August 24, 2023

Senator Ben Ray Luján (D-N.M.)
Senator John Thune (R-S.D.)
Co-Chairs
Universal Service Working Group
U.S. Senate
Washington, D.C. 20510

Dear Senators Luján and Thune,

On behalf of the more than one million members and supporters of the Council for Citizens Against Government Waste (CCAGW), I submit the following comments to the Universal Service Working Group.

CCAGW has long been concerned about the funding mechanism used to provide for the Universal Service Fund (USF) and has listed it among the organization’s Prime Cuts, recommending that the program be eliminated. However, following the September 6, 2017, Senate Commerce, Science, and Transportation Committee hearing on “Addressing the Risk of Fraud, Waste, and Abuse in the FCC’s Lifeline Program,” where Citizens Against Government Waste Technology and Telecommunications Policy Director Deborah Collier testified, it became quite apparent that Congress has no intention of eliminating the USF now or anytime in the future.

Understanding that objective, Ms. Collier urged the committee to work with the Federal Communications Commission (FCC) to find ways to reduce the waste, fraud, and abuse that was occurring in the USF’s Lifeline program, including the use of a national verifier for income qualifications, and noted that the existing funding process was flawed and unsustainable. During that hearing, American Enterprise Institute visiting scholar Jeffrey Eisenach testified about the flaws in the program from its inception. He offered four possible ways to remedy those problems:

1. “Federal and state governments should work to reduce barriers to broadband deployment and adoption, and to the efficient functioning of the broadband marketplace, so as to lower prices and increase the availability of affordable broadband services.
2. Regardless whether Lifeline is replaced or reformed, support should be targeted to those who do not already have service.
3. The replacement for Lifeline should reflect an assessment of who needs help, and of what sort.
4. It is time to consider a new delivery mechanism – one that involves neither the federal regulatory agency which has so grossly mismanaged the Lifeline program nor the telephone companies that have profited so handsomely from that mismanagement.”

Everyone who wishes to be connected should have access to online services, and the federal government has provided significant funding toward that goal beyond the funding provided through the USF. On February 1, 2022, CAGW hosted a Facebook Live interview with FCC Commissioner Brendan Carr, who indicated that before the passage of the Infrastructure Investment and Jobs Act (IIJA), there was up to $800 billion available for federal broadband programs. More than half of that money was provided between 2019 and 2021. Commissioner Carr also said that $80 billion would be enough funding to connect all unserved and underserved households across the country.

The Coronavirus Aid, Relief and Economic Security Act provided $150 billion to state and local governments to mitigate the effects of the COVID-19 pandemic, including broadband; the Consolidated Appropriations Act, 2021, provided $7 billion for various infrastructure initiatives including broadband; and the American Rescue Plan Act (ARPA) included $350 billion for state and local governments with sufficient flexibility to allow some or all the money to be spent on broadband infrastructure. Even though many states were already using tens of millions of dollars from those pots of money, which in some cases was sufficient to connect all their unserved and underserved households, the IIJA provided another $65 billion for broadband programs, including $45 billion for the Broadband Equity, Access, and Deployment funding program under the National Telecommunications and Information Administration (NTIA).

With the hundreds of billions of dollars now available for broadband deployment across the country, it is difficult to continue to justify keeping the USF program at its current level. However, the USF is not the only program Congress should be reviewing to ensure broadband is available universally to everyone who desires access. A May 31, 2022, Government Accountability Office (GAO) report unveiled 133 programs across 15 federal agencies for broadband deployment, including the USF. GAO noted that despite the federal government’s expenditure of $44 billion between 2015 and 2020, millions of Americans continued to lack broadband access. The GAO report noted that the fragmentation of these programs has had the most negative effect on “communities with limited resources.” This lack of a unified effort to provision broadband access demonstrates why Congress should review all federal broadband programs, including the USF, and then consolidate and eliminate duplicative programs while supporting those that are operating effectively and efficiently.

One program that appears to be working as intended is the Affordable Connectivity Program (ACP), which replaced the Emergency Connectivity Program established in ARPA. This program allows qualified low-income households to obtain a voucher of up to $30 monthly ($75 monthly for households on Tribal lands) to gain access to the internet using any available vendor or technology. As of August 21, 2023, there were 20,351,962 enrolled households in the ACP program.
An April 3, 2023 American Action Forum study found, “To date, ACP has proved largely effective at connecting Americans to broadband. If Congress allows the program to expire, Americans will likely be left with only Lifeline, an outdated and comparatively ineffective program, as an alternative to connect them to broadband. Further, if Lifeline is the only federal option for affordability support, regulators may look to things such as rate controls or other utility-style regulations to address the perceived need for affordable programs, which would negatively affect broadband deployment and affordability.”

