

No. 24-354

IN THE
Supreme Court of the United States

FEDERAL COMMUNICATIONS COMMISSION, *ET AL.*,
Petitioners,

v.

CONSUMERS' RESEARCH, *ET AL.*,
Respondents.

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

**BRIEF OF NCTA — THE INTERNET & TELEVISION
ASSOCIATION AND THE NATIONAL FEDERATION
OF THE BLIND AS *AMICI CURIAE*
IN SUPPORT OF PETITIONERS**

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INTEREST OF *AMICI CURIAE*¹

Amici have a substantial interest in the question presented in this case. *Amicus* NCTA – The Internet & Television Association (“NCTA”) is the principal trade association of the cable industry in the United States. Its members include owners and operators of cable systems that reach 77% of broadband serviceable residences and businesses and deliver high-speed internet service (commonly known as “broadband”) to more than 71 million subscribers nationwide. NCTA members also provide phone service to approximately 16 million subscribers. NCTA regularly advocates on behalf of its members before the Courts of Appeals and the Supreme Court on questions impacting the cable industry.

NCTA members are active participants in programs supported by the Universal Service Fund (“USF”), including the High Cost program, which includes the Rural Digital Opportunity Fund (“RDOF”), the Schools and Libraries program (commonly known as “E-Rate”), the Rural Health Care (“RHC”) program, and the Lifeline program. For these reasons, NCTA has an acute interest in the constitutionality and continued operation of the USF. The Government has responded at length to the non-delegation holding of the *en banc* U.S. Court of Appeals for the Fifth Circuit. NCTA writes here to emphasize the destructive consequences

¹ No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. *Amici* NCTA and NFB, their members, and their counsel were the only parties who made a monetary contribution to the preparation or submission of this brief.

that affirmance would have on cable operators and the communities they serve—particularly in rural and remote parts of the country that still lack access to any high-speed internet service whatsoever, as well as for low-income consumers.

Amicus The National Federation of the Blind (“NFB”), the oldest and largest national organization of blind persons, is a non-profit corporation headquartered in Baltimore, Maryland. It has affiliates in all 50 states, Washington, D.C., and Puerto Rico. The NFB and its affiliates are recognized by the public, Congress, executive agencies of state and federal governments, and the courts as a collective and representative voice on behalf of blind Americans and their families. The ultimate purpose of the NFB is the complete integration of the blind into society on a basis of equality. This objective includes the removal of legal, economic, and social barriers to access. As part of its mission and to achieve these goals, the NFB has worked actively to ensure that the blind have access to the technologies, including internet access, that allow the blind to participate fully in American life.

SUMMARY OF ARGUMENT

Despite significant efforts and investments, today millions of Americans still reside in areas without access to high-speed internet service. Hundreds of thousands of schools, libraries, and rural health care facilities with tight budgets still struggle to connect to the internet, to maintain their own internal networks, and to meet the basic needs of their students, patrons, and patients. Millions of households fighting to make ends meet still cannot afford an internet connection or even phone service. And individuals like blind persons, who rely on

technologies to participate fully in American life, still struggle to obtain needed services. These problems will not fix themselves. Market realities mean that private investment alone will not fix them either. The USF exists to address these persistent challenges through targeted subsidy programs.

Respondents purport to “take no position on the wisdom” of universal service programs. Pet’rs 5th Cir. Br. 1. Instead, Respondents have argued that the USF is unconstitutional because Congress failed to specify the precise formula the FCC must use to determine how much money telecommunications providers contribute on a quarterly basis. The Fifth Circuit stopped short of endorsing that unprecedented view of the non-delegation doctrine. The Court instead invalidated the USF program on the novel theory that Congress’s delegation to the FCC *in combination with* the FCC’s use of private entity, the Universal Service Administrative Company (“USAC”), to determine the quarterly contribution factor *together* violated non-delegation principles. The Government has addressed these arguments in its brief to this Court. *See* Fed. Pet’rs Br. 18-50. But it also bears emphasis that, by disclaiming any view about the USF’s tremendous benefits to connectivity nationwide, Respondents obscure the very real and destructive consequences that would follow the adoption of either Respondents’ aggressive non-delegation doctrine arguments or the hybrid approach of the *en banc* Fifth Circuit.

For millions of American households and communities—especially those in rural areas, those of limited means, and those with accessibility challenges such as blind persons—adopting these non-delegation theories could spell disaster. It likely would mean the

end of the High Cost program including RDOF, a ten-year multibillion-dollar program administered by the FCC to help bring high-speed internet to communities that are too costly to reach through private investment alone. At least 3.5 million homes and small businesses in rural areas nationwide will be connected in the next several years by networks funded by RDOF, bringing them high-speed internet for the very first time. Affirmance would also threaten to cut off the E-Rate and RHC programs, which offer discounts on internet and other communications services to public and non-profit K-12 schools, libraries, and rural health care providers. Over 100,000 of these institutions depend on these discounted services to meet the educational needs of their students, the resource needs of their library patrons, and the health care needs of their patients. And affirmance would risk cutting off service for about 7.4 million households enrolled in the Lifeline program that may be unable to afford internet service, or even phone service, without the help of the federal subsidies supplied by the USF. In short, affirmance could result in significant harm for millions of people and businesses and for internet connectivity across the country.

