

## **Sullivan QFRs for FCC Commissioner Nominee, Nathan Simington**

It is important to understand that telecommunications services in remote, high cost areas such as Alaska must have support from predictable and stable FCC programs that help make the business case for service – including Alaska’s version of the high cost USF program, the Alaska Plan. On August 23, 2016, the Commission adopted the Alaska Plan Order, which freezes \$1.5 billion in funding over ten years and allocates that money to maintain, extend, and upgrade broadband service across certain areas of Alaska. The plan has been a significant success, and invaluable for Alaska. Due to the predictability provided by stable high cost funding in Alaska since the plan went into effect, over 50,000 locations in Alaska have had broadband deployed or upgraded, thousands of Alaskans are benefiting from upgraded wireless coverage, and major construction is happening in the middle mile space. The Alaska Plan will go through FCC staff review later this year and into next: wireline early next year and wireless beginning in 2021. As part of the plan, service providers have agreed to meet certain performance obligations – this review will look at these performance obligations.

Statement: Thank you, Senator, for the opportunity to address your questions and concerns. I am aware of the unique circumstances, challenges, and geographical situation of Alaska. I am also aware that Congress and regulatory bodies have been most successful in addressing Alaskan issues when they have taken Alaska’s unique situation into account. I hope that my responses show both a present commitment to Alaskan issues and a desire to both work with your office and your constituents in good faith and to see for myself how better to serve the people of Alaska.

- **Would you agree that predictable and stable funding is crucial in order to provide service in remote, high cost areas like Alaska?**

Answer: Yes. And frankly, I do not believe the FCC’s approach to universal service in Alaska has provided the predictable and stable funding necessary for providers to build and maintain service in remote, high cost areas. Among other things, this has had a negative impact on health care providers in the state that need connectivity to serve their communities and on the Alaskans that live and work in those areas. For instance, the FCC’s 2019 revisions to the Rural Health Care (RHC) Program are credibly claimed to be producing anomalous and arbitrary rates that are the opposite of predictable and stable outcomes. The slow pace with which the FCC is acting on Alaska issues only compounds these problems.

I believe strongly in regulatory certainty, rural connectivity and the expanded provision of vital services, such as health care, through telecommunications. Predictable and stable funding is crucial everywhere, but especially to provide service in remote, high cost areas like Alaska. Indeed, health care providers in Alaska and the wireless and wireline providers that serve them face a unique set of challenges. When it comes to building and maintaining networks in Alaska, the FCC needs to do a better job of taking those challenges into account when reaching its decisions. Without predictable and stable funding, providers in Alaska simply cannot make the investments necessary to bridge the digital divide.

As someone who grew up in rural Canada, I believe I have a valuable perspective on the challenges of serving remote communities, and if I am confirmed I would bring that perspective to the FCC.

- **Will you commit to ensure that the Alaska Plan’s reviews are completed through a fair and transparent process and with a reasonable outcome which will not delay or diminish broadband service in Alaska?**

Answer: Yes. If the FCC is to faithfully carry out its statutory, universal service obligations, it must complete the Alaska Plan review in a manner that provides a fair and transparent process and reaches a reasonable outcome. Indeed, fairness, transparency and the preservation of broadband service in Alaska must be baseline goals for the Commission’s implementation of the Alaska Plan.

- **Will you commit to not reducing high cost funding to Alaska, including the Alaska Plan, Alternative-Connect America Cost Model (A-CAM), and Connect America Fund (CAF) II?**

Answer: Yes. The Alaska Plan, A-CAM and CAF II are already in progress. As such, it would be an extraordinary action to cut them and, based on the evidence I have reviewed, I see no reason or benefit to doing so.

- **It is obvious more funding is needed to finish extending broadband service to all rural Americans. Will you commit to increasing funding for broadband? If so, how do you think that should be distributed?**

Answer: I agree that additional funding will be necessary to extend broadband to every rural American. Current funding levels will not be enough to get the job done. If I am confirmed, I will work to ensure the FCC actually meets its obligations that Congress codified in Section 254 of the Communications Act. I commit to ensuring the level of funding necessary for the FCC to meet that statutory mandate. I will seek to ensure that such funding is distributed in a manner consistent with the principles of universal service established pursuant to section 254, with a particular focus on closing the digital divide in rural and high-cost areas, including Alaska. The circumstances leading to the persistence of the digital divide vary among communities, and the Commission should tailor its distribution of funds to ensure that each community is able to obtain meaningful connectivity. Expanding connectivity in high-cost and remote Alaskan communities must be reflected in the FCC’s USF decisions. I am committed to reaching decisions that do just that, if I am confirmed.

