

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

In the Matter of)
Requests for Waiver by)
Bartlett Regional Hospital)
Community Counseling Services)
Heart of Texas Region MHMR)
Hiawatha Behavioral Health)
Rural Health Care Support Mechanism) WC Docket No. 02-60

ORDER

Adopted: April 18, 2024

Released: April 18, 2024

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we address four requests from petitioners seeking waivers of the deadline to submit requests for funding under the Rural Healthcare (RHC) Program. Consistent with precedent established in the E-Rate Program, we grant two requests where the petitioners did file, and deny two requests where the petitioners did not file, funding requests or waiver requests within 14 days after the filing window deadline.

1 See Request for Waiver of Bartlett Regional Hospital, CC Docket No. 02-60 (filed June 11, 2021), https://www.fcc.gov/ecfs/search/search-filings/filing/10612166968696 (Bartlett Request for Waiver); Request for Waiver of Hiawatha Behavioral Health, CC Docket No. 02-60 (filed June 11, 2021), https://www.fcc.gov/ecfs/search/search-filings/filing/10611297752797 (Hiawatha Request for Waiver); Request for Waiver of Heart of Texas Region MHMR, CC Docket No. 02-60 (filed Aug. 23, 2022), https://www.fcc.gov/ecfs/search/search-filings/filing/1082390781140 (Heart of Texas Request for Waiver); Request for Waiver of Community Counseling Services, CC Docket No. 02-60 (filed Dec. 27, 2022), https://www.fcc.gov/ecfs/search/search-filings/filing/1227129927548 (Community Counseling Services Request for Waiver). Each year, USAC is responsible for opening an initial application filing window with an end date no later than 90 days prior to the start of the funding year. See 47 CFR § 54.621(a). Pursuant to section 54.719(c) of the Commission’s rules, a party seeking waiver shall seek relief directly from the Commission. 47 CFR § 54.719(c). While not all petitioners addressed in this Order have specifically requested waiver of the filing window deadline, each petitioner’s request is treated as such because each petitioner requests that a funding request filed outside of the filing deadline window be reviewed by USAC.

2 See Request for Review of the Decision of the Universal Service Administrator by Academy of Math and Science, et al., Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Order, 25 FCC Rcd 9256 (2010) (Academy of Math and Science).

II. BACKGROUND

2. The Commission's RHC Program consists of two component mechanisms: (1) the Healthcare Connect Fund (HCF) Program and (2) the Telecommunications (Telecom) Program. The HCF Program promotes the use of broadband services and facilitates the formation of health care provider consortia that include both rural and urban health care providers by providing a flat 65% discount on an array of advanced telecommunications and information services.³ The Telecom Program subsidizes the difference between the rates in the health care provider's rural area and rates for comparable services available in urban areas within the health care provider's state.⁴

3. In order to obtain RHC Program support, eligible healthcare providers (HCPs) must file funding requests (using the FCC Form 462 for the HCF Program and FCC Form 466 for the Telecom Program) to the Universal Service Administrative Company (USAC) during an application filing window established for each funding year.⁵ Effective funding year 2021, the Commission revised section 54.621 of its rules to require that USAC establish an initial application filing window with an end date no later than 90 days prior to the start of the funding year.⁶ In doing so, the Commission analogized the RHC Program to the E-Rate Program, which has its own application funding window that closes 90 days in advance of the funding year intended to provide applicants with certainty as to when funding requests must be filed.

4. Two of the petitions before us request waiver of the funding year 2021 application filing deadline.⁷ Bartlett Regional Hospital (Bartlett) seeks waiver of the filing deadline for one of its applications, which Bartlett attempted to submit one day past the June 1, 2021 filing deadline, and promptly sought waiver that same day.⁸ Bartlett cites to the demands of responding to the COVID-19 pandemic and a vacancy in its sole Grant Manager position as the reasons for its late-filed funding request.⁹ Hiawatha Behavioral Health (Hiawatha) likewise requests waiver of the filing deadline for three of its funding requests, which Hiawatha submitted ten days after the June 1 deadline.¹⁰ Hiawatha provides no explanation for its late filing, only submitting its three funding requests directly to the Commission through the Electronic Comment Filing System.¹¹

³ See 47 U.S.C. § 254(h)(2)(A); 47 CFR §§ 54.611, 54.612; *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678, 16680-81, paras. 1-3 (2012).

