

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: March 18, 2020

Released: March 18, 2020

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we waive, on our own motion, the Commission’s gift rules applicable to the Rural Health Care (RHC) and E-Rate programs,1 to assist rural health care providers and schools and libraries affected by the coronavirus disease, also known as COVID-19. In response to this evolving pandemic, institutions throughout the United States have taken steps to prepare for a rise in COVID-19 cases and mitigate the spread in their communities. Specifically, hospitals and health care providers are preparing to treat an influx of patients, not only in person but also via telemedicine,2 while many schools have closed or are expected to close and transition to remote learning.3 In light of the need for increased connectivity during this pandemic, we find good cause to waive through September 30, 2020, the RHC and E-Rate program gift rules in sections 54.622(h) and 54.503(d) of the Commission’s rules.4 This

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

2 See, e.g., Manojna Maddipatla, U.S. Telehealth Companies Brace for Demand Spike as Coronavirus Spread Accelerates, Reuters (Mar. 6, 2020), https://www.reuters.com/article/us-health-coronavirus-telehealth/u-s-telehealth-companies-brace-for-demand-spike-as-coronavirus-spread-accelerates-idUSKBN20T2KC (explaining that the U.S. telehealth industry is bracing for a surge of demand for telehealth services as public health officials aim to contain the virus by using virtual visits and encouraging patients to avoid public places); Sidney Fussell, Telemedicine is a Safety Value for a Strained Health Care System, Wired (Mar. 13, 2020), https://www.wired.com/story/telemedicine-safety-valve-strained-health-care-system/ (explaining that telemedicine will be a key component of managing the coronavirus because it will allow hospitals to limit admittance to patients with a higher risk due to infection and help to flatten the curve); Eric Wicklund, Coronavirus Scare Gives Telehealth an Opening to Redefine Healthcare, mHealth Intelligence (Mar. 5, 2020), https://mhealthintelligence.com/news/coronavirus-scare-gives-telehealth-an-opening-to-redefine-healthcare.

3 See, e.g., Press Release, New York City Office of the Mayor, New York City to Close All School Buildings and Transition to Remote Learning (Mar. 15, 2020), https://www1.nyc.gov/office-of-the-mayor/news/151-20/new-york-city-close-all-school-buildings-transition-remote-learning; Coronavirus concerns lead South Carolina, Vermont, Arkansas, New Jersey and other states to close schools, Chicago Tribune (Mar. 15, 2020), https://www.chicagotribune.com/coronavirus/ct-nw-coronavirus-united-states-school-closings-20200312-sh2d5vi525drvcf5dwm7hnebru-story.html (reporting the closure of state-wide and metropolitan schools districts).

4 47 CFR §§ 54.622(h), 54.503(d).

waiver will enable service providers to offer, and RHC and E-Rate program participants to solicit and accept, improved broadband connections or equipment for telehealth or remote learning during the COVID-19 outbreak without running afoul of Commission rules. We will continue to monitor the situation and determine whether an additional extension of this waiver is warranted.

## II. BACKGROUND

2. The Commission's RHC program consists of two component programs: (1) the Telecommunications (Telecom) program; and (2) the Healthcare Connect Fund program.<sup>5</sup> Unless a competitive bidding exemption applies, applicants in the Telecom program must submit for posting on the Universal Service Administrative Company's (USAC) website an FCC Form 465 to request bids for services and applicants in the Healthcare Connect Fund program must submit for posting on USAC's website an FCC Form 461 to request bids for services and/or equipment.<sup>6</sup> The RHC program's competitive bidding process must be fair and open and not have been compromised because of improper conduct by the applicant, service provider, or both parties,<sup>7</sup> and all potential bidders and service providers must have access to the same information and must be treated in the same manner throughout the procurement process.<sup>8</sup> Eligible health care providers may apply for support for eligible services by filing either an FCC Form 466 in the Telecom program or an FCC Form 462 in the Healthcare Connect Fund program with USAC after completing the competitive bidding process and selecting the most cost-effective service offering.<sup>9</sup>

