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

In the Matter of	)	
	)	
Report on the Future of the Universal Service Fund	)	WC Docket No. 21-476
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122

COMMENTS OF INCOMPAS

Angie Kronenberg
Lindsay Stern
INCOMPAS
1100 G Street, N.W.
Suite 800
Washington, DC 20005
(202) 872-5745

February 17, 2022

TABLE OF CONTENTS

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

In the Matter of	)	
	)	
Report on the Future of the Universal Service Fund	)	WC Docket No. 21-476
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122

COMMENTS OF INCOMPAS

INCOMPAS, by its undersigned counsel, hereby submits these comments in response to the Wireline Competition Bureau's *Notice of Inquiry*,[1] which seeks comment on issues related to the future of the Universal Service Fund ("USF") in light of the broadband investments in the Infrastructure Investment and Jobs Act ("IIJA" or "the Act").

I. INTRODUCTION AND SUMMARY

INCOMPAS is the preeminent national industry association for providers of internet and competitive communications networks, including both wireline and wireless providers in the broadband marketplace. We represent fixed broadband companies, including small local fiber and fixed wireless providers that provide residential broadband internet access service ("BIAS"), as well as other mass-market services, such as video programming distribution and voice services in urban, suburban, and rural areas. We also represent companies that are providing business broadband services to schools, libraries, hospitals and clinics, and businesses of all sizes, including regional fiber providers; transit and backbone providers that carry broadband and internet traffic; online video distributors, which offer video programming over BIAS to

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

consumers, in addition to other online content, such as social media, streaming, cloud services, and voice services.

INCOMPAS has previously filed in the Universal Service Reform Methodology docket under the organizational name of COMPTEL. Under COMPTEL, the association's membership was made up almost exclusively of competitive local exchange carriers (or "CLECs"). In 2015, COMPTEL transitioned to become INCOMPAS. While INCOMPAS' membership still consists of CLECs, its membership has grown to include fiber, mobile, and online content companies as described above. As such, any changes from COMPTEL's prior positions and advocacy on universal service reform can be attributed to the change and growth in our membership as well as our ongoing work with other third parties as we have worked to find consensus on this long-standing issue.

On November 15, 2021, President Biden signed the IIJA, which includes the largest ever federal investment in broadband totaling approximately $65 billion. The Act directs the FCC to submit to Congress "a report on the options of the Commission for improving its effectiveness in achieving the universal service goals for broadband in light of this Act" by August 12, 2022.[2] The USF is one of the nation's most important tools for connecting families, small businesses, and rural and urban communities in need to voice and broadband services. The FCC therefore needs to make sure that federal funding is going where it is needed so that the USF can be as beneficial and sustainable as possible. As such, the FCC's mandated Report to Congress on the USF presents an important opportunity for the Commission to conduct an in-depth analysis into how the new funding from the IIJA, the American Rescue Plan ("ARP"), and other similar

[2] *NOI*, at ¶ 1 (citing *IIJA*, div. F, tit. I, § 60104(c)).

federal and state funding programs may affect USF and whether any of the existing USF programs need modification as a result.

Given that there are different programs for funding in the IIJA, ARP, and similar federal and state programs that the FCC should review with different timeframes for implementation and goals to be met, INCOMPAS recommends that the FCC should set forth its plan in the Report to Congress on the agency's process and timing for—

> (1) attaining the necessary information from the funding agencies about the projects that are funded;
>
> (2) tracking what has been funded for network deployment that likely minimizes the need for additional high-cost dollars; and
>
> (3) assessing the IIJA and other funding programs, the impact on the USF programs, and any changes to the USF programs that are needed as a result.

Moreover, in its Report to Congress, the FCC should reinforce the importance of the USF in meeting connectivity needs and that changes to the USF must reflect the goals as laid out in the statute. Indeed, a bipartisan Congress passed the Telecommunications Act of 1996 that set forth the USF requirements and goals in Section 254(b). It provides as follows:

> (1) Quality services should be available at just, reasonable, and affordable rates.
>
> (2) Access to advanced telecommunications and information services should be provided in all regions of the Nation.[3]
>
> (3) Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are

[3] The Commission has interpreted "advanced telecommunications" to mean broadband services. *See Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, Fourteenth Broadband Deployment Report, GN Docket No. 20-269 (rel. Jan. 19, 2021) at ¶ 4 (stating: "[w]ith this Report, the Commission fulfills the Congressional directive to report each year on the progress made in deploying broadband to all Americans."); *see also* ¶ 7 ([t]his Report continues to evaluate deployment of fixed and mobile services over a rolling five-year time period.").

> reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

> (4) All providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.
>
> (5) There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.
>
> (6) Elementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications services as described in subsection.
>
> (7) And, the Federal-State Joint Board on Universal Service and the Commission may set forth additional principals that they determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with the statutory provision of enabling and promoting universal service.[4]

The Commission's Report should conclude that the FCC must conduct an extensive analysis into each of the four existing USF programs as they relate to the new federal funding programs. The existing and new funding programs have overlapping yet distinct goals and criteria, and it would be prudent for the FCC to analyze whether any of the existing programs need any adjustments due to the influx of congressional capital investment.

