

TELEHEALTH FUNDING CONNECTION, LLC.

17949 Main Street, Box 475, Dumfries, VA 22026.

703-986-3586.

Rhc-hcf@telehealthfundingconnection.com

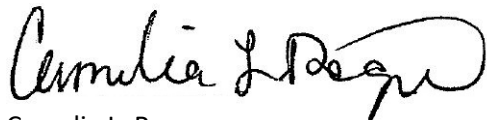
Date: May 14, 2018
To: Federal Communication Commission
From: Telehealth Funding Connection and Southwest Telehealth Access Grid
Subject: ECFS Confirmation Number 201803170958115089
Appeal for Funding Year 2017 – Consortium Application HCP 17256

To Whom It May Concern

On March 16, 2018 we filed an appeal for certain funding request numbers filed for HCP 17256 Southwest Telehealth Access Grid stakeholders. When filing the appeal, certain pages were inadvertently left off the appeal. Per the attached ECFS confirmation, the appeal was received on March 16, 2018. We are at this time supplementing the appeal with the pages that were inadvertently excluded, as well as the original exhibits.

Please contact us with any questions or concerns regarding this appeal. We look forward to hearing from you with a positive outcome to our appeals.

Sincerely,

A handwritten signature in black ink, appearing to read 'Camelia L. Rogers', with a stylized, cursive script.

Camelia L. Rogers

President & CEO

Telehealth Funding Connection, LLC 703-986-3586

For assistance with using ECFS, please contact the ECFS Help Desk at 202-418-0193 (tel:+12024180193) or via email at ECFSHelp@fcc.gov (mailto:ECFSHelp@fcc.gov).

Submit a Filing

1 **Filing** 2 **Review** 3 **Confirmation**

Proceeding:	02-60
Confirmation #:	201803170958115089
Submitted:	Mar 16, 2018 9:43:07 PM
Status:	RECEIVED
Name(s) of Filer(s)	Southwest Telehealth Access Grid
Law Firm(s)	
Attorney/Author Name(s)	Camelia Rogers
Primary Contact Email	crogers@telehealthfundingconnection.com
Type of Filing	APPEAL
File Number	
Report Number	
Bureau ID Number	
Address of	Filer
Address	17949 Main Street, Box 475 , Dumfries, VA, 22026
Email Confirmation	No

Submit Another  (/ecfs/filings)

For assistance with using ECFS, please contact the ECFS Help Desk at 202-418-0193 (tel:+12024180193) or via email at ECFSHelp@fcc.gov (mailto:ECFSHelp@fcc.gov).

Federal Communications Commission
445 12th Street SW, Washington, DC 20554
Phone: 1-888-225-5322
TTY: 1-888-835-5322
Videophone: 1-844-432-2275
Fax: 1-866-418-0232

Contact Us (<https://www.fcc.gov/contact-us>)

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

In the Matter of)	
)	
Rural Health Care Support Mechanism)	WC Docket No. 02-60
)	
Request for Waiver)	
By Southwest Telehealth Access Grid)	Application Nos. 17256491 et al.

**REQUEST FOR REVIEW AND WAIVER
BY SOUTHWEST TELEHEALTH ACCESS GRID
OF FUNDING DECISIONS BY THE
UNIVERSAL SERVICE ADMINISTRATIVE COMPANY**

Pursuant to sections 54.719 and 54.722 of the Commission's rules,¹ Southwest Telehealth Access Grid (SWTAG)² hereby respectfully requests a review of a Universal Service Administrative Company (USAC) decision to deny Rural Health Care (RHC) funding for Funding Year 2017.³

USAC denied the above-captioned applications for Healthcare Connect Fund (HCF) funding for two reasons: first because SWTAG failed to respond to requests for information from USAC by the associated deadlines, and second because SWTAG subsequently filed its appeals to USAC one or two days past the 60-day deadline. SWTAG respectfully asks the Bureau for waivers of both missed deadlines. To the extent USAC has the authority to extend the deadline for a request for information, SWTAG believes USAC erred by not granting SWTAG an extension to submit the requested information.

With respect to the deadline for submitting responses to USAC's requests for information, USAC failed to comply with the notification requirements the Commission

¹ 47 C.F.R. § 54.719(b), (c); 47 C.F.R. § 54.722(a).

² SWTAG's health care provider number is 17256.

³ The funding request numbers (FRNs) that this appeal covers are listed in Exhibit 1.

established in the *Healthcare Connect Fund Order*, resulting in inadequate notice to SWTAG and its consultant of USAC's request for information. USAC then denied SWTAG's reasonable requests for additional time to respond, contrary to the Bureau's directive that USAC do its best to work with applicants who are attempting in good faith to respond to its inquiries.

With respect to SWTAG missing the deadline for filing its appeals with USAC, the Bureau has granted waivers on several occasions to universal service applicants who file USAC appeals only a day or two late. Given that SWTAG missed the deadlines for filing its USAC appeals by two days at most, the same standard should apply here, and the Bureau should waive the deadline.

I. BACKGROUND

Southwest Telehealth Access Grid is a "consortium of consortia" in Arizona and New Mexico. SWTAG files RHC funding applications on behalf of its member networks. For the applications that underlie this appeal, SWTAG engaged a consultant, Telehealth Funding Connection, LLC, to assist with filing the applications. Camelia Rogers, the president and CEO of Telehealth Funding Connection, was USAC's primary point of contact for the applications.

On June 21 and June 30, 2017, SWTAG filed FCC Forms 462 to request HCF funding for its members for funding year 2017.⁴ Over the first two weeks of July 2017, USAC sent SWTAG several requests for information regarding its funding applications. For each information request, USAC informed SWTAG that its response would be due 14 calendar days later.