For many cable operators, affirmance would likely damage their investments and threaten their operations. NCTA members have launched multiyear, multibillion-dollar investments to expand their networks to over a million unserved locations nationwide, all in reliance on RDOF funding that the FCC has already committed to provide for ten years. Ending RDOF now—nearly five years since the program was adopted and over four years since the FCC announced the 180 winning bidders—would render many, if not most, of these projects economically non-viable, stranding cable

operators' investments without any ability to recover the considerable resources operators have poured into these projects. Striking down the USF would also upend NCTA members' active relationships with thousands of organizations that receive support through E-Rate and RHC, as well as with many individuals who participate in Lifeline.

Affirmance would also greatly impact people with disabilities, including blind people. Because print materials are inaccessible to blind persons, a lack of internet access often means they are denied access to government services, employment, education, and community participation. In addition, high-speed internet service can be essential to downloading and using assistive technologies the blind and other people with disabilities rely on to interact with the world. What's more, blind people and other people with disabilities are disproportionately low-income so rely on Lifeline and other subsidized services to receive internet and communications access.

These tremendous real-world consequences could result if the USF were invalidated under the Fifth Circuit's unprecedented theory and would certainly come to pass were this Court to adopt the even broader non-delegation holding Respondents have urged. For these reasons, and those explained in the Government's brief, this Court should reverse the judgment of the Fifth Circuit.

ARGUMENT**I. THE UNIVERSAL SERVICE FUND IS CRITICAL TO EFFORTS TO CONNECT ALL AMERICANS WITH HIGH-SPEED INTERNET.**

It is easy to take reliable, high-speed internet service for granted. According to the most recent FCC data, 93% of households and businesses are in areas where they can subscribe to broadband service offering download speeds of at least 100 megabits per second (“Mbps”) and upload speeds of at least 20 Mbps.² And the median download speed across the United States was 267 Mbps in December 2024, an increase from 227 Mbps in December 2023.³ As internet speeds have soared, and as high-speed internet has become more integrated and indispensable in Americans’ daily lives, the price of a high-speed connection has fallen precipitously on a per-megabit basis. In fact, since 2008, the price per megabit of speed has decreased by 98%,⁴ and consumers and businesses now have more choice

² See *In re Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, 2024 Section 706 Report, 39 FCC Rcd 3247 (2024). “Download speed” refers to the rate at which data is transferred from the internet to a user’s device. “Upload speed” refers to the rate at which data is transferred from a user’s device to the internet.

³ Ookla Global Speedtest Index, <https://www.speedtest.net/global-index> (last visited Jan. 16, 2025).

⁴ NCTA, *Industry Data*, <https://bit.ly/3UOSXJP> (last visited Jan. 16, 2025) (“NCTA, *Industry Data*”).

than ever when it comes to finding a service plan that meets their needs.

The cable industry has been a major driver of progress towards widespread availability of high-speed internet. Cable operators have invested over \$330 billion in private capital over the past twenty years in expanding their networks to reach more communities and upgrading their networks to deliver faster speeds and innovative services.⁵ Thanks to these investments, cable operators' networks now comprise 2.5 million miles of fiber-optic and coaxial cable that can deliver internet, video programming, and other services to 86% of all U.S. households.⁶ And a full 91% of all U.S. households can now subscribe to gigabit service (*i.e.*, up to 1,000 Mbps) where they live.⁷

Despite these massive investments, there are still millions of Americans who do not have access to fixed terrestrial high-speed internet at any price. This is largely due to the economic challenges of expanding networks and infrastructure to reach rural and remote areas of the country. In these areas, the cost of deploying fixed terrestrial broadband service is generally too high for providers to recover their costs through the revenues earned from subscribers, either because of low population density, long distances between a given location and a provider's existing network facilities, or challenging terrain that makes the

⁵ *Id.*

⁶ *In re Communications Marketplace Report*, 2024 Communications Marketplace Report, GN Docket No. 24-119, FCC 24-136 (rel. Dec. 31, 2024).

⁷ NCTA, *Industry Data*.

necessary construction and installations prohibitively expensive. Because of these challenges, Americans in rural, remote, Tribal, and other high-cost areas have persistently lagged their peers in more urban areas when it comes to access to high-speed internet service.

