



February 7, 2013

VIA ELECTRONIC DELIVERY

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW Room TW-A25
Washington, DC 20554

**Re: Reply Comments in WC Docket No. 02-60
Re California Telehealth Network FCC Appeal**

Dear Secretary Dortch:

On behalf of the California Telehealth Network (“CTN”), I offer these reply comments in response to the Wireline Competition Bureau’s request for comments on the recent appeal filed by CTN (“CTN Appeal”). The CTN Appeal concerned a decision by USAC denying eligibility to 29 CTN non-rural health clinics, however the USAC decision impacts all consortia and potential consortia participating in the new Healthcare Connect Fund (“HCF”). All comments filed supported the CTN Appeal. Commenters confirmed that the USAC decision will impact the sustainability of consortia generally, and represents a material change to the terms under which consortia understood they would be able to participate in the HCF. The Bureau should promptly resolve this issue and grant the CTN Appeal.¹

Commenters in California supporting the CTN request included:

- University of California Davis Health System, Office of the CIO
- University of California, Office of the President
- California Primary Care Association
- California Hospital Association
- California Emerging Technology Fund
- Access El Dorado (a rural healthcare collaborative based in Placerville, CA)

These commenters confirmed that excluding non-rural clinics affects not only the ability of the clinics to provide telemedicine and Telehealth, but will affect the entire state healthcare delivery system.

Additional commenters supporting the CTN request included:

- Commonwealth Healthcare Network Fund Consortium (Kentucky)
- New England Telehealth Consortium (Bangor, ME)
- Lurie, Besikof, Lapidus & Company, LLP (Minnesota)

¹ The Bureau should similarly grant appeals on the same issue filed by consortia in Illinois, Oregon, and Colorado.

In addition, all commenters to an earlier public notice regarding similar USAC appeals filed by Illinois Rural HealthNet, Colorado Telehealth Network, and Oregon Health Network were supportive.²

Notably, NETC's comments on the CTN Appeal further confirmed that a significant percentage of network participants in other RHC Pilot Program networks consist of non-rural clinics. NETC is perhaps the largest RHC Pilot project by number of participants, spanning three mostly rural states in New England; and yet 26% of NETC's initial participants were non-rural clinics. With this degree of participation of non-rural clinics in the RHC Pilot Program, it remains an open question whether these consortia would have formed much less been sustainable and successful without the *eligible* participation of a significant number of non-rural clinics.

Moreover, because the issue of non-rural clinic eligibility was not addressed in the Commission's HCF Order, projections for HCF program demand – demand projections which supported the 65% HCF subsidy level ultimately adopted – were clearly based on demand assumptions *that included participation of non-rural clinics*.³ If the Bureau allows USAC to make a policy change that materially alters these assumptions, then it follows that the issue of the appropriate discount level should be reconsidered. This is simply a further reason why a policy change of this magnitude should not be made without an open rulemaking to consider all of the issues.

Finally the Ascension Comments support CTN's position that eligibility should be determined at the entity level, not the address or site location level.⁴ Section 54.601(a)(2) itself recognizes that a "health care provider" is an entity that spans multiple service locations – and the rule's clear purpose is to enable the Maximum Allowable Distance calculation to take place, which is required only in the legacy Telecommunications Program.⁵ There is thus no reason why clinics that are owned by non-profit hospitals should not be considered eligible under that category.

We urge the Bureau to set aside the denials as quickly as possible so that broadband services to these health care providers can be provisioned and installed without further delays.

Sincerely and respectfully,



Eric Brown
President & CEO
California Telehealth Network

² See Comments of Ascension Health, Carle Foundation Hospital, Colorado Telehealth Network, Indiana Hospital Association, Parkview Health System, Suburban Hospital Organization, St. Vincent Health, WC Docket 02-60 (Dec. 20, 2013) ("Ascension Comments"); Reply Comments of Franciscan Alliance, Illinois Rural HealthNet (Jan. 3, 2014).

³ See HCF Order at ¶ 98, fn. 269 (future HCF funding demand based on estimated 4983 "non-rural HCPs" which appears to have been derived from experience with the pilot program which allowed non-rural clinics to participate).

⁴ Ascension Comments at 6-8.

⁵ The reorganization of the RHC rules that moved 54.602 to a section of the rules that purports to apply to the legacy program and the HCF should not be viewed as a substantive determination that 54.602(a)(2) was intended to apply to the HCF.