BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of	)	
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
	)	
	)	

COMMENTS OF USTELECOM—THE BROADBAND ASSOCIATION

I. Introduction

USTelecom – The Broadband Association[1] respectfully submits these comments identifying items the Commission should consider if it adopts rules setting an overall Universal Service Fund (USF) budget cap.[2] Consideration of a USF budget is an important public policy question given that the Federal Communications Commission (Commission) relies on the contributions of American consumers to carry out its statutory USF obligations. While considering the impact on ratepayers, the Commission must also be mindful that many of its program participants also rely on a pre-established budget to fulfill their broadband missions. Therefore, any post-commitment disruptions to allocated resources could have serious impacts on broadband deployment and use. Accordingly, the Commission should not lose sight of the importance of its statutory obligation to ensure "[t]here should be specific, predictable, and sufficient Federal and State mechanisms to preserve and advance universal service,"[3] which has,

---

[1]USTelecom is the nation's leading trade association representing service providers and suppliers for the broadband innovation industry. Its diverse member base ranges from large publicly traded communications corporations to small companies and cooperatives – all providing advanced communications and broadband services to hundreds of millions of customers around the world.

[2] *Budget Contribution Methodology*, WC Docket No. 06-122, Notice of Proposed Rulemaking, FCC 19-46 (rel. May 31, 2019) (NPRM).

[3] 47 U.S.C. § 254(b)(5).

and should continue, to allow broadband connections for consumers, businesses, schools, libraries and healthcare facilities. Providers must be confident in the predictability of all these programs to appropriately plan for the short term and predict for the longer term.

II. The Commission Should Not Cap a Program's Support Below Its Current Authorized Budget Without Full Examination of the Program

Establishing and tracking budgetary spending is an important responsibility for the Commission, particularly as it collects and disburses billions of dollars from American ratepayers annually. Thus, the Commission should always be mindful of whether it is putting this money to the best and highest uses. To that end, Congress has given the Commission statutory principles to guide its evaluation, including ensuring: quality and rates, access to advanced services, access in rural and high cost areas, specific and predictable support mechanisms, and access to advanced telecommunications services for schools, healthcare, and libraries.[4] Given that the USF contribution factor has reached a historic high of 24.4 percent,[5] USTelecom agrees the Commission should "ensure the funds are spent prudently and in a consistent manner across all programs."[6]

Total USF budget management begins with each individual USF program. The Commission has appropriately wrestled with USF budget caps in the past, setting hard caps and budgets for each of the four USF programs—E-rate, High Cost, Lifeline, and Rural Health Care—though the cap has differed from the amount actually disbursed under each program.[7] The NPRM in turn questions how to view those component caps holistically when addressing

---

[4] 47 U.S.C. § 254(b).

[5] *Proposed Third Quarter 2019 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 19-559 (OMD June 12, 2019).

[6] NPRM at para. 3. Of course, USF distribution program spending is only part of the reason the USF contribution factor is at a historic high. The increase in the contribution factor is also due to the shrinking contribution base.

[7] *See id.* at paras. 5-8.

total budget concerns. The individual caps/budgets[8] for the programs total $11.42 billion per year, though actual total USF disbursements for the most recent year totaled $8.832B, with $8.867 billion representing the highest disbursement in the past five years. Accordingly, the overall USF program would have "headroom" of $2.553 billion over the highest disbursement level since 2014 though the FCC's projections show that headroom would decrease to $1.416 billion in 2020, when disbursements are expected to climb to $10.491 billion.[9]

Should the Commission decide to set an overall USF cap, the proposed $11.42 billion should be the minimum floor it considers for a cap because it allows each program to operate at its fully allotted capacity. To the extent the Commission considers $11.42 billion as too high of an overall USF cap, or the projected disbursements threaten to exceed the cap, USTelecom recommends reevaluating each individual program budget first so that each program budget and expectations can be effectively managed. The NPRM seeks comment on whether "self-enforcing caps on each of the programs [would] provide more predictability to universal service spending."[10] Even if self-enforcing caps on each program might afford predictability in maximum program spending, it seems that other approaches to limit USF spending may ultimately be as effective without the potential harm to program providers and beneficiaries. Just as the Commission rightly-concluded that the establishment of separate budgets within the High-Cost USF program would foster "greater certainty and predictability,"[11] the maintenance of separate, carefully designed and applied budgets for each of the four distinct USF programs

---

[8] The High Cost program had a budget cap of $4.5B from 2012-2017 but lacked an inflation adjustment though it has dedicated reserves in place. *Id.* at para. 5. The 2018 disbursement total was $4.685B. *Id.* at para. 11.

[9] *Id.* at para. 11.

[10] *Id.* at para. 21.

[11] *Connect America Fund, et al.,* Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, 33 FCC Rcd 11893, 11918 at para. 84 (2018) ("December 2018 Order").

individually is necessary to achieve and preserve the same effects. The Commission should not authorize a certain level of support per-fund only to have that authorized amount jeopardized, even though the funds were spent in a manner compliant with the Commission's rules. Advance, per-fund budget expectations are critical not only to the overall stability of the Fund, but also to its providers that use anticipated USF support amounts in budgeting to meet near-term program commitments and planning for longer-term USF supported projects. To the extent the Commission believes periodic review of program budgets is appropriate to ensure that each program continues to effectively meet its universal service goals, it should establish a rule requiring a periodic simultaneous review of each program's individual budget. This would avoid a mechanical reduction of support across programs to comply with the USF cap without regard to the mission or effectiveness of each program individually.

