

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

In the Matter of)
Request for Review and Waiver of a Decision)
by the Universal Service Administrator by)
Tanana Chiefs Conference)
Fairbanks, AK)
Interior Alaska Regional Health Consortium) HCP Nos. 10720, et al.
Rural Health Care Universal Service) WC Docket No. 02-60
Support Mechanism)

ORDER

Adopted: January 15, 2020

Released: January 15, 2020

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

I. INTRODUCTION

1. In this Order, we deny a request for review and waiver by the Tanana Chiefs Conference (TCC) seeking review of the Universal Service Administrative Company (USAC) decision denying TCC's request to file FCC Forms 466 (Funding Request and Certification Form) for three clinics after the Rural Health Care (RHC) Program application filing deadline had passed for funding year 2016. We

1 See Tanana Chiefs Conference, Interior Alaska Regional Health Consortium, Request for Review and Waiver, WC Docket No. 02-60 (filed Apr. 28, 2017) (TCC Request for Review and Waiver). See also Supplemental Letter to Radhika Karmarkar, Deputy Division Chief, Telecommunications Access Policy Division, WCB, from Nick Gasca, Deputy General Counsel to Tanana Chiefs Conference, WC Docket No. 02-60 (dated Sept. 6, 2017); Letter to Marlene H. Dortch, Secretary, FCC, from Ronald E. Quirk, Jr., Counsel to TCC, WC Docket No. 02-60 (dated Oct. 6, 2017); Letter to Ryan Palmer, Division Chief, Telecommunications Access Policy Division, WCB, from Allison D. Rule and Ronald E. Quirk, Jr., Counsel to Tanana Chiefs Conference, WC Docket No. 02-60 (dated May 2, 2019) (requesting expedited action on TCC's Request for Review and Waiver); Letter to Marlene H. Dortch, Secretary, FCC, from Ronald E. Quirk, Jr., Counsel to TCC, WC Docket No. 02-60 (dated July 12, 2019).

2 See TCC Request for Review and Waiver at 1, 9-14 (regarding Health Care Provider (HCP) Nos. 10720, 10721, and 11022). A funding year runs from July 1 through June 30 of the subsequent year. 47 CFR § 54.675(b) (2018). FY2016 started on July 1, 2016 and ended on June 30, 2017. The application filing deadline for FY2016 was November 30, 2016. See Wireline Competition Bureau Provides a Filing Window Period Schedule for Funding Requests Under the Telecommunications Program and the Healthcare Connect Fund, WC Docket No. 02-60, Public Notice, 31 FCC Rcd 9588, at 3-4 (WCB 2016) (August 2016 Filing Window PN) (establishing the filing window periods for funding year 2016); USAC, Rural Health Care Program, Telecommunications Program, Filing Windows for FY2016, https://www.usac.org/rural-health-care/commitment-info/fy2016-funding-information/ (last visited Jan. 10, 2020) (Funding Year 2016 Filing Windows and Pro-rata Information). In October 2017, counsel, on behalf of TCC, filed a proposed Consent Decree and Compliance Plan seeking to effectuate a resolution of TCC's three FCC Forms 466 for FY2016 which TCC attempted to file outside of the funding year 2016 filing window period. Letter to Radhika Karmarkar, Deputy Division Chief, Telecommunications Access Policy Division, WCB, TCC - Proposed Consent Decree & Compliance Plan (Confidential Filing), from Ronald E. Quirk, Jr., Counsel to TCC (dated Oct. 18, 2017) (Proposed Consent Decree & Compliance Plan); Letter to Radhika Karmarkar, Deputy

(continued....)

also deny TCC's request to waive the Commission's proration rules to enable TCC to receive full RHC Program support for all 30 of the clinics in its consortium for funding year 2016.³ We find that TCC has not presented special circumstances warranting a waiver of the FCC Form 466 application filing window deadline for funding year 2016 or the Commission's proration rules.⁴