---

[4] In the 2011 *Connect America Fund*, the FCC adopted an additional principal that the High-Cost funds should be used to support broadband networks. *See Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90 (rel. Nov. 18, 2011) at ¶ 17 (stating: "[w]e begin by adopting support for broadband-capable networks as an express universal service principle under section 254(b) of the Communications Act, and, for the first time, we set specific performance goals for the high-cost component of the USF that we are reforming today, to ensure these reforms are achieving their intended purposes. The goals are: (1) preserve and advance universal availability of voice service; (2) ensure universal availability of modern networks capable of providing voice and broadband service to homes, businesses, and community anchor institutions; (3) ensure universal availability of modern networks capable of providing advanced mobile voice and broadband service; (4) ensure that rates for broadband services and rates for voice services are reasonably comparable in all regions of the nation; and (5) minimize the universal service contribution burden on consumers and businesses.").

Moreover, the Commission should reform the USF contribution base this year by adopting the recommendation of the USForward Report to add BIAS revenues to the contribution base, which is smart and equitable public policy that the FCC can implement quickly.[5] The USF is under significant duress and while each USF program has been modernized to support BIAS services, the contribution methodology that pays for these important programs has not been similarly modernized. The Commission should move forward with USF contribution reform now for several reasons: (1) the current funding mechanism is not sustainable; (2) expanding the current revenues-based system to include BIAS mitigates gamesmanship and promotes transparency by removing incentives of providers to arbitrarily allocate revenues from bundled services to one service and not the other; and (3) there is significant and diverse support for the Commission to act fast to stabilize the USF.

II. THE FCC SHOULD INCLUDE COMPETITION AS ONE OF ITS UNIVERSAL SERVICE AND BROADBAND GOALS.

The FCC's proposal considers its universal service goals to be universal deployment, affordability, adoption, availability, and equitable access to broadband, and seeks comment on whether it should consider additional goals for its Report.[6] In order to properly frame the discussion and make sure that all universal service needs are met, another important goal for the USF and broadband deployment is to ensure that there is sufficient competition in the marketplace for broadband and communications services for consumers and business customers.

---

[5] *See* Carol Mattey, *USForward Report* (Sept. 2021), *available at* https://www.incompas.org/Files/filings/2021/USForward%20Report%202021%20for%20Release_FINAL.pdf ("*USForward Report*").

[6] *See NOI*, at ¶ 4.

Competition in the marketplace leads to better and more affordable services and competition in the USF leads to those same results for the Fund.

Competition in the BIAS market leads to faster networks, more affordable pricing, and better service. As explained in the *Restoring Internet Freedom Order*, "[t]he more competitive the [ISP] market, the larger the net gains to subscribers and edge providers . . . [i]nnovation by ISPs may take the form of reduced costs, network extension, increased reliability, responsiveness, throughput, ease of installation, and portability."[7] In fact, a broad range of economic reports show that where INCOMPAS members are providing alternative broadband products, customers receive better service at lower prices and higher speeds.[8] Competition in the USF also leads to better results for consumers and the Fund. For instance, where we see competition among providers on the front end to get funding in USF programs, such as in E-rate, it results in better service to customers and price drops for both the USF program and customers. Moreover, the ability of providers to leverage funding drives more broadband deployment and competition in communities that can then offer faster speeds and affordability thereby helping the nation attain universal broadband connectivity more quickly. As such, it would be beneficial

---

[7] *Restoring Internet Freedom*, Declaratory Ruling, Report and Order, Order, WC Docket No. 17-108 (rel. Jan. 4, 2018), at ¶¶ 119-120 ("*RIFO*").

[8] *See* Declaration of William P. Zarakas Before the Federal Communications Commission, *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, WC Docket No. 18-141 (Aug. 6, 2018); *see also* David E.M. Sappington, *Premature, Ubiquitous Forbearance Will Harm Consumers* (Aug. 6, 2018), *available at* https://www.incompas.org/Files/filings/2018/08-06-18%20USTelecom%20Petition%20Opposition.pdf; *see also* INCOMPAS Reply Comments, WC Docket No. 17-108 (Aug. 30, 2017), Exhibit B, David S. Evans, *Economic Findings Concerning the State of Competition for Wired Broadband Provision to U.S. Households and Edge Providers*, GLOBAL ECONOMICS GROUP (Aug. 29, 2017), *available at* https://www.incompas.org/files/INCOMPAS%20RIF%20Reply%20Comments-30Aug%20FINAL.pdf.

to universal service and the USF programs for the FCC to claim "broadband competition" as one of its universal service and broadband goals.

