

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: March 13, 2020

Released: March 13, 2020

By the Commission:

I. INTRODUCTION

1. Telehealth and telemedicine services have become an increasingly important tool for addressing the healthcare needs of millions of Americans living in rural areas where geographic distances and low population densities often mean patients must travel long distances to be seen by a doctor, or may forego treatment to avoid the inconvenience and cost of traveling. As demand for these kinds of services has grown, participation in the Commission’s Rural Health Care universal service support mechanism has grown in lockstep.

2. The Commission has previously taken steps to alleviate growing demand on the Rural Health Care Program by increasing the Program’s budget by more than \$170 million in 2018, adjusting the budget annually for inflation, and permitting unused funds from prior funding years to be rolled over into the next funding year to absorb additional Program demand. As a result, there is sufficient funding available to fully fund all funding year (FY) 2019 requests in the Rural Health Care Program. However, program rules, put in place to prevent certain funding requests from consuming too much of the available funding, would nevertheless prevent the Program administrator from fully funding certain of these requests absent Commission action.

3. So today, we take action on our own motion to ensure that rural Americans have access to the health care services they need by granting limited waivers of the rules necessary to fully fund all eligible Rural Health Care Program funding requests filed during the FY 2019 application window.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

4. The Rural Health Care Program has two component programs: (1) the Telecommunications Program, which permits eligible health care providers to apply for discounts to defray the high cost of eligible telecommunications services in rural areas; and (2) the Healthcare Connect Fund Program,2 which supports the delivery of broadband services3 and encourages the development of

1 The FY 2019 application window ran from February 1 to May 31, 2019.

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

3 See HCF Order, 27 FCC Rcd at 16717-20, 16728-65, paras. 83-93, 105-92; 47 CFR §§ 54.634, 54.633-639 (2018). The electronic Code of Federal Regulations (CFR) has been updated to reflect the Rural Health Care Program reforms adopted by the Commission in Promoting Telehealth in Rural America, WC Docket 17-310, Report and

(continued....)

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 This funding allows rural health care providers to deliver critical telehealth services to patients in and around the communities they serve, including providing access to specialists in urban areas and performing essential functions such as exchanging electronic health records.⁵ By supporting state and regional health care networks, the Healthcare Connect Fund enables health care providers in rural areas to reap the cost benefits of bulk buying and aggregated administrative functions.⁶

5. The inflation-adjusted Program funding cap for FY 2019 is \$594.07 million.⁷ On June 10, 2019, the Wireline Competition Bureau (Bureau) announced that \$83.22 million in unused funds from prior funding years was available to cover FY 2019 demand as of the close of the application window,⁸ which brought total available Program funding for FY 2019 to \$677.29 million.⁹ Subsequently, the program administrator, the Universal Service Administrative Company (USAC), identified an additional

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Order, 34 FCC Rcd 7335, 7400-02, paras. 138-140 (2019) (*Promoting Telehealth Report and Order*). Because the rule changes will not be implemented until FY 2020 or FY 2021, depending on the reform, we cite to the 2018 CFR publication of the Rural Health Care Program rules in this Order to avoid confusion. *See Wireline Competition Bureau Provides Guidance on the Implementation Schedule for Reforms Adopted By the Rural Health Care Program Promoting Telehealth Report and Order*, WC Docket No. 17-310, Public Notice, DA 19-1253 (WCB 2019) (*Implementation Schedule PN*) (setting forth the implementation schedule for the reforms adopted by the *Promoting Telehealth Report and Order*).

⁴ *See HCF Order*, 27 FCC Rcd at 16699-700, paras. 45-46; 47 CFR § 54.638(a) (2018) (“Upfront payments include all non-recurring costs for services, equipment, and facilities, other than reasonable and customary installation charges up to \$5,000.”).

