

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

In the Matter of
Requests for Review and Waiver of
Decisions of the
Universal Service Administrator by
Fort Drum Regional Health Planning Organization
Watertown, NY
Rural Health Care Universal Service
Support Mechanism
WC Docket No. 02-60

ORDER

Adopted: December 13, 2024

Released: December 13, 2024

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant in part and deny in part three pairs of appeals filed by the Fort Drum Regional Health Planning Organization (Fort Drum) on behalf of two of its regional health care initiatives, Adirondack Champlain Telemedicine Information Network (ACTION) and North Country Telemedicine Project (North Country) regarding the Commission’s rules for the Rural Health Care (RHC) Program for evergreen contracts¹ and site eligibility.² Fort Drum seeks review of four decisions by the Universal Service Administrative Company (USAC) regarding competitive bidding, two of which denied funding year 2020 requests that USAC designate service provider contracts as evergreen³ and two of

1 Letter of Appeal on behalf of Adirondack Champlain Telemedicine Information Network, WC Docket No. 02-60 (filed May 26, 2022), https://www.fcc.gov/ecfs/search/search-filings/filing/1052622027705 (ACTION Appeal I); Letter of Appeal on behalf of Adirondack Champlain Telemedicine Information Network, WC Docket No. 02-60 (filed Aug. 10, 2022), https://www.fcc.gov/ecfs/search/search-filings/filing/10810061896688 (ACTION Appeal II); Letter of Appeal on behalf of North Country Telemedicine Project, WC Docket No. 02-60 (filed May 26, 2022), https://www.fcc.gov/ecfs/search/search-filings/filing/10526028146508 (North Country Appeal I); Letter of Appeal on behalf of North Country Telemedicine Project, WC Docket No. 02-60 (filed Aug. 10, 2022), https://www.fcc.gov/ecfs/search/search-filings/filing/10810880312012 (North Country Appeal II). ACTION Appeal I states that it serves “as a formal appeal of the denial of [ACTION’s] Funding Request 20853991” and North Country Appeal I states that it serves “as a formal appeal of the partial denial of [North Country’s] Funding Request 20867161.” ACTION Appeal I at 1; North Country Appeal I at 1. Both of the cited funding requests were in fact approved in full by USAC rather than denied. Accordingly, this Order will focus instead on the relief requested elsewhere in ACTION Appeal I and North Country Appeal I to reverse USAC’s designation of service contracts as not being evergreen. See ACTION Appeal I at 3; North Country Appeal I at 3.

2 See Letter of Appeal on behalf of Adirondack Champlain Telemedicine Information Network, WC Docket No. 02-60 (filed Dec. 2, 2022), https://www.fcc.gov/ecfs/search/search-filings/filing/1202258770536 (ACTION Appeal III); Letter of Appeal on behalf of North Country Telemedicine Project, WC Docket No. 02-60 (filed Dec. 2, 2022), https://www.fcc.gov/ecfs/search/search-filings/filing/12022291409522 (North Country Appeal III).

3 Letter from Universal Service Administrative Company to Mr. Robert Hunt, Fort Drum Regional Health Planning Organization (Mar. 31, 2022) (declining to designate as evergreen the contract for services requested by ACTION

(continued....)

which denied funding year 2021 funding requests under the RHC Program’s Healthcare Connect Fund (HCF) Program for competitive bidding violations because USAC determined that no competitive bidding exemption applied.⁴ Fort Drum also seeks review of four other USAC decisions that certain sites were ineligible to receive support in the RHC Program, which resulted in partial denials of funding year 2018 through 2020 funding requests.⁵

2. Based on our *de novo* review of the record on the competitive bidding matter, we grant a waiver to designate the contracts at issue in the funding year 2020 funding requests as evergreen and grant the appeals for the funding year 2021 funding requests because the competitive bidding exemption for evergreen contracts now applies to them.⁶ Based on our *de novo* review of the record on the site eligibility matter, we grant Fort Drum’s appeal for the sites in Appendix A that we find are eligible to receive support in the RHC Program and deny the appeals for the sites in Appendix B that we find are ineligible based on the documentation provided. While we find that Fort Drum has not demonstrated that the sites in Appendix B are eligible health care providers under the RHC Program rules, these sites may still participate in a consortium with eligible health care providers, and thereby benefit from being part of those health care networks and from the bulk discounts negotiated by the consortium, so long as they pay their “fair share.”⁷

II. BACKGROUND

3. The HCF Program allows eligible rural health care providers to apply for universal service support for eligible broadband connectivity services and equipment.⁸ To be eligible to receive support in the RHC Program, an entity must be a “health care provider” as defined in section 254(h)(7)(B)

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under funding request number (FRN) 20853991) (ACTION Decision I); Letter from Universal Service Administrative Company to Mr. Robert Hunt, North Country Telemedicine Project (Mar. 31, 2022) (declining to designate as evergreen the contract for services requested by North Country under FRN 20867161) (North Country Decision I).

⁴ Letter from Universal Service Administrative Company to Ms. Erika Flint, Fort Drum Regional Health Planning Organization (June 14, 2022) (denying ACTION funding request for FRN 21168161) (ACTION Decision II); Letter from Universal Service Administrative Company to Ms. Erika Flint, North Country Telemedicine Project (June 14, 2022) (denying North Country funding request for FRN 21171841) (North Country Decision II).

⁵ Letter from Universal Service Administrative Company to Ms. Erika Flint and Mr. Robert Hunt, North Country Telemedicine Project (Oct. 5, 2022) (denying North Country funding request for parts of FRNs 18437471 and 19617331) (North Country Decision III); Letter from Universal Service Administrative Company to Ms. Erika Flint and Mr. Robert Hunt, North Country Telemedicine Project (Oct. 5, 2022) (denying North Country funding request for parts of FRN 20867161) (North Country Decision IV); Letter from Universal Service Administrative Company to Ms. Erika Flint and Mr. Robert Hunt, Fort Drum Regional Health Planning Organization (Oct. 5, 2022) (denying ACTION funding request for part of FRN 19632511) (ACTION Decision III); Letter from Universal Service Administrative Company to Ms. Erika Flint and Mr. Robert Hunt, Fort Drum Regional Health Planning Organization (Oct. 5, 2022) (denying ACTION funding request for parts of FRNs 18428811 and 20853991) (ACTION Decision IV).

⁶ See 47 CFR § 54.723(a) (“The Wireline Competition Bureau shall conduct *de novo* review of request for review of decisions issue by the Administrator.”).

⁷ See *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678, 16699, 16709-10, paras. 45, 66 (2012) (*Healthcare Connect Fund Order*). The majority of members of an HCF Program consortium must be located in a rural area. See 47 CFR § 54.607(b). Effective funding year 2020, the Commission eliminated an exception to this rule that permitting non-rural health care providers that received a funding commitment in the RHC Pilot Program consortium that was not majority rural to continue to receive support in the HCF Program. See *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Report and Order, 34 FCC Rcd 7335, 7406, para. 152 (2019) (*Promoting Telehealth Report and Order*).

