

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Promoting Telehealth in Rural America)	WC Docket No. 17-310

COMMENTS OF AT&T

Just over a year ago, the Commission sought comment on comprehensive reform to its troubled Rural Health Care (RHC) Telecom Program.¹ The Commission created this program over twenty years ago in response to Congress’s directive that the Commission ensure that public and nonprofit health care providers in rural areas pay rates for telecommunications services that are reasonably comparable to the rates paid by customers in urban areas for similar services.² The Commission adopted rules to calculate the “rural” and “urban” rates that are far too complicated for an applicant – a rural health care provider in the business of providing essential health care services to underserved populations – to perform.³ Not surprisingly, rural health care providers turned to and relied on consultants or their service providers to obtain this information. These rules have made it easy for unscrupulous parties to create artificially high “rural rates” and, in some cases, artificially low “urban rates,” thus maximizing the alleged disparity between rural and urban rates. Because the Telecom Program is designed to provide discounts to rural

¹ See *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Notice of Proposed Rulemaking and Order, 32 FCC Rcd 10631 (2017) (*NPRM*).

² 47 U.S.C. § 254(h)(1)(A).

³ 47 C.F.R. §§ 54.605, 54.607.

health care providers so that they pay the “urban rate” for their purchased telecommunications service, this gamesmanship has resulted in exceptionally large discounts to the health care provider – with the average discount above 90 percent – and exorbitant payouts to these unscrupulous consultants and service providers.⁴ Against this backdrop, the Commission requested comment on how it should amend these rules and others to address the waste, fraud, and abuse that pervades its Telecom Program.

After reviewing the record compiled in response to the *NPRM*, the Wireline Competition Bureau (Bureau) now seeks further comment on changes to the Commission’s rural and urban rate calculation rules.⁵ Among other things, the Bureau highlights specific *NPRM* proposals for additional comment, including ones that will require service providers to compile detailed rate information for similar services offered in rural and urban areas.⁶ Those proposed changes, if adopted, will impose burdensome requirements on service providers that will likely further reduce competition in the Telecom Program, without addressing its underlying problems. Rather than tinker around the edges by making incremental changes to these flawed rules, AT&T respectfully submits that the Commission should phase out the Telecom Program outside of Alaska.⁷

⁴ See, e.g., *Network Services Solutions, LLC*, Scott Madison, Amendment to Notice of Apparent Liability for Forfeiture and Order, 32 FCC Rcd 5169 (2017); *DataConnex, LLC*, Notice of Apparent Liability for Forfeiture and Order, 33 FCC Rcd 1575 (2018).

⁵ *The Wireline Competition Bureau Seeks Additional Comment on Determining Urban and Rural Rates in the Rural Health Care Program*, WC Docket No. 17-310, DA 18-1226, at 2 (rel. Dec. 4, 2018) (*Public Notice*) (noting that since the close of the comment cycle, several carriers have sought approval of “cost-based” rural rates and the Universal Service Administrative Company (USAC) has conducted numerous reviews of applicants’ compliance with the urban and rural rate rules).

⁶ *Id.*

⁷ AT&T has no objection to the Commission creating Alaska-specific RHC programs, just as it has done with its high-cost programs, in recognition that service providers in Alaska have unique challenges to

As we detailed in our reply comments, the program has outlived its relevance as competition in the business data services (BDS) market, including in rural areas, is thriving and the BDS offerings health care providers purchase increasingly are not distance sensitive and are priced the same in rural and urban areas.⁸ AT&T provided just a few examples of its popular services purchased by health care providers that are priced the same regardless of geography and are not mileage-based in its reply comments.⁹ Based on the competitive BDS market, AT&T believes this equalizing of rural and urban rates is common among BDS service providers. In this circumstance, no discount can be justified under the statute as the “rural” and “urban” rates are reasonably comparable, if not identical.

With discounts that average over 90 percent outside of Alaska, many rural health care providers that participate in the Telecom Program are signing contracts for telecommunications services at rates that no other entity would ever pay¹⁰ and, post-discount, they are paying rates that are below what customers in urban areas are paying for similar service. Congress could not have intended either result by its reasonable comparability requirement in section 254(h)(1)(A). Nor could it have envisioned the cottage industry that has formed around this program with consultants and service providers catering exclusively to health care providers that participate in the Commission’s RHC programs, particularly, its Telecom Program. The Commission’s rural

providing affordable communications services in rural areas. Thus, AT&T’s proposals discussed herein address the operation of the Telecom Program outside of Alaska.