Before the first of these requests for information was due, on July 19, SWTAG's consultant, Ms. Rogers, called Jamaira Wiggins of USAC and let her know that she was on

⁴ See Exhibit 2, Administrator's Decision on Rural Health Care Program Appeal (Jan. 15, 2018). This is one of the four decisions on appeal issued by USAC. We can provide all of them to the Commission if so desired.

vacation and asked for additional time to respond. On July 19, Ms. Wiggins emailed Ms. Rogers, acknowledged that she knew Ms. Rogers was on vacation, but refused to extend the response deadline.⁵

On July 24, 2017, Ms. Rogers received an email from Ms. Wiggins at USAC, stating that USAC was giving SWTAG an extension, until July 25, to respond to requests for information that were originally due on July 21.⁶ This email came as a surprise, because neither Ms. Rogers nor SWTAG itself had any idea that USAC had sent any requests for information that were due on July 21. While Ms. Rogers had already responded to information requests from USAC about SWTAG's funding applications, neither Ms. Rogers nor SWTAG had received any previous correspondence from USAC about these particular FRNs. Ms. Rogers searched her email history and found no information request from USAC relating to these FRNs.

After receiving Ms. Wiggins's email, Ms. Rogers requested additional time to file responses to USAC's information request. Ms. Rogers asked Ms. Harris to forward the original email request, but Ms. Harris never did. Upon returning from vacation, Ms. Rogers confirmed that she had not received any correspondence from USAC through the U.S. mail either. Ms. Rogers also confirmed that SWTAG had likewise received no inquiries from USAC, either via email or through the U.S. mail. At this time, Ms. Rogers and SWTAG responded to USAC's questions as quickly as they could and submitted responses by August 4, 2017.⁷

⁵ See Exhibit 3, Email Exchange Between Camelia L. Rogers and Jamaira Wiggins dated July 19, 2017.

⁶ See Exhibit 4, Email Exchange Between Camelia L. Rogers and Jamaira Wiggins dated July 24, 2017.

⁷ See Exhibit 2.

Between July 28, 2017 and September 13, 2017, USAC denied all of the FRNs covered by this appeal.⁸ USAC stated that the reasons for denial were that USAC had received responses to its requests for information either late or not at all.⁹

SWTAG appealed all of USAC's denials in separate submissions between September 28 and November 8, 2017. USAC denied all of these appeals on January 15, 2018.¹⁰ In its denial letter, USAC explained that it was denying some of SWTAG's FRNS because "SWTAG did not respond to an information request from USAC for this FRN within the given response period."¹¹ With respect to the remaining FRNs at issue in the appeals, USAC explained that it was denying them because "SWTAG did not submit an appeal of the denials of these FRNs within 60 days from the date of USAC's decisions."¹²

Appeals to the Commission are due within 60 days.¹³ As such, this appeal is timely filed.

II. THE REQUESTED WAIVERS ARE IN THE PUBLIC INTEREST

Any of the Commission's rules may be waived if good cause is shown.¹⁴ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹⁵ In addition, the Commission may take into

⁸ *See id.*

⁹ *See id.*

¹⁰ *See id.*

¹¹ *Id.* at 1.

¹² *Id.*

¹³ 47 C.F.R. § 54.720.

¹⁴ 47 C.F.R. § 1.3.

¹⁵ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁶

Here, each of the requested waivers serves the public interest. USAC established a filing deadline that was inconsistent with the *Healthcare Connect Fund Order*, then refused to grant a reasonable extension to an applicant that was attempting in good faith to respond to USAC's inquiries. As for SWTAG filing its USAC appeals late, the Bureau has waived the filing deadline for USAC appeals several times in cases where the appeals were filed only a few days late. It is not in the public interest, nor does it advance the goals of the Rural Healthcare Program, to deny funding over two minor errors such as these. This is all the more true where, as here, neither missed deadline harms the RHC Program because USAC did not announce it was issuing funding commitments for funding year 2017 until March 15, 2018 – several months after the information requests were submitted to USAC.

A. SWTAG Attempted in Good Faith to Respond to USAC's Inquiries in a Timely Manner

SWTAG respectfully requests that the Bureau waive the deadline for Healthcare Connect Fund applicants to respond to questions from USAC about their applications. USAC failed to follow the requirements of the *Healthcare Connect Fund Order* regarding notifying applicants of deficiencies in their applications. As a result, SWTAG did not receive notice of USAC's questions until it was too late to respond on time. With respect to some of the information requests USAC says it sent, neither Ms. Rogers nor SWTAG ever received them at all. Then, USAC refused to grant a reasonable request for additional time to respond. For these reasons, the Bureau should waive the deadline and instruct USAC to process SWTAG's applications.

¹⁶ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

The *Healthcare Connect Fund Order* requires USAC to give applicants 14 days from the date of written notice to respond to request for additional information about applications.¹⁷ The Commission explained that applicants would “be presumed to have received notice five days after such notice is postmarked by USAC.”¹⁸ This language suggests that USAC must *mail* requests for information, rather than just *email* them. Because USAC did not mail its requests for information here, it failed to satisfy the notification requirements of the *Healthcare Connect Fund Order*.

More importantly, though, USAC failed to reasonably accommodate an applicant that was working in good faith to respond to its information requests and merely needed a little more time. Ms. Rogers, SWTAG’s consultant, was traveling when USAC’s information requests came due. As noted above, she did not receive all of the emailed requests for information that USAC later claimed to have sent. But as soon as she knew that USAC was asking questions about her client’s funding requests, she notified USAC that she was on vacation and asked for a short extension to file SWTAG’s responses, and she did so before the deadline for the information requests.

USAC clearly believed that it had the authority to extend the filing deadline, because USAC extended one of SWTAG’s response deadline on its own.¹⁹ However, USAC declined to give SWTAG any meaningful extension when Ms. Rogers requested it. The Bureau has directed USAC to do its best to work with applicants who are attempting in good faith to

¹⁷ *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678 (2012) (*Healthcare Connect Fund Order*).

¹⁸ *Id.* n.722.

¹⁹ See Exhibit 2 at 2-3 (“On July 24, 2017, which was three days after the original 14-day response deadline, USAC issued a notice to SWTAG indicating that it had not received a response to its information request for FRN 17281811 and that it was extending the deadline for SWTAG’s response to July 25, 2017.”).

respond to its inquiries.²⁰ But USAC did not do so here. If USAC had granted one 14-day extension, SWTAG would have been able to respond to all of USAC's inquiries in a timely fashion. Consistent with the Bureau's instructions, USAC should have made an effort to accommodate SWTAG once it knew that Ms. Rogers had every intention of responding to USAC's inquiries, but just needed a little more time.

