

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

In the Matter of
Request for Review and Petition for Waiver by
Georgia Department of Public Health
Request for Review and/or Waiver by ENA
Healthcare Services LLC
Rural Health Care Universal Service
Support Mechanism
WC Docket No. 02-60

ORDER

Adopted: March 22, 2022

Released: March 22, 2022

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

I. INTRODUCTION

1. In this Order, we address three requests for review filed by the Georgia Department of Public Health (GDPH), and three related requests for review filed by its service provider, ENA Healthcare Services LLC (ENA Healthcare). GDPH and ENA Healthcare separately seek review of three decisions by the Universal Service Administrative Company (USAC) to recover funding disbursed to GDPH's Southeast Health District (SEHD) for funding years 2015 and 2016, and to deny funding to SEHD for funding years 2017 and 2018, due to SEHD's failure to provide copies of bids it received as required under the competitive bidding rules for the Rural Health Care Program's Telecommunications

1 Request for Review of a Decision of the Universal Service Administrator and Petition for Waiver, WC Docket No. 02-60 (filed Feb. 22, 2021) (GDPH Request I); Request for Review of Decisions of the Universal Service Administrator and Petition for Waiver, WC Docket No. 02-60 (filed July 27, 2021) (GDPH Request II); Request for Review of a Decision of the Universal Service Administrator and Petition for Waiver, WC Docket No. 02-60 (filed Aug. 19, 2021) (GDPH Request III).

2 Request for Review and/or Waiver by ENA Healthcare Services LLC of a Decision of the Universal Service Administrator, WC Docket No. 02-60 (filed Feb. 22, 2021) (ENA Healthcare Request I); Request for Review and/or Waiver by ENA Healthcare Services, LLC of a Decision of the Universal Service Administrator, WC Docket No. 02-60 (filed July 15, 2021) (ENA Healthcare Request II); Request for Review and/or Waiver by ENA Healthcare Services, LLC of a Decision of the Universal Service Administrator, WC Docket No. 02-60 (filed Aug. 18, 2021) (ENA Healthcare Request III).

3 GDPH filed its requests on behalf of the following entities: SEHD; Pierce County Health Department, one of SEHD's affiliated health departments; and Ware County Board of Health (Ware County), the ENA Healthcare contract signatory. Declaration of Dr. Rosemarie Parks in Support of Request for Review of a Decision of the Universal Service Administrator and Petition for Waiver, Attach. to GDPH Request I at 1 (Parks Decl.). In its requests, GDPH refers to SEHD and Ware County collectively as the applicant for Telecom Program support. For the sake of simplicity, in this Order we refer to the applicant as SEHD only.

(Telecom) Program.⁴ GDPH and ENA Healthcare also seek review of USAC's decision to deny funding for a subset of funding year 2017 funding requests due to SEHD's failure to submit sufficient documentation that the urban rate used to calculate Universal Service Fund support complied with the Commission's rules.⁵ In the alternative, GDPH and ENA Healthcare request waiver of the competitive bidding and urban rate rules as applied by USAC in its decisions.

2. Based on our *de novo* review of the record and the special circumstances presented here, we find that good cause exists for a limited waiver of our competitive bidding rules.⁶ We therefore remand the funding requests listed in Appendices A, B, and C to USAC for further action consistent with this waiver. We separately grant the petitioners' requests for review as they pertain to the subset of funding year 2017 FRNs and instruct USAC to calculate the funding commitment amounts for these FRNs using the documented urban rate submitted by SEHD in its appeal.⁷

II. BACKGROUND

3. The Telecom Program allows eligible rural health care providers to apply for universal service support for eligible services.⁸ The Telecom Program rules generally require that entities seek competitive bids for services eligible for support.⁹ In accordance with the Telecom Program's competitive bidding rules, an applicant must initiate the competitive bidding process by submitting a service request using an FCC Form 465 (Description of Services Requested and Certification Form) to USAC for posting on the USAC website.¹⁰ After the FCC Form 465 is posted by USAC, and following a period of at least 28 days, the applicant may enter into a contract with its selected service provider and submit a funding request using an FCC Form 466 (Funding Request and Certification Form).¹¹ Section 54.603(b)(4) of the Commission's rules requires that, as part of its funding request, the applicant include copies of the responses or bids received in response to the request for service.¹² USAC uses the FCC

⁴ See Letter from Rural Health Care Division, Universal Service Administrator Company to Dr. Rosemarie D. Parks, District Health Director, Southeast Health District 9-2 (Dec. 23, 2020) (denying appeal to rescind recovery of funding disbursed for funding years 2015 and 2016) (USAC Decision I); Letter from Rural Health Care Division, Universal Service Administrator Company to Dr. Rosemarie D. Parks, District Health Director, Southeast Health District 9-2 (May 28, 2021) (denying appeal to reverse denial of funding for funding year 2017) (USAC Decision II); Letter from Universal Service Administrator Company to Dr. Rosemarie D. Parks, District Health Director, Southeast Health District 9-2 (June 20, 2021) (denying appeal to reverse denial of funding for funding year 2018) (USAC Decision III). The funding request numbers (FRNs) affected by USAC Decision I, USAC Decision II, and USAC Decision III are listed in Appendices A, B, and C, respectively.

