



Internet2
1150 18th Street, NW
Suite 750
Washington, DC 20036

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Senator Ben Ray Luján
Chairman of the Subcommittee on Communications, Media, and Broadband
498 Russell Senate Office Building
Washington, DC 20510

Senator John Thune
Ranking Member of the Subcommittee on Communications, Media, and Broadband
United States Senate SD-511
Washington, DC 20510

RE: Universal Service Fund Working Group - Comments

Senators Luján, Thune, and Members of the Universal Service Fund Working Group:

We write on behalf of Internet2¹ and the broader community of Research and Education (R&E) networks and applaud your efforts to look into the Universal Service Fund (USF) to ensure its future and in meeting the goals of achieving universal service. Internet2 operates the nation's largest and fastest coast-to-coast national R&E network, which now serves 332 U.S. universities, 32 federal affiliates, and 46 regional and state education networks (RENs) with speeds in increments of 400-800 gigabits per second. The network serves a critical and specialized niche in the national broadband infrastructure, underpinning high-capacity and advanced services for the demanding needs of research, education, and global collaboration. Internet2 also helps U.S. R&E organizations solve shared technology challenges and develop innovative solutions in support of their educational, research, and community service missions.

As the USF Working Group considers reforms to the USF contribution mechanism, we wish to draw the Working Group's attention to the unique role played by Internet2 and the R&E network community. As the early creators of the internet with our federal partners, we remain committed to our role as innovators, advancing the internet, and engaging a broad array of community anchor institutions as contributors to this innovation agenda. Subsequently, the Federal

¹ The University Corporation for Advanced Internet Development (d/b/a "Internet2") is a non-profit, member-driven advanced technology community, founded in 1996 by the nation's leading higher education institutions. Internet2 provides a highly specialized and purpose-built network to the R&E community, including federal government agencies, in addition to cloud solutions, research support, and identity and access management services. State and regional non-profit research and education networks that interconnect with Internet2 are additionally represented by The Quilt, a non-profit 501(c)(3) organization.



Communications Commission (FCC or Commission) has historically and consistently recognized the services provided by our community as non-mass market and non-common carrier services, making them exempt from regulation. This treatment aligns with long standing regulatory classifications and Commission precedent and ensures our non-profit networks can continue to fulfill their vital educational missions and public purposes without being constrained by regulations designed for mass-market, for-profit retail services. In order for these communities to continue to benefit from our services, USF reforms must uphold the exempt status for such services.

Background. R&E networks originated to provide high-capacity data services to institutions of higher education. R&E networks are designed to meet the needs of these most demanding internet users in the country: scientists, academics, and researchers at our nation’s leading academic institutions. As non-profit providers, R&E networks offer specialized, high-capacity data services and related services customized to meet the unique needs of their constituencies. R&E networks have evolved over time in alignment with their missions, and for some, they provide services beyond higher education to community anchor institutions such as healthcare, libraries, and K-12 education. Although Internet2 and R&E networks have become vital components of the internet ecosystem in this country, neither provide network services to the general public nor provide any kind of mass market retail services.

Maintain Section 254(b) principles. Our comments presently are focused on addressing Topic #7 in the USF Working Group’s Request for Comment, which concerns USF contribution methodology. While our community does not have a formal position regarding specific proposals to reform USF contribution methodology, we support the universal service principles set forth in Section 254(b) of the Telecommunications Act of 1996. Precisely, with respect to USF contributions reform, we believe that any methodology should continue to ensure “specific, predictable and sufficient . . . mechanisms to preserve and advance universal service.”²

Maintain FCC Form 499 filing exemptions. We ask that USF reform efforts continue to maintain certain specific revenue filing exemptions that are associated with FCC Form 499. The current FCC USF contribution mechanism is implemented through a revenue reporting requirement using FCC Form 499. One of the Form 499 filing exemptions applies to “Government, broadcasters, schools, and libraries” which includes: “Government entities that purchase telecommunications services in bulk on behalf of themselves, such as state networks for schools and libraries” and to “Broadcasters, non-profit schools, non-profit libraries, non-profit colleges, non-profit universities, and non-profit health care providers.”³ Given the public purposes of these entities, which include many in our R&E community, we urge that USF reform efforts continue to maintain these specific revenue filing exemptions.

² See 47 U.S.C. section 254(b)(5).

³ See 2023 FCC Form 499-A Instructions, at 8, <https://www.usac.org/wp-content/uploads/service-providers/documents/forms/2023/2023-FCC-Form-499A-Form-Instructions.pdf>.



