

**In the Supreme Court of the United States**

No. 24-354 and 24-422

FEDERAL COMMUNICATIONS COMMISSION, ET AL.,  
PETITIONERS,

v.

CONSUMERS' RESEARCH, ET AL.,  
RESPONDENTS.

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SHLB COALITION, ET AL.,  
PETITIONERS,

v.

CONSUMERS' RESEARCH, ET AL.,  
RESPONDENTS.

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*ON WRITS OF CERTIORARI  
TO THE UNITED STATES COURTS OF APPEALS  
FOR THE FIFTH CIRCUIT*

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**BRIEF OF PUBLIC KNOWLEDGE, AFFORDABLE  
BROADBAND CAMPAIGN, CHAMBER OF PROGRESS,  
COMMON SENSE MEDIA, AND COMMUNICATIONS  
WORKERS OF AMERICA AS AMICI CURIAE IN  
SUPPORT OF PETITIONERS**

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**INTEREST OF AMICI CURIAE<sup>1</sup>**

Public Knowledge is a consumer rights organization dedicated to promoting freedom of expression, an open internet, and access to affordable communications tools and creative works. For many years, it has worked to defend universal service principles and ensure that all Americans have access to essential communications services regardless of income or geography. Public Knowledge has been deeply involved in universal service policy through regulatory proceedings, court filings, and public advocacy, with particular focus on how these programs serve marginalized and underserved communities. The organization has extensive expertise in both the practical operation of the Universal Service Fund and the broader telecommunications regulatory frameworks that enable universal access to communications services in America.

The Affordable Broadband Campaign is a 501(c)(4) dedicated to helping secure long-term funding for low-income families so they can afford to get and stay connected to broadband service.

Chamber of Progress is a tech-industry coalition devoted to a progressive society, economy, workforce, and consumer climate. Chamber of Progress backs public policies that build a fairer, more inclusive country in which the tech industry operates responsibly and fairly, and in which all people benefit from technological leaps. Chamber of Progress seeks to protect

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<sup>1</sup> Pursuant to S. Ct. Rule 37.6, *Amici* state that no counsel for a party authored this brief in whole or in part and no person or entity made a monetary contribution to its preparation or submission.

internet freedom and free speech, to promote innovation and economic growth, and to empower technology customers and users. Chamber of Progress's work is supported by its corporate partners, but its partners do not sit on its board of directors and do not have a vote on, or veto over, its positions. Chamber of Progress does not speak for individual partner companies, and it remains true to its stated principles even when its partners disagree.

Common Sense Media is a nonpartisan, nonprofit organization dedicated to improving digital access and literacy for families and students. Through research, education, and advocacy, Common Sense works to ensure safe and meaningful access to communications technology, with particular focus on addressing the digital divide in education. The organization has extensive experience engaging with Universal Service Fund programs, particularly E-Rate and Lifeline, through regulatory proceedings and research. Common Sense's digital literacy curriculum reaches more than 1.2 million educators in over 85,000 schools nationwide, including 74% of Title I schools, giving it unique insight into how universal service programs impact education and student success.

The Communications Workers of America (CWA) is the largest communications and media labor union in the United States. Its membership consists of workers in the communications and broadband industries, as well as the news media, airlines, broadcast and cable television, public service, higher education, health care, manufacturing, video games, and high tech. CWA takes an active role advocating for its

members, which includes participating in litigation as a party or amicus.

### SUMMARY OF ARGUMENT

1. The Fifth Circuit’s decision invalidating the Universal Service Fund fundamentally misunderstands both law and precedent. While acknowledging that either Congressional delegation to the FCC or FCC delegation to USAC might be constitutional in isolation, its ruling that the combination of these delegations is unconstitutional has no basis in law and threatens a program that has successfully connected millions of Americans to essential communications services.
2. The Fifth Circuit’s novel “combination theory” fails because both delegations are proper and lawful. Congress provided clear direction to the FCC through Section 254’s detailed framework, easily satisfying the intelligible principle test. Meanwhile, USAC acts in a purely ministerial capacity under comprehensive FCC oversight and control, not as a private regulator. Two constitutional actions cannot combine to create an unconstitutional result.
3. The practical consequences of the Fifth Circuit’s ruling would be severe, disrupting vital telecommunications access for millions of Americans, undermining rural economic development, and threatening numerous other federal programs that rely on similar administrative structures where agencies work with private entities under careful government oversight.

