

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

In the Matter of	)	
	)	
Petition for Waiver of	)	
	)	
Iliuliuk Family and Health Services	)	
Unalaska, AK	)	
	)	
Rural Health Care Universal Service Support	)	WC Docket No. 02-60
Mechanism	)	

**ORDER**

**Adopted: December 20, 2023**

**Released: December 20, 2023**

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

**I. INTRODUCTION**

1. In this Order, we grant a petition for waiver submitted by Iliuliuk Family and Health Services (IFHS) of the Rural Health Care (RHC) Program application filing deadline for funding year 2022.<sup>1</sup> Based on the unique circumstances described in the petition, we waive section 54.621(a) of the Commission's rules to allow IFHS to file a funding year 2022 application after the filing deadline so that it can seek RHC Telecommunications (Telecom) Program funding.<sup>2</sup>

**II. BACKGROUND**

2. Eligible health care providers may apply for reduced rates on eligible telecommunications, advanced telecommunications, and information services through the RHC Program. The RHC Program has two component programs: (1) the Telecom Program, which permits eligible health care providers to apply for discounts to defray the high cost of eligible telecommunications services in rural areas<sup>3</sup> and (2) the Healthcare Connect Fund Program (HCF Program), which supports the delivery of broadband services and development of state and regional health care networks.<sup>4</sup> Eligible health care providers may apply for support for eligible services after completing a competitive bidding process and selecting the most cost-effective service offering, unless a competitive bidding exemption applies.<sup>5</sup> Applicants in the HCF Program may seek multi-year commitments under which a single funding commitment can cover a period of up to three years.<sup>6</sup> Multi-year commitments are not available

<sup>1</sup> See Petition for Waiver of Iliuliuk Family and Health Services, WC Docket No. 02-60 (filed July 2, 2023), <https://www.fcc.gov/ecfs/search/search-filings/filing/107011042110393> (Petition for Waiver).

<sup>2</sup> 47 CFR § 54.621(a) (2021).

<sup>3</sup> *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 34 FCC Rcd 4136, 4136, para. 2 (2019) (*FY 2018 Demand Order*).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 4139, para. 10.

<sup>6</sup> 47 CFR § 54.620(c) (allowing funding requests in the HCF Program to receive multi-year commitments).

in the Telecom Program, so applicants must annually file a request for Telecom Program funding.<sup>7</sup> Applicants must submit their requests prior to the close of the application filing window in order to be considered for RHC Program funding.<sup>8</sup> In funding year 2022, the application filing window opened in December 2021 and was scheduled to close April 1, 2022, but due to the COVID-19 pandemic, was extended to June 1, 2022.<sup>9</sup>

3. IFHS is a community-owned and operated Federally Qualified Health Center located in Unalaska, Alaska, one of the remotest communities in the United States.<sup>10</sup> Unalaska has the largest population in the Aleutian Islands, measured at 4,254 persons in the 2020 Census<sup>11</sup> and is the top-ranked commercial fishing port in the nation, based on the aggregate weight of seafood landed.<sup>12</sup> The nearest hospital is in Anchorage, about 800 air miles away.<sup>13</sup> For purposes of the RHC Program, IFHS is placed in the most extreme rurality tier, Frontier, and serves a Medically Underserved Area/Population.<sup>14</sup>

4. IFHS has a small medical staff and, particularly important for the commercial fishing industry, offers emergency services 24 hours per day, 7 days per week, 365 days per year.<sup>15</sup> It also leases space to a local Indian Health Service clinic operated by the Aleutian/Pribilof Islands Association.<sup>16</sup> This is one of two health centers operated by the Aleutian/Pribilof Islands Association, which includes the Qawalangin Tribe of Unalaska, as well as three other villages on Unalaska and neighboring islands and the Aleut Community of St. Paul Island, which is about 270 miles away.<sup>17</sup>

5. IFHS failed to request funding in the Telecom Program for funding year 2022 during the application filing window.<sup>18</sup> On July 2, 2023, it filed the Petition for Waiver seeking a waiver of the application filing deadline to allow it to file a funding request for funding year 2022. IFHS has

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<sup>7</sup> Cf. *id.*; see also 47 CFR § 54.620(a) (2021) (stating that health care providers must file funding requests each year unless a multi-year commitment applies).

