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April 10, 2009

BY HAND DELIVERY

Marlene H. Dortch  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, DC 20554

**RE: Request for Review by Verizon of Decision of Universal Service  
Administrator; Request for Confidential Treatment,  
WC Docket No. 02-60, CC Docket No. 96-45**

Dear Ms. Dortch:

Verizon hereby submits the enclosed Request for Review by Verizon of a Decision of the Universal Service Administrator ("Request for Review"). Pursuant to Section 0.459(a) of the Commission's rules, Verizon requests confidential treatment of certain attachments to the Request for Review that contain proprietary commercial and financial information (collectively, the "Confidential Attachments"). Accordingly, we have included five (5) public version copies of the Request for Review and one (1) version with the Confidential Attachments. We are also providing two versions of this letter, one labeled "CONFIDENTIAL – NOT FOR PUBLIC DISCLOSURE," and one without such label.

If the Commission cannot maintain the confidentiality of the Confidential Attachments, Verizon requests that the Commission return such information to Verizon pursuant to Section 0.459(e) of the Commission's rules. Further, in the event that a request for inspection of the Confidential Attachments is made under the Freedom of Information Act ("FOIA")<sup>1</sup> and/or Section 0.461 of the Commission's rules, Verizon requests notice and the opportunity to respond to such request before the Commission releases these documents for inspection.

The information contained in the Confidential Attachments is proprietary commercial and financial information routinely withheld from public disclosure. Under Section 0.459 of the Commission's rules, parties who submit confidential information to the Commission may file a request that the Commission not disclose the information to the public. If that information may properly be withheld pursuant to a FOIA exemption, the Commission's rules require that the

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<sup>1</sup> 5 U.S.C. § 522(b)(4).

information remain confidential unless the Commission identifies a “compelling public interest in disclosure.”<sup>2</sup>

In this case, the information in Verizon’s Confidential Attachments falls within FOIA Exemption 4, which exempts “commercial or financial information obtained from a person” that is “confidential” from public disclosure.<sup>3</sup> Exemption 4 and Section 0.457(d) of the Commission’s rules protects as confidential commercial or financial information that is “of a kind that would not customarily be released to the public by the person from whom it was obtained.”<sup>4</sup>

Here, the Confidential Attachments contain financial information about Verizon billing and various universal service funding for services performed by Verizon for certain health care providers within the Texas Healthcare Network and/or Hospital Networks Management (collectively “THN”), which is commercially sensitive information customarily not released to the public and/or packaged together for the public as the information appears on the Confidential Attachments. The information for which Verizon is seeking confidential treatment would be beneficial to Verizon and THN’s actual and potential competitors. This information relates to the highly competitive business of telecommunications services and may be used by Verizon and THN competitors to determine pricing structures and to evaluate service offerings in a way that would allow them to compete more effectively. Verizon and THN, therefore, may suffer substantial competitive harm if the confidential commercial and financial information contained in the Confidential Attachments were released to the public.

For these reasons, Verizon requests that the Commission withhold from public disclosure the proprietary commercial and financial information contained in the Confidential Attachments, pursuant to Section 0.459 of the Commission’s rules.

Sincerely,



Christopher Miller

Enclosures

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<sup>2</sup> *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, Report and Order, 13 FCC Rcd 24816 ¶ 8 (1998) (“*Confidential Treatment Order*”). Before authorizing release of information, the Commission “‘insists upon a showing that the information is a necessary link in a chain of evidence’ that will resolve an issue before the Commission.” *Id.* (quoting *Classical Radio for Connecticut, Inc.*, 69 FCC Rcd 1517, 1520 n.4 (1978)).

<sup>3</sup> 5 U.S.C. § 552(b)(4).

<sup>4</sup> *Critical Mass Energy Project v. Nuclear Regulatory Comm’n*, 975 F.2d 871, 879 (D.C. Cir. 1992); see also *Confidential Treatment Order* ¶ 4.

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Request for Review by Verizon of Decision	)	WC Docket No. 02-60
of Universal Service Administrator	)	CC Docket No. 96-45
	)	
	)	
	)	

**REQUEST FOR REVIEW BY VERIZON OF DECISION OF  
UNIVERSAL SERVICE ADMINISTRATOR**

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April 10, 2009

## TABLE OF CONTENTS

	<b>Page</b>
I. INTRODUCTION .....	1
II. BACKGROUND .....	1
III. ARGUMENT .....	4
A. Commission Precedent Requires the Administrator to Seek Recovery of Revoked Funds from the Party Responsible for the Rule Violation.....	4
B. It Is Inequitable to Seek Recovery from Verizon of Funds Revoked Because of the RHC Applicant’s Errors or Wrongdoing.....	7
IV. REQUEST FOR RELIEF .....	10

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of	)	
	)	
Request for Review by Verizon of Decision	)	WC Docket No. 02-60
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**REQUEST FOR REVIEW BY VERIZON OF DECISION OF  
UNIVERSAL SERVICE ADMINISTRATOR**

**I. INTRODUCTION**

Verizon appeals the decision of the Universal Service Administrative Company (“USAC” or the “Administrator”) to seek recovery from Verizon of \$555,893 in Rural Health Care program funding for services performed by Verizon for the Texas Healthcare Network and/or Hospital Networks Management (collectively, the “RHC Applicant”) for Funding Years 2003 and 2004. *See* 47 C.F.R. §§ 54.719(c), 54.721, 54.722; Appendix A (“Administrator’s Decision”). The Bureau should reverse the Administrator’s Decision for two reasons: (1) Commission precedent requires USAC to recover revoked funds in this instance from the RHC Applicant that allegedly violated the Commission’s competitive bidding rules, not from Verizon; and (2) it is inequitable to seek recovery from Verizon. The Bureau should direct USAC to recover rural health care funding from the party that caused any rule violation, not from the service provider regardless of the circumstances.

**II. BACKGROUND**

In a Commitment Adjustment Letter sent to MCI Communications Services, Inc. d/b/a Verizon Business Services, USAC’s Rural Health Care Division determined that

funding recovery was necessary because the RHC Applicant violated the Commission's competitive bidding requirements. *See* Appendix B. The Administrator's Decision affirmed the Commitment Adjustment Letter and indicated that USAC would seek recovery of revoked funds from Verizon, the RHC Applicant's service provider. Verizon requests that the Bureau reverse the Administrator's Decision.

Verizon provided various services to the RHC Applicant in connection with the RHC program. Universal service funding awarded to the RHC Applicant was paid to Verizon as an offset against Verizon's universal service contribution obligation and passed through to the RHC Applicant in the form of discounts on its Verizon bills. *See* 47 C.F.R. § 54.611. Thus, as the Commission's rules require, Verizon essentially served as a conduit through which USAC awarded funding to the RHC Applicant.

