

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

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

ORDER

Adopted: March 7, 2024

Released: March 7, 2024

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) waives on our own motion section 54.621(a)(1) of the Commission’s rules and extends the close of the funding year 2024 application filing window for the Rural Health Care (RHC) Program until May 1, 2024. We find that an extension of the application filing window for funding year 2024 is necessary due to two instances of outages of a program form that delayed some program participants’ ability begin competitive bidding.

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. Under the RHC Program, eligible health care providers and consortia that include eligible rural health care providers may apply for discounts for eligible services. To receive support, an applicant must first solicit bids for eligible services by posting an FCC Form 465 in the Telecom Program or an FCC Form 461 in the HCF Program to USAC’s website for service providers to review. Applicants must review all bids submitted in response to the FCC Form 465 or FCC Form 461 and wait at least 28 days before entering into a service agreement with the selected service provider. Competitive bidding for funding year 2024 began July 1, 2023, and applicants were encouraged, though not required, to submit their FCC Forms 465 and 461 by February 10, 2024, to ensure that they would be posted early enough for the 28-day competitive bidding period. Once an applicant has selected a provider and entered into a service

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 47 CFR § 54.603(b); 54.612.

3 47 CFR §§ 54.622; FCC Form 465, Rural Health Care Universal Service Mechanism, Description of Services Requested and Certification Form, OMB 3060-0804 (July 2014) (FCC Form 465); FCC Form 461, Rural Health Care Universal Service Healthcare Connect Fund, Request for Services, OMB 3060-0804 (July 2014) (FCC Form 461).

4 47 C.F.R. § 54.622(a), (g).

5 See USAC, Rural Health Care, July 2023 RHC Monthly Newsletter, (July 6, 2023), https://www.usac.org/wp-content/uploads/rural-health-care/documents/monthly-newsletter/2023-newsletter/RHC-Newsletter-July-2023.pdf; USAC, Rural Health Care, February 2024 RHC Monthly Newsletter, (Feb. 1, 2024), https://www.usac.org/wp-content/uploads/rural-health-care/documents/monthly-newsletter/2024-newsletter/RHC-Newsletter-February-2024.pdf (USAC February 2024 RHC Monthly Newsletter).

contract, the applicant must submit its funding request to USAC by filing an FCC Form 466 or FCC Form 462 during the application filing window.⁶

3. Section 54.621(a)(1) of the Commission's rules directs 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).⁷ The Commission established an 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 start of the funding year.⁸ 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.⁹ In addition, 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.¹⁰ On June 1, 2023, USAC announced that the funding year 2024 application filing window would close on April 1, 2024.¹¹

4. In June 2022, USAC launched RHC Connect, a new application filing platform to replace the legacy My Portal platform.¹² Since then, USAC has gradually migrated program forms to RHC Connect. The FCC Form 465 is the only continuing RHC Program form that still exists in USAC's legacy My Portal system.¹³ USAC plans to migrate the FCC Form 465 to RHC Connect to complete the transition.

5. During the competitive bidding period for funding year 2024, there were two instances of outages of the FCC Form 465 which affected Telecom Program applicants' ability to submit the FCC Form 465. The first instance occurred from December 27, 2023, through January 23, 2024 and the second occurred from February 16, 2024, through February 23, 2024.¹⁴ Due to technical difficulties related to submitting the form, program participants had been unable to submit their FCC Form 465 and

⁶ FCC Form 466, Rural Health Care Universal Service Mechanism, Funding Request and Certification Form, OMB 3060-0804 (July 2014) (FCC Form 466); FCC Form 462 Instructions, Rural Health Care Universal Service Healthcare Connect Fund, Request for Funding, OMB 3060-0804 (July 2014) (FCC Form 462 Instructions). 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).

⁷ 47 CFR § 54.621(a)(1); *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Report and Order, 34 FCC Rcd 7335, 7416, 7433, para. 176 (2019) (*Promoting Telehealth Report and Order*).

⁸ *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7416, para. 176.

⁹ *Id.* at 7416, para. 176 & n.532.

¹⁰ See 47 CFR § 54.619(a)(5).

¹¹ See USAC, Rural Health Care, June 2023 RHC Monthly Newsletter, (June 1, 2023), <https://www.usac.org/wp-content/uploads/rural-health-care/documents/monthly-newsletter/2023-newsletter/RHC-Newsletter-June-2023.pdf>.

¹² See USAC, Rural Health Care, June 2022 RHC Monthly Newsletter (June 2, 2022), <https://www.usac.org/wp-content/uploads/rural-health-care/documents/monthly-newsletter/2022-newsletters/RHC-Newsletter-June-2022.pdf>.

¹³ See USAC February 2024 RHC Monthly Newsletter. The Telecom Program Invoice Form, which is being sunset after funding year 2023, also exists in My Portal. See generally *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Order on Reconsideration, Second Report and Order, Order, and Second Further Notice of Proposed Rulemaking, FCC 23-6, paras. 55-59 (Jan. 27, 2023) (reforming the Telecom Program invoicing process effective funding year 2024).

