COMMENTS OF THE MOTION PICTURE ASSOCIATION, INC.

BEFORE THE SENATE

UNIVERSAL SERVICE FUND WORKING GROUP

REGARDING UNIVERSAL SERVICE FUND REFORM

AUGUST 25, 2023

I. INTRODUCTION AND SUMMARY.

The Motion Picture Association, Inc. ("MPA") appreciates the opportunity to provide these comments in response to the Universal Service Fund ("USF" or "Fund") Working Group's ("Working Group") *Request for Comment* on USF reform.[1] The MPA is a not-for-profit trade association founded in 1922. The MPA serves as the voice and advocate of the film and television industry, advancing the business and art of storytelling, protecting the creative and artistic freedoms of storytellers, and supporting the creative ecosystem that brings entertainment and inspiration to audiences worldwide. The MPA's member companies are Netflix Studios, LLC, Paramount Pictures Corporation, Sony Pictures Entertainment Inc., Universal City Studios LLC, Walt Disney Studios Motion Pictures, and Warner Bros. Entertainment Inc. These companies and their affiliates are the leading producers and distributors 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.

The MPA believes that universal access to high-speed broadband for all Americans is of paramount importance to the growth and competitiveness of the U.S. economy. We commend the Working Group's efforts to support this goal by considering reforms to the USF, which has helped American consumers access vital communications services. However, as described more fully below, MPA believes proposals to expand the USF contribution base to video streaming services would not constitute sound public policy and present numerous logistical and technical challenges, none of which proponents of such proposals have adequately addressed.[2] Moreover, expanding the contribution base to video streaming providers would disregard the considerable investments they make to support the Internet ecosystem.[3] Adoption of such proposals also could

[1] Office of Sen. Luján, Universal Service Fund (USF) Working Group Request for Comment, https://www.lujan.senate.gov/usf/ ("*RFC*" or "*Request*").

[2] *RFC* Inquiry No. 7(a) states that "some have advocated for assessing USF contributions on broadband service and edge providers," and invites comments on "the impact of such reforms on ratepayers and the marketplace." *RFC.*

[3] MPA has filed recent comments before the Federal Communications Commission ("FCC" or "Commission") on this matter as attached hereto. *See In the Matter of the Report on the Future of the Universal Service Fund, Notice of*

slow national broadband adoption, harm market competition and video streaming industry diversity, and threaten the investments that video streaming providers make on a global scale to contribute to the competitiveness of the national economy. MPA thus urges the Working Group not to recommend expansion of the funding base to include video streaming providers.

II. VIDEO STREAMING PROVIDERS CURRENTLY INVEST IN BROADBAND INFRASTRUCTURE AND ENCOURAGE BROADBAND ADOPTION BY DEVELOPING ENGAGING CONTENT.

A. Video Streaming Providers Already Support Broadband Through Their Investments in Content and Technology.

Video streaming content plays a vital role in supporting the federal government's objective to achieve universal broadband adoption.[4] Scholarly studies and data tracked by industry stakeholders indicate that online content can add value to connectivity and increase internet adoption by consumers.[5] Video streaming content supports the usage and adoption of fiber broadband.[6] Furthermore, recent data underscores that demand for mobile broadband traffic is "driven by a combination of factors, including video streaming and online gaming,"[7] and that users of streaming services "are more likely to upgrade their connections to faster speeds when available."[8]

Inquiry, WC Docket No. 21-476, FCC 21- 127, Reply Comments of the Motion Picture Association, March 17, 2022 ("*2022 FCC Comments*" or "*FCC Comments*").

[4] *See, e.g.*, Press Release, The White House, *The White House Fact Sheet: Biden-Harris Administration Announces Over $40 Billion to Connect Everyone in America to Affordable, Reliable High-Speed Internet* (June 26, 2023), https://www.whitehouse.gov/briefing-room/statements-releases/2023/06/26/fact-sheet-biden-harris-administration-announces-over-40-billion-to-connect-everyone-in-america-to-affordable-reliable-high-speed-internet/ ("White House Universal Broadband Statement").

