

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

In the Matter of
Requests for Review of
Decisions of the
Universal Service Administrator by
Windstream Communications, LLC
Little Rock, Arkansas
ABS Telecom LLC and Gary Speck
Plano, Texas
The Burke Center-West Austin Street;
Trinity Valley Community College; and The
University of Texas Health Science Center at
Tyler on behalf of the East Texas Interactive
Healthcare Network-Andrews Center
Rural Health Care Universal Service
Support Mechanism
WC Docket No. 02-60

ORDER

Adopted: September 15, 2020

Released: September 15, 2020

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

I. INTRODUCTION

1. In this Order, we address a request filed by Windstream Communications, LLC (Windstream) and a joint request filed by ABS Telecom LLC and Gary Speck (collectively, ABS), seeking review of decisions made by the Universal Service Administrative Company (USAC) under the rural health care universal service support mechanism.1 We also consider a request filed by Burke

1 Request for Review, WC Docket No. 02-60 (filed Aug. 23, 2018) (Windstream Request for Review); Request for Review, WC Docket No. 02-60 (filed Aug. 29, 2018) (ABS Request for Review); Opposition in Part to Request for Review, WC Docket No. 02-60 (filed Sept. 4, 2018) (ABS Opposition); Reply in Support of Request for Review, WC Docket No. 02-60 (filed Sept. 11, 2018) (Windstream Reply). Per ABS's request, we waive the appeal filing deadline for ABS, which submitted its request for review of USAC's decisions to the Commission less than two minutes late. See Request for Rule Waiver, WC Docket No. 02-60 (filed Sept. 11, 2018) (seeking a waiver of the appeal filing deadline set forth in section 54.720 of the Commission's rules). Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by ABC Unified School District et al.; Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Order, 26 FCC Rcd 11019, para. 2 (WCB 2011) (waiving the filing deadline for petitioners that submitted their appeals to the Commission or USAC only a few days late). The funding request numbers (FRNs) affected by USAC's decisions are listed in the Appendix. Section 54.719(b) of the Commission's rules provides that any party aggrieved by an action taken by USAC may seek review from the Commission after seeking review by USAC. 47 CFR § 54.719(b). The parties timely sought review by USAC in this proceeding. See infra paras. 10, 11.

Center-West Austin Street, Trinity Valley Community College, and The University of Texas Health Science Center at Tyler on behalf of the East Texas Interactive Healthcare Network-Andrews Center (collectively, UTHSCT) seeking a waiver of the Commission's competitive bidding requirements underlying the same USAC decisions.<sup>2</sup> In its decisions, USAC denied UTHSCT's requests for Rural Health Care (RHC) Telecommunications (Telecom) Program support for funding years (FY) 2012 through 2016 after determining that the business relationship between UTHSCT's consultant (i.e., ABS) and selected service provider (i.e., Windstream) created a conflict of interest that impaired UTHSCT's ability to hold a fair and open competitive bidding process.<sup>3</sup> USAC also adjusted and sought to recover RHC Program funds committed or disbursed to UTHSCT for its FY 2012-2015 funding requests.<sup>4</sup> USAC initiated recovery actions against Windstream after determining that Windstream was aware of the business relationship that created the impermissible conflict of interest.<sup>5</sup>

2. This matter involves a significant conflict of interest, where one individual having simultaneous business relationships with an RHC Program applicant and service provider represented both sides during the applicant's competitive bidding process, ultimately undermining the integrity of that process. After reviewing the record, we agree with USAC's determinations and find that Windstream and ABS's actions compromised the fairness of UTHSCT's competitive bidding process in violation of RHC Program requirements. We therefore deny Windstream and ABS's requests for review and direct USAC to continue recovery actions against Windstream, the party in this case that was in the best position to prevent the violation of RHC Program requirements. For the same reasons, we also deny UTHSCT's request for a waiver of the Commission's competitive bidding requirements under the RHC Program.

## II. BACKGROUND

3. Under the rural health care universal service support mechanism, eligible rural health care providers (HCPs) and consortia that include eligible rural HCPs may apply for discounts for telecommunications and broadband services necessary for the provision of health care.<sup>6</sup> Telecom Program applicants must make a bona fide request for eligible services by posting an FCC Form 465 to

---

<sup>2</sup> Request for Review, WC Docket No. 02-60 (filed May 12, 2017) (UTHSCT Request for Review). Section 54.719(c) of the Commission's rules provides that a party seeking waiver of the Commission's rules shall seek relief directly from the Commission. 47 CFR § 54.719(c). We dismiss as moot UTHSCT's request for an extension of time in which to file its appeal of USAC's March 13, 2017 decisions. *See* Request for Extension of Time, WC Docket No. 02-60 (filed Apr. 18, 2017). The record shows that UTHSCT submitted a timely appeal of these decisions with the Commission. *See* Motion to Withdraw Request for Extension of Time, WC Docket No. 02-60 (filed June 1, 2017) (withdrawing UTHSCT's request for an extension of time).

<sup>3</sup> *See* Administrator's Decision on Appeal Letter from USAC, Rural Health Care Division, to Matthew A. Brill and Elizabeth R. Park, Latham & Watkins LLP (dated June 29, 2018) (denying Windstream's request that USAC reverse the March 13, 2017 denial for Telecom Program support submitted by UTHSCT for FY 2012-2016) (Windstream ADL); Administrator's Decision on Appeal Letter from USAC, Rural Health Care Division, to Russell D. Lukas and Jeffrey A. Mitchell, Lukas, LaFuria, Gutierrez & Sachs, LLP (dated June 29, 2018) (denying ABS's request that USAC reverse the March 13, 2017 denial for Telecom Program support submitted by UTHSCT for FY 2012-2016) (ABS ADL). *See also* Appendix A for a list of FRNs associated with UTHSCT's FY 2012-2016 applications.

<sup>4</sup> *See* Administrator's Decision on Appeal Letter from USAC, Rural Health Care Division, to Matthew A. Brill and Elizabeth R. Park, Latham & Watkins LLP (dated June 29, 2018) (denying Windstream's request that USAC reverse the decisions in the Commitment Adjustment Letters (COMADs) issued to Windstream adjusting UTHSCT funding commitments for FY 2012-2016 and recovery of improperly disbursed funding for FY 2012-2015) (Windstream COMAD ADL). *See also* Appendix B for a list of FRNs subject to USAC's COMAD proceedings. Due to a clerical error, several FCC Form 465 application numbers in the Windstream COMAD ADL's Appendix A are incorrectly listed. Appendix B includes the correct FCC Form 465 application numbers.

<sup>5</sup> Windstream COMAD ADL at 7.

<sup>6</sup> 47 CFR §§ 54.601, 54.602, 54.604, and 54.615 (2018). The Telecom Program competitive bidding rules cited herein reflect the rules in effect at all times relevant to this proceeding.

USAC's website for telecommunications carriers to review.<sup>7</sup> Applicants must review all bids submitted in response to the FCC Form 465 and wait at least 28 days before entering into a service agreement with the selected service provider.<sup>8</sup> Once the applicant has selected a provider and entered into a service contract, the applicant must submit its request for discounts to USAC by filing an FCC Form 466.<sup>9</sup> The applicant uses the FCC Form 466 to verify the type of services ordered and to certify that the selected service provider is the most cost-effective option.<sup>10</sup> After reviewing the funding requests, USAC issues funding decisions in accordance with the Commission's rules.

