

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

COMMENTS OF ALASKA COMMUNICATIONS

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SUMMARY

Alaska Communications urges the Commission to evaluate the appropriateness and level of any cap in light of its legal obligation to meet the requirements of Section 254 of the Communications Act. It is not apparent how an overall cap on universal service support, on top of caps or budgets for each of the four individual programs, would further the statutory goals of ensuring all Americans have access to reasonably comparable services at affordable rates, and that schools, libraries and rural healthcare facilities have timely access to advanced services.

The utility of an overall cap is unclear, but to the extent that the Commission is concerned about the impact of its programs on those who contribute to the support, a more appropriate course would be for the Commission to take up contributions reform, to ensure that each of its universal service programs remains on sound footing without unduly burdening telecommunications consumers.

Nevertheless, if the Commission decides to proceed with a cap, it should adopt rules that promote flexibility to reallocate support among mechanisms (other than high-cost, which should not be reduced once accepted by a service provider) to ensure that Section 254's statutory goals are met, even where the need for support may exceed the previously budgeted amount.

Further, the Commission should conduct a fresh and realistic assessment of the level of support necessary under each of its four explicit support mechanisms. Any budget for support, as well as any calculation of contribution obligations, should be based on an objective assessment of the needs of Americans required to be supported under Section 254.

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Alaska Communications¹ hereby submits these comments in response to the Commission’s recent Notice of Proposed Rulemaking (the “Notice”) in the above-captioned proceeding.²

³ Notice at ¶ 9.

A. The Commission Should Consider Any Universal Service Cap Within the Context of the Statutory Framework

While the promotion of universal service has always been a part of the Commission's statutory duties,⁴ Section 254 of the Communications Act of 1934, as amended (the "Act"),⁵ enacted as part of the Telecommunications Act of 1996 (the "1996 Act"), for the first time focused this policy objective on a specific set of statutory obligations targeted to assist constituencies identified by Congress – customers in high-cost and insular areas, low-income consumers, schools and libraries, and rural health care providers. Section 254 sets forth directives to establish explicit⁶ support mechanisms for the benefit of these customers, with the consistent goal across all four categories that all Americans should have access to reasonably comparable services, including advanced services, at affordable and reasonable comparable rates.⁷ Support provided under each of these mechanisms must be "specific, predictable and sufficient."⁸

⁴ 47 U.S.C. § 151 (directing the Commission "to make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges").

⁵ 47 U.S.C. § 254.

⁶ 47 U.S.C. § 254(e).

⁷ *See, e.g.*, 47 U.S.C. §§ 254(b)(3) ("Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas."); 254(b)(6) ("Elementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications services as described in subsection (h).").

⁸ 47 U.S.C. § 254(b)(5).

1. The Utility of an Overall Cap on Universal Service Is Unclear, But May Not Be Used to Limit RHC Telecom Program Support

While some of Section 254's statutory mandates apparently leave to the Commission's expert judgment the precise blend of regulatory incentives and explicit financial support to commit in pursuit of the statutory goals, others are more exacting. For example, under Section 254(h)(1)(B), telecommunications carriers must "provide . . . services to elementary schools, secondary schools, and libraries for educational purposes at rates less than the amounts charged for similar services to other parties," with the difference covered by the E-rate support mechanism.⁹ That statute provides the Commission with inherent discretion to determine an appropriate E-rate budget, based on how much "less" it believes that schools and libraries should pay. Similarly, Section 254(h)(2)(A) requires the Commission to "establish competitively neutral rules . . . to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all . . . health care providers," providing the statutory basis for the Healthcare Connect Fund ("HCF").¹⁰ Again, in this section, the Commission retains discretion to determine the precise mix of policy initiatives, regulatory incentives, and financial support it believes will best accomplish the statutory objective.¹¹

⁹ 47 U.S.C. § 254(h)(1)(B); *see also Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-157, 12 FCC Rcd 8776 (1997) ("*Universal Service Order*"), at ¶ 425 (statutory authority), ¶ 533 (exercising discretion to set the original \$2.25 billion cap) (subsequent history omitted).

¹⁰ 47 U.S.C. § 254(h)(2)(A).

