

FCC MAIL SECTION

Federal Communications Commission

DA 99-2983

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

In the Matter of	)	
	)	
Request for Review	)	
Of the Decision of	)	
The Universal Service Administrator by	)	
	)	
Eastern Montana Telemedicine Network	)	File No. RHD-10263-1
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45 ✓
	)	
Changes to the Board of Directors	)	CC Docket No. 97-21
Of the National Exchange Carrier	)	
Association, Inc.	)	

**ORDER**

**Adopted: December 21, 1999**

**Released: December 22, 1999**

By the Common Carrier Bureau:

1. On August 23, 1999, the Eastern Montana Telemedicine Network (EMTN) filed an appeal seeking review of the decision by the Rural Health Care Division (RHCD) of the Universal Service Administrative Company (USAC or Administrator) rejecting the telecommunications service "contract" of four members of the EMTN. For the reasons set forth below, we deny EMTN's appeal and affirm RHCD's decision that the document does not qualify as an existing contract.

2. The Commission's universal service support mechanism for rural health care providers is a product of the Telecommunications Act of 1996 (1996 Act).<sup>1</sup> In the 1996 Act, Congress sought to provide rural Americans with affordable access to quality health care by giving rural health care providers the opportunity to buy telecommunications services at the same rates charged to urban residents. Congress did this by adding section 254(h)(1)(A) to the Communications Act of 1934.<sup>2</sup> Section 254(h)(1)(A) directs all telecommunications carriers to provide telecommunications services to any public or non-profit rural health care provider at rates that are reasonably comparable to rates charged for similar services in urban areas in the same state.<sup>3</sup>

<sup>1</sup> Pub. L. No. 104-104, 110 Stat. 56 (1996 Act).

<sup>2</sup> 47 U.S.C. §§ 151 *et seq.* (Act). (Hereinafter, all citations to the 1996 Act and the Act will be to the Act as it is codified in the United States Code.)

<sup>3</sup> 47 U.S.C. § 254(h)(1)(A).

3. On May 8, 1997, the Commission released the *Universal Service Order* to implement section 254.<sup>4</sup> The Commission subsequently appointed USAC to administer the universal service support mechanism that the Commission established for rural health care providers.<sup>5</sup> The Commission determined that only public and non-profit rural health care providers and consortia that include these eligible entities could apply for, and receive the benefits of, the universal service support mechanism for rural health care providers.<sup>6</sup> The Commission also concluded that rural health care providers must solicit competitive bids for all services eligible for universal service support.<sup>7</sup> As a result, the Commission's rules require a rural health care provider to submit an application to the Administrator that includes a description of the services for which the rural health care provider is seeking support.<sup>8</sup> The Administrator must post this information on its website.<sup>9</sup> The rural health care provider must wait at least 28 days from the date on which its information is posted on the website, before making commitments with the selected telecommunications carrier(s).<sup>10</sup> In this way, the description of the services is available to all potential service providers for bidding purposes, thus enhancing the rural health care provider's ability to benefit from the opportunity to seek competitive bids for the eligible services.

4. Although the competitive bidding process is a key component of the Commission's effort to ensure that universal service funds support services that satisfy the

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<sup>4</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997), as corrected by *Federal-State Joint Board on Universal Service, Errata*, CC Docket No. 96-45, FCC 97-157 (rel. June 4, 1997), *affirmed, reversed, and remanded in part sub nom. Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999), motion for stay granted in part (Sept. 28, 1999), petitions for rehearing and rehearing *en banc* denied (Sept. 28, 1999) (*Universal Service Order*).

<sup>5</sup> *Changes to the Board of Directors of the National Exchange Carrier Association, Inc. and Federal-State Joint Board on Universal Service*, Second Report and Order and Second Order on Reconsideration, CC Docket No. 97-21 and 96-45, 12 FCC Rcd 18400 (1997) (*NECA Order*). In the *USAC Reorganization Order* released on November 20, 1998, the Commission directed USAC to assume responsibility for the schools and libraries support mechanism and the rural health care support mechanism effective January 1, 1999. See *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 97-21, Third Report and Order and Fourth Order on Reconsideration, and Eighth Order on Reconsideration, 13 FCC Rcd 25058 (1998) (*USAC Reorganization Order*). The Schools and Libraries Corporation (SLC) and the Rural Health Care Corporation (RHCC) previously administered these programs, respectively, which have since been merged into USAC in accordance with the *USAC Reorganization Order*. *Id.*

<sup>6</sup> *Universal Service Order*, 12 FCC Rcd at 9117, para. 653.

