



December 3, 2012

***Ex Parte Notice***

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

***Rural Health Care Support Mechanism, WC Docket No. 02-60***

Dear Ms. Dortch:

On Friday, November 30, 2012, the undersigned, on behalf of the National Telecommunications Cooperative Association (“NTCA”), met with Priscilla Argeris, Legal Advisor to Commissioner Jessica Rosenworcel, to discuss matters in the above-referenced proceeding.

First, NTCA noted the legitimate questions surrounding whether Section 254(h)(1)(A) of the Communications Act of 1934, as amended (the “Act”), 47 U.S.C. § 254(h)(1)(A), permits Rural Health Care Program funds to be used by an institution for any purpose other than procurement of services. NTCA also explained that, particularly in areas served by small rural local exchange carriers, a central concern may not be one of availability, but rather affordability – which is precisely why Section 254 appropriately focuses on promoting procurement of services.

Second, NTCA expressed significant concern about the need for a carefully designed process to protect against overbuilding to the extent that infrastructure were supported under the rural health care program. NTCA observed that the record in this proceeding demonstrates that overbuilding is more than a hypothetical risk. *See, e.g.*, Comments of the Montana Telecommunications Association, WC Docket No. 02-60 (filed Sept. 8, 2010), at 12-13. NTCA highlighted that overbuilding in rural areas could effectively result in one universal service fund mechanism (Rural Health Care) imperiling already-existing infrastructure deployed through the support of another universal service mechanism (High-Cost). If infrastructure support were provided under the Rural Health Care Program, NTCA therefore urged the Federal Communications Commission (the “Commission”) to adopt a careful process to protect against overbuilding; such a process should include both publicly posted notice of applications and a sufficient and reasonable opportunity for interested parties to provide relevant data that would indicate whether existing networks in the vicinity could satisfy the needs of the applicant in lieu of self-provisioning infrastructure. *See* Comments of NTCA, WC Docket No. 02-60 (filed Sept. 8, 2010), at 4-6 (describing a recommended procedure).

NTCA further cautioned the Commission against allowing any contribution requirements to be satisfied through anticipated revenues from or in-kind use of excess capacity. Such proposals would not only appear to violate the prohibition in Section 254(h)(3) of the Act, 47 U.S.C. § 254(h)(3), on selling, reselling, or otherwise transferring any services or capacity obtained through the program, but it is also speculative at best whether such contributions through future sales or leases might actually be achieved. NTCA also noted that any sales or leases of excess capacity arising out of overbuilt networks would present a “double whammy” and harm existing networks in two ways – first, by removing an anchor institution from the potential pool of customers to be served by an existing network, and second, by adding a new competitor to an existing network in rural markets that have limited customer bases to serve.

Finally, NTCA explained that any evaluation of “cost-effectiveness” associated with deployment of telecommunications infrastructure in connection with the Rural Health Care Program must necessarily involve a long-term view of the “total cost of ownership” of that infrastructure. This analysis must include realistic and validated costs of equipment procurement, and also take account of the capabilities of an entity that does not regularly conduct telecommunications business to maintain and upgrade a network over its decades-long life.

Pursuant to Section 1.1206 of the Commission’s rules, a copy of this letter is being filed via ECFS. If you have any questions, please do not hesitate to contact the undersigned.

Sincerely,

/s/ Michael R. Romano  
Michael R. Romano  
Senior Vice President – Policy

cc: Priscilla Argeris