III. THE REPORT TO CONGRESS OFFERS AN OPPORTUNITY FOR THE COMMISSION TO DO A DEEP DIVE INTO EACH USF PROGRAM.

The FCC has been given a unique opportunity to report to Congress on the state of the USF. Given that the various funding programs from the IIJA, ARP, and other federal and state programs all have different disbursement timelines, it is unlikely that broadband providers and customers will see the benefits of all this funding until after the FCC submits its Report to Congress. Therefore, the best use of the Report would be for the FCC to set forth its plan on how it plans to improve the USF funding distribution and specifically explain to Congress its plans to do the following:

(1) attaining the necessary information from the funding agencies about the projects that are funded;

(2) tracking what has been funded for network deployment that likely minimizes the need for additional high-cost dollars; and

(3) assessing the IIJA and other funding programs, the impact on the USF programs, and any changes to the USF programs that are needed as a result.

(a) An Analysis of the High-Cost Fund.

While the four USF programs—High-Cost, Lifeline, E-rate, and Rural Health Care ("RHC")—have similarities, they each have distinct criteria and goals, and the FCC should break down its plan for each program separately. Given that the bulk of congressional funding from the IIJA and other federal and state programs have the purpose of funding broadband deployment, the FCC has an opportunity to take a closer look into its four USF programs, especially the High-Cost Program. In order to evaluate the future of the USF most effectively and how it relates to the $65 billion coming out of the IIJA, the FCC needs to engage in a comprehensive analysis into whether any additional High-Cost support will still be needed for further deployment once billions of dollars are awarded through the IIJA, the ARP, and the other federal and state funding projects. Overall, the FCC should be gathering information about all funding projects at the federal and state level being used to bridge the digital divide and assess their impact, if any, on the USF.

One goal of the FCC's Report should be to set forth how the FCC will analyze and the timing for its analysis of network deployment, and its impact on the High-Cost program. Accordingly, the FCC should include in its Report the agency's plan for gathering the information it needs concerning the projects that have funded network builds, how it will assess the remaining areas that may still need funding, and how it will ensure that the High-Cost program is as efficient and effective as possible. INCOMPAS believes it will be important for the FCC to determine which geographic areas receive or have already received support from the High-Cost program in order to ensure that the USF is modified in a way that reflects where high-speed networks have already been built by government funded USF dollars and no longer need support. As such, in its Report, the FCC should propose that it will analyze the current High-Cost Program by identifying which areas are getting money for deployment and whether these projects have completed their network builds. The FCC can do so by initiating a first-of-its-kind analysis of providers and areas receiving High-Cost funds and making sure that any new funding from the USF is going to places where assistance is still needed. This will help ensure that the finite USF dollars are being spent wisely and where they are truly needed, which will also help keep the USF contribution factor in check. For example, it would be important for the FCC to collect information on where participating providers have already received CAF II or RDOF funding for a one-time buildout project. The FCC was not planning to continuously fund these projects through the High-Cost Fund after deployment obligations have been met and the FCC needs to check that it is not doing just that. In fact, in both the CAF Phase II and RDOF Orders, the FCC is clear about its finite budget and the programs' 10-year term limits and that additional support for the network would not be forthcoming.[9] As such, the High-Cost Fund can potentially be adjusted as the FCC need not consider those areas for additional High-Cost support.

Similarly, the FCC should also compile a list of all federal broadband deployment projects being funded by the IIJA, USDA's Reconnect Loan and Grant Program (RLGP), and the ARP, including Treasury's Capital Projects Fund, as well as other state or local projects funded by government agencies.[10] For projects that are not within the FCC, the FCC could collaborate with NTIA and the other agencies to identify the various funded deployments. Where new, high-speed broadband networks have been deployed with IIJA, RLGP, ARP or USF High-Cost money, the FCC should refrain from allocating additional High-Cost money without an analysis of how much, if any, ongoing funding is still needed in the area. Understanding where USF

[9] *See Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90 (May 26, 2016), at ¶ 14, ("We expect and encourage participants to innovate and provide better service over the 10-year term."), *see also* ¶ 16 ("We want to maximize the number of consumers served within our finite budget. At the same time, we see the value to consumers in rural markets of having access to service during the 10-year term of support that exceeds our baseline requirements."); *see also* ¶ 34 ("Phase II winning bidders that elect to provide high-latency service will receive support for a 10-year term."). *See also Rural Digital Opportunity Fund*, Report and Order, WC Docket No. 19-126 (Feb. 7, 2020), at ¶ 7 ("Most commenters addressing this issue agree that a 10-year term of support will provide the certainty and stability needed to encourage broadband deployment in unserved and underserved locations and attract participation from a wide variety of participants. Moreover, disbursing support over a 10-year term minimizes the impact on the contribution factor . . . we expect bidders to seek sufficient support to build and maintain their network without an expectation of ongoing support after the 10-year support term expires.").

