

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

In the matter of

WC Docket No. 02-60

Rural Health Care Support Mechanism

Consortium #44647 American Telemedicine
Connect Consortium, Inc.

Request of American Telemedicine Connect
Consortium, Inc. for Waiver of the technical,
but not substantial, submission 462 rules set forth
in Section 54.675 (c) (4) of the Commission's
rules.

REQUEST FOR WAIVER

Pursuant to Section 1.3 of the Commission's rules, 47 C.F.R. 1.3, the Project Coordinator ("Coordinator") for American Telemedicine Connect Consortium Inc. ("ATMCC," Consortium # 44647) hereby requests a waiver of the Form 462 filing procedure in form but not substance. The procedure requires the Coordinator to submit a separate 462 for each individual vendor awarded a contract as a result of the 461 RFP process (in this case, for RFP # 100021853) under the Healthcare Connect Fund ("HCF") universal service support mechanism contained in Section 54.675 (c) (4) of the Commission's rules. The Coordinator erred in signing, certifying and submitting a single Form 462 appended with the documentation, analysis and supporting information for RFP #100021853's Funding Request Numbers ("FRNs"), instead of in duplicate seven times for each of the seven vendors' FRNs.

Background

A. HCF provisions

HCF's provisions 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 Procedure Act and the provisions of the chapter.¹ Note too, the Commission has waived HCF's provisions in the past where special circumstances warrant a deviation from the general rule and such deviation would serve the public interest, or where the particular facts make strict compliance inconsistent with the public interest.²

B. The Coordinator's Intention

Before the window's closing on June 30, 2017 (the 462 filing "deadline"), as shown in Attachment 1 - ATMCC's Portal Contents, page 1, by June 30, 2017, the Coordinator completed and uploaded to ATMCC's USAC portal the seven vendors' network cost worksheets resulting from its RFP # 100021853 as part of the consortium members' application for HCF subsidy funding. Six of these network cost worksheets with FRNs, 17268841, 17275711, 17269041, 17271401, 17275641 and 17275711 relate to the vendors selected as a result of the RFP process, and the other one, FRN 17277311, is a network cost worksheet and supporting information for a vendor whose sale and installation of network equipment at North Big Horn Hospital (HCP # 12256) during the previous year was eligible for a subsidy under the order's provisions for consortia members. The Coordinator, therefore, only technically "submitted" the final Form 462, FRN 17269511, that was edited and uploaded last to ATMCC's portal.

The information the Coordinator submitted in FRN 17269511, depicted at the bottom of Attachment 1, page 2 and continued on page 3, contains the information that was expected to be

¹ 47 C.F.R. section 1.3.

² *Northeast Cellular Telephone Co. v FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1157, (D.C. Cir. 1969), affirmed by *Wait Radio v. FCC*, 459 F.2d 1203 (D.C. Cir 1972)

considered for all of consortium # 100021853 FRNs, specifically, 1) on page 2, the six bids ATMCC received and their comparative analysis based on the factors required for RFP # 100021853's awards, labeled "Competitive Bid(s)" and "Cost Effectiveness Evaluation"; 2) the summary of the group # 100021853's RFP process for its twelve members, labeled "Viable Source Letter", and 3) the contract notes, two on page 2, a) for HCP 53605, Wyoming Medical Center, in file "Wyoming Medical Center - FIA -157961- signed.pdf," and b) for HCP 24125, Crook County Medical Service, "iCloud Mail - Re: Range contracts.pdf," and one on page 3, c) for HCP 12981, West Park Hospital, a note about its change in authorized signature, in file "iCloud Mail - WPH Contract.pdf," all of which was explanatory information required for group # 100021853's application submission, and 4) FRN's 17269511 individual network cost worksheet and its associated information for HCP 17433, St. John's Medical Center, (labeled Form, Excel and email on page 3). Given that it would have meant duplicating USAC's certifications and the submission of the same information in points 1-2 seven times, the Coordinator believed the one 462 submission certified and submitted the supporting information for all of consortium # 100021853's FRNs, whose specific FRN information for each member's services had been uploaded already into ATMCC's USAC portal.

First and most important, the information that USAC requires to process a group's 462s was in USAC's possession as of the deadline, in ATMCC's portal within USAC's system. Each time an authorized portal user logs into the system, the user certifies that the portal and the information in it is USAC's property with following declaration:

IMPORTANT SYSTEM NOTICE - *This system is the property of the Universal Service Administrative Company (USAC) and is to be used to assist individuals with managing their entity's involvement in federal universal service programs. This system may be accessed by authorized users only. By logging in, the user represents himself or herself as an authorized user. This system is monitored, recorded and subject to audit. Any unauthorized use or misuse of this system is strictly prohibited and subject to legal action, including criminal prosecution and civil penalties. Use of this system indicates acceptance of these terms and system monitoring and recording.*

Second, on July 1, 2017, the day following submission, the Coordinator realized that a Form 462 “submission” was required for each vendor’s FRN in the Consortium as the receipt was examined for the 462’s submission from USAC. Receiving one receipt for all of the FRNs was consistent with how USAC sent one receipt for the 461 validation and subsequent posting for all the HCP members of group # 100021853. The Coordinator immediately emailed Blythe Albert, the Manager of Program Management at USAC about this misunderstanding, knowing that otherwise, six of the seven vendors network cost worksheets might not be considered a timely filing.

