Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

ADDITIONAL REPLY COMMENTS OF GCI COMMUNICATION CORP.

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I. INTRODUCTION AND SUMMARY

GCI Communication Corp. ("GCI") files these reply comments in connection with the Commission's December 4, 2018 Public Notice seeking to refresh the record regarding the determination of urban and rural rates for the Rural Health Care Telecommunications Program ("RHC" or "RHC Telecom Program").[1]

The comments reflect overwhelming support for simplifying the RHC Telecom Program rules. Setting aside AT&T's proposal to eliminate the Telecom Program altogether outside of Alaska (which ignores the statute), the comments particularly support eliminating cost-based price regulation, while increasing transparency and taking other steps—such as increased minimum HCP payments—to facilitate the operation of the free market. The comments also point out that simplifying the Program and increasing transparency would reduce existing disincentives to participation, thereby increasing competition and choices for HCPs. This approach would provide much needed certainty to all participants, both HCPs and carriers, while enabling USAC to more easily administer the Program in a timely manner. And all of this is plainly preferable to retaining difficult-to-apply price regulation for business voice and data services provided only to HCPs, which is out of step with the Commission's deregulatory approach to competitive market pricing for all other purchasers of these services.

In sum, as further set forth below, commenters agree that the Commission should abandon complex over-regulation like the current and proposed rules, and instead rely on

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1 *See Wireline Competition Bureau Seeks Additional Comment on Determining Urban and Rural Rates in the Rural Health Care Program*, Public Notice, DA No. 18-1226, WC Docket No. 17-310 (rel. Dec. 4, 2018) ("*Public Notice*"). Pursuant to the Public Notice seeking comment on GCI's Application for Review ("AFR"), GCI is also filing these reply comments in support of its AFR. *See Wireline Competition Bureau Seeks Comment on GCI Application for Review*, Public Notice, WC Docket No. 17-310 (rel. Jan. 2, 2019).

straightforward market mechanisms to set rural rates. The Commission should also adopt specific proposals for greater simplicity and transparency in the remaining RHC Program rules.

II. THERE IS BROAD AGREEMENT THAT THE CURRENT RULES AND USAC IMPLEMENTATION ARE COMPLICATED AND OPAQUE, REDUCING HCP AND CARRIER PARTICIPATION, AND THAT THE NPRM'S PROPOSALS DO NOT ADDRESS THOSE PROBLEMS.

Commenters broadly criticize the complexity of the current rules, as well as the inconsistency of their application—and the resulting uncertainty for Program participants. For example, SHLB highlights its "concern[] that the complexity and unpredictable effects" of the rules "will force rural health care providers (HCPs) currently participating in the Telecom Program to . . . leave the RHC Program altogether . . . ."[2] Alaska Communications begins its comments with the same point, arguing that the "[t]he uncertainty shrouding the program diminishes the quality and quantity of care overall," has caused "some HCPs [to] drop[]out of the program," and has placed "the benefits to rural American made possible by the RHC program . . . at risk."[3] Alaska Communications also points out that the "rules governing the program have become outdated," and that USAC "administer[]s the Commission's rules in inconsistent" ways.[4] In short, as GCI argued in its comments, the current "complex, multilayered regulatory backstop" leads to "substantial regulatory and investment uncertainty."[5]

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2 Additional Comments of the Schools, Health & Libraries Broadband Coalition, WC Docket No. 17-310 at 2 (filed Jan. 30, 2019) ("SHLB Comments").

3 Supplemental Comments of Alaska Communications, WC Docket No. 17-310 at ii (filed Jan. 30, 2019) ("Alaska Communications Comments").

