Before the
Federal Communications Commission
Washington, DC 20554

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

To: The Commission

COMMENTS OF THE TELECOMMUNICATIONS INDUSTRY ASSOCIATION

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I. INTRODUCTION AND SUMMARY

As the leading trade association for the information and communications technology industry, the Telecommunications Industry Association ("TIA") shares the goal of the Federal Communications Commission ("FCC" or "Commission") of transforming America's health care system through the power of broadband and information technology. To that end, TIA supports the Commission's efforts in the *Notice* to reform its universal service health care support mechanism.[1] TIA's 600 member companies manufacture or supply the products and services used in the provision of broadband and broadband-enabled applications in every industry and market, including healthcare, education, security, public safety, transportation, government, military, environment, and entertainment. The issues involved in this proceeding are of great importance to the organization's member companies, as they already are deeply involved in ongoing efforts "to expand the reach and use of broadband connectivity for and by public and non-profit health care providers," particularly in those medically unserved and underserved

[1] *See Rural Health Care Support Mechanism,* Notice of Proposed Rulemaking (rel. July 15, 2010) at ¶ 1 ("*Notice*").

communities targeted by the Rural Health Care Support Mechanism.[2]

Below, TIA emphasizes its strong support for the creation of the Health Infrastructure Program and the Health Broadband Services Program. TIA has long advocated making permanent the Rural Health Care Pilot Program ("RHCPP") and is excited about the creation of a permanent program to bring important health care and technology benefits to underserved communities throughout the country. TIA believes these programs will be best served if fully funded to the $400 million level available to the Rural Health Care Support Mechanism.

TIA urges the Commission to implement programs that are flexible and take a practical approach to judging applicants and the technologies they wish to deploy. The Commission should ensure that it has an accommodating approach to determining applicant eligibility and compliance for participation in the Health Infrastructure Program and Health Broadband Services Program. Also, decisions on funding should acknowledge the different performance characteristics of different technological platforms to best encourage widespread broadband deployment to medically underserved communities that may have unique technical needs based on their particular location and network requirements. Finally, TIA supports the creation of a diverse working group of stakeholders to provide feedback and advice on the Rural Health Care Support Mechanism. This group, along with a streamlined application process, should ensure that funds are put to use as quickly and efficiently as possible, which should be the Commission's ultimate goal in this important proceeding.

[2] *Id.* at ¶ 2. *See also* Letter from Grant Seiffert, President, Telecommunications Industry Association, to Michael J. Copps, Chairman, Federal Communication Commission (Jan. 27, 2009) ("Copps Letter").

II. TIA SUPPORTS THE CREATION OF A FULLY FUNDED PERMANENT HEALTH INFRASTRUCTURE PROGRAM AND HEALTH BROADBAND SERVICES PROGRAM

A. TIA Has Long Supported Making Permanent the Rural Health Care Pilot Program to the Benefit of Medically Underserved Communities

TIA has regularly called for the Commission to expand and make permanent the RHCPP, and thus is very pleased to support the Commission's proposal to create a permanent health care broadband program.[3] In supporting up to 85 percent of the construction costs of new networks in medically underserved communities, the Commission would take an important step toward expanding investment in broadband health care technology while at the same time driving deployment of critical communications infrastructure for the delivery of health-services to rural areas where broadband is unavailable or insufficient.[4] Indeed, President Obama, in awarding Recovery Act broadband funds earlier this summer, highlighted the need to provide new or expanded broadband access to allow "medical professionals to provide cost-efficient remote diagnoses and care."[5]

TIA agrees with the recent finding in the National Broadband Plan that a permanent rural health care broadband program can be an important component of a national broadband strategy,

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[3] *See, e.g.*, Copps Letter at 1 ("In particular, TIA asks you to consider in the near term steps to expand and make permanent the Rural Health Care Pilot Program, which currently subsidizes the construction of high-speed networks linking public and for-profit health care facilities to a dedicated broadband backbone."); Comments of the Telecommunications Industry Association, GN Docket No. 09-29, at 9 (filed Mar. 25, 2009) ("TIA believes that the Pilot Program should be expanded and made permanent to help subsidize the construction of high-speed networks linking public and not-for-profit health care facilities located in rural America to a dedicated broadband backbone.") ("TIA Rural Broadband Comments").

