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ALERT

FCC Proposes Overall Funding Cap for USF Programs

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On May 31, 2019, the Federal Communications Commission (FCC or Commission) released a Notice of Proposed Rulemaking (NPRM) seeking comment on a proposal to set an overall budget cap for the Universal Service Fund (USF) programs. The USF provides support through four programs: the High-Cost program (known as the Connect America Fund), the Lifeline program, the Schools and Libraries program (known as E-Rate), and the Rural Health Care program (RHC). The NPRM asks whether an overall cap of $11.42 billion should be established based on the current authorized budget of the four programs. It also seeks comments on how the FCC can prioritize funding amongst the four programs if such prioritization is necessary to reduce expenditures below the overall cap. Comments are due 30 days after publication of the NPRM in the Federal Register and reply comments are due 60 days after publication.

USF Funding Cap

Although each of the USF programs is capped or operating under a targeted budget, the NPRM states that an overall cap could "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." (¶ 1) The FCC asks if it should establish an annual combined USF cap of $11.42 billion, which is the sum of the authorized budgets for the four universal service programs in 2018. (¶ 9)

The FCC asks how it should adjust the cap over time to ensure that it keeps pace with inflation. (¶ 10) The agency already uses the Gross Domestic Product Chained Price Index (GDP-CPI) to adjust the E-Rate

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and RHC program caps, and it asks whether there are other ways to adjust the overall cap for inflation, whether there should be an index specific to each USF program and, if so, how should such program-specific indices apply to an overall USF cap.

Implementation of the Funding Cap

The FCC asks how it should implement the cap. The NPRM lays out two possible methods. One method would be to determine when disbursements are projected to exceed the overall USF cap and, when that happens, reduce projected universal service expenditures to stay within the cap. The other method would be to cap the commitments issued by the Universal Service Administrative Company (USAC) when they are projected to exceed the cap, particularly given the difference in some programs between the date of commitments and the date funding is disbursed. (¶ 12)

The NPRM also raised questions about transparency for USAC's methodology for forecasting USF demand and whether it can be used to project future disbursements under an overall USF cap. As part of its duties, USAC projects demand for all four programs each quarter when it calculates the proposed contribution levels. The FCC asks for comment on using this mechanism to project future disbursements compared to the overall cap. (¶ 13) The FCC asks if the USAC forecasts should be available to the public and how to address forecasting miscalculations and the potential impact on programs. (¶¶ 15-16)

In the event disbursements are projected to exceed the overall cap, the FCC asks comment on the appropriate ways to reduce expenditures. (¶ 17) The FCC could direct USAC and Commission staff to make administrative changes to reduce the size or amount of funding available to the individual program caps in an upcoming year if demand is projected to exceed the overall cap. (¶ 18) For instance, the FCC could limit some or all of the automatic inflation increases in the programs in an attempt to reduce expenditures.

Critically, the NPRM seeks comments on prioritizing the funding among the four universal service programs and other possible future pilots if such prioritization is necessary to reduce expenditures below the capped level. The NPRM states that "adopting clear prioritization rules and evaluating the tradeoffs associated with these funding decisions could make disbursements more specific and predictable," and it seeks comment on how it could implement this proposal. For instance, the FCC could prioritize based on the cost-effectiveness of each program, the estimated improper payment rates, the types of services to be funded, or by rurality of the recipient. (¶ 19)

The FCC next seeks comment on how to account for additional duties or obligations that it might create in other proceedings that potentially would cause projected expenditures to exceed the cap within the next five years. For example, if the FCC proposes to create a new USF program or allocate additional funding to a program, that action would not occur unless the FCC either cuts spending elsewhere to keep projected spending below the cap or raises the overall cap. The FCC seeks comment on this idea. (¶ 20)

Proposed Changes to Individual USF Programs

The FCC asks if it should change the budget structures of any of the individual USF programs "to achieve a more holistic and coherent approach to universal service support." (¶ 21) It asks whether a "self-enforcing cap," which has been established for the E-Rate and RHC programs but not for the High Cost and Lifeline programs, should be created for all of the USF programs in order to provide more predictability to universal service spending.

Furthermore, the FCC proposes to combine the E-Rate and RHC program caps. The FCC states such action may be justifiable given that both programs promote the use of advanced services to anchor institutions that have similar needs for high-quality broadband services. Since many of these institutions operate through consortia with the objective of simplifying applications and lowering the costs for participating members, the FCC states that combining the caps might create additional implementation efficiencies and flexibility. The FCC asks if administrative simplicity is a sufficient reason to combine the programs under a single cap. (¶ 23)

Under this proposal, both the E-Rate and RHC programs would have shared a combined total cap of more than $4.64 billion in funding year 2018 and as long as total demand for both programs did not exceed the combined cap, all funding requests for both programs would be approved. To ensure that each program has a predictable level of support, the FCC proposes that if demand for either program was to meet or exceed its individual program funding cap, each program would continue to be subject to the individual program cap and the existing program rules would apply. The FCC asks if there is any downside to such a proposal. (¶ 25)

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For further information on these issues, please contact Edgar Class (eclass@wiley.law | 202.719.7504).