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Reply To: Grand Rapids

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August 3, 2012

Via UPS

Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743

Dear Sir or Madam:

Re: In the Matter of Request for Review by LMAS District Health Department of Decision of Universal Service Administrator
WC Docket No. 02-06
HCP Nos. 17483; 17484; and 17501

This law firm represents LMAS District Health Department ("LMAS"). We are writing to appeal the July 11, 2012 denial by Universal Service Administrative Company's ("USAC") of rural health care funding to LMAS and to request a waiver of the filing deadline for FCC Form 466 for the 2010 funding year. *See correspondence, attached as Exhibit A.*

Background

LMAS is located in Michigan's rural Upper Peninsula, and it provides essential services, education, and advocacy related to disease prevention, environmental hazard protections, health promotion, and emergency management. LMAS is the only multicounty health department in the area. LMAS relies on funding from USAC's Rural Health Care Program, which is critical to operate its telecommunication systems and necessary for LMAS's provision of services.

LMAS has an "evergreen" contract with USAC, such that LMAS is not required to file FCC Form 465 or participate in competitive bidding for the life of the contract. LMAS now understands that

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pursuant to FCC Rule 54.623, 47 C.F.R. § 54.623, USAC requires FCC Form 466 to be filed by June 30 of the year for which funding is requested, even for health care providers with evergreen contracts.

However, for the 2010 funding year, LMAS mistakenly failed to file FCC Form 466 prior to the June 30 deadline. As a result of LMAS's administrative error, USAC denied LMAS's request for discounted telecommunication services and Internet access by way of an e-mail dated July 11, 2012. (Exhibit A.) LMAS now submits this appeal to the FCC pursuant to 47 C.F.R. §§ 54.719 *et seq.* and other applicable rules.

Argument

The FCC has held that in some cases, "rigid adherence to filing procedures . . . does not further the public interest or the purposes of section 254(h) of the Communications Act of 1934 [which authorizes the funding program]." *In the Matter of Request for Review Bradford Regional Medical Center*, 25 F.C.C.R. 7221, 2010 WL 2234080 (June 4, 2010). The FCC has therefore concluded that the FCC Form 466 deadline can be waived. *See id.* In such instances, a health care provider may be allowed to resubmit the tardy form and receive prompt consideration of the funding request from USAC. *Id.*

Recently, the FCC granted a health care provider's request to waive the June 30 deadline for a required FCC Form 466. *FCC Daily Digest*, 31 FCC Daily Dig. 44, 2012 WL 735629 (March 6, 2012); *see also Wireline Competition Bureau Seeks Comment on Annette Island Service Unit Request for Waiver of the Rural Health Care FCC Form 466 Filing Deadline*, WC Docket No. 02-60, 2011 WL 5038783 (Oct. 21, 2011). In that matter, Annette Island Service Unit sought a waiver of the FCC Form 466 deadline, arguing that "as the island's lone health care facility, the error will significantly impact the island community." *Id.* The waiver was granted by the FCC.

Here, as in the Annette Island matter, LMAS is the only multicounty health department in the rural area that it serves. LMAS depends on outside funding, such as assistance from USAC, to carry out its operations. The loss of funding from USAC would be devastating to LMAS and would interrupt the important health related services that LMAS provides. Strictly enforcing the June 30 deadline based on an administrative oversight would be detrimental to the public health of LMAS's service area and would not further the purposes of USAC's enabling statute, the Communications Act of 1934. *See Bradford Regional Medical Center, supra.*

Notably, LMAS did not violate a substantive rule; it merely missed a procedural deadline that can be waived and that has been waived for other health care providers in the past. Denying LMAS's request for funding based on this procedural error would create undue hardship and prevent an otherwise eligible health care provider from receiving critical funding. The residents of LMAS's

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service area would ultimately suffer the consequences of the error and lose the benefit of the services that LMAS provides. LMAS therefore requests a waiver of the filing deadline.

Request for Relief

For these reasons, LMAS respectfully requests that the FCC grant a waiver of the FCC Form 466 filing deadline and waive any subsequent deadlines related to the late-filed FCC Form 466.

Thank you for your consideration of this request, and please feel free to contact me with any questions or concerns.

Sincerely,

FOSTER SWIFT COLLINS & SMITH PC



Michael Homier

MDH:LJG
Enclosure

cc: Nicholas Derusha

EXHIBIT A

----- Original Message -----

Subject: RE: 2011 support
Date: Wed, 11 Jul 2012 15:00:55 +0000
From: Tess Ellis <tellis@usac.org>
To: 'Nicholas Derusha' <nderusha@lmasdhd.org>
CC: Homier, Michael <MHomier@fosterswift.com>

Okay, I am looking for the status of the 2011 forms and will get back to you asap on that. It seems no forms were submitted for 2010 however; is this correct? If so, your only option is to appeal to the FCC. You can information on how to do this at:

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

Scroll down to the info regarding the FCC:

I'll be back in touch shortly regarding 2011. Thanks.