[4] *Notice* at ¶ 13.

[5] The White House, Office of the Press Secretary, *Background on the President's Recovery Act Announcement Tomorrow* (July 2, 2010). *See also* President-Elect Barack Obama, *Weekly Public Address* (Dec. 6, 2008), *available at* http://change.gov/newsroom/entry/the_key_parts_of_the_jobs_plan/. President Obama has noted the pressing need to "renew our information superhighway" and to "invest in priorities like … health care." In particular, President Obama has underscored the need to "modernize our health care system" by "ensur[ing] that our hospitals are connected to each other through the Internet."

as it will target an important constituency in rural America and serve as an important catalyst for future broadband developments.[6] To meet this important goal, the National Broadband Plan rightly concluded that health care facilities must have the necessary connectivity they need to improve our nation's health. Indeed, Recommendation 10.7 speaks directly to the challenge and opportunity at hand: "The FCC should establish a Health Care Broadband Infrastructure Fund to subsidize network deployment to health care delivery locations where existing networks are insufficient."[7] The success of the RHCPP simply underscores the fact highlighted in the National Broadband Plan that "[m]any health care providers are located in areas that lack adequate physical broadband infrastructure."[8]

With this vision in mind, TIA has advocated for a permanent rural health care program for some time because of the success of the RHCPP in bringing critical health care opportunities to long-underserved communities and in helping the long-underused Rural Health Care Support Mechanism to reach its full potential. TIA has previously documented a number of key projects that are bringing important medial services to rural America across the country, from West Virginia to California, from Minnesota to Tennessee, and in many other locations in between.[9] Indeed, the examples below further demonstrate that greater broadband connectivity will revolutionize health care delivery by increasing interoperability and providing access to state-of-the-art health IT solutions to thousands of facilities throughout the nation:

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[6] *See generally* Federal Communications Commission, *Connecting America: The National Broadband Plan* (Mar. 16, 2010) ("National Broadband Plan").

[7] *Id.* at 215.

[8] *Id.*

[9] *See* Copps Letter at 3.

- In Oklahoma, a cardiovascular group operating remote clinics throughout the state needed to be able to review images such as ultrasound, CAT scans and MRIs from anywhere in the system because imaging is such a crucial part of heart care. The group deployed a state-of-the art fixed wireless network which allows doctors to review images and have real-time consultations from any of the connected sites.[10]

- In New Mexico, it is a three-hour trip to the Navajo Medical Center located in Tuba City for many Navajo Territory residents. To help improve medical care for these students, the Navajo Tribal Authority deployed a wireless broadband network. Now students are able to visit with doctors and therapists regularly, receiving real-time personal care more often and more conveniently.[11]

- Research from Intel has shown that, in New Mexico's Sandoval County and neighboring communities, where 5,631 patients live more than 50 miles from the nearest hospital, investment in 4G connectivity to outpatients could reduce Medicare spending by as much as $2 million per year.[12]

Greater use of broadband will allow patients in medically underserved communities to receive health care locally and have access to state-of-the-art diagnostic tools typically available only in the largest and most sophisticated medical centers. The creation of the Health Infrastructure Program and the Health Broadband Service Program is a critical step in ensuring that the successes of deployments already highlighted by TIA can be made available to eligible health care facilities across the country. The benefits of a robust rural health care program are many: the use of health-related applications delivered over broadband will not only save lives, but also cut costs by shortening average hospital stays, reducing the need for tests, and increasing administrative efficiencies. Health care will improve, while health care costs will be lowered.

[10] Motorola, *Wireless Broadband Healthcare Solutions, System-Wide High-Speed Connectivity* at 6, *available at* http://www.motorola.com/staticfiles/Business/Solutions/Wireless%20Broadband%20for%20Healthcare/_Documents/_Static%20files/Wireless%20Broadband%20Healthcare%20Solutions.pdf?pLibItem=1&localeId=33 (2008).

[11] *Id.*

[12] *See* Comments of Intel Corporation at 20 (filed December 16, 2009).

