

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of

Request for Review by Hope Community  
Resources, Inc. of a Decision of the Universal  
Service Administrator

WC Docket No. 02-60

**Accepted/Files**

**OCT 17 2014**

Federal Communications Commission  
Office of the Secretary

**HOPE COMMUNITY RESOURCES, INC.  
REQUEST FOR REVIEW OF USAC DENIAL OF APPEAL**

DOCKET FILE COPY ORIGINAL

Danielle Frappier  
Adam Shoemaker  
DAVIS WRIGHT TREMAINE LLP  
1919 Pennsylvania Avenue, NW  
Suite 800  
Washington, DC 20006-3401  
(202) 973-4200

*Its Attorneys*

October 17, 2014

No. of Copies rec'd  
List ABCDE

043

## SUMMARY

On August 18, 2014, the Universal Service Administrative Company denied the appeal of Hope Community Resources, Inc. ("Hope") of USAC's denial of its application for Universal Service support through the Rural Health Care ("RHC") Telecommunications Program. USAC's initial denial of Hope's application and its subsequent denial of Hope's appeal were each based on flawed conclusions as to the nature of Hope's services and facilities in its Barrow, Alaska facility. Hope seeks review of these decisions.

First, USAC erroneously concluded that Hope is not a Community Mental Health Center and therefore does not offer services eligible for RHC Telecommunications Program support. USAC's conclusion is not supported by the facts or by applicable law or Commission rules. Second, concluded that Hope lacks a required state license. In fact, no state license is required to perform the services Hope currently provides in Barrow. Third, USAC based its decision in part on its belief that Hope's Barrow facility primarily offers residential services that are ineligible for RCH support. While Hope intends to offer such services at its Barrow facility in the future, it does not now offer such services, and when it launches these services, it will do so at a separate facility from those it currently offers.

In the alternative, Hope requests that the Commission waive those parts of its rules that it concludes disqualifies Hope for RHC support. In light of the uniquely difficult circumstances faced by Barrow, Alaska's population and the special role Hope plays in that community, it would be appropriate to allow Hope to receive support as a Community Mental Health Center.

**TABLE OF CONTENTS**

I. Introduction ..... 1

    A. Hope’s Mental Health Services in Alaska..... 2

    B. Hope’s Mental Health Services in Barrow, Alaska..... 2

    C. Hope’s Application for RCH Support..... 4

II. USAC Erred in Denying Hope’s Application and Appeal..... 5

    A. Neither the Act Nor Any Commission Rule Specifies the Precise Services that a  
        Community Mental Health Center Must (or May Not) Provide..... 5

    B. Using the CMHA as a Guide, Hope’s Barrow Facility Provides Qualifying Services.... 6

    C. A State License Is Not Required to Provide the Mental Health Services Currently  
        Provided at Hope’s Barrow Facility ..... 8

    D. Hope’s Residential Services Are Not Relevant to its Application..... 9

III. In the Alternative, a Waiver of Commission Rules Would Be Appropriate..... 9

    A. The Mental Health Needs of the Barrow Community Are Great ..... 10

    B. Barrow Is Too Remote For Conventional Mental Health Services to Be Effective ..... 10

    C. A Telecommunications Link Is Necessary Before Telemedicine Services Can Be  
        Offered ..... 11

IV. Conclusion..... 11

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of

Request for Review by Hope Community  
Resources, Inc. of a Decision of the Universal  
Service Administrator

WC Docket No. 02-60

**HOPE COMMUNITY RESOURCES, INC.  
REQUEST FOR REVIEW OF USAC DENIAL OF APPEAL**

**I. INTRODUCTION**

Hope Community Resources, Inc. (“Hope”) by its attorneys and pursuant to sections 54.719(b) and 54.722 of the Commission’s rules (47 C.F.R. §54.719(b) and 47 C.F.R. § 54.722), hereby requests review of the decision of the Universal Service Administrative Company (“USAC”) to deny Hope’s prior appeal to USAC of its denial of funding under the Rural Health Care (“RHC”) Telecommunications Program under Application Number 43138291 for Funding Year 2013.<sup>1</sup> In the alternative, should the Bureau decide not to grant Hope’s request for review, Hope requests a waiver of the Commission’s rules pursuant to section 54.719(c) (47 C.F.R. §54.719(c)).

---

<sup>1</sup> *Denial of Hope Application*, sent November 18, 2014 (“USAC Denial”) attached as **Exhibit 1**; *Appeal of Hope Community Resources, Inc. of USAC Determination of Ineligibility for Barrow, AK Location*, filed January 17, 2014 (“Hope Appeal”) attached as **Exhibit 2**; *Administrator’s Decision on Rural Health Care Program Appeal*, issued August 18, 2014 (denying the Hope appeal) attached as **Exhibit 3**.

