

**Comments of**

**TechFreedom**

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**To the Senate**

**Universal Service Fund (USF) Working Group**

**Request for Comment**

Submitted

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## INTRODUCTION

TechFreedom welcomes the opportunity to provide feedback to the Senate Universal Service Fund (USF) Working Group in response to its Request for Comment.<sup>1</sup>

### I. Introduction

Founded in 2011, TechFreedom is a nonprofit think tank dedicated to promoting the progress of technology that improves the human condition. To this end, we seek to advance public policy that makes experimentation, entrepreneurship, and investment possible, and thus unleashes the ultimate resource: human ingenuity. Wherever possible, we seek to empower users to make their own choices online and elsewhere.

TechFreedom has engaged on issues related to the Universal Service Fund (USF) since its founding in 2011. These comments are based on, or directly quoted from, my 2023 paper published by the Pacific Legal Foundation entitled “The FCC, USF, and USAC: An Alphabet Soup of Due Process Violations,” (hereinafter referred to, for brevity, as “Alphabet Soup”).<sup>2</sup>

We list below some additional work we’ve generated in this area:

#### FCC Comments:

- July 29, 2024: [Re: Review of the Commission's Assessment and Collection of Regulatory Fees for Fiscal Year 2024](#) (FCC);
- Jun 14, 2023: [Assessment and Collection of Regulatory Fees for Fiscal Year 2023](#) (FCC);
- Jul 18, 2022: [Assessment and Collection of Regulatory Fees for Fiscal Year 2022](#) (FCC);
- Oct 21, 2021: [Assessment and Collection of Regulatory Fees for Fiscal Year 2021](#) (FCC).

#### Court Filings:

- [Consumers’ Research v. FCC](#) (2022-2023): Congress delegated to the FCC the task of running the Universal Service Fund (USF), a program that pays for advanced telecommunications and broadband services for underserved institutions, remote areas, and the poor. The FCC in turn “subdelegated” most of its authority to run the USF to a private entity, the Universal

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<sup>1</sup> See <https://www.fischer.senate.gov/public/index.cfm/usf>.

<sup>2</sup> See [https://pacificlegal.org/wp-content/uploads/2025/08/Dunston-The-FCC-USF-and-USAC\\_An-Alphabet-Soup-of-Due-Process-Violations.pdf](https://pacificlegal.org/wp-content/uploads/2025/08/Dunston-The-FCC-USF-and-USAC_An-Alphabet-Soup-of-Due-Process-Violations.pdf).

Service Administrative Company. We argue this “private delegation” of power violates the Constitution. Our other briefs for this case include:

- [Amicus brief in support of reversal \*en banc\*](#) – Fifth Circuit Court of Appeals
  - [Amicus brief in support of rehearing \*en banc\*](#) – Sixth Circuit Court of Appeals
  - [Amicus brief in support of rehearing \*en banc\*](#) – Fifth Circuit Court of Appeals
  - [Amicus brief in support of petitioners](#) – Eleventh Circuit Court of Appeals
  - [Amicus brief in support of petitioners](#) – Sixth Circuit Court of Appeals
  - [Amicus brief in support of petitioners](#) – Fifth Circuit Court of Appeals
- **Other Work:**
    - Dec 20, 2024: [The FCC's \\$200 Billion Disaster](#), *Pirate Wires*
    - Apr 17, 2022: [#318: The Universal Service Fund](#), Tech Policy Podcast
    - Apr 18, 2022: [No Legislation Without Representation](#), *Law & Liberty*
    - Jan 18, 2022: [Report on the Future of the Universal Service Fund](#), FCC Comments
    - Aug 27, 2021: [The Arrival of the Federal Computer Commission?](#), *Federalist Society*
    - Feb 23, 2021: [RE: Addressing the Homework Gap through the E-Rate Program](#), Joint Letter

