



PUBLIC NOTICE

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WIRELINE COMPETITION BUREAU SEEKS COMMENT ON COVID-19 TELEHEALTH PROGRAM APPLICATION EVALUATION METRICS

WC Docket No. 20-89

Comment Date: January 19, 2021

I. INTRODUCTION

1. Telehealth is a critical tool in the fight against the ongoing COVID-19 pandemic. It can allow medical professionals to monitor non-critical COVID patients in a non-clinical setting, reduce demands on hospital staff and supplies, and avoid potential exposure to the coronavirus for patients seeking treatment for other conditions. The Commission's COVID-19 Telehealth Program awarded \$200 million Congress had previously appropriated for that purpose, targeting applications from providers in the hardest hit areas that would have the greatest impact on the pandemic. However, demand for the program significantly exceeded available funding.

2. To build on the success of the Commission's COVID-19 Telehealth Program, in the Consolidated Appropriations Act, 2021 Congress appropriated an additional \$249.95 million for the Program.¹ The Act requires the Commission to seek comment on "the metrics the Commission should use to evaluate applications for funding" and "how the Commission should treat applications filed during the funding rounds for awards from the COVID-19 Telehealth Program using amounts appropriated under the CARES Act"² Through this Public Notice, we seek comment on these matters, as well as how to meet the Act's other requirements for the COVID-19 Telehealth Program and other improvements to the application, review, and invoicing process.

II. BACKGROUND

3. Established on April 2, 2020, the Commission's COVID-19 Telehealth Program (Program) administered the \$200 million in funding appropriated by Congress as part of the Coronavirus Aid, Relief, and Economic Security (CARES) Act.³ The Program was established to help health care providers provide telehealth and connected care services⁴ to patients at their homes or mobile locations in

¹ Consolidated Appropriations Act, 2021, Pub. L. No: 116-260, Division N-Additional Coronavirus Response and Relief, Title IX-Broadband Internet Access Service, § 903 "FCC COVID-19 Telehealth Program" (2020).

² *Id.*

³ Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No 116-136, 134 Stat. 281 (2020) (CARES Act). The CARES Act appropriated \$200 million to the Commission "to support efforts of health care providers to address coronavirus by providing telecommunications services, information services, and devices necessary to enable the provision of telehealth services" during the pendency of the COVID-19 pandemic. *Id.*

⁴ The Commission "broadly define[d] 'connected care services' as a subset of telehealth that uses broadband Internet access service-enabled technologies to deliver remote medical, diagnostic, patient-centered, and treatment-related

(continued....)

response to the COVID-19 pandemic.⁵ During the initial round of funding (Round 1), the Program provided immediate support to eligible health care providers responding to the COVID-19 pandemic by committing to fully funding the telecommunications services, information services, and connected devices necessary to provide critical connected care services.⁶ On December 27, 2020, the President signed into law the Consolidated Appropriations Act, 2021 (the Act), providing an additional \$249.95 million to the Commission to support the Program. This additional funding will allow the Commission to continue its efforts to expand connected care throughout the country and enable patients to access necessary health care services while helping slow the spread of the disease.

4. For Round 1, the Commission directed the Wireline Competition Bureau to evaluate applications and award funding commitments on a rolling basis until the \$200 million in funding was exhausted or until the COVID-19 pandemic ended.⁷ In accordance with the Commission's directives, the application review process prioritized funding applications that targeted areas that had been hardest hit by COVID-19 and where the support would have the most impact on addressing the community's health care needs.⁸ Consistent with the Commission's direction, the Bureau accepted applications for the Program from April 13, 2020, to June 25, 2020.⁹ By July 8, 2020, the Bureau issued \$200 million in total Program funding commitments for 539 applications.¹⁰

5. The Act appropriates \$249.95 million in additional funding for the Commission's Program (Round 2). It directs the Commission to seek comment on application evaluation metrics and how to "treat applications filed during the funding rounds for award from the Program using amounts appropriated under the CARES Act."¹¹ The Act also directs the Commission to consider specific factors when evaluating applications during Round 2. Specifically, the Act directs the Commission, to the extent feasible, to ensure an equitable distribution of funding by awarding funding to at least one applicant in each of the 50 states and the District of Columbia.¹² Additionally, the Act requires the Commission to allow an applicant who filed an application during Round 1 of the COVID-19 Telehealth Program "the opportunity to update or amend that application as necessary."¹³

services directly to patients outside of traditional brick and mortar medical facilities – including specifically to patients at their mobile location or residence." *Promoting Telehealth for Low-Income Consumers; COVID-19 Telehealth Program*, WC Docket Nos. 18-213, 20-89, Report and Order, 35 FCC Rcd 3366, 3375, para. 14 (2020) (*COVID-19 Report and Order*).

