

Notice of Dismissal

Via Electronic Mail

April 23, 2019

Ms. Rachel Mehlenbacher
Finger Lakes Migrant Health Care Project, Inc.
14 Maiden Lane, P.O. Box 423
Penn Yan, NY 14527

Re: NY Community Broadband Partnership – Appeal of USAC’s Decision for Funding
Request Number 15680111

Dear Ms. Mehlenbacher:

The Universal Service Administrative Company (USAC) has completed its evaluation of the July 23, 2018 letter of appeal (Appeal) submitted on behalf of NY Community Broadband Partnership (NYCBP), health care provider number 35645.¹ The Appeal requests review of information provided by USAC in an email dated, July 20, 2018, and requests that USAC extend the funding end date for funding year 2015 (FY 2015) funding request number (FRN) 15680111 in the Rural Health Care Healthcare Connect Fund Program (HCF Program).²

USAC has reviewed the Appeal and the facts related to this matter and has determined that Federal Communication Commission (FCC or Commission) rules and requirements support the dismissal of the Appeal because NYCBP is not requesting review of an appealable USAC action or decision, and, instead, requests a waiver of FCC rules and requirements for the HCF Program.

Background

HCPs request funding through the HCF Program by submitting an FCC Form 462.³ The FCC allows applicants in the HCF Program to receive multi-year funding commitments that cover a period of up to three funding years.⁴ If USAC approves the funding request, it will issue a

¹ See Email from Rachel Lynn Mehlenbacher, Program Coordinator, NY Community Broadband Partnership, to the Rural Health Care Division, USAC (July 23, 2018) (Appeal).

² See Appeal.

³ See Rural Health Care (RHC) Universal Service, Healthcare Connect Fund, Funding Request Form, OMB 3060-0804 (FCC Form 462); FCC Form 462 Instructions, Rural Health Care Universal Service, Healthcare Connect Fund, Funding Request Form, OMB 3060-0804 at 1 (FCC Form 462 Instructions).

⁴ See 47 C.F.R. §§ 54.644(a); see also *Rural Health Care Support Mechanism*, Report and Order, WC Docket No. 02-60, 27 FCC Rcd 16678, 16794, para. 296 (2012) (*Healthcare Connect Fund Order*).

funding commitment letter indicating the support amount.⁵ Once USAC has issued a funding commitment letter, support provided under the letter is capped at the amount provided in the letter.⁶

FCC rules permit an aggrieved party to request review of an action taken by USAC or a USAC decision by filing an appeal within 60 days from the date of the action or decision.⁷ However, USAC is not authorized to waive the FCC's rules and requirements for the HCF Program.⁸ Rather, parties seeking waivers of the Commission's rules must seek relief directly from the FCC.⁹

NYCBP's Funding Request

On September 1, 2015, USAC approved NYCBP's FY 2015 funding request for FRN 15680111 and issued a multi-year funding commitment which identified September 1, 2015 and June 30, 2018 as the funding start and end dates, respectively.¹⁰ On July 16, 2018, NYCBP requested that USAC extend the funding end date for its FY 2015 funding commitment.¹¹ On July 20, 2018, USAC informed NYCBP that the funding end date could not be adjusted.¹²

NYCBP's Appeal

NYCBP appealed the information provided by USAC in the July 20, 2018 email, requesting that USAC extend the funding end date for its FY 2015 funding commitment.¹³

⁵ See *Healthcare Connect Fund Order*, para. 270.

⁶ See *Healthcare Connect Fund Order*, para. 315.

⁷ See 47 C.F.R. §§ 54.719(a) (permitting requests for review of "an action taken by the Administrator"), 54.720(b) (permitting requests for review of "an Administrator decision").

⁸ See generally, 47 C.F.R. § 54.702(c) (2014) ("[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 (2014) ("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.").

⁹ See 47 C.F.R. § 54.719(c).

¹⁰ See Letter from Rural Health Care Division, USAC to Mary A. Zelazny, Finger Lakes Migrant Health Care Project, Inc. (Sept. 1, 2015).

¹¹ See Email from Rachel Lynn Mehlenbacher, Consortium Program Coordinator, NY Community Broadband Partnership to Rural Health Care Division, USAC (July 16, 2018).

¹² See Email from Rural Health Care Division, USAC to Rachel Lynn Mehlenbacher, Consortium Program Coordinator, NY Community Broadband Partnership (July 20, 2018).

¹³ See Appeal.

Dismissal of NYCBP's Appeal

USAC finds that FCC rules support the dismissal of the Appeal because NYCBP is not requesting review of a USAC "action" or "decision" appealable pursuant to FCC rules.¹⁴ Specifically, the information provided in USAC's July 20, 2018 email to NYCBP was not a USAC action or decision but, rather, a clarification of FCC rules and requirements.¹⁵

To the extent NYCBP wished to appeal the funding end date for its FY 2015 funding commitment, it was required to submit an appeal to USAC within 60 days of the date of the issuance of the FY 2015 funding commitment letter.¹⁶ As explained above, USAC is not authorized to waive the FCC's rules and requirements for the HCF Program.¹⁷ Thus, where the Appeal requests that USAC extend the funding end date for FRN 15680111, NYCBP must seek relief directly from the FCC on this matter, as it did not appeal the funding end date to USAC within 60 days of the date of the issuance of the FY 2015 funding commitment letter.¹⁸

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 available at:

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

Sincerely,

/s/ Universal Service Administrative Company

¹⁴ See *supra* note 7.

¹⁵ While USAC did not explicitly state in its July 20, 2018 email why it was unable to extend the funding end date for NYCBP's FY 2015 funding commitment, the funding end date for FRN 15680111 could not be extended because it would result in NYCBP receiving a multi-year commitment that is greater than three funding years and support that is greater than the amount provided in the funding commitment letter, which is inconsistent with FCC rules and requirements. See *supra* notes 4 and 6.

¹⁶ See *supra* note 7.

¹⁷ See *supra* note 8.

¹⁸ See *supra* note 9.