4 *Id.*

5 Additional Comments of GCI Communications Corp., WC Docket No. 17-310 at 1 (filed Jan. 30, 2019) ("GCI Comments").

Commenters also share GCI's specific concern with the problems presented by cost-based justification of rural rates. Alaska Communications "supports the elimination of the cost-based justification as an option under Section 54.607(b)" because it "has to date yielded almost nothing . . . to guide future rate justifications"—creating further uncertainty—and because "any attempt at cost-based justification is an extremely burdensome process."[6] Those burdens extend not only to service providers and program participants, but to the Commission as well: "Bureau staff must devote considerable time and effort to analyze the many types of data submitted and the cost allocations supporting this *post hoc* justification."[7]

Much of AT&T's critique of the Program as a whole is also best understood as a criticism of its complexity—AT&T correctly argues that the rules have become "far too complicated" for program participants to reasonably follow.[8] While AT&T's proposed solution—eliminating the Program entirely outside of Alaska—would be unlawful,[9] AT&T is certainly right that the Commission should not *further* complicate its regulations by "imposing [additional] overly regulatory pricing requirements on service providers."[10]

Like GCI, Alaska Communications emphasizes that the existing rules are not only burdensome, but also economically irrational. Alaska Communications points out that it is

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6 Alaska Communications Comments at 3.

7 *Id.*

8 Comments of AT&T, WC Docket No. 17-310 at 1 (filed Jan. 30, 2019) ("AT&T Comments").

9 AT&T's suggestion is particularly surprising because even it appears to acknowledge that the statute, *see* 47 U.S.C. § 254(h)(1)(A), contains a congressional "directive" that the Commission *must* "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." AT&T Comments at 1.

10 *Id.* at 7.

"difficult to allocate" the "costs of providing Telecom Program-supported services" on an "economically efficient or cost causative basis," because many costs "are shared network costs."[11] Indeed—as GCI argued in its comments—attributing revenue to, for example, GCI's TERRA network from mass-market and voice services is at best imprecise because such services are generally bundled with a broader package of services.[12] On the cost-allocation side, the problem is even more daunting—as a matter of economic theory, there simply is no way to allocate common costs to replicate the cost recovery of a competitive market, and the result is that over-regulation imposes under-recovery.[13]

Commenters also argue that the NPRM's proposals would not eliminate the problems with the current rules. Several specifically criticize the Commission's proposed rule that rural rates should be determined by averaging publicly available rates. TeleQuality Communications' ("TeleQuality") comments list ten challenges that service providers would encounter in attempting to apply this methodology, concluding that—as a practical matter—"[c]ompliance . . . will be impossible."[14] SHLB explains that "[w]hile using an average of 'publicly available' rates may sound appealing at first blush, the reality is that it is not easy to gather and analyze these rates."[15] Moreover, trying to calculate such an "'average rate' introduces a great amount of uncertainty and arbitrariness into the process as rates may vary based on technology and

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[11] Alaska Communications Comments at 3.

[12] *See* GCI Comments at 25-28.

[13] *Id.* at 25-28.

[14] Comments of TeleQuality Communications, LLC, WC Docket No. 17-310 at 2 (filed Jan. 30, 2019) ("TeleQuality Comments").

[15] SHLB Comments at 2.

location."[16] SHLB also points out—as GCI did in its comments[17]—that "because of deregulation, many services, such as Ethernet, are not tariffed or published publicly, or are only tariffed by one carrier," and these rates "may not reflect all of the rates available in a market."[18] And Alaska Communications notes that while there are increasingly non-common carrier alternatives, these are privately negotiated deals that do not result in "publicly available rates" at all.[19] At the same time, however, ignoring these non-public rates undermines the statutory purpose of ensuring that rural HCPs do not pay more than commercial urban purchasers.[20]

Commentators thus overwhelmingly agree that neither the existing nor proposed rules best advance the core goals of the RHC Program. As set forth below, a better approach would be for the Commission to place greater reliance on market mechanisms, while adopting rules to ensure transparency and increase the efficiency of those mechanisms.

III. COMMENTERS AGREE THAT THE COMMISSION SHOULD COMBINE RATE DEREGULATION AND RELIANCE ON COMPETITIVE BIDDING WITH GREATER TRANSPARENCY IN THE RHC PROGRAM, AND SOLUTIONS THAT BUTTRESS EFFICIENT COMPETITIVE BIDDING.

A. Commenters Favor Market-Based Rates in the RHC Context.

As discussed in GCI's comments, since the Commission implemented the RHC program in 1997, it has moved decisively to rely on the competitive market to regulate both long distance and Ethernet service rates.[21] The Commission now relies primarily on private negotiations in

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16 *Id.*

17 GCI Comments at 10 ("Without tariffs, publicly-available rates are the exception rather than the rule," and "any proposal that relies on publicly available rates is [thus] anachronistic.").