[5] *See, e.g.,* V. Brian Viard & Nicholas Economides, *The Effect of Content on Global Internet Adoption and the Global "Digital Divide,"* 61 MGMT. SCIENCE 3, 665-687 (2014), https://pubsonline.informs.org/doi/epdf/10.1287/mnsc.2013.1875 ("We find a statistically and economically significant effect, implying that policies promoting content creation can substantially increase adoption"). We note that the FCC has even acknowledged how making traditional programming offered on broadcast and cable television services available via Internet-based services "could make Internet-based services attractive to customers," and that "resulting increased demand for broadband may in turn provide a boost to the deployment of high-speed broadband networks." *See In the Matter of Promoting Innovation and Competition in the Provision of Multichannel Video Programming Distribution Services*, Notice of Proposed Rulemaking, 29 FCC Rcd 15995, 15997 (2014).

[6] FTTH Council Europe, *FTTH adoption drivers and hurdles in Europe* (Feb. 2023), https://www.ftthcouncil.eu/knowledge-centre/all-publications-and-assets/1669/ftth-adoption-drivers-and-hurdles-in-europe.

[7] GSMA, *The Mobile Economy* (2023), https://www.gsma.com/mobileeconomy/wp-content/uploads/2023/03/270223-The-Mobile-Economy-2023.pdf.

[8] David Abecassis, *The Synergies Between Content and Networks Upon Which the Internet is Based Should Be Nurtured*, Analysys Mason (Oct. 2022), https://www.analysysmason.com/contentassets/a94ba83866ce4a7694bd3991d9cd6e17/analysys_mason_content_networks_synergies_oct2022.pdf ("Analysys Mason Study").

The MPA's members are vitally important partners in helping to encourage greater broadband adoption, having annually invested billions of dollars in content that incentivizes consumers to seek broadband services. Assessing video streaming providers could have a range of negative consequences that could threaten the development of video streaming content and the role of streaming providers in supporting broadband adoption. For example, it could reduce investments video streaming providers make in content. Moreover, video streaming providers could offset assessment costs by passing them on to their customers. To the extent that those consumers are already paying for broadband access, this would result in double charging, increase prices, and could deter broadband adoption, something contrary to the federal government's goals.[9] As the Working Group deliberates future USF policies that can achieve national objectives, it should refrain from supporting any legislative measures–such as assessing video streaming providers for the USF–that would inhibit video streaming providers' efforts to continue developing innovative and popular content that leads Americans online.

Moreover, video streaming providers, including the MPA's members, *already* significantly contribute to the costs of broadband networks through massive investments that support broadband infrastructure and the overall Internet ecosystem. For example, Analysys Mason estimates that from 2011 to 2021, content and application companies ("CAPs") spent $883 billion on internet infrastructure technologies including "hosting, data transport, and content delivery."[10] Many of these technologies, which include content delivery networks ("CDN"s), cache servers, and streaming encoding, have been determined by regulators to reduce broadband network traffic and connectivity costs.[11] According to industry experts, these investments have helped internet service providers ("ISPs") save over $1 billion per year.[12] The evidence clearly shows that video streaming services contribute to the economics of broadband networks by supporting demand and investing in technology to reduce costs.

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[9] White House Universal Broadband Statement.

[10] Analysys Mason Study. Also, as an example, at a May 11, 2023 Senate hearing on USF reform, trade association INCOMPAS testified that "online content and the large technology companies that INCOMPAS represents are also investing heavily in our communications networks to deliver a modern internet." *The State of Universal Service: Hearing Before the S. Subcomm. on Comm., Media and Broadband*, 118th Cong. 1 (2023) (statement of Angie Kronenberg, President, INCOMPAS), https://www.commerce.senate.gov/services/files/06D4A6A5-8452-4C49-92D8-F69A84C89DFA.

