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**VIA ELECTRONIC MAIL**  
**VIA ELECTRONIC FILING**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, N.W.  
Washington, DC 20554

Attn: Radhika Karmarkar, Deputy Division Chief  
Wireline Competition Bureau

**Re: California Telehealth Network**  
**CC Docket No. 02-60**

Madam Secretary:

We write regarding the policy shift by the Universal Service Fund Administrator (“USAC”) denying Rural Health Care (“RHC”) program funding to a class of previously eligible health care providers.<sup>1</sup> These health care providers serve some of California’s most underserved and vulnerable populations<sup>2</sup> and we urge the Commission to grant California Telehealth Network (“CTN”)’s Request for Review of USAC’s decision, filed December 20, 2013, in the above-captioned proceeding.<sup>3</sup> Telehealth is increasingly essential to delivering quality health care for all Americans, and this matter affects the ability of many health care providers in California to make such care affordable and available to our citizens.

CTN’s appeal is one of four filed by large statewide consortia in response to USAC’s sudden reversal of a long-standing Commission policy that allowed non-rural health clinics to obtain RHC

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<sup>1</sup> Eric Brown is participating in this proceeding as the President and CEO of California Telehealth Network and not in his capacity as a member of the USAC Board of Directors.

<sup>2</sup> The Rural Health Care program was created to address the needs of underserved and vulnerable populations. *See Rural Health Care Support Mechanism*, WC Docket No. 02 60, Report and Order, 27 FCC Rcd 16678, 16718, ¶ 89 (2012) (*HCF Order*) (supporting health care providers in areas with health care professional shortages is an important public policy goal that was reflected in the statutory categories of eligible providers in the 1996 Telecommunications Act); *see also id.* at 16705-06, ¶ 60 (summarizing benefits of providing RHC Healthcare Connect Fund support to non-rural health care providers).

<sup>3</sup> *See* <http://apps.fcc.gov/ecfs/document/view?id=7520964309>.

broadband funding as part of a consortium.<sup>4</sup> The Wireline Competition Bureau (“Bureau”) put the appeals out for comment in late 2013 and early 2014, in all cases receiving only supportive comments and no opposition.<sup>5</sup> Failure to resolve this issue is hindering CTN and other HCF consortia from expanding and realizing the goals the FCC set in 2012 for the RHC Healthcare Connect Fund (“HCF”).

**Affected CTN Sites Include Urban Locations Serving the Underserved, and Rural Locations Not Technically Considered “Rural”**

The twenty-nine CTN sites disallowed by USAC which are the subject of this appeal are representative of the many different potential participants being prevented from dramatically improving their broadband connectivity through CTN. Below we highlight several non-profit health care organizations that utilize networks of clinics to dispense care in their communities, two urban, and one not urban but not considered “rural” under current RHC rules.

*UCSF Benioff Children’s Hospital Oakland* (“Children’s”), in Oakland, California, has delivered exceptional medical care to children from all regions of California for over 100 years. Children’s treats tens of thousands of children every year with sub-specialty and fellowship-trained physicians covering over thirty pediatric specialties. Among other things, these specialists allow Children’s to offer care for many rare pediatric illnesses. Children’s Oakland trauma center is one of only five Level One Pediatric Trauma Centers in California and is dedicated exclusively to caring for children. In addition, Children’s has one of the top ten NIH-funded pediatric research centers in the country, and is a nationally recognized teaching hospital, helping provide pediatric education to the over 300 medical students a year. In 2012, Children’s delivered \$139.3 million of charity care and community benefits.<sup>6</sup>

Children’s delivers the specialty care for which it is known across the region through its many outpatient clinics. A number of these clinics received RHC-supported broadband connections through the pilot program, and more intended to join CTN, reasonably expecting to participate in

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<sup>4</sup> Letter of Appeal from Illinois Rural HealthNet, WC Docket No. 02-60 (Nov. 21, 2013); Letter of Appeal from the Colorado Telehealth Network, WC Docket No. 02-60 (Nov. 22, 2013); Letter of Appeal from the Oregon Health Network, WC Docket No. 02-60 (Nov. 27, 2013); *see also* Letter of Appeal from the California Department of Corrections and Rehabilitation, and the California Correctional Health Care Services Headquarters, WC Docket 02-60 (Nov. 18, 2014).

