

August 25, 2023

American Civil Liberties Union Comments in Response to the Universal Service Fund Bipartisan Working Group Request for Comment

A. The Inability to Connect to Broadband and Other Communications Services Creates an Inequitable Society



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The American Civil Liberties Union writes today about the Universal Service Fund because of its critical importance for systemic equality. Home broadband is necessary for everyone in the United States to access their full potential. It offers the tools needed to work, learn, access healthcare, and access government benefits. Likewise, mobile service is an essential safety net for Americans that enables them to connect on the go. They can use it to keep up with loved ones, schedule appointments, and call 911 during an emergency. Home broadband and mobile service are not always substitutes for one another. Without the ability to make calls and texts and access data while out of the house – just like without the ability to connect to broadband at home, marginalized individuals would be left behind.

Unfortunately, both services have been out of reach of the most marginalized communities for too long. According to the Pew Research Center, just 71% of African-American households, and 65% of Latinx households subscribe to the internet.¹ Additionally, 18% of people on tribal lands can't access broadband², and those with a disability are significantly less likely to be connected.³ African-American and Latinx households are also less likely to have phone service than their white counterparts. More than 40% of Lifeline recipients, a phone and

¹ Sara Atske and Andrew Perrin, *Home broadband adoption, computer ownership vary by race, ethnicity in the U.S.*, Pew Research Center (July 16, 2021), <https://www.pewresearch.org/short-reads/2021/07/16/home-broadband-adoption-computer-ownership-vary-by-race-ethnicity-in-the-u-s/>.

² *Tribal Broadband, National Strategy and Coordination Framework Needed to Increase Access*, Government Accountability Office (June 22, 2022), <https://www.gao.gov/products/gao-22-104421#:~:text=Despite%20federal%20efforts%2C%20broadband%20access,broadband%20access%20on%20tribal%20lands>.

³ See *Internet Access by Age, Disability, and Race/Ethnicity in the US*, Disability Rights Education & Defense Fund, <https://dredf.org/internet-access-by-age-disability-and-race-ethnicity-in-the-us/>; Barbara A. Butrica and Jonathan Schwabish, *Technology and Disability: The Relationship Between Broadband Access and Disability Insurance Awards*, Center for Retirement Research at Boston College (October 2022), https://crr.bc.edu/wp-content/uploads/2022/10/wp_2022-13.pdf.

broadband subsidy designed for low-income consumers, are African-American, or Latinx.⁴ Just 36% of households with incomes below \$25,000 a year have both a wireless data plan and a home broadband subscription (as compared to 75% of households with incomes above \$50,000).⁵

While these numbers are disheartening, the Universal Service Fund (USF) has improved broadband connectivity, and without it, marginalized communities will stand an even smaller chance of breaking onto the right side of the digital divide. We write today in response to the USF Working Group Request for Comment, to urge you to reform and expand the USF. The USF can be a one-stop source for ongoing funding that can close the digital divide for good.



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B. The USF Has Effectively Carried Out Section 254 of the Communications Act

Section 254 of the Communications Act enables the Federal Communications Commission (FCC) to create policies that preserve and advance universal service.⁶ These policies must ensure that quality telecommunications and information services are available at just and affordable rates, and that service is available to those regardless of where in the country they live.⁷ Although this country still has a long way to go to achieve affordable, universal connectivity, we have made significant progress because of the USF.

The high-cost fund's work to build new networks in unserved areas has significantly reduced the percentage of adults who can't connect to broadband at home. In 2010, about 60% of adults had broadband at home. In 2021, that number shot up to about 77% of adults in 2021.⁸

There are also countless anecdotes about how the Lifeline program has been a literal lifeline for those in need. For example, one

⁴ 2022 Annual Consumer Survey, National Lifeline Association, https://www.nalalifeline.org/wp-content/uploads/2023/01/NaLA-Consumer-Survey-Graphs_Long-Form_12.19.22.pdf.

⁵ John B. Horrigan, Reimagining Lifeline: Universal Service, Affordability and Connectivity, Benton Institute for Broadband and Society (February 2022) at 4, https://www.benton.org/sites/default/files/reimagininglifeline_final1_0.pdf.

⁶ 47 USC Sec 254(b)

⁷ *Id* at (1-2)

⁸ *Internet/Broadband Fact Sheet*, Pew Research Center (April 7, 2021) <https://www.pewresearch.org/internet/fact-sheet/internet-broadband/>.



