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Federal Communications Commission
445 12th Street SW
Washington, DC 20554

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

Comments of AASA: The School Superintendents Association

Introduction

On behalf of AASA, The School Superintendents Association, representing the nation's 14,000 public school superintendents, I write in response to the Federal Communications Commission's (FCC) recent Universal Service Contribution Methodology Notice of Proposed Rulemaking (NPRM).

AASA has actively advocated for the E-Rate program since its inception in the Telecommunications Act of 1996. Our organization is focused on ensuring the program continues to successfully pursue its mission of accelerating the deployment of advanced telecommunications and information services in schools and libraries. We have been engaged in each rulemaking related to the program and have long supported efforts to modernize and strengthen the E-Rate program. Any conversation about modernizing E-Rate must start by recognizing the unparalleled success of the E-Rate program. In its 20 years, E-Rate has proven critical to the rapid and dramatic expansion of school and library connectivity, forever changing the face of students' classroom experiences. Schools and libraries use their E-Rate discounts to help them afford essential connectivity services and leverage additional dollars for other areas of their budgets, including instruction. The long-term success of E-Rate relies on its ability to be updated to reflect the ever-changing world of connectivity and educational technology while remaining committed to its focus on equity and program sustainability, something accomplished through the 2014 modernization and cap increase. As a direct result of those changes, more schools and libraries are now connected to the internet, and the quality and speed of that connection more often meets that. We have fewer schools and libraries that lack the technological capacity to keep up with the mandated online formative assessments and tracking massive amounts of data through the state longitudinal data systems.

As the FCC moves forward with this NPRM, it is prudent to remain focused on the fact that E-Rate is a program that works and is succeeding in its mission. Any changes to the E-Rate program should be focused on expanding a successful program that has yet to reach its full potential and ensuring the FCC remains a good steward of the changes adopted 2014, allowing those changes to progress and play out as intended. E-Rate played a critical role is the rapid and significant expansion of connectivity in schools, and the 2014 modernization was a much-needed update to getting more schools and libraries connected to broadband.

Summary of NPRM

In explaining its rationale for considering the programmatic changes and funding caps, the FCC claims the proposal would "enable the Commission to 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", to "determine the most efficient and responsible use of these federal funds", and to "promote meaningful consideration of spending decisions by the Commission, limit the

contribution burden borne by ratepayers, provide regulatory and financial certainty, and promote efficiency, fairness, accountability, and sustainability of the USF programs." The rule points out that all four programs already operate with a cap, or at least a target, and relies on the fact that E-Rate and Lifeline, in particular, are operating well below their respective caps and budgets; that Rural Health Care demand has steadily increased since 2012 and is approaching its current cap; and that high cost fund/Connect America Fund demand currently exceeds its budget.

The tone of the NPRM indicates that the Commission's majority already believes that capping the overall USF is a good idea. Given the intent and purpose of the NPRM process, we are concerned that this proposal seems to have not only already reached its conclusion, but is using the public comment period as a mere formality, rather than a meaningful opportunity to engage in a full conversation around potential merits and pitfalls of the proposed funding caps. We also have concerns with the timing and duration of the comment period itself.

The majority Commissioners write "We believe capping the Fund overall will 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. Moreover, setting an overall cap will enable the Commission to take a more holistic view when considering future changes to the universal service programs and their impact on overall USF spending." They justify the cap, in part, by claiming it is an attractive policy because it will force a consideration of each program's relative effectiveness. We are concerned this proposal indicates a hyper reliance on overall cost and spending, with a priority on spending constraints, and arbitrarily limits full conversation about truly evaluating program effectiveness.

After framing its proposal, the majority Commissioners use the NPRM to seek feedback on a list of issues in five broad buckets: general merit and logistics of a funding cap; implementation of an overall cap; tracking USF demand; reduction mechanisms; and proposed changes to individual USF programs. For purposes of brevity and the specifics of the NPRM to which AASA will respond, our summary focuses only on the questions the Commission poses as it relates to proposed changes for individual USF programs, including E-Rate.

