

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of )
Request for Waiver of Section 54.611 )
of the Commission's Rules )
TeleQuality Communications, Inc. )
San Antonio, Texas )
Rural Health Care Universal Service ) WC Docket No. 02-60
Support Mechanism )

ORDER

Adopted: August 13, 2009

Released: August 13, 2009

By the Acting Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we grant a request by TeleQuality Communications, Inc., (TeleQuality) to waive section 54.611 of the Commission's rules concerning reimbursement for services provided under the universal service rural health care support mechanism. TeleQuality has demonstrated that good cause exists to waive this rule because, absent waiver, TeleQuality will be unable to sustain its operations and will be unable to provide discounted telecommunications services to the rural health care providers it serves. We thus direct the Universal Service Administrative Company (USAC) to make an initial reimbursement payment no later than 10 calendar days from release of this order to TeleQuality for the current rural health care support payments to which it is entitled without deducting any universal service contributions that TeleQuality may owe consistent with the terms of this order. USAC shall remit to TeleQuality any additional subsequent rural health care payments on a bi-monthly basis.

II. BACKGROUND

2. In section 254 of the Communications Act of 1934, as amended, Congress sought to provide rural health care providers "an affordable rate for the services necessary for the purposes of telemedicine and instruction relating to such services." Specifically, Congress directed telecommunications carriers to "provide telecommunications services which are necessary for the provision of health care services in a State, including instruction relating to such services, to any public or

1 See TeleQuality Communications, Inc., Petition for Waiver and Emergency Request for Expedited Stay and/or Special Relief, WC Docket No. 02-60 (filed May 27, 2009) (Request for Waiver); 47 C.F.R. § 54.611. TeleQuality requested that the Commission immediately stay enforcement of section 54.611 with respect to disbursements of rural health care support to TeleQuality. Request for Waiver at 11-13. Given the relief granted to TeleQuality in this order we dismiss the request for stay as moot.

2 See Request for Waiver at i.

3 47 U.S.C. § 254.

4 H.R. Conf. Rep. No. 458, 104th Cong. 2nd Sess. 133 (1996).

nonprofit health care provider that serves persons who reside in rural areas in that State at rates that are reasonably comparable to rates charged for similar services in urban areas in that State.”<sup>5</sup> Congress also directed the Commission to enhance access to advanced telecommunications and information services for health care providers.<sup>6</sup>

3. The Commission implemented this statutory directive by adopting the rural health care support mechanism in the 1997 *Universal Service First Report and Order*.<sup>7</sup> The mechanism provides discounts to rural health care providers to access modern telecommunications for medical and health maintenance purposes. Section 54.611 of the Commission’s rules sets forth the circumstances under which a telecommunications service provider may receive universal service support for providing service to an eligible health care provider under the rural health care support mechanism.<sup>8</sup> Under section 54.611, a telecommunications carrier providing services eligible for rural health care universal service support shall offset the amount eligible for support against its universal service contribution obligation.<sup>9</sup> During the annual true-up, if the total amount of support owed to the carrier exceeds its universal service contribution obligation, calculated on an annual basis, the carrier is entitled to receive the differential as a direct reimbursement.<sup>10</sup> Any reimbursement due a carrier, however, shall be made after the offset is credited against the carrier’s universal service contribution obligation for the applicable year.<sup>11</sup> The Commission sets the fourth quarter universal service contribution factor in mid-September of each year.<sup>12</sup> Therefore, once a carrier’s contribution obligation for the year is determined, USAC can then issue any refund due a carrier participating in the rural health care program.<sup>13</sup> Finally, any reimbursement shall be submitted to a carrier no later than the first quarter of the calendar year following the year in which the costs for the services were incurred.<sup>14</sup>

4. *TeleQuality’s Request for Waiver*. TeleQuality is a telecommunications reseller that provides telecommunications services to more than 60 rural health care providers in 23 states.<sup>15</sup> TeleQuality receives funding for many of its customers through the rural health care support mechanism.<sup>16</sup> Prior to October 2008, pursuant to the Commission’s universal service contribution rules, TeleQuality was considered to be a *de minimis* carrier, and therefore was not required to contribute

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<sup>5</sup> 47 U.S.C. § 254(h)(1)(A). The term “State” includes the District of Columbia and the territories and possessions. 47 U.S.C. § 153(40).

<sup>6</sup> 47 U.S.C. § 254(h)(2)(A).

<sup>7</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997) (*Universal Service First Report and Order*) (*subsequent history omitted*).

