Before the Federal Communications Commission

Washington DC 20554

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

Comments of the Education & Libraries Networks Coalition (EdLiNC)

I. INTRODUCTION

The Education and Library Networks Coalition (EdLiNC)[1], a group comprised of the leading public and private education associations and the American Library Association that was formed in 1995 to advocate for the interests of schools and libraries in the Telecommunications Act of 1996, is pleased to provide these comments to the Commission's Notice of Proposed Rulemaking on establishing an overall cap and sub-caps for the universal service fund's programs[2]. Since the enactment of the E-Rate as part of the Telecommunications Act of 1996, EdLiNC has pursued a mission of promoting and improving the E-Rate to fulfill its mission of accelerating the deployment of advanced telecommunications and information services in schools and libraries, and has filed in every Commission rulemaking related to the program. EdLiNC also filed comments in the Commission's 2016 Lifeline Modernization proceeding, focusing our proposals on elements of this rulemaking related to bridging the homework gap.

As is reflected in our comments below, EdLiNC believes: 1) The E-Rate program has been and continues to be extremely successful in its mission of promoting digital equity by connecting America's schools and public libraries to broadband, which has improved the education and lives of millions of children, educators and library patrons; 2) The Commission's proposal to impose an overall cap on all universal service fund (USF) programs would inevitably lead to

[1] See Appendix A for complete list of EdLiNC members.
[2] *Notice of Proposed Rulemaking*, WC Docket No. 06-122 (2019) (Notice).

unnecessary and damaging competition among and between the four existing universal service programs; and 3) The Commission's proposal to merge the spending caps for the E-Rate and Rural Health Care (RHC) programs into a single cap would result in a de facto combining of the two programs in contravention of the clear intent of the Telecommunications Act of 1996, which authorized both programs and would almost immediately establish a dangerous precedent of allowing one universal service program to access and use another program's designated funds. For all of these reasons, we urge the Commission to desist from this rulemaking and not proceed with any of the proposals advanced in this Notice.

II. EDLINC BELIEVES THAT THE E-RATE PROGRAM HAS BEEN AND CONTINUES TO BE EXTREMELY SUCCESSFUL IN ITS MISSION OF CONNECTING AMERICA'S SCHOOLS AND PUBLIC LIBRARIES TO BROADBAND, WHICH HAS IMPROVED THE LIVES OF MILLIONS OF CHILDREN, EDUCATORS AND LIBRARY PATRONS.

Since its authorization as part of the Telecommunications Act of 1996[3] and its first funding wave in 1998, the E-Rate program has been focused on connecting to the Internet all public and private K-12 schools and all public libraries. Over the last two decades, E-Rate has committed approximately $49 billion to applicants and helped raise the public school classroom connectivity rate from 14% in 1998 to nearly 100% today. Before the enactment of the Telecommunications Act of 1996, before the 1996 Telecom Act, about 20% of libraries had public internet access while nearly 100% have access today. Private schools also now enjoy near universal Internet connectivity.

The Commission modernized the program in 2014, refocusing funding on ensuring adequate bandwidth within every classroom and library and establishing short term and long term bandwidth goals. Since the Commission's adoption of the E-Rate modernization orders, E-Rate's beneficiaries have moved quickly to meet the short-term bandwidth goals of 100 Mbps/1000 students and many have made significant inroads into achieving the longer term goal of 1

[3] Telecommunications Act of 1996, Pub. LA. No. 104-104, 110 Stat. 56 (1996), Section 254 (h).

Gbps/1000 students. According to EducationSuperhighway, the percentage of classrooms meeting the initial bandwidth target grew from 30% in 2013 – the year before modernization – to 98% in 2018.[4] Additionally, CoSN's Annual Infrastructure Report from 2018 found that over one-third of school district respondents had met the long-term bandwidth target.[5]

Beyond the numbers, the individual stories from school and library beneficiaries of the E-Rate demonstrate the program's importance and continuing relevance:

- In Mississippi's Jones County School District, a very rural district that also ranks as the state's seventh largest, E-Rate modernization provided the district with sufficient funding to upgrade its network for the first time in eight years. Jones County used its E-Rate dollars to replace aging 100 Mbps switches with 1 Gbps switches, purchased 5G capable access points that provide connectivity in all areas, and laid fiber between all local area network sites. Next year, the district plans to upgrade Wi-Fi in its elementary schools. According to the district's IT Director: "The E-Rate program, undoubtedly, is one of the best funding resources we have to support the educational process for schools and libraries."
- Further north in Mississippi, the Columbus Municipal School District, which it's Director of Information Systems describes as "a high poverty district with a declining base," E-Rate allowed the district to build a $422,000 district-wide wireless network that it "could never have afforded otherwise." Thanks to E-Rate, the district replaced "an old piecemeal wireless network" with a new robust one that has "proven, extremely reliable in our day-to-day learning environment as well as during online testing." As its Director of IT Systems observed: "It would have been impossible to provide sufficient network infrastructure to support 21st Century learning for needy students without the funding that E-Rate has provided."