Finally, SWTAG urges the Bureau to recognize that the missed deadlines did not in any way harm the RHC Program. USAC announced it was beginning to issue commitments for funding year 2017 only one day before this appeal was filed. Accordingly, while SWTAG understands the importance of filing deadlines, its insignificant delays in responding to requests for information cannot possibly be said to have interfered with the efficient and effective operation of the RHC Program. SWTAG therefore respectfully asks the Bureau to waive the deadline for responding to information requests from USAC.

B. The Bureau Has on Several Occasions Waived Its Rules for USAC Appeals Filed Only a Few Days Late

SWTAG does not dispute that it filed some of its appeals to USAC one or two days late. While SWTAG recognizes the importance of filing deadlines to ensure the efficient and timely operation of the Universal Service Program, it respectfully asks the Bureau to waive the filing deadline in this case. SWTAG simply miscalculated the 60-day deadline. The Bureau has waived the filing deadline for USAC appeals several times in cases where the appeals were filed only a few days late.²¹ And as noted above, given that USAC announced only one day before

²⁰ See *Request for Review of the Decision of the Universal Service Administrator by Alpaugh Unified School District et al.*, File Nos. SLD-523576, *et al.*, CC Docket No. 02-6, Order, 22 FCC Rcd 6035 n.14 (2007) ("USAC shall continue, however, to work beyond [the deadline] with applicants attempting in good faith to submit the necessary documentation.")

²¹ See, e.g., *Streamlined Resolution Of Requests Related To Actions By The Universal Service Administrative Company*, CC Docket No. 02-6, Public Notice, 32 10368, 10370 (WCB 2017); *Requests for Review and/or*

this appeal was filed that it was beginning to issue commitments for funding year 2017, missing a filing deadline by only two days cannot possibly be said to have interfered with the efficient and effective operation of the RHC Program. Accordingly, SWTAG asks that the Bureau waive the filing deadline here, where the circumstances are indistinguishable from those in the cited orders.

Waiver of Decisions of the Universal Service Administrator by Baker Hall School, et al., CC Docket No. 02-6, Order, 25 FCC Rcd 17534, 17535, n.9 (WCB 2010); *Request for Waivers and Review of the Decisions of the Universal Service Administrator by Argos Public Library, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-737946, *et al.*, CC Docket No. 02-6, Order, 25 FCC Rcd 16109, 16109-10 & n.6 (WCB 2010) (all waiving the 60-day appeal filing requirement when petitioners filed their appeals only a few days late).

III. CONCLUSION

For the foregoing reasons, the Bureau should grant SWTAG's request for waiver of the deadlines for responding to USAC and filing an appeal with USAC, and direct USAC to process SWTAG's 2016 funding request.

Respectfully submitted,

/s/ Camelia L. Rogers

Camelia L. Rogers
President & CEO
Telehealth Funding Connection, LLC
17949 Main Street
Box 475
Dumfries, VA 22026
703-986-3586
Rhc-hcf@telehealthfundingconnection.com

Consultant for Southwest Telehealth Access Grid

March 16, 2018

CERTIFICATE OF SERVICE

This is to certify that on this 16th day of March, 2018, a true and correct copy of the foregoing Request for Review was sent via email to the Universal Service Administrative Company.

/s/ Camelia L. Rogers

EXHIBITS

- | | |
|-----------|--|
| Exhibit 1 | List of Funding Request Numbers Covered by This Appeal |
| Exhibit 2 | Administrator's Decision on Rural Health Care Program Appeal (Jan. 15, 2018) |
| Exhibit 3 | Email Exchange Between Camelia L. Rogers and Jamaira Wiggins dated July 19, 2017 |
| Exhibit 4 | Email Exchange Between Camelia L. Rogers and Jamaira Wiggins dated July 24, 2017 |

EXHIBIT 1

Funding Request Numbers Covered in this Appeal

Funding Request Numbers Covered in this Appeal

17256491
17276901
17281491
17282111
17282071
17282201
17281921
17281281
17281751
17281811
17281581
17281471
17282091
17282141
17282171
17281581
17281621

EXHIBIT 2

Administrator's Decision on Rural Health Care Program Appeal (Jan. 15, 2018)

Administrator's Decision on Rural Health Care Program Appeal

Via Electronic and Certified Mail

January 15, 2018

Mr. Terry Boulanger
Southwest Telehealth Access Grid
725 6th Street, NW
Albuquerque, NM 87102

Re: Southwest Telehealth Access Grid – Appeal of USAC's
Decision for Funding Request Numbers Listed in Appendix A

Dear Mr. Boulanger:

The Universal Service Administrative Company (USAC) has completed its evaluation of the September 28, 2017 letter of appeal (Appeal) submitted by Telehealth Funding Connection, LLC (Telehealth Funding) on behalf of Southwest Telehealth Access Grid (SWTAG), health care provider number 17256.¹ On July 28, 2017 and August 31, 2017, USAC denied SWTAG's funding requests for support under the Healthcare Connect Fund Program (HCF Program) for funding year 2017 (FY 2017).² The funding request numbers (FRNs) that are the subject of the Appeal are listed in Appendix A. The Appeal requests that USAC reverse the funding denials and permit SWTAG to respond to USAC's information requests for the FRNs listed in Appendix A.³

USAC has reviewed the Appeal and the facts related to this matter and has determined that Federal Communications Commission (FCC or Commission) rules and requirements do not support reversing the denials of the FRNs. With respect to FRN 17281811, USAC finds that SWTAG did not respond to an information request from USAC for this FRN within the given response period, and USAC therefore denies the Appeal for this FRN. With respect to the FRNs listed in Appendix A, Table 2, USAC finds that SWTAG did not submit an appeal of the denials of these FRNs within 60 days from the date of USAC's decisions, and USAC therefore dismisses the Appeal for these FRNs.

¹ See Letter from Camelia L. Rogers, Telehealth Funding Connection, LLC to Rural Health Care Division, USAC (Sept. 28, 2017) (Appeal).

