Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

To: The Commission

COMMENTS
OF
WTA – ADVOCATES FOR RURAL BROADBAND

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Summary

WTA – Advocates for Rural Broadband ("WTA") urges the Commission to reject the overall USF budget proposed in the *Notice of Proposed Rulemaking* ("*NPRM*') and instead to continue down the path of predictable and sufficient support for Rural LEC networks that was promised in its *2018 Rate-of-Return High-Cost Support Order*.

The reasons for rejection of an overall USF budget begin with the fact that Congress has delegated to the Commission the authority to establish the four separate predictable and sufficient USF programs existing today [the Connect America Fund ("CAF") Program, the Schools and Libraries ("E-Rate") Program, the Rural Health Care ("RHC") Program, and the Lifeline Program], but not the authority to subject them to a single overall budget that pits them against each other. Second, in rejecting a consolidated budget for the rate-of-return CAF support mechanisms in its *2018 Rate-of-Return High-Cost Support Order*, the Commission established a strong existing precedent and solid policy reasons for separate budgets for separate USF support mechanisms. Third, the four existing USF programs have such different goals and missions, geographic scopes, recipients and beneficiaries that there are no effective, efficient and equitable ways to measure and compare their relative benefits and cost effectiveness holistically, or to prioritize funding among them. Finally, the four existing USF programs all are subject to separate budgets that can meet the *NPRM*'s stated budgetary goals more effectively, efficiently and flexibly than the proposed overall budget. Hence, the Commission should reject the overall USF budget, and continue to administer its separate USF programs via separate budgets without subjecting them to cost-effectiveness metrics, trade-offs and funding re-prioritizations likely to result in unexpected and disruptive USF support reductions that violated the statutorily required predictability and sufficiency.

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WTA – ADVOCATES FOR RURAL BROADBAND

WTA – Advocates for Rural Broadband ("WTA")[1] hereby submits its comments with respect to the Commission's *Notice of Proposed Rulemaking*, FCC 19-46, released May 31, 2019 in the captioned proceeding ("*NPRM*"). These comments are filed in accordance with the schedule published in 84 Fed. Reg. 27570 (June 13, 2019).

WTA and its members have been pleased with the changes that the Commission made in its *2018 Rate-of-Return High-Cost Support Order*[2] to improve the predictability and sufficiency of both the model-based and the cost-based high cost support mechanisms depended upon by WTA's Rural LEC members and the rural households, businesses and anchor institutions that they serve. WTA members look forward to using this much more certain and reliable high-cost support to upgrade and extend their voice and broadband networks and to improve the services they provide to their rural service areas and customers. However, WTA believes that the overall

[1] WTA is a national trade association representing more than 340 rural telecommunications providers that offer voice, broadband, and video-related services in rural America. WTA members are predominately rural local exchange carriers ("Rural LECs") that serve some of the most rugged, remote and/or sparsely populated areas of the United States. The primary service areas of WTA members are comprised of farming and ranching regions, isolated villages, mountain and desert communities, and Native American reservations. WTA members are providers of last resort to many remote areas and communities that are both very difficult and very expensive to serve.

[2] *Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration*, WC Docket Nos. 10-90, 14-58 and 07-135 and CC Docket No. 01-92, FCC 18-176, released December 13, 2018 ("*2018 Rate-of-Return High-Cost Support Order*")

Universal Service Fund ("USF") cap proposed in the *NPRM* not only will undermine the predictability and sufficiency promised in the *2018 Rate-of-Return High-Cost Support Order*, but also has a number of substantial legal and policy flaws that preclude its adoption. These include: (1) Congress has delegated to the Commission the authority to establish the four separate existing USF programs [the Connect America Fund ("CAF") Program[3], the Schools and Libraries ("E-Rate") Program, the Rural Health Care ("RHC") Program, and the Lifeline Program], but not the authority to subject them to a single, comprehensive USF budget potentially pitting them against each other; (2) in rejecting a consolidated budget for the rate-of-return CAF support mechanisms in its *2018 Rate-of-Return High-Cost Support Order*, the Commission has established a strong recent precedent and solid policy reasons for separate budgets for separate USF support mechanisms; (3) the four existing USF programs have such different goals, geographic scopes, recipients and beneficiaries that there are no effective, efficient and equitable ways to measure and compare their relative benefits and cost effectiveness holistically, or to prioritize funding among them; and (4) the four existing USF programs all are subject to separate budgets that can effectively, efficiently and flexibly meet all of the *NPRM*'s stated budgetary goals. Therefore, WTA urges the Commission to reject the contemplated overall USF cap, and to continue to administer the individual USF programs via separate budgets.

