

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

In the Matter of
Rural Health Care Support Mechanism
WC Docket No. 02-60

ORDER

Adopted: May 14, 2019

Released: May 20, 2019

By the Commission: Commissioner Starks issuing a separate statement.

I. INTRODUCTION

1. With this Order, we take necessary steps to provide full funding for all eligible services requested from the Rural Health Care universal service support mechanism (RHC Program) for the 2018 funding year (FY). In FY 2018, multi-year and upfront payment funding requests filed during the window sought support exceeding the \$150 million funding cap for those payments. Our rules would require the Universal Service Administrative Company (USAC) to prorate requested support received by eligible health care providers. To avoid significant pro-rata reductions in support for multi-year and upfront payment requests and to ensure that all eligible funding requests seeking support for services to be delivered in FY 2018 are fully funded, we suspend on our own motion the Commission’s rule allowing for multi-year commitments in the Healthcare Connect Fund (HCF Program) for FY 2018 and direct USAC to process these requests as single-year funding requests.1 This action will ensure that rural health care providers can continue to obtain critical communications-based technologies for the delivery of health care services to their communities.

II. BACKGROUND

2. The RHC Program has two component programs: (1) the Telecommunications Program (Telecom Program), which permits eligible health care providers to apply for discounts to defray the high cost of eligible telecommunications services in rural areas;2 and (2) the HCF Program, which supports the delivery of broadband services,3 and encourages the development of state and regional health care networks by allowing health care consortia to request support for the upfront costs of deploying broadband infrastructure and seek funding for multi-year contracts.4 The latter program, in turn, allows rural health care providers to access specialists located in urban areas, exchange electronic health records, and take advantage of cost savings that result from bulk buying and aggregating administrative functions.5

1 See 47 CFR §§ 1.3, 54.644(a), 54.675(a), (f).

2 See 47 CFR §§ 54.603-54.625; Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9093-9161, paras. 608-749 (1997) (Universal Service First Report and Order) (subsequent history omitted).

3 See 47 CFR §§ 54.630-649; Rural Health Care Support Mechanism, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678, 16880-81, paras. 1-3 (2012) (HCF Report and Order).

4 See HCF Report and Order, 27 FCC Rcd at 16699-16700, paras. 45-46; 47 CFR § 54.638(a) (“Upfront payments include all non-recurring costs for series, equipment, and facilities, other than reasonable and customary installation charges up to \$5,000.”).

5 See HCF Report and Order, 27 FCC Rcd at 16686-93, 16669, paras. 19-28, 45.

3. Funding for the RHC Program for FY 2018 is capped at \$581 million.⁶ Within that cap, a maximum of \$150 million may be committed for HCF Program funding for requests seeking support for non-recurring upfront payments and multi-year commitments.⁷ Support for multi-year commitments is further limited to a period covering eligible expenses for three funding years.⁸ The \$150 million funding cap safeguards against large annual fluctuations in RHC Program demand by ensuring that upfront and multi-year payments do not inhibit the availability of single-year payments to rural health care providers.⁹

4. If, after a filing window period closes, demand exceeds either the overall RHC Program funding cap or the \$150 million upfront/multi-year cap in a particular funding year, the Commission requires the program administrator, USAC, to prorate funding requests to ensure that commitments do not exceed the relevant caps.¹⁰ The pro-rata factor is determined by dividing the total amount of available funding by the total amount of support requested during a filing window.¹¹ The administrator then multiplies “the pro-rata factor by the total amount of support requested by each applicant . . . and commit[s] funds to each eligible applicant that has filed during the specific window period consistent with this calculation.”¹² The net result is each eligible applicant in the filing window period will receive less support than requested by the same pro-rata factor to bring the overall support amount committed within the applicable cap limit, i.e., the \$581 million aggregate limit for FY 2018 or the \$150 million limit for HCF Program requests seeking support for upfront payments and multi-year commitments.

