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Working Group
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Washington, D.C.

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Senators Lujan and Thune:

The Chamber applauds the creation of the Universal Service Fund (USF) Working Group, a bipartisan process to reform the USF and its programs to help close the digital divide and improve the efficiency of the USF. We appreciate the ability to provide the following recommendations to strengthen and sustain the USF for future generations to come. USF is critical to help ensure connectivity for rural and unserved areas, schools and libraries, hospitals, and other important locations.

The Chamber makes the following recommendations:
- Fund USF programs through the appropriations process.
- Evaluate and reform USF programs to comport with key priorities.
- Address inefficiencies, waste, fraud, and abuse in USF programs.
- Advance sensible policies to advance universal service goals.
- Allow other entities to receive USF funding.
- Improve interagency coordination on federal broadband funding.
- Strengthen vetting requirements for funding recipients.

I.   Congress Should Fund the USF Through Appropriations

The Chamber strongly believes that the most viable and effective long-term solution is to transition universal service programs into the Congressional appropriations process. The following outlines the rationale of shifting to the Congressional appropriations process, specifically discretionary appropriations, and the impact of an appropriations model on USF.

First, every American and business benefits from the internet and broadband deployment. When the Telecommunications Act of 1996 was enacted only 20 million American adults had internet access and spent less than 30 minutes a day, on average, on the web. Today, 93% of Americans use the internet and spend nearly 8 hours a day consuming digital media. Similarly, the internet is also central to conducting business whether that be through the creation of new business models or increased efficiency at work. According to the Interactive Advertising Bureau, the internet contributed $2.45 trillion to the U.S. economy and supported 17 million jobs. Notably, the impact of the internet provides substantial benefits for specific sectors such as healthcare for telehealth, retail for e-commerce, education for students, and

entertainment for internet streaming and social media. Moreover, internet connectivity is essential for purposes such as teleworking, payments, email, and online productivity tools.

The purpose of the Congressional appropriations process is to finance societal priorities and ascertain how much policymakers should invest in each respective priority. The benefits of internet access are broad-based and impact nearly every individual and business, so the cost to connect all Americans should also fall on society through the appropriations process.

Second, as the Commission and many commentators have noted, the USF is facing a shrinking base of accessible revenues, leading to increased fees on telecommunications service providers, and is often reflected in higher telephone and telecommunications service bills for consumers and the businesses that purchase them. A primary cause of this trend is the rise of internet-based services that fall outside of the USF assessable base and the bundling of data transmission services with computing services to make them arguably inaccessible under current law. The Chamber expects that the private sector will continue to make rapid advancements in communications technologies. Supporting broadband programs through the Congressional appropriations process can help "future proof" universal service goals to account for new technologies to provide communications services for consumers and businesses. This is especially true as we are seeing the potential in newer areas such as the Internet of Things, 6G, augmented, and virtual reality. The appropriations process empowers Congress to tailor broadband programs on a regular basis to account for changes in the marketplace and new communications technologies.

Third, the clearest support for funding universal service programs through the Congressional appropriations process is that Congress has recently done just that; specifically in response to the COVID-19 pandemic and its broader impacts, Congress enacted and strengthened numerous broadband-related programs. The Coronavirus Aid, Relief, and Economic Security ("CARES") Act included $100 million in additional funds for the U.S. Department of Agriculture's ReConnect Program, $50 million to support digital services in libraries through the Institute of Museum and Library Services, $200 million for the Commission's COVID-19 Telehealth Program, and $13 billion for states for educational activities including distance learning. In December 2020, Congress enacted the Consolidated Appropriations Act, which included $1 billion for NTIA's tribal grant program, $300 million for NTIA's Broadband Infrastructure Program, $285 million for NTIA's Connecting Minority Communities Pilot Program, $3.2 billion for the Emergency Broadband Benefit, and $249 million in additional funds for the COVID-19 Telehealth Program. Finally, in March 2021, Congress enacted the American Rescue Plan, which included $7 billion for the Emergency Connectivity Fund and $340 billion in general assistance to states, where one of the eligible uses is broadband. All these broadband programs were financed through Congressional appropriations, which indicates that Congress is able, and willing, to prioritize taxpayer dollars for broadband investments.

