

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Rural Health Care Support Mechanism)	WC Docket No. 02-60
)	
)	

To: The Chief, Wireline Competition Bureau

PETITION FOR WAIVER

Mental Health Centers of Western Illinois (“MHCWI”), by its counsel and pursuant to Section 1.3 of the Commission’s rules,¹ hereby requests a waiver of certain portions of Sections 54.603(b)(4), 54.605(a)-(b), and 54.609(a)(2)² of the Commission’s rules, in connection with MHCWI’s requests for funding under the Rural Health Care Program (“RHC Program”).³ These requests were, unbeknownst to MHCWI, supported by inadequate documentation provided by Network Services Solutions, LLC (“NSS”), and as a result USAC refused to grant the requests via an October 11, 2018 letter.⁴ Because MHCWI is a victim of NSS’ fraud and misrepresentations, strict compliance with the rules would be inconsistent with the public interest and would undermine a key objective of the RHC Program: to ensure that health care providers (“HCPs”) are able to use advanced communications services to better serve rural communities across the country. Grant of the waiver will not result in program funds flowing to NSS or its

¹ 47 C.F.R. § 1.3.

² *Id.* § 54.603(b)(4).

³ *See* Funding Request Numbers 1690336, 1690339, 1690341, and 1690343.

⁴ Letter from the Universal Service Administrative Company (“USAC”) to Ms. Roxie Oliver, Mental Health Centers of Western Illinois (Oct. 11, 2018). (Exhibit A).

owners, as NSS is now in bankruptcy and the threatened collection action is by the Trustee in Bankruptcy. Support paid would be disbursed by the Trustee to the creditors of NSS, many of whom are also victims of NSS's fraud. This Petition is being filed contemporaneously with an appeal with USAC of its denial of NSS' appeal on behalf of MHCWI of USAC's rejection of the funding requests.⁵

I. Background

A. Description of Relevant Parties

Mental Health Centers of Western Illinois. Mental Health Centers of Western Illinois ("MHCWI") is a 501(c)(3) organization headquartered in Illinois and a provider of free and low-cost, comprehensive mental health services in the Brown, Hancock, and Pike counties of Illinois.⁶ In 2017, following a rigorous process involving peer review and a team of on-site surveyors, MHCWI was awarded a three-year accreditation by the Commission on Accreditation of Rehabilitation Facilities ("CARF") International. MHCWI has improved countless lives and connected children, adolescents, and adults across small and rural communities in western Illinois with individualized care to address their psychiatric needs, providing case management, community housing, crisis intervention, driver risk education, DUI evaluation, peer support, substance abuse, among other services.⁷

⁵ MHCWI Letter of Appeal to USAC (Dec. 10, 2018). (Exhibit I).

⁶ Mental Health Centers of Western Illinois, *Mission Statement*, <http://www.mhcwi.org/index.php?action=about> (last accessed Nov. 29, 2018).

⁷ See Mental Health Centers of Western Illinois, *Services*, <http://www.mhcwi.org/index.php?action=programs> (last accessed Nov. 29, 2018).

Network Services Solutions, LLC. NSS is a limited liability company, organized under the laws of Nevada, and is a reseller of telecommunications services.⁸ As a reseller, NSS contracts with other voice and data service providers to provide the underlying facilities that NSS then uses to deliver services to its HCP customers in connection with the RHC Program.⁹ From 2006 to 2017, NSS received more than \$38,000,000 in payments from the Universal Service Fund (the Fund or USF), and it was one of the largest recipients of USF funding in the RHC Program.¹⁰

On November 4, 2016, the Commission adopted a Notice of Apparent Liability for Forfeiture and Order against NSS and its chief executive, Scott Madison, for *inter alia* “apparently willfully and repeatedly violat[ing] Sections 54.603, 54.605, 54.607, 54.609, 54.613, and 54.615 of the Commission’s Rules by ... inflating the rates for services it charged to rural health care providers (HCPs) and the Fund, and relying on forged and false documents to support its claims for payment from the Fund.”¹¹ As a result, the Commission found it “appropriate to order that NSS repay the amounts improperly paid by the Fund as a result of NSS’s apparent violations.”¹² Additionally, in light of “[t]he nature of NSS’s misconduct” which was “more

⁸ NSS Articles of Organization, Limited Liability Company (Dec. 30, 2004); *see also* Telecommunications Reporting Worksheet, FCC Form 499-A, OMB 3060-0055, Block 1 (Dec. 2014) NS 0003843.

⁹ *See NSS NAL* at ¶¶ 21-22.

¹⁰ *Id.* at ¶ 16.

¹¹ *Id.*

¹² *See Network Services Solutions, LLC, Scott Madison, Amendment to Notice of Apparent Liability for Forfeiture and Order*, 32 FCC Rcd 5169 at para. 16 (2017) (*Amended NSS NAL*).

egregious than simple non-compliance with the Commission’s Rules,” the Commission proposed an amended forfeiture penalty of \$22,358,082.¹³

NSS is currently in Chapter 7 bankruptcy proceedings in Reno, Nevada.¹⁴ The Trustee for NSS is now seeking payment on hundreds of thousands of dollars in accounts receivable allegedly owed by MHCWI for NSS’ telecommunications services provided under what NSS refers to as the “Full Funded Program.”¹⁵ These amounts include the discounted share that MHCWI understood would be paid by the Fund. The amounts that the Trustee alleges are due to the Debtor in Bankruptcy greatly exceed MHCWI’s ability to pay, and collection upon even a portion of the amounts at issue would imperil the viability of MHCWI and its ability to continue serving rural and low-income communities in Illinois. Thus, grant of this Petition is necessary to ensure that essential mental health care services remain available in rural western Illinois.

B. The Business Relationship Between NSS and MHCWI

On March 22, 2015, Mr. Tim Yager, Vice President of Sales – Central Territory for NSS, emailed Ms. Roxie Oliver, Executive Director of MHCWI, a monthly quote of \$737 in order for AT&T to build out fiber and provide telecommunications services to MHCWI’s Mt. Sterling, Carthage, and Pittsfield locations. (Exhibit D). Mr. Yager stated that MHCWI had been accepted into NSS’ “Full Funded Program.” (*Id.*). However, Ms. Oliver became concerned when she began receiving invoices stating that MHCWI owed substantially larger amounts. For example,

¹³ *Id.* at ¶ 15.

¹⁴ *In the Matter of Network Services Solutions, LLC, Motion to Convert or Dismiss Case Pursuant to 11 USC § 1112(b)*, Chapter 11 Case, Case No.: BK-N-17-50309-gwz, United States Bankruptcy Court for the District of Nevada (dated July 17, 2017); *In the Matter of Network Services Solutions, LLC, Voluntary Petition for Non-Individuals Filing for Bankruptcy*, Chapter 11 Case, United States Bankruptcy Court for the District of Nevada (dated Mar. 20, 2017).

¹⁵ See Email from Elizabeth High, attorney to Bankruptcy Trustee for the estate of NSS, to Jane Denes, counsel to MHCWI (Nov. 28, 2018) (Exhibit I).

on February 2, 2016, MHCWI received its first invoice from NSS, showing an amount due of \$113,065 (Exhibit E-1), and on July 6, 2016, MHCWI received an invoice for \$340,001.42 to NSS and late charges of \$4,383.62. (Exhibit E-2). In both cases, NSS employees reassured MHCWI that it would owe only \$737 per month, with USAC paying the balance. For example, on July 7, 2016, Ms. Beth O'Connor, Billing Manager for NSS, reassured Ms. Oliver that "Your net remittance, until USAC approves funding, will be \$737.00. You are welcome to pay that amount. Once the USAC funding is approved (and available to obtain), I will immediately obtain the funding and post it to your account." (Exhibit F). Yet, on February 15, 2017, USAC denied MHCWI's funding requests (FRN 1690336, 1690339, 1690341, and 1690343) due to NSS' failure to supply adequate urban rate information, leaving only MHCWI accountable for NSS' invoices. (Exhibit G).

This bait-and-switch practice was detailed in the *NSS NAL*, which describes how NSS preyed upon rural HCPs, promising that their fees would be fixed at an affordable level, while invoicing them and USAC at "'eye-popping' rates."¹⁶ As occurred with MHCWI, "NSS directed the HCPs to focus only on the portion of the invoice that the HCP was directed to pay, which was typically less than 10 percent of the total amount NSS invoiced to USAC (the balance of which NSS charged to the Fund)."¹⁷

Because NSS fraudulently induced MHCWI to incur liability for its invoiced amounts and the Trustee in the NSS bankruptcy proceeding is seeking to collect upon this account,

¹⁶ *NSS NAL* at ¶ 55-57. The NAL observes that one NSS Point to Point Ethernet Service Agreement, when compared to the underlying AT&T Agreement, revealed a markup by NSS of 819 percent or 738 percent for 100 Mbps, and a markup by NSS of 1203 percent for 1000 Mbps/1 Gbps Ethernet, respectively. *Id.* at ¶ 56 n. 128.

¹⁷ *Id.* at ¶ 57.

