

Drafting Information

Theo Matuskowitz drafted this notice under the guidance of Peter J. Probasco of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Charles Ardizzone, Alaska State Office, Bureau of Land Management; Sandy Rabinowitch and Nancy Swanton, Alaska Regional Office, National Park Service; Drs. Warren Eastland and Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs; Jerry Berg and Carl Jack, Alaska Regional Office, U.S. Fish and Wildlife Service; and Steve Kessler, Alaska Regional Office, U.S. Forest Service, provided additional assistance.

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Dated: April 3, 2008.

P. Lynn Scarlett,

Deputy Secretary of the Interior, Department of the Interior.

Dated: March 27, 2008.

Mark Rey,

Under Secretary for Natural Resources and Environment, Department of Agriculture, Forest Service.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 02–60, FCC 08–47]

Rural Health Care Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: In this document, the Commission grants American Telemedicine Association's (ATA) Petition for Reconsideration in part and extends for three years the Commission's prior determination to grandfather those health care providers who were eligible under the Commission's definition of "rural" prior to the *Second Report and Order*.

DATES: Effective May 12, 2008.

FOR FURTHER INFORMATION CONTACT: Thomas Buckley, Senior Deputy Chief or Erica Myers, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division at (202) 418–7400 (voice), (202) 418–0484 (TTY).

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order on*

Reconsideration, in WC Docket No. 02–60, released February 14, 2008. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554.

I. Introduction

1. In this Order on Reconsideration, the Commission grants in part a Petition for Reconsideration by the American Telemedicine Association (ATA), seeking limited reconsideration of the Commission's Rural Health Care Support Mechanism *Second Report and Order*, 70 FR 6365, February 7, 2005. Specifically, the Commission grants ATA's Petition for Reconsideration in part and extends for three years the Commission's prior determination to grandfather those health care providers who were eligible under the Commission's definition of "rural" prior to the *Second Report and Order*.

II. Discussion

2. The Commission finds that it is in the public interest to grant ATA's Petition for Reconsideration in part and extends for three years the Commission's prior determination to grandfather those health care providers who were eligible to participate in the Commission's rural health care mechanism under the Commission's definition of "rural" prior to the *Second Report and Order*. Given the Commission's broad discretion to define the term "rural," the Commission also finds that it is within its authority to continue providing funding to those health care entities that were previously eligible under the Commission's definition of that term. In particular, the Commission finds it is premature to discontinue support at this time to those health care providers who were eligible under the definition of "rural" prior to the *Second Report and Order*. ATA and commenters proffered specific, uncontested evidence that the application of the new definition of rural in the *Second Report and Order* would result in specific harms to entities that previously were eligible for universal service rural health care support. For example, in its petition, ATA identifies multiple health care facilities that participate in telehealth communications networks in Nebraska and Montana that would be adversely affected by the loss in universal service rural health care funding if the new definition of rural were applied to their rural health care funding applications. This, in turn, would serve only to endanger the continued availability of telemedicine and telehealth services

that these health care facilities provide. Indeed, the Coordinator for Telehealth Services at Avera St. Luke's Hospital in Aberdeen, South Dakota specifically commented that "if we lose USAC support of our telecommunication infrastructure[,] the impact on our facility, our community [of several hundred people], our region and our patients would be devastating. Telehealth Services, including extensive telemedicine, would face significant cuts if not termination." Additionally, the discussion of the term rural in this order relates only to the existing rural health care mechanism.

3. The Commission believes, as commenters suggest, that additional time is necessary for the Commission to evaluate the effect of the new definition on health care providers before they lose support as a result of the modified definition of rural adopted in the *Second Report and Order* became effective in March 2005. Only two funding years have concluded since the new definition went into effect. It would be premature for the Commission to remove previously eligible entities from the mechanism after this limited amount of time, particularly when (as described below) there remains sufficient available funding. Further, in November 2007, the Commission released the *Universal Service Rural Health Care Pilot Program Selection Order*, 22 FR 20360, November 19, 2007, which selected 69 organizations to participate in the Rural Health Care Pilot Program (Pilot Program), initiated by the Commission in September 2006, to facilitate the creation of a nationwide broadband network dedicated to health care, connecting public and private non-profit health care providers in rural and urban locations. A goal of the Pilot Program is to provide the Commission with a more complete and practical understanding of how to ensure the best use of the available RHC support mechanism funds to support a broadband, nationwide health care network (expressly including rural areas). Upon completion of the Pilot Program, among other things, the Commission intends to use the information it learns to fundamentally reexamine the entire universal service rural health care mechanism. In particular, the Commission intends to issue a report detailing the results of the Pilot Program and the status of the RHC support mechanism generally, and to recommend any changes necessary to improve the existing RHC program. In addition, the Commission intends to incorporate the information it gathers as part of the Pilot Program into the record

