

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

In the Matter of
Rural Health Care Support Mechanism
WC Docket No. 02-60

ORDER

Adopted: May 22, 2020

Released: May 22, 2020

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) addresses the request by seven health care providers in Oklahoma ("Oklahoma Providers") for a waiver of the Rural Health Care (RHC) Universal Service Support Mechanism's rules to permit these providers to file funding year 2019 funding requests after the close of the funding year 2019 application window. Due to federally-declared disasters resulting from severe weather conditions that struck Oklahoma during May 2019, the Oklahoma Providers were unable to submit 11 Healthcare Connect Fund funding requests by the application deadline of May 31, 2019. They request that the Bureau waive sections 54.675(c)(2) and (c)(4) of the Commission's rules to permit them to file late applications and to treat those late applications as timely-filed in light of special circumstances that prevented the timely submission of the funding requests. Based on the record before us and consistent with precedent, we find good cause to grant this waiver.

II. BACKGROUND

2. Health care providers seeking Healthcare Connect Fund Program support are required to request funding using an FCC Form 462. The Universal Service Administrative Company (USAC) implements a filing window each funding year that treats all eligible health care providers submitting FCC Form 462s within the filing window as if their applications were received simultaneously. Applicants that fail to file by the filing deadline are automatically precluded from submitting their funding requests by USAC's Rural Health Care online application system, My Portal. For funding year

1 Kellogg and Sovereign Consulting, LLC requested waiver of the application filing deadline on behalf of the following Oklahoma health care providers: Jackson County Memorial Hospital, Memorial Hospital of Stilwell, JCMH - Family Care Clinic of Mangum, Jackson County Memorial Hospital - Counseling Center, Variety Care, Inc., Caring Hands Healthcare Network, and Kiamichi Family Medical Center Consortium.

2 Request for Waiver of Funding Year 2019 Rural Health Care Program Filing Deadline, WC Docket No. 02-60 (filed June 19, 2019) (Request for Waiver). The health care providers and their 11 funding requests at issue are listed in the attached Appendix.

3 Universal Service Administrative Company, Step 4: Submit Funding Requests, https://www.usac.org/rural-health-care/healthcare-connect-fund-program/step-4-submit-funding-requests/ (last visited May 22, 2020).

4 47 CFR §§ 54.675(c)(2), (c)(4).

5 See Request for Waiver at 2.

2019, USAC implemented a filing window for the FCC Forms 462 from February 1, 2019 to May 31, 2019.⁶

3. During the month of May 2019, Oklahoma experienced a series of disastrous weather events, including tornados, damaging winds, hail, and flooding.⁷ On May 28, 2019, just three days prior to the funding year 2019 application deadline, the Governor of Oklahoma declared that Oklahoma's 77 counties were in a state of emergency and, shortly thereafter, on June 2, 2019, the Federal Emergency Management Agency (FEMA) approved disaster relief assistance for 17 counties in Oklahoma.⁸ According to the Oklahoma Providers, disruptions resulting from the weather events in May made the timely submission of the 11 Healthcare Connect Fund funding requests at issue impossible, thereby prompting the instant request for waiver of the filing deadline.⁹ For support, the Oklahoma Providers cite prior decisions by the Commission granting waivers of deadlines in the universal service fund where natural disasters affected the ability to comply with those deadlines.¹⁰

4. On July 24, 2019, the Bureau released a Public Notice seeking comment on the request for waiver.¹¹ Three parties filed comments in response.¹² The Oklahoma Hospital Association (OHA) and the Schools, Health and Libraries Broadband Coalition (SHLB) support the request for waiver, and consistent with the position of the Oklahoma Providers,¹³ also encourage the RHC Program to adopt the E-Rate Program's 14-day grace period for late-filed applications, noting that their applications could have been filed within 14 days of the application filing deadline.¹⁴ The Oklahoma Universal Service Fund

⁶ When to Submit Your FY2019 RHC Program Forms, USAC, available at <https://www.usac.org/wp-content/uploads/rural-health-care/documents/handouts/Recommended-Form-Submission-Dates-FY2019.pdf> (setting the filing window as February 1, 2019 to May 31, 2019).

⁷ *Request for Waiver* at 2-3.

