

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

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

ORDER

Adopted: July 23, 2014

Released: July 23, 2014

By the Acting Chief, Wireline Competition Bureau:

I. INTRODUCTION AND BACKGROUND

1. In this Order, pursuant to section 54.600(b)(1) of the Commission's rules, the Wireline Competition Bureau (Bureau) takes action to update the list of rural areas used to determine eligibility in the Rural Health Care (RHC) universal service support mechanism.

2. As part of the Telecommunications Act of 1996 (1996 Act), Congress recognized the value of providing rural health care providers (HCPs) with "an affordable rate for the services necessary for the provision of telemedicine and instruction relating to such services."

1 47 C.F.R. § 54.600(b)(1). We note that § 54.600(b)(2) of the Commission's rules deems eligible for support any health care provider that is "located in a 'rural area' under the definition used by the Commission prior to July 1, 2005, and received a funding commitment from the rural health care program prior to July 1, 2005."

2 The Commission's "Rural Health Care Program" is made up of the Telecommunications program, Internet Access program, the Rural Health Care Pilot Program, and the Healthcare Connect Fund. See generally Rural Health Care Support Mechanism, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678 (2012) (HCF Order) (providing information on the then-current rural health care universal service support programs and adopting the Healthcare Connect Fund).

3 Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). The 1996 Act amended the Communications Act of 1934 (Communications Act or Act).

4 S. Report No. 104-230 at 133 (1996); see also 47 U.S.C. § 254(b)(3), (h).

5 47 U.S.C. § 254(h)(1)(A).

centers; (5) not-for-profit hospitals; (6) rural health clinics; and (7) consortia of HCPs consisting of one or more entities falling into the first six categories.⁶ In addition, eligible HCPs must be non-profit or public.⁷

3. Consistent with Congress's directive, in the 1997 *Universal Service First Report and Order*, the Commission concluded that all profit and non-profit HCPs that are located in "rural areas" and meet the statutory definition set forth in section 254(h)(7)(B) of the Act would be eligible for RHC support.⁸ The Commission defined "rural areas" at that time by reference to the Office of Management and Budget's (OMB) list of non-metropolitan counties and the Office of Rural Health Policy's (ORHP) Goldsmith Modification⁹ to the 1990 census data.¹⁰

4. In 2004, the Commission adopted a new definition of rural areas for purposes of the RHC programs.¹¹ Recognizing that this new definition might negatively impact the business operations of HCPs participating in the program, the Commission provided HCPs that had received a funding commitment in the RHC program since its inception a three-year transition period during which they could qualify for support.¹² Under the definition adopted in 2004, a "rural area" is an area that is either entirely outside a Core Based Statistical Area (CBSA), as defined by OMB based on data obtained through the most recent decennial census, or is within a CBSA but meets certain criteria related to population density.¹³ The definition thus relies on a combination of the decennial census data and OMB's

⁶ 47 U.S.C. § 254(h)(7)(B).

⁷ 47 U.S.C. §§ 254(h)(1)(A), (h)(2)(A), (h)(4).

⁸ See, e.g., 47 U.S.C. § 254(h)(1)(A); *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 C.F.R. Part 54, Subpart G. The *Universal Service First Report and Order* created the Rural Health Care Telecommunications Program. *Id.* at 9093, para. 608. The RHC Internet Access, Pilot and HCF programs were created subsequently. See 47 C.F.R. § 54.621; see generally *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 18 FCC Rcd 24546 (2003) (*2003 Order and Further Notice*); *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 21 FCC Rcd 11111 (2006) (*2006 Pilot Program Order*); *HCF Order*, 27 FCC Rcd 16678.

⁹ See Harold F. Goldsmith, Dena S. Puskin, & Diane J. Stiles, *Improving the Operational Definition of "Rural Areas" for Federal Programs*, FEDERAL OFFICE OF RURAL HEALTH POLICY (1993), <http://www.raconline.org/pdf/improving-the-operational-definition-of-rural-areas.pdf> (describing the Goldsmith Modification); see also HEALTH RESOURCES AND SERVICES ADMINISTRATION, *DEFINING THE RURAL POPULATION*, http://www.hrsa.gov/ruralhealth/policy/definition_of_rural.html; RURAL ASSISTANCE CENTER, *WHAT IS THE GOLDSMITH MODIFICATION?*, <http://www.raconline.org/topics/what-is-rural/faqs#goldsmith>.

