

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

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

ORDER

Adopted: September 16, 2020

Released: September 16, 2020

By the Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we waive, on our own motion, the Rural Health Care (RHC) Program’s Healthcare Connect Fund Program invoice filing deadline in section 54.645(b) of the Commission’s rules¹ to provide relief to applicants and service providers who received funding year (FY) 2019 funding commitment letters (FCLs) after or within 180 days of the invoice filing deadline.² We allow these entities to submit invoices to the Universal Service Administrative Company (USAC) within 180 days from the later of the release date of this Order or the issuance of an FCL by USAC.

II. BACKGROUND

2. The Healthcare Connect Fund Program provides support to eligible health care providers and consortia made up of eligible health care providers for advanced telecommunications and information services, network equipment, and/or facilities necessary for the provision of health care services.³ After an applicant has completed its competitive bidding process, it must file an FCC Form 462 to request a funding commitment for the selected eligible services, network equipment, and/or facilities.⁴ Once the applicant has received a funding commitment from USAC, the service provider has installed or commenced the requested eligible services, equipment, and/or facilities, and the applicant has received a bill from the service provider, the applicant and service provider must jointly submit an FCC Form 463 to USAC for disbursement of funding from the Program for the services, equipment, and/or facilities in the applicant's funding commitment letter.⁵ Pursuant to section 54.645(b) of the Commission’s rules,

¹ 47 CFR § 54.645(b) (2018).

² See Appendix. The Healthcare Connect Fund Program is one of the two programs that comprise the RHC Program.

³ See *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678 (2012) (*Healthcare Connect Fund Order*).

⁴ See 47 CFR § 54.643(a)(1) (2018); FCC Form 462, Rural Health Care Universal Service, Healthcare Connect Fund, Funding Request Form, OMB 3060-0804, https://www.usac.org/wp-content/uploads/rural-health-care/documents/FCC-Forms/Form_462_2019.pdf (last visited Sept. 16, 2020).

⁵ See 47 CFR § 54.645 (2018); FCC Form 463, Rural Health Care Universal Service, Healthcare Connect Fund, Invoice and Request for Disbursement Form, OMB 3060-0804, <https://www.usac.org/wp-content/uploads/rural-health-care/documents/FCC-Forms/FCC-Form-463.pdf> (last visited Sept. 16, 2020).

invoices for the Healthcare Connect Fund Program must be submitted to USAC within six months of the end date of the funding commitment.⁶

3. *RHC COVID-19 Relief Order.* In March 2020, as part of the Commission's continuing efforts to ensure that health care providers have the resources needed to effectively respond to the coronavirus pandemic, we granted relief to RHC Program participants to assist them in addressing the ongoing public health emergency.⁷ The *RHC COVID-19 Relief Order* provided, among of things, an automatic 180-day extension of the invoice filing deadline for FY 2019 Healthcare Connect Fund Program funding requests.⁸ The invoice filing deadline extension was intended to allow health care providers to focus their attention on addressing the influx of patients associated with the COVID-19 pandemic and maintaining care for existing patients without the diversion of near-term RHC Program administrative requirements.⁹ The applicants addressed herein received FCLs with invoice filing deadlines that have lapsed or left the applicants with insufficient time to submit invoices to USAC.

4. *Late funding commitments.* Applicants submitted FCC Form 462 applications for Healthcare Connect Fund Program support to USAC during the application filing window period for FY 2019 (i.e., February 1 to June 30, 2019)¹⁰ to request funding for FY 2019, which ran from July 1, 2019

⁶ See 47 CFR § 54.645(b). Effective FY 2020, the Commission has established a new invoice deadline of 120 days after the later of the service delivery deadline or the date of a revised FCL issued pursuant to an approved post-commitment request or a successful appeal. See *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Report and Order, 34 FCC Rcd 7335, 7423-26, paras. 188-193 (2019).

