Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

REPLY COMMENTS OF AT&T

Cathy Carpino
Christopher Heimann
Gary L. Phillips
David L. Lawson

AT&T Services, Inc.
1120 20th Street, N.W.
Suite 1000
Washington, D.C. 20036
(202) 457-3046 - telephone
(202) 457-3073 - facsimile

March 5, 2018

Its Attorneys

TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY

Although the bandwidth needs of rural healthcare providers are increasing each year, as they are for other business customers, that fact alone does not necessarily mean that the funding amounts for the Commission's Rural Health Care (RHC) Telecom Program also must increase. By statute, that program is intended only to ensure that rates charged to rural healthcare providers in a state for telecommunications services are reasonably comparable to rates charged for similar services in urban areas in that state.[1] If there is no difference between rural and urban rates, rural healthcare providers are not statutorily entitled to any discount. Thus, the question here is whether and to what degree any urban-rural rate disparity exists for the services (like Ethernet) that rural healthcare providers are increasingly purchasing. Based on the record, AT&T[2] agrees with USTelecom that, at a minimum, the Commission should adopt a rebuttable presumption that the rates for non-mileage-based telecommunications services between urban and rural areas are reasonably comparable.[3] We also believe the record supports Kellogg & Sovereign Consulting's recommendation that the Commission phase out the Telecom Program and continue with the Healthcare Connect Fund (HCF) Program,[4] giving rural healthcare providers the ability to demonstrate an urban-rural rate disparity in excess of the HCF Program's 65 percent discount. If adopted, these measures would obviate any need to expand the size of the RHC Program, at least in the near term.

---

[1] 47 U.S.C. § 254(h)(1)(A).

[2] As used herein, "AT&T" refers collectively to AT&T Services, Inc. and its operating affiliates.

[3] The United States Telecom Association Comments, WC Docket No. 17-310, 12-15 (filed Feb. 2, 2018) (USTelecom Comments).

[4] Kellogg & Sovereign Consulting, LLC Comments, WC Docket No. 17-310, 8 (filed Feb. 2, 2018) (Kellogg & Sovereign Consulting Comments).

Almost twenty years ago, the Commission recognized that, because "base rates for telecommunications service elements charged to rural health care providers are already reasonably comparable to those charged in urban areas,"[5] most of the disparities between urban and rural telecommunications services rates were due to distance sensitive charges, which thus were the focus of its Telecom Program.[6] After years of stable and very low demand, funding under that program has sky-rocketed, jumping from $67 million in funding year (FY) 2008 to $209 million in FY 2016 (the most recent data available).[7] These trends might make some sense if rural areas had been losing competitive providers over the past decade, if distance-based charges for telecommunications services had been increasing or if telecommunications services were increasingly priced on a distance-sensitive basis. But, based on the Commission's own data, the opposite is occurring, at least outside of Alaska.[8]

---

[5] *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, Sixth Order on Reconsideration in CC Docket No. 97-21, Fifteenth Order on Reconsideration in CC Docket No. 96-45, FCC 99-269, ¶ 32 (rel. Nov. 1, 1999). Even back in 1997, the Commission found that "many, if not most, base rates for telecommunications services are averaged across a state or study area. It is often distance-based charges, not differences between base rates for service elements, that create great disparities in the overall cost of telecommunications services between urban and rural areas." *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 12 FCC Rcd 8776, ¶ 675 (1997) (*Universal Service First Report and Order*) (further citations omitted).

[6] *See also Universal Service First Report and Order* at ¶ 673 (quoting the Joint Board that "whole thrust of section 254(h)(1)(A) is that . . . disparities in telecommunications rates based on distance should be reduced or eliminated").

[7] *Promoting Telehealth in Rural America*, Notice of Proposed Rulemaking and Order, 32 FCC Rcd 10631, ¶ 9, Fig. 2 (2017) (*NPRM*).

[8] For the reasons detailed in comments of Alaskan service providers and their rural healthcare customers, AT&T has no objection to the Commission establishing an RHC Program for Alaska, just has it has created different rules for high-cost support in Alaska. This program could be tailored to meet the unique needs of Alaskan rural health care providers. Of course, any Alaskan RHC Program should incorporate the transparency reforms suggested by USTelecom and others. *See generally* USTelecom Comments; NCTA – The Internet & Television Association Comments, WC Docket No. 17-310 (filed Feb. 2, 2018) (NCTA Comments).

