



**The Free State Foundation
P. O. Box 60680
Potomac, MD 20854**

September 15, 2025

Senator Deb Fischer, Chair
Senator Ben Ray Luján, Ranking Member
Telecommunications and Media Subcommittee
United States Senate
Washington, DC

**RE: Public Comments of the Free State Foundation in Response to the
Universal Service Fund Working Group's Request for Comment**

Senators Fischer and Luján and Members of the Universal Service Fund Working Group:

As Free State Foundation scholars,¹ we welcome both the news that you have reorganized the Universal Service Fund (USF or Fund) working group and the opportunity you have afforded interested members of the public to provide input regarding your much-needed effort "to explore the current state of the Fund, and assess proposals for the Fund's modernization."²

In the substantive discussion below, we elaborate on the following key points:

- Given that the huge \$42.45 billion BEAD Program and 130+ other overlapping federal subsidy programs are more than capable of connecting every remaining unserved location in the United States, at least for a substantial period, there is no need for Congress to allocate additional subsidies for the construction of

¹ These comments express the views of Randolph J. May, President of the Free State Foundation, and Andrew Long, Senior Fellow. The views expressed do not necessarily represent the views of others associated with the Free State Foundation.

² *Universal Service Fund (USF) Working Group – Request for Comment* (August 1, 2025), available at <https://www.fischer.senate.gov/public/index.cfm/usf>.

broadband infrastructure as it considers meaningfully reforming the subsidy program.

- Going forward, the Fund mostly should focus on affordability for low-income households and replace the inefficient and fraud-prone Lifeline program with a voucher-based approach modeled on the Affordable Connectivity Program and open to all providers, not just those designated as Eligible Telecommunications Carriers.
- The Fund's current contribution system – an ever-rising regressive tax on shrinking landline revenues – is unsustainable and inequitable, as it disproportionately burdens older Americans who are more likely to subscribe to legacy voice service.
- Congress should migrate to multi-year appropriations for whatever remaining subsidies are deemed necessary because this would foster greater efficiency, transparency, and accountability and help prevent waste, fraud, and abuse.
- If Congress instead chooses to continue to rely, in whole or in part, on surcharges, Congress should consider broadening the contribution base to include the large online platforms that benefit directly and substantially from subsidized broadband access.

* * *

The Free State Foundation (FSF) is a free market-oriented think tank that focuses heavily on communications and Internet law and policy as well as administrative law, constitutional law, and sound governance. Since its founding in 2006, the Free State Foundation has studied the universal service system and frequently published papers recommending meaningful reforms to the system.³ The substantive comments and

³ See, e.g., Seth L. Cooper, "Court Ruling on USF's Unconstitutionality Should Spur Reform in Congress," *Perspectives from FSF Scholars*, Vol. 19, No. 28 (August 9, 2024), available at <https://freestatefoundation.org/wp-content/uploads/2024/08/Court-Ruling-on-USFs-Unconstitutionality-Should-Spur-Reform-in-Congress-080924.pdf>; Seth L. Cooper, "Fifth Circuit Rules USF Contribution Scheme Violates Legislative Vesting Clause," *Perspectives from FSF Scholars*, Vol. 19, No. 26 (August 5, 2024), available at <https://freestatefoundation.org/wp-content/uploads/2024/09/Fifth-Circuit-Rules-USF-Contribution-Scheme-Violates-Legislative-Vesting-Clause-080524.pdf>; Randolph J. May, "The FCC's USF Report: Unprecedented Broadband Funding Requires Fundamental Universal Service Reforms," *Perspectives from FSF Scholars*, Vol. 17, No. 42 (August 26, 2022), available at <https://freestatefoundation.org/wp-content/uploads/2022/08/The-FCCs-USF-Report---Unprecedented-Broadband-Funding-Requires-Fundamental-Universal-Service-Reforms-082622.pdf>; Seth L. Cooper, "Congress Should Consider Expanding Universal Service Contributions: FCC Poses a Potential Answer to USF's Financial Problems," *Perspectives from FSF Scholars*, Vol. 17, No. 41 (August 23, 2022), available at <https://freestatefoundation.org/wp-content/uploads/2022/08/Congress-Should-Consider-Expanding-Universal-Service-Contributions-082322.pdf>; Reply Comments of the Free State Foundation, *Report on the Future of the Universal Service Fund*, WC Docket No. 21-476 (filed March 17, 2022), available at <https://freestatefoundation.org/wp-content/uploads/2022/03/FSF-Reply-Comments-Report-on-the-Future-of-the-Universal-Service-Fund-031722.pdf>; Comments of the Free State Foundation, *Report on the Future of the Universal Service Fund*, WC Docket No. 21-476 (filed February 17, 2022), available at <https://freestatefoundation.org/wp-content/uploads/2022/02/FSF-Comments-Report-on-the-Future-of-the-Universal-Service-Fund-021722.pdf>; Randolph J. May, "Put Universal Service Reform Near Top of FCC's

