

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Connect America Fund: A National Broadband	)	WC Docket No. 10-90
Plan for Our Future High-Cost Universal Service)	
Support)	
)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58
)	
Telecommunications Carriers Eligible to	)	WC Docket No. 09-197
Receive Universal Service Support)	
)	
Connect America Fund – Alaska Plan	)	WC Docket No. 16-271
)	
Expanding Broadband Service Through the)	
ACAM Program	)	RM-11868

REPLY COMMENTS OF INCOMPAS

Lindsay Stern
Angie Kronenberg
INCOMPAS
1100 G Street NW
Suite 800
Washington, DC 20005

November 21, 2023

TABLE OF CONTENTS

I.	Introduction and Summary.....	1
II.	The Record Does Not Support The Commission Adopting A New Support Mechanism For Operational Expenses At This Time.....	2
III.	The Record Shows That Not All Areas With A Full-Service Network Will Require Operational Support.....	6
IV.	The Commission Should Expand The USF Contribution Base To Include BIAS Revenues, Not The Edge.....	8
V.	Conclusion.....	11

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Connect America Fund: A National Broadband Plan for Our Future High-Cost Universal Service Support	)	WC Docket No. 10-90
)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58
)	
Telecommunications Carriers Eligible to Receive Universal Service Support	)	WC Docket No. 09-197
)	
Connect America Fund – Alaska Plan	)	WC Docket No. 16-271
)	
Expanding Broadband Service Through the ACAM Program	)	RM-11868

REPLY COMMENTS OF INCOMPAS

INCOMPAS hereby submits these reply comments in response to the Federal Communications Commission’s (“Commission” or “FCC”) Notice of Inquiry (“NOI”) that seeks comment on whether and how the Commission should modify its current USF high-cost support program considering the anticipated deployment in high-cost areas of next-generation broadband networks as a result of recent federal and state subsidy programs.¹

I. Introduction and Summary

INCOMPAS is the preeminent national industry association for providers of internet and competitive communications networks, including both wireline and wireless providers in the broadband marketplace. We represent fixed broadband companies, including small local fiber

¹ *In re Connect America Fund: A National Broadband Plan for Our Future High-Cost Universal Service Support et al.*, Report & Order, Notice of Proposed Rulemaking, and Notice of Inquiry, WC Docket Nos. 10-90, 14-58, 09-197, 16-271 & RM-11868 (rel. July 24, 2023) (“NOI”).

and fixed wireless providers, that offer residential broadband internet access service (“BIAS”), as well as other mass-market services, such as video programming distribution and voice services in urban, suburban, and rural areas. We also represent mobile and satellite entities offering BIAS and video services, as well as companies that are providing business broadband services to schools, libraries, hospitals and clinics, and businesses of all sizes, including regional fiber providers; transit and backbone providers that carry broadband and internet traffic; and online video distributors, which offer video programming over BIAS to consumers, in addition to other online content, such as social media, streaming, cloud services, and voice services. The availability of BIAS connectivity throughout the U.S. is critical for the nation’s economic development and global competitive edge, and INCOMPAS’ members are at the forefront of helping Americans get better, faster, more affordable internet service and online content.

INCOMPAS’ members have an interest in this proceeding. Congress has allocated billions of dollars to achieve universal broadband connectivity and prioritized the availability of these funds to ensure more effective and efficient deployment of high-speed, future-proof networks. INCOMPAS members are participating in these programs to help achieve Internet for All. INCOMPAS members also contribute to the Universal Service Fund. And in some instances, they are competing directly against providers that receive support from the High-Cost program. To that end, INCOMPAS offers its recommendations on the issues raised in the NOI.

II. The Record Does Not Support The Commission Adopting A New Support Mechanism For Operational Expenses At This Time.

The Commission is seeking comment on whether the Commission “can or should leverage the Commission’s existing cost models, or develop a new model, to estimate the

monthly costs necessary to sustain a full-service network.”² Even those commenters supporting creation of a new mechanism agree that the Commission should not propose and adopt a new support mechanism for operational expenses at the present time.³ Moreover, the comments filed in response to the NOI do not provide a clear path forward. Overall, no party commented in a meaningful way on the Commission’s suggestion of doing a financial business case analysis.⁴ While some commenters suggest that the FCC could update its existing cost model,⁵ others want to retain the option to obtain support based on actual costs,⁶ and others argue that support should only be provided based on an individualized showing of need.⁷ Several commenters also argue that awarding operational support via a competitive auction would not be a workable solution for providing operational support to full-service networks.⁸

Realistically, there is not sufficient time for the Commission to adopt a new program for operational support before state broadband offices will solicit applications for the BEAD

² NOI, at para. 164.

