

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Requests for Review of
Decisions of the
Universal Service Administrator by
Kodiak Area Native
Association, et al.
Rural Health Care Universal Service
Support Mechanism
Files Nos. RHCP 11193, et al.
WC Docket No. 02-60

ORDER

Adopted: September 17, 2015

Released: September 17, 2015

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

1. In this Order, we grant six appeals of decisions by the Universal Service Administrative Company (USAC) under the rural health care (RHC) universal service support mechanism in which USAC denied support because the applicants missed the deadline for filing the FCC Forms 466 and 466-A.1 Because the forms deadline rule was repealed for the time period at issue, we find good cause to grant the appeals for the health care providers (HCPs) and consortia listed in the Appendix.2

2. In its 2006 Biennial Review, the Commission repealed the FCC Forms 466/466-A deadline rule, 47 C.F.R. section 54.623(c)(3).3 Apparently, this repeal was inadvertent. In 2013, the Commission

1 Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of USAC may seek review from the Commission. 47 C.F.R. § 54.719(c). FCC Form 466 is the form by which applicants request support in the RHC Telecommunications Program. See FCC Form 466, http://www.usac.org/res/documents/rhc/pdf/forms/2013/Form-466-FY2013.pdf (last visited Sept. 17, 2015). FCC Form 466-A is the form by which applicants requested support in the former RHC Internet Access Program. See FCC Form 466-A, http://usac.org/res/documents/rhc/pdf/forms/2013/Form-466-A-FY2013.pdf (last visited Sept. 17, 2015). The RHC Internet Access Program was replaced by the RHC Healthcare Connect Fund on July 1, 2014. See Rural Health Care Support Mechanism, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678, 16681, n.9 (2012) (Healthcare Connect Fund Order).

2 See Letter from Bryan Bell, Annette Island Service Unit, to Federal Communications Commission, WC Docket No. 02-60 (filed Sept. 29, 2011); Letter from Becky Rains, Arkansas Department of Information Systems, to Federal Communications Commission, WC Docket No. 02-60 (filed Jan. 8, 2013) (AR DIS Appeal); Letter from Tammy Hansen, Kodiak Area Native Association, to Federal Communications Commission, WC Docket No. 02-60 (filed Apr. 8, 2011) (KANA Appeal); Letter from Michael Homier, LMAS District Health Department, to Federal Communications Commission, WC Docket No. 02-60 (filed Aug. 7, 2012); Letter from Linda Nygaard, Northeast Montana Health Services, to Federal Communications Commission, WC Docket No. 02-60 (filed Nov. 16, 2011) (NMHS Appeal); Letter from John T. Nakahata, Counsel for SouthEast Alaska Regional Health Consortium, to Federal Communications Commission, WC Docket No. 02-60 (filed Aug. 28, 2013).

3 See Biennial Regulatory Review of Regulations Administered by the Wireline Competition Bureau, WC Docket No. 02-313, Report and Order, 21 FCC Rcd 9937, 9948, paras. 47-48 (2006).

reinstated its FCC Form 466 deadline rule in 47 C.F.R. section 54.675(c)(4) through the *Healthcare Connect Fund Order*.⁴ Accordingly, for the time period at issue, September 20, 2006, until March 31, 2013, we grant the appeals of those applicants who were denied support by USAC due to missing the FCC Forms 466 and 466-A deadline.⁵

3. Some appellants' applications still are incomplete in that they lack necessary FCC Forms 466, 466-A, 467, and/or supporting documentation.⁶ In light of the absence of the deadline rule for the time period at issue, we will permit affected appellants to retroactively file the requisite forms as necessary to cure their incomplete applications. Accordingly, we direct affected appellants to file any requisite outstanding forms and/or documentation with USAC no later than 45 days from the date of release of this Order.⁷ We direct USAC to complete its review of each application listed in the Appendix and issue a Funding Commitment Letter (FCL) no later than 90 days from the date of release of this Order.⁸

4. We also waive certain rules as necessary to effectuate our decision to grant the appeals filed by the parties listed in the Appendix. Consistent with precedent,⁹ we find that good cause exists to waive, on our own motion, for Arkansas DIS and NMHS, section 54.720(a) of the Commission's rules, which requires applicants to seek Commission review of a USAC decision within 60 days.¹⁰ Thirty four of AR DIS's 36 HCP appeals were timely filed¹¹ and NMHS's appeal was filed only one day late.¹² On our own motion, we also waive section 54.679 of the Commission's rules and any USAC procedural rules or deadlines that might be necessary to effectuate our ruling.¹³

⁴ *Healthcare Connect Fund Order*, 27 FCC Rcd at 16818, para. 351-2, 16890, Appx. D. See also 47 C.F.R. § 54.675(c)(4). We note that the FCC Form 466-A deadline was not reinstated through the *Healthcare Connect Fund Order*, presumably because applicants used the FCC Form 466-A only to obtain support from the RHC Internet Access Program, which was replaced by the Healthcare Connect Fund in that same Order. See *id.* at 16681, n.9.

