

**Before the
Federal Communications Commission
Washington, D.C.**

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

**Comments of Funds For Learning, LLC
on Proposed Rule to Place an Overall Cap on the Universal Service Fund**

The following excerpt is from the May 1977 edition of Nation's Business, a U.S. Chamber of Commerce newsletter. In it, Bert Lance, a former Director of the Office of Management and Budget, explains how the federal government can save money.

Bert Lance believes he can save Uncle Sam billions if he can get the government to adopt a simple motto: "If it ain't broke, don't fix it." He explains: "That's the trouble with government: Fixing things that aren't broken and not fixing things that are broken."

That's what's wrong with the Commission's proposal to place a single cap on top of all all four USF programs: It is an unnecessary attempt to fix something that clearly isn't broken. It is a solution in search of a problem.

Each of the four USF programs is already capped or operating under a targeted budget. It is therefore impossible to see what could possibly be gained by imposing an overall cap on the universal service fund. The "problem," according to the NPRM, is that the FCC "has not examined the program holistically to determine the most efficient and responsible use of these federal funds." Linking the four programs together under a single cap, the FCC seems to believe, will "promote a robust debate on the relative effectiveness of the programs." It will not.

Realistically, what a "holistic debate" will create is a forum for competing interests, both inside and outside of the FCC, to fight over how to divide up the new, USF pie. Teams will be formed. They will have no choice but to fight for the

programs in which they have the most interest and to criticize and diminish the ones with which, for political and/or philosophical reasons, they may be somewhat less enamored. This fight is predestined not to be fair, which means that, in the end, it will resolve absolutely nothing.

Under the new rules, each team will have to prove that its program uses USF funds more efficiently, responsibly, and effectively than its competitors. This will be impossible, however, because the FCC's NPRM proposes no objective test of its own for determining the "most efficient use," "the most responsible use," or "the most effective use" of USF funds. Instead, the FCC seeks concrete proposals for measuring the cost effectiveness of the individual USF programs and how to use those measurements to best allocate funds among them. What history teaches us though is that these are extremely difficult and incredibly challenging, politically-charged questions that we believe the FCC is unlikely to answer -- ever. So asking the public to struggle with them -- in the first instance especially -- seems terribly unfair and, quite frankly, a waste of valuable time.

For more than two decades now, the E-rate community has been waiting for a concrete, unambiguous definition of the term, "cost effective," where E-rate purchases are concerned. The FCC's failure in this regard has engendered tremendous uncertainty, frustration, and administrative delay and resulted in remarkably questionable administrative decisions.

If, after all of this time, the FCC still cannot tell the E-rate community, in concrete terms, what a "cost effective" E-rate purchase is, we harbor very little hope indeed that it will ever be able to promulgate a much more complicated rule for measuring the four USF programs individually for efficiency, effectiveness, and responsibility and for allocating a single pot of money among them on the basis of those measurements. This is why we see a fued breaking out among USF programs that will be neither informed nor fair, if the FCC goes through with its plan to combine all four programs under a single, USF cap. This, along with the reasons set forth and discussed below, plus the many good reasons articulated already by other commenters, is why we are urging the FCC to table any further action on this NPRM.

Another thing that we find particularly disturbing about this NPRM, and thus definitely worth noting, is the astounding volume of complex issues that need to be addressed and resolved before the FCC can implement the USF-cap unification plan proposed in it. Considering how strongly the majority of FCC commissioners and the current administration feel about deregulation, we cannot even begin to

comprehend why they would want the FCC to adopt a wealth of new, complex and confusing regulations designed to solve some vague problem that even the FCC appears incapable of articulating clearly and which, as far as we and many others in the USF community can tell, does not even exist. Before it can begin to fix this amorphous problem, here is a smattering of what the FCC says it needs to know:

What should the overall cap be? How should the cap be adjusted over time to keep pace with inflation? Should there be an index specific to each USF program? How should such program-specific indices apply to an overall USF cap? If disbursements are projected to exceed the overall USF cap, should USF expenditures be reduced or should commitments be capped? What is the best way to track and make public universal service demand levels? Should the FCC adopt procedures to establish a five-year forecast for projected program disbursements? Should these forecasts be publicly available? How should funding be prioritized among the four universal service programs: by cost-effectiveness of each program? by estimated improper payment rates? by types of services to be funded? by how rural the recipient is? How can pilot USF programs or funding for emergency expenditures be prioritized in comparison to the existing USF programs? Should there be a maximum amount that a program can be reduced? Should any funding reduction distinguish between increased demand due to disasters and unexpected increases? Are there other changes that would better align the four programs to reduce duplicative work or simplify the administration of the overall cap? Should the E-Rate and Rural Health Care program budgets and caps be combined?

Just reading all of this is exhausting. Why is the FCC asking the public -- and its staff -- to spend so much time addressing so many extraordinarily difficult and complex issues when the FCC's NPRM cannot even explain what exactly it is that needs fixing? The regulations proposed in this NPRM add no additional value, create an enormous amount of complexity and uncertainty, and, we fear, will lead us down a path that will reduce support for broadband in schools and libraries. Fusing the four USF programs together under a single cap will pile on more rules and more bureaucracy, which will do nothing but exacerbate the frustrating and damaging delays and uncertainty that already plague the E-rate program today. What all of this amounts to, unfortunately, is nothing but a solution in search of a problem.

To utilize broadband services effectively, applicants not only need to know the level of support they can expect to receive, they also need to receive that support in a timely manner. A master cap will require the FCC to tally the demand across all USF programs *before* setting funding levels for the E-rate program and/or

potentially reducing funding commitment amounts, which will inevitably cause delays. Obviously, this would not be good for E-rate applicants or the administration of the E-rate program. The challenges associated with delayed funding commitments are well documented in the FCC's E-rate docket and elsewhere. Chairman Pai himself has weighed in on the importance of timely E-rate funding commitments on several occasions.¹

While much about the NPRM is unclear, this much is not: A master cap would undo the progress that has been made to improve the timing of funding decisions. The best approach, therefore, is for the FCC to follow the one that it has used successfully since the inception of the E-rate program: set and keep a fixed annual cap for the Schools and Libraries program. No question there are important aspects of the E-rate program that need fixing, but whatever it is that the NPRM is trying to fix is certainly not one of them.

Respectfully submitted,

/s/John D. Harrington

John D. Harrington
Chief Executive Officer
Funds For Learning, LLC

jharrington@fundsforlearning.com
405-341-4140

2575 Kelley Pointe Parkway, STE 200
Edmond, OK 73034

¹ For example, see <https://www.fundsforlearning.com/news/2017/04/usac-told-to-fix-flaws-focus-on-service>. Chairman Pai tells USAC to fix flaws and to focus on service.