



## FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[WC Docket No. 20-89; FCC 21-24; FRS 17581]

### COVID-19 Telehealth Program

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) takes the next steps in funding the COVID-19 Telehealth Program (Program) by expanding the administrative responsibilities of the Universal Service Administrative Company (USAC). The Commission finds it in the public's interest to direct USAC to administer the remainder of Round 1 and all of Round 2 of the Program under the Commission's oversight.

**DATES:** Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] and applicable February 2, 2021.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Minnock, Wireline Competition Bureau, 202-418-7400 or by email at [Stephanie.Minnock@fcc.gov](mailto:Stephanie.Minnock@fcc.gov). We ask that requests for accommodations be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418-0530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's document, Report and Order in WC Docket No. 20-89; FCC 21-24, adopted on February 2, 2021 and released on February 2, 2021. Due to the COVID-19 pandemic, the Commission's headquarters will be

closed to the general public until further notice. The full text of this document is available at the following Internet address: <https://docs.fcc.gov/public/attachments/FCC-21-24A1.pdf>.

## **I. INTRODUCTION**

1. In the Report and Order, the Commission takes the next step towards committing funding through the COVID-19 Telehealth Program by finding it is in the public interest to expand the administrative responsibilities of the Universal Service Administrative Company to include the Program. The ongoing COVID-19 pandemic has caused unprecedented stress on the Nation's health care system. As health care providers have struggled to provide urgently needed care, telehealth has emerged as an essential resource to combatting the pandemic. In March 2020, Congress allocated \$200 million to the Commission to establish a program to help health care providers offer telehealth and connected care services and connected devices to patients at their homes or mobile locations in response to the COVID-19 pandemic. The Commission established the Program and committed this funding to health care providers across the country. In December 2020, Congress appropriated an additional \$249.95 million for a second round of funding for the Program under the Consolidated Appropriations Act, 2021.

## **II. DISCUSSION**

2. After careful review of the record, and consideration of the Commission's staff resources and the need to expeditiously implement Round 2 of the Program, the Commission adopted the proposal to direct USAC to administer the remainder of Round 1, which includes, but is not limited to, conducting an initial review of invoices, providing outreach and guidance to stakeholders about the invoicing processes, and processing post-program feedback reports. The Commission similarly directs USAC to administer all of Round 2 of the Program, which includes, but is not limited to, updating the portal that will be used by applicants, reviewing

applications consistent with the metrics to be established by the Commission in a subsequent order, conducting an initial review of invoices, providing outreach and guidance to stakeholders about the application and invoicing processes, and administering any required audit and reporting requirements. For both the remainder of Round 1 and all of Round 2 of the Program, the Commission will retain the final funding decision-making authority.

3. The CARES Act, which authorized the Commission to create the Program, allows the Commission to rely on its rules under Part 54, *i.e.*, to use the services of USAC, if the Commission determines that doing so is in the public interest. During Round 1 of the Program, the Commission made this public interest finding and directed USAC to help administer a narrow portion of the Program by processing eligibility determinations and promoting the Program to interested stakeholders. Based on the lessons learned during Round 1, the need to complete Round 1 and swiftly implement Round 2 of the Program, USAC's extensive experience, and the support of commenters in the record, the Commission finds it is in the public interest to direct USAC to administer the remainder of Round 1 and all of Round 2 of the Program under the Commission's oversight.

4. USAC has more than 20 years of expertise developed from administering the Commission's Universal Service Fund Programs, which includes, but is not limited to, conducting applicant outreach, developing application systems, reviewing funding requests, and processing requests for disbursement. Given USAC's long-standing, successful record of administering the Universal Service Fund Programs, directing USAC to administer this Program would ensure the expeditious implementation of Round 2 of the Program and efficient continuation of the remaining work of Round 1 of the Program. In addition, using USAC in this manner will allow for more efficient allocation of Commission staff resources.

5. The record further supports using USAC for the administration of the remainder of Round 1 and all of Round 2 of the Program. Commenters that opined on this matter

supported the proposal to have USAC administer the Program, and at least one commenter noted USAC's successful administration of the Rural Health Care Program. Although another commenter noted that USAC would need additional resources to accommodate this work, the Commission intends to allocate a sufficient amount of administrative expenses from the COVID-19 Telehealth appropriation to USAC so that it can successfully mobilize the necessary resources to administer the Program.