**A. Hope's Mental Health Services in Alaska**

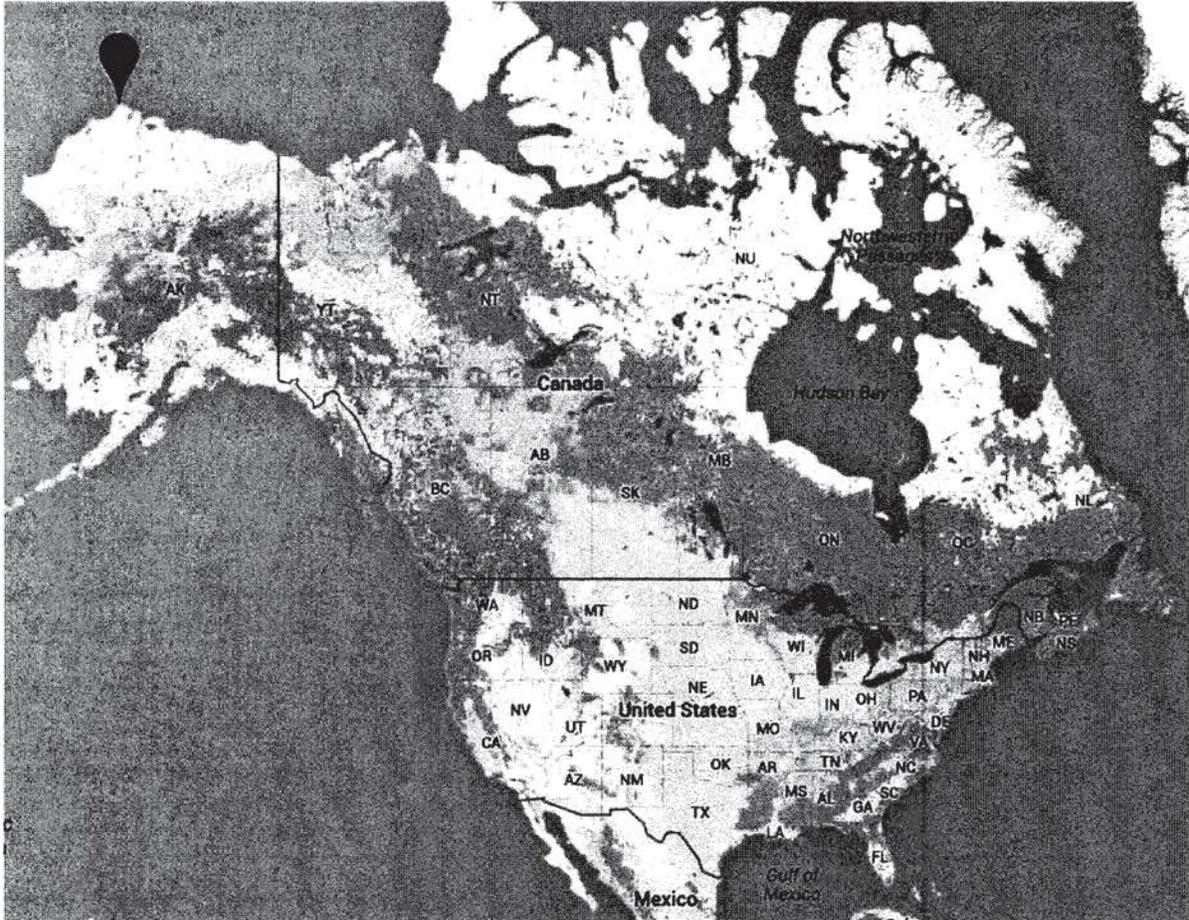
Hope is a non-profit organization that provides community-based support to over 1,400 families and individuals who experience mental health illness and developmental disabilities throughout the State of Alaska. Currently, Hope is the only such organization to provide services on a state-wide basis, and it does so through regional offices that are located in Anchorage, the Mat-Su Valley, Dillingham, Kodiak, Juneau, Ketchikan, Seward, Barrow, and the Kenai Peninsula. Hope also serves the outlying areas and numerous villages surrounding each region. Moreover, approximately 28 percent of Hope's support recipients are Alaskan Native. This proves to be challenging in light of the language and geographic barriers; however, Hope has accepted this challenge through its expansion of its regional offices, subsistence supports and cultural awareness.

The people who depend on Hope's services range in age from infancy to the elderly; are of varied and diverse ethnic backgrounds; and experience mild to severe mental health challenges and/or developmental disabilities. Each person is individual and unique in the supports they need and request. Because of this, and due to its role as the only state-wide provider of support to persons with mental illness and/or developmental disabilities, Hope focuses on the needs of each individual and not on a standard "menu" of services. Each person's plan is customized to meet their specific health care needs. This also permits Hope to treat more patients on site, without the need to send the person to a far-off facility. Keeping families together in the community of their choice is a major component of Hope's mission.