MHCWI has been put in a position in which it could be liable for sums that would threaten its financial viability and its ability to continue providing necessary mental health and substance abuse services to rural Illinois.¹⁸

II. Discussion

A. Waiver of Sections 54.603(b)(4), 54.605(a)-(b), and 54.609(a)(2)

The RHC Program provides eligible health care providers (HCPs) with universal service support for the difference between urban and rural rates for eligible telecommunications services, subject to limitations set forth in the Commission’s rules.¹⁹ Section 54.605(a)-(b) further provides that the urban rate “shall be a rate no higher than the highest tariffed or publicly-available rate charged to a commercial customer for a functionally similar service” in any city with a population of 50,000 or more in the state in which the HCP is located.²⁰ “Similar services” are services that are functionally equivalent from the perspective of the end user with respect to bandwidth and whether the service is symmetrical or asymmetrical.²¹ HCPs request funding through the RHC Program by submitting an FCC Form 466 on which they may opt to support their request for support with the monthly urban and rural rate for the requested service. HCPs that request “base rate support” (i.e., the difference between the urban and rural rates) are also required to submit supporting documentation for the urban and rural rates provided.²² After

¹⁸ MHCWI is concurrently asserting defenses against the Trustee’s purported receivable, but it is not clear how MHCWI’s liability will be resolved.

¹⁹ See 41 C.F.R. §§ 54.602(a), 54.604(b).

²⁰ 47 C.F.R. § 54.605(a)-(b).

²¹ *Rural Healthcare Support Mechanism*, WC Docket No. 02-60, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 18 FCC Red 24546, 24263-64, paras. 33-34 (2003).

²² See 47 C.F.R. § 54.609(a)(2). Supporting documentation includes proof of the rural and urban rate, cost of service, copy of the signed contract (if applicable), and copies of bids received.

reviewing the funding requests, USAC issues funding decisions in accordance with the Commission's rules.²³

On September 27, 2016, MHCWI submitted FCC Forms 466 requesting RHC Program support for services from NSS for funding request numbers 1690336, 1690339, 1690341, and 1690343. MHCWI had no past experience in seeking RHC funding, and, unfortunately, it relied upon the self-serving guidance of NSS in preparing its Form 466 and supporting MHCWI. For example, to support the urban rates reported on MHCWI's FCC Forms 466, NSS submitted a certification letter from NSS. (Exhibit B). On December 21, 2016, USAC sent an information request to NSS requesting clarification or additional information to address certain issues or deficiencies USAC had identified in MHCWI's funding requests with respect to NSS's urban rates. In response to USAC's information request, NSS provided a certification letter from NSS and service provider quotes from Windstream to support the urban rates for the funding requests. On October 11, 2018, USAC denied an appeal of its rejection of these funding requests because NSS *inter alia* did not demonstrate that the urban rates complied with FCC rules governing the RHC Program. Specifically, NSS did not demonstrate that the rates specified in its certification letters or the quotes from Windstream were "tariffed or publicly-available" and "charged to the customer."²⁴

USAC, Rural Health Care Telecommunications Program: Supporting Documentation, <http://www.usac.org/rhc/telecommunications/health-care-providers/documentation.aspx> (last visited Nov. 29, 2018).

²³ See USAC, Rural Health Care Telecommunications Program: Review, Approve, Submit, <http://www.usac.org/rhc/telecommunications/health-care-providers/step05/> (last visited Nov. 29, 2018).

²⁴ See 47 C.F.R. § 54.605(a)-(b).

NSS’ provision of inadequate, non-compliant, and even forged documentation to support its inflated urban rates for RHC funding requests is discussed at length in the *NSS NAL*.²⁵ As the Commission describes, “NSS apparently manipulated documents to improperly receive USF payments ... by submitting single-sentence urban rate letters to USAC on NSS letterhead stating that the urban rate was \$138.00 per month for telecommunications services with no further description or supporting documentation.”²⁶ With regard to quotes from other providers, “NSS employees and sales agents used forged sales quotes and falsified urban rate letters to evidence urban rates so as to increase its payments from USAC. NSS executives, including [NSS CEO Scott] Madison, knew about the false urban rate letters and forged sales quotes.”²⁷

As a result of NSS’ failure to timely submit appropriate urban rate documentation, USAC denied funding to MHCWI.²⁸ In light of NSS’ deception of MHCWI, NSS’ well-documented history of fraud against HCPs, and the ruinous impact that these obligations to the Trustee would have on MHCWI, if MHCWI is found to be responsible for the charges, MHCWI requests a waiver of the Commission’s requirements regarding the applicable urban rate and necessary supporting documentation required for the FCC Form 466 for obtaining base rate support from the RHC Program. Doing so will enable USAC to fund the denied request and pay the receivable to the bankruptcy trustee, to the extent MHCWI is liable to the Trustee for it, which will ensure that MHCWI can continue to provide its valuable mental health services for communities across rural Illinois. At the same time, grant of the waiver will not result in any

²⁵ *NSS NAL* at ¶ 72.

²⁶ *Id.* at ¶ 84.

²⁷ *Id.* at ¶ 71.

²⁸ Emails from Rural Health Care Division, USAC to HCP Nos. 39420, 39417, 39314, and 39313 (Feb. 15, 2017). (Exhibit G).

additional program funding flowing to NSS or its owners. NSS is now in bankruptcy, and the threatened collection action is by the Trustee. Support paid as a result of grant of this waiver ultimately will accrue only to the creditors of NSS—many of whom also were victims of NSS’s fraud and deceptive practices.

B. Waiver Standard

A Commission rule may be waived for “good cause shown.”²⁹ In particular, a waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.³⁰ In assessing a waiver request, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.³¹ Such a waiver is appropriate if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.³²

As demonstrated above, there is good cause for granting a waiver in this instance, because it will more effectively implement the Commission’s overall policy of promoting the use of communications services to provide healthcare services to rural communities. A deviation from the general rule in this instance will serve the public interest by allowing MHCWI to avoid the ruinous financial liability that would result from the Trustee’s collection action if MHCWI is required to pay the full, undiscounted amounts shown on NSS’s invoices. This will allow MHCWI to continue to provide mental health services to individuals across rural Illinois,

²⁹ 47 C.F.R. § 1.3. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Network IP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

³⁰ *Northeast Cellular*, 897 F.2d at 1166.

³¹ *Id.* at 1166; *WAIT Radio v. FCC*, 418 F.2d at 1159.

³² *Network IP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166.

whereas strict compliance with Sections 54.603(b)(4), 54.605(a)-(b), and 54.609(a)(2) would punish a victim of fraud and the communities it serves.

Moreover, the Commission has previously seen fit to grant similar waivers to other victims of NSS. In 2017, to avoid the “likely and imminent loss of service by some rural HCPs” resulting from NSS’ insolvency, the Wireline Competition Bureau granted waivers in 2017 to the Community Hospital Corporation³³ and rural HCPs who entered into service contracts with NSS³⁴ to enter into short term replacement contracts without initiating a new competitive bidding process. Relief is likewise justified here, where MHCWI faces – as discussed above – a real threat to its viability as an organization.

In considering this waiver request, the Commission should bear in mind that any funding provided under these FRNs will not benefit NSS or its owners. Given that NSS is now in bankruptcy, any funding will flow to the Trustee in bankruptcy, who will use the funding to pay NSS’s creditors, many of whom also may be victims of NSS’s fraud and deceptive practices. Thus, funding these requests will not only help to ensure the ongoing financial viability of MHCWI, it will also benefit other entities that may have been defrauded by NSS.

III. Conclusion

USAC, relying upon Sections 54.603(b)(4), 54.605(a)-(b), and 54.609(a)(2) of the Commission’s rules, denied MHCWI’s requests for funding. MHCWI is one of many victims of NSS’ fraud that this Commission rightly deemed “egregious.” For the reasons above, the Commission should grant this request of a waiver of Sections 54.603(b)(4), 54.605(a)-(b), and

³³ *In the Matter of Rural Health Care Universal Service Support Mechanism*, Order, 32 FCC Rcd 1328 (2017).

³⁴ *In the Matter of Rural Health Care Universal Service Support Mechanism*, Order, 32 FCC Rcd 7532 (2017).

54.609(a)(2) and enable MHCWI to obtain the funds it needs to continue serving communities' mental health needs in rural Illinois.

Respectfully submitted,

MENTAL HEALTH CENTERS OF
WESTERN ILLINOIS

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December 10, 2018

LIST OF EXHIBITS

Exhibit A – Letter from USAC to Ms. Roxie Oliver (Oct. 11, 2018)

Exhibit B – NSS Urban Rate Certification Letter

Exhibit C – Declaration of Ms. Roxie Oliver

Exhibit D – NSS Email to Ms. Roxie Oliver (Mar. 22, 2015)

Exhibit E-1 – MHCWI-NSS Email Exchange (February 2016)

Exhibit E-2 – MHCWI-NSS Email Exchange (July 2016)

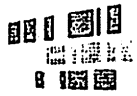
Exhibit F – NSS Email to Ms. Roxie Oliver (July 7, 2016)

Exhibit G – Letter from USAC to Ms. Roxie Oliver (Feb. 19, 2018)

Exhibit H – MHCWI Letter of Appeal to USAC (Dec. 10, 2018)

Exhibit I – Email from Elizabeth High, attorney to Bankruptcy Trustee for the estate of NSS, to Jane Denes, counsel to MHCWI (Nov. 28, 2018)

Exhibit A – Letter from USAC to Ms. Roxie Oliver (Oct. 11, 2018)



Universal Service
Administrative Co.

