

Nos. 24-354 and 24-422

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IN THE  
**Supreme Court of the United States**

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FEDERAL COMMUNICATIONS COMMISSION, *et al.*,  
*Petitioners,*

v.

CONSUMERS' RESEARCH, *et al.*,  
*Respondents.*

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SCHOOLS, HEALTH & LIBRARIES BROADBAND  
COALITION, *et al.*,  
*Petitioners,*

v.

CONSUMERS' RESEARCH, *et al.*,  
*Respondents.*

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

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**BRIEF OF AMICI CURIAE THE ALEUTIAN  
PRIBILOF ISLANDS ASSOCIATION, INC., AND  
OTHER TRIBES AND TRIBAL ORGANIZATIONS  
IN SUPPORT OF PETITIONERS**

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## **INTERESTS OF AMICI**

Amici include Tribal Nations, tribal organizations, and tribally run schools.<sup>1</sup> Together, Amici represent over 300 individual Tribal Nations.

The Tribal Nations that are Amici or members of Amici tribal organizations represented on this brief, and their tribal citizens, are beneficiaries of at least one of the four Universal Service Fund (USF) programs: the Rural Health Care program, which ensures health care providers serving rural communities have access to adequate and affordable telecommunications services so that they can provide high-quality health care; the Schools and Libraries, or E-Rate, program, which ensures discounted telecommunications services are available to eligible schools and libraries; the High Cost program, which ensures consumers in rural America have access to adequate telecommunications services at rates comparable to those in urban areas; and the Low-Income, or Lifeline, program, which provides discounts to eligible low-income consumers for telecommunications services across the country. Some Amici are direct beneficiaries of these programs in that the programs subsidize the direct cost of their telecommunications services. Other Amici benefit from USF programs because the programs support essential telecommunications services for their tribal citizens and community anchor institutions, such as schools, libraries, and health care facilities.

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<sup>1</sup> No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution to fund the preparation or submission of this brief. No one other than Amici curiae, their members, or their counsel made a monetary contribution to the preparation or submission of this brief.

These programs are the direct result of congressional policy decisions that require the FCC to collect contributions from telecommunications carriers to support efforts to achieve universal service, with particular emphasis on support for rural health care providers, schools, and libraries. 47 U.S.C. § 254(h)(1)(A)–(B). Without these vital programs, Tribal Nations, tribal organizations, and low-income and rural tribal citizens would not have access to affordable telephone and internet services necessary to participate fully in society and the economy today. Tribal health care organizations, many of which are the only health care providers for tribal citizens and other eligible beneficiaries in the remote areas they serve, would not have access to networks critical to their functioning or would have to cut essential health care services to pay for non-subsidized telecommunications services. Similarly, tribal schools and libraries serving remote communities would be unable to afford telecommunications services upon which their functioning and delivery of educational programming rely. Additionally, many Tribal Nations have built or are building their own broadband networks, and the sustainability of those networks would be jeopardized if the community anchor institutions on their lands were unable to afford to purchase services.

Amici Asa'carsarmiut Tribe; Colorado River Indian Tribes; Inupiat Community of the Arctic Slope; Ketchikan Indian Community; Kootenai Tribe of Idaho; Navajo Nation; Pascua Yaqui Tribe of Arizona; Prairie Band Potawatomi Nation; Pueblo of Acoma; Pueblo of Cochiti; Pueblo of Santa Clara; Rosebud Sioux Tribe; and Yakutat Tlingit Tribe are sovereign Tribal Nations that have been federally recognized and whose citizens benefit from USF-supported telecommunications services and which, to the extent they have or are deploying

their own tribal broadband networks, depend on USF subsidies for the sustainability of those networks.

Amicus the National Congress of American Indians is the oldest, largest, and most representative American Indian and Alaska Native organization serving the broad interests of tribal governments and communities.<sup>2</sup>

Amicus Affiliated Tribes of Northwest Indians and Great Plains Tribal Chairmen's Association are regional tribal organizations composed of Tribal Nations; Amicus Coalition of Large Tribes is a tribal organization representing Tribal Nations with land bases over 100,000 acres; and Amicus Kawerak, Inc., is a tribal organization composed of Tribal Nations that provides a broad range of services to citizens of those Nations in their geographic area.<sup>3</sup>

Amici Alaska Native Tribal Health Consortium; Aleutian Pribilof Islands Association, Inc.; Arctic Slope Native Association; Bristol Bay Area Health Corporation; Chugachmiut; Copper River Native Association; Council of Athabaskan Tribal Governments; Eastern Aleutian Tribes; Kodiak Area Native Association; Maniilaq Association; Norton Sound Health Corporation;

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<sup>2</sup> For more information on the National Congress of American Indians, see <https://www.ncai.org/about-ncai>. Last visited Jan. 13, 2025.

<sup>3</sup> For more information on the Affiliated Tribes of Northwest Indians, see <https://atnitribes.org/membership/atni-members>. For more information on the Coalition of Large Tribes, see <https://largetribes.org/members>. For more information on the Great Plains Tribal Chairmen's Association, Inc., see <https://www.linkedin.com/company/great-plains-tribal-chairmen-s-association/about>. For more information on Kawerak, Inc., see <https://kawerak.org/about-us/board-of-directors>. All sites last visited Jan. 13, 2025.

