

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

In the Matter of)
Request for Waiver by Elite Program Specialists,)
LLC)
Rural Health Care Support Mechanism) WC Docket No. 02-60

ORDER

Adopted: May 19, 2022

Released: May 19, 2022

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) grants the request by Elite Program Specialists, LLC on behalf of fourteen participating members and sixty-eight member sites in the Louisiana Independent Hospital Network Coalition (LIHNC) Consortium and the two participating members in the Abbeville General Hospital Consortium ("Louisiana Providers") for a waiver of the Rural Health Care (RHC) Universal Service Support Mechanism's rules to permit these providers to file funding year 2021 funding requests after the close of the funding year 2021 application window.

II. BACKGROUND

2. Health care providers seeking Healthcare Connect Fund Program support are required to seek competitive bids for services eligible for support. In accordance with the Healthcare Connect Fund Program's rules, an applicant must initiate the competitive bidding process by submitting a service request using an FCC Form 461 to the Universal Service Administrative Company (USAC) for posting on the USAC website.

1 Request for Waiver for Funding Year 2021 Rural Health Care Program Filing Deadline, WC Docket No. 02-60 (filed June 13, 2021) (Request for Waiver). The Request does not list the affected Funding Request Numbers (FRNs). We direct the Universal Service Administrative Company (USAC) to contact the applicant to obtain the list of affected FRNs.

2 See generally id.

3 Id. at 1-2.

4 47 CFR § 54.622(a).

5 Id. at § 54.622(e).

request using an FCC Form 462.⁶ USAC implements a filing window each funding year that treats all eligible health care providers submitting FCC Form 462s within the filing window as if their applications were received simultaneously.⁷ Applicants that fail to file by the filing deadline are automatically precluded from submitting their funding requests by USAC's Rural Health Care online application system, My Portal.⁸ For funding year 2021, USAC implemented a filing window for the FCC Form 462s from January 4, 2021 to June 1, 2021.⁹

3. In late 2020 and early 2021, several natural disasters occurred across the state of Louisiana over several months.¹⁰ Several parishes were designated as federally declared disaster areas by the Federal Emergency Management Agency (FEMA).¹¹ Elite Program Specialists, LLC's primary and secondary offices are located in two of the federally declared disaster areas.¹² According to Elite Program Specialists, LLC, the natural disasters, in conjunction with the ongoing COVID-19 pandemic, negatively impacted the Louisiana Providers and their consultant's operations over nine months, which made the timely submission of the Healthcare Connect Fund funding requests at issue extremely difficult due to Elite Program Specialists, LLC and the Louisiana Providers diverting resources to responding to the natural disasters.¹³ Elite Program Specialists filed its FCC Form 461 on April 29, 2021, and the FCC Form 461 was posted on USAC's website on May 4, 2021, which resulted in an Acceptable Contract Sign Date of June 2, 2021, one day after the 28-day competitive bidding period lapsed and one day after the FCC Form 462 filing deadline.¹⁴ On May 2, 2021, Elite Program Specialists contacted USAC to explain that the natural disasters impacting Louisiana led them to file the FCC Form 461 close to the FCC Form 461 deadline and asking for expedited review.¹⁵ Elite Program Specialists, LLC sought confirmation that the FCC Form 461 was properly filed because a separate FCC Form 461 also filed on April 29, 2021, was posted to USAC's website on April 30, 2021.¹⁶ USAC responded on May 5, 2021, confirming the FCC Form 461 was posted, and informing Elite Program Specialists, LLC that filing the FCC Form 461 one day before the deadline is not best practice and that the FCC Form 461 can be filed at any time of the year,¹⁷ a response which did not account for the extreme weather occurring from August 2020 until the deadline, that impacted Elite Program Specialists, LLC's ability to prepare the form.

III. DISCUSSION

4. Based on the facts and circumstances presented here, and consistent with our precedent, we find good cause exists to grant a waiver of the funding year 2021 application filing deadline and, *sua sponte*, grant a waiver of the Healthcare Connect Fund Program's competitive bidding rules to permit the Elite Program Specialists, LLC applications at issue to be filed. Generally, the Commission's rules may

⁶ *Id.* at § 622(f)-(g).

⁷ *Id.* at § 54.675(c)(2), (c)(4).

⁸ *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 35 FCC Rcd 5400, 5400 (WCB 2020).

⁹ Universal Service Administrative Company, *Funding Year Overview*, <https://www.usac.org/rural-health-care/additional-program-guidance/funding-year-overview/> (last visited May 19, 2022).

¹⁰ *See generally* Request for Waiver at Attach. A-H, M.

¹¹ *Id.* at 5-6.

¹² *Id.* at 3.

¹³ *Id.* at 2-6.

¹⁴ *Id.* at 5-6.

¹⁵ *Id.* at 6-7.

¹⁶ *Id.* at 6-7.

