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USF Supporters Ask 5th Circuit to Reject Latest Consumers' Research Challenge

March 23, 2026 by Howard Buskirk

Supporters of the USF and the programs it provides urged the 5th U.S. Circuit Court of Appeals on Friday to reject the latest attack on the USF contribution factor by Consumers' Research and its allies (see 2601120065). The amicus briefs support the FCC's view (see 2603130068) that the latest challenge provides no argument that wasn't already rejected by the U.S. Supreme Court last year (see 2506270054). Briefs were filed in docket 25-60535.

A joint brief by the Schools, Health & Libraries Broadband Coalition, the Benton Institute for Broadband & Society, the National Digital Inclusion Alliance and MediaJustice responded point by point to each of the arguments made by challengers. "Although Petitioners continue to press a nondelegation argument, they have learned none of the lessons from the Supreme Court's decision in their prior challenge," they said.

Petitioners' "statutory and constitutional challenges to the appointment" of the Universal Service Administrative Co. and its top officials "are baseless," the joint brief said. "In any event, those challenges have no bearing on the sole question now before this Court: whether the FCC lawfully adopted the fourth quarter 2025 contribution factor."

SHLB Executive Director Joseph Wender said in a news release that he's confident that the 5th Circuit will "follow" SCOTUS' holding and find that the USF is constitutional. "Funding from the E-Rate and Rural Health Care programs connect students to education, library patrons to employment opportunities and rural patients to telemedicine."

In a separate brief, the American Library Association called E-rate "a well-executed program with significant federal oversight, established anti-fraud measures, and controlled spending." The program allows "libraries to meet fundamental operational needs like information access, resource management, and building safety." In addition, it "supports libraries' necessary modernization efforts in a rapidly changing technological landscape." Without E-rate, libraries "would face an impossible choice between cutting critical functions and improvement measures or core staff and programs."

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