SouthEast Alaska Regional Health Consortium; and Yukon-Kuskokwim Health Corporation are tribal health care organizations representing Tribal Nations that depend on Rural Health Care program funding to access dedicated medical networks, without which they would be unable to deliver necessary health services for their communities.<sup>4</sup>

Amici Alaska Native Health Board and National Indian Health Board are tribal organizations that represent Tribal Nations operating health care delivery systems.<sup>5</sup>

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<sup>4</sup> For more information on the Alaska Native Tribal Health Consortium, see <https://www.anthc.org/who-we-are/board-of-directors>. For more information on the Aleutian Pribilof Islands Association, Inc., see <https://www.apiai.org/tribes>. For more information on the Arctic Slope Native Association, see <https://arcticslope.org/about/board-of-directors>. For more information on the Bristol Bay Area Health Corporation, see <https://bbahc.org/bbahc-board-of-directors>. For more information on Chugachmiut, see <https://www.chugachmiut.org/about-us/board-executive-leadership>. For more information on the Copper River Native Association, see <https://crnative.org/who-we-are/our-promise>. For more information on the Council of Athabascan Tribal Governments, see <https://www.catg.org/board-members>. For more information on the Eastern Aleutian Tribes, see <https://www.eatribes.org/about-us/board>. For more information on the Kodiak Area Native Association, see <https://kodiakhealthcare.org/who-we-are/board-of-directors>. For more information on the Maniilaq Association, see <https://www.maniilaq.org/board>. For more information on the Norton Sound Health Corporation, see [https://www.nortonsoundhealth.org/wp-content/uploads/FY22-Annual-Report\\_web.pdf](https://www.nortonsoundhealth.org/wp-content/uploads/FY22-Annual-Report_web.pdf). For more information on the SouthEast Alaska Regional Health Consortium, see <https://searhc.org/about/#board-of-directors>. For more information on the Yukon-Kuskokwim Health Corporation, see <https://www.ykhc.org/story/about-ykhc>. All sites last visited Jan. 13, 2025.

<sup>5</sup> For more information on the Alaska Native Health Board, see <https://www.anhb.org/about-anhb/member-organizations>. For

Amicus Alaska Federation of Natives is a statewide, nonprofit organization representing more than 140,000 Alaska Natives in addressing critical public policy issues that affect the cultural and economic well-being of Native peoples and villages.<sup>6</sup>

Amici Diné Grant Schools Association; Dzilth-Na-O-Dith-Hle Community School; Eastern Navajo School Board; and Na' Neelzhiin Ji Olta' Community School are tribally controlled schools, or entities governing or representing tribally controlled schools, that benefit from E-Rate funds that cover the substantial majority of their broadband costs annually, including costs for the delivery of service and necessary hardware and infrastructure.<sup>7</sup>

Amicus American Indian Higher Education Consortium is a tribal organization representing accredited tribal colleges and universities that benefit from, or plan to

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more information on the National Indian Health Board, see [https://www.nihb.org/about\\_us/area\\_health\\_boards.php](https://www.nihb.org/about_us/area_health_boards.php). Both sites last visited Jan. 13, 2025.

<sup>6</sup> For more information on the Alaska Federation of Natives, see <https://nativefederation.org/resources>, last visited Jan. 13, 2025.

<sup>7</sup> Diné Grant Schools Association unites 13 tribally controlled schools on the Navajo Nation: Alamo Navajo School Board; Black Mesa Community School; Ch'ooshgai Community School; Dzilth-Na-O-Dith-Hle Community School; Greyhills Academy High School; Hanaadli Community School; Little Singer Community School; Many Farms Community School; Na' Neelzhiin Ji Olta'; Pinon Community School & Residential; Ramah Navajo School Board; Rough Rock Community School; and To'Hajiilee Community School. Eastern Navajo School Board is the governing body for Dzilth-Na-O-Dith-Hle Community School, the Hanaadli Community School; and Na'Neelzhiin Ji Olta'.

apply for, E-Rate funding recently made available to tribal colleges and universities.<sup>8</sup>

### **SUMMARY OF ARGUMENT**

When Congress passed the Telecommunications Act of 1996 (1996 Act), it maintained its existing commitment to universal telecommunications service, articulated its updated policy priorities, and gave clear direction to the Federal Communications Commission (FCC) to carry out those priorities. It also addressed a matter of dire concern for Tribal Nations—providing connectivity for people and places excluded from connectivity because of the cost of deploying infrastructure to them, the lack of ability to pay for services, or both. USF subsidies have done exactly what Congress intended: help narrow the digital divide for the most disproportionately unserved communities, including Tribal Nations. Unless and until Congress decides to change its policy goals, priorities, and directives, the USF and its administration should remain undisturbed.

Despite significant progress since enactment of the 1996 Act, Tribal Nations continue to be disproportionately underserved, and closing the digital divide requires continued support. Congress chose to make that support available through a carrier-contribution mechanism, today known as the USF. Tribal Nations throughout the country depend on the USF's support for rural tribal health programs, tribal schools and libraries, low-income tribal individuals, and infrastructure in high-cost rural tribal areas. Many Tribal Nations are also in the process of deploying their own

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<sup>8</sup> For more information on the American Indian Higher Education Consortium, see <https://www.aihec.org/tcu-locations>, last visited Jan. 13, 2025.



broadband networks to serve communities that others historically would not serve because it was not cost-effective to do so, and the sustainability of these tribal networks depends upon continued USF support for subscribers. Elimination or disruption of USF support would have immediate, severe consequences for many Tribal Nations throughout the country.

Amici support Petitioners' arguments that there has been no violation of the nondelegation doctrine through Congress' statutory directives to the FCC, the FCC's use of the Universal Service Administrative Company (USAC) for administrative support, or the combination of the two. Amici respectfully request this Court grant Petitioners' requests and preserve the USF funding upon which so many rural tribal communities depend.

## **ARGUMENT**

### **I. Congress has Clearly Articulated its Policy Choices and Directives**

The Communications Act of 1934 (1934 Act) established the goal of universal service by stating in Section 1 its purpose of "mak[ing] available, so far as possible, to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges," for the purposes of national defense and promoting safety of life and property. 47 U.S.C. § 151; *see also* Statement of Capt. S. C. Hooper, Dir. Naval Commc'ns, U.S. Navy to U.S. Sen. Comm. on Interstate Com. (Mar. 15, 1934) ("[U]nless our communications systems in time of peace are adequate, efficient, and free from foreign influence they cannot be expected to function properly under the greater strain of war."). Section 1 of the 1934 Act

also created the FCC, stating that it “shall execute and enforce the provisions of this Act.” 47 U.S.C. § 151. This policy and directive remain in place today. *Id.*

Under the 1934 Act, Congress provided for carrying out its universal service policy objective through rate-setting. The 1934 Act required carriers to provide services upon reasonable request, *id.* § 201(a), and it made “unjust and unreasonable” charges unlawful, *id.* § 201(b). It also established a system under which the FCC was directed to receive and review carrier rate schedules. *Id.* §§ 203–05. Congress thus created a system under which implicit subsidies funded universal service goals, with rates being set to make service accessible and reasonably affordable in all areas served by a carrier. *See, e.g., AT&T, Inc. v. FCC*, 886 F.3d 1236, 1242 (D.C. Cir. 2018). The breakup of carrier monopolies, such as that of AT&T in 1984, made this system of implicit subsidies untenable. *See, e.g., United States v. AT&T Co.*, 552 F. Supp. 131, 180 (D.D.C. 1982), *aff’d sub nom. Maryland v. United States*, 460 U.S. 1001 (1983).

