

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

In the Matter of)
Request for Review and/or Wavier by Community)
Care of West Virginia, Inc.)
Rural Health Care Universal Service Support) WC Docket No. 02-60
Mechanism)

ORDER

Adopted: May 12, 2021

Released: May 12, 2021

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we address a request for review or, in the alternative, request for waiver of the Commission’s Rural Health Care (RHC) Telecommunications (Telecom) Program rules filed by Community Care of West Virginia, Inc. (CCWV).1 CCWV seeks review of two decisions by the Universal Service Administrative Company (USAC) denying CCWV’s request that USAC re-calculate thirty-two funding year 2018 (FY 2018) funding commitments using urban rates originally submitted by CCWV that USAC concluded were not publicly available as required by Commission rules.2 Based on our review of the record, we conclude that the urban rates submitted by CCWV were publicly available because the rates were provided upon request on a non-confidential basis and submitted to USAC in public filings. We therefore grant CCWV’s request for review and instruct USAC to revise the FY 2018 funding commitments for the funding request numbers (FRNs) listed in Attachment A accordingly.

II. BACKGROUND

2. The Telecom Program subsidizes the difference between the rates in a health care provider’s rural area and rates for comparable services available in urban areas within the health care provider’s state.3 Health care providers request funding by submitting an FCC Form 466 (Funding

1 Request for Review and/or Waiver by Community Care of West Virginia, Inc. of Decisions of the Universal Service Administrator, WC Docket No. 02-60 (filed Jan. 19, 2021) (Request for Review and/or Waiver). Because we grant the Request for Review we do not address CCWV’s request in the alternative for a waiver of Commission rules.

2 CCWV appeals two USAC decisions. The first denied CCWV’s appeal of USAC’s funding commitments for 31 funding requests for 10 Mbps service and the second denied CCWV’s appeal of one funding commitment for 20 Mbps service. See Letter from Universal Service Administrative Company to Kristi Walker, Senior Project Manager, Community Care of West Virginia, Re: Community Care of Weston – Appeal of USAC’s Decision for Funding Requests Numbers listed in Appendices A and B (Nov. 20, 2020) (USAC 10 Mbps Decision); Letter from Universal Service Administrative Company to Kristi Walker, Senior Project Manager, Community Care of West Virginia, Re: Community Care of Weston – Appeal of USAC’s Decision for Funding Requests Number 1848651 (Nov. 20, 2020) (USAC 20 Mbps Decision); see also 47 CFR §54.605(a)-(b) (2018).

3 See 47 U.S.C. § 254(h)(1)(A); Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9093-161, paras. 608-749 (1997) (Universal Service First Report and Order).

Request and Certification Form) that includes monthly urban and rural rates for the requested service.⁴ Telecom Program rules applicable in FY 2018 required that the urban rate “shall be a rate no higher than the highest tariffed or publicly-available rate charged to a commercial customer for a functionally similar service” in any city with a population of 50,000 or more in the state in which the health care provider is located.⁵

3. The FCC Forms 466 that are the subject of the Request for Review and/or Waiver are thirty-two FY 2018 Telecom Program requests for Ethernet services.⁶ On thirty-one FCC Forms 466 for 10 Mbps service, CCWV listed an urban rate of \$108.00 supported by a pricing sheet from Lumos Networks (Lumos) and a letter from TeleQuality Communications, LLC (TeleQuality),⁷ the service provider selected by CCWV, explaining that the Lumos urban rates were “publicly available to any retail consumer who requests service (from Lumos)” and providing contact information for Lumos.⁸ CCWV also submitted a tariff from Frontier Telephone Companies (Frontier) with an urban rate of \$590.00 for 10 Mbps service, which the TeleQuality letter explained was submitted “out of an abundance of caution, and due to continuously changing guidance on which documentary evidence USAC will deem acceptable.”⁹ CCWV submitted one FCC Form 466 for 20 Mbps service with urban rates of \$184.00, also supported by a different TeleQuality letter and Lumos pricing sheet.¹⁰ This second TeleQuality Letter provided an alternative urban rate from Frontier for 20 Mbps service at \$960.00.¹¹

