Before the
Federal Communications Commission
Washington, DC 20554

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

COMMENTS OF
NEW AMERICA'S OPEN TECHNOLOGY INSTITUTE

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I. Introduction and Summary

New America's Open Technology Institute ("OTI") respectfully submits the following comments in the above-captioned proceeding in response to the Federal Communications Commission's ("the Commission") Notice of Proposed Rulemaking ("NPRM") seeking comment on a proposed cap of the Universal Service Fund ("USF").[1]

OTI urges the Commission to abandon this NPRM, as it would significantly harm efforts to bridge the digital divide through the four programs run through the Universal Service Fund. The Lifeline, E-Rate, Connect America Fund, and Rural Health Care programs each serve specific purposes: connecting low-income Americans, connecting schools and libraries, catalyzing broadband deployment in rural and hard-to-serve areas, and improving broadband-connected healthcare services, respectively. These diverse needs require tailored techniques and budgeting methods. The NPRM proposes a budget cap that is too rigid and draconian for these programs.

The proposed cap directly contradicts the Commission's universal service mandate. Congress directed the Commission to catalyze the deployment and access of advanced telecommunications capability, and directed the creation of what eventually became the Universal Service Fund to address a variety of broadband deployment issues. The Commission, in seeking a cap on the entire USF, would hinder each program's ability to grow and serve the millions of Americans that have not yet been served by each individual program, and therefore make each program less flexible. Further, the proposed cap is unnecessary because each individual program already has a set budget. A broader cap to the entire USF would not promote

[1] Notice of Proposed Rulemaking, WC Docket No. 06-122 (May 15, 2019), https://docs.fcc.gov/public/attachments/FCC-19-46A1.pdf ("NPRM").

efficiency in spending, and would instead increase the burdens placed on the Universal Service Administrative Company and would restrict the mobility of each program to make changes to reach more consumers or parts of the country.

The proposed cap seeks to restrict USF disbursement levels in their current state, which would particularly harm the ability of the Lifeline program to expand and serve more consumers across the country. Capping the USF at current levels removes flexibility for programs to adjust to changing demand and the evolving telecommunications landscape. If anything, the Commission should focus on improving the Lifeline program's participation rate, which has been declining steadily.

The Commission should not combine the E-Rate and Rural Health Care (RHC) program caps. To do so would be to violate the spirit of the Telecommunications Act of 1996, which established two separate programs—one for schools and libraries and another for health care for rural areas—and combining their funding pools would undermine achieving the goals of both programs. Combining the program caps will harm both students and community members who depend on schools and libraries for broadband access and patients and providers who rely on broadband for telehealth services.

Finally, the NPRM ignores the USF's most urgent fiscal problem: the outdated contribution system. The current system is unsustainable and unfair. Broadband users reap the benefits of the USF without paying into the fund. The current system does not adapt to market changes and has not stabilized the contribution base. This is an existential fiscal problem for the USF, but the NPRM does not address it.

II. Strong USF Programs Are Needed To Close the Digital Divide

High-speed broadband is essential for participation in modern life, yet it continues to be out of reach for a significant portion of the population. The Commission's most recent data paints an unfortunate picture of broadband access and deployment: 21.3 million Americans lack broadband access and only 64.5 million households—54 percent—have a broadband connection.[2] These numbers, which are based on notably flawed Form 477 data, likely *overstate* broadband deployment, meaning the problem is even worse than what is being reported.[3]

The high cost of broadband service is another significant cause of the digital divide. Of adults with household incomes below $30,000 per year, 44% lack home broadband services, while only 19% of adults with household incomes between $30,000 and $99,000 also lack broadband services at home.[4] Fifty percent of those who do not have broadband connections reported cost as a reason for their lack of adoption.[5] Lack of adoption also affects the ability for

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[2] Federal Communications Commission, "Internet Access Services: Status as of June 30, 2017" (Nov. 2018), https://docs.fcc.gov/public/attachments/DOC-355166A1.pdf at Figure 32 ("FCC Internet Access Services Report"); Federal Communications Commission Press Release, " Revised Draft Broadband Deployment Report Continues To Show America's Digital Divide Narrowing Substantially" (May 1, 2019), https://docs.fcc.gov/public/attachments/DOC-357271A1.pdf ("FCC May 2019 Broadband Deployment Report Press Release").

