

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

In the Matter of)
Safeguarding and Securing the Open Internet) WC Docket No. 23-320
)

**PETITION FOR RECONSIDERATION OF
AFFORDABLE BROADBAND CAMPAIGN & WTA – ADVOCATES FOR RURAL
BROADBAND**

June 21, 2024

Gregory Guice
Counsel and Chair, Affordable Broadband
Campaign
Vernonburg Group
822 Dancy Ave
Savannah, GA 31419

Gigi Sohn
Treasurer, Affordable Broadband Campaign
3503 Alton Place, NW
Washington, DC 20008

Derrick B. Owens
Senior Vice President of Government & Industry
Affairs
WTA — Advocates for Rural Broadband
400 Seventh Street, NW
Suite 406
Washington, DC 20004

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**PETITION FOR RECONSIDERATION OF
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I. INTRODUCTION AND SUMMARY

The Affordable Broadband Campaign,¹ pursuant to 47 C.F.R. § 1.429, seeks reconsideration of the decision by the Federal Communications Commission (Commission) in the above-captioned proceeding to forbear from applying the first sentence of section 254(d) and the associated rules insofar as they would immediately require new universal service contributions to be assessed on broadband Internet access service to end users. Specifically, the Affordable Broadband Campaign (ABC) respectfully requests that the Commission not use its forbearance authority in this instance because: (1) the contribution mechanism is not stable or equitable; (2) the declining revenue base for contributions is hindering the ability of the Commission to ensure that universal service is properly evolving to acknowledge the essential role that broadband has in our economy and therefore the criticality of ensuring access for low-

¹ The Affordable Broadband Campaign is a 501(c)(4) dedicated to helping secure long-term funding for low-income families so they can afford to get and stay connected to broadband service.

income families; and (3) the Commission could have referred the issue to the Universal Service Contribution Methodology docket (WC Docket No. 06-122) and actually helped further inform the record at the Commission and “in other bodies.”² By reconsidering its forbearance decision in this proceeding, the Commission can better promote its congressionally mandated universal service obligations and ensure that all consumers, including low-income consumers, can afford to access this essential service.

The Commission stated in the *Safeguarding and Securing the Open Internet Order* that “USF contribution reform is an immensely complex and delicate undertaking with far-reaching consequences...[A]ny decisions on whether and how to make BIAS providers contribute to the USF are best addressed holistically in those ongoing discussions of USF contribution reform, with a full record and robust input from all interested parties, rather than in this proceeding.”³ On this point, ABC could not agree more. However, by forbearing from making a decision the Commission, which is the regulatory body that is best positioned to develop “a full record” through “robust inputs,” the Commission has foreclosed just such an opportunity. As ABC and others urged the Commission in this proceeding, this issue should have been referred to the Universal Service Contribution Methodology Docket or addressed in a further notice of proposed rulemaking where a full and complete record on this issue could have been developed. Such a referral would have also achieved the Commission’s other interest, it would have deferred a contribution obligation until such time as the Commission made an affirmative determination. For this and the reasons outlined below, we asked the Commission to reconsider

² *Safeguarding and Securing the Open Internet*, GN Docket No. 23-320, Declarator Ruling, Order, Report and Order, and Order on Reconsideration, FCC 24-52, at para. 364 (“*Safeguarding and Securing the Open Internet Order*”).

³ *Safeguarding and Securing the Open Internet Order* at para. 366.

its decision to forbear from applying the first sentence of section 254(d) and the associated rules.

II. RECONSIDERATION IS WARRANTED BECAUSE THE REVENUE BASE IS NOT STABLE, CONTRARY TO THE COMMISSION’S ASSERTION

The *Safeguarding and Securing the Open Internet Order* states that it agrees with commenters who warn that suddenly and unnecessarily imposing new fees on broadband Internet access service (BIAS) could pose “major upheaval in what is actually a stable and equitable contribution system.”⁴ As the evidence in the record demonstrates, USF contribution is neither stable nor equitable.

