

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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November 15, 2017

The Honorable Ajit V. Pai
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Chairman Pai:

I write to urge the Federal Communications Commission (FCC) to protect federal funding for rural broadband deployment through its High-Cost program. The FCC's Inspector General and others note that the FCC does not have the dedicated resources necessary to police the program.¹ By diverting resources away from the protection of the bipartisan High-Cost program, the FCC is undermining rural America's access to high-speed internet, and that must stop.

This issue came into focus as part of an investigation I began into how the High-Cost program operates today following calls to use the High-Cost program as a conduit for broadband infrastructure legislation. I wrote to your office, your fellow commissioners' offices, the Universal Service Administrative Company (USAC), the FCC's Office of the Inspector General, and the Government Accountability Office (GAO). As a result of several high-profile abuses of the program, GAO will soon begin a full review of how it is being run. I had hoped the Commission would also act by now to remedy the shortcomings referenced as part of my original inquiry. But the FCC has not, and so I write to urge you to immediately prioritize fixing the High-Cost Fund.

The attention of the full Commission is necessary, as the FCC's Inspector General provided the disturbing report that the problems in the program are extensive. The Inspector General notes that he "has neither the capacity nor the capability to conduct an aggressive program to ferret out waste, fraud, and abuse committed by the approximately 800 service

¹ Letter to Ranking Member Frank Pallone, Jr. from FCC Inspector General David L. Hunt at 3 (June 12, 2017); *see also* Letter to Ranking Member Frank Pallone, Jr. from FCC Commissioner Clyburn at 1 (June 9, 2017) (hereinafter Clyburn Letter).

providers that will continue to receive funding through [the legacy High-Cost program].”² He goes on to note that since “the elimination of the Accounting and Audits Division at the Commission years ago, there are few if any individuals working at the Commission possessing th[e] fount of knowledge,” needed to address fraud in the program.³ The Inspector General’s office has even had difficulty getting Assistant United States Attorneys to bring False Claims Act cases under the High-Cost program. He notes, “when income tax laws are easier to tackle than FCC accounting rules, the problem becomes clear!”⁴

While the Inspector General’s letter is surprising in the breadth of its assessment of the problems, the fact is that the program’s issues were well-known. In my original letter, I specifically noted the FCC’s nearly \$50 million Notice of Apparent Liability against Sandwich Isles Communications Inc. (Sandwich Isles).⁵ Sandwich Isles abused the High-Cost program for more than a decade all while Sandwich Isles impermissibly overcompensated its leadership.⁶ I agree with your assessment that this abuse was a “disgrace,”⁷ especially since the FCC would not have uncovered it without help from outside organizations.⁸ But Sandwich Isles is not alone. One carrier with only three full-time employees used High-Cost dollars to purchase four trucks, four all-terrain vehicles, two snowmobiles, and one 26-foot fishing boat.⁹ Another carrier used High-Cost money to send a general manager’s relative to college,¹⁰ and yet another tapped the program to fly its general manager’s spouse and the spouse of a *potential employee candidate* across the country to attend oral arguments in a court case about the program itself.¹¹

² Letter to Ranking Member Frank Pallone, Jr. from FCC Inspector General David L. Hunt at 3 (June 12, 2017).

³ *Id.*

⁴ *Id.*

⁵ See Federal Communications Commission, *Sandwich Isles Communications, Inc.*, Notice of Apparent Liability for Forfeiture and Order, FCC 16-165 at ¶3 (rel. Dec. 5, 2016) (hereinafter *Sandwich Isles Order*).

⁶ *Id.* at ¶40-42.

⁷ Federal Communications Commission, *All Universal Service High-Cost Support Recipients are Reminded that Support Must be Used for Its Intended Purpose*, Public Notice, FCC 15-133 at 5 (rel. Oct. 19, 2015) (hereinafter *High Cost Public Notice*).

⁸ See Clyburn Letter, *supra* note 1.

⁹ Federal Communications Commission, *Adak Eagle Enterprises, LLC and Windy City Cellular, LLC*, Order, WT Docket No. 10-90, DA 13-1578 at ¶38 (rel. July 15, 2013).

¹⁰ Federal Communications Commission, *Allband Communications Cooperative Petition for Waiver of Certain High-Cost Universal Service Rules*, Order and Order on Review, WT Docket No. 10-90, FCC 16-94 at ¶20 (rel. July 20, 2016).

¹¹ *Id.*

As Commissioner Clyburn noted, the FCC's current rules do not "prohibit recovery of universal service moneys for things like personal mortgages or golf memberships."¹² She also pointed out that "there is currently no explicit rule prohibiting a high-cost recipient from buying a Picasso and recovering that 'cost' from the [program]."¹³ Similarly, Commissioner O'Rielly acknowledges that the FCC needs to "further clarify which practices or costs may not be recovered through [the program]."¹⁴

Despite these examples of abuse and bipartisan agreement among your colleagues, the FCC has not moved to complete its proceeding to reign in these extravagant costs in the ten months you have been Chairman.¹⁵ Instead, you have focused almost exclusively on the smaller programs within the Universal Service Fund (USF) program—programs that the FCC had already taken steps to update. When it comes to the potentially widespread problems in the largest USF program, the FCC has issued only a public notice to remind carriers of what expenses are allowed.¹⁶ That simply is not enough.

For those reasons, I urge the Commission to take action immediately to protect this program pursuant to the authority granted to it by Congress. Additionally, I request that you fully and completely cooperate with GAO's investigation as it gets underway. Should you have any questions regarding this letter, please contact the Democratic Committee staff at (202) 225-3641.

Sincerely,



Frank Pallone, Jr.
Ranking Member

¹² See Clyburn Letter, *supra* note 1.

¹³ *Id.*

¹⁴ Letter to Ranking Member Frank Pallone, Jr. from FCC Commissioner O'Rielly at 1 (June 14, 2017).

¹⁵ Federal Communications Commission, *Connect America Fund*, Further Notice of Proposed Rulemaking, WT Docket No. 10-90, FCC 16-33 at ¶327 (rel. Mar. 30, 2016).

¹⁶ High Cost Public Notice, *supra* note 7.

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Cc: The Honorable Mignon Clyburn, Commissioner, Federal Communications Commission
The Honorable Michael O’Rielly, Commissioner, Federal Communications Commission
The Honorable Brendan Carr, Commissioner, Federal Communications Commission
The Honorable Jessica Rosenworcel, Commissioner, Federal Communications Commission
The Honorable David L. Hunt, Inspector General, Federal Communications Commission
The Honorable Gene L. Dodaro, Comptroller General of the United States, U.S.
Government Accountability Office
Ms. Vicki S. Robinson, Acting Chief Executive Officer & General Counsel, Universal
Service Administrative Company