

Rachel Lynn Mehlenbacher

From: rhcadmin@usac.org
Sent: Friday, January 11, 2019 1:22 PM
To: Rachel Lynn Mehlenbacher
Subject: RHC HCF Program - FCC Form 462 - Denial Notice - HCP# 35645
Attachments: Form_462.pdf

Follow Up Flag: Flag for follow up
Flag Status: Flagged

Date: 11-Jan-2019
Program: HCF Program
Funding Year: 2018
Health Care Provider (HCP) Number: 35645
HCP Name: NY Community Broadband Partnership
FCC Form 462 Application Number: 18470881

The Universal Service Administrative Company (USAC)'s Rural Health Care (RHC) Program has reviewed the submitted FCC Form 462 and supporting documents for the HCP referenced above. USAC has denied the HCP's FCC Form 462 for the following reason(s):

- **USAC issued an information request to the HCP requesting supporting documentation to verify the information submitted on the FCC Form 462. The HCP responded to the information request with insufficient information. USAC contacted the HCP again to request additional information and/or documentation to cure the issues or deficiencies identified in the response. The HCP responded again with documentation that could not verify the corresponding information on the submitted FCC Form 462. In the absence of sufficient information and documentation to support the funding request, USAC is unable to find that the FRN referenced above complies with Federal Communications Commission (FCC) rules governing the Healthcare Connect Fund. Therefore, USAC denies the FRN.**

All account holders associated with the HCP will be copied on this and all correspondence from USAC related to this account.

Next Steps

If you wish to appeal this decision, you must file an appeal with USAC within 60 days of the date of this letter. Detailed instructions for filing appeals are available on the USAC website at <http://usac.org/about/about/program-integrity/appeals.aspx>.

For More Information

Please do not reply directly to this email, as emails to this account will not be delivered to the RHC Program team. For questions or assistance, or if this email has been received in error, contact the Rural Health Care Program Help Desk at (800) 453-1546 between 8 AM and 5 PM Monday - Friday or by email at rhc-assist@usac.org.

For more information about the HCF Program application process, refer to the HCF Program Getting Started web page at <http://www.usac.org/rhc/healthcare-connect/process-overview/default.aspx>.

For more information about the FCC Form 462, visit the HCF Program Forms web page at <http://www.usac.org/rhc/healthcare-connect/tools/forms>.

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Administrator's Decision on Rural Health Care Program Appeal

Via Electronic Mail

September 30, 2019

Ms. Rachel L. Mehlenbacher
NY Community Broadband Partnership
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 18470881

Dear Ms. Mehlenbacher:

The Universal Service Administrative Company (USAC) has completed its evaluation of the March 6, 2019 letter of appeal (Appeal) submitted by NY Community Broadband Partnership (NYCBP), health care provider number 35645.¹ On January 11, 2019, USAC denied NYCBP's funding request for support under the federal Universal Service Rural Health Care (RHC) Healthcare Connect Fund Program (HCF Program) for funding year 2018 (FY 2018).² The Appeal requests that USAC: (1) reverse the denial of funding for Expense Items 1-8 and 10-12 in funding request number (FRN) 18470881; (2) adjust the monthly recurring cost for Expense Items 1, 5, and 8 in the funding request; and (3) remove Expense Item 9 from the funding request.³

USAC has reviewed the Appeal and the facts related to this matter, and has determined that Federal Communications Commission (FCC) rules and requirements support the denial of funding for the Expense Items listed in Appendix A (Expense Items 1-4 and 6-7) because NYCBP did not provide sufficient documentation to support the information entered on the FCC Form 462 and Network Cost Worksheet (NCW) for these items. Specifically, as discussed in detail below, NYCBP failed to provide documentation that clearly identifies the bandwidth for these Expense Items, as required by FCC rules. Therefore, USAC denies the Appeal with respect to these Expense Items. USAC has also determined that FCC rules and requirements support reversing its decision for the Expense Items listed in Appendix B (Expense Items 5, 8, and 10-12) because USAC finds that NYCBP has provided sufficient documentation to support the

¹ See Letter from Mary Zelanay, CEO, Finger Lakes Community Health, NY Community Broadband Partnership, to the Rural Health Care Division, USAC (Mar. 6, 2019) (Appeal). Although the appeal letter is dated February 21, 2019, it was submitted to USAC via email on March 6, 2019. See Email from Rachel Mehlenbacher, Consortium Project Coordinator, to the Rural Health Care Division, USAC (Mar. 6, 2019).