⁷ See *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 35 FCC Rcd 2922, 2922, para. 1 (WCB 2020) (*RHC COVID-19 Relief Order*). Section 54.645(b) requires that invoices be submitted to USAC within six months of the end of the end date of the funding commitment. 47 CFR § 54.645(b) (2018). The waiver of the invoice filing deadline described in the *RHC COVID-19 Relief Order* applied to Healthcare Connect Fund Program participants only for FY 2019 funding requests. *RHC COVID-19 Relief Order*, 35 FCC Rcd at 2926, n. 33.

⁸ See *RHC COVID-19 Relief Order*, 35 FCC Rcd at 2926, para. 11. In the *RHC COVID-19 Relief Order*, we (1) extended the RHC Program application filing window until June 30, 2020; (2) eased competitive bidding requirements for health care providers with expiring evergreen contracts; and (3) provided an extension of procedural deadlines, such as the response time for USAC information requests, the service delivery deadline, the invoice filing deadline, and the deadline for appeals and requests for waiver. In conjunction with the *RHC COVID-19 Relief Order*, in the *RHC and E-Rate COVID-19 Gift Rules Waiver Order*, we waived both programs' gift rules, which allowed service providers to offer, and for RHC and E-Rate program participants to solicit and accept, improved broadband connections or equipment for telehealth or remote learning during the COVID-19 outbreak without running afoul of Commission rules. See *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, 35 FCC Rcd 2741 (WCB 2020) (waiving sections 54.622(h) and 54.503(d) of the Commission's rules until September 30, 2020) (*RHC and E-Rate COVID-19 Gift Rules Waiver Order*). We further extended the waiver of the RHC and E-Rate Program's gift rules in the *RHC and E-Rate Gift Rule Waiver Extension Order*, which extended the waiver of the gift rules through December 31, 2020. See *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 20-1021 (WCB rel. Sept. 3, 2020) (*RHC and E-Rate Gift Rule Waiver Extension Order*).

⁹ See *RHC COVID-19 Relief Order*, 35 FCC Rcd at 2926, para. 1.

¹⁰ See *Rural Healthcare Support Mechanism*, WC Docket No. 02-60, Order, 35 FCC Rcd 2659, 2659, para. 3 n.1 (2020) (*RHC FY2019 Demand Order*). On May 20, 2019, the Commission extended the FY 2019 application filing window until June 30, 2019 for applicants who submitted upfront or multi-year applications in FY 2018 or have not received an FCL for a FY 2018 funding request by the release date of the Order. See *Rural Healthcare Support Mechanism*, WC Docket No. 02-60, Order, 34 FCC Rcd 4136, 4040-41, para. 13 (2019).

through June 30, 2020.¹¹ USAC reviews applications and issues FCLs on a rolling basis.¹² Despite the invoice deadline extension granted in the *RHC COVID-19 Relief Order*, by the time USAC issued certain FY 2019 FCLs, the applicants' extended invoice filing deadlines had already lapsed, while other applicants had invoice filing deadlines that would lapse within 180 days of receipt of their FCLs. USAC identified specific applicants with funding requests that were committed after or within 180 days of the invoice filing deadline that may also be precluded from submitting invoices by the extended invoice filing deadline.¹³ USAC is still processing funding requests for FY 2019 and continues to issue FY 2019 FCLs; thus, there may be other applicants and service providers that will receive FCLs after the invoicing filing deadline has lapsed or will have insufficient time to submit invoices by the filing deadline.¹⁴

III. DISCUSSION

5. On our own motion, we waive the invoice filing deadline set forth in section 54.645(b) of the Commission's rules¹⁵ for the applicants that received FCLs with either an invoice filing deadline that already lapsed or left applicants with insufficient time to submit invoices before the invoice filing deadline identified in the Appendix. For these applicants and service providers, we direct USAC to set a new invoice filing deadline of the later of 180 days from the release date of this Order or 180 days from the issuance of an FCL. We also direct USAC to conduct outreach as described in this Order.

