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# The Future of the Universal Service Fund and Related Broadband Programs

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# The Future of the Universal Service Fund and Related Broadband Programs

Universal service is the principle that all Americans should have access to communications services. It is the cornerstone of the Communications Act of 1934 (P.L. 73-416)—the law that established the Federal Communications Commission (FCC). The FCC is an independent federal agency charged with regulating interstate and international communications by radio, television, wire, satellite, and cable.

Since the enactment of the Communications Act, universal service policies and programs have helped to make telephone service available nationwide, including in rural areas. The Telecommunications Act of 1996 (P.L. 104-104) expanded the focus of universal service, amending the Communications Act, to include access to advanced telecommunications and information services, including high-speed (e.g., broadband) internet service to homes, schools, and businesses—especially in rural and high cost areas, and to low-income individuals.

The Telecommunications Act of 1996 adopted a set of principles to guide universal service policy and achieve universal service goals: promote the availability of quality services at just, reasonable, and affordable rates for all consumers; increase nationwide access to advanced telecommunications services; advance the availability of such services to all consumers, including those in low income, rural, insular, and high cost areas, at rates that are reasonably comparable to those charged in urban areas; increase access to telecommunications and advanced services in schools, libraries, and rural health care facilities; and provide equitable and non-discriminatory contributions from all providers of telecommunications services to the Universal Service Fund (USF), which supports universal service programs.

To advance the goals of universal service, the FCC uses various permanent, pilot, and temporary subsidy programs funded through the USF. The USF is funded by fees on telecommunications carriers, rather than through appropriations. The FCC's USF authority is governed by Section 254 of the Communications Act, as amended (47 U.S.C. §254), which was added by the Telecommunications Act of 1996. Section 254(d) requires interstate telecommunication carriers to contribute to the advancement of universal service based on mechanisms established by the FCC. The FCC has implemented this direction by adopting regulations requiring interstate carriers to pay a percentage of their revenue at a rate, set on a quarterly basis, called the "contribution factor." While the FCC sets the regulatory and fee structure, the USF is administered by the Universal Service Administrative Company, a nonprofit entity, under the direction of the FCC.

The FCC has established four USF programs: the High Cost Program, the Lifeline Program, the Rural Health Care Program, and the Schools and Libraries Program. The agency continually seeks to improve and update USF programs to reflect the changing needs of beneficiaries and advances in technology. Additionally, policymakers have discussed options for maintaining the viability of the four programs, for example, by expanding the types of entities that contribute to the fund.

During the 118<sup>th</sup> Congress, four bills have been introduced that would affect USF programs. These are the FAIR Contributions Act (S. 856), which would require the FCC to study and report on the feasibility of funding the USF through contributions from edge providers (i.e., providers of online content or services, such as search engines); the Reforming Broadband Connectivity Act of 2023 (companion bills S. 975 and H.R. 1812), which would require the FCC to reform the contribution system of the USF; and the Rural Broadband Protection Act of 2023 (S. 275), which would require the FCC to establish a process to vet applicants seeking funding under the high cost universal service programs.

Some policymakers have discussed options for improving the efficiency and effectiveness of the USF generally, and maintaining the viability of the four USF programs, for example, by expanding the types of entities that contribute to the fund or covering additional services (e.g., rural 5G). Other Members have called on Congress to reexamine the USF and the "hidden tax" it places on carriers (which may be passed down to consumers), to rein in FCC authorities, and to increase congressional oversight of USF spending. While expanding the USF could help to close the digital divide, expanding its use could require higher fees for carriers and, therefore, consumers.

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## Introduction

Universal service is the principle that all Americans should have access to communications services. It is the cornerstone of the Communications Act of 1934 (P.L. 73-416)—the law that established the Federal Communications Commission (FCC).<sup>1</sup> The FCC is an independent federal agency charged with regulating interstate and international communications by radio, television, wire, satellite, and cable. The mission of the agency is to make available for all people of the United States, “without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges.”<sup>2</sup>

Efforts to make voice telephone service available throughout the United States began with the enactment of the Communications Act. Since then, universal service policies and programs have helped to make telephone service available nationwide, including in rural areas. The Telecommunications Act of 1996 (P.L. 104-104) expanded the focus of universal service, amending the Communications Act of 1934 to include access to advanced telecommunications and information services, including high-speed (e.g., broadband) internet service to homes, schools, and businesses, especially in rural and high-cost areas, and to low-income individuals.<sup>3</sup>

To advance the principle of universal service, the FCC uses various permanent, pilot, and temporary programs funded through the Universal Service Fund (USF).<sup>4</sup> The USF is funded by fees on telecommunications carriers, rather than through appropriations. The FCC’s USF authority is governed by Section 254 of the Communications Act, as amended (47 U.S.C. §254), which was added by the Telecommunications Act of 1996. Section 254(d) requires interstate telecommunication carriers to contribute to the advancement of universal service on an “equitable and nondiscriminatory basis” based on mechanisms established by the FCC. The FCC has implemented this direction by adopting regulations requiring interstate carriers to pay a percentage of their revenue at a rate set on a quarterly basis, called the “contribution factor.”<sup>5</sup> The FCC sets the regulatory and fee structures for the USF, which is intended to ensure that telecommunications services, including broadband, are available and affordable throughout the country. The USF is administered by the Universal Service Administrative Company (USAC), under the direction of the FCC.<sup>6</sup>

## Universal Service Principles

The Telecommunications Act of 1996, which significantly amended the Communications Act, adopted a set of principles to guide universal service policy:

- Promote the availability of quality services at just, reasonable, and affordable rates for all consumers.
- Increase nationwide access to advanced telecommunications services.

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<sup>1</sup> 47 U.S.C. §151 et seq.

<sup>2</sup> 47 U.S.C. §151.

<sup>3</sup> 47 U.S.C. §254.

<sup>4</sup> Federal Communications Commission (FCC), “Universal Service,” <https://www.fcc.gov/general/universal-service>.

<sup>5</sup> For more information about the contribution rate, see CRS Legal Sidebar LSB10904, *Fifth Circuit Considers Constitutionality of the Universal Service Fund*, by Chris D. Linebaugh.

<sup>6</sup> The Universal Service Administrative Company (USAC) is an independent, not-for-profit corporation that manages Universal Service Fund (USF) programs, including the collection of contributions and disbursement of funds.

- Advance the availability of such services to all consumers, including those in low income, rural, insular, and high cost areas, at rates that are reasonably comparable to those charged in urban areas.
- Increase access to telecommunications and advanced services in schools, libraries, and rural health care facilities.
- Provide equitable and non-discriminatory contributions from all providers of telecommunications services for the fund supporting universal service programs.<sup>7</sup>

The FCC has updated the USF and its funding mechanisms to respond to improvements in telecommunications and internet technology and services.