<sup>8</sup> 47 CFR § 54.621(a)(3) (2021).

<sup>9</sup> *Rural Health Care Support Mechanism; Promoting Telehealth in Rural America*, WC Docket Nos. 02-60 and 17-310, Order, 37 FCC Rcd 2834-36 (WCB 2022). The Order waived section 54.621(a)(1) of the Commission's rules, which requires the filing window to end no later than 90 days prior to the start of the funding year itself.

<sup>10</sup> Petition for Waiver at 1.

<sup>11</sup> U.S. Census Bureau, Unalaska city, Alaska, 2020 Decennial Census, [https://data.census.gov/profile/Unalaska\\_city,\\_Alaska?g=160XX00US0280770](https://data.census.gov/profile/Unalaska_city,_Alaska?g=160XX00US0280770) (last visited Dec. 18, 2023).

<sup>12</sup> U.S. Department of Commerce National Marine Fisheries Service, Fisheries of the United States, 2020, U.S. Department of Commerce, NOAA Current Fishery Statistics No. 2020, 2022, p. 7, available at: <https://www.fisheries.noaa.gov/national/sustainable-fisheries/fisheries-united-states> (last visited Dec. 18, 2023).

<sup>13</sup> City of Unalaska, Resolution 2020-24, Requesting the U.S. Department of Transportation to Provide Financial Subsidy to an Air Carrier to Provide Essential Air Service to Unalaska (Dutch Harbor), Alaska, passed and adopted April 28, 2020, [https://www.ci.unalaska.ak.us/sites/default/files/fileattachments/Mayor%20and%20City%20Council/page/8061/24\\_eas\\_request.pdf](https://www.ci.unalaska.ak.us/sites/default/files/fileattachments/Mayor%20and%20City%20Council/page/8061/24_eas_request.pdf) (last visited Dec. 18, 2023).

<sup>14</sup> USAC Rurality Tier Search Tool, <https://www.usac.org/rural-health-care/resources/tools/rurality-tier-search-tool/> (last visited Dec. 18, 2023).

<sup>15</sup> Petition for Waiver at 6.

<sup>16</sup> *Id.* at 5.

<sup>17</sup> Indian Health Service, Alaska Area Profile, Anchorage Service Area, pp. 29-30, [https://www.ihs.gov/sites/alaska/themes/responsive2017/display\\_objects/documents/hf/asu.pdf](https://www.ihs.gov/sites/alaska/themes/responsive2017/display_objects/documents/hf/asu.pdf) (last visited Dec. 18, 2023).

<sup>18</sup> Petition for Waiver at 8-10.

participated in the Telecom Program since 2012, receiving a funding commitment each year, except for funding year 2022, which is the focus of this Petition for Waiver.<sup>19</sup> For funding year 2021, IFHS timely filed a funding request and received a Telecom Program funding commitment for dedicated, 30 Mbps MPLS Ethernet connection services from service provider OptimERA Holdings, Inc. (OptimERA) linking IFHS with health networks in Anchorage.<sup>20</sup> USAC determined that the parties' three-year contract was eligible for evergreen status,<sup>21</sup> thus relieving IFHS from the need to conduct an annual competitive bidding process during the evergreen period.<sup>22</sup> However, this evergreen status did not eliminate the requirement for IFHS to submit an annual funding application for the Telecom Program, for which multi-year funding commitments are not available.<sup>23</sup>