In 2007, USAC conducted an investigation of the RHC Applicant to determine whether the RHC Applicant violated the RHC program's competitive bidding requirements, 47 C.F.R. § 54.603. *See* Appendix A (Administrator's Decision at 1-2). In a February 1, 2008 decision ("Letter Decision"), USAC determined that a conflict of interest existed because the RHC Applicant, through its president, held itself out as a service provider while also acting as a consultant to health care providers in the network. *See* Appendix B (Letter Decision at 4). Accordingly, USAC revoked funding for Funding Years 2001 through 2005 based on the alleged conflict of interest in violation of the competitive bidding rules. *See id.*

The RHC Applicant filed an appeal of the Letter Decision, which USAC ultimately denied with respect to Funding Years 2003 through 2006.<sup>1</sup> On March 31, 2008, after learning that USAC intended to seek recovery of any erroneously disbursed funds from Verizon in the event the RHC Applicant's appeal was unsuccessful, Verizon appealed the Letter Decision to the Rural Health Care Committee of the USAC Board of Directors on the grounds that USAC should recover the revoked funding directly from the RHC Applicant.<sup>2</sup>

The Administrator's Decision issued on February 10, 2009, denied in part and granted in part Verizon's appeal. USAC granted Verizon's appeal with respect to Funding Years 2001 and 2002, properly concluding that it could not seek recovery of funds from Verizon for those years in light of the five-year document retention rule for purchases of services under the RHC program. *See* Appendix A (Administrator's Decision at 3). With respect to Funding Years 2003 through 2006, however, USAC denied Verizon's appeal. *See id.* USAC affirmed that it would: (1) seek recovery from Verizon of erroneously disbursed funds for Funding Years 2003 and 2004; and (2) rescind funds committed to the RHC Applicant for Funding Years 2005 and 2006 not yet credited by USAC to Verizon as the RHC Applicant's service provider.<sup>3</sup>

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<sup>1</sup> *See* Appendix A (Administrator's Decision at 2). Verizon lacks sufficient information to take a position on the underlying alleged violation of the competitive bidding rules. To the extent the Administrator's Decision found such a violation, Verizon does not appeal that aspect of the decision.

<sup>2</sup> *See* Appendix C; 47 C.F.R. § 54.719(a). On April 16, 2008, Verizon supplemented its appeal in order to clarify the record with respect to rescinded funding for Funding Years 2005 and 2006 that was originally committed to the RHC Applicant but not yet credited to Verizon as the service provider. *See* Appendix D.

<sup>3</sup> *See id.* In this request for relief, Verizon is appealing the Administrator's Decision only with respect to funding recovery for Funding Years 2003 and 2004.

### III. ARGUMENT

#### A. Commission Precedent Requires the Administrator to Seek Recovery of Revoked Funds from the Party Responsible for the Rule Violation.

The Bureau should reject USAC's conclusion that it must seek recovery of revoked funds from the service provider, Verizon, instead of the RHC Applicant. To the contrary, the Commission, including a majority of the current Commissioners, has specifically directed USAC to seek recovery of revoked funds from "the party or parties that committed the rule or statutory violation in question." *Federal-State Joint Board on Universal Service*, Order on Reconsideration and Fourth Report and Order, 19 FCC Rcd 15252, ¶ 10 (2004) ("*Order on Reconsideration*"). Thus, USAC should seek recovery of funds from the RHC Applicant, the funding beneficiary found responsible for violating the competitive bidding requirements, and not from Verizon, a service provider that played no role in the alleged violation.

The Commission addressed the issue of service provider liability for revoked funding in the *Order on Reconsideration*, which was decided in the Schools and Libraries program ("E-rate") context. The findings and conclusions of law in the *Order on Reconsideration* apply equally here.<sup>4</sup> In its *Order on Reconsideration*, the Commission stated:

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<sup>4</sup> In a 1999 decision, the Commission initially directed USAC to "seek repayment from service providers rather than schools and libraries because . . . service providers actually receive disbursements of funds from the universal service support mechanism." *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, Order, 18 FCC Rcd 27090, ¶ 8 (1999) ("*Commitment Adjustment Order*"). The *Commitment Adjustment Order* directed USAC to recover E-rate funding from service providers even if such funding had already been distributed. *Id.* ¶ 9. While multiple petitions for reconsideration of the *Commitment Adjustment Order* remained under review, the Administrator continued to seek E-rate recovery from service providers for several years consistent with the Commission's directive. Later, the issue of liability for revoked funding was raised again in a 2003 rulemaking. *See Schools and Libraries Universal*

We direct USAC to make the determination, in the first instance, to whom recovery should be directed in individual cases. In determining to which party recovery should be directed, USAC shall consider which party was in a better position to prevent the statutory or rule violation, and which party committed the act or omission that forms the basis for the statutory or rule violation. For instance, *the school or library is likely to be the entity that commits an act or omission that violates our competitive bidding requirements. . .*

*Id.* ¶ 15 (emphasis added). The Commission properly recognized that the program applicant is often in the best position to ensure compliance with the Communications Act and the universal service rules. *Id.* ¶ 11. As the Commission observed:

[I]n many situations, the service provider simply is not in a position to ensure that all applicable statutory and regulatory requirements have been met. Indeed, in many instances, a service provider may well be totally unaware of any violation. In such cases, we are now convinced that it is both unrealistic and inequitable to seek recovery solely from the service provider.

*Id.* ¶ 12. The Commission also expressed concern that, under the recovery procedures set forth in the *Commitment Adjustment Order*, “beneficiaries often [did] not directly bear the consequence of any failure to comply with [FCC] rules.” *Id.* ¶ 13. Conversely, recovering funds from the entity in violation of the rules would promote “greater accountability and care” by program applicants—the beneficiaries of universal service funding. *See id.*

The Commission has also consistently stressed the need for uniform application of its rules across all universal service programs,<sup>5</sup> and the Commission’s findings and conclusions of law in the *Order on Reconsideration* are not limited to the E-rate program. As a result, the Bureau should not now have to revisit an issue that the Commission

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*Service Support Mechanism*, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912 (2003). The *Order on Reconsideration* followed this decision.

<sup>5</sup> *See, e.g., Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight*, Report and Order, 22 FCC Rcd 16372, ¶ 30 (2007).

already decided merely because funding in this instance was disbursed from the RHC program, not the E-rate program.

Moreover, there is no basis to apply different funding recovery requirements in the RHC context. The mechanics of the RHC and E-rate programs are virtually the same. *See Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11308, ¶ 64 (2005) (“The disbursement process for the Rural Health Care program is similar to the process for the E-rate program.”). This is not surprising given that the statutory schemes for the two programs are very similar. Telecommunication carriers serving a particular geographic area are required to respond to “bona fide requests” by both schools/libraries and rural health care providers for discounted telecommunications services. *See* 47 U.S.C. § 254(h)(1). And in support of its reasoning in the Letter Decision, USAC itself stressed that the “similarities between each program’s competitive bidding requirements” make the conflict of interest principles underlying E-rate cases “equally applicable” to RHC funding requests. Appendix B (Letter Decision at 2-3).

Further, as with schools and libraries, RHC program applicants are often in the best position to ensure compliance with the statute and the Commission’s rules. Like the school or library, for example, the RHC provider is the entity that: (1) completes the application process for discounted telecommunications services; (2) receives the direct benefit of services rendered; (3) submits necessary forms to USAC detailing its technological needs and the services ordered; and (4) is required by law to comply with

the competitive bidding requirements and other rules.<sup>6</sup> As in the E-rate context, it is unrealistic to expect service providers to even be *aware* of violations by RHC applicants when they occur. Moreover, the Commission’s interest in promoting program applicants’ accountability for compliance with the law is just as great for RHC providers as it is for schools and libraries.

In light of the above, USAC should seek recovery of RHC funding from the RHC Applicant, not from Verizon. The RHC Applicant was in the best position to ensure compliance with the competitive bidding rules, and there is no suggestion that Verizon committed any acts or omissions or violated the competitive bidding requirements. Accordingly, under the principles set forth in the *Order on Reconsideration*, Verizon should not have to bear the consequences of the RHC Applicant’s alleged violation by paying USAC for funds erroneously distributed to the RHC Applicant.

