

September 28, 2017

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12<sup>th</sup> Street, SW,  
Room TW-A325  
Washington, SC 20554

**VIA ELECTRONIC COMMENT  
FILING SYSTEM**

Re: In the matter of Request for Review by the Arkansas Department of Health of Decision of  
Universal Service Administrator

Rural Health Care Program: WC Docket No. 02-60

Program:	HCF Program
Funding Year:	2016
Health Care Provider Number:	48720
Health Care Provider Name:	Arkansas Department of Health
FCC Form 462 Application Number:	16931211

I. Introduction

On August 8, 2017, the Universal Service Administrative Company (USAC) denied the Arkansas Department of Health's (ADH) appeal to reverse the Rural Health Care Program's (RHCP) denial of ADH's Form 462 application. *See* Exhibit 1. On January 9, 2017, RHCP had denied ADH's Form 462 application for being "[n]on-responsive to an information request..." *See* Exhibit 2. Pursuant to the Federal Communications Commission's (FCC) appeal process of an administrator's decision, this Letter of Appeal is submitted as ADH's formal appeal of USAC's appeal denial.

ADH asserts that RHCP's notification method in this case deviated from its previous course of conduct regarding notification requests for supplementary information, and the deviation prevented the request for supplementary information from being appropriately addressed by ADH. It was not, and never has been, ADH's intent to be non-responsive to an information request. As a result, ADH respectfully requests that the FCC overturn USAC's denial of ADH's appeal and allow ADH to provide the requested supplementary information included as an attachment. *See* Exhibit 3.

II. Discussion

a. *Timeline of Events Leading to Denial of Form 462*

On December 14, 2016, Jeremy Matkovich, on behalf of USAC's Rural Health Care Division, sent an e-mail to ADH requesting additional information. *See* Exhibit 4. Important to this Letter of Appeal is the fact that the e-mail requesting additional information was not sent from the customary [RHC-HCP@usac.org](mailto:RHC-HCP@usac.org) email address; instead, the request for information was sent from the e-mail address [Jeremy.Matkovich@usac.org](mailto:Jeremy.Matkovich@usac.org). The email requested the following additional information:

Submit documentation that verifies that the consortium has a viable source of funding for the 35% undiscounted portion of supported costs. The consortium may submit a letter signed by an officer, director or other authorized employee of the Consortium Leader. The letter should include the following:

1. The identity of the entity that will provide the 35% contribution.
2. The type of eligible source of funding (HCP Budget, grant/loan, etc.).

\* \* \* \*

Submit a corrected amount for Column AE, or if the amount entered on Column AE is correct, submit an explanation of the discrepancy, or submit corrected documentation.

*See* Exhibit 4. The e-mail dated December 14, 2016, also stated that the additional information had to be provided by December 29, 2016. *See* Exhibit 4. However, due to the notification method, appropriate personnel did not receive the notification, and ADH did not provide the requested supplemental information.

Consequently, on January 9, 2017, USAC sent a Letter of Denial to ADH. *See* Exhibit 2. However, sending the initial request for information from [Jeremy.Matkovich@usac.org](mailto:Jeremy.Matkovich@usac.org) has not been USAC's or RHCP's normal course of conduct for notifying ADH of the need for additional information. The standard notification method from RHC to ADH has used the protocol of [RHC-HCP@usac.org](mailto:RHC-HCP@usac.org) and not that of an individual; this change in notification method caused ADH to inadvertently overlook the RHCP request for supplemental information.

*b. Example of Notification of Request for Additional Information from [RHC-HCP@usac.org](mailto:RHC-HCP@usac.org)*

An example of RHCP's request for supplemental information is identified in an e-mail from RHCP dated December 28, 2016 (Funding Request Number 16928441 and Health Care Provider Number 48720) for additional information. In that communication, RHCP sent its e-mail request to ADH using the [RHC-HCP@usac.org](mailto:RHC-HCP@usac.org) protocol as the sender. *See* Exhibit 5. The December 28, 2016 request for additional information set a response deadline for January 11, 2017; based on the sender's naming protocol, the request for supplemental information was routed to the appropriate personnel, and ADH submitted its response in accordance with the requested timeline. *See* Exhibit 5. RHCP's course of conduct with ADH reflects usage of the [RHC-HCP@usac.org](mailto:RHC-HCP@usac.org) as the sender's naming protocol, and ADH has implemented its response procedures on that basis.



*c. Example of a Previous Request for Additional Information From Another USAC Program*

The State of Arkansas has also had extensive interaction with USAC's Schools and Libraries Division (SLD). During these interactions, SLD has sent requests to the State of Arkansas for additional information. These requests have been sent from the sender's naming protocol, [portal@usac.org](mailto:portal@usac.org). See Exhibit 6. Important to this appeal is that these requests have not been sent from an e-mail address with an individual's name, but from the USAC portal. This course of action is consistent with RHCP's naming protocol, and ADH has implemented its response procedures based on this naming convention.

