

Nos. 24-354 and 24-422

In the
Supreme Court of the United States

FEDERAL COMMUNICATIONS COMMISSION, ET AL.,
Petitioners,

v.

CONSUMERS' RESEARCH, ET AL.,
Respondents.

SCHOOLS, HEALTH & LIBRARIES BROADBAND
COALITION, ET AL.,
Petitioners,

v.

CONSUMERS' RESEARCH, ET AL.,
Respondents.

**On Writ of Certiorari to the United States
Court of Appeals for the Fifth Circuit**

**BRIEF OF AMICUS CURIAE STATE OF ALASKA
IN SUPPORT OF PETITIONERS**

TREG TAYLOR
Attorney General of Alaska

LAURA WOLFF
Assistant Attorney General
Counsel of Record

ALASKA DEPARTMENT OF LAW
1031 W. Fourth Ave., Suite 200
Anchorage, AK 99501

(907) 269-6612

laura.wolff@alaska.gov

Counsel for Amicus Curiae

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INTEREST OF AMICUS CURIAE¹

The Universal Service Fund enables wireless and internet service in rural Alaska. These services are critical for health care, 911 emergency operating systems, education, and everyday life. For these rural consumers, the Fund's continued existence is not about subsidized telecommunication access; it is about whether rural Alaska will have reliable access at all. Without the Fund, wireless and broadband internet in many rural communities will become prohibitively expensive for both consumers and providers alike.

Building and maintaining telecommunication infrastructure in Alaska is a unique challenge. Eighty percent of the State is off the road system, and maintenance costs are high for off-road telecommunication infrastructure across Alaska's rugged and unforgiving terrain. When a line is down, a service provider cannot simply repair it by driving along the road with a bucket truck. Service providers in Alaska acknowledge that ending the Fund would mean terminating unprofitable services, discontinuing services to schools and healthcare centers that cannot pay their bills, shutting down rural networks, and abandoning rural construction projects. Without the Fund, many providers will scale back services to mostly the road system. And that contravenes Congress's intent to bridge the digital divide between rural and urban America.

¹ This brief was not authored in whole or in part by counsel for any party, and no person or entity other than amicus curiae or its counsel has made a monetary contribution toward the brief's preparation or submission.

What will happen if this Court affirms the Fifth Circuit’s decision is presaged by the 2023 months-long fiber optic outage in Northwest Alaska. When ice severed a fiber optic cable in the Arctic Ocean, communities were cut off.² Communication for vital emergency services—like search and rescue, police, fire, and utilities—were disrupted.³ Some businesses could not operate. And parents in rural villages could not call their children who had moved away. While emerging satellite technologies that have not yet been sponsored by the Fund have helped fill gaps in internet reliability, they have not displaced the crucial role of Fund-enabled telecommunication services, which still provide the backbone of telecommunication access in rural Alaska.

Alaska has an interest in ensuring that its rural residents have equitable telecommunication access, just as Congress intended.

SUMMARY OF ARGUMENT

The Universal Service Fund is necessary to providing wireless communication and internet in “rural, insular, and high cost areas” of Alaska. 47 U.S.C. 254(b)(3). As this Court knows, “Alaska is

² Alena Naiden, *Internet and cell outages in Northwest Alaska, North Slope caused by offshore fiber optic cut*, ADN.com (June 12, 2023), <https://www.adn.com/alaska-news/rural-alaska/2023/06/12/internet-and-cell-outages-in-northwest-alaska-north-slope-caused-by-offshore-fiber-optic-cut/>.

³ Desiree Hagen, *Ongoing internet outage hamstrings 911, other vital services in Northwest Alaska*, KTOO (June 19, 2023), <https://www.ktoo.org/2023/06/19/long-internet-outage-hamstrings-911-other-vital-services/>.

different.” *Sturgeon v. Frost*, 577 U.S. 424, 438 (2016). Indeed, Alaska Senator Ted Stevens realized this when he co-drafted the universal service provisions in the Telecommunications Act of 1996. 142 Cong. Rec. S691–92, S718 (Feb. 1, 1996) (“I come from a State . . . one-fifth the size of the United States. It is rural in nature. We have a small population. We have people in our State who are just now getting telephone service as known to the rest of the country for the whole century, almost. Now, what we have assured here, as this program goes forward, is that universal service will be available to rural areas.”). While the telecommunication and broadband statutes affect the entire country, their import is felt most acutely in states like Alaska. For nearly thirty years, Alaskans have relied on the Universal Service Fund. Without rehashing the merits of this case, Alaska’s brief focuses on the State’s reliance interests in maintaining the Fund.

