

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

In the Matter of
Petition for Reconsideration by
TeleQuality Communications, Inc., on behalf of
Gonzales Community Health Center
And
Requests for Review by
TeleQuality Communications, Inc., on behalf of
Gonzales Community Health Center, New River
Valley Community Health Services, Timber Hills
Mental Health Services/Region IV, and Family
Healing Center
Rural Health Care Universal Service
Support Mechanism
CC Docket No. 02-60

ORDER ON RECONSIDERATION AND ORDER

Adopted: January 24, 2020

Released: January 24, 2020

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

I. INTRODUCTION

1. In this Order, we address a petition for reconsideration filed by TeleQuality Communications, Inc. (TeleQuality) on behalf of Gonzales Community Health Center (Gonzales). The Petition seeks review of the Wireline Competition Bureau's (Bureau) denial of a request for review concerning applications for discounts under the Rural Health Care Program's Telecommunications (Telecom) Program for funding year 2016. We dismiss the Petition to the extent that TeleQuality raises the same substantive arguments asserted in its previously filed appeal. Notwithstanding, we also deny the Petition on the merits and reaffirm our findings in the May 2017 Streamlined Request Resolution PN that USAC properly denied Telecom Program funding to Gonzales on the basis that Gonzales did not

1 Petition for Reconsideration of TeleQuality Communications, Inc., on behalf of Gonzales Community Health Center, WC Docket No. 02-60 (filed June 29, 2017) (regarding funding request numbers (FRN) 1687929 and 1687934) (Petition). The Petition and other appeals addressed by this Order on Reconsideration and Order are listed in the Appendix.

2 Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company, CC Docket Nos. 02-6 and 02-60, Public Notice, 32 FCC Rcd 4612, 4625 & n.29 (WCB 2017) (May 2017 Streamlined Request Resolution PN). The Bureau has the authority to act on petitions requesting reconsideration of final actions taken pursuant to delegated authority. 47 CFR § 1.106(a)(1).

3 See Request for Review by TeleQuality Communications, Inc. of Decision of Universal Service Administrator, WC Docket No. 02-60 (filed March 10, 2017) (Request for Review).

comply with the Commission's competitive bidding rules when it entered into a service contract with TeleQuality prior to expiration of the required 28-day waiting period.⁴ Finally, we deny TeleQuality's requests for review filed on behalf of Gonzales, New River Valley Community Health Services (New River), Timber Hills Mental Health Services/Region IV (Timber Hills), and Family Healing Center (Family Healing) as those filings raise similar facts and the same substantive arguments asserted in the Petition.⁵

II. BACKGROUND

2. The Telecom Program allows eligible rural health care providers and consortia that include eligible rural health care providers to apply for universal service support for eligible services.⁶ Telecom Program rules generally require that eligible entities seek competitive bids for services eligible for support.⁷ In accordance with the Telecom Program's competitive bidding rules, applicants must submit for posting on USAC's website an FCC Form 465 to initiate the competitive bidding process.⁸ The applicant must describe the requested services with sufficient specificity to enable potential service providers to submit bids for such services.⁹ After the FCC Form 465 is posted by USAC on its website, the applicant must wait at least 28 days before making commitments with its selected service providers.¹⁰ Upon the conclusion of the 28-day waiting period, applicants are required to consider all submitted bids prior to selecting the most cost-effective service provider.¹¹ An applicant may then enter into a contract with its selected service provider.

3. We permit one exception to the requirement that an applicant must wait 28 days before entering into a contract with a service provider. The exception involves existing contracts and applies if the following three conditions are met: (i) the applicant is choosing to continue service under an existing contract; (ii) the applicant competitively bid the services for the new funding year; and (iii) the applicant decides, after reviewing the competitive bids, to continue with the existing contract.¹² The exception allows applicants with existing contracts to be eligible for Telecom Program benefits prior to the existing

⁴ See *May 2017 Streamlined Request Resolution PN*, 32 FCC Rcd at 4625 & n.29.

