



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

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Internet: <https://www.fcc.gov>
TTY: 1-888-835-5322

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THE WIRELINE COMPETITION BUREAU SEEKS ADDITIONAL COMMENT ON DETERMINING URBAN AND RURAL RATES IN THE RURAL HEALTH CARE PROGRAM

WC Docket No. 17-310

Comment Date: January 7, 2019

Reply Comment Date: January 21, 2019

By this Public Notice, the Wireline Competition Bureau (Bureau) seeks additional focused comment on discrete issues raised in the Notice of Proposed Rulemaking in the above proceeding related to determining the urban and rural rates used to calculate support in the Telecommunications (Telecom) Program within the Rural Health Care (RHC) Program.¹ The Rural Health Care Program provides funding to eligible health care providers for telecommunications and broadband services necessary for the provision of health care. The Telecom Program, in turn, ensures that eligible rural health care providers pay no more than their urban counterparts similar for telecommunications services.

In the Telecom Program, Commission rules provide that an applicant's program support is based on the difference between rural rates charged for telecommunications services in the rural areas where the health care provider is located,² and the urban rates charged for similar telecommunications services in the State.³ The rural health care provider pays only the urban rate for the telecommunications service, and the Universal Service Fund pays the difference between the urban rate and rural rate for the service to the service provider.⁴ Applicants must justify the rural rate calculation on which they rely by using one of three methods set forth in the Commission's rules.⁵

¹ See *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Notice of Proposed Rulemaking and Order, 32 FCC Rcd 10631, 10651-54, paras. 60-72 (2017) (*2017 Promoting Telehealth Notice and Order*).

² 47 CFR §§ 54.607 (establishing requirements for determining a rural rate).

³ 47 CFR §§ 54.605 (establishing requirements for determining an urban rate), 54.609 (calculating Telecom Program support using rural and urban rates).

⁴ See 47 U.S.C. § 254(h)(1)(A); 47 CFR § 54.615(b) ("Upon receiving a bona fide request . . . from a rural health care provider for a telecommunications service that is eligible for support under the Telecommunications Program, a telecommunications carrier shall provide the service at a rate no higher than the urban rate . . .").

⁵ Pursuant to the Commission's rules, the rural rate may be calculated in one of three ways. In the first instance, the rural rate is "the average of the rates actually being charged to commercial customers, other than [healthcare providers], for identical or similar services provided by the telecommunications carrier providing the service in the rural area in which the [healthcare provider] is located." 47 CFR § 54.607(a). If the service provider is not providing an identical or similar service in the rural area, then the rural rate should be "the average of the tariffed and other publicly available rates . . . charged for the same or similar services in that rural area . . . by other carriers." 47 CFR § 54.607(b). If there are no tariffed or publicly available rates for such services in that rural area, or if the carrier reasonably determines that this method for calculating the rural rate is unfair, then the Commission's rules require the carrier to "submit for the state commission's approval, for intrastate rates, or the Commission's approval, for interstate rates, a cost-based rate for the provision of the service in the most economically efficient, reasonably available manner." 47 CFR § 54.607(b).

In the *2017 Promoting Telehealth Notice and Order*, the Commission proposed measures to increase transparency and predictability for participants in the Telecom Program by requiring urban and rural rates to be determined based on more detailed criteria and by providing participants more flexibility in justifying the rates used to determine program support.⁶ The Commission suggested eliminating the distinction between a service provider's own rates and the rates of other carriers and allowing rural rates to be the average of *all* publicly available rates in the rural area where the healthcare provider is located.⁷ If the only rates available in a healthcare provider's rural area are the service provider's own rates, the Commission proposed that service providers would calculate rural rates using publicly available rates in a comparable rural area in the health care provider's state where at least one other service provider offers functionally similar services.⁸ Given that these measures would significantly reduce the chance that there would be no publicly available rates a service provider could use to calculate a rural rate, the Commission sought comment on whether to retain the ability of service providers to request approval of cost-based rural rates from the Commission or state commissions pursuant to section 54.609(b) of the rules.⁹ The Commission also proposed to modify its rules regarding the calculation of the urban rates to require a rate average¹⁰ and sought comment on the best sources for the various rate data required to calculate the average rates and the discount.¹¹ It also sought comment on how to define the geographic contours of urban and rural areas for the purpose of determining the urban and rural rates.¹² Finally, the Commission sought comment on whether, in lieu of using rate averaging, it should instead adopt a median-based approach.¹³