I

The Commission Has No Clear Delegated Authority To Establish A Comprehensive Overall USF Budget

Section 254 of the Communications Act of 1934, as amended ("the Act"), gave the Commission express and explicit authority to establish each of the four separate USF programs,

[3] The CAF Program was formerly known as the High Cost Fund program.

but delegated no clear or specific authority to the Commission to subject the four programs to a single comprehensive budget or to impose related trade-offs and prioritizations that can adversely impact the predictability and sufficiency of their separate funding with little or no notice or opportunity for comment.

The principles of Section 254(b) of the Act expressly require that "low-income consumers and those in rural, insular and high cost areas" have "access to telecommunications and information services, including interexchange services and advanced telecommunications and information services" that are reasonably comparable in quality and rates to those provided in urban areas [Section 254(b)(3)]. They further state that "elementary and secondary schools and classrooms, health care providers, and libraries should have access to advance telecommunications services" [Section 254(b)(6)]. Congress proceeded to establish more detailed requirements for the CAF Program in Sections 214(e) and 254(e), and for the E-Rate and RHC Programs in Section 254(h).

Nowhere in Section 254 or elsewhere in the Act did Congress mention -- much less authorize or requite – that there could or should be a single comprehensive budget for the four separate programs or that the specific, predictable and sufficient funding required by the Act for each program should be interchanged with, affected by or dependent upon the funding of any one or more of the other three individual programs. There is no indication that Congress ever contemplated that the Commission's staff or the Universal Service Administrative Company ("USAC") would or could be given limited or unlimited authority to reduce the specific, predictable and sufficient funding of some or all of the authorized USF programs in the event that an overall USF budget were exceeded or projected to be exceeded, or to prioritize or shift funding among or between separate USF programs or mechanisms under such circumstances.

WTA believes that the language of Section 254 makes it very clear that Congress intended the Commission to establish and administer four separate USF programs, and that any Commission action to intertwine these different programs via a comprehensive overall budget that shifts, trades off and re-prioritizes funding among them requires a further delegation of authority from Congress.

II

Recent Commission Precedent Has Established Sound Reasons for Separate Budgets for CAF Program Mechanisms

In paragraph 85 of the *2018 Rate-of-Return High-Cost Support Order*, the Commission found that a consolidated, all-encompassing budget for the rate-of-return support mechanisms that comprise a portion of the CAF Program [including Alternative Connect America Cost Model ("ACAM") support, the Alaska Plan, Connect America Fund-Intercarrier Compensation ("CAF-ICC") support, and cost-based mechanisms] was "no longer appropriate, given the different obligations and terms of the various rate-of-return funding streams." The Commission asserted that separate budgets enable the recipients of the separate rate-of-return CAF support mechanisms to "focus on how best to efficiently maximize broadband deployment under each paradigm." *Id.* at ¶84. It further declared that each rate-of-return CAF mechanism "should be afforded a budget analysis on its own *bona fides* without regard to the other[s]" which the Commission claimed "will allow us in the future to better evaluate each support mechanism on its own merits." *Id*.

It is a well-established principle of administrative law that an agency may change a policy, but that it must acknowledge the change and show that there are good reasons for the new policy. *FCC v. FOX Stations*, 129 S. Ct. 1800, 1811 (1999). In the present instance, 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. More important, there are far greater differences in the goals, obligations, terms, and paradigms of the respective CAF, E-Rate, RHC and Lifeline Programs than there are among the rate-of-return CAF support mechanisms. Hence, rather than changing or departing from the policy of separate budgets for separate USF support mechanisms, it would appear that evaluation of the CAF, E-Rate, RHC and Lifeline Programs on their own merits would be even more crucial than was the case with respect to the various rate-of-return CAF support mechanisms.