II. BACKGROUND

A. RHC Program Rules and Procedures

2. Pursuant to section 254 of the Telecommunications Act of 1996,⁵ eligible health care providers may apply for reduced rates on eligible telecommunications, advanced telecommunications and information services.⁶ With an exception not applicable in this matter, the Commission's rules require health care providers to file new funding requests for each funding year in order to receive RHC Program support.⁷ Some contracts may qualify for evergreen status which exempts health care providers only from the competitive bidding process for the life of the contract or until the contract is modified.⁸ Thus, after an applicant has selected a service provider and entered into a service contract, the applicant must submit its request for discounts to USAC, even where a health care provider has a contract designated as "evergreen" with USAC.⁹

(Continued from previous page) _____

Division Chief, Telecommunications Access Policy Division, WCB, TCC's USAC Compliance Program Update (*Confidential Filing*), from Michael Humphrey, Acting Executive Director of IT, TCC (dated Jan. 10, 2018).

³ See TCC Request for Review and Waiver at 2, 14-17 (regarding HCP Nos. 10720, 10721, 11022, 10715, 10716, 10717, 10718, 10722, 10723, 10724, 10726, 10727, 10729, 10730, 10731, 10732, 10733, 10735, 10736, 10737, 10738, 10739, 11011, 12804, 15464, 15465, 16362, 10736, 176991, and 10719); 47 CFR § 54.675(f) (2018). TCC's Consent Decree did not address its waiver of the proration rules. See Proposed Consent Decree & Compliance Plan.

⁴ Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of USAC may seek review from the Commission. 47 CFR. § 54.719(c). Generally, the Commission's rules may be waived if good cause is shown. 47 CFR § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *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. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

⁵ See Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act). The 1996 Act amended the Communications Act of 1934 (Communications Act or Act). See S. Conf. Rep. No. 104-230 at 133 (1996); 47 U.S.C. § 254.

⁶ 47 CFR §§ 54.602(a) and (b), 54.634 (2018).

⁷ Health care providers that have received a multi-year funding commitment in the Healthcare Connect Fund Program are not required to file funding requests after the first year. 47 CFR § 54.675(d) (2018).

⁸ See USAC, Rural Health Care, Additional Program Guidance, Evergreen Contracts, <https://www.usac.org/rural-health-care/additional-program-guidance/evergreen-contracts/> (last visited Jan. 10, 2020) (Rural Health Care Program Evergreen Contracts) (indicating that health care providers with evergreen contracts must also submit the FCC Form 466 and the FCC Form 467 annually for every funding year in which funding is requested under the terms of the contract).

⁹ See USAC, Rural Health Care, Telecommunications Program, Step 4: Submit Funding Requests, <https://www.usac.org/rural-health-care/telecommunications-program/step-4-submit-funding-requests/> (last visited Jan. 10, 2020); USAC, Rural Health Care, Healthcare Connect Fund Program, Individual Health Care Providers, Submit Funding Requests, <https://www.usac.org/rural-health-care/healthcare-connect-fund-program/step-4-submit-funding-requests/> (last visited Jan. 10, 2020); USAC, Rural Health Care, Resources, Forms, FCC Form 466, <https://www.usac.org/rural-health-care/resources/forms/> (last visited Jan. 10, 2020); USAC, Rural Health Care,

(continued....)

3. The Commission's rules allow USAC to open a filing window for RHC applications and to treat all eligible health care providers filing within the window period as if their applications were simultaneously received.¹⁰ Applicants must submit their requests prior to the close of the application filing window in order to be considered for funding under the RHC Program. If requests submitted during a filing window period exceed the RHC Program's cap, per the Commission's rules, USAC must apply a pro rata reduction in support to all those requests received during the filing window period.¹¹ Funding requests submitted after the close of the filing window will not be accepted.

