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Via Electronic Filing

The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12 St. SW
Washington DC 20554

Radha Sekar, CEO
Universal Service Administrative Company
700 12th Street, NW, Suite 900
Washington, DC 20005

Re: Notice of ex parte filing
WC Docket No. 17-310, CC Docket No. 02-60
Impacts of the $150 million HCF Sub-Cap on Consortia

Dear Chairman Pai and Ms. Sekar:

I am writing on behalf of the New England Telehealth Consortium (NETC), and the consortia managed by Connections Telehealth Consortium.[1] All of these consortia participate in the Federal Communications Commission's Healthcare Connect Fund (HCF) and include hundreds of mostly rural health care providers (HCPs) in 20 states. I am writing to describe the impacts of HCF funding shortfalls on these consortia.

Before doing so, however, NETC and CTC recognize the efforts of both FCC and USAC in overseeing and managing the rapidly growing Rural Health Care program. We especially appreciate the FCC's efforts last year to increase funding levels for 2017 and forward, and recognize the FCC's ongoing efforts to clarify rules in the Telecommunications Program. NETC and CTC also recognize that USAC has had to keep the Rural Health Care program running smoothly in the face of rapid growth and funding shortfalls.

Nevertheless, the flow of information to the FCC and USAC from participants is vital to the Rural Health Care program's continued improvement and effectiveness. Therefore, NETC and

[1] Consortia managed by CTC include the Kentucky Telehealth Consortium, the Hawaii Telehealth Consortium, the Wyoming Healthcare Consortium, the Tennessee Telehealth Consortium, and others.

CTC believe it is important to convey the impacts of two recent program changes: (1) the expected reduction of multi-year funding commitments to a single-year due to the hitting of the HCF $150 million sub-cap; and (2) the related delayed release of multi-year funding commitments until April 2019 (or later). NETC and CTC also offer a suggestion regarding reducing or delaying Payment Quality Assurance reviews in the Rural Health Care program until after the seasonal crush of activity associated with the annual filing window.

A. The late-release of 2018 multi-year funding commitments and their truncation to one-year means many additional filings must be completed during the already busy 2019 filing window period.

While NETC and CTC applaud USAC for releasing FY 2018 single-year funding commitments beginning in November 2018, as consortia NETC and CTC depend heavily on the administrative efficiencies and other benefits gained by multi-year requests.[2] This year NETC and CTC have received several funding commitments with multi-year funding truncated to a single-year instead of three-years.[3] While having 100% percent funding rather than *pro rata* reductions is welcome, as discussed below, truncating multi-year funding requests creates escalating problems for NETC, CTC, and consortium generally, potentially undermining their viability.

First, mere months from the FY 2019 filing deadline consortia are concluding that some (and presumably all) FY 2018 multi-year funding requests will be single-year instead of multi-year. In the case of NETC and CTC, that means they must now file up to 140 additional funding requests before the May 31, 2019 deadline for funding requests. This is in addition to the already heavy workload this time of year due to the short filing window for service requests.[4] Indeed, NETC and CTC are already processing over 500 sites through the requests for services/RFP process before the May 31st USAC submission deadline. Consortia generally are already stretched to the staffing limit with the peak seasonal workload and these unexpected additional filings aggravate that situation.

[2] *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678, 16801 at ¶ 296 (2012) (*HCF Order*) (recognizing that multi-year funding commitments reduce uncertainty and administrative burdens while encouraging term discounts and lower rates).

[3] *See id.* at 16802, n.717 (where $150 million HCF sub-cap insufficient to meet demand "for a multi-year commitment [in a funding year], the applicant may choose to simply seek a one-year funding commitment, have the contract designated as 'evergreen,' and apply for a multiyear funding commitment in the next funding year.").

[4] *See* https://www.usac.org/_res/documents/rhc/pdf/handouts/RHC-Timeline-FY2019.pdf. Unlike the E-rate program where Requests for Proposals (RFPs) for the upcoming year can be filed in the fall, in the HCF RFPs cannot be filed until January.

B. Because network common costs cannot be deferred until funding commitments are released, delays mean NETC must now borrow money to fund network operations.