³ *See, e.g.*, TCA Comments, at 7 (arguing that the Commission should defer any “large-scale changes” to rate-of-return or model-based support before the effects of enhanced A-CAM support and BEAD subsidies can be assessed); NTCA Comments, at 11 (“The FCC should explore in an ensuing further NPRM how to implement a sustainability framework in the next several years”).

⁴ NOI, at para. 176.

⁵ *See* USTelecom Comments, at 2; *see also* WISPA Comments, at 2 (“the inputs for this model should be re-examined in light of current and anticipated future conditions”).

⁶ *See* Comments of Legacy Support Rural Local Exchange Carriers (“Legacy RLECs”), at 9.

⁷ *See* NCTA Comments, at 1.

⁸ *See* NTCA Comments, at 14.

program. As the Commission and several commenters recognize, developing an updated model for ongoing support once a network has been deployed would be a multi-year process.⁹

Rather, INCOMPAS maintains that the Commission needs to develop a better understanding of the economics of broadband networks serving rural America, including those that have received support through federal and state funding programs and have deployed fiber to their customers, given that the costs to maintain fiber networks are lower. As explained in INCOMPAS' filings in the Future of USF proceeding, the FCC should evaluate the continued need of each USF program in order to evaluate the future of the USF most effectively and how it relates to the billions of dollars coming from federal and state funding.¹⁰ The FCC should be gathering information about all funding projects at the federal and state level being used to bridge the digital divide and assess their impact, if any, on the USF.

Moreover, the Commission should take into consideration that BIAS providers have been delivering more fiber to consumers over time and that the recent funding programs will result in additional fiber-to-the-premise builds.¹¹ As shown in the Fiber Broadband Association's study, the operational expenditure savings per location passed per year for fiber networks are 50% less than hybrid fiber coax and 63% less than DSL over copper. These savings include operating costs

⁹ See, e.g., NOI at para. 175; Alternative Connect America Model Rural Local Exchange Carriers (A-CAM) RLECS Comments, at v (“the process of developing a robust full-service network support model will take time.”).

¹⁰ See, e.g., INCOMPAS Comments, *Report on the Future of the Universal Service Fund*, WC Docket Nos. 21-476 & 06-122 (fil. Feb. 17, 2022) at 7-10; INCOMPAS Reply Comments (fil. March 17, 2022), at 2-6; NCTA Comments, (fil. Feb. 17, 2022), at 7 (arguing that “absent a robust cost showing, there simply is no basis to assume that any particular provider or class of providers will need high-cost support for operating and maintenance costs.”).

¹¹ See USTelecom Comments, at ii (“[o]nce BEAD support has been allocated the Commission can assess whether support is needed, and if so where”).

for battery maintenance, power, customer churn, trouble calls, and truck rolls.¹² Furthermore, given that the current contribution factor has hit 34.5%—the highest ever—the Commission should be cautious about creating new programs that would put added stress on the contribution factor, especially before the FCC has moved forward with USF contribution reform.¹³

When considering the next steps forward for the High-Cost program, the Commission should take note of a recent white paper written by Paul de Sa that is intended to help state broadband offices assess financials when evaluating proposed broadband projects funded through the BEAD program. While de Sa’s paper is a primer for state officials, its principles can and should help the FCC in this context as well. The paper explains that “[t]o make efficient use of public funds, broadband officials must consider not just build costs but also revenues, operating expenses, and the availability of private capital.”¹⁴ It goes further to explain that “[a]s broadband projects generally generate substantial revenues from monthly subscription fees that offset construction, operating, and financing costs, the relevant question for determining appropriate subsidy amounts is, ‘How big is the gap that needs to be filled between expected

¹² See INCOMPAS Ex Parte Letter, WC Docket Nos. 21-476 & 06-122 (June 22, 2022) (citing Fiber Broadband Association, *Operational Expenses for All-Fiber Networks are Far Lower Than Other Access Networks* (June 2020), at 12), available at <https://www.fcc.gov/ecfs/document/10622448730471/1>.

¹³ INCOMPAS has filed its detailed position on why and how the FCC should move forward with USF contribution reform in the Commission’s relevant proceedings. See INCOMPAS Comments, WC Docket Nos. 21-476 & 06-122 (Feb. 17, 2022); see also INCOMPAS Reply Comments (March 17, 2022).