Just last year, for example, based on a massive record compiled over a decade, the Commission concluded that competition in the business data services (BDS) market, which feature prominently among the telecommunications services sold to rural healthcare provider customers, is "intense" with competitive local exchange carriers earning almost half of the BDS revenue in 2013 and cable providers emerging as "formidable competitors in this market."[9] It further found that 92 percent of buildings (which includes rural healthcare provider clinics, hospitals, and health centers) served by BDS in price cap carrier service territories are within a half mile of competitive fiber transport facilities.[10] Importantly, it also concluded that rural areas too were benefitting from this "substantial and growing competition."[11]

In the same order, the Commission found that legacy circuit-based services like DS1s and DS3s are "becoming obsolete" as demand for significant amounts of bandwidth "are being driven by bandwidth-hungry applications, mainly video services (teleconferencing, training, etc.). . . ."[12] The Commission explained that this demand is being increasingly satisfied by packet-based services such as Ethernet, especially over fiber.[13] Generally, these packet-based services are not priced on a distance-sensitive basis.

In short, the number of competitive providers in rural areas has not decreased, distance-based charges (at least those charged by facilities-based providers) have remained the same or

---

[9] *See Business Data Services in an Internet Protocol Environment et al.*, WC Docket No. 16-143 et al., 32 FCC Rcd 3459, ¶¶ 1-2 (2017) (*BDS Order*).

[10] *Id.* at ¶ 91.

[11] *Id.* at ¶ 1. *See also id.* at ¶ 60 (explaining that Mediacom, the fifth largest cable operator, has invested more than $4 billion on its high capacity fiber network serving thousands of small rural communities).

[12] *Id.* at ¶ 3.

[13] *Id.*

fallen over the past twenty years, and so few funding requests now are for actual distance-based charges that the Commission is proposing to eliminate reimbursements based on its distance-based methodology.[14] Simply put, the growth trends in the Telecom Program are inexplicable given the Commission's finding last year that, among other things, "[t]o a large extent in the business data services market, the competition envisioned in the Telecommunications Act of 1996 (1996 Act) has been realized. . . ."[15] The Commission thus is right to question whether much of the Telecom Program's growth is attributable to waste, fraud, and abuse.[16]

We commend the Commission for its numerous proposals to reform the Telecom Program. As we explain below, AT&T shares USTelecom's position that more fundamental reforms are warranted and until those reforms are implemented, AT&T agrees with USTelecom that the Commission should not increase the funding cap outside of Alaska.[17] Absent reform, it is impossible for the Commission to know what amount of funding is "sufficient" to satisfy its statutory requirements.[18]

---

[14] *NPRM* at ¶¶ 79-80.

[15] *BDS Order* at ¶ 5. *See also NPRM* at ¶ 9, Fig. 2 (explaining that rural healthcare providers' out-of-pocket expenses actually *decreased* from a high of $40 million in FY 2011 to approximately $11 million in FY 2016 despite the jump in overall Telecom Program funding).

[16] *NPRM* at ¶ 4.

[17] *See* USTelecom Comments at 10.

[18] 47 U.S.C. § 254(b)(5).

II. DISCUSSION

A. By Providing Such Deep Discounts to Rural Healthcare Providers, the Current Telecom Program Likely Does Not Comply with the Statute and Fundamental Reform Is Warranted.

The Commission describes in its *NPRM* how the current Telecom Program has been used by many healthcare providers to obtain telecommunications services that are so heavily discounted, they are virtually free.[19] Based on the Commission's data, the average discount amount for a healthcare provider participating in the Telecom Program outside of Alaska is 91 percent. To justify such a discount, service providers in rural areas would have be charging rural healthcare providers $100/month for telecommunications services that customers in urban areas purchase for $9/month. For *non-mileage-based* telecommunications services, such an extreme disparity between urban and rural rates is hard to imagine – particularly insofar as telecommunications carriers are required to geographically average rates across urban and rural areas within their service territories.[20] Plainly, Congress did not intend for the RHC Program to provide essentially free service to rural healthcare providers, and to the extent the Telecom Program has become a Lifeline-program of sorts for rural healthcare providers, the Commission should take steps to correct it.

