

# E-COPERNICUS

April 20, 2016

Letter of Appeal

Marlene H. Dortch  
Federal Communication Commission  
Office of the Secretary  
445 12th Street, SW  
Room TW-A325  
Washington, DC 20554

Re: Appeal of Fund Year 2013 Denial in Universal Service Rural Health Care Program.  
FCC Docket No. 02-60.

Dear Sirs:

This is an appeal of FRN 1345715 for Jamestown Hospital HCP 14320, a critical access hospital in North Dakota that leased dark fiber to link its new and old hospital buildings. The facts and discussion provided to USAC, attached but not repeated below, is incorporated by reference in this appeal.

Because the Rural Health Care Program (RHCP) lacks an eligible services list (ESL) and dark fiber is not mentioned on the RHCP website, it is unclear how applicants or reviewers would know it is ineligible. As noted by USAC, dark fiber was funded in the Rural Health Care Pilot Program, but it was not mentioned, defined or made eligible in the Pilot Program Order. It is not apparent that non-mention means eligible in the Pilot Program but ineligible in RHCP, or why mention in the Healthcare Connect Order means ineligible in RHCP. USAC cites the concept of the 2004 ESL that "the FCC has not resolved whether unlit dark fiber is a telecommunications service". The status of dark fiber as telecommunications before 2004 was elaborated in the Reply Comments of Sunesys (attached). Because the ESL did not affect RHCP, it is unclear why RHCP would not continue the pre-2004 E-Rate concept that dark fiber leased from a telecommunications carrier and used for telecommunications, is telecommunications. Or if USAC is applying the 2004 ESL philosophy, the confusion would seem to have ended when the ESL clarified that "telecommunications can be provided in whole or in part via lit or dark fiber".

Because USAC did not explain when or how it determined that dark fiber was ineligible, it is difficult to know what to appeal other than it appears USAC may have first elaborated its policy in private email for Jamestown. Prior to that, RHCP customer service said there was no preclusion for dark fiber as telecommunications. Several months after submission of this circuit, a reviewer asked for better urban rate

documentation but denied the application for non-reply a few days later. Separate email exchanges with USAC revealed that the denial was actually because dark fiber was considered ineligible equipment or hardware. Amidst the controversy, Jamestown disconnected the circuit in November 2014. If an unspecified rule does block lit dark fiber provided by a telecommunications carrier from funding as telecommunications, then we respectfully request the Commission consider the public interest of waiving the rule specifically for this disconnected circuit procured before USAC's determination.

Sincerely,



William England, Ph.D., J.D.  
Senior VP for Health Care Networks  
E-Copernicus

cc: Lisa Jackson, Director, Jamestown Hospital Foundation  
Greg Rohde, President, E-Copernicus