4. The Commission has consistently stated that competitive bidding is fundamental to the RHC Program, and that a critical requirement of the competitive bidding process is to ensure that it is conducted in a manner that does not give one bidder an unfair advantage over another bidder.<sup>11</sup> The Commission has further explained that “[t]o preserve the integrity of the competitive bidding process, an applicant's consultant is subject to the same prohibitions as an applicant itself with regard to the competitive bidding process.”<sup>12</sup> Service providers also have long been on notice that competitive bidding is compromised when they or their representatives place themselves in a position to influence the health

---

<sup>7</sup> *Id.* § 54.603 (2018); Rural Health Care Telecommunications Program, Description of Eligibility and Request for Services FCC Form 465, OMB 3060-0804 (July 2019) (FCC Form 465). The same application requirements were in force when UTHSCT submitted its service requests. *See* Health Care Providers Universal Service Description of Services Requested & Certification Form, OMB 3060-0804 (November 2011); Health Care Providers Universal Service Description of Services Requested & Certification Form, OMB 3060-0804 (August 2013); Health Care Providers Universal Service Description of Services Requested & Certification Form, OMB 3060-0804 (September 2016) (collectively, Prior FCC Forms 465).

<sup>8</sup> 47 CFR § 54.603(b)(3) (2018).

<sup>9</sup> Rural Health Care Telecommunications Program, Description of Request for Funding FCC Form 466, OMB 3060-0804 (July 2019). The same application requirements were in force when UTHSCT submitted its funding requests. *See* Health Care Providers Universal Service Funding Request and Certification Form, OMB 3060-0804 (November 2011); Health Care Providers Universal Service Funding Request and Certification Form, OMB 3060-0804 (August 2013); Health Care Providers Universal Service Funding Request and Certification Form, OMB 3060-0804 (September 2016).

<sup>10</sup> *Id.* HCPs must submit an FCC Form 466 every funding year for each service for which they are seeking Telecom Program support. Each funding year begins on July 1 and ends June 30 of the next calendar year. For example, FY 2020 runs from July 1, 2020 through June 30, 2021.

<sup>11</sup> *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9133-34, para. 686 (1997) (*Universal Service First Report and Order*) (“Consistent with the Joint Board’s recommendation for eligible schools and libraries, we conclude that eligible health care providers shall be required to seek competitive bids for all services eligible for support pursuant to section 254(h) by submitting their bona fide requests for services to the Administrator [for posting]”); *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678, 16778, para. 229 (2012) (*2012 Rural Health Care Order*), (“[C]ompetitive bidding furthers the competitive neutrality requirement in section 254(h)(2)(A) of the Act by ensuring that universal service support does not disadvantage one provider over another . . . .”); *Hospital Networks Management, Inc., Manchaca, Texas, Verizon Business Services, Arlington, Virginia, Rural Health Care Universal Service Support Mechanism*, WC Docket No. 02-60, Order, 31 FCC Rcd 5731, 5741, para. 20 (WCB 2016) (*Hospital Networks Order*) (“The principles underlying . . . orders addressing fair and open competitive bidding not only apply to the E-rate program . . . , but also to participants in the rural health care program. Indeed, the mechanics of the bidding processes in the rural health care and E-rate programs are effectively the same.”) (internal citation omitted).

<sup>12</sup> *See, e.g., Hospital Networks Order*, 31 FCC Rcd at 5740, para. 18 (finding a conflict of interest where “Mr. Zunke, in the role of consultant to the consortium members, was ostensibly acting on their behalf alone. Yet, simultaneously, [he] was acting on behalf of the apparent service provider, with whom the consortium was considering contracting . . . .”).

care provider's vendor selection process.<sup>13</sup> Thus, the Commission has made clear that competitive bidding must be fair and not undermined by improper conduct by the applicant, service provider, or consultant representing either or both parties.

5. Windstream is a provider of telecommunications services to residential, small business, and enterprise customers.<sup>14</sup> ABS is a network design and technology distribution company that designs telecommunications solutions for businesses and sets prices using access to more than 100 service providers nationwide.<sup>15</sup> Mr. Gary H. Speck is the managing partner and senior design engineer for ABS and has served as a partner since July 2006.<sup>16</sup> The East Texas Interactive Healthcare Network provides connectivity between medical health care centers and health care education institutions in east Texas, including the Burke Mental Health Clinic (Burke Center), the Andrews Center Behavioral Healthcare System (Andrews Center), and the Trinity Valley Community College Health Science Center (TVCC).<sup>17</sup> UTHSCT serves as the fiscal agent for these health care centers and provides them with facilities and staffing.<sup>18</sup>

6. In early 2011, UTHSCT engaged ABS as a consultant to assist UTHSCT with obtaining RHC Program support for a procurement.<sup>19</sup> ABS was responsible for managing a procurement that would supply telecommunications services to the Burke Center, Andrews Center, and TVCC.<sup>20</sup> Specifically, ABS was in charge of properly preparing and filing all forms necessary to obtain Telecom Program funding for each of these centers and assisting them with their bid evaluation processes.<sup>21</sup> Mr. Speck served as the contact person for each of the centers' FCC Forms 465 that collectively are the subject of this proceeding.<sup>22</sup>

7. On March 15, 2011, ABS entered into a "channel partner" (i.e., dealer) agreement with Windstream and its affiliates under which ABS would serve as Windstream's non-exclusive

---

<sup>13</sup> See, e.g., *Request for Review of Decisions of the Universal Service Administrator by Mastermind Internet Services, Inc.; Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 16 FCC Rcd 4028, 4033, para. 10 (2000) (*Mastermind Order*) (finding that the contact person influences an applicant's competitive bidding process by controlling the dissemination of information regarding the services requested and, when an applicant delegates that power to an entity that also participates in the bidding process as a prospective service provider, the applicant impairs its ability to hold a fair competitive bidding process); *Hospital Networks Order*, 31 FCC Rcd at 5742, para. 20 (applying holdings in the *Mastermind Order* to the RHC Program); *Schools and Libraries Universal Service Support Mechanism; A National Broadband Plan for Our Future*, Sixth Report and Order, CC Docket 02-6, 25 FCC Rcd 18762, 18800, para. 86 (2010) (*Schools and Libraries Sixth Report and Order*) (explaining that it is a violation of the Commission's competitive bidding rules if a service provider representative is listed as the FCC form's contact person and that service provider is also allowed to participate in the competitive bidding process); *Requests for Review of the Decision of the Universal Service Administrator by SEND Technologies, L.L.C., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 22 FCC Rcd 4950 (WCB 2007) (*SEND Order*) (finding that where the applicant's contact person is also a partial owner of the selected service provider, the relationship between the applicant and the service provider creates a conflict of interest and impedes fair and open competition).

<sup>14</sup> Declaration of Tim Loken, Attach. to Windstream Request for Review, ¶ 1 (Loken Decl.).

<sup>15</sup> Declaration (of Gary H. Speck), Attach. to ABS Request for Review, ¶ 4 (Speck Decl.).

<sup>16</sup> *Id.* at ¶ 1.

<sup>17</sup> UTHSCT Request for Review at 3.

<sup>18</sup> *Id.* at 3.

<sup>19</sup> *Id.* at 4.

<sup>20</sup> *Id.*

<sup>21</sup> UTHSCT Request for Review at 4; ABS Request for Review at 10.

<sup>22</sup> See Windstream ADL at 4.

representative to solicit orders from new business customers within Windstream's service area.<sup>23</sup> The agreement and any services provided to business customers solicited by ABS were to be governed by Windstream's tariffs and price lists on file with federal and state regulatory agencies.<sup>24</sup> Windstream compensated ABS in the amount of 20% of monthly recurring revenue from the contracts attributable to ABS.<sup>25</sup> The agreement remained in effect until April 19, 2016, when it was terminated by Windstream after Windstream determined that Mr. Speck was in breach of the channel partner agreement due to his dual role as UTHSCT's consultant and Windstream's channel partner.<sup>26</sup> UTHSCT also terminated its relationship with ABS after learning of Mr. Speck's dual role.<sup>27</sup>

8. Between April 20, 2012, and June 5, 2015, ABS submitted UTHSCT's FCC Forms 465 soliciting bids for services able to stream media and provide internet access, telemedicine, and link facilities.<sup>28</sup> Each of these forms identified Mr. Speck as the named contact person and "ABS Telecom LLC" as Mr. Speck's employer.<sup>29</sup> Mr. Speck managed the procurement, interfaced with all prospective bidders, and provided them with bid sheets for the desired services during the competitive bidding period.<sup>30</sup> Although multiple vendors requested additional information from UTHSCT about the various projects, Windstream was the only vendor to submit a bid for the sites in question.<sup>31</sup> Since Windstream was the only responsive bidder, UTHSCT selected it as the service provider for all UTHSCT sites.<sup>32</sup>

9. On March 13, 2017, USAC denied UTHSCT's FY 2012-16 funding requests after determining that UTHSCT's selection of Windstream as the service provider was not the result of a fair and open competitive bidding process.<sup>33</sup> USAC concluded that the relationship between Windstream and Mr. Speck created a conflict of interest that undermined the competitive bidding process for the FRNs at issue.<sup>34</sup> USAC also determined that ABS had a financial interest in selecting Windstream as the winning bidder since it received a sales commission from Windstream for identifying customers, and that this financial arrangement further tainted the competitive bidding process for the subject FRNs.<sup>35</sup> Because the

---

<sup>23</sup> Speck Decl. ¶ 12; Windstream Request for Review at 4.

