

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

¹ *Universal Service Contribution Methodology*, FCC 19-46, released May 31, 2019, published in the Federal Register at 84 Fed Reg 27570 (June 13, 2019)(hereafter cited as “*NPRM*”). The Commission subsequently granted a two-week extension of the comment deadlines. *Universal Service Contribution Methodology*, DA 19-628, released July 5, 2019.

voice, data, video and Internet communications across a variety of network infrastructures. ADTRAN's solutions are currently in use by service providers, private enterprises, government organizations and millions of individual users worldwide. ADTRAN's customers benefit greatly from the USF programs. ADTRAN thus brings an expansive perspective to this proceeding, as well as an understanding of the importance to individuals, communities and our country of robust and ubiquitous broadband. ADTRAN has been a strong advocate in Commission proceedings to help spur broadband deployment,² and has itself launched a gigabit initiative that has far surpassed its goal of facilitating the deployment of 200 gigabit communities by the end of 2015, with over 350 gigabit communities deployed.³

ADTRAN certainly agrees with the goals of this proceeding – to add a measure of certainty to the USF, and to try to ensure that any funds are expended efficiently. Contributors to the USF should not be exposed to continually escalating assessments as a result of regulators or bureaucrats obliviously spending other peoples' money. The beneficiaries of the USF subsidies

² E.g., Comments of ADTRAN in WC Docket No. 17-84, filed January 17, 2018; Comments of ADTRAN in WC Docket No. 10-90, filed December 6, 2017; Comments of ADTRAN in GN Docket No. 17-199, filed September 21, 2017; Comments of ADTRAN in GN Docket No. 15-191, filed September 15, 2015; Comments of ADTRAN in WC Docket No. 10-90 *et. al.*, filed August 8, 2014; Comments of ADTRAN in WC Docket No. 10-90, filed March 28, 2013; Comments of ADTRAN in WC Docket No. 10-90 *et. al.*, filed January 18, 2012; Comments of ADTRAN in WC Docket No. 10-90 *et. al.*, filed April 18, 2011.

³ See, *Press Release*, "ADTRAN Sets the Nation's Communities on the Path to Gigabit Transformation -- Utilities, MSOs and land developers deliver Gigabit broadband to over 350 communities," <http://phx.corporate-ir.net/phoenix.zhtml?c=67989&p=irol-newsArticle&ID=2178711>; <http://gigcommunities.net/adtran-reaches-200-gigabit-community-milestone/> ("More than 200 communities are now able to access [next-generation gigabit broadband services](#) as a result of ADTRAN's Enabling Communities, Connecting Lives program, ADTRAN announced August 11."); *Light Reading*, August 13, 2014, "Adtran Launches 'Gig Communities' Initiative," available at <http://www.lightreading.com/broadband/fttx/adtran-launches-gig-communities-initiative/d/d-id/710330>. See also, <http://www.adtran.com/index.php/broadband-access>.

– schools, libraries, rural health care providers, lifeline recipients and high-cost incumbent local exchange carriers – should not have to face inadequate or vacillating subsidies. Likewise, the providers of the various services subsidized by the USF should have a fair measure of certainty with regard to the level and continuation of funding. Otherwise, the resulting instability of the expenditures and contributions will make long-term planning impossible. But broadband deployment requires long-term investments, so the Commission properly seeks to create a measure of certainty for the USF.

While the Commission’s goals in this proceeding of providing additional certainty and efficiency are laudable, ADTRAN is unsure of the benefits of an overall cap, in addition to the individual caps, in achieving those goals. The *NPRM* does indicate that “By explicitly linking the expenditures in multiple USF programs through the overall cap, we seek to promote a robust debate on the relative effectiveness of the programs.”⁴ However, the Commission can (and should) analyze the effectiveness and efficiencies of the different programs in the absence of an overall cap.

The *NPRM* also seems to suggest that adopting an overall cap may constrain the Commission in the future from making changes to the USF program.⁵ But a future Commission retains the discretion to make policy changes it believes to be in the public interest, and any such

⁴ *NPRM* at ¶ 9.

