
PROTECTING AMERICANS FROM HIDDEN FCC TAX HIKES:

A Blueprint for Universal Service Fund Reform



U.S. Senate Committee
on Commerce, Science,
and Transportation

Ranking Member Ted Cruz (R-Texas)

A NOTE FROM TED

When a hardworking American family faces financial hardship, the first thing they do is re-evaluate their household spending and establish a responsible budget. When faced with managing America's fiscal crisis, President Biden has done the complete opposite, doubling down on reckless spending, racking up trillions in debt, and in turn unleashing record inflation—a cruel, hidden, and regressive tax on the working class.

In my role as Ranking Member of the Senate Committee on Commerce, Science, and Transportation, one area I've focused on is the federal government's massive \$125 billion broadband spending spree over the past four years, and the Biden administration's record of wasting taxpayer money on internet subsidies that are often unnecessary, duplicative, and inflationary.

With inflation still untamed, the last thing the government should do is increase taxes on American consumers. And, yet, that is precisely what the Biden-led Federal Communications Commission (FCC) is poised to do with the FCC's Universal Service Fund (USF)—a regressive, hidden tax on consumers' phone bills that funds a series of unaccountable, bloated internet subsidy programs.

Caught in a dilemma of wanting to further expand USF programs but having already maxed out the level of taxation American consumers can reasonably tolerate, the conversation at the FCC and in Congress has focused on expanding the pool of companies and products subject to the tax. This approach is anything but fair to American taxpayers: it would hide the problem of excessive USF taxation rather than fix it and ultimately make tax burdens worse by emboldening further unaccountable spending growth. It represents "Bidenomics" at its worst: reform nothing and hide unsustainable spending through inflationary taxes that Americans would never agree to pay directly.

American taxpayers deserve better. Rather than giving the FCC carte blanche to expand its balance sheet, Congress must reform the USF's structural problems, re-evaluate its component programs, and get the FCC's spending under control. In the blueprint that follows, I lay out a plan to do just that.

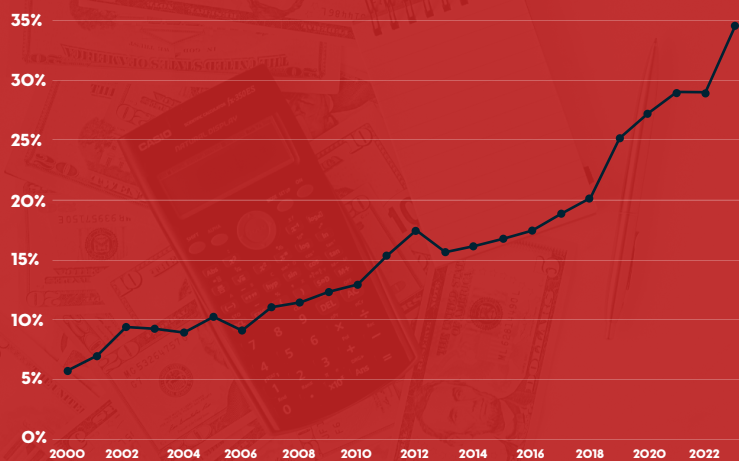


BACKGROUND

The Federal Communications Commission (FCC) has relied on vague provisions of the Communications Act of 1934 to impose ever-increasing tax burdens on consumers and businesses to fund the agency's constantly-expanding broadband subsidies. Unconstrained by a budget, the FCC unilaterally decides how much to take from consumers to pay for the Universal Service Fund (USF) and its four component programs: the High-Cost fund for rural areas; E-Rate for schools and libraries; Lifeline for low-income Americans; and the Rural Health Care program for rural health facilities. Uncontrolled spending, combined with an ever-shrinking tax base, has made the USF financially unsustainable and resulted in a regressive tax of **almost 35%** on consumers' monthly phone bills. This **disproportionately burdens** lower- and middle-income Americans.

