**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, DC 20554**

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| **Universal Service** | **)** | **WC Docket No. 06-122** |
| **Contribution Methodology** | **)** | |

**Comments of**

**NTCA–THE RURAL BROADBAND ASSOCIATION**

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**July 29, 2019**

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## EXECUTIVE SUMMARY

NTCA demonstrates herein that an overall cap on the Universal Service Fund (USF) is contrary to both law and policy and would place at risk the complementary missions of universal service as Congress intended and articulated in the Telecommunications Act of 1996 (1996 Act). Such a provision would also undermine the predictability of support that is crucial for beneficiaries and would thus limit the effectiveness of each of the individual mechanisms.

With respect to the statute, a cap on the overall size of the USF is inconsistent with the 1996 Act's directive for specific, predictable, and sufficient support. The directive to create "specific" mechanisms indicates Congressional understanding that a single, universal mechanism would not serve the separate and respectively diverse needs of rural and insular areas, low-income consumers, or the other targeted beneficiaries of the USF. An overall cap on the USF would be inconsistent with the mandate to ensure specific, predictable and sufficient support for each program.

An overall cap would also run afoul of the demand for predictability. Under an overall cap, each program will be at risk of losing funding as resources may be allocated differently amongst them from year-to-year. Beneficiaries of each program would be affected by funding decisions relating to programs that are not tied to their particular and specific needs. Accordingly, an overall cap on the fund would simply create existential uncertainty across all four programs, regardless of whether any individual program was effectively achieving its mission or not.

Rural carriers today operate with the knowledge that each component of the High-Cost program budget – including that program's Budget Control Mechanism and specific model-based support amounts made available to A-CAM recipients – is tied directly to a specific set of policy goals, buildout obligations, and other provisions that the Commission chose deliberately to apply only to RLEC High-Cost program recipients with a budget commensurate to those goals and obligations. An overall USF budget cap, in contrast, will reintroduce the lack of predictability and sufficiency that plagued the program for several years and that the Commission just took steps to eliminate. An overall cap does not achieve anything more than is now available to the Commission in terms of individual program spending controls. Mechanisms already in place account for projected demand exceeding an individual program's budget, giving the Commission the ability to engage funding controls (or not) should it find them necessary and appropriate.

NTCA strongly supports the NPRM's focus on a long-term view of the sustainability of the USF. If rural America is to keep up with the rest of the nation in terms of economic growth in an increasingly technology dependent and globalized economy, it must continue to have access to broadband technology that keeps up with the rest of the nation and that cannot happen without a strong USF that ensures that is both *sustainable and sufficient* over the long-term. NTCA neither discounts nor dismisses the Commission's interest in ensuring that USF resources are being used effectively, as they are ultimately derived from assessments on American ratepayers. An overall cap is unnecessary: the Commission can achieve its goal with a periodic review of USF budgets to ensure that each program is contributing meaningfully over time toward the goals of universal service and delivering appropriate payback for the resources devoted to it. This would ensure that funds are used for the purposes for which Congress intended but would avoid sacrificing the predictability that is so vital to beneficiaries.

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**Comments of**

**NTCA–THE RURAL BROADBAND ASSOCIATION**

To the Commission:

## I. INTRODUCTION

NTCA–The Rural Broadband Association (NTCA)[1] hereby submits these comments in response to the *Notice of Proposed Rulemaking* issued in the above-captioned docket.[2] As demonstrated below, an overall cap on the Universal Service Fund (USF) is contrary to both law and policy and would place at risk the complementary missions of universal service as Congress intended and articulated in the Telecommunications Act of 1996.[3] An overall USF cap, whether sized to meet current overall demand or even the sum of authorized levels plus inflation, is inconsistent with the proper fulfilment of universal service as designated by the 1996 Act. These comments will demonstrate that the 1996 Act outlines distinct programs within the USF

[1] NTCA represents nearly 850 independent, community-based telecommunications companies and cooperatives and more than 400 other firms that support or are themselves engaged in the provision of communications services in the most rural portions of America. All NTCA's service provider members are full service rural local exchange carriers (RLECs) and broadband providers.