In addition, even before the COVID-19 pandemic, Congress established multiple broadband programs across the federal government. Several of these include USDA's Broadband ReConnect Program (established in 2018), as well as other smaller programs in the Appalachian Regional Commission, the Economic Development Administration, the Institute

for Library and Museum Services, the Department of Health and Human Services, the Department of Housing and Urban Development, and other USDA programs. Finally, Congressional action to utilize the appropriations process tacitly recognizes that the USF cannot bear the costs of such urgently needed broadband programs.

Fourth, outside of the broadband context, Congress uses Congressional appropriations to fund similar programs that help to ensure the health and well-being of all Americans and that broadly support the infrastructure undergirding American commerce. Most notably, public assistance programs such as the Low-Income Home Energy Assistance Program ("LIHEAP") and Department of Housing and Urban Development programs are funded entirely by the Congressional appropriations process. In particular, Lifeline and the ACP are analogous to LIHEAP and HUD's Tenant-Based Rental Assistance programs considering these programs provide subsidies for low-income Americans to assist with important necessities. Furthermore, it is important to note that while transportation infrastructure programs, such as the Highway Trust Fund, are sometimes financed through user fees, an increasing portion is funded by one-time transfers from the General Fund into the Highway Trust.

Fifth, and finally, utilizing the Congressional appropriations process ensures that Congress serves its appropriate policy role overseeing in the distribution of broadband spending. This aligns with Congress' Constitutional responsibilities over the power of the purse and ensures that Congress can more easily adjust the scope of broadband investments to account for changes in the broadband market and needs of the American public. Given the vast array of federal investment in broadband, there may be circumstances in the future where the relative funding balance prioritized among goals that include affordability, adoption, and availability should be reviewed.

II.   Evaluation of Existing Universal Service Fund Programs

Universal broadband access, affordability for low-income consumers, and broadband adoption supports U.S. goals to drive economic competitiveness, market growth, and societal wellbeing. The Chamber supports the goal of universal broadband access, affordability, and adoption for all Americans. We also support utilizing the Infrastructure Investment and Jobs Act's ("IIJA") definition of universal service goals for broadband and do not believe that the definition should be expanded to include other objectives. As connectivity technologies and innovations stemming from increased connectivity rapidly evolve, specific universal service goals and benchmarks may have to change over time in consultation with relevant stakeholders.

Congress and the Commission must conduct rigorous oversight of USF programs to ensure the implementation of the programs align with achieving the universal service goals and other key benchmarks. Moving forward, Congress and the Commission should evaluate all broadband programs, including USF programs, utilizing the following considerations:

1) Deployment should be the highest priority with successful programs focusing on achieving universal broadband availability.

2) Broadband service requirements should be simple and uniform to lower barriers for participation, expedite deployment, and result in the most efficient use of funds.

3) Programs should use an open and competitive process that is simple to administer to allocate funds and be technology-neutral to accommodate the wide range of connectivity technologies.

4) Policymakers should support a holistic approach to evaluating broadband deployment proposals. This approach allows applicants to submit proposals that utilize efficient network design principles, thus maximizing the number of unserved and underserved locations that will be covered by program funding.

5) Policymakers should leverage participation in existing (or commensurate) federal affordability programs. This allows providers to quickly offer a low-cost option to eligible subscribers, effectively address broadband affordability, and significantly reduce the administrative burden.

6) Data-driven decisions are critical to maximize the number of unserved locations that will be covered by federal funding. In addition to using the Commission's broadband data maps to identify eligible areas, broadband programs should require states and any awardees of federal broadband funding to provide additional information about locations or areas that are the subject of existing broadband deployment awards and/or any enforceable commitment to deploy broadband to a specific and clearly identified geographic area or location regardless of their construction status. An enforceable commitment to the federal government to deploy broadband to a specific and clearly identified location may be a merger commitment as well as a commitment to deploy broadband service in exchange for federal or state government support or some governmental regulatory relief.

7) Funds should be prioritized on last-mile infrastructure deployments which are often the highest cost portion of a network to deploy.