## Universal Service Fund Programs

Section 254 directs the FCC, in consultation with a Federal-State Joint Board on Universal Service,<sup>8</sup> to consider the universal service principles outlined in the Communications Act when formulating USF policies and programs (e.g., affordable rates, rural access, essential to education, public health, or safety). To advance the universal service principles, the FCC, with the Board, has established four programs:

- High Cost Program,
- Lifeline Program,
- Rural Health Care Program, and
- Schools and Libraries Program (“E-Rate”).

Numerous proposals have been considered over the years to improve and update these programs to reflect the changing needs of beneficiaries and advances in technology. Additionally, policymakers have discussed options for maintaining the viability of the USF, for example, by expanding the types of entities that contribute to the fund. The four programs and the issue of changing the calculation of USF contributions are discussed below.

### High Cost Program

Historically, the High Cost Program subsidized voice service to ensure universal access to phone lines; the program is transitioning to provide support for broadband through its Connect America Fund (CAF). According to the USAC, the High Cost Program provides support through more than a dozen separate legacy funds that support voice service,<sup>9</sup> and modernized funds that support broadband service expansion in rural areas.<sup>10</sup> The modernized funds include, for example, the Alternative Connect America Cost Model (ACAM)—a voluntary option for rate-of-return carriers (i.e., small independent telephone companies). According to USAC, “carriers that elected this option receive predictable monthly payments to provide voice and broadband service to all

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<sup>7</sup> FCC, “Universal Service,” <https://www.fcc.gov/general/universal-service>.

<sup>8</sup> The Federal-State Joint Board on Universal Service is composed of the FCC Commissioners, State Utility Commissioners, and a consumer advocate representative. For more information, see FCC, “Federal-State Joint Board on Universal Service,” <https://www.fcc.gov/general/federal-state-joint-board-universal-service>.

<sup>9</sup> Legacy funds include Frozen High Cost Support, High Cost Loop, Intercarrier Compensation Recovery, and Interstate Common Line Support. For more information, see USAC, “Funds,” <https://www.usac.org/high-cost/funds>.

<sup>10</sup> USAC, “High Cost Fund,” <https://www.usac.org/high-cost/>.

funded locations over the program’s 10-year support term (2017-2026).<sup>11</sup> Carriers must meet specified broadband deployment milestones during the 10-year support term.<sup>12</sup>

The Rural Digital Opportunity Fund (RDOF)<sup>13</sup> and 5G Fund for Rural America<sup>14</sup> are the most recent initiatives established as part of the CAF.<sup>15</sup>

## **Rural Digital Opportunity Fund**

Through competitive reverse auctions—a mechanism that awards funds to the company that commits to deploying service at the lowest cost—the FCC committed \$20.4 billion to bring high-speed, fixed<sup>16</sup> broadband service to rural homes and small businesses in two phases.<sup>17</sup>

- The Phase I auction began on October 29, 2020. The FCC announced the results on December 7, 2020. 180 bidders won \$9.2 billion to deploy high-speed broadband to over 5.2 million unserved homes and businesses.<sup>18</sup> Following the auction, the FCC has continued<sup>19</sup> to review long-form applications<sup>20</sup> and authorize support for winning bidders over the 10-year period after the auction process is complete.<sup>21</sup>
- The Phase II auction, for which the FCC has not yet determined a timeframe, may provide up to \$11.2 billion to deploy high-speed broadband, targeting partially served areas as well as the few unserved areas that did not receive Phase I funding. In a November 10, 2022, letter from FCC Chairwoman Jessica Rosenworcel to Senator Roger Wicker, Chairwoman Rosenworcel noted that the FCC

discussed the need for future efforts like RDOF Phase II, in light of anticipated broadband infrastructure work from new programs like the National Telecommunications and Information Administration’s Broadband Equity, Access, and Deployment Program. We noted that after funding from these new programs is put in place, the FCC could consider deployment initiatives for areas still lacking service or otherwise falling short of the speed and latency standards required.<sup>22</sup>

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<sup>11</sup> USAC, “ACAM,” <https://www.usac.org/high-cost/funds/acam/>.

<sup>12</sup> Ibid. For information on other modernized funds, see USAC, “Funds,” <https://www.usac.org/high-cost/funds>.

<sup>13</sup> For additional information about RDOF, see CRS Report R46501, *Rural Digital Opportunity Fund: Requirements and Selected Policy Issues*, by Colby Leigh Rachfal.

<sup>14</sup> For additional information about the 5G Fund for Rural America, see CRS Insight IN11661, *5G Fund for Rural America*, by Jill C. Gallagher.

<sup>15</sup> The High Cost Programs included previous initiatives, such as the Connect America Fund Phase II Auction, which ran from July 24, 2018, to August 21, 2018. FCC, “Connect America Fund Phase II Auction (Auction 903),” <https://www.fcc.gov/auction/903>.

<sup>16</sup> Fixed technologies include, for example, fiber optic cable, cable modem, fixed wireless.

<sup>17</sup> FCC, “Auction 904: Rural Digital Opportunity Fund,” <https://www.fcc.gov/auction/904>.

<sup>18</sup> FCC, *Auction to Bring Broadband to over 10 Million Rural Americans*, <https://www.fcc.gov/document/fcc-auction-bring-broadband-over-10-million-rural-americans>.

<sup>19</sup> FCC Chairwoman Jessica Rosenworcel indicated in a November 10, 2022, letter to Senator Roger Wicker that “FCC staff is close to finalizing authorizations for RDOF support, with 413 out of 418 applications resolved.” <https://docs.fcc.gov/public/attachments/DOC-389366A2.pdf>.

<sup>20</sup> After the auction, long-form applications were required from winning bidders to provide additional information to the FCC about qualifications, funding, and the network that winning bidders intend to use to meet their obligations.

<sup>21</sup> For example, see FCC, *Auction 904 17<sup>th</sup> Authorization Public Notice*, January 13, 2023, <https://www.fcc.gov/document/auction-904-17th-authorization-public-notice>.

<sup>22</sup> FCC, *Chairwoman Jessica Rosenworcel’s Response to Senator Roger Wicker Regarding the Rural Digital Opportunity Fund*, November 21, 2022, <https://www.fcc.gov/chairwoman-rosenworcel-letters-congress> and (continued...)

## 5G Fund for Rural America

In October 2020, the FCC adopted rules creating the 5G Fund for Rural America.<sup>23</sup> The fund is expected to distribute up to \$9 billion from the USF over the next 10 years to bring voice and broadband services to areas of the country that are unlikely to see unsubsidized deployment of 5G networks. Funds are to be awarded to providers, including satellite operators, to serve areas that are not served by a subsidized 4G Long Term Evolution (LTE) or 5G broadband service provider. The FCC plans to award support through a competitive reverse auction. Further, the FCC announced it would award support in two phases:

- Phase I to target up to \$8 billion of support nationwide to areas lacking unsubsidized 4G LTE or 5G mobile broadband; \$680 million is set aside for tribal lands.
- Phase II to provide at least \$1 billion to support the deployment of 5G networks that facilitate precision agriculture.