[10] Some States used CARES Act for broadband deployment. INCOMPAS believes it will be important for the FCC to coordinate with the other federal agencies, States, and local governments to attain the information it needs about broadband deployment projects and geographic areas covered.

dollars have already been spent effectively will help the FCC and Congress better understand which areas still need funding through the USF and other federal funding projects. A deeper analysis into the High-Cost program is critical here because the approximately $4.5 billion that the USF now spends in high-cost areas annually represents a small portion of what Congress has funded. As such, the FCC needs to make sure that the USF funds are used as efficiently and effectively as possible.

The FCC should also outline a plan in the Report for how the Commission can obtain a better understanding of the economics of broadband networks serving rural America. The Commission should assess whether additional funding is needed to support operations from the High-Cost Fund, and if so, the factors that should be shown to make a demonstration that such operational support is needed. To our knowledge, the FCC has not previously required companies to make demonstrations of need, but that should be considered now that so much funding is available for companies to build out their networks through significant public support. It would be important for this analysis to include an analysis of whether other entities are operating in the geographic area without High-Cost funding.

(b) An Analysis of the E-rate and Rural Health Care Programs.

The FCC's Report should recognize that each USF program has a unique and important purpose and analyze each program accordingly. These USF programs share goals but are distinct—while the High-Cost Fund is mainly used to build and deploy network infrastructure, the E-rate and RHC programs ensure that customers can purchase affordable services. Therefore, once a network has been built, the E-rate or RHC subsidy ensures that the services are affordable for qualifying community anchor institutions. As a result, it is likely that the E-rate and RHC programs will need sustained and continuing funding to continue to meet the statutory goals of providing affordable service for schools, libraries, and rural healthcare entities.

Nevertheless, the FCC should still include in its Report how it will assess whether any changes are needed to E-rate while maintaining the benefits of the Emergency Connectivity Fund ("ECF") to students and library patrons who cannot afford broadband service or devices. For example, the FCC could consider whether it should combine ECF's off-campus funding with the E-rate program prior to the time that the ECF is scheduled to deplete its funding. The Commission should similarly assess whether the Affordable Connectivity Program ("ACP") requires changes to the Lifeline program. Given the substantial and increasing demand for these products and services, it will be important for the FCC to provide Congress its guidance on how it will assess the need for modifying the E-rate, RHC, and Lifeline programs well in advance of the conclusion of the ECF and ACP funding source in order to ensure that the universal service goals continue to be met. The FCC should include a schedule in its Report for its assessments and guidance to Congress and the nation. To the extent that the FCC finds that it may need to increase the spends for these programs, it should seek guidance from Congress and the public prior to implementation and as is consistent with the Administrative Procedure Act.

IV. THE FCC SHOULD PLAN FOR COORDINATION AMONG FEDERAL AGENCIES, STATES, AND LOCALITIES IN ORDER TO ENSURE EFFECTIVE AND EFFICIENT DEPLOYMENT OF BROADBAND FUNDING.

In its Report to Congress, the FCC should plan for how it will best coordinate among other federal agencies that share similar broadband funding programs to ensure effective and efficient deployment of federal broadband funding. In December 2020, Congress passed the Broadband Interagency Coordination Act, which required the FCC, USDA, and NTIA to enter into an agreement within six months to provide for sharing information about existing or planned projects that have received, or will receive, funding through the FCC's High-Cost programs and programs administered by NTIA and the FCC.[11] INCOMPAS and our members applaud this effort and recommend similar action under the IIJA. Sharing grant information among the federal agencies will help ensure that the FCC and the other federal agencies know exactly where funding is going and be in the position to better assess where funding is still needed.

Another potential action the FCC can take to best streamline the various broadband funding is to create a layer on the new FCC broadband maps that show which areas have received broadband funding, including through from FCC and non-FCC federal and state programs. This tool could help the FCC determine if any adjustment would then be necessary to the High-Cost program by requiring broadband providers to confirm if and where they have received federal funding to deploy broadband.

In order to ensure a smooth deployment process, the FCC should also plan for its role in ensuring that there is coordination happening on the state and local level with those managing federal grants, access to rights-of-ways, and issuing permits to broadband providers. INCOMPAS' members represent a cross section of industry and are actively building fiber, fixed wireless, and other broadband infrastructure throughout the U.S. that is being used to deliver network capacity for fixed and mobile networks and is key to bridging the digital divide. Increasing broadband providers' access to public rights-of-way, accelerating approval of construction permits, and asking state and local governments and railroads to charge fees that are based only on their actual, objectively reasonable costs will help spur faster and more efficient deployments, which in turn will benefit consumers and businesses that are waiting for access to

[11] *NOI*, at ¶ 16.

next-generation networks and efficiently using taxpayer dollars for broadband projects. As such, INCOMPAS highly encourages the FCC to work with NTIA and other federal agencies, states, and localities to plan for how to best do so, and how to ensure compliance with time restrictions for grant or denial of duly filed applications for easement, right-of-way, or lease to the extent required by 47 U.S.C. § 1455. For more specifics on how to best coordinate and ensure that state and local governments are ready for more broadband deployment projects and that those projects can be built quickly, please review INCOMPAS' Comments filed in the *NTIA Request for Comment on Broadband Programs* proceeding.[12]

V. THE FCC SHOULD ADOPT THE RECOMMENDATION OF THE USFORWARD REPORT AND EXPAND THE USF CONTRIBUTION BASE TO INCLUDE BROADBAND INTERNET ACCESS SERVICE REVENUES.

