



Federal Communications Commission
Washington, D.C. 20554

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DA 20-697

Ms. Radha Sekar
Chief Executive Officer
Universal Service Administrative Company
700 12th Street, N.W., Suite 900
Washington, DC 20005

Re: Rural Health Care Support Mechanism, WC Docket No. 17-310
Database of Urban and Rural Rates for the Telecommunications Program

Dear Ms. Sekar:

As part of the ongoing management and oversight of the Universal Service Fund (USF) by the Federal Communications Commission (Commission), this letter provides directions to the Universal Service Administrative Company (Administrator) on how to administer the Rural Health Care (RHC) support mechanism (RHC Program), and in particular, how to treat services and data when identifying rural and urban rates for the Telecommunications (Telecom) Program.¹ The guidance we issue today becomes effective immediately to assist with the creation and operation of the database by July 1, 2020 for the funding year (FY) 2021 Telecom Program applications.

Overview:

Consistent with the Commission's directives in the *Promoting Telehealth Report and Order*,² the Wireline Competition Bureau (Bureau) is working closely with the Administrator on creating a database of rates available in the marketplace for the determination of support amounts in the Telecom Program. At a high level, the Bureau envisions the database will allow end users to conduct searches of rates for two broad categories of eligible services, data transmission and voice telephony. Within these categories, users will have the capability to search for median urban and rural rates according to the subcategories of bandwidth, rurality tier, and whether the service is a dedicated or a best-efforts service. The calculated median rates will be based on the available rates identified by the Administrator for the applicable broad service category, which includes rates for similar services, i.e., both telecommunications and non-telecommunications service offerings, and the corresponding subcategories. For example, when a user searches for the rate of a 100 Mbps dedicated Ethernet service in New York, the database will display the median rate for similar services in the data transmission category offered as a dedicated service within a speed range of the requested service for the rural tiers and urban areas of the state.

To achieve the database vision outlined above, we direct the Administrator to take the following actions with respect to the treatment of data as discussed in more detail herein:

¹ See Memorandum of Understanding Between the Federal Communications Commission and the Universal Service Administrative Company, Parts I and III.A (Dec. 19, 2018).

² *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Report and Order, 34 FCC Rcd 7335 (2019) (*Promoting Telehealth in Rural America Order*).

- To implement the Commission's standard for identifying similar services, i.e., whether functionally similar from the end user's perspective, group services along the broad categories of either data transmission or voice telephony;
- In addition to identifying rates along subcategories of rurality and bandwidth, identify rates according to whether services are dedicated or best-efforts;
- Until appropriate indicators are incorporated into the data, treat RHC Telecom Program services as dedicated services and E-Rate Program services as best-efforts unless clearly apparent otherwise in the data;
- Do not separately identify rates for services with certain term and volume discounts as such contractual terms and conditions have no bearing on whether a service is functionally similar from the end user's perspective;
- Treat single and multi-line voice services as similar services;
- Use E-Rate Program and RHC Program data from the most recent three funding years;
- Normalize the E-Rate Program data as specified herein to mitigate inconsistencies that could skew median rate determinations, e.g., exclude data involving school districts and consortia with more than three member sites;
- Use rate information on tariffs currently in effect regardless of when filed;
- Exclude tariff information for rural rates if corresponding inter-office transport rates needed to identify rate for end-to-end service are unavailable as discussed herein;
- Use information on service provider websites only if it is possible to discern the following factors: rate, eligible service, bandwidth, and geographic area where rate offered;
- Limit service provider website research to only urban areas;
- When identifying rates, to the extent feasible, do not include line-item charges for additional fees such as network access fees, access recovery charges, etc.;
- Calculate median rates using distinct available rates so as to equalize weighting of rates when the total number of customers taking a rate in the marketplace is unknown for all available rates;
- Display for end users conducting database searches the sources of all identified rates related to the median rate calculation process; and
- Publicly provide information on methodology and process for identifying geographic areas for rurality tiers and urban areas.

We anticipate, following the launch, additional relevant information may come to light from the private sector on the rates reflected in the database. Accordingly, as discussed in more detail herein, we direct the Administrator to refresh the rates database post-launch to reflect any additional usable information received within a two-month window following the launch.

