To: **USF Working Group**

From: **Michael Santorelli & Alex Karras, ACLP at New York Law School**

Re: **Request for Comment**

Date: **September 15, 2025**

Dear Members of the USF Working Group,

The ACLP at New York Law School respectfully submits the following comments regarding the future of the Universal Service Fund (USF).

For two decades, the ACLP has been a leading voice and thought leader on the legal, regulatory, and public policy issues impacting the provision and use of advanced communications services. We stand ready to assist your ongoing efforts to modernize the USF and respectfully urge Congress to broaden its inquiry to encompass a comprehensive update of the Communications Act.

The Act is woefully out of date and increasingly of little use to the Federal Communications Commission (FCC), which can no longer rely on courts deferring to its attempts to apply telephone-era laws to advanced services like broadband. Instead, the Supreme Court has made clear that administrative agencies like the FCC can only do what Congress specifically tells them to do. If Congress is serious about addressing longstanding USF-related issues via this inquiry, then it should seek to go further and update the entire Act.

Choosing to do nothing is akin to a computer owner refusing to update their operating system. At some point, the machine will fail. Congress has not updated the telecommunications "operating system" in nearly three decades. With the rise of artificial intelligence, the emergence of innovative new platforms like fixed wireless and LEO satellite, and a national mandate to ensure that the country continues to lead the world in all-things tech, now is the time for Congress to be bold.

Kind regards,

/s/
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/s/
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The ACLP offers the following recommendations to the Working Group:

1. USF reform must be forward-looking and guided by data. USF reform should not be backward-looking, nor should it prop up outdated business models.
2. Complete a thorough and objective assessment of current USF programs, the results of which should inform reforms undertaken by Congress and/or the FCC.
3. Transform Lifeline into a successor of the Affordable Connectivity Program (ACP) and fund it by expanding the base of USF contributors.
4. Update the entire Communications Act.

Each recommendation is discussed in turn below.

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Recommendation #1: USF reform must be forward-looking and guided by data. USF reform should not be backward-looking, nor should it prop up outdated business models.

Before embarking on any reforms, Congress should gather and analyze as much data as possible regarding the present state of the U.S. communications market, trends in consumer demand, and emerging technologies that are poised to further transform how people interact with each other. This is necessary to ensure that Congress approaches the issues implicated by USF reform in a forward-looking manner and that any reforms it undertakes reflect the "evolving" nature of communications services, consumer demand for them, and the market in which they are delivered.[1] Congress must also be educated about and aware of the risks of continuing forward with programs and policies that prop up outdated services, poor business models, or antiquated market structures.

Universal service programs have always sought to provide that which the market, on its own, could not or would not. For decades, universal service initiatives revolved around subsidy mechanisms to support the deployment of basic telephone service to every corner of the country and ensure that the price of basic voice service in rural and urban areas was "reasonably comparable."[2] Over the last decade, universal service efforts largely shifted to supporting broadband deployment to rural areas.

Much has changed since 1996, when Congress formalized a federal USF that had existed, in various iterations, at the state and national levels for almost a century. Gone are the days when consumers relied on "plain old telephone service" (POTS) delivered over the public switched telephone network. Nowadays, consumers have made clear they prefer more advanced options for voice services delivered wirelessly or over the internet (or,

[1] 47 U.S.C. § 254(c)(1).

[2] 47 U.S.C. § 254.

increasingly, via satellite). Indeed, by the end of 2024, for the first time ever, less than 1% of U.S. households relied solely on a wireline telephone for voice service.[3] This reflects data collected by the FCC showing a steady decline in POTS lines, while the number of VoIP and wireless subscriptions has grown exponentially, making clear that millions of Americans have, of their own accord, replaced landline telephone with a more advanced alternative.[4]

At the same time, broadband is now available across most of the country. According to data collected and analyzed by the ACLP, the number of Americans lacking access to a terrestrial broadband connection capable of delivering at least 100/20 Mbps of service decreased 65% between December 2022 and July 2025.[5] This occurred before a single dollar of BEAD funds had been invested in further network expansion. With tens of billions of dollars in BEAD-backed investment forthcoming soon, the country is well on its way to achieving universal broadband availability.