¹¹ *See Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, FCC 12-150, 27 FCC Rcd 16678 (2012), at ¶ 48 (finding that, "a 35 percent contribution requirement is economically reasonable and fiscally responsible").

The statutory language establishing the RHC Telecom Program provides no such flexibility, however. Section 254(h)(1)(A) of the Act allows all rural healthcare providers to obtain access to eligible services “at rates that are reasonably comparable to rates charged for similar services in urban areas in that State.”¹² Furthermore, any carrier that provides service to a rural healthcare provider on that basis “shall be entitled to have an amount equal to the difference, if any, between the rates for services provided to health care providers for rural areas in a State and the rates for similar services provided to other customers in comparable rural areas in that State treated as a service obligation” that reduces its monetary universal service contribution obligation, dollar-for-dollar.¹³ These formulations thus require the Commission to afford any service provider that serves rural healthcare providers under Section 254(h)(1)(A) the full amount of compensation prescribed by the statute, irrespective of any administrative budgetary limit.

Even to the extent that the Commission believes it may cap the amount of explicit payments of RHC support, the statute is clear that telecommunications carriers may elect to treat the full urban-rural difference as an offset to its universal service contribution obligation without respect to any such administrative cap on payments of explicit support. Indeed, at the time the Commission established the original \$400 million budget for the RHC support mechanism, it originally determined that a telecommunications carrier would receive payment of explicit

¹² 47 U.S.C. § 254(h)(1)(A).

¹³ *Id.* See also 47 C.F.R. § 54.679(a); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-157, 12 FCC Rcd 8776 (1997), at ¶ 734 (finding that “a telecommunications carrier providing eligible services to rural health care providers at reasonably comparable rates under the provisions of section 254(h)(1)(A) should treat the amount eligible for support as an offset against the carrier's universal service support obligation for the year in which the costs were incurred”) (“*Universal Service Order*”) (subsequent history omitted).

support “[t]o the extent that the amount of universal service support owed a carrier exceeds that carrier's universal service obligation, calculated on an annual basis.”¹⁴

The Commission seeks comment on how to “reduce expenditures if USAC projects that disbursements will exceed the overall cap.”¹⁵ As discussed above, Alaska Communications believes that it is not lawful or appropriate for the Commission to cap support or order a reduction in expenditures under the RHC Telecom Program. Nevertheless, if the Commission has not budgeted sufficient support to meet the statutory obligation, it must at a minimum permit telecommunications carriers that serve rural healthcare providers under Section 254(h)(1)(A) to reduce their contributions to federal universal service mechanisms by any unfunded remainder. To simplify the administrative process and minimize the potential for such an outcome, Alaska Communications thus continues to believe that the Commission should prioritize RHC Telecom Program funding commitments above those for E-Rate and the HCF.

2. The Utility of an Overall Universal Service Cap Is Unclear, But Should Not Be Used to Reduce High-Cost Support That Is Tied to Service Commitments

Similarly, the Commission should honor in full commitments of high-cost support that are tied to service commitments by eligible telecommunications carriers (“ETCs”). For example, numerous incumbent local exchange carriers (“ILECs”) and some commercial mobile service providers have made explicit commitments to provide voice and broadband services meeting FCC criteria over a period of years in exchange for a specific amount of support. Such high-cost support should not be reduced before the expiration of the FCC-prescribed term, even if “USAC projects that total disbursements will exceed the overall cap.”¹⁶ Changing the amount of

¹⁴ *Universal Service Order* at ¶ 734.

¹⁵ Notice at ¶ 17.

¹⁶ Notice at ¶ 19.

available support after ETCs have begun their deployment planning and begun offering services that meet FCC performance requirements would, at a minimum, undermine the willingness of the industry to serve the future needs of Americans in rural, insular and high-cost areas.

The high-cost support landscape fundamentally changed with the Commission's 2011 *Transformation Order*.¹⁷ Under legacy high-cost support programs, high-cost support implicit in the intrastate and interstate rate structure generally allowed telecommunications carriers to maintain local residential rates broadly deemed "affordable" in a qualitative sense. Above-cost monthly recurring charges to business customers subsidized rates for voice service to residential consumers. Above-cost urban rates subsidized local rates in rural areas. High per-minute long-distance rates (and later, access charges levied on interexchange carriers) subsidized monthly recurring charges for local service.¹⁸ Even the explicit high-cost support mechanisms the Commission adopted in the wake of the 1996 Act to replace these implicit support flows were designed to enable Eligible Telecommunications Carriers ("ETCs") to meet a general obligation to keep local rates for "universal service,"¹⁹ as defined by the Commission, "affordable" and "reasonably comparable" among urban and rural areas pursuant to the priorities of Section 254(b).

