Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, DC 20554

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

REPLY COMMENTS FROM THE WISCONSIN ASSOCIATION OF SCHOOL BOARDS (WASB) OPPOSING THE NOTICE OF PROPOSED RULEMAKING TO PLACE A CAP ON THE UNIVERSAL SERVICE FUND AND A SUB-CAP ON THE E-RATE AND RURAL HEALTH CARE PROGRAMS

I. INTRODUCTION AND SUMMARY

The Wisconsin Association of School Boards (WASB) recognizes and appreciates the ongoing efforts of the Federal Communications Commission (Commission) to strengthen the Schools and Libraries Program (E-Rate) of the Universal Service Fund.

From the inception of the E-Rate program in 1996 until fairly recently, the program was arguably chronically underfunded. That changed with the Commission's 2014 decision to modernize and expand E-Rate, a decision that has afforded thousands of schools and millions of schoolchildren the opportunity to be connected to high-speed broadband in their schools and libraries. While the WASB also appreciates the Commission's current interest in continued modernization and oversight of E-Rate, it strongly opposes the recently published Notice of Proposed Rulemaking (NPRM) that would place a cap on the Universal Service Fund (USF) and a sub-cap on the E-Rate and Rural Health Care Programs.[1]

From the very outset of the NPRM, the Commission states its intention to seek comments on how a cap on the USF could in the words of the NPRM, "enable the Commission to evaluate the financial aspects of the four USF programs in a more holistic way, and thereby better achieve the

[1] Federal Communications Commission, Notice of Proposed Rule Making re Universal Service Fund Contribution Methodology, FCC 19-46; WC Docket No. 06-122, Federal Register p. 27570, June 13, 2019. Accessed August 26, 2019.

overarching universal service principles Congress directed the Commission to preserve and advance."[2]

We note that among those universal service principles Congress established are that:

1) Quality services should be available at just, reasonable, and affordable rates.
2) Access to advanced telecommunications and information services should be provided in all regions of the Nation.
3) Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.
4) All providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.
5) There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.
6) Elementary and secondary schools and classrooms, (rural) health care providers, and libraries should have access to advanced telecommunications services. [3]

   [We note that such telecommunications services are to be provided to **elementary and secondary schools and libraries** for educational purposes ***at rates less than the amounts charged for similar services to other parties*** at discounts determined by the Commission with respect to interstate services and by the states with respect to intrastate services appropriate and necessary to ensure affordable access to and use of such services by such entities. For **public or nonprofit health care providers that serve persons who reside in rural areas** in a State such services are to be provided ***at rates that are reasonably comparable to rates charged for similar services in urban areas*** in that State.[4]] (emphasis added.)

The NPRM then acknowledges that "each of the constituent USF programs are capped or operating under a targeted budget."[5] It is arguable that the E-Rate program actually operates under two separate funding caps: an overall cap and a specific five-year per pupil cap on Category II expenditures.

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[2] Ibid, p. 27571. Accessed August 26, 2019. [The four programs of the Universal Service Fund (USF), which is administered by the Universal Service Administrative Company under the direction of the FCC, include 1) Connect America Fund (formerly known as High-Cost Support) for rural areas; 2) Lifeline for low-income consumers, including initiatives to expand service to residents of Tribal lands; 3) E-rate for schools and libraries; and, 4) Rural Health Care.]

[3] 47 U.S.C. § 254(b)(1)-(6).

[4] 47 U.S.C. § 254(h)(1)-(2).

[5] FCC, NPRM re Universal Service Fund Contribution Methodology, FCC 19-46; WC Docket No. 06-122, Federal Register, p. 27571. Accessed August 26, 2019.

In announcing the proposed rule, the FCC seeks public comment on the potential establishment of a single cap covering the four components of the USF. The FCC further seeks comment on a proposal to merge the E-Rate and Rural Health Caps. We address these requests in sequence.

The WASB opposes the proposal put forward by the Commission to establish a cap on the Universal Service Fund (USF). In our opinion, the imposition of such a cap would run contrary to the intended purpose and scope of the existing USF programs. Given the fact that, as noted above and by the Commission, three of the four Universal Service programs[6] already have funding caps and the Lifeline program has a funding target as set by the FCC it would appear that an overall cap is unnecessary.

The Commission claims that one rationale for establishing an overall cap is "to protect against Fund waste…." It is hard to fathom how an overall cap would protect against Fund waste any better than having individual program caps.