² See Email from Rural Health Care Division, USAC, to NY Community Broadband Partnership (Jan. 11, 2019) (Administrator's Denial).

³ See Appeal.

information listed on its FCC Form 462 and NCW for these portions of its funding request. Therefore, USAC will proceed with its review of these Expense Items and adjust the monthly recurring costs for Expense Items 5 and 8, as requested in the Appeal. Finally, with respect to the Expense Item listed in Appendix C (Expense Item 9), USAC grants NYCBP's request to withdraw this portion of the funding request.

Background

FCC rules require eligible health care providers (HCPs) and consortia applying for discounts for eligible services in the HCF Program to submit requests for discounts to USAC by filing an FCC Form 462 (Funding Request Form) to provide information about the services selected and to certify that those services are the most cost-effective option of the offers received.⁴ If the request is for multiple eligible expenses or for a consortium, applicants must submit an NCW, which identifies each eligible expense item for which the HCP is seeking support.⁵ In addition to the FCC Form 462, HCPs are required to submit a contract or other documentation that clearly identifies the vendor(s) selected and the HCP(s) that will receive the services; the service, bandwidth, and costs for which support is being requested; and the term of the service agreement(s), if applicable (i.e. if services are not being provided on a month-to-month basis).⁶

As explained in the *Healthcare Connect Fund Order*, the FCC allows applicants to cure errors on their submissions after initial USAC review; however, "the responsibility to submit complete and accurate information remains at all times the sole responsibility of the applicant."⁷ The *Healthcare Connect Fund Order* further states that USAC will inform applicants in writing of: "(1) any and all ministerial or clerical errors that it identifies in the funding commitment request, along with a clear and specific explanation of how the selected participants can remedy those errors; (2) any missing, incomplete, or deficient certifications; and (3) any other deficiencies that USAC finds, including any ineligible network components or ineligible network components that are mislabeled in the funding request."⁸ If an applicant receives a notice that its funding request includes deficiencies, "it will have 14 calendar days from the date of receipt of the USAC written notice to amend or re-file its funding request for the sole purpose of correcting the errors identified by USAC."⁹ After

⁴ See 47 C.F.R. § 54.643(a); Rural Health Care (RHC) Universal Service, Healthcare Connect Fund, Funding Request Form, OMB 3060-0804 (July 2014) (FCC Form 462); FCC Form 462 Instructions, Rural Health Care Universal Service, Healthcare Connect Fund, Funding Request Form, OMB 3060-0804, at 2-3 (July 2014) (FCC Form 462 Instructions).

⁵ See FCC Form 462; FCC Form 462 Instructions at 3, 6, 8-9.

⁶ See 47 C.F.R. § 54.643(a)(3); *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678, 16797, para. 282 (2012) (*Healthcare Connect Fund Order*).

⁷ *Healthcare Connect Fund Order*, 27 FCC Rcd at 16803, para. 300.

⁸ *Id.* See also FCC Form 462 Instructions at 2-3.

⁹ *Id.* See also FCC Form 462 Instructions at 3.

reviewing the funding request, USAC issues a funding commitment letter or denial.¹⁰ USAC is not authorized to waive the FCC's rules and requirements for the HCF Program.¹¹

NYCBP's Funding Request

On June 29, 2018, NYCBP submitted an FCC Form 462 and NCW seeking support for services provided by Charter Communications Operating, LLC (Spectrum) under FRN 18470881.¹² This funding request included nine (9) Expense Items for NYCBP's consortia member HCPs.¹³ With its funding request, NYCBP submitted, among other documentation, a customer service order for fiber services from Spectrum.¹⁴ However, the customer service order did not support the information provided on the FCC Form 462 and NCW for all Expense Items included in the funding request.¹⁵

On September 10, 2018, USAC sent an information request to NYCBP, requesting that it provide additional documentation to support the information provided on the FCC Form 462 and NCW for FRN 18470881.¹⁶ In response to USAC's information request, NYCBP provided (1) a second service order for fiber services from Spectrum,¹⁷ and (2) a service order for coax services from Spectrum.¹⁸ However, USAC was unable to verify the service bandwidth for all Expense Items included in the funding request using the documentation provided.