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foster youth in San Jose was going to lose her own child if she couldn't attend a court mandated parenting class. Her Lifeline connection allowed her to participate remotely. Another foster youth in college went from failing their class to getting a B, by using their Lifeline connection to Zoom into their class and do schoolwork.⁹ The program has also helped countless people get back on their feet, by enabling them to access critical government resources.¹⁰

And it's not just households that are more connected. When the E-Rate program began offering discounts to help schools and libraries obtain affordable telecommunications and broadband access, less than a quarter of public libraries offered free public internet access. Now 98.9 percent do.¹¹ According to a recent survey of E-rate applicants, 87% said their school has fast internet directly because of E-Rate.¹²

The rural healthcare program has also made it easier for individuals in rural communities to access quality healthcare. Rural communities often lack the number of specialists and the resources needed to handle complex medical cases. Telehealth allows rural residents to access many of these services virtually, improving patient outcomes and reducing burden. According to Congressional testimony, the UVA health system has connected 153 sites across the state of Virginia to telemedicine, due in part to rural healthcare funds. Increased telemedicine has saved Virginians not only 17 million miles of driving, but it has also saved lives.¹³ Telehealth has reduced hospital readmissions by more than 40%.¹⁴

⁹ Jenna Leventoff, Twitter, September 15, 2020

<https://twitter.com/LeventoffJ/status/1305906974681427970>.

¹⁰ NaLA ACP & Lifeline Customer Testimonials, National Lifeline Association, <https://www.nalalifeline.org/testimonials/>.

¹¹ John Bertot and Kara Palmer, *U.S. Public Libraries Provide Access to Computers, the Internet, and Technology Training*, Bill and Melinda Gates Foundation, (<https://www.gatesfoundation.org/ideas/media-center/press-releases/2005/06/support-needed-for-library-technology#:~:text=New%20data%20shows%20that%2098.9,one%20in%20four%20libraries%20did>)

¹² Giovanni Albanese, Report: E-Rate a Success but Needs Cybersecurity Investment, Government Technology (November 11, 2022), <https://www.govtech.com/education/k-12/report-e-rate-a-success-but-needs-cybersecurity-investment>.

¹³ Testimony of Karen S. Rheuban, *Senate Hearing 115-280, The Universal Service Fund and Rural Broadband Investment* (June 20, 2017), <https://www.govinfo.gov/content/pkg/CHRG-115shrg30768/html/CHRG-115shrg30768.htm>.

¹⁴ *Id.*

Of course – our nation has not yet achieved universal service. Because high-cost fund grants have been used to build relatively slow networks, the percent of the country served with “broadband” will significantly decrease should the FCC (rightly) increase the broadband threshold speed. And, Lifeline’s \$9.25 subsidy hasn’t even come close to keeping up with the cost of broadband service, which now hovers between \$50-90/month.¹⁵ But, it’s impossible to argue that the USF hasn’t significantly improved connectivity. With tweaks to the contributions methodology, and to the programs within the fund, the USF can continue to be a key driver of universal connectivity.



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C. The Commission Must Add Broadband Adoption Programs to the USF to Promote Equity

Policies to promote broadband deployment alone are insufficient to achieve universal service. Congress has recognized, on a bi-partisan basis, that affordability, access to a device, and digital literacy skills are all necessary components of adoption.¹⁶ However, Congress cannot promote these goals on its own. With reform, the USF can provide sustainable and reliable support for adoption initiatives, including home broadband and mobile subsidies for households in need, vouchers to offset the high cost of computers, and grants to help communities teach critical digital literacy skills.

a. The FCC Should Move the Affordable Connectivity Program into USF

Affordability is key to universal adoption of telecommunications and information services. However, the cost of broadband far exceeds what many low-income families can afford. In fact, one of the top reasons that households don’t subscribe to the internet is because they can’t afford to.¹⁷ And that’s likely because broadband in the U.S is amongst the most expensive in the world. The average US household pays \$84.37 a

¹⁵ Jonathan Schwantes, *Broadband Pricing: What Consumer Reports Learned from 22,000 Internet Bills* (November 17, 2022), <https://advocacy.consumerreports.org/wp-content/uploads/2022/11/FINAL.report-broadband.november-17-2022-2.pdf>.