Background:

In the *Promoting Telehealth Report and Order*, the Commission reformed the procedures for determining support for health care providers participating in the RHC Telecom Program.³ This program

³ *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7365, para. 60.

is statutorily focused per section 254(h)(1)(A) of the Communications Act of 1934, as amended, on helping rural health care providers obtain telecommunications services at rates reasonably comparable to those paid by their urban counterparts.⁴ The program accomplishes this goal by subsidizing the purchase of telecommunications services by health care providers in rural areas.⁵ Support amounts for health care providers are determined by comparing the “rates for similar services provided to other customers in comparable rural areas in that State” with “rates that are reasonably comparable to rates charged for similar services in [urban areas of] that State.”⁶

To improve “transparency, predictability, and efficiency” for the Telecom Program, the Commission determined that rather than individual health care providers identifying all urban and rural rates for determining support amounts, rates would be calculated based on a publicly available database of urban and rural rates, to be established by the Administrator at the Commission’s direction, by July 1, 2020.⁷ The Commission also: (1) revisited the statutory interpretation of “similar services” for identifying comparable rates in urban and rural areas; (2) gave examples of sources of available rate information for the Administrator to identify rates; (3) provided the methodology for calculating the rates; (4) adopted rurality tiers for identifying comparable rural areas; and (5) revised the geographic areas for identifying urban rates.⁸

We provide the following guidance to assist the Administrator with its efforts to compile available rate information on similar services for the determination of support amounts.⁹ The Bureau will continue to work closely with the Administrator to timely implement the database by July 1, 2020.

The Classification of Similar Services:

The identification of urban and rural rates for determining support requires evaluating the rates for “similar services” per section 254(h)(1)(A) of the Act.¹⁰ In the *Promoting Telehealth Report and Order*, the Commission retained the interpretation of similar services to mean services that are “functionally similar as viewed from the perspective of the end user.”¹¹ Accordingly, the inquiry focuses on the functional capabilities of the service from the end user’s perspective and not the technology used to provide the service.

⁴ The Act specifically states: “A telecommunications carrier shall, upon receiving a bona fide request, provide telecommunications services which are necessary for the provision of health care services in a State . . . to any public or nonprofit health care provider that serves persons who reside in rural areas in that State at rates that are reasonably comparable to rates charged for similar services in urban areas in that State. A telecommunications carrier providing service under this paragraph shall be entitled to have an amount equal to the difference, if any, between the rates for services provided to health care providers for rural areas in a State and the rates for similar services provided to other customers in comparable rural areas in that State . . .” 47 U.S.C. § 254(h)(1).

⁵ *Id.* § 254(h)(1)(A).

⁶ *Id.*

⁷ *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7372-73, para. 78.

⁸ *Id.* at 7343-78, paras. 14-91.

⁹ 47 CFR § 54.702(c) (“The Administrator may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress. Where the Act or the Commission’s rules are unclear, or do not address a particular situation, the Administrator shall seek guidance from the Commission.”).

¹⁰ *See* 47 U.S.C. § 254(h)(1)(A).

¹¹ *See Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 18 FCC Rcd at 24563, para. 33 (emphasis in original); *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7343, para. 15 (2003) (2003 RHC Internet Access Order).

To help determine whether services are functionally similar, the Commission replaced the outdated voluntary safe harbor adopted in 2003, which was based on fixed speed tiers, with a percentage range approach.¹² Specifically, two services are considered similar for purposes of the RHC Telecom Program rules if the advertised speed is “30% above or below the speed of the requested service.”¹³ For example, if the health care provider is requesting funding for a 50 Mbps data transmission service, then services with advertised speeds between 35 and 65 Mbps would be considered functionally similar for identifying urban and rural rates for comparison.¹⁴

The Commission acknowledged that factors other than bandwidth are relevant to whether a service is functionally similar and thus directed the Administrator to distinguish between dedicated and best-efforts services. For example, the Commission stated, “Where a health care provider specifies that it requires a dedicated service or other service level guarantees, we instruct the Administrator to take that into account when identifying functionally similar services for rate comparisons.”¹⁵ The Commission recognized “the Administrator may need to determine and publish two types of rates . . . – one applicable to funding requests for which bids were only sought for dedicated services and one applicable to funding requests for which responsive bids were not so limited,” to implement this instruction.¹⁶