[4] EducationSuperhighway, State of the States Report (2018), p. 7.
[5] Consortium for School Networking, 2018-19 Annual Infrastructure Report, p. 4.

- In Alabama, many libraries didn't even apply for E-Rate in the past because of how onerous the process is. This year Alabama libraries have gotten state matching funds to get every library in Alabama connected at 100 Mbps if they file for E-Rate. This is going to really level the playing field for the rural libraries of Alabama, who have not had stable connectivity in the past. As part of this roll out, the libraries will have to offer Wi-Fi in their parking lots after hours, and some of the small towns are finding that the police use the libraries' Wi-Fi to fill out their reports, so it's a big win for the community all around. They've long had support for K-12 by offering Homework Alabama to current K12 students and to those who have dropped out of school. Alabama libraries are now able to really level the economic playing field in rural Alabama.
- In western Kentucky, Owensboro Catholic Schools has used the E-Rate program for over ten years. According to its Director of Technology, E-Rate "has allowed our school system to flourish technologically. As a private Catholic school, we are unable to tap into local tax funds as the public schools do. We also work to keep our schools affordable to all who want a Catholic education. E-Rate has allowed us over the years to obtain savings not only on telecommunications and equipment, but it has also had a direct effect on how we are able to save through sharing networks. E-rate allowed us to build a gigabit WAN (Wide area network) between all of our sites which offered savings on internet connections, server consolidation (employees can service multiple sites simultaneously because of the WAN) and software licensing. Owensboro Catholic Schools is able to maintain an incredible technological environment for education while keeping the cost affordable to working families in large part because E-Rate savings have allowed us to be financially frugal in so many areas and stretch our dollars far further than we could ever do without E-Rate."
- In Nebraska's Johnson-Brock Public Schools, a rural school district that consists of two schools and serves less than 350 students, the district's superintendent stated that the district had "benefited tremendously from Category 2 funds over the last three years and will continue to benefit from the improvements that have been made. In the summer of 2015, with the help of Category 2 funds, we were able to install a fiber-optic

backbone throughout our school. This included updated switches, routers, and wireless access points in each classroom. Our plan was to create a strong system so over time we could add devices without a drop in bandwidth. Over the past two years we have added over 200 more devices to our system without issue. We have added 1:1 to our 4th-6th grade and 1:1 with our 7th-12th grade because of our ability to connect using the wireless access points and fast fiber optics. We have also been able to do live feeds for all of our home contests like volleyball, basketball and music programs using our strong system that was established with Category 2 funds. Without funds flowing in to help with these ever-changing updates, educational facilities would lag behind with what the business world uses on a day-to-day basis. Technology is an area that cannot be put to the side and not make improvements to your facility in order to keep up with the high evolution of technology."

- In New Jersey, the Associate Superintendent for the Archdiocese of Newark states that: "most of the inner-city schools in the Catholic Urban Schools Partnership basically did not have internet access until we were able to leverage E-rate funds to build out their infrastructure with new wiring and new routers. Before these improvements students were unable to use the internet as they might in any other school. For example, Sacred Heart School in Jersey City received Chromebooks from a foundation for their upper grades but they couldn't use them. Some schools couldn't utilize basic software tools in their business office. The principal at St. Francis Xavier in Newark told me that now her teachers can employ blended learning strategies for an entire class — which they could not do before the upgrades."
- In Connecticut, North Branford (pop. 14,208) has two library branches, Edward Smith Library and Atwater Memorial Library. The libraries' internet service provider, the Connecticut Education Network, brought a fiber line to the Edward Smith Library a few years ago, using state funding at no cost to the town. However, the other branch was left on the DSL network. There was a huge difference in bandwidth between the two libraries. Smith's download speed was over 100 times as fast as Atwater's, and its upload speed was over 700 times as fast. Atwater's connection was barely adequate at

the time, with frequent pauses that weren't seen at Smith. With E-Rate funding for a 20-year dark fiber IRU in Funding Year 2016, the town was able to bring Atwater online with fiber, matching the speeds and service at Smith.

