

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
) WC Docket No. 21-476
Report on the Future of the Universal Service)
Fund)

COMMENTS OF THE BENTON INSTITUTE FOR BROADBAND & SOCIETY

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SUMMARY

The Commission invites comment on the effect of the Infrastructure Investment and Jobs Act on Universal Service Fund (USF) programs and how the Commission can reach its goals of universal deployment, affordability, adoption, availability, and equitable access to broadband throughout the United States.

The Infrastructure Act includes critical language that lays the foundation for the work the Commission now embarks on including a set of challenges, principles and goals that the Commission should embrace and incorporate into the report on the Future of the Universal Service Fund. At a minimum, the Infrastructure Act language offers principles the Commission should determine to be necessary and appropriate for the protection of the public interest, convenience, and necessity and consistent with Section 254 of Telecommunications Act of 1996.

Since the start of the COVID-19 pandemic, Congress has repeatedly identified areas in which USF programs have fallen short of the Commission's goals. The Commission should consider how USF programs can better serve the areas and populations that Congress has found it necessary to address with additional funding over the past two years.

In a recent report, the National Telecommunications and Information Administration identified 22 federal programs funding broadband work and many more programs that can provide funds for broadband. What is needed—and what this proceeding offers the Commission the opportunity to provide—is an overarching plan to employ Congress' investments across a host of agencies to achieve our national goal. The Commission is well-positioned to devise a strategic plan for universal deployment, affordability, adoption, availability, and equitable access to broadband.

The Commission should take a fresh, holistic approach as to what constitutes advanced

telecommunications capability and use updated threshold speeds in its next evaluation of advanced telecommunications capability availability.

In the Infrastructure Act, Congress defines as an underserved location any location that lacks access to reliable broadband service offered with a speed of not less than 100 megabits per second for downloads and 20 megabits per second for uploads, and a latency sufficient to support real-time, interactive applications. The Commission’s definition of advanced telecommunications capability can no longer include what Congress has deemed underserved.

Universal service is an evolving level of telecommunications services that the Commission establishes periodically, taking into account advances in telecommunications and information technologies and services. In the United States today, it has become the norm for a majority of households to have two types of subscriptions to the internet—mobile data and fixed (and for the most part) wireline service.

The Commission’s Affordable Connectivity Program and the National Telecommunications and Information Administration’s Broadband Equity, Access, and Deployment (BEAD) Program should deliver affordable broadband internet access service to all low-income households, even those that cannot afford any monthly payment at all. The Infrastructure Act requires subgrantees to offer “not less than 1 low-cost broadband service option for eligible subscribers.” The definition of “eligible subscribers” should match the criteria for the Affordable Connectivity Program and low-cost options should not exceed \$30/month unless located in Tribal high-cost areas where low-cost options should not exceed \$75/month.

The Commission’s Lifeline program was created nearly 40 years ago with the aim of providing low-income households with low-cost landline telephony options. As currently structured, Lifeline is inadequate to meet the connectivity needs of low-income households in the

2020s as evidenced by an independent evaluation and the findings and recommendations of the Commission's own Wireline Competition Bureau. The program is ripe for reform, modernization, and alignment with the new Affordable Connectivity Program.

The goal of the Telecommunications Act of 1996 is to let anyone enter any communications business—to let any communications business compete in any market against any other.

Changes in the USF programs should encourage all telecommunications and broadband service providers to compete for USF support and, especially, to serve low-income households in their service areas. Specifically, the Commission should consider the following pro-competition policies:

- **Prioritize Open-Access Networks that Facilitate Competition Between Multiple Providers**
- **Support Municipal Experimentation**
- **Encourage Local Planning**
- **Empower Community Institutions to Act as Launching Pads**
- **Collect and Make Public Broadband Pricing Data**

Low-income consumers spend too much of their incomes on telecommunications service. The Commission should also revise its measure of affordability of broadband for low-income consumers.

The Commission faces a complex task of not only preserving but advancing universal service while trying to maintain current USF contribution factors. The Infrastructure Act's BEAD Program could alleviate the strain that the Commission's Rural Digital Opportunity Fund puts on the USF. There is little dispute that the contribution base for USF must be broadened. There are a number of proposals to accomplish that goal. The Commission may be able to employ its existing powers or suggest legislative options for that purpose. However, Benton

does emphasize that proposals to finance the USF via the Congressional appropriations process are ill advised and, indeed, extremely dangerous. But if the Commission decides to pursue USF contribution reform, it must ensure that vulnerable consumers do not end up paying a disproportionate rate or substantially more than they are today.

Introduction

Pursuant to the Infrastructure Investment and Jobs Act,¹ the Federal Communications Commission (Commission) invites comment on the effect of the Infrastructure Act on existing Universal Service Fund (USF) programs and the ability of the Commission to reach its goals of universal deployment, affordability, adoption, availability, and equitable access to broadband throughout the United States.²

The Benton Institute for Broadband & Society³ conducts research and engages in advocacy to bring open, affordable, high-performance broadband to all people in the U.S. to ensure a thriving democracy. For 40 years Benton has provided information and analysis about communications policy including universal service. In recent years, Benton's primary mission is to bring open, affordable, high-capacity and competitive broadband to all people in the U.S. to ensure a thriving democracy.

I. The Commission Cannot Read Past Critical Language in the Infrastructure Investment and Jobs Act

The Infrastructure Act includes critical language that lays the foundation for the work the Commission now embarks on including a set of challenges, principles and goals that the Commission should embrace and incorporate into the report on the Future of the Universal Service Fund.

¹ Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (Infrastructure Act); see §60104(b) (directing FCC to issue a report on the Universal Service Fund within 270 days of enactment).

² Report on the Future of the Universal Service Fund (FCC 21-127, WC Docket No. 21-476) (released December 15, 2021). (“USF NOI”)

³ The Benton Institute for Broadband & Society (Benton), a non-profit, operating foundation. These comments reflect the institutional view of the Benton Institute for Broadband & Society, and, unless obvious from the text, is not intended to reflect the views of its individual officers, directors, or advisors.

Congress finds:⁴

1. Access to affordable, reliable, high-speed broadband is essential to full participation in modern life in the United States.
2. The persistent “digital divide” in the United States is a barrier to the economic competitiveness of the United States and equitable distribution of essential public services, including health care and education.
3. The digital divide disproportionately affects communities of color, lower-income areas, and rural areas, and the benefits of broadband should be broadly enjoyed by all.
4. In many communities across the country, increased competition among broadband providers has the potential to offer consumers more affordable, high-quality options for broadband service.
5. The 2019 novel coronavirus pandemic has underscored the critical importance of affordable, high-speed broadband for individuals, families, and communities to be able to work, learn, and connect remotely while supporting social distancing.

And it is the sense of Congress that:⁵

1. A broadband connection and digital literacy are increasingly critical to how individuals—(A) participate in the society, economy, and civic institutions of the United States; and (B) access health care and essential services, obtain education, and build careers;
2. Digital exclusion—(A) carries a high societal and economic cost; (B) materially harms the opportunity of an individual with respect to the economic success, educational achievement, positive health outcomes, social inclusion, and civic engagement of that individual; and (C) exacerbates existing wealth and income gaps, especially those experienced by covered populations;
3. Achieving digital equity for all people of the United States requires additional and sustained investment and research efforts;
4. The Federal Government, as well as State, tribal, territorial, and local governments, have made social, legal, and economic obligations that necessarily extend to how the citizens and residents of those governments access and use the internet; and
5. Achieving digital equity is a matter of social and economic justice and is worth pursuing.

Finally, it is now the policy of the United States that:⁶

1. Subscribers should benefit from equal access to broadband internet access service within the service area of a provider of such service;
2. “Equal access” means the equal opportunity to subscribe to a service that provides comparable speeds, capacities, latency, and other quality of service metrics in a given area, for comparable terms and conditions; and

⁴ Infrastructure Act at §60101.

