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Via ECFS

Marlene Dortch
Secretary
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

Re: *Promoting Telehealth in Rural America, WC Docket No. 17-310; Rural Health Care Support Mechanism, WC Docket No. 02-60*

Dear Ms. Dortch,

On Thursday, March 14, 2019, Anisa Latif, Stacy Fuller and I, of AT&T Services, Inc. (AT&T) met with Trent Harkrader, Ryan Palmer, Liz Drogula, Regina Brown, Carol Pomponio, and Johnnay Schrieber of the Wireline Competition Bureau (Bureau) to discuss reforms to the Commission's Rural Health Care (RHC) Telecom Program outside of Alaska.

We explained that there is consensus in the record that robust competition could address much of the waste, fraud, and abuse that has plagued the Commission's Telecom Program. However, there are barriers in the program that are impeding such competition. First, prospective service providers do not receive enough information about the services healthcare providers (HCPs) are requesting as part of the Telecom Program based on how HCPs or their consultants have been filling out FCC Form 465. The online form provides a series of checkboxes by category (interactive, transactional, bulk, miscellaneous), usage (light, moderate, heavy), and period of time the service will be used (*e.g.*, 24/7, business hours). That information alone is insufficient for a service provider that is not already the current service provider to make an informed bid in response to that request for service. In addition to the information collected through the checkboxes, AT&T recommends that the Commission or the Universal Service Administrative Company (USAC) clarify that HCPs must use Line 29 to provide the following information: (1) an existing Telecom Program HCP must list all of the current discounted services it receives today and it must state whether it wants to continue receiving the same services(s) or whether it wants, for example, increased bandwidth; (2) an HCP that does not currently participate in the Telecom Program must describe which services it wants for the checkboxes it selects. Those services likely are the services the HCP receives today, albeit undiscounted through the Telecom Program. We believe the Commission has the authority to make this clarification, requiring HCPs to complete Line 29 as described above, using the existing Office of Management and Budget (OMB)-approved information collection. As an alternative to using Line 29 to provide additional information about the HCP's requested services, the Commission could require HCPs to attach or include a link to a request for proposal

(RFP) although that may be a modification of the current OMB-approved information collection. Once implemented, USAC should reject any FCC Form 465 that does not contain this additional information (*i.e.*, a complete Line 29 or an RFP).

In addition to enhancing competition, requiring additional service information upfront will have the benefit of minimizing the gatekeeper role that some consultants play today in the Telecom Program. Many, perhaps most, of the FCC Form 465 filings are prepared by consultants, who serve as the HCP's contact. As AT&T noted in its comments, it has been its experience that some consultants are unwilling to provide even the most basic information about the services HCPs want through the Telecom Program.¹ To be sure, AT&T was not looking for some inside advantage when it sought additional information. Consultants in the RHC programs understand well how to establish a process to disseminate all questions and answers to all prospective bidders. However, if a consultant's compensation is based on the size of the Telecom Program discount it can obtain for the HCP, that consultant may have little interest in having a truly competitive bidding process.

Second, we also recommended that the Commission amend its current Telecom Program competitive bidding rule (47 C.F.R. § 54.603) to require an HCP to make price the primary factor as it considers multiple bids, which is the standard in the E-rate competitive bidding rule (47 C.F.R. § 54.503(c)(2)(ii)(B)). Under the current Telecom Program rules, HCPs are to select the most cost-effective method of providing service, which means the "method that costs the least after consideration of the features, quality of transmission, reliability, and other factors that the health care provider deems relevant to choosing a method of providing the required health care services." 47 C.F.R. § 54.603(b)(4). AT&T explained that it has viewed many FCC Forms 465 where cost was assigned equal weight as "prior experience, including past performance." If AT&T were to submit a bid that is lower than another bidder that is the current service provider, such weighting could allow the HCP to select the current provider every time, even if that other provider's rates were significantly higher than AT&T's proposed rates. Similarly, AT&T has seen many forms that assign a lower weight overall to cost than to other factors combined (*e.g.*, cost is 25% and there are three other factors listed, each at 25%). Again, such weighting gives too much discretion to the HCP to minimize cost when selecting the winning bidder. As we understand it, there are fewer issues in the E-rate program because those beneficiaries are treating price as the primary factor when they evaluate bids. In the event the HCP selects a bidder with a higher rate, we recommended that USAC require the HCP to justify in writing why it declined to select the lower bidder and share that explanation with Commission staff.