There can be no dispute but that the four basic USF support programs serve significantly different goals and paradigms. As the Commission notes in the *NPRM*, the various mechanisms of the CAF Program help to make broadband-capable networks and their resulting broadband and voice services available from price cap, rate-of-return and other providers to homes, businesses, and community anchor institutions in rural and other high-cost areas that do not have, or would not otherwise have, such networks. *Id.* at ¶5. The E-Rate Program focuses upon the provision of discounts to schools and libraries in urban, suburban and rural areas throughout the United States to ensure affordable access to the high-speed broadband and telecommunications services necessary for digital learning. *Id.* at ¶6. The RHC Program provides funding to eligible healthcare providers in rural areas to help them obtain telecommunications and broadband services necessary for the provision of healthcare services. *Id.* at ¶7. Finally, the Lifeline Program provides subsidies for voice and broadband services to qualifying low-income households throughout the country. *Id.* at ¶8. It is difficult to conceive how or why the Commission would achieve more efficient broadband deployment and usage by the recipients and beneficiaries of these very different programs by departing from its existing policy of evaluating each of the programs on its own merits.

WTA believes that the current Commission policy and precedent of separate budgets for separate programs and mechanisms is the most effective, efficient and equitable approach for administering its four basic individual USF programs as well as its various rate-of-return CAF mechanisms, and that there are no obvious or persuasive reasons that would support a change in the existing policy and precedent.

III

The Extensive Differences Among the Four USF Programs Preclude Comparisons of Relative Benefits and Cost-Effectiveness As Well As Prioritization of Funding

Even if the foregoing administrative law issues could be resolved in a manner that would enable the establishment of an overall USF budget and trade-offs among the four basic USF programs, those programs have such different goals, geographic scopes, recipients and beneficiaries that there are no effective, efficient and equitable ways to measure and compare their relative benefits and cost effectiveness, or to prioritize funding among them.

The goal of the various CAF Program mechanisms is to deploy, upgrade and extend the basic networks that provide households, businesses, schools, libraries, health care facilities and other community anchor institutions with access to quality, advanced and affordable voice and broadband services. In contrast, the predominant goals of the E-Rate, RHC and Lifeline Programs are to provide discounts that reduce the purchase costs of certain services (and in the case of the E-Rate Program, certain internal connections and customer premises equipment) in order to encourage their greater use and make them more affordable for schools, libraries, rural health care facilities and low-income households. Both the E-Rate and the Lifeline Program are nationwide programs that provide support to beneficiaries in urban, suburban and rural areas, while the CAF and the RHC Programs are limited to the provision of support to carriers and health care facilities in rural and similar high-cost areas. The CAF Program pays support directly to the carriers that construct and operate the basic networks that provide voice and broadband services to the general public (including Lifeline, E-Rate and RHC beneficiaries) in rural areas, while the Lifeline, E-Rate and RHC programs focus primarily upon enabling a limited category of eligible beneficiaries to purchase and use affordable voice and broadband services. The Lifeline Program is limited to that subset of households in urban, suburban and rural areas that qualifies for various types of low-income assistance and provides qualifying households with subsidies that are intended to make voice and broadband services more affordable for them. Although teachers, students, library users, doctors, nurses and patients may employ networks and services supported by the CAF and Lifeline Programs to communicate with schools, libraries and rural health care clinics, the E-Rate and RHC Programs direct the predominant portion of their funding toward schools, libraries and rural health care clinics (including some state and local networks and organizations that oversee multiple eligible facilities) to help them purchase broadband and some voice services and to upgrade their internal connections and customer premises equipment ("CPE") to make effective use of such services. Given the diversity of goals, geographic service areas, recipients and beneficiaries, there is no readily ascertainable – much less, effective or efficient -- approach or standard that can be used to compare the relative benefits and cost-effectiveness of the four very different programs.

A prime example of this can be found in the significant variances among the metrics currently used to evaluate different USF programs. As noted in the *NPRM*, the CAF Program measures effectiveness using telephone penetration rates as well as the number of residential, business and community anchor institutions that newly gain access to broadband service. *NPRM* at ¶22, n.38. In contrast, the E-Rate Program measures its effectiveness on the basis of prices paid as a function of bandwidth and also as a function of the numbers of users in schools and libraries. *Id.* Even though schools and libraries are community anchor institutions in many rural areas, comparing CAF Program metrics with E-Rate Program metrics is no more informative or useful than comparing apples with books. Just how do the percentages of people subscribing or having access to voice or broadband service in particular rural areas receiving CAF support compare with the bandwidth prices paid by schools and libraries receiving E-Rate support in various urban, suburban and rural areas throughout the country? And how can the numbers of new households, businesses and community anchor institutions gaining access to broadband service at all hours throughout the year in rural areas receiving CAF support be compared to the numbers of students and library users able to obtain broadband services during operating hours in schools and libraries receiving E-Rate support throughout the country? These metrics are not comparable in any relevant sense – either vis-à-vis one another or on a "per funding dollar" basis.

