

**Remarks of Commissioner Mignon L. Clyburn
NARUC Winter Summit
Washington, DC
February 14, 2018**

Thank you, President Betkoski for that kind introduction. It is great to be back at NARUC. While I've been at the FCC now for over eight years, most of you know, that I have spent most of my regulatory career as a state commissioner, so I understand you, have always taken your positions into account, and continue to do so, even when we disagree.

To say that the past year at the Commission has been busy, would be an understatement. While the rollback of the 2015 net neutrality rules dominated most of the headlines, there is much more on our agenda. But for the sake of time, I will narrow my focus to universal service, in particular, the high-cost and Lifeline programs, and close by discussing contribution reform.

On the high-cost side, allow me to touch on our upcoming reverse auctions, and share some of my thoughts on how states and localities can participate. As you know, last year around this time, we granted New York State a waiver of our CAF rules, allowing them to receive some of the declined price cap funds, and roll them into an ambitious, competitively-bid program designed to provide robust broadband service throughout the state. Just a couple weeks ago, Governor Cuomo announced winning bidders in the third round, and by all reports, participation was robust. We are eagerly looking towards the buildout of infrastructure and deployment of service, and are confident we can translate support dollars into better broadband service for consumers.

Now I have been told that some are wondering how to achieve a similar result as New York — ensuring that federal funding flows to your state, to build out robust broadband for your citizens. While there is nothing that precludes any state from putting together a request like New York's, we are so far along in the CAF Phase II process, that it is doubtful that anything a state could put together, would be considered by the FCC at this juncture. But a little ingenuity could go a long way.

I say this because I firmly believe that states and localities, can still take advantage of the process, that the FCC has spent literally years designing. I know some of you would have done the reverse auction differently, and I must admit I am not wild about every aspect of the auction process. But overall, the framework is a solid one, built upon what we have learned, from among other things, our Rural Broadband Experiments and the Mobility Fund Phase I auction.

So just how would a state or locality participate? It would involve money: a mix of state USEF, discretionary funding from the statehouse, or some other source, that could be leveraged in the CAF auction process. And while I may have lost many in this room with those suggestions, the potential benefits are significant, if a state or locality wraps this additional funding, around the existing auction mechanism. For example, a state could announce a 1:1 match for whatever support an auction participant wins at the federal level. This would simultaneously encourage potential bidders to bid, on eligible areas in the state or locality, and allow them to participate at a lower cost per area, than if they were relying on federal funding alone. This would ensure that

proportionally, more federal funding flows to that particular state or area.

Or say, if a state or locality wanted to encourage high-speed deployment, it could limit its matching funding to the highest speed tiers in the FCC auction. Or, if a jurisdiction wanted to encourage broad satellite deployment for particularly remote areas, it could buy down the latency weight that the FCC assigned in the auction.

And it does not even need to be a state or locality taking advantage of this process. Local businesses, foundations, and other entities could incent broadband deployment in their communities, by leveraging our auction mechanism. Even though the time is short to pull something together for this auction, remember, the Mobility Fund Phase II and the Remote Areas Fund auctions, are in the pipeline.

While I am excited about these auctions, there are other things that the FCC majority is doing, that concern me deeply. One of these, involves the Lifeline program, where I am dismayed at this Administration's approach when it comes to dealing with the economically disadvantaged.

This became glaringly evident in February 2017, when the FCC majority flushed the hopes of several Lifeline providers and their prospective customers, down the drain. Through an unprecedented action, the FCC revoked the provider's authorizations without notice. Now it would be one thing if there were wrongdoing involving these entities, but there was no wrongdoing and as a result, the majority that always boasts about free markets, managed to hamper competition and deep-six consumer choice. It cost providers millions of dollars and, in one case, left thousands of customers the provider was already onboarding, out in the cold.

Now I know that some of you disagreed with the process that the prior Administration set up, to enable Lifeline providers to provide broadband, but tell me, how does the decision last February bring about good process or good policy? In fact, one provider — Kajeet — said after its national designation was revoked, that it would likely take it 25 years for them to achieve a nationwide Lifeline footprint. Now a company, whose mission is to provide low-income students access to broadband outside the classroom, potentially in each of your jurisdictions, will be less able to connect families in your communities in a timely fashion, as a result of last year's decision.

And there is more to the story. The majority pounced on a Government Accountability Office (GAO) report, which was based on stale data, to justify further cuts to the Lifeline program. Even those who have been critical of the Lifeline program in the past, have suggested that a National Verifier has the potential to fix the remaining issues, with bad actors taking advantage of the program, one of the core points raised by the GAO's report. So, I am not sure how to interpret the news that the implementation of the National Verifier, is now being delayed.