### ARGUMENT

The Fifth Circuit’s decision invalidating the Universal Service Fund’s structure, *Consumers’ Research v. Fed. Comm’n Comm’n*, 109 F.4th 743 (5th Cir. 2024), rests on serious misunderstandings of both law

and reality. The ruling not only conflicts with decisions from other circuits, but threatens to destroy a program that has successfully connected millions of Americans to essential communications services for over 25 years.

The court's core theory—that the combination of Congress's delegation to the FCC and the FCC's delegation to USAC creates an unconstitutional structure—falls apart under light scrutiny, and directly contravenes numerous of this Court's precedents. Indeed, while the Fifth Circuit panel seemed inclined to find the structure of USF and USAC unconstitutional on the grounds that either Congress or the FCC improperly delegated its authority, it was bound by this Court's precedents to the contrary. But its newly-invented combination theory violates those same precedents, and the idea that somehow these two proper delegations become improper when combined makes no legal sense. The Supreme Court has never suggested that two constitutional actions somehow merge into an unconstitutional one. The Fifth Circuit's theory fails because there is no improper private delegation to USAC. It also fails because there was no improper delegation to the FCC. It necessarily also fails when neither improper delegation has taken place. Zero plus zero equals zero.

The Fifth Circuit's ruling appears to reflect policy concerns about the structure of the universal service program rather than constitutional infirmities. While reasonable minds may differ on the optimal design of universal service funding mechanisms, such policy judgments are properly addressed to Congress, not the courts. If changes to this structure are warranted, they should come through legislative action, not through novel constitutional interpretations that would upset decades of settled administrative practice. The Fifth Circuit's ruling strays beyond judicial

review into questions of policy best left to the political branches.

### **I. Congress Codified Clear Universal Service Principles Through the 1996 Telecommunications Act**

Universal service principles have been a key element of American communications policy since the nation's founding. As James Madison wrote in 1788 in *The Federalist* No. 42, "Nothing which tends to facilitate the intercourse between the states, can be deemed unworthy of the public care."<sup>2</sup> The Post Office Act of 1792 established the precedent of universal communications access by subsidizing newspaper delivery to remote areas, creating a communications infrastructure that prioritized public access and the dissemination of information over profit maximization.<sup>3</sup> This commitment to universal access continued through the telegraph era, where states, courts, and eventually Congress required operators to serve all customers without discrimination, establishing patterns that would shape later telecommunications regulation.<sup>4</sup>

Each generation has understood that communications networks—from voice, to data processing, to modern wireline and wireless broadband networks—are essential services for participation in our economy.<sup>5</sup> Universal service is not simply about ensuring

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<sup>2</sup> Available at Library of Congress, *Federalist Papers: Primary Documents in American History*, <https://guides.loc.gov/federalist-papers/text-41-50>.

<sup>3</sup> Richard John, *Spreading the News: The American Postal System from Franklin to Morse* 7, 25-63 (1995).

<sup>4</sup> Paul Starr, *The Creation of the Media: Political Origins of Modern Communications* 188 (2004).

<sup>5</sup> See Rahul Tongia & Ernest J. Wilson III, *The Flip Side of Metcalfe's Law: Multiple and Growing Costs of Network*

telecommunications access, though this remains vital. As federal policy, universal service advances broader economic and educational benefits that communications access provides. *See infra* Part IV.B.

The Communications Act of 1934 formally codified universal service as a national policy goal, declaring the FCC's mission to make communication services available "to all the people of the United States." 47 U.S.C. § 151. Initially, this was accomplished through an implicit system of cross-subsidies, with profits from densely populated urban areas subsidizing service in higher-cost rural regions.<sup>6</sup> However, increasing competition in long-distance service made this cross-subsidization structure unsustainable.

The FCC took initial steps to preserve universal service, including creating both the Lifeline program for low-income consumers and a predecessor to today's high-cost fund following AT&T's dissolution. *See Rural Tel. Coalition v. FCC*, 838 F.2d 1307, 1312 (D.C. Cir. 1988) (upholding the FCC's creation of a "Federal Universal Service Fund" to "ensure that telephone rates are within the means of the average subscriber in all areas of the country") (citing Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, 96 F.C.C.2d 781, 795 (1984)).