¹⁶ See Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (2021), <https://www.govinfo.gov/app/details/PLAW-117publ58>.

¹⁷ Unplugged: NTIA Survey Finds Some Americans Still Avoid Home Internet Use, National Telecommunications and Information Administration, <https://www.ntia.gov/blog/2019/unplugged-ntia-survey-finds-some-americans-still-avoid-home-internet-use>.

month, as compared to \$46.83 in Europe and \$64.29 in Asia.¹⁸ Additionally, half of low-income households who do subscribe to broadband are “subscription vulnerable,” meaning they would be subject to service interruption during financially difficult times.¹⁹

To date, the Affordable Connectivity Program (ACP) has helped nearly 20 million households connect to the internet. Unfortunately, the ACP is rapidly running out of funding. While Congress can, and should, offer stop-gap funding so that the ACP does not end as early as March 2024 -- funding ACP, long-term, through the USF, would offer a far more sustainable and predictable funding mechanism, not reliant upon the whims of Congress.



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b. The FCC Should Reform Lifeline

The ACP should work in conjunction with the Lifeline program to ensure that all households can afford access to both home broadband and cell phone service. The Commission can do this by modifying the Lifeline program so that it better supports mobile voice, text and data plans.

Although access to broadband is important, those looking to thrive in modern society also need access to mobile voice, text, and data. The FCC itself has noted that phone service is not outdated and “many consumers have demanded and will continue to demand voice communications.”²⁰ However, like broadband, mobile connections are often too expensive. The average cell phone bill is \$144 a month.²¹

¹⁸ Becky Chao, Claire Park and Joshua Stager, *The Cost of Connectivity 2020*, Open Technology Institute (July 15, 2020) at 4, <https://www.newamerica.org/oti/reports/cost-connectivity-2020/global-findings>.

¹⁹ John B. Horrigan, Philadelphia's Digital Divide by the Numbers, City of Philadelphia (October 2021) at 20, <https://www.phila.gov/media/20211019110414/Connecting-Philadelphia-2021-Household-Internet-Assessment-Survey.pdf>.

²⁰ *Third Report and Order, Further Report and Order, and Order on Reconsideration In the Matter of Lifeline and Link Up Reform and Modernization*, Federal Communications Commission at paragraph 58 (April 27, 2016), <https://docs.fcc.gov/public/attachments/FCC-16-38A1.pdf>.

²¹ Brett Holzhauer, *Cut your cell phone bill up to 50% with these 4 tips*, CNBC (June 15, 2023), <https://www.cnbc.com/select/how-to-cut-your-cell-phone-bill-costs/>

The vast majority of Lifeline subscribers already use their benefit for voice service (oftentimes bundled with broadband).²² Modifying the program to subsidize only mobile service, while modifying the ACP to subsidize only home internet, will ensure that low-income and marginalized households have access to everything they need to stay connected. In order to make Lifeline an effective mobile subsidy, the Commission should significantly increase the subsidy amount to keep pace with the cost of a cell phone plan. The Commission should also remove the one per household limitation so that every eligible member of a household can connect while outside of the house.

c. The Commission Must Create a Device Subsidy Within the USF

Although the average household has 22 connected devices²³, 1 in 10 households don't have even a single computer.²⁴ Those who don't have a computer are disproportionately Black, Latinx, or low-income. Black and Latinx households are two times less likely than white households to have a device.²⁵ In addition, more than 40% of low-income adults don't own a desktop or laptop.²⁶ And, many households don't have enough computers for everyone in the household to connect simultaneously. The inability to afford a computer is one of the key reasons that non-broadband users say they don't have broadband at home.²⁷ In fact, the FCC has already recognized that the "lack of access to



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²² *Report on the State of the Lifeline Marketplace*, Wireline Competition Bureau of the Federal Communications Commission at 8 (June 2021), <https://docs.fcc.gov/public/attachments/DOC-373779A1.pdf>.

²³ *Press release: Consumers benefit from virtual experiences, but need help managing screen time, security and tech overload*, Deloitte (August 3, 2022), <https://www2.deloitte.com/us/en/pages/about-deloitte/articles/press-releases/connectivity-and-mobile-trends.html>.

²⁴ Digitunity, *The Issue*, <https://digitunity.org/the-issue/>.

