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May 25, 2018

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th street, SW
Room TW-A325
Washington, D.C. 20554

Re: Rural Health Care Program: Request to Promptly Approve Emergency Petition for Waiver of the Funding Cap Pending Conclusion of the Open Rulemaking (ID 10403964016004, Proceedings CC 02-60 and WC 17-310)

Dear Ms. Dortch,

Bi-State Primary Care Association (Bi-State) appreciates the opportunity to strongly urge the Commission to approve the Emergency Petition for Waiver of the Rural Health Care Program (RHCP) Funding Cap Pending Conclusion of the Open Rulemaking, which was recently filed by the Schools, Health & Libraries Broadband (SHLB) Coalition. *(ID 10403964016004, Proceedings CC 02-60 and WC 17-310).*

This letter begins with a summary of our request and is followed by background information about Bi-State, the Community Health Centers (CHCs) in Vermont and New Hampshire, and the importance of this Emergency Petition to those CHCs.

SUMMARY OF REQUEST

Bi-State strongly urges the FCC to promptly approve the Emergency Rule Petition for Waiver of the RHCP Funding Cap Pending Conclusion of the Open Rulemaking, for the following reasons:

- The reductions in FY2017 RHCP payments to rural CHCs are in direct contradiction to Congress' and HHS' long-standing efforts to expand EHRs and telehealth in rural communities.
- The reductions in FY2017 RHCP payments to rural CHCs are significant, unexpected and largely-retroactive – and particularly difficult for small safety-net providers to absorb.

- Given the size of the FY2017 reductions – and the unpredictability of future payment amounts – many rural CHCs are considering giving up activities that require broadband access, despite significant pressure from Congress and HHS to engage in these activities. This is especially true in Vermont and New Hampshire, which are among the most rural states in the nation.
- Given that rural providers and carriers are presently determining if -- and under what terms -- they will participate in the RHCP in FY18, the FCC should approve the emergency waiver promptly.

BACKGROUND ON BI-STATE AND FQHCs IN VERMONT AND NEW HAMPSHIRE

Established in 1986, Bi-State is a nonpartisan, nonprofit 501(c)(3) charitable organization promoting access to effective and affordable primary care and preventive services for all, with special emphasis on underserved populations in Vermont and New Hampshire. Bi-State's combined Vermont and New Hampshire membership includes 28 CHCs, delivering primary care at over 120 locations for over 300,000 patients.¹

Our CHCs are the backbone of the rural "health care safety net" in the states of Vermont and New Hampshire, and our comments come from the perspective of these rural providers. Congress explicitly indicated that rural providers are intended to benefit from the Rural Health Care Program (RHCP) and rural CHCs were named as one of the seven types of health care providers whom the program was designed to support.² In recent years, CHCs have become increasingly concerned that the RHCP expanded beyond its original intent, to include providers who should not be eligible under a "plain reading" of the statute. As a result, CHCs have been subject to across-the-board funding reductions, and significant administrative complexities which have made it difficult for them to participate in the program that was designed for them.

THE FCC SHOULD APPROVE THE EMERGENCY PETITION PROMPTLY

The following are reasons why the FCC should act promptly to approve the Emergency Petition for Waiver of the Rural Health Care Program Funding Cap Pending Conclusion of the Open Rulemaking:

- **The reductions in FY2017 RHCP payments to rural CHCs are in direct contradiction to Congress' and HHS' long-standing efforts to expand EHRs and telehealth in rural communities.** CHCs in rural communities, including those in Vermont and New Hampshire are serving patients across multiple sites and many miles. The distance, along with the rural nature of the topography make broadband connections far more

¹ CHCs are community based and patient directed organizations that serve populations with limited access to health care. They are statutorily required to be located in or serve a high need community, governed by a community board composed of a majority of CHC patients, provide comprehensive health care and provide services regardless of a patient's ability to pay. See generally Section 330 of the Public Health Services Act.

² §254(h)(7)(B)(ii)

challenging than in an urban environment. The CHCs in these communities need connected, functional EHRs to perform good patient care, meet HRSA and CMS requirements, and address the opioid crisis. The RHCP payments are considered “mission-critical” by CHCs to support the necessary broadband connections. Lack of these funds would be devastating for our most rural CHCs.

The reductions in FY2017 RHCP payments to rural CHCs are significant, unexpected and largely-retroactive – and particularly difficult for small safety-net providers to absorb. The FCC’s announcement of 15%-25% reductions in FY17 payment levels over eight months into the Funding Year has been significant and has unexpected, negative financial impacts on Vermont and New Hampshire CHCs.

There was no indication that there would be payment reductions of this magnitude for RHCP recipients prior to this announcement. Section 47 U.S.C. § 254(b) (5) requires that “There should be specific, ***predictable*** and sufficient Federal and State mechanisms to preserve and advance universal service.” (*emphasis added*) Furthermore, the FCC emphasized the importance of predictable funding in its original order on the Universal Service Support (CC Docket No. 96-45, adopted May 7, 1997), which referenced predictability over 50 times. Thus, these large and unpredictable reductions are inconsistent with both to the statute and the FCC’s stated priorities for the Universal Service program.

Reductions of this nature are particularly difficult for safety-net providers, like CHCs, to absorb. CHCs in Vermont and New Hampshire target underserved populations and provide a full range of services to their patients regardless of ability to pay. The CHCs in NH and VT joined the Northern New England Cooperative as a way to gain efficiencies for access to broadband reducing the cost as much as possible.

As mission-driven, safety-net providers, CHCs run on small financial margins- often 1% or less. Large and unexpected reductions in critical funding sources, like RHCP subsidies, can threaten a CHC’s financial stability. The CHCs in Vermont and New Hampshire are currently struggling to determine how they can absorb these cuts while minimizing impact on critical patient care.

- **Given the size of the FY2017 reductions – and the unpredictability of future payment amounts – many rural CHCs are considering giving up activities that require broadband access, despite significant pressure from Congress and HHS to engage in these activities.** This is especially true in Vermont and New Hampshire, which are among the most rural states in the nation. CHCs in Vermont and New Hampshire already face hurdles because local communications providers are not always able to handle the bandwidth needs of CHCs. Additionally, the RHCP funding supported upgrading to systems so that more efficient technologies can be employed, like VOIP and telemedicine. These systems result in significant savings not only to the CHC, but to payers like Medicare and Medicaid.

- **Given that rural providers and carriers are presently determining if -- and under what terms -- they will participate in the RHCP in FY18, the FCC should approve the emergency waiver promptly.** CHCs and carriers are actively determining what the terms of the next funding year will be (the funding year is July-June). The CHCs are also concerned that certain carriers may withdraw from the program, leaving even more instability in this area. The CHCs in Vermont and New Hampshire are under pressure to determine what terms and conditions to accept with significant financial uncertainty.

Thank you for your attention to this request, and for your efforts to increase access to care for patients in rural areas. Please do not hesitate to contact me at (603) 228-2830 extension 112 or via email at tkuenning@bistatepca.org if you would like additional information or require clarification on the comments presented above.

Sincerely,

A handwritten signature in cursive script that reads "Tess Kuenning".

Tess Stack Kuenning, CNS, MS, RN
President and Chief Executive Officer
Bi-State Primary Care Association