



PUBLIC NOTICE

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THE WIRELINE COMPETITION BUREAU PROVIDES GUIDANCE REGARDING THE COMMISSION'S RULES FOR DETERMINING RURAL RATES IN THE RURAL HEALTH CARE TELECOMMUNICATIONS PROGRAM

WC Docket No. 02-60

The funding year (FY) 2019 application filing window for the Rural Health Care Universal Service Support Mechanism (RHC Program) opened on February 1, 2019 and will run through May 31, 2019.¹ To assist eligible health care providers participating in the RHC Telecom Program as they compile their applications for FY2019, this Public Notice provides guidance on complying with program rules, including the Commission's rules for determining rural rates.² It also provides a few reminders and tips that provide additional transparency into the program's application process and will help applicants and service providers prepare their applications so as to expedite application review and the issuance of funding decisions by the program administrator, the Universal Service Administrative Company (USAC).³

Calculating Telecom Program Support

The Telecom Program enables eligible health care providers in rural areas to purchase telecommunications services at rates no higher than the rate charged for similar services in urban areas in the same state.⁴ It does so by compensating telecommunications carriers for the difference between the higher rates provided in rural areas and the lower rates available to urban customers in the same state. To obtain program support for a telecommunications service, participating health care providers must submit a funding application (FCC Form 466) to USAC that states and substantiates the rural rate requested by

¹ There are two components of the RHC Program—the Telecommunications (Telecom) Program and the Healthcare Connect Fund Program. The Telecom Program ensures that rural health care providers pay no more than their urban counterparts for telecommunications services. *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) (*Universal Service First Report and Order*) (subsequent history omitted); 47 U.S.C. § 254(h)(1)(A). The Healthcare Connect Fund Program provides a flat 65% discount on an array of communications services to both individual rural health care providers and consortia, which can include non-rural health care providers (if the consortium has a majority of rural sites). *See Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678 (2012) (*Healthcare Connect Fund Order*); 47 U.S.C. § 254(h)(2)(A).

² 47 CFR § 54.607.

³ The Wireline Competition Bureau (Bureau) reminds applicants and service providers that they are ultimately responsible for knowing and complying with program rules and deadlines. *See Requests for Waiver or Review of Decisions of the Universal Service Administrator by Indiana Telehealth Network, Rural Health Care Universal Service Support Mechanism*, WC Docket No. 02-60, Order, DA 18-1284 (WCB Dec. 20, 2018), 2018 WL 6722649; *Rural Health Care Support Mechanism*, WC Docket 02-60, Order, 30 FCC Rcd 1063, 1065, para. 6 (WCB 2015); *Request for Review by Portland Area Indian Health Service, Rural Health Care Universal Service Support Mechanism*, WC Docket No. 02-60, Order, 25 FCC Rcd 13050, 13053, para. 7 (WCB 2010). We encourage program participants to contact USAC with any questions concerning specific filings or circumstances.

⁴ 47 U.S.C. § 254(h)(1)(A).

the service provider for the service and the urban rate for the service within the state.⁵ After USAC reviews the application and issues a funding decision, the health care provider only pays the urban rate and the Universal Service Fund (Fund) pays the difference between the urban rate and the rural rate to the telecommunications carrier.

Pursuant to the statutory requirement that universal service mechanisms be “specific, predictable and sufficient . . . to preserve and advance universal service,”⁶ the Commission adopted rules that specify how service providers and health care providers must determine and justify the urban and rural rates used to determine the amount of support requested.⁷ Compliance with these rules is critical to ensuring that the limited resources allocated to the RHC Program are distributed in a fair and efficient manner. Although the Commission’s rules require health care providers to conduct a competitive bidding process and select the most cost-effective method of receiving the services,⁸ the fact that a health care provider “using the rural-urban differential pays only the urban rate” creates “little incentive to control the overall cost of the service (i.e., the rural rate).”⁹ Given that “[a]ny increases in the overall cost of the service are borne directly by the Fund,”¹⁰ and the funding available for the RHC Program is limited,¹¹ ensuring that the rural rates requested in FCC Form 466 funding applications comport with the limits of the Commission’s rules is essential to the RHC Program’s goal of supporting as many health care providers as possible in the delivery of health care services to their rural communities.