for any subsequent proceeding. The Commission expects that this post-Pilot Program review would include an examination of the definition of rural. Further, because only \$40.5 million was disbursed for the rural health care mechanism in 2006 and available Pilot Program support will be approximately \$139 million per funding year, well below the \$400 million annual cap for the rural health care mechanism, health care providers eligible under the rural definition adopted in the *Second Report and Order* would not be disadvantaged by the Commission permitting this limited universe of additional entities to remain eligible to receive rural health care support.

4. The Commission does not, however, as requested by ATA, grandfather indefinitely those health care providers who were eligible to participate in the Commission's rural health care mechanism under the Commission's definition of "rural" prior to the *Second Report and Order*. Instead, the Commission finds a three-year extension provides the appropriate timeframe to evaluate the effect of the changes in the definition of "rural" on health care providers and for the Commission to engage in the anticipated reexamination of the rural health care mechanism upon completion of the Pilot Program. Accordingly, health care providers that are no longer eligible to participate in the rural health care program due to the expiration of the three year transition period adopted in the *Second Report and Order* will remain eligible for support under the Rural Health Care Program for an additional three year period through the funding year ending on June 30, 2011.

III. Paperwork Reduction Act of 1995 Analysis

5. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

6. The Commission will send a copy of this Order on Reconsideration in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

IV. Final Regulatory Flexibility Certification

7. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

8. An initial regulatory flexibility analysis (IRFA) was incorporated in the *Second Report and Order*. The Commission sought written public comment on the proposals in the *Second Report and Order*, including comment on the IRFA. No comments were received to the *Second Report and Order* or IRFA that specifically raised the issue of the impact of the proposed rules on small entities.

9. In this Order, the Commission now extends, for three years, the Commission's prior determination to grandfather those health care providers who were eligible under the Commission's definition of "rural" prior to the *Second Report and Order*. This has no effect on any parties that do not currently participate in the rural health care support program. It does not create any additional burden on small entities. The Commission believes that this action imposes a minimal burden on the vast majority of entities, small and large, that are affected by this action.

10. Therefore, the Commission certifies that the requirements of the order will not have a significant economic impact on a substantial number of small entities.

11. In addition, the order and this final certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the **Federal Register**.

V. Ordering Clauses

12. Pursuant to the authority contained in sections 1, 4(i), 4(j), 201-205, 214, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j),

201-205, 214, 254, and 403, this *Order on Reconsideration* is adopted.

13. It is further ordered that, pursuant to the authority contained in sections [1, 4(i), 4(j), 10, 201-205, 214, 254, and 403] of the Communications Act of 1934, as amended, [47 U.S.C. 151, 154(i), 154(j), 201-205, 214, 254, and 403,] the Petition for Reconsideration filed by the American Telemedicine Association on March 7, 2005 is granted to the extent described herein.

14. It is further ordered that Part 54 of the Commission's rules, 47 CFR Part 54, is amended as set forth in Final Rules attached hereto, effective May 12, 2008 of this *Order on Reconsideration*.

15. It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Order on Reconsideration*, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Communications commons carriers, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

■ 2. Amend § 54.601 by revising paragraph (a)(3)(i) to read as follows:

§ 54.601 Eligibility.

(a) * * *

(3) * * *

(i) Any health care provider that was located in a rural area under the definition used by the Commission prior to July 1, 2005, and that had received a funding commitment from USAC since 1998, remain eligible for support under this subpart though the funding year ending on June 30, 2011.

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