

**Before the
Federal Communications Commission
Washington, DC 20554**

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

REPLY COMMENTS OF PUBLIC KNOWLEDGE

I. Introduction

Comments on WC Docket No. 06-122 overwhelmingly object to the Federal Communication Commission’s (FCC) Notice of Proposed Rulemaking (NPRM) to cap the entire Universal Service Fund (USF).¹ These dissents represent a wide array of interests, including public school systems, telecommunication companies, veteran’s rights organizations, members of Congress, and public interest organizations supporting consumer and civil rights.

¹ See Comments of the National Association of American Veterans at 2, In the Matter of Universal Service Contribution Methodology Federal-State Joint Board on Universal Service 1998 Biennial Regulatory Review, Docket 06-122, filed July 31, 2019, (“We urge the FCC to reject these punitive and unnecessary proposals.”); Comments of Puerto Rico Telephone Company, Inc. at 1, In the Matter of Universal Service Contribution Methodology Federal-State Joint Board on Universal Service 1998 Biennial Regulatory Review, Docket 06-122, filed July 29, 2019, (“the Commission should decline to impose an overall cap.”), (“July 29 Comments of Puerto Rico Telephone Company, Docket 06-122”); Comments of the Education & Libraries Networks Coalition (edLiNC) at 2, In the Matter of Universal Service Contribution Methodology Federal-State Joint Board on Universal Service 1998 Biennial Regulatory Review, Docket 06-122, July 23, 2019, (“We urge the Commission to desist from this rulemaking and not proceed with any of the proposals advanced in this Notice.”), (“July 23 Comments of edLiNC, Docket 06-122”); Comments of Members of Congress Cindy Axne, et. al. at 2, In the Matter of Universal Service Contribution Methodology Federal-State Joint Board on Universal Service 1998 Biennial Regulatory Review, Docket 06-122, filed July 9, 2019, (“We urge you not to impose a cap on USF or place any USF programs under a shared cap.”), (“July 9 Comments of Members of Congress, Docket 06-122”); Comments of the Leadership Conference on Civil and Human Rights at 1, In the Matter of Universal Service Contribution Methodology Federal-State Joint Board on Universal Service 1998 Biennial Regulatory Review, Docket 06-122, filed August 9, 2019, (“We oppose the proposed cap because it will harm communities of color, will slow efforts to close the homework gap, and is counter to congressional intent.”).

II. There is Consensus in the Record that the NPRM Would Undermine the Federal Government’s Goal of Closing the Digital Divide

Broadband access is critical for enabling US residents to engage in society – including to learn, find work, or access medical care. In fact, the FCC has found that “Americans turn to broadband Internet access service for every facet of daily life.”² However, broadband is not yet accessible for every American. According to the FCC’s *2019 Broadband Deployment Report*, in 2017, 26% of those in rural areas and 30% of those in tribal lands lacked access to fixed broadband.³ Moreover, according to a Pew Research Center survey, both Black and Latinx families are less likely than their peers to have access to broadband internet at home. Only 66 percent of blacks, 61 percent of Hispanics report having broadband at home.⁴ The digital divide is also a problem facing disabled Americans, with 57 percent of disabled Americans lacking home broadband.⁵ Although these percentages are staggering, Microsoft believes that the number of Americans without broadband is even higher – noting that more than 160 million residents don’t use the internet at speeds the FCC would classify as broadband.⁶ One reason for these disparities

² Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act, GN Docket No. 14-126, 2015 Broadband Progress Report and Notice of Inquiry on Immediate Action to Accelerate Deployment, 30 FCC Rcd. 1375, 1377 ¶ 2 (2015).

³ Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, GN Docket No. 18-238, 2019 Broadband Deployment Report, FCC 19-44, 2 ¶ 1 (rel. May 29, 2019).

⁴ Andrew Perrin and Erica Turner, "Smartphones help blacks, Hispanics bridge some - but not all - digital gaps with whites," (August 20, 2019), <https://www.pewresearch.org/fact-tank/2019/08/20/smartphones-help-blacks-hispanics-bridge-some-but-not-all-digital-gaps-with-whites/>.

