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 SMITH BAGLEY, INC.

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Summary

Smith Bagley, Inc., believes that three conclusions can be drawn from the record responding to the Commission's proposal for a "topline" Universal Service Fund budget cap.

The Cap Proposal Should Not Be Adopted.—There is virtually universal agreement among commenters that the Commission should abandon its topline budget cap proposal.

First, the cap would exceed the Commission's authority. Commenters agree with SBI that the cap would contradict policies enacted by Congress by hindering the promotion and advancement of universal service, and by compromising long-term funding predictability.

Second, the proposed cap would turn the Commission's number one priority—closing the Digital Divide—into a bridge too far. Closing the Divide depends in part upon funding broadband deployment, but the record shows that a topline cap would restrict or limit this funding.

Third, the proposed budget cap would inflict hardship on constituencies the USF program is intended to serve. Americans living in rural and remote areas across the country, low-income people, children, patients, Tribal communities, schools, libraries, rural health care facilities—all would be harmed by a topline cap that restricts or limits funding needed to provide these people and institutions with access to advanced broadband services.

Fourth, the global budget cap would introduce uncertainty and contentiousness among the four USF programs, because the cap's funding "prioritizations" would make year-to-year support unpredictable, with each program facing the risk of funding reductions every year.

The Commission Should Stop Ignoring Contribution Reform.—Commenters share SBI's

bewilderment that the Commission has ignored USF contribution reform for many years, neglecting an issue that needs a solution.

The lesson from the record is that the Commission's failure to reform the contribution mechanism is endangering the viability of the universal service program. Time is running out, and the Commission has no reason to expect that a budget cap could serve as a substitute for contribution reform, or could be effective in stabilizing the pressures threatening the USF program.

The Contribution Base Should Be Expanded.—The contribution revenue base is collapsing. "Feeable" interstate telecommunications revenues have declined by nearly 35% from 2010 to 2019. For the "Big Four" mobile wireless carriers, assessable revenues have declined by 37% from 2013 through 2017, while customer counts have increased by 21%. The collapse of the revenue base has resulted in a contribution factor that has burgeoned to 24.4%.

The Commission's job is to fix this problem, and the record points the way to a solution: expand the contribution base. SBI agrees with commenters who argue that including broadband Internet access revenues in the base will help generate sufficient revenues, and will also significantly reduce the contribution factor. Including broadband in the base also would be equitable because USF support increasingly funds broadband deployment.

Other Issues.—The record bolsters SBI's view that, if the Commission does impose a top-line budget cap, support recipients serving remote Tribal lands should be exempt. Commenters also agree with SBI that, if the Commission wishes to pursue its cap proposal further, it should issue a further notice of proposed rulemaking, which could address numerous complex issues that would need to be resolved, and which could also make proposals for contribution reform.

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Smith Bagley, Inc. ("SBI"), by its counsel, hereby submits these Reply Comments in response to the Notice of Proposed Rulemaking proposing a global budget cap on the Universal Service Fund ("USF" or "Fund").[1]

I. INTRODUCTION.

The record criticizes the *NPRM* on two fronts. First, many commenters join SBI in opposing the Commission's proposal for a topline USF budget cap.[2] Second, numerous commenters express concern that the Commission completely ignores the collapsing contribution base and the urgent need for contribution reform.[3]

[1] *Universal Service Contribution Methodology*, WC Docket No. 06-122, Notice of Proposed Rulemaking, 34 FCC Rcd 4143 (2019) ("*NPRM*"). Reply comments are due August 26, 2019. *Universal Service Contribution Methodology*, WC Docket No. 06-122, Order, DA 19-628 (WCB July 5, 2019) (para. 5).

[2] SBI notes that, while Ad Hoc Telecommunications Users Committee ("Ad Hoc"), swims against the tide by supporting the proposed global cap, Ad Hoc also advocates strongly for contribution reform, arguing that the Commission will never resolve the current USF crisis until it reforms the broken contribution methodology. Ad Hoc Comments at 11.

