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Comments filed with the Federal Communications Commission on the "Future of the Universal Service Fund"

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Before the
Federal Communications Commission
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In the Matter of Report on the Future of the Universal Service Fund	))))))	WC Docket No. 21-476

Reply Comments of Sarah Oh Lam* and Scott J. Wallsten†

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Introduction

In its Notice of Inquiry,[1] the Federal Communications Commission asks a series of questions about the current set of programs supported though the Universal Service Fund, particularly in light of the broadband initiatives funded through the American Rescue Plan Act of 2021 (ARPA) and the Infrastructure Investment and Jobs Act (IIJA).

Comments that have been submitted to the Commission focused heavily on how to fund universal service programs given the problems with the current contribution mechanism and ways to modify existing support programs. We have reviewed these comments and respectfully submit reply comments.

We make six points in these reply comments:

1. Fund Universal Service Through General Revenues, Not Taxes on Services
2. Stop Mandating Minimum Projected Demand for High-Cost Subsidies
3. Set Budgets for CAF and Other Infrastructure Programs
4. Include Measurable Objectives and Evaluation
5. Continue Using Reverse Auctions
6. Create a Task Force to Overhaul USF and Monitor ARPA and IIJA Funds

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[1] *Report on the Future of the Universal Service Fund*, WC Docket No. 21-476, *Notice of Inquiry*, FCC 21-127 (Dec. 15, 2021) ("Notice"), https://ecfsapi.fcc.gov/file/12152781704402/FCC-21-127A1.pdf.

1. Fund Universal Service Through General Revenues, Not Taxes on Services

When telecommunications were provided by a single company decades ago when phone service was considered to be a natural monopoly, a firm would charge higher prices in some areas in order to subsidize lower prices in other areas. These cross-subsidies generally meant that urban consumers paid more to subsidize rural consumers and commercial users paid more to subsidize residential consumers.

Competition in the telecommunications industry in the late 20th century would gradually make cross-subsidies impossible. To respond to this dynamic, Congress established the Universal Service Fund in the Telecommunications Act of 1996 to more directly subsidize high-cost areas and social priorities that might not otherwise be profitable.

The cross-subsidy approach to universal service relies on a steady stream of funding. Currently, funding is generated by mandatory contribution fees on telecommunications services. The FCC is rightly concerned that the funding base is becoming too small to sustain current levels of spending.[2]

In order to fund $8 to $10 billion in annual USF subsidies, the FCC has been increasing the contribution factor on telecommunications services to upwards of 25 percent,[3] clocking in at 29.1 percent in the fourth quarter of 2021.[4] This quarterly increase in the contribution factor is highly regressive and not sustainable.[5]

Contrary to the recommendations of other commenters in this proceeding, the answer is not to extend the contribution fee to other specific services or firms, but to fund the program from general federal tax revenues and Congressional appropriations.[6]

Funding universal service programs from general tax revenues has several advantages. First, raising money through the federal taxation system is typically more efficient, fair, and equitable than a contribution fee system like the one currently administered by the FCC. Second, in the budget and appropriations process, Congress can balance priorities against each other. In the FCC's contribution fee mechanism, no budgets are set or deliberated. Lastly, Congress can annually revisit allocations through a budget process, whereas the FCC conducts oversight and reform in ad hoc rulemakings.

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[2] *Notice* at ¶ 44-45.
[3] *In the Matter of Universal Service Contribution Methodology*, WC Docket No. 06-122, "The Universal Service Fund Needs a Budget: Comments of Sarah Oh, J.D., Ph.D. and Scott Wallsten, Ph.D.," July 29, 2019, ("USF Contribution Methodology Comments"), https://techpolicyinstitute.org/wp-content/uploads/2019/07/Oh_Wallsten_USF072919.pdf.
[4] *Notice* at ¶ 44.
[5] *USF Contribution Methodology Comments* at 3 ("Worse, the fees collected to provide the funding are regressive because everyone pays into the program, regardless of income. Funds are then redistributed to companies and organizations, regardless of income, who extend broadband goods and services to end users.").
[6] *Notice* at ¶ 51 ("We note that in recent legislation, including the Infrastructure Act, Congress provided significant support for several programs related to our universal service goals through the appropriations process whereas our universal service programs are supported through a system of contributions from telecommunications carriers and providers of interstate telecommunications. We seek comment on whether we should provide recommendations to Congress on this issue.").

