

October 9, 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.**

Dear Ms. Dortch:

On October 7, 2019, Phillip Berenbroick and Jenna Leventoff of Public Knowledge, Francella Ochillo of Next Century Cities, and Amir Nasr of New America’s Open Technology Institute (“public interest and municipal advocates”) met with Arielle Roth of Commissioner Michael O’Rielly’s office to discuss matters in the above-captioned proceeding.

The public interest and municipal 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 Representatives voted to withhold funds from the FCC for the purpose of enforcing the proposed USF cap.²

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 woefully 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 the problem the USF was designed to address.³ Further, while the high cost of broadband remains a leading barrier to adoption,⁴

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

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 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 (Sep. 2018), <https://www.gao.gov/assets/700/694386.pdf>.

⁴ 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/>

imposing an arbitrary limit on the USF would make it even more difficult to increase adoption rates among populations in need. 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.⁵ As a result, the true demands on the USF are unknown, but likely to grow.

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 increased USF support is unnecessary, creates uncertainty regarding whether the USF can achieve its congressionally mandated mission, and will merely serve as a stumbling block to the agency’s efforts to close the digital divide. Further, 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.⁶ As 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.⁷ The Commission itself noted in March 2018 that unpredictable funding levels could decrease the incentives of USF recipients to invest.⁸

The public interest and municipal 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

(finding that more than one-in-five non-broadband adopters cite the cost of service as the most important reason for not adopting broadband).

⁵ 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)).

⁶ 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.”).

⁷ 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.’”).

⁸ Comments of CTIA at 5.; *See, e.g.*, In re 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).

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 addressing the contribution side of 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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cc: Arielle Roth