4. In March 2016, USAC opened a filing window period for funding year 2016 that ended on June 1, 2016.¹² After the end of that initial filing window period, USAC continued to accept funding requests on a rolling basis and, following its review of the requests, made funding commitments to eligible participants for eligible services on a "first-come, first-served" basis, per the Commission's rules.¹³ In August 2016, recognizing the growing interest in the RHC Program and the potential that requests in funding year 2016 could exceed the \$400 million cap prior to the end of the funding year, the Bureau released a public notice providing a schedule for additional filing windows in funding year 2016.¹⁴ USAC implemented a second filing window from September 1, 2016 to November 30, 2016.¹⁵ USAC conducted outreach in the form of an email blast to all account holders, webinar, newsletter, and notices on its website regarding the dates of the second filing window period.¹⁶ Under the Commission's rules, if requests submitted during an established filing window period exceed the RHC Program's cap, USAC must apply a pro rata reduction in support to all those requests received during the filing window period.¹⁷ In adopting the pro rata rule, the Commission found that this approach ensured fairness and equity to each health care provider applying for universal service support and did not impose an undue administrative burden upon either the applicants or USAC.¹⁸ Because demand for RHC Program support during the second filing window period of funding year 2016 exceeded the total amount available for the RHC Program, all qualifying funding requests submitted during the second filing window period for funding year 2016 received a pro-rated amount of 92.5%.¹⁹

(Continued from previous page) _____
Resources, Forms, FCC Form 462, <https://www.usac.org/rural-health-care/resources/forms/> (last visited Jan. 10, 2020).

¹⁰ 47 CFR § 54.675(c)(2) (2018).

¹¹ See 47 CFR § 54.675(f) (2018).

¹² See Funding Year 2016 Filing Windows and Pro-rata Information.

¹³ See 47 CFR § 54.675(c)(1) (2018); Funding Year 2016 Filing Windows and Pro-rata Information.

¹⁴ See August 2016 Filing Window PN.

¹⁵ *Id.*; Funding Year 2016 Filing Windows and Pro-rata Information.

¹⁶ See August 2016 Filing Window PN (establishing a filing window period schedule for applications for RHC Program support based on the Commission's current rules for the RHC Program, and indicating that the opening of any filing window periods is dependent upon whether the demand for RHC Program funds exceeds the funding cap); FY2016 Filing Windows and Pro-rata Information; Email to RHC Program distribution list, from USAC RHC Program, New Filing Window Periods: File Your Funding Request ASAP (dated Aug. 26, 2016) (August 2016 Email) (strongly encouraging applicants to submit funding requests by November 30 and indicating that there would only be a third filing window period if funding remained).

¹⁷ See 47 CFR § 54.675(f) (2018).

¹⁸ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifth Order on Reconsideration and Fourth Report and Order, 13 FCC Rcd 14915, 14940-41, para. 40 (1998) (*RHC Fifth Order on Reconsideration and Fourth Report and Order*).

¹⁹ See *id.* at 14941, para. 41; 47 CFR § 54.675(f) (2018); August 2016 Filing Window PN at 5; Funding Year 2016 Filing Windows and Pro-rata Information.

B. TCC's Funding Year 2016 Funding Requests and Appeal

5. TCC is a Fairbanks, Alaska-based, nonprofit intertribal consortium providing a wide range of health services to Alaska Native communities in interior Alaska.²⁰ For FY2016, TCC timely filed its FCC Form 466 applications for 27 of the clinics in its consortium within the second filing window period for funding year 2016.²¹ Pursuant to the Commission's rules, those funding requests were prorated and reduced by 7.5%.²² TCC, however, failed to file FCC Form 466 applications for the three other clinics in its consortium — Hughes Village Health Clinic, Huslia Village Health Clinic, and Chalkyitsik Village Clinic (collectively, HHC Clinics).²³ TCC asserts that the applications for the HHC Clinics were not filed because those locations were transitioning from satellite connections to terrestrial microwave, and the TCC official responsible for those filings put off filing the applications until after the transitions in order to avoid confusion when filing.²⁴ TCC contends that the official was unaware of the filing windows and therefore missed the November 30, 2016 deadline.²⁵ TCC also claims that the application for Chalkyitsik Village Clinic was missed because of an oversight of the primary account holder who did not have this location listed on the list of health care providers for which an FCC Form 466 should be filed.²⁶ TCC discovered its omissions for the HHC Clinics in late March 2017, approximately four months after the close of the second application filing window and, when it attempted to submit applications for the HHC Clinics, was told by USAC that the filing window for funding year 2016 was closed and that it was not possible for USAC to waive the filing deadline rules.²⁷