Running a discretionary $10 billion fund in a specific sector generates risks of regulatory capture, oversight challenges, opportunities for fraud and waste, not to mention a Pandora's box of arguments regarding who benefits from different infrastructure and, therefore, who "should" be subject to levies of contribution fees.

If we believe as a society that telecommunications services should be available to everyone, then we have an obligation to use as efficient a method as possible to raise the necessary revenues to fund this federal subsidy program. That means ending the current contribution system and asking Congress to appropriate general funding for universal service programs, just as it has funded billions of dollars of broadband subsidies through ARPA and the IIJA.

2. Stop Mandating Minimum Projected Demand for High-Cost Subsidies

When the High-Cost Fund was changed in 2011 to allow it to subsidize broadband in addition to voice, the FCC passed an order that required the Universal Service Administrative Company (USAC) to "forecast total high-cost universal service demand as no less than $1.125 billion, i.e., one quarter of the annual high-cost budget."[7]

This order meant that the FCC was able to avoid reducing collections even when it spent less. Effectively, this means that even if USAC did not project demand for subsidies, the High-Cost program would be required to spend a minimum projected amount of funds.

While some may think such a requirement is not a significant concern, the effects of running a subsidy program with a budget floor, rather than ceiling, are profound. Instead of trying to find the best uses of the capital, the floor gives the FCC dollars to spare. This additional funding is seen in the figure below in red.

In the years 2011 through 2017, USAC added an extra amount to the High-Cost fund as a line item titled "Projected Support to High-Cost Account Pursuant to FCC 11-161." These additional allocations were added when projections fell below $4.5 billion.

This floor contributes to the problem that USF finds itself in today, with the need to expand its sources of contribution fees. This floor also creates an environment where duplicative spending is a real risk, leading to concerns expressed in the IIJA and raised in the NOI.[8] The FCC should stop forbidding USAC from projecting demand for subsidies below a pre-determined floor.

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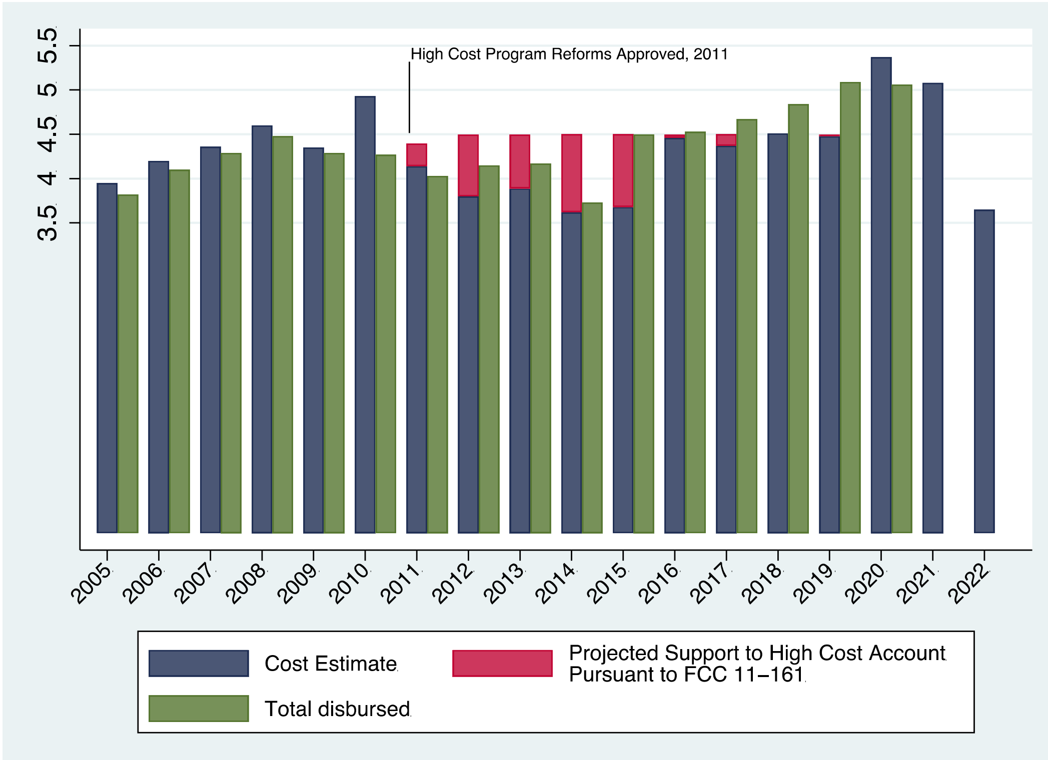
[7] *FCC Connect America Fund Order*, 2011 ¶ 559, https://docs.fcc.gov/public/attachments/FCC-11-161A1.pdf.