⁴ 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).

⁵ See Universal Service Administrative Co., *Step 4: Submit Funding Requests*, <https://www.usac.org/rural-health-care/healthcare-connect-fund-program/step-4-submit-funding-requests/> (last visited Apr. 8, 2024) (HCF Program); Universal Service Administrative Co., *Step 4: Submit Funding Requests*, <https://www.usac.org/rural-health-care/telecommunications-program/step-4-submit-funding-requests> (last visited Apr. 8, 2024) (Telecom Program).

⁶ *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Order, 34 FCC Rcd 7335, 7416 (2019); see also 47 CFR § 54.621(a). The funding year is the period between July 1 of the current year through June 30 of the next calendar year. 47 CFR § 54.600(a).

⁷ For funding year 2021, the application filing window close was extended from April 1, 2021, until June 1, 2021 because of the impact of the COVID-19 pandemic. See *Rural Health Care Support Mechanism*; *Promoting Telehealth in Rural America*, WC Docket Nos. 02-60 and 17-310, Order, 36 FCC Rcd 1604, 1604, para. 1 (WCB 2021).

⁸ Bartlett Request for Waiver.

⁹ *Id.*

¹⁰ Hiawatha Request for Waiver.

¹¹ *Id.*

5. The two remaining petitions request waiver of the application filing deadline for funding year 2022.¹² Heart of Texas Region MHMR (Heart of Texas) seeks waiver of the RHC Program filing deadline, submitting its waiver request 83 days after the close of the application window.¹³ Heart of Texas offers no explanation for missing the filing deadline other than that its application “was not submitted and still shows in draft mode.”¹⁴ Community Counseling Services (CCS) seeks waiver of the RHC Program funding window deadline for three of its funding requests, for which the waiver request was filed 209 days after the close of the application window.¹⁵ CCS cites to a “mistake due to a misinterpretation of funding year end dates and what was funded and not funded for [funding year] 2023” as the reason for missing the funding request deadline.¹⁶

III. DISCUSSION

6. The Commission may waive its rules for good cause shown.¹⁷ The Commission may exercise its discretion to waive a rule where the particular facts would make strict compliance inconsistent with the public interest.¹⁸ Additionally, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁹ 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.²⁰

7. In this Order, we grant the requests of Bartlett and Hiawatha and deny the requests of Heart of Texas and CCS seeking waiver of the filing window deadlines set forth in section 54.621(a) of the Commission’s rules. In acting on these waiver requests, we are guided by a Commission decision addressing multiple requests for waiver of the E-Rate Program’s application filing deadline.²¹ In

¹² For funding year 2022, the application filing window close was extended from April 1, 2022, until June 1, 2022 because of the impact of the COVID-19 pandemic. *See Rural Health Care Support Mechanism; Promoting Telehealth in Rural America*, WC Docket Nos. 02-60 and 17- 310, Order, 37 FCC Rcd 2834, 2834, para. 1 (WCB 2022).

¹³ Heart of Texas Request for Waiver at 1.

¹⁴ *Id.*

¹⁵ Community Counseling Services Request for Waiver.

¹⁶ *Id.* at 1.

¹⁷ 47 CFR § 1.3.

¹⁸ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

¹⁹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

²⁰ *Northeast Cellular*, 897 F.2d at 1166.

