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

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

REPLY COMMENTS OF
NTCA–THE RURAL BROADBAND ASSOCIATION

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March 17, 2022

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Executive Summary

As NTCA stated in initial comments, this proceeding offers a welcome and necessary opportunity to re-evaluate the goals of the essential universal service fund ("USF") mechanisms overseen by the Federal Communications Commission (the "Commission"). NTCA offered in its initial comments a number of specific suggestions for how do just that, centered on meeting two critical objectives: (1) restoring the focus of the USF programs not only upon facilitating construction of networks but also distributing ongoing support so that areas that become served will stay served in a manner that satisfies long-standing statutory universal service mandates; and (2) coordinating various initiatives (both within the four separate but complementary USF programs and between the USF as a whole and other initiatives) to ensure these programs function in complementary ways and achieve the best possible results in enabling network construction, sustaining those networks, and promoting high-quality services at more affordable rates.

The record in this proceeding supports the steps proposed by NTCA to meet these objectives; specifically:

- Like NTCA, a wide variety of stakeholders point to the importance of promoting both the initial establishment of connectivity and the ongoing availability of robust and reliable services at affordable rates. As NTCA noted in initial comments, this underscores the need to support recovery of not only capital expenses that are not otherwise recovered but also ongoing operations and maintenance expenses;

- Like NTCA, commenters highlight that, with respect to programs administered by the Commission as well as other federal agencies, the value of each is increased when their respective resources are leveraged to complement rather than compete with one another;

- Like NTCA, commenters recognize that the need for coordination exists within the USF itself as well – such coordination between the Lifeline and Affordable Connectivity Programs can ensure low-income consumers have access to the communications services of their choosing, and the Schools and Libraries and Rural Health Care programs' roles as primarily facilitating access to services should be retained; and

- Finally, many commenters agree that the time has come to add broadband to the USF contribution base, with others (like NTCA) supporting as well exploration of other measures that could further broaden the base by including assessments from businesses that depend heavily upon the availability of robust and affordable broadband services as a mechanism for the delivery of their own products and services.

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NTCA–The Rural Broadband Association ("NTCA")[1] hereby submits these Reply Comments addressing the record complied in response to the Notice of Inquiry[2] released by the Federal Communications Commission (the "Commission") in the above-captioned proceeding. NTCA notes herein strong support for: (1) reorienting the Universal Service Fund ("USF") more directly toward its explicit statutory mission; (2) coordinating the operations of the USF with other federal programs; (3) ensuring the various USF mechanisms themselves work in concert rather than conflicting with or duplicating one another; and (4) updating the contribution mechanism to be more equitable and sustainable by reflecting evolving uses of communications networks.

[1] NTCA represents approximately 850 independent, community-based companies and cooperatives that provide advanced communications services in rural America and more than 400 other firms that support or are themselves engaged in the provision of such services.

[2] *Report on the Future of Universal Service*, WC Docket No. 21-476, Notice of Inquiry (rel. Dec. 15, 2021) ("*NOI*").

I. THE RECORD SUPPORTING REORIENTING UNIVERSAL SERVICE TOWARD ITS STATUTORY MISSION BY FOCUSING ON ENSURING THAT REASONABLY COMPARABLE SERVICES ARE AVAILABLE AT REASONABLY COMPARABLE RATES – AND TAKING SEVERAL AFFIRMATIVE STEPS TOWARD FULFILLMENT OF THIS MANDATE.

NTCA's initial comments highlighted how, especially over the past decade, the pendulum has swung too far toward perceiving the Commission's high-cost USF programs as "deployment initiatives" at the expense of the more comprehensive statutory objective of ensuring that services are reasonably comparable in price and quality in rural and urban America alike. As NTCA discussed, the availability of robust networks is to be sure an essential prerequisite to fulfillment of this objective, and it is important in charting a course for "the future of universal service" that the pendulum does not swing too far in the opposite direction – more specifically, it must not be lost that the high-cost USF program is critical in making the business case for investment in rural communications networks. But an overly narrow focus on treating high-cost USF support as if it were a deployment-targeted grant program first and foremost risks sacrificing long-term ongoing achievement of universal service goals for short-term claims of victory merely when customers are connected at some basic level of capability in the first instance.[3] As NTCA summarized in its initial comments, "**In practical terms, . . . USF support should not be limited to facilitating construction of networks in unserved areas, but it must also continue to be distributed in some areas even after networks are deployed – areas that become served must *stay* served in a way that satisfies the principles and directives of Section 254.**"[4]

[3] *See* Comments of NTCA–The Rural Broadband Association ("NTCA"), WC Docket No. 21-476 (fil. Feb. 17, 2022) at 2-12.

[4] *Id*. at 9 (emphasis in original).

Consistent with this perspective, NTCA's comments identified four specific "lessons learned" from the past decade to inform future reforms of the high-cost USF programs:

1. *Avoid the pitfalls of positioning high-cost USF as a one-time "quasi-grant" program and, consistent with the law, focus more broadly on the ongoing needs and challenges of providing high-quality services, sustaining networks, and keeping rates affordable in rural areas.*

2. *Fulfill the statutory mission of both preserving <u>and</u> advancing universal service, rather than aiming primarily or even exclusively to address concerns about "unserved areas" at the expense of sustainability considerations in areas already served.*

3. *Consistent with the notion that universal service is "evolving," aim higher when it comes to expectations as to service levels that will be delivered – avoiding an inefficient and incrementalist approach and ensuring instead that consumers and communities will receive "reasonably comparable" services that keep pace with those available in urban areas for decades; and*

4. *Ensure transparency and accountability in the use of USF resources by setting clear standards and fully evaluating the capabilities of providers and the platforms they propose to use to deliver services <u>prior to</u> new awards of support.*[5]

The comments filed in this proceeding reflect substantial agreement with these perspectives and encourage in particular the Commission to reorient its universal service goals on ensuring the sustainability of both networks and services rather than focusing upon deployment alone. Indeed, commenters across a wide spectrum highlight the importance of promoting *both* the initial establishment of connectivity *and* the ongoing availability of robust and reliable services at affordable rates, underscoring the need to support recovery of not only capital expenses (where not covered by grants obtained otherwise) but also ongoing operations and maintenance expenses. For example, Cisco Systems, Inc. ("Cisco") observes, "Support for both up-front investment and ongoing operations are essential for broadband services to be viable over the long term. In light of