Alaska relies on each of the four programs made possible by the Fund. The Rural Health Care program funds internet connectivity for over 220 rural healthcare providers in Alaska.⁴ Those clinics stand to lose over \$200 million in annual support if the Fund is

⁴ *Rural Health Care Commitments and Disbursements Tool*, <https://opendata.usac.org/Rural-Health-Care/RHC-Commitments-and-Disbursements-Tool/sm8n-gg82> (sum of recipient healthcare providers derived by selecting 2024 funding year and AK for filing state, removing duplicates, and limiting count to “processed” and “approved” applications); *see also* FCC Office of the Chairwoman, *The Universal Service Fund: How It Impacts Alaska* (providing funding in Alaska between 2021–2023 to 227 healthcare providers), <https://docs.fcc.gov/public/attachments/DOC-404605A1.pdf>.

eliminated.⁵ The High Cost program makes affordable phone, wireless, and broadband internet service for rural Alaskan consumers. The E-Rate program provides grants for internet for over 500 schools and libraries in Alaska.⁶ And the Lifeline program provides basic wireless plans to about 19,000 very low-income Alaskans.⁷ This brief discusses the first three programs—how their application in Alaska fulfills congressional intent, and the devastating effects on rural Alaska if the Fund is discontinued.

⁵ *Rural Health Care Commitments and Disbursements Tool*, <https://opendata.usac.org/Rural-Health-Care/RHC-Commitments-and-Disbursements-Tool/sm8n-gg82> (sum funding derived by selecting 2024 funding year and AK for filing state, removing duplicates, and limiting sum to committed funds).

⁶ *E-Rate Search Commitments Tool*, <https://opendata.usac.org/stories/s/jj4v-cm5x> (sum of recipient schools, libraries, and school districts derived by filtering funding year to 2024, billed entity state to AK, and removing duplicates); *see also see also* FCC Office of the Chairwoman, *The Universal Service Fund: How It Impacts Alaska* (providing funding in Alaska between 2022–2024 to 496 schools and 81 libraries, reaching 137,603 students), <https://docs.fcc.gov/public/attachments/DOC-404605A1.pdf>.

⁷ *FCC Office of the Chairwoman, The Universal Service Fund: How It Impacts Alaska* (providing funding in Alaska in March 2024 to 19,289 subscribers), <https://docs.fcc.gov/public/attachments/DOC-404605A1.pdf>.

ARGUMENT

I. Rural Alaskans rely on the Fund for delivery of critical healthcare services.

The FCC's Rural Health Care Program, made possible by the Universal Service Fund, makes internet-assisted health care available to rural residents. High-bandwidth internet is especially critical to delivering medical care in rural Alaska.

Because of Alaska's unique geography, many rural Alaskans live in communities off the road system. They cannot simply drive to a doctor's office or a hospital. This means patients are often a weather-dependent plane ride away from medical, dental, and mental health professionals.

These access barriers have prompted delivery of health care on a hub-and-spoke model. There are numerous small local "spoke" clinics that employ no or few medical professionals, but that work remotely with medical professionals at regional rural and urban medical hubs.

In rural Alaskan villages, Fund-enabled internet (and a dedicated team of 550 paraprofessional community health aides) make remote health care possible. For instance, if a patient in Tyonek has an earache, a community health aide takes otoscopic images of the eardrum and sends those high-resolution images to doctors elsewhere for diagnoses and a treatment plan. If a patient in Unalakleet is in a snow machine crash, high-quality x-rays of her injuries can be taken locally and then sent to a radiologist in the city to make critical and time

sensitive diagnoses. When a patient arrives in Nome or Bethel with stroke-like symptoms, his CT scan or MRI image can be immediately transmitted and read by specialists in Anchorage. Transmission of medical imagery and detailed health records needs high bandwidth. Fiber optic service, which provides this bandwidth, would not be possible without the Universal Service Fund.

As one illustration of a typical rural patient experience, a tribal health organization relayed the following story: A patient in a remote village was complaining of chest pain. The village community health aide evaluated the patient and followed guidelines available via the web-based Community Health Aide Manual. The manual prompted the aide to hook the patient up to an EKG machine and send the EKG and other pertinent data to an ER doctor at a rural hospital. The ER doctor authorized a medevac flight to the rural hospital and monitored the patient in the remote village via Zoom while the patient waited for the flight. The ER doctor then communicated with a cardiologist in Anchorage via an encrypted messaging service. The ER doctor followed the cardiologist's instructions, and when the patient arrived in Anchorage after the second medevac, the cardiologist there was able to treat the patient with the benefit of having received the patient's entire electronic health record via Fund-supported internet.

Even in non-emergent situations, the delivery of health care in rural Alaska requires wireless and internet service. Electronic health records are maintained on the cloud. Clinics use the internet to bill insurance and to take co-pays. Medical

professionals in rural Alaska use cellular service to collaborate with team members in Anchorage to diagnose and treat patients. Staff at correctional facilities in rural communities, like the Yukon Kuskokwim Correctional Center in Bethel, rely on electronic web-stored medical records to provide inmates with medication and other health care.