To determine eligible areas for the 5G Fund, the FCC is to use data collected as required by the Broadband Deployment Accuracy and Technological Availability Act (P.L. 116-130). The act required the FCC to—among other requirements—collect and display (on a map) specific location-level information about broadband services available throughout the country and implement a public challenge process.

The November 10, 2022, letter from FCC Chairwoman Jessica Rosenworcel to Senator Roger Wicker explains the FCC’s position, stating

As was contemplated by the FCC at the time it adopted the framework for the 5G Fund for Rural America and as the FCC later explained in its recent report [to Congress],<sup>24</sup> our support initiatives in the future should take into consideration the data we develop in the Broadband Data Collection, as well as the impact of programs like the Broadband Equity, Access, and Deployment Program [a program at the National Telecommunications and Information Administration], before moving forward with new approaches to long-term support for mobile broadband.<sup>25</sup>

On November 18, 2022, the FCC released the preproduction draft of the map—referred to as the National Broadband Map. According to the FCC, the preproduction draft began an “ongoing, iterative process that will improve the data submitted by providers by incorporating challenges from individuals and other stakeholders.”<sup>26</sup>

The FCC released an update to its National Broadband Map on May 30, 2023. As of the publication of this report, the FCC has not announced when the 5G Fund for Rural America would begin.

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<https://docs.fcc.gov/public/attachments/DOC-389366A2.pdf>. (Hereinafter, “*Chairwoman Jessica Rosenworcel’s Response to Senator Roger Wicker Regarding the Rural Digital Opportunity Fund*.”)

<sup>23</sup> FCC, *In the Matter of Establishing a 5G Fund for Rural America*, Report and Order, GN Docket 20-32, October 27, 2020, <https://docs.fcc.gov/public/attachments/FCC-20-150A1.pdf>. For additional information, see CRS Insight IN11661, *5G Fund for Rural America*, by Jill C. Gallagher.

<sup>24</sup> FCC, *FCC Report on Future of the Universal Service Fund* (WC 21-476, FCC 22-67), August 15, 2022, <https://www.fcc.gov/document/fcc-reports-congress-future-universal-service-fund>. (Hereinafter, “*FCC USF Report*.”)

<sup>25</sup> *Chairwoman Jessica Rosenworcel’s Response to Senator Roger Wicker Regarding the Rural Digital Opportunity Fund*.

<sup>26</sup> FCC, *FCC Releases Pre-Production Draft National Broadband Map*, November 18, 2022, <https://www.fcc.gov/document/fcc-releases-pre-production-draft-national-broadband-map>.

## **Lifeline Program**

Through the Lifeline Program, the FCC provides subsidies to broadband providers to cover monthly subscription costs for qualified consumers or households. Eligibility is limited to one beneficiary per household. Low-income broadband subscribers may qualify for assistance through this program if they earn less than 135% of the federal poverty level or meet certain other qualifying criteria, such as enrollment in federal nutrition or housing assistance programs. Lifeline subsidizes beneficiaries via reimbursements to eligible providers to cover monthly subscription charges—up to \$9.25 per month in most cases; up to \$34.25 for those living on tribal lands. In many cases, beneficiaries pay nothing out-of-pocket. In other cases, Lifeline providers may apply the reimbursement to lower the end-user cost of eligible plans that exceed the subsidy amount. Lifeline does not provide reimbursement for mobile phones or connected computing devices, but some providers include smartphones as a marketing incentive with their mobile broadband plans. Annual spending varies depending on program enrollments. Enrollment rates vary widely from state to state; nationally, 19% of eligible households—approximately 7.4 million subscribers—benefit from the Lifeline Program.<sup>27</sup>

## **Emergency Broadband Benefit Program/Affordable Connectivity Program**

The Emergency Broadband Benefit Program (EBB) was established as a temporary program under the Consolidated Appropriations Act, 2021 (P.L. 116-260), funded by an appropriation of \$3.2 billion to the FCC to help low-income households pay for broadband service and connected internet devices. The EBB supports the goals of the USF, but it is not funded through USF contributions. Funding for the EBB was available until expended or until six months after the Coronavirus Disease 2019 (COVID-19) public health emergency was terminated (as declared by the Secretary of Health and Human Services). The FCC engaged the USAC to implement the EBB Program.

Under Title V of the Infrastructure Investment and Jobs Act (IIJA, P.L. 117-58), the EBB was renamed the Affordable Connectivity Program (ACP). The sunset provision tied to the COVID-19 pandemic was eliminated. Under the IIJA, Congress appropriated \$14.2 billion for the ACP, to remain available until expended.

The creation of the EBB in 2021, now transitioned to the ACP, highlighted issues related to the ongoing and developing connectivity needs of low-income Americans, as well as potential areas for improvement and reform of the Lifeline Program. ACP as written in statute differs from the Lifeline Program in its funding structure, benefits levels, and provider and beneficiary eligibility requirements.<sup>28</sup> ACP offers broader and more generous eligibility provisions and significantly higher monthly subsidies to cover the cost of residential broadband service—up to \$30 in most cases; up to \$75 on tribal lands. In addition, ACP provides one-time discounts of up to \$100 for connected laptops, desktop computers, or tablets purchased by subscribers from participating broadband providers. It also expands eligibility criteria for service providers, while imposing public outreach and consumer protection mandates. Finally, ACP supports grant programs in the nonprofit and government sector to expand program outreach to historically underrepresented communities.<sup>29</sup>

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<sup>27</sup> USAC, “Program Data”, <https://www.usac.org/lifeline/resources/program-data>.

<sup>28</sup> IIJA, Division F, Title V, §60502(a)(2). For additional information on EBB, see CRS Insight IN11612, *The Emergency Broadband Benefit: Implementation and Future Policy Directions*, by Brian E. Humphreys.

<sup>29</sup> See FCC, “Affordable Connectivity Outreach Grant Program,” <https://www.fcc.gov/acp-grants>.



## Rural Health Care Program<sup>30</sup>

The Rural Health Care (RHC) Program allows rural health care providers to pay rates for internet and telecommunications services similar to those of their urban counterparts, making telehealth services more affordable in rural areas.<sup>31</sup> The RHC has two permanent programs, the Healthcare Connect Program and the Telecommunications Program, and a three-year program, the Connected Care Pilot Program.<sup>32</sup> The COVID-19 pandemic brought increased attention to the need for reliable high-speed services for health care providers and their patients. The pandemic also accelerated the adoption of telehealth services, which were seen by some policymakers as increasingly critical in providing health care in rural areas of the country. The FCC set the RHC program funding cap for funding year 2023 at \$6.82 million.<sup>33</sup>

## Healthcare Connect Fund Program

The Healthcare Connect Fund (HCF) Program,<sup>34</sup> established by the FCC in 2012, supports broadband connectivity to eligible health care providers and encourages the establishment of state and regional provider networks. Under this program, eligible rural health care providers receive a 65% discount on internet services. Eligible non-rural health care providers that are members of a consortium with more than 50% rural health care providers receive the 65% discount as well.<sup>35</sup>

## Telecommunications Program

The Telecommunications Program,<sup>36</sup> established by the FCC in 1997, subsidizes the difference between urban and rural rates within a state for telecommunications and voice services to facilitate the use of telemedicine and telehealth.<sup>37</sup> This program provides non-profit or public health care providers in rural areas access to telecommunications services at rates reasonably comparable to rates charged in urban areas of a state.