**B. It Is Inequitable to Seek Recovery from Verizon of Funds Revoked Because of the RHC Applicant’s Errors or Wrongdoing.**

In addition, equitable considerations require USAC to recover erroneously disbursed funding from the RHC Applicant and not Verizon. The revoked funds have already been disbursed by Verizon to the RHC Applicant, who in this case was solely responsible for any alleged wrongdoing. Moreover, holding service providers like Verizon responsible for erroneous funding disbursements when the error or wrongdoing

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<sup>6</sup> See *Order on Reconsideration* ¶ 11 (recognizing that the school or library (1) “undertakes the various necessary steps in the application process, and receives the direct benefit of any services rendered;” (2) “submits to USAC a completed FCC Form 470, setting forth its technological needs and the services for which it seeks discounts;” (3) “is required to comply with the Commission’s competitive bidding requirements;” and (4) “submits FCC Form 471, notifying the Administrator of the services that have been ordered, the service providers with whom it has entered into agreements, and an estimate of the funds needed to cover the discounts to be provided on eligible services”).

involves an issue over which the service provider has no control is likely to dissuade service providers from competing to serve RHC customers with the best services offered at the best price. Such an outcome would be at odds with the fundamental goals of the universal service program.

As the Commission's rules require, Verizon's role in this situation was merely to act as a conduit for RHC disbursements made to the RHC Applicant. The service provider's role is to submit a bid to provide services to the RHC Applicant, provide the services, and undertake the administrative task of seeking reimbursement from USAC for discounts received by the RHC Applicant. Here, Verizon acted in good faith in submitting its bid(s) to the RHC Applicant and in providing services as requested. Verizon was unaware of the alleged rule violations until informed by USAC and was as much a victim of the RHC Applicant's wrongdoing as USAC. As the beneficiary of the RHC funding, the party responsible for the information provided to the USAC RHC Division, and the party found responsible for violating the Commission's rules, the RHC Applicant *alone* should be held liable for returning any unauthorized benefit.

Indeed, it would be fundamentally unfair to hold Verizon liable for funds under the control of the RHC Applicant and, further, to impose on Verizon the costs of recovering funds already distributed to the RHC Applicant. Verizon has long ago passed RHC funding through to the RHC Applicant in the form of discounts on prior years' bills. Forcing Verizon to seek indemnification from the RHC Applicant would cause Verizon—a party lacking any responsibility for the erroneous disbursement—to bear the

monetary costs of attempting to reclaim these amounts.<sup>7</sup> Recovery by Verizon will be particularly difficult here because the RHC Applicant is no longer a Verizon customer. Thus, it may be difficult, if not impossible, for Verizon to obtain reimbursement from the RHC Applicant years after the fact.

Further, seeking funding recovery from service providers rather than directly from RHC applicants hampers the recovery mechanism's deterrent effect on waste, fraud, and abuse of universal service funds. In addition, from an accounting standpoint, in many cases it would be impossible for service providers to properly reserve for loss contingencies associated with revoked RHC funding years after it is disbursed to RHC program beneficiaries. During the years in which the costs for providing eligible RHC services are incurred, providers often have no way of predicting that USAC will later revoke funding under circumstances completely outside of their control. The RHC applicants, on the other hand, are familiar with the information they supply to USAC and are in a better position to account for any related loss contingencies.

Finally, forcing Verizon to serve as an intermediary collection agent would be administratively inefficient. Here, there is no dispute that the RHC Applicant is the party responsible for the matter giving rise to the funding revocation. *See* Appendix A (Administrator's Decision at 2). The most efficient and cost-effective way of recovering funding under circumstances such as these is on a centralized basis by USAC, not by spreading the costs amongst individual service providers.

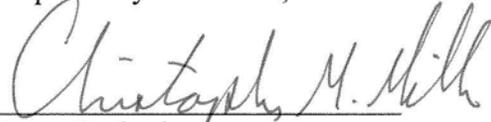
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<sup>7</sup> As commenters aptly observed in the E-rate proceeding, it is often difficult for service providers to recover funds from beneficiaries after such funds have already been distributed. *See Order on Reconsideration* ¶ 13 n.33.

**IV. REQUEST FOR RELIEF**

For these reasons, Verizon respectfully requests that the Bureau reverse the Administrator's Decision to seek recovery from Verizon of funds awarded to the RHC Applicant for Funding Years 2003 and 2004.

Respectfully submitted,



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April 10, 2009

*Counsel for Verizon*

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

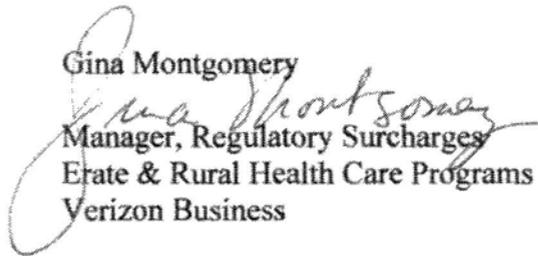
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Request for Review by Verizon of Decision	)	WC Docket No. 02-60
of Universal Service Administrator	)	CC Docket No. 96-45
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**DECLARATION OF**

I, **Gina Montgomery**, do hereby under penalty of perjury declare and state as follows:

1. I am the Manager of the Regulatory Surcharges & the Erate and Rural Health Care Programs for Verizon for Verizon. In that capacity, I have responsibility for proper application of Regulatory fees to Verizon Business products and services; the administration of Regulatory fees to Verizon Business products and services; the administration of the Erate and Rural Health Care Programs; the proper disbursement of Erate and Rural Health Care subsidies to qualifying applicants; and the invoicing of Service Provider invoices to the Schools and Libraries Division and the Rural Health Care Division.
2. In accordance with Commission rules, 47 C.F.R. § 54.721(b)(2), I have reviewed the factual assertions set forth in the foregoing Request for Review by Verizon of Decision of Universal Service Administrator and hereby certify that they are true and correct to the best of my knowledge.

Dated: \_\_\_\_\_ 4/8/2009 \_\_\_\_\_

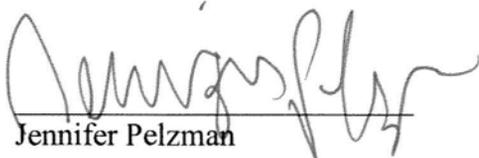
Gina Montgomery  
  
Manager, Regulatory Surcharges  
Erate & Rural Health Care Programs  
Verizon Business

**CERTIFICATE OF SERVICE**

I, Jennifer Pelzman, hereby certify that on this 10th day of April 2009, I caused copies of the foregoing "Request for Review by Verizon of Decision of Universal Service Administrator" in WC Docket No. 02-60 and CC Docket No. 96-45 be mailed via first-class postage prepaid mail to the following:

Universal Service Administrative Company  
Attn: David Capozzi, Acting General Counsel  
2000 L Street, N.W.  
Suite 200  
Washington, DC 20036

Texas Healthcare Network  
Attn: Randy Zunke, President  
P.O. Box 15384  
Austin, TX 78761-5384

  
Jennifer Pelzman

# APPENDIX A



Rural Health Care Division

*Administrator's Decision on Rural Health Care Program Appeal*

*Via Electronic and Certified Mail*

February 10, 2009

Ms. Karen Zacharia  
Mr. Christopher M. Miller  
Regulatory Counsel  
Verizon, Inc.  
1515 North Court House Road  
Suite 500  
Arlington, VA 22201

Re: Appeal of Texas Healthcare Network Commitment Adjustment

Dear Ms. Zacharia and Mr. Miller:

The Universal Service Administrative Company (USAC) has completed its evaluation of Verizon's appeal of the USAC Rural Health Care Division's decision denying Rural Health Care (RHC) Support Mechanism funding to Texas Healthcare Network and/or Hospital Networks Management (collectively, HNM). Verizon appeals a February 1, 2008 decision by USAC to recover funding for Funding Years 2001-2005 based on a competitive bidding violation by HNM. In its appeal dated March 31, 2008, Verizon stated it understood that USAC intended to seek recovery of funds from Verizon if HNM's appeal was unsuccessful. USAC has denied HNM's appeal in part. After consideration of Verizon's appeal, USAC also grants in part and denies in part Verizon's request for appeal of USAC's decision to seek recovery of funding from Verizon for Funding Years 2001-2005.