¹⁷ *Connect America Fund*, WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd 17663 (2011) ("*Transformation Order*").

¹⁸ *Universal Service Order* at ¶ 10.

¹⁹ *Universal Service Order* at ¶ 56 (defining the elements of service "that will receive universal service support as: single-party service; voice grade access to the public switched network; Dual Tone Multifrequency ('DTMF') signaling or its functional equivalent; access to emergency services including, in some circumstances, access to 911 and Enhanced 911 ('E911'); access to operator services; access to interexchange service; access to directory assistance; and toll limitation services for qualifying low-income consumers").

The *Transformation Order* adopted and quantified new performance goals for high-cost support, including “to ensure the universal availability of modern networks capable of delivering broadband and voice service to homes, businesses, and community anchor institutions,”²⁰ and to measure achievement based on “the number of residential, business, and community anchor institution locations that newly gain access to broadband service.”²¹ Service providers accepting high-cost support – such as under Connect America Fund (“CAF”) Phase I Frozen Support, CAF Phase I Incremental Support, CAF Phase II (model or frozen), the CAF Auction, and the “Alaska Plan” – have been required to make certain time-bound broadband service commitments in connection with that support. Under these commitments, ETCs provide voice and broadband services meeting FCC-specified performance and affordability standards in areas that the Commission deems unserved, and that would remain unserved absent such support, for a specified period.²² In return, the Commission has committed to provide high-cost support at a certain level over the same period to assist ETCs in meeting the cost of fulfilling those commitments.

These deployment commitments therefore are bilateral and have many hallmarks of a binding contract – offer, acceptance, consideration, and defined, agreed-upon terms.²³ Service

²⁰ *Transformation Order* at ¶ 51.

²¹ *Id.* at ¶ 52.

²² *See, e.g., Transformation Order* at ¶ 86 (“As a condition of receiving federal high-cost universal service support, all ETCs, whether designated by a state commission or the Commission, will be required to offer broadband service in their supported area that meets certain basic performance requirements and to report regularly on associated performance measures. ETCs must make this broadband service available at rates that are reasonably comparable to offerings of comparable broadband services in urban areas”) (citations omitted).

²³ *Cf. FCC v. Nextwave Personal Communications, Inc.*, 537 U.S. 293, 301 (2003) (holding that the FCC was prohibited from cancelling Nextwave’s spectrum license under Section 525(a) of the Bankruptcy Code, 11 U.S.C. § 525(a), and the installment debt to the Commission for purchase of the license was dischargeable in bankruptcy, regardless of whether “the FCC had a valid regulatory motive for the cancellation” apart from Nextwave’s failure to make the necessary installment payments) (internal quotation marks omitted).

providers that accepted high-cost support in exchange for making such broadband deployment commitments entered into long-term capital spending commitments in reliance on the promised support. Often they enter into debt or equity financing agreements to raise the necessary capital, to be serviced over time based on the expected receipt of the Commission's support payments. In the ordinary case, the Commission will have committed this support within the context of its overall high-cost support budget, which the *Transformation Order* set at \$4.5 billion,²⁴ so it's unlikely that the cap will impose a constraint on the Commission's issuance of the support in due course. Having induced such reliance, however, the Commission should continue to honor its commitments, and prioritize such high-cost support disbursements, regardless of whether other developments make it possible that the Commission would exceed any overall cap it may adopt.

B. The Existing Budget Levels Do Not Provide a Sound Basis for Establishing an Overall Cap; The Commission Should Conduct an Objective Assessment of the Realistic Current and Projected Demands on All Four Program

While the Commission seeks comment on whether the overall cap should be set at a level equal to the sum of each of the four mechanisms individual 2018 budget amounts,²⁵ Alaska Communications believes that the existing budgets do not even reflect current levels of need for support under the mechanisms to which they apply, let alone provide a sound basis for setting an overall cap. Rather, before establishing any overall cap, the Commission should make a fresh evaluation of the individual budgets for each of the four programs, and adjust those budget amounts accordingly.