Third, consistent with AT&T's comments and those of other parties urging transparency in the Telecom Program, we recommended that the Commission make public certain information contained on the HCP's FCC Form 466. We explained that a prospective service provider is more apt to bid in response to future HCP requests for service if it sees that the current provider's rates are higher – perhaps, exponentially higher – than its rates for the same service. Combined, we think these simple, yet effective, enhancements to the front-end processes will increase competition in the Telecom Program.

¹ See AT&T Comments, WC Docket No. 17-310, at 6 (filed Jan. 30, 2019) (AT&T Comments).

AT&T also discussed the Bureau's guidance issued last month.² We noted that USAC has been faithfully and aggressively implementing the Bureau's guidance and in doing so, it has essentially revived the long obsolete FCC Form 468. The Commission and USAC wisely decided to jettison this form in 2002, effective Funding Year 2003, in response to complaints by HCPs over delays in getting their funding requests approved.³ Those delays were attributable, in turn, to delays by the HCPs' service providers, which were required to complete FCC Form 468 and provide a copy to the HCP so that the HCP could submit the package of information to USAC for approval. FCC Form 468 (the "Telecommunications Service Providers Support Form") required a service provider to calculate the applicable rural and urban rate for each service it provided to the HCP as part of the Telecom Program. The instructions to that form directed carriers to follow the methodology the Bureau provided in its recent Public Notice (*i.e.*, Method 1, and if not Method 1, then Method 2, and if not Method 2, then Method 3).⁴ The Commission acknowledged the burden that FCC Form 468 imposed on carriers when cited a hospital association's request to eliminate this form "because telecommunications carriers struggle to complete the form in a timely manner."⁵ Other commenters similarly complained at the time about the difficulties in providing rural and urban rate information.⁶

We explained that AT&T has no reasonable way to identify commercial customers that receive the same or similar service as the HCP in the same "rural area" as where the HCP is located. AT&T does not geocode these customers nor does it obtain customers' county information. AT&T has no business reason to collect this information and its systems are not designed to maintain it. However, to comply with "Method 1," service providers are to identify non-HCP commercial customers in the same county or census tract as the HCP.⁷ The only feasible query that AT&T can perform is to check the HCP's zip code for other customers. If

² *The Wireline Competition Bureau Provides Guidance Regarding the Commission's Rules for Determining Rural Rates in the Rural Health Care Telecommunications Program*, WC Docket No. 02-60, Public Notice, DA 19-92 (rel. Feb. 15, 2019) (*Public Notice*).

³ *See Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 18 FCC Rcd 24546, ¶ 54 & n.176 (2003) (*2003 RHC Order*).

⁴ *See Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 2372 (1997), 1997 WL 797532, at *162-163.

⁵ *2003 RHC Order* at n.176 (citing Kansas Hospital Association Comments, WC Docket No. 02-60, at 2).

⁶ *See, e.g.*, WorldCom Comments, WC Docket No. 02-60, at 9 (filed July 1, 2002) ("The reason for the lengthy application delay, which results in a lengthy benefit delay, is due to the lengthy time [] carriers must spend researching the applicable urban rate for each applicant in order to calculate the urban-rural rate differential."); Northwest TeleHealth Comments, WC Docket No. 02-60, at 5 (filed July 1, 2002) ("Telecommunications providers frequently delay the application process or refuse to cooperate in completing necessary forms. These delays often result in HCP's [sic] receiving rebates for services in subsequent years."); Blue Cross of California Comments, WC Docket No. 02-60, at 5 (filed July 1, 2002) ("Months can pass" waiting on telecommunications carriers to complete the application process).

⁷ *See, e.g., Rural Health Care Support Mechanism*, WC Docket No. 02-60, Second Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 24613, ¶¶ 11-12 (2004) (defining "rural area" as a county or, in some cases, a census tract).

there are no non-HCP commercial customers receiving the same or similar service in that zip code, AT&T then provides tariff or guidebook rate information (*i.e.*, “Method 2”) to the requesting HCP (or to its consultant). As of today, AT&T has been able to supply “Method 2” information to all of its requesting HCPs. It is AT&T’s belief that USAC currently lacks the authority to require HCPs (and their service providers) to collect the information described in the Bureau’s *Public Notice*. The existing “rural rate” information that USAC has the authority to collect via the FCC Form 466 is the “actual rural rate,” which is defined as:

the amount the HCP pays per month, or the amount the HCP expects to pay per month for service. This information should be taken from the service provider’s bill, or from the new service offer or contract received from the service provider. The applicant must submit to RHCD a bill, contract, service offer or letter from the service provider, from which this information was taken.⁸

This OMB-approved information collection – *i.e.*, copy of the HCP’s invoice or contract – is the supporting documentation the Bureau was referencing in its 2005 Order, mentioned in footnote 13 of the *Public Notice*, not the information required by Methods 1 through 3.⁹ AT&T understands that Methods 1 through 3 are memorialized in section 54.607 of the Commission’s rules. 47 C.F.R. § 54.607. But, USAC’s authority to collect the information necessary for Methods 1 through 3 lapsed when the Commission and USAC purposefully eliminated FCC Form 468 effective Funding Year 2003 and made subsequent revisions to FCC Form 466 that exist today.

