BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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

REPLY COMMENTS OF THE
CALIFORNIA PUBLIC UTILITIES COMMISSION
ON NOTICE OF PROPOSED RULEMAKING

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I. INTRODUCTION

The California Public Utilities Commission (CPUC) hereby files these reply comments on the Federal Communications Commission's (FCC) *Notice of Proposed Rulemaking* (*NPRM*) in the above-captioned proceeding.[1] The *NPRM* seeks comments on the implementation of an overall budget cap on the Universal Service Fund (USF) and prioritization of funding among the different USF programs under an overall cap. The *NPRM* also asks if individual budget caps should be implemented on the USF programs that currently are not capped. Through these proposals, the FCC aims to "strike the appropriate balance between ensuring adequate funding for the universal service programs while minimizing the financial burden on ratepayers and providing predictability for program participants."[2]

The CPUC supports these universal service goals; however, an overall cap is not the appropriate method to ensure minimum burden on ratepayers and adequate funding for the USF. The CPUC opposes an overall cap on the USF and any rules to prioritize funding for one program over another. Instead of predictability, these proposals will cause uncertainty for California's state universal service programs that are complementary to the USF programs. The CPUC recommends that the FCC instead: 1) focus on better targeting funding in each program to prevent waste, fraud, and abuse;

[1] *See In the Matter of Universal Service Contribution Methodology,* WC Docket No. 06-122, Notice of Proposed Rulemaking *(NPRM),* FCC 19-46, (rel. May 31, 2019).

[2] *NPRM*, ¶ 9.

and 2) reform the USF contribution methodology to broaden the base of services assessed for contribution.

II. DISCUSSION

A. The FCC Should Not Implement an Overall Budget Cap on the Universal Service Fund.

The *NPRM* states that the FCC seeks "to evaluate the financial aspects of the four USF programs in a more holistic way" and that an overall cap on the USF would "limit the contribution burden borne by ratepayers, provide regulatory and financial certainty, and promote efficiency, fairness, accountability, and sustainability of the USF programs."[3]

The National Association of State Utility Consumer Advocates (NASUCA) and many other stakeholders in their comments state that an overall cap on the USF is unnecessary and would not achieve these objectives.[4] The CPUC agrees with these commenters that an overall cap would hinder, not help, the FCC in meeting these objectives. The CPUC also agrees with ADTRAN, Inc. that the FCC should account for other government subsidy programs in its holistic review of the USF.[5] Specifically, the FCC should consider the impacts an overall cap plus any reallocation of funding among the USF programs would have on state universal service programs. California's

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[3] *NPRM*, ¶ 1.

[4] National Association of State Utility Consumer Advocates (NASUCA) Comments, (filed July 2, 2019), p. 2.

[5] ADTRAN, Inc. Comments, (filed July 29, 2019), p. 6.

complementary state universal service programs leverage federal funding to bridge the digital divide. These programs are:

- **California LifeLine Fund**: The fund provides discounts on telecommunications services to qualified low-income households. California LifeLine discount is applied in conjunction with the federal discount to qualifying low-income households.
- **California Teleconnect Fund**: Similar to the E-Rate program, this fund provides a discount on broadband services to qualifying K-12 schools, libraries, community colleges, government-owned health care providers, and community-based organizations. The program encourages leveraging federal funds and applies a discount after the federal E-Rate discount is applied on eligible services.
- **California Advanced Services Fund**: Similar to the Connect America Fund (CAF), this fund provides grants to unserved and underserved parts of the state to build broadband infrastructure and increase broadband adoption. The program will supplement a grant pursuant to Connect America Fund Phase II to expand broadband service within identified census blocks, as needed.[6]
- **California High Cost Fund-A**: This fund provides support through rate of return regulation to small independent telephone corporations that serve high cost areas and promotes access to advanced services and deployment of broadband-capable facilities. This program will replace dollar-for-dollar any reductions in federal high cost loop support.
- **California High Cost Fund-B**: Similar to the federal High Cost Fund, this fund provides support to carriers of last resort who serve customers in high cost areas currently served by AT&T California, Verizon California, Frontier Communications of California, and Cox Communications.

Any reductions to federal disbursements or reallocation of funding between the federal USF programs would cause uncertainty for state universal service programs that leverage federal funding to bridge the digital divide. For example, California would have

[6] CA Public Utilities Code § 281(f)(5)(C)(ii).

to grapple with increasing state subsidies to cover lack of federal funding resulting from the cap.[7] If federal funding is significantly diminished, California may need to increase state surcharges on ratepayers to replenish that lack of funding. In 2015, the CPUC increased the state surcharge rate for the California Teleconnect Fund in response to the elimination of E-Rate support for voice services.[8] At that time, California was not prepared to eliminate support for voice services, and instead increased support to account for the loss of federal funding for voice services. Therefore, California sees no certainty that a federal cap will limit the burden on ratepayers as the burden could simply shift from the federal level to the states.