The Commission further retained its earlier conclusion that it is appropriate to “consider whether the requested service is symmetrical or asymmetrical when assessing functional similarity.”¹⁷ In addition, the Commission expanded the scope of services for the “functionally similar” inquiry to include not just telecommunications services but also private carriage and information services.¹⁸ The Commission reasoned that “determining the similarity of services is a technology-agnostic inquiry as to whether there are functionally equivalent substitutes from the end user’s viewpoint.”¹⁹ When asked to account for “discounts included in rates for high volume, long-term contracts when determining the rural rates for services,” the Commission noted the statutory limits on its discretion for such action as these types of discounts have no bearing on the functioning capabilities of the service from the end user’s perspective.²⁰

Eligible Service Categories. We instruct the Administrator to group, at a high level, services into two broad categories, data transmission and voice telephony services. These two categories encompass the functional capabilities of the telecommunications services for which funding is sought through the Telecom Program. Accordingly, as a first layer for creating a database, the Administrator will group all eligible services, such as T1s/T3s, Ethernet, microwave, MPLS, OCn, etc., that are used to transmit data between points as one category. Grouping services in this manner is consistent with the Commission

¹² *Promoting Telehealth Report and Order*, 34 FCC Rcd at 74343, para. 15. The previous fixed speed tiers, promulgated in 2003, only went as high as 50 Mbps and treated all services above that level as similar. See *2003 RHC Internet Access Order*, 18 FCC Rcd at 24564, para. 34. Accordingly, in determining a rate comparison for support, HCPs could treat a 100 Mbps and 1 Gbps service as similar even though the price difference between the two is substantial.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 7344-45, para. 17.

¹⁶ *Id.* at 7345, para. 17 & n.53.

¹⁷ *Id.* at 7344-45, para. 17.

¹⁸ *Id.* at 7345-46, paras. 18-20.

¹⁹ *Id.* at 7345, para. 18.

²⁰ *Id.* at 7344, para. 16 & n.49.

direction that services be viewed functionally from the perspective of the end user.²¹ All voice telephony services will be grouped in a separate category.

Dedicated vs. Best-Efforts Services. We direct the Administrator, consistent with the *Promoting Telehealth Report and Order*, to bifurcate the data transmission service category into dedicated and best-efforts service offerings for purposes of identifying median rates.²² To determine whether a service is dedicated, the Administrator is directed to distinguish dedicated and best-efforts services by whether or not there is a service level guarantee. Such an approach is consistent with the standard developed by the Commission for business data services.²³ Service level guarantees most commonly cover speed, reliability, and traffic prioritization but can also cover latency, jitter, and packet loss where applicable to packet-based communications. These guarantees often result in higher rates for dedicated services as compared to best-efforts service offerings.²⁴ As the Commission has previously stated:

At the most-basic level, best-efforts and dedicated business data services appear to be interchangeable: end users can use both services to access the Internet or create virtual private networks. However, best-efforts Internet access is provided with asymmetrical speeds and without service performance guarantees. Whereas dedicated packet-based business data services allow for packet prioritization and quality of service priority tiers, best-efforts services do not. Also, while dedicated business data services commonly provide at least 99.9 percent network reliability, with higher guarantees being available for fiber services, and guarantees for latency and jitter, best-efforts services generally do not offer any reliability guarantees, although some cable providers offer some non-binding performance “assurances.”²⁵

We understand there are some shortcomings in the data currently collected by the Commission that impede the ability to accurately determine whether a data transmission service is provided on a dedicated or best-efforts basis. For example, data currently collected from the Telecom Program forms do not currently indicate such information. The same holds true for data collected in the E-Rate program. Recognizing this, we are taking steps to ensure such information is tracked going forward by revising the relevant RHC Program forms and collecting this data starting in Funding Year 2021.

Until we can accurately track such information, we will rely on assumptions for purposes of data analytics derived from the Commission’s past experiences with these programs to identify which services are dedicated and best efforts. Specifically, unless apparent otherwise, we direct the Administrator to treat data transmission services in the Telecom Program as dedicated services. As we understand, health

²¹ See *2003 RHC Internet Access Order*, 18 FCC Rcd 24546, 24563, para. 33; *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7343, para. 15.

