Public Knowledge

October 15, 2019

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

Re: Universal Service Contribution Methodology, WC Docket No. 06-122; Establishing the Digital Opportunity Data Collection, WC Docket No. 19-195; Modernizing the FCC Form 477 Data Collection Program, WC Docket No. 11-10; Bridging the Digital Divide for Low-Income Consumers, WC Docket No. 17-287.

Dear Ms. Dortch:

On October 10, 2019, Phillip Berenbroick and Jenna Leventoff of Public Knowledge; Amir Nasr of New America's Open Technology Institute; and John Windhausen of the Schools, Health & Libraries Broadband Coalition met with Preston Wise of Chairman Ajit Pai's office.

On October 10, 2019, Phillip Berenbroick and Jenna Leventoff of Public Knowledge; Amir Nasr of New America's Open Technology Institute; John Windhausen of the Schools, Health & Libraries Broadband Coalition; Leo Fitzpatrick of Free Press; and Olivia Wein of the National Consumer Law Center met with Ryan Palmer, Trent Harkrader, Karen Sprung, Hayley Steffen, and Veronica Garcia-Ulloa of the Wireline Competition Bureau.

On October 11, 2019, Phillip Berenbroick and Jenna Leventoff of Public Knowledge; Eric Null of New America's Open Technology Institute; John Windhausen of the Schools, Health & Libraries Broadband Coalition; Leo Fitzpatrick of Free Press ("public interest advocates") met with Travis Litman of Commissioner Jessica Rosenworcel's office. Each of the meetings addressed matters in the above-captioned proceedings.

The public interest advocates explained that the Federal Communications Commission's ("FCC" or "Commission") proposal to cap the Universal Service Fund ("USF")[1] runs contrary to the Chairman's stated goal of closing the digital divide and the agency's congressionally mandated universal service mission. Capping the USF will unnecessarily obstruct the Commission's efforts to use the USF to close the digital divide. That is why the House of

[1] Universal Service Fund Contribution Methodology, WC Docket 06-122, *Notice of Proposed Rulemaking*, 34 FCC Rcd 4143 (2019).

Representatives voted to withhold funds from the FCC for the purpose of enforcing the proposed USF cap.[2]

The Commission's proposal runs contrary to Congress' intent. The Communications Act of 1934 sets forth the fundamental job of the Federal Communications Commission: It was established "For the purpose of regulating interstate and foreign communication by wire and radio so as to make available, so far as possible, ***to all people*** of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges . . . ."[3] This principle of universal service led to the creation of the Lifeline program in 1985 to ensure that low-income consumers could overcome the cost-barriers to connection to essential communication service. The Telecommunications Act of 1996 codified the Lifeline program as well as three other universal services programs, the High Cost program to ensure rural and high cost areas have access to affordable telecommunication and information services, the Schools and Libraries (E-Rate) program and Rural Health Care program to ensure these institutions have access to advanced telecommunication and information services.[4] These four Universal Services Programs address unique and different challenges in the provision of universal access and connectivity to essential communications services that Congress identified as critical to the nation's interests.

The Telecommunications Act of 1996 also set forth a Universal Services funding mechanism to ensure that the four USF programs could achieve their purposes. Congress directed that carriers contributing to the USF should do so "on an equitable and non-discriminatory basis, to the ***specific, predictable, and sufficient mechanism*** established by the Commission to preserve and advance universal service."[5] Furthermore, carriers receiving universal service support "shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. ***Any such support should be explicit and sufficient to achieve the purpose of this section***."[6] Access to universal service supports services that "are essential to education, public health, or public safety."[7] These are public policy goals that are baked into the founding of this Commission: "to make available, so far as possible, to all people . . . of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communications service . . .for the purpose of promoting safety of life and property through the use of wire and radio communications."[8] The placement of an overall, arbitrary cap on the four Universal Service programs runs counter to the Commission's mandate from Congress to ensure universal access and affordable connectivity to poor consumers, schools and libraries and rural health care institutions and exacerbate broadband connectivity in rural and hard to reach areas of the nation.

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[2] *See* Financial Services and General Government Appropriations Act, 2020, H.R. 3351, 116th Cong. H. Amdt. 483 (2019) (agreed to by voice vote on June 25, 2019). *See also*, 165 Cong. Rec. H5130-31 (June 25, 2019) (statements of Rep. Pocan and Rep. Quigley).
[3] 47 U.S.C. §151 (emphasis added).
[4] 47 U.S.C. § 254(b).
[5] 47 U.S.C. § 254(d) (emphasis added).
[6] 47 U.S.C. § 254(e) (emphasis added).
[7] 47 U.S.C. § 254(c)(1)(A).
[8] 47 U.S.C. § 151.

Contrary to closing the digital divide, an overall cap would harm the ability of the universal service programs to achieve their important missions.