For example, it has been apparent for many years that the budget for the RHC mechanism is inadequate to meet modern demands. The Commission established a \$400 million cap on that

²⁴ *Transformation Order* at ¶ 125.

²⁵ Notice at ¶ 9.

program in 1997, which remained unchanged until 2018, when the Commission adjusted that figure for accumulated inflation, to \$571 million for Funding Year 2017 (with automatic future inflationary adjustments codified for the first time).²⁶ But, other changes over the past two decades, in addition to inflation, have also increased the need for support under the RHC mechanism. Congress amended the statutory language in 2017 to allow skilled nursing facilities to seek RHC support, greatly expanding the pool of eligible applicants.²⁷ In creating the HCF, the Commission, expanded the types of equipment and services that are eligible and the level of RHC support available, compared to the RHC Internet Access Program, which was in place when the original budget was set.²⁸ Advances in telehealth and telemedicine technology, coupled with greater availability of broadband and other advanced services in rural markets, have expanded the availability and quality of patient care.²⁹ Coupled with these advances, greater patient understanding and acceptance of telemedicine services have increased demand, raised the standard of care in rural areas, and heightened patient expectations surrounding remote delivery

²⁶ *Universal Service Order* at ¶ 35; *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Report and Order, FCC 18-82, 33 FCC Rcd 6574 (2018), at ¶ 9. The budget, increased for inflation, is approximately \$594 million for Funding Year 2019. Public Notice, “Wireline Competition Bureau Announces the Availability of Unused Funds to Increase Rural Health Care Program Funding for Funding Year 2019,” WC Docket No. 02-60, DA 19-540 (Wir. Comp. Bur., rel. June 10, 2019).

²⁷ 47 U.S.C. § 254(h)(7)(B)(vii).

²⁸ *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, FCC 12-150, 27 FCC Rcd 16678 (2012), at ¶¶ 81-82 (“*Healthcare Connect Fund Order*”).

²⁹ When the Commission first established the RHC Telecom Program, it limited support to a bandwidth not to exceed 1.544 Mbps, equal to a single T-1 line per eligible healthcare provider. *Universal Service Order* at ¶ 620. Today, rural HCPs routinely use broadband services to support multi-purpose telemedicine carts, remote telestroke, eICU, X-ray, CT, MRI, mammography, ultrasound, and DEXA scans, and cost-saving medical videoconferencing services. Remote availability of this care has transformed the delivery of health care in rural and remote areas, but they require broadband with bandwidth that is orders of magnitude greater than what the Commission originally contemplated. Today, rural HCPs routinely purchase packet-based MPLS services offering far greater reliability and security than the circuit-switched services available in 1997.

of services.³⁰ And, many rural HCPs have migrated to secure, high-bandwidth, managed broadband services such as Multi-Protocol Label Switching (“MPLS”) services, which provide layers of security and reliability not found in earlier generation services. MPLS is the preferred choice of rural healthcare providers to meet heightened network security and performance requirements such as those embodied in the regulations adopted by the Department of Health and Human Services to protect the confidentiality and security of patient health information under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”),³¹ as well as to meet the electronic health record mandates under Title IV of the American Recovery and Reinvestment Act.³² The transformation of the telehealth and telemedicine landscape has been well catalogued in the Commission’s recent proceedings on the RHC mechanism itself,³³ as well as the Connect2Care Pilot program.³⁴

On the other hand, the Commission’s current budgets for the E-rate and Low-Income mechanisms far exceed current demand under those programs. In the case of E-rate, the Commission raised the cap to \$3.9 billion in 2014 to “mak[e] it possible to close the high-speed

³⁰ *Promoting Telehealth in Rural America*, WC Docket No. 17-301, *Ex Parte* Letter from Karen Brinkmann, Counsel to Alaska Communications (filed May 20, 2019), Attachment: “Tele-Health Requirements and Bandwidth Utilization: Evaluating Demands for Rural Health Care Support Over Time,” at 3 (explaining that “escalating demand for bandwidth can be traced to,” among other factors, “evolving healthcare industry norms”) (“*Telehealth White Paper*”).

