

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Requests for Waiver or Review of Decisions
of the Universal Service Administrator by
Indiana Telehealth Network, et al.
Terre Haute, IN
Rural Health Care Support Mechanism
Funding Request Nos. 16964351, et al.
WC Docket No. 02-60

ORDER

Adopted: December 20, 2018

Released: December 20, 2018

By the Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we address seven requests from petitioners seeking review of decisions made by the Universal Service Administrative Company (USAC) under the Rural Health Care (RHC) Program. The petitioners failed to submit their Healthcare Connect Fund invoicing forms (FCC Form 463) and are seeking a waiver of the invoicing deadline for reimbursement of services under the RHC Program. For the reasons provided below, we grant one request and deny six requests.

II. BACKGROUND

2. The Healthcare Connect Fund provides support to eligible health care providers for broadband service. Participating health care providers are responsible for paying at least 35% of the cost of the service to the service provider directly and the program provides funds for the balance of the service directly to the service provider. To receive support from the program, the service provider and the health care provider must submit an invoice for the broadband service using FCC Form 463 (Invoice and Request for Disbursement Form) to USAC. The applicant certifies that the FCC Form 463 is accurate and they have paid the minimum 35% contribution, and the service provider certifies to the accuracy of the information in the FCC Form 463 and submits it to USAC for payment. Once received, USAC processes the FCC Form 463 and, if approved, distributes to the service provider the balance owed

1 See Appendices A-B. 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 CFR § 54.719(c).

2 See 47 CFR § 54.645(b); Rural Health Care Support Mechanism, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678, 16804, para. 305 (2012) (Healthcare Connect Fund Order).

3 See Appendices A-B.

4 See Healthcare Connect Fund Order.

5 Id. at 16718-24, paras. 91-98.

6 See USAC, Rural Health Care Program, Healthcare Connect Fund Program, Individual HCPs, Initiate Invoicing, https://www.usac.org/rhc/healthcare-connect/Individual/step07/default.aspx (last visited Nov. 9, 2018) (Invoicing Procedures).

7 Invoicing Procedures; Healthcare Connect Fund Order, 27 FCC Rcd at 16804, para. 305.

for the services.⁸ The Commission's rules require all Healthcare Connect Fund invoices to be received by USAC within six months of the end date of the funding commitment.⁹ The FCC Form 463 invoicing deadline is included on the funding commitment letter USAC sends to both the health care provider and service provider.¹⁰ All petitioners seeking relief in this Order failed to submit their FCC Forms 463 and invoices by the relevant invoicing deadline.

III. DISCUSSION

3. Generally, the Commission's rules may be waived if good cause is shown.¹¹ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹² In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹³ Waiver of the Commission's rules is appropriate only if both: (1) special circumstances warrant a deviation from the general rule; and (2) such deviation will serve the public interest.¹⁴

4. Based on the record and consistent with precedent, we grant one request for review and waiver where the petitioner, Indiana Telehealth Network, demonstrated that it was unable to file the Healthcare Connect Fund invoice form on a timely basis due to a USAC technical system issue that prevented the filing of the invoice form.¹⁵ We deny, however, six requests for waiver for which the petitioners failed to present compelling explanations for their delay in seeking reimbursement.¹⁶ The petitioners indicate that they missed the invoice deadline due to: the need to process FCC Forms 463 for an influx of funding commitment approvals or revised funding year 2017 commitments due to the increase in the program funding cap;¹⁷ difficulty in determining the invoice deadline based on the information provided on USAC's filing system;¹⁸ personnel changes;¹⁹ time required for service providers to respond to numerous questions and concerns from health care provider customers;²⁰ an unspecified

⁸ Invoicing Procedures.

⁹ See 47 CFR. § 54.645(b); *Healthcare Connect Fund Order*, 27 FCC Rcd at 16804, para. 305.

¹⁰ Invoicing Procedures.

¹¹ 47 CFR § 1.3.

¹² *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

¹³ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

¹⁴ *Northeast Cellular*, 897 F.2d at 1166.

