



August 25th, 2023

Dear Senator Thune and Senator Lujan,

Thank you for your request for comment regarding the Universal Service Fund (USF) and related programs. We appreciate this opportunity to contribute our voice to this important conversation on behalf of American consumers. We would also like to thank you for your willingness to engage with and solicit ideas from advocacy organizations such as our own and seriously consider diverse perspectives as we work towards a common goal of better serving the American people in the realm of telecommunications.

The Universal Service Fund was originally established by the Communications Act of 1996, replacing the old long-distance carriage fees used to subsidize telephone service for all Americans. In the nearly three decades since, traditional bureaucratic mission creep has grown the USF's distributions to cover all manner of telecommunications services, including internet service for local libraries, schools, and eventually grew to subsidize whole local broadband networks. Some now call for USF to support broadband access for low-income households.

As Congress considers reforms to USF, three guiding principles should take precedence: 1) USF was designed for phone service when the internet was in its infancy and does not conform to the dynamics of the contemporary broadband market, 2) the American people and especially taxpayers are best represented when Congress exercises real oversight over all spending programs, and 3) programs that directly subsidize the consumer and maximize choice are preferable to more paternalistic or centralized programs that create inefficiencies in the market.

With these priorities in mind, we offer the following answers to select questions in your request for comment. We have elected to only answer those questions relevant to our expertise as a free-market advocacy group that believes most federal broadband programs should be eliminated, consolidated, and refocused. While certainly important and relevant, some of your questions on improved administration can be universally answered with the same advice: divest USF of most of its broadband work and return it to phone service as originally intended, eliminate most other broadband programs, and rely on the Broadband Equity, Access, and Deployment (BEAD) program for deployment and the Affordable Connectivity Plan (ACP) for access. Question 3's three subparts can be uniformly answered that there is something of a black box at the core of these programs' distribution models that could be remedied either through stronger oversight of the existing program or by bringing the whole structure under the regular appropriations process, which would accomplish both the oversight goal and ensure great fiscal responsibility.

1) How should Congress and the Commission evaluate the effectiveness of the existing USF programs in achieving universal service goals for broadband?

A chief concern with USF is one of definitions: the concepts of “universal service” and “reasonable prices” from the original 1934 statute are too nebulous to effectively evaluate. Ultimately, the short answer is that USF programs should be evaluated in terms of the rate of participation by consumers and ETCs. The school and library programs are somewhat different in this regard because there is no free market of programs competing for their participation, but it is still possible to quantify how effective these programs are at getting into the communities they seek to serve.

A much clearer dynamic is at play with consumer subsidies. Congress can much more easily evaluate the effectiveness of these programs through their popularity. Congress should trust that consumers know what is most adequately meeting their needs. As the American Consumer Institute has documented, ACP is far and away the winner for broadband access while Lifeline remains the most popular for telephone access.¹ This further supports the case for making ACP permanent as a replacement for other duplicative programs.

6) Should Congress eliminate the requirement that a provider must be an “Eligible Telecommunications Carrier” to receive USF subsidies?

While there are legitimate criticisms of how ETCs are defined, as a general rule it is best to keep the guardrails established by 47 CFR §54.201 largely intact. Recipients of subsidies should have to demonstrate some baseline level of competence at serving their communities of interest. At the very least, the prohibition on certifying an ETC in a census block that is already served by an unsubsidized competitor should be maintained to prevent subsidized overbuilding that picks winners and losers for customers rather than allowing market demand to make such a determination.

The one reform that Congress might consider would be assess how corrupt, if at all, state commissions have been in certifying ETCs and whether self-dealing or anticompetitive practices resulted. Regulatory capture is one of the pressing issues of our Age, and Congress should take what steps it can to militate against it. Throwing the door completely open, however, may invite more corruption and market inefficiency than it shuts out.

7) Currently, telecommunications companies must pay a contribution factor to the Universal Service Fund proportional to interstate end-user revenues. What reforms are necessary to ensure that the contribution factor is sufficient to preserve and advance universal service?

