Before the
Federal Communications Commission
Washington, DC 20554

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

REPLY COMMENTS OF
NEW AMERICA'S OPEN TECHNOLOGY INSTITUTE

New America's Open Technology Institute
740 15th Street, NW Suite 900
Washington, DC 20005

August 26, 2019

Table of Contents

I. Summary

New America's Open Technology Institute ("OTI") respectfully submits these reply comments to the Notice of Proposed Rulemaking ("NPRM") seeking to cap the Universal Service Fund ("USF").[1] In initial comments, OTI urged the Commission to reject this proposed cap due to its potential harm to the health of the USF and its potential to perpetuate the digital divide that leaves millions without broadband access in the United States.[2]

The record shows strong opposition to the NPRM from a diverse set of commenters. The wireless industry, rural broadband providers, public interest organizations, schools, libraries, and organizations representing the elderly and veterans all agree that the Commission should not cap the USF and that the proposal would damage the Commission's universal service mandate.

First, the proposed overall USF cap is unnecessary and would harm the Commission's efforts to bridge the digital divide. All four programs currently have separate budgets, which exemplifies that each program (Lifeline, E-Rate, the Connect America Fund, and Rural Health Care) has unique budgetary needs and goals. The FCC offers no persuasive explanation for how this proposal, which would force the programs to fight over a limited budget, would improve efficiencies or create any sense of certainty for any of the programs—and in fact, as several industry commenters note, the proposal would bring about great uncertainty and unpredictability, harming both providers and consumers. Further, the cap is unnecessary as the size of the USF has remained largely static over the past ten years, while the Lifeline program has suffered poor participation rates that are declining further. The Commission has recently rejected proposals to

[1] Notice of Proposed Rulemaking, WC Docket No. 06-122 (May 15, 2019), https://docs.fcc.gov/public/attachments/FCC-19-46A1.pdf ("NPRM").
[2] Comments of New America's Open Technology Institute, WC Docket No. 06-122 (July 29, 2019).

combine other programs targeting universal service and should follow the same logic from those proceedings in this one.

Second, commenters demonstrate that Americans living in rural and low-income communities require more investment from government programs seeking to provide universal service. However, rather than addressing this need, the proposal to cap the budgets could actually increase the inequity in broadband access and adoption that exists today. This is evidenced in the record, but additionally from actions taken in other proceedings such as the Commission's proposal to establish a new USF program, called Connected Care, with its own distinct budget. Even worse, the Commission is relying on data that is unreliable and inaccurate to determine broadband access, and that even the Commission has recognized to be inadequate. Without accurate data that fully illustrates the extent of the digital divide, it is improper for the Commission to consider a proposal to further hinder the USF.

Third, the record provides ample evidence that the proposal violates Congressional intent and the USF statute. Congress explicitly required "specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service." The statute also specifically noted the four areas of universal service that the Commission should target that led to the creation of the four USF programs existent today. Commenters highlight that the use of the plural for the word "mechanisms" and the mandate to implement "predictable and sufficient" mechanisms to advance universal service demonstrate that Congress unambiguously directed the Commission to ensure that each of the four issue areas received special attention with their own funds to effectively target the goal of universal service. The statute is clear and the NPRM should be rejected.

Fourth, the record shows opposition to the proposal to combine the E-Rate and Rural Health Care program budgets. More than 20 commenters representing schools and libraries agree that this proposal contradicts Congressional intent and would harm the ability of schools and libraries to avail themselves of the USF. The proposed combination would likely bring in more administrative burdens for schools and libraries, and would actually make the entire process more complicated, rather than the simplicity the Commission asserts that it is seeking in the NPRM.

Fifth, commenters agree that the Commission should focus on contribution reform if it wants to truly stabilize USF programs. The current system is unsustainable and unfair, and without changes could severely undermine the effectiveness of the USF. The Commission should re-focus on fixing the contribution methodology, thereby ensuring more certainty for the USF programs instead of focusing on an unnecessary overall cap.