<sup>8</sup> See 47 C.F.R. § 54.611.

<sup>9</sup> *Id.*

<sup>10</sup> 47 C.F.R. § 54.611(b).

<sup>11</sup> 47 C.F.R. § 54.611(c).

<sup>12</sup> See 47 C.F.R. § 54.711(b); see also 47 C.F.R. § 54.709 (setting dates for contributor filings and determining the contribution factor).

<sup>13</sup> See 47 C.F.R. § 54.611(d).

<sup>14</sup> 47 C.F.R. § 54.611(d).

<sup>15</sup> See Request for Waiver at 2.

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

directly to the universal service fund.<sup>17</sup> While a *de minimis* carrier, TeleQuality received bi-monthly payments from the rural health care program.<sup>18</sup>

5. In the fourth quarter of 2008, TeleQuality's revenues surpassed the \$10,000 revenue threshold to be considered a *de minimis* carrier.<sup>19</sup> No longer *de minimis*, TeleQuality became subject to the Commission's rule that requires USAC to offset the amount eligible for support against its universal service contribution obligation on an annual basis.<sup>20</sup> Accordingly, TeleQuality's required contributions to the universal service fund have increased from zero to approximately \$1,000 per month.<sup>21</sup> In addition, TeleQuality is no longer eligible to receive bi-monthly rural health care support payments and instead, TeleQuality anticipates the earliest it can expect reimbursement under the Commission's offset rule is November 2009.<sup>22</sup>

6. On May 27, 2009, TeleQuality filed the instant request for waiver.<sup>23</sup> Specifically, TeleQuality seeks a waiver of section 54.611 of our rules to allow USAC to begin making reimbursement payments immediately to TeleQuality on a bi-monthly basis.<sup>24</sup> TeleQuality argues that it cannot continue operations if it must wait for the annual true-up in order to receive its rural health care support reimbursement, after the offset is credited against its universal service obligation.<sup>25</sup> Specifically, the offset waiting period would create a financial hardship that would require TeleQuality to advance hundreds of thousands of dollars before the company would receive its reimbursement.<sup>26</sup> TeleQuality contends that it does not have other sources of revenue to pay its underlying carriers and credit rural health care providers until the annual rural health care offset occurs.<sup>27</sup> In addition, TeleQuality argues that enforcement of the offset rule effectively cedes participation in the rural health care program to a handful of incumbent telecommunications providers that have the resources to absorb massive debts while waiting for the annual true-up to receive reimbursement for services rendered pursuant to the rural health care universal service program.<sup>28</sup>

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<sup>17</sup> *Id.* Section 54.708 of the Commission's rules state that if a contributor's universal service contribution obligation in any given year is less than \$10,000, that contributor is not required to contribute directly to the universal service fund. 47 C.F.R. § 54.708.

<sup>18</sup> Request for Waiver at 2.

<sup>19</sup> *Id.*

<sup>20</sup> *See supra*, para. 3. 47 C.F.R. § 54.611.

<sup>21</sup> *See* Request for Waiver at 2.

<sup>22</sup> *Id.* at 9.

<sup>23</sup> *See id.* at 1.

<sup>24</sup> *See id.*

<sup>25</sup> *See id.* at 3.

<sup>26</sup> *Id.*

<sup>27</sup> *See* Letter from James M. Smith, Counsel for TeleQuality Communications, Inc., to Thomas Buckley, Federal Communications Commission, WC Docket No. 02-60 at 1 (filed July 21, 2009) (TeleQuality *Ex Parte* Letter).

<sup>28</sup> Request for Waiver at 9.

### III. DISCUSSION

7. We grant TeleQuality's request for waiver. As noted above, section 54.611 sets forth the schedule by which USAC must reimburse service providers when funds they are owed for providing services under the rural health care program exceed their universal service contribution obligation.<sup>29</sup> Specifically, the Commission established the first quarter of the calendar year following the year in which the costs were incurred as the deadline for USAC to make any reimbursement payments, and instructed USAC to calculate the reimbursement as the difference between the support owed and the universal service obligation "calculated on an annual basis."<sup>30</sup>

8. Upon review of the record, we find that good cause exists to waive section 54.611 of our rules so that TeleQuality may continue to receive bi-monthly rural health care support payments.<sup>31</sup> In doing so, we direct USAC to make an initial reimbursement payment no later than 10 calendar days from release of this order to TeleQuality for the current rural health care support payments to which it is entitled without deducting any universal service contributions that TeleQuality may owe. USAC shall remit to TeleQuality any additional subsequent rural health care payments on a bi-monthly basis.