⁵ GDPH Request II at 17-18; ENA Healthcare Request II at 18-20 (requesting review of USAC Decision II as it pertains to USAC's denial of funding based on insufficient urban rate documentation). The subset of 17 FRNs with urban rates deemed insufficiently documented are identified by an asterisk in Appendix B.

⁶ The Wireline Competition Bureau is required to conduct *de novo* review of requests for review of decisions issued by USAC. 47 CFR § 54.723(a).

⁷ See GDPH Request II Exhibit 3, Letter from Dr. Rosemarie D. Parks, District Health Director, Southeast Health District 9-2 to Universal Service Administrative Company, Rural Health Division (Apr. 27, 2021) (SEHD Urban Rate Letter).

⁸ See 47 CFR §§ 54.600-54.625 (2018). The prior Telecom Program rules cited herein reflect the rules in effect at all times relevant to this proceeding.

⁹ *Id.* § 54.603(a) (2018).

¹⁰ *Id.* § 54.603(b) (2018).

¹¹ *Id.* § 54.603(b)(3) (2018).

¹² *Id.* § 54.603(b)(4) (2018). The requirement that applicants submit copies of each bid received is now contained in section 54.623(a)(3) of our rules, 47 CFR § 54.603(a)(3).

Form 466 and supporting documentation to determine, among other things, the appropriate support payments from the Universal Service Fund.

4. The Telecom Program rules set the amount of universal service support provided for an eligible service as the difference, if any, between the urban rate and the rural rate charged for that service.¹³ The urban rate is 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 relevant state.¹⁴ Telecom Program applicants are required to submit documentation to support the urban rate(s) reported on their FCC Forms 466 submitted to USAC.¹⁵

5. GDPH is the lead agency for the state of Georgia in preventing disease, injury, and disability, promoting health and well-being, and preparing for and responding to disasters from a health perspective.¹⁶ GDPH is comprised of 18 public health districts, including SEHD, which is itself tasked with promoting and protecting the health of citizens of southeast Georgia and enhancing their quality of life.¹⁷ ENA Healthcare is a licensed telecommunications company serving the communications needs of rural health care customers.¹⁸ In 2018, ENA Healthcare merged with TeleQuality Communications, LLC (TeleQuality), the carrier selected by SEHD to provide the services that are the subject of this proceeding.¹⁹

6. In 2015 SEHD sought guidance from USAC regarding competitive bidding for potential plans to move more than 200 circuits from an existing network hub to a rural location in Pierce County, Georgia.²⁰ Although SEHD was prepared to submit its FCC Form 465 by October 2015 for the new network with an anticipated service commencement date of July 1, 2016 (*i.e.*, the first day of funding year 2016), USAC's online application portal as it existed at the time did not allow applicants to submit FCC Forms 465 for funding year 2016 before January 1, 2016.²¹ That placed SEHD in an administrative quandary because its network migration was expected to take up to 180 days to complete, thus jeopardizing the planned July 1 rollout.²² USAC's proposed solution called for SEHD to submit two versions of FCC Form 465.²³ The first version (filed in October 2015) initiated the required competitive

¹³ *Id.* § 54.609(a) (2018).

¹⁴ *Id.* § 54.605(a), (b) (2018).

¹⁵ *Id.* § 54.609(a)(2) (2018).

¹⁶ GDPH Request I at 3.

¹⁷ *Id.*

¹⁸ Education Networks of America, Inc., *ENA Healthcare Services LLC*, <https://www.ena.com/legal/ena-services/> (last visited March 22, 2022).

¹⁹ See Joel Stinnett, *Nashville tech company acquires Texas firm* (Jan. 19, 2018) <https://www.bizjournals.com/nashville/news/2018/01/19/nashville-tech-company-acquires-texas-firm.html>.

²⁰ GDPH Request I at 4. The move could not occur under SEHD's existing multi-year contract and thus had to be put up for bid. *Id.*

²¹ *Id.* at 5. See also GDPH Request I Exhibit 2, E-mail from Devent Carter, USAC, to Roger Bunch, IT Manager, Southeast Health District 9-2 (Oct. 13, 2015, 9:26 AM) (Carter E-Mail I). Since then, Rural Health Care Program procedures have been amended to permit health care providers to initiate the competitive bidding process on July 1 preceding the funding year, which is one full year before the funding year begins. See *Promoting Telehealth in Rural America*, Report and Order, WC Docket No. 17-310, 34 FCC Rcd 7335, 7416-17, paras. 173-75 (2019) (*Promoting Telehealth Report and Order*).