The comment period for the *2017 Promoting Telehealth Notice and Order* closed on March 5, 2018.¹⁴ We received comments asserting different views on how to best determine urban and rural rates in the Telecom Program. However, since the close of the comment period, USAC has undertaken extensive reviews of Telecom Program applications for compliance with the Commission's urban and rural rate rules. In addition, for the first time since the inception of the Telecom Program, several carriers submitted requests for approval of cost-based rural rates to the Bureau. We recognize that these reviews, which required substantial effort by health care providers, service providers, and Bureau staff have provided additional experience from which Telecom Program participants can give more targeted feedback on the application of the rural rate rule, as well as the Commission's suggested changes, and that some parties may wish to supplement previously filed comments with additional information. The Bureau is also interested in additional targeted comment on these issues in light of its own experience addressing the cost-based rural rate requests.

For these reasons, with this Public Notice, the Bureau reopens a limited comment period for the *2017 Promoting Telehealth Notice and Order* to allow parties to supplement the record with any new

⁶ See *2017 Promoting Telehealth Notice and Order* at 10651-54, paras. 60-72.

⁷ See *2017 Promoting Telehealth Notice and Order* at 10652, paras. 63-64.

⁸ *Id.*

⁹ *Id.* at 10653, para. 66; 47 CFR § 54.607(b) ("If there are no tariffed or publicly available rates for such services in that rural area, or if the carrier reasonably determines that this method for calculating the rural rate is unfair, then the carrier shall submit for the state commission's approval, for intrastate rates, or the Commission's approval, for interstate rates, a cost-based rate for the provision of the service in the most economically efficient, reasonably available manner.").

¹⁰ See *2017 Promoting Telehealth Notice and Order* at 10653, para. 67; 47 CFR § 54.605.

¹¹ See *2017 Promoting Telehealth Notice and Order* at 10653, para. 68; 47 CFR §§ 54.605, 54.607.

¹² See *2017 Promoting Telehealth Notice and Order* at 10654, para. 70.

¹³ *Id.* at 10654-55, para. 72.

¹⁴ See *Promoting Telehealth in Rural America*, 83 FR 2412 (Jan. 17, 2018).

information or arguments pertaining to the pending urban and rural rate issues and proposals. When expressing support for or against a proposal, we ask that commenters explain why their positions would promote the Commission's goal of transparency and predictability for RHC Program participants in the Telecom Program while promoting fiscal responsibility in the RHC Program¹⁵ in order to ensure that healthcare providers have a sustainable source of support for the telecommunications services they need to serve their rural communities. Commenters should submit any relevant data in support of their proposals or arguments.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the date indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

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In addition, one copy of each paper filing must be sent to each of the following: (1) the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY-B402, Washington, DC 20554; website: www.bcpweb.com; phone: (800) 378-3160; (2) Regina Brown, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, SW, Room 5-A333, Washington, DC 20554; e-mail: Regina.Brown@fcc.gov and (3) Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, SW, Room 5-A452, Washington, DC 20554; e-mail: Charles.Tyler@fcc.gov.

Filing and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. Copies may also be purchased from the Commission's duplicating contractor, BCPI, 445 12th Street, SW, Room CY-B402, Washington, DC 20554. Customers may contact BCPI through its website: www.bcp.com, by e-mail at fcc@bcpweb.com, by telephone at (202) 488-5300 or (800) 378-3160 or by facsimile at (202) 488-5563.

Comments and reply comments must include a short and concise summary of the substantive

¹⁵ See 2017 *Promoting Telehealth Notice and Order* at 10651, para. 60.

arguments raised in the pleading. Comments and reply comments must also comply with section 1.49 and all other applicable sections of the Commission's rules. We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission. We also strongly encourage parties to track the organization set forth in the NPRM in order to facilitate our internal review process.

For further information, please contact Regina Brown, Telecommunications Access Policy Division, Wireline Competition Bureau, at (202) 418-0792 or via email at Regina.Brown@fcc.gov.

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