II. The Commission Should Not Adopt An Overall USF Cap

The Commission's proposal to adopt an overall cap on the USF is strongly opposed in the record. A wide range of commenters including the wireless industry, public interest organizations, veterans, schools, libraries, and rural broadband providers offer sound arguments for why the Commission should reject the NPRM.[3] An overall USF cap is unnecessary and

[3] Comments of the National Rural Electric Cooperative Association; Comments of Free Press; Comments of NTCA—the Rural Broadband Association; Comments of Public Knowledge and the National Hispanic Media Coalition; Comments of Common Cause; Comments of CTIA; Comments of TracFone Wireless; Comments of Sage Telecom Communications; Comments of the Schools, Health, & Libraries Broadband (SHLB) Coalition; Comments of Puerto Rico Telephone Company, Inc.; Comments of National Education Association; Comments of National Association of American Veterans; Comments of Communication Workers of America; Comments of American Library Association; Comments of AARP; Comments of the Consortium for School Networking (CoSN); Comments of Arizona Department of Education; Comments of Alabama Association of School Boards; Comments of California Dept. of Education; Comments of Common Sense Kids Action; Comments of WTA—Advocates for Rural Broadband; Comments of INCOMPAS; Comments of National School Boards Association; Comments of State E-rate Coordinators' Alliance; Comments of Wyoming Department of Enterprise Technology

counterproductive to the Commission's goals to reach universal service; it would harm the American people and worsen the digital divide; it is counter-intuitive as rural and low-income areas require more investment from the government at this time, as other proceedings reflect; and this cap would violate Congressional intent.

A. The Record Demonstrates that a USF Cap Is Unnecessary and Counterproductive

The Commission's proposal to impose an overall cap of the USF is unnecessary, as a wide variety of commenters notes.[4] Each USF program already has budget mechanisms, as well as unique budgetary needs that demand separate management. The four USF programs are designed as complementary to one another, not as competitors. Further, a budget cap would create more uncertainty and unpredictability in the various markets at issue for USF programs, whereas the current system provides more stability while also allowing for fiscal responsibility.

The Commission already exercises budget control over the USF and has adequate tools at its disposal.[5] As NTCA—the Rural Broadband Association notes, even in the Commission's quest to improve forecasting for USF funding needs, "an overall cap for its part does not achieve

Services; Comments of Cochise County Library District; Comments of National Tribal Telecommunications Association; Comments of Pittsylvania County Schools; Comments of Livingston County School District; Comments of Kentucky Department of Education; Comments of State Educational Technology Directors Association; Smith Bagley; Comments of Council of the Great City Schools; Comments of Appleton Area School District; Comments of Utah Education and Telehealth Network; Comments of The National Association of State Utility Consumer Advocates; Comments of Bethel Public Schools; Comments of Wisconsin Department of Public Instruction; Comments of E-Rate Management Professionals Association; and Comments of Buckeye Elementary School District. All references to comments relate to this proceeding (WC Docket No. 06-122) unless noted otherwise.

[4] Comments of CTIA; Comments of NTCA—the Rural Broadband Association; Comments of TracFone Wireless; Comments of WTA—Advocates for Rural Broadband; Comments of Free Press; Comments of the Communication Workers of America; Comments of the SHLB Coalition.

[5] Comments of WTA—Advocates for Rural Broadband at 9-10 ("These separate budgets can effectively, efficiently and flexibly meet all of the NPRM's stated budgetary goals, including the promotion of meaningful consideration of spending decisions by the Commission, the limitation of the contribution burden borne by ratepayers, the provision of regulatory and financial certainty, and the promotion of the efficiency, fairness, accountability, and sustainability of the varying USF programs."); NPRM ¶ 1.

anything more than is now available to the Commission in terms of individual program spending controls."[6] Not only does each program already have budgets in place, but all four programs also have "strict rules that promote efficiency, fairness, and accountability," as the Schools, Health, & Libraries Broadband ("SHLB") Coalition notes.[7]