[5] *Id*. at 23.

the [Infrastructure] Act's appropriation of over $42 billion for infrastructure, the Commission should ensure that its high-cost programs adequately support the ongoing operating expenses of existing infrastructure as well as the incremental cost of new infrastructure enabled by the IIJA."[6] Likewise, John Staurulakis, LLC notes, "Universal service support provides funds necessary to undertake the long-term investment of building networks in rural areas (Capex) and allow the networks to be operated and maintained over the life of the assets (Opex)."[7]

Along these lines, Public Knowledge captures well both the need and the opportunity before the Commission to refocus and reorient the high-cost USF program through the upcoming report and subsequent actions:

> [T]he Commission should transition the high-cost program to address current needs, upgrading and maintaining networks and expanding the funding to include hardening networks to make them more resilient against the ever-increasing natural disasters. . . . Networks do not run themselves; they require people, equipment, maintenance, and upgrades. These are the operating expenses a provider will incur in delivering service to their community. The Commission must take these substantial expenses into account as it seeks modification to the Commission's rules so that any changes do not result in a shock to the system as the quantile regression and other reforms of the past decade did. Discipline and accountability are critical elements of a sustainable program, but not at the expense of extracting the marrow out of the bones of our communications networks.[8]

Numerous other commenters echo similar sentiments regarding the need for ongoing USF support, including ACA Connects – America's Communications Association ("ACA Connects"),[9] the

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[6] Comments of Cisco, WC Docket No. 21-476 (fil. Feb. 17, 2022) at 2.

[7] Comments of John Staurulakis, LLC ("JSI"), WC Docket No. 21-476 (fil. Feb. 17, 2022) at 5-6.

[8] Comments of Public Knowledge, WC Docket No. 21-476 (fil. Feb. 17, 2022) at 10.

[9] Comments of ACA Connects, WC Docket No. 21-476 (fil. Feb. 17, 2022) at 17 (explaining that smaller operators in particular will "need to continue to access support from the Commission to cover above-average operational costs").

National Rural Electric Cooperative Association ("NRECA"),[10] Vantage Point Solutions, Inc. ("VPS"),[11] Lumen Technologies, Inc. d/b/a Lumen Technologies ("Lumen"),[12] and USTelecom-The Broadband Association ("USTelecom").[13]

As noted above, however, it is essential to ensure that the pendulum does not swing too far in the *other* direction as the Commission considers the future of universal service – freezing, for example, any much-needed concrete efforts to improve universal service in the near-term as part of some ambiguous long-term "transition" to supporting operating expenses or moving toward the creation of singularly-focused "broadband maintenance funds" that ignore the critical role of the high-cost USF programs in enabling the business case for investment and providing recovery of capital expenses that often are *not* covered by government grants. As TCA succinctly states, "There is no 'done button' with constructing communications networks or a point in time when a provider will never have capital expenditures and this is especially true with broadband

[10] Comments of NRECA, WC Docket No. 21-476 (fil. Feb. 17, 2022) at 14 (highlighting the need "to ensure that these new broadband systems in rural and high-cost areas are also well-maintained and affordable").

[11] Comments of VPS, WC Docket No. 21-476 (fil. Feb. 17, 2022) at 10 ("Current and future USF programs play a significant role in enabling and sustaining broadband performance and will need to reach beyond the initial task of network construction. Those 'rules of the broadband road' are required for the Commission to continue to be successful with broadband public policy.").

[12] Comments of Lumen, WC Docket No. 21-476 (fil. Feb. 17, 2022) at 9 ("In some rural areas, even once a network is built, the location lacks the business case to maintain it, much less improve upon it. Using High-Cost Program funding to support upgrades and maintenance will ensure that service providers located in such areas will continue to be able to meet consumer demand for high-speed broadband services.").

[13] Comments of USTelecom, WC Docket No. 21-476 (fil. Feb. 17, 2022) at 15 ("The High Cost program as designed is not just a capital expenditure fund. Support may also be used for operating expenses. Particularly in the most rural, less dense, highest cost portions of the United States, providers have had an ongoing need for support in order to maintain and keep those networks operating and have relied on USF support to do so.").

networks."[14] Thus, the Commission should decline to follow the invitations of those suggesting that USF either should be redirected *only* to support operating and maintenance expenses or recommending that any and all needed USF reforms should somehow be "put on pause" pending completion of network builds pursuant to new grant programs. Such perspectives perpetuate the mistakes of the last decade, presuming yet again that the high-cost USF programs are currently supporting only capital expenses and aimed at deployment in unserved areas, when the fact is that the USF programs already have been supporting and remain critical to the sustainability of networks and services. It is simply the case that more recent reforms and certainly emphasis in recent years have been on supporting deployment in unserved areas, when in fact the programs do far more than that. In short, what is needed is a "course correction" in reorienting the USF programs for the more comprehensive focus already indicated by the law; there is no need for a fundamental remaking or sweeping transition of the high-cost USF program – and there is certainly no need for Congress to grant the Commission the authority or permission to support operations, maintenance, upgrading of networks, or recovery of capital through USF, as the statute has already enabled this for years.

For example, it would be a bridge too far to proceed as urged by the Rural Wireless Association ("RWA") and "[t]ransition high-cost support for fixed broadband to ongoing support to maintain networks after the Infrastructure Act and current programs conclude."[15] To the contrary, recovery of capital *and* operating expenses alike has been (and still is) part and parcel of USF for decades, even if again in recent years emphasis has shifted too heavily to "supporting

[14] Comments of TCA, WC Docket No. 21-476 (fil. Feb. 17, 2022) at 2.

