

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: March 3, 2022

Released: March 3, 2022

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 2022 application filing window for the Rural Health Care (RHC) Program until June 1, 2022. We find that an extension of the application filing window for funding year 2022 is necessary in light of the persistent and ongoing disruptions caused by the COVID-19 pandemic to program participants and the shortage and burnout of health care staff aggravated by the surge of the Omicron variant.

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.¹ 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.² In the 2019 *Promoting Telehealth Report and Order*, the Commission revised its application filing window rules, which took effect beginning in funding year 2021.³

3. Section 54.621(a)(1) of the Commission’s rules requires USAC to open an 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).⁴ The Commission established the requirement of the April 1 end date for the 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 demand estimate prior to the

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.

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 May 6, 2021, USAC announced that the funding year 2022 application filing window would close on April 1, 2022.⁷ In addition to these requirements, the Bureau, in conjunction with the Office of the Managing Director, must determine the amount of unused funding from previous funding years available to be used in the current funding year by the end of the second quarter of each calendar year.⁸

4. In March 2020, the Bureau extended the RHC Program funding year 2020 application filing window until June 30, 2020, when the COVID-19 outbreak rapidly spread nationwide and started to cause significant disruptions to health care providers.⁹ In February 2021, as the COVID-19 pandemic continued to cause significant disruptions to health care providers, the Bureau waived section 54.621(a)(1) of the Commission's rules, which requires the RHC Program funding year 2021 application filing window close on April 1, 2021,¹⁰ and extended the window to June 1, 2021.¹¹ When the funding year 2022 application filing window opened in December 2021, the Omicron variant of COVID-19 started to emerge in the United States.¹² This highly contagious variant caused a large surge in COVID-19 cases and pushed hospitalizations to record levels, resulting in unprecedented health care staff shortage and burnout.¹³ Some health care providers have been so overwhelmed that they have only recently started the funding year 2022 application process.¹⁴

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 May 2021, at 2 (May 6, 2021), <https://www.usac.org/wp-content/uploads/rural-health-care/documents/monthly-newsletter/2021-newsletters/RHC-Newsletter-May-2021.pdf>.

⁸ See 47 CFR § 54.619(a)(5).

⁹ 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*).

¹⁰ 47 CFR § 54.621(a)(1).

¹¹ *Rural Health Care Support Mechanism; Promoting Telehealth in Rural America*, WC Docket Nos. 02-60 and 17-310, Order, 36 FCC Rcd 1604, 1604, para. 1 (WCB 2021) (*FY 2021 Filing Window Extension Order*).

¹² The Centers for Disease Control and Prevention, *Omicron Variant: What You Need to Know* (Feb. 2, 2022), https://www.cdc.gov/coronavirus/2019-ncov/variants/omicron-variant.html?s_cid=11734:omicron%20variant:sem.ga:p:RG:GM:gen:PTN:FY22 (“December 1, 2021: The first confirmed U.S. case of Omicron was identified.”).

¹³ See Request for Waiver by the New England Telehealth Consortium (NETC) and the Connections Telehealth Consortium (CTC), WC Docket Nos. 02-60 and 17-310, n.4–n.8 (filed Feb. 22, 2022) (*NETC and CTC Request for Waiver*) (citing various sources to support their statement that the Omicron surge has worsened the health care staff shortage and burnout). See also, Kelsey Kernstine & Cassie Buchman, *Rural hospitals seeing staff shortages amid omicron surge*, NewsNation Now (Jan. 25, 2022), <https://www.newsnationnow.com/morninginamerica/rural-hospitals-struggling-because-of-covid/>; Aaron Bolton, *Omicron amplifies hospital staffing shortages, contact tracing challenges*, Montana Public Radio (Jan. 26, 2022), <https://www.mtpr.org/montana-news/2022-01-26/omicron-amplifies-hospital-staffing-shortages-contact-tracing-challenges>; Mary Klingler, *Health care workers face burnout amid Omicron surge*, WBIR-TV (Jan. 18, 2022), <https://www.wbir.com/article/news/health/coronavirus/health-care-workers-face-burnout-amid-omicron-surge-south-college-school-of-pharmacy-covid-19-testing-rise-in-cases/51-fc4706af-83bf-45d8-bfac-c45039df616e>.

¹⁴ Letter from John Windhausen, Jr., Executive Director, Schools, Health & Libraries Broadband (SHLB) Coalition, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 02-60 and 17-310, at 2 (filed Feb. 28, 2022) (*SHLB Letter*).

