Comments for the Record

Comments on the “Report on the Future of the Universal Service Fund”

JEFFREY WESTLING | FEBRUARY 17, 2022

Introduction

The Universal Service Fund (USF) has long supported the telecommunications needs of Americans across the country, but it does so at a cost.[2] Due to the fund’s regressive nature, those with the most difficulty purchasing service pay the same rates as other subscribers.[3] While in the past these fees remained relatively small due to the massive rate-base, the expansion of the program into broadband and the dwindling subscriber base of traditional telecommunications services has put pressures on the program and left the fund in jeopardy.[4]

While the Notice of Inquiry asks about a broad range of elements, these comments focus on the future of the contribution mechanism and ultimately the role that USF should play in bridging the digital divide moving forward. The FCC should remain cognizant of the inherent structural defects of the contribution mechanism as it seeks to alleviate the pressures the fund currently faces, and not simply pass off these structural failings onto new rate payers. While only Congress can truly reform the program, the FCC should carefully consider whether the USF as currently structured adequately meets the goals of the universal service, especially in light of new spending programs seeking to address the same issues.

Updates to the Contribution Mechanism

The NOI highlights to the core issue of the current USF model: “The USF contribution factor for the fourth quarter of 2021 is 29.1 per cent, up from 6 percent in 2001.”[5] Section 254 requires that interstate telecommunications services shall contribute to the USF,[6] and in practice this means traditional telephony subscribers pay a percentage of their bill to support the fund. Yet the amount of telephony subscribers continues to dwindle, while the covered programs of the USF continue to increase.[7] This problem will only grow more pronounced over time, and regulators must address the challenge moving forward.

While many proposals to update the program seek to simply add more services into the contribution base, such an approach would be a mistake.

The FCC should not simply include broadband in the contribution mechanism.

Some call for including broadband internet access service (BIAS) in the contribution factor.[8] This would seemingly resolve the issue: If USF can support broadband, then broadband should support USF. Simply covering more services keeps the existing regressive structure of the contribution mechanism, however, leaving those without the means to afford broadband connections further behind. Consumers who can barely afford a broadband connection but do not qualify for support will pay the same rate as those who can easily afford the best plans and services. As a result, they will need to make difficult decisions regarding whether a plan or upgrade makes sense financially.

Further, the FCC currently lacks the statutory authority to extend the USF to cover BIAS absent reclassification, which would run counter to its goals.[9] Section 254 only covers telecommunications services, which does not currently include BIAS. The FCC could revisit this classification, but as many have noted, doing so comes with significant costs and imposes barriers to broadband deployment, which runs directly counter with the goals of this program.[10] Indeed, reclassification of BIAS as a Title I service correlated with increased investment in broadband networks,[11] and evidence from the record in previous classification proceedings supports the idea that Title II regulation directly caused a decrease in private investment.[12]

In 2015, when the FCC reclassified broadband as a Title II, it prevented Section 254 from applying to BIAS,[13] but theoretically, a future FCC could decide to include a Title II BIAS in the contribution mechanism. Yet even under a Democratic administration, the FCC refused to simply include broadband in the contribution mechanism because doing so would not serve the purposes of the program.

The FCC lacks the authority to include "Big Tech" in the contribution mechanism

Some suggest including edge providers into the contribution mechanism, forcing the companies that use the most bandwidth to support the goals of the program.[14] This, too, would be a misguided approach.

As it stands, the FCC cannot include these edge providers in the base because of section 254's limitations to telecommunications services. While BIAS could theoretically be reclassified as such, edge providers simply do not meet the statutory definition. Further, as Tech Freedom explains, these companies fall completely outside of the FCC's jurisdiction on the matter.[15] The FCC would need to advocate for new authorization to Congress, but even that would ultimately hurt consumers.

Multiple challenges exist with including "Big Tech" in the contribution mechanism. For example, determining which "Big Tech" companies would contribute creates a regime in which the FCC or Congress would be able to target specific companies. Even seemingly neutral characteristics such as bandwidth usage or profits could hurt specific companies, which in turn would hurt the users who rely on these companies. Further, if the regime was truly neutral and charged fees equally, then new entrants and startups would be harmed to a greater extent than incumbent firms, harming competition as a whole.

The FCC should work with Congress to fund USF through direct appropriations.

Ultimately, the funding mechanism for USF can't sustain the expansion of the program into BIAS, and the FCC doesn't have the authority to adequately address the issue. Instead, funding for the USF program should no longer rely on a regressive tax on telecommunications services but instead come from direct appropriations from Congress.

Primarily, this would make the program more sustainable moving forward. Appropriations is admittedly a difficult process, but congressional action can ensure that the USF doesn't wilt under the increasing pressures described above. Further, the certainty provided by a direct appropriation from Congress will give participants clarity about the availability of the funds and the future offerings to their customers.

On a secondary basis, a direct appropriation also better meets the goals of the program. The regressive tax structure of the existing USF funding mechanism means that low-income consumers feel a greater burden when purchasing a telecommunications plan. Because direct appropriations would rely on a more progressive taxation regime, low-income consumers would not feel the same pressures as they do currently. As a result, fewer would need to rely on the program to afford and adopt broadband services.

The FCC Should Consider Whether the USF Still Serves the Purpose Congress Intended

The FCC should also work with Congress to carefully examine the continued need for the USF. Congress has made available billions of dollars for broadband deployment and affordability programs, with much of the money earmarked specifically for broadband. The American Rescue Plan included both a $195 billion grant for states and $155 billion grant for counties for a variety of purposes, including broadband.[16] Meanwhile, the Infrastructure Investment and Jobs Act allocated over $60 billion for broadband, with funding for both deployment and access programs.[17] Indeed, in the bill, Congress made the Emergency Broadband Benefit a permanent program.