6. IFHS explains that there are significant unique events underlying its one-time failure to timely request Telecom Program funding for funding year 2022, including the absence of a permanent IFHS CEO during the majority of the application filing window, and the relative inexperience of IFHS' selected service provider with the RHC Program.<sup>24</sup> These events occurred in the midst of the COVID-19 pandemic national emergency, when normal operations for most organizations were anything but normal, and overlapped with the peak period for COVID-19 cases and deaths in Alaska, which was from approximately September 2021 to March 2022.<sup>25</sup>

7. First, in December 2021, the CEO of IFHS, who signed the new three-year contract in 2021 with OptimERA, left IFHS and was not replaced by a permanent successor until May 2022.<sup>26</sup> This left IFHS without a permanent CEO for nearly all of the funding year 2022 application filing window, which was open from December 1, 2021, to June 1, 2022.<sup>27</sup> The staff available during this time had no experience with the RHC Program.<sup>28</sup> IFHS cites this as "a primary factor" causing it to miss the funding year 2022 filing deadline for the Telecom Program.<sup>29</sup> Although IFHS failed to request Telecom Program funding for funding year 2022, IFHS continued to receive the service from OptimERA.<sup>30</sup>

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<sup>19</sup> USAC, Open Data, Rural Health Care Commitments and Disbursements (FCC Form 462/466/466A), <https://opendata.usac.org/Rural-Health-Care/Rural-Health-Care-Commitments-and-Disbursements-FC/2kme-evqq> (last visited Dec. 18, 2023) (USAC Commitments and Disbursements Data).

<sup>20</sup> USAC Commitments and Disbursements Data; Petition for Waiver at 7. For funding year 2021, IFHS received Telecom Program disbursements of \$766,230, and is scheduled for the same amount for funding year 2023.

<sup>21</sup> USAC Commitments and Disbursements Data; Petition for Waiver at 7-8.

<sup>22</sup> 47 CFR §§ 54.603(c) and 54.622(i)(3) (2021).

<sup>23</sup> For the annual filing requirement, see 47 CFR § 54.620(a). For the evergreen contracts exemption from annual competitive bidding, see 47 CFR §§ 54.603(c); 54.622(i)(3). In contrast to the Telecom Program, eligible health care providers can obtain multi-year funding commitments through the HCF Program. *See* 47 CFR § 54.620(c).

<sup>24</sup> Petition for Waiver, at 8-10.

<sup>25</sup> Johns Hopkins University of Medicine, Coronavirus Resource Center, Alaska Data Timeline, <https://coronavirus.jhu.edu/region/us/alaska>.

<sup>26</sup> Petition for Waiver at 8.

<sup>27</sup> USAC, Funding Year Overview, <https://www.usac.org/rural-health-care/additional-program-guidance/funding-year-overview/> (last visited Dec. 18, 2023).

<sup>28</sup> Petition for Waiver at 10.

<sup>29</sup> Petition for Waiver at 8. IFHS submitted its funding year 2022 application seeking support for Internet access to the Healthcare Connect Fund on June 1, 2022. USAC Commitments and Disbursements Data. Internet access is not an eligible service in the Telecom Program. Section 254(h)(1)(A) of the Communications Act authorizes the Telecom Program and applies to only telecommunications services. *See* 47 U.S.C. § 254(h)(1)(A) ("A telecommunications carrier shall, upon receiving a bona fide request, provide *telecommunications services* which are

(continued....)

8. Second, IFHS' service provider, OptimERA had limited experience with the RHC Program, including the funding processes for multiple-year contracts, and had issues with various complex, online systems for several months, which contributed to the delay in discovering IFHS' failure to file a funding request for funding year 2022.<sup>31</sup> OptimERA explains that based on its first year in the RHC Program, the absence of a funding commitment letter from the Telecom Program did not raise concerns for OptimERA until late 2022.<sup>32</sup> When in mid-December 2022, OptimERA attempted to check on IFHS' Telecom Program funding request status in USAC systems, it believed that it was locked out, which it attributed to being on red-light status due to missed license payments.<sup>33</sup> OptimERA promptly paid the Commission its license fees. However, for several months, OptimERA still believed it was unable to access its account page.<sup>34</sup> Additionally OptimERA reported challenges with its 2022 registration with the System for Award Management, which it believed prevented it from accessing USAC's systems.<sup>35</sup> Having resolved these system challenges and outstanding issues, OptimERA contacted USAC via email in early February 2023 and indicates that it first realized around this time that the lack of a funding commitment was due to IFHS' failure to file a funding request for funding year 2022.<sup>36</sup> OptimERA and IFHS did not immediately take action to address this issue out of concern that immediate action could be perceived as impacting competitive bidding for funding year 2023 because IFHS had posted a request for proposals in mid-February 2023.<sup>37</sup> IFHS waited until the competitive bidding process for funding year 2023 concluded in June 2023 before filing the Petition for Waiver.<sup>38</sup>