In the 1996 Act, Congress retained the goal of universal service while also promoting competition. It adopted a system of direct subsidies whereby high-cost services are funded by carrier contributions. 47 U.S.C. § 254(d)–(e), (h). The carrier-contribution system was not some amorphous concept that Congress employed to punt hard decisions regarding how to balance and implement its policy priorities. Indeed, most countries around the world use similar carrier-contribution models to subsidize the expansion of services instead of using taxes and direct appropriations. *See, e.g., Rob Frieden, Remedies for Universal Service Funding Compassion Fatigue*, 39 Santa Clara High Tech. L.J. 395, 410 (2023). In the 1996 Act, Congress made a

considered and deliberate choice to adopt this model to further the universal service policy it had established over 60 years prior. 47 U.S.C. § 254.

Congress set out specific principles to direct the FCC's implementation of this new model for subsidizing service to high-cost areas, including but not limited to the principles that "[q]uality services should be available at just, reasonable, and affordable rates," *id.* § 254(b)(1), and that "[a]ccess to advanced . . . services should be provided in all regions of the Nation," *id.* § 254(b)(2). Of particular importance to rural Tribal Nations, these principles include that:

Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services . . . that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

*Id.* § 254(b)(3). These principles echo those of the 1934 Act, translating them into the new carrier-contribution system.

Congress further provided that, in order to preserve and advance universal service, all telecommunications service providers "should make an equitable and nondiscriminatory contribution," *id.* § 254(b)(4), and that there should be "specific, predictable and sufficient . . . [support] mechanisms," *id.* § 254(b)(5). The statutory provisions establishing the USF and governing its implementation operate to carry out and to fulfill Congress' policy objectives of universal service

established by the 1934 Act and remaining in our law today.

In setting forth the universal service principles in the 1996 Act, and in creating the framework for funding mechanisms to implement them, Congress directly addressed an issue of major significance to Tribal Nations. The year before, the U.S. Census Bureau reported that data from the 1990 decennial census demonstrated that around 47% of on-reservation American Indian and Alaska Native households had telephone service, compared to around 95% of homes countrywide. U.S. Gov't Accountability Off., *Challenges to Assessing and Improving Telecommunications for Native Americans on Tribal Lands* 10 (2006), [hereinafter *Challenges to Assessing and Improving Telecommunications*]. Today, approximately 82% of residents on tribal lands have some internet connectivity. Brian Howard & Traci Morris, Am. Indian Pol'y Inst., *Fact Sheet – Tribal Technology Assessment – The State of Internet Service on Tribal Lands* 2 (2019) [hereinafter *Tribal Technology Assessment*]. However, changes since the 1990 decennial census also mean that reliance on connectivity for participation in today's society is much greater, and the digital divide has narrowed but not closed. Congress' choice to seek universal service, and its creation of a carrier-contribution system as the mechanism to do so, remains extremely important to Tribal Nations.

## **II. FCC Administration of the USF Implements Congress' Policy Priorities and Directives**

Carrying out its statutory directive, the FCC engages in fact-finding and subsequently determines the amount of carrier contributions based on comparative self-reported projected profits and projected USF need. 47 C.F.R. § 54.709. USF support is directed to

beneficiaries based on the requirements Congress established in the 1996 Act, in accordance with regulations promulgated through rulemaking processes that provide the FCC with the facts necessary to administer the USF in accordance with Congress' policy priorities and directives.

The FCC uses the nonprofit Universal Service Administrative Company (USAC) to provide administrative support. *See id.* §§ 54.5 (defining "Administrator"), 54.701. USAC provides the FCC with data and it collects and distributes funds. FCC regulations control USAC's governance, *id.* §§ 54.701, 54.703, and identify its scope of functions, *id.* § 54.702. USAC "may not make policy, interpret unclear provisions of [law or regulation], or interpret the intent of Congress." *Id.* § 54.702(c). The FCC uses USAC's compilation of data on the carriers' self-reported projected quarterly profits and the projected quarterly USF subsidy cost to determine quarterly contribution amounts. *Id.* § 54.709(a)(2). By assigning USAC administrative support duties, the FCC enables itself to carry out Congress' statutory directives and delegates the work of collection and distribution of funds. USAC's administrative support role benefits Tribal Nations by contributing to the smooth operation of the mechanics of USF administration.

The FCC's administration of the USF has advanced universal service consistent with Congress' chosen policy priorities and statutory directives. This necessarily includes addressing the most significant disparities in telecommunications access, which in turn necessarily implicates Tribal Nations. And while Tribal Nations continue to face significant disparities in access to telecommunications services, the establishment of the

USF and its implementation by the FCC have been essential to helping narrow the digital divide.

After the 1996 Act was passed, the FCC convened meetings with Tribal Nations in 1998 and held formal field hearings in 1999. FCC, *In re Federal-State Joint Board of Universal Service*, 15 F.C.C. Rcd. 12208, 12212 (June 8, 2000). Based on these fact-finding proceedings, in June 2000, the FCC issued a Report and Order addressing Tribal Nations' disproportionate lack of connectivity. In its 2000 Report and Order, the FCC cited the statutory principles established for advancement of universal service, including that "quality services should be available at just, reasonable, and affordable rates." *Id.* at 12219.