In addition to the millions of Americans who do not have the opportunity to subscribe to fixed terrestrial high-speed internet, there are also millions of Americans who simply cannot afford an internet connection—or even phone service—without economic hardship. And thousands of schools, libraries, and rural health care providers struggle to afford high-speed internet and other communications services, and to maintain the necessary equipment, given their limited budgets. The COVID-19 pandemic underscored the importance of connectivity for work, school, health care, and participating in our communities. This is particularly true for K-12 students who depend on the internet to stay connected to their teachers and classrooms and individuals relying on telehealth services for medical care. Without the help of subsidies, these consumers and institutions would likely remain unconnected to critical communications services.

Congress directed the FCC to establish the USF precisely to address these problems and to ensure that all Americans have access to advanced communications services at just, reasonable, and affordable rates.⁸ *See*

⁸ Expanding access to high-speed internet for rural Americans has been a major priority in Congress in recent years. As Representative Glenn Thompson (R-PA) of the House Committee on Agriculture explained in May 2021, “[t]he one issue that united rural members on both sides of the aisle is the need to address the digital divide. This critical infrastructure void has been

47 U.S.C. § 254(a)-(b). Universal service programs play a critical role in filling the gaps where private investment alone has been insufficient to connect all Americans with internet and other communications services, primarily by delivering targeted subsidies through partnerships with communications providers.

Affirmance would threaten to end the USF and put a halt to billions of dollars in annual universal service support, as would adopting the broader non-delegation arguments that Respondents have advanced. To make that radical result seem more palatable, throughout this litigation, Respondents have portrayed the USF as ineffective and unnecessary. *See* Pet’rs 5th Cir. Br. 17-20. Even while ruling for Respondents—albeit without endorsing their broader non-delegation doctrine argument—the *en banc* Fifth Circuit recognized that “[m]any of the billions injected into the USF have undoubtedly been deployed to support the important goal of universal service.” Pet. App. 8a. As the largest providers of in-home, high-speed internet in the country, and as major participants in universal service programs who are doing the hard work of connecting all Americans, NCTA members are familiar with the imperfections of the USF, and they have advocated for reforms to the administration of the USF, universal service programs, and the contribution mechanism where necessary. But the truth is that the USF plays a vital role connecting consumers and businesses to communications services to which they would not

exacerbated by the challenges faced by rural families and businesses during the pandemic.” Press Release, House Committee on Agriculture Republicans, *House Agriculture Republicans Introduce Broadband for Rural America Act* (May 20, 2021), <https://bit.ly/3jaffPo>.

otherwise have access. The following programs, in particular, are essential.

RDOF: Approximately 53% of the USF’s annual disbursements—over \$4 billion per year—go towards the High Cost program, a set of different initiatives that distribute funding to help broadband and telecommunications providers construct and operate networks in areas that would otherwise be too costly to serve with internet, phone, or other communications services. USAC, *2023 Annual Report* at 3 (2023), <https://bit.ly/4fWPPWS> (“*2023 USAC Annual Report*”).

As a component of the High Cost program, the FCC established RDOF in 2020. RDOF commits billions of dollars over ten years to help internet service providers (including cable operators) build their networks out to rural areas that currently do not have access to high-speed internet. See *In re Rural Digital Opportunity Fund*, Report and Order, 35 FCC Rcd 686, 687-88 ¶¶ 1-5 (2020); 47 C.F.R. §§ 54.801-806. For the first phase of the program, providers were awarded funding through a competitive “reverse auction” process, under which providers submitted bids for the funding amounts at which they would be willing and able to deploy their services to a specific location and at a certain speed tier (*e.g.*, 100/20 Mbps or 1,000/500 Mbps). The RDOF Phase I auction was completed on November 25, 2020, and the FCC authorized over \$6 billion in support for new deployments to approximately 3.5 million unserved locations nationwide, *infra* at 14-17, which will be paid out to providers monthly over a period of ten years. See *Rural Digital Opportunity Fund Auction 904 Application Review Concludes; Long-Form Applications Made Public*, Public Notice, 38 FCC Rcd

12029 (2023) (“*Long-Form Application Review Public Notice*”); 47 C.F.R. § 54.802(b).⁹

In exchange for support, RDOF recipients must offer both internet service and phone service to the locations for which they receive support “at rates that are reasonably comparable to rates for comparable offerings in urban areas.” 47 C.F.R. § 54.805(a). RDOF recipients must also make binding commitments to deploy their networks to the areas for which they receive support and comply with a regimented schedule for completing those deployments within six years. *Id.* § 54.802(c).