- In New York, the Assistant Superintendent of the Archdiocese of Buffalo writes: "Our school is concerned that the FCC's proposal to impose a cap on the Universal Service Fund (USF) programs would potentially reduce the funds available to E-rate. We have begun our network infrastructure modernization efforts so that we are positioned to meet the increasing network demands of State testing. As it stands, the current $160 per student Category 2 budget multiplier may not suffice to allow us to fully install all the network equipment for our wired and wireless infrastructure. We fear that a proposed USF cap would jeopardize our ability to fund our necessary network modernization efforts."

III. EDLINC OPPOSES THE COMMISSION'S PROPOSAL TO IMPOSE AN OVERALL CAP ON ALL UNIVERSAL SERVICE FUND PROGRAMS

The Notice provides upfront the Commission's multiple rationales for examining the concept of – and really the advantages of – establishing an overall cap for all four universal service programs – E-Rate, RHC, the Lifeline program and the Connect America Fund:

1) "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"[6]
2) "Determine the most efficient and responsible use of these federal funds"[7]
3) "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" [8]

[6] *Notice* at para. 2.
[7] Ibid.
[8] *Id.*

4) "Consider the consequences and tradeoffs of spending decisions for the overall fund and more carefully evaluate how to efficiently and responsibly use USF financial resources"[9]
5) "By explicitly linking the expenditures in multiple USF programs through the overall cap, we seek to promote a robust debate on the relative effectiveness of the programs"[10]

The Notice proceeds to note that all four of the universal service programs already operate under Commission established caps or targets, thereby implying that an overall cap would not be such a major step.

Finally, before receiving a single comment on the issue, the Notice suggests that the Commission has already decided to establish an overall cap and all that remains is to determine how high or low to set the cap and how the capping mechanism will operate in the event that the cap is reached. The Notice opens its discussion of this issue by stating: "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."[11]

EdLiNC disagrees vehemently with the Commission's rationales for and apparent stance in favor of an overall cap. We believe that the Commission's reasoning and apparent conclusion to impose an overall cap on USF programs ignores the governing statute's requirement that the universal service mechanism "be specific, predictable and sufficient."[12] While the Notice pays lip service to this requirement[13], the actions that the Commission contemplates taking here would lead inexorably to at least some USF beneficiaries not knowing how much, if any, USF support they will receive from year-to year and to some or all USF beneficiaries receiving

[9] *Notice* at para. 3.
[10] *Notice* at para. 9.
[11] *Notice* at para. 9.
[12] Telecommunications Act, Section 254 (b) (5)
[13] *Notice* at para 4.

support that is completely insufficient to their needs. The very notion of setting an overall cap presupposes that at some point aggregate demand from all four programs will reach or exceed that cap. Indeed, despite claims from some Commissioners that a large, healthy cap that grows with inflation will prevent this eventuality, the Notice spends a good deal of time exploring potential methods to stay within an overall cap if demand exceeds the cap and how to prioritize funding in that event. Additionally, the Notice indicates repeatedly that once the Commission establishes an overall cap, it has "a legal imperative to remain within" it.[14] Thus, in a scenario with an overall cap where aggregate demand begins to creep close to that cap, most USF beneficiaries will not be certain whether they will be able to receive the level of USF support that they anticipated and needed, with the exceptions being particular types of beneficiaries or particular programs that the Commission has already designated for prioritized funding. While the Commission would be following the "legal imperative" of staying within the cap that it created, EdLiNC contends that it would not be following the legal dictates established by Congress and the President to ensure a "specific, predictable and sufficient" universal service mechanism. On this basis alone, EdLiNC urges the Commission to proceed no further with establishing an overall USF cap.

Beyond the idea of establishing an overall cap, EdLiNC is alarmed by the Notice's questions about priorities when the cap is breached. Some of the ideas advanced here would unnecessarily pit worthy USF program against worthy USF program or deserving USF beneficiary against deserving USF beneficiary. Specifically, the Notice posits a few options for remaining within the cap in an excess demand situation, including lowering the amount available for all programs or "prioritizing the funding among the four universal service program."[15] The Notice then poses the following queries: "Should we prioritize based on the cost effectiveness of each program or the estimated improper payment rates? Should we instead prioritize based on the types of services to be funded or by the rurality of the recipient?"[16] From our perspective, we find these prioritization options absurd and defy the

[14] *Notice* at paras. 12-13
[15] *Notice* at para. 19
[16] Ibid.