The FCC found that the record before the agency demonstrated there were "disproportionately lower levels of infrastructure development and subscriber-ship prevalent among tribal communities" that were "largely due to the lack of access to and/or affordability of telecommunications services." *Id.* at 12219–20. It concluded that "the unavailability or unaffordability of telecommunications service on tribal lands is at odds with our statutory goal of ensuring access to such services to '[c]onsumers in all regions of the Nation, including low-income consumers.'" *Id.* at 12221 (quoting 47 U.S.C. § 254(b)(3)). It further found that lack of access to affordable services on tribal lands was inconsistent with its statutory directive to make service at reasonable rates "available, so far as possible, to all the people of the United States." *Id.* at 12221 n.53 (citing 47 U.S.C. § 151).

Based on the FCC's fact-finding and its statutory directives, it adopted measures to "promote telecommunications subscribership and infrastructure deployment within American Indian and Alaska Native

tribal communities,” *id.* at 12211, seeking to address the fact that American Indians and Alaska Natives continued to have “the lowest reported telephone subscribership levels in the country,” *id.* at 12113. These measures included increasing the Lifeline program assistance available for low-income households on tribal lands by \$25 per month. *Id.* at 12215.

Since the inception of the USF, therefore, the FCC has addressed Tribal Nations’ concerns as it looked to Congress’ directive regarding universal service policies, engaged in extensive fact-finding, and made adjustments to its administration of particular USF-supported mechanisms to carry out its directives from Congress.

The FCC has continued to address Tribal Nations’ concerns in this manner, as Congress intended. At the time of the FCC’s Report and Order in 2000, the national rate for households with telephone service was around 98% while the rate for Native households in Alaska Native villages was 87% and the rate for Native households on tribal lands in the lower 48 states was around 69%. U.S. Gov’t Accountability Off., *Challenges to Assessing and Improving Telecommunications* at 3. Some tribes had significantly lower rates of connectivity, with the most populous Tribal Nation, the Navajo Nation, having only 38% telephone subscribership. *Id.* at 13. Data on internet subscribership on tribal lands was entirely untracked by the federal government. *Id.* at 4. Tribal Nations were also among the most economically distressed groups, with 37% of American Indian and Alaska Native households below the federal poverty line, over twice the rate countrywide. *Id.* at 9.

To address these disparities, the U.S. Government Accountability Office (GAO) recommended that USF programs be used to increase connectivity for Tribal

Nations. *Id.* at 6. That is exactly what has happened, with FCC-administered USF support making connectivity possible for many tribal citizens, health care programs, schools, and libraries.

### **III. Tribal Nations are Significant Beneficiaries of Congress' Universal Service Policy Priorities**

Beyond identifying carrier contributions as the primary mechanism for achieving universal service, Congress also identified specific substantive priorities. Of particular importance to Tribal Nations, Congress required support for rural health care providers, schools, and libraries. 47 U.S.C. § 254(h)(1)(A)–(B). In expanding on what other services should be supported as technology advanced, Congress also directed the FCC to consider the extent to which services are essential to education, public health, or public safety; have been subscribed to by a substantial majority of residential customers; are being deployed in public networks by carriers; and are consistent with the public interest, convenience, and necessity. *Id.* § 254(c)(1)(A)–(D).

Consistent with these guidelines, the USF today provides support through four separate mechanisms:

1. Rural Health Care Support Mechanism—Provides support for rural health care providers' telecommunications services at rates similar to those of their urban counterparts.
2. Schools and Libraries Support Mechanism (“E-Rate Program”)—Provides support for telecommunications services and the equipment to deliver those services to eligible schools and libraries.



3. Low-Income Support Mechanism (“Lifeline Program”)—Provides support for low-income customers by helping pay connection charges and monthly fees for phone and internet service.
4. High Cost Support Mechanism—Provides support for infrastructure and services to high-cost areas.

See *Universal Service Fund*, FCC, <https://www.fcc.gov/general/universal-service-fund> (last visited Jan. 13, 2025). Each mechanism has been indispensable to making connectivity accessible to Tribal Nations.

#### **A. The Rural Health Care Mechanism**

Tribal Nations inhabit some of the most rural and remote areas of the United States. Often, tribal governments are the primary providers of essential services, including health care, to both tribal citizens and non-Natives alike. Tribal Nations carry out these services in the exercise of their inherent sovereign authority and pursuant to various federal programs and authorities, including the Indian Self-Determination and Education Assistance Act (ISDEAA), which provides the cornerstone for modern statutory self-determination policy. 25 U.S.C. §§ 5301–99.

Contracting and compacting under ISDEAA has dramatically transformed the Indian health care delivery system, empowering Tribal Nations to exercise their governmental authority and make key decisions about program design and administration for the benefit of their citizens. However, there has been persistent underfunding of the Indian health system by the federal government. U.S. Comm’n on Civ. Rts., *Broken Promises: Continuing Federal Funding Shortfall for Native Americans* 66–73 (2018) [hereinafter *Broken Promises*]. In recent years, federal health care

spending per person countrywide has been around three times more than the Indian Health Service's (IHS) per capita expenditures. *Id.* Federal health care expenditures in 2022 were \$13,493 per person, compared to \$4,078 per person by IHS in 2023. Indian Health Serv., *Fact Sheet – IHS Profile 1* (Oct. 2024), [https://www.ihs.gov/sites/newsroom/themes/responsive2017/display\\_objects/documents/factsheets/IHSProfile.pdf](https://www.ihs.gov/sites/newsroom/themes/responsive2017/display_objects/documents/factsheets/IHSProfile.pdf).

Chronic funding shortages have meant that the United States continues to fall short of fulfilling its responsibilities to provide for the health care of American Indians and Alaska Natives. *See, e.g., Rosebud Sioux Tribe v. United States*, 9 F.4th 1018, 1025 (8th Cir. 2021) (discussing the “special trust relationship between the Government and the Tribe” and confirming the “documented deficiencies in the quality of healthcare provided to members of the Tribe”). This has resulted in significant health disparities. American Indians and Alaska Natives have mortality rates 1.3 times that of the rest of the population. U.S. Comm’n on Civ. Rts., *Broken Promises* at 66. According to the Centers for Disease Control and Prevention, American Indians and Alaska Natives continue to have the lowest life expectancy at birth for any group in the United States. Elizabeth Arias, Ph.D., et al., Nat’l Ctr. for Health Stats., *Provisional Life Expectancy Estimates for 2022* 2 (2023). In 2023, 21.8% of American Indians and Alaska Natives reported being in fair or poor health, more than any other group. *Interactive Summary Health Statistics for Adults*, Nat’l Ctr. for Health Stats., [https://wwwn.cdc.gov/NHISDataQueryTool/SHS\\_adult/index.html](https://wwwn.cdc.gov/NHISDataQueryTool/SHS_adult/index.html) (last visited Jan. 13, 2025).