[15] Comments of RWA, WC Docket No. 21-476 (fil. Feb. 17, 2022) at 3.

deployment." Similarly, CTIA – The Wireless Association ("CTIA") misses the mark when it suggests that no additional USF support should be allocated or awarded for fixed broadband specifically until all of the new grant programs are fully implemented.[16] Moreover, while USTelecom contends that a *complete* assessment of future high-cost USF needs should be undertaken as the work of new infrastructure grant programs manifests,[17] the Commission should not defer or deny reforms that are needed to improve, enhance, or extend essential USF mechanisms as they work now. As an initial matter, Congress did not temporarily suspend the Commission's own statutory mandate for universal service when it enacted the new broadband grant programs; to the contrary, Congress was quite clear that it saw the USF programs as complementary to the new infrastructure initiatives and specifically admonished the Commission against reading the law as "in any way reduc[ing] the congressional mandate to achieve the universal service goals for broadband."[18] Thus, the Commission cannot simply "put USF on ice" pending how the deployment of networks plays out in certain areas over the next five or so years – there will be reforms needed and important issues to address during this time, and Congress was explicit that it did not intend for the Commission to neglect or punt on them. Indeed, there are many rural areas where new broadband grants will *not* be awarded (or even available) that

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16 Comments of CTIA, WC Docket No. 21-476 (fil. Feb. 17, 2022) at 6-8. *See also* Comments of AT&T Services, Inc. ("AT&T"), WC Docket No. 21-476 (fil. Feb. 17, 2022) at 34 (recommending the Commission "not advance additional fixed broadband deployment programs . . . or extend existing programs beyond their current terms until appropriated federal funding for broadband is fully distributed and evaluated"); Comments of Verizon Communications Inc. ("Verizon"), WC Docket No. 21-476 (fil. Feb. 17, 2022) at 7-8 (urging the Commission to "defer consideration of any new fixed broadband support until the appropriated funds have been fully awarded").

17 USTelecom at 15-16.

18 Infrastructure Act at § 60104(c)(3).

nonetheless need USF support to enable investment in broadband networks and/or to sustain those networks that already exist and ensure the services offered over them are reasonably comparable in price and quality to those offered in urban areas. Reforms aimed at helping carry out in a better way the mission of universal service in these rural areas should not – and by law, cannot – sit awaiting deployments that may take place in other rural areas.

Moreover, even if it is true, as Public Knowledge notes, that the new grants may relieve "some pressure" on the high-cost USF program by reducing need for recovery of capital expenses in some areas,[19] this is a very different proposition indeed from deciding that capital expenses should no longer be recoverable at all through USF anywhere or asserting affirmatively that no changes to high-cost USF programs should be enacted until all construction under the new grant programs is complete.[20] To be sure, what is considered and done next with respect to the high-cost USF programs broadly should factor in the likely effects of grant programs coming online, but to declare a moratorium on USF reforms until all networks are built under new grant programs would ignore the clear admonishment of Congress in the Infrastructure Act and risk abandoning the mission of universal service in contravention of the existing mandate in the Communications

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19 Public Knowledge at 9.

20 In fact, new "pressure" for recovery and support of capital expenses will arise even after new grants are awarded. As JSI aptly observes, "Networks are not static investments. For example, fiber-optic cable can be used for the transmission and distribution portions of the network. These fiber cables are expected to last for over 20 years when they are not disturbed. Yet, the electronics used to send signals through these fiber cables have a much shorter life expectancy due to technological obsolesce. The dynamic nature of communications networks confirms that investment and operations are part of an ongoing process." JSI n. 8. USF support will therefore remain essential to help make the business case for such upgrades of networks and continued reinvestment in them, even if it does not itself provide the upfront capital to do so.

Act.[21] It should also go without saying that facile recommendations like those from Information Technology & Innovation Foundation ("ITIF"), which suggests in a few cursory paragraphs that the Commission can and should "eliminate high-cost programs" once the new grant programs run their course,[22] provide no basis in law, fact, economics, or good public policy to shift course, ignore Congress, and wind down altogether the support of networks and services necessary to fulfill the statutory mandate for universal service. Instead, the Commission should continue the iterative process of seeking to improve its high-cost USF programs when and where appropriate against this broader backdrop, proceeding for example to seek comment on proposals that would enhance these existing programs like that put forward by the ACAM Broadband Coalition.[23]

The record likewise indicates strong support for NTCA's perspectives regarding what "reasonable comparability" should mean moving forward – more specifically, the need to plan ahead in setting expectations for the quality of services that will be delivered over supported networks, rather than aiming for deployment goals and service levels that enable near-term declarations of "mission accomplished" but quickly become "unreasonably incomparable" when measured against the access available in urban areas. Commenters including Public Knowledge,[24]

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[21] *See* Comments of GCI Communication Corp., WC Docket No. 21-476 (fil. Feb. 17, 2022) at 4 ("Because the Act's programs serve different purposes than USF programs, funds made available by the Act should complement—but not replace—USF funding.").

[22] Comments of ITIF, WC Docket No. 21-476 (fil. Feb. 17, 2022) at 3-4.

[23] Comments of the ACAM Broadband Coalition, WC Docket No. 21-476 (fil. Feb. 17, 2022) at 5-6.

[24] Public Knowledge at 11-12 ("Half measures and incremental steps should not be where we settle. It is worth noting that the average download speed in the United States is 143 Mbps. Thus, it would seem that a majority of consumers have subscribed to these higher speeds.").

NRECA,[25] VPS,[26] the Benton Institute for Broadband & Society ("Benton"),[27] TCA,[28] and the California Emerging Technology Fund ("CETF")[29] all urge the Commission to aim higher in setting its goals for the capabilities of supported networks and the services those networks will enable, discarding the approach of the past decade where incremental speed targets for deployment obligations have been rapidly surpassed by the marketplace nationwide.

By contrast, there is scant support for continuing along the current course and setting service level commitments that appear more aimed at accommodating certain providers' limitations than focused on the consumers who are the ultimate intended beneficiaries of the program or a longer-term perspective on the efficient use of funds. For example, Hughes Network Systems, LLC ("Hughes") implores the Commission to "eschew performance or other requirements that would favor certain technologies over others,"[30] citing technological neutrality

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[25] NRECA at 7 ("The 1996 Telecommunications Act calls on the Commission to ensure that comparable communications services are available at comparable rates in rural communities just as they are available to those living in urban and suburban areas.").

[26] VPS at 11 (citations omitted) ("The Commission should 'take account of where USF support is also needed to sustain networks and keep services affordable and at a level that keeps pace with evolving consumer demand.'").

[27] Comments of Benton, WC Docket No. 21-476 (fil. Feb. 17, 2022) at 9 ("[T]he Commission should ensure that the nation never adheres to outdated speed benchmarks.").