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<sup>30</sup> FCC, “Rural Health Care Program,” <https://www.fcc.gov/general/rural-health-care-program>.

<sup>31</sup> The Communications Act of 1934, as amended, defines health care providers as (1) post-secondary educational institutions offering health care instruction, teaching hospitals, and medical schools; (2) community health centers or health centers providing health care to migrants; (3) local health departments or agencies; (4) community mental health centers; (5) not-for-profit hospitals; (7) rural health clinics; (8) skilled nursing facilities; or (9) consortia of health care providers consisting of one or more entities falling into the first seven categories. (47 U.S.C. §254(h)(7)(B)(vi)).

<sup>32</sup> In April 2020, the FCC established a three-year Connected Care Pilot Program to provide up to \$100 million of support from the USF to help defray eligible health care providers’ costs of providing connected care services and help assess how USF funds might be used to support connected care services. The program is to provide funding for selected pilot projects to cover 85% of the eligible costs of broadband connectivity, certain network equipment, and information services necessary to provide connected care services to the intended patient population. (USAC, “Connected Care Pilot Program,” <https://www.usac.org/rural-health-care/connected-care-pilot-program>.)

<sup>33</sup> FCC, *Wireline Competition Bureau Announces E-Rate and RHC Programs’ Inflation-Based Caps for Funding Year 2023*, Public Notice, DA-23-178, March 3, 2023, <https://www.fcc.gov/document/e-rate-and-rhc-programs-inflation-based-caps-funding-year-2023>. (Hereinafter, *Wireline Competition Bureau Announces E-Rate and RHC Programs’ Inflation-Based Caps for Funding Year 2023*.)

<sup>34</sup> FCC, “Healthcare Connect Fund—Frequently Asked Questions,” <https://www.fcc.gov/general/healthcare-connect-fund-frequently-asked-questions>.

<sup>35</sup> Ineligible entities are permitted to participate as members of a consortium but cannot receive support from the HCF Program.

<sup>36</sup> USAC, “Telecommunications Program,” <https://www.usac.org/rural-health-care/telecommunications-program>.

<sup>37</sup> 47 U.S.C. §254(h)(1)(A); 47 C.F.R. §54.601(a).

## Schools and Libraries Program

Based on the Telecommunications Act of 1996, the FCC created the Schools and Libraries Program, commonly called the E-Rate Program.<sup>38</sup> The program provides needs-based discounts to eligible schools and libraries for telecommunications services (e.g., local and long-distance calling, high-speed lines) and internet access, as well as internal connections (i.e., the equipment to deliver these services), among other services. Eligible schools and libraries may request support for “category one” services, which provide connectivity to schools and libraries, and “category two” services, which provide connectivity within schools and libraries.<sup>39</sup> Provision of category one services are prioritized over category two services.

In recent years, the FCC refocused the program on providing broadband services, including significantly expanding Wi-Fi access. Discounts range from 20% to 90% based on the poverty level of the schools; rural schools and libraries may receive an even higher discount. If demand for funding is greater than the available funds, funding is allocated based on greatest need, as determined by poverty level. On March 3, 2023, the FCC announced that the E-rate Program funding cap for funding year 2023 will be \$4.768 billion.<sup>40</sup>

## Emergency Connectivity Fund

In addition to the existing E-Rate Program, the American Rescue Plan Act (ARPA, P.L. 117-2) established the \$7.171 billion Emergency Connectivity Fund (ECF). The ECF has allowed schools and libraries to purchase eligible equipment and services for use by students, school staff, and library patrons.<sup>41</sup> The program has provided support to approximately 11,000 schools, 1,000 libraries, and 100 consortia, and provided nearly 13 million connected devices and over 8 million broadband connections in all 50 states, the District of Columbia, and U.S. territories.<sup>42</sup> The third and final<sup>43</sup> funding application window for the ECF closed on May 13, 2022; funding awards may be used to purchase eligible equipment and services between July 1, 2022, and December 31, 2023.

The funding provided to the ECF through ARPA was intended as an emergency supplement to the E-Rate program, to purchase services and hardware not eligible for E-Rate funding; specifically, broadband connectivity and connected devices for students, school staff, and library patrons during the COVID-19 emergency period. Other programs created and funded through the IIJA (P.L. 117-58) are more likely viewed to complement funding available through E-Rate and the ECF. For example, states may allocate funds under the Broadband Equity, Access, and Deployment (BEAD) Program (a program at the National Telecommunications and Information Administration established by the IIJA) for deploying and upgrading broadband network facilities

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<sup>38</sup> FCC, “E-Rate—Schools and Libraries USF Program,” <https://www.fcc.gov/general/e-rate-schools-libraries-usf-program>.

<sup>39</sup> 47 C.F.R. §§ 54.501, 54.502.

<sup>40</sup> *Wireline Competition Bureau Announces E-Rate and RHC Programs’ Inflation-Based Caps for Funding Year 2023*.

<sup>41</sup> American Rescue Plan Act (ARPA, P.L. 117-2), Title VII, §7402, <https://www.congress.gov/bill/117th-congress/house-bill/1319/text>.

<sup>42</sup> FCC, *FCC Announces over \$2.5 Million in Emergency Connectivity Funding for Schools and Libraries*, news release, April 12, 2023, <https://docs.fcc.gov/public/attachments/DOC-392526A1.pdf>. A running total of funding commitments is available at <https://www.fcc.gov/ecf-current-funding-commitments>.

<sup>43</sup> As demand in the third application filing window exceeded the remaining \$1.5 billion in appropriated funding, there will not be any additional application filing windows for the Emergency Connectivity Fund (ECF) program. FCC, *FCC Announces over \$2.8 Billion in Funding Requests for Final Window in Ongoing Work to Close the Homework Gap*, press release, May 25, 2022, <https://docs.fcc.gov/public/attachments/DOC-383685A1.pdf>.

to provide or improve broadband service to schools and libraries that lack access to Gigabit-level broadband service.<sup>44</sup> Construction of facilities through BEAD grants is a few years away, meaning the FCC may not have data to determine the impact of BEAD projects on the E-Rate Program for a number of years. It is possible that the additional funding, both through the ECF and BEAD grants, could provide significant new infrastructure, which could increase demand for recurring E-Rate funding.

