

Nos. 24-354 and 24-422

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

**BRIEF OF THE LAWYERS' COMMITTEE FOR  
CIVIL RIGHTS UNDER LAW AND ELEVEN  
ORGANIZATIONS AS *AMICI CURIAE*  
IN SUPPORT OF PETITIONERS**

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January 16, 2025

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## TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
INTERESTS OF <i>AMICI</i> .....	1
SUMMARY OF ARGUMENT.....	3
ARGUMENT.....	6
I. The Universal Service Fund is critical to broadband access and equal opportunity.	6
II. Broadband is a basic necessity; access is a civil rights issue.....	13
A. The digital divide disproportionately harms communities of color.....	13
B. Eliminating USF support jeopardizes access to health care for those most in need.....	20
C. Broadband access is fundamental to economic participation and speech.....	22
CONCLUSION.....	27

## TABLE OF AUTHORITIES

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<i>303 Creative LLC v. Elenis</i> , 600 U.S. 570 (2023).....	1
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U.S. Const. amend. I .....	26

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47 U.S.C. § 151 .....	6
47 U.S.C. § 254(b).....	5-7
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INTERNATIONAL INSTRUMENTS	
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## INTEREST OF AMICI<sup>1</sup>

Formed in 1963, **The Lawyers' Committee for Civil Rights Under Law (Lawyers' Committee)** is a nonpartisan, nonprofit organization using legal advocacy to pursue racial justice. It fights inside and outside the courts to ensure that Black people and other people of color have the voice, opportunity, and power to make the promises of American democracy real. To that end, the Lawyers' Committee has frequently represented parties or served as *amicus curiae* in this Court. See, e.g., *Students for Fair Admissions, Inc. v. Univ. of N.C.*, 600 U.S. 181 (2023); *Shelby County v. Holder*, 570 U.S. 529 (2013); *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1 (2013). The Lawyers' Committee is also a leader on digital justice issues. It regularly participates in cases involving algorithmic discrimination, online voter intimidation, broadband equity, and tech-enabled harms directed at Black communities and other communities of color. See, e.g., *Moody v. NetChoice, LLC*, 603 U.S. 707 (2024); *Murthy v. Missouri*, 603 U.S. 43 (2024); *Counterman v. Colorado*, 600 U.S. 66 (2023); *Gonzalez v. Google LLC*, 598 U.S. 617 (2023); *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023); *Minn. Telecom All. v. FCC*, No. 24-1179 (8th Cir.); *Nat'l Coal. on Black Civic Participation v. Wohl*, 661 F. Supp. 3d 78 (S.D.N.Y. 2023); *Dumpson v. Ade*, No. 18-CV-01011, 2019 WL 3767171 (D.D.C. Aug. 9, 2019).

**Access Now** is an international civil society organization, founded in 2009, and a registered 501(c)(3) non-profit in the United States of America,

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<sup>1</sup> No counsel for a party authored this brief in whole or in part. No person or entity, other than *amici*, their members, or their counsel, made any monetary contribution to the preparation or submission of this brief.

that defends and extends the digital rights and security of people and communities at risk.

**Asian Americans Advancing Justice | AAJC** is a nonprofit, nonpartisan organization that seeks to advance the civil and human rights of Asian Americans and to build and promote a fair and equitable society for all.

The **Japanese American Citizens League**, founded in 1929, is the largest Asian American civil rights organization whose ongoing mission is to secure and maintain the civil rights of Japanese Americans and all others who are victimized by injustice and bigotry.

The **League of United Latin American Citizens (LULAC)**, the oldest and largest Latino civil rights organization in the U.S. with over 325,000 members across 535 councils in 33 states and two U.S. territories, is committed to bridging the digital divide and ensuring that Latino communities have the broadband access they need to thrive in the digital era.

The **National Action Network** (“NAN”) is one of the nation’s leading civil rights organizations with chapters throughout the entire United States.

The **National Coalition on Black Civic Participation (NCBCP)** is a nonprofit, nonpartisan, national civil rights and social justice organization dedicated to increasing civic engagement, voter participation and economic opportunity in Black and underserved communities. For nearly 50 years, the NCBCP has worked at the forefront of championing justice and equity for Black and underserved communities. To that end, the NCBCP has been a leading voice engaging with lawmakers and federal regulatory agencies regarding digital justice and digital equity issues such as equitable access to broadband, algorithm-

mic discrimination, and online voter and election disinformation.

The **National Council of Negro Women**, founded 89 years ago by legendary educator and activist Dr. Mary McLeod Bethune, seeks to lead, advocate for and empower women of African descent, their families and communities.

The **National Urban League** is a historic civil rights organization dedicated to economic empowerment, equality, and social justice.

The **Leadership Conference on Civil and Human Rights** is a coalition charged by its diverse membership of more than 240 national organizations to promote and protect the civil and human rights of all persons in the United States.

**UnidosUS** is a nonprofit, nonpartisan organization that serves as the nation's largest Hispanic civil rights and advocacy organization.

The United Church of Christ is a faith community rooted in justice; it established the **United Church of Christ Media Justice Ministry** in 1959 as part of the civil rights movement to create just and equitable media and technology structures that give meaningful opportunities and voice to diverse peoples, cultures and ideas.

### **SUMMARY OF ARGUMENT**

Today, Internet access is a basic and essential necessity, much like electricity, water, and telephone service. The Internet provides access to educational resources, job search and training tools, and telemedicine. It is a primary access point for election information, public services and programs, and community resources. It provides avenues to “communicate with family and

friends, perform daily chores, conduct business, and learn about and comment on current events.” *Moody v. NetChoice, LLC*, 603 U.S. 707, 767 (2024) (Alito, J., concurring). Not surprisingly, Internet access has become a key determinant of economic status and overall health.