<sup>5</sup> *Wireline Competition Bureau Seeks Comment on Illinois Rural Healthnet, Colorado Telehealth Network, and Oregon Health Network Requests for Review of Decisions by the Universal Service Administrative Company*, WC Docket No. 02-60, Public Notice, DA 13-2336 (rel. Dec. 6, 2013); *Wireline Competition Bureau Seeks Comment on California Telehealth Network Request for Review of a Decision by the Universal Service Administrative Company*, WC Docket No. 02-60, Public Notice, DA 14-55 (rel. Jan. 17, 2014); *see* Letter from Eric Brown, President and CEO, California Telehealth Network, to Marlene H. Dortch, Secretary, FCC, WC Docket 02-60 (Feb. 7, 2013) (*CTN Reply Comments*) (summarizing comments filed in response to CTN appeal).

<sup>6</sup> *See* UCSF Benioff Children’s Hospital, About Us, <http://www.childrenshospitaloakland.org/main/about-us.aspx> (last visited Feb. 24, 2015); *see also* UCSF Benioff Children’s Hospital, 2013 Annual Report at 13, [http://s3.amazonaws.com/wpd-assets/ucsf/CHO\\_Annual\\_Report\\_2013\\_final.pdf](http://s3.amazonaws.com/wpd-assets/ucsf/CHO_Annual_Report_2013_final.pdf).

the HCF. Nine of the twenty-nine sites denied by USAC included Children's outpatient clinics – all focused on the provision of high quality care to children, many in low income communities.<sup>7</sup> Unfortunately, Children's recently decided to seek a uniform broadband platform for its many clinics and has withdrawn from CTN. We attribute this regrettable change in direction by Children's in part to USAC's policy change on non-rural clinics.

*Hi-Desert Medical Center* (“Hi-Desert”) is located in Joshua Tree, California (San Bernardino County). Joshua Tree has a population of less than 7500 and lays in the Morongo Basin, on the southern edge of the Mohave desert, the northern edge of Joshua Tree National Park, and between the San Bernardino National Forest to the east and the 187,000 acre Sheephole Wilderness in the west. With bighorn sheep, mountain lions, black bears, and coyotes commonly roaming the surrounding hills, it is far from urban.<sup>8</sup>

Hi-Desert is the primary provider of healthcare services in the Morongo Basin area (which also includes the cities of Yucca Valley, Twenty-Nine Palms, and the Twenty-Nine Palms Naval Airbase), serving a population of more than 53,000 people. Hi-Desert offers a modern, nonprofit fifty-nine bed acute primary care hospital on its principal campus which provides a wide range of quality inpatient and outpatient diagnostic, treatment and rehabilitation services, home health and hospice services, and a variety of community outreach services. Hi-Desert is owned by the citizens of the communities it serves in the Morongo Basin and is the area's third largest employer. In 2010, Hi-Desert provided charity and uncompensated care totaling \$3.3 million to those in need.<sup>9</sup>

The Hi-Desert Family Medical Clinic, in Yucca Valley, California, was one of the six Hi-Desert clinics that USAC denied eligibility. Hi-Desert Family Health Clinic offers first-rate comprehensive care to anyone who walks in in the door, regardless of their ability to pay.<sup>10</sup> Technically non-rural outpatient clinics like this provide affordable care to those living in rural, remote, underserved communities, and are a vital part of the health care safety-net in California.