There is also ample data showing that broadband competition is increasing across the board as new entities – fixed wireless, LEO satellite, etc. – enter the market; broadband speeds across every platform continue to increase; and the cost of broadband and related communications services has decreased while prices for most other goods have increased.[6]

After gathering and analyzing additional data about the state of telecommunications in the U.S., Congress should not be afraid to ask itself whether it might be time to radically rethink what "universal service" means in an age of abundant options for communications and in the face of clear evidence that the benefits of competition – wider availability, faster speeds, lower prices, etc. – are being felt everywhere in the country irrespective of geographic location.

Recommendation #2: Complete a thorough and objective assessment of current USF programs, the results of which should inform any reforms undertaken by Congress and/or the FCC.

The data above should demonstrate to Congress that, at the very least, the current structure of the USF and the underlying universal service principles included in the Communications

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[3] Stephen J. Blumberg, Ph.D., and Julian V. Luke, Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July-December 2024, p. 4, CDC (June 2025), https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless202506.pdf.

[4] *See, e.g.,* Michael Santorelli, *Why States Must Stop Treating Your Smartphone Line a Dumb Rotary Phone,* May 29, 2025, Forbes, https://www.forbes.com/sites/washingtonbytes/2025/05/29/why-states-must-stop-treating-your-smartphone-like-a-dumb-rotary-phone/ ("*Why States Must Stop*").

[5] Alex Karras and Michael Santorelli, *BEAD Eligible Locations Drop 14% in New Benefit of the Bargain Lists, a Combined 65% Drop Since Dec. 2022 BEAD Allocations*, July 22, 2025, Broadband Expanded, https://broadbandexpanded.com/posts/botblocations.

[6] *See, e.g., Why States Must Stop;* Alex Karras, Phoebe Kamber, and Michael Santorelli, *Broadband Prices in Context,* Sept. 19, 2024, Broadband Expanded, https://broadbandexpanded.com/posts/pricegrowth.

Act are incongruent with the modern telecommunications market. As a next step, Congress should undertake a thorough and objective evaluation of each component of the USF. This would be different from the requirement included by Congress in the IIJA for the FCC to submit "a report on options of the Commission for improving its effectiveness in achieving the universal service goals for broadband in light of this Act...and other legislation that addresses those goals."[7] That report assumed that the USF remained a viable and useful vehicle for "achiev[ing] its goals of universal deployment, affordability, adoption, availability, and equitable access to broadband."[8]

Congress should instead take a step back and spearhead a holistic examination of the structure, uses, impacts, successes, and failures of each USF program. To ensure that this examination is truly objective, Congress should either hire outside experts or convene an expert commission to conduct a study.

The goal of this assessment, which should be launched once BEAD allocations in each of the 50 states are approved by NTIA and time-limited to no more than 180 days, should be to harness all available data to evaluate whether each USF program is still needed post-BEAD. In addition, the experts conducting the assessment should, at a minimum, be tasked with answering the following questions:

- Is the USF still needed? The experts should be encouraged to offer a straightforward yes/no recommendation.
- Are the USF principles in section 254 of the Communications Act still relevant?
- Does each USF program pass a simple cost-benefit analysis?
- How would the elimination of a USF program impact consumers? How could those impacts be minimized?
- If a program is to be eliminated, how much lead-time would be needed to minimize impacts on consumers?
- What other impacts (legal, regulatory, policy-related, economic, etc.) would the elimination of USF programs have and how could those be minimized?
- Should there be a successor program, or are there other ways to achieve the core goals of the USF?
- If the federal USF is eliminated or dramatically reshaped, should states be permitted to continue forward with their USF programs, or should they be preempted to assure a uniform national approach to these issues?

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[7] Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, div. F, tit. I, § 60104(c), 135 Stat. 429, 1205 (2021).

