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June 12, 2019

Via ECFS
Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Promoting Telehealth and Telemedicine in Rural America*, WC Docket No. 17-310 – FY2018 Rural Rates

Dear Ms. Dortch,

TeleQuality Communications, LLC ("TeleQuality") hereby submits for the Commission's approval its interstate rural rates for Funding Year 2018, for purposes of providing service to healthcare providers ("HCPs") through the Rural Health Care Telecommunications Program. This filing updates and replaces all of TeleQuality's prior submissions of interstate Method 3 rural rate justifications for FY2018.[1]

To establish its rural rates for FY2018, TeleQuality has followed the requirements of 47 C.F.R. § 54.607 and the recent USAC guidance.[2] TeleQuality does not provide service to commercial customers other than HCPs, so it cannot calculate rural rates based on the average rate charged to commercial customers for similar services pursuant to 47 C.F.R. § 54.706(a) (USAC's Method 1). In some cases, TeleQuality can establish a rural rate by calculating the average of tariffed or other publicly available rates for similar services in the same rural area pursuant to 47 C.F.R. § 54.706(b) (USAC's Method 2). In cases where due diligence has not revealed any tariffed or other publicly available rates for "the same or similar services in that rural area over the same distance as the eligible service," or where TeleQuality has reasonably determined that Method 2 results in a rate that is "unfair," TeleQuality is submitting its rates for

[1] Letters from John T. Nakahata, Counsel to TeleQuality Communications, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-310 (filed June 21, 2018); Letter from John T. Nakahata, Counsel to TeleQuality Communications, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-310 (filed June 22, 2018); Letters from John T. Nakahata, Counsel to TeleQuality Communications, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-310 (filed June 25, 2018); Letter from John T. Nakahata, Counsel to TeleQuality Communications, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-310 (filed June 26, 2018); Letter from John T. Nakahata, Counsel to TeleQuality Communications, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-310 (filed June 27, 2018).

[2] USAC, *Telecom Program: Urban and Rural Rates*, https://www.usac.org/_res/documents/rhc/pdf/handouts/TelecomRuralUrbanRateInfo.pdf.

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interstate services to the Commission for approval pursuant to 47 C.F.R. § 54.607(b) (USAC Method 3).

These rates are all for services that are interstate interexchange and/or CLEC business data services, and which were subject to competitive bidding. As such, these are all services that the Commission has mandatorily or permissively detariffed because of the presence of a competitive market. *See* 47 C.F.R. § 61.19; *Hyperion Telecommunications Inc. Petition Requesting Forbearance*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 12 FCC Rcd. 8596 (1997) ("[W]e have previously determined that [CLECs] are nondominant, and that nondominant carriers, 'by definition,' cannot exercise market power.") *See also* 47 C.F.R. § 61.201 (detariffing ILEC business data services). Moreover, even if a tariff were filed (which is no longer permitted for interexchange services, including interexchange private lines), these are rates charged by a nondominant carrier and thus would be considered *prima facie* lawful and permitted to take effect on one day's notice. *See* 47 C.F.R. § 1.773(a)(ii). As such, although the margins for individual contract prices vary, as would be expected under competitive bidding in which bids are submitted in advance based on estimated costs, that variance does not create a basis for determining these rates to be unreasonable or not cost-based. Indeed, forcibly setting a different rate distorts the market and harms consumers. *See Nat'l Ass'n of Telecommunications Officers & Advisors v. Fed. Commc'ns Comm'n*, 862 F.3d 18, 25 (D.C. Cir. 2017) ("Rate regulation of a firm in a competitive market harms consumers.")

The cost justification for the proposed interstate rural rates is contained in the attached workbook. Rather than present this information on separate pages, all funding requests (FRN) are listed on a single spreadsheet page. The columns provide detail on the cost components, including circuit costs, telecommunications taxes and fees on wholesale circuits, allocated common costs, working capital, state income taxes, federal income taxes, and federal universal service assessments.[3] There is also a column listing the customer group associated with the FRN. This will assist staff in determining which circuits are purchased by a common entity or group. However, just because circuits are procured by a common entity or group does not mean that they were purchased as part of the same procurement. The methodologies used are the same as those used with respect to TeleQuality's February 5, 2019 rate filing for its FY2017 rates.

The cost columns were determined as follows:

Circuit Cost.[4] Circuit costs are the wholesale costs of the telecommunications circuit provisioned for the supported (i.e. eligible) telecommunications service.

Telecommunications Taxes and Fees. These are the sum of booked telecommunications fees and taxes spread over all Circuit Costs.

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3 USAC recently informed TeleQuality that, notwithstanding prior Commission orders, it views all USAC payments for Rural Healthcare support as assessable end user revenues.

4 All costs are actuals for FY2018, unless otherwise noted.

Allocated Common Costs. This is the amount of common costs allocated to the particular circuit. Per discussions with staff, TeleQuality has used an allocator based on total eligible and ineligible direct costs. TeleQuality derived a factor by taking the total common costs and dividing by the total amount of eligible and ineligible direct costs. This factor was then multiplied the sum of circuit costs and telecommunications taxes and fees to determine the amount of common costs allocated to that circuit.

