

# Digital Progress Institute

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Esteemed Members of the Senate Universal Service Fund Working Group:

The Digital Progress Institute welcomes the opportunity to provide additional feedback to the U.S. Senate on its work to oversee the Universal Service Fund and prepare for the Future of Universal Service.

Per congressional direction in the bipartisan Infrastructure, Investment, and Jobs Act, the Federal Communications Commission held a proceeding on this very subject, with the Digital Progress Institute filing comments. The Commission issued a report in that proceeding last year, recommending in line with our suggestions that the Commission reevaluate the Lifeline program in light of the success of the Affordable Connectivity Program and seek legislation to broaden the base of contributors.<sup>1</sup>

The Senate Commerce Committee's Subcommittee on Communications, Media, and Broadband held a hearing earlier this year on "The State of Universal Service," featuring testimony from schools, rural carriers, competitive Internet service providers, and public interest advocates. In the lead up to that hearing, the Digital Progress Institute wrote a letter to the Subcommittee arguing that "the most pressing problem facing universal service is not formally part of the Universal Service Fund at all. The Affordable Connectivity Program . . . is running out of funds."<sup>2</sup> We deeply appreciated the bipartisan support shown in that hearing for the Affordable Connectivity Program, including a recognition of that program's importance to families both rural and inner city and to veterans across these United States.

Before diving into the specific questions posed by the co-chairs, the Digital Progress Institute wants to highlight again the pressing need to fund the Affordable Connectivity Program. With some 20 million households now participating, the ACP is by far the most popular and successful program to ensure broadband affordability in this nation's history. That includes 696,927 households in Michigan, 210,142 households in Minnesota, 167,783 households in New Mexico, 110,801 households in Kansas, 110,000 households in West Virginia, and 19,893 households in South Dakota.<sup>3</sup>

A strong, bipartisan majority of voters (78%) support continuing the Affordable Connectivity Program, including 64% of Republicans, 70% of Independents, and 95% of Democrats. Similar majorities hold for urban, suburban, and rural households, seniors and Millennials, men and women, high-school graduates and PhDs, the employed and the retired, who all support continuing the program by at least a 2:1 ratio. In short, the American people recognize the importance and need to continue funding for this vital program.

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<sup>1</sup> *Report on the Future of the Universal Service Fund*, WC Docket No. 21-476, Report, FCC 22-67, paras. 55-74, 88-111 (2022).

<sup>2</sup> Letter from Joel L. Thayer, President, Digital Progress Institute, to Esteemed Members of the Senate Commerce Committee at 1 (May 10, 2023).

<sup>3</sup> The Digital Progress Institute welcomes any member to explore our interactive map that shows enrollment by state and congressional district: <https://map.digitalprogress.tech>.

We recognize that any request for more funding must come with additional oversight. Members of this Committee, along with the leadership of the Federal Communications Commission, the Inspector General, and the Government Accountability Office have been taking a hard look at the Universal Service Fund programs to eliminate any waste, fraud, and abuse—and that work must continue to ensure that no federal funding is wasted.

Along those lines, the Digital Progress Institute offers two modest suggestions for the USF Working Group’s consideration. *First*, Congress should consider limiting the additional funding on Tribal lands to *rural* Tribal lands.<sup>4</sup> Although members of the Navajo Nation in Northwest New Mexico or those living on the Rosebud Tribal area in Southern South Dakota certainly need the additional support, there is little reason to think that anyone living in Tulsa or Reno or Honolulu need that same level of support. What is more, excessive support in low-cost areas is more likely to incentivize potential fraud and abuse; removing that excessive support should eliminate such an incentive.

*Second*, Congress should consider narrowing the eligibility criteria for the Affordable Connectivity Program and aligning the eligibility for the Affordable Connectivity Program and Lifeline. Every additional criterion that can qualify a household creates additional need for oversight, and some criteria—like qualification because a student is at a Community Eligibility Provision school for the U.S. Department of Agriculture’s Free and Reduced-Price School Lunch Program or School Breakfast Program—create eligibility for households that are not low-income and may not need support.<sup>5</sup> What is more, differing criteria for the two programs creates consumer confusion without any policy justification.

Finally, the Digital Progress Institute asks Congress to consider indexing the support levels of the Affordable Connectivity Program to inflation. The sky-high inflation of recent years has wreaked havoc on the budgets of consumers—and inflation-proofing the program would ensure that broadband remains affordable for all Americans even should inflation come roaring back.

Turning next to the Universal Service Fund, the Digital Progress Institute will focus its comments on three specific components: the high-cost program, the low-income (Lifeline) program, and funding for the Universal Service Fund.

*First*, the recent \$42 billion investment in fixed broadband deployment from the bipartisan Infrastructure, Investment, and Jobs Act may obviate the need for a second phase of the Rural Digital Opportunity Fund. Congress should nonetheless recognize that those investments will not bring high-speed mobile broadband to rural America, however, given the way that program has been designed and implemented. As such there is a pressing need for the Federal Communications Commission to move forward with the 5G Fund, a \$9 billion investment the Commission established in 2020 but has not yet implemented. And the FCC’s National Broadband Map makes clear that large swathes of West Virginia, Pennsylvania, New York, Nebraska, New Mexico, Arizona, and other states have little to no 5G coverage. If Congress and the Commission are going to make good on the promise of universal service, that means ensuring that next-generation technologies like 5G are in fact available to all Americans.

