

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Rural Health Care)	
Universal Service Support Mechanism)	
)	
RE: Appeal of Administrator's Denial)	
of FRNs 17267181, 17269321, 17270941,)	
17273181, 17273581, 17274321, and 17281301)	
submitted by Utah Telehealth Network)	
)	CC Docket No. 02-60
)	
)	

**Appeal of Administrator's Denial of Rural Health Care Program 2017 Funding Requests
and Request for Waiver
RE: Healthcare Connect Fund Program FCC Form 462**

I. INTRODUCTION AND SUMMARY

The Utah Education and Telehealth Network (UETN) is the state's designated and duly authorized statewide Education and Telehealth Network¹. UETN's mandated mission parallels the goals of Universal Service with respect to education and healthcare. Part of UETN's responsibilities include the "development of telehealth services as a means of reducing health care costs and increasing health care quality and access, with emphasis on assisting rural health care providers and special populations." The Utah Telehealth Network component of UETN has

¹ Utah Code 53B-17-105, Utah Education and Telehealth Network. 2(g) in consultation with health care providers from a variety of health care systems, explore and encourage the development of telehealth services as a means of reducing health care costs and increasing health care quality and access, with emphasis on assisting rural health care providers and special populations.

surmounted numerous challenges to build a coalition of rural healthcare providers as a means to accomplish this aspect of the UETN telehealth mission. The taxpayers of Utah expect UETN to accomplish our goals in the most efficient and sensible manner available to us. To maximize government efficiencies UETN implements legislative imperatives by leveraging UETN's existing statewide highly scalable private sector fiber infrastructure to promote telehealth adoption and reduce costs for all citizens. Accomplishing this includes our mandate to qualify and apply for all federal funding for which the services UETN facilitates are eligible. UETN's long experience working with USAC in both the E-rate and RHC programs has given us the impression that the FCC and USAC are equally concerned about finding the most cost-effective solutions that will help us expeditiously achieve USF goals. In accomplishing the UETN mission, UETN now provides one of the most efficient and functional statewide education and telehealth broadband networks in the nation.

As documented in the record, UTN applied for HCF program funds via the FCC Form 462 on June 30, 2017, citing competitive bidding exemptions for E-rate negotiated contracts which make up the overwhelming majority of UETN's procurement and contracting. USAC denied all FRNs on July 28, 2017 claiming the cited contracts as "not E-rate". UETN appealed these denials to USAC on August 11, 2017, as described in the attached USAC Appeal Denial Letter, dated September 27, 2018. As UTN made clear in the original appeal, all contracts resulted from a complex procurement process undertaken by UETN to leverage both E-rate and RHC needs to obtain better and more cost-effective pricing for all services specified under relevant vendor master agreements. UETN acted in good faith to qualify RHC procurement relying upon the RHC program's competitive bidding exemptions as spelled out by USAC.²

² See <https://www.usac.org/rhc/healthcare-connect/Consortia/step04/exemptions.aspx> , #2. Purchasing Services from a master service agreement (MSA) negotiated by a federal, state, Tribal, or local government entity on its

UETN is a duly authorized government entity entitled to bid, procure, order, implement, and pay the non-discounted share for eligible services obtained on behalf of entities eligible for both the RHC and E-rate programs. In carrying out UETN's statutory duties, we've complied with all state, local, and federal competitive bidding requirements as so certified on required FCC Forms necessary for UETN's to participation in both the RHC and E-rate programs.

UETN asserts that it is duly authorized to negotiate contracts that constitute a "Government Master Service Agreement (MSA)" as defined in the statute.³

Alternatively, if the FCC chooses to dismiss the above assertion, we would like to point out the misalignment of administrative processes that unfairly impede our state's efforts to direct USF funding towards broadband projects in the most un/underserved areas. UETN and by our efforts the citizens of Utah have benefitted greatly from nearly two decades of participation in USF programs. Nearly continuous interaction with USAC over this period should provide some familiarity with our state's approach to broadband deployment as undertaken by UETN. As UETN attempts to seek funding for our projects that are obviously eligible for USF funding, we've become painfully aware of the tensions that arise in complying with contentious program rules. These tensions are exposed in the application and subsequent appeal record for the listed RHC FRNs. The isolation of the two program's administration effectively codifies a one-year delay in implementation, as evidenced in the appeal and follow-up with RHC staff informing them of the approval of relevant contracts "as E-rate". In telephone conversations with USAC during the appeal process, UETN came to believe that as the E-rate review process concluded,

behalf, and which was awarded pursuant to applicable competitive bidding requirements. #5 Using a contract negotiated under the Schools and Libraries (E-rate) Program.

³ 47 C.F.R. § 54.642(2) Government Master Service Agreement (MSA). Eligible health care providers that seek support for services and equipment purchased from MSAs negotiated by federal, state, Tribal, or local government entities on behalf of such health care providers and others, if such MSAs were awarded pursuant to applicable federal, state, Tribal, or local competitive bidding requirements, are exempt from the competitive bidding requirements under this section.

we could inform USAC and these approvals would be taken into consideration during the RHC appeal process. Clearly this did not take place as USAC denied all FRNs on appeal.⁴ , claiming the lack of authority to waive FCC rules requiring the existence of “approved” E-rate master agreements prior to the certification of the Form 462. UETN had approved contracts in place at the time of certification, but programmatic misalignment of USAC processes and procedures would not allow timely processing. This has effectively erected insurmountable obstacles to UETN’s 2017 funding requests. We therefore seek relief from the FCC.

II. Request

The Utah Education and Telehealth Network (UETN) respectfully requests that the FCC overturn USAC’s denial of the FRNs listed in the attached Appendix A and allow USAC to review these funding requests on their merits and if necessary, we request that that FCC also waive the requirement that UETN’s MSA’s obtain E-rate approval prior to certification of the Form 462 or approval of FRNs citing such contracts. We also request that the FCC recognize UETN’s authority as a duly authorized state government entity and grant UETN a permanent competitive bidding exemption for all contracts that result from procurements that combine E-rate and RHC requests for proposals.

Respectfully submitted,

Ray Timothy

⁴ See USAC Denial page 4 of 6, “*Decision on Appeal for the FRNs listed in Appendix A*

In order for the FRNs listed in Appendix A to be exempt from competitive bidding under the E-rate program master contract exemption, FCC rules state that the contract must have been “*approved* in the schools and libraries universal service support program as a master contract”²⁰ (emphasis added). At the time the FY 2017 FCC Forms 462 for the FRNs listed in Appendix A were submitted (*i.e.*, the E-rate program master contract exemptions were claimed), the contracts had been submitted to USAC, but were not yet approved by USAC.²¹ Because USAC is not authorized to waive the FCC’s rules and requirements for the HCF Program,²² USAC is unable to reverse its denial of UTN’s funding requests listed in Appendix A and hereby denies that portion of the Appeal.

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