

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

COMMENTS OF COMMON CAUSE

I. INTRODUCTION

Common Cause submits these comments in response to the Federal Communications Commission (“FCC” or “Commission”) Notice of Proposed Rulemaking (“NPRM”) seeking comment on establishing a cap on the Universal Service Fund (“USF” or “Fund”).¹ Since the enactment of the Telecommunications Act of 1996 (“1996 Act”), the Commission has leveraged the USF to provide funding for deployment of telecommunications services in rural areas, affordable voice and broadband services for low-income communities, connectivity for schools and libraries, and access to telehealth services. The Fund ensures that all Americans, regardless of location or income, have access to communications services in order to connect with friends, family, employers, healthcare providers, schools, financial institutions, and government offices. Access to communications services supports a better-informed electorate, a responsive government, and enhanced civic engagement, providing communities with a voice in our democracy.

¹ *Universal Service Contribution Methodology*, Notice of Proposed Rulemaking, WC Docket No. 06-122, FCC 19-46 (May 31, 2019) (“NPRM”).

The Commission's goal of universal service is to ensure all Americans have access to communications services. Under the 1996 Act, Congress codified specific principles, which the Commission must base its policies for the preservation and advancement of universal service.² From these principles, the Commission established the USF, creating four distinct universal service programs that serve a specific purpose. In recognition of its universal service goal, the Commission has modernized and expanded each of its USF programs to make broadband affordable and accessible.

The NPRM's underlying proposal, that the Commission should implement an overall budget cap for the USF, contradicts the principles of universal service the agency is mandated to uphold.³ Placing an overall cap on the USF would create unnecessary artificial scarcity, forcing indispensable programs to compete for funding. Pitting any of the programs against another would hinder the statute's flagship policy goal of ensuring that Americans across the country, of all income levels, may access pivotal services that improve their lives and well-being, facilitating greater democratic participation. Furthermore, an overall cap would contradict the Commission's goal of closing the digital divide by limiting funding for broadband projects at a time when funding is vital.

II. THE COMMISSION'S GOAL OF UNIVERSAL SERVICE IS TO ENSURE ALL AMERICANS HAVE ACCESS TO COMMUNICATIONS SERVICES

The Commission's universal service mission is to ensure ubiquitous telecommunications access, recognizing that communications services have become integral to all aspects of American life. The 1996 Act affirmed this commitment and mandates that the Commission go

² See 47 U.S.C. § 254(b).

³ See 47 U.S.C. § 254(b)(3); 47 U.S.C. § 254(b)(6).

further, by establishing universal service policy goals. The Commission’s subsequent expansion of its four universal service programs rightfully devote resources toward improving broadband access for Americans in all parts of the country, regardless of income.

A. The Commission Has a Statutory Mandate to Promote and Advance Universal Service

The Commission has long prioritized the importance of advancing universal service. Prior to the 1996 Act, the Commission based its universal service policy on Section 1 of the Communications Act of 1934.⁴ In the 1996 Act, Congress specifically codified universal service principles on which the Commission must base policies, which preserve and advance universal service.⁵ These principles include: quality service at just, reasonable, and affordable rates; access to advanced services in all parts of the country; access to both telecommunications and information services in rural and high-cost areas that are reasonably comparable to services and rates offered in urban areas; predictable, and sufficient support mechanisms; and access to advanced telecommunications services for elementary and secondary schools and classrooms, healthcare providers, and libraries.⁶ Congress also mandated that a telecommunications carrier provide access for the provision of health care services to any nonprofit healthcare provider serving communities in rural areas.⁷

⁴ See Federal-State Joint Board on Separations, CC Docket No. 96-45, Notice of Proposed Rulemaking, 11 FCC Rcd 18092, 18096, ¶ 3 (1996), 47 U.S.C. § 151 (mandating that the Commission “make[s] 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(b).

⁶ 47 U.S.C. § 254 (b)(1), (2), (3), (5), & (6).

⁷ 47 U.S.C. § 254(h)(1)(A).