The Digital Progress Institute would support Congress directing the FCC to move forward with the 5G Fund. In doing so, the Commission should rely on the latest National Broadband Map and include a robust challenge process for States, consumers, and other stakeholders to challenge coverage claims (similar to the process used in implementing the Broadband Equity, Access, and Deployment Program).

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<sup>4</sup> The Affordable Connectivity Program provides qualifying households with up to \$30 off their monthly home Internet bills and up to \$75 per month for households on qualifying Tribal lands.

<sup>5</sup> See *Lifeline and Link Up Reform and Modernization et al.*, WC Docket Nos. 11-42, 09-197, 10-90, Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38, at paras. 188-96 (2016) (explaining why the Commission streamlined eligibility for Lifeline, including no longer using the National School Lunch Program to qualify a household for the program).

What is more, Congress should—as suggested in the co-chairs questions—have a more thorough and upfront vetting process to ensure that any participant is actually capable of conducting the buildout and operation of 5G networks that it bids for in rural America. That may require limiting the extent to which mobile providers may bid to serve areas far away from their existing networks.

Finally, Congress should consider eliminating the eligible telecommunications carrier requirement for participation in the high-cost program. Congress did not graft a similar requirement onto the Broadband Equity, Access, and Deployment Program, and the requirement primarily increases the costs of compliance and participation for high-cost recipients. Doing so would level the playing field and reduce the needless paperwork that often comes with such a designation.

*Second*, the Digital Progress Institute firmly believes that the Commission’s Lifeline program must be thoroughly reexamined. In its present form, Lifeline is now largely duplicative of the work of the Affordable Connectivity Program—but it has been far less successful, enrolling less than half as many households.<sup>6</sup> Moreover, the Lifeline program’s current implementation has a distortive effect on the competitive market for broadband since only some Internet service providers can participate, leading to some households receiving support for only the ACP and others for both the ACP and Lifeline despite receiving substantially the same, if not the exact same, service at the same price. This is wasteful and unnecessary.

That said, the Digital Progress Institute believes that Lifeline can continue to play a vital role that complements the Affordable Connectivity Program. Specifically, Congress should recognize that not every American household will want to subscribe to a high-speed broadband service. For such households, Lifeline can offer the opportunity for affordable voice services. As noted above, Congress should direct the Commission to align the eligibility criteria between Lifeline and the Affordable Connectivity Program and give consumers a choice: support for affordable broadband or support for affordable voice service. Notably, Congress should also consider directing the Commission to examine the amount of support for telephone services under the Lifeline program—for example, normalizing support in urban areas (regardless of whether such areas are qualifying Tribal lands) and increasing support in rural areas where basic telephone services continue to be more expensive. And, as with the high-cost program, Congress should recognize that the eligible telecommunications carrier designation is a needless barrier to entry for participation in this program and eliminate that requirement.

*Third*, the Commission’s contributions program must be examined. The Commission’s current contribution mechanism for the USF is broken and unfairly saddles consumers—families, veterans, working adults, and the elderly—with fees that were borne almost exclusively by the business community not so long ago. Accordingly, the Digital Progress Institute proposes a consumers-first approach to contribution reform, including reforms to bring in large telecommunications providers that exploit loopholes to avoid contributing (such as the self-provision exemption) and to ensure that Big Tech companies (such as digital advertising platforms, streamers, gaming companies, and cloud computing firms) that profit tremendously from universal service pay their fair share. In all, the goal of the Commission should be to return to first principles: The businesses that profit from universal service should be the ones paying—not the American families and veterans that we want to get connected.

As a first step, Congress could direct the Commission to offset one-tenth of contributions for next year from digital advertising platforms while requiring the Commission to eliminate existing loopholes in its contributions rules that favor some companies over others (and encourage gamesmanship). Doing so would impose only a modest cost on the firms that most directly benefit from universal connectivity and give the Commission experience in assessing a fee on such companies, while reducing the contribution burden on American families and veterans.

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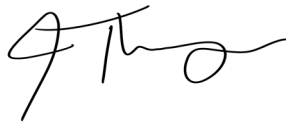
<sup>6</sup> Universal Service Administrative Company, Lifeline Program Data, <https://www.usac.org/lifeline/resources/program-data/> (last visited Aug. 25, 2023).

In that same vein, Congress should recognize that it already has begun to fund universal service through an appropriations model. Indeed, Congress appropriated funding for the Affordable Connectivity Program, the Broadband Equity, Access, and Deployment program, the Emergency Connectivity Fund, and the COVID telehealth program—paralleling each of the four USF programs. A modest appropriation of one-tenth the Universal Service Fund’s budget would, again, give the Commission and Congress experience in relying on appropriations to carry out the Universal Service Fund in an incremental way.

*Finally*, the co-chairs ask whether the FCC has administered the Universal Service Fund in a sufficiently transparent and accountable manner. Congress may want to consider legislation that would require additional transparency and accountability at the Universal Service Administrative Company, including legislation that would insulate that important work from judicial attack. Furthermore, the Commission has long believed that the Fund lies outside the gambit of the Federal Funding Accountability and Transparency Act, which generally requires disclosure of federal funding awards on USASpending.gov. If Congress is concerned about transparency and accountability, it should review whether that template would be useful as applied to the Universal Service Fund.

We appreciate the opportunity to share our views with the USF Working Group on these critical issues and thank you in advance for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Thayer', with a stylized flourish at the end.

Joel L. Thayer  
President & Member of the Board