In the *NOI*, the FCC seeks comment on how to improve the stability of the quarterly USF contribution factor and whether it should provide any recommendations to Congress, such as whether changes in the law are necessary or appropriate to update the USF contribution system.[13] There is currently an open and ongoing proceeding on USF reform at the FCC, which is the appropriate forum for this question of contribution reform.[14] As such, we have filed these comments in that docket as well. However, since the question of USF contribution reform has been brought up in this *NOI*, we will also address it here. As explained below, no changes in the

---

[12] *See generally* Comments of INCOMPAS, *NTIA Request for Comment on Broadband Programs*, (filed Feb. 4, 2022), https://www.incompas.org//Files/filings/2022/02-04-22%20INCOMPAS%20Comments-%20NTIA%20IIJA%20Broadband%20Programs%20(Docket%20NTIA-2021-0002).pdf.

[13] *See NOI*, at ¶¶ 44, 45, and 51.

[14] *See Universal Service Contribution Methodology*, Further Notice of Proposed Rulemaking, WC Docket No. 06-122 (rel. April 30, 2012).

law are necessary for the FCC to move forward with USF contribution reform. Rather, the FCC has the authority to expand the current contribution system to include BIAS revenues and should state so in its Report to Congress. Indeed, the Commission should stabilize the USF as soon as possible this year. INCOMPAS, along with 332 organizations, have filed a Call to Action letter and the USForward Report with the FCC that explain why reform must occur as soon as possible and why including BIAS revenues in the contribution base is the most logical path forward.[15]

(a) The FCC Should Move Forward With USF Contribution Reform Now.

While USF contribution reform has been pending at the FCC for over two decades, the Commission can no longer wait to act on USF contribution reform. The USF is under significant duress because the mechanism that pays for these important programs has not been modernized despite much more recent updates to the services that the programs support. As a result, we have seen the contribution factor rise significantly, and it could reach 40% in just four years if action is not taken.

It is time for the FCC to move forward with reform for several reasons.[16] First, the current funding mechanism is not sustainable. In the last two decades, the revenues subject to USF assessment have declined by 63%, which has led to a 400%-plus increase in the contribution factor. The telecom revenues assessed have been in decline for years. Stabilizing the

---

[15] *See* Mattey Consulting LLC, *Notice of Ex Parte Communications*, WC Docket Nos. 21-476 and 06-122 (filed Feb. 14, 2022), *available at* https://ecfsapi.fcc.gov/file/102141954517172/USF%20Call%20to%20Action%20Ex%20Parte%20Feb%2014%202022.pdf; *see also Repairing the FCC's Universal Service Fund Contribution Mechanism: A Call to Action* (filed Feb. 14, 2022), WC Docket Nos. 21-476 and 06-122, *available at* https://ecfsapi.fcc.gov/file/102141954517172/USF%20Call%20to%20Action%20Letter%20with%20Signatories%20Feb14%202022.pdf ("*Call to Action Letter*").

[16] *See* Mattey Consulting LLC, *Notice of Ex Parte Communications*.

USF is not a new issue, but what has made reform urgent is the increased (and continuing) instability of the funding mechanism at a time when broadband access has never been more important. Promoting the deployment, sustainability, and affordability of communications networks and services is how we help connect rural and low-income consumers, schools, libraries, and rural health care providers. Second, expanding the current revenues-based system to include BIAS mitigates gamesmanship and promotes transparency by removing incentives of providers to arbitrarily allocate revenues from bundled services to one service and not the other. It would not require the development of complicated and untested reporting regimes to implement. This modification would lower the current USF assessment on voice service, resulting in a more equitable contribution system. Moreover, the small assessment on BIAS would not impact consumer broadband adoption.[17] Third, there is significant and diverse support for the Commission to act fast to stabilize the USF. No proposed solution for USF reform will be perfect, but the Commission should not wait any longer. Time is of the essence and the calls for action are only getting louder. Former FCC Commissioner Clyburn stated at NARUC's Winter Meeting this week: "This is a foundation that's crumbling. We can no longer afford to ignore it."[18] The Commission should follow her lead and act as soon as possible. It is time to modernize the USF contribution methodology and sustain the USF for the future.