The lack of transparency in the Telecom Program and its arcane and complex rules, about which USTelecom and others commented at length,[21] has enabled some parties to take advantage of and misuse this program. Additionally, as the Commission notes, with such high discount

[19] *See, e.g.*, *NPRM* at ¶ 12.

[20] 47 U.S.C. § 254(g).

[21] *See, e.g.*, USTelecom Comments at 15-24; NCTA Comments; Alaska Communications Comments, WC Docket No. 17-310, 17-21 (filed Feb. 2, 2018) (Alaska Communications Comments).

rates, many Telecom Program beneficiaries are not price sensitive in choosing services or carriers.[22] These entities are appropriately focused on providing essential healthcare services in underserved and/or challenging environments. Consequently, they rely on consultants or service providers to advise them regarding the communications services needed to provide those essential healthcare services to their patients and how to navigate the Telecom Program.

Unfortunately, it appears that some of these consultants and service providers – at times one and the same – have created a cottage industry around obtaining the highest discount possible through the Telecom Program, without regard to whether any difference actually exists between competitive, market-based rural and urban rates. If the consultant's compensation is based on the size of the discount it is able to obtain on behalf of the healthcare provider, that consultant's incentives clearly are at odds with the Commission's goal of making the Telecom Program more cost-efficient and targeting scarce funding to the rural healthcare providers that need it.[23] Similarly, it appears that some service providers (perhaps in conjunction with consultants) have based their business model on crafting the highest possible "rural rate" and the lowest possible "urban rate" to justify charging a Telecom Program beneficiary a rate that no non-Telecom Program beneficiary would ever pay.[24] With the Telecom Program picking up almost all the tab, there is no reason for a rural healthcare provider to second-guess what it is being told by its consultant and/or service provider.

---

[22] *NPRM* at ¶¶ 41, 47.

[23] *See, e.g., id.*

[24] *See, e.g., DataConnex, LLC,* File No.: EB-IHD-15-00020296, Notice of Apparent Liability for Forfeiture and Order, FCC 18-9 (rel. Jan. 20, 2018) (issuing a proposed forfeiture of $18.7 million against a Telecom Program service provider).

The Commission has proposed a number of suggestions to modify its Telecom Program rules to address the waste, fraud, and abuse. However, for reasons provided above and in other parties' comments, the Commission could reasonably conclude that its Telecom Program has outlived its relevance and eliminate it outside of Alaska.[25] In this regard, we urge the Commission to consider Kellogg & Sovereign Consulting's recommendation that the Commission phase out the Telecom Program and require rural healthcare providers to seek funding under the HCF Program.[26] If a rural healthcare provider can demonstrate that the HFC Program's 65 percent discount is inadequate to ensure that its rates are reasonably comparable to rates for a similar service in an urban area, it could request a deeper discount, but its request would be subject to enhanced review by USAC.[27] Additionally, it would be reasonable for the Commission to close immediately the Telecom Program to new applicants.

If the Commission is not prepared to sunset the Telecom Program outside of Alaska, then AT&T recommends that it adopt USTelecom's proposals as well as certain other reforms proposed by other parties.

---

[25] This is hardly news. Almost twenty years ago, the Universal Service Administrative Company (USAC) issued a report on the RHC Program and stated, "Given the goals of the Act of 1996 to put [rural healthcare providers] on an equal footing with urban counterparts with respect to telecommunications rates, it seems that rates are more equal than anticipated, at least regarding basic service. This could be interpreted by concluding that the current access charge policy and the High Cost Universal Service Program have helped to achieve this goal." *USAC Report to the FCC, Evaluation of the Rural Health Care Program*, CC Docket No. 96-45, at 36 (filed March 5, 1999).

[26] Kellogg & Sovereign Consulting Comments at 8.

[27] We agree with TeleQuality that the Commission must establish clear standards for USAC to follow as part of any enhanced review and such standards must be transparent to all parties. TeleQuality Communications, LLC Comments, WC Docket No. 17-310, 14 (filed Feb. 2, 2018) (TeleQuality Comments).

1. The Commission Should Adopt a Rebuttable Presumption That Rates for Non-Mileage-Based Telecommunications Services Are Reasonably Comparable between Rural and Urban Areas.

