

determination that the attainment contingency measure requirement no longer applies to the area. The State may elect to withdraw the attainment contingency measures to lift the obligation on the EPA under section 110(k) to act on these measures.

We are not proposing to suspend the attainment-related requirements for the Phoenix NAA under 40 CFR 51.1118 at this time because ozone monitoring data for 2018 are not consistent with continued attainment of the standard in the Phoenix NAA.

We also note that, if finalized, this proposed determination that the Phoenix ozone NAA has attained the 2008 ozone NAAQS would not constitute a redesignation of the area to attainment for the 2008 ozone standard. Under CAA section 107(d)(3)(E), redesignations to attainment require states to meet a number of additional statutory criteria, including the EPA's approval of a SIP revision demonstrating maintenance of the standard for 10 years after redesignation. The designation status of the Phoenix area will remain Moderate nonattainment for the 2008 ozone NAAQS until such time as the EPA determines that the area meets the CAA requirements for redesignation to attainment.

#### IV. Environmental Justice Considerations

The EPA believes that this proposed action will not have disproportionately high or adverse human health or environmental effects on minority, low-income, or indigenous populations.

The purpose of this rule is to determine whether the Phoenix NAA attained the 2008 ozone standard by its Moderate area attainment date, which is required under the CAA for purposes of implementing the 2008 ozone standard. As such, this action does not directly affect the level of protection provided for human health or the environment.

#### V. Statutory and Executive Order Reviews

*A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

*B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs*

This action is not expected to be an Executive Order 13771 regulatory action

because this action is not significant under Executive Order 12866.

*C. Paperwork Reduction Act (PRA)*

This rule does not impose any new information collection burden under the PRA not already approved by the OMB.

*D. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities.

*E. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments, or the private sector.

*F. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, tribes, or the relationship between the national government and the states and tribes, or on the distribution of power and responsibilities among the various levels of government.

*G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action has tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. Four tribes have areas of Indian country within or directly adjacent to the Phoenix NAA: Fort McDowell Yavapai Nation, Gila River Indian Community, Salt River Pima-Maricopa Indian Community of the Salt River Reservation, and the Tohono O'odham Nation of Arizona. The EPA intends to communicate with potentially affected tribes located within or directly adjacent to the boundaries of the Phoenix NAA as the agency moves forward in developing a final rule.

*H. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not

subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

*I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*J. National Technology Transfer Advancement Act (NTTAA)*

This rulemaking does not involve technical standards.

*K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations. The results of this evaluation are contained in the section of the preamble titled “Environmental Justice Considerations.”

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Volatile organic compounds.

Dated: May 31, 2019.

**Deborah Jordan,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 2019–12517 Filed 6–12–19; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 54

[WC Docket No. 06–122; FCC 19–46]

### Universal Service Contribution Methodology

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) seeks comment on establishing a cap on the Universal Service Fund (USF or Fund) and ways it could 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.

**DATES:** Comments are due on or before July 15, 2019 and reply comments are due on or before August 12, 2019.

**ADDRESSES:** Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated in the **DATES** section of this document. Comments and reply comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998). If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this document, you should advise the contact listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible.

- **Electronic Filers:** Comments may be filed electronically using the internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.

- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.

**People with Disabilities:** To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs

Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

**FOR FURTHER INFORMATION CONTACT:**

Karen Sprung, Wireline Competition Bureau, (202) 418-7400 or TTY: (202) 418-0484.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in WC Docket No. 06-122; FCC 19-46, adopted on May 15, 2019 and released on May 31, 2019. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street SW, Washington, DC 20554 or at the following internet address: <https://www.fcc.gov/ecfs/filing/05310169808865>.

**I. Introduction**

1. In the NPRM, the Commission seeks comments on establishing a cap on the Universal Service Fund (USF or Fund) and ways it could 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. While each of the constituent USF programs are capped or operating under a targeted budget, the Commission has not examined the programs holistically to determine the most efficient and responsible use of these federal funds. A 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.