Rural Rate Determination and Documentation

A service provider should determine the rural rate *before* it responds to a health care provider’s request for bids (FCC Form 465) and ensure that the rate is sufficiently documented at that time. Once the health care provider selects a winning bid and service provider, and enters into a commitment, any attempt to change the rates or other contract terms could violate the program’s competitive bidding rules. Further, health care providers must have program-compliant rural rates supported by documentation in hand *before* they file their FCC Form 466 funding applications.¹² Health care providers are required to

⁵ USAC posts a “standard urban distance” (SUD) for each state on its website. 47 CFR §§ 54.605(c)-(d). If the telecommunication service requested by the health care provider is to be provided over a distance equal to or less than the SUD, then the urban rate must be a rate “no higher than the highest tariffed or publicly-available rate charged to a commercial customer for a functionally similar service in any city with a population of 50,000 or more in that state, calculated as if it were provided between two points within the city.” 47 CFR § 54.605(a). If the telecommunication service requested by the health care provider is to be provided over a distance greater than the SUD, then the urban rate must be a rate “no higher than the highest tariffed or publicly-available rate charged to a commercial customer for a functionally similar service *provided over the [SUD]* in any city with a population of 50,000 or more in that state, calculated as if it were provided between two points within the city.” 47 CFR § 54.605(b).

⁶ 47 U.S.C. § 254(b)(5).

⁷ *Universal Service First Report and Order*, 12 FCC Rcd at 9020-21, para. 660 (noting that the approach adopted for determining a rural rate is “[m]indful of the Commission’s obligation to craft a mechanism that is ‘specific, predictable and sufficient’”).

⁸ 47 CFR §§ 54.603(a), 54.603(b)(4), 54.615(c)(7). We also note that in the RHC Program, health care providers have broad discretion when assessing cost-effectiveness. 47 CFR §§ 54.603(b)(4), 54.642(c).

⁹ *Healthcare Connect Fund Order*, 27 FCC Rcd 16678, 16718, para. 87.

¹⁰ *Id.*

¹¹ 47 CFR § 54.675.

¹² While service provider assistance is prohibited during the competitive bidding process, once a service provider has been selected and a contract has been executed, health care providers may request that the service providers supply an explanation of how the rural rate for the requested service has been determined and copies of the required supporting documentation.

certify that the information in their FCC Form 466 funding applications is correct and that they will comply with all program rules. They also must submit supporting documentation with their applications, including the documents substantiating the stated urban and rural rates.¹³ The submission of inaccurate and/or unsupported rural and urban rate information to USAC could result in a denial in funding, in whole or in part.

The Commission's rules provide three methods service providers and health care providers can use to determine a rural rate: (1) averaging the rates that the service provider actually charges other non-health care provider commercial customers for same or similar services provided in the rural area where the health care provider applicant is located (Method 1);¹⁴ (2) averaging tariffed and other publicly available rates charged by other service providers for same or similar services provided over the same distance in the rural area where the health care provider applicant is located (Method 2);¹⁵ and (3) requesting approval of a cost-based rural rate from the Commission (for interstate services) or a state commission (for intrastate services) (Method 3).¹⁶

1. *Methods 1, 2, and 3 Must Be Applied Sequentially:* Method 1 must be used to determine a rural rate unless the service provider selected is not actually charging non-health care provider customers rates for same or similar services in the rural area where the eligible health care provider is located.¹⁷ In that case, health care providers and service providers must attempt to calculate a rural rate using Method 2.¹⁸ If it is not possible to determine a rural rate because there are no tariffed or publicly available rates charged by other service providers for same or similar services in the rural area where the eligible health care provider is located, or if the service provider reasonably determines that the rural rate calculated using Method 2 is unfair, then health care providers and service providers may calculate a rural rate using Method 3.¹⁹ We encourage health care providers and service providers to review each funding request carefully to ensure that the correct method of determining a rural rate has been used.
2. *Definition of "Rate" (Method 1 and 2):* A "rate" for the purposes of calculating Telecom Program support is "the entire cost or charge of a service, end-to-end, to the customer . . . [and] not rates for particular facilities or elements of a service."²⁰ Accordingly, any rate used to determine a rural rate using Method 1 or 2 must be the rate actually charged to the

¹³ See *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 30 FCC Rcd 230, 231, paras. 2-3 (WCB 2015) (requiring applicants to submit supporting documentation with their funding applications and in response to USAC inquiries, including proof of the requested rural and urban rates).

¹⁴ 47 CFR § 54.607(a).

¹⁵ 47 CFR § 54.607(b).

¹⁶ *Id.*

¹⁷ See 47 CFR § 54.607(a) ("The rural rate shall be the average of the rates actually being charged to commercial customers, other than health care providers, for identical or similar services provided by the telecommunications carrier providing the service in the rural area in which the health care provider is located.").

¹⁸ See 47 CFR § 54.607(b) ("If the telecommunications carrier serving the health care provider is not providing any identical or similar services in the rural area, then the rural rate shall be the average of the tariffed and other publicly available rates, not including any rates reduced by universal service programs, charged for the same or similar services in that rural area over the same distance as the eligible service by other carriers.").

