

Before the
Federal Communications Commission
Washington, D.C. 20554

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

ORDER

Adopted: March 26, 2020

Released: March 26, 2020

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. As a part of the Commission’s continuing efforts to ensure that health care providers have the resources they need to effectively respond to the coronavirus pandemic,¹ we grant on our own motion additional relief to assist Rural Health Care (RHC) Program participants in addressing this ongoing public health emergency. Telemedicine will play a significant role in combating the ongoing pandemic, especially in rural areas. Specifically, we take the following actions: (1) issue an extension of the RHC Program application filing window until June 30, 2020; (2) ease competitive bidding requirements for health care providers with expiring evergreen contracts; and (3) provide an extension of several procedural deadlines. Today’s action is intended to allow health care providers to focus their attention on their immediate task at hand—addressing the influx of patients associated with the COVID-19 outbreak and maintaining care for existing patients, thereby helping to control the spread of this serious pandemic, without the diversion of near-term RHC Program administrative requirements.

II. BACKGROUND

2. The Commission’s RHC Program consists of two component programs: (1) the Telecommunications (Telecom) Program; and (2) the Healthcare Connect Fund Program.² Unless a competitive bidding exemption applies, applicants must submit for posting on the Universal Service Administrative Company’s (USAC) website an FCC Form 465 (Telecom Program) or an FCC Form 461 (Healthcare Connect Fund Program) to request bids for eligible services and/or equipment.³ The RHC Program’s competitive bidding process must be fair and open and not have been compromised because of improper conduct by the applicant, service provider, or both parties,⁴ and all potential bidders and service providers must have access to the same information and must be treated in the same manner throughout

¹ See, e.g., *Rural Health Care Universal Service Support Mechanism, Schools and Libraries Universal Service Support Mechanism*, WC Docket No., 02-60, CC Docket No. 02-6, Order, DA 20-290, para. 8 (rel. Mar. 18, 2020) (*RHC and E-Rate Gift Rule Waiver Order*).

² *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 34 FCC Rcd 4136, 4136, para. 2 (2019) (*Funding Year 2018 Demand Order*).

³ *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Report and Order, 34 FCC Rcd 7335, 7410, 7411, paras. 160-163 (2019) (*Promoting Telehealth Report and Order*) (harmonizing both programs’ competitive bidding exemptions and directing applicants to file a Form 461 or Form 465 for the appropriate program).

⁴ See 47 CFR § 54.622(b)(1) (“Applicants participating in the Telecommunications program or the Health Care Connect Fund program must conduct a fair and open competitive bidding process.”).

the procurement process.⁵ Eligible health care providers apply for support for eligible services by filing either an FCC Form 466 in the Telecom Program or an FCC Form 462 in the Healthcare Connect Fund Program with USAC during the application filing window, after completing the competitive bidding process and selecting the most cost-effective service offering.⁶ To ensure efficient and effective administration, the RHC Program has deadlines for applying for funding, responding to USAC inquiries, delivery of services, and filing invoices and appeals or requests for waivers.⁷

3. The COVID-19 pandemic is an outbreak of a serious respiratory illness that has spread throughout the United States and around the world.⁸ To help contain the transmission of the disease, hospitals and health care providers are increasingly turning to telemedicine and telehealth services to screen and treat COVID-19 patients.⁹ The growing reliance on these services is particularly acute in rural America, where health care providers lack the medical equipment and supplies that are more readily available in urban parts of the country.¹⁰ Enhancing telehealth services in rural areas helps ensure that health care services available to patients in remote parts of the country are comparable to the care available to patients in more densely populated areas.¹¹ To promote such enhanced services during the COVID-19 outbreak, we have waived the RHC gift rule to enable service providers to offer for free, and for rural health care providers to solicit or accept, improved broadband connections and equipment for

⁵ See 47 CFR § 54.622(b)(1)(i).

⁶ See *Funding Year 2018 Demand Order*, 34 FCC Rcd at 4139, para. 10; see also 47 CFR §§ 54.603(b)(4), 54.615(a), 54.643 (2018).

