



Federal Communications Commission
Washington, D.C. 20554

MEMORANDUM OF UNDERSTANDING BETWEEN THE FEDERAL COMMUNICATIONS
COMMISSION AND THE UNIVERSAL SERVICE ADMINISTRATIVE COMPANY
REGARDING THE COVID-19 TELEHEALTH PROGRAM

I. PURPOSE AND PARTIES

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security (CARES) Act was signed into law, appropriating \$200 million to the Commission “to support efforts of health care providers to address coronavirus by providing telecommunications services, information services, and devices necessary to enable the provision of telehealth services” during the pendency of the COVID-19 pandemic.¹ On April 2, 2020, the Commission established the COVID-19 Telehealth Program (Program) to administer the \$200 million in funding to provide immediate support to eligible health care providers responding to the COVID-19 pandemic.² The Commission directed the Wireline Competition Bureau (Bureau) to evaluate applications and award funding commitments on a rolling basis until the \$200 million in funding was exhausted or until the COVID-19 pandemic ended.³ As part of application review, the Universal Service Administrative Company (USAC) was directed to assist the Commission by processing the FCC Form 460 eligibility forms used by the Program.⁴ By July 8, 2020, the Bureau had issued \$200 million in total Program funding commitments and continues to review requests for reimbursement (i.e., invoice review) for this tranche of Program funds.⁵

On December 27, 2020, the Consolidated Appropriations Act, 2021 was signed into law, appropriating an additional \$249.95 million to the Commission for the Program.⁶ The Act requires the

¹ Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No 116-136, 134 Stat. 281 (2020) (CARES Act). The Program’s funds are subject to the Antideficiency Act. 31 U.S.C. §§ 1341(a), 1342, and 1517(a).

² *Promoting Telehealth for Low-Income Consumers; COVID-19 Telehealth Program*, WC Docket Nos. 18-213, 20-89, Report and Order, 35 FCC Rcd 3366 (2020) (*COVID-19 Report and Order*).

³ *COVID-19 Report and Order*, 35 FCC Rcd at 3376-77, para. 17.

⁴ Round 1 applicants were required to obtain an eligibility determination and health care provider number from USAC for each health care provider site they included in their COVID-19 Telehealth Program application. *COVID-19 Report and Order*, 35 FCC Rcd at 3375-84, paras. 15-36; *Wireline Competition Bureau Provides Guidance on the COVID-19 Telehealth Application Process*, WC Docket No. 20-89, Public Notice, 35 FCC Rcd 3052 (WCB Apr. 8, 2020).

⁵ *Wireline Competition Bureau and Office of the Managing Director Set July 31, 2021 Invoicing Deadline for COVID-19 Telehealth Program and Provide Post-Program Guidance*, WC Docket No. 20-89, Public Notice, 35 FCC Rcd 14628 (WCB Dec. 18, 2020).

⁶ Consolidated Appropriations Act, 2021, Pub. L. No: 116-260, Division N-Additional Coronavirus Response and Relief, Title IX-Broadband Internet Access Service, § 903 “FCC COVID-19 Telehealth Program” (2020). Section 903(b), *Additional Appropriation*, provides as follows: “Out of amounts in the Treasury not otherwise appropriated, there is appropriated \$249,950,000 in additional funds for the COVID-19 Telehealth Program, of which \$50,000 shall be transferred by the Commission to the Inspector General of the Commission for oversight of the COVID-19 Telehealth Program.” Section 903(a)(3), in turn, defines the term “COVID-19 Telehealth Program” to mean “the COVID-19 Telehealth Program established by the Commission under the authority provided under the heading

Commission to seek comment on “the metrics the Commission should use to evaluate applications for funding” and “how the Commission should treat applications filed during the funding rounds for awards from the COVID-19 Telehealth Program using amounts appropriated under the CARES Act . . .”.⁷ On January 6, 2021, the Wireline Competition Bureau released a Public Notice, DA 21-14, seeking comment as directed by the Consolidated Appropriations Act. The Public Notice included a proposal to use USAC to assist in the remaining work needed to administer the funding appropriated by the CARES Act (Round 1), and to administer the funding appropriated to the Program through the Consolidated Appropriations Act (Round 2).⁸ On February 2, 2021, the Commission made a public interest determination to adopt this proposal and expand the role of USAC in the administration of the Program.⁹ In the *February 2nd Report and Order*, the Commission directed USAC to administer the remainder of Round 1 of the Program, which includes, but is not limited to, conducting a review of invoices, providing outreach and guidance to stakeholders about the invoicing processes, and processing post-program feedback reports.¹⁰ It also directed 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 a review of invoices and providing support to the Commission in the disbursement process, providing outreach and guidance to stakeholders about the application and invoicing processes, and administering any required audit and reporting requirements.¹¹