Rural Health Care Division

Administrator's Decision on Rural Health Care Program Appeal

Via Electronic Mail

October 11, 2018

Ms. Roxie Oliver
Mental Health Centers of Western Illinois
700 SE Cross Street
Mt. Sterling, IL 62353

Re: Mental Health Centers of Western Illinois – Appeal of USAC's Decision for the
Funding Request Numbers Listed in Appendix A

Dear Ms. Roxie Oliver:

The Universal Service Administrative Company (USAC) has completed its evaluation of the March 27, 2017 letter of appeal (Appeal) submitted by Network Services Solutions, LLC (NSS) on behalf of the health care providers (HCPs) listed in Appendix A (MHCWI).¹ On February 15, 2017, USAC denied MHCWI's funding requests for support under the federal Rural Health Care Telecommunications Program (Telecom Program).² The Appeal requests that USAC reverse its denials of the funding request numbers (FRNs) listed in Appendix A and permit MHCWI to receive support under the Telecom Program for funding year (FY) 2016.³

USAC has reviewed the Appeal and the facts related to this matter and has determined that Federal Communications Commission (FCC) rules support the denial of the FRNs listed in Appendix A. Based on our review, we have determined that neither NSS nor MHCWI has submitted sufficient documentation to demonstrate that the urban and rural rates for the funding requests comply with FCC rules governing urban and rural rates in the Telecom Program. Based on the Telecom Program rules, USAC denies the Appeal.

The Telecom Program provides eligible health care providers (HCPs) with universal service support for the difference between urban and rural rates for eligible telecommunications services, subject to limitations set forth in the Commission's rules.⁴ FCC rules provide that "[t]he rural rate shall be the average of the rates actually being charged to commercial customers, other than health care providers, for identical or similar services provided by the

¹ See Letter from Aimee McCarty, Vice President of Operations, NSS to Rural Health Care Division, USAC (Mar. 27, 2017) (*Appeal*).

² See Emails from Rural Health Care Division, USAC to HCPs listed in Appendix A (MHCWI) (Feb. 15, 2017) (*Administrator's Denials*).

³ See *Appeal*.

⁴ See 47 C.F.R. §§ 54.602(a), 54.604(b).

telecommunications carrier providing the service in the rural area in which the health care provider is located.”⁵ If the telecommunications carrier does not provide similar or identical service in the rural area where the HCP is located, “the rural rate shall be the average of the tariffed and other publicly available rates, not including any rates reduced by universal service programs, charged for the same or similar services in that rural area, over the same distance as the eligible service by other carriers.”⁶ If there are no such tariffed or publicly available rates or the carrier “reasonably determines that this method for calculating the rural rate is unfair,” the carrier must submit its rural rates to the state commission (for intrastate rates) or the FCC (for interstate rates) for approval.⁷ FCC rules further provide that the urban rate “shall be a rate no higher than the highest tariffed or publicly-available rate charged to a commercial customer for a functionally similar service” in any city with a population of 50,000 or more in the state in which the HCP is located.⁸ “Similar services” are services that are functionally equivalent from the perspective of the end user with respect to bandwidth and whether the service is symmetrical or asymmetrical.⁹

HCPs request funding through the Telecom Program by submitting an FCC Form 466 on which they provide the monthly urban and rural rate for the requested service to receive base rate support (i.e., the difference between the urban and rural rates), or mileage charges for funding requests for mileage-based support.¹⁰ HCPs that request base rate support are also required to submit supporting documentation for the urban and rural rates provided.¹¹ HCPs must submit the FCC Form 466 and all supporting documentation prior to the end of the relevant funding year.¹²

⁵ 47 C.F.R. § 54.607(a).

⁶ 47 C.F.R. § 54.607(b).

⁷ 47 C.F.R. § 54.607(b), (b)(1), (b)(2).

⁸ 47 C.F.R. § 54.605(a)-(b).

⁹ *Rural Healthcare Support Mechanism*, WC Docket No. 02-60, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 18 FCC Rcd 24546, 24263-64, paras. 33-34 (2003).

¹⁰ See Health Care Providers Universal Service, Funding Request and Certification Form, OMB 3060-0804 (July 2014) (FCC Form 466); Form 466 Instructions, Rural Health Care Universal Service Mechanism, OMB 3060-0804 at 1, 3-6 (July 2014) (FCC Form 466 Instructions).

¹¹ See 47 C.F.R. § 54.609(a)(2).

¹² See 47 C.F.R. § 54.675(b); FCC Form 466 at 1; USAC, Rural Health Care Telecommunications Program: Submit Funding Requests, <http://www.usac.org/rhc/telecommunications/health-care-providers/step04/> (last visited Apr. 10, 2018); USAC, Rural Health Care Telecommunications Program: Supporting Documentation, <http://www.usac.org/rhc/telecommunications/health-care-providers/documentation.aspx> (last visited Apr. 10, 2018). Supporting documentation includes proof of the rural and urban rate, cost of service, copy of the signed contract (if applicable), and copies of bids received. *Id.* FCC rules also require both applicants and service providers to maintain records to document compliance with program rules and orders for at least five years after the last day of service delivered in a particular funding year. See 47 C.F.R. § 54.619(a)(1), (d).

After reviewing the funding requests, USAC issues funding decisions in accordance with the Commission's rules.¹³ The FCC clarified that, beginning with FY 2015, when USAC determines that an applicant lacks all supporting documentation accompanying its FCC Form 466 or the supporting documentation is inadequate, USAC shall inform the applicant promptly in writing of the omission or inadequacy and give the applicant fourteen (14) calendar days from receipt of that notice to submit the missing or relevant supporting documentation.¹⁴ The FCC stated that "if applicants do not provide timely responses to USAC requests for omitted or adequate supporting documentation, USAC shall deny the associated funding requests."¹⁵ USAC is not authorized to waive the FCC's documentation requirements.¹⁶

MHCWI Funding Request

On September 27, 2016, MHCWI submitted FCC Forms 466 requesting Telecom Program support for services from NSS for the FRNs listed in Appendix A.¹⁷ To support the rural rates reported on its FCC Forms 466, MHCWI submitted an NSS invoice.¹⁸ To support the urban rates reported on its FCC Forms 466, MHCWI submitted a certification letter from NSS.¹⁹

On December 21, 2016, USAC sent an information request to NSS requesting clarification or additional information to address certain issues or deficiencies USAC had identified in MHCWI's funding requests with respect to NSS's urban and rural rates.²⁰ USAC gave NSS thirty (30) calendar days from the receipt of the notice to respond to its information request.²¹ In response to USAC's information request, NSS provided service provider quotes to support the rural rates for the FRNs listed in Appendix A.²² NSS also provided a certification letter from NSS and service provider quotes to support the urban rates for the funding requests.²³

On February 15, 2017, USAC denied the FRNs listed in Appendix A because NSS did not demonstrate that the urban and rural rates provided for the funding requests complied with

¹³ See USAC, Rural Health Care Telecommunications Program: Review, Approve, Submit, <http://www.usac.org/rhc/telecommunications/health-care-providers/step05/> (last visited Apr. 10, 2018).

¹⁴ See *In the Matter of Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 30 FCC Rcd 230, 231 at para. 3 (2015) (*FCC Form 466 Deadline Order*).

¹⁵ *Id.*

¹⁶ See generally, 47 C.F.R. § 54.702(c) ("[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 ("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.").

¹⁷ See FY 2016 FCC Forms 466 for FRNs 1690336, 1690339, 1690341, and 1690343 (Sep. 27, 2016).

¹⁸ See NSS, Invoice No. 0000632160901 for 20M MPLS and 45M MPLS at 2 (Sep. 1, 2016).

¹⁹ See Letter from Scott Madison, Managing Member, NSS to Rural Health Care Division, USAC (Sep. 23, 2016).

²⁰ See Email from Rural Health Care Division, USAC to Scott Madison, NSS (Dec. 21, 2016).

²¹ See *id.*

²² See Letter from Scott Madison, President and Founder, NSS to Rural Health Care Division, USAC (Jan. 14, 2017).

²³ See *id.*

FCC rules governing the Telecom Program.²⁴ NSS appealed USAC's denials of the FRNs on behalf of MHCWI on March 27, 2017.²⁵

In the Appeal, NSS argues that: (1) USAC is applying a new interpretation of the rules; (2) the urban rate rule applies to HCPs and not carriers; (3) NSS provided urban rates as a courtesy, but the HCP was not required to use them, and (4) an urban rate violation may be cured by submitting a revised urban rate to USAC or using USAC's safe harbor."²⁶

Administrator's Decision on Appeal

As detailed below, USAC has determined that neither NSS nor MHCWI has demonstrated that the urban and rural rates for the funding requests comply with FCC rules governing urban and rural rates in the Telecom Program. Therefore, USAC is unable to grant the Appeal.