E-Rate: The second largest component of the USF is the Schools and Libraries universal service support mechanism, more commonly known as “E-Rate,” which disburses over \$2.4 billion per year to support connectivity for eligible elementary schools, secondary schools, and libraries.¹⁰ *2023 USAC Annual Report* at 3. E-Rate support currently accounts for approximately 30% of annual USF disbursements. *Id.* Under the program, eligible schools (public and private non-profit K-12) and libraries can apply for discounted internet, data transport or telecommunications services, as well as equipment and basic maintenance services for their networks. *See* 47 C.F.R. § 54.502(a). Schools and libraries then select a qualifying communications service provider through a competitive bidding process. *Id.* § 54.503. The discounts that these institutions receive

⁹ *See also* FCC, *Auction 904: Rural Digital Opportunity Fund Fact Sheet*, <https://bit.ly/40oTI2l> (last visited Jan. 16, 2025).

¹⁰ The program excludes colleges and universities, for-profit schools and libraries, and schools with endowments exceeding \$50,000,000. *See* 47 C.F.R. § 54.501(a)-(b). E-Rate also allows consortia of schools and libraries to participate jointly. *Id.* § 54.501(c).

range from 20% to 90%, depending on the poverty level of the student population the school or library serves, meaning that eligible schools and libraries in the areas with the highest percentage of low-income students benefit most. *See id.* § 54.505(b). In 2024, the FCC launched a pilot program under E-Rate that allows eligible schools, libraries, and consortia comprised of eligible schools and libraries to request and receive support to defray the costs of eligible cybersecurity services and equipment. *See In re Schools and Libraries Cybersecurity Pilot Program*, Report and Order, WC Docket No. 23-234, FCC 24-63 (WTB rel. June 11, 2024).

RHC: The Rural Health Care program offers various forms of support to public and non-profit health care providers in rural areas (*e.g.*, skilled nursing facilities, teaching hospitals, community health centers, and rural health clinics) for the internet and telecommunications services they need to provide health care to their patients. *See* 47 C.F.R. §§ 54.601, 54.602.

RHC consists of two primary programs: the Healthcare Connect Fund Program and the Telecommunications Program. *Id.* § 54.602. Through the Telecommunications Program, rural health care providers receive discounts off the cost of telecommunications services sufficient to ensure that they benefit from rates that are comparable to what similar institutions receive in urban areas. *Id.* § 54.602(a). Through the Healthcare Connect Fund Program, health care providers receive a 65% discount off the cost of their internet service and a variety of other communications services, as well as necessary network equipment. *Id.* §§ 54.602(b), 54.611(a), 54.612, 54.613(a). In 2006, the FCC also launched a pilot program under RHC to support telehealth services in

rural areas. *See In re Rural Health Care Support Mechanism*, Order, 21 FCC Rcd 11111 (2006).

Like E-Rate, RHC requires the use of competitive bidding to match health care facilities with communications service providers. 47 C.F.R. § 54.622(a). In 2023, USAC disbursed approximately \$468 million in support to rural health care providers. *2023 USAC Annual Report* at 3.

Lifeline: The Lifeline program has facilitated discounted phone service for low-income households since 1985.¹¹ The program helps ensure that low-income households have access to communications services, particularly when they are needed most (*e.g.*, for receiving public service announcements or to call the police, hospital, or fire department in an emergency). Lifeline functions as a reimbursement program, under which eligible telecommunications carriers provide discounted service to eligible low-income households and then receive reimbursement from the USF. *See* 47 C.F.R. § 54.407. In 2016, the FCC expanded the program to include discounts for internet service and introduced several reforms to enhance accountability and program integrity.¹² Currently, Lifeline offers eligible households up to \$9.25 off the monthly cost of their internet service or service plans that include both

¹¹ *See* FCC, *Universal Service Monitoring Report* at 29, CC Docket Nos. 96-45 et al. (OEA 2024), <https://bit.ly/4fWUo3v>.

¹² *See In re Lifeline and Link Up Reform and Modernization*, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962 (2016).

internet and phone service.¹³ See 47 C.F.R. § 54.403(a)(1). For eligible households on Tribal lands, the Lifeline program offers subsidies up to \$34.25 per month. See *id.* § 54.403(a)(3).

II. AFFIRMANCE COULD HAVE DESTRUCTIVE CONSEQUENCES FOR CABLE OPERATORS AND THE COMMUNITIES THEY SERVE.

Although the *en banc* Fifth Circuit largely omitted discussion of the practical consequences of its decision, affirmance could be highly destructive. Ending the USF would disrupt the multibillion-dollar, multiyear deployments that cable operators have already planned and undermine the major investments cable operators have already made for those deployment projects. Affirmance would frustrate cable operators' contracts with schools, libraries, and rural health care providers to provide discounted communications services and equipment. Cable operators that participate in Lifeline may lose low-income customers enrolled in the Lifeline program, who may not be able to afford communications services without the subsidies offered through the program. And of course, striking down the USF would be catastrophic for the millions of consumers and

¹³ The FCC has scheduled the phase-out of Lifeline support for “standalone” phone service, *i.e.*, service plans that include phone service but not internet service, but has paused this scheduled phase-out due to changes in the marketplace for affordable broadband services through December 1, 2025. *In re Lifeline and Link Up Reform and Modernization*, Order, WC Docket Nos. 09-197, 11-42, 10-90, DA 24-642 (WCB rel. July 3, 2024). Currently, the program offers up to \$5.25 off the monthly cost of standalone phone service. See 47 C.F.R. § 54.403(a)(2).

businesses who rely on universal service programs for access to high-speed internet and other services.

