

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 9, 2020

Released: March 9, 2020

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

I. INTRODUCTION

1. In this Order, we waive, sua sponte, the Healthcare Connect Fund Program invoice filing deadline in section 54.645(b) of the Commission's rules to provide relief to applicants and service providers who either received funding commitment letters (FCLs) with the incorrect invoice filing deadline or did not receive FCLs in time to submit invoices before the invoice filing deadline. Specifically, we allow the applicants and the service providers who received the FCLs with incorrect invoice filing deadlines and whose invoice deadlines have already lapsed to submit invoicing forms to the Universal Service Administrative Company (USAC) within 180 days from the release date of this Order if they have not yet done so and to retain the funding already disbursed for the funding requests at issue if they have already submitted invoices. Additionally, we allow those applicants and service providers who did not receive Funding Year (FY) 2018 FCLs in time to submit invoicing forms to USAC to submit invoices within 180 days from the release date of this Order.

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. Only eligible consortium applicants may seek upfront payments for broadband services. The Commission's rules require consortium applicants to prorate support requested for upfront payments for at least three years if, on average, more than \$50,000 in upfront payments is requested per health care provider site, which results in a three-year funding commitment.

3. Invoices must be submitted to USAC within six months of the end date of the funding commitment. For example, a FY 2017 funding request with a three-year funding commitment would

1 47 CFR § 54.645(b) (2018).

2 See Appendices A, B and C. The Healthcare Connect Fund Program is one of the two programs that comprises the Rural Health Care 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 § 54.638(b)(2) (2018).

5 See 47 CFR § 54.638(c) (2018).

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-

(continued....)

have an invoice filing deadline of December 31, 2020 because its funding commitment end date would be June 30, 2020, and the deadline is six months from the end of the funding commitment. In contrast, a FY 2017 funding request with a one-year commitment would have an invoice deadline of December 31, 2018 because December 31, 2018 is six months from June 30, 2018, the end date of the funding commitment.

4. *Incorrect invoice dates.* In March 2019, USAC discovered that its Rural Health Care Program system erroneously assigned a uniform invoice filing deadline of three years and six months from the funding start date to *all* consortium applicants that sought support for upfront payments, rather than just to those consortium applicants whose upfront payments exceeded an average of \$50,000 per health care provider site and were required to be prorated over at least three years.⁷ Due to this error, consortium applicants with upfront payments that were less than \$50,000 per health care provider site received FCLs indicating that their invoice deadline was three and half years from their service start date even though their actual invoice filing deadline was only one and a half years from their service start date.

5. Because USAC's Rural Health Care Program system reflected the incorrect invoice filing deadlines, it permitted these applicants and their service providers to submit invoices and receive payment for the services well after the invoice filing deadline established by the Commission's rules. By the time USAC discovered this system error, the correct invoice filing deadlines had already passed for the funding requests listed in Appendix A, leaving these consortium applicants and service providers with no time available to invoice for the requested services based on the correct invoice filing deadlines.⁸ Without a waiver, they would not be able to submit invoices and will not be able to receive their available funding for these funding requests. Appendix B lists the consortium applicants and service providers whose correct invoice filing deadlines have already lapsed but who received an incorrect future invoice deadline on their FCLs and have already received disbursements from USAC.⁹ Without a waiver, these consortium applicants and service providers would be required to return funding disbursed for invoices submitted after the correct invoice filing deadline.

6. *Late funding commitments.* Other applicants submitted FCC Form 462 applications for Healthcare Connect Fund Program support to USAC during the filing window period for FY 2018 (i.e., February 1, 2018 through June 29, 2018) and requested partial year funding commitments with services ending between July 2018 and June 2019.¹⁰ USAC began to issue FCLs on a rolling basis in November 2018, after reviewing an unprecedented number of funding applications.¹¹ By the time USAC issued these FCLs, however, some of the applicants' invoice filing deadlines had already passed, while others had invoice deadlines that would lapse within six months of receipt of their FCL. Consequently, the applicants listed in Appendix C were precluded from completing and submitting their FY 2018 invoicing forms to USAC or did not have sufficient time to do so.