⁷ See, e.g., *Promoting Telehealth in Rural America*, 34 FCC Rcd at 7423, para. 189 (explaining that “filing deadlines are necessary for efficient administration of the RHC Program”); *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 30 FCC Rcd 1063, 1065, para. 6 (WCB 2015) (reminding applicants that adherence to the filing deadlines and program rules are necessary for the efficient administration of the RHC Program).

⁸ Centers for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19) Cases in U.S.*, <https://www.cdc.gov/coronavirus/2019-ncov/cases-in-us.html> (last visited Mar. 19, 2020).

⁹ See *RHC and E-Rate Gift Rules Waiver Order*. See also Manojna Maddipatla, *U.S. Telehealth Companies Brace for Demand Spike as Coronavirus Spread Accelerates*, Reuters (Mar. 6, 2020), <https://www.reuters.com/article/us-health-coronavirus-telehealth/u-s-telehealth-companies-brace-for-demand-spike-as-coronavirus-spread-accelerates-idUSKBN20T2KC> (explaining that the U.S. telehealth industry is bracing for a surge of demand for telehealth services as public health officials aim to contain the virus by using virtual visits and encouraging patients to avoid public places); Sidney Fussell, *Telemedicine is a Safety Valve for a Strained Health Care System*, Wired (Mar. 13, 2020), <https://www.wired.com/story/telemedicine-safety-valve-for-a-strained-health-care-system/> (explaining that telemedicine will be a key component of managing the coronavirus because it will allow hospitals to limit admittance to patients with a higher risk due to infection and help to flatten the curve); Eric Wicklund, *Coronavirus Scare Gives Telehealth an Opening to Redefine Healthcare*, mHealth Intelligence (Mar. 5, 2020), <https://mhealthintelligence.com/news/coronavirus-scare-gives-telehealth-an-opening-to-redefine-healthcare>; Makenzie Garrity, *How Providence, Kaiser Permanente, Intermountain are Using Telehealth to Treat Patients Amid the Coronavirus Outbreak*, ASC Communications (Mar. 5, 2020), <https://www.beckershospitalreview.com/telehealth/how-providence-kaiser-permanente-intermountain-are-using-telehealth-to-treat-patients-amid-coronavirus-outbreak.html> (explaining that Kaiser Permanente is using telehealth services to treat quarantined patients and providing laptops to doctors who can conduct visits from their homes at night and Intermountain used video visits to treat a quarantined patient on the Diamond Princess cruise ship).

¹⁰ See Eli Saslow, *‘We’ll improvise’: A resource-starved rural hospital steels itself for coronavirus’s arrival*, The Washington Post, https://www.washingtonpost.com/national/well-improvise-a-resource-starved-rural-hospital-steels-itself-for-coronavirus-arrival/2020/03/14/a724d1ac-6604-11ea-acca-80c22bbee96f_story.html (Mar. 14, 2020).

¹¹ See Centers for Disease Control and Prevention, *Telehealth in Rural Communities*, <https://www.cdc.gov/chronicdisease/resources/publications/factsheets/telehealth-in-rural-communities.htm> (last visited Mar. 19, 2020).

telehealth.¹² With today's action, we take additional steps to lessen on a temporary basis certain regulatory requirements to further promote the ability of rural health care providers to quickly and effectively respond to the COVID-19 pandemic.

III. DISCUSSION

4. Generally, the Commission's rules may be waived for good cause shown.¹³ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹⁴ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an overall basis.¹⁵

5. We find that the scale of the current public health emergency, the extensive disruption to health care providers throughout the country, and the enhanced need for telehealth and telemedicine services caused by COVID-19 present compelling and unique circumstances that merit waivers of our rules and the additional relief discussed below. We conclude that any potential costs to the RHC Program that could result from this order will be clearly outweighed by the benefits of our actions.

