

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Rural Health Care Support Mechanism) WC Docket No. 02-60
)
Request for Review by AT&T Corp. of)
Decision of Universal Service Administrator)

**COMMENTS OF
THE UNITED STATES TELECOM ASSOCIATION**

These comments are in response to the Federal Communications Commission’s (“Commission”) Public Notice¹ in which the Wireline Competition Bureau (Bureau) requests comments to be submitted on AT&T’s Request for Review of a Decision by the Universal Service Administrative Company (USAC). USTelecom² supports AT&T’s request³ that the Bureau reverse a decision of USAC to recover certain Rural Health Care (RHC) support payments from AT&T, the service provider, rather than the RHC applicant responsible for the non-compliance with the USAC audit process that prompted USAC to seek recovery of such RHC support payments. AT&T also requests that the Bureau clarify that USAC should recover erroneously disbursed funds from the party that committed the violations.⁴ USTelecom strongly supports that request as well.

¹See FCC Public Notice DA 11-1204 “*Wireline Competition Bureau Seeks Comment on an AT&T Corp. Request for Review of a Decision by the Universal Service Administrative Company*” WC Docket No. 02-60 (released July 18, 2011) and FCC Public Notice DA 11-1204.

² USTelecom is the premier trade association representing service providers and suppliers for the telecommunications industry. USTelecom members provide a full array of services, including broadband, voice, data and video over wireline and wireless networks.

³ *Request for Review by AT&T Corp. of Decision of Universal Service Administrator*, WC Docket No. 02-60 (filed Jun. 3, 2011) (Request for Review).

⁴ Request for Review at 5.

This issue must be acted on promptly. Over two years ago, Verizon filed a request for review that, while based on different facts than AT&T's request, raised the exact same issues.⁵ That request has not yet been acted upon by the Bureau. While only AT&T and Verizon have appealed specific situations to the Bureau, the relevant USAC interpretation applies to every RHC service provider, including both current providers and any future providers. The potential for additional appeals is increased with every additional beneficiary and service provider. While the particular amount being appealed by AT&T is small (\$1,860), it illustrates what should be a real concern. Any potential service provider that bids to provide broadband service to a RHC provider places itself in financial jeopardy when, under the current USAC interpretation, the service provider is always the party at risk of having to refund monies to USAC should the beneficiary be found not to be in compliance with a Commission or USAC rule or procedure.

Common sense, good public policy, the facts of both the AT&T and Verizon requests for review, as well as the Commission's own adopted policy, should make it clear that in both the E-rate and RHC contexts, USAC's "recovery actions should be directed to the party or parties that committed the rule or statutory violation in question."⁶ Furthermore, the Commission could enhance the accountability of program beneficiaries by adopting the disbursement simplification process, discussed below, in both the RHC and E-rate programs.

⁵ See *Request for Review by Verizon of Decision of Universal Service Administrator*, WC Docket No. 02-60, CC Docket No. 96-45 (filed April 10, 2009) (Verizon Request).

⁶ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order on Reconsideration and Fourth Report and Order, 19 FCC Rcd 15252, para. 10 (2004) (*Commitment Adjustment Reconsideration Order*).

I. USAC is Incorrectly Interpreting FCC Precedent

Under USAC's interpretation of FCC precedent, it is only permitted to seek recovery of RHC funds from the service provider, never the beneficiary; even in instances in which it is clear that only the beneficiary committed the statutory or rule violation. In its 2004 *Commitment Adjustment Reconsideration Order*, the Commission explained that seeking recovery only from the service provider, regardless of whether the applicant or service provider was responsible for the noncompliance, did "not place sufficient incentive on beneficiaries to ensure compliance with all relevant statutory requirements and our implementing rules."⁷ There is nothing in the record to indicate that the sound policy reasons that compelled the FCC to change course in 2004 by directing USAC to seek recovery from whichever entity committed the wrongdoing in the E-rate context, should not and do not apply with equal force to the RHC program.

It is time for the Bureau to close the loophole created by USAC's interpretation of Commission policy that both AT&T and Verizon have identified in their RHC appeals by making clear that, consistent with the FCC's commitment to "aggressively pursue instances of waste, fraud, or abuse,"⁸ USAC should seek recovery of *any* improperly disbursed funds – regardless of universal service support mechanism – from the party that committed the wrongdoing.

The Bureau plainly has the authority to make this clarification. As AT&T noted in its appeal, the FCC has delegated to the Bureau the authority to waive its RHC FCC rules if they prove "unreasonable."⁹ The Bureau recently relied on this authority to

⁷ *Id.* at para. 13.

