Nos. 24-354 and 24-422

IN THE

Supreme Court of the United States

FEDERAL COMMUNICATIONS COMMISSION, *et al.*,
Petitioners,
v.
CONSUMERS' RESEARCH, *et al.*,
Respondents.

SCHOOLS, HEALTH & LIBRARIES BROADBAND COALITION, *et al.*,
Petitioners,
v.
CONSUMERS' RESEARCH, *et al.*,
Respondents.

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

BRIEF OF *AMICI CURIAE* THE NATIONAL LIFELINE ASSOCIATION, AARP, AND AARP FOUNDATION IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICI CURIAE*[1]

The National Lifeline Association (NaLA) is the leading nonprofit organization dedicated to preserving and protecting the integrity of the Lifeline Program (Lifeline or Program), a federal initiative administered by the Federal Communications Commission (FCC) that provides discounted broadband internet and voice services to eligible low-income consumers. NaLA supports the primary stakeholders in the Lifeline Program through education, cooperation, and advocacy on issues involving Lifeline. Many of NaLA's members are small, entrepreneurial businesses that participate in Lifeline and serve low-income consumers who are difficult to reach and costly to serve.

Because Lifeline is funded through the Universal Service Fund (USF) and administered by the Universal Service Administrative Company (USAC), NaLA and its members have a strong interest in this case, as invalidating USF funding would shutter the Lifeline Program. NaLA's members, particularly the small, entrepreneurial businesses that serve low-income consumers, would suffer greatly if Lifeline is discontinued by a holding that finds an unconstitutional delegation of legislative authority. Not only would some NaLA members be forced to close, the low-income consumers they serve would no longer have affordable access to essential communication services through Lifeline.

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[1] No counsel for any party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. In addition, no person or entity, other than the *amici curiae* or its counsel, made a monetary contribution to the preparation and submission of this brief.

AARP is the nation's largest nonprofit, nonpartisan organization dedicated to empowering Americans 50 and older to choose how they live as they age. With a nationwide presence, AARP strengthens communities and advocates for what matters to the more than 100 million Americans 50-plus and their families: health and financial security, and personal fulfillment. AARP's charitable affiliate, AARP Foundation, works for and with vulnerable people over 50 to end senior poverty and reduce financial hardship by building economic opportunity.

AARP and AARP Foundation are deeply committed to increasing access to affordable and high-quality broadband services and expanding digital equity for older Americans and their families. As such, they have long advocated on behalf of the millions of consumers, including older adults, disabled people, veterans, and military families, who depend on affordable telephone and broadband services for essential communication and internet access.

Amici submit this brief to address the FCC's and USAC's respective roles in administering Lifeline, as well as to highlight the detrimental impact that the Fifth Circuit's decision, if not corrected, would have on low-income and older consumers, the businesses that serve them, public safety, and the economy.

SUMMARY OF THE ARGUMENT

The FCC, not USAC, retains complete authority over Lifeline, and the Fifth Circuit erred by concluding otherwise. In support of this argument, *amici* focus narrowly on Lifeline's history, regulatory structure, and operations, each of which supports a conclusion that a private delegation has not occurred. *Amici* also write to emphasize the detrimental impacts that the

Fifth Circuit's decision, if left uncorrected, would have on low-income and older Americans, including on their ability to access healthcare and fully participate in society and preserve their well-being, work and learn, engage in e-commerce, and access public safety and other government services and benefits, each of which has a positive impact on the economy.

1. Lifeline's history demonstrates the FCC's primacy. Through the Communications Act of 1934 and the Telecommunications Act of 1996, Congress envisioned universal service for all Americans, regardless of income, and charged the FCC with accomplishing that goal with the conferral of broad authority. To ensure that low-income Americans have access to essential communication services, the FCC created the USF, which funds Lifeline. Lifeline is a federal program that provides direct benefits to low-income consumers with discounts on essential broadband internet and voice services.

The FCC also created USAC to assist with the practical administration of the USF, including Lifeline. USAC, however, was not afforded any delegated authority to make policy or interpret federal law. Indeed, the FCC has always required that if USAC was uncertain about the meaning or application of a federal statute or regulation issued by the FCC, USAC must seek guidance from the FCC rather than engage in any interpretative task.

What was true then is true now. Recent history demonstrates the FCC's continued authority over Lifeline—and USAC. In 2012, 2016, and 2024, for example, the FCC issued orders that reformed aspects of Lifeline. In the 2012 and 2016 orders, the FCC directed USAC to create, respectively, the National Lifeline Accountability Database and National Verifier to safeguard Lifeline against waste, fraud, and abuse. The FCC required USAC to use specific parameters for developing the databases and retained oversight over their creation. In the 2024 order, the FCC ordered USAC to allow victims of Hurricane Milton and other environmental catastrophes to enroll in Lifeline, subject to certain conditions. In these and other instances, the FCC, not USAC, led changes to Lifeline, and USAC followed the FCC's explicit instructions to implement those changes.

2. Lifeline's operations and administration show the FCC's primacy. FCC regulations, orders, and memoranda confirm that USAC serves in a ministerial role. For example, when USAC applies the FCC's rules and guidance while conducting integrity audits for the Program, the FCC's regulations permit parties to appeal those decisions to the FCC, and the FCC can then overturn USAC. Moreover, the Memorandum of Understanding executed between the FCC and USAC explicitly requires USAC to subject itself to the FCC's regulations, orders, and memoranda of understanding. At bottom, USAC is not a free-ranging and unaccountable actor that has taken over Lifeline, as the Fifth Circuit would have it. Instead, it only acts pursuant to the FCC's instructions and within the bounds of the FCC's regulations.

