FCC E-Rate NPRM Primer & Instructions for Advocating on This Issue

**BACKGROUND:**

*Earlier this summer, the Federal Communications Commission (FCC) released a Notice of Proposed Rulemaking (NPRM) related to the schools and libraries program, known as E-Rate. In the NPRM, the republican FCC Commissioners pose and consider setting an overall cap for the programs financed under the Universal Service Fund (USF). As a reminder, the USF is a system of telecommunications subsidies and fees designed to promote and expand universal access to telecommunications in the US. It is authorized by the Telecommunications Act and was created to support and serve four distinct programs: schools and libraries (E-Rate), rural health care, lifeline, and Connect America Fund.*

*Specific to the current NPRM and E-Rate, this proposal would place limits on the amount of money the E-Rate program could make available to support school and library efforts to improve internet access. Unlike previous proposals we have responded to at the FCC, which have been narrow in scope and focused on E-Rate, this latest proposal targets the broader umbrella program USF and its component programs (as listed above). Specific to E-Rate and our focus, the proposal would pair E-Rate with Rural Healthcare under a single cap. Although E-Rate is currently undersubscribed, school and library demand will only continue to grow, and even if these connectivity prices keep falling, the reality of increasing demand and skyrocketing costs with rural health care create a scenario where one USF program is pitted against another, with rural schools competing with rural health care for connectivity needs*

**SUMMARY OF RULE:**

In explaining its rationale for considering the programmatic changes and funding caps, the FCC claims the proposal would **“**enable the Commission to evaluate the financial aspects of the four USF programs in a more holistic way, and thereby better achieve the overarching universal service principles Congress directed the Commission to preserve and advance”, to “determine the most efficient and responsible use of these federal funds”, and to “promote meaningful consideration of spending decisions by the Commission, limit the contribution burden borne by ratepayers, provide regulatory and financial certainty, and promote efficiency, fairness, accountability, and sustainability of the USF programs.” The rule points out that all four programs already operate with a cap, or at least a target, and relies on the fact that E-Rate and Lifeline, in particular, are operating well below their respective caps and budgets; that Rural Health Care demand has steadily increased since 2012 and is approaching its current cap; and that high cost fund/Connect America Fund demand currently exceeds its budget.

The tone of the NPRM indicates that the Commission’s majority already believes that capping the overall USF is a good idea. Given the intent and purpose of the NPRM process, we are concerned that this proposal seems to have not only already reached its conclusion, but is using the public comment period as a mere formality, rather than a meaningful opportunity to engage in a full conversation around potential merits and pitfalls of the proposed funding caps. The majority Commissioners write “We believe capping the Fund overall will 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. Moreover, setting an overall cap will enable the Commission to take a more holistic view when considering future changes to the universal service programs and their impact on overall USF spending.” They justify the cap, in part, by claiming it is an attractive policy because it will force a consideration of each program’s relative effectiveness. We are concerned this proposal indicates a hyper reliance on overall cost and spending, with a priority on spending constraints, and arbitrarily limits full conversation about truly evaluating program effectiveness.

After framing its proposal, the majority Commissioners use the NPRM to seek feedback on a list of issues in five broad buckets: general merit and logistics of a funding cap; implementation of an overall cap; tracking USF demand; reduction mechanisms; and proposed changes to individual USF programs. For purposes of brevity and the specifics of the NPRM to which ASBO International and AASA will respond, our summary focuses only on the questions the Commission poses as it relates to proposed changes for individual USF programs, including E-Rate.

When it comes to measuring cost effectiveness, the FCC requests “information and data related to the economic efficiency costs associated with increasing contributions above current levels. Estimating the benefits of these programs could allow us to prioritize them by their cost effectiveness. Are there ways to compare effectiveness across the programs more holistically in order to measure program efficiency? How should we balance the benefits of the different programs with the costs of increased contributions by ratepayers? We seek concrete proposals that illustrate how program effectiveness would be measured and how it would affect the allocation of contributions between the individual programs. Weighing the costs of increased contributions against the estimated benefits of the programs could allow the Commission to better assess whether funds are allocated efficiently.” In justifying their proposal to combine the E-Rate and rural health care (RHC) under one cap, the FCC claims it could be justifiable, “…given that both programs promote the use of advanced services to anchor institutions that have similar needs for high-quality broadband services. Additionally, many of these institutions often operate through consortia for the purpose of simplifying applications for program support and lowering the costs for participating members.”

**SUMMARY OF ASBO/AASA OPPOSITION**: We are concerned with—and opposed to—this simplistic approach to a significant program overhaul, seemingly for administrative simplicity. We are concerned that the realities of funding and demand trends in E-Rate and rural health care are at odds. Yes, the E-Rate program is undersubscribed from its current budget, but we know that demand for equitable access to broadband in schools is only going to continue to grow. And even granting the generous assumption that actual costs of school connectivity are falling and can help offset the increasing demand, the reality of RHC demand and costs is an all-but-certain road map highlighting how the pairing of these programs under one cap is a head-on collision.