It is also clear from the stagnant nature of the Universal Service Fund's size that this cap is not required and that this proposal is a "solution in search of a problem."[8] As the data presented by Free Press demonstrates, there is no reasonable impetus for the introduction, adoption, and implementation of this woefully inadequate proposal—" the total size of USF is largely unchanged in the past decade should be reason enough to question the need for an overall cap and its draconian 'Hunger Games' battle between 14 programs."[9] Further, the USF programs' caps and budgets are currently too low to adequately improve broadband access in the United States, and specifically the Lifeline program is already at risk. As Communications Workers of America argue, "[a]t the current budget level, greater participation in the Lifeline program or an economic downturn could cause the Commission to turn away eligible customers. Capping the entire USF would exacerbate this problem and force its constituent programs to compete with one another for funding."[10]

Wireless carriers similarly argue that an overall cap both is unnecessary to the fiscal responsibility and stable future of the USF and could serve as a deterrent to carriers participating

---

[6] *Id.*
[7] Comments of SHLB Coalition at 4.
[8] Comments of Free Press at 3-5 ("However, it is critical to note that the total size of USF is almost flat since 2010 (the first full year after the most recent recession). In 2010, USF disbursed $8 billion. The unaudited disbursement value for 2018 was $8.5 billion, less than 6 percent total growth over this 8-year period. Therefore, an overall cap would likely not, as the Commission suggests, '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.'").
[9] *Id.,* citing NPRM (Dissenting Statement of Commissioner Jessica Rosenworcel).
[10] Comments of Communications Workers of America at 3.

in the program.[11] CTIA, for its part, warns that the implementation of this overall USF cap, and with it the introduction of the risk of uncertainty and the "potential new link between one program's funding and another program's performance" would pose "significant questions for providers who participate in the various USF programs."[12] TracFone argues that an overall cap on the USF program, which would additionally serve as a cap hindering the Lifeline program's budget, is not needed due to Lifeline's low and declining participation rate over the past few years.[13] Sage Telecom Communications also claimed that it "does not make sense for the FCC to consider budget caps while the relevant programs— Lifeline in particular—are not yet functioning at (or anywhere near) their intended potential."[14]

The Commission should consider the procedural issues introduced by the uncertainty surrounding this proposal. As the SHLB Coalition highlights: "If an overall cap is enforced, however, applicants may have to wait until the end of the funding year for all four programs before any individual applicant is funded. This additional delay increases uncertainty, not certainty."[15] Without certainty over funding, carriers will likely suffer severe consequences or have to withdraw.

---

[11] Comments of CTIA at 6 ("... the Commission has already instituted a cap or predictable budget mechanism on each individual program, which in turn provides the Commission with the tools necessary to guard against unexpected growth of the overall USF. An overall cap is thus not necessary at this time for the Commission to achieve its goal of efficient and responsible program management.").
[12] Comments of CTIA at 5-6.
[13] Comments of TracFone Wireless at 3-4 ("A global USF cap scheme which requires placing some type of hard cap on the Lifeline program is ill-advised because the Lifeline program is tragically underutilized… As TracFone explained in its comments opposing the Commission's proposal in the 2017 Lifeline NPRM to adopt a self-enforcing budget mechanism, imposing such a cap on the Lifeline program could depress organic growth and, in the event the cap is ultimately reached, cause tremendous harm to Lifeline subscribers—a vulnerable population that depends on Lifeline services to stay connected in an era where access to communications services is essential for employment, education, safety, social interaction, and nearly every facet of everyday life."); Comments of New America's Open Technology Institute at 13-14.
[14] Comments of Sage Telecom at 2.
[15] Comments of SHLB Coalition at 4.

