

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

In the Matter of)
Rural Health Care Universal Service Support) WC Docket No. 02-60
Mechanism)
Schools and Libraries Universal Service Support) CC Docket No. 02-6
Mechanism)

ORDER

Adopted: December 14, 2020

Released: December 14, 2020

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. On September 3, 2020, the Wireline Competition Bureau (Bureau) extended its temporary waivers of the Federal Communications Commission’s (Commission) gift rules applicable to the Rural Health Care (RHC) and E-Rate¹ programs to assist rural health care providers, schools, and libraries affected by the coronavirus (COVID-19) pandemic.² These waivers expire on December 31, 2020.

2. In light of the ongoing disruptions caused by COVID-19 to program participants and the continued need for robust connectivity, we find good cause to extend our waivers of the RHC and E-Rate program gift rules through June 30, 2021, the end of funding year 2020.³ With our action, we continue to ensure that health care providers, schools, and libraries can benefit from and solicit offers for improved broadband connections or equipment for telehealth or remote learning during the COVID-19 pandemic without running afoul of Commission rules.

II. BACKGROUND

3. The RHC program provides financial support to help rural health care providers obtain broadband and other communications services at discounted prices through two component mechanisms: (1) the Healthcare Connect Fund Program, which supports the delivery of broadband services by offering a discount on an array of advanced telecommunications and information services, and (2) the Telecommunications Program, which permits eligible health care providers to apply for discounts to defray the high cost of eligible telecommunications services in rural areas.⁴ The E-Rate program provides

¹ E-Rate is more formally known as the schools and libraries universal service support mechanism.

² See Rural Health Care Universal Service Support Mechanism; Schools and Libraries Universal Service Support Mechanism, WC Docket No. 02-60, CC Docket No. 02-6, Order, 35 FCC Rcd 2741 (WCB 2020) (RHC and E-Rate COVID-19 Gift Rules Waiver Order) (initially waiving sections 54.622(h) and 54.503(d) of the Commission’s rules through September 30, 2020); Rural Health Care Universal Service Support Mechanism; Schools and Libraries Universal Service Support Mechanism, WC Docket No. 02-60, CC Docket No. 02-6, Order, 35 FCC Rcd 9416 (WCB 2020) (RHC and E-Rate Gift Rules Waiver Extension Order) (extending the waiver of each program’s gift rule until December 31, 2020).

³ 47 CFR §§ 54.622(h) (RHC program gift rule), 54.503(d) (E-Rate program gift rule).

⁴ Promoting Telehealth in Rural America, WC Docket No. 17-310, Order, 34 FCC Rcd 7335, 7337, para. 4 (2019) (Promoting Telehealth Report and Order).

universal service discounts to eligible schools, libraries, and consortia (comprised of eligible schools and libraries) for eligible services and equipment, including connections necessary to support broadband connectivity to eligible schools and libraries.⁵

4. RHC and E-Rate program participants must adhere to the Commission's gift rules, which prohibit applicants from soliciting or accepting any gift or other thing of value from a service provider participating in or seeking to participate in either program.⁶ Similarly, service providers are prohibited from offering or providing any gift or other thing of value to those personnel of eligible entities involved in either program.⁷ When it adopted the gift rules for the RHC and E-Rate programs, the Commission explained that "the restriction on gifts is always applicable and is not in effect or triggered only during the time period when competitive bidding is taking place."⁸ Accordingly, under RHC and E-Rate rules, applicants are not permitted to solicit or accept a gift or thing of value over \$20 from a service provider, and service providers are not permitted to offer or provide applicants a gift or thing of value over \$20.⁹

5. The Bureau initially waived the RHC and E-Rate program gift rules in March as COVID-19 rapidly spread throughout the United States and its adverse effects on health care providers, schools, and libraries were first being felt.¹⁰ We subsequently extended those waivers in September after determining that the need for relief remained unchanged.¹¹ Now, as the December 31, 2020 expiration date of these waivers approaches,¹² it is clear that the challenges posed by COVID-19 on health care

⁵ 47 CFR §§ 54.501, 54.502.

⁶ 47 CFR § 54.622(h) ("[A]n eligible health care provider or consortium that includes eligible health care providers, may not directly or indirectly solicit or accept any gift, gratuity, favor, entertainment, loan, or any other thing of value from a service provider participating in or seeking to participate in the Rural Health Care Program. No such service provider shall offer or provide any such gift, gratuity, favor, entertainment, loan, or other thing of value except as otherwise provided herein."); 47 CFR § 54.503(d) ("[A]n eligible school, library, or consortium that includes an eligible school or library may not directly or indirectly solicit or accept any gift, gratuity, favor, entertainment, loan, or any other thing of value from a service provider participating in or seeking to participate in the schools and libraries universal service program. No such service provider shall offer or provide any such gift, gratuity, favor, entertainment, loan, or other thing of value except as otherwise provided herein."); *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7412-14, paras. 166-69; *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Order, 25 FCC Rcd 18762, 18801, para. 88 (2010) (*Schools and Libraries Sixth Report and Order*). Consistent with the gift rules applicable to federal agencies, certain *de minimis* gifts, including modest refreshments and items that are worth \$20 or less, are allowable under the rules. *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7413, para. 167; *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18801, para. 88. When it adopted gift rules for the RHC program, the Commission specifically adopted the already-existing gift rules in the E-Rate program. *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7412-13, para. 166-67.

