

# United States Senate

August 20, 2020

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

Dear Chairman Pai:

We write to express our concern about the Federal Communications Commission's failure to ensure that our nation's health care providers have the resources they need to engage in telehealth. Your actions over the last three and one half years since becoming Chairman, and especially over the last six months during the coronavirus pandemic, have shown your unwillingness to take decisive action within your power and the Commission's mandate to help our nation's health care providers. Specifically, the Commission has not made sufficient funding available, has delayed rural health care funding decisions, and has not been transparent about its operations. We urge you to address these issues as soon as possible.

When Congress created the Rural Health Care (RHC) Program in 1996, it gave the Commission an important role in expanding telehealth in the United States. The RHC Program, which is the only federal program that provides support to health care providers for broadband connectivity, is comprised of two parts: the Telecommunications Program, which subsidizes the difference between urban and rural rates for telecommunications services, and the Healthcare Connect Fund, which provides health care providers a 65% discount on their telecommunications and broadband costs.

In recent years, demand for the RHC Program funding has outstripped support made available by the Commission. While the Commission increased the funding cap on the program in 2018, it was not enough, and funding requests continue to be greater than the Commission's funding levels. Moreover, although the Commission proposed an overall cap on the Universal Service Fund as a way to "limit the contribution burden borne by ratepayers,"<sup>1</sup> you had no qualms about raising the contribution factor to collect an additional \$100 million for the overlapping Connected Care Pilot Program created under your leadership. It is troubling that you are able to make adequate funding available for programs you create, but not for those lawfully established by Congress.

Furthermore, the RHC application process has not kept pace with the urgent need for more telehealth funding, which has caused significant backlogs and delays for program applicants. Specifically, the rules of the RHC Program require the Universal Service Administrative Company (USAC) to seek direction from the Commission on how to prioritize applications when funding demand outstrips available support. Under your leadership, the Commission has failed

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<sup>1</sup> See *Universal Service Contribution Methodology*, WC Docket No. 06-122, Notice of Proposed Rulemaking, 34 FCC Red 4143, para. 1 (2019).

to provide such guidance until many months after the start of the funding year. As a result, applicants for RHC funding have waited months, sometimes even years, for USAC to process their applications, causing many health care providers to struggle with financial insecurity.

In early March, you infused more money into the RHC Program by rolling over funding available for future years to respond to the increasing demand. While on the one hand this is positive, on the other hand, these rollover funds were only available because the extreme delays in processing applications from the previous year were so significant that applicants did not have a chance to spend the funding that was ultimately committed to them. These processing delays continue today; a significant number of applicants for FY 2019 funding have still not received word whether or not their applications have been approved, even though many of these applications were filed over 13 months ago and the application filing window for the next funding year, FY 2020, just recently closed.

The coronavirus pandemic has continued to exacerbate increasing demands on the RHC Program. The waiver of Medicare restrictions to encourage telehealth visits, coupled with states' stay-at-home orders, have required many health care providers to increase their broadband capacity to enable greater use of telehealth. Although the use of telehealth has increased dramatically during the pandemic, a widely cited barrier is broadband availability. Cash-strapped health care providers are looking to the RHC Program for help to defray these costs, but you have so far not taken steps that would allow health care providers to receive additional support through the program for broadband connectivity.

Finally, the Commission has not been transparent about the administration of its rural health care initiatives. Neither the Commission nor USAC has released information about the demand for RHC funding, even though a previous Commission order explicitly says that the Commission shall release such information.<sup>2</sup> The same is true, unfortunately, with the recently-completed COVID-19 Telehealth Program—the Commission finalized all of its funding awards in July, but it has not released information about the overall demand for that funding program.

Your failure to successfully manage and lead the RHC Program and associated policies is extremely disappointing and surprising in light of your public statements.<sup>3</sup> By September 3, 2020, please provide your response to the questions below to explain how you plan to address these problems.

1. Why did the Commission wait until the start of the pandemic to give USAC the guidance it needed to prioritize applications for FY 2019 funding so that health care providers could receive the vital broadband support for which they were eligible? What will the Commission do in the future to hasten the pace of processing applications for the RHC program?
2. Why did the Commission decide to increase the contribution factor to raise \$100 million for the upcoming Connected Care Pilot, but refuses to increase the RHC fund for existing health care provider needs?

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<sup>2</sup> See *In the Matter of Promoting Telehealth in Rural America*, WC Docket No. 17-310, Report and Order, 34 FCC Rcd 7335, 7432-33, para. 212 (2019).

<sup>3</sup> *Id.* at 7496-97; see also *In the Matter of Promoting Telehealth in Rural America*, WC Docket No. 17-310, Notice of Proposed Rulemaking, 32 FCC Rcd 10631, 10709 (2017).

3. What RHC programmatic rules regarding eligibility or subsidy rates has the Commission revised to provide health care providers more support for broadband during the pandemic? Will the Commission amend its policies to allow providers using telehealth to immediately increase their broadband network capacity to handle the crisis, as applicants have requested?
4. Why hasn't the Commission increased the subsidies for RHC Program participants during the FY 2019 funding year and beyond to address the urgent need for more telehealth across America?
5. Why hasn't the Commission provided greater transparency regarding the demand for RHC and COVID-19 Telehealth Program funding? What specific actions will the Commission take to provide greater transparency about these programs? Please provide a specific timeline for when the Commission plans to implement these steps.

Sincerely,



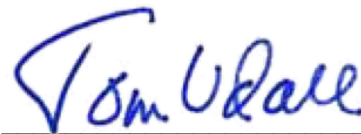
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TOM UDALL  
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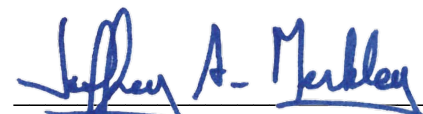
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