²¹ *See Academy of Math and Science*, 25 FCC Rcd at 9256-62. *Academy of Math and Science* is part of a series of E-Rate Program orders addressing requests for waivers of the E-Rate Program filing window deadline. In 2006, the Commission granted filing window deadline waiver requests where petitioners demonstrated special circumstances to justify waiver, including cases where (1) petitioners “committed minor errors in filling out their application forms,” (2) “someone on the applicants’ staff made a mistake or had a family emergency that prevented them from filing on time,” or (3) “the delay in the filing or receipt of the application was due to circumstances out of the applicants’ control” such as inclement weather or school reorganizations. *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 21 FCC Rcd 5316, 5321-23 (2006) (*Bishop Perry*). Next, consistent with *Bishop Perry*, the Wireline Competition Bureau (Bureau) granted waivers where “someone on the applicants’ staff failed to file on time due to misunderstanding or personal emergencies” or where “the delay in the filing or the receipt by USAC of the FCC Form 471 was due to circumstances out of the applicants’ control.” *Request for Review of the Decision of the Universal Service Administrator by Academy for Academic Excellence, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 22 FCC Rcd 4747, 4748-49 (WCB 2007) (*Academy for Academic Excellence*). Subsequently, consistent with *Bishop Perry* and *Academy for Academic Excellence*, the Bureau granted waivers for petitioners on the basis of special circumstances

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Academy of Math and Science, the Commission granted 57 waiver requests from petitioners that were filed within 14 days after the filing deadline, finding that the petitioners' applications "were filed close enough to the deadline so as not to impair the administration of the [E-Rate] program."²² The Commission, using the same rationale, also granted three waiver requests from petitioners whose funding requests were delayed by "unexpected" circumstances (e.g., "the unexpected serious illness or death of a family member for the staff member assigned responsibility for E-Rate applications") that were filed within 30 days of the filing deadline.²³ The Commission, however, denied 158 waiver requests wherein the petitioner filed more than 14 days after the filing deadline and failed to present such special circumstances justifying a waiver of the filing deadline.²⁴ We now apply these E-Rate Program waiver standards announced in *Academy of Math and Science* to the RHC Program in the continuing effort to improve the administration of the RHC Program and, when sensible, establish consistency between the two programs.²⁵

8. *Grants.* We grant Bartlett's and Hiawatha's waiver requests, which were filed by petitioners within 14 days of the end of the filing window.²⁶ Consistent with the *Academy of Math and Science* decision, we find that, because the petitioners' requests involve procedural and not substantive violations of the Commission's rules, petitioners' requests should not be rejected outright.²⁷ While filing and other procedural deadlines are necessary to maintain the efficient administration of the application process, requiring strict compliance with the Commission's rules in this instance, where a late funding application was filed within 14 days of the deadline and administration of the RHC Program was minimally affected, frustrates the basic purpose of the RHC Program and would not serve the public interest.²⁸ Bartlett filed its waiver request just one day after the application filing deadline and Hiawatha

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where petitioners filed within 14 days after the filing window deadline, filed "late because of an illness of the E-rate staff person or from the death of a member or his or her family," and filed more than 14 days late "when circumstances beyond the applicant's control cause the applicant to miss a deadline on a matter that is procedural" (e.g., a technical problem with USAC's online filing or the USAC system not processing a request). *In re Requests for Waiver and Review of Decisions of the Universal Service Administrator by Acorn Public Library District, et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 23 FCC Rcd 15474, at 15478-79 (WCB 2008) (*Acorn Public Library District*).

²² *Academy of Math and Science*, 25 FCC Rcd at 9259-60.

²³ *See id.* (finding too that "these applications were filed close enough to the deadline so as not to impair the administration of the program.").

²⁴ *See id.* at 9261-62.

²⁵ *See Promoting Telehealth in Rural America*, 34 FCC Rcd at 7415 (explaining that the adoption of new RHC Program measures modeled after similar E-Rate Program measures "establish[es] consistency in the administration of the Universal Service Fund program"). The Commission has addressed waiver of the filing window deadline for the RHC Program in specific limited circumstances on a case-by-case basis. *See, e.g., Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 35 FCC Rcd 5400, 5402-04 (WCB 2020); *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 37 FCC Rcd 6263, 6264-65 (WCB 2022) (waiving the filing window deadline for petitioners that were unable to file timely funding requests due to natural disasters). To improve the administration of the RHC Program, we are applying E-Rate Program precedent to carry over a consistent standard for funding deadline waiver requests to the RHC Program.

²⁶ The waiver requests of Bartlett Regional Hospital, Funding Request Number (FRN) 19634991, and Hiawatha Behavioral Health, FRNs 21178601, 21178611, and 21178621, are granted.