Broadband access is fundamental to full and equal participation in modern society. Without reliable and affordable Internet services, people of color frequently are excluded from opportunities to learn and work, cannot access public support programs or critical medical care, and are denied avenues for speech and civic participation. In the words of the late Rep. John Lewis, this digital divide in access to high-speed Internet is “the civil rights issue of the 21st century.” Comcast, *Rep. John Lewis (D-GA) and Comcast Exec. VP David Cohen with Tim Farley*, SoundCloud (Aug. 24, 2012), on *The Morning Briefing*, SiriusXM.<sup>2</sup> Broadband access is a path out of isolating intergenerational poverty rooted in historic segregation, underinvestment in Black communities, and the racial contours of the digital divide.

Expanding access for the 42 million Americans that still lack fixed broadband is vital to building an equitable Internet in which everyone can fully participate. The Sixth and Eleventh Circuits rightfully rejected Respondents’ thin argument for upending a decades-old regulatory regime, upon which industry, low-income participants, and consumers have significant reliance interests. Respondents present only the shakiest of

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<sup>2</sup> [https://corporate.comcast.com/comcast-voices/rep-john-lewis-d-ga\\_and\\_comcast\\_exec\\_vp\\_david\\_cohen\\_discuss\\_internet\\_essentials\\_with\\_tim\\_farley](https://corporate.comcast.com/comcast-voices/rep-john-lewis-d-ga_and_comcast_exec_vp_david_cohen_discuss_internet_essentials_with_tim_farley) (follow first hyperlink to SoundCloud clip).

legal theories premised on a mischaracterization of clearly expressed statutory design.

Congress recognized the need for universal broadband service to provide equal opportunity in society for everyone. The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, mandates the creation of a subsidy program, funded by mandatory contributions from telecommunications carriers, to ensure affordable high-speed broadband is available to all Americans regardless of income, location, or race. 47 U.S.C. § 254(b), (d).

The Universal Service Fund (“USF”) directs financial support and subsidies that reach low-income and rural communities of color, both directly and through support mechanisms for digital infrastructure. The USF High-Cost program funds the expansion of rural broadband infrastructure. The USF E-Rate program connects entire communities by supporting access in schools and libraries—it has supported Internet access for over 54 million students. The USF Rural Health Care program enables health care services and telehealth to reach those in remote locations, supporting over 16,000 rural health care providers. Due to USF Lifeline program support, an additional 8.5 million subscribers can afford high-speed broadband. Universal service is an express legislative mandate reinforced through decades of congressional action. Without these crucial supports, and their regulatory support mechanisms, countless individuals may be abruptly disconnected.

## ARGUMENT

### **I. The Universal Service Fund is critical to broadband access and equal opportunity.**

The Universal Service Fund (“USF”) provides critical support for community infrastructure, broadband deployment, and affordability. “Universal service is the principle that all Americans should have access to communications services.” Fed. Commc’ns Comm’n, *Universal Service*.<sup>3</sup> USF pursues this objective by injecting support into the marketplace so that telecommunications providers can afford to invest in infrastructure upgrades and can acquire new customers who would otherwise be unable to afford their services. Subsidy programs expand Internet access for low-income and rural consumers, Tribal communities, schools and libraries, and telemedicine. USF is a pro-markets mechanism for providing public goods.

Through the Communications Act of 1934, Congress established universal service as a core federal principle and created the Federal Communications Commission (“FCC”) to effectuate this goal. *See* 47 U.S.C. § 151. The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, amended the 1934 Act to regulate telephone, cable, and Internet service providers, and codified the commitment to universal service by U.S. policymakers. The 1996 Act required the FCC to create a universal service subsidy program funded by mandatory contributions from telecommunications carriers to provide “[q]uality” services at just, affordable, and reasonably comparable rates for “low-income consumers and those in rural, insular, and high cost areas” “in all regions of the Nation.” 47 U.S.C.

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<sup>3</sup> <https://www.fcc.gov/general/universal-service> (accessed Jan. 12, 2025).

§ 254(b). Additional directives provided for increased access to advanced telecommunications in schools, libraries, and health care facilities. *Id.* § 254(h). Section 254 codifies the moral imperative to provide service for all Americans by articulating guiding principles by which the FCC is directed to achieve reliable and affordable service while achieving maximum participation. *Id.* § 254(b).

Cost remains the major obstacle to broadband access and digital equity across the country. Kelly Wert, *Every State Identifies Broadband Affordability as Primary Barrier to Closing Digital Divide*, Pew Charitable Trs. (Oct. 4, 2024).<sup>4</sup> Low-income individuals cannot afford costs of broadband installation, ongoing maintenance, or monthly fees. *See id.*; Raza Panjwani et al., *Broadband Affordability: Removing a Roadblock to Universal Service*, New Am.: Open Tech. Inst. (Feb. 27, 2024).<sup>5</sup> Rural and low-income urban communities of color are unable to afford the up-front cost of laying fiber optic cable or installing cell towers and modern equipment. *See* Nicol Turner Lee et al., *Why the Federal Government Needs to Step up Efforts to Close the Rural Broadband Divide*, Brookings Inst. (Oct. 4, 2022).<sup>6</sup> The USF directs subsidies to close these gaps.

USF currently distributes approximately \$8 billion in subsidies through four major programs: High-Cost

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<sup>4</sup> <https://www.pewtrusts.org/en/research-and-analysis/articles/2024/10/04/every-state-identifies-broadband-affordability-as-primary-barrier-to-closing-digital-divide>.

<sup>5</sup> <https://www.newamerica.org/oti/briefs/broadband-affordability-removing-a-roadblock-to-universal-service/>.

<sup>6</sup> <https://www.brookings.edu/articles/why-the-federal-government-needs-to-step-up-their-efforts-to-close-the-rural-broadband-divide/>.