The USF now serves as a redundancy in many respects. Commenters rightfully highlight the importance for government coordination to prevent taxpayer dollars from going to overbuild networks or otherwise being wasted.[18] At the same time, it is wise to consider whether USF is still needed to bridge the digital divide.

USF does offer a few benefits beyond the programs included in recent legislation. For one thing, programs such as Lifeline and E-Rate go beyond the Affordable Connectivity Program to cover more users and services, though admittedly at a lower rate. And the experience of the Universal Service Administrative Company and the FCC in administering the USF program lends institutional knowledge to its implementation, meaning that it can be done much more efficiently than an altogether new program.

Many of these same benefits can be worked into the new permanent benefit programs, however, and ideally the need for additional subsidized deployment will be significantly diminished, if not entirely eliminated, after these programs go into effect. Should the USF no longer materially contribute toward bridging the digital divide, the FCC could then lower the rates on existing telecommunications subscribers, allowing these users to spend their money elsewhere and drive additional competition back into the telecommunications marketplace.

It may not be time to eliminate USF, but the FCC should start discussing the possibility with Congress. Again, this doesn't necessarily mean the elimination of USF without any changes to the new programs to cover users now supported by programs such as E-Rate and Lifeline. In either case, if taxpayer dollars are being wasted on redundant subsidies without having a material effect on adoption rates, USF should be eliminated.

Conclusion

The existing USF funding mechanism is broken, and the FCC is limited in what it can do to fix it. The FCC should work with Congress to update the program to make it sustainable once more. Further, given the massive spending on broadband already, the FCC should also carefully consider if there is a continued need for the program and whether it still serves the goals of bridging the digital divide.

Respectfully submitted,

___________/s/________________

Jeffrey Westling

Director, Technology & Innovation Policy

The American Action Forum

1747 Pennsylvania Avenue, N.W.

Washington, D.C. 20006

February 17, 2022

[1] Jeffrey Westling is the Director for Technology & Innovation Policy at the American Action Forum. These comments represent the views of Jeffrey Westling and not the views of the American Action Forum, which takes no formal positions as an organization.

[2] *Universal Service Fund*, Federal Communications Commission (last visited Feb. 17, 2022), https://www.fcc.gov/general/universal-service-fund/.

[3] Will Yepez, *The Universal Service Fund is On the Brink*, *But It's Not Too Late to Save It*, National Taxpayer's Union p. 2 (April 16, 2021), https://www.ntu.org/library/doclib/2021/04/The-Universal-Service-Fund-Is-On-The-Brink-But-It-s-Not-Too-Late-To-Save-It.pdf.

[4] *Id*.

[5] *Report on the Future of the Universal Service Fund*, WC Docket No. 21-476, Notice of Inquiry ¶ 44 (Dec. 15, 2021), https://ecfsapi.fcc.gov/file/12152781704402/FCC-21-127A1.pdf. (“NOI”).

[6] 47 USC § 254(d).

[7] Jeffrey Westling, *Updating the Lifeline Program*, R Street Shorts No. 102 (Apr. 2021), https://www.rstreet.org/wp-content/uploads/2021/04/Final-Short-No.-102-Updating-the-LIfeline-Program.pdf.

[8] Joan Engebreston, *Senate Bill Would Expand Universal Service Fund Contribution Base*, Telecompetitor (Nov. 29, 2021). https://www.telecompetitor.com/senate-bill-would-expand-universal-service-fund-contribution-base/

[9] Juan Londoño, *The Debate on Universal Service Fund Reform: A Primer*, American Action Forum (Jan. 12, 2022), https://www.americanactionforum.org/insight/the-debate-on-universal-service-fund-reform-a-primer/.

[10] Jeffrey Westling, *Net Neutrality Refresher*, American Action Forum (Jan. 11, 2022), https://www.americanactionforum.org/insight/net-neutrality-refresher/.

[11] Mike Saperstein, *2020: Broadband Providers Pump Another $79.4 Billion Into America’s Connectivity Infrastructure*, USTelecom (September 22, 2021). https://www.ustelecom.org/2020-broadband-providers-pump-another-79-4-billion-into-americas-connectivity-infrastructure/.

[12] George S. Ford, *Infrastructure Investment After Title II*, Phoenix Center Perspectives 18-09 (2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3299059.

[13] *Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, GN Docket No. 14-28 ¶ 486 (Mar 12, 2015), https://docs.fcc.gov/public/attachments/FCC-15-24A1.pdf.

[14] Brendan Carr, *Ending Big Tech’s Free Ride*, Newsweek (May 24, 2021), https://www.newsweek.com/ending-big-techs-free-ride-opinion-1593696.

[15] Comments of TechFreedom, WT Docket No. 21-476 pp. 7-9 (Jan. 18, 2022), https://ecfsapi.fcc.gov/file/10118030405604/TF%20Comments%20USF%20NOI%201%2018%2022.pdf.

[16] Joan Engebretson, *Report Highlights States Using ARPA Funding for Broadband, Including Line Extensions*, Telecompetitor (Dec, 10 2021), https://www.telecompetitor.com/report-highlights-states-using-arpa-funding-for-broadband-including-line-extensions/.

[17] Jeffrey Westling, *Keeping Up With the Congress: The Good and Bad of the Broadband Infrastructure Package*, R Street Institute (Aug. 3, 2021), https://www.rstreet.org/2021/08/03/keeping-up-with-the-congress-the-good-and-bad-of-the-broadband-infrastructure-package/.

[18] Comments of TechFreedom, WT Docket No. 21-476 pp. 2-3 (Jan. 18, 2022), https://ecfsapi.fcc.gov/file/10118030405604/TF%20Comments%20USF%20NOI%201%2018%2022.pdf.