⁷ 47 CFR §§ 54.622(h), 54.503(d); *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7413, para. 168; *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18801, para. 88.

⁸ *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7413, para. 168; *see also Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18801, para. 88 (noting that "the restriction on gifts is always applicable, and is not in effect or triggered only during the time period when the competitive bidding process is taking place," because "gift activities that undermine the competitive bidding process may occur outside the bidding period.").

⁹ *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7413, para. 168; *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18801, para. 88. In addition to *de minimis* gifts, the Commission's rules also allow for charitable donations, including literacy programs, scholarships, and capital improvements, as long as such contributions are not directly or indirectly related to procurement activities or decisions. *See Promoting Telehealth Report and Order*, 34 FCC Rcd at 7413, para. 167; *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18802, para. 90.

¹⁰ *RHC and E-Rate COVID-19 Gift Rules Waiver Order*, 35 FCC Rcd at 2741.

¹¹ *RHC and E-Rate Gift Rules Waiver Extension Order*, 35 FCC Rcd at 9416.

¹² *Id.*

providers, schools, and libraries persist, and broadband connectivity remains critical to their ability to respond to the pandemic.

III. DISCUSSION

6. Generally, the Commission's rules may be waived for good cause shown.¹³ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹⁴ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁵

7. We find that the extensive disruption to health care providers, schools, and libraries throughout the country and the heightened need for telemedicine and remote learning caused by COVID-19 continue to present compelling and unique circumstances that merit further extension of the RHC and E-Rate program gift rule waivers through June 30, 2021, the end of funding year 2020 for both programs. Indeed, the need for relief is as compelling as ever in the face of the recent surge of COVID-19 cases across the country.¹⁶ We therefore find that this extension is warranted to permit service providers to continue to offer or provide, and eligible RHC and E-Rate entities to continue to solicit or accept, improved capacity, Wi-Fi hotspots, networking gear, or other things of value to assist health care providers, schools and libraries, as well as doctors and patients, teachers, students, school administrators, and librarians and patrons during this unprecedented national pandemic.

A. RHC Program

8. We extend through June 30, 2021, the temporary waiver of the RHC program gift rule to enable health care providers to receive free upgraded services from service providers. The need for enhanced telehealth services in the wake of COVID-19 remains acute. As caseloads of infected patients increase, health care providers have come to rely on telehealth to deliver critical medical care, particularly in the nation's rural areas where access to health care is often limited.¹⁷ Extending the gift rule waiver will enable these health care providers to continue to receive, on a temporary basis, free telecommunication services and equipment that would otherwise be prohibited, thereby enhancing the delivery of quality medical care across the country.

9. As before, the gift rule waiver that we extend today is limited to health care providers involved in the screening and treatment of patients for COVID-19 and in providing service to other patients in an effort to both help mitigate the spread of COVID-19 and devote limited on-site medical resources towards treatment of COVID-19. We also extend, as we did previously,¹⁸ our waivers, to the extent necessary, of section 54.611(b),¹⁹ which requires health care providers to pay the unsupported portion of service costs in the Healthcare Connect Fund Program, and of section 54.603(b),²⁰ which

¹³ 47 CFR § 1.3.

¹⁴ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

¹⁵ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

¹⁶ See, e.g., Adam Martin, *Key U.S. Covid-19 Metrics All Set New Records*, Wall Street Journal (Dec. 4, 2020), <https://www.wsj.com/articles/as-covid-19-patients-stretch-hospitals-some-doctors-ration-intensive-care-11607022592> (stating that the U.S. is seeing record highs in newly reported COVID-19 cases, hospitalizations, and deaths).

¹⁷ See, e.g., Abby Wargo, *Telehealth supplements medical care for rural areas*, Capital Journal (Oct. 9, 2020), https://www.capjournal.com/news/telehealth-supplements-medical-care-for-rural-areas/article_10ce0b2e-0a4b-11eb-a97e-9fbcca1420e7.html (reporting that telehealth services “have increased dramatically” as health care providers strive to serve the specialized medical needs of South Dakotans living in rural areas).

¹⁸ *RHC and E-Rate Gift Rules Waiver Extension Order*, 35 FCC Rcd at 9421.

¹⁹ 47 CFR § 54.611(b).