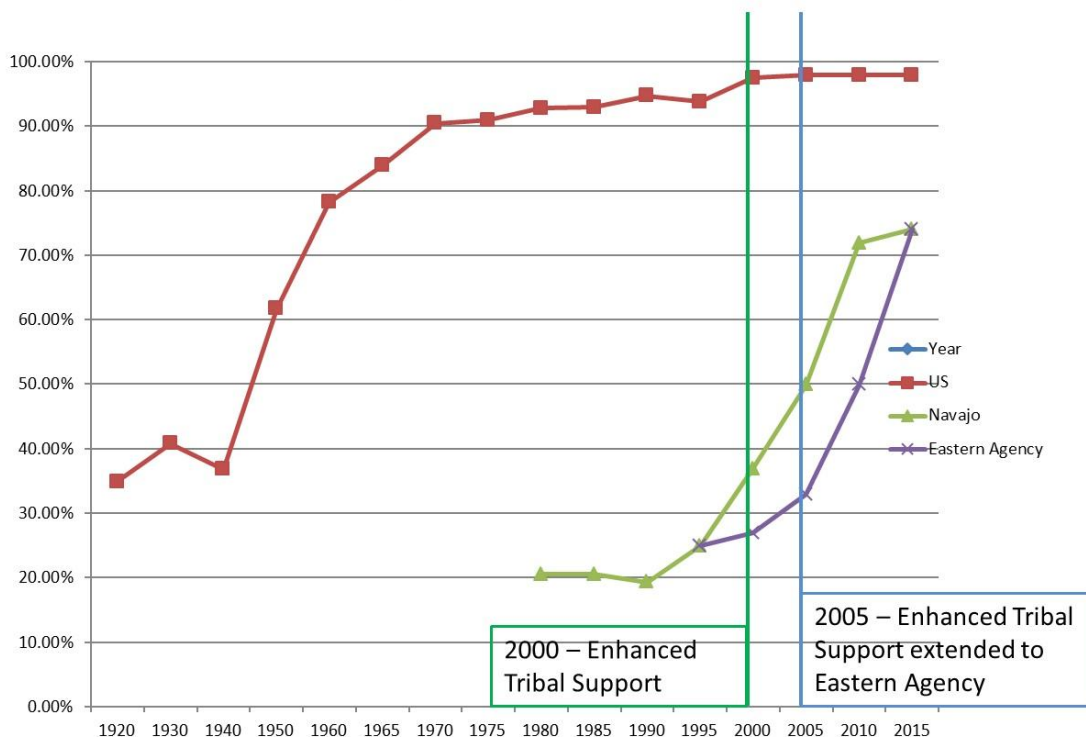
## II. Response to Questions

### A. How should Congress evaluate the effectiveness of each USF program in achieving their respective missions to uphold universal service?

The goal of providing universal telecommunications and broadband service pursuant to Section 254 is a laudable and necessary goal. The four programs (High Cost, Lifeline, E-rate, and Rural Health support) have provided the necessary government support to expand telecommunications and broadband into areas where market forces alone do not provide the economic return necessary for carriers to deliver service. For example, in a filing made by the Navajo Nation Telecommunications Regulatory Commission (NNTRC) in 2015, they demonstrated how the Lifeline program (among others) has taken telephone penetration on the Navajo from 20% in 2000 to 75% in

2015, and that when the FCC extended the Lifeline Enhanced Tribal Support to the “checkerboard” portions of the Navajo Nation in New Mexico, that area of the Navajo Nation caught up to the rest of Navajo.<sup>3</sup>

### Comparison of U.S. Telephone Penetration and Navajo Nation Telephone Penetration



USF programs *can* work.

That does not mean that Congress shouldn’t carefully review the Universal Service Program in its oversight capacity and consider legislation that would make the program more efficient, cost-effective, and minimize waste, fraud and abuse, something for which the GAO has called for years.<sup>4</sup>

The problem with “evaluat[ing] the effectiveness of each USF program” is that USF is made up of four distinct programs with very different purposes, yet all funded through a single budget, and administered by a private company, USAC. The USF budget as been

<sup>3</sup> See <https://www.fcc.gov/ecfs/document/60002115176/1>. (For full disclosure, I wrote those comments and continue to represent NNTRC in my private practice.)

<sup>4</sup> See Greater Involvement Needed by FCC in the Management and Oversight of the E-rate Program, GAO-05-151, GAO (Feb. 9, 2005), <https://www.gao.gov/products/gao-05-151>. See also, FCC Should Take Additional Action to Manage Fraud Risks in Its Program to Support Broadband Service in High-Cost Areas, GAO-20-27, GAO (Oct. 2019), <https://www.gao.gov/assets/gao-20-27.pdf>.

deemed by then-FCC Commissioner Michael O'Reilly as "a joke, not a budget."<sup>5</sup> USAC, not the FCC, sets the USF budget, skims its operating expenses off the top, and then administers the four programs through a Byzantine set of rules and forms that mere mortals can't comprehend, forcing them to hire expensive consulting firms who are made up of former FCC and USAC staffers. The ultimate self-licking ice cream cone. As a private entity, USAC is not subject to FOIA requests, and operates with zero transparency.