Congress ultimately stepped in through the Telecommunications Act of 1996, creating an explicit support mechanism in Section 254. *See Telecommunications Act of 1996*, Pub. L. No. 104-104,

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Exclusion, 5 INT'L J. COMM. 665 (2011) (explaining that as more people gain access to broadband internet service and participate in the digital side of society, everyone benefits, while "as a network grows in size and value, those outside the network face growing disparities.").

<sup>6</sup> Congressional Research Service, *Universal Service Fund: Background and Options for Reform*, 2 (2011).

110 Stat. 56 (1996). The Act defined universal service as “an evolving level of telecommunications services” that the FCC would periodically update based on technological advances. 47 U.S.C. § 254(c)(1). Congress directed the FCC to consider specific factors in this evolution, including whether services are “essential to education, public health, or public safety” and have “been subscribed to by a substantial majority of residential customers.” *Id.* The statute enumerates additional criteria for the FCC to consider as it evolves the definition over time. 47 U.S.C. § 254(c)(1)-(3).

To fund these programs through a “specific, predictable, and sufficient mechanism,” Congress mandated contributions from telecommunications carriers and empowered the FCC to require contributions from other providers as the public interest requires. 47 U.S.C. § 254(d). The FCC has occasionally expanded the contribution base, such as requiring certain VoIP providers to contribute based on their benefit from interconnection with the public switched telephone network. *See Universal Service Contribution Methodology*, 21 FCC Rcd. 7518 (2006). These “interconnected VoIP services” are defined as those that “(1) enable real-time, two-way voice communications; (2) require a broadband connection from the user’s location; (3) require IP-compatible customer premises equipment; and (4) permit users to receive calls from and terminate calls to the PSTN.” 47 C.F.R. § 8.1.

This statutory scheme, viewed in context, demonstrates Congressional recognition that communications networks continually evolve. Congress thus empowered the FCC, as the expert agency, to oversee and advance universal service policy to keep pace with that evolution. The resulting framework sup-

ports not just networks in rural areas, but also programs for schools, libraries, and rural healthcare providers, 47 U.S.C. §§ 254(h)(1)(A)-(B), 254(h)(2)(A), while preserving the FCC’s existing Lifeline program, 47 U.S.C. § 254(j).

## **II. Congress’s Delegation to the FCC Satisfies Constitutional Requirements**

Congress didn’t hand the FCC a blank check and its delegation provides the agency ample guidance. As this Court held, “If Congress shall lay down by legislative act an intelligible principle to which the person or body authorized to fix such rates is directed to conform, such legislative action is not a forbidden delegation of legislative power.” *J.W. Hampton, Jr., & Co. v. United States*, 276 U.S. 394, 409 (1928). The Court more recently explained that “The standards for that principle are not demanding.” *Gundy v. United States*, 139 S. Ct. 2116, 2120 (2019). Section 254 easily satisfies this undemanding test by providing detailed, specific guidance:

- It requires the FCC to follow six clear principles, from ensuring affordable rates to providing comparable urban and rural service
- It specifies who must contribute (telecommunications carriers) and who can receive



support (eligible carriers, schools, libraries, rural healthcare providers)

- It defines what services can be funded (telecommunications services essential for education, health, and safety)
- It includes guardrails on costs, requiring support to be “sufficient” while keeping services “affordable”

This is more detailed direction than the Supreme Court has required when upholding other delegations of authority. *See Nat’l Broad. Co. v. United States*, 319 U.S. 190 (1943) (upholding delegation to the FCC to regulate broadcast licensing in the “public interest”); *Yakus v. United States*, 321 U.S. 414 (1944) (upholding delegation of authority to fix “fair and equitable” commodity prices during wartime); *Am. Power & Light Co. v. SEC*, 329 U.S. 90 (1946) (upholding delegation to SEC to prevent “unfair or inequitable” distribution of voting power among security holders); *Lichter v. United States*, 334 U.S. 742 (1948) (upholding delegation to determine “excessive profits” during wartime); *Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457 (2001) (upholding delegation to EPA to set air quality standards “requisite to protect the public health” with “an adequate margin of safety”); *Gundy v. United States*, 139 S. Ct. 2116 (2019) (upholding delegation to Attorney General to determine when it is “feasible” to apply registration requirements for pre-Act offenders under sex offender registration law).