²² GDPH Request I at 5.

²³ *Id.* at 5-6; Carter E-Mail I (“Therefore, as a workaround to accommodate the long lead time for installation, you should file Form 465 asap using the funding year 2014 functionalities and indicate that the installation is expected to be completed by the Spring of 2016.”).

bidding process that resulted in four bids, including one from TeleQuality, which SEHD selected as the most cost-effective, and thus winning, bidder. The second version (filed in February 2016) was intended to account for USAC's application system limitations. As described by GDPH, the second form served as a "dummy" request for services to allow SEHD to seek funding year 2016 support after the opening of the January 1, 2016 filing window.²⁴ The second FCC Form 465 did not initiate a new round of competitive bidding. Indeed, following USAC's advice, SEHD indicated on the second form that it was being posted "[f]or administrative purposes only," that "[b]ids are not solicited at this time," and that "[b]ids for this location were already requested in October 2015 and a carrier has been selected."²⁵

7. Between May 2016 and November 2016, SEHD filed 287 funding requests (using multiple FCC Forms 466) covering services provided during either funding year 2015 or funding year 2016.²⁶ On the FCC Forms 466, SEHD indicated that no bids had been received in response to the FCC Form 465 out of a belief that the FCC Form 466 referenced the most recently submitted FCC Form 465 (*i.e.*, the February 2016 version) for which no bids had either been solicited or received.²⁷ When submitting 220 funding requests for funding year 2017, SEHD again indicated on its FCC Forms 466 that no bids had been received in response to the FCC Form 465.²⁸ By the following year, in connection with funding requests covering funding year 2018, SEHD apparently realized the potentially misleading nature of its prior responses. It submitted 57 funding requests that referenced the FCC Form 465 filed in October 2015 that correctly indicated that bids were received.²⁹

8. In November 2017, USAC issued two information requests to SEHD concerning funding year 2017 support, one of which requested competitive bidding information for funding years 2015 and 2016 and the other of which sought information about how SEHD had determined its urban rate for funding year 2017.³⁰ SEHD responded to the first information request with copies of the four bids received in response to the October 2015 FCC Form 465, as well as documents relating to the selection of TeleQuality as its service provider.³¹ The revelation that SEHD had in fact received bids, notwithstanding

²⁴ See GDPH Request I at 2. See also GDPH Request I Exhibit 2, E-mail from Devent Carter, USAC, to Carolyn Griffin, Telehealth Accountant, Southeast Health District 9-2 (Feb. 2, 2016, 8:31 AM) (Carter E-Mail II).

²⁵ See Carter E-Mail II ("[SEHD] should file a Form 465 for Funding Year 2016 and indicate the following in Line 29 . . . posted for administrative purposes only. Bids are not solicited at this time. Bids for this location were already requested in October 2015 and a carrier is selected.") (emphasis in original). See also GDPH Request I Exhibit 7 (Description of Services Requested & Certification Form (FCC Form 465) of Pierce County Health Department at Block 4, Section 29 (dated Feb. 4, 2016).

²⁶ GDPH indicates that SEHD filed 288 FCC Forms 466 for funding years 2015 and 2016 in May 2016. GDPH Request I at 7. According to USAC, 287 FCC Forms 466 were filed, as follows: 115 FCC Forms 466 filed between May 19 and July 28, 2016 seeking support for funding year 2015 or 2016, and 172 FCC Forms 466 filed between July 19, 2016 and November 15, 2016 seeking support for funding year 2016. USAC Decision Letter I at 3-4, Appendix A and Appendix B. SEHD's requests sought more than \$3.2 million in support. GDPH Request I at 1. USAC ultimately approved the 2015 and 2016 funding requests and granted evergreen status to the underlying TeleQuality service contract entered into by SEHD on January 5, 2016. USAC Decision I at 3.

²⁷ GDPH Request I at 7-8.

²⁸ GDPH Request II at 7. The funding year 2017 requests sought more than \$3.4 million in support. *Id.* at 1. Of the 220 funding requests submitted, 185 referenced the FCC Form 465 filed in February 2016 and 35 referenced the FCC Form 465 filed in October 2015. SEHD acknowledges that, as to the latter for which bids were received, the "no bids" response was "technically incorrect." *Id.* at 7.