Commission to come up with a rational basis for even measuring them. Take cost effectiveness: how would the Commission go about determining whether providing USF support to a rural tele-health clinic is more cost-effective than providing USF support to a rural library? The number of people served, the number of lives saved, or something else entirely? Take improper payments: are rural carriers and the low-income residents they serve less deserving of USF support because the improper payments for their program outpace those of other USF programs? Take rurality: are rural residents more deserving of USF support than low-income urban residents?

On the rural issue, we are compelled to state that if the Commission opts to favor rural E-Rate recipients over urban recipients in a USF fund shortage scenario, it would drive a wedge between program applicants and sow great division within the program. Such an action is unnecessary and unwarranted given E-Rate's already strong focus on supporting rural schools and libraries. E-Rate was created by a group of bipartisan, rural state Senators and strives to serve rural and urban schools and libraries equally. Additionally, in recognition of higher costs faced by many rural beneficiaries, the E-Rate program accords rural applicants increased discounts in its discount matrix. Finally, the Commission's recent report on E-Rate Category 2 services following modernization found that: "Since FY2015, urban and rural applicants at all discount rates have requested and received funding commitments for internal connections at roughly the same rate."[17]

In sum, from EdLiNC's perspective the answers to all of these priority questions are the same: each and every intended beneficiary of universal service is equally deserving of support. Establishing a cap will inevitably lead to establishing baseless priorities that favor one program or one beneficiary over another, will undermine universal service itself and will lead to conflict amongst and between USF beneficiary classes. For all of these reasons, EdLiNC urges the Commission to not proceed down this path.

[17] *Category 2 Report*, WC Docket No. 13-184 at para. 10, released February 11, 2019.

Finally, EdLiNC urges the Commission not to pursue such a drastic change to USF as the E-Rate, Rural Health Care and Lifeline programs have all undergone significant modernizations in the past five years and these programs' beneficiaries have, in many instances, really just grown accustomed to these changes. Since 2015, E-Rate beneficiaries have had to adjust: to the program's new broadband and Wi-Fi focus; the termination of support for key services such as voice, web hosting and e-mail; the new Category 1 application process for self-provisioning fiber lateral construction; new bandwidth goals; and, perhaps most significantly, new Category 2 formulas to allocate funding for Wi-Fi and internal connections. Adding to E-Rate beneficiaries' burden by establishing a system where funding could once again become uncertain strikes us as unfair as well as likely damaging to the program itself. In particular, we fear that any move to cap the USF fund and prioritize in any of the ways proposed could undermine beneficiaries' confidence in the availability of funding, make it more difficult to secure funding for the undiscounted portions of their E-Rate eligible services, and lead to artificially suppressed demand.

IV. EDLINC OPPOSES THE COMMISSION'S PROPOSAL TO MERGE E-RATE AND RHC UNDER A SINGLE CAP

In addition to an overall USF cap, the Notice seeks comment on combining the E-Rate and RHC programs under a single cap, which would be equal to or greater than $4.64 billion, on the grounds that "both programs promote the use of advanced services to anchor institutions that have similar needs for high quality broadband services" and that such a combination might "create additional implementation efficiencies and flexibility."[18] The Notice also goes on to state that "if demand for either programs were to meet or exceed their individual program funding caps, each program would continue to be subject to its individual program cap and the existing program rules would apply."[19] However, it appears under this proposal that if only one program exceeded its cap and the other was below its cap, the program with excess demand could meet that excess demand by resorting to the use of funds from the program with

[18] *Notice* at para. 23.
[19] *Notice* at para. 25.

demand below its cap. If that scenario sounds familiar, it should. As the Notice makes clear, E-Rate "has been substantially under its cap since its budget was increased to approximately $4 billion per year indexed to inflation in 2014" while "there has been significant pressure on the Rural Health Care budget in recent years."[20]

EdLiNC raises several objections to the E-Rate-RHC Cap Combination proposal contained in the Notice. First, a plain reading of the statute shows that Congress established two separate and distinct programs for schools/libraries and rural health care providers, placing "Health care providers for rural areas" in section 254 (h) (1) (A) and "Educational providers and libraries" in section 254 (h) (1) (B). If Congress had desired a single program, it would not have created two distinct and separate sections. Further, Congress emphasized "rural" as the focus for the health care program it created whereas it deliberately did not specify that support for educational providers and libraries be restricted to only rurals – another significant difference. Lastly, the Commission has recognized the distinctiveness of these two programs throughout their now more than twenty-year histories and never considered merging them or bringing them into competition with each other in any way. To EdLiNC, the reasons for why Congress worded the statute the way it did and why the Commission honored the statute's decision to maintain these programs as separate, independently operating programs are obvious: schools/libraries and clinics/hospitals have different but equally vital missions and serve dramatically different but important populations with significantly different needs. Merging these programs under a single cap would ignore the statute, the legislative intent of its authors and twenty years of Commission precedent.