### III. DISCUSSION

9. The Commission's rules may be waived for good cause shown.<sup>39</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with

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necessary for the provision of health care services in a State....) (emphasis added). *But see Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678, 16684-85, paras. 12-13 (2012) (discussing initiative to provide support for Internet access under a different provision of the Communications Act, section 254(h)(2)(A)).

<sup>30</sup> Petition for Waiver at 1 and Letter from Brooks E. Harlow, Counsel for OptimERA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-60 (filed Aug. 11, 2023) (OptimERA Aug. 11 *Ex Parte*).

<sup>31</sup> USAC Commitments and Disbursements Data; Petition for Waiver at 6, 7-10; and Letter from Brooks E. Harlow, Counsel for OptimERA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-60 (filed Sept. 11, 2023) (OptimERA Sept. 11 *Ex Parte*).

<sup>32</sup> OptimERA Sept. 11 *Ex Parte* at 1-2.

<sup>33</sup> *Id.* at 2. *See also* 47 CFR § 1.1910(b) (requiring that applications from entities owing a debt to the Commission be held and that such applications be dismissed if the debt is not resolved or other arrangements made within 30 days).

<sup>34</sup> OptimERA Sept. 11 *Ex Parte* at 2-3. RHC Program data, including the status of applications is publicly available via the Open Data Portal. OptimERA indicates it was not aware of this option at the time due to inexperience with the RHC Program. *See id.* n.1. *See also* USAC Commitments and Disbursements Data.

<sup>35</sup> To receive payments from Universal Service Fund programs, organizations must have a valid registration with the System for Award Management (SAM). The specific issue with SAM was due to the system requiring a physical address and OptimERA's Unalaska address being designated as a "P.O. Box only" area by the U.S. Postal Service. OptimERA Sept. 11 *Ex Parte* at 3.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*; Petition for Waiver at 13-14.

<sup>38</sup> OptimERA Sept. 11 *Ex Parte* at 3; Petition for Waiver at 13-14.

<sup>39</sup> 47 CFR § 1.3.

the public interest.<sup>40</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>41</sup> 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.<sup>42</sup>

10. We find that good cause exists to grant IFHS' petition for waiver of the application filing deadline to permit it to file a funding year 2022 FCC Form 466 for the Telecom Program.<sup>43</sup> Based on the record, we find that the series of unique challenges IFHS and its service provider experienced, all taking place during the height of the COVID-19 pandemic, provides the special circumstances required to justify a waiver of the Commission's rules.<sup>44</sup> IFHS' normal operations were disrupted by the lack of a permanent CEO for nearly all of the funding year 2022 filing window, leaving IFHS without staff experienced with the RHC Program. Coupled with its switch to a service provider with limited experience with the RHC Program that encountered issues across multiple systems for several months, numerous additional failure points arose and certain backstops were lacking that might ordinarily help a program participant adhere to its RHC funding request deadline during such transitions. In light of these unique circumstances, we find that strict compliance with the Commission's funding request deadline would be inconsistent with the public interest.