---

[17] *See* Letter from Michael R. Romano, Senior Vice President, NTCA – The Rural Broadband Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 06-122 (filed May 11, 2020) (submitting a report prepared by the Berkeley Research Group, NTCA-USF Study, Expert Report of Michael A. Williams and Wei Zhao (dated May 7, 2020) that found a modest USF assessment on broadband service would have no material impact on broadband adoption and retention).

[18] Adam Bender, Communications Daily, *NTIA, Treasury Want NARUC to Engage on Broadband* (Feb. 15, 2022).

(b) Assessing BIAS Revenues Is Smart, Stable, Transparent, And Equitable Policy That Can Be Implemented Quickly.

It is critical for the FCC to act on USF contribution reform. In addition to the contribution factor being unstable, it is the only area of the USF that the FCC has not modernized. Every program supports broadband-capable networks and service. However, the telecommunications revenues that are currently assessed to fund the USF contribution base continue to decline and have led to a dramatic increase in the contribution factor. As such, the FCC should adopt the recommendation of the USForward Report by Carol Mattey who is one of the nation's leading experts on universal service with over a decade of experience as Deputy Chief of the FCC's Wireline Competition Bureau overseeing the universal service programs.[19] In the USForward Report, Mattey recommends expanding the current contribution base to include BIAS revenues and that doing so would lower the USF contribution factor to less than 4% for the foreseeable future. This proposal has unprecedented support and there is a growing coalition of supporters, which is evidenced by the Call to Action letter signed by 332 diverse organizations including public interest groups, consumer organizations, anchor institutions, trade associations, and broadband service providers.[20] Expanding the contribution base to include BIAS revenues has been one of the reform options that the FCC has long had on the table and can be implemented right away by the FCC without further congressional authorization.[21] This proposal is sound policy for the FCC to implement as it is smart, stable, fast, transparent, and equitable policy.

---

[19] *See USForward Report*.

[20] *See Call to Action Letter*.

[21] *See Universal Service Contribution Methodology*, Further Notice of Proposed Rulemaking, WC Docket No. 06-122 (rel. April 30, 2012).

Smart: Expanding the USF contribution base to include BIAS revenues is smart policy. All four USF programs have been modernized to support broadband connectivity. It is therefore smart policy and common sense to use BIAS revenues to fund programs that support such broadband access. As explained in the USForward Report, the service that is driving value in the communications marketplace should contribute to support today's modern communications network for all. Residential consumers and businesses have largely adopted BIAS. While consumers and businesses continue to use other services that contribute, those services alone should not carry the responsibility to finance USF. This conclusion is buttressed by the fact that all four programs in the USF now support the availability of broadband networks that can deliver BIAS. Consumers and businesses are purchasing BIAS to get access to the internet more than ever before and the decline in assessable telecom revenues as well as the increase in BIAS revenues now indicate that is the primary service delivering connectivity and value for customers.[22]

Stable: BIAS revenues are expected to remain stable with the potential for some modest growth, which would stabilize the current funding mechanism into the future. As the USForward Report explains, "[t]his would stabilize the funding mechanism and stop the death spiral in the current USF contribution methodology."[23]

Fast: Including BIAS revenues can be implemented more quickly than alternative proposals for two reasons: (1) the FCC can use its existing authority, which is discussed more below; and (2) it is a known system because companies have been contributing based on

---

[22] *See USForward Report*, at 22.

[23] *Id.*

revenues for more than two decades. As explained in the USForward Report, "[i]nternal accounting and tax reporting systems would require only modest adjustment to add revenues from broadband internet access services to the 'assessable" side of the ledger. For existing contributors that currently are reporting [BIAS] revenues on FCC Form 499 Line 418, they merely would report those revenues on a new row on the form."[24]

Transparent: The vast majority of USF contributions comes from publicly traded companies whose revenues are already audited for financial reporting. Therefore, retaining the current revenues-based system allows for additional scrutiny. As explained in the USForward Report, "USAC would be able to look at publicly reported revenues in those companies' annual 10-Ks and quarterly 10-Qs to spot any significant discrepancies compared to what has been reported to USAC to identify FCC Form 499 filers that warrant further investigation."[25]

Moreover, assessing both BIAS and voice services mitigates gamesmanship and the incentives of providers to arbitrarily allocate revenues from bundled services to one service and not the other, which creates inequity where only some continue to pay in. As explained in the USForward Report, "mobile providers are increasingly shifting their allocation of bundled service revenues to unassessed [BIAS], which reduces the amount they must contribute. This creates an inequitable situation where some end users continue to pay into USF, while others do not, yet everyone benefits from the positive network externalities of universal connectivity made possible from the four USF programs that support broadband-capable networks and service."[26]

---

[24] *Id.* at 22.

[25] *Id.* at 22-23.

[26] *Id.* at 23.

Equitable: Including BIAS revenues will ensure the costs of achieving our universal service goals are equitably shared. As more consumers have shifted their usage to broadband internet access services, the end-user charge has fallen on those that have not made the switch, such as older Americans.

