

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

In the Matter of )
Request for Review by Primary Healthcare Centers )
Rural Health Care Universal Service Support ) WC Docket No. 02-60
Mechanism )

ORDER

Adopted: December 5, 2022

Released: December 5, 2022

By the Chief, Telecommunications Access Policy Division, 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 Primary Healthcare Centers (PHC).1 PHC seeks review of eight funding requests denied by the Universal Service Administrative Company (USAC) for funding year (FY) 2016.2 Based on our review of the record, we conclude that USAC was correct in denying PHC’s funding requests and find that PHC and its selected telecommunications provider, TeleQuality Communications LLC (TeleQuality or Company), failed to comply with the Commission’s rules for rural rates. We also find that PHC has not demonstrated special circumstances justifying a waiver of the Commission’s rules and has not otherwise demonstrated that such a waiver will serve the public interest. We therefore deny both PHC’s request for review and waiver.

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 a health care provider’s state.3 Health care providers request funding by submitting an FCC Form 466 (Funding Request and Certification Form) that includes monthly urban and rural rates for the requested service.4

1 See Request for Review and/or Waiver by Primary Healthcare Centers of Funding Decisions by the Universal Service Administrative Company, WC Docket No. 02-60 (filed November 13, 2018) (Request for Review).
2 Funding Request Numbers 1688401, 1688417, 1688419, 1688421, 1688424, 1688427, 1688429, and 1688431. Id., Exh. 1 at Appx. A. See id., Exh. 1 (Letter from USAC, Rural Health Care Division, to Melanie Forsythe, Primary Healthcare Centers (September 13, 2018) (USAC Appeal Denial).
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).
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 January 14, 2022).

3. Under the Commission's rules applicable in FY 2016, three methods could be used for calculating rural rates in the Telecom Program, depending on the circumstances.<sup>5</sup> Specifically, the Commission's rules provided that the rural rate can be calculated based on one of the following three methods: (1) the average of rates that the carrier actually charges to other non-health care provider commercial customers for the same or similar services provided in the rural area where the health care provider is located (Method 1);<sup>6</sup> (2) if the carrier does not have any commercial customers in the health care provider's rural area, the average of tariffed and other publicly available rates charged by other service providers for the same or similar services provided over the same distance in the rural health care provider's area (Method 2); or (3) if there are no such rates or the carrier reasonably determines that those rates would be unfair, a cost-based rate that is approved by the Commission for interstate services (or the relevant state commission for intrastate services) (Method 3).<sup>7</sup> A carrier seeking approval of a rural rate under Method 3 is required to provide "a justification of the proposed rural rate that includes an itemization of the costs of providing the requested service."<sup>8</sup>

4. On May 5, 2016, PHC submitted an FCC Form 465 (Description of Services Requested and Certification Form) requesting bids for services from potential service providers and initiating the 28-day competitive bidding process.<sup>9</sup> After reviewing the bids, PHC selected TeleQuality to provide services and submitted Forms 466 for each service.<sup>10</sup>

5. The Commission's Enforcement Bureau (EB) and TeleQuality entered into a Consent Decree in February 2020 for the purposes of terminating EB's investigation into whether TeleQuality violated the Commission's RHC Program rules.<sup>11</sup> Among many violations, TeleQuality admitted to the Company's failure to comply with any of the three methods outlined in section 54.607 of the Commission's rules to determine its rural rates for the period of at least January 1, 2015, through December 31, 2018, which includes FY 2016, the FY for the request at issue in the instant appeal.<sup>12</sup>

6. USAC sent information requests to PHC requesting documentation demonstrating how the rural rates listed on PHC's filed Forms 466 were compliant with the Commission's rules.<sup>13</sup> In response to the information requests, PHC provided a letter from TeleQuality that detailed the type, cost, and dates of services.<sup>14</sup> On December 6, 2016, USAC denied the funding requests finding that PHC: (1)

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<sup>5</sup> See 47 CFR § 54.607 (2017). All references herein to section 54.607 refer to this version of the rule and its subparts as set forth in the Commission's rules prior to the effective date of the Rural Health Care Program reforms adopted in 2019. See also *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 (WCB 2019) (*Promoting Telehealth Implementation Public Notice*) (announcing the effective date of section 54.605(a), which replaces section 54.607 as the means for determining rural rates, at the beginning of the FY 2021 competitive bidding period). These rules have since been waived for FYs 2021 and 2022. *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Order, DA 21-394 at 6, para. 12 (WCB April 8, 2021).

<sup>6</sup> For the purposes of section 254 of the Communications Act, a "rate" is a single rate for a complete end-to-end service, and not rates for components of a service. See *Universal Service First Report and Order*, 12 FCC Rcd at 9128, paras. 674-75.

<sup>7</sup> 47 CFR § 54.607(a), (b) (2017).

