



May 22, 2020

The Honorable Nancy Pelosi
Speaker
United States House of Representatives
U.S. Capitol, H-232
Washington, DC 20515

The Honorable Mitch McConnell
Majority Leader
United States Senate
U.S. Capitol, S-230
Washington, DC 20510

The Honorable Kevin McCarthy
Minority Leader
United States House of Representatives
U.S. Capitol, H-204
Washington, DC 20515

The Honorable Charles Schumer
Minority Leader
United States Senate
U.S. Capitol, S-221
Washington, DC 20510

RE: Additional Congressional Support for Utility Consumers Impacted by the COVID-19 Public Health Emergency and Economic Crisis

Dear Speaker Pelosi, Leader McConnell, Leader McCarthy and Leader Schumer:

On behalf of the National Association of State Utility Consumer Advocates (NASUCA)¹, I write to thank you for the support for utility consumers that Congress has provided in the prior COVID-19 stimulus packages. The COVID-19 public health emergency and economic crisis is unprecedented.

During this crisis, many utilities and communication providers have temporarily stopped disconnecting consumers while some have also reconnected consumers that had lost service prior

¹ NASUCA is a voluntary association of 58 state utility consumer advocate offices. NASUCA members represent the interests of utility consumers in 43 states, the District of Columbia, Puerto Rico, Barbados and Jamaica. NASUCA's full members are designated by the laws of their respective jurisdictions to represent the interests of utility consumers before state and federal utility regulators and in the courts.

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to the crisis. However, utilities and communication providers cannot continue indefinitely under these moratoria.

Congress must provide additional support to ensure consumers impacted by this crisis can maintain access to essential utility and communication services.

Our NASUCA members are acutely aware of the challenges utility consumers are facing during this COVID-19 crisis. We are working every day to ensure that universal access to affordable utility and communication services is not diminished during this public health emergency and economic crisis. We also recognize that the end of the COVID-19 public health emergency, however defined, will not correspond to the end of the economic crisis. Many utility consumers are already falling behind on their utility bills and will need uniform programmatic assistance and financial help to get back on their feet. This includes payment arrangements covering much longer time periods than normal, discount/assistance plans where none currently exist or expansion of existing plans. We will continue to work closely with utilities and communication providers, state governors, legislators, public utility commissions, energy and health agencies and other interested parties to address these needs.

NASUCA recently passed Resolution 2020-01 “*NASUCA Recommendations Concerning the Effects of the Public Health and Economic Crises Resulting from COVID-19 upon Utility Rates and Services Provided to Consumers by Public Utilities*”² Based on this membership statement of policy priorities we offer the following requests:

- **State Jurisdiction:** Congress should respect state jurisdictional and decision-making authority to determine the extent and duration of any shutoff moratoria and to control any rules related to disconnections and reconnections, utility communications, payment programs and revenue collection activities. While we understand the good intention of wanting to help utility consumers through a “one-size-fits-all” approach to moratoria, we support the position on state authority expressed by the National Association of Regulatory Utility Commissioners (NARUC) in its letter of April 20, 2020³. NASUCA members believe that state decision makers, including the public utility commissioners, are in the best position to assess the needs of both utilities and utility consumers and best equipped to determine the steps necessary to provide the broadest remedy to those impacted by this crisis. A “one-sized-fits-all” approach does not recognize the on-the-ground differences among the many states. Congress should not impose requirements or restrictions that impede state authority to craft the solutions necessary to address state

² <https://www.nasuca.org/nwp/wp-content/uploads/2020/05/2020-01-NASUCA-COVID-19-Policy-Resolution-Final-5-12-20-.pdf>

³ This position is also supporting in an April 21, 2020 letter to Congress from the National Association of Water Companies (NAWC), and an April 28, 2020 letter from the Edison Electric Institute.

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needs. Congress must avoid imposing additional disconnection moratoria or imposing restrictions that serve to hinder the ability of NASUCA members, utility commissions, utilities and communications providers to communicate with consumers about payment programs or other services designed to address consumer needs.