From these principles, the Commission manages four universal service programs, which are now called: Connect America Fund (CAF), Schools and Libraries (E-Rate), Lifeline, and Rural Health Care.⁸ The CAF program provides support to qualifying telecommunications carriers to serve high-cost areas that would not otherwise have communications services.⁹ The E-Rate program provides discounts to eligible schools and libraries to ensure access to communications services.¹⁰ The Lifeline program assists qualifying low-income households afford communications services.¹¹ Finally, the Rural Health Care program provides funding for eligible health care providers for communications services for the provision of health care services.¹²

B. The Commission Has Modernized and Expanded its Universal Service Programs to Make Broadband Affordable and Accessible

Since establishing each of the four universal service programs, the Commission has expanded the availability of funding to also include broadband service. In 2011, the Commission established the Connect America Fund, extending the High-Cost Support program to support broadband.¹³ Three years later, the Commission similarly broadened the E-Rate program, providing funding for high-speed broadband in schools and libraries.¹⁴ Then, in 2016, the

⁸ See Federal Communications Commission, Universal Service, <https://www.fcc.gov/general/universal-service>.

⁹ See *id.*

¹⁰ See *id.*

¹¹ See *id.*

¹² See *id.*

¹³ See *Connect America Fund et al*, WC Docket No.10-90 *et al*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶ 118 (2011) (“*Universal Service Transformation Order*”).

¹⁴ See *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, ¶ 22 (July 23, 2014) (“*E-Rate Modernization Order*”).

Commission added broadband to the list of services providers may offer to Lifeline consumers.¹⁵ In each order, the Commission emphasized the growing importance of connecting all Americans with broadband in service of its universal service obligations under the 1996 Act.¹⁶

III. AN OVERALL BUDGET CAP RUNS COUNTER TO THE COMMISSION'S GOAL OF UNIVERSAL SERVICE

An overall budget cap for USF contradicts the principles of universal service the agency is mandated to uphold. Placing an overall cap on the USF would create unnecessary artificial scarcity, forcing universal service programs to compete for funding. Pitting any of the programs against another would hinder the statute's flagship policy goal of ensuring that Americans across the country, of all income levels, may access pivotal services that improve their lives and well-being, facilitating greater democratic participation. Furthermore, an overall cap would contradict Chairman Pai's oft-repeated goal of closing the digital divide by reducing funding to one of the USF programs, which each addresses a unique challenge to achieving broadband access.

A. An Arbitrary Budget Cap Pits the USF Programs Against Each Other, Undermining Universal Service

The NPRM seeks to establish an overall USF budget cap in order "to promote a robust debate on the relative effectiveness of the programs."¹⁷ However, comparing program effectiveness simply pits the four USF programs against each other in competition for funding.

¹⁵ See *Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, and Connect America Fund*, WC Docket Nos. 11-42, 09-197, & 10-90, Order on Reconsideration, 31 FCC Rcd 3962, ¶ 30 (2016) ("*Lifeline Modernization Order*").

¹⁶ *Universal Transformation Order*, 26 FCC Rcd at ¶¶ 71-72; *E-Rate Modernization Order*, 29 FCC Rcd at ¶ 22; *Lifeline Modernization Order*, 31 FCC Rcd at ¶ 31.

¹⁷ NRPM ¶ 9.

As explained in the prior section, each USF program serves a distinct purpose and specific principle related to universal service. The CAF program is intended for communications deployment in rural areas; Lifeline was created for low-income households to afford connectivity; E-Rate is designed for schools and libraries to achieve communications access, and the Rural Health Care program provides funding for telehealth services. Indeed, each program is complimentary rather than duplicative of each other. Therefore, comparing each program's effectiveness does nothing to advance the Commission's goal of universal service.

The NPRM further attempts to force the USF programs to compete against each other by seeking comment on methods for prioritizing the funding among the four universal service programs if an overall budget cap is exceeded.¹⁸ However, there is no policy basis for the Commission to prioritize funding one USF program over another. The Commission already acknowledges each of the USF programs is already capped or operating with a targeted budget.¹⁹ Prioritizing funding among the four programs based on an overall cap does not increase predictability among program participants but rather causes uncertainty. Indeed, when the Commission first established budgets for the High Cost and E-Rate programs, it cited to Section 254(b)(5) explaining that “[t]here should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.”²⁰ However, the Commission specifically rejected a proposal “to establish a principle to minimize the size and growth of the universal service fund”²¹ The Commission cited again to the same governing statute explaining that this proposal ran contrary to maintaining predictability for the universal service programs.