<sup>8</sup> 47 CFR § 54.607(b)(1) (2017).

<sup>9</sup> See *Request for Review* at 4.

<sup>10</sup> *Id.*

<sup>11</sup> *TeleQuality Communications*, Order and Consent Decree, DA 20-69, 35 FCC Rcd 503 (EB 2020) (*TeleQuality Consent Decree*).

<sup>12</sup> *Id.* at 504, para. 2. See also *id.* at 514, para.13.C.

<sup>13</sup> See *Request for Review* at 5. See also *id.*, Exh. 2.

had not selected the most cost-effective method of providing the requested services; (2) did not provide documentation to support the rural rate “as required by the instructions on the form;” (3) and did not adequately respond to information requests related to rural rates.<sup>15</sup>

7. On January 17, 2017, PHC appealed the denials to USAC arguing that the letter it submitted supported the rural rate and requested USAC to review the documentation.<sup>16</sup> PHC also provided an analysis justifying how TeleQuality was the most cost-effective service provider out of all the potential bidders.<sup>17</sup> On September 13, 2018, USAC agreed with PHC’s competitive bidding analysis and found that PHC selected the most cost-effective method of providing the service.<sup>18</sup> Nonetheless, USAC denied PHC’s appeal, finding that the letter PHC provided was insufficient to support the funding requests because it did not demonstrate how the rates were determined.<sup>19</sup> Specifically, USAC found that the letter did not show PHC and TeleQuality’s compliance with any of the three permissible methods for determining a rural rate.<sup>20</sup>

8. PHC’s appeal to the Commission argues that the documentation did not need to demonstrate how the rate was determined because the documentation complied with what it claims was a different documentation requirement in effect in FY 2016.<sup>21</sup> PHC argues that documentation demonstrating how the rate was determined was not required until USAC announced new guidance on February 19, 2019.<sup>22</sup> Additionally, PHC submits new documentation that it claims demonstrates that TeleQuality used Method 3 to determine rates and filed the rates charged to PHC with the Georgia Public Service Commission.<sup>23</sup> PHC is now requesting that the Commission reevaluate USAC’s decision and, in the alternative, grant a waiver of the rules in the event the Commission believes PHC failed to comply with the rules.

### III. DISCUSSION

9. We agree with USAC that PHC failed to comply with the Telecom Program rules for the funding requests at issue because the rates for the funding requests were not calculated consistent with Commission rules. The letter that PHC provided to USAC reflected the type of service, dates of service, and cost of service on signed letterhead from TeleQuality in an effort to comply with the instructions on the FCC Form 466 for FY 2016.<sup>24</sup> This documentation demonstrated what the requested rural rate was,

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<sup>14</sup> See *id.*, Exh. 3.

<sup>15</sup> Funding Request Denial Letters (sent Dec. 6, 2016). *Id.*, Exh. 4.

<sup>16</sup> See *id.* at 5. See also *id.*, Exh. 5.

<sup>17</sup> *Id.*, Exh. 5 at 2-4.

<sup>18</sup> Letter from USAC to Ms. Melanie Forsythe, Primary Health Care Centers (Sep. 13, 2018). See *id.*, Exh. 1 at 4.

<sup>19</sup> *Id.*, Exh. 1 at 4-5.

<sup>20</sup> 47 C.F.R. § 54.607(b). *Id.*

<sup>21</sup> See *Request for Review* at 9.

<sup>22</sup> *Id.* See *The Wireline Competition Bureau Provides Guidance Regarding the Commission’s Rules for Determining Rural Rates in the Rural Health Care Telecommunications Program*, WC Docket No. 02-60, 34 FCC Rcd 533 Public Notice (WCB 2019) (*WCB Guidance Letter*), <https://www.fcc.gov/document/wcb-provides-guidance-rural-rates-rhc-telecommunications-program>.

<sup>23</sup> See *Request for Review*, Exh. 7.

<sup>24</sup> See *id.* See also *id.* at 9.

but did not demonstrate that the requested rural rate complied with the Commission's rules for the RHC Program.<sup>25</sup>

10. The rural rates listed on PHC's application do not comply with any of the three methods for calculating rural rates. PHC and TeleQuality did not substantiate the rural rates under Method 1 because no documentation was provided showing the average of rates being charged to commercial customers other than health care providers for identical or similar services.<sup>26</sup> PHC and TeleQuality also did not justify the rural rates under Method 2 because no documentation was provided demonstrating that TeleQuality did not provide identical or similar services in PHC's rural area and they did not provide documentation showing the average of tariffed and other publicly available rates for the same or similar services by other carriers.<sup>27</sup>