**B. Hope's Mental Health Services in Barrow, Alaska**

Hope's Barrow facility, which opened in 2001, provides much-needed mental health services to one of the most isolated communities in the nation. The town of Barrow, Alaska lies

above the Arctic Circle and is the northernmost city in the United States. Its location is shown below in Google Maps by the tear-drop shaped marker on the map below.



No roads connect the town to the rest of Alaska, and supplies must be brought in by air (year-round) or by sea (in the summer only).

The nearest health facilities dedicated to treating mental illness are located in Anchorage or Fairbanks, which are 720 and over 500 miles away from Barrow, respectively, and generally accessible only by air. The National Alliance on Mental Illness (“NAMI”) has concluded that available public mental health services are inadequate to meet the needs of Alaskans.<sup>2</sup> NAMI’s

<sup>2</sup> See NAMI State Statistics: Alaska (2010) (available at <http://www.nami.org/ContentManagement/ContentDisplay.cfm?ContentFileID=93479>).

study found that of Alaska's approximately 700,000 residents, close to 24,000 adults live with serious mental illness and about 8,000 children live with serious mental health conditions.<sup>3</sup> Alaska's public mental health system provides services to only 38 percent of adults who live with serious mental illness.<sup>4</sup>

### **C. Hope's Application for RCH Support**

In November 2013, Hope applied for RHC Telecommunications Program support for its operations in Barrow. The application identified Hope's Barrow facility as a Community Mental health Center and requested support for telecommunications and Internet services for the remainder of funding year 2013. USAC denied Hope's application later the same month, stating that Hope's Barrow facility had been identified as an "Ineligible HCP type." It apparently based this conclusion on a statement found on the website of an unaffiliated third party, which uses the phrase "Assisted Living Facility" in its description of Hope's Barrow facility. USAC did not ask Hope whether this description was accurate or complete (it is neither), or whether the RCH support Hope had requested is to be used for an assisted living facility (it is not).<sup>5</sup> Hope timely appealed USAC's determination, explaining this misinterpretation, stating that the outpatient services for which it seeks RCH support are distinct from the inpatient services it offers, and citing Commission precedent for prorating support when an applicant offers both eligible and ineligible services.<sup>6</sup> On August 18, 2014, USAC sent its Administrator's Decision denying Hope's appeal. In this decision, USAC explained that "[b]ecause residential facilities are not eligible for RHC Program support, the services Hope's Barrow facility provides to long-term residents are not eligible for RHC Program support." Further, it stated that because some of

---

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> See USAC Denial at Exhibit 1.

<sup>6</sup> See Hope Appeal at Exhibit 2.

Hope's statements "use the future tense to describe Hope Barrow's services for non-residents," Hope had not demonstrated that it "currently provides community mental health services to non-residents or community clinical services." It also cited Hope's lack of licensure to provide community mental health services as a basis for the denial.

## II. USAC ERRED IN DENYING HOPE'S APPLICATION AND APPEAL

Hope's Barrow facility offers "Community Mental Health Services" by any reasonable definition of that term, and therefore USAC's denial of its application for RCH support and subsequent denial of Hope's appeal are in error.

### A. **Neither the Act Nor Any Commission Rule Specifies the Precise Services that a Community Mental Health Center Must (or May Not) Provide**

Neither the Communications Act nor Commission rules include requirements for qualification as a "Community Mental Health Center" based on the precise services offered or not offered. In fact, in 1996, the Federal-State Joint Board issued a Recommended Decision outlining its view of how the Commission should structure federal universal service support to rural healthcare providers. As part of that proceeding, several commenters asked that the Commission, after recommendation by the Joint Board, define the term "community mental health center" coextensive with other federal definitions, which typically list the specific services must be provided in order to qualify as a particular type of health service provider. The Joint Board, however, recommended against this request, and the Commission explicitly declined to adopt such an approach.<sup>7</sup> The Commission subsequently adopted that recommendation.<sup>8</sup> The import is that there is no list of services that a Community Mental Health Center must (or

---

<sup>7</sup> *In Re Federal-State Joint Board on Universal Service*, Recommended Decision, 12 FCC Rcd 87 (1996), ¶¶ 708-711.