III. DISCUSSION

7. We waive the invoice filing deadline set forth in section 54.645(b) of the Commission's rules for the applicants listed in Appendices A and B because they received an incorrect invoice filing deadline in their FCLs from USAC and for the applicants listed in Appendix C because they did not

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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 47 CFR § 54.638 (2018).

⁸ See Appendix A.

⁹ See Appendix B.

¹⁰ See Appendix C.

¹¹ See USAC, Rural Health Care Program, Healthcare Connect Fund Program, Latest News, Newsletter for December 2018 (Dec. 17, 2018), http://www.icontact-archive.com/TfWiFvrku1_Lm6RfjSIRP08YzNeKwYBP?w=4 (last visited Mar. 9, 2020).

receive their FCLs with sufficient time to submit invoices before the invoice deadline. We direct USAC to set a new invoice filing deadline of 180 days from the release of this Order for the applicants and service providers listed in Appendices A and C and to conduct outreach as described in this Order.

8. Generally, the Commission's rules may be waived for good cause shown.¹² The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹³ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁴ 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.¹⁵

9. We have previously granted waivers of the invoice filing deadline where technical issues beyond the applicants' or service providers' control prevented them from meeting the invoice filing deadline.¹⁶ We have also granted a waiver of the service implementation and invoicing deadlines in the E-Rate Program where USAC's IT system calculated the incorrect service delivery and invoice filing deadlines and included the incorrect invoicing deadline on the funding commitment decision letters.¹⁷ Consistent with this precedent, we find that the USAC's listing an incorrect invoice filing deadline due to a system error and USAC's issuance of FCLs within six months of the invoice filing deadline amounts to special circumstances and that the public interest would be served by allowing these applicants to receive disbursements for the requested services and equipment when they relied upon incorrect invoice filing

¹² 47 CFR § 1.3.

¹³ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

¹⁴ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

¹⁵ *Northeast Cellular*, 897 F.2d at 1166.

¹⁶ See *Requests for Waiver or Review of Decision of the Universal Service Administrator by Indiana Telehealth Network*, WC Docket No. 02-60, Order, 33 FCC Rcd 12341, 12342, para. 4 (WCB 2018) (*Indiana Telehealth Network Order*) (granting one request for review and waiver where the petitioner demonstrated that it was unable to file the Healthcare Connect Fund Program invoice form on a timely basis due to a USAC technical system issue that prevented the filing of the invoice form); *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*) (granting a limited waiver of the Healthcare Connect Fund Program invoice deadline where USAC issued funding commitment letters late and some of the applicants' invoicing deadlines had already passed, while others were set to expire less than six months later); *Rural Health Care Support Mechanism*, WC Docket 02-60, Order, 30 FCC Rcd 1063, 1064-65, paras. 4-5 (WCB 2015) (*Healthcare Connect Fund Invoice Deadline Order*) (granting a limited waiver of the Healthcare Connect Fund Program invoice filing deadline due to USAC filing system deficiencies beyond the control of some applicants and service providers that prevented them from meeting the invoice deadline); *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 33 FCC Rcd 2042, 2044-45, para. 6 (WCB 2018) (finding that extraordinary circumstances exist to grant a waiver of the invoice deadline "when applicants and service providers have made every attempt to comply with the invoice deadline rules, but were blocked from timely completing the invoicing process because a predicate request or function had not been completed (or could not be completed) by USAC's systems"); see also *Wireline Competition Bureau Extends Deadline for E-Rate Participants to Request Invoice Deadline Extensions*, CC Docket No. 02-6, Public Notice, 31 FCC Rcd 11924 (WCB 2016) (extending the invoice filing deadline in order to provide E-Rate participants with additional time to file their invoice deadline extension requests due to USAC technical system issues that prevented participants from timely filing their requests).

¹⁷ See *Schools and Libraries Universal Service Support Mechanism*, CC Docket 02-6, Order, 34 FCC Rcd 1015, 1018, para. 8 (WCB 2019) (*2019 E-Rate Invoice Deadline Waiver Order*) (granting a limited waiver to certain E-Rate applicants extending the service implementation date to the erroneous date provided on USAC's funding commitment decision letters and providing 90 additional days to invoice for the services).

deadlines provided to them based on USAC system errors that were beyond their control.¹⁸ Moreover, a waiver of the invoice filing deadline will not lead to any undue advantage in funding as these applicants will not receive more funding than allowed under the Rural Health Care Program rules.¹⁹ By providing this limited waiver for the funding requests at issue in this Order, we ensure that otherwise eligible health care providers receive and are able to retain the funding they need to provide telehealth services to the communities they serve.

