SMALL COMPANY COALITION
WE BUILT IT, WE MAINTAIN IT, WE VALUE IT!

Filed Via ECFS

July 29, 2019

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **In the matter In the Matter of Universal Service Contribution Methodology, WC Docket No. 06-122**

Dear Ms. Dortch:

The Small Company Coalition submits this comment pursuant to the above-captioned matter[1], which seeks to establish an aggregate cap of $11.42 billion on distributions by the Universal Service Fund (USF), encompassing all four (4) USF programmatic elements: a) The High Cost Program/Connect America Fund (CAF); b) Schools and Hospitals (E-rate); c) Lifeline, and d) Telemedicine. For the reasons detailed below, the SCC opposes such a cap, and asks that the NPRM be significantly reconsidered and/or withdrawn.

Washington is not a place to live in. The rents are high, the food is bad, the dust is disgusting and the morals are deplorable. Go West, young man, go West and grow up with the country.

~ Horace Greeley 1811-1872

1. Rural America and the Provenance of Universal Service

The difficulties inherent in delivering essential services to communities separated by great distance have bedeviled American government since our nation's inception. In the Revolutionary War era, as newly-minted Americans multiplied, moved inland and settled the vast wilderness, they found they had more in common with each other than the Old World, and demanded reliable and affordable mail service. Due largely to the expense of traversing territory this size, the private sector failed to generate an adequate solution, necessitating a coordinated government response.

America's first Postmaster General, Benjamin Franklin, established what we now know as the U.S. Postal Service, standardizing rates and practices, and developing the necessary infrastructure for a reliable

[1] Federal Communications Commission (FCC) Pub. 19-46, *Notice of Proposed Rulemaking,* WC Docket No. 06-122, May 15, 2019

communications network from Maine to Georgia. As the only reliable instrument of communication over distance at that time, the letters exchanged via this network were critical to the success of an aspiring nation. Whether memorializing mundane details of commercial transactions, detailing the lives of kith and kin, or discussing pressing matters of state, they present a vibrant record of early American life, eloquent expressions of America's founding ideals, and bare, riveting testimony to the risks and sacrifices necessary to achieve them.

As the nation continued to grow in population and size, the same challenge would continually arise. Americans were exhorted to populate the continent, enabled by U.S. Government (USG) policies like Land Grants and the Homestead Acts, which prompted waves of expansion and the settlement of tens of millions of interior acres by those willing to pioneer a new life. (The Homestead Acts, signed into law by Abraham Lincoln in 1862, remained good law in most of the U.S. until 1972 – and in Alaska until 1986!).[2]

Meanwhile, new technologies like electrification and the telephone dramatically altered the quality, pace and content of American life. No longer confined to darkness when the sun set, nor having to wait days, weeks or months to communicate with parties distant, America set upon a path which would define the human experience as we now know it, enriching our own lives and those of diverse peoples across the planet in ways unmatched in human history.

And yet, even today, and even where new technology is widely embraced and fundamentally shifts the social paradigm, we struggle to ensure that all Americans enjoy the fruits of progress. After 243 years of existence and a population growing to over 327 million, 97 percent the territorial United States remains rural,[3] and government support remains essential to reach areas where, due to distance and population density (extremely large, and low, respectively), private sector incentives continue to prove insufficient.

Enter the Universal Service Fund (USF).

The idea of "universal service," or access to modern communications services for all Americans regardless of place of residence in the country, was first established by Congress in the Communications Act of 1934[4] -- the very same Act which created the Federal Commission (FCC). Though originally implemented to provide rural Americans with telephone service, the modern incarnation of the program (the USF) reflects the paradigm shift to mobile communications and the internet, and supports their extension through various programmatic elements.[5]

As is reflected in its history, and by the continued dominance of the High Cost Program in USF commitments, rural America constitutes the fund's primary constituency and predominant responsibility.

As an association of companies that build and maintain the necessary infrastructure and provide actual broadband internet to rural communities across America, we oppose any measures which would dilute this focus or commitment.

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[2] https://www.loc.gov/rr/program/bib/ourdocs/homestead.html Accessed 7/25/19
[3] As defined by the U.S. Census Bureau. https://www.census.gov/library/stories/2017/08/rural-america.html Accessed 7/20/19.
[4] https://transition.fcc.gov/Reports/1934new.pdf
[5] Listed in the opening paragraph of this communication.

2. The Cap is Unnecessary

The SCC lauds the FCC for its focus on "tak[ing] a more holistic view [of] . . . [proposed] changes to the universal service programs and their impact on overall USF spending . . . . seek[ing] to promote a robust debate on the relative effectiveness of the programs."[6] We do not believe, however, that an enforced cap is necessary for this purpose.

As is demonstrated by numerous initiatives over recent years, including *inter alia*, the nearly $1 billion in USF support for Puerto Rico,[7] the FCC already possesses the decisional latitude to make assessments of program value and performance, and substantial adjustments to financial commitments flowing from such assessments. An arbitrary cap on disbursements might appear advantageous as a "forcing agent," but in reality, the only thing necessary to accomplish this objective is the existence of sufficient political will. The proposal is, in effect, an admission of its absence, as well as a plea to "save us from ourselves".

We continue to believe that those supporting the cap possess both the persuasive ability and operational authority to make the desired assessments, and any adjustments flowing therefrom, in the absence of the proposed hard ceiling.