<sup>8</sup> *In Re Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776 (FCC rel. May 8, 1997) at ¶¶ 655-656.

conversely, may not) provide in order to participate in the RHC Telecommunications Program. USAC's interpretation of Section 254 of the Communications Act and Commission rules to limit RHC support to entities that provide specific services, therefore, is an impermissible interpretation of the statute and Commission rules.<sup>9</sup>

Hope's Barrow facility provides screening services for patients to determine, in part, whether the person should be referred to a state facility, as well as other support services, such as consultative and treatment support, outpatient services, psychosocial rehabilitation services, education and outreach services, facilitating treatment team meetings and providing wellness seminars. Hope's mission is to connect with community members in need of mental health services, identify those needs, and provide the community-based support necessary. Taken together, all these activities provide important mental health services to the Barrow community that meet the goals of the RHC program to provide telecommunications and Internet access services to rural communities throughout the United States.

**B. Using the CMHA as a Guide, Hope's Barrow Facility Provides Qualifying Services**

The Community Mental Health Act ("CMHA"), however, provides useful guidance in this context. In fact, it appears to serve as the basis for the checklist USAC provides to applicants to determine whether they are Community Mental Health Centers.<sup>10</sup> The CMHA, at

---

<sup>9</sup> Under 47 C.F.R. § 54.702(c), USAC is prohibited from "mak[ing] policy, interpret[ing] unclear provisions of the statute or rules, or interpret[ing] the intent of Congress."

<sup>10</sup> See USAC Rural Health Care Universal Service Community Mental Health Center Checklist (*available at <http://www.usac.org/res/documents/rhc/pdf/forms/2013/CMHC-Certification-Checklist.pdf>*). The form includes the following criteria: (1) The facility offers outpatient mental health treatment; (2) The facility offers 24-hour emergency care for mental health patients; (3) The facility provides day hospital treatment for mental health patients; (4) The facility provides other partial hospitalization services for mental health patients; (5) The facility provides psychosocial rehabilitation services; (6) The facility provides pre-admission screening for patients being considered for admission to state mental health facilities.

42 U.S.C. §§ 300x-2(c)(1) and 1395x(ff)(3)(B)(i)(I), defines the term "Community Mental Health Center" as an entity that provides one of the following types of services:

(A) Services principally to individuals residing in a defined geographic area (hereafter in this subsection referred to as a "service area").

(B) Outpatient services, including specialized outpatient services for children, the elderly, individuals with a serious mental illness, and residents of the service areas of the centers who have been discharged from inpatient treatment at a mental health facility.

(C) 24-hour-a-day emergency care services.

(D) Day treatment or other partial hospitalization services, or psychosocial rehabilitation services.

(E) Screening for patients being considered for admission to State mental health facilities to determine the appropriateness of such admission.

Hope's Barrow facility easily meets this definition because one of the key services it provides is to screen patients for further services, including whether the person should be referred to a state facility. These services can help determine whether local services are sufficient to provide support to the patient, and if not, whether the services of a state mental health facility are necessary. That initial determination can make a vast difference in a place like Barrow given that the nearest state facilities dedicated to the treatment of mental illness are many hundreds of miles away and are only accessible by plane.

It is important to keep in mind that the purpose of the CMHA is to encourage the treatment of mental illness within the community, not in a distant state institution. This goal is particularly appropriate in Barrow, where the nearest state mental institution is 725 miles distant and is inaccessible by road. President Kennedy spearheaded the creation of the CMHA as a means for assessing and treating mental illness at local community facilities. Assessing the

needs of patients in their own communities was a key goal of the CMHA. As President Kennedy stated in his 1963 address to Congress regarding the creation of the CMHA:<sup>11</sup>

These centers will focus community resources and provide better community facilities for all aspects of mental health care. Prevention as well as treatment will be a major activity. Located in the patient's own environment and community, the center would make possible a better understanding of his needs, a more cordial atmosphere for his recovery and a continuum of treatment.

In the context of this goal, and in the circumstances of Barrow residents, screening is best accomplished when a community-based entity like Hope's Barrow facility is empowered to evaluate patients and determine what support would best improve their mental health outcome. In some cases the appropriate answer may be a transfer to the state mental health facility in Anchorage. In many other cases, and in keeping with the purpose of the CMHA, the best course may be to provide outpatient services in the community.

This screening is one of Hope's Barrow facility's major roles in the community. On this ground alone, Hope's Barrow facility qualifies as a CMHC eligible for RCH support.

**C. A State License Is Not Required to Provide the Mental Health Services Currently Provided at Hope's Barrow Facility**

USAC's denial of Hope's appeal is based in part on the assumption that a license is required to provide the types of mental health services currently provided by Hope's Barrow facility. However, a state license is not required for the screening and other services currently being provided by Hope at its Barrow location. In addition, no Commission rule or decision requires the Community Mental Health Center to demonstrate compliance with any state

---

<sup>11</sup> John F. Kennedy, Feb. 5 1963, Special Message to the Congress on Mental Illness and Mental Retardation (available at <http://www.presidency.ucsb.edu/ws/?pid=9546>).

licensing requirements, even if there were a licensing requirement for these services. Therefore USAC's denial, to the extent it relies on this assumption, is in error and should be overturned.