⁵ Monica Anderson and Andrew Perrin, "Disabled Americans are less likely to use technology," (April 7, 2017), <https://www.pewresearch.org/fact-tank/2017/04/07/disabled-americans-are-less-likely-to-use-technology/>.

⁶ See John Kahan, Microsoft on the Issues, “It’s Time for a New Approach for Mapping Broadband Data to Better Serve Americans,” (Apr. 9 2019), <https://blogs.microsoft.com/on-the-issues/2019/04/08/its-time-for-a-new-approach-for-mapping-broadband-data-to-better-serve-americans/>.

is cost. In a Pew Research Center survey, 19 percent of respondents said that they did not use the internet because of the expense of internet service or owning a computer.⁷

Closing the “digital divide,” is a core policy priority across the federal government. In the 115th Congress, over forty bills were introduced aiming to increase or expand broadband access, and this year the House of Representatives unanimously adopted House Amendment 483 to H.R. 3351 that would prohibit implementation of this proposed rule.⁸ Moreover, President Trump pledged significant funding to bring broadband to rural America during his 2016 campaign.⁹ Finally, the FCC itself has consistently declared that closing the digital divide is its top priority.¹⁰

A. The Cap Would Force the USF Programs to Compete Against One Another for Funding

The vast majority of commenters believe the proposed cap and proposal to combine the budgets of the E-rate and Rural Telehealth programs would undermine the federal government’s goal to eliminate the digital divide.¹¹ It could do this by potentially forcing the four USF programs

⁷ Monica Anderson et. al, "10% of Americans don't use the internet. Who are they?" (April 22, 2019), <https://www.pewresearch.org/fact-tank/2019/04/22/some-americans-dont-use-the-internet-who-are-they/>.

⁸ Cong. Research Serv., RL30719, Broadband Internet Access and the Digital Divide (2009); July 9 Comments of Members of Congress, Docket 06-122.

⁹ John Hendel, POLITICO, "Democrats torch Trump failures on rural digital divide," (August 17, 2019), <https://www.politico.com/story/2019/08/17/rural-digital-divide-democratic-candidates-1655290>.

¹⁰ See Federal Communications Commission, 2018-2022 Strategic Plan (2018), at 5.

¹¹ For example, see Comments of New America's Open Technology Institute at 11, In the Matter of Universal Service Contribution Methodology Federal-State Joint Board on Universal Service 1998 Biennial Regulatory Review, Docket 06-122, filed July 29, 2019, (reiterating Congress’s sentiment that the cap would “put the various USF programs in direct competition for USF funds.”); July 9 Comments of Members of Congress, Docket 06-122, (“We believe it is detrimental to the goal of universal service to put the various USF programs in direct competition for USF funds.”); Comments of Pinellas County Schools at 1, In the Matter of Universal Service Contribution Methodology Federal-State Joint Board on Universal Service 1998 Biennial Regulatory Review, Docket 06-122, filed August 7, 2019, (“The proposed rule unnecessarily puts schools/libraries against rural hospitals/clinics, creating a false race to the bottom under which both programs and the communities they support lose.”), (“August 7 Comments of Pinellas County Schools, Docket 06-122”); Comments of the Association of Alaska School Boards at 2, In the Matter of Universal Service Contribution Methodology Federal-State Joint Board on Universal Service 1998 Biennial Regulatory Review, Docket 06-122, filed August 20, 2019, (“This proposed rule would lead to competition among the four USF programs.”); Comments of AARP at ii, In the Matter of Universal Service Contribution Methodology Federal-State Joint Board on Universal Service 1998 Biennial Regulatory Review,

to compete against one another, with some programs set to lose funding should demand for other programs increase. If and when demand for the USF programs increases, the programs will be forced to compete against each other for funding. According to NTCA – The Rural Broadband Association, “this is particularly hazardous because an increase in support to one program does not translate to a benefit to the other. Increased funding for schools and libraries, for example, would not promote the needs of rural health care if resources from the latter were reallocated to the former. Likewise, an increase in low-income funding would not benefit network deployment goals.”¹²

USF programs impact real people in this country, and a cap could directly harm them. For example, according to a number of representatives of K-12 education, the cap or combination of the E-Rate and Rural Telehealth programs could “unnecessarily pit[] schools/libraries against rural hospitals/clinics, creating a false race to the bottom under which both programs and the communities they support lose.”¹³ Residents should not have to worry that their children will either lack the internet they need to learn and be prepared for the workforce or go without the internet they need to access healthcare when they can’t make it to a clinic. These goals are separate, but important, and should not be made to compete.

