

Universal Service Subsidies Have Failed

Why it's time for Congress to act

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Introduction

In 2024, the United States Court of Appeals for the Fifth Circuit ruled that the indeterminacy of Section 254 (§ 254 hereafter) of the Telecommunications Act of 1996, combined with the Federal Communications Commission’s sub-delegation of its power to a private corporation called the Universal Service Administrative Company, made the USAC’s contribution charges an unconstitutional tax. The Supreme Court heard oral arguments in the case, now called *FCC v. Consumers’ Research*, in March 2025. It is expected to issue a ruling in the summer of 2025.

These judicial events have illuminated Congress’s future policy options. No matter what the Supreme Court decides, the Fifth Circuit’s opinion has alerted policymakers to serious problems with universal service subsidies. Legislators are now on notice that the open-ended language of § 254 gives the FCC extraordinary authority that cannot be constrained by the judiciary or by the appropriations process.

The broad delegation and sub-delegation of authority to the FCC and USAC mean that universal service programs lack accountability, which contributes in turn to failures of universal service policy. Congress should view the constitutional infirmities identified by the Fifth Circuit ruling as an opportunity to improve telecom policy.

Indeed, this controversy illuminates perennial and pervasive problems with universal service subsidies. The regulatory mechanism chosen to achieve universal service goals has been to charge some telecommunications service consumers more, so that others pay less. Universal service pricing policies regularly create unfair results; low-income wireless callers subsidize broadband to wealthy ranchers. Furthermore, universal service funding and distribution mechanisms distort markets. For example, universal service funding schemes subsidize wireline systems even though wireless systems may serve the same regions at much lower cost.

Section 254 of the Telecommunications Act of 1996 defines universal service as “an evolving level of telecommunications services that the Commission shall establish periodically” by deciding which services are “essential to education, public health,

or public safety; have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers; are being deployed in public telecommunications networks by telecommunications carriers; and are consistent with the public interest, convenience, and necessity.”¹

Federal legislators had good intentions when they passed § 254 of the Telecommunications Act of 1996. They sought to ensure access to communications services to all Americans at affordable rates. Good intentions, however, are not enough to yield good results, given the troubling realities of universal service subsidies.

Universal service mechanisms lack strong accountability measures. Legislators and the public should not have to plead with the FCC to explain itself on an *ad hoc* basis. Incremental reforms such as funding subsidies from the FCC’s electromagnetic spectrum auction revenues will not suffice to cure these persistent ills. The design of § 254 is inherently flawed. In practice, its mechanisms create large inequities.

Policymakers should take the initiative to end the universal service subsidy regime created by § 254. Its end would benefit taxpayers and ratepayers while improving regulatory accountability and restoring efficiency to the communications sector. A better alternative to § 254 is a market-centered telecommunications policy. That approach would ensure that as many users as possible could access advanced services at a reasonable cost.

Universal service mechanisms are unnecessary, price- and market-distortive, wasteful, and unaccountable. Furthermore, they amount to a regressive and constitutionally inappropriate tax. The Trump administration has demonstrated a commendable willingness to transform outmoded, wasteful bureaucracies, and after more than 90 years it is an ideal time for Congress to end universal service subsidies.

Section 254 is inherently flawed. Policymakers should adopt a market-centered communications policy. This approach would ensure that as many users as possible could access advanced services at a reasonable cost.

¹ 47 U.S.C. § 254(c)(1).

This approach would rest on functional principles such as technological neutrality and built-in accountability measures.

There are obstacles to change, such as the difficult issue of how to end subsidies to dependent carriers. But Congress should overcome these difficulties with a goal of advancing the interests of the American taxpayer and businesses.

Are these subsidies constitutional?

The ostensible goal of universal service subsidies was to provide communications services to all Americans at affordable rates. The Telecommunications Act of 1996 (the 1996 Act) created the Universal Service Fund (USF) to finance universal service subsidies. Section 254 of the 1996 Act directed the Federal Communications Commission (FCC) to establish mechanisms to subsidize advanced communications services such as broadband to schools, libraries, rural hospitals, low-income consumers, and consumers in high-cost (chiefly rural) areas. Sections 254(b)(4) and 254(d) require interstate telecommunications carriers to make “equitable and nondiscriminatory” contributions to the USF.²

To administer the USF, the FCC established the Universal Service Administrative Company (USAC), a private corporation. Each quarter, the USAC proposes a USF contribution rate. Under FCC rules, the rate is deemed approved unless the FCC affirmatively objects to it.³ The USAC bills carriers and makes distribution decisions. The managers of USAC are drawn from “interest groups affected by and interested in universal service programs.”⁴ Recipients of universal service subsidies influence contribution levels, setting up a conflict of interest between USAC and taxpayers.

The USF finances four programs. The high-cost program (\$4.32 billion) subsidizes telecommunications carriers’ provision of broadband and voice services in high-cost (mostly rural) areas. The schools and

libraries program (\$2.48 billion), also known as E-Rate, subsidizes broadband and other services to schools and libraries. The Lifeline program (\$860 million) subsidizes broadband and voice services to low-income consumers. The rural health care program (\$430 million) subsidizes broadband and voice services to rural health care providers.⁵

In July 2024, in *Consumers’ Research v. FCC*,⁶ the US Court of Appeals for the Fifth Circuit ruled that the open-ended language of § 254, combined with the FCC’s delegation of the power to determine universal services contribution rates to USAC, made USF charges an unconstitutional tax. In particular, the court ruled that USF contributions are taxes, not fees: that is because fees are charged only if one engages in some voluntary act, such as entering a national park, and because fees are proportional to the value of a benefit conferred on the individual paying the fee. The court therefore found that USF contributions are taxes, essentially because those contributions are not associated with a voluntary act, but instead are a “condition of doing business in the telecommunications industry.”⁷

USF contributions are not returned to the carriers and consumers who pay them in the form of a benefit of comparable value; rather, they are used to subsidize other carriers and other consumers. The court explained that “the power to level USF ‘contributions’ is the power to tax—a quintessentially legislative power.”⁸ The 1996 Act broadly delegated authority to design a funding mechanism to the FCC, which then sub-delegated authority for contribution levels to the USAC. The court ruled that this combination of delegation and sub-delegation violated Article I, Section I of the US Constitution, which vests legislative powers—particularly the power to tax—in the legislative branch.⁹

The Fifth Circuit’s opinion explains that § 254 by itself presents serious constitutional issues: more precisely, § 254 confers the power to tax on the FCC without an

² 47 U.S.C. § 254(b)(4), (d).

³ 47 C.F.R. § 54.709(a)(3).

⁴ “Leadership,” Universal Service Administration Co., accessed May 6, 2024, <https://www.usac.org/about/leadership/>; see also 47 C.F.R. § 54.703(b) (setting out rules for makeup of USAC’s board of directors); U.S. Government Accountability Office, *Telecommunications: Administration of Universal Service is Consistent with Selected FCC Requirements*, GAO-24-106967, July 2024, p. 6, <https://www.gao.gov/assets/gao-24-106967.pdf> (reviewing board membership).

⁵ U.S. Government Accountability Office, *Telecommunications: Administration of Universal Service is Consistent with Selected FCC Requirements*, pp. 1, 5.

⁶ *Consumers’ Research v. FCC*, 109 F.4th 743 (2024).

⁷ 109 F.4th at 757.

⁸ 109 F.4th at 756; see also 109 F.4th at 758.

⁹ 109 F.4th at 756, 778.

intelligible principle to guide the FCC's discretion.¹⁰ In that respect, the statutory language appears almost limitless. For example, the statute allows the FCC to redefine universal service on an ongoing basis, consistent with an undefined "public interest" and perhaps "other principles."