**D. Hope's Residential Services Are Not Relevant to its Application**

USAC's denial of Hope's application and appeal is also based on USAC's conclusion that Hope's Barrow facility provides only residential services. This is false. Hope's Barrow facility does not currently provide any residential services, and its RHC application did not seek support for such services. Once these services are launched, they will be provided in a separate location from the location in which the current services will be provided. As a result, there would be no use of the RHC-supported service for the residential services offered by Hope.<sup>12</sup>

**III. IN THE ALTERNATIVE, A WAIVER OF COMMISSION RULES WOULD BE APPROPRIATE**

In the event the Commission concludes that USAC's decision was correct under applicable law and Commission rules, and that Hope's Barrow facility is not offering mental health care services eligible for RCH support, a waiver of those rules would be appropriate in these circumstances. A waiver of Commission rules may be granted for good cause shown.<sup>13</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>14</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>15</sup>

---

<sup>12</sup> Even if USAC were to find that there was shared use of the RHC-supported service for the assisted living facility, such usage should be prorated out of the support amounts, as is permitted under program rules.

<sup>13</sup> 47 C.F.R. § 1.3.

<sup>14</sup> Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>15</sup> WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969); Northeast Cellular, 897 F.2d at 1166.

**A. The Mental Health Needs of the Barrow Community Are Great**

As described in the introduction, the mental health needs of Alaska, and Barrow in particular, are drastically underserved, and there is a critical need for community-based mental health assessment, screening and psychosocial rehabilitation services that can connect community members in need to appropriate treatment. The services offered by Hope's Barrow facility are designed to assist individuals with severe and chronic mental illness through a recovery model not offered anywhere else in the region. One of the most important tools that Hope's Barrow facility can use to fulfill this mission is videoconferencing with mental health professionals elsewhere in the state.

**B. Barrow Is Too Remote For Conventional Mental Health Services to Be Effective**

Barrow's isolation and size preclude the existence of a state-run mental health care facility like the one in Anchorage. In that absence, the mental health care providers that do exist in the community must be empowered to provide the assessment and treatment that local resources can support while also directing those most in need to mental health providers outside the community. While it is not feasible for Hope's Barrow facility to maintain a dedicated staff of medically-trained mental health care professionals on site, its most effective role is that of a portal connecting community members in need with mental health experts through videoconferencing and Internet-enabled services.

In order to support the connectivity requirements of the Barrow community, one of the most remote and isolated in the nation, the Commission may need to forego strict application of the RHC rules, should it decide that those rules require health care providers to adhere to the CMHA or some other standard of what precisely qualifies as a Community Mental Health

Center. Instead, in this particular instance it should adopt a holistic, contextual application of RHC and CMHA principles in order to address the telecommunications needs of this region. Hope is providing the most critical, triage-like screening services to those suffering from mental illness the Barrow community. The public interest demands that the Bureau refrain from an overly-strict interpretation of Section 254 and its rules. The hardships that the community would face completely outweigh any concerns that Hope's Barrow facility may not neatly fit within some definitional limitation on Community Mental Health Center that has been unarticulated by the Commission. The balance of the equities in this requires that the community of Barrow has access to the front line mental health services provided by Hope.

**C. A Telecommunications Link Is Necessary Before Telemedicine Services Can Be Offered**

In order for Hope's Barrow facility to offer the services that seem to be, in USAC's view, required of a Community Mental Health Center, Hope needs broadband and telecommunications connections to more distant mental health facilities in Alaska and beyond. RHC support is required to provide this connection in this context of extreme isolation and distance.

If granted, the RHC support Hope has requested will have catalyzing effect on its capabilities in Barrow, allowing it to connect community members with the mental health care system state-wide and nation-wide. The benefits of this connection to the citizens of one of America's most isolated settlements cannot be overstated.

**IV. CONCLUSION**

In light of the foregoing, Hope respectfully requests that the Bureau reverse USAC's denial of its appeal and direct USAC to provide the requested support under the RHC Telecommunications Program. In the alternative, should the Bureau deny this request, it should

waive any Commission rules which, in its view, prevent Hope from receiving RCH Telecommunications Program funding for the services provided at its Barrow facility.

Respectfully submitted,

HOPE COMMUNITY RESOURCES, INC.