9. The Commission's offset rules have been strictly enforced, with waiver allowed only in limited, compelling situations.<sup>32</sup> For instance, in the *Unicom Order*, the Commission found that rigid adherence to the rule would mean that Unicom, a small carrier participating in the rural health care program, would be placed in a position where it could not meet payment obligations to vendors.<sup>33</sup> Absent waiver, such an outcome could have caused Unicom's rural health care provider customers to lose necessary services, and would have put Unicom at risk of breaching its contractual obligations to its rural health care customers and its subcontractors.<sup>34</sup> In TeleQuality's case, rigid adherence to this rule would mean that TeleQuality, like Unicom, would be unable to meet its payment obligations to its underlying carriers without other means of support.<sup>35</sup> In turn, TeleQuality's rural health care provider customers would be placed at risk due to lost service and with potentially no alternative service providers.<sup>36</sup> The loss of bi-monthly support is further exacerbated because TeleQuality's rural health care providers constitute almost all of its business.<sup>37</sup> Prolonged delay in TeleQuality's receipt of rural health care

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<sup>29</sup> *Id.*; *supra* para. 3.

<sup>30</sup> 47 C.F.R. § 54.611; *supra* para. 3.

<sup>31</sup> The Commission may waive any provision of its rules on its own motion and for good cause shown. 47 C.F.R. § 1.3. A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. *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, 1157, (D.C. Cir. 1969), *affirmed by WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972). In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule. *Northeast Cellular*, 897 F.2d at 1166.

<sup>32</sup> See *Request for Waiver by Unicom, Inc.*, WC Docket No. 02-6, Order, 21 FCC Rcd 11240 (Wireline Comp. Bur. 2006) (*Unicom Order*).

<sup>33</sup> See *Unicom Order*, 21 FCC Rcd. at 11244, para. 9.

<sup>34</sup> See *id.*

<sup>35</sup> See Request for Waiver at 7-8. TeleQuality also contends that often no other carrier will serve its rural health care provider customers. See TeleQuality *Ex Parte* Letter at 2.

<sup>36</sup> See Request for Waiver at 7-8; TeleQuality *Ex Parte* Letter at 2

<sup>37</sup> See TeleQuality *Ex Parte* Letter at 2.

support, therefore, causes a particular hardship for TeleQuality because it could go out of business and leave its rural health care provider customers with no comparable provider of discounted services.<sup>38</sup> We find that such an outcome is not the intended result of section 54.611 of the Commission's rules and that waiver is appropriate in this instance. Furthermore, grant of a waiver to TeleQuality is consistent with the goals of section 254 of the Act – enhancing access to advanced telecommunications and information services for health care providers – and therefore serves the public interest.<sup>39</sup>

10. Thus, we direct USAC to make an initial reimbursement payment to TeleQuality no later than 10 calendar days from release of this order for the current rural health care support payments to which TeleQuality is entitled without deducting the amount of any universal service contributions that TeleQuality may owe. USAC shall remit to TeleQuality any additional subsequent rural health care payments on a bi-monthly basis.<sup>40</sup>

#### IV. ORDERING CLAUSES

11. 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 pursuant to authority delegated in sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, and 0.291, the request for waiver of section 54.611 of the Commission's rules filed by TeleQuality Communications, Inc., IS GRANTED.

12. 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 pursuant to authority delegated in sections 0.91, and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, USAC SHALL MAKE an initial reimbursement payment to TeleQuality no later than 10 calendar days from release of this order for the current rural health care support payments to which TeleQuality is entitled without deducting the amount of any universal service contributions that TeleQuality may owe, and shall remit to TeleQuality any additional subsequent rural health care payments on a bi-monthly basis.

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<sup>38</sup> *See id.*

<sup>39</sup> 47 U.S.C. § 254(h)(2)(A).

<sup>40</sup> Bi-monthly payments to TeleQuality are necessary to ensure that TeleQuality maintains sufficient revenue to support its operations. *See* TeleQuality *Ex Parte* Letter at 1. Bi-monthly payments are consistent with the manner in which USAC provides rural health care support to *de minimis* entities and to participants in the universal service rural health care Pilot Program. *See* <http://www.usac.org/rhc/service-providers/step08/> (last visited Aug. 13, 2009) (describing USAC's bi-monthly invoicing cycle).

13. IT IS FURTHER ORDERED that, pursuant to 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

Julie A. Veach  
Acting Chief  
Wireline Competition Bureau