



January 25, 2021

Chairwoman Jessica Rosenworcel
Commissioner Brendan Carr
Commissioner Geoffrey Starks
Commissioner Nathan Simington
Federal Communications Commission
45 L Street, NE
Washington, DC 20554

Re: Promoting Telehealth in Rural America, WC Docket No. 17-310

Dear Chairwoman Rosenworcel, and Commissioners Carr, Starks, and Simington:

The Schools, Health & Libraries Broadband (SHLB) Coalition respectfully asks the Commission to extend the filing window for funding year 2021 Rural Health Care (RHC) applications to May 30, 2021. In addition, the SHLB Coalition requests that the Commission waive the rule requiring health care providers to use the RHC Telecommunications program rates database (Rates Database) for the next two funding years, for reasons similar to those the Wireline Competition Bureau (Bureau) articulated in its January 19, 2020, Order granting relief to Alaska applicants and service providers.¹

Any of the Commission's rules may be waived if good cause is shown.² The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.³ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁴ Both of the requested actions are in the public interest and are urgently necessary (1) to allow health care providers to focus on providing health care at this critical time, and (2) to ensure that health care providers do not see a significant increase—approximately three times higher than what they are paying now—in their out-of-pocket costs during the COVID-19 pandemic.

Application Window Deadline Extension. The current Rural Health Care application deadline for funding year (FY) 2021 is April 1, 2021. RHC applicants will have trouble meeting this deadline, including completing all of the steps necessary to solicit bids and prepare funding requests under the Commission's two RHC support mechanisms. There are several reasons why

¹ *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Order, DA 21-83 (WCB rel. Jan. 19, 2021) (*Alaska Database Order*).

² 47 C.F.R. § 1.3.

³ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁴ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

an extension is necessary, all of which are outside of the health care providers' control and none of which could have been anticipated by the Commission when it set the April 1 deadline nearly 18 months ago.

- First, the long duration of the COVID-19 crisis, including the recent explosion of cases in January, emergence of a more contagious mutation of the virus, and surging hospitalizations has overwhelmed the health care providers' limited staffing and financial resources. On top of that, health care providers are working hard to plan for and administer vaccines.
- Second, the implementation of the new COVID-19 Telehealth Program funded by the recent COVID-19 relief legislation, while a welcome opportunity, will further reduce available resources of both USAC and health care providers. While the Commission has not established due dates for the COVID-19 program, it is likely those applications will be due within a few weeks of the current RHC April 1 deadline. Extending the RHC window would allow both health care providers and USAC to focus first on the COVID-19 program with its immediate ability to assist health care providers as they fight to contain COVID-19.
- Third, Telecom program applicants are having difficulty working with the new, mandatory Rates Database, particularly since the third set of rates in the past six months was just posted at the turn of the New Year. These frequent revisions to the database rates force health care providers to continually reevaluate whether to continue in the Telecom program, with a co-payment mandated by the Rates Database, or switch to the HCF program, where the health care provider's mandatory co-pay is a flat 35 percent. Switching between the two programs is time-consuming, and, based on applicant experience, USAC is taking about four weeks to approve the paperwork for the necessary first step in the HCF program.⁵ Without an extension to the deadline, applicants may soon run out of time to complete all of the steps in the process.⁶ While in theory applicants could have started their procurement and application processes earlier, in practice they were still waiting for the final version of the database to determine the correct course of action. Moreover, as explained below, the database continues to yield many results that do not make sense, and suggest underlying issues with the data, and the Commission and health care providers need further time to consider and implement necessary relief.

⁵ Even applicants already designated as eligible for the Telecom program have to fill out a Form 460 (eligibility form) to initiate participation in the HCF program. <https://www.usac.org/rural-health-care/healthcare-connect-fund-program/step-1-determine-eligibility-of-your-site/> See *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Report and Order, 34 FCC Rcd 7335 (2019) (*Promoting Telehealth Report and Order*).