⁵ See *supra* note 2.

⁶ See, e.g., KANA Appeal. FCC Form 467 is the form by which applicants, among other things, notify USAC that their service provider(s) has/have turned on the service(s) for which the applicants are seeking support. See FCC Form 467, http://www.usac.org/_res/documents/rhc/pdf/forms/2011/Form-467-FY2011.pdf (last visited Sept. 17, 2015).

⁷ 47 U.S.C. §§ 154(i), (j); 47 C.F.R. §§ 0.91, 0.291.

⁸ USAC will issue FCLs only to those appellants whose requisite FCC Forms 466, 466-A, 467, and/or supporting documentation are submitted to USAC no later than 45 days from the date of release of this Order.

⁹ See *Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by ABC Unified School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 11019, para. 2 (Wireline Comp. Bur. 2011) (granting petitioners' requests for waivers of filing deadline for appeals because they submitted their appeals to the Commission within a reasonable period of time after receiving notice of USAC's adverse decision).

¹⁰ 47 C.F.R. § 54.720(a). Generally, the Commission's rules may be waived if good cause is shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is appropriate only if both: (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

¹¹ Appeals for only two of AR DIS's 36 HCPs, 16255 and 16271, were filed late. See AR DIS appeal.

¹² See NMHS Appeal.

¹³ 47 C.F.R. § 54.679. See *supra* note 10.

5. We do not permit non-appellants who missed the FCC Form 466/466-A deadline during the time periods at issue to now file their outstanding forms. This decision is consistent with Congress' directive that "[t]here should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service," and we find that prohibiting a potentially large universe of applicants from seeking an unknown sum of RHC support will preserve specific, predictable, and sufficient RHC Program support.¹⁴

6. Based on the evidence available to date, we find no evidence in these cases of waste, fraud, or abuse; misuse of funds; or failure to adhere to core program requirements and therefore remand the underlying applications listed in the Appendix to USAC for further action consistent with this Order. In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the petitioners' applications.

7. We emphasize the limited nature of this decision. Filing deadlines and minimum processing standards are necessary for the efficient administration of the RHC Program. This limited appeals grant does not reduce or eliminate any application review procedures or lessen the program requirements with which applicants must comply to receive funding. Indeed, we retain our commitment to detecting and deterring potential instances of waste, fraud, and abuse by ensuring that USAC continues to scrutinize applications and take steps to educate applicants in a manner that fosters program integrity. All existing RHC Program rules and requirements will continue to apply, including USAC's minimum processing standards; existing forms, documentation, and associated certifications; USAC's Program Integrity Assurance review procedures; and other processes designed to ensure applicants meet the applicable program requirements. Therefore, we caution that this appeals grant should not be read to mean that applicants may not comply fully with all of our procedural rules, as these requirements are vital to the efficient operation of the RHC Program.

8. 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, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Requests for Review filed by the petitioners as listed in the Appendix ARE GRANTED and their underlying applications ARE REMANDED to USAC for further consideration in accordance with the terms of this Order.

9. IT IS FURTHER 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 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, the appellants listed in the Appendix to this Order SHALL FILE all necessary forms with USAC no later than 45 days from the date of release of this Order.

10. IT IS FURTHER 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, USAC SHALL COMPLETE its review of each application listed in the Appendix and SHALL ISSUE a Funding Commitment Letter no later than 90 days from the date of release of this Order.

11. IT IS FURTHER ORDERED that this Order SHALL BE EFFECTIVE UPON RELEASE.

¹⁴ 47 U.S.C. § 254(b)(5).

FEDERAL COMMUNICATIONS COMMISSION

Ryan B. Palmer
Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

APPENDIX

Requests for Waiver and Review Granted

Petitioner	HCP Number(s)	Funding Year	Date Request for Review/Waiver Filed
Annette Island Service Unit (Metlakatla Clinic)	13063	2010	9/29/2011
Arkansas Department of Information Systems	16230, 16231, 16232, 16235, 16237, 16238, 16242, 16243, 16245, 16250, 16253, 16254, 16255, 16261, 16263, 16266, 16268, 16269, 16271, 16272, 16276, 16277, 16278, 16280, 16282, 16284, 16285, 16287, 16288, 16289, 16290, 16291, 16292, 16295, 16297, 16299	2011	1/8/2013
Kodiak Area Native Association	11193, 11195, 11196, 11197, 11198, 11199	2009	4/8/2011
LMAS District Health Department	17483, 17484, 17501	2010	8/7/2012
Northeast Montana Health Services – Poplar	11413	2010	11/16/2011
SouthEast Alaska Regional Health Consortium	10047, 10048, 10049, 10050, 10051, 10052, 10053, 10054, 13013, 13014, 14977, 17789, 18012, 18152, 18417, 18418	2011	8/28/2013