Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

To: The Commission

REPLY COMMENTS
OF
WTA – ADVOCATES FOR RURAL BROADBAND

WTA – Advocates for Rural Broadband ("WTA") hereby submits its reply comments with respect to the Commission's *Notice of Proposed Rulemaking*, FCC 19-46, released May 31, 2019 in the captioned proceeding ("*NPRM*"). These reply comments are filed in accordance with the schedule published in the Wireline Competition Bureau's Order (*Universal Service Contribution Methodology*), WC Docket No. 06-122, DA 19-628, released July 5, 2019.

In its initial July 29, 2019 comments, WTA opposed an overall Universal Service Fund ("USF") budget cap for several substantial reasons. First, Congress in Section 254 of the Communications Act of 1934, as amended, 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 cap 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*,[1] the Commission established a strong existing precedent and solid policy reasons for

[1] *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*") at ¶85.

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 metrics or other 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 subject overall USF budget and budget cap as both unnecessary and counterproductive. Rather, the Commission should continue to administer its separate USF programs via separate budgets without subjecting them to cost-effectiveness metrics, trade-offs, political battles and funding re-prioritizations likely to result in unexpected and disruptive USF support reductions that violate the statutory requirements for predictable and sufficient support.

Many industry participants and other interested parties also oppose an overall USF budget cap for many of the same or similar reasons. This extensive group includes CAF recipients and their representatives [such as NTCA – The Rural Broadband Association ("NTCA"), the National Tribal Telecommunications Association ("NTTA"), and Puerto Rico Telephone Company ("PRTC")]; E-Rate recipients and representatives [including the National Education Association ("NEA"), National School Boards Association ("NSBA"), the American Library Association ("ALA"), the Schools, Health & Libraries Broadband Coalition ("SHLB"), the Education & Libraries Networks Coalition (EdLinc"), the Kansas Association of School Boards ("KASB") and the E-Rate Management Professionals Association ("E-mpa")]; Lifeline recipients and representatives [including the National Lifeline Association ("NaLA") Common Sense Kids Action ("Common Sense") and Smith Bagley, Inc. ("SBI")]; and other interested and knowledgeable parties [including the Communications Workers of America ("CWA"), the National Association of State Utility Consumer Advocates ("NASUCA"), Common Cause, AARP, Public Knowledge, New America's Open Technology Institute ("OTI") and Adtran, Inc. ("ADTRAN")].

Absence of Delegated Authority. WTA is fully in agreement with commenting parties such as NTCA and Public Knowledge that the Commission has explicit statutory authority to establish the four separate predictable and sufficient USF programs in existence today, but lacks clearly delegated authority to subject them to a single overall budget cap. As detailed by NTCA, both the plain meaning of the words in Section 254 of the Act and the contextual discussion of the USF programs therein make it clear that each of the four USF programs must be supported through a specific, predictable and sufficient mechanism that is tailored to the distinct needs of that program.[2] Public Knowledge shows how the statutory language of the 1996 Act [particularly Sections 254(b)(3), 254(b)(5) and 254(b)(6)] and the accompanying Congressional debates provide the "clearest guidance to the FCC" that "Congress stated unequivocally that it wanted the Commission to use the funding mechanisms it provided to achieve rate parity between high-cost and urban areas, affordability for all Americans, access to advanced services for all classrooms and libraries, and access to advanced services for all rural healthcare facilities at rates equivalent to their urban counterparts."[3] In the words of Public Knowledge, "[u]nder the language of the 1996 Act and the Conference Committee's guidance, any attempt to cap the USF in ways that undermine the FCC's ability to achieve Congress' goals or to set up a prioritization conflict between the USF programs, 'flies in the face of Congress's direction to the FCC.'"[4]

[2] Comments of NTCA-The Rural Broadband Association (July 29, 2019) at pp. 2-3.
[3] Comments of Public Knowledge and the National Hispanic Media Coalition (July 29, 2019) at pp. 25-26.
[4] *Id*. at p. 26.

Established Commission Precedent. Like WTA, NTCA recognizes that in rejecting a consolidated budget for various rate-of-return CAF support mechanisms in its *2018 Rate-of-Return High-Cost Support Order*, the Commission has established a strong existing precedent and solid policy reasons for separate budgets for separate USF support mechanisms.[5] As the Commission found therein, separate budgets enable separate support mechanisms – even separate mechanisms within the same USF program – to focus upon how best to efficiently maximize broadband deployment and service under each paradigm and to allow the budget for each mechanism to be analyzed on its own *bona fides* without regard to those of other mechanisms.[6]

