Congress of the United States
Washington, DC 20515

July 31, 2019

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

Dear Chairman Pai,

We acknowledge the Commission's (FCC) significant work to modernize the Rural Health Care (RHC) Program through *Promoting Telehealth and Telemedicine in Rural America* (WC Docket No. 17-310), and appreciate the opportunity to share our observations. As you know, telemedicine is the single point of access to health care for many Alaskans, and consequently it is essential to the fabric of our health care system. We repeatedly hear from health care providers (HCPs) and telecom service providers alike that they are distressed by the recent administration of the program and the subsequent impacts. We share our constituents' concerns and request that you consider the following as you adopt a final rule.

The vast majority of stakeholder input request that the Commission delay the item from adoption on August 1 so that its effects may be adequately assessed. The nature of concerns and questions posited by stakeholders is varied - it all, however, is reflective of the lack of modeling, data, or relevant analysis underlying the Order. Such information, simply put, is fundamental to good policy, and practically necessary for participants to calculate what participation in RHC will look like with a reasonable level of certainty. Further, the statute governing Universal Service Fund (USF) explicitly directs the Commission to prioritize "specific, predictable, and sufficient" support when considering management of the fund. This clear directive from Congress cannot be advanced without further examination.

In an effort to minimize challenges and what the Commission has in some cases identified as discrepancies with the determination of "rural rates" within the program, the Order establishes a new rate-setting mechanism to be administered by Universal Service Administrative Company (USAC). We recognize that proper stewardship of the fund may require process safeguards to augment the competitive bidding process. We also appreciate that the objective of this provision is to effect responsible governance of a finite fund in a way that is simple, calculable, and transparent. While the median rural rate determination and all of the factors to consider in that equation have the veneer of simplicity, calculability, and transparency, we find that further deconstruction yields numerous material questions that may ultimately deter participation in the program to the unacceptable detriment of end users.

We welcome the Commission's acknowledgement throughout this particular provision that the term "rural" as defined by the Order encompasses immensely diverse service areas, necessitating the further refined granularity of three tiers of rurality. Alaska's landscape as it

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pertains to the unique telecom service and geographic landscape, however, is not reflected when the state in almost its entirety is considered one category - "extremely rural." The patchwork of technologies comprised of our networks which cover an area greater than four times the size of California is as broad and unique as Alaska itself, and the cost differentials are not fairly captured by the three tiers of rurality that the Order proposes. This results in a rational telecom service provider choosing to contract from expensive, hard to serve locations, which is at odds with USF's intent.

If we are to accept notionally the concept of determining a median rural rate through the synthesis of rates charged within that tier of rurality, then we must next examine the methodology by which median rates are concluded and the numerous components that inform each rate. The Commission's intent to create a straightforward, objective process for calculation is again transparent and we share this goal. But, yet again upon deconstruction, there are more questions than clarity.

The authority ceded to USAC in setting the rates is alone striking. It assumes that the data available to USAC is simple to integrate; it also assumes the underlying available data as prescribed by the Commission is sound. We respectfully disagree. The Order would be significantly improved if a more fulsome explanation of "similar services" was provided and if it was in alignment with the true RHC marketplace. For example, the reliance of E-Rate data in the context of RHC rate-making is problematic as it is difficult to contemplate scenarios where dedicated, resilient broadband services designed to facilitate delivery of medical care is comparable to the best-effort, nonsymmetrical services typical of E-rate subscribers. Tariffs are routinely 100+ pages and unintelligible to even the most well-versed telecom professionals. Similarly, invoices are rife with information and terminology that is not universal, creating many timely if not insurmountable obstacles to USAC interpreting accurately. Unfortunately, this concern cannot be answered, because the database of allowable information informing the rates is not yet available. If the Order is enacted as written, we note that there is no mechanism providing for transparency in these complicated calculations being performed by USAC, consequently leaving petitioners without sufficient information for effective remediation. We also remind the Commission as you have acknowledged in other contexts that RHC markets are highly sensitive, and inexact regulation of rates could have devastating consequences.

Lastly, we request that the Commission revise its draft order to include a thoughtful approach to the transition being imposed by the new rules. The record available contains feedback which accurately points out that the Order contains no discussion of multiyear contracts which could extend past the effective 2021 date for the new rules. It is imperative that stakeholders know how those already executed contracts will be affected.

It is our hope that the Commission fully evaluate the valuable stakeholder feedback provided and act accordingly. We caution against hasty adoption of an Order that contains numerous prospects for unintended consequences that undermine the stability and sustainability of the program. This is an opportunity for the Commission to strengthen a cost effective program relied upon by countless citizens across the country for significantly improved access to care and related health outcomes. We thank you for your attention to this matter.

Sincerely,

Dan Sullivan
United States Senator

Lisa Murkowski
United States Senator

Don Young
Member of Congress