Relatedly, an overall USF cap would harm the predictability of funding for each program and deter participation from carriers. CTIA argues that the NPRM itself concedes that an overall funding cap could "reduce projected universal service expenditures" when "disbursements are projected to exceed the overall USF cap."[16] As NTCA notes, the Commission has opted against combining separate parts of USF due to the move likely harming predictability as recently as December 2018 where it declined to combine cost-based high cost support and CAF-ICC.[17] "[I]t is difficult to understand why the same reasoning would not apply here to a proposal that would be similar, but on a much larger scale and potentially affecting a much larger pool of universal service beneficiaries with diverse needs and concerns," argued NTCA.[18] And given that a basic tenet of administrative law is that a federal agency must explain why it changes certain policies, "it would be somewhat unusual for the Commission to change a policy that the same Commissioners had just adopted at the end of the previous year."[19] Further, the Commission has previously acknowledged that unpredictable funding levels could lower USF recipients' incentives to invest in a March 2018 Connect America Fund order.[20]

In this vein, the entire premise of the proposal—that an overall cap would facilitate comparisons of each program's effectiveness—ignores the reality that the programs are designed

[16] Comments of CTIA at 5 ("In practice, funding for one USF program—for example, the high-cost program—could be reduced if expenditures for another USF program—for example, the RHC program—are anticipated to exceed prior expectations."), citing NPRM ¶ 12.
[17] Comments of NTCA at 13 ("There, the Commission found that tying together programs that serve entirely distinct but complementary missions would undermine that effort.").
[18] *Id.*; *See also* WTA—Rural Broadband Advocates at 4, citing the order where the Commission "found that a consolidated, all-encompassing budget for the rate-of-return support mechanisms that comprise a portion of the CAF Program… was 'no longer appropriate, given the different obligations and terms of the various rate-of-return funding streams.'"
[19] Comments of WTA—Rural Broadband Advocates at 4, citing *FCC v. FOX Stations, 129 S. Ct. 1800, 1811 (1999).*
[20] Comments of CTIA at 5.; See, e.g., In re Connect America Fund, Report and Order, Third Order on Reconsideration, and Notice of Proposed Rulemaking, WC Docket Nos. 10-90, 14-58, 07-135, CC Docket No. 01-92, FCC 18-29 ¶ 81 (rel. Mar. 23, 2018).

to complement each other, not compete against each other. Comparing the effectiveness of the four USF programs "simply pits the four USF programs against each other in competition for funding" and "does nothing to advance the Commission's goal of universal service."[21]

Commenters broadly agree that the proposed cap on the USF would be ineffective at achieving its purported goal of improving USF administration. On the contrary, it would likely cause harm to all four programs because a single cap is unlikely to be able to account for each program's distinct and independent goals and budgetary needs.

B. USF Programs Need More Government Investment, Not Less

The digital divide has left millions of Americans—predominantly in low-income and rural communities—without access to broadband. Rather than encouraging infighting between the USF programs, the Commission should focus on how it could actually improve the programs.

The Commission's proposal to cap USF seems incongruous with its recent vote on a proposal to expand USF through the "Connected Care" program. The proposed new program would allocate $100 million over three years for qualifying patients' connections for health care services.[22] Upon voting to advance the NPRM, Chairman Pai stated, "[t]he future of health care is connected care.… The $100 million budget we've proposed for the Connected Care Pilot program is a smart investment. It will deliver a lot of value to American consumers and won't divert resources from existing USF programs. And I believe it will better inform our understanding of how telemedicine can be used, save costs, and improve health outcomes."[23]

---

[21] Comments of Common Cause at 5-6.
[22] Notice of Proposed Rulemaking, WC Docket No. 18-213 (Rel. July 11, 2019), https://docs.fcc.gov/public/attachments/FCC-19-64A1.pdf ("Connected Care NPRM").
[23] Statement of Chairman Ajit Pai, Promoting Telehealth for Low-Income Consumers, WC Docket No. 18-213 (July 10, 2019), https://docs.fcc.gov/public/attachments/FCC-19-64A2.pdf.

Instead of, as here, proposing to restrict the overall spending and flexibility of the USF, the Commission should continue the trend it started with its efforts on the Connected Care pilot program by allocating more money for areas in the country in need of investment.[24]

The Rural Health Care program also suffers from insufficient funding. A recent letter from a bipartisan group of senators urged the Commission to postpone action on the item, in part due to the fact that it did not "address the need for more funding."[25] The senators argued the Rural Health Care program needs more funding because they believe "American families deserve access to high-quality and reliable health care, regardless of the zip code in which they live."[26] More funding for RHC would allow for the program's benefits to be felt more broadly.