Reports filed by various parties in this proceeding demonstrate the revenue base on which USF is funded continues to decline, which puts upward pressure on the quarterly contribution factor.⁵ This fact was confirmed again by the Commission’s release of the third quarter contribution factor on June 12, 2024.⁶ In the Public Notice, the contribution base declined by over \$2 billion from the previous quarter, raising the contribution factor to 34.4 percent from 32.8 percent. The Commission’s own USF Monitoring Report demonstrates that the third quarter decline in revenues is not an anomaly, it is a trend that has been underway for more

⁴ *Safeguarding and Securing the Open Internet Order* at para. 366.

⁵ Comments of INCOMPAS in the Matter of Safeguarding and Securing the Open Internet (Dec. 14, 2023), <https://www.fcc.gov/ecfs/document/1214097190544/1>; Comments of National Consumer Law Center, Access Humboldt, Benton Institute for Broadband & Society, Center for Rural Strategies, Common Sense, Families for Freedom, The Greenlining Institute, Media Alliance, MediaJustice, Mississippi Alliance of Nonprofits and Philanthropy, NC Counts Coalition, New America’s Open Technology Institute, Next Century Cities, National Hispanic Media Coalition, NTEN in the Matter of Safeguarding and Securing the Open Internet (Dec. 14, 2023), <https://www.fcc.gov/ecfs/document/1214156759243/1>; Comments of the American Civil Liberties Union in the Matter of Safeguarding and Securing the Open Internet (Dec. 14, 2023), <https://www.fcc.gov/ecfs/document/12140803805692/1>; Comments of NTCA-The Rural Broadband Association in the Matter of Safeguarding and Securing the Open Internet (Dec. 14, 2023), <https://www.fcc.gov/ecfs/document/121458348415/1>

⁶ Proposed Third Quarter 2024 Universal Service Contribution Factor, *Public Notice*, CC Docket No. 96-45, available at <https://docs.fcc.gov/public/attachments/DA-24-557A1.pdf> (June 12, 2024).

than a decade. At a time of unprecedented increases in connectivity and the ubiquitous availability of communications services, end-user telecommunications revenues have declined from \$187 billion in 2013 to \$81 billion in 2022, and when the percentage that is subject to USF is determined, those revenues have gone from \$67.5 billion to \$29 billion during that same time period.⁷ This information is nowhere addressed by the Commission regarding how such steep and continual revenue declines create a “stable” funding base. In fact, it would seem that, based on this information, the concerns raised by parties in this proceeding that the funding base for USF is collapsing are supported by information the Commission itself collects.

In addition to the decline of the revenue base at the federal level, the Commission’s actions to forbear from applying a contribution obligation to BIAS implicate the ability of the states to promote universal service as envisioned by section 254(f).⁸ Section 254(f) provides states the authority to adopt programs to preserve and advance universal service, so long as the rules are not inconsistent with the Commission’s rules.⁹ States that have adopted their own universal service programs have generally structured their funding mechanisms to assess the intrastate portion of telecommunications revenues. Under section 254(f) and section 10(e), when the Commission forbears, the states are hindered from addressing the challenges that their universal service programs face to their declining revenue base because, as the Commission

⁷ *Universal Service Monitoring Report, 2023*, CC Docket No. 96-45 et al. (Data Received Through September 2023), in Table 1.2 – Filer Revenues, Wholesale vs. Retail: 2013 – 2022, available at <https://docs.fcc.gov/public/attachments/DOC-401168A1.pdf>.

⁸ 47 U.S.C. §254(f).

⁹ *Id.*

notes, these statutory restrictions bar states from applying a provision that the Commission has determined it will forbear from applying.¹⁰

With a continually declining revenue base, the congressionally mandated work of the Commission and states to advance universal service is called into question.¹¹ The evidence available in the record and from the Commission itself demonstrate that the contribution mechanism is far from stable. We urge the Commission to reconsider its forbearance decision on this matter and to instead refer this issue to the Universal Service Contribution Methodology docket for further consideration.¹² Such an approach would still achieve the Commission's stated objective to "proceed cautiously and incrementally."¹³

III. THE COMMISSION IS HINDERED IN ADVANCING THE GOALS OF UNIVERSAL SERVICE BECAUSE THE CONTRIBUTION MECHANISM IS INADEQUATE

The *Safeguarding and Securing the Open Internet Order* proclaims that the record does not show that assessing new USF contribution requirements on BIAS is necessary for the Universal Service Fund to fulfill the goals of ensuring access to affordable broadband at this time.¹⁴ The *Safeguarding and Securing the Open Internet Order* goes on to assert that "[o]n the contrary, the Universal Service Fund has been funding broadband access and affordability for well over a decade without imposing contribution requirements on BIAS providers. And the record does not show that anything would substantially change in that regard without imposing contribution requirements on BIAS." The *Safeguarding and Securing the Open Internet Order*

¹⁰ 47 U.S.C. §160(e).