For the last several years, Lifeline has operated well below its FCC prescribed annual budgets. Those budgets were set and approved by the FCC and not USAC. Further, when determining the contribution factor for universal service, the FCC, and not USAC, calculates and approves the contribution factor. Those funds are then held in the U.S. Treasury and not with USAC. USAC's narrow administrative role recently was vetted in a 2024 report issued by the Government Accountability

Office (GAO) that the Fifth Circuit neglected to consider. That report found USAC acted pursuant to the FCC's directions and managed its internal processes in accordance with the FCC's guidelines.

3. If not corrected, the Fifth Circuit's invalidation of the USF, which also ends the Lifeline Program, would have profound, detrimental consequences on low-income and older Americans. Lifeline provides many within these groups with the ability to afford essential communication services. Without Lifeline, millions who rely on the internet for healthcare, work, education, goods and services, and other needs would lose access to these vital services. Further, were Lifeline discontinued, social isolation among older Americans would worsen, and lower income and older Americans would even lose access to 911, leading to a reduced quality of life, health, and safety. In turn, Lifeline's end would reduce economic output when low-income and older Americans cannot fully participate in society, which will cause costs to rise across the economy and small businesses that cater to these Americans to close. Reversing the Fifth Circuit's decision will avoid these harmful effects, allowing the FCC to fulfill Congress's mandate of achieving universal service for all Americans.

ARGUMENT

I. Lifeline's history demonstrates that the FCC exercises complete control over USAC.

A. The FCC created USAC to administer Lifeline and other USF programs at the FCC's exclusive direction.

The FCC's mandate to ensure affordable access to essential communication services for all Americans dates back to the agency's origin. Since 1934, the FCC has pursued Congress's goal of universal service for all

Americans. See 47 U.S.C. § 151. In the Communications Act of 1934 (1934 Act), Congress sought to "make available, so far as possible, to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communications service with adequate facilities at reasonable charges." *Id*. Congress created the FCC to "execute and enforce" the provisions of the 1934 Act, which thus required the FCC to make available and deliver wire and radio communications to all Americans at "reasonable charges." *Id.* This Court has previously interpreted the 1934 Act as conveying "broad authority" on the FCC. *United States* v. *Sw. Cable Co.*, 392 U.S. 157, 168 (1968).

Consistent with its "broad authority" to make wire and radio communications available at reasonable rates under the 1934 Act and the 1996 Act's specific universal service mandates, the FCC, for decades, has ensured the availability of affordable communication services for under-resourced Americans through regulations. The FCC's directives were in full accord with its obligation in the 1934 Act to ensure that "[a]ll charges, practices, classifications, and regulations" pertaining to communication services are "just and reasonable." 47 U.S.C. § 201(b). In 1985, after the divesture of AT&T, the FCC required telecommunications carriers to offer discounted services to qualifying low-income consumers. See *Nat'l Lifeline Ass'n* v. *Fed. Commc'ns Comm'n,* 921 F.3d 1102, 1106 (D.C. Cir. 2019). This became the first low-income support program and the predecessor to today's modern Lifeline Program. See *id.* To ensure affordable access to essential communication services, the FCC provided reimbursements to certain communication service providers for waiving certain charges for low-income subscribers. See *MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment* *of a Joint Board*, CC Docket Nos. 78-72, 80-286, 50 Fed. Reg. 939, 942, ¶11 (rel. Dec. 28, 1984).

After the Lifeline prototype's creation, Congress reiterated its commitment to universal service for all Americans, regardless of income, in the Telecommunications Act of 1996 (1996 Act). 47 U.S.C. § 254. The 1996 Act charged the FCC with ensuring that "low-income consumers . . . have access to telecommunications and information services" that are "available at just, reasonable, and affordable rates." *Id.* § 254(b)(1), (3).

To that end, the FCC created Lifeline. Lifeline exists to advance section 254 of the 1996 Act by "ensur[ing] that all people of the United States have access to telecommunications services at affordable rates." *In the Matter of Lifeline and Link Up Reform and Modernization*, WC Docket Nos. 11-42, 09-197, 10-90, FCC 16-38, 31 FCC Rcd. 3962, 3975, ¶45 (rel. Apr. 27, 2016) (*2016 Lifeline Modernization Order*). Lifeline currently provides eligible low-income consumers with a $9.25 discount on Lifeline supported broadband internet access or bundled voice and broadband services. Fed. Commc'ns Comm'n, *Lifeline Support for Affordable Communities* (updated Oct. 29, 2024), https://perma.cc/WF2S-WU86 (captured Dec. 26, 2024). A $5.25 discount is available for low-income consumers who select plans with only voice services. *Id.* Those who reside on Tribal lands can receive up to a $34.25 monthly discount. *Id.* Congress provided express directives to the FCC for achieving universal service, which, in turn, led to the creation of Lifeline and its benefits, as well as USAC's limited administration thereof.

In addition to mandating just, reasonable, and affordable rates for low-income consumers, the 1996 Act established criteria on which the FCC must "base policies for the preservation and advancement of universal service." 47 U.S.C. § 254(b). Set forth in section 254, the FCC must employ the following criteria: (1) quality services at just, reasonable, and affordable rates; (2) access to advanced telecommunications and information services in all parts of the United States; (3) access to telecommunications and information services for consumers in rural, insular, and high cost areas that are "reasonably comparable" to services and rates in urban areas; (4) equitable and nondiscriminatory contributions from telecommunications providers for universal service; (5) specific and predictable mechanisms from the federal and state governments; (6) access to advanced telecommunications services for schools, healthcare providers, and libraries; and (7) other principles that the FCC deems "necessary and appropriate" to protect the public interest, convenience, necessity, and are consistent with the 1996 Act. *Id*. § 254(b)(1)–(7).