⁵ *E.g.*, *NPRM* at ¶ 20 (footnote omitted):

Finally, we seek comment on how to account for additional duties or obligations that the Commission might create in other proceedings that potentially would cause projected expenditures to exceed the cap within the next five years. For example, if the Commission proposes to create a new USF program or allocate additional funding to a program, that action would not occur unless the Commission either: (a) cuts spending elsewhere to keep projected spending below the cap or (b) raises the overall cap.

changes are not subject to greater judicial scrutiny.⁶ Presumably a future Commission will be conscious of its obligations to follow these obligations and the Administrative Procedures Act when making changes that affect the USF programs.

Moreover, to the extent that adopting an overall cap on the USF program might cause future Commissions to have to make comparative judgments about the “value” of each of the four USF programs,⁷ ADTRAN is not convinced that attempting in this proceeding to make hypothetical, *a priori* assessments of the tradeoffs provides much benefit.⁸ Any such analyses

⁶ *FCC v. Fox Television Stations, Inc.*, 129 S.Ct. 1800, 1811 (2009):

To be sure, the requirement that an agency provide reasoned explanation for its action would ordinarily demand that it display awareness that it *is* changing position. An agency may not, for example, depart from a prior policy *sub silentio* or simply disregard rules that are still on the books. See *United States v. Nixon*, [418 U. S. 683](#), 696 (1974). And of course the agency must show that there are good reasons for the new policy. But it need not demonstrate to a court’s satisfaction that the reasons for the new policy are *better* than the reasons for the old one; it suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency *believes* it to be better, which the conscious change of course adequately indicates. This means that the agency need not always provide a more detailed justification than what would suffice for a new policy created on a blank slate. Sometimes it must—when, for example, its new policy rests upon factual findings that contradict those which underlay its prior policy; or when its prior policy has engendered serious reliance interests that must be taken into account. *Smiley v. Citibank (South Dakota), N. A.*, [517 U. S. 735](#), 742 (1996). It would be arbitrary or capricious to ignore such matters. In such cases it is not that further justification is demanded by the mere fact of policy change; but that a reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy.

⁷ *Cf.*, *NPRM* at ¶ 3:

Although the creation of a topline budget will not eliminate the Commission’s ability to increase funding for a particular program, a cap would require us to expressly consider the consequences and tradeoffs of spending decisions for the overall fund, and more carefully evaluate how to efficiently and responsibly use USF financial resources.

⁸ *See, e.g.*, *NPRM* at ¶ 19:

Second, we seek comment on prioritizing the funding among the four universal service programs and other possible universal service pilots or programs if still necessary to

are likely to be dependent on the particular facts and circumstances existing at the time. Moreover, it is not clear how to compare the benefits of the different programs. For example, how do you trade off children receiving the benefit of an enhanced education as a result of the Schools and Libraries Program versus lives saved as a result of the Remote Health Care Program?

Equally important, pitting the USF programs against each other may fail to adequately consider the interactions of the USF programs. The *NPRM* does acknowledge the need for the Commission to examine the USF programs holistically.⁹ But such a holistic assessment means not only looking at the USF programs compared to one another,¹⁰ but also taking into account how the programs work (or could work) together. Subsidizing fiber deployment to anchor institutions such as schools, libraries or hospitals can also make it more efficient to provide broadband services to nearby homes and businesses. Such positive externalities need to be factored into the Commission's assessments of the "value" of the individual USF programs.

expenditures where USAC projects that total disbursements will exceed the overall cap ... How should we prioritize among the programs? For instance, should we prioritize based on the cost-effectiveness of each program or the estimated improper payment rates? Should we instead prioritize based on the types of services to be funded or by rurality of the recipient?

See also, NPRM at ¶ 17 ("What criteria should be used in prioritizing reductions of one program against reduction in another?").

⁹ *E.g., NPRM at ¶ 1* ("While each of the constituent USF programs are capped or operating under a targeted budget, the Commission has not examined the programs holistically to determine the most efficient and responsible use of these federal funds."; *NPRM at ¶ 4* ("Although the Commission has taken steps over the last decade to set caps or funding targets for each of the four programs individually, for the first time we look at the Fund and its programs holistically.").

¹⁰ *Cf., NPRM at ¶ 22* ("Are there ways to compare effectiveness across the programs more holistically in order to measure program efficiency? How should we balance the benefits of the different programs with the costs of increased contributions by ratepayers?").