- **What are your thoughts on introducing 5G terrestrial service into the 12 GHz band?**

Answer: It is critically important that we find way to make more spectrum available for 5G deployment. I favor exploring whether it is possible to use this potentially underutilized band in a way that results in a “win-win” for incumbent users, 5G operators, and the public at large.

In order to create market certainty, the Commission should therefore make it a priority to act on the petitions currently before it regarding this band. If this band proves viable for terrestrial service, it may take years to resolve the required license reclassifications. Potential users will need to begin planning the necessary capital raises and go-to-market strategies. Current users will need lead time to modify

installations and adjust to coexistence with terrestrial service. One thing is certain: we cannot wait in the race to 5G.

- **If you are confirmed, will you commit to come to Alaska early in your term for over a week to experience the geography, climate, and other factors that make Alaska a uniquely challenging environment for telecommunications services?**

Answer: Yes. If confirmed, I would be honored to travel to Alaska for over a week early in my term. I am eager to see the challenges, successes, and ongoing needs of Alaska and Alaskans. If confirmed, I do not believe that I would be able, without visiting Alaska, to effectively assess, respond to or support Alaskans' unique conditions or needs. Hopefully my time in Alaska will help guide me to make the right decisions and give me material to further enhance my ability to advocate with colleagues on issues important to your state.

The Universal Service Administrative Company (USAC) and the FCC is administering the Rural Health Care (RHC) USF program in a manner that is destructive to Alaska. It has had severe negative effects on our carriers, our health care service providers, and the availability of service for some of the most vulnerable populations in the country - many whose only option is telemedicine. Issues include retroactive funding cuts, years-long languishing funding requests and appeals, a slow and opaque process, and new rule changes that will disproportionately impact Alaska.

- **Will you commit to work with me to solve these issues as expeditiously as possible?**

Answer: Yes. I believe the FCC's USF decisions are credibly claimed to be producing arbitrary and anomalous results in Alaska. As noted above, the FCC's 2019 RHC decision is just one example. The slow pace with which the FCC has reached these determinations has only compounded the problems. Providers—whether serving health care facilities or remote communities in Alaska or elsewhere—need greater certainty and predictability to make the massive investments necessary to build and extend broadband service.

- **Will you commit to work to convince your fellow commissioners to help solve these issues as expeditiously as possible?**

Answer: Yes. If confirmed, I would work to ensure that my FCC colleagues understand basis for the credible claims of arbitrary and anomalous results the agency's decisions may be producing in Alaska and convince them that the agency should take expeditious action to address those issues.

- **If some of your fellow commissioners continue to treat Alaska unfairly, how will you push back?**

Answer: There are a number of issues the FCC could resolve right now that would bring much needed certainty and predictability to communities in Alaska. If I am confirmed, I would make it clear to my FCC

colleagues that we should take up and resolve those issues before the agency votes on unrelated proceedings that do not rise to the same level of importance. I would work to ensure that the FCC satisfies Congress's mandate to the FCC under Section 254 and, furthermore, Congress's mandate to take Alaska's unique circumstances and needs into account when considering matters before the FCC. I would vote accordingly, advocate to my fellow commissioners that they do the same, and ensure that we as a Commission are held to public account when we fail to fulfill our obligations.

In recent years, USAC's processing of funding requests for the RHC program has slowed to a snail's pace. Many funding requests are tied up at USAC due to bureaucratic indecision, and USAC makes frequent administrative errors requiring applicants such as health care providers to appeal to the FCC. USAC's processes are entirely opaque, so applicants have no visibility into where their applications and appeals may stand, and USAC gives them no timeframe for decision. All of these problems impose great administrative costs, and leave service providers as well as rural health care providers in an impossible position. It undermines efforts to deliver effective telehealth services, which is especially important in a crisis such as we now are facing with COVID-19. Alaska has carriers with pending rate approvals from 2 and 3 years ago. Some have finally been approved (not disbursed), although at dramatically reduced rates, and some have still had no action. I have relentlessly pushed the Chairman and the FCC to expedite these processes. I have received pre-confirmation commitments from at least one Commissioner to address these issues, but to no avail.

- **Would you agree that RHC program participants should be fairly compensated in a timely manner?**

Answer: Yes. RHC program participants must be fairly compensated in a timely manner. Failure to do so will disincentivize participation in RHC to the great detriment of patients and communities reliant upon the program. In recent years, the FCC has not acted in a timely enough manner and its decisions may now be producing anomalous results.