The court found that "[n]othing in the statute precludes FCC from... imposing the USF Tax to create an endowment that it could use to fund whatever projects it might like."¹¹ Its opinion states that "§ 254 is a hollow shell that Congress created for FCC to fill—so amorphous that no reviewing court could ever possibly invalidate any FCC action taken in its name."¹² It emphasizes that there was no need to delegate broad authority to the FCC for technical reasons; determining the optimal size for a welfare program is a policy judgment for Congress.¹³

That opinion notes that the FCC's sub-delegation of authority to USAC was inherently problematic from a constitutional perspective, even if § 254 posed no constitutional concerns. That is because delegation of an agency's authority to a private entity is not valid when the agency rubber-stamps the entity's activities.¹⁴ Furthermore, Congress did not expressly authorize the FCC's delegation to USAC.¹⁵

Of course, the Fifth Circuit's majority opinion is not the final word on these constitutional

questions. The dissenting judges disagreed with the majority's characterization of USF charges as taxes rather than fees; they argued that carriers and consumers generally benefit from increased network penetration.¹⁶ The Sixth Circuit and the Eleventh Circuit, in contrast to the Fifth Circuit, have upheld the constitutionality of USF mechanisms.¹⁷ The Supreme Court is expected to decide the appeal of the Fifth Circuit ruling in 2025.¹⁸ The Court should uphold the Fifth Circuit. Allowing branches of government other than the legislature to set tax rates is unwise and constitutionally impermissible.¹⁹

However, no matter what the Supreme Court decides, the Fifth Circuit's decision is a red flag to policymakers. Congress should now understand that the open-ended language of § 254 gives the FCC extraordinary authority to determine the size and scope of a welfare program. The FCC's exercise of this authority cannot effectively be constrained either by the judiciary²⁰ or by Congress via the appropriations process.²¹

The possibilities for impropriety (both constitutional and practical) of allowing the FCC to sub-delegate authority to distribute subsidies to a private entity overseen in part by representatives of entities that receive the subsidies speak for themselves.²² However USAC's *pro forma* compliance with ethics rules and auditing requirements²³ is understood,

¹⁰ 109 F.4th at 756, 760-767 (discussing failure of § 254 to supply intelligible principle).

¹¹ 109 F.4th at 760.

¹² 109 F.4th at 767. Section 254 leaves the FCC and any reviewing court "utterly at sea" in trying to determine whether subsidies are distributed consistent with the will of Congress. 109 F.4th at 761.

¹³ 109 F.4th at 764.

¹⁴ FCC lacks process for checking USAC work and had never taken significant action to alter USAC practice. 109 F.4th at 750. Private entity must remain subject to pervasive surveillance and authority of person or entity vested with government power. 109 F.4th at 768-774.

¹⁵ 109 F.4th at 774, 777.

¹⁶ 109 F.4th at 800 (Stewart, C.J., dissenting) (characterizing doing business as voluntary act). Carriers generally receive public benefits from contributions. 109 F.4th at 799 (Stewart, C.J., dissenting).

¹⁷ *Consumers' Research v. FCC*, 67 F.4th 773 (6th Cir. 2023), cert. denied *Consumers' Research v. FCC*, No. 23-456, 2024 WL 2883753 (U.S. June 10, 2024); *Consumers' Research v. FCC*, 88 F.4th 917, 923 (11th Cir. 2023), cert. denied *Consumers' Research v. FCC*, No. 23-743, 2024 WL 2883755 (U.S. June 10, 2024).

¹⁸ "Federal Communications Commission v. Consumers' Research," SCOTUSblog, accessed January 23, 2025, <https://www.scotusblog.com/case-files/cases/federal-communications-commission-v-consumers-research/>.

¹⁹ Brief for the Competitive Enterprise Institute as Amicus Curiae Supporting Respondents, *FCC v. Consumers' Research* (Supreme Court 2025) (Nos. 24-354 & 24-422); Devin Watkins, "CEI to Supreme Court: Please Don't Let Executive Branch Set Tax Rates," Open Market (blog), Competitive Enterprise Institute, February 19, 2025, <https://cei.org/blog/cei-to-supreme-court-please-dont-let-executive-branch-set-tax-rates/>. "First, Congress's instructions are so ambiguous that it is unclear whether Americans should contribute \$1.37 billion, \$9 billion, or any other sum to pay for universal service. Second, private entities bear important responsibility for universal service policy choices. And third, it is impossible for an aggrieved citizen to know who bears responsibility for the USF's serious waste and fraud problems. All three of those things implicate bedrock constitutional principles." 109 F.4th at 752. Both private and public nondelegation doctrines' aim is accountability. 109 F.4th at 759, 782-283.

²⁰ 109 F.4th at 767, 784; see also 109 F.4th at 783 (discussing general danger that statutes that fail to delegate authority appropriately will undermine accountability to the judiciary).

²¹ 109 F.4th at 766-767 ("§254 delegates to FCC the power to make important policy judgments, and to make them while wholly immunized from the oversight Congress exercises through the regular appropriations process.").

²² 109 F.4th at 772 ("[N]ine of USAC's nineteen directors represent companies in the telecommunications industry who are compensated by the very same USF funds they raise. . . . [A]nother seven represent the schools, libraries, health care providers, and low-income consumers who are direct recipients of USF funds.").

²³ U.S. Government Accountability Office, *Telecommunications: Administration of Universal Service is Consistent with Selected FCC Requirements*, p. 6; 109 F.4th at 804 (Stewart, C.J., dissenting) (discussing FCC audits as evidence of pervasive control). But see 109 F.4th at 751-752 (discussing problems with USF audits).

the consequences of indulgence under § 254 have included billions of dollars in waste and fraud.²⁴ The American public does not know who to blame for this boondoggle.²⁵ The constitutional problems that stem from the broad language of § 254 have led to multiple failures of universal service policy. Legislators should seize the opportunity to correct these failures.

Pervasive policy failures

Given the opportunity to revisit universal service and make fundamental changes, what should legislators do? Industry observers and legislators regularly offer proposals for incremental universal service reform. Others call for elimination of most or all universal service subsidies. Experience suggests that incremental reforms will fail. Thus, elimination is the best course. Universal service policy failures, as outlined below, are too pervasive and persistent for partial measures to make a difference.

First, universal service pricing policies amount to an unfair and regressive tax. Second, USF mechanisms distort markets, skewing the decisions of carriers and consumers. Third, universal service mechanisms lack meaningful accountability measures. These three propositions explain why incremental reforms will not suffice.

Unfair tax: Universal services subsidies function as a regressive tax—that is, an unfair tax that takes proportionally more from low-income individuals.²⁶ In practice, that is because universal service has generally been funded by cross-subsidies. Since the 1940s, the regulatory mechanism chosen to achieve universal service has been to charge some consumers of telecommunications services artificially high prices, so that other consumers pay less.²⁷ For decades, users of local phone service (including low-income households) subsidized long-distance callers (including wealthy households). Generally, users of telecommunications services subsidize users of information services such as broadband service. That is, landline and mobile voice telephony service providers, paging services, cable companies that provide voice service, and some Voice over IP services (including users in low-income households)²⁸ subsidize rural broadband users (including wealthy users).²⁹

The universal service tax is regressive regardless of whether consumers are aware of it, whether the tax is expressly disclosed as a separate USF charge on every bill or whether it is entirely concealed. The FCC could change its rule that allows carriers to pass the tax through to consumers.³⁰ But all that would do is to make the costs of universal service less transparent to legislators and the public, as the charges would be hidden in the regular price of services.³¹

²⁴ 109 F.4th at 751-752.

²⁵ 109 F.4th at 752; see also 109 F.4th at 759, 782-283 (stating both private and public nondelegation doctrines' aim is accountability); 109 F.4th at 784 (discussing risk that government will pass off bad results of policy as the fault of private actors).

²⁶ U.S. Senate Committee on Commerce, Science, and Transportation and Ranking Member Ted Cruz (R-Texas), *Protecting Americans from Hidden FCC Tax Hikes: A Blueprint for Universal Service Fund Reform*, March 2024, <https://www.commerce.senate.gov/services/files/45983F37-2FA5-4586-BCCA-8E04495E3AF>; Thomas Johnson Jr., *The Future of Universal Service* (American Enterprise Institute, Digital Governance Working Group, September 2022), p. 4 (arguing that universal service charges are “doubly regressive”); see also Testimony of Jeffrey A. Eisenach, Ph.D. in Addressing the Risk of Waste, Fraud, and Abuse in the Federal Communications Commission's Lifeline Program, Hearing before the Senate Commerce, Science, and Transportation Committee, 115th Congress, Second Session, September 6, 2017, <https://www.commerce.senate.gov/services/files/79B60E24-1B86-4935-A88D-5DC594A2B806>; Gregory L. Rosston and Scott Wallsten, “Overhauling the Universal Service Fund: Aligning Policy with Economic Reality,” Technology Policy Institute (blog), August 28, 2024, <https://techpolicyinstitute.org/publications/broadband/overhauling-the-universal-service-fund-aligning-policy-with-economic-reality/>.

²⁷ Elizabeth E. Bailey and William J. Baumol, “Deregulation and the Theory of Contestable Markets,” *Yale Journal on Regulation*, Vol. 1 (1984), pp. 111, 115-116, n.6, <https://openyis.law.yale.edu/handle/20.500.13051/7873> (discussing inefficiency and unfairness of cross-subsidies generally, with example of telecommunications).

