Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

COMMENTS OF
THE E-RATE MANAGEMENT PROFESSIONALS ASSOCIATION

The E-Rate Management Professionals Association (E-mpa)[1] respectfully submits comments on the Commission's Notice of Proposed Rulemaking regarding the establishment of an overall cap on the Universal Service Fund (USF or Fund), and specifically on its proposal to combine the Rural Health Care (RHC) and E-Rate funding caps.[2] E-mpa opposes both an overall cap and a combined annual cap for E-rate and RHC. Furthermore, E-mpa believes that establishing the proposed caps would reduce the effectiveness of the Universal Service Program by taking away funds needed to meet future connectivity demands.

Each of the four programs that the Universal Service Fund encompasses (E-rate, RHC, Lifeline, and High Cost) has different goals and structures. Each program uses different forms, adheres to different calendars, and has different rules, procedures and deadlines. Each has its

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[1] The E-Rate Management Professionals Association (E-mpa)® is an association of E-rate professionals and consultants whose mission is to promote excellence and ethics in E-rate professional management and consulting through certification, education and professional resources. E-mpa members assist one-third of E-rate beneficiaries with their applications.
[2] *Universal Service Contribution Methodology*, WC Docket No. 06-122, Notice of Proposed Rulemaking, FCC 19-46 (rel. May 31, 2019) (*Notice*).

own separate staff, reporting to a vice president of the division, who in turn reports to the president of the Universal Service Administration Company (USAC). Each division also has its own governing board committee, comprising highly respected members of the communities that division serves. Each program faces its own challenges and combining them under a single cap—in whole or in part—would do nothing to address those challenges.

The proposed overall cap would hamper the Commission's ability to provide "predictable and sufficient … mechanisms to preserve and advance universal service," as the Communications Act requires.[3] With the cap in place, support for each program would become less predictable, as the support available could be affected by the level of demand in other programs. The cap would constrain the Commission in providing sufficient support to the USF programs. Accordingly, E-mpa believes that rather than jeopardizing funding of the USF programs with a cap, the Commission should instead address the real problem driving up the contribution factor: the declining revenue base.

If the Commission is concerned about expenditures in the Universal Service Fund (USF), we would respectfully suggest that the Commission review the High Cost program. The High Cost program expenditures have increased by approximately $1 billion during the past five years.

Of even greater concern is the Commission's proposal to combine RHC and E-rate under a single cap. The *Notice* offers no acceptable rationale for doing so, and again the Commission's proposal obscures the real problem: that demand is exceeding the cap in the RHC program. Rather than jeopardize funding for schools and libraries, the Commission should focus on fixing the RHC program itself.

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[3] 47 U.S.C. § 254(b)(5).

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I. THE E-RATE AND RURAL HEALTH CARE FUNDING CAPS SHOULD NOT BE COMBINED

The *Notice* sought comment on whether to combine the E-rate and RHC program caps.[4] E-mpa strongly opposes this proposal. Placing the two programs under a single cap may alleviate the problem of demand exceeding the current cap in the RHC program, but it would do so at the expense of schools and libraries. E-mpa respectfully argues that the Commission has offered no convincing rationale for this approach, and that a better approach would be for the Commission to address problems with the RHC program without involving E-rate.

First, combining the caps would significantly affect the E-rate program when the Commission has not demonstrated that there is any reason to modify the E-rate funding cap. Indeed, it is clear that the problem the Commission is attempting to fix with this proposal has nothing to do with E-rate: the problem is that demand for RHC funding has been exceeding the cap in recent years.[5] Combining the RHC and E-rate caps would make additional funding available to address the RHC funding shortfall. But while this approach may seem like an appealingly easy way to address the problem, in fact it would merely apply a Band-aid to systemic problems in the RHC program.

