Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Report on the Future of the Universal Service Fund	)))))	 WC Docket No. 21-476

REPLY COMMENTS OF THE MOTION PICTURE ASSOCIATION, INC.

The Motion Picture Association, Inc. ("MPA") submits this reply to the comments filed in response to the Federal Communications Commission's ("Commission") Notice of Inquiry in the above-captioned matter.[1] MPA is a not-for-profit trade association founded in 1922 to address issues of concern to the motion picture industry. Since then, MPA has served as the voice and advocate of the film and television industry around the world, advancing the business and art of storytelling, protecting the creative and artistic freedoms of storytellers, and bringing entertainment and inspiration to audiences worldwide. MPA's members are Netflix Studios, LLC, Sony Pictures Entertainment Inc., Paramount Pictures Corporation, Universal City Studios LLC, Walt Disney Studios Motion Pictures, and Warner Bros. Entertainment Inc. These companies and their affiliates are the leading producers and disseminators of filmed entertainment, which consumers enjoy via subscription and ad-supported services, by viewing discs or downloaded copies from online retailers, and by visiting theaters. In keeping with their commitment to encouraging the creation and dissemination of a wide variety of filmed entertainment through a wide variety of platforms and distributors, MPA's members or affiliates have developed and now operate some of the most prominent direct-to-consumer content

[1] *Report on the Future of the Universal Service Fund*, Notice of Inquiry, WC Docket No. 21-476, FCC 21-127 (rel. Dec. 15, 2021).

offerings in the world, including Netflix, Disney+, Hulu, ESPN+, Peacock, Paramount+, Crunchyroll, and HBO Max.

MPA agrees that universal access to high-speed broadband service is of paramount importance, and applauds Congress and the Commission for their ongoing efforts to improve the Universal Service Fund ("Fund" or "USF"). In the same Act in which Congress appropriated $65 billion for broadband deployment and affordability, it tasked the Commission with analyzing the current state of the Fund and recommending a course of action that the Commission or Congress should take to address the future of the Fund. As noted above, MPA's members operate a wide variety of streaming services accessed over the Internet, and wish to highlight the legal, policy, and practical barriers to the suggestion that online services should pay into the Fund as the Commission prepares its report to Congress on this question. What has been pitched as an easy cure-all to issues with the existing USF contribution mechanism actually would present new, and more difficult, problems to surmount.

The record demonstrates that there is widespread agreement on certain issues, and that the contributions problem cannot be fixed simply by requiring streaming services and other online services to contribute. Commenters overwhelmingly agree that the Commission cannot extend the obligation to pay contributions to streaming services without explicit authorization from Congress to do so. An approach centered on an expansion of the USF contribution base to include streaming and other online services also would not make sense as a matter of policy. Moreover, many commenters have raised the issue of administration, highlighting the logistical and technical challenges that imposing contributions requirements on streaming services would present, while no commenters have adequately addressed these challenges, much less provided solutions to them. For these reasons, and as set forth more fully below, MPA urges the

Commission to report to Congress that legal, policy, and practical concerns counsel strongly against any consideration of an expansion of the USF contribution base to include streaming and other online services.

I. THE RECORD DEMONSTRATES THAT THE COMMISSION DOES NOT HAVE THE AUTHORITY TO IMPOSE CONTRIBUTIONS OBLIGATIONS ON ONLINE SERVICES.

The record reflects a broad consensus that the Commission currently lacks the authority to impose contributions requirements on entities that are not currently telecommunications providers. The Communications Act of 1934, as amended ("the Act"), specifically requires telecommunications carriers that provide interstate telecommunications services to contribute to the Fund.[2] While the Act grants the Commission some discretion to expand the pool of contributors in the name of the public interest, it still limits that the eligible pool to telecommunications providers, a class to which content streaming services unquestionably do not belong.

Even those commenters who advocate expanding the contributions base to include "Big Tech" (which has been used to vaguely describe streaming services, online advertising, cloud services, online marketplaces, and other services) concede that the Commission currently lacks such authority.[3]

[2] 47 U.S.C. § 254(d).