2. The Communications Act of 1934 first established the concept of universal service, and the Telecommunications Act of 1996 formalized and expanded universal service, paving the way for the programs that exist today. The Fund provides financial support to recipients through four major programs: The High-Cost program (also known as the Connect America Fund), the Lifeline program, the schools and libraries program, also known as E-Rate, and the Rural Health Care program. Financial contributions to the Fund are required to be made by providers of telecommunications and telecommunications services, who are assessed charges based on their interstate and international revenues. Consumers ultimately pay these charges, however, either through higher prices or line-item charges on their bills.

3. The Commission initiates this proceeding mindful of its obligation to safeguard the USF funds ultimately paid by ratepayers, and to ensure the funds are spent prudently and in a consistent manner across all programs. Although the creation of a topline budget will not eliminate the Commission's ability to increase funding for a particular program, a cap would require it to expressly 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. The Commission takes this action to preserve and advance universal service, to increase access to telecommunications services for all consumers at just, reasonable, and affordable rates, to meet its obligation to protect against Fund waste, and to ensure that the universal service programs are funded appropriately.

4. Section 254(b) of the Telecommunications Act of 1996 directs the Commission to base policies for the preservation and advancement of universal service on a number of principles. The Commission's statutory obligation requires that the Commission's policies result in equitable and nondiscriminatory contributions to the Fund, as well as specific and predictable support programs. In order to fulfill Congress' directive, the Commission must balance the need for fiscal responsibility and predictability with the benefits that comes from universal service funding. However, as courts and the Commission have recognized, too much subsidization could negatively affect the affordability of telecommunications services for those consumers who ultimately provide the support for universal service. Although the Commission has taken steps over the last decade to set caps or funding targets for each of the four programs individually, for the first time it looks at the Fund and its programs holistically.

5. **High-Cost.** The High-Cost program provides support for the deployment of broadband-capable networks in rural areas. It helps make broadband, both fixed and mobile, available to homes, businesses, and community anchor institutions in areas that do not, or would not otherwise have broadband. The *USF/ICC Transformation Order*, 76 FR 73830, November 29, 2011, comprehensively reformed and modernized the High-Cost program and established, for the first time, a budget mechanism for the various Connect America Fund (CAF) programs. For years 2012-2017, the budget was set at

no more than \$4.5 billion per year, with an automatic review trigger if the budget was threatened to be exceeded. The Commission did not include an inflationary adjustment in the \$4.5 billion budget adopted in 2011. The Commission in 2011 also directed the Fund Administrator, the Universal Service Administrative Company (USAC), to collect \$1.125 billion per quarter for High-Cost funding, regardless of the projected quarterly demand, to avoid dramatic shifts in the contribution factor while the CAF was implemented. Any excess money collected is kept in reserve for the CAF initiatives. The CAF, which focused on supporting different technologies and recipients with different funding amounts, disbursed \$4.692 billion in 2017, of which approximately \$480 million came from the CAF reserves.

6. *Schools and Libraries.* The schools and libraries universal service support mechanism provides discounts to schools and libraries to ensure affordable access to high-speed broadband and telecommunications necessary for digital learning. Originally capped at its inception at \$2.25 billion in disbursements per funding year, the Commission began indexing the funding cap to inflation in 2010 to ensure that E-Rate program funding keeps pace with the changing broadband and telecommunications needs of schools and libraries. The Commission then increased the cap in funding year 2015 by \$1.5 billion. In funding year 2018, the E-Rate cap was \$4.06 billion and demand for actual support was \$2.77 billion.

7. *Rural Health Care.* The Rural Health Care (RHC) Program provides funding to eligible healthcare providers for telecommunications and broadband services necessary for the provision of health care services. When the Commission established the RHC Program in 1997, it capped funding for the program at \$400 million per funding year. Beginning in 2012, the Commission expanded the RHC program to include the Healthcare Connect Fund Program, after which total RHC program demand began to steadily increase. In June 2018, the Commission raised the RHC program funding cap to \$571 million, beginning in funding year 2017, to address current and future demand for supported services by health care providers. The Commission also adjusted the funding cap annually for inflation using the Gross Domestic Product Chained Price Index (GDP-CPI), beginning in funding year 2018, raising the funding cap to \$581 million. In funding year 2016, RHC demand was approximately \$556

million, and the total amount of qualifying funding requests was approximately \$408 million.

