Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

NOTICE OF PROPOSED RULEMAKING

COMMENTS OF THE

NATIONAL EDUCATION ASSOCIATION

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The National Education Association (NEA) offers the following comments in response to the Federal Communications Commission's (Commission's) recently issued *Universal Service Contribution Methodology* Notice of Proposed Rulemaking (NPRM).[1] The NEA has been a strong supporter and advocate of the E-rate Program ("program") since it was established in 1997 and has serious concerns about the Commission's proposed changes to the Universal Service Fund (USF) and the E-rate and Rural Health Care (RHC) programs. The NEA believes the proposed changes: 1) undermine the E-rate program's equitable, need-based distribution of discounts; 2) neglect future broadband connectivity demands; 3) violate congressional and statutory intent; and, 4) contribute to a disturbing pattern of Commission action incongruent with supporting students and 21st century teaching and learning. The NEA calls upon the Commission to immediately terminate this rulemaking and abandon these harmful proposals.

Introduction

The NEA, which is the nation's largest professional employee organization, is committed to advancing the cause of public education. The NEA's three million members work at every level of education – from pre-school to university graduate programs. The NEA has affiliated organizations in every state and in more than 14,000 communities across the United States. Among the Association's members are countless K-12 educators whose students benefit from the E-rate program and the support it provides in classrooms in every congressional district in the country.

The Commission's USF cap and sub-cap proposals come not long after the E-rate program's two-part modernization in 2014. In the first modernization order of July 2014, the Commission took "…major steps to modernize and streamline the schools and libraries universal service support program [E-rate] and focus on expanding funding for Wi-Fi networks in elementary schools and secondary schools and libraries across America." Further, the Commission sought "…to ensure that the program is geared towards meeting the broadband needs of schools and libraries in today's world of interactive, individualized digital learning."[2]

[1] In the Matter of Modernizing the E-Rate Program for Schools and Libraries, Notice of Proposed Rulemaking, WC, Docket No. 13-184, FCC 13-100 (July 23, 2013).
[2] Modernizing the E-rate Program for Schools and Libraries, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870 (2014) (E-rate Modernization Order or FNPRM).

In the second modernization in December 2014, the Commission increased the annual E-rate funding cap by $1.5 billion annually and indexed it to inflation, recognizing doing so was the "critical next step toward meeting the program goals and connectivity targets…in order to meet the long term connectivity needs for all schools and libraries."[3] The increase to the E-rate funding cap in 2015 was the first in the program's history, addressing the fact demand had exceeded the original 1998 funding cap of $2.25 billion in every year since the beginning of the program.

Today, more than ever, a sufficiently funded E-rate program is essential to meeting the program goals and connectivity targets set forth by the Commission. The E-rate has been instrumental in providing the bridge across the digital divide for countless students by providing them access to the internet and the opportunity to develop the skills needed to compete in the digital age. In fact, the program has been so successful that it has helped ensure that nearly 100 percent of our nation's classrooms are connected to the Internet. Simply put, the E-rate is a program that works. Implementing an artificial construct such as an overall cap to the USF and jeopardizing E-rate funding by merging and sub-capping it with another program is short-sighted and would be an outright act of disinvestment in the future of our country's K-12 schools and our students. The NEA has long believed that predictable, sustained investment in the E-rate program is required to support the broadband infrastructure of our nation's schools.

Universal USF Cap Undermines E-rate's Equitable, Need-based Distribution of Discounts

The NEA has serious concerns with the Commission's proposal to implement an overall cap on the four USF programs.[4] The Commission states in the NPRM, "A cap could promote meaningful consideration of spending decisions by the Commission, [to] limit the contribution borne by ratepayers…" This intent is disingenuous at best. The outcome of such a proposal will pit the four USF programs against one another, undermining the specific purpose and intent of each to address unique connectivity challenges. The Commission also notes, "…each of the

[3] "Summary of the Second E-rate Modernization Order, https://www.fcc.gov/general/summary-second-e-rate-modernization-order (July 29, 2019).
[4] The four programs established as part of the Universal Service to ensure that all Americans should have access to communications services include: 1) Connect America Fund (formerly known as High-Cost Support); 2) Lifeline for low-income consumers, including initiatives to expand service to residents of Tribal lands; and 3) E-rate for schools and libraries; and, 4) Rural Health Care.

constituent USF programs are capped or operating under a targeted budget."[5] The Commission opts instead to "limit the contribution" imposing an arbitrary "universal" cap to programs rather than address the long overdue task of contribution reform. The E-rate, RHC and Lifeline programs have all been modernized. Perhaps it is time for the contribution factor to be reformed and modernized, as well.