18 SHLB Comments at 5.

19 Alaska Communications Comments at 5.

20 SHLB Comments at 5.

21 GCI Comments at 9, 10.

competitive markets to regulate the price of such services, including most business data services ("BDS"). GCI argued in its comments that it does not make sense to apply strict regulatory rate reviews to RHC-purchased services—which are also BDS— while applying no such reviews to the same services outside of the Program.

Other commenters express broad support for market-driven regulation of rural rates. AT&T, for example, urges the "Commission [to] refrain from imposing overly regulatory pricing requirements on service providers."[22] ASTAC acknowledges that even in Alaska locations that it maintains were not competitive in the past, there is "now true competition for the middle mile transport provided by GCI's TERRA network."[23] Accordingly, ASTAC correctly argues that the

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22 Comments of AT&T at 7.

23 Comments of Arctic Slope Telephone Association Cooperative, Inc., on the GCI Application for Review, WC Docket No. 17-310 at 8 (Filed Feb. 4, 2019) ("ASTAC"). Notably, while ASTAC is a rural LEC in Alaska, it does not participate in RHC Program bidding. Its comments contain a number of arguments to which GCI does not respond in detail here that appear primarily designed to employ the comment process to critique a competitor rather than to address the RHC Program issues before the Commission. ASTAC's comments are particularly unfounded as it is not even on GCI's TERRA network.

The best Commission response to such arguments may be greater reliance on market mechanisms and less on regulation, since—as the Commission has recognized—it is often over-regulation that creates the opportunity for regulatory gamesmanship. *See, e.g. Comsat Corp. Petition for Partial Relief from the Current Regulatory Treatment of Comsat World System's Switched Voice Private Line, and Video and Audio Services.*, 11 FCC Rcd. 9622, 9636 (1996) (relying on "[m]arketplace forces" can "serve the public well by reducing opportunities for gamesmanship.").

It is also important to note that ASTAC nowhere demonstrates that all four facilities-based satellite providers are not capable of serving the entire state of Alaska, or that they face substantial barriers to doing so. The Commission has recognized that both actual and potential competition must be considered in any competition analysis. ASTAC also provides no cognizable competition analysis with respect to terrestrial services including those provided by GCI's TERRA network. The markets where GCI's TERRA network reach are also robustly competitive —capable of being served not only by TERRA, but also by fiber alternatives and satellite. (ASTAC also incorrectly characterizes these services as BIAS.

critical issue now is to ensure that "this competition is reflected in the . . . methodology . . . used to determine the rural rates" under the RHC program.[24]

GCI also suggested that the Commission had correctly recognized in 1997 that competitive bidding is the best market-driven way to determine rural rates under the Program.[25] Moreover, because services for RHC providers are "subject to competition," the Commission has properly held that "anchor or benchmark pricing is unnecessary and could in fact inhibit investment."[26] Like GCI, other commenters also specifically tout the benefits of competitive bidding as the best way to set rural rates in the RHC Program. SHLB, for example, criticizes the Commission's proposed rule as "revert[ing] to rate regulation—disfavored in every other instance—instead of promoting competition," and urges that "the Commission should primarily rely on the competitive bidding process to establish the rural rates for HCPs."[27] TeleQuality similarly argues that the Commission should "use market-based mechanisms," and in particular that "[p]romoting competitive bidding is better than increasing rate regulation."[28]

They are not mass-market retail broadband services, but are enterprise packet-based telecommunications services.)

[24] *Id.* at 8.

[25] *Id.* at 15.

[26] *Id.* at 16.

[27] SHLB Comments at 5.

[28] TeleQuality Comments at 4,5. In the last round of comments, TeleQuality also emphasized that a "market-based approach" would achieve Commission's overarching the goals of lower rates and greater predictability "better than rate regulation would." Reply Comments of TeleQuality Communications, LLC, WC Docket No. 17-310 at 4 (filed Mar. 5, 2018).