Docket 06-122, filed July 15, 2019, (“Capping universal service funding in the face of the continuing digital divide is exactly the wrong policy for this Commission to adopt.”), (“July 29 Comments of AARP, Docket 06-122”).

¹² Comments of NTCA -- The Rural Broadband Association at 11, In the Matter of Universal Service Contribution Methodology Federal-State Joint Board on Universal Service 1998 Biennial Regulatory Review, Docket 06-122, filed July 29, 2019.

¹³ For example, *see* August 7 Comments of Pinellas County Schools, Docket 06-122; Comments of Community Unit School District #205, In the Matter of Universal Service Contribution Methodology Federal-State Joint Board on Universal Service 1998 Biennial Regulatory Review, Docket 06-122, filed July 29, 2019; Comments of Traverse Bay Area Intermediate School District, In the Matter of Universal Service Contribution Methodology Federal-State Joint Board on Universal Service 1998 Biennial Regulatory Review, Docket 06-122, filed July 23, 2019; Comments of East Grand Forks Public Schools, In the Matter of Universal Service Contribution Methodology Federal-State Joint Board on Universal Service 1998 Biennial Regulatory Review, Docket 06-122, filed July 23, 2019.

B. The Cap Will Not Make Programs More Effective and Efficient

The FCC claims the rationale for the NPRM is to ensure efficiency in USF programs. A small minority of commenters agree, but provide little, if any, supporting evidence. Sarah Oh and Scott Wallsten of the Technology Policy Institute (TPI) declare that a budget would “create incentives for subsidy recipients to operate more efficiently,” and for “the FCC to search for ways to get a bigger bang for the buck.”¹⁴ However, TPI does not detail *how* the cap would lead to either of these things, aside from alleging that people are better at budgeting when resources are scarce.

In fact, even some commenters who support the overall cap on the USF note that the existing individual caps have helped to ensure program efficiency. In its comments, Ad Hoc stated that the FCC need “look no further than the current budget mechanisms applied to each of the four USF programs for evidence that budget caps are effective.”¹⁵ According to Ad Hoc, the existing budget caps for each component “directed funds toward their most efficient use while still meeting the needs of the program’s constituents.”¹⁶ If that is the case, why would an overall cap be necessary?

In fact, it could be counterproductive. Not forcing the four USF programs to compete for funding has the benefit of ensuring that each is evaluated for efficiency and effectiveness on its own merits. By maintaining the existing separate caps for each program, it will be easier for the FCC to examine each program in turn to “determine the most efficient and responsible use of

¹⁴ Comments of Sarah Oh and Scott Wallsten of the Technology Policy Institute at 8, In the Matter of Universal Service Contribution Methodology Federal-State Joint Board on Universal Service 1998 Biennial Regulatory Review, Docket 06-122, filed July 29, 2019.

¹⁵ Comments of the Ad Hoc Telecommunications Users Committee at 5, In the Matter of Universal Service Contribution Methodology Federal-State Joint Board on Universal Service 1998 Biennial Regulatory Review, Docket 06-122, filed July 29, 2019, (“July 29 Comments of Ad Hoc, Docket 06-122”).

¹⁶ *Id* at 6.

[USF] federal funds.”¹⁷ As we have previously noted, and Congress has agreed, "each USF program addresses an important, but different, principal of universal service as described in 47 USC §254. Their 'relative effectiveness' cannot be easily compared because each program serves its own purpose and group of consumers... and putting them against each other for funding does nothing to advance the goal of achieving universal service."¹⁸ By maintaining individual caps, the FCC won't have to compare apples and oranges, but rather need only consider whether each program is fulfilling its own goals and mandates.