(c) The Most Logical Path Forward For The FCC Is To Assess BIAS Revenues, Not Edge Providers.

Commissioner Carr's statement in the *NOI* proposes a solution to USF reform that would require certain online businesses, namely edge providers, to pay into USF.[27] However, such a solution is not a recommended path forward for multiple reasons.

i. The FCC Does Not Have Authority To Require Edge Providers To Contribute To USF.

The USF contribution system is in a crisis mode. As such, the FCC should pursue solutions that it has the authority to act on. The FCC has the authority to address the three contribution methodologies that it has teed up in its pending NPRMs, which are assessing: (1) BIAS revenues, (2) telephone numbers, or (3) voice and broadband connections.

The FCC has a history of not regulating edge providers and online content. In the *Restoring Internet Freedom Order*, the FCC relied on Section 230 of the Communications Act to show the importance of the free market and as evidence for the agency not to regulate the internet. The FCC found that Section 230 was intended to enable the development of the internet, free from federal or state regulation in order to preserve the vibrant and competitive free market that presently exists for the internet.[28] A recent Congressional Research Service Report similarly

---

[27] *See NOI*, Statement of Commissioner Brendan Carr.

[28] *See RIFO*, at ¶ 58.

explains that the FCC does not have jurisdiction over edge providers. As it explains: "[e]dge provider activities . . . are not regulated by the Federal Communications Commission."[29] To show this, the Report cites to a Petition for Rulemaking that was filed at the FCC requesting that the Commission regulate edge providers, which the FCC dismissed, stating that the FCC would not regulate any internet content.[30] In its Order dismissing this Petition, the Commission states: "[t]he Commission has been unequivocal in declaring that it has no intent to regulate edge providers."[31] The FCC thereby does not have the authority to require edge providers to contribute to USF and would need congressional action to do so. Under *Vonage v. FCC*, the Commission has the authority under Section 254(d) of the Communications Act to include BIAS revenues in the contribution base without needing to reclassify it as a telecommunications service just as it did with interconnected VoIP services.[32] *Vonage* holds that the FCC has the authority under Section 254(d) to require VoIP providers to contribute to the USF because telecommunications can be a component of an information service, and in the *Restoring Internet Freedom Order* the FCC recognizes that BIAS is an IP-based transmission service that has a telecommunications component even if it is an information service.[33]

---

[29] *See* Clare Y. Cho, Congressional Research Service, *Competition on the Edge of the Internet*, Summary (Jan. 30, 2020), *available at* https://www.everycrsreport.com/files/20200130_R46207_aae4de15c44a3c957e7329b19ec513bd5d3a6629.pdf.

[30] *See id.* at 13 (citing *Consumer Watchdog Petition for Rulemaking to Require Edge Providers to Honor 'Do Not Track' Requests*, Order, RM-11757 (Nov. 6, 2015), *available at* https://docs.fcc.gov/public/attachments/DA-15-1266A1.pdf.

[31] *Consumer Watchdog Petition for Rulemaking to Require Edge Providers to Honor 'Do Not Track' Requests*, Order, RM-11757 (Nov. 6, 2015), at ¶ 1.

[32] *See Vonage Holdings Corp. v. FCC*, 489 F.3d 1233 (D.C. Cir. 2007).

[33] *See RIFO*, at ¶ 52 (stating "[b]y definition, all information services accomplish their functions 'via telecommunications,' and as such, broadband Internet access service has always had a

Overall, requiring edge providers to pay into USF is currently not possible for the FCC to do unless and until it receives authority from Congress, which is no small feat. At a time when the contribution factor has surpassed 30% and the revenues being assessed are in decline, the FCC can no longer delay action. After two decades of putting USF reform on the backburner, the FCC must quickly move forward with a logical and feasible solution that will help ensure it can continue to meet its universal service statutory obligations.

ii. Edge Providers Are Contributing To USF And The Broadband Ecosystem.

The assumption that edge providers are experiencing a "free ride" from the USF and over networks is incorrect.[34] In reality, every business that is using a USF-assessed service contributes to the USF, including edge providers. For example, companies using interconnected VoIP in their business operations are contributors to the USF just like any other subscriber.

Moreover, BIAS is part of an ecosystem where different and many players contribute to different parts of the system. Edge providers play active roles in closing the digital divide by investing in rural connectivity programs, as well as digital equity programs in urban cities. Also, as networking becomes more and more a software-driven and cloud-native endeavor, edge providers are leveraging their software prowess and cloud experiences to bring tremendous innovation to the networking infrastructure build-out to help BIAS providers lower capital and operating expenses and more easily scale their operations. Innovation such as software-defined

---

telecommunications component intrinsically intertwined with the computer processing, information provision, and computer interactivity capabilities an information service offers.").

[34] *See NOI*, Statement of Commissioner Brendan Carr (stating "[i]t is time to end this free ride.").

networking and AI-enhanced network management, are good examples of how cloud providers are helping to transform the networking landscape and drive down costs.