⁸ FEMA, Oklahoma Severe Storms, Straight-line Winds, Tornadoes, And Flooding (DR-4438), <https://www.fema.gov/disaster/4438> (last visited May 22, 2020) (declaring counties eligible for federal disaster relief on June 1, 2019 for the incident period occurring from May 7, 2019 through June 9, 2019).

⁹ *Request for Waiver* at 4 (explaining that "vital staff and businesses necessary to complete the funding request process, including service providers in the Tulsa and Oklahoma City area, were not able to come to work or perform business duties," including "performing circuit and data relocation and providing documents and information for participating healthcare providers to file their FCC RHC Program documents by the May 31 deadline.").

¹⁰ *Id.* at 6 (citing *Schools and Libraries Universal Service Support Mechanism*, WC Docket 02-6, 34 FCC Rcd 56 (WCB 2019) (waiving certain rules and deadlines applicable to schools and libraries in areas affected by California wildfires) (*California Wildfires Order*)); *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 33 FCC Rcd 10186 (WCB 2018) (granting waiver of the invoice filing deadline in the wake of Hurricane Michael) (*Florida Hurricane Order*); *Schools and Libraries Universal Service Support Mechanism*, WC Docket No. 02-6, Order, 32 FCC Rcd 7456 (WCB 2017) (waiving certain E-Rate and contribution rules applicable to universal service fund participants in areas affected by Hurricanes Harvey, Irma, and Maria) (*Hurricanes Harvey, Irma, and Maria Order*).

¹¹ *Wireline Competition Bureau Seeks Comment on Kellogg & Sovereign Consulting, LLC Request for Waiver*, WC Docket No. 02-60, Public Notice, 34 FCC Rcd 6324 (2019).

¹² *See generally* Oklahoma Universal Service Fund Administrator Comments (rec. Aug. 23, 2019) (OUSF Administrator Comments); Sandra B. Harrison Comments (rec. Sept. 9, 2019) (filed on Behalf of The Oklahoma Hospital Association) (OHA Comments); Schools, Health & Libraries Broadband Coalition Comments (rec. Aug. 23, 2019) (SHLB Comments).

¹³ *Request for Waiver* at 7.

¹⁴ *See* OHA Comments at 2; SHLB Comments at 3.

(OUSF) Administrator likewise supports the request for waiver, and explains that denial of the request would have devastating results to the areas that the Oklahoma Providers serve.¹⁵

III. DISCUSSION

5. Based on the facts and circumstances presented here, and consistent with our precedent, we find good cause exists to waive the funding year 2019 application filing deadline for the 11 funding requests listed in the Appendix. Generally, the Commission's rules may be waived for good cause shown.¹⁶ Waiver of the Commission's rules is appropriate only if both (1) special circumstances warrant a deviation from the general rule, and (2) such deviation will serve the public interest.¹⁷ In exercising its discretion, the Commission may consider hardship, equity, or more effective implementation of policy on an overall basis.¹⁸ As discussed in further detail below, we find that the damage and disruption caused by the extreme weather events that occurred in Oklahoma and the close proximity of these events to the May 31, 2019 application filing deadline merit a waiver of the filing deadline.¹⁹

6. We find that the Oklahoma Providers have demonstrated special circumstances that warrant a deviation from the general rule.²⁰ Throughout May 2019, extensive flooding and tornadoes struck Oklahoma, which caused their consultant, Kellogg & Sovereign Consulting, LLC to close its offices and impeded the firm's ability to obtain information that was required to complete the FCC Form 462s from the Oklahoma Providers.²¹ Health care providers, their employees, and key contacts necessary to complete the Oklahoma Providers' funding requests were unavailable because of road closures and because the continuing need to seek shelter impacted their ability to work and communicate.²² The weather effects were so severe that, three days before the May 31, 2019 deadline, all 77 counties in Oklahoma were declared in a state of emergency by the Governor of Oklahoma and, just days later, FEMA issued major disaster declarations for 17 Oklahoma counties.²³ We have previously waived

¹⁵ OUSF Administrator Comments at 1-2; *see also* OHA Comments at 4.

¹⁶ 47 CFR § 1.3.