¹⁷ *Id.* at 7.

be waived for good cause shown.¹⁸ Waiver of the Commission's rules is appropriate only if both (1) special circumstances warrant a deviation from the general rule, and (2) such deviation will serve the public interest.¹⁹ In exercising its discretion, the Commission may consider hardship, equity, or more effective implementation of policy on an overall basis.²⁰ As discussed in further detail below, we find that the damage and disruption caused by the continuous severe weather events that occurred in Louisiana and Elite Program Specialists' good faith attempts to meet the Healthcare Connect Fund's filing deadline despite those disruptions merit a waiver of the FCC Form 462 filing deadline and the competitive bidding rules.²¹

5. We find that the Louisiana Providers have demonstrated special circumstances that warrant a waiver. Throughout early 2021, severe weather, such as flash flooding and tornadoes, affected Louisiana, which affected the Louisiana Providers' consultant, Elite Program Specialists, LLC's offices, and caused a diversion of the health care providers' resources to disaster response.²² The record indicates that Elite Program Specialists, LLC made every effort to comply with the Healthcare Connect Fund's deadlines.²³ The delayed filing of the FCC Form 461 resulted in an Acceptable Contract Sign Date of June 2, 2021, one day after the FCC Form 462 filing deadline, but Elite Program Specialists, LLC contacted USAC for assistance and explained that the delayed filing was due to the natural disasters.²⁴ Specifically, the delayed filing was caused by the natural disasters and the impact on the affected health care providers and their consultant.²⁵ We have waived filing deadlines when the natural disaster occurred simultaneously with the filing deadline.²⁶ While Elite Program Specialists, LLC made every effort to comply with the FCC Form 462 filing deadline, extreme weather impacted its ability to comply with the

¹⁸ 47 CFR § 1.3.

¹⁹ *Id.*

²⁰ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

²¹ In past orders, we granted waivers of certain deadlines for areas affected by natural disasters. See, e.g., *Schools and Libraries Universal Service Support Mechanism*, WC Docket 02-6, 34 FCC Rcd 56 (WCB 2019) (*California Wildfires Order*); *Request for Waiver of Section 54.514 of the Commission's Rules by Florida Department of Management Services*; *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 33 FCC Rcd 10186 (WCB 2018) (*Florida Hurricane Order*); *Schools and Libraries Universal Service Support Mechanism*, CC Docket 02-6, Order, 32 FCC Rcd 9538 (2017) (*FCC Hurricanes Harvey, Irma, and Maria Order*); *Schools and Libraries Universal Service Support Mechanism*; *Rural Health Care Support Mechanism*; *Lifeline and Link Up Reform and Modernization*, CC Docket No. 02-6, WC Docket Nos. 02-60 and 11-42, Order, 32 FCC Rcd 7456 (WCB 2017) (*Hurricanes Harvey, Irma, and Maria Order*); *Federal-State Joint Board on Universal Service*; *Schools and Libraries Universal Service Support Mechanism*; *Rural Health Care Support Mechanism*, CC Docket Nos. 96-45 and 02-6; WC Docket Nos. 02-60 and 03-109, Order, 20 FCC Rcd 16883 (2005) (*Hurricane Katrina Order*). We dismiss this Request for Waiver to the extent it seeks an additional competitive bidding period, finding that the FCC Form 461s were bid for a reasonable amount of time, as discussed herein.

²² Request for Waiver at 2-6.

²³ See Request for Waiver at 5-7 (explaining that after filing the FCC Form 461 Elite Program Specialists contacted USAC notifying them of the circumstances impacting the filing and requesting confirmation the FCC Form 461s were received and would be posted in time to satisfy the Program's competitive bidding requirements).

²⁴ See *id.*

²⁵ See *id.* at 2-6.

²⁶ See, e.g., *Hurricanes Harvey, Irma, and Maria Order*, 32 FCC Rcd at 7457, para. 2; *California Wildfires Order*, 34 FCC Rcd at 57, para. 2; *Florida Hurricane Order*, 33 FCC Rcd at 10188, para. 5; *FCC Hurricanes Harvey, Irma, and Maria Order*, 32 FCC Rcd at 9540, para. 4; *Hurricane Katrina Order*, 20 FCC Rcd at 16885, para. 4. By contrast, deadlines outside the scope of the disaster were not waived. See *California Wildfire Order*, 34 FCC Rcd at 59-60, para. 8 (denying a request to waive the service implementation deadline for non-recurring services because the deadline was prior to the time period during which the wildfires were reported by FEMA as having occurred).

deadline and the extreme weather continued up until days before the FCC Form 462 deadline.²⁷ As such, we find, consistent with past precedent,²⁸ the Louisiana Providers have demonstrated special circumstances meriting a waiver of the funding year 2021 filing deadline.²⁹

6. We also find that granting this request for waiver will serve the public interest. Denial of relief would have severe negative impacts on the areas that the Louisiana Providers serve. The health care providers affected by the severe weather resulted in hardships that would be worsened by a denial of Healthcare Connect Fund Program funding, particularly in light of the extensive impact of the COVID-19 pandemic on Louisiana's healthcare system.³⁰ Additionally, permitting the Louisiana Providers to submit Funding Year 2021 funding requests would enable the Providers to provide quality healthcare service to their communities.³¹ We therefore find that it is in the public interest to provide the Louisiana Providers a waiver of the funding year 2021 application filing deadline.

