

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

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

**COMMENTS OF  
THE NATIONAL ASSOCIATION OF STATE UTILITY  
CONSUMER ADVOCATES**

The U.S. Congress has tasked the Federal Communications Commission (FCC or Commission) to present a report on the FCC’s proposal for the future of the Federal Universal Service Fund, in light of the Infrastructure Investment and Jobs Act (Act or IIJA) funding for broadband. The FCC issued a Notice of Inquiry (NOI) on December 15, 2021, inviting comment on the “effect of the Infrastructure Act on existing USF programs and ability of the [FCC] to reach its goals of universal deployment, affordability, adoption, availability, and equitable access to broadband throughout the United States.” NOI ¶1.

The National Association of State Utility Consumer Advocates (NASUCA)<sup>1</sup> supports the FCC’s ongoing mission to assure that the federal Universal Service programs, developed to advance the goals and directives of Section 254,<sup>2</sup> evolve to meet the needs of consumers for robust and universally available communications networks, including broadband networks that

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<sup>1</sup> NASUCA is a voluntary association of 56 consumer advocate offices. NASUCA members represent the interests of utility consumers in 42 states, the District of Columbia, Puerto Rico, Barbados and Jamaica. NASUCA is incorporated in Florida as a non-profit corporation. NASUCA’s full members are designated by the laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General’s office). NASUCA’s associate and affiliate members also represent the interests of utility consumers but are not created by state law or do not have statewide authority. Some NASUCA member offices advocate in states whose respective state commissions do not have jurisdiction over certain telecommunications issues.

<sup>2</sup> 47 U.S.C. § 254.

support current and future needs. Of necessity, the FCC's development of its Report on the Future of the Universal Service Fund will run concurrent with early implementation of the broadband deployment and related initiatives established by the Act and other programs funded by appropriations.<sup>3</sup> NASUCA provides these comments to assist the FCC in development of the Report.<sup>4</sup> NASUCA also recommends changes in FCC policies to promote universal broadband goals and the efficient use of available funds from the USF and appropriations under the Act and related legislation.<sup>5</sup>

## I. EXECUTIVE SUMMARY

NASUCA recommends that the FCC report to Congress that its Universal Service programs should continue, subject to the FCC's ongoing review and improvements to the programs to meet current and evolving needs.

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<sup>3</sup> NOI ¶¶ 5-15. As summarized in the NOI, the Act directs the National Telecommunications and Information Administration (NTIA) to establish the Broadband Equity, Access, and Deployment (BEAD) program and other programs to facilitate broadband deployment, capacity, and accessibility. These initiatives under the Act are in addition to other, existing federal programs such as the U.S. Department of Agriculture's Rural Utility Service (RUS) and funding allocated to states and localities under the American Rescue Plan of 2021 which may be used for investment in broadband infrastructure.

<sup>4</sup> NASUCA Resolutions related to telecommunications, broadband, universal service, affordability, access, reliability, and infrastructure guide these comments. See: Resolution 2019-04, Urging the FCC to Refrain from Adopting a Cap on the USF; Resolution 2019-03, Supporting Congressional Legislation to Adopt Net Neutrality Legislation; Resolution 2019-02, Lifeline Support for Voice Services and to Study Lifeline Minimum Services; Resolution 2019-01, Urging States to Enact Protections for Residential Electric, Gas, Water, Sewer, and Telecommunications Services Customers in the Event of Major Disasters, Natural or Otherwise; Resolution 2018-01, Affordable Lifeline Support Resolution; Resolution 2017-09, State and Local Authority to Manage Pole Attachments; Resolution 2017-05, Lifeline Broadband Resolution; Resolution 2017-04, Broadband Resolution – Ensure Reliable Broadband Internet Access Services are Accessible and Affordable to all Consumers; Resolution 2014-06, Reasonable Rates for Telephone and Broadband Services; Resolution 2013-02, Calling for the Development of National and State Policies to Ensure Reliable Wireline and Wireless Communications During a Power Outage; Resolution 2012-03, Supporting the Adoption of Federal Universal Service Support Contribution Mechanisms that Ensure all Carriers and Services that Benefit from High Cost USF Contribute to their Program's Funding Base; Resolution 2012-01, Retention of Traditional Regulatory Oversight of all Voice Services; Resolution 2010-02, Calling for the Reform of the Lifeline Program, including Reform for Prepaid Wireless Lifeline Services; Resolution 2009-06, Lifeline and Link-Up Support for Broadband Internet Access Service; Resolution 2009-05, Development of National Policies that Encourage Deployment of Affordable Broadband; Resolution 2009-04, Support for National Telephone Discount Lifeline and Link-Up Awareness Week; Resolution 2008-01, Support Enactment of Federal Legislation to Establish a National Broadband Policy; Resolution 2007-11, Opposing Proposals for the Adoption of the Numbers-Based or Connections-Based Universal Service Contribution Mechanism.