### **III. The Administration of USF by the FCC and USAC Demonstrates that the FCC Retains Control Over USF and USAC Acts in a Ministerial Capacity**

The Fifth Circuit fundamentally mischaracterizes the relationship between the FCC and USAC, erroneously concluding that the FCC has “de facto abdicat[ed],” 109 F.4th at 771, its authority by rarely rejecting USAC’s proposed contribution factors. This ignores both the comprehensive regulatory framework governing USAC’s operations and the practical reality that USAC’s calculations merely implement FCC-established formulas and procedures. USAC is not a private shadow regulator but rather an entity designated by the FCC to gather and process information, operating under the FCC’s authority and surveillance. As the 11th Circuit found,

[T]he FCC maintains deep and meaningful control over the USAC. In addition to the ways the FCC maintains final decision-making authority regarding the universal service fund, the FCC always maintains control of the USAC as an entity. It sets requirements for selection and selects each of the USAC’s nineteen directors, *id.* § 54.703(b)-(c), and the Chairman of the FCC must approve or appoint the USAC’s Chief Executive Officer, *id.* § 54.704(b). A review of the USAC’s involvement with calculating the contribution factor process reveals no unconstitutional delegation of legislative authority. The USAC submits proposed projections of the fund’s needs, and the FCC reviews the USAC’s proposal. If the FCC approves the projection, it is then used in the FCC’s calculation of the contribution factor. The USAC collects and disburses the funds but must do so according to statutory and administrative directions. Parties can appeal any USAC action to the FCC, and the

FCC's decisions in these cases bind USAC. In sum, under § 254, the USAC is subordinate to and remains subject to the authority of the FCC.

*Consumers' Research v. Fed. Commc'ns Comm'n*, 88 F.4th 917, 928 (11th Cir. 2023). The comprehensive regulatory framework governing USAC's operations, coupled with the FCC's pervasive oversight and control, establishes precisely the type of constitutionally permissible administrative arrangement this Court has upheld.

By regulation, USAC is expressly prohibited from any policymaking role: it “may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress.” 47 C.F.R. § 54.702(c). This prohibition is reinforced through a detailed regulatory structure that confines USAC to purely ministerial functions. As described by the current version FCC and USAC's Memorandum of Understanding,<sup>7</sup> USAC's role is strictly limited to administrative tasks: collecting and processing carrier data, calculating contribution factors using FCC-established formulas, and performing billing and collection functions. 47 C.F.R. § 54.702(b).

The FCC maintains complete control over all substantive aspects of the universal service program. Through notice-and-comment rulemaking, the Commission establishes all policies and rules governing universal service support, sets budgets for the four disbursement programs, reviews and must approve USAC's proposed quarterly contribution factor, and maintains ongoing oversight of USAC's activities. The

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<sup>7</sup> Memorandum of Understanding Between the Federal Communications Commission and the Universal Service Administrative Company (2024), <https://www.fcc.gov/sites/default/files/usac-mou.pdf>

FCC can modify or reject any USAC decision, handles all policy interpretations and waiver requests, and reviews appeals of USAC decisions. Even the forms USAC uses to collect revenue data must be developed by the FCC and approved by the Office of Management and Budget.

Congress established clear statutory parameters by enacting key definitions that set guardrails on eligible recipients and beneficiaries. Only “eligible telecommunications carriers” (ETCs)—carriers licensed by states to provide services to eligible beneficiaries—can receive support. Congress also established definitions for “schools,” “libraries,” and “health care providers” as potential beneficiaries, mirroring other federal programs where Congress defines eligible classes rather than naming specific recipients.

The Fifth Circuit’s emphasis on the FCC’s routine approval of USAC’s contribution factor calculations misconstrues the nature of the relationship. Far from evidencing abdication, this pattern of approval reflects the fact that USAC operates entirely within the confines of FCC direction and control. USAC’s contribution calculations are the product of inputs that the FCC regulates at every turn—from the detailed worksheets that carriers must submit, to the caps that the FCC imposes on projected expenses. Why would the FCC disapprove of USAC following its direction?