8) Regulatory policies should be light touch. This will allow for a public private partnership that works with the market, not against it, and marshals private resources and government support to close the remaining gaps in network coverage.

9) An emphasis on unsupported and adjacent policy concerns will distract from the real challenges that stand in the way of closing the digital divide and thus should be avoided.

10) Programs should be funded through the general appropriations process to allow for ongoing congressional oversight, and if needed, reform.

III.   Reforms to Address Inefficiencies, Waste, Fraud, and Abuse in USF Programs

USF programs are only a portion of all federal programs focused on broadband access, adoption, and affordability. Congress and the Administration must examine the impact of other federal broadband programs on universal service goals and seek to ensure proper coordination and, if necessary, streamlining and reform to enable the efficient use of federal resources.

Challenges pertaining to waste, fraud, and abuse should also be addressed through ensuring that each program complies with the principles outlined in the section above and implementing any necessary legislative or administrative changes.

IV.   Policy Options to Advance Universal Service

Congress and the Administration should pursue several policies to preserve and advance universal service outside of changes to USF.

1) The Administration and Congress should ensure the effective and continued implementation of the IIJA's Broadband, Equity, Access, and Deployment ("BEAD") Program and should be consistent with the IIJA statute and congressional intent.

2) Policymakers at the federal, state, and local level should pursue permitting reform and reforms to other barriers to entry to speed and reduce the cost of deployment. These include addressing challenges pertaining to access to federal lands, National Environmental Policy Act review, National Historic Preservation Act review, municipal and electric cooperative pole attachment requirements, and state and local barriers (e.g. cable system transfers, franchise terms and termination, notification of road changes, street restoration fees not reasonably related to the size of the cut in the roadway, requests for access, required franchises agreements or similar approvals as a prerequisite for permitting, mandatory "in-kind" compensation to municipalities, onerous liability provisions, and excessive and arbitrary fees).

3) Congress and the Administration should help ensure that the broadband industry has a sufficient workforce to meet universal service objectives.

4) Congress and the Administration should seek to mitigate the impact of policies that increase the cost of deployment, such as Buy America requirements and extraneous and burdensome grant conditions on states and broadband providers.

5) The Chamber supports the enactment of legislation that codifies key neutrality principles without imposing onerous legal regimes on broadband. Federal legislation would also help address a growing patchwork of state net neutrality legislation that risks fragmenting internet regulation. The Commission should not pursue a Title II reclassification for broadband service.

6) Congress should appropriate sufficient funding to sustain the Affordable Connectivity Program after the funding from the IIJA is exhausted.

7) Congress should establish a uniform and streamlined national process for replacing legacy networks and technologies with new broadband networks.

8) Congress should act expeditiously to renew the Commission's spectrum auction authority, which lapsed in March.

9) The Commission and Congress should maintain a light-touch approach to regulating broadband networks.

V.   Allow Other Entities to Receive USF Subsidies

The Chamber believes Congress should streamline the process for entities to participate in USF programs by aligning such USF provider participation requirements with recent federal legislation establishing affordability programs (i.e. the Affordable Connectivity Program) and broadband deployment programs like BEAD. Congress should ensure that government-owned networks are not eligible to receive USF subsidies.

VI.   Improving Broadband Funding Coordination Between Federal Agencies

The Chamber recommends that Congress maintain robust and continuous oversight of federal broadband agencies and programs, including implementation of NTIA's Memorandum of Understanding ("MOU"), which helps facilitate coordination between federal agencies involved in broadband programs. Likewise, federal agencies covered by the MOU should continue to implement and collaborate consistent with the MOU to ensure effective inter-agency coordination.

VII.   Strengthen Vetting Requirements for Funding Recipients

The Chamber believes that recipients should be required to demonstrate a proven track record or strong ability to meet the program's requirements, ability to sustain and maintain the network, and the ability to innovate and deploy technologies to improve connectivity to conduct activities in modern life.

VIII.   Conclusion

The Chamber again appreciates the Senate's focus on addressing challenges associations with the USF. We look forward to collaborating with the Working Group on solutions to close the digital divide and ensure an effective universal service policy. Please reach out to Matt Furlow at mfurlow@uschamber.com with any questions.

Sincerely,

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