<sup>5</sup> Dr. Robert Loube, of Rolka Loube Associates assisted NASUCA in development of these comments. Dr. Loube is an economist with extensive experience analyzing and testifying in matters related to telecommunications, broadband, and universal service at the federal and state level.

NASUCA supports the FCC’s proposed “universal service broadband goals” subject to the addition of reliability as a goal. The FCC’s reliability goal should be informed by the definitions provided by the Act’s framework for broadband deployment programs, which address service quality and continuity, and broadband projects that are designed to meet evolving needs. The FCC’s High Cost and Lifeline programs do impose baseline performance requirements for designated Eligible Telecommunications Carriers. But NASUCA recommends that the FCC improve upon its approach to assuring reliable broadband networks and services, particularly in the case of power outages.

NASUCA also recommends that the FCC advise Congress of the need for separate reform of the Lifeline program and USF contributions base and the FCC’s concurrent progress towards making those reforms.

To improve timely access and the content of broadband mapping data, NASUCA recommends some changes in the FCC’s practices.

## **II. COMMENTS**

### **A. The FCC’s Universal Service Goals for Broadband Should Include Reliability**

The Act defines the “universal service broadband goals for broadband” as “the statutorily mandated goals of universal service for advanced telecommunications capability under section 706 of the Telecommunications Act of 1996 (47 U.S.C. 1302).”<sup>6</sup> These goals include “universal deployment, affordability, adoption, availability, and equitable access to broadband throughout the United States.” NOI ¶¶ 4, 18. The FCC’s Report for improving its effectiveness in achieving the universal service goals for broadband should be based on the Act as well as “other legislation

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<sup>6</sup> IIA, div. F, tit. I, § 60104(a).

that addresses those goals.”<sup>7</sup> The Act’s universal service broadband goals are a floor, with the opportunity for the FCC to recommend expansion of those goals, to benefit the public interest.<sup>8</sup>

As such, NASUCA urges the FCC to add reliability to these universal service broadband goals. The Act states “Congress finds... [a]ccess to affordable, *reliable*, high-speed broadband is essential to full participation in modern life....”<sup>9</sup> Broadband infrastructure and connectivity must be sufficiently reliable to assure that the communities, households, businesses, anchor institutions, and public safety providers have connectivity that is robust, continuous, and reliable. NASUCA Resolutions spanning more than a decade have emphasized the need for federal and state regulations and policies to ensure the reliability of wireline, wireless, and broadband networks and services.<sup>10</sup> The derecho windstorms, which buffeted the Washington, D.C. area several years ago, the devastation of Hurricane Sandy and other storms, and fires that have destroyed swaths of California and other states are events that inflicted significant damage to infrastructure critical to communications and broadband connectivity. Damage to middle-mile and other facilities due to human error, accidents, or maintenance issues can also disrupt connectivity, with widespread impact.<sup>11</sup> The FCC’s universal service goals for broadband must value and encourage reliable broadband networks and services.

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<sup>7</sup> IIA, div. F, tit. I, § 60104(c)(2).

<sup>8</sup> IIA, div. F, tit. I, § 60104(c)(3).

<sup>9</sup> IIA, div. F, tit. I, § 60101. (Emphasis added).

<sup>10</sup> See, e.g., NASUCA Resolution 2019-01, Urging States to Enact Protections for Residential Electric, Gas, Water, Sewer, and Telecommunications Services Customers in the Event of Major Disasters, Natural or Otherwise; Resolution 2013-02, Calling for the Development of National and State Policies to Ensure Reliable Wireline and Wireless Communications During a Power Outage; Resolution 2009-05, Development of National Policies that Encourage Deployment of Affordable Broadband; Resolution 2008-01, Support Enactment of Federal Legislation to Establish a National Broadband Policy; Resolution 2007-11, Resolution 2006-06, Equitable Deployment of High Quality Advanced Telecommunications Services.

<sup>11</sup> See, NASUCA Resolution 2014-06, Reasonable Rates for Telephone and Broadband Services (reference to damage to 400 feet of AT&T fiber in Mendocino, CA which resulted in a 45 hour outage).

