

FCC MAIL SECTION

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Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Good Samaritan)	File Nos. RHCD-10575-1, 10591-1,
Health Systems Foundation)	0592-1, and 10605-1
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.)	

ORDER

Adopted: July 13, 2000

Released: July 14, 2000

By the Common Carrier Bureau:

1. The Common Carrier Bureau has under consideration a Letter of Appeal¹ filed by the Good Samaritan Health Systems Foundation of Kearney, Nebraska on behalf of four consortium members of the Mid-Nebraska Telemedicine Network (Good Samaritan).² The Letter of Appeal seeks review of the decision by the Rural Health Care Division (RHCD) of the Universal Service Administrative Company (USAC or Administrator)³ rejecting Good

¹ Letter to the Office of the Secretary, Federal Communications Commission, from Donna K. Hammack, Good Samaritan Health Systems Foundation, filed March 8, 2000 (Letter of Appeal).

² The four consortium members of the Mid-Nebraska Telemedicine Network are Cozad Community Hospital, Callaway District Hospital, Jennie M. Melham Memorial Medical Center, and Cambridge Memorial Hospital. Letter of Appeal at 1.

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*.

Samaritan's request for benefits from the universal service support mechanism based upon an existing contract. For the reasons set forth below, we deny Good Samaritan's appeal and affirm RHCD's⁴ decision that Good Samaritan does not qualify for benefits based upon an existing contract.

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.⁵ Specifically, 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.⁶ 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).⁷ The Commission's rules provide, however, that under certain circumstances rural health care providers need not renegotiate existing contracts, and therefore, they could obtain support for telecommunications services received from a carrier selected before the expiration of the 28-day posting period. Specifically, 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, 1999.⁸

3. Good Samaritan sent a letter to RHCD dated May 5, 1998, indicating that Good Samaritan would not be seeking benefits from the universal service support mechanism for rural health care providers based upon an existing contract for telecommunications services. Thereafter, Good Samaritan sent its initial application to RHCD for the first funding year.⁹ RHCD posted this application on its web site on July 9, 1998, and sent a letter to Good Samaritan notifying it of the posting date.¹⁰ Because a rural health care provider must wait at least 28 days from the date on which its information is posted before making commitments with

⁴ For simplicity, this order uses the term "RHCD," although at the time the application was filed the entity was "RHCC."

⁵ *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*).

⁶ 47 C.F.R. § 54.603.

⁷ *Id.*

⁸ 47 C.F.R. § 54.604(a).

⁹ 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*).

¹⁰ Letter to Donna Hammack, Good Samaritan Health Systems Foundation, from Universal Service Administrative Company, Rural Health Care Division, dated July 9, 1998.

the selected telecommunications carrier, the earliest date that Good Samaritan could have selected a carrier was August 6, 1998. On October 22, 1998, RHCD received from Good Samaritan its "Health Care Providers Universal Service Services Ordered and Certification Forms" (FCC Forms 466). Consistent with Good Samaritan's May 5, 1998 letter, each of the FCC Forms 466 indicates that Good Samaritan had selected a carrier from which it was receiving telecommunications services without a contract. Based upon the information received from Good Samaritan, RHCD approved Good Samaritan's request for benefits from the earliest date that Good Samaritan, consistent with the competitive bidding rules, could have selected a carrier (August 6, 1998), through the last day of the funding year (June 30, 1999).¹¹

4. Good Samaritan responded with the subject Letter of Appeal to the Commission, which appears to argue that Good Samaritan was receiving services pursuant to an existing contract that is exempt from the Commission's competitive bidding requirement.¹² Consequently, Good Samaritan claims that RHCD should have included support for the period preceding the 28-day posting, and should have approved, therefore, Good Samaritan's request for benefits from the first day of the funding year (January 1, 1998), instead of the earliest date that Good Samaritan, consistent with the competitive bidding rules, could have selected a carrier (August 6, 1998). Specifically, the Letter of Appeal explains that,

we made numerous inquiries in September and October 1997 as to whether we should sign a new contract as our original contract with AT&T was coming to an end. Because the rules were not established and AT&T at that time was even ineligible, we were reluctant to sign another agreement. We felt we should be moving to another carrier who was eligible as an ETC.¹³ At that time, there was no other carrier interested. Because we had limited options, we came to an agreement with AT&T to continue our relationship in the same manner as we had for the previous years. We believe this is a pre-existing commitment.

In support of its position, Good Samaritan attached to its Letter of Appeal billing statements for telecommunications services that it received from January 1, 1998 through June 30, 1999.

5. We have reviewed Good Samaritan's application including the billing statements and RHCD's records relating thereto. Based on the record before us, we conclude that RHCD properly determined that Good Samaritan was not receiving services pursuant to an existing contract, and therefore, was not eligible for benefits before the 28-day posting period expired. 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.¹⁴ The only carrier-generated documents that Good Samaritan has presented to support its claim are billing statements. Given that the billing statements do not contain any signatures, we find that they do

¹¹ Funding Commitment Letter at 1.

¹² Letter of Appeal at 1.

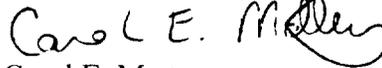
¹³ ETC is an acronym for eligible telecommunications carrier. See 47 C.F.R. § 54.5.

¹⁴ 47 C.F.R. § 54.604(a).

not meet the definition of existing contracts, and we conclude, therefore, that the billing statements do not qualify for either of the limited exceptions for existing contracts under section 54.604(a) of the Commission's rules. Thus, we also conclude that RHCD properly refused to approve Good Samaritan's request for support from the first day of the funding year (January 1, 1998) based upon an existing contract.

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 March 8, 2000 by the Good Samaritan Health Systems Foundation of Kearney, Nebraska on behalf of the following four consortium members of the Mid-Nebraska Telemedicine Network: Cozad Community Hospital, Callaway District Hospital, Jennie M. Melham Memorial Medical Center, and Cambridge Memorial Hospital. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Carol E. Matthey

Deputy Chief, Common Carrier Bureau