² See Emails from Rural Health Care Division, USAC to Southwest Telehealth Access Grid (July 28, 2017) (Administrator's Denials of FRNs 17281581, 17281471, 17282091, 17282141, 17282171, and 17281621); Email from Rural Health Care Division, USAC to Southwest Telehealth Access Grid (Aug. 31, 2017) (Administrator's Denial of FRN 17281811).

³ See Appeal at 2.

1. Denial of Appeal with Respect to FRN 17281811 for Failure to Respond to USAC's Information Request within the Given Response Period

USAC denies the Appeal of the denial of FRN 17281811 because SWTAG did not respond to USAC's information request for this funding request within the given response period.⁴ The HCF Program requires eligible health care providers (HCPs) applying for discounts for eligible services in the HCF Program to submit requests for discounts to USAC by filing an FCC Form 462.⁵ The HCP uses the FCC Form 462 to provide information about the services selected and to certify that those services are the most cost-effective option of the offers received. As explained in the *Healthcare Connect Fund Order*, the FCC allows applicants to cure errors on their submissions after initial USAC review; however, "the responsibility to submit complete and accurate information remains at all times the sole responsibility of the applicant."⁶ The *Healthcare Connect Fund Order* further states that USAC will inform applicants in writing of: "(1) any and all ministerial or clerical errors that it identifies in the funding commitment request, along with a clear and specific explanation of how the selected participants can remedy those errors; (2) any missing, incomplete, or deficient certifications; and (3) any other deficiencies that USAC finds, including any ineligible network components or ineligible network components that are mislabeled in the funding request."⁷ If an applicant receives a notice that its funding request includes deficiencies, "it will have 14 calendar days from the date of receipt of the USAC written notice to amend or re-file its funding request for the sole purpose of correcting the errors identified by USAC."⁸ After reviewing the funding request, USAC issues a funding commitment letter or denial.⁹

On June 30, 2017, SWTAG submitted an FCC Form 462 requesting HCF Program support under FRN 17281811.¹⁰ On July 7, 2017, USAC sent an information request to SWTAG requesting clarification or additional information to address certain issues or deficiencies USAC had identified in SWTAG's funding request.¹¹ Consistent with the FCC's requirements, USAC gave SWTAG 14 calendar days from the receipt of the notice (*i.e.*, until July 21, 2017), to respond to its information request.¹² On July 24, 2017, which was three days after the original 14-day response deadline, USAC issued a notice to SWTAG indicating that it had not received a response to its information request for FRN 17281811 and that it was

⁴ See *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678, 16803, para. 300 (2012) (*Healthcare Connect Fund Order*); FCC Form 462 Instructions, Rural Health Care Universal Service, Healthcare Connect Fund, Funding Request Form, OMB 3060-0804, at 2-3 (July 2014) (*FCC Form 462 Instructions*).

⁵ See Rural Health Care (RHC) Universal Service, Healthcare Connect Fund, Funding Request Form, OMB 3060-0804 (July 2014) (*FCC Form 462*); *FCC Form 462 Instructions* at 2-3.

⁶ See *Healthcare Connect Fund Order*, 27 FCC Rcd at 16803, para. 300.

⁷ *Id.*

⁸ *Id.*; see also *FCC Form 462 Instructions* at 2-3.

⁹ *Healthcare Connect Fund Order*, 27 FCC Rcd at 16803, para. 302.

¹⁰ See FCC Form 462 for FRN 17281811 (June 30, 2017).

¹¹ See Email from Rural Health Care Division, USAC to Southwest Telehealth Access Grid (July 7, 2017).

¹² See *id.*

extending the deadline for SWTAG's response to July 25, 2017.¹³ SWTAG responded to USAC's information request for FRN 17281811 on August 4, 2017, which was ten days after the extended response deadline specified in USAC's July 24, 2017 notice.¹⁴ On August 31, 2017, USAC denied FRN 17281811 because SWTAG failed to respond to USAC's information request before the given response deadline, as required by the FCC.¹⁵ While SWTAG requested a second extension of the deadline to respond to USAC's information request for FRN 17281811, this extension request was not granted because it was requested after the expiration of the extended response period and because SWTAG had already received an extension of the original 14-day response period.¹⁶

SWTAG appealed USAC's denial of FRN 17281811 on September 28, 2017.¹⁷ In its Appeal, SWTAG argues that "[n]either Camelia Rogers nor Terry Boulanger received the e-mail USAC says it sent on July 7, 2017" with the information request for FRN 17281811.¹⁸ SWTAG also asserts that, on July 25, 2017, its consultant requested a copy of the information request from USAC, but that USAC "never forwarded the emails for Ms. Rogers to respond to the information requests timely."¹⁹ In addition, SWTAG claims that "Camelia Rogers, the consultant for SWTAG, was on vacation" when USAC sent its July 24, 2017 notice extending the deadline for SWTAG to respond to its information request, and that USAC "was aware that Ms. Rogers was on vacation at this time."²⁰

Citing the *Healthcare Connect Fund Order*, SWTAG also argues in the Appeal that "USAC did not send the information requests by mail as required by the FCC Order."²¹ SWTAG further asserts that "USAC is required to provide applicants with a total of 19 days to respond to information requests (14 day notice + 5 days per footnote 722)."²²

¹³ See Email from Rural Health Care Division, USAC to Southwest Telehealth Access Grid (July 24, 2017).

¹⁴ See Email from Camelia L. Rogers, President & CEO, Telehealth Funding Connection, LLC to Rural Health Care Division, USAC (Aug. 4, 2017).

¹⁵ See Administrator's Denial of FRN 17281811.

¹⁶ Although SWTAG contacted USAC to request an extension of the given response period, it did not do so until July 31, 2017, which was six days after the extended deadline specified in USAC's July 24, 2017 notice. See Email from Rural Health Care Division, USAC to Southwest Telehealth Access Grid (July 24, 2017) (extending the deadline for SWTAG's response to July 25, 2017); Email from Camelia L. Rogers, President & CEO, Telehealth Funding Connection, LLC to Rural Health Care Division, USAC (July 31, 2017). In the interest of efficient program administration, USAC does not provide multiple extensions or grant extension requests submitted after the applicable deadline for the applicant's response to its information requests. *C.f. Modernizing the E-Rate Program for Schools & Libraries*, 29 FCC Rcd. 8870, 8966 at para. 240 (2014) (adopting a rule allowing E-rate applicants to seek and receive from USAC a single one-time extension of the 120-day invoice filing deadline only if the request is made no later than what would otherwise be the deadline for submitting invoices). Because SWTAG's request for additional time to respond to USAC's information request was untimely submitted and requested an extension where one had already been provided, USAC did not grant the requested extension.

