FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, DC 20554

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In the Matter of	)	
	)	
Request for Review of the Decision of the Universal Service Administrator by	)	
	)	
Northern Arizona Regional Behavioral Health Authority, Flagstaff, Arizona	)	File No. RHCD-10025-1
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Changes to the Board of Directors of the National Exchange Carrier Association, Inc.	)	CC Docket No. 97-21

ORDER

Adopted: March 9, 2000 **Released: March 10, 2000**

By the Common Carrier Bureau:

1. The Common Carrier Bureau has under consideration a Letter of Appeal filed by the Northern Arizona Regional Behavioral Health Authority (Northern Arizona) of Flagstaff, Arizona, seeking review of a decision issued by the Rural Health Care Division (RHCD) of the Universal Service Administrative Company (USAC or Administrator).[1] RHCD denied Northern Arizona's application to receive benefits from the universal service support mechanism for rural health care providers because Northern Arizona failed to comply with the Commission's competitive bidding requirement. For the reasons set forth below, we deny Northern Arizona's appeal and affirm RHCD's denial of Northern Arizona's application.

2. In an effort to ensure that universal service funds support services that satisfy the precise needs of an institution, and that the services are provided at competitive rates, the Commission requires each rural health care provider to participate in a competitive bidding process.[2] Specifically, the Commission's rules require a rural health care provider to submit an

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[1] Letter to the Office of the Secretary, Federal Communications Commission, from Catherine P. Romeo-Wolff, Northern Arizona Regional Behavioral Health Authority, filed November 24, 1999 (Letter of Appeal).

[2] *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*).

application to the Administrator[3] that includes a description of the services for which the rural health care provider is seeking support.[4] The Administrator must post this information on its web site, and the rural health care provider must wait at least 28 days from the date on which its information is posted before making commitments with the selected telecommunications carrier(s).[5] The Commission concluded, however, that rural health care providers need not renegotiate existing contracts. 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.[6]

3. On May 18, 1998, RHCD received Northern Arizona's initial application to receive telecommunications services at reduced rates for the first funding year.[7] RHCD posted this application on its web site on June 18, 1998.[8] On July 8, 1998, RHCD sent a letter to Northern Arizona notifying Northern Arizona of the posting date.[9] Thereafter, Northern Arizona informed RHCD that it began receiving services from US WEST on July 1, 1998.[10] Northern Arizona also submitted to RHCD a document entitled "Interstate Private Line Transport Services Pricing Plan Acknowledgement" (Pricing Plan Acknowledgement).[11] Northern Arizona signed the Pricing Plan Acknowledgement on July 1, 1998. Based upon the information received from

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[3] The Commission appointed USAC to administer the universal service support mechanism for rural health care providers. *Changes to the Board of Directors of the National Exchange Carrier Association, Inc. and Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21 and 96-45, Second Report and Order and Second Order on Reconsideration, 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, and have since been merged into USAC in accordance with the *USAC Reorganization Order*.

[4] 47 C.F.R. § 54.603.

[5] *Id.*

[6] 47 C.F.R. § 54.604(a).

[7] For simplicity, this order uses the term "RHCD," although at the time the application was filed the entity was "RHCC." 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*).

[8] Letter to Catherine P. Romeo-Wolff, Northern Arizona Regional Behavioral Health Authority, from Universal Service Administrative Company, Rural Health Care Division, dated November 11, 1999 (Funding Denial Letter).

[9] *Id.* at 1.

[10] *Id.*

[11] Letter of Appeal at 1.

Northern Arizona, on November 11, 1999, RHCD sent a letter to Northern Arizona denying Northern Arizona's application because it improperly selected a carrier before the 28-day waiting period had expired on July 16, 1998.[12]

4. Northern Arizona responded with the subject Letter of Appeal to the Commission, which appears to argue that the Pricing Plan Acknowledgement is an existing contract that is exempt from the Commission's competitive bidding requirement.[13] Specifically, the Letter of Appeal states that Northern Arizona did not improperly select a carrier during the 28-day posting period because it selected US WEST on November 24, 1997. Northern Arizona's argument is based on the fact that the date of "11-24-97" appears on the Pricing Plan Acknowledgement as the commencement date for service, a line was drawn across this date, and it was replaced with "7-1-98."[14] Northern Arizona also argues that its position is supported by the fact that the document bears a hand written note stating "Rate decrease Tariff change 7/1/98."[15] Northern Arizona explains that the only conclusion that can be drawn from this information is that Northern Arizona selected US WEST in November 1997 to provide the needed services, and US WEST simply changed the rates for the services on July 1, 1998.[16]

5. We have reviewed Northern Arizona's application including the Pricing Plan Acknowledgement and RHCD's records relating thereto. Based on the record before us, we conclude that RHCD properly determined that Northern Arizona violated the Commission's competitive bidding rules. We find that there are two separate sections of the Pricing Plan Acknowledgement at issue: the section that contains the service commencement date and applicable rate, and that which includes the signature date. The Commission's rules expressly provide that the relevant fact in determining whether either of the exemptions from competitive bidding applies is the date that the contract is signed.[17] Based upon the July 1, 1998 signature date on the Pricing Plan Acknowledgement, we find that the Pricing Plan Acknowledgment is not an "existing contract" as the Commission defines that term. Northern Arizona does not argue that it signed the Pricing Plan Acknowledgement on or before July 10, 1997. We are not persuaded, based on the record before us, that Northern Arizona signed the document after July 10, 1997 but before January 30, 1998, which would exempt services provided in 1998 from competitive bidding. Even accepting Northern Arizona's argument that it had selected US WEST in November 1997, and that US WEST lowered its rate in July 1998, it is apparent that the contract at issue was signed in July 1998. The Pricing Plan Acknowledgement clearly bears the signature date of July 1, 1998. We conclude, therefore, that the Pricing Plan Acknowledgement does not qualify for either of the limited exceptions for existing contracts under section 54.604(a) of the Commission's rules. Because Northern Arizona signed the

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12 Funding Denial Letter at 1.

13 Letter of Appeal at 1.

14 *Id.*

15 *Id.*

16 *Id.*

17 47 C.F.R. § 54.604(a).

contract with US WEST within the 28-day posting period, we conclude that Northern Arizona failed to satisfy the Commission's competitive bidding rules, and RHCD properly denied Northern Arizona's application.

6. 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 November 24, 1999 by Northern Arizona Regional Behavioral Health Authority IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Mattey

Carol E. Mattey
Deputy Chief, Common Carrier Bureau