Additionally, adopting an overall cap on the entire USF would be directly contrary to the specific language of Section 254. Section 254 directs the Commission to base its policies for the preservation and advancement of universal service on seven core principles. Principle (5) states:

> (5) Specific and Predictable Support Mechanisms.—There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.[9]

These words appear again in section 254(d), where Congress directs that "every telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service."[10] The words "explicit and sufficient" appear again in section 254(e).[11] The repetition of these words reflects Congress' strong intention that the Commission should focus on ensuring that all consumers are connected. The proposed cap on the USF would undermine the Commission's ability to achieve Congress' goal.

A cap on the USF would also conflict with the Congressional directive that support must be "predictable." Among other problems, the implementation of a cap would be very difficult. A cap on the USF could sabotage the predictability of support for the USF programs by pitting the programs against one another, leading to uncertainty regarding whether those programs can sufficiently achieve their missions of closing the digital divide.

By enacting section 254, Congress intended that universal service support must be "specific, predictable and sufficient" to serve the needs of low-income consumers, high-cost areas, schools, libraries and healthcare. These programs should not be limited or delayed by an arbitrary cap on the USF.

By the FCC's own admission, it is unaware of the true extent of the digital divide. It is well accepted that the Commission's broadband availability maps are inaccurate and almost certainly classify millions of Americans who lack access to broadband as served. It is unwise and shortsighted to consider a cap for the agency's universal service fund programs while the agency lacks accurate data regarding the true magnitude of one of the problems the USF was designed to address.[12]

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[9] 47 U.S.C. § 254(b)(5).
[10] 47 U.S.C. § 254(d).
[11] 47 U.S.C. § 254(e).
[12] The Commission's data on broadband availability may not accurately depict the state of deployment in Tribal lands in particular. *See* Government Accountability Office, *FCC's Data Overstate Access on Tribal Lands* (2018), https://www.gao.gov/assets/700/694386.pdf.

The high cost of broadband remains a leading barrier to adoption.[13] Studies consistently show that cost is one of the biggest barriers—if not *the* biggest barrier—to broadband adoption. Research from the National Telecommunications and Information Administration showed that of the households making less than $25,000 annually that lacked broadband at home, 51 percent cited cost as the most important reason they did not have that access, compared to 41 percent who said it was due to a lack of interest.[14] Further, a mere 42 percent of households earning less than $20,000 per year had fixed wired home internet service as of the end of 2017, compared to 83 percent of households that earn more than $100,000 annually.[15] The issue of affordability is crucial, because even if an area is deemed as fully "served" by the Commission, many may not be able to afford broadband service deployed in that area.

Imposing an arbitrary limit on the USF would make it even more difficult to increase adoption rates among low-income households. The Commission's recent Notice of Proposed Rulemaking proposing the Connected Care Pilot Program reiterates the fact that adoption is a significant barrier to broadband access, and as telehealth applications become more ubiquitous, there will be demand for the USF to step in address the high cost of adoption for low-income households.[16]

Further, each of the four universal service programs already has a mechanism in place to control costs. Establishing an additional bureaucratic barrier to clear before the FCC can act to direct USF support would be unnecessary, create uncertainty regarding whether the USF can

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[13] Monica Anderson, Pew Research Center, *Mobile Technology and Home Broadband 2019* (2019), https://www.pewinternet.org/2019/06/13/mobile-technology-and-home-broadband-2019/ (finding that more than one-in-five non-broadband adopters cite the cost of service as the most important reason for not adopting broadband).

[14] Rafi Goldberg, National Telecommunications and Information Administration, *Unplugged: NTIA Survey Finds Some Americans Still Avoid Home Internet Use* (2019), https://www.ntia.gov/blog/2019/unplugged-ntia-survey-finds-some-americans-still-avoid-home-internetuse. While the research does report that Americans also cite a lack of interest as the main reason for a lack of home broadband access, this does not negate the significance of affordability to the digital divide. Interest and cost are often inextricably connected. *See* Benton Institute for Broadband & Society, *The Complexity of 'Relevance' as a Barrier to Broadband Adoption*, (2016), https://www.benton.org/blog/complexity-relevance-barrier-broadband-adoption; Benton Institute for Broadband & Society, *The Ability to Pay for Broadband* (2019), https://www.benton.org/blog/ability-pay-broadband.

[15] Written Testimony of Dana J. Floberg Before the Congress of the United States House of Representatives Committee on Energy and Commerce Subcommittee on Communications and Technology, "Legislating to Connect America: Improving the Nation's Broadband Maps," at 12 (September 11, 2019), https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/Floberg_ Testimony.pdf.