⁵ *COVID-19 Report and Order*, 35 FCC Rcd at 3375-84, paras. 15-36; *Wireline Competition Bureau Provides Guidance on the COVID-19 Telehealth Application Process*, WC Docket No. 20-89, Public Notice, 35 FCC Rcd 3052 (WCB Apr. 8, 2020) (*2020 Application Public Notice*); see also *COVID-19 Report and Order*, 35 FCC Rcd at 3377-78, para. 19 (delegating responsibility for reviewing COVID-19 Telehealth Program applications and announcing selected recipients and funding amounts to the Bureau).

⁶ *2020 Application Public Notice*, 35 FCC Rcd at 3052.

⁷ *COVID-19 Report and Order*, 35 FCC Rcd at 3376-77, para. 17.

⁸ *Id.* at 3381, para. 28.

⁹ *Wireline Competition Bureau Announces COVID-19 Telehealth Program Application Portal Will Open Monday*, WC Docket No. 20-89, Public Notice, 35 FCC Rcd 3076 (WCB 2020); *Wireline Competition Bureau Announces Close of Filing Window for COVID-19 Telehealth Program*, WC Docket No. 20-89, Public Notice, 35 FCC Rcd 6515 (WCB 2020).

¹⁰ Press Release, FCC, FCC Approves Final Set of COVID-19 Telehealth Program Applications (July 8, 2020), <https://www.fcc.gov/document/fcc-approves-final-set-covid-19-telehealth-program-applications>.

¹¹ Consolidated Appropriations Act, 2021, at § 903(c)(1)(A).

¹² *Id.* at § 903(c)(2).

¹³ *Id.* at § 903(c)(3).

III. REQUEST FOR COMMENT

A. Prioritizing Round 2 Funding

6. The Act directs the Commission to seek comment on the metrics used to evaluate applications for Round 2 Program funding.¹⁴ During Round 1, the Bureau evaluated the Program applications on a rolling basis, targeting funding to areas that were hardest hit by COVID-19 and where the support would have the most impact on addressing health care needs.¹⁵ Although Round 1 funding was not targeted toward specific medical conditions, patient populations, or geographic areas, the Commission strongly encouraged applicants to target the funding received to high-risk and vulnerable patients to the extent practicable.¹⁶ The Commission encouraged applicants under pre-existing strain (e.g., providing care for a large underserved or low-income patient population, facing health care provider shortages, or dealing with rural hospital closures) to document such factors in their applications.¹⁷ The Commission directed the Bureau to select as many applicants as reasonably possible within the funding appropriated by the CARES Act.¹⁸ To ensure that as many applicants as possible receive available funding, the Commission did not anticipate awarding more than \$1 million to any single applicant.¹⁹

7. We seek comment on whether we should continue to target funding to health care providers in areas “hardest hit” by COVID-19 at the time of the funding decision. During Round 1, the pandemic impacted some regions much more severely than others, thus allowing the Bureau to identify particular hotspots that were “hardest hit” in comparison to other parts of the country by referencing data published and collected by Johns Hopkins.²⁰ Given the broader infection rate currently in the U.S.,²¹ should we continue to target funding to hardest hit areas? If so, how should we define which areas have been “hardest hit”?

8. Similarly, in Round 1 the Commission targeted funding to health care providers under pre-existing strain. At the time, the Commission “recognized that some health care providers may have been under pre-existing strain,” which included health care providers that were facing difficulty providing telehealth services prior to the pandemic.²² However, given the longevity of pandemic, many health care

¹⁴ Consolidated Appropriations Act, 2021, at § 903(c)(1)(A)(i).

¹⁵ See *COVID-19 Report and Order*, 35 FCC Rcd at 3377, 3381, paras. 19, 28.

¹⁶ *Id.* at 3377, para. 19.

¹⁷ *Id.*

¹⁸ *Id.* at 3381, para. 28.

¹⁹ *Id.* at 3376-77, para. 17.

²⁰ *COVID-19 Report and Order*, 35 FCC Rcd at 3366, para. 1 *citing* Centers for Disease Control and Prevention, Coronavirus (COVID-19), <https://www.cdc.gov/coronavirus/2019-ncov/index.html> (last visited Mar. 15, 2020) (Known daily cases as of Mar. 15, 2020 were 444 and by June 25, 2020 known daily cases were 40,632. As of Dec. 20, 2020, known daily cases are 239,604). See also CDC, COVID Data Tracker, US and State Trends, Daily Trends in Number of COVID-19 Cases in the United States Reported to CDC, https://covid.cdc.gov/covid-data-tracker/#trends_dailytrendscases (last visited Dec. 22, 2020); Johns Hopkins, *COVID-19 Dashboard*, <https://coronavirus.jhu.edu/map.html> (last visited Dec. 29, 2020).