10. We grant a waiver of the invoice filing deadline to permit the applicants listed in Appendix A, who received an incorrect invoice deadline applicable to a three-year commitment even though their funding commitments were only one year, and the applicants listed in Appendix C, who did not receive their FCLs with sufficient time to complete invoicing, to submit invoices and direct USAC to set a new invoice deadline of 180 days after the release of this Order. A new invoice filing deadline 180 days from the release of this Order will allow the applicants and service providers time to complete and submit their invoicing forms to USAC.²⁰ To ensure that applicants and service providers are aware of their new invoice filing deadlines, we direct USAC to send them notifications of their new invoice filing deadlines within 14 days of the release of this Order.

11. For similar reasons, we also waive the invoice filing deadline for the funding requests identified in Appendix B and allow the applicants and the service providers associated with these funding requests to retain all disbursed funding associated with invoices submitted after the correct invoice filing deadline date.²¹ We find that these applicants and service providers submitted their invoices consistent with the invoice filing deadlines provided in their FCLs by USAC's system.²²

12. USAC has addressed the system error that caused these consortium applicants to receive an erroneous invoice filing deadline. Accordingly, we anticipate that consortium applicants requesting upfront payments will be provided the correct invoice filing deadline going forward. Thus, we limit the waiver and relief granted here only to the funding requests listed in Appendices A, B, and C. Although we grant a limited waiver of the Commission's invoice filing deadline, this Order does not alter the obligations of participants in the Rural Health Care Program to comply with the Commission's rules.²³

13. We emphasize that the Commission is committed to guarding against waste, fraud, and abuse and ensuring that funds disbursed through the Rural Health Care 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

¹⁸ See also *2019 E-Rate Invoice Deadline Order*, 34 FCC Rcd at 1018, para. 7 (finding that the public interest would not be served if the affected parties lost the universal service funding because they relied on and complied with the incorrect invoice deadlines based on USAC system error which was beyond their control).

¹⁹ See, e.g., *2019 E-Rate Invoice Deadline Waiver Order*, 34 FCC Rcd at 1018, para. 7 (finding that a waiver of the E-Rate invoice filing deadline would not provide an unfair funding advantage for applicants and service providers as those entities would only receive funding that was already approved and committed for their eligible funding requests).

²⁰ See *Indiana Telehealth Network Order*, 33 FCC Rcd at 2809, para. 4. But see *2019 E-Rate Invoice Deadline Waiver Order*, 34 FCC Rcd at 1018, para. 8 (granting a waiver in the E-Rate Program to extend the service delivery deadline for special construction to the incorrect deadline listed on USAC notifications when the correct and incorrect deadlines on the notifications were only 90 days apart). We decline to set a new invoice filing deadline that matches the incorrect deadline indicated on the FCLs because those deadlines are several years beyond the correct deadline and using those deadlines would unnecessarily delay the invoicing process.

²¹ See Appendix B.

²² See, e.g., *2019 E-Rate Invoice Deadline Waiver Order*, 34 FCC at 1021-22, para. 6.

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

action does not affect the authority of the Commission or USAC to conduct audits or investigations with respect to the funding requests listed in Appendices A, B, and C to determine compliance with Rural Health Care Program rules and requirements. Because audits or investigations may provide information showing that a Rural Health Care 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 Rural Health Care 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.

IV. ORDERING CLAUSES

14. 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.

15. 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.