¹⁵ See Appendix A; Request for Review and Waiver by Indiana Telehealth Network (ITN) of Funding Decision by the Universal Service Administrative Company, WC Docket No. 02-60 (filed Sept. 5, 2018) (ITN Request for Review and Waiver). See *Rural Health Care Support Mechanism*, WC Docket 02-60, 30 FCC Rcd 1063, 1064-65, paras. 4-5 (WCB 2015) (granting a limited waiver of the Healthcare Connect Fund invoice deadline due to USAC filing system deficiencies beyond the control of some applicants and service providers that prevented them from meeting the invoice deadline) (*Healthcare Connect Fund Invoice Deadline Order*); *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 33 FCC Rcd 2042, para. 6 (WCB 2018) (finding that extraordinary circumstances exist to grant a waiver of the invoice deadline "when applicants and service providers have made every attempt to comply with the invoice deadline rules, but were blocked from timely completing the invoicing process because a predicate request or function had not been completed (or could not be completed) by USAC's systems"); see also *Wireline Competition Bureau Extends Deadline for E-rate Participants to Request Invoice Deadline Extensions*, CC Docket No. 02-6, Public Notice, 31 FCC Rcd 11924 (WCB 2016) (extending the invoice deadline in order to provide E-rate participants with additional time to file their invoice deadline extension requests due to USAC technical system issues that prevented participants from timely filing their requests).

electronic error;²¹ or no reason at all.²²

5. The Commission and the Wireline Competition Bureau have consistently held that applicants and service providers are responsible for knowing and following the Commission's rules, including program deadlines, and for submitting their program filings in a timely manner.²³ A delay on the part of an applicant or service provider to certify and submit the FCC Form 463 for reasons within their control does not obviate that obligation or without more justify a waiver of the Commission's rules. In each case where we are denying the waiver request, we find that the FCC Form 463 was not submitted by the deadline due circumstances within the applicant or service provider's control.²⁴ In order for the Healthcare Connect Fund to work efficiently, applicants and service providers must assume responsibility for timely submissions and for the action or inaction of their employees, consultants and other representatives.²⁵ We find, therefore, that the six petitioners identified in Appendix B have not

(Continued from previous page)

¹⁶ See Appendix B. See *Requests for Waiver of Decisions of the Universal Service Administrator by Batesville Community School Corporation et al.; Schools and Libraries Universal Service Support Mechanism; Modernizing the E-rate Program for Schools and Libraries*, [CC Docket No. 02-6](#), [WC Docket No. 13-184](#), [Order, 31 FCC Rcd 7731, 7733](#), paras. 5-7 (WCB 2016) (denying requests for waiver that present only generalized arguments, rather than special circumstances warranting deviation from the general rule); *WAIT Radio v. FCC*, 418 F.2d 1153, 1157, note 9 (D.C. Cir. 1969) (holding that the Commission "is not bound to process in depth what are only generalized pleas, a requirement that would condemn it to divert resources of time and personnel to hollow claims. The applicant for waiver must articulate a specific pleading, and adduce concrete support, preferably documentary"); *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664, 666 (D.C. Cir. 1968) ("When an applicant seeks a waiver of a rule, it must plead with particularity the facts and circumstances which warrant such action").

¹⁷ See Waiver Request for Denied Invoice Extension Request by Charter Communications (Spooner Health System), WC Docket No. 02-60 (filed Mar. 9, 2018) (Charter Communications Waiver Request); Waiver Request for Denied Invoice Extension Requests by Charter Fiberlink CC VIII, LLC (Aspirus Clinic), WC Docket No. 02-60 (filed May 10, 2018); (Charter Fiberlink CC VIII Waiver Request); Waiver Request for Denied Invoice Extension Requests by Charter Fiberlink CCO, LLC (St. Joseph), WC Docket No. 02-60 (filed Oct. 12, 2018) (Charter Fiberlink CCO Waiver Request); Waiver Request for Denied Invoice Extension Request by Charter Advanced Services (Yakima Valley Farm Workers Clinic - Mountainview Women's Health Center), WC Docket No, 02-60 (filed Sept. 25, 2018) (Charter Advanced Services Waiver Request).