⁵ *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7336-37, paras. 2, 5 (noting the importance of telehealth services delivered to rural communities via the eligible services supported by the Rural Health Care Program, including the ability to connect patients with general medical practitioners and specialists and to exchange electronic medical records); *Rural Health Care Support Mechanism*, WC Docket No. 02-60, *Report and Order*, *Order on Reconsideration*, and *Further Notice of Proposed Rulemaking*, 18 FCC Rcd 24546, 24550 (2003) (stating that Rural Health Care Program support “has facilitated the delivery of medical services to people who would otherwise have to wait for care, go without it, or take long and expensive journeys across difficult terrain to find help.”).

⁶ *See HCF Order*, 27 FCC Rcd at 16686-93, 16669, paras. 19-28, 45.

⁷ *See Wireline Competition Bureau Announces the Availability of Unused Funds to Increase Rural Health Care Program Funding for Funding Year 2019*, WC Docket No. 02-60, Public Notice, 34 FCC Rcd 4775, 4776 (WCB 2019) (*2019 Carry-Forward Public Notice*). The \$594,066,116 cap for FY 2019 represents a 2.2% inflation-adjusted increase from the \$581,278,000 funding cap for FY 2018. *Id.*; 47 CFR § 54.675(a)(1)-(2) (2018); *see also Promoting Telehealth in Rural America*, WC Docket No. 17-310, *Report and Order*, 33 FCC Rcd 6574, 6583-84, paras. 21-23 (2018) (providing for the Rural Health Care Program funding cap to be adjusted annually for inflation using the gross domestic product chain-type price index (GDP-CPI)) (*2018 Budget Report and Order*).

⁸ *2019 Carry-Forward Public Notice* at 1; *see also* USAC, Federal Universal Service Support Mechanisms Fund Size Projections for Fourth Quarter 2019 at 30 (August 2, 2019), <https://www.usac.org/wp-content/uploads/about/documents/fcc-filings/2019/fourth-quarter/financials/USAC-4Q2019-Federal-Universal-Service-Mechanism-Quarterly-Demand-Filing.pdf>. *See generally 2018 Budget Report and Order*, 33 FCC Rcd at 6584, para. 27 (establishing process for carrying forward unused funds from prior funding years for use in future funding years of the Rural Health Care Program).

⁹ 47 CFR § 54.675(a)(5) (2018) (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.”).

\$162.67 million in unused funds from prior funding years that could be carried forward for use in later funding years.¹⁰

6. Irrespective of the total funding available for a particular year, the Commission's rules establish a cap on requests seeking support for upfront payments and multi-year commitments of up to three years in the Healthcare Connect Fund, which was \$150 million in FY 2019.¹¹ This funding cap safeguards against large annual fluctuations in Program demand by ensuring that upfront and multi-year payments do not inhibit the availability of single-year payments to rural health care providers for recurring services.¹²

7. If, at the end of an application filing window, demand exceeds either the overall Program funding cap or the cap on multi-year and upfront payment requests, the Commission requires USAC to prorate funding requests to ensure that commitments do not exceed the relevant caps.¹³ The pro-rata factor is determined by dividing the total amount of available funding by the total amount of support requested during an application window.¹⁴ USAC 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."¹⁵ The net result is that each eligible health care provider that sought funding during the application window would receive less support than

¹⁰ Letter from Mark Sweeney, Vice President, Rural Health Care Division and Shared Services, Universal Service Administrative Company, to Bryan Boyle, Deputy Chief, Telecommunication Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, WC Docket 02-60 (filed Feb. 14, 2020) at 1 (*USAC FY2019 Demand Letter*).

¹¹ 47 CFR § 54.675(a) (2018). In the *Promoting Telehealth Report and Order*, the Commission retained the \$150 million funding limit on multi-year and upfront payment requests, but also adopted a rule requiring that the \$150 million cap be adjusted annually for inflation by the GDP-CPI beginning in FY 2020. *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7400-02, paras. 138-140. The cap on upfront payments and multi-year commitments for FY 2020 is \$153 million. *Wireline Competition Bureau Announces E-Rate and RHC Programs' Inflation-Based Caps for Funding Year 2020*, CC Docket No. 02-6, WC Docket No. 02-60, Public Notice, DA 20-263 (rel. Mar. 12, 2020). 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) (2018). The entire amount, however, is counted towards the cap in the funding year in which the multi-year support is committed. *See HCF Order*, 27 FCC Rcd at 16802, para. 298.