(rural/high-cost areas), E-Rate (schools and libraries), Rural Health Care (rural care facilities/providers), and Lifeline (low-income households). *See* Fed. Commc'n's Comm'n, *The Universal Service Fund: How It Impacts the United States* (Aug. 8, 2024);<sup>7</sup> Fed. Commc'n's Comm'n, *Universal Service*, *supra*. Together USF programs improve access to broadband for low-income individuals, support the expansion of broadband infrastructure across rural and Tribal communities, and fund broadband infrastructure and service for schools, libraries, and hospitals. These supports are especially critical for majority-Black and Native communities who suffer from lesser access and utilization.

The USF High Cost program subsidizes the deployment of communications infrastructure in rural and Tribal communities. *See* Universal Serv. Admin. Co., *High Cost*;<sup>8</sup> Universal Serv. Admin. Co., *Tribal Nations*.<sup>9</sup> Deployment support through the High-Cost fund was approximately \$4 billion in 2024. Universal Serv. Admin. Co., *High Cost Funding Disbursement Search*.<sup>10</sup> These support mechanisms close the infrastructure gap in rural communities where higher capital costs are required to reach fewer customers compared to other, more densely populated regions. Private investment in broadband infrastructure is incentivized by support directed towards rural regions

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<sup>7</sup> <https://docs.fcc.gov/public/attachments/DOC-404602A1.pdf>.

<sup>8</sup> <https://www.usac.org/high-cost/> (accessed Jan. 9, 2025).

<sup>9</sup> <https://www.usac.org/about/tribal-nations/> (accessed Jan. 9, 2025).

<sup>10</sup> <https://opendata.usac.org/High-Cost/High-Cost-Funding-Disbursement-Search/cegz-dzzi> (accessed Jan. 13, 2025).

the market would otherwise exclude. Universal Serv. Admin. Co., *High Cost*, *supra*.

“[R]ural communities of color score more poorly than their majority-white counterparts on measures of digital divide and digital inclusion, reflecting the dual burden of race and place.” Anthony F. Pipa et al., *Maximizing New Federal Investments in Broadband for Rural America*, Brookings Inst. 5 (May 31, 2023).<sup>11</sup> In the rural South, 38 percent of Black households are without home Internet access. Domonique Harrison, *Affordability & Availability: Expanding Broadband in the Black Rural South*, Joint Ctr. for Pol. & Econ. Stud. 2 (Oct. 2021).<sup>12</sup> Extreme disparities are often understated or masked by reporting policies that determine “broadband to be ‘available’ for an entire census block if the provider *could* serve *at least one* location in the census block[,]” vastly overstating the level of connectivity in rural and Tribal communities. U.S. Gov’t Accountability Off., GAO-18-630, *Broadband Internet: FCC’s Data Overstate Access on Tribal Lands* (Sept. 7, 2018) (under “GAO Highlights”).<sup>13</sup>

From 2015 through 2020, the High-Cost program funded more than 203,000 broadband deployments across 299 Tribal lands in 30 states. U.S. Gov’t Accountability Off., GAO-22-104421, *Tribal Broadband: National Strategy and Coordination Framework Needed to Increase Access* 10 (June 2022).<sup>14</sup> A report from the

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<sup>11</sup> [https://www.brookings.edu/wp-content/uploads/2023/05/Rural\\_Broadband.pdf](https://www.brookings.edu/wp-content/uploads/2023/05/Rural_Broadband.pdf).

<sup>12</sup> <https://jointcenter.org/wp-content/uploads/2021/10/Affordability-Availability-Expanding-Broadband-in-the-Black-Rural-South.pdf>.

<sup>13</sup> <https://www.gao.gov/assets/gao-18-630.pdf>.

<sup>14</sup> <https://www.gao.gov/assets/gao-22-104421.pdf>.

Government Accountability Office (“GAO”) identified Tribally owned providers who “noted that the High Cost program was critical to their company’s operations and sustainability, as well as their ability to provide broadband access.” *Id.* at 12. One such provider, serving the Tohono O’odham Nation in southern Arizona, said that the company would not be sustainable without High-Cost funds accounting for 40 percent of its revenue. *Id.*

The E-Rate program reaches even deeper, subsidizing telecommunications infrastructure, service, and maintenance for schools and libraries in low-income communities. For individuals who do not have access to broadband Internet at home, schools and libraries are vital avenues for getting online. During the past two years, the E-Rate program has supported 106,000 schools and nearly 12,600 libraries, covering up to 90 percent of costs for access, internal connections, and maintenance. Fed. Commc’ns. Comm’n, *The Universal Service Fund: How It Impacts the United States*, *supra*; Fed. Commc’ns Comm’n, *E-Rate - Schools & Libraries USF Program*.<sup>15</sup> The E-Rate program has benefited 54,367,186 students, Fed. Commc’ns Comm’n, *The Universal Service Fund: How It Impacts the United States*, *supra*, enabling them to learn digital skills, conduct online research, and access supplemental resources not provided by local public schools. Connecting anchor institutions, such as schools and libraries, is a critical step in expanding access deeper into excluded communities. *See generally* Jonathan Sallet, *Broadband for America Now*, Benton Inst. for

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<sup>15</sup> <https://www.fcc.gov/general/e-rate-schools-libraries-usf-program> (accessed Jan. 14, 2025)

Broadband & Soc’y (Oct. 2020);<sup>16</sup> Tracie D. Hall, *Information Redlining: the Urgency to Close the Digital Access and Literacy Divide and the Role of Libraries as Lead Interveners*, 61 J. Libr. Admin. 484 (2021).<sup>17</sup>

The E-Rate program is especially critical to expanding access for youth in low-income communities of color. See Reply Comments of Hispanic Tech. & Telecomms. P’ship et al., WC Docket No. 13-184 (Sept. 30, 2014);<sup>18</sup> Comments of NAACP, WC Docket No. 13-184 (Sept. 16, 2013) (“[W]e urge the FCC to increase funding for E-rate in order to achieve this critical goal without diverting funds from other universal service programs.”).<sup>19</sup> A recent GAO report discussed one Tribal community of the Choctaw Nation where a school using E-rate support is the only Internet access the community has—there are no broadband options available to the wider community. U.S. Gov’t Accountability Off., *Tribal Broadband: National Strategy and Coordination Framework Needed to Increase Access*, *supra*, at 13. The E-rate program has enabled tens of millions of additional low-income students, workers, and unhoused individuals to access telecommunication networks and utilize the Internet for education and job training purposes.

