

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

In the Matter of)
Rural Health Care Support Mechanism) WC Docket No. 02-60
Promoting Telehealth in Rural America) WC Docket No. 17-310

ORDER

Adopted: February 12, 2021

Released: February 12, 2021

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) waives section 54.621(a)(1) of the Commission’s rules and extends the close of the funding year 2021 application filing window for the Rural Health Care (RHC) Program until June 1, 2021. We find that an extension of the application filing window for funding year 2021 is necessary in light of the ongoing disruptions caused by the COVID-19 pandemic to program participants, the emergence of the more contagious new COVID-19 variants, and the overwhelming burden placed on health care providers to administer COVID-19 testing and vaccines.

II. BACKGROUND

2. The Commission’s RHC Program consists of two component programs: (1) the Telecommunications (Telecom) Program; and (2) the Healthcare Connect Fund (HCF) Program. Eligible health care providers apply for support for eligible services by submitting funding requests (an FCC Form 466 in the Telecom Program or an FCC Form 462 in the HCF Program) to the Universal Service Administrative Company (USAC) during an application filing window. In the 2019 Promoting Telehealth Report and Order, the Commission revised its application filing window rules that take effect in funding year 2021.

3. Beginning in funding year 2021, section 54.621(a)(1) of our rules requires USAC to open an initial application filing window with an end date no later than 90 days prior to the start of the funding year (i.e., no later than April 1). The Commission established the requirement of the April 1 end date for the initial application filing window to provide more certainty to applicants by creating a consistent application filing window close date each year, to give USAC time to begin processing submitted RHC Program applications before the funding year begins, and to give USAC sufficient time to publish a gross

1 Rural Health Care Support Mechanism, WC Docket No. 02-60, Order, 34 FCC Rcd 4136, 4136, para. 2 (2019) (Funding Year 2018 Demand Order).

2 See Funding Year 2018 Demand Order, 34 FCC Rcd at 4139, para. 10; WCB Provides a Filing Window Period Schedule for Funding Requests under the Telecom Program and the Healthcare Connect Fund, WC Docket No. 02-60, Public Notice, 31 FCC Rcd 9588, 9589, 9592 (WCB 2016).

3 Promoting Telehealth in Rural America, WC Docket No. 17-310, Report and Order, 34 FCC Rcd 7335, 7416-17, 7433, paras. 176, 214 (2019) (Promoting Telehealth Report and Order). The RHC Program funding year begins on July 1 of each calendar year and ends June 30 of the next calendar year. See 47 CFR § 54.600(a).

4 47 CFR § 54.621(a)(1); Promoting Telehealth Report and Order, 34 FCC Rcd at 7416, para. 176.

demand estimate prior to the start of the funding year.⁵ In establishing a consistent application filing window close each year, the Commission also directed USAC to publish a gross demand estimate 30 days before the start of the applicable funding year and allowed the Bureau to require a demand estimate to be filed at a different time if warranted by new circumstances.⁶ On July 1, 2020, USAC announced that the funding year 2021 application filing window would close on April 1, 2021.⁷

4. In March 2020, the Bureau extended the RHC Program funding year 2020 application filing window until June 30, 2020, as the COVID-19 outbreak rapidly spread nationwide and caused significant disruptions to health care providers.⁸ Today, almost a year later, as the more contagious new COVID-19 variants emerge and spread into many states in the U.S.,⁹ health care providers continue to face extreme challenges, including the increasing demand for COVID-19 testing, and the administration of vaccines.¹⁰ RHC Program participants have indicated that a delay of the close of the application filing window would help them address these challenges.¹¹

III. DISCUSSION

5. We waive section 54.621(a)(1) of the Commission's rules,¹² which requires that the RHC Program application filing window close no later than April 1 and direct USAC to extend the end date of the funding year 2021 initial filing window to June 1, 2021. Generally, the Commission's rules may be

⁵ *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7416, para. 176.

⁶ *Id.* at 7416, para. 176 & n.532.

⁷ See USAC, RHC Program News for July 2020 (July 1, 2020), <https://view.outreach.usac.org/?qs=be09390ef07599d284f2b38fd59dd2c39f6b121f0ca170945dbb0982bc42596bcb0e4c09491e9f242b75d4a4e11eeb6da21cf8d6702235f973a7c64c426324a377b2b7a89de733dc>.

⁸ Rural Health Care Support Mechanism, WC Docket No. 02-60, Order, 35 FCC Rcd 2922, 2924, para. 6 (WCB 2020) (*COVID-19 RHC Relief Order*).

⁹ See Bridget Balch, *The COVID-19 variants are spreading rapidly. Here's what scientists know about them — and why you need a better mask*, The Association of American Medical Colleges (AAMC) (Jan. 26, 2021), <https://www.aamc.org/news-insights/covid-19-variants-are-spreading-rapidly-here-s-what-scientists-know-about-them-and-why-you-need>.

¹⁰ See, e.g., Kay Lazar, *COVID-19 testing remains a challenge. It could get worse as health care providers juggle vaccine rollout*, The Boston Globe (Jan. 7, 2021), <https://www.bostonglobe.com/2021/01/07/nation/virus-testing-remains-challenge-it-could-get-worse-taxed-health-care-providers-juggle-vaccine-rollout/>; Jennifer Steinhauer, *Overwhelmed, More States Turn to National Guard for Vaccine Help*, The New York Times (Jan. 14, 2021), <https://www.nytimes.com/2021/01/14/us/politics/coronavirus-vaccine-national-guard.html>; Jared S. Hopkins and Arian Campo-Flores, *Demand for COVID-19 Vaccines Overwhelms State Health Providers*, The Wall Street Journal (Feb. 8, 2021), <https://www.wsj.com/articles/demand-for-covid-19-vaccines-overwhelms-state-health-providers-11612789789>; Michelle Cortez, *Telemedicine*, The Washington Post (Sept. 14, 2020), https://www.washingtonpost.com/business/telemedicine/2020/09/12/3dcf2ea4-f4cb-11ea-8025-5d3489768ac8_story.html.