citations contained herein to relevant Free State Foundation scholarly papers reflect our depth of experience and widely acknowledged expertise on law and policy issues surrounding universal service. In particular, we direct your attention to our August 2023 response to a previous USF Working Group request for comments as a recent statement of our views.⁴

* * *

Despite judicial challenges, radical technological change, a deteriorating financial foundation, and the overlay of too-numerous-to-count redundant federal subsidy programs, the USF somehow continues to lumber on nearly 30 years after its creation. But certainly not lumbering on as a model of an efficient, effective, transparent, and accountable government program.

Therefore, in our prior submission referenced above, FSF argued that "Congress should fundamentally reform the universal service regime into a broadband-centric system that is sustainable, efficient, effective, and accountable – not tinker around the edges of the existing system."⁵ In the intervening 2+ years, we have reaffirmed that position with intensifying urgency, quarter after quarter, as the contribution factor – which really functions as a tax – has marched ever higher.⁶

Agenda," *Perspectives from FSF Scholars*, Vol. 2, No. 28 (November 30, 2007), available at https://freestatefoundation.org/wp-content/uploads/2019/08/USF_Reform_Should_Top_Agenda-113007.pdf.

⁴ See generally Comments of the Free State Foundation, *Universal Service Fund Working Group Request for Comment* (submitted August 25, 2023), available at <https://freestatefoundation.org/wp-content/uploads/2023/08/FSF-Public-Comments-to-USF-WG-Final.082523.pdf> (FSF 2023 USF WG Comments).

⁵ *Id.* at 1-2.

⁶ See, e.g., "PRESS RELEASE: The USF Fund May Be Constitutional, But It's on Shaky Ground," *FSF Blog* (June 27, 2025), available at <https://freestatefoundation.blogspot.com/2025/06/press-release-usf-fund-may-be.html> ("Congress needs to get serious about engaging in a top-to-bottom examination of the program to determine its size and scope going forward, how it should be funded, or whether it should even exist."); Seth L. Cooper, "USF Tax Rises to Record High 36.6%," *FSF Blog* (March 14, 2025), available at <https://freestatefoundation.blogspot.com/2025/03/usf-tax-rises-to-record-high-366.html>; Seth L. Cooper, "USF Tax Hike – Now Up to 36.3%," *FSF Blog* (December 14, 2024), available at <https://freestatefoundation.blogspot.com/2024/12/usf-tax-hike-now-up-to-363.html>; Seth L. Cooper, "Court Ruling on USF's Unconstitutionality Should Spur Reform in Congress," *Perspectives from FSF Scholars*, Vol. 19, No. 28 (August 9, 2024), available at <https://freestatefoundation.org/wp-content/uploads/2024/08/Court-Ruling-on-USFs-Unconstitutionality-Should-Spur-Reform-in-Congress-080924.pdf>, at 3 (supporting "efforts by Congress to modernize the USF system into a broadband-centric program that is financially stable, more efficient in its expenditures, and constitutionally sound in its structure"); Randolph J. May, "The Telephone Tax Rises Again – Now 34%," *FSF Blog* (June 14, 2024), available at <https://freestatefoundation.blogspot.com/2024/06/the-telephone-tax-rises-again-now-34.html> ("I've been arguing for reform of the universal service system put in place by the FCC after the Telecommunications Act of 1996 for two decades.... This latest increase in the tax imposed on traditional voice telephone calls should be a further impetus – as if a further impetus should be needed! – to get on with the important task of meaningfully reforming the existing universal service regime."); Seth L. Cooper, "Senate Bill Would Require USF Contributions From Major Edge Providers and ISPs," *FSF Blog* (November 20, 2023), available at <https://freestatefoundation.blogspot.com/2023/11/senate-bill-would-require-usf.html> ("The sponsors of the Lowering Broadband Costs for Consumers Act should be saluted for