⁶ Once USAC has approved Form 460, an applicant can file its Form 461, USAC reviews the 461 for a period of time to ensure that the 461 is allowable, which can also take two to four weeks. USAC then posts the Form 461 to its website. At that point, the health care provider must wait at least 28 days before it can select a service provider and enter into a contract. The health care provider must then complete and submit its funding request, Form 462, to USAC.

- Finally, both Telecom and HCF applicants have been awaiting USAC’s decisions on their current year (FY 2020) applications. If applicants receive “evergreen” status for a multiyear contract as part of their funding commitment, they do not have to conduct another unnecessary competitive bidding process. Without the approval of the current pending applications, however, health care providers must start the procurement process from scratch. The slow pace of USAC review is likely to force many health care providers to devote resources to conducting a new competitive bidding process, even though they have a multiyear contract which may ultimately be approved by USAC. USAC has indicated that it plans to have all funding commitments issued by April 1. If USAC meets that goal and the Commission moves the application deadline, applicants will know if they need to conduct a new competitive bidding process and will have the time to conduct a new process if they have to. They will not have to expend time and effort to do so now, when it might be unnecessary.

For these reasons, it is in the public interest that the Commission provide the requested relief for health care providers and extend the application window to May 31, 2021, and it is imperative that the Commission announce this relief as soon as possible.

Telecom Program Database Waiver. Under new rules taking effect for FY 2021, health care providers face a significant increase in their out-of-pocket costs for telecommunications services—more than tripling them. To prevent a significant hike in rural health care provider telecom costs in July, reduce health care provider confusion, and ensure service providers receive consistent and adequate Telecom Program support, SHLB requests that the Commission allow rural health care providers to use rural and urban rates from prior years to determine out-of-pocket payments and subsidy amounts. Granting this waiver request would be consistent with the Commission’s decision and rationale in the *Alaska Database Order*.

As the Commission is aware, pursuant to the Telecommunications Act of 1996, the FCC provides subsidies to non-profit and public rural health care providers to bring their telecom costs down to the same levels as urban health care providers. The funding is urgently needed to support health care delivery in rural areas, made all the more pressing by the pandemic and the rise in telehealth.

The FCC’s new rules utilize a new database, created by USAC, to set the co-pay amounts that health care providers must pay under the Telecom program. Service providers are required to collect these amounts from health care providers: they cannot be further discounted. The new database yields significantly higher required copayments than had previously been approved, as well as shrinking the amount of payments service providers receive. Specifically, the approximately 1,200 non-Alaskan rural health care providers that received Telecom Program funding paid, in the aggregate, about \$393,000 a month for their share of the cost of services in FY 2019.⁷ If those same health care providers bought the exact same services for FY 2021, health care providers would have to pay more than \$1.4 million in monthly recurring charges—an amount 3.5 times their FY 2019 share.

⁷ We used FY 2019 data as not enough FY 2020 applications have received commitments yet to use that data. Note that this data does not include Alaska, as the Bureau has separately addressed Alaska.

While the creation of the Rates Database may have been well-intentioned in theory, it appears that the actual results were not scrutinized or tested to determine whether they are economically sound, comport with reality or are consistent with the statutory objective of the RHC Telecom Program to equalize telecommunications costs between urban and rural health care providers. It is not possible to tell from the data USAC published why these results occur. Regardless, what is known is the fact that health care providers face a dramatic and frankly outrageous increase in the share they pay at a time when they can least afford it—and with very little notice.⁸

As the Bureau noted in the *Alaska Database Order*, the Rates Database determination is based on the premises that, in general, the cost to provide services increases as the level of rurality increases and that the overall total rate tends to increase as bandwidth increases. The Bureau recognized that, in Alaska, the Rates Database “all too often provides a lower rural rate for more remote health care providers and higher bandwidths.” Unfortunately, that result is not confined to Alaska. In fact, the same anomalies exist in the Rates Database for the rest of the country. For example:

- The Rates Database frequently yields a median urban rate for a state that is above one or more of the rural tier rates in that state—and often by significant margins. This upside-down result means that rural health care providers in those areas cannot receive any funding from the Telecom Program.⁹
 - In Georgia, Kentucky, Ohio, Tennessee, Texas, and West Virginia (and possibly other states), the median urban rate for a one gigabit circuit that sets the health care provider’s co-pay exceeds the median rural rate in all rural tiers.
 - In Georgia, there is no bandwidth where the median rural rate is higher than the urban rate. That means that health care providers in Georgia are effectively barred from the Telecom Program. According to the Rates Database, for example, the median urban rate for a 250 Mbps circuit is nearly double (\$2,027) the median rural rate (\$1,057).
 - In Arizona, the urban rate for a 45 Mbps DS3 or a 50 Mbps Ethernet circuit is higher than the permitted rural rate in Extremely Rural areas.
 - In Virginia, the urban rate for 1 gigabit is \$4,000 a month while the rural rate is only \$1,800.
- Nor do rates necessarily reflect changes in bandwidth, as the Bureau noted was the anticipated result.¹⁰
 - In Arizona, a 45-50 Mbps circuit has an urban rate that is higher than a 100 Mbps circuit.
 - In Georgia, the rural rate for 100 Mbps is about three times higher than the rate for 250 Mbps and is even more expensive than a gigabit of service.
- Some of the urban rates appear to use rates that are actually rates offered in rural areas. For example, the Rates Database classifies a rate offered in Georgia by the Planters Rural

⁸ The Commission has provided more than a few months for health care providers to adjust to changes in the RHC program in the past. Here, health care providers have only a few weeks before having to decide how to apply for funding.

⁹ Under the new Telecom program rules, the subsidy is the difference between the median rural rate for that rurality zone and the median urban rate in that State.

¹⁰ *Alaska Database Order* at ¶ 8.

Telephone Cooperative as an urban rate. The same is true in Arizona, where USAC include as “urban” rates charged by the very rural Gila River Telephone Cooperative, Fort Mojave Telecommunications, Table Top Telephone Company and Tohono O’Odham Utility Authority.¹¹

- The database also yields extremely rural rates in a state that are below the rates for the rural or less rural rates. For example, the permitted Extremely Rural rate for a 45 Mbps DS3 or a 50 Mbps Ethernet circuit in Arizona is one-fifth of the Rural tier rate, and less than one-third of the Less Rural tier rate. This is the exact opposite of the intent of the tiers, which was to recognize that telecommunications services become more costly in more rural, less dense areas.

As illustrated above, the substantial “inconsistencies in the Rates Database and the significant reductions in levels of support” exist outside of Alaska.¹² The Bureau found those inconsistencies were sufficient to find a waiver was in the public interest for Alaska health care providers and the same is true for the rest of the country.¹³ Unlike in Alaska, the anomalies in the database rates affect both the urban and rural rates, so the Bureau should find that health care providers do not have to rely upon either set of database rates, and instead should be permitted to use approved urban and rural rates from one of the previous three years for support applications and co-pays in FY 2021 and 2022. Health care providers should also have the choice as to whether to use the Rates Database or any already-approved rates for the coming funding year, as some health care providers may have already submitted requests for FY 2021 funding.

We appreciate the Commission’s willingness to consider these requests. Please do not hesitate to contact me for additional information.

Sincerely,



John Windhausen, Jr.
Executive Director
Schools, Health & Libraries Broadband (SHLB) Coalition
jwindhausen@shlb.org
(202) 256-9616

cc: Kris Monteith, Chief, WCB
Adam Copeland, Associate Chief, WCB
Ryan Palmer, Chief, TAPD
Bryan Boyle, Deputy Chief, TAPD

¹¹ The service areas for these companies can be viewed at: <https://www.fcc.gov/reports-research/maps/study-area-boundaries/>.

¹² *Alaska Database Order* at ¶ 10.

¹³ *Alaska Database Order* at ¶¶ 10-11.