Rather than hiding these problems, the Commission should focus its efforts on improving the RHC program. First, the Commission should undertake an evaluation of the RHC program demand and establish a cap that is more realistic for the program. It is true that the Commission recently increased the RHC program cap, but it did so without conducting any analysis of demand, and such analysis is long overdue. Because the Commission simply increased the cap

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[4] *Notice* ¶¶ 23-25.
[5] *See* Promoting Telehealth in Rural America, WC Docket No. 17-310, Report and Order, 33 FCC Rcd 6574, 6574- 75, ¶ 2 (2018) (*RHC Program Funding Cap Order*).

to account for inflation since the beginning of the program and without taking into account the additional eligible entities that have been added to the program since its inception,[6] and considering that the Commission established an entirely new subprogram—the Healthcare Connect Fund—without raising the program cap,[7] it is long past time that the Commission conduct a rigorous analysis of the actual funding needs of the RHC program. And indeed, the Commission itself has acknowledged the need for substantial revisions to the RHC program by placing a draft order revising the RHC rules on the agenda for the Commission's August open meeting.[8]

Second, the *Notice* offers only the flimsiest rationale for combining the caps: that both programs support broadband services for anchor institutions,[9] and that in other proceedings some stakeholders have asked the Commission to "better harmonize the USF program rules."[10] Combining the caps has nothing whatsoever to do with harmonizing program rules. And the fact that both programs support anchor institutions cannot obscure the fact that there is no other reason to lump the two programs together. The E-rate and RHC programs have different purposes, different statutory directives, different discount calculations, different application and implementation calendars, different forms, different staffs at the Commission and at USAC, and largely different stakeholders.

In short, there is no legitimate reason to combine any aspect of these two programs. Rather than using the E-rate program as a slush fund to cover up funding shortfalls in the RHC program,

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[6] *Id.* at 6580, ¶ 13.
[7] *Id.* at 6576, ¶ 5.
[8] *Promoting Telehealth in Rural America*, Draft Report and Order, WC Docket No. 17-310 (Public Draft rel. July 11, 2019), https://docs.fcc.gov/public/attachments/DOC-358434A1.pdf.
[9] *Notice* ¶ 23.
[10] *Id*.

the Commission should address problems with the RHC program without jeopardizing schools' and libraries' access to funding in their own program.

II. THE COMMISSION SHOULD NOT ADOPT AN OVERALL CAP FOR THE UNIVERSAL SERVICE FUND

E-mpa urges the Commission not to adopt an overall cap for the USF program. As we explain below, an overall cap is unnecessary, unfair, and does not address the root problems of a declining contributions revenue base and an increasing High Cost program.

A. An Overall Cap is Unnecessary

As the Commission makes clear in the table following paragraph 11 in the *Notice*, the cap will serve no purpose for the foreseeable future; through 2023, program demand will remain below the cap.[11] Indeed, total program demand is shown to be flat through 2023. The proposed cap is a solution in search of a problem. The current rulemaking intends to increase the complexity of the program by adding rules which will not be implemented. Worse, it is an attempt to guess what the right solution would be should the problem ever arise. At some point in the future, the Commission may be constrained by rules concerning automatic expenditure reductions which were developed when no such reductions were seen to be necessary.

Furthermore, the suggestion in the *Notice* that an overall program cap would promote a more transparent and holistic examination of demand across the four programs is misleading. In reality, the Commission already has at its disposal of the entirety of data it needs to analyze current expenditures and forecast future fund needs. The Commission can direct USAC to provide it with whatever information it needs to conduct an analysis now, without an order. The

[11] *Notice* ¶ 11.

Commission can also make public or direct USAC to make public any of that information. Changing the overall cap is not required for the Commission to review any data or conduct any analysis. Indeed, the Commission would be neglecting its oversight duties if it were not already doing so.

B. An Overall Cap is Unfair

The proposed overall cap would affect all four USF programs, even though the High Cost program is the one most responsible for driving demand. A cap is thus unfair to the other programs, particularly to E-rate.