Tribal health programs make up the difference between available funding and actual need to the extent they can, and every single dollar is needed to support health care services. Persistent underfunding, however, means that programs often lack the resources to weather funding cuts or even funding disruptions.

In this context, USF's Rural Health Care mechanism provides important resources that support the exercise of tribal self-determination by subsidizing the infrastructure and services needed for rural tribal health care programs to operate. Amici Aleutian Pribilof Islands Association, Inc. (APIA), Arctic Slope Native Association (ASNA), Bristol Bay Area Health Corporation (BBAHC), Council of Athabascan Tribal Governments (CATG), Chugachmiut, Copper River Native Association (CRNA), Eastern Aleutian Tribes (EAT), Ketchikan Indian Community (KIC), Kodiak Area Native Association (KANA), Maniilaq Association, Norton Sound Health Corporation (NSHC), SouthEast Alaska Regional Health Consortium (SEARHC), Yakutat Tlingit Tribe (YTT), and Yukon-Kuskokwim Health Corporation (YKHC) depend on the Rural Health Care mechanism to enable tribally operated hospitals and clinics across Alaska to afford medical-grade networks (MGNs), which supply secure and resilient communications infrastructure tailored to the needs of health care providers.

Amicus ANTHC also delivers broadband-dependent clinical systems and services to Tribal Nations and tribal health organizations in Alaska, many of which are located in remote areas. Combined, ANTHC serves 22 organizations and 192 clinical locations, and it depends on over \$193 million in annual USF subsidies to do so. Significantly, this program reduces but does not eliminate the digital divide, as 154 of the 192

tribally operated clinics whose networks depend on the Rural Health Care mechanism do not receive services that meet the minimum speeds necessary to be considered served.<sup>9</sup>

MGNs supply secure and resilient communications infrastructure tailored to the needs of health care providers. They employ dedicated, symmetric connections solely reserved for the tribal health care program. This provides guaranteed bandwidth, with limited latency and adequate upload and download speeds, which are necessary to support critical medical applications and real-time performance across vast geographic areas. MGNs are also essential for the operation of required electronic health record (EHR) systems, teleradiology, telemedicine, telepharmacy, remote patient monitoring, continuing remote education for providers, videoconferencing, and provider and emergency services communications systems that are compliant with the Health Insurance Portability and Accountability Act.

These USF-supported communications systems are particularly important in areas including rural Alaska, where Amici tribal health organizations operate or support clinics and hospitals in nearly 200 locations, with varying levels of staff and medical professionals on-site. As part of the Alaska tribal health system, Amicus ANTHC delivers medical care to rural, tribal populations across a geography that, if superimposed on the contiguous United States, would span distances from Phoenix, Arizona to Jacksonville, Florida, and from Little Rock, Arkansas to Minneapolis, Minnesota. Throughout this vast region, only about 20% of the communities have road access to the tertiary care

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<sup>9</sup> Minimum speeds are 100/20 Mbps. FCC, *2024 Section 706 Report*, 39 FCC Rcd. 3247 ¶ 22, 2024 WL 1192504, at \*2 (Mar. 18, 2024).

center in Anchorage. This has necessitated the development of novel health care delivery models that are heavily dependent on connectivity for both specialty and primary care services.

Amici ASNA, BBAHC, Maniilaq, NSHC, SEARHC, and YKHC manage regional critical access hospitals and their own networks of community clinics in their respective regions of Alaska. The hospitals provide a full array of medical services and programs, including dental, pharmacy, audiology, optometry, physical therapy, behavioral health, inpatient, and emergency services, among others. As with all modern hospitals, routine operations are dependent on information technology systems and network-connected equipment for medical imaging, medical record access, pharmacy and lab management, and patient communications. Unlike most other hospitals, a patient from a village must typically fly in a small plane to access the next level of care due to the lack of road access within and between regions. Routine, 15-minute follow-up appointments can require days of travel to a specialty care facility, and the Alaska tribal health system relies on the availability of videoconferencing and digital imaging systems to deliver care. Reliable, high-speed connectivity allows Amici to avoid unnecessary travel by sending data about patients rather than the patients themselves.

Delivery of primary care services in Alaska's tribal community clinics relies on itinerant physician assistants and nurse practitioners, and on Community Health Aides/Practitioners (CHAPs), who are trained and certified community-based providers. CHAPs fill a unique role and are an example of tribally led efforts to address provider shortages in remote villages. CHAPs provide preventive, acute, chronic, and emergency

care within their scope of practice using a Community Health Aide Manual, and must report to a supervising physician who typically resides in a regional or subregional hub community. CHAPs and other midlevel providers depend on ready access to videoconferencing for acute and emergency care support in regional hospitals and to communicate with specialty providers in Anchorage.

The coordination and provision of care across these extensive, almost entirely rural regions not only depends on reliable, high-speed networks but also the utilization of those networks to their limits. It is not uncommon for minutes to be the difference between negative and positive medical outcomes, and connectivity allows for real-time, potentially life-saving diagnoses by doctors who may be hundreds of miles away. Medical evacuations, particularly in rural parts of Alaska that frequently experience extreme weather conditions, can be dangerous not only for patients but also for responders. Not to mention, they are costly. It is critical that medical evacuations are only called when necessary, and making such determinations can be nearly impossible without the use of real-time communications and medical applications like videoconferencing, teleradiology, and others. This is especially so for Amici like ASNA, which serves the northernmost arctic region of Alaska with a regional hospital in Utqiagvik and itinerant providers that rotate through remote village clinics. Stable internet connectivity is absolutely necessary to the hospital's operations, as they require medical diagnostic imaging to be digitally sent for interpretation by remote radiologists and consultation with remote medical specialists to determine if a medevac is appropriate.