[3] Dissenting Statement of Commissioner Jessica Rosenworcel, Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, GN Docket No. 17-199, https://transition.fcc.gov/Daily_Releases/Daily_Business/2018/db0202/FCC-18-10A6.pdf. FCC Commissioner Jessica Rosenworcel dissented to the claim made in the FCC's 2018 deployment report that deployment of broadband in the U.S. is reasonable and timely, commenting that, "this is ridiculous—and irresponsible."; Max Garland, "WV broadband council chairman blasts FCC report, says data isn't correct," West Virginia Gazette-Mail (Feb. 8, 2018), https://www.wvgazettemail.com/business/wv-broadband-council-chairman-blasts-fcc-report-says-data-isn/article_d98cf35b-e9ac-5f82-93a9-b214770656db.html.

[4] Monica Anderson and Madhumitha Kumar, "Digital divide persists even as lower-income Americans make gains in tech adoption," Pew Research Center (May 7, 2019), https://www.pewresearch.org/fact-tank/2019/05/07/digital-divide-persists-even-as-lower-income-americans-make-gains-in-tech-adoption/ ("Digital divide persists even as lower-income Americans make gains in tech adoption").

[5] Monica Anderson, "Mobile Technology and Home Broadband 2019," The Pew Research Center (June 13, 2019), https://www.pewinternet.org/2019/06/13/mobile-technology-and-home-broadband-2019/.

students to receive the highest quality education and patients to attain the highest quality healthcare.

The USF, with its four programs—Lifeline, E-Rate, Connect America Fund, and Rural Health Care—is crucial to addressing the issue of cost and insufficient deployment across the country. Understanding that cost is a prohibitive factor for both build-out of infrastructure and customers, Congress revised the USF in the 1996 Telecommunications Act to promote the deployment of advanced telecommunications capabilities across the country. Congress clearly intended for the USF to alleviate high costs, both on internet service providers and consumers.

The Lifeline Program serves as a vital resource for many Americans who cannot otherwise afford to get online. It grants relief against the high cost of communications services, allowing those who cannot normally afford to get online a chance to engage. With each passing year, domestic broadband service subscription prices regularly outpace international peers as consumers face misleading fees and extra costs that factor into unaffordable monthly bills.[6] As this plays out, low-income and historically minority communities disproportionately feel the impact of these high costs, as exhibited in adoption rates.[7] Should USF programs be scaled back, decreased adoption rates across these communities would surely follow. Under the current eligibility requirements for the USF, Americans may qualify if their income is 135% or less of the federal poverty guidelines.[8] For families at this income level, the consideration of another bill for broadband services comes alongside difficult decisions regarding food, electricity, childcare, and other daily expenses. Even the Commission's 2019 Broadband Deployment Report showed a

[6] International Broadband Data Report, GN Docket No. 17-199 (2 Feb 2018), Appendix C, ¶1, Table 3.
[7] Adie Tomer et al., "Signs of Digital Distress: Mapping broadband availability and subscription in American neighborhoods," The Brookings Institution (September 2017), https://www.brookings.edu/research/signs-of-digital-distress-mapping-broadband-availability/.
[8] Universal Service Administrative Company Website, "Do I Qualify?" https://www.lifelinesupport.org/ls/do-i-qualify/default.aspx.

sharp decrease in adoption rate when moving from those who qualify for Lifeline to those immediately above the maximum qualifying income.[9] Without a strong Lifeline program that can flexibly address increases in demand, adoption rates may further plummet.

