**State of California** **Public Utilities Commission**
**San Francisco**

**M E M O R A N D U M**

**Date :** **July 26, 2019**

**To :** **The Commission**
**(Meeting of August 1, 2019)**

**From :** **Helen M. Mickiewicz**
**Assistant General Counsel, Legal Division**

**Sindy Yun**
**P.U. Counsel, Legal Division**

**Ravneet Kaur**
**Public Utilities Regulatory Analyst, Communications Division**

**Subject:** **Filing of Comments at the FCC: Notice of Proposed Rulemaking to Set An Overall Cap on the Universal Service Fund**

**RECOMMENDATION:** The California Public Utilities Commission (CPUC) should file comments in response to the *Notice of Proposed Rulemaking* (*NPRM*), issued by the Federal Communications Commission (FCC), which seeks to implement an overall budget cap on the Universal Service Fund (USF).[1] The CPUC should oppose an overall cap of the USF as it could negatively affect CPUC public purpose programs that are complementary to federal USF programs. Instead of implementing an arbitrary cap, the CPUC should recommend the FCC take measures to better target spending in each program to prevent waste. Furthermore, the FCC should reform the contribution mechanism to broaden the base of services that are assessed for contribution. An overall cap is not the right approach to address concerns about spending. It would be a temporary solution for an issue that will only get worse as the base of assessed services shrinks.

**FACTS:** On May 31, 2019, the FCC issued a *NPRM* seeking comments on a proposed overall budget cap on the USF, including changes to individual USF programs. There are four individual programs under the USF umbrella:

[1] *Notice of Proposed Rulemaking*, WC Docket No. 06-122 (rel. May 31, 2019).

- *High Cost Fund* also known as the Connect America Fund: this funds mobile and fixed broadband-capable networks in rural areas. The program has a budget of no more than $4.5 billion per year that is not adjusted for inflation.

- *E-Rate program*: this provides discounts to schools and libraries to ensure affordable access to high-speed broadband service. In 2018, the program budget was capped at $4.06 billion that is adjusted for inflation.

- *Federal Lifeline program*: this provides discounts for voice and broadband services to qualifying low-income households. In 2018, the program budget was $2.279 billion adjusted annually for inflation.

- *Rural Health Care program*: this provides funding to eligible healthcare providers for telecommunications and broadband services necessary to provide health care services. In 2018, the program budget was capped at $581 million that is adjusted for inflation.

By adopting an overall budget cap, the FCC aims to "strike the appropriate balance between ensuring adequate funding for the universal service programs while minimizing the financial burden on ratepayers and providing predictability for program participants."[2] The following are the issues in the *NPRM* on which staff recommends the CPUC should submit comments.

**Proposed Overall Cap on USF**

- *Cap Amount*: Should a USF cap of $11.42 billion, the sum of the 2018 authorized budgets of the four USP program, be adopted?

- *Funding Prioritization*: How to prioritize funding among the four universal service programs and other possible future pilots if such prioritization is necessary to reduce expenditures below the capped level.

**Proposed Changes to Individual USF Programs**

- Should a "self-enforcing cap" be established for each of the four USF programs in order to provide more predictability to USF spending?

**<u>DISCUSSION AND RECOMMENDATIONS</u>:** The CPUC has complementary programs to the four USF programs that are either directly or indirectly affected by funding changes to the USF programs. For example, the California High Cost Fund-A (CHCF-A) is a residual program that replaces dollar-for-dollar any reductions in federal funding for the CHCF-A participants. Staff recommends that the CPUC file comments

[2] *Id.* at 4.

opposing the overall cap on USF because it is not an appropriate method to achieve adequate funding for the USF programs and limit the burden on ratepayers.

The CPUC should identify how its programs are directly or indirectly tied to the USF programs and should identify the potential impacts an overall cap could impose on the CPUC programs and California ratepayers. Specifically, California would be impacted by the FCC's proposal to prioritize funding among the four federal programs, which could result in funding cuts for one USF program to provide more funding for another. For example, federal Lifeline funding may be cut to provide more funding for the High Cost Fund. These types of changes would foster uncertainty for both program participants and state programs themselves. Ratepayers may have to make up for funding cuts at the federal level to ensure the state programs can continue to meet their statutory requirements. Thus, this proposal provides no certainty that an overall cap would minimize the burden on ratepayers. Rather, a cap could simply cause the cost burden to shift from the federal level to the states.

The CPUC should also oppose the proposal of an individual cap for the Lifeline program itself. An individual cap for Lifeline may prevent it from helping consumers that need it most. This program is not like the other USF programs in that, its enrollment is directly affected by economic conditions. In an economic downturn, enrollments will naturally increase, and a cap could prevent the program from helping consumers when they need it most. Further, the "right" cap amount would be difficult to calculate. Because participants enroll in Lifeline on a rolling basis, the level of participation fluctuates constantly. An eligible consumer can apply for a discount at any time, making expense projections difficult. Other USF programs take applications at certain deadlines with hard cut-offs, allowing for more certainty in projections. The Lifeline program differs as it serves low-income consumers and the total eligible low-income consumers can change depending on economic conditions.

To control spending and minimize the burden on ratepayers, goals the CPUC fully supports, the CPUC should recommend that instead of adopting an arbitrary cap, the FCC should do the following: (1) better target spending in each program to prevent waste, and (2) reform the USF contribution mechanism so that a broader base of services is assessed to provide adequate funding. The FCC can better target spending by collecting more accurate data of where funding is needed. For example, in a newly drafted *Report and Order*, the FCC is proposing a new broadband deployment data collection process.[3] If the FCC can better understand where broadband deployment is lacking, it can more effectively target the spending for areas that truly need it. This would prevent wasteful spending in programs like the High Cost Fund.

[3] Draft *Report and Order and Second Further NPRM* , WC Docket No. 19-195, No. 11-10, July 11, 2019.

Along with better targeted funding, the FCC should reform the USF contribution mechanism. A shrinking base of services is the current source of revenues assessed in the contribution mechanism. These revenues have declined from $81 billion in 2007 to $55 billion in 2017.[4] Continued reliance on the current contribution mechanism is likely not sustainable long-term. It is time for the FCC to reform the contribution mechanism to include more services whose revenues are assessed, especially because of a disconnect between which services are assessed and which services are subsidized by the USF programs. For example, the FCC has explicitly declined to assess surcharges on broadband Internet access service (BIAS) even though almost all the USF programs subsidize only broadband services. The FCC's decision to classify broadband as an "information service" has further complicated potential efforts both to include broadband in the Lifeline program, and to provide funding for doing so. The FCC should address this discrepancy by expanding the base of services to fund the USF, rather than continuing to rely inequitably on a shrinking number of ratepayers who purchase the assessed services that fund the USF.

Finally, because staff cannot obtain CPUC approval to file comments until the Commission's Voting Meeting on August 1, 2019, these comments will be filed sometime after the July 29, 2019 deadline the FCC has set.

[4] Comments of Gila River Telecommunications, Inc. at 8, WC Docket 06-122.