6. On April 28, 2017, TCC filed the instant Request for Review and Waiver seeking review of USAC's decision not to allow TCC to file FCC Forms 466 for the HHC Clinics that are part of the TCC health care delivery system.²⁸ In the alternative, TCC requests that the Commission waive the filing window period deadline for the HHC Clinics and permit TCC to file its FCC Forms 466 for funding year 2016.²⁹ TCC argues that the Commission should not allow TCC's inadvertent errors to prevent it from receiving the discounts necessary for vital telecommunications services.³⁰ According to TCC, failure to grant the request or waiver will force TCC to cut critical telecommunications services for its clinics and divert funds intended for health care for Alaska Natives to pay its service provider.³¹ TCC maintains that the Commission has previously permitted parties to cure clerical and ministerial errors in the context of receiving universal service administrative support and that there was no fair notice that the applications would not be accepted.³² TCC also points out that it has never missed an FCC Form 466 deadline.³³ In addition, TCC states that, due to this situation, it has implemented a quality control program to prevent

²⁰ See TCC Request for Review and Waiver at 4, 12.

²¹ *Id.* at 9-11.

²² See 47 CFR § 54.675(f) (2018).

²³ See TCC Request for Review and Waiver at 9-11.

²⁴ *Id.* at 10.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 11, 20.

²⁸ See TCC Request for Review and Waiver.

²⁹ *Id.* at 1; 47 CFR §§ 54.623, 54.675(c)(2) (2018).

³⁰ TCC Request for Review and Waiver at 12.

³¹ *Id.*

³² *Id.* at 13-14, 20.

³³ *Id.* at 10, 19.

missing any further filing deadlines and to ensure compliance with all USAC and Commission requirements going forward.³⁴

7. TCC also requests a waiver of the proration rule for FY2016 to enable all 30 of its members, including the timely filed applications for the other 27 member clinics, to receive the full amount of their commitments.³⁵ First, TCC states that USAC approved TCC's contract as evergreen and, according to TCC, all health care providers in TCC's consortium were deemed eligible and full funding was earmarked for them.³⁶ TCC claims that the funding reduction adversely affected all of TCC's rural health care clinics and that the unusual circumstances in funding year 2016 warrant a waiver of the Commission's rules.³⁷ Next, TCC again asserts that it did not receive fair notice that USAC planned to pro-rate funding for every health care provider, even evergreen contracts, who filed during the second filing window period.³⁸ Lastly, TCC maintains that USAC has the money to fully fund telecommunications service for TCC's health care providers.³⁹ TCC states that a denial of its request for RHC Program support would cause hardship on TCC and have an adverse impact on the Alaska Native populations served by TCC.⁴⁰

III. DISCUSSION

8. *Filing Window Deadline.* We deny TCC's request for review of USAC's decision or in the alternative waiver of the application filing deadline for funding year 2016.⁴¹ We reject TCC's first argument that it should be permitted to file the FCC Forms 466 after the filing window deadline for funding year 2016.⁴² TCC indicates that, for two of the clinics, the responsible official was unaware of the filing window periods and, for one clinic, the deadline was missed because of an oversight of the primary account holder.⁴³ Filing the FCC Forms 466 on a timely basis was therefore within TCC's control but for the mistake on the part of a TCC staff member. In certain instances, the Commission has granted a waiver of an application filing deadline where the FCC Form was filed shortly after the deadline, the deadline was missed due to circumstances beyond the applicant's control, or the application was filed within a reasonable period of time following the death or serious illness of the person responsible for filing the application or the death of a family member of the staff person.⁴⁴ However, none of these special circumstances are present here. Rather, in this instance, FCC Forms 466 were *never* filed for the HHC Clinics and the omissions were discovered over three months later.⁴⁵ We also do not

³⁴ *Id.* at 20-21; Proposed Consent Decree & Compliance Plan.