¹⁴ Paul de Sa, *Broadband Financials: A Practical Primer* (May 2022), available at https://www.quadrapartnersllc.com/_files/ugd/259809_1c83772535b149728b043d65d1c16d85.pdf.

costs and revenues?’ not ‘How much will it cost to build this broadband network?’”¹⁵ As de Sa explains, it is important and necessary for broadband officials to be familiar with a project’s overall capital structure and financial model in order to determine the appropriate level and form of public support—“[s]imply providing ‘cost-based’ grants will prove to be exceptionally wasteful and likely drain the subsidy budget before desired broadband policy goals have been achieved.”¹⁶

III. The Record Shows That Not All Areas With A Full-Service Network Will Require Operational Support.

The Commission is seeking comment on how it should define “a full-service network, meaning a network potentially eligible for sustainability support.”¹⁷ However, the Commission should not assume that all full-service networks will be eligible for potential support. INCOMPAS agrees with those commenters that recognize that not all areas with a full-service network will necessarily require operational support, but rather that ongoing USF high-cost support should be focused only where there is a market failure—in other words, where no broadband service would be available at reasonably comparable rates but for ongoing operational support from the USF. As WISPA argues, “support for sustainable and ongoing operations should only be available where there is a market failure inhibiting the provision of sustainable broadband.”¹⁸ Similarly, USTelecom argues that areas “where there is no business case for deployment due to the population density and/or the geographic nature of the region” are the

¹⁵ *Id.* at 5.

¹⁶ *Id.* at 10.

¹⁷ NOI, at para. 161.

¹⁸ WISPA Comments, at 4.

areas that “may need USF to support on-going operating expenses to maintain and upgrade broadband service once the deployment is complete.”¹⁹ Operational support should not automatically be provided to current recipients of support, nor should it be provided in areas where there is an unsubsidized provider of broadband service. It should not be assumed that any area with only one full-service network provider requires operational support. Even NTCA recognizes that some areas awarded BEAD or other funding will not need ongoing support.²⁰ Rather, any operational support should be provided only to the discrete geographic areas full-service fiber network where there are insufficient end-user revenues to cover the ongoing costs of providing service.

For more than a decade, the Commission has relied upon one contractor (CostQuest) to develop a theoretical forward-looking cost model to be used for various high-cost programs. A number of commenters in this proceeding have noted that model requires updates,²¹ while others have suggested that fundamental assumptions in the model should be modified.²² However, the Commission now has a source of real-world data that may shed some light on the actual economics of serving rural areas. The Commission could analyze the long form financial showings of firms that are building fiber networks and successfully meeting or exceeding their

¹⁹ USTelecom Comments, at 4.

²⁰ See NTCA Comments, at ii (stating “there will be some rural areas where grants may provide sufficient economic support to enable self-sustaining operations thereafter . . .”).

²¹ See, e.g., Vantage Point Solutions Comments, at 7 (“[i]f the Commission intends to move forward with modeling to apply to any sustainability scenario, we recommend focusing initial attention to the need to update capital cost and operating expense cost inputs that are dated”); USTelecom Comments, at 7 (“the inputs to the cost models may need to be updated”).

²² See, e.g., Home Telephone ILEC LLC d/b/a/ Home Telecom Comments, at 13 (“[t]he creation of an entirely new USF clearly should be predicated on a full review of the current model”).

required CAF Phase II auction and RDOF auction support deployment milestones to better understand the business case for serving these rural areas. In order to be authorized to receive support, those high-cost recipients were required to demonstrate to the Commission how they would fund their projects and provide financial projections showing that they would be able to cover any necessary debt service over the life of the project. In other words, these authorized recipients had to demonstrate the financial feasibility of their projects assuming support over the 10-year term without any assurance of future support. As such, a comparative analysis of the financial projections for companies that are successfully deploying fiber networks to meet Gigabit service performance commitments may provide the Commission with greater insights into the characteristics of service providers and areas (density and geography) that likely do not need ongoing support.²³

IV. The Commission Should Expand The USF Contribution Base To Include BIAS Revenues, Not The Edge.

INCOMPAS has previously explained to the FCC that the USF's contribution methodology is currently unsustainable and has urged the FCC to move forward on USF contribution reform by expanding the base to include BIAS revenues. While the NOI did not seek comment on contribution reform, several commenters in this proceeding discussed it, and we therefore will take the opportunity to narrowly reply to those comments here.

²³ The Commission could exclude from its analysis firms that have missed any mandatory deployment obligations, or that appear to be slow in starting to deploy broadband, as those firms may have financial issues that would skew the analysis. Alternatively, the Commission could seek to determine whether that subset of authorized recipients presented financial projections to the Commission that now, in hindsight, were unrealistic.