In August 2025, however, certain facts on the ground compel Congress, more so now than ever before, to consider urgent action:

- The Supreme Court's recent decision in *FCC v. Consumers' Research* upholding the Fund's constitutionality – and extinguishing hope for a judicial escape hatch;⁷
- The at-long-last-imminent distribution of subsidies from the Broadband Equity, Access, and Deployment (BEAD) Program's \$42.45 billion coffer – a sum apparently at least \$13 billion greater than is necessary to close remaining digital divides,⁸ to say nothing of the more than 130 additional federal grant programs threatening duplicate grants, the overbuilding of privately funded infrastructure; and waste, fraud, and abuse;⁹ and

introducing legislation that would tackle the serious problem of the USF contribution scheme's fiscal unsustainability.").

⁷ See generally *FCC v. Consumers' Research*, 145 S. Ct. 2482 (June 27, 2025), available at https://www.supremecourt.gov/opinions/24pdf/24-354_0861.pdf; see also "PRESS RELEASE: The USF Fund May Be Constitutional, But It's on Shaky Ground," *FSF Blog* (June 27, 2025), available at <https://freestatefoundation.blogspot.com/2025/06/press-release-usf-fund-may-be.html>.

⁸ See NTIA Press Release, "'Benefit of the Bargain' Reforms Turbocharge Speed and Savings" (September 5, 2025), available at <https://www.ntia.gov/press-release/2025/benefit-bargain-reforms-turbocharge-speed-and-savings> ("After years of delay, the Trump Administration has made monumental progress in moving the BEAD program forward," said Assistant Secretary for Communications and Information and NTIA Administrator Arielle Roth.... In the plans submitted today, states are already projecting savings of at least \$13 billion for American taxpayers....").