- **Low-Income Home Energy Assistance Programs:** We appreciate the effort Congress has made in its previous stimulus bills to increase LIHEAP funding to address the needs for low-income consumers. However, it is clear that consumers will need additional support as we head into the heat of summer. Providing low-income consumers additional support through LIHEAP will be an essential tool in recovering from the economic crisis and for getting consumers current on their utility bills. Congress should increase current fiscal year funding levels for LIHEAP and maintain that level of support through the next fiscal year. The National Energy Assistance Directors Association (NEADA) is recommending a \$4.3 billion increase in LIHEAP funding, although funding in excess of this level may be necessary to fully address this crisis.
- **Low-Income Assistance for Water and Wastewater Consumers:** Access to affordable water and wastewater services is essential for public health and safety. Consumers that are not able to pay their electric utility bill or natural gas utility bill during the current crisis are likely also not able to pay their water and wastewater bill. Yet there is no LIHEAP type federal assistance program to support low-income water and wastewater consumers. Congress should create and fund a LIHEAP type program to address the needs of low-income water and wastewater consumers.
- **Low-Income Assistance for Telecommunications:** 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. We appreciate the action taken by communication providers pursuant to the Federal Communications Commission's (FCC) "Keep America Connected Pledge." To support low-income consumer access to necessary telecommunication service, Congress should require the FCC to support the uncapping and increasing of the Lifeline program funds so that for the duration of this public health emergency and economic crisis funding levels are sufficient to meet consumer needs, provided that such reasonable protections against waste be retained to protect the public. This includes supporting the expansion of the provision of voice minutes, text messages and broadband internet access over wireless Lifeline phones such that vulnerable families will retain full and reasonable access to online education, government, health/telemedicine and public safety services.
- **Direct Utility Assistance:** Many of the newly unemployed have likely never heard of LIHEAP and have likely never had to apply for LIHEAP or other utility bill assistance.

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Additionally, low-income assistance programs will not necessarily address the disconnections and revenue deficiency caused reduced commercial and industrial activities. Ultimately, to minimize the potential rate increases that retail consumers may face in the future and to also help maintain financial stability for utilities, Congress should consider providing direct funding to utilities with the instruction that the funding can be accessed and used only to reduce consumer arrearages through credits directly to consumer bills.

- **Eliminate Tax Normalization Rules for Excess Accumulated Deferred Income Tax Balances:** When marginal tax rates for utilities were reduced in the Tax Cut and Jobs Act of 2017 (TCJA), Congress required that the majority of the resulting excess accumulated deferred income tax (ADIT) balances be returned to consumers “normalized” over the life of the underlying assets. In simpler terms, with the new lower TCJA marginal tax rates, utilities are holding on to a pool of consumer supplied tax money in excess of what is needed to actually pay those taxes going forward. No one disputes this excess ADIT balance belongs to consumers and no one disputes that this money will be returned to consumers. It is simply a timing issue. Eliminating federal normalization requirements will allow states regulatory agencies to use the excess ADIT balances to help consumers recover from the COVID-19 crisis. Congress should eliminate the normalization requirement contained in the Tax Cuts and Jobs Act of 2017 associated with the flowback of excess protected accumulated deferred income taxes to allow state commissions the flexibility to use these consumer-supplied funds to either make rates more affordable or to fund programs to help consumers maintain necessary utility service.
- **Broadband, Telephone and Cable:** The COVID-19 crisis had put a spotlight on the importance to this country of a robust broadband communication network that is available to all consumers. To facilitate the additional capacity necessary to support telemedicine and education and commerce, Congress should work with states and increase funding to appropriate state governmental agencies, or create incentives for investor-owned broadband internet access providers, to expand broadband capability and availability in all areas, but with additional focus on unserved and underserved areas to reduce the impact of the digital divide.
- **Support for Water and Wastewater Assistance:** Small water and wastewater utilities have unique liquidity and infrastructure needs that must be addressed. Due to the lack of population density and the lack of economies of scale, small communities often face hurdles in supporting water and wastewater systems. Both urban and rural water systems may also have issues with lead and other contaminants and face other infrastructure challenges. All of these challenges are magnified by the current crisis. Congress should expand access and funding for existing programs that provide critical water and wastewater infrastructure technical assistance and workforce development support. Expanded access to these types of water and wastewater programs will help support the affordability and stability of water and wastewater services for consumers. Also, it will

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help support the safety and potability of drinking water during and after this crisis, especially for small systems and systems burdened by lead and other nationally recognized contaminants.

As Congress considers additional legislative action aimed at addressing the public health emergency and economic crisis caused by COVID-19, we appreciate your consideration and focus on the above policy priorities. Taking these actions will not only spread benefits widely across the country but will also put the utility consumers that NASUCA members represent in the best position to maintain access to safe, reliable, and affordable utility services. Taking these actions now will help keep consumers connected to the utility system, bring a level of revenue stability to utilities and reduce the need for future utility rate increases, increases that would only serve to exacerbate the current economic challenges. Taking these actions now will put states in the best position possible to manage through the current challenges and bring their economies back online.

Sincerely,



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