Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Amendment of Part 54 of the Commission's Rules to Further Modernize the Rural Health Care Program	)	**CC Docket No. 02-60**

COMMENTS OF
ITTA – THE VOICE OF MID-SIZE COMMUNICATIONS COMPANIES

ITTA – The Voice of Mid-Size Communications Companies ("ITTA") hereby submits its comments in response to the Petition for Rulemaking ("Petition") filed by the Schools, Health & Libraries Broadband (SHLB) Coalition, *et al*. (the "Petitioners") in the above-captioned proceeding.[1]

I. INTRODUCTION AND SUMMARY

The Petitioners ask the Commission to adopt a number of changes to the Healthcare Connect Fund ("HCF"), which include increasing the HCF discount percentage,[2] treating consortia administrative expenses as eligible costs,[3] and allowing entities that construct health care provider ("HCP")-owned facilities to lease excess capacity on those networks.[4] Petitioners contend that these and other potential modifications to the program will expand the availability

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[1] Petition for Rulemaking of the Schools, Health & Libraries Broadband Coalition, California Telehealth Network, New England Telehealth Consortium, Health Information Exchange of Montana, Utah Telehealth Network, Colorado Telehealth Network, and Southwest Telehealth Access Grid, CC Docket No. 02-60 (filed Dec. 7, 2015) ("Petition").

[2] *See id*. at 19-20.

[3] *See id*. at 23-24.

[4] *See id*. at 20-22.

of affordable, quality broadband to support rural health care needs.[5]

ITTA, whose members serve predominantly rural areas throughout the United States, recognizes the importance of robust broadband in obtaining access to vital health care services, particularly in remote areas of the country where the need is most acute. However laudable the goals in the Petition, the filing is in many ways no more than an untimely petition for reconsideration of the FCC's 2012 *Report and Order* that established the HCF.[6]

In other words, the Commission already has considered and rejected many of the proposals advanced in the Petition, and the Petitioners have provided no new evidence or compelling justification for the Commission to reexamine its prior conclusions, particularly when doing so may very well exceed the bounds of the Commission's statutory authority. Moreover, the requested changes would drastically expand the scope and cost of the HCF at a time when the Commission should be focused on reform of the current outdated contribution methodology. For these reasons, the Petition should be denied.

ITTA addresses several of the proposals in the Petition below.

II. THE COMMISSION SHOULD NOT INCREASE THE RURAL HEALTH CARE FUND DISCOUNT

Petitioners propose that the Commission increase the HCF discount percentage from its current level of 65% to a significantly higher level of 85%.[7] They also suggest that the Commission consider an increase in the HCF discount percentage for "consortia only" in recognition of the "unique importance" of such entities.[8]

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[5] *See id*. at ii.

[6] *In the Matter of Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678, FCC 12-150 (rel. Dec. 21, 2012) ("*R&O*").

[7] *See* Petition at 19-20.

[8] *Id*.

When the Commission established the HCF in 2012, it required all HCPs receiving HCF support to contribute 35% towards the cost of services, equipment, and expenses related to infrastructure and construction, resulting in the current 65% discount rate.[9] The Commission took into account a variety of factors in adopting this rate structure, and ultimately, struck an appropriate balance between promoting access to advanced broadband capabilities needed for rural health care purposes and ensuring fiscal responsibility and program efficiency. The Commission should not upset this balance.

Petitioners' claims that the current subsidy is too low and does not adequately support rural broadband deployment are unavailing.[10] The Commission recognized in the *Report and Order* that a 35% contribution would be significant commitment for many HCPs.[11] However, one of the Commission's primary objectives in setting the HCP contribution at this level was "to ensure that HCPs have a financial stake in the services and infrastructure they are purchasing, thereby providing a strong incentive for cost-effective decision-making and promoting the efficient use of universal service funding."[12]

The Commission acknowledged that the 35% contribution level might preclude new sites from being added to existing networks or result in existing sites dropping off the network.[13] Nonetheless, the Commission determined that a cautious approach was warranted given that other changes in the *Report and Order* that would expand program eligibility and streamline the

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[9] *See R&O* at ¶ 91.

[10] *See* Petition at 15-16.

[11] *See R&O* at ¶ 96.

[12] *Id.*

[13] *See id.* at ¶ 97.

application process were likely to increase the number of participating HCPs.[14] In fact, it was very important to the Commission that the 65% discount rate would keep demand for HCF funding below the program's $400 million cap, even as program participation expanded.[15]

For these reasons, the Commission should reject Petitioners' proposal. Raising the discount percentage as Petitioners suggest would lead to a dramatic increase in program costs, upsetting the careful balance the Commission struck in the *Report and Order* and threatening the financial health and long-term sustainability of the HCF. As ITTA has argued time and again, it is illogical for the Commission to consider expanding its universal service programs without first tackling long overdue contribution reform.[16] The increase in HCF program spending that would result from Petitioners' proposal cannot be justified under the circumstances, and should be rejected by the Commission.

The Commission should likewise reject Petitioners' proposal to increase the discount rate only for consortia.[17] Raising the discount rate for one type of program participant would be unfair to all other participants in the program. The Commission should not be choosing winners and losers by granting artificial benefits to consortia at the expense of HCPs that participate in the HCF on an individual basis. In fact, any suggestion that consortia need preferential treatment in the form of an increased discount seems absurd when one of the purported advantages of such arrangements is the cost efficiencies they produce. The FCC should continue to administer the HCF on a competitively-neutral basis without special preferences that would distort program

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[14] *See id.*

[15] *See id.* at ¶ 98.