¹<https://nam04.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.theamericanconsumer.org%2F2023%2F08%2Fconsumergram-an-assessment-of-the-affordable-connectivity-program-keep-it-scrap-it-or-modify-it%2F&data=05%7C01%7Cjerwin%40atr.org%7Ca704e7a9a9bd4b78b3ee08db9e824d33%7C56343cb3e2f44f93b83bbb36af05cab6%7C0%7C0%7C638278054726449794%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ikl1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=T7QQXmd9qawFcilahJx5iFejTTRD8iwfKOAfGOP%2Fk%2FI%3D&reserved=0>

As a taxpayer and consumer advocacy group, we hesitate to endorse a change in fees that would be passed on to customers through higher rates. This amounts to an effective tax increase on broadband service despite the fact that the FCC has the authority to set the rates themselves, making USF contributions a tax without Congressional oversight. Collecting in the range of \$5-8 billion each year, USF does not want for contribution but rather suffers from numerous problems on the distribution end. Congress should focus on how to better distribute existing funds before it seeks to change contributions.

Given the plethora of other broadband access programs, totaling some 130 across 15 agencies according to GAO,² Congress should consider how other programs might better achieve broadband-related goals and refocus the program on telephone service as originally intended. This will of course include 5G and later 6G data capable of accessing most internet services, but confining distributions to ETCs that deal directly in traditional telecommunications services for traditional telecommunications services. Existing fees could be spent much more efficiently than they are to ensure sufficient funding.

a) Some have advocated for assessing USF contributions on broadband service and edge providers. What would the impact of such reforms on ratepayers and the marketplace?

In all likelihood, this would mean an increase in rates for consumers. ETCs that contribute to USF already include a line item for the USF contribution on monthly phone bills to document the very real mark-up required by the FCC. While the logic of expanding the contribution pool to include edge providers might be that the wider diffusion of costs will lower the individual burden on consumers, the reality is budgets are more likely to grow in response to increased revenue yielding no relief to consumers. Regardless, expanding the pool to edge providers would impose a fee on consumers, many of whom pay into USF through their phone plans as well. Double taxation of this variety will be felt by the consumer one way or another.

Furthermore, edge providers could be followed by large tech firms, at which point the fee has essentially become a broad-based tax on different telecommunications services. When this is the case, it would be preferable for elected members such as yourselves exercise true oversight over how the funds are spent through the appropriations process.

b) Some have advocated the funding for the USF to an appropriations model. What impact would that have the USF?

As mentioned above, if the contribution pool is expanded it would simply be good governance for Congress to exercise stronger oversight of USF spending through the appropriations process. That does not necessarily mean that it is vital for Congress to do so now; there are trade-offs associated with the current USF becoming a programmatic appropriations account. Congressional oversight would be greatly strengthened and the assessment of fees by an executive agency that should not wield any taxation power that properly belongs with Congress, but inconsistent funding that may result from spending

² <https://www.gao.gov/assets/gao-23-106818.pdf>

fights and government shutdowns would greatly disrupt ETCs' business models. If Congress seeks to encourage and maintain ETC participation, which most find to be in their financial interest, arbitrary lapses in funding that could result from the appropriations process would discourage participation.

8) What actions are necessary and appropriate to improve coordination between USF programs and other programs at the Federal Communications Commission, the National Telecommunications and Information Administration, USDA Rural Development, the Department of Treasury, and other federal agencies?

At the risk of sounding excessively idealistic or doctrinaire, the best way to improve coordination is to simply eliminate and consolidate programs into a smaller number of centralized programs. USDA Rural Development has been rendered completely redundant by the passage of the Broadband Equity Access and Deployment (BEAD) program as a part of the Infrastructure Investment and Jobs Act (IIJA). Locally controlled and state-directed broadband approaches to all programs tend to prove more successful than top-down federal programs, as those closest to the problem best understand it. The state-driven approach taken by BEAD will very likely produce better results than USDA programs ever have, especially in states like West Virginia where ReConnect, Rural Development, and RDOF have not had a good track record.