STEALTH SKYROCKETING USF TAX HIKES

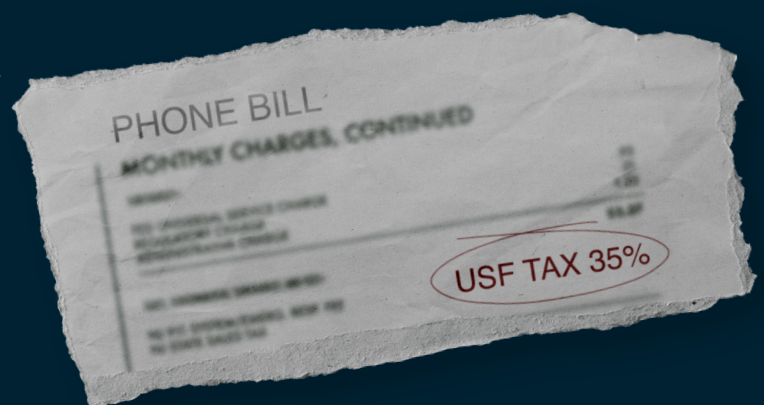
The USF Tax Rate Increased by More than 600% Since First Established



Some in Congress have responded by seeking to expand the FCC's powers to levy taxes on American consumers and businesses, claiming that a broader tax base would reduce the burden on any specific consumer or business. This is false. Expanding the tax base alone would not reduce the amount consumers pay but merely change the method for collecting their payments. It would conceal—rather than fix—excessive spending, and ultimately make consumers' tax burdens *worse* by undermining any incentive the FCC would have to lower costs or improve program performance.

Expanding the base without distribution reform puts the cart before the horse. Spending reform must precede revenue reform. The critical first step is to evaluate what the programs are paying for and to what extent they continue to be necessary. Scrutiny is especially needed amid the federal government's massive broadband spending spree over the last few years, resulting in **more than 100** overlapping broadband programs administered by 15 federal agencies.

To get USF tax burdens on consumers under control, it is necessary to reform the USF subsidy programs themselves. This effort should be guided by the following eight principles:



1

PUT CONGRESS BACK IN THE DRIVER'S SEAT

The primary cause of the exponential growth in the USF tax is mission creep. Due to the FCC's repeated expansion of USF programs, **overall spending is now nearly \$10 billion per year, having grown almost twice as fast as inflation since the USF's inception in 1996.** FCC Chairwoman Jessica Rosenworcel is exacerbating this trend with recent [proposals](#) to expand E-Rate by paying schools and libraries to distribute free Wi-Fi hotspot devices to students and patrons—a move that would [gut Congress' restrictions](#) on the program, vastly increase spending, and result in kids' unsupervised access to the internet.

UNIVERSAL SERVICE FUND
DISBURSEMENTS BY PROGRAM, 2001-2022

HIGH-COST FUND	\$91.5 BILLION
E-RATE	\$43.9 BILLION
LIFELINE	\$24.6 BILLION
RURAL HEALTH CARE	\$3.3 BILLION
TOTAL	\$163.4 BILLION

Source: *Federal Communications Commission, 2022 Universal Service Monitoring Report*

To get spending under control, Congress—not the FCC—must take charge of defining universal service and deciding where USF funds may go. The FCC must end its mission creep and not create new programs, including pilot programs, without express legal authority.

2

MOVE SOCIAL WELFARE SPENDING ON-BUDGET

The FCC's history of USF mission creep is largely attributable to the absence of ordinary budgetary constraints faced by most agencies—a topline budget and the congressional appropriations process. This has enabled the FCC to expand spending repeatedly over the years, without congressional approval and without the need for tradeoffs or pressure to eliminate inefficiencies. And spending has grown stealthily, thanks to the agency's [unaccountable process](#) for setting the quarterly tax, whereby it has repeatedly raised the tax without holding a single Commission-level vote.

Moving some or all USF programs into direct congressional appropriations would help restore political accountability over the FCC's spending decisions. This is especially obvious in the case of E-Rate, Lifeline, and Rural Health Care—the USF social welfare spending programs of the sort that Congress began to directly fund via the appropriations process during the COVID-19 pandemic and continued to fund in the Infrastructure Investment and Jobs Act.

At the same time, it may make sense to keep the High-Cost program within the current USF funding framework given ongoing multiyear commitments to providers.

3 ELIMINATE PROGRAM DUPLICATION

As the Government Accountability Office (GAO) has [pointed out](#), the federal government has too many broadband programs, and a poor record of coordinating them. Even though the FCC only administers a handful of these programs, it has faced criticism for wasteful duplication *within* the USF.

For example, the FCC currently funds broadband deployment via multiple programs. This has led to the USF [subsidizing](#) multiple providers to serve the same area. Similarly, Chairwoman Rosenworcel's recent [proposal](#) to fund the distribution of Wi-Fi hotspots through the E-Rate program would duplicate Lifeline. As a basic first step, duplicative spending in the USF must be eliminated.