⁵ Request for Review of TeleQuality Communications, Inc., on behalf of Gonzales Community Health Center, WC Docket No. 02-60 (filed July 20, 2017) (Gonzales Request for Review) (regarding FRNs 1695538 and 1695546, which involve the same services requested under FRNs 1687929 and 1687934); Request for Review of TeleQuality Communications, Inc., on behalf of New River Valley Community Health Services, WC Docket No. 02-60 (filed July 17, 2017) (New River Request for Review) (regarding FRN 1688460); Request for Review of TeleQuality Communications, Inc., on behalf of Timber Hills Mental Health Services/Region IV, WC Docket No. 02-60 (filed July 10, 2017) (Timber Hills Request for Review) (regarding 1694343, 1694344, and 1694345); Request for Review of TeleQuality Communications, Inc., on behalf of Family Healing Center, WC Docket No. 02-60 (filed June 26, 2017) (Family Healing Request for Review) (regarding FRNs 1688225, 1688233, 1688235 1688240, 1688241, 1688262, 1695631, 1695637, 1695640, 1695642, 1695646, and 1695653).

⁶ See 47 CFR §§ 54.601-54.615 (2018).

⁷ 47 CFR § 54.603 (2018).

⁸ 47 CFR § 54.603(b) (2018).

⁹ See *id.*

¹⁰ 47 CFR § 54.603(b)(3) (2018).

¹¹ See 47 CFR § 54.615(a); 54.615(c)(7) (2018) (Health care providers "shall consider all bids submitted and select the most cost-effective alternative[,] . . . where the most cost-effective method of providing a service is defined as the method that costs the least after consideration of the features, quality of transmission, reliability, and other factors that the health care provider deems relevant to choosing a method of providing the required health care services.").

contract's expiration.¹³ We strictly limit the exception, however, because entering into a contract before expiration of the 28-day waiting period under any other circumstances circumvents the competitive bidding process and ultimately damages the integrity of the program.¹⁴ We also encourage applicants to memorialize, at the conclusion of the 28-day waiting period, their decision to continue under an existing contract and to enter the date on which they did so as their contract award date.¹⁵ Such action helps USAC to determine whether the applicant properly complied with the Commission's competitive bidding requirements.

III. DISCUSSION

4. *Dismissal of Petition for Reconsideration.* The Commission's rules provide that a petition for reconsideration will only be entertained if it relies on facts or arguments that have changed or were unknown to the petitioner when it previously filed its appeal.¹⁶ We have already considered and rejected the facts and arguments offered by TeleQuality in support of the Petition.¹⁷ Therefore, to the extent TeleQuality reiterates previously asserted arguments, we dismiss the Petition as repetitious pursuant to section 1.106(b)(3) of the Commission's rules.¹⁸

5. *Denial of Petition for Reconsideration.* Notwithstanding the dismissal on procedural grounds, we nonetheless consider the Petition on the merits and deny on these grounds as well. The service contracts Gonzales entered into with TeleQuality prior to the expiration of the 28-day waiting period were not existing contracts and the services to be provided under the contracts were not of a continuing nature as required under the exception to the 28-day waiting period rule.

6. The record shows that Gonzales posted an FCC Form 465 seeking telecommunications services for funding year 2015 on January 13, 2015.¹⁹ More than a year later, on April 5, 2016, while still under the FCC Form 465 for funding year 2015, Gonzales signed two three-year service contracts with TeleQuality to provide Bonded T-1 (10.5 Mbps) service and Ethernet (10 Mbps) service.²⁰ Each contract stated that its term would begin "upon [the] circuit completion date."²¹ According to TeleQuality, the

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¹² *Request for Review by Franciscan Skemp Waukon Clinic, Rural Health Care Universal Service Support Mechanism*, WC Docket No. 02-60, Order, 29 FCC Rcd 11714, 11715, para. 3 (WCB 2014) (*Waukon Order*); see also *Request for Review of the Decision of the Universal Service Administrator by Kalamazoo Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order on Reconsideration, 17 FCC Rcd 22154, 22157, para. 6 (WCB 2002) (*Kalamazoo Order*).

¹³ *Cf. Request for Review of the Decision of the Universal Service Administrator by Cochrane-Fountain City School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 16628, 16629, para. 3 (CCB 2000).

¹⁴ See *Waukon Order*, 29 FCC Rcd at 11717, para. 9.

¹⁵ *Id.* at 11715, para. 3.

¹⁶ 47 CFR § 1.106(b)(2).

¹⁷ See *May 2017 Streamlined Request Resolution PN*, 32 FCC Rcd at 4625 & n.29 (denying the Request for Review).