The E-Rate program also requires additional funding to adequately carry out its mission, particularly in rural areas. The Wireline Competition Bureau recently reported that the current level of category two budgets (for internal connections and schools and libraries) could be insufficient for rural libraries and entities at the funding floor, and the Bureau highlighted that these institutions are the least likely to participate in the program and typically use only a small amount of their budgets.[27]

To fully understand where USF funding should go, the Commission needs a better understanding of broadband deployment. The Commission does not currently have a genuine understanding of the full extent of the digital divide, particularly in rural areas, due to unreliable

[24] OTI is not, at this time, submitting comment on the merits of the Connected Care pilot program. The references to the program are only meant to show how the Commission's recent actions have contradicted the goals of this NPRM.
[25] Letter from Sen. Ron Wyden et al. to FCC Chairman Ajit Pai (July 30, 2019), https://www.wyden.senate.gov/imo/media/doc/073019%20FCC%20RHCP%20Letter.pdf.
[26] *Id.* The recent inflation adjustment was insufficient. *Id.*
[27] Report, WC Docket No. 13-184 (Feb. 11, 2019), https://docs.fcc.gov/public/attachments/DA-19-71A1.pdf ¶ 12 (the Bureau also notes that several possible factors might explain the lower participation and usage rates for libraries and funding floor entities, including administrative burdens, lack of funds for non-discounted share, and, for libraries, Children's Internet Protection Act compliance.").

broadband deployment data collected by the Commission.[28] The Commission should prioritize adequate data collection and mapping of the digital divide before even considering any proposal to restrict future USF funding.[29]

C. An Overall USF Cap Violates the Law and Congressional Intent

The record shows broad agreement that the NPRM contradicts the law and Congressional intent.[30] Section 254(b)(5) of the 1996 Telecommunications Act mandates "specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service."[31] Congress also specifically identified that the Commission should be working to meet the needs of consumers in high-cost areas, low-income consumers, schools and libraries, and rural health care recipients.[32] As NTCA argues, Congress explicitly directed the creation of "specific" mechanisms shows "Congressional understanding that a single, universal mechanism would not serve the separate and respectively diverse needs of rural and insular areas, low-income consumers or the other targeted beneficiaries of the USF."[33]

---

[28] Comments of NRECA; Comments of the National Tribal Telecommunications Association; Comments of AARP at 2-3.
[29] Comments of the National Tribal Telecommunications Association at 5.
[30] Comments of Common Cause; Comments of CTIA; Comments of the SHLB Coalition; Comments of Public Knowledge and the National Hispanic Media Coalition; Comments of NTCA; Comments of the Puerto Rico Telephone Company; Comments of Sage Telecom; Comments of WTA; and Comments of the American Library Association.
[31] 47 U.S.C. § 254(b)(5); Comments of Common Cause; Comments of Public Knowledge and the National Hispanic Media Coalition; Comments of the SHLB Coalition; Comments of CTIA; and Comments of WTA.
[32] 47 U.S.C. § 254(b)(3), (h)(1)(A)-(B).
[33] Comments of NTCA at 3 ("Accordingly, each program of the USF, whether for high-cost areas, low-income, rural healthcare or schools and libraries, must be supported through a mechanism that is tailored to the distinct needs of that respective program. While it may be tempting to interpret the plural "mechanisms" delineated in Section 254(b)(5) as referring to the sum of a single Federal and various state programs (" . . . Federal and State mechanisms . . ."), that limiting interpretation fails when held against Section 254(a)(2), which refers specifically to the plural of "Federal universal support mechanisms.").

