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Public Service Commission

July 1, 2002

VIA ELECTRONIC FILING

Honorable Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW - Portals II, TW-A325
Washington, DC 20554

Re: CC Docket No. 02-60

Dear Ms. Dortch:

Forwarded herewith are Comments of the Florida Public Service Commission in the above dockets with regard to the Rural Health Care Support Mechanism.

Should you have additional questions, you may contact Curtis Williams, the primary staff person in this docket, at (850) 413-6924.

Sincerely,

/ s /

Cynthia B. Miller, Esquire
Office of Federal and Legislative Liaison

CBM:tf

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
)
Rural Health Care) WC Docket No. 02-60
Support Mechanism)

COMMENTS OF THE FLORIDA PUBLIC SERVICE COMMISSION

The Florida Public Service Commission (FPSC) submits these comments in response to the Notice of Proposed Rulemaking (NPRM) (FCC 02-60) released on April 19, 2002. In this Notice, the Federal Communications Commission (FCC) seeks comment on proposed modifications to its rules and other changes governing the rural health care universal service support mechanism.

The FPSC's comments specifically address issues regarding: eligible health care providers, eligible services, calculation of discounted services, streamlining and improving the application process, and competitive bidding. When considering whether to expand a universal service program, we believe there are several key factors that should be considered. First, we believe it is important to review whether the intent of the program has been met. Next, we believe emphasis should be placed on streamlining current processes to be more efficient and increasing accountability to ensure that the intended recipients receive the program benefits for which they are eligible. Finally, we encourage the FCC to carefully evaluate the cost of any changes prior to implementing them and ensure that any expansion of the program does not cause the rural health care program to exceed the existing fund.

Eligible Health Care Providers

The FCC has requested comment on whether it should revisit prior interpretations of the term “health care provider” to enable rural health care providers to be eligible for discounts even if they or their affiliates also function in capacities that do not fall under the statutory definition in section 254(h)(5)(B) of the Act. On reconsideration of the Universal Service Order, the FCC previously rejected arguments that it had too narrowly defined the term “health care provider” and that it should expand the definition to include rural nursing homes, hospices, or other long-term care facilities. In this notice, the FCC affirms its position regarding health care provider eligibility. However, in light of low participation, the FCC invites comment on whether it should revisit its interpretation of the Act for purposes of expanding the number of eligible rural health care providers.

The FPSC believes the FCC should not expand the definition of “health care provider” at this time. We agree that eligible health care providers should be limited to the seven categories enumerated in the statutory definition of “health care provider,” which include:

- 1) Post-secondary educational institutions offering health care instruction, teaching hospitals, and medical schools,
- 2) Community health centers or health centers providing health care to migrants,
- 3) Local health departments or agencies,
- 4) Community mental health centers,
- 5) Not-for-profit hospitals,
- 6) Rural health clinics, and

- 7) Consortia of health care providers consisting of one or more entities described in clause (1) through (6).

The facilities that are currently included in the definition are either public or non-profit, and provide direct medical diagnosis and treatment. Conversely, facilities such as nursing homes are typically for-profit organizations and generally do not provide medical diagnosis and treatment as a primary part of the facility's operation. Clearly, nursing homes, hospices, and other long-term care facilities do provide a form of medical care, but we do not believe it is the type of primary medical care that was contemplated by the Act. The Act is clear in limiting the definition of "health care provider." We are concerned that expanding the definition to include facilities that do not provide primary medical diagnosis and treatment could change the direction of the program. We believe it is more appropriate to focus on increasing participation by health care providers that are currently eligible under the Act at this time, while not exceeding the \$400 million cap. Therefore, it is the FPSC's position that the FCC should not expand the definition of eligible health care provider at this time.

Eligible Services

Under section 254(h)(2)(A), the FCC is authorized to establish competitively neutral rules to "enhance . . . access to advanced telecommunications and information services for . . . health care providers" In the Universal Service Order, the FCC, relying on these provisions, authorized limited support for access to the Internet for health care providers. The FCC declined at that time to adopt any proposals for support of the Internet access provided by an Internet Service Provider

(ISP), due to the limited information available and the complexity of the proposals.¹ The FCC did find, however, that rural health care providers incur large telecommunications toll charges and those charges were a major deterrent to full use of the Internet for health-related services.² Therefore, acting pursuant to its authority under section 254(h)(2)(A), the FCC provided support for toll charges incurred by all health care providers that could not obtain toll-free access to an ISP.³

The FCC points out in its NPRM that it has previously recognized that the most efficient and cost-effective way to provide many telemedicine services may be via the Internet.⁴ In the NPRM, the FCC states that “it is time to reevaluate our previous policy decision not to support Internet access service provided by an ISP.” Therefore, the FCC now requests comment on whether to alter the current framework for providing support for Internet access. Specifically, the FCC asks whether it should modify or eliminate recovery of toll charges related to Internet access by rural health care providers, whether it should include discounts on Internet access for these facilities, and how support for rural health care providers could be implemented.