-Tess

Tess Ellis

Senior Manager, Rural Health Care

Universal Service Administrative Company

202.629.4809 - desk

202.374.3543 - blackberry

tellis@usac.org

-----Original Message-----

From: Nicholas Derusha [mailto:nderusha@lmasdhd.org]
Sent: Wednesday, July 11, 2012 9:24 AM

To: Tess Ellis
Cc: Homier, Michael
Subject: Re: 2011 support

Tess,

Thanks for looking into this. However, I now have a few follow-up questions/comments. 1. We were on evergreen status so we do not have to file form 465 per our December 9, 2009 email from drobins@rhc.universalservice.org <mailto:drobins@rhc.universalservice.org> (I can send you copies of this email if necessary). 2. We did file forms 466 for 2011 and I will send them in an email immediately following this email so that you can see the forms and the date they were submitted. 3. Because we are evergreen we had to print and email the forms which we did on 6-27-12. 4. Who can we contact to appeal the decision for 2010? I believe because we were on evergreen status, in essence we did submit form 465 as we were enrolled in the program for the life of the contract per the December 9, 2009 email from drobins. Your response is appreciated. Thanks for all of your help with this. My phone number is 906-293-1311 or 906-420-1867 (cell).

Nick

On 7/10/2012 10:08 PM, Tess Ellis wrote:

- > Mr. Derusha:
- >
- > It appears that your organization did not file the Form 465 for 2010
- > or 2011. If you did not file the 465 and 466 during the funding year,
- > unfortunately we cannot provide funding based on FCC rules. We do not
- > have authority to waive FCC rules (Form 466 must be submitted by June
- > 30 to receive support). The deadline to file a 465 to receive a full
- > year's support is June 2nd at the beginning of the fund year (for
- > funding year 2011, this would have been June 2, 2011). The Form 466
- > and supporting documentation must be received by June 30th at the end
- > of the funding year (for 2011, this would have been June 30th, 2012).
- > I'm afraid there is little we can do to assist you as neither form was
- > submitted. If you believe this to be in error, please send me copies
- > of the forms and I'll look into it immediately.
- >
- > I would strongly recommend that you file a 465 for FY 2012 (if you

> haven't already). Attached is a link to the funding year calendar

> that may be useful:

>

http://www.usac.org/_res/documents/rhc/pdf/handouts/Primary-Program-Timeline.pdf.

> Also, we have revamped our entire website and there is a lot of useful

> information that I think would help get your organization back on

> track for funding: www.usac.org/rhc <<http://www.usac.org/rhc>>.

<<http://www.usac.org/rhc>> If

> you have questions about how to file the applications, you should feel

> free to contact the RHC Help Desk at 1.800.229.5476.

>

> I wish I had better news for you.

>

> -Tess

>

> Tess Ellis

> Senior Manager, Rural Health Care

> 202.263.1638

> tellis@usac.org <<mailto:tellis@usac.org>>

>

>

>

> -----Original Message-----

> From: Nicholas Derusha [<mailto:nderusha@lmasdhd.org>]

> Sent: Monday, July 09, 2012 12:44 PM

> To: rhc-admin@usac.org <<mailto:rhc-admin@usac.org>>

> Subject: Extremely Urgent Reimbursement Assistance Requested

>

> To Whom it May Concern:

> My name is Nicholas Derusha I am the Health Officer for the

> Luce-Mackinac-Alger-Schoolcraft District Health Department (LMAS). I

> need some assistance from you to ensure LMAS receives \$72K in rural

> health reimbursement for our T1 internet connections (HCP #s

> 17482,17483, 17484, and 17501). To provide some background LMAS is

> one of Michigan's 45 local health departments serving one of the most

> rural areas in Michigan's Upper Peninsula. In 2008 LMAS had T1

> connections installed at our 5 remote office locations, and a T1

> Direct Internet Attachment installed in our main office.

> This was only made financially possible with rural health

> reimbursement. In

> 2009 we filed for, and in 2010 were reimbursed for 2008 service. In

> 2010 we

> submitted our Form

> 466 and 466A paperwork, but due to problems with AT&T's contract

> structure we were not asked to submit forms 467 for Funding Year 2009

> until June 2011.

> At the end of last month our IT Director was completing the paperwork

> for what he believed would be 2010 service but was informed that the

> deadline for 2010 service had passed a year ago and we could not be

> reimbursed for the \$72K for that service. The 2010 reimbursement of

> \$72K for our agency was included in our current year's budget. If we

> do not receive this reimbursement it could financially devastate our

> local public health organization. We have paid for this AT&T service

> to AT&T and can provide the associated documentation and were
> considered evergreen status through rural health. Please contact me
> as soon as possible as it is critical our agency receive this
> reimbursement so that our public health services can continue in this
> rural area. This is so critical to our agency I am willing to drive
> out to Washington D.C. for a meeting if necessary. Your assistance in
> resolving this matter is greatly appreciated.

> Respectfully,

> Nicholas Derusha

>

> --

> Nicholas Derusha, REHS

> Health Officer

> LMAS District Health Department

> Office: 906-293-1311

> Fax: 906-293-5453

> -----

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> strictly prohibited. Please notify the sender immediately and destroy
> all copies of this communication and any attachments.

--

Nicholas Derusha, REHS

Health Officer

LMA District Health Department

Office: 906-293-1311

Fax: 906-293-5453

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