



# PUBLIC NOTICE

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## WIRELINE COMPETITION BUREAU PROVIDES A FILING WINDOW PERIOD SCHEDULE FOR FUNDING REQUESTS UNDER THE TELECOMMUNICATIONS PROGRAM AND THE HEALTHCARE CONNECT FUND

### WC Docket No. 02-60

We hereby provide a filing window period schedule for funding requests for the Federal Communications Commission's (Commission) Rural Health Care (RHC) Program, which facilitates healthcare delivery in rural America.<sup>1</sup> Recognizing the growing interest in the RHC program, we also remind the public of the Commission's existing rules for situations when requested RHC Program funding begins to near, or exceeds, the RHC Program's \$400 million cap.<sup>2</sup>

*Background on the RHC Program.* In the Telecommunications Act of 1996 (1996 Act),<sup>3</sup> Congress recognized the value of providing rural health care providers (HCPs) with "an affordable rate for the services necessary for the provision of telemedicine and instruction relating to such services."<sup>4</sup> Based on this legislative mandate, in 1997, the Commission established the RHC Program.<sup>5</sup> The Commission also adopted rules permitting the establishment of filing window periods to enable the distribution of limited RHC funds in a manner that was both equitable and administratively manageable.<sup>6</sup> From 1997 onward, the Commission has sought to make the benefits of the RHC Program accessible to as many rural HCPs as possible, facilitating the provision of essential healthcare services to families and individuals living and working in rural and remote parts of the country.<sup>7</sup>

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<sup>1</sup> The RHC Program currently includes the Telecommunications Program, which provides support for telecommunications services, and the Healthcare Connect Fund (HCF) Program, which provides support for broadband connectivity.

<sup>2</sup> See 47 CFR § 54.675(f).

<sup>3</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). The 1996 Act amended the Communications Act of 1934 (Communications Act or Act).

<sup>4</sup> S. Conf. Rep. No. 104-230 at 133 (1996); see also 47 U.S.C. § 254(b)(3), (h)(1)(A).

<sup>5</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997) (*Universal Service First Report and Order*) (subsequent history omitted).

<sup>6</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Third Report and Order, 12 FCC Rcd 22485 (1997) (*Third Report and Order*).

<sup>7</sup> See, e.g., *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Second Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 24580 (2004); *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 21 FCC Rcd 11111 (2006); *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678 (2012) (*Healthcare Connect Fund Order*).

As noted above, the RHC Program operates with an annual cap of \$400 million for eligible HCPs,<sup>8</sup> of which up to \$150 million per funding year is available to support upfront payments and multi-year commitments under the HCF Program.<sup>9</sup> In 1998, the first funding year for the RHC Program, \$3.375 million was disbursed.<sup>10</sup> Since that time, demand for support under the RHC Program has grown steadily and requests for support in funding year 2015, which ended on June 30, 2016, were at a historic high of \$377.64 million.<sup>11</sup>

With these funds, the RHC Program has supported and facilitated many vital healthcare services. At a time when rural Americans make up nearly 25 percent of the nation's population, but only 10 percent of the nation's physicians practice in rural America,<sup>12</sup> the growth in the RHC Program translates into greater access to medical care across the country.

Current Implementation of the "First-Come, First-Served" Rule After Initial Filing Window Period. The RHC Program funding year begins on July 1 of each calendar year.<sup>13</sup> Prior to the beginning of each funding year, USAC implements an initial funding request filing window period that treats all HCPs filing within this filing window period as if their applications were simultaneously received.<sup>14</sup> After the end of that filing window period, USAC continues to accept funding requests on a rolling basis until the end of the funding year (June 30 of the following calendar year) and, following its review of the requests, makes funding commitments to eligible participants for eligible services on a "first-come, first-served" basis.<sup>15</sup>

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<sup>8</sup> 47 CFR § 54.675(a). The \$400 million annual cap applies to funding commitments. See *Universal Service First Report and Order* at 9143-44, paras. 710-713.

<sup>9</sup> See *Healthcare Connect Fund Order* at 16764-65, para. 190; 47 CFR § 54.675(a).

<sup>10</sup> See *Universal Service Monitoring Report*, CC Docket No. 98-202, at Table 2.21 (rel. Dec. 29, 2011), <https://transition.fcc.gov/web/iatd/monitor.html> (last visited Aug. 24, 2016).