⁸ See, e.g., AT&T Reply Comments, WC Docket No. 17-310, at 3 (filed March 5, 2018) (AT&T Reply Comments) (quoting *BDS Order*, 32 FCC Rcd 3459, at ¶¶ 1-2 (2017), finding that competition in the BDS market is “intense” with rural areas also experiencing “substantial and growing competition”).

⁹ *Id.* at 8.

¹⁰ This includes the rural health care provider itself absent an assured massive discount by its consultant and/or service provider.

and urban rate rules created this completely artificial niche market, which, in turn, created the skyrocketing growth in the Telecom Program. Such growth is at odds with the Commission's own data, which supported the Commission's conclusion in 2017 that "the competition envisioned in the Telecommunications Act of 1996 (1996 Act) has been realized[,]”¹¹ as well as its determination over twenty years ago that "base rates for telecommunications service elements charged to rural health care providers are already reasonably comparable to those charged in urban areas" and the "whole thrust of section 254(h)(1)(A) is that . . . disparities in telecommunications rates based on distance should be reduced or eliminated.”¹²

The most reasonable short-term enhancement the Commission can make to its Telecom Program as it phases out this program outside of Alaska is to make public the information the Telecom Program participant submits in support of its request that the rates it is paying for such telecommunications services are not reasonably comparable to rates paid for similar services in urban areas. Interested parties could then comment on the participant's supplied data (e.g., by supplying tariffed or other public rate information). Additionally, a Telecom Program participant that selected a reseller as its service provider could be required to have its service provider identify its underlying wholesale service provider. USAC personnel could contact the underlying wholesale service provider to determine whether it sells that same service at retail and, if so, at what rates and/or whether the wholesale provider offers that retail service in both rural and urban areas. With clear and transparent guidelines from the Commission and public comment on the applicant's supplied rate documentation, USAC personnel would determine

¹¹ *BDS Order* at 5.

¹² *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 12 FCC Rcd 8776, ¶¶ 673, 675 (1997).

whether the rates for the service at issue really are not reasonably comparable between rural and urban areas. If USAC concludes that some provider offers a similar service at rates that are reasonably comparable between rural and urban areas, it should deny the applicant's funding request.¹³

Another near-term improvement the Commission should make to the Telecom Program is to eliminate discounts for voice service. For years, the Commission has been transitioning its universal service programs away from supporting telephone service to supporting broadband service. The Commission should continue that work by eliminating discounts for voice service from its Telecom Program. Rates for voice services are reasonably comparable in rural and urban areas and there is no record support for maintaining discounts for voice service. Moreover, a phase-out for voice service discounts like the Commission adopted for its E-rate program is unnecessary for the Telecom Program because it is more likely than not that the rates service providers charge for voice service in rural and urban areas are already reasonably comparable, if not identical.

Further, the Commission also should move quickly to adopt commenters' recommendations to apply the E-rate Program's best practices to its RHC Programs.¹⁴ This

¹³ It is AT&T's understanding that many health care providers' agreements with service providers are conditioned on USAC approval of RHC funding. If USAC denies the health care provider's request for RHC funding, then the applicant may terminate the agreement. At such time, the health care provider could solicit new bids for service. If a health care provider's agreement with a service provider is not conditioned on RHC funding and USAC denies the health care provider's request for funding because USAC has determined that rural and urban rates for that service are reasonably comparable, the Commission could find that such action constitutes a change of law. This declaration would allow a health care provider to terminate its agreement with its service provider and solicit new bids for service, including from its current service provider. The Commission and USAC should consider modifying funding windows to accommodate health care providers that must post a new FCC Form 465 in response to USAC's denial.