*d. Applicable FCC Ruling*

In *In the Matter of Alpaugh Unified School District, CA et. al*, FCC 07-36, CC Docket No. 02-6, the FCC granted 78 appeals of different school districts which had failed to respond to additional information requests within the required time frames. *Requests for Review of the Decisions of the Universal Services Administrator by Alpaugh Unified School District, Alpaugh, CA, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-523576, et al., CC Docket No. 02-6, Order adopted March 22, 2007. See Exhibit 7. In the *Alpaugh* order, the FCC stated:

[T]hese appeals involved a procedural error of the part of the Petitioners, not a failure to adhere to a core program requirement or a misuse of funds. As the Commission has noted previously, given that any violated that occurred were procedural, not substantive, we find that the complete rejection of these applications is not warranted. Furthermore, these appeals involved a processing deadline, not a program rule. Although deadlines are necessary for the efficient administration of the program, in these cases, the applicants have demonstrated that rigid adherence to such procedures does not further the purposes of section 254(h) of the Telecommunications Act of 1996 or serve the public interest

*Id* (citations omitted). Of central importance to the FCC in its ruling was the fact that each school did not fail to adhere to a core program requirement of misuse of funds, and the failure to provide additional information was a simple procedural mistake on the part of the schools. *Id*. In this case, the FCC's decision in *Alpaugh* has direct application as the basis for ADH's appeal.

*e. Application of the Alpaugh Ruling to RHCP's Denial Letter*

ADH's failure to timely respond to RHCP's request for additional information was not a substantive violation of FCC rules or a misuse of funds, but rather a simple procedural error that occurred because of ADH's reliance on USAC's normal course of conduct when requesting additional information. As noted in subsections *a*, *b*, and *c* of this appeal, ADH has become accustomed to receiving additional information requests through e-mail from a RHC address or a USAC portal address and not from an individual. Based on course of conduct, ADH has instituted a system to flag and respond to e-mail addresses like [rhcaadmin@usac.org](mailto:rhcaadmin@usac.org) and [RHC-HCP@usac.org](mailto:RHC-HCP@usac.org). In light of this reliance on USAC's normal course of conduct, ADH did not flag and respond to the information request at issue because it was sent from the e-mail address [Jeremy.Matkovich@usac.org](mailto:Jeremy.Matkovich@usac.org). As in *Alpaugh*, ADH's inadvertent

failure to respond is neither intentional nor substantive, but involves a processing deadline rather than a program rule.

*f. Beneficial Notification Procedures Currently Employed by Another USAC Program*

As described in subsection *c*, the State of Arkansas has extensive dealings with USAC's Schools and Libraries Division via RHCP's sister program, E-Rate. While ADH fully acknowledges the separate nature of the two programs, they are both administered and controlled by USAC. One major benefit that the E-Rate Program provides to its applicants is an automated reminder notice in the event that any requested supplemental information has not been provided. *See* Exhibits 8, 9, 10, and 11. This procedure acts as a safeguard for applicants when, for example, a request for additional information has been overlooked or sent to the wrong individual. Again, ADH in no way asserts that RHCP and E-Rate should adhere to the same procedural requirements, however the notification benefits provided to applicants under the E-Rate program allow for any mistakes or oversight to be corrected in a much more efficient manner.

III. Conclusion

ADH inadvertently failed to respond to a request for supplemental information based on RHCP's course of conduct in its notification method. The omission involves a processing deadline, not a program rule, and is analogous to the issues addressed in the FCC's *Alpaugh* ruling. As a result, ADH respectfully requests that the FCC overturn USAC's denial of ADH's appeal of RHCP's denial of ADH's Form 462 application and allow ADH to submit the requested documentation as USAC's rigid adherence to RHCP's processing deadline would not further the purposes of the Telecommunications Act of 1996 or serve the public interest.

Respectfully submitted



Anthony W. Black  
General Counsel

Arkansas Department of Information Systems  
One Capitol Mall, Third Floor  
P.O. Box 3155  
Little Rock, Arkansas 72201  
Telephone: (501) 682-1011  
Facsimile: (501) 682-4310  
[anthony.black@arkansas.gov](mailto:anthony.black@arkansas.gov)


Enclosures

cc: Universal Service Administrative Co., Rural Health Care Division

## CERTIFICATE OF SERVICE

I certify that on September 28, 2017, I have caused the Letter of Appeal and Exhibits to be delivered via FEDEX Express Standard Overnight Service, No. 8565 0049 4941, to the following:

Universal Service Administrative Co.  
Rural Health Care Division  
700 12<sup>th</sup> Street N.W., Suite 900  
Washington, D.C. 20005



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Anthony W. Black  
General Counsel

Arkansas Department of Information Systems  
One Capitol Mall, Third Floor  
P.O. Box 3155  
Little Rock, Arkansas 72201  
Telephone: (501) 682-1011  
Facsimile: (501) 682-4310  
[anthony.black@arkansas.gov](mailto:anthony.black@arkansas.gov)