3. Under the E-Rate program, eligible schools, libraries, and consortia (comprised of eligible schools and libraries) may request universal service discounts for eligible services, including connections necessary to support broadband connectivity to eligible schools and libraries.<sup>10</sup> To obtain support, an applicant must comply with the Commission's competitive bidding rules, enter into an agreement with a service provider, and file an FCC Form 471 with USAC to request E-Rate discounts for the purchase of the services.<sup>11</sup> As in the RHC program, the Commission has stated that the competitive bidding process in the E-Rate program must be fair and open and not have been compromised because of improper conduct by the applicant, service provider, or both parties.<sup>12</sup> All potential bidders and service providers must have access to the same information and must be treated in the same manner throughout the procurement process.<sup>13</sup>

4. Consistent with these requirements, 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

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<sup>5</sup> *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 34 FCC Rcd 4136, 4136, para. 2 (2019) (*FY 2018 Demand Order*).

<sup>6</sup> *Promoting Telehealth in Rural America*, WC Docket 17-310, Report and Order, 34 FCC Rcd 7335, 7410, 7411, paras. 160-163 (2019) (*Promoting Telehealth Report and Order*) (harmonizing both programs' competitive bidding exemptions and directing applicants to file a Form 461 or Form 465 for the appropriate program).

<sup>7</sup> See 47 CFR § 54.622(b)(1) (2019) ("Applicants participating in the Telecommunications program or the Health Care Connect Fund program must conduct a fair and open competitive bidding process.").

<sup>8</sup> See 47 CFR § 54.622(b)(1)(i) (2019).

<sup>9</sup> See *FY 2018 Demand Order*, 34 FCC Rcd at 4139, para. 10; see also 47 CFR §§ 54.603(b)(4), 54.615(a), 54.643 (2015-2018).

<sup>10</sup> 47 CFR §§ 54.501, 54.502.

<sup>11</sup> See 47 CFR § 54.503.

<sup>12</sup> See 47 CFR § 54.503(a) ("All entities participating in the schools and libraries universal support program must conduct a fair and open competitive bidding process[.]").

<sup>13</sup> See *id.*

of value from a service provider participating in or seeking to participate in either program.<sup>14</sup> 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.<sup>15</sup> In separately adopting 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.”<sup>16</sup> 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 applicants a gift or thing of value over \$20.<sup>17</sup>

5. *Impact of COVID-19.* The coronavirus COVID-19 pandemic is an outbreak of a respiratory illness that has spread throughout the United States.<sup>18</sup> America’s hospitals and health care providers are bracing for the expected influx of COVID-19 patients. While all levels of the nation’s health care system will likely be taxed in the near future, rural health care providers serving the needs of Americans living in the more remote areas of the country are uniquely vulnerable.<sup>19</sup> These rural facilities are typically limited by the equipment and medical supplies that they have readily available and by the

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<sup>14</sup> 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.

<sup>15</sup> 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.

<sup>16</sup> *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.”).

<sup>17</sup> *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.

<sup>18</sup> Centers for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19) Cases in U.S.*, <https://www.cdc.gov/coronavirus/2019-ncov/cases-in-us.html> (last visited Mar. 18, 2020).

<sup>19</sup> *See* Eli Saslow, ‘We’ll improvise’: A resource-starved rural hospital steels itself for coronavirus’s arrival, *The Washington Post*, (Mar. 14, 2020) [https://www.washingtonpost.com/national/well-improvise-a-resource-starved-rural-hospital-steels-itself-for-coronaviruss-arrival/2020/03/14/a724d1ac-6604-11ea-acca-80c22bbe96f\\_story.html](https://www.washingtonpost.com/national/well-improvise-a-resource-starved-rural-hospital-steels-itself-for-coronaviruss-arrival/2020/03/14/a724d1ac-6604-11ea-acca-80c22bbe96f_story.html).

scope of services that they are able to offer.<sup>20</sup> Consequently, rural health care providers must often rely on telemedicine to provide their patients with a level of health care coverage that can compare with that offered by their urban counterparts.<sup>21</sup>

6. In addition to the extremely serious and potentially life-threatening health consequences, the rapid and extensive spread of COVID-19 has disrupted many aspects of everyday life, including the operations of schools and libraries. A growing number of states have closed all of their primary schools, while several cities have closed their school districts.<sup>22</sup> Libraries have also been affected by the outbreak of COVID-19, as several public libraries and library systems have been compelled to close their doors in an effort to stop the spread of the disease.<sup>23</sup>