Rather, these metrics are susceptible to being used as largely irrelevant and potentially disruptive and harmful ammunition in the lobbying efforts of proponents and opponents of the various programs. Like most metrics, they are vulnerable to receiving undue and unreasonable weight in competitive service decisions, and to over-focusing attention upon readily available numbers rather than upon the types, amounts and qualities of the actual service desired by the intended beneficiaries of the various programs. For example, the number of residences that gain new access each year to broadband service can be a useful measure of progress toward the goal of universal service, but a competitive race to maximize the number of new households passed by a network this year can result in sub-optimal construction that will need to be repaired or replaced during the foreseeable future. Similarly, a price per bandwidth or price per student metric can be a useful measure of efficiency, but when subjected to competitive pressures can result in the purchase of less expensive or lower quality services that do not meet the reasonable needs of students and library users.

Put another way, instead of enabling the Commission to evaluate the costs and benefits of the four separate USF programs in a "holistic" way, the contemplated overall cap is much more likely to initiate a series of "food fights" among proponents of the various programs. To date, the USF has been largely a bi-partisan program supported by Democrats and Republicans, and by conservatives, liberals and moderates. Across a broad spectrum of politics and opinion, the provision of affordable access to advanced telecommunications and information services and improved educational and health care opportunities to more and more people has been deemed to be a beneficial, efficient and responsible use of federal funds. Should this change, and USF support become embroiled in partisan politics with certain programs being supported by some factions and opposed by others, the elements of ***predictability and sufficiency*** essential to the functioning of each of the four individual programs can be destroyed as the funding and priorities for each program become subject to substantial shifts with each change of administration.

To reiterate, each of the four separate USF programs is most effectively, efficiently and equitably administered by allowing it to focus on its own goals and to be evaluated on its own merits. Placing them in ongoing or potential competition for funding priorities under an overall USF budget and judging such competition on the basis of disparate metrics subject to potential manipulation is far more likely to divert the four programs from their goals and missions and to disrupt their predictability and sufficiency rather than to improve their effectiveness or efficiency.

IV

Existing USF Program and Mechanism Budgets Can Better Satisfy The Commission's Goals for Efficient and Responsible Use of Federal Funds

Finally, an overall USF cap is not needed because the four basic USF programs as well as various CAF mechanisms already have, or can readily be provided, their own self-enforcing budgets. 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* at ¶1.

The *NPRM* indicates that the E-Rate Program (2018 cap: $4.062 billion) and the RHC Program (2018 cap: $581 million) currently operate under self-enforcing budgets. *NPRM* at n.35 and n.22. The Lifeline Program had a 2018 budget of $2.279 billion, and has had a rulemaking proposal pending since 2017 for the adoption of a self-enforcing budget. *NPRM* at ¶8. The CAF Program has a variety of budgetary mechanisms, including: (a) contractual arrangements for fixed levels of support and build-out obligations over specified terms for its CAF Phase II, CAF Phase II Auction, Alaska Plan, ACAM I and ACAM II mechanisms; (b) capped High Cost Loop Support ("HCLS"); (c) a budget control mechanism that limits Connect America Fund – Broadband Loop Support ("CAF-BLS") and further limits HCLS; and (d) a Connect America Fund – Intercarrier Compensation ("CAF-ICC") mechanism whose 2011-based maximum eligible recovery is reduced by five percent each year. The budgets for the E-Rate, RHC and Lifeline Programs and for the cost-based CAF Program mechanism are subject to annual inflation adjustments based upon the Gross Domestic Product Chained Price Index ("GDP-CPI").

These existing separate USF program and mechanism budgets provide in the aggregate the same assurance as the *NPRM*'s proposed comprehensive overall USF budget that USF disbursements can be limited to predictable amounts. The *NPRM*'s proposed initial overall USF budget of $11.42 billion is essentially the sum of the authorized CAF, E-Rate, RHC and Lifeline program levels for 2018. *NPRM* at ¶9 and n.22. The primary difference between using the proposed overall USF budget vis-à-vis the existing program and mechanism budgets is that the separate existing budgets are much more flexible and adaptable to changing conditions and technologies while remaining compliant with statutory predictability and sufficiency requirements.