USF’s Rural Health Care program also supports community broadband infrastructure, driving subsidies to support public and nonprofit rural health care. Health care providers in rural areas often have fewer

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<sup>16</sup> [https://www.benton.org/sites/default/files/BroadbandAmericanNow\\_final.pdf](https://www.benton.org/sites/default/files/BroadbandAmericanNow_final.pdf).

<sup>17</sup> <https://www.tandfonline.com/doi/full/10.1080/01930826.2021.1906559>.

<sup>18</sup> <https://www.fcc.gov/ecfs/document/60000869710/1>.

<sup>19</sup> <https://www.fcc.gov/ecfs/document/6017468262/1>.

medical resources and higher telecommunications service rates than in urban areas. The program supports access to telecommunications services necessary for the provision of health care and at service rates comparable to those paid in urban areas. Fed. Commc'n's Comm'n, *Rural Health Care Program*.<sup>20</sup> The goal “is to improve the quality of health care available to patients in rural communities” and increase access to telemedicine. *Id.* Between 2021 and 2023, the USF distributed \$1,621,136,341 to 16,080 health care providers for service connections. Fed. Commc'n's Comm'n, *The Universal Service Fund: How It Impacts the United States*, *supra*. Through the Connected Care Pilot program, 107 projects received \$98,234,805 to support the expansion of telehealth. *Id.*

Finally, USF supports service affordability for low-income individuals through Lifeline subsidies. More than 8.5 million American households currently benefit from Lifeline support. Universal Serv. Admin. Co., *Program Data: Lifeline Participation*.<sup>21</sup> Consumer subsidies effectively help individuals overcome cost barriers and significantly expand broadband access. Augusto Espín & Christian Rojas, *Bridging the Digital Divide in the US*, 93 Int'l J. Indus. Org., no. 103053 (2024).<sup>22</sup> Still, only 20 percent of eligible households participate in the Lifeline program. Panjwani et al., *supra*; see also Second Reply Comments of Media Action Grassroots Network at 4, WC Docket No. 11-42

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<sup>20</sup> <https://www.fcc.gov/general/rural-health-care-program> (accessed Jan. 4, 2025).

<sup>21</sup> <https://www.usac.org/lifeline/resources/program-data/> (accessed Jan. 12, 2025) (figures from “Lifeline Participation Rate” Excel file).

<sup>22</sup> <https://www.sciencedirect.com/science/article/abs/pii/S0167718724000080?via%3Dihub>.

(May 25, 2011) (“The failing of Lifeline and Link Up to this point has not been over-subscription, but under-utilization.”);<sup>23</sup> Comments of the Multicultural Media, Telecom and Internet Council & the “Lifeline Supporters” at ii, WC Docket No. 17-287 (Feb. 21, 2018) (“[P]articipation in the program has never materially exceeded fifty percent (50%) of the eligible low-income population”).<sup>24</sup> Lifeline subsidies close the affordability gap, enabling low-income Black and Brown individuals to access telehealth resources, online classes, job listings, and marketplaces for goods or services.

For over 25 years, USF has played a vital role in closing the digital divide by expanding broadband access to low-income, rural, and Tribal communities, communities of color, schools and libraries, and rural health care providers. To lose this program would decimate the FCC’s ability to expand broadband access, hurting not just the affected communities, but the American economy, educational system, and national competitiveness in a rapidly developing technological ecosystem.

## **II. Broadband is a basic necessity; access is a civil rights issue.**

### **A. The digital divide disproportionately harms communities of color.**

Broadband services are a basic and essential necessity in the 21st century, much like electricity, water, and telephone service. In passing the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act, Congress recognized Internet access as a “covered

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<sup>23</sup> <https://www.fcc.gov/ecfs/document/6016792083/1>.

<sup>24</sup> <https://www.fcc.gov/ecfs/document/1022217996675/1>.

utility.” Pub. L. 116-136 § 1106(a)(5), 134 Stat. 281, 297 (2020). Congress has established that “[a]ccess to affordable, reliable, high-speed broadband is essential to full participation in modern life in the United States.” 47 U.S.C. § 1701(1). Access to broadband has become increasingly vital, such that it is a key determinant of socioeconomic mobility, equity, and justice. *See, e.g.*, Human Rights Counsel Res. 32/13, U.N. Doc. A/HRC/RES/32/13 (July 18, 2026); Catherine Howell & Darrell M. West, *The Internet As a Human Right*, Brookings Inst. (Nov. 7, 2016) (United Nations declared access to the Internet an Article 19 human right).<sup>25</sup>

And yet, 42 million Americans still do not have access to wired or fixed wireless broadband at all. Natalie Campisi, *Millions of Americans Are Still Missing Out on Broadband Access and Leaving Money on the Table—Here’s Why*, *Forbes* (May 26, 2023).<sup>26</sup> The term “digital divide” defines the gap between those who have access to broadband and those who do not, including rural, low-income, and Black and Brown individuals. Colby L. Rachfal, Cong. Rsch. Serv., R46613, *The Digital Divide: What Is It, Where Is It, and Federal Assistance Programs* (Mar. 9, 2021).<sup>27</sup> Without reliable highspeed broadband, low-income, rural, and Tribal communities are more likely to struggle to access public support programs and resources, opportunities to learn and work, and avenues for expressive association and civic participation. In the words of the late Rep. John Lewis,

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<sup>25</sup> <https://www.brookings.edu/articles/the-internet-as-a-human-right/>.

<sup>26</sup> <https://www.forbes.com/advisor/personal-finance/millions-lack-broadband-access/>.