To deliver network reliability and ensure competition between diverse broadband vendors, NETC built and maintains network core infrastructure at two locations, operates its own network operations center to monitor and manage network performance, and leases network services including transport "pipes" to the Boston area to obtain low-cost commodity Internet access from Tier 1 providers located there.

NETC depends on the HCF subsidy to help fund these shared network costs. These services are essential to NETC network operations and therefore NETC must pay for these services beginning July 1 each year, regardless of when USAC approves funding commitments. Because NETC is funded solely by modest participation fees, it does not have cash-on-hand to pay these costs without the HCF subsidy.

In 2018 – with previous multi-year funding commitments at an end – NETC for the first time was forced to borrow money via a credit line to pay for essential network services pending approval of new funding commitments. Finance charges for this credit line were a significant new cost to NETC participants. While incurring such costs once every three years might be manageable, if three-year commitments are converted to one-year commitments, NETC will annually need to finance the gap between when essential network services commence and when commitments are issued.

This new financial burden affects any consortia that utilizes shared network infrastructure. NETC is one of the most successful consortia in the HCF, with a large number of members benefiting from bandwidth that otherwise would be unaffordable, increased buying power and other efficiencies. However, NETC is facing growing financial strains due to the changes in the program these last few years: *pro rata* reductions in 2016; significant funding uncertainty in 2017, 2018, and going forward; and now growing borrowing costs. If a large successful consortium like NETC struggles to manage these growing costs and uncertainties, it is likely causing substantial impacts on all consortia.

In light of these growing challenges to creating and maintaining viable consortia, NETC and CTC have the following recommendations:

1. *Consider ways to return to approving funding commitments on a rolling basis and, if possible, avoid issuing commitments more than 4-5 months into the funding year (i.e., before December).*

In 2016 and 2017, because the cap was exceeded requiring *pro rata* reductions of all funding commitments, USAC was forced to wait until all funding decisions were made before *any* funding requests could be released. This is because actual program demand is not known until all funding decisions are final. HCF participants affected by the $150 million sub-cap are facing the same issue in 2018.[5] Eliminating the HCF sub-cap and substantially increasing funding for the program would allow USAC to return to approving funding requests on a rolling basis because USAC would no longer have to decide all funding requests before releasing any commitments.

The Commission has already recognized with respect to the $150 million sub-cap that an upward adjustment could be appropriate as Telecommunications Program participants migrated to the HCF program.[6] Given the FCC's recent rigorous enforcement of the rural and urban rate requirements for the Telecommunications Program, it is likely that many HCPs are in fact shifting to the HCF. We ask that the FCC eliminate or make an appropriate increase to the $150 million sub-cap to reflect this shift, and to index the sub-cap to inflation like the overall program cap.[7]

The Commission could also consider rule changes that would allow funding demand to be initially calculated based on gross demand (*i.e,* requested funding which is known on July 1 each year) rather than actual demand (*i.e.*, approved funding which is not known until USAC has finalized all funding decisions). To avoid unnecessary funding shortfalls, unused funds based on the difference between requested and approved funding could be made available *via* the rollover mechanism in the following funding year (increasing funding availability each year by the rollover amount).[8]

[5] *See* 47 C.F.R. § 54.675(a) (applying $150 million sub-cap to upfront payments and multi-year funding commitments). Only consortia are eligible for upfront payments. 47 C.F.R. § 54.638.

[6] *See HCF Order,* 27 FCC Rcd at 16802, ¶ 298 ("We may consider adjusting the cap upward if it appears a significant number of Primary Program participants are moving to the Healthcare Connect Fund").

[7] *See* 47 C.F.R. § 54.675(a)(1).

[8] *See* 47 C.F.R. § 54.675(a)(5).

2. *Ensure consortium funding applications are properly prioritized as required in the HCF Order.*[9]

The cumulative impact of everything noted above is moving the HCF away from the Commission's primary objective of "encourage[ing] the growth or formation of statewide, regional, or Tribal broadband health care networks."[10] For networks like NETC that have invested in facilities and administrative infrastructure in order to meet the Commission's objectives for the HCF program, programmatic headwinds are making it difficult to stay viable.