A. Unserved and Underserved Communities Will Lose Access to New High-Speed Internet Deployment Projects Through RDOF.

First and foremost, affirmance would threaten to derail NCTA members' multiyear, multibillion-dollar high-speed internet deployment projects that would serve communities and people in need. The FCC has authorized approximately \$6 billion in funding to date, which will support new deployments to 3.5 million unserved homes and businesses nationwide.¹⁴ The overwhelming majority of these locations will receive access to internet service with gigabit speeds thanks to RDOF support.

All but two states are beneficiaries of this support. The eight states that receive the largest amount of RDOF support are Arkansas, Georgia, Louisiana, Michigan, Mississippi, Pennsylvania, Texas, and West Virginia. In each, RDOF-authorized support recipients will collectively receive more than \$250 million over ten years to support high-speed broadband deployments.¹⁵ The vast majority of currently unserved locations will receive access to internet service with gigabit speeds.¹⁶ Nationwide, NCTA members were authorized to receive

¹⁴ *Long-Form Application Review Public Notice.*

¹⁵ These figures are based on the most recently available High Cost Funding Disbursements from USAC. See USAC, *High Cost Funding Disbursement Search*, <https://bit.ly/4h5wjse> (last visited Jan. 16, 2025).

¹⁶ *See Long-Form Application Review Public Notice.*

approximately \$1.18 billion to deploy their cable networks to reach over one million unserved locations.

Cutting off RDOF funding—especially after the earliest authorized support recipients have been required to meet deployment milestones¹⁷—would be a major blow to families, businesses, and communities that are now scheduled to receive high-speed internet access for the very first time. Because all of the unserved locations discussed above are in high-cost areas (*i.e.*, areas that are too costly to serve without the help of subsidies from the public sector) many of these deployment projects will no longer be economically viable if RDOF support is removed from the equation, and they will have to be abandoned.

That would deprive millions of Americans in rural, remote, and low-income areas of the transformational benefits of a high-speed internet connection, and it may leave them stranded without any reliable internet service for years to come. The ripple effects of that loss would be profound. Not having reliable internet access makes it harder for communities in these areas to attract new investment and commerce, start new businesses and create jobs, improve health care outcomes, keep in touch with friends and family who live elsewhere, and stay connected to the wider world. The COVID-19 pandemic demonstrated that K-12 students without access to high-speed internet at home are at a severe disadvantage as remote learning has become more

¹⁷ RDOF support recipients authorized in 2021 were required to deploy to 40 percent of their required number of locations by December 31, 2024. *See* 47 C.F.R. § 54.802(c)(1).

prevalent and as educational resources have increasingly moved to online platforms.

For example, NCTA member Charter Communications announced a multiyear plan to invest approximately \$6.2 billion, offset by approximately \$1.2 billion in RDOF support, to deploy to about 1.3 million unserved locations¹⁸ in 24 states.¹⁹ Charter's planned deployments in each state are made possible by RDOF support. In 2023 alone, Charter extended its network to reach approximately 295,000 new locations through its broader subsidized rural construction initiative.²⁰ And while final numbers are not yet settled for 2024, Charter expected to activate approximately 400,000 new subsidized rural passings last year, or about 35% more than in 2023.²¹ Charter's deployments represent a transformational leap for these communities—from having no high-speed internet at all to having the same access to gigabit-level service (the current gold standard

¹⁸ RDOF passings include approximately 0.3M passings identified in areas adjacent to the census blocks awarded in the RDOF auction that Charter will add to its network as it completes the RDOF build. Capital expenditures associated with these approximately 0.3M passings are included in the approximately \$6.2B of RDOF capital expenditures.

¹⁹ Press Release, Charter Communications, *Charter Communications Launches New Multiyear, Multibillion-Dollar Initiative to Expand Broadband Availability to Over 1 Million New Customer Locations* (Feb. 1, 2021), <https://bit.ly/3UX84kM>.

²⁰ Charter Communications, *Network Investment & Access*, <https://bit.ly/4ac9i4B> (last visited Jan. 16, 2025).

²¹ See Charter Communications, 3Q 2024 Investor Conference Call, at 16:35 (Nov. 1, 2024), <https://bit.ly/40zzxPu>.

of internet connectivity) as communities in more urban and densely populated areas.