6. Consistent with its role in administering the Universal Service Fund Programs, USAC's role for the Program will be limited to program administration; USAC will not have authority to make policy decisions for the Program. As indicated, the full Commission will establish award metrics in a subsequent order. Thereafter, Commission staff will provide USAC with additional guidance as necessary regarding remaining Round 1 responsibilities, the Round 2 application review process, the Round 2 application prioritization criteria, the Round 2 invoice review process, and any other related administrative functions required to implement the Program. Given the ongoing nature of the pandemic, and the urgent need for the Program, the Commission finds that it is in the public interest to designate USAC as the administrator for the Program at this time so that it can expeditiously put into place any necessary administrative resources and processes while the Commission and its staff continue to evaluate policy questions.

7. The Commission delegates financial oversight of the Program to the Commission's Managing Director and direct the Office of the Managing Director (OMD) to work in coordination with the Wireline Competition Bureau (Bureau) to ensure that all financial aspects of the program have adequate internal controls. These duties fall within OMD's current delegated authority to ensure that the Commission operates in accordance with federal financial statutes and guidance. Such financial oversight must be consistent with the metrics to be established by the Commission in a subsequent order, and any Commission rules and

policies to the extent these are applicable to the Program. OMD performs this role with respect to USAC's administration of the Commission's Universal Service Programs and the Commission anticipates that OMD will leverage existing policies and procedures, to the extent practicable and consistent with section 903 of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182 to ensure the efficient and effective management of the Program. The Commission anticipates that among the first acts, OMD will perform to ensure satisfaction of its financial management obligations is the execution of a memorandum of understanding, or similar agreement, with USAC. Finally, the Commission notes that OMD is required to consult with the Bureau on any policy matters affecting the Program, consistent with § 0.91(a) of the Commission's rules.

8. In USAC's administration of the Program, it is directed to comply with, on an ongoing basis, all applicable laws and Federal government guidance on privacy and information security standards and requirements, such as the Privacy Act, relevant provisions in the Federal Information Security Modernization Act of 2014, National Institute of Standards and Technology publications, and Office of Management and Budget guidance.

9. The Commission finds that the Public Notice, DA 21-14 rel. Jan 6, 2021 provided sufficient notice and allowed for suitable public comment on our proposal to allow USAC to administer the Program. However, out of an abundance of caution, the Commission also determines that using additional notice and comment procedures for the administration of the emergency relief Program, and thereby delaying its effectiveness by at least several months, would be impracticable and contrary to the public interest. The good cause exception to the notice and comment procedures of the Administrative Procedure Act "excuses notice and comment in emergency situations, or where delay could result in serious harm." "In determining whether good cause exists, an agency should 'balance the necessity for immediate implementation against principles of fundamental fairness which require that all affected

persons be afforded a reasonable amount of time to prepare for the effective date of its ruling.”

10. As a general matter, the Commission believes that public notice and comment requirements are an essential component of our rulemaking process. In this case, however, because of the unprecedented nature of this pandemic and the need for immediate action, the Commission finds there is good cause for forgoing a formal Notice of Proposed Rulemaking. Delaying USAC’s ability to prepare for the administration of the Program would result in a delay in the commitment and use of Program funds. In light of the continued spread and devastating impact of COVID-19, and the continued urgent need to address this public health crises, any further delay in the use of Program funds to assist health care providers in meeting the health care needs of their patients could impede efforts to mitigate the spread of the disease, and would also frustrate Congress’s decision to declare an “emergency period” when it appropriated \$200 million for Round 1 of the Program. This emergency relief imposes a minimal regulatory burden on any parties and serves to expedite the commitment of appropriated funds to help health care providers combat this global pandemic. For the same reasons, and because USAC must begin preparations as soon as practicable to handle the tasks the Commission has assigned to it, the Commission also finds good cause to make the rules granting this relief effective immediately upon release of the Report and Order.

### **III. PROCEDURAL MATTERS**

#### **A. Paperwork Reduction Act Analysis**

11. This document contains no new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13.

#### **B. Congressional Review Act**

12. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), concurs that the

rules adopted herein are “non-major” under the Congressional Review Act, 5 U.S.C. 804(2). Because the Commission finds for good cause that notice and public procedure on the rules adopted herein is impracticable, unnecessary, or contrary to the public interest, the Report and Order will become effective February 2, 2021 pursuant to 5 U.S.C. 808(2). The Commission will send a copy of the Report and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

#### **IV. ORDERING CLAUSES**

13. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 201, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 201, 254, 303(r), and 403, DIVISION B of the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281, and DIVISION N of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182, the Report and Order IS ADOPTED.

14. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 808(2) of the Congressional Review Act, 5 U.S.C. 808(2), the Report and Order SHALL BECOME EFFECTIVE February 2, 2021.

FEDERAL COMMUNICATIONS COMMISSION.

**Marlene Dortch,**

*Secretary.*

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