¹⁷ *See Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁸ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

¹⁹ *See Florida Hurricane Order*, 33 FCC Rcd at 10188 (citing the close proximity to the invoice deadline for recurring services as an extraordinary circumstance meriting a deviation from the general rule). The petitioners maintain that, notwithstanding the weather disruptions, they were in a position to submit the funding requests within 14 days of the deadline had that option been available to it, and that permitting late filings within a 14-day period is consistent with Commission precedent approving requests for waiver of deadlines for universal service applicants even where no special circumstances exist. *Request for Waiver* at 7 (citing *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Academy of Math and Science et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 25 FCC Rcd 9256, 9259, para. 8 (2010) (granting requests for waiver where applicants filed their FCC Forms 471 within 14 days of the filing window deadline)). We dismiss this Request for Waiver to the extent it seeks a 14-day grace period for filing applications.

²⁰ *But see Request for Review and Waiver by the Tanana Chiefs Conference*, WC Docket No. 02-60, Order, DA 20-64 (WCB rel. Jan. 15, 2020) (denying a request to file applications after the deadline for filing applications when the applications were not filed due to a lack of awareness of deadlines and an oversight—the petitioner did not discover the need to file the applications until three months after the deadline, and no additional funding was available in the relevant funding year as it had been subject to proration).

²¹ *Request for Waiver* at 3-4.

²² *Id.*

²³ *See* FEMA, Oklahoma Severe Storms, Straight-line Winds, Tornadoes, And Flooding (DR-4438), <https://www.fema.gov/disaster/4438> (last visited May 22, 2020); *Request for Waiver* at 3.

disaster-related deadlines that occurred simultaneously with the disaster²⁴ and, here, the May 31, 2019 application filing deadline was impacted directly by the extensive flooding and disruption in communications and transportation that occurred immediately before the deadline.²⁵ Therefore, we find, consistent with past precedent,²⁶ that the Oklahoma Providers have demonstrated special circumstances meriting a waiver.

7. We also find that granting this request for waiver will serve the public interest. Denial of relief would have severe negative impacts on the areas that the Oklahoma Providers serve. The OUSF Administrator notes that rural health care providers in Oklahoma are at risk of closing; loss of RHC Program funding may expedite closures, which could further limit access to healthcare in Oklahoma.²⁷ Moreover, if the 11 funding year 2019 requests cannot be filed, the Oklahoma Providers also will be ineligible for Oklahoma state universal service funding because application for alternative funding, such as RHC Program funding, is a necessary prerequisite to Oklahoma state universal service funding eligibility.²⁸ We therefore find that it is in the public interest to provide the Oklahoma Providers a waiver of the funding year 2019 application filing deadline.

8. To ensure that this waiver is available only to health care providers that were unable to file their FCC Form 462s by the deadline due to the natural disasters, we require that each petitioner and its consultant affirm that, to the best of their knowledge, the applications would have been timely but for

²⁴ See, e.g., *California Wildfires Order*, 34 FCC Rcd 56; *Florida Hurricane Order*, 33 FCC Rcd 10186; *Schools and Libraries Universal Service Support Mechanism*, CC Docket 02-6, Order, 32 FCC Rcd 9538 (2017) (*FCC Hurricanes Harvey, Irma, and Maria Order*); *Hurricanes Harvey, Irma, and Maria Order*, 32 FCC Rcd 7456; *Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45 and 02-6; WC Docket Nos. 02-60 and 03-109, Order, 20 FCC Rcd 16883 (2005) (*Hurricane Katrina Order*). By contrast, deadlines outside the scope of the disaster were not waived. See *California Wildfire Order*, 34 FCC Rcd at 59-60, para. 8 (denying a request to waive the service implementation deadline for non-recurring services because the deadline was prior to the time period during which the wildfires were reported by FEMA as having occurred).

²⁵ *Request for Waiver* at 4.