The USF also provides vital funding to the FCC's E-Rate Program. Anchor institutions play an important role in ensuring connectivity for students and those who otherwise cannot maintain an internet connection at home. The E-Rate program is designed to ensure that those crucial anchor institutions are not left unable to afford reliable broadband services, which are then used by millions throughout the country to access online services.

The access problem is particularly pronounced for students. Currently, 3 million students across the country lack access to a reliable home broadband network. When these students are unable to log on at home, they rely on a patchwork of alternatives for connectivity, including schools, libraries and fast food restaurants.[10] These alternatives are a poor substitute for home access, leading to student disengagement and what is known as the "homework gap."

Thirty-eight percent of children ages 3 to 18 with no home broadband access said it was because service was too expensive, while 38 percent said it was because they did not need it or they were uninterested in it.[11] Further, 78% of teachers in a nationwide survey of nearly 770 districts and 710 teachers specifically cited the lack of home access to the internet as a barrier to using Digital Learning Resources (DRL) with English Learners.[12] Teachers are also more

[9] 2019 Broadband Deployment Report, GN Docket No. 18-238 (29 May 2019), ¶49, Fig. 13, https://docs.fcc.gov/public/attachments/FCC-19-44A1.pdf.
[10] Michael Melia et al., "AP: 3 million US students don't have home internet," The Associated Press (June 10, 2019), https://apnews.com/7f263b8f7d3a43d6be014f860d5e4132.
[11] "Student Access to Digital Learning Resources Outside of the Classroom," U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics (Apr. 2018), https://nces.ed.gov/pubs2017/2017098.pdf.
[12] Jenny Muñiz, "Survey: Districts and Teachers Think English Learners Face a Digital Divide at Home," New America Blog Post (July 15, 2019), https://www.newamerica.org/education-policy/edcentral/survey-districts-and-teachers-think-english-learners-face-digital-divide-home/.

hesitant to use and integrate DRL into homework assignments with English Learners, knowing that English Learners have limited access to computers, DLRs, or internet access outside of school. The homework gap affects nearly 3 million students nationwide. Ensuring a strong connection in our libraries and schools is a fundamental step toward supporting 21st century learning at all ages. If we expect to adequately prepare our students, we must continue to *improve* the E-Rate program, not restrict its available funding.

The USF also contemplates easing the burden on internet providers to build infrastructure in expensive areas. As internet service providers work to expand their networks, certain areas, particularly rural areas, present high expenditures and lower returns than urban areas. As a result, rural areas tend to attract fewer providers. The Commission administers the Connect America Fund, which already has a cap and will provide $1.9 Billion to develop infrastructure over the next ten years.[13]

Finally, the USF supports the Rural Health Care Program, which directly funds rural health care and telehealth providers to ensure that those providers have access to telecommunications and broadband services. The Commission claims that this program directly improves the quality of healthcare provided to rural citizens, something that should be considered fundamental by all people, but it is now moving to place another barrier in the way of health professionals.

[13] Federal Communications Commission Website, "Connect America Fund Phase II Auction (Auction 903)," https://www.fcc.gov/auction/903.

III. The NPRM is Unnecessary and Contradicts the Commission's Universal Service Mandate

OTI strongly opposes the Commission's proposed overall cap of the USF. The proposed cap is unnecessary and harmful to all four programs, as they will have to fight one another for limited funding in addition to having their own individual budgets. Further, the proposed cap contradicts Congress' mandate in the revision of the USF in the 1996 Telecommunications Act. Further, the Commission should be focusing on improving the participation rates and strength of USF programs such as Lifeline, which has seen declining participation rates over the past few years. A budget cap will only further restrict the Lifeline program's ability to broaden its subscription pool.