3. The Cap is Premature

As long as future demands on the fund are unknown, institution of the cap is premature. To paraphrase a former senior US official, there are "known unknowns" (things of which we are aware, but aren't certain as to their presentation or conclusion), and "unknown unknowns" (things which could occur, the but which we have not or cannot contemplate).[8] With respect to the future of the USF and the operation of the proposed cap, both situations are applicable

In the former category, for example, is the cost of deploying 25/3 Mbps service to all customers, which could require substantial additional investment. Rural rate-of-return (RoR) carriers and others receiving cost-based reimbursements would have nowhere to turn to finance the necessary upgrades other than the USF. Without an accurate idea of the real cost of this requirement and others (e.g. performance testing) it is premature to shackle the fund as so proposed.

In the "unknown unknowns" category, we have . . . well, we can only speculate. And that's the point. When English Prime Minister Harold Macmillan (PM 1957-63) was asked by a reporter to cite what was most likely to blow a government off course, Macmillan purportedly responded, "[e]vents, dear boy. Events!" Though subject to some dispute, this response has entered the lexicon as adjunct to "the best laid plans of mice and men"[9] encapsulating our inability to forecast the future no matter how carefully we plan. Such axioms are no less applicable here.

Ironically, while designed to promote managerial discretion over the fund, the cap could actually undermine this objective by tying the hands of the FCC as demands on the fund change in response to conditions or circumstances. A natural disaster, a quantum leap in technology, a national financial crisis,

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[6] See N.1., p. 4 (Section III, paragraph 9)

[7] https://www.fcc.gov/document/chairman-pai-proposes-954-million-plan-puerto-rico-and-usvi

[8] https://en.wikiquote.org/wiki/Donald_Rumsfeld

[9] "To a Mouse" Robert Burns 1759-1796.

a cataclysmic act of terrorism -- any development which places an extreme demand on the fund could require the vitiation of the rule or abrogation of the cap.

While the FCC and Congress could certainly take steps to address such developments should they manifest, political consensus is often difficult to reach, and the undoing of the cap would surely require significant time and effort. In any of the above scenarios, time devoted to changing the cap or legally justifying its breech would be time better spent elsewhere.

4. The Cap Would Generate Beneficiary Acrimony and Uncertainty

Each of the component programs within the USF is intended to address a separate and distinct objective within the overall rubric of achieving universal service. In the NPRM, the FCC specifically cites its "statutory obligation requires that the Commission's policies result in equitable and nondiscriminatory contributions to the Fund, *as well as specific and predictable support programs*.[10]

A USF cap would subject such sub-programs to the political whims of successive Administrations, pitting them and their beneficiary classes against each other in a competition not for excellence in administration or execution, but for influence, favor and funding. We do not think that this is the kind of competition that the FCC envisions or wishes to foster with this NPRM, but it is a likely outcome.

Moreover, small rural carriers operate on thin margins, requiring careful planning that can be upended by even slight programmatic changes. The Budget Control Mechanism (BCM), recently (and thankfully) suspended by the FCC,[11] is a good example of this principle in practice. The BCM was determined by conditions and circumstances beyond the control of USF beneficiaries, was unknowable to USF support recipients until the FCC issued the relevant edict, and wreaked havoc on the planning and finances of the companies affected. Changes stemming from competition among USF programs for limited funds would inject the same type of uncertainty into the program, violating the statutory requirement for predictability in program support.

5. Conclusion

Finally, in addition to the foregoing objections, the SCC observes several incongruities which amplify our opposition to a USF cap.

First, with the exception of 2017 and 2018, the HCP program apparently collects more than it distributes. As the NPRM states, since 2012 the Universal Service Administrative Company (USAC) has "collect[ed] $1.125 billion per quarter for high-cost funding alone, regardless of the projected quarterly demand" to protect against program fluctuations.[12] Excess money collected is kept in reserve for CAF initiatives.[13]

This cap was exceeded 2017-2018 by a combined total of $377 million, but the NPRM states that $480 million was drawn from the reserve *in 2017 alone* to reach the $4.692 billion total outlay. If, per footnote 9 (*NPRM,* page 3) the HCP disbursed $4.213 billion in program funds in 2017 (i.e. in collections exclusive of reserve funds), that would leave some $287 million in undisbursed contributions for that

[10] NPRM, p.2, para. 4, citing 47 U.S.C. § 254(b)(4)-(5) (*emphasis added).*
[11] https://docs.fcc.gov/public/attachments/FCC-18-176A1.pdf
[12] Id at p.3, note 4 (internal citations omitted).
[13] Id.

year. Why would the reserve be tapped for $480 million when spending over the cap was only $192 million?

As the FCC knows, the SCC has for some time labored to determine how the USF reserve accumulates and is managed, including seeking an accounting of its overall size, and a delineation of the processes utilized for the discretionary commitment of such funds. To date, this information has not been forthcoming, and reference to the reserve and details regarding its usage in the NPRM do little to clarify.

At the same time, the contribution rate has reached record levels, now standing just shy of 25%, which though assessed on providers, is ultimately borne by customers.[14] Why does the FCC need to cap a user-funded program (i.e. not drawn from the general Treasury, nor subject to an annual appropriation) when contributions are at record high and fund runs an apparent surplus? It is the SCC's position that expanding contributions through contribution reform is the most effective way to balance the needs of the USF component programs, guarantee equity in USF contributions, ensure consistency in support, and best align USF contributions with program need and overarching policy guidelines.

Based on the forgoing, the SCC opposes capping the USF program.

We thank the FCC for its consideration of our comments.

Sincerely,

James J. Kail

President & CEO, LHTC Broadband

Executive Committee Member, Small Company Coalition

[14] Id. at p. 1-2