⁸ See 47 CFR §§ 54.607-54.618.

of the Communications Act and implemented in the Commission's rules.⁹ Both the Communications Act and the Commission's rules specify that "health care providers" are: (1) post-secondary educational institutions offering health care instruction, teaching hospitals, and medical schools; (2) community health centers or health centers providing health care to migrants; (3) local health departments or agencies; (4) community mental health centers; (5) not-for-profit hospitals; (6) rural health clinics; (7) skilled nursing facilities; and (8) consortia of health care providers consisting of one or more entities falling into the first seven categories.¹⁰ In addition, eligible health care providers must be non-profit or public.¹¹ Eligible health care providers located in non-rural areas are eligible to receive support under the HCF Program by participating in HCF consortia for which a majority of sites are rural.¹²

4. To seek funding under the HCF Program, eligible health care providers or a consortium of eligible health care providers must submit an FCC Form 460 to USAC to obtain an eligibility determination from USAC for each health care provider site.¹³ On the FCC Form 460, the health care provider or the health care provider consortium must indicate the eligible health care provider type for each site and provide a brief explanation of why the site is eligible and qualifies as the specific health care provider type.¹⁴

5. The HCF Program rules require that eligible health care providers seek competitive bids for services and equipment eligible for support unless a competitive bidding exemption contained within the rules applies.¹⁵ HCF applicants that qualify for a competitive bidding exemption are not required to initiate a competitive bidding process by preparing a request for services form (FCC Form 461), and may instead proceed directly to submitting a funding request using the FCC Form 462.¹⁶ One such exemption involves evergreen contracts, which are multi-year contracts entered into by a health care provider as a result of competitive bidding and that include certain contractual terms and requirements.¹⁷ After USAC

⁹ 47 U.S.C. § 254(h)(7)(B); 47 CFR § 54.600(b). Prior to funding year 2019, site eligibility requirements were codified in section 54.600(a) of the Commission's rules. The language of the rule did not change when it was re-codified. Unless otherwise noted, citations in this Order are to the current version of the Commission's rules.

¹⁰ 47 U.S.C. § 254(h)(7)(B); 47 CFR § 54.600(b). The only distinction between the definitions in the Communications Act and the Commission's rules is that the Communications Act's explanation of eligible entities is in the plural whereas the Commission's rules explanation is in the singular.

¹¹ 47 U.S.C. § 254(h)(1)(A), (h)(2)(A), (h)(4); 47 CFR § 54.601(a).

¹² See 47 CFR § 54.607(b) ("An eligible non-rural health care provider site may receive universal service support only as part of a consortium that includes more than 50 percent eligible rural health care provider sites.").

¹³ See 47 CFR § 54.601(a)(2) ("Each separate site or location of a health care provider shall be considered an individual health care provider for purposes of calculating and limiting support under this subpart."); *Healthcare Connect Fund Order*, 27 FCC Rcd at 16773, para. 214.

¹⁴ See *Healthcare Connect Fund Order*, 27 FCC Rcd at 16773, para. 215; USAC website, FCC Form 460 Guide for Consortia, <https://www.usac.org/wp-content/uploads/rural-health-care/documents/forms-guides/FCC-Form-460-Guide-Consortium.pdf> (last visited Dec. 13, 2024); FCC Form 460 Instructions at 9 ("Provide a brief explanation of why this site qualifies as the organization type selected above is a required field. Provide a brief explanation of why the consortium qualifies (e.g. scope of consortium and services being sought).").

¹⁵ 47 CFR § 54.622(a) (competitive bidding requirements); § 54.622(i) (competitive bidding requirement exemptions).

¹⁶ See *id.* § 54.622(a); § 54.623; USAC, *Step 4: Submit Funding Requests*, <https://www.usac.org/rural-health-care/healthcare-connect-fund-program/step-4-submit-funding-requests/> (last visited Dec. 13, 2024).

¹⁷ 47 CFR § 54.622(i)(3). Prior to 2020, the evergreen contracts exemption was codified under section 54.642(h)(4). 47 CFR § 54.642(h)(4) (2019). USAC may designate a multi-year contract as evergreen if the contract: (1) is signed by the individual health care provider or consortium lead entity; (2) specifies the service type, bandwidth, and quantity; (3) specifies the term of the contract; (4) specifies the cost of services to be provided; and (5) includes the physical location or other identifying information of the health care provider sites purchasing from the contract. 47 CFR § 54.622(i)(3).

designates a contract as evergreen, an applicant with an evergreen contract need not undertake competitive bidding over the life of the contract because it has already undergone a competitive bidding process that identified and selected the most cost-effective service provider.¹⁸ The evergreen contract exemption thus protects the integrity of the Universal Service Fund while simultaneously streamlining the application process by removing unnecessary and duplicative competitive bidding.¹⁹

6. Fort Drum is a non-profit entity that promotes healthcare and illness prevention to residents of Jefferson, Lewis, and St. Lawrence Counties in New York.²⁰ In collaboration with local hospitals, primary care offices, and community-based organizations, Fort Drum undertakes initiatives to identify and fill gaps in its tri-county regional healthcare system.²¹ Two of its initiatives include ACTION and North Country, the entities that filed the funding requests at issue in these appeals.²²

III. DISCUSSION

7. Based on our review of the record, we grant Fort Drum’s appeals seeking to overturn USAC’s designation of its funding year 2020 services contracts as non-evergreen, waive the evergreen contract requirement that these funding year 2020 contracts be “multi-year” in nature, and grant Fort Drum’s appeals to allow for the evergreen contract competitive bidding exemption to apply to its funding year 2021 requests. We also grant Fort Drum’s appeals of USAC’s determinations that its health care sites are ineligible for the RHC Program to the extent that these sites serve as eligible community mental health centers, and deny the appeals as to the remaining sites that do not qualify as an eligible entity type under our rules.

A. Evergreen Contracts and Competitive Bidding

8. First, based on the unique circumstances present here, we grant Fort Drum’s appeal of the denial of evergreen status for its funding year 2020 one-year contracts with renewal options. On our own motion, we find that good cause exists to grant a waiver of the requirement – set forth in section 54.622(i)(3)(i) – that a contract must be “multi-year” in order to be designated an evergreen contract and based on this waiver we designate, *nunc pro tunc*, the contracts at issue in the funding year 2020 funding requests as evergreen. With this evergreen designation in place, the funding year 2021 funding requests now fall within the competitive bidding exemption for evergreen contracts. Accordingly, we grant Fort Drum’s appeals for funding year 2021.

1. Procedural History

9. *Funding requests.* In May 2019, ACTION and North Country each submitted an FCC Form 462 to USAC requesting support for services for funding year 2019.²³ In June 2020, ACTION and

¹⁸ *Id.* § 54.622(i)(3)(i). See also *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7412, para. 165.

¹⁹ *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7412, para. 165.

²⁰ Fort Drum Regional Health Planning Organization, *What is FDRHPO?*, <https://wni.1ef.myftpupload.com/what-is-fdrhpo/#> (last visited Dec. 13, 2024).

²¹ *Id.*

²² ACTION has been described as a proposed 239-mile network to link medical facilities in eight counties in central and upstate New York. Dan Heath, *Telemedicine broadband network construction to start* (July 19, 2011), https://www.pressrepublican.com/news/local_news/telemedicine-broadband-network-construction-to-start/article_d4d316a1-be71-5eb7-a2b6-827f686a6289.html (last visited Dec. 13, 2024). North Country is a partnership of hospitals, independent physicians, and community providers that seek “to align incentives across [Jefferson, Lewis, and St. Lawrence Counties in New York], create clinical programs and develop necessary health technology infrastructure.” North Country Initiative, *Our Work In Action*, <https://northcountryinitiative.org/> (last visited Dec. 13, 2024). We note that ACTION is no longer included among the initiatives listed on the Ford Drum website. See Fort Drum Regional Health Planning Organization, *Our Initiatives*, <https://wni.1ef.myftpupload.com/what-is-fdrhpo/#> (last visited Dec. 13, 2024).