⁹ See, e.g., Andrew Long, "The Failure's in the Footnote: Agencies Must Improve Broadband Expenditure Coordination Efforts," *Perspectives from FSF Scholars*, Vol. 20, No. 4. (January 22, 2025), available at <https://freestatefoundation.org/wp-content/uploads/2025/01/The-Failures-in-the-Footernote---Agencies-Must-Improve-Broadband-Expenditure-Coordination-Efforts-012225.pdf>, at 5 ("Perhaps Citizens Against Government Waste's Deborah Collier was on to something when she titled a recent blog post on interagency coordination '133 Broadband Programs May Be 132 More Than Necessary.'") (citation omitted); Andrew Long, "Broadband: Billions at Risk of Wasteful Duplication," *Perspectives from FSF Scholars*, Vol. 18, No. 29 (July 13, 2023), available at <https://freestatefoundation.org/wp-content/uploads/2023/07/Broadband-Billions-at-Risk-of-Wasteful-Duplication-071323.pdf>, at 2 ("What we currently have, instead, is a recipe for fiscal disaster. Specifically, a May 2022 report prepared by the Government Accountability Office identified upwards of 133 different programs managed by 15 different agencies — truly a 'patchwork of programs [that] could lead to wasteful duplication of funding and effort.'") (citation omitted); Andrew Long, "Wasteful Duplication by Design: A Case Study on Overlapping Federal Broadband Subsidies," *Perspectives from FSF Scholars*, Vol. 18, No. 19 (May 8, 2023), available at <https://freestatefoundation.org/wp-content/uploads/2023/05/Wasteful-Duplication-by-Design-A-Case-Study-on-Overlapping-Federal-Broadband-Subsidies-050823.pdf>, at 2 ("Given the sizeable dollar totals (hundreds of billions), number of programs (130 and counting), and agencies (15 or more) involved, there are valid reasons to worry that scattershot federal efforts to subsidize the expansion of broadband infrastructure will lead to overlapping grants, not to mention waste, fraud, and abuse. "); Andrew Long, "Absent Oversight, the Broadband Funding Faucet Likely Will Overflow," *Perspectives from FSF Scholars*, Vol. 17, No. 58 (November 10, 2022), available at <https://freestatefoundation.org/wp-content/uploads/2022/11/Absent-Oversight-the-Broadband-Funding-Faucet-Likely-Will-Overflow111022.pdf>, at 1 ("[I]n the absence of adequate oversight and coordination by the Biden Administration and Congress of the many federal programs charged with doling out these massive subsidies, there is a substantial risk that the money will continue to flow – and the potential for waste, fraud, and abuse, along with duplicative 'overbuilding' on top of existing broadband networks, will continue to grow.").

- Reports that the contribution factor – again, read tax – for the fourth quarter of this year will reach 39.3 percent¹⁰ – yet another record high, an increase of nearly ten percent from the current quarter's 36 percent, and a level that surely will be surpassed as the demand for landline phone service will only decrease in the future. That, of course, is in part thanks to the unreasonable burden imposed by this regressive tax that disproportionately impacts older Americans: according to the National Center for Health Statistics, adults age 65 and up are 31 percent more likely than those between 25 and 29 to subscribe to landline phone service.¹¹

Accordingly, the Free State Foundation in these comments takes a big-picture approach to reforming the Fund by asking three foundational questions regarding its current purpose. One, who are its intended beneficiaries? Two, how can their needs best be achieved? And three, how should those efforts be funded?

Who Should the USF Benefit?

In recent memory – that is to say, in its post-universal-voice-service era – the Fund broadly speaking has targeted two distinct, but in some instances overlapping, groups of consumers: (1) those who live in areas where, largely due to daunting economics, privately funded broadband providers have not yet built out their networks; and (2) those who cannot afford to subscribe. The FCC's High Cost program, the \$20.4 billion Rural Digital Opportunity Fund (RDOF), and other initiatives have relied upon the Fund to subsidize the construction of broadband infrastructure in unserved areas. The Lifeline program addresses affordability for the benefit of low-income consumers.

As FSF pointed out in its recent comments in the FCC's Section 706 inquiry regarding the availability of broadband service to all Americans, however, the National Broadband Map indicates that, "in just the last six months of 2024, roughly one in seven locations still unserved – 'nearly a million' – gained access to broadband."¹² In addition, the FCC reports that there are only approximately 5.8 million locations still on the wrong side of digital divides.¹³ What's more, and as noted above, the BEAD Program, a once-in-a-lifetime undertaking to connect every unserved location, apparently has billions of dollars more than it needs for the job.

¹⁰ See Cameron Marx, "USF Contribution Factor Expected to Hit Record 39.3 Percent," *Broadband Breakfast* (August 11, 2025), available at <https://broadbandbreakfast.com/usf-contribution-factor-expected-to-hit-record-39-3-percent/>.

¹¹ See Stephen J. Blumberg, Ph.D., and Julian V. Luke, "Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July-December 2024," Division of Health Interview Statistics, National Center for Health Statistics, available at https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless202506.pdf?utm_source=chatgpt.com, at 2.