With the proliferation of ISPs, most, but not all, rural health care providers can now reach an ISP without incurring toll charges, bringing into question the need for support. However, in Florida, there are some rural health care providers who still do not have toll-free access to an ISP. It has been estimated that approximately 5% of Florida’s rural health care providers are unable to reach an ISP without incurring toll charges. While this number may seem low, we believe it

¹ See Universal Service Order, 12 FCC Rcd at 9161, para. 749.

² See Universal Service Order, 12 FCC Rcd at 9107, para. 631.

³ See Universal Service Order, 12 FCC Rcd at 9107-08, para. 631.

⁴ See Universal Service Order, 12 FCC Rcd at 9107, 9158, paras. 630, 744.

demonstrates that there is still a need for this form of assistance. Further, because we know there is still a need for this service in Florida, we believe it is reasonable to assume that there may be a continued need in some other states as well. Considering that a mechanism is currently in place to provide this form of assistance and there are rural health care providers who will benefit from it, we believe it is appropriate that the FCC maintain its current policy of allowing recovery. Further, we believe a continuation of USAC's applicant outreach and education efforts will help make applicants aware that this type of assistance is available. We will discuss the USAC outreach efforts further in our comments on streamlining and improving the application process. While we believe it is appropriate to continue offering this form of assistance at this time, we encourage the FCC to revisit this issue in the future as the availability of toll-free access to an ISP continues to grow.

In the Universal Service Order, the FCC declined to adopt proposals in support of discounts for Internet access, due to the limited information then available and the complexity of the proposals.⁵ The FCC now requests comment on whether the rural health care support mechanism should provide discounts on Internet access, and on how such support should be implemented--specifically, whether a percentage discount on internet access charges, analogous to the operation of the schools and libraries support mechanism would be appropriate, or whether support should be based on the current rural health care mechanism's rural-urban rate comparison.

The FPSC recognizes that Internet access may be beneficial to rural health care providers, and agrees that supporting Internet access for rural health care providers is consistent with achieving the goals of section 254 of the Act. To the extent that adding Internet access can be implemented

⁵ See Universal Service Order, 12 FCC Rcd at 9161, para. 749.

in an efficient, cost-effective manner within the existing fund, we would support adding Internet access as an eligible service. If implemented, we encourage the FCC to adopt a discount that is easy to implement and one that provides a beneficial level of support. We believe establishing a percentage discount would serve that purpose and would be consistent with the Act. Although mileage-based pricing is used for other eligible rural health care support mechanism services, such as T-1 access, we recognize that Internet access fees are not based upon mileage. Therefore, we believe the application of a percentage discount on Internet access fees is a reasonable approach and would have the added benefit of making the application process less burdensome for applicants. Further, if implemented, we would encourage the FCC to establish procedures that will ensure accountability in the use of funds for Internet access.

Calculation of Discounted Services

The FCC requests comment on whether, for purposes of determining the urban rate, USAC should allow comparison of rates in any urban area in the state, not just comparison with rates in the nearest city with a population of more than 50,000. Section 254(h)(1)(A) provides that “a telecommunications carrier shall . . . provide telecommunications services . . . at rates that are comparable to rates charged for similar services in urban areas in that State.” However, 47 C.F.R. 54.607(a) states “The urban rate is defined as a rate no higher than the highest tariffed or publicly-available rate charged to a commercial customer for a similar service provided over the same distance in the nearest city in the state with a population of at least 50,000.” However, the NPRM indicates that there is evidence that suggests that largest cities in a state have significantly lower rates and more service options than the city of at least 50,000 nearest the rural health care provider.

The evidence also suggests that many rural health care providers choose to link their telemedicine networks to pockets of expertise located in larger cities in the state rather than to the nearest city. Therefore, the FCC is reconsidering its previous conclusion.

We believe expanding the rate comparison could provide rural health care providers with more service options than are available in the nearest city of 50,000, and possibly at lower prices. We believe this change is consistent with the Act, which affords greater flexibility than the existing rule. However, we believe it is important to first consider if the current processes can be streamlined to be more effective, and then consider whether the proposed change can be implemented in a cost-effective manner. To the extent this change can be implemented in an efficient, cost-effective manner within the existing fund, the FPSC supports allowing comparisons of rates beyond the nearest city with a population of more than 50,000.