With the adoption of the *E-rate Modernization Order* and the *Second E-rate Modernization Order*, the Commission established connectivity goals, promoted efficiencies to drive the cost of broadband down, increased the cap, and also established limitations for Category 2 funding by establishing a budget and removing items from the Eligible Services List.[12] The Commission was on the right track then, to make the E-rate program more efficient and cost-effective. The other Universal Service programs have not been so restrained:

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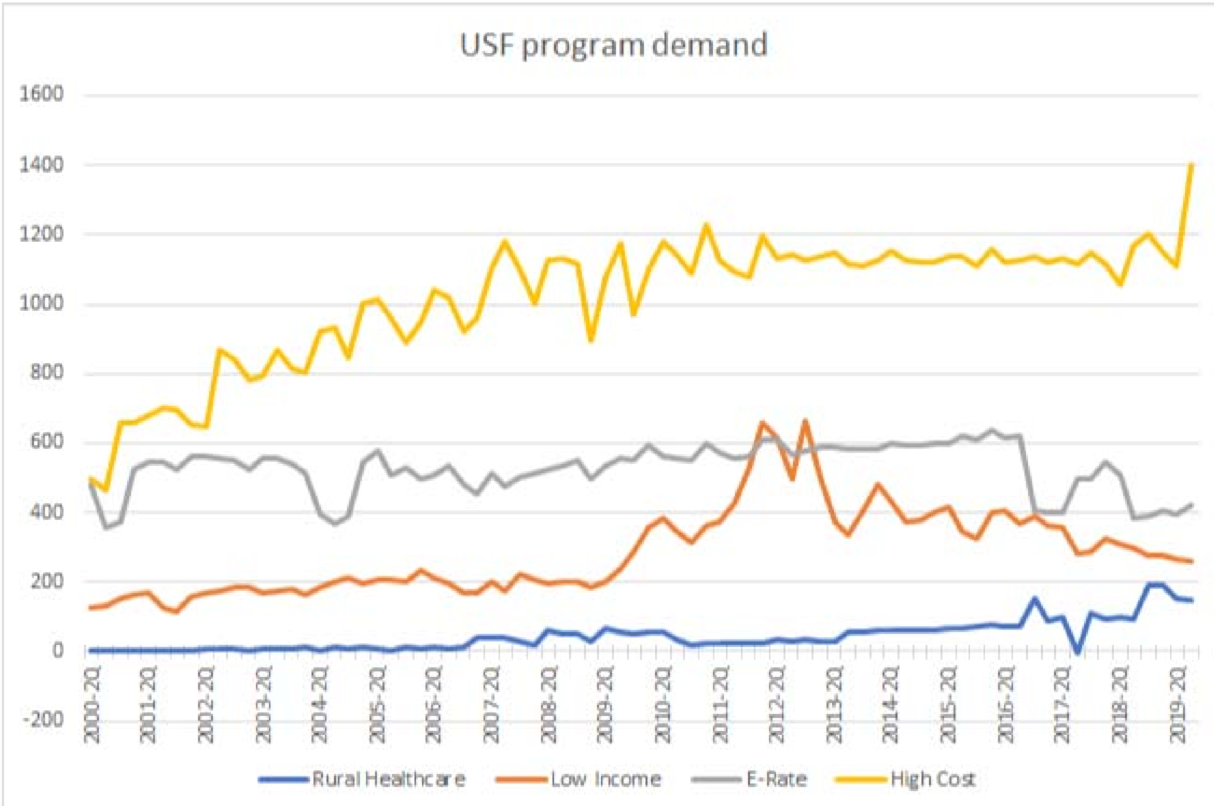
[12] *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870 (2014) (*First Modernization Order*); *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Second Report and Order and Order on Reconsideration, 29 FCC Rcd 15538 (2014) (*Second Modernization Order*).



While the E-Rate program demand is roughly the same as it was in 2000, the other programs have grown significantly.[13] Demand for costs in the High Cost program have more than tripled.

[13] Data from https://www.fcc.gov/general/contribution-factor-quarterly-filings-universal-service-fund-usf-management-support.

If we account for inflation, contributions allocated for the E-Rate program have dropped by almost half, while the High Cost fund contributions have more than doubled.