<sup>24</sup> Speck Decl. ¶ 12.

<sup>25</sup> Letter from Matthew A. Brill and Elizabeth R. Park, Latham & Watkins LLP to USAC, Rural Health Care Division at 11 (filed May 11, 2017) (Windstream USAC Appeal) (appealing USAC's decision to deny UTHSCT's FY 2012-2016 applications).

<sup>26</sup> Windstream Request for Review at 5. Windstream asserts that it first learned of the dual role on or about February 12, 2016. Speck Decl. ¶ 7. *But see* ABS Opposition at 14 (Windstream had no "reasonable basis" for representing that it was unaware of Mr. Speck's dual role). On or about February 24, 2016, the wife of Mr. Speck formed CFT Filings, LLC (CFT) presumably to address the perceived conflict of interest. Windstream Request for Review at 5; Speck Decl. ¶ 9. CFT was to assume the consulting role for HCPs participating in the Telecom Program and was authorized by UTHSCT to act on its behalf before USAC in matters relating to the Telecom Program for FYs 2015-2018. Windstream Request for Review at 5-6.

<sup>27</sup> UTHSCT Request for Review at 6.

<sup>28</sup> UTHSCT Request for Review at 4; Windstream ADL at 3.

<sup>29</sup> Windstream ADL at 4.

<sup>30</sup> UTHSCT Request for Review at 4-5.

<sup>31</sup> *Id.* at 5.

<sup>32</sup> *Id.* at 2.

<sup>33</sup> *See* Letter from Craig Davis, Vice President, Rural Health Care Division, USAC to Ms. Darlene Flournoy, The Burke Center-West Austin Street, Trinity Valley Community College, UTHSCT on behalf of ETIHN-Andrews Center, and Mr. Zachery Mungeer, Windstream Communications, LLC at 1-2 (Mar. 13, 2017).

<sup>34</sup> *Id.* at 6.

<sup>35</sup> *Id.*

selection of Windstream was not the result of a fair and open competitive bidding process, USAC deemed the underlying FCC Forms 465 defective and therefore denied all funding requests arising from these forms.<sup>36</sup> To the extent USAC had previously disbursed funding for FRNs arising from these defective FCC Forms 465, USAC separately initiated recovery of these funds.<sup>37</sup>

10. On May 11 and December 19, 2017, Windstream filed appeals of USAC's decisions, acknowledging that it had a business relationship with Mr. Speck arising from a channel partner agreement executed on March 15, 2011, under which ABS served as its sales agent by identifying business opportunities on its behalf.<sup>38</sup> Notwithstanding this agreement, Windstream argued that it was not responsible for any conflict of interest involving the procurements at issue and that USAC should direct recovery action towards ABS because Mr. Speck and ABS were the only parties that could have improperly profited from the commission arrangement with Windstream.<sup>39</sup> Windstream also argued that USAC should reverse its decision to deny funding to Windstream because the current Telecom Program rules do not contain any fair and open competitive bidding requirements, which USAC contends were violated.<sup>40</sup> Finally, Windstream argued that constitutional and equitable considerations mitigate against depriving Windstream of Telecom Program funding.<sup>41</sup>

11. ABS filed its own appeal of USAC's decisions on May 12, 2017.<sup>42</sup> In its appeal, ABS also acknowledged that it had a business relationship with Windstream arising from a non-exclusive agreement under which ABS would receive commissions for soliciting new business projects on its behalf.<sup>43</sup> ABS argued that UTHSCT and ABS were only subject to the competitive bidding and certification requirements of section 54.603 of the Commission's rules, which do not require the competitive bidding process to be fair and open, and that neither UTHSCT nor ABS violated any provision of section 54.603.<sup>44</sup> ABS then asserted that, regardless of the foregoing, UTHSCT's competitive bidding process was in fact fair and open.<sup>45</sup> Finally, ABS argued that USAC improperly withheld certain documents from ABS relating to USAC's denial of funding to UTHSCT.<sup>46</sup>

12. In separate letters issued on June 29, 2018, USAC denied Windstream and ABS's appeals.<sup>47</sup> USAC rejected Windstream's position that funding should not be denied because Windstream was not responsible for any conflict of interest between itself and Mr. Speck, explaining that denial was

---

<sup>36</sup> *Id.* at 2. *See also infra* at Appendix A (listing the denied FRNs).

<sup>37</sup> *See* Notification of Commitment Adjustment Letters from Rural Health Care Division, USAC to Maribeth Everley, Windstream Communications, LLC (Oct. 23, 2017). *See also infra* at Appendix B (listing the FRNs subject to commitment adjustments).

<sup>38</sup> Windstream USAC Appeal at 3; Letter from Matthew A. Brill and Elizabeth R. Park, Latham & Watkins, LLP, to USAC, Rural Health Care Division at 3-4 (Dec. 19, 2017) (Windstream COMAD Appeal) (appealing USAC's decision to adjust funding committed to UTHSCT for FYs 2012-2015).

<sup>39</sup> Windstream USAC Appeal at 11-12; Windstream COMAD Appeal at 14.

<sup>40</sup> Windstream COMAD Appeal at 7-8.

<sup>41</sup> Windstream USAC Appeal at 12-14; Windstream COMAD Appeal at 15-16.

<sup>42</sup> Letter from Russell D. Lukas and Jeffrey A. Mitchell, Lukas, LaFuria, Gutierrez & Sachs LLP to USAC, Rural Health Care Division (May 12, 2017) (ABS USAC Appeal).

<sup>43</sup> ABS USAC Appeal at 9.

<sup>44</sup> *Id.* at 3-8.

<sup>45</sup> *Id.* at 8-10.

<sup>46</sup> *Id.* at 10 (arguing that because ABS was an aggrieved party in the proceeding, USAC should have provided the documents to ABS upon request so that it would have a meaningful opportunity to be heard).