C. The Cap Runs Afoul of Congressional Intent

Many commenters agree that the cap would run afoul of Congress's intent in enacting the Telecommunications Act, as well as the law's plain language.¹⁹ The cap could jeopardize Congress's intent to enable consumers throughout the country, "including low-income consumers and those in rural, insular, and high cost areas," to "have access to telecommunications services."²⁰

In addition, many commenters agree that these caps violate the mandate that there be "specific, predictable and sufficient... mechanisms to preserve and advance universal service."²¹ The cap would lead to anything but specific, predictable and sufficient support. In its comments, Smith Bagley, Inc. notes that the cap "is at odds with Section 254(b) because it erases the principal

¹⁷ Universal Service Contribution Methodology at 1, WC Docket No. 06-122, Notice of Proposed Rulemaking, FCC 19-46 (rel. May 31, 2019), ("NPRM").

¹⁸ July 9 Comments of Members of Congress at 2, Docket 06-122.

¹⁹ See Comments of the State Education Technology Directors Association (SETDA), In the Matter of Universal Service Contribution Methodology Federal-State Joint Board on Universal Service 1998 Biennial Regulatory Review, Docket 06-122, filed July 26, 2019; Comments of Smith Bagley, Inc., In the Matter of Universal Service Contribution Methodology Federal-State Joint Board on Universal Service 1998 Biennial Regulatory Review, Docket 06-122, filed July 29, 2019, ("July 29 Comments of Smith Bagley, Docket 06-122"); July 29 Comments of Puerto Rico Telephone Company at 5, Docket 06-122.

²⁰ 47 USC § 254(b)(3).

²¹ 47 U.S.C. § 254(b)(5).

of sufficient funding. The NPRM suggests that the cap would result in a specific and predictable funding mechanism, but the FCC fails to explain how.”²²

In addition, the cap calls into question the predictability and sufficiency of support. In one of the few comments in support of the cap, Mark Jamison states that an overall cap would “provide stakeholders with clarity for their planning.”²³ However, the stakeholders already have clarity for planning purposes, as each of the USF programs already have their own cap. Thus, Mr. Jamison’s comment is moot because an overall cap would provide no additional clarity. Moreover, according to the Education and Library Networks Coalition, a cap “would lead inexorably to at least some USF beneficiaries not knowing how much, if any, USF support they will receive from year-to year and to some or all USF beneficiaries receiving support that is completely insufficient to their needs.”²⁴ Without the proper resources, USF cannot meet Congress’s stated goal.

III. The Cap Runs Counter to the Federal-State Joint Board’s Implementation of USF Programs

In our original comments, we noted that the NPRM runs counter to several of the Congressionally mandated Federal-State Joint Board’s recommendations, including explicitly ordering separate accounting and allocation systems for the E-Rate and Rural Telehealth programs, and to ensuring that previous caps wouldn’t impact fund recipients. Overall, the Joint Board set up programs in a way that would most effectively achieve Congress’s goals. No commenters have challenged our assertion that the NPRM runs counter to the Joint Board’s intentional implementation efforts aimed at serving Congressional intent.

²² July 29 Comments of Smith Bagley at iii, Docket 06-122.

²³ Comments of Mark A. Jamison at 2, In the Matter of Universal Service Contribution Methodology Federal-State Joint Board on Universal Service 1998 Biennial Regulatory Review, Docket 06-122, filed July 29, 2019, (“July 29 Comments of Mark A. Jamison, Docket 06-122”).

²⁴ July 23 Comments of edLiNC at 7, Docket 06-122.

IV. Contribution Reform Would Solve the FCC's Stated Problem

The FCC explains its NPRM arises from concerns about the USF's burden on ratepayers. The situation is explained by the Ad Hoc Telecommunications Users Committee, which advocates for a cap, to "control the explosive growth in the quarterly contribution factor," which forces telecommunications users to pay a 24.4% surcharge or else utilize "nonassessed services" for their communications needs.²⁵ The USF is funded with a surcharge on landline subscribers, however, due to a dwindling base of landline subscribers, the fund cannot keep pace with demand for USF services as our nation is increasingly connected.