6. *Funding Year 2020 Application Filing Window.* To minimize the disruptions caused by the COVID-19 pandemic that are facing health care providers across the country, we direct USAC to extend the deadline for RHC Program applicants and consortia to submit their funding year 2020 FCC Form 462 funding applications (for the Healthcare Connect Fund Program) and FCC Form 466 funding applications (for the Telecom Program) to June 30, 2020.¹⁶ RHC Program applicants and consortia will now have until June 30, 2020, at 11:59 pm EDT to submit their funding year 2020 FCC Form 462 and FCC Form 466 funding applications.¹⁷ Notwithstanding this extension, we encourage all RHC applicants and consortia, to the extent practicable, to continue to work on their funding 2020 funding applications and submit the forms as they are able to, so that funding decisions can be issued in a timely manner.

7. *Evergreen Contract Extensions.* To reduce administrative burdens for health care providers combatting COVID-19, we permit those health care providers whose evergreen contracts expire in funding year 2019 to extend those contracts through funding year 2020. The Telecom and Healthcare Connect Fund Programs allow a multi-year contract to be designated "evergreen," which means that it is exempt from the RHC Program's competitive bidding requirements for the remainder of the contract term.¹⁸ Evergreen designation benefits health care providers by, among other things, reducing the

¹² *RHC and E-Rate Gift Rules Waiver Order.*

¹³ 47 CFR § 1.3.

¹⁴ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁵ *Id.*

¹⁶ See Letter from John Windhausen, Executive Director, Schools, Health & Libraries Broadband (SHLB) Coalition, to Kris Monteith, Chief, Wireline Competition Bureau, WC Docket No. 02-60 (filed Mar, 17, 2020) (requesting various forms of relief for E-Rate and RHC participants impacted by the COVID-19 pandemic, including an extension of the RHC application filing window until June 30, 2020).

¹⁷ The funding year 2020 FCC Form 462 and FCC Form 466 application filing window was originally scheduled to close on April 30, 2020, at 11:59 pm EDT.

¹⁸ 47 CFR § 54.622(i)(3). USAC will designate a contract as evergreen if the contract: (1) is signed by the individual health care provider or consortium lead entity; (2) specifies the service type, bandwidth, and quantity; (3) specifies the term of the contract; (4) specifies the cost of services to be provided; and (5) includes the physical location or other identifying information of the health care provider sites purchasing from the contract. 47 CFR § 54.622(i)(3)(ii).

administrative burdens associated with participation in the competitive bidding process.¹⁹ Health care providers may exercise voluntary options to extend the term of an evergreen contract, thereby extending the attendant competitive bidding exemption, provided: (1) the voluntary extension is memorialized in the contract; (2) the decision to extend the contract occurs before the health care provider submits its funding request for the funding year when the contract would otherwise expire; and (3) the voluntary extension does not exceed five years in the aggregate.²⁰

8. We waive for funding year 2020 two of the requirements necessary before a health care provider may voluntarily extend an evergreen contract.²¹ First, we waive section 54.622(i)(3)(iii)(A) in order to permit health care providers whose evergreen contracts expire in funding year 2019, and their service providers, to elect to extend the terms of these contracts to cover funding year 2020, even if those contracts do not provide an option for another voluntary extension.²² Second, we waive section 54.622(i)(3)(iii)(C) to allow health care providers with evergreen contracts that reach the five-year voluntary extension limit during funding year 2019 to extend their contract terms for one additional year to cover funding year 2020.²³ Health care providers that are parties to contracts extended in this manner will be required to memorialize the extension and to retain any documentation that they create to effectuate the extension.²⁴ Both waivers are intended to provide relief to those health care providers that have not yet completed the competitive bidding process for funding year 2020 and that wish to extend the terms of their existing evergreen contracts. We expect that those health care providers in a position to do so will benefit from a reduction in the administrative burdens associated with competitive bidding at a time when their attention and time are critically needed to respond to the current pandemic. We note that this waiver is limited to health care providers involved in the screening and treatment of patients for COVID-19, or for providing services to other patients to help mitigate the spread of COVID-19 and devote limited on-site medical resources towards treatment of COVID-19.