<sup>47</sup> *See supra* notes 3-4.

required because the support requested was for services procured through a competitive bidding process that was not fair and open.<sup>48</sup> USAC also rejected the arguments of both parties that, because the fair and open standard is not codified in the Telecom Program rules, they are not bound by that standard.<sup>49</sup> USAC found that the Commission has consistently held that the competitive bidding process must be fair and open notwithstanding the fact that the standard has not be codified in the existing Telecom Program rules.<sup>50</sup> USAC was also not persuaded by ABS's argument that even if the fair and open standard did apply to the instant procurements, UTHSCT conducted a fair and open bidding process because all potential bidders were treated in the same manner and had the same opportunity to bid.<sup>51</sup> USAC found that the relationship between Windstream and Mr. Speck created a conflict of interest because the relationship gave the contact person the ability to influence an HCP's competitive bidding process, which undermined the competitive bidding process for all FRNs at issue.<sup>52</sup> USAC also determined that Windstream was in fact aware of Mr. Speck's dual role as its channel partner and UTHSCT's consultant, and despite this knowledge, submitted bids in response to FCC Forms 465 that listed Mr. Speck as the contact person for UTHSCT.<sup>53</sup> USAC therefore directed its recovery actions against Windstream, finding that Windstream was the party responsible for violating the Commission's competitive bidding requirements.<sup>54</sup>

13. Windstream and ABS then filed the instant requests for review with the Commission.<sup>55</sup> In their requests, Windstream and ABS reiterate the argument that the Commission's fair and open competitive bidding requirements do not apply to Telecom Program participants because those requirements did not apply to the Telecom Program during the time frame relevant to UTHSCT's procurements.<sup>56</sup> Windstream further argues that, even if the fair and open standard were applicable, it applies only to health care providers (and not to service providers such as Windstream) because the rule governing competitive bidding, by its terms, only concerns health care provider applicants.<sup>57</sup> Windstream also maintains that it was unaware of ABS and Mr. Speck's dual role at the time the bid was submitted notwithstanding USAC's finding to the contrary<sup>58</sup> and that, under Commission precedent, Windstream cannot be held liable for the conflict of interest because it was not the party that committed the rule violation.<sup>59</sup> To the extent the Commission finds a violation of its competitive bidding requirements,

---

<sup>48</sup> Windstream ADL at 5.

<sup>49</sup> Windstream COMAD ADL at 5-6; ABS ADL at 5-6.

<sup>50</sup> Windstream COMAD ADL at 6; ABS ADL at 6.

<sup>51</sup> ABS ADL at 8-9.

<sup>52</sup> *Id.*

<sup>53</sup> Windstream COMAD ADL at 7.

<sup>54</sup> Windstream COMAD ADL at 7. USAC stated that it is not authorized to recover support from third parties like ABS. *Id.*

<sup>55</sup> *See supra* note 1.

<sup>56</sup> Windstream Request for Review at 7-9; Windstream Reply at 2; ABS Request for Review at 30-35; ABS Opposition at 4-5. ABS also advances three procedural arguments: (1) that USAC violated due process and *ex parte* rules when it denied ABS's request for copies of documents pertaining to Windstream's appeal; (2) that, because it is not a federal agency, USAC improperly relied on the Freedom of Information Act when it withheld documents and documentary evidence from ABS, and (3) that USAC ignored ABS's "substantial and material questions of fact" with respect to whether Windstream violated section 1.17 of the Commission's rules. ABS Request for Review at 35-41; ABS Opposition at 12-16 (citing 47 CFR § 1.17).

<sup>57</sup> Windstream Request for Review at 10 (citing 47 CFR § 54.603(a)).

<sup>58</sup> *Id.* at 9-10.

<sup>59</sup> *Id.* at 11-15 (citing *Federal-State Joint Board on Universal Service; Changes to the Board of Directors for the National Exchange Carrier Association, Inc.; Schools and Libraries Universal Service Support Mechanism*, CC

(continued....)

Windstream requests a waiver of such requirements because UTHSCT's bidding processes were not compromised by what amounts to a technical rule violation and that the process was otherwise consistent with the Commission's competitive bidding policy goals.<sup>60</sup> UTHSCT also seeks waiver of the Commission's competitive bidding rules, on the grounds that the service provider involvement in the procurement processes at issue did not affect the outcome of the procurements and the HCPs were unaware of, and did not benefit from, the conflict of interest.<sup>61</sup>

### III. DISCUSSION

14. Consistent with our obligation to conduct a *de novo* review of appeals of decisions made by USAC,<sup>62</sup> we find that the relationship between UTHSCT's consultant, Mr. Speck, and the selected service provider, Windstream, created a conflict of interest that irreparably undermined the integrity of UTHSCT's competitive bidding process in violation of RHC Program requirements. We therefore deny the petitioners' requests for review and waiver and direct USAC to continue recovery actions against Windstream consistent with this Order.

15. The record shows that Mr. Speck served as FCC Form 465 contact person for and consultant to UTHSCT and as channel partner to Windstream simultaneously during funding years 2012-16.<sup>63</sup> We are troubled by this arrangement and the conflict of interest that it created. A contact person can greatly influence the competitive bidding process by controlling the dissemination of information regarding the services requested.<sup>64</sup> Where a contact person with this degree of influence also has a relationship with a service provider, the risk of an unfair competitive bidding process becomes significantly magnified. For instance, a contact person with a relationship with a prospective bidder may be inclined to not provide information to other bidders of the same type and quality that the contact person retains for its own use as a bidder.<sup>65</sup> This contact person also may discourage prospective bidders from submitting a bid or exclude prospective bidders from the bidding process altogether.<sup>66</sup> He or she could likewise lead prospective bidders not to participate in the competitive bidding process if the would-be bidder believes that vendor evaluations will not be conducted fairly given that another bidder is serving as the contact person.<sup>67</sup> For all these reasons, it is well established under Commission precedent that an

(Continued from previous page) \_\_\_\_\_  
Docket Nos. 96-45, 97-21 and 02-6, Order on Reconsideration and Fourth Report and Order, 19 FCC Rcd 15252, 15257, para. 10 (2004) (*Schools and Libraries Fourth Report and Order*); *Hospital Networks Order*; *Requests for Review of Decisions of the Universal Service Administrator by BellSouth Telecomms., Inc./Union Parish School Bld.*, CC Docket No. 02-6, Order, 27 FCC Rcd 11208 (WCB 2012) (*BellSouth Order*); *SEND Order*; and *Requests for Review of Decisions of the Universal Service Administrator by Achieve Telecom Network of Massachusetts et al.*, CC Docket No. 02-6, Order, 30 FCC Rcd 3653 (WCB 2015) (*Achieve Telecom Order*). Windstream also asserts that requiring it to forgo funds awarded under the Telecom Program would both amount to an unconstitutional confiscation of property without just compensation and run counter to basic principles of equity because Windstream relied on the funding commitments to procure high-capacity circuits from third parties to enable the provision of services to UTHSCT. Windstream Request for Review at 16-17.

<sup>60</sup> Windstream Request for Review at 17-18. *See also* ABS Opposition at 8-10 (agreeing with Windstream that the competitive bidding process was fair and open because there is no evidence showing that the alleged conflict of interest "impeded fair and open competition").

<sup>61</sup> UTHSCT Request for Review at 7-10.

<sup>62</sup> 47 CFR § 54.723(a).

<sup>63</sup> *See supra* paras. 6-8.

<sup>64</sup> *Mastermind Order*, 16 FCC Rcd at 4033, para. 10.

<sup>65</sup> *See SEND Order*, 22 FCC Rcd at 4953, para. 6; *Hospital Networks Order*, 31 FCC Rcd at 5740, para. 17.

<sup>66</sup> *See Hospital Networks Order*, 31 FCC Rcd at 5740, para. 17.

<sup>67</sup> *See, e.g., Mastermind Order*, 16 FCC Rcd at 4033, para. 11.

FCC Form 465 that lists as the contact person an employee or representative of a service provider that also participates in the bidding process or is ultimately selected to provide the requested service will be deemed defective.<sup>68</sup> That is the case here. Upon review of the facts, we agree with USAC that Mr. Speck's connection to UTHSCT and Windstream created an impermissible conflict of interest. USAC correctly concluded that the dual role held by Mr. Speck compromised the impartiality and fairness of the competitive bidding process, as prohibited by Commission precedent, and thus invalidated the service contracts at issue for purposes of receiving rural health care support.

16. Windstream and ABS argue that, when reaching its decisions, USAC improperly relied on a "fair and open" competitive bidding requirement that the petitioners maintain is absent from the Telecom Program rules.<sup>69</sup> The parties also point to the Commission's then-pending proposal to add a specific "fair and open" standard to the Telecom Program rules as evidence that USAC's application of the standard now in advance of its adoption amounts to an impermissible retroactive application of that standard.<sup>70</sup> We reject these arguments. The requirement that Telecom Program competitive bidding be conducted fairly and openly is not new.<sup>71</sup> The Commission has consistently stated that competitive bidding is fundamental to the RHC Program, and that "a critical requirement of the competitive bidding process is to ensure that [it] is conducted in a manner that does not give one bidder an unfair advantage over another bidder."<sup>72</sup> Thus, notwithstanding the absence of the precise phrase "fair and open" in the program's rules, notions of fairness and openness have long served as the foundation of the Telecom Program's competitive bidding mechanism.