[2] *Universal Service Contribution Methodology: Notice of Proposed Rulemaking,* Docket No. 06-122, FCC 19-46 (2019) (NPRM).

[3] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act). The 1996 Act amended the Communications Act of 1934 and is codified at 47 U.S.C. § 151 *et seq.* Hereinafter, references to the Communications Act of 1934 as amended by the 1996 Act will be characterized as "the Act."

and requires that each be supported of its own accord by "specific" and "sufficient" and "predictable" funding. To be clear, this does not mean that the Commission cannot set any budget at all for each distinct mechanism. Rather, it is an *overall cap* on the USF that would run afoul of the directives and the benefits that Congress intended to accrue to users of advanced telecommunications and information services.[4] Moreover, the instant proposal is inapposite to the Commission's many stated policies to advance universal service, consistent with the statutory mandate, through the various programs.

## II. DISCUSSION

### A. CAPPING THE OVERALL SIZE OF THE FUND IS NOT CONSISTENT WITH THE ACT'S DIRECTIVE FOR SPECIFIC, PREDICTABLE, AND SUFFICIENT SUPPORT.

#### 1. The Act Envisions Separate Universal Service Programs, Each of Which Must be Funded Sufficiently.

##### (a) The statute's use of the plural "mechanisms" demonstrates the need for separate, specific mechanisms to meet the needs of each program.

Any and all policies to advance and sustain universal service, including the very structure of the programs intended for that purpose, must proceed from Section 254 of the Act. Accordingly, 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. This determination arises from both the plain meaning of words in the statute, as well as the contextual discussion of universal service programs within the statute.

[4] *See,* 47 U.S.C. § 254(b)(2).

Section 254 establishes the foundation for universal service programs that meet the needs of consumers in high-cost rural and insular areas,[5] low-income consumers,[6] rural health care and schools and libraries.[7] Congress also established the mandate that there should be "specific, predictable, and sufficient Federal and State *mechanisms* to preserve and advance universal service."[8] As discussed further below, the express identification of each type of community or set of users to be served and the directive to create "specific" *mechanisms* indicates Congressional understanding that a single, universal mechanism would not serve the separate and respectively diverse needs of rural and insular areas, low-income consumers or the other targeted beneficiaries of the USF. Accordingly, each program of the USF, whether for high-cost areas, low-income, rural healthcare or schools and libraries, must be supported through a mechanism that is tailored to the distinct needs of that respective program. While it may be tempting to interpret the plural "mechanisms" delineated in Section 254(b)(5) as referring to the sum of a *single* Federal and various state programs (" . . . Federal and State mechanisms . . ."), that limiting interpretation fails when held against Section 254(a)(2), which refers specifically to the plural of "Federal universal support mechanisms."[9] The complete statutory context, accordingly, contemplates a suite of distinct Federal *mechanisms* that are *complemented* by the state mechanisms referred in Section 254(b)(5). Any supposed ambiguity to whether "mechanisms" in Section 254(b)(5) refers to the combination of a *single Federal* mechanism with State mechanisms is therefore resolved by the specific reference to multiple

[5] *See,* 47 U.S.C. § 254(b)(2),(3).

[6] *See,* 47 U.S.C. § 254(b)(3).

[7] *See,* 47 U.S.C. § 254(b)(6).

[8] 47 U.S.C. § 254(b)(5) (emphasis added).

[9] 47 U.S.C. § 254(a)(1),(2). Section 254(a)(1), as well, refers to "Federal mechanisms."

Federal "mechanisms" in Sections 254(a)(1) and (2). As noted by the Supreme Court, "Statutory construction . . . is a holistic endeavor. A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme . . . ."[10] Accordingly, unambiguous references to multiple "Federal mechanisms" in Section 254(a)(1) and (2) illuminates the multiple "Federal . . . mechanisms" articulated in Section 254(b)(5) and confirms that each separate program warrants a separate, "specific" mechanism that itself provides "sufficient" and "predictable" funding.