11. Granting the filing deadline waiver request will also advance the public interest. Congress intended for section 254(h) to assist health care providers in rural areas with affordable access to modern communications services to enable them to provide medical and educational services to all parts of the nation.<sup>45</sup> Unalaska represents one of the remotest and highest cost areas in all of the United States. Due to its location on a small island in the ocean, far from a population center of any magnitude or a hospital, the Commission appreciates the unique operational challenges for IFHS, as well as its vital importance for addressing health care needs in the western Aleutians. Finally, the application filing window for funding year 2022 occurred during the height of the national pandemic emergency, and the Commission worked aggressively to help health care providers around the nation cope with special circumstances arising out of the pandemic. We find that the public interest would not be served if IFHS is denied the ability to request funding year 2022 Telecom Program funding for services critical to providing health care services in a very remote, medically unserved area/population in Alaska.

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<sup>40</sup> *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

<sup>41</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>42</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>43</sup> 47 CFR § 1.3.

<sup>44</sup> See *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, New Orleans, LA, et al.*, Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Order, 21 FCC Rcd 5316 (2006); *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Acorn Public Library District, Oak Forest, IL, et al.*, Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Order, 23 FCC Rcd 15474 (WCB 2008).

<sup>45</sup> See 47 U.S.C. § 254(h); Joint Explanatory Statement at 131 (explaining that Congress intended Section 254(h) "to ensure that health care providers for rural areas . . . have affordable access to modern telecommunications services that will enable them to provide medical . . . services to all parts of the Nation" and that "[t]he ability of . . . rural health care providers to obtain access to advanced telecommunications services is critical to ensuring that these services are available on a universal basis"); see also *Universal Service First Report and Order*, 12 FCC Rcd at 8795, para. 31 (stating the "level of discounts correlated to indicators of poverty and high cost [i.e., rurality] for schools and libraries . . . satisfies section 254(h)(1)(B)'s directive that the discount be an amount that is 'appropriate and necessary to ensure affordable access to and use of' the services eligible for the discount").

12. Nothing in today's decision relieves RHC Program applicants of their obligation to abide by the application filing deadlines set forth in our current rules.<sup>46</sup> We emphasize that this waiver is based on unique circumstances – a very remote location with limited health care options, pandemic-period leadership turmoil in a very small organization, and a service provider with very limited RHC Program experience. In granting this waiver, we take no position on the merits of any funding requests that may be filed in response to today's action. We direct USAC to contact IFHS within 30 days of the release of this Order to make arrangements for the filing of its funding year 2022 applications. USAC should review any such requests for funding for compliance with Program rules applicable to funding year 2022 before issuing a funding decision.<sup>47</sup>

#### IV. ORDERING CLAUSES

13. Accordingly, **IT IS HEREBY ORDERED**, pursuant to sections 4(i), 4(j), 5(c), and 254(h) of the Communications Act, 47 U.S.C. §§ 154(i), 154(j), 155(c), and 254(h), and sections 1.3, 1.115, and 54.722 of the Commission's rules, 47 CFR §§ 1.3, 1.115, and 54.722, that the Petition for Waiver filed by Iliuliuk Family and Health Services on July 3, 2023, is **GRANTED**.

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 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 54.621(a) of the Commission's rules, 47 CFR § 54.621(a), is **WAIVED** to the limited extent provided herein. **IT IS FURTHER ORDERED** that this Order **SHALL BE EFFECTIVE** upon release.

FEDERAL COMMUNICATIONS COMMISSION

Jodie Griffin  
Chief  
Telecommunications Access Policy Division  
Wireline Competition Bureau

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<sup>46</sup> See 47 CFR § 54.621(a) (directing USAC to open a filing window with an end date no later than 90 days prior to the start of the funding year).

<sup>47</sup> We find that granting this waiver to allow IFHS to file a funding request for funding year 2022 would not cause the RHC Program cap for funding year 2022 to be exceeded. See *Wireline Competition Bureau Announces the Availability of Unused Funds to Fully Satisfy Demand for Rural Health Care Program Funding for Funding Year 2022*, Public Notice, DA 22-792 (WCB July 22, 2022).