<sup>11</sup> See USAC, Rural Health Care, Healthcare Connect Fund Program, Funding Information, <http://usac.org/rhc/healthcare-connect/funding-information/default.aspx> (last visited Aug. 26, 2016). The RHC Program funding year begins on July 1 of each calendar year through June 30 of the subsequent calendar year. See 47 CFR § 54.675(b). Funding year 2015 began on July 1, 2015 and ended on June 30, 2016. See 47 CFR § 54.675(c)(4).

<sup>12</sup> See Southwest Rural Health Research Center School of Rural Public Health, The Texas A&M University System Health Science Center, *Rural Healthy People 2010: A Companion Document to Healthy People 2010*, Volume 1, at 45-46, <https://sph.tamhsc.edu/srhrc/docs/rhp-2010-volume1.pdf> (last visited Aug. 24, 2016).

<sup>13</sup> See 47 CFR § 54.675(b).

<sup>14</sup> See *Healthcare Connect Fund Order* at 16795-96, paras. 275-6; 47 CFR § 54.675(c)(2), FCC Form 462 Instructions, Rural Health Care Universal Service, Healthcare Connect Fund, Funding Request Form, OMB 3060-0804, at 2 (FCC Form 462 Instructions); FCC Form 466 Instructions, Rural Health Care Universal Service Mechanism, OMB 3060-0804, at 1 (July 2014) (FCC Form 466 Instructions). The initial filing window period for both the Telecommunications and the HCF Programs for funding years 2015 and 2016 runs from March 1 through June 1 of the calendar year. See USAC, Rural Health Care Program, Trainings and Outreach, Newsletter, RHC Circuit – First Quarter 2015, <http://www.usac.org/rhc/telecommunications/outreach/newsletters/2015/q1.aspx> (last visited Aug. 24, 2016) (Telecommunications Program FY 2015 Filing Calendar); USAC, Rural Health Care Program, Trainings and Outreach, Newsletter, RHC Circuit – First Quarter 2015, <http://www.usac.org/res/documents/rhc/pdf/hcf/RHC-Snail-FY2015-HCF-Program.pdf> (last visited Aug. 24, 2016) (HCF Program FY 2015 Filing Calendar). For example, the initial funding request filing window period for funding year 2015 started on March 1, 2015 and ended on June 1, 2015. See Telecommunications Program FY 2015 Filing Calendar; HCF Program FY 2015 Filing Calendar.

<sup>15</sup> See Telecommunications Program FY 2015 Filing Calendar; HCF Program FY 2015 Filing Calendar; FCC Form 462 Instructions at 2; FCC Form 466 Instructions at 1; 47 CFR § 54.675(c)(1). In addition, every month throughout

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Under the Commission’s rules, if requests submitted during an established filing window period exceed the RHC Program’s \$400 million cap, USAC must apply a pro-rata reduction in support to all those requests received during the filing window period.<sup>16</sup> Likewise, funding requests filed after the initial filing window period (but prior to the earlier of the end of the funding year, or the date on which the \$400 million cap is reached) are handled on a “first-come, first-served” basis. Because RHC Program demand has never reached the cap, USAC has not had to pro-rate support for requests received during the single filing window period, and it has accepted funding requests for the Telecommunications and Health Care Connect Fund Programs until the last day of the funding year.

*Multiple Filing Window Periods.* In light of RHC Program growth and the potential for funding year 2016 demand to exceed the \$400 million cap before the end of the funding year on June 30, 2017, we direct USAC to follow the filing window period schedule described below, based on the Commission’s current rules for RHC Program support.<sup>17</sup> Establishing this schedule and affording USAC the discretion to establish multiple filing window periods going forward furthers the Commission’s goals of supporting healthcare delivery in as many parts of rural America as possible.<sup>18</sup>

While this approach does not affect the \$400 million cap, it provides a greater opportunity for HCPs filing within a filing window period to get some support, rather than none at all, even at the point where demand exceeds the cap. By establishing multiple filing window periods, we also provide a mechanism for USAC to more efficiently administer the program and process requests while providing an incentive for applicants to timely submit their applications for support. Absent such filing window periods, all RHC funding requests would be subject to the “first-come, first-served” rule and, should the \$400 million cap be met, subsequently filed HCP requests would be cut off from RHC Program funding. Such a flash cut may be particularly difficult for those RHC participants who have relied on RHC Program funds for many years. Thus, we set forth the filing window period schedule below to facilitate the distribution of future funding in an equitable and administratively manageable manner.