¹⁹ See 47 CFR § 54.607(b) ("If there are no tariffed or publicly available rates for such services in that rural area, or if the carrier reasonably determines that this method for calculating the rural rate is unfair, then the carrier shall submit for the state commission's approval, for intrastate rates, or the Commission's approval, for interstate rates, a cost-based rate for the provision of the service in the most economically efficient, reasonably available manner.").

²⁰ See *Universal Service First Report and Order*, 12 FCC Rcd at 9128, paras. 674-75.

customer, regardless of any term or volume discounts the customer may be receiving, for the entire service and must appear on an invoice, contract, or other acceptable form of documentation as the entire charge for a complete end-to-end service provided by a service provider. USAC cannot accept a purported rate derived by, for example, piecing together different service provider charges for different service components (e.g., transport, local loop) that are not sold to a commercial customer as an end-to-end service.

3. *Showing that Rates Are Actually Charged* (Method 1): A rural rate can only be determined using Method 1 by averaging rates for same or similar services that are “actually being charged.”²¹ That means that the rates cannot be derived from rate cards, rate quotes, or certified letters from the service provider. The documentation submitted in support of a rural rate determined using Method 1 must show that the rate is being charged to commercial customers for purchased services (e.g., invoices, contracts).
4. *Publicly Available Rates* (Method 2): The Commission’s rules require that a rural rate derived under Method 2 must be an average of tariffed and other publicly available rates charged by other service providers.²² Publicly available rates include, but are not limited to, those posted on a rate card on a service provider’s website or accessible via a public database. For example, USAC hosts an Open Data Platform (<https://opendata.usac.org/browse?category=E-rate&limitTo=datasets>) that includes a database of service information submitted by participants in the schools and libraries universal service mechanism (commonly known as the E-rate Program). That information includes the pre-discount contract rates charged by service providers for services provided to schools and libraries, which are non-health care provider commercial entities. Database searches may be geographically limited to see the type of services being provided in a particular area by different service providers and the associated pre-discount charges. We encourage participants to use this tool to familiarize themselves with potential service options in their rural areas and to evaluate whether Method 2 may be used to determine a rural rate.
5. *Similar Services* (Method 1 and 2): Services will be considered “similar” for the purposes of calculating Telecom Program support if they are “functionally similar as viewed from the perspective of the end user.”²³ Functional similarity is assessed based on the advertised speeds and nature of the services, including whether they are symmetrical or asymmetrical.²⁴ Evaluating functionality from the perspective of the end user means that factors such as the technology used to provide the service and network configurations are irrelevant to the service comparison.²⁵ The Commission has also established a voluntary “safe harbor” of functionally equivalent speeds that health care providers and service providers may also use to compare services.²⁶

²¹ See 47 CFR § 54.607(a).

²² See 47 CFR § 54.607(b).

²³ See *Rural Health Care Mechanism*, WC Docket No. 02-60, Report and Order, Order on Reconsideration and Further Notice of Proposed Rulemaking, 18 FCC Rcd 24546, 24563, para. 33 (2003) (emphasis in original).

²⁴ *Id.* at 24564, para. 34.

²⁵ *Id.* at 24563-64, para. 33 (departing from previous policy of comparing technical similarity).

²⁶ *Id.* at 24564, para. 34 (for purposes of the RHC Program, the following advertised speed categories are deemed to be functionally equivalent: (1) low - 144-256 Kbps; (2) medium - 257-768 Kbps; (3) high - 769-1400 Kbps (1.4 Mbps); (4) T-1 - 1.41-8 Mbps; and (5) T-3 - 8.1-50 Mbps).

6. *Interstate vs. Intrastate Services* (Method 3): A service provider may request approval of a cost-based rural rate from either the Commission (for interstate services) or a state commission (for intrastate services). In most cases, services requested by eligible health care providers will be interstate services, and a request for a cost-based rural rate should be submitted to the Commission. If, however, 10% or less of the traffic carried over a mixed-use circuit is interstate, the revenue and costs generated by that circuit are classified as intrastate.²⁷ Health care providers and service providers can receive further guidance on whether a service is interstate or intrastate in nature by contacting USAC's Contributions team at (888) 641-8722.
7. *Requesting a Cost-Based Rate* (Method 3): To request approval of a cost-based rural rate, the Commission's rules require the service provider to submit a justification of its requested rural rate to either the Commission or the state commission, including an itemization of the costs of providing the service requested by the eligible health care provider.²⁸ To comply with this requirement, the request for approval of a cost-based rural rate should include a cost study that demonstrates how the costs of providing service are allocated to RHC Program customers. At a minimum, the cost study should include the following data points:
 - a. The company's total capital expenditures (CAPEX) and operational expenditures (OPEX), with a breakdown of the total figure's components (e.g., depreciation, taxes, return on investment);²⁹
 - b. An explanation of how the total CAPEX/OPEX figure is allocated between customers, together with the resulting allocated figures, as necessary to show how the company has allocated CAPEX/OPEX costs to its RHC Program customers;³⁰
 - c. The company's total common costs and a breakdown of that total figure's components;³¹ and
 - d. An explanation of how the company's total common costs are allocated between customers, together with the resulting allocated figures, as necessary to show