[3] *See*, *e.g.*, New America's Open Technology Institute ("OTI") Comments at 15 (observing that "[b]y focusing on a myopic and needless budget cap, the Commission is missing the forest for the trees").

Numerous parties agree with SBI that the proposed cap would conflict with universal service policies enacted in Section 254 of the Communications Act of 1934, as amended ("Act").[4] Parties agree that support mechanisms cannot be either predictable or sufficient—as required by the statute—if they are restricted by a global funding cap. Moreover, the record reflects SBI's concern that the Commission's top priority of closing the Digital Divide would be undercut by a topline cap that would smother broadband deployment to citizens on the wrong side of that Divide.

The message the Commission should take from the response to the *NPRM* is that the time for contribution reform is now. SBI suggested in its Comments that the best course for the Commission is to expand the contribution base.[5] Commenters support this approach, reflecting a consensus that the viability of the universal service program faces an "existential crisis"[6] driven by a shrinking contribution base, and that the Commission must focus its efforts immediately on expanding the base in order to avert this crisis.

Commissioner O'Rielly recently has expressed a contrary view, contending that "[d]etermining [a] maximum level of funding [in the form of a global cap setting an upper limit on USF funding] is … a necessary precondition to any effort to reform the FCC's method for assessing USF contributions."[7] SBI respectfully suggests that Commissioner O'Rielly's approach would put the cart before the horse. Increased USF expenditures have played only a minor role

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[4] 27 U.S.C. § 254.

[5] SBI Comments at 13.

[6] Ad Hoc Comments at 2.

[7] Commissioner Michael O'Rielly, "A Needed USF Budgetary Cap," FCC Blog (Apr. 2, 2019) ("O'Rielly Blog"), *accessed at* https://www.fcc.gov/news-events/blog/2019/04/02/needed-usf-budgetary-cap.

in the rise in the contribution factor, especially when compared with the impact of the collapsing contribution base. If the Commission wants to fix the problem, it must address the *cause* of the problem: "feeable" interstate telecommunications revenues have declined by nearly 35% from 2010 to 2019,[8] while USF expenditures have increased by only 7% during the same period.[9]

Expanding the contribution base will preserve the support mechanisms, ensure their sufficiency, contribute to closing the Digital Divide, make it easier for the Commission to bring broadband USF solutions to rural and low-income Americans, and ease the burdens faced by end-user contributors.

II. DISCUSSION.

A. Numerous Parties Agree with SBI That the Proposed Topline Budget Cap Contradicts Statutory USF Principles.

SBI stated in its Comments that the proposed topline budget cap is inconsistent with Section 254 of the Act because it would fail to ensure sufficient funding for the preservation and advancement of universal service.[10] The record supports this view, while also demonstrating that the proposed cap would undercut the statutory principle that support mechanisms should be

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[8] *Compare* Federal Universal Service Support Mechanisms Quarterly Contribution Base (third quarter 2010), *accessed at* https://www.usac.org/about/tools/fcc/filings/2010/Q3/3Q2010%20Contribution%20Base%20Filing.pdf, *with* Federal Universal Service Support Mechanisms Quarterly Contribution Base (third quarter 2019), *accessed at* https://www.usac.org/about/tools/fcc/filings/2019/q3/USAC%203Q2019%20Universal%20Service%20Contribution%20Base%20Filing.pdf. *See also* Free Press Comments at 4.

[9] *Compare* Federal USF Mechanisms Fund Size Projection (third quarter 2010), *accessed at* https://www.usac.org/about/tools/fcc/filings/2010/Q3/3Q2010%20Quarterly%20Demand%20Filing.pdf, *with* Federal USF Mechanisms Fund Size Projection (third quarter 2019), *accessed at* https://www.usac.org/about/tools/fcc/filings/2019/q3/USAC%203Q2019%20Federal%20Universal%20Service%20Mechanism%20Quarterly%20Demand%20Filing_Final.pdf.

[10] SBI Comments at 7-8.

predictable in the manner in which they preserve and advance universal service.