**Background**

In 2007, based on complaints received from potential bidders responding to Funding Year 2006 Form 465 postings, USAC conducted an investigation of HNM.<sup>1</sup> USAC concluded in a decision issued December 10, 2007 that HNM presented itself as the service provider to the health care providers (HCPs). Because HNM was also the contact

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<sup>1</sup> Randy Zunke represents himself as the president of Texas Healthcare Network (THN), an entity representing a consortium of hospitals, and as president of HNM. HNM explains in its appeal THN is a d/b/a for HNM and THN simply exists as a name for a consortium of hospitals. Although THN appears to be more than just a fictitious name and Mr. Zunke seems to use THN and HNM differently depending on the circumstances, for purpose of this decision only, USAC will refer to HNM and THN collectively as HNM. (See e.g., Texas Health Care Rural Health Care Pilot Program application, pp. 6, 18 (May 4, 2007)).

Ms. Karen Zacharia  
 Mr. Christopher Miller  
 February 10, 2009  
 Page 2 of 4

entity on the Forms 465, USAC determined there was a conflict of interest in violation of the FCC's competitive bidding rules. USAC also concluded that HNM failed to select the most cost effective service provider as required by Section 54.603(b)(4) of the Federal Communications Commission's (FCC or Commission) rules.<sup>2</sup> As a result, USAC denied funding for Funding Year 2006.

At the conclusion of the investigation for Funding Year 2006, USAC initiated a second investigation to determine if the FCC's competitive bidding requirements were violated during Funding Years 2001 through 2005. Because Mr. Zunke's relationship with the HCPs as a consultant and HNM's appearance as a service provider appeared to begin with Funding Year 2001, USAC determined a conflict of interest existed during Funding Years 2001-2005 in violation of the FCC's competitive bidding rules. On February 1, 2008, USAC issued a decision to recover funding for Funding Years 2001-2005.

USAC has issued simultaneously with this letter a decision denying HNM's appeal with respect to Funding Years 2003-2006. USAC determined on appeal that HNM was a reseller to the HCPs. Because HNM was a service provider and Mr. Zunke was listed as the designated contact person for the HCPs, there was a conflict of interest in violation of the competitive bidding rules. Therefore, USAC upheld the decision to rescind funding for Funding Years 2003-2006.<sup>3</sup>

**Decision and Explanation:** Granted in Part and Denied in Part

As administrator of the Universal Service Fund and the universal service support mechanisms, USAC is required to seek recovery of funds disbursed in violation of a statute or the Commission's rules.<sup>4</sup> Telecommunications carriers are the recipients of RHC Support Mechanism funds.<sup>5</sup> However, in citing the 2004 Commission *Schools and Libraries Recovery Order* concerning recoveries under the Schools and Libraries Support Mechanism, Verizon argues that USAC is obligated to seek recovery of funds from HNM, the party at fault in this matter. Unlike the Schools and Libraries Support Mechanism, the Commission has not promulgated any rule for the RHC Support Mechanism that directs USAC to recover from any party other than the recipients of the support funds.<sup>6</sup> USAC does not believe it has the authority to apply an order directed

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<sup>2</sup> 47 C.F.R. § 54.603(b)(4).

<sup>3</sup> See 47 C.F.R. § 54.619 (USAC did not rescind funding for Funding Years 2001-2002 because those years are outside the five year documentation retention requirement. See note 8 infra.). See also, Attachment A to this letter for all pending COMADs and See Attachment B to this letter for all funding for which a support is rescinded.

<sup>4</sup> 47 C.F.R. § 54.707.

<sup>5</sup> 47 C.F.R. § 54.611.

<sup>6</sup> In a 2004 Order, the FCC concluded that fund recovery should be directed to the party that committed the rule violation. See *In the Matter of Federal State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc. and Schools and Libraries Universal Service Support Mechanism*, CC Dockets 96-45, 97-21 and 02-6, Order on Reconsideration and Fourth

Ms. Karen Zacharia  
 Mr. Christopher Miller  
 February 10, 2009  
 Page 3 of 4

specifically at the Schools and Libraries Support Mechanism to the RHC Support Mechanism, absent clear Commission direction to do so.<sup>7</sup> Verizon also makes certain equitable arguments in its appeal that the applicant, not Verizon—the service provider—is to blame for the erroneous disbursements, and, therefore, the applicant should be subject to recovery action rather than Verizon. USAC does not have the authority to make equitable decisions in contravention of Commission rules; that is the province of the Commission. Consequently, Verizon’s request to have USAC seek recovery from HNM is denied.

In light of the requirement that health care providers retain documentation for five years from the end of the funding year for purchases of services supported by the Rural Health Care support mechanism, USAC will not seek recovery of funds from Verizon for Funding Years 2001 and 2002.<sup>8</sup> Therefore, with respect to Funding Years 2001-2002, USAC grants the appeal.

The commitment adjustment letters issued February 1, 2008 for Funding Years 2003 and 2004 are affirmed and USAC will seek recovery of those funds from Verizon.<sup>9</sup> Verizon has sixty days to file an appeal of this decision with the FCC. If an appeal is not filed, recovery action will commence at that time.

USAC also finds that the denial of funding for Funding Years 2005 and 2006 for service provided by MCI d/b/a Verizon was also appropriate and USAC will rescind the associated support schedules.<sup>10</sup>

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Report and Order, 19 FCC Rcd 15252, ¶ 10 (2004) (*Schools and Libraries Recovery Order*) (“...we conclude that recovery actions should be directed to the party or parties that committed the rule or statutory violation in question. (*Citations omitted*). We do so recognizing that in many instances, this will likely be the school or library, rather than the service provider.”).

<sup>7</sup> Verizon also cites to the *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight Order* (22 FCC RCD 16372, ¶ 30 (2007) (*Program Management Order*)) as a basis for arguing that the concepts for recovery of support under the *Schools and Libraries Recovery Order* should also be applied to the Rural Health Care Support Mechanism as well as the High Cost and Low Income Support Mechanisms. The clear language of paragraph 30 of the *Program Management Order* does not specifically change the parties subject to recovery in the RHC Support Mechanism. Rather, this paragraph contains general language directing USAC to recover in full amounts disbursed from these support mechanisms in violation of statute(s) or Commission rules.