<sup>27</sup> <https://crsreports.congress.gov/product/pdf/R/R46613>.

access to high-speed Internet is “the civil rights issue of the 21st century.” Comcast, *supra*.

The need for universal service funding is particularly acute for communities of color. The racial contours of the digital divide have roots in historic segregation and systematic disenfranchisement of communities of color. *See generally* Fed. Rsrv. Hist., *Redlining* (June 2, 2023),<sup>28</sup> Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America* 18-24 (2017). Redlining practices led to significant disparities in infrastructure investment, including in electric power and telecommunications. *See, e.g.*, Benjamin T. Skinner et al., *Digital Redlining: the Relevance of 20th Century Housing Policy to 21st Century Broadband Access and Education*, 38 *Educ. Pol’y* 1007 (2024),<sup>29</sup> Lyle Sch. of Eng’g, S. Methodist Univ., *Building a Foundation for Improving Infrastructure Equity in Dallas Neighborhoods* (Dec. 5, 2023),<sup>30</sup> Benjamin Goldstein et al., *Racial Inequity in Household Energy Efficiency and Carbon Emissions in the United States: An Emissions Paradox*, 84 *Energy Rsch. & Soc. Sci.*, no. 102365 (2022).<sup>31</sup> As technological improvements escalated in wealthier white areas, other communities were left behind with antiquated and unreliable systems architecture.

Communities suffering from slow or nonexistent broadband service today are often the same as those historically redlined. *See* Comments of Asian

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<sup>28</sup> <https://www.federalreservehistory.org/essays/redlining>.

<sup>29</sup> <https://journals.sagepub.com/doi/abs/10.1177/08959048231174882>.

<sup>30</sup> <https://www.smu.edu/lyle/latest-at-lyle/2023-24/dr-minsker-improving-infrastructure-equity>.

<sup>31</sup> <https://doi.org/10.1016/j.erss.2021.102365>.

Americans Advancing Just. | AAJC et. al., WC Docket No. 22-69 (May 16, 2022) (redlined Asian American communities often have lower rates of connectivity than city wide averages).<sup>32</sup> Digital redlining is “the creation and maintenance of technology practices that further entrench discriminatory practices against already marginalized groups.” *Banking on Your Data: The Role of Big Data in Financial Services: Hearing Before the Task Force on Fin. Tech. of the H. Comm. on Fin. Servs.*, 116th Cong. 9 (Nov. 21, 2019) (statement of Dr. Christopher Gilliard, Digit. Pedagogy Lab Advisor, Macomb Cmty. Coll.).<sup>33</sup> FCC data confirms these geographic disparities in broadband access, particularly slower access speeds in rural, low-income, and communities of color. *See Fed. Commc’ns Comm’n, FCC National Broadband Map*.<sup>34</sup> These data reflect an enduring market failure to incentivize infrastructure investment. *See id.*

Underinvestment in low-income communities of color has resulted in growing digital disparities. Black and Brown individuals today disproportionately lack affordable broadband service. Adoption of home broadband among white adults is approximately 83 percent, while adoption by Black and Hispanic adults is only 68 percent and 75 percent, respectively. Risa Gelles-Watnick, *Americans’ Use of Mobile Technology and Home Broadband*, Pew Rsch. Ctr. 6 (Jan. 31, 2024).<sup>35</sup> About 44 percent of Asian American, Native

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<sup>32</sup> <https://www.fcc.gov/ecfs/document/10517967112357/1>.

<sup>33</sup> <https://democrats-financialservices.house.gov/uploadedfiles/chrg-116hrg42477.pdf>.

<sup>34</sup> <https://broadbandmap.fcc.gov/home> (accessed Jan. 14, 2025) (broadband speeds searchable by address).

<sup>35</sup> [https://www.pewresearch.org/wp-content/uploads/sites/20/2024/01/PI\\_2024.01.31\\_Home-Broadband-Mobile-Use\\_FINAL.pdf](https://www.pewresearch.org/wp-content/uploads/sites/20/2024/01/PI_2024.01.31_Home-Broadband-Mobile-Use_FINAL.pdf).

Hawaiian, and other Pacific Islanders surveyed are living “where high-speed internet [is] not available due to lack of infrastructure.” Asian Americans Advancing Just. | AAJC, *Digital Divide in the Asian American, Native Hawaiian, and Pacific Islander Communities* 1, 5 (2024) (clarified).<sup>36</sup> People of color are less likely to own a home computer and are more dependent on smartphone technology exclusively. Gelles-Watnick, *supra*, at 7; *see also* Sara Atske & Andrew Perrin, *Home Broadband Adoption, Computer Ownership Vary by Race, Ethnicity in the U.S.*, Pew Rsch. Ctr. (July 16, 2021).<sup>37</sup> Across the rural South, 38 percent of Black households still do not have home Internet. Harrison, *supra*.

Among households that do have Internet access, those in poorer areas have lower effective access speeds, in part because lower income households are more likely to be limited to outdated technologies like DSL. Roberto Gallardo & Brian Whitacre, *The Real Digital Divide? Advertised vs. Actual Internet Speeds*, Purdue Univ. Ctr. for Reg’l Dev. (Oct. 7, 2020),<sup>38</sup> Shara Tibken, *The Broadband Gap’s Dirty Secret: Redlining Still Exists in Digital Form*, CNET (June 28, 2021).<sup>39</sup> This creates circumstances “where wealthy broadband users are getting the benefits of cheaper and faster Internet access through fiber, and low-income broadband users are being left behind with more expensive slow

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<sup>36</sup> [https://www.advancingjustice-aaajc.org/sites/default/files/2024-06/1399\\_DigitalDivide-Quantitative\\_Charter\\_Digital\\_Pages.pdf](https://www.advancingjustice-aaajc.org/sites/default/files/2024-06/1399_DigitalDivide-Quantitative_Charter_Digital_Pages.pdf).