Applying section 254 of the 1996 Act, the FCC created the USF in 1997 to promote universal service and the modern Lifeline Program, specifically, to comply with Congress's directive of providing low-income consumers with affordable access to communication services. See *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 97-157, 12 FCC Rcd. 8876, 8780–88, ¶¶1–20 (rel. May 8, 1997) (*USF Order*). When announcing the USF, the FCC expanded Lifeline to "all states, territories, and commonwealths of the United States" and increased the Program's financial support. *USF Order*, 12 FCC Rcd. 8876, 8793, ¶27. The FCC concluded that these changes "comporte[d] with . . . universal service principles and the 1996 Act's renewed concern for low-income consumers," particularly under sections 254(b)(1) and (3). *Id.*

Around this same time, the FCC also created USAC to temporarily administer Lifeline with funds from the USF. See *In the Matters of: Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21, 96-45, FCC 97-253, 12 FCC Rcd. 18400, 18415, ¶25 (rel. July 18, 1997). By 1998, the FCC designated USAC to serve as the permanent entity "responsible for administering all of the universal service support mechanisms," including Lifeline. See *In the Matters of: Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21, 96-45, FCC 98-306, 13 FCC Rcd. 25058, 25059, ¶2 (rel. Nov. 20, 1998). Subject to the FCC's oversight, USAC would continue its "billing, collection, disbursement, and certain additional common functions for all of the support mechanisms" associated with the USF. *Id.*

The FCC's creation of USAC to administer Lifeline coincided with the participation of all fifty states in the Program. To achieve the nationwide goal of universal service, Congress expressly envisioned a role for the states. See 47 U.S.C. § 254(f). Lifeline depends upon state and FCC-designated eligible telecommunications carriers (ETCs) to provide services to subscribers qualifying as eligible "low-income consumer[s]."[2] *Id.* § 214(e)(1). When the states cannot or do not act, the FCC determines which service providers can participate in Lifeline by designating ETCs. *Id.* § 214(e)(2)(6); 47 C.F.R. § 54.702(b). ETCs are never, and have never been, designated by USAC under the

[2] To qualify for Lifeline, an eligible consumer must be a "low-income consumer" who meets certain eligibility criteria exclusively set by the FCC. See 47 C.F.R. § 54.409(a).

1996 Act or the FCC's regulations because USAC is only permitted to bill, collect, and disburse contributions to the ETCs and administer the programs associated with the USF. See 47 C.F.R. § 54.702(b).

Pursuant to the FCC's regulations, USAC administers Lifeline under the FCC's oversight and is required to do so "in an efficient, effective, and competitively neutral manner." *Id*. § 54.701(a). USAC, in turn, is given responsibility only for administering initiatives related to the USF, including Lifeline, and nothing more. *Id*. § 54.702(a) (stating USAC is only responsible for administering Lifeline and other related USF projects). In this "relatively narrow" role, *Nat'l Lifeline Ass'n* v. *Fed. Commc'ns Comm'n*, 983 F.3d 498, 503 (D.C. Cir. 2020), USAC is given no independent authority or autonomous power from the FCC.

The FCC's regulations addressing USAC's limitations are not cited in the Fifth Circuit's novel holding about a private delegation occurring between the FCC and USAC. See *Consumers' Rsch.* v. *Fed. Commc'ns Comm'n*, 109 F.4th 743, 767–77 (5th Cir. 2024). This alone mandates reversal. The Court's precedents require a private delegation inquiry to begin with the pertinent regulations that are the source of the delegation, which is crucial to determining "[t]he power conferred" upon the private person. See *Carter* v. *Carter Coal Co.*, 298 U.S. 238, 310–11 (1936).

Ignored by the Fifth Circuit, 47 C.F.R. § 54.702(c) states that USAC "may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress." It further provides that "[w]here the Act or the Commission's rules are unclear, or do not address a particular situation," USAC "shall seek guidance from the Commission." 47 C.F.R. § 54.702(c). Further, 47 C.F.R. § 54.702(d) explains how USAC "may advocate positions before the Commission and its staff only on administrative matters relating to the universal service support mechanisms." These regulations retain the FCC's authority and delineate only a "narrow" administrative role for USAC, *Nat'l Lifeline Ass'n*, 983 F.3d at 503.

B. Lifeline's recent history shows the FCC exercising its regulatory authority and compelling USAC to act pursuant to FCC direction.

The historical backdrop of Lifeline shows a hierarchical relationship between Congress, the FCC, USAC, and the states for achieving universal service. That hierarchy, which subordinates USAC to the FCC, holds true to this day. In recent times, the FCC repeatedly has issued orders and rules compelling USAC to act at its exclusive direction by administering Lifeline and implementing the FCC's mandates to reform and refine the Program.

Lifeline's modern era began in the mid-2000s with the designation of wireless service resellers as ETCs[3] partly in response to Hurricane Katrina,[4] followed by

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[3] See *Federal-State Joint Board on Universal Service, Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, FCC 05-165, 20 FCC Rcd. 15095, 15097–98, ¶¶3–6 (rel. Sept. 8, 2005) (permitting TracFone to become an ETC for Lifeline and granting forbearance from the statute's facilities requirement).

[4] The FCC adopted "modifications to the low-income program rules to improve the effectiveness of the low-income support mechanism at meeting the needs of victims of Hurricane Katrina." *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 05-178, 20 FCC Rcd. 16883, 16887–88, ¶8 (rel. Oct. 14, 2005).

rapid growth in Lifeline's participation rate in 2010 through 2011, and, most importantly, subsequent administrative orders issued by the FCC reforming Lifeline and protecting it from waste, fraud, and abuse. Holding true to the 1996 Act and regulations constraining USAC's duties, Lifeline's modern history shows with each change to the Program the FCC's repeated instructions to USAC to perform certain tasks pursuant to the FCC's, and not USAC's, regulatory authority.

