



AT&T takes no position on the merits of the applicant's appeal or USAC's decision finding a competitive bidding violation, but it does take issue with USAC's decision to seek recovery of RHC support based on an alleged violation of the Commission's rules from a party that had no involvement in or knowledge of the alleged violation.<sup>5</sup> As discussed herein, and consistent with Commission precedent, USAC should direct its recovery efforts only to the party or parties responsible for the alleged rule violation.

Shortly after the inception of the E-rate program, USAC determined that it had committed to provide funding to a number of E-rate applicants that had violated certain requirements of the Communications Act of 1934, as amended (Act). In response to a request by USAC for guidance on how to handle this situation, the Commission concluded that it was required by law to seek repayment of erroneously disbursed funds and directed USAC to recover such funds from service providers.<sup>6</sup> The Commission's sole basis for seeking recovery of improperly disbursed funds only from service providers was that service providers, not applicants, "actually receive disbursements of funds from the universal service support mechanism."<sup>7</sup> Upon further consideration and in response to several petitions for reconsideration, the Commission reversed course in 2004, and correctly held that "recovery actions should be directed to the party or parties that committed the rule or statutory violation in

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<sup>5</sup> To be clear, we do not fault USAC since, as it notes in its Administrator's Decision to Verizon, the Commission may not have given USAC the authority to reach any other decision. See Verizon Request, Appendix A at 2-3 (Administrator's Decision on Rural Health Care Program Appeal, Feb. 10, 2009).

<sup>6</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifth Order on Reconsideration and Fourth Report and Order, 13 FCC Rcd 14915, ¶ 7 (1999) (*Commitment Adjustment Order*).

<sup>7</sup> *Id.* at ¶ 8.

question.”<sup>8</sup> The Commission explained that its prior improper payments recovery methodology (i.e., seeking recovery only from the service provider irrespective of whether the applicant or the service provider was responsible for the rule violation on which the improper payment determination was based) did “not place sufficient incentive on beneficiaries to ensure compliance with all relevant statutory requirements and our implementing rules.”<sup>9</sup> The Commission concluded that “directing recovery actions to beneficiaries in those situations where the beneficiary bears responsibility for the rule or statutory violation will promote greater accountability and care on the part of such beneficiaries” and furthers the Commission’s “goals of minimizing waste, fraud and abuse in the schools and libraries support mechanism.”<sup>10</sup>

These Commission findings are no less important and applicable to the RHC support mechanism. While it is true that the Commission’s recovery precedent was issued in the context of the E-rate program, there is no policy or legal basis for treating erroneously or improperly disbursed RHC payments any differently.<sup>11</sup> As Verizon notes, the E-rate and RHC programs

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<sup>8</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order on Reconsideration and Fourth Report and Order, 19 FCC Rcd 15252, ¶ 10 (2004) (*Commitment Adjustment Reconsideration Order*).

<sup>9</sup> *Id.* at ¶ 13.

<sup>10</sup> *Id.*

<sup>11</sup> Indeed, if the Bureau were to conclude that USAC cannot recover RHC funds disbursed improperly because of a violation of the rules by the applicant, it is by no means clear that USAC could recover such funds at all. In its Administrator’s Decision, USAC cited section 54.707 of the Commission’s rules as the basis of its authority to seek recovery of RHC funding from Verizon. Verizon Request, Appendix A at 2 & n.4. However, that provision authorizes USAC to “suspend or delay discounts, offsets, and support amounts provided to a carrier *if the carrier fails to provide adequate verification* of discounts, offsets, or support amounts provided upon reasonable request.” 47 C.F.R. § 54.707 (emphasis added). If Verizon can demonstrate that it did in fact provide discounted service to the RHC applicant that USAC alleges to have violated the Commission’s rules, section 54.707 simply would not apply. Thus, it is unclear what basis, if any, USAC has to recover funding from either Verizon or the RHC applicant. To be clear, AT&T supports Commission and USAC efforts to recover universal service support payments, regardless of the mechanism, that have been disbursed improperly or in error. However, AT&T is concerned that USAC’s interpretation of its authority to seek recovery of improperly disbursed RHC funds only from

share many similarities, including the disbursement process.<sup>12</sup> In its 2004 order, the Commission recognized the error in its prior decision to require USAC to recover unlawful E-rate support payments from service providers – regardless of which party violated the Act or the Commission’s rules – simply because service providers, not applicants, “actually receive disbursements” whereas applicants receive “discounted services.”<sup>13</sup> The sound policy reasons that led the Commission to modify its approach to seek recovery from the party responsible for any rule violation in order to promote accountability and compliance with its funding rules apply with full force to the RHC program.

Until corrected, the gap that Verizon’s Request identifies (USAC lacks authority under current requirements to recover improperly disbursed RHC funds from wrongdoing applicants) acts as a very real deterrent to service provider participation in the RHC program. USAC’s Administrator’s Decision to Verizon should prompt all would-be RHC service providers to think twice about responding to a RHC applicant’s request for proposal lest they be left holding the bag if it later turns out that the RHC applicant violated the rules.<sup>14</sup> AT&T notes, in this regard, that years may have passed before USAC approaches a service provider seeking recovery of RHC funding solely due to the misdeeds of the RHC applicant. In the meantime, the service

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service providers, rather than the applicants responsible for violating the Commission’s RHC funding rules, would create a gap in the Commission’s rules that would preclude recovery of such RHC payments from any RHC participant.