[28] TCA at 3 ("Within the very definition of Universal Service we see the requirement for scalability: 'Universal service is an evolving level of telecommunications services that the Commission shall establish periodically under this section, taking into account advances in telecommunications and information technologies and services.'").

[29] Comments of CETF, WC Docket No. 21-476 (fil. Feb. 17, 2022) at 7 ("In summary, the universal service goals must continue to evolve with advancements in technology, to avoid a situation where there is state-of-the-art service for households who can afford it, and second-rate services serving low-income or rural/remote/Tribal households.").

[30] Comments of Hughes, WC Docket No. 21-476 (fil. Feb. 17, 2022) at 7.

as a rationale to establish lower bars that lack any tether to the reasonable comparability required by law and what consumers across the country are enjoying in terms of levels of broadband access. In lieu of perpetuating near-term perspectives on what should be required of recipients of high-cost USF support or constructing requirements based upon little more than a desire to "let all providers play," consistent instead with the overwhelming input reflected in the record, the Commission should adopt forward-looking service performance goals that will efficiently reflect anticipated consumer demands over the lives of the networks supported through USF.

II. THE RECORD REFLECTS SUPPORT FOR PROGRAM COORDINATION TO ENSURE THAT FUNDING MEETS COMMUNITIES' NEEDS WHILE AVOIDING WASTEFUL/DUPLICATIVE SPENDING.

As NTCA set forth in its initial comments, numerous Federal programs, including those under the aegis of the U.S. Department of Agriculture ("USDA") and the National Telecommunications and Information Administration ("NTIA"), contribute to broadband accomplishments in rural America. The Commission has worked assiduously with RUS and NTIA to coordinate actions relating to broadband funding and deployment, and Congress formalized these necessary processes the Broadband Interagency Coordination Act, which requires the Commission, NTIA, and USDA to share information and coordinate their respective programs. These *combined* programs, working in tandem with each other, are critical components in effort to deploy and maintain next-generation broadband networks in the rural spaces. Accordingly, NTCA maintains that the value of each program is increased when their respective resources are leveraged to complement, but not compete, with each other. Rural broadband will advance when qualified providers can appropriately combine the resources from various programs – some providing access to capital and others providing support that enables the business case for investment and recovery of ongoing costs – to advance the availability of robust broadband networks and services. By contrast, rural broadband deployment will suffer when the resources of various programs are dispersed among different providers seeking to serve a single area that would be uneconomic to serve but for the funding available.

These principles are articulated well by numerous commenters in the underlying proceeding. JSI for example commends the bundling of resources to achieve desired deployment, specifying, "[Rural local exchange carriers ("RLECs")] who have elected A-CAM support should also be eligible for BEAD support for locations."[31] Such coordination can be helpful to ensure that providers are able to do more in terms of delivering higher-quality services than any one program may require alone, and it promotes access to capital that might otherwise be unattainable. This is distinguishable as well from dispersing numerous programmatic funds to *different* providers in a single service area, an overbuilding risk that the Wireless Internet Service Provider Association recognizes, urging that it is "essential to ensure that the Commission and other federal and state agencies carefully coordinate broadband funding programs to prevent duplication for broadband funding."[32] This surgical approach, however, will require coordination among the agencies. As VPS explains, "[C]oordination between the NTIA and the FCC will be essential,"[33] and JSI likewise specifies the need for the Commission to "coordinate with NTIA and the states for the distribution of BEAD support for RLECs in RLEC-designated ETC areas."[34]

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31 JSI at 24.

32 Comments of the Wireless Internet Service Providers Association ("WISPA"), WC Docket No. 21-476 (fil. Feb. 17, 2022) at 20.

33 VPS at 10.

34 JSI at 23. Even CETF, which generally opposes the combining of resources, "recommends that the FCC consider whether any NTIA [Broadband Equity, Access, and Deployment ("BEAD"] program grantee that successfully completes construction of a broadband infrastructure project to an unserved be eligible to apply for support under a new High-Cost Fund program (e.g., an FCC

NTCA notes, as well, the recommendation of the Digital Progress Institute ("DPI") that coordination among agencies include not only those that distribute broadband funding but also those with ancillary interests and impacts on broadband deployment, including *inter alia* the Department of Transportation ("DOT"), Indian Health Service, and Appalachian Regional Commission.[35] NTCA cautions, however, that coordination with these agencies is best undertaken in consultative roles, such that, for example, agencies with a focus on particular regions or types of communities could share their perspectives and expertise that would guide broadband deployment strategies in such areas, or that DOT would share its ability to navigate relevant rights-of-way or other issues. This approach aligns with recommendations from Cisco that the Commission should lend its own experience to NTIA.[36]

The goal of such coordination serves several discrete goals which conflate to the overarching aim to ensure that the best broadband network for a community's needs is deployed without wasteful duplication. As such, agencies with subject matter expertise relating to industries or issues relating to broadband would be positioned to share their perspective that could be factored into the overall paradigms of the funding agencies. This coordination enables *and certainly does not preclude* combining funding resources to support singular advancements.

Accordingly, recommendations such as those advanced by Lumen, which would discourage as a blanket matter using federal funds to improve underserved areas,[37] should be set

BEAD Support program) for any operating and maintenance costs that are not covered by the BEAD program funding or other local or other funding for a ten-year period." CETF at 15.

35 Comments of DPI, WC Docket No. 21-476 (fil. Feb. 17, 2022) at 9.

36 Cisco at 9.

37 Lumen at 5.

aside. Likewise, CETF similarly opposes combining funds, [38] while the California Public Utilities Commission ("CPUC") inveighs against "double dipping."[39] These comments, however, overlook the advantages of leveraging multiple programs – provided that such leverage is properly aligned and avoids inefficient duplication. The CPUC's jaundiced view of "double dipping" would be accurate if, in fact, providers were reaping *more* than their outlays by tapping into various programs without doing anything more with such funds or recovering costs already recovered through another program. WISPA for example distinguishes this by stipulating that "where other funds for broadband deployment have already been deployed with enforceable obligations to offer service at a particular speed, the Commission should only use high-cost support to fund upgrades to faster speeds."[40] In these instances, providers are not "double dipping." Rather, they would embark upon a business plan no different than other firms that establish numerous sources of capital investors.