¹¹ 47 U.S.C. § 254.

¹² The Universal Service Contribution Methodology docket is WC Docket No. 06-122.

¹³ *Safeguarding and Securing the Open Internet Order* at para. 366.

¹⁴ *Id.* at para. 365.

further concludes that “[i]n fact, the Universal Service Fund successfully operated under a materially identical set of contribution and support schemes throughout the time that the 2015 Open Internet Order was in effect.” What this framing of the Commission’s USF mission omits is that universal service is not meant to be stagnant, it is supposed to evolve.¹⁵

In drafting section 254, Congress was very clear that it intended the definition of universal service to be an evolving level of service.¹⁶ As such, the Commission’s construct that the USF is essentially “identical” to the support schemes that were in place in 2015 is more revealing of the fact that perhaps the Commission is not meeting its universal service goals. For example, in 2015, the Commission’s USF affordability program, Lifeline, offered the same support amount that it offers today, up to \$9.25 for bundled broadband and voice service and up to an additional \$25 on tribal lands.¹⁷ The subscription rate for Lifeline in 2015 was over 12 million subscribers.¹⁸ Over the last nine years that has declined to 6.3 million.¹⁹ As the Affordable Connectivity Program’s (ACP) support amount of \$30 (and up to \$75 on tribal lands) demonstrated that if there is a meaningful level of support provided, one that more closely matches the cost of broadband service, low-income consumers will subscribe. Thus, while it may be accurate to say that the Commission has maintained the Lifeline program over those nine years, that assertion is not the same as saying that broadband access for low-income households is being met. Rather, based on the decline in subscription rates for Lifeline as

¹⁵ 47 U.S.C. § 254(c).

¹⁶ *Id.*

¹⁷ Universal Service Administrative Company. *Lifeline, Rules and Requirements, Minimum Service Standard*. <https://www.usac.org/lifeline/rules-and-requirements/minimum-service-standards/>.

¹⁸ *Universal Service Monitoring Report, 2023*, CC Docket No. 96-45 et al. (Data Received Through September 2023), in Table 2.1 - Lifeline Subscribers and Link Up Beneficiaries, available at <https://docs.fcc.gov/public/attachments/DOC-401168A1.pdf>

¹⁹ *Id.*

compared to the robust acceptance of ACP by low-income families, it would be plausible to assume that the Commission has not adequately evolved its own low-income program to meet the needs of low-income households.

Changing the support amount available to low-income families under the Lifeline program, particularly in the wake of the funding lapse for ACP, would have provided those households with a safety net and access to affordable broadband. That, however, is impractical at this time because the revenue base for the current contribution base cannot support a low-income program that provides \$30 per month in support. This declining base hinders the other USF programs from evolving their needs as well.

Contrary to the Commission's conclusion that the USF is meeting its objectives, Lifeline demonstrates that more could and should be done to assist low-income households afford broadband service. In order for the Commission to truly meet the evolving level of service as called on by the statute, it would be more appropriate to develop a record on the potential opportunity to better assist low-income households through more adequate support amounts so that they can get and stay connected to broadband. Ensuring a more stable USF funding base would allow the Commission to better address these needs as well as other needs that are unaddressed in the other USF programs. By using its forbearance authority instead of referring this matter to the Universal Service Contribution Methodology docket, the Commission, regardless of the self-described "temporary" nature of its forbearance, has foreclosed the opportunity to consider these issues, and that is to the detriment of achieving its universal service goals.