## USF Program Fund Contributions

In accordance with Section 254(d) of the Communications Act, the FCC requires any entity that provides interstate telecommunications services to the public for a fee to contribute to the USF.<sup>45</sup> The act also grants the FCC permissive authority to assess contributions such that “any other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires.”<sup>46</sup> Contributions are determined quarterly, calculated based on the ratio of total projected quarterly costs of the universal service programs to contributors’ projected interstate and international telecommunications revenue. Providers may pass through the USF contribution cost to end-users.<sup>47</sup>

The amount households pay for the “pass through” has been relatively stable in recent years, but the contribution factor has increased significantly—from 16.7% in the first quarter of 2017<sup>48</sup> to 33.0% in the third quarter of 2022.<sup>49</sup> These increases are due in large part to a decline in the contributions revenue base, i.e., providers are reporting a declining share of telecommunications revenues and an increasing share of non-telecommunications revenues.<sup>50</sup> USF demand and disbursements, however, have remained relatively stable over the past decade—in 2012, USF disbursements were \$8.71 billion, and in 2020 disbursements were \$8.27 billion.<sup>51</sup> These figures might indicate that the declining contribution base is the primary driver of the increased contribution factor, rather than increased demand from consumers.

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<sup>44</sup> National Telecommunications and Information Administration (NTIA), *Broadband Equity, Access, and Deployment Program (BEAD)*, Notice of Funding Opportunity, May 12, 2022, <https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf>.

<sup>45</sup> The Communications Act of 1934, as amended, directs that every telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the FCC to preserve and advance universal service. 47 U.S.C. §254(d). For more detail on the contribution rates, see CRS Legal Sidebar LSB10904, *Fifth Circuit Considers Constitutionality of the Universal Service Fund*, by Chris D. Linebaugh.

<sup>46</sup> 47 U.S.C. §254(d). For example, in 2006, the FCC relied on this authority to require interconnected Voice over Internet Protocol providers to contribute as a means of ensuring a level playing field among direct competitors.

<sup>47</sup> 47 C.F.R. §54.712.

<sup>48</sup> FCC, *Proposed First Quarter 2017 Universal Service Contribution Factor* (CC Docket 96-45, DA-16-1367), Public Notice, December 9, 2016, <https://www.fcc.gov/document/proposed-first-quarter-2017-usf-contribution-factor-167-percent>.

<sup>49</sup> FCC, *Proposed Third Quarter 2022 Universal Service Contribution Factor* (CC Docket 96-45, DA-22-623), Public Notice, June 9, 2022, <https://www.fcc.gov/document/omd-announces-usf-3q-contribution-factor-33-percent>.

<sup>50</sup> FCC, *Universal Service Monitoring Report, 2021*, Table 1.1, <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>. (Hereinafter, *Universal Service Monitoring Report, 2021*.)

<sup>51</sup> FCC, *Universal Service Monitoring Report, 2021*, Table 1.10.

## **Legislative Activity in the 118<sup>th</sup> Congress**

During the 118<sup>th</sup> Congress, four bills have been introduced that would affect USF programs, and one hearing has been held.

### **Rural Broadband Protection Act of 2023 (S. 275)**

The Rural Broadband Protection Act of 2023 was introduced by Senator Shelley Moore Capito on February 7, 2023. The bill would require the FCC to establish a process to vet applicants seeking funding under the high-cost universal service programs.

Referred to the Committee on Commerce, Science, and Transportation.

### **FAIR Contributions Act (S. 856)**

The FAIR Contributions Act was introduced by Senator Roger Wicker on March 16, 2023. The bill would require the FCC to study and report on the feasibility of funding the USF through contributions from edge providers (i.e., providers of online content or services, such as search engines).

The report would require the FCC to consider (1) the type and size of firms and services on which contributions could be assessed, (2) equity issues related to current versus alternative systems for contributing to the fund, (3) the effect of any change to the contribution system on the telecommunications bills of consumers, and (4) the sustainability of the fund and how to ensure that fund disbursements are consistent and predictable over time.

Referred to the Senate Committee on Commerce, Science, and Transportation.

### **Reforming Broadband Connectivity Act of 2023 (S. 975 and H.R. 1812)**

The Reforming Broadband Connectivity Act of 2023 was introduced by Senator Amy Klobuchar on March 27, 2023, and Representative Joe Neguse on March 7, 2023. This bill would require the FCC to make changes to the financing of the USF. The USF is financed by fees contributed by telecommunications carriers, and supports programs to expand the availability of and access to telecommunications services.

Specifically, the bill directs the FCC to (1) study the need for expanding the fund's contribution base to ensure fairness and equity in applicable contribution requirements, and (2) reform the fund's contribution system through rulemaking. In carrying out the rulemaking, the FCC must consider the findings and recommendations of its study and the impact of changes on consumers, businesses, and seniors.

Referred to the Senate Committee on Commerce, Science, and Transportation and the House Energy and Commerce Committee Subcommittee on Communications and Technology.

### **Senate Hearing, "The State of Universal Service"**

On May 11, 2023, the Senate Committee on Commerce, Science, and Transportation Subcommittee on Communications, Media, and Broadband, held a hearing, "The State of

Universal Service.”<sup>52</sup> The hearing examined the need for connectivity in rural and insular areas, for health professionals in providing telemedicine and telehealth, for low-income households that otherwise could not afford internet access and for access to broadband in the nation’s schools and libraries. One topic discussed was the continuity of ACP funding. The initial funding of \$14.2 billion, appropriated through the IIJA, is expected to run out during the first or second quarter of 2024. Some lawmakers expressed concern that the FCC has not sufficiently accounted for how ACP funds have been spent to date. Before committing additional funds to the program, they said they wanted to wait for the results of an Office of Inspector General review of the FCC’s management of COVID-19 broadband funds; that review was due on June 1, 2023. Other lawmakers noted the complexity of the challenge of increasing connectivity through the ACP and other broadband programs, and expressed continued support for these programs.<sup>53</sup> The hearing also explored potential reforms aimed at ensuring the future effectiveness of the USF and the status of a GAO examination, due November 10, 2023, regarding previous recommendations to the agency about USF accounting.

## Considerations for Congress

In response to continuing increases in the USF contribution factor over time, policymakers have considered numerous proposals to improve and maintain the fund’s viability. The FCC has proposed five areas for possible reform: the High Cost Program; Lifeline and the ACP; E-Rate and ECP; the Rural Health Care Program; and USF contributions. Each is discussed below.