Likewise, there are cases where grants from one program do not cover *all* costs necessary for investment (or certainly provide any support for ongoing operations); in such cases, leveraging complementary programs is appropriate and may be necessary. Moreover, it should be clear that no provider that engages USDA loans and high-cost USF disbursements emerges with unreasonable or unwarranted gains simply in doing so. In the first instance, USF reimbursement is but for a *portion* of the provider's costs – and USDA loans must be repaid. An entity that combines BEAD grant funding with USF support has only the opportunity to access resources to defray the costs of intensive capital investments while using USF to maintain affordable rates for

[38] CETF at 14.

[39] Comments of the CPUC, WC Docket No. 21-476 (fil. Feb. 17, 2022) at 6.

[40] WISPA at 25.

its subscribers and recover costs beyond those addressed by BEAD. NTCA therefore urges the Commission to set aside broad-stroke recommendations against "double-dipping" and instead consider more thoughtfully aligned "rules of the road" that can be followed to ensure that its USF programs work in concert with grant programs that focus exclusively on recovery of certain (but, often, certainly not all) capital expenses.

In comparable vein, NRECA suggests the Commission should favor local governments and cooperatives.[41] Here, too, NTCA commends the Commission to see through such recommendations with a more discerning eye. The foundation of NTCA members' commitment to their communities (and as is the case with other locally operated firms) is their *roots* in the community – that they are operated locally, employ locally, and conduct business with the aim to improve local conditions. These interests of locally operated providers attach regardless of their form of corporate organization, and neither the Commission nor other agencies should accord unfounded and unwarranted differential treatment on those bases.

III. THE RECORD SUPPORTS COORDINATION BETWEEN THE LIFELINE AND AFFORDABLE CONNECTIVITY PROGRAMS, AS WELL AS RETENTION OF THE E-RATE AND RURAL HEALTH PROGRAMS' ROLES IN PRIMARILY FACILITATING ACCESS TO EXISTING SERVICES.

A. Effective Coordination Between the Lifeline and Affordable Connectivity Program Will Enable Low Consumers to Obtain Affordable Access to the Communications Services of Their Choosing.

In initial comments, NTCA urged the Commission to view the Lifeline and Affordable Connectivity Program ("ACP") support mechanisms as partners in ensuring that communications services meet low-income beneficiaries' individual needs in lieu of mandating specific requirements that hinder consumer choice. As NTCA suggested, the most important and

41 NRECA at 16.

immediate step the Commission can take in this regard is to provide flexibility with respect to low-income consumers' use of the Lifeline program subsidy. Like NTCA, a number of parties urge the Commission to enable Lifeline eligible consumers to apply the full $9.25 subsidy to any communications service of their choosing, whether standalone broadband or voice service or a "bundle" of the two. The National Association of State Utility Consumer Advocates ("NASUCA") joins NTCA in stating that the Commission should "improve the Lifeline program, to assure eligible households continue to have more affordable access to vital voice and data or broadband connections of their choosing."[42]

The New York Public Service Commission ("NYPSC") expands upon these points by tying in the ACP, explaining how coordination between the ACP and Lifeline could address the needs of its low-income residents:

> Despite many New Yorkers having access to fixed broadband service, the data indicates that a significant number of Lifeline customers nonetheless still choose to rely on voice-only service. Additionally, should a low-income consumer want a broadband service, they now also have the option to obtain a more appropriate level of broadband support through the Affordable Connectivity Program.[43]

The comments of the NY PSC echo what NTCA has heard from members all across the nation and describing the needs of their rural communities – rural low-income consumers' need and desire for voice service persists while the ACP can fill their need for a broadband subsidy. For some, the additional Lifeline subsidy applied to broadband is needed, but ultimately consumers should have the opportunity to choose the service that fits their needs, which may be voice in some cases.

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[42] Comments of NASUCA, WC Docket No. 21-476 (fil. Feb. 17, 2022) at 7-8.

[43] Comments of the NYPSC, WC Docket No. 21-476 (fil. Feb. 17, 2022) at 2.

In keeping with the theme of consumer choice, NTCA urges the Commission to reject the proposal from NCTA-The Internet and Television Association ("NCTA") to limit Lifeline to support for mobile services.[44] In the rural areas served by NTCA members, mobile service coverage is often spotty, if not nonexistent. For many rural consumers, a wireline voice/broadband connection is their only choice. And, because some mobile wireless plans continue to "throttle" service when a certain level of usage has been achieved,[45] and because in many rural areas the ability to "crib off free public Wi-Fi" is not an option given distances involved, many rural consumers would be left without that option to avoid the dialing back of their speeds. Confining Lifeline support to mobile services only would thus greatly undermine the value and reach of this subsidy, especially in rural areas.

B. The Record Also Supports Focusing the E-Rate and Rural Health Care Mechanisms on Enabling Access to Services, Rather than Promoting the Deployment of Redundant Capacity.

In initial comments, NTCA proposed that the same principle of coordination discussed in Section II, *supra*, apply not only to interagency efforts but also to the Commission's own Schools and Libraries ("E-Rate"), Emergency Connectivity Fund ("ECF"), and Rural Health Care ("RHC") programs. Each of these initiatives plays, and should continue to play, essential roles in enabling critical community anchor institutions to purchase needed services where available, while filling service availability gaps only where providers and/or other programs are not already working to do so. As NTCA has long stressed, in the rural areas its members serve, it is the high-cost USF

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[44] Comments of NCTA, WC Docket No. 21-476 (fil. Feb. 17, 2022) at 11-12.