### III. DISCUSSION

7. Today, we waive the RHC and E-Rate program gift rules to permit service providers to offer, and eligible RHC and E-Rate entities to solicit and 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 the coronavirus outbreak. These gifts could include but are not limited to free upgrades to connections, connected devices, equipment, and other services for RHC program participants who provide care via telemedicine and free broadband connections, devices, or other services that support remote learning for students and teachers who will be taking classes at and providing instruction from home as a result of COVID-19. Generally, the Commission's rules may be waived for good cause shown.<sup>24</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>25</sup> In addition, the Commission may take into account considerations

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<sup>20</sup> See *id.* (explaining that rural hospitals are under-resourced and may have to ration out existing medical supplies to be able to continue to treat patients as they are currently unable to order new supplies due to ongoing shortages).

<sup>21</sup> See Jackie Drees, *How telehealth is being used to limit the spread of coronavirus: 6 things to know*, Becker's Hospital Review (Mar. 6, 2020), <https://www.beckershospitalreview.com/telehealth/how-telehealth-is-being-used-to-limit-the-spread-of-coronavirus-6-things-to-know.html>.

<sup>22</sup> See, e.g., Press Release, Los Angeles Unified School District, State's Two Largest School Districts Announce Plans to Prevent Spread of COVID-19 (Mar. 13, 2020), <https://achieve.lausd.net/site/default.aspx?PageType=3&DomainID=4&ModuleInstanceID=4466&ViewID=6446EE88-D30C-497E-9316-3F8874B3E108&RenderLoc=0&FlexDataID=86736&PageID=1> (announcing closure of Los Angeles Unified School District schools for two weeks, starting March 16, 2020); Press Release, Government of the District of Columbia, Mayor Muriel Bowser, Mayor Bowser Adjusts the District of Columbia Government's Operating Status (Mar. 13, 2020), <https://coronavirus.dc.gov/release/mayor-bowser-adjusts-district-columbia-government%E2%80%99s-operating-status> (closing all District of Columbia public schools from Monday, March 16 through Tuesday, March 31, 2020); Press Release, Maryland State Department of Education, State Superintendent Salmon Announces Temporary Closure of Maryland Public Schools (Mar. 12, 2020), <https://news.maryland.gov/msde/state-superintendent-salmon-announces-temporary-closure-of-maryland-public-schools/>; Press Release, Commonwealth of Pennsylvania, Governor Tom Wolf, Governor Wolf Announces Closure of Pennsylvania Schools (Mar. 13, 2020), <https://www.governor.pa.gov/newsroom/governor-wolf-announces-closure-of-pennsylvania-schools/>.

<sup>23</sup> See, e.g., Jennifer Schuessler, *At the Library, Last Call for Beauty and Books*, The New York Times (Mar. 14, 2020), <https://www.nytimes.com/2020/03/14/arts/coronavirus-nypl-closed.html> (announcing closure of New York Public Library); Daniel Beekman, *Seattle closing all public libraries, community centers, parks programs in bid to slow coronavirus*, The Seattle Times (Mar. 12, 2020), (announcing closures of Seattle public library system); Esteban L. Hernandez, *Mayor Michael Hancock closes public venues in Denver due to coronavirus*, Denverite (Mar. 13, 2020), <https://denverite.com/2020/03/13/mayor-michael-hancock-closes-public-venues-in-denver-due-to-coronavirus/> (announcing closure of Denver public library system).

<sup>24</sup> 47 CFR § 1.3.

<sup>25</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

of hardship, equity, or more effective implementation of overall policy on an overall basis.<sup>26</sup> As discussed in further detail below, we find that the extensive disruption to health care providers, schools, and libraries throughout the country and enhanced need for telemedicine and remote learning caused by COVID-19 present compelling and unique circumstances that merit a waiver of our rules. We conclude that any potential costs to the RHC or E-Rate programs that could result from this order will be outweighed by the benefits of our action.

