

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Request for Review)	
)	
Bradford Regional Medical Center)	File No. RHCP 14491
))
Rural Health Care Universal Service)	WC Docket No. 02-60
Support Mechanism)	

ORDER

Adopted: June 4, 2010

Released: June 4, 2010

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we grant a request for reversal of a decision by the Universal Service Administrative Company (USAC), denying funding for discounted services under the rural health care universal service support mechanism to Bradford Regional Medical Center (Bradford RMC).¹ In so doing, we waive section 54.623(c)(3) of the Commission's rules, which establishes the filing deadline for all required forms under the rural health care universal service support mechanism.² We find that good cause exists to grant the request and remand the application to USAC for action consistent with this order. We direct USAC to complete its review and analysis no later than 60 days from the release date of this order.

II. BACKGROUND

2. Under the rural health care universal service support mechanism, eligible rural health care providers and consortia that include eligible rural health care providers may apply for discounts for eligible telecommunications services and Internet access.³ To obtain discounted service, applicants must make a request for telecommunications and/or Internet services by filing an FCC Form 465 with USAC.⁴ USAC posts the FCC Form 465 to its website for telecommunications carriers to review.⁵ Following a 28-day waiting period, applicants may enter a service agreement and submit an FCC Form 466 (for telecommunications services) and/or an FCC Form 466-A (for Internet services),⁶ which are used to

¹ Letter from Terry Palmer, Bradford Regional Medical Center, to Federal Communications Commission, WC Docket No. 02-60 (filed Mar. 21, 2006) (Bradford RMC Appeal). Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of USAC may seek review from the Commission. 47 C.F.R. § 54.719(c).

² 47 C.F.R. § 54.623(c)(3) (2006).

³ 47 U.S.C. § 254(h); 47 C.F.R. § 54.601.

⁴ 47 C.F.R. § 54.603.

⁵ *Id.*

⁶ *Id.*; see FCC Form 466 Instructions, available at <http://www.usac.org/res/documents/rhc/pdf/forms/2010/Form-466-FY2010-instructions.pdf> (last visited June 4, 2010)(FCC Form 466 Instructions); FCC Form 466-A

verify the type of services ordered and to certify that the selected service provider is the most cost-effective.⁷ Applicants must submit their FCC Forms 466 and 466-A to USAC by June 30 for the funding year that begins on July 1 of the previous year.⁸ After reviewing the funding requests, USAC issues funding decisions in accordance with the Commission's rules.

3. *Bradford RMC Petition.* On March 21, 2005, Bradford RMC filed an FCC Form 466 for funding year 2004, requesting support for Internet access.⁹ USAC informed Bradford RMC that additional documentation was required to process the request.¹⁰ Bradford RMC timely submitted the requested information to USAC on April 29, 2005, two months prior to the June 30, 2005 filing deadline, indicating that it was requesting funding for Internet service.¹¹ Bradford RMC, however, improperly submitted its request for Internet services on the FCC Form 466, instead of the FCC Form 466-A. Despite Bradford RMC's timely submission of the information requested by USAC and its subsequent attempts to contact USAC to verify that the information was received, it was not until September 2005, nearly five months after the amended submission, that USAC informed Bradford RMC that its application had been received and was being reviewed.¹² In addition, USAC did not inform Bradford RMC that it had filed the wrong form to request funding for Internet service.¹³ On February 2, 2006, USAC denied Bradford RMC's funding request, stating that Bradford RMC had failed to provide additional information necessary to process the application.¹⁴ Bradford RMC then filed an appeal with the Commission.¹⁵

III. DISCUSSION

4. We find that good cause exists to waive the June 30, 2005 filing deadline in section 54.623(c)(3) of the Commission's rules for Bradford RMC to file its FCC Form 466-A with the USAC.¹⁶

Instructions, available at <http://www.usac.org/res/documents/rhc/pdf/forms/2010/Form-466-A-FY2010-instructions.pdf> (last visited June 4, 2010) (FCC Form 466-A Instructions).