Similarly, Cox has already deployed high-speed broadband to millions of locations across its footprint, including over 6.4 million locations in the 9 states for which it has obtained RDOF funding.²² Mediacom Communications has deployments underway to approximately 9,600 homes and small businesses in Alabama, Florida, Georgia, and North Carolina with the help of \$2.2 million in RDOF support.²³ And Midcontinent Communications has launched multimillion-dollar deployment projects to bring its fiber-optic internet service to approximately 6,500 homes and small businesses in Minnesota, North Dakota, and South Dakota with the help of \$4.9 million in RDOF support.²⁴

NCTA members themselves have considerable reliance interests in the administration of RDOF. The RDOF support commitments members have received from the FCC act as the lynchpin in members' ambitious deployment projects; RDOF support is essential to the viability of these projects. But members' reliance

²² FCC, Data as of June 30, 2024, FCC Broadband Data Collection, <https://broadbandmap.fcc.gov/data-download>.

²³ See FCC, *Historical Authorized Auction 904 Long-Form Applicants Data* (last updated Mar. 26, 2024), <https://www.fcc.gov/auction/904> ("*Historical Authorized Auction 904 Long-Form Applicants Data*"); Jeff Baumgartner, *Mediacom Taps Tarana for FWA-Based RDOF Buildout*, LightReading (Apr. 10, 2024), <https://bit.ly/3Pu5SR9>.

²⁴ See *Historical Authorized Auction 904 Long-Form Applicants Data*; Jeff Baumgartner, *Tarana Broadens FWA Connection with Cable Ops*, LightReading (Sept. 17, 2024), <https://bit.ly/4adX9fF>.

interests go beyond the funding cable operators expect to receive over the next decade, because cable operators are *already* investing heavily to complete their required deployments on or ahead of schedule.²⁵

Charter, for example, has already deployed high-speed broadband to hundreds of thousands of locations across the country, including over 47,000 locations in Texas, over 40,000 locations in Wisconsin, and over 31,000 in North Carolina.²⁶ Midcontinent Communications has already deployed to over 2,000 locations.²⁷ The timing of those investments is driven in part by RDOF recipients' obligations to complete deployments to a specified number of unserved locations, and to do so for 40% of those locations within three years, 60% within four years, 80% within five years, and to 100% of those locations within six years. *See* 47 C.F.R. § 54.802(c). These milestones kick in once a provider is authorized to receive funding. As discussed above, billions of dollars of funding for millions of unserved locations have been authorized by the FCC, meaning that the clock is now running on these milestones. For some NCTA members, the first milestone has already passed, and these members have until March 1, 2025, to report the built locations in the

²⁵ *See, e.g.*, Charter Communications, *Helping Meet the Needs of Low-Income Families and Narrowing the Digital Divide* (May 6, 2024), <https://bit.ly/3BZN6hF> (stating that Charter “expect[s] the RDOF portion of [its rural broadband] project to be completed by the end of 2026, two years ahead of schedule”).

²⁶ *See* USAC, *Connect America Fund Broadband Map*, <https://bit.ly/4gN0g0p> (data certified as of Sept. 30, 2024) (“CAF Map”).

²⁷ *See* CAF Map.

government's online portal.²⁸ To meet both the interim and final milestones, NCTA members and other RDOF recipients have begun their deployment projects in earnest.

Meeting RDOF's deployment targets and milestones requires cable operators to take on considerable costs upfront. Deploying broadband networks to unserved areas is a complex and capital-intensive process, and cable operators must begin planning and investing in these projects well in advance to meet their deployment milestones. That includes careful planning and engineering work, identifying capital resources to cover the costs of the deployment and securing necessary financing, securing access to and preparing infrastructure like utility poles that are needed to run new cable wiring to planned locations, obtaining permits for construction, purchasing expensive new equipment and materials, and hiring new employees and contractors to perform construction and support operations in the new communities to be served (which often requires hundreds or even thousands of new personnel at a time). These processes are already underway, and as discussed above, cable operators are already committing major resources to complete their RDOF deployments.

Moreover, because RDOF support does not cover the full cost of deployments, and because RDOF support will be disbursed in monthly installments over the course of 10 years, NCTA members and other RDOF recipients will have to complete their deployment projects long before they recover all the RDOF support they have

²⁸ See 47 C.F.R. § 54.802(c).

been awarded, and they must invest their own capital out-of-pocket to reach that goal.

Ending the USF and eliminating RDOF support would be massively disruptive for these projects, and it would severely undermine the investments cable operators are already making. In fact, given the persistent economic challenges that plague deployments to high-cost areas, cutting off RDOF support may destroy these investments altogether. As mentioned, it may not be economically viable for cable operators to complete their planned deployments without RDOF support, and there may be no other realistic way for cable operators to recover the expenses they have incurred.

