

**Before the  
Federal Communications Commission  
Washington, DC 20554**

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

**PETITION FOR WAIVER AND  
EXTENSION OF TIME OF  
THE UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTelecom)<sup>1</sup> seeks a temporary waiver of certain rules adopted in an order released by the Federal Communications Commission (Commission) on December 21, 2012, and an extension of time to file. The Commission’s Rural Health Care Support Mechanism Order (*RHC Order*)<sup>2</sup> reformed the Commission’s universal service support programs for health care, transitioning its existing Internet Access and Rural Health Care Pilot Programs into a new Healthcare Connect Fund (HCF).

As part of its comprehensive reform, the Commission instituted several changes that, among other things, streamlined the different invoicing and payment procedures within the HCF, through which service providers receive universal service support payments for the services they have rendered to health care providers (HCPs).<sup>3</sup> As explained fully below, good cause exists for waiving the current December 31, 2014, deadline for filing Form 463, and extending the deadline by sixty days to March 2, 2015.

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<sup>1</sup> USTelecom is the premier trade association representing service providers and suppliers for the telecommunications industry. USTelecom members provide a full array of services, including broadband, voice, data and video over wireline and wireless networks.

<sup>2</sup> See Order, *Rural Health Care Support Mechanism*, WC Docket No. 02-60 (rel. Dec. 21, 2012) (*Order*).

<sup>3</sup> *Order*, ¶¶ 303 – 305.

## **I. BACKGROUND ON THE FORM 463 PROCESS.**

As part of its reforms adopted in the *RHC Order*,<sup>4</sup> the Commission aligned certain invoicing procedures. Specifically, it adopted requirements whereby: (1) a HCP or Consortium Leader must certify to the Universal Service Administrative Company (USAC) that it has paid its contribution to the service provider before the service provider can send its invoice to USAC and the service provider can be paid, and (2) before any invoice is sent to USAC, both the HCP and service provider must certify that they have reviewed the invoice and that it is accurate.<sup>5</sup>

All invoices must be received by the Fund Administrator (currently, USAC) within six months of the end date of the funding commitment.<sup>6</sup> For Funding Year 2013, Forms 463 are due to USAC on December 31, 2014.<sup>7</sup> As explained fully below, good cause exists for waiving the current deadline of December 31, 2014, and extending by sixty days to March 2, 2015.

## **II. THE COMMISSION MAY WAIVE ITS RULES FOR GOOD CAUSE SHOWN.**

The Commission has discretion to waive its rules “for good cause shown.”<sup>8</sup> Generally, the waiver of a Commission rule is appropriate “when granting such relief would not undermine the rule’s policy objective and would better serve the public interest than requiring strict compliance.”<sup>9</sup> The D.C. Circuit has further explained that waiver of the Commission’s rules “is

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<sup>4</sup> *Id.*, ¶ 305.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> See, USCA News Release, *Reminder: HCF Program Deadline for FCC Form 463 for FY2013*, December 2, 2014 (available at: <http://www.usac.org/about/tools/news/default.aspx>) (visited December 19, 2014).

<sup>8</sup> 47 C.F.R. § 1.3.

<sup>9</sup> Order and Authorization, *Application for Blanket Authority to Operate Ancillary Terrestrial Component Base Stations and Dual-Mode MSS-ATC Mobile Terminals in the 2 GHz MSS Bands*, 25 FCC Rcd 228, DA 10-60, ¶ 22 (released January 13, 2010) (citing *Northeast Cellular Tel. Co.*

appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.”<sup>10</sup> In evaluating whether to exercise its discretion under Rule 1.3, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. The Commission has previously granted waiver petitions filed by industry groups where these criteria have been satisfied.<sup>11</sup>

### **III. GOOD CAUSE EXISTS FOR THE COMMISSION TO GRANT THE REQUESTED WAIVER AND EXTENSION REQUEST**

#### **A. The Administrative Demands within the RHC Program are Significant.**

The administrative demands within the Rural Health Care program have changed under the Healthcare Connect Fund, and are significant for HCPs and service providers. Waiving the current deadline of December 31, 2014, and extending it to March 2, 2015, is in the public interest because it would allow sufficient time to for both HCPs and carriers/service providers to ensure the integrity of the information submitted to USAC. This is the first time that HCPs and carriers/service providers are filing under the new rules, and as is evident from the record, these stakeholders continue to struggle to adjust to this new requirement. Despite best efforts, some HCPs are unable to file on time, and other HCPs that file just before the current December 31 deadline may find their service provider does not have enough time to fulfill its new duties by December 31.

As of October 28, 2014, more than 3,300 Health Care Fund program requests for funding were received by USAC for Fiscal Years 2013 and 2014, with more than 2,400 requests for

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*v. FCC*, 897 F.2d 1166 (D.C. Cir. 1990) (*Northeast Cellular*); *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969)).

<sup>10</sup> *Northeast Cellular*, 897 F.2d 1164, 1166.