⁵ Id. at §60303.

⁶ Id. at §60506(a)

3. The Commission should take steps to ensure that all people of the United States benefit from equal access to broadband internet access service.

At a minimum, the Infrastructure Act language above offers principles the Commission should determine to be necessary and appropriate for the protection of the public interest, convenience, and necessity and consistent with Section 254 of Telecommunications Act of 1996.⁷ The Commission should base policies for the preservation and advancement of universal service on the language above in addition to:

- 1) **Quality and rates**—Quality services should be available at just, reasonable, and affordable rates.
- 2) **Access to advanced services**—Access to advanced telecommunications and information services should be provided in all regions of the Nation.
- 3) **Access in rural and high cost areas**—Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.
- 4) **Equitable and nondiscriminatory contributions**—All providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.
- 5) **Specific and predictable support mechanisms**—There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.
- 6) **Access to advanced telecommunications services for schools, health care, and libraries**—Elementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications services.
- 7) **Competitive Neutrality**—Universal service support mechanisms and rules should be competitively neutral. In this context, competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.⁸

⁷ 47 U.S.C. §254(b)(7); see generally 47 U.S.C. §254.

⁸ *Federal-State Joint Board on Universal Service*, 12 FCCRcd 8776, 8799. para 47 (1997).

II. Congress Has Identified Vulnerable Communities and Populations on which to Concentrate Universal Service Efforts

Since the start of the COVID-19 pandemic,⁹ Congress has repeatedly identified areas in which Universal Service Fund (USF) programs have fallen short of the Commission's goals. As the Commission considers the future of universal service, it must address how USF programs have fallen short of the goals of truly universal deployment, affordability, adoption, availability, and equitable access to broadband.

In the Coronavirus Aid, Relief, and Economic Security Act,¹⁰ Congress saw the need to for additional investment in telehealth and access to connected care services and devices,¹¹ and distance education.¹²

In the Consolidated Appropriations Act, 2021¹³ Congress found the need for additional action to:

- make broadband service more affordable for low-income households;¹⁴
- support broadband connectivity on tribal lands and rural areas;¹⁵
- address the lack of broadband access, connectivity, adoption and equity at historically Black colleges or universities (HBCUs); Tribal Colleges or Universities (TCUs); and Minority-serving institutions (MSIs);¹⁶ and
- support health care providers to bring connected care services to patients at their homes or mobile locations.¹⁷

Further, in the American Rescue Plan Act of 2021,¹⁸ Congress recognized the importance of:

⁹ Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak, Proclamation 9994, 85 Fed. Reg. 15338 (March 18, 2020).

¹⁰ Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136 (March 27, 2020) (CARES Act).

¹¹ CARES Act at §20004

¹² CARES Act at §18004.

¹³ Consolidated Appropriations Act, 2021, 13 U.S.C. §1301 note, §§904ff. (Consolidated Appropriations Act, 2021).

¹⁴ Id. at §904(b)(1).

¹⁵ Id. at §905

¹⁶ Id.

¹⁷ Id. at §903

¹⁸ American Rescue Plan Act, 2021, Pub. L. 117-2, (March 11, 2021), §7402 (2021) (American

- Ensuring students could connect to online classes while at home;¹⁹
- Assisting homeowners in paying their internet service bills;²⁰ and
- States investing in broadband infrastructure.²¹

The Infrastructure Law also identifies particular communities and populations on which to prioritize broadband programs. Undoubtedly, the Commission should ensure that universal service policies moving forward connect these underserved communities and populations including:

- Communities of color, lower-income areas, and rural areas;²²
- Any household, the income of which for the most recently completed year is not more than 150 percent of an amount equal to the poverty level²³ and an income that is at or below 200% of the federal poverty guidelines;²⁴
- Households with children who receive benefits under the free and reduced-price school lunch program or the school breakfast program (including through the USDA Community Eligibility Provision);²⁵
- Students who received a Federal Pell Grant during the current award year;²⁶
- Participants in Federal programs including Supplemental Nutrition Assistance Program (SNAP); Special Supplemental Nutrition Program for Women, Infants, and Children (WIC); Medicaid; Supplemental Security Income (SSI); Federal Public Housing Assistance (FPHA); and Veterans Pension and Survivors Benefit²⁷
- People who live on Tribal lands, especially low-income households residing on Tribal lands and participants in Bureau of Indian Affairs General Assistance, Head Start (only households meeting the income qualifying standard), Tribal Temporary Assistance for Needy Families (Tribal TANF), and Food Distribution Program on Indian Reservations;²⁸
- Individuals who live in covered households; aging individuals; incarcerated individuals, other than individuals who are incarcerated in a Federal correction facility; veterans; individuals with disabilities; individuals with a language barrier including individuals who are English learners, and have low levels of literacy; individuals who are members

Rescue Plan Act).

¹⁹ Id.

²⁰ Id. at §3206.

²¹ Id. at §604, codified at 42 U.S.C. §804.

²² Infrastructure Act at §60101(3) (“The digital divide disproportionately affects communities of color, lower-income areas, and rural areas.”)

²³ Infrastructure Act at §60302(7)(defining “covered households).

²⁴ Infrastructure Act at §60502(b)(1)(A)(i)(I).

²⁵ Consolidated Appropriations Act, 2021 at §904.

²⁶ Id.

²⁷ Id. as amended by Infrastructure Act at §60502(b)(1)(A)(i)(VI)

²⁸ Consolidated Appropriations Act, 2021 §§904-905; Infrastructure Act at §60401(b)((2)(A)(ii).

of a racial or ethnic minority group; and individuals who primarily reside in a rural area;²⁹

- Unserved areas in which the cost of building out broadband service is higher, as compared with the average cost of building out broadband service in unserved areas in the United States incorporating factors that include the remote location of the area, the lack of population density of the area, the unique topography of the area, a high rate of poverty in the area, or any other factor identified by the Assistant Secretary of Commerce for Communications and Information that contributes to the higher cost of deploying broadband service in the area.³⁰
- Multi-family residential buildings, especially those that have a substantial share of unserved households and are located in an area in which the percentage of individuals with a household income that is at or below 150 percent of the poverty line applicable to a family of the size involved is higher than the national percentage of such individuals.³¹
- Persistent poverty counties and high-poverty areas.³²
- Unserved locations (locations that lack access to reliable 25/3 broadband service with latency sufficient to support real-time, interactive applications), underserved locations (locations that lack access to reliable 100/20 broadband service with latency sufficient to support real-time, interactive applications), and community anchors (entities that facilitate greater use of broadband service by vulnerable populations, including low-income individuals, unemployed individuals, and aged individuals).³³

III. The Future of Universal Service Report Should Offer an Overarching Plan to Ensure Everyone in the U.S. Can Make Use of Affordable, High-Performance Broadband

As noted above, the shortcomings of the Commission’s USF programs to reach the Commission’s goals have left many communities and populations underserved or unserved, and prevented critical uses of broadband. The investments made by Congress since the start of the COVID-19 pandemic should accelerate progress toward universal deployment, affordability, adoption, availability, and equitable access to broadband. In a recent report, the National Telecommunications and Information Administration identified 22 federal programs funding

²⁹ Infrastructure Act at §60302(8) (defining “Covered Populations”).

³⁰ Infrastructure Act at §60102(a)(2)(G) (defining “high-cost areas”).