¹⁸ See Charter Communications Waiver Request; Charter Fiberlink CC VIII Waiver Request; Charter Fiberlink CCO Waiver Request; Charter Advanced Services Waiver Request.

¹⁹ See Charter Communications Waiver Request; Charter Fiberlink CC VIII Waiver Request.

²⁰ See Charter Advanced Services Waiver Request.

²¹ See Request for Review and Waiver by Hancock Rural Telephone Corporation, WC Docket No. 02-60 (filed Feb. 20, 2018).

²² See Form 463 Deadline Waiver Request by District Health Department No. 10, WC Docket No. 02-60 (filed Feb. 27, 2018).

²³ See *Healthcare Connect Fund Invoice Deadline Order*, 30 FCC Rcd at 1065, para. 6 (reminding applicants that adherence to the filing deadlines and program rules are necessary for the efficient administration of the Healthcare Connect Fund Program); *Request for Review by Portland Area Indian Health Service, Rural Health Care Universal Service Support Mechanism*, WC Docket No. 02-60, Order, 25 FCC Rcd 13050, 13053, para. 7 (WCB 2010) ("All applicants must comply with our rules and procedures and continue to submit complete and accurate information to USAC as part of the application review process").

²⁴ See *Freehold Regional High School District, Schools and Libraries Universal Service Support Mechanism*, CC Docket NO. 02-6, 19 FCC Rcd 2983, 2984, para. 2 (WCB 2004) (stating that "neither employee illness, staff failure to perform a job properly, nor misunderstanding of the rules relieves applicants of their responsibility to comply with the Commission's rules and procedures").

²⁵ See *Healthcare Connect Fund Invoice Deadline Order*, 30 FCC Rcd at 1065, para. 6.

demonstrated special circumstances to justify a waiver finding that it would be in the public interest to allow an extension of time to file invoices after the relevant deadline.

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 0.91, 0.291, 1.3 and 54.722(a) of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3 and 54.722(a), the Request for Review and Waiver filed by the Petitioner in Appendix A is GRANTED.

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 0.91, 0.291, 1.3 and 54.722(a) of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3 and 54.722(a), that section 54.645(b) of the Commission's rules, 47 CFR § 54.645(b), IS WAIVED to the limited extent provided 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 0.91, 0.291, 1.3 and 54.722(a) of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3 and 54.722(a), the Requests for Waiver filed by Petitioners in Appendix B are DENIED.

9. IT IS FURTHER ORDERED that, pursuant to Section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Ryan B. Palmer
Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

APPENDIX A

Request for Review and Waiver Granted

Petitioner	Funding Request Number	Funding Year	Date Request for Review and Waiver Filed
Indiana Telehealth Network	16964351	2016	Sept. 5, 2018

APPENDIX B

Requests for Waiver Denied

Petitioner	Funding Request Number(s)	Funding Year(s)	Date Request for Waiver Filed
Charter Advanced Services (Yakima Valley Farm Workers Clinic - Mountainview Women's Health Center)	16875641	2016	Sept. 25, 2018
Charter Communications (Spooner Health System)	15775081	2015	Mar. 9, 2018
Charter Fiberlink CC VIII, LLC (Aspirus Clinic)	15829721 15837421 15837511 15837711 15837731 15832131 15829601 15829861 15826201	2015 2015 2015 2015 2015 2015 2015 2015 2015	May 10, 2018
Charter Fiberlink CCO, LLC (St. Joseph)	14622131 15768411	2014 2015	Oct. 12, 2018
District Health Department No. 10	16977171	2016	Feb. 27, 2018
Hancock Rural Telephone Corporation d/b/a NineStar Connect (Indiana Telehealth Network)	14642481	2014	Feb. 20, 2018