Different Missions and Metrics. As Common Cause recognizes, each of the four existing USF programs is "complementary rather than duplicative of each other. Therefore, comparing each program's effectiveness does nothing to advance the Commission's goal of universal service."[7] As WTA detailed in its initial comments, the four 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.[8] OTI declares that "[e]valuating the cost effectiveness of these programs is like comparing apples and oranges; each program has vastly different needs to achieve vastly different missions."[9] OTI proceeds to quote a July 9, 2019 letter from Congressman Mark Pocan (D-WI) and 13 other members of Congress to the effect that "each USF program addresses an important, but different, principle of universal service" and that the "USF programs were not intended to compete against each other for funding and pitting then against each other for funding does nothing

[5] Comments of NTCA-The Rural Broadband Association (July 29, 2019) at pp. 7-8.
[6] *2018 Rate-of-Return High-Cost Support Order at* ¶84.
[7] Comments of Common Cause, p. 6.
[8] Comments of WTA – Advocates for Rural Broadband (July 29, 2019) at pp. 6-9.
[9] Comments of New America's Open Technology Institute (July 29, 2019) at p. 10.

to advance the goal of achieving universal service."[10] AARP notes that a further major problem with cost-benefit analyses is that they tend to emphasize quantitative costs while overlooking or minimizing equally important qualitative benefits (such as rural households getting access to broadband service for the first time, completion of student homework assignments and ready access by rural residents to healthcare services in the home) in violation of the quantitative and qualitative regulatory assessment requirements of Executive Order No. 12866 (September 30, 1993).[11]

Absence of Need and Disruptive Impacts. Finally, an overall USF cap is unnecessary because the four basic USF programs as well as various CAF mechanisms already have, or can readily adopt, 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. As OTI states, the *NPRM* proposes an unnecessary overall USF budget cap "without adequately explaining why an additional layer of budget bureaucracy is needed."[12]

Public Knowledge asserts that the proposed USF cap undermines the national goal (as well as Chairman Pai's frequently stated goal) of closing the digital divide. Specifically, Public Knowledge states that "[c]apping the USF will obstruct the goal of universal service by creating an unnecessary bureaucratic and political hurdle for policy-makers to clear in order to respond to changes in demand or improve program functions."[13] OTI reaches a similar conclusion that "an

[10] *Id*, at pp. 10-11.
[11] Comments of AARP (July 15, 2019) at pp. 17-18.
[12] Comments of New America's Open Technology Institute (July 29, 2019) at p. 8.
[13] Comments of Public Knowledge and the National Hispanic Media Coalition (July 29, 2019) at p. 15.

overall cap is poor policy because such an approach does not take into account how the landscape might change for each program"[14] – for example, due to unexpected increases in demand, emergencies, storm damage and other circumstances. As OTI concludes, "if the FCC imposes an overall cap on the USF programs, it would restrict access to critical funds when demand for one USF program increases, such that available funding for other programs would also be restricted."[15]

AARP agrees that "[i]mplementation of a cap would make it less likely that the Commission could establish effective pilot programs or appropriately respond to emergencies."[16] Examples of innovative programs that could be chilled by the multiple program scrutiny and support adjustments required in connection with a hard cap on total USF spending include the recent $100 million Connected Care Pilot Program[17] and $20.4 billion Rural Digital Opportunity Fund[18] proposals. Similarly, as pointed out by the Puerto Rico Telephone Company, the potential for offsetting reductions in funding for existing USF programs and mechanisms under an overall USF cap would have reduced the flexibility, and increased the difficulty and complexity, of the Commission's response to the 2017 hurricane damage in Puerto Rico and the U.S. Virgin Islands by creating the Uniendo Fund and the USVI Fund.[19]

Need for Statutory Predictability and Sufficiency. WTA agrees with the Communications Workers of America that "USF programs are working" and that the "Commission should not risk the progress that these programs have made in providing broadband and telecommunications services across the country by forcing these programs to compete with each other for resources, as

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[14] Comments of New America's Open Technology Institute (July 29, 2019) at p. 11.
[15] *Id.*
[16] Comments of AARP (July 15, 2019) at p. 15.
[17] *Promoting Telehealth for Low-Income Consumers*, Notice of Proposed Rulemaking, WC Docket No. 18-213, FCC 19-64, released July 11, 2019
[18] *Rural Digital Opportunity Fund*, Notice of Proposed Rulemaking, WC Docket Nos. 19-126 and 10-90, FCC 19-77, released August 2, 2019.
[19] Comments of Puerto Rico Telephone Company, Inc. (July 29, 2019) at p. 6.

will inevitably happen if the Commission imposes a USF cap."[20] While further improvements and adjustments can be made, the Commission has made great strides during recent years in achieving the statutory goals of predictability and sufficiency for all four USF programs, as well as minimizing waste, fraud and abuse.