The FCC’s control over the contribution factor is further demonstrated by its active management of reserve funds to adjust quarterly contributions. For example, in 2023 and 2024, the Commission directed USAC to apply unused funds to reduce the contribution factor.<sup>8</sup> USAC lacks any independent authority

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<sup>8</sup> Proposed Fourth Quarter 2023 Universal Service Contribution Factor, CC Docket No. 96-45, DA 23-843 (rel. Sep. 13, 2023);

to make such adjustments, underscoring that it serves purely as the Commission's administrative agent. This direct control over contribution levels through reserve fund management further demonstrates that the FCC, not USAC, exercises ultimate authority over the universal service program's funding mechanisms.

The FCC's control extends to USAC's basic structure and operations. The Commission sets requirements for and selects all nineteen USAC directors, and the Chairman of the FCC must approve or appoint USAC's Chief Executive Officer. USAC must file annual reports with the FCC and Congress detailing its operations, activities, accomplishments, and administrative actions intended to prevent waste, fraud, and abuse. The FCC maintains processes to ensure proper administration of the universal service support mechanisms, and telecommunications carriers may challenge USAC proposals directly to the agency, which regularly grants relief when appropriate.

When USAC requires interpretation of any rule or policy, it must seek guidance from the FCC. USAC's projections for the contribution factor are merely proposals, which the FCC has authority to adjust, replace, or reject. The contribution factor cannot be applied to fund contributors until it has received FCC approval. These constraints ensure that USAC's role remains purely administrative, with all substantive decision-making authority firmly lodged with the Commission.

This comprehensive framework of agency control far exceeds what this Court has required in upholding

other arrangements involving private entities. The Fifth Circuit’s conclusion that the FCC has abdicated authority to USAC cannot be reconciled with either the regulatory restrictions on USAC’s role or the practical reality of how the universal service program operates. USAC’s limited administrative function, performed under comprehensive FCC oversight and control, readily satisfies constitutional requirements.

The relationship between FCC and USAC is fundamentally different from the unconstitutional private delegation found in *Carter v. Carter Coal*, 298 U.S. 238 (1936), where private coal producers had the power to directly regulate the wages and hours of their competitors without any governmental oversight. In that case, the Court found that the statute violated the Constitution by delegating to “private persons” the unchecked “power to regulate the affairs of an unwilling minority.” *Id.* at 311. The private entity in *Carter Coal* was able to set prices, which the court called “delegation in its most obnoxious form.” *Id.*

Instead, the arrangement between the FCC and USAC is more analogous to the situation in *Sunshine Anthracite Coal v. Adkins*, 310 U.S. 381 (1940), where private entities, such as local boards of coal producers, proposed minimum prices for coal. However, those prices were subject to the approval, disapproval, or modification by the National Bituminous Coal Commission, a governmental body. The Supreme Court upheld the scheme because the private boards “function[ed] subordinately” to a federal agency. The Court emphasized that the agency, not the boards, ultimately “determine[d] the prices” and that the agency “ha[d] authority and surveillance over the [private boards’] activities.” *Id.* at 399. In *Sunshine Anthra-*

*cite*, the code authorities only had the power to recommend minimum coal prices, which were cabined by a clear rule set by Congress.

In *Sunshine Anthracite*, the private entities were subject to “pervasive surveillance and authority” by the government agency, and the agency, not the private entities, made the final decisions. Similarly, USAC operates under the FCC’s authority and surveillance. The FCC maintains control over USAC and holds final decision-making authority regarding the USF and its programs. The Fifth Circuit’s conclusions otherwise were incorrect, and this Court should reverse.

#### **IV. The Fifth Circuit’s Decision Would Have Far-Reaching Harmful Consequences**

##### ***A. Termination of Universal Service Support Threatens Access to Communications Services for Millions of Americans***

The Fifth Circuit’s decision threatens vital telecommunications programs that millions of Americans rely upon daily. The Universal Service Fund supports four programs that would face disruption: the High-Cost Program, which enabled broadband deployment to 1.65 million rural locations in 2023 alone, totaling deployment to over 10.7 million locations;<sup>9</sup> the E-Rate

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<sup>9</sup> Universal Service Administrative Company, CAF Disbursements and Locations Search, <https://opendata.usac.org/stories/s/nzbc-zgrs> (last visited Jan. 14, 2025) (Filter “filing year” and tabulate total sums of “Locations Deployed in Filing Year” and “Total Location Obligation” columns to obtain specific numbers).