²⁸ Carol Matthey, *FCC Must Reform USF Contributions Now: An Analysis of the Options*, USForward, September 2021, pp. 3, 7, 15, <https://www.ntca.org/sites/default/files/documents/2021-09/FINAL%20USForward%20Report%202021%20for%20Release.pdf> (noting that FCC does not assess provider-to-provider revenues, information services, retail fixed broadband internet access, or retail mobile data services that provide internet access).

²⁹ Patricia Moloney Figliola, *The Future of the Universal Service Fund and Related Broadband Programs* (Congressional Research Service, Report No. R47621, updated March 1, 2024), pp. 3-5, <https://www.congress.gov/crs-product/R47621> (describing anticipated distributions of USF funds to provide broadband (\$20.4 billion), and 5G (\$9 billion) to mainly rural areas).

³⁰ 47 C.F.R. § 54.712(a); Federal Communications Commission, *Report on the Future of the Universal Service Fund*, FCC 22-67, August 15, 2022, pp. 10084-10085, 10086, https://docs.fcc.gov/public/attachments/FCC-22-67A1_Rcd.pdf (stating about 82 percent of carriers pass through charges).

³¹ See H. Cremer et al., “Universal Service: An Economic Perspective,” *Annals of Public and Cooperative Economics*, Vol. 72, No. 1 (March 2001), pp. 43, 31, https://regulationbodyofknowledge.org/wp-content/uploads/2013/03/Cremer_Universal_Service_An.pdf (asserting that the burden of universal service taxes ultimately falls on consumers, with the exact effects depending on market structure); Joe Kane, *A Blueprint for Broadband Affordability* (Information Technology & Innovation Foundation, January 2025), p. 10, n.31, <https://www2.itif.org/2025-broadband-affordability.pdf>.

Ultimately, as legislators have recognized, the current universal service funding mechanism (based on contributions from carriers) is not sustainable. Consumers are switching away from the legacy “telecommunications services” that pay contributions to “information services” that do not. Between 2014 and 2023, the USF contribution base declined from \$6.58 billion to \$3.38 billion.³² The USAC must steadily increase the contribution rates to keep disbursements the same.³³

Distortions: Both the collection of universal service funds and the distribution of subsidies distort markets. Consumers are discouraged from consuming services that are priced artificially high due to USF taxes. For example, consumers are switching from legacy voice services, which pay universal service charges, to non-contributing Voice over IP or similar options. Furthermore, top-down rules regarding services eligible for subsidies may displace consumer demand in shaping carrier offerings. For example, the FCC’s minimum service standards for Lifeline users may not coincide with the services that low-income users actually want.³⁴

USF subsidies also distort carriers’ incentives, affecting firms’ decisions to enter markets, invest in infrastructure and innovation, manage costs and growth, and compete.³⁵ Before 2012, USF subsidies for high-cost areas were based on rural carriers’ costs, inviting egregious inflation of rural carriers’

administrative expenses.³⁶ Many rural carriers were (and are) too small to be efficient.³⁷ At times, more than one carrier within a given area received cost-based subsidies (for example, a mobile carrier and a landline carrier might both be subsidized).³⁸ This policy was an attempt to maintain competitive and technological neutrality,³⁹ on the theory that it would be unfair for an unsubsidized carrier (often wireless) competing against a subsidized carrier (often wireline). However, subsidizing multiple entrants based on inflated costs of landline networks caused rampant growth of the high-cost fund.

Beginning in 2012, the FCC addressed these problems by distributing some subsidies for high-cost areas using reverse auctions. In a reverse auction, service providers submit competing bids to gain access to subsidies, with each bidder seeking to offer services at the lowest subsidy level. Reverse auctions are a significant reform.⁴⁰ Generally, if there are unsubsidized competitors in a region, the region must move to distribution of subsidies by reverse auction.⁴¹

However, participation in reverse auctions is optional for some rural carriers. Carriers operating under rate-of-return regulation (typically the smallest rural carriers) may still receive USF funds based on carriers’ actual costs, long associated with inflation.⁴² USF funds may be distributed to price cap carriers (typically larger carriers) based on forward-looking cost models, which are complex and hard to get

³² Federal Communications Commission, *Universal Service Monitoring Report*, 2024, Table 1.5, p. 17, <https://docs.fcc.gov/public/attachments/DOC-408848A1.pdf>.

³³ Johnson, *The Future of Universal Service*, p. 4 (noting that contribution base has declined from \$65.9 billion to 41.4 billion); U.S. Government Accountability Office, *Telecommunications: Administration of Universal Service is Consistent with Selected FCC Requirements*, p. 7 (noting that USF contribution factor has grown from about 6 percent of end-user revenues in 2000 to about 33 percent in the second quarter of 2024); see also Federal Communications Commission, *Universal Service Monitoring Report*, 2024, Table 1.5, p. 17.

³⁴ Adrienne B. Furniss, “The Importance and Effectiveness of the Lifeline Program,” Digital Beat (blog), The Benton Institute for Broadband & Society, August 28, 2023, <https://www.benton.org/blog/importance-and-effectiveness-lifeline-program> (describing effect of changing FCC service standards on participation of low-income households in Lifeline program).

³⁵ Universal service tax-induced distortions affect investment and shape competition. Gregory L. Rosston and Bradley S. Wimmer, “The ‘State’ of Universal Service,” *Information Economics and Policy*, Vol. 12, No. 3 (September 2000), p. 262, n.5, <https://www.sciencedirect.com/science/article/pii/S0167624500000111>.

³⁶ Scott Wallsten, *The Universal Service Fund: What Do High-Cost Subsidies Subsidize* (Technology Policy Institute, February 23, 2011), pp. 10-15, <https://techpolicyinstitute.org/publications/broadband/the-universal-service-fund-what-do-high-cost-subsidies-subsidize/> (discussing problem of incentive to inflate costs, and finding that \$0.59 of every dollar in high-cost subsidies to incumbent carriers goes to “inflated administrative expenses”).

³⁷ Thomas W. Hazlett, “Universal Service” Telephone Subsidies: What Does \$7 Billion Buy?, June 2006, pp. 3, 37, 42, <https://www.scribd.com/document/22635423/Thomas-W-Hazlett-Universal-Service-Telephone-Subsidies-What-Does-7-Billion-Buy-06-2006>.

³⁸ Hazlett, “Universal Service” Telephone Subsidies, p. 18.

³⁹ Universal systems service should be competitively neutral; an inappropriate funding mechanism can impede entry by efficient operators or foster less efficient operators. See generally Cremer et al., “Universal Service: An Economic Perspective,” pp. 24, 28.

⁴⁰ Funds distributed by reverse auction are the Connect America Fund’s Phase II Auction and the Rural Digital Opportunity Fund (RDOF).

⁴¹ See Connect America Fund, WC Docket No. 10-90; ETC Annual Reports and Certifications, WC Docket No. 14-58; Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135; Developing a Unified Inter-carrier Compensation Regime, CC Docket No. 01-92, Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, FCC 18-176, December 13, 2018.

⁴² These include High Cost Loop Support (HCLS); Broadband Loop Support (BLS); Connect America Fund (CAF) Phase I Frozen Support; Frozen Competitive Eligible Telecommunications Carrier (CETC) Support; and CAF Inter-carrier Compensation (ICC) Support.

right.⁴³ For example, under the Alternative Connect America Cost Model, carriers who have not won reverse auctions may receive \$200 per line per month in broadband support; comparable residential satellite service from Starlink is available for \$120 per month (plus one-time equipment costs starting at \$350) and from Hughes for \$75-\$125 per month (plus one-time equipment costs of \$300-\$450).⁴⁴ One study found that carriers' self-reported data, sent to the FCC to assess compliance with subsidy rules such as the requirement that a certain percentage of addresses be served, greatly overstates carriers' compliance.⁴⁵ The FCC has stated its intention to phase out cost-based carrier support. As a start, cost-based support to carriers facing unsubsidized wireline competitors was to be ended, with subsidies in those regions distributed by competitive bidding. However, the process of elimination drags on interminably.

Furthermore, reverse auctions are not markets. Subsidies still distort carriers' decisions and competition. The FCC's auction rules may displace consumer demand in shaping carriers' offerings. Reverse auctions may yield a show of cost-cutting until the auction is over. The FCC has struggled to determine whether auction winners have delivered what they promised. Such central supervision and double-checking are unnecessary in markets with well-functioning price systems and ongoing (as opposed to episodic) competition. In the less efficient,

reverse-auction system, necessary supervision may be ineffective or may not occur at all.