NTCA explains that "the Commission's proposal to implement an overall cap on the USF can stand only if an overall cap is consistent with the statute. A clear reading of the statute, however, reveals that an overall cap on the USF is not consistent with either the language or intent of the law."[11] GVNW opposes the proposed cap because:

> Congress has stated its intention that USF funds should promote and advance universal service for high-cost areas, low-income consumers, schools and libraries, and health care providers. Therefore, any policy that restricts or limits the USF funding that Congress set forth in Section 254 of the Act is contrary to the stated public policy.[12]

Thus, as SBI demonstrated in its Comments,[13] the proposed overall cap would abandon the sufficiency principle in Section 254 and therefore would not be consistent with the statute.[14]

The record shows that the cap also would contradict the statutory principle that support must be predictable. CTIA observes that "[t]he 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."[15] SBI agrees with NTCA's argument that a topline cap would flout this statutory directive because, "[w]ere the four

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[11] NTCA–The Rural Broadband Association ("NTCA") Comments at 2. *See* American Library Association Comments at 2; California Department of Education ("CDE") Comments at 2; Common Cause Comments at 5; National Education Association Comments at 6; Public Knowledge & Hispanic Media Coalition ("Public Knowledge") Comments at 26; Wisconsin Department of Public Instruction ("WDPI") Comments at 1.

[12] GVNW Consulting, Inc. ("GVNW") Comments at 5. *See* WDPI Comments at 2; WTA–Advocates for Rural Broadband ("WTA") Comments at 3; Wyoming Department of Enterprise Technology Services Comments at 2 (arguing that the topline cap proposal would "replace Congress's judgment" and "frustrate Congress's intent").

[13] See SBI Comments at 9-10.

[14] *See* Public Knowledge Comments at 26 (explaining that "[a] USF cap may make it impossible for the Commission to provide sufficient funding for the USF programs in the future").

[15] CTIA–The Wireless Association® ("CTIA") Comments at 5 (footnotes omitted).

programs to be controlled under a single cap, long-term predictability would be compromised by the uncertainty of future funding levels that might be allocated to any particular program."[16]

B. The Proposed Cap Conflicts with the Commission's Commitment to Close the Digital Divide Because It Threatens to Cut Off Rural and Low-Income Americans from Access to Advanced Broadband Services.

SBI argued that, since the Commission's number one priority is closing the Digital Divide, its application of the Section 254 principles must not result in a level of funding that is insufficient to close the Divide.[17] The record reflects concern that the impact the proposed global cap would have on funding levels would undermine the Commission's top priority.

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[16] NTCA Comments at 8, 10-11. *See* Alabama Association of School Boards ("AASB") Comments at 1 (arguing that "Congress deliberately did not create a single funding pool to force each program to compete under a single cap"); GVNW Comments at 3; Public Knowledge Comments at 26-27; WTA Comments at 3. The Commission states that adopting clear prioritization rules and evaluating the tradeoffs associated with its funding decisions could make disbursements more predictable. *NPRM* at para. 19. Several commenters demonstrate, however, that the opposite would be true. *See*, *e.g.*, NTCA Comments at 10 (emphasis in original) (explaining that "an overall cap would threaten predictability for ***each*** of the programs because each will be at risk of losing funding as resources may be allocated differently amongst them from year-to-year.… The resulting 'collateral damage of insufficiency' would not only undermine that program's mission and the goals set forth by a deliberative Commission process, but it would be a recipe for fostering a permanent sense of unpredictability across ***all four USF programs***."); OTI Comments at 12.