In addition to making a critical difference in emergency situations, Amici rely on USF-supported networks to provide a high level of preventive care to maximize resources and secure positive outcomes for patients. This care includes regular medical evaluations and early and regular screenings, as well as addressing root causes of health issues by providing community-level interventions such as nutrition education, tobacco cessation programs, opioid abuse prevention programs, and increasing access to educational and job training programs. Telehealth connectivity also makes it possible to provide much-needed mental health treatment in communities where there is no qualified provider on-site. The ability to provide these preventive services requires connectivity, as do the EHR systems that make care coordination possible.

Tribal health programs are also required to meet certain EHR requirements and other stringent regulatory requirements that are increasingly impossible to satisfy without an MGN. USF-supported connectivity is, therefore, necessary for their ability to continue to operate in compliance with Centers for Medicare & Medicaid Services (CMS) requirements.

The Rural Health Care mechanism has provided the necessary funding to build an increasingly reliable and efficient health care system. Bandwidth constraints previously forced Amici to ration their network usage, and unreliable connectivity impaired their ability to use modern network-connected applications. Amici had to decide if they wanted to perform a CAT scan on a traumatic injury or to run a mammogram on a high-risk patient who had flown 150 miles for an appointment. They had to decide which community clinic was allowed to use videoconferencing since only one clinic could run such applications at a time. They had to ship

physical discs for critical software updates to avoid impacting bandwidth availability for health care functions. They had to deal with physician burnout due to unreliable networks that would drop and cause medical notes to be lost or high-latency networks that would add delay to every mouse click in the medical record. Improved connectivity has allowed tribal health care organizations to focus more directly on improving health care services.

Without the Rural Health Care mechanism, Amici would face hundreds of millions of dollars more annually in costs to fund replacement networks in addition to being potentially subject to monetary penalties in the event they were, even temporarily, not able to meet CMS regulatory requirements. Without these funds, Amici would not be able to afford the connectivity that enables modern health care delivery. Amicus YKHC, for example, would incur additional costs of more than \$2 million per month—costs that the USF covers precisely because YKHC cannot afford to cover them.

Defraying increased connectivity costs would require reduction in staffing, negatively impacting clinical services. Amici would be forced to rebuild their networks from asymmetric, best-effort services that are not comparable to the networks they currently operate, and which would be inadequate to support the communications and medical technologies and applications they rely on. In some communities, critical health care infrastructure would fully cease to operate, and some rural tribal health programs could disappear altogether. Even a temporary disruption in USF funding would almost certainly change the infrastructure and services available in rural areas, with severe impacts on the health and wellbeing of individuals



and communities for whom the United States has a unique responsibility to provide health care.

### **B. The E-Rate Program for Schools and Libraries**

Many schools and libraries on tribal lands rely on the E-Rate Program, which funds the deployment of telecommunications infrastructure to connect schools and libraries and pays up to 90% of service costs. *See, e.g., E-Rate – Schools & Libraries USF Program*, FCC (Jan. 4, 2025), <https://www.fcc.gov/general/e-rate-schools-libraries-usf-program>. Amicus Coalition of Large Tribes (COLT) is composed of many of the largest Tribal Nations in the country—the Spokane Tribe of Indians; Shoshone-Bannock Tribes; Cheyenne River Sioux Tribe; Navajo Nation; Rosebud Sioux Tribe; Oglala Sioux Tribe; Ute Indian Tribe; Blackfeet Nation; Eastern Shoshone Tribe; Fort Belknap Indian Community; Mandan, Hidatsa and Arikara Nation; Sisseton-Wahpeton Oyate Tribe; and San Carlos Apache Tribe. COLT is concerned about the devastating impact that the loss of E-Rate funding would have on schools located on tribal lands. Native children throughout the country would lose the broadband connectivity essential to their education.

Amici Dzilh-Na-O-Dith-Hle Community School and Na’ Neelzhiin Ji Olta’ Community School are tribally controlled schools that operate pursuant to the Tribally Controlled Schools Act of 1988. Both are governed by Amicus Eastern Navajo School Board and are located on Amicus Navajo Nation, and both have benefitted from E-Rate funding. For example, E-Rate currently provides 90% of the service costs for Dzilh-Na-O-Dith-Hle Community School. Even with this subsidy, the school often still struggles to provide its 10% share of the service costs. Any disruption in USF

support would leave the school without a way to meet the connectivity needs of its students in the immediate term. Amicus Diné Grant Schools Association includes 13 tribally controlled schools on the Navajo Nation, all of which rely on E-Rate funding to provide connectivity to their students.

E-Rate-funded connectivity for schools and libraries on tribal lands often serves the broader community as well. Frequently the only meaningful broadband access on rural tribal lands is through E-Rate-funded service at schools and libraries. During the COVID-19 public health emergency, for example, school children and others situated themselves outside of closed school and library buildings to access the wireless connectivity extending to parking lots and sidewalks. *See, e.g.,* Kolby KickingWoman, *Reservation Libraries Provide Internet Lifeline*, ICT News (Aug. 5, 2020).

Libraries with E-Rate-funded service are also often the only locations open to the general public where tribal citizens can go to access the connectivity they need for a variety of purposes. For many years tribal libraries were only eligible for E-Rate funding if they obtained recognition from state library agencies. The FCC, carrying out its universal service directive, amended the E-Rate rules in 2022 to include tribal libraries in the definition of library. FCC, *Report & Order 22-8*, 37 FCC Rcd. 1458 \*2 ¶ 7 (Jan. 28, 2022). In 2023, the FCC expanded access to the E-Rate program by making libraries at tribal colleges and universities eligible so long as they met certain requirements. FCC, *Report & Order 23-56*, 38 FCC Rcd. 6842, 6847 ¶ 11 (July 21, 2023). Both of these developments occurred after the FCC performed its fact-finding duties through its rulemaking process, receiving extensive comments regarding the operation

of the E-Rate program with respect to tribal libraries. Amicus American Indian Higher Education Consortium has members that either have tribal libraries funding or are preparing to apply now that this important resource is more readily available.

