Summary of WTA's USF *Amicus Brief* in *Consumers' Research v. FCC*

WTA filed an *amicus curiae* brief in support of the parties requesting the Supreme Court reverse the Fifth Circuit decision that ruled the federal Universal Service Fund unconstitutional.

In enacting Section 254 of the Telecommunications Act of 1996, Congress was not writing on a clean slate, but rather was codifying a long-standing practice from early last century of the Federal Communications Commission (FCC), states and telephone companies subsidizing rural phone service using AT&T long-distance revenues, when AT&T was the monopoly provider of long-distance service. But the introduction of long-distance and then local services competition made such a system untenable.

Given these changes in the telecommunications industry, Congress directed the FCC, working with the states, to develop a universal service program that would rely on explicit subsidies – to be paid by all providers of telecommunications services – to ensure that high-quality telecommunications and information services were available throughout the nation at affordable rates.

The Fifth Circuit was wrong in asserting that Congress unlawfully delegated to the FCC unfettered discretion to impose a "tax" and spend the money however it wanted. Section 254 incorporates numerous principles the FCC must adhere to with regard to its universal service program, and Congress through legislation, the appropriation process, the Congressional Review Act and oversight retains the ability to rein in the FCC if it strays from its assigned role.

In addition, the Fifth Circuit wrongly held that the FCC unlawfully sub-delegated to the Universal Service Administrative Company (USAC) the ability to determine the USF contribution factor. USAC performs the ministerial acts of calculating the proposed USF contribution factor based on its estimates of the expected telecommunications services revenues and USF expenditures, but it is the FCC that sets the contribution factor. Moreover, the FCC closely monitors and supervises USAC with regard to the USF distributions. The extent of this close oversight has also been confirmed by a Government Accountability Office report[1].

The small Internet service providers (ISPs) WTA represents rely on USF to support the deployment of broadband services to their customers in some of the most remote, rugged, sparsely populated, and expensive-to-serve areas of the United States. The low population densities, long trunk and loop distances and often-rugged terrains of these areas make it very expensive not only to construct broadband networks, but also to operate, maintain and sustain such networks on a long-term basis. Broadband services have improved the economic, educational, health, public safety and social circumstances of those who live in these remote high-cost rural areas, and continuing USF support is necessary to help with loan repayments and meeting the higher ongoing costs of providing service in these rural areas.

Without ongoing USF support, broadband service rates would rise to unaffordable levels, and any ongoing upgrade plans would come to a halt. Terminating or significantly interrupting the existing high-cost USF support programs would cripple the availability and quality of broadband services and benefits in many or most small ISP service areas and relegate their inhabitants to second-class (or worse) broadband service.

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[1] "Telecommunications: Administration of Universal Service Programs Is Consistent with Selected FCC Requirements," GAO-24-106967, Publicly Released: August 24, 2024 (https://www.gao.gov/products/gao-24-106967) (GAO Report).