²² See *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7344-45, para. 17.

²³ See *id.* at 7384, para. 103 n.300 (“Business data services refers to the dedicated point-to-point transmission of data at certain guaranteed speeds and service levels using high-capacity connections.”) (citing *Business Data Services in an Internet Protocol Environment*, WC Docket No. 16-143, Report and Order, 32 FCC Rcd 3459, 3463, para. 6 (2017) (*2017 BDS Report and Order*)). In this letter, we use the terms dedicated, business data services and special access interchangeably as referring to the same service type.

²⁴ See *Business Data Services in an Internet Protocol Environment*, WC Docket No. 16-143 *et al.*, Tariff Investigation Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 4723, 4806, paras. 191-92 (“The prices of best efforts services are considerably lower than the prices of roughly comparable [business data services]. . . . If two readily available services have substantially different prices, then they are likely dissimilar . . .”).

²⁵ *2017 BDS Report and Order*, 32 FCC Rcd at 3473, para. 30.

care providers typically request such services due to their needs for highly reliable service offerings.²⁶ Accordingly, we find it appropriate to assume, more often than not, that such services are provided on a dedicated basis. We note that applicants are able to identify service level agreement (SLA) requirements for the Healthcare Connect Fund and will treat the services as dedicated or best efforts as indicated on the FCC Forms 462. As for the E-Rate Program data, we instruct the Administrator to treat those data transmission services as a best-efforts service offering with limited exception. Our understanding is schools and libraries participating in that program typically need best-efforts services.²⁷ While there could be instances where a school or library is purchasing a dedicated service, we find it appropriate in the short-term, until we are able to better track such information, to assume for these purposes that most E-Rate supported services are provided on a best-efforts basis. However, we direct the Administrator to treat services that by their nature are inherently dedicated or where the Administrator has reason to know the service purchased is dedicated as dedicated services. For example, a T1/T3 (DS1/DS3) service inherently has certain service guarantees and the Administrator should thus treat such services as dedicated.

Further, based on the Commission's experience with business data services (previously known as special access), we understand such offerings are typically provided with symmetrical download and upload speeds.²⁸ Best-efforts service offerings, in comparison, are typically asymmetrical with greater download than upload speeds, but there are exceptions.²⁹ Due to the significant overlap between the best efforts/dedicated and asymmetric/symmetric service inquiry, we instruct the Administrator to not separately identify rates depending on whether a service is asymmetric and symmetric. Instead, the Administrator should simply rely on the dedicated versus best-efforts classifications to account for such service variations.

Treatment of Term and Volume Discounts. Because discounts for term and volume commitments do not alter whether the service is functionally similar from the perspective of the end user, we direct the Administrator not to separately identify urban and rural rates based on such terms and conditions. Thus, the similar services identified for making rate comparisons will include not only base month-to-month rates but also term and volume discount-based rates, consistent with the Commission's instructions and the statutory requirement to compare available rates charged in the marketplace.³⁰

Single vs. Multi-Line Voice Service. We direct the Administrator to treat single-line and multi-line business voice services as similar for purposes of identifying available rates. Health care providers are more likely than not in need of more than one voice telephony line even when the health care provider is relatively small in size. And from a functional service perspective, both a single and multi-line voice service provide the same capability.

²⁶ Letter from Jennifer Bagg, Counsel to GCI Communication Corp., to RHC Review, Administrator, 3 (dated Apr. 24, 2018) ("HCPs that purchase data transport services from GCI utilize dedicated Ethernet, as compared with "best efforts" transmission services. . . . [T]he applications that HCPs must use to provision remote health care can be most reliably supported through the use of dedicated service.") (attached as Exhibit D to GCI, Application for Review, WC Docket No. 17-310 (filed Nov. 9, 2018)).

²⁷ *Id.* at 5-6 ("Other educational application use cases are largely Internet-based and can be delivered adequately over a best effort/shared platform.").

²⁸ *2017 BDS Report and Order*, 32 FCC Rcd at 3463, para. 6.

²⁹ *See id.* at 3473, para. 30.