Streamlining and Improving the Application Process

The FCC requests comment on ways to streamline the application process to make it easier for applicants to apply for support. The FCC has acknowledged that the complexity and rigor of the application process present a barrier to applicants.⁶ The FPSC believes the best long-term strategy for improving the application process is for USAC to increase its current applicant outreach and education efforts. USAC has good tools to assist participants in the application process; however, we believe there are still many participants who are not aware of the valuable assistance and information that can be obtained from USAC. We believe it would be beneficial for USAC to

⁶ See, e.g., Fifteenth Order on Reconsideration, FCC 99-269, para 33; see also Universal Service Administrative Company Report to the FCC: Evaluation of the Rural Health Care Program, CC Docket Nos. 96-45 and 97-21, Public Notice, 14 FCC Red 5163.

provide more notification to participants about the assistance that is available, as well as encourage them to use USAC's website. Also, we believe USAC's monthly rural health care conference calls are very helpful and should be continued as part of USAC's outreach efforts. In Florida, there have been instances where rural health care service providers have recently been successful in securing funding, based in large part on USAC's outreach efforts. However, we are aware that many Florida applicants remain frustrated with the process. Therefore, we encourage continued outreach efforts to assist applicants in securing funding with greater efficiency. While we are not providing comments on specific changes to the application package, we would encourage and support efforts to streamline the forms used in the application process.

Competitive Bidding Rules.

The FCC requests comment on the effectiveness of the rural health care universal service support mechanism's competitive bidding rules. Current rules do not specifically address what types of bidding practices are acceptable or desirable. However, the rules do state that applicants are required to participate in a competitive bidding process pursuant to Commission regulations and any additional applicable state, local, or other procurement requirements. Currently, commonly used competitive bidding practices include the traditional Invitation to Bid (ITB) and Request for Proposal (RFP) methods.

The State of Florida recently instituted a third competitive bidding practice to provide greater flexibility in the procurement of commodities or services referred to as an Invitation to Negotiate (ITN). This method is used when an ITB or RFP may not provide an appropriate mechanism to purchase the needed commodities or services. An ITN is often the most appropriate

purchasing method for the acquisition of emerging technologies or complex services, as is the case for telecommunications services to support the delivery of telemedicine. The ITN provides safeguards to ensure a fair bidding process, as do the ITB and RFP, but offers flexibility by allowing specific negotiation practices within the framework of the bidding procedures.

The Florida agencies that assist the participants are concerned that the FCC may not accept the ITN as an acceptable bidding practice. To provide applicants with clear direction, the FPSC believes it is appropriate for the FCC to state in its rules that the bidding practices such as the ITB, RFP, and ITN are consistent with the FCC's universal service competitive bidding rules. Clarification will help improve the application process by eliminating concern by applicants as to the appropriateness of using the ITN method.

Conclusion

When considering whether to expand a universal service program, we believe there are several key factors that should be considered. First, we believe it is important to review whether the intent of the program has been met. Next, we believe emphasis should be placed on streamlining current processes to be more efficient and increasing accountability to ensure that the intended recipients receive the program benefits for which they are eligible. Finally, we encourage the FCC to carefully evaluate the cost of any changes prior to implementing them and ensure that any expansion of the program does not cause the rural health care program to exceed the existing fund.

The FPSC believes the FCC should not expand the definition of eligible health care provider at this time and that the eligible health care providers should be limited to the seven categories enumerated in the statutory definition of "health care provider." Regarding Internet access, we

believe it is appropriate that the FCC maintain its current policy of allowing recovery of toll charges, considering that there are still some rural health care providers who do not have toll-free access to the Internet. While we believe it is appropriate to continue offering this form of assistance at this time, we encourage the FCC to revisit this issue in the future as the availability of toll-free access to an ISP continues to grow. Further, to the extent that adding Internet access can be implemented in an efficient, cost-effective manner within the existing fund, we would support adding Internet access as an eligible service for rural health care universal service support. We believe it would be consistent with the Act for the FCC to establish a percentage discount. We believe the application of a percentage discount on Internet access fees would have the added benefit of making the application process less burdensome for applicants. Further, we encourage the FCC to adopt a discount that is easy to implement and one that provides a beneficial level of support to rural health care providers. If implemented, we would encourage the FCC to establish procedures that will ensure accountability in the use of funds for Internet access.

The FPSC supports allowing comparison of rates beyond the nearest city with a population of more than 50,000 provided that this change can be implemented in an efficient, cost-effective manner within the existing fund. We believe this change is consistent with the Act, which affords greater flexibility than the FCC's existing rule. Such a change would provide rural health care providers with more service options, and possibly at lower prices.

In Florida, there have been instances where rural health care service providers have recently been successful in securing funding, based in large part, on USAC's outreach efforts. The FPSC believes the best long-term strategy for improving the application process is for USAC to increase

its current applicant outreach and education efforts. While we are not providing comments on specific changes to the application package, we would encourage and support efforts to streamline the forms used in the application process.

In addition, the FPSC believes it is appropriate for the FCC to state in its rules that bidding practices, such as the ITB, RFP, and ITN competitive bidding practices are consistent with the FCC's universal service competitive bidding rules. Clarification will help improve the application process by eliminating concern by applicants as to the appropriateness of using the ITN method.

Respectfully submitted,

/ s /

Cynthia B. Miller, Esquire
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DATED: July 1, 2002

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
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Rural Health Care) CC Docket No. 02-60
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing comments will be mailed to the persons on the attached list.

/ s /

CYNTHIA B. MILLER
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DATED: July 1, 2002

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