¹² *See HCF 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 . . .").

¹³ 47 CFR § 54.675(f) (2018). When establishing the Healthcare Connect Fund Program and the upfront/multi-year funding cap, the Commission intended to apply "the longstanding default rule" of pro-rata reduction in the event the overall Rural Health Care 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 Rural Health Care Support Mechanism*, WC Docket No. 02-60, 34 FCC Rcd 4136, 4137, para. 4 n. 10 (2019).

¹⁴ 47 CFR § 54.675(f) (2018); *see also* USAC, Rural Health Care Program, Funding Commitments, FY2016 Funding Information, <https://www.usac.org/rural-health-care/commitment-info/fy2016-funding-information> (last visited Mar. 13, 2020).

¹⁵ *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); 47 CFR § 54.675(f) (2018). 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 2019 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.

requested by the same pro-rata factor to bring the overall support amount committed within the applicable cap limit, i.e., the \$677.29 million aggregate limit for FY 2019 or the \$150 million limit for Healthcare Connect Fund requests seeking support for upfront payments and multi-year commitments.¹⁶

8. *FY 2019 Program Demand.* According to USAC, total Rural Health Care Program demand for FY 2019 is \$719.48 million.¹⁷ That amount includes net demand for all Program funding requests filed during the single application filing window for FY 2019 of \$701.62 million and USAC's administrative expenses of \$17.86 million.¹⁸ Thus, total Program demand exceeds the \$677.29 million in available funding for FY 2019 by \$42.19 million. Of the \$701.62 million in requested support, \$209.83 million represents applications seeking support for upfront payments and multi-year commitments in the Healthcare Connect Fund,¹⁹ exceeding the funding cap on such requests by approximately \$60 million. The remaining single-year Healthcare Connect Fund requests and Telecommunications Program requests total \$491.79 million.²⁰ USAC has begun issuing funding commitments for such single-year FY 2019 funding requests at their full eligible amounts;²¹ total demand for those requests, when added to the \$150 million authorized for upfront payments and multi-year commitments and USAC's administrative expenses, does not exceed the \$677.29 million in available funding for FY 2019.²² Absent action by the Commission, however, USAC will be required to prorate the funding support for upfront payments and multi-year commitments by a factor of 71.48% to bring demand within the \$150 million cap before funding decisions for those request categories can be issued.²³

III. DISCUSSION

9. We take the following actions to fund all requests filed during the FY 2019 application window to their full eligible amounts without pro-rata reductions. First, subject to the limitations stated below, we waive section 54.675(a)(5) to the extent necessary to permit USAC to carry-forward additional unused funds from prior funding years discovered after the second quarter of the calendar year to FY 2019.²⁴ Second, we waive the \$150 million cap on multi-year commitments and upfront payments in section 54.675(a) of the Commission's rules to permit all eligible amounts for such requests to be

¹⁶ As discussed in more detail below, the Commission has adopted new rules that will require available funding to be prioritized based on the rurality of the health care provider's location and Medically Underserved Areas and Populations designations if demand exceeds available funding. *Promoting Telehealth Report and Order*, 34 FCC Rcd, at 7385-86, para. 107. This new prioritization process will apply, if required, beginning in FY 2020, *Implementation Schedule PN* at 2, and will apply to multi-year and upfront payment funding requests subject to the inflation-adjusted \$150 million cap. *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7395, para. 125.

¹⁷ *USAC FY2019 Demand Letter* at 1.

¹⁸ *USAC FY2019 Demand Letter* at 1. Administrative costs are paid as part of the Program budget. *See, e.g., Federal-State Joint Board on Universal Service, 2017 Universal Service Monitoring Report*, at 20, Table 1.11 (2017) (rel. Apr. 13, 2018), <https://www.fcc.gov/general/federal-state-joint-board-monitoring-reports>.

¹⁹ *USAC FY2019 Demand Letter* at 1.

²⁰ *USAC FY2019 Demand Letter* at 1. This number is calculated by subtracting the \$209.83 figure for upfront and multi-year commitments from the \$701.62 overall demand figure.