<sup>37</sup> <https://www.pewresearch.org/short-reads/2021/07/16/home-broadband-adoption-computer-ownership-vary-by-race-ethnicity-in-the-u-s/>.

<sup>38</sup> <https://pcrd.purdue.edu/the-real-digital-divide-advertised-vs-actual-internet-speeds/>.

<sup>39</sup> <https://www.cnet.com/home/internet/features/the-broadband-gaps-dirty-secret-redlining-still-exists-in-digital-form/>.

access by that same carrier.” Ernesto Falcon, *The FCC and States Must Ban Digital Redlining*, Elec. Frontier Found. (Jan. 11, 2021).<sup>40</sup> A 2022 report found broadband service providers “disproportionately offered lower-income and least-White neighborhoods slow Internet service for the same price as speedy connections they offered in other parts of town.” Leon Yin & Aaron Sankin, *Dollars to Megabits, You May Be Paying 400 Times As Much As Your Neighbor for Internet Service*, The Markup (Oct. 19, 2022).<sup>41</sup>

The pandemic accelerated the digital transformation of our society, deepening the impact of the digital divide on communities lacking access to broadband—and disproportionately impacting people of color. See Nat’l Urb. League, *New Analysis Shows Students of Color More Likely to Be Cut from Online Learning* (Jan. 10, 2025);<sup>42</sup> White House Council of Econ. Advisors, *Pandemic Shifts in Black Employment and Wages* (Aug. 24, 2022);<sup>43</sup> Brooke Axier & Monica Anderson, *As Schools Close Due to the Coronavirus, Some U.S. Students Face a Digital ‘Homework Gap’*, Pew Rsch. Ctr. (Mar. 16, 2020) (“[O]ne-quarter of black teens said they often or sometimes cannot do homework assignments due to lack of reliable access to a computer or Internet connectivity, compared with 13% of white

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<sup>40</sup> <https://www.eff.org/deeplinks/2021/01/fcc-and-states-must-ban-digital-redlining>.

<sup>41</sup> <https://themarkup.org/still-loading/2022/10/19/dollars-to-megabits-you-may-be-paying-400-times-as-much-as-your-neighbor-for-internet-service>.

<sup>42</sup> <https://nul.org/news/new-analysis-shows-students-color-more-likely-be-cut-online-learning>.

<sup>43</sup> <https://www.whitehouse.gov/cea/written-materials/2022/08/24/pandemic-shifts-in-black-employment-and-wages/>.

teens and 17% of Hispanic teens.”).<sup>44</sup> Overall health and well-being were disproportionately impacted, as people of color encountered more significant obstacles to accessing basic medical care and public services that were uniquely available online during the pandemic. John A. Iasiello et al., *Racial Differences in Patient-Reported Access to Telehealth: An Important and Unmeasured Social Determinant of Health*, 19 JCO Oncology Prac. 1215 (2023)<sup>45</sup>. Many people of color went without essential services.

Communities of color still experience gaps across the digital landscape, including in service availability, affordability, adoption, and participation in the tech sector. Nat’l Urb. League, *The Lewis Latimer Plan for Digital Equity and Inclusion* 10-16 (2021).<sup>46</sup> Rural Black communities are among those most impacted. Avi Asher-Schapiro & David Sherfinski, *Digital Divide in the US: Nearly 40% of Rural Black Americans Have No Internet at Home*, Glob. Citizen (Oct. 7, 2021);<sup>47</sup> Turner Lee et al., *supra*; Gregory Rose, *Wireless Broadband and the Redlining of Rural America*, New Am.: Open Tech. Inst. (Apr. 26, 2010);<sup>48</sup> Chez Oxendine, *‘Digital Redlining’ Inhibits Tribal Broadband Develop-*

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<sup>44</sup> <https://www.pewresearch.org/short-reads/2020/03/16/as-schools-close-due-to-the-coronavirus-some-u-s-students-face-a-digital-home-network-gap/>.

<sup>45</sup> <https://ascopubs.org/doi/pdf/10.1200/OP.23.00006>.

<sup>46</sup> [https://nul.org/sites/default/files/2021-04/NUL%20LL%20DIA%20041421%20Latimer%20Plan\\_vFINAL\\_1136AM.pdf](https://nul.org/sites/default/files/2021-04/NUL%20LL%20DIA%20041421%20Latimer%20Plan_vFINAL_1136AM.pdf).

<sup>47</sup> <https://www.globalcitizen.org/en/content/digital-divide-black-americans/>.

<sup>48</sup> <https://www.newamerica.org/oti/policy-papers/wireless-broadband-and-the-redlining-of-rural-america/>.

ment, Tribal Bus. News (Dec. 5, 2022).<sup>49</sup> Disparities in broadband access—particularly these alarming racial disparities—have only grown and continue to impact access to essential services, care, and opportunity.

**B. Eliminating USF support jeopardizes access to health care for those most in need.**

The Internet is an increasingly significant avenue for the delivery of medical care. The health care industry leverages information technology to deliver acute care via telemedicine, to remotely monitor chronic diseases, and to disseminate critical healthcare information. Yosselin Turcios, *Digital Access: A Super Determinant of Health*, Substance Abuse & Mental Health Servs. Admin. (Mar. 22, 2023).<sup>50</sup> These new treatment modalities require high-speed Internet access and adequate technology, private space to have sensitive discussions with health care providers, and a level of digital literacy. *Id.* “Internet access is increasingly recognized as a ‘super determinant’ of health. It plays a role in health care outcomes and influences more traditionally recognized social determinants of health, such as education, employment, and healthcare access.” *Id.* (footnotes omitted); *see also* Jillian McKoy, *Combating Digital Redlining ‘Is Imperative for Advancing Health Equity’*, B.U. Sch. of Pub. Health (Mar. 21, 2024);<sup>51</sup> Monica L. Wang, *Digital*

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<sup>49</sup> <https://tribalbusinessnews.com/sections/economic-development/14131-digital-redlining-inhibits-tribal-broadband-development>.

