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United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
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May 10, 2023

The Honorable Gene L. Dodaro
 Comptroller General of the United States
 U.S. Government Accountability Office
 441 G Street, N.W.
 Washington, D.C. 20548

Dear Mr. Dodaro:

The Federal Communications Commission's (FCC) Universal Service Fund ("USF" or "Fund") has been the subject of intense legal and policy debate in recent years. Funded through fees assessed on telecommunications providers and passed onto consumers as a telephone bill line item, USF has become increasingly burdensome for consumers since the Fund was first established two decades ago, due to both exponential growth in USF spending levels and a shrinking revenue base. It has also been plagued by reports of waste, fraud, and abuse since its inception.¹

As Congress considers the future of USF, one area in critical need of attention is the Fund's administration. Rather than manage the USF on its own, the FCC in 1998 permanently outsourced administration of the Fund to the Universal Service Administrative Company (USAC), a private non-profit Delaware corporation.² This sub-delegation, which GAO and others have found to be legally suspect,³ appears to have compromised the FCC's accountability, inhibited oversight of USF management, and resulted in widespread waste of American consumers' hard-earned dollars.

¹ See, e.g., *FCC Should Take Additional Action to Manage Fraud Risks in Its Program to Support Broadband Service in High-Cost Areas*, GAO-20-27 (Oct. 23, 2019), available at <https://www.gao.gov/assets/gao-20-27.pdf>; *FCC Should Take Action to Better Manage Persistent Fraud Risks in the Schools and Libraries Program*, GAO-20-606 (Sept. 16, 2020), available at <https://www.gao.gov/products/gao-20-606>; *Additional Action Need to Address Significant Risks in FCC's Lifeline Program*, GAO-17-538, (May 30, 2017), available at <https://www.gao.gov/products/gao-17-538>. Additionally, the FCC Office of Inspector General in its most recent semi-annual report to Congress states that it continues to open new investigations and has been assisting the U.S. Department of Justice and United States Attorney's Offices around the country to pursue civil and criminal fraud cases in the E-Rate program. See *Semiannual Report to Congress*, Federal Communications Commission Office of Inspector General, (April 1, 2022-September 30, 2022), available at https://www.fcc.gov/sites/default/files/fcc_oig_sar_09302022.pdf.

² 47 C.F.R. § 54.701(a).

³ *FCC Lacked Authority to Create Corporations to Administer Universal Service Programs*, GAO, Office of the General Counsel (Feb. 10, 1998), available at <https://www.gao.gov/assets/t-rced/ogc-98-84.pdf>.

First, USAC's role has shielded the FCC from accountability for skyrocketing USF fees. Each quarter, USAC announces cost projections that are used to calculate a "contribution" factor (i.e., percentage) assessed on providers' voice service revenues. While the FCC "reserves the right" to set the contribution factor, if the FCC does not take any action within fourteen days of the contribution factor's announcement by FCC staff, it is "deemed approved by the Commission."⁴ The FCC has taken advantage of this scheme and never held a Commission-level vote on a contribution factor increase. By dodging responsibility for increases, the FCC has been able to repeatedly enact policies to expand USF spending while insulating itself from the consequences of doing so.

Second, USAC's operations lack transparency, and there has been virtually no oversight into USAC's ever-increasing overhead costs, even though American consumers ultimately foot the organization's bill. For reference, USAC's operations skimmed \$328 million from the USF in 2022, almost as much as the FCC's entire budget. However, unlike the FCC, USAC is not subject to the Freedom of Information Act ("FOIA"), its budget is not subject to congressional approval, let alone a public FCC vote, and information regarding its staffing levels and pay is not publicly available. USAC's non-profit status does not provide any insight into its operations either: it claims to be exempt from filing tax returns with the IRS because it is chartered by the FCC.

And it is far from clear that USAC's Board of Directors possesses the independence, competency, or fiduciary duties necessary to ensure USAC is acting in ratepayers' interests. USAC's board is appointed directly by the FCC Chairman, without a Commission-level vote, and is composed largely of beneficiaries of the USF, including telecommunications companies and advocacy groups with a vested interest in high subsidies. As a result, it is difficult, if not impossible, to monitor if USAC is spending Americans' hard-earned dollars efficiently.

Third, USAC has a history of poor performance. Members of Congress, the FCC, and the public have repeatedly voiced concerns about USAC's poor responsiveness, misinformation, and delays.⁵ In addition, the USF's administration by USAC has been the subject of multiple GAO reports concerning waste, fraud, and abuse. For example, in 2017, GAO found that mismanagement of the FCC's Lifeline Program had led to massive fraud in the program, namely approving \$137 million in subsidies to ineligible, fictitious, or dead people. GAO has also found significant fraud risks in the administration of the FCC's High Cost and E-Rate programs and made recommendations to improve fraud risk assessments in October 2019 and September 2020, respectively.⁶ According to GAO, the FCC and USAC have yet to implement these

⁴ 47 C.F.R. § 54.709(a)(3)

⁵ *Statement of Commissioner Michael O'Reilly on the Resignation of USAC CEO*, Federal Communications Commission (May 4, 2017), available at <https://docs.fcc.gov/public/attachments/DOC-344726A1.pdf>.

⁶ *See, e.g., Telecommunications: FCC Should Take Additional Action to Manage Fraud Risks in Its Program to Support Broadband Service in High-Cost Areas*, GAO-20-27 (Oct. 23, 2019), available at <https://www.gao.gov/assets/gao-20-27.pdf>.

recommendations. More than three years is too long to wait for implementation of basic good governance in a major government funding program.

To better understand the FCC's management and oversight of USAC, we request that GAO examine the following issues and questions and provide written responses by November 10, 2023.

1. In 1998, GAO found that the FCC exceeded its authority when it directed the National Exchange Carriers Association to create private non-profit corporations to administer universal service for schools and libraries and rural health providers.⁷ Does the FCC's current designation of USAC as permanent administrator of the Fund comply with federal law and best practices?
 - a. How does the FCC ensure that USAC is not performing any inherently quasi-legislative or policymaking functions? Are these guardrails sufficient in GAO's view?
 - b. Has the FCC established goals and performance measures for USAC? If so, are they sufficiently clear and specific?
2. The FCC currently determines the quarterly contribution factor through a passive "deemed approved" process, without a Commission vote. Does this process comply with best practices?
3. Please review the budget and planning process for USAC, including:
 - a. How USAC's budget and spending is approved;
 - b. How USAC is staffed, how salaries and bonuses are determined for employees, and how that information is disclosed to the public; and
 - c. Whether this process complies with federal law and best practices.
4. Please review the process for selecting USAC board appointees. Does GAO have any concerns regarding this process? Please review whether this process complies with federal law and best practices.
 - a. How does the FCC ensure that USAC board members avoid conflicts of interest?
 - b. In each of the last five years, how much USF funding went to entities that employ, are owned or managed by, or are otherwise financially connected to a USAC board member or their immediate family members? Please identify the date of the funding, to whom it was made, and the amount of the funding.

⁷ GAO, *supra* note 3.

5. Please review all GAO and Inspector General recommendations from the last five years addressing waste, fraud, and abuse in USF and related programs, as well as any actions that the FCC and/or USAC have taken to implement recommendations. Please provide a list of all unaddressed recommendations, including the date the recommendation was made, and any recommendations for the FCC and/or USAC to change their process for addressing recommendations regarding waste, fraud, and abuse.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Ted Cruz', is positioned above a horizontal line.

Ted Cruz
Ranking Member