17. Indeed, the principles underlying the Commission's orders addressing fair and open competitive bidding apply not only to the E-Rate Program (as Windstream and ABS point out) but also to the Telecom Program.<sup>73</sup> Notably, the mechanics of the bidding processes in the two programs are effectively the same. Like the FCC Form 470 in the E-Rate Program (*i.e.*, the FCC form inviting service providers to submit bids in response to an applicant's request for services), the Telecom Program's FCC Form 465 describes the applicant's planned service requirements, as well as other information regarding

---

<sup>68</sup> See *Hospital Networks Order*, 31 FCC Rcd at 5742, para. 20 (noting that funding requests arising from the form will be denied); *Mastermind Order*, 16 FCC Rcd at 4032, para. 9.

<sup>69</sup> Windstream Request for Review at 7-9; Windstream Reply at 2; ABS Request for Review at 30-35; ABS Opposition at 4-5.

<sup>70</sup> Windstream Request for Review at 7-8; ABS Request for Review at 32-35; ABS Opposition at 5. The Commission proposed to codify the "fair and open" competitive bidding standard under the Telecom Program rules to align those rules with the HCF Program rules. See *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Notice of Proposed Rulemaking and Order, 32 FCC Rcd 10631, 10663, para. 100 (2017) (*Promoting Telehealth Notice*). The Commission subsequently adopted this proposal. See *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Report and Order, 34 FCC Rcd 7335, 7410, para. 161 (2019) (*Promoting Telehealth Order*).

<sup>71</sup> See *Network Services Solutions, LLC*, Notice of Apparent Liability for Forfeiture and Order, 31 FCC Rcd 12238, 12270, n. 228 (2016) ("The Commission's fair and open competitive bidding requirements date back to the inception of the USF and have always applied to service providers.").

<sup>72</sup> *DataConnex, LLC*, Notice of Apparent Liability for Forfeiture and Order, 33 FCC Rcd 1575, 1586, para. 27 (2018) (*DataConnex*), citing *Universal Service First Report and Order*, 12 FCC Rcd at 9133-34, paras. 686, 688.

<sup>73</sup> See, e.g., *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight, Federal-State Joint Board on Universal Service, Schools and Libraries Universal Service Support Mechanism, Rural Health Care Support Mechanism, Lifeline and Link-Up, Changes to the Board of Directors for the National Exchange Carrier Association, Inc.*, WC Docket Nos. 05-195, 02-60, 03-109, CC Docket Nos. 96-45, 02-6, 97-21, Report and Order, 22 FCC Rcd 16372 (2007) (emphasizing the need for uniform application of its rules across all universal service programs); *In the Matter of Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678 (2012) (referencing several E-Rate orders as support in the establishment of the Healthcare Connect Fund's competitive bidding process).

the applicant and its competitive bidding process that may be relevant to the preparation of bids.<sup>74</sup> Both forms must be completed by the entity that will negotiate with prospective service providers and signed by a person who is authorized to order the requested services on behalf of the applicant.<sup>75</sup> Both forms also require the applicant to name a person whom prospective service providers may contact for additional information.<sup>76</sup> As discussed above, this contact person may not be affiliated with a service provider that participates in the bidding process as a bidder, and in cases where there is such an affiliation, the underlying FCC Form 465 or Form 470 is deemed defective.<sup>77</sup> While it is correct that the Commission proposed to,<sup>78</sup> and subsequently did,<sup>79</sup> align the “fair and open” competitive bidding standard by codifying it within the Telecom Program’s rules, that proposal, and the Commission’s subsequent adoption of the proposal, merely codified longstanding Commission precedent and did not impose a new competitive bidding requirement. As the Commission explained when making the proposal, “numerous Commission orders state that an applicant must conduct a fair and open competitive bidding process prior to submitting a request for funding, and indeed, a process that is not ‘fair and open’ is inherently inconsistent with ‘competitive bidding.’”<sup>80</sup> Simply put, we do not accept the argument that the mere absence of the words “fair and open” from the Telecom Program rules excuses unfair, anti-competitive conduct on the part of RHC program participants.<sup>81</sup>

18. Windstream maintains that, even if the “fair and open” requirement applies to the Telecom Program, it imposes no obligation on service providers because the Telecom Program

---

<sup>74</sup> See *Schools and Libraries Universal Service, Description of Services Requested and Certification Form 470*, OMB 3060-0806 (December 2018) (FCC Form 470); FCC Form 465; Prior FCC Forms 465.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> See *supra* para. 15. Cf. *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18799-800, para. 86. (“[A]n applicant violates the Commission’s competitive bidding rules if the applicant turns over to a service provider the responsibility for ensuring a fair and open competitive bidding process”).

<sup>78</sup> See *Promoting Telehealth Notice*, 32 FCC Rcd at 10663, para. 100 (explaining that by adding the “fair and open” standard, the Commission is “merely proposing to codify an existing requirement”).

<sup>79</sup> *Promoting Telehealth Order*, 34 FCC Rcd at 7409, para. 160.

<sup>80</sup> *Promoting Telehealth Notice*, 32 FCC Rcd at 10663, para. 100. Similarly, when adopting the proposal to codify the “fair and open” standard in the Telecom Program rules, the Commission noted that “the Commission has long stated that an applicant must conduct a fair and open competitive bidding process.” *Promoting Telehealth Order*, 34 FCC Rcd at 7409, para. 160. See, e.g., *Mastermind Order*, 16 FCC Rcd at 4033, para. 10 (holding that when the power of an applicant’s contact person to disseminate information regarding the requested services is delegated to a service provider participating in the bidding process, the ability to hold a fair and open competitive bidding process is irreparably impaired); *Schools and Libraries Universal Service Support Mechanism*, CC Docket Nos. 96-45, 97-21 and 02-6, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912, 26939, para. 66 (2003) (stating that a fair and open competitive bidding process is critical to preventing waste, fraud, and abuse of program resources); *Hospital Networks Order*, 31 FCC Rcd at 5740, para. 17 (holding that an affiliation between an applicant’s contact person and a prospective bidder undermines fair and open competitive bidding); *Franciscan Skemp Waukon Clinic, Waukon, Iowa, Rural Health Care Universal Service Support Mechanism*, WC Docket No. 02-60, Order, 29 FCC Rcd 11714, 11717, para. 9 (WCB 2014) (holding that when an applicant signs a contract with a service provider before the expiration of the 28-day waiting period required under the Commission’s rules, the applicant impairs its ability to hold a fair and open competitive bidding process); *Ozark Guidance Center, Springdale, Arizona, Rural Health Care Universal Service Support Mechanism*, WC Docket No. 02-60, Order, 29 FCC Rcd 14319, 14321, para. 4 (WCB 2014) (overturning USAC denial of support because Ozark conducted a fair and open competitive bidding process for the funding requests at issue).