The FCC already conditions award of USF support for voice and broadband networks and services on certain performance commitments by the recipient, whether for High Cost or Lifeline support. These requirements are imposed through the FCC's Eligible Telecommunications Carrier (ETC) designation framework. Section 54.202 of the FCC's regulations require the ETC applicant to "demonstrate its ability to remain functional in emergency situations..." including a demonstration of reasonable back-up power, ability to reroute traffic around damaged facilities, and capability to manage traffic spikes during an emergency.<sup>12</sup> The specific public interest broadband performance requirements associated with an award of High Cost support are described in terms of speed, latency, and usage allowances, also as part of the FCC's ETC designation standards.<sup>13</sup>

NASUCA's first concern is that these FCC's performance standards are at present limited to carriers designated as ETCs and so eligible for USF certain. The FCC, other federal agencies, and the states have and will be devoting significant public funds to support deployment of broadband infrastructure and services to unserved and underserved areas, whether by ETCs, or other broadband providers ineligible or uninterested in obtaining ETC designation. Additional public funds will go to support broadband access and affordability, such as the Affordable Connectivity Program (ACP) administered by the FCC. Participation in the ACP is not limited to broadband providers designated as ETCs. The FCC should expand its universal service goals for broadband to include reliable networks and services, whether supported by USF programs or not.

Prompt action by the FCC to expand its universal service broadband goals to include broadband network and service reliability is appropriate for a second reason. Under the Act,

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<sup>12</sup> 47 C.F.R. § 54.202.

<sup>13</sup> See, e.g. 47 C.F.R. § 54.308, 54.309, 54.805.

there is a connection between the FCC’s performance criteria and standards and the NTIA’s award of funding for broadband projects.

The Act defines a “priority broadband project” as a project designed to provide broadband service “that meets speed, latency, *reliability, consistency in quality of service*, and related criteria...” as determined by the Assistant Secretary of Commerce and also ensures that the project can easily scale speeds over time to meet the evolving connectivity needs of households and businesses, as well as the deployment of 5G and future wireless technology.<sup>14</sup> The Act further defines “reliable broadband service” as service that meets the performance criteria determined by the Assistant Secretary in coordination with the FCC.<sup>15</sup> At a minimum, the Act’s criteria of “reliable broadband service” addresses “service availability, adaptability to changing end-user requirements, length of serviceable life, or other criteria, other than upload and download speeds...”<sup>16</sup> Each subgrantee must adhere to quality of service standards established by the Assistant Secretary in building and operating networks supported by IJA funds.<sup>17</sup>

These provisions of the Act accentuate the need for the FCC to expand the FCC’s universal service broadband goals to include reliability. The FCC’s service reliability criteria for broadband networks and services should at least mirror the Act’s concerns for reliability, service consistency, and forward looking performance concerns.

Further, the FCC should identify performance criteria for “reliable service” that are more robust than the minimal provisions of Section 54.202 requirements for prospective ETCs.

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<sup>14</sup> IJA, div. F, tit. I, § 60102(a)(2)(I) (emphasis added).

<sup>15</sup> IJA, div. F, tit. I, § 60102(a)(2)(L).

<sup>16</sup> Id.

<sup>17</sup> IJA, div. F, tit. I, § 60102(g)(1)(A).

NASUCA agrees that broadband networks and services funded by USF support should remain functional in an emergency situation. NASUCA supports the concern articulated in Section 54.202 that network providers should have “a reasonable amount of back-up power to ensure functionality without an external source...” during an emergency situation. The availability of back-up power is important to the operation of middle-mile networks, wireless broadband connections, and at the consumer connection.

NASUCA urges the FCC to revise and strengthen its battery back-up power standards, to better protect the ever-increasing number of consumers who rely on networks powered by the electric grid for broadband services. The FCC currently only requires providers of fixed service that is not line-powered to offer residential voice service customers a 24-hour back-up power option.<sup>18</sup> NASUCA cautions against simply importing this back-up power standard for fixed voice service that is not line-powered as a standard for assuring reliable broadband network connections for consumers.<sup>19</sup> NASUCA continues to have concerns that using the point-of-sale customer choice approach to determine whether a household will or will not have back-up power for vital broadband connectivity in the event of a power outage is not in best interests of the household or the public interest.

#### B. The Lifeline Program Should Be Preserved and Improved

At present, the Lifeline program provides a discount of \$5.25 for stand-alone voice service and up to \$9.25 for voice and broadband or standalone broadband services, with more support in Tribal areas. As part of its Report to Congress, the FCC should commit to continue and improve the Lifeline program, to assure eligible households continue to have more

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<sup>18</sup> See, Public Notice from Public Safety and Homeland Security Bureau Reminds of Upcoming Requirement to Offer Subscriber 24 Hours of Backup Power, PS Docket No. 14-174 (rel. Nov. 27, 2018).