### **C. The Lifeline Program**

Funding for individual connectivity and expansion of telecommunications networks on tribal lands is an important component of the United States' fulfillment of its treaty and trust responsibilities to Tribal Nations regarding the health, safety, and welfare of tribal citizens.

The Lifeline Program currently provides support for individual telephone and broadband services, providing up to \$100 for connection charges and up to \$34.25 for recurring monthly fees for low-income customers on qualifying tribal lands. *See Enhanced Tribal Benefit*, USAC, <https://www.usac.org/lifeline/enhanced-tribal-benefit> (last visited Jan. 13, 2025). As of September 2024, the program served over 8 million subscribers throughout the country, including many on tribal lands. *See Lifeline Program Data*, USAC, <https://www.usac.org/lifeline/resources/program-data> (last visited Jan. 13, 2025) (excel sheet linked on webpage).

This support fills an important role in enabling tribal citizens to access education, health care, public safety, and other necessary services. During the COVID-19 pandemic, for example, many rural tribal citizens lacked the ability to engage in remote learning, telehealth, remote work, remote governance, and a variety of other daily, civic, and life activities requiring telecommunications services. In no small part due to a lack of these services, Tribal Nations

suffered among the highest rates of pandemic-related fatalities. *See, e.g.*, Katherine Leggat-Barr, Fumiya Uchikoshi, & Noreen Goldman, *COVID-19 Risk Factors and Mortality Among Native Americans*, 45 *Demographic Rsch.* 1185 (2021); Sarah M. Hatcher, et al., *COVID-19 Among American Indian and Alaska Native Persons — 23 States, January 31–July 3, 2020*, *Centers for Disease Control Morbidity and Mortality Weekly Report* (Aug. 28, 2020). These fatalities caused irreversible impacts to Tribal Nations’ cultural survival as elders were lost, and the pandemic continues to have devastating effects on future generations as tribal school children must grapple with overcoming pandemic-related learning loss.

Amici Tribal Nations, tribal organizations, and tribal rural health programs are concerned about the ability of low-income tribal citizen households to be able to afford the connectivity they need to access necessary services.

#### **D. The High Cost Program**

Additionally, the High Cost program has traditionally been important to providing support for eligible telecommunications carriers to deploy infrastructure and services to tribal lands and other high-cost areas. This funding has helped incentivize expansion of telecommunications infrastructure and services to many areas that were previously devoid of connectivity because carriers were not interested in expensive buildouts through often rugged terrain to areas without the population and/or income to make such expenditures cost-effective.

The High Cost program continues to award funds, for example through the Enhanced Alternative Connect America Cost Model and Rural Digital

Opportunity Fund, to eligible telecommunications carriers (ETCs) seeking to serve tribal lands. *See generally High Cost Funds*, USAC, <https://www.usac.org/high-cost/funds> (last visited Jan. 13, 2025). While many Tribal Nations would like to see the FCC engage in rulemaking to make high-cost funds available for non-ETC tribal governments to construct their own networks on their own lands, USF support for infrastructure deployment and services to high-cost areas remains important to bridging the Tribal Nations' digital divide.

#### **IV. Tribal Broadband Network Sustainability Depends on USF Support**

Importantly, USF support is also essential to the viability of networks currently being deployed by Tribal Nations. These efforts are important to Tribal Nations exercising self-determination over the infrastructure on their lands, exercising data sovereignty, and providing essential services to their citizens at affordable rates. While these infrastructure deployments are not USF-funded, their economic sustainability relies on subscribers having access to USF support.

In 2019, the FCC, in carrying out its spectrum-licensing directives, announced the first-ever Rural Tribal Priority Window, which enabled qualifying Tribal Nations to license the unclaimed 2.5 GHz spectrum over their lands at no additional cost. FCC, *Report & Order* 19-62, 34 FCC Rcd. 5446, 5463–69 ¶¶ 47–65 (Jul. 11, 2019). In 2020, Congress established the Tribal Broadband Connectivity Program (TBCP), administered by the U.S. Department of Commerce's National Telecommunications and Information Administration (NTIA), to provide grants for Tribal Nations to deploy broadband infrastructure to connect unserved households, community anchor institutions,

and businesses on their lands. Consolidated Appropriations Act, 2021, div. N, tit. IX, § 905(c), 134 Stat. 1182, 2136 (2020), as amended. In assessing the business case for tribal broadband projects, Tribal Nations and NTIA relied on the continued availability of USF funding. In total, Congress made \$3 billion of TBCP awards available, and Tribal Nations throughout the country are now in the process of deploying their networks.

Amicus Rosebud Sioux Tribe (RST) is a sovereign Tribal Nation located in current-day southern South Dakota. It is part of the Oceti Sakowin (Seven Council Fires or Great Sioux Nation), and it is party to multiple treaties with the United States, including the Fort Laramie Treaty of 1868. 15 Stat. 635 (Apr. 29, 1868). Despite the numerous guarantees in that treaty and others regarding the protection of the lands, health, safety, and well-being of the tribal signatories, the United States has repeatedly violated the terms of the treaty and failed to provide for the wellbeing of the people. *See, e.g., Rosebud Sioux Tribe*, 9 F.4th at 1025.

Today, despite significant historic encroachment on its tribal lands, the Rosebud Indian Reservation consists of over one million acres, making RST among the largest land-based Tribal Nations in the country. While remaining rich in culture, history, language, and leadership, the conditions of colonization have impoverished RST's people. For example, over half of the households on the Rosebud Indian Reservation and off-reservation trust lands live in poverty, and the unemployment rate hovers just over 60%. *Rosebud Indian Reservation and Off-Reservation Trust Land, SD*, U.S. Census Bureau, [https://data.census.gov/profile/Rosebud\\_Indian\\_Reservation\\_and\\_OffReservation\\_Trust\\_Land,\\_SD?g=2500000US3235](https://data.census.gov/profile/Rosebud_Indian_Reservation_and_OffReservation_Trust_Land,_SD?g=2500000US3235) (“Income and

Poverty” and “Employment”) (last visited Jan. 13, 2025) [hereinafter *Rosebud Census Bureau Profile*]. The digital divide has exacerbated the extent to which on-reservation households are excluded from opportunities available to the rest of the country—with over half of households remaining unserved.