[3] *See* TCA Comments at 7, CTIA Comments at 3, CWA Comments at 4, NTCA Comments at 61, USTelecom Comments at 5, Rural Broadband Providers' Comments at 23, NRECA Comments at 12, Free State Foundation Comments at 4, Hughes Network Systems Comments at 2, 6, ACA Connects Comments at 27.

II. THE COMMISSION SHOULD REPORT TO CONGRESS THAT EXPANDING THE USF CONTRIBUTION BASE TO INCLUDE ONLINE SERVICES IS INADVISABLE AS A MATTER OF POLICY.

There is a persistent error in the comment record that MPA wishes to correct. Several comments repeatedly state that online streaming providers disproportionately enjoy the benefits of broadband deployment in comparison to all other users, while paying nothing to support broadband networks or even the delivery of their content.[4] Both parts of this assertion are not only false, they also misrepresent the roles played in the communications space between content providers, communications networks, and consumers.

Online services today are both robust and dynamic, and broadband capacity is used for much more than just streaming video. For example, Commissioner Carr has written at length about the transformative effects that broadband has had on the lives of people he has met on his signature #CarrTrips. Whether it is a small business opened in rural Indiana,[5] a family farm modernized to take advantage of precision agriculture in South Dakota,[6] or a Mississippi hospital using broadband to deliver better health care outcomes to its patients,[7] it is clear from the

[4] See, Rural Broadband Providers' Comments at 23, Chickasaw Telephone Company (Oklahoma) et al. Comments at 1, NTCA, WTA Comments at 18, CTIA Comments at 3; see also Brendan Carr, *Ending Big Tech's Free Ride*, Newsweek, May 24, 2021 https://www.newsweek.com/ending-big-techs-free-ride-opinion-1593696.

[5] *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, Report, Statement of Commissioner Carr, 34 FCC Rcd 3857 (2019) (describing trip to Indiana with Sen. Young); *see also, Senator Young Hosts FCC Commissioner Brendan Carr in Indiana*, Press Release, May 2, 2018 https://www.young.senate.gov/newsroom/press-releases/-photos-senator-young-hosts-fcc-commissioner-brendan-carr-in-indiana.

[6] *Rural Digital Opportunity Fund*, Report and Order, Statement of Commissioner Carr, 35 FCC Rcd 686 (2020) (detailing a trip with Sen. Thune to a farm in South Dakota); *see also* https://twitter.com/BrendanCarrFCC/status/1204423681931431943.

[7] *Promoting Telehealth for Low-Income Consumers; COVID-19 Telehealth Program*, Report and Order, Statement of Commissioner Carr, 35 FCC Rcd 3366 (detailing trip to North Sunflower Medical Center to see UMMC telehealth program); *see also, Wicker Examines Ways to Expand Telehealth Nationwide: Miss. Senator Focuses on Need to Provide Access to Rural America*, Press Release, April 21, 2015 https://www.wicker.senate.gov/2015/4/wicker-examines-ways-to-expand-telehealth-nationwide.

Commission's substantial and successful efforts in recent years that the broadband applications that consumers rely on most are highly varied and continually evolving.

Throughout the COVID-19 pandemic telehealth allowed patients to receive medical care without endangering themselves or overwhelming hospitals, distance learning allowed students to continue their education, and telework allowed many Americans to continue working while mitigating the transmission of disease. Even before the pandemic, Chairwoman Rosenworcel had been highlighting the need for the Commission to close the "homework gap" for years, as students around the country needed high-speed broadband to complete homework assignments.[8] Given the complex and dynamic nature of the demand for broadband capacity, there is no sound policy justification for USF contribution reform that would single out a narrow category of content providers over other providers.