²⁵ David DiMolfetta, *Another Digital Divide: Americans Without Access to Devices*, S&P Global (June 15, 2022), <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/another-digital-divide-americans-without-access-to-devices-69125302>.

²⁶ Emily A. Vogels, *Digital divide persists even as Americans with lower incomes make gains in tech adoption*, Pew Research Center (June 22, 2021), <https://www.pewresearch.org/short-reads/2021/06/22/digital-divide-persists-even-as-americans-with-lower-incomes-make-gains-in-tech-adoption/>.

²⁷ Michelle Cao and Rafi Goldberg, *Switched Off: Why are one in five U.S. households not online?*, National Telecommunications and Information Administration (2022), <https://www.ntia.gov/blog/2022/switched-why-are-one-five-us-households-not-online>.

affordable equipment, including computers... is a significant barrier to broadband adoption among low-income consumers.”²⁸

Absent a device, low income and marginalized consumers are beholden to public spaces to connect to the internet. But, what happens if the family needs to connect after library hours? Or what if the family does not have a mode of transportation to reach a public computer? While many low-income households do have a cell phone, it’s incredibly difficult to write papers, or fill out forms, on a mobile device.

The Commission can increase broadband adoption by creating a device voucher program within the USF. This program should be modeled off of the Device Access for Every American Act, with some modifications. That legislation would provide low-income families with multiple vouchers that they can use to purchase a computer or tablet directly from a retailer or device refurbisher.²⁹ Vouchers can be used to pay for an eligible device, as well as taxes, shipping and warranties. Like with the Device Access for Every American Act, vouchers should be limited to computers, tablets and similar devices that are suitable for working and learning remotely. As written in the legislation, the Commission should set evolving minimum standards for devices and adjust the voucher amount to keep pace with the average price of a device, so that beneficiaries have the same opportunities as others for a quality connection.

To create true equity, however, the voucher should be given to each eligible individual, instead of each eligible household. This will enable each member of a household to connect simultaneously. Additionally, it is critical that the device voucher program enable customers to secure a new device when their old one no longer works, or becomes too outdated, lest the device divide open up again. The average computer only works for 3-5 years.³⁰ Thus, the Commission should create mechanisms to offer eligible individuals new vouchers every 3-5 years, or



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²⁸ *Report and Order and Further Notice of Proposed Rulemaking in the Matter of Lifeline and Link Up Reform and Modernization*, Federal Communications Commission at paragraph 349 (February 6, 2012), <https://www.fcc.gov/document/fcc-reforms-modernizes-lifeline-program-low-income-americans>.

²⁹ See generally, Device Access for Every American Act, S. 2729, 117th Cong. (2021).

³⁰ Derek Walter, *How long do computers last? 10 signs you need a new one*, Business News Daily (February 21, 2023), <https://www.businessnewsdaily.com/65-when-to-replace-the-company-computers.html>.

when the individual can prove that, through no fault of their own, their device has stopped working.

d. The FCC Should Create a Digital Literacy Grant Program Within the USF

The lack of digital literacy skills are a tremendous barrier to closing the digital divide. A startling 1/3 of working adults lack digital skills.³¹ Older Americans, those with limited English proficiency, and lower income households are more likely to lack digital skills.³² Additionally, older people of color have lower levels of digital skills than their white counterparts.³³ According to a study by the Pew Research Center, just 4% of Americans can correctly answer all nine questions on a digital knowledge survey created by Pew.³⁴

Through the Digital Equity Act, Congress has invested nearly \$3 billion in improving digital skills, and securing access to devices.³⁵ Nevertheless, the significant percentage of Americans needing to build digital skills will require additional and sustained funding. As noted by Congress in the Digital Equity Act, “achieving digital equity for all people of the United States requires additional and sustained investment and research efforts.”³⁶

The Commission can take advantage of a reformed USF to create a permanent, and expanded program supporting digital equity initiatives, such as digital literacy training and digital navigation. One option the Commission can consider is creating a Digital Equity Foundation, as



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³¹ Amanda Bergson-Shilcock, The new landscape of digital literacy, National Skills Coalition at 4 (May 2020), <https://nationalskillscoalition.org/wp-content/uploads/2020/12/05-20-2020-NSC-New-Landscape-of-Digital-Literacy.pdf>.

³² Ian Hecker, Shayne Spaulding and Daniel Kuehn, *Digital skills and older workers, supporting success in training and employment in a digital world*, Urban Institute at 2 (September 2021), https://www.urban.org/sites/default/files/publication/104771/digital-skills-and-older-workers_0.pdf.