- **Would you agree that withholding funding for multiple years after services have been rendered is an unacceptable way to run a program?**

Answer: Yes. Applicants are entitled to clear and timely determinations regarding their eligibility for funding. If an applicant is entitled to funding under the statute and the Commission's rules, there is no justification for withholding that funding – whether for one year or multiple years. It's critically important that applicants and providers understand the rules of the game up front, and that those rules not be changed midstream.

- **Would you agree that changing rates after services have been rendered resulting in retroactive funding cuts is not a fair or transparent way to run a program?**

Answer: Yes. Applicants are entitled to clear and timely determinations regarding their eligibility for funding. Once reached, such determinations should not be subject to retroactive revision. It is critically important that applicants and providers understand the rules of the road up front, and that those rules not be changed midstream.

- **Would you agree that allowing appeals to languish for years is an unacceptable way to run a program?**

Answer: Yes.

- **Will you commit to working expeditiously on reforms to USAC's processes to improve transparency and to prevent delayed and vital support? Will you commit to advocating for this with your fellow commissioners?**

Answer: Yes.

- **Will you commit to advocating for expeditious rate approvals and reviews? Will you commit to advocating for this with your fellow commissioners?**

Answer: Yes.

- **What do you believe is a reasonable time period for a rate approval or review under this program?**

Answer: The public interest would be best served by providing carriers with certainty and predictability. The program should have clear processes and standards so that post-hoc reviews and approvals are rare, not routine; review causes uncertainty and delay. But when a review is needed, it should take weeks, not years. Lengthy reviews, in the absence of the need for extensive discovery, are unacceptable and do not further the public interest. When the Commission does approve a rate, that rate should be good not just for the backward-looking year but for the future as well. That would help mitigate some of the harms that flow from the FCC's recent, drawn out rate approval processes.

Applicants are entitled to clear and timely determinations regarding their eligibility for funding. If confirmed, I commit to working with your office so that the FCC's processes provide certainty to applicants.

- **Will you commit to impose strict deadlines on USAC and the Bureaus, and insist that applications and appeals do not languish for years? Will you commit to advocating for this with your fellow commissioners?**

Answer: Yes.

- **Will you commit to much greater FCC oversight of USAC? Will you commit to advocating for this with your fellow commissioners?**

Answer: Yes. Every FCC Commissioner has an obligation to ensure that USAC is a good steward of Americans' hard-earned dollars and that the FCC's universal service program is administered in a manner that is fair and efficient. That is the best way to ensure that Congress's mandate for universal service in Section 254 is met: "There should be specific, predictable and sufficient Federal and State

mechanisms to preserve and advance universal service.” Greater FCC oversight of USAC decisions will further this goal. Any uncertainty or instability is the Commission’s problem and, if confirmed, I will commit to addressing this issue.

The FCC revised its RHC Program rules in August 2019. I had requested an expedited rulemaking from Chairman Pai as a part of Commissioner Carr’s confirmation process to address many of the problems our state had been experiencing with the program and to lay out clear rules for the future. These rules are anything but helpful to Alaska, and anything but clear.

The rules group rural communities into rurality tiers and provide subsidy awards only for the difference between the median of rural rates and the urban rate for functionally similar services in the same tier. In Alaska, there are four tiers, but even in the most rural tiers, many communities with very different costs of service are in the same tier. For example, communities in the same tier may be served by different technologies (satellite vs. fiber or terrestrial wireless networks), be of different population sizes, be closer to or farther from the nearest fiber network, have access to fewer or more competitive networks, or have different topography, significantly affecting the cost to serve them. The rules short-change communities where rates are above the median (sometimes way above) due to the very high cost of service. These are the Alaskan communities that have the least broadband infrastructure and the most limited access to health care providers, and thus have the greatest need for support from the Rural Health Care program. The FCC also delegated the work to set median rates for each service to USAC, which does not have the authority, information, or experience to make these critical support decisions. Petitions for reconsideration of the rules have been pending for almost a year, and yet the FCC has so far refused to stay the effective date of these new rural and urban rate rules. Additionally, the Alaska delegation sent a letter to the Chairman back in April requesting that the FCC delay the implementation of these rules in light of the pandemic. Many health care providers are strained enough without trying to navigate an incomplete and new process. The Chairman did not address or act on this request.

The bidding season for Funding Year 2021, which is governed by USAC’s new median rate database and cost model waivers, has already begun. The database is a disaster and will not work – especially in Alaska. Our carriers will have to file cost model waivers for most services on a case-by-case basis, which will be stuck in the same impossibly slow review and appeals process at USAC and the Bureaus.

