

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Rural Health Care Support Mechanism)
) WC Docket No. 02-60

BELLSOUTH REPLY COMMENTS

BellSouth Corporation, on behalf of itself and its wholly-owned subsidiaries (“BellSouth”), submits this reply to certain comments filed in response to the *Further Notice of Proposed Rulemaking* released by the Commission on November 17, 2003.¹

In relation to other universal service support mechanisms, especially the schools and libraries support mechanism, the scope of the rural health care support mechanism has allowed it to remain relatively simple to administer. In light of this, opportunities for waste, fraud and abuse within the program have been minimized. Any modifications made to the program as a result of this proceeding should be accomplished in a way that allows the program to retain its integrity while at the same time fulfilling its statutory goals.

In response to the Commission’s request for comment on modifications to the definition of “rural area” for the rural health care universal service support mechanism, a number of parties suggest broadening the current definition. BellSouth agrees that the definition should be broadened in order that the benefits of telemedicine reach underserved communities, but that the

¹ *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 (2003).

breadth of any new definition should not be so expansive as to bring unnecessary complexity to the program's administration. In this regard, BellSouth agrees that there are a number of existing definitions of "rural area" used by other federal agencies: the USDA Rural Broadband Grant and Loan Program as contained in the 2002 Farm Bill and amended in the 2004 Omnibus appropriations bill;² the definition contained in the USDA Rural Development Housing and Community Facilities program;³ the definition contained in the USDA Rural Utilities Services Telemedicine and Distance Learning Grant Program;⁴ and the USDA Rural Urban Commuting Area System as employed by the Office of Rural Health Policy.⁵ Unless reply comments raise any serious objections to any of these federal agency definitions, BellSouth believes that applicants should be able to qualify for support under the program if they can demonstrate that the applicant's area qualifies as "rural" under any of the federal definitions identified in the record. This would provide needed flexibility and allow applicants to qualify under a new, but pre-approved, federal definition in the event they no longer qualify under the program's current definition.

A number of commenters support using state definitions.⁶ BellSouth believes that the flexibility obtained by using multiple federal definitions of "rural areas" would begin to be compromised by the added unnecessary complexity of administering multiple definitions of

² Comments of the Office of Telemedicine of the University of Virginia Medical Center ("UVA Medical Center") at 14-15; Comments of the Virginia Department of Health ("VA Dept. of Health") at 2.

³ UVA Medical Center Comments at 17.

⁴ Comments of Rep. Rick Boucher at 7.

⁵ Comments of Patricia Taylor, Ph.D., at 1.

⁶ *See, e.g.*, Blue Cross of California Telemedicine Program Comments at 2-3; California Primary Care Association Comments at 1; California State Rural Health Association Comments at 1-2; Rural Healthcare Center, California Healthcare Association Comments at 2-3; VA Dept. of Health Comments at 4.

“rural area” as used by 50 state jurisdictions and the District of Columbia. While it seems reasonable that the central administrator of a federal program could keep track of and apply a range of federal definitions to applicants across 51 separate jurisdictions, the chore would become very complicated if the administrator had to keep track of multiple state definitions as well. The benefits of any marginal additional flexibility added by allowing applicants to qualify under a multitude of state-derived definitions would be outweighed by the cost and complexity of keeping track of all of those additional definitions. With increased complexity, unfortunately, come increased opportunities for waste, fraud, and abuse. The Commission, therefore, should broaden the definition of “rural areas” so as to embrace the various federal definitions identified in the record, but not allow applicants to rely, as a matter of course, on state definitions.⁷

This approach would obviate the need for the Commission to “grandfather” existing areas that currently qualify as rural, if they no longer qualify under the existing definition, because it is highly unlikely that a once-qualified rural area will no longer qualify under any of the available federal definitions of rural area. It would be good for the Commission to avoid adopting grandfathering provisions, in any event. BellSouth agrees with Verizon’s fundamental analysis that once a rural area becomes “urban” its rates are by definition “comparable to” (and, indeed, are the same as) “urban” rates, regardless of whether the area formerly was rural.⁸ In addition to the reasons Verizon provides against grandfathering, BellSouth urges the Commission to consider the potentially market distorting effects that grandfathered arrangements would have on the competitive provision of telemedicine services in transitional rural to urban markets. As

⁷ In the unlikely event that an applicant that had previously qualified under any federal definition of “rural area” no longer qualifies under any federal definition of rural area, the applicant might obtain a waiver provided it can demonstrate that it meets an appropriate state definition and it is in the public interest to obtain a waiver.

⁸ Verizon Comments at 7.

Verizon suggests, as the size of the community grows, the more likely it is that more competitors will enter the market, and offer a variety of telecommunications services at competitive prices.⁹ The Commission should not adopt rules or policies that could encourage waste, as Verizon demonstrates, or discourage the rapid introduction of competitive telecommunications services into formerly rural markets.

Finally, BellSouth agrees that the Commission should extend its conclusion that support for satellite services to mobile rural health care providers should be capped at the amount a provider would receive if it received functionally similar terrestrial-based services.¹⁰ The problem, of course, is that as a practical matter there may not be any functionally similar terrestrial-based services in the immediate serving areas for purposes of determining the amount of the cap. Therefore, the program administrator should establish appropriate surrogates to use to determine the cap where such terrestrial-based services are not available.

CONCLUSION

The Commission should allow areas to qualify as rural under any of the federal definitions submitted in the record of this proceeding. It should not grandfather existing areas. The Commission should establish default surrogates to use, when necessary, in establishing funding caps for mobile satellite service providers.

⁹ *Id.*

¹⁰ American Telemedicine Association Comments at 4. BellSouth generally supports Verizon's comments on this issue. Verizon Comments at 7-11.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that I have this 7th day of April 2004 served the following parties to this action with a copy of the foregoing **BELLSOUTH REPLY COMMENTS** by electronic filing and/or by placing a copy of the same in the United States Mail, addressed to the parties listed on the attached service list.

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