Furthermore, competition is affected after the auction. Unsubsidized competitors are disadvantaged if they enter the under-served market, and will be drawn to compete mainly in more profitable regions,⁴⁶ undercutting the subsidized firm's profits if there is overlap. Ultimately, cross-subsidy pricing and subsidies are incompatible with efficient, fair competition.

A closely related problem is subsidized overbuilding.⁴⁷ Overbuilding occurs when multiple carriers each build infrastructure to offer service in the same geographic location to the same people. If the rival carriers live in a world of supply and demand, overbuilding will tend to produce efficient competition that drives each provider to seek out ways to reduce costs. But if any of those carriers are subsidized, then overbuilding likely is driven by a perverse incentive system, because subsidized carriers' incentives to economize on capital investment and operating costs are reduced. Examples of overbuilding include multiple situations where one carrier is subsidized by the USF and another carrier is subsidized by another program.⁴⁸

Interagency coordination efforts might reduce these situations.⁴⁹ However, coordination will not prevent situations where a subsidized new entrant moves into an area served by an unsubsidized provider, which suggests that the subsidy is not necessary to the

⁴³ These include the Connect America Phase Cost Models and the Connect America Fund Phase II Cost Model. To reduce cost inflation, the FCC has substituted formulas based on hypothetical estimates of what carriers' costs would be using a modern *wireline* network (forward-looking cost models) for the carriers' reported costs. The forward-looking costs models represent improvement only if they are based on correct estimates. Given variations of terrain, population density, and infrastructure, this is improbable. "Peer Review of Connect America Phase II Cost Model," Federal Communications Commission, accessed February 13, 2025, <https://www.fcc.gov/general/peer-review-connect-america-phase-ii-cost-model>.

⁴⁴ "Service Plans," Starlink, accessed March 12, 2025, <https://www.starlink.com/us/service-plans>; S.E. Slack, "HughesNet's Satellite Internet: The Game Changer You Didn't Know You Needed," Lifewire, February 27, 2025, <https://www.lifewire.com/hughesnet-internet-11686954>.

⁴⁵ Haarika Manda et al., *The Efficacy of the Connect America Fund in Addressing US Internet Access Inequities*, in ACM SIGCOMM '24: Proceedings of the ACM SIGCOMM 2024 Conference (Association for Computing Machinery, August 2024), <https://dl.acm.org/doi/pdf/10.1145/3651890.3672272> (noting that FCC relies on self-reported data, but finding that other data shows only about 55 percent of addresses certified as served are served, and only about 33 percent of served addresses comply with download speed minimums).

⁴⁶ Senate Committee on Commerce, Science, and Transportation and Cruz, *Protecting Americans* (calling for regulators to stop subsidizing networks that face unsubsidized competition).

⁴⁷ See, e.g., Letter from Michael O'Reilly, Commissioner, Federal Communications Commission, to Jacqui Clay, Superintendent, Cochise County Schools, regarding allegation of wasteful and duplicative Universal Service fund (USF) spending, August 26, 2019, <https://docs.fcc.gov/public/attachments/DOC-359287A1.pdf>; Letter from Ted Cruz, Ranking Member, Committee on Commerce, Science, and Transportation, and Cathy McMorris Rodgers, Chair, Committee on Energy and Commerce, to Chairwoman Jessica Rosenworcel, Federal Communications Commission, opposing plan to expand E-Rate program, July 31, 2023, <https://www.commerce.senate.gov/services/files/B64FAC86-8E70-4D15-9859-EBF43D233E3A> ("By expanding E-Rate support to off-campus connectivity, the plan appears to open the door to funding broadband buildout to homes, even in cases where the community is already served by an existing broadband provider.").

⁴⁸ U.S. Government Accountability Office, *Broadband: National Strategy Needed to Guide Federal Efforts to Reduce Digital Divide*, GOA-22-104611, May 2022, pp. 16-18, <https://www.gao.gov/products/gao-22-104611> (explaining multiple situations where high-cost fund subsidized one carrier, and USDA's Rural Utility Service subsidizes carrier with overlapping area).

⁴⁹ Wireline Competition Bureau, *Report on the Effectiveness of the Broadband Interagency Coordination Agreement Pursuant to §1308 of the Broadband Interagency Coordination Act* (Federal Communications Commission, February, 2023), <https://docs.fcc.gov/public/attachments/DOC-391167A1.pdf>.

former and unfair to the latter, its shareholders, and its customers.⁵⁰

Universal service programs tend to favor wireline over wireless technologies, violating the principle of technological neutrality. Political factors, not technical issues, largely drive this distortion. Past distributions of universal service subsidies have set up a persistent lobbying dynamic that has locked in inefficient technologies and carriers. Some legacy wireline systems have become dependent on subsidies. Carriers using wireless can provide service at low cost compared to wireline systems. Relying more on wireless and less on wireline could save billions of dollars.⁵¹ But the FCC has been reluctant to accept wireless networks as substitutes for wireline networks.

For example, the FCC has resisted extending universal service subsidies to satellite broadband, even after the speed and latency of satellite broadband networks satisfied the FCC's technical requirements.⁵² Rural wireline firms fiercely argue for the subsidies' continuance, even if it means that many carriers build and maintain costly wireline systems in regions where only wireless makes sense. This lobbying dynamic affects legislators as well as the USAC and FCC staff, because almost every congressional district includes inefficient subsidy-receiving carriers.⁵³ For example, some propose that the FCC make it easier for small carriers to participate in reverse auctions, setting up the small carriers for sustainability issues going forward and undermining efficiency gains from auctions.

Little accountability: Universal service programs accountability measures are *ad hoc* and/or unsatisfactory. First, the statutory design of universal service allows legislators to escape accountability. It is as if Congress opted to fund Medicare and Medicaid without taxing anyone, allowing hospital executives to set the Medicare-Medicaid budget, and asking Health and Human Services to approve the hospital's taxes after a cursory review—after which the taxes would be added to patients' bills.⁵⁴ If universal service were being recreated from scratch today, no responsible legislator would support such a scheme, precisely because it makes spending decisions (and the true decision-makers) opaque.

Second, § 254 fails to hold the FCC accountable for universal service subsidy taxes or spending. Whatever mechanism the FCC designs, the requirement that carriers contribute bypasses the appropriations process.⁵⁵ The FCC may make puzzling decisions unchecked by Congress, such as the decision to scale back the Linkup program, although evidence showed it was more effective than Lifeline in boosting subscribership.⁵⁶ In combination with lobbying dynamics, bypassing appropriations means that subsidies will rarely be reduced even if policy, technology and/or competition warrant reductions. The high-cost fund's size has held roughly constant during the past eight years.⁵⁷ It ought to be shrinking because of the reduced costs of serving high-cost areas by satellite,⁵⁸ not to mention the billions now available to carriers through other subsidy programs.

⁵⁰ T.J. York, "WISP Executives Debate Whether Government Unfairly Favors Fiber Builds Over Wireless," Broadband Breakfast, April 11, 2022, <https://broadbandbreakfast.com/wisp-executives-debate-whether-government-unfairly-favors-fiber-builds-over-wireless/>; see also letter from Michael O'Reilly, Commissioner, Federal Communications Commission, to Radha Sekar, CEO, Universal Service Administrative Co., March 7, 2019, <https://www.fundsforlearning.com/docs/2019/03/Commissioner%20Michael%20O'Reilly%20Letter%20to%20USAC.pdf> (describing concern that E-Rate subsidies will be used to finance networks in areas already served by multiple competitors).

⁵¹ Hazlett, "Universal Service" Telephone Subsidies p. 51.

⁵² See generally Gregory L. Rosston and Scott J. Wallsten, "Should Satellite Broadband Be Included in Universal Service Subsidy Programs," *Journal of Law & Innovation*, Vol. 6, No. 1 (2023), p. 135, <https://scholarship.law.upenn.edu/jli/vol6/iss1/2/>; see, e.g., Federal Communications Commission, Eighteenth Section 706 Report Notice of Inquiry, GN Docket No. 24-214, September 6, 2024, p. 9, <https://docs.fcc.gov/public/attachments/FCC-24-92A1.pdf> (noting satellite service has been excluded from evaluation of physical deployment of advanced telecommunications capability); see also Statements of Michelle Connolly, Professor of Economics, Duke University during "Universal Service after the Supreme Court's Consumers' Research Decision," Free State Foundation Annual Policy Conference, YouTube, March 25, 2025, video, https://www.youtube.com/watch?v=12kfe_rfXaM (describing FCC's reluctance to recognize satellite broadband provided by satellites in low earth orbits).