**(b) The demand for separate mechanisms also finds support in the meaning of the term "specific."**

The question of *why* the statute requires multiple universal service mechanisms is answered by Section 254(b), which establishes multiple universal service program goals – to meet the needs of high-cost areas, low-income consumers, rural health care, and schools and libraries. Each constituent program meets different needs and accordingly requires a funding design that addresses those respective needs. The seemingly disparate elements of universal service programs – high cost, low-income, rural health care and schools and libraries – can do nothing but support the need for tailored, "specific" mechanisms that are designed to meet the unique demands of each constituent program. Accordingly, *each* program of the USF is entitled to "predictable and sufficient" support that is "specific" to its program. The principles of statutory interpretation support this logical reading.

Rules of statutory construction accord meaning to each word in the statute. The semantic canons of statutory interpretation include the rule against surplusage, specifically, the

[10] *United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd.,* 484 U.S. 365, 371 (1994).

proposition that every word in the statute is to be accorded meaning and operative effect.[11] The courts have addressed multiple times the application of "sufficient" and "predictable" as they find meaning in Commission rules.[12] For purposes of the instant discussion, once the Commission has assured the provision of "sufficient" and "predictable" support, the term "specific" must be interpreted to address *how* its meaning is invoked to support the provision of "sufficient"' and "predictable" support. This interpretation enables policies that ensure the statute can be implemented and operated as a whole.[13]

Having confirmed the *need* to identify the meaning of "specific," the task to *define* "specific" is at hand. Where a term is not defined within the statute, reviewing courts usually begin with the plain definition of the text. The principle of "simple introspection" instructs the understanding of the word as it is commonly used. By way of example, Justice Scalia explained, "When someone asks, 'Do you use a cane,' he is not inquiring whether you have your grandfather's silver-handled walking stick on display in the hall; he wants to know whether you *walk* with a cane."[14] Accordingly, the definition of "specific" is informed by ordinary dictionary definitions: (i) constituting or falling into a specifiable category; (ii) restricted to a particular

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[11] *See, i.e., Bailey v. United States,* 516 U.S. 137, 138-139 (1995) (examining 18 U.S.C. § 924(c)(1) and finding specific meaning for each of the terms, "uses or carries a firearm" during the commission of a violent or drug-related crime, noting that the interpretation must preserve distinct and separate roles for "uses" and "carries").

[12] *See i.e., In re: FCC-161,* 753 F.3d 1015 (2014); *Qwest Corp. v. FCC,* 258 F.3d 1191, 1234 (10th Cir. 2001) (*Qwest I*); *Qwest Corp. v. FCC,* 398 F.3d. 1222, 1228 (10th Cir. 2005) (*Qwest II*); *Connect America Fund, National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing a Unified Intercarrier Compensation Scheme, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform – Mobility Fund: Report and Order and Further Notice of Proposed Rulemaking,* Docket Nos. 10-90, 09-51, 07-135, 05-337, 01-92, 96-45, 03-109, 10-208, at para. 194 *et seq.,* FCC 11-161 (2011) (Transformation Order).

[13] *See, Adoptive Couple v. Baby Girl,* 133 S.Ct. 2552, 2573 (2013).

[14] *Smith v. United States,* 508 U.S. 223, 242 (1993) (Scalia, J., dissenting).

individual, situation, relation or effect;[15] (iii) precisely formulated or restricted;[16] (iv) having a certain form or designation; to make particular, definite, limited or precise.[17] Therefore, when reading the whole of the statute, the plain meaning of the word "specific" must inform the contextual application of the word to the statute. In this regard, Section 254(b)(5) refers to "mechanisms" (plural). Each mechanism must enable *specifically* sufficient and predictable support that is formulated precisely for each program. The Commission's prior actions and statements to date reinforce this interpretation.