AT&T supports the Commission’s efforts to rein in the waste, fraud, and abuse in the Telecom Program, which is why it has been doing its best to comply with USAC’s Methods 1 through 3 demands. However, for reasons described above, Method 1 is a real burden on facilities-based carriers and serves as a very real deterrent to future participation in the Telecom Program. Resellers that sell only to HCPs never have to comply with Method 1, placing AT&T and other facilities-based carriers at a competitive disadvantage. During the meeting, AT&T suggested several alternatives to the methodology set forth in section 54.607. Among other things, we suggested when an HCP receives more than a certain number of bids in response to its FCC Form 465, including at least one bid from a facilities-based carrier, the “rural rate” should be the rate as currently defined in the instructions to the FCC Form 466. Of course, this suggestion is premised on the Commission adopting the other reforms to the “front-end” processes that we discussed above (*e.g.*, requiring HCPs to provide more information on FCC Form 465, make price the primary factor in bid evaluation). AT&T suggested staff consult with USAC on what the minimum number of competitive bids should be – two, three, more? – based on the average number of bids that HCPs receive today in response to their FCC Forms 465.

In the event the HCP receives no response or just one service provider response to its FCC Form 465, AT&T suggested (1) if the existing provider or the sole bidder is a facilities-based carrier, then USAC should accept that carrier’s tariffed or otherwise publicly available rate

⁸ See *Form 466 Instructions* at 6 (describing the information and supporting documentation required for Line 33).

⁹ *Public Notice* at n.13 (citing *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 30 FCC Rcd 230, ¶¶ 2-3 (WCB 2015)).

as corroboration of the “rural rate” defined in FCC Form 466. In the event the facilities-based carrier does not make the rate for a particular service publicly available, AT&T suggested that USAC accept a certification made under penalty of perjury that the carrier offers and sells this service to HCPs and non-HCP commercial customers at the same rates, terms, and conditions in that state. In other words, the carrier will certify that it makes no distinction between HCP and non-HCP customers in pricing a particular telecommunications service; and (2) if the existing provider or sole respondent to an HCP’s FCC Form 465 is a reseller that sells only to HCPs, USAC could obtain the reseller’s underlying provider’s tariffed or otherwise publicly available rate for that service or, if unavailable, USAC could use the E-rate database to identify the rate for the same or similar service being charged in the HCP’s rural area as corroboration of the FCC Form 466-defined “rural rate.” Under any of these alternatives, if USAC ultimately concludes that some provider offers the same or similar service at rates that are reasonably comparable between rural and urban areas, it should deny the HCP’s funding request.¹⁰

Finally, we discussed the rural and urban pricing data that we have collected. We explained that, using several HCP locations identified in TeleQuality’s filings, we have retail rates for service to those locations. We also collected rate information for those same services in urban areas (*i.e.*, cities with populations greater than 50,000) in the same states. We found that for several services, the non-promotional retail rates to the HCP’s location are identical to the retail rates AT&T charges in urban areas in that state. In another instance, AT&T was charging an urban customer in a city slightly more than its non-promotional retail rate to the HCP and charging another urban customer in a different city about 2.5% less than the retail rate to the HCP, a difference that we believe shows reasonable comparability. We offered to continue collecting such pricing data or collecting pricing data using some other staff-directed methodology (*e.g.*, staff selects about 50 cities in AT&T’s 21-state ILEC footprint and 50 HCP locations in those same states, along with specific services to be priced), which we will file confidentially. Ideally, staff would collect similar information from several other facilities-based carriers, including, perhaps, one or more cable companies, on a voluntary basis. Consistent with our previously filed comments, we believe any such data collection will show that rates for telecommunications services in rural and urban areas are reasonably comparable.

Please contact me with any questions,

Sincerely,

/s/ Cathy Carpino
Cathy Carpino

cc: (all via email)
Trent Harkrader
Ryan Palmer
Liz Drogula
Regina Brown
Carol Pomponio
Johnnay Schrieber

¹⁰ See AT&T Comments at 4-5.