IV. BUILDING A RECORD WOULD HELP THE COMMISSION BETTER DETERMINE WHAT EFFECT ASSESSING BROADBAND COULD HAVE ON CONSUMER PRICES

The *Safeguarding and Securing the Open Internet Order* states that not assessing contributions on BIAS is in the public interest because it serves the important public interest goals of broadband access and affordability.²⁰ The *Safeguarding and Securing the Open Internet Order* frames affordability based on potential increase in contribution to end users that is based on some but not all data in the record, claiming that the potential range of increases to consumer bills could be between \$5 to \$18.²¹ By relying on only partial data in the record, the Commission's conclusion does not provide an accurate assessment of the potential impact of including BIAS in the contribution base.

As noted above, under the current contribution mechanism, there is some doubt as to whether the universal service fund is able to provide sufficient support for low-income households to obtain a robust broadband connection under the Lifeline program. Therefore, what is meant by affordability and for whom can be a significant distinction.

Additionally, the Commission's decision relies on only a portion of the data in the record for its conclusion that assessing broadband would increase the cost of providing broadband services between \$5 to \$18. In fact, there are studies in the record that indicate the range could be as low as \$2.22.²² Instead of disputing these reports, the *Safeguarding and Securing the Open Internet Order* dismisses these contrary reports in a footnote with no analysis.²³ ABC

²⁰ *Safeguarding and Securing the Open Internet Order* at para. 367.

²¹ *Id.*

²² See Letter from Lindsay Stern, INCOMPAS, to Marlene H. Dortch, FCC, WC Docket No. 23-320, at 3 (filed Apr. 16, 2024).

²³ *Safeguarding and Securing the Open Internet*, GN Docket No. 23-320, Declarator Ruling, Order, Report and Order, and Order on Reconsideration, FCC 24-52, at para. 372 n.1495 (“*Safeguarding and Securing the Open Internet*”).

would argue that the *Safeguarding and Securing the Open Internet Order* wrongly assumes that there is no time in which to build a record to determine what the potential cost might be. Instead, it states that the Commission “decline[s] to revisit those figures here without a fully updated record and comprehensive input from a full array of interested parties.” Of course, that is exactly what commenters opposed to forbearance were calling for, referral of the issue to another proceeding to study it fully before determining whether and how to assess contributions.

The Commission’s decision to forbear hinders its ability to help inform the ongoing deliberations concerning USF contribution reform. ABC urges the Commission to begin building a record that it and others, including Congress, can use to inform their discussion. The Commission is uniquely qualified to gather that information and could help advance these considerations along a fact-based, data driven path that would benefit all stakeholders considering how best to advance the goals of universal service.

V. CONCLUSION

At the time of the release of the *Safeguarding and Securing the Open Internet Order*, many of the members of the ABC commended the Commission for its decision. Reasserting its authority over BIAS will certainly ensure that all consumers are better protected, competition is promoted, and that public safety is enhanced. Moreover, as the Commission notes, reclassification of BIAS as a telecommunications service places its efforts within the distribution side of the universal service program on more sound legal grounds.

The issue that ABC has with the *Safeguarding and Securing the Open Internet Order* is its reversion to the 2015 forbearance position on universal service fund contributions. As noted above, the desire to reinstate the 2015 forbearance decision regarding section 254(d) fails to

acknowledge the significant changes since 2015 in the communications marketplace. Moreover, there is strong evidence presented in the record that demonstrates the need for the Commission to begin the process of considering whether and how BIAS revenues could help secure the Commission's historic role in advancing the goals under section 254. ABC believes that this petition demonstrates there are grounds for the Commission to reconsider its decision and do what many commenters and the Commission itself indicates is the better course – develop a fuller record on the issue of what the impact may be on collecting USF contributions on BIAS.

For the reasons stated in this petition, the Affordable Broadband Campaign respectfully requests that the Commission reconsider its decision to forbear from applying the first sentence of section 254(d) and its associated rules, and instead refer this matter to the Universal Service Contribution Methodology docket.

Respectfully submitted,

/s/ Gregory Guice
Counsel and Chair, Affordable Broadband Campaign
Vernonburg Group
822 Dancy Ave
Savannah, GA 31419

/s/ Gigi Sohn
Treasurer, Affordable Broadband Campaign
3503 Alton Place, NW
Washington, DC 20008

/s/ Derrick B. Owens
Senior Vice President of Government & Industry Affairs
WTA — Advocates for Rural Broadband
400 Seventh Street, NW
Suite 406
Washington, DC 20004