4. USAC determined that the Lumos pricing sheet was not publicly available as required by Commission rules and requested additional information and documentation from CCWV to support both the 10 Mbps and 20 Mbps urban rates.¹² In response to the USAC information request, CCWV provided a signed letter from Lumos validating the rates for Ethernet services in Charleston, West Virginia.¹³ CCWV also provided a 10 Mbps urban rate of \$500.00 from the universal service schools and libraries (E-Rate) Open Data platform.¹⁴

5. USAC ultimately determined that the documentation submitted by CCWV did not demonstrate that the urban rates in the Lumos pricing sheet were publicly available as required by Commission rules.¹⁵ CCWV then gave USAC permission to change the urban rates on fifteen of the 10 Mbps FCC Forms 466 to \$500.00 as supported by E-Rate documentation, and to change the urban rates on sixteen of the 10 Mbps FCC Forms 466 to \$590.00 as supported by the Frontier tariff so that it could

⁴ See Health Care Providers Universal Service, Funding Request and Certification Form (FCC Form 466), available at https://www.usac.org/wp-content/uploads/rural-health-care/documents/FCC-Forms/Form_466_2019.pdf (last visited April 28, 2021).

⁵ 47 CFR §54.605(a)-(b) (2018).

⁶ See Attachment A.

⁷ TeleQuality was acquired by Education Networks of America, Inc. in January 2018 and currently provides services under the name ENA Healthcare Services, LLC.

⁸ See Attachment B, TeleQuality Urban Rate Supporting Documentation Letter (undated) (*TeleQuality 10 Mbps Justification Letter*); Request for Review and/or Waiver at 4-5; *USAC 10 Mbps Decision* at 3.

⁹ *TeleQuality 10 Mbps Justification Letter*; Request for Review and/or Waiver Exhibit 5.

¹⁰ See Attachment C, TeleQuality Urban Rate Supporting Documentation (undated) (*TeleQuality 20 Mbps Justification Letter*); Request for Review and/or Waiver at 4-5; *USAC 20 Mbps Decision* at 3.

¹¹ *TeleQuality 20 Mbps Justification Letter*.

¹² *USAC 10 Mbps Decision* at 3-4; *USAC 20 Mbps Decision* at 3-4.

¹³ Request for Review and/or Waiver, Exhibit 6.

¹⁴ *USAC 10 Mbps Decision* at 4; Request for Review and/or Waiver at 6.

¹⁵ *USAC 10 Mbps Decision* at 3; *USAC 20 Mbps Decision* at 3.

receive a funding commitment instead of a denial.¹⁶ USAC used an urban rate of \$960.00 for the 20 Mbps FRN, which was the urban rate for 100 Mbps service on the Frontier tariff.¹⁷ On appeal, USAC adjusted the funding commitment for 20 Mbps Ethernet service to reflect the \$590.00 urban rate for 10 Mbps in the Frontier tariff.¹⁸

6. CCWV requests that the Commission find that the urban rates from the Lumos pricing sheet are publicly available as required by Commission rules.¹⁹ In the alternative, CCWV requests a waiver of the requirement in section 54.605 of the Commission's rules that urban rates be publicly available on grounds that USAC's interpretation of the rule has placed an unreasonable burden on CCWV and caused significant financial harm.²⁰

III. DISCUSSION

7. We grant CCWV's request for review and find that the urban rates from the Lumos pricing sheet submitted to USAC were publicly available. Commission rules in effect for FY 2018 required that the urban rate "shall be a rate no higher than the highest tariffed or publicly-available rate charged to a commercial customer for a functionally similar service in any city with a population of 50,000 or more in that state[.]"²¹ The Commission has previously noted that urban rate documentation could include "tariff pages, contracts, signed letters on a service provider's letterhead, rate pricing information from a service provider's website, or similar documentation showing how the urban rate was obtained."²² Though the rates from the Lumos pricing sheet submitted by CCWV were not posted on the Lumos website or another public forum, the full pricing sheet was provided upon request to TeleQuality, a competing service provider, and submitted to USAC with CCWV's FCC Form 466 filings. There is no evidence that Lumos requested that the rates be kept confidential, either when providing the rates or when the rates were publicly filed with the Commission without redactions as part of the Request for Review and/or Waiver.²³ The letters from TeleQuality submitted with the CCWV FCC Forms 466 assert that any retail customer can request urban rates from Lumos and provide a phone number and email address to request such rates.²⁴ The Lumos urban rates were subsequently verified by a signed letter on Lumos letterhead, an example of urban rate justification previously identified by the Commission.²⁵ The Lumos documentation also included an "On-Net Building List" that identified commercial customers in Charleston, West Virginia.²⁶