Urban Rates. As part of the review process, USAC reviewed the urban rates and rural rates, and requested documentations to support both rates. NSS provided documentation for the urban rate which (as discussed below) we found to be insufficient. NSS argues that it provided the urban rates merely as a courtesy. USAC requested the documentation to confirm that the urban rates provided on the HCP's FCC Forms 466 complied with FCC rules.²⁷ Pursuant to FCC rules both the applicant and the service provider are required to maintain records to document compliance with program rules and orders for at least five years after the last day of service delivered in a particular funding year.²⁸

NSS argues that it should be given additional time to cure the issues or deficiencies USAC identified with respect to its urban rates, such as by supplying a new urban rate or using the safe harbor rate for the requested services on appeal is inaccurate. USAC may not consider additional documentation on appeal. USAC's funding decision was based on the documentation that was timely submitted as part of the original application or in response to our document request. USAC is required to notify an applicant of omissions or inadequacies in its supporting documentation upon review of an applicant's FCC Form 466, and will consider only such documentation as is timely submitted in response to such inquiries.²⁹

USAC finds that the certification letter from NSS submitted by MHCWI and the certification letter and service provider quotes submitted by NSS do not demonstrate that the urban rates reported on MHCWI's FCC Forms 466 for the FRNs listed in Appendix A are "a rate no higher

²⁴ See *Administrator's Denials*.

²⁵ See *Appeal*.

²⁶ *Id.*

²⁷ See *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678 at 16803, para. 300 (2012) ("[T]he responsibility to submit complete and accurate information remains at all times the sole responsibility of the applicant.").

²⁸ See 47 C.F.R. § 54.619(a)(1), (d).

²⁹ See *FCC Form 466 Deadline Order*, 30 FCC Rcd at 231, para. 3.

than the highest tariffed or publicly-available rate charged to a commercial customer for a functionally similar service” in any city with a population of 50,000 or more in the state in which MHCWI is located.³⁰ Specifically, NSS did not demonstrate that the rates specified in its letters are “tariffed or publicly-available” and “charged to a commercial customer.”³¹ In addition, NSS did not demonstrate that the rates in the Windstream quotes are “tariffed or publicly-available” and “charged to a commercial customer.”³² Therefore, the documentation provided does not demonstrate that the urban rates for the FRNs listed in Appendix A comply with FCC rules governing urban rates in the Telecom Program.³³ Without adequate support for the urban rates reported on MHCWI’s FCC Forms 466, USAC is unable to grant the Appeal.

Rural Rates. As an initial matter, contrary to NSS’s arguments, USAC did not deny MHCWI’s funding requests under a novel interpretation of the rural rate rule. Rather, pursuant to the FCC’s rules, we considered whether the documentation submitted by the HCP and NSS demonstrated that the rural rates submitted on the FCC Forms 466 comply with FCC rules and requirements. As described above, there are three methods of calculating the rural rate.³⁴ USAC finds that neither NSS nor the HCP demonstrated compliance with any of three methods.

First, USAC finds that the NSS invoice submitted by MHCWI and the service provider quotes submitted by NSS do not demonstrate that the rural rates reported on MHCWI’s FCC Forms 466 for the FRNs listed in Appendix A represent the “average of the rates actually being charged to commercial customers, other than health care providers, for identical or similar services provided by the telecommunications carrier providing the service in the rural area in which the health care provider is located.”³⁵ Specifically, the rates in the NSS invoice are for services provided to MHCWI and, therefore, are not rates charged “to commercial customers, *other than health care providers*” [emphasis added].³⁶ In addition, the rates in the Nitel and CenturyLink QCC quotes are not “*actually being charged* to commercial customers” [emphasis added] and are not for services provided by “the telecommunications carrier [i.e., NSS] providing the service” to MHCWI.³⁷

Second, the NSS invoice and service provider quotes do not demonstrate that the rural rates reported in MHCWI’s FCC Forms 466 represent “the average of the tariffed and other publicly available rates, not including any rates reduced by universal service programs, charged for the same or similar services in that rural area, over the same distance as the eligible service by other

³⁰ 47 C.F.R. § 54.605(a)-(b).

³¹ *Id.* 47 C.F.R. § 54.605(a)-(b).

³² *Id.* 47 C.F.R. § 54.605(a)-(b).

³³ Although the Appeal included additional information and/or documentation to supplement the certification letters from NSS and service provider quotes provided to support the urban rates reported on MHCHI’s FCC Forms 466, USAC finds that the supplemental material is not sufficient to demonstrate that the urban rates for the funding requests comply with FCC rules governing urban rates in the Telecom Program.

³⁴ See 47 C.F.R. § 54.607(a)-(b).

³⁵ See 47 C.F.R. § 54.607(a).

³⁶ See *id.*

³⁷ See *id.*

Ms. Roxie Oliver
Mental Health Centers of Western Illinois
October 11, 2018
Page 6 of 7

carriers.”³⁸ Specifically, the NSS invoices provide rates for services provided by NSS and not “by other carriers.”³⁹ In addition, it is not clear that the rates in the Nitel and CenturyLink QCC quotes are “publicly available.”⁴⁰

Finally, there is no evidence that NSS submitted its rural rates to the state commission (for intrastate rates) or the FCC (for interstate rates) for approval.

Accordingly, the documentation provided does not demonstrate that the rural rates for the FRNs listed in Appendix A comply with FCC rules governing rural rates in the Telecom Program.⁴¹ Without adequate support for the rural rates reported on MHCWI’s FCC Forms 466, USAC is unable to grant the Appeal.

Conclusion

USAC finds that neither NSS nor MHCWI has demonstrated that the urban and rural rates for the FRNs listed in Appendix A comply with FCC rules governing urban and rural rates in the Telecom Program. Because USAC is not authorized to waive the FCC’s documentation requirements, 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

cc: Aimee McCarty, Vice President of Operations, Network Services Solutions LLC

³⁸ See 47 C.F.R. § 54.607(b).

³⁹ See *id.*

⁴⁰ *Id.*

⁴¹ Although the Appeal included additional information and/or documentation to supplement the NSS invoice and service provider quotes provided to support the rural rates reported on MHCWI’s FCC Forms 466, USAC finds that the supplemental material is not sufficient to demonstrate that the rural rates for the funding requests comply with FCC rules governing rural rates in the Telecom Program.

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Mental Health Centers of Western Illinois
October 11, 2018
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APPENDIX A

List of Appealed FRNs

FRN	HCP Number	HCP Name
1690336	39420	Mental Health Centers of Western Illinois- Pittsfield
1690339	39417	Mental Health Centers of Western Illinois-Carthage
1690341	39314	Mental Health Centers of Western Illinois-Day Program
1690343	39313	Mental Health Centers of Western Illinois

Exhibit B – NSS Urban Rate Certification Letter

Exhibit C – Declaration of Ms. Roxie Oliver

STATE OF _____)
)
COUNTY OF _____)

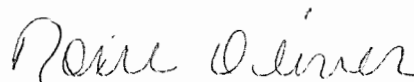
DECLARATION

1. My name is Roxie Oliver. I am the Executive Director of the Mental Health Centers of Western Illinois (HCP No. 39313); Mental Health Centers of Western Illinois – Pittsfield (HCP No. 39420); Mental Health Centers of Western Illinois – Carthage (HCP No. 39417); Mental Health Centers of Western Illinois – Day Program (HCP No. 39314) (collectively, “MHCWI”). My business address is 700 SE Cross Street Mt Sterling IL 62353.

2. I swear or affirm that I have personal knowledge of the facts stated in this Petition for Waiver, that I am competent to testify to them, and that I have the authority to make this Appeal on behalf of MHCWI.

3. I further swear or affirm that all of the statements and representations made in this Petition for Waiver are true and correct.

Executed this 10 day of December, 2018.



Roxie Oliver
Executive Director
MHCWI

Exhibit D – NSS Email to Ms. Roxie Oliver (Mar. 22, 2015)

Roxie Oliver

From: Roxie Oliver
Sent: Monday, March 23, 2015 8:40 AM
To: 'Tim Yager'
Cc: 'Dan Fisher'; Keshia Heaton; 'Travis Smith'; 'Liz Grachus'; 'Gene Dean'
Subject: RE: Network Proposal with added Construction Charges
Attachments: network services revised rate 3.23.2015.pdf

Hi Tim,

See attached. How can I not sign.... the cost to MHCWI remains at \$737.00 a month and the band width remains the same. Thanks for providing additional clarification that my costs will remain the same. MHCWI is looking forward to working with Network Services and getting our Internet issues resolved at a cost that we can afford. Thanks, Roxie

Roxie Oliver
Executive Director
Mental Health Centers of Western Illinois
700 S.E. Cross
Mt. Sterling, Illinois 62353
Phone: 217-773-3325
Fax: 217-773-2425
roliver@mhcwi.org

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From: Tim Yager [<mailto:TimYager@networkservices.org>]
Sent: Sunday, March 22, 2015 5:40 PM
To: Roxie Oliver
Cc: Dan Fisher; Keshia Heaton; Travis Smith; Liz Grachus; Gene Dean
Subject: Network Proposal with added Construction Charges
Importance: High

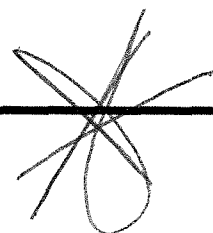
Roxie,

As we discussed last week I now have the final pricing from AT&T to build out fiber services to each of your locations. I included their special construction charges into the bid and you will see that while the monthly service price has increased due to the special construction charges, your Net Remittance has not changed. Your cost per month on this 3 year term will remain at \$737 per month. AT&T has begun the engineering on this project and the next step once you give me the approval is to have AT&T start the construction. Because they have already begun engineering we have made significant progress and we expect completion within the next 60-75 days barring any weather delays. As I mentioned previously there are no hidden charges and no extra cost to you for this construction. AT&T also will include any work needed at each location to get the fiber into your building and this includes all backboard, conduit and ground requirements.