³⁵ TCC Request for Review and Waiver at 2, 14-17; 47 CFR § 54.675(f) (2018).

³⁶ TCC Request for Review and Waiver at 14-16.

³⁷ *Id.* at 15.

³⁸ *Id.* at 16.

³⁹ *Id.* at 16-17.

⁴⁰ *Id.* at 17-19.

⁴¹ *See id.* at 1, 9-14 (regarding Health Care Provider (HCP) Nos. 10720, 10721, and 11022).

⁴² *See* TCC Request for Review and Waiver at 9-11.

⁴³ *Id.* at 10.

⁴⁴ *See, e.g., Requests for Waiver and Review of Decisions of the Universal Service Administrator by Acorn Public Library District, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 23 FCC Rcd 15474 (WCB 2008).

⁴⁵ *See* TCC Request for Review and Waiver at 10-11. *Cf., Request for Review by Bradford Regional Medical Center, Rural Health Care Universal Service Support Mechanism*, WC Docket No. 02-60, Order, 25 FCC Rcd 7221, 7222-23, paras. 4-5 (WCB 2010) (waiving the filing deadline to allow the petitioner to file an FCC Form 466-A where the petitioner timely filed an FCC Form 466, timely responded to USAC's request for additional information, made several attempts to follow-up with USAC, and USAC delayed in responding to the petitioner).

consider these omissions ministerial or clerical errors, as suggested by TCC.⁴⁶ Ministerial or clerical errors include the kinds of errors that a typist might make when entering data from one list to another, such as mistyping a number, using the wrong name or phone number, failing to enter an item from the source list onto the application, or making an arithmetic error.⁴⁷ These types of errors are not present in this instance.

9. We also reject TCC's argument that USAC did not provide fair notice of the application filing window deadlines for funding year 2016.⁴⁸ First, the Bureau announced the filing window period schedule for funding year 2016 in August 2016 after it became apparent that program demand could exceed the \$400 million cap.⁴⁹ In addition, USAC conducted substantial outreach about the funding year 2016 filing window. USAC advised program participants of the filing window deadlines through an email blast to all holders of accounts in USAC's RHC Program filing system, in a newsletter, during a webinar it conducted, and by including notices on its website.⁵⁰ All of the outreach encouraged applicants to file applications by the November 30 deadline in order to ensure that qualifying funding requests would receive funding since a third filing window would only open if RHC Program funding remained available.⁵¹

10. RHC Program participants are ultimately responsible for knowing about and complying with all program rules, including deadlines established pursuant to our program rules.⁵² That is true whether or not USAC conducts outreach to program participants regarding a program deadline,⁵³ as it did here. TCC had one account holder for all the health care providers in its consortium. At a minimum, that account holder received USAC's email blast concerning the funding year 2016 application filing window period and participated in USAC's webinar regarding the filing window period deadlines.⁵⁴ Therefore, there should have been no confusion about the filing deadlines for funding year 2016. In fact, TCC timely filed applications for 27 of the 30 health care providers in its consortium. While we recognize that TCC has taken steps, as part of its subsequent efforts to rectify its filing procedures going forward,⁵⁵ we

⁴⁶ See TCC Request for Review and Waiver at 13.

⁴⁷ See *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Ann Arbor Public Schools, et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 25 FCC Rcd 17319, 17320, paras. 1-2, note 5 (WCB 2010).

⁴⁸ See TCC Request for Review and Waiver at 10, 14.

⁴⁹ See August 2016 Filing Window PN at 4.

⁵⁰ See *supra* para. 4, note 16.

