

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

In the Matter of
Requests for Waiver by
University of Virginia Health System
Center for Telehealth and
Lumos Networks Inc.
Rural Health Care Universal Service
Support Mechanism
CC Docket No. 02-60

ORDER

Adopted: February 1, 2023

Released: February 1, 2023

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

I. INTRODUCTION

1. In this Order, we address a pair of requests filed by the University of Virginia Health System Center for Telehealth (UVA Telehealth Center) and Lumos Networks Inc. (Lumos) seeking waiver of section 54.627(a) of the Commission’s rules, the invoice filing deadline rule under the Rural Health Care Program’s Healthcare Connect Fund (HCF) Program. For the reasons provided below, we grant the requested relief.

II. BACKGROUND

2. The HCF Program provides eligible health care providers with a flat 65% discount on an array of advanced telecommunications and information services. The HCF Program funding disbursement process requires that an invoice be submitted to the Universal Service Administrative Company (USAC) using an FCC Form 463. The health care provider initiates the invoicing process by preparing the FCC Form 463 and sending it via USAC’s invoicing system to the service provider for completion. Section 54.627(a) of the HCF Program rules requires that the completed FCC Form 463 be submitted to USAC within 120 days of the service delivery deadline, unless a later date applies due to a revised funding commitment or successful appeal of a denied funding request. In response to the

1 Letter from Karen S. Rheuban M.D., Director, UVA Center for Telehealth, to FCC (Apr. 6, 2022) (UVA Telehealth Center Request for Waiver); Letter from Anthony Stroman, E-Rate/RHC Coordinator, Lumos Networks Inc., to FCC (March 23, 2022) (Lumos Request for Waiver). Lumos specifically requests a one-time extension of the invoice filing deadline, which in effect would require a waiver of the invoice filing deadline rule. The invoice filing deadline is set forth in section 54.627(a) of the Commission’s rules. 47 CFR § 54.627(a).

2 See 47 CFR §§ 54.607-54.618.

3 See USAC, Rural Health Care, Healthcare Connect Fund Program, Step 6: Invoice USAC, https://www.usac.org/rural-health-care/healthcare-connect-fund-program/step-6-invoice-usac/ (last visited Feb. 1, 2023). Both the health care provider and service provider are required to make certifications as to, among other things, the accuracy of the information contained in the FCC Form 463 before USAC may process and pay the invoice. See 47 CFR § 54.627(d)(1).

administrative burdens suffered by health care providers as a result of the COVID-19 pandemic, the Wireline Competition Bureau (Bureau) extended the invoice filing deadline by an additional 120 days for funding year 2020 requests.⁵

3. UVA Telehealth Center facilitates access to specialty medical care and supports the University of Virginia Health System's mission to advance clinical service, teaching, research, and public service.⁶ For funding year 2020, UVA Telehealth Center received approval for approximately \$441,000 in HCF Program support, all for services provided by Lumos.⁷ With the COVID-related extension included, the invoice filing deadline for these services was February 25, 2022. In its waiver request, UVA Telehealth explains that it completed its portion of the FCC Form 463 in the amount of \$416,943.97 on February 16, 2022, and that USAC "immediately forwarded the form to the service provider."⁸ However, according to UVA Telehealth Center, the "service provider did not review and complete the form before the February 25, 2022 deadline."⁹ Lumos verifies this account in its own waiver request, acknowledging that the FCC Form 463 was submitted to USAC on February 16, 2022 but that it "was not aware the invoice was pending approval."¹⁰ Both parties request that the February 25, 2022 invoice filing deadline be waived to permit Lumos to complete its review of the FCC Form 463 and allow USAC to process the form and disburse the associated funding.¹¹

III. DISCUSSION

4. We grant the waiver requests of UVA Telehealth Center and Lumos. The Commission's rules may be waived for good cause shown.¹² The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹³ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁴ 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.¹⁵

5. Special circumstances in this particular case favor waiving the requirements of section 54.627(a). The record is clear that UVA Telehealth Center submitted its portion of the FCC Form 463 in

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⁴ 47 CFR § 54.627(a). The service delivery deadline, with limited exceptions, is June 30 of the funding year for which program support was sought. 47 CFR § 54.626(a). Rural Health Care Program participants may request a one-time 120-day extension of the invoice filing deadline, which USAC is obligated to grant if timely requested. *Id.* § 54.626(b).

⁵ *Rural Health Care Support Mechanism, Promoting Telehealth in Rural America*, WC Docket Nos. 02-60 and 17-310, Order, 36 FCC Rcd 7051, 7062, para. 30 (WCB 2021).

⁶ See UVA Health System, *History of Telemedicine at UVA, Our Mission*, <https://uvahealth.com/services/telemedicine/about> (last visited Feb. 1, 2023).

⁷ The entire amount of support was associated with funding request number 20817161.

⁸ UVA Telehealth Center Request for Waiver at 1.

⁹ *Id.*

¹⁰ Lumos Request for Waiver at 1.