The Rosebud Sioux Tribe embraced the opportunity to provide for its people by exercising sovereignty over the spectrum above its tribal lands and by pursuing federal funding to deploy the infrastructure necessary to use this spectrum. RST secured its 2.5 GHz license through the Rural Tribal Priority Window, and it also received over \$48 million in TBCP funding to deploy broadband infrastructure that will use the spectrum obtained in its 2.5 GHz license. *Tribal Broadband Connectivity Program, Rosebud Sioux Tribe*, U.S. Dep’t of Commerce, NTIA, <https://www.internetforall.gov/funding-recipients/rosebud-sioux-tribe> (last visited Jan. 13, 2025). Using this license and this funding, RST is in the process of providing connectivity throughout the Rosebud Indian Reservation, including to 1,526 unserved households, which compose over half of reservation households. See *Rosebud Census Bureau Profile* (“Housing”). RST has already met both interim and final build-out requirements required to retain its spectrum license for 10 years—satisfying final build-out requirements two years prior to the deadline. For RST, the 2.5 GHz license combined with TBCP funding represents a monumental opportunity to serve its tribal citizens—and a monumental opportunity for the federal government to work toward fulfillment of many broken promises. Elimination of USF subsidies for subscribers threatens to jeopardize these opportunities.

Amici Colorado River Indian Tribe, Navajo Nation, Pascua Yaqui Tribe of Arizona, Pueblo of Acoma, Pueblo of Cochiti, and Pueblo of Santa Clara have also received TBCP grants to deploy broadband infrastructure to unserved locations on their lands. Tribal Nations have long sought these opportunities. The GAO in 2006 noted that “to address the barriers of rural, rugged terrain and limited financial resources that have deterred investment in telecommunications on tribal lands, several tribes are moving toward owning or developing their own telecommunications systems” and that “tribally owned companies are focusing on extending and improving service rather than on maximizing profit.” GAO, *Challenges to Assessing and Improving Telecommunications* at 5, 18. Congress has recently expanded the ability of Tribal Nations to deploy networks through TBCP grants, but all Tribal Nations that already operate their telecommunications networks, or are seeking to do so, would be harmed by their networks no longer having subscribers with access to USF subsidies.

Congress intended and directed USF funding to facilitate connectivity in areas where it was not cost-effective for carriers to provide service. Without USF subsidies for community anchor institutions, including schools, libraries, and health facilities, service to many rural tribal lands would once again be economically unsustainable, jeopardizing existing tribally owned internet service providers and the tribal broadband projects underway throughout the country.

### **CONCLUSION**

The USF has, as Congress intended and directed, been enormously important in carrying out the policy priorities set out in the 1996 Act. Neither the FCC’s administration of the USF nor USAC’s administrative



support to the FCC raises separation of powers concerns or violates nondelegation principles. Congress' policy goal of universal service and its selection of the priorities and mechanism to further that goal remain as important as ever for Tribal Nations.

Despite significant progress, more must be done to fully close persistent accessibility gaps and realize Congress' goals for universal service with respect to Tribal Nations. American Indians and Alaska Natives continue to have among the lowest rates of access to broadband. Daniela Mejía, U.S. Census Bureau, *Computer and Internet Use in the United States: 2021* 9 (2024) [hereinafter *Computer and Internet Use*]. In the fall of 2019, just before the COVID-19 public health emergency hit the country, 18% of residents on tribal lands lacked any home internet access and 33% relied on cell phone service for at-home internet. Howard & Morris, *Tribal Technology Assessment*, at 2. According to the latest U.S. Census Bureau data, 16% of households in tribal areas lacked access to broadband, compared with the national average of 10%. Mejía, *Computer and Internet Use* at 9. This represents a significant narrowing of the digital divide over the years, as in 2016 there was a 10% gap between tribal broadband access and the national average.

That 10% gap, however, continues to persist in rural tribal areas, which compose 45% of lands where Tribal Nations are located. *Id.* Additionally, the digital divide between tribal and non-tribal areas has traditionally been more significant than the gap between rural and urban areas. For example, data from 2016 through 2019 showed that the gap between internet access in tribal and non-tribal areas was four times larger than the rural–urban gap. Anahid Bauer, et al., *The*

*Tribal Digital Divide: Extent and Explanations*, 46 Telecommc'ns Pol'y 1 (2022) (analyzing U.S. Census Bureau American Community Survey data) [hereinafter *The Tribal Digital Divide*].

FCC data paints a similar picture, estimating that approximately 23% of people living on lands where Tribal Nations are located lack access to 100/20 Mbps fixed broadband services compared to approximately 7% of the country overall. *2024 Section 706 Report*, 39 FCC Rcd. 3247, 2024 WL 1192504 \*2, ¶ 4 (Mar. 18, 2024). For rural lands where Tribal Nations are located, this divide increases to 40% of people lacking these benchmark speeds. *Id.* at \*20 ¶ 62.

Not only is service in these tribal areas slower—over 70% slower than in neighboring non-tribal areas—it is also more expensive. Bauer, et al., *The Tribal Digital Divide* at 2. In general, an internet service provider's least expensive broadband plan is approximately 11% more expensive in tribal areas than in nearby non-tribal areas. *Id.* The budget share for internet services for households on tribal land is estimated to be twice as high as in neighboring non-tribal areas. *Id.* at 3.

Tribal Nations are still in pursuit of the full benefits and opportunities provided by advanced telecommunications services, and USF support remains essential to this pursuit. Unless and until Congress decides to act otherwise, carrier contributions to the USF remain the mechanism it has chosen to carry out its policy goals, and it has provided clear directives for the operation of that mechanism. Having exercised, rather than delegated, its legislative power, Congress' policy determinations and directives should remain undisturbed. Amici respectfully request that the Court grant Petitioners' requests and preserve the USF.

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