8. *Lifeline.* The Lifeline program provides subsidies for voice and broadband services to qualifying low-income households. In 2016, the Commission adopted a budget for the program of \$2.25 billion with an annual inflation adjustment. The Lifeline program budget does not automatically curtail disbursements, and in the 2017 *Lifeline Order and NPRM*, 83 FR 2075, January 16, 2018 and 83 FR 2104, January 16, 2018, the Commission proposed adopting a self-enforcing budget mechanism for the Lifeline program. At the same time, recent demand has been considerably lower than the authorized budget levels. For example, the Lifeline program disbursed approximately \$1.263 billion in calendar year 2017 and is on track to spend approximately \$1.212 billion in 2018, compared to budgets of \$2.25 billion and \$2.279 billion in the respective years.

## II. Discussion

9. The Commission believes 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. By explicitly linking the expenditures in multiple USF programs through the overall cap, the Commission seeks to promote a robust debate on the relative effectiveness of the programs. The Commission seeks comment on establishing an annual combined USF cap. For example, should the Commission set the overall cap at \$11.42 billion, which is the sum of the authorized budgets for the four universal service programs in 2018? Should the Commission set it at a different amount? The Commission seeks comment on this proposal, as well as other methods for setting the appropriate level of an annual overall USF cap.

10. To ensure the overall cap keeps pace with inflation, the Commission seeks comment on how to adjust the cap over time. The Commission is currently using the GDP-CPI to adjust the E-Rate and RHC program caps, as well as the operating expense limitations for rate-of-return carriers, and has previously found it to be more accurate than some

other measures in estimating price changes over time. The Commission seeks comment on whether there are other ways to adjust the overall cap for inflation that would be more appropriate. Should there be an index specific to each USF program and how should such program-specific indices apply to an overall USF cap? Would this process make a significant difference to the caps compared to the use of the GDP-CPI? How often should the caps be adjusted? Commenters should provide data to support their conclusions.

11. The Commission next seeks comment on how to implement the cap. One method is to determine when disbursements are projected to exceed the overall USF cap and, in that event, to reduce projected universal service expenditures to stay within the cap. Another method, given the difference in some programs between the date of commitments and the date funding is disbursed, is to cap the commitments issued by USAC. The Commission seeks feedback on the best way to track and make public universal service demand levels to appropriately anticipate pending USF demand issues. In the event disbursements are projected to exceed the overall cap, the Commission also seeks comment on the appropriate way to reduce expenditures automatically consistent with its universal service goals and consistent with the legal imperative to remain within the cap.

12. *Tracking USF Demand Transparently.* A critical function of an effective cap mechanism is that the Commission can track projected demand and to correct potential overspending before the cap is reached. As part of its administrative duties, USAC projects demand for all four programs each quarter when it calculates the proposed contribution factor. The Commission seeks comment on using this existing mechanism to help USAC and the Commission project future disbursements compared to the overall cap. In particular, the Commission seeks comment on a process whereby USAC will notify the Commission staff if the quarterly demand calculation, either alone or in combination with other data, suggests the cap will be exceeded by future disbursements. USAC may base this prediction on the size of the quarterly demand projection when, for example, the quarterly demand alone exceeds one quarter of the overall cap, or when the quarterly data in combination with other information suggests an increase in future demand above the cap. The Commission seeks comment on this idea. USAC also issues commitments in

some programs long before the funding is disbursed to recipients. Should the cap mechanism limit the commitments USAC makes or should it limit total disbursements? In determining the appropriate period of time over which to evaluate demand, should the Commission consider the annual cap exceeded over the course of any 12-month period or should the Commission evaluate the demand over the course of a calendar year? What about over the course of a funding year? Given the differences in administration of the four USF programs, are there issues with the timing of commitments and disbursements to consider when projecting demand? Should any administrative rules for any program(s) be modified to synchronize them and eliminate or mitigate any differences that would be problematic to measuring demand? What about any timing issues with respect to the mitigation measures the Commission would take to correct the projected overspending?