In 2012, to combat waste, fraud, and abuse, the FCC ordered USAC to create the National Lifeline Accountability Database (NLAD) to screen for duplicative enrollments in Lifeline, as well as to perform other functions such as identity and address verification. See *In the Matter Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, FCC 12-1, 27 FCC Rcd. 6656, 6660, 6734–35, ¶¶4, 179–82 (rel. Feb. 6, 2012) (*2012 Lifeline Reform Order*). The FCC was clear that it "direct[ed] USAC, in coordination with the Bureau and the agency's Office of the Managing Director (OMD), to take all necessary steps to develop and implement, as quickly as possible, a database and associated processes capable of performing the functions outlined in this section of the Order consistent with [its] rules." *2012 Lifeline Reform Order*, 27 FCC Rcd. at 6736–37, ¶186. USAC did not create and implement the NLAD of its own volition but rather did so at the direction and under the supervision of the FCC. *Id.*; see also *2012 Lifeline Reform Order*, 27 FCC Rcd. at 6747, ¶210.

The next major change to Lifeline came in 2016. See *2016 Lifeline Modernization Order*, 31 FCC Rcd. at 3964, ¶6. In its *2016 Lifeline Modernization Order*, the FCC extended Lifeline discounts to fixed and mobile broadband services, recognizing changes in the communications marketplace. *Id.* The FCC, and not USAC, (1) "allow[ed] support for robust, standalone fixed and mobile broadband services to ensure meaningful levels of connectivity and . . . continue[d] to support bundled voice and broadband services," (2) "establish[ed] minimum service standards for broadband and mobile voice services to ensure those services meet the needs of consumers, and . . . allow[ed] an exception in areas where fixed broadband providers do not meet the minimum standards," and (3) "implement[ed] a five and one-half year transition, during which [the FCC would] gradually increase mobile voice and data requirements and gradually decrease voice support levels." *Id.*

Additionally, the FCC continued its efforts to curb waste, fraud, and abuse by ordering USAC to implement the National Verifier, which verifies eligibility for all Lifeline applicants and takes over that responsibility from the ETCs. *2016 Lifeline Modernization Order*, 31 FCC Rcd. at 4006, ¶¶126–27. Thus, contrary to the Fifth Circuit's view that the FCC "abdicated responsibility for ensuring [Lifeline] compliance to the very entities whose universal service demand projections dictate the size of the contribution amount," *Consumers' Rsch.*, 109 F.4th at 772, USAC carried out the FCC's *2016 Modernization Order* mandate by developing the National Verifier to assume the eligibility verification function from ETCs. Universal Serv. Admin. Co., *Launches*, https://perma.cc/T2B8-PYZR (captured Dec. 25, 2024).

Most recently, in October 2024, the FCC issued an order temporarily waiving certain Lifeline eligibility requirements to enable households to participate in Lifeline based on impacts caused by Hurricane Milton and other hurricanes, typhoons, tropical storms, or tropical cyclones. See *In the Matter of Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, FCC 24-108, ¶5, 2024 WL 4482417, at *3 (rel. Oct. 11, 2024) (*2024 Hurricane Order*). Because Hurricane Milton and other extraordinary climactic events impacted so many Americans, the FCC ordered USAC to allow "impacted consumers to enroll in the Lifeline program through their participation in [the Federal Emergency Management Agency's Individuals and Households Program]." *Id.* at ¶9, 2024 WL 4482417, at *8. The FCC instructed USAC to ensure that its systems would allow such households to participate in Lifeline for up to twelve months. *Id.* Mirroring the FCC's previous orders, the *2024 Hurricane Order* compelled USAC to act at the FCC's direction.

In sum, the FCC regulated changes to Lifeline and directed USAC to create the NLAD and National Verifier as guardrails against waste, fraud, and abuse, and it also required USAC to permit those impacted by devastating storms to enroll in Lifeline. *2012 Lifeline Reform Order*, 27 FCC Rcd. at 6736–37, ¶186; *2016 Lifeline Modernization Order*, 31 FCC Rcd. at 4006, ¶¶126–27; *2024 Hurricane Order*, ¶9, 2024 WL 4482417, at *8. In response, with management by the FCC's Wireline Competition Bureau or coordination with OMD, USAC followed the FCC's directives by implementing various databases to administer Lifeline and by providing those impacted by catastrophic storms with the opportunity to obtain Lifeline benefits. *2012 Lifeline Reform Order*, 27 FCC Rcd. at 6736–37, ¶186; *2016 Lifeline Modernization Order*, 31 FCC Rcd. at 4120, ¶433; *2024 Hurricane Order*, ¶9, 2024 WL 4482417, at *8.

II. Lifeline's operations and administration show that USAC performs an administrative and ministerial role for the FCC and is subject to FCC regulations, orders, and memoranda of understanding.

A. Under FCC regulations and memoranda of understanding, USAC is subordinate to the FCC and is an arm of the federal government.

Even as the services supported by Lifeline and the Program's safeguards have evolved, USAC's limited administration of Lifeline remains the same—ministerial and subordinate to the FCC. See *Conf. Grp., LLC* v. *Fed. Commc'ns Comm'n*, 720 F.3d 957, 960 (D.C. Cir. 2013) ("[USAC] has no policy or interpretative role." (citation omitted)). The FCC designated USAC as the entity responsible for collecting contributions and disbursing support for Lifeline, analyzing data to inform the FCC about Lifeline trends, and promoting Lifeline participation. See 47 C.F.R. § 54.702.