Between September 21, 2018 and September 24, 2018, NYCBP requested a number of modifications to its funding request, including modification of the service cost and/or speed for certain Expense Items, as well as the addition of three Expense Items to the funding request.¹⁹

¹⁰ See *Healthcare Connect Fund Order*, 27 FCC Rcd at 16803, para. 302.

¹¹ 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.”).

¹² See FY 2018 FCC Form 462 for FRN 184708841 (June 29, 2018); Network Cost Worksheet for FRN 184708841 (June 29, 2018).

¹³ See *id.*

¹⁴ See Spectrum, Customer Service Order No. 10605599 for Fiber Services (June 29, 2018).

¹⁵ The Service Order from Spectrum only identified the HCP receiving the supported service, the cost of service, and bandwidth for Expense Item 4. See *id.* at 2.

¹⁶ See Email from Rural Health Care Division, USAC, to NY Community Broadband Partnership (Sept. 10, 2018).

¹⁷ See Spectrum, Customer Service Order No. 10778567 for Fiber Services (Sept. 21, 2018).

¹⁸ See Spectrum, Customer Service Order No. 10778698, for Spectrum Business Internet (Sept. 21, 2018).

¹⁹ See Email from Rachel Lynn Mehlenbacher, Consortium Program Coordinator, NY Community Broadband Partnership, to Rural Health Care Division, USAC (Sept. 21, 2018); Email from Rachel Lynn Mehlenbacher, Consortium Program Coordinator, NY Community Broadband Partnership, to Rural Health Care Division, USAC (Sept. 22, 2018); Email from Rachel Lynn Mehlenbacher, Consortium Program Coordinator, NY Community Broadband Partnership, to Rural Health Care Division, USAC (Sept. 24, 2018, 12:46pm EST); Email from Rachel Lynn Mehlenbacher, Consortium Program Coordinator, NY Community Broadband Partnership, to Rural Health Care Division, USAC (Sept. 24, 2018, 12:46pm EST).

USAC modified the funding request in accordance with NYCBP's requests, but was unable to verify the service speed for all Expense Items using the supporting documentation provided with the funding request and the documentation provided in response to USAC's information request.

On November 30, 2018, USAC sent a second information request to NYCBP, requesting that it provide additional documentation to support the bandwidth and service terms provided on the revised FCC Form 462 and NCW for each of the Expense Items.²⁰ In response to the information request, NYCBP resubmitted the same service orders from Spectrum that it had previously provided in response to USAC's September 10, 2018 information request.²¹

On January 11, 2019, USAC denied FRN 18470881 because NYCBP did not provide sufficient documentation to support the information entered on its FCC Form 462 and NCW for the funding request.²²

NYCBP's Appeal

On March 6, 2019, NYCBP appealed USAC's denial of FRN 18470881.²³ In the Appeal, NYCBP argues that the documentation it submitted in response to USAC's information requests supports the information provided for Expense Items 1-8 and 10-12 in FRN 18470881, and requests that USAC reverse its denial with respect to these items.²⁴ NYCBP also requests that USAC remove Expense Item 9 from its funding request,²⁵ and modify the cost of service for Expense Items 1, 5, and 8.²⁶

Administrator's Decision on Appeal

Denial of Expense Items Listed in Appendix A

NYCBP requests that USAC reverse the denial of funding for the Expense Items listed in Appendix A (Expense Items 1-4 and 6-7). However, USAC finds that NYCBP did not provide sufficient documentation to support the information entered on the FCC Form 462 and NCW for these Expense Items. Specifically, USAC was unable to confirm the service bandwidths for these Expense Items using the documentation provided with the funding request and in response to USAC's information requests. Although NYCBP asserts that the applicable bandwidths are listed

²⁰ See Email from Rural Health Care Division, USAC, to NY Community Broadband Partnership (Nov. 30, 2018).

²¹ See Email from Rachel Lynn Mehlenbacher, Consortium Program Coordinator, NY Community Broadband Partnership to Rural Health Care Division, USAC (Dec. 21, 2018); Spectrum, Customer Service Order No. 10778567 for Fiber Services (Sept. 21, 2018); Spectrum, Customer Service Order No. 10778698, for Spectrum Business Internet (Sept. 21, 2018).