11. Commission rules allow carriers to use Method 3 only when Method 1 and Method 2 are unavailable.<sup>28</sup> PHC and TeleQuality did not establish, or even assert, that Method 1 and Method 2 were unavailable and therefore cannot rely upon Method 3 to justify the rates in question.<sup>29</sup> In any event, even if Method 3 was applicable, PHC and TeleQuality failed to demonstrate that the rates in question were calculated pursuant to Method 3. PHC provided new documentation on appeal that it claims demonstrates that TeleQuality calculated the rural rates using a cost-based approach and filed the rates with the Georgia Public Service Commission for approval according to Commission rules.<sup>30</sup> The documentation is a tariff sheet TeleQuality filed with the Georgia Public Service Commission.<sup>31</sup> This tariff sheet does not satisfy the requirements for a Method 3 submission because it does not provide a "justification of the proposed rural rate, including an itemization of the costs of providing the requested service" as required by Commission rules.<sup>32</sup> Moreover, the tariff sheet submitted to the Georgia Public Service Commission could not be used to substantiate the rural rate in this instance under any method because the tariff sheet was not effective until February 9, 2017, five months after PHC and TeleQuality filed the Forms 466 on September 1, 2016 for the funding requests at issue.<sup>33</sup>

12. PHC's claim that it complied with the relevant USAC documentation instructions in place at the time is unavailing even if it is accurate,<sup>34</sup> which we need not decide here. Commission rules have required carriers to calculate rural rates in accordance with Method 1, Method 2 or Method 3 since the inception of the Telecom Program.<sup>35</sup> Whether or not USAC's documentation instructions in place at

<sup>25</sup> See 47 C.F.R. § 54.607(a)(b). See also *id.*, Exh. 7.

<sup>26</sup> See 47 C.F.R. § 54.607(a).

<sup>27</sup> See 47 C.F.R. § 54.607(b).

<sup>28</sup> See 47 CFR § 54.607(a)-(b).

<sup>29</sup> See 47 CFR § 54.607(a) ("If the telecommunications carrier serving the health care provider is not providing any identical or similar services in the rural area, then the rural rate shall be the average of the tariffed and other publicly available rates, not including any rates reduced by universal service programs, charged for the same or similar services in that rural area over the same distance as the eligible service by other carriers."); see also § 54.607(b) ("If there are no tariffed or publicly available rates for such services in that rural areas, or if the carrier reasonably determines that this method for calculating the rural rate is unfair, the carrier shall submit for the state commission's approval, for intrastate rates, or the Commission's approval, for interstate rates, a cost-based rate for the provision of the service in the most economically efficient, reasonably available manner.").

<sup>30</sup> See 47 C.F.R. § 54.607(b)(1)-(2).

<sup>31</sup> See *Request for Review*, Exh. 7.

<sup>32</sup> See 47 CFR § 54.607(b)(1)-(2); see also *Request for Review*, Exh. 7.

<sup>33</sup> See *Request for Review* at 4. See also *id.*, Exh. 7.

<sup>34</sup> See *id.* at 9.

<sup>35</sup> See *Universal Service First Report and Order*, 9120- 21, paras. 658, 662 (1997).

the time specifically called for applicants to demonstrate compliance with one of the three methods, PHC had an underlying obligation under Commission rules to demonstrate such compliance and failed to do so. Therefore, we deny PHC's request for review.

13. We also deny PHC's request in the alternative for a waiver of the Telecom Program rules that prevent PHC from receiving RHC Program support.<sup>36</sup> Generally, Commission's rules may be waived or suspended for good cause shown.<sup>37</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>38</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>39</sup> 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.<sup>40</sup>

14. PHC has not demonstrated special circumstances justifying a waiver of the Commission's rules and has not otherwise demonstrated that such a waiver will serve the public interest.<sup>41</sup> PHC argues for a waiver because of the negative impact that a denial of funding would have on its budget.<sup>42</sup> If the negative impact on a petitioner's budget resulting from a denial of funding amounted to special circumstances justifying a waiver of Commission rules, RHC Program participants would have little incentive to follow program rules given that the denial of funding associated with most rule violations would result in a negative impact on the participant's budget, and would undermine our obligation to protect Universal Service funds against waste, fraud, and abuse.

#### IV. ORDERING CLAUSE

15. 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, 54.607 and 54.722(a) of the Commission's rules, 47 CFR §§ 0.91, 0.291, 54.607 and 54.722(a)(2018), that the Request for Review and Waiver filed by Primary Healthcare Centers on November 3, 2018 IS DENIED.

16. 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

Jodie C. Griffin  
Chief, Telecommunications Access Policy Division  
Wireline Competition Bureau

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<sup>36</sup> See *Request for Review* at 10-12.

<sup>37</sup> 47 CFR § 1.3.

<sup>38</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

<sup>39</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>40</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>41</sup> *Id.*

<sup>42</sup> *Request for Review* at 11.