[11] *See, e.g.,* Connected Nations Report, Ofcom, (Dec. 16, 2016), https://www.ofcom.org.uk/__data/assets/pdf_file/0035/95876/CN-Report-2016.pdf ("The local delivery of content can result in better delivery times to the consumer, which may translate to a better quality of experience, and so is often a preferred option for content providers. This approach further reduces transit or backhaul connectivity costs, and can also improve the customer experience by reducing the likelihood of data congestion in these parts of the network. The commercials in this model are likely to include location services and port-based pricing.")

[12] David Abecassis & Andrew Daly, *Netflix's Open Connect program and codec optimisation helped ISPs save over $1Bn in 2021, 2022*, Analysys Mason (July 14, 2022), https://www.analysysmason.com/consulting/reports/netflix-open-connect/ ("Analysys Mason ISP Savings Study").

B. Proposals to Expand Contribution Assessments Based on Video Streaming Providers' Share of Network Traffic Should Be Rejected.

MPA urges the Working Group to reject any proposals to expand the USF contribution base to video streaming providers to ensure that they pay their "fair share" for broadband network builds and traffic.[13] These arguments are premised on the misguided theory that video streaming providers disproportionately benefit from broadband connectivity.[14] Broadband connectivity benefits society at large, and broadband networks support numerous industries aside from the video streaming industry. Indeed, recent studies have demonstrated that video streaming service revenue is a small fraction of online commercial activity. Many internet-based businesses generate more revenue than video streaming with less traffic, such as stock-trading or advertisements.[15] The vast majority of revenue generated online originates from other types of activities, such as online advertising and e-commerce.[16] Comscore data indicates, for example, that online retail sales in 2022 were more than $1 trillion, and while digital content is a growing area of digital sales, the top grossing digital categories include grocery, apparel, and consumer electronic sales.[17]

To buttress their proposals to expand the contribution base to video streaming providers, several USF stakeholders also falsely allege that user demand for video streaming services is responsible for a large portion of broadband network costs.[18] However, empirical data indicates that traffic-sensitive costs for fiber-based broadband networks account for a small percentage (*i.e.*, 10 to 20 percent) of network costs, and "growing demand from end users can be handled

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[13] *See, e.g., In the Matter of the Report on the Future of the Universal Service Fund, Notice of Inquiry*, WC Docket No. 21-476, FCC 21- 127, Comments of TCA, Inc., February 17, 2022, pp.7-8 ("Over the years, many bandwidth intensive applications have been developed and these companies have earned huge profits without paying a fair share of the additional burden these applications place on broadband networks.")

[14] *Id.*

[15] For example, in 2022, global "over-the-top" revenues were $152 billion, while online advertising revenues in the U.S. grew to over $200 billion. Global OTT TV and Video Forecasts, DIGITAL TVRESEARCH (April 2023), https://digitaltvresearch.com/product/global-ott-tv-and-video-forecasts/; Internet Advertising Revenue Report, Full Year, 2022, IAB (April 12, 2023), https://www.iab.com/wp-content/uploads/2023/04/IAB_PwC_Internet_Advertising_Revenue_Report_2022.pdf

[16] *See, e.g.,* State of Digital Commerce Report, Comscore (Jan. 30, 2023), https://www.comscore.com/Insights/Presentations-and-Whitepapers/2023/State-of-Digital-Commerce ("Comscore Study").

[17] Comscore Study.