7. Separately, we find good cause exists to waive our competitive bidding rules, *sua sponte*, to permit the affected HCPs to file the FCC Form 462s. Despite Elite Program Specialists, LLC's attempts to comply with the 28-day competitive bidding period, the delayed filing and subsequent posting resulted in a 27-day competitive bidding period. We have previously waived the 28-day competitive bidding rule when applicants only missed the deadline by one to three days, thereby allowing their requests for services to be competitively bid for a meaningful period of time, and there was no evidence of waste, fraud, or abuse.³² In this instance, the affected applicants missed the competitive bidding period by one day and there is no evidence of waste, fraud, or abuse.³³ In fact, the applicants' consultant appears to have made every effort to comply with the competitive bidding period.³⁴ Additionally, the disruption and damage caused by the severe weather created unique challenges for preparing the FCC Form 461, which delayed the filing and impacted the competitive bidding period.³⁵ While we emphasize that our

²⁷ See Request for Waiver at 5-8.

²⁸ In past orders, we granted waivers of certain deadlines for areas affected by natural disasters. See, e.g., *Hurricanes Harvey, Irma, and Maria Order*, 32 FCC Rcd at 7457, para. 2; *California Wildfires Order*, 34 FCC Rcd at 57, para. 2; *Florida Hurricane Order*, 33 FCC Rcd at 10188, para. 5; *FCC Hurricanes Harvey, Irma, and Maria Order*, 32 FCC Rcd at 9540, para. 4; *Hurricane Katrina Order*, 20 FCC Rcd at 16885, para. 4. Historically, we defined "affected areas" as counties that FEMA designated as Major Disaster Areas eligible for Individual Assistance for the purposes of federal disaster relief. See *California Wildfires Order*, 34 FCC Rcd at 57 n.6 (defining "affected areas" as the counties located in California that have been designated as Major Disaster Areas eligible for Individual Assistance for purposes of federal disaster relief by FEMA).

²⁹ The contract was bid for 27 days, which we find sufficient given the circumstances presented.

³⁰ See Request for Waiver at Attach. S (describing the hardships the health care providers would face if denied RHC Program funding for funding year 2021).

³¹ *Id.* at 8-9.

³² See, e.g., *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Aberdeen School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 22 FCC Rcd 8757, 8763, para. 9 (2007).

³³ See *id.*; see also Request for Waiver at 2-8.

³⁴ Compare Request for Waiver at 5-7 (explaining that after filing the FCC Form 461 Elite Program Specialists contacted USAC notifying them of the circumstances impacting the filing and requesting confirmation the FCC Form 461s were received and would be posted in time to satisfy the Program's competitive bidding requirements); with *Request for Review and Waiver by the Tanana Chiefs Conference*, WC Docket No. 02-60, Order, 35 FCC Rcd 482 (WCB 2020) (denying a request to file applications after the deadline for filing applications when the applications were not filed due to a lack of awareness of deadlines and an oversight—the petitioner did not discover the need to file the applications until three months after the deadline, and no additional funding was available in the relevant funding year as it had been subject to proration).

³⁵ See Request for Waiver at 5.

competitive bidding rules are important to ensure a fair bidding process, we find that denying these the Louisiana Providers' requests for funding would create undue hardship and prevent these potentially otherwise eligible health care providers from receiving Rural Health Care Program funding. We therefore find that good cause exists to grant Petitioners a waiver of section 54.622(g) of our rules.

8. We emphasize that the Commission is committed to guarding against waste, fraud, and abuse and ensuring that funds disbursed through the Rural Health Care Program are used for appropriate purposes. We find no evidence that waste, fraud, or abuse will result from this waiver. This action does not affect the authority of the Commission or USAC to conduct audits or investigations to determine compliance with Rural Health Care Program rules and requirements with respect to the funding requests filed as a result of this waiver. Because audits or investigations may provide information showing that a Rural Health Care Program participant failed to comply with the statute or the Commission's rules, such proceedings can reveal instances in which universal service funds were disbursed improperly, or in a manner inconsistent with the statute or the Commission's rules. To the extent that the Commission finds that funds were not used properly, the Commission will require USAC to recover such funds through its normal processes. The Commission retains the discretion to evaluate the use of funds disbursed through the Rural Health Care Program and to determine on a case-by-case basis whether waste, fraud, or abuse of program funds occurred, or recovery is warranted. The Commission will continue to aggressively pursue instances of waste, fraud, or abuse under the Commission's procedures and in cooperation with law enforcement agencies.

IV. ORDERING CLAUSES

9. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.106, 54.675(c)(2) of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.106, 54.675(c)(2), (c)(4) that the Request for Waiver filed by Elite Program Specialists, LLC on behalf of the Louisiana Providers IS GRANTED to the extent provided herein.

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

FEDERAL COMMUNICATIONS COMMISSION

Trent Harkrader
Chief
Wireline Competition Bureau