USTelecom suggests the Commission establish a rebuttable presumption that rates for non-mileage-based telecommunications services are reasonably comparable between urban and rural areas, and thus do not require support.[28] AT&T agrees and urges the Commission to adopt this presumption. As we noted above, such a finding is consistent with the Commission's conclusions reached twenty years ago and changes in the marketplace since then have only validated the Commission's previous finding that base rates for telecommunications services generally do not vary between urban and rural areas. For example, AT&T makes no distinction in price between rural and urban areas for its Switched Ethernet and Dedicated Ethernet services and we have no reason to believe that our pricing structure is anomalous in the industry. We agree that the Commission should limit the Telecom Program support to actual distance-based charges on invoices. Rather than eliminating its mileage-based methodology,[29] the Commission should consider requiring all Telecom Program recipients to use it if they are legitimately being charged mileage-sensitive rates. Moreover, we agree with USTelecom that giving rural healthcare providers the ability to show that a deeper discount than available through the HCF Program is warranted satisfies the Commission's obligations under section 254(h)(1)(A).[30]

---

[28] USTelecom Comments at 12-15.

[29] *NPRM* at ¶¶ 79-80.

[30] USTelecom Comments at 14-15.

2. The Commission Should Eliminate Discounts for Voice Service in the Telecom Program.

As CHRISTUS Health notes with support, the Commission has been transitioning its universal service support mechanisms away from supporting voice telephone service to supporting broadband service.[31] The Commission should continue that work by eliminating discounts for voice service from its Telecom Program. In 2014, the Commission adopted rules to phase out E-rate discounts on voice services. It recognized then that voice services are competitive and the availability of VoIP services provides many schools and libraries with a cost-effective option.[32] While the Commission elected to phase out voice discounts in the E-rate program over several years, a similar transition is unnecessary for the RHC Program because the statutory underpinnings of the two programs are different in a key respect. The relevant statute requires E-rate eligible entities to be charged "at rates *less than* the amounts charged for similar services to other parties."[33] By contrast, the relevant RHC statute requires the Commission to ensure that the rates rural healthcare providers pay for telecommunications services are "*reasonably comparable* to rates charged for similar services in urban areas in that State."[34] If the Commission determines, as it must, that the rates for voice service are reasonably comparable in rural and urban areas, then no phase down is necessary and the Commission could eliminate discounts on voice service beginning with FY 2019. A review of the record to date will show that no commenter has discussed the importance of maintaining discounts for voice service. To

[31] CHRISTUS Health Comments, WC Docket No. 17-310, 2 (filed Feb. 2, 2018).

[32] *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, FCC 14-99, ¶ 138 (2014).

[33] 47 U.S.C. § 254(h)(1)(B) (emphasis added).

[34] 47 U.S.C. § 254(h)(1)(A) (emphasis added).

the contrary, commenters emphasize the importance of broadband to the future of telehealth and telemedicine. While it is unclear from the data in the *NPRM* what percentage of the Telecom Program's funding supports voice services, eliminating voice subsidies will free up some amount of funding for broadband and will reduce by some degree the pressure to raise the annual funding cap. Finally, we note that this action is consistent with the overall bipartisan policy objective of transforming the universal service support mechanisms to support the services of the 21st Century, which do not include legacy voice networks.

3. Proposals to Impose Pricing Regulation on Service Providers Are Likely to Have the Effect of Deterring Competition.

There is no doubt that the current Telecom Program rules have enabled some number of consultants and service providers to manipulate rural and urban rates to their own financial advantage and to the detriment of the RHC program.[35] However, we are concerned that the highly regulatory proposals in the *NPRM*, such as creating a rural rate of return,[36] a cap on a reseller's mark up,[37] and other pricing-related requirements on service providers that participate in the Telecom Program are a cure worse than the disease. We agree with commenters that express concern that these proposals will only deter provider participation and make the Telecom Program even less competitive than it is today.[38] As TeleQuality notes, "[i]f service providers likewise have to jump through more hoops, they are less likely to bid on potential contracts, thereby decreasing [rural healthcare provider] options and eliminating any possibility of the

---

[35] *See, e.g., NPRM* at ¶ 60.

[36] *Id.* at ¶ 49.

[37] *Id.* at ¶ 50.