[8] *Report on the Future of the Universal Service Fund,* Report, at ¶ 1, FCC (Aug. 12, 2022), https://docs.fcc.gov/public/attachments/FCC-22-67A1.pdf ("*FCC USF Report*").

Congress should give itself no more than 180 days to review and act on the recommendations put forward by the outside experts. If the data support it, Congress should not hesitate to begin the process of sunsetting discrete programs or the entire USF itself.

Recommendation #3: Transform Lifeline into a successor of the Affordable Connectivity Program (ACP) and fund it by expanding the base of USF contributors.

To the extent Congress elects to continue forward with some version of the USF, it should narrow the program's focus to delivering broadband subsidies to qualifying low-income households. To that end, Congress should transform the Lifeline program into a successor of the enormously popular and impactful ACP and fund it by expanding the base of contributors to the USF.

Regarding Lifeline reforms, Congress should seek to apply the lessons learned from the very successful ACP experiment when updating and bolstering Lifeline. ACP helped bolster broadband connectivity for millions of Americans. But in terms of bringing new subscribers to broadband, ACP's impact was limited. In addition, ACP's impact was greatly enhanced by the ongoing efforts of ISPs to offer low-cost options to low-income subscribers. Without continued leadership by ISPs on this point, additional subsidies might not move the broadband adoption needle.

To effectively reform Lifeline and incorporate the lessons of ACP, it is essential for Congress to understand the complexities of broadband adoption decisions and the role that affordability plays in them.

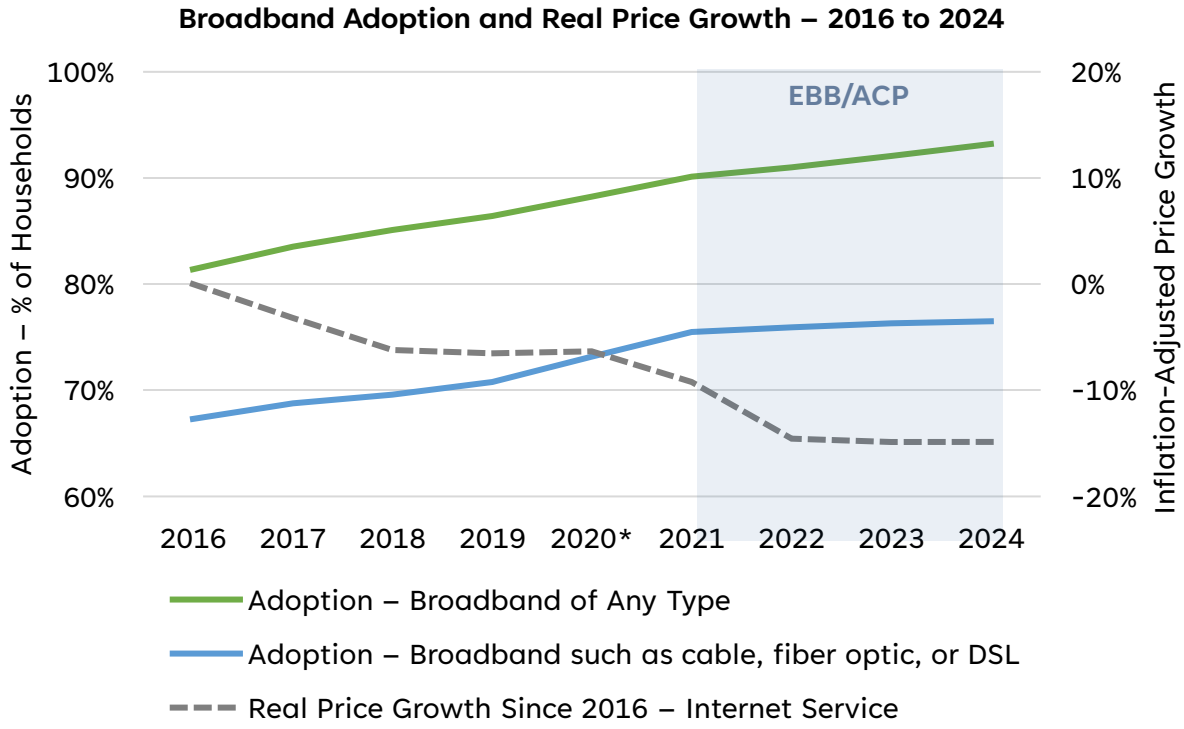
Broadband affordability remains a concern for many Americans, but it is not the primary barrier to adoption. For some, cost is the sole determinant. But for many others, broadband is not important enough to justify an investment of resources at any price point. Indeed, surveys have consistently found that "relevance" – i.e., viewing broadband as essential or useful enough to one's life to invest in it – remains the primary barrier to more robust broadband adoption among non-adopters and that, even when offered at a very low cost or for free, many of these digital holdouts will remain offline.[9] In short, if someone does not view broadband as relevant, they will likely view it as unaffordable at almost any price.

