



N A R U C
National Association of Regulatory Utility Commissioners

NOTICE VIA ELECTRONIC FILING

March 16, 2016

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

RE: Notice of Written Ex Parte¹ filed: *In the Matter of Lifeline and Link Up Reform and Modernization, WC Docket 11-42, Telecommunications Carriers Eligible for Universal Service Support, WC Docket 09-197, Connect America Fund, WC Docket 10-90.*

Secretary Dortch:

On March 10, 2016, **Nebraska Commissioner Crystal Rhoades** and the undersigned met separately with (i) **Gigi B. Sohn**, *Counselor to the Chairman*, **Stephanie Weiner**, *Senior Legal Advisor, Wireline*, **Ryan B. Palmer**, *Chief, Telecommunications Access Policy Division, Wireline Competition Bureau*, and **Eric Feigenbaum**, *Office of Media Relations*, (ii) **Travis Litman**, *Senior Legal Advisor to Commissioner Rosenworcel*, (iii) **Nicholas (Nick) Degani**, *Legal Advisor, Wireline, to Commissioner Pai*, and finally with (iv) *FCC Commissioner Michael O'Reilly*, and **Amy Bender**, *Commissioner O'Reilly's Legal Advisor, Wireline*.

The meetings were requested to discuss recent *ex partes* filed by others arguing that the FCC can give lifeline funding to entities that have not been designated as eligible telecommunications carriers under 47 U.S.C. 214(e), that the FCC can establish a federal "ETC" designation process that bypasses the 47 U.S.C. 214(e) requirement that States in the first instance conduct such designations, and elements of the Fact Sheet the FCC released on March 8, 2016.

During each of these, Commissioner Rhoades made one or more of the following points:

Nebraska, like NARUC, is a strong supporter of the federal Lifeline Program and the expansion to cover broadband. We have our own matching lifeline subsidy and related programs.

The FCC released "Fact Sheet" seems to acquiesce in the industry-driven proposals to bypass the State certification process by establishing an alternative "federal" certification procedure – *a procedure that is not found in the Telecommunications Act*. The impetus for the proposed bypass procedure seems to be the misguided notion that, by cutting States out of the process, it will somehow encourage cable providers of broadband services to focus on providing facilities based lifeline service at a discounted rate very close to the current lifeline subsidy rate.

¹ NARUC requests any waivers need to file this out-of-time. NARUC has very limited staff and I was unable to complete the approval process in time to file before today.

For carriers most likely to take advantage of the alternate procedure are not already certificated at the State level. Particularly, for such carriers, permitting the alternate procedure eliminates the only lever that Nebraska has to assure service quality, audit the use of the federal funds, and guard against waste fraud and abuse. The FCC should reconsider permitting that optional procedure.

In Nebraska we have rejected some carriers request for ETC designation that have already been certificated outside the State by the FCC for providing substandard E911 service. This is a public safety issue. For carriers that choose the federal procedure, in Nebraska (and many other states) there will be nothing we can do to correct or prevent problems with that carrier's lifeline service.

Unlike other jurisdictions, Nebraska has limited oversight of all telecommunications carriers. The ETC designation procedure is the one tool we do have at our disposal. The one certain outcome of permitting a federal bypass option in Nebraska is:

- (i) INCREASED CONFUSION BY LIFELINE SUBSCRIBERS that can come to the Nebraska commission with complaints about State designated service providers, but will only be able to go to the FCC for federally designated ones; and
- (ii) INCREASED LIKELIHOOD OF FRAUD, ABUSE, REDUCED SERVICE QUALITY by the federally designated carriers; and
- (iii) THE STATE MATCHING PROGRAM WILL BE UNDERMINED as the FCC permits carriers to choose both the level of service quality oversight – and for States like Nebraska with matching programs – the level of subsidy available to individual subscribers.

NARUC has not taken a position on this issue, but from my perspective, there seems to be a mismatch between the shift to a more data-centric network, the phasing out of support for standalone voice wireless services, and the anticipated timeline for deployment of NG911 services that the FCC should carefully examine before proceeding.

Sincerely,

James Bradford Ramsay
NARUC General Counsel

cc **Gigi B. Sohn, Counselor to the Chairman**
Jon Wilkins, FCC Managing Director and Chief Operating Officer
Eric Feigenbaum, Office of Media Relations.
Rebekah Goodheart, Legal Advisor to Commissioner Clyburn on Wireline
Travis Litman, Senior Legal Advisor to Commissioner Rosenworcel
Nicholas Degani, Legal Advisor to Commissioner Pia on Wireline
Amy Bender, Legal Advisor to Commissioner O'Reilly on Wireline
Ryan B. Palmer, Chief, Telecommunications Access Policy Division, Wireline Competition Bureau