SBI notes that the proposed cap also may face a more explicit congressional directive. Legislation passed by the House on June 26, 2019, and currently pending in the Senate, states that "[n]one of the funds made available by this Act may be used to finalize, implement, administer, or enforce the proposed rule entitled 'Universal Service Contribution Methodology' published by the Federal Communications Commission in the Federal Register on June 13, 2019 (27570 Fed. Reg. 84)." Fiscal Year 2020 Financial Services and General Government Appropriations Bill, H.R. 3351, 116th Congress (2019), Sec. 901, *cited in* AASB Comments at 1; CDE Comments at 2 (stating that the unanimously-adopted amendment to H.R. 3551 would "prohibit[ ] the implementation of any rule that would effectively impose a cap on the USF or place USF programs under a shared cap"); National Rural Electric Cooperative Association Comments at 9 (noting that, if the bill passes, "the Commission will be prohibited from placing a budget cap on USF expenditures"). The purpose of the House-passed amendment (House Amendment No. 483) is "to prohibit the Federal Communications [Commission] from finalizing the proposed rule … which would impose a cap on the Universal Service Fund and allow the sub-caps of USF programs to be combined." *See* Congress.gov, H. Amdt. 483 to H.R. 3351–116th Congress (2019-2020), *accessed at* https://www.congress.gov/amendment/116th-congress/house-amendment/483.

[17] SBI Comments at 2, 7. *See* National Association of State Utility Consumer Advocates ("NASUCA") Comments at 6.

Common Sense Kids Action points to the continuing severity of the Digital Divide, noting that "many low-income families still do not have access to broadband. More than four-in-ten (44%) low-income households with incomes below $30,000 do not have broadband services at home."[18] AARP argues that "[c]apping universal service funding in the face of the continuing digital divide is exactly the wrong policy for this Commission to adopt."[19] GVNW explains that "[e]stablishing an overall cap on USF funds could potentially slow down the deployment of broadband services if the Commission reduces funding to these [support] mechanisms due to distributions from the USF Fund exceeding the overall cap."[20]

The record demonstrates convincingly that a virtually inescapable result of imposing a topline budget cap would be to impose hardships on "low-income people, schools, libraries, children, rural health care facilities and patients, Native tribes, as well as those who live in rural and remote areas across the United States"[21] by diminishing their opportunity to benefit from the availability of advanced broadband services.

The Commission should not impose a cap because it would "dramatically weaken the USF programs and harm the wide range of stakeholders and beneficiaries who rely on them."[22] AARP

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[18] Common Sense Kids Action Comments at 5 (footnote omitted). *See* National School Boards Association Comments at 6.

[19] AARP Comments at 5.

[20] GVNW Comments at 7. *See* Common Cause Comments at 7-8; National Tribal Telecommunications Association ("NTTA") Comments at 3-4 (noting that "the FCC's USF cap proposal comes at a time when … the digital divide between rural Tribal areas and the rest of the United States still exists …. Because of [this] and many other factors, the timing of the USF cap proposal is unreasonable, at best, and suspect at worst."); Public Knowledge Comments at 15-21.

[21] Communications Workers of America ("CWA") Comments at 4.

[22] *Id*. at 2. *See* AARP Comments at 6-7; AASB Comments at 1 (explaining that "[t]he proposed cap could have a devastating impact on students, particularly those with no internet access at home.… Broadband connectivity is essential especially in the rural areas. Providing sufficient broadband connectivity at public

points to the broadband deployment goal the Commission set in its National Broadband Plan,[23] and points out that "[c]apping the Universal Service Fund is exactly the wrong policy given the failure of the Commission to achieve [this goal]. The Commission should instead take steps to assure that there is affordable access to 100 Mbps/50 Mbps service to all Americans."[24]

C. The Record Buttresses SBI's Argument That the Commission's Focus Should Be on Reforming the USF Contribution Methodology.

SBI expressed concern in its Comments that, after identifying a pressing need for contribution reform, the Commission has allowed years to pass without taking any action, and now has completely ignored the contribution methodology crisis in the *NPRM*.[25]

Other commenters share this view. Alaska Communications, for example, observes that "since 1997 the Commission has made only marginal changes to the mechanism, unable or unwilling to adopt a contribution mechanism appropriate for the Internet age."[26] Ad Hoc pointedly complains that, "[t]hrough years of inattention, neglect, avoidance, delay and deliberate policy decisions to exclude from assessment revenues attributable to broadband internet access, the Commission has endangered the viability of USF by keeping in place a

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schools is critical to prepare students for the national and international work force."); ITTA–The Voice of America's Broadband Providers Comments at 7.