³⁰ *See Promoting Telehealth Report and Order*, 34 FCC Rcd at 7344-45, para. 17; 47 U.S.C. § 254(h)(1)(A).

Available Rates:

In the *Promoting Telehealth Report and Order*, the Commission directed the Administrator to create a publicly available database for providing information on rates used to determine support levels. The median rates in the database must be based on “available rates.”³¹ The Commission provided an illustrative list of potential sources for data on rates, including “rates posted on service providers’ websites, rate cards, publicly available contracts (i.e., state master contracts), undiscounted E-Rate Program data, tariffs (i.e., intrastate tariffs filed with state commissions, FCC’s Electronic Tariff Filing System), and [RHC Program data].”³² The Commission also permitted service providers to bring their rate information to the Administrator’s attention to assist with the determination process. We provide the following additional guidance to assist the Administrator in gathering and treating data on available rates.

E-Rate and RHC Program Data. We direct the Administrator to use E-Rate Program and RHC Program data for the three most recent funding years to identify the median rates. For example, for the July 1 deadline, the Administrator will look at data from funding year (FY) 2017- FY 2019. Data from the most recent three-year period available is sufficiently current for identifying the rates available in the marketplace. Moreover, using data covering three years will increase the pool of available rates, thereby making the median rate determinations more robust than if only one year of data were used. If for some reason, however, the previous funding year’s data is not yet substantially complete and available, e.g., if FY 2019 data is unavailable for the RHC Program, then the Administrator will use the data available for the next three most recent funding years, i.e., for FY 2016 - FY 2018.

We acknowledge that the way the E-Rate data is reported can occasionally create challenges in identifying available rates for certain services. For a school district or consortium with multiple members, there may be inconsistencies in the reporting of bandwidth and monthly rates across member sites. In some instances, the total bandwidth or rate charged was reported for each member site and not allocated across sites. For example, a district with 100 members may have reported a monthly rate of \$10,000 for each member site when in reality, the cost for each member site is only \$100 per month and the total paid by the district is \$10,000 per month. In such a situation, a single data observation may show a member site receiving a 100 Mbps Ethernet service at a monthly rate of \$10,000 when in fact the monthly rate attributed to the site is \$100 per month. Accordingly, to ensure such reporting inconsistencies do not adversely skew the available rates analysis, we are instructing the Administrator to take certain steps to normalize this data for evaluation as discussed below. We note, as discussed elsewhere herein, that we are working with the assumption, at least initially, that E-Rate services are best-efforts services unless clearly evident to the contrary, e.g., when dealing with a T1/T3 (DS1/DS3) service, which by its nature comes with a guaranteed level of service or when the service provider contract includes SLA requirements. Accordingly, these data normalization steps will have most bearing on the analysis of available rates for best-efforts service offerings and only a small percentage of Telecom Program support is sought for best-efforts services.

- **Removing Applicants with More than Three Sites.** Because of the inconsistencies in the reporting of monthly rates and bandwidth among consortia and school districts, we direct the Administrator to remove observations involving applicants with more than three sites. We find three is an appropriate demarcation point because a threshold with fewer members would exclude too much of the data from the analysis. Further, focusing on E-

³¹ *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7372-73, para. 78.

³² *Id.*

Rate applicants with three or fewer sites will make it easier to identify and resolve data anomalies due to inconsistent allocation methodologies used by program participants.³³

- Removing Mismatched Service Type Descriptions. Not all service type descriptions used in the E-Rate Program have an equivalent service type within the RHC Program. For example, the E-Rate Ethernet connection type description “internet access service with no circuit” has no equivalent in the RHC Program when support is sought for Ethernet service. Accordingly, we instruct the Administrator to remove from consideration those E-Rate Program line items with purposes that are not reflected in RHC Program. Instead, the Administrator should only include rates most relevant to the purposes of the type of service sought in the RHC Program.³⁴
- Removing Service Provider Identification Number (SPIN) Change Entries. Because new rates reported for a service provider change may not reflect actual cost of service but instead, the remaining amount of support allocated, we direct the Administrator to remove observations that result from an operational SPIN change from the E-Rate Program data.³⁵

Tariff Information. For tariffs, we direct the Administrator to look at those currently in effect regardless of when the tariff was actually filed and became effective. Further, we understand there are challenges to interpreting the provisions in tariffs to identify rates for specific service types in geographic areas. The applicable provisions may span across several tariffs and are not written for those readers lacking an institutional understanding of the incumbent telephone company nomenclature. We therefore have directed the Administrator to enter into third-party arrangements for tools to assist with interpreting tariff provisions, and we understand that the Administrator has already entered into one such agreement to use the tariff tool supported by the National Exchange Carrier Association (NECA).