[16] *See, e.g.*, Comments of the Independent Telephone & Telecommunications Alliance, WC Docket No. 06-122, GN Docket No. 09-51 (filed July 9, 2012); Comments of ITTA – The Voice of Mid-Size Communications Companies, WC Docket Nos. 11-42, 09-197, 10-90 (filed Sept. 30, 2015).

[17] *See* Petition at 19-20.

participation.

III. THE COMMISSION SHOULD NOT ALLOW PROGRAM FUNDING TO BE USED TO COVER CONSORTIA ADMINISTRATIVE EXPENSES

Petitioners assert that administrative expenses continue to be an obstacle to the formation and operation of consortia, so they argue that the Commission should treat such expenses as eligible costs under the program.[18] Adopting this suggestion, too, would unreasonably expand the HCF program, and the Commission should reject this proposal.

The Commission expressly declined to allow recovery for administrative expenses in the *Report and Order*.[19] As the Commission concluded, allowing recovery for administrative expenses would be counterproductive to its goals of streamlining program administration and ensuring that HCF funding is used in a fiscally responsible way.[20] First, providing support for administrative expenses would likely increase administrative burdens by requiring the Commission to establish guidelines as to which expenses are entitled to reimbursement and necessitating additional and more complex application requirements for participants.[21] In addition, introducing subjective decision-making into the process as to what expenses are reasonable or unreasonable could lead to waste, fraud, and abuse of the program and would require the Commission to expend additional resources on policing such conduct.[22]

The Commission correctly concluded that the primary focus of the HCF should be to fund infrastructure, not project administration.[23] The Petitioners have failed to offer any new

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[18] *See id*. at 23-24.

[19] *See R&O* at ¶ 173.

[20] *See id.* at ¶ 174.

[21] *See id*.

[22] *See id.* at ¶ 176.

[23] *See id.* at ¶ 172.

evidence that calls the Commission's conclusions into question. Therefore, the Commission should maintain the approach adopted in the *Report & Order*, not only with respect to consortia, but also with respect to all program participants.

IV. THE COMMISSION SHOULD NOT ALLOW ENTITIES CONSTRUCTING HCP-OWNED FACILITIES TO LEASE EXCESS CAPACITY

Petitioners propose that the Commission adopt significant changes to its rules to permit entities constructing HCP-owned facilities to lease excess capacity.[24] They argue that public-private partnerships are of critical importance to deploying broadband networks for rural health care needs and that Section 54.633(d)(5) of the FCC's rules, which prohibits such arrangements, limits the number of entities that may be available as potential partners.[25]

The Communications Act generally prohibits sale or resale of USF-supported services or capacity by rural health care providers, schools, or libraries.[26] The Commission concluded in the *Report and Order* that HCPs must retain ownership of the excess capacity of HCP-owned facilities.[27] While the Commission allows HCPs to make their facilities available to third parties under an indefeasible right of use ("IRU") or lease arrangement, the lease or IRU between the participant and the third party must be an arm's length transaction.[28] To ensure that such arrangements are made at arm's length, neither the vendor that installs the excess capacity facilities nor its affiliate is eligible to enter into an IRU or lease with the participant.[29]

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[24] *See* Petition at 20-22.

[25] *See id*. at 21.

[26] 47 U.S.C. § 254(h)(3) ("Telecommunications services and network capacity provided to a public institutional telecommunications users under this subsection may not be sold, resold, or otherwise transferred by such user in consideration for money or any other thing of value.").

[27] *See R&O* at ¶ 103.

[28] *See id*.

[29] *See id*.

The Commission adopted this restriction to help safeguard against program manipulation and to help prevent conflicts of interest or influence from vendors and for-profit entities that may lead to waste, fraud, and abuse.[30] According to the Commission, allowing the carrier, service provider, or other vendor to have a role in contributing to the cost of the network, such as by leasing excess capacity, would distort the competitive bidding process and reduce HCPs' incentives to choose the most cost-effective bid, leading to an inefficient use of program resources.[31]

The Petitioners are seeking a direct reversal of the Commission's prior determination yet they have not provided any new evidence or a convincing rationale that would justify the Commission doing so. In fact, nowhere in the Petition do they demonstrate why this limitation is no longer necessary. Petitioners argue that the competitive bidding process serves the purpose of determining whether a particular bid is the most cost-effective way to deliver the facilities in question and that additional safeguards are unnecessary.[32] However, this argument completely overlooks the influence the vendor or service provider would have just by submitting a bid in the first place. Given that the rule prohibiting entities that construct HCP-owned facilities from leasing excess capacity continues to serve a valid purpose in combatting against program abuse, the change proposed by the Petitioners should be rejected by the Commission.

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[30] *See id.* at ¶ 101.

[31] *See id*.

[32] *See* Petition at 21.

V. CONCLUSION

As discussed above, the Petition is tantamount to an untimely petition for reconsideration of the Commission's 2012 *Report and Order* establishing the HCF. The Commission has already considered and rejected many of the proposals in the Petition, including the specific rule changes discussed above, and the Petitioners have not provided any new evidence or compelling reasons why the Commission should revisit its findings. Furthermore, the changes suggested in the Petition would significantly expand the size of the HCF program, which is unjustified in the absence of contribution reform.

The HCF offers meaningful benefits to rural communities and warrants support. But the Commission must be cautious and prudent in managing the program, especially given the limited statutory authority delegated by Congress. Abruptly reversing policies and expanding the program in the ways proposed by the Petitioners would raise doubts about the administration of the program, including whether such an expanded program has been extended beyond what Congress authorized.

The Petition should be denied.

Respectfully submitted,

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