North Country sought similar support for funding year 2020 by again filing requests with USAC shortly after the coronavirus pandemic began.²⁴ Each of the four funding requests included a copy of the applicable separate contract with service provider Development Authority of the North Country (DANC), which provided that the contract's term would run from July 1, 2019 through June 20, 2020 (for funding year 2019) or from July 1, 2020 through June 30, 2021 (for funding year 2020) unless one-year renewals were requested.²⁵ Each contract also stated that ACTION or North Country was required to give 90 days prior notice to DANC of its intent to renew services for up to four additional one-year terms, and that if any additional term was chosen, DANC would "extend the same pricing or lower as applicable under this Agreement for the length of the Additional Term."²⁶ Although ACTION and North Country requested an evergreen designation for the parties' respective DANC service contracts covering the funding year 2019 and 2020 funding requests,²⁷ USAC approved all four funding requests but designated the contracts as non-evergreen.²⁸

10. On June 1, 2021, ACTION and North Country submitted requests seeking funding year 2021 support that included a request for an evergreen contract competitive bidding exemption which listed their respective 2019 contracts with DANC as evergreen contracts.²⁹ The parties also included with

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²³ ACTION Decision II at 3; North Country Decision II at 3. ACTION and North Country also submitted a network cost worksheet identifying each eligible expense item for which it sought support. Both parties engaged in competitive bidding for their funding years 2019 and 2020 services.

²⁴ ACTION Decision I at 3; North Country Decision I at 4. The parties again included network cost worksheets with their requests. Both parties engaged in competitive bidding for their funding years 2019 and 2020 services.

²⁵ See ACTION Decision I at 3; North Country Decision I at 4; ACTION Decision II at 3; North Country Decision II at 3. See also ACTION 2019 Service Contract by and between Fort Drum Regional Health Planning Organization and Development Authority of the North Country at 3 (signed May 21 and May 28, 2019) (2019 ACTION Service Contract); North Country 2019 Service Contract by and between Fort Drum Regional Health Planning Organization and Development Authority of the North Country at 3 (signed May 10 and 16, 2019) (2019 North Country Service Contract); ACTION 2020 Service Contract by and between Fort Drum Regional Health Planning Organization and Development Authority of the North Country at 3 (signed Apr. 20, 2020) (2020 ACTION Service Contract); North Country 2020 Service Contract by and between Fort Drum Regional Health Planning Organization and Development Authority of the North Country at 3 (signed Apr. 23, 2020) (2020 North Country Service Contract).

²⁶ See 2019 ACTION Service Contract at Section 3 (Term and Termination); 2019 North Country Service Contract at Section 3 (Term and Termination); 2020 ACTION Service Contract at Section 3 (Term and Termination); 2020 North Country Service Contract at Section 3 (Term and Termination).

²⁷ ACTION and North Country requested evergreen designation as part of the network cost worksheets included with their funding requests.

²⁸ Funding Commitment Letter from Rural Health Care Division, USAC to Adirondack-Champlain Telemedicine Information Network at 2-4 (Feb. 20, 2020) (approving funding for FRN 19632511); Funding Commitment Letter from Rural Health Care Division, USAC to North Country Telemedicine Project at 2-4 (Feb. 27, 2020) (approving funding for FRN 19617331); Funding Commitment Letter from Rural Health Care Division, USAC to Adirondack-Champlain Telemedicine Information Network at 5-6 (July 29, 2021) (approving funding for FRN 20853991); Funding Commitment Letter from Rural Health Care Division, USAC to North Country Telemedicine Project at 6-7 (July 1, 2021) (approving funding for FRN 20867161). We note the discrepancy between the June 20, 2020 end date of the 2019 DANC contracts and the June 30, 2020 funding end date included in the funding commitment letters that approved support for funding year 2019.

²⁹ ACTION FCC Form 462 for FRN 21168161 at Block 2; North Country FCC Form 462 for FRN 21171841 at Block 2. Fort Drum maintains that it was "advised" by USAC to use the funding year 2019 service contracts with DANC as the source of the ACTION and North Country evergreen contract exemption requests rather than the funding year 2020 service contracts because USAC had not yet completed its review of the ACTION and North Country funding year 2020 requests and because the language in the funding year 2019 contract "was identical to the FY2020 contract." ACTION Appeal II at 3; North Country Appeal II at 3.

their funding requests a copy of a letter indicating DANC's acknowledgment that its service contract was being extended through June 30, 2022 pursuant to the applicable DANC contract.³⁰

11. USAC denied support for ACTION and North Country's funding year 2021 requests because the requests sought an evergreen contract bidding exemption based on the funding year 2019 service contract that USAC designated as non-evergreen.³¹ Fort Drum appealed the funding year 2021 funding denials on behalf of ACTION and North Country, and separately appealed USAC's decision designating the funding year 2020 DANC contracts as non-evergreen. USAC denied all four appeals on the same grounds – namely, that the DANC service contracts were not multi-year agreements and thus could neither be designated as evergreen contracts nor relied upon for the evergreen contract competitive bidding exemption.³²

12. *Appeals.* Fort Drum's four appeals collectively request two connected forms of relief. First, Fort Drum asks in an initial pair of appeals that we designate the already-funded funding year 2020 service contracts with DANC as evergreen contracts.³³ Second, based on the assumption that the evergreen status of these contracts would have exempted ACTION and North from competitive bidding for funding year 2021, Fort Drum requests, in the second pair of two appeals, that we reverse USAC's decision to deny the funding year 2021 requests due to ACTION and North Country's failure to competitively bid the requested services.³⁴

13. Fort Drum contends that its reliance on exercising the extensions to the single-year funding year 2020 DANC contracts to exempt ACTION and North Country from conducting competitive bidding for funding year 2021 was a direct consequence of the turbulence it experienced during the early stages of the coronavirus pandemic.³⁵ Fort Drum states that high patient counts and reduced staffing diverted its limited resources away from administrative requirements in order to focus attention instead on responding to the more immediate health care demands imposed by the pandemic.³⁶ According to Fort Drum, these demands "directly influenced [its] decision to file a Form 462 [competitive bidding] exemption" by relying on the extensions in the single-year DANC contracts rather than undergo the many "time-intensive" steps necessary to prepare, submit, and consider a request for services for funding year 2021.³⁷ Had it known that the duration of a contract must be more than one year for the contract to be designated as evergreen, Fort Drum states that it would have worked with DANC to negotiate a contract term of at least two years, which would have made the contract eligible for an evergreen designation.³⁸

³⁰ See Letters from David M. Wolf, Director of Telecommunications, DANC, to Robert Hunt, Fort Drum (May 28, 2021); see also ACTION Decision II at 4; North Country Decision II at 4.

³¹ See ACTION Decision II at 4; North Country Decision II at 4.

³² ACTION Decision I at 4; North Country Decision I at 5; ACTION Decision II at 4; North Country Decision II at 4-5.

³³ ACTION Appeal I at 3; North Country Appeal I at 3. See also ACTION Appeal II at 4; North Country Appeal II at 4 ("we also ask that the contract for FY2020 be deemed Evergreen and the 1-year contract extension be approved by USAC").

³⁴ ACTION Appeal II at 4; North Country Appeal II at 4.

³⁵ See Letters from Erika F. Flint, Executive Director, Fort Drum Regional Health Planning Organization, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-60, at 2 (June 12, 2023); <https://www.fcc.gov/ecfs/document/106122856519033/1>; <https://www.fcc.gov/ecfs/document/1061296259686/1> (June 12, 2023 Supplement).

³⁶ *Id.* at 2-3.

³⁷ *Id.*

³⁸ ACTION Appeal I at 3; North Country Appeal I at 3.

