**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

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| In the Matter of | ) | |
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| Promoting Telehealth in Rural America | ) | WC Docket No. 17-310 |
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# <u>REPLY COMMENTS OF THE SCHOOLS, HEALTH & LIBRARIES BROADBAND (SHLB) COALITION</u>


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The Schools, Health & Libraries Broadband ("SHLB") Coalition hereby submits these reply comments in the above-captioned proceeding. The SHLB Coalition is a broad-based coalition of organizations that share the goal of promoting open, affordable, high-quality broadband for anchor institutions and their communities.[1] SHLB members include many participants in the Rural Health Care ("RHC") Program—both the Healthcare Connect Fund ("HCF") and the Telecommunications Program ("Telecom Program").

SHLB submits these reply comments primarily to respond to AT&T's comments. In particular, SHLB urges the Commission to reject AT&T's proposal that the Commission phase out the Telecom Program outside of Alaska. AT&T's assertion that business data services ("BDS") are priced the same in urban and rural areas is simply false. Even with competition in the BDS market, the prices for services in rural areas are not the same as those in urban areas. SHLB also believes that the initial supplemental comments contained proposals for improving the RHC Program that the Commission should consider, in addition to SHLB's proposal that

[1] Our SHLB Coalition members include representatives of health care providers and networks, schools, libraries, state broadband offices, private sector companies, state and national research and education networks, and consumer organizations. See http://shlb.org/about/coalition-members for a current list of SHLB Coalition members.

rural HCPs pay some "floor" percentage of their rural rate, to ensure that they are cost sensitive when selecting a provider.

## I. Contrary to AT&T's Assertion, Urban and Rural Rates for Telecommunications Services Are Not "Reasonably Comparable, If Not Identical"

AT&T proposes in its comments that the Telecom Program be phased out, primarily because "the program has outlived its relevance as competition in the [BDS] market, including in rural areas, is thriving and the BDS offerings health care providers purchase increasingly are not distance sensitive and are priced the same in rural and urban areas."[2] AT&T maintains that "no discount can be justified under the statute as the 'rural' and 'urban' rates are reasonably comparable, if not identical."[3] AT&T also asserts, without evidence, that rural HCPs often pay less for services than their urban counterparts.

SHLB strongly disagrees with these assertions. It may be the case that certain individual components of a service may be the same in urban and rural areas—say, channel termination and per-mile rates—but the total rate charged is *not* the same, or reasonably comparable. The costs to provide services are certainly not the same.[4] The realities of the RHC marketplace belie AT&T's assertion that rural rates are artificially high. If they were, presumably providers that claim to be able to provide service in rural and urban areas for the same cost would be bidding on, and winning, rural HCPs' business at dramatically lower rates. In reality, though, there is no evidence that this is happening. Further, rural HCPs are not paying less for services than their urban counterparts. Commission regulations require rural HCPs to pay the urban rate. Urban

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[2] AT&T Comments at 3.

[3] *Id.*

[4] If it were the case that urban and rural costs and rates were the same, there would be no need for the Connect America Fund.

rates are determined by either a USAC "safe harbor" rate or a publicly available urban rate. As such, the urban rates are those that urban HCPs are actually paying.

SHLB agrees with AT&T that competition is ramping up in rural areas as access to broadband facilities are more available. Competition in rural areas, however, does not equal comparable urban and rural rates. As competition increases in rural areas, it will also continue to thrive in urban areas, pushing urban prices down as well. The fact that there will always be more facilities to maintain means that there will likely always be some price difference between urban and rural areas.

Most importantly, because universal service support for telecommunications services for RHC providers is statutorily mandated, the Commission may not simply eliminate the Telecom Program in 49 states, as AT&T urges it to do.[5] Eliminating Alaska from its proposal, as AT&T has done, cannot save it. The Commission would have to make an airtight showing that rural and urban rates are reasonably comparable throughout the United States, and the record simply does not support such a finding. Indeed, in its February 2018 comments in this proceeding, USTelecom promised to submit data from its members regarding which services are priced the same in rural and urban areas.[6] USTelecom has not yet submitted the information it promised.

Finally, SHLB is pleased to see that TeleQuality agrees that the Commission should increase the discounts available in the HCF Program in order to encourage HCPs to apply for

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[5] 47 U.S.C. § 254(h)(1)(a). Chairman Pai has previously written to emphasize this statutory obligation. See, https://www.fcc.gov/document/chairman-pai-letter-acs-inc-rural-healthcare-program-alaska.