²⁹ GDPH indicates that SEHD filed 60 FCC Forms 466 for funding year 2018. GDPH Request III at 8. According to USAC, 57 FCC Forms 466 were filed. USAC Decision Letter III Appendix A. The funding year 2018 requests sought approximately \$900,000 in support. GDPH Request III at 1.

³⁰ GDPH Request II at 7-8. These information requests were sent to SEHD prior to the submission of its FCC Forms 466 for funding year 2018, which correctly indicated that SEHD received four bids in response to its request for service.

its FCC Form 466 indications to the contrary, prompted USAC to issue recovery actions against SEHD for both 2015 and 2016 based on SEHD's failure to submit copies of all bids received as required under section 54.603(b)(4) of our rules.³² For related reasons, USAC subsequently denied SEHD's funding requests for 2017 and 2018, explaining that the competitive bidding process was "tainted" and "any subsequent FRNs filed from that FCC Form 465 will be denied for funding."³³

9. In its response to the second information request from USAC in 2017, TeleQuality provided a service quote from a competitor purporting to document the urban rate submitted by SEHD.³⁴ Two years later, after it identified "other problems" with the service quote, TeleQuality submitted revised urban rate documentation taken from USAC's E-Rate Open Database.³⁵ Two years after that, SEHD submitted its own revised urban rate documentation, again taken from the E-Rate Open Database.³⁶ USAC, however, declined to address SEHD's revised documentation because it was untimely filed³⁷ and rejected the original urban rate for the 17 FRNs in question, citing SEHD's failure to provide documentation demonstrating that the rates were "tariffed or publicly available" as required by the Commission's rules.³⁸ SEHD appealed USAC's decisions to recover funding for 2015 and 2016, to deny funding requests in 2017 and 2018, and to reject the funding year 2017 urban rates, each of which USAC denied for reasons consistent with its original decisions.³⁹

10. GDPH and ENA Healthcare now separately request our review of USAC's three decisions. GDPH maintains in all three of its pleadings that the failure to provide copies of competing bids was a "minor clerical error" that was "linked to confusion around a counter-intuitive workaround process USAC directed [SEHD] to follow."⁴⁰ GDPH argues that the minor nature of the error, when coupled with the facts that SEHD's selection of TeleQuality was the product of "a careful and detailed review of each bid" and that SEHD derived "no benefit" from its failure to submit the missing bids,

(Continued from previous page) _____

³¹ *Id.* at 8; USAC Decision I at 4. SEHD provided the missing bids on a timely basis in response to USAC's information request. *Id.*

³² GDPH Request I Exhibit 9, Commitment Adjustment Letter from Rural Health Care Division, USAC, to Carolyn Griffin, Pierce County Health Department (Jan. 15, 2020). SEHD appealed the recovery action on March 13, 2020. USAC Decision I at 5.

³³ *See, e.g.*, Funding Denial Email for FRN 1713442 (Apr. 15, 2019); Funding Denial Email for FRN 1830286 (Oct. 29, 2020). SEHD appealed the funding year 2017 denials on June 14, 2019, and the funding year 2018 funding denials on December 22, 2020. USAC Decision II at 6; USAC Decision III at 4.

³⁴ GDPH Request II at 8. The service quote documented an urban rate of \$129.00. *Id.* TeleQuality provided the same service quote in response to a follow-up information request issued by USAC. USAC Decision II at 5-6.

³⁵ ENA Healthcare Request II at 9. TeleQuality's revised urban rate of \$329.41 was submitted on March 18, 2019, prior to USAC's decisions to deny SEHD's funding year 2017 funding requests, which were issued on April 15, 2019. USAC Decision II at 6. TeleQuality did not explain what the "other problems" were with the original service quote.

³⁶ GDPH Request II at 8. SEHD submitted its documentation in April 27, 2021 supporting a \$142.90 urban rate. *Id.*

³⁷ USAC Decision II at 1, n.1 (SEHD "submitted additional information and documentation to supplement the Appeal; however, USAC does not address the additional information because it was submitted after the 60-day appeal filing deadline."). In its decisions, USAC did not mention TeleQuality's revised urban rate documentation filed in March 2019 while SEHD's appeal was still pending. *See* ENA Healthcare Request II at 19 ("USAC may have simply overlooked [TeleQuality's] filing . . .").

³⁸ USAC Decision II at 8.

³⁹ In support of its funding year 2018 denial, USAC concluded that that SEHD's failure to submit copies of bids "invalidated" the evergreen contract competitive bidding exemption granted to the TeleQuality service agreement, which meant that SEHD should have competitively bid the services for funding year 2018. USAC Decision III at 5.