B. TIA Urges the Commission To Utilize the Entire $400 Million Cap Available to the Rural Health Care Support Mechanism

TIA is pleased that the Commission, in initiating this proceeding, is specifically addressing how to improve distribution of funds from a highly beneficial, but underutilized, program. The *Notice* rightly documents the unfortunate fact that the Rural Health Care Support Mechanism has historically been under-utilized notwithstanding its $400 million annual funding cap.[13] TIA agrees with the Commission that the new Healthcare Infrastructure Program and Health Broadband Services Program should be used to their full potential.[14] Under the prevailing economic circumstances, the public interest would best be served by a collective effort to ensure that available Rural Health Care Support Mechanism funds are fully utilized. In this regard, TIA suggests below a flexible approach to program administration that it believes will best ensure a full distribution of funds as quickly and efficiently as possible.

III. THE COMMISSION SHOULD ADOPT A FLEXIBLE APPROACH TO DETERMINING APPLICANT ELIGIBILITY AND PLATFORM PERFORMANCE REQUIREMENTS

Consistent with the above, TIA urges the Commission to structure its revised health-care mechanism in ways that maximize flexibility, both with respect to the types of applicants and projects eligible for support and with regard to the types of broadband networks that might be relied upon by health-care providers. Ultimately, the program's funding choices should be driven by the demands and preferences of these providers and their patients – the parties best suited to evaluating which services will best advance the nation's health-care needs. Thus, the Commission should establish broad, flexible eligibility criteria that are responsive to those demands and preferences, allowing underserved providers and patients to "vote with their feet,"

[13] *Notice* at ¶ 8.

[14] *See, e.g.*, Copps Letter at 2 ("TIA asks the Commission to raise immediately the current cap on funding available to RHCPP participants."); TIA Rural Broadband Comments at 9.

driving funds to useful, high-value offerings and technologies.

A. The Commission Should Adopt Flexible Criteria To Govern Which Applicants and Projects Are Eligible for Support

First, the Commission should be as flexible as possible in establishing rules and/or guidelines for applicant and program eligibility. Unduly restrictive eligibility criteria would be likely to prevent funding for compelling projects that could well improve health-care service in underserved areas, substituting the Commission's own preferences for those of individuals on the front lines of health-care delivery. For example, the *Notice* seeks comment on the minimum level of reliability and quality of service to support health IT services.[15] While these are important factors for deployment of some applications, such requirements will be highly dependent upon the type of IT service provided and could restrict some deployments. Flexible criteria, in contrast, would permit evaluation of individual applications on their merits, in ways that account for the specific applicant's needs, not to mention its belief that the project would be worthwhile and its willingness to invest additional funds.

To begin with, the Commission should take care to avoid criteria that inherently favor large health-care providers. In rural, sparsely populated, and other underserved areas, it is often difficult for health-care facilities to obtain scale at levels that are anywhere close to the scale achieved in more urban areas. Likewise, underserved patients may be unable – economically or otherwise – to make repeated visits to far-away medical centers for the treatment of chronic conditions, or to reach such centers during times of acute distress. Thus, underserved patients will often be served best by smaller providers well outside of large population centers. A rural health-care support mechanism that favored larger providers would disserve these patients, cementing rather than remedying their current lack of access to adequate care.

[15] *Notice* at ¶ 20.

In addition, the Commission should take a very broad view of the types of services and equipment that can be funded. For example, the *Notice* proposes to prohibit support for "[i]nside wiring or networking equipment (e.g., video/Web conferencing equipment and wireless user devices) on health care provider premises except for equipment that terminates a carrier's or other provider's transmission facility and any router/switch that is directly connected to either the facility or the terminating equipment."[16] Such restrictions have no place in a mechanism designed to promote broadband-enabled health solutions. As TIA has long advocated, rural health care staff should be able to purchase wireless user devices and video/web conferencing equipment with program funds, because allowing them to do so is directly correlated to their efficiency on the job. It would be inconsistent with the spirit of HIP, which seeks to improve rural health care IT, to bar employees funded by the program to purchase IT equipment that would help them to perform their jobs.[17] Ultimately, what matters most is not whether a supported facility might be put to some incidental use unrelated to the provision of health-care, but rather whether it will be used to serve the program's core health-care mission. So long as it is, whether it is *also* put to another use is simply irrelevant. The rules should be amended to reflect this point.