³¹ Id. at §60102(f)(4)

³² Id. at §60102(h)(1)(A)(iv)(I)

³³ Id. at §60102 (h)(1)(A)(i); id. at §§60102(a)(1)(A), 60102(a)(1)(C), §60102(a)(2)(E) (definitions).

broadband work and many more programs that can provide funds for broadband.³⁴

What is needed—and what this proceeding offers the Commission the opportunity to provide—is an overarching plan to employ Congress’ investments across a host of agencies to achieve our national goal.

Created, in part, “to make available...to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges,”³⁵ the Commission is well-positioned to devise a strategic plan for universal deployment, affordability, adoption, availability, and equitable access to broadband.

The plan should provide 1) an overarching vision, 2) performance objectives and identified performance measures, and 3) an integrated communications plan, at a minimum. With so diverse a range of communities and populations to reach and the number of federal agencies providing support, the overarching plan would be aided by a) adopting a coordinated and crosscutting approach, b) identifying sustained leadership, c) committing to achieving results and accountability, and d) engaging Congress.

IV. Broadband at 25/3 Speeds No Longer Supports Advanced Functions

The Commission should take a fresh, holistic approach as to what constitutes “advanced telecommunications capability.”³⁶ And the Commission should use updated threshold speeds in its next evaluation of advanced telecommunications capability availability.

The Commission last updated the speed requirements for advanced telecommunications

³⁴ ACCESS BROADBAND 2021 Report (December 2021)

https://www.ntia.gov/files/ntia/publications/ntia_access_broadband_2021_report.pdf

³⁵ 47 U.S.C. §151

³⁶ 47 U.S.C. §706(c)(1)

capability in January 2015.³⁷ Consistent with its 2015 Broadband Progress Report,³⁸ the Commission should adopt an approach that is designed to place America at the forefront of broadband offerings and ensure that all Americans, wherever they live, have access to the extensive and ever-expanding offerings available today or on the near horizon. As the Commission found, Congress never intended the Commission to take a conservative view of what constitutes advanced telecommunications capability.³⁹ Moreover, it is reasonable to conclude that Congress used the term “advanced” quite intentionally.⁴⁰ The Commission should evaluate the availability of broadband networks that permit consumers to originate and receive highly developed or progressive services, rather than limit its assessment to the most common or basic capabilities that exist today.⁴¹

Moreover, the Commission can do more than simply raise the broadband speeds threshold for 2021; it can and should adopt a methodology to continually set the threshold to mirror market realities. Modeled on the Consumer Price Index⁴² and other Federal support mechanisms,⁴³ the Commission should continuously reset benchmarks, based on the broadband speeds that consumers access⁴⁴ to ensure that consumers in all regions and all people of the nation—including low-income consumers and those in rural, insular, and high cost areas—have

³⁷ 2015 Broadband Progress Report (GN Docket No. 14-126) Adopted January 29, 2015 <https://www.fcc.gov/reports-research/reports/broadband-progress-reports/2015-broadband-progress-report>

³⁸ Id. at para. 19.

³⁹ Id. at para. 20.

⁴⁰ Id. at para. 20.

⁴¹ Id. at para. 22

⁴² See U.S. Bureau of Labor Statistics <https://www.bls.gov/cpi/>

⁴³ See Social Security and Supplemental Security Income Cost-of-Living Adjustment (COLA) <https://www.ssa.gov/cola/>

⁴⁴ Data that can be gleaned from sources like BroadbandNow (<https://broadbandnow.com/research>), Ookla’s Speedtest (<https://www.speedtest.net/>), Akamai Internet Speed Test (<https://testmy.net/hoststats/akamai.com>), and/or M-Lab’s Speed Test (<https://speed.measurementlab.net/#/>) to name just a few potential sources.

access to telecommunications and information services, including advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.⁴⁵

In short, the Commission should ensure that the nation never adheres to outdated speed benchmarks.

In the Infrastructure Law, Congress offers new speed thresholds, defining as an “underserved location” any location that lacks access to reliable broadband service offered with a speed of not less than 100 megabits per second for downloads and 20 megabits per second for uploads, and a latency sufficient to support real-time, interactive applications.⁴⁶ The Commission’s definition of advanced telecommunications capability can no longer include what Congress has deemed underserved.

The Commission should consider the types of service packages that people actually subscribe to when they are available. Nearly 10 percent of broadband subscribers have 1 Gbps service, an amount that grew 300 percent throughout 2020.⁴⁷ As of Q1 2021, 80.4 percent of broadband-subscribing households had adopted services providing downloads of at least 100 Mbps.⁴⁸

The need for greater broadband speeds reflects the growing, simultaneous, in-home uses of connected devices. The average U.S. household now has a total of 25 connected devices, across 14 different categories (up from 11 in 2019), including laptops, tablets and smartphones;

⁴⁵ 47 U.S.C. §254(b)(3)

⁴⁶ Infrastructure Act at §60102(a)(C)

⁴⁷ “Broadband Insights Report (OVBI) Q1 2021,” p. 7. Another 4 percent have services between 500 and 900 Mbps.

⁴⁸ Id.

video streaming devices and smart TVs; wireless headphones and earbuds; gaming consoles and smart home devices; and fitness trackers and connected exercise machines.⁴⁹

The average household downloaded 462 GB of data per month in first quarter 2021, an amount that had steadily increased by 25 to 40 percent annually for the last several years before the pandemic.⁵⁰ Videoconferencing applications have also tested the limits of networks' upload capacities. Internet monitoring company OpenVault found that average monthly upload usage increased 63 percent between the end of 2019 and the end of 2020, from 19 to 31 GB per month.⁵¹ A growing number of upstream super-users have nearly reached the limits of certain networks; OpenVault noted that there have been "an increasing number of incidents in which upstream traffic exceeded 80% of node capacity," requiring that network operators pinpoint bottlenecks and take action to improve upstream connectivity.

We are living in a world where the pandemic required us to move our lives online. Seemingly overnight, we had to learn how to do activities online that were previously performed overwhelmingly in person. With these new skills and a new environment in which participation in society is ever more reliant on broadband, change will certainly come to all manner of pursuits.

Work

Nicholas Bloom, an economist at Stanford, explains the changes in work from home this way: "Before COVID, five percent of working days were spent at home. During the pandemic,

⁴⁹ "2021 Connectivity and Mobile Trends Survey" Deloitte <https://www2.deloitte.com/us/en/insights/industry/telecommunications/connectivity-mobile-trends-survey.html>

⁵⁰ "Broadband Insights Report (OVBI) Q1 2021," p. 13, OpenVault, <https://openvault.com/resources/ovbi/> (accessed October 20, 2021).

⁵¹ "OVBI Special Report: 2020 Upstream Growth Nearly 4X of Pre- Pandemic Years," OpenVault, April 1, 2021, <https://openvault.com/ovbi-special-report-2020-upstream-growth-rate-nearly-4xof-pre-pandemic-years/>

this increased eightfold to 40 percent a day. And post-pandemic, the number will likely drop to 20 percent.”⁵² Thus we can expect greater usage of remote work for those who can (about 40 percent of employees, by one calculation).⁵³

Learning

The demand for online education, both at the K-12 and higher education levels,⁵⁴ will be greater after the current crisis than before. In 2020, enrollment at Arizona State University, for example, was up 7.6 percent over the previous year, and more than 53,000 students were entirely online—ASU’s largest online enrollment to date.⁵⁵ When schools across the country closed, students, families, and school professionals had to adapt rapidly to distance learning. Schools employed technologies like Google Classroom and Zoom that became essential for many teachers and professors to manage virtual learning. Even as students returned to classrooms, teachers and professors continue to use the technologies they adopted to enhance distance learning, recognizing that digital technologies can be powerful complements to in-person learning.