6. Generally, the Commission's rules may be waived for good cause shown.¹⁶ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹⁷ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of the overall policy on an individual basis.¹⁸ Waiver of the Commission's rules is appropriate only if both (1) special circumstances warrant a deviation from the general rule, and (2) such deviation will serve the public interest.¹⁹

7. We have previously granted waivers of the invoice filing deadline in the RHC Program where a delay in USAC's review of a funding request and subsequent issuance of an FCL precluded the applicant from meeting the invoice filing deadline.²⁰ Based on this precedent, we find that USAC's

¹¹ 47 CFR § 54.675(b) (2018); Funding Year Overview, USAC, <https://www.usac.org/rural-health-care/additional-program-guidance/funding-year-overview/> (last visited Sept. 16, 2020).

¹² See Funding Year Overview, USAC, <https://www.usac.org/rural-health-care/additional-program-guidance/funding-year-overview/> (last visited Sept. 16, 2020).

¹³ See Appendix. The funding request numbers (FRNs) included in the Appendix is a non-exhaustive list of the affected applicants.

¹⁴ See also Funding Year Overview, USAC, <https://www.usac.org/rural-health-care/additional-program-guidance/funding-year-overview/> (last visited Sept. 16, 2020) ("USAC is currently issuing decisions on FY2019 funding requests, and will continue to do so on a rolling basis.").

¹⁵ See 47 § 54.645(b) (requiring that all invoices must be submitted to USAC within six months of the end of the funding commitment). The relief granted herein also waives the invoice filing deadline established in the *RHC COVID-19 Relief Order*, which extended the invoice filing deadline established in Section 54.645(b) by 180 days.

¹⁶ 47 CFR § 1.3.

¹⁷ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

¹⁸ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

¹⁹ *Northeast Cellular*, 897 F.2d at 1166.

²⁰ See *Rural Health Care Support Mechanism*, WC Docket 02-60, Order, 35 FCC Rcd 1986, 1994 (WCB 2020) (*FY 2018 Healthcare Connect Fund Program Invoice Waiver Order*); see also *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 32 FCC Rcd 5065, 5065-66, paras. 2, 4 (WCB 2017) (granting a waiver of the invoice filing deadline when the deadline had already passed at the time that health care providers received USAC's decision, which made compliance with program rules impossible).

issuance of FCLs after or within 180 days of the invoice filing deadline amounts to special circumstances and that the public interest would be served by allowing these applicants and service providers to submit invoices. This issue arose through no fault of the applicants and service providers, and it would be impossible or impracticable to submit invoices by the invoice filing deadline.²¹ A waiver of the invoice filing deadline will not lead to any undue advantage in funding as these applicants and service providers will not receive more funding than allowed under the RHC Program rules. In order to promote administrative efficiency for program participants, the Commission, and USAC, rather than addressing waiver requests on a case-by-case basis, we grant a waiver applicable to all applicants and service providers who received FCLs after or within 180 days of the invoice deadline to save them the burden of filing individual waivers. Additionally, a waiver applicable to all applicants and service providers in this situation provides certainty that they will be able to submit invoices for FY 2019 Healthcare Connect Fund Program funding requests where they have complied with RHC Program rules and would otherwise be precluded from submitting invoices through no fault of their own.

8. We direct USAC to set a new invoice deadline of the later of 180 days from the release date of this Order or 180 days from the date of the FCL. This new invoice filing deadline will allow applicants and service providers time to complete and submit their invoicing forms to USAC and is consistent with RHC Program rules.²² A non-exhaustive list of funding requests that USAC has already identified for which it issued FCLs after or within 180 days of the invoice filing deadline is in the Appendix. Because there are likely funding requests other than those listed in the Appendix that are subject to the relief we provide in this Order, we direct USAC to identify any other applicants and service providers who are subject to the waiver granted herein and extend the invoice filing deadline 180 days from the later of the release date of this Order or the date of the FCL. To ensure that applicants and service providers are aware of their new invoice filing deadlines, we also direct USAC to update the invoice filing deadline and send notifications of the updated invoice filing deadlines within 14 days of the release of this Order for funding requests that have already been committed and within 14 days of the issuance of the FCL for funding requests that have not yet been committed. Although we grant a limited waiver of the Commission's invoice filing deadline, this Order does not alter the obligations of participants in the RHC Program to comply with the Commission's rules.²³