*Funding Year 2016 Filing Window Period Schedule.* For funding year 2016, USAC’s initial filing window period opened on March 1, 2016, and closed on June 1, 2016. Participants requested \$35.5 million in support during that time period.<sup>19</sup> From June 1, 2016 through today, the RHC Program has operated on a “first-come, first-served basis” per the Commission’s rules.<sup>20</sup>

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the funding year, USAC publishes the current level of funding requests and commitments so participants are able to determine the amount of funding left under the program cap. See USAC, Rural Health Care Program, Healthcare Connect Fund, Funding Information, <http://www.usac.org/rhc/healthcare-connect/funding-information/default.aspx> (last visited Aug. 26, 2016); USAC, Rural Health Care Program, Telecommunications Program, Funding Information, <http://www.usac.org/rhc/telecommunications/funding-information/default.aspx> (last visited Aug. 26, 2016); *Healthcare Connect Fund Order* at 16795-96, para. 275.

<sup>16</sup> See 47 CFR § 54.675(f).

<sup>17</sup> See 47 CFR §§ 54.675(c)(2), (f).

<sup>18</sup> See 47 U.S.C. § 254(h)(2)(A), (h)(1)(A); *Third Report and Order* at 22488-89, para. 6 (delegating authority to the Wireline Competition Bureau, formerly the Common Carrier Bureau, to interpret the Commission’s rules as necessary to ensure that support for services provided to rural health care providers operates to further the Commission’s universal service goals).

<sup>19</sup> The initial funding request filing window period for funding year 2016 was from March 1, 2016 through June 1, 2016. USAC, Rural Health Care Program, Trainings and Outreach, Newsletter, RHC Circuit – First Quarter 2016, <http://www.usac.org/rhc/telecommunications/outreach/newsletters/2016/q1.aspx> (last visited Aug. 24, 2016) (FY 2016 Filing Calendar).

<sup>20</sup> See 47 CFR § 54.675(c)(1).

Moving forward for funding year 2016, we direct USAC to open a second filing window period starting on September 1, 2016 through November 30, 2016. From December 1, 2016 through January 31, 2017, USAC will not accept funding request forms (i.e., applicants will be prevented from submitting FCC Forms 462 and 466), but will continue to accept all other forms. USAC will also continue to process all application forms, including funding request forms filed during or before the second filing window period. USAC will estimate demand and, prior to the close of the second filing window period, determine whether to open an additional filing window period.

Based on historic demand trends, we currently anticipate that USAC will be able to open this third filing window period. Thus, assuming demand does not exceed the cap during the second filing window period, we direct USAC to open a third filing window period from February 1, 2017 through April 30, 2017. For the remainder of funding year 2016, USAC will determine, based on demand and available funding, whether to open additional filing window periods and the duration of such filing window periods. To the extent that USAC opens additional filing window periods, it shall provide notice and include either in that notice or soon thereafter the amount of remaining available funding.

<b>Funding Year 2016 Filing Window Period Schedule</b>		
<b>Filing Window Period</b>	<b>Filing Window Period Open Date</b>	<b>Filing Window Period Close Date</b>
1	3/1/2016	6/1/2016
2	9/1/2016	11/30/2016
No funding requests accepted from 12/1/2016 - 1/31/2017		
3	2/1/2017	4/30/2017
Subsequent filing window periods may be opened at USAC's discretion		

There are several reasons for implementing the filing window period schedule described above for funding year 2016, which includes a time period where no funding request forms will be accepted. First, recent legislation has modified section 254 of the 1996 Act to add a new eligible entity (skilled nursing facilities or SNFs) to the list of health care providers who may receive funding under the RHC Program.<sup>21</sup> In addition to extending the current requirements of the RHC Program forms, the current RHC Program forms must now also be revised to account for the addition of the SNFs to the RHC Program in compliance with the Paperwork Reduction Act requirements.<sup>22</sup> These revised forms will be available on USAC's portal starting on January 1, 2017. Establishing a new filing window period from February 1, 2017 to April 30, 2017 will thus give the SNFs an opportunity to participate in the RHC Program for funding year 2016 should they choose to do so.<sup>23</sup> Second, in addition to accommodating the SNFs, establishing a time period during which no funding request forms can be filed will help everyone involved in the RHC application process to adjust to this new approach of multiple filing window periods. For those RHC Program participants who are accustomed to filing later in the funding year, an opportunity to organize their paperwork and meet the timeframe of the third filing window period will be helpful. Finally, a time period when no funding request forms are accepted will also give USAC an opportunity to assess whether any changes need to be made to the system before opening the third filing window period to better serve the needs of RHC Program participants.