¹⁴ See USAC February 2024 RHC Monthly Newsletter.

subsequently may have experienced delays in starting the 28-day bidding period, making compliance with the April 1, 2024, application deadline difficult.

III. DISCUSSION

6. We waive section 54.621(a)(1) of the Commission's rules,¹⁵ 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 2024 initial filing window to May 1, 2024. Generally, the Commission's rules may be waived for good cause shown.¹⁶ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹⁷ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy.¹⁸

7. We find that technical issues affecting applicants' ability to submit the FCC Form 465 over two separate periods of time spanning several weeks is good cause for an extension of the application filing window until May 1, 2024. The Bureau has previously found good cause to waive the Commission's rules and grant an extension of a program deadline when technical issues affected an applicant's ability to meet a program's process deadline.¹⁹ We have granted individual waivers of RHC Program deadlines where technical issues beyond the applicants' or service providers' control prevented them from meeting the invoice filing deadline²⁰ and have granted program-wide waivers of the application filing deadline due to the COVID-19 pandemic, which was beyond applicants' or service providers' control.²¹ Consistent with this precedent, we find that granting a waiver of the application filing deadline is appropriate in this circumstance. Due to technical issues with USAC's legacy filing system, some applicants experienced difficulties and delays in submitting their FCC Forms 465. An extension of the application filing window will provide applicants with sufficient time to undergo the 28-

¹⁵ 47 CFR § 54.621(a)(1).

¹⁶ 47 CFR § 1.3.

¹⁷ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁸ *Id.*

¹⁹ See *Application for Review of a Decision by the Wireline Competition Bureau by Pribilof School District; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 33 FCC Rcd 8378, 8381, para. 9 (2018) (granting waivers of the E-Rate Program application filing deadline due to technical difficulties associated with the rollout of a new application filing system). See also *Wireline Competition Bureau Extends E-Rate Program Deadlines During E-Rate Productivity Center (EPC) Blackout Period*, CC Docket No. 02-6, Public Notice, DA 23-1019, 2023 WL 7212261 (WCB 2023) (granting an extension of any form or program process deadline for E-Rate participants due to a blackout period of USAC's systems during a transition from the legacy invoicing system to a new system); *Wireline Competition Bureau Extends Deadline for E-Rate Participants to Request Invoice Deadline Extension*, CC Docket No. 02-6, Public Notice, 31 FCC Rcd 11924, 11925 (WCB 2016) (granting additional time for program participants to submit invoices because USAC's systems stopped accepting invoice filings prior to the deadline).

²⁰ See *Requests for Waiver or Review of Decision of the Universal Service Administrator by Indiana Telehealth Network*, WC Docket No. 02-60, Order, 33 FCC Rcd 12341, 12342, para. 4 (WCB 2018) (*Indiana Telehealth Network Order*) (granting one request for review and waiver where the petitioner demonstrated that it was unable to file the Healthcare Connect Fund Program invoice form on a timely basis due to a USAC technical system issue that prevented the filing of the invoice form); *Rural Health Care Support Mechanism*, WC Docket 02-60, Order, 30 FCC Rcd 1063, 1064-65, paras. 4-5 (WCB 2015) (*Healthcare Connect Fund Invoice Deadline Order*) (granting a limited waiver of the Healthcare Connect Fund Program invoice filing deadline due to USAC filing system deficiencies beyond the control of some applicants and service providers that prevented them from meeting the invoice deadline).

²¹ *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 35 FCC Rcd 2922, 2924, para. 6 (WCB 2020); *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).

day competitive bidding process, enter into a service agreement with a service provider, and submit a Request for Funding for funding year 2024. By providing this waiver, we also ensure that eligible health care providers receive the funding they need to obtain the advanced telecommunications and information services, network equipment, and/or facilities necessary for the provision of health care. While the outage only impacted the Telecom Program, we also extend the application filing window end date for the HCF Program until May 1, 2024, to maintain consistency of deadlines for the RHC Program. We expect that technical issues with the FCC Form 465 will be resolved after the form migrates from USAC's legacy system to the new RHC Connect system.

8. Additionally, we direct USAC to file the RHC Program gross demand estimate by July 1, 2024. The delay of the close of the application filing window until May 1, 2024, makes it impracticable for USAC to provide a demand estimate 30 days before the start of funding year 2024, the deadline contemplated in the *Promoting Telehealth Report and Order*.²² Requiring USAC to file its gross demand estimate by July 1, 2024, will give it approximately 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.²³ We also 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.²⁴ 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 2024.²⁵

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 section 54.621(a)(1) of the Commission's rules, 47 CFR § 54.621(a)(1), is waived to the extent provided herein.

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

²² *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.").

²³ 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.

²⁴ See 47 CFR § 54.619(a)(5).

²⁵ 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 2024.