

United States Senate

WASHINGTON, DC 20510

November 30, 2018

The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

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Dear Chairman Pai,

Throughout 2018, we have engaged in numerous conversations about the Rural Health Care (RHC) program and its essential role in delivering basic healthcare to so many Alaskans. We appreciate the opportunity to continue the dialogue with the shared objective of strengthening the program and its administration.

As you know from your travels to Alaska, providing quality healthcare to residents of our state is an unparalleled challenge given its unique geography and demography. Four times the size of California, most communities in remote Alaska do not have hospitals, doctors, diagnostic equipment, or specialists. Access to these generally accepted standards of care is difficult because the communities are inaccessible by roads, flights are expensive, infrequent, and challenged by weather. Simply put, telehealth *is* healthcare for rural Alaskans and the RHC program has been critically important to achieving improved health outcomes, as well as improving patient survival and quality of life.

Given telemedicine's uniquely vital function within Alaska's complex healthcare ecosystem, we are concerned by the Commission's recent management of the RHC fund. Our concerns are amplified by the subsequent disruptions to the entire ecosystem throughout rural Alaska that we have observed. That is why we are invested in working toward a program governed by well-defined and transparent rules for all participants, immune from varying interpretations dependent on leadership at the agency, and sufficient to cover the costs of providing telehealth services to rural healthcare providers (HCPs). To that end, we welcome the following constructive commitments proposed by the Chairman during a meeting with Senator Sullivan on November 15, 2018:

- Ensuring open, due process to claimants impacted by the Commission's application of its rules by addressing any petitions for relief at the Commission as expeditiously as possible;
- issuance of a Public Notice by January of 2019, with an emphasis on clarifying how to comply with the Commission's definition of "rural rates" as it relates to the RHC program; and
- expeditious action on the *Promoting Telehealth in Rural America* rulemaking, with the objective of adopting a final rule by the end of Q2 2019.

As you contemplate reforms to RHC through the *Promoting Telehealth in Rural America* rulemaking process, we urge earnest consideration of the potential for direct harm and unintended consequences. Particularly, please consider not only the effects of prospective policy

on broadband investment, but, most importantly, consider the effects on the health of thousands of Alaskans who otherwise do not have access to care. While we unequivocally support responsible stewardship and rigorous oversight of the Universal Service Fund (USF), the program's principles cannot be effectively carried out in the absence of clear rules and objective standards governing their enforcement. All participants—the telecom carriers who deliver the broadband services necessary for the provision of care from a distance and the HCPs most directly delivering patient care—must be able to calculate the risk of participation in the program with certainty. The Commission's RHC program fails to achieve its purposes when it is riddled with delays in the funding process; lacks enforceable, reasonable deadlines; and applies the program's rules with apparent subjectivity. We have seen firsthand these pervasive problems translate into dissuasion from needed broadband investments by telecom carriers and program participation by HCPs. Additionally, we cannot overstate the harmful consequences of the retroactive nature of the current Commission's implementation of its views. Service providers who have incurred significant out-of-pocket costs to provide vital services to rural HCPs continue to wait for reimbursement more than a year after providing service. The final rules the Commission adopts in the rulemaking must acknowledge these issues as impediments to RHC's mission, and make amendments accordingly.

Further, the Commission under your leadership has a well-established record favoring deregulatory decisions and promoting competition. We believe that the Commission's ongoing efforts to rely on market mechanisms to constrain pricing in lieu of pricing regulations are correct. We, therefore, support the preservation of this approach as you revise the rules. In the *Business Data Services* order, you state your intention to apply rate regulation "...only where competition is expected to materially fail to ensure just and reasonable rates. As a matter of policy we prefer reliance on competition..." You explain further, "Even well-crafted regulations have unintended consequences, inhibiting competition, reducing investment, and end user benefits... In general, regulation discourages entry wherever it enforces prices that do not allow firms full cost recovery or raise the costs of entry." Consistent with your record, we urge that RHC service rates should be determined through competitive bidding, absent a determination by the full Commission that competition in the market has failed.

Thank you for your efforts on this program that is vital to our state's wellness, and we look forward to the continued dialogue.

Sincerely,



Dan Sullivan
United States Senator



Lisa Murkowski
United States Senator

cc: Commissioner Michael O'Rielly
Commissioner Brendan Carr
Commissioner Jessica Rosenworcel