As to the inclusion of tariff rates in the database, we recognize the database we are establishing effectively reflects rates for end-to-end service to customers, pulling largely historical information from the E-Rate and RHC Programs. However, tariffs for identified study areas provide rate information only for the local portion of service in the study area for which the tariff is filed. Accordingly, the rates identified in tariffs would not show the additional charges incurred for an end-to-end service. For example, a tariff covering Fort Yukon, Alaska would not show the charges for use of middle-mile, inter-office facilities to connect customers in the local community to Internet access points in Anchorage, Juneau, Seattle or Portland. These transport charges, which are not typically the subject of tariff filings, likely constitute a substantial portion of the overall cost of the end-to-end service in rural areas. Accordingly, unless the Administrator is able to identify both the local tariff and inter-office transport rates to the community served to estimate the overall end-to-end service rate, the Administrator shall exclude the local tariff rate from the database because such rates are unlikely to accurately reflect the rates available for end-to-end service in rural areas. Including only the local portion of service purchased would significantly adversely skew the results of the database to substantially reduce the median rates identified in rural areas, thereby substantially reducing support amounts for program participants.

³³ We understand this approach will result in the exclusion of about one-third of the E-Rate Program data observations for FY 2017 – FY 2019 from the analysis.

³⁴ We understand this approach will result in the elimination of about 5 percent of the observations from the E-Rate Program data for FY 2017 – FY 2019.

³⁵ This approach will result in the elimination of about 0.5 percent of the observations for the FY 2017 – FY 2019 E-Rate Program data.

Notwithstanding our concerns over the inclusion of local tariff rates for rural areas, the Administrator shall include such rates to the extent the tariffed study area falls within urbanized areas in a state for the identification of median urban rates. Customers in urbanized areas are unlikely to face the substantial non-tariffed transport charges faced by customers in rural areas. Accordingly, these tariff rates are relevant to identifying available rates for service in urbanized areas.

Separately, for tariffed T1/T3 (DS1/DS3) services, there is a base unit price and then additional mileage-based pricing for transport to and from a served location. Given the complexity of incorporating such information into the rates database, as the rates would change depending on each individual health care provider location, we will include the basic unit price but exclude additional mileage-based pricing for T1/T3 services under the NECA tariff. This direction is consistent with the Commission's decision to eliminate mileage-based support in the *Promoting Telehealth Report and Order*.³⁶ Health care providers seeking support for services encompassing speeds within the T1/T3 ranges may want to look to the NECA tariffed mileage-based pricing for their locations when choosing to seek support in excess of the support amounts determined by the rates database.³⁷

Service Provider Websites. We understand the Administrator has reviewed the websites of numerous service providers across several states, searching for information on available rates. To date, these efforts have produced little to no usable information to assist with the identification of median rates. Many websites simply discuss the services offered and ask potential customers to contact a representative for a quote depending on the specific location and needs of the customer. Those that do provide rate information often fail to indicate the general geographic areas where the rate is available and at what bandwidth speed. Even if geography and bandwidth speed are provided, the rate may pertain to a bundle of services that includes services ineligible for support under the Telecom Program. The Administrator can thus not determine what portion of the rate pertains solely to the eligible service.

We confirm that without indicators of geography, bandwidth, and whether the rate is solely for the eligible service, the information available on a service provider's website is unusable for purposes of determining median rates for the database. Instead of using limited resources on efforts unlikely to produce usable information, given the results from the efforts to date, we direct the Administrator to limit website searches to urban areas of the state where there is a greater chance of obtaining helpful information. For rural areas of the state, the Administrator should focus on the usable rate information voluntarily provided by service providers instead of trying to identify and search the websites of providers serving a particular rural tier in a state.