A. A USF Cap is Unnecessary and Would Harm Vital Programs

This proposed cap is not necessary for the Commission to ensure responsible spending, as each of the four programs already has a cap or budget mechanism.[14] The Commission acknowledges this in the NPRM without adequately explaining why an additional layer of budget bureaucracy is needed.[15]

[14] Third Report and Order, Further Report and Order, and Order on Reconsideration, WC Docket No. 11-42 (March 31, 2016) ("Lifeline Modernization Order"), ¶ 10, "This Order next recognizes the importance of fiscal responsibility in the program, establishes an annual budget of $2.25 billion, and directs the Bureau to submit a report to the Commission if Lifeline disbursements in a year exceed 90 percent of this level, with an expectation that the Commission will act within six months of this report. It is essential that we ensure the program is designed to operate in an efficient, highly accountable manner that obtains great value from the expenditure of ratepayer dollars. In establishing a budget mechanism, we bring the Lifeline program into alignment with the other three programs of the Universal Service Fund, each of which operates within a budget."

[15] NPRM ¶ 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.").

Imposing an overall cap is a needlessly draconian way to force a holistic review of the USF programs. USAC already provides publicly available reports to Congress that detail how the four programs perform, how much money they use, how those disbursements compare to the program budgets, and the effectiveness of each program.[16] The Commission could seek input from USAC about those reports and how it thinks the programs are functioning. The Commission could ask more questions in its USF-relevant proceedings about the budgetary impacts of program changes. But imposing an overall cap is not the right way to engage in these conversations. Instead, the cap forces programs to vie for limited funds in a zero-sum way, and could force the Commission into making arbitrary cuts to programs for no reason other than an arbitrary cap has been placed on the programs.

A budget cap is also a poor way to evaluate a program's cost effectiveness. The Commission has long considered efficiency and cost-effectiveness when modernizing USF programs.[17] When the Commission updated the E-Rate program through its first E-Rate Modernization Order, then-Chairman Tom Wheeler said, "[w]e are stewards of the Universal Service Fund, and that we have a fiduciary obligation to those who pay into USF—consumers. That's why this Report and Order includes such an emphasis on maximizing the cost-

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[16] Universal Service Administrative Company 2018 Annual Report, https://ecfsapi.fcc.gov/file/10329622217495/USAC%202018%20Annual%20Report.pdf; High Cost & Low Income Committee Briefing Book, Universal Service Administrative Company (April 29, 2019), https://www.usac.org/_res/documents/about/pdf/bod/materials/2019/High-Cost&Low-Income-Briefing-Book-April.pdf.

[17] Commissioner Michael O'Rielly argued that the establishment of this overall cap will "require the Commission to more thoughtfully consider the cost-effectiveness of its spending decisions and the consequences of raising one program's budget for the entire USF enterprise," adding that the Commission has "repeatedly raised the budgets" of USF programs without being required to "consider the implications of the whole fund." Commissioner Michael O'Rielly, "A Needed USF Budgetary Cap," Federal Communications Commission Blog (April 2, 2019), https://www.fcc.gov/news-events/blog/2019/04/02/needed-usf-budgetary-cap ("O'Rielly USF Cap Blog").

effectiveness of E-rate spending."[18] In this first E-Rate Modernization Order, the Commission adopted a new method for the program's category two budgets that govern internal connections (e.g. Wi-Fi), and in February 2019, the Wireline Competition Bureau issued a report detailing how this budget change has so far proven to be a success.[19] Similarly, in the 2016 Lifeline Modernization Order, the Commission adopted and implemented a budget mechanism of $2.25 billion per year along with extensive reporting requirements to ensure responsibility, and through the establishment of this budget the Commission noted that it sought to "ensure that the Lifeline program continues to reduce the contribution burden on the nation's ratepayers, will continue to support service to eligible consumers, and will provide information to the Commission as it monitors the Lifeline program's growth following such significant programmatic changes."[20]

Evaluating the cost effectiveness of these programs is like comparing apples and oranges; each program has vastly different needs to achieve vastly different missions. As 14 members of

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[18] Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 13-184 (July 11, 2014) at 163 (Statement of Chairman Tom Wheeler).