²⁰ 47 CFR § 54.603(b).

requires health care providers in the Telecom Program to pay the urban rate, as well as any other requirement, to extent necessary, to effectuate RHC program relief during the pandemic.²¹

B. E-Rate Program

10. We similarly extend through June 30, 2021, the temporary waiver of the E-Rate program gift rule to provide relief to schools and libraries affected by COVID-19 and to enable service providers to continue supporting remote learning efforts without concerns about an impact on E-Rate program support.²² As the pandemic continues to impact the nation, many schools and libraries remain either fully or partially closed and dependent upon remote learning.²³ Therefore, we find it is in the public interest to continue allowing service providers to offer or provide, and E-Rate program participants to solicit or accept, things of value that could help students, teachers, and patrons affected by these closures. Moreover, we find that extending the gift rule waiver until the end of funding year 2020 will provide certainty to program participants as they plan for the rest of the funding year.

11. As we noted in our last extension, this waiver is limited to offerings provided by service providers and solicited or accepted by E-Rate eligible entities on behalf of students, teachers, or patrons while schools and libraries prepare for extended remote learning and remain fully or partially closed as a direct result of COVID-19.²⁴ Additionally, as before, we waive any other requirement, to the extent that is necessary, in these special circumstances to effectuate the relief granted. We also remind E-Rate applicants of their obligation to comply with state and local procurement laws,²⁵ and we note that applicants are still subject to the program rules requiring a fair and open competitive bidding process for funding year 2021.²⁶

C. Preventing Waste, Fraud, and Abuse

12. We are committed to protecting against waste, fraud, and abuse in the Universal Service Fund (USF) programs. Accordingly, we require all eligible RHC and E-Rate program participants to retain records documenting the services, equipment, or other things of value that they receive pursuant to the waivers described above, consistent with the document retention periods applicable to each program.²⁷ Although we grant the limited waivers described herein, program participants and service providers remain otherwise subject to audits and investigations to determine compliance with USF program rules

²¹ This relief includes certain applicant and service provider certification requirements contained in our rules. *See* 47 CFR § 54.623(a)(1)(vi) (requiring the applicant to certify that the health care provider or consortium and/or its consultant has not solicited or accepted any gift or any other thing of value from a service provider participating in the Rural Health Care program); 47 CFR § 54.627(c)(3)(ii)(H), (d)(1)(ii)(F) (requiring the service provider to certify that “it was not offered or provided a gift or any other thing of value to the applicant (or the applicant’s personnel, including its consultant) for which it will provide services”).

²² *See RHC and E-Rate COVID-19 Gift Rules Waiver Order*, 35 FCC Rcd at 2741-42, para. 1.

²³ *See, e.g., Map: Where Are Schools Closed?*, Education Week (last updated Dec. 7, 2020), <https://www.edweek.org/ew/section/multimedia/map-covid-19-schools-open-closed.html> (reporting that 11 states, the District of Columbia, and Puerto Rico have state-ordered full or partial school closures in effect); *The List: Pittsburgh-area school districts shift back to remote learning as COVID-19 cases surge*, Pittsburgh Post-Gazette (Nov. 29, 2020), <https://www.post-gazette.com/news/education/2020/11/29/Pittsburgh-western-pennsylvania-schools-close-remote-virtual-learning-COVID-19-cases-online-2/stories/202011290191> (listing Pennsylvania school districts that are transitioning to remote learning due to a surge in COVID-19 cases); *See, e.g., Fla. Emergency Order No. 2020-EO-07* (Dec. 2, 2020), <http://www.fldoe.org/core/fileparse.php/5673/urlt/DOEOrder2020-EO-07.pdf> (extending remote learning options through the spring semester for Florida schools due to the ongoing impact of the pandemic).

²⁴ *RHC and E-Rate Gift Rules Waiver Extension Order*, 35 FCC Rcd at 9422, para. 13.

²⁵ *See* 54 CFR § 54.503(b).

²⁶ *See* 47 CFR § 54.503.

²⁷ *See* 47 CFR §§ 54.631(b)-(c), 54.516(a)(1)-(2).

and requirements. We will require USAC to recover funds through its normal process that we discover were not used properly. We emphasize that we retain the discretion to evaluate the uses of monies disbursed through the USF programs and to determine on a case-by-case basis that waste, fraud, or abuse of program funds occurred, and that recovery is warranted. Additionally, in the event we discover any improper activity resulting from our action today, we will subject the offending party to all available penalties at our disposal, and will direct USAC to recover funds, assess retroactive fees and/or interest, or both. We remain committed to ensuring the integrity of the RHC and E-Rate programs and will continue to aggressively pursue instances of waste, fraud, or abuse under our own procedures and in cooperation with law enforcement agencies.

IV. ORDERING CLAUSES

13. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 USC §§ 151-154 and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, that sections 47 CFR 54.503(d)(1), 54.603(b), 54.611(b), 54.622(h)(1), 54.623(a)(1)(vi), 54.627(c)(3)(ii)(H), and 54.627(d)(1)(ii)(F) of the Commission's rules ARE WAIVED to the extent provided herein.

14. IT IS FURTHER ORDERED, that pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.1.02(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief
Wireline Competition Bureau