



**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

**COMMENTS OF THE  
COMPETITIVE ENTERPRISE INSTITUTE**

In the Matter of )  
)  
Federal Communications ) FCC-21-127  
Commission ) Docket Number 21-476  
)  
Notice of Inquiry: )  
Report on the Future of the )  
Universal Service Fund )

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## Introduction

On behalf of the Competitive Enterprise Institute (CEI), I respectfully submit these comments in response to the Federal Communications Commission's (FCC) notice of inquiry and request for comment regarding the future of the Universal Service Fund (USF), given recent broadband investments through the Infrastructure Investment and Jobs Act.<sup>1</sup> Founded in 1984, the Competitive Enterprise Institute is a non-profit research and advocacy organization that focuses on regulatory policy from a pro-market perspective. CEI experts research and advocate policies to boost American technological innovation and economic competitiveness through technology and telecommunication policy reforms.

The Competitive Enterprise Institute appreciates the intention of Congress and the FCC to expand Internet access for all Americans. To that end, CEI also appreciates the Commission's efforts to request comments on the report on the future of the Universal Service Fund. As the FCC seeks to improve broadband access while minimizing costs to taxpayers, the USF could benefit from reforms in several areas.

- First, given the recent authorization of funds through the American Rescue Plan and the Infrastructure Investment and Jobs Act, the FCC should reconsider the future of the USF programs and reevaluate which programs are necessary to achieve the Commission's statutory objectives.
- Second, due to the recent increases in broadband funding through other sources, the FCC should reconsider the need for the high-cost program.
- Third, to the extent that future government assistance is needed, the USF should focus on consumer-focused initiatives, like the Lifeline program.
- Fourth, like other USF components, the E-Rate program suffers from inefficient allocation of funds. Therefore, the Commission should consider reviewing its current E-Rate policies and enact reforms to use taxpayer-provided funds effectively.
- Fifth, the Commission should propose the elimination of the USF surcharge and seek Congressional appropriation to fund future USF programs. Eliminating this surcharge will improve broadband affordability for low-income Americans. Furthermore, Congressional appropriation will allow Congress to set a hard limit on the amount of USF assistance, encouraging more efficient usage of such funds.

### I. Reconsider Which Universal Service Fund Programs Are Necessary

Given recent increases in broadband funding, the Commission should reconsider which USF programs are necessary to meet its statutory connectivity goals. In 2017, the FCC published a report that found it would cost approximately \$40 billion in capital expenditures to ensure that broadband services reach 98 percent of households and small and medium-sized businesses.<sup>2</sup> However, the FCC has already spent more than \$43 billion in funding since 2017.<sup>3</sup> Most recently, the American Rescue Plan provided \$350 billion to states and counties to improve infrastructure, including broadband.<sup>4</sup> The Infrastructure

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<sup>1</sup> Federal Communications Commission, "Notice of Inquiry: In the Matter of Report on the Future of the Universal Service Fund," FCC 21-127, Docket Number 21-476, December 15, 2021, <https://www.fcc.gov/document/fcc-initiates-proceeding-future-universal-service>.

<sup>2</sup> Joe Kane and Jessica Dine, "Comments to the FCC on the Future of the Universal Service Fund," Information Technology and Innovation Foundation, February 17, 2022, p. 2, <https://itif.org/publications/2022/02/17/comments-fcc-future-universal-service-fund>; Paul de Sa, "Improving the Nation's Digital Infrastructure," Federal Communications Commission, 2017, p.2, <https://docs.fcc.gov/public/attachments/DOC-343135A1.pdf>.

<sup>3</sup> Kane and Dine, "Comments on the USF," p. 2.

<sup>4</sup> Jeffrey Westling, "Comments on the 'Report on the Future of the Universal Service Fund,'" American Action Forum, February 17, 2022, p. 5, <https://www.americanactionforum.org/comments-for-record/comments-on-the-report-on-the-future-of-the-universal-service-fund/>.

Investment and Jobs Act provided more than \$60 billion for broadband deployment, including access and deployment programs.<sup>5</sup>

This dramatic increase in federal funding means that the FCC has more than enough resources for the capital expenditures required to ensure universal broadband connectivity. Consequently, the FCC should reconsider the extent to which USF programs serve their original intended purpose.<sup>6</sup> To that end, the Commission should examine the extent to which the different USF components have been effective and provide a rationale for the continuation of any existing programs, such as the E-Rate program for public schools and libraries. While the USF programs have undoubtedly improved broadband connectivity and access to the Internet, a comprehensive and programmatic audit now will help ensure that taxpayer funding is used effectively in the future.