<sup>21</sup> See Frank R. Lautenberg Chemical Safety for the 21<sup>st</sup> Century Act, Title II – Rural Healthcare Connectivity, Pub. L. No. 114-182 (2016) (noting that the subsection, Title II, Rural Healthcare Connectivity, shall apply 180 days after the enactment of the Act). The President signed this legislation into law on June 22, 2016.

<sup>22</sup> See also 81 Fed. Reg. 47389 (rel. July 21, 2016) (seeking Office of Management and Budget approval to revise the RHC FCC Forms pursuant to 44 U.S.C. 3507 of the Paperwork Reduction Act of 1995).

<sup>23</sup> See 47 CFR § 54.642 (competitive bidding requirements and exemptions).

*Funding Year 2017 and Beyond Filing Window Period Schedule.* For funding year 2017 and beyond, we permit USAC to establish multiple filing window periods.<sup>24</sup> The first filing window period will open on February 1, 2017, and close on April 30, 2017 prior to the beginning of the funding year. USAC will determine the timing, duration, and administrative requirements associated with all subsequent filing window periods for funding year 2017 and beyond.

<b>Funding Year 2017 and Beyond Filing Window Period Schedule</b>		
<b>Filing Window Period</b>	<b>Filing Window Period Open Date</b>	<b>Filing Window Period Close Date</b>
1	2/1/2017	4/30/2017
Subsequent filing window periods may be opened at USAC's discretion		

USAC shall provide notice about subsequent filing window periods for funding year 2017, based on its assessment of the total funding requested in a given filing window period and the amount of available funding still remaining.

*Pro-Rata Process.* For each discrete filing window period, if the total demand exceeds the total remaining funding available for the funding year, USAC shall, in accordance with the Commission's rules: (1) divide the total funds available for the funding year by the total amount of support requested during that filing window period to produce a pro-rata factor; (2) multiply the pro-rata factor by the total amount of support requested by each applicant that has filed during the specific filing window period; (3) and commit funds to each eligible applicant that has filed during the specific filing window period consistent with this calculation.<sup>25</sup> For example, if at the close of a filing window period \$125 million has been requested and there is \$100 million remaining in RHC Program support, USAC will calculate the pro-rata factor by dividing \$100 million by \$125 million to produce a factor of four-fifths (.8).<sup>26</sup> USAC will then multiply the total dollar amount requested by each applicant that filed during the specific filing window period by .8 and commit such reduced dollar amount to each applicant.<sup>27</sup>

Given our determination to apply the filing window period schedule described above going forward, we emphasize the importance of ensuring that all RHC Program forms are complete at the time of submission and that applicants not delay their submissions. We ask that applicants pay particular attention to their funding request forms (i.e., FCC Forms 462 and 466) and ensure these are submitted with *all* supporting documentation, during a filing window period.<sup>28</sup>

For additional information, contact Radhika Karmarkar ([Radhika.Karmarkar@fcc.gov](mailto:Radhika.Karmarkar@fcc.gov)) of the Wireline Competition Bureau, Telecommunications Access Policy Division, at (202) 418-7400.

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<sup>24</sup> See 47 CFR § 54.675(c)(2).

<sup>25</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifth Order on Reconsideration and Fourth Report and Order, 13 FCC Rcd 14915, 14941, para. 41 (1998) (*RHC Fifth Order on Reconsideration and Fourth Report and Order*); 47 CFR § 54.675(f).

<sup>26</sup> *RHC Fifth Order on Reconsideration and Fourth Report and Order* at 14941, para. 41.

<sup>27</sup> *Id.* Any funding declined by an applicant is included in the total available funding for any consecutive subsequent filing window period.

<sup>28</sup> See *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 30 FCC Rcd 230, 231, para. 3 (WCB 2015) (finding that allowing applicants to submit supporting documentation after the funding year or inadequate supporting documentation compromises the efficiency and effectiveness of the RHC Program).

