Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Wireline Competition Bureau	)	CC Docket No. 02-60
Invites Comments on Petition	)	
for Rulemaking Filed by	)	
Schools, Health & Libraries	)	
Broadband Coalition, et al.,	)	
Seeking Further	)	
Modernization of the Rural	)	
Health Care Program	)	

REPLY COMMENTS
OF
NTCA–THE RURAL BROADBAND ASSOCIATION

January 29, 2016

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REPLY COMMENTS OF NTCA–THE RURAL BROADBAND ASSOCIATION

I. INTRODUCTION AND SUMMARY

NTCA–The Rural Broadband Association[1] ("NTCA") hereby submits these reply comments in response to comments filed on the Schools, Health, Libraries Coalition ("SHLB") *et al*. joint Petition for Rulemaking ("Petition")[2] filed in the above-captioned proceeding. The Petition seeks certain adjustments to the Universal Service Fund ("USF") Rural Health Care

[1] NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents nearly 900 rural rate-of-return regulated telecommunications providers. All of NTCA's members are full service rural local exchange carriers (" RLECs") and many of its members provide wireless, cable, Internet, satellite, and long-distance services to their communities. Each member is a "rural telephone company" as defined in the Communications Act of 1934, as amended ("the Act"). NTCA's members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

[2] *Wireline Competition Bureau Invites Comments on Petition for Rulemaking Filed by Schools, Health & Libraries Broadband Coalition, et al., Seeking Further Modernization of the Rural Health Care Program*, CC Docket No. 02-06, DA 15-1424 (rel. Dec. 15, 2015), ("Petition").

Program ("RHC Program"). A number of other parties commenting on the Petition share NTCA's view that many aspects of the Petition should be dismissed as they represent untimely requests for reconsideration of carefully balanced policy decisions already made in the Commission's extensive Report and Order in this proceeding released on December 12, 2012.[3] By contrast, comments filed in support of the Petition mostly suffer from the same defect as the Petition itself, seeking to re-litigate issues decided in the prior Report and Order.

If the Commission nonetheless decides to reopen entirely the debate over the RHC Program, it must at every turn ensure that it continues to employ safeguards that will promote efficient and effective use of RHC Program funds. As noted below, the Commission has already determined that certain safeguards are necessary to ensure that health care providers ("HCPs") have a sufficient financial stake in networks for which they seek support in order to ensure that RHC resources are used efficiently. That need has not changed and the Commission should not abandon its commitment to promoting the efficient and effective use of limited ratepayer resources. Moreover, the Commission must utilize a data-driven approach to reform to ensure that limited ratepayer funds are directed specifically to where they are needed to meet the Program's goals and to make certain that existing networks, particularly those that are built and maintained by leveraging other federal USF programs, are not undermined.

Finally, should the Commission seek to reconsider the definition of "rural" for the purposes of the RHC Program, it should only do so with reference to the variety of definitions of "rural" sprinkled across other federal programs. A comprehensive, coordinated look would be

[3] *Rural Health Care Support Mechanism*, Report and Order, CC Docket No. 02-60, (rel. Dec. 21, 2012), ("Report and Order").

needed to ensure that "rural" is defined in a way that is consistent with broader policy goals and other programs.

II. MUCH LIKE THE PETITION ITSELF, COMMENTS FILED IN SUPPORT ARE NO MORE THAN UNTIMELY PETITIONS FOR RECONSIDERATION OF PREVIOUS COMMISSION DETERMINATIONS

In its initial comments, NTCA noted that the Petition in certain respects effectively constitutes an untimely Petition for Reconsideration of a Commission Report and Order issued in 2012. That Report and Order addressed many of the same arguments made by Petitioners, and did so based on hundreds of filings from various stakeholders representing a wide cross-section of the communications and health care industries. In the end, based upon a full and comprehensive record, the Report and Order struck a delicate balance of policy objectives. Petitioners, while apparently disappointed with the direction chosen by the Commission, present no evidence in their Petition that the Commission's rules are not operating as intended, that the judgement of the Commission at the time was incorrect, or that the facts have changed such that a new direction is warranted. For those reasons, the Petition should be dismissed.

