



Rural Health Care Committee Meeting

Audit Report Briefing Book

Monday, January 30, 2023

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Universal Service Administrative Company Offices

700 12th Street NW, Suite 900

Washington, DC, 20005

Summary of Rural Health Care Support Mechanism Beneficiary Audit Reports Released: October 2022

Entity Name	Number of Findings	Significant Findings	Amount of Support	Monetary Effect*	USAC Management Recovery Action**	Commitment Adjustment	Entity Disagreement
Hot Spot Broadband, Inc. Attachment A	2	<ul style="list-style-type: none"> • <u>Service Provider’s Urban Rates Were Not Properly Determined.</u> The Service Provider’s urban rates were based on services that were not functionally similar. 	\$446,833	\$89,255	\$83,561	\$0	Y
Navajo Communications Attachment B	2	<ul style="list-style-type: none"> • No significant findings. 	\$254,193	\$24,373	\$24,373	\$0	Y
Presbyterian Healthcare Services Attachment C	0	<ul style="list-style-type: none"> • Not applicable. 	\$1,433,151	\$0	\$0	\$0	N/A
Peoples Communications, Inc. Attachment D	3	<ul style="list-style-type: none"> • <u>Competitive Bidding Process Was Not Fair and Open:</u> The Beneficiary had a conflict of interest and, therefore, did not conduct a fair and open 	\$3,394,320	\$4,011,915	\$3,394,320	\$3,394,320	Y

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Entity Name	Number of Findings	Significant Findings	Amount of Support	Monetary Effect*	USAC Management Recovery Action**	Commitment Adjustment	Entity Disagreement
		competitive bidding process when seeking services.					
Peninsula Fiber Network Attachment E	0	<ul style="list-style-type: none"> Not applicable. 	\$203,619	\$0	\$0	\$0	N/A
Total	7		\$5,732,116	\$4,125,543	\$3,502,254	\$3,394,320	

* The Monetary Effect amount represents the actual dollar effect of the finding(s) without taking into account any overlapping exceptions that exist in multiple findings. Thus, the total Monetary Effect may exceed the Amount of Support disbursed to the Beneficiary.

**The Monetary Effect amount may exceed the USAC Management Recovery Action and/or Commitment Adjustment, as there may be findings that may not warrant a recommended recovery or commitment adjustment or had overlapping exceptions that exist in multiple findings.

Attachment A

RH2019SP006

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Hot Spot Broadband, Inc.

Performance Audit on Compliance with the Federal Universal Service
Fund Rural Health Care Support Mechanism Rules

USAC Audit No. RH2019SP006

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EXECUTIVE SUMMARY

January 6, 2022

Garry Gomes, Chief Executive Officer
Hot Spot Broadband, Inc.
8975 Double Diamond Parkway, Suite A9
Reno, NV 89521-4824

Dear Mr. Gomes:

The Universal Service Administrative Company (USAC or Administrator) Audit and Assurance Division (AAD) audited the compliance of Hot Spot Broadband, Inc. (Service Provider), Service Provider Identification Number (SPIN) 143048277, using the regulations and orders governing the federal Universal Service Rural Health Care Support Mechanism, set forth in 47 C.F.R. Part 54, as well as other program requirements (collectively, the FCC Rules). Compliance with the FCC Rules is the responsibility of the Service Provider's management. AAD's responsibility is to make a determination regarding the Service Provider's compliance with the FCC Rules based on the performance audit.

AAD conducted the audit in accordance with Generally Accepted Government Auditing Standards (GAGAS) issued by the Comptroller General of the United States (2018 Revision, as amended). Those standards require that AAD plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for its findings and conclusions based on the audit objectives. The audit included examining, on a test basis, evidence supporting the competitive bidding process undertaken to select the Service Provider, the type and amount of services provided, as well as performing other procedures AAD considered necessary to make a determination regarding the Service Provider's compliance with the FCC Rules. The evidence obtained provides a reasonable basis for AAD's findings and conclusions based on the audit objectives.

Based on the test work performed, our audit disclosed two detailed audit findings (Findings) discussed in the Audit Results and Recovery Action section. For the purpose of this report, a Finding is a condition that shows evidence of non-compliance with the FCC Rules that were in effect during the audit period.

Certain information may have been omitted from this report concerning communications with USAC management or other officials and/or details about internal operating processes or investigations. This report is intended solely for the use of USAC, the Service Provider, and the Federal Communications Commission (FCC) and should not be used by those who have not agreed to the procedures and taken responsibility for the sufficiency of those procedures for their purposes. This report is not confidential and may be released to a requesting third party.



We appreciate the cooperation and assistance extended by you and your staff during the audit.

Sincerely,

A handwritten signature in blue ink that reads "Jeanette Santana-Gonzalez". The signature is written in a cursive style.

Jeanette Santana-Gonzalez
USAC Senior Director, Audit and Assurance Division

cc: Radha Sekar, USAC Chief Executive Officer
Mark Sweeney, USAC Vice President, Rural Health Care Division
Teleshia Delmar, USAC Vice President, Audit and Assurance Division

Audit Results And Recovery Action

Audit Results	Monetary Effect (A)	Overlapping Recovery ¹ (B)	Recommended Recovery (A) - (B)
Finding #1: 47 C.F.R. § 54.605(a),(b) (2016) – Service Provider’s Urban Rates were not Properly Determined The Service Provider’s urban rates were based on services that were not functionally similar.	\$80,097	\$0	\$80,097
Finding #2: 47 C.F.R. 54.607(b) (2016) – Service Provider’s Rural Rate Method Did Not Comply With FCC Rules The rural rate listed in the FCC Form 466 did not agree to the supporting documents provided by the Service Provider.	\$9,158	\$5,604	\$3,554
Total Net Monetary Effect	\$89,255	\$5,604	\$83,651

¹ If a finding is subsequently withdrawn on appeal, any overlapping recovery for that finding will be recommended for recovery for the remaining findings.

USAC MANAGEMENT RESPONSE

USAC management concurs with the audit results and will seek recovery of the Rural Health Care program support amount consistent with the FCC Rules. See the chart below for USAC management's recovery action by FRN.

FRN	Finding #1	Finding #2	Total
1725006	\$5,604.00		\$5,604.00
1725009	\$6,660.00		\$6,660.00
1725011	\$6,696.00		\$6,696.00
1725028	\$5,634.00		\$5,634.00
1725001	\$2,537.00		\$2,537.00
1725004	\$2,626.00		\$2,626.00
1725008	\$6,636.00		\$6,636.00
1725015	\$6,660.00		\$6,660.00
1725017	\$6,660.00		\$6,660.00
1725019	\$5,634.00		\$5,634.00
1725021	\$6,228.00		\$6,228.00
1725024	\$6,210.00		\$6,210.00
1725027	\$6,228.00		\$6,228.00
1725032	\$6,084.00		\$6,084.00
1725006		\$3,554.00	\$3,554.00
USAC Recovery Action	\$80,097	\$3,554.00	\$83,651

PURPOSE, SCOPE, BACKGROUND AND PROCEDURES

PURPOSE

The purpose of the audit was to determine whether the Service Provider complied with the FCC Rules.

SCOPE

The following chart summarizes the Rural Health Care Telecommunications program support amounts committed and disbursed to the Service Provider for Funding Year 2017 (audit period):

Service Type	Amount Committed	Amount Disbursed
Multiprotocol Label Switching (MPLS)	\$446,833	\$446,833

Note: The amounts committed and disbursed reflect funding year activity as of the date of the commencement of the audit.

The committed total represents 15 FCC Form 466 applications with 15 Funding Request Numbers (FRNs). AAD selected five FRNs,² which represents \$188,673 of the funds committed and \$188,673 of the funds disbursed during the audit period, to perform the procedures enumerated below with respect to the Funding Year 2017 applications submitted by the selected Beneficiaries.

BACKGROUND

The Service Provider provides telecommunications services to its health care provider customers and its headquarters are located in Reno, Nevada.

PROCEDURES

AAD performed the following procedures:

A. Eligibility Process

AAD obtained an understanding of the Service Provider's processes and internal controls governing its participation in the Rural Health Care (RHC) program. Specifically, AAD conducted inquiries of the Service Provider and the selected Beneficiaries and examined documentation to obtain an understanding of the controls that exist to determine whether services were eligible, delivered, and installed in accordance with the FCC Rules. AAD conducted inquiries and examined documentation to determine whether the Service Provider assisted with the completion of each selected Beneficiary's FCC Form 465.

B. Competitive Bid Process

AAD conducted inquiries of the Beneficiaries to determine that no bids were received for the requested services. AAD examined evidence that the Beneficiaries waited the required 28 days from the date the FCC Form 465 was posted on USAC's website before signing contracts with the selected Service Provider or properly retaining services with the incumbent Service Provider under an existing contract. If a contract was executed for the funding year under audit, AAD reviewed the Service Provider's contract to determine

² The FRNs included in the scope of this audit were: 1725006, 1725009, 1725011, 17250113, and 1725028.

whether it was properly executed. AAD evaluated the services requested and purchased to determine whether the Beneficiary selected the most cost-effective option.

C. Rural and Urban Rates

AAD conducted inquiries and examined the Service Provider's contract(s), service agreement(s), service quote(s), tariff(s), and/or other documentation to determine whether the Service Provider's rural rate was established in accordance with the FCC Rules. AAD also conducted inquiries and examined documentation to substantiate the urban rate listed in the FCC Form(s) 466.

D. Invoicing Process

AAD examined invoices for which payment was disbursed by USAC to determine whether the services identified on the service provider invoices submitted to USAC and the corresponding service provider bills submitted to the Beneficiaries were consistent with the terms and specifications of the Service Provider's agreements. AAD examined documentation to determine whether each Beneficiary paid its non-discounted share in a timely manner.

E. Billing Process

AAD examined the Service Provider bills for the RHC program supported services to determine whether the services identified were consistent with the terms and specifications of the Service Provider's contracts, or other service agreements, and eligible in accordance with the FCC Rules. In addition, AAD examined documentation to determine whether the Service Provider billed the selected Beneficiaries for the rural rate and only collected payment for the selected Beneficiaries' equivalent of the urban rate for the eligible services purchased with universal service discounts.

F. Health Care Provider Location

AAD determined through inquiry and inspection of documentation whether the services were provided and were functional. AAD also determined through inquiry and inspection of documentation whether the supported services were used for purposes reasonably related to the provision of health care services and in accordance with the FCC Rules.

DETAILED AUDIT FINDINGS

Finding #1: 47 C.F.R. § 54.605(a),(b) - Service Provider's Urban Rates Were Not Properly Determined

CONDITION

AAD obtained and examined documentation provided by the Service Provider to determine whether the urban rates in the Beneficiaries' (Saint Marks Medical Center and Yoakum Community Hospital) FCC Forms 466 were established in accordance with FCC Rules for FRNs 1725006, 1725009, 1725011, 1725013 and 1725028. FCC Rules state that the urban rate "shall be a rate no higher than the highest tariffed or publicly-available rate charged to a commercial customer for a functionally similar service..."³ In its FCC Forms 466, the Beneficiaries requested Multiprotocol Label Switching (MPLS) 100 Mbps for FRNs 1725006, 1725009, 1725011, 1725028 and MPLS 1000 Mbps for FRN 1725013 and listed \$70, and \$300, plus taxes and fees, as the urban rate, respectively, for the two services. The Beneficiaries' urban rates, based on documentation provided by the Service Provider, were supported by advertised rates on the Internet for *Google Fiber for Small Business*. After examination of this documentation, AAD determined the urban rates noted in Block 6 of the relevant FCC Forms 466 for the FRNs noted above were not properly determined as the rates were based on services that were not functionally similar.

Services are considered "functionally similar" for the purposes of calculating support in the Telecom Program "as viewed from the perspective of the end user."⁴ Functional similarity is assessed based on the advertised speeds and the nature of the services, including whether they are symmetrical or asymmetrical.⁵ For example, a service that does not include encrypted VPN is not functionally similar to a service that does include encrypted VPN.

The advertised Google Fiber rates are for basic Internet access for small businesses. Using an address in Austin, Texas, the Service Provider identified advertised rates of \$70 and \$250 for Fiber Business 100 and Fiber Business 1000, respectively. As described by the Service Provider, "[t]hese services would have been functionally similar to the services provided[,] [but] [i]t would require [the Beneficiaries] to utilize Encrypted VPN's but unfortunately they [Encrypted VPN's] are still not available in [the HCPs'] area."⁶ Without the Encrypted VPN or equivalent, Google Fiber Internet is ubiquitous and not capable of providing the private connections and secure network that are provided by MPLS services and, therefore, is not a functionally similar service. Based on examination of Funding Year 2017 commitments, AAD determined that similar urban

³ See 47 C.F.R. §§ 54.605(a); 54.605(b) (2016).

⁴ See *Rural Health Care Mechanism*, WC Docket No. 02-60, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 18 FCC Rcd 24546, 24563, para. 33 (2003).

⁵ *Id.*, para. 34 (2003).

⁶ See email from Bradley Thompson, Network Engineer, Sky Fiber Internet, to AAD received May 13, 2019.

rates were also used for FRNs 1725001, 1725004, 1725008, 1725015, 1725017, 1725019, 1725021, 1725024, 1725027, and 1725032.⁷

To determine whether the urban rates in the FCC Forms 466 could be substantiated, AAD performed alternative procedures by examining USAC's Open Data Platform,⁸ which is a publicly available platform. AAD located similar services provided to E-Rate applicants in urban areas within the same state by other telecommunications carriers. AAD compared the urban rates identified on the FCC Forms 466 to the lowest publicly available rates charged to urban E-Rate applicants, as follows:

FRN	Urban Rate Per FCC Form 466, Including Taxes and Fees (A)	Lowest Supported Urban Rate Per Open Data (B)	Difference (C = B - A)	Months of Service (D)	Monetary Impact (E = C * D)
1725006	\$77	\$632	\$555	10.09677	\$5,604
1725009	\$77	\$632	\$555	12.00000	\$6,660
1725011	\$74	\$632	\$558	12.00000	\$6,696
1725013	\$314	\$1,050	\$736	9.63333	\$7,090
1725028	\$74	\$632	\$558	10.09677	\$5,634
1725001	\$74	\$302	\$228	11.12903	\$2,537
1725004	\$74	\$310	\$236	11.12903	\$2,626
1725008	\$79	\$632	\$553	12.00000	\$6,636
1725015	\$77	\$632	\$555	12.00000	\$6,660
1725017	\$77	\$632	\$555	12.00000	\$6,660
1725019	\$74	\$632	\$558	10.09677	\$5,634
1725021	\$74	\$632	\$558	11.16129	\$6,228
1725024	\$74	\$632	\$558	11.12903	\$6,210
1725027	\$74	\$632	\$558	11.16129	\$6,228
1725032	\$74	\$632	\$558	10.90323	\$6,084
Total					\$87,187

Because the urban rates identified on the FCC Forms 466 were based on services that were not functionally similar, AAD concludes that the identified urban rates were not determined in accordance with FCC Rules. As a result, the RHC program was over-invoiced for the difference between the identified urban rate and the urban rate supported by tariffed or publicly available rates charged to commercial customers for functionally similar services delivered in an urban area in the same state as the Beneficiaries.

CAUSE

The Beneficiaries did not report and the Service Provider did not calculate the urban rates based on the FCC Rules, and failed to demonstrate sufficient knowledge of FCC Rules governing the substantiation of urban rates. The Beneficiaries and Service Provider did not perform adequate research of the FCC Rules prior to submitting its FCC Forms 466.

⁷ All FRNs apply to the Beneficiaries except for FRNs 1725001 and 1725004, which apply to Jellico Community Hospital and Jellico Community Hospital – Careplus Center, respectively.

⁸ See <https://opendata.usac.org/E-rate/E-rate-Recipient-Details-And-Commitments/avi8-svp9/data>.

EFFECT

The monetary effect for this finding is \$87,187. This amount represents the amount disbursed by the RHC program for the difference between the urban rate identified by the Beneficiaries on the FCC Forms 466 and the lowest supported publicly available urban rates for functionally similar services for the following FRNs:

FRNs	Monetary Effect
1725006	\$5,604
1725009	\$6,660
1725011	\$6,696
1725013	\$7,090
1725028	\$5,634
1725001	\$2,537
1725004	\$2,626
1725008	\$6,636
1725015	\$6,660
1725017	\$6,660
1725019	\$5,634
1725021	\$6,228
1725024	\$6,210
1725027	\$6,228
1725032	\$6,084
Grand Total	\$87,187

RECOMMENDATION

AAD recommends that USAC management seek recovery of the amount identified in the Effect section above from the Service Provider.

The Beneficiaries and Service Provider must familiarize themselves with FCC Rules and ensure that urban rates are determined based on tariffed or publicly available rates for functionally similar services. The Beneficiaries and Service Provider may visit USAC's website at <https://www.usac.org/rural-health-care/telecommunications-program/step-4-submit-funding-requests/> to learn more about determining urban rates and at <https://www.usac.org/rural-health-care/learn/> to become familiar with the training and outreach available from the RHC program.

SERVICE PROVIDER RESPONSE

First, contrary to AAD's finding, the urban rates submitted with the FCC Forms 466 were for a functionally similar service and therefore complied with the FCC's rules. Sky Fiber's earlier communication with AAD, quoted in the finding, may have led to confusion on this point. In its earlier communication, Sky Fiber was merely noting that the applicants themselves would not be able use the Google Fiber Business services because the encrypted VPN that Google's services require is not available in the applicant's area. But that was just a side note. Whether or not the applicants themselves could use Google's Fiber Business services has no bearing on whether those services are functionally similar to the services Sky Fiber provided the applicants.

Under the FCC's standard, the Google Fiber Business 100 and Fiber Business 1000 services the applicants used for their urban rates are functionally similar to the 100 Mbps and 1000 Mbps (1 Gbps) MLPS services Sky Fiber provided. The Commission has found that services should be evaluated as

“functionally similar” when viewed from the end user’s perspective.⁹ Specifically, the FCC has stated that it considers bandwidth and symmetry when determining functional similarity.¹⁰ Sky Fiber and Google’s services have the same bandwidth and symmetry. The Google urban rates that the applicant submitted are thus acceptable urban rates under the FCC’s rules.

Sky Fiber hopes this information clears up the confusion and establishes that the Google urban rates were indeed for functionally similar services.