Please let me know if you approve the new monthly which will be submitted to USAC and I will send you a new MSA to include this new pricing. Once again there will be no extra charge to you and there will be no hidden costs. Your monthly cost will \$737 as we have included you into our Full Funded Program.

Exhibit E-1 – MHCWI-NSS Email Exchange (February 2016)

Roxie Oliver



From: Tim Yager
Sent: Wednesday, February 03, 2016 7:32 AM
To: Roxie Oliver; Dane Jansen
Cc: Beth O'Connor; Debbi Robinson
Subject: Re: Your most recent invoice attached February 2016: Acct: 632 - MENTAL HEALTH CENTER OF WESTERN ILLINOIS

NO you do not owe \$113,000!!!! DO NOT PAY THIS!

That would be the total price if you were not getting Funding. We will cover this today on the call. You will only ever pay us the Net Remittance and Debbi will help you with your Funding for USAC.

Tim Yager

VP - Sales, Central Territory



785-371-0012 | Direct

785-409-1836 | Mobile

888-885-9029 | Maintenance & Support

800-726-2575 | Main

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From: Roxie Oliver <roliver@mhcwi.org>

Date: Tuesday, February 2, 2016 at 8:25 PM

To: Tim Yager <timyager@nssconnect.com>

Subject: Re: Your most recent invoice attached February 2016: Acct: 632 - MENTAL HEALTH CENTER OF WESTERN ILLINOIS

Not sure I understand. But I still didnt get a yes or no answer. Do I owe \$113,000?

On Feb 2, 2016 7:20 PM, "Tim Yager" <timyager@nssconnect.com> wrote:

I completely understand Roxie and I spoke with our billing team about this this evening. The good news is that as we discussed this is the overall circuit bill and you will start seeing your Net Remittance bill on the next statement. It is just the way our billing system generates the first bill in that the Net Remittance doesnt appear until the second statement. Our billing team always calls the customer as soon as the system generates the 1st bill but you got it a day early. Im so excited for you getting your new fiber network installed and operational and Im looking forward to visiting with you this Spring.

Have a great evening!

Tim Yager

VP - Sales, Central Territory



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From: Roxie Oliver <roliver@mhcwi.org>
Reply-To: Roxie Oliver <roliver@mhcwi.org>
Date: Tuesday, February 2, 2016 at 8:12 PM
To: Beth O'Connor <bethoconnor@nssconnect.com>, Tim Yager <timyager@nssconnect.com>, Dane Jansen <djansen@mhcwi.org>
Subject: RE: Your most recent invoice attached February 2016: Acct: 632 - MENTAL HEALTH CENTER OF WESTERN ILLINOIS

I will need to check with Dane. I have meetings from 9:00am until 2pm. I can tell you that getting a bill for \$113,000 has elevated my anxiety. I didn't budget nor plan for that expense.

Sent via the Samsung GALAXY S[®]4, an AT&T 4G LTE smartphone

----- Original message -----

From: Beth O'Connor <bethoconnor@nssconnect.com>
Date: 02/02/2016 6:08 PM (GMT-06:00)
To: Roxie Oliver <roliver@mhcwi.org>, Tim Yager <timyager@nssconnect.com>, Dane Jansen <djansen@mhcwi.org>
Cc: Tim Yager <timyager@nssconnect.com>
Subject: RE: Your most recent invoice attached February 2016: Acct: 632 - MENTAL HEALTH CENTER OF WESTERN ILLINOIS

Roxie,

This is why we like to review the first invoice with you. Will Dane be available for the call at 12:00?

Beth

From: Roxie Oliver [<mailto:roliver@mhcwi.org>]
Sent: Tuesday, February 02, 2016 4:07 PM
To: Tim Yager; Dane Jansen
Cc: Beth O'Connor; Travis Smith
Subject: Re: Your most recent invoice attached February 2016: Acct: 632 - MENTAL HEALTH CENTER OF WESTERN ILLINOIS

I can't meet tomorrow at noon. Are you saying MHCWI will have to pay the \$113,000 ? I sure hope not.

Sent via the Samsung GALAXY S®4, an AT&T 4G LTE smartphone

----- Original message -----

From: Tim Yager <timyager@nssconnect.com>

Date: 02/02/2016 5:28 PM (GMT-06:00)

To: Dane Jansen <djansen@mhcwi.org>, Roxie Oliver <roliver@mhcwi.org>

Cc: Beth O'Connor <bethoconnor@nssconnect.com>, Travis Smith <travissmith@nssconnect.com>

Subject: Re: Your most recent invoice attached February 2016: Acct: 632 - MENTAL HEALTH CENTER OF WESTERN ILLINOIS

Dane

Thanks for the e-mail. I just spoke to Beth who is out billing manager and she is hosting a call for all of us tomorrow at 10:00 AM Central. What you received is a First Bill for the entire network and now Beth will explain the Net Remittance piece which is inline with your \$762 per month. Please accept her calendar maker and here is the bridge information: Conference [\(877\)278-9469](tel:8772789469) | Room 2008 | Pin 92008

Tim Yager

VP - Sales, Central Territory

[785-371-0012](tel:7853710012) | Direct

[785-409-1836](tel:7854091836) | Mobile

[888-885-9029](tel:8888859029) | Maintenance & Support

[800-726-2575](tel:8007262575) | Main

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From: Dane Jansen <djansen@mhcwi.org>

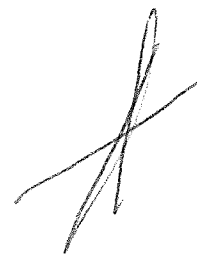
Date: Tuesday, February 2, 2016 at 4:44 PM

To: Tim Yager <timyager@nssconnect.com>

Cc: Roxie Oliver <roliver@mhcwi.org>

Subject: FW: Your most recent invoice attached February 2016: Acct: 632 - MENTAL HEALTH CENTER OF WESTERN ILLINOIS

Good afternoon Tim,



We received the attached invoice this morning for \$113,065 for services performed between Jan 13, 2016 and Mar 31, 2016.

Can you provide some clarification for us? We were only expecting a monthly amount of \$762 per our contract. Is this the piece that is to be billed to the Universal Service Fund? Please advise.

Thank you,
Dane

--

Dane Jansen | Financial Director

Mental Health Centers of Western Illinois

700 S.E. Cross, Mt. Sterling, Illinois 62353

Phone: [217-773-3325](tel:217-773-3325) ext. 32

Fax: [217-773-2425](tel:217-773-2425)

Email: djansen@mhcwi.org

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From: billing@networkservices.org [mailto:billing@networkservices.org]

Sent: Tuesday, February 02, 2016 1:42 PM

To: djansen@mhcwi.org

Subject: Your most recent invoice attached February 2016: Acct: 632 - MENTAL HEALTH CENTER OF WESTERN ILLINOIS

Your Network Services monthly statement is attached.

We appreciate your timely payment for services. Please make sure we receive your payment by the due date on the invoice to avoid any interruptions.

Please note our new mailing and remittance address is:

3700 Barron Way

Reno, NV 89511-2388

If you have any questions relating to your invoice, please contact us at billing@networkservices.org or call us at (844) 689-5782, option 2.

24 Hour Trouble Shooting or Circuit Outage:

Please call tech on duty at

888-885-9029 or email:

support@networkservices.org

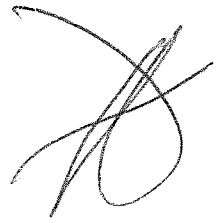
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Exhibit E-2 – MHCWI-NSS Email Exchange (July 2016)

Roxie Oliver

From: Tim Yager
Sent: Thursday, July 07, 2016 8:36 AM
To: Roxie Oliver
Cc: dane jansen; keisha heaton
Subject: Re: Concern



Roxie

I have spoken with our billing manager, Beth O'Connor and she will be reaching out to today to explain your bill. I assure you that you will not have to pay this large bill and you will only be paying what we contracted for as Net Remittance. You do not owe any late charges and you are not liable for the \$340K. Beth will explain how the bill actually breaks down but I believe the reason for the total network amounts is a USAC requirement to report even though you are not responsible for their funded portion.

Tim Yager

VP - Sales, Central Territory



785-371-0012 | Direct
785-409-1836 | Mobile
888-885-9029 | Maintenance & Support
800-726-2575 | Main

From: Roxie Oliver <roliver@mhcwi.org>
Date: Wednesday, July 6, 2016 at 8:41 AM
To: Tim Yager <timyager@nssconnect.com>, Scott Madison <scottmadison@nssconnect.com>
Cc: dane jansen <djansen@mhcwi.org>, keisha heaton <kheaton@mhcwi.org>
Subject: Concern

Hi Tim and Scott

It is concerning to continue to receive an invoice such as this (see attached). I don't understand the process of why we continue to receive invoices that state we owe \$340,001.42 and have late charges of \$4,383.62. Can you please provide a written explanation? We have not heard anything on the acceptance of our 466 forms and Debbi Robinson, tells me to be patient because USAC's staff are on vacation. When I receive invoices such as this, it is disturbing and stressful and it appears on paper that MHCWI is racking up a huge bill with NSS. A bill that we obviously cannot pay. I continue to need reassurance that we are not liability for the \$340,001.42. Please understand the position that I am in. My Board of Directors is also concerned about this. Please advise.

