

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: October 19, 2020

Released: October 19, 2020

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. Telehealth and telemedicine services function as critical tools for the delivery of health care to rural America. Using connectivity to bridge the oftentimes vast geographic distances that separate health care facilities, telehealth services enable the delivery of high-quality medical care without costly and burdensome travel. Given telehealth’s efficacy and convenience, demand for these services is understandably rising, particularly following the onset and rapid spread of the coronavirus (COVID-19) pandemic. Health care providers across all parts of the country are increasingly relying on telehealth technologies to respond to the sweeping impact of COVID-19.¹

2. The Commission’s Rural Health Care universal service program promotes telehealth by providing financial support to eligible health care providers for broadband and other communications services. The Commission has previously taken steps to ensure that funding for the Rural Health Care (RHC) Program matches the growing demand for telehealth services, including by adjusting the program’s budget annually for inflation and allowing unused funds from prior funding years to carry over for use in the next funding year to address demand.² These steps are working, as evidenced by the fact that available RHC Program funding exceeds overall demand for funding year (FY) 2020, thereby making the full funding of all FY2020 funding requests possible.³ However, absent a waiver, a cap on support applicable to funding requests involving upfront payments and multi-year commitments, intended to prevent these types of requests from consuming too much support, would nevertheless preclude full funding.

3. Today we waive, on our own motion and consistent with Commission precedent, section 54.619(a) of the Commission’s rules to eliminate the cap on upfront payments and multi-year commitments for FY 2020 to ensure that all RHC Program requests for support can be funded in full. This waiver responds to the unique set of circumstances presented by COVID-19. The far-reaching effects of the pandemic lead us to conclude that funding all RHC Program requests in full will promote the public interest by enabling the widespread delivery of vital communications-based health care during the pandemic.

¹ See, e.g., mHealth Intelligence, *COVID-19 Gives Providers a Blueprint for New Telehealth Strategies* (May 18, 2020) <https://mhealthintelligence.com/features/covid-19-gives-providers-a-blueprint-for-new-telehealth-strategies>.

² *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Report and Order, 33 FCC Rcd 6574 (2018).

³ Letter from Mark Sweeney, Vice President, Rural Health Care and Shared Services, USAC, to Ryan Palmer and Bryan Boyle, Wireline Competition Bureau, FCC (Oct. 19, 2020) (on file in WC Docket No. 02-60) (USAC FY 2020 Demand Letter).

II. BACKGROUND

4. The RHC Program consists of two component mechanisms: (1) the Telecommunications Program, which permits eligible health care providers to apply for discounts to defray the high cost of eligible telecommunications services in rural areas; and (2) the Healthcare Connect Fund Program, which supports the delivery of broadband services by offering a discount on an array of advanced telecommunications and information services.⁴ The Healthcare Connect Fund Program encourages the development of state and regional health care networks by allowing health care consortia to request support for the upfront costs of deploying broadband infrastructure and seeking funding for multi-year contracts.⁵

5. Support available through the RHC Program is subject to an annual cap, which is adjusted each funding year for inflation.⁶ The funding cap for FY 2020 is \$604.76 million.⁷ On June 30, 2020, the Wireline Competition Bureau (Bureau) announced that \$197.98 million in unused funds from prior funding years was available for use in future funding years, and directed the Universal Service Administrative Company (USAC) to carry forward up to that amount to the extent necessary to satisfy FY 2020 RHC Program demand as of the close of the funding year filing window on June 30, 2020.⁸ The combination of the inflation-adjusted funding cap and carried-forward funding means that there is a total of \$802.74 million in available RHC Program funding for FY 2020.

6. Regardless of the total RHC Program funding for a particular year, the support available for upfront payments and multi-year commitments through the Healthcare Connect Fund Program is subject to its own inflation-adjusted cap, which is \$152.7 million for FY 2020.⁹ This funding cap safeguards against large annual fluctuations in RHC Program demand by ensuring that upfront payments

⁴ *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Order, 34 FCC Rcd 7335, 7337, para. 4 (2019) (*Promoting Telehealth Report and Order*).