Second, even if the Google Fiber Business urban rates were not for functionally similar services, the replacement urban rates AAD identified in USAC’s Open Data Platform are *not* “the lowest publicly available rates charged to urban E-rate applicants.” Looking at the same database, we easily identified rates for each bandwidth that are significantly lower than those AAD used.¹¹ The E-rate Database includes the following urban rates for 100 Mbps service:

FRN	Service Provider	City	Monthly Rate, 100 Mbps
1699116702	Southwestern Bell Telephone Co.	Houston	\$85.54
1699123756	Comcast Business Communications	Houston	\$174.90
1699050064	Time Warner Cable Business LLC	Dallas	\$260.46

The E-rate Database includes the following urban rates for 1000 Mbps (1 Gbps) service:

FRN	Service Provider	City	Monthly Rate, 1000 Mbps/1 Gbps
1699137930	Southwestern Bell Telephone Co.	San Antonio	\$202.20
1699113583	AT&T Corp.	San Antonio	\$274.15
1699113583	AT&T Corp.	San Antonio	\$290.79
1699109650	Frontier Southwest Inc.	Dallas	\$302.61

Accordingly, Sky Fiber asks that if USAC refuses to accept the urban rates the applicants originally submitted with the FCC Forms 466, it use the urban rates provided with this response instead of those identified in its finding. Again, these rates are publicly available urban rates being charged to E-rate customers in Texas, taken from USAC’s Open Platform Database, and therefore satisfy the standard in the FCC’s rules at the time that the urban rate “shall be a rate no higher than the highest tariffed or publicly-available rate charged to a commercial customer for a functionally similar service in any city with a population of 50,000 or more in that state.”¹² And they are much lower than the urban rates AAD identified as the lowest available urban rates in that database.

⁹ *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, Order on Reconsideration and Further Notice of Proposed Rulemaking, 18 FCC Rcd 24546, para 33 (2003). (*2003 RHC Order*).

¹⁰ *Id.* para. 34.

¹¹ The standard of “functionally similar” does not mean that the exact type of product has to be used in the comparison; only the bandwidth and symmetry need to be the same.

¹² 47 C.F.R. § 54.605(a) (2016).

Sky Fiber also notes that in its finding, AAD used different replacement urban rates for 100 Mbps service for different FRNs: \$632 for most of the FRNs, and \$302 and \$310 for two of the FRNs. It is not clear to us why some of the urban rates AAD used are different when the bandwidth is the same. But if AAD still finds fault with the urban rates originally provided, or finds fault with the replacement rates identified above, it should use the lowest urban rate it has found (\$302) for *all* of the 100 Mbps FRNs. Under the rules in effect in FY 2017, a rate for a functionally similar service charged to customers in an urban area in a state can be used as the urban rate anywhere in the state.¹³ Thus there is no reason—geographical or otherwise—to use an urban rate that is more than twice as high as the lowest rate AAD has identified. (And, as noted above, we have identified urban rates in Texas that are lower than the lowest rate AAD used for 100 Mbps service.)

Finally, urban rates are the responsibility of the applicant, not the service provider, even if the service provider offers an urban rate to the applicant for its possible use. It is the applicant's responsibility to provide an appropriate urban rate with its funding requests. Applicants are free to identify urban rates from any source they want to. Unless the applicant provides the application to the service provider, there is no way for the service provider to even know what urban rate the applicant selected. Because the applicant is the entity in a position to prevent the rule violation, violations should be collected from the applicant, not from the service provider.¹⁴ Sky Fiber therefore respectfully argues that if there were an urban rate violation—which, as we have explained, there was not—then FCC precedent requires USAC to seek recovery from the applicant, not from SkyFiber.

AAD RESPONSE

The Service Provider asserts that Google Fiber is functionally similar, viewed from the end-user perspective, to the MPLS services the Service Provider provided based on bandwidth and symmetry. According to the Service Provider, the MPLS service is a hybrid of Carrier Ethernet and traditional Private IP services,¹⁵ both of which are categorized as a business data service (BDS).¹⁶ “BDS tends to cost substantially more than ‘best efforts’ services and are offered to businesses, non-profits, and government institutions that need to support mission critical applications and have greater demands for symmetrical bandwidth, increased reliability, security, and service to more than one location.”¹⁷ The MPLS service delivered to the Beneficiaries is a BDS while Google Fiber, used as the basis for the urban rates, is a best effort broadband Internet access service (BIAS).¹⁸ From the end-user's perspective, whether or not the Service Provider uses Ethernet over IP with Google Fiber Internet does not change the type of service delivered to the end-user. In the Ethernet over IP, Google Fiber is

¹³ *Id.* para. 37.

¹⁴ *Federal-State Joint Board on Universal Service, Changes to the Board of Directors for the National Exchange Carrier Association, Inc., Schools and Libraries Universal Service Support Mechanism*, CC Docket Nos. 96-45, 97-21 and 02-6, Order on Reconsideration and Fourth Report and Order, FCC 04-181, para. 15 (rel. July 30, 2004).

¹⁵ Conference call with Bradley Thompson, Network Engineer, Hot Spot Broadband, dated Oct. 13, 2021.

¹⁶ See <https://www.fcc.gov/general/special-access-data-collection-overview-0>.

¹⁷ *Id.*

¹⁸ See *Accessibility of User Interfaces, and Video Programming Guides and Menus*, MB Docket No. 12-108, Memorandum Opinion and Order, DA 19-916, para. 3 (rel. Sept 16, 2019).

functioning as a discreet element of the overall BDS. The rates must be based on comparing end-to-end service provided to customers,¹⁹ and not discreet elements of the service.²⁰ While the Service Provider claims Google Fiber presents the same bandwidth and is symmetric, Google Fiber is a BIAS, and is not an eligible service under the RHC Telecommunications Program. Also, as stated in the condition, without the Encrypted VPN or equivalent, Google Fiber Internet is ubiquitous and not capable of providing the private connections and secure network that are provided by MPLS services and, therefore, is not a functionally similar service

The Service Provider stated it was able to identify urban rates that were lower than those used in AAD's calculation by using USAC's Open Data Platform. Specifically, the Service Provider quoted three FRN rates for the 100 Mbps bandwidth and three FRN rates for the 1000 Mbps bandwidth. AAD reviewed the Service Provider's quoted rates within USAC's Open Data Platform, and determined the following:

- For the three FRNs quoted for 100 Mbps (FRNs 1699116702, 1699123756, and 1699050064), the product types were Cable Modem and Ethernet, while the product type under audit was MPLS. Therefore, the quoted services are not functionally equivalent to the audited service.
- For the three FRNs quoted for 1000 Mbps, FRN 1699109650 showed an Ethernet product type, while the remaining FRNs (FRNs 1699137930 and 1699113583) were MPLS. Therefore, the quoted services are not functionally equivalent to the audited service.

Comparing the lowest rate provided for MPLS (FRN 1699137930), AAD determined that the urban rate charged by the Service Provider for the 1000 Mbps service for FRN 1725013 was acceptable. Thus, AAD updated the monetary impact calculation to exclude the portion applicable to FRN 1725013.

The Service Provider further stated that AAD "should use the lowest urban rate it has found (\$302) for *all* of the 100 Mbps FRNs." Two FRNs, 1725001 and 1725004, were charged a different replacement rate than the majority because the healthcare providers, Jellico Community Hospital (HCP no. 27406) and Jellico Community Hospital-Careplus Center (HCP no. 32444), respectively, were not located in Texas. AAD pulled rates from USAC's Open Data Platform for FRN 1725001 within Tennessee and FRN 1725004 within Kentucky. Thus, AAD's rates applicable to FRNs 1725001 and 1725004 remain.

Finally, the Service Provider states "[u]rban rates are the responsibility of the applicant, not the service provider." While it is the applicant's responsibility to state an urban rate within its funding request, the applicant is to obtain documentation to support the rate. Per one of the two Beneficiaries, the urban rates provided upon submission of the funding requests were provided by the Service Provider.²¹ Because the Service Provider provided the Beneficiaries with the urban rate for the requested service, it is appropriate to

¹⁹ See *The Wireline Competition Bureau Provides Guidance Regarding the Commission's Rules for Determining Rural Rates in the Rural Health Care Telecommunications Program*, WC Docket No. 02-60, DA 19-92 (rel. Feb 15, 2019). "A 'rate' for the purposes of calculating Telecom Program support is 'the entire cost or charge of a service, end-to-end, to the customer. . . [and] not rates for particular facilities or elements of a service.'"

²⁰ See *Report and Order*, WC Docket No. 96-45, FCC 97-157, para. 675 (rel. May 8, 1997) "...not rates for particular facilities or elements of a service."

²¹ Email from Whitney Walker, Director, Telecom Funding Programs, Yoakum Community Hospital, to USAC PQA, dated May 9, 2019, regarding RHC-2018-04-Case-054 for FRN 1725028. Whitney Walker is also affiliated with the other Beneficiary, Saint Marks Medical Center.

hold the Service Provider responsible for deficiencies in the support provided to demonstrate that its urban rate complies with program rules.²² In addition, the Service Provider is more likely than the Beneficiary to have the industry knowledge, proprietary information, and technical expertise necessary to provide information and/or documentation to support the urban rate, and is therefore “in a better position to prevent the statutory or rule violation.”²³ Finally, although the Service Provider’s position as the source of the urban rate may allow it to manipulate or misrepresent the urban rate in order to increase the commitment amount, the potential for recovery against the Service Provider may discourage it from engaging in such fraudulent practices.²⁴ Thus, AAD will continue to seek recovery from the Service Provider.

Based on the information above for FRN 1725013, the revised monetary effect for this FRN is \$0, and the total revised monetary effect for this finding is \$80,097. See Revised Effect and Recommendation sections below.

REVISED EFFECT

The monetary effect for this finding is \$80,097. This amount represents the amount disbursed by the RHC program for the difference between the urban rate identified by the Beneficiaries on the FCC Forms 466 and the lowest supported publicly available urban rates for functionally similar services for the following FRNs:

²² See *Updated Frequently Asked Questions on Universal Service for Rural Health Care Providers*, 12 FCC Rcd. 13429, 13432-33 (1997) (“Health care providers need not calculate urban rates because the calculations done by the telecommunications carrier and the universal service administrator.”).

²³ See *Schools and Libraries Fourth Report and Order*, 19 FCC Rcd at 15257, FCC 04-181, para. 15 (rel. July 30, 2004).

²⁴ See, e.g., *Network Services NAL*, 31 FCC Rcd at 12284-85, para. 144 (2016) (proposing recovery against service provider that submitted documents to USAC and applicants with apparently forged and false urban rates in order to increase its universal service support payments.); see also *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight Federal-State Joint Board on Universal Service, et al.*, WC Docket Nos. 05-195 *et al.*, Report and Order, 22 FCC Rcd 16372, 16385 (2007) (“[T]he danger of waste, fraud, and abuse by service providers is as great as the danger of such conduct by rural health care providers.”).

FRNs	Monetary Effect
1725006	\$5,604
1725009	\$6,660
1725011	\$6,696
1725028	\$5,634
1725001	\$2,537
1725004	\$2,626
1725008	\$6,636
1725015	\$6,660
1725017	\$6,660
1725019	\$5,634
1725021	\$6,228
1725024	\$6,210
1725027	\$6,228
1725032	\$6,084
Grand Total	\$80,097

REVISED RECOMMENDATION

AAD recommends that USAC management seek recovery of \$80,097 from the Service Provider less any funds that may have already been returned to USAC related to the condition of this finding.²⁵

Finding #2: 47 C.F.R. 54.607(b) – Service Provider’s Rural Rate Method Did Not Comply with FCC Rules

CONDITION

AAD conducted inquiries and obtained and examined documentation, including the FCC Form 466, tariffs and pricing guides, to determine whether the Service Provider established its rural rate in accordance with FCC Rules for FRN 1725006. In its FCC Form 466, the Beneficiary (Saint Marks Medical Center) requested Rural Health Care (RHC) Telecommunications Program support for “MPLS 100 Mbps” and identified a rural rate of \$4,620, excluding taxes. To support its rural rate, the Service Provider provided AAD with copies of local tariffs and pricing guides. However, the average price of the tariffed rates and pricing guides did not match the rural rate in the FCC Form 466. The Service Provider did not provide any other documentation demonstrating its rates were established using another method, including submitting its rates to the state commission or to the FCC for approval.

The Service Provider informed AAD that “[i]n rare cases, the price we come to is over the average of the publicly available rates [and] [i]n these cases, the bid was still submitted but Sky Fiber Internet was not able

²⁵ AAD is aware of a current PQA appeal regarding FRN 1725028, appeal letter addressed to RHCP from Jeffrey Mitchell, Counsel for Community Hospital Corporation, Management Company to Yoakum Community Hospital (HCP no. 14035) (rec. Jan. 28, 2022).

to identify any alternative carriers to complete the project.”²⁶ In addition, the Service Provider stated that “[i]n this case the only available carrier was FiberLight [and] [c]ost for services were much higher than other carriers.”²⁷ The Service Provider further stated that “we could not use any common transport, meaning we would need to order both sides of the link and add the additional charges for cross connect [and] [s]ince that service is the only service, we have with FiberLight, it cannot be shared amongst any other service.”²⁸

The FCC Rules state that “[i]f the telecommunications carrier serving the health care provider is not providing any identical or similar services in the rural area, then the rural rate shall be the average of the tariffed and other publicly available rates, not including any rates reduced by universal service programs, charged for the same or similar services in that rural area over the same distance as the eligible service by other carriers” (Method 2).²⁹ Moreover, “[i]f there are no tariffed or publicly available rates for such services in that rural area, or if the carrier reasonably determines that this method for calculating the rural rate is unfair, then the carrier shall submit for the state commission’s approval, for intrastate rates, or the Commission’s approval, for interstate rates, a cost-based rate for the provision of the service in the most economically efficient, reasonably available manner” (Method 3).³⁰ Thus, when the Service Provider determined that its rate was higher than the average of the tariffed and other publicly available rates and that if calculating the rural rate by averaging tariffed and publicly available rates using Method 2 was unfair, it should have submitted its rates to the state commission or to the FCC for approval.

The average of the tariff and pricing guide rates for 100 Mbps service resulted in a rural rate of \$3,713, which was calculated as follows:

Public Source	Port Charge (A)	Access Charge (B)	MPLS Transport Charge (C)	Managed Router (D)	Cost Recovery Fee (E = (A + B + C + D) * 12%)	Total Rate (A + B + C + D + E = F)
AT&T Business Service Guide ³¹	N/A	N/A	N/A	N/A	N/A	\$2,748 ³²
Level 3 Pricing Guide ³³	\$2,540	\$862	\$439	\$336	\$502	\$4,679
Total (F / 2)						\$3,713

The rural rate of \$4,620 in the FCC Form 466 is \$907 more than the calculated rural rate based on the average of the tariffed and other publicly available rates. Therefore, by not requesting \$3,713 in conformity with Method 2, nor submitting its cost-based rates to the state commission or the FCC for approval, AAD concludes that the Service Provider’s method for establishing its rural rate was not in compliance with FCC Rules. As a result, the RHC program was over-invoiced and over-disbursed support in the amount of \$9,158, as follows.

²⁶ See Service Provider’s response to audit inquiries received Oct. 13, 2020.

²⁷ *Id.*

²⁸ *Id.*

²⁹ See 47 C.F.R. § 54.607(b) (2016).

³⁰ *Id.*

³¹ See *AT&T Business Service Guide, AT&T Bandwidth Services, P-4.2.5.9. Rate Table ACS-SETH-IOC3*, as 200 (Jul. 20, 2012).

³² The *AT&T Business Service Guide* specifies flat rates by geographic zones. This rate is applicable to Zone 9, representing locations in California and Texas.

³³ See *DIR Contract No. DIR-TEX-AN-NG-CTSA-006, Pricing With DIR Cost Recovery Fee (CRF), Attachment C-1 Pricing*.

FRN Number	Rural Rate Difference (A)	Service Months (B)	Monetary Effect (A * B = C)
1725006	\$907	10.09677	\$9,158

CAUSE

The Service Provider did not calculate its rural rates based on the established methods in the FCC Rules, and failed to demonstrate sufficient knowledge of FCC Rules governing the determination of its rural rates. The Service Provider did not perform appropriate research of the FCC Rules and did not utilize the resources available on USAC's website to gain the appropriate understanding on establishing its rural rates when it believes tariffed and other publicly available rates are not compensatory for its cost-based rates.

EFFECT

The monetary effect for this finding is \$9,158 with overlapping recovery of \$5,604 from Finding #1. This amount represents the total amount of RHC program funds disbursed for the difference between the rural rate in the FCC Form 466 and the calculated rural rate using the average rate based on Method 2 of the FCC Rules.

RECOMMENDATION

AAD recommends that USAC management seek recovery of \$9,158 from the Service Provider to the extent funds are not already recovered as a result of other findings included in this audit report.

The Service Provider must familiarize itself with the FCC Rules requiring the determination of rural rates to ensure either (1) its rural rate is the average of the rates it actually charges to commercial customers, other than HCPs, for identical or similar services in the rural area where the HCP is located; (2) if the Service Provider is not providing identical or similar services, the Service Provider must ensure its rural rate is the average of the tariffed and other publicly available rates charged for the same or similar services over the same distance by other carriers; or (3) if there are no tariffed or publicly available rates for such services in that rural area or if the Service Provider reasonably determines the rate is unfair, the Service Provider must submit its cost-based rates to the state commission (for intrastate rates) or to the FCC (for interstate rates) for approval.³⁴ The Service Provider can learn more about the rural rates on USAC's website at <https://www.usac.org/wp-content/uploads/rural-health-care/documents/handouts/TelecomRuralUrbanRateInfo-1.pdf> and trainings offered by USAC at <https://www.usac.org/rural-health-care/learn/>.

SERVICE PROVIDER RESPONSE

Sky Fiber appreciates AAD's effort to identify a replacement rural rate for this FRN using Method 2. However, we believe that the rate AAD used from the AT&T Business Service Guide is not representative of the rates that the applicants could have obtained in their rural area, and therefore is not a comparable rate that should be used to determine the rural rate. Where AT&T does not have facilities in place, as is often the case in rural areas, it charges special construction costs that greatly increase the overall costs. The rule cited by AAD below indicates that the rate must actually be

³⁴ See 47 C.F.R. §§ 54.607(a); 54.607(b).

charged and the service should be provided over the same distance as the service at issue. There is no evidence that AT&T's rate is actually being charged and it is likely being provided mostly in the urban and suburban areas served by AT&T.