4 STOP SUBSIDIZING NETWORKS THAT FACE UNSUBSIDIZED COMPETITION

The USF was established during the age of dial-up internet and AOL, before the explosion of competition in telecom markets and the rise of the modern internet in the 2000s. In some parts of the country, however, the FCC acts as if the Ma Bell wired telephone line is the only game in town, providing ongoing funding to legacy telecom companies even when one or more unsubsidized competitors serve the same area. At best, this is a dubious use of scarce taxpayer dollars that should not continue without compelling justification.



DO NOT SUBSIDIZE *IIJA-FUNDED NETWORKS' ONGOING OPERATIONAL COSTS*

When Congress passed the Infrastructure Investment and Jobs Act (IIJA) into law, lawmakers described the \$42.45 billion Broadband Equity, Access, and Deployment (BEAD) program as a once-in-a-generation opportunity to close broadband gaps. However, some in the Biden administration are now trying to re-write history, claiming the law implied that BEAD recipients would receive ongoing support for their operational expenses from the USF.

There is no statutory basis for this. BEAD was drafted and sold as the solution to the nation's rural broadband gaps and should be treated as such. Ongoing operational support for IIJA-funded networks—meaning, costs related to the normal maintenance of networks—should not be available except in case-by-case, exceptional circumstances.



TARGET LOW-INCOME SUBSIDIES *TO THOSE WHO TRULY NEED THEM*

Through both the Affordable Connectivity Program (ACP) and Lifeline, the FCC has spent billions of dollars to subsidize internet access for low and middle-income Americans. Unfortunately, there is scant evidence that either program has boosted broadband adoption. By the FCC's own estimates, more than 80% of subsidies have gone to households that already had broadband.

As a threshold matter, Lifeline and ACP are duplicative and should at the very least be combined. Further, they should be streamlined and reformed to target subsidies to those who truly need them to get online. If low-income broadband subsidies are to continue, it also makes sense to abandon ACP's overly broad eligibility criteria in favor of more limited enrollment rules. Most importantly, the FCC must heed the advice of GAO, the FCC's Inspector General (IG), and outside economists and develop clear performance metrics, so the agency can track the effectiveness of subsidies over time.

7

ENSURE E-RATE IS TRULY IMPROVING EDUCATION *AND NOT AGGRAVATING KIDS' SCREEN ADDICTIONS*

E-Rate has spent more than \$40 billion to push broadband into schools. With virtually every school in the country now connected, the FCC is set on expanding the program's mission. Chairwoman Rosenworcel has sought to expand the program to fund Wi-Fi on school buses and give hotspots to students for off-premises use even though the Communications Act [explicitly confines](#) E-Rate authority to “classrooms.”

This expansion raises serious concerns regarding kids' online safety. Unlike a classroom or a study hall, there is little possibility of supervised internet access on a school bus. The FCC's new efforts also risk expanding kids' access to TikTok and Instagram, and in turn exposing them to numerous documented threats, such as online bullying, development of eating disorders and suicidal thoughts, and targeting by sexual predators.

Instead of pushing more internet and screen use on children, E-Rate should be evaluated so policymakers can make sure it is truly benefitting pedagogical objectives. If the federal government is going to continue subsidizing internet usage in schools through the USF, it should be to serve children—not the interests of tech and telecom lobbyists.



ESTABLISH BETTER CONTROLS *TO STOP WASTE, FRAUD, AND ABUSE*

In addition to a record of gross inefficiencies, the USF has been wracked with massive levels of fraud across all four programs, from bid-rigging, kickbacks, and false certifications in [E-Rate](#), to improper payments in the [High Cost](#) program, to duplicate subscribers and fake addresses in the [Lifeline](#) (A.K.A. “[Obamaphones](#)”) program. Despite multiple warnings about endemic enrollment fraud in Lifeline, the [FCC IG](#) reports that “the FCC did not apply lessons learned from prior [Lifeline] program experience when the agency designed the [similar] ACP.”

Rather than develop effective controls on waste, fraud, and abuse, the FCC has relied on states to designate which companies are subject to state telecom regulations and in turn eligible to receive USF funding. Not only has this process failed to stop waste, fraud, and abuse, but it has also served as an [anachronistic barrier to participation](#) in USF programs for companies that do not want to face uncertain state regulatory burdens. It is imperative that the FCC follow the [GAO](#) and [IG’s](#) recommendations and implement better safeguards rather than punting its responsibility.

CONCLUSION

USF reform involves hard work and hard choices, but Congress and the FCC owe it to American taxpayers to rise to the challenge. While expanding the tax base has been the focus of most US legislative efforts, the more lasting, meaningful benefits will come from spending reform. Guided by this blueprint—and its principles of fiscal responsibility, administrative accountability, and the rule of law—I look forward to developing legislation to address the USF challenge.