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

REPLY COMMENTS OF THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

On December 15, 2021, the FCC issued a Notice of Inquiry (NOI) 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) comments proposed modifications to the FCC's policies and practices related to the USF, to complement and advance policy goals of the Infrastructure Investment and Jobs Act (IIJA).

Like NASUCA, other parties have recommended that the FCC act to expand the Universal Service Fund (USF) contributions base. NASUCA discusses below the need to modify but continue the Lifeline program, as a complement to the tax-payer funded Affordable Connectivity Program (ACP). The FCC should exercise care to not decide the future of the Rural Healthcare Program in its report to Congress, when a new further notice of proposed rulemaking is pending. NASUCA concurs with state commissions that the federal-state relationship is critically important for the FCC to respect, for the betterment of universal service programs, the ACP, and advancement of state interests in consumer protection and sound disposition of IIJA funds by states for broadband build-out. Further, NASUCA agrees that the FCC has proper authority for its past and future administration of the USF programs and approach to contributions assessment.

I. REPLY COMMENTS

A. The FCC Should Take Action to Reform the Contributions Base

The need for prompt action to reform the universal service contributions base is a common theme in the comments by public interest groups and trade groups representing telecommunications and broadband service providers alike. [1] NASUCA agrees. The FCC should add broadband internet access revenues to the universal service contributions base. As part of the FCC's reform efforts, the FCC should be guided by the State Members of the Joint Board recommendation to limit the burden on residential households to 50% of contributions base.[2] Additionally, the FCC should address how to guard against Lifeline and ACP recipients being assessed to support the USF, to avoid undermining the value of such targeted USF or tax-payer support.

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[1] See, Call to Action Letter filed on behalf of the Ad Hoc Telecom Users Committee, et al (Feb. 14, 2022) in this proceeding and Universal Service Contribution Methodology, WC Docket No. 21-476. See also, INCOMPAS Comments at 13-19; Broadband Connects Comments at 3-4; California Public Utilities Commission (CPUC) Comments at 8.

[2] 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.

B. <u>The Record Includes Some Sound Recommendations for Improvements to the Lifeline Program, for the Benefit of Eligible Low Income Households</u>

Many interested parties have offered suggestions as to how the Lifeline program should be re-focused and improved, to help low-income households obtain access to voice and data or broadband connectivity on affordable terms. NASUCA supports the FCC's exploration of a number of recommendations, to determine the best mix to help increase Lifeline participation in the current and the future Lifeline program. There is common recognition that the Lifeline program should continue, to advance the universal service goals of Section 254(b)(3).[3] The Lifeline program should continue as a source of baseline support, to complement the more recent, taxpayer funded Affordable Connectivity Program.

The National Lifeline Association encourages a higher Lifeline support amount of $30 per month to promote increased low-income subscribership to wireless service with robust wireless data allowances. The Benton Institute's "Reimaging Lifeline: Universal Service, Affordability, and Connectivity" report by John B. Horrigan recommends a focus on supporting a wireless connection and a fixed broadband connection.[4] The Benton report suggests a $20 per month Lifeline support amount.[5] NASUCA agrees that the monthly value of Lifeline support should be increased. The $5.25 per month for voice only services and $9.25 for broadband with or without voice is inadequate and may account in part for the low Lifeline participation rates, as discussed by the Benton report and others.[6] The amount of support should be better calibrated to encourage eligible households to go through the process to apply and obtain Lifeline support, to

[3] 47 U.S.C. § 254(b)(3).
[4] See, Benton written ex parte (Feb. 25, 2022), Horrigan, John B, "Reimaging Lifeline: Universal Service, Affordability, and Connectivity" at 24; CPUC Comments at 10 (Recommends Lifeline support a fixed wireless connection and that the ACP support a fixed broadband connection).
[5] Horrigan, John B, "Reimaging Lifeline: Universal Service, Affordability, and Connectivity" at 24.
[6] Horrigan, John B., "Reimaging Lifeline: Universal Service, Affordability, and Connectivity" at 17; AT&T Comments at 31.

bring the household spending on connectivity within the FCC's 2% of household budget affordability benchmark.[7]