And to top it all off, the majority has voted to move forward with a proposal that would effectively kill the program. Be it drastically lower budget caps, a requirement to pay for the service, or telling 70% of consumers they cannot use their preferred mobile carrier: The impact of their proposal would make it more difficult, for the economically disadvantaged to access the

internet. That is why I dubbed the item, the *Widen the Digital Divide* Notice of Proposed Rulemaking, because if passed, we will ensure that the majority of those who qualify for Lifeline, will be unable to access affordable voice and broadband, in the foreseeable future.

I am hearted that NARUC's proposed resolution recognizes the value of Lifeline. But I refuse to give up hope because to destroy or weaken a program, that so many Americans rely on as their only means to dial 9-1-1, do their homework, or find a job, is not putting #ConsumersFirst. I am hopeful that this will not come to pass. I am hopeful, that we will see the National Verifier come online soon, and I am hopeful that many of the issues that the majority has expressed concern when it comes to provider abuses, will be addressed and resolved, once and for all.

Turning from outlays to collection, brings me to issues of contributions to the Universal Service Fund. It is no secret that contribution reform has languished for far too long. And while I am not particularly optimistic about getting it over the finish line over the next three years, I do believe that our discussions have borne fruit. I sincerely appreciate the work of the Joint Board's state members, who have tried to constructively contribute to the discussion and move the ball forward.

The FCC's approach to the federal universal service fund, is much like a long-running Jenga game: we keep removing pieces from the base, and keep adding more to the top. Eventually, the whole tower will come tumbling down. Historically, our universal service fund contribution system, has matched in large part our distribution system, at least on the high-cost side. By that I mean, the services that were supported, are the services that were assessed. In recent years, we have moved away from that model, with legacy voice revenues propping up a program, that is now primarily funding broadband. And with calls for fresh funding on all fronts, and a contribution factor that keeps climbing, we all know that action needs to be taken and that needs to happen now.

But just what should be done? It seems no matter which way we turn, someone's ox is gored. With a few caveats, I think the winning approach could be a simple one. Here goes: the infrastructure that is supported by the Fund, should be the infrastructure that is assessed by the Fund. It makes no sense to me, for grandma's dial-tone service, and only grandma's dial-tone service, to be undergirding the buildout of next-generation infrastructure.

Now heading in that direction, has been made more difficult by the FCC's recent actions to reclassify broadband as an information service. Then again, that action undermines the distribution side of the equation as well. My only hope, is that we come up with a solution, before the walls come tumbling down.

Even in the wake of these critical, yet unresolved issues, I still appreciate of the work of our state partners? Why? Because you continue to push for a comprehensive, sensible contribution mechanism. I believe that the suggestion the state members of the Joint Board have submitted to the Commission, is a workable start, and I applaud the recognition that we need to rationalize the contribution base.

We have heard many objections, to moving forward with including broadband connections in the contribution mechanism and this morning, I would like to address a couple of them. For one, there is the suggestion, that the Internet Tax Freedom Act, bars assessing contributions on broadband. Let me be clear: That statute, places absolutely no bar, on addressing universal service reform. Even if you believe, that broadband is “internet access” pursuant to that statute, the language of the statute itself, explicitly carves out universal service contributions, and 9-1-1 fees.

Another objection, is that including broadband connections, would increase the cost of connectivity, would not lower the contribution factor, and would increase universal service fund expenditures. Including broadband, my friends, would not increase the total contribution burden on consumers, nor would it increase universal service expenditures. It would reduce the contribution factor. In fact, a hybrid connections/revenues approach, would significantly reduce the per-connection fee that consumers pay, and would also significantly reduce the contribution factor.

These diametrically opposed positions, but I still believe we can move forward with reform as a Joint Board. However, if by chance that fails, I think that we must accept that, and work quickly to bring in experts from outside the telecommunications bar. This move will inject fresh thinking into the debate.

In line with this thinking, I humbly suggest this: that the Joint Board, organize a pitch competition, inviting new, outside experts to come in, and present their ideas for contributions reform. Using pitch competitions work well in many other sectors, and it is one I incorporated as part of my #Solutions2020 Policy Forum in 2016, and subsequent White Paper. But here’s the twist that I respectfully recommend: that the pitches must be ideas, that have not been hashed, rehashed, or rehashed again in the contributions docket. Why do I recommend that as a ground rule? Because some of the most innovative ideas, have come, when experts from one field, work to solve problems in a completely different field. Let’s face it, progress over the years, has been stymied, and I believe it is past time, that we are long overdue, for a new and novel approach.

As a leave you, I again thank you, for the fine work you are doing at the state level. I wish to applaud those of you, who have enacted much needed inmate calling service reform. This is making a real a difference, in the lives of children, in marriages, and recidivism rates in your states.

We are all public servants, which has the added challenge of ensuring that we endorse and implement policies, that benefit each and every citizen, no matter who they are, or where they reside. So, thank you once again for having me here today, and if there is time, I look forward to entertaining any questions or accepting any feedback, you may have.