⁸ *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 22 FCC Rcd 20360, para. 125 (2007 *Rural Health Care Order*).

⁹ AT&T Appeal at 11 (citing 2007 *Rural Health Care Order* at para.124).

extend the RHC Pilot Program beyond the three years set forth in the FCC's *2007 Rural Health Care Order*.¹⁰ If the Bureau has the authority to turn a three-year pilot program into a five-year or more pilot program, surely it has the authority to direct USAC to seek recovery of improperly disbursed RHC funds from the entity that was responsible for any rule or statutory violation.

II. Common Sense and Sound Public Policy Compel the Bureau to Promptly Clarify that Improperly Disbursed Funds Should be Recovered from the Party that Committed the Wrongdoing

The facts of AT&T's appeal highlight exactly why the Bureau must make clear that in both the E-rate and RHC contexts, USAC's "recovery actions should be directed to the party or parties that committed the rule or statutory violation in question."¹¹

Although it never asserts that AT&T failed to comply with the FCC's rules, USAC seeks to hold AT&T financially liable for the alleged misdeeds of a RHC beneficiary (which is no longer an AT&T customer) that made the calculated decision not to comply with a USAC audit. Indeed, AT&T produced documentation as part of its appeal that demonstrates that it did comply with its requirements as a RHC service provider.¹²

Apparently, the RHC beneficiary, a hospital, determined that it was inconvenient for it to retrieve certain documents requested by USAC auditors because it stored those documents (copies of invoices) in an unheated, off-site storage center. USAC contended that it needed to review copies of relevant invoices to verify that the beneficiary complied with the FCC's RHC rules. The beneficiary, however, opted not to comply with USAC's audit because evidently its personnel did not want to be bothered during the winter with

¹⁰ Rural Health Care Support Mechanism, Order, DA 11-819, n.1 (WCB rel. May 3, 2011).

¹¹ *Commitment Adjustment Reconsideration Order*, para. 10.

¹² See AT&T Appeal at 12 (referencing Attachments B, C, & D).

retrieving documents it was required to maintain from the cold storage facility where it had elected to file these documents.¹³ This beneficiary also decided not to pay AT&T its standard reproduction fees in order to obtain copies of the pertinent invoices and, instead, chose to accept an audit finding of noncompliance.¹⁴

If USAC's interpretation of FCC precedent is correct (that USAC may seek recovery only from the service provider, never the beneficiary) why would an RHC beneficiary ever comply with a USAC audit or, for that matter, comply with the FCC's rules? The beneficiary's conduct in the instant appeal demonstrates that this is no mere hypothetical concern. It seems clear that this beneficiary concluded that, for \$1,860 (the amount that it received in RHC support), it was not worth the beneficiary's time or effort to demonstrate compliance with the FCC's rules, particularly since its service provider – AT&T – would be on the financial hook for the beneficiary's refusal to cooperate. Moreover, since the beneficiary no longer has any relationship with its former RHC service provider, it seems likely that this beneficiary made the calculation that AT&T has little leverage to obtain appropriate reimbursement from its former customer (e.g., AT&T's costs of collecting \$1,860 from the beneficiary may exceed that amount, in which case AT&T may not aggressively pursue collections from its former customer). The Verizon request for review covers a circumstance that is similar in that USAC concluded that there was an issue of noncompliance by an RHC applicant, but sought recovery from Verizon even though it played no role in the alleged violation, prompting Verizon to appeal.

¹³ See AT&T Appeal at 4.

¹⁴ *Id.*

III. The Commission Should Adopt Disbursement Simplification for the RHC and E-rate Programs

For both the RHC and E-rate programs, USAC's disbursement process should be simplified by removing the service provider from the middle of this process. In the AT&T and Verizon cases referenced above, this change would have prevented the service providers from being inappropriately placed between USAC and the RHC beneficiary in USAC's demand to recover funds. And it would emphasize the direct relationship between USAC and the beneficiary, which presumably would prompt beneficiaries to comply with the Commission's rules and cooperate in USAC audits.

IV. Conclusion

The Bureau should promptly grant both the recent AT&T request as well as the Verizon request made two years ago. Commission policy and common sense dictate that recovery should be made from the noncomplying party, which in both cases was the RHC beneficiary. Furthermore, future proceedings addressing the E-rate and RHC programs should adopt disbursement simplification to enhance the accountability of program beneficiaries.

Respectfully submitted,

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