"Evaluat[ing] the effectiveness of each USF program," is nearly impossible.

**B. How well has each USF program fulfilled Section 254 of the Communications Act of 1996?**

As stated above, comparing the efficacy, effectiveness, and efficiency of each individual program is nearly impossible. But using telephone and broadband availability and uptake is a good place to start. Congress should direct the FCC to provide a report and map showing how much of each program has gone into each census block, and from there determine with programs, either individually or together, have driven "universal service" forward. The data is out there – it's just that neither the FCC, nor certainly USAC, has ever bothered to do a full economic analysis of which programs provide the best "bang for the buck." Is the High Cost program, which provides CAPEX and OPEX support to carriers enough, or must it be combined with a consumer-facing program like Lifeline, Emergency Broadband Benefit (EBB) or the Affordable Connectivity Program (ACP).

Equally important is an economic analysis of the cost-benefit approach of the types of programs. Are carrier support programs most efficient? Would reviving something like ACP drive more broadband penetration by providing consumers with subsidies?

Finally, the amount of waste, fraud, and abuse must be quantified, and the trade space established as between types of programs. For example, it may be possible that while theoretically, direct consumer subsidies like Lifeline and ACP are the most effective in driving penetration, because of the amount of waste, fraud and abuse in such programs, it is more cost-effective to increase funding to the High Cost program, or establish another type of program that is more cost-effective.

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<sup>5</sup> See B. Herold, FCC Adds Broadband to "Lifeline" Program in Party-Line Vote, Education Week (Mar. 31, 2016), <https://www.edweek.org/technology/fcc-adds-broadband-to-lifeline-program-in-party-line-vote/2016/03>.

**C. Has the FCC adequately assessed each USF program against consistent metrics for performance and advancement of universal service?**

Absolutely not. As the “Alphabet Soup” paper states:

[T]he entire FCC budget for overseeing all of its programs (everything from regulating radio and television to allocating and licensing spectrum) is just under \$390 million, 20 times less than the budget administered by USAC. In this sense, USAC’s power, especially over broadband deployment and affordable access to broadband, dwarfs the power of the independent agency to which Congress delegated this power. The FCC has tried vainly to impose some guardrails on the USF program, such as setting a “budget” for the Lifeline Program, which Commissioner O’Reilly deemed “a joke, not a budget.” The General Accounting Office has long warned that subdelegating so much power to USAC could lead to massive waste, fraud, and abuse in the USF programs. Nonetheless, the FCC has all but abdicated its statutory responsibility to run one of the most critical programs to the American people.<sup>6</sup>

It is time for Congress to remedy this through strong oversight of the FCC, and to make statutory changes which can lead to a cost effective and sustainable approach to universal service.

**D. What reforms within the four existing USF programs would most improve their: Transparency; Accountability; Cost-effectiveness; Administration; and Role supporting universal service?**

Congress must step in and require the FCC to actually administer the USF, not delegate it to a private company that has every incentive to keep driving costs up and hide behind an opaque system that is not subject to FOIA or any other practical oversight, all the while skimming money off the top. We estimate, for example, that every American pays USAC \$1.00 each and every month to administer the USF, with virtually no oversight by the FCC and zero accountability to the public that pays it.<sup>7</sup>

Notwithstanding the Supreme Court’s recent decision in *Federal Communications Commission v. Consumers’ Research* finding the USF scheme constitutional, that doesn’t

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<sup>6</sup> See *supra* n. 2, p. 4.