⁴⁰ GDPH Request I at 11-16. *See also* GDPH Request II at 11-16; GDPH Request III at 14-15.

warrants relief.⁴¹ ENA Healthcare raises many of these same points in its pleadings.⁴² Regarding the rejected urban rates, GDPH and ENA Healthcare request that the Commission direct USAC to accept either of the revised urban rate submissions or some “reasonable” or “acceptable” replacement.⁴³ In the alternative, both parties seek waiver of the Commission’s rules to the extent necessary to grant the requested relief, citing Commission precedent for support.⁴⁴

III. DISCUSSION

11. *Requests for Review of Competitive Bidding Rule Decision.* We deny GDPH and ENA Healthcare’s requests for review of USAC’s decision regarding section 54.603(b)(4), the Commission’s competitive bidding rule that requires the submission of all bids received. However, based on a review of the record and the special circumstances presented, we grant GDPH and ENA Healthcare’s requests to waive section 54.603(b)(4). Accordingly, we remand the funding requests listed in Appendices A-C to USAC for further action consistent with this Order.

12. Competitive bidding is a fundamental component of the Telecom Program support mechanism. The rules governing competitive bidding ensure that the bidding process is conducted in a manner that is both fair and open and results in selection of the most cost-effective bidder.⁴⁵ To that end, section 54.603(b)(4) requires an applicant to provide “copies of the responses or bids received in response

⁴¹ GDPH Request I at 13, 15. GDPH also maintains that, by denying SEHD support for funding year 2018 despite its accurate statement on the FCC Forms 466 that bids were received, USAC is: (1) imposing without subject matter jurisdiction a time-barred sanction that impermissibly penalizes SEHD; (2) acting in an arbitrary manner by failing to consider evidence of a fair and open competitive bidding process; and (3) violating the due process rights of Georgia’s rural residents under the Fifth Amendment. GDPH Request III at 9-14, 16-21. Given the relief we grant herein, we need not address these points.

⁴² See, e.g., ENA Healthcare Request I at 7-11 (claiming that USAC’s rescission of funding is based on “what is most a paperwork mistake . . . that has no bearing on whether the competitive bidding process was fair and open”). ENA Healthcare separately raises two of its own arguments. First, while not objecting to USAC’s proposed “workaround” solution, ENA Healthcare maintains that USAC subsequently imposed a requirement on SEHD, unsupported by Commission rule or precedent, that an “applicant . . . file with its Form 466 bids that were submitted in response to a different FCC Form 465 than the one cited in the Form 466.” *Id.* at 11. We are not persuaded by this argument. Commission rule or precedent is not necessary to link SEHD’s FCC Forms 466 to the first FCC Form 465 filed in October 2015. The FCC Forms 466 inarguably involved a funding process initiated by the first FCC Form 465. SEHD admits as much when it acknowledges its understanding that the second FCC Form 465 should have been “ignored” for purposes of completing the FCC Forms 466. Parks Decl. at 6. Second, ENA Healthcare maintains that USAC erred when it concluded in its funding year 2018 decision that the evergreen designation of the TeleQuality service contract was “invalidated.” ENA Healthcare Request III at 11-13. For support, ENA claims that the “Commission’s criteria for evergreen status are separate from and do not require a review of the competitive bidding process.” *Id.* at 11. We disagree. Our evergreen contract competitive bidding exemption criteria are prefaced with the requirement that the service contract in question “be entered into . . . as a result of competitive bidding.” 47 CFR § 54.642(h)(4)(ii) (2018). For that requirement to have any meaning, the contract entered into must be the result of a bidding process that is compliant with the competitive bidding rules. The ability to reverse a contract’s evergreen designation in cases where a competitive bidding rule violation is discovered prevents the competitive harm that would result from exempting that non-compliant contract from future rebidding, which in turn serves to protect the Universal Service Fund.

⁴³ GDPH Request II at 18; ENA Healthcare Request II at 20.

⁴⁴ See, e.g., GDPH Request I at 16-19 (citing *Request for Review and Waiver of a Decision by the Universal Service Administrator by Maniilaq Association*, Order, WC Docket No. 02-60, 35 FCC Rcd 1458 (WCB 2020) (*Maniilaq*); ENA Healthcare Request I at 14-16 (citing *Request for Review of Decisions of the Universal Service Administrator by Allendale County School District et al.*, CC Docket No. 02-6, Order, 26 FCC Rcd 6109 (WCB 2011)).