Health Care

Telehealth has long been “on the brink of greater use and acceptance,” but changes in regulations at the outset of the pandemic have allowed the practice to become much more

⁵² Nicholas Bloom, “How Working from Home Works Out,” Stanford Institute for Policy Research, June 2020, <https://siepr.stanford.edu/research/publications/how-workinghome-works-out>

⁵³ Jonathan I. Dingel and Bret Neiman, “How Many Jobs Can Be Done at Home?,” Becker Friedman Institute for Economics at the University of Chicago, June 19, 2020, https://bfi.uchicago.edu/wp-content/uploads/BFI_WhitePaper_Dingel_Neiman_3.2020.pdf

⁵⁴ Ali, Christopher “The Other Homework Gap: Post-Secondary Education During COVID-19.” Benton Institute for Broadband & Society (April 7, 2020) <https://www.benton.org/blog/other-homework-gap-post-secondary-education-during-covid-19>

⁵⁵ “Overall enrollment [is] up 7.6% over fall 2019 as university gives students options of where and how they prefer to attend class.” asu.edu/20200820-sun-devil-life-asu-begins-fall-semesterrecord-enrollment

common as patients attempt to avoid busy, potentially dangerous medical facilities⁵⁶ and as Congress has appropriated emergency stimulus funds to support telehealth.⁵⁷

By one calculation, doctors and other medical professionals have been “seeing 50 to 175 times the number of patients via telehealth than they did before the pandemic.”⁵⁸ More than half of physicians now say they are using telehealth to treat patients, compared with only 18 percent in 2018.⁵⁹ Health care systems have done “a decade’s worth of work” to launch telehealth programs, and patients are enjoying a new “consumerization” of health care as virtual services increase their options for care.⁶⁰

Greater experience with telemedicine and revamped payment processes may sustain the new demand for remote care and lead to new roles for health care locations once the crisis passes. When medical appointments are available from home and patients can easily send data about their health status via their home internet connection, the role of health care locations—clinics, pharmacies, hospitals—may shift. Some experts are even rethinking the role of hospitals as “hubs” for care. Schools and public housing, for instance, may be better places to integrate clinical care with social services, housing, and other nonclinical services.⁶¹ Dr. Michael Boland,

⁵⁶ Executive Order 13941, Improving Rural Health and Telehealth Access, 85 Fed. Reg. 47881 (August 3, 2020); Stuart M. Butler, “After COVID-19— Thinking Differently About Running the Health Care System,” *Journal of the American Medical Association (JAMA) Forum*, April 23, 2020, <https://jamanetwork.com/ channels/health-forum/fullarticle/2765238?resultClick=1>, (temporary rules expanding Medicare reimbursement for televisits).

⁵⁷ CARES Act at §5001.

⁵⁸ Tanya Albert Henry, “After COVID-19, \$250 Billion in Care Could Shift to Telehealth,” *American Medical Association*, June 18, 2020, <https://www.ama-assn.org/ practice-management/digital/after-covid-19-250-billioncare-could-shift-telehealth>

⁵⁹ Nathan Eddy, “Nearly Half of Physicians Using Telehealth, up from Just 18% in 2018,” *Healthcare IT News*, April 23, 2020, <https://www.healthcareitnews.com/news/nearlyhalf-physicians-using-telehealth-just-18-2018>

⁶⁰ Heather Landi, “The COVID-19 Pandemic Will Have a Long-Term Impact on Healthcare. Here Are 4 Changes to Expect,” *Fierce Healthcare*, May 18, 2020, <https://www.fiercehealthcare.com/tech/4-ways-healthcare-will-change-from-impact-covid-19-experts-say>

⁶¹ Butler, *supra*, n.56.

IT director of the Wilmer Eye Institute at Johns Hopkins, says that the pandemic has necessitated creating an “ecosystem of distributed care” so that patients are not densely packed into one location.⁶² For instance, patients may receive part of their care at a testing facility and part of their care through video at home. Broadband connections are therefore crucial not only for the home and the hospital, then, but for any location where patients receive care. The trend toward telehealth may incentivize the use of at-home technology to monitor patient health.⁶³ For instance, glaucoma patients can already check their eye pressure at home and send the data back to a doctor.⁶⁴ Moving forward, patients may regularly send their vital signs to their physician and only visit a doctor’s office or hospital for an in-depth exam or medical procedure.⁶⁵ Telehealth allows patients in a small town or rural community to receive treatment from a specialist in their condition, an opportunity that previously would have been impossible or required extensive travel.⁶⁶

V. The Commission Should Adopt a New Definition of Universal Service that Includes Both Fixed and Mobile Broadband Services

Section 254 provides that “Universal service is an evolving level of telecommunications services that the Commission establishes periodically, taking into account advances in telecommunications and information technologies and services.”⁶⁷ It directs the Commission to:

⁶² Dr. Michael Boland (IT director, the Wilmer Eye Institute at Johns Hopkins), in telephone interview with Jonathan Sallet and Jordan Arnold, July 2, 2020.

⁶³ Id..

⁶⁴ Id.

⁶⁵ Morris Panner, “How Telehealth Technology Is Helping to Close the Urban-Rural Divide in Health Care,” *Forbes*, June 30, 2020, <https://www.forbes.com/sites/forbestechcouncil/2020/06/30/how-telehealth-technologyis-helping-to-close-the-urban-rural-divide-in-healthcare/#5a88ef88e0e4>

⁶⁶ Id.

⁶⁷ 47 U.S.C. §254(c)(1)

consider the extent to which such telecommunications services—

- (A) are essential to education, public health, or public safety;
- (B) have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers;
- (C) are being deployed in public telecommunications networks by telecommunications carriers; and
- (D) are consistent with the public interest, convenience, and necessity.⁶⁸

As noted above, Congress has repeatedly recognized how essential broadband is to education and public health, especially during the COVID-19 pandemic. Specifically in the Infrastructure Law, Congress finds that:

- Access to affordable, reliable, high-speed broadband is essential to full participation in modern life in the United States;
- The 2019 novel coronavirus pandemic has underscored the critical importance of affordable, high-speed broadband for individuals, families, and communities to be able to work, learn, and connect remotely while supporting social distancing;
- A broadband connection and digital literacy are increasingly critical to how individuals—(A) participate in the society, economy, and civic institutions of the United States; and (B) access health care and essential services, obtain education, and build careers; and
- Digital exclusion—(A) carries a high societal and economic cost; (B) materially harms the opportunity of an individual with respect to the economic success, educational achievement, positive health outcomes, social inclusion, and civic engagement of that individual; and (C) exacerbates existing wealth and income gaps, especially those experienced by covered populations.

In the United States today, it has become the norm for a majority of households to have two types of subscriptions to the internet— mobile data and fixed (and for the most part) wireline service. As Table 1 shows, 75.1 percent of households whose annual incomes exceed \$50,000 have cellular data and wireline broadband subscriptions. For households below that level, 44.7 percent have both types of subscription plans. The story is more pronounced at either end of the income spectrum. At upper-income levels—homes whose annual incomes exceed \$150,000— 85.1 percent had both wireline and cellular data subscriptions. Among households whose annual

⁶⁸ Id.

incomes are \$25,000 or lower, the figure is less than half that—36.3 percent.

Table 1: Adoption of Digital Tools by Income & Lifeline-eligibility Status (2019)

	Lifeline-eligible Households	Households whose incomes are \$25,000 per year or less	Households whose incomes are between \$25,000 and \$50,000 per year	Households whose incomes are greater than \$50,000 per year
Communication Services				
Cellular data plans <i>and</i> wireline broadband	45.1%	36.3%	52.2%	75.1%
Cellular data plans	64.4%	55.5%	70.9%	87.4%
Wireline broadband	53.9%	49.8%	62.4%	81.3%
Telephone service at home	97.8%	96.3%	98.7%	99.4%
Computing devices				
Desktop or laptop computer	58.2%	54.9%	68.3%	88.8%
Tablet computer	44.9%	41.2%	49.4%	73.8%
Smartphone	77.4%	76.5%	81.6%	93.6%
<i>Either</i> desktop/laptop or tablet	66.9%	58.7%	76.3%	92.9%
Number of households	31,666,046	22,976,861	25,612,689	74,169,512

In addition, according to the Pew Research Center, 85% of American adults have a smartphone.⁶⁹ And smartphone access goes hand-in-hand with wireline broadband subscriptions at home for most Americans. The norm for internet access is using Wi-Fi at home off of a wireline subscription for many data-intensive applications, thereby conserving data allotments in mobile broadband plans for use on-the-go.