Program, which 90% of U.S. schools and libraries depend on for internet access,<sup>10</sup> serving nearly 49 million students;<sup>11</sup> the Rural Healthcare Program, supporting over 9,500 unique rural healthcare providers since inception;<sup>12</sup> and the Lifeline Program, ensuring affordable communications services for over 7 million low-income households per month in 2023.<sup>13</sup> The impact would be particularly severe in rural areas, where the High-Cost Program subsidizes telecommunications service where the cost per household can exceed \$2,000 annually—an amount that would make service unaffordable for most rural residents without support. The E-Rate Program has been essential for 26 years, with schools and libraries having

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<sup>10</sup> Rhea Kelly, Report: 90% of Schools Depend on E-Rate Funding Every Year, *The Journal* (Oct. 29, 2024), <https://thejournal.com/articles/2024/10/29/report-90-of-schools-depend-on-e-rate-funding-every-year.aspx>.

<sup>11</sup> NCES Data Show Public School Enrollment Held Steady Overall From Fall 2022 to Fall 2023, National Center for Education Statistics (Dec. 5, 2024), [https://nces.ed.gov/whatsnew/press\\_releases/12\\_5\\_2024.asp](https://nces.ed.gov/whatsnew/press_releases/12_5_2024.asp); Private School Enrollment, National Center for Education Statistics, <https://nces.ed.gov/programs/coe/indicator/cgc/private-school-enrollment> (May 2024).

<sup>12</sup> Universal Service Administrative Company, RHC Application Status Report, <https://opendata.usac.org/stories/s/9853-5sfz> (last visited Jan. 14, 2025) (Tabulate the total number of unique healthcare provider (or “hcp\_id”) numbers with “external status” equaling “approved for funding” to obtain specific numbers.)

<sup>13</sup> Universal Service Administrative Company, Lifeline Disbursements Tool, <https://opendata.usac.org/Lifeline/Lifeline-Disbursements-Tool/rink-mije> (last visited Jan. 14, 2025).



built their entire technological infrastructure around this support.

The termination of universal service support would create severe public safety and healthcare risks, particularly in rural and low-income communities. Rural healthcare providers depend on telecommunications subsidies for their operations,<sup>14</sup> which includes providing telemedicine services, which have become essential for managing chronic conditions<sup>15</sup> and providing emergency care in areas far from hospitals.<sup>16</sup>

The loss of Lifeline support would be especially dangerous, as it would disconnect millions of Americans, including homeless individuals, from emergency alert systems. Local, state, and federal authorities rely on these mobile connections to issue targeted evacuation orders, provide real-time emergency updates, and coordinate disaster response.<sup>17</sup> The granularity of these mobile alerts—allowing authorities to target specific neighborhoods or streets with critical safety information—cannot be replicated through traditional broadcast emergency systems. During recent natural disasters, these targeted mobile alerts have proven crucial for coordinating evacuations and emergency response.<sup>18</sup> The loss of universal service support would thus create dangerous gaps in our public

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<sup>14</sup> <https://www.fcc.gov/general/rural-health-care-program>

<sup>15</sup> HHS, Telehealth for chronic conditions, <https://telehealth.hhs.gov/providers/best-practice-guides/telehealth-for-chronic-conditions/managing-chronic-conditions-through-telehealth>.

<sup>16</sup> Christina Tsou et al., Effectiveness of Telehealth in Rural and Remote Emergency Departments: Systematic Review, 23 J. MED. INTERNET RSCH., e30632 (2021), <https://doi.org/10.2196/30632>.

<sup>17</sup> FCC, Wireless Emergency Alerts (WEA), <https://www.fcc.gov/consumers/guides/wireless-emergency-alerts-wea>.

<sup>18</sup> Andrew Lopez, *What alerts should I sign up for during L.A.'s fires?*, Boyle Heights Beat (Jan. 13, 2025),

safety infrastructure, leaving millions of vulnerable Americans without access to emergency communications precisely when they need them most.

Beyond the numbers, the disruption of universal service programs would inflict profound harms on the people who depend on them. Lacking reliable telecommunications access means being cut off from fundamental aspects of modern American life. Rural and low-income Americans could face increasing isolation from family and friends, as video calls and social media have become primary means of maintaining relationships across distances. Senior citizens would lose vital connections to children and grandchildren. These harms are difficult to quantize, but they are real, and damaging.