Finally, *Tarzana Treatment Centers, Inc.* (“Tarzana”), located in Los Angeles, is another CTN participant affected by USAC's decision. Tarzana is a private, nonprofit community-based organization that operates a variety of behavioral healthcare programs and primary medical care

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<sup>7</sup> The denied sites included: Brentwood Outpatient Clinic, Castlemont High School Teen Clinic, Ferritometry & Bone Density Clinic, Fifty Second St Outpatient Clinic, Larkspur Outpatient Clinic, McClymonds High School Clinic, Outpatient Subspecialty Clinic, Pleasanton Subspecialty Clinic, 53rd St. Psychiatry Clinic.

<sup>8</sup> See Big Morongo Canyon Preserve, wildlife listing, <http://www.bigmorongo.org/a32Wildlife.htm> (last visited Feb. 25, 2015). At 20,105 square miles, San Bernardino County is the largest county in the country by area, almost twice the size of the state of Massachusetts, but with a population density one-tenth that of Massachusetts – with most concentrated in the San Bernardino Valley near to Los Angeles. See generally, [http://en.wikipedia.org/wiki/San Bernardino County, California](http://en.wikipedia.org/wiki/San_Bernardino_County,_California), <http://en.wikipedia.org/wiki/Massachusetts> (both last visited Feb. 25, 2015).

<sup>9</sup> See Hi-Desert Medical Center – Overview, <http://www.hdmc.org/Overview> (last visited Feb. 25, 2015).

<sup>10</sup> See Hi-Desert Medical Center – Family Health Clinics, <http://www.hdmc.org/Family%20Health%20Clinic> (last visited Feb. 25, 2015).

clinics. Tarzana provides integrated care for substance use (alcohol and drugs), mental health, primary medical care, and HIV/AIDS services at multiple locations in Los Angeles County. Since its founding in 1972, Tarzana has emerged as a cutting-edge provider in the field of integrated behavioral health care. Tarzana innovatively combines typical alcohol and drug treatment services with medical care, mental health, housing, case management and HIV/AIDS services to form an integrated delivery system that has set a standard other organizations emulate.

Tarzana is a leader in offering telehealth specialty care services in mental health, particularly in the delivery of psychiatric services. With the roll-out of healthcare reform, Tarzana has focused on developing integrated care among its various services, receiving two four-year Primary Behavioral Health Care Integration grant from the Substance Abuse and Mental Health Administration. This has helped catalyze Tarzana's efforts to provide integrated Substance Use Disorders, mental health and medical care.<sup>11</sup> Tarzana is committed to providing services to the uninsured and those with low incomes, providing, for example, a 100% discount for those with incomes at 200% of the federal poverty level.<sup>12</sup>

Tarzana currently has three non-rural clinics on CTN and would like to bring on eight more – but cannot unless the Commission reverses USAC's decision. Using CTN connectivity, these additional clinics could be providing vital, specialty behavioral health services via telehealth to both urban and rural providers in California. CTN's inability to add innovative providers like Tarzana hurts our ability to grow and sustain our network, and thereby undercuts the Commission's HCF goals.

### **Commission Goals for the Healthcare Connect Fund**

The Commission, when it established the new Healthcare Connect Fund in 2012 sought to “encourage the creation of state and regional broadband health care networks”<sup>13</sup> – specifically, by fostering the formation and growth of consortium based networks that include both rural and urban health care provider participants. The Commission recognized that including non-rural participants in these networks “will provide significant health care benefits to both rural and non-rural patients.”<sup>14</sup> These conclusions were based on the Bureau's comprehensive evaluation of the

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<sup>11</sup> See generally Tarzana Treatment Centers – Who We Are - Our History, <https://www.tarzanatc.org/who-we-are/our-history/> (last visited Feb. 25, 2015); see also <https://www.tarzanatc.org/wordpress/wp-content/uploads/2014/05/community-benefit-plan.pdf>.

<sup>12</sup> <https://www.tarzanatc.org/wordpress/wp-content/uploads/2014/05/charity-care.pdf>.

<sup>13</sup> See *HCF Order*, 27 FCC Rcd at 16697, ¶ 39.