13. The Commission also seeks comment on extending its projections out further than one year to better anticipate potential spending over the cap. Limiting the Commission's forecasting to a single year could be insufficient to assess spending levels in future years, and the Commission would have a better opportunity to course-correct if it can evaluate demand over a more extended period of time. Should the Commission also adopt procedures to establish a five-year forecast for projected program disbursements? The Commission seeks comment on this idea. Is a five-year period appropriate or feasible? Should the Commission consider a different period of time?

14. As a first step towards greater transparency, the Commission next seeks comment on making these forecasts available to the public. USAC already makes public the quarterly demand projections and the Commission believes providing an extended forecast to the public would assist it in protecting the financial status of the Fund. Alternatively, the Commission seeks comment on making these forecasts available to state commissions. Sharing this forecast information would help to further the Commission's coordination with state commissions and allow states to continue to create complementary state universal support mechanisms. The Commission seeks comment on the best process for making these forecasts available to state commissions or the public.

15. Additionally, the Commission seeks comment on how to address forecasting miscalculations and the

potential impact on programs. For example, how would the Commission correct a scenario where projected demand is expected to exceed the cap, but actual disbursements do not hit the cap? Or in the alternative, how should the Commission correct a situation where actual commitments or disbursements exceed the cap, although the forecast did not anticipate an overage? How would the Commission handle a temporary or one-time budget increase that hits the overall cap during a specific period? USAC already has experience correcting its projections for each of the programs when actual disbursements differ from its projections. Each quarter, USAC typically makes a prior period adjustment in one or more of the programs to account for actual program demand and this adjustment affects the demand for the next quarter as well as the contribution factor. Would adopting a similar process work to help correct forecasting errors? How can the Commission use USAC's prior period adjustment to adjust for miscalculations? Would more frequent forecasting help to mitigate potential forecasting errors? What other difficulties should the Commission anticipate when forecasting demand and disbursements?

16. *Reduction Mechanisms.* Next, the Commission seeks comment on how to reduce expenditures if USAC projects that disbursements will exceed the overall USF cap. First, the Commission notes that the program rules for each of the four universal service programs will continue to govern those programs, and therefore existing spending constraints in place would prevent some, but not all, of the universal service programs from exceeding their caps. The overall cap could be exceeded due to rising demand, or a future Commission decision to increase funding for a program or to institute a new USF program without any corresponding increase in the overall cap. The Commission seeks comment on ideas to reduce expenditures as needed under each of these scenarios. Should these reductions take place when commitments are expected to exceed the caps or should they only take place when disbursements are projected to exceed the caps? What criteria should be used in prioritizing reductions of one program against reduction in another?

17. First, the Commission seeks comment on directing 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. For instance, should the Commission consider limiting some or all of the automatic inflation increases in the programs? The Commission seeks comment on this idea and on directing the Wireline Competition Bureau, which oversees the Fund, or the Office of the Managing Director, which currently calculates the quarterly contribution factor, to carry it out. Are there other administrative changes the Commission should consider that could provide greater flexibility to allow USAC and the Commission to address this issue, such as using reserve or carry forward funds to offset potential spending over the cap?