[19] Wireline Competition Bureau Report, WC Docket No. 13-184 (Feb. 11, 2019), https://docs.fcc.gov/public/attachments/DA-19-71A1.pdf at ¶ 2 ("Based on our review of the data, we identify numerous ways in which the category two budget approach has resulted in a broader distribution of funding that is more equitable and more predictable for schools and libraries.") and at ¶ 12 ("... We conclude that the category two budget approach is an effective means to ensure greater access to E-Rate discounts for internal connections. Specifically, the existing budget amounts are likely sufficient for school districts, which (1) participate at a high rate, (2) are likely to request funding for most or all schools within their respective districts, and (3) use the majority of their funding over multiple years.").

[20] Lifeline Modernization Order ¶¶ 395-403 ("While we believe this budget level will provide ample room for new households to enroll in the program, we must also monitor the program and account for the reasons for growth in the program in order to make adjustments, if necessary. We therefore direct the Bureau to issue a report to the Commission by July 31 of the following year if total Lifeline disbursements exceeded 90 percent of the budget in the previous calendar year… This report should offer an evaluation of program disbursements, including the causes of program growth, an evaluation of the different services and technologies supported by Lifeline, disbursement amounts by state or other geographic areas, and any other information relevant to the Commission's necessary oversight of the Lifeline program. The report should also make recommendations about what should be done, for example, including making adjustments to the minimum service standards, changing the support levels, altering other requirements, or modifying the budget amount. We expect the full Commission will take appropriate action to address the Lifeline budget within six months of receiving the report.").

Congress recently argued, this proposed cap is "detrimental to the goal of universal service" due to the fact that it would "put the various USF programs in direct competition for USF funds."[21] As the lawmakers argue, "[e]ach USF program addresses an important, but different, principle of universal service as described in 47 U.S.C. § 254… The USF programs were not intended to compete against each other for funding and pitting them against each other for funding does nothing to advance the goal of achieving universal service."[22] It will be difficult, if not impossible, for the Commission to develop good metrics by which to evaluate a program that provides subsidies to low-income Americans, another that reduces costs for infrastructure for schools and libraries, another that reduces costs for health care providers, and another that subsidizes rural infrastructure build-out. The Commission should not expend its limited resources on this fool's errand.

Further, imposing an overall cap is poor policy because such an approach does not take into account how the landscape might change for each program. The NPRM acknowledged that "unexpected increases in demand in one program could affect the funding levels of other programs that have not experienced similar unexpected increases in demand."[23] However, prioritizing funding among the programs would also lead to the same undesirable outcome. USF funds are collected based on demand, so a program may come in under its individual cap when demand declines. But if the FCC imposes an overall cap on the USF programs, it would restrict access to critical funds when demand for one USF program increases, such that available funding for other programs would also be restricted.

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[21] Letter from Rep. Mark Pocan et al. to the Federal Communications Commission (July 9, 2019), https://ecfsapi.fcc.gov/file/107091530201836/USF%20Cap%20Letter%20Signed.pdf.
[22] *Id.*
[23] *Id.*

B. A USF Cap Contradicts Congressional Intent

The proposed cap contradicts the Commission's Congressional mandate. Congress told the Commission its administration of the USF must be guided by several goals. An overall cap is inconsistent with at least two of those goals: (1) to "increase nationwide access to advanced telecommunications services" and (2) to "advance the availability of such services to all consumers, including those in low income, rural, insular, and high cost areas, at rates that are reasonably comparable to those charged in urban areas."[24] Capping all four program budgets at current authorized levels will lead to fighting between the programs over limited funding. This infighting would not increase access to advanced telecommunications services to "all consumers."

An overall cap and prioritization rules undermine the goals of each USF program. Each of the four USF programs fulfills a distinct and critical role in helping the FCC reach its goal of providing universal service support, as mandated by the Telecommunications Act of 1996. The Commission acknowledges in its NPRM that "[a]ny prioritization will result in less funding available for one of the programs,"[25] which directly undermines the goal of universal service. Proposals for prioritization rules based on cost-effectiveness, estimated improper payment rates, types of services to be funded, or rurality of the recipient like those suggested in the NPRM risk inhibiting the FCC's mission to provide universal service support and should not come at the expense of those on the wrong side of the digital divide.[26] Indeed, an overall cap on the USF programs forecloses growth that may be necessary to achieve the goals of the USF.

