

Communications Advisory

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FCC Establishes New Healthcare Connect Fund

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The Federal Communications Commission (FCC) has created a new Healthcare Connect Fund (Fund), designed to expand health care provider (HCP) access to broadband technologies and to encourage the creation of broadband health care networks. The Healthcare Connect Program (Program) will match, up to two-for-one, the cost of broadband services or facilities used for health care purposes, requiring HCPs to make a 35% contribution. The Fund will permit HCPs to purchase services or construct their own broadband infrastructure, although the FCC expects the self-construction option to be used in only limited circumstances. Funding will focus on rural areas. Non-rural providers can participate in the program as part of consortia of other HCPs. Finally, the FCC also created a Pilot Program to test whether it is technically feasible and economically reasonable to include skilled nursing facilities in the Program.

Support for Broadband Connectivity

Focus on Rural HCPs

The FCC will allow participation in the Fund by both rural and non-rural HCPs, but with limitations to ensure that rural needs are met. First, non-rural HCPs may only apply for support as part of a consortium that includes rural HCPs and may not submit individual applications. Second, non-rural HCPs may receive support only if they participate in consortia that include more than 50% of sites that are rural HCPs (the 50% level must be reached within three years of request for funding). Third, the FCC established a cap on the annual funding available to each of the largest hospitals in the program (those with 400 or more beds)—a non-rural hospital site with 400 or more beds may receive no more than \$30,000 per year in support for recurring charges and no more than \$70,000 in support for nonrecurring charges every five years. Non-rural HCPs can still participate in a health care broadband network outside of a consortium if they pay their undiscounted portion of network costs.

Payments for Infrastructure and Services

Funding will be available for services and construction, although the self-construction option may be used only where it is absolutely necessary to enable the HCP to obtain the needed broadband connectivity. Consortia interested in self-construction must solicit bids both for services and construction. The same 35% contribution will apply to both services and construction. There will be a \$150 million cap on the annual funds that can be allocated to up-front, non-recurring costs, including HCP-owned infrastructure. Non-recurring costs that exceed an average of \$50,000 per HCP in a consortium must be prorated over a minimum three-year period.

HCP Contribution

HCPs will be required to contribute 35% to the cost of services or construction. The FCC established the eligible sources of HCPs' contributions: the applicant or eligible HCP participants; state grants, funding, or appropriations; federal funding, grants, loans, or appropriations except for other federal universal service funding; Tribal government funding; and other grant funding, including private grants. Examples of ineligible sources include in-kind or implied contributions; a local exchange carrier (LEC) or other telecom carrier, utility, contractor, consultant,

vendor, or other service provider; and for-profit entities. In limited instances, the FCC will allow consortia in the Fund to use future revenues from excess capacity as a source for their 35% match.

Eligible Services and Equipment

Eligible Services

The FCC will provide support for “[a]ny advanced telecommunications or information service that enables HCPs to post their own data, interact with stored data, generate new data, or communicate, by providing connectivity over private dedicated networks or the public Internet for the provision of health information technology.” HCPs may receive funding for public and private networks and different network configurations—last mile, middle mile, or backbone services provided over any technology—wireline, wireless, or satellite. While the FCC did not impose a minimum bandwidth requirement, it provided that no upfront payments will be eligible for funding for build-out or infrastructure upgrades that deliver less than 1.5 Mbps symmetrical, except for reasonable installation costs under \$5,000 as outlined below.

The Fund will support broadband services provided over service-provider lit fiber. HCPs may also receive support for dark fiber where the customer provides the modulating electronics and under certain other conditions. Support is available for those modulating electronics and, for consortia, for the upfront costs of purchasing the equipment. However, support will not be available for dark fiber that remains unlit. HCPs may receive support for maintenance costs for dark or lit fiber, although only consortia may receive support for upfront payments for maintenance costs.

The membership fees associated with using non-profit backbone services provided by Internet2 and National LambdaRail are eligible for support, although they must be part of an HCP’s competitive bidding process. Support is also available for connections and network equipment associated with off-site data centers and off-site administrative offices used by HCPs for their health care purposes, under certain conditions. The FCC will also provide support for reasonable and customary installation charges up to an undiscounted cost of \$5,000. For consortium applicants, it will also provide support for upfront payments to facilitate build-out of facilities to HCPs. Funding will be available for service provider deployment of facilities up to the “demarcation point,” the boundary between facilities owned or controlled by the service provider, and facilities owned or controlled by the customer. In contrast, inside wiring and internal connections are not eligible.

Eligible Equipment

The Fund will provide support for network equipment necessary to make broadband service functional in conjunction with providing support for that broadband service. For consortium applicants, support will be available for equipment necessary to manage, control, or maintain broadband service or a dedicated health care broadband network. Eligible equipment costs include the following: equipment that terminates a carrier’s or provider’s transmission facility and any router/switch that is directly connected to either the facility or the terminating equipment; computers and related hardware used for network management; software used for network management; costs of engineering, furnishing, and installing network equipment; and equipment that is a necessary part of HCP-owned facilities.

Ineligible Costs

The FCC gave the following examples of costs that are not eligible for Fund payments: costs associated with general computing, software, applications, and Internet content; costs associated with medical equipment; inside wiring or internal connections; administrative expenses including costs associated with applying for funding. Cost sharing will be permitted, however, with ineligible entities under certain circumstances and the FCC provides a mechanism for allocating costs between eligible and ineligible components of a project. Generally, HCP sites may share costs with ineligible sites so long as the ineligible site pays a “fair share” of the costs.