An August 14, 2023 Information Technology & Innovation Foundation study determined that in fiscal year 2021, the Lifeline program, “prior to the ACP, spent about $100 per subscription it generated.” The study also noted that the ACP is “currently operating at the minimum capacity necessary to actually close all affordability gaps. Estimates put the number of households eligible for the ACP at 4.8 million, and 2021 NTIA data finds that 4.4 million offline households cited price as the major reason for nonadoption.”

However, given its current enrollment rate, the ACP is expected to run out of funding by 2024, if Congress doesn’t act to provide additional appropriations to continue the program. If Congress eliminated the Lifeline program and moved eligible Lifeline recipients to the ACP, enrollees would continue to have access to far more choices to obtain broadband access.

Replacing Lifeline with the ACP should be accompanied with other reforms to the USF program. The USF has four separate programs, the Connect America Fund (formerly the High-Cost Support program); Lifeline low-income support program; Schools and Libraries (E-Rate); and Rural Health Care. In the fourth quarter of 2020, the USF funding program added a fifth pilot program called Connected Care, which supports funding connected care services to certain intended patient populations. These programs are administered by the Universal Service Administrative Company (USAC). Total outlays in 2022 were $7.45 billion for the five programs, with 54 percent going toward the High-Cost program ($4 billion), followed by the Schools and Libraries program ($2.42 billion), the Lifeline program ($802.6 million), Rural Health ($609.75 million), and the Connected Care pilot program ($33.72 million).

Currently, the USF is funded by a contribution factor, which is determined by the USAC based on a percentage of earnings from telephone service providers for interstate and international revenue. The contribution factor is passed onto consumers in the form of a hidden tax or fee on their telephone bills. The contribution factor has increased from an average of 5 percent in 2000 to a record high of 33.4 percent in the second quarter of 2021 and is set at 29.2 percent for the third quarter of 2023. With fewer consumers using interstate or international telephone services, the contribution factor can be expected to remain or increase from this level for the foreseeable future. The continuation of the status quo for this funding mechanism is untenable for both consumers and providers, and if Congress intends to keep the USF in place, spending levels must be considered in the context of the hundreds of billions of dollars available for broadband in other programs, or distribution reforms should be implemented, or new funding solutions must be found.

In accordance with the requirements of the IIJA, on August 14, 2022, the FCC asked Congress for advice to adjust the contribution factor for funding USF. The FCC suggested
expanding the contribution base to include broadband internet access revenues from internet service providers, and requiring edge providers like Amazon, Google, Netflix, and others to also contribute portions of their revenues toward USF support. The Funding Affordable Internet with Reliable (FAIR) Contributions Act, S. 856, would require the FCC to investigate whether the costs of expanding broadband are “distributed equitably and that all companies are held accountable for their role in shaping our digital future.” However, this solution would not resolve the rising contribution factor costs that are passed onto consumers or address whether there is a need to continue USF funding given the money available through other broadband programs that could provide internet access without a telephone bill charge.

Another possible solution being discussed to fund the USF programs would be through the appropriations process. This would allow Congress to review the USF program on an annual basis and determine the success of the different funding programs as well as how the funds are being spent to ensure tax dollars are not being wasted. As noted by Senate Commerce, Science, and Transportation Committee Ranking Member Ted Cruz (R-Texas) during a May 11, 2023, hearing on the future of the Universal Service Fund, “The FCC’s Universal Service Fund, or USF, is a prime example of the unaccountable administrative state. It has imposed ever-increasing tax burdens on American consumers without sufficient checks and balances or oversight from Congress. … When it comes to the USF, the FCC, not Congress, calls the shots. The FCC decides how much money to collect and where it will go. According to the FCC, there’s no ceiling on the amount it can impose on consumers to fund the USF. And the USF operates in the shadows since it is not subject to the congressional appropriations process.”

While both proposals will change how the USF should be funded, Congress must decide the best course of action based on the past record of the USF and the USAC, and anticipation of broadband and other connectivity needs into the future. Again, on behalf of the members and supporters of CCAGW, I appreciate the opportunity to provide these comments to the Universal Service Working Group.

Sincerely,

Tom Schatz