A July 2021 survey of Philadelphia households shows a similar pattern.⁷⁰ Some 91% of households whose incomes were above \$50,000 annually had both a wireline home high-speed subscription and a cellular data plan.⁷¹ Among households whose income were \$20,000 or less, that figure was 59%. The Philadelphia survey adds another dimension – the impact of discount

⁶⁹ Mobile Fact Sheet. Pew Research Center (April 7, 2021) <https://www.pewresearch.org/internet/fact-sheet/mobile/>

⁷⁰ CONNECTING PHILADELPHIA: 2021 Household Internet Assessment Survey. City of Philadelphia (October 2021) <https://www.phila.gov/media/20211019110414/Connecting-Philadelphia-2021-Household-Internet-Assessment-Survey.pdf>

⁷¹ Philadelphia’s median household income in 2019 was \$45,900.

programs such as Comcast Internet Essentials or subscriptions aided by the Emergency Broadband Benefit. Without those programs, just 42% of low-income households (i.e., households with annual incomes below \$20,000) would have both wireline and wireless subscriptions.

Clearly, given sufficient income, households rely on both wireline and wireless broadband services. They often are not substitutes but a part of a continuum of connectivity that consumers rely upon in their daily lives.

VI. The Commission’s Affordable Connectivity Program and NTIA’s BEAD Program Should Ensure Affordable Broadband Service for Even the Lowest-Income Households

The Commission’s Affordable Connectivity Program and the National Telecommunications and Information Administration’s Broadband Equity, Access, and Deployment (BEAD) Program should deliver affordable broadband internet access service to all low-income households, even those that cannot afford any monthly payment at all. The Infrastructure Act requires subgrantees to offer “not less than 1 low-cost broadband service option for eligible subscribers.”⁷² The definition of “eligible subscribers” should match the criteria for the Affordable Connectivity Program and low-cost options should not exceed \$30/month unless located in Tribal high-cost areas where low-cost options should not exceed \$75/month.

VII. The Lifeline Program is Ripe for Reform and Modernization

The Commission’s Lifeline program was created nearly 40 years ago with the aim of providing low-income households with low-cost landline telephony options. As currently structured, Lifeline is inadequate to meet the connectivity needs of low-income households in the

⁷² Infrastructure Act at §60102(h)(4)(B).

2020s as evidenced by an independent evaluation and the findings and recommendations of the Commission's own Wireline Competition Bureau.

A. Wireline Competition Bureau's November 21 Order

In an order adopted on November 5, 2021, the Commission's Wireline Competition Bureau paused a scheduled phaseout in Lifeline support for voice-only services and an increase in minimum service standards for mobile broadband data capacity.⁷³ The phaseout and increase had been established 2016, long before the COVID-19 pandemic and were based on optimistic projections that have not always been borne out.⁷⁴

According to the Wireline Competition Bureau, the pause gives the Commission "time to evaluate whether [changed circumstances] warrant longer-term modifications of the Lifeline program." The "changed circumstances" include the COVID-19 pandemic as well as the Bureau's own findings that "the removal of Lifeline support for voice-only services may push some Lifeline consumers into bundled plans that they are unable to afford."⁷⁵

The Wireline Competition Bureau also notes another major milestone for the Lifeline program: Congress' establishment of connectivity discount programs for low-income consumers.

In 2020, Congress created the Emergency Broadband Connectivity Fund through the Consolidated Appropriations Act, 2021. The fund's \$3.2 billion fueled the rollout of the Emergency Broadband Benefit Program which, through December 2021, discounted broadband services and connected devices for eligible low-income households. As of December 2021, over

⁷³ *Lifeline and Link Up Reform and Modernization Telecommunications Carriers Eligible for Universal Service Support Connect America Fund* (WC Docket No. 11-42, WC Docket No. 09-197, WC Docket No. 10-90) (DA 21-1389) (released November 5, 2021).

⁷⁴ *Lifeline and Link Up Reform and Modernization*, 31 FCCRcd 3962, 3989-97, paras. 73-98 (2016). (2016 Lifeline Order).

⁷⁵ Report on the State of the Lifeline Marketplace (WC Docket No. 09-197, WC Docket No. 11-42, WC Docket No. 20-437) (June 2021).

nine million households had enrolled in the Emergency Broadband Benefit Program. In contrast to Lifeline's \$9.25 monthly discount, the Emergency Broadband Benefit (EBB) provided a \$50/month subsidy for broadband service. The EBB program was aimed at helping low-income households connect to distance education, telehealth, work, and family members during the pandemic.

Originally the EBB program was envisioned as a temporary measure, lasting until the initial funding ran out or six months after the pandemic ended (whichever came first). However, on November 15, 2021 President Biden signed the Infrastructure Investment and Jobs Act. The legislation makes the Emergency Broadband Benefit Program more permanent by adding over \$14 billion in funding. Reflecting the change, the program is being renamed the Affordable Connectivity Program. Starting in 2022, broadband providers began receiving up to \$30/month for providing service to low-income households [\$75/month for low-income Tribal households.].

In the November 2021 order, the Wireline Competition Bureau noted that as Lifeline subscribers automatically qualify for the Emergency Broadband Benefit Program (and that continues to be true under the Affordable Connectivity Program), the EBB program's discount of up to \$50 would likely have large implications on the affordability of broadband service for Lifeline-eligible households. The relatively new nature of the Affordable Connectivity Program underscores the need for more data to adequately assess the effects on the Lifeline program and its role in shaping the broadband market for low-income Americans.

With the Wireline Competition Bureau's one-year pause in place and the passage of the Infrastructure Investment and Jobs Act, the table is set for the Commission to launch a proceeding to consider what role Lifeline can play in ensuring affordable communications services for low-income consumers.

The Commission's last major comprehensive reform and modernization of Lifeline took place in 2016. Seeing that 43% of the nation's poorest households could not afford broadband, the Commission decided to refocus Lifeline support on internet access. For the first time, Lifeline was allowed to support stand-alone broadband service as well as bundled voice and data service packages.

In the Commission's own words, a core tenet of the 2016 decision was to enable “Lifeline customers to obtain the type of robust service which is essential to participate in today’s society.”⁷⁶ The Commission recognized “it is vital that the offered service provides sufficient speed and capacity to allow the user to utilize all that the Internet has to offer.” And the Commission meant to ensure that Lifeline supports an evolving level of service.

By 2020, and in light of the COVID-19 pandemic, Congress recognized that Lifeline's \$9.25/month subsidy isn't enough to provide robust broadband to low-income households. With a more-permanent Affordable Connectivity Program providing \$30/month for broadband, the Commission should now address what role Lifeline can play to help low-income consumers get and stay connected via broadband service.

B. Broadband Internet Access Service Classification

There is another justification to reexamine the Lifeline program: classification of broadband internet access service. The Commission's 2018 Restoring Internet Freedom order⁷⁷ left the Commission without the authority to regulate residential broadband internet access service. Although the United States Court of Appeals for the District of Columbia Circuit generally affirmed the exercise of discretion to do so, the court remanded the action, finding,

⁷⁶ 2016 Lifeline Order, 31 FCCRcd at 3988, para. 69.