²¹ *See USAC, Rural Health Care Commitments and Disbursements (FCC Form 462/466/466A)*, <https://opendata.usac.org/Rural-Health-Care/Rural-Health-Care-Commitments-and-Disbursements-FC/2kme-evqq> (last visited Mar. 13, 2020) (periodically updated with FY 2019 commitment information).

²² \$491.79 million in single-year requests + \$150 million in multi-year and upfront requests + \$17.86 million in USAC administrative expenses = \$659.65 million.

²³ *USAC FY2019 Demand Letter* at 2.

²⁴ 47 CFR § 54.675(a)(5) (2018).

funded,²⁵ including multi-year support requested for services to be delivered in FY 2020 and FY 2021.²⁶ For the reasons stated herein, we find good cause exists to grant these limited waivers of our rules.²⁷

10. *Waiver to Carry-Forward Additional Funds to FY 2019.* In the *2018 Budget Report and Order*, the Commission established a carry-forward process for unused funds whereby “[o]n an annual basis, in the second quarter of each calendar year, all funds that are collected and that are unused from prior years shall be available for use in the next full funding year of the Rural Health Care Program in accordance with the public interest and notwithstanding the annual cap.”²⁸ The Commission explained that based on estimates by USAC, the Bureau would announce in the second calendar quarter a specific amount to be carried forward for future funding years.²⁹

11. Pursuant to this process, on June 10, 2019 the Bureau announced that \$83.22 million in unused funds from prior funding years would be available for use in later funding years beginning in FY 2019.³⁰ This amount was based on projections provided by USAC in its quarterly report dated May 2, 2019.³¹ The Bureau directed USAC to apply those funds to the extent necessary to cover FY 2019 demand as of the close of the FY 2019 application window.³² Doing so brought total available funding for FY 2019 to \$677.29 million. USAC subsequently informed the Bureau that, after the second quarter announcement, it had identified an additional \$162.67 million in unused funds from prior funding years that could be carried forward for use in later funding years.³³

12. Total demand (i.e., all eligible funding requested during the FY 2019 application window plus USAC’s administrative expenses) exceeds the \$677.29 million available for FY 2019 by \$42.19 million.³⁴ In order to account for that overage, we waive, to the extent necessary, the carry-forward

²⁵ 47 CFR § 54.675(a) (2018).

²⁶ A multi-year commitment approved pursuant to a FY 2019 application may run through FY 2021. 47 CFR § 54.644(a) (2018) (stating that a multi-year commitment may cover up to three funding years).

²⁷ 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.

²⁸ *2018 Budget Report and Order*, 33 FCC Rcd at 6584-85, paras 24-28 (“This unused funding may be used to commit to eligible services in excess of the annual funding cap in the event demand in a given year exceeds the cap, or it may be used to commit to reduce collections for the [Rural Health Care] Program in a year when demand is less than the cap.”); 47 CFR § 54.675(a)(5) (2018).

²⁹ See *2018 Budget Report and Order*, 33 FCC Rcd at 6584-85, para. 27. “Distribution of funds on an annual basis allows USAC to refine its calculation of available funds over four reporting quarters as the funding year progresses. We also believe the timing of this process provides certainty regarding when unused funds will be carried forward for use in the [Rural Health Care] Program with minimal disruption to the administration of the Program.” *Id.* at 6585, para. 28.

³⁰ *2019 Carry-Forward Public Notice* at 1.

³¹ *Id.*; see also 47 CFR § 54.675(a)(4) (2018) (requiring USAC to report the funding that is unused from prior years of the Rural Health Care Program to the Commission on a quarterly basis).

³² *2019 Carry-Forward Public Notice* at 1.

³³ *USAC FY2019 Demand Letter* at 1. The additional unused funds amount is derived substantially from FY 2018 application withdrawals, lapsed appeals, and other deobligations.