In addition, it is growing hard to see how current consortium processes can be considered "streamlined . . . process[es] that facilitate[] consortium applications"[11] The process for processing site and service substitutions – which is critical for consortia[12] – is a good example. Processing the reallocation of committed funding from an HCP that has reduced or terminated service to an HCP that has increased or gotten new services used to take a matter of weeks; now it takes several months. In one case, NETC is still waiting on completion of a site and service substitution filed in November 2018. In addition, USAC provides no confirmations when it approves a site and service substitution making it difficult for consortia that may be trying to track and invoice many such requests.

We urge a new commitment by the Commission and USAC to work with existing consortia to understand their challenges and continue to refine administrative processes with feedback from the applicant community. Such process improvement feedback-loops are well-established in many fields as an optimum way to improve business processes.

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[9] *See HCF Order,* 27 FCC Rcd at 16757, ¶ 174 (implementing a "streamlined application process that facilitates consortium applications"); *see also id.* at 16699, ¶ 45 ("a primary focus of the Healthcare Connect Fund will be encouraging the growth or formation of statewide, regional, or Tribal broadband health care networks that will expand the benefits we observed in the Pilot Program. Benefits of such networks include access to specialists; cost savings from bulk buying capability and aggregation of administrative functions; efficient network design; and the transfer of medical, technical, and financial resources to smaller HCPs.").

[10] *Id.*

[11] *See id.* at 16757, ¶ 174.

[12] *Id.* at 16806, ¶ 314 ("[A]llowing site and service substitutions minimizes the burden on consortium participants and increases administrative efficiency by enabling HCPs to ask USAC to substitute or modify the site or service without modifying the actual commitment letter.").

3. *Reduce uncertainty by publicizing Rural Health Care program demand information as provided for in the HCF Order.*[13]

Uncertainty over how quickly the program is growing and the likely availability of funding in future years is worsened because USAC has stopped publicizing funding demand data.[14] This reporting failure contradicts statutory principles for universal service and contravenes clear Commission directives for the HCF.[15] We ask that USAC resume regular public reporting of program demand data – at least on a quarterly basis.

4. *Consider limiting or suspending PQAs in the Rural Health Care program during the peak filing window period (January to April).*

We recognize that Payment Quality Assurance reviews (PQAs) are an important tool for USAC to measure rates of improper payments in the universal service programs. Recently, however, there have been a flurry of PQAs in the Rural Health Care program happening during the peak time of year for applicants trying to meet programmatic filing deadlines. Some of these PQAs take a full-time staff person to pull the information requested. For example, service provider invoices can be voluminous – sometimes so voluminous, USAC email systems cannot accept them because the files are so large. USAC apparently does not offer an FTP upload option for such information and instead requires the applicant to sift through the invoice to identify only the relevant information for USAC, a very time consuming and labor-intensive process.

We would request that the rate of PQAs be reduced during the spring filing window period so that applicants can devote scarce staff resources to the application process. The number of PQAs could then be increased during times of the year that are less frantic, which would ensure USAC is able to conduct the requisite number of PQAs. We also request that USAC acknowledge the receipt of completed PQA responses.

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[13] *Id. at* 16823 (directing "USAC to periodically inform the public, through its web site, of the total dollar amounts that have been requested by HCPs, as well as the total dollar amounts that have been actually committed by USAC for the funding year. USAC should post this information for both the $150 million cap on multi-year commitments and the $400 million cap that applies to the entire rural health care support mechanism.").

[14] See https://www.usac.org/rhc/tools/funding-commitments/overview.aspx.

[15] *See* 47 U.S.C. § 254(b)(5) ("There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service."); *HCF Order,* 27 FCC Rcd at 16802, ¶ 298 (directing USAC "to periodically inform the public, through its web site, of the total dollar amounts subject to the $150 million cap that have been (1) requested by HCPs (2) actually committed by USAC for the funding year.").

We thank you for your attention to these matters and look forward to meeting soon to discuss these issues further.

Respectfully submitted,

/s/

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