⁷⁷ Restoring Internet Freedom, 33 FCCRcd 311 (2018), remanded sub nom. Mozilla Corp. v. FCC, 940 F.3d 1 (D.C. Cir. 2019).

among other things, that the Commission had not sufficiently considered the impact the decision would have on the agency's ability to include support for broadband services in the Lifeline program, and directing it to consider whether it could continue to operate the Lifeline program without Title II authority.⁷⁸

In 2020, on remand, the Commission concluded, after gathering and reviewing public comment, that the Restoring Internet Freedom order "allows us to continue to provide Lifeline support for broadband Internet access service."⁷⁹ Moreover, the Commission concluded that "any potential negative effects that the reclassification may have on ... the Lifeline program are limited and would not change our classification decision in the Restoring Internet Freedom Order even if such negative effects were *substantiated*. Rather, we find that [the] overwhelming benefits of Title I classification and restoration of light-touch regulation outweigh any adverse effects."⁸⁰

Then-Commissioner, now-Chairwoman Jessica Rosenworcel called that ruling a dodge. She continued: "It ignores the fact that ... universal service is defined as an evolving level of telecommunications service and it offers a hodgepodge of citations to claim that its decision did not destabilize the Lifeline program. But it did. Because there is no question the program is on less firm legal ground than it was before—and that's a shame. The future of communications is broadband, and this program should reflect that."⁸¹

C. Evaluations of the Lifeline Program Confirm the Need and Set an Agenda for Reform

The Commission's 2016 Lifeline decision included two mechanisms to review the impact of the reforms adopted in that order. The Commission mandated that the Universal

⁷⁸ Mozilla Corp. v. FCC, 940 F.3d 1 (D.C. Cir. 2019).

⁷⁹ Restoring Internet Freedom, Order on Remand, 35 FCCRcd 12328 (2020) (reconsideration pending) (review pending).

⁸⁰ Id., 35 FCCRcd at 12336, para. 18.

⁸¹ Id., 35 FCCR at 12418 (Dissenting Statement of Commissioner Rosenworcel).

Service Administrative Company (USAC) obtain an independent program evaluation of the Lifeline program’s design, function, and administration by December 31, 2020 so that the evaluation’s findings could be incorporated, as appropriate, into a report on the state of the Lifeline marketplace. That independent evaluation was completed in February 2021 and raises many concerns that demand attention from the Commission including:⁸²

1. There is a notable absence of a Lifeline Program strategic plan which details the means by which USAC can implement the Commission’s policies to achieve the program’s intended outcomes and measure results based on FCC-developed performance measures.
2. Despite current USAC information outreach methods, low-income consumers are generally unaware of the Lifeline program or USAC, which may be limiting consumer program participation.
3. The penetration rate for broadband has been increasing for the low-income consumer group; however, program participation rates have been decreasing over the same time period. There is no evidence to support whether or not the Lifeline program has improved access to voice and broadband services for low-income consumers.
4. The evaluation could not determine whether the Lifeline program has been effective in addressing challenges in the low-income community such as the “Homework Gap” among school-aged children, the digital divide, or socio-economic mobility in low-income families due to lacking data to link program participation with these dimensions.
5. USAC’s Companies Near Me tool may not provide participants an accurate listing of service providers serving their community due to data completeness issues resulting from the tool relying on self-reported information from carriers.
6. No substantial evidence was found to determine whether the National Verifier has been successful in enhancing consumer choice. (Grant Thornton noted that the evaluation was finalized less than a month after the final hard launch for the National Verifier system, but the firm had found no evidence of increased competition among providers to serve Lifeline consumers.)
7. The Lifeline online application process has improved with implementation of the National Verifier. However, Grant Thornton noted several areas for improvement in the online application process and user interface.
8. The Lifeline program’s design, including implementation of the National Verifier and expansion of automated data connections, have created cost efficiencies and protect program resources against fraud, waste, and abuse. However, USAC’s administrative costs relative to program enrollment and the number of eligible low-income households have been steadily increasing since 2011 and should be monitored to determine whether program changes achieve the Commission’s goal of reducing costs on carriers and consumers.
9. Grant Thornton was unable to determine whether the Lifeline program’s design minimizes costs for carriers due to the lack of published carrier cost data.

In July 2021, the Commission’s Wireline Competition Bureau released its report on the

⁸² Grant Thornton Public Sector LLC “Lifeline Program 2020 Program Evaluation” Universal Service Administrative Company (February 5, 2021) <https://www.neca.org/docs/default-source/wwpdf/public/7121usac.pdf>

state of the Lifeline marketplace, in part informed by the above Grant Thornton research.⁸³

The aim was to identify areas for Commission consideration regarding the continued transition of the Lifeline program from a program that primarily supports voice services to one with a greater focus on supporting broadband Internet access service.

From the Wireline Competition Bureau, we learned:

- For low-income consumers, high-speed data adoption rates are much lower than they are for households that are not low-income. In 2019, 86.4% of Americans had high-speed data but only 64.2% of households with an annual income of \$20,000 or less had high-speed data service.
- As of June 20, 2021, approximately 6.9 million subscribers were enrolled in the Lifeline program.
- Approximately 94% of all Lifeline subscribers subscribe to a mobile service.
- Lifeline subscribers are now more likely to participate in plans that have a broadband component; the largest service category is the bundled voice and broadband category, where both services meet the Lifeline minimum service standards. More than 52% of Lifeline subscribers received this type of offering in May 2021.
- 73% of Lifeline subscribers use less than 250 minutes of voice service per month. A further 12% of Lifeline subscribers use between 250 and 500 minutes, and a further 9% of subscribers use between 500 and 1,000 minutes per month. Approximately 6% of reported Lifeline subscribers use more than 1,000 minutes per month. This data reflects all voice service offerings, including voice service offered as part of a bundled service, so it may reflect the current state of free-to-the-user bundled Lifeline plans, which may cap such free service at 250 minutes.
- Over 90% of the Lifeline subscriber population uses less than 4 GB of data per month, with 76% of all reported Lifeline subscribers using less than 1 GB per month.
- The majority of Tribal Lifeline consumers subscribe to either bundled broadband or bundled voice broadband service. About 8% of Tribal Lifeline consumers subscribe to voice-only service and a smaller percentage still subscribe to broadband-only or bundled voice service.
- In 2019, 77.9% of the Native American population had high speed internet compared to 86.4% of the overall U.S. population.
- Tribal lands experience lower rates of both fixed and mobile broadband deployment as compared to non-Tribal areas of the United States, particularly in rural areas.
- Deployment on rural Tribal lands continues to lag behind urban Tribal lands, with only approximately 65% of all Tribal lands in rural areas having deployment of both services, as compared to 95% of Tribal lands in urban areas.
- The disparity between broadband adoption by low-income rural Americans and higher-income rural Americans is significant.
- U.S. population with high-speed internet access in rural areas is 82.3% and in urban areas is 87.4%.

⁸³ Report on the State of the Lifeline Marketplace, *supra*, n.75.

- While the majority of Lifeline subscribers have shifted to broadband-focused Lifeline plans, a persistent minority of Lifeline subscribers opt for voice-only Lifeline plans. Approximately 8% of Lifeline subscribers still subscribe to either a voice-only plan or a bundled plan that only qualifies for reimbursement because it has met the voice minimum service standard. Apparently, those subscribers still value the voice service to which they subscribe as those plans are only eligible for the lower voice reimbursement amount that is currently set at \$5.25.