[45] *See AT&T will let unlimited-data customers pay more to avoid the slow lane*, ars TECHNICA (Jul. 13, 2022) (noting that all three large mobile wireless carriers impose some speed slowdowns at the point of network congestion and after hitting certain data usage thresholds) (available at https://arstechnica.com/tech-policy/2021/07/att-stops-slowing-down-unlimited-data-if-you-buy-the-most-expensive-plan/).

program that is tasked in the first instance with ensuring that users of all kinds *throughout these communities* have sufficient and affordable access to broadband. As a matter of coordination and good governance, the E-Rate, ECF, and RHC programs should seek to leverage these networks and existing service levels where possible. Indeed, the kinds of "guardrails" specified in the creation and implementation of the ECF, for example, can be viewed as a model for program coordination.[46]

Such program coordination aimed at meeting the needs of each discrete category of rural user and community could be upended, however, by a blurring of the lines between these various programs. The proposal made by WISPA is instructive in this regard, as it suggests "filling the homework gap by allowing E-Rate funding to support off-campus use of broadband services for library patrons/students who would *otherwise lack access* to equipment and/or services sufficient to meet their educational needs."[47] To be clear, the E-Rate mechanism should be available as well to fill discrete gaps in service that *anchor institutions* themselves confront where those are not filled by the high-cost USF program or otherwise by service providers. Yet, in the rural areas served by NTCA members, enabling the extension of a school-owned and/or operated network throughout a community where the high-cost USF program is already supporting the availability and affordability of services for users puts at risk the efforts of both programs and represents an

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46 *See Establishing Emergency Connectivity Fund to Close the Homework Gap*, WC Docket No. 21-93, Report and Order, FCC 21-58 (rel. May 11, 2021), ¶ 38 (stating that " providing support for network construction in areas with commercially available options would be inconsistent with the emergency purposes of the Emergency Connectivity Fund and better addressed through other Commission Universal Service Fund Programs or broadband efforts that have established competitive bidding and cost-effectiveness safeguards.")

47 WISPA at 26.

inefficient use of resources that could have gone toward promoting broadband access or more affordable services in areas in much greater need.

IV. THE RECORD IN THIS PROCEEDING SUPPORTS NEAR-TERM COMMISSION ACTION TO INCLUDE FIXED AND MOBILE BROADBAND INTERNET ACCESS REVENUES WITHIN THE USF CONTRIBUTION BASE, EVEN AS CERTAIN SUPPLEMENTAL APPROACHES SHOULD RIGHTLY BE EXPLORED IN THE WAKE OF SUCH REFORM.

A. There is Broad Consensus for the Commission to Act as Soon as Possible to Include Fixed and Mobile Broadband Internet Access Revenues Within the USF Contribution Base.

A broad coalition of stakeholders joins NTCA in urging the Commission to add broadband in some form to the USF contribution base.[48] Whether it be through assessing broadband revenues or some other means, entities representing providers and users alike recognize that expanding the base to include broadband is both within the Commission's existing statutory authority and squarely in the public interest.

A number of parties join NTCA in asserting that assessing broadband revenues represents the optimal approach readily available to shore up the USF contribution base. INCOMPAS perhaps states it best in declaring that this approach is "sound policy for the FCC to implement as it is smart, stable, fast, transparent, and equitable policy."[49] INCOMPAS then devotes substantial effort to explaining precisely why this is the case, noting among other things that USF distributions

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48 *See, e.g.*, Comments of INCOMPAS, WC Docket No. 21-476 (fil. Feb. 17, 2022) at 13-19; Comments of Broadband Connects America, WC Docket No. 21-476 (fil. Feb. 17, 2022) at 4; Comments of the Schools, Health & Libraries Broadband (SHLB) Coalition ("SHLB"), WC Docket No. 21-476 (fil. Feb. 17, 2022) at 4; Comments of the Information Technology Industry Council, WC Docket No. 21-476 (fil. Feb. 17, 2022) at 6-7; RWA at 9-10; CETF at 26-27; TCA at 6-7; Lumen at 7-8; NRECA at 10-12; NASUCA at 9-10; JSI at 29, NYPSC at 3; CPUC at 8; Public Knowledge at 17-19.

49 INCOMPAS at 16.

have already been modernized to further broadband and that, as the USForward Report found, this service which is driving value in the marketplace should contribute.[50] That report also found, as others note as well,[51] that broadband revenues can reasonably be expected to remain stable (unlike the current base) and even experience modest growth. Thus, the Commission would be able to set the USF contribution mechanism on a solid foundation for decades to come.

Beyond offering a stable and modernized approach to collecting contributions in support of various universal service initiatives, adding broadband revenues would be "easy to implement as the Commission could preserve the structure and model of the current system and simply add additional services subject to reporting and contribution, a process the Commission has successfully undertaken many times in the past."[52] Moreover, as INCOMPAS points out, this is "a known system because companies have been contributing based on revenues for more than two decades."[53] Thus, any administrative disruption to contributors would be minimal and could be implemented in a rapid timeframe. Such reform would also inject a much-needed shot of equity into the contribution mechanism; as ACA Connects rightly highlights, "[t]here is a substantial disconnect between those who benefit from our modern communications networks and those that

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50 *Id*. at 16-19.

51 *See, e.g.*, Comments of the Ad Hoc Telecom Users Committee ("Ad Hoc"), WC Docket No. 21-476 (fil. Feb. 17, 2022) at 4 (stating that broadband revenues are expected to remain stable or grow over the coming years, eliminating the current problem of a rapidly decreasing base of assessed revenues and the corresponding rapid increase in the contribution factor).

52 *Id*.

53 INCOMPAS at 17-18.

contribute to USF. That is not fair to those who contribute, and it will not ensure that USF distributions are sustainable."[54]

It should be noted that some in Congress recognize that an "equity gap" exists with respect to the contribution base as well, and are interested in actively encouraging the Commission to examine steps to address it. Specifically, the "Reforming Broadband Connectivity Act of 2021" would direct the Commission to consider whether the existing system is equitable and propose one that is more consistent with that important value.[55] To be clear, congressional approval of assessing broadband revenues is unnecessary, as such reform is already well within the Commission's authority as discussed previously and further below – but the fact that Congress recognizes the inequity of the existing system is telling.

With respect to the Commission's legal authority to enact such reform, the Commission is on firm legal ground to shore up the contribution mechanism by including broadband revenues.[56] While this entire discussion from NTCA's initial comments need not be repeated here, it is worth reiterating that the Commission can exercise its "permissive authority" to assess broadband revenues and do so without reaching the question of whether the service is either an information service and telecommunications service, because both include a transmission component.[57] The

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[54] ACA Connects at 27. *See also* SHLB at 4 ("This existing funding regime results in discriminatory and unfair treatment to different types of consumers, including low-income consumers who still use voice telephone service and pay into the fund when others using similar services do not."); TCA at 7 ("Today, while broadband networks are being deployed and maintained using USF, and broadband customers are receiving benefits from USF, only voice customers are paying into the fund. This mismatch is unfair, and worse, it is unsustainable.").