³⁴ See *supra* para. 8.

process established by section 54.675(a)(5) of our rules for the limited purpose of using a portion of the additional unused funds identified by USAC after the second quarter to cover FY 2019 demand. This waiver will provide the funding necessary to approve all eligible support amounts requested during the FY 2019 application window without any pro-rata reductions that could result in both increased costs and reduced broadband services for health care providers.³⁵ The Commission has recognized that “proration is a poor solution for the [Rural Health Care] Program” when demand exceeds available funding because it creates uncertainty and financial hardship for Program participants due to the funding delays caused by the proration process.³⁶ Accordingly, in the *Promoting Telehealth Report and Order*, the Commission adopted new rules that replace proration with a prioritization process that ensures Program support is targeted to eligible health care providers in the most rural and medically underserved areas when demand exceeds available funding.³⁷ This new process will commence, if required, in FY 2020.³⁸ Therefore, FY 2019 is the last year that the Commission will need to take steps to either eliminate or mitigate the financial toll of proration on program participants.³⁹ Given these findings and the limited scope of this waiver, we find good cause exists to grant it. We direct USAC to limit the additional unused funds applied to FY 2019 to only the amount necessary to cover FY 2019 demand based on funding requests filed during the FY 2019 application window and USAC’s administrative expenses.

13. *Waiving the \$150 Million Cap on Upfront Payments and Multi-year Commitments.* The Commission established a cap on upfront payments and multi-year commitments in the Healthcare Connect Fund, which was \$150 million in FY 2019 to ensure that the large, upfront costs of broadband construction and long-term investments do not foreclose the ability of health care providers to use Program funding to obtain recurring services over the course of a particular funding year.⁴⁰ More broadly, the Commission intended this cap to ensure “economic reasonableness and responsible fiscal management of the program” and help prevent “large annual fluctuations in program demand.”⁴¹ We find that grant of a waiver of the \$150 million funding cap requirement to avoid proration of funding requested during the FY 2019 application window and fully fund eligible services, equipment, and facilities advances the goals of the Healthcare Connect Fund Program and will not impede the underlying purposes served by the cap. The waiver will not reduce the funding available to support eligible recurring charges for services purchased by health care providers in FY 2019. Indeed, USAC has already begun issuing funding commitments for single-year funding requests in FY 2019 in full. This waiver will permit all

³⁵ The Bureau, in consultation with the Office of the Managing Director, may use portions of unused funds from prior funding years to increase available funding (notwithstanding the cap), reduce collections, or hold in reserve to address contingencies in a future funding year, in accordance with the public interest. 47 CFR § 54.619(a)(5) (2019). While this waiver reduces the amount of unused funds available for those purposes in future years by approximately \$42 million, we conclude that doing so is in the public interest because it will ensure that rural health care providers will continue to receive the services they need to deliver critical health care services to their communities. Further, approximately \$120 million in unused funds will remain to increase available funding (notwithstanding the cap), reduce collections, or hold in reserve to address contingencies in future years.

³⁶ *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7385-86, para. 107 (noting the negative impacts experienced by health care providers when proration was required when demand exceeded the funding cap for the first time in FY 2016 and again in FY 2017).

³⁷ *Id.* at 7388-89, paras. 114-115; 47 CFR § 54.621(b) (2019).

³⁸ *Implementation Schedule PN* at 2.

³⁹ *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7387, para. 110 & n.325 (noting steps taken to mitigate impact of proration on program participants in FY 2017 and to avoid proration of multi-year commitment and upfront payment requests in FY 2018).

⁴⁰ See *HCF Order*, 27 FCC Rcd at 16700, 16710, 16713-14, paras. 47, 67, 75.

⁴¹ See *HCF Order*, 27 FCC Rcd at 16802, para. 298.

recurring services requested as part of multi-year commitments to be funded in full for FY 2019 as well. Accordingly, a limited waiver of the \$150 million internal cap applying only to upfront payment and multi-year requests filed during the FY 2019 application window will, in this instance, serve the public interest by ensuring fully-funded financial support for the communications services required by health care providers to treat patients in their rural communities.

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 § 1.3, that section 54.675(a) of the Commission's rules, 47 CFR § 54.675(a) (2018), IS WAIVED to the limited extent provided herein.

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