[23] CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN (Mar. 2010) at 9, *accessed at* https://transition.fcc.gov/national-broadband-plan/national-broadband-plan.pdf ("GOAL NO. 1: At least 100 million U.S. homes should have affordable access to actual download speeds of at least 100 megabits per second and actual upload speeds of at least 50 megabits per second."), *cited in* AARP Comments at 8, n. 23.

[24] AARP Comments at 10.

[25] SBI Comments at 11 & nn. 28, 29.

[26] Alaska Communications Comments at 18 (footnote omitted). *See* AARP Comments at 10; NASUCA Comments at 5.

contribution methodology whose demise has long been predicted."[27]

OTI also agrees with SBI's concerns, noting that "[t]he contribution factor is now 24.4 percent, an extraordinarily high number. The current contribution regime does not adapt to market changes and has not stabilized the contribution base. This is an existential problem for the USF, but the NPRM does not address it."[28]

The principal fact that the Commission ignores is this: Over the past 15 years the revenue base that fuels USF support has been shrinking dramatically.[29] This is occurring because more and more end-user customers are migrating to services that currently are not assessed any USF contributions, while carriers are rapidly migrating to all-IP solutions, facilitating these consumer choices.[30] "While the implementation of an additional overall USF cap may slow the increase in USF expenditures, it does nothing to address the shrinking contribution base."[31]

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[27] Ad Hoc Comments at 11.

[28] OTI Comments at 16-17 (footnote omitted).

[29] Ad Hoc Comments at 12 (demonstrating that the assessed carrier revenue base for USF "is collapsing"); AARP Comments at 11; Free Press Comments at 4; Public Knowledge Comments at 34-35.

[30] *See* Ad Hoc Comments at 4. Commissioner O'Rielly has indicated that he does not favor distributing the contribution factor among phone and broadband services because such an action "wouldn't change the overall cost to consumers, but would merely shift it." *Commissioner O'Rielly Defends USF Budget Cap Proposals*, COMM. DAILY, June 26, 2019 ("*O'Rielly Article*"), at 8. That concern does not apply to the problem confronting the Commission, *i.e.*, the current contribution mechanism is driving up overall costs to consumers who use services that are ***assessed*** USF contribution fees, while imposing no costs on consumers who are shifting to ***non-assessable*** services. This consumer migration is now in the process of depleting the revenues used to fund the Commission's universal service support mechanisms.

[31] ADTRAN, Inc. ("ADTRAN") Comments at 7. *See* Ad Hoc Comments at 11-12 (footnote omitted) (stating that "USF expenditures are not the primary cause of the astonishing growth in the contribution factor. Indeed, as the Commission's own reporting of disbursement[s] shows, USF expenditures over the last five years have remained relatively flat. Yet, during that same period, the contribution factor has increased dramatically: from 16.8% in Q1 2015 to the current 24.4%, a dramatic 45% increase."); E-Rate Management Professional Association Comments at 10 (footnote omitted) (stating that the growth in the contribution factor "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"); Free Press Comments at 4-5; Public Knowledge Comments at 34 (stating that "[i]n recent

The table below illustrates the severity of the problem, showing the extent to which this customer migration is affecting the sustainability of the Fund. The table shows customer counts and USF assessable revenues for the "Big Four" mobile wireless carriers[32] for the most recent five years for which data are available. From 2013 through 2017 customer counts for the Big Four carriers have increased by 21%, while USF assessable revenues have decreased by 37%.

"BIG FOUR" MOBILE WIRELESS CARRIERS CUSTOMER COUNTS AND USF ASSESSABLE REVENUES*		
Year	**Customer Counts****	**Assessable Interstate and International Mobile Services Revenues†**
2013	337,117	$21,457,000
2014	366,179	$19,170,000
2015	391,463	$17,482,000
2016	411,704	$15,539,000
2017	427,548	$13,610,000

* Customer counts and assessable revenues are in thousands.