We believe that USAC's Open Data Platform contains more appropriate comparisons for Sky Fiber's 100 Mbps Ethernet service. For example, in the RHC Database, Sky Fiber found a rate of \$11,442.54 charged by Windstream Communications, LLC. Also, in the RHC Database, Sky Fiber identified rates charged by FiberLight, LLC. It is Sky Fiber's understanding that FiberLight is the only other equivalent provider in this geographic area, so that rate is the best comparison for Method 2 purposes. There were four rates charged by FiberLight and approved in the RHC program, which would indicate that they were acceptable by USAC. The average of those four rates is \$5,289.38 per month.

FRN	Service Provider	City	Monthly Rate, 100 Mbps
1689011	Windstream Communications, LLC	Fairfield	\$11,442.54 ³⁵
17200971	FiberLight, LLC	Muleshoe, Eldorado, Van Horn, Wellington	\$5,289.38 ³⁶

When the FiberLight and Windstream rates are averaged with the Level 3 rates, the average monthly rate for 100 Mbps is \$7,136.97. We submit that the Windstream, FiberLight and Level 3 rates are comparable to the Sky Fiber rates because they are actually being charged in rural areas, and, in the case of FiberLight, the healthcare provider could have actually obtained service from that provider. As you can see, FiberLight's 100 Mbps rates were, on average, comparable to Sky Fiber's rates, even though Sky Fiber's \$4,620 rate was lower.

Even adding the AT&T tariffed rate to those three other carriers, the average of the four rates is \$6,039.73 per month – still significantly higher than the Sky Fiber rate of \$4,620.

Attachment A:

Funding Year	Funding Request Number	Status	Participating HCP	Participating HCP Name	Participating HCP City	Participating HCP State	Service Type	Bandwidth	Monthly Rural Rate	Service Provider ID	Service Provider Name
2016	1689011	Committed	17196	East Texas Medical Center	Fairfield	TX	MPLS	100 Mbps	11,442.54	143030766	Windstream Communications, LLC

³⁵ See Attachment A. We took the gross total demand and divided by 12 months of service to calculate the monthly recurring charges.

³⁶ See Attachment B. We took the gross total demand and divided by 12 months of service to calculate the monthly recurring charges. This rate represents the average of FiberLight's four FRNs in the RHC program.

Attachment B:

Funding Year	Funding Request Number	Filing HCP	Filing HCP Name	Filing HCP City	Filing HCP State	Category of Expense	Service Type	Bandwidth	Download Speed	Upload Speed	Service Provider ID	Service Provider Name	Gross Demand
2017	17238531	18455	Muleshoe Area Medical Center	Muleshoe	TX	Leased/Tariffed Facilities or Services	Dedicated Internet Access (DIA)	100.0MB	100.0MB	100.0MB	143034904	FiberLight, LLC	45,630.00
2017	17200971	11857	Collingsworth General Hospital	Wellington	TX	Leased/Tariffed Facilities or Services	Dedicated Internet Access (DIA)	100.0MB	100.0MB	100.0MB	143034904	FiberLight, LLC	112,320.00
2017	17215621	11977	Schleicher County Medical Center	Eldorado	TX	Leased/Tariffed Facilities or Services	Dedicated Internet Access (DIA)	100.0MB	100.0MB	100.0MB	143034904	FiberLight, LLC	45,630.00
2017	17238211	52026	Culberson Hospital	Van Horn	TX	Leased/Tariffed Facilities or Services	Dedicated Internet Access (DIA)	100.0MB	100.0MB	100.0MB	143034904	FiberLight, LLC	50,310.00

AAD RESPONSE

The Service Provider disagrees with the inclusion of AT&T's pricing within AAD's calculation of the rural rates for Method 2 based on three points: (1) potential inclusion of special construction costs, (2) rate may not be actually charged, and (3) possible inclusion of urban locations. However, it was the Service Provider itself that provided this tariff information to AAD in support of their rural rates.³⁷ Further, the Service Provider provided no additional documentation demonstrating the validity of its claims.

In addition, the Service Provider identified rural rates that it claimed were more appropriate comparisons than those used within AAD's calculation. The Service Provider quoted four FRN rates from FiberLight, LLC using USAC's Open Data Platform. However, the rates applicable to FiberLight, LLC were specific to the RHC Healthcare Connect Fund and were for Dedicated Internet Access (DIA). DIA is an ineligible service for the RHC Telecommunications Program. The Service Provider quoted one additional FRN rate using USAC's Open Data Platform specific to Windstream Communications, LLC (Windstream). Despite the Windstream rate being used for a similar service, MPLS, the address of the participating HCP used as support for this rate is approximately three times the distance away from the audited HCP address, approximately 160 miles, and therefore not relevant to the audited service area.

Therefore, for the reasons stated above, AAD's position on this finding remains unchanged.

³⁷ Service Provider provided tariff documentation to AAD on Aug. 7, 2020. See Service Provider's response to audit inquiries received Oct. 15, 2020, which detailed the Service Provider's calculation and specified pages being used from each tariff provided.

CRITERIA

Finding	Criteria	Description
#1	47 C.F.R. § 54.605(a) (2016).	If a rural health care provider requests support for an eligible service to be funded from the Telecommunications Program that is to be provided over a distance that is less than or equal to the “standard urban distance,” as defined in paragraph (c) of this section, for the state in which it is located, the “urban rate” for that service shall be a rate no higher than the highest tariffed or publicly-available rate charged to a commercial customer for a functionally similar service in any city with a population of 50,000 or more in that state, calculated as if it were provided between two points within the city.
#1	47 C.F.R. § 54.605(b) (2016).	If a rural health care provider requests an eligible service to be provided over a distance that is greater than the “standard urban distance,” as defined in paragraph (c) of this section, for the state in which it is located, the urban rate for that service shall be a rate no higher than the highest tariffed or publicly-available rate charged to a commercial customer for a functionally similar service provided over the standard urban distance in any city with a population of 50,000 or more in that state, calculated as if the service were provided between two points within the city.
#1	<i>Rural Healthcare Mechanism, WC</i> Docket No. 02-60, Report and Order, Order on Reconsideration and Further Notice of Proposed Rulemaking, 18 FCC Rcd 24546, 24563, para. 33 (2003).	33. We alter our current policy to allow rural health care providers to compare the urban and rural rates for functionally similar services as viewed from the perspective of the end user. We agree with commenters that our current policy of comparing technically similar services does not take into account that certain telecommunications services offered in urban areas are not always available in rural areas. ³⁸ In particular, new technologies are often first deployed in urban areas, and such services may be less expensive than services in rural areas based on older technologies. This modification to our rules will better effectuate the mandate of Congress to ensure comparable services for rural areas, as provided in section 254 of the Act, by allowing rural health care providers to benefit from obtaining telecommunications services at rates equivalent to those in urban areas. ³⁹ Eligible health care providers must purchase telecommunications services and compare their service to a functionally equivalent telecommunications service in order to receive this discount.
#1	<i>Rural Healthcare Mechanism, WC</i>	34. Accordingly, we create “safe harbor” categories of functionally equivalent services based on the advertised speed and nature of the

³⁸ See Illinois Center for Rural Health Comments at 2; Kansas DHE Comments at 2; NM Health Resources Comments at 2; NOSORH Comments at 2; Tri-County Memorial Hosp. Comments at 2; Washington Rural Comments at 3.

³⁹ See 47 U.S.C. § 254.

Finding	Criteria	Description
	<p>Docket No. 02-60, Report and Order, Order on Reconsideration and Further Notice of Proposed Rulemaking, 18 FCC Rcd 24546, 24563, para. 34 (2003).</p>	<p>service. For purposes of the rural health care support mechanism only, we establish the following advertised speed categories as functionally equivalent: low – 144-256 kbps; medium – 257-768 kbps; high – 769-1400 kbps (1.4 mbps); T1 – 1.41-8 mbps;⁴⁰ T-3 – 8.1-50 mbps. We will also consider whether a service is symmetrical or asymmetrical when determining functional equivalencies. Telecommunications services will be considered functionally similar when operated at advertised speeds within the same category (low, medium, high, T-1, or T-3) and when the nature of the service is the same (symmetrical or asymmetrical). For example, a symmetrical fractional T-1 service operating at an advertised speed of 144 kbps would be considered functionally similar to a symmetrical DSL transmission service with an advertised speed of 256 kbps.⁴¹ By developing “safe harbor” categories of functionally equivalent speeds, we hope to minimize the disparity in rates of services available in rural and urban areas in an administratively easy fashion. We will update these categories, as needed, to reflect technological developments.</p>
#1	<p><i>Federal-State Joint Board on Universal Service, Changes to the Board of Directors for the National Exchange Carrier Association, Inc., Schools and Libraries Universal Service Support Mechanism</i>, CC Docket Nos. 96-45, 97-21 and 02-6, Order on Reconsideration and Fourth Report and Order, FCC 04-181, para. 15 (rel. July 30, 2004).</p>	<p>15. 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, our requirement to have necessary resources to make use of the supported services, the obligation to calculate properly the discount rate, and the obligation to pay the appropriate nondiscounted share. On the other hand, the service provider is likely to be the entity that fails to deliver supported services within the relevant funding year, fails to properly bill for supported services, or delivers services that were not approved for funding under the governing FCC Form 471. We recognize that in some instances, both the beneficiary and the service provider may share responsibility for a statutory or rule violation. In such situations, USAC may initiate recovery action against both parties, and shall pursue such claims until the amount is satisfied by one of the parties.</p>

⁴⁰ For purposes of categorizing functionally similar services, E-1 service is equivalent to US T-1 service.

⁴¹ [The FCC] specifically refer[s] to rates for a DSL transmission service, and not to rates for a DSL-based Internet access service. The Commission has not determined whether DSL-based Internet access is an information service, or telecommunications service. See generally Wireline Broadband Internet Access NPRM. We also decline, at this time, to consider, for purposes of making a comparison of functionally similar services, cable modem services to be a telecommunications service, pending the issuance of a non-appealable final judicial decision concluding that it constitutes a telecommunications service. See generally *Brand X Internet Services v. FCC*, No. 02-70518, FCC No. FCC-Act 2-77, 2003 WL 22283874 (9th Cir. 2003) (*Brand X v. FCC*).

Finding	Criteria	Description
		Pursuant to section 54.719(c) of the Commission's rules, any person aggrieved by the action taken by a division of the Administrator may seek review from the Commission. ⁴²
#1	https://www.fcc.gov/general/special-access-data-collection-overview-0	Business data services (BDS), formerly known as special access services, are high-capacity connections provided over dedicated facilities and used by businesses, schools, hospitals and a wide range of other institutions to transmit voice and data traffic. BDS includes more traditional Time Division Multiplexing (TDM) services, such as DS1s and DS3s, as well as generally higher-capacity IP-based services, such as Ethernet.
#1	<i>Report and Order, WC Docket No. 96-45, FCC 97-157, para. 675 (rel. May 8, 1997)</i>	675. Such an interpretation is consistent with the language and purpose of section 254(h)(1)(A). As discussed above, section 254(h)(1)(A) refers to "rates for services provided to health care providers" and "rates for similar services provided to other customers," ⁴³ not rates for particular facilities or elements of a service. As the record indicates, many, if not most, base rates for telecommunications services are averaged across a state or study area. ⁴⁴ It is often distance-based charges, not differences between base rates for service elements, that create great disparities in the overall cost of telecommunications services between urban and rural areas. ⁴⁵ Indeed, distance-based charges are often a serious impediment to rural health care providers' use of telemedicine. ⁴⁶ If, as several LECs contend, a rural rate is "reasonably comparable" to an urban rate provided that per-mile charges are the same for rural and urban areas, ⁴⁷ section 254(h)(1)(A) could do little to reduce the disparity between rural and urban rates. Given that Congress emphasized the importance of making telecommunications services affordable for rural health care providers, ⁴⁸ it seems unlikely that Congress intended to adopt such a restrictive definition of "rate." ⁴⁹ Accordingly, we will support distance-based charges incurred by rural health care providers, consistent with the limitations described herein.
#1	<i>The Wireline Competition Bureau Provides Guidance Regarding the</i>	Definition of "Rate" (Method 1 and 2): A "rate" for the purposes of calculating Telecom Program support is "the entire cost or charge of a service, end-to-end, to the customer . . . [and] not rates for particular facilities or elements of a service." ⁵⁰ Accordingly, any rate used to

⁴² 47 C.F.R. § 54.719. The standard of review such an appeal is *de novo*. 47 C.F.R. § 54.723.

⁴³ 47 U.S.C. § 254(h)(1)(A) (emphasis added).

⁴⁴ See e.g., MCI comments at 18; PacTel comments at 14; USTA comments at 40.

⁴⁵ See e.g., American Telemedicine comments at 5.

⁴⁶ See American Telemedicine comments at 5; Nebraska Hospitals comments at 2; NTIA comments at 2.

⁴⁷ See, e.g., Ameritech comments at 25-27; PacTel comments at 3-56; AirTouch reply comments at 33; Ameritech reply comments at 8; GCI reply comments at 14; PacTel reply comments at 30; SBC reply comments at 24-27

⁴⁸ Joint Explanatory Statement at 131-32.

⁴⁹ We note that the Senate sponsors of the Snowe-Rockefeller-Exon-Kerrey Amendment to the 1996 Act assert that the Act prohibits "the use of distance in determining transmission rates." See Senate Jan. 9 ex parte.

⁵⁰ See Universal Service First Report and Order, 12 FCC Rcd at 9128, paras. 674-75.

Finding	Criteria	Description
	<i>Commission’s Rules for Determining Rural Rates in the Rural Health Care Telecommunications Program</i> , WC Docket No. 02-60, DA 19-92, para. 7 (rel. Feb 15, 2019).	determine a rural rate using Method 1 or 2 must be the rate actually charged to the customer, regardless of any term or volume discounts the customer may be receiving, for the entire service and must appear on an invoice, contract, or other acceptable form of documentation as the entire charge for a complete end-to-end service provided by a service provider. USAC cannot accept a purported rate derived by, for example, piecing together different service provider charges for different service components (e.g., transport, local loop) that are not sold to a commercial customer as an end-to-end service.
#1	<i>Accessibility of User Interfaces, and Video Programming Guides and Menus</i> , MB Docket No. 12-108, Memorandum Opinion and Order, DA 19-916, para. 3 (rel. Sept 16, 2019).	Google Fiber is a high-speed broadband Internet and television provider that utilizes fiber optic cables and fixed wireless deployments to deliver gigabit internet speeds to residential and business customers in various U.S. metro areas. Google Fiber claims that it is partially unable to comply with the Commission’s accessible user interfaces requirements for its navigation devices. Currently, Google Fiber makes available to its subscribers an in-home streaming service through its “Fiber TV” app available for iOS and Android devices, which permits subscribers to perform many set-top box functions using their mobile device as a remote control and uses the native and third-party accessibility features of the mobile device (e.g., screen readers) for navigation device accessibility. Google Fiber explains that its current solution provides audible accessibility for consumers who are blind or visually impaired for most of the required video programming functions, but it seeks a waiver with respect to four functions for which it does not provide audible accessibility: Activating video description (for certain programming) (i.e., “configuration—video description control”); Adjusting the presentation and display of closed captioning (i.e., “configuration—CC options”); Display of current configuration options (i.e., “display configuration info”); and Activating set-top box configuration options (i.e., “configuration—setup”).
#2	47 C.F.R. § 54.607(a) (2016).	The rural rate shall be the average of the rates actually being charged to commercial customers, other than health care providers, for identical or similar services provided by the telecommunications carrier providing the service in the rural area in which the health care provider is located. The rates included in this average shall be for services provided over the same distance as the eligible service. The rates averaged to calculate the rural rate must not include any rates reduced by universal service support mechanisms. The “rural rate” shall be used as described in this subpart to determine the credit or reimbursement due to a telecommunications carrier that provides eligible telecommunications services to eligible health care providers.
#2	47 C.F.R. § 54.607(b) (2016).	If the telecommunications carrier serving the health care provider is not providing any identical or similar services in the rural area, then the rural rate shall be the average of the tariffed and other publicly available rates, not including any rates reduced by universal service programs, charged for the same or similar services in that rural area over the same distance as the eligible service by other carriers. If there are no tariffed or publicly available rates for such services in that rural area, or if the carrier reasonably determines that this method for

Finding	Criteria	Description
		calculating the rural rate is unfair, then the carrier shall submit for the state commission's approval, for intrastate rates, or the Commission's approval, for interstate rates, a cost-based rate for the provision of the service in the most economically efficient, reasonably available manner.

This concludes the report.

Attachment B

RH2019SP005

Available For Public Use

Navajo Communications Company, Inc.

Limited Review Performance Audit on Compliance with the Federal
Universal Service Fund Rural Health Care Support Mechanism Rules

USAC Audit No. RH2019SP005

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EXECUTIVE SUMMARY

December 16, 2021

Jessica Matushek, Director
Navajo Communications Company, Inc.
100 CTE Drive
Dallas, PA 18612

Dear Ms. Matushek:

The Universal Service Administrative Company (USAC or Administrator) Audit and Assurance Division (AAD) audited the compliance of Navajo Communications Company, Inc. (Service Provider), Service Provider Identification Number (SPIN) 143002480, using the regulations and orders governing the federal Universal Service Rural Health Care Support Mechanism, set forth in 47 C.F.R. Part 54, as well as other program requirements (collectively, the FCC Rules). Compliance with the FCC Rules is the responsibility of the Service Provider's management. AAD's responsibility is to make a determination regarding the Service Provider's compliance with the FCC Rules based on the limited review performance audit.

AAD conducted the audit in accordance with Generally Accepted Government Auditing Standards (GAGAS) issued by the Comptroller General of the United States (2018 Revision, as amended). Those standards require that AAD plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for its findings and conclusions based on the audit objectives. The audit included examining, on a test basis, evidence supporting the competitive bidding process undertaken to select the Service Provider, the type and amount of services provided, as well as performing other procedures AAD considered necessary to make a determination regarding the Service Provider's compliance with the FCC Rules. The evidence obtained provides a reasonable basis for AAD's findings and conclusions based on the audit objectives.

Based on the test work performed, our audit disclosed two detailed audit findings (Findings) discussed in the Audit Results and Recovery Action section. For the purpose of this report, a Finding is a condition that shows evidence of non-compliance with the Rules that were in effect during the audit period.