⁵¹ *Id.*

⁵² See *Request for Review by Portland Area Indian Health Service, Rural Health Care Universal Service Support Mechanism*, WC Docket No. 02-60, Order, 25 FCC Rcd 13050, 13053, para. 7 (WCB 2010) ("All applicants must comply with our rules and procedures and continue to submit complete and accurate information to USAC as part of the application review process."); *Jemez Pueblo Tribal Consortium Jemez and Zio Pueblos, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 32 FCC Rcd 10238, 10243, para. 10 (WCB 2017).

⁵³ See *Universal Service Contribution Methodology*, WC Docket No. 06-122, Order, 25 FCC Rcd 7399, 7401, para. 6 (WCB 2010) (noting that emails sent by USAC to regulatory contacts for contributors about changes to contribution base revenues are "just that, a courtesy notification . . . It is the contributor's responsibility to identify and correct any errors in its filing within the 45-day revision window").

⁵⁴ See August 2016 Email; September 2016 Webinar.

⁵⁵ See Proposed Consent Decree & Compliance Plan.

find, consistent with Commission precedent, that TCC has not presented special circumstances justifying a waiver of the filing window period deadline for funding year 2016.⁵⁶

11. *Funding Year 2016 Proration.* We also deny TCC's request to waive the Commission's pro-rata rules so that TCC will receive full RHC Program support for all 30 of the clinics in its consortium.⁵⁷ Specifically, we reject TCC's argument that because USAC approved TCC's contract as evergreen, all of TCC's health care providers were deemed eligible for full funding for the life of the contract.⁵⁸ TCC misunderstands the effect of having a contract deemed evergreen by USAC. Evergreen status provides an important shortcut by allowing health care providers an exemption from the competitive bidding requirement for future funding years.⁵⁹ Health care providers are not required to participate in competitive bidding for the life of the contract (or until the contract is modified), but evergreen status does not guarantee health care providers full funding for the length of the evergreen contract nor does it allow them to avoid submitting a request for discounts by filing a funding application each year.⁶⁰

12. We also reject TCC's argument that it did not receive fair notice that USAC planned to pro-rate funding for all health care providers that filed in the second filing window for funding year 2016.⁶¹ USAC's email to all RHC account holders and newsletter in August 2016 specifically encouraged applicants to submit their funding requests by November 30 indicating that there would only be a third filing window period if funding remained and the potential for proration if demand exceeded the cap during the filing window.⁶² Moreover, applicants were able to file as early as March 1, 2016 for funding year 2016 RHC Program support and, beginning as early as August 2016, had adequate notice of the funding year 2016 filing window deadlines for the remainder of the application filing period.⁶³ TCC thus had six months to file its FCC Forms 466 in order to receive funding for its clinics but waited until the second filing window, where demand exceeded available RHC Program funding. As a result of this

⁵⁶ See, e.g., *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) (denying waivers of the Schools and Libraries Program's application (FCC Form 471) filing window deadline where petitioners failed to present special circumstances justifying waivers of the Commission's rules). See also *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket Nos. 96-45, 97-21, 02-6 and WC Docket Nos. 02-60, 06-122, Public Notice, 30 FCC Rcd 11692 (WCB 2015) (denying in part appeals related to the FCC Form 466 deadline where the appellants late-filed or never-filed the FCC Form 466 by the deadline). Because we deny TCC's request for waiver of the application filing deadline finding that TCC has not presented special circumstances justifying a waiver of the Commission's rules for funding year 2016, we therefore also decline to consider and dismiss with prejudice TCC's proposed Consent Decree and Compliance Plan. In the alternative, were we to construe the Consent Decree and Compliance Plan as submitted in support of the request for waiver, the proposals contained in the Consent Decree and Compliance Plan, while addressing compliance measures on a going forward basis, do not address the flaws identified in the waiver request for funding year 2016. See Proposed Consent Decree & Compliance Plan.

⁵⁷ See TCC Request at 2, 14-17 (regarding HCP Nos. 10720, 10721, 11022, 10715, 10716, 10717, 10718, 10722, 10723, 10724, 10726, 10727, 10729, 10730, 10731, 10732, 10733, 10735, 10736, 10737, 10738, 10739, 11011, 12804, 15464, 15465, 16362, 10736, 176991, and 10719); 47 CFR § 54.675(f).