Treatment of Additional Fees. In identifying available rates, we direct the Administrator to not, to the extent feasible, include additional line item charges like network access fees, access recovery charges, or fees associated with universal service contribution obligations and regulatory compliance. We are not declaring these additional fees as ineligible for support, but they are not to be counted as part of the underlying available rate charged for the service.

Median Rate Determination:

In the *Promoting Telehealth Report and Order*, the Commission changed the methodology for determining the urban and rural rates for calculating support amounts. The urban and rural rates, starting in FY 2021, will be "the median of all available rates identified by the Administrator for functionally similar services."³⁸ In making the change, the Commission concluded that using a median rate among

³⁶ 34 FCC Rcd at 7381-83, paras. 98-101.

³⁷ 47 CFR § 54.605(c).

³⁸ 47 CFR §§ 54.604, 54.605.

“multiple price points . . . will bring restraint and discipline to the Program and will minimize opportunities for rate manipulation.”³⁹

The data sources for identifying available rates include not only RHC Program and E-Rate Program data from previous funding years but also rates on provider websites, rate cards, tariffs, in contracts, etc. In pooling the data, we note the E-Rate Program and RHC Program data shows not only the rates charged but also the program participants taking those rates, resulting in hundreds of thousands of data observations. In contrast, a rate posted on a website or a tariff does not show the number of customers actually charged that rate. Accordingly, any rate that lacks information on the number of customers can only be considered a single data observation. Thus, if all such observations of available rates were grouped together, then the E-Rate Program and RHC Program data observations would overwhelmingly dominate the median rate calculation. For example, a single rate listed on a tariff for a 10 Mbps Ethernet service is unlikely to affect the median rate that includes thousands of rate observations for the same service in the RHC Program.

To equalize the weighting of the rates, we direct the Administrator to identify each distinct available rate in the marketplace and to calculate the median rate based on that pool of rate observations. For example, we instruct the Administrator to first look at all available rates in the relevant similar service category according to the applicable geographic rural tier or urban areas in the state and across all data sources and to round down those rates to the nearest dollar. The Administrator will then identify the distinct rate offerings by the different providers, i.e., providers associated with different Service Provider Identification Numbers where applicable. Finally, the Administrator will then calculate the median rate based on that pool of distinct rate observations.

To illustrate, we provide the following example. There are ten rate observations across data sources as follows:

Name	Monthly Rate Charged
Company A	\$5
Company B	\$6
Company C	\$6
Company A	\$7
Company A	\$7
Company D	\$8
Company E	\$8
Company F	\$9
Company A	\$12
Company A	\$12

In this scenario, the total number of rate observations equals ten but the number of distinct rates available in the marketplace from different providers for calculating the median rate is eight as Company A is charging the exact same rate in two instances (\$7 and \$12). That is, we will exclude from the calculation instances where the same provider is charging the same rate for the same service type and bandwidth, in the same relevant geographic area, i.e., when there is a duplication of rate by the same provider for the exact same service. Accordingly, in the this example, the pool for calculating the median rate would exclude the two duplicate observations for Company A and just include: Company A at \$5,

³⁹ *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7361-62, para. 49.

Company B at \$6, Company C at \$6, Company A at \$7, Company D at \$8, Company E at \$8, Company F at \$9, and Company A at \$12. The median rate would thus be \$7.50.⁴⁰

Data Transparency. The Commission directed the Administrator to provide the “underlying data used by the Administrator to determine the median rates.”⁴¹ To this end, when the database generates a rate, it will also generate all available rate data observations, including the source of the data observation, that were identified. This information shall indicate whether the observation is a distinct available rate used in the median rate calculation or a “duplicate” rate that was identified but excluded from the calculation. With this level of transparency, service providers will be able to verify that the rates they offer were used to calculate median rates.