Our opposition falls in three broad topics:

* **Creates arbitrary competition, pitting USF programs against each other in a connectivity version of ‘Hunger Games’**. An overall USF cap set at $9.6 billion or less would pit all four programs into competition with each other. The competition emerges when demand exceeds the proposed cap, and the Commission would be in the position of deciding which programs deserve funding. The proposal creates significant uncertainty year-to-year for all who participate in and benefit from USF programs. Specific to E-Rate and RHC, this means schools and libraries, along with rural health care providers, would not know year to year what they stand to receive, independent of eligibility, resulting in instability and uncertainty and undermining their ability to plan and budget accordingly. Part of our concern with this approach is that it could be perceived as the Commission intending to purposefully nourish such uncertainty to artificially and arbitrarily suppress program demand and participation. Using federal policy to create budget uncertainty to suppress demand is shortsighted and completely disregards the intent and focus of the underlying statute, connectivity. Further, when you look at the overlap of USF beneficiaries, the reality is that many rely on more than one USF program. This proposal pits USF programs against each other.
* **Pits Schools/Libraries Against Rural Hospitals and Clinics**. While E-Rate demand is currently below its authorized $4 billion cap, demand could continue to grow substantially as schools and libraries seek to upgrade their internal connections to achieve the one Gbps per thousand student goal established in the 2014 E-Rate Modernization Order or as new eligible services are added. Rural Health Care program beneficiaries have ramped-up their demand significantly in recent years, exceeding that program’s cap in 2016. RHC’s actual commitments have increased from $83 million in 2010 to $521 million in 2017. In 2018, the Commission raised the RHC program’s cap to $571 million and demand is estimated to quickly outstrip that number. If the Rural Health Care program is placed under a single cap with E-Rate, there is every reason to presume that RHC will continue growing beyond its 2018 authorized cap and will begin to consume the unused part of E-Rate funding almost immediately. This establishes a troubling precedent of one program taking from another that may lead to a permanent change in the E-Rate’s cap level. The goals of E-rate and Rural Health Care differ significantly, making the combining of their caps unnecessary and potentially competitive. Administrative ease is not an excuse for wreaking havoc with E-rate beneficiaries’ expectations or threatening the critical role E-Rate played in expanding and supporting school connectivity.
* **NPRM Proposal Stymies E-Rate Funds and Stands to Expand Confusion Among Beneficiaries**. Before 2014, E-Rate demand was more than double the $2.4 million available under its annual cap and no money was available for internal connections. In 2014, the FCC approved two E-Rate modernization orders that, among other things, raised E-Rate’s annual cap to $4 billion and reserved at least $1 billion annually for internal connections. The 2014 orders also established a formula for internal connections/Wi-Fi support (now called Category 2) that provided each school district and private school with $150 per pupil for a five-year period. Category 2 allocations for public libraries were based on square footage. The first five-year cycle of this Category 2 formula’s operation is essentially a pilot, with the FCC required to take action in order for the formula to continue to operate. In February 2019, the FCC released a [report](https://docs.fcc.gov/public/attachments/DA-19-71A1.pdf) on the E-rate’s Category II (CII) formula that concluded that the formula was a preferable alternative to the previous application system. Specifically, the report found that the formula ensured that more schools and libraries were benefitting from E-Rate and that rural, urban and suburban schools and libraries were receiving Category 2 support at equivalent rates. The report did not address whether the formula itself was sufficient to meet the beneficiaries’ internal connections needs. School E-rate beneficiaries believe, based on anecdotal evidence and surveying, that the $150 cap for Category 2 is insufficient:
  + It is not enough to cover the costs of many schools’ projects to improve internal connections and construction costs associated, as costs vary greatly given locale (rural, urban, geographic diversity, etc.). Additionally, Costs for Category 2 vary widely, largely because of labor costs, which this formula does not take into account.
  + An FY2018 [survey](https://www.fundsforlearning.com/blog/2019/05/suggestions-for-fy2020) of E-rate applicants found that the per-pupil budget fell short of what schools needed for Category 2 as 44.9% of school respondents indicated that the budget should be set at $250 per student; another 24.3% indicated it should be set at $350 per student.
  + There is concern that the $150 per-pupil “budget” keeps demand for Category 2 artificially low and also helps explain, in part, why we have not reached the modernized E-rate cap as of yet.

While the beneficiaries believe that the Category 2 formula is imperfect, they are concerned that drastic changes such as a new sub-cap, new overall USF cap, and/or new priorities could wreak havoc with the program and cause great uncertainty for beneficiaries. Right now, there is sufficient room under the $4 billion annual E-Rate cap to raise the $150 per pupil allocation by $250 or more if the Commission determines it is warranted. If E-Rate is merged financially with the Rural Health Care program, there may not be sufficient funding under a new sub-cap to provide schools the money that they truly need for internal connections. There are serious concerns that capping the USF and sub-capping E-rate and HRC is intended to sow confusion and create uncertainty in an attempt to discourage beneficiaries from applying to the program(s) and artificially suppress demand in order to drive down the contribution factor.

**WHAT CAN YOU DO**:   
Participate in this advocacy opportunity with ASBO/AASA to protect E-Rate funding. Using the ASBO/AASA template, please take the time to submit your own comments. Provide information, as prompted, specific to your district. Save the document on your personal or district letter head (depending on what is most appropriate if you are advocating as an individual citizen or on behalf of your district), and then submit the final document for submission, either directly to the FCC or to ASBO/AASA staff.