¹⁸ See 47 CFR § 1.106(b)(3) (allowing the Commission to dismiss as repetitious petitions for reconsideration that fail to rely on new facts or changed circumstances).

¹⁹ Gonzales Community Health Center, FCC Form 465 (posted Jan. 13, 2015).

²⁰ Petition at 2.

²¹ Letter from USAC, Rural Health Care Division, to Raziel De La Barreda, Gonzales Community Health Center at 2 (Jan. 11, 2017) (Administrator's Decision Letter).

Bonded T-1 and Ethernet circuits were intended to be activated during funding year 2015 but delays in the circuit ordering process limited TeleQuality's performance under the contracts to pre-installation work only.²² Because the circuits were not activated during funding year 2015, Gonzales did not file an FCC Form 466 requesting support for them.²³ Then, on May 24, 2016, Gonzales posted an FCC Form 465 requesting telecommunications services for funding year 2016 that established an allowable contract service date (ACSD) of June 21, 2016.²⁴ Gonzales submitted FCC Forms 466 requesting support for funding year 2016 for the same Bonded T-1 and Ethernet services from TeleQuality, and provided April 5, 2016, as the "Date Contract Signed or Date HCP Selected Carrier" on the forms.²⁵ Gonzales indicated on the FCC Forms 466 that it did not receive any bids in response to its FCC Form 465 for funding year 2016, and provided July 1, 2016, as the service installation date for the underlying services.²⁶ On November 2, 2016, USAC denied Gonzales' funding requests because Gonzales did not comply with the Commission's competitive bidding rules when it entered into the April 5, 2016 contracts with TeleQuality prior to the June 21, 2016 ACSD established by its funding year 2016 FCC Form 465.²⁷ USAC upheld its decision and denied an appeal submitted by TeleQuality on behalf of Gonzales, and we subsequently denied TeleQuality's request for review of USAC's determination.²⁸

7. In its Petition, TeleQuality argues that Gonzales fully complied with the Commission's competitive bidding rules, including the 28-day waiting period requirement. TeleQuality states that the April 5, 2016 contracts were not "new" contracts establishing an ACSD of June 21, 2016.²⁹ Instead, they were active contracts that contemplated service activation in funding year 2015, which made them eligible for the existing contract exception to the 28-day waiting period recognized under our *Waukon Order* precedent.³⁰ In support of this position, TeleQuality advances three basic points. First, the 2016 funding year requests involved a continuation of services performed by TeleQuality during funding year 2015.³¹ Second, that Gonzales did not submit an FCC Form 466 for funding year 2015 services was to be expected and does not undermine TeleQuality's arguments because TeleQuality did not request payment for the pre-activation work it provided in funding year 2015 and Gonzales did not render any payment.³² Third, services under an existing contract need not be "activated" in the previous funding year for the 28-day waiting period exception to apply, contrary to the position we took in the *May 2017 Streamlined*

²² Petition at 2.

²³ Petition at 2-3.

²⁴ Gonzales Community Health Center, FCC Form 465 (posted May 24, 2016). As explained above, an applicant must wait at least 28 days after submitting an FCC Form 465 before making commitments with its selected service providers. The 28th day following the submission date establishes the ACSD.

²⁵ Gonzales Community Health Center, FCC Forms 466 (filed Aug. 29, 2016) (regarding FRNs 1687929 and 1687934).

²⁶ *Id.*

²⁷ Email from Universal Service Administrative Company, Rural Health Care Division, to Raziell De La Barreda, Gonzales Community Health Center (Nov. 2, 2016).

²⁸ Administrator's Decision Letter at 1; *May 2017 Streamlined Request Resolution PN*, 32 FCC Rcd at 4625, n. 29.

²⁹ Petition at 5.

³⁰ *Id.* at 6.

³¹ *Id.* at 3.