Regarding permanent agencies like the FCC and NTIA, coordination has often been a sticking point. Agencies have been known to simply send an email and consider that sufficient to fulfill a statutory requirement for "coordination." More and stronger inter-agency liaisons can improve this, but empowering them to the point of an effective veto over another agency's actions that cross jurisdictions. This would only exacerbate bureaucratic existing deficiencies. In other areas of government, joint task forces have proved somewhat effective at mitigating these problems. Though not without issues of its own, the Joint Terrorism Task Force, for example, did improve counter-terrorism efforts in the wake of the 9/11 attacks. Some of these already exist to address specific domestic policy issues, but a standing interagency committee on rural broadband deployment could go a long way towards addressing these problems. Ideally, jurisdictions would be clearly delineated to prevent any duplication in the first place, e.g. by confining NTIA to its original role as the steward of government spectrum and technology while the FCC regulates the telecommunications market as a whole. Treasury's role should be confined to disbursing funding according to law and Congress should refrain from empowering them to promulgate regulations or guidance in the broadband space and defer completely to the subject matter agencies.

9) Is the USF administrator, USAC, sufficiently accountable and transparent? Is USAC's role in need of reform?

USAC is not sufficiently accountable or transparent. As a quasi-public entity, its opacity exceeds that of a federal agency, even as it effectively acts as one. The privacy of individual participants and proprietary information of participating ETCs should continue to be protected, but decision making on distributions should be more transparent. There are two potential remedies to this problem: either USAC should be reformed and treated like a government agency subject to Congressional oversight, or it should be fully privatized and required to re-enter a competitive bidding process every few years like a government contractor. Neither model is perfect, but the

semi-public nature of the company has enabled it to better respond to market forces than an agency and worse than a contractor.

As a free-market advocacy group, Digital Liberty would favor the latter approach if reform is deemed necessary by Congress. This could well reduce waste in the company and greatly improve the efficiency of distributions thanks to the market competition to which USAC would be subject every so often to renew its contract.

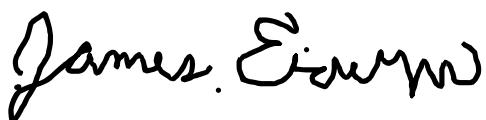
10) Is Congressional guidance needed to ensure future high-cost program rollouts, such as RDOF phase II, are improved? Would a thorough and upfront vetting process be more efficient for federal dollars and recipient ISPs?

The answer to this question is short and simple: yes, more guidance is needed, and a thorough upfront vetting process would be more efficient. the BEAD program again serves as a model for best practices. An initial review with a BEAD-style challenge process will not serve as a preventative panacea, but it would ensure accountability for the finished project that can be used to assess a bidder's trustworthiness for future projects. Of course, any glaring issues of feasibility could be better detected in this initial review as well.

Helpful Congressional guidance would specify what standards ISPs should operate within as they complete deployment. Maintaining a consistent, statutory definition of unserved and underserved areas that reflect the definitions in use for the largest pot of funding (\$42.5 billion) and imposing BEAD's prioritization requirements, as well as subjecting applicants to actionable deadlines for each concrete step in the process, could go a long way towards ameliorating RDOF. Congressional guidance should also include requirements that applicants work in conjunction with state governments to prevent duplication of planned BEAD deployments.

On behalf of American consumers and taxpayers, we appreciate your bipartisan attention to these vital issues that will have profound impacts on the future of our economy and broader society. Fiscal responsibility is becoming increasingly imperative as the national debt reaches new heights during a period of higher interest rates; one of the best places to start working towards a balanced budget is eliminating duplication in broadband programs and embracing models that prove both popular with consumers and cost-effective for taxpayers. If you have any further questions about our positions or the responses above, please do not hesitate to contact me at jerwin@atr.org or (207) 232-1120.

Sincerely,

A handwritten signature in black ink that reads "James Erwin". The signature is written in a cursive, flowing style.

James Erwin
Federal Affairs Manager for Telecommunications
Americans for Tax Reform

Executive Director
Digital Liberty