<sup>81</sup> See *Mastermind Order*, 16 FCC Rcd at 4032-33, para. 10 (rejecting the claim that applications cannot be denied in the absence of a rule specifically prohibiting a service provider’s involvement in the competitive bidding process).

competitive bidding rules only mention, and thus only apply to, “health care provider” applicants.<sup>82</sup> We reject this argument. Windstream’s status as a service provider does not grant it immunity from compliance with our competitive bidding rules. Service providers “have long been aware that the Commission will take action against service providers that seek to secure an unfair advantage in competing for contracts supported by the USF or otherwise engage in conduct that threatens to damage the integrity of USF programs in violation of the Commission’s Rules.”<sup>83</sup> As the Commission has explained, “the danger of waste, fraud, and abuse by service providers is as great as the danger of such conduct by rural health care providers.”<sup>84</sup>

19. We concur with USAC’s determination that Windstream was the party responsible for the competitive bidding violation.<sup>85</sup> We find that Windstream’s claim that it first discovered in February 2016 that Mr. Speck “may have been” acting as a consultant for UTHSCT is not credible.<sup>86</sup> Between April 20, 2012, and June 2, 2015, ABS submitted on UTHSCT’s behalf multiple FCC Forms 465 requesting eligible services.<sup>87</sup> The FCC Form 465 in each case listed Mr. Speck and his organization, ABS Telecom LLC, as the contact for the UTHSCT health care provider.<sup>88</sup> Windstream submitted bids in response to these forms, which were ultimately accepted for funding support. Windstream therefore cannot credibly claim that it lacked knowledge of Mr. Speck’s involvement with UTHSCT when his name and organization were collectively listed as the point of contact for the UTHSCT entities – particularly given the fact that Windstream had an active contractual relationship with Mr. Speck’s organization related to the same transactions involving UTHSCT.<sup>89</sup>

---

<sup>82</sup> Windstream Request for Review at 10-11.

<sup>83</sup> *DataConnex*, 33 FCC Rcd at 1608, para. 81 (2018) (explaining that parties that seek universal service fund reimbursement “impliedly represent that they have not violated the Commission’s competitive bidding rules in a manner that would disqualify them from reimbursement”).

<sup>84</sup> *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight, Federal-State Joint Board on Universal Service, Schools and Libraries Universal Service Support Mechanism, Rural Health Care Support Mechanism, Lifeline and Link-up*, WC Docket Nos. 05-195, 02-60, and 03-109 and CC Docket Nos. 96-45 and 0206, Report and Order, 22 FCC Rcd 16732, 16385, para. 26 (2007).

<sup>85</sup> See Windstream COMAD ADL at 7.

<sup>86</sup> See Windstream Request for Review at 4-5.

<sup>87</sup> See Windstream ADL at 3-4, n. 15.

<sup>88</sup> *Id.* at 4.

<sup>89</sup> Windstream relies on four Commission decisions to support its position that recovery efforts cannot be taken against a party not responsible for the conflict of interest or other rules violation. See *supra* note 59. Windstream is correct that, in the cases cited, the Commission directed USAC recovery actions only against those parties responsible for a competitive bidding rule violation. See *Hospital Networks Order*, 31 FCC Rcd at 5743, para. 22 (finding no evidence that Verizon violated the competitive bidding rules or that there was a conflict of interest between Verizon and the consortium applicant); *BellSouth Order*, 27 FCC Rcd at 11210, para. 3 (finding no evidence that BellSouth violated the competitive bidding rules or that there was a conflict of interest between BellSouth and the applicant); *SEND Order*, 22 FCC Rcd at 4953-54, paras. 6, 10 (finding that a prohibited conflict of interest existed between the applicant and SEND Technologies and remanding the relevant applications to USAC for recovery actions against SEND Technologies); *Achieve Telecom Order*, 30 FCC Rcd at 3672, para. 31 (finding that Achieve violated the competitive bidding rules and directing USAC to continue its recovery actions against Achieve). Here we conclude that Windstream was the party responsible for the competitive bidding rule violation and so, consistent with the very cases cited by Windstream, properly direct USAC to recover the funds improperly awarded to Windstream. For similar reasons, we also reject Windstream’s arguments asserting an unconstitutional taking without just compensation and raising basic principles of equity. See Windstream Request for Review at 16-19. Both arguments are based on the faulty premise of Windstream’s assertion of innocence with respect to the conflict of interest, which we determine to not be the case.

20. Our precedent requires that recovery actions be taken against the party in the best position to prevent the competitive bidding rule violation.<sup>90</sup> In this case, that party is Windstream because it was aware of (or should have been aware of) its business relationship with Mr. Speck.<sup>91</sup> Rather than ending that relationship, Windstream submitted bids over multiple years in response to FCC Forms 465 that listed Mr. Speck as the contact person for the applicants, and then received significant funding support based on those very forms. To be sure, Windstream eventually terminated its agreement with Mr. Speck in 2016 after determining that Mr. Speck's dual role created a conflict of interest. But Windstream undertook such action after several years passed where the impermissible conflict of interest persisted. Had Windstream been more diligent, it could have terminated the relationship with Mr. Speck much sooner in the process before funding was committed.<sup>92</sup>

21. Finally, we dismiss the Windstream and UTHSCT requests to waive the Telecom Program competitive bidding rules. Both parties rely on our prior decisions holding that waiver is appropriate in cases where the competitive bidding process was not compromised by technical rule violations and the outcomes of the vendor selection processes were otherwise consistent with the policy goals underlying the Commission's competitive bidding rules.<sup>93</sup> Both parties specifically point to the fact

---

<sup>90</sup> See, e.g., *Schools and Libraries Fourth Report and Order*, 19 FCC Rcd at 15257, para. 15 (directing USAC to consider which party was in a better position to prevent the statutory or rule violation); *Achieve Telecom Order*, 30 FCC Rcd at 3672, para. 30 (concluding that although all involved parties violated Commission rules, the service provider was in a better position to prevent these rule violations because it alone know of a scheme to pass through, control, and direct the disbursement of funds to cover the non-discounted share of payments from schools for the service provider's services in violation of the E-Rate program rules). Since there is no evidence in the record that UTHSCT knew of Mr. Speck's agreement with Windstream, we find that it is appropriate for USAC to continue its recovery actions against Windstream only. Under Commission precedent, recovery efforts are directed against health care providers and/or service providers. See *2012 Rural Health Care Order*, 27 FCC Rcd at 16814, para. 339 (2012) ("Recovery of funds will be directed at the party or parties (including both beneficiaries and vendors) who have committed the statutory or rule violation.").

<sup>91</sup> Having determined Windstream to be the party in the best position to prevent the competitive bidding violation, we decline to examine the question raised by ABS regarding whether Windstream violated section 1.17 of our rules. See ABS Request for Review at 41. We also dismiss ABS's argument alleging, without persuasive citation, that USAC violated its due process rights and the *ex parte* rules by not providing ABS with certain documents concerning Windstream's appeal. *Id.* at 35-41. Even if we were to find that ABS had articulated a valid due process claim, it ultimately received the documents it requested from USAC pursuant to a Freedom of Information Act (FOIA) request in September 2017 and directly from Windstream in August 2018 and ABS alleges no other injury outside its initial failure to receive the documents. *Id.* at 19, 29-30. Cf. *Bayala v. U.S. Dep't of Homeland Sec., Office of the Gen. Counsel*, 827 F.3d 31, 34 (D.C. Cir. 2016) (holding that a FOIA claim is moot once an agency produces the requested documents); *Anguimate v. U.S. Dep't of Homeland Sec.*, 918 F. Supp 2d 13, 17 (D.D.C. 2013) (holding that a plaintiff's due process claim is moot where the basis for claim is that an agency may use a document against plaintiff that plaintiff was not allowed to see in advance but which the agency ultimately did not use in a concluded proceeding) (citing *Clarke v. United States*, 915 F.2d 669, 701 (D.C. Cir. 1990) ("Even where litigation poses a live controversy when filed, the [mootness] doctrine requires a federal court to refrain from deciding it if 'events have so transpired that the decision will neither presently affect the parties' rights nor have a more-than-speculative chance of affecting them in the future.'") (citation omitted)).

<sup>92</sup> Windstream asserts that its channel partner agreement with ABS required that ABS comply with all applicable laws, including the Commission's rules and regulations. Windstream Request for Review at 4. That is a private contractual matter between Windstream and ABS and not relevant to the decision we make here. See *Applications of Centel Corp. and Sprint Corp. for Consent to the Transfer of Control for Authorizations in the Domestic Public Cellular Radio Telecommunications Service and Other Common Carrier Services*, Memorandum Opinion and Order, 8 FCC Rcd 1829, 1831, para. 10 (CCB 1993) (Commission is not the proper forum for the resolution of private contractual disputes).

