NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

July 15, 2020

The Honorable Roger Wicker
Chairman
Senate Committee on Commerce, Science & Transportation
U.S. Senate
Washington, DC 20510

The Honorable Maria Cantwell
Ranking Member
Senate Committee on Commerce, Science & Transportation
U.S. Senate
Washington, DC 20510

RE: Support for S. 4021, *Accelerating Broadband Connectivity Act of 2020* Retention of the §214 Designation process protect your constituents.

Dear Chairman Wicker and Ranking Member Cantwell:

The National Association of Consumer Advocates (NASUCA) is a voluntary association of 58 consumer advocates. NASUCA members represent the interests of utility consumers in 43 states, the District of Columbia, Puerto Rico, Barbados, and Jamaica.[1] NASUCA members represent both the interests of the consumers who benefit from the availability of affordable broadband internet access services and also the interest of retail consumers of telecommunications services who support the Universal Service Fund (USF) through the contributions process. NASUCA has long advocated for the efficient use of the federal USF to support provisioning quality, affordable telecommunications services coupled with a public

[1] NASUCA is incorporated in Florida as a nonprofit corporation. NASUCA's full members are designated by the laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions. Some NASUCA member offices are separately established advocacy organizations while others are divisions of larger state agencies (e.g. the state Attorney General's office). NASUCA's associate and affiliate members also represent the interests of utility consumers but are not created by state law or do not have statewide authority. Some NASUCA member offices advocate in states whose respective state commissions do not have jurisdiction over certain telecommunications issues.

interest obligation to deploy high-speed broadband networks and services in rural unserved or underserved areas.[2]

The Federal Communications Commission (FCC or Commission) has begun implementing a new approach to its universal service high-cost program – the Rural Digital Opportunity Fund (RDOF). In October, the FCC will conduct a reverse auction aimed to provide funds to companies committing to build-out service in US census blocks that are currently unserved by fixed broadband with minimum speeds of 25 megabits per second (Mbps) for downloads and 3 Mbps for uploads. The FCC will make available $16 billion in federal USF subsidies in the Phase I auction and will make additional funds available in Phase II.[3]

Senate Commerce Chairman Roger Wicker introduced, with four co-sponsors, S.4021, *The Accelerating Broadband Connectivity Act of 2020 (ABC Act)* on June 22, 2020. Slightly more than a week later, Senators Portman, Brown, Bennet, and Jones introduced S. 4201, *The Rural Broadband Acceleration Act*, which is identical to the simultaneously introduced HR 7447. The goal of both bills is to incentivize auction winners to expedite construction and service initiation of the subsidized broadband services. NASUCA supports this goal. Extending broadband networks to eliminate the digital divide is of enormous benefit to consumers. This is especially true given the additional reliance on internet access for purposes of education, employment, and healthcare created by the spread of the novel coronavirus.[4]

However, the effort to expand high-speed broadband access should be undertaken carefully so as to not cause unintended consequences that can ultimately harm consumers and defeat the goal of decreasing the digital divide. Of the bills that have been introduced, Senator Wicker's bill is best designed to ensure that auction winners continue to offer Federal, and, where available State, subsidies for Lifeline service for qualifying low-income individuals.

The main mechanism by which Senator Wicker's bill (S. 4021) ensures that RDOF support is beneficial to all customers is by retaining the requirement that carriers be designated as Eligible Telecommunications Carriers (ETC) in order to receive USF support. Eliminating

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[2] See, e.g. NASUCA Resolution 2019-04, *Urging the FCC to Refrain from Adopting a Hard Cap on the Overall Size of the Federal Universal Service Fund and Instead Focus on Universal Service Goals and Contributions Reform;* NASUCA Resolution 2018-01, *Urging the FCC and States to Assure that Lifeline Eligible Households in All Regions of the Nation Have Access to Voice and Broadband Internet Access Services from a Choice of Providers and Networks, Made More Affordable with Lifeline Support;* NASUCA Resolution 2017-05, *Urging State Commissions and the FCC to Adopt Policies and Processes to Provide Lifeline Eligible Households with Access to Affordable Lifeline and Broadband Internet Access Services;* and NASUCA Resolution 2017-4, *Urging Local, State, and Federal Officials to Ensure Reliable Broadband Internet Access Services are Accessible and Affordable to All Consumers.*

[3] FCC, "Auction 904: Rural Digital Opportunity Fund," https://www.fcc.gov/auction/904/factsheet.

