

Administrator's Decision on Rural Health Care Program Appeal

Via Electronic Mail

September 27, 2018

Ms. Deb LaMarche
Utah Telehealth Network
101 Wasatch Drive, Room 215
Salt Lake City, UT 84112

Re: Utah Telehealth Network – Appeal of USAC's Decision for
Funding Request Numbers 1727933, 1727961, and 1728095

Dear Ms. LaMarche:

The Universal Service Administrative Company (USAC) has completed its evaluation of the December 8, 2017 letters of appeal (Appeal) submitted by Utah Telehealth Network on behalf of its member sites: Monument Valley Community Health Center, health care provider (HCP) number 11645; Navajo Mountain Community Health Center, HCP 17003; and Valley Medical Clinic, HCP 24074 (UTN).¹ On October 9, 2017, USAC denied UTN's funding requests for support under the federal Universal Service Telecommunications Program (Telecom Program) for funding year (FY) 2017.² The Appeal requests that USAC reverse the denial of the FY 2017 funding request numbers (FRNs) 1727933, 1727961, and 1728095 (Appeal FRNs).³

USAC has reviewed the Appeal and the facts related to this matter and has determined that the Federal Communications Commission's (FCC) rules and requirements support the denial of UTN's FRNs because UTN's contracts were signed prior to the allowable contract selection dates (ACSDs). Therefore, USAC denies the Appeal.

The Telecom Program requires HCPs to conduct a competitive bidding process for eligible services by submitting an FCC Form 465 and waiting at least twenty-eight (28) days before making commitments with the selected telecommunications carrier(s).⁴ The ACSD is the first day the HCP is permitted to select a service provider and sign a contract, which is twenty-nine (29) calendar

¹ Emails from Deb LaMarche, Associate Director, Utah Telehealth Network (UTN), to the Rural Health Care Division, USAC (Dec. 8, 2017) (Appeals).

² See Emails from Rural Health Care Division, USAC, to UTN (Oct. 9, 2017) (Administrator's Denial of Appeal FRNs).

³ *Id.*

⁴ See 47 C.F.R. § 54.603(b).

days after the posting date indicated on the FCC Form 465 Receipt Acknowledgment Letter.⁵ Under FCC rules, there is a limited exception that permits an HCP to choose to continue to receive service under an existing contract signed before the end of the required twenty-eight (28) day bidding period for the applicable FCC Form 465, provided that “(i) the applicant is choosing to continue service under an existing contract; (ii) the applicant competitively bid the services for the new funding year; and (iii) the applicant decides, after reviewing the competitive bids, to continue with the existing contract.”⁶ HCPs that consider an existing contract as a bid under these conditions must wait the required twenty-eight (28) days before deciding to continue services under the existing contract.⁷

UTN’s Funding Requests

1. Monument Valley Community Health Center (FRN 1727933)

On June 1, 2017, Monument Valley Community Health Center submitted an FCC Form 465 requesting support for telecommunications services for FY 2017.⁸ On the same day, USAC approved the FCC Form 465, with the resulting June 29, 2017 ACSD.⁹ UTN entered into a 36-month service agreement that would take effect on July 1, 2017, with an optional two-year extension, followed by an optional three-year extension with Conterra Ultra Broadband, LLC for Microwave Service (150 Mbps).¹⁰ The contract was signed on June 28, 2017 and June 29, 2017.¹¹ Addendum No. 1 to the contract was signed on the same dates.¹²

On June 30, 2017, Monument Valley Community Health Center submitted an FCC Form 466 requesting Microwave Service (150 Mbps) from Conterra Ultra Broadband, LLC and provided

⁵ *Id.*; see USAC, Telecommunications Program, Competitive Bidding, available at <https://www.usac.org/rhc/telecommunications/health-care-providers/competitive-bidding.aspx> (last visited July 18, 2018).

⁶ *Request for Review Franciscan Skemp Waukon Clinic*, WC Docket No. 02-60, Order, 29 FCC Rcd 11714, 11715, para. 3 (2014) (*Waukon Order*) (citing to *Request for Review of the Decision of the Universal Service Administrator by Kalamazoo Pub. Schs.*, CC Docket No. 96-45, Order on Reconsideration, 17 FCC Rcd 22154, 22157-58, paras. 6-7 (2002)).

⁷ *Id.*

⁸ See FCC Form 465, Health Care Providers Universal Service Description of Services Requested & Certification Form, OMB 3060-0804 (July 2014) (*FCC Form 465*), FY 2017 No. 43176887 (June 1, 2017) (*FY 2017 FCC Form 465 No. 43176887*).

