**NOSORH Comments on Proposed Rulemaking in WC Docket No. 17-108**

The National Organization of State Offices of Rural Health (NOSORH) is the membership organization of the nation’s fifty State Offices of Rural Health. State Offices of Rural Health disseminate information, coordinate and provide technical assistance to rural communities and providers who serve rural and underserved patients with care.

NOSORH is concerned about the potential negative impact on rural health that can result from enactment of the proposed rulemaking in WC Docket No. 17-108. NOSORH is particularly concerned about the potential negative impact on rural health service providers and health service consumers from key provisions in the proposed rules. In this communication NOSORH will outline its specific concerns and make recommendations for modification of proposals included in WC Docket No. 17-108.

The discussion of the proposed rules provided by the Commission addresses the need to repeal much of what was promulgated in its own 2015 Title II Order. The Commission asserts that the provisions in this Order have provided disincentives for broadband innovation and investment – particularly in rural markets. The Commission also asserts that repeal of these Title II provisions will improve incentives and increase the availability of affordable high-speed broadband services. The Commission includes in its plans for repeal, “Brightline” provisions banning three specific practices by providers of both fixed and mobile broadband Internet access service: blocking, throttling, and paid prioritization.

NOSORH believes that for many rural areas in the years prior to the Title II Order the improvement of rural broadband services did not develop adequately in a lightly regulated marketplace. The Wall Street Journal reported last June that roughly 39% of rural America, or about 23 million people, still lack high-speed broadband - as defined by the FCC as having a minimum download speed of 25 megabits per second. That compares with just 4% of urban residents lacking high-speed access. This is in spite of the FCC and other public programs for improving the availability of rural broadband.

NOSORH believes that this significant digital divide is a continuing threat to rural health and that the proposed repeal of Title II Order provisions will not remedy the conditions underlying the rural-urban divide. NOSORH further believes that elimination of Brightline provisions could have a particularly negative impact on rural health providers and rural health service consumers.

In many rural areas there is a single provider of wireline broadband services. This meets the definition of a monopoly service market. Single provider markets are particularly apparent in remote rural and frontier communities. In other rural areas there are fewer than 3 providers of wireline broadband services – an insufficient condition for true service competition. In most of these communities wireless broadband services are not an affordable alternative – particularly for high-speed services. NOSORH believes that any efforts to improve broadband services for these communities must address the unique circumstances of low-volume high-cost market areas.

Given the lower population concentrations and great distances in rural areas, rural broadband providers face lower service volume and higher costs than do urban broadband providers. Improving market competition is not a foolproof way to assure adequate rural high-speed broadband services in these markets. If it was, there would not be a digital divide between rural and urban areas, and there would not be the presence of monopoly rural broadband providers in rural areas. These problems preceded the enactment of Title II provisions by the Commission and will likely continue.

NOSORH is concerned about how the proposed rules would impact rural telehealth services. This includes the impact on both rural health service providers – such as hospitals, rural health clinics, public health offices and federally-qualified health centers - as well as their patients/consumers. NOSORH is particularly concerned that that repeal of Brightline provisions will negatively impact the operation of rural health services.

Health service providers need access to high-speed broadband in order to appropriately implement telehealth applications. This includes the need for broadband capacity necessary to support:

* Transmission of electronic health information – including static radiological images , and
* Live video consultation with upstream specialty providers.

These needs are spelled out – in multiple plans, studies and reports, including several authored by the FCC. Most notably these needs are specified in:

* Healthcare Broadband in America – Part of the National Broadband Plan:
  + <https://transition.fcc.gov/national-broadband-plan/health-care-broadband-in-america-paper.pdf>
* Connect2Health – Broadband Health Imperative
  + <https://www.fcc.gov/health/broadbandhealthimperative>

Health service consumers require high-speed broadband for multiple health-related reasons, including:

* Online access to personal health records – consistent with Medicare/Medicaid meaningful use requirements,
* Communication with health care providers,
* Health education, and
* Telemonitoring of health status – particularly for patients with chronic health conditions.

The current Brightline provisions of the Title II Order assure that these functions can be achieved without discrimination in rural areas. Repeal of these provisions could affect rural health in several ways. Blocking decisions by broadband providers could restrict access of rural health service providers to necessary upstream links. Throttling decisions could restrain operations of video/data intensive teleconsultation and telemonitoring. Paid prioritization could make access to higher speed broadband unaffordable in the rural low-volume higher cost markets. Any of these restrictive decisions by unregulated broadband providers would harm rural health.

NOSORH believes that the Commission should continue Brightline provisions, and that these provisions are consistent with statutory intent – particular the Telecommunications Act of 1996. In that Act Congress directs the FCC to encourage the deployment on a reasonable and timely basis of advanced telecommunications capability for all Americans. The Act also calls on the FCC to provide rural health care providers with an affordable rate for the services necessary for the provision of telemedicine and instruction relating to such services. Brightline provisions preventing speed-throttling and paid prioritization are particularly important guidelines for assuring an affordable rate for the provision of telehealth services, as called for in the Act.

NOSORH understands that there may be a case for providing relief from other regulatory provisions in the Title II Order, particularly for smaller broadband providers. Relief may improve their ability to innovate and expand services at an affordable rate. Some rural broadband providers have argued for regulatory relief, while others have urged continuation of the requirements:

* <https://www.eff.org/files/2017/06/27/isp_letter_to_fcc_on_nn_privacy_title_ii.pdf>

NOSORH believes that the Commission should gather additional information from both providers and consumers on these regulatory relief issues before implementing any repeal.

Consistent with these considerations NOSORH makes the following recommendations:

* **Recommendation 1 – Brightline Rules**: NOSORH recommends that the Commission make ***no revision*** of Brightline provisions. Rural health providers and rural health consumers need the availability of unblocked access to all health support services on the internet – at unthrottled speeds with no differential pricing.
* **Recommendation 2 – Other Regulatory Relief**: NOSORH recommends that the FCC conduct more detailed study of how relief of the non-Brightline provisions of the Title II Order will impact rural broadband providers and rural broadband consumers. This could include studies on the impact of the repeal of privacy requirements.