Pursuant to the most recent Memorandum of Understanding between the FCC and USAC, which the Fifth Circuit's decision does not reference, the FCC reaffirmed that it is responsible for the "effective and efficient management, administration, and oversight of the USF and the USF programs, including policy decisions, rules, and regulations." Fed. Commc'ns Comm'n, *Memorandum of Understanding Between the Federal Communications Commission and the Universal Service Administrative Company* 1 (2024), https://perma.cc/4BUE-HNET. USAC's "sole purpose is to assist the FCC in the administration of the USF programs (and such other programs as agreed upon and directed by the FCC), as an agent and instrumentality of the

FCC." *Id.* at 2. USAC has "no corporate purpose" independent from the FCC's regulations and no independent profit motive. *Id.* Subject to the FCC's oversight, USAC is responsible for the "efficient, effective, and completely neutral management of the USF programs." *Id.* As such, USAC remains subject to the FCC's regulations, orders, and memoranda of understanding when ensuring the effective management and execution of Lifeline. *Id.* The Memorandum of Understanding between USAC and the FCC "does not in any way limit the Commission's authority over the USF, the USF programs, or USAC," instead it merely outlines the relationship between the FCC and USAC for Lifeline administration. *Id.*

The FCC and USAC's Memorandum of Understanding complements the FCC's existing regulations detailing how USAC "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). Whenever a situation arises where the 1934 Act, 1996 Act, or the FCC's rules are unclear or do not address a problem, USAC "shall seek guidance" from the FCC, and it may not act independently of FCC oversight. *Id.* Moreover, USAC cannot advocate for any positions that are unrelated to universal service administration. *Id.* § 54.702(d).

The limited scope of USAC's authority is shown just as clearly by what it *can* do as what it *can't* do. USAC is permitted to (1) make limited decisions in the context of provider audits, which ensure program integrity, and (2) "advise the Commission on any enforcement issues that arise and provide any suggested response." See 47 C.F.R. §§ 54.702(n), .707(a), .713(a). However, any decision concerning a program integrity audit is not a final agency action because parties can appeal USAC's decision to the FCC, and the FCC can overturn USAC's finding. See 47 C.F.R. § 54.719(b) ("Any party aggrieved by an action taken by the Administrator, after seeking review from the Administrator, may . . . seek review from the Federal Communications Commission."). When an appeal from USAC occurs, the review of USAC's decision is "considered and acted upon" by the FCC's Wireline Competition Bureau, with the full Commission retaining authority over "requests for review that raise novel questions of fact, law or policy." *Id*. § 54.722(a).

Those are not indicia of an impermissible delegation. To have a private delegation, there must be a private party in both substance and form. See *Sunshine Anthracite Coal Co.* v. *Adkins*, 310 U.S. 381, 399 (1940) (declining to find a private delegation when industry members "function[ed] subordinately to the Commission," "[the Commission] . . . determine[d] the prices," and "[the Commission] ha[d] authority and surveillance over the activities"). Those factors simply aren't present here. In a different (but still illuminating) context, the Washington Supreme Court recently applied the Court's tax immunity precedents, rightly holding USAC is nothing more than "an arm of the federal government and . . . therefore tax immune." See *Assurance Wireless USA, LP* v. *Dep't of Revenue*, 544 P.3d 471, 486 (Wash. 2024). In so concluding, the Washington Supreme Court reasoned that USAC is a "'captive corporation' of the FCC," possesses "no corporate purposes other than as defined by FCC regulations," and does not "have any independent profit motive." *Id.* at 483. USAC's mission is to "solely carry out the FCC's mission of advancing universal service, which includes the Lifeline program," and the FCC's "regulatory control over USAC's operations, leadership composition, and finances have produced an entity so closely related to the FCC." *Id.* at 485.

For Lifeline, the FCC retains its authority over USAC through its regulations, including an appeal mechanism, and the Memorandum of Understanding. These sources underscore USAC's subordinate role to the FCC and how USAC is the FCC's agent, in a ministerial capacity, for administrative tasks. See *Consumers' Rsch.* v. *Fed. Commc'ns Comm'n*, 88 F.4th 917, 925 (11th Cir. 2023) ("[T]here is no violation of the private nondelegation doctrine where the private entity functions subordinate to an agency, and the agency has authority and surveillance over the entity." (citations omitted)).

B. Recent FCC orders and a report from the Government Accountability Office confirm that USAC is not independent from the FCC.

Viewing USAC's role through the lens of the FCC's various orders and a 2024 GAO report shows that USAC has not operated as an independent entity that is free from the FCC's oversight, especially for Lifeline. Despite these sources, and others, pointing against a private delegation, none were considered or referenced in the Fifth Circuit's private delegation analysis. See *Consumers' Rsch.*, 109 F.4th at 767–77.

The amount of money that is needed to cover disbursements for the USF's programs, including Lifeline, is set for each program by the FCC. Each year, the FCC sets the budget for Lifeline by applying the calculations set out in the *2016 Lifeline Modernization Order*, and the FCC remains in complete control of determining low-income consumers' eligibility for Lifeline. For instance, on July 29, 2022, the FCC set a budget for Lifeline of $2,572,862,300 for the 2023 calendar year. See Public Notice, Wireline Competition Bureau Announces Updated Lifeline Minimum Service Standards and Indexed Budget Amount, WC Docket No. 11-42, DA 22-800 (rel. July 29, 2022). Similarly, on July 30, 2024, the FCC set Lifeline's budget at $2,778,691,284 for the 2024 calendar year and announced $2,892,617,627 as the budget for the 2025 calendar year. See Public Notice, Wireline Competition Bureau Announces Updated Lifeline Minimum Service Standards and Indexed Budget Amount, WC Docket No. 11-42, DA 24-740 (rel. July 30, 2024).

For the past few years, Lifeline has operated below its FCC-set budgets. The budget for the 2023 calendar year for Lifeline was $2,572,862,300, but Lifeline spending was only $869,882,875 in 2023, meaning that Lifeline spent less than 34% of its budget approved by the FCC. Universal Serv. Admin. Co., *Lifeline Disbursements Tool*, https://perma.cc/Q67G-NYL6 (captured Dec. 26, 2024). The budget for the 2024 calendar year was $2,778,691,284, but spending was only $942,964,781, meaning that the Program again spent less than 34% of its approved FCC budget. *Id.* While these figures indicate that the FCC has the ability and opportunity to do more to ensure affordable access for low-income Americans through Lifeline, they do not support a finding that USAC wields government power from a private delegation.