³¹ *See generally* 45 C.F.R. Parts 160, 162, 164.

³² Pub. L. 111-5, *codified at* 42 U.S.C. § 1395w-4(o).

³³ *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Notice of Proposed Rulemaking, FCC 17-164, 32 FCC Rcd 10631 (2017).

³⁴ *Promoting Telehealth for Low-Income Consumers*, WC Docket No. 18-213, Notice of Inquiry, FCC 18-112, 33 FCC Rcd 7825 (2018) at ¶ 1 (naming increased telehealth opportunities a “top-priority” imperative, with a focus on “connected care anywhere”).

connectivity gap” and “provide certainty about the availability of funding.”³⁵ Instead, since that time, “[d]emand for E-rate funding has declined, in part, because of the cost efficiencies of maintaining and operating fiber networks compared to legacy networks.”³⁶ As a result, the Notice cites 2018 E-rate demand of roughly \$2.205 billion, well below the annual cap of \$4.06 billion, on a calendar year basis.³⁷ Similarly, the budget mechanism for the Low-Income Support Mechanism was initially set at \$2.25 billion for 2017, adjusted for inflation, based on “projections of how the program will be updated once [broadband Internet access service] is a supported service . . . considering current participation rates, possible growth of the program as we seek to raise awareness of its benefits, and the safeguards already in place to reduce waste, fraud, and abuse.”³⁸ Since that time, demand has collapsed to \$1.143 billion, as measured in the Notice, a level that is roughly half the current amount of the governing budget mechanism.

The budgets for all three of these programs are in need of a new level-set by the Commission. Therefore, rather than simply aggregating the current budget figures for the four mechanisms, the Commission should begin the process of developing an overall cap, if it begins at all, with updated needs assessments for the individual constituent mechanisms. Alaska

³⁵ *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Second Report and Order and Order on Reconsideration, FCC 14-189, 29 FCC Rcd 15538 (2014) (“*Second E-rate Modernization Order*”), at ¶ 115.

³⁶ *Texas Carriers’ Petition to Prohibit Use of E-rate Funds to Build Fiber Networks*, RM-11841, Comments of the SHLB Coalition, *et al.* (filed July 1, 2019), at 3.

³⁷ Notice at ¶ 11. On April 1, 2019, USAC submitted to the FCC a demand estimate for the E-Rate program for funding year 2019, estimating the total demand at \$2.896 billion, still substantially below the E-rate program cap of \$4.15 billion for the funding year, without counting the \$1 billion in unused and available funds from previous years. *Wireline Competition Bureau Directs USAC to Fully Fund Category One and Category Two E-Rate Requests*, Public Notice, CC Docket No. 02-6, DA 19-669 (Wireline Competition Bur. rel. July 17, 2019).

³⁸ *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38, 31 FCC Rcd 3962 (2016) (“*Low-Income Broadband Order*”), at ¶ 400.

Communications believes that this process should include a significant increase in the budget for the RHC mechanism, based on the actual and anticipated needs of rural healthcare providers, and should include the removal of any cap on the Telecom Program. This budget should take into account, for example, that there are now more than 26,000 rural healthcare providers believed to be eligible to participate in the RHC support mechanism, far more than the estimated 10,000-12,000 providers on which the Commission relied in the past.³⁹ Further, the needs of this enlarged pool of applicants include “escalating bandwidth requirements for telehealth applications [and] increased demand for network security, route redundancy, network reliability, and dynamic management services.”⁴⁰ These expanding needs of rural healthcare providers, in turn, drive the demand for support correspondingly higher.

Additionally, there is an emerging nexus between telehealth and other Commission universal service mechanisms. For example, the Commission has recently recognized that low-income “patients who cannot afford or who otherwise lack reliable, robust broadband Internet access connectivity are not enjoying the benefits of these innovative telehealth technologies,” leading it to propose a Connected Care Pilot Program.⁴¹ This Pilot Program will focus on overcoming “that lack of affordable and robust broadband Internet access service [as] an obstacle to the adoption of connected care services by health care providers and patients,” particularly low-income patients and veterans.⁴² The Commission has proposed that USAC will

³⁹ *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Comments of the Schools, Health & Libraries Broadband (SHLB) Coalition (filed Feb. 2, 2018) at 13.