9. We emphasize that the Commission is committed to protecting the RHC Program from waste, fraud, and abuse and ensuring that funds disbursed through the RHC Program are used for appropriate purposes and we find no evidence of waste, fraud, or abuse will result from waiving the invoice filing deadline rule. Although we grant a limited waiver of the Commission's invoice filing deadline rule, this action does not affect the authority of the Commission or USAC to conduct audits or investigations with respect to the funding requests listed in the Appendix or that USAC identifies as qualifying for the relief granted herein to determine compliance with RHC Program rules and requirements. Because audits or investigations may provide information showing that a RHC Program participant failed to comply with the statute or the Commission's rules, such proceedings can reveal instances in which universal service funds were disbursed improperly, or in a manner inconsistent with the statute or the Commission's rules. To the extent that the Commission finds that funds were not used properly, the Commission will require USAC to recover such funds through its normal processes. The Commission retains the discretion to evaluate the use of funds disbursed through the RHC Program and to determine on a case-by-case basis whether waste, fraud, or abuse of program funds occurred, or recovery is warranted. The Commission will continue to aggressively pursue instances of waste, fraud, or abuse under the Commission's procedures and in cooperation with law enforcement agencies.

²¹ *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 32 FCC Rcd 5065, 5065, para. 2 (WCB 2017) (*2017 Rural Health Care Program Invoicing Waiver Order*).

²² 47 CFR § 54.645(b).

²³ See 47 CFR §§ 54.600 *et seq.* (2018).

IV. ORDERING CLAUSES

10. ACCORDINGLY, IT IS ORDERED, that pursuant to the authority contained in sections 1-4, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 254, and 403, and sections 0.91, 0.291, 1.3 and 54.722(a) of the Commission’s rules, 47 CFR §§ 0.91, 0.291, 1.3 and 54.722(a), that this Order IS ADOPTED.

11. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3 and 54.722(a) of the Commission’s rules, 47 CFR §§ 0.91, 0.291, 1.3 and 54.722(a), that section 54.645(b) of the Commission’s rules, 47 CFR § 54.645(b), IS WAIVED to the limited extent provided herein.

12. IT IS FURTHER ORDERED, pursuant to section 1.103(a) of the Commission’s rules, 47 CFR § 1.103(a), that this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Ryan B. Palmer
Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

Appendix

Funding Commitment Letters Issued with Lapsed Invoice Filing Deadline or Within 180 Days of the Invoice Filing Deadline