18. Second, the Commission seeks comment on prioritizing the funding among the four universal service programs and other possible universal service pilots or programs if still necessary to expenditures where USAC projects that total disbursements will exceed the overall cap. Adopting clear prioritization rules and evaluating the tradeoffs associated with these funding decisions could make disbursements more specific and predictable. The Commission seeks comment on the best methods for prioritizing funding when faced with projected disbursements exceeding the overall cap. How should the Commission prioritize among the programs? For instance, should the Commission prioritize based on the cost-effectiveness of each program or the estimated improper payment rates? Should the Commission instead prioritize based on the types of services to be funded or by rurality of the recipient? The Commission also seeks comment on whether to consider limits to any demand reductions. Any prioritization will result in less funding available for one of the programs. In this instance, should there be a maximum amount that a program can be reduced, either as a percentage of its annual budget or a specific dollar amount? Should the Commission instead consider reducing each program's disbursements by the same amount, rather than prioritizing funding among the programs? Under such an approach, unexpected increases in demand in one program could affect the funding levels of other programs that have not experienced similar unexpected increases in demand. Is this a desirable outcome? Should any funding reduction mechanism distinguish between increased demand due to natural, and other, disasters and unexpected increases in demand due to other factors? How should the Commission account for future universal service

expenditures that the Commission may create? In past years, the Commission has established pilot programs designed to test the use of universal service funding for new purposes and has also dedicated discrete amounts of funding for emergency purposes. How should those pilot program or emergency expenditures be prioritized in comparison to the existing programs for universal service funding? What other factors should the Commission consider when considering how best to prioritize funding among the programs?

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

20. The Commission next seeks comment on possible changes to the budget structures of the individual universal service programs in order to establish a maximum level of universal service support that can be disbursed annually, thus limiting contribution burdens and providing predictability to contributors and ratepayers. First, the Commission seeks comment on other changes to any of the universal service program rules that would assist the Commission in its efforts to achieve a more holistic and coherent approach to universal service support. For instance, consistent with previously-proposed rule changes, would self-enforcing caps on each of the programs provide more predictability to universal service spending? Are there other changes that would better align the four programs to reduce duplicative work or simplify the administration of the overall cap?

21. Additionally, the Commission seeks comment on how best to balance program needs with the contribution burdens imposed on ratepayers. In particular, the Commission 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 the Commission 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 the Commission balance the

benefits of the different programs with the costs of increased contributions by ratepayers? The Commission seeks 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. The Commission seeks comment on this idea and encourages commenters to include data to support their conclusions.

22. The Commission also seeks comment on combining the E-Rate and RHC program caps. Schools, libraries, and healthcare facilities increasingly offer important community resources over their broadband networks. Combining the program caps 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. 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. In other USF proceedings, some stakeholders have asked the Commission to reexamine the rules to better harmonize the USF program rules. It is reasonable, therefore, to consider combining the caps to create additional implementation efficiencies and flexibility. However, is administrative simplicity a sufficient reason to combine the programs under a single cap? Does combining the caps promote efficient use of limited funds if the effectiveness of the two programs differ significantly?

23. The Commission seeks comment on the practical effect of combining the E-rate and Rural Health Care budgets. While the E-rate program has been substantially under its cap since its budget was increased to approximately \$4 billion per year indexed to inflation in 2014, there has been significant pressure on the Rural Health Care budget in recent years, and the Commission in 2018 increased the Rural Health Care budget to \$571 million indexed to inflation. Assuming current trends persist in future years, would a combined budget that allows support for participants in either program to come from a single fund improve the efficiency with which these programs could disburse funding? Would a combined budget effectively increase the budget on whichever program is closest to their cap?

24. Under this proposal, both the E-Rate and RHC programs would share 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 Commission also proposes 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. For example, if in funding year 2018 demand for E-Rate support exceeded the E-Rate cap and demand for RHC support also exceeded that program's existing cap, E-Rate requests would be prioritized according to current E-rate program rules, up to \$4.062 billion, and RHC requests would be subject to the proration rules in effect in RHC, up to \$581 million. The Commission also believes that rules pertaining to carrying funds forward, inflationary adjustments, prioritization, and proration would continue to apply within each of the individual programs. The Commission seeks comment on this proposal. Is there any downside to such a proposal? The Commission also seeks comment on the mechanics of how it would distribute funding under a combined, prioritization scheme.