<sup>93</sup> See Windstream Request for Review at 17; UTHSCT Request for Review at 8-9 (citing *Central Islip Union Order*, 29 FCC Rcd at 2715; *Ja Joya Order*, 28 FCC Rcd at 7866; *Coolidge Unified Order*, 28 FCC Rcd 16907).

that Windstream was the only service provider to submit a bid in response to UTHSCT's FCC Forms 465 as evidence that the competitive bidding process was not compromised and consistent with policy.<sup>94</sup>

22. Waiver of the Commission's rules is appropriate if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.<sup>95</sup> Neither Windstream nor UTHSCT has demonstrated that a waiver is warranted in this case. The dual role held by Mr. Speck represents a violation of our rules that rises far above a mere "technical" rule violation because the underlying conflict of interest that the dual role created fundamentally undermined the notion of fairness that is critical to the competitive bidding process. Unlike the cases relied on by Windstream and UTHSCT involving violations whose outcomes on the competitive bidding process were "likely to impose the least burden on the federal universal service fund,"<sup>96</sup> Mr. Speck's dual role had unknown consequences on the bidding outcomes because it could have convinced prospective bidders to refrain from participating. Even the perception of a relationship between a service provider and applicant could lead prospective bidders to believe that bidding will not be conducted in a fair and open manner and depress participation in the bidding process.<sup>97</sup> Thus, the fact that Windstream alone submitted bids in response to the subject FCC Forms 465 is not necessarily evidence of a lack of harm to the competitive bidding process. We recognize that strict enforcement of our competitive bidding rules in this case means a harsh result for Windstream. However, our underlying policy of ensuring that rural health care providers receive the most cost-effective services eligible for universal service support requires that we not waive our rules in the face of such a significant conflict of interest.

23. As the administrator of the rural health care universal service support mechanism, USAC is expected to commence recovery actions when it becomes aware of a violation of program rules and requirements.<sup>98</sup> In the instant matter, USAC reviewed UTHSCT's competitive bidding processes and documentation submitted on appeal concerning these processes and acted appropriately pursuant to its findings. We are deeply concerned about the practices of the type addressed here, which undermine the framework of the competitive bidding process and ultimately damage the integrity of the program. Neither Windstream, ABS, nor UTHSCT has provided sufficient evidence demonstrating that USAC erred in its decisions. We therefore deny the petitioners' requests for review and/or waiver and direct USAC to continue its recovery actions against Windstream for any monies disbursed for the funding year 2012-2015 FRNs identified in Appendix B. We also affirm USAC's decision to rescind funding commitments for the funding year 2012-2016 FRNs identified in Appendix A.

#### IV. ORDERING CLAUSES

24. ACCORDINGLY, IT IS ORDERED that, 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 pursuant to authority delegated in sections 0.91, 0.291 and 54.722(a) of the Commission's rules, 47

<sup>94</sup> See Windstream Request for Review at 17; UTHSCT Request for Review at 10.

<sup>95</sup> Generally, the Commission may waive its rules for good cause shown. See 47 CFR § 1.3. The Commission may exercise its discretion to waive a rule where particular facts make strict compliance inconsistent with the public interest. See *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. See *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166.

<sup>96</sup> *Central Islip Union Order*, 29 FCC Rcd at 2716, note 7.

<sup>97</sup> *Hospital Network Order*, 31 FCC Rcd at 5740, para. 17.

<sup>98</sup> See, e.g., *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 at 7197, para. 8 (1999) (determining that Congress required the Commission to recover monies erroneously disbursed); *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, 15 FCC Rcd 22975 (2001) (establishing procedures for implementing commitment adjustment recovery actions).

C.F.R. §§ 0.91, 0.291 and 54.722(a), the requests for review filed by Windstream Communications, LLC, Little Rock, Arkansas, on August 23, 2018, and ABS Telecom, LLC and Gary Speck, Plano, Texas, on August 28, 2018, ARE DENIED.

25. IT IS FURTHER ORDERED that, 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 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, the request for waiver of sections 54.603 and 54.615 of the Commission's rules, 47 C.F.R. §§ 54.603, 54.615, filed by Burke Center-West Austin Street, Trinity Valley Community College, and the University of Texas Health Science Center at Tyler on behalf of the East Texas Interactive Healthcare Network-Andrews Center on May 12, 2017, IS DENIED.

26. 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 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, that USAC SHALL CONTINUE its recovery actions against Windstream Communications, LLC, and SHALL SEEK recovery for any monies disbursed under the funding year 2012, 2013, 2014, and 2015 funding request numbers identified herein.

27. 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 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, that USAC SHALL RESCIND funding committed for the funding year 2012, 2013, 2014, 2015, and 2016 FRNs identified herein.

28. IT IS FURTHER ORDERED that, 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 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, the request for waiver of section 54.720(a) of the Commission's rules, 47 C.F.R. § 54.720(a), filed by ABS Telecom LLC and Gary Speck, Plano, Texas, on September 11, 2018, IS GRANTED.

29. IT IS FURTHER ORDERED that, 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 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, the request for waiver of section 54.720(a) of the Commission's rules, 47 C.F.R. § 54.720(a), filed by Burke Center-West Austin Street, Trinity Valley Community College, and the University of Texas Health Science Center at Tyler on behalf of the East Texas Interactive Healthcare Network-Andrews Center on April 18, 2017, IS DISMISSED AS MOOT.

30. 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 A**FY 2012 - 2016 FRNs For Which Funding Has Been Committed/Denied**

<b>Health Care Provider Number</b>	<b>Health Care Provider Name</b>	<b>Funding Year</b>	<b>FCC Form 465</b>	<b>Funding Request Number</b>
26649	Trinity Valley Community College	2012	43123237	1210028
26649	Trinity Valley Community College	2012	43123239	1210032
26649	Trinity Valley Community College	2012	43123240	1210038
26649	Trinity Valley Community College	2013	43123237	1332019
26649	Trinity Valley Community College	2014	43123240	1455788
26649	Trinity Valley Community College	2014	43123237	1455793
26649	Trinity Valley Community College	2014	43133868	1455796
26649	Trinity Valley Community College	2014	43133868	1455797
26649	Trinity Valley Community College	2014	43133868	1455798
26649	Trinity Valley Community College	2014	43133868	1456124
26649	Trinity Valley Community College	2014	43133868	1456125
26649	Trinity Valley Community College	2014	43144511	1456126
26649	Trinity Valley Community College	2014	43144511	1456997
26649	Trinity Valley Community College	2014	43144511	1456998
26649	Trinity Valley Community College	2014	43144511	1462637
26649	Trinity Valley Community College	2014	43144511	1462640
33149	The Burke Center- West Austin Street	2014	43144429	1456999
33149	The Burke Center- West Austin Street	2014	43144429	1457000
33149	The Burke Center- West Austin Street	2014	43144429	1457001
33149	The Burke Center- West Austin Street	2014	43144429	1457002
33149	The Burke Center- West Austin Street	2014	43144429	1457003
33149	The Burke Center- West Austin Street	2014	43144429	1457004
33149	The Burke Center- West Austin Street	2014	43144429	1457005
33149	The Burke Center- West Austin Street	2014	43144429	1457006