¹⁰ See *2003 Order and Further Notice*, 18 FCC Rcd at 24578, para. 63.

¹¹ *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Second Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 24613, 24619-20, paras. 11-12 (2004) (*2004 Rural Definition Order*).

¹² See *id.* at 24623-24, para. 23.

¹³ 47 C.F.R. § 54.600(b)(1) ("A 'rural area' is an area that is entirely outside of a Core Based Statistical Area; is within a Core Based Statistical Area that does not have any Urban Area with a population of 25,000 or greater; or is in a Core Based Statistical Area that contains an Urban Area with a population of 25,000 or greater, but is within a specific census tract that itself does not contain any part of a Place or Urban Area with a population of greater than 25,000. For purposes of this rule, 'Core Based Statistical Area,' 'Urban Area,' and 'Place' are as identified by the Census Bureau."). The Census Bureau relies on OMB for the identification of CBSAs and also adjusts census tracts and updates which areas are considered "Urban Areas" and "Places" after each decennial census. Likewise, OMB updates which areas are considered CBSAs. See, e.g., U.S. CENSUS BUREAU, 2010 GEOGRAPHIC TERMS AND CONCEPTS – CORE BASED STATISTICAL AREAS AND RELATED STATISTICAL AREAS, http://www.census.gov/geo/reference/gtc/gtc_cbsa.html ("The U.S. Office of Management and Budget (OMB) defines CBSAs to provide a nationally consistent set of geographic entities for the United States and Puerto Rico for

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designations of CBSAs. The Commission applied this new definition to sites in the RHC program and directed the Universal Service Administrative Company (USAC), administrator of the federal universal service programs,¹⁴ to post on its website a “rural areas” list (the “2005 Rural Areas List”) to implement the revised definition.¹⁵ The 2005 Rural Areas List was based on the 2000 census data and the then-current OMB identification of CBSAs. Since the 2005 Rural Areas List was posted, the Census Bureau has updated its identification of “Urban Areas” and “Places,” and OMB has updated its designation of CBSAs, to reflect the more recent census and population data. However, the 2005 Rural Areas List has not yet been updated and is still used to determine whether a HCP site is “rural.”¹⁶

5. Pursuant to the Act and the Commission’s rules, each individual HCP site must be located in a rural area to receive support in the Telecommunications and Internet Access programs.¹⁷ Similarly, individual applicants in the Healthcare Connect Fund (HCF) must also be located in a rural area.¹⁸ Although both HCF and the Rural Health Care Pilot Program (Pilot) allow non-rural HCPs to participate in consortia, HCF requires that each consortium comprise a majority of rural HCP sites,¹⁹ and a consortium may only increase the number of non-rural sites on its network under HCF if it meets their majority rural requirement.²⁰ Pilot consortia had to have more than a *de minimis* percentage of rural HCPs in their networks.²¹

II. DISCUSSION

6. Consistent with section 54.600(b)(1) of the Commission’s rules, and in accordance with furthering the Commission’s goals of increasing broadband access for eligible HCPs, particularly those in rural areas,²² within sixty (60) days of release of this order, we will update the list of “rural areas” (“Rural Areas List”) to reflect the 2010 decennial census data and most recent OMB CBSA designations. Additionally, going forward, we direct USAC to update the list as necessary to reflect the most recent decennial census data and nationwide CBSA designations when released and to post the list on its website

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use in tabulating and presenting statistical data.”); OMB, 2010 STANDARDS FOR DELINEATING METROPOLITAN AND MICROPOLITAN STATISTICAL AREAS, http://www.whitehouse.gov/sites/default/files/omb/assets/fedreg_2010/06282010_metro_standards-Complete.pdf. CBSA, as used by OMB and the Census Bureau, is an umbrella term that encompasses both metropolitan and micropolitan statistical areas.

¹⁴ 47 C.F.R. 54.701.

¹⁵ See *2004 Rural Definition Order*, 19 FCC Rcd at 24619, para. 13.

¹⁶ See 47 C.F.R. § 54.600(b)(1); 47 U.S.C. 254(h)(7)(B)(i).