2. Analysis

14. We first find that based on the unique circumstances here, good cause exists to waive the RHC Program rules regarding evergreen designations to allow the one-year, subsequently extended contracts supporting ACTION and North Country's funding year 2020 funding requests to be designated as evergreen. The record demonstrates that the coronavirus pandemic severely impacted ACTION and North Country's ability to initiate a new competitive bidding process before filing funding requests for funding year 2021. Further, under these resource constraints, ACTION and North Country mistakenly believed that exercising the optional extensions would make the contracts eligible for evergreen status. With the evergreen designation now established for the contracts at issue, we find that there was no competitive bidding violation for ACTION and North Country's funding year 2021 funding requests because the competitive bidding exemption for evergreen contracts applies to these funding requests.

a. Funding Year 2020 Appeals – Evergreen Designation

15. USAC originally determined the contracts at issue did not qualify for evergreen status because they were single year contracts with extension options. Section 54.622(i)(3) of our rules specifies that USAC “may designate a *multi-year* contract” as evergreen provided certain requirements are met, including specification of the term of the contract.³⁹ The multi-year nature of a service contract is an important condition of evergreen status. When it adopted the evergreen contract competitive bidding exemption, the Commission cited the lower prices to be realized from entering into a longer contract term.⁴⁰ Service providers are incentivized to offer lower rates if they are able to secure the commitment of a customer over multiple years, which in turn decreases the burden on the Universal Service Fund.⁴¹

16. Fort Drum competitively bid the two DANC contracts at issue, as required under HCF Program rules, before submitting its funding year 2020 funding requests for services. The initial terms for the two DANC contracts covering funding year 2020 were 12 months in length and thus not multi-year in nature as required for an evergreen contract designation.⁴² Although the DANC contracts included voluntary extensions, under program rules the extensions, by themselves, could not transform the single-year contracts into multi-year contracts eligible for evergreen status due to the fact that those extensions might never be exercised.

17. Nonetheless, given the unique circumstances here, we find that a waiver of section 54.622(i)(3)(i), which limits evergreen designations to multi-year contracts, is appropriate to allow evergreen designation for the contracts at issue. The Commission's rules may be waived for good cause shown.⁴³ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.⁴⁴ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an

³⁹ 47 CFR § 54.622(i)(3) (emphasis added).

⁴⁰ *Healthcare Connect Fund Order*, 27 FCC Rcd at 16791, para. 262 (“[E]vergreen procedures likely will benefit participating [health care providers] by affording them: (1) lower prices due to longer contract terms; and (2) reduced administrative burdens due to fewer required [requests for services].”).

⁴¹ *Id.* at 16802, para. 296 (noting that funding over multiple years reduces rates).

⁴² See 2020 ACTION Service Contract and 2020 North Country Service Contract at 3 (providing the minimum initial term “shall commence on July 1, 2020 and end on June 30, 2021 unless the one-year renewals are requested”). The DANC service contracts covering funding year 2019 contained similar language. See 2019 ACTION Service Contract and 2019 North Country Service Contract at 3 (providing the minimum initial term “shall commence on July 1, 2019 and end on June 20, 2020 unless the one-year renewals are requested”).

⁴³ 47 CFR § 1.3.

⁴⁴ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

individual basis.⁴⁵ 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.⁴⁶

18. The tremendous strain on Fort Drum's resources during the coronavirus pandemic created special circumstances that justify a waiver to permit evergreen designation for the contracts supporting ACTION and North Country's funding year 2020 requests. Fort Drum's administrative resources were understandably prioritized on combatting the coronavirus pandemic at the time ACTION and North Country filed their funding year 2021 funding requests. As explained above, in funding year 2020 Fort Drum entered into one-year contracts, with multiple extensions, after a competitive bidding process as required under HCF Program rules. However, USAC determined that the one-year contracts were ineligible for an evergreen designation.⁴⁷ Fort Drum mistakenly assumed that after exercising the extensions, the contracts qualified as evergreen contracts and could be used in funding year 2021 without a new competitive bidding process. Based on the record before us, Fort Drum's decision to rely on the extensions under these contracts rather than commit limited administrative resources to initiating a new competitive bidding process is understandable in the context of the unprecedented strain on resources that Fort Drum and its affiliated consortia experienced as they mounted a response to the coronavirus pandemic.⁴⁸ We therefore find that the specific exigencies detailed by Fort Drum resulting from the coronavirus pandemic presents in this case the special circumstances necessary to justify a waiver of the evergreen contract multi-year requirement for the contracts at issue.

19. Granting a waiver of the evergreen contract multi-year requirement based on these circumstances will also serve the public interest. The COVID-19 pandemic imposed unprecedented administrative hardships on health care providers that the Commission sought to mitigate through numerous rule waivers and other forms of relief.⁴⁹ According to Fort Drum, its service area of upstate New York was particularly hard hit and the resulting hospital workloads "put tremendous pressure on non-profit hospitals during the October 2020 through May 2021 timeframe."⁵⁰ Given these significant administrative challenges that taxed ACTION and North Country's resources, we find the public interest will be served by this waiver by enabling ACTION and North Country to receive funding for funding year 2021 based on the contracts at issue. The record also reveals no evidence of any waste, fraud, or

⁴⁵ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

⁴⁶ *Northeast Cellular*, 897 F.2d at 1166.

⁴⁷ See 47 CFR § 54.622(i)(3) (requiring that evergreen contracts be multi-year agreements).

⁴⁸ See June 12, 2023 Supplement at 3 (stating that the "primary focus of all [Fort Drum] IT/Networking staff was in support of the hospital mission to manage the local COVID-19 pandemic" and that "[t]here was no 'free time' available to support . . . completing the Form 461/Form 462 filing requirements."). Fort Drum explains that "it was clear early in calendar year 2021" that the routine four- to six-month process for filling a Form 461 and Form 462 would take "significantly longer" because the pandemic precluded face-to-face meetings of Fort Drum consortium members, video conferencing capabilities were not universally available, and staffing shortages, increased workloads, and COVID-related illness resulted in "significant delays between questions asked and answered" via telephone, text, and email. *Id.*

⁴⁹ See, e.g., *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 35 FCC Rcd 2922 (WCB 2020) (extending the application filing window, easing competitive bidding requirements for health care providers with evergreen contracts, and extending several procedural deadlines); *Rural Health Care Universal Service Support Mechanism, Promoting Telehealth in Rural America*, WC Docket Nos. 02-60 and 17-310, Order, 36 FCC Rcd 1604 (WCB 2021) (extending application filing window for funding year 2021) (*2021 Filing Window Extension Order*).

⁵⁰ June 12, 2023 Supplement at 2 (explaining that "high patient volume, reduced staff and the inability to discharge patients from nursing homes began to overwhelm some facilities, particularly in the North Country [of New York State]" and "hospitalizations were up 150% in Upstate New York versus Downstate New York.") The Bureau has previously acknowledged the burdensome impact of the pandemic during the funding year 2021 filing period. *2021 Filing Window Extension Order*, 36 FCC Rcd at 1606 (explaining that the COVID-19 "challenges were dire" in 2020 and "they remain at least as exigent today with respect to the initial filing window for 2021.").

abuse on the part of the Fort Drum entities at issue.⁵¹ Further, the contracts at issue provided for no increase in price, and actually include the possibility of a cost decrease, under the exercised voluntary extensions.⁵²

20. We emphasize the limited scope of today's waiver, which exclusively concerns a discrete aspect of our competitive bidding rules involving the evergreen contract competitive bidding exemption, and which we grant only because of the coronavirus pandemic's substantial impact on Fort Drum's administrative resources. This decision does not relieve health care providers from their obligation to adhere to program requirements, including those requirements for competitive bidding and evergreen contracts.

b. Funding Year 2021 Appeals – Competitive Bidding Exemption

21. We also grant ACTION and North Country's appeals seeking review of USAC's decision to deny their funding year 2021 funding requests, which was premised on there being no competitive bidding exemption applicable to those funding requests.⁵³ With the evergreen designation for the contracts supporting these funding requests now in place through the waiver we issue today, we find that these funding requests are exempt from competitive bidding under the competitive bidding exemption for evergreen contracts codified in section 54.622(i)(3) of the Commission's rules. We remand these funding requests to USAC for further processing and make no finding as to the eligibility of the funding requests.

B. Site Eligibility Appeals

22. Next, we address Fort Drum's appeals of USAC's determinations that certain Fort Drum sites do not meet the requirements for eligibility in the RHC Program. We find that the sites listed in Appendix A are eligible for support in the RHC Program as community mental health centers under section 54.600(b)(4) of the Commission's rules and therefore grant Fort Drum's appeals related to those sites. However, based on the record, we find that Fort Drum has not demonstrated that the sites listed in Appendix B fall under any of the eligible entity types listed in section 54.600(b) of the Commission's rules and we therefore deny Fort Drum's appeals related to those sites.