The record compiled in response to the Petition confirms its status as both an untimely Petition for Reconsideration and a Petition that warrants dismissal. ITTA perhaps sums up the Petition best, noting that:

> However laudable the goals in the Petition, the filing is in many ways no more than an untimely petition for reconsideration of the FCC's 2012 *Report and Order* that established the HCF. In other words, the Commission already has considered and rejected many of the proposals advanced in the Petition, and the Petitioners have provided no new evidence or compelling justification for the Commission to reexamine its prior conclusions.[4]

[4] Comments of ITTA – The Voice of Mid-Size Communications Companies, CC Docket No. 02-60 (fil. Jan. 14, 2016), p. 2.

As to those prior conclusions, as NTCA noted in initial comments, certain aspects of the Petition are mere requests for reconsideration, including: changes to the RHC Program annual funding cap and/or reimbursement percentage afforded to HCPs; support for short-term funding relief in the event the RHC Program exceeds the cap; expansion of the definition of "rural;" revising HCP eligibility categories; re-examining support provided to consortia which include ineligible HCPs; revisiting support for consortia administrative expenses; and a review of the Commission's stated prohibition on the entity constructing HCP-owned facilities from also leasing excess capacity. In these parts of the Petition, Petitioners ask the Commission to revisit carefully crafted decisions made just a few years prior to this new filing. Much like the Petition, comments filed in support of it also fail to provide a compelling reason for revisiting previously considered determinations.

As one example, Petitioners seek reconsideration of the provisions in the 2012 Report and Order that require a 35 percent contribution from HCP participants. And like Petitioners, comments filed in response to the Petition fail to present any new arguments or data that would compel reconsideration of this rule. The only commenters to address the issue directly in favor of increasing the discount percentage note the availability of a higher discount rate in the Schools and Libraries ("E-rate") universal service program.[5] This apples-to-oranges argument in unavailing. The E-rate and RHC Programs serve different purposes, vastly different constituencies (schools, libraries, and other eligible anchor institutions in urban and rural areas versus rural health care providers), have vastly different budgets and provide support for

[5] Comments of the American Hospital Association ("AHA"), CC Docket No. 02-60 (fil. Jan. 14, 2016), p. 3; Comments of the Utah Telehealth Network ("UTN"), CC Docket No. 02-60 (fil. Jan. 14, 2016), p. 2.

different portions of the network infrastructure necessary to provide broadband service. In short, the only substantial commonality among the two programs is their support of broadband service to unique, discrete subsets of institutional entities. With all of the major differences between the programs, it would make little sense to simply transport the discount percentage of one over to the other program, particularly considering that the current discount percentage for each was based on a number of factors weighed by the Commission in multiple separate rulemaking proceedings over several years.

Moreover, as USTelecom notes, "[p]etitioners have failed to demonstrate that the analysis the Commission performed only a few years ago establishing the current 35% HCP contribution is no longer correct."[6] Comments filed in support of the Petition's request to decrease the HCP contribution percentage also fail in this regard and therefore should carry no weight.

As other examples, commenters in support of the Petition fail to provide the Commission with any justification or evidentiary basis for revisiting the 2012 Report and Order's prohibition on the entity constructing HCP-owned facilities from also leasing excess capacity, for modifying the definition of "rural" in the program, or for expanding the categories of entities eligible for participation in the program. Like the Petition itself, much of what has been proposed by commenters in support of the Petition may very well represent well intentioned ideas. Yet they all have in common proposals for modifications to the RHC program already considered and rejected by the Commission in 2012 based upon a detailed analysis of the "trade-offs" and

6 Comments of the USTelecom, CC Docket No. 02-60 (fil. Jan. 14, 2016), p. 4.

implications of such proposals both on rural health care connectivity and other aspects of federal broadband policy.