Since 1996, each program of the USF has been considered separately, with discrete rules and budgets that are tailored to each branch. Each program has a unique application process for its constituent beneficiaries. More critical to the instant discussion is the fact that each program's budget has consistently been considered individually. The annual budget for schools and libraries, for example, was determined initially to be set at $2.25 billion and subsequently indexed to inflation in 2010. The funding level for E-Rate was revisited further in 2015, providing an increase of $1.5 billion annually independent of any budgets for other programs because of a "substantial record" examining program demand and anticipated costs of connectivity for schools and libraries.[18] In 2011, the Commission separately tackled the high-cost program, adopting an annual budget of $4.5 billion that was then revisited in 2018 to include additional support and, for the first time an inflationary index like E-Rate, precisely

[15] *See,* Merriam-Webster's Collegiate Dictionary, Eleventh Edition, Merriam-Webster Incorporated (Springfield, Mass. 2003).

[16] *See,* Black's Law Dictionary, Sixth Ed., West Publishing Co., St. Paul, Minn., *citing People v. Thomas,* 25 Cal.2d 880, 156 P.2d 7, 17 (1991).

[17] *See, Id.*

[18] *See, Modernizing the E-rate Program for Schools and Libraries; Connect America Fund: Second Report and Order and Order on Reconsideration,* Docket Nos. 13-184, 10-90, FCC 14-189, at para. 81 (2014).

because of concerns about predictability and sufficiency within the high-cost program.[19] In similar vein, the Commission recently examined funding for rural health care, which had been held flat since establishment of the program, and found independent of adjustments to other program budgets, that an increase and application of an inflationary index like E-Rate was warranted in order to provide rural health care providers specifically "with a sufficient and more predictable source of universal service funding."[20] Lifeline, too, has been considered independently of the other budgets.[21] These actions demonstrate the Commission's repeated recognition that each statutory goal must be achieved through sufficient and predictable mechanisms that are also *specific* to each program.[22]

Indeed, this interpretation is affirmed by this Commission's own discussion only a few short months ago as it considered whether to bundle various components of the high-cost USF program under a single budget. Specifically, in creating new model offers in the high-cost program, introducing an inflationary factor and taking other steps to enhance the budget for rate-of-return carriers, the Commission rejected expressly proposals to combine certain USF components under a single budget and explained, "[W]e establish this budget for legacy providers **separate and apart from the other programs** . . . We agree that separate budgets enable proponents of the two support mechanisms [legacy and A-CAM] to focus on how best to

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[19] *See, Connect America Fund, et. al: Report and Order and Further Notice of Proposed Rulemaking,* Docket Nos. 10-90, 09-51, 07-135, 05-337, 01-92, 96-45, 03-109, 10-208, at para. 18 (2011). *See, also, Connect America Fund, ETC Annual Reports and Certification, Establishing Just and Reasonable Rates for Local Exchange Carriers, Developing a Unified Intercarrier Compensation Regime: Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration,* Docket Nos. 10-90, 14-58, 07-135, 01-92, FCC 18-176 (2018) (2018 Rate of Return Order).

[20] *See, Promoting Telehealth in Rural America: Report and Order,* Docket No. 17-310, at para. 3 (2018).

[21] NPRM at para. 4.

[22] To be sure, no USF program has ever reached its respective cap (*see,* NPRM at paras. 4-7); but, that does not mean that the imposition of an overall cap is consistent with statutory intent.

efficiently maximize broadband deployment under each paradigm . . . each should be afforded a budget analysis **on its own bona fides without regard to the other.**"[23] The very same reasoning employed by the Commission last December rings true today in the face of the instant NPRM, and there is no good cause to depart from that logic now.