Second, if the Commission adopts this E-Rate-RHC sub-cap proposal, it is very likely that quite soon high demand for RHC support will eclipse its existing cap and cause it to make use of unused E-Rate dollars – exactly as the Notice's proposal would allow it to do. Demand for RHC support has grown from $83 million in 2010 to near its cap of $571 million in 2018. In the past four years, E-Rate demand has slowed and lies currently more than $1.2 billion below its

[20] *Notice* at para. 24.

existing cap. Thus, if the Commission establishes this new sub-cap, these trends suggest RHC might begin consuming some portion of E-Rate's unused funds almost immediately. While RHC and its beneficiaries deserve support for the worthy mission they pursue collectively, their incursion into unused E-Rate cap space gives rise to several issues: 1) it would allow for the first time one USF program to take funds from another program, thereby setting the stage for future conflict among and between all USF programs; 2) it would allow unused E-Rate dollars to be devoted to other, albeit worthy, purposes, potentially establishing grounds for a permanent taking by RHC of some portion of E-Rate's cap if RHC's demand continues to grow at the same or faster rate; and 3) it could lead to de facto restrictions on expanding the number of E-Rate eligible services or its Category 2 formula because there would not be sufficient funding. To EdLiNC, this seems a recipe for chaos and the gradual diminishment of the E-Rate program under the guise of administrative ease.

Third, the issue of confusion and diminishing interest in participating in the E-Rate program that EdLiNC noted in relation to the proposal for an overall USF cap is an even stronger possibility with the sub-cap proposal. While demand breaching an overall USF cap may be a few years off, RHC demand is likely to exceed the program's individual cap and, in a merged cap scenario, begin using unused E-Rate dollars next year. This would stir fear in the hearts of E-Rate beneficiaries who remember all too well the years of E-Rate Priority 2 scarcity and will wonder if the E-Rate funding walls are beginning to close in again. As the Commission itself noted in the Category 2 Report from earlier this year: "In FY2013 and FY2014, no funding was available for category two services. Further, applicants had little certainty that funding for internal connections would be available. As a result, schools and libraries were discouraged from planning for support for internal connections, particularly those below the top discount bands for which funding was unlikely to be available."[21] If RHC's use of E-Rate funding becomes a permanent taking by adverse possession, E-Rate's applicants could again find themselves with less or no money and fewer reasons to continue applying for funding. Once again, this would contravene the statute's express injunction that universal service should be specific, predictable

[21] *Category 2 Report* at para. 4.

and sufficient. Additionally, a scarce funds scenario for E-Rate would undermine the Commission's 2014 E-Rate modernization orders which sought to more equitably distribute funding to ensure adequate Wi-Fi for students, educators and library patrons.

V. Conclusion

EdLiNC urges the Commission to terminate this rulemaking and to undertake no further efforts to establish an overall USF cap or a sub-cap that would combine the E-Rate and RHC programs. Both proposals would contravene the statute and Commission and Congressional intent, would pit worthwhile programs and deserving beneficiaries against one another, would unsettle the Commission's own efforts to promote equity in the distribution of E-Rate support, and would sow confusion and discord within the USF's beneficiary communities.

Appendix A

EdLiNC Member Organizations

AASA: The School Superintendents Association (AASA)
American Federation of Teachers (AFT)
American Library Association (ALA)
Association of Educational Service Agencies (AESA)
Association of Latino Administrators and Superintendents (ALAS)
Association of School Business Officials International (ASBO)
Consortium for School Networking (CoSN)
International Society for Technology in Education (ISTE)
National Association of Elementary School Principals (NAESP)
National Association of Independent Schools (NAIS)
National Association of Secondary School Principals (NASSP)
National Catholic Educational Association (NCEA)
National Education Association (NEA)
National PTA (PTA)
National Rural Education Association (NREA)
National Rural Education Advocacy Coalition (NREAC)
National School Boards Association (NSBA)
State Educational Technology Directors Association (SETDA)
United States Conference of Catholic Bishops (USCCB)