[6] USTelecom Initial Comments at 12 n.14 ("USTelecom's members are currently reviewing which telecommunications services they have been directed by USAC to discount and which of those services are priced exactly the same in rural and urban areas. USTelecom's members hope to have this information available by the reply comment deadline.").

funding under the HCF Program instead of the Telecom Program.[7] Eliminating the Telecom Program as an option runs afoul of Congress's directive that the RHC Program subsidize the difference between urban and rural rates for telecommunications services.[8] But providing an incentive to move from the Telecom Program to the HCF Program would not. SHLB believes that the Commission should at least consider whether encouraging applicants to move into the HCF Program could be part of its efforts to improve the RHC Program.

## II. The Commission Should Consider Proposals that Foster Competition in the RHC Program.

SHLB also supports commenters' arguments that fostering competitive bidding would be a far better way to address the problems with the RHC Program than the Commission's proposed rate regulation.[9] SHLB agrees with other commenters that the Commission's proposed methods of determining rural rates not only would be impossible to comply with, but also would not solve the problems that the Commission identified with the RHC Program.[10] Indeed, TeleQuality's itemized list of questions that the Commission's proposed rule would spawn perfectly demonstrates why the proposed rule would not work.[11] GCI also adeptly explains the numerous problems with RHC rate regulation and the advantages of a market-based approach in its initial comments.[12] SHLB agrees that the Commission should primarily rely on the competitive bidding process to establish the best value rural rates for HCPs.

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[7] TeleQuality Comments at 8-9; SHLB Initial Comments at 11.

[8] *Id.* at 8.

[9] GCI Comments at 20. TeleQuality Comments at 4-6.

[10] TeleQuality Comments at 2-4; GCI Comments at 21-22.

[11] TeleQuality Comments at 2.

[12] GCI Comments at 9-14.

As it has explained in its previous comments in this proceeding, SHLB supports improved transparency in the RHC program. As other commenters have noted, transparency would allow the market to function better. SHLB therefore agrees with other commenters that the Commission could adopt rules comparable to those in the E-rate program in order to enhance transparency.[13] Enhanced transparency would foster a more competitive RHC marketplace and would thus be good both for the Program and for HCPs. Better administration of the program would also improve competition. For example, because of the lengthy delay in receiving funding commitment decisions, many HCPs do not find out whether their contracts have been granted evergreen status until well after the funding window opens. Those HCPs, then, must post bids for services that are already in a multi-year contract. That adds an administrative burden for HCPs, while carriers submit bids to HCPs that are not really seeking them. If USAC's review process were completed more quickly, carriers would know where to focus their efforts and the program will benefit from the resulting improved competition. Further, SHLB agrees with the Utah Education and Telehealth Network's proposal that, if the Commission continues to accept Safe Harbor Rates from USAC, these rates should be updated to reflect current technologies and pricing.[14]

SHLB also agrees that program participants should have actual notice when USAC or the Commission provides additional guidance regarding program rules.[15] Preferably, of course, and as required by the Administrative Procedure Act, stakeholders should have an opportunity to comment on new rules. But, at a minimum, program participants should have the benefit of the

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[13] *See id.* at 5-6; TeleQuality Comments at 6.

[14] UETN Comments at 2; ACS Comments at 16-17.

[15] ACS Comments at 22.

latest guidance from USAC. For example, SHLB is aware of a "best practices" tip sheet (distributed by USAC by e-mail) for providing documentation to support the urban and rural rates.[16] This tip sheet is not easy to find on USAC's website. Further, SHLB has heard from some members that USAC is not explaining to HCPs what information they need to provide and is denying applications without sufficient explanation of the issue. This is contrary to the Commission's mandate in the E-rate program requiring USAC to continue to work with applicants who are providing information to USAC in good faith and allowing USAC to correct minor errors in applications.

In conclusion, SHLB encourages the Commission to analyze the benefits of the recommendations before it and adopt those that promote greater access to broadband by encouraging competition and reducing unnecessary regulation as it continues its efforts to improve the program for all beneficiaries.

Respectfully submitted,

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[16] See, https://www.usac.org/_res/documents/rhc/pdf/FY2018-RR-Tip-Sheet_1-23.pdf.