## **II. Phase out the High-Cost Program**

Because of the existing resources available for supporting broadband connectivity, the FCC should consider phasing out its high-cost program, also known as the Connect America Fund. With a yearly budget of \$4.5 billion, the high-cost program is the most significant component of the USF and provides subsidies to Internet service providers (ISPs) for connectivity in rural, sparsely populated areas.<sup>7</sup> However, as per the FCC’s 2017 estimate, the Commission already has more than enough resources to achieve universal service without seeking further support through the high-cost program.<sup>8</sup> Furthermore, as private-sector investment has expanded broadband investment in rural areas, the lack of affordability—rather than connectivity—is now the more significant barrier to achieving universal Internet access.<sup>9</sup>

Furthermore, the FCC should improve its mapping capabilities to ensure that USF taxpayer dollars are not wasted in areas that already enjoy strong broadband connectivity.<sup>10</sup> Instead, through better mapping information, the FCC should make evidence-based decisions to allocate scarce resources to areas that lack adequate connectivity.<sup>11</sup> To ensure fiscal transparency, the Commission should provide a detailed timeline of when and how it will use the existing broadband funding to achieve universal Internet access throughout the country.

## **III. Improve the Lifeline Program**

The FCC should focus its efforts on improving the existing Lifeline program to improve Internet affordability. As private broadband investment and past subsidies have helped improve broadband connectivity, the lack of affordability has become a more pressing concern for Internet access in both rural and urban areas.<sup>12</sup> In the long run, there is no alternative to increased competition between different types of providers—including cable, fiber optic, and satellite—to make Internet access affordable for all

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<sup>5</sup> Kane and Dine, “Comments on the USF,” pp. 2–3; Westling, “Comments on the USF,” p. 5.

<sup>6</sup> See the note above.

<sup>7</sup> Kane and Dine, “Comments on the USF,” pp. 3–4.

<sup>8</sup> Ibid.; De Sa, “Improving the Nation’s Digital Infrastructure,” p. 2.

<sup>9</sup> Ryan Nabil, “How to Expand Broadband Access without Spending \$100 Billion,” *Real Clear Policy*, April 13, 2021, [https://www.realclearpolicy.com/articles/2021/04/13/how\\_to\\_expand\\_broadband\\_access\\_without\\_spending\\_100\\_billion\\_772426.html](https://www.realclearpolicy.com/articles/2021/04/13/how_to_expand_broadband_access_without_spending_100_billion_772426.html).

<sup>10</sup> Will Yepez, “The Universal Service Fund Is on the Brink, but It’s Not too Late to Save It,” National Taxpayers Union, April 15, 2021, p. 3, <https://www.ntu.org/publications/detail/the-universal-service-fund-is-on-the-brink-but-its-not-too-late-to-save-it>.

<sup>11</sup> Ibid.

<sup>12</sup> Nabil, “How to Expand Broadband Access.”

Americans.<sup>13</sup> However, to do so in the short term, existing broadband subsidies should prioritize consumer-focused initiatives, such as the Lifeline program. Such programs provide greater choice and market competition since the contributions go to the ISPs that consumers choose for broadband connection.<sup>14</sup> Compared to wasteful subsidies to Internet service providers for delivering service in rural areas, consumer-focused programs like Lifeline are likely to create fewer market-distorting effects.<sup>15</sup>

However, like the high-cost program, the Lifeline program remains plagued by corruption and misuse of funds, which the FCC needs to address.<sup>16</sup> Such misuse means that taxpayer dollars often go to those who do not need help at the cost of those who do. For example, in 2010, the Commission learned that a company owner fraudulently obtained \$6.5 million from the high-cost program.<sup>17</sup> However, the FCC did not act for four years while the company acquired more than \$27 million in improper USF payments.<sup>18</sup> It was only a public outcry following an indictment of the company's owner that led the FCC to start an investigation. Several companies fraudulently received Lifeline funds for customers that they did not have—although the FCC was able to recover the money in at least some of the cases.<sup>19</sup>

To improve the Lifeline program, the FCC could issue subsidies as vouchers directly to consumers—instead of to ISPs—which would offer consumers greater choice in selecting broadband services.<sup>20</sup> That is the model followed in many European countries. For example, the United Kingdom's Gigabit Broadband Voucher Scheme provides vouchers to eligible rural households and businesses to offset broadband connection costs.<sup>21</sup> However, if the Commission were to opt for a voucher-based program, it would need to establish adequate verification processes to ensure that the intended recipients receive the money and that the assistance is used for the specified purpose.