¹¹ See Letter from John Windhausen, Jr., Executive Director, Schools, Health & Libraries Broadband (SHLB) Coalition, to Jessica Rosenworcel, Acting Chairwoman, FCC, et al., WC Docket No. 17-310, at 2 (dated Jan. 25, 2021) (stating that RHC Program participants would have trouble meeting an April 1, 2021 application filing deadline and requesting an extension until late May 2021); see also Letter from Carl Baranowski, Vice President & Chief Legal Officer, University of Texas Health Science Center at Tyler, to Jessica Rosenworcel, Acting Chairwoman, FCC, et al., WC Docket No. 17-310 (dated Jan. 27, 2021); Letter from John J. Heitmann, Counsel for Fiberutilities Group, LLC, to Jessica Rosenworcel, Acting Chairwoman, FCC, et al., WC Docket No. 17-310 (dated Feb. 1, 2021); Dan Kettwich, Chief Executive Officer, Advanced Data Services, Inc., to Jessica Rosenworcel, Acting Chairwoman, FCC, et al., WC Docket No. 17-310 (dated Feb. 3, 2021) (all supporting an extension of the close of the funding year 2021 application filing window).

¹² 47 CFR § 54.621(a)(1).

waived for good cause shown.¹³ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹⁴ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy.¹⁵ We find that the persistent and prolonged nature of the COVID-19 pandemic, the emergence of the more contagious new variants, and the overwhelming burden placed on health care providers in administering COVID-19 testing and vaccines present compelling and unique circumstances that merit a waiver of section 54.621(a)(1) and an extension of the application filing deadline.

6. The Commission established a consistent application filing window close in section 54.621(a)(1) of the Commission's rules to provide more certainty to applicants by creating a consistent application filing window close date each year, to give USAC time to begin processing submitted RHC Program applications before the funding year begins, and to allow USAC sufficient time to publish a gross demand estimate prior to the start of the funding year.¹⁶ While establishing an application filing window end date sufficiently far in advance of the start of the funding year may provide these benefits, the COVID-19 pandemic has presented unique and evolving challenges that was unforeseen when the new application filing window rules were adopted in 2019. Those challenges were dire last year, when the Bureau issued a waiver to extend the 2020 initial filing window;¹⁷ and they remain at least as exigent today with respect to the initial filing window for 2021.¹⁸ We find that it is in the public interest to waive the deadline in section 54.621(a)(1) to allow RHC program participants to focus their limited resources on providing critical health care to their patients. We further find that any potential costs to the RHC Program that could result from this Order will be outweighed by the benefits of providing additional time for health care providers, many of whom are exhausted and overburdened by the COVID-19 pandemic, to file applications for the RHC Program health care providers and their patients.

7. Additionally, we direct USAC to file the RHC Program gross demand estimate by August 1, 2021. The delay of the close of the application filing window until June 1, 2021 makes it impossible for USAC to provide a demand estimate 30 days before the start of funding year 2021, the deadline contemplated in the *Promoting Telehealth Report and Order*.¹⁹ Requiring USAC to file its gross demand

¹³ 47 CFR § 1.3.

¹⁴ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁵ *Id.*

¹⁶ *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7416, para. 176.

¹⁷ *COVID-19 RHC Relief Order*, 35 FCC Rcd at 2924, para. 6. The Bureau also granted additional relief to assist RHC program participants facing challenges created by the pandemic. *See id.* at 2924-27, paras. 7-12 (extending expiring evergreen contracts, the deadline for responses to USAC information requests, the service delivery deadline, the invoicing deadline, and deadlines for filing appeals and requests for waiver); *Rural Health Care Universal Service Support Mechanism; Schools and Libraries Universal Service Support Mechanism*, WC Docket No. 02-60, CC Docket No. 02-6, Order, 35 FCC Rcd 2741 (WCB 2020) (initially waiving the Commission's gift rule for the RHC and E-Rate Programs through September 30, 2020); *Rural Health Care Universal Service Support Mechanism; Schools and Libraries Universal Service Support Mechanism*, WC Docket No. 02-60, CC Docket No. 02-6, Order, 35 FCC Rcd 9416 (WCB 2020) (extending the waiver of each program's gift rule until December 31, 2020 and extending the response time for USAC information requests in each program); *Rural Health Care Universal Service Support Mechanism; Schools and Libraries Universal Service Support Mechanism*, WC Docket No. 02-60, CC Docket No. 02-6, Order, 35 FCC Rcd 14544 (WCB 2020) (extending the waiver of each program's gift rule until June 30, 2021).

¹⁸ *See supra* note 11.

¹⁹ *Id.* at 7416, para. 176 & n.532 (requiring that USAC provide a "gross demand estimate 30 days prior to the start of the pertinent funding year.").

estimate by August 1, 2021 will give it the same amount of time to prepare the estimate as it would have had without an extension of the close of the application filing window.²⁰

IV. ORDERING CLAUSES

8. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 USC §§ 151-154 and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, that section 54.621(a)(1) of the Commission's rules, 47 CFR § 54.621(a)(1), is waived to the extent provided herein.

9. IT IS FURTHER ORDERED, that pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief
Wireline Competition Bureau

²⁰ Thirty days prior to the start of the funding year is June 1. *See* 47 CFR 54.600(a). If the application filing window closed on April 1, USAC would have two months to provide a gross demand estimate.