<sup>19</sup> See, Ensuring Continuity of 911 Communications, Report and Order, 30 FCC Rcd 8677 (2015).

affordable access to vital voice and data or broadband connections of their choosing. The obligation to offer Lifeline service is an integral obligation of most ETCs, including those ETCs which have accepted High Cost support to deployment broadband with CAF or RDOF support.

The FCC has already acknowledged the need to develop a record to address the future of Lifeline support for voice service, when the FCC stayed the scheduled phase out of Lifeline support for voice only service.<sup>20</sup> In previous comments, NASUCA urged the FCC to “put all Lifeline service options on the same footing and allow Lifeline eligible household[s] to choose which service or mix of services meets their needs and budget, with comparable Lifeline support.”<sup>21</sup> The FCC’s administration of the separately funded and authorized Emergency Broadband Benefit (EBB) program and successor ACP provides another source of experience and information regarding the various needs of income-eligible households for voice and/or broadband services on affordable terms. Outreach and education to promote knowledge of both Lifeline and the ACP, including eligibility and how they complement or differ from one another, is an important on-going mission for the FCC and community partners.

NASUCA looks forward to contributing to the FCC’s efforts to improve the Lifeline program to meet the needs of eligible consumers, whether they prefer voice service, are in unserved or underserved areas as to broadband connectivity, or prefer voice from one provider and broadband from a non-ETC broadband provider through the ACP. The FCC’s Lifeline improvements should also determine the appropriate level of monthly support to meet Lifeline universal service goals. The FCC’s Report to Congress should affirm its plans to continue and improve the Lifeline program.

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<sup>20</sup> In the Matter of Lifeline and Link-Up Reform and Modernization, WC Docket No. 11-22, Order (Nov. 5, 2021).

<sup>21</sup> In the Matter of Lifeline and Link-Up Reform and Modernization, WC Docket Nos. 11-42, et al, NASUCA Comments to Refresh the Record and Support NASUCA’s Petition for Reconsideration at 7, with supporting Affidavit of Susan M. Baldwin (Aug. 2, 2021)



C. The FCC’s Report to Congress Should Include a Commitment to Reform of the USF Contributions Base

In its report to Congress, the FCC should commit to reform and broaden the USF contributions base. Concurrent with development of the Report, the Commission should move forward to develop a record and make a swift decision on the merits. Although NASUCA has not identified a need for additional legislative authority, if the FCC concludes that such authority is needed to implement appropriate reforms, the FCC’s Report should note that.

NASUCA has long been concerned that the costs of supporting the USF programs fall unevenly on consumers, based upon their purchase of assessable interstate telecommunications services.<sup>22</sup> The FCC’s referral to the Federal State Joint Board for Universal Service resulted in a recommendation by State Members alone.<sup>23</sup> More recently, coalitions of industry and public interest groups have offered economic analyses and recommendations for the FCC to address how to reform its USF contributions process. For example the February 14, 2022 “Call to Action” letter filed by Matthey Consulting on behalf of a broad coalition, urges prompt expansion of the USF contributions base to include broadband internet access service revenues, to reform and stabilize the funding mechanism, to reduce regulatory uncertainty and promote fairness.<sup>24</sup>

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<sup>22</sup> See, e.g. NASUCA Resolution 2019-04, Urging the FCC to Refrain from Adopting a Cap on the USF; Resolution 2017-05, Lifeline Broadband Resolution; Resolution 2017-04, Broadband Resolution – Ensure Reliable Broadband Internet Access Services are Accessible and Affordable to all Consumers; Resolution 2014-06, Reasonable Rates for Telephone and Broadband Services; Resolution 2012-03, Supporting the Adoption of Federal Universal Service Support Contribution Mechanisms that Ensure all Carriers and Services that Benefit from High Cost USF Contribute to their Program’s Funding Base; Resolution 2007-11, Opposing Proposals for the Adoption of the Numbers-Based or Connections-Based Universal Service Contribution Mechanism.

<sup>23</sup> In the Matter of Federal State Joint Board on Universal Service, WC Docket No. 96-45, et al., Recommended Decision of the State Members (rel. Oct. 15, 2019). The State Members recommended that: 1) services such as broadband internet access service (BIAS) and advance business services be included in the contribution (§ 17 and 24); 2) residential customers should be assessed on the basis of the number of voice and broadband connections to the public communications network rather on the basis of revenue (§22); 3) 50 percent of the fund should be recovered from the assessments on residential customers and 50 percent of the fund should be recovered from assessments on business customers; (§23); and 4) the FCC should remove prohibitions that prevents state from including broadband and other advance services in their state contribution bases.