The Commission does not do so presently. For example, in the CAF auctions, the Commission awards subsidies on the basis of a reverse auction that established the lowest subsidy level for the High Cost Fund to subsidize broadband service to homes and businesses. But it may be the case that a different set of technologies would most efficiently provide broadband service to a community if the subsidies serving anchor institutions under the Schools and Libraries and Rural Health Care programs were also taken into account, along with the High Cost Fund subsidies.¹¹

Moreover, the Commission's holistic review of the USF programs should additionally take into account other government subsidy programs. Broadband subsidies are also being provided under programs under the authority of the Department of Agriculture. Health care costs, including for necessary broadband and remote healthcare services, are subsidized by various federal programs. And numerous states are subsidizing broadband deployment. A holistic assessment of the Commission's USF programs should also take into account these other programs to ensure that they work harmoniously and efficiently. Simply adding an overall USF cap does not by itself ensure that such much broader analyses are undertaken.

If the Commission does proceed with adoption of an overall USF cap, ADTRAN has concerns with a couple of the specifics regarding the implementation of the cap proposed in the *NPRM*. The *NPRM* proposes to rely on USAC projections with regard to future demand and disbursements.¹² But the *NPRM* does not discuss how reliable those USAC projections have

¹¹ By way of example, the winner of a reverse auction focusing solely on the High Cost Fund might be a satellite service provider, but it could actually be more efficient overall to provide broadband service to a community as a whole if the subsidized fiber-based service to hospitals, schools and libraries was also "extended" to other customers via wireless broadband.

¹² *NPRM* at ¶¶ 13-14.

proven to be. If it has not done so already, the Commission should compare the USAC projections with the actual results to determine whether they are sufficiently reliable to be incorporated into the new USF cap mechanism. In addition, ADTRAN has concerns with the NPRM's proposal to delegate authority to USAC, the Bureaus or the Managing Director's Office Commission to make significant decisions with regard to the funding and the caps.¹³ ADTRAN believes that such decisions should be made by the Commission.

ADTRAN is also very concerned, however, with an element of the USF that is not addressed in the *NPRM*. Notwithstanding the title of this proceeding, the *NPRM* does not discuss the USF contribution methodology. As mentioned previously, one of the critical goals of this proceeding is to add a degree of certainty to the USF. And this goal is at risk from the current contribution methodology -- which is unsustainable. The problem is that the "base" on which contributions are assessed has been declining, while the expenditures have been rising. While the implementation of an additional overall USF cap may slow the increase in USF expenditures, it does nothing to address the shrinking contribution base.

The most recent USF contribution factor (or tax, if you prefer) for the Third Quarter of 2019 has been set at 24.4%.¹⁴ Moreover, the problem will continue to grow, particularly because with assessments at this level, the tax has a distortive effect on the marketplace. As a result, the

¹³ *NPRM* at ¶ 18.

¹⁴ *Public Notice*, "Proposed Third Quarter 2019 Universal Service Contribution Factor," DA 19-559, Released: June 12, 2019.

non-assessed services will be even relatively more attractive, thus triggering an escalation of the decline in the contribution base.

The Commission in theory has been addressing the issue of USF contribution reform since this current docket was initiated in 2006. And while the Commission has tinkered some with the USF contribution issues since adoption of the USF pursuant to the Telecommunications Act of 1996,¹⁵ it has merely applied “band-aids” without yet undertaking the significant reforms necessary to address the problem of the declining base of revenues subject to USF assessments. ADTRAN thus urges the Commission to refresh the record, if necessary, and then expeditiously address USF contribution reform. Such action will likely do much more to stabilize the USF than adding an overall cap to the USF. ADTRAN believes that the public interest would best be served by taking the actions proposed in these comments.

Respectfully submitted,
ADTRAN, Inc.

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¹⁵ The Commission did require interconnected VoIP providers to contribute to the USF, and it has also adjusted the “safe harbors.” In addition, in 2014 the Commission asked the Federal-State Joint Board on Universal Service (Joint Board) to provide recommendations on how the Commission should modify the universal service contribution methodology. *Federal State Joint Board on Universal Service*, 29 FCC Rcd 9784 (2014). However, the Commission has not yet received a recommendation or taken any action to address the USF contribution issue.