Given the lack of substantive or procedural objections set forth by Petitioners, and given the fact that relatively few stakeholders filed Petitions for Reconsideration in the immediate wake of the Report and Order's release, one can conclude that the Commission's prior policy decisions need not be re-visited. As demonstrated above, neither the Petition itself nor any comment filed in support of it makes the case to revisit the Commission's previously thoroughly considered policy determinations based on a comprehensive record. The Petition should therefore be denied.

III. ANY MODIFICATIONS TO THE RURAL HEALTH CARE PROGRAM SHOULD RETAIN SAFEGUARDS TO ENSURE THAT HEALTH CARE PROVIDERS MAKE EFFICIENT AND EFFECTIVE USE OF EXISTING RESOURCES AND SHOULD BE BASED ON A DATA-DRIVEN APPROACH TO REFORM

As noted above, neither the Petition nor the comments filed in support demonstrate the need to revisit determinations made by the Commission's 2012 Report and Order adopted in this proceeding. Should the Commission nevertheless move forward with a rulemaking proceeding to examine possible modifications to the RHC Program, it must at every turn ensure that it continues to employ safeguards to promote the most efficient and effective use of RHC program funds. A data-driven approach to reform is also needed to ensure that limited ratepayer funds are directed only to where they are needed to meet the Program's goals.

In terms of preserving safeguards that promote the efficient use of USF resources, the current discount provided to HCPs is based on the Commission's determination that "[a] two-for-one match will significantly lower the barriers to connectivity for HCPs nationwide, while

also requiring all program participants to pay a sufficient share of their own costs to *incent considered and prudent decisions and the choice of cost-effective broadband connectivity solutions*."[7] Further, as the Commission declared, HCPs need a "sufficient financial stake" in the RHC Program, and a "35% contribution requirement is economically reasonable and fiscally responsible."[8] As ITTA correctly notes, these safeguards were "warranted given that other changes in the *Report and Order* that would expand program eligibility and streamline the application process were likely to increase the number of participating HCPs."[9] This determination is as correct today as it was then, as safeguards intended to promote the efficient and effective use of RHC Program resources will also ensure that RHC Program funds go farther; money saved through prudent investment by one HCP is available to assist another HCP further down the road.

With respect to other proposals made by Petitioners, the Commission should decline to reconsider and relax safeguards on the entity constructing HCP-owned facilities from also leasing excess capacity. These safeguards ensure that the RHC Program does not inadvertently undermine other federal policy priorities, such as the High-Cost USF program that provides connectivity *both* to rural anchor institutions *and* to the residents and businesses in the surrounding rural and remote communities. Specifically, many rural and remote areas of the country are home to limited numbers of residents and businesses and even fewer anchor tenants, meaning that the business case for investment and operations in such areas will typically support

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7 Report and Order, ¶5. (emphasis added).

8 *Id*., ¶48.

9 ITTA, pp. 3-4.

no more than one telecommunications operator (at most). Indeed, absent the support provided by the High Cost Program, advanced networks capable of offering ubiquitous voice and broadband might not exist at all in many or even most of these areas. A second commercial network offering, using another "competing" USF program, could entice and thereby remove anchor tenants and other customers from rural carriers' customer bases. This is particularly true for a network that receives 65% of its financing from the RHC Program, and therefore, may be able to compete and offer its excess capacity to commercial users at below-market rates. Thus, this second network would in effect pit one USF supported network against another. In the end, this would only undermine the much-needed effort to ensure that *all* Americans have sustainable and affordable access to high-quality communications services.