¹⁷ See Appeal.

¹⁸ Appeal at 2.

¹⁹ Appeal at 1.

²⁰ *Id.*

²¹ *Id.*

²² Appeal at 2.

As an initial matter, USAC has ascertained that SWTAG's consultant, who is also the contact person listed on the FCC Form 462 for FRN 17281811, received the information request at issue because she responded on behalf of SWTAG after the given response deadline.²³ Although SWTAG's consultant did request copies of the original information requests for six FRNs on July 25, 2017, FRN 17281811 was not included in the request.²⁴ In addition, SWTAG's argument that USAC was aware of its consultant's absence when it sent its July 24, 2017 notice extending the response deadline is immaterial.²⁵ SWTAG did not timely request additional time to respond to the information request for FRN 17281811, and USAC was not required to provide an extension after the expiration of the original 14-day response deadline.²⁶

Further, SWTAG's assertion that Footnote 722 in the *Healthcare Connect Fund Order* requires USAC to issue its information requests by postal mail and provide applicants with 19 days within which to respond to its information requests is inaccurate. First, in the *Healthcare Connect Fund Order*, the FCC established a 14-day period within which an applicant must respond to a written notice "to amend or re-file its funding request for the sole purpose of correcting the errors identified by USAC," but did not specify the method by which USAC should issue such notice.²⁷ While footnote 722 of the *Healthcare Connect Fund Order* suggests that such notice may be mailed, along with an electronic transmission, it does not require USAC to do so and only addresses when an applicant might be presumed to have received notice in the event USAC mails such notice. The footnote, however, does not preclude delivery by email only or require the use of two delivery methods in every case. Indeed, since the inception of the HCF program and consistent with the *Healthcare Connect Fund Order*, USAC's practice has been to issue information requests by email only. Moreover, SWTAG's objections to USAC's delivery of the written notice via email is immaterial, as SWTAG did in fact receive the notice via email as evidenced by the fact that SWTAG responded to the information request, albeit after the deadline.²⁸

²³ See FCC Form 462 for FRN 17281811 at Line 43 (June 30, 2017); Email from Camelia L. Rogers, President & CEO, Telehealth Funding Connection, LLC to Rural Health Care Division, USAC (Aug. 4, 2017).

²⁴ See Email from Camelia L. Rogers, President & CEO, Telehealth Funding Connection, LLC to Rural Health Care Division, USAC (July 25, 2017) (requesting copies of the original information requests for FRNs 17281581, 17281471, 17282091, 17282141, 17282171, and 17281621).

²⁵ See Appeal at 1.

²⁶ In the interest of efficient program administration, USAC does not grant extension requests submitted after the original deadline for the applicant's response to its information requests. See *supra* note 16.

²⁷ See *Healthcare Connect Fund Order*, 27 FCC Rcd at 16803, para. 300.

²⁸ See Email from Camelia L. Rogers, President & CEO, Telehealth Funding Connection, LLC to Rural Health Care Division, USAC (Aug. 4, 2017) (sent electronically at 3:11 PM). A copy of Ms. Rogers's untimely response on behalf of SWTAG to USAC's information request for FRN 17281811 is attached herein as Appendix B. USAC notes that the email address it used for Ms. Rogers and to which USAC sent the information request (i.e., crogers@telehealthfundingconnection.com) is the same email address Ms. Rogers used to respond to USAC's information request. *Id.* In addition, USAC not only sent the information request at issue to the email address provided on SWTAG's FCC Form 462 (i.e., crogers@telehealthfundingconnection.com), but also sent it to four other email addresses associated with SWTAG's account. See FCC Form 462 for FRN 17281811 at Line 46 (June 30, 2017) (providing crogers@telehealthfundingconnection.com as the email address for the contact person for SWTAG); Email from Rural Health Care Division, USAC, to Southwest Telehealth Access Grid (July 7, 2017) (sent

Second, with respect to SWTAG's claim that the *Healthcare Connect Fund Order* requires USAC to provide applicants with a total of 19 days to respond to an information request (*i.e.*, 14 days plus an additional five days according to SWTAG), USAC notes that the presumption noted in the footnote does not require USAC to provide applicants with five additional days within which to respond to USAC's information requests in all cases.²⁹ Rather, this presumption applies only to a notice that is "postmarked," *i.e.*, delivered by postal mail, and not to the information requests at issue, which USAC sent to SWTAG by email.³⁰ We also note that, because USAC's information request for FRN 17281811 clearly indicated that a response was required within 14 calendar days and specified the date of the deadline, SWTAG was fully aware of the timeframe within which it was required to respond to USAC's information request for this funding request.³¹

Because SWTAG did not respond to USAC's information request for FRN 17281811 within the given response period, USAC denies the Appeal with respect to this FRN.

2. Dismissal of Appeal with Respect to the FRNs in Appendix A, Table 2 for Failure to Submit an Appeal within 60 Days from USAC's Decision

USAC dismisses the Appeal to the extent it requests review of the denials of the FRNs listed in Appendix A, Table 2 because SWTAG did not submit an appeal of the denials within 60 days from the date of USAC's decision.³² FCC rules require any party aggrieved by a USAC decision to file an appeal with USAC within 60 days from the date of the decision.³³ USAC is not authorized to waive the Commission's rules.³⁴ Because granting the requested relief in this case would require a waiver of the appeal deadline, USAC dismisses the Appeal with respect to these FRNs. FCC rules require parties seeking waivers of the Commission's rules to seek relief directly from the Commission.³⁵

electronically to crogers@telehealthfundingconnection.com, taboulanger@gmail.com, bmonge6@salud.unm.edu, mwhite@kelloggllc.com, and rhc@kelloggllc.com). Although SWTAG claims in the Appeal that Telehealth Funding Connection, LLC, Camelia Rogers, and Terry Boulanger did not receive the information request at issue, it does not argue that *none* of the other three addressees received it. *See* Appeal at 2. In fact, the email addresses USAC used to send the information request for FRN 17281811 are the same email addresses USAC has used to send information requests for other FRNs and to which Ms. Rogers has previously responded on behalf of SWTAG. Finally, USAC has also confirmed that it did not experience any network or e-mail outages that would have impacted e-mail delivery on July 7, 2017 (*i.e.*, the date on which USAC issued its information request).