Under the 1996 Act and the FCC's regulations, interstate providers of telecommunications must contribute to the USF, which funds Lifeline. 47 U.S.C. § 254(d); 47 C.F.R. § 54.706(a). When determining providers' contributions, the FCC calculates the quarterly contribution factor, not USAC or private companies. The FCC directs USAC to project (1) demand and administrative expenses for USF programs, and (2) the total contribution base using reports filed by service providers. See 47 C.F.R. § 54.709(a)(3). After receiving those projections, the FCC's OMD then calculates the contribution factor, which is issued by public notice and subsequently adopted if the FCC takes no action within 14 days of release. *Id.*; see also Public Notice, Proposed First Quarter 2025 Universal Service Contribution Factor, CC Docket No. 96-45, DA 24-1245 (rel. Dec. 12, 2024); Public Notice, Proposed First Quarter 2022 Universal Service Contribution Factor, CC Docket No. 96-45, DA 21-1550 (rel. Dec. 13, 2021).

The contribution factor has not risen in recent years due to the Lifeline Program's expenditures (which have been suppressed for over a decade), it has instead risen because of a shrinking contribution base upon which the FCC chooses to assess fees. See Thomas M. Johnson Jr., American Enterprise Institute, *The Future of Universal Service* 2 (2022), https://perma.cc/5NTX-S5LR; Letter from Federal Communications Chairwoman Jessica Rosenworcel to United States Senator Ben Ray Luján of New Mexico (Jan. 12, 2024), https://perma.cc/N8GS-URGC. Regardless, all funds collected by USAC are held in the U.S. Treasury and not with USAC. See Fed. Commc'ns Comm'n, *Memorandum of Understanding Between the Federal Communications Commission and the Universal Service Administrative Company* at 3.

USAC's subservient and ministerial role, and its compliance with the FCC's regulations, was confirmed by the GAO in a 2024 report. See Gov't Accountability Office, *Administration of Universal Service Programs is Consistent with Selected FCC Requirements* (July 2024), https://perma.cc/DB29-68C8 (2024 GAO Report).

The Fifth Circuit ignored the 2024 report in favor of outdated 2010 and 2017 reports issued by the GAO about the Lifeline Program. See *Consumers' Rsch.*, 109 F.4th at 750–52. Notably, the 2010 report preceded the FCC's *2012 Lifeline Reform Order* and the *2016 Lifeline Modernization Order* and did not, therefore, consider the impact of those significant reforms to the Program by the FCC. Moreover, the 2010 and 2017 reports both showed GAO analyzing FCC policies managing Lifeline, making recommendations to the FCC, and the FCC's progress in implementing those recommendations. See Gov't Accountability Office, *Additional Action Needed to Address Significant Risks in the FCC's Lifeline Program* (May 2017), https://perma.cc/F7WD-GLQZ; Gov't Accountability Office, *Improved Management Can Enhance FCC Decision Making for USF Low-Income Program* (Nov. 2010), https://perma.cc/5EH8-ZUTT.

The 2024 GAO Report indicates that the FCC provided clear direction for USAC to establish goals, USAC submitted its 18-month plans to the FCC and incorporated the FCC's feedback, and USAC managed its budget and processes in accordance with the FCC's regulations and requirements. See 2024 GAO Report. Nothing in the 2024 report is suggestive of a private delegation that runs afoul of the Constitution. See *id.* Rather, it shows that USAC follows the FCC's requirements and performs what the FCC commands. See *id.*

Throughout, USAC serves in a subservient role and ministerial capacity for the FCC with no ability to make rules or issue independent guidance on regulatory matters. Moreover, the FCC's historical interactions with USAC and the 2024 GAO Report further demonstrate that USAC only administers Lifeline at the FCC's direction and instructions, including for the implementation of the FCC's approved initiatives to safeguard Lifeline. See *supra* Part I.B.

III. Lifeline plays a key role in closing the digital divide and allowing lower-income and older Americans to stay connected, access healthcare, and attend to life's necessities.

A. Lifeline provides crucial assistance to help bridge the digital divide that threatens to cut off millions of households from full participation in the economy and modern society.

Allowing Lifeline to end would have disastrous real-world effects. "Access to affordable, reliable, high-speed broadband is essential to full participation in modern life in the United States." 47 U.S.C. § 1701(1). Congress has recognized a "persistent 'digital divide'" that "is a barrier to the economic competitiveness of the United States," which "disproportionately affects communities of color, lower-income areas, and rural areas." *Id.* § 1701(2)–(3). To that end, Congress has declared that "the benefits of broadband should be broadly enjoyed by all." *Id.* § 1701(3).

The digital divide is well-documented. Whereas 98% of Americans earning more than $100,000 per year have a smartphone, only 78% of those earning $30,000 or less have one. Risa Gelles-Watnick, Pew Research Center, *Americans' Use of Mobile Technology and Home Broadband* (Jan. 31, 2024), https://perma.cc/9B3S-3L8Z. Similar gaps exist across age cohorts. Among Americans between 30 and 40 years old, 97% have a smartphone and 87% have broadband access at home. Among those over 65, those figures are 76% and 70%, respectively. *Id.* AARP's affiliate, Older Adults Technology Services, made similar findings, noting that poverty is the best predictor of whether a household has broadband access, followed closely by age. Older Adults Technology Services, *Aging Connected* 9 & n.2 (2021), https://perma.cc/5AFZ-C5HC.

Approximately one-third of Americans who lack home broadband cite the monthly cost as the primary reason. Lori Dickes et al., *Socioeconomic Determinants of Broadband Non-Adoption Among Consumer Households in South Carolina, USA*, 26 J. Depopulation & Rural Dev. Studies 103, 106 (2019). In an AARP study, 60% of adults over 50 similarly said that the cost of high-speed internet is a problem. Shannon Guzman & Joanna Shell, *The New AARP Livability Index: High-Speed Internet Access Is an Indicator of Community Livability*, AARP (Apr. 27, 2022), https://perma.cc/439K-2Y5C.