³³ *Id.*

³⁴ Olivia Didoti and Emily A. Vogels, *What Americans Know About AI, Cybersecurity and Big Tech*, Pew Research Center (August 17, 2023), <https://www.pewresearch.org/internet/2023/08/17/what-americans-know-about-ai-cybersecurity-and-big-tech/>.

³⁵ Yvette Scorse, *NDIA Celebrates the Senate Passage of the Infrastructure Bill*, National Digital Inclusion Alliance (August 10, 2021), <https://www.digitalinclusion.org/blog/2021/08/10/infrastructure-bill/>.

³⁶ Digital Equity Act of 2021, H.R.1841 Sec 3 (3) (2021).



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proposed by Senator Lujan, within USF.³⁷ This foundation would be an independent body that can promote digital literacy, digital inclusion, and digital equity by awarding grants to community organizations, leveraging private sector resources, and collecting data. Creating this program within the USF will allow the trusted community groups who have improved digital equity in their communities continue to do so.

D. The FCC Should Reform the USF Contributions Methodology

While the Universal Service Fund has helped connect millions of households, its current contributions mechanism is not sustainable. The FCC has not changed its contributions mechanism since the fund was adopted more than 25 years ago. Accordingly, the contribution fee has increased from about 7% to nearly 30%.³⁸ Additionally, because different companies pass along the fees to their customers differently, and because some people are simply more likely to use assessed services, some customers pay a disproportionate amount.

While the Commission has full authority to reform its own contributions mechanism, so far, it has been unwilling to do so. Accordingly, we urge Congress to require the Commission to change its contributions mechanism. Doing so will ensure that the USF has enough funding to fully close the digital divide. Assessing broadband internet access service (BIAS) revenues should enable the Commission to increase the amount available within the USF to sufficiently fund new programs and expand existing ones, while simultaneously reducing the contribution factor.³⁹

³⁷ Digital Equity Act Foundation Act, S. 4865 (2022).

³⁸ *OMD announces that the proposed universal service contribution factor for the third quarter of 2023 will be 29.2 percent*, Federal Communications Commission (June 14, 2023), [https://www.fcc.gov/document/third-quarter-2023-usf-contribution-factor-292-percent#:~:text=Third%20Quarter%202023%20USF%20Contribution%20Factor%20is%2029.2%20percent%20%7C%20Federal%20Communications%20Commission;Repairing%20the%20FCC's%20Universal%20Service%20Fund%20Contribution%20Mechanism,%20A%20call%20to%20action,%20NCTA%20\(The%20Rural%20Broadband%20Association\)%20\(November%2029,%202021\),https://www.ntca.org/sites/default/files/documents/2021-11/USF%20Call%20to%20Action%20Letter%20with%20Signatories%2C%20Nov.%202021upd.pdf](https://www.fcc.gov/document/third-quarter-2023-usf-contribution-factor-292-percent#:~:text=Third%20Quarter%202023%20USF%20Contribution%20Factor%20is%2029.2%20percent%20%7C%20Federal%20Communications%20Commission;Repairing%20the%20FCC's%20Universal%20Service%20Fund%20Contribution%20Mechanism,%20A%20call%20to%20action,%20NCTA%20(The%20Rural%20Broadband%20Association)%20(November%2029,%202021),https://www.ntca.org/sites/default/files/documents/2021-11/USF%20Call%20to%20Action%20Letter%20with%20Signatories%2C%20Nov.%202021upd.pdf).

³⁹ *See generally*, Carol Matthey, *USForward*, NTCA (The Rural Broadband Association) (September 2021), <https://www.ntca.org/sites/default/files/documents/2021-09/FINAL%20USForward%20Report%202021%20for%20Release.pdf>.

E. Conclusion

The USF plays a critical part in reducing the digital divide. However, with modifications, the USF can do more than reduce the digital divide – it can end it. We urge Congress to require the FCC to reform the USF contributions methodology. Once they do, we urge the Commission to ensure that the USF can be used to promote the affordability of service and devices NATIONAL LIFELINE ASSOCIATION COMMENTS IN RESPONSE TO UNIVERSAL SERVICE FUND WORKING GROUP REQUEST FOR COMMENT and improve digital literacy skills.



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