⁴⁰ *Telehealth White Paper* at 2.

⁴¹ *Promoting Telehealth for Low-Income Consumers*, WC Docket No. 18-213, Notice of Proposed Rulemaking, FCC 19-64 (rel. July 11, 2019), at ¶ 1.

⁴² *Id.* at ¶¶ 14-15.

collect funding for this Pilot Program outside of the existing caps on the Low-Income and RHC support mechanisms,⁴³ but the Pilot Program is expected to last three years, at the end of which time the Commission may determine whether and how to permanently fund telehealth connections for low-income consumers, whether through one of the existing universal service mechanisms or a new program. Currently, there plainly would be room within the existing Low-Income budget mechanism to accommodate the proposed \$100 million in annual funding for the Pilot Program, but the Commission may want to consider the size of any permanent Connect2Health support, and where among the four primary mechanisms it will be housed, in undertaking this comprehensive assessment of the individual universal service budgets.

The definition of universal service continues to be an evolving one, as anticipated by Congress,⁴⁴ so the Commission should reassess universal service demands on a regular basis. Only after the Commission has assessed the needs of each individual program will the Commission, or commenters, be in a position to meaningfully assess whether \$11.42 billion, or any other number, is a reasonable starting point for an overall cap. Today, the current budgets substantially overestimate the level of need in some mechanisms while substantially underestimating the need in others. Thus, it would be mere serendipity if the current total of these budget figures were ultimately shown to produce a reasonable aggregate cap.

⁴³ *Id.* at ¶ 29.

⁴⁴ 47 U.S.C. §254(c)(1). Congress expected that the Commission not only would fund the services foreseen in 1996 but would designate additional services as needed by schools, libraries and rural healthcare providers. 47 U.S.C. §254(c)(3).

C. Greater Flexibility Should Be Incorporated Into the Commission's Rules To Ensure Current and Future Demands Of The Various Universal Service Mechanisms Will Be Met

As is evident from the current budget levels that apply to the individual universal service support mechanisms, it is extremely difficult for the Commission or USAC to predict the need for support with any great degree of certainty, even from one year to the next. In 1997, the Commission capped RHC support at \$400 million, only to see demand fail to materialize.⁴⁵ In 2012, the Commission revisited the RHC mechanism, concluding that demand would “not . . . exceed the \$400 million cap in the foreseeable future,”⁴⁶ but demand exceeded that cap within just a few years. In 2014, the Commission increased the E-rate cap to \$3.9 billion, indexed for inflation, only to see demand decline to a level more in line with the original \$2.25 billion cap. In 2011, the Commission authorized up to \$300 million in CAF Phase I Incremental high-cost support, but only \$115 million was accepted.⁴⁷ And, in 2016, the Commission set the budget mechanism for the Low-Income program at \$2.25 billion, and demand quickly fell to about half that level.⁴⁸

In light of the Commission's mixed record in accurately forecasting demand under the individual support mechanisms, the Commission should examine its rules and methods with the goal of facilitating swift reallocation of support to programs where it is most in demand in any given year, from programs currently experiencing demand levels below their budgeted amounts. In Alaska Communications' assessment, because each of the four programs currently operates under some form of cap or budget mechanism, the only incremental benefit of an overall cap would be to facilitate such a reallocation mechanism.

⁴⁵ *Universal Service Order* at ¶ 704.

⁴⁶ *Healthcare Connect Fund Order* at ¶ 67.

⁴⁷ *Connect America Fund*, WC Docket No. 10-90, Report and Order, FCC 13-73, 28 FCC Rcd 7766 (2013), at ¶ 1.

⁴⁸ *Low-Income Broadband Order* at ¶ 10.

1. To the Extent that an Overall Cap Facilitates Flexibility To Direct Program Funds Where Need Is Greatest, It Could Address Recurring Funding Issues

If such a reallocation mechanism had been in place over the past few years, for example, the Commission could have sharply curtailed lengthy funding delays and *pro rata* funding cuts that have plagued the RHC support mechanism since Funding Year 2016. While the outdated Telecom Program rules undoubtedly would have continued to create compliance issues and funding delays for individual funding requests, USAC would not have been forced to delay *all* funding commitments until it had reached a decision on *every* funding request. And, *pro rata* cuts to meritorious requests would not have been necessary at all, given the significant headroom available under the E-rate cap and Low-Income budget mechanism.