<u>Summary of AASA Opposition</u>

AASA is concerned with—and opposed to—this simplistic approach to a significant program overhaul, seemingly for administrative simplicity. We are concerned that the realities of funding and demand trends in E-Rate and rural health care (RHC)

are at odds. Yes, the E-Rate program is undersubscribed from its current budget, but we know that demand for equitable access to broadband in schools is only going to continue to grow. And even granting the generous assumption that actual costs of school connectivity are falling and can help offset the increasing demand, the reality of RHC demand and costs is an all-but-certain road map highlighting how the pairing of these programs under one cap is a head-on collision. Our opposition falls in four broad topics:

- **Creates arbitrary competition, pitting USF programs against each other in a connectivity version of 'Hunger Games'**. An overall USF cap set at $9.6 billion or less would pit all four programs into competition with each other. The competition emerges when demand exceeds the proposed cap, and the Commission would be in the position of deciding which programs deserve funding. The proposal creates significant uncertainty year-to-year for all who participate in and benefit from USF programs. Specific to E-Rate and RHC, this means schools and libraries, along with rural health care providers, would not know year to year what they stand to receive, independent of eligibility, resulting in instability and uncertainty and undermining their ability to plan and budget accordingly. Part of our concern with this approach is that it could be perceived as the Commission intending to purposefully nourish such uncertainty as a way to artificially and arbitrarily suppress program demand and participation. Using federal policy to create budget uncertainty to suppress demand is shortsighted and completely disregards the intent and focus of the underlying statute, connectivity. Further, when you look at the overlap of USF beneficiaries, the reality is that many rely on more than one USF program. This proposal pits USF programs against each

other. Further, the proposal completely disregards the Congressional intent of the original underlying statue: the 1996 Telecommunications Act was clear in its intent to prioritize ensuring that consumers across the country—specifically calling out those in rural, insular, and high cost areas—have access to telecommunications and information services and that among other things, should be specific, predictable and sufficient for schools, libraries and health care providers.

- **Pits Schools/Libraries Against Rural Hospitals and Clinics**. While E-Rate demand is currently below its authorized $4 billion cap, demand could continue to grow substantially as schools and libraries seek to upgrade their internal connections to achieve the one Gbps per thousand student goal established in the 2014 E-Rate Modernization Order or as new eligible services are added. Rural Health Care program beneficiaries have ramped-up their demand significantly in recent years, exceeding that program's cap in 2016. RHC'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 outstrip that number. If the Rural Health Care program is placed under a single cap with E-Rate, there is every reason to presume that RHC will continue growing beyond its 2018 authorized cap and will begin to consume the unused part of E-Rate funding almost immediately. This establishes a troubling precedent of one program taking from another that may lead to a permanent change in the E-Rate's cap level. The goals of E-rate and Rural Health Care differ significantly, making the combining of their caps unnecessary and potentially competitive. Administrative ease is not an excuse for wreaking havoc with E-rate beneficiaries' expectations or threatening the critical role E-Rate played in expanding and supporting school connectivity.
- **NPRM Proposal Stymies E-Rate Funds and Stands to Expand Confusion Among Beneficiaries**. Before 2014, E-Rate demand was more than double the $2.4 million available under its annual cap and no money was available for internal connections. In 2014, the FCC approved two E-Rate modernization orders that, among other things, raised E-Rate's annual cap to $4 billion and reserved at least $1 billion annually for internal connections. The 2014 orders also established a formula for internal connections/Wi-Fi support (now called Category 2) that provided each school district and private school with $150 per pupil for a five-year period. Category 2 allocations for public libraries were based on square footage. The first five-year cycle of this Category 2 formula's operation is essentially a pilot, with the FCC required to take action in order for the formula to continue to operate. In February 2019, the FCC released a report on the E-rate's Category II (CII) formula that concluded that the formula was a preferable alternative to the previous application system. Specifically, the report found that the formula ensured that more schools and libraries were benefitting from E-Rate and that rural, urban and suburban schools and libraries were receiving Category 2 support at equivalent rates. The report did not address whether the formula itself was sufficient to meet the beneficiaries' internal connections needs. School E-rate beneficiaries believe, based on anecdotal evidence and surveying, that the $150 cap for Category 2 is insufficient:
    - It is not enough to cover the costs of many schools' projects to improve internal connections and construction costs associated, as costs vary greatly given locale (rural, urban, geographic diversity, etc.). Additionally, Costs for Category 2 vary widely, largely because of labor costs, which this formula does not take into account.
    - An FY2018 survey of E-rate applicants found that the per-pupil budget fell short of what schools needed for Category 2 as 44.9% of school respondents indicated that the budget should be set at $250 per student; another 24.3% indicated it should be set at $350 per student.
    - There is concern that the $150 per-pupil "budget" keeps demand for Category 2 artificially low and also helps explain, in part, why we have not reached the modernized E-rate cap as of yet.