If anything, this exemption should be expanded because, under current FCC precedent, the government exemption is lost if a service provider primarily serving government customers generates revenue from a single private-sector customer. For example, if a service provider has sales of \$10 million to government customers, and only serves government customers, it is not subject to USF payments on otherwise assessable services. If that same provider earns \$100 of revenue from a private sector customer, the service provider's entire \$10,000,100 becomes assessable for purposes of USF. In other words, the service provider could owe \$3,000,000 for generating \$100 from a private sector customer. This is clearly not an economically rational outcome and has particularly negative consequences for government customers – as government customers either will be expected to pay USF charges from their limited technology budgets, or they will have a very limited selection of service providers who choose only to serve government customers, and only government customers. Either way, the government loses. The solution that would have virtually no impact on USF revenues would be to exempt any revenues from otherwise assessable services earned from government or non-profit customers, regardless of whether the service provider generates any revenue from private sector customers or not.

Maintain Broadband Internet Access Services (BIAS) exclusions. To the extent the Working Group considers proposals to incorporate revenues from providing BIAS into the USF contribution base, we urge that the current FCC definition of BIAS, which expressly excludes services provided by Internet2 and the R&E community, not be disturbed.

The FCC's current definition of BIAS specifically excludes the services provided by Internet2 and R&E networks from being considered "mass market" services. As the FCC explained in 2017, as part of the repeal of the 2015 Net Neutrality rules:

We continue to define "broadband Internet access service" as a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service.

* * * *

Broadband Internet access service . . . does not include virtual private network (VPN) services, content delivery networks (CDNs), hosting or data storage services, or Internet backbone services (if those services are separate from broadband Internet access service), consistent with past Commission precedent. The Commission has historically distinguished these services from "mass market" services, as they do not provide the capability to transmit data to and receive data from all or substantially all Internet endpoints. We do not disturb that finding here.⁴

⁴ See *Restoring Internet Freedom*, Declaratory Ruling, Report and Order, and Order, 33 FCC Rcd. 311, 318-19 (2018) (footnotes omitted); see also *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601, 5749, ¶ 340 (2015).



The Commission further explained:

By mass market, we mean services marketed and sold on a standardized basis to residential customers, small businesses, and other end-user customers such as schools and libraries. “Schools” would include institutions of higher education to the extent that they purchase these standardized retail services. For purposes of this definition, “mass market” also includes broadband Internet access service purchased with the support of the E-rate and Rural Healthcare programs, as well as any broadband Internet access service offered using networks supported by the Connect America Fund (CAF), but does not include enterprise service offerings or special access services, which are typically offered to larger organizations through customized or individually negotiated arrangements.⁵

Similarly, with respect to the private carrier and specialized services provided by Internet2 and R&E networks, in 2017 as part of its Business Data Services (BDS) proceeding, the Commission affirmed that “shared use arrangements” previously recognized by the Commission would continue to be recognized as private carriage, and thus exempt from common carrier regulations.⁶ The FCC explained:

Independently, we are not persuaded by policy arguments that we should depart from our longstanding classification approach [as to virtually eliminate any distinction between offerings “to the public” and private offerings] even if we could do so as a matter of statutory interpretation. . .

Given that we do not depart here from our longstanding approach to evaluating private carriage and common carriage classification, we also continue to adhere to our precedent under which shared use arrangements typically were classified as private carriage. Consequently, this addresses the concerns of some commenters that research and education (R&E) networks that historically had been treated as private carriage under that framework might newly be classified as common carrier telecommunications services under a new approach to classification.⁷

Although we recognize that certain types of private telecommunications and private carriage are presently included in the USF contribution base, we urge the Working Group, as it considers

⁵ See *Restoring Internet Freedom*, Declaratory Ruling, Report and Order, and Order, 33 FCC Rcd. at 318-19, n.58.

⁶ See *Business Data Services in an Internet Protocol Environments, et al.*, WC Docket No. 16-143, Report and Order, 32 FCC Rcd 3459, 3579-80 (2017) (*BDS Order*).

⁷ See *id.*, n.723 (“See, e.g., Internet2 et al. Reply [comments] at 11 (discussing R&E networks and the *Resale and Shared Use Order* [Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities, Docket No. 20097 et al., Report and Order, 60 FCC 2d 261 (1976)]; see also, e.g., The Quilt Reply [comments] at 2 (“The Commission has a long history of treating R&E networks as private carriers.”); Letter from Jen Leasure, President and CEO, The Quilt, to Marlene H. Dortch, Secretary, FCC, WC Docket No.16-143 et al. (filed Sept. 22, 2016) (similar).”).



reforms, not to disturb long-standing historical understandings regarding what constitutes common carriage vs. private carriage.

Through the unique lens of R&E networks, we see immense value in the Working Group's efforts to support and achieve the goals of universal service. For example, we offer, from the experience of our REN partners who serve an array of community anchor institutions, that there could be greater alignment on the timeline of the Schools and Libraries Support and Rural Health Care Support program. Both programs aim to serve community anchor institutions and aligning the timelines for the bid cycle could enable service providers to bid on a school, library, and clinic in the same community, which should result in better pricing for all institutions. As such, we lift up our expertise and partnership to the subcommittee and look forward to working with you to further the subcommittee's goals.

Thank you for your consideration of our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "BN", with a stylized flourish at the end.

Belinda E. Nixon
Internet2
Vice President and General Counsel
bnixon@internet2.edu