Also concerning is the Commission seeking comment on not *if* but rather *how* to implement a universal cap and "the appropriate way to reduce expenditures automatically…to remain within the cap." The Commission's intent to impose an overall USF cap would immediately force the USF programs into competition among each other if set at or below $9.6 billion (the USF programs' current combined total). Conflict would arise when demand exceeds the collective cap and the Commission is forced to decide which programs merit funding. The NEA believes that it is not for the Commission to determine which USF program(s) deserve merit over another.

The NEA views the Commission's proposal to implement a universal cap to the USF and subsequent pitting of programs against each other, as undermining a cornerstone of the E-rate program— that is *equitable*, need-based distribution of discounts. An artificial cap will eventually erode E-rate funds, ultimately denying discounts to beneficiaries who are eligible *based on need*. Implementing a universal cap to the USF does not treat applicants in an equitable manner. A universal cap will force the Commission to distinguish among the programs and their beneficiaries – schools and their students, library patrons, patients and low-income consumers – tipping the scale of inequity. A rural school's application could eventually be denied because the Commission has opted to determine winners and losers among the four programs.

Sub-cap Proposal Pits Schools and Libraries against Rural Health, Telemedicine

The NEA strongly opposes the Commission's proposal to merge E-rate and Rural Health Care programs under a single spending cap. For all intensive purposes, the Commission is proposing to put the two programs in direct financial conflict (i.e. competition) with one another, if not immediately, then in the near future. Each program is distinct with specific goals and worthy beneficiaries. Pitting these two programs against each other for funds would force the Commission to determine whom to prioritize – either students or patients – at a significant cost.

[5] *Notice* at 1, para. 1.

An eligible school may be denied their E-rate discount and lose their ability to provide sufficient broadband connectivity to their students. Conversely, a health clinic may lose the ability to provide vital telemedicine services to patients at a time when maternal mortality and opioid addiction, among other health crises, are on the rise, particularly in rural America.

The NEA recognizes that post-modernization, the E-rate's current demand has not yet reached its authorized $4 billion cap. However, banking or gambling on it not reaching its cap is shortsighted and hamstrings the program's ability to respond to broadband and internal connections demands of tomorrow. The NEA believes demand for E-rate support may grow substantially when schools and libraries seek to upgrade their internal connections under Category Two (C2) to achieve the one Gigabits per second, per thousand-student goal established in the E-rate Modernization Order, or as new eligible services are added.

The NEA observes RHC program demand has increased significantly in recent years, exceeding the program's cap in 2016. The RHC program's actual commitments have increased from $83 million in 2010 to $521 million in 2017. In 2018, the Commission raised the RHC program's cap to $571 million and demand is estimated to quickly outpace the cap. If the RHC is placed under a single cap with the E-rate, there is every reason to presume that RHC will continue growing beyond its 2018 authorized level and will begin to consume the unused portion of E-rate funding almost immediately. This establishes a deeply troubling precedent of one program using funds from another, ultimately leading to a permanent change to the E-rate funding cap.

The NEA recognizes the RHC program is vital to providing broadband for health care delivery and telemedicine to rural America. The NEA also recognizes the goals of the E-rate and RHC programs differ. Merging their funding is illogical and will eventually result in competition. The Commission should not want to pit worthy beneficiaries who depend on USF programs, particularly in rural areas, against one another. The programs were designed as independent, though aligned, to meet the needs of underserved communities. The NEA believes it is not up to the Commission to prioritize between the worthy beneficiaries of the E-rate and RHC.

While the NEA strongly opposes merging and sub-capping E-rate and RHC funds because of their unique goals, it also opposes the merger for practical purposes. The

Commission's proposal would create significant uncertainty year-to-year for all who participate and benefit from the programs. Specifically, schools and libraries, rural health care providers and others, including local ISPs, would not know from year to year what USF discounts or funds they would receive, independent of eligibility. This scenario would create instability and uncertainty for program recipients and providers, and would impair advanced planning. Most schools must construct multi-year technology plans and budget accordingly, at least a couple years in advance. Creating enough uncertainty and confusion will likely discourage USF applicants from applying and ISPs from participating – driving down USF program participation (and the contribution factor).