The Universal Service Fund is critical to providing disproportionately disadvantaged rural Alaskans with modern health care. This is precisely what Alaska Senator Ted Stevens had in mind when he told fellow senators, “[m]y State, when I first came here, had no assistance whatever for people in small villages. They had to find their way to Indian hospitals in regional areas. We created a system of clinics . . . This bill means telecommunications will bring telemedicine in. They will be able to have a direct exposure of patients to doctors miles and miles away.” 142 Cong. Rec. at S692. Dissolving the Fund would widen the inequitable divide that Congress so clearly intended to bridge.

II. Rural Alaskans rely on the Fund for critical safety processes and daily life functions.

“The High Cost program provides monetary support to providers of telecommunications services to allow for the provision of voice and broadband services at reasonable prices in rural and insular areas that, due to low population density, difficult terrain, and other factors, might otherwise be prohibitively expensive to serve.” *Report on the Future of the Universal Service Fund*, 37 FCC Rcd. 10041, 10053 ¶ 30 (2022). These telecommunication services are

essential to communities, from emergency 911 calls to more quotidian, but still important, aspects of life.

If the Fund is eliminated, the telecommunication system will retreat to mainly the road system. At first, many consumers will be priced out of accessing telecommunication services. If a service area is no longer profitable with the remaining customer base, and many won't be, those service areas will be shut down. Then, more service areas will be shut down as the economics fail to justify maintenance projects across Alaska's harsh terrain. Eventually, only communities on the road system will have reliable service. And just as the benefits of the Fund have been life-changing, so too will the ramifications of its elimination.

Elimination of the Fund will impact the safety of rural Alaskan communities that are already disproportionately under-resourced in addressing violent crime. For instance, rural residents will lack a reliable way to call 911.⁸ And when Alaska troopers are deployed to rural communities to apprehend a suspected shooter, they will not be able to use cell service during investigations, which will severely hamper their ability to protect the community and keep themselves safe.

⁸ As discussed above, satellite internet that is not yet supported by the Fund provides important backup coverage in some parts of rural Alaska. But it is limited to the specific small range surrounding a wifi router, is not ubiquitous, and is impeded by certain weather conditions prevalent in many areas of Alaska.

Elimination of the Fund will also impact the economies of rural communities. The internet is used for everything nowadays, from ordering goods, customer service communication, credit card transactions, advertising, accounting, payroll, and tax preparation.

Eliminating the Fund will slide rural Alaska backwards when Congress meant to bring it forward into the modern technological age.

III. Rural Alaskans rely on the Fund for more equitable education.

Alaska relies heavily on E-rate funding, which provides fast and reliable internet to schools. In 2024, nearly every one of Alaska's almost 500 schools relied on E-Rate for internet connectivity. E-Rate pays the cost of internet for the portion of the school on free or reduced lunches. Elimination of the Fund would impact both urban and rural Alaskan schools, which are already cash-strapped. But it would hit rural communities hardest because internet is most expensive there and because many rural communities are economically disadvantaged.

E-rate has been transformative for rural Alaskan schools. It has done what Alaska Senator Ted Stevens said the Act would do: "It will mean that the small schools in rural America will have access to modern technology, and can participate through telecommunications." 142 Cong. Rec. at S692. It is not simply important for schools to have internet, which itself has become essential to all facets of life including education. It is important for schools to have fast and reliable internet. High-bandwidth internet means

that multiple teachers within a school can access the internet at the same time for different classes. It means that instead of delivering video instruction in a classroom with one shared screen, students can receive individualized learning material and video instruction. Alaskan schools use high-bandwidth internet as the sole means of administering nationally required standardized tests. Without E-Rate, poor rural schools in Alaska could not afford internet access, and as technology advances, those children will be left behind.

Eliminating the Fund would also throw the corollary (and much smaller) state-sponsored internet subsidization program into disarray because the State bases its school eligibility requirement on the federal program. Alaska Stat. § 14.03.127.

In addition to providing essential access for schools, E-Rate supports internet connectivity throughout Alaska's library system. In rural Alaska, not everyone has internet access at their house. Many community members access the internet through their local libraries, which is made possible by the Universal Service Fund.

In sum, without the reliable internet access made possible by the Fund, already-disadvantaged rural Alaskan students will encounter additional barriers to equitable education.

CONCLUSION

For the foregoing reasons, the Court should consider Alaska's near thirty-year reliance on the Fund and the devastating consequences to rural

Alaska if this Court were to find it unconstitutional.
The judgment of the Fifth Circuit should be reversed.

Respectfully submitted,

TREG TAYLOR
Attorney General of Alaska

LAURA WOLFF
Assistant Attorney General
Counsel of Record
ALASKA DEPARTMENT OF LAW
1031 West Fourth Avenue
Anchorage, Alaska 99501
(907) 269-6612
laura.wolff@alaska.gov

Counsel for Amicus Curiae