⁷ 47 C.F.R. § 54.615; FCC Form 466 Instructions; FCC Form 466-A Instructions.

⁸ 47 C.F.R. § 54.623(b); USAC Webpage, Rural Health Care, Frequently Asked Questions, <http://www.usac.org/rhc/tools/frequently-asked-questions.aspx#6> (last visited May 13, 2010) ("Note: the absolute deadline to submit an FCC Form 466/466-A is June 30th of the end of the funding year").

⁹ FCC Form 466, Bradford Regional Medical Center (filed Mar. 21, 2005).

¹⁰ Bradford RMC Appeal at 2 (Letter from Universal Service Administrative Company, to Terry Palmer, Bradford Regional Medical Center (dated Feb. 2, 2006) (USAC Funding Decision Letter)).

¹¹ E-mail from Terry Palmer, Bradford Regional Medical Center, to Donovan Smalls, USAC (dated Apr. 29, 2005).

¹² Bradford RMC Appeal at 1 (stating that Bradford RMC called USAC three times from May through July 2005 to verify that USAC had received the additional information); *id.* at 6 (e-mail from Donovan Smalls, USAC, to Terry Palmer, Bradford Regional Medical Center (dated Sept. 29, 2005)).

¹³ *Id.* at 6 (e-mail from Donovan Smalls, USAC, to Terry Palmer, Bradford Regional Medical Center (dated Sept. 29, 2005)).

¹⁴ Bradford RMC Appeal at 2 (USAC Funding Decision Letter at 1).

¹⁵ See Bradford RMC Appeal; 47 C.F.R. § 54.722.

¹⁶ Generally, the Commission's rules may be waived for good cause shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008), *Northeast Cellular*, 897 F.2d at 1166.

Given Bradford RMC's timely submission of the original form and response to USAC's request for additional information, its several attempts to follow-up with USAC, and USAC's delay in responding to Bradford RMC, we find that special circumstances warrant waiver of the June 30, 2005 filing deadline. In particular, we find that complete rejection of Bradford RMC's application is not warranted, given that the violation here is a minor procedural error.¹⁷ We find that in this instance rigid adherence to filing procedures with respect to Bradford RMC does not further the public interest or the purposes of section 254(h) of the Communications Act of 1934, as amended.

5. We, therefore, grant Bradford RMC's a waiver of section 54.623(c)(3) of the Commission's rules and remand Bradford RMC's application to USAC for further consideration.¹⁸ We instruct USAC to permit Bradford RMC to reapply for funding using the FCC Form 466-A and to issue a new funding decision based on the submission of the proper form. We direct USAC to complete its review of this application and issue an award or denial based on a complete review and analysis no later than 60 calendar days from the release of this order.

IV. ORDERING CLAUSES

6. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 1.3 and 54.722(a), that the appeal filed by Bradford Regional Medical Center IS GRANTED and REMANDED to USAC for further consideration.

7. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 1.3 and 54.722(a), that the June 30, 2005 filing deadline IS WAIVED as discussed herein.

8. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 1.3 and 54.722(a), that USAC SHALL COMPLETE its review of the remanded application and issue an award or denial based on a complete review and analysis no later than 60 calendar days from release of this order.

9. IT IS FURTHER ORDERED, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), that this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Sharon E. Gillett
Chief
Wireline Competition Bureau

¹⁷ See *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, New Orleans, LA, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-487170, *et al.*, CC Docket No. 02-6, Order, 21 FCC Rcd 5316 (2006) (*Bishop Perry Order*) (waiving the Commission's rules to, *inter alia*, allow applicants additional time to file their FCC Forms 471 to receive universal service support under the schools and libraries mechanism, where applicants' ministerial or clerical errors caused USAC to find that the applications were not complete and thus not filed within the filing window).

¹⁸ 47 C.F.R. §§ 1.3, 54.623(c)(3).