While the FCC charts the future of the Lifeline program as to amount of support and whether one or two connections should be supported, NASUCA urges the FCC to respect that some Lifeline eligible households may not be ready or able to obtain a reliable connection to a wireless or wireline broadband service with Lifeline support. Many commenters acknowledge the need for improved outreach and publicity of the Lifeline program. NASUCA agrees. Near term, such outreach should account for the current needs and opportunities for connectivity of Lifeline eligible households. Some households may not be ready to move away from a wireline connection with voice service. Further, as New Century Cities, NCLC, and Common Sense Media note wireless voice connections support public safety communications.[8]

The FCC should not adopt any recommendation to eliminate Lifeline support for "traditional voice-only service."[9] Rather than guide policy based on the preferences of current Lifeline enrollees,[10] the FCC should recognize that the needs of Lifeline eligible households may vary by household size and life stage.[11] Withholding support from low-income households that need and purchase telecommunications service despite the budget burden does not advance universal service goals.[12] NASUCA joins New Centuries Cities, the New York Public Service Commission, the Massachusetts Department of Telecommunications and Cable and others that

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[7] Horrigan, John B., "Reimaging Lifeline: Universal Service, Affordability, and Connectivity" at 17-20 (discussion of affordability and measures).
[8] New Century Cities, National Consumer Law Center, and Comment Sense Media Comments at 5-7 (New Cnetury Cities).
[9] AT&T Comments at 33; CPUC Comments at 10 (CPUC "recommends that Lifeline assume the role of a wireless broadband program…").
[10] AT&T Comments at 33
[11] See, <u>In the Matter of Lifeline and Link-Up Reform and Modernization</u>, 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)
[12] New Century Cities Comments at 8. "Reducing and eliminating Lifeline voice subsidy is antithetical to the Commission's goals of universal service and may potentially disconnect many households that rely on Lifeline service."

recommend continued Lifeline support for voice service and with an appropriate level of support.[13]

Looking forward, NASUCA believes the tax-payer funded ACP and the USF supported Lifeline program should be treated as complementary but separate programs.[14] Households that are eligible for both programs should be free to decide to obtain a Lifeline supported service from one provider and an ACP supported broadband connection from another provider, where there is a choice of providers and service types.

C. The FCC's Future Plans for the Rural Health Care Program

The FCC issued a Further Notice of Proposed Rulemaking in its "Strengthening Rural Health Care Program Procedures" proceeding in February 2022.[15] Nonetheless, AT&T recommends that the FCC's plan for the future of the USF include a phase out the Rural Health Care Telecommunications Program in the lower 48 states and restrict the program to Alaska.[16] In light of the open rulemaking and comment period, adoption of the AT&T position as part of the FCC's report to Congress may be premature.

D. The FCC Should Recognize the Important Role of States

Pursuant to Section 214(e), states have been the primary agency to review and approve applications for designation as an eligible telecommunications carrier, relative to high cost and/or Lifeline universal service support.[17] Most recently, states have reviewed and approved numerous ETC applications by RDOF winners. The ACP program does not require providers to

[13] New York Public Service (NYSPC) Comments, 1-3; Massachusetts Dept. of Telecommunications and Cable (Mass. DTC) Comments at 1-4; Vermont Department of Public Service (VT DPS) Comments at 10; California Emerging Technology Fund

[14] California Emerging Technology Fund (CETF) Comments at 18; contrast, National Lifeline Association Comments at 11-12, AT&T Comments at 33.

[15] Strengthening Rural Health Care Program Procedures, Further Notice of Proposed Rulemaking, WC Docket No. 17-310 (rel. Feb. 22, 2022). Available at: https://ecfsapi.fcc.gov/file/0222114785183/FCC-22-15A1.pdf.

[16] AT&T Comments at 37-40.

[17] 47 U.S.C. § 214(e).

be ETCs to participate, but there is some overlap or parallels between Lifeline and ACP providers and Lifeline and ACP administration. Federal funds for broadband build-out made available by the IIJA will go to state agencies to determine the final recipients and projects to be funded. As the FCC charts the future of the USF programs, the FCC should respect and work cooperatively with states to advance national universal service broadband principles.