Some think that adoption rates correlate with the cost of broadband – i.e., that adoption rates will increase when the price of broadband decreases. Real world data show that this way of thinking about broadband adoption is too simplistic because it omits any

[9] *See, e.g.,* George S. Ford, *Challenges to Universal Adoption: A Look at NTIA's New Data,* June 9, 2022, Phoenix Center, https://www.phoenix-center.org/perspectives/Perspective22-03Final.pdf (commenting on recent broadband adoption surveys); Octavian Carare et al., *The Willingness to Pay for Broadband of Non-Adopters in the U.S.: Estimates from a Multi-State Survey,* Information Economics and Policy (Jan. 2015), https://www.researchgate.net/publication/271080509_The_willingness_to_pay_for_broadband_of_non-adopters_in_the_US_Estimates_from_a_multi-state_survey.

acknowledgement of the significant role that non-price factors like relevance and lack of digital literacy skills play in consumers' decision-making processes.

Consider the following chart. It leverages national data from the Census Bureau and the Bureau of Labor Statistics to plot trends in (1) broadband adoption rates of any kind of non-dial-up broadband internet access service (including mobile and satellite); (2) broadband adoption rates of fixed wireline services like cable and fiber; and (3) real internet price growth nationally since 2016.



Significant broadband subsidies via the FCC's EBB and ACP programs were available to consumers across the country until May 2024. These are represented in the chart above by the shaded portion beginning in 2021. When combined with low-cost offerings from ISPs, many consumers were able to lower the cost of broadband to zero. At the same time, internet access prices across the board declined significantly (after adjusting for inflation), represented by the dashed line in the chart above. Taken together, these conditions would seem ideal for boosting take-rates. In reality, though, wireline broadband adoption rates barely increased. When mobile broadband is considered (represented by the green line), the adoption rate inched up several percentage points.

These data demonstrate that adoption rates do not respond as robustly to subsidies as some think. One recent study found that the ACP yielded a 3% overall increase in broadband

adoption.[10] Survey data collected by the FCC confirms this dynamic: Only about 20% of ACP enrollees used their subsidy to purchase their first internet connection; all other enrollees used their subsidies to purchase *additional* broadband services (*e.g.,* to upgrade a service offering, add another mobile broadband plan to their bill, etc.).[11]

This is not to say that subsidies are wasteful or that they have no role to play in boosting adoption rates. To the contrary, targeted subsidies of similar size should be the ideal outcome for a transformed Lifeline.[12] But subsidies themselves will only go so far towards boosting adoption rates. Indeed, their impact appears to have been greatly enhanced when combined with the low-cost offerings of ISPs, which have played significant roles in bringing more people online and keeping them there, especially when paired with programs that help make broadband more relevant to new users.[13]

Congress has demonstrated an understanding of the complexities of broadband adoption and sought to fund an expansion of demand-side programming via the Digital Equity Act (DEA). The Trump Administration has expressed misgivings about several elements of the DEA and has attempted to "cancel" the program because of concerns about its constitutionality. The legality of this action is being reviewed in the courts. Nevertheless, Congress should not be discouraged from crafting and funding a more tightly focused demand-side program that, when paired with a transformed and narrowly tailored Lifeline program, could help to ensure that the country's universally available broadband infrastructure is being used with purpose by as many Americans as possible.