### III. Procedural Matters

#### A. Paperwork Reduction Act

25. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

26. *Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities from the policies and rules proposed in this NPRM. The Commission requests written public comment on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief

Counsel for Advocacy of the Small Business Administration (SBA).

27. This NPRM seeks comment on a proposal to adopt an overall cap on the Fund and to combine the caps for the schools and libraries and Rural Health Care programs in an effort to promote efficiency, fairness, and sustainability. This action is taken consistent with the Commission's objective to preserve and advance universal service, together with its obligation to protect against program waste, fraud, and abuse, and to ensure that programs are funded appropriately. A cap will limit the overall contribution burden and will provide regulatory and financial certainty to both recipients of and contributors to the Fund, including small businesses.

28. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act. A small-business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

29. The NPRM proposes changes to the Fund and the four universal service support mechanisms in order to promote efficiency, fairness, and sustainability. The proposals in this NPRM are directed at enabling the Commission to meet its goals and objectives for the Fund, to preserve and advance universal service, to meet its obligation to protect against Fund waste, and to ensure that the universal service programs are funded appropriately. The NPRM seeks comment on some potential changes that could increase economic burdens on small entities, as well as some potential changes that would decrease economic burdens on small entities.

30. *Contributions.* Universal Service support is funded by ratepayers and continuing to increase Fund expenditures unchecked risks an increased burden on consumers, including small businesses. Capping the Fund at \$11.42 billion overall will strike the appropriate balance between ensuring adequate funding for the universal service programs while minimizing the burdens placed on ratepayers, including small businesses, who contribute to the programs.

31. *Programmatic Changes.* The Commission does not expect that the proposed changes will result in disruption to the programs or services provided by the programs. However, it is possible that proposed budget reduction mechanisms, if necessary, could result in prioritization schemes or budgetary cuts that could impact program participants, including small businesses.

32. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. The Commission expects to consider all of these factors when it has received substantive comment from the public and potentially affected entities.

33. Largely, the proposals in the NPRM, if adopted, would have no impact on or would reduce the economic impact of current regulations on small entities. Certain proposals in this NPRM could have a positive economic impact on small entities; for instance, the Commission seeks comment on some changes to the budget structures of the four universal service programs in order to establish a maximum level of universal service support that can be collected. The Commission expects that this will provide predictability to contributors and ratepayers, including small entities. In addition to proposing the budget changes to the individual USF programs, the Commission proposes an overall USF budget cap as well as reduction mechanisms to correct a scenario when disbursements exceed or are projected to exceed the proposed overall USF budget. The Commission expects that an overall cap will help to reduce the contribution burden for all contributors, including small businesses. In the NPRM, the Commission seeks comment on the burden this change would create for carriers and will factor that into its decision.

34. More generally, the Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the NPRM and this IRFA, in reaching its

final conclusions and taking action in this proceeding. The proposals and questions laid out in the NPRM were designed to ensure the Commission has a complete understanding of the benefits and potential burdens associated with the different actions and methods.

35. *Ex Parte Presentations.* The proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b). In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

#### IV. Ordering Clauses

36. Accordingly, *it is ordered* that, pursuant to the authority found in sections 1–5, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151–155, 201–206, 214, 218–220, 251, 252, 254, 256,

303(r), 403, and 405, this Notice of Proposed Rulemaking is *adopted*.

Federal Communications Commission.

**Katura Jackson,**

*Federal Register Liaison.*

[FR Doc. 2019–12162 Filed 6–12–19; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

RIN 0648–BI98

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic Region; Amendment 42

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of availability (NOA); request for comments.

**SUMMARY:** The South Atlantic Fishery Management Council (South Atlantic Council) has submitted Amendment 42 to the Fishery Management Plan (FMP) for the Snapper-Grouper Fishery of the South Atlantic Region for review, approval, and implementation by NMFS. If approved by the Secretary of Commerce, Amendment 42 would add three new devices as options for fishermen with Federal commercial or charter vessel/headboat permits for South Atlantic snapper-grouper to meet existing requirements for sea turtle release gear, and would simplify and clarify the requirements for other sea turtle release gear. Amendment 42 would also modify the FMP framework procedure to allow for future changes to release gear and handling requirements for sea turtles and other protected resources. The purpose of Amendment 42 is to allow the use of new devices to safely handle and release incidentally captured sea turtles, clarify existing requirements, and streamline the process for making changes to the release devices and handling procedures for sea turtles and other protected species.

