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October 24, 2019  
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6064833345

Marlene Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12th Street SW, Washington, DC 20554  
**RE: Rural Health Care Program: WC Docket No. 02-60**

Date: 24-Oct-2019  
Program: HCF Program  
Funding Year: 2017  
Health Care Provider (HCP) Number: 12911  
HCP Name: Lawrence County Health Department  
FCC Form 462 Application Number: 17279441  
Spin form 498 number: 143050213

Dear Ms. Dortch:

Please consider this a formal request for an appeal for the denial of funding for the Lawrence County Health Department HCP 12911 under FCC form 462 number 17279441, by USAC. The denial email is at the end of this document.

1) This request was filed under FY 2017. This was for a server, firewall and equipment needed to support a circuit that is covered under a separate funding request.

2) In the funding requests filed for the circuit in FY 2017 there were a total of four funding requests made, three of which were related to the circuit. One was related to the server. The three funding requests related to the circuit were 17279741, 17217451, and 17260781. The latter two should have been withdrawn, but due to my unfamiliarity with the program rules at the time I did not understand quite how to do that. Only 17279741 is actually being funded. The requests were modified over the funding window due to the type of circuit changing, and due to items being left off a quote from the vendor, and not being included in the funding request.

3) The funding for 17279441 was filed late in the filing window. Circumstances on the ground at the health department were changing rapidly during the funding filing window. The health department was being directed by the state of KY to upgrade services in part to prepare for an electronic records system. This was going to require upgraded bandwidth both for this and other services of the department. The health department was given a relatively tight deadline for install to be met by August 2017. That was not going to permit the long lead time needed for a fiber circuit, so the decision was made to install coax. However, shortly thereafter, the department was told the install of an EHR was being delayed until November of 2017. That permitted the health department the extra construction time needed by the vendor to install fiber, and a fiber circuit was then installed.

4) During this time, which was in the June 2017 period if memory serves, the Lawrence County Health Department's IT service provider, CDP informed them that a new server and firewall was going to be needed to support the circuit. CDP is under form 498 number 143050213.

5) Due to our newness to the RHC program it was apparent only with some digging that funding support was available under the HCF for the server and related equipment that would support the circuit. Given that the end of the filing window was looming, less than a month away, we obtained a quote from the health department's IT provider. Only the cost of the equipment was covered in this quote, because the health department had a maintenance agreement with CDP that would cover all of the labor cost. None of the labor cost for the install of equipment to support the circuit was submitted to USAC for funding. The fact that the equipment had no added labor cost attached, automatically made the quote from CDP, the lowest cost obtainable. Any other provider would have added labor cost to the cost of the installation of equipment.

6) Also given that the filing window closure was less than one month away there was no opportunity to put the server and equipment request for proposal, up for the requisite 30 days before a contract could be signed under competitive bidding rules.

7) The purpose of the competitive bidding process is to assure that the lowest cost bids are submitted for projects that are going to be requesting funding from USAC. Clearly this goal was met because there was no labor cost attached. In addition, USAC knew or should have known that the server and equipment cost submitted was cost competitive based on the

many other entities submitting. Clearly it is a burden on small health departments to go through a competitive bid process for non-recurring items below \$10,000. These costs should be known by USAC from other clients. That is now being acknowledged under the rural telecommunications program based on our understanding that USAC has been charged by the FCC with compiling pricing for the differences between rural and urban rates. The cost of the equipment alone is cost competitive and that is easily verified with all of the data available to USAC.

8) Although the total of the funding requests for FY 2017 was over \$10,000, only the equipment cost for the sever, was not subject to competitive bidding. It seems contrary to the overall intent of the regulatory language to combine amounts that were submitted to competitive bidding for recurring costs with amounts that were not submitted to competitive bidding for non-recurring costs to deny funding to smaller requests.

9) Given that this is a rural Appalachian area, there are not may qualified IT providers around. In particular significant IT expertise is required to connect the health department to the state health department and the Commonwealth Office of Technology while observing all of the rules covering protected health information and HIPAA regulations. CDP has this expertise. The health department director is not aware directly of any other entity in this area that can provide the IT support required to integrate the server, firewall, circuit and the necessary external connections to serve the health department's needs. So even if this funding request had been subjected to competitive bidding, the second evaluation category after cost that would be a major consideration would be technical expertise to actually do the work properly.

10) Even though this funding request for equipment for the server and equipment was not put out for competitive bidding, this is a one-time expense. It is not a recurring expense. It seems arbitrary to include a one-time equipment request in with a request for ongoing support. This is not a recurring cost. USAC has lumped together recurring and non-recurring costs which pushes the server and equipment into the same category and thus above the \$10,000 threshold for reimbursement requests.