To fund these programs, Congress should explicitly authorize the FCC to broaden the base of USF contributors. There is significant consensus that it no longer makes sense to limit USF contributions to firms providing voice service. This approach might have made sense in 1996, a time when most people relied on voice service (POTS or mobile) to communicate with each other. But as the number of people who use the services that are assessed for USF purposes decreases, the burden is falling more heavily on those who still use them, a fact that has not escaped the notice of the FCC.[14]

The FCC has observed "diverse and wide-ranging" support for "broadening the USF contribution base to include entities including 'edge providers' such as streaming video

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[10] Hernan Galperin et al., *A Preliminary Assessment of the ACP Program,* Aug. 2024, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4913528.

[11] *Measuring the Impact of ACP: Survey Results,* FCC, https://www.fcc.gov/sites/default/files/ACP-Survey-Results.pdf.

[12] *See, e.g.,* Michael Santorelli, *Why It's Time to Get Over the Broadband Affordability Fixation,* Sept. 26, 2024, Forbes, https://www.forbes.com/sites/washingtonbytes/2024/09/26/why-its-time-to-get-over-the-broadband-affordability-fixation/.

[13] *See, e.g.,* Matt Kalmus et al., *A Human Approach to Closing the Digital Divide,* June 13, 2022, BCG, https://www.bcg.com/publications/2022/how-to-close-digital-divide-with-human-approach.

[14] *FCC USF Report* at ¶ 92.

providers, digital advertising firms, and cloud services companies rather than relying solely on the end-users—or consumers and enterprises—that have historically paid the line-item fees passed through by providers."[15] Thoughtful proposals for operationalizing this expansion have been put forward by a number of experts.[16] The Commission should be authorized and encouraged by Congress to explore these options, which could yield a more equitable approach to funding the USF going forward.

Recommendation #4: Update the entire Communications Act.

If the result of this process is Congressional action to reform the USF, then Congress should keep going and endeavor to update the entire Communications Act. Doing so would force Congress to address a growing list of issues that have languished due to an increasingly outdated statute and the inability of the FCC to do much of anything that is not specifically authorized in the Communications Act. These include, among other pressing issues:

- Fast-tracking the IP transition by empowering the Commission with the authority to preempt state-level laws and rules that are impeding progress towards a national shift away from POTS. These include state carrier of last resort rules, state USF funds, and legacy telephone regulations.

- Providing the FCC with specific instructions for classifying and regulating advanced services like broadband and VoIP. Failure to do so has opened the door to harmful state-level regulation of these services (e.g., broadband rate regulation in New York; VoIP regulation in California).

- Determining whether and to what extent the FCC should have a formal role to play in overseeing the services that are transmitted over the communications networks it regulates. This would be consistent with Congressional action to authorize the FCC to assess edge companies for USF purposes.

Congress could engage in USF-related statutory reforms first and use those actions as a jumping off point for a comprehensive overhaul of the Act. The framework of this exercise – convening hearings and meetings with stakeholders, soliciting comments, and, hopefully, using the input received to inform new laws – could be replicated for additional statutory reforms down the line. Those could be piecemeal or all-encompassing. Regardless, it is respectfully submitted that Congress get to work on telecom reform.

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[15] *Id.* ¶ 98.

[16] *See, e.g.,* James E. Prieger, *An Analysis of Options for Reforming the Universal Service Fund Funding Mechanism,* DPI (July 2025), https://digitalprogress.tech/wp-content/uploads/2025/07/USF-funding-reform-Prieger.pdf; Hal J. Singer and Ted Tatos, *Subsidizing Universal Broadband Through a Digital Advertising Services Fee: An Alignment of Incentives,* Econ One (Sept. 2021), https://www.econone.com/wp-content/uploads/2021/09/Digital-Divide-HSinger-TTatos-2.pdf.