By:

Danielle Frappier  
Adam Shoemaker  
DAVIS WRIGHT TREMAINE LLP  
1919 Pennsylvania Avenue, NW  
Suite 800  
Washington, DC 20006-3401  
(202) 973-4200

*Its Attorneys*

October 17, 2014

# **Exhibit 1**

-----Original Message-----

From: [rhcadmin@usac.org](mailto:rhcadmin@usac.org) [mailto:[rhcadmin@usac.org](mailto:rhcadmin@usac.org)]

Sent: Tuesday, November 19, 2013 12:11 PM

To: Jim Haacke

Subject: Rural Health Care FCC Form 465 Submission

Date: 19-Nov-2013

Funding Year: 2013

Health Care Provider (HCP) Number: 33986 HCP Name: Hope Community Resources - Barrow MH FCC Form 465

Application Number: 43138921

The Rural Health Care (RHC) division of the Universal Service Administrative Company (USAC) received and reviewed the FCC Form 465 submitted by the HCP referenced above. A health care provider (HCP) must meet four criteria in order to be eligible to participate in the RHC program:

1. The HCP must be located in a rural area. (A "rural area" is defined in section 54.5 of the Federal Communications Commission's (FCC) rules. The FCC uses lists published by the Office of Management and Budget (OMB) and the Office of Rural Health Policy of the U.S. Department of Health and Human Services (ORHP/HHS) to identify rural areas)
2. The HCP must be a public or non-profit health care provider
3. The HCP type must be one of the following:
  - Post-secondary educational institution offering health care instruction, teaching hospital, or medical school
  - Community health center or health center providing health care to migrants
  - Local health department or agency including dedicated emergency department of rural for-profit hospital
  - Community mental health center
  - Not-for-profit hospital
  - Rural health clinic including mobile clinic
  - Consortium of HCPs consisting of one or more of the above entities
  - Part-time eligible entity located in otherwise ineligible facility

4. The HCP has not previously been assigned a Health Care Provider number (HCP number). If the HCP referenced above is denied as a duplicate HCP, this means that the HCP has previously been deemed eligible. Contact the RHC Help Desk to identify the existing HCP Number for your HCP

An HCP that does not meet these initial criteria is not eligible to participate. Based on the information provided on the submitted FCC Form 465, RHC has determined that the HCP referenced above is not eligible to participate because the HCP has been identified as:

Ineligible HCP type

If you wish to appeal this decision, you may file an appeal with USAC, or directly to the FCC. The appeal must be filed within 60 days of the date of this letter. Detailed instructions for filing appeals are available at:

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

If you have questions or need assistance, contact the RHC Help Desk at 800-229-5476 or at [rhc-admin@usac.org](mailto:rhc-admin@usac.org).

## **Exhibit 2**

Universal Service Administrative Corporation  
Rural Health Care Division  
Attention: Letters of Appeal  
2000 L Street, N.W., Suite 200  
Washington, D.C. 20036

**APPEAL OF HOPE COMMUNITY RESOURCES, INC. OF  
USAC DETERMINATION OF INELIGIBILITY FOR BARROW, AK  
LOCATION**

**Organization Information:**

HCP Name: Hope Community Resources – Barrow MH  
HCP Number: 33986  
Funding Request Number:  
FCC Form 465 Application Number: 43138921  
Funding Year: 2013

**Contact Information:**

Jim Haacke  
Director of Information Technology  
540 W. International Airport Rd.  
Anchorage, Alaska 99518  
(907) 433-4802  
jhaacke@hopealaska.org

On November 19, 2013, the Rural Health Care (“RHC”) Division of the Universal Service Administrative Corporation (“USAC”) issued a determination that Hope Community Resources – Barrow MH (HCP Number 33986) (“Hope Barrow”) is ineligible to receive support from the RHC universal service support mechanism because it is an “ineligible Entity type.” Pursuant to Section 54.719(a) of the rules of the Federal Communications Commission (“FCC” or “Commission”), 47 C.F.R. § 54.719(a), Hope Community Resources, Inc. (“Hope Community Resources”), the operator of the Hope Barrow facility, hereby requests review and reversal of this finding. As explained in more detail herein, this finding of ineligibility is erroneous, and contrary to longstanding Federal Communications Commission policy. As a result, the RHC Division should promptly reverse its decision, and confirm that Hope Barrow is eligible for full or prorated support from the RHC universal service support mechanism.