	Quarterly Demand (in millions)		Change	
Program	**3Q 2000**	**3Q 2019 ***	**$ millions**	**Percent**
E-Rate	$480.9	$282.9	-$198	-41.2%
Rural Health Care	$4.1**	$98.3	$94.2	2,296.4%
Low-Income	$134.1	$176.2	$42.1	31.4%
High Cost	$464.8	$940.9	$476.1	102.4%

* using year 2000 dollars
** 2Q 2000 used; because 3Q 2000 demand was negative

Without the growth in the High Cost program, overall demand would have decreased from 2000 to 2019. From the demand side, the clear solution to restraining the contribution factor is to restrain the High Cost program, not to take money from other programs to allow the High Cost program to continue its growth.

C. The Real Problem is the Declining Revenue Base

The contribution factor, which determines how much consumers are charged for universal service fees, has been steadily increasing each year, with a significant 25% jump in the past quarter.[14] The growth in the Contribution Factor, however, has not been primarily driven by increases in program spending, with the exception of the High Cost program, which has

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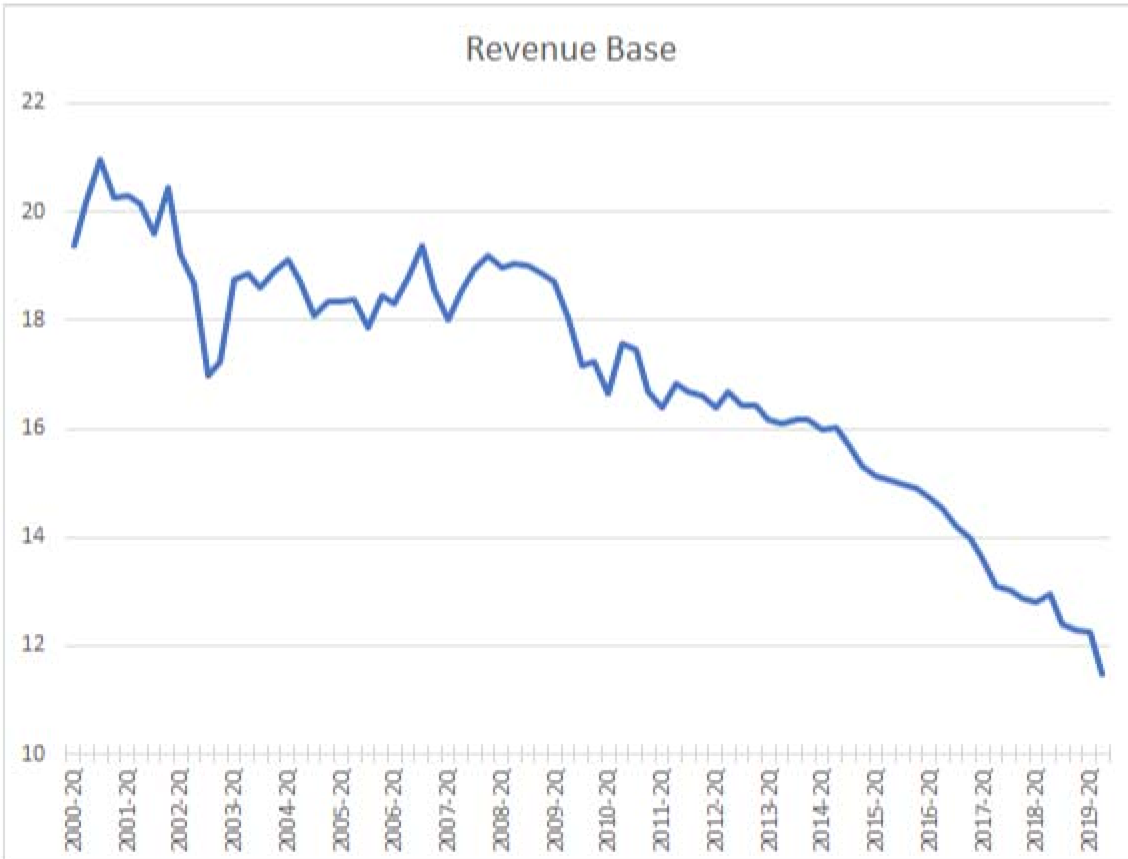
[14] *See Proposed Second Quarter Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 19-178 (rel. Mar. 13, 2019 (announcing the proposed second quarter contribution factor of 18.8 percent); *Proposed Third Quarter Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 19-559 (rel. June 12, 2019 (announcing the proposed third quarter contribution factor of 24.4 percent).