Additionally, the FCC could extend the Lifeline program to low-income individuals in both urban and rural areas. Currently, only residents in underserved rural areas can benefit from the Lifeline program.<sup>22</sup> The Lifeline program—and any similar USF initiatives—should not discriminate between urban and rural residents. While broadband connectivity remains a challenge in underserved rural areas, the lack of Internet affordability is a problem in rural and urban areas alike.<sup>23</sup> By ensuring that allocated taxpayer dollars go to those with the highest needs irrespective of location, the Commission can help bring the Internet to Americans who cannot afford Internet service.<sup>24</sup>

#### **IV. Reform the E-Rate Program**

The E-Rate program—a relatively less known USF component—offers financial assistance to K-12 schools and libraries for broadband connectivity. Depending on the poverty level of the institutions, the

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<sup>13</sup> Ibid.

<sup>14</sup> Kane and Dine, “Comments on the USF,” pp. 3–5.

<sup>15</sup> Ibid.

<sup>16</sup> Katie McAuliffe, “Fraud still plague the FCC’s Universal Service Fund,” *The Hill*, February 14, 2017, <https://thehill.com/blogs/pundits-blog/technology/319446-fraud-still-plagues-the-fccs-universal-service-fund>.

<sup>17</sup> For more information, see Federal Communications Commission, “FCC Fines Sandwich Isles \$49,598,488 for defrauding Universal Service Fund,” *FCC News*, <https://www.fcc.gov/document/fcc-fines-sandwich-isles-over-49-million-defrauding-usf>.

<sup>18</sup> McAuliffe, “Fraud still plague the FCC’s Universal Service Fund,”

<sup>19</sup> Ibid.

<sup>20</sup> Kane and Dine, “Comments on the USF,” pp. 4–5.

<sup>21</sup> UK Government, “Who is eligible?,” Gigabit Broadband Voucher Scheme, n.d., accessed March 8, 2022, <https://gigabitevoucher.culture.gov.uk/home/who-is-eligible/>.

<sup>22</sup> Kane and Dine, “Comments on the USF,” pp. 4–5.

<sup>23</sup> Nabil, “How to Expand Broadband Access.”

<sup>24</sup> Kane and Dine, “Comments on the USF,” pp. 4–5.

E-Rate program provides between 20 to 90 percent of the costs of Internet connectivity for eligible schools and libraries.<sup>25</sup> Many schools lack a large enough tax base to draw on, so the FCC will likely have to continue the E-Rate program in some form.<sup>26</sup>

However, like other USF components, the E-Rate program suffers from misuse and inefficient allocation of resources. Therefore, the Commission should consider reviewing its current E-Rate policies and pursuing reforms to allow more effective use of limited taxpayer dollars.<sup>27</sup> To that end, the Commission could introduce means-testing to ensure that funding goes to schools and libraries in genuine need of support. For example, the FCC should consider whether a particular school is located in a poor or wealthy district.<sup>28</sup> The Commission could also introduce information-sharing mechanisms that allow educational institutions to compare what other institutions pay for broadband connections and help schools negotiate better subscription rates.<sup>29</sup>

## **V. Eliminate the Universal Service Fund Surcharge and Propose Congressional Appropriation<sup>30</sup>**

The FCC should request Congress to replace the USF surcharge funding mechanism with a legal framework that provides broadband funding through direct Congressional appropriation.<sup>31</sup> Currently, USF programs are funded by a surcharge fee instead of direct Congressional allocations.<sup>32</sup> The Commission imposes this fee on telecommunications companies, but it is generally passed on to consumers as a line item in the overall broadband bill.<sup>33</sup> Although this surcharge was only 3 percent in 1998, it has steadily increased to 33.4 percent as of the second quarter of 2021<sup>34</sup>—even though broadband subscription fees declined by 26 percent between 2008 and 2020.<sup>35</sup>

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<sup>25</sup> U.S. Department of Education, “E-Rate Program – Discounted Telecommunications Services,” undated, accessed March 16, 2022, <https://www2.ed.gov/about/inits/ed/non-public-education/other-federal-programs/fcc.html>.

<sup>26</sup> Federal Communications Commission, “E-Rate: Universal Service Program for Schools and Libraries,” updated September 15, 2021, <https://www.fcc.gov/consumers/guides/universal-service-program-schools-and-libraries-e-rate>.