Certain information may have been omitted from this report concerning communications with USAC management or other officials and/or details about internal operating processes or investigations. This report is intended solely for the use of USAC, the Service Provider, and the Federal Communications Commission (FCC) and should not be used by those who have not agreed to the procedures and taken responsibility for the sufficiency of those procedures for their purposes. This report is not confidential and may be released to a requesting third party.

We appreciate the cooperation and assistance extended by you and your staff during the audit.

Sincerely,



Jeanette Santana-Gonzalez
USAC Senior Director, Audit and Assurance Division

cc: Radha Sekar, USAC Chief Executive Officer
Mark Sweeney, USAC Vice President, Rural Health Care Division
Teleshia Delmar, USAC Vice President, Audit and Assurance Division

Audit Results and Recovery Action

Audit Results	Monetary Effect	Recommended Recovery
Finding #1: 47 C.F.R. § 54.602(d) (2016) – Services for which the Beneficiary Received RHC Telecommunications Program Support Not Used for the Provision of Health Care: The telecommunications service for which support was requested was terminated prior to the start of the funding year.	\$21,553	\$21,553
Finding #2: 47 C.F.R. § 54.607(a) (2016) – Service Provider Did Not Calculate Its Rural Rate in Accordance with the FCC Rules: The rural rate listed in the FCC Form 466 did not agree to the supporting rural rate calculation.	\$2,820	\$2,820
Total Net Monetary Effect	\$24,373	\$24,373

USAC MANAGEMENT RESPONSE

USAC management concurs with the audit results and will seek recovery of the Rural Healthcare program support amount consistent with the FCC Rules. In addition, USAC management will conduct outreach to the Navajo Communications Company, Inc. to address the areas of deficiency that are identified below in the audit report. See the chart below for USAC management's recovery action by FRN.

	Finding #1	Finding #2	Total
FRN 1692545	\$8,857	\$0	\$8,857
FRN 1718743	\$12,696	\$0	\$12,696
FRN 1718992	\$0	\$2,820	\$2,820
USAC Recovery Action	\$21,553	\$2,820	\$24,373

PURPOSE, SCOPE, BACKGROUND AND PROCEDURES

PURPOSE

The purpose of the audit was to determine whether the Service Provider complied with the FCC Rules.

SCOPE

The following chart summarizes the Rural Health Care Telecommunications program support amounts committed and disbursed to the Service Provider for Funding Year 2017 (audit period):

Service Type	Amount Committed	Amount Disbursed
Telecommunications	\$254,193	\$254,193

Note: The amounts committed and disbursed reflect funding year activity as of the commencement of the audit.

The committed total represents 31 FCC Forms 466 applications with 31 Funding Request Numbers (FRNs). AAD selected seven FRNs,¹ which represent \$87,871 of the funds committed and \$87,871 of the funds disbursed during the audit period, to perform the procedures enumerated below with respect to the Funding Year 2017 applications submitted by the selected Beneficiaries.

BACKGROUND

The Service Provider provides telecommunications services to its health care provider customers and its headquarters are located in Dallas, PA.

PROCEDURES

AAD performed the following procedures:

A. Eligibility Process

AAD obtained an understanding of the Service Provider's processes and internal controls governing its participation in the Rural Health Care (RHC) program. Specifically, AAD conducted inquiries of the Service Provider and the selected Beneficiaries and examined documentation to obtain an understanding of the controls that exist to determine whether services were eligible, delivered, and installed in accordance with the FCC Rules. AAD conducted inquiries and examined documentation to determine whether the Service Provider assisted with the completion of each selected Beneficiary's FCC Form 465.

B. Competitive Bid Process

AAD examined documentation to determine whether all bids for the services received were properly evaluated. AAD conducted inquiries and examined documentation to determine whether the Beneficiaries selected the most cost-effective method. AAD examined evidence that the Beneficiaries waited the required 28 days from the date the FCC Form 465 was posted on USAC's website before

¹ The FRNs included in the scope of this audit were: 1717414, 1718751, 1718743, 1718590, 1719066, 1718992, and 1718836.

selecting or signing contracts with the Service Provider. AAD evaluated the services requested and purchased to determine whether the Beneficiaries selected the most cost-effective option.

C. Rural and Urban Rates

AAD conducted inquiries and examined the Service Provider's contracts, service agreements, service quotes, tariffs, and/or other documentation to determine whether the Service Provider's rural rate was established in accordance with the FCC Rules. AAD also conducted inquiries and examined documentation to substantiate the urban rate listed in the FCC Forms 466.

D. Invoicing Process

AAD examined invoices for which payment was disbursed by USAC to determine whether the services identified on the Service Provider invoices submitted to USAC and the corresponding service provider bills submitted to the Beneficiaries were consistent with the terms and specifications of the Service Provider's agreements. AAD examined documentation to determine whether each Beneficiary paid its non-discounted share in a timely manner.

E. Billing Process

AAD examined the Service Provider bills for the RHC program supported services to determine whether the services identified were consistent with the terms and specifications of the Service Provider's contracts, or other service agreements, and eligible in accordance with the FCC Rules. In addition, AAD examined documentation to determine whether the Service Provider billed the selected Beneficiaries for the rural rate and only collected payment for the selected Beneficiaries' equivalent of the urban rate for the eligible services purchased with universal service discounts.

F. Health Care Provider Location

AAD determined through inquiry and inspection of documentation whether the services were provided and were functional. AAD also determined through inquiry and inspection of documentation whether the supported services were used for purposes reasonably related to the provision of health care services and in accordance with the FCC Rules.

DETAILED AUDIT FINDINGS

Finding #1: 47 C.F.R. § 54.602(d) (2016) – Services for which the Beneficiary Received RHC Telecommunications Program Support Not Used for the Provision of Health Care

CONDITION

AAD obtained and examined documentation, including the FCC Form 466, FCC Form 467, Service Provider invoices submitted to the Rural Health Care (RHC) program, and corresponding Service Provider bills, to determine whether the services requested by the Beneficiary (Kayenta Health Center) were used for purposes reasonably related to the provision of health care services or instruction that the Health Care Provider (HCP) was legally authorized to provide under applicable state law for FRN 1718743. In its FCC Form 466, the Beneficiary requested T1 or DS1 1.544 Mbps service, and in its FCC Form 467, the Beneficiary listed the service start date as July 1, 2017 and the service end date as June 30, 2018. However, for the reasons detailed below, AAD determined that the Beneficiary requested RHC Telecommunications Program support and the Service Provider invoiced the RHC program for services not used for the provision of health care.

The Beneficiary informed AAD and provided documentation demonstrating that the T1 service was terminated prior to the start of Funding Year 2017 on October 12, 2016 following an upgrade in service from the T1 to Ethernet.² However, the Beneficiary did not inform the RHC program of the terminated service³ and the Service Provider continued to bill the Beneficiary for the T1 service through September 2017 in addition to the new Ethernet service.

The Service Provider invoiced the RHC program \$12,340 for FRN 1692545 on invoice no. 143002480-071218, which represents 12 months of T1 service for Funding Year 2016,⁴ and invoiced the RHC program \$12,696 for FRN 1718743 on invoice no. 143002480-07302018, which represents 12 months of T1 service for Funding Year 2017. However, the Service Provider only provided 3.387 months and 0 months of service for Funding Years 2016 and 2017, respectively. Therefore, the RHC Telecommunications Program supported services were not used for the purposes reasonably related to the provision of health care services for 8.613 months in Funding Year 2016 and for 12 months in Funding Year 2017.⁵ Thus, the Service Provider over-invoiced the RHC program for the amount of \$8,857 ($\$12,340 / 12 * 8.613$) for FRN 1692545 and \$12,696 for FRN 1718743.

Because the Service Provider continued invoicing for services that were terminated by the Beneficiary, AAD concludes that the Service Provider over-invoiced the RHC program for services that were not used for the provision of health care.

² See email exchanges between Herman Holiday and Renita Curtis, Indian Health Services (Jul. 19, 2018 and Jul. 27, 2018).

³ See *Health Care Providers Universal Service Connection Certification* (FCC Form 467) (OMB 3060-0804), at Block 3.

⁴ After learning of the service termination date, AAD examined the prior year FRN 1692545 to determine the impact on Funding Year 2016 RHC program disbursements.

⁵ See 47 C.F.R. § 54.602(d) (2016).

CAUSE

The Beneficiary did not have adequate controls and procedures in place to ensure it requested RHC program support only for services provided by the Service Provider and used for purposes reasonably related to the provision of health care or instruction that the HCP was legally authorized to provide under applicable state law. The Beneficiary requested services for Funding Year 2017 without confirming that the services were needed and would be used for allowable purposes. The Service Provider did not have adequate controls and procedures in place to ensure that the RHC program is invoiced only for eligible services used solely for purposes reasonably related to the provision of health care or instruction that the HCP was legally authorized to provide under applicable state law. The Service Provider's process did not include an adequate review and reconciliation to compare the services provided to the Beneficiary to the services billed and invoiced to the RHC program.

EFFECT

The monetary effect for this finding is \$21,553. This amount represents the RHC program funds disbursed for services not used for purposes reasonably related to the provision of health care for the following FRNs:

FRN	Funding Year	Amounts Disbursed
1692545	2016	\$8,857
1718743	2017	\$12,696
Total		\$21,553

RECOMMENDATION

AAD recommends that USAC management seek recovery of \$21,553 from the Service Provider.

The Beneficiary must implement controls and procedures to ensure that it only requests RHC program support for services that are used for purposes reasonably related to the provision of health care or instruction an eligible HCP is authorized to provide under state law, in accordance with the FCC Rules. In addition, the Service Provider must implement controls and procedures to ensure that the RHC program is invoiced only for eligible services provided to the Beneficiary. The Beneficiary may visit USAC's website at <https://www.usac.org/rural-health-care/telecommunications-program/step-4-submit-funding-requests/> to learn more about submitting funding requests for support for services used for the provision of health care. The Service Provider may also visit USAC's website at <https://www.usac.org/rural-health-care/telecommunications-program/step-6-invoice-usac/> to learn more about the invoicing process for seeking reimbursement for services provided for the provision of health care.

BENEFICIARY RESPONSE

During this timeframe, in July 2016, the Kayenta Health Center (KHC) moved from their old facility into the new facility, which is about a mile apart. The CIO at the time, ordered that the existing telecommunication and Internet services be moved to the new facility. The CIO did not know that the type of circuit had been changed from a T1 to Ethernet. The assumption was that the existing system would be moved as is and there would be no changes with the account. During this time, all Navajo Area Office USAC filings were maintained by a contractor, who recently retired and who was notified that the circuit would be moved. Locally, KHC was not aware that a form of the move needed to be filed, much less that a change of circuit occurred. The contractor was *(sic)* responsible for all filings. Local IT were also not aware of the need for any type of filing since the move was thought to be the

one and the same circuit. It wasn't until the audit was announced that we found that the old circuit was disconnected and new one was installed in its place and that we should have submitted the form of the disconnect notification.

SERVICE PROVIDER RESPONSE

The 2017 fund year health care support schedule (HSS) (*sic*) was dated September 28, 2018 and the 2016 fund year health care support schedule (HSS) (*sic*) was dated November 15, 2017. These dates are well after the beneficiary was invoiced and the funding end date on the health care support schedule. Health Care support schedules are issued by USAC and are based on representations from the beneficiary. Navajo Communications Company, Inc. relied on the accuracy of the health care support schedules in order to provide the credit to the beneficiary.

Navajo Communications Company, Inc. has implemented controls and procedures to review the billing account number provided on each health care support schedule to validate that the service requested has been validly billed and provided during the fund year.

Finding #2: 47 C.F.R. § 54.607(a) (2016) – Service Provider Did Not Calculate Its Rural Rate in Accordance with the FCC Rules

CONDITION

AAD conducted inquiries and requested documentation to determine whether the Service Provider determined its rural rate in accordance with the FCC Rules⁶ for FRN 1718992. Based on review of the documents provided, AAD determined that the rural rate was not determined in accordance with FCC Rules.

Method 1 under the FCC Rules requires the rural rate to be the average of the rates actually being charged to commercial customers, other than health care providers (HCPs), for identical or similar services provided by the service provider providing the requested services in the rural area in which the HCP is located.⁷ For FRN 1718992, AAD requested documentation from the Service Provider to demonstrate that the rural rate listed in the FCC Form 466 agreed with the average of the rate that the Service Provider charged the non-HCP commercial customers. However, the \$721 rural rate listed in the FCC Form 466 did not agree with the Method 1 calculation. The Service Provider's rate charged to non-HCP commercial customers in the state of Arizona for ISDN PRI Bundle, End-User Common Line-ISDN, Access Recovery, and Multi-business Federal Line charges is \$486 per month, calculated as follows:⁸

⁶ See 47 C.F.R. § 54.607 (2016).

⁷ See 47 C.F.R. § 54.607(a) (2016) (“[t]he rural rate shall be the average of the rates actually being charged to commercial customers, other than health care providers, for identical or similar services provided by the telecommunications carrier...” (Method 1).

⁸ AAD was able to verify that the rates were “actually being charged” to non-HCP commercial customers using an invoice provided by the Service Provider.

ISDN-PRI Bundle⁹ A	End-User Common Line – ISDN: Primary Rate Interface ISDN, Per Facility¹⁰ B	Access Recovery Charge: Multi-Line Business, ISDN PRI, Centrex Per Individual Line or Trunk¹¹ C	Total D=A+B+C
\$425	\$46	\$15	\$486

As a result of the Service Provider’s failure to properly determine the rural rate under Method 1 in connection with FRN 1718992, the Beneficiary was over-invoiced for the supported services by \$2,820 (((\$721 - \$486) * 12 months).

CAUSE

The Service Provider did not have adequate controls and procedures in place to ensure its rural rate is calculated in accordance with the FCC rules. The Service Provider did not have a formal policy for calculating the rural rate.

EFFECT

The monetary effect for this finding is \$2,820. This represents the amount disbursed by the RHC program for the difference between the rate listed in the Beneficiary’s FCC Form 466 and the rural rate supported by AAD’s Method 1 calculation for FRN 1718992.

RECOMMENDATION

AAD recommends that USAC management seek recovery of \$2,820 from the Service Provider.

The Service Provider must implement controls and procedures to ensure that the rural rate is calculated in accordance with the FCC Rules. In addition, the Service Provider may visit USAC’s website at <https://www.usac.org/rural-health-care/learn/> to become familiar with the training and outreach available from the RHC program.

SERVICE PROVIDER RESPONSE

The Navajo Communications Company General Exchange Tariff – Arizona, Section 31 was issued on Nov. 3, 2015, became effective on December 5, 2015 and was previously not a tariff item. Navajo

⁹ See Navajo Communications Company General Exchange Tariff – Arizona, Section 31 (Nov. 3, 2015).

¹⁰ See Frontier Telephone Companies, Tariff FCC No. 1, 6th Revised Page 20-3 (Jun. 16, 2017).

¹¹ Access recovery charge is calculated using the per month rate of \$3 multiplied by five. See Frontier Telephone Companies, Tariff FCC No. 1, 2nd Revised Page 4-8 (Oct. 1, 2012) (“When an end user is provided ISDN PRI service in a state, the EUCL ISDN PRI rate applies as set forth in Section 20 following. Each ISDN PRI service will be assessed the equivalent of five Multi-Line Business ARC charges.”).

Communications charged a rural rate that was based on a contract signed by the beneficiary on November 30, 2015.

Navajo Communications Company, Inc. will provide tariffed information to beneficiaries to calculate the rural rate.

AAD RESPONSE

In its response, the Service Provider states, “Navajo Communications Company, Inc. will provide tariffed information to beneficiaries to calculate the rural rate.” AAD clarifies that service providers are responsible for establishing the rural rate under the pre-2019 competitive bidding rules.¹² The health care provider must evaluate the bids to determine the most cost-effective rates,¹³ and therefore, the healthcare provider cannot provide rural rates on behalf of the service providers. If the health care provider were to offer rates to service providers, it would be an appearance of a conflict of interest.¹⁴ Even the perception of a relationship between service providers and health care providers could lead prospective bidders to believe that bidding will not be conducted in a fair and open manner as established in the FCC rules.¹⁵ Additionally, a service provider would be in the best position to provide rates for calculating the rural rates since the service provider (1) knows the actual rates being charged to customers by the service provider,¹⁶ (2) would be in the best position to obtain publically available rates offered by other service providers,¹⁷ and (3) must submit rates for the state commission's approval, for intrastate rates, or the Commission's approval, for interstate rates.¹⁸

AAD's recommendation remains unchanged.

¹² See 47 CFR § 54.603(b)(4) (2018).

¹³ See 47 C.F.R. § 54.615(a) (2018).

¹⁴ *Request for Review of Decisions of the Universal Service Administrator by Hospital Network Management, Inc. et al.*, WC Docket No. 02-60, Order, 31 FCC Rcd 5731, 5740, para. 17 (2016) (*HNM Order*).

¹⁵ See *HNM Order*, 31 FCC Rcd at 5740, para. 17.

¹⁶ See 47 CFR § 54.607(a) (2018).

¹⁷ See 47 CFR § 54.607(b) (2018).

¹⁸ See 47 CFR § 54.607(c) (2018).