²¹ Centers for Disease Control and Prevention, COVID Data Tracker, US and State Trends, Trends in COVID-19 Cases and Deaths in the United States, by County-level Population Factors, https://covid.cdc.gov/covid-data-tracker/#pop-factors_7daynewcases (last visited Dec. 22, 2020) (showing exponential growth of daily cases in metropolitan and non-metropolitan areas).

²² *COVID-19 Report and Order*, 35 FCC Rcd at 3377, para. 19.

providers throughout the country have experienced significant strain.²³ In Round 2, what weight should we give pre-existing strain faced by applicant health care providers? Should we distinguish pre-existing strain from pandemic-related strains many providers now face?

9. During Round 1 of the Program, the Commission “did not anticipate awarding more than \$1 million” per applicant to ensure that as many applicants as possible receive funding.²⁴ Should we maintain this approach? How should we address applications filed by statewide entities, large health care providers or health care provider systems with numerous sites?

10. Are there other equitable limitations that will help the Program spread funding to a greater number of health care providers without sacrificing the needs of larger health care providers struggling to treat patients during the pandemic? Should applicants from Round 1 that did not receive \$1 million be eligible to receive additional funding? Should applicants from Round 1 that did receive \$1 million be eligible to receive additional support in Round 2?

11. Are there any other metrics we should use to prioritize applications during the evaluation process? Should we prioritize health care providers serving a large percentage of COVID-19 patients? Are there specific types of telehealth and connected care services that should be prioritized? Should we prioritize applications from health care providers that seek funding to treat specific at-risk populations, such as Tribal, low-income, or rural communities? If so, how should those populations be defined? Should these applicants be prioritized only if a certain percentage of their patient base, i.e., the total amount of patients who visited a facility in a year, is at-risk? What percentage would be reasonable to achieve the goal of prioritizing funding for at-risk populations? Are there other criteria we should prioritize?

12. *Ensuring Nationwide Distribution of Funding.* The Act directs the Commission, to the extent feasible, to ensure “that not less than 1 applicant in each of the 50 States and the District of Columbia has received funding” from the Program since the program’s inception, “unless there is no such applicant eligible for assistance in a State or in the District of Columbia.”²⁵ To fulfill this requirement, the Bureau proposes accepting Round 2 applications and establishing an application filing window rather than accepting applications on a rolling basis. Although accepting and evaluating applications on a rolling basis allowed the Bureau to quickly review applications and issue funding commitments for the funding appropriated by the CARES Act, this evaluation method will not ensure that funding will be available for applicants in each State and the District of Columbia. Establishing an application filing window would allow the Bureau to prioritize applications using pre-defined evaluation metrics and ensure that funding is provided, to the extent feasible, to at least one applicant in each of the 50 states and the District of Columbia. This approach would also provide all applicants the same period of time to prepare and file applications. We seek comment on this approach. If an application filing window is established, how long should the window remain open?

13. Is there an alternative approach that would ensure that the Commission meets this legislative provision? Should we instead continue to accept applications on a rolling basis, but set aside a portion of funding, e.g., \$1 million for each state and the District of Columbia, to ensure that an applicant from each State and the District of Columbia receive Round 2 funding?

²³ Sarah Mervosh & Lucy Tompkins, *The arrival of the Moderna vaccine brings hope to rural areas*, New York Times (Dec. 22, 2020) (“Parts of California are down to their last I.C.U. beds and almost one-fifth of U.S. hospitals with intensive care units reported that at least 95 percent of their I.C.U. beds were full in the week ending Dec. 17. Nationwide, 78 percent of I.C.U. beds were full on average.”).

²⁴ *COVID-19 Report and Order*, 35 FCC Rcd at 3376 -77, para. 17; *2020 Application Public Notice*, 35 FCC Rcd at 3054.

²⁵ Consolidated Appropriations Act, 2021 § 903(c)(2).