9. *Response Time for USAC Information Requests.* We waive the 14-day deadline for applicants to respond to information requests from USAC and automatically extend that deadline an additional 28 days.²⁵ We also direct USAC to consider information that an applicant provides even after the deadline to respond to an information request has expired if the applicant can reasonably attribute such delay to its efforts to combat COVID-19.²⁶ This waiver applies to information requests related to funding requests, appeals and waivers, invoices, audits, and other documentation submitted by program

¹⁹ See *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678, 16791, para. 262 (2012).

²⁰ 47 CFR § 54.622(i)(3)(iii)(A)-(C).

²¹ To ensure that the health care provider and service provider agree that service will be provided for an additional year, we will continue to require that the decision to extend the evergreen contract occur before the health care provider submits its relevant funding request. See 47 CFR § 54.622(i)(3)(iii)(B).

²² See 47 CFR § 54.622(i)(3)(iii)(A).

²³ See 47 CFR § 54.622(i)(3)(iii)(C).

²⁴ See 47 CFR § 54.623(a)(1)(ix) (requiring the RHC Program applicant to certify that it has retained all documents associated with its application, including contracts, for a period of at least five years); see also 47 CFR § 54.631(b) (requiring RHC applicants to retain records demonstrating compliance with program rules for at least five years after the last day of service delivered in a particular funding year); § 54.631(b)(iii) (requiring service providers to retain documentation related to the delivery of discounted services for at least five years after the last day of the delivery of the discounted services and any other document that demonstrates compliance with the program rules).

²⁵ See *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 30 FCC Rcd 230, 230, para. 1 (2015) (*FCC Form 466 Documentation Order*).

²⁶ See *FCC Form 466 Documentation Order*, 30 FCC Rcd at 231-32, para. 3.

participants. We understand that in response to COVID-19, health care providers may have diverted their administrative resources to respond to the pandemic, which would impede their ability to respond timely to USAC information requests.²⁷ This waiver will apply to all information requests issued on or before September 30, 2020 regardless of the funding year for which those requests relate.

10. *Service Delivery Deadline.* We waive the service delivery deadline in section 54.626(a) of the Commission's rules for non-recurring services in the Healthcare Connect Fund Program for funding year 2019 and extend that deadline an additional year.²⁸ Program rules require non-recurring services in the Healthcare Connect Fund Program to be delivered by June 30 of the funding year for which services were sought.²⁹ The disruption caused by COVID-19 directly impacts health care providers throughout the country and is expected to continue for an uncertain duration. Program participants may have difficulty adhering to the service delivery deadline because of the strain placed on health care providers by COVID-19³⁰ and equipment and material required to satisfy funding requests may be unavailable due to disruptions to global supply chains.³¹ We find that a one-year extension of the service delivery deadline is in the public interest and an appropriate measure to accommodate the extraordinary circumstances caused by COVID-19 while continuing to protect the integrity of the RHC Program.³²

11. *Invoice Filing Deadline.* Next, we waive section 54.645(b) of the current RHC Program rules to provide all Healthcare Connect Fund Program participants with a 180-day extension of their invoice filing deadline. Section 54.645(b) requires that invoices be submitted to USAC within six months of the end date of the funding commitment.³³ As discussed above, we understand that RHC Program participants may have difficulty adhering to the invoicing deadline and find it is in the public interest to waive this deadline for all participants given the nationwide strain COVID-19 has placed on health care

²⁷ See, e.g., Letter from John Windhausen, Jr., Executive Director, Schools, Health and Libraries Broadband (SHLB) Coalition, to Ajit Pai, Chairman, Michael O'Rielly, Commissioner, Brendan Carr, Commissioner, Jessica Rosenworcel, Commissioner, and Geoffrey Starks, Commissioner, Federal Communications Commission (filed Mar. 17, 2020) (explaining that health care providers need additional time for applying for RHC Program funding as their staff cannot complete the forms and respond to the COVID-19 pandemic at the same time) (March 17, 2020 SHLB Letter).

²⁸ 47 CFR § 54.626(a) (requiring that all applicants use non-recurring services for which Healthcare Connect Fund Program funding has been approved by June 30 of the funding year for which the program support was sought).

²⁹ *Id.*

³⁰ See, e.g., March 17, 2020 SHLB Letter (explaining that health care providers need additional time to meet RHC and E-Rate program deadlines because of lack of resources due to the COVID-19 pandemic).