While the beneficiaries believe that the Category 2 formula is imperfect, they are concerned that drastic changes such as a new sub-cap, new overall USF cap, and/or new priorities could wreak havoc with the program and cause great uncertainty for beneficiaries. Right now, there is sufficient room under the $4 billion annual E-Rate cap to raise the $150 per pupil allocation by $250 or more if the Commission determines it is warranted. If E-Rate is merged financially with the Rural Health Care program, there may not be sufficient funding under a new sub-cap to provide schools the money that they truly need for internal connections. There are serious concerns that capping the USF and sub-capping E-rate and HRC is

intended to sow confusion and create uncertainty in an attempt to discourage beneficiaries from applying to the program(s) and artificially suppress demand in order to drive down the contribution factor.

- **Timing and Duration of Comment Period**: AASA appreciates that the commission extended the timeline by which the public can submit comments in response to the proposal. The initial comment period was scheduled to run June 13-Aug 12, 2019, a 60-day comment and reply comment period. AASA submitted, through the EdLiNC coalition, a request for an extension. In addition to its brevity, the initial comment period coincided almost completely with the summer recess for K-12 public and private schools. Summer recess means that many school teachers and leaders, as well as system administrators, would not be working in their classrooms and offices at the time of the comment period. While the FCC did grant a two week extension (through August 26), the revised timeline overlapped with not only summer, but also the final weeks of summer—and in some states, the first weeks of the school year—a time when K12 educators are rightfully consumed with preparing and opening their schools. AASA maintains that when it comes to soliciting feedback on the E-Rate program, a program focused solely on connecting schools and libraries, it is in the FCC's best interests to ensure that stakeholders of the program for which the FCC is proposing changes are able to purposefully and substantively engage in the rule making process. The FCC should want to hear from program beneficiaries, as they are best positioned to provide the feedback on what the proposed changes would mean to the program and how those changes would impact, undermine or bolster the program's stated purpose. Given the very predictable pattern of school calendars, the FCC can and should do better in the timing of these comment periods. AASA urges the FCC to be mindful and deliberate in scheduling E-Rate related NPRMs at a time that can better capture and reflect feedback from schools and libraries.

AASA filed additional comments with the Education and Library Networks Coalition (EdLiNC), and we want to reaffirm our support for those comments as already filed.

In closing, AASA urges the FCC to cease its work on this rulemaking and to pursue no additional efforts to explore or establish a cap for the USF program, or within its sub-programs, and specifically opposes any efforts to create a sub-cap for E-Rate and RHC. Such policy proposals are flawed and short sighted, and threaten to undermine not only the intent of the underlying statute, but also the significant progress the USF programs have made when it comes expanded access to connectivity.

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