⁹ See Email from Rural Health Care Division, USAC, to Deb LaMarche, UTN (June 1, 2017).

¹⁰ Wide Area Network Telecommunications Service Agreement between Conterra Ultra Broadband, LLC and Utah Education and Telehealth Network (July 1, 2017) (MVCHC Contract).

¹¹ *Id.* The contract was signed by the following individuals: Ray Timothy, CEO of Utah Education and Telehealth Network, on June 28, 2017; Steve Hess, CIO of the University of Utah, on June 29, 2017; and Shane Turley, Senior Vice President of the General Counsel for Conterra Ultra Broadband, LLC, on June 29, 2017.

¹² *Id.* The addendum was signed by Ray Timothy, CEO of Utah Education and Telehealth Network, on June 28, 2017, and Shane Turley, Senior Vice President of the General Counsel for Conterra Ultra Broadband, LLC, on June 29, 2017.

June 30, 2017 as the “Date Contract Signed or Date HCP Selected Carrier.”¹³ On October 9, 2017, USAC denied FRN 1727933 because Monument Valley Community Health Center did not comply with the FCC’s competitive bidding rules when it signed the Conterra Ultra Broadband contract before the June 29, 2017 ACSD for Monument Valley Community Health Center’s FY 2017 Form 465.¹⁴

2. Navajo Mountain Community Health Center (FRN 1727961)

On June 1, 2017, Navajo Mountain Community Health Center submitted an FCC Form 465 requesting support for telecommunications services for FY 2017.¹⁵ On the same day, USAC approved the Form 465, with the resulting June 29, 2017 ACSD.¹⁶ UTN entered into a 36-month service agreement that would take effect on July 1, 2017, with an optional two-year extension, followed by an optional three-year extension with Conterra Ultra Broadband, LLC for Microwave Service (150 Mbps).¹⁷ The contract was signed on June 28, 2017 and June 29, 2017.¹⁸ Addendum No. 1 to the contract was signed on the same dates.¹⁹

On June 30, 2017, Navajo Mountain Community Health Center submitted an FCC Form 466 requesting Microwave Service (150 Mbps) from Conterra Ultra Broadband, LLC and provided June 29, 2017 as the “Date Contract Signed or Date HCP Selected Carrier.”²⁰ On October 9, 2017, USAC denied FRN 1727961 because Navajo Mountain Community Health Center did not comply with the FCC’s competitive bidding rules when it signed the Conterra Ultra Broadband contract before the June 29, 2017 ACSD for Navajo Mountain Community Health Center’s FY 2017 Form 465.²¹

3. Valley Medical Clinic (FRN 1728095)

On June 1, 2017, Valley Medical Clinic submitted an FCC Form 465 requesting support for telecommunications services for FY 2017.²² On the same day, USAC approved the Form 465,

¹³ See FCC Form 466, Health Care Providers Universal Service Funding Request and Certification Form, OMB 3060-0804 (*FCC Form 466*) for FY 2017, FRN 1727933 (June 30, 2017) (*FY 2017 FCC Form 466 FRN 1727933*).

¹⁴ Email from the Rural Health Care Division, USAC, to Deb LaMarche, UTN; Michael Jensen, Utah Navajo Health System; and, Juanita Cook, Conterra Ultra Broadband, LLC (Oct. 9, 2017).

¹⁵ See *FCC Form 465*, FY 2017 No. 43176898 (June 1, 2017) (*FY 2017 FCC Form 465 No. 43176898*).

¹⁶ See Email from Rural Health Care Division, USAC, to Deb LaMarche, UTN (June 1, 2017).

¹⁷ Wide Area Network Telecommunications Service Agreement between Conterra Ultra Broadband, LLC and Utah Education and Telehealth Network (July 1, 2017) (NMCHC Contract).

¹⁸ *Id.* The following individuals signed the contract: Ray Timothy, CEO of Utah Education and Telehealth Network, on June 28, 2017; Steve Hess, CIO of the University of Utah, on June 29, 2017; and Shane Turley, Senior Vice President of the General Counsel for Conterra Ultra Broadband, LLC, on June 29, 2017.

¹⁹ *Id.* The addendum was signed by Ray Timothy, CEO of Utah Education and Telehealth Network, on June 28, 2017, and Shane Turley, Senior Vice President of the General Counsel for Conterra Ultra Broadband, LLC, on June 29, 2017.

²⁰ See *FCC Form 466*, FY 2017, FRN 1727961 (June 30, 2017) (*FY 2017 FCC Form 466 FRN 1727961*).