²⁶ In past orders, we granted waivers of certain deadlines for areas affected by natural disasters. See, e.g., *Hurricanes Harvey, Irma, and Maria Order*, 32 FCC Rcd at 7457, para. 2; *California Wildfires Order*, 34 FCC Rcd at 57, para. 2; *Florida Hurricane Order*, 33 FCC Rcd at 10188, para. 5; *FCC Hurricanes Harvey, Irma, and Maria Order*, 32 FCC Rcd at 9540, para. 4; *Hurricane Katrina Order*, 20 FCC Rcd at 16885, para. 4. Historically, we defined “affected areas” as counties that FEMA designated as Major Disaster Areas eligible for Individual Assistance for the purposes of federal disaster relief. See *California Wildfires Order*, 34 FCC Rcd at 57, n. 6 (defining “affected areas” as the counties located in California that have been designated as Major Disaster Areas eligible for Individual Assistance for purposes of federal disaster relief by FEMA). We have not necessarily limited relief to areas that meet this definition, however, provided circumstances made granting relief consistent with the public interest. See *id.* at n. 4 (listing counties that were included in the Request for Waiver but fell outside of the major disaster declaration areas). In this regard, grant of relief here comports with waivers that the Bureau granted previously under similar circumstances. *Florida Hurricane Order*, 33 FCC Rcd at 10188, para. 5. While the Oklahoma Providers were not eligible for Individual Assistance, the widespread disruption that occurred in close proximity to the filing deadline impeded the health care providers’ ability to timely file their FCC Form 462s.

²⁷ OUSF Administrator Comments at 3 (citing US News World Report, <https://www.usnews.com/news/best-states/oklahoma> (ranking Oklahoma as 47th out of 50 states concerning healthcare access and quality); US News and World Report, Feb. 22, 2019, <https://www.usnews.com/news/healthiest-communities/slideshows/top-10-states-in-danger-of-rural-hospital-closures?onepage.&slide=4> (listing Oklahoma as one of the top ten states most in danger of rural hospital closures)).

²⁸ *Id.* at 1-2; see also OHA Comments at 4 (arguing that denying the request for waiver would thwart the public interest).

the natural disaster in Oklahoma.²⁹ We direct USAC to contact the petitioners with instructions for how to submit their FCC Form 462s and affirmations within 15 days of the release of this order.

9. We emphasize that the Commission is committed to guarding against waste, fraud, and abuse and ensuring that funds disbursed through the Rural Health Care Program are used for appropriate purposes. We find no evidence of waste, fraud or abuse will result from this waiver. This action does not affect the authority of the Commission or USAC to conduct audits or investigations to determine compliance with Rural Health Care Program rules and requirements with respect to the funding requests filed as a result of this waiver. Because audits or investigations may provide information showing that a Rural Health Care Program participant failed to comply with the statute or the Commission's rules, such proceedings can reveal instances in which universal service funds were disbursed improperly, or in a manner inconsistent with the statute or the Commission's rules. To the extent that the Commission finds that funds were not used properly, the Commission will require USAC to recover such funds through its normal processes. The Commission retains the discretion to evaluate the use of funds disbursed through the Rural Health Care Program and to determine on a case-by-case basis whether waste, fraud, or abuse of program funds occurred, or recovery is warranted. The Commission will continue to aggressively pursue instances of waste, fraud, or abuse under the Commission's procedures and in cooperation with law enforcement agencies.

IV. ORDERING CLAUSES

10. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.106, 54.675(c)(2) of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.106, 54.675(c)(2), (c)(4) that the Request for Waiver filed by Kellogg & Sovereign Consulting, LLC on behalf of the Oklahoma Providers IS GRANTED to the extent provided herein.

11. 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

Kris Anne Monteith
Chief
Wireline Competition Bureau

²⁹ Although the *Request for Waiver* affirmed the petitioners' readiness to file their applications shortly after the application filing deadline, it did not state that the applications would have been timely filed but for the natural disasters. See *Request for Waiver* at 4-5 ("Within a week of the deadline, Kellogg and Sovereign had obtained the necessary documentation from applicants and service providers and was prepared to file these additional funding requests. Most could have been submitted even earlier.").

Appendix
Funding Requests Included in Request for Waiver

HCP No.	HCP Name	FRN	Funding Year
10202	Jackson County Memorial Hospital	19668531	2019
10202	Jackson County Memorial Hospital	19668571	2019
10202	Jackson County Memorial Hospital	19668561	2019
15217	Memorial Hospital of Stilwell	19668121	2019
15217	Memorial Hospital of Stilwell	19668131	2019
15862	JCMH – Family Care Clinic of Mangum	19668551	2019
16560	Jackson County Memorial Hospital – Counseling Center	19668541	2019
46665	Variety Care, Inc.	19666881	2019
46665	Variety Care, Inc.	19668331	2019
51747	Caring Hands Healthcare Network	19667981	2019
52411	Kiamichi Family Medical Center Consortium	19667941	2019