²⁷ *See Academy of Math and Science*, 25 FCC Rcd at 9259-60.

²⁸ The Universal Service Fund, and subsequently the RHC Program, were created based on several principles, including, and not limited to, providing access to advanced telecommunications to all regions of the nation including to healthcare providers, ensuring that services are available at just, reasonable, and affordable rates, and ensuring that rural service and rates are reasonably comparable to those services provided in urban areas. *See* 47 U.S.C. § 254(b). Consistent with Commission precedent established by the E-Rate Program, requiring strict compliance with

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filed its waiver request 11 days after the deadline.²⁹ In consideration of precedent established by *Academy of Math and Science*, we again find here “that these applications were filed close enough to the deadline so as not to impair the administration of the program.”³⁰ For these reasons, there is good cause to grant petitioners’ waiver requests and remand petitioners’ applications for funding through the RHC program to USAC for further action. We make no finding as to the eligibility of the funding requests that will be filed and instruct USAC to coordinate the filing of requests for funding with the petitioners. While we grant these two waiver requests, we remind applicants of their obligation to comply with the Commission’s procedural rules, including application filing deadlines, which are critical to the efficient operation of the RHC Program.

9. *Denials.* We deny Heart of Texas’ and CCS’s waiver requests where the untimely funding requests were filed by petitioners more than 14 days after the filing window deadline and without special circumstances warranting a waiver of the deadline. Heart of Texas and CCS filed their requests 83 days and 209 days after the close of the filing window, respectively.³¹ Neither party, however, offered or demonstrated special circumstances of the type identified in *Academy of Math and Science* that caused them to miss their deadlines.³² In that order, the Commission denied waiver requests in cases where the funding application was not filed: (1) within 14 days of the close of the filing window; (2) within “a reasonable period of time” following a death or serious illness of the person responsible for filing the application or death of a member of their family; or (3) due to circumstances beyond the petitioner’s control.³³ Heart of Texas did not provide any explanation for its delay.³⁴ CCS did not identify any employee death or illness or other circumstances beyond its control and only references “a misinterpretation of funding year end dates and what was funded and not funded for [funding year] 2023.”³⁵

10. Consistent with the *Academy of Math and Science* precedent, waiver is not warranted for Heart of Texas and CCS since petitioners failed to file their funding requests within 14 days of the close of the filing window and have not shown special circumstances to warrant waiver of the filing window deadline.³⁶ Because we find in these cases that petitioners failed to file their funding request forms within a reasonable amount of time, we deny their requests for waiver.³⁷

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the Commission’s rules would conflict with the purposes of the RHC Program and would result in undue hardship to applicants who would benefit from funds under the HCF or Telecom Programs. *See Academy of Math and Science*, 25 FCC Rcd at 9259-60.

²⁹ Consistent with the *Academy of Math and Science* decision, we grant these waiver requests filed within 14 days of the end of the filing window even though the applicants were unable to submit their FCC Forms 462 to USAC because USAC did not allow applicants to electronically submit after the deadline. *Id.* at 9260, n.26. For the purposes of this Order, in light of an applicant’s inability to file the funding request form past the deadline, we treat the date that the request for waiver was filed as a proxy for the date the funding request was filed.

³⁰ *Academy of Math and Science*, 25 FCC Rcd at 9260.

³¹ *See* Heart of Texas Request for Waiver; Community Counseling Services Request for Waiver.

³² *See Acorn Public Library District*, 23 FCC Rcd at 15476-77 (requiring petitioners who file after 14 days past the filing window deadline to show special circumstances for waiver).

³³ *See Academy of Math and Science*, 25 FCC Rcd at 9261-62.

³⁴ Heart of Texas Request for Waiver at 1 (stating only that its “application was not submitted and still shows in draft mode.”).

³⁵ Community Counseling Services Waiver Request at 1.