[8] *Notice* at ¶ 31 ("We seek comment on the impact of the Infrastructure Act on the High-Cost program. What changes, if any, should we consider to the High-Cost program in light of the Infrastructure Act and other recent developments? Are there changes that should be made in light of the additional funding provided by the Infrastructure Act? … How can we protect against waste, fraud, and abuse in the High-Cost program, particularly in light of the Infrastructure Act?").

Figure 1: High-Cost Program Projections and Disbursements, 2005 – 2022



Sources: USAC https://www.usac.org/service-providers/making-payments/contribution-factors/ and annual reports.

3. Set Budgets for CAF and Other Infrastructure Programs

Universal service programs largely operate without budgets. To encourage efficient spending, the FCC should set budgets for the Connect America Fund (CAF) and other infrastructure programs. As we wrote in 2019:

> The lack of a hard budget creates perverse incentives, as it gives program managers and recipients little reason to ensure that money is spent efficiently… Before discussing the economic problems of the lack of a budget, it is worth noting how unusual it is for a program like the USF to have no budget. Specifically, the lack of a budget means that USF is similar to entitlement programs, like Social Security and Medicare, which are generally based on how many people meet certain eligibility criteria rather than on set budgets. By contrast, discretionary spending, such as on Defense and other agencies, is determined by budgets set by Congress.[9]

The lack of a budget also enables the FCC's lack of response to the many critiques from the Government Accountability Office (GAO) and other government organizations. It is easier to avoid addressing failures when nobody accountable needs to approve additional spending.

A serious attempt to address the issues discussed in the NOI should include setting budgets.

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[9] *USF Contribution Methodology Comments* at 2.

4. Include Measurable Objectives and Evaluation

Universal service subsidy programs exist to make sure everybody has some minimum access to telecommunications services. Yet, no resources are allocated to rigorous program evaluation, despite USAC's annual administrative expenses exceeding $200 million.[10] Additionally, evaluation is made more difficult by the lack of measurable objectives.[11]

The GAO has written many reports over the years noting these problems. In October, 2020, for example, it concluded when reviewing the High-Cost program:

> "Although the performance goals for the high-cost program reflect principles in the Telecommunications Act of 1996, not all of the goals are expressed in a measurable or quantifiable manner and therefore do not align with leading practices. Furthermore, FCC's measures for its performance goals do not always align with leading practices, which call for measures to have linkage with the goal they measure and clarity, objectivity, and measurable targets, among other key attributes. For example, as shown below for two of FCC's five goals, GAO found that FCC's measures met most, but not all, of the key attributes. By establishing goals and measures that align with leading practices, FCC can improve the performance information it uses in its decision-making processes about how to allocate the program's finite resources. Leading practices also suggest that agencies publicly report on progress made toward performance goals. FCC does so, however, only in a limited fashion, which may lead to stakeholder uncertainty about the program's effectiveness."[12]

It is tempting to avoid defining specific goals to avoid the problem of incorporating differing opinions, but the lack of goals promotes fuzzy thinking. The lack of measurable objectives and rigorous evaluation makes it easy for programs to continue ineffective programs and yield smaller benefits than they could.