[55] *Reforming Broadband Connectivity Act*, S. 3236, 110th Cong. (2021).

[56] *See* NTCA at 51-61. *See also* USTelecom at 10; NRECA at 12.

[57] NTCA at 51-61.

Commission has already taken a similar approach with respect to including interconnected VoIP as part of the USF contribution base, and that approach has been upheld by the D.C. Circuit.[58]

One common and critical theme emerges in the record's support for adding broadband revenues to the contribution base – stakeholders of all kinds agree that the current mechanism is unstable and deteriorating. As the USForward paper found, "the revenues used to calculate contributions [fell] from $79.9 billion in 2001 to $29.6 billion in 2021 - a 63% decrease."[59] This trend shows no sign of abating, there is certainly no mystery why this is the case and some of the reasons should trouble the Commission and spur it to move forward – as NTCA noted in initial comments:

> the uneven and discriminatory nature of the current contribution obligations are troubling too from a public policy perspective. Some services that do not contribute (such as "one-way VoIP" services or broadband Internet access services, for example) are in some respects functionally equivalent to, and adopted as substitutes by users for, others that do (like other voice and data transmission services). In addition to being unbalanced in terms of burden, this fosters confusion in compliance and even promotes gaming, as parties "self-classify" services in certain ways that they believe colorable but ultimately work to the detriment of the essential USF programs by reducing contributions.[60]

Of course, the Commission could (and indeed *should*) assess "one-way" VoIP and any other services that are functionally equivalent to those that are assessed. But the most glaring inequity can only be cured by one fix that the record supports – adding broadband revenues to the base. Of

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58 *Universal Service Contribution Methodology*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006) ("VoIP Order"), *aff'd, Vonage Holdings Corp. v. FCC*, 489 F.3d 1232 (D.C. Cir. 2007).

59 *USForward, FCC Must Reform USF Contributions Now: An Analysis of the Options*, Mattey Consulting, Inc. (Sept. 2021) ("USForward Paper") (available at: https://www.ntca.org/sites/default/files/documents/202109/FINAL%20USForward%20Report%202021%20for%20Release.pdf).

60 NTCA at 43.

course, no solution is perfect – there may be other solutions that could further buttress the stability and equity of the contribution mechanism over the longer-term. But the perfect should not be the enemy of the better, and awaiting review of other options or (worse still) congressional expansion of authority to do something more before doing something that is already within the Commission's authority is ill-advised and puts the Commission's essential USF programs at increased risk.

NTCA recognizes (and has long heard) the arguments from some corners that including broadband revenues in the contribution base could have an effect on broadband adoption and retention. Such observations have been (and continue to be) raised, however, without serious attempt to quantify the likelihood of such impacts on users. For example, while Free Press contends that assessing broadband revenues would harm residential consumers,[61] it neither addresses in detail the literature published on this topic nor does it account for how reforms could be structured to specifically head off any concerns about impacts on consumers most in need. More specifically, as NTCA and others have recommended repeatedly, the Commission could ensure that consumers receiving benefits through programs such as Lifeline or ACP – those identified as most in need of help to subscribe to broadband – will be exempted from contribution obligations. Thus, when Free Press emphasizes the "disproportionate harm on low-income households already harmed by the home internet digital divide"[62] that would arise from such reform, it is doing nothing more than setting up a strawman that may be convenient to its arguments but is not in fact part of the proposals made by those recommending such reform. The Singer/Tatos comments set up the same strawman when comparing the proposal to add broadband revenues to

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61 Comments of Free Press, WC Docket No. 21-476 (fil. Feb. 17, 2022) at 31.

62 *Id*. at 35.

a general tax on research and development and pointing to "nearly ten million broadband customers dropping out of the broadband market."[63] They fail in particular, as does Free Press, to acknowledge that the low-income consumers about which they presumably express concern can be exempted. Indeed, it is telling that, even as Free Press and Singer/Tatos assert the purported concerns of the most vulnerable consumers, some of the most notable long-standing representatives of consumer interests *support* expansion of the USF contribution base to include broadband.[64]

B. Proposals for Contribution Obligations for Entities That Benefit from the Presence of Broadband Networks Rest on a Sound Public Policy Foundation – These Should be Fully and Promptly Explored as Supplements to Assessing Broadband Revenues Now.

The record contains a number of interesting and potentially promising proposals[65] to broaden the base by ensuring that all of those that benefit from broadband availability and adoption in offering Internet-based services contribute to the mission of universal service. As commenters promoting such ideas correctly note, adoption of such measures could promote greater equity by ensuring that all such entities help to recover the costs of the underlying networks that enable such services. NTCA has long supported Commission and congressional consideration of measures of this kind, and would encourage the Commission to work with Congress to examine this further and identify what additional authority is needed to act – but NTCA cautions against deferring

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[63] *Ex parte* letter, Hal Singer and Ted Tatos, WC Docket No. 21-476 (fil. Mar. 11, 2022) at 2.

[64] *See* NASUCA at 10; Public Knowledge at 17-18.

[65] *See, e.g.*, Comments of Chickasaw Telephone Company, REV Broadband, Rural Telephone Service Co., Inc. (d/b/a Nex-Tech), Smithville Communications, Silver Star Communications, and Totah Communications (collectively, the "Rural Broadband Providers"), WC Docket No. 21-476 (fil. Feb. 17, 2022) at 1-16; Comments of Roslyn Layton, PhD, *et al.*, WC Docket No. 21-476 (fil. Feb. 17, 2022) at 1-2; RWA at 10; ACA Connects at 27; DPI at 8.

reforms that can be adopted pending consideration of such supplemental ways to broaden the base even further.