²⁹ *Healthcare Connect Fund Order*, 27 FCC Rcd at 16803, para. 299 n.722.

³⁰ *Id.*

³¹ *See* Email from Rural Health Care Division, USAC to Southwest Telehealth Access Grid (July 7, 2017).

³² *See* 47 C.F.R. § 54.720(b) (2017) ("An affected party requesting review of an Administrator decision by the Administrator... shall file such a request within sixty (60) days from the date the Administrator issues a decision.").

³³ *See* 47 C.F.R. §§ 54.719(a), 54.720(b) (2017).

³⁴ *See generally* 47 C.F.R. § 54.702(c) (2017) (USAC "may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress."); 47 C.F.R. § 1.3 (2017) ("The provisions of this chapter may be suspended, revoked, amended, or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedures Act and the provisions of this chapter.").

³⁵ 47 C.F.R. § 54.719(c) (2017) ("Parties seeking waivers of the Commission's rules shall seek relief directly from

On June 30, 2017, SWTAG submitted an FCC Form 462 requesting HCF Program support for the FRNs listed in Appendix A, Table 2.³⁶ On July 7, 2017, USAC sent information requests to SWTAG requesting clarification or additional information to address certain issues or deficiencies USAC had identified in SWTAG's funding requests.³⁷ Consistent with the FCC's requirements, USAC gave SWTAG 14 calendar days from the receipt of the notices (*i.e.*, until July 21, 2017) to respond to USAC's information requests.³⁸ On July 24, 2017, which was three days after the original 14-day response deadline, USAC issued a notice to SWTAG indicating that it had not received a response to its information requests for FRNs listed in Appendix A, Table 2 and that it was extending the deadline for SWTAG's responses to July 25, 2017.³⁹ On July 25, 2017, SWTAG requested a second extension of the deadline to respond to USAC's information requests; however, this extension request was not granted because it was requested after the expiration of the extended response period and because SWTAG had already received an extension of the original 14-day response period.⁴⁰ SWTAG never responded to the information requests for the FRNs listed in Appendix A, Table 2.

On July 28, 2017, USAC denied the FRNs listed in Appendix A, Table 2 because SWTAG failed to respond to USAC's information requests before the given response deadline, as required by the FCC.⁴¹ Under FCC rules, the deadline for SWTAG to appeal the denials was September 26, 2017 (*i.e.*, 60 days after the date of USAC's decisions).⁴² SWTAG appealed USAC's denial of the FRNs listed in Appendix A, Table 2 on September 28, 2017, which was two days after the deadline to request review of these decisions.⁴³

the Commission.”).

³⁶ See FCC Form 462 for FRNs 17281581, 17281471, 17282091, 17282141, 17282171, and 17281621 (June 30, 2017).

³⁷ See Emails from Rural Health Care Division, USAC, to Southwest Telehealth Access Grid (July 7, 2017).

³⁸ See *id.*

³⁹ See Email from Rural Health Care Division, USAC to Southwest Telehealth Access Grid (July 24, 2017).

⁴⁰ Although SWTAG contacted USAC to request an extension of the applicable response period, it did not do so until *after* close of business on July 25, 2017, which was the deadline specified in USAC's July 24, 2017 notice. See Email from Rural Health Care Division, USAC to Southwest Telehealth Access Grid (July 24, 2017) (extending the deadline for SWTAG's response to close of business on July 25, 2017); Email from Camelia L. Rogers, President & CEO, Telehealth Funding Connection, LLC to Rural Health Care Division, USAC (July 25, 2017) (sent electronically at 8:57PM with request to extend the deadline to July 28, 2017). In the interest of efficient program administration, USAC does not provide multiple extensions or grant extension requests submitted after the applicable deadline for the applicant's response to its information requests. See *supra* note 16. Because SWTAG's request for additional time to respond to USAC's information request was untimely submitted and requested an extension where one had already been provided, USAC did not grant the requested extension.

⁴¹ See Administrator's Denials of FRNs 17281581, 17281471, 17282091, 17282141, 17282171, and 17281621.

⁴² See 47 C.F.R. § 54.720(b) (2017) (“An affected party requesting review of an Administrator decision by the Administrator... shall file such a request within sixty (60) days from the date the Administrator issues a decision.”).

⁴³ See Appeal.

Mr. Terry Boulanger
Southwest Telehealth Access Grid
January 15, 2018
Page 7 of 9

Because SWTAG did not submit its appeal of USAC's denials of the FRNs listed in Appendix A, Table 2 within 60 days from the date of USAC's decisions, as required by FCC rules, and USAC is not authorized to waive FCC rules, including the 60-day appeal deadline, USAC dismisses the Appeal of the FRNs listed in Appendix A, Table 2, and does not address the merits of the arguments raised by SWTAG in its Appeal with respect to these funding requests.⁴⁴

* * * *

If you wish to appeal this decision or request a waiver, you can follow the instructions pursuant to 47 C.F.R. Part 54, Subpart I (47 C.F.R. §§ 54.719 to 725). Further instructions for filing appeals or requesting waivers are also available at:

<http://www.usac.org/about/about/program-integrity/appeals.aspx>.