5. The Commission adopted an order in June 2018 increasing the RHC Program cap to its current limit while deferring action on modifying the \$150 million upfront/multi-year cap.¹³ The Commission separately established a process to carry-forward unused RHC Program funds on an annual basis for use in future funding years. This unused funding is available to commit to funding requests for eligible services, equipment, and facilities in excess of the annual funding cap.¹⁴

⁶ Per the Commission’s rules, the annual funding cap is \$571 million, which is then adjusted annually for inflation. 47 CFR § 54.675(a)(1); *see also Promoting Telehealth in Rural America*, WC Docket No. 17-310, Report and Order, 33 FCC Rcd 6574, 6584, para. 23 (2018) (“For FY 2018, based on GDP-CPI, the RHC Program funding cap will be \$581 million.”) (2018 Report and Order).

⁷ 47 CFR § 54.675(a).

⁸ Section 54.644(a) of the Commission’s rules allows health care providers to “receive funding commitments from the [a]dministrator for a period that covers up to three funding years.” 47 CFR § 54.644(a). The entire amount, however, is counted towards the cap in the funding year in which the multi-year support is committed. *See HCF Report and Order*, 27 FCC Rcd at 16802, para. 298 (“We institute a single cap of \$150 million that will apply to all commitments for upfront payments during the funding year, and all multi-year commitments made during a funding year.”).

⁹ *See HCF Report and Order*, 27 FCC Rcd at 16801-02, paras. 296, 298 (“This cap takes into account the need for economic reasonableness and responsible fiscal management of the program . . .”).

¹⁰ 47 CFR § 54.675(f). When establishing the HCF Program and the \$150 million upfront/multi-year funding cap, the Commission intended to apply “the longstanding default rule” of pro-rata reduction in the event the overall RHC Program cap, including the upfront/multi-year funding cap, is exceeded during a filing window period and to otherwise process and prioritize funding requests on a rolling basis until the program cap is reached. *See HCF Report and Order*, 27 FCC Rcd at 16795, paras. 274-75. Accordingly, the Commission specifically directed USAC, when discussing the process for addressing excess demand, to periodically inform the public of the total dollar amounts “committed in upfront payments (for purposes of the \$150 million cap on upfront payments).” *Id.* at 16795-96, 16802, paras. 275, 298; *see also id.* at 16802, para. 298 (“We direct USAC to process and prioritize funding requests for upfront payments and multi-year commitments on a rolling basis, similar to the process we set forth above for funding requests generally.”).

6. *FY 2018 Program Demand.* According to USAC, gross demand for all RHC Program applications filed during the single filing window period for FY 2018 is approximately \$648 million.¹⁵ About \$237 million of that total represents funding requests seeking support for upfront payments and multi-year commitments in the HCF Program.¹⁶ If requests for multi-year commitments and upfront payments did not exceed the \$150 million upfront/multi-year HCF funding cap, then the overall demand for the RHC Program would be less than the \$581 million funding cap for FY 2018, as the remaining HCF Program requests and Telecom Program requests total about \$411 million.¹⁷ Of the \$237 million subject to the upfront/multi-year HCF funding cap, only about \$149 million is for upfront expenses and FY 2018 recurring charges, which is within the HCF upfront/multi-year funding cap.¹⁸ The remaining \$88 million is sought for FY 2019 and FY 2020 recurring charges.¹⁹

7. In November 2018, USAC announced there would be no proration for FY 2018 Telecom Program funding requests or for single-year FY 2018 funding requests seeking support for recurring services under the HCF Program.²⁰ That announcement reflected the fact that the total demand for such funding requests plus \$150 million authorized for upfront payments and multi-year commitments does not exceed the \$581 million cap for FY 2018. Pursuant to that announcement, USAC began issuing funding decisions for single-year funding requests seeking support for recurring services in November 2018.²¹

8. Absent action by the Commission, USAC would need to significantly prorate the funding support for upfront payments and multi-year commitments to bring demand within the \$150 million cap before issuing funding decisions for this category of requests. If it did so based on the total \$237 million demanded for such requests, applicants would lose about 37% of the expected program support for these upfront and multi-year requests over the next three years.²²

III. DISCUSSION

9. We suspend on our own motion our rule allowing for multi-year commitments in the HCF Program for FY 2018 to ensure all eligible services requested for FY 2018 are fully funded and to avoid

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¹¹ 47 CFR § 54.675(f); *see also* USAC, Rural Health Care Program, Funding Commitments, FY2016 Funding Information, <https://www.usac.org/rhc/tools/funding-commitments/archive/default.aspx>.