<sup>8</sup> 47 C.F.R. § 54.619(a). *See also*, *In the Matter of Rural Health Care Support Mechanism*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 03-288, 18 FCC Rcd 256, ¶¶ 49, 60 (2003) (codifying the five year record retention requirement and establishing effective date as start of Funding Year 2004). Prior to the five year record retention requirement, health care providers were required to retain documentation “necessary to assist in future audits.” *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, FCC 97-157, 12 FCC Rcd 8776, ¶ 581 (1997). *See also* 47 C.F.R. § 54.619(a) (2002).

<sup>9</sup> *See* Attachment A.

<sup>10</sup> *See* Attachment B.

Ms. Karen Zacharia  
Mr. Christopher Miller  
February 10, 2009  
Page 4 of 4

If you wish to appeal this decision, you may file an appeal with the FCC by following the instructions provided at:

<http://www.usac.org/rhc/about/filing-appeals.aspx>

Sincerely,

USAC

# APPENDIX B



Rural Health Care Division

*Via Electronic and Certified Mail*

February 1, 2008

Mr. Randy Zunke, President  
Texas Healthcare Network  
P.O. Box 15384  
Austin, TX 78761-5384

Re: Rural Health Care Program Funding

Dear Mr. Zunke:

The Universal Service Administrative Company (USAC) has concluded its investigation of potential competitive bid violations by Texas Healthcare Network (THN or the Network) in Funding Years 2001 through 2005 of the Federal Communications Commission's (FCC) Rural Health Care (RHC) Program. USAC finds that THN violated the FCC's Rural Health Care Program's competitive bid requirements because Mr. Zunke acted as the consultant to the hospitals in the Network and he was president of THN, which held itself out to the member hospitals and the general public as a service provider.

### **Background**

On December 10, 2007, USAC issued a decision regarding two competitive bid complaints filed against THN (hereinafter referred to as the December 10<sup>th</sup> Decision). In the decision, USAC concluded that THN failed to comply with certain rules and regulations of the FCC governing participation in the RHC Program during Funding Years 2006 and 2007. In particular, USAC found that THN violated the FCC's competitive bidding requirements<sup>1</sup> because (i) it informed potential bidders that hospitals in the Network were already under contract when they in fact were not; (ii) it failed to respond to potential bidders' requests for information to enable them to submit bids; and (iii) it served as both a service provider and as a consultant to Health Care Providers (HCP) participating in the Network, which is considered a conflict of interest.

At the conclusion of the initial competitive bid investigation, USAC initiated a second investigation.<sup>2</sup> The purpose of the second investigation was to determine if the FCC's competitive bidding requirements were violated during Funding Years 2001 through 2005. As part of the investigation, USAC reviewed internal records for Funding Years 2001 through 2005 pertaining to THN, Hospital Networks Management (HNM) and

<sup>1</sup> See 47 C.F.R. § 54.603.

<sup>2</sup> See December 10<sup>th</sup> Decision, p. 11.

Mr. Randy Zunke  
February 1, 2008  
Page 2 of 5

Randy Zunke. Detailed background information regarding Mr. Zunke and his relationship to THN, HNM and various HCPs in the Network are provided in the December 10<sup>th</sup> Decision and are incorporated here by reference.

### Statutory Framework

As described in the December 10<sup>th</sup> Decision, the FCC's rules require a fair and open competitive bidding process. The FCC has explained that this means that the service provider may not have direct involvement in the application process.<sup>3</sup> In the FCC's *MasterMind Order*, the FCC upheld USAC's decision to deny funding where an employee listed as the contact person on an application, worked for a service provider that bid on the application.<sup>4</sup> The FCC reasoned that under those circumstances, the funding application was defective and violated the Commission's competitive bidding requirements.<sup>5</sup> In reaching its decision in the *MasterMind Order*, the FCC explained that "[t]he contact person exerts great influence over an applicant's competitive bidding process by controlling the dissemination of information regarding the services requested."<sup>6</sup> The FCC further explained that "the participation of the contact person in the bidding process may significantly affect the submission of bids by other prospective bidders, thereby undermining the ability of the applicant to obtain the most cost-effective bid."<sup>7</sup>

Similarly, in the FCC's *SEND Order*,<sup>8</sup> the FCC found that where the program recipient's contact person was a partial owner of the service provider "the relationship between [the] contact person and the service provider, Send Technologies, involved a conflict of interest, and in fact, impeded fair and open competition, as prohibited by the Commission's precedent."<sup>9</sup> While these decisions were made in regard to funding requests in the FCC's Universal Service Program for Schools and Libraries, these

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<sup>3</sup> See *Request for Review of Decisions of the Universal Service Administrator by MasterMind Internet Services, Inc., Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 16 FCC Rcd 4028-4032-33, ¶ 10 (2000); *Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District, et al. Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, SLD Nos. 321479, et al., CC Docket Nos. 96-45, 97-21, Order, 19 FCC Rcd 6858, ¶ 60 (2003).

<sup>4</sup> *Id.* ¶ 6.

<sup>5</sup> Pursuant to FCC guidance, *MasterMind* applies to any contact information on the posting including address, telephone and fax numbers, or email addresses that prospective bidders might associate as belonging to a competitive service provider.

<sup>6</sup> *Id.* ¶ 10.

<sup>7</sup> *Id.* ¶ 11.

<sup>8</sup> See *Requests for Review of the Decision of the Universal Service Administrator by Send Technologies, L.L.C., SPIN -143010002, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, DA 07-1270 (2007).

<sup>9</sup> *Id.* ¶ 6.

Mr. Randy Zunke  
February 1, 2008  
Page 3 of 5

principles are equally applicable to funding requests in the RHC Program because of similarities between each program's competitive bidding requirements.<sup>10</sup>

### **Conflict of Interest**

Mr. Zunke, as president of HNM, was identified as the designated contact person on THN's FCC Forms 465, 466, 466-A and 467 submitted to USAC in Funding Years 2001 through 2005.<sup>11</sup> Hospital Networks Management, Inc. is a for profit entity that provides telecommunications and Internet access services.<sup>12</sup> Mr. Zunke was also president of THN during Funding Years 2001 through 2005. As more fully described in the December 10<sup>th</sup> Decision, in addition to being the President of and authorized contact person for THN, Mr. Zunke owned HNM. During the investigation, Mr. Zunke provided USAC with the following explanation of the relationship between HNM and THN: "Hospital Networks Management, Inc. is the legal corporate name while Texas Healthcare Network is the d/b/a name for the Texas hospitals in the consortium."<sup>13</sup> Mr. Zunke appears to be both a consultant to the HCPs in the Network and a service provider, which is a conflict of interest in violation of the FCC's competitive bidding requirements and the principles set forth in the *Mastermind Order*.<sup>14</sup>

The following events further demonstrate the existence of a conflict of interest during Funding Years 2001 through 2005:

1. On June 28, 2006, Texas Hospital Telecommunications Alliance, a member of the Network,<sup>15</sup> filed IRS Form 990 for tax year 2005. On the form it was noted that the Alliance paid Texas Healthcare Network \$305,716 for "Telecomm. Services and Support."<sup>16</sup> The tax year 2005 covers partial Funding Years 2004 and 2005.

<sup>10</sup> Compare 47 C.F.R. §§ 54.603, 54.615 with 47 C.F.R. §§ 54.504, 54.511.

<sup>11</sup> Funding Years 2001 through 2005 are defined as funding for services provided during the period of July 1, 2001 to June 30, 2006.

<sup>12</sup> As described in the December 10<sup>th</sup> Decision, HNM also appears to be a service provider because it signed contracts with MCI WorldCom.

<sup>13</sup> Email communication from Randy Zunke to USAC dated August 3, 2007.

