

FCC Votes on Possible Changes to the Rural Health Care Program

December 19, 2017



At its last open meeting in 2017, the five FCC Commissioners unanimously voted to adopt a [Notice of Proposed Rulemaking \(NPRM\) and Order](#) regarding the Commission's Rural Health Care (RHC) Program, a 20-year old initiative aimed at improving rural health care provider access to first telecommunications services and later an array of communications services, including Internet access, dark fiber, and business data services. This item is part of FCC Chairman Ajit Pai's overall initiative to close the "digital divide," and proposes to increase the \$400 million spending cap for the first time since 1997. The NPRM also proposes to change how the FCC handles demand beyond the cap, from general proration to prioritization based on rurality or remoteness. As such, all interested stakeholders should carefully monitor and consider participating in the rulemaking process. Comments will be due 30 days after publication of the item in the Federal Register (which usually takes a few weeks) and reply comments will be due 60 days after publication.

The NPRM accounts for the bulk of the item and sets forth numerous proposals aimed at ensuring that sufficient funds are available to meet demand, which exceeded the \$400 million cap for the first time in FY 2016, while at the same time improving the efficiency of the support. As explained in the NPRM, the RHC program consists of two components – the Telecom Program, which subsidizes the difference between urban and rural rates for telecommunications services, and the HCF Program, which provides a flat 65 percent discount on an array of communications services, including Internet access, dark fiber, business data, traditional DSL, and private carriage services. The NPRM identifies potential changes for both components of the RHC Program. In particular, the NPRM proposes and seeks comment on the following:

- **Revising the RHC Program Cap.** The FCC seeks comment on whether and how it should raise the cap for the RHC Program. In particular, the FCC seeks comment on adjusting the cap based on inflation, or whether the Commission should roll over unused funds committed in one year into a subsequent funding year. The NPRM also asks whether potential waste in the Telecom Program should factor into a decision about increasing the cap, as well as how increasing the cap would affect other Universal Service Fund (USF) programs.
- **Prioritizing Funding if Demand Reaches the Cap.** The NPRM seeks comment on whether the Commission should change how it prioritizes funding of eligible RHC Program requests. In particular, the FCC poses questions about the following potential approaches: prioritizing based

on rurality or remoteness; prioritizing based on type of service; prioritizing based on RHC program (Telecom v. HCF); and prioritizing based on economic need or healthcare professional shortages. The focus on prioritizing based on rurality or remoteness is consistent with the FCC's recent order and NPRM on the Lifeline program, which also seeks to prioritize service in rural areas.

- **Targeting RHC Support.** The NPRM seeks comment on “several proposals to direct proportionally more funding to rural healthcare providers, including healthcare providers on rural Tribal lands.” Specifically, the FCC asks commenters to weigh in on several issues related to healthcare consortia that include both rural and non-rural healthcare providers.
- **Establishing a Benchmark and Review Process for RHC Program Support Requests.** The FCC proposes to “establish objective benchmarks to identify outlier funding requests” in the Telecom Program and subject such outlier requests to enhanced review by the Universal Service Administrative Company (USAC) before issuing funding commitments. To carry out this proposal, the NPRM seeks comment on how to calculate the benchmark and the appropriate procedures for the enhanced review process for outlier requests. It also seeks comment on a potential alternative approach that would cap funding for outlier requests at the benchmark level.
- **Reforming the Rules for Calculating Support in the Telecom Program.** The NPRM proposes “more detailed requirements about how the urban and rural rates are determined in the Telecom Program to minimize potential variances and rate manipulation.” The FCC seeks comment on calculating support based on the average of relevant publicly available rates, and asks commenters to provide feedback on a number of issues and questions related to such an approach, including how to collect data to inform the calculations. It also asks whether it should retain the cost-based approach to support calculation. Additionally, the NPRM seeks comment on changing the Commission’s interpretation of “similar services” for purposes of calculating comparable urban and rural rates, as well as eliminating the use of distance as a proxy for the appropriate support amount.
- **Redefining the “Cost Effectiveness” Standard Across the RHC Program.** The NPRM notes that under current RHC Program rules, funding recipients can select services that exceed the healthcare provider’s needs, thereby wasting program funds. The FCC seeks comment on how it can revise the definition of “cost effectiveness” to address this inefficiency. With the USF contributions rate hitting 19.5% this quarter, all USF programs will be under increased scrutiny and budgetary restrictions as the Commission tries to avoid hitting the 20% mark.
- **Improving Oversight of the RHC Program.** The FCC seeks comment on establishing rules related to the use of consultants in connection with RHC funding requests (including disclosure of certain information about the consultants), as well as applying specific restrictions with respect to the receipt of gifts in connection with funding requests, similar to the existing rule in the E-rate program. It also proposes to harmonize various filing deadlines within the program.
- **Streamlining RHC Program Processes and Administration.** The NPRM proposes to reduce the number of forms associated with the RHC Program, with an aim toward improving the efficiency of the application process while reducing the administrative burden on applicants.
- **Bolstering the Competitive Bidding Rules.** The NPRM proposes and seeks comment on potential changes to harmonize the competitive bidding rules for the Telecom and HCF components of the program.

The brief Order portion of the item makes clear that the proposals in the NPRM, if adopted, will not be applied to Funding Year 2017 requests, finding that “the anticipated hardship that would be imposed on healthcare providers from proration in FY 2017 justifies good cause for waiver of certain rules.” The Order expressly directs USAC to “commit up to the amount of any unused funds carried forward from prior years to the RHC Program funding to reduce the proration for individual rural healthcare providers in both the Telecom and HCF Programs for FY 2017.” The Order further “allow[s] service providers to voluntarily reduce their rates for qualifying FY 2017 requests, in the event of proration, while holding constant the prorated support amount contained in the healthcare providers’ funding commitment letters.”

The issues raised in the NPRM could present an opportunity for existing and potential entrants to the RHC Program to guide its direction going forward. As such, service providers and health care entities/consortia that participate or are interested in participating in the Rural Health Care Program should consider submitting comments in response to the NPRM. While the exact comment cycle is not known yet, the item specifies that **initial comments will be due 30 days after publication in the Federal Register, and reply comments will be due 30 days after that.**