### 2. Predictability Would be Undermined by a Cap.

Predictability, as well, is mandated by the statute and similarly would be undermined through an overall cap. The Commission's effort to control high-cost support through a regression analysis was found to wreak too much unpredictability onto fund users.[24] The Commission found the same to be the case where distinct budget control mechanisms applied, respectively, to the high-cost and rural health care programs, which is what led the Commission to revisit the budgets for each of those programs as noted above. These same concerns now attend the potential for unpredictability that would arise out of a single, overarching cap (and corresponding budget control mechanism) across all USF programs. Were the four 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. Predictability would be threatened by the impact of conditions arising wholly outside of the respective various programs: funding for schools and libraries could be subject to countervailing and yet unrelated needs in rural health care; low-income consumers and high-cost support programs could be pitted against each other only to find an outcome that benefits neither. The annual receipts of any of the four programs would be subject to considerations that cannot be

[23] 2018 Rate of Return Order at para. 84 (emphasis added) (internal citations omitted).

[24] *See, Connect America Fund; Universal Service Reform – Mobility Fund; ETC Annual Reports and Certifications; Establishing Just and Reasonable Rates for Local Exchange Carriers; Developing a Unified Intercarrier Compensation Regime: Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking,* Docket Nos. 10-90, 10-208, 14-58, 07-135, 01-92, FCC 14-54, at para. 127 *et seq.* (2014).

foreseen or anticipated since the conditions that could tend to favor one program over another would be wholly beyond the perceptive predictability of any program. Even the regression analysis, as part of an overall strategy aimed at high-cost support that survived *Alenco* review but was ultimately rejected by the Commission, limited the inputs that could affect support to those circumstances arising out of the community of similarly-situated parties.[25] An overall cap, by contrast, contemplates a Rube Goldberg-type arrangement in which disparate and unrelated elements could combine to effect results that are substantively detached from the various inputs. This approach disables predictability and therefore fails to find consistency with the statute.

### 3. Budgets Must Not be Conflated with a Cap.

The statute and caselaw permit setting budgets for the individual programs, as the Commission has implemented historically. But, those budgets must each in their own right be specific, predictable, and sufficient to achieve the stated mission of each program. In the instant NPRM, the Commission explains that it is proposing an overall cap to, *inter alia,* "ensure that the universal service programs are funded appropriately."[26] However, an overall cap that has no logical tether to the uniquely defined mission of a given program by definition cannot ensure that "programs are funded appropriately." The Commission has identified on numerous occasions technological, market and other factors that warrant adjustments to various program budgets, whether those adjustments are actual increases in the budget or the implementation of inflationary factors.[27] USF program budgets reflect market demands, and market demands evolve independently of a cap. Even if the level of a cap is based logically on historic trends or

[25] *See, In re: FCC 11-161,* 753. F.3d 1015 (10th Cir.) (2014), *citing Alenco Communications, Inc. v. FCC,* 201 F.3d 608, 622 (5th Cir. 2000).

[26] NPRM at para. 3.

[27] *See,* fn. 18-20 *supra* and accompanying text.

even calculable predictions of future trends, the cap, which by definition is a *limiting* force, cannot "ensure" that programs are funded appropriately. Rather, programs might be funded appropriately *despite* a cap or *without affect* from a cap – but, there is no "cause and effect" reality that assures appropriate funding because of a cap, unless "appropriate" is intended to be defined as a limitation factor. The NPRM underscores this intent, noting, "Although the creation of a topline budget will not eliminate the Commission's ability to increase funding for a particular program, a cap would require us to expressly consider the consequences and tradeoffs of spending decisions for the overall fund, and more carefully evaluate how to efficiently and responsibly use USF financial resources."[28] These statements convey an intent to invoke a cap as a lever that disassociates funding requirements from specific programmatic needs and instead bases the budget for any one program on the potential impact that targeted allocations may have on another program.

### B. AN OVERALL CAP ON THE USF WOULD UNDERMINE THE EFFECTIVENESS OF EACH OF THE FOUR INDIVIDUAL PROGRAMS BY INJECTING A DOSE OF UNPREDICTABILITY INTO THE FUND; SUCH A CAP IS ALSO NOT +NECESSARY TO ALLOW THE COMMISSION TO EXERCISE FISCAL RESTRAINT WITHIN EACH OF THE FOUR PROGRAMS.