Roxie Oliver
Executive Director
Mental Health Centers of Western Illinois
700 S.E. Cross
Mt. Sterling, Illinois 62353

Exhibit F – NSS Email to Ms. Roxie Oliver (July 7, 2016)

Roxie Oliver

From: Beth O'Connor
Sent: Thursday, July 07, 2016 10:24 AM
To: roliver@mhcwi.org
Cc: Tim Yager
Subject: Concern

Good Morning Roxie!

Tim passed along an email concern you have regarding your invoices and account.


Your concern about the late charges has been address. I have removed all of the late charges from your account and changed the status on your account so you will not see them in the future. The only way you will pay late charges is if you do not make the required net remittance every month. You will not be assessed a late charge on any portion that USAC agrees to pay.

Your second concern is about the large balance that your invoice states. According to the USAC funding program rules, Network Services Solutions is required to show the full balance on the account at all times. I am not allowed to change the balance in any way. Normally you can find your responsibility under the important messages. We had a computer glitch and this information was dropped. Your net remittance, until USAC approves funding, will be \$737.00. You are welcome to pay that amount. Once the USAC funding is approved (and available to obtain), I will immediately obtain the funding and post it to your account.

Thank you for taking the time to reach out to us with your questions and concerns. Please let me know if this is the information that you are looking for or if you would like to me to discuss more in depth.

Thank you,

Beth O'Connor
Billing Manager

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800-725-2575 ext 1006 | Company Main
bethoconnor@nssconnect.com

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Exhibit G – Letter from USAC to Ms. Roxie Oliver (Feb. 19, 2018)

Administrator's Decision on Rural Health Care Program Appeal

Via Electronic and Certified Mail

February 19, 2018

Mr. Jeffrey A. Mitchell
8300 Greensboro Dr. Suite 1200
McLean, VA 22102

Cc: Ms. Roxie Oliver
Mental Health Centers of Western Illinois
700 SE Cross Street
Mt. Sterling, IL 62353

Re: Appeal of USAC's Decision for Mental Health Centers of Western Illinois's Funding Year 2015 Funding Request Numbers 1576895, 1576897, 1576898, and 1576899

Dear Mr. Mitchell:

The Universal Service Administrative Company (USAC) has completed its evaluation of the August 12, 2016, letter of appeal submitted by Network Services Solutions (NSS) on behalf of Mental Health Centers of Western Illinois (MHCWI).¹ USAC previously denied MHCWI's funding requests because: (1) MHCWI requested funding for items that are ineligible for program support; and (2) MHCWI did not select the most cost-effective method of providing the requested services.² The Appeal requests that USAC reverse the denial of funding for Funding Year (FY) 2015 Funding Request Numbers (FRNs) 1576895, 1576897, 1576898, and 1576899 in the federal Universal Service Rural Health Care Telecommunications Program (RHC Telecom Program).³ Based on RHC Telecom Program rules, USAC denies the Appeal.

USAC has reviewed the Appeal and the facts related to this matter and has determined that Federal Communications Commission (FCC or Commission) rules do not support reversing the denial of funding for FRNs 1576895, 1576897, 1576898, and 1576899. Specifically, as discussed in detail below, although USAC finds that MHCWI has demonstrated that it selected the most cost-effective method of providing the requested services, it also finds that, where

¹ Letter from Jeffrey A. Mitchell, Counsel, on behalf of Network Services Solutions, to USAC (Aug. 12, 2016) (Appeal).

² See Emails from Rural Health Care Division, USAC to MHCWI for FY 2015 FRNs 1576895, 1576897, 1576898, and 1576899 (July 19, 2016) (collectively, Administrator's Denials).

³ See Appeal at 6.

USAC is unable to determine what portions of MHCWI's funding requests are for eligible telecommunications services and what portions are for ineligible special construction charges, MHCWI requested funding for items ineligible for support under the RHC Telecom Program, in violation of FCC rules. USAC notes that it is not authorized to waive FCC rules.⁴ Therefore, USAC is unable to grant the Appeal. In addition, although not the subject of the Appeal or USAC's denials, upon further review, USAC notes that neither MHCWI nor NSS have demonstrated that the monthly rural rates for FY 2015 FRNs 1576895, 1576897, 1576898, and 1576899 comply with FCC rules governing rural rates for the RHC Telecom Program.

Background

The RHC Telecom Program provides eligible health care providers (HCPs) with universal service support for the difference between urban and rural rates for eligible telecommunications services, subject to limitations set forth in the Commission's rules.⁵ FCC rules require HCPs to competitively bid the requested services and select the most cost-effective method of providing the requested service, which the FCC defines as "the method that costs the least after consideration of the features, quality of transmission, reliability, and other factors that the health care provider deems relevant to choosing a method of providing the required health care services."⁶ In order to request funding through the RHC Telecom Program, HCPs submit an FCC Form 466, on which they provide the monthly urban and rural rate for the requested service to receive base rate support (i.e., the difference between the urban and rural rates), or mileage charges for funding requests for mileage-based support.⁷ Equipment, services, and other items that are not eligible telecommunications services are ineligible for support under the RHC Telecom Program.⁸

FCC rules further provide that "[t]he rural rate shall be the average of the rates actually being charged to commercial customers, other than health care providers, for identical or similar

⁴ See generally 47 C.F.R. § 54.702(c) (2015) ("[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 (2015) ("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."); see also 47 C.F.R. § 54.719(c) (2015) ("Parties seeking waivers of the Commission's rules shall seek relief directly from the Commission.").

⁵ See 47 C.F.R. §§ 54.602(a), 54.604(b) (2015).

⁶ See 47 C.F.R. §§ 54.603(a), (b)(4), 54.615(a) (2015).

⁷ See *FCC Form 466 Instructions* (OMB 3060-0804) at 1, 3-6 (July 2014).

⁸ 47 C.F.R. § 54.602(a) (2015); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9105, para. 627 (1997) (concluding that only telecommunications services should be designated for support under the RHC Telecom Program); see also *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678, 16750, para. 156 (2012) (*Healthcare Connect Fund Order*) ("Prior to the Pilot Program, the RHC support mechanism did not provide support for *any* form of equipment.") (emphasis added); FCC Form 466 (OMB 3060-0804) at 6, Line 33 (July 2014) (instructing HCPs to exclude "equipment charges, or other non-eligible charges that may be on the bill" from the monthly rural rate reported on the FCC Form 466).

services provided by the telecommunications carrier providing the service in the rural area in which the health care provider is located.”⁹ If the telecommunications carrier does not provide similar or identical service in the rural area where the HCP is located, “the rural rate shall be the average of the tariffed and other publicly available rates, not including any rates reduced by universal service programs, charged for the same or similar services in that rural area, over the same distance as the eligible service by other carriers.”¹⁰ If there are no such tariffed or publicly available rates or the carrier “reasonably determines that this method for calculating the rural rate is unfair,” the carrier must submit its rural rates to the state commission (for intrastate rates) or the FCC (for interstate rates) for approval.¹¹

Information Requests, and Responses, Regarding Cost-Effective Method.

On March 23, 2016, MHCWI submitted FY 2015 FCC Forms 466 requesting support for Multiprotocol Label Switching (MPLS) service (45 Mbps) for FRN 1576895 and MPLS services (20 Mbps) for FRNs 1576897, 1576898, and 1576899 from NSS.¹² According to MHCWI’s FY 2015 FCC Forms 466, these FRNs were associated with FY 2015 FCC Forms 465 that MHCWI had posted on June 11, 2015.¹³ On its FCC Forms 466, MHCWI indicated that it received multiple bids in response to its FY 2015 FCC Forms 465 and listed monthly recurring charges (MRCs) of \$11,803.87 for MPLS (45 Mbps) service for FRN 1576895; \$9,703.13 for MPLS (20 Mbps) service for FRN 1576897; \$11,417.20 for MPLS (20 Mbps) service for FRN 1576898; and \$10,377.40 for MPLS (20 Mbps) service for FRN 1576899.¹⁴

On March 28, 2016, USAC contacted MHCWI requesting, among other items, clarification as to whether services for FRNs 1576895, 1576897, 1576898, and 1576899 were associated with MHCWI’s FY 2015 FCC Forms 465 or, alternatively, FY 2014 FCC Forms 465.¹⁵ USAC also requested copies of all bids received in response to both MHCWI’s FY 2014 and FY 2015 FCC Forms 465, and, if multiple bids were received, the score criteria and decision materials used by MHCWI to select the most cost-effective service provider.¹⁶

On March 30, 2016, MHCWI responded to USAC’s request by providing a copy of a bid from TeleQuality Communications Inc. (TeleQuality) dated November 17, 2014, and explaining that

⁹ 47 C.F.R. § 54.607(a) (2015).

¹⁰ 47 C.F.R. § 54.607(b) (2015).

¹¹ 47 C.F.R. § 54.607(b), (b)(1), (b)(2) (2015).