The proposal is likely to lead to unpredictable funding mechanisms for the programs. For instance, "if the Commission adopts and enforces an overall USF spending cap, it would have the effect of denying funding for projects that the Commission has already determined meet its program rules."[34] Similarly, the proposed USF cap could result in the Commission siphoning money from one or more programs to another if the latter program required increased funding.[35] This NPRM may also have negative effects on certainty and predictability of future USF fund distributions.[36]

The NPRM itself acknowledges the unpredictability of having an overall cap. The NPRM states "unexpected increases in demand in one program could affect the funding levels of other programs that have not experienced similar unexpected increases in demand."[37] It seems that the proposed USF cap would make funding unpredictable if one or more programs see an unanticipated increase in use.[38] Such unpredictability violates the law and the intent of Congress.

Further, Congress and the Commission have previously rejected similar proposals to restrict spending on universal service. In 1995, Congress considered and rejected amendments to the Telecommunications Act that would have imposed a statutory cap on the universal service fund and restricted universal service support.[39] In 1997, the Commission similarly declined to

---

[34] Comments of SHLB Coalition at 1.
[35] Comments of Puerto Rico Telephone Company at 5.
[36] Comments of CTIA at 5 ("Congress directed the Commission in Section 254(b) to ensure that universal service support mechanisms are predictable and sufficient. The Commission has recognized that predictability is essential for those who receive support from the four USF programs, as certainty of funding is necessary to help support recipients plan, invest, and innovate.")
[37] NPRM ¶ 19.
[38] Comments of Public Knowledge and the National Hispanic Media Coalition at 26-27.
[39] Congress.gov, S.Amend. 1285 to S.652, https://www.congress.gov/bill/104th-congress/senatebill/652/amendments?q={%22search%22:[%22\%22Telecommunications+act+of+1996\%22%2 2]}&r=4&s=9&pageSize=250; 141 Cong. Rec. 15345; Comments of Public Knowledge and the National Hispanic Media Coalition at 29 ("The Commission's present day concerns works would have been familiar to the drafters of the 1996 Act. However, those positions were rejected in 1996 and should be rejected again today.").

adopt a proposal “to establish a principle to minimize the size and growth of the universal service fund,” and cited to the USF portions of the Telecommunications Act and argued the proposal would contradict the effort to preserve predictability for USF programs.[40] “The circumstances of the USF have not changed since the Commission came to this conclusion in 1997.… Prioritizing funding based on an arbitrary cap would do nothing more than unnecessarily cut funding to one of the USF programs.”[41] The Commission need not revisit an issue already summarily rejected by Congress and by the Commission contemporaneously with the passage of the Telecommunications Act.

III. The Record Shows Strong Opposition to Combining the Rural Health Care and E-Rate Programs

The record demonstrates strong opposition to the Commission’s proposal to unite the E-Rate and Rural Health Care (RHC) programs under a single program cap. The proposal would harm students and community members who rely on schools and libraries for high-speed broadband access and patients and providers who rely on broadband connections for telehealth services.

As an initial matter, combining the programs under a single cap would violate the legislative intent of the Telecommunications Act, which sets up two *distinct* programs for the relevant services: one for schools and libraries, and another for health care for rural areas.[42]

Beyond that, combining the E-Rate and RHC programs under a single cap would create several problems. First, it would create additional administrative barriers. “Combining these two

[40] Comments of Common Cause at 6-7; Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd 8776 ¶¶ 55, 704, 746, 815 (1997).
[41] Comments of Common Cause at 7.
[42] 47 USC § 254(h)(1)(A)-(B).

programs would create unwarranted administrative burdens to determine which participants - between schools, libraries, and healthcare providers, should receive the funding," argued Common Sense Kids Action.[43] Moreover, while the SHLB Coalition has proposed administrative reforms that would simplify and streamline the application processes for both programs, it opposes combining the program caps for E-Rate and RHC: "SHLB has suggested the idea of allowing applicants to seek E-rate and RHC funding simultaneously in one application on a trial basis. But, allowing a single application does NOT require combining the two programs, and combining the two programs would NOT further SHLB's proposal for a single application."[44]

Second, combining the program caps would make it difficult for schools and libraries to plan their budgets in advance, due to greater uncertainty in year-to-year availability of E-Rate funding. As the National Education Association wrote, "[S]chools 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…. 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)."[45] Increasing uncertainty in the program will harm these entities.