³² *Id.*

*Request Resolution PN.*³³

8. This matter ultimately turns on the question of whether, as required by the 28-day waiting period exception, Gonzales chose to continue service under existing contracts entered into on April 5, 2016 with TeleQuality. TeleQuality maintains that is the case. We disagree. As an initial matter, we note that the contracts entered into on April 5, 2016, indicate that the terms of the contracts began “upon [the] circuit completion date.”³⁴ Because the circuit completion date fell on July 1, 2016, the first day of funding year 2016, the contracts by their own terms were not in effect during funding year 2015. Accordingly, we previously concluded, and reaffirm here, that the contracts were not existing contracts but instead were “new” agreements ineligible for the 28-day waiting period exception.³⁵

9. We also find that the work performed by TeleQuality during funding year 2015 fell short of the requirement “to continue service” under an existing contract. That work, in TeleQuality’s own words, was preparatory in nature, as it involved “*beginning* the provisioning process,” which “encompasses *preparation* of the service by the underlying carrier, facility work, configuration and installation of the customer premise equipment (CPE), and finally a test and tune up (TTU) process.”³⁶ We believe that more than just preparatory work is needed for an eligible service to be considered continuing. Indeed, the fact that actual telecommunications service was not available to Gonzales during funding year 2015 formed the basis of our prior determination that an underlying service must be “activated” for its contract to be eligible for the 28-day waiting period exception.³⁷ “[T]o continue service” for purposes of determining eligibility for the exception requires some demonstrable level of functioning telecommunications capability between the applicant and other parties that the applicant can choose to continue and not just preparatory or preliminary work required to establish such capability at a later date. Nothing that TeleQuality offers in its Petition demonstrates that such functioning service was in fact available for Gonzales to choose during funding year 2015. Accordingly, we deny the Petition on the merits.

10. *Denial of Health Care Providers’ Requests for Review.* We also deny the requests for review filed by TeleQuality on behalf of Gonzales, New River, Timber Hills, and Family Healing (collectively, the HCPs) presenting essentially the same facts and arguments as those described in the Petition.³⁸ To summarize, TeleQuality maintains that the HCPs posted FCC Forms 465, and signed

³³ *Id.* at 7. TeleQuality also acknowledges the Bureau’s recommendation that a health care provider memorialize its decision to continue under an existing contract, and that it will “follow this suggestion in any future HCP adoptions of existing contracts for which RHC funding will be sought.” *Id.* at n.22.

³⁴ *See supra* para. 6.

³⁵ *See May 2017 Streamlined Request Resolution PN*, 32 FCC Rcd at 4625 & n.29.

³⁶ Petition at 6, quoting Request for Review at 2-3 (emphasis added).

³⁷ *See May 2017 Streamlined Request Resolution PN*, 32 FCC Rcd at 4625 & n.29. TeleQuality maintains that neither the *Waukon Order* nor the *Kalamazoo Order* stands for the proposition that the 28-day waiting period exception requires contracts for services that were activated in the previous funding year. Petition at 7. TeleQuality’s reading of these decisions is in error. In *Waukon*, we determined that there was no continuation of services under an existing contract where the contract at issue was signed several months before services were to commence after the start of the new funding year. *Waukon Order*, 29 FCC Rcd at 11717, para. 8. These same basic facts are present here. The contracts entered into by Gonzales on April 5, 2016 were for services contemplated to begin on July 1, 2016, the first day of the new funding year. In *Kalamazoo*, we recognized the continuation of services under an existing contract in the case involving a multi-year service contract for which Kalamazoo had received discounts for services provided during previous funding years. *Kalamazoo Order*, 17 FCC Rcd at 22156-57, paras. 4, 6. TeleQuality provided no such services to Gonzales in a prior funding year under the contracts entered into on April 5, 2016.

³⁸ *See supra* note 5.

service contracts pursuant to those postings, in funding year 2015.³⁹ However, due to installation delays, the contracted services were not activated in funding year 2015.⁴⁰ The HCPs then posted FCC Forms 465 for funding year 2016 and submitted their respective funding requests for the contracted services after the services were activated during funding year 2016.⁴¹ Each funding request identified the HCPs' funding year 2016 FCC Form 465 as the establishing form and provided the HCP-TeleQuality contract signature date in the "Date Contract Signed or Date HCP Selected Carrier" field of the form.⁴² Because the HCPs' funding requests bore contract signature dates that pre-dated the ACSDs for their respective funding year 2016 FCC Form 465, USAC determined that the requests for support violated the Commission's competitive bidding rules.⁴³ For the reasons explained above, we agree with USAC's determination in each case and deny the requests for review filed on behalf of the HCPs.