²² See Administrator's Denial.

²³ See Appeal.

²⁴ See *id.* at 1-2.

²⁵ See *id.* at 2.

²⁶ See *id.* at 1-2.

in the transaction record in the Spectrum coax service order it submitted in response to USAC's information requests, USAC was unable to locate this information in either the transaction record or in any other portion of the service order. Because NYCBP did not provide sufficient documentation to support the information given on the FCC Form 462 for the Expense Items listed in Appendix A, as required by FCC rules, USAC denies the Appeal with respect to this portion of the funding request.²⁷

Reversal of Denial of Expense Items Listed in Appendix B

USAC finds that NYCBP has provided sufficient documentation to support the information entered on the FCC Form 462 and NCW for the Expense Items listed in Appendix B (Expense Items 5, 8, and 10-12). Accordingly, USAC reverses its decision with respect to the Expense Items listed in Appendix B, and will proceed with its review of this portion of NYCBP's funding request.²⁸ With respect to Expense Items 5 and 8, USAC will also adjust the monthly recurring charges, as NYCBP requests in the Appeal, before proceeding with its review.

Withdrawal of Expense Item Listed in Appendix C

Finally, NYCBP requests that USAC remove the Expense Item listed in Appendix C (Expense Item 9) from its funding request. Accordingly, USAC considers NYCBP's request for support for this Expense Item withdrawn, and does not address the sufficiency of the documentation provided for this portion of the funding request.

Conclusion

Although the documentation provided by NYCBP was insufficient to support the information entered on its FCC Form 462 for the Expense Items listed in Appendix A, USAC finds that it was sufficient to support the information entered on the funding request for the Expense Items listed in Appendix B. Therefore, USAC denies the Appeal with respect to the Expense Items listed in Appendix A, but will reverse its decision with respect to the Expense Items listed in Appendix B. USAC will also remove the Expense Item listed in Appendix C from FRN 18470881 in accordance with NYBCP's request in 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>.

²⁷ Accordingly, USAC also denies NYCBP's request for an adjustment of the monthly recurring charge for Expense Item 1.

²⁸ USAC's decision to reverse the denial of funding for these Expense Items does not guarantee that support will be approved for these Expense Items, and does not indicate that NYCBP complied with all of the FCC's rules and requirements with regards to these Expense Items.

Ms. Rachel L. Mehlenbacher
NY Community Broadband Partnership
September 30, 2019
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Sincerely,

/s/ Universal Service Administrative Company

Appendix A

**Appeal Denied for Failure to Provide Documentation Sufficient to Support the Service
Bandwidth for the Expense Item**

| Expense Item | Service Type | Bandwidth | Cost |
|---------------------|---------------------|--|-------------|
| 1 | Coax Service | Download: 100 megabits per second; Upload: 10 megabits per second | \$144.98 |
| 2 | Coax Service | Download: 100 megabits per second; Upload: 10 megabits per second | \$144.98 |
| 3 | Coax Service | Download: 100 megabits per second; Upload: 10 megabits per second | \$144.98 |
| 4 | Coax Service | Download: 100 megabits per second; Upload: 10 megabits per second | \$119.99 |
| 6 | Coax Service | Download: 100 megabits per second; Upload: 10 megabits per second | \$144.98 |
| 7 | Coax Service | Download: 100 megabits per second; Upload: 10 megabits per second | \$59.99 |

Appendix B

Appeal Granted and Denial of Support for Expense Item Reversed

| Expense Item | Service Type | Bandwidth | Cost |
|--------------|--------------------------------------|------------------------|-----------|
| 5 | Fiber | 50 Megabits per second | \$599.00* |
| 8 | Fiber | 50 Megabits per second | \$599.00* |
| 10 | Installation of Recurring Service | N/A | \$99.00 |
| 11 | Installation of Recurring Service | N/A | \$99.00 |
| 12 | Installation of Recurring Service | N/A | \$99.00 |

** Cost revised in accordance with the request submitted in the Appeal.*

Appendix C

Request for Support for Expense Item Withdrawn

| Expense Item | Service Type | Bandwidth | Cost |
|--------------|-----------------------------------|-----------|---------|
| 9 | Installation of Recurring Service | N/A | \$99.00 |