As described above, the Commission just restored predictability and sufficiency to high-cost support in late 2018 after years of uncertainty and harm. Those recent and much-welcomed efforts would be unfortunately undermined by the instant proposal. Just six months ago, the Commission took affirmative steps to "provide sufficient and predictable support to increase broadband deployment."[29] These changes were intended, by the Commission's own assessment,

[28] NPRM at para. 3

[29] 2018 Rate of Return Order at para. 1.

to create a "higher degree of predictability"[30] by eliminating the potential for "fluctuations in support reductions [that] make it more challenging to engage in capital planning,"[31] and these changes are anticipated to promote significant investments in network infrastructure that will bring advanced services to tens of thousands of additional users.[32]

As noted above in the legal discussion, more than just the High-Cost program is at risk here, as 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. 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. Even worse, any demand increase (anticipated through forecasting or not) would have a "bleed over effect" into the other three programs – a program operating "in its own lane" and with demand in line with its budget (as set by the Commission to achieve a specific set of goals) would be subject to an unnecessary "shared" budget control that could have the effect of thwarting that program's overall mission. 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*. Beneficiaries of each program would, justifiably, operate under the assumption that a budget control caused by this "bleed over effect"

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[30] *Id*. at para. 82

[31] *Id*. at para. 70 (internal citation omitted).

[32] *See, i.e., id.* para. 25.

is coming, as they would know that the specific program on which they rely and that is critical to their missions *does not operate under a budget tied to their particular needs*. Accordingly, an overall cap on the fund would simply create existential uncertainty across all four programs, regardless of whether any individual program was effectively achieving its mission or not.

From the perspective of RLECs, these carriers *today* can operate with the knowledge that each component of the High-Cost program budget – including that program's Budget Control Mechanism and specific model-based support amounts made available to A-CAM recipients – is directly tied to a specific set of policy goals, buildout obligations, and other provisions[33] that the Commission deliberately chose to apply only to RLEC High-Cost program recipients with a budget commensurate to those goals and obligations. But an overall USF budget cap will reintroduce the lack of predictability and sufficiency that plagued the program for several years[34] as recipients work to complete their buildout obligations anticipating a level of support that may not appear due to *another program* seeing increased demand. Such a result would only undermine the effort to expand the quality and reach of broadband networks in rural areas.[35]

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[33] *See* High-Cost Budget Report and Order. In December 2018 the Commission took steps to "right size" the High-Cost Program budget and did so based on an analysis of the support necessary for either cost-based or model-based support recipients to meet specific buildout obligations tailored to those carriers.

[34] *See* NTCA *ex* parte, WC Docket No. 10-90 (Aug. 15, 2017) (discussing a July 2017 NTCA member survey that found that that due to the Budget Control Mechanism and the resulting USF budget shortfall of $173 million over the following 12 months for cost-based USF recovery, as well as the uncertainty of changes to that mechanism in future, 183 NTCA member RLECs indicated that they planned to reduce their broadband investments over the following 12 months by nearly $950,000, on average.); *Connect America Fund*, et al., WC Docket No. 10-90, et al., Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 14-54 (rel. Jun. 10, 2014) (eliminating the Quantile Regression Analysis-based benchmarks that led to a debilitating lack of predictability for recipients of High-Cost support).

[35] Indeed, if the Commission were to adopt an overall cap that could limit high-cost USF support, it would need as well to adopt at the same time corresponding provisions to reduce automatically carriers' rural buildout obligations in the event of budget controls triggered – a result that no one wants and that benefits no one.

It must also be noted that the Commission has declined to go down a similar road just recently, as it specifically noted in the December 2018 order that tying together multiple parts of the fund – in that case, cost-based high-cost support and CAF-ICC – was harmful to predictability. The Commission expressly pulled them apart into separate budgets precisely to address such concerns. There, the Commission found that tying together programs that serve entirely distinct but complementary missions would undermine that effort. It is difficult to understand why the same reasoning would not apply here to a proposal that would be similar, but on a much larger scale and potentially affecting a much larger pool of universal service beneficiaries with diverse needs and concerns.