5. On February 22, 2022, the New England Telehealth Consortium (NETC) and the Connections Telehealth Consortium (CTC), through their counsel, filed a Request for Waiver that asks the Commission to waive the April 1 filing window end date requirement for funding year 2022 and extend the filing window to June 1, 2022.¹⁵ The Request for Waiver attested to the staff shortage and burnout that NETC and CTC health care providers have experienced and noted that these issues will not resolve quickly even as Omicron fades.¹⁶ On February 28, 2022, the Schools, Health & Libraries Broadband (SHLB) Coalition filed a letter to support the request for waiver by NETC and CTC.¹⁷

III. DISCUSSION

6. We grant the Request for Waiver from NETC and CTC, as supported by SHLB, by waiving section 54.621(a)(1) of the Commission's rules,¹⁸ 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 2022 filing window to June 1, 2022. Generally, the Commission's rules may be waived for good cause shown.¹⁹ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.²⁰ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy.²¹ We find that the persistent and prolonged nature of the COVID-19 pandemic and the shortage and burnout of health care staff aggravated by the surge of Omicron cases since the opening of the funding year 2022 filing window present compelling and unique circumstances that merit a waiver of section 54.621(a)(1) and an extension of the application filing deadline.

7. 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, 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.²² 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 were unforeseen when the new application filing window rules were adopted in 2019. Those challenges were dire in the past two years, when the Bureau extended the funding years 2020 and 2021 filing windows;²³ and they remains significant now with respect to the filing window for 2022.²⁴ We find

¹⁵ *NETC and CTC Request for Waiver* at 2.

¹⁶ *Id.*

¹⁷ *SHLB Letter* at 1.

¹⁸ 47 CFR § 54.621(a)(1).

¹⁹ 47 CFR § 1.3.

²⁰ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

²¹ *Id.*

²² *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7416, para. 176.

²³ *FY 2021 Filing Window Extension Order*, 36 FCC Rcd at 1604, para. 1; *COVID-19 RHC Relief Order*, 35 FCC Rcd at 2924, para. 6. The Bureau also granted other relief to assist RHC Program participants facing challenges created by the pandemic. See *COVID-19 RHC Relief Order*, 35 FCC Rcd 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*

(continued....)

that it is in the public interest to waive the deadline in section 54.621(a)(1) because many RHC Program participants may not be able to meet the April 1 deadline as they focused their limited resources on providing critical health care to their patients during the Omicron surge. 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. Moreover, we believe that any delays in application processing as a result of this extension should be limited. As NETC, CTC, and SHLB acknowledge, USAC significantly improved application processing in funding year 2021, despite the extension of the filing window for funding year 2021.²⁵

8. Additionally, we adjust two deadlines that are associated with the close of the filing window. First, we direct USAC to file the RHC Program gross demand estimate by August 1, 2022. The delay of the close of the application filing window until June 1, 2022 makes it impossible for USAC to provide a demand estimate 30 days before the start of funding year 2022, the deadline contemplated in the *Promoting Telehealth Report and Order*.²⁶ Requiring USAC to file its gross demand estimate by August 1, 2022 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.²⁷ Second, we waive the requirement in section 54.619(a)(5) of the Commission's rules requiring that the determination of the amount of unused funding from previous funding years available to carry forward to the current funding year be made in the second quarter.²⁸ To align this deadline with the window close and gross demand estimate deadline, we now require that determination to be made in the third quarter of 2022.²⁹

IV. ORDERING CLAUSES

9. 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 sections 54.619(a)(5) and 54.621(a)(1) of the Commission's rules, 47 CFR §§ 54.619(a)(5), 54.621(a)(1), are waived to the extent provided herein.

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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); *Rural Health Care Support Mechanism; Promoting Telehealth in Rural America*, WC Docket Nos. 02-60 and 17-310, Order, 36 FCC Rcd 7051, 7061, paras. 27, 28 (WCB 2021) (granting relief to RHC Program service delivery deadline, invoice filing deadline, and response deadline).

²⁴ See *supra* paras. 4-5.

²⁵ *NETC and CTC Request for Waiver* at 2; *SHLB Letter* at 2.

²⁶ *Promoting Telehealth Report and Order*, 34 FCC Rcd 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.").

²⁷ 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.

²⁸ See 47 CFR § 54.619(a)(5).

²⁹ When the Commission adopted section 54.619(a)(5), it also directed the Bureau to announce a specific amount of unused funds from prior funding years to be carried forward to increase available funding for future funding years in the second quarter. See *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Report and Order, 33 FCC Rcd 6574, 6584-85, para. 27 (2018) ("The Bureau will announce the availability and amount of carryover funds during the second quarter of the calendar year."). We require the announcement of the availability and amount of carryover funds to be made in the third quarter of 2022.

10. 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

Trent B. Harkrader
Chief
Wireline Competition Bureau