The Commission likewise should ease other restrictions that would limit funding to worthy projects. For example, TIA supports the Commission's proposal to allow for shared use of networks by health care facilities and non-health care facilities. Where such sharing can advance health-care by providing options that would otherwise be unavailable, joint use should be promoted, not prohibited. For the same reasons, TIA agrees that the Commission should expand eligibility to administrative offices and data centers located apart from a medical facility,

[16] *Notice* at ¶ 42.

[17] *See* Copps Letter.

and supports inclusion of skilled nursing facilities and renal dialysis centers. There can be no doubt that facilities such as these play an integral role in the health facilities' operations, and will continue to do so, especially as providers embrace the use of electronic health records and other health information technologies. When providers believe that connectivity to these facilities would improve care, those beliefs should be credited, and their applications should be considered.

In addition to the above, TIA notes that if the Commission opts to apply the Department of Health and Human Service's ("HHS's") "meaningful use" requirements as a prerequisite to receipt of support, it should make one key modification to HHS's framework. The "meaningful use" framework establishes financial incentives promoting health-care providers' use of electronic health records. The Notice "seek[s] comment on whether, assuming full implementation of meaningful use requirements in 2015, recipients of funding from the Rural Health Care Support Mechanism should be required to document their compliance with meaningful use requirements as a condition of receiving support."[18] TIA notes, however, that the existing "meaningful use" rules treat all facilities operating under the same heath care provider as a single entity, and requires compliance on a system-wide basis (i.e., for all entities sharing a Centers for Medicare and Medicaid Services provider number).[19] Thus, if the Commission were to apply the meaningful use framework "as is," it could well wind up denying project funding to fully compliant hospitals or clinics merely because sister institutions were non-compliant. To ensure that providers are not punished by the failure of other institutions to adopt electronic health record technologies, the Commission should apply the meaningful use

[18] *Notice* at ¶ 144.

[19] *See, e.g.*, iHealthBeat, *CMS Holds Steady on Multicampus Rule for "Meaningful Use" Pay* (July 30, 2010), available at http://www.ihealthbeat.org/articles/2010/7/30/cms-holds-steady-on-multicampus-rule-for-meaningful-use-pay.aspx.

framework only on a per-facility basis (if at all).

Finally, to ensure maximum flexibility going forward in the face of unexpected developments, the Commission should remain ready to exercise its waiver authority with regard to any eligibility criteria that it might adopt here. While Commission rules can be amended, such developments often take time. The Commission can minimize the cost of such inevitable delay by announcing its willingness to waive criteria when circumstances warrant. Only a public commitment to such waivers can ensure that worthy applicants are not deterred by requirements that would bar their proposed projects, but that could be waived.

B. The Commission Should Apply Technology Neutral Policies to the Rural Health Care Support Mechanism

The Commission's long-standing technology neutral policies should be reflected in the new rural health care programs. TIA agrees with the Commission's tentative conclusion "not [to] propose restricting the type of technology participants may use."[20] The Commission should fashion rules for the Health Infrastructure Program and the Health Broadband Services Program that provide program participants the utmost flexibility to select the technology platform that suits their needs in an economical way.

At the outset, eligible health care providers participating in the Health Infrastructure Program or the Health Broadband Services Program should be able to choose their preferred technology platform, so long as it is capable of meeting their needs. The National Broadband Plan found that "[t]he connectivity needs of different health delivery settings will vary depending on their type and their size."[21] Accordingly, health care providers should be empowered to select the delivery vehicle for broadband capacity that will best allow them to provision high-quality

[20] *Notice* at ¶ 50.

[21] National Broadband Plan at 210-211.

services. The Commission's RHCPP provides an excellent example of an approach that includes this type of project and design flexibility. As the Commission highlighted in the *Notice*, projects funded by the RHCPP have involved different platforms (e.g., wired, wireless) for providing broadband capacity tailored to meet the varied demands of health care providers.[22]

Moreover, Section 254 of the Communications Act, 47 U.S.C. § 254, requires that competitively neutral rules govern access to advanced telecommunications and information services for health care providers.[23] As the *Notice* aptly states, "allowing health care providers flexibility in designing their networks furthers the 'competitive neutrality' provision of section 254(h)(2) of the Act by ensuring that universal service support does not favor or disfavor one technology over another."[24] To that end, the Commission must promote all capable technologies as viable options in the new rural health care programs.