⁴⁵ 47 CFR § 54.622(b), (c). The fair and open competitive bidding requirement applied to the Telecom Program at all times relevant to this proceeding and has since been codified in our rules. See *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7409-11.

to the requested services” to give USAC the documentation necessary to verify that the applicant selected the most cost-effective bidder.⁴⁶ SEHD plainly did not comply with this requirement when it indicated on its FCC Forms 466 covering funding years 2015, 2016, and 2017 that it had received no bids in response to the FCC Form 465 that initiated the competitive bidding process.⁴⁷ SEHD only corrected its error by the time it submitted funding requests for funding year 2018.⁴⁸

13. GDPH and ENA Healthcare maintain that this failure to submit bid copies amounts to a “minor clerical error” or “paperwork mistake” subject to applicant cure, but we disagree.⁴⁹ A “minor clerical error” is the type 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.”⁵⁰ Unlike these types of simple bookkeeping or typographical lapses, SEHD’s failure to provide copies of bids directly violated section 54.603(b)(4), which by allowing for verification of cost-effectiveness, acts as an important safeguard against waste, fraud, and abuse of the Universal Service Fund.⁵¹ We therefore conclude that SEHD’s omission does not equate to the types of minor clerical errors for which our precedent permits correction.⁵²

14. Although we disagree that SEHD committed a minor clerical error, we agree with the petitioners that the public interest would be served by and special circumstances exist meriting a waiver in this case. The Commission’s rules may be waived for good cause shown.⁵³ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.⁵⁴ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁵⁵ Waiver of the Commission’s rules is appropriate if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest.⁵⁶ Although we conclude here that SEHD violated section 54.603(b)(4) by failing to submit copies of bids received when submitting its funding requests, we find that special circumstances justify, and the public interest is best served, by a grant of a waiver in this limited circumstance. The record shows that SEHD conducted a thorough review of the four bids that it received in 2015.⁵⁷ Its subsequent failure to document the existence of competing bids in

⁴⁶ See 47 CFR § 54.603(b)(4) (2018).

⁴⁷ See GDPH Request I at 7; GDPH Request II at 7.

⁴⁸ See GDPH Request III at 8.

⁴⁹ GDPH Request I at 9 (citing *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, et al.*, CC Docket No. 02-6, Order, 21 FCC Rcd 5316 (2006) (*Bishop Perry*)); ENA Healthcare Request I at 7.

⁵⁰ *Tanana Chiefs Conference, Fairbanks, AK*, Order, WC Docket No. 02-60, 35 FCC Rcd 482, 487 (WCB 2020).

⁵¹ See *Maniilaq*, 35 FCC Rcd at 1461-62 (explaining that section 54.603(b)(4) is a competitive bidding rule that ensures that the Universal Service Fund is used wisely and efficiently).

⁵² See, e.g., *Bishop Perry*.

⁵³ 47 CFR § 1.3.

⁵⁴ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

⁵⁵ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

⁵⁶ *Northeast Cellular*, 897 F.2d at 1166.

⁵⁷ GDPH Request I, Exhibit 4 and Exhibit 5. These exhibits include copies of the four bids received in response to the October 2015 request for services and scoring matrices documenting SEHD’s basis for selecting TeleQuality as the most cost-effective option. The panels evaluating the four bids examined and assigned a score to each bidder’s general information, statement of work, cost for services, and qualifications. Panel members also added written comments supporting their scores. TeleQuality received an average score of 90 out of a possible 100. The other three bidders received average scores of 69, 32, and 25.

the FCC Forms 466, although violative of our rules, does not undo the careful steps that SEHD took in apparent good faith compliance with our competitive bidding requirements. We therefore conclude that the public interest would best be served, and the policy objectives of the Telecom Program's competitive bidding rules would not be undermined, by waiving the requirements of section 54.603(b)(4) in this limited case.

15. We also find that special circumstances support today's waiver. SEHD's failure to submit bid copies was the apparent result of USAC's recommendation to file two FCC Forms 465 in order to circumvent USAC's internal application filing limitations in a manner to permit the timely rollout of service. We are convinced that the filing of the second FCC Form 465 led to SEHD's failure to submit the missing bid copies. As in our *Maniilaq* decision, which the petitioners cite for support, the failure to submit the required supporting documentation did not convey an advantage or benefit to the filer, and the record offers no evidence that the competitive bidding process was not fair and open.⁵⁸ In light of the special circumstances present here, we conclude that strict enforcement of section 54.603(b)(4) is not justified.⁵⁹ Accordingly, we waive the requirements of section 54.603(b)(4) and remand the funding requests at issue in this appeal to USAC to review SEHD's competitive bidding documentation to ascertain whether SEHD's selection of TeleQuality as its service provider complied with our competitive bidding rules.