8. *RHC Program.* Health care providers and hospitals are increasingly turning to telemedicine and telehealth services to screen and treat patients for COVID-19.<sup>27</sup> In fact, some health care providers are providing free screening for COVID-19 using an app that can be downloaded to the patient's mobile device or logged into using a computer.<sup>28</sup> Health care providers can more safely treat patients exposed to COVID-19 and provide protection for their staff and other patients by using telemedicine and telehealth services.<sup>29</sup>

9. The increased demand on rural health care providers will put them under great strain, and demand for telemedicine and telehealth services to effectively screen and treat COVID-19 will require increased connectivity and broadband services.<sup>30</sup> We recognize that health care providers participating in the RHC program may need additional broadband capacity to combat this mounting public health crisis.

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

<sup>27</sup> We note that on March 6, 2020, Medicare rules were temporarily expanded to cover and allow patients to use a greater range of telehealth services and communication tools to treat COVID-19 as well as other medically-related purposes. See U.S. Centers for Medicare and Medicaid Services, Medicare & Coronavirus, <https://www.medicare.gov/medicare-coronavirus#500> (last visited Mar. 18, 2020). See also Makenzie Garrity, *How Providence, Kaiser Permanente, Intermountain are Using Telehealth to Treat Patients Amid the Coronavirus Outbreak*, ASC Communications (Mar. 5, 2020), <https://www.beckershospitalreview.com/telehealth/how-providence-kaiser-permanente-intermountain-are-using-telehealth-to-treat-patients-amid-coronavirus-outbreak.html> (explaining that Kaiser Permanente is using telehealth services to treat quarantined patients and providing laptops to doctors who can conduct visits from their homes at night and Intermountain used video visits to treat a quarantined patient on the Diamond Princess cruise ship); Agam Shah, *Coronavirus Prompts Hospitals to Fast-Track Telemedicine Projects*, CIO Journal, Wall Street Journal (Mar. 10, 2020), <https://www.wsj.com/articles/coronavirus-prompts-hospitals-to-fast-track-telemedicine-projects-11583876313> (noting that St. Luke's University Health Network in Pennsylvania is testing a videoconferencing tool to treat older patients who do not use mobile devices and prefers desktop or laptop).

<sup>28</sup> See, e.g., Emily Wakeman, *S.C. Hospitals Roll Out Free Coronavirus Virtual Screening as Cases Rise*, WIS News (Mar. 11, 2020), <https://www.wistv.com/2020/03/12/sc-hospitals-roll-out-free-coronavirus-virtual-screening-cases-rise/> (reporting that Prisma Health and The Medical University of South Carolina were offering a free online COVID-19 screening service that you could use on your phone or computer to determine if you should be tested for the virus); *Spectrum Health Offers Free Virtual Screenings for Those with Possible COVID-19 Symptoms*, Spectrum Health (Mar. 9, 2020), <https://www.prnewswire.com/news-releases/spectrum-health-offers-free-virtual-screenings-for-those-with-possible-covid-19-symptoms-301019724.html> (providing a virtual video visit to determine whether additional care should be sought); Indiana University Health, *IU Health Virtual Clinic Offers Free Coronavirus Screening*, <https://iuhealth.org/news-hub/iu-health-virtual-clinic-offers-free-coronavirus-screening> (last visited Mar. 18, 2020) (reporting that free 24/7 coronavirus virtual screening was available using the app on your mobile device or enrolling through your computer).

<sup>29</sup> See, e.g., Agam Shah, *Coronavirus Prompts Hospitals to Fast-Track Telemedicine Projects*, CIO Journal, Wall Street Journal (Mar. 10, 2020), <https://www.wsj.com/articles/coronavirus-prompts-hospitals-to-fast-track-telemedicine-projects-11583876313> (explaining that the use of telemedicine is maximizing patient and provider protection in treating coronavirus patients).

<sup>30</sup> See, e.g., Makenzie Garrity, *How Rural Hospitals are Responding to Coronavirus*, ASC Communications (Mar. 13, 2020), <https://www.beckershospitalreview.com/telehealth/how-rural-hospitals-are-responding-to-coronavirus.html> (explaining that the need for improved broadband access in rural areas is critical for effectively responding to the coronavirus).