⁵³ Rosston and Wallsten, "Should Satellite Broadband Be Included," pp. 135, 151-152 ("Terrestrial providers operate in congressional districts, creating identifiable constituents—the recipient rural companies. . . . Satellite operates across the entire country. . . . Any dollar that goes to a satellite provider is a dollar less that will go to a recipient with a congressional representative.") ("[T]he USF is also a political program, with every state and many Congressional districts receiving subsidies. Reform is extremely difficult, with the last major reform, in 2011, doing little more than opening up subsidies to terrestrial broadband providers and setting a floor (not a ceiling) on how much the FCC must collect in taxes for the program.").

⁵⁴ *Consumers' Research v. FCC*, 109 F.4th 743, 758.

⁵⁵ 109 F.4th 743, 766-767 ("§ 254 delegates to FCC the power to make important policy judgments, and to make them while wholly immunized from the oversight Congress exercises through the regular appropriations process."); see also Senate Committee on Commerce, Science, and Transportation and Cruz, *Protecting Americans* ("USF mission creep is largely attributable to the absence of ordinary budgetary constraints faced by most agencies.").

⁵⁶ Daniel A. Akerberg et al., "Estimating the Impact of Low-income Universal Service Programs," *International Journal of Industrial Organization*, Vol. 37 (November 2014), pp. 84-98, <https://www.sciencedirect.com/science/article/abs/pii/S016718714000800> (noting that Linkup was more effective than Lifeline, but that FCC reduced support for Linkup).

⁵⁷ U.S. Government Accountability Office, *Telecommunications: Administration of Universal Service is Consistent with Selected FCC Requirements*.

⁵⁸ See generally Rosston and Wallsten, "Should Satellite Broadband Be Included?"

The E-Rate program for schools and libraries was originally capped at \$2.25 billion per year. The FCC adjusted the cap to \$4.94 billion for 2024. Even when the statute establishes some limits on subsidies, the FCC may ignore these limits. For example, the FCC has proposed extending subsidies to provide Wi-Fi on school buses and to students away from school grounds,⁵⁹ disregarding statutory language directing subsidies to classrooms and without evidence that technology in classrooms improves learning.⁶⁰

More generally, the FCC has not meaningfully addressed the perverse incentives resulting from the inclusion of representatives of subsidy recipients in USAC management.⁶¹ Legislators' efforts to hold the FCC accountable for USF spending are *ad hoc* and often after-the-fact rather than systematic. These problems of resistance to subsidy reduction and more careful administration of spending would be daunting, even if one ignores overspending attributable to fraud and waste.

Of course, it is unwise to ignore fraud and waste. Legislators and the General Accounting Office have repeatedly exhorted the FCC to control fraudulent and wasteful uses of subsidy funds.⁶² Section 254 contains neither accountability measures nor any incentive for regulators to create them.

Waste and fraud have plagued every USF program from the start, with losses amounting to billions per year.⁶³ A large proportion of USF funds have gone to ineligible recipients.⁶⁴ A cottage industry of consultants helps to maximize the monies going

to schools and libraries.⁶⁵ Consultants and service providers willing to bend the rules have played a role in channeling unlawful payments to rural health care providers, as well.⁶⁶

The FCC has made efforts to control fraud by (for example) reforming the Lifeline eligibility verification process and establishing fraud prevention as a mission of the Enforcement Bureau. But it is not just the Fifth Circuit that has found these measures far from adequate. Legislators and the public have no way to know how effective these measures have been.

The limited data is not promising. For example, the FCC's Lifeline eligibility verification measures are suited to keep out consumers who are already subscribed, but failed to block a carrier's submission of lists of non-existent subscribers.⁶⁷ Too little has been accomplished to prevent waste and fraud—and only after decades of mismanagement.

Here is where we are now: a dysfunctional system, in which contributions to the universal service fund have grown from \$1.37 billion (\$2.86 billion adjusted for inflation) in 1995 to more than \$9 billion in 2021.⁶⁸ Adjusting for inflation, this represents an increase of 215 percent. Neither legislators nor taxpayers have had much say in this increase.

Siren song of half measures

Policymakers have proposed various incremental and partial reforms to the universal service programs. These include plans to fund universal service from revenues raised from auctions of electromagnetic

⁵⁹ Seth L. Cooper, "FCC Can't Subsidize Wi-Fi Use Away from Schools and Libraries," Free State Foundation, *Perspectives from FSF Scholars*, Vol. 19, No. 30 (August 20, 2024), <https://freestatefoundation.org/wp-content/uploads/2024/08/FCC-Lacks-Authority-to-Subsidize-Wi-Fi-Use-Away-From-Schools-and-Libraries-082024.pdf>.

⁶⁰ Letter from Ted Cruz and Cathy McMorris Rodgers to Chairwoman Jessica Rosenworcel opposing plan to expand E-Rate program; see also Jakub Tecza, Scott Wallsten, and Yoojin Lee, *Do Broadband Subsidies for Schools Improve Students' Performance? Evidence from Florida* (Technology Policy Institute, May 5 2023), <https://techpolicyinstitute.org/publications/broadband/do-broadband-subsidies-for-schools-improve-students-performance-evidence-from-florida/>; Brent Skorup and Raymond Russell, *Technology in Schools: What Does \$27 Billion in E-Rate Spending Accomplish?* (Mercatus Center at George Mason University, June 2017), <https://www.mercatus.org/research/policy-briefs/technology-schools-what-does-27-billion-e-rate-spending-accomplish>.

⁶¹ 47 C.F.R. § 54.703(b); see also *Consumers' Research v. FCC*, 109 F.4th 743, 772 (noting role of stakeholders at USAC).

⁶² U.S. Government Accountability Office, *Telecommunications: FCC Should Take Action to Better Manage Persistent Fraud Risks in the Schools and Libraries Program*, GAO-20-606, September 2020, p. 18, <https://www.gao.gov/products/gao-20-606>.

⁶³ *Consumers' Research v. FCC*, 109 F.4th 743, 751 (discussing payments inconsistent with FCC rules under the high-cost and Lifeline programs).

⁶⁴ 109 F.4th at 772.

⁶⁵ Letter from Ted Cruz and Cathy McMorris Rodgers to Chairwoman Jessica Rosenworcel opposing plan to expand E-Rate program; see, e.g., Memorandum from Federal Communications Commission Inspector General David Hunt regarding Management and Performance Challenges, October 14, 2022, https://www.fcc.gov/sites/default/files/fy22_fcc_mngt-perf_challenges_10142022.pdf.

⁶⁶ Federal Communications Commission, "FCC Announces \$31 Million Rural Health Care Program Settlement with Telequality Communications," news release, February 5, 2020, <https://docs.fcc.gov/public/attachments/DOC-362310A1.pdf> (describing \$31 million settlement with firm that violated FCC rules in collaboration with health care providers to concoct misleading bid proposals); see also Federal Communications Commission, "FCC Proposes Imposing \$18.7 Million Fine on Company for Allegedly Defrauding Rural Health Care Program," news release, January 30, 2018, <https://docs.fcc.gov/public/attachments/DOC-348936A1.pdf> (describing use of forged documents to seek funding from rural health care plan).

⁶⁷ Lukas I. Alpert, "Telecom Exec Pleads Guilty to Stealing \$100 Million from Fraud-plagued Government Program," MarketWatch, October 16, 2024, <https://www.marketwatch.com/story/telecom-exec-pleads-guilty-to-stealing-100-million-from-fraud-plagued-government-program-60f2b191>.

⁶⁸ *Consumers' Research v. FCC*, 109 F.4th 743, 750-751.

spectrum to broadcasters and other wireless services, or from edge providers such as streaming services.⁶⁹

However, the regressive aspects of the universal service tax would not disappear if edge providers such as streaming services were required to pay USF contributions. This simply spreads the problem out, affecting providers and users of services who have been important engines of economic growth.⁷⁰

Funding USF from auction revenues or any other new source would waste enormous sums of money, because of the lack of accountability measures and market distortions.⁷¹ Subsidized carriers will still be investing in infrastructure when the returns do not justify the expense.