[16] Promoting Telehealth for Low-Income Consumers, WC Docket No. 18-213, *Notice of Proposed Rulemaking*, 34 FCC Rcd 5620, 5624, 5627-28 ¶ 13, n.27 (2019) (stating "for many Americans, the cost of connected care services, *including broadband connectivity costs*, may serve as an obstacle to the adoption of connected care services" (emphasis added)).

achieve its congressionally mandated mission, and merely serve as a stumbling block to the agency's efforts to close the digital divide. Further, industry commenters have argued that the proposed overall cap on USF would bring uncertainty and reduce the predictability of the support levels the four programs offer to those who rely on them.[17] As such, commenters have argued, the Commission declined to combine distinct sections of USF because of the likelihood of it damaging predictability as recently as December 2018, when the Commission opted not to join cost-based high cost support and CAF-ICC.[18] The Commission itself noted in March 2018 that unpredictable funding levels could decrease the incentives of USF recipients to invest.[19]

The Commission would be similarly shortsighted if it attempted to cap the Lifeline program. In the 2016 Lifeline Modernization Order, the Commission adopted a budget mechanism to monitor spending in the Lifeline program.[20] In 2017 the FCC issued a Notice of Proposed Rulemaking seeking comment on capping the Lifeline program.[21] The record reflected overwhelming opposition to the Commission's proposal. Consumer and public interest advocates, civil rights organizations, unions, farmers, facilities-based providers, and resellers all strongly opposed Lifeline budget cap proposal.[22] Lifeline-eligible households, current subscribers, and

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[17] Comments of CTIA, WC Docket No. 06-122 (filed July 29, 2019), at 5 ("The Commission has recognized that predictability is essential for those who receive support from the four USF programs, as certainty of funding is necessary to help support recipients plan, invest, and innovate. As described below, however, an overall USF cap may introduce uncertainty for both program participants and beneficiaries, and reduce the Commission's flexibility to respond to the evolving needs of low-income consumers and rural communities.").

[18] Comments of NTCA—the Rural Broadband Association, WC Docket No. 06-122 (filed July 29, 2019) at 13 ("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."); *See also* Comments of WTA—Rural Broadband Advocates, WC Docket No. 06-122, at 4 (filed July 29, 2019) (citing the order where the Commission "found that a consolidated, all-encompassing budget for the rate-of-return support mechanisms that comprise a portion of the CAF Program… was 'no longer appropriate, given the different obligations and terms of the various rate-of-return funding streams.'").

[19] *See* Connect America Fund, *Report and Order, Third Order on Reconsideration, and Notice of Proposed Rulemaking*, WC Docket Nos. 10-90, 14-58, 07-135, CC Docket No. 01-92, 33 FCC Rcd 2990, 3025 ¶ 81 (2018), Comments of CTIA at 5.

[20] *See* Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Connect America Fund, WC Docket Nos. 11-42, 09-197, 10-90, *Third Report and Order, Further Report and Order, and Order on Reconsideration*, 31 FCC Rcd 3962, 4108-4110 ¶¶ 395-403 (2016).

[21] *See* Bridging the Digital Divide for Low-Income Consumers, Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, WC Docket Nos. 17-287, 11-42, 09-197, *Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry*, 32 FCC Rcd 10475, 10510-12 ¶¶ 104-110 (2017).

[22] *See e.g.*, WC Docket No. 17-287, Comments of TracFone at 58-61, Comments of Sprint at 2-8, Comments of Cox at 9-10, Comments of USTelecom at 8-9, Comments of INCOMPAS at 12-14,

providers offering Lifeline-supported service would be harmed if the Commission adopted a Lifeline budget cap. Creating a Lifeline budget cap would create unnecessary uncertainty in the program, act as a deterrent to Lifeline provider participation in the program, and will sabotage two of the Commission's priorities: promoting competition and choice in the Lifeline market, and incentivizing investment in broadband networks. Lastly, rationing Lifeline is contrary to the goal of universal service and stifles the program's ability to bring affordable communications to the poor.

The public interest advocates explained that the record in this proceeding is clear and overwhelming in its opposition to the NPRM's proposals to cap the USF and combine the budgets of the E-Rate and Rural Health Care programs. Additionally, claims that a USF cap will result in more efficient USF programs are unsupported by any evidence. Nor is there any support that a USF cap will make the programs more effective at achieving their missions.
The Commission should abandon this proceeding and focus its attention on strengthening the USF, rather than exhausting time and resources on a proposal that runs counter to the USF's mission and Congress' intent.

In accordance with Section 1.1206(b) of the Commission's rules, this letter is being filed with your office. If you have any further questions, please contact me at (202) 861-0020.

Respectfully submitted,

/s/ Phillip Berenbroick

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Comments of ITIF at 7-8, Comments of Free Press at 49-56, Comments of OTI at 29-30, Comments of NHMC at 23-25, Comments of Multicultural Media, Telecom and Internet Council and Lifeline Supporters at 14-15, Comments of Asian Americans Advancing Justice at 2-3, Comments of National Association for the Advancement of Colored People at 2, Letter from Rainbow PUSH Coalition at 2, Comments of National Housing Conference at 3, Letter from National Grange at 3, Letter from National Association of American Veterans at 2, Comments of New York State Public Sevice Commission at 2, Comments of New York City at 6, Comments of Oregon Citizens Utilities Board at 3, Comments of Randy May at 6, Letter from America's Health Insurance Plans at, Letter from LGBT Technology Partnership at 3.

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