CRITERIA

Finding	Criteria	Description
#1	47 C.F.R. § 54.602(d) (2016).	The requested service or services will be used solely for purposes reasonably related to the provision of health care services or instruction that the health care provider is legally authorized to provide under the law in the state in which such health care services or instruction are provided....
#1	Health Care Providers Universal Service Connection Certification (FCC Form 467) (OMB 3060-0804), at Block 3.	The Connection Certification (Form 467) is the means by which an HCP informs RHCP that the service provider(s) has turned on the service(s) for which the HCP is seeking reduced rates under the universal service support mechanism. Form 467 must also be used to notify RHCP that a supported service was disconnected or that the service was not or will not be turned on during the funding year.
#2	47 C.F.R. § 54.607 (2016).	<p>(a) The rural rate shall be the average of the rates actually being charged to commercial customers, other than health care providers, for identical or similar services provided by the telecommunications carrier providing the service in the rural area in which the health care provider is located. The rates included in this average shall be for services provided over the same distance as the eligible service. The rates averaged to calculate the rural rate must not include any rates reduced by universal service support mechanisms. The “rural rate” shall be used as described in this subpart to determine the credit or reimbursement due to a telecommunications carrier that provides eligible telecommunications services to eligible health care providers.</p> <p>(b) If the telecommunications carrier serving the health care provider is not providing any identical or similar services in the rural area, then the rural rate shall be the average of the tariffed and other publicly available rates, not including any rates reduced by universal service programs, charged for the same or similar services in that rural area over the same distance as the eligible service by other carriers. If there are no tariffed or publicly available rates for such services in that rural area, or if the carrier reasonably determines that this method for calculating the rural rate is unfair, then the carrier shall submit for the state commission's approval, for intrastate rates, or the Commission's approval, for interstate rates, a cost-based rate for the provision of the service in the most economically efficient, reasonably available manner.</p> <p>(1) The carrier must provide, to the state commission, or intrastate rates, or to the Commission, for interstate rates, a justification of the proposed rural rate, including an itemization of the costs of providing the requested service.</p> <p>(2) The carrier must provide such information periodically thereafter as required, by the state commission for intrastate rates or the Commission for interstate rates. In doing so, the carrier must take into account anticipated and actual demand for telecommunications</p>

Finding	Criteria	Description
		services by all customers who will use the facilities over which services are being provided to eligible health care providers.
#2	47 C.F.R. § 54.702(n) (2016).	When the Administrator, or any independent auditor hired by the Administrator, conducts audits of the beneficiaries of the Universal Service Fund, contributors to the Universal Service Fund, or any other providers of services under the universal service support mechanisms, such audits shall be conducted in accordance with generally accepted government auditing standards.

This concludes the report.

Attachment C

RH2021LR004

Available For Public Use

Presbyterian Healthcare Services

Performance Audit on Compliance with the Federal Universal Service
Fund Rural Health Care Support Mechanism Rules

USAC Audit No. RH2021LR004

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EXECUTIVE SUMMARY

October 12, 2022

Jim Noble, Senior Vice President and Chief Financial Officer
Presbyterian Healthcare Services
9521 San Mateo Blvd.
Albuquerque, NM 87113

Dear Jim Noble:

The Universal Service Administrative Company (USAC or Administrator) Audit and Assurance Division (AAD) audited the compliance of Presbyterian Healthcare Services (Beneficiary), Health Care Provider (HCP) Number 45514, using the regulations and orders governing the federal Universal Service Rural Health Care Support Mechanism, set forth in 47 C.F.R. Part 54, as well as other program requirements (collectively, the FCC Rules). Compliance with the FCC Rules is the responsibility of the Beneficiary's management. AAD's responsibility is to make a determination regarding the Beneficiary's compliance with the FCC Rules based on the performance audit.

AAD conducted the audit in accordance with Generally Accepted Government Auditing Standards (GAGAS) issued by the Comptroller General of the United States (2018 Revision, as amended). Those standards require that AAD plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for its findings and conclusions based on the audit objectives. The audit included examining, on a test basis, evidence supporting the competitive bidding process undertaken to select service providers, the type and amount of services received, physical inventory of equipment purchased and maintained, as well as performing other procedures AAD considered necessary to make a determination regarding the Presbyterian Healthcare Service's compliance with the FCC Rules. The evidence obtained provides a reasonable basis for AAD's findings and conclusions based on the audit objectives.

Based on the test work performed, our audit did not disclose any areas of non-compliance with the FCC Rules that were examined and in effect during the audit period.

Certain information may have been omitted from this report concerning communications with USAC management or other officials and/or details about internal operating processes or investigations. This report is intended solely for the use of USAC, the Beneficiary, and the Federal Communications Commission (FCC) and should not be used by those who have not agreed to the procedures and taken responsibility for the sufficiency of those procedures for their purposes. This report is not confidential and may be released to a requesting third party.

We appreciate the cooperation and assistance extended by you and your staff during the audit.

Sincerely,



Jeanette Santana-Gonzalez
USAC Senior Director, Audit and Assurance Division

cc: Radha Sekar, USAC Chief Executive Officer
Mark Sweeney, USAC Vice President, Rural Health Care Division
Teleshia Delmar, USAC Vice President, Audit and Assurance Division

PURPOSE, SCOPE, BACKGROUND AND PROCEDURES

PURPOSE

The purpose of the audit was to determine whether the Beneficiary complied with the FCC Rules.

SCOPE

The following chart summarizes the Rural Health Care Healthcare Connect Fund program support amounts committed and disbursed to the Beneficiary for Funding Year 2018 (audit period):

Service Type	Amount Committed	Amount Disbursed
Telecommunications	\$70,589.69	\$70,589.69
Internet Access	\$1,362,561.46	\$1,362,561.46
Total	\$1,433,151.08	\$1,433,151.15

Note: The amounts committed and disbursed reflect funding year activity as of the date of the commencement of the audit.

The committed total represents three FCC Form 462 applications with 5 Funding Request Numbers (FRNs). AAD selected 3 FRNs,¹ which represents \$1,415,333.10 of the funds committed and disbursed during the audit period, to perform the procedures enumerated below with respect to the Funding Year 2018 applications submitted by the Beneficiary.

BACKGROUND

The Beneficiary provides healthcare services within Albuquerque, New Mexico.

PROCEDURES

AAD performed the following procedures:

A. Application Process

AAD obtained an understanding of the Beneficiary's processes relating to the Rural Health Care (RHC) Healthcare Connect Fund (HCF) program. Specifically, AAD examined documentation to support its effective use of funding and that adequate controls exist to determine whether funds were used in accordance with the FCC Rules. AAD conducted inquiries and inspection of documentation to determine whether the Beneficiary used funding as indicated in its Network Cost Worksheets (NCWs).

AAD examined documentation to determine whether the Project Coordinator obtained Letters of Agency from the Beneficiary's network of HCPs and/or the HCPs' health systems authorizing the Beneficiary's lead entity and/or Project Coordinator to act on their behalf, confirming the HCPs' agreement to participate in the network, confirming the specific timeframe the Letter of Agency covers, and confirming the type of services covered by the Letter of Agency.

¹ The FRNs included in the scope of this audit were: 18409991, 18424431, and 18426261.

AAD examined the FCC Forms 462 and the FCC Form 462 Attachments to determine whether the Beneficiary identified the participating HCPs and documented the allocation of eligible costs related to the provision of health care services. AAD also examined the Network Cost Worksheets (NCW) to determine whether ineligible costs, if any, were identified and ineligible entities, if any, paid their fair share.

AAD obtained an understanding of the Beneficiary's processes relating to the Rural Health Care (RHC) program. Specifically, AAD examined documentation to support its effective use of funding and obtain an understanding of the controls that exist to determine whether funds were used in accordance with the FCC Rules. AAD conducted inquiries and inspection of documentation to determine whether the Beneficiary had the necessary resources to support the services for which funding was requested.

B. Competitive Bid Process

AAD examined documentation to determine whether the Beneficiary properly selected a service provider to provide eligible services. AAD conducted inquiries and examined documentation to determine whether the Beneficiary considered price and other non-cost factors and that no evaluation criteria was weighted higher than price. AAD examined evidence that the Beneficiary waited the required 28 days from the date the FCC Form 461 was posted on USAC's website before selecting and signing contracts with the selected service provider(s). If a contract was executed for the funding year under audit, AAD reviewed the service provider contract(s) to determine whether they were properly executed. AAD evaluated the services requested and purchased to determine whether the Beneficiary selected the most cost-effective option.

AAD examined documentation to determine whether all bids for the services received were properly evaluated. AAD conducted inquiries and examined documentation to determine whether the Beneficiary selected the most cost-effective method. AAD examined evidence that the Beneficiary waited the required 28 days from the date the FCC Form 465 was posted on USAC's website before selecting or signing contracts with the selected service provider(s). AAD evaluated the services requested and purchased to determine whether the Beneficiary selected the most cost-effective option.

C. Eligibility

AAD conducted inquiries and inspection of documentation, and examined documentation to determine whether the Beneficiary's eligible HCPs were public or non-profit eligible health care providers, and whether the annual limitation on support available to large non-rural hospitals was exceeded. AAD examined documentation to determine whether more than 50 percent of the sites in the consortium were rural HCPs and determined whether the member HCPs' physical addresses were the same as listed on the FCC Form 462 applications and NCWs. AAD conducted inquiries and examined documentation to determine whether the HCPs participating in the consortium received funding in the HCF program for the same services for which they requested support in the RHC Telecommunications program.

AAD examined documentation to determine whether the Beneficiary was a public or non-profit eligible health care provider. AAD determined whether the Beneficiary is located in a rural area and that its physical address was the same as listed on the FCC Form(s) 466.

D. Invoicing Process

AAD examined invoices for which payment was disbursed by USAC to determine whether the services identified on the FCC Form 463 service provider invoices submitted to USAC and the corresponding

service provider bills submitted to the Beneficiary were consistent with the terms and specifications of the service provider agreements. AAD examined documentation to determine whether the Beneficiary paid its required 35 percent minimum contribution and that the required contribution was from eligible sources. AAD also examined documentation to determine whether the HCF program disbursements did not exceed 65 percent of the total eligible costs. AAD examined documentation to determine whether each Beneficiary paid its non-discounted share in a timely manner.

E. Reporting Process

AAD examined documentation to determine whether the Beneficiary timely submitted its annual reports to the RHC program and whether the reports included the required information. AAD examined the Sustainability Plan and Network Plan(s) to determine whether they included the required content. AAD did not assess the reasonableness of the Sustainability Plan or whether the Beneficiary can meet or maintain the objectives described in that plan since the FCC Rules do not define how to assess the reasonableness of the content included in the Sustainability Plan.

F. Health Care Provider Location

AAD determined through inquiry and inspection of documentation whether the services were provided and were functional. AAD also determined through inquiry and inspection of documentation whether the supported services were used for purposes reasonably related to the provision of health care services and in accordance with the FCC Rules.

*This concludes the report.**

Attachment D

RH2019SP002

Available For Public Use

Peoples Communication, Inc.

Performance Audit on Compliance with the Federal Universal Service
Fund Rural Health Care Support Mechanism Rules

USAC Audit No. RH2019SP002

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EXECUTIVE SUMMARY

February 4, 2022

Gena Von Reyn, Regulatory Affairs Manager
Peoples Communication, Inc.
102 N. Stephens Stree
Quitman, TX 75783

Dear Gena Von Reyn:

The Universal Service Administrative Company (USAC or Administrator) Audit and Assurance Division (AAD) audited the compliance of Peoples Communications, Inc. (Service Provider), Service Provider Identification Number (SPIN) 143001132, using the regulations and orders governing the federal Universal Service Rural Health Care Support Mechanism, set forth in 47 C.F.R. Part 54, as well as other program requirements (collectively, the FCC Rules). Compliance with the FCC Rules is the responsibility of the Service Provider's management. AAD's responsibility is to make a determination regarding the Service Provider's compliance with the FCC Rules based on the performance audit.

AAD conducted the audit in accordance with Generally Accepted Government Auditing Standards (GAGAS) issued by the Comptroller General of the United States (2018 Revision, as amended). Those standards require that AAD plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for its findings and conclusions based on the audit objectives. The audit included examining, on a test basis, evidence supporting the competitive bidding process undertaken to select the Service Provider, the type and amount of services provided, as well as performing other procedures AAD considered necessary to make a determination regarding the Service Provider's compliance with the FCC Rules. The evidence obtained provides a reasonable basis for AAD's findings and conclusions based on the audit objectives.

Based on the test work performed, our audit disclosed three detailed audit findings (Findings) discussed in the Audit Results and Commitment Adjustment/Recovery Action section. For the purpose of this report, a Finding is a condition that shows evidence of non-compliance with the FCC Rules that were in effect during the audit period.

Certain information may have been omitted from this report concerning communications with USAC management or other officials and/or details about internal operating processes or investigations. This report is intended solely for the use of USAC, the Service Provider, and the Federal Communications Commission (FCC) and should not be used by those who have not agreed to the procedures and taken responsibility for the sufficiency of those procedures for their purposes. This report is not confidential and may be released to a requesting third party.

We appreciate the cooperation and assistance extended by you and your staff during the audit.

Sincerely,



Jeanette Santana-Gonzalez
USAC Senior Director, Audit and Assurance Division

cc: Radha Sekar, USAC Chief Executive Officer
Mark Sweeney, USAC Vice President, Rural Health Care Division
Teleshia Delmar, USAC Vice President, Audit and Assurance Division

AUDIT RESULTS AND COMMITMENT ADJUSTMENT/RECOVERY ACTION

Audit Results	Monetary Effect (A)	Overlapping Recovery and Commitment Adjustment ¹ (B)	Recommended Recovery (A) - (B)	Recommended Commitment Adjustment
Finding #1: Hospital Networks Management Order, 31 FCC Rcd 5731, 5733, para. 4 (2016)-Competitive Bidding Process Was Not Fair and Open Due to a Conflict of Interest. Beneficiary had a conflict of interest and, therefore, did not conduct a fair and open competitive bidding process when seeking services.	\$3,394,320	\$0	\$3,394,320	\$3,394,320
Finding #2: 47 C.F.R § 54.602(c),(d) (2016)-Services for which the Beneficiary Received RHC Telecommunications Program Support Not Used for the Provision of Health Care. The Service Provider invoiced the RHC program for services not used for the provision of health care, and did not allocate eligible and ineligible activities in order to receive prorated support for the eligible activities only.	\$476,067	\$476,067	\$0	\$0
Finding #3: 47 C.F.R § 54.607(a) (2016)-Service Provider's Rural Rates Were Not Properly Determined. The Service Provider omitted rates it charged to its E-Rate customers for identical or similar services from its rural rate calculation.	\$141,528	\$141,528	\$0	\$0
Total Net Monetary Effect	\$4,011,915	\$617,595	\$3,394,320	\$3,394,320

¹ If a finding is subsequently withdrawn on appeal, any overlapping recovery for that finding will be recommended for recovery for the remaining findings.

USAC MANAGEMENT RESPONSE

USAC management concurs with the audit results and will seek recovery of the Rural Health Care program support amount consistent with the FCC Rules. See the chart below for USAC management's recovery action by FRN.

FRN	Finding #1	Finding #2	Finding #3	Total
1726785	\$334,860.00			\$334,860.00
1726827	\$256,860.00			\$256,860.00
1726829	\$256,860.00			\$256,860.00
1726830	\$334,860.00		\$70,764.00	\$334,860.00
1726831	\$334,860.00			\$334,860.00
1726834	\$256,860.00	\$219,207.00		\$256,860.00
1726836	\$256,860.00			\$256,860.00
1726837	\$256,860.00			\$256,860.00
1726838	\$256,860.00			\$256,860.00
1726842	\$334,860.00		\$70,764.00	\$334,860.00
1726843	\$256,860.00			\$256,860.00
1726852	\$256,860.00	\$256,860.00		\$256,860.00
USAC Recovery Action	\$3,394,320	\$476,067.00	\$141,528.00	\$3,394,320

PURPOSE, SCOPE, BACKGROUND AND PROCEDURES

PURPOSE

The purpose of the audit was to determine whether the Service Provider complied with the FCC Rules.

SCOPE

The following chart summarizes the Rural Health Care Telecommunications program support amounts committed and disbursed to the Service Provider for Funding Year 2017 (audit period):

Service Type	Amount Committed	Amount Disbursed
Ethernet	\$3,394,320	\$3,394,320

Note: The amounts committed and disbursed reflect funding year activity as of the date of the commencement of the audit.

The committed total represents 12 FCC Form 466 applications with 12 Funding Request Numbers (FRNs). AAD selected 5 FRNs,² which represent \$1,440,300 of the funds committed and disbursed during the audit period, to perform the procedures enumerated below with respect to the Funding Year 2017 applications submitted by the Beneficiaries.

BACKGROUND

The Service Provider provides Ethernet services to its health care provider customers and its headquarters are located in Quitman, Texas.

PROCEDURES

AAD performed the following procedures:

A. Eligibility Process

AAD obtained an understanding of the Service Provider's processes and internal controls governing its participation in the Rural Health Care (RHC) program. Specifically, AAD conducted inquiries of the Service Provider and the selected Beneficiaries and examined documentation to obtain an understanding of the controls that exist to determine whether services were eligible, delivered, and installed in accordance with the FCC Rules. AAD conducted inquiries and examined documentation to determine whether the Service Provider assisted with the completion of each selected Beneficiary's FCC Form 465.

B. Competitive Bid Process

AAD conducted inquiries of the Beneficiary to determine that no bids were received for the requested services. AAD examined evidence that the Beneficiary waited the required 28 days from the date the FCC Form 465 was posted on USAC's website before signing contracts with the Service Provider or properly retaining services with the incumbent Service Provider under an existing contract. If a contract was executed for the funding year under audit, AAD reviewed the Service Provider contract to determine whether it was properly executed. AAD evaluated the services requested and purchased to determine whether the Beneficiary selected the most cost-effective option.

² The FRNs included in the scope of this audit were: 1726827, 1726830, 1726834, 1726842, 1726852.

C. Rural and Urban Rates

AAD conducted inquiries and examined the Service Provider's contract(s), service agreement(s), service quote(s), tariff(s), and/or other documentation to determine whether the Service Provider's rural rate was established in accordance with the FCC Rules. AAD also conducted inquiries and examined documentation to substantiate the urban rate listed in the FCC Form(s) 466.

D. Invoicing Process

AAD examined invoices for which payment was disbursed by USAC to determine whether the services identified on the service provider invoices submitted to USAC and the corresponding service provider bills submitted to the Beneficiary were consistent with the terms and specifications of the Service Provider agreements. AAD examined documentation to determine whether each Beneficiary paid its non-discounted share in a timely manner.

E. Billing Process

AAD examined the Service Provider bills for the RHC program supported services to determine whether the services identified were consistent with the terms and specifications of the Service Provider's contracts, or other service agreements, and eligible in accordance with the FCC Rules. In addition, AAD examined documentation to determine whether the Service Provider billed the selected Beneficiaries for the rural rate and only collected payment for the selected Beneficiaries' equivalent of the urban rate for the eligible services purchased with universal service discounts.

F. Health Care Provider Location

AAD determined through inquiry and inspection of documentation whether the services were provided and functional. AAD also determined through inquiry and inspection of documentation whether the supported services were used for purposes reasonably related to the provision of health care services and in accordance with the FCC Rules.