increased by $1 billion annually during the past five years.[15] Instead, it is primarily the result of decreases in the revenue base to which the Contribution Factor is applied. Since the year 2000, the Revenue Base has dropped to half its former value, even before adjusting for inflation.[16]



Adjusting for inflation, the revenue base has dropped from $20.2 billion in 3Q 2000 to $7.7 billion (in year 2000 dollars) in 3Q 2019. Without a change in the contribution methodology for the Universal Service Fund, no reforms on the demand side will control the contribution factor. The landscape of telecommunications has changed dramatically in recent years. With the movement of broadband and voice services away from traditional telecommunications services,

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[15] *Notice* ¶ 11. The RHC program spending has also increased but only by $100 million during the same time frame.
[16] Data from https://www.fcc.gov/general/contribution-factor-quarterly-filings-universal-service-fund-usf-management-support.

the base of services from which USF charges can be collected has eroded, increasing the percentage collected on the services remaining. E-mpa believes the way to address the burden placed on ratepayers would be to overhaul the contribution structure to increase the types of services from which USF fees can be collected.

D. An Overall Cap Increases Complexity Without Improving the Fund

It is unclear what goals the Commission is attempting to achieve with the proposals contained in the *Notice*. The Commission already controls the individual fund caps, and therefore already has the power to control the overall funding approved in any given funding year. Adding an overall funding cap would add a layer of complexity and redundancy to an already complex program, at a time when the Commission has stated that its goal is simplification of Universal Service. While E-mpa is mindful of the stated rationale in the NPRM that an overall cap would "enable the Commission to evaluate the financial aspects of the four USF programs in a more holistic way," it is unclear as to why the Commission cannot already consider all four programs when setting the separate funding caps. For example, if, as one of the proposed options suggests, the Commission sets the overall funding cap at the current sum of the individual caps of the four programs, what has been gained? What information will the Commission possess that it does not now? What capability will the Commission gain that is currently denied to it?

E. An Overall Cap Does Not Harmonize the Programs

Creating an overall cap would not harmonize the rules of the USF programs in any way. If the overall cap ever had any effect, it would be to pit one program against another.

Nor would it create implementation efficiencies, flexibility or administrative simplicity. The implementation of the cap would create new realms of administrative tasks for funding prioritization and reduction. The flexibility of the program could be decreased, as necessary increases in one program's cap would require extra steps to either increase the overall cap or to reduce funding for some other program(s). In addition to the new administrative complexity created by new prioritization and reduction actions, the Commission proposes requiring USAC to expand projections. The complexity would also increase for participants in each program, as they would have to consider the potential effect of activity in other programs on the availability of funding in their program.

F. The Commission Should Adopt Reporting Proposals As Necessary

The Commission seeks comment on various issues related to tracking and forecasting USF demand.[17] We recommend that the Commission consider implementing overall reporting that will provide the Commission with the information needed to properly oversee all four funds without changing the overall funding cap. Combined reporting and supervision is logically necessary and can be accomplished without setting an overall funding cap.

In evaluating E-Rate demand in comparison to the proposed cap, USAC should use the Funding Year rather than any calendar year.[18] The pace of funding approvals and disbursements is affected by many factors and using a calendar year would make demand projections less accurate.

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[17] *Notice* ¶¶ 12-16.
[18] The RHC should be treated similarly.

III. IF THE COMMISSION PROCEEDS WITH A CAP, EVEN THOUGH ONE IS UNNECESSARY AND COULD BE HARMFUL, THE COMMISSION SHOULD MINIMIZE THE DAMAGE TO THE PROGRAMS

As explained above, E-mpa believes an overall cap is unnecessary and will harm the USF. However, if the Commission does decide to establish an overall cap, the damage to the USF can be minimized by the following implementation steps.