Specifically, USTelecom and Vantage Point Solutions argue that the Commission should expand the contribution base to include edge providers.²⁴ INCOMPAS disagrees with this approach and is on record at the FCC regarding why we joined with 332 diverse organizations (the USForward Coalition) to support the USForward Report’s recommendation—written by USF-expert Carol Matthey—that the Commission move forward with contribution reform by expanding the current revenue base to include BIAS revenues.²⁵

A recent report commissioned by INCOMPAS by the Brattle Group found that including edge providers to the contribution base would greatly distort the marketplace, harm competition, and raise prices for consumers. In fact, the Report found that assessing BIAS revenues is the best path forward as it is the least economically distortionary option.²⁶ The report explores and finds the following, among others:

- (1) There are harmful economic consequences from currently having such large fees on a narrow contribution base, and without any reform the factor will grow to almost 50% in 2027.
- (2) Expanding the base to include BIAS revenues would lower the factor to less than 4% (consistent with the USForward Report).

²⁴ See Vantage Point Solutions Comments, at 10-11; USTelecom Comments, at 8-12. Notably, USTelecom agrees with the USForward Coalition that BIAS providers should also contribute to the USF.

²⁵ See INCOMPAS USF Briefing Sheet, *Universal Service Fund—Path to Sustainability* (2023), available at <https://www.incompas.org/Files/filings/2023/Universal%20Service%20Fund%20-%20Path%20to%20Sustainability.pdf>; see also INCOMPAS Comments, WC Docket Nos. 21-476 & 06-122 (Feb. 17, 2022) at 13-24; see also INCOMPAS Reply Comments, WC Docket Nos. 21-476 & 06-122 (March 17, 2022), at 6-22.

²⁶ The Brattle Group, *The Economics of Universal Service Fund Reform* (Aug. 24, 2023) (“Brattle Report”), available at https://www.incompas.org/Files/filings/2023/The%20Economics%20of%20USF%20Reform%20Brattle_FINAL.pdf.

- (3) Assessing BIAS revenues means that many consumers will likely save money due to the decreasing factor on voice service.²⁷
- (4) Businesses would bear more of the burden on USF given that they pay more for BIAS than consumers.
- (5) There are major problems with other proposals, such as including edge providers, which would lead to market distortions and increased prices on consumers.²⁸

There is no real, specific proposal for how to assess edge providers without distorting the market.

Moreover, assessing the edge is rife with numerous other problems.²⁹ The Commission should

²⁷ USTelecom claims that including BIAS revenues will burden consumers; however, the Brattle Report addresses that issue and finds that due to the decrease of the contribution factor, consumers will save money on their USF fees. *See* USTelecom Comments, at 10-11; *contra* Brattle Report, at Executive Summary (finding that “consumers will not face a significant price increase and many will likely achieve savings due to the decrease in contribution factor on voice service. In addition, to the extent any additional fees levied are passed onto downstream consumers, the burden will likely be borne relatively more by high-income consumers.”). USTelecom also discusses the potential of including self-provisioned networks into the base; however, it fails to offer how the Commission would assert jurisdiction over such companies or implement a mechanism by which it could assess these components of online services in any manageable way—especially given that these types of networks extend to numerous other industries, such as banking. *See* USTelecom Comments, at 10.

²⁸ USTelecom misrepresented an INCOMPAS ex parte letter in its comments. To further its point that the demand on the USF may change, USTelecom points to the part of the letter where we told the FCC that we support renewed congressional funding for the ACP “and not via USF—at least in the short term.” USTelecom claims that “INCOMPAS failed to factor in the possibility of ACP falling under USF and, thus, estimated the factor assuming no increase in budget.” USTelecom Comments, at n.22. However, USTelecom left out the following two sentences that show we do not support the USF funding the ACP in the long-term without first having contribution reform since it would in fact increase demand on the Fund. As our letter clearly states: “The ACP should not be brought into the USF before there is USF contribution reform. Adding an entirely new program to the USF would increase the contribution factor even more and further destabilize the Fund.”). *See* INCOMPAS Ex Parte Letter, WC Docket Nos. 21-450, 21-476 & 06-122 (Oct. 5, 2023), at 2-3.

²⁹ *See* INCOMPAS USF Briefing Sheet; *see also* Former FCC Commissioner Michael O’Rielly, *What the push to ‘tax Big Tech’ gets wrong* (Oct. 9, 2023), available at <https://www.washingtonexaminer.com/restoring-america/faith-freedom-self-reliance/what-the-push-to-tax-big-tech-gets-wrong>.

reject this proposal, which would expand the FCC's authority to the entire internet, effectively sweeping into the USF every company with an online presence today.

V. Conclusion

For the reasons stated herein, INCOMPAS urges the Commission to consider the recommendations as it examines the issues raised in the NOI.

Respectfully submitted,

/s/ Lindsay Stern

Lindsay Stern
Angie Kronenberg
INCOMPAS
1100 G Street NW
Suite 800
Washington, D.C. 20005
(202) 872-5746

November 21, 2023