1. Appeal History

23. Over the course of funding years 2018 through 2020, ACTION and North Country filed various FCC Forms 462 seeking support for individual non-rural sites and consortia that included non-rural sites that had participated in the RHC Pilot Program, a precursor to the HCF Program, that ran from funding years 2006 to 2012. On February 7, 2022, USAC issued a notification denying funding for certain sites on the basis that they were ineligible as rural health clinics because they were located in non-rural areas.⁵⁴ Fort Drum did not appeal the determination that these sites do not qualify as rural health clinics. However, Fort Drum filed appeals to USAC on March 4, 2022, March 11, 2022, and March 31, 2022, arguing that the sites were eligible to receive funding in the RHC Program under other eligible health care provider categories.⁵⁵ On October 5, 2022, USAC issued decisions granting appeals for some

⁵¹ 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, 5324 (2006).

⁵² See 2019 ACTION Service Contract at Section 3 (Term and Termination); 2019 North Country Service Contract at Section 3 (Term and Termination); 2020 ACTION Service Contract at Section 3 (Term and Termination); 2020 North Country Service Contract at Section 3 (Term and Termination). As explained above, one of the core policy goals of encouraging evergreen contracts is the lower costs to be realized by health care providers due to longer contract terms. See *Healthcare Connect Fund Order*, 27 FCC Rcd at 16791, para. 262.

⁵³ See ACTION Appeal II and North Country Appeal II.

⁵⁴ See, e.g., Denial Notification for Funding Request No. 19632511 (Feb. 7, 2022); Denial Notification for Funding Request No. 20867161 (Feb. 14, 2022).

sites after finding that they are eligible to receive support in the RHC Program as different entity types than rural health clinics but denying the appeals for the sites currently on appeal, finding that they did not qualify as an eligible entity type.⁵⁶

24. On December 2, 2022, Fort Drum filed appeals to the Commission seeking review of USAC's decisions⁵⁷ and filed multiple supplements from June 2023 through September 2023.⁵⁸ In their appeals and supplements, Fort Drum contends that the sites at issue either qualify as an eligible entity type other than a rural health clinic or that the sites fall within an exemption (now expired) that permitted non-rural sites that participated in the RHC Pilot Program to continue participating in the HCF Program as part of a consortium that was not majority rural.⁵⁹

2. Analysis

25. *Eligible sites.* We grant Fort Drum's appeals for the sites listed in Appendix A. Based on the evidence Fort Drum provided in its initial appeal and supplements, we conclude that the sites listed in Appendix A are eligible as community mental health centers under section 254(h)(7)(B)(iv) of the Communications Act and section 54.600(b)(4) of the Commission's rules.

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⁵⁵ See Letter from Mr. Robert Hunt, Fort Drum Regional Health Planning Organization, on behalf of North Country Telemedicine Project to Rural Health Care Division, USAC (Mar. 4, 2022) (appealing denial of funding for FRNs 18437471 and 19617331); Letter from Mr. Robert Hunt, Fort Drum Regional Health Planning Organization, on behalf of North Country Telemedicine Project to Rural Health Care Division, USAC (Mar. 4, 2022) (appealing denial of funding for FRN 19632511); Letter from Mr. Robert Hunt, Assistant Project Coordinator, Fort Drum Regional Health Planning Organization, on behalf of North Country Telemedicine Project to Rural Health Care Division, USAC (Mar. 11, 2022) (appealing denial of funding for FRN 20867161); Letter from Robert Hunt, Fort Drum Regional Health Planning Organization, on behalf of Adirondack Champlain Telemedicine Information Network, to Rural Health Care Division, USAC (Mar. 31, 2022) (appealing denial of funding for FRNs 18428811 and 20853991).

⁵⁶ North Country Decision III; North Country Decision IV; ACTION Decision III; ACTION Decision IV.

⁵⁷ See ACTION Appeal III; North Country Appeal III.

⁵⁸ See Supplement to Letter of Appeal, Erika F. Flint and Robert P. Hunt, Fort Drum Regional Health Planning Organization, WC Docket No. 02-60 (dated June 12, 2023), <https://www.fcc.gov/ecfs/search/search-filings/filing/10612989722997> (ACTION June 12, 2023 Supplement); Supplement to Letter of Appeal, Erika F. Flint and Robert P. Hunt, Fort Drum Regional Health Planning Organization, WC Docket No. 02-60 (June 12, 2023), <https://www.fcc.gov/ecfs/search/search-filings/filing/10612250644232> (North Country June 12, 2023 Supplement); Supplement to Letter of Appeal, Erika F. Flint and Robert P. Hunt, Fort Drum Regional Health Planning Organization, WC Docket No. 02-60 (Aug. 7, 2023), <https://www.fcc.gov/ecfs/search/search-filings/filing/108082237406336> (ACTION Aug. 7, 2023 Supplement); Supplement to Letter of Appeal, Erika F. Flint and Robert P. Hunt, Fort Drum Regional Health Planning Organization, WC Docket No. 02-60 (Aug. 14, 2023), <https://www.fcc.gov/ecfs/search/search-filings/filing/10814215403966> (North Country Aug. 14, 2023 Supplement); Supplement to Letter of Appeal, Erika F. Flint and Robert P. Hunt, Fort Drum Regional Health Planning Organization, WC Docket No. 02-60 (Sept. 11, 2023), <https://www.fcc.gov/ecfs/search/search-filings/filing/1091204111472> (North Country Sept. 11, 2023 Supplement); Supplement to Letter of Appeal, Erika F. Flint and Robert P. Hunt, Fort Drum Regional Health Planning Organization, WC Docket No. 02-60 (Sept. 15, 2023), <https://www.fcc.gov/ecfs/search/search-filings/filing/10915125013788> (ACTION Sept. 15, 2023 Supplement).

⁵⁹ See *id.*; ACTION Appeal III at 3-4; North Country Appeal III at 3-4. See also *Healthcare Connect Fund Order*, 27 FCC Rcd at 16708, para. 62 (permitting non-rural health care providers that received a funding commitment in the RHC Pilot Program consortium that was not majority rural to continue to receive support in the HCF Program). The Commission subsequently eliminated this exemption for these "grandfathered" sites effective funding year 2020. See *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7406, para. 152.

26. Although the RHC Program rules do not define “community mental health center,”⁶⁰ we can look to other federal statutes for guidance on what constitutes a community mental health center. Section 1913(c)(1) of the Public Health Service Act describes outpatient, emergency care, day treatment, screening, or rehabilitation services for mental health to individuals within a certain geographic area as criteria for determining whether a site is a community mental health center.⁶¹ The services provided by the health care providers listed in Appendix A fall squarely within the parameters of section 1913(c)(1). The Center for Recovery – Glens Falls and the Center for Recovery – Hudson Falls locations listed in Appendix A offer alcohol and substance abuse evaluations, counseling for individuals, group therapy, and medication therapy for mental health.⁶² The Behavioral Health Services/Ridge Commons location provides, among other things, outpatient mental health care for adults and children, and outpatient mental health clinical care for adults.⁶³ Accordingly, the health care providers listed in Appendix A are eligible for support in the RHC Program as community mental health centers.