Neglects Future Broadband Connectivity Demands

The NEA believes merging the E-rate with HRC under a single funding sub-cap is shortsighted and undermines the program's ability to address students' future needs. Schools anticipate increased demand for broadband capacity and upgrading or replacing internal connections to support Wi-Fi. As schools and school districts are integrating more digital resources, it will only continue to drive the demand for bandwidth and internal connections to serve multi-tenet, multi-device environs. The Commission recently released another proposed rulemaking on July 9, 2019, *In the Matter of Modernizing the E-rate Program for Schools and Libraries,* requesting comment on whether to continue with the C2 $150 per-pupil allocation budget approach.

While the NEA plans to file separate comments in response to the C2 NPRM, we are concerned that the current $150 per-pupil formula for internal connections is insufficient, suppressing demand for E-rate funds. A recent FY2019 survey of E-rate applicants found that the per-pupil budget fell short of what schools needed for C2 as 49 percent of school respondents indicated that the budget should be set at $250 per student.[6] An additional 18 percent of respondents indicated the budget should be set at $350 per student. The NEA strongly suspects that $150 per-pupil is insufficient to cover the costs of many schools' projects to improve internal connections and the construction costs associated, as costs very greatly given locale (rural, urban, etc.). Additionally, C2 costs vary widely, largely due to labor costs, which the

[6] https://www.fundsforlearning.com/docs/2019/07/FFL%20FY2019ApplicantSurvey-ExParte2019-06-10.pdf

current formula does not take into account. As a result, there is concern that the current $150 per-pupil budget for C2 is too low and helps explain, in part, demand for the E-rate not being closer to the cap. Currently, there is sufficient room under the $4 billion E-rate cap to raise the per-pupil allocation. If the E-rate is financially merged with RHC, there may not be sufficient funding to provide schools the discounts needed to sufficiently upgrade internal connections, let alone consider adding any new eligible services in the future.

Violates Congressional and Statutory Intent

The Commission's rationale for making such drastic changes to USF programs is so it can "evaluate the financial aspects of the four USF programs in a more holistic way, and thereby, better achieve the overarching universal service principles Congress directed the Commission to preserve and advance."[7] However, the Telecommunications Act of 1996 requires,

> "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….[and] should be specific, predictable and sufficient for schools, libraries and health care providers."[8]

The Commission's proposals to impose an overall cap on the USF programs and merge the E-rate and RHC under a single cap fly in the face of Congress's articulated principles and intent for the programs.

In addition, the U.S House took recent congressional action to prevent the Commission from implementing the USF cap proposals. On June 26, 2019, House Amendment 483 to H.R. 3351, the FY2020 Financial Services and General Government Appropriations bill, passed by unanimous voice vote, stating, "None of these funds made available by this Act may be used to finalize, implement, administer or enforce the proposed rule entitled "Universal Service Contribution Methodology."

Pattern of Commission Action Incongruent with Supporting Students

The NEA has noticed a recent and disturbing pattern of Commission activity that are incongruent with supporting students and 21st century teaching and learning. Each action alone is

[7] *Notice* at 1, para. 1.
[8] 47 U.S.C. §254(b)

troubling; the totality is downright hostile to ensuring we continue to bridge the digital divide in our schools, especially in rural and low-income areas. An environmental scan includes, though is not limited to, the following Commission-related activity.

Inaccurate Mapping and Overstatement of Broadband Availability

Several bipartisan congressional delegations recently wrote to Chairman Pai regarding their serious concerns with broadband mapping methodology and the gross and erroneous overstatement of broadband availability.[9]

- The Colorado delegation's letter aptly observes, "Broadband access is a vital link to a range of necessary services and resources for America's rural residents….A validated set of data based upon standardized methods of granular reporting will be essential to ensuring that universal service is available throughout rural America."[10]
- Likewise, the entire bipartisan, bicameral Kansas delegation wrote, "The FCC's current broadband availability maps…do not utilize data that is granular enough to adequately depict broadband availability in rural communities…Many Kansans' access to affordable and reliable broadband services relies on federal programs that distribute resources for deployment like the programs administered with the FCC's Universal Service Fund."[11]
- The South Dakota delegation remarked, "High-speed broadband services are vital to America's rural residents. Broadband connectivity provides opportunities for advancements in health care, education, and economic development."[12]

The NEA believes it would behoove the Commission to focus its attention on improving broadband mapping instead of imposing arbitrary, harmful and ill-conceived caps to the USF or merge any of the programs' funds. Inaccurate and overstated broadband availability does not help the Commission in closing the digital divide or the "homework gap," experienced by nearly