<sup>12</sup> Verizon Request at 6.

<sup>13</sup> *Commitment Adjustment Order* at ¶ 8.

<sup>14</sup> Verizon’s Request is especially timely given that a large number of RHC pilot program participants have not yet selected service providers. See FCC Update on Rural Healthcare Pilot Program Initiative, April 16, 2009 (noting that more than two years after the Commission selected pilot program participants, only 29 out of 67 projects had request for proposals posted and only 5 out of 67 projects received funding commitments from USAC), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-290141A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-290141A1.pdf).

provider, unaware of the applicant's wrongdoing, would have already flowed the RHC support through to the applicant in the form of discounted service years earlier. At that point, as Verizon explains, the service provider may no longer have any relationship with the applicant and thus the applicant, which USAC has already determined to be guilty of some sort of wrongdoing, may have no incentive to cooperate with its former service provider's request for reimbursement.<sup>15</sup> Service providers should be able to rely on an applicant's certifications that it is complying with all Commission rules and requirements<sup>16</sup> and should not be held accountable if USAC later concludes that the applicant's – not the service provider's – certifications were false.

Though USAC may be constrained from clarifying that it is equally appropriate to seek recovery from wrongdoing RHC applicants as it is from E-rate applicants, the Bureau is not. A Bureau clarification in this regard is consistent with Commission efforts to harmonize the administration of all of its universal service programs, including with respect to the recovery of improperly disbursed funding. For example, in its *Comprehensive Program Management Order*, the Commission stated that “[c]onsistent with our conclusion regarding the schools and libraries program, funds disbursed from the high-cost, low-income, and rural health care support mechanisms in violation of a Commission rule that implements the statute or a substantive program goal should be recovered.”<sup>17</sup> While USAC states that this language does not alter the

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<sup>15</sup> Verizon Request at 9.

<sup>16</sup> See FCC Forms 465, 466, 466A, 467, all of which require multiple certifications from applicants.

<sup>17</sup> *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight*, WC Docket No. 05-195, Report and Order, 22 FCC Rcd 16372, ¶ 30 (2007). See also *id.* at ¶¶ 22-27 (harmonizing the document retention requirements for the high-cost, E-rate, and RHC programs and for contributors); ¶ 29 (harmonizing the administrative limitations period for the high-cost, E-rate, RHC, and low-income programs).

parties subject to recovery in the RHC program,<sup>18</sup> the Bureau need not adopt such a cramped reading.

Indeed, in its *Rural Health Care Pilot Program Implementation Order*, the Commission seems to have adopted an expansive view of the Bureau's delegated authority. Among other things, the Commission has delegated to staff the authority to waive Commission rules if they prove "unreasonable" to participants and to select new pilot program participants, if necessary.<sup>19</sup> Moreover, in this order, the Commission again expressed its intent that "funds disbursed in violation of a Commission rule that implements section 254 or a substantive program goal will be recovered" and "[w]e remain committed to ensuring the integrity of the [RHC] Program and will aggressively pursue instances of waste, fraud, or abuse under the Commission's procedures . . . ."<sup>20</sup> As noted above, the Commission cited these same principles in 2004 when it determined that USAC should seek recovery of improper E-rate disbursements from the party or parties that committed the rule violation.<sup>21</sup> The Commission plainly would not have made such clear pronouncements in the RHC context but then deny the Bureau the authority to make necessary clarifications to the Commission's rules in order to give meaning to these Commission pronouncements.

For the foregoing reasons, AT&T requests that the Bureau act quickly to grant Verizon's Request and clarify that the Commission's findings in its *Commitment Adjustment*

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<sup>18</sup> Verizon Request, Appendix A at n.7.

<sup>19</sup> *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 22 FCC Rcd 20360, ¶ 124 (2007).

<sup>20</sup> *Id.* at ¶ 125 & n.407.

<sup>21</sup> See *Commitment Adjustment Reconsideration Order* at ¶ 13 (concluding that "recovering disbursed funds from the party or parties that violated the statute or Commission rule will further our goals of minimizing waste, fraud, and abuse in the schools and libraries support mechanism").

*Reconsideration Order* apply equally to E-rate and RHC applicants. Bureau inaction on Verizon's Request will act as a real deterrent to service provider participation in the RHC pilot program, the success of which seems to be a Commission priority.<sup>22</sup>

Respectfully Submitted,

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<sup>22</sup> Indeed, while correcting the issue identified in Verizon's Request should be the Bureau's first RHC priority, AT&T urges the Bureau and Commission to revisit all of the RHC rules and requirements in order to make this program more effective and efficient. *See, e.g.*, AT&T Broadband NOI Comments, GN Docket No. 09-51, at 93 (filed June 8, 2009) (urging the Commission, among other things, to provide funding directly to the RHC beneficiaries themselves, not to the service provider intermediaries).