<sup>7</sup> *Id.*, p. 7.

make the structure and approach good policy or a model of good governance. As we pointed out in our *amicus* brief supporting the grant of certiorari:

[T]he USF is a case study in unaccountable governance. What started 16 as a 5.7% tax on end-user interstate telecommunications revenue, netting around \$1.1 billion in quarterly “contributions,” in 2000, ballooned to a 33.4% tax rate, and around \$2.5 billion in quarterly “contributions,” by mid-2021. (Making matters worse, this fee is a highly regressive flat tax paid, by all but the poorest Americans, as a line item on monthly phone bills.) No one is minding the till—a fact made all the clearer by the “history of extensive waste and abuse” that has occurred on USAC’s watch (or lack thereof). Pet. 13. This is not an instance where the answer to the “constitutional issue” rests simply on “musings” about “political theory.” *Collins v. Yellen*, 141 S. Ct. 1761, 1800 (2021) (Kagan, J., concurring in part and concurring in the judgment). USAC embodies the Founders’ fear of unaccountable government both in theory and in practice.<sup>8</sup>

**E. What reforms would ensure that the USF contribution factor is sufficient to preserve universal service?**

Unfortunately, this question glosses over the overriding question in the USF debate – is a contribution factor the right approach to funding universal service? As stated above, the contribution factor is *the* most regressive tax in the United States. Once the poorest in our country make just 135 percent of the Federal Poverty Guidelines, they lose Lifeline support and must pay a 36 percent tax on their phone service, the same tax Elon Musk, Jeff Bezos, Mark Zuckerberg and Bill Gates. Imagine for a moment a flat rate income tax that required those at 136 percent of the poverty rate to pay the same amount (not percent) as the richest in this country. No sliding scale, no deductions. That is what the USF contribution factor is.

No tweaking with the Contribution Factor will eliminate that fundamental inequity. TechFreedom has long called for the elimination of the Contribution Factor; we call on Congress to fund USF through general funds.<sup>9</sup>

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<sup>8</sup> See <https://techfreedom.org/wp-content/uploads/2022/04/Filestamped-TechFreedom-Amicus-Brief-Consumers-Research-v.-FCC.pdf>, p. 14.

<sup>9</sup> See *Alphabet Soup*, p. 23 (“Finally, Congress needs to step in and pass legislation. The USF program needs a complete overhaul. Congress should prohibit the private delegation to USAC that the FCC has done, effectively abdicating its role as a regulator and removing virtually all of the transparency from



Simply legislating an expansion of the contribution base won't solve the problem either. Bringing in edge providers such as Netflix or Apple TV and requiring them to pay into the USF would result in them passing along those fees to customers. It would also make them rethink their investments in the Internet itself, from data centers to the large strategically placed servers that shorten the distance their programming must be carried to reach subscribers.

Again, the answer lies in scraping the current contribution system and moving USF funding into the overall U.S. budget.

**F. What reforms would reduce waste, fraud, and abuse in each of the four USF programs?**

While we agree that that substantial waste, fraud, and abuse exists in the USF program, the Alphabet Soup paper reveals that the greatest culprit is not individuals trying to cheat Lifeline, schools and libraries trying to cheat E-rate, or carriers trying to cheat High Cost, the largest waste in the system is its structure, and the fact that the FCC has abdicated its statutory responsibility through private delegation to a company with direct ties to the telecommunications industry that sets its own budget, pays itself handsomely, and creates a funding process so complicated that all but the most sophisticated recipients must pay consultants to help them through the process – consultants made up almost entirely of former FCC and USAC staffers.

Worse yet, USAC is also judge and jury, and can demand repayment of funds without any statute of limitations to limit their roving band of auditors. This danger dampens participation by the most vulnerable:

At a recent “listening session”<sup>82</sup> for tribal leaders, the FCC asked why participation by Native American Tribes in the E-rate program was so low. A number of reasons were suggested, including lack of knowledge of the availability of E-rate funding in Indian Country, as well as the complexity of the rules. I suggested that the lack of closure on funding year recoupments, coupled with the amounts involved (because of the

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the program. Congress also needs to put the program on firm financial footing by removing the contribution mechanism and replacing it with a budgeted appropriation to operate the program.”); Comments of TechFreedom in WT Docket No. 21-476, filed January 18, 2022, pp. 8-9 (in response to a call to broaden the contribution base to include edge providers and “Big Tech,” “Those companies fall completely outside the FCC’s jurisdiction in almost every respect. Attempting to broaden the contribution base to include “Big Tech” platforms would suffer the same fate as the FCC’s attempt to do Hollywood’s bidding to protect copyrighted material. ‘There is no statutory foundation for the broadcast flag rules,’ ruled the D.C. Circuit in 2005, ‘and consequently the rules are ancillary to nothing.’” *Quoting American Library Ass’n v. FCC*, 406 F.3d 689, 692 (D.C. Cir. 2005).).

