

The National Association of State Utility Consumer Advocates' (NASUCA)⁴ members represent both the interests of the consumers who benefit from the availability of affordable voice and broadband internet access services and the interests of retail consumers of telecommunications services who support the USF. NASUCA opposes the FCC's suggested adoption of a hard cap on the total size of the USF, to be accompanied by rules for spending reduction, allocation, and possible prioritization based on the perceived cost-effectiveness of one USF program over another.⁵ NASUCA agrees with the Comments of AARP, filed on July 15, 2019, that adoption of a hard cap on the USF is not necessary and will not assist the FCC in closing the digital divide. Instead, the FCC should focus on more USF program specific concerns, preserve the FCC's flexibility to adopt pilot programs with limited time USF support or provide disaster relief support, and address contributions reform, all in furtherance of the universal service principles of Section 254.

II. COMMENTS

A. The Commission's Proposed "Holistic" Overview Is Unnecessary and Incomplete Without Contributions Reform

The NPRM's premise that a cap on the total size of the USF is necessary to meet the universal service funding standards articulated more than 20 years ago is unsound. Section 254

⁴ NASUCA is a voluntary association of 56 consumer advocate offices. NASUCA members represent the interests of utility consumers in 42 states, the District of Columbia, Puerto Rico, Barbados and Jamaica. NASUCA is incorporated in Florida as a non-profit corporation. NASUCA's full members are designated by the laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General's office). NASUCA's associate and affiliate members also represent the interests of utility consumers but are not created by state law or do not have statewide authority. Some NASUCA member offices advocate in states whose respective state commissions do not have jurisdiction over certain telecommunications issues.

⁵ NASUCA Resolution 2019-04, Urging the Federal Communications Commission to Refrain from Adopting a Hard Cap on the Overall Size of the Federal Universal Service Fund and Instead Focus on Universal Service Goals and Contribution Reform. Available at <https://www.nasuca.org/nwp/wp-content/uploads/2018/11/2019-04-NASUCA-Draft-Telecom-Resolution-re-NPRM-to-Cap-the-USF.pdf>

requires that support for federal universal service mechanisms be “specific, predictable and sufficient ... to preserve and advance universal service.”⁶ Providers of telecommunications services should make “equitable and nondiscriminatory contribution to the preservation and advancement of universal service.”⁷ The four primary USF “mechanisms” or programs – the High Cost/Connect America Fund (CAF) program, the Lifeline program, the Schools and Libraries program (E-Rate), and Rural Health Care program – each operate to preserve and advance different aspects of the Nation’s universal service principles.⁸ Critically, NASUCA believes that the Commission can and should evaluate the spending decisions and effectiveness of each of the individual universal service programs against the universal service goals and principles specific to that program.

A “topline budget” does not answer whether rates for services particular to each program are just, reasonable, and affordable.⁹ To make that evaluation, context matters. The rates that matter to Lifeline eligible consumers are basic retail rates for residential voice and broadband internet access services, whether provided by wireline, or new CAF support recipients such as a satellite providers. The rates that matter to schools and libraries involve commercial telecommunications and broadband services, use of fiber, and internal connections such as Wi-Fi. After an Eligible Telecommunications Carrier (ETC) has invested CAF funding in infrastructure and networks to provide access to voice and broadband internet access services in unserved or underserved areas, the rates for the services made possible by that USF spending should satisfy the “reasonably comparable” to urban test. That check on the reasonableness of

⁶ 47 U.S.C. § 254(b)(5). Support provided to Eligible Telecommunications Carriers (ETCs) that provide services with high cost support and/or Lifeline support “should be explicit and sufficient to achieve the purposes” of Section 254. *Id.*, § 254(b)(e).

⁷ *Id.*, § 254(b)(4).

⁸ 47 U.S.C. § 254(b)(1), (2), (3), (4), (6). What compromises “universal service” is “an evolving level of telecommunications services” subject to updating. *Id.*, § 254(c).

⁹ See, *id.*

the rates for services made possible by CAF support may not occur until many years after the FCC has determined the amount of CAF support to offer and finalized the award of those funds. NASUCA respectfully disagrees that the adoption of a hard cap on the USF will improve the just, reasonableness and affordability of rates for services made possible through the four USF major support programs.