27. *Ineligible sites.* Based on the record, we deny Fort Drum’s appeals for the sites listed in Appendix B because the provided information and documentation does not demonstrate that these sites are eligible health care providers under the types specified in section 254(h)(7)(B) of the Communications Act and section 54.600(b) of the Commission’s rules.⁶⁴

28. Fort Drum argues that these sites should be deemed eligible because: (1) they qualify as community health centers or health centers providing health care to migrants under section 54.600(b)(2) of the Commission’s rules;⁶⁵ (2) they qualify as not-for-profit hospitals under section 54.600(b)(5) of the Commission’s rules;⁶⁶ (3) the sites are “grandfathered” under the exemption to the consortium majority-rural requirement that the Commission created when the HCF Program was established;⁶⁷ and (4) the time it took for USAC to review Fort Drum’s Requests for Funding prevented Fort Drum from being able to

⁶⁰ See 47 CFR § 54.600(b); *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 9118, para. 655 (1997) (*Universal Service Report and Order*) (adopting the Joint Board’s recommendation that “the Commission attempt no further clarification of the term ‘health care provider’” beyond the categories listed in the statute).

⁶¹ See 42 U.S.C. § 300x-2(c). The Social Security Act defines “community mental health center” as an entity that (1) provides mental health services under section 1913(c)(1) of the Public Health Service Act or provides similar services, (2) is licensed as a community mental health center, (3) provides 40% of services to individuals who are ineligible for partial hospitalization services, and (4) meets other conditions specified by the Department of Health and Human Services. See 42 U.S.C. § 1395x(ff)(3)(B). In this specific instance, we find that it is appropriate to use the Public Health Service Act’s definition because it is clear and cited in the Social Security Act. Although other federal statutes may provide helpful guidance for defining health care provider types, we recognize that there may be definitions or criteria that are not mentioned in federal statutes that could be appropriate to use to define certain health care provider types in other instances.

⁶² See ACTION Sept. 15, 2023 Supplement at 5.

⁶³ See *id.*

⁶⁴ 47 U.S.C. § 254(h)(7)(B); 47 CFR § 54.600(b).

⁶⁵ See 47 CFR § 54.600(b)(2). See also 47 U.S.C. § 254(h)(7)(B)(ii); ACTION Sept. 15, 2023 Supplement at 2-4; North Country Sept. 11, 2023 Supplement at 2-4; E-mail from Robert Hunt, Fort Drum Regional Health Planning Organization to Bryan Boyle, Federal Communications Commission (Sept. 26, 2023) (ACTION Sept. 26, 2023 Supplement).

⁶⁶ See 47 CFR § 54.600(b)(4). See also 47 U.S.C. § 254(h)(7)(B)(v); ACTION June 12, 2023 Supplement at 2; North Country June 12, 2023 Supplement at 2.

⁶⁷ See ACTION Appeal III at 2-4; North Country Appeal III at 2-4; ACTION Aug. 7, 2023 Supplement at 8-9; North Country Aug. 7, 2023 Supplement at 8-9. See also *Healthcare Connect Fund Order*, 27 FCC Rcd at 16708, para. 62.

re-configure its network to minimize cost-allocations, thereby maximizing the funding that it would have received.⁶⁸ We reject Fort Drum’s arguments that these sites are eligible for the reasons explained below.

29. *Community health centers or health centers providing health care to migrants.* First, the documentation and information that Fort Drum provides does not demonstrate that the sites listed in Appendix B are eligible as community health centers or health centers providing health care to migrants. RHC Program rules and precedent do not define a “community health center or health center providing health care to migrants.”⁶⁹ Fort Drum points to section 330 the Public Health Service Act’s definition of “health center” to establish what constitutes a community health center or health center providing health care to migrants.⁷⁰ The Public Health Service Act defines “health center” as “an entity that serves a population that is medically underserved, or a special medically underserved population comprised of migratory and seasonal agricultural workers, the homeless, and residents of public housing, by providing, either through the staff and supporting resources of the center or through contracts or cooperative arrangements, required primary health services.”⁷¹ A health care provider must submit an application to the Health Services and Resources Administration (HRSA) in order to receive funding as a health center under Section 330 or be designated as a health center look-alike, and must meet certain requirements including providing primary care services in underserved areas, providing care on a sliding fee scale based on ability to pay, and operating under a governing board that includes patients.⁷² HRSA supports a variety of health centers including community health centers, migrant health centers, health care for the unhoused, and health centers for residents of public housing.⁷³

30. Congress did not define “community health centers or health centers providing health care to migrants” in the Communications Act; however, consistent with the presumption that Congress uses terms consistently in different statutes,⁷⁴ we find that it is reasonable to use the Public Health Service Act’s definition of “health center” to assess whether a site is a community health center or health center providing health care to migrants under RHC Program rules because it is used by other federal agencies. While the term “community health center” is a general term used to describe a variety of health centers and is not specifically defined in section 330 of the Public Health Service Act, the terms “community health center” and “health center” tend to be used interchangeably within the health care industry.⁷⁵ Most

⁶⁸ See ACTION Aug. 7, 2023 Supplement at 4-8; North Country Aug. 7, 2023 Supplement at 4-8.

⁶⁹ Cf. 54.600(b)(2) (stating that a community health center or health center providing health care to migrants is eligible without defining the term); *Universal Service Report and Order*, 12 FCC Rcd at 9118, para. 655 (adopting the Joint Board’s recommendation that “the Commission attempt no further clarification of the term ‘health care provider’” beyond the categories listed in the statute).

⁷⁰ ACTION Sept. 25, 2023 Supplement at 2-4; North Country Sept. 11, 2023 Supplement at 2-4. See also 42 U.S.C. § 254b(a)(1). As with community mental health centers, we find that that it is appropriate in this instance to look to other federal statutes to determine whether the sites at issue qualify as community health centers or health centers providing health care to migrants.

⁷¹ 42 U.S.C. § 254b(a)(1).

⁷² HRSA, *Become a Health Center*, <https://bphc.hrsa.gov/about-health-center-program/become-health-center> (last visited Dec. 13, 2024); see also 42 U.S.C. § 254b(k) (requiring the submission of an application for a health care center grant).

⁷³ HRSA, *What is a Health Center?*, <https://bphc.hrsa.gov/about-health-center-program/what-health-center> (last visited Dec. 13, 2024) (explaining that health centers serve “people and groups who find it difficult to access health care”).

⁷⁴ *Hawaiian Airlines v. Norris*, 512 U.S. 246, 254-55 (1994) (defining a term within a collective bargaining agreement regulated under the Federal Aviation Act of 1958 based on a definition in the Railway Labor Act).

⁷⁵ See, e.g., HRSA, Health Center Program, *What is a Health Center?*, <https://www.bphc.hrsa.gov/about/what-is-a-health-center/index.html> (last visited Dec. 13, 2024); National Association of Community Health Centers, *What Is a*

notably, the Department of Health and Human Services uses this definition for determining grant recipients.⁷⁶ Additionally, the Social Security Act uses section 330 in defining “federally qualified health center,” which is a type of health center that receives grant funding from HRSA.⁷⁷

31. To demonstrate that the sites at issue qualify as community health centers or health centers providing health care to migrants, Fort Drum points to the county-wide Health Professional Shortage Area (HPSA) designations for the counties where the sites in Appendix B are located. Fort Drum also provides general data on the number of migratory farm workers in its geographic area and provides specific data on the number of patients served by each site in a four-year period that do not have an address (a proxy for homelessness), do not have a social security number (a proxy for migrant status), and that are covered by Medicaid.⁷⁸ We find that the county-based HPSA designations Fort Drum cites do not demonstrate that these specific sites qualify as a community health center or health center providing care to migrants for purposes of the RHC Program rules. Eligibility determinations for the RHC Program require site-specific information.⁷⁹ Fort Drum argues that the sites at issue serve a medically underserved population because they are located in counties that are designated as HPSAs by the Department of Health and Human Services.⁸⁰ It contends that Jefferson County, Warren County, and Washington County, the counties in which the sites listed in Appendix B are located, “qualify as [an HPSA] for both primary care and behavioral health.”⁸¹ Although the limited HPSA designations for Jefferson County, Warren County, and Washington County for primary care and mental health services confirm the presence of a medically underserved population in the area, these designations are not specific to the sites at issue and the actual patients each site serves.⁸² Therefore, these county-wide

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Community Health Center?, <https://www.nachc.org/community-health-centers/what-is-a-health-center/> (last visited Dec. 13, 2024).