Incrementalism will fail. It does not address fundamental problems. Universal service subsidies are unfair, market-distortive, and wasteful. Most legislators would agree that it is desirable for all Americans to have access to communications services. But a reasonably well-designed program for achieving this goal would bear little resemblance to § 254 or the unconstitutional tax mechanisms that the FCC has created under § 254.

The American public is increasingly aware of the costs of bureaucracies and boondoggles. This is an ideal time for responsible legislators to eliminate the universal service subsidies program.

A better path for consumers

Policymakers should consider a fundamentally different vision of universal service: a market-based regime that serves as many people as reasonably possible at costs as low as reasonably possible. Below are several key principles that such a policy would incorporate.

Subsidies should only be provided when necessary and effective for consumers; most USF spending is neither. Subsidies involve spending other people's money; incentives for prudence with other people's money are minimal. Even if fraud and waste were eliminated, significant USF expenditures are not necessary.

Subsidies to high-cost areas are no longer necessary. Some economists doubt their effectiveness for increasing subscribership.⁷² The issue is now moot. The availability of mobile and satellite service effectively means there are no more high-cost areas.⁷³ The FCC reports that 100 percent of US locations has access to 100/20 Mbps broadband (with 95 percent having access to this level of service excluding satellite).⁷⁴

Note that some "unserved" locations might be misidentified. An inquiry into one broadband subsidy program notes that some unserved locations are zoo enclosures, summer camps, and so on.⁷⁵ Also, a currently unserved location might be served in future, without a subsidy.⁷⁶ Perhaps the premise of endless internet expansion to every island, forest, resort, and

⁶⁹ Johnson, *The Future of Universal Service*, p. 5; Brendan Carr, "Ending Big Tech's Free Ride," *Newsweek*, May 24, 2021, <https://www.newsweek.com/ending-big-techs-free-ride-opinion-1593696>.

⁷⁰ Kane, *A Blueprint for Broadband Affordability*, p. 10; Violet Wang, *Universal Service Fund Reform Requires a Direct Overhaul*, National Taxpayers Union Foundation, January 6, 2023, p. 3, <https://www.ntu.org/foundation/detail/universal-service-fund-reform-requires-a-direct-overhaul> ("Edge providers help create robust online ecosystems and should not be seen as a scapegoat for the USF to deflect its internal funding problems towards.").

⁷¹ Senate Committee on Commerce, Science, and Transportation and Cruz, *Protecting Americans*.

⁷² Rosston and Wimmer, "The 'State' of Universal Service," p. 272 (discussing model suggesting that "efforts to improve subscribership by maintaining the web of implicit subsidies are largely ineffective – eliminating them entirely would have a small effect on subscribership and that decline could be mitigated substantially by instituting a targeted low-income program."); see also Connolly, "Universal Service After the Supreme Court's Consumers' Research Decision" (noting that Link Up is only universal service program that increased subscribership).

⁷³ Information Technology & Innovation Foundation, "Congress Should Eliminate the Universal Service Fund's High-Cost and Lifeline Programs, Says ITIF," news release, May 11, 2023, <https://itif.org/publications/2023/05/11/congress-should-eliminate-the-universal-service-funds-high-cost-and-lifeline-programs/> (quoting ITIF analyst Joe Kane, "If a broadband network cannot survive without ongoing subsidies for its operation, then it ought not to get federal support, especially in light of burgeoning satellite broadband options.").

⁷⁴ Seth L. Cooper, "The FCC's 2024 Communications Marketplace Report: Time for a Broader View of Competing Broadband Services," *Free State Foundation, Perspectives from FSF Scholars*, Vol. 20, No. 5 (January 24, 2025), <https://freestatefoundation.org/wp-content/uploads/2025/01/The-FCCs-2024-Communications-Marketplace-Report-Time-for-a-Broader-View-of-Competing-Broadband-Services-012425.pdf>. FCC has received more than enough funding to achieve universal service without high-cost fund. See Ryan Nabil, "How Congress and the Federal Communications Commission Can Help Improve Affordable Internet Access to Underserved Populations," Competitive Enterprise Institute, *OnPoint*, No. 279 (June 30, 2022), p. 2, <https://cei.org/wp-content/uploads/2022/06/Ryan-Nabil-How-the-FCC-Can-reform-the-Universal-Service-Fund.pdf>.

⁷⁵ Sen. Ted Cruz, *Red Light Report: Stop Waste, Fraud, and Abuse in Federal Broadband Funding* (U.S. Senate Committee on Commerce, Science, and Transportation, September 2023), <https://www.commerce.senate.gov/services/files/0B6D8C56-7DFD-440F-8BCC-F448579964A3>.

⁷⁶ Statement of Commissioner Brendan Carr Approving in Part and Concurring in Part, Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, Eighteenth Section 706 Report Notice of Inquiry, GN Docket No. 24-214, September 6, 2024, p. 9, <https://www.fcc.gov/document/fcc-opens-eighteenth-inquiry-state-broadband-us/carr-statement> (noting that it does not follow from the fact that a location is unserved that it will not be served in future).

field in the United States deserves scrutiny. May one never escape the internet?⁷⁷

Historically, there were arguably some net public benefits from subsidies to extend wireline networks out further into remote areas. Telecommunications is a network industry, subject to network effects. That is, one telephone is not useful, and every user tends to benefit from the addition of more users.⁷⁸ But adding more users has a cost: at some level of cost, there is no net benefit (to society or individuals) from adding more users.

The arguments for continued universal service subsidies based on alleged benefits to other users are vague and hypothetical, as they are typically unaccompanied by any actual cost/benefit figures. At today's level of network penetration and given the realities of USF waste, the burden of proof ought to be on subsidy proponents. If adding more users would increase the value of the network unambiguously, private firms have an incentive to adjust prices to maximize subscribership themselves, and some have done so.

But what concrete arguments are there for a net benefit to users and carriers of the extension of networks unsupportable by supply and demand to every parcel of property? This question deserves an

answer, particularly when some of the remote users of the networks would continue to subscribe if they paid a market price for the service.⁷⁹ No subsidy should be continued until that question has been meaningfully answered, especially subsidies to carriers.

Furthermore, the USF is no longer necessary for another reason: other subsidy programs (more appropriately funded from general tax revenues) support deployment of advanced services.⁸⁰ Duplication of subsidy programs leads to overbuilding and makes overbuilding very hard to track.⁸¹ Duplication also heightens the risk of fraud or accusations of fraud, as the complexity of the bureaucracy mounts.⁸² Agencies fail to coordinate efforts effectively to ensure that carriers are not receiving more than one subsidy effectively, leaving carriers to report themselves.⁸³ Eliminating the USF is an important step to ending duplicative subsidies.

Where might subsidies be necessary? Some support the idea of targeting subsidies to low-income users, perhaps through a voucher program like those used in the United Kingdom.⁸⁴ Voucher-type subsidies for low-income users funded from general tax revenues⁸⁵ would limit distortion of consumers' and carriers' decisions.⁸⁶ Any essential subsidies for rural health care and educational institutions should also

⁷⁷ There are reasons that people go camping. Some pay a premium to be disconnected. "Camp Grounded: Summer Camp for Adults," Digital Detox, accessed May 5, 2025, <https://www.digitaldetox.com/experiences/camp-grounded/>; Lenore Skenazy, "A List of Phone-Free Camps," Let Grow, April 3, 2024, <https://letgrow.org/a-list-of-phone-free-camps/>; Lisa Felepruch, "Could You Go Phone-Free For a Whole Weekend at Adult Summer Camp?," *The Globe and Mail*, March 8, 2018, https://mtm-otm.ca/_files/NewsAlert/Could%20You%20Go%20Phone-Free%20For%20A%20Whole%20Weekend%20At%20Adult%20Summer%20Camp.pdf; "No Technology," Camp Waziyatah, accessed May 5, 2025, <https://wazi.com/about/no-technology/> ("Camp Waziyatah is a NO-TECH atmosphere. That means no cell phones, no TV, no computers and no internet.").

⁷⁸ 109 F.4th at 798-799 (Stewart, C.J., dissenting); Gerald Brock and April Corbett, *The Universal Service Program: A Regulatory Subsidy Case Study*, prepared for the Pew Charitable Trusts (Regulatory Studies Center of the George Washington University, March 28, 2012), p. 6, <https://www.pewtrusts.org/-/media/assets/2012/03/28/universal-service-paper.pdf>; see generally Cremer et al., "Universal Service: An Economic Perspective," pp. 13, 18, 21 (discussing network effects argument, public goods argument, and the assessment of net benefits).