In addition, it is misleading to suggest that streaming services do not contribute to the support of broadband networks and therefore should be targeted in contribution reform. Online streaming services have been investing billions of dollars in content to develop programming that American consumers greatly value. The ability to access this quality content allows consumers to derive even more value from the broadband connections that they may use for a variety of purposes. Furthermore, many online streaming services have invested heavily in content delivery networks to help manage the data flows across broadband networks. These services bring content physically closer to the end users, which alleviates traffic across

[8] Commissioner Jessica Rosenworcel, *Broadband Imperative and the Homework Gap*, Remarks to the State Education Technology Directors Association (Sept. 8, 2016) https://www.fcc.gov/document/cmr-rosenworcel-setda-broadband-imperative-and-homework-gap; *Closing the Homework Gap*, Remarks to CUE16 National Conference (March 17, 2016) https://www.fcc.gov/document/commissioner-rosenworcel-remarks-cue16-closing-homework-gap.

broadband networks.[9] Streaming services similarly have invested in innovative technology such as versatile video coding and variable bitrate to more efficiently transfer data across existing broadband networks. Without these content delivery networks and technical innovations, far more data would be transported across broadband networks. By building out content delivery networks, working with broadband providers through peering arrangements, and developing innovative technical solutions, online streaming services have greatly alleviated the traffic running through network cores, all of which has been accomplished through tremendous investment by the streaming services themselves.[10]

Targeting specific uses of broadband to fund universal service programs also fundamentally does not make sense as a policy approach because *consumers,* not individual providers of online services, are the ultimate users of broadband and therefore dictate how, when, where, and how much bandwidth is used. Technology and market structures are constantly shifting as new use cases for broadband continue to emerge, and consumers will choose which applications to use. As 5G and advances in DOCSIS and other wireline technologies continue to introduce further use cases for broadband, such as the Internet of Things, augmented/virtual reality, and artificial intelligence, among others, the future applications of broadband are unknown and unpredictable. A neutral policy to fund broadband deployment, as Congress recently demonstrated when appropriating $65 billion for broadband, keeps the government's thumb off the scale, allowing consumer preferences and enterprise needs to dictate future investment. Such a policy does not favor or hinder any particular use case, and does not place

[9] Analysys Mason has estimated that between 2014 and 2017 online content providers spent $75 billion *annually* on infrastructure to bring content closer to consumers. Analysys Mason, *Infrastructure Investment by Online Service Providers*, December 2018 https://www.analysysmason.com/consulting-redirect/reports/online-service-providers-internet-infrastructure-dec2018/.

[10] Netflix alone has estimated that its content delivery networks saved Internet service providers $1.2 billion in 2020 (https://openconnect.netflix.com/Open-Connect-Briefing-Paper.pdf).

the Commission and Congress in the position of predicting how rapidly moving markets will evolve in the near, medium, and long terms. That allows innovators to think freely about solutions to consumers' problems, consumers to choose the services they value most, and regulators to focus on how best to deploy broadband funding rather than forecasting whether and from which industry sectors that funding may be drawn in the future.

III. THE COMMISSION SHOULD REPORT TO CONGRESS THAT EXPANDING USF CONTRIBUTIONS TO ONLINE SERVICES WOULD PRESENT TECHNICAL AND LOGISTICAL PROBLEMS THAT RENDER SUCH AN APPROACH IMPRACTICAL AND INADVISABLE.

If Congress were to grant the Commission the authority to levy USF contributions on providers of online services despite the compelling policy reasons to reject this approach, the Commission would be presented with a host of new—and substantial—functional and administrative problems. The current contributions regime draws from a pool of known providers of interstate telecommunications services. The Commission has exclusive authority to regulate these firms, and all interstate telecommunications carriers must register with the Commission, providing necessary contacts and information regarding the services provided and the states served.[11] From the moment a provider begins to offer telecommunications services, the Commission possesses information regarding the provider's services, the technology used, area served, and company contact information. This ensures that USF contributions are "equitable and non-discriminatory" and "specific [and] predictable," both long-held universal service principles enshrined in the statute.[12]

The online marketplace is markedly different. No such system of records currently exists for providers of online services, nor could such a system reasonably be developed. Providers of

[11] 47 CFR § 64.1195.