<sup>50</sup> <https://www.samhsa.gov/blog/digital-access-super-determinant-health>.

<sup>51</sup> <https://www.bu.edu/sph/news/articles/2024/combating-digital-redlining-is-imperative-for-advancing-health-equity/>.

*Redlining Perpetuates Health Inequity. Here's How We Fix It.*, Harv. Pub. Health (Oct. 30, 2024).<sup>52</sup>

For the many individuals for whom telemedicine and online interventions deliver life sustaining care, broadband access can be a matter of life or death. Nearly seven million Americans live in “maternity care deserts,” or “areas without hospitals, birthing centers, or obstetric providers,” where telehealth services and prenatal care are key “in reducing preventable deaths.” Jericho Casper, *FCC: Broadband Gaps Worsen Maternal Care Across U.S.*, Broadband Breakfast (Dec. 17, 2024).<sup>53</sup> Additionally, “nearly 28 million U.S. residents live in areas with below-average Internet adoption and above-average rates of preterm birth, where telehealth could play a critical role.” *Id.* These issues are particularly acute for Black parents. “[N]on-Hispanic Black women are 2.6 times more likely to die from pregnancy-related complications than white women.” Mayo Clinic Press Editors, *Why Are Black Maternal Mortality Rates So High?*, Mayo Clinic (Aug. 4, 2023);<sup>54</sup> see also Anuli Njoku et al., *Listen to the Whispers Before They Become Screams: Addressing Black Maternal Morbidity and Mortality in the United States*, 11 *Healthcare* 438 (2023).<sup>55</sup>

For low-income, tribal, and rural communities, a lack of home broadband access means going without the full array of online health care and telemedicine.

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<sup>52</sup> <https://harvardpublichealth.org/equity/bridging-the-digital-divide-is-a-prescription-for-health-equity/>.

<sup>53</sup> <https://broadbandbreakfast.com/fcc-broadband-gaps-worsen-maternal-care-across-u-s/>.

<sup>54</sup> <https://mcpres.mayoclinic.org/pregnancy/black-maternal-mortality-rate/>.

<sup>55</sup> <https://doi.org/10.3390/healthcare11030438>.

It causes “populations that have poorer health outcomes [to] continue to have poorer health outcomes despite technological improvements.” Sy Atezaz Saeed & Ross MacRae Masters, *Disparities in Health Care and the Digital Divide*, 23 *Current Psychiatry Reps.*, no. 61, at 1 (2021).<sup>56</sup> The digital divide contributes significantly to racial disparities in health and life expectancy, meaning affordable, high-speed broadband is crucial to delivering advancements in care to those most in need.

### **C. Broadband access is fundamental to economic participation and speech.**

Full economic participation today requires broadband access. Both youth and adults require broadband to access educational resources, find work, and develop fundamental skills. Reliable high-speed broadband is critical for academic success. *See* Am. U. Sch. of Educ., *Understanding the Digital Divide in Education* (Dec. 15, 2020).<sup>57</sup> Students who lack access to reliable highspeed broadband experience increased hurdles in learning, extended time to complete assignments, poorer academic performance, and a disadvantage upon entering higher education. *Id.* Access to the Internet and to technology is also a factor in whether students ultimately drop out of postsecondary education or enroll at all. *See* Nat’l Governors Ass’n, *Broadband Access for Success in Postsecondary Education* (Apr. 7, 2021).<sup>58</sup> Without broadband access, youth may struggle to learn how to responsibly engage

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<sup>56</sup> [https://pmc.ncbi.nlm.nih.gov/articles/PMC8300069/pdf/11920\\_2021\\_Article\\_1274.pdf](https://pmc.ncbi.nlm.nih.gov/articles/PMC8300069/pdf/11920_2021_Article_1274.pdf).

<sup>57</sup> <https://soeonline.american.edu/blog/digital-divide-in-education/>.

<sup>58</sup> <https://www.nga.org/news/commentary/broadband-access-for-success-in-postsecondary-education/>.

with media or to develop critical digital skills. See UNICEF, *Done Right, Internet Use Among Children Can Increase Learning Opportunities and Build Digital Skills* (Nov. 27, 2019).<sup>59</sup>

Job seekers are also at a disadvantage where they lack access to reliable high-speed Internet. Most job openings are now posted online. Anthony P. Carnevale et al., *Understanding Online Jobs Ad Data*, Geo. Ctr. on Educ. & the Workforce (Apr. 2014).<sup>60</sup> More than eighty percent of Fortune 500 companies, “including huge employers like Walmart and Target,” only accept job applications online. *Lifeline: Improving Accountability and Effectiveness: Hearing Before the Subcomm. on Comm’ns, Tech., Innovation, & the Internet of the S. Comm. on Com., Sci., & Transp.*, 114th Cong. 35 (June 2, 2015) (statement of Jessica J. González, Exec. Vice President & Gen. Couns., Nat’l Hispanic Media Coal.).<sup>61</sup> And, over ninety percent of jobs posted online require digital skills. Elizabeth Bogue, *Baseline for Work: 92 Percent of Jobs Require Digital Skills*, Fed. Rsrv. Bank of Atlanta.<sup>62</sup> Potential workers are less likely to be able to access resources, find opportunities, and acquire full-time employment without reliable high-speed Internet access.

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<sup>59</sup> <https://www.unicef.org/press-releases/done-right-internet-use-among-children-can-increase-learning-opportunities-and-build>.

<sup>60</sup> [https://cew.georgetown.edu/wp-content/uploads/2014/11/OC-LM.Tech\\_Web\\_.pdf](https://cew.georgetown.edu/wp-content/uploads/2014/11/OC-LM.Tech_Web_.pdf).

<sup>61</sup> <https://www.congress.gov/114/chrq/CHRG-114shrg98163/CHRG-114shrg98163.pdf>.