8. We find, consistent with previous Commission guidance, that a pricing sheet made available by a service provider to any interested party and verified by a signed letter on the service provider's letterhead is a sufficient demonstration that an urban rate is publicly available. Posting on a public website is not required for a rate to be "publicly available" under section 54.605 of the rules. We instruct USAC to recalculate the funding commitment amounts for the CCWV FY 2018 FRNs listed in

¹⁶ *USAC 10 Mbps Decision* at 3-4; Request for Review and/or Waiver at 6.

¹⁷ *USAC 20 Mbps Decision* at 4.

¹⁸ *USAC 20 Mbps Decision* at 5; Request for Review and/or Waiver at 7.

¹⁹ Request for Review and/or Waiver at 8.

²⁰ Request for Review and/or Waiver at 13-14; 47 CFR § 54.605.

²¹ 47 CFR § 54.605(a) (2018).

²² Request for Review and/or Waiver at 9, citing *In the Matter of DataConnex, LLC*, Notice of Apparent Liability for Forfeiture and Order, 33 FCC Rcd 1575, 1580, para. 10 (2018) (*DataConnex NAL*).

²³ See Request for Review and/or Waiver, Exhibit 4.

²⁴ *TeleQuality 10 Mbps Justification Letter*; *TeleQuality 20 Mbps Justification Letter*.

²⁵ Request for Review and/or Waiver, Exhibit 6; *DataConnex NAL*, 33 FCC Rcd at 1580, para. 10.

²⁶ *Id.*

Appendix A using the urban rates of \$108.00 for 10 Mbps Ethernet service and \$184.00 for 20 Mbps Ethernet service from the Lumos pricing sheet.

9. We acknowledge that TeleQuality previously admitted to multiple violations of RHC Program rules, including rules related to the calculation and justification of urban rates, during the period of at least January 1, 2015, through December 31, 2018, in an Order and Consent Decree entered into with the Commission's Enforcement Bureau.²⁷ In this case, we find that there is no evidence of fabricated urban rate documentation or other waste, fraud, and abuse, by TeleQuality or CCWV related to the Lumos rates and the signed letter from Lumos verifying those rates. TeleQuality's previous violations included providing forged sales quotes that purported to show urban rates charged by other providers in order to deflate urban rates, which resulted in TeleQuality receiving a higher level of support than it was entitled to.²⁸ TeleQuality also admitted to establishing certain urban rates based on rates for TeleQuality service that was indirectly supported by the RHC Program in violation of Commission rules and submitting urban rates based on insufficient documentation.²⁹ The forged urban rate documentation that was the subject of the *TeleQuality Consent Decree* was related to documentation purporting to be from Level 3 Communications, Inc. and the improperly calculated urban rates based on services indirectly supported by the RHC Program were related to urban rates for services in Texas. Importantly, there is no evidence in the record that suggests that the documentation used to support the urban rates in this case was forged.

IV. ORDERING CLAUSES

10. 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, 54.605 and 54.722(a) of the Commission's rules, 47 CFR §§ 0.91, 0.291, 54.605 and 54.722(a) (2018), that the Request for Review filed by the Community Care of West Virginia, Inc. on January 19, 2021 IS GRANTED.

11. IT IS FURTHER ORDERED that, pursuant to the authority delegated in section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief
Wireline Competition Bureau

²⁷ *In the Matter of TeleQuality Communications*, Order and Consent Decree, 35 FCC Rcd 503 (EB 2020) (*TeleQuality Consent Decree*).

²⁸ *See id.* at 503, para. 13.

²⁹ *Id.*