2. A Combined Cap for the RHC and E-Rate Programs Could Be Useful In Permitting Facilities Sharing

The Notice seeks comment on whether the Commission should combine the budgets for the E-rate and RHC mechanisms, to permit both sets of applicants to draw on a combined pool of available support.⁴⁹ Alaska Communications has long supported virtually any avenue that would provide relief from the RHC support mechanism's "two-sizes-too-small" cap.⁵⁰ Alaska Communications agrees with the Commission that the similarity in the objectives of each program, including the fact that both are targeted to serve groups of anchor institutions, would support such a change. While the services of interest to each constituency differ – in Alaska, with human lives on the line, rural healthcare providers often opt for secure and reliable MPLS services, while schools and libraries choose dedicated Internet access – the *facilities* used to

⁴⁹ Notice at ¶ 23.

⁵⁰ See, e.g., *Rural Health Care Support Mechanism*, WC Docket No. 02-60, *Ex Parte* Letter from Karen Brinkmann, Counsel to Alaska Communications (filed Nov. 3, 2017) (proposing to combine the RHC and Low-Income budgets, given overlap among the constituencies served by each program).

serve each frequently overlap. As the Commission moves increasingly to permit the use of these mechanisms to fund special construction of facilities, it should certainly seek out ways to break down the “siloed” treatment of funding applications, to permit applicants to seek, and USAC to grant, a single funding request covering facilities or services that will serve groups of schools, libraries, *and* rural healthcare providers. Combining the budgets for these two mechanisms could facilitate approval of such shared facilities.

The Notice goes on, however, to seek comment on how the Commission should prioritize funding, if the aggregated budget cap were to be breached, proposing that, “if demand for either programs were to meet or exceed their individual program funding caps, each program would continue to be subject to its individual program cap and the existing program rules.”⁵¹ Given the disparity in the size of the caps that apply to the RHC and E-rate programs, and the fact that demand under the RHC mechanism has repeatedly exceeded the capped level since 2016, this proposal highlights the need for the Commission to complete the assessment of these programs’ respective needs as a foundational prerequisite for this proposal. Reverting to these two programs’ existing, imbalanced cap amounts when combined demand in both programs grows to a level that would exceed the combined budget would only produce satisfactory results that serve the public interest after the Commission (1) removes the cap on the RHC Telecom Program, as required under Section 254(h)(1)(A); and (2) rebalances the caps to reflect ongoing growth in demand for RHC support.

As the respective E-rate and RHC caps stand today, the Commission’s proposal likely would impose the entire burden of any necessary cuts on applicants for RHC support, since that program’s budget is so much smaller than the E-rate budget. Alaska Communications believes

⁵¹ Notice at ¶ 24.

that the Commission instead should allocate any necessary reductions, after fully funding RHC Telecom Program funding requests, so as to share the burden more equitably among schools, libraries, and rural healthcare providers.

While Alaska Communications readily acknowledges the operational difficulties associated with *pro rata* reductions, as implemented under today's rules for the RHC mechanism, prioritized adjustments could facilitate a reasonable distribution of support under a combined cap. Specifically, in cases where demand exceeds available support, the current E-rate prioritization rules require USAC to prioritize funding for schools and libraries that are eligible for the highest discounts, while the Commission is considering changes to the RHC mechanism that would direct USAC to prioritize funding for the most rural areas and those facing shortages of health care providers, based on eight defined tiers. Alaska Communications believes that, in cases where total demand under the E-rate and RHC mechanisms exceeds the combined budgets for the programs, those processes could unfold in parallel until a proportional number of complete tiers in each program have received funding, with proration applied only to the last tier of applications in each program to be funded. In this way, the maximum number of applicants in each program will receive full funding, while minimizing any delays associated with the proration process.