Just as important as the continued focus on safeguards to promote the most efficient and effective use of RHC program funds, the Commission must also ensure that any modifications to the RHC Program are based on a data-driven approach to reform that directs limited ratepayer funds only to where they are needed to meet the Program's goals. In the health care context, the "solution" to modernization of the RHC Program must depend, in the first instance, upon isolation and clear definition of the "problem" at hand. The Commission must gather data that can be used to assess and validate the unique needs of each individual HCP – including the unique requirements associated with availability, affordability, quality of service, and capacity requirements.

As NTCA noted in initial comments – and in comments in the E-rate proceeding – such a data-driven, analytical framework is necessary to ensure that federal USF programs operate in concert, rather than in competition, and to make the most of each program in reaching its "target

audience" and achieving its stated goals. This is particularly true because NTCA members report that in most RLEC service territories, the "problem" may be related to affordability, as opposed to availability.[10] A failure to understand this reality and leverage the availability of high-capacity, scalable networks already in place will expend a significant amount of USF funds, and waste resources that could otherwise be directed to keeping services for HCPs and other rural users more affordable – or to solve an "availability" problem for a HCP or another rural user where it actually exists. In short, if the Commission should decide to reopen the RHC Program, it can and must tailor solutions to the needs of each individual HCP and take advantage of existing assets and facilities so that the RHC Program can extend the benefits of broadband to as many HCPs and their patients as possible. The current structure attempts to do this, and this tailored balancing of policy needs must not be lost or overlooked in any attempt to "modernize" (yet again) the RHC program.

[10] According to an internal NTCA member survey, respondents report that they serve, on average, more than 94% of CAIs with their service territories – defined as K-12 schools; public libraries; community colleges; (non - Veterans Administrative) hospitals and clinics; and Veterans Administrative facilities. Further, according to this same survey, respondents report that they serve, on average, more than 88% of hospitals and clinics with their service territories. For those who provide telecommunications services to HCPs, more than 65% offer service via fiber. Service providers report that can provide a mean speed of 393.8 Mbps; and a median speed of 50 Mbps; but HCPs only purchase a mean speed of 16.3 Mbps and a median speed of 10.0 Mbps.

IV. ANY MODIFICATION TO THE DEFINITION OF "RURAL" SHOULD TAKE A HOLISTIC VIEW OF UNIVERSAL SERVICE AND OTHER FUNDING AND GRANT PROGRAMS THAT DIRECT RESOURCES BASED ON THAT TERM'S DEFINITION

Finally, a few commenters support the Petition's proposal to expand the definition of "rural" for the purposes of the RHC Program.[11] As with the issues discussed in Section II, *supra*, neither these commenters nor the Petition itself provide the Commission with justification to reconsider this issue. For example, AHA argues that "[t]he goal of the program should be to support all health care providers that provide essential health care services to persons who reside in rural areas, notwithstanding their status according to the Census."[12] While this may be correct, from a public policy perspective, the Commission in the Report and Order determined that the definition of "rural" accomplished that very same goal. AHA and others fail to demonstrate or even argue as to why that determination should be overturned now.

Perhaps more importantly, if the Commission decides to reopen the definition of "rural" in the RHC program, it should take account of the fact that this term is subject to many definitions across the many federal government agencies that direct resources to rural areas and, in fact, within the USF programs as a group as well. As was seen in the E-rate context a few years ago, attempts to define "rural" can end up having very real and troubling impacts on anchor institutions and other end-users if not carefully considered ahead of time. Thus, NTCA would submit that the Commission should not reopen the definition already used in the RHC program in the first instance – but, if it does, the Commission should proceed with caution based

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[11] Comments of Tracfone Wireless, CC Docket No. 02-60 (fil. Jan. 14, 2016), pp. 5-7; AHA, pp. 6-7.

[12] AHA, p. 7.

upon a holistic understanding of the use of the term "rural" both in terms of the impacts on RHCs *and* in the context of other federal programs.

V. CONCLUSION

For all of the reasons discussed above, the SHLB *et al*. Petition for Rulemaking should be dismissed.

Respectfully submitted,

NTCA – THE RURAL BROADBAND ASSOCIATION

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