In the NPRM, the Commission acknowledges the existence of these funding caps and the funding target, but contends that, "[w]hile each of the constituent USF programs are capped or operating under a targeted budget, the Commission has not examined the programs holistically to determine the most efficient and responsible use of these federal funds. A cap could 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.[7]

We agree that the Commission ***should*** periodically evaluate program needs and funding. However, the Commission is perfectly capable of conducting such an evaluation with or without a cap on the USF in place. We fail to see a need, as the American Library Association put it, to "layer on" another overall funding cap on top of those already established. Simply put, the Commission does not need to have such a cap in place to conduct this evaluation. In our opinion, the very suggestion that a cap is needed implies that the evaluation that follows will focus on program funding rather than program needs.

As noted above, the Telecommunications Act of 1996 established principles for universal service that focused on increasing access to evolving services for consumers in rural areas, consumers with low-incomes, for the nation's schools and libraries, and for rural health care facilities. Each of the four federal Universal Service programs that were implemented is very different in the constituents they serve, how they are administered, and how funds are dispersed. The funds operate with different application periods and different disbursement schedules. How would an overall evaluation fairly account for these differences?

For that reason and others, we believe that any evaluation of the USF should be conducted on a program-by-program basis. If a program's evaluation shows a need to increase a particular program's funding, the Commission should initiate action to address the issue and thus meet the

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[6] The E-rate program, the High Cost program, and the Rural Health Care program.
[7] FCC, NPRM re Universal Service Fund Contribution Methodology, FCC 19-46; WC Docket No. 06-122, Federal Register, p. 27571. Accessed August 26, 2019.

program goals established by Congress. We see little purpose to an overall cap except to further limit the expenditure of funds for these dedicated purposes beyond what has already been prescribed by the FCC.

To illustrate our concerns, we point to the potential *Reduction Mechanisms* set forth in paragraphs 17-20. In particular, two questions from the *NPRM* illustrate our concerns:

- What criteria should be used in prioritizing reductions of one program against reduction in another? [8]
- Should we prioritize based on the cost-effectiveness of each program or the estimated improper payment rates? [9]

We are concerned that by focusing primarily on the financial aspects of USF, the Commission could ignore or bypass the overall goal and intent of Congress when it passed the Telecommunications Act of 1996.[10]

In short, we do not see how a funding cap, especially should it be exceeded, could possibly preserve and advance the principles of universal service. In fact, we think a cap would likely jeopardize two key principles of universal service established by Congress: The first is that funding be "predictable, and sufficient."[11] The second is that advanced telecommunications be available in all areas of the country at "just, reasonable, and affordable rates."[12] We believe the options the Commission proposes do not address these principles.

We acknowledge that some commenters have advanced the arguments that each program has pursed its mission without regard to cost and that greater coordination of the programs would be fostered by an overall cap on funding. However, an overall funding cap is not the only way to encourage greater coordination. In fact, an overall cap could ignore program needs and subordinate them, contrary to the intent of Congress and place programs in an implicit competition with each other. Congress created four distinct programs. Congress could have, but did not, require these programs to be viewed holistically in terms of their budgets.

We also acknowledge that some commenters have focused on what they assert is a continuing erosion in the USF revenue base to justify an overall funding cap. However, if as these commenters assert, the current funding mechanism truly proves unsustainable, it will ultimately be up to Congress, not the Commission, to redesign the USF.

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[8] FCC, NPRM re Universal Service Fund Contribution Methodology, FCC 19-46; WC Docket No. 06-122, Paragraph 17. Accessed August 26, 2019.
[9] Ibid. Para. 19.
[10] Telecommunications Act of 1996, Pub. LA. No. 104-104, 110 Stat. 56 (1996), Section 254 (h). Accessed August 26, 2019.
[11] 47 U.S.C. § 254(d).
[12] 47 U.S.C. § 254(b)(1)(2).

II. ABOUT THE WISCONSIN ASSOCIATION OF SCHOOL BOARDS

The Wisconsin Association of School Boards, Inc., (WASB) is a not-for-profit voluntary membership organization organized under the laws of the state of Wisconsin. All 421 locally elected public school boards in the state of Wisconsin are members of the WASB. The WASB represents the 2,787 locally elected school board members in Wisconsin as well as the 12 regional educational service agencies known as Cooperative Educational Service Agencies (or CESAs).

A concern for educational equity is a hallmark of Wisconsin law and policy. Dating from its original 1848 language, the Wisconsin Constitution has continuously evinced a clear dedication to equitable education for all school children of the state. Article X, Section 3, requires by law, "the establishment of district schools, which shall be as nearly uniform as practicable."

Schools and libraries can no longer accomplish their mission in an equitable manner without affordable access to high-speed broadband. E-rate funds have played a critical in providing equitable access to educational resources to our schools and libraries across Wisconsin.

The typical (median sized) K-12 public school district in Wisconsin has an enrollment of roughly 950 students. Many of our school districts are located in remote and rural areas of our state. The E-Rate program has been critical to providing equitable access to high-speed broadband to all schoolchildren, including those in small and rural schools.