11) Even though this funding request for equipment was not put out for competitive bidding, based on our prior experience in this area, we usually never get other bidders when the RFP is submitted and posted. We usually

only get bids that we solicit directly from the providers in this area, but outside of the USAC program.

12) Both on the cost and technical components scoring under a competitive bid process, it is very clear that CDP was going to be the least expensive provider, and the only one in this area that was going to meet the technical expertise criteria. Therefore, the essential elements of the regulations were already met, even though the actual competitive bidding process did not take place. The results would have been the same.

13) The intent of the regulations is to provide funding support to rural health departments that need such support for broadband and broadband supporting equipment. In this case the spirit of the regulations was maintained even if the exact letter of the regulations was not. As explained above, had the situation on the ground not changed, during the 30 period before the funding window closed, we would have submitted the request for competitive bidding. But there was not time to do so. The results would have been the same. It seems that in this particular case the letter of the regulations contradicts the spirit of the regulations by combining recurring and non-recurring requests for the fiscal year. Again, the recurring requests were submitted for competitive bidding, the non-recurring request was not. But if the regulatory intent is to make sure that the lowest pricing was obtained, and that is assured for the reasons explained above (no labor cost, competitive equipment cost, technical expertise), then denying funding in this case is contrary to the regulatory intent. Beyond which if the goal is to be compliant with obtaining lowest cost, then whether that is obtained through a competitive bid or not, should not matter. For example, if there had been competitive bidders, and they included labor cost, and if CDP had not submitted a bid through the USAC process, would we exclude CDP from consideration? That would have forced the health department into a situation where it might have had to accept a higher bid from within the program, in order to obtain funding, rather than a lower bid from outside the program and not obtain funding.

Again, given the circumstances in this unique situation providing funding to the health department for a one-time cost of a server and related equipment to support a circuit, is, we believe, fully within the regulatory intent of the FCC. Penalizing the health department by not providing funding given circumstances that were beyond its control at the state level, and despite the fact that it was compliant with the spirit of the regulatory intent, seems to be a miscarriage of fairness. Denying funding is not doing the right thing

for a small rural health department. It doesn't follow the intent of the program. Combining recurring competitively bid expenses with non-competitively bid non-recurring expenses seems to be an overzealous interpretation of regulations.

We ask for a prompt determination regarding this appeal in expedited fashion, since this has been dragging on for 2.5 years at this point. We ask that the funding requested under FCC Form 462 Application Number: 17279441 be granted.

Sincerely,

Lee Balaklaw

rhcadmin@usac.org

Thu 10/24/2019 10:31 AM

Date:	24-Oct-2019
Program:	HCF Program
Funding Year:	2017
Health Care Provider (HCP) Number:	12911
HCP Name:	Lawrence County Health Department
FCC Form 462 Application Number:	17279441

The Universal Service Administrative Company (USAC)'s Rural Health Care (RHC) Program has reviewed the submitted FCC Form 462 and supporting documents for the HCP referenced above. USAC has denied the HCP's FCC Form 462 for the following reason(s):

- **Upon review of the documentation for the funding requests submitted for HCP 12911, USAC has determined that more than \$10,000 of undiscounted recurring costs were requested for this HCP for Fund Year 2017. FCC Rules state an "application seeking support for undiscounted costs of \$10,000 or less is exempt from competitive bidding if the total of all members' undiscounted costs for which support is sought, in this and any other application combined, is not more than \$10,000 for that year." Since you did not meet this requirement, this FRN must be denied.**

All account holders associated with the HCP will be copied on this and all correspondence from USAC related to this account.

#### Next Steps

If you wish to appeal this decision, you must file an appeal with USAC within 60 days of the date of this letter. Detailed instructions for filing appeals are available on the USAC website at <http://usac.org/about/about/program-integrity/appeals.aspx>.

#### For More Information

Please do not reply directly to this email, as emails to this account will not be delivered to the RHC Program team. For questions or assistance, or if this email has been received in error, contact the Rural Health Care Program Help Desk at (800) 453-1546 between 8 AM and 5 PM Monday - Friday or by email at [rhc-assist@usac.org](mailto:rhc-assist@usac.org).

For more information about the HCF Program application process, refer to the HCF Program Getting Started web page at <http://www.usac.org/rhc/healthcare-connect/process-overview/default.aspx>.

For more information about the FCC Form 462, visit the HCF Program Forms web page at <http://www.usac.org/rhc/healthcare-connect/tools/forms>.