HCP No.	HCP Name	FRN	SPIN	Service Provider Name	FCL Date	Invoice Deadline Listed on FCL
25528	Carondelet Health Center	19635471	143021460	Centurylink Level 3 Communications, LLC	7/16/2020	1/6/2020
57429	Tennessee Telehealth Consortium	19644181	143001639	Tellico Telephone Company, Inc.	7/6/2020	1/31/2020
32287	Ascension Medical Group At Kiel	19635971	143048275	Time Warner Cable Business LLC	7/16/2020	2/12/2020
31990	Mchs In New Prague New – Prague Hospital	19552751	143002116	Consolidated Communications of Minnesota Company	7/9/2020	2/16/2020
32857	Mclaren Health Care – Mclaren Lapeer Region	19645731	143025928	Us Signal Company, LLC	7/30/2020	3/3/2020
11266	Munson Medical Center	19651101	143049465	Everstream GLC Holding Company LLC	7/23/2020	5/29/2020
11268	Munson Medical Center	19660971	143049465	Everstream GCL Holding Company LLC	7/23/2020	5/29/2020
49488	Mountain States Health Alliance	19611411	143050436	Charter Communications Operating LLC	8/13/2020	1/3/2020
12513	Phelps Memorial Health Center	19645781	143050436	Charter Communications Operating LLC	8/6/2020	1/28/2020
13679	Long Valley Health Center	19623841	143031579	Ena Healthcare Services, LLC	8/27/2020	1/31/2020
59497	Gibson – Brink’s Family Practice	19643221	143048275	Time Warner Cable Business LLC	8/31/2020	2/29/2020
54401	Goshen Medical Center - Southport	19510451	143001157	Centurylink Quest Communications Company, LLC	8/20/2020	3/1/2020
11268	Munson Medical Center	19661691	143050436	Charter Communications Operating LLC	8/20/2020	3/28/2020
34046	Tift Regional Medical Center Dba Ben Hill Specialty Clinic	19542341	143029836	Mcc Telephony, LLC	8/27/2020	3/31/2020
14224	North Shore Medical Clinic – Algoma	19631881	143001192	AT&T Corp.	8/13/2020	4/8/2020
24510	Munson Healthcare Boyne Area Health Center	19640261	143049465	Everstream Gcl Holding Company, LLC	8/20/2020	4/30/2020
60432	Goshen Medical Center - Vineland	19510391	143001157	Centurylink Qwest Communications Company, LLC	5/21/2020	2/29/2020

51819	UPMC Pinnacle	19544911	143003990	Comcast Business Communications	5/28/2020	2/18/2020
59996	Adventist Health System (Florida)	19554291	143050436	Charter Communications Operating LLC	3/19/2020	1/3/2020
59996	Adventist Health System (Florida)	19554361	143001444	Centurylink-Embarq Florida, Inc. (fka Embarq)	6/12/2020	1/3/2020
49488	Mountain States Health Alliance	19561991	143001420	Centurylink United Telephone-Southeast, Inc. (fka Embarq)	6/12/2020	1/21/2020
47555	Livingston Community Health Consortium	19626261	143042955	Corcom Communications, Inc.	2/13/2020	3/12/2020
38352	Cross Timbers Community Health Center	19637251	143031579	Ena Healthcare Services, LLC	2/13/2020	3/24/2020
33823	Catholic Health Initiatives	19665971	143009090	Interfacing Company Of Texas	6/4/2020	1/1/2020
30885	Tift Regional Health System DbA Southwell Medical	19660111	143034928	Plant Tiftnet, Inc.	2/20/2020	3/30/2020
15157	Atrium Health Carolinas Healthcare System – Anson Community Hospital	19538621	143050436	Charter Communications Operating, LLC	6/28/2020	1/6/2020
26202	Knox County Hospital District	19585511	143030766	Windstream Communications, LLC	8/6/2020	6/30/2020
10767	Lawrence Memorial Health Foundation	19556821	143001102	TCA Communications, LLC	8/27/2020	6/30/2020
44911	Dearborn County Hospital – The Center For Women and Children	19496471	143005254	Centurylink United Telephone Co. of Indiana (fka Embarq)	8/13/2020	6/26/2020
32420	Dearborn County Surgery	19496441	143005254	Centurylink United Telephone Co. of Indiana (fka Embarq)	8/13/2020	6/26/2020
51827	Providence St. Joseph Health Consortium	19606921	143023855	Zayo Group, LLC	8/6/2020	6/15/2020
45773	Fhs Heart & Vascular Institute	19497251	143001192	AT&T Corp.	8/13/2020	6/15/2020
25721	Prov – Hood River Memorial Hospital	19517781	143011100	Gorge Networks	8/27/2020	6/11/2020
13911	Neosho Memorial Regional Medical Center	19588461	143004662	Southwestern Bell Telephone Company	8/27/2020	5/18/2020