** Sources: *Communications Marketplace Report*, *et al*., GN Docket No. 18-231, *et al*., Report, 33 FCC Rcd 12558, 12565 (2018) (Fig. A-3) (2014-2017 data); *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 17-69, Twentieth Report, 32 FCC Rcd 8968, 8981 (2017) (Table II.B.1) (2013 data).

† Source: Universal Service Monitoring Reports for 2013-2018, Supplementary Material Table S.1.1, *accessed at* https://www.fcc.gov/general/federal-state-joint-board-monitoring-reports. The Commission presents accessible mobile services (retail) revenue data as revenue for the "Top 5 Affiliated Entities," which include AT&T Inc., CenturyLink, Deutsche Telekom AG (which acquired T-Mobile US, Inc., in 2001), SoftBank Corporation (which acquired Sprint in June 2013), and Verizon Communications.

These trends are a symptom of a broken contribution methodology. Ideally, as customer counts increase, assessable revenues should increase as well. This has not happened because the Commission does not assess broadband revenues, creating incentives for carriers to under-report

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years, the USF contribution factor has risen dramatically. However, addressing the burdens on ratepayers by undermining the agency's ability to fulfill its universal service mandate [by imposing a topline budget cap] is not the answer."). *But see* O'Rielly Blog (claiming that "USF spending has steadily increased over the years, and we've seen the 'contribution factor'— the burden levied on consumers—which currently hovers around 20 percent of a contributor's telephone bill, continually rise").

[32] The "Big Four" national mobile wireless carriers are AT&T, Sprint, T-Mobile US, Inc., and Verizon Wireless.

telecommunications revenues, and to use various reporting stratagems to shift revenues into the "non-telecommunications"—and, therefore, non-assessable—category.

SBI in its Comments urged the Commission to examine whether broadband services should be added to the contribution base.[33] The record provides strong support for this step. Ad Hoc, for example, explains that bringing broadband into the USF contribution base will produce positive results:

> Inclusion of broadband internet access revenues will solve the *primary* problem facing the current system—lack of assessable revenues to support current disbursement obligations. Most importantly, inclusion for broadband internet access revenues will, by most estimates, reduce the contribution factor to 5% or lower, a dramatic improvement and step forward toward stabilizing USF.[34]

Alaska Communications explains that, because the Commission has used its USF mechanisms to support broadband deployment, "[t]he Commission now should acknowledge the logical conclusion to that process: that it is time to expand the pool of contributors to reflect the diversity of modern communications services."[35] AARP agrees, pointing out a deficiency in the contribution base, namely, that, "[s]ince 2011, universal service programs have supported both

[33] SBI Comments at 13-14.

[34] Ad Hoc Comments at 15-16 (emphasis in original). *See* AARP Comments at 11 (arguing that "universal service assessments promote essential connectivity for Americans who are vulnerable to being cut off from critical telecommunications services. Imposing 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.").

[35] Alaska Communications Comments at 19. *See id*. at 18 (emphasis in original) (arguing that, "[r]ather than arbitrarily capping universal service support, the Commission should serve its statutory universal service mandate *and* effectively control the burden of growing demands for support by making meaningful reforms to the contribution methodology"). *See also* GVNW Comments at 4 (arguing that the Commission should pursue alternative methods for raising the overall level of contributions while reducing the impact of the contribution surcharge, and citing, as an example, the use of "a set connection-based charge per access line on landline, wireless, and voice over internet connections at an equal rate instead of using a contribution percentage").

voice and broadband services, but the assessment to support these programs continues to fall solely on voice services."[36]

The record demonstrates that, although the Commission expresses the view that an overall USF "cap could … limit the contribution burden borne by ratepayers,"[37] the Commission's best option for limiting these contribution burdens is to adopt contribution reforms that will broaden the sources of contribution revenues, reduce end-user contribution amounts, and thereby avert the "death spiral"[38] that currently threatens universal service funding.