<sup>14</sup> See December 10<sup>th</sup> Decision pp. 9-11 for detailed explanation regarding relationship between THN as a service provider and the health care providers who are members of THN.

<sup>15</sup> Texas Hospital Telecommunications Alliance is a not-for-profit organization that has been developed and sponsored by Texas Organization of Rural and Community Hospitals. The purpose, according to the website is to "provide a vehicle through which health care organizations may collaborate to improve access to and delivery of health care services utilizing telemedicine and other technology to the fullest potential." <http://www.trhta.net/about.html>

<sup>16</sup> Texas Hospitals Telecommunications Alliance, IRS Form 990, Year 2005, page 9.

Mr. Randy Zunke  
February 1, 2008  
Page 4 of 5

2. An HCP with an FCC Form 465 that had been posted by THN responded to a potential bidder by stating that it was "currently under contract till the end of 2007 with *Texas Healthcare Network*" (emphasis added).<sup>17</sup>
3. In the spring of 2006, at least two potential bidders attempted to contact the mailing contact and in some cases the physical location contact of hospitals in the Network. A few of the hospitals communicated with the potential bidders, but upon reviewing the bids informed the bidders that they were currently receiving service through THN at a lower rate, and would continue to receive their service through THN.<sup>18</sup> Most physical location contacts referred potential competitive bidders to Mr. Zunke, the contact listed on FCC Form 465.<sup>19</sup>

### Conclusion

Because of Mr. Zunke's relationship as President of Hospital Networks Management, the consultant to the HCP and Mr. Zunke's relationship as President of Texas Healthcare Network, which holds itself out to the member hospitals and the general public as a service provider, there is a conflict of interest in violation of the FCC's *Mastermind Order* and its competitive bidding requirements.<sup>20</sup>

As a result, funding previously committed for HCPs filing under the umbrella of Texas HealthCare Network must be retracted. Attached is a spreadsheet<sup>21</sup> that details the Funding Year, HCP Number, Funding Request Number, and funding amount for which USAC is issuing a Commitment Adjustment and Demand.<sup>22</sup> Also attached is a listing of the Funding Year, HCP Number, Funding Request Number, and funding amount for which USAC is hereby rescinding funding.<sup>23</sup>

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<sup>17</sup> Competitive bid complaint #1, email communication string between service provider and HCP physical location, forwarded to USAC July 25, 2007.

<sup>18</sup> Competitive bid complaint #1, email communication containing notes on all contacts for consortium of hospitals in Texas, email provided to USAC July 25, 2007.

<sup>19</sup> See December 10<sup>th</sup> Decision pp. 9-11 for detailed explanation regarding relationship between THN as a service provider and the health care providers who are members of THN.

<sup>20</sup> See 47 C.F.R. § 54.603.

<sup>21</sup> See Attachment A for full listing. USAC has already issued payment to the service provider for all Funding Requests that are issued a Commitment Adjustment and Demand via this letter.

<sup>22</sup> See Attachment B for standard Commitment Adjustment and Demand language.

<sup>23</sup> See Attachment C for a full listing. USAC has not issued payment to the service provider for all Funding Requests that are denied via this letter.

Mr. Randy Zunke  
February 1, 2008  
Page 5 of 5

The mailing contacts and the HCP physical location contacts on file with USAC based on the Funding Year 2007, or most recent Form 465, will receive a copy of this letter.<sup>24</sup> A copy of this letter was also sent to the applicable service provider(s).

If you wish to file an appeal of this decision, your appeal must be *received* no later than 60 days after the date of this letter. Appeals must be filed in conformance with the requirements of 47 C.F.R. §§ 54.719 and 54.720. Detailed instructions for filing appeals are available at:

<http://www.usac.org/rhc/about/filing-appeals.aspx>.

Sincerely,

USAC

---

<sup>24</sup> See Attachment D for a full listing.

ATTACHMENT B

**USAC**

Universal Service Administrative Company

100 South Jefferson Road  
Whippany, NJ 07981

Rural Health Care Division

www.rhc.universalservice.org  
Phone: 1-800-229-5476

**COMMITMENT ADJUSTMENT LETTER**

FEBRUARY 1, 2008

XX  
XX  
XX  
XX

RE:	Commitment Adjustment
Funding Year:	SEE ATTACHMENT A OF FEB 1, 2008 LETTER
Applicant:	SEE ATTACHMENT A OF FEB 1, 2008 LETTER
HCP Contact Person:	SEE ATTACHMENT A OF FEB 1, 2008 LETTER
HCP Contact Phone:	SEE ATTACHMENT A OF FEB 1, 2008 LETTER

Dear \*\*:

Our routine review of Universal Service Administrative Company (USAC) Rural Health Care Division (RHCD) Program funding commitments revealed certain applications where funds were committed in violation of program rules. In order to be sure that no funds are used in violation of program rules, RHCD must now adjust these funding commitments. This letter is to inform you of these adjustments.

**FUNDING COMMITMENT REPORT**

On the page following this letter, we have provided a Funding Commitment Report for the application cited above. The enclosed report includes a list of the Funding Request Number(s) (FRNs) from the application for which adjustment(s) are necessary. RHCD is also sending this information to the applicant, so you may work with them to implement this decision. Immediately following the Funding Commitment Report, you will find a guide that defines each line of the Report.

Please note that if the Funds Disbursed to Date amount exceeds your Adjusted Funding Commitment amount, USAC will have to recover some or all of the funds disbursed. This amount is shown as Funds to be Recovered. We will soon send a letter describing the process for recovering these funds, and will send a copy of the letter to the applicant. If the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount. To remit payments, please review the payment addresses below.

The physical address for wire transfers is:

**LaSalle Bank N.A.**  
**540 W Madison St., 4<sup>th</sup> Floor**  
**Chicago, IL 60661**

The ABA Routing Number for ACH and wire payments is 07100505, DDA is 5590045653.

For courier, overnight packages (FedEx, UPS, etc.), and checks via postal service the address is

**USAC**  
**1259 Paysphere Circle**  
**Chicago, IL 60674**

ATTACHMENT B

**Funding Commitment Report**  
**XXXXXXXXXXXXXX**

**Funding Request Number(s):** SEE ATTACHMENT A TO FEB 1 2008 LETTER  
**SPIN:** SEE ATTACHMENT A TO FEB 1 2008 LETTER  
**Service Provider Name:** SEE ATTACHMENT A TO FEB 1 2008 LETTER  
**Services Ordered:** SEE ATTACHMENT A TO FEB 1 2008 LETTER  
**Billing Account Number:** SEE ATTACHMENT A TO FEB 1 2008 LETTER

**Adjusted Funding Commitment:** ATTACHMENT  
A  
**Funds Disbursed to Date:** ATTACHMENT  
A  
**Funds to be Recovered:** ATTACHMENT  
A

**Funding Commitment Adjustment Explanation:**

PLEASE REFER TO THE FEBRUARY 1, 2008 LETTER TO TEXAS HEALTHCARE NETWORK AND SPECIFICALLY ATTACHMENT A TO THE LETTER LISTING ALL HCP'S, SPINS, FRN'S AND AMOUNTS TO BE RECOVERED BY COMAD.