³⁶ While the filing deadline in the RHC Program previously has been waived in two instances where the waiver request was filed more than 14 days after the application window deadline and there was no employee death or illness, the unique circumstances of those cases distinguish them from the waiver requests being denied in this

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11. *Direction to USAC.* To ensure the smooth application of this decision for future funding years, going forward, we direct USAC to continue to allow health care providers to submit funding requests for the RHC Program for 30 days after the close of each application filing window.³⁸ If the Bureau grants a waiver of the filing deadline for a late-filed funding request submitted within 30 days of the deadline, USAC will then process the funding request as if it had been timely filed. If the health care provider does not request a waiver for a late-filed funding request submitted within 30 days of the deadline or the Bureau denies such a waiver, USAC will dismiss the funding request.³⁹

IV. ORDERING CLAUSES

12. 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 1.3 and 54.722(a) of the Commission's rules, 47 CFR §§ 1.3 and 54.722(a), that the appeals filed by petitioners Hiawatha Behavioral Health, FRNs 21178601, 21178611, and 21178621; and Bartlett Regional Hospital, FRN 19634991 are GRANTED and the applications are REMANDED to USAC for further action consistent with this Order.

13. 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), that section 54.621(a) of the Commission's rules, 47 CFR § 54.621(a), IS WAIVED for the petitioners Hiawatha Behavioral Health, FRNs 21178601, 21178611, and 21178621; and Bartlett Regional Hospital, FRN 19634991 to the extent provided herein.

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Order. *See Application for Review of Tanana Chiefs Conference, Fairbanks, AK, Rural Health Care Universal Service Support Mechanism*, WC Docket 02-60, Order on Review, FCC 23-41, 2023 WL 3690743 (May 26, 2023) (waiving the filing window deadline for petitioner who presented special circumstances due to “misunderstandings and confusion about the filing deadline” regarding the inaugural RHC Program filing window); *Petition for Waiver of Iliuliuk Family and Health Services, Unalaska, AK, Rural Health Care Universal Service Support Mechanism*, WC Docket 02-60, Order, DA 23-1192, 2023 WL 8877081 (WCB Dec. 20, 2023) (waiving the filing deadline because the health care provider failed to timely file an application due to a confluence of the service provider’s confusion caused by being a new participant in the Rural Health Care Program, medical issues with health care provider personnel responsible for filing applications, and the COVID-19 pandemic). That combination of unique circumstances is not present in the waiver requests denied in this Order.

³⁷ The E-Rate Program has waived the application filing deadline in limited cases where “a serious and unexpected medical condition of the person responsible for filing the E-Rate application” delayed the application’s filing, the delay was “slightly more” than 30 days after the deadline, and the modest increase in time did not “impede the efficient administration of the program.” *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Archdiocese of San Antonio, San Antonio, Texas, et. al., Schools and Libraries Universal Service Support Mechanism, Establishing Emergency Connectivity Fund to Close the Homework Gap*, CC Docket No. 02-6, WC Docket No. 21-93, Order, 37 FCC Rcd 4879, 4881-82 (WCB 2022) (*Archdiocese of San Antonio*) (granting waivers to an application filed 35 days late due to employee’s serious cycling accident and an application filed 43 days late due to employee’s brain surgery). The Heart of Texas and CCS cases involved applications that were filed more than 14 days after the filing deadline, and as explained above did not involve the type of special circumstances outlined in the *Academy of Math and Science* or *Archdiocese of San Antonio* decisions.

³⁸ In the event that there is a waiver extending the close of the application filing, as is the case for funding year 2024, healthcare providers are permitted to continue to submit funding requests for 30 days after the extended close of the filing window. *See Rural Health Care Support Mechanism; Promoting Telehealth in Rural America*, WC Docket Nos. 02-60 and 17-310, DA 24-214 (WCB rel. Mar. 7, 2024).

³⁹ We direct USAC to allow a health care provider to file an application more than 30 days after the filing deadline if the Bureau waives the deadline after consideration of the circumstances supporting the health care provider’s waiver request. *See, e.g., Archdiocese of San Antonio*, 37 FCC Rcd at 4881-82.

14. 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), that the appeals filed by petitioners Heart of Texas Region MHMR Center, FRN 2222293 and Community Counseling Services, FRNs 20827611, 20828001, and 20828271 are DENIED.

15. 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

Trent B. Harkrader
Chief
Wireline Competition Bureau