In addition, while the Commission is also correct to consider how it should respond to potential miscalculations in demand forecasting[36] as well as how to improve improving transparency with respect to forecasting of USF demand,[37] the proposed remedy of an overall cap is unnecessary. Mechanisms already in place account for projected demand exceeding an individual program's budget, giving the Commission the ability to engage funding controls (or not) should it find them necessary and appropriate.[38] Certainly, improved forecasting and a stronger focus on the long-term view of the spending trends and needs of the individual programs can enable the Commission to plan ahead and ensure that the mechanisms are now

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[36] NPRM at para 16.

[37] *Id*. at paras. 13-16.

[38] *Id*. (increasing the High-Cost USF Program budget and adopting an inflation adjustment while retaining the Budget Control Mechanism as a spending control on the program); *See also*, 47 C.F.R. § 54.423 (setting forth the annual Lifeline program budget and requiring the Wireline Competition Bureau to prepare a report evaluating program disbursements if spending in the Lifeline program meets or exceeds 90 percent of the Lifeline budget in a calendar year); 47 C.F.R. § 54.507 (setting the cap for the E-Rate program and setting forth steps USAC shall take if total demand for the funding year exceeds the total support available); 47 C.F.R. § § 54.675 (setting the cap for the Rural Health Care program and setting forth steps USAC shall take if total demand for the funding year exceeds the total support available).

and in the future operating in a fiscally conservative manner, for the benefit of ratepayers that pay into the USF. However, again, while more accurate forecasting over the long-term can assist the Commission in understanding the needs of each individual USF program with respect to achieving its mission and keeping pace with broadband obligations or future needs as may be applicable to those consumers/entities benefiting from support, *an overall cap for its part does not achieve anything more than is now available to the Commission in terms of individual program spending controls*.

Any thought to prioritize funding amongst the individual programs in the event of projected total disbursements exceeding the cap[39] is similarly misplaced. To be clear, NTCA maintains its long-held view that the High-Cost program is foundational to the overall USF being a success in rural areas[40] – when operating as set forth in the statute with *sufficient*, *predictable* and *specific* funding levels, the program makes available throughout rural areas networks comparable to those in urban areas (in terms of quality of service) and offers residential and business consumers the opportunity to purchase such services at affordable rates. Those same networks are then available to schools, libraries, low income consumers, and rural health-care facilities in rural areas, and the other USF mechanisms in turn enable these discrete communities of users to "buy down" the price of services offered via these rural networks. But while the Commission should ensure that its universal service policies recognize the foundational importance of the High-Cost Program in rural areas, that can and should be done

[39] NPRM at para. 19.

[40] *See Comments of NTCA*, WC Docket Nos. 11-42, et al. (Aug. 31, 2015) (supporting modernization of the Lifeline Program and noting that the Commission could achieve success with this program only by stabilizing the High-Cost program budget to ensure that every rural consumer, low income or otherwise, has access to affordable broadband service); *See also*, *NTCA Petition for Temporary Waiver*, WC Docket No. 11-42, et al. (Oct. 20, 2017) (seeking a waiver of the program's minimum service standards based on the fact that the High Cost budget at the time was insufficient to enable RLECs to offer standalone broadband service at affordable rates for any rural consumer, low income or otherwise, that even begin to resemble in urban areas).

with a sufficient, specific and predictable budget for that individual mechanism necessary to meet its needs and mission, the particulars of which (speeds, latency, locations, etc.) are set forth by a deliberative process of the Commission. The crucial E-Rate, Lifeline and Rural Health Care funds should for their own part have budgets based on each individual program's goals (speed targets, whether anchor institutions need fiber or internal connections, the amount of the Lifeline discount, or other factors and metrics, for example) that the Commission determines through an examination of those programs and their beneficiaries, standing alone, is sufficient to meet their missions as set forth in statute. If the Commission does that – and even improves the accuracy of its demand forecasting – but then adopts an overall cap that at a later date "pulls the rug out" from one program operating within the budget the Commission determined was necessary to fulfill an individual program's mission, that mission will be undermined unnecessarily and the deliberative process of setting program budgets based on actual needs and policies adopted to ensure those needs are met will be all for naught.