¹² Comments of the Free State Foundation, *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 25-223 (filed September 8, 2025), available at <https://freestatefoundation.org/wp-content/uploads/2025/09/Section-706-Inquiry-Initial-Comments.090825.pdf>, at 2-3 (citation omitted).

¹³ See Jean Kiddoo, "Broadband Data Collection Shows Access to High-Speed Internet Services is Expanding!," *FCC Blog* (May 20, 2025), available at <https://www.fcc.gov/newsevents/blog/2025/05/20/broadband-data-collection-shows-access-high-speed-internet-services>.

Accordingly, there appears to be no need going forward, at least for a substantial period of time, to allocate additional Fund money to the construction of broadband infrastructure. As FSF argued in its previous submission to the USF Working Group, "Congress should direct the FCC to plan now on transitioning to an 'end-state' for universal service that, at least for the most part, sunsets the High Cost program and other legacy programs."¹⁴ Whether that "end-state" includes ongoing operational support for rural networks post construction, as some have argued is essential,¹⁵ is an open issue. But even if Congress elects to provide that assistance, the financial burden going forward still presumably would be relatively small as compared to the roughly \$8 billion currently spent annually.

That leaves the latter group of consumers: those who cannot afford broadband service. Having identified the "who," below we turn to the "how."

How Can the Needs of Fund Beneficiaries Best Be Met?

The question as to how to address broadband affordability prompts a discussion of the Lifeline program – which, in turn, brings us to the Affordable Connectivity Program (ACP), a voucher-based program that ran out of funding in June 2024.¹⁶ As FSF President and co-author of these comments Randolph May wrote in an October 2022 *Perspectives from FSF Scholars*:

[T]he ACP represents a superior solution to, say, the FCC's Lifeline program.... [T]he ACP is funded through a direct appropriation rather than the almost certainly unsustainable Universal Service Fund (USF), which taxes a steadily dwindling base of "telecommunications services." It is open to a broader range of providers, not just those designated as an Eligible Telecommunications Carrier. And it is designed to enable the beneficiaries, through the exercise of their preferred choices as consumers, to participate in the marketplace for broadband services.¹⁷

¹⁴ *FSF 2023 USF WG Comments* at 5.

¹⁵ See, e.g., Jake Neenan, "Rural Carriers: Operating Expense Support From Universal Service Necessary," *Broadband Breakfast* (September 5, 2025), available at <https://broadbandbreakfast.com/rural-carriers-operating-expense-support-from-universal-service-necessary/> ("As the wireless industry has matured and roaming revenue has decreased as part of the business plan to serve rural areas, support for operational expenses through USF is critically needed," the Competitive Carriers Association wrote in a Wednesday letter to the House Committee on Small Business.").

¹⁶ See FCC Press Release, "FCC Brings Affordable Connectivity Program to a Close" (May 31, 2024), available at <https://docs.fcc.gov/public/attachments/DOC-402930A1.pdf>.

¹⁷ Randolph J. May, "Congress Should Extend and Revise the Affordable Connectivity Program," *Perspectives from FSF Scholars*, Vol. 17, No. 53 (October 25, 2022), available at <https://freestatefoundation.org/wp-content/uploads/2022/10/Congress-Should-Extend-and-Revise-the-Affordable-Connectivity-Program-102522.pdf>, at 2.

Should Congress revive the ACP, Mr. May identified several ways to improve it, including by lowering the income-based eligibility threshold to "further target those persons truly most in need."¹⁸

Mr. May's mention of a direct congressional appropriation brings us to our third and final question, below.

From Where Should the Fund Receive Money?

Starting from a blank slate in 2025, no one would suggest that the optimal way to pay for a 21st century broadband affordability program is by imposing a relentlessly rising regressive tax on those primarily older consumers who still rely on a 20th century technology (really 19th century in certain respects): landline phone service. And yet, here we are. As noted above, it is expected that the contribution factor for the fourth quarter will near 40 percent, a level that unquestionably is unsustainable, inequitable, and increasing in a way that is self-perpetuating.