The Commission is exercising its authority to use USAC’s services to administer the COVID-19 Telehealth Program. Accordingly, the Commission and USAC are entering into this Memorandum of Understanding (MOU) to facilitate the efficient management, oversight, and execution of the Program. This MOU is not intended to and does not in any way limit the Commission’s authority over the Program. The Commission is responsible for the effective and efficient management and oversight of the Program, including all policy decisions. For example, 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.¹² USAC is responsible for the effective administration of the Program, pursuant to the direction in the *February 2nd Report and Order* and any future orders, public notices or directives from the Commission. In addition to administering the remainder of Round 1 and all of Round 2 of the Program, USAC’s responsibilities include, but are not limited to, producing timely and relevant data and analysis to inform the Commission in its policy-making and oversight of the Program, educating stakeholders to promote successful participation in the Program and operational efficiency, and advising the Commission on any business and/or operational requirements to effectuate any changes resulting from future Commission decisions. To the extent USAC has questions regarding its functions or duties pursuant to this MOU which are not fully addressed herein or in the Commission’s orders, public notices or directives, it should address its questions to the FCC’s Managing Director.

‘salaries and expenses’ under the heading ‘Federal Communications Commission’ under the heading ‘INDEPENDENT AGENCIES’ in title V of Division B of the CARES Act (Public Law 116-136; 134 Stat. 531).” (case formatting in the statute).

⁷ *Id.*

⁸ *Wireline Competition Bureau Seeks Comment on COVID-19 Telehealth Program Application Evaluation Metrics*, WC Docket No. 20-89, DA 21-14, Public Notice (rel. Jan. 6, 2021).

⁹ *COVID-19 Telehealth Program*, WC Docket No. 20-89, FCC 21-24, Report and Order (rel. Feb. 2, 2021) (*February 2nd Report and Order*).

¹⁰ *Id.* at 2, para. 3.

¹¹ *Id.*

¹² *Id.* at 2-3, paras. 3 and 7.

In its *February 2nd Report and Order*, the Commission states that it “intend[s] to allocate a sufficient amount of administrative expenses from our COVID-19 Telehealth appropriation to USAC so that it can successfully mobilize the necessary resources to administer the Program.”¹³ The Commission allocates to USAC no more than \$6.6 million of the appropriation for the Program’s administrative expenses that USAC incurs pursuant to this MOU. The Commission and USAC will implement controls to ensure that this cap is not exceeded. In reporting its Program administrative costs to the Commission, USAC should use fully allocated costs for tracking and accounting for expenses for which USAC seeks reimbursement from the Commission. Amounts disbursed to Program participants are not considered Program administrative costs and do not count against the \$6.6 million cap referred to in this paragraph. Commitments and disbursements to program participants shall be made by the Commission out of funds appropriated by Congress for the Program, although notification of commitments may be sent to program participants by USAC. Additionally, USAC will assist the Commission, as necessary, in complying with any reporting requirements applicable to the Program, including as part of CARES Act oversight.¹⁴

While the USF is currently exempt from the Antideficiency Act,¹⁵ the COVID-19 Telehealth Program is fully subject to the Antideficiency Act. Accordingly, USAC shall not enter into any contract that constitutes open-ended commitments of monies related to the Program, or any other commitments or obligations in violation of the Antideficiency Act. In addition, in connection with any monies related to the Program, USAC shall (a) establish USAC’s maximum legal commitment at the time of award, either by establishing a firm fixed price or a not-to-exceed price that the contractor exceeds at its own risk; (b) not include any commitment by USAC to provide indemnification of any other party unless such indemnification has a stated not-to-exceed amount and such amount is considered a part of the total contract price for approval by the USAC Board of Directors and, if applicable, Managing Director; and (c) not include any provision authorizing any party to unilaterally increase the contract price, and not include any provision authorizing automatic renewal or extension of the contract without prior written authorization of USAC. When used in this paragraph, “commitment” refers to obligations USAC incurs to its own staff and its contractors, not to commitments made to Program participants.