<sup>14</sup> *Id.* at 16706, ¶ 60; see also *id.* (“The California Telehealth Network, for example, states that it ‘frequently encounters urban health care providers with patient populations that are as isolated from clinical specialty care as [the] most rural health care providers,’ including urban Indian HCPs who could better serve Native populations through broadband-centered technologies such as EHRs and telemedicine.”).

RHC pilot program released prior to the HCF Order, which expressly recognized that large numbers of non-rural clinics were part of the pilot program.<sup>15</sup>

In CTN's experience, growing a consortium that meets the Commission's goals requires sustained commitment and effort from many stakeholders. Having the broadest base possible of potential consortium participants is also critical. As we have noted, CTN and many other of the large pilot consortia presently include significant numbers of non-rural clinics. Such clinics were part of the critical mass that led to the success of CTN and NETC, two of the largest statewide consortia.<sup>16</sup>

With USAC and the FCC having established a long-standing policy of funding such clinics, it has proven very disruptive to CTN's growth to inform many potential participants – far beyond the twenty-nine at issue in its appeal – that they are no longer eligible to participate in this vital program. This disruption and resulting uncertainty could have been avoided had a notice and comment rulemaking been employed instead of a sudden, barely acknowledged, flash-cut policy change by USAC.

### **Congress and the GAO: Dogs That Haven't Barked**

We understand there may be concerns at the Commission that funding non-rural clinics exceeds the scope of the statutory authority conferred by the eligibility categories listed in Section 254(h)(5)(B).<sup>17</sup> Although CTN addressed this concern in its appeal – noting for example, the Commission more than ten years ago embraced an elastic definition of “rural health clinic”<sup>18</sup> – we address here the fact that neither Congress nor its investigative arm, the Government Accountability Office (“GAO”), have raised concerns about funding for non-rural clinics. Indeed, GAO performed a detailed review of the RHC pilot program in 2010 that we discuss below.

The RHC pilot program was launched in 2007 and for many participants continues to this day.<sup>19</sup> The RHC pilot has thus spanned two administrations, and a Congress (including relevant FCC oversight committees in the House and Senate) that has been under the control of both parties at different times. Yet Congress over the last eight years in hearings or in letters from individual

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<sup>15</sup> The Bureau characterized these as the “urban equivalents” of rural health clinics. See *Wireline Competition Bureau Interim Evaluation of Rural Health Care Pilot Program Staff Report*, WC Docket No. 02-60, Staff Report, 27 FCC Rcd 9387, at ¶¶ 39, 42 (2012) (charts summarizing the number of rural and “urban equivalent” clinics funded).

<sup>16</sup> See, e.g., *CTN Reply Comments* at 2 (noting that NETC, the largest RHC pilot consortium by number of sites, was 26% non-rural clinics at the outset). For example, conservatively, the 29 CTN sites that have been denied funding by USAC would have been paying CTN membership fees of \$325/month each, or over \$100k per year that could be used to help sustain our organization.

<sup>17</sup> 47 U.S.C. § 254(h)(5)(B); see also 47 C.F.R. § 54.600(a).

<sup>18</sup> See *CTN Appeal* at 6, 13-15; *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, 24553-55, ¶¶ 13-16 (2003) (“rural health clinic” includes emergency departments in for-profit rural hospitals).

<sup>19</sup> See *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 26 FCC Rcd 6619, 6628, ¶ 19 (Wireline Comp. Bur. 2011) (extending pilot program invoicing deadline to 2017 for some projects).

members has never expressed concerns regarding the funding of non-rural clinics in the RHC program.<sup>20</sup>

In 2009 and 2010, acting on requests from members of Congress, GAO conducted a thorough review of the RHC pilot program.<sup>21</sup> The GAO's general mission is to "investigate[] how the federal government spends taxpayer dollars."<sup>22</sup> The GAO report expressed no concern regarding funding for non-rural clinics.<sup>23</sup> Based on the scope and thoroughness of the GAO effort – reviewing FCC orders, interviews with FCC and USAC staff, surveying program participants – it is reasonable to assume if GAO had concerns USAC or FCC were potentially violating the Telecom Act, it would have called this out in its report.