D. Imposition of the Proposed Cap Would Impose Undue Burdens in Tribal Areas.

SBI stated in its Comments that, if the Commission adopts a global USF cap, support recipients serving remote Tribal lands should be exempt from the cap.[39] NTTA provides insight regarding the nature of the burdens that such a cap would impose, explaining that the prioritization of funding programs would introduce "a new level of contentiousness within the USF programs—contentiousness between programs, providers, customers, carriers, governments and other stakeholders—that simply is not necessary."[40]

NTTA observes that its members "serve customers and areas that rely on all facets of the USF program, and to implement a contentious process at this time, for no good reason, is against

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[36] AARP Comments at 10.

[37] *NPRM*, 34 FCC Rcd at 4143 (para. 1). *See O'Rielly Article* at 8 (reporting Commissioner O'Rielly's view that "[a]n overall budget cap 'is by no means a contribution fix,' … but it would help stabilize the amount ratepayers would pay each month").

[38] Ad Hoc Comments at 4.

[39] SBI Comments at 14-16.

[40] NTTA Comments at 2.

all that the USF stands for, or should stand for in Tribal areas."[41] These outcomes should be avoided by abandoning the topline cap proposal, or by exempting Tribal areas if a cap is adopted.

E. The Commission Should Issue a Further Notice of Proposed Rulemaking.

If the Commission wishes to examine further how it could "better achieve the overarching universal service principles Congress directed the Commission to preserve and advance[,]"[42] its next step should be the issuance of a Further Notice of Proposed Rulemaking in this docket.[43]

A Further NPRM could present Commission proposals to expand the contribution base, as a means of arriving at more equitable contributions while also fulfilling the statutory mandate to ensure a sufficient level of USF funding.[44] As NTTA explains, "[c]onsidering the proceeding in which the *NPRM* is included was opened in 2006 to address USF contributions reform, it appears this current iteration of the docket is a prime place to try again."[45] One issue to examine should be "the disconnect between contributions to, and distributions from, the USF.… Wireless carriers … contribute a disproportionate level to the USF relative to what they receive from it (and relative

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[41] *Id*.

[42] *NPRM*, 34 FCC Rcd at 4143 (para. 1).

[43] *See* Funds for Learning, LLC, Comments at 3 (emphasis removed) (pointing to "the astounding volume of complex issues that need to be addressed and resolved before the FCC can implement the USF-cap unification plan proposed in" the *NPRM*).

[44] The Commission issued a further NPRM in this docket seven years ago, in which it asked numerous questions and sought comment on the prospect of including broadband services in the contribution base. *Universal Service Contribution Methodology*, *et al*., WC Docket No. 06-122, et al., Further Notice of Proposed Rulemaking, 27 FCC Rcd 5358, 5390-92 (paras. 67-72) (2012). Given that the urgency of fixing the contribution methodology has continued to heighten since 2012, SBI suggests that the Commission, in issuing a further NPRM at this time, could seek comment on specific proposals it makes for expanding the contribution base to include broadband services.

[45] NTTA Comments at 8. *See* ADTRAN Comments at 8 ("urg[ing] the Commission to refresh the record, if necessary, and then expeditiously address USF contribution reform. Such action will likely do much more to stabilize the USF than adding an overall cap to the USF.").

to what wireline telecommunications providers receive)."[46]

III. CONCLUSION.

The record demonstrates that the Commission's ill-considered topline budget cap proposal would head the Commission down the wrong path. The Commission should not adopt a budget cap that is outside the bounds of the statute, conflicts with congressional mandates and intent, and would endanger rather than protect the Commission's universal service mechanisms.

Instead, the Commission should pursue its top priority of closing the Digital Divide by fixing the critical contribution methodology problem, thus preserving its USF mechanisms and enabling them to sufficiently fund efforts to bring broadband to rural and low-income Americans.

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[46] Competitive Carriers Association Comments at 4.