<sup>62</sup> <https://www.atlantafed.org/community-development/publications/partners-update/2023/08/10/baseline-for-work-92-percent-of-jobs-require-digital-skills> (accessed Jan. 14, 2025).

Building a competitive workforce, both generally and within the technology sector, requires ensuring equity of broadband access across previously excluded communities. Diversity has long been recognized as an engine of innovation and a key driver of global competitiveness. *See generally* Vijay Eswaran, *The Business Case for Diversity in the Workplace Is Now Overwhelming*, *World Econ. F.* (Apr. 29, 2019);<sup>63</sup> Dame Vivian Hunt et al., *Delivering Through Diversity*, McKinsey & Co. (Jan. 18, 2018);<sup>64</sup> Sylvia Ann Hewlett et al., *How Diversity Can Drive Innovation*, *Harv. Bus. Rev.* (Dec. 2013).<sup>65</sup> And yet, access to higher paying tech employment lags. *See* U.S. Equal Emp. Opportunity Comm’n, *High Tech, Low Inclusion: Diversity in the High Tech Workforce and Sector 2014 – 2022*, at 4-5 (2024).<sup>66</sup> Broadband access fuels workforce participation and economic growth. *See* Jack Fritz & Dan Littmann, *Broadband for All: Charting a Path to Economic Growth*, Deloitte (Apr. 2021).<sup>67</sup> Businesses require diverse, digitally-literate talent to compete in the global economy.

Fundamentally, without reliable broadband access, key marketplaces are foreclosed to innovators and those seeking economic mobility. Markets for goods

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<sup>63</sup> <https://www.weforum.org/stories/2019/04/business-case-for-diversity-in-the-workplace/>.

<sup>64</sup> <https://www.mckinsey.com/capabilities/people-and-organizational-performance/our-insights/delivering-through-diversity#/>.

<sup>65</sup> <https://hbr.org/2013/12/how-diversity-can-drive-innovation>.

<sup>66</sup> [https://www.eeoc.gov/sites/default/files/2024-09/20240910\\_Diversity%20in%20the%20High%20Tech%20Workforce%20and%20Sector%202014-2022.pdf](https://www.eeoc.gov/sites/default/files/2024-09/20240910_Diversity%20in%20the%20High%20Tech%20Workforce%20and%20Sector%202014-2022.pdf).

<sup>67</sup> <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/process-and-operations/us-charting-a-path-to-economic-growth.pdf>.

and services have flourished online, providing avenues for price-conscious shoppers and for small business growth. *See generally* John B. Horrigan, *The Internet and Consumer Choice*, Pew Rsch. Ctr. (May 18, 2008);<sup>68</sup> Yannis Bakos, *The Emerging Role of Electronic Marketplaces on the Internet*, 41 *Comm'ns of the ACM* 35 (1998);<sup>69</sup> Comments of Nat'l Black Chamber of Com., WC Docket No. 04-242 (July 21, 2004) (“For small business, the greatest equalizer of all is the Internet . . .”).<sup>70</sup> Many other wealth-generating activities, including modern banking and investing, have also moved online. Aleksandrs Malins, *The Rise of Digital Banking: A Paradigm Shift in Fintech*, *Forbes* (May 1, 2024).<sup>71</sup> The buying, selling, and renting of homes has moved into online marketplaces. Over 50 percent of homebuyers find their home online. Nat'l Ass'n of Realtors, *2024 Home Buyers and Sellers Generational Trends Report* 54 (2024).<sup>72</sup> The Internet meaningfully provides informational underpinnings for efficient marketplaces, democratizing access to financial resources and wealth-generating opportunities.

Access to emerging information and reporting on current events is also critical to a healthy democracy. “[I]t is critically important to have a well-functioning sphere of expression, in which citizens have access to information from many sources. That is the whole

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<sup>68</sup> <https://www.pewresearch.org/internet/2008/05/18/the-internet-and-consumer-choice/>.

<sup>69</sup> <https://dl.acm.org/doi/pdf/10.1145/280324.280330>.

<sup>70</sup> <https://www.fcc.gov/ecfs/document/5511437429/1>.

<sup>71</sup> <https://www.forbes.com/councils/forbestechcouncil/2024/05/01/the-rise-of-digital-banking-a-paradigm-shift-in-fintech/>.

<sup>72</sup> <https://www.nar.realtor/sites/default/files/documents/2024-home-buyers-and-sellers-generational-trends-04-03-2024.pdf>.

project of the First Amendment.” *Moody v. NetChoice, LLC*, 603 U.S. 707, 732 (2024). The Internet has become a primary source of information, including for local news, goods, and services. See Elisa Shearer et al., *Americans’ Changing Relationship with Local News*, Pew Rsch. Ctr. 19-20 (May 7, 2024);<sup>73</sup> see also, e.g., Jesse Zanger & Nick Caloway, *New Jersey Star-Ledger, Times of Trenton, South Jersey Times to End Print Editions in 2025*, CBS News (Oct. 30, 2024).<sup>74</sup> No less important, people connect with friends and family and otherwise build community online. Without broadband service, individuals cannot reliably access pressing information about the places they live, study, work, and worship.

The lack of affordable high-speed broadband denies individuals and communities of color the benefits of, and equal participation in, modern society. It fuels modern inequities, poverty, and isolation.

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<sup>73</sup> [https://www.pewresearch.org/wp-content/uploads/sites/20/2024/04/PJ\\_2024.05.07\\_local-news-trends\\_report.pdf](https://www.pewresearch.org/wp-content/uploads/sites/20/2024/04/PJ_2024.05.07_local-news-trends_report.pdf).

<sup>74</sup> <https://www.cbsnews.com/newyork/news/star-ledger-times-of-trenton-south-jersey-times-to-end-print-editions/>.

**CONCLUSION**

The Court should uphold the constitutionality of the Universal Service Fund and its administrative structure.

Respectfully submitted,

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January 16, 2025

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