In light of the compelling and unique circumstances caused by COVID-19, we are waiving the RHC program gift rules to allow service providers to offer and provide free upgrades, connected devices, networking equipment, services, or other things of value to health care providers participating in the RHC program that could help them improve connectivity and respond to the ongoing COVID-19 pandemic more effectively.

10. We find that a waiver is necessary to remove any regulatory obstacles that could otherwise prevent a service provider from voluntarily offering this kind of relief to health care providers.<sup>31</sup> To implement this approach, we waive the gift rule that bars service providers from offering, and health care providers from soliciting or accepting, such contributions,<sup>32</sup> along with the rule that prohibits service providers from reducing the health care provider's portion of the service cost<sup>33</sup> and the rule requiring health care providers to pay the urban rate for services provided in the Telecom program.<sup>34</sup> We note that this waiver is limited to health care providers involved in the screening and treatment of patients for COVID-19 and for providing services 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 waive any other requirement, to the extent that is necessary, in these special circumstances to effectuate the relief granted, including restrictions on certification requirements.<sup>35</sup>

11. In addition, we waive section 54.611(b) of our rules<sup>36</sup> requiring health care providers to pay the unsupported portion of service costs in the Healthcare Connect Fund program and section 54.603(b) requiring health care providers in the Telecom program to pay the urban rate.<sup>37</sup> We anticipate that health care providers could face financial strain as a result of the influx of patients and other demands on the health care system associated with responding to the COVID-19 pandemic; waiver of these rules will permit service providers to voluntarily ease this burden through reduced rates. In addition, waiver of these rules will provide maximum flexibility for service providers and health care providers in developing responses to the pandemic and will eliminate any ambiguity as to whether particular action service providers take in response to this Order could potentially conflict with the rules addressing health care provider payments to service providers. We have taken similar action in the past to alleviate strain on

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<sup>31</sup> We have previously granted waivers that allowed service providers to voluntarily reduce their rates when health care providers received pro-rated support through the RHC program and may have been liable for additional out-of-pocket costs that were not covered by the support payment. *See Rural Health Care Support Mechanism, WC Docket 02-60, Order, 32 FCC Rcd 5463 (2017) (2017 Alaska Waiver Order)* (waiving Commission rules to allow service providers to voluntarily reduce their rates when the Alaskan applicants' RHC Program support was pro-rated and did not cover the full cost of the requested services, facilities, or equipment).

<sup>32</sup> *See* 47 CFR § 54.622(h)(1) (2019) (providing that health care providers 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 the Rural Health Care Program" and that "no service provider shall offer or provide any such gift, gratuity, favor, entertainment, loan, or any other thing of value").

<sup>33</sup> *See* 47 CFR § 54.611(b)(2) (2019) (prohibiting "direct payments from service providers, including contractors and consultants" to cover the non-discounted portion of costs).

<sup>34</sup> *See* 47 CFR § 54.603(b) (2019) (requiring that service providers in the Telecom program provide services at the urban rate).

<sup>35</sup> *See* 47 CFR § 54.623(a)(1)(vi) (2019) (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); §§ 54.627(a)(3)(ii)(H) and 54.627(d)(1)(ii)(F) (2019) (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").

<sup>36</sup> 47 CFR § 54.611(b).

<sup>37</sup> 47 CFR § 54.603(b).



health care providers,<sup>38</sup> and we conclude that permitting service providers to give similar relief to their RHC program customers will relieve financial strain on health care providers that could hinder their ability to treat patients.<sup>39</sup>

12. This waiver of RHC program rules will remain in effect through September 30, 2020. We will monitor the situation and assess the need for continued relief after this date. Keeping this waiver in effect through September 30, 2020 will ensure that service providers may offer and provide free upgraded connections on a long-term basis while health care providers are dealing with the effects of COVID-19. This deadline will also alleviate any potential administrative burdens associated with health care providers needing to competitively bid upgraded services that they will need to combat COVID-19 in the beginning of funding year 2020.