The professional consequences could be equally severe. Remote work opportunities—which have become essential to rural economic development—would vanish for many Americans without reliable broadband. Job seekers would lose access to online job boards and application systems that are now standard across industries. Workers would be cut off from training and skills development programs that typically require reliable internet access.

Educational opportunities would contract. Students would lose access to online educational resources, research databases, and distance learning programs that have become part to modern education. Rural schools would be unable to offer advanced

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<https://boyleheightsbeat.com/los-angeles-wildfire-alerts-cell-phone>; George Karagiannis, *Effective public warning systems: Saving lives and mitigating disaster amid a changing climate*, Prevention Web (Jun. 4 2024), <https://www.preventionweb.net/news/effective-public-warning-systems-saving-lives-and-mitigating-disaster-amid-changing-climate>.

courses that rely on remote instruction. Adult learners would be cut off from online degree programs and professional certifications that provide paths to career advancement.

Cultural participation depends on reliable and affordable telecommunications as well. Without universal service, many rural and low-income Americans would lose access to streaming services that have become primary channels for entertainment and cultural engagement. They would be cut off from participating in online communities and forums that connect people with shared interests across geographic divides. Local cultural institutions like rural libraries and community centers would lose the connectivity that allows them to offer digital programs and resources to their communities.

The loss of universal service support would also undermine democratic participation and civic engagement in affected communities. The internet has become the primary source of information about elections, candidates, and policy issues. Voters research ballot measures, watch candidate debates, and engage with campaign materials through online platforms. News about community issues and public services is shared through municipal websites and social media. Without reliable telecommunications access, rural Americans would lose these channels for civic engagement. The loss of broadband access would make it harder to file public comments on proposed regulations, participate in online town halls, or engage with elected officials through digital constituent

services platforms. In short, universal service is necessary for a properly functioning democracy.

***B. Termination of Universal Service Support Would Have Far-Reaching Negative Effects on the National Economy***

The Fifth Circuit’s ruling threatens not just the immediate beneficiaries of universal service support, but would inflict broader damage across the American economy. As this Court has recognized, reliance interests are “at their acme in cases involving property and contract rights.” *Payne v. Tennessee*, 501 U.S. 808, 828 (1991). The universal service framework has fostered extensive private investment and economic development that would be imperiled by the invalidation of Section 254. The impact would be particularly severe in rural America, where providers have made infrastructure investments based on the reasonable expectation of continued universal service support. A recent survey revealed that 67% of rural carriers have outstanding debt for broadband network deployments. Without USF support, 61% of those providers indicated they would likely default on these loans within three years. Pet. Br. 53. Such defaults would not only harm local economies but would have ripple effects throughout the financial system and chill future infrastructure investment nationwide.

Beyond direct telecommunications investment, USF enables broader economic activity by supporting the network effects that make modern commerce possible. As the FCC has explained, universal service provides value to “all consumers, not just low-income consumers, [through] the network effects of widespread voice and broadband subscribership.” *Lifeline & Link Up Reform & Modernization, Report and Order and Further Notice of Proposed Rulemaking*, 27

FCC Rcd. 6656, 6665 (2012). When more Americans can access communications services, it increases the value and economic potential of the network for everyone.

The economic consequences extend far beyond rural areas. Urban businesses rely on being able to serve and communicate with customers nationwide. Healthcare providers depend on reliable telecommunications to deliver telemedicine services. Educational institutions require connectivity to offer distance learning opportunities. A disruption of universal service support would thus impair economic activity and growth across every sector of the economy.

***C. The Fifth Circuit's Ruling  
Threatens Numerous Government  
Activities***

The Fifth Circuit's novel “combination theory” creates troubling uncertainty that extends beyond universal service programs. Its reasoning raises questions about the constitutional status of numerous administrative structures where agencies work with private entities under government oversight. The scope and implications of the court’s theory—that two independently constitutional delegations might combine to create an unconstitutional result—remain unclear. This ambiguity leaves regulated entities, agencies, and courts without clear guidance on how to evaluate similar arrangements, potentially casting a shadow over long-established administrative frameworks that have functioned effectively for decades under careful government supervision.