B. Treatment of Round 1 Applications

14. The Act directs the Commission to seek comment on “how the Commission should treat applications filed during” Round 1 of the Program.²⁶ The Act also requires the Commission to allow an applicant who filed an application during Round 1 “the opportunity to update or amend that application as necessary.”²⁷

15. We propose to require applicants to update and resubmit applications that were filed during Round 1 if they want them to be considered for Round 2. We propose that Round 1 applications that are not resubmitted during the filing window will not be considered for Round 2. We make this proposal because many of the remaining Round 1 applications need to be refreshed and some require substantial amendments. From April to June 2020, the Commission received thousands of applications for Round 1, and committed funding to 539 applicants before the available funding was exhausted.²⁸ Many of the remaining applications are from ineligible entities or require substantial supplementation to be considered materially complete. Some applicants no longer need funding because they received support for telehealth services from other sources. And, because these applications were filed between April and June 2020, all the remaining applications contain stale information—COVID-19 infection rates in many areas were dramatically lower at that time than they are today, the pandemic was less widespread, and health care providers have had time to refine their strategies for providing services during the pandemic, making it likely that these applicants would, given the opportunity, request different amounts and types of connected devices and eligible services.²⁹ We seek comment on this approach.

16. We also propose this approach because the application system used during Round 1 of the Program, which was developed quickly given the emergency situation, is functionally limited, and is not designed to let applicants amend or update their applications after they have been filed. In addition, certain information required to comply with the Act, such as the new evaluation criteria, was not collected in Round 1. Thus, it would be less burdensome for both Round 1 applicants and Commission staff to have Round 1 applicants submit new applications during the Round 2 filing window than to update Round 1 applications in the existing portal. Requiring Round 1 applicants to submit new applications will increase the speed at which Commission or USAC staff are able to process and award Round 2 funding. Therefore, we propose requiring Round 1 applicants that continue to seek funding to update or amend their applications by submitting a new application for Round 2.

17. Should we review Round 2 applications filed by Round 1 applicants before evaluating applications from new entities during the Round 2 review process? Should we prioritize funding applications submitted during Round 2 by applicants that applied, but did not receive any or all of the requested funding, during Round 1? Relatedly, how should we treat applicants for Round 2 funding that received the full amount of their requested funding during Round 1?

²⁶ *Id.* § 903(c)(1)(A)(ii).

²⁷ *Id.* § 903(c)(3).

²⁸ *Wireline Competition Bureau Announces Close of Filing Window for COVID-19 Telehealth Program*, WC Docket No. 20-89, Public Notice, 35 FCC Rcd at 6515-16 (WCB 2020) (stating the demand for the program greatly exceeded the remaining funding).

²⁹ Centers for Disease Control and Prevention, Coronavirus (COVID-19), <https://www.cdc.gov/coronavirus/2019-ncov/index.html> (last visited Mar. 15, 2020) (Known daily cases as of Mar. 15, 2020 were 444 and by June 25, 2020 known daily cases were 40,632. As of Dec. 20, 2020, known daily cases are 239,604); *see also* Centers for Disease Control and Prevention, COVID Data Tracker, US and State Trends, Daily Trends in Number of COVID-19 Cases in the United States Reported to CDC, https://covid.cdc.gov/covid-data-tracker/#trends_dailytrendscases (last visited Dec. 22, 2020).

C. Additional Program Improvements

18. During the process of standing up this Program, we learned valuable lessons about the unique needs of connected care and health care providers. To build on the lessons learned during Round 1, we propose updating the Program's application and invoicing processes and seek comment on implementing these proposed improvements during Round 2.³⁰ Specifically, we propose using the Universal Service Administrative Company (USAC) to assist in administering the remaining work necessary to complete Round 1 of the Program as well as Round 2. We further propose directing USAC to update the portal that will be used by Round 2 applicants, including Round 1 applicants that wish to renew their request for funding under the Program, to submit applications for the funding appropriated by the Act; to conduct an initial review of Round 2 invoices; and to provide outreach and guidance about the application process to applicants. Updating the portal will ensure that all applicants provide the information needed for review under the updated Round 2 application evaluation metrics, facilitate program administration, and reduce administrative burdens on both applicants and Commission staff. However, under this approach Commission staff would make final funding determinations, subject to the requirements of the Act. We seek comment on this approach.

19. During Round 1, applicants were required to file FCC Forms 460 to obtain eligibility determinations for all participating health care provider sites.³¹ As part of the eligibility determination process, health care provider sites seeking an eligibility determination were assigned a health care provider number by USAC. We found that requiring health care providers to file FCC Forms 460 for each site delayed our ability to move quickly on many applications, especially those applications with a large number of sites in need of eligibility determinations. Using a different method to determine whether a site is eligible could reduce the administrative burden on applications, the Commission, and USAC during the application review process. Accordingly, we seek comment on directing USAC to include eligibility review as part of the application process, but not requiring applicants to file FCC Forms 460. Are there other means of identifying health care providers and determining their eligibility for support in the program that we should consider?