⁷⁹ Rosston and Wimmer, "The 'State' of Universal Service," pp. 264-265 ("[M]uch of the subsidy is directed to consumers with high incomes who would remain connected even if prices reflect costs. This makes the program larger than is necessary and requires higher tax rates, which distort market outcomes.").

⁸⁰ This remark is not intended to imply that these other subsidies are necessary. See Nabil, "How Congress and the Federal Communications Commission Can Help Improve Affordable Internet Access to Underserved Populations," p. 2 (calling for end to wasteful duplication of programs); see also Senate Committee on Commerce, Science, and Transportation and Cruz, *Protecting Americans* (calling for end to wasteful duplication of programs).

⁸¹ U.S. Government Accountability Office, *Broadband: National Strategy Needed to Guide Federal Efforts to Reduce Digital Divide*, p. 17 (determining the extent to which duplication exists may become more difficult when there are more programs).

⁸² See generally James E. Dunstan, *The FCC, USF, and USAC: An Alphabet Soup of Due Process Violations* (The Center for Growth and Opportunity at Utah State University, April 2023), <https://www.thecgo.org/research/an-alphabet-soup-of-due-process-violations/>.

⁸³ Andrew Long, "The Failure's in the Footnote: Agencies Must Improve Broadband Expenditure Coordination Efforts," Free State Foundation, *Perspectives from FSF Scholars*, Vol. 20, No. 4 (January 22, 2025), <https://freestatefoundation.org/wp-content/uploads/2025/01/The-Failures-in-the-Footernote---Agencies-Must-Improve-Broadband-Expenditure-Coordination-Efforts-012225.pdf>.

⁸⁴ Kane, *A Blueprint for Broadband Affordability*; Nabil, "How Congress and the Federal Communications Commission Can Help Improve Affordable Internet Access to Underserved Populations," p. 3; see, e.g., "Guidance: Gigabit Broadband Voucher Scheme Information," GOV.UK, updated April 9, 2025, <https://www.gov.uk/government/publications/gigabit-broadband-voucher-scheme-information/gigabit-broadband-voucher-scheme-information>.

⁸⁵ Senate Committee on Commerce, Science, and Transportation and Cruz, *Protecting Americans* (recommending that social welfare spending be moved on-budget).

⁸⁶ Kane, *A Blueprint for Broadband Affordability*, pp. 6, 7 (asserting that properly tailored voucher program will go to only a fraction of the marketplace, minimizing effect on prices).

be funded from general revenues.⁸⁷ Competitive neutrality would be restored. The FCC would no longer decide whether wireless is good enough. Rather, consumers would decide.⁸⁸

The argument that funding subsidies from general tax revenues would be unreliable is unconvincing;⁸⁹ this has not been an objection to funding any other type of general welfare program from tax revenues. Many federal programs—such as the Children’s Health Insurance Program and job training for low-income workers under the Workforce Innovation and Opportunity Act—are, of course, funded from tax revenues.

Furthermore, legislators may pass a law that provides for appropriations over more than one year.⁹⁰ If we must have subsidies, they should be subject to legislative scrutiny via the appropriations process. Finally, legislators might consider whether state and local governments are better suited to determine how to improve access to communications than a distant, centralized regulator.⁹¹

Note that a program for low-income users cannot logically be necessary unless it is effective.

Historically, some researchers considered Lifeline more effective in increasing subscribership than the high-cost program.⁹² Other research casts doubt on the marginal effectiveness of Lifeline.⁹³ For example, the FCC estimates that more than 80 percent of Lifeline subsidies for broadband went to households that already had broadband.⁹⁴ Affordability is not the main reason households are not connected to broadband. The main reasons are not well understood.⁹⁵ More generally, economist Daniel Lyons has noted that regulators have not shown that universal service subsidies actually expand subscribership, as opposed to subsidizing subscribers who already had service.⁹⁶

Policymakers should also identify the exact beneficiaries of subsidies to users (or carriers, for that matter) in high-cost areas. Does the availability of broadband to a user simply increase the rent that the user must pay, such that the ultimate beneficiaries of the subsidies are landlords?⁹⁷

⁸⁷ Robert W. Crandall and Leonard Waverman, *Who Pays for Universal Service?: When Telephone Subsidies Become Transparent* (Brookings Institution Press, 2000), p. 164, <https://www.jstor.org/stable/10.7864/j.ctvdmx0fn> (asserting that subsidies could be raised in more competitively neutral, equitable, and efficient ways by funding from budgets of education and health services).

⁸⁸ Connolly, “Universal Service After the Supreme Court’s Consumers’ Research Decision” (arguing that consumers should have the choice of whether to opt for satellite broadband now or fiber five years from now).

⁸⁹ Figliola, *The Future of the Universal Service Fund and Related Broadband Programs*, p. 17 (“[A]ppropriated funding is in high demand for a wide range of other federal programs and may be limited by government-wide fiscal constraints. In addition, the appropriations process can be unpredictable, and USF programs rely on stable support, because telecommunications carriers rely on that stability to make long-term investment decisions, and consumers rely on continuous assistance for uninterrupted connectivity.”).

⁹⁰ Kane, *A Blueprint for Broadband Affordability*, p. 9 (“[L]onger-term appropriations would prevent political considerations from leaving the program on a knife’s edge such that consumers lose the benefits, temporarily or permanently.”).

⁹¹ See generally Steven Titch, *Inclusion, Not Infrastructure: Rethinking Universal-Service Policy in a Broadband Era* (Reason Foundation, September 2009), https://reason.org/wp-content/uploads/files/ps376_broadband_investment.pdf (describing comparative effectiveness of local efforts); see also Louis Riggs, “BEAD’s Groundhog Day Moment,” *Broadband Breakfast*, February 5, 2025, <https://broadbandbreakfast.com/rep-louis-riggs-beads-groundhog-day-moment/> (describing boondoggle resulting from federal oversight of broadband subsidy program).

⁹² Rosston and Wimmer, “The ‘State’ of Universal Service,” p. 265 (discussing effect of subsidizing installation and targeting subsidies to low-income users); see also Ackerman et al., “Estimating the Impact of Low-income Universal Service Programs,” pp. 84–98 (noting low-income universal service programs increased penetration about 6 percent).

⁹³ Connolly, “Universal Service After the Supreme Court’s Consumers’ Research Decision” (noting that only Link Up was effective); see also Rosston and Wallsten, “Should Satellite Broadband Be Included,” p. 140; Daniel A. Lyons, *Assessing the State of the Universal Service Fund*, Statement before the Senate Committee on Commerce, Science, and Transportation, Subcommittee on Communications, Media, and Broadband, May 11, 2023, p. 3, <https://www.commerce.senate.gov/services/files/98A0DEB0-42E5-4D74-B4BD-F4CB6B5C85C4> (“[T]he limited data suggests that small stipends are unlikely to affect low-income broadband adoption rates.”); see also *The Lifeline Fund: Money Well Spent?*, Hearing before the Subcommittee on Communications and Technology of the Committee on Energy and Commerce, House of Representatives, 113th Congress, Second Session, April 25, 2013 (opening statement of Chairman Greg Walden), <https://www.govinfo.gov/content/pkg/CHRG-113hhrg82189/html/CHRG-113hhrg82189.htm> (noting that many low-income households purchase phone service without subsidies).

⁹⁴ Letter from John Thune, Senator, Ted Cruz, Senator, Cathy McMorris Rodgers, Member of Congress, and Robert E. Latta, Member of Congress, to Jessica Rosenworcel, Chairwoman, Federal Communications Commission, December 15, 2023, p. 1, n.5, https://www.thune.senate.gov/public/_cache/files/3c3175e8-1533-4b5a-8549-f4d058b8e1b5/F0FCDF42DD0D07A3923C00B7B472D4A.thune-cruz-mcmorris-rodgers-latta-letter-to-chairwoman-rosenworcel-re-acp.pdf.

⁹⁵ Kane, *A Blueprint for Broadband Affordability* (“[T]he majority of people who do not use Internet at home say the reason is that they ‘don’t need’ it or are ‘not interested.’ This group . . . is . . . in need of more study”) (“The second-place reason for non-use of the Internet at home . . . is affordability, cited by 15.4 percent of respondents.”); “NTIA Data Explorer,” National Telecommunications and Information Administration, June 6, 2024 (Non-Use of the Internet at Home, updated November 2023), <https://www.ntia.gov/data/explorer#sel=noNeedInterestMainReason&demo=&pc=prop&disp=chart>; see also Jeffrey Westling, *Lowering the Cost of the Universal Service Fund* (American Action Forum Insight, December 5, 2024), <https://www.americanactionforum.org/insight/lowering-the-cost-of-the-universal-service-fund/> (suggesting that price may not be a primary factor in whether households subscribe to broadband).