¹² *See Wireline Competition Bureau Provides a Filing Window period Schedule for Funding Requests Under the Telecommunications Program and the Healthcare Connect Fund*, WC Docket No. 02-60, Public Notice, 31 FCC Rcd 9588, 9592 (WCB 2016) (discussing the pro-rata process) (*2016 Public Notice*); 47 CFR § 54.675(f)(3). With a request for a multi-year commitment, the administrator would multiply the pro-rata factor by the entire amount requested for the multi-year period as that entire amount counts towards the cap in the funding year in which the support is committed. The administrator would then commit funds consistent with this calculation. For example, if the health care provider requested \$300 million in FY 2018 for a three-year period and the pro rata factor is 90%, then the administrator would only commit \$270 million (.90 x \$300 million = \$270 million) for the multi-year period.

¹³ *2018 Report and Order*, 33 FCC Rcd at 6578, 6580, paras. 9, 13 & n.44 (“We plan to consider whether to increase the internal \$150 million cap at a future time, once we have the historical data to determine if such action is necessary and the impact that raising or not [] raising the internal cap would have on the functioning of the RHC Program.”). Like possible changes to the \$150 million cap, the Commission continues to consider other issues and proposals raised in the Notice of Proposed Rulemaking adopted in December 2017. *See generally Promoting Telehealth in Rural America*, WC Docket No. 17-310, Notice of Proposed Rulemaking and Order, 32 FCC Rcd 10631 (2017) (*2017 NPRM and Order*).

¹⁴ *2018 Report and Order*, 33 FCC Rcd at 6584-85, para. 27; *see also* 47 CFR § 54.675(a)(5) (stating unused funds “shall be available for use in the next full funding year . . . in accordance with the public interest and notwithstanding the annual cap . . .”). The carry-forward process allows USAC to “refine its calculation of available funds over four reporting quarters as the funding year progresses” and “provides certainty regarding when unused funds will be carried forward for use in the RHC Program with minimal disruption to the administration of the Program.” *2018 Report and Order*, 33 FCC Rcd at 6585, para. 28.

making pro-rata reductions of support for health care providers.²³ We further direct USAC to designate the underlying contracts as “evergreen” to the extent those contracts meet the requirements of Section 54.642(h)(4)(ii) of our rules²⁴ to allow the health care providers seeking multi-year commitments to receive the full eligible amount requested for subsequent funding years by submitting funding requests to USAC without rebidding the services. These actions will enable the funding of all RHC Program support requests to receive their full eligible amounts for services delivered in FY 2018 and create a simpler administrative path for health care providers to obtain eligible funding for services to be delivered in FY 2019 and FY 2020. This, in turn, will help connect health care providers to essential advanced telecommunications and information services for the delivery of modern healthcare to rural Americans without further burdening contributors to the Universal Service Fund.

10. RHC Program applicants are generally required to file requests for support annually and must satisfy a competitive bidding process before selecting vendors and service providers.²⁵ A multi-year funding commitment obtained pursuant to section 54.644(a) of the Commission’s rules allows a health care provider to file and obtain approval for just one request for a multi-year period not to exceed three funding years.²⁶ Separately, long-term contracts designated by the administrator as “evergreen” are not required to conduct competitive rebidding during the life of the contract.²⁷

11. For the first time in the HCF Program’s history, demand for upfront payments and multi-year commitments has exceeded the \$150 million cap.²⁸ The Commission stated in the *HCF Report and Order* that under a first-come, first-served scenario where applications are processed on a rolling basis that “[i]f an applicant signs a multi-year contract but funds are no longer available . . . [,] the applicant may choose to simply seek a one-year funding commitment, have the contract designated as ‘evergreen,’ and apply for a multi-year funding commitment in the next funding year.”²⁹ Under such circumstances, failure to opt for one year of funding would result in a denial of the multi-year commitment request by the administrator due to the lack of available funds. In the context of a filing window, however, all submitted

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¹⁵ Letter from Mark Sweeney, Vice President, Rural Health Care Division and Shared Services, USAC, to Ryan Palmer and Elizabeth Drogula, Chief and Deputy Chief, Telecommunication Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, WC Docket 02-60, at 1 (filed May 3, 2019) (*USAC FY2018 Demand Letter*). In addition, administrative costs are funded within the RHC Program cap. See, e.g., *Federal-State Joint Board on Universal Service*, 2017 Universal Service Monitoring Report, at 20, Table 1.11 (2017) (Apr. 13, 2018), <https://www.fcc.gov/general/federal-state-joint-board-monitoring-reports> (identifying administrative costs in excess of \$12 million for FY 2017).