<sup>24</sup> Report on the Future of the Universal Service Fund, WC Docket No. 21-476, Universal Service Contribution Methodology, WC Docket No. 06-122, Call to Action Letter filed on behalf of the Ad Hoc Telecom Users Committee, et al (Feb. 14, 2022).

NASUCA agrees with the identified need for reform and expansion of the USF contribution base to include revenues from broadband internet access services. NASUCA also agrees that the need for reform is urgent, to assure that the FCC's on-going USF programs are properly funded in a manner which is fair, sustainable, and reflective of greater focus of USF support on programs that fund deployment of broadband, enhance affordability, and integrate broadband connectivity into important activities such education and telehealth.

D. The FCC Should Take Steps to Improve the Timeliness of Mapping Information Available to the NTIA and State Broadband Authorities and to Require More Detailed Mapping Information

Broadband mapping information that is current, detailed, and available to not only the FCC but other agencies, as well as the states, is critical to the success of the USF programs, the broadband deployment and access programs created by the Act, and other programs supported by appropriations. For example, NTIA grants for middle-mile projects under the Act require the use of the most recent mapping data available from the FCC, states, or even speed or usage surveys. NOI ¶ 8. Provisions of the Act enhance the collection of broadband data, allowing the FCC to ask service providers, upon 60-day notice, for information necessary to augment the Broadband Data Collection or the Form 477 data collection. NOI ¶ 10. The FCC will receive from the Secretary of Commerce housing unit counts per census block, to add more detail to the FCC's Broadband Serviceable Location Fabric. Id.

NASUCA recommends the FCC accelerate its release of broadband data collected through Form 477, as one more step to improve access by decision-makers and applicants for funding for broadband deployment projects to important information. The FCC collects data from broadband on a semi-annual basis for data as of June 30 and December 31 of each year.

The FCC releases the data on its web page, but with a lengthy delay. For example, on October 29, 2021 the FCC released broadband deployment data from December 31, 2020.<sup>25</sup>

Expedited access to up-to-date broadband mapping data is important to the Broadband Equity, Access, and Deployment (BEAD) program under the Act. Each state broadband authority has to provide the Assistant Secretary of Commerce a five-year action plan, which includes a preliminary and a final proposal. The Act requires the state action plans and the proposals to prioritize the provision of services to underserved and unserved locations. NOI ¶ 5. To meet this requirement, state entities must identify the unserved and underserved locations. FCC action to speed access by the Assistant Secretary for Commerce to the most current Form 477 broadband data would also help state broadband authorities accelerate development of their state action plans and proposals, based on the most current and accurate data available.

In addition, NASUCA recommends that the FCC modify the Form 477 instructions to precisely define what can be placed within a GIS polygon. Each polygon should be limited to one technology, one set of download and upload speeds and one latency metric. This differs from the current instructions where a single census block can contain several speeds and several technologies. That is, a census block can contain DSL service at several speeds and fiber service at different speeds. Based on such a filing, it is impossible to determine where in the census block service under 25/3 Mbps is offered or where service under 100/20 Mbps is offered. While a single location may still be able to obtain different types of services, by precisely defining the GIS polygon by technology and speed, it will be possible to determine whether a location is unserved or underserved.

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<sup>25</sup> See, [Fixed Broadband Deployment Data from FCC Form 477 | Federal Communications Commission](#) (visited on Jan. 26, 2022).

Through adoption of these practices, the FCC may support the efforts of NTIA and the states to use appropriations made by the Act for broadband deployment to unserved and underserved areas. The expedited access to FCC collected broadband mapping information, with improved details, will also benefit the FCC's High Cost USF programs.

## II. CONCLUSION

NASUCA respectfully requests that the FCC adopt these recommendations as the FCC:

1) develops its Report to Congress, 2) finalizes the scope of its universal service broadband goals, 3) takes steps to update and improve USF programs and policies, and 4) evaluates its role in providing mapping information to support the broadband goals of the Act.

Respectfully submitted,

David Springe, Executive Director  
NASUCA  
8380 Colesville Road, Suite 101  
Silver Spring, MD 20910  
Phone (301) 589-6313  
Fax (301) 589-6380

Barrett C. Sheridan  
Assistant Consumer Advocate  
Office of Consumer Advocate  
555 Walnut St., Forum Pl., 5<sup>th</sup> Fl.  
Harrisburg, PA 17101  
Phone (717) 783-5048  
[bsheridan@paoca.org](mailto:bsheridan@paoca.org)

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