Sincerely,

/s/ Universal Service Administrative Company

cc: Camelia Rogers, Telehealth Funding Connection, LLC

⁴⁴ See *supra* notes 36-37. Although USAC does not address the merits of SWTAG's arguments with respect to FRN 1728128, as previously explained, USAC does not issue information requests by postal mail, but rather issues such requests by email. In this case, USAC sent the information requests at issue to the email address provided on SWTAG's FCC Forms 462, as well as to four other email addresses associated with SWTAG's account. See FCC Form 462 for FRNs 17281581, 17281471, 17282091, 17282141, 17282171, and 17281621 at Line 46 (June 30, 2017) (providing crogers@telehealthfundingconnection.com as the email address for the contact person for SWTAG); Emails from Rural Health Care Division, USAC, to Southwest Telehealth Access Grid (July 7, 2017) (sent electronically to crogers@telehealthfundingconnection.com, taboulanger@gmail.com, bmonge6@salud.unm.edu, mwhite@kelloggllc.com, and rhc@kelloggllc.com). Although SWTAG claims in the Appeal that Telehealth Funding Connection, LLC, Camelia Rogers, and Terry Boulanger did not receive the information requests at issue, it does not argue that *none* of the other three addressees received them. See Appeal at 2. In fact, the email addresses USAC used to send the information requests for FRN 17256491 are the same email addresses USAC used to send the information request for FRN 17281811, to which Ms. Rogers responded on behalf of SWTAG. See Email from Camelia L. Rogers, President & CEO, Telehealth Funding Connection, LLC to Rural Health Care Division, USAC (Aug. 4, 2017). A copy of this response is attached herein as Appendix B. Finally, as previously stated, USAC has also confirmed that it did not experience any network or e-mail outages that would have impacted e-mail delivery on July 7, 2017 (i.e., the date on which USAC issued its information request).

APPENDIX A

List of Appealed FRNs

Table 1

FRN	HCP Number	HCP Name
17281811	17256	Southwest Telehealth Access Grid

Table 2

FRN	HCP Number	HCP Name
17281581	17256	Southwest Telehealth Access Grid
17281471	17256	Southwest Telehealth Access Grid
17282091	17256	Southwest Telehealth Access Grid
17282141	17256	Southwest Telehealth Access Grid
17282171	17256	Southwest Telehealth Access Grid
17281581	17256	Southwest Telehealth Access Grid
17281621	17256	Southwest Telehealth Access Grid

Mr. Terry Boulanger
Southwest Telehealth Access Grid
January 15, 2018
Page 9 of 9

APPENDIX B

SWTAG's Response to USAC's Information Request for FRN 17281811

From: Camelia Rogers
To: [Jamaira Wiggins](mailto:Jamaira.Wiggins@usac.org); taboulanger@gmail.com; bmonge6@salud.unm.edu
Cc: [RHC-HCP](#)
Subject: RE: Information Request - HCF Form 462, HCP# 17256, FRN: 17281811
Date: Friday, August 04, 2017 3:11:08 PM
Attachments: [Lighttower - RFP 16 Pricing Response.xlsx](#)
[Community Health Evaluation Worksheet BB 16 Final .xlsx](#)

Please see attached the "LightTower RFP 16 bid response cost" spreadsheet provided by the service provider to confirm cost. Please also see the bid matrix for this competitive bid.

With this email, all outstanding issues for this FRN should be resolved. If they are not - at having shown good faith by being responsive to all prior USAC emails, we ask that you clarify any additional requests that you have so that we may be responsive. We have done our best to be entirely responsive; if we have not provided information requested, it is because we did not understand the request.

With this information, it is my understanding that the information required to process this funding request has been provided. If USAC requires additional information, please let me know and we will process as soon as possible.

Thank you,
Camelia

Camelia L. Rogers, President & CEO
Telehealth Funding Connection
17949 Main Street, P.O. Box 475
Dumfries, VA 22026
703-986-3586

From: Jamaira Wiggins [<mailto:Jamaira.Wiggins@usac.org>]
Sent: Friday, July 7, 2017 2:56 PM
To: taboulanger@gmail.com; bmonge6@salud.unm.edu; crogers@telehealthfundingconnection.com; mwhite@kelloggllc.com; rhc@kelloggllc.com
Cc: RHC-HCP <RHC-HCP@usac.org>
Subject: Information Request - HCF Form 462, HCP# 17256, FRN: 17281811

Date: 7/7/2017

Funding Year: 2017

Funding Request Number (FRN):	17281811
Health Care Provider (HCP) Number:	17256
HCP Name:	Southwest Telehealth Access Grid (AZ NM TX CO CA NV UT)

As part of its initial review of the FCC Form 462 Healthcare Connect Fund Funding Request Form (Form 462) submitted for the HCP referenced above, the Rural Health Care (RHC) division of the Universal Service Administrative Company (USAC) identified issues or deficiencies in the form that must be addressed by the HCP before the USAC can continue its review of the form.

The following issue(s) require clarification or additional information:

Information Required / Correction Needed

- **Bidding Matrix**
• **Cost** confirmed by service provider

The HCP has 14 calendar days from the receipt of this notice to make any required corrections to the form, and to respond to all of the above action items. Based on the date of this email, the HCP must respond to this information request no later than the close of business on **Friday, 07/21/2017**. A timely response to this inquiry is required; failure to respond by the deadline will result in a funding delay or denial.

After the information is received and any corrections made, the review of the form can continue.

For questions or assistance, or if this email has been received in error, contact Rural Health Care at 1-800-453-1546, between **9:00 a.m. and 5:00 p.m Eastern Time** Monday through Friday or by email at rhc-HCP@usac.org.

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

Thank you,

Jamaira Wiggins

Rural Health Care Program

USAC

1 (800) 453-1546 Prompt 3 then 2

rhc-hcp@usac.org | [Health Care Connect Fund](#)

The information contained in this electronic communication and any attachments and links to websites are intended for the exclusive use of the addressee(s) and may contain confidential or privileged information. If you are not the intended recipient, or the person responsible for delivering this communication to the intended recipient, be advised you have received this communication in error and that any use, dissemination, forwarding, printing or copying is strictly prohibited. Please notify the sender immediately and destroy all copies of this communication and any attachments.