The Wireline Competition Bureau identified a number of issues for the full Commission to consider:

1. The current formula for calculating updates to minimum service standards for mobile broadband data capacity yields increasingly high results given broader market increases in mobile broadband data consumption and the greater prevalence of unlimited data plans. The Commission should consider several options to address this situation.
2. The minimum service standards for speed and data capacity have continued to increase gradually over the years. However, the structure of the rule may create a situation where a consumer could be forced into a higher-priced plan in order to receive Lifeline service. The Commission should revisit this approach.
3. The Bureau recommends that the Commission consider continuing to support efforts directed toward improving broadband access in rural Tribal areas and consider exploring other ways of improving access in these areas.
4. As the Commission looks to take action to improve broadband access and adoption in rural areas, it should consider ways to improve awareness of the Lifeline program for the eligible population in rural areas.
5. The removal of Lifeline support for voice-only services may push some Lifeline consumers into bundled plans that they are unable to afford.
6. Voice-only services, particularly for those populations that do not have an interest in receiving broadband services, are often Lifeline subscribers only connection to their communities and emergency services, which is more pronounced during national emergencies such as the COVID-19 pandemic.
7. The Commission should consider some modification to the paused phase-down in support for voice-only Lifeline services.
8. In orders implementing both the Emergency Broadband Benefit Program the Emergency Connectivity Fund Program, and the Affordable Connectivity Program, the Commission stated its expectations that connected devices for bridging the digital divide and closing the homework gap should be accessible to and usable by individuals with disabilities. The Commission should consider whether a similar expectation that Lifeline providers that provide mobile or fixed broadband services and devices similarly will provide devices that are accessible to and usable by individuals with disabilities.
9. Given that individuals with disabilities may need certain service plans and communications technologies to accommodate their disabilities, the Commission

- should consider the need for Lifeline providers to make a variety of services available, such as bundled services, voice-only plans, and data-focused plans.
10. The Commission should consider ways to craft Lifeline broadband support that accounts for data-intensive video communications like Video Relay Services (VRS). Such an approach may be best informed by lessons learned in the Emergency Broadband Benefit Program and Affordable Connectivity Program.
 11. Many Lifeline subscribers lack the ability to pay a copay: nearly two-thirds of Lifeline subscribers do not have a checking or savings account and 60% lack a credit or debit card.
 12. The Commission should consider requesting additional information from Lifeline service providers when they file for reimbursement. When providers file claims for Lifeline reimbursement, they could be asked to provide basic information regarding the data, speed, and minutes of use associated with their current Lifeline plan(s) offered, and information on the number of subscribers enrolled in each plan. Collecting information on plan offerings and the number of subscribers enrolled in each offering may make it easier for the Commission to understand which aspects of minimum service standards are most costly for providers, as well as which services are most highly valued by consumers.
 13. The Commission should seek comment on the best methods for tracking Lifeline’s impact on broader affordability issues.
 14. One of the most proposed suggestions for further changes in the Lifeline program was to raise the reimbursement amount for Lifeline services beyond \$9.25, regardless of any changes in the minimum service standards. The current level has not changed in nearly a decade and does not allow Lifeline eligible consumers to receive a level of service necessary to meet modern needs.
 15. The Commission should consider removing “structural limitations” to provider participation in the Lifeline program, such as the requirement to become an eligible telecommunications carrier (ETC), and do more to encourage competition within the Lifeline program.
 16. The Commission should explore new options for distributing support to Lifeline eligible consumers or permit support beyond one Lifeline service per household.
 17. The Commission should consider reclassifying broadband as a Title II service, as it would put broadband Internet access service supported through the Lifeline program on a firmer statutory foundation.

D. Additional Areas for Lifeline Reform

To reduce consumer and provider confusion and streamline enrollment processes, the Commission should match Lifeline program eligibility criteria with those set by Congress for the Affordable Connectivity Program in the Infrastructure Act.

The Commission should adopt additional changes in the Lifeline program so it better benefits

eligible households:

1. The Commission should seek to understand the composition of Lifeline households and what services various members need (i.e., school-aged children, telecommuters, etc.). The minimum services supported by Lifeline should address the needs of the entire household.
2. Just 20 percent of the people eligible to participate in the Lifeline program actually enroll. The Commission must understand why and should consider ways to improve awareness of the Lifeline program. One idea is to partner with other federal benefit programs, and the state agencies that administer those programs, to not only increase outreach about Lifeline, but ideally to integrate Lifeline's application processes into those program applications. For both Affordable Connectivity Program and Lifeline, the Commission should move towards matching agreements with other Federal agencies that allow for automatic qualification of eligible consumers so, for example, a food stamp recipient can be automatically made aware of and enrolled ACP and Lifeline.
3. The FCC should adopt program rules that incorporate Lifeline consumer feedback to ensure the program works for the most vulnerable people in society.

VIII. The Commission Must Embrace Competition in USF

The goal of the Telecommunications Act of 1996 is to let anyone enter any communications business—to let any communications business compete in any market against any other.” Changes in the USF programs should encourage all telecommunications and broadband service providers to compete for USF support and, especially, to serve low-income households in their service areas.

Creating or perpetuating anticompetitive markets or even monopolies through USF programs is not the goal of Congress, the law, the Commission, nor the USF programs. As Congress finds in the Infrastructure Act, “In many communities across the country, increased competition among broadband providers has the potential to offer consumers more affordable, high-quality options for broadband service.” The Commission must foster competition to adhere to the principles of Sec 254 of the Communications Act as well as the findings and affordability goals of the Infrastructure Law.

As noted in the Executive Order on Promoting Competition in the American Economy,⁸⁴ “In the telecommunications sector, Americans likewise pay too much for broadband, cable television, and other communications services, in part because of a lack of adequate competition.” Low-income households are the most vulnerable to conditions that threaten basic economic liberties, democratic accountability, and the welfare of workers, farmers, small businesses, startups, and consumers. The Telecommunications Act of 1996—and the Universal Service Fund programs created and confirmed by the law—aims to protect conditions of fair competition. The Commission should 1) police unfair, deceptive, and abusive business practices, 2) resist consolidation and promote competition, 3) promulgate rules that promote competition, including the market entry of new competitors; and 4) promote market transparency through compelled disclosure of information.

Specifically, the Commission should consider the following pro-competition policies:

- **Prioritize Open-Access Networks that Facilitate Competition Between Multiple Providers:** USF programs should give preference in awarding funding to broadband network builders that choose to provide open access
- **Support Municipal Experimentation:** USF programs should enable municipalities and counties to experiment with various ways—including public-private partnerships—of increasing broadband deployment.
- **Encourage Local Planning:** Even applying for USF support requires funding. The Commission should provide the kind of support offered by multiple states, including Illinois, which provide grants to eligible municipalities and/or economic development organizations in order to assist in the creation of a local or regional broadband strategy.
- **Empower Community Institutions to Act as Launching Pads:** The E-Rate program should allow private broadband providers to extend networks that reach community institutions into nearby neighborhoods.
- **Collect and Make Public Broadband Pricing Data:** The Commission should require broadband providers to disclose their residential pricing (with fees and ancillary charges) for each market and the Commission should provide public analyses of competition in local markets.

⁸⁴ Executive Order 14036, Promoting Competition in the American Economy 86 FR 36987 (July 9, 2021)

Benton especially welcomes the Commission’s newly-issued decision expanding competition and increased choice for broadband services for people living and working in apartments, multiunit premises, and other multiple tenant environments (MTEs).⁸⁵ USF programs to date have looked predominately at single family housing. But to close the digital divide we also need to support the 12 million low-income people in the 4.5 million unserved households in multi-family apartments. The BEAD Program will prioritize projects that serve multiple tenant environments with a high rate of low-income Americans with free Wi-Fi. The Commission should sync USF goals with the Infrastructure Law’s priorities. In addition, current broadband data and maps are insufficient to be able to even answer if these low-income residents are served or unserved. The Commission should correct this in its forthcoming broadband data collection efforts—you can’t manage what you can’t even measure.