**DATES:** Written comments on Amendment 42 must be received by August 12, 2019.

**ADDRESSES:** You may submit comments on Amendment 42 identified by “NOAA–NMFS–2019–0047” by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the

Federal e-Rulemaking Portal. Go to [www.regulations.gov/](http://www.regulations.gov/) #!docketDetail;D=NOAA-NMFS-2019-0047, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit all written comments to Frank Helies, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Electronic copies of Amendment 42 may be obtained from [www.regulations.gov](http://www.regulations.gov) or from the Southeast Regional Office website at <https://www.fisheries.noaa.gov/action/amendment-42-modifications-sea-turtle-release-gear-and-framework-procedure-snapper-grouper>. Amendment 42 includes a fishery impact statement, a regulatory impact review, and a Regulatory Flexibility Act (RFA) analysis.

**FOR FURTHER INFORMATION CONTACT:** Frank Helies, NMFS Southeast Regional Office, telephone: 727–824–5305; email: [frank.helies@noaa.gov](mailto:frank.helies@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any FMP or FMP amendment to NMFS for review, and approval, partial approval, or disapproval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or amendment, publish an announcement in the **Federal Register** notifying the public that the FMP or amendment is available for review and comment.

The Council prepared the FMP being revised by Amendment 42, and if approved, Amendment 42 would be implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

#### Background

The Endangered Species Act (ESA) directs all Federal agencies to ensure that any action they authorize, fund, or

carry-out is not likely to jeopardize the continued existence of endangered or threatened species, or destroy or adversely modify designated critical habitat. In June 2006, NMFS issued a biological opinion (2006 BiOp), in accordance with section 7 of the ESA, that evaluated the impact of the South Atlantic snapper-grouper fishery on ESA-listed sea turtles and smalltooth sawfish. The 2006 BiOp concluded that the anticipated incidental take of sea turtles and smalltooth sawfish by the South Atlantic snapper-grouper fishery is not likely to jeopardize their continued existence, or destroy or adversely modify designated critical habitat. However, the 2006 BiOp required that within the fishery reasonable and prudent measures be taken to minimize stress and increase the survival rates of any sea turtles and smalltooth sawfish taken in the fishery.

In response to the 2006 BiOp, the South Atlantic Council developed measures in Amendment 15B to the FMP (Amendment 15B) to increase the likelihood of survival of released sea turtles and smalltooth sawfish caught incidentally in the South Atlantic snapper-grouper fishery. The final rule for Amendment 15B required fishermen on vessels with Federal commercial or charter vessel/headboat permits for South Atlantic snapper-grouper to possess a specific set of release gear, and comply with sea turtle and smalltooth sawfish handling and release protocols and guidelines (74 FR 58902, November 16, 2009). The final rule also required those fishermen to maintain a reference copy of the NMFS sea turtle handling and release protocols document titled, “Careful Release Protocols for Sea Turtle Release with Minimal Injury” (Release Protocols), in the event a sea turtle is incidentally captured. These South Atlantic snapper-grouper permit holders are also required to post a NMFS placard of sea turtle handling and release guidelines inside their vessel wheelhouse, or in an easily viewable area on the vessel if there is no wheelhouse.

The required gear for safe sea turtle handling and release was initially the same gear as required for vessels using pelagic longline gear for highly migratory species. However, most effort in the snapper-grouper fishery in the South Atlantic occurs on smaller vessels using lighter tackle than used when longline fishing for pelagic species. Subsequent to Amendment 15B, Comprehensive Ecosystem-Based Amendment 2 modified sea turtle release gear requirements to allow smaller vessels to have fewer gear requirements than for pelagic longline