¹¹ UVA Telehealth Center Request for Waiver at 1; Lumos Request for Waiver at 1.

¹² 47 CFR § 1.3.

¹³ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

¹⁴ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

¹⁵ *Northeast Cellular*, 897 F.2d at 1166.

time to permit Lumos to complete the form prior to the invoice filing deadline of February 25, 2022.¹⁶ The failure by Lumos to complete its portion of the form is the sole reason for the missed deadline, and we find that this isolated oversight on behalf of the service provider does not justify denying UVA Telehealth Center the funding necessary to support its telemedicine efforts. A waiver in these circumstances would also serve the public interest. Denying UVA Telehealth Center its funding for reasons not of its own doing would exact a severe and inequitable penalty because the HCF Program funding at issue represents nearly \$417,000 and 100% of UVA Telehealth Center's request for support for funding year 2020.¹⁷

6. In addition, the record presents no evidence of waste, fraud, or abuse on the part of UVA Telehealth Center, which fully complied with its half of the section 54.627(a) requirements.¹⁸ Accordingly, we conclude that the unique special circumstances of UVA Telehealth having no fault in this matter combined with the public interest in allowing it to receive a substantial amount of RHC Program funding that constitutes all of its funding for the year at issue justifies waiving the section 54.627(a) invoice filing deadline in this particular case, allowing the parties to re-submit the invoice within 60 days of this decision, and directing USAC to process the FCC Form 463 once that form has been completed by Lumos.¹⁹

7. We emphasize that our holding here is narrow in scope and premised on the special circumstances and unique public interest considerations cited. Health care providers and service providers participating in the Rural Health Care Program continue to have a joint obligation to submit invoices by the filing deadline set forth in our rules.²⁰ Finally, we remind health care providers that they may protect their interests by negotiating contractual terms with service providers that would relieve a health care provider of their obligation to pay the service provider for funding that would otherwise be paid by the Universal Service Fund but for the service provider's mistake.

¹⁶ See UVA Telehealth Center Request for Waiver at 1; Lumos Request for Waiver at 1.

¹⁷ UVA Telehealth's funding commitment for funding year 2020 was \$441,334 but it has not received any disbursements for that funding year. See USAC, *Open Data, Rural Health Care Program, RHC Commitments and Disbursements Tool*, <https://opendata.usac.org/Rural-Health-Care/RHC-Commitments-and-Disbursements-Tool/sm&n-gg82> (filtered for Funding Request No. 20817161) (last visited Feb. 1, 2023).

¹⁸ See *Request for Review or Waiver by Maniilaq Association of Decision of Universal Service Administrator, Rural Health Care Universal Service Support Mechanism*, WC Docket No. 02-60, Order, 35 FCC Rcd 1458, 1462, para. 9 (granting waiver of competitive bidding rules requirements in part because of no evidence of waste, fraud, or abuse on the part of the health care provider applicant).

¹⁹ Lumos stated that it is "prepared to complete the Service Provider Review immediately once the relief is granted to cause no further delay to [UVA Telehealth Center], USAC, and the FCC." Lumos Letter at 1. We expect Lumos to abide by its pledge.

²⁰ A Bureau-level decision from 2017 involving the E-Rate Program suggests the possibility that the invoice filing deadline in E-Rate could be met when the applicant submits its portion of the invoice form by the deadline despite the service provider not completing its portion by that date. See *Petition for Reconsideration by Jefferson-Madison Regional Library, Charlottesville, VA et al.*, CC Docket No. 02-6, Order of Reconsideration, 32 FCC Rcd 4626, 4628-29, para. 6 (WCB 2017) (concluding that E-Rate invoice forms "may be considered timely submitted even if the service provider did not certify them before the deadline"). However, in adopting the invoice filing deadline rules for the Rural Health Care Program, the Commission indicated that both the health care provider and service provider portions of the invoice form must be completed by the invoice deadline. See *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Report and Order, 34 FCC Rcd 7335, 7422, para. 188 (2019) ("For example, for funding year 2020 funding commitments ending on June 30, 2021, the invoice deadline for submitting the invoice forms by the applicant to the Administrator, after approval by the service provider, is October 31, 2021.").

IV. ORDERING CLAUSES

8. 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, 1.3 and 54.719(c) of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3 and 54.719(c), the waiver requests of UVA Telehealth Center and Lumos, ARE GRANTED to the extent described herein.

9. 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 0.91, 0.291, 1.3 and 54.719(c) of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3 and 54.719(c), that section 54.627(a) of the Commission's rules, 47 CFR § 54.627(a), IS WAIVED to the limited extent provided herein and UVA Telehealth Center and Lumos shall re-submit the invoice at issue within 60 days of this decision.

10. 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 0.91, 0.291, 1.3, and 54.719(c) of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, and 54.719(c), that USAC SHALL PROCESS the FCC Form 463 associated with funding request number 20817161 within 60 days of receipt of the completed form.

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

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