[38] *See, e.g.,* TeleQuality Comments at 11-12; NCTA Comments at 6-8; USTelecom Comments at 7-8.

benefits of a competitive marketplace."[39] While these proposals are meant to inject objectivity into the rural and urban rates reported by applicants to determine eligible subsidies, we are concerned that they are more likely to increase significantly providers' and USAC's administrative burdens. Instead, we believe that the other reforms discussed herein will be more effective in curbing waste, fraud, and abuse.

B. The Commission Should Extend Certain E-rate Requirements to the RHC Program to Enhance the Transparency of This Program.

One of the few areas of consensus in the record was that the Commission should extend several E-rate "best practices" to the RHC Program.[40] A number of commenters urge the Commission to make RHC funding requests publicly available and searchable on USAC's website, just as USAC does today for E-rate.[41] AT&T strongly agrees with this proposal, which will make requests for services more competitive and will help tamp down waste, fraud, and abuse as service providers, government watchdogs, regulators, and others can review the reasonableness of the rate information included on funding requests. As TeleQuality states, "[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," as participants in the E-rate program currently do.[42]

---

[39] TeleQuality Comments at 12.

[40] *See, e.g.*, NCTA Comments at 2; USTelecom Comments at 17-24.

[41] *See* NCTA Comments at 5; TeleQuality Comments at 12, 19; USTelecom Comments at 15-16; The Schools, Health & Libraries Broadband (SHLB) Coalition Comments, WC Docket No. 17-310, 34 (filed Feb. 2, 2018) (SHLB Comments); Alaska Communications Comments at 19-20, 25.

[42] TeleQuality Comments at 19 (also noting that had the "bad actions of NSS and DataConnex occurred in the E-rate Program, they likely would have been spotted by competitors, who would have complained to the applicants and to USAC").

AT&T also agrees with commenters and the Commission that too many RHC Program applicants provide an inadequate amount of information about the services they are requesting.[43] As NCTA explains, "[i]t is very difficult, if not impossible, for potential bidders to compete to provide services that are not clearly described."[44] And fewer bid responses are likely to result in higher prices to the rural healthcare providers, which, in turn, are passed through to the RHC fund.[45] To remedy this, the Commission should require RHC applicants to provide additional information about the services they require, as well as their anticipated usage demands, similar to the detail required by E-rate applicants.[46] We also support USTelecom's suggestion to extend E-rate bid evaluation and cost-effectiveness principles to the RHC program.[47] Among other things, the Commission should require Telecom Program applicants to make price a primary factor in evaluating competitive bids for both of its RHC Programs, not just for its HCF Program.[48]

Codifying the current E-rate gift restrictions in the RHC rules also "is a necessary step to eliminate fraud and abuse in the RHC Program."[49] As USTelecom and others indicate in their comments, some carriers (including AT&T) have applied the E-rate gift restriction rule to their

---

[43] USTelecom Comments at 18; Alaska Communications Comments at 17-18; NCTA Comments at 2.

[44] NCTA Comments at 2. Like NCTA's member companies, AT&T also has viewed posted FCC Form 465 submissions on USAC's website containing blank service description fields. *Id.*

[45] *Id.*

[46] USTelecom Comments at 18. *See also* NCTA Comments at 2; Alaska Communications Comments at 18-19 (both urging the Commission to require applicants to provide additional detail in their requests for service – FCC Form 465 – or formal requests for funding).

[47] USTelecom Comments at 18.

[48] *Id.* at 18-19; TeleQuality Comments at 21.

[49] USTelecom Comments at 19. *See also* TeleQuality Comments at 24; General Communication, Inc. Comments, WC Docket No. 17-310, 26 (filed Feb. 2, 2018) (GCI Comments).

RHC activities[50] but we are concerned that, absent codification of the requirement, other carriers, applicants, and consultants will not comply. Not only does this give non-compliant service providers an unfair competitive advantage, it also facilitates fraud and abuse in the RHC Program. We also agree with USTelecom that for this rule to be enforceable, it is essential for USAC to maintain a searchable list of all entities participating in the RHC Program, as well as the locations receiving RHC support, so it will be clear to service providers which healthcare providers are covered by the rule.[51] Additionally, such a database of RHC Program participants could increase service provider competition by making carriers aware of potential RHC customer opportunities.