¹⁷ See 47 U.S.C. § 254(h)(1)(A) (“A telecommunications carrier shall, upon receiving a bona fide request, provide telecommunications services which are necessary for the provision of health care services in a State, including instruction relating to such services, to any public or nonprofit health care provider that serves persons who reside in rural areas in that State . . .”).

¹⁸ See *HCF Order*, 27 FCC Rcd at 16707, para. 61 (“[N]on-rural HCPs may only apply for support as part of consortia that include rural HCPs; that is, they may not submit individual applications.”); see also 47 C.F.R. § 54.630(a) (“Under the Healthcare Connect Fund, an eligible rural healthcare provider may receive universal service support by applying individually . . .”); 47 C.F.R. § 54.600(c) (“A ‘rural health care provider’ is an eligible health care provider site located in a rural area.”).

¹⁹ See 47 C.F.R. § 54.630(b).

²⁰ See *HCF Order*, 27 FCC Rcd at 16707-08, para. 62, n.170.

²¹ See *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 21 FCC Rcd 11111, 11114, para. 10 (2006).

²² See *id.* at 16695, 16815, paras. 32, 344 (adopting performance goals for both HCF and the RHC Telecommunications Program).

within 60 days after the updated data is available from the Census Bureau or OMB.²³

7. We note that this Order does not modify the definition of “rural areas” in the RHC program, but instead merely implements the existing rule and reminds applicants that the list of qualifying rural areas will be maintained and updated periodically as required by the Commission’s rules. We expect the number of HCP sites affected by each update to be small.²⁴ Nevertheless, consistent with Commission precedent when it adopted a new definition of “rural areas” in 2004, we take further action discussed below to ensure that HCPs whose status may change as a result of the rural areas update have sufficient time and notice to address the impact of the change on their business operations and delivery of healthcare.

8. *Limited Waiver of Rural Areas List for Program Participants Transitioning from Rural to Non-Rural Status.* We recognize that the effect of updating the Rural Areas List in the RHC program may be that some program participants that were previously determined to be “rural” will become “non-rural.” Many of these sites play an important role in delivering health care and a change in eligibility due to the loss of an HCP’s “rural” status could have a serious effect on its ability to deliver needed health care services to patients in a given area. As the Commission concluded in 2004, we find that these particular facts would make strict compliance inconsistent with the public interest, and a transition period is necessary. Therefore, on our own motion, we grant a limited waiver of section 54.600(b)(1), for those participating HCPs that have already received an eligibility determination and whose status changes from “rural” to “non-rural” as a result of updating the Rural Areas List. This waiver will temporarily allow HCP sites that have already been determined to be “rural” to seek funding for the remainder of the funding year in which the update occurs and the following funding year as they transition into their new status. For example, formerly “rural” sites that are determined to be “non-rural” after USAC updates the rural areas in Funding Year 2014 with the 2010 census data and CBSA data, as instructed above, will be eligible to seek support for the remainder of Funding Year 2014 (until June 30, 2015) and the following funding year, Funding Year 2015 (July 1, 2015-June 30, 2016). We note that all sites that submit annual funding requests should follow this procedure, including those covered by “evergreen contracts.”²⁵ We direct USAC to follow the same procedures for RHC program participants in the future that change from “rural” to “non-rural” status as a result of updates to the Rural Areas List.

9. We find that transitioning formerly “rural” sites in this way will provide HCPs currently participating in the RHC program with notice and sufficient time to determine whether their status as a “rural” site will change, and to address any implications of this in their business operations. Transitioning HCPs will remain connected as they consider how best to go forward, either on their own or potentially as

²³ Even if there is more than one update to the underlying data in a 12-month period, USAC will post an updated list no more than once per year. We also direct USAC to inform any health care provider sites of their change in status caused by the updated Rural Areas List.

²⁴ Preliminary analysis indicates that less than three percent of the HCPs that recently participated in all the RHC programs would change from “rural” to “non-rural” following the updating of the Rural Areas List as directed by this Order. Of the 15,305 HCP sites that filed a Form 460, 466, 466-A in funding years 2012-13, or participated in a Pilot project, approximately 360 would shift from “rural” to “non-rural” after updating USAC’s “rural areas” list with the most recent Census Bureau and OMB data. See Craig Davis, Vice President, Rural Health Care Division, USAC, to Julie Veach, Chief, Wireline Competition Bureau, Federal Communications Commission, WC Docket No. 02-60 (filed July 9, 2014).