IV. ORDERING CLAUSES

11. 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, and 1.106 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.106, that the Petition for Reconsideration filed by TeleQuality Communications, Inc. on behalf of Gonzales Community Health Center IS DISMISSED to the extent TeleQuality has raised the same arguments, and as an independent and alternative basis for the decision, the Petition for Reconsideration is also DENIED on the merits.

³⁹ Gonzales Community Health Center, FCC Form 465 (posted Jan. 13, 2015; ACSD Feb. 10, 2015); New River Valley Community Health Services, FCC Form 465 (posted Apr. 6, 2015; ACSD May 4, 2015); Timber Hills Mental Health Services/Region IV, FCC Form 465 (posted Jan. 8, 2015; ACSD Feb. 5, 2015); Family Healing Center, FCC Form 465 (posted Sept. 1, 2015; ACSD Sept. 29, 2015). TeleQuality signed services contracts with Gonzales on April 5, 2016, New River on March 28, 2016, Timber Hills on March 21, 2016, and Family Healing on February 2 and March 10, 2016. *See* Gonzales Request for Review at 3; New River Request for Review at 2; Timber Hills Request for Review at 2; Family Healing Request for Review at 2.

⁴⁰ Gonzales Request for Review at 3; New River Request for Review at 3; Timber Hills Request for Review at 3; and Family Healing Center Request for Review at 3.

⁴¹ Gonzales Community Health Center, FCC Form 465 (posted May 24, 2016, ACSD June 21, 2016); New River Valley Community Health Services, FCC Form 465 (posted May 5, 2016, ACSD June 2, 2016); Timber Hills Mental Health Services/Region IV, FCC Form 465 (posted May 25, 2016, ACSD June 22, 2016); Family Healing Center, FCC Form 465 (posted May 27, 2016, ACSD June 24, 2016); Gonzales Community Health Center, FCC Forms 466 (filed Nov. 14, 2016) (regarding FRNs 1695538 and 1695546); New River Valley Community Health Services, FCC Form 466 (filed Sept. 1, 2016); Timber Hills Mental Health Services/Region IV, FCC Forms 466 (filed Nov. 3, 2016); Family Healing Center, FCC Form 466 (filed Aug. 31, 2016) (regarding FRNs 1688225, 1688233, 1688235, 1688240, 1688241, 1688262); Family Healing Center, FCC Form 466 (filed Nov. 15, 2016) (regarding FRNs 1695631, 1695637, 1695640, 1695642, 1695646, 1695653).

⁴² Gonzales Community Health Center, FCC Form 466; New River Valley Community Health Services, FCC Form 466; Timber Hills Mental Health Services/Region IV, FCC Form 466; Family Healing Center, FCC Forms 466.

⁴³ Email from USAC, Rural Health Care Division, to Gonzales Community Health Center (Dec. 6, 2016); Email from USAC, Rural Health Care Division, to New River Valley Community Services (Dec. 14, 2016); Email from USAC, Rural Health Care Division, to Timber Hills Mental Health Services/Region IV (Dec. 6, 2016); Email from USAC, Rural Health Care Division, to Family Healing Center (Nov. 2, 2016).

12. 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, and 54.722(a) of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 54.722(a), that the Requests for Review filed by TeleQuality Communications, Inc. on behalf of Gonzales Community Health Center, New River Valley Community Health Services, Timber Hills Mental Health Services/Region IV, and Family Healing Center ARE DENIED.

13. IT IS FURTHER ORDERED that, pursuant to the authority delegated in section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 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

Health Care Provider	Filing	Date of Submission	Funding Request Numbers
Gonzales Community Health Center, HCP No. 26215	Petition for Reconsideration	June 29, 2017	1687929, 1687934
Gonzales Community Health Center, HCP No. 26215	Request for Review	July 20, 2017	1695538, 1695546
Family Healing Center, HCP No. 16330	Request for Review	June 26, 2017	1688225, 1688233, 1688235, 1688240, 1688241, 1688262, 1695631, 1695637, 1695640, 1695642, 1695646, and 1695653
New River Valley Community Health Services, HCP No. 34285	Request for Review	July 17, 2017	1688460
Timber Hills Mental Health Services/Region IV, HCP No. 28200	Request for Review	July 10, 2017	1694343, 1694344, and 1694345