[24] 47 USC 254(b).
[25] NPRM ¶ 19
[26] *Id.*

Congress intended for the USF to address distinct issues that result in millions of Americans being left without advanced telecommunications services. The NPRM ignores the distinction between these issues, and thus the legislative intent of the USF. Moreover, the proposed budget cap would limit the Commission's ability to administer each program in a manner that is specific to their specific contexts and needs. By painting each program with the same fiscal brush, the NPRM limits the USF's flexibility and ensures that the USF cannot grow to accommodate more people.

C. The Commission Should Focus On Improving Participation In USF Programs

USF programs are underutilized even at current funding levels. Rather than freezing funding to maintain this status quo, the Commission should focus on reforms that expand participation in these underutilized programs.

Lifeline is the only program designed to directly address the affordability of communications services. Even without the proposed budget cap to the USF, the Lifeline program struggles with declining participation and decreasing disbursement levels. Data from USAC shows that participation rates in the Lifeline program fell from 2016 to 2017 in all but nine states, with the average Lifeline participation rate across the United States at 28%.[27] Lifeline subscribership has dropped overall in the past three years, with 13.3 million average subscribers at the end of 2015 dropping to 9.2 million subscribers by the fourth quarter of 2018.[28] The decline in subscribers has been accompanied by a parallel decline in the total amount of financial

[27] "Eligible Lifeline Population Statistics." https://www.usac.org/li/about/process-overview/stats/default.aspx

[28] Universal Service Administrative Company, "High Cost & Low Income Committee" (April 29, 2019), https://www.usac.org/_res/documents/about/pdf/bod/materials/2019/High-Cost&Low-Income-Briefing-Book-April.pdf.

support for the program, actively challenging the claims made in the Commission's 2017 Lifeline item that the Commission could benefit from 'maximum discount levels' and a budget cap.[29]

Notably, participation rates have declined despite an increasing number of households being eligible for Lifeline support. Nearly half of households across the United States self-reported as having insufficient or no internet access at their house, apartment, or mobile home qualify for Lifeline.[30] These poor participation rates are also concerning in the context of the Homework Gap. A little over 60% of households with insufficient internet service with children 17 years or younger qualify for Lifeline, while 78% of young Americans aged 0-17 years old without access to or a subscription for internet qualify for Lifeline.[31]

IV. The Commission Should Not Combine the E-Rate and Rural Health Care Programs

Combining the E-Rate and Rural Health Care (RHC) program caps will harm students and community members who rely on schools and libraries for high-speed broadband access and patients and providers who rely on broadband connections for telehealth services. Administrative simplicity is not a sufficient reason to combine the E-Rate and RHC programs under a single cap.

The E-Rate and RHC should have separate, individual program caps to avoid running contrary to the Telecommunications Act. While the NRPM suggests that "[c]ombining the program caps may be justifiable given that both programs promote the use of advanced services

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[29] "FCC Takes Major Steps to Transform Lifeline Program for Low-Income Americans," Federal Communications Commission, November 16, 2017, https://docs.fcc.gov/public/attachments/DOC-347792A1.pdf.
[30] "Eligible Lifeline Population Statistics," Universal Service Administrative Company, https://www.usac.org/_res/documents/li/xls/stats/Eligible-Lifeline-Population-Statistics.xlsx.
[31] "Eligible Lifeline Population Statistics," Universal Service Administrative Company

to anchor institutions that have similar needs for high-quality broadband services," Section 254(h) of the Telecommunications Act of 1996 sets up two *distinct* programs for services, one for schools and libraries, and another for health care for rural areas.[32] The distinction suggests that, even though they benefit different types of "anchor institutions," the programs should be separately administered and funded.[33]

Combining the E-Rate and RHC program caps would pit schools, libraries, and rural health care providers against each other in an unnecessary competition for resources. Commissioner Rosenworcel recently likened this to a "a universal service hunger games."[34] It would also inject significant uncertainty into both programs, which would discourage schools, libraries, and health care providers from applying for support.[35] Individual program caps provide more certainty for potential applicants, encourage participation, and add stability to the programs.