Lastly, we reiterate the Commission’s instructions: “In the unlikely event that a health care provider’s rural tier includes no available rates for a particular service, we direct the Administrator to use the available rates for that service available from the tier next lowest in rurality in the health care provider’s state ([e.g.], the Administrator will use the rates from the Rural tier if no rates are available in the Extremely Rural tier, and from the Less Rural tier if no rates are available in the Rural tier).”⁴²

Database of Geographic Areas:

In the *Promoting Telehealth Report and Order*, the Commission defined the geographic contours for the areas used for determining urban and rural median rates.⁴³ The Commission separately directed the Bureau to work with the Administrator to create a publicly available search tool to help health care providers identify the rural tiers based on site location. To satisfy these requirements, the Commission’s staff has worked closely with the Administrator to develop the procedures and methodology for creating a database of geographic areas to support these efforts. This database of geographic areas will not only cover the rural tiers and urban areas used for identifying median rates but will also include data on the geographic areas designated by the Department of Health and Human Services’ Health Resources and Service Administration as Medically Underserved Areas/Populations (MUA/Ps). The MUA/Ps, while not relevant for determining median rates, are relevant for the prioritization of funding in the event demand exceeds available funding in a given funding year.⁴⁴ We direct the Administrator to display on its website details of the procedures and methodology developed with the assistance of Commission staff to determine the relevant geographic areas contained in the database.

Database Launch:

Following the database launch on July 1, 2020, we direct the Administrator to provide a two-month window, ending on Monday, August 31, 2020, to give the public an additional opportunity to voluntarily submit information to the Administrator on rates and services relevant to the median rate calculations contained in the database.⁴⁵ Despite the Administrator’s diligence in identifying as many

⁴⁰ For clarity, when there is an even number of data observations, we instruct the Administrator to use the mean of the two most middle numbers.

⁴¹ *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7372-73, para. 78.

⁴² *Id.* at 7365, para. 61.

⁴³ *Id.* at 7346-53, paras. 21-35.

⁴⁴ *Id.* at 7390-91, para. 116.

⁴⁵ The Commission in the *Promoting Telehealth Report and Order* encouraged service providers “to bring their available urban and rural rate data to the Administrator’s attention.” 34 FCC Rcd at 7372-73, para. 78 n.216. USAC solicited rates for inclusion in the database from the public. See USAC, RHC Program News for March 2020, <http://view.outreach.usac.org/?qs=7767c2066ea08fe7bea59dec06d9f22b0e6fa69586d985bbb0d76de6666d0e3b2f072fda0e82b5ce6c9d5ab282b42dba3f7e60a1cf785d0df4bc40d2851202ac72e48e85a83b419a> (dated March, 5, 2020);

relevant rates as possible, we recognize the database may not capture every possible available rate. Accordingly, we instruct the Administrator to permit the public to submit additional relevant information on rates not already reflected in the database. The public can submit rates to the Administrator by emailing RHC-Assist@usac.org with the subject line "Urban and Rural Rate Database."

All rates submitted for inclusion in the rates database must be submitted by August 31, 2020. The Administrator will then refresh the database by September 30, 2020, incorporating any usable rates received.⁴⁶ This is not an opportunity for the public to challenge the Commission's policy decisions but instead an opportunity to bring relevant available rate information to the Administrator's attention. A two-month window is a sufficient amount of time for the public to respond while not unduly impairing the expanded competitive bidding period. RHC Program participants will still have ample opportunity to interact with the new database before the FY 2021 application filing window opens to request RHC Program support.

We appreciate the Administrator's hard work to timely establish the rates database. The Bureau will continue to assist and provide guidance to your team as we jointly work towards the July 1, 2020 deadline and beyond. If you have questions, please do not hesitate to contact me.

Sincerely,



Kris Anne Monteith
Chief
Wireline Competition Bureau

cc: Mark Sweeney, Vice Pres., USAC
Adam Copeland, Assoc. Chief, WCB
Ryan Palmer, Chief, TAPD/WCB
Bryan Boyle, Deputy Div. Chief, TAPD/WCB
William Layton, Asst. Div. Chief, TAPD/WCB

USAC, RHC Program News for March 2020,
<http://view.outreach.usac.org/?qs=9dc69aa6f9e2b644911cf7b46d433a60168c375d5fc7d4cc4a18b3bb9d28917b63543f6e69dc86d6791d567c39e64b7ce04f083f77a19834a01a129a596b41a236185c4f5c3f22a6>.

⁴⁶ As discussed herein, without indicators of geography, bandwidth, and whether the rate is just for the eligible service, the information on rates is unusable for purposes of determining median rates for the database.