A better approach: multi-year congressional direct appropriations. As FSF argued in its 2023 comments:

Periodic multi-year appropriations would provide a window for planning deployment projects, and appropriations would provide transparency and restore political accountability to the universal service regime regarding important decisions such as uses and amounts of spending. Congressional appropriations also would mean the elimination or significant reductions in surcharges and thereby provide needed relief to voice consumers.¹⁹

Multi-year appropriations, based on careful, realistic assessments of future needs, covering, say, three or four years, would allow for longer-term planning so that the subsidy program can operate efficiently, effectively, and without waste, fraud, or abuse.

However, should Congress ultimately choose instead to continue to rely, in whole or in part, on surcharges, then it should expand the base to which those surcharges apply to include a broader universe of service providers that rely upon the communications networks that are being subsidized, including the large online platforms that benefit most directly from broadband connectivity: Alphabet/Google, Amazon, Apple, Meta/Facebook, Netflix, and so on.

Then-FCC Commissioner, now-Chairman Brendan Carr made a similar point in a May 2021 op-ed that appeared in *Newsweek*: "It is time to fundamentally rethink how we fund

¹⁸ Randolph J. May, "The Affordable Connectivity Program: Time Is of the Essence for Congress to Act," *Perspectives from FSF Scholars*, Vol. 18, No. 1 (March 6, 2023), available at <https://freestatefoundation.org/wp-content/uploads/2023/03/The-Affordable-Connectivity-Program—Time-Is-of-the-Essence-for-Congress-to-Act-030623.pdf>, at 2.

¹⁹ *FSF 2023 USF WG Comments* at 7.

our high-speed networks.... We should start requiring Big Tech to pay its fair share."²⁰ Strand Consult's Roslyn Layton advocated for an approach along the same lines in a recent opinion piece in *The Washington Post*: "Financial reporting from Alphabet, Meta and Amazon suggests they are on track to reach approximately \$500 billion in online ad revenue this year. Just 1 percent of this revenue can secure the fund in perpetuity and end the financial burden on consumers."²¹

As Ms. Layton notes, the Lowering Broadband Costs for Consumers Act, reintroduced by a bipartisan group of Senators in May of this year, would require that certain edge providers (specifically, "those with more than 3% of the estimated quantity of broadband data transmitted in the United States and more than \$5 billion in annual revenue") and broadband providers contribute to the Fund.²²

But, to restate, our preference remains multi-year appropriations that provide whatever subsidies Congress determines are needed to support carefully considered and well-defined objectives.

* * *

We commend your decisions to reorganize the USF Working Group and solicit comments from interested members of the public, both of which represent timely and critical steps toward a meaningfully reformed Fund that meets the broadband needs of American consumers in 2025 – not those of voice users from a bygone era. Rather than starting from the Frankenstein's monster that the Fund has become and working around the edges, we urge you to return to square one, redefine the problems to be solved, and pursue the optimal solutions to those problems.

We hope that the discussion above assists you in that effort. Please let us know if ever there is more that FSF can do.

Sincerely,

Randolph J. May
President

Andrew Long
Senior Fellow

Free State Foundation

²⁰ Brendan Carr, "Ending Big Tech's Free Ride," *Newsweek* (May 24, 2021), available at <https://www.newsweek.com/ending-big-techs-free-ride-opinion-1593696>.

²¹ Roslyn Layton, "The big problem with this aging \$8 billion fund," *The Washington Post* (August 18, 2025), available at <https://www.washingtonpost.com/opinions/2025/08/18/fcc-big-tech-broadband-rural>.

²² See Senator Mark Kelly Press Release, "Kelly, Mullin, Crapo, Cramer Introduce Bill to Expand High-Speed Internet Across the U.S." (May 8, 2025), available at <https://www.kelly.senate.gov/newsroom/press-releases/kelly-mullin-crapo-cramer-introduce-bill-to-expand-high-speed-internet-across-the-u-s/>.

P.O. Box 60680
Potomac, MD 20854

September 15, 2025