V. The NPRM Ignores the USF's Most Urgent Fiscal Problem: the Contribution System

By focusing on a myopic and needless budget cap, the Commission is missing the forest for the trees. The NPRM's broad goals include "achiev[ing] a more holistic and coherent approach to universal service support"[36] and "provid[ing] regulatory and financial certainty, and promot[ing the] efficiency, fairness, accountability, and sustainability of the USF programs."[37] In

[32] 47 USC § 254(h)(1)(A)-(B).
[33] This argument also explains why the Commission should not adopt an overall cap of the USF.
[34] Remarks of Commissioner Jessica Rosenworcel at the Digital Equity Summit 2019: Bridging the Learning @ Home Gap, (July 8, 2019), https://docs.fcc.gov/public/attachments/DOC-358343A1.pdf.
[35] Letter from Education and Library Networks Coalition (EdLiNC) to FCC Re: Notice of Proposed Rulemaking on Universal Service Contribution Methodology (WC Docket No. 06-122), June 21, 2019, https://ecfsapi.fcc.gov/file/1062153140161/EdLiNC%20ltr%20opposing%20USF%20Cap%2C%20E-rate%20RHC%20subcap%206.21.19.pdf.
[36] NPRM ¶ 20.
[37] NPRM ¶ 1.

furtherance of those goals, it asks several questions related to balancing program needs with the contribution burdens placed on ratepayers.[38] None of these goals are adequately achieved by a budget cap; they require reforms to the contribution system.

The Commission has long been aware that the current contribution system is unsustainable.[39] At least as far back as the National Broadband Plan in 2010, the Commission recognized that the contribution base needed to be expanded to ensure sustainability of the program.[40] In 2012, the Commission stated "[u]niversal service goals could be undermined by declines in the contribution base. Such declines could result in the obligation to support universal service being borne by a shrinking pool of contributors and, ultimately, consumers" and "[o]ne of the proposed goals for reform is to create an improved system that will adapt to market changes and stabilize the contribution base."[41] The contribution factor is now 24.4 percent, an

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[38] NPRM ¶ 21.

[39] NTCA—The Rural Broadband Association Ex Parte, WC Docket No. 10-90, WC Docket No. 06-122, WC Docket No. 05-337, CC Docket No. 96-45 (Oct. 12, 2016), https://ecfsapi.fcc.gov/file/10121539710526/10.10.16%20FCC%20Ex%20Parte-Notice%20of%20Kansas%20Rural%20Representatives%20Meeting%20with%20Commissioner%20Pai%2C%20WC%2010-90%20et%20al.pdf ("For some time now, the universal service contribution factor has remained very high due to the shrinking pool of assessable telecommunications service revenue. The Commission should take action on specific measures proposed to 'broaden the base' of contributors... "); WTA – Advocates for Rural Broadband Ex Parte, WC Docket Nos. 10-90, 14-58, 07-135, and 06-122; WT Docket No. 10-208; and CC Docket Nos. 96-45 and 01-92 (April 27, 2015), https://ecfsapi.fcc.gov/file/60001044966.pdf ("... Universal service contribution reform be addressed expeditiously, for the current contribution base (which is comprised, in substantial part, of declining interstate toll revenues) is becoming increasingly incapable of supporting existing broadband networks and the growing needs for extending the reach and increasing the capacity of the nation's critical broadband network infrastructure, not to mention supporting the other school, library, rural health care and lifeline programs that rely in major part upon such infrastructure.").