Another E-rate best practice that should be extended to the RHC Program is permitting applicants to administer their own invoices and receive payments directly from USAC.[52] In the E-rate Billed Entity Applicant Reimbursement (BEAR) process, the applicant pays the service provider in full, then collects its E-rate funding directly from USAC. Better yet, the Commission should remove the service provider from the invoicing and payment process altogether by *requiring* RHC beneficiaries to be responsible for administering invoices and collecting their subsidies directly from USAC. Removing service providers from the middle will reduce sometimes significant invoicing and payment delays and will encourage more service providers to participate in this program.[53] Indeed, service providers will not hesitate to respond to rural healthcare providers' requests for service if they could treat the rural healthcare provider from a

---

[50] USTelecom Comments at 19; GCI Comments at 26.

[51] USTelecom Comments at 19-20.

[52] *Id.* at 23; NCTA Comments at 9.

[53] USTelecom Comments at 23.

billing and collections perspective like any other commercial customer. Today, the significant administrative burden that the RHC invoicing requirements impose on service providers can be a real deterrent to participation.

AT&T also supports Kellogg & Sovereign Consulting's, SHLB's, and ADTRAN's recommendation that the Commission extend the E-rate consultant registration requirements to the RHC Program.[54] We agree with the Commission that requiring RHC Program consultants to obtain a unique registration number from USAC will "be a more effective way of identifying those individuals providing consulting services to RHC Program participants."[55] In addition to extending the HCF Program's "declaration of assistance" rule to the Telecom Program,[56] AT&T also supports the Commission – not simply USAC – prohibiting consultants from performing the four enumerated functions listed in paragraph 88 if the consultant has any financial stake with a bidding service provider.[57] Additionally, the Commission should consider adopting NCTA's suggestion that it publish an Eligible Services List for the RHC Program, similar to the E-rate Program.[58] We agree with NCTA that all parties will benefit by having the Commission's detailed guidance on RHC-supported services.

USTelecom and other parties detailed in their comments a number of common sense improvements to the current RHC Program funding year schedule and invoicing procedures that

---

[54] Kellogg & Sovereign Consulting Comments at 12-13; SHLB Comments at 34; ADTRAN, Inc. Comments, WC Docket No. 17-310, 7 (filed Feb. 2, 2018).

[55] *NPRM* at ¶ 87.

[56] *Id.* (citing 47 C.F.R. § 54.642(e)(3), which requires an applicant to submit a "Declaration of Assistance," identifying any consultant, service provider or other outside expert that assisted in the preparation of its application).

[57] *Id.* at ¶ 88.

[58] NCTA Comments at 4-5.

the Commission should adopt.[59] Among other things, AT&T agrees that the Commission should eliminate the requirements that limit an applicant's submission for requests for service to a strict timeframe starting on January 1 and, instead, permit the applicant to conduct its requests for proposals on a rolling basis, like in E-rate.[60] We also support closing the funding window far enough in advance of the beginning of the new funding year so that USAC can issue all funding decisions prior to the commencement of that new funding year.[61] Furthermore, we share USTelecom's concerns about the delays the current RHC Program invoicing requirements create and agree that they serve as a deterrent to provider participation.[62] The Commission should remedy this problem by, among other things, requiring HCF Program participants to pay their share of the overall cost of service within 90 days of being invoiced by the service provider and dispensing with the requirement that service providers certify to USAC the applicant's information on FCC Form 463.[63]

There is one E-rate rule discussed in the comments that the Commission should *not* export to the RHC Program: the so-called lowest corresponding price (LCP) rule. AT&T disagrees with Alaska Communications that this rule is "a very simple, easily administered rule."[64] AT&T is required to expend considerable resources to comply with this E-rate rule. Adding the same administrative burden to the much smaller RHC program will likely reduce

[59] *See, e.g.*, USTelecom Comments at 21-23, Alaska Communications Comments at 40-41; SHLB Comments at 32.

[60] USTelecom Comments at 21.

[61] *See, e.g., id.*; Alaska Communications Comments at 40-41.

[62] USTelecom Comments at 23.

[63] *Id*.