DETAILED AUDIT FINDINGS

Finding #1: *Hospital Networks Management Order*, 31 FCC Rcd 5731, 5733, para. 4 (2016) – Beneficiary’s Competitive Bidding Process Was Not Fair and Open Due to a Conflict of Interest

CONDITION

AAD inquired of the Beneficiary (University of Texas Health Science Center at Tyler) and Service Provider and obtained and examined documentation, including the FCC Forms 465 and correspondence between the Service Provider and the Beneficiary, to determine whether the Beneficiary’s competitive bidding process was fair and open for FRNs 1726827, 1726830, 1726834, 1726842 and 1726852. Under the FCC Rules, applicants in the RHC Telecommunications Program are required to competitively bid for supported services, unless they qualify for an exemption.³ When conducting its competitive bidding process, the applicant must consider all bids submitted and select the most cost-effective alternative.⁴ In selecting a cost-effective alternative, the Beneficiary must ensure that the competitive bidding process is fair and open, and does not disadvantage one service provider over another.⁵ AAD identified that the Beneficiary had a conflict of interest and, therefore, did not conduct a fair and open competitive bidding process when seeking services for FRNs 1726827, 1726830, 1726834, 1726842 and 1726852, as summarized below.

Prior to selecting the Service Provider to provide its telecommunications services, the Beneficiary received RHC Telecommunications Program supported services from its former service provider, Windstream Communications. However, in Funding Year 2016, USAC denied the Beneficiary’s applications for support⁶ when it learned that the Beneficiary utilized a consultant, ABS Telecom LLC (ABS), that was receiving sales commissions from Windstream Communications. The Beneficiary terminated its agreement with ABS and hired CFT Filings as its consultant in March 2016. The Beneficiary informed AAD that ABS referred the Beneficiary to CFT Filings.⁷ The Beneficiary also informed AAD that CFT Filings solicited new bids and selected the Service Provider to provide services to various Beneficiary locations.⁸

³ See 47 C.F.R. § 54.603(a) (2016).

⁴ See 47 C.F.R. § 54.615(a) (2016).

⁵ See *Requests for Review of Decisions of the Universal Service Administrator by Hospital Networks Management, Inc. Manchaca, Texas*, WC Docket No. 02-60, Order, 31 FCC Rcd 5731, 5733, para. 4 (2016) (*Hospital Networks Management Order*); *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 22 FCC Rcd 20360, 20414, para. 102 (2007) (*RHC Pilot Program Selection Order*) (explaining that “competitive bidding furthers the requirement of ‘competitively neutrality’ by ensuring that universal service support does not disadvantage one provider over another”).

⁶ See Letter from Rural Health Care Division, USAC to Mr. Russell D. Lukas and Mr. Jeffrey A. Mitchell, Lukas, Lafuria, Gutierrez & Sachs, LLP, on behalf of ABS Telecom, LLC, page 2 (Jun. 29, 2018) (Administrator’s Decision on Rural Health Care Program Appeal).

⁷ Attachment B to Beneficiary response to competitive bidding questionnaire sent by AAD, received Nov. 19, 2019 (University of Texas Health Northeast notes from USAC meeting dated June 6, 2017).

⁸ *Id.*

According to public records, Gary Speck was the President and a Director of ABS while ABS served as the Beneficiary's consultant, as well as during the period ABS served as a channel partner to the Beneficiary's former service provider.⁹ The Service Provider informed AAD that it also utilizes ABS as a channel partner.¹⁰ Public records suggest that Gary Speck is married to Amy Speck, who was also a Director at ABS.¹¹

As noted above, ABS referred the Beneficiary to CFT Filings after ceasing its consultant relationship with the Beneficiary. According to public records, CFT Filings began business in February 2016, which is the month prior to becoming the Beneficiary's consultant and soon after, USAC had denied the Beneficiary's Funding Year 2016 applications due to the relationship between the Beneficiary's former service provider and ABS. According to public records, Amy Speck, Gary Speck's wife, is identified as a Managing Member of CFT Filings.¹²

The Beneficiary asserts that it was not initially aware of the relationship between ABS and CFT Filings.¹³ Per the FCC Forms 465, the Beneficiary's contact with CFT Filings was Warren Lai. The Beneficiary indicated it was not informed that Amy Speck was a Managing Member of CFT Filings. In the Beneficiary's notes following a meeting with USAC in June 2017, the Beneficiary stated that it became suspicious of the Service Provider following communication from USAC regarding the conflicts of interest between the Beneficiary's former service provider and ABS and that subsequent research indicated that CFT Filings might have been created and/or controlled by the owners of ABS. The Beneficiary stated that it terminated its agreement with CFT Filings in March 2017. However, the Beneficiary's Funding Year 2017 commitments are still the result of the FCC Forms 465 completed by CFT Filings and the competitive bidding process conducted by CFT Filings.

As stated in the *Hospital Networks Management Order*, "a service provider participating in the competitive bidding process cannot be involved in the preparation of the applicant's technology plan, FCC Form 465, request for proposal (RFP), or the vendor selection process... [and] [c]onsultants who have ownership interest, sales commission arrangement, or other financial stake with respect to a bidding service provider are also prohibited from performing any of those tasks on behalf of the applicant."¹⁴ Because ABS management maintained direct relationships¹⁵ with the Service Provider as its channel partner and with CFT Filings through Ms. Speck, AAD concludes that a conflict of interest prevented a fair and open competitive bidding process for FRNs 1726827, 1726830, 1726834, 1726842 and 1726852.

CAUSE

The Beneficiary did not have adequate controls and procedures in place to determine whether there were conflicts of interest that could prevent a fair and open competitive bidding process. The Service Provider did

⁹ See <https://www.corporationwiki.com/Texas/Plano/abs-telecom-llc/37293402.aspx>. See also <http://www.buzzfile.com/business/ABS-Telecom-LLC-972-407-0063> and <https://www.zoominfo.com/c/abs-telecom-llc/347008520>.

¹⁰ See Service Provider's response to the audit *Background Questionnaire*, received Nov. 13, 2019

¹¹ See <https://www.corporationwiki.com/Texas/Plano/abs-telecom-llc/37293402.aspx>.

¹² See <https://www.corporationwiki.com/p/2rgtul/cft-filings-llc>.

¹³ Attachment B to Beneficiary response to competitive bidding questionnaire sent by AAD, received Nov. 19, 2019 (University of Texas Health Northeast notes from USAC meeting dated June 6, 2017).

¹⁴ *Hospital Networks Management Order*, 31 FCC Rcd at 5733, para. 4.

¹⁵ The participants related to this finding are the same as those that resulted in a decision by the FCC that Windstream violated the competitive bidding rules. See *Windstream Order*, 35 FCC Rcd 10312, DA 20-1085 (WCB 2020).

not demonstrate a sufficient knowledge of the FCC Rules governing its role in preventing the Service Provider from gaining an unfair competitive advantage in the competitive bidding process. The Service Provider’s channel partner recommended the Beneficiary use a consulting company that was created by the channel partner’s spouse.

EFFECT

The monetary effect of the finding is \$3,394,320. This amount represents the total amount committed and disbursed for Funding Year 2017 for the five FRNs in the original scope of the audit (i.e., FRNs 1726827, 1726830, 1726834, 1726842 and 1726852) as well as the additional FRNs for Funding Year 2017 in which RHC program committed support as a result of the same competitive bidding process, as follows.

FRN Number	Monetary Effect
1726785	\$334,860
1726827	\$256,860
1726829	\$256,860
1726830	\$334,860
1726831	\$334,860
1726834	\$256,860
1726836	\$256,860
1726837	\$256,860
1726838	\$256,860
1726842	\$334,860
1726843	\$256,860
1726852	\$256,860
Total	\$3,394,320

RECOMMENDATION

AAD recommends that USAC management seek recovery of the amount identified in the Effect section above from the Service Provider. In addition, AAD recommends that USAC management issue a downward commitment adjustment to reduce the amount committed by the amount identified in the Effect section above. Also, AAD recommends that USAC management examine additional FRNs associated with other funding years to determine whether similar issues exist.

The Beneficiary must implement policies, procedures and controls to ensure it conducts an appropriate vetting of its consultants and service providers to determine whether conflicts of interest exist that prevent a fair and open competitive bidding process. The Service Provider must adhere to the FCC Rules and implement policies and procedures to ensure that its channel partners are not serving in a dual-capacity as the Health Care Provider’s (HCP) consultant and, therefore, jeopardizing the HCP’s ability to conduct a fair and open competitive bidding process in accordance with the FCC Rules. In addition, AAD recommends the Beneficiary and Service Provider visit USAC’s website at <https://www.usac.org/rural-health-care/telecommunications-program/step-2-prepare-for-competitive-bidding-and-request-services/> to become familiar with the FCC Rules governing a proper competitive bidding process and at <https://www.usac.org/rural-health-care/learn/> to become familiar with the training and outreach available from RHC program.

SERVICE PROVIDER RESPONSE

The Commission has stated that competitive bidding is fundamental to the Telecom Program, and that “a critical requirement of the competitive bidding process is to ensure that it is conducted in a manner that does not give one bidder an unfair advantage over another bidder.”¹⁶ Peoples wholly supports the Commission’s directive that there should be a fair and open competitive bidding process for Telecom Program funding, and at the time Peoples participated in the bidding process for HCP, it reasonably believed it was just that. Indeed, when the underlying facts are examined, it becomes clear that it would have been unreasonable to expect Peoples to have known about the alleged conflict of interest uncovered by the present audit, and if there was a conflict, Peoples was a victim of fraud perpetrated by the consultants, ABS and CFT.¹⁷

Peoples and HCP did not Know, and Could not Have Reasonably Been Expected to Know, of the Alleged Conflict of Interest Between ABS and CFT.

Pursuant to Telecom Program requirements, in order to start the competitive bidding process a health care provider must submit a completed Form 465 to the Administrator.¹⁸ Accordingly, HCP filed its Form 465 on October 17, 2016, and listed its consultant as CFT, with Mr. Lai as its agent.¹⁹ Peoples became aware of the bidding opportunity through Mr. Speck, the President and Director of its long-time channel partner, ABS. Peoples, in good faith, submitted a competitive bid in November 2016, and was subsequently informed that it was the selected provider. At the time, Peoples was unaware that CFT was an entity created by Mr. Speck’s wife, Amy Speck, apparently creating the potential for a conflict of interest between HCP’s and Peoples’ respective consultants.²⁰

¹⁶ Request for Review, WC Docket No. 02-60 (filed September 15, 2020) (“Windstream Decision”).

¹⁷ Peoples was not involved in the preparation of HCP’s technology plan, FCC Form 465, request for proposal, or the vendor selection process. To Peoples’ knowledge, neither was Mr. Speck nor ABS, its channel partner involved in such preparation. The FCC Order that USAC cites to in the DAF states that “all potential bidders and service providers must have access to the same information and must be treated in the same manner throughout the procurement process.” See DAF at 1 (citing *Hospital Networks Management Order*, 31 FCC Rcd 5731, 5733, para. 4 (2016) (“Hospital Networks Management Order”). To Peoples’ knowledge, the RFP was open to all potential bidders and service providers and Peoples was given no additional information or preferential treatment.

¹⁸ See, e.g., 47 § 54.603(b)(1) (stating that “[a]n eligible health care provider seeking to receive telecommunications services eligible for universal service support under the Telecommunications Program shall submit a completed FCC Form 465 to the Administrator.”)

¹⁹ See UTHSCT Form 465 (Exhibit 1).

²⁰ Peoples had no reason to know that Amy Speck had created CFT and was involved with CFT *prior* to HCP issuing the RFP; however, it seems unclear that her involvement with CFT prior to the RFP alone would constitute conclusive evidence that a conflict of interest existed. Since Ms. Speck was not involved with CFT at the time of the RFP, it seems unlikely that she, or her husband, could have been involved with preparing the technology plan, FCC Form 465, RFP, or vendor selection process. See n. 5, *supra*. While it is Peoples’ strong belief that HCP did not know of the potential relationship between ABS and CFT, HCP seems to have been in a better position to have discovered Mr. Speck’s involvement in CFT since HCP appears to have engaged CFT in March 2016, when Mr. Speck was the managing member of CFT. See Request for Review by Windstream Communications, LLC of Decision by the Universal Service Administrator, Rural Health Care Program, WC Docket No. 02-60, at 6 (filed Aug. 23, 2018)

At the time that Peoples bid on the project, there was no information to trigger any concern on behalf of Peoples about a conflict of interest, since the consultant and agent listed on Form 465 were clearly different from the channel partner used by Peoples. Indeed, at the time Peoples reviewed the Form 465 and submitted a bid, the most current public records with the Texas Secretary of State showed Mr. Lai (not Ms. Speck) as the managing member of CFT with an address that was completely different than the one Peoples had on file for ABS.²¹ To be sure, the most current information on the managing member of CFT had been in place since May 2016, well before HCP filed the Form 465. In addition, Peoples was not privy to the investigation of HCP and Windstream that was going on at the time, which Peoples later learned resulted in a Funding Commitment Denial Letter due to a conflict of interest perpetuated by Mr. Speck. Mr. Speck had been Peoples' channel partner since 2011, and Peoples had no reason to be suspicious of him.

According to the DAF, HCP maintained it was unaware of the alleged conflict of interest between ABS and CFT until June of 2017 when it had a meeting with USAC, three months after HCP ultimately terminated its relationship with CFT. This USAC meeting occurred well after HCP had filed its Form 465, reviewed the bid(s), selected Peoples' bid, and accepted services from Peoples. Peoples, in turn, did not become aware of any relationship between ABS and CFT until after Peoples learned about the dispute between Windstream, HCP's former service provider, and ABS sometime in late 2018 after Windstream filed a Request for Review of a USAC denial of Telecom Program funding ("Windstream Appeal") in the publicly accessible FCC Electronic Comment Filing System. At the time of that discovery, Peoples had a number of business disputes with ABS. Peoples subsequently terminated its relationship with ABS in January 2019.

This timeline makes clear that Peoples did not know, nor could have reasonably been expected to know, about the alleged conflict of interest perpetuated by Mr. Speck. Peoples was unaware about any such conflict when the Form 465 was prepared and submitted, or when Peoples submitted its bid. Further, if Mr. Speck did influence the bidding process, he went to great lengths to bury his fraud by using Mr. Lai's name and contact information, rather than his wife's, on relevant filings.

The Commission's Windstream Decision is Precedent for the Fact that Peoples Did not Have Knowledge of the Alleged Conflict of Interest at the Time of the Competitive Bidding Process and Should not be Held Accountable.

If Mr. Speck did play a dual role in the RFP process, then the fraud he perpetuated on Peoples, HCP, and the Telecom Program was not novel. Indeed, Mr. Speck committed nearly identical fraud against HCP and its former service provider, Windstream, only in a much more blatant manner, by serving as both Windstream's and HCP's consultant during a competitive bidding process pursuant to the Telecom Program, and *listing himself* as the HCP contact person on the Form 465, from 2012-2016.²² On March 13, 2017, USAC denied HCP's FY 2012-2016 funding requests, due to this very conflict of interest. As a result of that audit, it was necessary for HCP to search for a new service provider (that would ultimately be Peoples).

²¹ See Texas Secretary of State, Business Organizations Inquiry: CFT Filings, LLC, Management Screenshot (Exhibit 2).

²² Windstream Decision at ¶ 6-7.

In the FCC's Order supporting USAC's denial, the Commission emphasized the fact that Mr. Speck's name and contact information appeared on the Forms 465, stating that:

"Between April 20, 2012 and June 2, 2015, ABS submitted on UTHSCT's behalf multiple FCC Forms 465 requesting eligible services. The FCC Form 465 in each case listed Mr. Speck and his organization ABS Telecom LLC, as the contact for the UTHSCT health care provider. Windstream submitted bids in response to these forms, which were ultimately accepted for funding support. Windstream therefore cannot credibly claim that it lacked knowledge of Mr. Speck's involvement with UTHSCT *when his name and organization were collectively listed as the point of contact* for the UTHSCT entities – particularly given the fact that Windstream had an active contractual relationship with Mr. Speck's organization related to the same transactions involving UTHSCT."²³

As a result, the Commission held that Windstream was "in fact aware of Mr. Speck's dual role as its channel partner and UTHSCT's consultant, and despite this knowledge, submitted bids in response to FCC Forms 465 that listed Mr. Speck as the contact person for UTHSCT."²⁴

The facts here are acutely distinguishable from the circumstances in Windstream. As discussed *supra*, unlike when Windstream bid to provide the services, it was not reasonably obvious to Peoples that Mr. Speck could have been involved with HCP's bidding process in 2016. Indeed, while Mr. Speck was listed on the Form 465 for several consecutive years in Windstream, effectively putting Windstream on notice of the conflict, Peoples had no such warning. It appears, having learned his lesson from his experience with Windstream, and the subsequent Windstream audit, Mr. Speck doubled down his efforts to hide his potential dual role when it came to the competitive bidding process for FY2016.²⁵ While Peoples is not privy to the business decisions involved with establishing CFT or with Mr. Lai becoming its managing member, it appears now that Mr. Speck strategically listed Mr. Lai as the contact for CFT on the Form 465, and not his wife, Ms. Speck. In fact, Ms. Speck's name was removed from the corporate documents on file for CFT prior to CFT issuing the Form 465. As a result, Peoples did not have the obvious notice of a potential rule violation that was available to Windstream for years.

Ultimately the Commission directed USAC to seek recovery actions against Windstream only (and not UTHSCT), since there was no evidence "that UTHSCT knew of any of Mr. Speck's agreement with Windstream."²⁶ This decision is consistent with long-standing Commission precedent to only recover funding from the party at fault for a rule violation. Importantly, there is no evidence that Peoples knew, or reasonably could have known, that there was any questionable relationship between ABS and CFT. Indeed, in the Hospital Networks Management Order that USAC cites to, the FCC held that a

²³ *Id.* at ¶ 19 (emphasis added).

²⁴ *Id.* at ¶ 12.

²⁵ The original bid submitted by Peoples for FY2016 and accepted by the HCP was part of an evergreen contract, including FY2017.

²⁶ Windstream Decision at n. 90.

party that has no role in a rule violation involving a conflict of interest should not be penalized.²⁷ Here, Peoples participated in what it thought was a legitimate, open, and fair competitive bidding process for HCP, and had no reason to conclude otherwise.²⁸ If USAC ultimately finds that a conflict of interest existed, Peoples should not be the party to pay the price.

Holding Peoples' Responsible for Mr. Speck's Fraud is Inequitable, Would have a Chilling Effect on Future Bidders and Would Thwart the Goals of the Telecom Program.