Health Care Provider Number	Health Care Provider Name	Funding Year	FCC Form 465	Funding Request Number
33149	The Burke Center- West Austin Street	2014	43144429	1457007
33149	The Burke Center- West Austin Street	2014	43144429	1457008
33149	The Burke Center- West Austin Street	2014	43144429	1457010
33149	The Burke Center- West Austin Street	2014	43144429	1457011
33149	The Burke Center- West Austin Street	2014	43144429	1462644
33149	The Burke Center- West Austin Street	2014	43144429	1462646
33149	The Burke Center- West Austin Street	2014	43144429	1465687
26649	Trinity Valley Community College	2015	43133868	1578411
26649	Trinity Valley Community College	2015	43133868	1578412
26649	Trinity Valley Community College	2015	43133868	1578413
26649	Trinity Valley Community College	2015	43133868	1578414
26649	Trinity Valley Community College	2015	43133868	1578415
26649	Trinity Valley Community College	2015	43144511	1578416
26649	Trinity Valley Community College	2015	43144511	1578417
26649	Trinity Valley Community College	2015	43144511	1578418
26649	Trinity Valley Community College	2015	43123237	1578419
26649	Trinity Valley Community College	2015	43123240	1578420
26649	Trinity Valley Community College	2015	43155659	1578421
26649	Trinity Valley Community College	2015	43155659	1580115
34447	UTHSCT on behalf of ETIHN- Andrews Center	2015	43155889	1575203
34447	UTHSCT on behalf of ETIHN- Andrews Center	2015	43155889	1578408
34447	UTHSCT on behalf of ETIHN- Andrews Center	2015	43155889	1578409
34447	UTHSCT on behalf of ETIHN- Andrews Center	2015	43155889	1578410
34447	UTHSCT on behalf of ETIHN- Andrews Center	2015	43155889	1584974
33149	The Burke Center- West Austin Street	2015	43144429	1580117
33149	The Burke Center- West Austin Street	2015	43144429	1580118

Health Care Provider Number	Health Care Provider Name	Funding Year	FCC Form 465	Funding Request Number
33149	The Burke Center- West Austin Street	2015	43144429	1580121
33149	The Burke Center- West Austin Street	2015	43144429	1580122
33149	The Burke Center- West Austin Street	2015	43144429	1580123
33149	The Burke Center- West Austin Street	2015	43144429	1580124
33149	The Burke Center- West Austin Street	2015	43144429	1580125
33149	The Burke Center- West Austin Street	2015	43144429	1580126
33149	The Burke Center- West Austin Street	2015	43144429	1580127
33149	The Burke Center- West Austin Street	2015	43144429	1580128
33149	The Burke Center- West Austin Street	2015	43144429	1580129
33149	The Burke Center- West Austin Street	2015	43144429	1580130
33149	The Burke Center- West Austin Street	2015	43144429	1580131
33149	The Burke Center- West Austin Street	2015	43144429	1580132
33149	The Burke Center- West Austin Street	2015	43155674	1584689
33149	The Burke Center- West Austin Street	2016	43144429	1697877
33149	The Burke Center- West Austin Street	2016	43144429	1697940
33149	The Burke Center- West Austin Street	2016	43144429	1697941
33149	The Burke Center- West Austin Street	2016	43144429	1697946
33149	The Burke Center- West Austin Street	2016	43144429	1697947
33149	The Burke Center- West Austin Street	2016	43144429	1697948
33149	The Burke Center- West Austin Street	2016	43144429	1697949
33149	The Burke Center- West Austin Street	2016	43144429	1697953
33149	The Burke Center- West Austin Street	2016	43144429	1697954
33149	The Burke Center- West Austin Street	2016	43144429	1697958
33149	The Burke Center- West Austin Street	2016	43144429	1697959
33149	The Burke Center- West Austin Street	2016	43144429	1697960
33149	The Burke Center- West Austin Street	2016	43144429	1697961

Health Care Provider Number	Health Care Provider Name	Funding Year	FCC Form 465	Funding Request Number
33149	The Burke Center- West Austin Street	2016	43144429	1697963
26649	Trinity Valley Community College	2016	43123237	1698106
26649	Trinity Valley Community College	2016	43133868	1698108
26649	Trinity Valley Community College	2016	43133868	1698110
26649	Trinity Valley Community College	2016	43133868	1698112
26649	Trinity Valley Community College	2016	43133868	1698118
26649	Trinity Valley Community College	2016	43133868	1698121
26649	Trinity Valley Community College	2016	43144511	1698125
26649	Trinity Valley Community College	2016	43144511	1698130
26649	Trinity Valley Community College	2016	43144511	1698134
26649	Trinity Valley Community College	2016	43155659	1698138
34447	UTHSCT on behalf of ETIHN- Andrews Center	2016	43155889	1697880
34447	UTHSCT on behalf of ETIHN- Andrews Center	2016	43155889	1698227
34447	UTHSCT on behalf of ETIHN- Andrews Center	2016	43155889	1698229
34447	UTHSCT on behalf of ETIHN- Andrews Center	2016	43155889	1698230
34447	UTHSCT on behalf of ETIHN- Andrews Center	2016	43165932	1698233

**Appendix B****FY 2012 - 2015 FRNs Subject to Commitment Adjustments**

<b>Healthcare Provider Number</b>	<b>Healthcare Provider Name</b>	<b>Funding Year</b>	<b>FCC Form 465</b>	<b>Funding Request Number</b>
26649	Trinity Valley Community College	2012	43123237	1210028
26649	Trinity Valley Community College	2012	43123239	1210032
26649	Trinity Valley Community College	2012	43123240	1210038
26649	Trinity Valley Community College	2013	43123237	1332019
26649	Trinity Valley Community College	2014	43123240	1455788
26649	Trinity Valley Community College	2014	43123237	1455793
26649	Trinity Valley Community College	2014	43133868	1455796
26649	Trinity Valley Community College	2014	43133868	1455797
26649	Trinity Valley Community College	2014	43133868	1455798
26649	Trinity Valley Community College	2014	43133868	1456124
26649	Trinity Valley Community College	2014	43133868	1456125
26649	Trinity Valley Community College	2014	43144511	1456126
26649	Trinity Valley Community College	2014	43144511	1456997
26649	Trinity Valley Community College	2014	43144511	1456998
26649	Trinity Valley Community College	2014	43144511	1462637
26649	Trinity Valley Community College	2014	43144511	1462640
33149	The Burke Center- West Austin Street	2014	43144429	1456999
33149	The Burke Center- West Austin Street	2014	43144429	1457000
33149	The Burke Center- West Austin Street	2014	43144429	1457001
33149	The Burke Center- West Austin Street	2014	43144429	1457002
33149	The Burke Center- West Austin Street	2014	43144429	1457003
33149	The Burke Center- West Austin Street	2014	43144429	1457004
33149	The Burke Center- West Austin Street	2014	43144429	1457005
33149	The Burke Center- West Austin Street	2014	43144429	1457006

Healthcare Provider Number	Healthcare Provider Name	Funding Year	FCC Form 465	Funding Request Number
33149	The Burke Center- West Austin Street	2014	43144429	1457007
33149	The Burke Center- West Austin Street	2014	43144429	1457008
33149	The Burke Center- West Austin Street	2014	43144429	1457010
33149	The Burke Center- West Austin Street	2014	43144429	1457011
33149	The Burke Center- West Austin Street	2014	43144429	1462644
33149	The Burke Center- West Austin Street	2014	43144429	1462646
33149	The Burke Center- West Austin Street	2014	43144429	1465687
34447	UTHSCT on behalf of ETIHN- Andrews Center	2015	43155889	1575203
34447	UTHSCT on behalf of ETIHN- Andrews Center	2015	43155889	1578408
34447	UTHSCT on behalf of ETIHN- Andrews Center	2015	43155889	1578409
34447	UTHSCT on behalf of ETIHN- Andrews Center	2015	43155889	1578410
26649	Trinity Valley Community College	2015	43133868	1578411
26649	Trinity Valley Community College	2015	43133868	1578413
26649	Trinity Valley Community College	2015	43133868	1578414
26649	Trinity Valley Community College	2015	43133868	1578415
26649	Trinity Valley Community College	2015	43144511	1578416
26649	Trinity Valley Community College	2015	43144511	1578417
26649	Trinity Valley Community College	2015	43144511	1578418
26649	Trinity Valley Community College	2015	43123237	1578419
26649	Trinity Valley Community College	2015	43123240	1578420
26649	Trinity Valley Community College	2015	43155659	1578421