---

[43] Comments of Common Sense Kids Action at 7-8.

[44] Comments of SHLB Coalition at 5-6.

[45] Comments of National Education Association at 5. The Consortium for School Networking echoed this sentiment, Comments of The Consortium for School Networking at 4-5 ("The Commission's proposal to establish an overall USF cap and to merge the E-rate and Rural Care cap would utterly impede a school district's long-term planning by injecting much greater uncertainty into the system. There is a distinct possibility that this policy change could create a chilling effect on districts' participation in the program."), as did more than 20 rural school districts in Iowa, Arizona, New Mexico, Washington, Illinois, Oklahoma, and Rhode Island—that are particularly concerned with the impact of this proposal on broadband access in their districts given their high poverty rates and low population densities in rural areas—and suburban school districts in Connecticut, New York, and Pennsylvania. Comments of Cochise County Library District at 2, Comments of Pittsylvania County Schools at 2, Comments of Ridley School District at 2, Comments of Bethel Public Schools at 2, Comments of College Community School District

Third, combining the program caps would likely reduce available E-Rate funds. As the State Educational Technology Directors Association wrote, this proposal "could divert needed broadband resources away from students. Sharing resources between these two unique programs could reduce available E-rate funding during a critical funding year."[46] Demand for RHC has increased significantly in recent years, from $377 million in 2015 to $521 million in 2017.[47] Several school districts had similar concerns about the "increasing demand and skyrocketing costs [of] rural health care,"[48] and rural school districts in Iowa "are already making difficult decisions when it comes to health care and squeezing funds could have a dramatic negative outcome."[49] Further, "[i]f 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."[50] The E-Rate Management Professionals Association urges the Commission to focus on efforts to improve the RHC program, instead of

at 2, Comments of Hewlett-Woodmere Public Schools at 2, Comments of Vinton-Shellsburg Community School District at 2, Comments of Turner Public Schools at 2, Comments of Buckeye Elementary School District at 2, Comments of Calhoun Community Unit District 40 at 2, Comments of Michigan State Education Network at 2, Comments of Arizona School Administrators at 2, Comments of Vienna Public Schools at 2, Comments of Yavapai County Education Service Agency at 2, Comments of Bartelso School District No. 57 at 2, Comments of Albia Community School District at 2, Comments of Spencer Community Schools at 2, Comments of Manson Northwest Webster School District at 2, and Comments of Eatonville School District at 2 ("The proposed rule will likely immobilize E-Rate funding and expand confusion among beneficiaries. Specific to E-Rate and schools/libraries, where school system and library leaders have a responsibility to balance their budget annually, the idea that the E-Rate funding would be hamstrung and lack certainty in availability will certainly impact how schools and libraries plan to continue (or discontinue, should funding not be certain or reliable) their effort to build out connectivity to meet the needs of their communities).

[46] Comments of the State Educational Technology Directors Association at 4.

[47] Promoting Telehealth in Rural America, WC Docket No. 17-310, Report and Order, ¶ 6.

[48] Comments of School Administrators of Montana.

[49] Comments of The Iowa Association of School Boards at 1.

[50] Comments of the National Education Association at 4.

trying to make additional funding available for RHC by combining program caps for E-Rate and RHC, especially when it has not demonstrated that there is any reason to modify the E-Rate funding cap.[51]

Fourth, commenters express concern that combining the two programs' funding caps would once again threaten the sustainability of E-Rate and hinder schools' progress toward the connectivity goals laid out in the 2014 E-Rate Modernization Order. For many years, E-Rate was underfunded, and it was not until the 2014 E-Rate modernization reforms that the program became sufficiently funded. The NPRM threatens to send the E-Rate program back to those days of chronic underfunding. Rather than continue this approach, the Commission should "refrain from any rule changes that once more jeopardize the E-rate community's hard won battle to finally get the program adequately funded. With many students and patrons having their own tablets and other mobile devices, the additional funding has been particularly useful in ensuring adequate in-building network infrastructure."[52] Adequate E-Rate funding is particularly important at this juncture, where demand for E-Rate funding may increase when schools and libraries seek to upgrade their internal connections to achieve the one gigabit per second for every one thousand students goal established by the E-Rate Modernization Order.[53]