As shown in the email exchange with USAC’s Manager of Program Management (“Manager”), Attachment 2: Email exchange with Blythe Albert, Manager of Program Management, the Manager responded that USAC was forbidden from accepting “new, supplemental FRNs,” because the window had closed. The Manager confirmed that what the Coordinator had submitted would receive a careful review, noting that “If you simply need to add documents to FRN 17269511, a reviewer will reach out to you for any missing documentation.” The Manager also added if the Coordinator had “just” cause, the Coordinator could appeal to the FCC Commission to change its program rules. As predicted, ATMCC’s 462 reviewer, Rimsha Khan, did limit the scope of USAC’s analysis to just the one request for

vendor funding, although the reviewer agreed that the 462 had extraneous information. This 462, FRN # 17269511, for Millenium Networks dba Silver Star is now awaiting notification of its funding award for the window which closed on June 30, 2017.

Discussion

All of ATMCC's FRN information was in the portal as of June 30, 2017 and the submitted 462 clearly contained information related to more than one vendor and more than one HCP. The 462, as processed by USAC, is only for the funding of one vendor's service to one HCP in ATMCC's consortium. The FRNs the Coordinator asked USAC to notice were not "new" in substance, as they were uploaded as of June 30, 2017 within the filing deadline.

The members and vendors participating in ATMCC's consortium submitted a complete application. The staff at the USAC help desk, whose conversations were recorded and can be verified, urged the ATMCC Coordinator to make the application as complete as possible without missing the application submission deadline. This advice led to the Coordinator's submission of the three contract explanatory notes in the one 462 submission for all of the group's FRNs.

USAC should be legally permitted to use the information in its possession if the applicants and service providers involved made a good faith attempt to comply with USAC processes. The Commission has acknowledged previously³ that first time HCF filers under new HCF rules and procedures may need modifications to "ensure that otherwise eligible healthcare providers receive the funding they need to obtain the advanced telecommunications and

³ FCC decision DA 15-163, paragraph 5

information services, network equipment, and/or facilities necessary for the provision of health care.” ATMCC’s Coordinator and the individuals at its member HCPs, were new to HCF’s consortium requirements as ATMCC is the first consortium for general health care providers in the state of Wyoming.

The Coordinator made a reasonable interpretation of USAC procedures in a timely manner. The information required by USAC was submitted before the deadline. The USAC information system for filing the application has limitations that prevented the “filing” to be seen by USAC and reviewed consistently for all the healthcare providers in the consortium that met the subsidy funding requirements in substance.

Conclusion

This appeal is the result of the Coordinator’s writing to USAC when it asked filers to comment on their HCF experience. The USAC decision to not process all of ATMCC’s submitted 462 information, though on one 462 form, is contrary to HCF’s interest in assuring its process is “just”. Only one of ATMCC’s consortium members will receive funding as of July 1, 2017 when all of the members’ FRN information was in the portal as of the deadline and the submitted 462 clearly contained information related to more than one vendor and more than one healthcare provider. The USAC representative that responded, Nicole Taylor, directed the Coordinator to appeal USAC’s decision not to review all of ATMCC’s information as USAC cannot do so without the permission of the Commission (Attachment 3: Email Exchange with Nicole Taylor).

The HCF process is such that the Commission anticipates situations “where the particular facts make strict compliance inconsistent with the public interest.” In this case, the Commission should take into account the substance of ATMCC’s submission in order to meet HCF’s objective of serving the public interest by subsidizing non-profit healthcare providers’ use of the best broadband and internet service they can afford after undergoing a cost effective competitive bidding process. The HCF subsidy involves a complicated process and the program envisions that those who undergo it should be treated justly and in ATMCC’s case, the information from eligible HCPs who underwent the process is not being considered because of a procedure misunderstanding by the Coordinator. Giving USAC permission to process all the information in the submitted 462 application for funding beginning as of July 1, 2017 will benefit the public interest.

Therefore, the Coordinator requests that the Commission under the provisions of 47 C.F.R. 1.3 waive the multiple 462 technical submission contained in Section 54.675 (c) (4) for ATMCC’s FRNs as they were completed and in USAC’s possession as of the filing deadline, June 30, 2017 and it is just to award ATMCC’s members HCF subsidy funding based on that submission date.

Respectfully Submitted,

Claire Hurley
President and Project Coordinator
American Telemedicine Connect Consortium, Inc.
2 Pheasant Lane
Westport, CT 06880
(617) 584-6663, email: chh.atmcc@icloud.com