<sup>7</sup> See *Universal Service Order*, 12 FCC Rcd at 9133, para. 686.

<sup>8</sup> 47 C.F.R. § 54.603.

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

<sup>10</sup> *Id.*

precise needs of an institution, and that the services are provided at the lowest possible rates, in the *Fourth Reconsideration Order* the Commission provided an exception to this requirement.<sup>11</sup> Specifically, the Commission decided that rural health care providers need not renegotiate existing contracts in order to receive the benefits of the program.<sup>12</sup> The Commission concluded, among other things, that it would not be in the public interest to penalize rural health care providers that had already entered into contracts for service, by refusing to allow them to receive the benefits of support for eligible services that they were receiving pursuant to an existing contract.<sup>13</sup> Accordingly, section 54.604(a) of the Commission's rules states that contracts signed on or before July 10, 1997 are exempt from the competitive bidding requirements for the life of the contract; and contracts signed after July 10, 1997, but before January 30, 1998, are exempt with respect to services provided between January 1, 1998 and June 30, 1999.<sup>14</sup>

5. On June 8, 1998, RHCD received EMTN's initial applications for Sidney Health Center, Glendive Medical Center, Colstrip Medical Center, and the Eastern Montana Community Mental Health Center to receive universal service support, for the first funding year,<sup>15</sup> based upon an "Interstate Private Line Transport Services Pricing Plan Acknowledgement," which EMTN asserts is an "existing contract." By letter dated July 23, 1999, RHCD informed EMTN that support would not be provided to these four entities based upon an "existing contract." EMTN responded with the subject Letter of Appeal to the Commission, contending that USAC erred in refusing to recognize the EMTN document as an "existing contract," because EMTN, the aforementioned members of the EMTN consortium, and U S WEST all believe that they are committed to a binding contract.

6. We have reviewed EMTN's application and RHCD's records relating thereto, and we conclude that RHCD properly denied EMTN's application for support for services based upon an existing contract. RHCD's records reveal that EMTN's description of services was posted on the Administrator's website on July 5, 1998. Thereafter, EMTN submitted to RHCD an "Interstate Private Line Transport Services Pricing Plan Acknowledgement" to verify, among other things, that services had been ordered from U S WEST for the four entities in question. Although a representative of EMTN signed the "Interstate Private Line Transport Services

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<sup>11</sup> *Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, Fourth Order on Reconsideration, 13 FCC Rcd 5318, 5446 at para. 219 (1997) (*Fourth Reconsideration Order*).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

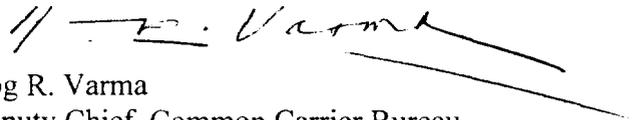
<sup>14</sup> 47 C.F.R. § 54.604(a).

<sup>15</sup> The first funding cycle for the rural health care support mechanism covered the period from January 1, 1998 through June 30, 1999. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ninth Order on Reconsideration, 14 FCC Rcd 377 (1998) (*Ninth Order on Reconsideration*).

Pricing Plan Acknowledgement," there is no signature from U S WEST. Our rules define an "existing contract" as a signed contract between an eligible rural health care provider and a telecommunications carrier for services eligible for support.<sup>16</sup> Given that the document presented by EMNT does not contain the signature of a representative of the carrier, it does not meet the definition of an existing contract, and USAC properly refused to provide support to Sidney Health Center, Glendive Medical Center, Colstrip Medical Center, and the Eastern Montana Community Mental Health Center based upon an existing contract.

7. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the appeal filed on August 23, 1999 by Eastern Montana Telemedicine Network on behalf of the Sidney Health Center, Glendive Medical Center, Colstrip Medical Center, and the Eastern Montana Community Mental Health Center IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Yog R. Varma  
Deputy Chief, Common Carrier Bureau

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<sup>16</sup> 47 C.F.R. § 54.604(a).