In denying Hope Barrow’s eligibility for RHC funding, the RHC official’s November 19, 2013 email states: *“The Rural Health Care (RHC) division of the Universal Service Administrative Company (USAC) received and reviewed the FCC*

Form 465 submitted by the HCP referenced above. A health care provider (HCP) must meet four criteria in order to be eligible to participate in the RHC program:

1. The HCP must be located in a rural area. (A "rural area" is defined in section 54.5 of the Federal Communications Commission's (FCC) rules. The FCC uses lists published by the Office of Management and Budget (OMB) and the Office of Rural Health Policy of the U.S. Department of Health and Human Services (ORHP/HHS) to identify rural areas)

2. The HCP must be a public or non-profit health care provider

3. The HCP type must be one of the following:

- Post-secondary educational institution offering health care instruction, teaching hospital, or medical school
- Community health center or health center providing health care to migrants
- Local health department or agency including dedicated emergency department of rural for-profit hospital
- Community mental health center
- Not-for-profit hospital
- Rural health clinic including mobile clinic
- Consortium of HCPs consisting of one or more of the above entities
- Part-time eligible entity located in otherwise ineligible facility

4. The HCP has not previously been assigned a Health Care Provider number (HCP number). If the HCP referenced above is denied as a duplicate HCP, this means that the HCP has previously been deemed eligible. Contact the RHC Help Desk to identify the existing HCP Number for your HCP

An HCP that does not meet these initial criteria is not eligible to participate. Based on the information provided on the submitted FCC Form 465, RHC has determined that the HCP referenced above is not eligible to participate because the HCP has been identified as:

*Ineligible HCP type"*

I have done further investigation on this site and have found the following website: <https://doctorselite.com/facility/hope-community-resources-inc-3>. This site shows the address of 5115 Herman Street, Barrow, AK as follows: HOPE COMMUNITY RESOURCES INC, Assisted Living Facility, Barrow, AK: Locations: PRACTICE, 5115 HERMAN ST, Barrow, AK 99723. As stated in an earlier email,

this is an ineligible Entity type under the Rural Health Care Program. Unfortunately, we will have to deny this application.<sup>1</sup>

Thus, based on the characterization of Hope Barrow listed on an independent, third party web site with no connection to Hope Community Resources itself, and with no further opportunity for Hope Community Resources to correct this misinformation, the RHC Division issued its blanket denial of eligibility for RHC support.

Hope Community Resources appeals this determination on two grounds: First, that the characterization of Hope Barrow solely as an “assisted living facility” is erroneous; and, second, that the offering by Hope Barrow of short term/long term residential services, even if true, does not bar the facility from eligibility from RHC support for services to the extent that it also offers, as a primary function, services that meet the statutory eligibility criteria.

#### **A. Hope Barrow Is Not Solely an “Assisted Living Facility”**

The sole evidence on which the RHC denial of eligibility is based appears to be an unreliable characterization of Hope Barrow by an independent, third party web site called “DoctorsElite.” The web site is operated by “Doctor’s Elite, LLC,” a social media startup formed in late 2011 and based in Gulfport, Mississippi, over 3,700 miles distant from Barrow, Alaska.<sup>2</sup> Its business plan is to grow by “helping patients find doctors who can best diagnose and treat the conditions afflicting them” and “giv[ing] patients power over their diagnoses by helping them chart a course toward better health using trackers, record-keeping tools, and more.”<sup>3</sup> Critical to this goal, the DoctorsElite web site claims a “database of over 500,000 facilities.”<sup>4</sup> While the web site makes no representations as to the source of its information, it invites individual providers listed in the database to “Claim Your Profile,” in order to update or correct listed information, and to “promote your practice” and “market your facility,”<sup>5</sup> which Hope Community Resources has not done. Hope Community

---

<sup>1</sup> Email correspondence from Rose Fioretti-Phillips, Associate Manager, Rural Health Care Division, USAC, to Jim Haacke, Director of Information Technology, Hope Community Resources (Nov. 19, 2014).

<sup>2</sup> See Mississippi Secretary of State, Business Entity Search Results, available at: <https://business.sos.state.ms.us/corp/soskb/Corp.asp?566299>

<sup>3</sup> DoctorsElite, “Help Patients Find the Right Doctor and Health Facility,” available at: <https://doctorselite.com/WhatWeDo/QuickView> (visited Jan. 15, 2014).

<sup>4</sup> DoctorsElite, “Find a Medical Facility by Specialty and Location,” available at: <https://doctorselite.com/FindFacility> (visited Jan. 14, 2014).

<sup>5</sup> DoctorsElite, “Network for Doctors,” available at: <https://doctorselite.com/signup> (visited Jan. 14, 2014).

Resources does not know the source of the information on the DoctorsElite web site, but the characterization of Hope Barrow solely as an "assisted living facility" is incorrect, unreliable, and not based on any information provided by Hope Community Resources.