A. The Cap Should be Equal to the Sum of the Caps for the Individual Programs

If the Commission decides to create an overall cap, it should be equal to the sum of the caps already on the individual programs. In the future, the cap should be automatically adjusted so that it remains the sum of the individual program caps. Otherwise, there is a risk that the overall cap will one day be less than overall demand, and the Commission will be pressured to decrease the funding to one or more programs based on an arbitrary overall cap. The growth of individual program caps should be determined according to the needs of the individual program. The inflation adjustment has been adequate for the E-Rate, but the High Cost program's growth has been double the rate of inflation. Further, the Commission has not conducted an analysis of the actual demand for the RHC program since 1997. Such an evaluation is long overdue.

If the Commission creates a pilot program within one of the existing programs, that pilot should be covered by the cap of the program within which it was created. If the pilot necessitates an increase in the cap for that program, it should trigger an automatic increase in the overall cap.

If the Commission decides to create additional demand on the USF for an emergency response, and the increase would cause that program to exceed its cap, then the cap for the individual program should be increased to cover the emergency, triggering an increase in the overall cap, or the demand for that individual program should be reduced in some other manner.

B. Any Reductions Should Occur at the Commitment Stage

To the specific matter of how to implement an overall cap, E-mpa respectfully comments that because the Commission acknowledges that a cap will require reduction of commitments needed by E-rate applicants to pay for eligible services, in the event that a cap is established, any adjustments to requests should happen pre-commitment. E-mpa is alarmed that the Commission may be entertaining the prospect of not paying an invoice for a service USAC previously committed to funding. This approach would be catastrophic for both applicants and service providers. It would have a corrosive effect on confidence in the fund, and could inhibit schools and libraries from applying for funding in the first place, thus undermining the statutory goals of the E-rate program.

C. Reductions and Prioritizations Should Be Made Within Each Program

In determining how to reduce expenditures, the Commission should rely on the existing caps for the individual programs. Since the overall cap can only be exceeded if a program has exceeded its individual cap, that program's spending should be reduced so that it is again under its individual cap. There is no need for a separate reduction mechanism for the proposed overall cap. Demand reductions should be limited to the amount of that program's demand increase for the past year. The result will be that when demand is projected to exceed the cap, no program will face a cut in funding. Instead, one or more programs will be unable to meet their projected increase in demand. Again, the logical determination that the program that is over its individual cap should be the one that is reduced begs the question of why an overall cap is necessary or even helpful to program administration.

Reducing disbursements by the same dollar amount for each program would have vastly inequitable effects. At current funding levels, a cut of $200 million from each program would represent more than 50% of the Rural Health Care program, but only 5% of the High Cost program.

The question of how to prioritize funding if caps are exceeded lays bare the essential problem with the concept of an overall cap covering all USF programs: the programs are so dissimilar that it is not possible to create an objective comparison of the efficiency, importance or need of one program compared to another.

Prioritizing based on cost-effectiveness is not possible without a quantifiable definition of cost-effectiveness. Indeed, it is not possible to comment on such a solution until "cost-effectiveness" has a concrete meaning.

The Commission should not prioritize funding among programs based on the estimated improper payment rates. Such prioritization would disadvantage those programs where applicants cannot afford teams of regulatory lawyers to interpret program rules and read relevant court and Commission orders to ensure compliance with the Commission's complex rules. Many improper payment errors are simply "paperwork" errors, not substantive. Others are the fault of USAC and should not be held against program beneficiaries. Further, improper payment procedures, which are not public, play a critical role in how many improper payments are identified in the first place. Those measures are not necessarily reflective of the integrity of each program.

Prioritizing based on type of service is not possible because each program provides more than one type of service. Likewise, we cannot prioritize based on the rurality of the recipient, because each program has many recipients. At this time the programs do not track the relative rurality of recipients; trying to quantify the relative overall rurality of recipients for each program would add considerable complexity to program administration and require substantial expansion of program rules.

IV. CONCLUSION

E-mpa appreciates the opportunity to comment on this NPRM. E-mpa reiterates its opposition to the proposed overall cap, as well as the proposed merger of the E-Rate and RHC caps. The Commission should not adopt either of these proposals, but instead should address the underlying problems with the contribution methodology and the RHC program.

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