16. 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 A
Incorrect Invoice Deadline Listed on FCL
Funding Not Disbursed

HCP #	HCP Name	FRN	SPIN	Service Provider Name	Incorrect Invoicing Deadline (on FCL)	Correct Invoicing Deadline
17225	HealthNet Connect	1678783	143035006	Nebraska Link LLC	12/31/2020	12/31/2017
34237	Eastern Kansas Health Network	1687369	143014302	Paragon Development Systems Inc.	12/31/2020	12/31/2017
17212	Colorado Telehealth Network	1688519	143033565	EDI, Ltd	12/31/2020	12/31/2017
17225	HealthNet Connect	1688833	143003005	State of Iowa, Iowa Telecommunication & Technology Commission	12/31/2020	12/31/2017
17206	UAMS e-Link Network	1693148	143022896	Brocade Communications Systems, Inc.	12/31/2020	12/31/2017
17206	UAMS e-Link Network	1694562	143048970	General Datatech, L.P.	12/31/2020	12/31/2017
17223	Illinois Rural HealthNet	1697109	143027274	Telamon Corporation	12/31/2020	12/31/2017
17225	HealthNet Connect	1698447	143029868	Unite Private Networks, LLC	12/31/2020	12/31/2017
17225	HealthNet Connect	1698505	143031354	Great Plains Communications Netlink, Inc	12/31/2020	12/31/2017
35632	CDCR CCHCS Consortium	1727937	143001192	AT&T Corp.	12/31/2021	7/29/2018
17234	New England Telehealth Consortium	1725585	143048275	Time Warner Cable Business LLC	12/31/2021	8/6/2018
39261	Kentucky Telehealth Consortium	1727689	143004779	Logicalis Inc	12/31/2021	12/22/2018
38493	CommunityHealth IT	1727174	143050261	New River Technology LLC	12/31/2021	12/26/2018
43399	Choctaw Nation Health Services Authority	1727433	143030284	MNJ Technologies Direct, Inc.	12/31/2021	12/27/2018
17234	New England Telehealth Consortium	1727444	143030494	Workgroup Technology Partners	12/31/2021	12/28/2018
50590	Russell County Consortium	1713836	143026997	Advanced Global Communications	12/31/2021	12/31/2018
50590	Russell County Consortium	1713962	143049885	Park Place International, LLC	12/31/2021	12/31/2018
44495	INTEGRIS TeleHealth Network	1715367	143015315	Presidio Networked Solutions LLC	12/31/2021	12/31/2018

17234	New England Telehealth Consortium	1721882	143030494	Workgroup Technology Partners	12/31/2021	12/31/2018
17206	UAMS e-Link Network	1722125	143022896	Brocade Communications Systems, Inc.	12/31/2021	12/31/2018
17206	UAMS e-Link Network	1722963	143048970	General Datatech, L.P.	12/31/2021	12/31/2018
17223	Illinois Rural HealthNet	1724691	143030677	Integration Partners Corporation	12/31/2021	12/31/2018
33832	Kansas Health-e Broadband Consortium	1725081	143028558	Nex-Tech, LLC	12/31/2021	12/31/2018
17206	UAMS e-Link Network	1725770	143022896	Brocade Communications Systems, Inc.	12/31/2021	12/31/2018
38493	CommunityHealth IT	1725779	143005588	CDW Government LLC	12/31/2021	12/31/2018
50049	Trinity Health Consortium	1725783	143027247	Syringa Networks, LLC.	12/31/2021	12/31/2018
17206	UAMS e-Link Network	1726144	143022896	Brocade Communications Systems, Inc.	12/31/2021	12/31/2018
38493	CommunityHealth IT	1726214	143004824	BellSouth Telecommunications, LLC	12/31/2021	12/31/2018
17268	Western New York Rural Area Health Education Center, Inc.	1726599	143046641	Netanium, Inc.	12/31/2021	12/31/2018
44835	Lakewood Health Systems Consortium	1726825	143005588	CDW Government LLC	12/31/2021	12/31/2018
17226	Iowa Rural Health Telecommunications Program	1727902	143003005	State of Iowa, Iowa Telecommunication & Technology Commission	12/31/2021	12/31/2018
17243	Palmetto State Providers Network	1698302	143032515	FRC, LLC	12/31/2020	8/11/2019
17243	Palmetto State Providers Network	1727106	143032515	FRC, LLC	12/31/2021	8/11/2019
17234	New England Telehealth Consortium	1725792	143015315	Presidio Networked Solutions LLC	12/31/2021	5/24/2020