Consider Medicare and Medicaid administration. Like USAC, private Medicare Administrative Contractors (MACs) process claims and make payments according to formulas and rules established by the Centers for Medicare & Medicaid Services (CMS).

These contractors handle over 1.1 billion Medicare claims annually, processing more than \$430 billion in payments.<sup>19</sup> Under the Fifth Circuit’s logic, this entire structure could be constitutionally suspect as an improper delegation from Congress to CMS to private contractors, despite the contractors performing purely administrative functions under comprehensive federal oversight—just like USAC.

The Department of Education’s federal student loan servicing system faces similar risks. Congress authorized the Department to administer student loan programs; the Department contracts with private loan servicers to collect payments and manage borrower accounts according to detailed federal guidelines. These servicers handle over \$1.6 trillion in federal student loans.<sup>20</sup> Yet the Fifth Circuit’s theory might suggest this arrangement improperly combines Congressional delegation to the Department with the Department’s delegation to private servicers, despite the Department maintaining ultimate control and oversight.

Federal banking regulation could also be imperiled. The Federal Reserve System operates through private member banks that implement monetary policy and follow Federal Reserve rules and guidelines.<sup>21</sup>

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<sup>19</sup> Centers for Medicare & Medicaid Services, <https://www.cms.gov/medicare/coding-billing/medicare-administrative-contractors-macs/whats-mac>.

<sup>20</sup> Federal Student Aid, Federal Student Aid Posts New Quarterly Reports to FSA Data Center, Federal Student Aid Posts New Quarterly Reports to FSA Data Center, <https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2023-08-30/federal-student-aid-posts-new-quarterly-reports-fsa-data-center>.

<sup>21</sup> Investopedia, Federal Reserve System: What It Is and How It Works, <https://www.investopedia.com/terms/f/federalreservebank.asp>.

This structure, which has underpinned U.S. monetary policy for over a century, could be questioned as an improper delegation from Congress to the Federal Reserve to private banks, even though the Federal Reserve maintains strict oversight of member bank activities.

Similar questions may arise for programs where agencies rely on private entities for oversight functions. The Environmental Protection Agency works with private laboratories and monitoring stations to collect environmental data.<sup>22</sup> The FDA and USDA collaborate with private certification bodies for food safety inspections.<sup>23</sup> In each case, private entities perform administrative functions according to detailed agency specifications while remaining under agency supervision—just like USAC’s relationship with the FCC.

The common theme in these arrangements is that Congress delegates authority to an agency, which then works with private entities in a purely administrative capacity, with those entities following agency rules and formulas while remaining under agency oversight and control. This structure has proven both efficient and effective, allowing agencies to leverage private sector capabilities while maintaining government control over policy decisions. The Fifth Circuit’s ruling threatens to disrupt these long-standing arrangements by suggesting that two independently

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<sup>22</sup> Environmental Protection Agency, Superfund Contract Laboratory Program, <https://www.epa.gov/clp>.

<sup>23</sup> U.S. Food and Drug Administration, FSMA Final Rule on Accredited Third-Party Certification, <https://www.fda.gov/food/food-safety-modernization-act-fsma/fsma-final-rule-accredited-third-party-certification>; U.S. Department of Agriculture, Food Safety Agencies & Partners, <https://www.fsis.usda.gov/about-fsis/food-safety-agency-partners>.

constitutional delegations somehow become unconstitutional when combined.

This Court has never endorsed such a theory, and with good reason. Federal agencies often lack the internal capacity to directly perform all administrative functions. Forcing everything in-house would massively increase costs while reducing efficiency. Moreover, many federal programs benefit from private sector expertise and established infrastructure while maintaining appropriate government oversight—the same balance struck by the USF program.

The practical consequences of affirming the Fifth Circuit’s theory may therefore extend far beyond universal service programs. This potential sweeping disruption of established administrative practices is neither required by the Constitution nor consistent with this Court’s precedents.

The Fifth Circuit’s ruling reflects neither constitutional necessity nor sound policy. Instead, it threatens to undermine numerous effective federal programs that responsibly balance public oversight with private sector capabilities. This Court should reject the Fifth Circuit’s novel “combination theory” and reaffirm that



agencies may work with private entities in administrative roles while maintaining appropriate government control.

**CONCLUSION**

For the above reasons, the Court should reverse the Fifth Circuit.

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