[4] See, NASUCA Resolution 2020-01: "NASUCA affirms its historic support for universal service and affordability, service quality and the need for telephone service to reach as close as practicable to 100% of low-income households in the United States, as was originally provided for by the Communications Act of 1934 and the 1985 Lifeline amendments thereto, and as such programs are consistent with NASUCA policy positions taken over time in its resolutions and legal action(s)." (*available at* https://www.nasuca.org/nwp/wp-content/uploads/2020/05/2020-01-NASUCA-COVID-19-Policy-Resolution-Final-5-12-20-.pdf).

that requirement, as Senator Portman's bill does, would be a significant departure from the existing statutory structure, would weaken consumer protections, and likely undermine complementary state programs.[5]

The Telecommunications Act of 1996 has long recognized that the provision of a modern communications network which is universally available is a shared goal of the FCC and states.[6] Funds distributed from the federal USF for infrastructure in high cost areas and to make services more affordable for low income consumers carry universal service obligations.[7] Any legislative changes in these areas must preserve the role of states as partners in assuring that the goals of universal service are advanced and the federal USF resources are put to their intended use.

Section 214(e) of the Act reflects Congress' determination that states with jurisdiction shall have primary responsibility for designation of common carriers as the ETCs that will be eligible to receive federal universal service support and will be obligated to provide supported services.[8] If a common carrier is not subject to the jurisdiction of a state commission, then "the Commission shall upon request" make the ETC designation.[9] Section 214 requires that a carrier designated as an ETC must "offer the services that are supported by Federal universal service mechanisms."[10]

Removal of state ETC oversight of carriers who receive RDOF subsidies raises the possibility that carriers can receive universal service funds for broadband expansion, but ultimately not serve some of the customers in the greatest need of the service. A carrier that has received RDOF support without first obtaining ETC designation or is later allowed to relinquish its ETC obligations might make the business decision to continue offering broadband services and maintain the network in that areas. But low-income customers eligible for Lifeline support would have to pay the full retail rate for service from a carrier that is not an ETC.

Section 214(e)(4) authorizes the state commission to rule upon whether and under what conditions an ETC may relinquish its ETC designation, "to ensure that all customers served by the relinquishing carrier will continue to be served…"[11] States can thus ensure that there is always at least one ETC-designated carrier offering Lifeline support to qualified low-income customers. Removing the ETC requirement could potentially leave entire regions of low-income customers unserved by the Lifeline program. Ironically, those customers would be contributing to USF support through assessments on their communications bills while being unable to access the benefits of the program.

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[5] The House Commerce Committee Currently has two bills pending: H.R. 7160 and H.R. 7447. Both of those bills eliminate the requirement that recipients of USF support through the RDOF be designated ETCs. There are also other proposals in both chambers that, while undoubtedly well intentioned, make the same crucial mistake of eliminating States from the designation procedure.
[6] 47 U.S.C. § 254(a), (b), (f), (i).
[7] 47 U.S.C. § 254(c)(1), (e).
[8] 47 U.S.C. § 214(e)(1), (2).
[9] 47 U.S.C. § 214(e)(6).
[10] 47 U.S.C. § 214(e)(1)(A)
[11] 47 U.S.C. § 214(e)(4).

We encourage the Senate to continue to explore ways to eliminate the digital divide, including the provision of funds to incentivize accelerated deployment. At the same time, we encourage the Senate to ensure that all consumers, including low-income consumers, will have access to federally supported projects by retaining state oversight through the ETC designation process.

If you have any questions about this letter, please do not hesitate to contact our Executive Director, David Springe at (785) 550-7606 or david.springe@nasuca.org, or NASUCA Telecommunications Committee Chair Regina Costa at (415) 786-8831, or rcosta@turn.org.

Respectfully Submitted,

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