16. *Request for Review of Urban Rate Documentation Decision.* We separately grant GDPH and ENA Healthcare's requests to review USAC's decision denying a subset of 17 funding year 2017 requests due to a failure to document urban rates. USAC rejected the service quote submitted by TeleQuality to support those rates because there was nothing in the quote demonstrating that the rates were tariffed or publicly available rates charged to a commercial customer.⁶⁰ We need not address that issue because, with its appeal, SEHD submitted a revised urban rate taken from the E-rate Open Database,⁶¹ a rate that satisfies section 54.605's requirement that the rate be publicly available.⁶² We therefore direct USAC to use this subsequently filed urban rate when calculating Universal Service Fund support for the 17 FRNs to which it applies.⁶³

17. We remand each of the applications at issue in this appeal to USAC to determine whether the applications comply with competitive bidding rules that were not waived in this Order, and we direct USAC to complete its review of the applications and issue a funding commitment or a denial based on a complete review and analysis no later than 90 calendar days from the release date of this Order. In remanding these applications to USAC, we make no finding as to the ultimate eligibility of SEHD's

⁵⁸ *Maniilaq*, 35 FCC Rcd at 1462. See also *Application for Review of a Decision of the Wireline Competition Bureau by Pribilof School District, St. Paul Island, Alaska*, CC Docket No. 02-6, Order, 33 FCC Rcd 8378, 8380-82, paras. 8-11 (2018) (granting a waiver of the deadline to file an appeal to the Commission when the applicant with a late-filed application reasonably believed that its application would be considered due to an inaccurate response in USAC's application system).

⁵⁹ See *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

⁶⁰ USAC Decision II at 8.

⁶¹ See SEHD Urban Rate Letter (submitting documentation supporting a \$142.95 urban rate for 10 Mbps service offered by Mediacom Illinois LLC to St. Frances Cabrini Catholic Schools as of March 2019).

⁶² 47 CFR § 54.605(a), (b).

⁶³ We direct USAC not to use the urban rate contained in the original service quote because TeleQuality identified unspecified "other problems" with the rate documentation that prompted it to submit its own revised urban rate. ENA Healthcare Request II at 9.

applications. We also waive section 54.645(b) (2018) of the Commission's rules and direct USAC to waive any other procedural deadline that might be necessary to effectuate our ruling.⁶⁴

IV. ORDERING CLAUSES

18. ACCORDINGLY, IT IS ORDERED that, pursuant to the authority contained in section 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, 1.3 and 54.722(a) of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3 and 54.722(a), sections 54.603(b)(4) and 54.645(b) are WAIVED to the extent described herein.

19. IT IS FURTHER 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 1.3 and 54.722(a) of the Commission's rules, 47 CFR §§ 1.3 and 54.722(a), the Request for Review of Decisions of the Universal Service Administrator and Petition for Waiver filed by GDPH on July 27, 2021, and the Request for Review and/or Waiver by ENA Healthcare Services, LLC of a Decision of the Universal Service Administrator filed on July 15, 2021, ARE GRANTED IN PART AND DENIED IN PART to the extent described herein.

20. IT IS FURTHER ORDERED, pursuant to authority contained in section 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, sections 0.91, 0.291, 1.3, and 54.722(a), 47 CFR §§ 0.91, 0.291, 1.3 and 54.722(a), that the applications identified in Appendices A, B, and C ARE REMANDED to USAC for further action in accordance with the terms of this Order.

21. 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

⁶⁴ See 47 CFR § 54.645(b) (2018) (requiring that invoices be submitted within six months of the end date of the funding commitment). We conclude that the public interest would best be served by waiving any procedural deadlines that may preclude USAC's full consideration of the funding requests that are the subject of this matter.

Appendix A**SEHD Funding Request Numbers for Commitments Subject to Recovery Under USAC Decision I****Funding Year 2015**

1580941	1581145	1581208
1580943	1581146	1581213
1581108	1581148	1581215
1581109	1581155	1581221
1581110	1581159	1581223
1581113	1581162	1581226
1581115	1581166	1581994
1581117	1581168	1581998
1581119	1581169	1582024
1581120	1581173	1582025
1581123	1581177	1582026
1581124	1581178	1582392
1581126	1581180	1582395
1581127	1581181	1582398
1581128	1581183	1582400
1581129	1581184	1582439
1581136	1581186	1582440
1581140	1581187	1583309
1581141	1581189	1583310
1581144	1581205	1583311