### High Cost Program

The COVID-19 pandemic magnified the issue of who had access to broadband and who did not, as social distancing moved activities such as school and work online. This left many Americans who were without broadband access to seek alternatives, such as sitting in parking lots outside restaurants or libraries to access Wi-Fi connections.<sup>54</sup> In response, Congress provided billions in funding and established new programs to aid in expanding broadband to areas that lacked it.<sup>55</sup>

In particular, Congress authorized appropriations of \$65 billion in the IIJA for various broadband programs. Of this funding, \$42.45 billion was allocated to the BEAD program, to be administered by NTIA, an agency within the Department of Commerce.<sup>56</sup> According to the FCC,

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<sup>52</sup> U.S. Senate Committee on Commerce, Science, and Transportation Subcommittee on Communications, Media and Broadband, “The State of Universal Service,” hearing, May 11, 2023, <https://www.commerce.senate.gov/2023/5/the-state-of-universal-service>.

<sup>53</sup> Jimm Phillips, “Latta, Thune Undecided on ACP Future; House Subpanel Eyes Fed Broadband Changes,” Communications Daily, May 11, 2023, <https://communicationsdaily.com>. (Hereinafter, “Latta, Thune Undecided on ACP Future; House Subpanel Eyes Fed Broadband Changes.”)

<sup>54</sup> Kang, Cecilia, “Parking Lots Have Become a Digital Lifeline,” May 20, 2020, <https://www.nytimes.com/2020/05/05/technology/parking-lots-wifi-coronavirus.html>.

<sup>55</sup> See CRS In Focus IF12030, *The Broadband Digital Divide: What Comes Next for Congress?*, by Colby Leigh Rachfal.

<sup>56</sup> NTIA, *The Broadband Equity, Access, and Deployment (BEAD) Program Overview*, <https://www.internetforall.gov/sites/default/files/2022-05/BEAD%20Info%20Sheet%20-%20IFA%20Launch%20-%20Final.pdf>. See also CRS Report R47075, *The National Telecommunications and Information Administration (NTIA): Current Roles and Programs*, by Ling Zhu.

this infusion of new capital and administrative resources will move the United States closer to near ubiquitous deployment of advanced telecommunications services, thus materially impacting the need to support infrastructure development.<sup>57</sup>

In light of this prospect, the FCC has contemplated the future of the USF, including reorientation of the High Cost Program. To this end, the FCC has proposed initiation of a proceeding at the agency to:

- consider future support needs of high cost and other hard to serve areas, to include if, when, and under what circumstances continuing support may be necessary;
- develop strategies to ensure that consumers in high cost areas have affordable access comparable to what is offered in urban areas;
- examine potential funding mechanisms that could bridge any remaining deployment gaps;
- anticipate funding needs for existing and future providers and consider the creation of new support; and
- consider sustainability support for providers for ongoing operating and maintenance costs.<sup>58</sup>

The Government Accountability Office (GAO) made several recommendations in its October 2020 report titled *FCC Should Enhance Performance Goals and Measures for Its Program to Support Broadband Service in High-Cost Areas*. These recommendations include, for example, revising high-cost performance goals so that they are measurable and quantifiable, ensuring high-cost performance measures align with key attributes of successful performance measures, and publicly and periodically reporting on the progress of performance goals.<sup>59</sup> GAO indicates that these recommendations remain open.<sup>60</sup>

As FCC efforts unfold to consider reorientation of the High Cost Program, Congress may take an interest in monitoring the FCC's efforts and whether legislative action might be necessary to provide congressional direction. Congress might consider several potential options for the High Cost Program, discussed below.

While numerous programs provide funding for deployment of broadband infrastructure, one option for reorientation of the High Cost Program could be a pivot from support for deployment costs to support for operation and maintenance costs to sustain networks. This concept is supported, for example, by NTCA—The Rural Broadband Association,<sup>61</sup> as well as a number of other interest groups representing various broadband constituencies.<sup>62</sup> Other interest groups urged postponing any program changes until the FCC had assessed the impact of IIJA funding on broadband deployment.<sup>63</sup> Congress could wait until the FCC makes an assessment through the

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<sup>57</sup> *FCC USF Report*.

<sup>58</sup> *Ibid*.

<sup>59</sup> Government Accountability Office (GAO), *FCC Should Enhance Performance Goals and Measures for Its Program to Support Broadband Service in High-Cost Areas* (GAO-21-24), October 30, 2020, <https://www.gao.gov/products/gao-21-24>.

<sup>60</sup> *Ibid*.

<sup>61</sup> NTCA—The Rural Broadband Association, *NTCA Statement on FCC Future of USF Report*, August 16, 2022, <https://www.ntca.org/ruralischool/newsroom/press-releases/2022/16/ntca-statement-fcc-future-usf-report>.

<sup>62</sup> *FCC USF Report*.

<sup>63</sup> *FCC USF Report*.

above-proposed proceeding, or Congress could require the FCC to initiate a public proceeding on this specific issue and provide a report to Congress within a specified timeframe.

Many tribal lands lack the broadband infrastructure needed to provide connectivity for broadband services. In the January 2020 RDOF Report and Order, while the FCC recognized “the difficulty tribal lands have faced in obtaining broadband deployment”—and although tribal entities were eligible—there was no tribal entity priority in the application or bidding process for RDOF.<sup>64</sup> Tribal entities are eligible (among other eligible entities) for other federal broadband programs. There is one program administered by the NTIA—the Tribal Broadband Connectivity Program (TBCP)—which is available only to tribal entities.<sup>65</sup> In September 2021, NTIA announced that it had received more than 280 applications under the TBCP, for a total of over \$5 billion (at the time, \$980 million was available for the program, as provided through the Consolidated Appropriations Act, 2021 (P.L. 116-260)).<sup>66</sup> As it appears that demand for a program focused on tribal broadband is high, Congress could weigh whether to refocus the High Cost Program on tribal areas, or create a tribal entity priority for the program for the application process, bidding process, or both. In 2020, the FCC implemented a tribal priority window, which provided an opportunity for tribes to directly access specified spectrum (in the 2.5 GHz band) over their rural tribal lands.<sup>67</sup> A similar priority for funding of broadband deployment on tribal lands could complement tribal spectrum efforts and help tribes meet the buildout requirements specified in their licenses.

The release of the pre-production version of the National Broadband Map, containing specific location-level data on where broadband is available, along with ongoing challenges, may help the FCC better evaluate future funding needs of high cost areas, including whether future planned processes, such as RDOF Phase II, remain necessary.<sup>68</sup> As there has been a renewed focus in the 118<sup>th</sup> Congress on redundancy and potential duplication of funding,<sup>69</sup> Congress could consider whether to eliminate the High Cost Program, and instead make recently enacted broadband deployment programs in the IIJA—for example, the BEAD or Enabling Middle Mile Grant Program—permanent programs with annual appropriations. Elimination of the High Cost Program could provide potential benefits, such as lowering monthly rates for telecommunications subscribers<sup>70</sup> and lessening the potential for overlap with other broadband deployment programs.<sup>71</sup> Further, some states, such as Texas and Pennsylvania, have their own state-specific

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<sup>64</sup> See FCC, *In the Matter of the Rural Digital Opportunity Fund*, Report and Order, January 30, 2020, p. 16, <https://docs.fcc.gov/public/attachments/FCC-20-5A1.pdf>.