Appendix B
Incorrect Invoice Deadline Listed on FCL
Funding Disbursed

HCP #	HCP Name	FRN	SPIN	Service Provider Name	Incorrect Invoicing Deadline (on FCL)	Correct Invoicing Deadline
17241	OCHIN, Inc.	1342427	143027621	Charter Fiberlink OR-CCVII, LLC	12/31/2016	12/31/2014
35632	CDCR CCHCS Consortium	1349789	143007368	Nexus IS, Inc.	12/31/2016	12/31/2014
17225	HealthNet Connect	1688833	143003005	State of Iowa, Iowa Telecomm & Technology Commission	12/31/2020	12/31/2017
17264	Utah Telehealth Network	1697755	143011994	North American Communication Resource, Inc.	12/31/2020	12/31/2017
46283	LMH Rural Healthcare Consortium	1690211	143004544	Sirius Computer Solutions, Inc.	12/31/2020	12/31/2017
50590	Russell County Consortium	1713962	143049885	Park Place International, LLC	12/31/2021	12/31/2018
50590	Russell County Consortium	1713836	143026997	Advanced Global Communications	12/31/2021	12/31/2018
44414	Lincoln County Primary Care Center, Inc	1721219	143034225	Alpha Technologies, Inc.	12/31/2021	12/31/2018
17226	Iowa Rural Health Telecommunications Program	1727902	143003005	State of Iowa, Iowa Telecomm & Technology Commission	12/31/2021	12/31/2018
17243	Palmetto State Providers Network	1727106	143032515	FRC, LLC	12/31/2021	8/11/2019
43399	Choctaw Nation Health Services Authority	1727433	143030284	MNJ Technologies Direct, Inc.	12/31/2021	12/31/2018

Appendix C
FCLs Issued with Insufficient Time to Invoice

HCP #	HCP Name	FRN	SPIN	Service Provider Name	Service/ Funding End Date	FCL Issuance Date
27406	Jellico Community Hospital	1844890	143019593	Spectrotel	7/15/2018	1/11/2019
16783	Trigg County Hospital	1845869	143030766	Windstream Communications, LLC	7/26/2018	1/25/2019
11752	CHASE COUNTY COMMUNITY HOSPITAL	1844233	143005588	CDW Government LLC	7/31/2018	1/22/2019
43213	Mid-Valley Medical Group	1835515	143001199	GCI Communication Corp	8/3/2018	1/25/2019
10403	Mid Valley Hospital	1845099	143001199	GCI Communication Corp	8/3/2018	1/22/2019
48720	Arkansas Department of Health	1844158	143004662	Southwestern Bell Telephone Company	8/31/2018	3/15/2019
25078	Cedar County Memorial Hospital	1846081	143045344	Charger Access, LLC	8/31/2018	11/29/2018
45157	Federal Broadband Funding Consortium	1845028	143029770	TelePacific Communications Co	9/8/2018	2/8/2019
42093	South Georgia Medical Center Consortium	1843519	143029836	MCC Telephony, LLC	9/25/2018	5/29/2019
16747	Cox Health Center - Aurora	1844226	143037412	CenturyLink Qwest Communications Company, LLC	10/20/2018	1/22/2019
39261	Kentucky Telehealth Consortium	1840867	143001192	AT&T Corp.	10/25/2018	2/8/2019
10781	Cordova Community Medical Center	1845530	143007105	Alaska Communications Systems Holdings	10/31/2018	1/25/2019
11862	Hardeman County Hospital	1842182	143029426	Airespring, Inc.	11/1/2018	1/22/2019
48720	Arkansas Department of Health	1844152	143022332	CenturyTel of Central Arkansas, LLC	11/21/2018	2/15/2019
13745	Syracuse Area Health	1843296	143030766	Windstream Communications, LLC	11/27/2018	1/22/2019
17268	Western New York Rural Area Health Education Center, Inc.	1837786	143030766	Windstream Communications, LLC	1/7/2019	2/8/2019
39261	Kentucky Telehealth Consortium	1844752	143050940	Princeton Electric Plant Board	1/23/2019	2/8/2019
39261	Kentucky Telehealth Consortium	1841266	143050436	Charter Communications Operating, LLC	6/30/2019	8/22/2019