Though much attention focuses on increasing broadband availability, "demand-side efforts are potentially even more vital" to closing the digital divide because the availability of broadband means little to those who cannot afford it. Brian Whitacre & Roberto Gallardo, *SRDC Broadband Issues Brief 2022-4: Broadband Availability vs. Adoption: Which Matters More for Economic Development* 2 (2022), https://perma.cc/HFW2-EF6W. Lifeline helps to close the digital divide. As of September 2024, over 8.5 million households received Lifeline discounted services, representing only a fraction of those eligible. Universal Serv. Admin. Co., *Program Data*, https://perma.cc/YFM7-QQMS (captured Dec. 26, 2024). Though granular data is unavailable for Lifeline, the similar, but more robust, Affordable Connectivity Program (ACP) reported that approximately half of its total subscribers were over 50, demonstrating that Lifeline is a valuable tool in reducing the digital divide for older Americans.

Universal Serv. Admin. Co., *Additional ACP Data*, https://perma.cc/BAV4-ZPT6 (captured Jan. 6, 2025). ACP's benefits recently expired, making Lifeline the primary source of direct assistance to eligible low-income and older subscribers. Fed. Commc'ns Comm'n, *FCC Brings Affordable Connectivity Program to a Close* (May 31, 2024), https://perma.cc/4MJB-C2C7.

One older woman living in Maine described how the loss of support from ACP would affect her: "Even though it's a little bit of money, to some people it's a lot. I'm already struggling and to lose that . . . it would be food and maybe gas. . . . I don't know what I would do away with, probably food." AARP, *Affordable Connectivity Program (ACP) Stories Among 50+ Adults* 35 (Feb. 2024), https://perma.cc/TVR4-4WTX. Another older woman in Washington said:

> I don't have anything I could shrink. I pay for rent, car insurance, I hardly go anywhere. I haven't driven my car but twice in the last month . . . . I don't have a lot of fat that I can cut from my financial diet. I don't know what I could cut.

Id. Affirming the Fifth Circuit's ruling will harm these Americans by eliminating their last source of support for essential communication services and will undermine Congress's goal of providing universal service to all Americans.

B. Lifeline plays a critical role keeping low-income and older Americans connected to healthcare, society, work, education, e-commerce, and government services and benefits, which helps grow the economy.

Millions of Americans rely on voice and broadband to access healthcare, work, learn, engage in e-commerce, and access government services and benefits, including

911 emergency services. Lifeline satisfies a critical component of the FCC's overall approach towards fulfilling Congress's universal service objectives in keeping low-income households connected to essential voice and high-speed internet services. See *supra* Part I.A. Lifeline reduces digital disparities, enhances healthcare quality, and supports low-income consumers in maintaining connections that reduce social isolation, securing employment, and accessing important government services and benefits.

i. *Lifeline improves health outcomes for low-income and older subscribers.*

Lifeline improves health outcomes for low-income and older households by connecting consumers to telehealth. Telehealth is an especially effective resource for improving access to healthcare, improving health outcomes, and lowering medical costs, especially for low-income and older populations. See Winifred V. Quinn et al., AARP, *Using Telehealth to Improve Home-Based Care for Older Adults and Family Caregivers* (May 2018), https://perma.cc/T9B4-RYLZ; Adie Tomer et al., Brookings Institution, *Digital Prosperity: How Broadband Can Deliver Health and Equity to All Communities* 18 (Feb. 2020), https://perma.cc/CW6V-6VF6. According to NaLA's consumer survey from 2022, 62.05% of Lifeline subscribers use the service to connect with doctors and for other health-related issues. NaLA, *Notice of Oral Ex Parte Presentation; WC Docket Nos. 21-450, 2-445, 1142* 16 (Dec. 19, 2022), https://perma.cc/JZ74-A378. Several Medicare managed care organizations also emphasized the importance of Lifeline to "help connect Medicaid beneficiaries to critical health services as well as the supports provided by their health plan." Association for Community Affiliated Plans et al., WC Docket Nos.

17-287, 11-42, 09-197; FCC 17-155 (Feb. 13, 2018), https://perma.cc/5JTT-D3DR.

Telehealth is especially impactful in rural communities. By improving access to healthcare for rural Americans, telehealth improves health outcomes and reduces medical costs for those who otherwise would have to travel long distances for medical care. See Quinn et al., *supra*; Tomer et al., *supra* at 18. For example, in Grayson County, Virginia, "[t]he typical person . . . has to drive 52 miles to get any sort of healthcare" because "[d]octors are hard to find in rural areas" due to lower pay. Amy Lennard Goehner, AARP, *How Grayson County is Getting Connected* (Apr. 2021), https://perma.cc/7TXT-LRCD.

Lifeline provides access to essential health care services by bridging gaps in care for homebound, underserved, and older populations, and it enables remote patient monitoring, virtual visits, and caregiver support, thereby improving patient care and reducing health care costs for providers and patients alike. See Quinn et al., *supra*, at 1. Ending Lifeline would cut off telehealth services for millions of low-income, disabled, and older Americans, adding burdens to their lives, harming their health, and inflicting related costs on the economy.

ii. *Lifeline combats social isolation by keeping subscribers connected to loved ones and community.*

Loneliness and isolation have become a widespread public health concern in the U.S. See Johns Hopkins Medicine, *New Studies Suggest Social Isolation Is a Risk Factor for Dementia in Older Adults, Point to Ways to Reduce Risk* (Jan. 12, 2023), https://perma.cc/P5YH-TUFA; U.S. Ctrs. for Disease Control &

Prevention, *Health Effects of Social Isolation and Loneliness* (last accessed Jan. 6, 2025), https://perma.cc/2JNM-S6NX. In a 2023 report, the Surgeon General observed that "the highest prevalence for loneliness and isolation [is] among people with poor physical or mental health, disabilities, financial insecurity, those who live alone, single parents, as well as younger and older populations." U.S. Surgeon General, *Our Epidemic of Loneliness and Isolation: The U.S. Surgeon General's Advisory on the Healing Effects of Social Connection and Community* 19 (2023), https://perma.cc/5SEB-APB5.