Instead, the NPRM's focus on rate affordability concerns the "contributions burden," *i.e.*, the surcharges and prices paid by consumers to reimburse for contributions assessed against providers of interstate wireline, wireless, and interconnected VOIP services.¹⁰ NASUCA agrees that the FCC's commitment of additional USF funds for a new phase of a USF program, pilot, or disaster relief should include consideration of the impact on those consumers who support the USF.¹¹ The FCC's recently released NPRM to implement a Connected Care Pilot with a proposed \$100 million budget and three-year timeframe raises this consideration.¹² Clearly, the Commission will not commit funding for the Connected Care Pilot or the more recently proposed Rural Digital Opportunity Fund¹³ without consideration of the increase in USF spending on rate affordability and contributions issues. NASUCA shares AARP's concern that the FCC's proposed adoption of a hard cap on total USF spending coupled with elevated scrutiny of the

¹⁰ See, NPRM, ¶¶ 2, 3, 4, 9. Commissioner O'Rielly states concern that USF contributions costs impact low income consumers especially hard. However, low-income consumers who receive Lifeline service from certain ETCs are shielded from USF surcharges by regulation. See, 47 C.F.R. § 69.131, 69.158. This illustrates that the FCC can adopt policies to lessen the impact of the contributions burden on low-income consumers.

¹¹ See, 47 U.S.C. § 254(b)(4), (5), (d).

¹² In the Matter of Promoting Telehealth, WC Docket No. 18-213, FCC 19-64 (rel. July 11, 2019), ¶¶ 28, 29. The FCC proposes to establish the Connected Care Pilot as a separate USF program, rather than under the Rural Healthcare program.

¹³ See, Public Notice of August 11, 2019 Public Meeting. Available at <https://docs.fcc.gov/public/attachments/DOC-358431A1.pdf>. The FCC has released a draft NPRM to create a \$20.4 billion Rural Digital Opportunity Fund. Available at <https://www.fcc.gov/document/creating-rural-digital-opportunity-fund>. Para. 13 of the draft NPRM includes consideration of the contributions burden associated with such a major commitment of USF spending over the proposed 10 year period.

impact on the contributions rate is not necessary and will chill development of such innovative pilot programs.¹⁴

NASUCA's greater concern is the lack of consideration in the NPRM of the need to reform and expand the contributions base.¹⁵ AARP expresses the same concern.¹⁶ If the contributions base is limited to voice-only services with declining interstate revenues, then the contributions rate or USF surcharge can still increase, even if USF spending remains constant. High Cost/CAF USF support is applied to expand and extend networks to support both voice and broadband services. The Lifeline, E-Rate, and Rural Health programs all support affordable broadband connections and services. The Connected Care Pilot NPRM notes that the expense of broadband service impedes low-income consumers from receiving connected telehealth care. Broadband services are eligible for universal service support pursuant to the standards of Section 254(b) and (c), as services "essential to education, public health, or public safety," broadly subscribed to by residential customers, and broadly deployed, as well as Section 254(h) for schools, libraries, and healthcare.¹⁷ As AARP notes, "[i]mposing an assessment on broadband services to support the FCC's broadband deployment and adoption objectives is a reasonable and more equitable path forward to fund universal service objectives."¹⁸

B. The FCC Should Focus on the Need to Evaluate and Improve the Sufficiency and Effectiveness of Each USF Program to Address the Multi-Dimensional Digital Divide

NASUCA recognizes that the FCC could adopt a hard budget cap on the size of the USF and later, as suggested by Commissioner O'Rielly -- after notice, comment, and a Commission

¹⁴ AARP Comments at 15.

¹⁵ See, NASUCA Resolution 2019-04, *supra*.

¹⁶ AARP Comments at 10-11.

¹⁷ 47 U.S.C. § 254(c)(1); *see, e.g.*, 47 C.F.R. § 54.101, Supported services to rural, insular, and high cost areas. See also, AARP Comments at 2.

¹⁸ AARP Comments at 11. Compare, NPRM, Statement of Commissioner O'Rielly.

vote -- modify that cap.¹⁹ Before reaching that point, the NPRM suggests that the Commission might reduce projected universal service expenditures to stay within the cap or cap the commitments issued by the Universal Service Administrative Company (USAC).²⁰ The NPRM asks for comment on how to allocate and prioritize reductions in USF spending among the supported programs to satisfy such a self-imposed “legal imperative to remain within the cap.”²¹

The Commission should not adopt a cap on the entire USF as a legal imperative. Instead, NASUCA concurs with AARP. The Commission should focus on evaluating and improving how existing universal service goals are met. As AARP states, the “existing Universal Service programs are not meeting the needs of Americans, resulting in a multi-dimensional digital divide.”²² The existing and future USF programs should function to reduce this multi-dimensional digital divide, a divide which impacts low income consumers, households with school age children, seniors, folks who lack access to healthcare services, consumers and businesses in rural areas, as well as schools, libraries, and healthcare providers.²³

For example, if approved and implemented, the newly proposed Connected Care pilot may provide useful information concerning how to improve USF policies related to broadband affordability for low income consumers and access to telehealth services. The draft Rural Digital Opportunity Fund NPRM proposes to commit \$20.4 billion in funding over ten years to bring broadband networks and services to some of the estimated 10 million rural households and small businesses without modern, highspeed broadband services. NASUCA supports these initiatives.