<sup>65</sup> NTIA, BroadbandUSA, *Tribal Broadband Connectivity Program*, <https://broadbandusa.ntia.doc.gov/funding-programs/tribal-broadband-connectivity>.

<sup>66</sup> NTIA, BroadbandUSA, *NTIA’s Tribal Broadband Connectivity Program Receives More Than 280 Applications, over \$5 Billion in Funding Requests*, September 8, 2021, <https://ntia.gov/press-release/2021/ntia-s-tribal-broadband-connectivity-program-receives-more-280-applications-over>.

<sup>67</sup> FCC, *Rural Tribal Window Updates*, <https://www.fcc.gov/rural-tribal-window-updates>.

<sup>68</sup> *Ibid.*

<sup>69</sup> For example, see letter from Senators Ben Ray Lujan and John Thune to the Honorable Gene L. Dodaro, April 24, 2023, [https://www.thune.senate.gov/public/\\_cache/files/e660b0df-8389-4f87-b235-2ad7dd2cad28/B461F65991D60CFD7D05BB1571907007.4.24.2023-thune-lujan-letter-to-gao.pdf](https://www.thune.senate.gov/public/_cache/files/e660b0df-8389-4f87-b235-2ad7dd2cad28/B461F65991D60CFD7D05BB1571907007.4.24.2023-thune-lujan-letter-to-gao.pdf).

<sup>70</sup> Of the four USF programs, the High Cost Program is consistently authorizes the most funding to be disbursed. See USAC, *Annual Report*, <https://www.usac.org/about/reports-orders/annual-report/>.

<sup>71</sup> Jeffrey Westling, *Comments on the “Report on the Future of the Universal Service Fund,”* American Action Forum, Comments for the Record, February 17, 2022, <https://www.americanactionforum.org/comments-for-record/comments-on-the-report-on-the-future-of-the-universal-service-fund/>.

USF,<sup>72</sup> in which funds are used for universal service efforts at the state and local level. These state USF funds could be duplicative of federal USF efforts. States without a state-level USF programs, however, may rely exclusively on the federal USF funding.

Since much of the funding Congress has provided focuses on deploying fixed broadband infrastructure, the FCC sees an opportunity to proceed with providing support for mobile broadband through a competitive process (e.g., potentially through the 5G Fund for Rural America); however, the FCC acknowledged that an evaluation of the impact of the BEAD and other broadband programs on future mobile deployments may be beneficial.<sup>73</sup> With the recent release of the FCC’s National Broadband Map, both the FCC and Congress may be able to better visualize how federal investments are closing the digital divide, and which of these programs may be the most effective.<sup>74</sup> Further, with many federal broadband programs targeted to the deployment of fixed broadband, another consideration for Congress may be whether to transition the high cost program to focus entirely on mobile broadband deployment. Although the planned 5G Fund for Rural America may provide up to \$9 billion, some providers have described that figure as “nowhere near enough.”<sup>75</sup>

Another issue Congress may take an interest in monitoring is where the money left over from RDOF defaults may go next. According to an estimate from broadband consultant Cooperative Network Services, “of the \$9.2 billion ... tentatively won in the auction, over \$2.8 billion has gone into default.”<sup>76</sup> Some stakeholders and policymakers have deemed the RDOF Phase I auction unsuccessful, due to issues such as the FCC’s lack of scrutiny for vetting bidders before the auction.<sup>77</sup> This may have played a role in the shift of recent broadband efforts (e.g., broadband funding in ARPA and the IJJA) from the FCC to other agencies, such as NTIA and the U.S. Department of the Treasury. Congress could, for example, hold a hearing on this issue to examine the reasons for defaults, assess the FCC’s administration of the program, and explore whether leftover funding should be added to a future phase of RDOF, or whether this funding should be diverted to other purposes, such as potential options described above.

Congress could also choose to leave the High Cost Program in place within its current framework.

## **Lifeline and the Affordable Connectivity Programs**

Significant differences between the Lifeline Program and ACP prompted the FCC to consider how the programs can best operate with each other, applying lessons learned from EBB and ACP

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<sup>72</sup> For example, see Public Utility Commission of Texas, *Helpful Information About the Texas Universal Service Fund*, <https://www.puc.texas.gov/industry/communications/reports/tusf/default.aspx> and Pennsylvania Public Utility Commission, *PA Universal Service Fund*, <https://www.puc.pa.gov/telecommunications/pa-universal-service-fund/>.

<sup>73</sup> Ibid.

<sup>74</sup> FCC, *Broadband Funding Map*, <https://fundingmap.fcc.gov/home>.

<sup>75</sup> Mike Dano, *Rural US Wireless Carriers Ask for More 5G Subsidies*, LightReading, July 22, 2022, <https://www.lightreading.com/digital-divide/rural-us-wireless-carriers-ask-for-more-5g-subsidies/d/d-id/779195>.

<sup>76</sup> That is, recipients failed to execute the projects they were funded to perform. Joan Engebretson, *RDOF Defaults Estimate: Over \$2.8B—What Happens to That Money?*, Telecompetitor, May 22, 2023, <https://www.telecompetitor.com/rdof-defaults-estimate-over-2-8b-what-happens-to-that-money/>.

<sup>77</sup> Diana Goovaerts, *RDOF Postmortem: Can the FCC Fix These Problems in Phase II?*, Fierce Telecom, September 1, 2021, <https://www.fiercetelecom.com/regulatory/rdof-postmortem-fcc-fix-problems-phase-II>.



implementation.<sup>78</sup> In its *FCC Report on the Future of the Universal Service Fund*,<sup>79</sup> the FCC suggested that it might consider expanding Lifeline consumer eligibility requirements to align with the less-restrictive ACP requirements. It also recommended deferring consideration of relaxing Lifeline provider eligibility requirements to align with ACP, pending further evaluation.<sup>80</sup> Additionally, the report recommended that the FCC consider requesting congressional action to “facilitate and fund” Lifeline consumer outreach programs similar to those established for ACP, and establish consumer protection provisions for Lifeline based on those established for ACP.<sup>81</sup>

These recommendations, if adopted, might affect stakeholders in different ways depending on their implementation. Some commenters on the FCC report recommended that the Commission fold ACP into Lifeline, or vice versa, while others recommended refocusing each program on a specific type of service.<sup>82</sup> Some observers have suggested that—as a matter of practice—Lifeline is used by subscribers as a basic smartphone and mobile data plan, even though it may also be used for fixed residential broadband and voice-only service. ACP by contrast, does not support mobile broadband or voice-only service. However, the FCC currently allows beneficiaries to use the benefits together for a single fixed residential broadband plan—something that would not be possible if Lifeline was limited to supporting mobile service. Other commenters advocated for retaining two low-income programs with different funding mechanisms—one the fee-based USF program, and the other based on congressional appropriations—as a safeguard against potential future lapses in congressional appropriations.<sup>83</sup>

Some Members of Congress have expressed ongoing concern that the FCC has not sufficiently accounted for how ACP funds have been spent as well as whether and how to provide additional funding when the current funds are exhausted (see “Senate Hearing, “The State of Universal Service”,” above, for further discussion of this topic).<sup>84</sup>

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<sup>78</sup> *FCC USF Report*. The report recommended that the FCC “initiate a rulemaking to evaluate how the Lifeline program can best operate with the Affordable Connectivity Program and examine lessons learned from implementation of the EBB Program and the Affordable Connectivity Program that may be able to be applied to Lifeline.”