EXHIBIT 3

Email Exchange Between Camelia L. Rogers and Jamaira Wiggins dated July 19, 2017

Camelia Rogers

From: Camelia Rogers <crogers@telehealthfundingconnection.com>
Sent: Wednesday, July 19, 2017 4:30 PM
To: Jamaira Wiggins
Cc: brian.schuster@sanfordhealth.org; chuck.carlson@sanfordhealth.org;
john.kawasaki@sanfordhealth.org; RHC-HCP
Subject: Re: Information Request - HCF Form 462, HCP# 17253, FRN: 17268571

Jamaira,

I will respond before the end of the day today. I am in a different time zone today and have limited access to internet. As soon as I get internet access which should be in about 45 minutes I will respond to remaining issues.

Sent from my iPhone

On Jul 19, 2017, at 9:42 AM, Jamaira Wiggins <Jamaira.Wiggins@usac.org> wrote:

Camelia,

There was no NCW attached, and I haven't received any update to the missing circuits. Also, I don't know which circuit is related to this FRN. I searched by FRN 17268571, and nothing appeared.

I understand you're on vacation, but we are upholding the 14-day deadline. Please respond to this request by the close of business today.

Thank you,

Jamaira

From: Camelia Rogers [<mailto:crogers@telehealthfundingconnection.com>]
Sent: Thursday, July 13, 2017 4:28 PM
To: Jamaira Wiggins <Jamaira.Wiggins@usac.org>; brian.schuster@sanfordhealth.org;
chuck.carlson@sanfordhealth.org; john.kawasaki@sanfordhealth.org
Cc: RHC-HCP <RHC-HCP@usac.org>
Subject: RE: Information Request - HCF Form 462, HCP# 17253, FRN: 17268571

See attached my initial review on this one. I am asking for clarification from Sanford pertaining to the circuits for those that I don't have on NCW's at the moment. They may be funded through Telecommunications. I should be able to get back to you on this tomorrow.

Thank you,
Camelia

Camelia L. Rogers, President & CEO
Telehealth Funding Connection
17949 Main Street, P.O. Box 475

Dumfries, VA 22026
703-986-3586

From: Jamaira Wiggins [<mailto:Jamaira.Wiggins@usac.org>]
Sent: Wednesday, July 5, 2017 11:47 AM
To: Camelia Rogers <crogers@telehealthfundingconnection.com>; brian.schuster@sanfordhealth.org;
chuck.carlson@sanfordhealth.org; john.kawasaki@sanfordhealth.org; webe0135@sio.midco.net
Cc: RHC-HCP <RHC-HCP@usac.org>
Subject: RE: Information Request - HCF Form 462, HCP# 17253, FRN: 17268571

Date: 7/5/2017
Funding Year: 2017

Funding Request Number (FRN):	17268571
Health Care Provider (HCP) Number:	17253
HCP Name:	Sanford Health Collaboration and Communication Channel (SC3)

As part of its initial review of the FCC Form 462 Healthcare Connect Fund Funding Request Form (Form 462) submitted for the HCP referenced above, the Rural Health Care (RHC) division of the Universal Service Administrative Company (USAC) identified issues or deficiencies in the form that must be addressed by the HCP before the USAC can continue its review of the form.

The following issue(s) require clarification or additional information:

Information Required / Correction Needed

- **Related Circuit**—Equipment/maintenance may only be funded if it is related to a circuit that has/will be funded. Please provide the FRN this maintenance is for.

The HCP has 14 calendar days from the receipt of this notice to make any required corrections to the form, and to respond to all of the above action items. Based on the date of this email, the HCP must respond to this information request no later than the close of business on **Wednesday, 07/19/2017**. A timely response to this inquiry is required; failure to respond by the deadline will result in a funding delay or denial.

After the information is received and any corrections made, the review of the form can continue.

For questions or assistance, or if this email has been received in error, contact Rural Health Care at 1-800-453-1546, between **9:00 a.m. and 5:00 p.m Eastern Time** Monday through Friday or by email at rhc-HCP@usac.org.

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

Thank you,

Jamaira Wiggins
Rural Health Care Program
USAC

The information contained in this electronic communication and any attachments and links to websites are intended for the exclusive use of the addressee(s) and may contain confidential or privileged information. If you are not the intended recipient, or the person responsible for delivering this communication to the intended recipient, be advised you have received this communication in error and that any use, dissemination, forwarding, printing or copying is strictly prohibited. Please notify the sender immediately and destroy all copies of this communication and any attachments.

The information contained in this electronic communication and any attachments and links to websites are intended for the exclusive use of the addressee(s) and may contain confidential or privileged information. If you are not the intended recipient, or the person responsible for delivering this communication to the intended recipient, be advised you have received this communication in error and that any use, dissemination, forwarding, printing or copying is strictly prohibited. Please notify the sender immediately and destroy all copies of this communication and any attachments.

EXHIBIT 4

Email Exchange Between Camelia L. Rogers and Jamaira Wiggins dated July 24, 2017

Camelia Rogers

From: Jamaira Wiggins <Jamaira.Wiggins@usac.org>
Sent: Monday, July 24, 2017 12:55 PM
To: taboulanger@gmail.com; bmonge6@salud.unm.edu; crogers@telehealthfundingconnection.com; mwhite@kelloggllc.com; rhc@kelloggllc.com
Subject: RE: HCP 17256 Information Requests-Correction

Hello,

Information requests were sent for the following FRNs on July 7:

- 17281581
- 17281471
- 17282091
- 17282141
- 17282171
- 17281811
- 17281621

I never received a response for these requests, and the deadline was Friday, July 21, 2017. I will extend the deadline to tomorrow. Please advise, tomorrow (7/25/17) will be the final deadline for these information requests. I will need the necessary information by the close of business tomorrow, or these forms will not be reviewed.

Thank you,

Jamaira Wiggins

Assistant Program Analyst | Rural Health Care

USAC

(202) 423-2069

jamaira.wiggins@usac.org | www.usac.org

The information contained in this electronic communication and any attachments and links to websites are intended for the exclusive use of the addressee(s) and may contain confidential or privileged information. If you are not the intended recipient, or the person responsible for delivering this communication to the intended recipient, be advised you have received this communication in error and that any use, dissemination, forwarding, printing or copying is strictly prohibited. Please notify the sender immediately and destroy all copies of this communication and any attachments.