<sup>11</sup> CITE.

funding processed. USAC has also committed and disbursed approximately \$13.6 million and \$1.5 million, respectively, to individual HCPs during this same period.<sup>12</sup> Providing a modest extension of sixty days will ensure that all stakeholders are afforded sufficient time to complete the mandated review, analysis and verification of information associated with the Form 463.

This in turn will satisfy a principal objective of the Commission's *Order*, since data accuracy and integrity was the primary goal cited by the Commission in establishing the Form 463 certification process. In adopting the Form 463 process, the Commission concluded that it would "help eliminate waste, fraud, and abuse by making sure that HCPs have made their required contribution to the cost of the services they receive and that the invoice accurately reflects the services an HCP is receiving and the support due to the service provider."<sup>13</sup>

However, the Commission's laudable goal of eliminating waste, fraud and abuse in the Rural Health Care program can only be achieved if carriers/service providers and HCPs are afforded sufficient time to ensure the accuracy and integrity of information submitted to USAC. USTelecom maintains that a modest sixty day extension until March 2, 2015 would ensure this goal is met, thereby better serving the public interest than requiring strict compliance with a December 31, 2014 deadline.

**B. Circumstances Beyond the Control of USTelecom's Member Companies Warrant a Waiver and Extension of the December 31, 2014 Deadline.**

A number of factors have contributed to the need for a waiver and extension of the Commission's December 31, 2014 Form 463 filing deadline. USTelecom is aware of instances where certain of its member companies have yet to receive a completed Form 463 from

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<sup>12</sup> FCC-USAC Webinar, *Healthcare Connect Fund (HCF) Program*, p. 13, October 28, 2014 (available at: <http://www.usac.org/res/documents/rhc/training/2014/FCC-USAC-HCF-Program-Webinar.pdf>) (visited December 16, 2014) (*USAC Webinar*).

<sup>13</sup> *Order*, ¶ 305.

participating HCPs. In other instances, its member companies have received a large number of Forms 463 only within the last 30 days. Although the exact scope of the problem is difficult to quantify, USTelecom's members have reported dozens of forms that remain outstanding, constituting hundreds of thousands of dollars in outstanding invoices.<sup>14</sup> In addition, USAC has only recently addressed certain enhancements to its online filing portal that were the source of several applicant concerns. Finally, the current filing deadline falls during several culturally significant holidays.

**1. Insufficient Time Remains for Carriers/Service Providers to Appropriately Process Outstanding and Late-Submitted Form 463s.**

With only a few weeks remaining until the Commission's December 31, 2014 deadline, USTelecom member companies are still waiting to receive forms from their HCP customers. Once these forms are received by the carrier/service provider, they must still review the forms for completeness and accuracy. In addition to their initial review, the carrier/service provider must also confirm that the information regarding services received by the submitting HCP matches with the associated services rendered by the carrier/service provider.

Based on experience with the forms received in previous instances, it is highly likely that many of the submitted forms will have various errors. And, according to the Commission's requirements, these forms may not be submitted for payment until corrected by the HCP. The HCP must review the service provider's questions and revisions, analyze and correct the form, and then resubmit it to the carrier/service provider. Even under the most ideal circumstances, it

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<sup>14</sup> In recent days, USTelecom has attempted to quantify the full scope of the problem relating to outstanding Form 463s. However, given the highly fluid nature of the situation which changes on a daily basis, obtaining exact numbers and amounts would require these members to re-purpose staff from processing Form 463s to assessing counts and dollar amounts. Given the impending deadline, the carriers determined that the more prudent approach would be to process the forms.

is highly unlikely that the HCP applicant will be able to submit a properly reviewed and corrected form to the carrier/service provider by the deadline of December 31, 2014. Even then, the carrier/service provider must still go through the entire review process once again to ensure that the previously identified mistakes have been corrected, and that all information on the Form 463 is correct. Given the Commission's emphasis on data accuracy and integrity, this is not a process that should be rushed to meet a December 31, 2014 deadline.

In addition to Form 463s that remain outstanding, USTelecom is aware of instances where a significant number of these forms have been received within the last 30 days. This stream of recent filings has created an inordinate number of forms that the carrier/service provider must process simultaneously. Given service provider experience to date with the new Form 463 process, many of these recently submitted forms may end up being incorrect when submitted to the carrier/service provider, requiring the process to begin again for both HCPs and carriers/service providers.

Moreover, in previous instances involving invoicing procedures relating to the distribution of universal service funds, the Commission has implemented mechanisms allowing for automatic extensions of time. Specifically, earlier this year, the Commission codified USAC's existing E-Rate invoice filing deadline to allow applicants to request and automatically receive a single one-time 120-day extension of the invoicing deadline.<sup>15</sup> In implementing this approach, the Commission concluded that it provided the "right balance between the need for efficient administration of the program, and the need to ensure that applicants and service

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<sup>15</sup> Report and Order and Further Notice of Proposed Rulemaking, Modernizing the E-rate Program for Schools and Libraries, 29 FCC Rcd 8870, FCC 14-99, ¶ 238 (released July 23, 2014) (*E-Rate Order*).

providers have sufficient time to finish their own invoicing processes.”<sup>16</sup> The same principal is equally applicable in the current instance, and the request for an additional 60 days is modest by comparison.

