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*NOT ADMITTED IN VA

January 31, 2012

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, DC 20554

**Re: Notice of *Ex Parte* in WC Docket No. 02-60
Palmetto State Providers Network
FRC, LLC**

Madam Secretary:

In accordance with Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, we hereby provide notice of an oral *ex parte* presentation in connection with the above captioned proceeding. On January 26 and 27, 2012, W. Roger Poston, II, Director, Academic and Research Systems, Office of the CIO, Medical University of South Carolina, and Associate Project Manager of the Palmetto State Providers Network ("PSPN"), Larry Vincent, Vice President, FRC, LLC, ("FRC") and undersigned counsel met separately with Angela Kronenberg, Legal Advisor to Commissioner Clyburn, and Trent Harkrader, Division Chief, and Attorney Advisors Christianna Barnhart, Linda Oliver, and Chin Yoo in the Telecommunications Access Policy Division of the Wireline Competition Bureau discuss the Federal Communications Commission's ("FCC" or "Commission") Rural Health Care ("RHC") programs.

We discussed how PSPN has successfully utilized its \$7.9 million award through the RHC pilot program to implement a services-based broadband network across the state of South Carolina. We noted that a typical PSPN connection offers much more functionality at generally much less cost than an equivalent bandwidth circuit-based connection – and that PSPN participants are now able to decommission in some cases multiple expensive circuit-based services as a result of having access to PSPN. As a result of the high-quality, high-bandwidth services PSPN is providing, PSPN is bringing substantial benefits to rural residents who can now

receive diverse types of high quality care without leaving their community. In addition, we noted substantial and quantifiable cost savings that are now being enjoyed by a variety of health programs within the state.

Notwithstanding these achievements, PSPN's continued growth and long-term sustainability depends on continued support through the RHC program – either through implementation of the Commission's proposed broadband services program¹ or utilization of the legacy RHC program.² Because pilot program support for the first wave of PSPN participants will be exhausted in 2012, the network has reached a critical juncture. We referenced a letter PSPN and FRC provided to the Universal Service Administrative Company ("USAC") in December 2011 seeking to address these concerns.³

With respect to legacy RHC support, we discussed issues related to the migration of pilot projects into the existing RHC support mechanism. Specifically, we discussed the importance of being able to continue to operate the PSPN network using a consortium model – as is contemplated under current RHC program rules.⁴ This would include the ability to submit a single application for support each year rather than a separate application for each PSPN participant.

We also discussed key differences between existing RHC program rules and the rules governing the pilot program and how those differences affect the amount of support potentially available to pilot projects under the legacy program. For example, unlike the pilot program, the legacy RHC program (1) does not support urban participants; (2) provides support to telecommunications providers only (not non-traditional service providers); (3) supports telecommunications services only (not broadband services); (4) provides support based on the urban-rural price difference rather than a fixed discount percentage (85% in the pilot program); and (5) has a distance-sensitive support limitation known as the Maximum Allowable Distance ("MAD").

Eligible Participants

We discussed how the legacy RHC program currently funds the urban end of point-to-point connections to rural areas, but that in a cloud-based network such as PSPN, the urban participants effectively bear the cost of meeting rural participants "half-way." With regard to the

¹ See *Rural Health Care Universal Service Support Mechanism*, CC Docket No. 02-60, Notice of Proposed Rulemaking, 25 FCC Rcd 9371, 9407-9415, FCC 10-125 (2010) ("Rural Health Care NPRM").

² By "legacy" RHC support, we are referring to support available for the urban-rural difference rather than the 25% support available for Internet access.

³ See Letter from Jeffrey Mitchell, Counsel to FRC, to Tess Ellis, Senior Manager, RHC Division, USAC, December 13, 2011 (attached hereto). As we discussed, we also met with representatives of USAC to discuss the issues highlighted in the letter and this *ex parte* notice.

⁴ See 47 C.F.R. § 54.601(a)(2)(vii) (consortia of eligible health care providers ("HCPs") are eligible to receive supported services); see also 54.601(b)(1) (HCPs may join consortia).

Commission's pending Rural Health Care NPRM, we discussed the importance of urban eligibility in ensuring these networks are affordable for the eligible rural health providers they are intended to benefit. We also discussed the importance of ensuring that nominally private, federally licensed Rural Health Clinics are ultimately made eligible for support as public health care providers.