IX. The Commission Must Reevaluate Its Measure of Affordability

The Commission should also revise its measure of affordability of broadband for low-income consumers. In the 2016 Lifeline Reform Order, the Commission found it does “not interpret and implement the concept of ‘affordability’ under sections 254(b)(1) and 254(i) by looking narrowly at whether and when a customer would not purchase a service at all but for discounts made possible, directly or indirectly, by universal service support.” Even though affordability is a “central touchstone” of Lifeline, the program’s resources should focus on “supporting those services that are otherwise unaffordable to consumers.”

⁸⁵ Improving Competitive Broadband Access to Multiple Tenant Environments, Report and Order and Declaratory Ruling, FCC 22-12, GN Docket No. 17-142 (released February 16, 2022). *See also* Sherman, Ryland “America’s Broadband Moment: Facilitating Competition in Apartment Buildings” (July 22, 2020) <https://www.benton.org/blog/americas-broadband-moment-facilitating-competition-apartment-buildings>

Low-income Americans pay a significant portion of their income for telephone service. The Lifeline Marketplace Report notes that the Commission would consider affordability in the context of “the extent to which voice and broadband service expenditures exceed two percent of low-income consumers’ disposable household income.” Analysis of the Census Bureau’s Consumer Expenditure Survey (CES) shows that households whose annual incomes are below \$15,000 pay about \$500 per year for telephone service—or 3.3 percent of their income. Households in the \$15,000-to-\$30,000 income range pay \$660 per year for telephone service, or 2.2 percent of their income (using the upper range as the denominator). For households in deep poverty (whose median incomes are only \$2,400 annually), phone service might be as much as 15 percent of their gross incomes (assuming such households pay less than \$500 per year). For all Lifeline-eligible households, assuming a cell phone bill annually of \$550 (or about \$45 per month), service is close to 3 percent of gross income.

Surveys of Lifeline subscribers underscore the tight financial circumstances of these households. Seventy-eight percent of Lifeline subscribers say they cannot afford a Lifeline co-pay of \$10 per month. A 2021 national survey of low- and lower-middle-income households asked these households what they pay for service and to identify monthly service fees that would be *too expensive* for their budgets.⁸⁶ Forty percent of households whose incomes were below \$50,000 annually said they could not afford any monthly fee. According to BroadbandNow, entry-level broadband plans start in the range of \$40 to \$50 per month. Carriers such as Verizon, Comcast, Spectrum, and AT&T have promotional rates that start at \$40 or \$50 per month; Cox starts at \$30. After a year, Cox’s plan increases by \$15 to \$45 per month and AT&T’s rate

⁸⁶ Horrigan, John B. Affordability and the Digital Divide. EveryoneOn (December 2021) <https://static1.squarespace.com/static/5aa8af1fc3c16a54bcbb0415/t/61ad7722de56262d89e76c94/1638758180025/EveryoneOn+Report+on+Affordability+%26+the+Digital+Divide+2021.pdf>

increases \$20.⁸⁷ This means that low-income households, to be comfortable paying for monthly service, would require a subsidy that is far greater than Lifeline's current \$9.25. For many, \$30 might suffice in that it would put a \$50 monthly plan within reach (with the household covering the remaining \$20). Other households might need to use a \$30 subsidy in conjunction with a discounted offer in order to have service without making outlays themselves. This suggests that these consumers will greatly benefit from being able to combine their Affordable Connectivity Program and Lifeline benefits for the same service.

With the Infrastructure Act's massive investment in broadband infrastructure deployment in unserved and underserved areas, the Commission has an opportunity to refocus the Rural Digital Opportunity Fund and other high-cost area deployment programs in the USF on closing the affordability gap for those who may have access but cannot afford broadband service.

X. Sustaining Universal Service Programs

The Commission has sought "comment on proposals to improve the stability of the quarterly [contribution] factor."⁸⁸ It also asks parties to address "comments submitted with respect to the proposed universal service contribution factors for the fourth quarter of 2021 and the first quarter of 2022."⁸⁹

The Congressional directive of the Telecommunications Act of 1996 is for the Commission to ensure that there should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service. The dilemma to which the Commission refers is that the source of USF programs is end user (i.e. retail) revenues from international and interstate wireline and mobile services, as well as revenue from providers of interconnected Voice over

⁸⁷ Cheapest Internet Service in 2022 (BroadbandNow)

<https://broadbandnow.com/internet/best/cheap>

⁸⁸ USF NOI at 18, para. 44.-45.

⁸⁹ Id. at para. 45.

Internet Protocol (VoIP) services. The transition to non-interconnected services and cord cutting of wireline phone services has reduced USF revenues by more than 60% over the last two decades. As a consequence, the contribution factor, i.e., the percentage surcharge added to remaining telecommunications service bills, has increased by significant amounts.

There is little dispute that the contribution base for USF must be broadened. There are a number of proposals to accomplish that goal, some of which the Commission may be able to employ using its existing powers, and others that would require legislation. Benton takes no position at this time as to which mechanism would be best. However, Benton does emphasize that proposals to finance the USF via the Congressional appropriations process are ill advised and, indeed, extremely dangerous. Even with multiyear appropriations (something which is very difficult to accomplish legislatively for both political and technical reasons), leaving USF to the vagaries of the appropriations process would unquestionably conflict with the established – and essential – objective of maintaining a specific and predictable funding mechanism, and would likely endanger the need to provide sufficient funding as well.

A potential impact of the Infrastructure Act's historic investment in broadband network deployment and its emphasis on currently unserved, underserved and high-cost areas is that it raises the potential that one of the USF programs, the Rural Digital Opportunity Fund (RDOF), could soon be obsolete. Billions of RDOF dollars could be more productively used if they were redirected over coming years to other USF programs. In this scenario, gradual decreases in interstate end-user revenues could be offset in part by reductions in overall USF spending, especially RDOF/high-cost area spending.

But Congress instructs the Commission to not just preserve universal service but to advance it as well. The Commission therefore should explore ways to create a contribution base that has

long-term stability and predictability, is specific, and can provide sufficient funding for the expansive universal service goals Congress has set not only in the Telecommunications Act of 1996 but updated in the Infrastructure Act. In whatever approach the Commission adopts, it needs to be especially cautious to address the needs of low-volume, low-income, and other vulnerable users, so that they do not end up paying a disproportionate rate or substantially more than they are today. That would hinder universal service goals and efforts to keep communications affordable for these important communities.

The Commission would be wise to engage in a broad-based economic analysis to develop an approach to contribution reform that ensures that average vulnerable users do not end up paying more than they are today in the aggregate. If there are greater contributions that need to be collected to support the system as a whole, then the additional burden should be shouldered by enterprise users—so that USF can meet its mandate to support an evolving level of services, and achieving truly “universal” service.

With respect to comments that have been filed raising constitutional questions about the USF mechanisms, Benton notes that those commenters have sought judicial review to raise these questions, and that it has joined other stakeholders in intervening in that litigation to support the Commission’s defense of its USF programs. For immediate purposes, Benton notes that a central element of these challenges is that USF charges are in violation of the Constitution’s Origination Clause. Notably, this argument is foreclosed by direct and clear precedent. In *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 428 (5th Cir. 1999), the United States Court of Appeals unanimously and unequivocally ruled that “the application of the universal service contribution requirement to ... carriers does not transform the [Telecommunications] Act into a ‘bill for raising revenue’ in violation of the Origination Clause.”

CONCLUSION

The Commission has been tasked to present a report that can provide the opportunity to help design a universal service program for the twenty-first century. It is hard to overstate the important role that this report will play in assuring that all Americans have access to adequate and affordable high-speed broadband.

Respectfully submitted,

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