⁵⁸ See TCC Request for Review and Waiver at 14-15.

⁵⁹ See *supra* para. 2; Rural Health Care Program Evergreen Contracts.

⁶⁰ See *supra* para. 2; 47 CFR § 54.675(d) (2018) (requiring health care providers to file new funding requests for each funding year, except for health care providers who have received multi-year funding commitments); Rural Health Care Program Evergreen Contracts.

⁶¹ See TCC Request for Review and Waiver at 16.

⁶² See August 2016 Email; 3rd Quarter 2016 Newsletter.

⁶³ See *supra* para. 4, note 16; August 2016 Filing Window PN; August 2016 Email.

delay, USAC was required, per Commission's rules, to pro-rate TCC's commitments.⁶⁴ Although USAC did not have to implement the Commission's proration rules in previous funding years, these rules have been in effect since the early years of the RHC Program.⁶⁵ TCC has also been a regular participant in the RHC program for the past few years⁶⁶ and over that time demand for RHC Program support has steadily grown towards the program cap. TCC therefore should have been aware of the proration rules and the potential for these rules to take effect if demand ever exceeded the cap.

13. We next reject TCC's argument that it should receive full funding for all of its consortium members because USAC has the money to fully fund telecommunications services for TCC's health care providers.⁶⁷ The annual funding cap for funding year 2016 was \$400 million with a total amount of qualifying funding requests for that year of \$407,770,232.⁶⁸ After subtracting \$12,700,000 for USAC's administrative expenses, the total amount of available RHC Program funding was \$387,242,870.⁶⁹ At the time of TCC's request, \$241,466,119 in funding requests were pending and \$131,023,258 in commitments had been made.⁷⁰ TCC argues that this means \$14,753,493 in available RHC Program funding remained for funding year 2016.⁷¹ TCC also contends that USAC had \$35,280,855 held in "reserve" for funding year 2016.⁷² TCC argues that USAC could use a portion of these funds to fully fund TCC's funding year 2016 requests.⁷³

14. As an initial matter, TCC misunderstands USAC's funding calculations for funding year 2016.⁷⁴ The total amount of qualifying funding requests for funding year 2016 was \$407,770,232 which represented the sum of \$241,466,119 in pending commitments, \$131,023,258 in commitments made, as well as the \$35,280,855 held in "reserve."⁷⁵ The funds held in "reserve" were fully allocated for appeals of funding requests that were denied or reduced and funding requests that remained pending for further review.⁷⁶ Accordingly, no funding year 2016 funds remain to provide additional support for funding year 2016 requests, as TCC suggests.⁷⁷ In fact, the total dollar value of all qualifying funding requests received by the close of the second filing window period for funding year 2016 was \$274,725,249, which

⁶⁴ See 47 CFR § 54.675(f) (2018).

⁶⁵ See *RHC Fifth Order on Reconsideration and Fourth Report and Order*, 13 FCC Rcd at 14941, para. 41.

⁶⁶ TCC Request for Review and Waiver at 19 (noting that for more than ten years, TCC has been a part of the RHC Program).

⁶⁷ See TCC Request for Review and Waiver at 16-17.

⁶⁸ See USAC, Rural Health Care Program, Funding Commitments, FY2016 Funding Information, <https://www.usac.org/rural-health-care/commitment-info/funding-commitments-archive/> (last visited Jan. 10, 2020) (Funding Year 2016 Funding Information).

⁶⁹ Funding Year 2016 Funding Information.

⁷⁰ *Id.*

⁷¹ TCC Request for Review and Waiver at 16-17.

⁷² *Id.*

⁷³ *Id.* at 17.

⁷⁴ See Funding Year 2016 Funding Information.

⁷⁵ *Id.*

⁷⁶ *Id.* When USAC denies or reduces a funding request, it holds the amount denied or reduced in the event of a successful appeal.