As to existing programs, the Commission has proposed to adopt the current Category Two form of E-Rate support as sufficient, with changes to improve participation, following the

¹⁹ NPRM, Statement of Commissioner O’Rielly.

²⁰ NPRM, ¶ 13.

²¹ *Id.*, ¶¶ 12,

²² AARP Comments at 1.

²³ *Id.* at 3-7.

Wireline Competition Bureau's (WCB) Category Two Budget Report findings.²⁴ The FCC should conduct similar evaluations as to the sufficiency, participation levels, improved access to broadband services, and affordability under the other USF programs, particularly the Lifeline program.

Lifeline program spending is currently below the level of recent years and below the current Lifeline program soft budget level of \$2.279 billion.²⁵ NASUCA supports the efforts of the FCC and USAC to improve the administration and accountability of the Lifeline program. However, the current level of Lifeline subscribership should not be accepted as evidence of a successful USF program, where many income eligible households are not enrolled. As noted by AARP, Pew Research Center data for 2019 reflects that only 56% of households with income below \$30,000 per year have home internet access.²⁶ The Commission should devote more resources to improving the affordability of voice and broadband services and greater participation by Lifeline eligible households, rather than the adoption of a USF cap. The current difference between Lifeline program spending and the \$2.279 billion soft Lifeline budget for other USF program purposes should not be perceived as an opportunity to shift Lifeline program funds to other programs.²⁷

C. NASUCA Supports Collection of Better Data and Transparency

As noted by AARP, it is critical that the Commission have reliable information regarding where broadband networks are deployed and services are offered, before the Commission can

²⁴ See, Modernizing the E-Rate Program for Schools and Libraries, Docket No. 13-184, WCB Report, 34 FCC Rcd 319 (1) (rel. Feb. 11, 2019); NPRM, FCC DA 19-58 (rel. July 9, 2019), ¶¶ 13, 14, 19.

²⁵ NPRM, ¶ 8.

²⁶ AARP Comments, at 3-5.

²⁷ See, AARP Comments at 14. *See also*, In Bridging the Digital Divide for Low Income Consumers, WC Docket No. 17-287, NASUCA Comments at 25-26 (filed Feb. 21, 2018).

assess whether the Commission is meeting broadband deployment objectives.²⁸ The Commission’s proposal to establish a Digital Opportunity Data Collection program is an important step forward, to improve the reliability and granularity of the Commission’s broadband mapping information.²⁹ NASUCA concurs with AARP that while this gap in reliable information about broadband availability persists, now is not the time for the Commission to cap the size of the Universal Service Fund.”³⁰

As part of the NPRM, the Commission questions whether existing forecasts made by USAC as part of the quarterly calculation of the contributions factor or other additional forecasting of USF demand calculations should be undertaken and made available to the public. NASUCA does not support the proposed adoption of a cap on the total size of the USF. However, to the extent that USAC or the Commission undertake additional analysis and consideration of future demand, NASUCA supports making such information available to the public. Indeed, these forecasts may be informative as the Commission evaluates the sufficiency and need for improvements to individual USF programs or pilots.

²⁸ AARP Comments at 2-3.

²⁹ See, Public Notice of August 11, 2019 Public Meeting. Available at <https://docs.fcc.gov/public/attachments/DOC-358431A1.pdf>.

³⁰ AARP Comments at 3.

III. CONCLUSION

NASUCA urges the Commission to not adopt a cap on the size of the total Universal Service Fund budget and rules for how to cut spending or reallocate funds. The better course is for the Commission to continue to balance the expected universal service benefits and impact of additional USF spending in each Commission initiative to improve existing USF programs, or adopt new programs or pilots. NASUCA encourages the Commission to undertake contributions reform. NASUCA supports the Commission's efforts to obtain better quality broadband mapping data as the much-needed foundation for future policy and USF program decisions.

Respectfully submitted,

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