⁵ See *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678, 16699-700, paras. 45-46 (2012) (*Healthcare Connect Fund Order*); 47 CFR § 54.616(a) (“Upfront payments include all non-recurring costs for services, equipment, or facilities, other than reasonable and customary installation charges of up to \$5,000.”). Sites in non-rural areas are eligible for RHC Program support only to the extent that they are part of a Healthcare Connect Fund Program-eligible consortium and the overall percentage of rural sites in the consortium is above a designated percentage threshold. 47 CFR § 54.607(b). The percentage threshold is 50%, but increases by 5% for the following funding year (up to a maximum of 75%) if the Commission must prioritize funding for a given year because RHC Program demand exceeds the funding cap. *Id.* The percentage increase is only triggered when demand exceeds the cap applicable to the RHC Program as a whole and not when demand exceeds the cap applicable to upfront payments and multi-year commitments. See *id.* (explaining that the percentage threshold will increase for the following funding year if the Commission prioritizes funding “because Rural Health Care Program demand exceeds the funding cap.”). Accordingly, the majority rurality percentage threshold for FY 2021 will 50%.

⁶ 47 CFR § 54.619(a). The RHC Program funding year runs from July 1 to June 30 of the subsequent funding year.

⁷ *Wireline Competition Bureau Announces E-Rate and RHC Programs’ Inflation-Based Caps for Funding Year 2020*, CC Docket No. 02-6, WC Docket No. 02-60, Public Notice, 35 FCC Rcd 2062, 2063 (WCB 2020) (*FY 2020 Program Cap Public Notice*).

⁸ *Wireline Competition Bureau Announces the Availability of Unused Funds to Increase Rural Health Care Program Funding for Funding Year 2020*, WC Docket No. 02-60, Public Notice, 35 FCC Rcd 6600 (WCB 2020). Section 54.619(a)(5) of the Commission’s rules directs the Bureau, in consultation with the Office of the Managing Director, to determine the proportion of unused funds to use in subsequent funding years. See 47 CFR § 54.619(a)(5).

⁹ *FY 2020 Program Cap Public Notice*, 35 FCC Rcd at 2063. Support for multi-year commitments is limited to a maximum of three funding years. 47 CFR § 54.620(c).

and multi-year commitments do not inhibit the availability of single-year payments to health care providers for recurring services.¹⁰

7. *Funding Year 2020 Program Demand.* According to USAC, total RHC Program demand for FY 2020 is \$670.14 million, which includes \$648.24 million in gross demand for all program funding requests during the funding year's single application filing window.¹¹ Thus, the available RHC Program funding of \$802.74 million exceeds total demand by \$132.6 million for FY 2020. Of the \$648.24 million in requested support, \$195.46 million represents applications seeking support for upfront payments and multi-year commitments in the Healthcare Connect Fund.¹² This amount exceeds the upfront and multi-year payment cap of \$152.7 million by \$42.76 million. Given this overage, full funding of eligible requests from Healthcare Connect Fund consortia applicants comprised of eligible rural and non-rural health care providers is not possible absent action by the Commission.

8. *COVID-19.* The COVID-19 pandemic has placed considerable demands on the delivery of health care across the country, particularly in rural America.¹³ Experience has shown that these demands can be reduced in part by enhanced telehealth availability.¹⁴ The Commission already has taken several significant steps to bolster the ability of health care providers to employ telehealth in response to COVID-19, including by establishing the \$200 million COVID-19 Telehealth Program,¹⁵ temporarily waiving the RHC Program gift rules,¹⁶ extending the program's application filing window, easing

¹⁰ See *Healthcare Connect Fund Order*, 27 FCC Rcd 16678, 16801-02, paras. 296, 298 ("This cap takes into account the need for economic reasonableness and responsible fiscal management of the program . . .").

¹¹ USAC FY 2020 Demand Letter. The balance of \$21.9 million reflects USAC's projected administrative expenses. *Id.* Administrative costs are paid as part of the RHC Program budget. See, e.g., *Federal-State Joint Board Monitoring Reports, 2019 Universal Service Monitoring Report*, at 22, Table 1.11 (2019) (rel. Feb. 4, 2020) <https://www.fcc.gov/general/federal-state-joint-board-monitoring-reports>.