¹⁶ *USAC FY2018 Demand Letter* at 1. While a request covers support for multiple funding years, the entire amount requested is counted towards the cap in the year that the request is filed. See *HCF Report and Order*, 27 FCC Rcd at 16802, para. 298.

¹⁷ That is, \$150 million in multi-year commitments and upfront payments plus \$411 million in other requests equals \$561 million. Even with administrative costs typically averaging around \$12-14 million per funding year, the overall gross demand for the fund would fall within the \$581 million cap for FY 2018.

¹⁸ By comparison, in FY 2017 about \$133 million was for funding requests seeking both upfront and multi-year commitments and approximately \$130 million for other single-year HCF Program funding requests. See USAC, <https://www.usac.org/rhc/tools/funding-commitments/overview.aspx> (last visited May 15, 2019).

¹⁹ *USAC FY2018 Demand Letter* at 1.

²⁰ See USAC, Rural Health Care Program, Telecommunications Program, Trainings and Outreach, Newsletter, RHC Program News for November 2018, <https://www.usac.org/rhc/about/outreach/newsletters/2018/November.aspx> (last visited May 15, 2019).

²¹ See USAC, Rural Health Care Program, Telecommunications Program, Trainings and Outreach, Newsletter, RHC Program News for December 2018, <https://www.usac.org/rhc/about/outreach/newsletters/2018/December.aspx> (last visited May 15, 2019).

applications are treated as being filed simultaneously and the rule of proration applies when demand exceeds available funds.³⁰ As a consequence, giving the entire pool of applicants an option would lead to further processing delays at this late date in the funding process for not just an individual applicant, but for *all* HCF Program applicants that have filed upfront payment and multi-year funding requests; health care providers and consortia would need time to consider and make their choices, and USAC would then need to recalculate the demand once all selections were made before issuing any funding commitments. Further, if not enough applicants opted for single-year funding, the process could still lead to significant pro-rata support reductions. In that event, the parties to the underlying contracts would bear the burden of the shortfall: Either health care providers would have to shoulder a substantially larger portion of the cost of the supported services, or service providers would seek to offer price reductions to avoid curtailing service, or some combination thereof.³¹

12. Accordingly, we find the public interest better served by suspending the multi-year commitment rule for FY 2018 and directing USAC to process all multi-year requests as requests for a single year of funding. We recognize that parties to multi-year contracts may have hoped to receive a commitment for up to three years of service, but significant pro-rata reductions in support for a multi-year period would likely have a more severe impact on applicants.³² Moreover, to mitigate concerns about the inability to lock in funding for future years, we instruct USAC to designate the underlying contracts associated with the multi-year funding requests as evergreen, provided the contracts satisfy the criteria set forth in section 54.642(h)(4)(ii) of the Commission's rules.³³ The evergreen designation will exempt applicants from having to complete the competitive bidding process for the contracts when subsequently filing requests for support pursuant to these contracts.³⁴ In addition, applicants can still request multi-year commitments pursuant to these contracts in the next funding year.

13. Finally, we direct USAC to extend the FY 2019 application filing window deadline from May

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²² *USAC FY2018 Demand Letter* at 2.

²³ 47 CFR § 1.3. The Commission may exercise its discretion where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Suspension or waiver of the Commission's rules is appropriate if both: (1) special circumstances warrant a deviation from the general rule; and (2) such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

²⁴ 47 CFR § 54.642(h)(4)(ii).

²⁵ See 47 CFR §§ 54.603, 54.623(a), 54.642, 54.675(d).