Certainly, the Commission should decline to consider additional changes to any of the four separate USF programs via this NPRM.[41] It is difficult to understand how the Commission could consider both an entirely new way of budgeting for the USF while simultaneously contemplating changes to the administration of the individual mechanisms that could affect how they achieve their purpose and consequently the budget necessary to so do. In other words, changes to, among other things, an individual program's administration, structure, eligibility criteria, or purpose will change its budget needs and any overall USF budget process and vice versa. This would be a "regulatory chicken and the egg, which comes first?" exercise that would further undermine the predictability that the Commission just injected into the High-Cost

[41] NPRM at paras. 21-25.

program. Likewise, E-Rate, Lifeline and Rural Health Care beneficiaries (and those entities serving them) would likely find it difficult to plan for investment in long-lived broadband infrastructure over the next year or so as this rulemaking takes place knowing that how they fulfill their missions and the funds they will have to do so are both up in the air. Certainly, the Commission should look at every turn to improve the administration of the individual programs, to advance their efficiency and effectiveness to make them work better for their ultimate beneficiaries and to ensure that ratepayer dollars that fund the programs are put to their best possible use. That said, the primary inquiry here, the consideration of an overall USF budget cap that is problematic for numerous reasons as discussed herein, is not the time and place for such programmatic discussions.

To be clear, NTCA strongly supports the NPRM's focus on a long-term view of the sustainability of the USF.[42] Each of the four individual USF programs, working in concert with one another to address discrete connectivity needs, has brought broadband and other communications services to rural schools, libraries, health care institutions, residents (low income or otherwise), and businesses that would otherwise lack access. If rural America is to keep up with the rest of the nation in terms of economic growth in an increasingly technology dependent and globalized economy, it must continue to have access to broadband technology that keeps up with the rest of the nation and the world as well. That cannot happen without a strong USF that ensures that each individual program meant to tackle discrete but interconnected connectivity challenges is both *sustainable and sufficient* over the long-term to

[42] *See*, NPRM, Statement of Commissioner Michael O'Rielly ("In my years working on communications policy, I have been tremendously focused on improving the effectiveness of our Universal Service Fund (USF) programs to bring broadband Internet to those without access. Part and parcel of that mission is to ensure the USF's sustainability for years to come, and to protect the hard-earned investments of consumers who pay for our subsidy programs.").

connect those that lack access still and to ensure that broadband speeds can rise to meet rural communities' needs over the long-term.

In the end, NTCA neither discounts nor dismisses the Commission's interest in ensuring that USF resources are being used effectively, as they are ultimately derived from assessments on American ratepayers. To the extent the Commission believes some periodic review of USF budgets is necessary and appropriate to ensure that each program is contributing meaningfully over time toward the goals of universal service and delivering appropriate payback for the resources devoted to it, it could rather simply establish a rule requiring just such a periodic review of each program's individual budget in lieu of adopting an overall cap that could mechanically and arbitrarily result in the reduction of support across programs without tether to the mission or effectiveness of each program individually. This would balance the recognition of each program's unique mission and needs and the provision of greater predictability with the chance to review whether that mission is being achieved effectively by the individual program and whether the current levels of funding are appropriate for that purpose.

## III. CONCLUSION

As set forth above, the proposal to impose an overall cap on the USF is inconsistent with both law and policy. In the first instance, an overall cap would run afoul of the universal service statute whose language points to the establishment of separate universal service programs, each with a specifically-formulated budget. Moreover, the Commission's own actions since 1996 evidence the Commission's recognition that each program warrants individual consideration and budgetary construction. In contrast, the imposition of an overall cap would undermine the effectiveness of each program and is not necessary to maintain fiscal restraint with each of the four programs. For these and the other reasons elucidated above, NTCA commends the Commission to decline adoption of an overall cap on the USF.

Respectfully submitted,

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