**PLEASE SEND A COPY OF THIS PAGE WITH YOUR  
CHECK TO ENSURE TIMELY PROCESSING**

## ATTACHMENT B

### **TO APPEAL THESE FUNDING COMMITMENT ADJUSTMENTS**

If you wish to appeal this decision, you may file an appeal with the Universal Service Administrative Company, or directly to the Federal Communications Commission. The appeal **must be filed within 60 days of the date at the top of this letter**. Detailed instructions for filing appeals are available at:

<http://www.usac.org/rhc/about/filing-appeals.aspx>

If you have questions or need help, please call the Customer Service Support Center at 1-800-229-5476.

Sincerely,

USAC – RHCD

Attachments

CC: XXXXXXXXXXXXX

## ATTACHMENT B

### A GUIDE TO THE FUNDING COMMITMENT REPORT

Attached to this letter is a report for each support schedule for this HCP for which a commitment adjustment is required. Below are definitions for terms used in the report.

- ◆ **Funding Request Number (FRN):** A Funding Request Number is assigned by the RHCD to each Funding Commitment Letter. This number is used to report to applicants and service providers the status of individual discount funding requests submitted on a Form 466/468.
- ◆ **SPIN (Service Provider Identification Number):** A unique number assigned by the Universal Service Administrative Company to service providers seeking payment from the Universal Service Fund for participating in universal service support programs.
- ◆ **SERVICE PROVIDER:** The legal name of the service provider.
- ◆ **SERVICES ORDERED:** The type of telecommunications service ordered from the service provider, as shown on the Form 466/468.
- ◆ **BILLING ACCOUNT NUMBER:** The account number your service provider has established with you for billing purposes. This will be present only if a Billing Account Number was provided on your Form 466/468 or Form 467.
- ◆ **ADJUSTED FUNDING COMMITMENT:** This represents the adjusted total amount of funding that RHCD has committed to this FRN. If this amount exceeds the Funds Disbursed to Date, the RHCD will continue to process properly filed invoices up to the new commitment amount.
- ◆ **FUNDS DISBURSED TO DATE:** This represents the total funds which have been paid up to now to the identified service provider for this FRN.
- ◆ **FUNDS TO BE RECOVERED:** This represents the amount of Funds Disbursed to Date that exceeds the Adjusted Funding Commitment amount. These funds will have to be recovered. If the Funds Disbursed to Date do not exceed the Adjusted Funding Commitment amount, this entry will be \$0.
- ◆ **FUNDING COMMITMENT ADJUSTMENT EXPLANATION:** This is a description of the reason the adjustment was made.

# APPENDIX C

Christopher M. Miller  
Regulatory Counsel



1515 North Court House Road  
Suite 500  
Arlington, VA 22201

Phone 703 351-3071  
Fax 703 351-3676  
chris.m.miller@verizon.com

March 31, 2008

**LETTER OF APPEAL**

**BY ELECTRONIC MAIL AND HAND DELIVERY**

Universal Service Administrative Company  
Attn: Rural Health Care Division, USAC  
Attn: Rural Health Care Committee, Board of Directors, USAC  
c/o Camelia Rogers  
2000 L Street, NW, Suite 200  
Washington, DC 20036

**RE: Appeal of Verizon – Texas Healthcare Network Commitment Adjustment  
Letter dated February 1, 2008**

Dear Sir or Madam:

Pursuant to 47 C.F.R. § 54.719(a), Verizon appeals the Universal Service Administrative Company (“USAC”) Rural Health Care Division’s Commitment Adjustment Letter dated February 1, 2008 (the “Letter Decision;” attached at Attachment A) and issued to MCI Communications Services, Inc. d/b/a Verizon Business Services (“Verizon”). To the extent USAC seeks recovery of rural health care funds identified in the Letter Decision USAC is bound by Commission precedent to recover those funds from the funding applicant, not from Verizon. Even if not bound, the same principles from the Commission’s orders that address recovery of revoked universal service funds should apply in this instance and USAC should recover directly from the applicant.

The Letter Decision was received by Verizon as an attachment to a February 1, 2008 funding revocation letter addressed to Texas Healthcare Network and/or Hospital Networks Management (collectively “the applicant”), one or both of which apparently is a consortium of Texas health care providers (the “Texas hospitals”) and potentially also a service provider to the Texas hospitals. Verizon provides various services to the Texas hospitals, and some or all of those services are provided pursuant to bid(s) submitted by Verizon in response to FCC Form(s) 465 submitted by the applicant to the Rural Health Care Division (the “Division”).

The Division’s funding revocation letter indicates that certain rural health care funds in funding years 2001-2005 were revoked because of specified violations of the rural health care

Rural Health Care Appeal of Verizon

March 31, 2008

Page 2 of 6

program's competitive bidding rules in 47 C.F.R. § 54.603. Verizon does not have sufficient information to take a position on the alleged underlying competitive bidding rules violations, and to the extent the Letter Decision speaks to such alleged violations Verizon does not appeal those aspects of the Letter Decision.

Verizon understands from various correspondence and subsequent communication with USAC that the alleged competitive bidding rules violations relate only to the applicant and not to Verizon. Verizon further understands that the applicant has separately appealed the Division's funding revocation decision. Verizon also understands, however, that in the event the applicant's appeal of the Division's funding revocation decision is unsuccessful, USAC intends to or may seek recovery from Verizon – not from the applicant – of revoked rural health care funds dispersed by USAC in the funding years. Verizon appeals this aspect of the Letter Decision.

As required by 47 C.F.R § 54.611, the revoked rural health care funds awarded to the applicant were paid to Verizon as an off-set against Verizon's universal service contribution obligation and passed through to the applicant by Verizon on bills in the funding years. This is similar to the discounted billing process in the E-rate program for school and library applicants. 47 C.F.R. § 54.514; *see also Schools and Libraries Universal Service Support Mechanism, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, ¶ 51 (2003)*.

Even though rural health care funds are passed through service providers to applicants under the Commission's rules, the Commission has determined that in instances such as this where there is an alleged rules violation by an applicant, and not by a service provider (or in this case a contract provider to another service provider), USAC must seek recovery of revoked funds from the applicant.

[W]e conclude that recovery actions should be directed to the party or parties that committed the rule or statutory violation. . . . This revised recovery approach shall apply on a going forward basis to all matters for which USAC has not yet issued a demand letter as of the effective date of this order, and to all recovery actions currently under appeal to either USAC or this agency. *Federal-State Joint Board on Universal Service, Order on Reconsideration and Fourth Report and Order, 19 FCC Rcd 15252, ¶ 10 (2004) ("Order on Reconsideration")*.

The *Order on Reconsideration* controls USAC's determination as to which party to seek recovery from in this instance. Even if not binding, the same guiding principles from the *Order on Reconsideration* apply to the present situation and direct USAC to recover from the applicant. The *Order on Reconsideration* was issued in response to multiple petitions for reconsideration of an earlier Commission decision holding that because service providers generally receive E-rate funding and then pass those amounts through to applicants, USAC should in all instances seek recovery of funds from service providers. *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 97-21 and 96-45, FCC 99-291, ¶ 8 (rel. Oct. 8, 1999) ("*Commitment Adjustment Order*").

Rural Health Care Appeal of Verizon

March 31, 2008

Page 3 of 6

In modifying the *Commitment Adjustment Order*, the *Order on Reconsideration* sought to address this very situation – where an applicant is alleged to have violated the Commission’s competitive bidding rules and funding is subsequently revoked by USAC.

We direct USAC to make the determination, in the first instance, to whom recovery should be directed in individual cases. In determining to which party recovery should be directed, USAC shall consider which party was in a better position to prevent the statutory or rule violation, and which party committed the act or omission that forms the basis for the statutory or rule violation. For instance, the school or library is likely to be the entity that commits an act or omission that violates our competitive bidding requirements. . . *Order on Reconsideration* ¶ 15.