[40] Federal Communications Commission, "Connecting America: The National Broadband Plan," at 149, https://transition.fcc.gov/national-broadband-plan/national-broadband-plan.pdf, ("Recommendation 8.10, 'The FCC should broaden the universal service contribution base.'").

[41] Further Notice of Proposed Rulemaking, WC Docket No. 06-122, GN Docket No. 09-51 (April 27, 2012), https://docs.fcc.gov/public/attachments/FCC-12-46A1.pdf ¶ 25 ("2012 USF Contribution Methodology FNPRM"); see *Id.*., Statement of Commissioner Robert McDowell, "To put the importance

extraordinarily high number.[42] The current contribution regime does not adapt to market changes and has not stabilized the contribution base. This is an existential problem for the USF, but the NPRM does not address it.

The contribution system is also unfair. Landline and wireless phone customers should not shoulder the burden of funding the USF alone; the Commission should be continuing discussions that began over a decade ago regarding how to expand the contribution base to include broadband users.[43] Broadening the base would *reduce* the burden on landline and wireless phone customers, add a small fee on broadband users, and improve program efficiency and sustainability. Further, broadband users benefit from the network effects generated by the USF, yet they reap those benefits without paying into the fund. Last, fees on older technologies should not sustain new technologies, because (as is happening now) the subsidy could eventually die off and starve the USF program.

Without proper modernization, the USF contribution system could become an increasingly regressive fee. Commissioner O'Rielly has lamented the regressiveness of the USF fee, as "providers generally assess it equally against all their consumers."[44] A regressive contribution system is not required by the Commission, and it can be modernized through

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of contribution reform into perspective, the contribution factor ... has risen each year from approximately 5.5 percent in 1998 to almost 18 percent in the first quarter of [2012]. This trend is unacceptable because it is unsustainable" ("2012 USF Contribution Methodology FNPRM Statement of Commissioner McDowell").

[42] "Proposed Third Quarter 2019 Universal Service Contribution Factor," CC Docket No. 96-45 (June 12, 2019), https://docs.fcc.gov/public/attachments/DA-19-559A1.pdf.

[43] So far this FCC has not been heading in that direction, it has actually doubled down on the current regime recently in a vote to approve the Connected Care Pilot Program NPRM, which proposes to increase the USF fee. *See* Notice of Proposed Rulemaking, WC Docket No. 18-213 (July 10, 2019), https://docs.fcc.gov/public/attachments/FCC-19-64A1.pdf.

[44] O'Rielly USF Cap Blog.

rulemaking.[45] The proposed budget cap would do nothing to fix this problem; if anything, it risks exacerbating the regressive impact of the current system.

It is not clear how imposing an overall USF cap is a "necessary precondition" to reassessing contribution reform, as Commissioner O'Rielly has argued.[46] The Commission has considered contribution reform before without imposing an overall cap, and nothing in the NPRM explains why this cannot happen again today.[47] No credible discussion of USF expenditures can happen without contemplating the fiscal reality of the contribution system. The Commission should not allow the USF system to reach a breaking point.

VI. Conclusion

The proposal to cap the budget of the Universal Service Fund would damage all four programs and would severely undermine the Commission's efforts to close the digital divide. OTI strongly urges the Commission to abandon this NPRM and focus on strengthening these vital programs.

[45] Federal Communications Commission Website, "Universal Service Support Mechanisms" https://www.fcc.gov/consumers/guides/universal-service-support-mechanisms ("The FCC does not require [the USF contribution] charge to be passed on to customers."); 2012 USF Contribution Methodology Statement of Commissioner McDowell ("Controversy, however, should not deter us from lowering the tax rate while broadening the base according to the authority granted to us by Congress.").

[46] O'Rielly USF Cap Blog ("Fundamentally, I believe we must set an upper limit of what we're willing to take from hardworking American consumers to support these subsidies. Determining this maximum level is also a necessary precondition to any effort to reform the FCC's method for assessing USF contributions.").

[47] 2012 USF Contribution Methodology FNPRM.