[9] Congressional delegations or representatives from eight states that wrote to Chairman Pai include Colorado, Kansas, Michigan, Mississippi, North Dakota, South Dakota, Virginia and Wisconsin, and are available at https://www.fcc.gov/chairman-pais-letters-congress.
[10] *See* https://docs.fcc.gov/public/attachments/DOC-358163A2.pdf
[11] *See* https://docs.fcc.gov/public/attachments/DOC-357762A2.pdf
[12] *See* https://docs.fcc.gov/public/attachments/DOC-357762A6.pdf

20 percent of teens who are assigned homework that requires internet access, but do not have broadband at home.[13]

Commission Highjacks Education Broadband Service (EBS) from Schools

On July 10, 2019, the Commission moved to co-opt the Education Broadband Service (EBS) by taking the 2.5 GHz band airwaves distributed to education institutions committed to delivering instructional televisions services or to lease excess capacity for commercial use.[14] The Commission turned its back on schools and educational institutions that have made the 2.5 GHz band their home since President Kennedy established the program in 1962. In her dissent, Commissioner Rosenworcel explains, "Instead of using these airwaves in creative ways, we take that 2.5 GHz band, cut education from its mission and collapse this spectrum into an overlay auction system that structurally advantages a single nationwide carrier."[15] Conversely, Commissioner O'Rielly supported the decision saying the removal of educational restrictions fosters a more vibrant secondary market.[16]

Several organizations representing E-rate beneficiaries urged the Commission to maintain the 2.5 GHz band's educational focus and provide state education agencies and school districts the opportunity to acquire new EBS licenses. The U.S. Department of Education even weighed in, filing a Notice of Ex Parte on June 7, 2019, urging the Commission to "maintain and modernize the current educational priority of the EBS spectrum by keeping the current eligibility requirements for EBS licensing, modernizing the educational use requirement, and issuing new EBS licenses."[17] In the end, the Commission sided with the "secondary market" at the expense of schools.

Commission Releases NPRM on Category Two Budgets

The Commission recently released another proposed rulemaking on July 9, 2019, *In the Matter of Modernizing the E-rate Program for Schools and Libraries,* requesting comment on whether to continue a per-pupil allocation C2 budget approach. The NEA wishes to highlight the

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[13] *See* https://www.pewresearch.org/fact-tank/2018/10/26/nearly-one-in-five-teens-cant-always-finish-their-homework-because-of-the-digital-divide/
[14] *Transforming the 2.5 GHz Band*, WT Docket No. 18-120
[15] *See* https://docs.fcc.gov/public/attachments/FCC-19-62A5.pdf
[16] *See* https://docs.fcc.gov/public/attachments/FCC-19-62A3.pdf
[17] *See* https://ecfsapi.fcc.gov/file/10607076793462/190607-Education-EBSExParte.pdf

overlap of the C2 NPRM with the current Universal Service Contribution Methodology NPRM, with comments due July 29. If the Commission is sincere in seeking input from E-rate beneficiaries, the NEA questions the timing of these two NPRMs. In a letter to the Commission on June 13, 2019, the NEA, as member of the Education and Library Networks Coalition (EdLiNC), requested an extension to the comment period until at least the end of September 2019. The extension was sought in order to seek an appropriate level of input from our educators who rely on the E-rate and are most affected by any changes to its structures or rules.[18] While the NEA appreciated the two-week extension to the USF Cap NPRM filing deadline, organizations representing E-rate beneficiaries, and educators themselves, are in the unenviable position of seeking and providing input over the summer month. Educators attend conferences, participate in professional development and take vacation when school is not in session. The NEA perceives the timing of the two E-rate-related NPRMs as yet another challenge to ensuring the E-rate continues to be a program that works for our students.

Conclusion

In conclusion, on behalf of educators and the students in our classrooms, we firmly believe that the E-rate program is a program that works. For more than 20 years, the E-rate has been essential to connecting schools and libraries to the internet. The NEA urges the Commission to terminate this rulemaking and abandon these harmful proposals to establish an overall USF cap or a sub-cap combining the E-rate and RHC programs. Distinguishing among winners and losers is not only inequitable (not based on need), it would be a significant diversion from the inclusive intent of the E-rate Program, as established and championed by Senators Rockefeller and Snowe, along with Senators Exon and Kerrey, as part of the U.S. Telecommunications Act of 1996. The NEA believes it is outside the purview of the Commission to determine one type of USF beneficiary as more meritorious over another.

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[18] *See* https://www.fcc.gov/ecfs/filing/106130389320952

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