¹² FCC Forms 466 for FY 2015 FRNs 1576895, 1576897, 1576898, and 1576899 (Mar. 23, 2016).

¹³ See *id.*; FY 2015 FCC Forms 465, Nos. 43156215, 43156260, 43156261, and 43156262 (June 11, 2015) (associated with FRNs 1576899, 1576895, 1576898, and 1576897, respectively).

¹⁴ FCC Forms 466 for FY 2015 FRNs 1576895, 1576897, 1576898, and 1576899 (Mar. 23, 2016).

¹⁵ See USAC Information Request (Mar. 28, 2016).

¹⁶ *Id.*

MHCWI was “resubmitting the bids received in regards to the FY 14 posting.”¹⁷ MHCWI also stated that “[t]he contract was signed during the 2014 fund year” and that “it took much longer than anticipated to get the service up and running.”¹⁸ As a result, MHCWI explained, it “repost[ed] for Fund Year 2015” and “used the signed contract as an existing bid.”¹⁹ However, according to MHCWI, “[n]o new bids were received based on the 2015 posting” of its FCC Forms 465.²⁰

In subsequent information requests issued on April 21, 2016, and May 24, 2016, USAC reiterated its request that MHCWI provide the score criteria it used to evaluate the bids received in response to its FCC Forms 465.²¹ USAC also noted that, in its proposal, TeleQuality had offered rates that were more than one hundred percent less expensive than the rates charged by NSS.²² MHCWI responded on April 28, 2016, and May 25, 2016, stating that “[t]he decision to choose NSS was made with cost and quality of service in mind.”²³ MHCWI also explained that “[t]he monthly charge was within MHCWI’s budgeted amount and significantly less than Telequality,” and that “the benefit of services with fiber vs. coax and the overall quality of services with NSS outweighed Telequality.”²⁴

Information Requests, and Responses, Regarding Rural Rates and Eligible Services.

Between May 24, 2016 and June 7, 2016, USAC submitted multiple inquiries to MHCWI requesting, among other items, information and documentation to support NSS’s rural rates and MRCs for FRNs 1576895, 1576897, 1576898, and 1576899.²⁵ On June 7, 2016, NSS responded on behalf of MHCWI to USAC’s inquiries regarding its MRCs, stating that “its costs to provide the services to MHCWI *included significant special construction charges* levied by underlying carriers to build out facilities necessary to provide substantially upgraded services” and that “[i]t is common practice for facilities and non-facilities providers such as NSS to amortize such costs over the term of a service agreement – which is what NSS has done here.”²⁶ NSS also argued

¹⁷ Information Response from MHCWI (Mar. 30, 2016). *See* TeleQuality Communications Inc. Proposal for Telecommunications Services for Mental Health Centers of Western Illinois (Nov. 17, 2014) (TeleQuality Proposal).

¹⁸ Information Response from MHCWI (Mar. 30, 2016).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *See* USAC Information Request (Apr. 21, 2016); USAC Information Request (May 24, 2016).

²² *See* USAC Information Request (Apr. 21, 2016).

²³ Letter from Roxie Oliver, Executive Director, MHCWI (Apr. 28, 2016); Letter from Roxie Oliver, Executive Director, MHCWI (May 25, 2016) (together, MHCWI Letters).

²⁴ *Id.*

²⁵ *See* USAC Information Request (May 24, 2016); USAC Information Request (May 25, 2016); USAC Information Request (June 7, 2016).

²⁶ Letter from Scott Madison, Founder & President, Network Services Solutions to USAC, 1 (June 7, 2016) (NSS Letter) (emphasis added).

that it “assumes considerable risk by incurring these costs on behalf of the HCP while the HCP sought USAC funding,” and described this risk as “a cost of doing business that NSS also factors into its pricing.”²⁷ NSS did not explain how these special construction charges were allocated in the calculation of its MRCs, or specify the dollar amount associated with these special construction charges.

With respect to its rural rates, NSS stated in its June 7, 2016 letter that it “does not provide identical or similar services to other commercial customers in [MHCWI’s] rural area” and that it “is not aware of any tariffed or publicly available rates for comparable services in the rural area.”²⁸ NSS did not include any information or documentation to demonstrate that it submitted its rural rates to the state commission or the FCC for approval. Instead, NSS argued that requiring it to initiate such a proceeding “would be a novel approach by USAC, possibly prohibited by 47 C.F.R. § 54.702(c).”²⁹ NSS did not explain how USAC’s request for information regarding compliance with the rural rate requirements under 47 C.F.R. § 54.607, would be “possibly prohibited by 47 C.F.R. § 54.702(c).”

Funding Denial and Subsequent Appeal.

On July 19, 2016, USAC denied FRNs 1576895, 1576897, 1576898, and 1576899 because MHCWI (1) requested funding for items ineligible for support under the RHC Telecom Program, and (2) did not select the most cost-effective method of providing the requested services.³⁰ On August 12, 2016, NSS appealed on behalf of MHCWI, requesting that USAC reverse the denial of funding for these FRNs.³¹

In the Appeal, NSS argues that USAC may not require HCPs to use the lowest-cost technology when superior, but more costly, options are available, and that the monthly recurring cost for an eligible service may include amortized capital costs necessary to provision that eligible service.³² NSS also argues that its services provide the features of quality of transmission, reliability, and other factors that MHCWI deemed relevant to provide the required healthcare services.³³ Finally, NSS claims that all carriers recover capital costs through their rates and that there is no rule in the RHC Program prohibiting this practice.³⁴

Administrator’s Decision on Appeal

²⁷ *Id.*

²⁸ *Id.* at 2.

²⁹ *Id.*

³⁰ *See* Administrator’s Denials.

³¹ Appeal at 6.

³² *Id.* at 2.

³³ *Id.* at 5-6.

³⁴ *Id.* at 4-5.

As detailed below, USAC has determined that, while MHCWI has demonstrated that it selected the most cost-effective method of providing the requested services, USAC is nevertheless unable to grant the Appeal because it finds that MHCWI requested RHC Telecom Program support for items ineligible for funding under FCC rules. In addition, as explained below, although not the subject of the Appeal or USAC's denials, upon further review, USAC notes that neither MHCWI nor NSS have demonstrated that the monthly rural rates for FY 2015 FRNs 1576895, 1576897, 1576898, and 1576899 comply with FCC rules governing rural rates for the RHC Telecom Program.

Ineligible Item(s).

USAC is unable to grant the Appeal because it has determined that MHCWI requested RHC Telecom Program support for items ineligible for funding under FCC rules. Specifically, NSS indicated that the MRCs listed on MHCWI's FCC Forms 466 for FRNs 1576895, 1576897, 1576898, and 1576899 include amortized special construction charges attributable to the build out of facilities required to provide MHCWI with upgraded services.³⁵ NSS also explained that, because of the risk it assumed by incurring these special construction costs on behalf of MHCWI while MHCWI sought RHC Telecom Program support, it factored these costs into the MRCs.³⁶

As explained above, the RHC Telecom Program only provides support for eligible telecommunications services.³⁷ NSS's claim that including special construction costs is common practice among service providers, even if true, is immaterial. Without an explanation of how the ineligible costs were allocated in the calculation of NSS's MRCs, or an itemized list of associated amounts, USAC is unable to determine what portions of MHCWI's funding requests are for eligible telecommunications services and what portion are for ineligible special construction charges. Because special construction charges are not eligible telecommunications services and were included in the MRCs for FRNs 1576895, 1576897, 1576898, and 1576899, USAC finds that MHCWI's funding requests include items ineligible for RHC Telecom Program support, in violation of FCC rules. Therefore, USAC is unable to grant the Appeal.

Cost-Effectiveness.

Notwithstanding its conclusion that the Appeal must be denied for the reasons stated above, USAC withdraws its previous finding that MHCWI failed to select the most cost-effective method of providing the requested services. Although MHCWI indicated on its FCC Forms 466 for FRNs 1576895, 1576897, 1576898, and 1576899 that it received multiple bids in response to its FY 2015 FCC Forms 465 and submitted a copy of a TeleQuality bid in response to USAC's request for its competitive bidding documentation, MHCWI has clarified that it did not in fact receive multiple bids for services in FY 2015 and that the TeleQuality bid was incorrectly submitted in response to USAC's request for competitive bidding documentation when in fact

³⁵ NSS Letter at 1.

³⁶ *Id.*

³⁷ 47 C.F.R. § 54.602(a) (2015); *see supra* note 8 and accompanying text.

the bid was associated with MHCWI's FCC Form 465 for FY 2014, and not its FY 2015 FCC Forms 465.³⁸ As a result, MHCWI only received one bid in response to its FY 2015 FCC Forms 465 (i.e., NSS's bid) and selected it as the only bid received. Because TeleQuality did not submit a bid in response to MHCWI's FY 2015 FCC Forms 465 and NSS's bid was the only bid received in response to MHCWI's FY 2015 FCC Forms 465, MHCWI was not required to consider TeleQuality's bid when selecting a service provider to provide the requested services in FY 2015 and did not fail to select the most cost-effective method of providing the requested services.³⁹ Accordingly, USAC withdraws its previous finding regarding cost-effectiveness.

Rural Rates.