²⁵ See *HCF Order*, 27 FCC Rcd at 16800-01, paras. 294-296. Applicants can request “evergreen” status for their contract, which means that participants do not have to rebid the service for the life of the contract. The Commission currently allows evergreen contracts in the Telecommunications Program and HCF. Telecommunications Program participants, however, are only guaranteed support for a year at a time and must re-submit a funding request each year, whereas HCF applicants may receive a multi-year funding commitment for a period of time that covers up to three years.

part of a HCF-supported network.²⁶ Thus, this support will help maintain the *status quo* for many patients and communities that benefit from the telemedicine and telehealth applicants provided by the HCPs participating in the RHC programs. We also note that updates to the Rural Areas List may change the status of areas that were previously “non-rural” to “rural.” HCP sites in these newly “rural” areas will be eligible to seek RHC support, assuming they meet all other requirements of the RHC programs, immediately upon posting of the updated Rural Areas List on USAC’s website.

10. *Effect of Updated Rural Areas List on the Majority Rural Requirement for Consortia.*

Consistent with our instructions above, we also direct USAC to maintain for a limited period of time the “rural” status of sites that are transitioning to “non-rural” status so that consortia have time to bring their networks into compliance with the majority rural requirement of HCF. Under HCF, a consortium has three years from the date of filing its first funding request to become majority rural (*i.e.*, more than 50 percent of its sites are rural HCPs).²⁷ We recognize that updating the Rural Areas List may impact the distribution of rural and non-rural sites participating in a consortium network, and some sites that were previously designated as “rural” may become “non-rural” as a result of the update. Therefore, sites that have received a funding commitment as part of a consortium before the Rural Areas List is updated, and have their status change to “non-rural” as a result of the update, will count as “rural” toward the consortium’s majority rural requirement for the remainder of the current funding year and the following funding year. Allowing these sites to continue to count as “rural” for a limited period will help ensure that these HCPs remain connected to the broadband networks developed with RHC support as the consortium seeks to attract new rural HCP sites to fulfill its majority rural requirement. Sites that have not sought a funding commitment and change from “rural” to “non-rural” as a result of the update, must immediately count as a “non-rural” HCP site towards the majority-rural requirement for consortia.²⁸ Non-rural Pilot project sites that were “grandfathered” by the *HCF Order* may continue to receive support, but only so long as they meet the terms outlined in the *HCF Order*.²⁹

11. *Effect of Updated Rural Areas List on Multi-Year Funding Commitments.* We also instruct USAC to allow HCPs that have received multi-year funding commitments to retain their “rural” status for the duration of the commitment, regardless of the impact of an updated Rural Areas List. HCF allows HCPs to receive multi-year funding commitments for a period of time that covers up to three funding years.³⁰ Applicants that receive such HCF multi-year funding commitments do not have to re-apply for support each year, which helps reduce uncertainty and administrative costs for applicants and USAC.³¹ We find that HCPs that have received multi-year HCF funding commitments from USAC, and whose status subsequently changes from “rural” to “non-rural” as a result of an update, can continue to receive funding as “rural” HCP sites for remainder of the commitment. To the extent that sites that previously were “rural” prior to the Rural Areas List update have sought but have not yet received a HCF

²⁶ Under HCF, a site whose status changes from “rural” to “non-rural” can still potentially receive RHC support if it is part of a consortium that is majority rural. *HCF Order*, 27 FCC Rcd at 16705-7, paras. 59, 61; *see also* 47 C.F.R. § 54.630(b) (“An eligible non-rural health care provider may receive universal service support only as part of a consortium that includes more than 50 percent eligible rural health care provider sites.”).

²⁷ *HCF Order*, 27 FCC Rcd at 16707, para. 61.

²⁸ For the purposes of this Order, an applicant has sought a commitment if it has filed with USAC FCC Forms 462 or 466 to request funding.

²⁹ *See HCF Order*, 27 FCC Rcd at 16707-08, para. 62 (detailing the conditions for “grandfathering” non-rural Pilot project HCP sites). HCP sites that were located in “rural areas” under the pre-July 2005 definition and “grandfathered” under the *HCF Order* may also continue to receive support, as long as they meet the terms outlined in the *HCF Order*. *See id.* at 16710, para. 68.