¹² USAC FY 2020 Demand Letter.

¹³ See U.S. Department of Health & Human Services, *Rural Health and COVID-19* (updated Aug. 19, 2020) <https://files.asprtracie.hhs.gov/documents/aspr-tracie-rural-health-and-covid-19.pdf> ("Many rural communities are experiencing increases in COVID-19 cases and similar challenges as are urban areas, but rural healthcare systems also face unique considerations compared to their urban counterparts.").

¹⁴ See Centers for Disease Control and Prevention, *Using Telehealth to Expand Access to Essential Health Services during the COVID-19 Pandemic* (last updated June 10, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/hcp/telehealth.html> ("Many professional medical societies endorse telehealth services and provide guidance for medical practice in this evolving landscape. Telehealth can also improve patient health outcomes.").

¹⁵ See *Promoting Telehealth for Low-Income Consumers, COVID-19 Telehealth Program*, WC Docket Nos. 18-213 and 20-89, Report and Order, 35 FCC Rcd 3366 (2020) (establishing the COVID-19 Telehealth Program to implement the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which among other actions, provided \$200 million in funding to the Commission to support eligible telecommunications services, information services, and connected devices for health care providers responding to the pandemic).

¹⁶ 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) (temporarily waiving sections 54.603(b), 54.611(b)(2), 54.622(h)(1), 54.623(a)(1)(vi), 54.627(c)(3)(ii)(H), and 54.627(d)(1)(ii)(F) of the Commission's rules); see also *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 Sept. 3, 2020) (extending the gift rule waiver and response time for USAC information requests through December 31, 2020).

competitive bidding requirements for health care providers with evergreen contracts, and extending several program procedural deadlines.¹⁷ Our decision today builds upon these efforts.

III. DISCUSSION

9. Consistent with Commission precedent,¹⁸ we waive the \$152.7 million cap on upfront payment and multi-year commitments in section 54.619(a) of the Commission's rules to permit all FY 2020 eligible requests to be funded in full.¹⁹ The Commission's rules may be waived for good cause shown.²⁰ The Commission may generally exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.²¹ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.²² Waiver of the Commission's rules is appropriate if both: (1) special circumstances warrant a deviation from the general rule; and (2) such deviation will serve the public interest.²³ For the reasons stated below, we find good cause exists to grant this limited waiver of our rules.

10. The Commission established a cap on upfront payments and multi-year commitments in the Healthcare Connect Fund to ensure "economic reasonableness and responsible fiscal management of the program" and help prevent "large annual fluctuations in program demand."²⁴ More specifically, the cap prevents the large, upfront costs of broadband construction and long-term investments from foreclosing the ability of health care providers to use RHC Program funding to obtain recurring services over the course of a particular funding year.²⁵ The protections built into the cap, however, are not required for FY 2020 because all eligible recurring services requested by health care providers can be fully funded given the current year's surplus of funding over demand. Thus, waiving the FY 2020 funding cap will not in any way limit the funding for eligible recurring services purchased by these health care providers.

11. In normal circumstances when demand exceeds the upfront and multiyear cap, it would be appropriate to apply the cap so as to preserve funds for future years, through the carryover mechanism, so that sufficient support will be available for single-year funding requests. Applying this cap also helps to even out demand fluctuations and make the program economically reasonable.²⁶ The Commission, however, previously waived the cap to allow for full funding of all requests in a given funding year where (1) sufficient funding was available to fully fund all requests for support, and (2) where waiver did not impede the underlying purposes served by the cap.²⁷ These are the circumstances presented by FY 2020. Available RHC Program funding exceeds demand for FY 2020, thereby making it possible to fully fund all eligible program requests. And as explained above, no request for single-year recurring support will

¹⁷ See *Rural Health Care Support Mechanism*, WC Docket No. 02-60, 35 FCC Rcd 2922 (WCB 2020) (temporarily waiving sections 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).