²¹ Email from the Rural Health Care Division, USAC, to Deb LaMarche, UTN; Michael Jensen, Utah Navajo Health System; and, Juanita Cook, Conterra Ultra Broadband, LLC (Oct. 9, 2017).

²² See *FCC Form 465*, FY 2017 No. 43176888 (June 1, 2017) (*FY 2017 FCC Form 465 No. 43176888*).

with the resulting June 29, 2017 ACSD.²³ UTN entered into a five-year service agreement with South Central Utah Telephone Association, Inc. and South Central Communications, Inc., with an execution date of April 28, 2017, for Ethernet (25 Mbps) services.²⁴ The contract was signed on May 1, 2017 and May 2, 2017.²⁵ Exhibit B of the contract was signed on June 28, 2017 and June 29, 2017.²⁶

On June 30, 2017, Valley Medical Clinic submitted an FCC Form 466 requesting Ethernet (25 Mbps) services from South Central Utah Telephone Association, Inc. and provided June 30, 2017 as the “Date Contract Signed or Date HCP Selected Carrier.”²⁷ On October 9, 2017, USAC denied FRN 1728095 because Valley Medical Clinic did not comply with the FCC’s competitive bidding rules when it signed the South Central Utah Telephone Association, Inc. contract before the June 29, 2017 ACSD for Valley Medical Clinic’s FY 2017 Form 465.²⁸

UTN’s Appeal

On December 8, 2017, UTN appealed USAC’s denials of FRNs 1727933, 1727961, and 1728095.²⁹ In the Appeal, UTN requests that USAC rescind the denials of funding and give the applications proper consideration.³⁰ UTN states, “[w]hile it does appear that the competitive bidding rules were technically violated by signing an agreement on the 27th instead of 28th day, the intent and spirit of the competitive bidding rules were upheld and exceeded for Funding Year 2017.”³¹ UTN explains in the Appeal that it received no bids for the aforementioned sites through the past few years of competitive bidding periods, and that the competitive bidding processes for the sites for FY 2017 followed University of Utah, State of Utah and E-Rate procurement rules.³² UTN further explains that the filing windows in FY 2016 and FY 2017 created a hardship and, when combined with its end of Pilot Program funding, added complexity and effort.³³ UTN also

²³ See Email from Rural Health Care Division, USAC, to Deb LaMarche, UTN, and Sherrie Pandya, Kane County Hospital (June 1, 2017).

²⁴ Wide Area Network Service and Support Agreement between South Central Utah Telephone Association, Inc., South Central Communications, Inc., and the University of Utah on behalf of its Utah Education and Telehealth Network (April 28, 2017) (VMC Contract).

²⁵ *Id.* The following individuals signed the contract: Michael East, General Manager and CEO of South Central Utah Telephone Association, Inc. and South Central Communications, Inc., on May 2, 2017; Ray Timothy, Executive Director of Utah Education and Telehealth Network, on May 1, 2017; and, Steve Hess, CIO of the University of Utah, on May 1, 2017.

²⁶ *Id.* Exhibit B was signed by Ray Timothy, CEO of Utah Education and Telehealth Network, on June 28, 2017, and Michael East, General Manager and CEO of South Central Communications, on June 29, 2017.

²⁷ See FCC Form 466, FY 2017, FRN 1728095 (June 30, 2017) (FY 2017 FCC Form 466 FRN 1728095).

²⁸ Email from the Rural Health Care Division, USAC, to Deb LaMarche, UTN; Sherrie Pandya, Kane County Hospital; J. Palmer, Kane County Hospital; and, Wendy Stewart, South Central Communications, Inc. (Oct. 9, 2017).

²⁹ See generally Appeal at 1.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

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asserts that the rigor of its competitive bidding processes met the goals of ensuring that the process of obtaining network services is fair and that HCPs have access to the best possible pricing.³⁴

Administrator's Decision on Appeal

Based on a review of the facts, we find that UTN did not comply with the FCC's competitive bidding rules.³⁵ As noted above, UTN requested support for telecommunications services on FCC Forms 466 (FRNs 1727933, 1727961, and 1728095) for FY 2017 using contracts that were signed before the ACSDs for each FCC Form 465. Specifically, USAC finds that UTN's competitive bidding processes did not comply with FCC rules governing contract execution in the Telecom Program. Because USAC is not authorized to waive the FCC's rules and requirements for the Telecom Program, USAC denies the Appeal.

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

³⁴ See *id.*

³⁵ See 47 C.F.R. § 54.603(b).