Halting RDOF would also be highly disruptive for cable operators' businesses more generally, requiring operators to go back to the drawing board and reconsider their planned capital expenditures, employment levels, and other investments that may have been premised on the receipt of RDOF support under the terms set by the FCC's rules. Cable operators would have no way to recover the opportunity costs they have incurred because they chose to commit billions of dollars of resources and years of effort to participating in Congress's and the FCC's High Cost program, rather than pursuing other opportunities to invest in their networks or grow their customer bases.

Cable operators would not be able to make up for the loss of RDOF support through other federal programs. As part of the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021), Congress appropriated tens of billions of dollars to fund new deployments of high-speed internet services to unserved

and underserved areas, including \$42.45 billion through the Broadband Equity, Access, and Deployment (“BEAD”) Program.²⁹ But to avoid overbuilding and duplicating federal subsidies, the BEAD program excludes areas authorized to receive cable internet service through RDOF funding.³⁰ And depending on when this pending litigation is resolved, it will very likely be too late for cable operators who have been awarded RDOF support to apply for BEAD funding for the affected locations.³¹

The consequences of ending RDOF would also have profound and direct impacts on consumers and people with disabilities, including blind people. These individuals are disproportionately low-income and rely on internet-based technology, including increasingly on artificial intelligence. Ending the USF would threaten these people’s access to the very technologies that allow them to participate fully in education, work, and community life and facilitate access to needed services.

²⁹ See NTIA, *Broadband Equity, Access, and Deployment (BEAD) Program*, <https://bit.ly/3uK1cfP> (last visited Jan. 16, 2025).

³⁰ See NTIA, *Notice of Funding Opportunity* at 36 & n.52, <https://bit.ly/3W6Rjoa> (“unserved” and “underserved” locations exclude areas that are “already subject to an enforceable federal, state, or local commitment to deploy qualifying broadband,” aside from satellite service).

³¹ *Id.* Approximately two-thirds of the eligible entities (the 50 states, D.C., and territories) have already finalized their BEAD eligibility maps, see NTIA, *Bead Progress Dashboard*, <https://bit.ly/4ahEEHh> (last visited Jan. 16, 2025), and a few states have already announced awarded funding to subgrantees, see, e.g., ConnectLA, *BEAD Final Proposal*, (Nov. 18, 2024), <https://bit.ly/40Dw6aB>; HighSpeedNV, *BEAD Final Proposal* (Dec. 16, 2024), <https://bit.ly/40bvBCX>.

What's more, vision loss is highly correlated with age. That means the country's aging population, especially in rural areas, will soon result in even more people who depend on these services. Compromising high-speed internet access for these populations would be devastating.

B. Schools, Libraries, and Rural Healthcare Providers Will Lose Discounted Service and Equipment Through E-Rate and the Rural Health Care Program.

In addition to depriving people in need, consumers, and businesses in unserved areas of access to high-speed internet and disrupting cable operators' investments in their networks, affirming the Fifth Circuit would upend cable operators' customer relationships with schools, libraries, and rural health care providers.

E-Rate has been a major success and directly enhances educational opportunities for millions of students and library users across the country. In 2023, over 132,000 K-12 schools and libraries in the United States received discounted internet, data transport, telecommunications services, as well as Wi-Fi devices and other equipment, through E-Rate worth over \$2.46 billion. *2023 USAC Annual Report* at 7. Last year, that included over \$65 million in funding commitments for Pennsylvania, over \$46 million for Indiana, over \$22 million for Oregon, and over \$11 million for Nebraska.³²

³² See E-Rate Central, *Funding Commitment Overview: Pennsylvania*, <https://bit.ly/3BZvMt7> (last updated Jan. 16, 2025); E-Rate Central, *Funding Commitment Overview: Indiana*, <https://bit.ly/3DLVphE> (last updated Jan. 16, 2025); E-Rate Central, *Funding Commitment Overview: Oregon*, <https://bit.ly/>

Since the program launched in 1998, NCTA members have contracted with thousands of schools and libraries across 47 states to deliver hundreds of millions of dollars' worth of broadband and communications services. Most of NCTA's customer relationships with these schools and libraries are governed by year-long or multiyear contracts executed after a competitive bidding process. To name just a few, Comcast is providing discounted services to hundreds of schools, school districts, and libraries in California, including discounted high-speed internet service for the Lompoc Unified School District valued at over \$500,000.³³ In New York, Charter is providing discounted services worth over \$200,000 to the Buffalo and Erie County Public Library System. In Missouri, Mediacom is partnering with the Springfield Public School District to provide the fiber infrastructure that connects the district's wide-area-network.³⁴

Affirmance would threaten cable operators' customer relationships with these institutions and lead to disastrous consequences for schools and libraries and for millions of students, teachers, and library patrons. Because the schools and libraries that benefit most from E-Rate are those in areas with the highest poverty, ending E-Rate would have a disproportionate impact on

3Wf5dqH (last updated Jan. 16, 2025); E-Rate Central, *Funding Commitment Overview: Nebraska*, <https://bit.ly/3WdnjcL> (last updated Jan. 16, 2025).