While the *Order on Reconsideration* was issued in the context of E-rate funding recovery, the language used by the Commission is broad enough to cover identical situations in the rural health care program. The first sentence in paragraph 10 of the order, for example, indicates that “recovery actions should be directed to the party or parties that committed the rule or statutory violation” and is not qualified with language specific to E-rate. *Id.* ¶ 10. Similarly, the first two sentences of paragraph 15 of the Order direct USAC to determine “to whom recovery should be directed” based on which party (the applicant or the service provider) “was in a better position to prevent the statutory or rule violation” and also are not qualified with language specific to E-rate. *Id.* ¶ 15. In addition, the *Order on Reconsideration* speaks most directly to recovery disputes in the E-rate context only because the *Commitment Adjustment Order* was issued in response to USAC’s revocation of certain funding commitments made to school and/or library applicants – not because the Commission intended a different standard for rural health care funding adjustments.

The Commission’s most recent *Program Management Order* provides further guidance. *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight*, 22 FCC Rcd 16372 (2007) (“*Program Management Order*”). In that decision the Commission concluded that it should streamline funding recovery across all universal service programs consistent with the well-established E-rate rules and standards.

[W]e sought comment on whether, consistent with the conclusions in the *Schools and Libraries Fifth Report and Order*, amounts disbursed from the high-cost, low-income, and rural health care support mechanisms in violation of the statute or Commission rule must be recovered in full. Waste, fraud, and abuse of the USF programs harm all program participants by reducing the amount of available funds. Consistent with our conclusion regarding the schools and libraries program, funds disbursed from the high-cost, low-income, and rural health care support mechanisms in violation of a Commission rule that implements the statute or a substantive program goal should be recovered. *Program Management Order* ¶ 30.

Rural Health Care Appeal of Verizon  
March 31, 2008  
Page 4 of 6

Moreover, the policy reasons underlying the Commission's decision to direct USAC to seek recovery from applicants where there is an alleged violation of the competitive bidding rules apply equally to the E-rate and rural health care programs. There is no justification for seeking recovery from a rural health care service provider when funds have already been disbursed by USAC and passed through to an applicant. The service provider's role is to submit a bid to provide services and to undertake the administrative task of seeking reimbursement for discounts received by the applicant. Assessing the service provider years after the fact for errors or violations that the applicant committed in seeking funds is not only unfair but will also discourage service providers from bidding on new rural health care provider requests. In many instances it would be difficult or impossible for the service provider to subsequently obtain reimbursement from the applicant, and, as a result, the service provider will suffer a loss through no fault of its own.

Unless the service provider is to blame for an erroneous disbursement, the service provider should not be required to indemnify USAC for rural health care funds that have already been disbursed to the applicant but later revoked. It is particularly inappropriate to seek repayment of funds from a service provider when there is evidence that the applicant engaged in waste, fraud, or abuse or committed a statutory violation. The applicant engaged in the wrongdoing is the entity responsible for compliance with the Commission's rules, not a service provider. The applicant is also in the best position to prevent fraud. Often the alleged rules violation occurs before a service provider is even selected by the applicant or in the course of the selection process. In either case and in almost every such situation the service provider has no way of even knowing about, much less preventing the violation.

Indeed, in the present situation Verizon had no control over the applicant's actions in seeking rural health care funds from USAC, and the alleged rules violations were unknown to Verizon until notified of the allegations by USAC. If the Division's funding revocation decision is upheld, Verizon will be as much the victim of wrongdoing as USAC. Verizon acted in good faith in submitting its bid(s) to the applicant and in providing the requested services to the Texas hospitals. Now, in addition to USAC's potential claim for reimbursement, if the Division's funding revocation decision is upheld Verizon must seek payment from the applicant for discounts already given on the applicant's bills but not credited to Verizon by USAC. To further require Verizon to indemnify USAC for rural health care funds already credited would add insult to injury.

Rural Health Care Appeal of Verizon

March 31, 2008

Page 5 of 6

For the foregoing reasons, Verizon requests that USAC reverse that aspect of the Letter Decision seeking recovery from Verizon of rural health care funds awarded to the applicant. Should you have any questions or require any additional information, please contact me.

Respectfully submitted,

By: 

Michael E. Glover, *Of Counsel*

Karen Zacharia  
Christopher M. Miller  
VERIZON  
1515 North Courthouse Road  
Suite 500  
Arlington, VA 22201-2909  
(703) 351-3071

Attorneys for Verizon

cc: David Copozzi

Rural Health Care Appeal of Verizon  
March 31, 2008  
Page 6 of 6

## **ATTACHMENT A**

# APPENDIX D

Christopher M. Miller  
Regulatory Counsel



1515 North Court House Road  
Suite 500  
Arlington, VA 22201

Phone 703 351-3071  
Fax 703 351-3676  
chris.m.miller@verizon.com

April 16, 2008

**LETTER OF APPEAL – SUPPLEMENTAL FILING**

BY ELECTRONIC MAIL AND U.S. MAIL

Universal Service Administrative Company  
Attn: Rural Health Care Division, USAC  
Attn: Rural Health Care Committee, Board of Directors, USAC  
c/o Camelia Rogers  
2000 L Street, NW, Suite 200  
Washington, DC 20036

**RE: Appeal of Verizon – Texas Healthcare Network Commitment Adjustment  
Letter dated February 1, 2008**

Dear Ms. Rogers:

This is to clarify the above-captioned appeal and to supplement the record. On March 31, 2008 Verizon appealed the Universal Service Administrative Company (“USAC”) Rural Health Care Division’s Commitment Adjustment Letter dated February 1, 2008 (the “Letter Decision”) and issued to MCI Communications Services, Inc. d/b/a Verizon Business Services. In the materials attendant to the Letter Decision USAC indicates that certain rural health care funds awarded to Texas Healthcare Network (the “applicant”) in funding years 2001-2005 were revoked because of alleged violations of the rural health care program’s competitive bidding rules. USAC also indicates that certain additional funding originally committed to the applicant but not yet credited to Verizon as the applicant’s service provider was rescinded. The rescinded funding is identified as Attachment C with the materials attendant to the Letter Decision. All of these materials were included with Verizon’s appeal.

To the extent the Letter Decision should be construed as a final decision by USAC not to credit the rescinded funding amounts to Verizon, Verizon also appeals that aspect of the Letter Decision. Consistent with the Commission’s rural health care program billing procedures, in discounting bills to the applicant for services provided Verizon relied upon USAC’s original funding commitment as assurance that Verizon would be reimbursed by USAC for the discounted portion of the services. For reasons more fully explained in Verizon’s appeal, if the applicant is determined to have violated the Commission’s competitive bidding rules through no fault of Verizon such that funding must be revoked or rescinded, Verizon should still be made

Rural Health Care Appeal of Verizon

April 16, 2008

Page 2 of 3

whole, and USAC should seek recovery from the applicant. Attached hereto as Attachment A are the rescinded funding invoices for funding year 2005. The rescinded funding invoices for funding year 2006 were submitted on April 11, 2008 to USAC for crediting. In the event they are denied, Verizon will again supplement the record on appeal.

Should you have any questions or require any additional information, please contact me.

Respectfully submitted,

By: 

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Rural Health Care Appeal of Verizon

April 16, 2008

Page 3 of 3

## **ATTACHMENT A**