However, as we have noted in previous comments, "it is the denominator – USF contribution base – that needs to be significantly changed."²⁶ Numerous commenters feel that the contribution mechanisms should be reformed in order to truly decrease rates and to provide telecommunications services to all– including the AARP, the National Tribal Telecommunications Association, and Free Press.²⁷ This will ultimately ensure the sustainability of the USF while alleviating ratepayer's current excessive burden. In fact, Ad Hoc itself acknowledges, the best way to reduce taxpayer burden is to reform contribution mechanisms.²⁸ Doing that would likely curb the "explosive growth" in contributions "even if disbursements remain at current levels."²⁹

²⁵ July 29 Comments of Ad Hoc at 10-14, Docket 06-122.

²⁶ Comments of the National Tribal Telecommunications Association (NTTA) at 8, In the Matter of Universal Service Contribution Methodology Federal-State Joint Board on Universal Service 1998 Biennial Regulatory Review, Docket 06-122, filed July 29, 2019, ("July 29 Comments of NTTA, Docket 06-122").

²⁷ See July 29 Comments of NTTA at 8, Docket 06-122, ("While addressing the numerator – total fund demand – is clearly important to the Commission, it is the denominator – USF contribution base – that needs to be significantly changed."); July 29 Comments of AARP at 11, Docket 06-122, ("To successfully achieve universal service objectives, the Commission must address the noncontributing status of broadband services and expand the contribution base."); Comments of Free Press, In the Matter of Universal Service Contribution Methodology Federal-State Joint Board on Universal Service 1998 Biennial Regulatory Review, Docket 06-122, filed July 29, 2019, ("We strongly believe that Congress should revisit how USF is funded."), ("July 29 Comments of Free Press, Docket 06-122").

²⁸ July 29 Comments of Ad Hoc at iii, Docket 06-122.

²⁹ *Id* at 10.

For example, as we noted in our previous comments, if the FCC were to cap the USF and never raise it, subscribers could still face increasing costs if the current trend continues, and fewer people subscribe. Free Press agrees that the reason assessments are so high is a dwindling base, noting “the change in how people and businesses communicate is shrinking the revenue base from which USF draws support.... the declining revenue base is what led to a marked increase in the contribution burden, from 6.8 percent in 2001 to 19 percent in 2018.”³⁰ Thus, the NPRM does little to fix its stated problem. According to the AARP, “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.”³¹

Ad Hoc provides three potential methods of reforming contributions: (1) expand the base to include broadband; (2) assess each phone number from the North American Numbering Plan; or (3) construct a connections-based methodology. We believe that the first and third options are the most likely to ensure the sustainability of the USF, while the second could place the burden of supporting the USF onto consumers. Ad Hoc notes that a numbers-based methodology would charge about \$1.00 a month per phone number in the North American Numbering Plan.³² However, this plan could cause consumers to support the bulk of these costs, while large businesses earn extraordinary cost savings. Because many businesses use extensions for each employee, it’s possible that businesses would only be assessed once, even though there are multiple phone lines in use. A Fortune 500 Company could pay just dollars a month towards the USF, while consumers, who must have their own phone numbers, would take on the burden of this tax. While we do not feel that companies should be required to pay 24% surcharge on their phone service, the nearly

³⁰ July 29 Comments of Free Press at 4, Docket 06-122.

³¹ July 29 Comments of AARP at 11, Docket 06-122.

³² July 29 Comments of Ad Hoc at 16-17, Docket 06-122.

complete shift of the cap to consumers is unfair. Thus, as we stated in our previous comment, we agree with Ad hoc, one of the few comments in support of the cap, that the real problem is actually the contribution mechanism and the FCC should broaden the base by requiring a percentage of broadband revenue be added, or by requiring payments on a per-connection basis.

V. Conclusion

The NPRM is not the appropriate solution to decrease ratepayer burden. If the FCC truly wants to decrease ratepayer burden, while closing the digital divide, it should reform contribution mechanisms. Accordingly, as almost all commenters have declared, the FCC should not place a cap on the USF or combine the E-rate and Rural Telehealth programs.

Respectfully submitted,

/s/ 

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