⁹⁶ Statements of Daniel Lyons, Boston College Law School during “Universal Service After the Supreme Court’s Consumers’ Research Decision,” Free State Foundation Annual Policy Conference YouTube, March 25, 2025, video, https://www.youtube.com/watch?v=12kfe_rfXaM.

⁹⁷ Hazlett, “Universal Service” Telephone Subsidies, p. 73 (“The current ‘universal service’ system does not benefit low-income residents in rural areas. Whatever gains are available from lower phone rates result in higher housing costs, meaning that landlords and landowners gain—not poor renters.”).

Furthermore, the assumption that more technology is necessarily better for education is controversial.⁹⁸ On the advice of education researchers, Swedish schools—leaders in bringing advanced technology to the classroom—are returning to physical books, pens, paper, and to handwriting practice.⁹⁹

Any subsidies targeted to low-income users should have strong means-testing and accountability measures built into the design of the program. Congress should determine and cap the amount of the subsidy. Any statute authorizing such a subsidy should provide standards that a court could use to determine whether that subsidy's distribution is consistent with the will of Congress.

As it is, § 254 embodies none of the principles appropriate to a market-centered approach. Eliminating universal service subsidies is therefore an essential first step to a market-based policy.

Stubborn obstacles to market-based reforms

One sticking point to adopting a market-based approach is subsidy-dependent carriers. These carriers are not at fault. They behaved rationally by availing themselves of a legal program. Nonetheless, their continued dependence is problematic. The elimination of subsidies to carriers would benefit taxpayers, consumers, and would correct distortions affecting the communications sector.¹⁰⁰ The status quo creates endless pressures to extend subsidies where they ought not to be—for example, the temptation to shift subsidies from network building to cover network operating costs.¹⁰¹

Carrier subsidies should be ended.¹⁰² Sympathetic legislators might ameliorate these effects by sunseting subsidies over a period of five to ten years,¹⁰³ by offering affected carriers assistance in bidding on wireless spectrum, or by ensuring their partnerships or mergers with other carriers are not blocked by regulators.

Another obstacle to adopting a market-centered policy is the mythology of universal service. Some have referred to universal service as the “bedrock” or “foundation” of US telecommunications policy.¹⁰⁴ It is not. “One System, One Policy, Universal Service” started out as a motto of Theodore Vail’s Bell Telephone Company. “Universal service” then meant that competing phone services would ultimately be connected to and engulfed by the Bell monopoly.¹⁰⁵

Later, “universal service” came to refer to the more appealing goal of making communications service accessible to all Americans. But the Progressive-era mechanisms for supporting this goal involved distorted pricing and heavy regulation.

These failed policies ought to be left in the past. Section 254 represents legislators’ best efforts from almost three decades ago to bridge the gap between our Progressive past and our modern understanding of the superiority of market systems. This bridge has been crossed. It is time for legislators to recognize that the reality of universal service does not match the rhetoric.

⁹⁸ Thomas W. Hazlett, Ben Schwall, and Scott Wallsten, “The Educational Impact of Broadband Subsidies for Schools under E-Rate,” *Economics of Innovation and New Technology*, Vol. 28, No. 5 (2019), <https://www.tandfonline.com/doi/pdf/10.1080/10438599.2018.1527554> (finding no educational gains from E-Rate); see Senate Committee on Commerce, Science, and Transportation and Cruz, *Protecting Americans* (calling for measures to ensure E-Rate is improving education and not aggravating kids’ screen addictions).

⁹⁹ Charlene Pele, “Sweden Brings More Books, Handwriting Practice Back to Tech-heavy Schools,” Associated Press, July 6, 2024, <https://apnews.com/article/sweden-digital-education-backlash-reading-writing-1dd964c628f76361c43dbf3964f7dbf4>; see also Elviira Luoma and Anne Kauranen, “Books in, Screens Out: Some Finnish Pupils Go Back to Paper after Tech Push,” Reuters, September 10, 2024, <https://www.reuters.com/world/europe/books-screens-out-some-finnish-pupils-go-back-paper-after-tech-push-2024-09-10/>.

¹⁰⁰ Rosston and Wimmer, “The ‘State’ of Universal Service,” p. 273 (discussing idea that removal of subsidies would have net benefits because market prices would send more accurate signals to consumers and competitors).

¹⁰¹ Senate Committee on Commerce, Science, and Transportation and Cruz, *Protecting Americans* (stating that Infrastructure Investment and Jobs Act-funded (IIJA) networks’ ongoing operational costs should not be subsidized).

¹⁰² Information Technology & Innovation Foundation, “Congress Should Eliminate the Universal Service Fund’s High-Cost and Lifeline Programs” (quoting statement of Joe Kane).

¹⁰³ For high-cost areas, one option would be to make reverse auctions mandatory for all carriers and all service areas and reduce the amount of the subsidy available each year, until the subsidy is entirely gone. See Randolph J. May and Seth L. Cooper, Public Comments of the Free State Foundation in Response to Universal Service Fund Working Group Request for Comment, August 25, 2023, <https://freestatefoundation.org/wp-content/uploads/2023/08/FSF-Public-Comments-to-USF-WG-Final.082523.pdf>; Seth L. Cooper, “Court Ruling on USF’s Unconstitutionality Should Spur Reform in Congress,” Free State Foundation, *Perspectives from FSF Scholars*, Vol. 19, No. 28 (August 9, 2024), <https://freestatefoundation.org/wp-content/uploads/2024/08/Court-Ruling-on-USFs-Unconstitutionality-Should-Spur-Reform-in-Congress-080924.pdf> (proposing sunset over 10 years of high-cost fund).

¹⁰⁴ Deborah Collier, “Reforms are Needed for Financing the Universal Service Fund,” The WasteWatcher (blog), Citizen Against Government Waste, January 25, 2021, <https://www.cagw.org/thewastewatcher/reforms-are-needed-financing-universal-service-fund> (calling for elimination of the USF program) (quoting Sen. John Thune, describing universal service as “the bedrock of our nation’s communications policies”).

¹⁰⁵ Milton L. Mueller, Jr., *Universal Service: Competition, Interconnection, and Monopoly in the Making of the American Telephone System* (MIT Press and AEI Press, 1997), pp. 96-103, 108.

Advanced communications services owe far more to markets than to regulation and subsidies. Policymakers need a counter-narrative that rests on a more sophisticated understanding of economic and political processes—a narrative that describes and encourages innovation, economic growth, and benefits that markets confer on consumers and firms.

Conclusion

The problems with universal service are pervasive and persistent. Incremental reform has been attempted and has made no real difference. Billions of dollars are still misdirected and wasted. The time has come to eliminate universal service subsidies.

These subsidies are not necessary. The availability of high-quality, satellite-based broadband eliminated the need for subsidies for broadband service in “high-cost” areas. Furthermore, a subsidy cannot be considered necessary unless it is effective. Policymakers should ask hard questions about the effectiveness of subsidies intended to boost penetration among low-income users. The same goes for the apparently endless expansion of technology in school settings.

Consistent with a market-centered approach, policies and mechanisms intended to support access to communications services should be technology-neutral and should not distort markets. Sectoral taxes distort consumption decisions. Any funds should come from general tax revenues. Subsidizing carriers makes fair competition between carriers and technologies impossible. Any support should go to end users, not to carriers. This change will end the

stakeholder lobbying dynamics that have made the USF so resistant to reform or reductions.

Strong accountability measures should be part of any regulatory program from the start. Fund-raising should involve the appropriations process. Distribution processes should include systemic measures to reduce fraud and waste. Statutes should include intelligible legal standards enforceable by the judiciary.

The elimination of universal service subsidies will be a test case for the effectiveness of Congress. It will be a test case for how serious federal legislators are about pursuing better, cheaper, and more effective governance.

Competition and technological changes have rendered universal service subsidies not so much inefficient as incoherent. The Fifth Circuit’s decision has given legislators the opportunity and the responsibility to end universal service subsidies and move to a market-centered approach to access. That policy would benefit consumers, encourage economic growth and technological improvement, and advance the public interest.

About the author

Solveig Singleton is an attorney and policy analyst who writes about issues at the intersection of law, markets, and innovation. She has worked at several think tanks, including the Competitive Enterprise Institute and the Progress and Freedom Foundation. She is a graduate of Reed College and Cornell Law School.



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