II. APPLICABLE PROVISIONS

The Commission and USAC currently have a Memorandum of Understanding (MOU), dated December 19, 2018, which governs the relationship between the Commission and USAC as it pertains to USAC’s work as the Commission’s designated administrator of the Universal Service Fund (USF).¹⁶ The Commission would like to leverage the existing agreed upon clauses in the USF MOU to apply to USAC’s work on the Program. As such, for the purposes of USAC’s work for the Commission on the Program, the selected MOU clauses listed below that are applicable to USAC’s work as USF administrator are incorporated by reference herein to USAC’s work on the Program:¹⁷

¹³ *Id.* at 3, para. 6.

¹⁴ See Consolidated Appropriations Act, 2021, H.R. 133, div. O, tit. VIII—Pandemic Response Accountability Committee Amendments § 801, Amendment to the Pandemic Response Accountability Committee (2020).

¹⁵ Codified as amended at 31 U.S.C. §§ 1341, 1342, 1351, and 1517. Guidance is provided by OMB Circular A-11, Section 145 (Dec. 23, 2020) and OMB Memorandum M-13-10, Antideficiency Act Implications of Certain Online Terms of Service Agreements (April 4, 2013).

¹⁶ Memorandum of Understanding between the Federal Communications Commission and the Universal Service Administrative Company, Dec. 19, 2018, is available online at: <https://www.fcc.gov/sites/default/files/usac-mou.pdf>.

¹⁷ The FCC intends that the phrase “and COVID-19 Telehealth Program” or “and Program” be used in lieu of “universal service fund” or “USF” in each of the USF MOU clauses listed in this letter.

- IV.A.1 – Coordination and Communication
- IV.A.3 – Conflicts of Interest
- IV.A.4 – Claims Involving the USF [to include the COVID-19 Telehealth Program]
- IV.A.5 – Potential Loss of Service
- IV.A.6 – Forms Approval
- IV.A.7 – Stakeholder Engagement and Program Outreach [if directed by the Commission]
- IV.A.8 – Notification of Rule Violations and Potential Waste, Fraud and Abuse
- IV.A.9 – Enforcement Referrals
- IV.A.10 – USAC Website Changes
- IV.B.1 – Annual Procurement Plan
- IV.B.2 – Quarterly Procurement Reporting
- IV.B.3 – Procurement Advance Review
- IV.B.4 – Transparency
- IV.B.5 – Annual Procurement Report
- IV.B.6 – Procurement Standards and Procedures
- IV.B.8 – Transferability of Property Rights
- IV.B.9 – Contract Administration
- IV.B.10 – Conflicts of Interest
- IV.B.11 – Performance-Based Contracting
- IV.B.12 – Training
- IV.B.13 – Competition Advocate
- IV.C – Treatment of Non-Public Information
- IV. D – Reporting Requirements
- IV.D.1 – Financial and Programmatic Reports
- IV.D.2 – Commission Access to USF Analytics and Data
- IV.D.3 – Performance Measures [except for the “Contributor Performance” measure]
- IV.D.4 – Customer Service Standards
- IV.D.5 – Expenditure Records and Reporting
- IV.F – Statutes and Agency Directives Applicable to the USF [and to the COVID-19 Telehealth Program]
- IV.G – USF Audits and Assessments [if requested by the FCC’s Managing Director and subject to the availability of funds]
- IV.G.1 – Beneficiary and Contributor Audits [if requested by the FCC’s Managing Director and subject to the availability of funds; except provision that the audit program shall be

designed to verify that all audited contributors are making the appropriate contributions in accordance with the Commission's rules does not apply to the Program]

- IV.G.2 – Improper Payment Estimates, Identification, and Recovery. USAC shall also follow OMD's June 15, 2020 Letter to USAC regarding the Payment Integrity Information Act (PIIA), Pub. L. No.116-117 with respect to the COVID-19 Telehealth Program.IV.G.4 – Audit Follow-up
- IV.G.5 – Internal Control
- IV.G.6 – Employing the Audit Program to Advance Program Goals Adopted by the Commission
- IV.H.1 – General Coordination
- IV.I – Freedom of Information Act Submissions [as needed and subject to the availability of funds]
- IV.J – USAC Requests for Guidance
- VI. – Revision and Duration
- VII. – No Private Cause of Action and Disclaimer
- VIII. – Severability
- Attachment A (USAC Confidentiality Agreement) (including Appendix A) [the definition of Personally Identifiable Information in Appendix A will be updated by mutual agreement by USAC and the FCC]

SIGNATURES

Date: _____

Mark Stephens
Managing Director
Federal Communications Commission

Date: February 4, 2021



Radha Sekar
Chief Executive Officer
Universal Service Administrative Company