Limitations on Upfront Payments

As noted above, upfront payments associated with services providing a bandwidth of less than 1.5 Mbps are not eligible for support. Second, upfront payments will be limited to consortium applications. Third, the FCC imposed a \$150 million annual limit on total commitments for upfront payments and multi-year commitments. Fourth, consortia must prorate support requested for upfront payments over at least three years if, on average, more than \$50,000 in upfront payments is requested per site. Fifth, upfront payments must be part of a multi-year contract. Finally, consortia that seek certain types of upfront payments will be subject to additional reporting requirements.

Eligible Service Providers

Any provider of equipment, facilities, or services is eligible for support, so long as the HCP selects the most cost-effective option.

Funding Process

Pre-Application Process

Each consortium seeking support must identify an entity or organization that will be the lead entity (the Consortium Leader), which may be the consortium itself, an eligible HCP participating in the consortium, or an ineligible state organization, public sector entity, or non-profit entity. Next, the consortium should identify all HCPs that will participate. Each Consortium Leader must obtain a letter of agency (LOA) from each HCP seeking to participate.

HCPs are required to seek a determination of eligibility from the FCC. There is no need for applicants to submit technology plans with their requests for service. Applicants must develop appropriate evaluation criteria for selecting the winning bid before submitting a request for services to initiate competitive bidding. The evaluation criteria should be based on the FCC's definition of "cost effective." Weights must be assigned to each criterion. Applicants will not be required to submit documentation regarding sources for the 35% of the costs they will pay, although the FCC urges applicants to identify possible sources. Finally, applicants must obtain an FCC Registration Number (FRN) as part of the pre-application process.

Competitive Bidding

Under almost all circumstances, applicants for funding must participate in a competitive bidding program. The FCC announced three basic principles intended to guide the bidding process. First, service providers who intend to bid should not also simultaneously help the HCP choose a winning bidder. Second, all potential bidders and service providers must have access to the same information. Finally, applicants and service providers must comply with applicable state or local competitive bidding requirements.

Requests for Proposals (RFPs) are required for (1) applicants who are required to issue an RFP under applicable state, Tribal, or local procurement rules or regulations; (2) consortium applications that seek more than \$100,000 in program support in a funding year; and (3) consortium applications that seek support for infrastructure (i.e. HCP-owned facilities) as well as services. Other applicants are free to submit RFPs if they choose.

Requests for services (whether or not an RFP is required) must be submitted to the Universal Service Administrative Coordinator (USAC), the entity designated by the FCC to administer the Fund. Applicants may submit requests for services starting 180 days before the beginning of the funding year (the funding year will usually begin on July 1). The FCC anticipates that the filing window will open on approximately July 1, 2013 for the first funding year. After the HCP submits its request for services, USAC will post the request on its website. After posting, bidders are required to submit bids to the applicant. Applicants must wait at least 28 calendar days from posting before entering into a commitment with a service provider. Once the 28-day period expires, applicants may evaluate bids, select a winning bidder, and negotiate a contract. Applicants must submit documentation to support their certification that they have selected the most cost-effective vendor. The following are exemptions from the competitive bidding process: (1) annual undiscounted cost of \$10,000 or less (not applicable to multi-year contracts); (2) government master service agreements (if those agreements were awarded pursuant to competitive requirements); (3) master service agreements previously approved by the FCC under past health care support programs; (4) evergreen contracts (although the HCP must still apply annually for support); and (5) contracts negotiated under certain other FCC support programs. There is no exemption for Internet2 and LambdaRail.

Funding Commitment from USAC

Once a service provider is selected, applicants submit a funding request. Within 21 days of receiving a complete funding request, USAC will inform applicants in writing of and deficiencies in the request. If USAC needs more time to process the request, it may notify the applicant, and provide a date when it expects to be able to identify any deficiencies. If USAC approves the funding request, it will issue a Funding Commitment Letter. Once an applicant receives a Funding Commitment Letter, USAC may be billed, after review of the invoice from the service provider and certification by the HCP that it has paid its percentage of the invoice. Applicants may request multi-year commitments that cover a period of up to three funding years. Requests may also be designated as "evergreen," which means that they will not be required to go through the competitive bidding process again. Service providers

must secure a Service Provider Identification Number (SPIN). After approval, if a proposed modification to the contract would be exempt from state or local competitive bidding requirements, applicants will not be required to re-initiate the process for FCC funding, however, a revised funding commitment request must be filed with USAC. Applicants are also permitted, post-grant, to make site and service substitutions under certain conditions. Consortia that are funding recipients will be required to submit annual reports before September 30 for the preceding period ending June 30; individual applicants will not.

Additional Measures to Prevent Waste, Fraud, and Abuse

Program participants and vendors will be required to maintain records for five years. The FCC will use the audit process and engage in site visits in order to deter program abuse. It will also impose certification requirements. HCPs will be prohibited from receiving support from both the Fund and other similar FCC support mechanisms, although the FCC did not foreclose the potential use of other federal programs for applicants to obtain their 35% contributions. The FCC has authority to recover funds that were improperly disbursed. It may also pursue enforcement and criminal sanctions.

Pilot Program for Skilled Nursing Facility Connections

As part of its decision, the FCC launched a pilot program to test how to support skilled nursing facilities (SNFs) with \$50 million in funding over three years, beginning in Funding Year 2014. Details about the pilot program will be released in the future.

Timing

Although the competitive bidding process will normally begin January 1 of each year (six months before the beginning of the July 1 funding year), for funding year 2013, the competitive bidding process will begin in later summer 2013, with new applicants eligible to receive funds beginning January 1, 2014.



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