Although not the subject of the Appeal or USAC's denials, upon further review, USAC also notes that neither MHCWI nor NSS have demonstrated that the monthly rural rates for FY 2015 FRNs 1576895, 1576897, 1576898, and 1576899 comply with FCC rules governing rural rates for the RHC Telecom Program. By NSS's own admission, NSS is unable to show that its rural rates are the average of either "rates actually being charged to commercial customers, other than health care providers, for identical or similar services provided by [NSS] in the rural area in which [MHCWI] is located" or "tariffed and other publicly available rates, not including any rates reduced by universal service programs, charged for the same or similar services in that rural area, over the same distance as the eligible service by other carriers."⁴⁰ In addition, there is no indication that NSS submitted its rural rates to either the state commission or the FCC for approval, as required by FCC rules if there are no such tariffed or publicly available rates or if NSS "reasonably determines that this method for calculating the rural rate is unfair."⁴¹

Because this deficiency was not included as a basis for USAC's denial of MHCWI's funding requests, we do not address it further here. However, USAC may conduct additional inquiry into this issue and address it in future decisions if necessary, with respect to FY 2015 FRNs 1576895, 1576897, 1576898, and 1576899.

Conclusion

Although USAC withdraws its previous finding that MHCWI failed to select the most cost-effective method of providing the requested services, for the reasons explained above, USAC nevertheless finds that MHCWI failed to demonstrate compliance with FCC rules for the RHC

³⁸ See Information Response from MHCWI (Mar. 30, 2016). USAC notes that the TeleQuality bid submitted by MHCWI is dated November 17, 2014, which was before MHCWI posted the FY 2015 FCC Forms 465 associated with FRNs 1576897, 1576898, and 1576899. This supports MHCWI's claim that the TeleQuality bid was not posted in response to these FY 2015 FCC Forms 465. Compare TeleQuality Proposal with FY 2015 FCC Forms 465, No. 43156215, 43156260, 43156261, and 43156262 (June 11, 2015).

³⁹ See 47 C.F.R. § 54.615(a) (2015) ("In selecting a telecommunications carrier, a health care provider shall consider all bids submitted and select the most cost-effective alternative.").

⁴⁰ 47 C.F.R. § 54.607(a)-(b) (2015). See NSS Letter at 2.

⁴¹ 47 C.F.R. § 54.607(b) (2015).

Mr. Jeffrey A. Mitchell

February 19, 2018

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Telecom Program by including ineligible items in the MRCs for FRNs 1576895, 1576897, 1576898, and 1576899. In addition, USAC is not authorized to waive FCC rules.⁴² Therefore, USAC is unable to grant the Appeal.

If you wish to appeal this decision, you can follow the instructions pursuant to 47 C.F.R. Part 54, Subpart I (47 C.F.R. §§ 54.719 to 725). Detailed instructions for filing appeals are available at:

<http://www.usac.org/about/about/program-integrity/appeals.aspx>

Sincerely,

/s/ Universal Service Administrative Company

⁴² See *supra* note 4.

Exhibit H – MHCWI Letter of Appeal to USAC (Dec. 10, 2018)

1800 M STREET, NW
SUITE 800N
WASHINGTON, DC 20036
TEL 202.783.4141
FAX 202.783.5851
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L. CHARLES KELLER
DIRECT 202.383.3414
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December 10, 2017

VIA EMAIL (RHC-appeals@usac.org)

Universal Service Administrative Co.
Rural Health Care
Attn: Letter of Appeal
700 12th Street, NW, Suite 900
Washington, DC 20005

Re: *Letter of Appeal on behalf of Mental Health Centers of Western Illinois (HCP No. 39313); Mental Health Centers of Western Illinois – Pittsfield (HCP No. 39420); Mental Health Centers of Western Illinois – Carthage (HCP No. 39417); Mental Health Centers of Western Illinois – Day Program (HCP No. 39314) WC Docket No. 02-60*

To Whom It May Concern:

Pursuant to 47 C.F.R. §§ 54.719-54.725, the Mental Health Centers of Western Illinois entities listed above (collectively, “MHCWI”) hereby appeal the decision of the Universal Service Administrative Company (“USAC”) to deny Network Services Solutions, LLC’s (“NSS”) March 27, 2017 appeal request on behalf of MHCWI for funding support under the federal Rural Health Care Telecommunications Program (“RHC Program”).¹ By letter dated October 11, 2018, USAC concluded that “neither NSS nor MHCWI has submitted sufficient documentation to demonstrate that the urban and rural rates for the funding requests comply with FCC rules governing urban and rural rates in the [RHC] Program.” (Exhibit A) (the “USAC October Letter”).

As discussed in detail in the attached, contemporaneously filed petition for waiver, MHCWI was a victim of fraud and deceptive practices carried out by NSS. MHCWI is seeking a waiver from the Commission of the Commission rule that formed the basis for the denial at issue here. On the basis of this pending waiver request, MHCWI hereby appeals the USAC October Letter. In the event that the Commission grants MHCWI’s Petition and awards the requested

¹ See Funding Request Numbers 1690336, 1690339, 1690341, and 1690343. (Exhibit B).

relief, MHCWI asks that USAC reevaluate MHCWI's application for RHC funding, in light of the unfortunate facts discussed above.

Any questions regarding this appeal should be directed to the undersigned.

Respectfully submitted,

WILKINSON BARKER KNAUER, LLP

/s/ L. Charles Keller

L. Charles Keller

Melissa L. Turcios

Counsel to Mental Health Centers of Western Illinois;

Mental Health Centers of Western Illinois – Pittsfield;

Mental Health Centers of Western Illinois – Carthage;

Mental Health Centers of Western Illinois – Day Program

Attachments

Declaration of Roxie Oliver, Executive Director, MHCWI
MHCWI Petition for Waiver

Declaration of Ms. Roxie Oliver

STATE OF _____)
)
COUNTY OF _____)

DECLARATION

1. My name is Roxie Oliver. I am the Executive Director of the Mental Health Centers of Western Illinois (HCP No. 39313); Mental Health Centers of Western Illinois – Pittsfield (HCP No. 39420); Mental Health Centers of Western Illinois – Carthage (HCP No. 39417); Mental Health Centers of Western Illinois – Day Program (HCP No. 39314) (collectively, “MHCWI”). My business address is 700 SE Cross Street Mt Sterling IL 62353.

2. I swear or affirm that I have personal knowledge of the facts stated in this Petition for Waiver, that I am competent to testify to them, and that I have the authority to make this Appeal on behalf of MHCWI.

3. I further swear or affirm that all of the statements and representations made in this Petition for Waiver are true and correct.

Executed this 10 day of December, 2018.



Roxie Oliver
Executive Director
MHCWI

**Exhibit I – Email from Elizabeth High, attorney to Bankruptcy Trustee for the estate of
NSS, to Jane Denes, counsel to MHCWI (Nov. 28, 2018)**

Carr, Alexandra

Subject: FW: Bankruptcy Petition #: 17-50309-gwz Network Services Solutions, LLV
Attachments: image002.jpg; ATT00001.htm; image002.jpg; ATT00002.htm; 000632.pdf; ATT00003.htm

From: Elizabeth High <e.high@lee-high.com>
Date: November 28, 2018 at 3:28:11 PM CST
To: Jane Denes <Jane@posegate-denes.com>
Subject: RE: Bankruptcy Petition #: 17-50309-gwz Network Services Solutions, LLV

Jane:

We have had a chance to look at the receivable amount for Mental Health Centers of Western Illinois. The total amount due is \$922,980.30. The final invoice dated October 2017 is attached for your review. As I stated in my prior email, the Trustee intends to pursue amounts due from former NSS customers so we will get you a formal demand letter shortly.

Please let me know if you have any questions.

Liz

WE'VE MOVED! PLEASE NOTE NEW ADDRESS



8175 S. Virginia St, Suite 850
Box 398
Reno, Nevada 89511-2388
Address Service Requested

☐ Check here for change of address (see reverse for details)



MENTAL HEALTH CENTER OF WESTERN ILLINOIS
700 SOUTHEAST CROSS STREET
MT STERLING, IL 62353-1561

Remittance Section

Invoice #:	0000632171001
Customer Name	MENTAL HEALTH CENTER OF WESTER
Account Number	000632-2261
Past Due Amount	922,980.30
Current Charges	.00
Due Date	10/31/17
Total Amount Due:	\$922,980.30
Amount Paid	\$

Please make checks payable to: *Network Services Solutions*



Network Services Solutions
8175 S Virginia St STE 850
Box 398
Reno, Nevada 89511-8981

Please detach and return above portion with your payment.

Summary of Account

Total Current Charges	.00
Previous Bill	922,980.30
Payment Received	.00
Adjustments	.00
Past Due Amount	922,980.30
Current Charges	.00
Total Amount Due	922,980.30
Due Date	10/31/17



Invoice #:	0000632171001
Account Number:	000632-2261
Statement Date:	10/01/17

Important Messages

Federal USF Surcharge Information

Please note the Federal USF surcharge is assessed to the loop only portion of the circuit.

Detail of Payments and Adjustments

If you have any questions about your bill, please call
Customer Service at (800) 726-2575 and select Option 2.

24-Hour Troubleshooting or Circuit Outage:

Please call tech on duty at 888-885-9029
or email: support@networkservices.org