[18] These proposals—supporting the payment of network fees to providers based on network traffic—have been made domestically and internationally. For example, MPA has addressed similar arguments in a recent filing before the European Commission, noting that in the European Union (EU): "the suggestion for network fees is based on claims that a small number of leading CAPs are responsible for most of the data traffic growth in the last decade. Some electronic communications networks ("ECN") providers argue that the large CAPs are causing the increase in data traffic, which results in higher costs that they want to be remunerated for. However, we have seen larger growth rates in the past and traffic-related costs are currently declining." *See* Motion Picture Association EMEA, *Written contribution to the European Commission's Exploratory Consultation on 'The future of the electronic communications sector and its infrastructure,'* May 19, 2023, p. 4.

sustainably without increasing network costs over time."[19] As evidence shows that network traffic does not directly correlate to either online services revenue or broadband network costs, the proposition that the volume of network traffic that an entity generates should serve as a guidepost for USF contributions must be rejected. While USF reform may be necessary to stabilize the Fund, as addressed above, there are no defensible arguments to support assessing video streaming providers to aid in that effort given their significant investments in the internet ecosystem and their unique role in encouraging internet adoption.

III. EXPANDING THE CONTRIBUTION BASE TO VIDEO STREAMING PROVIDERS WOULD NOT BE SPECIFIC OR PREDICTABLE AND COULD HARM MARKETPLACE COMPETITION AND INDUSTRY DIVERSITY.

A. Contribution Base Expansion to Video Streaming Providers Would Not Be Specific or Predictable.

Expanding the USF contribution base to video streaming services would conflict with the statutory mandate to establish a just and fair contribution funding mechanism administered on an "equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service."[20] As MPA has previously stated, the existing USF contribution base is comprised of entities that are regulated and trackable by the FCC, making the base of USF providers "less susceptible to change."[21] Currently, however, a multitude of services of all different sizes and varying business models stream video content. For example, data compiled by MPA indicate that there are over 140 full-length movie and television streaming providers in United States. Streaming services are not regulated by the Commission and providers have different ranges and sources of revenue, varying rates of broadband usage, and offer ever-changing services to domestic and international customers at an unpredictable pace. Given the dynamic presence of video streaming providers in the online marketplace, tracking them for the purposes of specific and predictable assessments would be a challenging, virtually impossible, task.[22] Additionally, because video streaming providers can enter and exit the marketplace at any time, assessing them for the USF could cause fluctuations in the contribution base and threaten the Fund's stability.[23]

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[19] Analysys Mason ISP Savings Study at p. 2.

[20] 47 U.S.C. § 254(d).

[21] *2022 FCC Comments* at p. 8.

[22] As MPA has stated: "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." *Id.*

[23] *Id.*

B. Contribution Base Expansion Could Disadvantage All Video Streaming Providers.

Expanding the contribution base to video streaming providers could weaken marketplace competition. Requiring large video streaming providers—who compete in the video programming marketplace with content creators exclusively distributing their content through non-online platforms (*e.g*., traditional cable and satellite subscription services and broadcast television) as well as other forms of online entertainment (*e.g*., social media and video gaming)—to contribute to the USF could reduce the amount of capital available to them to develop content, placing them at a competitive disadvantage. Furthermore, as competition-policy experts have underscored, consumers could "choose services that have no USF obligations, which could destabilize the USF."[24] Additionally, if all video streaming providers were assessed for the USF under a new statutory scheme, contribution assessments could be financially and administratively prohibitive for small and fledgling streaming providers as they might have to pay potentially steep contribution fees, comply with challenging administrative filing rules, and design and employ technical accounting procedures to recoup costs from customers.

C. Contribution Base Expansion Could Harm Video Streaming Industry Diversity.

USF assessments could threaten the growth of small and fledgling video streaming companies with diverse ownership and overall diversity in the streaming industry. For example, video streaming technologies provide unique opportunities for minority-owned start-up companies to enter the media industry.[25] USF assessments might deter potential diverse owners from entering the video streaming market. Additionally, video streaming providers inject vital diversity into the content programming landscape by serving diverse consumers[26] and they also enable employment opportunities for diverse talent.[27] Nielsen data indicates that "subscription video on demand ("SVOD") programming represents several identity groups *e.g.,* Blacks, Hispanic and Asians . . . helping us understand, in part, why more diverse audiences are subscribing to streaming services than the general population."[28] While progress must be made to continue diversifying the video streaming content marketplace, requiring USF assessments from video streaming providers could have the unintended consequence of diminishing content diversity and competitive opportunities for diverse talent.