³³ All data regarding E-Rate is drawn from USAC's open data regarding the program. See USAC, *USAC Open Data: E-Rate Data Tools*, <https://bit.ly/3PCqITg> (last visited Jan. 16, 2025).

³⁴ See Press Release, Mediacom Business, *Mediacom Business Announces New Partnership with Springfield Public Schools* (Oct. 2, 2024), <https://bit.ly/3Pt6mXQ>.

the schools and libraries that can least afford to lose the discounts offered through the program. Many of these institutions would not be able to afford high-speed internet connections, telecommunications services, and related networking equipment without the large discounts made possible by E-Rate. These funds are essential to all students, but particularly students who are blind or have other disabilities, who depend on the internet to access information otherwise available only in inaccessible print format. Eliminating educational discounts would force these institutions to make hard choices between the connectivity students, teachers, and library patrons need in today's economy and other critical budget items. This would be an especially tragic outcome for school-age children in low-income and rural areas, who may be deprived of the educational opportunities their peers enjoy, opportunities made possible by reliable high-speed internet.

Afirmance would likely wreak similar havoc on RHC. Nearly 11,000 public and non-profit health care providers participated in RHC last year and received over \$468 million in support for high-speed internet, telecommunications, and phone services, as well as support for the network equipment, needed to support their delivery of health care to patients in rural areas. *2023 USAC Annual Report* at 3, 5. NCTA members currently deliver discounted services and equipment to rural health care providers in 49 states. For example, Charter, Comcast, and Mediacom provide discounted internet and other services to dozens of non-profit hospitals, rural health clinics, community health centers, and similar facilities. Cox also provides services to several non-profit hospitals and community health centers. As with E-Rate, NCTA members' provision of

these discounted services and equipment is generally governed by year-long contracts with these health care providers. Eliminating RHC support would make it difficult for rural health care providers to afford the communications services they need to care for their patients.

C. The Universal Service Fund Provides Critical Communications Services to Thousands of Low-Income Households Through Lifeline.

NCTA members provide phone service to approximately 16 million subscribers nationwide, including high-speed internet and phone service packages to thousands of low-income households through the Lifeline program. Invalidating the USF would end the Lifeline program, which has been in effect in its most basic form since 1985. That would disrupt communications services for about 7.4 million low-income households nationwide.³⁵ These impacts would be particularly hard felt in states like California, Michigan, Nevada, and Oklahoma, which have the highest Lifeline participation rates in the country, all with more than 30% of their eligible populations receiving a Lifeline benefit.³⁶

Although the Fifth Circuit identified various shortcomings of the Lifeline program, Pet. App. 8a-10a, which the FCC has since addressed in fundamental reforms introduced in 2016, neither that Court nor Respondents dispute that millions of low-income households rely on the program for connectivity. Their

³⁵ 2023 USAC Annual Report at 5, 11.

³⁶ USAC, *Lifeline's Participation Rate Database*, <https://bit.ly/3CnnLOF> (last visited Jan. 16, 2025).

strained non-delegation theories do not warrant disrupting these households' communications services.

Lifeline services are particularly important to people with disabilities, including blind people, who are disproportionately low-income. Nearly 26% of blind adults live in poverty and over 60% are not employed full-time.³⁷ Without Lifeline services, low-income blind people would be left without access to government services, employment, education, and community participation because they would be forced to rely on print communications, which are both less available in the current internet-based environment, and inherently inaccessible to persons with vision-impairments. People with other disabilities also experience poverty at disproportionate rates. Approximately 25% of people with all types of disabilities live in poverty and 55% of adults with disabilities are unemployed.³⁸ Lifeline services can be literally life-saving for these vulnerable populations.

³⁷ Cornell Univ., *American Community Survey, Disability Statistics*, <https://www.disabilitystatistics.org/acs/7> (2022) (Disability Type: Visual Disability); Cornell Univ., *American Community Survey, Disability Statistics*, <https://www.disabilitystatistics.org/acs/4> (2022) (Disability Type: Visual Disability).

³⁸ Cornell Univ., *American Community Survey, Disability Statistics*, <https://www.disabilitystatistics.org/acs/7> (2022) (Disability Type: Any Disability); Cornell Univ., *American Community Survey, Disability Statistics*, <https://www.disabilitystatistics.org/acs/2> (2022) (Disability Type: Any Disability).

CONCLUSION

For the foregoing reasons, this Court should reverse the judgment of the Fifth Circuit.

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