The Commission has stated that the underlying policy of the Telecom Program is to ensure that “rural health care providers receive the most cost-effective services eligible for universal service support.”²⁹ To that end, the program itself relies on the participation of competent local service providers that have experience in delivering broadband and other telecommunications services to rural areas. Such service providers are hard to come by. Indeed, Peoples has reason to believe that it was the only bidder in HCP’s competitive bidding process for FY2016. Should AAD’s findings stand, the willingness of such service providers to participate in the Telecom Program will dwindle even further.

Smaller, rural telecommunications companies and cooperatives – ones that are in the best position to serve rural America – may be hesitant to participate in the Telecom Program if the burden is on them to discover fraud or a conflict of interest, even when reasonable diligence would not uncover such fraud. Indeed, it is unreasonable to expect a service provider to dig endlessly to uncover a potential conflict of interest that is not apparent on its face and that consultants may have surreptitiously hidden. Peoples acted in good faith in submitting its bid to ABS and HCP and in investing hundreds of thousands of its own dollars to deliver services to HCP. Punishing small telecommunications cooperatives such as Peoples for the potentially dishonest actions of a channel partner, particularly when such dishonesty was not reasonably discoverable, is punitive and thwarts the goals of the Telecom Program.

If USAC seeks recovery of the Telecom Program funding for the FY2017 from Peoples – an innocent service provider that performed reasonable diligence under the circumstances – it would not only have a disastrous impact on Peoples’ ongoing viability; it would negatively impact the sustainability of the Telecom Program itself.

²⁷ Hospital Networks Management Order at ¶ 2 (stating that “because we find that the [HCP] is the party at fault in violating the Commission’s competitive bidding requirements, we direct USAC to discontinue its recovery actions against [the service provider]”). See also *Federal-State Joint Board on Universal Service*, Order on Reconsideration and Fourth Report and Order, 19 FCC Rcd 15252 (2004) at ¶ 12 (stating that “[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 is both unrealistic and inequitable to seek recovery solely from the service provider.”)

²⁸ Based on the facts, Peoples was not in the best position to be aware of any potential conflict of interest.

²⁹ Hospital Networks Management Order. at ¶ 22.



[Exhibit 1:]

FCC Form 465	Health Care Providers Universal Service Description of Services Requested & Certification Form	Approval by OMB 3060-0804 Estimated time per response: 1 hour
Read instructions thoroughly before completing this form. Failure to comply may cause delayed or denied funding.		
Form 465 Application Number (assigned by RHCID): 43167726		
Block 1: HCP Location Information		
Information required in this block applies to the physical location of the HCP. Do not enter a "PO Box" or "Rural Route" address.		
1 HCP Number 34447	2 Consortium Name	
3 HCP Name UTHSCT on behalf of ETIHN - Andrews Center	4 HCP FCC Registration Number (FCC RN) 0020953857	
5 Contact Name Darlene Flournoy		
6 Address Line 1 1174 East Lennon Avenue		
7 Address Line 2	8 County Rains	
9 City Emory	10 State TX	11 ZIP Code 75440
12 Phone #(903) 887-1210	13 Fax #(903) 887-1230	14 E-mail darlene.flournoy@netnet.org
Block 2: HCP Mailing Contact Information		
15 Is the HCP's mailing address (where correspondence should be sent) different from its physical location described in Block 1?		<input checked="" type="checkbox"/> Yes, complete Block 2 <input type="checkbox"/> No, go to Block 3.
16 Contact Name Warren Lai	17 Organization CFT Filings LLC	
18 Address Line 1 6505 W Park Blvd		
19 Address Line 2 Suite 306, PMB 200		
20 City Plano	21 State TX	22 ZIP Code 75093
23 Phone #(972) 836-8468	24 Fax #	25 E-mail cftfilings@att.net
Block 3: Funding Year Information		
26 Funding Year (Check only one box)		
<input checked="" type="checkbox"/> Year 2016 (7/1/2016-6/30/2017) <input type="checkbox"/> Year 2017 (7/1/2017-6/30/2018) <input type="checkbox"/> Year 2018 (7/1/2018-6/30/2019)		
Block 4: Eligibility		
27 Only the following types of HCPs are eligible. Indicate which category describes the applicant. (Check only one.)		
<input type="checkbox"/> Post-secondary educational institution offering health care instruction, teaching hospital or medical school	<input type="checkbox"/> Rural health clinic	
<input type="checkbox"/> Community health center or health center providing health care to migrants	<input type="checkbox"/> Consortium of the above	
<input type="checkbox"/> Local health department or agency	<input type="checkbox"/> Dedicated ER of rural, for-profit hospital	
<input checked="" type="checkbox"/> Community mental health center	<input type="checkbox"/> Part-time eligible entity	
<input type="checkbox"/> Not-for-profit hospital		
28 If consortium, dedicated emergency department, or part-time eligible entity was selected in Line 27, please describe the entity.		
29 Please describe the eligible health care provider's telecommunications and/or Internet service needs, so that service providers may bid to provide the services. The description should describe whether video or store and forward consultations will be used, whether large image files or X-rays will be transmitted, the quality of connection needed, or other relevant considerations. Need to stream media, provide telemedicine and link facilities for educational events such as Grand Rounds, Center for Disease Control satellite feeds and healthcare professional education.		
Block 5: Request for Services		
30 Is the HCP requesting reduced rates for:		
<input type="checkbox"/> Both Telecommunications & Internet Services <input checked="" type="checkbox"/> Telecommunications Service ONLY <input type="checkbox"/> Internet Service ONLY		



Block 6: Certification

31 <input checked="" type="checkbox"/> I certify that I am authorized to submit this request on behalf of the above-named entity or entities, that I have examined this request, and that to the best of my knowledge, information, and belief, all statements of fact contained herein are true.	
32 <input checked="" type="checkbox"/> I certify that the health care provider has followed any applicable State or local procurement rules.	
33 <input checked="" type="checkbox"/> I certify that the telecommunications services and/or Internet access charges that the HCP receives at reduced rates as a result of the HCPs' participation in this program, pursuant to 47 U.S.C. Sec. 254 as implemented by the Federal Communications Commission, will be used solely for purposes reasonably related to the provision of health care service or instruction that the HCP is legally authorized to provide under the law of the state in which the services are provided and will not be sold, resold, or transferred in consideration for money or any other thing of value.	
34 <input checked="" type="checkbox"/> I certify that the health care provider is a non-profit or public entity.	
35 <input checked="" type="checkbox"/> I certify that the health care provider is located in a rural area. Visit the Eligible Rural Areas Search Tool on the Telecommunications Program web page at http://usac.org/rhc/telecommunications/tools/rural/search/search.asp or contact RHCD at (800) 453-1546 for a listing of rural areas.	
36 <input checked="" type="checkbox"/> Pursuant to 47 C.F.R. Secs. 54.601 and 54.603, I certify that the HCP or consortium that I am representing satisfies all of the requirements herein and will abide by all of the relevant requirements, including all applicable FCC rules, with respect to funding provided under 47 U.S.C. Sec. 254.	
37 Signature Electronically signed	38 Date 17-Oct-2016
39 Printed name of authorized person Warren Lai	40 Title or position of authorized person Member
41 Employer of authorized person CFT Filings LLC	42 Employer's FCC RN 0025483124

Please remember:

- Form 465 is the first step a health care provider must take in order to receive the benefit of reduced rates resulting from participation in this universal service support program.
- After the HCP submits a complete and accurate Form 465, RHCD will post it on the RHCD web site for 28 days.
 - HCPs may not enter into agreements to purchase eligible services from service providers before the **28 days expire**.
 - After the HCP selects a service provider, the HCP must initiate the **next** step in the application process, the filing of Form 466 and/or 466A.

Persons willfully making false statements on this form can be punished by fine or forfeiture under the Communications Act, 47 U.S.C. Secs. 502, 503(b), or fine or imprisonment under Title 18 of the United States Code, 18 U.S.C. Sec. 1001.

FCC NOTICE FOR INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT

Part 3 of the Commission's Rules authorize the FCC to request the information on this form. The purpose of the information is to determine your eligibility for certification as a health care provider. The information will be used by the Universal Service Administrative Company and/or the staff of the Federal Communications Commission, to evaluate this form, to provide information for enforcement and rulemaking proceedings and to maintain a current inventory of applicants, health care providers, billed entities, and service providers. No authorization can be granted unless all information requested is provided. Failure to provide all requested information will delay the processing of the application or result in the application being returned without action. Information requested by this form will be available for public inspection. Your response is required to obtain the requested authorization.

The public reporting for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the required data, and completing and reviewing the collection of information. If you have any comments on this burden estimate, or how we can improve the collection and reduce the burden it causes you, please write to the Federal Communications Commission, AMD-PERM, Paperwork Reduction Act Project (3060-0804), Washington, DC 20554. We will also accept your comments regarding the Paperwork Reduction Act aspects of this collection via the Internet if you send them to pra@fcc.gov. PLEASE DO NOT SEND YOUR RESPONSE TO THIS ADDRESS.

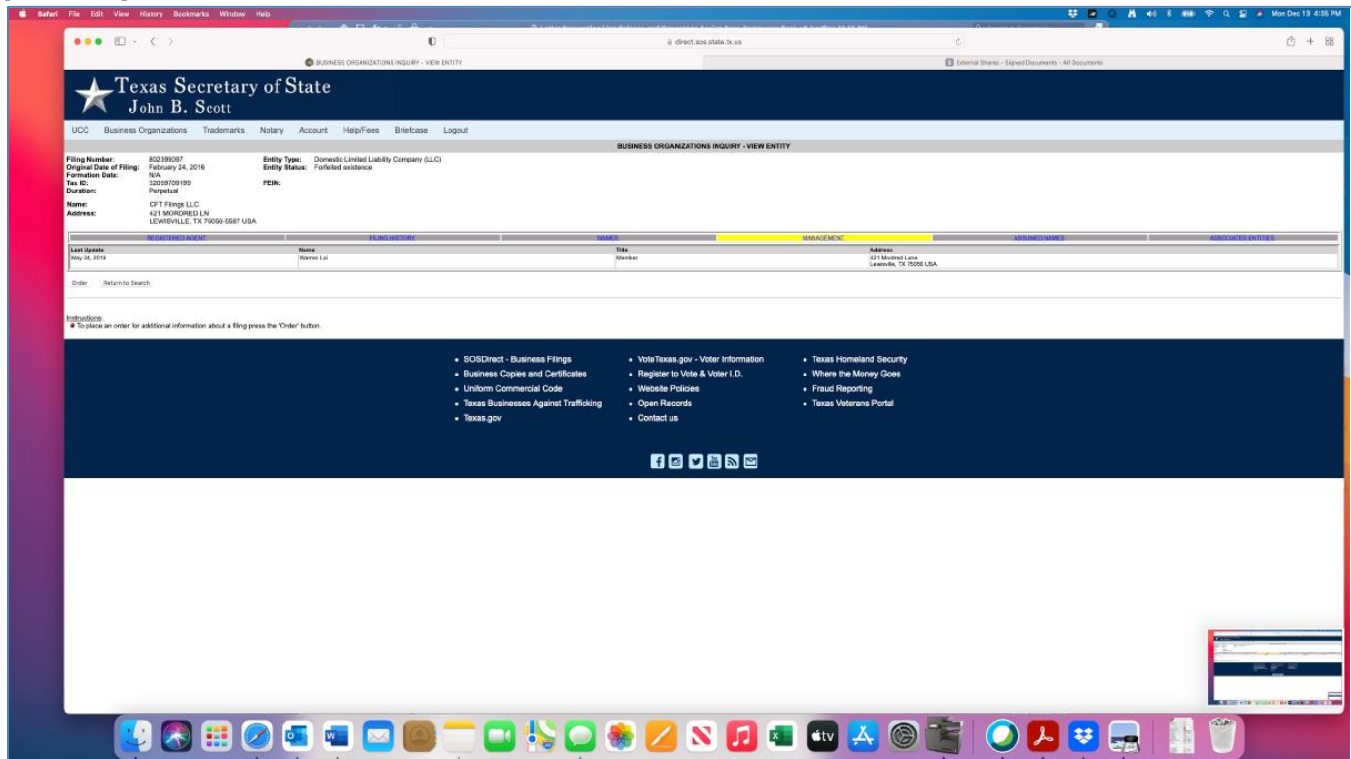
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THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, PUBLIC LAW 93-579, DECEMBER 31, 1974, 5 U.S.C. 552a(e)(3) AND THE PAPERWORK REDUCTION ACT OF 1995, PUBLIC LAW 104-13, OCTOBER 1, 1995, 44 U.S.C. SECTION 3507.

This form should be submitted online through the RHC Program online application system, My Portal.
<https://forms.universalservice.org/usaclogin/login.asp>

FCC Form 465
July 2014

[Exhibit 2:]



BENEFICIARY RESPONSE

In its Finding #1, USAC points to a chain of relationships among individuals and entities that it alleges created a conflict of interest that prevented a fair and open competitive bidding process. UTHSCT disagrees with this conclusion. Even if there might have been a potential conflict of interest—of which UTHSCT was unaware when the procurement was conducted—this potential conflict of interest neither affected the outcome of the procurement nor the cost of the services supported by the Telecom Program.

As set forth in UTHSCT’s audit response of September 3, 2020, the facts underlying the Peoples Communications (“Peoples”) procurement are as follows. From approximately FY11 through FY16, Windstream provided UTHSCT with Telecom Program supported services. The procurements that resulted in the selection of Windstream as the University’s service provider had been conducted by UTHSCT’s consultant, ABS Telecom, and its principal, Gary Speck. During 2016, UTHSCT retained a new consultant, CFT Filings, to conduct the procurement that resulted in the selection of Peoples as the winning bidder. During that procurement, UTHSCT had no reason to believe that CFT Filings or its principal, Warren Lai, had any connection to any service providers.

In March 2017, UTHSCT had an urgent need to replace Windstream as the provider of Telecom Program services to the University because USAC had just issued FCDLs alleging that Windstream had a sales commission relationship with ABS Telecom and Gary Speck, the consultant that had conducted the procurement that resulted in the selection of Windstream as the winning bidder. UTHSCT urgently needed the high-speed data services that had been provided by Windstream in order to provide telemedicine services to serve the rural population of Northeast Texas, who suffer from a disproportionate incidence of chronic diseases and psychiatric illness. Specifically, the Andrews Center is a non-profit, comprehensive mental health and intellectual and developmental disability center that provides services in a five-county

area of East Texas. Further, since the outbreak of the current Covid-19 pandemic, UTHSCT has been designated by the State of Texas as a pandemic response coordinating center for Northeast Texas.

Against this background, in May 2017, UTHSCT filed an FCC application for review of the Windstream FCDLs seeking a waiver of the conflict of interest rules because: (1) ABS Telecom's participation did not affect the outcome of the procurement; and (2) UTHSCT was unaware of, and did not benefit from, whatever vendor involvement may have occurred. In addition, prior to filing its FY17 Forms 466, University staff and its attorneys met with USAC staff to discuss the Peoples applications. At that time, and based on its pre-filing due diligence, UTHSCT had become aware that Gary Speck, the principal of ABS Telecom, had been or was still a sales agent for Windstream. The University also uncovered some information after the procurement—which it conveyed to USAC—suggesting that CFT Filings may have been created and/or controlled by the owners of ABS Telecom, but found no evidence that CFT Filings received sales commissions from Peoples and no other evidence of rule violations.

After notifying USAC of the results of its initial due diligence, UTHSCT filed its FY17 Forms 466 with the understanding that if a conflict of interest were later discovered and that conflict distorted the results of the procurement, UTHSCT would request an FCC rule waiver on the same basis that it had for the Windstream applications.

In conducting its due diligence for the present audit, the University asked Peoples about its possible relationships with Gary Speck, ABS Telecom, and CFT Filings. Peoples reported that ABS Telecom was a sales agent for Peoples at the time of the UTHSCT procurement. This was the first time that the University became aware that ABS Telecom was a sales agent for Peoples. Peoples also stated that it did not know CFT Filings (the entity listed on the University's Form 465) was related to ABS Telecom. Moreover, Peoples reported that it has never had any type of relationship with CFT Filings or its principal, Warran Lai.

Even if Mr. Speck's relationship with ABS Telecom (which was a sales agent for Peoples) and his relationship with his wife Amy (who was a member of CFT Filings) presented a potential conflict of interest, as detailed below, the relationship between ABS Telecom and CFT Filings and did not affect UTHSCT's choice of vendor or the level of support provided by the Telecom Program for the circuits in question. Therefore, Mr. and Mrs. Speck's relationships with ABS Telecom and CFT Filings should not disqualify UTHSCT from Telecom Program support for the following reasons.

First, at the time it filed its FY17 Forms 466 for the Peoples circuits, UTHSCT was not aware of the fact that in addition to being a channel partner for Windstream, ABS Telecom was a sales agent for Peoples.

Second, out of an abundance of caution, UTHSCT self-reported the information regarding CFT Filings as a potential conflict of interest both before it filed its FY17 Forms 466 and, after querying Peoples, in response to the instant audit.

Third, Peoples was the only bidder and, on information and belief, the only service provider other than Windstream that had the facilities necessary to provide telecommunications services to the Andrews Clinic. Therefore, UTHSCT had only one service provider from which to choose to provide service to these facilities regardless of any potential conflicts of interest.

Fourth, Peoples’ bid rates were approximately half of those of the incumbent provider, Windstream, on a per circuit basis—Peoples averaged \$24,708 per circuit while Windstream averaged \$46,329 per circuit. Attachment A, Competitive Bidding Documents, Bid Summaries. And, as noted below, these rates have declined over the life of the evergreen contract.

Finally, the Telecom Program did not reimburse Peoples according to the contract (bid) rates. Rather, Peoples’ rural rates have been reviewed and revised by USAC for every funding year from FY17-FY21. In particular, Peoples’ rates are based on USAC Method 1—the average rates charged by Peoples to other commercial customers for similar services in the same rural area as UTHSCT. Because these rates were subject to revision every year as the rates Peoples charged to other customers fluctuated, so were Peoples’ rates as reimbursed by the Telecom Program. In fact, these rates declined virtually every funding year from an average rate of approximately \$25,000 per circuit in FY17 to an average rate of approximately \$3,800 per circuit in FY21. Given that the rural rates were reviewed by USAC every funding year and declined by an order of magnitude over the life of the evergreen contracts, any apparent defects in the procurement could not have resulted in an overcharge to the Telecom Program.