To the contrary, as indicated in the attached Official Program Description prepared by Hope Community Resources to describe the resources and services available at Hope Barrow, the facility offers primarily outpatient mental health treatment. Hope Barrow "will not be a residential treatment facility, a safe haven for homeless individuals, a detoxification center, a drop-in center or a crisis center."<sup>6</sup> Rather, each patient "will have a weekly treatment team meeting where progress, challenges and program changes may be recommended and/or determined," as well as "a weekly group meeting, inclusive of all individuals supported in the facility and specified staff."<sup>7</sup>

Hope anticipates that the primary focus of Hope Barrow will be offering outpatient services, but a portion of the building will also provide long term residential services and "one short term stay bed," which should not be considered a long-term residential option. Rather, this short term service is offered as an interim care solution only, and is "intended for the purpose of providing the individual with needed mental health rehabilitation services and the families and possibly the community with 'respite.'"<sup>8</sup> At the outset of his or her stay, an individual using this service agree that "the stay is for 2 weeks and at the end of the time, the individual will relocate to their permanent placement."<sup>9</sup>

Hope Community Resources regrets that the RHC Division precipitously denied funding eligibility for the Hope Barrow location based on a speculative and erroneous third-party characterization of entirety of its services, and without providing an adequate opportunity for Hope Community Resources to correct the record. Because it is clear that Hope Barrow is an eligible facility, we request that the RHC Division reconsider and reverse its previous denial of eligibility.

**B. The "Short Term Stay Bed/Long Term Stay Beds" Do Not Render Hope Barrow Ineligible for RHC Funding**

Sections 254(h)(1)(A) and 254(h)(2)(A) of the Communications Act of 1934, as amended ("Communications Act") establish the mechanism for providing support for telecommunications services, on the one hand, and advanced and

---

<sup>6</sup> Hope Community Resources, Inc., "The Barrow Herman Street Location Program Description," at 2 (attached as Exhibit A).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 8.

<sup>9</sup> *Id.*

information services, on the other hand, requested by rural health care providers.<sup>10</sup> The statute defines a “health care provider” to include seven specific categories of entities, including “community mental health centers,” 47 U.S.C. § 254(h)(7)(B)(iv), such as Hope Barrow.

While “nursing homes, hospices, and other long-term care facilities” are not eligible for RHC support,<sup>11</sup> the primary service Hope Barrow offers through its outpatient services does not constitute “long-term care.” Rather, as explained above, these outpatient services are distinct from the ancillary services the facility offers of a residential nature, as an interim step toward an individual’s preplanned return home, or admission to a longer-term placement in a residential facility.<sup>12</sup>

Even to the extent that the HRC Division were to conclude that a portion of Hope Barrow’s services constitutes long-term care outside the Communications Act’s definition of “health care provider,” this determination would not support the RHC Division’s finding that Hope Barrow is categorically ineligible for RHC support. Rather, for over ten years, the Federal Communications Commission (“FCC” or “Commission”) has made clear that rural health care providers are, at a minimum, eligible for prorated support, even if they also provide ineligible services. As the Commission has stated:

[G]iven the realities of rural health care providers in offering quality health care services in rural areas, we clarify the entities listed in section 254(h)(7)(B) that qualify as rural “health care providers.” We conclude that entities listed in section 254(h)(7)(B) include non-profit entities that function as one of the listed entities on a part-time basis . . . . *[P]art-time non-profit rural health care clinics are eligible for prorated support, even when associated with a nursing home, hospice, or other long-term care facility.*<sup>13</sup>

Recognizing as much, the RHC Division’s “Community Mental Health Checklist” states that, “to the extent the Community Mental Health Center includes a long-term care facility, such as a residential substance abuse treatment center, *that portion* would not be eligible for support.”<sup>14</sup>

<sup>10</sup> 47 U.S.C. §§ 254(h)(1)(A), 254(h)(2)(A).

<sup>11</sup> *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 03-288, 18 FCC Rcd 24546 (2003) (“*Rural Health Care Report and Order*”), at ¶ 16.

<sup>12</sup> See Exhibit A, at 8.

<sup>13</sup> *Rural Health Care Report and Order* at ¶¶ 15-16 (emphasis added).

<sup>14</sup> Rural Health Care Universal Service Community Mental Health Center Checklist, OMB Approval No. 3060-0804, available at:

In short, therefore, even if a portion of the ancillary services Hope Barrow offers were considered to be “long-term care,” that determination, at most, would trigger the FCC’s requirement to prorate Hope Barrow’s support, and cannot support the RHC Division’s finding that the facility is entirely ineligible to participate in the RHC support mechanism.

\* \* \* \* \*

---

<http://www.usac.org/res/documents/rhc/pdf/forms/2013/CMHC-Certification-Checklist.pdf> (visited Jan. 14, 2014) (emphasis added).

For the foregoing reasons, Hope Community Resources hereby requests that the RHC Division reverse its previous finding, and rule that Hope Barrow is in fact eligible for support from the RHC universal service support mechanism.

Respectfully Submitted,

**HOPE COMMUNITY  
RESOURCES, INC.**

---

Stephen P. Lesko  
Chief Executive Officer  
540 W. International Airport Rd.  
Anchorage, Alaska 99518  
(907) 433-4701  
slesko@hopealaska.org