D. Universal Service Support Mechanisms Require a Contribution Mechanism That Fairly Allocates the Burden Across All Networks

Since 1997, the Commission has funded its universal service mechanisms through assessments on end-user revenues from interstate telecommunications and telecommunications services.⁵² On May 1, 2001, the Commission initiated a review of the universal service

⁵² *Federal-State Joint Board on Universal Service, et al.*, Report and Order, 12 FCC Rcd 8776, 9206, ¶ 843 (1997) (subsequent history omitted).

contribution system to bring it into line with market developments, including the growth of wireless and other forms of transmission services, and ensure that it remains equitable and sustainable.⁵³ For 18 years, through one docket after another, the Commission has proposed and considered different changes to the contribution mechanism to broaden the base of support and ensure equitable distribution of the burden of support.⁵⁴ Yet since 1997 the Commission has made only marginal changes to the mechanism, unable or unwilling to adopt a contribution mechanism appropriate for the Internet age.⁵⁵

This docket is titled, “Universal Service Contribution Methodology,” and the Notice repeatedly cites the desire to balance achieving universal service program goals against limiting the burden on contributing ratepayers.⁵⁶ Yet the Notice proposes no changes to the contribution rules themselves. The most obvious target for reform also is the most needed. Rather than arbitrarily capping universal service support, the Commission should serve its statutory universal service mandate *and* effectively control the burden of growing demands for support by making meaningful reforms to the contribution methodology.

⁵³ *Federal-State Joint Board on Universal Service; 1998 Biennial Review, et al.*, Notice of Proposed Rulemaking, 16 FCC Rcd 9892 (2001).

⁵⁴ *E.g., Universal Service Contribution Methodology, et al.*, Further Notice of Proposed Rulemaking, 27 FCC Rcd 5357 (2012) (seeking comment on assessing broadband and other possible methodologies); *High-Cost Universal Service Support, et al.*, Order on Remand, Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6475 (2008) (seeking comment on a numbers or connections-based approach).

⁵⁵ *E.g., Universal Service Contribution Methodology, et al.*, Report and Order and Notice of Proposed Rulemaking, FCC 06-94 (rel. June 27, 2006) (modifying the safe harbor for commercial mobile service contributions and extending contribution requirement to interconnected voice-over-Internet Protocol (“VoIP”) services).

⁵⁶ Notice ¶¶ 1, 4, 9, 21-22; *id.*, Appendix, ¶¶ 2, 94.

As the Commission observes, the Act requires that contributions be assessed in a manner that it “equitable and nondiscriminatory.”⁵⁷ The current mechanism is not that. As the Commission has acknowledged, today’s market is characterized by rapidly declining telecommunications services revenues, with much of the traffic being replaced by IP-based services that may or may not be required to contribute to universal service. In the IP environment, e-mails, text messages and social media posts have replaced calls, pages and other traditional telecommunications transmissions. Indeed, it has been a pillar of Commission policy for many years to catalyze the nation’s ongoing transition from traditional telecommunications services to a broader array of modern, packet-switched broadband and information services.⁵⁸ And, the Commission has increasingly used its universal service mechanisms to support the availability and affordability of broadband and deployment of associated packet-switched, next-generation facilities. The Commission now should acknowledge the logical conclusion to that process: that it is time to expand the pool of contributors to reflect the diversity of modern communications services.

⁵⁷ 47 U.S.C. § 254(d); *see also* 47 C.F.R. § 54.706.

⁵⁸ *See, e.g., Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Second Report and Order, FCC 18-74, 33 FCC Rcd 5660 (2018) at ¶ 1 (“Removing regulatory barriers causing unnecessary costs or delay when carriers seek to transition from legacy networks and services to broadband networks and services is an important piece of our work to encourage deployment of next-generation networks and to close the digital divide.”).

Conclusion

For the foregoing reasons, Alaska Communications urges the Commission to address the statutory requirements for its universal service support programs and ensure that adequate funding will be available. The Commission should not adopt an overall cap on universal service support merely to limit the burden on contributors, but instead should address the contribution mechanism head-on, after making a fresh assessment of the level of support needed to meet its statutory obligations under each of the four programs. The Commission should adopt an overall cap to the extent that it finds this necessary to streamline reallocation of support to the mechanisms where then-current conditions reveal that it is needed most, while assuring that all mechanisms are adequately funded within the intent of the Act.

Respectfully submitted,

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