

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

In the Matter of)
Request for Wavier by GCI Communication Corp.)
and Southcentral Foundation)
Rural Health Care Universal Service Support) WC Docket No. 02-60
Mechanism)

ORDER

Adopted: June 12, 2020

Released: June 12, 2020

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

I. INTRODUCTION

1. In this Order, we address an emergency petition filed by GCI Communication Corp. (GCI) and Southcentral Foundation (SCF) to waive certain provisions of the Commission’s Rural Health Care (RHC) Telecommunications (Telecom) Program’s rules to allow SCF’s Takotna Village Health Clinic to continue to receive Telecom Program support at a new, temporary site. Specifically, GCI and SCF seek a waiver of sections 54.622 and 54.623 of the Commission’s rules to permit SCF’s Takotna Village Health Clinic to receive Telecom Program support for services provided to this new, temporary clinic site in light of the destruction of its health clinic by fire on March 30, 2020.1 Based on our review of the record and the special circumstances presented here, we find good cause exists to grant a limited waiver to permit the site substitution at issue. In granting this waiver, we note that the type of site substitution requested in the instant case will be permissible under the Telecom Program’s site substitution rule taking effect in funding year 2021.

II. BACKGROUND

2. The RHC Program has two component programs: (1) the Telecom Program, which permits eligible health care providers to apply for discounts to defray the high cost of eligible telecommunications services in rural areas;2 and (2) the Healthcare Connect Fund Program, which supports the delivery of broadband services and development of state and regional health care networks.3 Consortium participants in the Healthcare Connect Fund may request a site and service substitution, which allows a consortium leader to re-allocate un-invoiced funds to substitute services, modify or upgrade services, or provide services to other eligible sites.4 However, for funding year 2020 and prior, the Commission never adopted, and USAC never established, similar site and service substitution

1 Emergency Petition for Waiver to Allow the Parties to Immediately Use the Site Substitution Rule, WC Docket 02-60 (filed Apr. 9, 2020) (Request for Waiver).

2 Rural Health Care Support Mechanism, WC Docket No. 02-60, Order, 34 FCC Rcd 4136, 4136, para. 2 (2019) (Funding Year 2018 Demand Order).

3 See id.

4 Rural Health Care Support Mechanism, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678, 16806-07, paras. 313-15 (2012) (Healthcare Connect Fund Order). See also 47 CFR § 54.646 (2018).

procedures under the Telecom Program.⁵ In the *RHC Promoting Telehealth Report and Order*, the Commission made the site and service substitution procedures for the Healthcare Connect Fund applicable to the Telecom Program and allows both health care providers and consortium leaders to request such changes.⁶ The rule change permitting site and service substitutions for the Telecom Program does not become effective until funding year 2021, which begins on July 1, 2021.⁷

3. SCF is the Alaska Native tribal health organization designated by Cook Inlet Region, Inc. and eleven federally recognized Tribes to provide healthcare services to entities receiving support from the Indian Health Service.⁸ The Takotna Village Health Clinic is a participant in the Telecom Program and the only clinic in Takotna, Alaska.⁹ GCI provides eligible telecommunications services to the Takotna Village Health Clinic.¹⁰ The original location of the Takotna Village Health Clinic was destroyed by fire on March 30, 2020 and deemed a total loss.¹¹ Following the fire, Takotna Village Health Clinic moved to the Takotna Tribal Building temporarily to continue to provide necessary telehealth services.¹² The Takotna Village Health Clinic was destroyed in the midst of the COVID-19 pandemic, which has increased the demand for telemedicine and telehealth services.¹³

4. GCI and SCF request that the Commission grant a waiver of Commission rules to allow GCI to receive Telecom Program support for telecommunications services provided to the Takotna Village Health Clinic's temporary site, the Takotna Tribal Building.¹⁴ GCI and SCF cite the rule adopting site substitution procedures in the Telecom Program, effective in funding year 2021, as special

⁵ *RHC Promoting Telehealth Report and Order*, WC Docket 17-310, Report and Order, 34 FCC Rcd 7335, 7425, para. 195 (2019). Without a rule permitting site and service substitutions, such substitutions are not allowed because the substituted services would not have been competitively bid or included in the original funding application. Thus, any modification to the original request would require competitive bidding, new funding applications and new funding commitments. See, e.g., *Wireline Competition Bureau Evaluation of the Rural Health Care Pilot Program*, WC Docket No. 02-60, 27 FCC Rcd 9387, 9436 (WCB 2012) (explaining that any site or service substitution in the Telecom Program requires a new funding application and funding commitment for each impacted health care provider); *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC 16678, 16806-807, para. 314 (2012) (noting that any modification to a Telecom Program funding request requires a new funding application and new commitment). See also *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 32 FCC Rcd 7532, 7534, paras. 7-8 (WCB 2017) (waiving the Commission rules to allow health care providers to select a new service provider and new services without conducting a new competitive bidding process when the original service provider was not able to provide the requested Telecom Program services).

⁶ *RHC Promoting Telehealth Report and Order*, 34 FCC Rcd at 7425, para. 194-96.

⁷ *Wireline Competition Bureau Provides Guidance on the Implementation Schedule for Reforms Adopted by the Rural Health Care Program Promoting Telehealth Report and Order*, WC Docket No. 17-310, Public Notice, 34 FCC Rcd 11983, 11985 (2019).

⁸ *Request for Waiver* at 2.

⁹ *Id.* at 5.

¹⁰ *Id.* at 2.

