Congress of the United States
Washington, DC 20515

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June 16, 2016

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Chairman Wheeler:

We write to express our concern about the Federal Communications Commission's (FCC) recent actions on the universal service Lifeline program, namely its decision to drastically curtail the important state role in preventing waste, fraud, and abuse. We recognize the value of the Lifeline program for those people who are truly in need of assistance, and we appreciate the FCC's efforts to ensure that qualified low-income consumers can obtain access to affordable voice and broadband services.

In its order, the FCC creates a new category of Eligible Telecommunications Carrier (ETC), called "Lifeline Broadband Providers," and adopts a designation process by which Lifeline providers are to be certified by the FCC. To create this new category of ETCs, the FCC expressly preempts the authority of state public service commissions to conduct the ETC designation process for providers of Lifeline broadband service. Though the FCC goes to great lengths to explain the legal basis for its decision, the fact remains that this rule directly contravenes the language of section 214(e) of the Communications Act. The plain language of that law gives state commissions the primary responsibility for designating carriers to participate in the universal service programs. The FCC may only perform this function where a carrier is not subject to the jurisdiction of a state commission. Any change to this framework must be made by Congress.

As 96 state public service commissioners noted in a recent letter to the FCC, when it comes to designating ETCs to participate in the Lifeline program, states are still the best cops on the beat.[1] Several states have refused to grant ETC designations or have revoked designations for carriers that violate program rules or provide substandard services to consumers. While the FCC's order stresses that it does not preempt the state ETC designation process for Lifeline voice service, this seems like a distinction without a difference. With the phase out of support for standalone voice service, the state role in designating ETCs will no longer exist by the end of that process. And in the meantime, nothing prevents providers from forum shopping to seek designation from the regulator with the more lenient requirements. As such, we worry this rule change could increase the risk of waste, fraud, and abuse in the program, as well as the chance that consumers will lose the vital check on service quality that existed prior to the FCC's decision.

We are similarly concerned about the FCC's proposal to implement a National Verifier to verify consumer eligibility for the program. We share the FCC's goal of preventing enrollment by consumers who do not meet the eligibility criteria or have signed up for multiple phones. Establishing an automated eligibility verification system is paramount to preventing waste, fraud, and abuse in the program. That said, more than twenty states have implemented processes for determining the Lifeline eligibility of consumers in their states. The Lifeline order provides little guidance on how the National Verifier will coordinate with those states, or to what extent states will be permitted to continue using their own automated eligibility systems.

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[1] Letter to FCC Chairman Tom Wheeler and FCC Commissioners Mignon Clyburn, Jessica Rosenworcel, Ajit Pai, and Michael O'Rielly, from National Association of State Regulatory Commissioners (NARUC) (March 20, 2016).

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Given that data about program eligibility for Lifeline is typically housed at the state level, it could be more efficient and cost-effective to allow states to continue serving as the primary verifiers of applicant eligibility. The FCC should focus on working with the states to ensure they have the information needed to perform robust checks of applicant eligibility and, if it implements a National Verifier, clarify whether states will be permitted to opt out or otherwise maintain their processes to check applicant eligibility.

As the FCC moves forward with implementing changes to the Lifeline program, we ask that you keep in mind the integral work that states have done in preventing waste, fraud, and abuse and ensuring the availability of high quality services for all consumers.

Sincerely,

Deb Fischer
United States Senator

Steve Daines
United States Senator

Kevin Cramer
United States Representative

Roger F. Wicker
United States Senator

Orrin Hatch
United States Senator

Michael B. Enzi
United States Senator

John Barrasso, M.D.
United States Senator

Marco Rubio
United States Senator

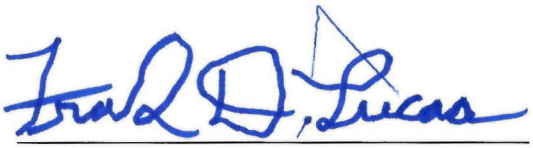
David Perdue
United States Senator

Thom Tillis
United States Senator

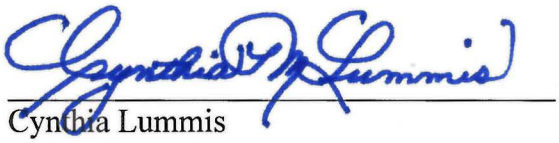
Ben Sasse
United States Senator

Steve Russell
United States Representative

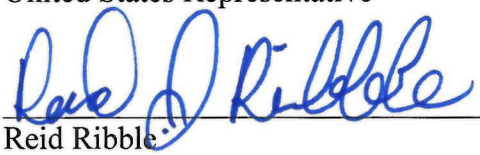
Ryan Zinke
United States Representative



Frank D. Lucas
United States Representative

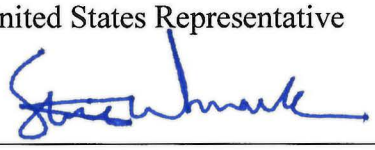


Cynthia Lummis
United States Representative



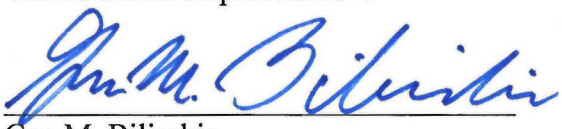
Reid Ribble
United States Representative

Kristi Noem
United States Representative



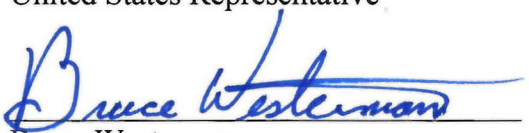
Steve Womack
United States Representative

Rick Crawford
United States Representative

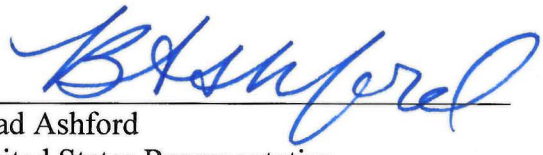


Gus M. Bilirakis
United States Representative

Markwayne Mullin
United States Representative



Bruce Westerman
United States Representative



Brad Ashford
United States Representative

Jeff Miller
United States Representative

Austin Scott
United States Representative