⁷⁷ See TCC Request for Review and Waiver at 16-17.

exceeded the funding available (\$254,255,017) by approximately \$20 million.⁷⁸ For this reason, USAC was required to prorate all funding requests received in the second filing window for funding year 2016.⁷⁹

15. TCC's consortium of rural health clinics was among many other health care providers that received prorated funding for funding year 2016. As indicated above, in adopting the pro rata rule, the Commission found that this approach ensured fairness and equity to each health care provider applying for universal service support and did not impose an undue administrative burden upon either the applicants or USAC.⁸⁰ Therefore, it would be inconsistent with the Commission's intent in establishing this rule to prioritize full funding to the rural health care clinics as part of TCC's consortium over other eligible health care providers that also submitted funding requests during the final filing window for funding year 2016 and received prorated funding. Further, program rules and deadlines are necessary for the effective administration of the RHC Program, ensuring program integrity, and providing certainty to all RHC Program participants. While we appreciate that the proration of funding requests may place a strain on health care providers working to deliver health care services in their rural communities, a general claim that a reduction of funding will have a detrimental impact does not constitute special circumstances for waiving the Commission's rules, particularly where an applicant has missed a filing deadline.⁸¹ Indeed, if the detrimental impact a reduction of funding has on rural communities and health care providers alone were grounds for a waiver, waiver could be warranted for almost every conceivable violation of the Commission's rules.

16. That said, in the *Alaska Waiver Order*, released in June 2017, the Commission recognized that the impact of proration on health care providers in Alaska was more severe and those health care providers could be required to absorb a substantially larger portion of the cost of the services they receive, potentially having public health consequences.⁸² It, therefore, gave Alaskan health care providers the opportunity to seek to mitigate the impact of funding year 2016 proration by working with its service provider to obtain a reduced price for its services.⁸³ TCC, as an Alaskan consortium of health care providers, had the ability to take advantage of this opportunity by working with its service provider to minimize any significant costs borne by TCC due to proration. Thus, while we are sympathetic to the need for health services to Alaska Native residents served by the rural health clinics as part of TCC's consortium, we find that TCC has not provided special circumstances justifying a waiver of the Commission's pro rata rules.

IV. ORDERING CLAUSES

17. 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 sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 54.722(a) that

⁷⁸ Funding Year 2016 Funding Information; Funding Year 2016 Filing Windows and Pro-rata Information.

⁷⁹ See 47 CFR § 54.675(f) (2018); FY2016 Filing Windows and Pro-rata Information. All qualifying requests submitted before the September 1 – November 30, 2016 filing window period received 100% of the requested funding. FY2016 Filing Windows and Pro-rata Information.

⁸⁰ See *supra* para 4; *RHC Fifth Order on Reconsideration and Fourth Report and Order*, 13 FCC Rcd at 14940-41, para. 40.

⁸¹ See *Application for Review of a Decision of the Wireline Competition Bureau by Yakutat School District*, CC Docket No. 02-6, 29 FCC Rcd 10746, 10749, para. 8 (2014); *supra* para 10, note 52. In this instance, TCC seeks full RHC Program support for all 30 of the clinics in its consortium for funding year 2016, including the three clinics where TCC never filed applications for support. See TCC Request for Review and Waiver at 2, 14-17.

⁸² *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 32 FCC Rcd 5463, 5464, para. 5 (2017) (*Alaska Waiver Order*) (waiving, *sua sponte*, the Commission's rules to assist remote Alaskan health care providers impacted by the RHC Program proration in funding year 2016).

⁸³ See *id.* at 5464-67, paras. 6-12.

the Request for Review and Waiver filed by the Tanana Chiefs Conference on April 28, 2017 IS DENIED.

18. 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 1.93 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.93 that the Proposed Consent Decree submitted by Tanana Chiefs Conference IS DISMISSED with prejudice.

19. IT IS FURTHER ORDERED, pursuant to section 1.103(a) of the Commission's rules, 47 CFR. § 1.103(a), that this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

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