

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of Rural Health Care Support Mechanism Request for Review of Ilanka Community Health Center, Cordova, Alaska of a Decision of the Universal Service Administrator

Attachment - 1

WC Docket No. 02-60

Form 465 Application No. 43123751

Funding Request No. 12256601

HCP No. 11932

Petition for Reconsideration and Waiver

This Petition for Reconsideration and Waiver ("Petition") is made by the Ilanka Community Health Center ("IHC") to the Rural Health Care ("RHC") division of the FCC, Wireline Competition Bureau consistent with the applicable regulations governing actions taken by the Universal Service Administrative Company (USAC). The FCC issued a streamlined resolution of requests made to USAC in its decision on WC Docket No. 02-60 in decision DA 15-1237, released on October 30, 2015 granting the DIA request under Form 466-A in the amount of \$214.50, but denying the request for multiprotocol label switching funding ("MPLS") due to a lack of a second Form 466 in the amount of \$47,588.63.

Background

The IHC provides necessary acute and community healthcare in the remote coastal community of Cordova, Alaska. Everything is scarce in Cordova, including available building space for health programs as well as technical and data communications support for those healthcare programs. IHC was forced to relocate the IHC on February 13, 2013, and along with that relocation, a simple address change occurred with no change in health services, no change in MPLS service, and no change in compliance with USAC requirements.

KANA Decision

The Bureau strictly requires a Request for Reconsideration to not merely restate prior facts and legal arguments already considered in any USAC decision, but rather to identify any change in law or facts to have occurred since the submittal of any initial Request for Review. It should however be noted that the FCC does not, in its decision DA 15-1237 in any way address the factual, legal, or policy arguments made in the original ICHC Request for Review, which is Attached and incorporated herein by reference in its entirety. Request for Review or Waiver of ICHC, HCP No. 11932, Request for Review and Request for Waiver, WC Docket No. 02-60 (filed Jan. 27, 2014) (“Request for Review” “Attachment 1”).

What has changed factually and legally since the Request for Review was filed is the FCC’s decision in the Matter of *Requests for Review of Decisions of the Universal Service Administrator by Kodiak Area Native Association et al.*, Files Nos. RHCP 11193, *et al.*, *Rural Health Care Universal Service Support Mechanism*, WC Docket No. 02-60, Order, DA 15-1047, paras. 1-2, 7 (Wireline Comp. Bur. rel. Sept. 17, 2015) (“KANA Decision”). The KANA Decision operated on facts and law similar to the issues raised in the ICHC Request for Review. What is noteworthy, though, in the KANA Decision is that the FCC acknowledges that at the time of ICHC’s change in location (February 13, 2013) there was no FCC Requirement, as a matter of law, for ICHC to submit a new Form 466 following its relocation. The FCC noted: “In its 2006 Biennial Review, the Commission repealed the FCC Forms 466/466-A deadline rule, 47 C.F.R. section 54.623(c)(3).¹ Apparently, this repeal was inadvertent. In 2013, the Commission reinstated its FCC Form 466 deadline rule in 47 C.F.R. section 54.675(c)(4) through the *Healthcare Connect Fund Order*.” KANA Decision at 1-2.

¹ See *Biennial Regulatory Review of Regulations Administered by the Wireline Competition Bureau*, WC Docket No. 02-313, Report and Order, 21 FCC Rcd 9937, 9948, paras. 47-48 (2006).

What the FCC then did with this information is peg the new FCC Form 466 Deadline Rule on the date March 31, 2013. KANA Decision at 2. Nowhere in the Healthcare Connect Fund Order, nor in the FCC's KANA Decision, is there any indication that this new Form 466 Deadline Rule was to be applied retroactively. At the time of ICHC relocation, the KANA Decision confirms that there was no legal requirement for filing Form 466 for the administrative purposes of an address change. Furthermore, the "new" requirement, which was not communicated out to ICHC at any time and which the KANA Decision notes as taking effect March 31, 2013, was not known or knowable by ICHC as triggering a new filing requirement, and there is no evidence whatsoever of an intent by the FCC to apply this March 31, 2013 rule retroactively to an address change that occurred over one month prior. As the Request for Review (Attachment 1) discusses at length, ICHC did in fact provide USAC and the RHC Division notice of its new location prior to the stated June 30, 2013 deadline (on June 26, 2013), and it was not until September 27, 2013 that RHC Division responded with any further information requests. Had RHC Division acted timely on June 26, 2013, ICHC would have been capable of meeting this new founded Form 466 requirement.

Taken together, the KANA Decision provides a clear, new, legal basis for the Bureau to Reconsider its prior decision on WC Docket 02-60 with respect to ICHC's MPLS funding denial of \$47,588.63. The arbitrary and capricious retroactive application of a Form 466 filing requirement for an address change is not supported by the KANA Decision or by the applicable regulations, including the *Healthcare Connect Fund Order*. ICHC is entitled to full funding for its MPLS services in the amount of \$47,588.63.

At a minimum, ICHC is entitled to \$15,704.25, which represents the MPLS amount denied by the FCC that the KANA Decision clearly indicates that ICHC has a legal right to (for the period denied from February 13, 2013 to March 31, 2013) based upon the FCC's analysis and ruling in KANA that the date upon which the Form 466 filing deadline was implemented (March 31, 2013). Up to that point,

applying KANA, there were no filing deadlines or responsibilities associated with the ministerial and administrative act of an address change by ICHC.

For the foregoing reasons, ICHC requests that the Bureau grant this Request for Reconsideration; direct the RHC Division to restore support for the period from February 13, 2013 through June 30, 2013, pursuant to the original and aforementioned funding request; and waive the Commission's rules governing the RHC support mechanism, consistent with the KANA Decision and waivers provided to those appellants, to permit ICHC to file a second Form 466, or such other documentation as may be necessary with the RHC Division to substantiate and support its funding request for the period from February 13, 2013 through June 30, 2013.

Respectfully submitted,



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Attachments