After being forced to deal with Quantile Regression Analysis ("QRA") impacts and double-digit Budget Control Mechanism ("BCM") reductions during recent years, WTA members and other rural local exchange carriers ("Rural LECs") are all too well aware of the adverse impacts upon broadband investment, deployment and financing that result from unpredictable reductions in CAF support caused by factors beyond their knowledge and control. After believing that these predictability problems were finally reduced significantly by the reforms in the *2018 Rate-of-Return High-Cost Support Order*, WTA members are concerned that unpredictability may again raise its ugly head via uncontrollable year-to-year support reductions required to stay within the contemplated overall USF budget cap. For capital-intensive rural carriers that must make substantial 15-to-30-year investments in broadband plant, and incur associated loan repayment obligations of similar duration, unpredictable year-to-year fluctuations in the CAF support flows upon which they depend create crippling revenue shortfalls that impair their planning, operations and financial administration, and discourage their lenders, managers and owners from making future broadband investments.

Unpredictable support fluctuations required to stay within an overall USF budget cap will also violate the statutory requirement of sufficient support. Assuming that the Commission will continue to monitor its existing USF programs and mechanisms to ensure that they do not provide excessive or wasteful support, each and every USF support reduction that is imposed to stay within

[20] Comments of Communications Workers of America (July 29, 2019) at pp. 4, 8-9.

the contemplated overall USF budget cap rather that fulfilling the mission of the affected USF program or mechanism means that the program/mechanism will be distributing less support than the amount that the Commission had previously determined was "sufficient" to meet its goals.

Many WTA members serve schools, libraries, rural health care facilities, and low-income customers, and directly or indirectly receive funds distributed by the E-Rate, RHC and Lifeline programs. WTA does not want the recipients and beneficiaries of the E-Rate, RHC and Lifeline programs to be subjected to the predictability and sufficiency problems of budget re-prioritizations and "food fights" any more than its members that receive CAF support.

Supporters of Overall USF Budget Cap. Professor Mark A. Jamison concedes that an explicit overall USF cap "makes clear that the individual USF programs compete with each other for funds, which should lead to a more rigorous analysis of the relative benefits of the individual programs."[21] However, unlike the numerous industry participants that have submitted comments, he makes no attempt to indicate how four complementary USF programs having very different goals, missions, geographic scopes, recipients and beneficiaries can reasonably be compared, or what common metrics might be used to analyze their relative benefits. And while WTA does not doubt that the USF recipients with whom Professor Jamison has spoken over the years "find planning difficult because they are unsure how much money might be available in any given year,"[22] the Pai Commission's reforms have made substantial strides in improving the predictability and sufficiency of the USF support provided by all four programs. Such predictability and sufficiency gains can be significantly reversed by an overall USF budget cap that would have the clear potential to reduce unexpectedly the funding provided by some programs

[21] Comments of Mark A. Jamison (July 29, 2019) at p. 1
[22] *Id*., p. 2

and mechanisms because other programs or mechanisms have exceeded, or will exceed, their budgets.

Professor Daniel Lyons recognizes that the four independent USF programs "each . . . seeks to solve a different problem."[23] He claims that the "structural flaw" is that the USF must function through a "single surcharge" and that "technical progress" has "eroded the revenue base" thereof and resulted in its "continual growth" to a current 24.4% rate that is "close to indefensible."[24] WTA will return to contribution reform below, but before leaving Professor Lyons' comments WTA takes issue with his unsupported allegation that the current USF model "facilitates uncoordinated empire building."[25] This is simply not the case. Rather, the Commission's comprehensive use of individual program and mechanism budgets, build-out and service obligations, operating expense limitations, Universal Service Administrative Company ("USAC") audits and reporting requirements have been effective in ensuring that USF support is used for its intended purposes and that waste, fraud and abuse are minimized.

Finally, while it supports an overall USF budget cap, the Ad Hoc Telecommunications Users Committee ("Ad Hoc") expressly states that such cap will not solve the real USF funding problem – specifically, the rapid growth of the USF contribution factor due to the equally rapid decline in its current assessed revenue base.[26] While it understands that assessing USF contributions upon broadband Internet access services has been a controversial political issue for more than a decade, WTA believes that AD Hoc has advanced arguments for USF contribution reform that deserve consideration. Given that all four existing USF programs have been rapidly evolving into predominately broadband programs, it increasing makes sense – from both equitable

[23] Comments of Professor Daniel Lyons, Boston College Law School at p. 1.
[24] Id. at pp. 1, 2 and 4.
[25] *Id.* at p. 1.
[26] Comments of Ad Hoc Telecommunications Users Committee (July 29, 2019) at pp. 11-18.

and sustainability standpoints – that their USF support should be funded in part by contributions assessed upon broadband Internet access services, telecommunication numbers (including Internet Protocol (“IP”) addresses), or some hybrid approach.

Conclusion. WTA urges the Commission to continue its progress in improving the predictability and sufficiency of USF support, to reject the contemplated overall USF budget cap, and to continue to administer its separate USF programs via separate budgets. 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. 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. 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.

Respectfully submitted,
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