⁷⁶ See, e.g., 42 U.S.C. §§ 254b, 254b-2.

⁷⁷ See 42 U.S.C. § 1396d(l)(2)(B)(i).

⁷⁸ See ACTION Aug. 7, 2023 Supplement at 2-4; North Country Aug. 14, 2023 Supplement at 2-4; North Country Sept. 11, 2023 Supplement at 2-4; ACTION Sept. 15, 2023 Supplement at 2-4; ACTION Sept. 26, 2023 Supplement.

⁷⁹ *Request for Review of St. Vincent Health Suburban Health Organization, Indianapolis, Indiana*, WC Docket No. 02-60, 30 FCC Rcd 10778, 10782, para. 8 (WCB 2015) (*St. Vincent Order*) (“[T]he Commission requires that each health care provider site or location shall be considered an individual health care provider for purposes of calculating and limiting support under the RHC program.”).

⁸⁰ See ACTION Aug. 7, 2023 Supplement at 2-3; North Country Aug. 14, 2023 Supplement at 2.

⁸¹ See ACTION Aug. 7, 2023 Supplement at 2; North Country Aug. 14, 2023 Supplement at 2. See also ACTION Aug. 7, 2023 Supplement, Exh. 1, <https://www.fcc.gov/ecfs/document/108082237406336/1>; North Country Aug. 14, 2023 Supplement, Exh. 1, <https://www.fcc.gov/ecfs/document/10814215403966/1> (both exhibits listing an HPSA designation type of “Medicaid Eligible Population” for the relevant counties. See also Health Resources and Services Administration, *HPSA Find, Search*, <https://data.hrsa.gov/tools/shortage-area/hpsa-find> (HPSA Find) (select “New York” as State/Territory; “Jefferson County,” “Warren County,” and “Washington County” as counties and deselect “All Geographic HPSAs” and “All HPSA Facilities” as HPSA designation/population types) (last visited Dec. 13, 2024).

⁸² An HPSA designation can apply to a Medically Underserved Population, Medically Underserved Area, or specific facility that HRSA designates as having a shortage of health professionals. See U.S. Dept. of Health & Human Services, *Health Professional Shortage Areas (HPSAs) and Medically Underserved Areas/Populations (MUA/P) Shortage Designation Types*, <https://www.hhs.gov/guidance/document/hpsa-and-muap-shortage-designation-types> (last visited Dec. 13, 2024). Examples of Medically Underserved Populations that can be designated as HPSAs include Medicaid eligible populations, people with low incomes, migrant farmworkers, Native Americans/Alaska Natives and people experiencing homelessness. See *id.* Medically Underserved Areas include counties, census tracts, or other county or civil divisions. See *id.*

designations do not demonstrate that the sites in Appendix B are eligible as community health centers or health centers serving migrants.

32. We also find that the data Fort Drum provided concerning the percentage of Medicaid patients, and patients without addresses (a proxy for homelessness) or social security numbers (a proxy for migrant status) does not provide a sufficient basis to conclude that the sites at issue are community health centers or health centers serving migrants for purposes of the RHC Program rules. We expect that many non-profit health care providers nationwide, including providers that are not community health centers or health centers serving migrants, serve *some* patients in these categories. Therefore, merely serving *some* patients in these categories would not alone provide a sufficient basis to conclude that a site qualifies as a community health center or health center serving migrants for purposes of the RHC Program.

33. For the sites at issue, Fort Drum provided the proportion of Medicaid patients for each site in Appendix B: less than 1% (one site); 6% (one site); 11% to 14% (three sites); and 17% to 21% (five sites). While the data show that each site at issue serves some Medicaid patients, the number of Medicaid patients served by each site on a percentage basis is far less than the percentage of Medicaid patients served by the health care centers in New York State receiving awards from HRSA in 2023.⁸³ The median percentage of Medicaid patients served by the 63 New York health care centers receiving HRSA awards is 57.4%.⁸⁴ Only 10% of these health care centers served a proportion of Medicaid patients of 40.9% or less, and the site with the *lowest* percentage of Medicaid patients served was 26.3% – all of which exceed the percentage of Medicaid patients served at each of the Fort Drum sites.⁸⁵ Therefore, the comparably smaller number of Medicaid patients served by the Fort Drum sites listed in Appendix B does not provide a sufficient basis to conclude that these sites qualify as a community health center or health center serving migrants.

34. With respect to patients without addresses or social security numbers, Fort Drum provided no data on the proportion of patients in these categories for six of the sites at issue, and for the remaining four sites, Fort Drum provided the following numbers of patients without social security numbers over a four-year period: 18 (one site); six (two sites), and for patients without addresses ten (one site) and between three and six (two sites).⁸⁶ For one site, Fort Drum indicated five combined patients in these categories.⁸⁷ In all instances, the combined total of patients without addresses or social security numbers amounted to less than 1% of the patient population.⁸⁸ By comparison, approximately 4.4% of the patients served in 2023 by the 63 New York health centers receiving HRSA awards were homeless.⁸⁹ While the data provided by Fort Drum shows the sites at issue may have served some migrants and some unhoused individuals, here, as with the Medicaid patient data, this data alone does not provide a sufficient basis to conclude that these sites are eligible as community health centers or health centers serving migrants for purposes of the RHC Program. Moreover, there are no Medically Underserved Area

⁸³ See HRSA, *Health Center Program Uniform Data System (UDS) Data Overview, New York Program Awardee Data*, <https://data.hrsa.gov/tools/data-reporting/program-data?type=AWARDEE&state=NY> (last visited Dec. 13, 2024) (New York Program Awardee Data). HRSA data for Medicaid includes Children's Health Insurance Program (CHIP) data.

⁸⁴ See *id.*

⁸⁵ See *id.*

⁸⁶ See ACTION Sept. 15, 2023 Supplement at 3.

⁸⁷ See North Country Sept. 11, 2023 Supplement at 3.

⁸⁸ See ACTION Sept. 15, 2023 Supplement at 3; North Country Sept. 11, 2023 Supplement at 4.

⁸⁹ See New York Program Awardee Data.

designations for Jefferson County, Warren County, or Washington County that would apply to all medical providers within the counties.⁹⁰

35. We also looked to whether HRSA has designated the sites listed in Appendix B as health centers, including federally-qualified health centers (FQHCs) or FQHC look-alikes. FQHCs and FQHC look-alikes are safety net providers that typically provide outpatient medical services primarily to low-income patients.⁹¹ Eligibility to receive a grant under section 330 of the Public Health Service Act is a condition that qualifies a site as an FQHC⁹² or FQHC look-alike.⁹³ Community health centers and migrant health centers are examples of the types of providers that can become an FQHC or FQHC look-alike under Section 330 of the Public Health Service Act.⁹⁴ While lacking an FQHC or FQHC look-alike designation does not automatically preclude a health care provider from qualifying as a community health center or health center serving migrants under the RHC Program, an FQHC or FQHC designation is one factor that could support a determination that a health care provider qualifies as a community health center or health center serving migrants. None of the sites listed in Appendix B have been designated by HRSA as an FQHC or FQHC look-alike.⁹⁵

36. For the foregoing reasons, the information and documentation that Fort Drum provided does not provide a sufficient basis to conclude that the sites in Appendix B qualify as community health centers or health centers serving migrants for purposes of the RHC Program.