## **2. Problems Associated with USAC’s Online Filing Portal Have Been Addressed Only Recently.**

The delays in processing of the Form 463s by certain HCPs may be due in part to problems with the filing process that were recently addressed by USAC. During a recent USAC-sponsored webinar on October 28, 2014, USAC acknowledged recent enhancements to its form submission process that were designed to address applicant concerns.<sup>17</sup> These included the addition of more Rural Health Care program staff,<sup>18</sup> correcting earlier versions of the forms not being backwards compatible,<sup>19</sup> addressing specific system problems including unexplained user lockouts that started in May, 2014,<sup>20</sup> the service provider portal not being fully functional,<sup>21</sup> and intermittent system outages.<sup>22</sup> Moreover, USAC has outlined further changes to the website portal to ensure additional necessary improvements are incorporated.<sup>23</sup>

These include enhancements that will ensure greater accuracy and improved processing time, as well as enhanced troubleshooting capabilities.<sup>24</sup> For example, USAC notes that automated regression testing will “[s]horten the time between recognizing issues and the

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<sup>16</sup> *E-Rate Order*, ¶ 239.

<sup>17</sup> *See, USAC Webinar*, pp. 19 - 26.

<sup>18</sup> *Id.*, p. 19.

<sup>19</sup> *Id.*, p. 20.

<sup>20</sup> *Id.*, p. 21.

<sup>21</sup> *Id.*, p. 22.

<sup>22</sup> *USAC Webinar*, p. 23.

<sup>23</sup> *Id.*, pp. 24 - 27.

<sup>24</sup> *Id.*, pp. 25 - 27.

deployment of new functionality and bug fixes.”<sup>25</sup> Similarly, a change that would allow applicants to make form revisions through My Portal after forms have been submitted will “reduce cycle time for processing applicant requested revisions.”<sup>26</sup>

USTelecom raises these issues not to criticize the administration of the program, but rather to highlight the significant challenges faced by HCPs and carriers/service providers alike as they worked towards meeting the December 31, 2014 deadline. Indeed, USAC conducted a further webinar for December 17, 2014 in order to review the Form 463 requirements to provide tips for completing the process.<sup>27</sup>

### **3. The Current Filing Deadline Falls During Several Culturally Significant Holidays.**

While USTelecom is hopeful that USAC’s educational outreach will provide useful information to HCPs as they complete their Form 463s, these filing challenges are further exacerbated by the fact that the December 31, 2014 deadline occurs around several culturally significant holidays. These holidays include Christmas, Hanukkah, Kwanzaa, and New Year’s Day, as well as the end of the fourth quarter 2014 business cycle. These are some of the busiest travel and vacation holidays, and many of the business analysts, technical staff, and legal personnel of both HCPs and service providers who are responsible for preparing, evaluating, revising and filing Form 463s will be unavailable during this time, while remaining staff will be attending to essential business activities. An additional extension until March 2, 2015 will ensure that all parties have the opportunity to allocate key resources to ensuring the necessary accuracy and integrity for the Form 463 process. USTelecom is unaware of any negative

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<sup>25</sup> *Id.*, p. 25.

<sup>26</sup> *Id.*, p. 26.

<sup>27</sup> *See*, USAC website, *FCC Form 463 Invoicing Webinar for Service Providers* (available at: <https://attendeegotowebinar.com/register/392907544389081858>) (visited December 16, 2014).

consequence to HCPs, service providers or to the Fund itself if the Commission extends the filing deadline until March 2, 2015.

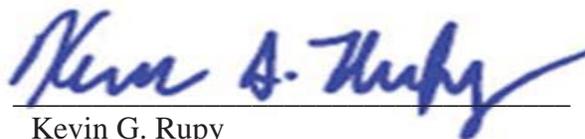
#### IV. CONCLUSION

USTelecom supports the Commission's goal of eliminating waste, fraud, and abuse under the Rural Health Care program.<sup>28</sup> Waiving the current December 31, 2014 deadline, and extending it to March 2, 2015, would not interfere with the Commission's oversight of the Rural Health Care program, and would instead ensure greater integrity to the administration of the program. Providing additional time to carriers/service providers and HCPs for the processing of Form 463s will enhance the program by helping to thoroughly safeguard the accuracy, completeness and integrity of the underlying services and payments associated with the administration of the RHC program. The additional time provided to these parties will ensure that each HCP can accurately certify to USAC that it has paid its contribution to the service provider, so that USAC can confidently process the invoice for eventual payment to the carrier/service provider.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION

By:



Kevin G. Rupy

Its Attorney

607 14<sup>th</sup> Street, NW, Suite 400  
Washington, D.C. 20005  
202-326-7300

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<sup>28</sup> Order, ¶ 305.