¹⁴ See, e.g., NCTA Comments, WC Docket No. 17-310, at 2 (filed Feb. 2, 2018); USTelecom Comments, WC Docket No. 17-310, at 17-24 (filed Feb. 2, 2018); AT&T Reply Comments at 11-16.

includes, among other things, making funding requests publicly available and searchable on USAC's website.¹⁵ As discussed above, doing so will enable interested parties to evaluate the reasonableness of the alleged rural and urban rates, and, as TeleQuality notes, "[w]here multiple carriers are vying for the right to provide services, they will see if the winning bidder's pricing significantly exceeds their own."¹⁶ The Commission and USAC also should demand more detail from applicants on their FCC Form 465 submissions. As NCTA noted, "[i]t is very difficult, if not impossible, for potential bidders to compete to provide services that are not clearly described."¹⁷ AT&T has reviewed recently posted FCC Forms 465 and it is rare to find a form that actually provides a description of the requested services. More often than not, the form merely indicates what the usage level is (e.g., light, moderate, heavy) and the what the usage period is (almost always, "24/7") by category (e.g., distance learning, electronic patient billing, exchange of electronic health records). When AT&T recently reached out to an HCP contact (a consultant) to obtain additional information about a particular FCC Form 465, AT&T was told to bid whatever service and solution it wished between 56 kbps and 100 GB. In other words, the consultant failed to provide AT&T with the basic information about what services the health care provider wanted, information that should have been provided in the first instance on its FCC Form 465. With USAC permitting health care providers (via their consultants) to post FCC Forms 465 containing inadequate information and with consultants reluctant to answer basic questions from prospective service providers, bids for the Telecom Program are "competitive"

¹⁵ See NCTA Comments at 5; USTelecom Comments at 15-16; TeleQuality Comments, WC Docket No. 17-310, at 12, 19 (filed Feb. 2, 2018); SHLB Comments, WC Docket No. 17-310, at 34 (filed Feb. 2, 2018); Alaska Communications Comments, WC Docket No. 17-310, at 19-20, 25 (filed Feb. 2, 2018).

¹⁶ AT&T Reply Comments at 11-12; TeleQuality Comments at 19.

¹⁷ NCTA Comments at 2. See also AT&T Reply Comments at 12.

only in that a FCC Form 465 is on USAC's website for 28 days before the health care provider selects its service provider, likely the only service provider to respond to the FCC Form 465.

Another E-rate best practice that the Commission should import to its RHC programs is to allow the bidding window for the *new* funding year to commence immediately after the current funding year application window closes, and not to wait until January 1 of the following year.¹⁸ Currently, USAC allows RHC applicants both to commence requests for service *and* select service providers *after* the close of the current funding year filing window (i.e., May 31). Because USAC does not treat such an out-of-cycle process as a request for service for the *upcoming* funding year as it does for the E-rate Program, that process is less likely to be competitive than one conducted during the filing window. USAC then permits these out-of-cycle bids and service provider selections to be rolled over to January 1 for the new funding year, resulting in a less than robust competitive bidding process for the *new* funding year. By identifying and treating any RHC request for service filed after the current application window closes as a request for service for the *upcoming* funding year, USAC will ensure that prospective service providers are more aware of the opportunity, which is likely to result in a more competitive bidding process. Additionally, USAC should prohibit any RHC applicant (or its consultant) from imposing "intent to bid" requirements on prospective vendors that serve to lock out any vendor that fails to submit its intent to bid notice by day 7 or day 10, for example, of the 28-day competitive bidding period. Such a requirement effectively and impermissibly shortens that bidding period.

Finally, the Commission should refrain from imposing overly regulatory pricing requirements on service providers. By making an already undesirable program even less so, the

¹⁸ See, e.g., AT&T Reply Comments at 15; USTelecom Comments at 21.

Commission will discourage participation from legitimate service providers, leaving providers that more resemble Network Services Solutions and DataConnex than USTelecom's and NCTA's members to fill the void. Enhancing service provider competition by extending E-rate best practices to the RHC program will be more effective in weeding out waste, fraud, and abuse than creating, for example, a "rural rate of return."

For reasons provided above and in AT&T's reply comments, AT&T urges the Commission to adopt rules that phase out the Telecom Program outside of Alaska. During that phase down, AT&T also urges the Commission to adopt the E-rate best practices described herein and by other parties in this proceeding.

Respectfully Submitted,

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January 30, 2019

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