There is little excuse for not funding rigorous evaluations. In the context of an $8 to $10 billion annual budget, the cost of funding several rigorous evaluation studies each year is less than a rounding error.

5. Continue Using Reverse Auctions

Concerns about outcomes from the Rural Development Opportunities Fund auction (RDOF) have created a backlash against reverse auctions.[13] RDOF criticisms, however, are completely unrelated to the auction itself. The primary complaints focus on large winnings by LTD, which many think will not be able to meet its promises, and funded areas that do not need subsidies.[14]

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[10] *Notice* at ¶ 20 ("We also seek comment on whether and how the Commission should evaluate USF program performance.").

[11] *Id*. at ¶ 20 n.73 ("For example, we could use a process evaluation approach, an outcome evaluation approach, or an impact analysis.").

[12] GAO, "FCC Should Enhance Performance Goals and Measures for Its Program to Support Broadband Service in High-Cost Areas," Report to the Chairman, Committee on Energy and Commerce, House of Representatives, Oct. 2020, https://www.gao.gov/assets/720/710167.pdf.

[13] "Is the FCC's Reverse Auction Fatally Wounded or Just Bloodied?", Benton Institute Digital Beat, Apr. 29, 2021, https://www.benton.org/blog/fcc%E2%80%99s-reverse-auction-fatally-wounded-or-just-bloodied.

[14] Linda Hardesty, "The Biggest RDOF Winner LTD Broadband Responds to Naysayers," *Fierce Telecom*, Feb. 11, 2021, https://www.fiercetelecom.com/telecom/biggest-rdof-winner-ltd-broadband-responds-to-naysayers.

The concerns, in other words, had to do with eligibility requirements and mapping. Any process—auction or otherwise—could have suffered from similar problems.[15]

Auctions, per se, for universal service have been successful around the world for decades, although the U.S. is a relative newcomer. [16] Procurement auctions have a proven track record of getting more bang-for-the-buck for rural buildout.

And most everyone acknowledges the power of competitive bidding for telecommunications services has been a major contributor to massive gains in consumer well-being. The FCC has run nearly 100 spectrum auctions and raised $200 billion for the Treasury. The Nobel Prize committee awarded the 2020 Prize in Economics to Paul Milgrom and Robert Wilson in part for their work in helping to design and refine the auctions. We should not dismiss this vast experience and proven success.[17]

This strong endorsement of auctions, however, is not intended to dismiss the importance of getting the details right. But failing to use auctions would benefit incumbents who would prefer not to have to justify their cost estimates or be subject to competition from other providers. Making sure that universal service funds are used efficiently to benefit consumers mandates that the FCC use methods most likely to generate strong returns.

6. Create a Task Force to Overhaul USF and Monitor ARPA and IIJA Funds

Making significant reforms to the $10 billion USF and $200 million USAC is a daunting task for the FCC. The Commission may need to create a task force that can devote dedicated attention to an overhaul of the USF.

The task force could be relied upon to develop legislation for general appropriations, develop an annual budget process for USF programs, develop program evaluation goals and reporting requirements, and monitor short and long-term outcomes from ARPA and IIJA funds, and the interaction with USF programs.

Without a dedicated effort, the Commission is likely to continue its current course of managing the fund, which is to kick the can down the road until the next reform rulemaking proceeding.

Conclusion

With Congress having appropriated billions of dollars for broadband subsidies in the ARPA and IIJA, the FCC deserves praise for taking this important moment in history to take a hard look at the structure of the funding, administration, evaluation, and oversight of its $10 billion universal service programs.

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[15] *See, e.g.*, Gregory L. Rosston and Scott Wallsten, "How Not to Waste $45 Billion in Broadband Subsidies," Aug. 7, 2021, https://thehill.com/opinion/finance/566772-how-not-to-waste-45-billion-in-broadband-subsidies.
[16] Scott Wallsten, "Reverse Auctions and Universal Telecommunications Service: Lessons from Global Experience," *Federal Communications Law Journal* 61, no. 2 (Mar. 2009).
[17] *Id.*

The Commission is asking the right questions about the future of USF and should continue these efforts to reform the programs in order to connect all Americans to high-speed broadband.