Funding Year 2016

1685966	1686324	1686778	1687222	1688746	1693424
1685971	1686358	1686781	1687291	1688747	1693425
1685976	1686359	1686795	1687292	1688748	1693432
1685979	1686361	1686797	1687296	1688749	1693437
1686025	1686374	1686798	1687357	1688750	1693441
1686030	1686376	1686799	1687358	1688751	1693450
1686035	1686382	1686801	1687359	1688752	1693452
1686036	1686386	1686804	1687360	1688753	1693456
1686038	1686388	1686805	1687362	1688754	1693742
1686040	1686391	1686806	1687363	1688756	1693744
1686041	1686393	1686808	1687364	1688827	1693747
1686053	1686397	1686809	1687365	1689146	1695345
1686055	1686400	1686810	1687377	1689147	1695346
1686057	1686403	1686811	1687378	1689149	1695347
1686059	1686584	1686947	1687379	1689152	1695348
1686060	1686585	1686948	1687380	1689154	1695352
1686062	1686612	1686950	1687381	1692052	1695353
1686100	1686614	1686951	1688053	1692055	1695354
1686104	1686619	1686956	1688055	1692058	1695355
1686108	1686675	1686957	1688056	1692060	1695356
1686109	1686728	1686958	1688067	1692066	1695358
1686110	1686729	1686959	1688078	1692072	1695365
1686292	1686730	1686960	1688082	1692075	1695366
1686293	1686731	1686961	1688084	1692084	1695375
1686296	1686734	1686962	1688087	1692089	1695379
1686297	1686735	1686963	1688089	1692096	1695389
1686298	1686737	1686964	1688092	1692101	1695392
1686302	1686739	1686965	1688098	1692107	1695398
1686303	1686740	1686966	1688100	1692109	1695404
1686305	1686745	1686984	1688101	1692135	1695407
1686307	1686746	1686985	1688102	1692137	1695450
1686310	1686756	1686986	1688107	1692138	1695455
1686312	1686759	1686987	1688109	1692139	1695456
1686315	1686766	1686988	1688112	1692142	1695464
1686317	1686767	1686989	1688115	1693408	1695770
1686318	1686769	1687009	1688117	1693410	1695773
1686320	1686772	1687137	1688119	1693416	1695777
1686322	1686776	1687138	1688125	1693422	

Appendix B**SEHD Funding Request Numbers for Commitments for Funding Year 2017
Denied Under USAC Decision II**

1713442	1714097	1717924	1718678	1719316	1720252
1713849	1714101	1717925	1718680	1719461	1720254
1713853	1714103	1717927	1718683	1719463	1720258
1713855	1714105	1717929	1718684	1719467	1720260
1713859	1714117	1717936	1718687	1719469	1720274
1713861	1714119*	1717959	1718690	1719471	1720282
1713869	1714122	1717960	1718693	1719472	1720285
1713907	1714123	1717962	1718710	1719474	1720289
1713910	1714125	1718133	1718712	1719477*	1720293
1713914	1714126	1718135	1718713	1719495	1720296*
1713917	1714128	1718136	1718714	1719497	1720298
1713922	1714130	1718391	1718718	1719501	1720299
1713927	1714132*	1718393	1718720	1719503	1720302
1713929	1714136*	1718395	1718727	1719508	1720303
1713931	1714140*	1718396	1718730	1719609	1720306
1713937	1714144	1718399	1718773	1719621	1720307
1713943	1714146	1718401	1718775	1719624	1720309
1713948	1714151	1718402	1718779	1719627*	1720345
1713952	1714542	1718403	1718781	1719629	1720362
1713954	1714546*	1718404	1718783*	1719633	1720373
1713956	1714548	1718405	1718785	1719636	1720379
1713957*	1714552	1718407	1718801	1719637	1720386
1713959	1714561	1718409	1718809	1719639	1720393
1713961	1714563	1718411	1718835	1719643	1720398*
1713964*	1714564	1718412	1718841	1719646	1720406
1713967	1714879	1718413	1718847	1720217	1720410
1714065	1714887	1718414	1718851	1720221	1721074*
1714069	1714890	1718416	1718858	1720222	1721078
1714072*	1714895	1718419	1718863	1720226	1721093
1714076	1714898	1718420	1718866	1720230	1721098*
1714078	1714905	1718421	1718871	1720231	1721193
1714081	1714909	1718423	1718874	1720233	1721746
1714086	1714920	1718424	1718926	1720238	1722841
1714088	1714925	1718425	1719296	1720239	1722848
1714092	1714949	1718428	1719301	1720242	1723769
1714096	1714952*	1718673	1719307	1720246	1724574*
	1717923	1718677	1719312	1720248	

* Indicates FRN with urban rate documentation that USAC determined to be insufficient.

Appendix C**SEHD Funding Request Numbers for Commitments for Funding Year 2018
Denied Under USAC Decision III**

1830286	1830502	1833006	1835592	1837017
1830366	1830516	1834771	1835693	1837086
1830372	1830530	1834778	1835838	1837089
1830374	1832125	1834781	1835941	1837098
1830378	1832126	1835237	1835962	1837171
1830379	1832173	1835257	1835974	1837203
1830383	1832182	1835370	1836163	1837264
1830396	1832997	1835415	1836170	1837405
1830402	1832999	1835443	1836490	1837702
1830419	1833003	1835552	1836998	1837741
1830496	1833005	1835579	1837008	1837777
1830499				1837778