[64] Alaska Communications Comments at 26 (citing 47 C.F.R. § 54.511(b)).

competition for RHC-funded services. More importantly, however, the statutory basis for the RHC Program does not support extending this E-rate rule as Alaska Communications suggests. With E-rate, Congress intended eligible schools and libraries to receive service "at rates that are *less than* the amounts charged for similar services to other parties."[65] By contrast, in the RHC Program, "rates charged for the service shall be rates that are *reasonably comparable* to rates charged for similar services in urban areas."[66] By applying LCP to the RHC Program, the Commission would render superfluous the reasonable comparability requirement, something the Commission lacks the authority to do. Simply put, the E-rate LCP requirement has no place in the RHC program.

C. Until the Commission Fundamentally Reforms Its Telecom Program, It Is Premature to Consider Increasing the Annual Funding Cap.

Most commenters support increasing the size the RHC Program's annual funding cap. Indeed, some parties support doubling the size of the RHC fund to $800 million per year.[67] Like USTelecom, AT&T has no objection to the Commission reconsidering and, possibly, increasing the size of the RHC fund, which was set over twenty years ago.[68] However, until the Commission addresses the waste, fraud, and abuse flowing throughout the Telecom Program, it is impossible for the Commission to determine what amount of RHC support is "sufficient," as required by the statute.[69] Additionally, we agree with USTelecom that once the Commission's

[65] 47 U.S.C. § 254(h)(1)(B) (emphasis added). *See also* Joint Explanatory Statement of the Committee of the Conference at 133 (H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess.) (Joint Explanatory Statement).

[66] *See* Joint Explanatory Statement at 133; 47 U.S.C. § 254(h)(1)(A).

[67] *See, e.g.,* SHLB Comments at 3; Kellogg & Sovereign Consulting Comments at 6.

[68] USTelecom Comments at 8.

[69] 47 U.S.C. § 254(b)(5).

Telecom Program reforms have taken hold, there may be no reason to increase the current $400 million/year funding cap.[70]

To support its request for doubling the size of the RHC Program fund, one proponent points to changes in technologies that make telehealth and telemedicine more valuable, the continuing closures of rural hospitals, Congress adding skilled nursing facilities to the list of eligible entities, and federal mandates such as the implementation of electronic medical records.[71] There is no doubt that rural healthcare providers are struggling due to demographic, economic, and regulatory changes, and the benefits of telehealth and telemedicine are worthy of support from some governmental entity. Yet, however compelling, these challenges have nothing to do with the Commission's mandate under section 254(h)(1)(A). Congress did not intend for the Commission's rural healthcare program to be the panacea that SHLB and some other commenters are suggesting. Congress's statutory directive to the Commission was narrow in scope: provide discounts to rural healthcare providers so that the rates they pay for telecommunications services are reasonably comparable to rates charged in urban areas for similar services.[72] Where there are no differences in rural and urban rates, rural healthcare providers are not statutorily entitled to receive any discount from this Commission program, no matter how financially dire their situation might be.

We understand that prorating RHC support creates hardship for healthcare providers and cannot be a long-term solution because it fails to provide beneficiaries with specific and

---

[70] USTelecom Comments at 11-12.

[71] SHLB Comments at 4 (claiming these four reasons support increasing the RHC Program's funding cap).

[72] 47 U.S.C. § 254(h)(1)(A).

predictable support, as required by section 254(b)(5).[73] However, there is no consensus in the record for the Commission to adopt some alternative prioritization.[74] Consequently, it is reasonable for the Commission to continue proration, if necessary, on an interim basis until it implements the reforms discussed herein. Finally, we agree with commenters that the Commission should roll-over any unused RHC funds to future funding years, as is done in the E-rate Program.[75]

III. CONCLUSION

AT&T urges the Commission to take such action consistent with AT&T's positions described above.

Respectfully Submitted,

/s/ Cathy Carpino
Cathy Carpino
Christopher Heimann
Gary L. Phillips
David L. Lawson

AT&T Services, Inc.
1120 20th Street NW
Suite 1000
Washington, D.C. 20036
(202) 457-3046 – phone
(202) 457-3073 – facsimile

March 5, 2018

Its Attorneys

[73] USTelecom Comments at 10.

[74] *See, e.g.,* TeleQuality Comments at 8-10; GCI Comments at 40-48; SHLB Comments at 15-17.

[75] TeleQuality Comments at 7; USTelecom Comments at 11.