³¹ See, e.g., Peter Suci, *COVID-19 and the Bleak Outlook for Tech Supply Chain*, Tech News World, <https://www.technewsworld.com/story/86553.html> (Mar. 6, 2020) (reporting that the coronavirus impact could affect global supply chains for all products in mid-March 2020).

³² Cf. *Promoting Telehealth in America*, WC Docket No. 17-310, Report and Order, 34 FCC Rcd 7335, 7421, para. 187 (2019) (adopting a one-year extension for non-recurring services).

³³ 47 CFR § 54.645(b) (2018) ("All invoices must be received by the Administrator within six months of the end date of the funding commitment."). Under current rules for the Telecom Program, there is no deadline for the submission of invoices. Therefore, no invoice filing deadline waiver is necessary for the Telecom Program. Beginning on July 1, 2020, section 54.645(b) is no longer applicable and participants in the Telecom Program and the Healthcare Connect Fund Program must comply with a uniform invoice filing deadline and submit invoices to USAC within 120 days after the later of: (1) the service delivery deadline (i.e., June 30, 2021); or (2) the date of a revised funding commitment letter issued pursuant to an approved post-commitment request made by the applicant or service provider or a successful appeal of a previously denied or reduced funding request. 47 CFR § 54.627(a). The waiver of the invoice filing deadline described herein applies to Healthcare Connect Fund Program participants only for funding year 2019 funding requests.

providers. An extension of 180-days is reasonable to accommodate the unprecedented circumstances caused by COVID-19 while preventing waste, fraud, and abuse.³⁴

12. *Deadline for Appeals and Requests for Waiver.* We waive the 60-day deadlines in section 54.720(a)-(b) of the Commission's rules for requests for review or waiver of decisions by USAC, directed to USAC or the Commission, and provide an additional 60 days for such requests.³⁵ We find that providing an additional 60-day period for filing appeals and waivers is an appropriate measure to accommodate the extraordinary circumstances caused by COVID-19. We understand that the disruptions caused by COVID-19 will persist for an uncertain length of time and find that any harm in giving petitioners additional time to submit their filings is outweighed by the significant public interest benefits. To reduce the burden on petitioners, we direct USAC to automatically provide petitioners with an additional 60 days to file appeals and waivers. This waiver will be in effect for all deadlines of appeals and waiver requests from March 11, 2020 through September 30, 2020.

13. *Preventing Waste, Fraud, and Abuse.* We remain committed to guarding against waste, fraud, and abuse in the RHC Program. Although we grant the limited waivers described herein, RHC Program participants and service providers remain otherwise subject to audits and investigations to determine compliance with RHC Program rules and requirements. We will require USAC to recover funds through its normal process in the event it is discovered that they were not used for their intended purposes. We emphasize that we retain the discretion to evaluate the uses of monies disbursed through the RHC Program and to determine on a case-by-case basis that waste, fraud, or abuse of program funds occurred, and that recovery is warranted. Additionally, in the event we discover any improper activity resulting from our actions today, we will subject the offending party to all available penalties at our disposal, and will direct USAC to recover funds, assess retroactive fees and/or interest, or both. We remain committed to ensuring the integrity of the RHC Program and will continue to aggressively pursue instances of waste, fraud, or abuse under our own procedures and in cooperation with law enforcement agencies.

IV. ORDERING CLAUSES

14. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 USC §§ 151-154 and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, that sections 47 CFR §§ 54.622(i)(3)(iii)(A), 54.622(i)(3)(iii)(C), 54.626(a), 54.645(b), and 54.720(a)-(b) of the Commission's rules are waived to the extent provided herein.

15. IT IS FURTHER ORDERED, that pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief
Wireline Competition Bureau

³⁴ See, e.g., *Rural Healthcare Support Mechanism*, WC Docket No. 02-60, Order, DA 20-244 (rel. Mar. 9, 2020) (waiving section 54.645(b) and permitting an additional 180 days to complete invoicing).

³⁵ 47 CFR § 54.720(a)-(b).