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[24] *See In the Matter of the Report on the Future of the Universal Service Fund, Notice of Inquiry*, WC Docket No. 21-476, FCC 21- 127, Reply Comments of INCOMPAS, March 17, 2022 ("*2022 FCC INCOMPAS Reply Comments*"), pp. 19-20.

[25] *See, e.g.,* Lauren Forristal, *Founded by actors, Mansa brings its free streaming service for global Black culture out of stealth*, TECHCRUNCH (April 18, 2023), https://techcrunch.com/2023/04/18/mansa-streaming-service-black-cultural-content/.

[26] Press Release, *Streaming Platforms Leading The Way In On-screen Diverse Representation*, Nielsen (Dec. 3., 2020), https://www.prnewswire.com/news-releases/streaming-platforms-leading-the-way-in-on-screen-diverse-representation-301185827.html ("Nielsen Data").

[27] *See, e.g.,* David Robb, *Streaming Films Are Far More Diverse Than Theatrical Features, Study Finds*, DEADLINE (March 30, 2023), https://deadline.com/2023/03/streaming-films-more-diverse-than-theatrical-features-study-1235313145/.

[28] Nielsen Data.

IV. EXPANDING THE CONTRIBUTION BASE TO VIDEO STREAMING PROVIDERS COULD WEAKEN THE NATIONAL ECONOMY.

The enactment of legislation to expand the USF contribution base to video streaming providers could encourage international regulators to assess content creators or charge "network fees" for broadband network usage. This would weaken U.S. competitiveness and the national economy, as well as jeopardize a global open Internet. As global content providers oppose the imposition of network fees by regulators—an issue that bears many similarities to assessing streaming providers for USF contributions—so has the federal government recently rejected a proposal to directly assess content providers for broadband network costs because of its potential negative impact on the global internet ecosystem.[29] The National Telecommunications and Information Administration ("NTIA") has recently stated, in response to the European Commission's exploratory consultation on network fees, that mandating direct payments from content providers could "raise costs for consumers and small businesses" and "create distortions in the Internet ecosystem."[30] As NTIA has commented: "Internet traffic is global, raising questions regarding one country's ability to collect revenues from foreign content providers; if many countries take this path it would likely be unsustainable."[31] NTIA has further pointed to the unsuccessful network-fee regime implemented in South Korea, highlighting that policy studies have indicated that South Korea's contribution system has created "unnecessary costs and bottlenecks in South Korea's digital ecosystem."[32] Additionally, NTIA has referenced how content providers work on a global scale to "build and operate networks, including large international fiber and submarine cable systems, that deliver popular services and applications," and "develop or acquire content, operate data centers, and incur other obligations that contribute to the ecosystem's total costs."[33] Robust investment in these activities, which helps drive the nation's economic competitiveness and ability to innovate, could be jeopardized by the promulgation of rules from global regulators requiring direct payments from content providers, an action that could be provoked by federal policy that assesses online providers for the Fund.

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The MPA thanks the Working Group for the opportunity to comment on this matter and believes that, collectively, the issues illustrated above demonstrate why expanding the contribution base to video streaming providers would be untenable and should not be supported by the Working Group. The MPA looks forward to continuing to assist the Working Group as it

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29 Press Release, NTIA, *U.S. Government Engages in European Commission Discussion on Financing Network Deployment* (May 25, 2023), https://www.ntia.gov/press-release/2023/us-government-engages-european-commission-discussion-financing-network.

30 *Id.*

31 NTIA, *United States Comments on European Consultation: "The future of the electronic communications sector and its infrastructure*" (May 25, 2023), https://ntia.gov/other-publication/2023/united-states-comments-european-consultation-future-electronic.

32 *Id.*

33 *Id.*

further deliberates USF reform. Please do not hesitate to contact the MPA with any questions or requests for additional information.

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Motion Picture Association, Inc.