¹¹ *Id.*

¹² *Id.*

¹³ *Rural Health Care Support Mechanism, Schools and Libraries Support Mechanism*, WC Docket No. 02-60, CC Docket No. 02-6, Order, 35 FCC Rcd 2741, 2743, para. 5 (WCB 2020).

¹⁴ While GCI and SCF fashion their requested waiver relief as a waiver of 47 CFR 54.624, we will consider the request as requesting a waiver of the current Commission rules preventing Telecom Program support for services to the new clinic site. See 47 CFR § 54.622 and 54.623. We do not find section 54.624 applicable to this request for waiver because it is not yet in effect.

circumstances warranting a waiver and note that allowing the site substitution will ensure that the only clinic in Takotna can continue providing necessary telehealth services during the COVID-19 pandemic.¹⁵

III. DISCUSSION

5. Based on a review of the record and the special circumstances presented, we grant GCI and SCF's request for waiver. Generally, the Commission's rules may be waived for good cause shown.¹⁶ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹⁷ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an overall basis.¹⁸ 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.¹⁹ We find that GCI and SCF's request meets both requirements and that the public interest is best served by a grant of a waiver in this limited circumstance.

6. We find that GCI and SCF have demonstrated special circumstances warranting waiver of the rules that prevent site substitutions in the Telecom Program. In the *RHC Promoting Telehealth Report and Order*, the Commission adopted site and service substitution procedures for the Telecom Program that will be effective in funding year 2021.²⁰ Under the site substitution procedures, Telecom Program participants may request a site substitution if (1) the substitution is provided for in the contract, within the change clause, or constitutes a minor modification; (2) the site is an eligible health care provider and the service is an eligible service under the Telecom Program; (3) the substitution does not violate any contract provision or state, Tribal or local procurement laws; and (4) the requested change is within the scope of the controlling request for services.²¹

7. We agree with GCI and SCF that the site substitution requested in this instance is permitted based on the criteria that will apply for funding year 2021 and after.²² First, GCI and SCF's contract does not prohibit the movement of services to a temporary site, and movement of services would at most constitute a minor modification of the contract.²³ Second, GCI provides eligible telecommunications services to SCF, which is an eligible health care provider and the Takotna Village Health Clinic's temporary site is an eligible health care provider under section 54.600(b) of the Commission's rules.²⁴ Third, GCI and SCF certify that the site substitution would not violate any contract provision or state, Tribal or local procurement laws.²⁵ Finally, the requested site substitution would not change the services that GCI provides to SCF, would not increase the amount of support under the funding commitment, and would not affect the service delivery deadline.²⁶ Given that the relief requested

¹⁵ *Request for Waiver* at 5.

¹⁶ 47 CFR § 1.3.

¹⁷ *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 *Northeast Cellular*, 897 F.2d at 1166.

²⁰ *RHC Promoting Telehealth Report and Order*, 34 FCC Rcd at 7425, para. 194-96.

²¹ *Id.* at 7425, para. 194.

²² *Request for Waiver* at 3.

²³ *Id.*

²⁴ 47 CFR § 54.600(b) ("a 'health care provider' is any ... rural health care provider").

²⁵ *Request for Waiver* at 3.

²⁶ *See id.*

will be allowable in the near future, we find GCI and SCF have shown special circumstances warranting waiver of the rules prohibiting site substitutions in the Telecom Program.

8. We also find that allowing the Takotna Village Health Clinic, which was destroyed by fire during a public health emergency, to substitute the site of their clinic temporarily serves the public interest. The Telecom Program support mechanism is intended to “ensure that health care providers for rural areas . . . have affordable access to modern telecommunications services that will enable them to provide . . . medical services to all parts of the Nation.”²⁷ During the ongoing COVID-19 pandemic, telemedicine plays a critical role, especially in rural areas.²⁸ Rural health care providers must often rely on telemedicine to provide their patients with a level of health care coverage that can compare with that offered by their urban counterparts.²⁹ The Takotna Village Health Clinic was destroyed by fire, which makes providing telecommunications services to the original clinic location impossible.³⁰ GCI, however, can provide eligible telecommunications services to the Takotna Tribal Building to support clinic operations.³¹ We find granting the request for waiver serves the public interest because it would allow the sole health clinic in Takotna to continue providing essential healthcare during a global pandemic.

9. We emphasize the limited nature of this waiver. We grant this waiver because the participant and service provider have demonstrated special circumstances to permit a site substitution and we find that permitting a site substitution serves the public interest by ensuring that the Takotna Village Health Clinic may continue providing vital health care during a public health emergency. This waiver will not increase the funding amount beyond the amount sought on the FCC Form 466 and the amount committed. Finally, this waiver does not impact the timing of the effectiveness of the rule allowing for site and service substitutions in the Telecom Program adopted in the *RHC Promoting Telehealth Report and Order*, which is still effective beginning in funding year 2021.

²⁷ *RHC Promoting Telehealth Report and Order*, 34 FCC Rcd at 7340, para. 9.

²⁸ *Rural Health Care Support Mechanism, Schools and Libraries Support Mechanism*, 35 FCC Rcd at 2745, para. 9.

²⁹ *Id.* at 2744, para. 5.

³⁰ See Takotna Village Clinic, Southcentral Foundation, <https://www.southcentralfoundation.com/takotna-village-clinic/> (last visited June 12, 2020).

³¹ *Request for Waiver* at 4.

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 pursuant to sections 0.91, 0.291, 1.106, 54.622 and 54.623 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.106, 54.622 and 54.623 of the Commission's rules, ARE WAIVED and that the Request for Waiver filed by GCI Communication Corp. and Southcentral Foundation 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

Ryan B. Palmer
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Wireline Competition Bureau