This methodology ensures that common costs are spread over both eligible and ineligible services. A stylized example will demonstrate that this is the case. Say that a company had $2000 of eligible direct costs and $1000 of ineligible direct costs, for a total of $3000 of direct costs. Assume also that the company had $1500 of common costs. The allocator would be 50% ($1500 common costs/$3000 total direct costs). According, the circuits accounting for the eligible direct costs would be allocated $1000 of common expense, and the ineligible costs would be allocated $500 of common expense.

Working Capital. Working capital is calculated consistent with the methodology explained in TeleQuality's response to the Bureau's questions on October 23, 2018. Per the Bureau's suggestion, TeleQuality checked the ratio of urban rates to rural rates for its actual FRNs. The urban rate as a percentage of the rural rate is updated to the actual percentage. The working capital calculation is included as a separate tab of the workbook.

State Income Taxes. The state income tax amounts are determined using the state corporate tax rate multiplied by the pre-tax margin to be earned on a particular circuit. In some cases, the state tax amount may be negative for a particular circuit. As it would in a company tax return, this offsets positive tax amounts on other circuits. The applicable state tax rates are summarized in a separate tab.

Federal Income Taxes. Federal income tax amounts are determined by multiplying a 36% federal income tax rate by the pre-tax margin.

Federal Universal Service Assessment. The federal universal service assessment amount is determined by multiplying the rural rate times, as a proxy, the average federal universal service contribution factor for FY2018, 19.20%.

The TeleQuality FY2018 Interstate Rate Cost Justification (Attachment 1) contains detailed information as to both TeleQuality's actual or estimated (as applicable) circuit costs and overheads during the 2018 Funding Year, and thus contains business-sensitive confidential information. Pursuant to Sections 0.457 and 0.459 of the Commission's rules, 47 C.F.R. §§ 0.457, 0.459, TeleQuality hereby requests confidential treatment of the attachment, which should be withheld from public inspection.

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In support of this request, TeleQuality hereby states as follows:

1. Identification of Specific Information for Which Confidential Treatment Is Sought (Section 0.459(b)(1))

TeleQuality seeks confidential treatment with respect to the cost information contained in TeleQuality FY2018 Interstate Rate Cost Justification (the "Confidential Information").

2. Description of Circumstances Giving Rise to the Submission (Section 0.459(b)(2))

TeleQuality is disclosing the Confidential Information pursuant to 47 C.F.R. § 54.607(b)(1). TeleQuality needs to establish some of its rural rates under the Telecommunications Program by submitting those rates to the Commission. As required by the rules, the submission must include "a justification of the proposed rural rate, including an itemization of the costs of providing the requested service." *Id.*

3. Explanation of the Degree to Which the Information Is Commercial or Financial, or Contains a Trade Secret or Is Privileged (Section 0.459(b)(3))

The information in the TeleQuality FY2018 Interstate Rate Cost Justification is commercial or financial and contains trade secret information. The justifications for TeleQuality's rates include detailed information regarding the prices TeleQuality pays to its wholesale providers as well as TeleQuality's own costs to serve HCPs. In addition, the Cost Justification includes information about how TeleQuality provisions services to HCPs to meet their unique business needs; this information describes TeleQuality's internal business practices and techniques and is sensitive commercial information.

4. Explanation of the Degree to Which the Information Concerns a Service that Is Subject to Competition (Section 0.459(b)(4))

The market for the services at issue is subject to competition; the level of competition varies based on the element of the service and the specific location.

5. Explanation of How Disclosure of the Information Could Result in Substantial Competitive Harm (Section 0.459(b)(5))

First, disclosure of the information in the response would provide TeleQuality's competitors with sensitive insights related to TeleQuality's services and how it provisions its services to meet its customers' unique needs. Disclosure of this information would allow TeleQuality's competitors to use this information to determine TeleQuality's competitive position and associated revenues and thereby gain a competitive advantage. *Second*, disclosure of TeleQuality's Confidential Information would place TeleQuality at a competitive disadvantage, as TeleQuality lacks the same information regarding its competitors. *Third*, disclosure of the information could damage TeleQuality's relationships with its wholesale providers, to the extent that it has purchased wholesale inputs at rates that are not generally

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publicly available. *Finally*, disclosure of this information could harm the competitive bidding process in the RHC program.

6. Identification of Any Measures Taken to Prevent Unauthorized Disclosure (Section 0.459(b)(6))

The Cost Justification has been kept private and internal to TeleQuality and its parent company. Each page of the attachment is clearly marked "TeleQuality Proprietary – Not for Public Disclosure."

7. Identification of Whether the Information Is Available to the Public and the Extent of Any Previous Disclosure of the Information to Third Parties (Section 0.459(b)(7))

TeleQuality has not previously disclosed to third parties, other than its counsel, its parent company, and relevant state commissions any of the information in the Cost Justification.

8. Justification of Period During Which the Submitting Party Asserts that Material Should Not Be Available for Public Disclosure (Section 0.459(b)(8))

TeleQuality requests that the Cost Justification not be disclosed for 10 years from the date of this request. By that time, the sensitivity of TeleQuality's commercial information will have diminished, as market changes will render it increasingly dated, and would make it difficult for competitors to gauge TeleQuality's current market position and revenues.

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Should you have further questions or require additional information in order to grant the requested confidentiality treatment, please contact me immediately so that I can provide further assistance to resolve this matter.

Sincerely,

John T. Nakahata
Counsel to TeleQuality Communications, LLC

Attachs.

Attachment is redacted in its entirety.