As an initial matter, while a number of parties point to "Big Tech" as entities that should contribute to the USF (a position also supported by NTCA), these parties largely recognize the need for Congress to authorize such an approach or at least clarify whether such action can be taken by the Commission under existing law.[66] Moreover, even after congressional authority is clarified or granted, at least two critical steps will be necessary to implement such an approach. First, "the Commission must undertake further analysis of the scope of the demands placed upon such networks by these Internet-based businesses."[67] Second, "the Commission must develop a means of contribution that ensures these entities indeed bear their 'fair share' (*e.g.*, Commissioner Carr has suggested looking possibly to digital advertising revenues)."[68] For these reasons, NTCA urges the Commission to follow the advice of Ad Hoc, which rightly recommends that:

> The Commission need not and should not wait for consideration of alternative methodologies that are outside its jurisdiction and expertise and that *will inevitably require much time to convert into actual legislation, especially when the Commission can act now to ameliorate significant problems with the current methodology and the economic distortion it causes*. Nothing prevents the Commission from modifying or replacing a much improved revenues based system that assesses BIAS if a completely different methodology or methodologies are later adopted by Congress or even reconsidered by the Commission.[69]

66 *See* Verizon at 14-15 (stating that the Commission "should recommend that Congress make clear that the Commission has the authority to expand the universal service contributor base to include the most significant enterprises operating within the broader internet economy and to determine how to allocate the universal service burden equitably among existing and newly-added contributors").

67 NTCA at 63.

68 *Id*.

69 Ad Hoc at 9 (emphasis added).

In other words, while it makes good sense as a matter of public policy and economics to broaden the base to capture as many users and beneficiaries of networks and services as possible – and NTCA is in full support of doing so – the Commission should not defer reasonable and effective steps that can be taken now to make the USF contribution mechanism more stable and equitable even as such other measures are further considered and hopefully implemented in the end.

C. Relying Upon Congressional Appropriations to Fund the Commission's Critical Universal Service Initiatives Would Undermine the Predictability of the USF, Particularly for the High-Cost Program that Relies Upon the Premise of Cost Recovery Over Time.

NTCA urges the Commission to reject proposals to recommend to Congress an "appropriations-funded" USF.[70] Doing so would undermine the predictability that is an important part of serving rural areas and could "lock in" the quality of services made available, to the detriment of consumers that should have access to networks that evolve along with their needs.

As the Commission well knows, Section 254 of the Communications Act, as amended, specifies the need for "sufficient, predictable, and specific" funding of various universal service initiatives. As it relates to the high-cost USF program, predictability and regulatory certainty are essential both to justify investments in network assets in deeply rural areas where returns are measured in decades rather than years and then to recover the costs of operating, maintaining, and upgrading those networks and delivering high-quality services at affordable rates over time. Indeed, the Commission has in the past recognized the importance of avoiding measures or features within its USF programs that undermine predictability.[71]

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70 AT&T at 12-15; Verizon at 14.

71 *See, e.g., Connect America Fund*, WC Docket No. 10-90, et al, Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration and Further Notice of Proposed Rulemaking, FCC 14-54 (rel. Jun. 10, 2014), ¶ 132 (stating that

With this as backdrop, the Commission should decline invitations to pursue funding alternatives for USF that would inject even greater uncertainty and unpredictability into the mechanisms – and there is no better example perhaps of such a proposal than to rely upon the vagaries of annual congressional appropriations for funding of USF. As a threshold matter, providers attempting to finance networks built over several years and then develop business plans for the repayment of loans and recovery of ongoing costs in deeply rural areas would likely find it difficult if not impossible to access capital or justify their own business plans in the absence of a relatively predictable level of support over the period of time when all of those costs will be incurred. Moreover, a one-time appropriation of funds similar to the BEAD program – proposed by some as a possible base of funding for the USF[72] – would be highly problematic. Such funding would risk "locking in" the quality and capability of networks funded at that time – especially if the networks are built at speeds that do not even match what is available in urban areas now. In turn, future budgeting priorities of Congress that do not include these initiatives could limit the ability of support recipients to keep up with user demand over time, or even to fund continuing operational expenditures and maintenance.

Indeed, it is clear that some view the BEAD program as a model with respect to obviating the need to address the contribution factor, but it is equally clear that Congress itself did not see it that way and instead sought to have the Commission take a more thoughtful long-term view of what is needed not only to achieve universal *connectivity* in the first instance but also universal *service* over the long term. Specifically, Section 60102(l) of the Infrastructure Act states that new

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"the rule unintentionally has encouraged carriers that were not subject to the benchmarks to believe that they too needed to limit their investment in broadband-capable networks").

72 AT&T at 12-15; CTIA at 13-14.

grant funds awarded to states "shall be used to supplement, and not supplant" other funding mechanisms.[73] Section 60104 further indicates that the report prepared through this proceeding shall not "in any way reduce the congressional mandate for universal service" and encourages the Commission to consider "recommendations to expand the universal service goals for broadband" where in the public interest.[74] These provisions taken together indicate Congress' recognition of the continuing critical role that the USF will play even as the BEAD program fills discrete availability gaps – and the failure to address for the long term the contribution mechanism that underpins that program runs counter to this acknowledgement.

Finally, AT&T points to the appropriations-based Emergency Connectivity Fund ("ECF") and Covid relief funding as proof that "[t]he lesson is clear: direct appropriations work." As an initial matter, it is beyond premature to say the least to claim that an "emergency" program implemented only a month or two ago "works" in achieving and sustaining universal service; only time will tell if the ECF is capable of still delivering on the mission of universal service in two, three, or ten years. Moreover, AT&T in fact helpfully makes the case for appropriations as *a supplement to and not a substitute for* a stable contribution mechanism as the foundation for USF. Indeed, in pointing to the ECF and a continuing need to support virtual learning, AT&T tellingly observes that "[t]he *ongoing* need for such appropriations is also clear" and that "meeting those needs requires a *reliable* stream of funding."[75] It is difficult to envision the annual congressional appropriations process as a reliable stream of ongoing funding; put another way, there was a reason in 1996 that Congress chose *not* to fund universal service through appropriations and instead

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73 Infrastructure Act § 60102(l).

74 *Id*. at § 60104(c)(3).

75 AT&T at 14 (emphasis added).

decided upon a user-based fee that would not reside within unpredictable budget and appropriations processes. Meeting the mission of universal service requires a stable funding mechanism, and appropriations provide no such platform.

V. CONCLUSION

For the reasons set forth herein, the Commission should reorient the USF toward its statutory mission of getting and keeping Americans connected and take the measures necessary to shore up the contribution base now and into the future.

Respectfully submitted,

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March 17, 2022