- **Would you agree that ignoring petitions for reconsideration with no acknowledgment or response while going ahead with a new program is unfair and poor governance?**

Answer: Yes. I believe that petitioners are entitled to a timely response to their petitions, and that timely disposing of such petitions – one way or the other – is simply good governance. Likewise, communicating timely with petitioners is also fundamental to good governance.

- **Will you commit to support delaying these new rate-setting rules while the pending petitions for reconsideration are fully addressed? Will you commit to advocating for this with your fellow commissioners?**

Answer: The petitions for reconsideration and applications for review, presently before the full Commission, raise fundamental questions that should be resolved before the bidding for 2021 takes place. As noted above, there are credible claims that the current approach is producing arbitrary and anomalous results. If confirmed, I would support action that provides more certainty, more predictability and more reasonable rates, whether that action is a suspension, waiver, or delay of new rate-setting rules. Relief should be provided as soon as possible, and if confirmed, I would commit to working with my colleagues to accomplish this result.

- **Given that the that the database is clearly not ready and it will likely result in a disproportionate impact on Alaska, will you commit to support delaying these new rate-setting rules in light of the pandemic until at least bidding season 2022? Will you commit to advocating for this with your fellow commissioners?**

Answer: There are steps the FCC could take right now to address the arbitrary and anomalous outcomes that its 2019 RHC decision is credibly claimed to be producing. If confirmed, I would support taking the immediate actions necessary to ensure fair rates and a stable, predictable outcome for Alaska—whether that action involves delaying rates or taking other steps. I commit to advocating for those actions with my fellow commissioners if I am confirmed. COVID-19 has clearly produced a once-in-a-century challenge and clearly any rulemaking needs to take it into account.

- **Will you commit to work with Alaska’s stakeholders and me to fix the program? Will you commit to advocating for this with your fellow commissioners?**

Answer: Yes.

Alaska’s health care and telecom providers are struggling to keep up with increased demand, financial strain, and diminished workforce because of COVID-19. In early April, the Alaska delegation wrote to Chairman Pai asking that he take certain steps in response to COVID-19 to facilitate the delivery of tele-health services in rural Alaska. We requested suspending the new RHC rural rate setting rules from August 2019, which I have already mentioned. We also recommended waiving the funding cap on Rural Health Care support for Funding Year 2021 to meet increased telehealth demands. The FCC has imposed a cap on annual RHC support of \$581 million (adjusted for inflation), which makes it the smallest of the Universal Service programs. This cap limits the program’s ability to provide adequate support in response to rapidly increasing demand due to COVID. We also recommended suspending audits and investigations, and extending response deadlines for responding to USAC and FCC inquiries so tele-health providers can focus on providing essential services during the COVID-19 pandemic.

- **Will you commit to support waiving the funding cap on RHC support due to the pandemic for Funding Year 2021 to the extent that demand exceeds the cap imposed by the FCC? Will you commit to advocating for this with your fellow commissioners?**

Answer: As noted above, the FCC’s August 2019 decision is credibly claimed to be producing certain arbitrary and unjustified results. This is clearly not in the public interest. If I am confirmed, I will investigate the complaints about the August 2019 decision and advocate for the FCC to take immediate,

corrective action where warranted. The urgency of this is only sharpened by the acute additional need caused by the COVID-19 pandemic. If my findings suggest it is advisable to suspend certain audits and investigations, I will recommend and advocate doing so. As a commissioner, I would take seriously my obligation to act against unfair results that are not in the public interest.

- **Will you commit to support suspending audits and investigations, and extending deadlines for responding to FCC and USAC inquiries? Will you commit to advocating for this with your fellow commissioners?**

Answer: The FCC has waived a number of rules due to impacts associated with COVID-19. If confirmed, I would support continuing or providing additional regulatory relief where compliance is not in the public interest due to the demands of addressing COVID-19. If confirmed, I would also advocate that my fellow commissioners do the same. In addition, I commit to working with your office to obtain the information necessary to acquire an informed judgment about the need to suspend audits and investigations, and to extend deadlines for other responses to FCC and USAC inquiries.

- **Will you commit to support further waiving of the gift rule for the RHC and E-Rate due to COVID-19? Will you commit to advocating for this with your fellow commissioners?**

Answer: In my opinion, waiving the gift rule during the COVID-19 pandemic has produced significant public interest benefits. Unless there is evidence that I am currently unaware of, I do not see how the public interest is supported by not further waiving the gift rule. If confirmed, and based on the information currently available to me, I would support further waiving of the gift rule.