13. *E-Rate Program.* As the number of school closures continues to grow due to COVID-19, schools are increasingly planning for and turning to remote learning to continue instruction for students who will be home for an extended period of time. In response, some service providers are partnering with schools and libraries to provide mobile hotspots and other wireless broadband-enabled devices to students without broadband access at home.<sup>40</sup> Others are offering free broadband services directly to students that need them.<sup>41</sup> We waive the E-Rate program gift rules<sup>42</sup> to enable service providers to offer, and E-Rate eligible schools and libraries to solicit or accept, broadband connections, devices, networking equipment, or other things of value that could help students, teachers, and patrons affected by school and library closures during the coronavirus pandemic. We find the mass disruption to daily life, including closure of schools and libraries and transition to educating students online for an extended period of time, presents special circumstances that warrant a deviation from the general rule. We also find that it is in the public interest to waive the gift rules in this limited and unique circumstance to ensure students with limited or no internet connection are connected at home and prevent them from falling behind their peers, furthering the effects of the digital divide. We also waive any other requirement, to the extent that is necessary, in these special circumstances to effectuate the relief granted.

14. We note that this waiver is limited to offerings made 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 closures or remain closed as a direct result of COVID-19, regardless of funding year. In taking this action, we find relevant that the underlying purpose of our gift rules, to ensure the integrity of the competitive bidding process, is not likely to be frustrated, particularly where competitive bidding for

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<sup>38</sup> 2017 Alaska Waiver Order, 32 FCC Rcd at 5465, paras. 9-10 (waiving Commission rules to allow service providers to voluntarily reduce their rates to offset the funding shortfall owed by Alaskan health care providers due to prorated funding commitments).

<sup>39</sup> In waiving the rules addressing health care provider payments to service providers, we clarify that service providers are under no obligation to provide rate relief, and health care providers are still bound by the terms of their contractual agreements with service providers unless the parties mutually agree to deviate from those contracts.

<sup>40</sup> See, e.g., Shellie Murdaugh, *Lowcountry schools prepare distance learning, meal plans as coronavirus forces closures*, Bluffton Today (Mar. 16, 2020), <https://www.blufftontoday.com/news/20200316/lowcountry-schools-prepare-distance-learning-meal-plans-as-coronavirus-forces-closures#>.

<sup>41</sup> To the extent service providers are willing to offer free or reduced-cost Internet access service directly to families with school-aged children, rather than to eligible E-Rate schools and libraries on behalf of students, we find no need to waive our gift rules, which only apply to eligible entities and service providers participating in or seeking to participate in the E-Rate program. Likewise, we find no need to waive our gift rules for the RHC program to permit service providers to offer free or reduced-cost Internet access service directly to patients of health care providers participating in the RHC program and commend any service provider making this offer.

<sup>42</sup> 47 CFR § 54.503(d).

funding year 2019 is complete and nearly complete for funding year 2020.<sup>43</sup> We also balance the need for connectivity for students and library patrons during the coronavirus outbreak with our overarching need to protect the program against waste, fraud, and abuse.

15. To that end, this waiver of E-Rate program rules will remain in effect through September 30, 2020 to provide flexibility to schools and libraries as they deal with COVID-19-related closures. We will monitor the situation and assess the need for continued relief in the future. At the same time, we remind E-Rate applicants of their obligation to comply with state and local procurement laws.<sup>44</sup>

16. *Preventing Waste, Fraud, and Abuse.* We are committed to guarding 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 and consistent with the document retention periods applicable to each program.<sup>45</sup> 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 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 Programs and will continue to aggressively pursue instances of waste, fraud, or abuse under our own procedures and in cooperation with law enforcement agencies.

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<sup>43</sup> See *Wireline Competition Bureau Directs USAC to Extend E-Rate Application Filing Window for Funding Year 2020 Due to Potential Coronavirus Disruptions*, CC Docket No. 02-6, Public Notice, DA 20-273 (WCB rel. Mar. 13, 2020) (*Filing Window Public Notice*); USAC News Brief, *Application Window Extended and Additional Time Given for PIA Reviews Due to COVID-19* (Mar. 13, 2019), <https://apps.usac.org/sl/tools/news-briefs/preview.aspx?id=942>.

<sup>44</sup> See 54 CFR § 54.503(b).

<sup>45</sup> See 47 CFR §§ 54.631(b)-(c), 54.516(a)(1).



**IV. ORDERING CLAUSES**

17. 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)(2), 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.

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

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Chief  
Wireline Competition Bureau