³⁰ *See id.* at 16801-03, paras. 296-99. Within the universal service programs, the HCF is unique in allowing applicants to receive multi-year funding commitments.

³¹ *See id.*

commitment, can receive funding as “rural” for the term of the multi-year funding commitment. We also find that sites that have previously been determined as “rural” prior to the Rural Areas List update, but have yet to seek a commitment are ineligible to receive support for a full multi-year commitment, and instead, are only eligible for support for the current funding year and the following year. We conclude that this approach best addresses the potential for the disruption of long-term business plans, as well as ensures that RHC funds are being appropriately distributed to HCPs that are truly located in rural areas. HCP sites that received a multi-year funding commitment as a member of a Pilot project or HCF consortium, and change from “rural” to “non-rural” as a result of an update to the Rural Areas List, will maintain their “rural” status and count towards the consortium’s majority rural calculation until the expiration of the funding commitment.

12. *Effect of Updated Rural Areas List on New RHC Applicants.* We conclude that it is appropriate for USAC to begin using the updated Rural Areas List to determine eligibility of new RHC program applicants immediately upon posting of the updated list. Thus, any new RHC applicants filing a FCC Form 460 or Form 465 on or after the first business day following USAC’s posting of an updated Rural Areas List will have their “rural” or “non-rural” status determined by reference to the updated list. We find that new applicants seeking support do not need a transition period because their eligibility to participate in the program has not already been established. And, although a change from “rural” to “non-rural” status may preclude a new applicant from receiving support in the Telecommunications Program or applying as an individual participant in HCF, we note that an HCP still may be able to receive RHC support as a member of a consortium in HCF.³²

III. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.201(d), and 0.291 of the Commission’s rules, 47 C.F.R. §§ 0.91, 0.201(d), and 0.291, this Order IS ADOPTED.

14. IT IS FURTHER ORDERED that, pursuant to sections 0.91, 0.291, and 1.3 of the Commission’s rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, section 54.600(b)(1) of the Commission’s rules, 47 C.F.R. § 54.600(b)(1), IS WAIVED to the extent described above.

15. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 1.102(b)(1) of the Commission’s rules, 47 C.F.R. § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey
Acting Chief
Wireline Competition Bureau

³² See *supra* para. 7.

APPENDIX A

Impact of Updated Rural Areas List on Rural Health Care Program Participants

<p>Effect of updated Rural Areas List on current HCPs participating in the Rural Health Care Program.</p>	<p>HCP sites that were previously determined to be “rural” by USAC and subsequently have their status change to “non-rural” as a result of the Rural Areas Update may seek funding for the remainder of that funding year in which the list updated and the following funding year.</p>
<p>Effect of updated Rural Areas List on HCPs participating in consortia and the majority-rural requirement for consortia in the Healthcare Connect Fund.</p>	<p>HCP sites that have received a funding commitment as part of a consortium before the Rural Areas List is updated and have their status changed from “rural” to “non-rural” as a result of the update can count as “rural” towards the consortium’s majority rural requirements for the remainder of that funding year in which the Rural Areas List was updated and the following funding year.</p> <p>Sites that have not yet sought a funding commitment and change from “rural” to “non-rural” as a result of the update must immediately count as a “non-rural” HCP site towards the majority-rural requirement for consortia.</p>
<p>Effect of updated Rural Areas List on HCPs with multi-year funding commitments.</p>	<p>HCP sites that have received a multi-year funding commitment before the Rural Areas List update and change from “rural” to “non-rural” as a result of the update retain their “rural” status for the duration of the commitment.</p> <p>HCP sites that previously were “rural” prior to the Rural Areas List update, have sought but have not yet received a HCF commitment, can receive funding as “rural” for the term of the multi-year funding commitment.</p> <p>HCP sites that have not sought a funding commitment and change from “rural” to “non-rural” as a result of the Rural Areas List update can seek funding for the remainder of the funding year in which the update is made and the following funding year.</p> <p>HCP sites that received a multi-year funding commitment as a Pilot or HCF consortium member, and have change from “rural” to “non-rural” as a result of an update to the Rural Areas List maintain their “rural” status and count towards the consortium’s majority rural calculation until the expiration of the funding commitment.</p>

Effect of the updated Rural Areas List on new applicants to the Rural Health Care program.	The Rural Areas List should be used to determine eligibility for new RHC applicants.
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