An overall cap on the USF is illogical as it could stifle the USF's ability to address persistent digital divide issues. One such issue is the homework gap, which refers to students' lack of broadband access at home to do homework. The E-Rate program does not currently subsidize off-premise wireless broadband service. If it were to do so, it could help address the homework gap issue. In fact, the U.S. Government Accountability Office (GAO) released a report in July 2019 recommending that the FCC assess and report on the potential benefits, costs, and challenges of making wireless broadband access away from school grounds eligible for E-rate.[9] However, an overall cap and

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[7] From January through May 2019, the California LifeLine program covered the federal Lifeline subsidy for an average of 82,000 participants who no longer qualified for federal Lifeline due to federal program changes.

[8] *See* CPUC Resolution T-17471. The CPUC subsequently reduced the surcharge rate in 2018 CPUC Resolution T-17606, but only after it was clear that a reduced surcharge rate would not impact the program's ability to cover services.

[9] *See* WIRELESS INTERNET: FCC Should Assess Making Off-School-Premises Access Eligible for Additional Federal Support, U.S. Government Accountability Office, (rel. July 2019).

funding prioritization could affect the USF's ability to address digital divide issues like the homework gap as other digital divide issues may be given funding priority.

Further, the CPUC agrees with Free Press that a USF cap would further destabilize the federal Lifeline program.[10] The CPUC opposes an additional individual cap on the Lifeline program as it may prevent the program from helping consumers that need it most. Lifeline is unlike other USF programs as its enrollments are directly impacted by economic conditions. In an economic downturn, Lifeline enrollments will naturally increase, but a cap on the program could prevent the program from helping consumers when they need it most. Also, the appropriate cap amount would be difficult to calculate since Lifeline participants enroll on a rolling basis, resulting in the participation level to constantly fluctuate. Instead of capping the program, the FCC should focus on increasing Lifeline participation, which is at a low rate of approximately 28 percent of the total eligible households in the nation.[11]

B. The FCC Should Better Target Funds to Reduce Waste, Fraud, and Abuse.

The *NPRM* states that an overall cap is being considered to "preserve and advance universal service, together with its obligation to protect against program waste, fraud, and abuse, and to ensure that programs are funded appropriately."[12] NASUCA and other commenters argue that an overall cap will not accomplish these objectives, and instead

[10] Free Press Comments, (filed July 29, 2019), p. 9.

[11] *See* Lifeline Participation, Total 2017 Est. Lifeline Participation Rate; https://www.usac.org/li/about/process-overview/stats/participation.aspx.

[12] *NPRM*, Appendix, A. 2

recommend that the FCC focus on collecting better data to identify areas that truly need USF funding.[13] The CPUC agrees. With improved data collection, the FCC can better target funding and prevent wasteful spending on unqualified areas and participants. In addition, the FCC should focus on verifying the data and ensure that recipients are meeting program obligations. By focusing on improving data collection, data verification, and enforcing program obligations, the FCC can more effectively reduce waste, fraud, and abuse of USF funds. As noted in the comments of various stakeholders, the FCC is already taking steps to do this. It recently created the Digital Opportunity Data Collection and is collecting feedback on how to ensure the data is accurate.[14] The FCC also established a new Fraud Division within the FCC's Enforcement Bureau to combat misuse of USF funding.[15] Instead of a cap, these types of targeted approaches at the program level will reduce waste, fraud, and abuse. The overall cap is unnecessary and will not enhance accountability in the USF.

C. The FCC Should Reform the USF Contribution Base.

As the comments of Schools, Health & Library Broadband Coalition (SHLB), NASUCA, ADTRAN, and others have noted, the *NPRM* fails to address the issue of USF contribution reform even though it intends to evaluate the USF programs in a more holistic way. The CPUC agrees that the FCC needs to reform the USF contribution base

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[13] NASUCA Comments, (filed July 2, 2019), p. 7.

[14] *See* Second Report and Order and Second Further Notice of Proposed Rulemaking, WC Docket Nos. *19-195, 11-10, (*rel. August 6, 2019*).*

[15] *See In the Matter of Establishment of the Fraud Division of the Enforcement Bureau,* Order *(*rel. February 4, 2019*).*

as the current base of services assessed is shrinking. Implementing a cap on the USF will not address long-term concerns about USF sustainability and would be only a temporary solution. It is time to reform the contribution base to include more services, especially because of the disconnect between which services are assessed and which services are subsidized. All the USF programs subsidize access to broadband services; yet, the FCC has explicitly declined to assess surcharges on broadband services when it reclassified broadband as an "information service," which has further complicated the issue of contribution reform.[16] The FCC should address these obstacles to USF funding, and should consider expanding the base of services supporting the USF. It is not equitable to rely on a shrinking number of ratepayers who purchase the assessed services that fund the USF.

III. CONCLUSION

The CPUC requests that the FCC not adopt an overall cap on the USF nor an individual cap on the federal Lifeline program. These caps will not promote the FCC's universal goals and will not enhance sustainability or accountability in the USF. Instead, the FCC should better target funding by taking measures to improve data collection in the USF programs, improve data verification, and ensure program obligations are met by program participants. The FCC should also reform the USF contribution base to include assessment of broadband services. This is a more equitable approach that will align USF contribution methodology with USF distribution policies.

[16] *See Restoring Internet Freedom*, Declaratory Ruling, Report and Order, and Order, 33 FCC 3d. 311 (rel. Jan. 4, 2018), ¶¶ 268-292.

Respectfully submitted,

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