For example, if consumer needs and technology changes require the budgets of one or more programs or mechanisms to be increased in order to provide predictable and sufficient funding, this can be accomplished in a timely and efficient manner via a meaningful focus upon the needs of the specific affected program(s). Likewise, if a hurricane, tornado, flood or earthquake requires unanticipated emergency CAF and/or E-Rate funding to restore damaged networks and services, this determination can be most readily and rapidly made within the affected program(s). In contrast, under an overall budget, it is likely that the Commission would need to undertake a lengthy, extensive and contentious review of the cost-effectiveness and funding priorities of all four individual USF programs in order to determine whether the additional needed funding could be taken from one or more individual programs subject to the overall USF budget rather than increasing the overall budget. Likewise, if consumer needs and technology changes require a new USF program or mechanism to be created and implemented, it can be considered in a timely and efficient manner on its own merits rather than being subjected to a lengthy and contentious proceeding to determine which programs or mechanisms must endure budget reductions in order to create headroom in the proposed overall USF budget for it.

The Commission also has the flexibility to decrease the budgets of separate USF programs and mechanisms under certain circumstances. However, this is complicated by the fact that a number of CAF mechanisms – for example, the CAF Phase II, CAF Phase II Auction, Alaska Plan, ACAM I and ACAM II mechanisms – are essentially contractual arrangements whereby the Commission has promised to provide specific amounts of support to carriers for a fixed term in return for their commitment to build-out their networks in a specified manner. The budgets for these mechanisms cannot be lawfully decreased during the terms set by the Commission. Similarly, cost-based RLECs receiving CAF support are subject to build-out obligations, budget control mechanisms and minimum threshold levels of support that also can preclude reductions of support or shifts of support to other programs. These complicating factors have been developed and are being implemented within the scope of the CAF Program and its various budget mechanisms. However, if they were injected into determinations of cost-effectiveness, trade-offs and funding priorities among all four existing USF programs in the context of an overall USF budget, they would be likely to make such determinations significantly more complicated, controversial and susceptible to appellate litigation.

The existing USF program and mechanism budgets enable the Commission to efficiently and meaningfully consider its USF spending decisions in an effective, efficient and flexible manner. Taken together, they allow the Commission to predict and limit the contribution burdens borne by ratepayers in a manner that is not significantly different from that of the proposed overall USF budget that simply aggregates the authorized individual program budgets. The existing separate USF program and mechanism budgets provide far more regulatory and financial certainty in the form of predictable and sufficient support than an overall USF budget subject to unanticipated support reductions due to trade-offs and re-prioritizations. Finally, allowing the four existing programs to focus upon their own goals, missions and beneficiaries without being forced to compete with the other programs for funding via incompatible and potentially contrived metrics will promote efficiency, fairness, accountability and sustainability in all four of the separate programs. In the end, the existing USF programs and budgets are not broken, but rather are operating in an acceptably effective, efficient and flexible manner. They need not be "fixed" by a holistic, overall budget approach that is virtually certain to be very complicated and disruptive while offering few perceptible benefits that cannot provided by the separate existing budgets.

V

Conclusion

WTA urges the Commission to continue down the path of predictable and sufficient support for Rural LEC networks that was promised in its *2018 Rate-of-Return High-Cost Support Order*. The Commission should reject the *NPRM*'s proposed holistic overall USF budget that would disrupt this essential predictability and sufficiency not only for the CAF Program mechanisms but also for the E-Rate, RHC and Lifeline Programs by subjecting them to cost-effectiveness metrics, trade-offs and funding re-prioritizations likely to result in unexpected and disruptive USF support reductions.

The many reasons for rejection of the proposed overall USF budget cap begin with the fact that Congress has delegated to the Commission the authority to establish the four separate existing USF programs, but not the authority to subject them to a single overall budget that pits them against each other. Second, in rejecting a consolidated budget for the rate-of-return CAF support mechanisms in its *2018 Rate-of-Return High-Cost Support Order*, the Commission has established a strong precedent and solid policy reasons for separate budgets for separate USF support mechanisms. Third, the four basic individual USF programs have such different goals, geographic scopes, recipients and beneficiaries that there are no effective, efficient and equitable ways to measure and compare their relative benefits and cost effectiveness holistically, or to prioritize funding among them. Finally, the four existing USF programs all are subject to separate budgets that can meet all of the *NPRM*'s stated budgetary goals more effectively, efficiently and flexibly than the proposed aggregated overall budget.

For all of these reasons, WTA urges the Commission to reject the contemplated overall USF budget, and to continue to administer its separate USF programs via separate budgets.

Respectfully submitted,
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