IV. The Commission Should Focus On Contribution Reform

The proposed USF cap is a distraction from the real issue, contribution reform. Rather than invent new USF limitations, the Commission should instead focus on contribution reform to address the NPRM's broad goals of "achiev[ing] a more holistic and coherent approach to

---

[51] Comments of the E-Rate Management Professionals Association at 4-5.
[52] Comments of American Library Association at 4.
[53] Comments of the National Education Association at 4.

universal service support"[54] and "provid[ing] regulatory and financial certainty, and promot[ing the] efficiency, fairness, accountability, and sustainability of the USF programs."[55]

The Commission's proposals to cap the USF fund will not stabilize the contribution base. As Free Press wrote, "A cap alone will not keep the contribution factor constant: capping a fund that has not grown in size in the past decade (and one that is already subject to program-specific budgets) will do nothing to help ratepayers or bring the contribution factor down."[56] Moreover, the "growth in the Contribution Factor, however, has not been primarily driven by increases in program spending.... Instead, it is primarily the result of decreases in the revenue base to which the Contribution Factor is applied. Since the year 2000, the Revenue Base has dropped to half its former value, even before adjusting for inflation. Adjusting for inflation, the revenue base has dropped from $20.2 billion in 3Q 2000 to $7.7 billion (in year 2000 dollars) in 3Q 2019. Without a change in the contribution methodology for the Universal Service Fund, no reforms on the demand side will control the contribution factor."[57]

The Commission should evaluate ways to broaden the classes of carriers required to pay into the USF fund by including broadband. Broadband users reap the benefits of the USF without paying into the fund. As the Competitive Carriers Association (CCA) wrote, "Wireless carriers, including many CCA members, contribute a disproportionate level to the USF relative to what they receive from it (and relative to what wireline telecommunications providers receive)."[58] Alaska Communications agreed "it is time to expand the pool of contributors to reflect the diversity of modern communications services."[59] Public Knowledge and the National Hispanic

---

[54] NPRM ¶ 20.
[55] NPRM ¶ 1.
[56] Comments of Free Press at 5.
[57] Comments of the E-Rate Management Professionals Association at 9-11.
[58] Comments of the Competitive Carriers Association at 4-5.
[59] Comments of Alaska Communications at 19.

Media Coalition (NHMC) urged the Commission to consider broadening the classes of carriers required to pay into the USF fund: "[the Commission] could require payments on a per-connection basis, rather than a per-phone line basis. They could require a percentage of all broadband revenue to be added to the USF. By greatly increasing the base contributing to universal service support, these reforms would ensure the sustainability of the program and alleviate the burden on ratepayers in a way that merely capping the program does not."[60]

Further, including broadband services in the universal service fund contribution mechanism is more equitable. As AARP wrote, "[i]mposing an assessment on broadband to support the FCC's broadband deployment and adoption objectives is a reasonable and more equitable path forward to fund universal service objectives. While the NPRM emphasizes the burden of current universal service funding mechanisms, the NPRM overlooks the lopsided and unfair burden the voice-only funding approach imposes on older Americans. In addition, voice service revenues continue to decline, resulting in a situation that is both unsustainable and unfair."[61] Contribution reform will likely do much more to stabilize USF than an overall cap.

V. Conclusion

The NPRM is unnecessary, counterproductive, a violation of congressional intent, and harmful to millions of Americans. The Commission should heed the overwhelming advice of the record and withdraw this proposal.

Respectfully submitted,

/s/ Amir Nasr
Becky Chao
New America's Open Technology Institute

[60] Comments of Public Knowledge and National Hispanic Media Coalition at 34-36.
[61] Comments of AARP at 11.

740 15th Street, NW Suite 900
Washington, DC 20005