Some commenters recommend an end to the role of ETC designation and certain ETC obligations.[18] NASUCA opposes the proposed dismantling or lessening of the public protections provided by the Section 214(e) ETC framework. As described in NASUCA's Comments, the FCC's standards for ETC designation require providers to demonstrate and commit to certain standards for network operation including reliability and public safety functions. It is reasonable for ETCs to continue to have an obligation to provide reliable telecommunications service, even if a dollar of universal service support is not currently received for that bit of network. The ETC designation requirement is appropriate given that the funds provided for high cost program or Lifeline purposes are USF dollars, not tax-payer funds. The ETC process involves both states and the FCC and provides important protections of the public interest.

Further, states have and continue to advance federal universal service goals in many ways. For example, the Vermont Department of Public Service recommends that the FCC engage with state commissions to improve the future allocation of any high cost support to bring broadband to unserved areas.[19] Separately, NARUC has long emphasized the valuable role played by state commissions as "another cop on the beat" well positioned to identify abusive practices which harm universal service program integrity. The Mass. DTC encourages the FCC

[18] USTelecom Comments at 27-31; NTCA – the Internet & Television Association (NTCA) Comments at 13.
[19] Vt. DPS Comments at 8-9.

to facilitate coordination between ACP providers and state agencies.[20] As the Mass. DTC explains, ACP consumers will benefit if state agencies have information about providers, particularly those that are not ETCs, so the state agencies may help resolve consumer complaints.[21] Outreach efforts to publicize the availability of Lifeline services have long been a federal and state cooperative effort, in addition to the ETC's own obligation to advertise. NASUCA members also work in their states to promote federal universal service goals and help consumers.

As the FCC evaluates the future of universal service programs, moves forward with administration of the ACP, and tackles other tasks assigned by Congress such as improved maps of broadband availability, NASUCA urges the FCC to recognize the importance of strong federal and state cooperation, including with state commissions, NASUCA members, and other state agencies, including state broadband development offices. Further, NASUCA cautions against the lifting of ETC obligations or interference with state carrier of last resort obligations at this time.

E. The FCC's Authority to Implement, Modernize, and Fund the Universal Service Programs is Soundly Based

As part of the NOI, the FCC invited public comment on the legal challenges leveled by Consumers' Research, et al against the FCC's authority to administer the USF programs and adjust the contributions rate. NOI ¶ 45, n. 124. For example, in 2021 and 2022 Consumers' Research protested and appealed quarterly changes to the USF contribution factor implemented by the Wireline Competition Bureau pursuant to FCC regulation.[22]

[20] Mass. DTC Comments at 2-3.
[21] Mass. DTC Comments at 2-3.

NASUCA agrees with Public Knowledge[23] and the collective position of USTelecom – The Broadband Association (USTelecom), NTCA – The Rural Broadband Association (NTCA), and the Competitive Carriers Association (CCA) that the FCC has the legal authority to create and manage the Universal Service Fund, the individual supported programs, and the contributions process.[24] Section 254 provides the FCC with the requisite statutory authority to advance the universal service goals spelled out by Congress.

NASUCA will not repeat the legal analysis capably put forth by Public Knowledge or the Joint Comments of USTelecom, NTCA, and CCA. Historically, NASUCA or member offices have played an active role in the FCC's implementation of the universal service provisions of the 1996 Telecommunications Act. NASUCA representatives served on the original Joint Federal-State Board on Universal Service, assisting the FCC in crafting the initial universal service framework and goals. NASUCA members have also served on the board of the Universal Service Administrative Company (USAC), the private entity that helps administer the FCC's universal service programs.

NASUCA has not always agreed with particular FCC rulemaking decisions. However, NASUCA rejects the position of Consumers' Research that the FCC's universal service policy, programs, and assessment of contributions are contrary to law, procedurally deficient, or constitutionally infirm. These legal challenges should not inhibit or deter the FCC from its ongoing commitment to administer, improve, and assure there is adequate funding for today's universal service programs and priorities and those of the future with increased focus on broadband connectivity.

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[22] Joint Comments of USTelecom – The Broadband Association, NTCA – The Rural Broadband Association, and the Competitive Carriers Association at 1-26.
[23] Public Knowledge Comments at 17-19.
[24] Joint Comments of USTelecom, NTCA, and CCA at 1-26.

II. CONCLUSION

NASUCA supports the FCC's on-going efforts to improve and strengthen the existing universal service programs and to report to Congress suggested plans for the future.

Respectfully submitted,

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