III. THE E-RATE PROGRAM IS WORKING IN WISCONSIN

The E-Rate program has played a crucial role in aiding schools and libraries to connect to high-speed broadband that is vital for the type of student learning required in today's world. While there is always room for improvement, WASB members recognize the important role E-Rate has played in connecting Wisconsin schools and libraries and urge the Commission to not take steps that will jeopardize the success of the program.

Wisconsin schools and libraries have received $694,884,005.46 in E-Rate funding since the first funding year in 1998.[13] This amount would be significantly higher had the program not been significantly underfunded over a period of years. As a result, very few Wisconsin schools and libraries received any funding for in-building network enhancements. Insufficient funding was a well-recognized problem nationwide and, as we noted, we were pleased and grateful when the Commission increased funding to $3.9 billion/annually as part of its 2014 E-Rate

[13] This amount is through July 18, 2019. See E-rate Central's Funding Commitment Overview at https://tools.e-ratecentral.com/us/stateInformation.asp?state=WI.

reforms.[14] Despite this significant increase, however, the need/demand for E-Rate funds in Wisconsin continues to grow.

IV. THIS RULE WILL HARM E-RATE AND THE OTHER USF PROGRAMS

Placing an overall cap on the universal service fund (USF) will lead to competition among the four USF programs creating unnecessary burdens for them. It is also contrary to the intent of Congress. Further, schools and school boards need as much certainty as possible when planning their budgets. This proposal would lead to instability in budgeting and planning for broadband use by the districts. For those reasons, WASB opposes the proposed rule.

Imposing a sub-cap on the E-rate and Rural Health Care programs creates dangerous precedent. The proposal to merge spending caps for E-Rate and Rural Health Care programs into a single cap is also against the clear legislative intent found in the Telecommunications Act of 1996. Allowing one USF program the opportunity to potentially use another program's designated funds undermines the intent of Congress and threatens all four programs. This issue is of critical importance to our nearly 2,800 school board members.

Placing an overall cap on the universal service fund (USF) will lead to unnecessary competition among the four USF programs, contrary to the intent of Congress. The legislative goal was to provide four distinct programs, each with specific funding, not one funding pool where the four programs had to fight for funding if an overall cap was reached.

The U.S. House of Representatives affirmed the goals of USF and expressed their strong opposition to the effort being proposed to place a cap on USF or sub-cap on E-Rate and the Rural Health Care program through the recent unanimous passage of House Amendment 483 to H.R. 3351, the FY2020 Financial Services and General Government Appropriations Act, which prohibits the Federal Communications Commission (FCC) from implementing this rule. Similar efforts are now underway in the U.S. Senate, demonstrating the strong concern that Congress has over this proposed rule.

Given the growing demand for E-Rate funding we disagree with the Commission's proposal to merge the E-Rate fund with the Rural Health Care (RHC) fund under a single funding cap.[15] We acknowledge that since E-rate funding was significantly increased in 2014, the aggregate fund demand by schools and libraries each year since has been below the $3.9 billion cap. That concern in the current context is heightened, given that based on growth in RHC applicant demand, the RHC program will likely exceed its $581 million cap in the next 1-2 years. We are very concerned that E-Rate funds would then almost inevitably be diverted to meet the RHC applicant demand under the Commission's proposed rule.

We note that E-Rate funding for Category II expenditures is subject to a five-year per student cap. Many argue that this per student cap is artificially decreasing demand for E-Rate funding

[14] *Second Report and Order and Order on Reconsideration.* Modernizing the E-rate Program for Schools and Libraries. Para. 77. WC Docket 13-184. December 19, 2014.

[15] *Notice*. Para. 23.

that would otherwise be evident and further argue that current E-Rate utilization underestimates current needs and, therefore, the current per pupil cap amount should be significantly increased. With schools increasingly subject to ransomware attacks, data breaches, distributed denial of service attacks, as well as various other types of malware, schools districts are stepping up their expenditures for cybersecurity measures. Given the difficulty many districts experience in getting cybersecurity expenditures "e-rated" and the arcane regulations surrounding Category II-eligible expenditures, school district officials must often employ consultants. As we understand it, those consultant expenses cannot be paid from E-Rate funds. While those arguments may be more appropriate for a docket specifically addressing Category II, we note them here as evidence that demand for Category II funds is unduly limited by the restrictions placed upon eligible Category II expenditures.

We also note that from the perspective of schools and the school boards we represent, we are, collectively, scarcely five years into the current E-Rate modernization effort. We question why a reappraisal connected to a combined RHC and E-Rate cap is being undertaken before we know what the replacement costs of that modernization are ultimately going to be.

The WASB appreciates the opportunity to comment on this proposal. We respectfully request the commission reconsider the proposal.