Eligible Services

Although only telecommunications providers are eligible to receive legacy RHC support, we noted that FRC is certified as a Competitive Local Exchange Carrier ("CLEC") in South Carolina. We also noted that FRC is providing "Ethernet services" to PSPN which are recognized as eligible telecommunications services.⁵ We discussed whether the network monitoring and management functions being provided by FRC were eligible services and we explained that carriers provisioning point-to-point circuit-based Ethernet services were providing these same services and recovering those costs through their rates.

Legacy Support for Urban-Rural Difference

We discussed how PSPN and FRC price services delivered to network participants and suggested a methodology for calculating the urban-rural difference. Specifically, we noted how both urban and rural PSPN participants pay a monthly recurring local loop fee and monthly recurring network access fee.⁶ We noted that urban locations would not subscribe to the network access fee but for their need to reach beyond their urban area and connect with rural participants. We suggested that, as a result, it would not be appropriate to count the urban network access fee as part of the comparable service for purposes of calculating the urban-rural difference.⁷ Thus, we discussed a support calculation method for PSPN that would compare the total price paid by the rural sites (local loop fee plus network access fee) to the local loop fee paid by the urban site. We explained that this calculation method on average would support about 50% of the cost of the service for eligible rural PSPN participants.

Maximum Allowable Distance

We discussed how the PSPN network connects all participants on the network but that each network participant pays only its costs to get to the cloud (the local loop fee), and its fair share of costs to obtain cloud services (the network access fee). Thus the only distance sensitive costs are those reflected in the local loop fee paid by each participant. We also noted how the distance from any PSPN service location to the nearest PSPN master hub will not exceed 100

⁵ See USAC RHC Program website, Guide for Health Care Providers, <http://www.usac.org/rhc/health-care-providers/step01/eligible-services.aspx>.

⁶ Although PSPN refers to this network access fee as a "port fee," the fee recovers each participant's fair share of the cost to access the PSPN cloud rather than, for example, a share of the costs associated with a particular piece of network equipment.

⁷ This approach is consistent with the fact that calculating circuit-based support under the legacy RHC program allows the rural site to seek support for costs associated with the urban "end" of the connection.

miles and thus each site cannot exceed the MAD to reach the network (i.e., the nearest master hub).⁸ While every PSPN service location can reach service locations beyond the MAD, the costs to do so are not reflected in each participant's price to use the network.⁹

Finally, the legacy RHC rules direct both the service provider and consortium to propose a support calculation for consortium members and USAC apparently has an established process to evaluate such proposals.¹⁰ PSPN sites that are losing pilot program support in 2012 are currently trying to plan for their future, so a timely final determination on PSPN's proposed methodology will be critical.

We appreciated everyone's time and obvious interest in these important issues. If you have any questions or require any additional information, please contact undersigned counsel directly.

Sincerely,



Jeffrey A. Mitchell
Counsel for FRC, LLC

Enclosures

cc: Christianna Barnhart, FCC
Trent Harkrader, FCC
Angela Kronenberg, FCC
Craig Davis, USAC
Stefani Watterson, USAC

⁸ We included a state map on page 15 of our slide presentation that overlays a 100-mile radius around each of the three PSPN master hubs in Charleston, Columbia, and Greenville. Columbia is South Carolina's most populous city so the MAD is the distance from any site to the far edge of Columbia. *See* 47 C.F.R. § 54.625(a). Sites beyond 100 miles from Columbia will in almost every case be 100 miles or closer to the hub in either Charleston or Greenville.

⁹ This is similar to the public Internet where the cost for an end-user to visit a website on the other side of the world is the same as the cost to visit a website located across town.

¹⁰ *See, e.g.*, 47 C.F.R. § 54.609(a)(2) ("If . . . base rates for telecommunications services in rural areas are not reasonably comparable to the base rates charged for functionally similar telecommunications service in urban areas in that state, the telecommunications carrier . . . and/or consortium of health care providers may request that [USAC] perform a more comprehensive support calculation."); *see also* USAC RHC Program website, Glossary of Terms, <http://www.usac.org/rhc/tools/glossary-terms-detailed.aspx> (describing USAC "rate case" process) (last checked January 31, 2012).