The Commission has taken numerous steps in recent years to reduce waste, fraud and abuse in the program, which in turn ensures budget availability for legitimate purposes.[12] USTelecom encourages the Commission to continue such efforts in order to preserve budget availability for legitimate program uses. The Commission can take the potential for curbing additional waste, fraud and abuse into account when conducting its periodic review of each program's budget.

III. Commitments Made in the High-Cost Fund Should Not be Subject to Retroactive Limiting Budget Decisions

The make-up of the High-Cost program is evolving but it differs from the other USF funds in its long-range, commitment-based nature. While the High-Cost program has historically consisted of separate budgets for price cap and rate-of-return carriers, the traditional lines are

[12] *See, e.g.*, *Establishment of the Fraud Division of the Enforcement Bureau*, Order, 34 FCC Rcd 781 (2019); *DataConnex, LLC*, Notice of Apparent Liability, 33 FCC Rcd 1575 (2018); *American Broadband and Telecommunications Company*, Notice of Apparent Liability, 33 FCC Rcd 10308 (2018).

beginning to blur. The majority of the CAF Phase II Auction support was awarded to non-ILECs[13] and the draft Notice of Proposed Rulemaking creating the Rural Digital Opportunity Fund proposes to make $20.4 billion in high cost funding available to many different types of broadband providers in a competitive auction.[14] Similarly, many traditional rate-of-return carriers have opted into the Commission's A-CAM program for high-cost support.[15] Through these evolutions, the High-Cost program is today, more than ever, based on a procurement-style model whereby the High-Cost support recipient commits to meeting certain broadband deployment over a period of years and performance goals in exchange for a set amount of funding.

High-Cost program participants are investing today with the belief that the funds the Commission commits through the USF program are secure; any potential reduction in that support based upon an overall USF budget cap would greatly destabilize participation, and ultimately broadband deployment in rural America. For example, the CAF Phase II Auction required bidders to commit to deploy broadband across the supported territory in the first six years, though the funding term is 10 years.[16] If budget issues could destabilize the support in the out years of the program, the bidder would have made a substantial investment relying on expected support that may not materialize, calling into question their ability to continue to provide broadband in their high-cost service territory. Further, even the question of budget

---

[13] *Connect America Fund Auction (Auction 903) Closes; Winning Bidders Announced; FCC Form 683 Due October 15, 2018*, Public Notice, 33 FCC Rcd 8257, 8272-82 (AU, WCB 2018).

[14] *Rural Digital Opportunity Fund*, WC Docket Nos. 19-126, 10-90, Notice of Proposed Rulemaking, FCC-CIR1908-01.

[15] Wireline Competition Bureau Announces Offers of Revised A-CAM Support Amounts and Deployment Obligations Authorized A-CAM Companies to Expand Rural Broadband, WC Docket No. 10-90, Public Notice, DA 19-115 (WCB rel. Feb. 25, 2019).

[16] *See Connect America Fund Phase II Auction Scheduled for July 24,, 2018; Notice and Filing Requirements and Other Procedures for Auction 903*, Public Notice, 33 FCC Rcd 1428, 1435 at para. 14 (2018).

instability threatens the concept of a reverse auction. Bidders would have to inflate their bids to account for the possibility that once-guaranteed support may not materialize, making the auction far less efficient and as a result the auction would enable less broadband to rural Americans.

The Commission has recently addressed budget tensions between High-Cost funds in the rate-of-return context and decided to emphasize certainty and predictability, which it should also do here. The Commission established two distinct budgets for legacy and A-CAM providers in order to "provide greater certainty and predictability." It "agree[d] that separate budgets enable proponents of the two support mechanisms [legacy and A-CAM] to focus on how best to efficiently maximize broadband deployment."[17] Further, making the budgets function independently would "afford[] budget analysis on [their] own bona fides without regard to the other, which will allow [the Commission] to better evaluate each support mechanism on its own merits."[18] The Commission's decision eight months ago is equally applicable today—in order for the High Cost program to function effectively, the support awarded under it must be predictable and not subject to impacts from other program overruns.

For these reasons the High Cost Program should not be – and should not need to be— subject to a self-enforcing overall budget cap. Further, it seems equally unwise to impose reductions in program support for any of the USF distribution programs that would disrupt established expectations for program support. Thus, to better ensure predictability and certainty, should the Commission set a total USF cap then it should allow flexibility to move funding between programs to enable full coverage of each program's commitments. If enforcement of a total budget cap would trigger support reductions, any such reductions should only be made with

[17] December 2018 Order, 33 FCC Rcd at 11918-19, para 84 (internal citations omitted).

[18] *Id.* at 11919, para 84 (internal citations omitted).

sufficient notice. As a preferable approach, however, USTelecom supports annual program reviews combined with long-term forecasting to avoid placing any fund and its supported providers in a situation of not being able to fulfill their universal service commitments to the consumers, business, schools, libraries, rural healthcare providers and others for whose benefit these programs were created.

Respectfully submitted,

USTELECOM

By: ______________________________

Michael Saperstein
Vice President, Policy & Advocacy
601 New Jersey Avenue, NW, Suite 600
Washington, D.C. 20001
202-326-7200

July 29, 2019