37. *Not-for-profit hospitals.* Second, the sites listed in Appendix B do not qualify as not-for-profit hospitals by virtue of being “hospital extension clinics” under New York state law.⁹⁶ According to Fort Drum, a hospital extension clinic is “a clinic which is a component of a general hospital sponsored ambulatory care program, or a diagnostic and treatment center sponsored ambulatory care program, offering services of a nonemergent nature and located on premises other than those of the hospital or diagnostic and treatment which operates it” and Fort Drum contends that hospital extension clinics are “logical extensions” of eligible not-for-profit hospitals.⁹⁷ In the 2015 *St. Vincent Health Order*, the Wireline Competition Bureau (“Bureau”) rejected the argument that sites are eligible as non-profit hospitals by virtue of affiliation with an eligible not-for-profit hospital.⁹⁸ The Bureau held that an

⁹⁰ See HRSA, *HPSA Find, Search*, <https://data.hrsa.gov/tools/shortage-area/hpsa-find> (select “New York” as State/Territory; “Jefferson County,” “Warren County,” and “Washington County” as counties and deselect “All Population HPSAs” and “All HPSA Facilities” as HPSA designation/population types) (last visited Dec. 13, 2024).

⁹¹ See, e.g., HRSA FQHC Fact Sheet at 1, <https://static1.squarespace.com/static/53023f77e4b0f0275ec6224a/t/5a29875a0d92972420c91437/1512671067129/fqhcfactsheet.pdf> (last visited Dec. 13, 2024).

⁹² See 42 U.S.C. § 1395x(aa)(4). Other criteria for designation as an FQHC under section 1395x(aa)(4) are receiving funding under a contract with a grant recipient under section 330, designation by the Secretary of the Department of Health and Human Services as being eligible to receive a section 330 grant, and being a health program or facility operated by certain Tribal entities under the Indian Self-Determination Act or the Indian Health Care Improvement Act. *Id.*

⁹³ FQHC look-alikes are health care providers that qualify as FQHCs but do not receive grants available to FQHCs. Health Resources and Services Administration, *Health Center Program Look-Alikes*, <https://www.hrsa.gov/opa/eligibility-and-registration/health-centers/fqhc-look-alikes> (last visited Dec. 13, 2024).

⁹⁴ See HRSA FQHC Fact Sheet at 1.

⁹⁵ Health Resources and Services Administration, *Federally Qualified Health Centers and Look-Alikes*, <https://data.hrsa.gov/data/reports/datagrid?gridName=FQHCs> (last visited Dec. 13, 2024) (select “New York” as State).

⁹⁶ See ACTION June 12, 2022 Supplement at 2; North Country June 12, 2022 Supplement at 2.

⁹⁷ *Id.*

⁹⁸ *St. Vincent Order*, 30 FCC Rcd at 10782, para. 7.

“ineligible entity”’s relationship with an eligible entity is an insufficient basis for allowing an entity omitted from the list [of eligible entity types in the Communications Act] to qualify” for the RHC Program and that “each site must demonstrate that *by itself* it is an eligible entity.”⁹⁹ Just as in the *St. Vincent Health Order*, the basis for eligibility of the Fort Drum sites at issue is affiliation with an eligible not-for-profit hospital and the sites are located on different premises than the hospital. Because of the strikingly similar facts to the *St. Vincent Health Order*, we reach the same conclusion the Bureau reached in that order: that the hospital extension clinics here are not eligible as not-for-profit hospitals simply because of their affiliation with a non-profit hospital.

38. *RHC Pilot Program grandfathered rural sites.* Third, the mere fact that some non-rural health care providers were permitted to continue participating in consortia when the Commission shifted from the RHC Pilot Program to the HCF Program does not make the sites in Appendix B eligible as Fort Drum contends.¹⁰⁰ When the Commission created the HCF Program in 2012, it required that consortia in the HCF Program be comprised of a majority of rural sites.¹⁰¹ It established an exemption to the majority-rural requirement that permitted non-rural eligible sites that previously received a funding commitment for the RHC Pilot Program to continue participating in an HCF Program consortium that was not majority rural, which it referred to as “grandfathering” of those sites.¹⁰² Each site covered under this grandfathering still needed to qualify as an eligible health care provider type.

39. The majority-rural requirement, which addresses whether the consortium is majority rural, is not an issue in these appeals. Accordingly, the prior grandfathering for the majority-rural consortium requirement has no bearing on whether the sites in Appendix B are eligible to receive funding.

40. *Timing of recovery letters.* Fourth, we reject Fort Drum’s argument that this appeal should be granted because of delays in issuance of USAC’s recovery letters. There are no provisions in RHC Program rules that permit granting appeals simply due to the time it took to process appeals.¹⁰³

41. Even though the sites listed in Appendix B are ineligible for funding in the HCF Program, they are still permitted to participate in a consortium, and thereby benefit from being part of those health care networks and from the bulk discounts negotiated by the consortium. To do so, these sites must pay their “fair share,” *i.e.*, the undiscounted rate required to participate in a supported network, or share supported services or equipment, with an eligible health care provider.¹⁰⁴ Additionally, to the extent Fort Drum believes that these sites could fall within any other eligible category listed in section 54.600(b) of the Commission’s rules, Fort Drum may file a new FCC Form 460 for the site to seek an eligibility determination.¹⁰⁵

IV. ORDERING CLAUSES

42. 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

⁹⁹ *Id.* at 10782, para. 8 (emphasis in original).

¹⁰⁰ See ACTION Appeal III; North Country Appeal III.

¹⁰¹ See *Healthcare Connect Fund Order*, 27 FCC Rcd at 16707, para. 61. Non-rural sites are not eligible to participate in the RHC Program unless they are members of a majority rural consortium. See 47 CFR § 54.607(b) (“An eligible non-rural health care provider site may receive universal service support *only* as part of a consortium that includes more than 50 percent eligible rural health care provider sites.”) (emphasis added).

¹⁰² See *Healthcare Connect Fund Order*, 27 FCC Rcd at 16707-08, para. 62. This exemption ended in funding year 2020. *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7406, para. 152.

¹⁰³ See 47 CFR § 54.600 *et seq.*

¹⁰⁴ See *Healthcare Connect Fund Order*, 27 FCC Rcd at 16761, para. 181.

¹⁰⁵ See 47 CFR § 54.600(b).

sections 1.3 and 54.722(a) of the Commission’s rules, 47 CFR §§ 1.3 and 54.722(a), the Requests for Review filed by Fort Drum on May 26 and August 10, 2022 are GRANTED to the extent provided herein.

43. 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 54.722(a) of the Commission’s rules, 47 CFR §§ 0.91, 0.291, 1.3, and 54.722(a), section 54.622(i)(3) of the Commission’s rules, 47 CFR § 54.622(i)(3), IS WAIVED to the extent described herein.

44. 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 section 54.722(a) of the Commission’s rules, 47 CFR § 54.722(a), the Requests for Review filed by Fort Drum on December 2, 2022 are GRANTED IN PART to the extent provided herein and DENIED IN PART to the extent provided herein.

45. 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

APPENDIX A

Eligible Health Care Providers

Health Care Provider Name	HCP Number	Designation	Appeal
Behavioral Health Services/Ridge Commons	26567	Community Mental Health Center	ACTION Appeal III
Center for Recovery – Glens Falls	26573	Community Mental Health Center	ACTION Appeal III
The Center for Recovery – Hudson Falls	26585	Community Mental Health Center	ACTION Appeal III

APPENDIX B
Ineligible Sites

Site Name	HCP Number	Appeal
Glens Falls Hospital Broad Street Campus	26566	ACTION Appeal III
Main Street Physical Therapy	26582	ACTION Appeal III
The Rehab Center & The Hearing Center	26581	ACTION Appeal III
GFH Sleep Lab	26574	ACTION Appeal III
SMC Urology Clinic	23820	North Country Appeal III
The Medical Center at Wilton	26578	ACTION Appeal III
Hudson Falls Internal Medicine	26579	ACTION Appeal III
Adirondack Cardiology Associates	44601	ACTION Appeal III
Advanced Imaging at Baybrook	26564	ACTION Appeal III
Fort Edward Family Medicine	26568	ACTION Appeal III