Unsurprisingly, people with low incomes are more likely to suffer from social isolation. *Id.* Older adults have the highest rates of social isolation, increasing their risk of dementia and Alzheimer's disease. *Id.* at 19, 28–29. "Social isolation among older adults alone accounts for an estimated $6.7 billion in excess Medicare spending annually, largely due to increased hospital and nursing facility spending." *Id.* at 9. Yet, communication services are an effective intervention for isolation. Johns Hopkins Medicine, *supra*. Social isolation and loneliness also are linked to lower academic achievement and decreased work performance. U.S. Surgeon General, *supra*, at 9. In contrast, social connectedness is a critical social determinant of community health and a cornerstone of overall community well-being. *Id.* at 10.

Broadband internet access is especially important for low-income, older adults who spend large amounts of time alone. An ethnographic study by AARP highlights the dependence older adults have on voice and broadband services for connections with family and societal engagement. AARP, *supra*. Kristi, an older adult from Washington, explains: "As I become less able bodied, I spend much more time at home on my devices. So, it is really a connection to the outside world to me." *Id.* at 25.

Lifeline combats isolation and loneliness in older and less able-bodied Americans by providing them with the means of connecting with friends, family, and the outside world over the internet.

iii. *Access to voice and broadband is crucial to helping low-income households and older adults work, learn, engage in e-commerce, and access public safety and other government services and benefits, all of which produce positive economic output.*

Older adults rely on affordable broadband service to work, participate in online learning, shopping, and banking, and access government services and benefits, including 911 emergency services.

A caregiver for his mother, Ross from New Mexico relies on broadband service for remote work: "The internet has allowed me to have work. Today I have to work from the house because I cannot leave [my mother] alone. . . . So, whatever I have to do here it has to be on the internet." *Id.* at 26. Without affordable access to the internet, those like Ross, see *supra*, not only would be unable to access remote work, but locating any work would be difficult as the majority of employers today only accept online applications. Tomer et al., *supra*, at 18–19.

Without affordable access to the internet, online learning and e-commerce are placed out of reach for low-income and older Americans, reducing their ability to contribute to a robust economy. Michael from

West Virginia takes evening courses online, as he cannot drive at night:

> There is no way that I would have driven up there and back. It would have been so limited on the times I could be there and if it was raining, I wouldn't be able to make it. I can't do it at night. Until I found out the classes were all online. I looked into it. I wouldn't have done it otherwise. No way.

Id. at 22. For Thomas from New York, broadband allows him to shop online:

> I don't have to go to the store and stand in line. At this age, I just can't. . . . Before I would go from store to store to find something, if they are out, I had to go to 5 stores to find something. And now you go online and it's there.

Id. at 16. Kristi, an older adult from Washington, explains how she "won't be able to shop or pay [her] bills," "won't be able to have access to [her] bank account" and "won't be able to download books and have eBooks or audiobooks" if she loses internet connectivity. AARP, *supra*, at 33.

Ultimately, if low-income and older Americans are less connected, it will be more challenging for them to access government services and benefits, increasing costs and decreasing the reach of critical government programs. *See, e.g.*, Tomer et al., *supra*, at 39. Older Americans and others who may be less mobile would lose access to income, education, and goods and services that help them live and age in place. Adrianne B. Furniss, Benton Institute for Broadband & Society, The Importance of the Universal Service Fund (Aug. 28, 2023), https://perma.cc/VV23-F289.

This loss of access includes access to 911 emergency services, effectively nullifying the FCC's mandate that Lifeline providers ensure low-income consumers "have access to the same public safety features as all Americans." *2016 Lifeline Modernization Order*, 31 FCC Rcd. at 3976, ¶40 n.93. Without Lifeline, millions of low-income and older Americans will lose access to such services, threatening their own safety and that of the communities in which they live.

Along with the foregoing real-world accounts, the data underlying Lifeline also underscore the adverse effect that affirming the Fifth Circuit's decision would have on the American economy. When over 8 million households participating in Lifeline lose access to broadband and voice services, local, state, and federal governments will incur higher costs to serve citizens. See Adie Tomer & Ranjitha Shivaram, Brookings Institute, *Rollback of the FCC's Lifeline Program Can Hurt Households that Need Broadband the Most* (Nov. 27, 2017), https://perma.cc/9BUW-F6YV. Medial costs will soar due to reduced telehealth visits. See Quinn et al., *supra*, at 1. And economic output will be reduced when low-income and older Americans do not have a means to pursue "new personal opportunity[ies]" for economic empowerment, including through jobs, education, and ecommerce. Furniss, *supra*.

In sum, if the Court upholds the Fifth Circuit's decision, millions of low-income and older Americans will lose access to critical broadband internet and voice services that allow them to remain connected to healthcare, society, jobs, education, e-commerce, and government services and benefits. That result would harm both Lifeline subscribers and non-subscribers by (a) driving up the cost of healthcare and government services, (b) reducing economic output made possible through employment, online learning, and e-commerce, and (c) adversely impacting public safety and access to 911 emergency services. And if 8 million American households no longer have the ability to purchase affordable voice and broadband services, small businesses that cater to them – including NaLA member companies – will close their doors.

CONCLUSION

For the foregoing reasons, *amici curiae* respectfully request this Court reverse the decision of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

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