²⁶ 47 CFR §§ 54.675(e), 54.644. Multi-year commitment recipients thus need only satisfy the bidding requirements for the contract associated with the single request. The Commission allows requests for multi-year commitments "to encourage term discounts and produce lower rates from vendors [and] also allow consortium applicants to choose HCP-constructed-and-owned infrastructure where it is the most cost-effective way to obtain broadband." *HCF Report and Order*, 27 FCC Rcd at 16801, para. 296.

²⁷ 47 CFR §§ 54.642(h)(4)(i), 54.644(b).

²⁸ Demand in the aggregate has, however, exceeded the overall cap in past two funding years for the RHC Program. See *2017 NPRM and Order*, 32 FCC Rcd at 10667-68, paras. 107-110; *2016 Public Notice*, 31 FCC Rcd at 9588.

²⁹ *HCF Report and Order*, 27 FCC Rcd at 16802, para. 298 n.717.

³⁰ 47 CFR § 54.675(c), (f).

³¹ We note that service providers would need to seek waivers from the Commission to offer voluntary price reductions to health care providers. See, e.g., *2017 NPRM and Order*, 32 FCC Rcd at 10667-68, paras. 111-17.

31, 2019 to June 30, 2019 for health care providers that: (1) filed FY 2018 multi-year and upfront payment funding requests either individually or as part of a consortium; and (2) have not received a funding decision on their FY 2018 funding request from USAC by the release date of this order.³⁵ We recognize that these health care providers may have delayed competitive bidding processes and application preparations for FY 2019 due to uncertainty about their FY 2018 requests, and little time may remain in the filing window after receiving their funding decisions from USAC pursuant to this order. We also recognize health care providers that filed FY 2018 multi-year requests will now need to prepare FY 2019 submissions because of the suspension of the multi-year commitment rule. Accordingly, we provide these affected health care providers with additional time to complete their FY 2019 filings. If additional time is needed beyond June 30, 2019 due to unique circumstances, then they may file a request for waiver³⁶ of the Commission's filing commitment request deadline for FY 2019.³⁷

IV. ORDERING CLAUSES

14. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and section 1.3 of the Commission's rules, 47 CFR. § 54.644(a) IS SUSPENDED.

15. IT IS FURTHER ORDERED, that pursuant to section 1.103 of the Commission's rules, 47 CFR § 1.103, this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

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³² We note applicants receiving services pursuant to contract prior to obtaining a funding commitment do so at their own risk. *See HCF Report and Order*, 27 FCC Rcd at 16796, para. 277.

³³ 47 CFR § 54.642(h)(4)(ii).

³⁴ 47 CFR § 54.642(h)(4).

³⁵ USAC, Rural Health Care Program, Telecommunications Program, Trainings and Outreach, Newsletter, RHC Program News for February 2019, <https://www.usac.org/rhc/about/outreach/newsletters/2019/February.aspx> (last visited May 15, 2019) (announcing the opening of the FY 2019 filing window running from February 1, 2019 to May 31, 2019).

³⁶ *See* 47 CFR § 1.3; *Northeast Cellular*, 897 F.2d at 1166 (noting that suspension or waiver of the Commission's rules is appropriate if both: (1) special circumstances warrant a deviation from the general rule; and (2) such deviation will serve the public interest).

³⁷ 47 CFR § 54.675(c)(4) ("The deadline to submit a funding commitment request under the Telecommunications Program and the Healthcare Connect Fund is June 30 for the funding year that begins on the previous July 1").

**STATEMENT OF
COMMISSIONER GEOFFREY STARKS**

Re: *Rural Health Care Support Mechanism*, WC Docket No. 02-60.

The Rural Health Care program is essential to realizing the potential for telehealth. It supports the links that enable telehealth – which has great promise to transform the way that people in rural areas, and all over the country, access care and interact with doctors and medical professionals. I support the actions this order takes that will allow health care provider consortiums to receive support for Funding Year 2018.

Last year the Commission expanded funding to the Rural Health Care program because the fund had recently become oversubscribed for the first time. Here, we similarly see that funding year 2018 was the first time that applications for consortium funding exceeded the applicable \$150 million cap. We need to evaluate and better understand the growth in demand for the Healthcare Connect Fund, so we can stay ahead of changes and enable the program to meet the needs of those it serves.

I'm mindful that preparing orders requires a great deal of work, and I'd like to thank the dedicated staff of WCB for preparing this one.