



MEMORANDUM

TO: Conference of State Association Legislative Staff (CSALS)
FR: Chip Slaven, Esq., Chief Advocacy Officer, National School Boards Association (NSBA)
RE: FCC's Recent NPRM Concerning the Universal Service Fund and Its Negative Impact on E-Rate
DA: Friday, July 12, 2019

Overview

This memorandum provides information on the recent FCC announced rulemaking that impacts the E-Rate program. The National School Boards Association (NSBA) encourages the state associations and district board members to file comments or reply comments to the FCC opposing a rule to place a cap on the Universal Service Fund which would negatively impact E-Rate and high-speed broadband access to schools and libraries. Instructions on how to submit comments and/or reply comments are included in a separate document. Comments are due by July 29, 2019 with the reply comment deadline of August 26, 2019. Please contact me at cslaven@nsba.org with any questions or assistance.

What is E-Rate and How Does It Operate

The Federal Communications Commission (FCC) manages the schools and libraries universal service support program, commonly known as the E-Rate program. It is one of four programs of the Universal Service Fund (USF), which is administered by the Universal Service Administrative Company under the direction of the FCC. The four programs under USF include 1) Connect America Fund (formerly known as High-Cost Support) for rural areas; 2) Lifeline for low-income consumers, including initiatives to expand service to residents of Tribal lands; 3) E-rate for schools and libraries; and, 4) Rural Health Care. The Telecommunications Act of 1996 gives the definition of universal service today as including rural health care providers and education related services through schools and libraries. High-speed broadband access to connect with the Internet is one of the focuses of the various programs. *See <https://www.fcc.gov/general/universal-service-fund> Accessed July, 12, 2019.*

“The Telecommunications Act of 1996 expanded the traditional goal of universal service to include increased access to both telecommunications and advanced services – such as high-speed Internet – for all consumers at just, reasonable and affordable rates. The Act established principles for universal service that specifically focused on increasing access to evolving services for consumers living in rural and insular areas, and for consumers with low incomes.

<https://www.fcc.gov/general/universal-service> Accessed July 12, 2019

E-Rate is crucial for school connectivity and improved student learning and data shows it works

E-Rate is a crucial program in aiding schools and libraries to connect to high-speed broadband that is especially vital for the type of student learning required in today's modern world. The Consortium for School Networking's (CoSN) 2018-2019 Annual Infrastructure Report has found that broadband for schools continues to improve thanks to E-Rate modernization and expansion. “Ninety-two percent (92%) of districts are meeting the FCC short-term goal of 100 Mbps per 1,000 students for all their schools.

INFORMATION ON E-RATE AND THE RECENT FCC NPRM

Even more impressive, this year over a third (35%) of districts achieved the FCC long-term goal (1 Gbps per 1,000 students) for all schools – up nearly 100% from last year.” See *The Consortium for School Networking’s (CoSN) 2018-2019 Annual Infrastructure Report*, page 3.

https://www.cosn.org/sites/default/files/CoSNs%202018%202019%20Annual%20Infrastructure%20Survey%20Report%20final_0.pdf Accessed July 5, 2019.

EducationSuperhighway reports in its 2018 State of the States that 40.7 million more students in 81,000 schools have high-speed Internet access than did so in 2013. See *2018 State of the States, EducationSuperhighway*, page 5. <https://s3-us-west-1.amazonaws.com/esh-sots-pdfs/2018%20State%20of%20the%20States.pdf> Accessed July 5, 2019.

Summary of the NPRM

The FCC has published a Notice of Proposed Rulemaking (NPRM) to establish an overall cap on the USF and a sub-cap on the E-Rate and Rural Health Care programs. The FCC is calling for comments on the proposal. ***The deadline for comments is July 29, 2019 and August 26, 2019 for reply comments. You can offer comments, reply comments, or both.*** This proposal would force the four programs funded under USF, including E-Rate, to battle each other for funds if the overall cap is reached. NSBA worked with our EdLiNC partners to secure House language in the FCC’s fiscal year 2020 appropriation that would prevent the agency from completing the rulemaking and establishing a cap or sub-cap. We do not yet know if the Senate will adopt the language but encourage state school board associations to appeal to their senators for support of this important language that will help protect broadband in public schools and libraries.

Placing a cap on USF in against the intent of Congress

Placing an overall cap on the universal service fund (USF) will lead to competition among the four USF programs which is contrary to the intent of Congress. The legislative goal was to provide four distinct programs, each with specific funding, not one funding pool where the four programs had to fight for funding if an overall cap was reached.

The U.S. House of Representatives expressed their strong opposition to this effort through the recent unanimous passage of House Amendment 483 to H.R. 3351, the FY2020 Financial Services and General Government Appropriations Act, which prohibits the FCC from implementing this rule. See *attached letter*

An overall cap is not necessary—the four programs have their own individual caps

Each of the four programs, including E-Rate, already have their own caps in place to ensure funds are being utilized in an efficient manner. Providing an overall cap only complicates the programs and creates potential problems down the road. Furthermore, if each program stays within its individual cap there is no reason for an overall cap, even if it was not against the intent of the legislation.

Setting a sub-cap on E-Rate and rural health will jeopardize both programs

Imposing a sub-cap on the E-rate and Rural Health Care programs creates dangerous precedent

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The proposal to merge spending caps for E-Rate and Rural Health Care programs into a single cap is also against the clear legislative intent found in the Telecommunications Act of 1996. Allowing one USF program the opportunity to potentially use another program's designated funds undermines the intent of Congress and would threaten the reliability and viability of the programs. This issue is of critical importance to the future of public education and the 90,000 school board members.

School boards would face uncertainty when planning their budgets

If a cap is enacted, the four programs will be uncertain each year how much support they can rely on from USF. Setting a cap also suggests the FCC expects the USF to reach the cap at some point in the future forcing this competition among the four programs. Exploring potential methods to stay within an overall cap if demand exceeds the cap and how to prioritize funding in that event. USF programs are an on-demand program. This means there may be times when the programs come in under their caps while other years they may be come in over. Placing an overall cap on the full program would limit access to those saved funds if demand rises and the program would come in over budget. Presently, E-Rate is operating far under its cap. Intentionally placing uncertainty each year on the stability of the E-Rate program makes it difficult for school districts to plan their budgets.

The FCC should be doing more, not less, to help students connect to broadband.

E-Rate has made a tremendous difference in helping students connect to broadband when they are in schools or libraries. However, rural areas continue to lag behind other areas in connectivity and there are still enormous broadband gaps when students are out of school. The Institute of Education Sciences (IES) released a report in 2018 noting major gaps in connectivity and internet access for many students when they were out of school and/or not at library. The gaps varied depending on their racial and ethnic background, economic status, and where they lived. Instead of proposing new rules that could limit broadband access in schools and in libraries, leading the nation backwards, the FCC should be exploring ways to strengthen E-Rate and expand other opportunities for students to connect to high-speed broadband out of school to help close the digital divide in education which is commonly called the Homework Gap. See *"New Report on Student Internet Access at Home Shows Persistent Digital Divide"* Chip Slaven, Alliance for Excellent Education <https://all4ed.org/new-report-on-student-internet-access-at-home-shows-persisting-digital-divide/> Accessed July 5, 2019.