### Growth of the HCF Program Remains Below Expectations

Finally, the HCF has not shown dramatic growth since it was launched in January 2013. Indeed, USAC's most recent data indicates that funding commitments toward the \$150 million HCF cap (which includes multi-year funding commitments for consortia) currently total about \$41 million for funding year ("FY") 2013 (which ended June 30, 2014), and about \$18 million for FY 2014

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<sup>20</sup> See, e.g., Letter from Reps. Barton, McCaul, Flores and Carter to FCC Chairman Julius Genachowski (Jun. 21, 2012) (urging Commission to move forward with RHC reform order based on the pilot program), available at [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-316156A2.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-316156A2.pdf).

<sup>21</sup> See U.S. Gov't Accountability Office, FCC's Performance Management Weaknesses Could Jeopardize Proposed Reforms of the Rural Health Care Program GAO 11-27 (Nov. 2010) (*GAO Report*), available at <http://www.gao.gov/products/GAO-11-27>.

<sup>22</sup> See "About GAO" at <http://www.gao.gov/about/index.html> (last visited Feb. 23, 2015). The GAO's mission statement is:

[T]o support the Congress in meeting its constitutional responsibilities and to help improve the performance and ensure the accountability of the federal government for the benefit of the American people. We provide Congress with timely information that is objective, fact-based, nonpartisan, non-ideological, fair, and balanced.

<sup>23</sup> The GAO explained the scope of its review of the RHC pilot program as follows:

GAO was asked to review (1) how FCC has managed the primary program to meet the needs of rural health care providers, and how well the program has addressed those needs; (2) how FCC's design and implementation of the pilot program affected participants; and (3) FCC's performance goals and measures for both the primary program and the pilot program, and how these goals compare with the key characteristics of successful performance goals and measures. GAO reviewed program documents and data, interviewed program staff and relevant stakeholders, and surveyed all 61 pilot program participants with recent participation in the program.

*Id.* at 2 (inside cover page). GAO clearly understood that non-rural clinics were being funded. See, e.g., *id.* at 11 (explaining the scope of one pilot project as follows: "The purpose of [the Illinois Rural HealthNet] fiber is to create the backbone of a network that will connect rural critical access hospitals, **health clinics**, and community mental health centers to specialists throughout the state and nation.") (emphasis added).

(which ends June 30, 2015).<sup>24</sup> In contrast, RHC pilot program funding commitments (which all went to consortia) totaled over \$364 million from 2008 to 2012,<sup>25</sup> an average of about \$90 million per year. We believe removal of non-rural clinics from the potential base of new consortia members is responsible in part for this slow growth.

In conclusion, sudden exclusion of non-rural clinics from the HCF program unnecessarily complicated an already complex program which, in CTN's experience, has contributed to underutilization of the HCF in California. Reversing USAC's decision would strengthen the HCF by enabling consortia like CTN to embrace the entire community of safety net health care providers that are serving our underserved communities. Moreover, as we have shown, including non-rural health care clinics like Tarzana and Children's Hospital of Oakland leverages vitally needed specialty care physicians located at these institutions to serve patients across the state through via telemedicine, including patients in rural locations. Finally, because the HCF provides no administrative support for consortia expenses – which the record shows are substantial – reinstatement of non-rural sites will provide consortia with a broader base of potential participants and thus help with long term sustainability.

Please let us know if we can be of further assistance.

Respectfully submitted,



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*Its Counsel*

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<sup>24</sup> See USAC 02/04/2015 Monthly Update on Progress Towards Annual Funding Cap, <http://www.usac.org/rhc/tools/news/default.aspx> (last visited Feb. 27, 2015).

<sup>25</sup> See *HCF Order*, 27 FCC Red at 16681, ¶ 2.