²⁷ See *MTS and WATS Market Structure, Amendment of Part 36 of the Communications Rules and Establishment of a Joint Board*, CC Docket Nos. 78-72 and 80-286, Decision and Order, 4 FCC Rcd 5660, 5660-61, para.1 (1998); *Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Universal Service Contribution Methodology, Request for Review by McLeodUSA Telecommunications Services, Inc. et al. of Universal Service Administrator Decision*, CC Docket Nos. 96-45 and 97-21, WC Docket No. 06-122, Order, 32 FCC Rcd 2140, 2141-42, para. 4 (WCB 2017).

²⁸ See 47 CFR § 54.607(b)(1) ("The carrier must provide, to the state commission, or intrastate rates, or to the Commission, for interstate rates, a justification of the proposed rural rate, including an itemization of the costs of providing the requested service").

²⁹ Cf., e.g., 47 CFR § 61.38 (describing data and documentation, including a cost study and revenue impact, to support rate requests for carriers with gross revenues exceeding \$500,000) and § 61.39 (describing data and documentation, including a cost study and revenue impact, to support rate requests for carriers serving 50,000 and fewer access lines).

³⁰ See generally 47 CFR § 64.901 (explaining the cost-allocation hierarchy principles). Cf. 47 CFR § 54.607(b)(2) (providing that approved rates should be periodically reviewed taking into account anticipated and actual demand for services by all customers who will make use of the facilities over which services are being provided to eligible health care providers).

³¹ Cf., e.g., 47 CFR § 51.505 (requiring that a forward-looking economic cost includes a reasonable cost-allocation of forward-looking common costs).

how the company has allocated common costs to RHC facilities and to RHC Program customers.³²

The Commission's rules do not specify a format for cost studies. They may be a single page spreadsheet together with a short narrative explanatory statement or another format reasonably designed to demonstrate the proper allocation of costs. Note that state commissions may have differing requirements for the submission of cost studies, and applicants should reach out to a state commission for guidance before submitting one.

8. *Demonstrating Intrastate Submission* (Method 3): If an applicant is seeking approval of a cost-based rural rate from a state commission, the applicant must also submit to USAC: (a) a certification attesting to the intrastate classification of the service; and (b) a copy of the cost-based rural rate approval request submitted to the state commission with receipt stamp or other confirmation that the request has actually been submitted.
9. *Health Care Provider Rights*: Health care providers have certain rights as eligible participants in the Telecom Program. For instance, upon receiving a bona fide request from an eligible health care provider,³³ carriers are obligated to provide the requested, eligible telecommunications services to that health care provider at a rate no higher than the urban rate allowed under program rules.³⁴ That means carriers may not require health care providers to pay any amount for the service that the carrier expected to—but did not actually—receive from the Telecom Program because the rates do not comply with program rules. Similarly, a carrier may not discontinue or refuse to provide service to a health care provider because it has not paid more than the permissible urban rate for the service. Additionally, all carriers offering telecommunications services are prohibited from engaging in any unjust or unreasonable practices and may not discontinue service to a community without prior Commission approval.³⁵

This Public Notice is intended to assist applicants participating in the Telecom Program in doing their part to ensure the efficient processing of funding requests and fair distribution of limited RHC Program funding. The Bureau trusts this information is useful to applicants as they begin the application process for FY2019 and encourages program participants to reach out to USAC with any additional questions they may have about filing FY2019 applications.

For further information, please contact Carol Pomponio, Telecommunications Access Policy Division, Wireline Competition Bureau, at (202) 418-1898 or via email at Carol.Pomponio@fcc.gov.

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³² See generally 47 CFR § 64.901. Cf. 47 CFR § 54.607(b)(2).

³³ See 47 CFR §§ 54.615(c)-(d) (setting forth the requirements for a bona fide request).

³⁴ See 47 CFR § 54.615(b) (“[A] telecommunications carrier shall provide the service at a rate no higher than the urban rate . . .”); 47 CFR § 54.605 (requirements for determining the urban rate for a funding request).

³⁵ 47 U.S.C. §§ 201, 214.