B. Commenters Advocate Focusing Regulation on Increasing Transparency and Market Efficiency.

While GCI and other commenters thus urge greater reliance on competitive solutions rather than rate setting to establish rural rates, the comments also reflect agreement that Commission rules can play an important role in increasing Program transparency and enhancing market efficiency. TeleQuality observes that "[i]n the E-Rate program, the Commission and USAC have focused on increasing transparency," and recommends adopting certain best practices from that context. For example, "[s]chools and libraries have to identify the bandwidths purchased and their recipients of services publicly so potential vendors can determine the current rates being charged," while the "RHC Program does not make applications publicly available."[29] TeleQuality "recommends that USAC make the RHC Program applications and competitive bids available to the public, as the increased information and transparency would further promote a fair and open competitive bidding process."[30] TeleQuality also calls for greater visibility into the manner in which the Commission establishes safe harbor rates, as well as Commission obtention and publication of urban rates[31]—which GCI also advocated in its opening comments.[32]

AT&T also asks the Commission to "move quickly to adopt commenters' recommendations to apply the E-Rate Program's best practices" to the RHC Programs. In addition to agreeing that funding requests should be made publicly available, AT&T also suggests requiring more detailed descriptions of the requested, as well as prohibiting "intent to

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[29] *Id.* at 6.

[30] *Id.*

[31] *Id.* at 7, 8.

[32] GCI Comments at 32.

bid" requirements that effectively shorten the 28-day competitive bidding period.[33] Finally, AT&T recommends that "the Commission should import" from the E-rate context the practice of "allow[ing] 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."[34] "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."[35]

SHLB seeks greater "transparency in the RHC program as a whole," including by publishing the amount of funding requested for the Program each year, and by "making prices for RHC services more transparent."[36] Like TeleQuality and AT&T, SHLB also specifically calls for "making this pricing information publicly available," which will help HCPs compare their rates to those of other similarly situated entities.[37] GCI supports these calls for rules that increase the transparency of the Program.

In addition to increasing transparency, the Commission could also improve efficiency by strengthening market incentives for HCPs to ensure that they are making cost-effective purchases. GCI suggested requiring HCPs "to pay the greater of the urban rate or one percent of the rural rate. This amount could then be incrementally increased to up to five percent of the

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33 AT&T Comments at 5, 6.

34 *Id.* at 7.

35 *Id.*

36 SHLB Comments at 11.

37 *Id.*

rural rate . . . " should it be necessary to do so to achieve greater purchasing discipline.[38] SHLB likewise argues that "[r]equiring HCPs to pay 5% of the urban-rural rate difference would ensure that HCPs are price sensitive to the total cost of the services."[39] While the Commission might need to go through the necessary forbearance analysis, this approach would be more tailored and economically rational than rate regulation if the concern is that HCPs are not now sufficiently sensitive to price.

Finally, it bears emphasis that GCI opposes proposals that would increase the complexity of the Program rules. For example, while Alaska Communications touts its "lowest corresponding price" proposal as a simple approach, it would actually require complex rules that would be difficult or impossible to apply in the RHC context. Indeed, Alaska Communications itself devotes nearly ten pages of its comments to explaining the intricacies of its purportedly "efficient approach to approving rural rates."[40] By the same token, the Utah Education and Telehealth Network's ("UETN") suggestion that broadband providers should be required to submit various sorts of "appropriate documentation" in support of funding requests actually represents the kind of "complexity of the process" that UETN itself claims to oppose.[41] Once again, relying on market-driven processes would obviate the need for such additional documentation.

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[38] *Id.* at 32. GCI's proposal also included a "circuit-breaker" to protect against price increases undermining Section 254(h)(1)(A)'s overall purpose. *See* Comments of GCI, WC Docket No. 17-310 at 45-46 (filed Feb. 2, 2018).2, 2018).

[39] SHLB Comments at 7.

[40] Alaska Communications Comments at 5-15.

[41] Comments of the Utah Education and Telehealth Network, WC Docket No. 17-310 at 2 (filed Jan. 28, 2019).

IV. CONCLUSION

GCI and other commenters support a holistic approach to rate-setting in the RHC context that combines greater emphasis on market mechanisms with rules that enhance the transparency and efficiency of the Program. The Commission should avoid unnecessarily complex over-regulation that will discourage infrastructure investment and reduce participation in the Program.

Respectfully submitted,

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