TIA also encourages the Commission to incorporate flexibility if it adopts performance measurement rules. Any broadband speed or reliability thresholds deemed necessary for the rural health care programs should recognize that meaningful health care applications can be deployed using wireline, fixed wireless, and mobile wireless platforms and architectures, which have a wide range of achievable performance. In particular, any speed and/or reliability thresholds adopted should recognize and reflect the unique abilities and limitations of each technology platform, permitting applicants to make any necessary cost and performance trade-offs they deem appropriate.

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[22] *Notice* at ¶ 50, n. 104 (highlighting the wired and wireless network plans of the Rural Wisconsin Health Cooperative Information Technology Network and the Michigan Public Health Institute).

[23] *See* 47 U.S.C. 254(h)(2)(A).

[24] *Notice* at ¶ 50.

If the Commission decides to set speed and reliability thresholds, in some cases they may not be possible to achieve due to, for example, problematic deployment geography greatly increases cost and cannot be financially justified. Deploying new infrastructure in underserved areas may be too costly even at the applicant's 15% contribution level, and applicants should able to choose from any viable technology option. Overall improvement to local healthcare quality may be achieved at varying levels of performance when the Commission takes the cost-effectiveness of the application into account. Enabling *healthcare improvements* should be the Commission's primary goal, which will sometimes be possible without meeting fixed performance thresholds that are derived from statistically typical scenarios.

In summary, such flexibility will make the Rural Health Care Support Mechanism attractive to the broadest range of potential program participants, and maximize investment. And, lastly, flexible performance requirements provide rural health care providers with the freedom to acquire economical broadband solutions that provide them with the right level of capacity and throughput to meet their needs in light of their financial viability considerations.

Finally, the proposed restrictions on satellite broadband services should be consistent with the rural health care programs' spirit of technological neutrality. The *Notice* proposes to (i) require health care providers seeking support for satellite service to demonstrate that satellite is the "most cost-effective option" available and (ii) to incorporate rules that cap discounts at amounts that providers would receive if they purchase a functionally similar terrestrial based alternative.[25] TIA takes no position on these proposals, and generally supports safeguards to deter waste, fraud, and abuse. At the same time, TIA urges the Commission to carefully weigh the impact of any platform-specific conditions and to ensure that satellite solutions may be used

[25] *Id.* at ¶ 103.

when warranted. All stakeholders share a common goal of advancing broadband services to needy rural health care facilities. Commission rules should not unintentionally curtail the use of any specific technology platform that could be well positioned to provide service.

IV. AN ADVISORY WORKING GROUP AND STREAMLINED APPLICATION PROCESS WILL IMPROVE ADMINISTRATION OF THE NEW RURAL HEALTH CARE PROGRAMS

TIA supports the creation of a working group of public, non-profit, and private organizations to provide feedback and advice on the Rural Health Care Support Mechanism. In the *Notice*, the Commission seeks comment on how and "whether to create a working group to develop recommendations for the direction of the Rural Health Care Support Mechanism."[26] TIA agrees that such a working group would create a valuable framework for providing continuing input into the program. A working group would provide a useful and transparent mechanism to assess and measure the progress of the programs and to overcome obstacles as they arise. To obtain meaningful input from the broadest array of sources, participation in the working group should be open to all stakeholders, including public, non-profit and private organizations.

In addition, TIA supports the Commission's conclusion to adopt a streamlined application process for the Health Infrastructure Program. In the *Notice*, the Commission proposes a three-phase process for application, selection and commitments for Healthcare Infrastructure Program projects.[27] In particular, the application and selection processes would be "streamlined."[28] TIA believes that a streamlined approach is the correct way to maximize

[26] *Id.* at ¶ 150.

[27] *Id.* at ¶¶ 14-17.

[28] *Id.* at ¶ 14.

participation from eligible health care providers. An overly burdensome administrative process can deter some eligible applicants from applying. Especially where resources are already stretched thin, a complex application process can present a formidable barrier to participation.[29]

V. CONCLUSION

For the foregoing reasons, TIA encourages the Commission to take action in this proceeding consistent with the recommendations set out above.

Respectfully submitted,

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[29] *See* National Broadband Plan at 214 ("Thousands of eligible rural health care providers currently do not take advantage of [the Rural Health Care] program. Some claim that this is because… the application process is too complex to justify participation.").