

December 5, 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

Madam Secretary:

In accordance with Section 1.1206 of the Federal Communications Commission's ("FCC or "Commission") rules, 47 C.F.R. § 1.1206, we hereby provide you with notice of an oral *ex parte* presentation in connection with the above captioned proceeding. On December 3, 2012, David LaFuria and undersigned counsel, on behalf of the Health Information Exchange of Montana ("HIEM") met with Nicholas Degani, Legal Advisor to Commissioner Pai. We discussed specific issues related to the Commission's reforms to the Rural Health Care ("RHC") program.¹

We discussed the fact that HIEM's existing network – which does not require ongoing support from the RHC program – represented a model of cost-effective broadband deployment. We noted that HIEM's excess capacity partnerships are sustaining its network (at no cost to the USF), while making low-cost broadband available to local carriers who are in turn increasing broadband availability to rural communities.

We also discussed the importance of maintaining the existing open competitive bidding process, which ensures universal service funds are used cost-effectively. Such a process requires all vendors to compete on a level playing field to provide connectivity at the lowest possible cost to RHC participants. For this reason we emphasized that the Commission should not adopt a

¹ See *Wireline Competition Bureau Seeks Further Comment on Issues in the Rural Health Care Reform Proceeding*, WC Docket 02-60, Public Notice, DA 12-1166 (rel. Jul. 19, 2012) (*RHC PN*); *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Notice of Proposed Rulemaking, 25 FCC Rcd 9371 (2010).

two-step competitive bidding process which would foreclose competition between builders and those who claim to have available facilities sufficient for health care uses.

We expressed concerns regarding the potential reduction of the Pilot Program's discount level below 85%, noting that the Commission previously recognized that 85% is appropriate for infrastructure deployment, and that administrative costs must be permitted to help with the start-up phase of network implementation. As the Commission had explained:

Our experience with the Pilot Program supports the need to provide some amount of funding for administrative expenses in infrastructure projects, to support the process of designing the network and securing necessary agreements. Participants have indicated that the costs associated with infrastructure deployment can be a considerable financial burden on participants that are designing and deploying networks over vast geographic areas. Allowing a portion of funding to be used for administrative expenses could enable program participants to explore more efficient, effective means of deploying broadband for the delivery of health care. Accordingly, we propose that after a participant is selected for funding based on its initial application, it may request funding for up to 85 percent of the reasonable administrative expenses incurred in connection with the project.²

We noted further that, if the Commission does reduce the subsidy level, continuing the Pilot program's policies regarding excess capacity will be even more important. In HIEM's case, use of excess capacity, funded at incremental cost, stretched program funds much farther than would otherwise have been possible. HIEM has successfully exchanged bandwidth with rural telephone companies in its region, and exchanged bandwidth for the provision of maintenance and last-mile connectivity. HIEM has found Montana's rural telephone companies to be productive partners in assisting rural communities expand the benefits of broadband.

Finally, we voiced concerns that the Commission is making overly optimistic assumptions regarding the growth of a reformed Rural Health Care support mechanism. Indeed, in the Pilot program with a subsidy level of 85%, after over five years, total commitments remain well below the \$417 million allocated to the program in 2007³ – funding which was originally

² See *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Notice of Proposed Rulemaking, 25 FCC Rcd 9371, 9386-87, ¶ 37 (2010) (footnotes omitted).

³ USAC reports total RHC Pilot program commitments through November 15, 2012 totaled \$364 million. See Letter from Craig Davis, Vice President of Rural Health Care, USAC, to Julie Veach, Chief, Wireline Competition Bureau, WC Docket No. 02-60, at 1 (filed Nov. 16, 2012).

expected to be committed in three years' time.⁴ Specifically, the Pilot Program assumed \$139 million per year would be committed each year for three years. Actual Pilot commitments have averaged almost half that level (\$364 million/5 years = \$73 million/year). The record from the Pilot Program is thus one of substantially slower-than-expected funds utilization – which happens to be consistent with the entire history of the RHC program leading up to the Pilot.

In conclusion, HIEM applauds the Commission for finalizing rules to reform the Rural Health Program, thereby completing its reform efforts for the four USF support mechanisms. A copy of our presentation slides is enclosed.

If you have any questions or require any additional information, please contact undersigned counsel directly.

Sincerely,



Jeffrey A. Mitchell
Counsel for Health
Information Exchange of Montana

Enclosure

cc: Nicholas Degani, Esq.
Linda Oliver, Esq.

⁴ See *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 22 FCC Rcd 20360, 20361, ¶ 2 (2007).



HEALTH INFORMATION EXCHANGE OF MONTANA

Rural Health Care Program

Ensuring Effective Reforms

December 2012

Rural Health Care Pilot Program

Policies that are working:

- Competitive bidding increases cost effectiveness.
- Excess capacity is helping to sustain networks and provide opportunities for carriers.
- 15% program match provides incentives to participants without setting the bar too high.

Competition is the Answer

- *Competitive bidding leads to “Lower Rates, Higher Bandwidth, and Better Service Quality”*
 - Bureau Pilot Program Evaluation at paras. 81-83
- *HIEM saved program funds by selecting a build/maintain option.*
 - HIEM was agnostic as to build vs. lease
 - Bidders offering to lease existing facilities did not offer competitive pricing
 - Leasing costs were so high, HIEM would not have been able to establish a sustainable network
 - HIEM’s network does not require ongoing RHC subsidies to maintain
- *May the lowest cost option win*
 - No “two-step” competitive process needed for infrastructure;
 - Those with existing facilities should be able to offer a lease price that is competitive with a build/maintain option

Excess Capacity Sustains Networks

- HIEM has provided excess capacity to carriers seeking to expand at low cost, in exchange for access to last mile carrier fiber.
- HIEM has partnered with BNSF to extend broadband access across Continental Divide.
- Reciprocal dark fiber agreements with Montana BTOP winner.

Excess Capacity Makes Sense

- Beneficial
 - Local carriers obtain access to low cost fiber which they can use to provide affordable broadband to local communities
 - Local communities benefit at no cost to USF
- Sustainable
 - Excess capacity proceeds improve sustainability of RHC networks
- Efficient
 - Excess capacity partnerships ensure no silos of RHC-only facilities
- Lawful
 - Construction of excess capacity does not use program funds and does not violate the Act
- Vital
 - Reduction of discount from 85% would make excess capacity options more important

15% Match Funding Ensures Wise Investments

- Pilot's 85% discount was not easy
 - *No eligibility for administrative costs*
 - *Large up-front costs (esp. infrastructure projects and pre-pays)*
- Increasing match will disproportionately impact those rural HCPs that are the most remote
 - *Most remote rural HCPs have largest NRCs*
 - *Networks like HIEM with high proportion of remote rural HCPs also will be disproportionately affected*
- New RHC Health Infrastructure Program originally proposed 85% subsidy and eligibility for administrative start-up costs (up to \$300K)
 - *BTOP is 80/20% and permitted in-kind contributions (i.e., labor).*