<sup>79</sup> *FCC USF Report*.

<sup>80</sup> *FCC USF Report*. To participate in Lifeline, providers must secure an Eligible Telecommunications Carrier designation from relevant state regulators, or, in some cases, from the FCC, and meet minimum service and other requirements. Participation in ACP does not require state regulatory approval, and may be granted automatically in some cases if certain basic requirements for service and prevention of waste, fraud, and abuse are met. FCC, “Affordable Connectivity Program: Provider FCC Approvals,” <https://www.fcc.gov/affordable-connectivity-program#provider-fcc-approvals>.

<sup>81</sup> *FCC USF Report*.

<sup>82</sup> For example, see FCC, *Report on the Future of the Universal Service Fund*, Notice of Inquiry, WC Docket 21-476, December 15, 2021, <https://docs.fcc.gov/public/attachments/FCC-21-127A1.pdf> (Hereinafter, *Future of the USF NOI*). See AT&T comments recommending combining the programs, *Comments of AT&T In the Matter of Report on the Future of the Universal Service Fund*, p. 33, <https://www.fcc.gov/ecfs/document/1021750379067/1>; and California Public Utility Commission comments recommending separation of program focus by service type, *Comments of the California Public Utilities Commission In the Matter of the Future of the Universal Service Fund*, p. 10, <https://www.fcc.gov/ecfs/document/10217151028198/1>.

<sup>83</sup> For example, see California Emerging Technology Fund comments on de-risking low-income support by retaining Lifeline as a fee-based program, *Comments of the California Emerging Technology Fund In the Matter of Report on the Future of the Universal Service Fund*, p. 18, <https://www.fcc.gov/ecfs/document/1021796076649/1>.

<sup>84</sup> “Latta, Thune Undecided on ACP Future; House Subpanel Eyes Fed Broadband Changes.”

## **Schools and Libraries (E-Rate) and Emergency Connectivity Fund Programs**

Assessing the impact of the E-Rate, ECF, and BEAD funding on network construction cannot occur until the networks are completed. Once such an assessment has been conducted, the FCC may consider, for example, adding new eligible technology and services, such as those that were made available through the ECF, and giving equal priority to category one and category two services.

Some Members have already suggested mandating a more detailed accounting of how the E-Rate, ECF, and BEAD funding may overlap. NTIA—in response to a GAO recommendation made in 2022<sup>85</sup>—intends to submit a report to Congress on federal broadband coordination by May 31, 2026. The report is intended to “identify barriers and statutory limitations that limit the beneficial alignment of broadband programs and offer potential legislative changes.”<sup>86</sup> Congress may explore ways to obtain status updates on the agency’s findings prior to 2026.

## **Rural Health Care Program**

The FCC may only provide RHC Program support to “eligible entities,” as listed in the Communications Act.<sup>87</sup> For example, non-rural health clinics are currently ineligible to receive support under the HCF Program, even as members of a consortium with eligible providers. Congress could modify the Communications Act to allow such partnerships. The change could improve the RHC Program and the quality of telehealth services available in rural areas.

The FCC could also conduct a reevaluation of the current list of eligible entities and report its findings to Congress.

## **Universal Service Fund Contributions**

Changing how the FCC assesses USF contributions could be one way to reduce the contribution rate, while still maintaining the necessary level of funding for the four USF programs. That goal could be achieved, for example, through legislation to confirm the FCC’s authority to assess contributions based on broadband revenues or to expand the FCC’s authority to assess contributions on the broadest range of revenues, such as digital advertising and certain other online services that benefit from broadband networks (e.g., from “edge providers,” entities that provide content, applications, or services over the internet, such as Amazon, Facebook, Google, and Netflix). Regarding the latter option, without congressional action to provide the FCC with the authority to assess edge providers, the FCC would need to determine that their services meet the statutory definition of “telecommunications” and that the contributions would be in the public interest.

Another option for future USF funding would be through direct congressional appropriations. This approach is supported, for example, by the U.S. Chamber of Commerce, AT&T, and some

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<sup>85</sup> GAO, *Broadband: National Strategy Needed to Guide Federal Efforts to Reduce Digital Divide* (GAO-22-104611), May 31, 2022, <https://www.gao.gov/assets/gao-22-104611.pdf>.

<sup>86</sup> GAO, *Broadband: A National Strategy Needed to Coordinate Fragmented, Overlapping Federal Programs* (GAO-23-106818), May 10, 2023, <https://www.gao.gov/assets/gao-23-106818.pdf>.

<sup>87</sup> 42 U.S.C. 254(h)(7)(B)(vi).

industry trade associations.<sup>88</sup> Such a decision would provide the broadest possible base for funding USF programs, while reducing burdens on consumers. On the other hand, appropriated funding is in high demand for a wide range of other federal programs and may be limited by government-wide fiscal constraints. In addition, the appropriations process can be unpredictable, and USF programs rely on stable support, because telecommunications carriers rely on that stability to make long-term investment decisions, and consumers rely on continuous assistance for uninterrupted connectivity.

There have been two recent legal challenges to the FCC's authority to collect fees from providers. In both cases, the courts ruled in favor of the FCC. Despite the findings of the courts, Congress may take action to further clarify FCC authorities to collect fees and establish and implement programs under the USAC.<sup>89</sup>

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<sup>88</sup> U.S. Chamber of Commerce, Broadband Breakfast, *In FCC Proceeding, Multiple Groups Recommend New General Tax for Universal Service Fund*, March 17, 2022, <https://broadbandbreakfast.com/2022/03/in-fcc-proceeding-multiple-groups-recommend-new-general-tax-for-universal-service-fund/>.

<sup>89</sup> For more detailed information about these cases, see CRS Legal Sidebar LSB10904, *Fifth Circuit Considers Constitutionality of the Universal Service Fund*, by Chris D. Linebaugh; CRS Legal Sidebar LSB10941, *Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (Mar. 20, 2023–Mar. 26, 2023)*, by Juria L. Jones and Christopher T. Zirpoli; and CRS Legal Sidebar LSB10959, *Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (May 1, 2023–May 7, 2023)*, by Jimmy Balser, Michael D. Contino, and Alexander H. Pepper.