90 percent discount rate available to most tribes) was a major barrier, in that many tribes are unwilling to participate in a program that must be “booked” as a contingent liability, presumably forever. The representative from USAC’s response was classic, effectively saying that so long as tribes comply with all the rules and all the filing deadlines, they have nothing to worry about. Since a participant can never know the final answer to that until they receive a COMAD, that’s cold comfort, and it has kept many needy parties out of the program, for fear of crushing reparations they might have to pay.<sup>10</sup>

**G. What actions would improve coordination and efficiency among USF programs and other FCC programs, as well as broadband programs housed at other federal agencies?**

The lack of coordination between the USF programs, and more generally all telecommunication and broadband support programs, has resulted in a system that is about as inefficient as one could imagine. We warned of this in January 2022 in Comments filed in response to the Notice of Inquiry in WT Docket No. 21-476:

More taxpayer dollars will be spent on broadband deployment in the next few years than has been spent in the history of this nation. The NOI catalogs the various programs that are spending money at a dizzying rate:

In addition to funding the Commission’s Affordable Connectivity Program, the Act contains numerous programs to be implemented by NTIA, such as the BEAD Program, the State Digital Equity Capacity Grant Program and its federal counterpart, the Middle Mile Infrastructure Grant Program, and the Tribal Broadband Connectivity Program, as well as the State and Local Cybersecurity Grant Program to be implemented by the Department of Homeland Security and the RUS Distance Learning, Telemedicine, and Broadband Program. We invite commenters to identify any other provisions in the Act or any other recent legislation that constitute “legislation that addresses [the broadband universal service] goals” that we should consider in this proceeding. Please describe the

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<sup>10</sup> Alphabet Soup, p. 21 (footnote omitted).

relationships between these programs and our universal service programs.

Some are already questioning whether the federal government even knows where taxpayer monies are going, and whether that money is actually being spent on broadband deployment or adoption. It is therefore paramount, in order to combat fraud, waste, and abuse, that the FCC coordinate with other federal and state governments to track where previous dollars have been spent, and where current dollars are being committed. Failure to do so will make the waste in the 2009 ARRA program look pale in comparison.<sup>11</sup> v

Congress must step in and consolidate its support programs and house them in a single place. The fact that so many federal agencies have separate programs makes accomplishing universal service almost impossible. Stories are legion of instances where linemen from multiple companies are stringing wire on the same poles to serve the same people, funded by different programs, none of which has any handle on which locations are currently unserved. What a mess.

**H. For any recommendations on reforms, does the Commission currently have the feasibility and authority to make such changes?**

There are many things the FCC could do to reform USF and reverse its mistakes. It could, for example, reverse the 1997 order that set the USAC debacle into motion. There was no statutory mandate to create USAC, and certainly no requirement that USAC be a subsidiary of the National Exchange Carrier Association (NECA). The FCC merely lacks the will to do so, and Congress has never exercised its oversight authority to force the FCC to answer the tough questions of why it has allowed the fox to guard the henhouse (and skim off three percent of the chickens each month to feed its pack).

In contrast, the FCC cannot expand the contribution base without legislation amending the Communications Act.<sup>12</sup>

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<sup>11</sup> See *Comments of TechFreedom in WT Docket No. 21-476*, filed January 18, 2022, pp. 2-3, <https://techfreedom.org/wp-content/uploads/2022/01/TF-Comments-USF-NOI-1-18-22.pdf>.

<sup>12</sup> *Id.*, pp. 8-9 (in response to a call to broaden the contribution base to include edge providers and “Big Tech,” “Those companies fall completely outside the FCC’s jurisdiction in almost every respect. Attempting to broaden the contribution base to include “Big Tech” platforms would suffer the same fate as the FCC’s attempt to do Hollywood’s bidding to protect copyrighted material. “There is no statutory foundation for the broadcast flag rules,” ruled the D.C. Circuit in 2005, ‘and consequently the

**I. Is the USF administrator, the Universal Service Administrative Company (USAC), sufficiently accountable and transparent? Is USAC's role in need of reform?**

For all the reasons set forth in response to the comments above, Congress should enact legislation directing the FCC to either eliminate or completely overhaul its private delegation of USF administration to USAC. As demonstrated in the Alphabet Soup paper, it should also establish a firm five-year statute of limitations so that needy beneficiaries of the USF program aren't forever in danger of USAC swooping in and demanding refund of monies that flowed through the beneficiaries and on to private carriers.

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_

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