The availability of online content and services provided by edge providers also helps the ecosystem operate efficiently and effectively. For example, large edge providers often invest significantly in data centers, subsea cables, CDNs, long haul lines, and cybersecurity and online safety provisioning, applications, services, and content developments. The technology community including edge providers have also played a significant role in enabling the Wi-Fi ecosystem, which leveraging BIAS enables access to interesting applications, products, and services. All of this helps to drive demand and as such benefits BIAS providers and their end users.[35] Connecting to these online services and products is the reason why the Commission, Congress, and the public have called for more broadband deployment and adoption. Indeed, it is the edge providers' products that are contributing to the demand for BIAS services and the incentive to build more BIAS networks that are faster and more robust. This investment is far from a "free ride." To stretch the metaphor further, what good is there in building a rollercoaster if there is no one bringing in the customers to ride it?

The purpose of the broadband ecosystem is not about the network infrastructure in itself, but rather about connectivity to important online services, products, and content. As explained in the FCC's *Restoring Internet Freedom Order*, "[t]he content and applications produced by edge providers often complement the broadband Internet access service sold by ISPs, and ISPs themselves recognize that their businesses depend on their customers' demand for edge

[35] *Contra* Comments of Communications Coalition of Kansas, WC Docket No. 21-476 (Feb. 10, 2021).

content."[36] Indeed, "ISPs, as well as edge providers, are important drivers of the virtuous cycle, and regulation must be evaluated accounting for its impact on ISPs' capacity to drive that cycle, as well as that of edge providers."[37] In fact, more consumers and businesses today are subscribing to BIAS than ever before.[38] Because of online content, BIAS providers are able to sell more broadband and increase their subscribership, which is at an all-time high, and they are selling faster speeds to consumers and businesses, which in turn increases their revenues and profits. According to Leichtman Research Group findings, in 2016 the largest BIAS providers in the U.S. accounted for 92.9 million broadband subscribers.[39] As of the third quarter in 2021, these top providers accounted for 107.9 million subscribers.[40] This means that in less than five years the top BIAS providers have experienced a 16% increase in BIAS subscribers, which they could not have done without the demand for online services. Without the services and applications from the edge providers, and the corresponding investments that support the provision of these applications and services, the last-mile provided by BIAS providers would be a "bridge to nowhere." Connectivity to online and OTT services is important for everyone, including consumers, small businesses, and enterprise companies, and these services are the

---

[36] *RIFO*, at ¶ 117.

[37] *RIFO*, at ¶ 119.

[38] *See* Broadland Chart, *Broadband Usage Will Keep Growing Post-Pandemic, available at* https://broadlandusa.com/.

[39] *See* Leichtman Research Group, Inc., *2.7 Million Added Broadband From Top Providers in 2016* (March 17, 2017), *available at* https://www.leichtmanresearch.com/wp-content/uploads/2017/03/LRG-Press-Release-2017-03-17.pdf.

[40] *See* Leichtman Research Group, Inc., *About 630,000 Added Broadband in 3Q 2021* (Nov. 17, 2021), *available at* https://www.leichtmanresearch.com/about-630000-added-broadband-in-3q-2021/.

primary reasons people demand BIAS connectivity for voice, video, software, cloud computing, online sales, online entertainment, shopping, and social media. Therefore, it is disingenuous to categorize edge providers as “free riding” when they are investing in the delivery of online services and content that BIAS providers rely on to attract BIAS subscribers.

iii. There Is Clear Support In The Record For The FCC To Move Forward With USF Reform By Including BIAS Revenues In The Contribution Base.

Over the last two decades, we have seen a dramatic decline in assessable revenues and a significant rise in the contribution factor on the nation’s most important universal service programs, and it is clear that the FCC can no longer wait to implement USF reform. Delaying reform until after its Report is submitted to Congress would be contrary to the public interest and the goal to have a predictable and sustainable USF.

The FCC has the authority and broad support to move forward with USF reform now, which is evidenced by the 332 diverse stakeholders that all agree on a path forward and have called on the FCC to act. Even with all the additional federal funding, the USF will still be a critical program to connect Americans to broadband networks and voice and broadband services. The current USF system is endangered and unpredictable, which makes it hard for providers and their customers to handle the swings in the quarterly contribution factor. But it does not have to remain this way. The FCC has never before had this much support to move forward on USF reform and should take advantage of this momentum.

VI. CONCLUSION

For the reasons stated herein, INCOMPAS encourages the Commission to outline in its Report to Congress how it will best ensure that our nation's most important connectivity programs are used efficiently, effectively, and long into the future.

Respectfully submitted,

/s/ Angie Kronenberg

Angie Kronenberg
Lindsay Stern
INCOMPAS
1100 G Street, N.W.
Suite 800
Washington, DC 20005
(202) 872-5745

February 17, 2022