20. Finally, are there additional improvements we should consider making to the application, review, and invoicing processes? For example, during the Round 1 application process, applicants were required to submit documentation demonstrating that funding requests were for equipment and services eligible for Program support, and funding commitments were made based on the anticipated costs of the eligible services requested on their applications.³² After receiving Round 1 commitments, however, some health care providers seeking support for eligible services and equipment experienced supply chain disruptions and equipment shortages, while other health care providers determined that, due to shifting pandemic response strategies, they needed different services or equipment than those requested in their application. Anticipating these issues, the Commission gave health care providers flexibility to respond to changing circumstances by not requiring health care providers that received funding commitments to

³⁰ The CARES Act permits the Commission to rely on Part 54 of the Commission's rules as needed in disbursing funding. CARES Act, Pub. L. No 116-136, 134 Stat. 281 (2020) ("[T]he Federal Communications Commission may rely on the rules of the Commission under part 54 of title 47, Code of the Federal Regulations, in administering the amount provided under the heading in this Act if the Commission determines that such administration is in the public interest.").

³¹ *2020 Application Public Notice*, 35 FCC Rcd at 3053. Round 1 applicants were required to obtain an eligibility determination and health care provider number from the Universal Service Administrative Company (USAC) for each health care provider site they included in their application. Applicants must submit an FCC Form 460 to USAC to receive these eligibility determinations and health care provider numbers.

³² *2020 Application Public Notice*, 35 FCC Rcd at 3054-57; *Wireline Competition Bureau and Office of Managing Director Provide Invoicing Guidance for the COVID-19 Telehealth Program*, WC Docket No. 20-89, Public Notice, 35 FCC Rcd 3564 (WCB Apr. 17, 2020).

purchase only the services and connected devices identified in their applications.³³ Accordingly, health care providers that received funding commitments may have been allowed to substitute vendors, eligible services, and/or eligible connected devices as long as the substituted items are eligible and the total amount sought for reimbursement does not exceed the commitment amount.³⁴

21. Should we maintain this flexibility, but streamline the application process by requiring applicants demonstrate the eligibility of the connected devices and services purchased using Round 2 support only during the invoicing process? Are health care providers still experiencing supply chain delays or noticing shortages of certain connected devices? Have health care providers' pandemic response strategies solidified to the point where they will be able to accurately identify the telecommunication services, information services, or connected devices needed on their application for Round 2? If we do not require applicants to demonstrate the eligibility of the services and connected devices for which they seek funding on their applications during Round 2, what documentation or demonstration should we require the applicant to submit to demonstrate that they will use the funding requested for services and devices that are eligible for support? What safeguards should we consider implementing to ensure that this proposal does not lead to waste, fraud, or abuse of Program funding? Should we require additional certifications on applications and for each invoice to ensure applicants/awardees understand what is expected of them and the potential penalties for waste, fraud, or abuse? Relatedly, should we publish a list of eligible and ineligible equipment and services to provide applicants with specific guidance on what may be requested for reimbursement?

IV. HOW TO FILE COMMENTS

22. Interested parties may file comments on or before the date indicated above. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS), or by filing paper copies.

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs/>.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail.³⁵ All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

³³ *COVID-19 Report and Order*, 35 FCC Rcd at 33773376-77, para. 17.

³⁴ All invoice submissions are reviewed to confirm that the expenses for which the applicant seeks reimbursement are eligible. See Federal Communications Commission, *COVID-19 Telehealth Program Invoice FAQs-Eligibility of Services and Connected Devices*, www.fcc.gov/covid-19-telehealth-program-invoice-frequently-asked-questions (last updated Oct. 1, 2020). Applicants are also required to certify that they have received the services and equipment for which they seek reimbursement, that the costs were incurred and paid for in accordance with Program rules and procedures, and that the funds are to be used for their intended purpose. See Federal Communications Commission, Request for Reimbursement Form, <https://www.fcc.gov/sites/default/files/covid-19-telehealth-request-for-reimbursement-form.pdf> (last visited Dec. 29, 2020). Applicants are required to retain records related to their participation in the Program for three years from the last date of service and may be subject to compliance audits. *COVID-19 Report and Order*, 35 FCC Rcd at 3381, para. 32.

³⁵ In response to the COVID-19 pandemic, the FCC has closed its current hand-delivery filing location at FCC Headquarters. We encourage outside parties to take full advantage of the Commission's electronic filing system. Any party that is unable to meet the filing deadline due to the building closure may request a waiver of the comment or reply comment deadline, to the extent permitted by law. *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, DA 20-304 (rel. Mar. 19, 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
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23. The proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.³⁶ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

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³⁶ 47 CFR §§ 1.1200 *et seq.*