¹⁸ See *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 35 FCC Rcd 2659 (2020) (*FY 2019 Waiver Order*) (waiving the upfront payment and multi-year commitment funding cap for FY 2019).

¹⁹ 47 CFR § 54.619(a).

²⁰ 47 CFR § 1.3.

²¹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

²² *WAIT Radio*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

²³ *Northeast Cellular*, 897 F.2d at 1166.

²⁴ *Healthcare Connect Fund Order*, 27 FCC Rcd at 16802, para. 298.

²⁵ *Id.* at 16713, para. 75.

²⁶ See *Healthcare Connect Fund Order*, 27 FCC Rcd at 16802, para. 298.

²⁷ See *FY 2019 Waiver Order*, 35 FCC Rcd at 2664, para. 13.

be affected by the waiver of section 54.619(a), thereby preserving the purpose of the cap. Commission precedent therefore supports the limited action we take today.

12. We also conclude that the public interest strongly favors putting the excess available RHC Program funding to use this funding year rather than rolling it over for use in future years. The once-in-a-century impact of the COVID-19 pandemic has placed the country's health care system under tremendous and uncommon strain.²⁸ Health care providers in rural America, which lack the medical resources more widely available in more populous areas of the country, have been particularly hard hit, especially as caseloads of infected patients rise.²⁹ Fully funding the consortia that link rural health care providers with eligible non-rural health care providers can offer many critical forms of relief, including enhanced access to specialists in urban areas, the exchange of electronic health records, and the cost benefits of bulk buying and aggregated administrative functions.³⁰ Accordingly, we find that a limited waiver of section 54.619(a) and its \$152.7 million funding cap applying only to upfront and multi-year requests filed during the FY 2020 application window will serve the public interest by providing rural communities with additional tools and improved capabilities to address the challenges posed by COVID-19.³¹

²⁸ See, e.g., American Hospital Association, *Hospitals and Health Systems Face Unprecedented Financial Pressures Due to COVID-19* (May 2020), <https://www.aha.org/guidesreports/2020-05-05-hospitals-and-health-systems-face-unprecedented-financial-pressures-due>.

²⁹ See, e.g., University of Southern Mississippi, *Public Health Professionals Feel Strain Created by COVID-19* (Aug. 17, 2020) <https://www.usm.edu/news/2020/release/health-professionals-feel-strain-covid19.php> (explaining that the COVID-19 crisis “has stretched public healthcare professionals to their limits and created a massive strain on hospitals – particularly the rural ones that dot South Mississippi landscape.”); NPR, *Rural Hospitals Are Sinking Under COVID-19 Financial Pressures* (Aug. 22, 2020) <https://www.npr.org/sections/health-shots/2020/08/22/904455215/rural-hospitals-are-sinking-under-covid-19-financial-pressures> (“As COVID-19 continues to spread, an increasing number of rural communities in the U.S. find themselves without their hospitals or on the brink of losing already cashed-strapped facilities.”).

³⁰ See *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7336-37, paras. 2-5 (noting the importance of telehealth services delivered to rural communities via the eligible services supported by the Healthcare Connect Fund Program, including the ability to connect patients with general medical practitioners and specialists and to exchange electronic medical records); *Healthcare Connect Fund Order*, 27 FCC Rcd at 16699, para. 45 (listing the benefits of health care networks, including access to specialists, cost savings from bulk buying capability and aggregation of administrative functions, efficient network design, and the transfer of medical, technical, and financial resources to smaller health care providers).

³¹ We recognize that absent this waiver excess FY 2020 funding could be applied to a subsequent funding year or returned to the Universal Service Fund, thereby potentially reducing the contribution factor in the future. See 47 CFR § 54.619(a)(5). We conclude that the benefits to rural health care providers and their patients, especially in light of the ongoing pandemic, clearly outweigh the minimal impact this could have on future contributions.

IV. ORDERING CLAUSES

13. ACCORDINGLY, IT IS 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, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, that section 54.619(a) of the Commission's rules, 47 CFR § 54.619(a), IS WAIVED to the limited extent provided herein.

14. 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