<sup>27</sup> Kane and Dine, “Comments on the USF,” pp. 4.

<sup>28</sup> *Ibid.*

<sup>29</sup> Jonathan Sallet, “Four Steps Towards E-Rate Connectivity and Competition,” Benton Institute for Broadband and Society, March 11, 2020, <https://www.benton.org/blog/four-steps-towards-e-rate-connectivity-and-competition>.

<sup>30</sup> Please note that a discussion of whether the USF surcharge fee is constitutional is beyond the scope of the FCC’s notice of inquiry and request for comment. Therefore, this section should not be construed as a support for the constitutionality of the USF surcharge funding mechanism.

<sup>31</sup> Daniel Lyons, “A common-sense opportunity to reform the Universal Service Fund,” *AEIdeas*, American Enterprise Institute, January 28, 2021, <https://www.aei.org/technology-and-innovation/a-common-sense-opportunity-to-reform-the-universal-service-fund/>.

<sup>32</sup> Congressional Research Service, *Overview of the Universal Service Fund and Selected Federal Broadband Programs* (Washington, DC: CRS, June 2021), p. 2, <https://sgp.fas.org/crs/misc/R46780.pdf>.

<sup>33</sup> Brian Regan, “Ushering Universal Service Reform: Politically Feasible Legislation Principles,” *CommLaw Conspectus*, Vol. 16 (2008), p. 472, <https://scholarship.law.edu/cgi/viewcontent.cgi?article=1390&context=commlaw>.

<sup>34</sup> As Daniel Lyons of Boston College Law School and the American Enterprise Institute explains, the USF surcharge on broadband subscriptions has increased as the USF’s tax base has dwindled over the years due to declining landline usage. See Lyons, “A common-sense opportunity to reform the USF.” See also Jamie Davidson, “Universal Service Fund (USF) Quarterly Rates,” Vast Conference, April 2, 2021, <https://www.conferencecalling.com/blog/what-is-the-universal-service-fund-usf-fee>.

<sup>35</sup> Scott Mackey and Ulrik Boesen, “Wireless Tax Burden Remains High Due to Federal Surcharge Increase,” *Tax Foundation Fiscal Fact No. 732* (November 2020), p. 1, <https://files.taxfoundation.org/20201116124929/Wireless-Tax-Burden-Remains-High-Due-to-Federal-Surcharge-Increase.pdf>.

The USF surcharge’s regressive nature means that consumers pay the same percentage irrespective of their income level, undermining the program’s purpose of promoting broadband access for lower-income households.<sup>36</sup>

Congressional appropriation will have three advantages over the USF surcharge funding mechanism.

- First, removing the surcharge will make broadband subscriptions cheaper and more affordable at the point of purchase.
- Second, Congressional allocation could help reduce inefficiency and corruption and help Congress hold the FCC accountable for how funds are used. According to the Government Accountability Office, USF programs are plagued by inefficiency and the lack of internal controls, while other sources have also criticized the misuse of funds.<sup>37</sup>
- Third, direct Congressional appropriation will allow Congress to set a hard limit on the amount of USF assistance, encouraging more efficient usage of such funds. To that end, Congress should consider annual reviews of the extent to which different USF programs have been effective in meeting their intended targets. Such review mechanisms can enable evidence-based decision-making about which programs should continue to be funded and how much funding should be allocated. The increased oversight and accountability can help address existing USF shortcomings like inefficient allocation of resources and misuse of funds.<sup>38</sup>

## Conclusion

With growing private investment and recent increases in broadband funding, the Federal Communications Commission can help ensure universal broadband access for Americans without significant future assistance. To do so, the Commission needs to ensure that it uses existing funding prudently and effectively. The policies proposed in this comment—from reforming the Lifeline and E-Rate programs to phasing out the high-cost program—should help the FCC move in that direction.

Ultimately, there is no alternative to market competition to expand broadband access in the long run. To that end, the FCC should seek to reduce regulatory barriers to private broadband investment and promote competition between different types of providers, such as cable, fiber, and satellite-based Internet providers. Creating a market-friendly regulatory environment for the private sector is crucial to reduce broadband subscription prices and ensure universal Internet access while lowering costs to taxpayers.

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<sup>36</sup> Kane and Dine, “Comments on the USF,” pp. 4; Yepez, “The Universal Service Fund Is on the Brink,” p. 2.

<sup>37</sup> Lyons, “A common-sense opportunity to reform the USF”; McAuliffe, “Fraud still plague the FCC’s USF.”

<sup>38</sup> See the note above.