[12] 47 U.S.C. §§ 254(b)(4)-(5).

online services do not require Commission licenses to operate, there is no effective cap on the number of providers in the marketplace, and that number is always changing. Online platforms, including streaming services, social media networks, advertising platforms, and online marketplaces, are continually entering and exiting the market, creating a situation in which the Commission would be unable to properly determine which firms must pay contributions. USF cannot be assessed on such a dynamic set of services in any way that is "specific [and] predictable." Moreover, the diversity of online business models and services makes "equitable and nondiscriminatory" USF contributions impossible to structure, administer, or enforce.

In contrast, while there are occasional new entrants, the market for telecommunications and communications services is relatively fixed and contains entities that are by nature of their operation known to the Commission. As their business involves the deployment of hard infrastructure such as fiber cable and wireless base stations, the market for telecommunications and communications services is less susceptible to rapid change. Once a firm deploys a network, that investment affords a certain degree of stability as the providers—and thus the Fund—may rely on that asset for predictable revenue streams going forward. As such, the Commission and its staff have a complete picture of which firms are required to submit Form 499 and pay into the Fund. And perhaps even more importantly, the firms themselves know which requirements apply, so the Commission is not constantly engaged in tracking down and reminding firms of their obligations.

The global nature of online services presents additional practical problems and risks to U.S. competitiveness. Compared to online service providers, the Commission and Fund have clear authority over interstate telecommunications providers within the U.S., as there is no doubt about the Commission's jurisdictional reach over domestic providers of telecommunications services. However, as online services can be provided from almost anywhere in the world, it is not clear what jurisdiction the Commission would have to require online service providers based overseas to contribute to the Fund. Such a system might ultimately put U.S.-based providers of online services at a competitive disadvantage against overseas providers, who would not likely be subject to the contributions requirement. Moreover, the global operations of many online services highlights the complexity of assessing contributions on online services, as the providers may have operations in the U.S. and abroad, and may provide different services from various locations, presenting immense separations challenges.

Expanding the contributions obligation to online service providers would create new challenges and present the Commission and its staff with an impossible knowledge problem. Commenters who have proposed such a system have not articulated any solutions to these problems, nor explained how it might work at a logistical level. Given the complexity of the online marketplace, this is no surprise and reveals that such expansive proposals will ultimately prove unworkable. Others commenters have raised this concern,[13] and MPA stresses that the Commission will need to implement or recommend to Congress a contributions system that it can actually carry out and enforce without creating confusion in the industry.

IV. CONCLUSION.

MPA believes that universal access to broadband is of the utmost importance, and fully supports the Commission and Congress in their efforts to ensure that that all Americans have access to robust broadband service and the myriad, life-changing applications it enables. However, as demonstrated in detail above, an effort to expand the USF contribution base to

[13] Public Knowledge Comments at 18-19, Information Technology Industry Council Comments at 7, Jeffrey Westling Comments at 4.

include online services including streaming services would (1) exceed the Commission's authority, (2) be inadvisable as a matter of policy, and (3) present significant implementation issues that would render such an approach unworkable. Doing so would be particularly difficult to justify as there is considerable support in the record for simpler and more neutral ways of funding broadband.[14] Therefore, for the foregoing reasons, MPA respectfully requests that the Commission conclude and report to Congress that it would be inadvisable, if not practically infeasible, to expand the USF contribution base to include streaming services and other online services, and to terminate its inquiry accordingly.

Respectfully submitted,

/s/ Benjamin S. Sheffner
Benjamin S. Sheffner
Senior Vice President & Associate
General Counsel
Motion Picture Association, Inc.
15301 Ventura Boulevard
Building E
Sherman Oaks, CA 91403

March 17, 2022

[14] Joint Comments of ALLVanza, MMTC, LGBTTech, Asian American Tech Table; Verizon Comments, Information Technology and Innovation Foundation Comments, TechFreedom Comments, Citizens Against Government Waste Comments, U.S. Chamber of Commerce Comments.