¹⁸ *Id.* ¶ 19.

¹⁹ *Id.* ¶ 1.

²⁰ *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776 ¶¶ 55, 704, 746, 815 (1997).

²¹ *Id.* ¶ 55.

The circumstances of the USF have not changed since the Commission came to this conclusion in 1997. In fact, as explained in the subsequent section, the USF programs have become even more critical as the Commission seeks to close the digital divide. Prioritizing funding based on an arbitrary cap would do nothing more than unnecessarily cut funding to one of the USF programs.

B. An Overall Budget Cap Would Contradict The Commission’s Goal of Closing the Digital Divide

Implementing an overall USF budget cap would undermine the Commission’s goal of closing the digital divide. As explained in the prior section, the Commission modernized and expanded each of the USF programs to include broadband services out of the growing importance to connect all Americans with broadband. Further, Chairman Pai has repeatedly stated that closing the digital divide is his top priority.²² However, an overall cap could arbitrarily cut funding to one or more of the USF programs, each of which addresses a unique challenge in closing the digital divide. Indeed, rural areas, low-income communities, and schools and libraries continue to face challenges achieving broadband access. For example, a recent Pew Research Center survey found that about one-third of residents in rural areas lack broadband access at home.²³

²² See, e.g., Testimony of Ajit Pai, Chairman, Federal Communications Commission, Testimony of Ajit Pai, Chairman, Federal Communications Commission, U.S. House of Representatives Committee on Energy and Commerce, Subcommittee on Communications and Technology “Hearing on Accountability and Oversight of the Federal Communications Commission” (May 15, 2019) (“For almost two-and-a-half years, we have worked together to achieve the priorities I set at the beginning of my chairmanship—most notably, the top priority of closing the digital divide.”); U.S. House of Representatives Committee on Energy and Commerce, Subcommittee on Communications and Technology Hearing on “Oversight of the Federal Communications Commission” (July 25, 2018) (“From the beginning of my tenure as head of the agency, I’ve made clear that my top priority would be to close the digital divide.”).

²³ See Andrew Perrin, “Digital gap between rural and nonrural America persists” Pew Research Center (May 31, 2019), <https://www.pewresearch.org/fact-tank/2019/05/31/digital-gap-between-rural-and-nonrural-america-persists/>.

Affordability continues to be a significant barrier to broadband adoption. Another survey from Pew Research Center shows that 18 percent of U.S. adults who make less than \$30,000 a year do not use the internet, compared to just 2 percent of those who make more than \$75,000 annually.²⁴ Finally, the FCC’s own data shows that 2.3 million students are not receiving broadband service at school that meets the agency’s connectivity standards.²⁵ These glaring statistics indicate that the digital divide remains a significant problem. Imposing an overall USF cap would only serve to undermine USF programs designed to address these challenges and frustrate the Commission’s goal of closing the digital divide.

IV. CONCLUSION

For the foregoing reasons, the Commission should abandon its proposal to place an overall cap on USF and focus on refining existing programs while enacting policies that fulfill its universal service goal of ensuring all Americans have access to communications services.

Respectfully submitted,

/s/ Yosef Getachew

Yosef Getachew

Corian Zachar*

COMMON CAUSE

805 15th St NW, Suite 800

Washington, DC 20005

(202) 833-1200

* Ms. Zachar is a summer legal intern at Common Cause and a rising 3L at the University of Colorado Law School.

²⁴ See Monica Anderson et al., “10% of Americans don’t use the internet. Who are they?,” Pew Research Center (Apr. 22, 2019), <https://www.pewresearch.org/fact-tank/2019/04/22/some-americans-dont-usethe-internet-who-are-they>.

²⁵ *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, 2019 Broadband Deployment Report, GN Docket No. 18-238, FCC 19-44 ¶ 55 (May 29, 2019).