[Attachment A:]

A Location	NPA/NXX	Z Location	NPA/NXX	Existing Contract - MRR	Existing Carrier	New Bid - MRR	New Bid Carrier
1174 E Lennon Dr, Emory TX 75440	903/953	115 Airport Rd Sulphur Springs, Tx 75482	903/558	\$ 23,500.00	Peoples	\$ 22,000.00	Peoples
1174 E Lennon Dr, Emory TX 75440	903/953	2323 West Front Street Tyler, Tx 75712	903/535	\$ 51,000.00	Windstream	\$ 28,500.00	Peoples
1174 E Lennon Dr, Emory TX 75440	903/953	2400 Clarksville St, Paris, TX 75460	903/785	n/a	n/a	\$ 22,000.00	Peoples
1174 E Lennon Dr, Emory TX 75440	903/953	2866 FM1735, Mt Pleasant, TX 75455	903/380	n/a	n/a	\$ 22,000.00	Peoples
1174 E Lennon Dr, Emory TX 75440	903/953	6500 Monty Stratton Parkway, Greenville, Texas 75402	903/454	n/a	n/a	\$ 22,000.00	Peoples
1174 E Lennon Dr, Emory TX 75440	903/953	1137 Loop 301 East, Sulphur Springs, Texas 75483	903/558	n/a	n/a	\$ 22,000.00	Peoples
1174 E Lennon Dr, Emory TX 75440	903/953	6901 Highway 19 South Athens, TX 75751	903/675	\$ 51,000.00	Windstream	\$ 28,500.00	Peoples
1174 E Lennon Dr, Emory TX 75440	903/953	575 W. Highway 243 Canton, TX 75103	903/502	\$ 51,000.00	Windstream	\$ 22,000.00	Peoples
1174 E Lennon Dr, Emory TX 75440	903/953	703 West Patten St Mineola, TX 75773	903/369	\$ 51,000.00	Windstream	\$ 22,000.00	Peoples
1174 E Lennon Dr, Emory TX 75440	903/953	11937 US HWY 271, TYLER TX 75708	903/877	n/a	n/a	\$ 28,500.00	Peoples
1174 E Lennon Dr, Emory TX 75440	903/953	1200 I-20, Terrell, TX 75161	903/563	n/a	n/a	\$ 28,500.00	Peoples
1174 E Lennon Dr, Emory TX 75440	903/953	2323 West Front Street Tyler, Tx 75712 (Diverse Route)	903/535	\$ 50,473.50	Windstream	\$ 28,500.00	Peoples
				\$ 277,973.50		\$ 296,500.00	
				\$ 46,328.92			
		MRR for Existing Six Sites Comparison		\$ 277,973.50		\$ 151,500.00	

AAD RESPONSE TO SERVICE PROVIDER

In its response, the Service Provider claims it should not be held accountable for this finding and asserts that it was a victim of fraud perpetrated by the consultants, ABS and CFT. The Service Provider asserts that it was not aware of the alleged conflict of interest between ABS and CFT nor could have reasonably been expected to know. In addition, the Service Provider states that it should not be held financially responsible for this finding, because it undermines the purpose of the Telecommunications Program. Per the *Hospital Networks Management Order*, “[t]he Commission has consistently stated that the competitive bidding process must be fair and open and must not have been compromised because of improper conduct by the applicant, service provider, or both parties...Consultants who have an ownership interest, sales commission arrangement, or other financial stake with respect to a bidding service provider are also prohibited from performing any of those tasks on behalf of the applicant.”³⁰ Thus, the overall requirement of the Telecommunications Program is to provide support to telecommunications carriers that will provide eligible services, on which each eligible health care provider participates in an open and fair competitive bidding process and must not have been compromised because of improper conduct by the applicant, service provider, or both parties. While AAD

³⁰ *Hospital Networks Management Order*, 31 FCC Rcd at 5733, para. 4.

acknowledges that fraud may have occurred, the Service Provider was still involved in a business relationship with ABS, its channel partner, who acted on behalf of the Service Provider. Thus, the competitive bidding process was compromised because of an improper conduct by ABS.

Therefore, AAD's conclusion on this finding remains unchanged.

AAD RESPONSE TO BENEFICIARY

In its response, the Beneficiary states that “[i]n conducting its due diligence for the present audit, the University asked Peoples about its possible relationships with Gary Speck, ABS Telecom, and CFT Filings. Peoples reported that ABS Telecom was a sales agent for Peoples at the time of the UTHSCT procurement. This was the first time that the University became aware that ABS Telecom was a sales agent for Peoples.” Per the *Hospital Networks Management Order*, “[t]he Commission has consistently stated that the competitive bidding process must be fair and open and must not have been compromised because of improper conduct by the applicant, service provider, or both parties...Consultants who have an ownership interest, sales commission arrangement, or other financial stakes with respect to a bidding service provider are also prohibited from performing any of those tasks on behalf of the applicant.”³¹ Thus, the Beneficiary was required to ensure its competitive bidding process is fair and open and should have controls and processes in place to ensure that the consultants did not have an ownership interest, sales commission arrangement, or other financial stake with respect to the bidding service provider.

The Beneficiary further states that it self-reported information regarding CFT Filings as a potential conflict of interest before it filed its funding request for FY2017, and that the Beneficiary only had one service provider, Peoples, to choose from to provide the necessary services after Windstream, which AAD confirmed through audit fieldwork testing. As stated before, once the Beneficiary was aware of the potential conflict of interest, the Beneficiary was required to ensure a fair and open competitive bidding process was conducted and should have controls and processes in place to check on potential conflict of interest relationships within its employees, which included inquiring and researching potential involvement of a channel partner working as a sales agent for a service provider.

Lastly, the Beneficiary asserts that the potential conflict of interest neither affected the outcome of the procurement nor the cost of the services supported by the Telecom Program. The purpose of this audit was to determine whether the Service Provider complied with the FCC Rules. While the result of the procurement and the cost of services may not have affected the Telecom Program from a monetary standpoint, the integrity of the Telecom Program was affected, and a violation was still uncovered.

Thus, AAD's conclusion for this finding remains unchanged.

³¹ *Hospital Networks Management Order*, 31 FCC Rcd at 5733, para. 4.

Finding #2: 47 C.F.R. § 54.602(c), (d) – Services for which the Beneficiary Received RHC Telecommunications Program Support Not Used for the Provision of Health Care

CONDITION

AAD conducted inquiries and obtained and examined documentation, including the Beneficiary’s FCC Form 465 and FCC Forms 466, service provider bills, network diagrams, and circuit utilization report, to determine whether the services requested by the Beneficiary were used within the funding year for which the support was sought for purposes reasonably related to the provision of health care services or instruction that the Health Care Provider (HCP) was legally authorized to provide under applicable state law for FRNs 1726834 and 1726852, as required by FCC rules.³² AAD determined that the Beneficiary requested RHC Telecommunications Program support and the Service Provider invoiced the RHC program for services not used for the provision of health care, and did not allocate eligible and ineligible activities in order to receive prorated support for the eligible activities only.

In its FCC Form 465, the Beneficiary identified itself as a “Community mental health center” and requested services to “stream media, provide telemedicine and link facilities for educational events such as Grand Rounds, Center for Disease Control satellite feeds and healthcare professional education.” However, the Beneficiary requested RHC program funding for two post-secondary learning institutions (Northeast Texas Community College in Mt. Pleasant, Texas for FRN 1726834, and Paris Junior College in Sulphur Springs, Texas for FRN 1726852)³³ that offered non-health care instruction as well as health care instruction; yet, the Beneficiary included 100 percent of the circuit rate in its FCC Forms 466, which was committed to by RHC program in its Funding Commitment Letter.

Further, in its FCC Form 466 for FRN 1726852, the Beneficiary requested 1,000 megabits per second with a circuit termination address for Paris Junior College for Funding Year 2017. The bills provided by the Service Provider listed Paris Junior College as the recipient of the services. AAD examined the circuit utilization report for Paris Junior College provided by the Service Provider and noted that the circuit utilization report showed that no bandwidth was utilized at this location throughout Funding Year 2017. The Beneficiary informed AAD that this location was connected, but the Beneficiary did not utilize the supported services until March 2019.³⁴

For FRN 1726834, the Beneficiary provided course descriptions, the quantity of health care-related versus non-health care-related courses, the quantity of students enrolled in health care-related courses versus non-health care-related courses, and the quantity of professors teaching health care-related courses versus non-health care-related courses.³⁵ In determining an allocation between eligible and ineligible services, AAD utilized the students enrolled in health care-related courses offered by Northeast Texas Community College for FRN 1726834 and identified the following:

³² See 47 C.F.R. §§ 54.602(d); 54.615(c)(4) (2016)

³³ See 47 C.F.R. § 54.600(a) (2016) (including post-secondary educational institutions offering health care instruction within the definition of “health care provider”).

³⁴ Beneficiary response to Audit Inquiry Record, received Feb. 10, 2020.

³⁵ Beneficiary response to Audit Inquiry Record, received Jan. 21, 2020.

FRN	1726834
Total Students Enrolled	4,209
Students Enrolled in Health Care-Related Courses	617
Percent of Students in Health Care-Related Courses	14.66%
Percent of Students in Non-Health Care-Related Courses	85.34%

Because the Beneficiary received RHC Telecommunications Program support for these locations that were not using the services solely for the purposes reasonably related to the provision of health care or instruction that the health care provider is legally authorized to provide under the law of the state³⁶ for Funding Year 2017, and did not allocate the cost of services between eligible and ineligible activities in order to receive only a pro-rated amount of support for the eligible activities, as required by FCC rules,³⁷ AAD concludes that the RHC program was over-invoiced for the entire commitment amount of \$256,860 for FRN 1726852, and for \$219,207 in support committed for FRN 1726834 (\$256,860 committed multiplied by 85.34%).

CAUSE

The Beneficiary did not adequately plan for the use of the services delivered to Paris Junior College, and did not demonstrate sufficient knowledge of FCC Rules requiring the allocation of eligible and ineligible costs. The Beneficiary informed AAD that this occurred due to an oversight by the Beneficiary's Information Technology staff.³⁸

EFFECT

The monetary effect of this finding is \$476,067. This amount represents amounts committed and disbursed by the RHC program for services not used during the funding year for purposes reasonably related to the provision of health care, as follows:

FRN Number	Monetary Effect	Overlapping Recovery and Commitment Adjustment	Recommended Recovery and Commitment Adjustment³⁹
1726834	\$219,207	\$219,207	\$0
1726852	\$256,860	\$256,860	\$0
Total	\$476,067	\$476,067	\$0

RECOMMENDATION

AAD recommends that USAC management seek recovery of \$476,067 from the Beneficiary to the extent funds are not already recovered as a result of other findings included in this audit report. AAD also recommends USAC management issue a downward commitment adjustment for \$476,067 to the extent funds are not already downward adjusted as a result of other findings included in this audit report.

The Beneficiary must implement policies, procedures and controls, and familiarize itself with FCC Rules to ensure that it only requests RHC program support for services that are used during the funding year for

³⁶ See *Form 465 Instructions*, (OMB 3060-0804), July 2014, at 5, Block 6, Line 33.

³⁷ See 47 C.F.R. § 54.602(c) (2016).

³⁸ Beneficiary response to Audit Inquiry Record, received Feb. 10, 2020.

³⁹ To prevent double-recovery, the recommended recovery amount is less than the monetary effect given that \$476,067 overlaps with the recommended recovery in Finding #1.

purposes reasonably related to the provision of health care services or instruction an eligible HCP is authorized to provide under state law in accordance with FCC Rules, including service use planning and monitoring. The Beneficiary may visit USAC's website at <https://www.usac.org/rural-health-care/telecommunications-program/step-4-submit-funding-requests/> to learn more about submitting funding requests for support for services used for the provision of health care. In addition, AAD recommends the Beneficiary and Service Provider take advantage of the training and outreach available from RHC program on USAC's website at <https://www.usac.org/rural-health-care/learn/>.

SERVICE PROVIDER RESPONSE

Peoples provided the requested services to HCP locations and had no control (or knowledge) of which students, healthcare, or non-healthcare curriculum based, used the provided services. As such, Peoples has no comment or additional information in response to this draft finding.

BENEFICIARY RESPONSE

[Regarding FRN 1726852:] UTHSCT does not have any further response to this finding.

[Regarding FRN 1726834:] Because continuing healthcare education students are also enrolled in a "[p]ost-secondary educational institution offering health care instruction, including a teaching hospital or medical school ..." 47 C.F.R. § 54.600(b), these students should be counted towards "eligible" activities, and there should be lesser reduction in the funds allocated to FRN 1726834 based on eligibility criteria. Therefore, the 30 continuing healthcare education students should be added to the 617 healthcare students for an eligibility ratio of healthcare students/total students or $(30+617) / (617+4209)$, or 13.4%.

AAD RESPONSE TO BENEFICIARY

The Beneficiary claims that 30 additional continuing education students "should be counted towards 'eligible' activities, and there should be [a] lesser reduction in the funds allocated to FRN 1726834 based on eligibility criteria." While the Beneficiary was able to provide supporting documentation to verify the 617 total students enrolled in health care-related courses, as well as the total students enrolled, 4209, the Beneficiary was unable to provide supporting documentation to confirm these additional 30 continuing education students.⁴⁰

Thus, AAD's conclusion for this finding remains unchanged.

⁴⁰ Email to AAD from John Yoder, Vice President of Technology and CIO, Health Affairs, The University of Texas at Tyler, received April 19, 2022.

Finding #3: 47 C.F.R. § 54.607(a) – Service Provider’s Rural Rates Were Not Properly Determined

CONDITION

AAD conducted inquiries, and obtained and examined documentation, including the FCC Forms 466, copies of bills to other customers provided by the Service Provider, and USAC’s Open Data platform, to determine whether the Service Provider properly determined its rural rates for FRNs 1726830 and 1726842. Based on AAD’s review, the rural rates did not represent “the average of the rates actually being charged to commercial customers, other than health care providers, for identical or similar services provided by the telecommunications carrier providing the services [i.e., the Service Provider] in the rural area in which the health care provider is located,” as required by FCC rules.⁴¹ The Service Provider’s rural rates were not properly determined, as it omitted rates it charged to its E-Rate customers for identical or similar services from its calculation.

In its FCC Forms 466, the Beneficiary requested RHC Telecommunications Program support, which was committed by the RHC program in its Funding Commitment Letter, for “Ethernet 1 Gigabyte per second” and identified the rural rate as \$28,500 each for FRNs 1726830 and 1726842. In response to the documentation requested by AAD for the audit, the Service Provider provided copies of bills for 1 Gigabyte point-to-point Ethernet services charged to other commercial customers, other than health care providers (HCPs), in the rural area in which the Beneficiary is located. Per the Service Provider’s contract with the Beneficiary, the Beneficiary’s service is also point-to-point. AAD determined that the rural rate on the FCC Forms 466 did not exceed the average of the rates, which was \$28,762, charged to the other commercial customers per the bills provided by the Service Provider.

However, AAD examined USAC’s Open Data platform for E-Rate services to determine whether the Service Provider utilized a complete listing of rates it charged for services to other commercial customers in its rural rate calculation by identifying whether the Service Provider provided the same or similar services to E-Rate beneficiaries, since there were no schools or libraries among the other commercial customer bills provided by the Service Provider. As identified in the table below, AAD identified one instance in which the Service Provider provided an E-Rate beneficiary service that appears to be identical or similar to the service that the Service Provider provided to the Beneficiary, at a rate that was significantly lower than the rates used by the Service Provider in its rural rate calculation.

E-Rate Beneficiary Name	Identical Service Received	Rate Charged Per Circuit
Northeast Texas Regional Education Telecommunications Network (NTxRETN)	1000 Mbps Ethernet	\$4,123

⁴¹ 47 C.F.R. § 54.607(a) (2016). The Service Provider was required to calculate its rural rates using the method set forth in Section 54.607(a) (Method 1) because it provides identical or similar services to commercial customers, other than health care providers, in the rural area in which the Beneficiary is located. See 47 C.F.R. § 54.607(b) (outlining “If the telecommunications carrier serving the health care provider is not providing any identical or similar services in the rural area, then the rural rate shall be the average of the tariffed and other publicly available rates...” (emphasis added)).

The Service Provider informed AAD that it did not include any of its E-Rate customers into the rural rate calculation because “there had been no direction from the FCC or USAC until the January 2019 Public Notice, which was released in the middle of Funding Year 2018, that service providers could use undiscounted E-rate services to calculate the rural rate for the RHC program.”⁴² However, the FCC’s *GCI Decision* letter that was referenced in the Public Notice⁴³ did not indicate that service providers should begin utilizing undiscounted E-Rate services in the rural rate calculations but, rather, indicated that GCI, and therefore other service providers, should have been using undiscounted E-Rate services in its calculation. In the *GCI Decision* letter, the FCC acknowledged that GCI had included E-Rate contracts among the commercial customer rates as an “after-the-fact justification that it was charging similar rates to E-[R]ate customers... [but the Wireline Competition] Bureau staff provided GCI with a larger set of similar end-to-end services that GCI offered to E-Rate customers that could be used to calculate corrected rural rates.”⁴⁴ However, as stated in the FCC Rules, the rural rate is the “average of the rates actually being charged to commercial customers, other than HCP, for identical or similar services....”⁴⁵ Since E-Rate customers are commercial customers, the rates charged to E-Rate customers should be included in the Service Provider’s rural rate calculation.

Because the Service Provider did not include rates it charged to its E-Rate beneficiary for the same or similar service in its rural rate calculation, AAD concludes that the Service Provider’s rural rate was not an accurate representation of the average of the rates actually being charged to commercial customers, other than HCPs, for identical or similar services. “Similar services” are services that are functionally equivalent from the perspective of the end user with respect to bandwidth (i.e., advertised speeds) and whether the service is symmetrical or asymmetrical.⁴⁶ Evaluating functionality from the perspective of the end user means that factors such as the technology used to provide the service and network configurations are irrelevant to the service comparison. The FCC has also established a voluntary “safe harbor” of functionally equivalent speeds that health care providers and service providers may also use to compare services.⁴⁷

AAD recalculated the Service Provider’s rural rate based on its non-HCP commercial customers that received the identical or similar service, as follows.

⁴² See letter to AAD from Robin E. Tuttle, Herman & Whiteaker, LLC, Counsel for Peoples Communication, Inc., at 2 (Mar. 17, 2020).

⁴³ See Public Notice, *Wireline Competition Bureau Seeks Comment On GCI Application For Review*, WC Docket No. 17-310, DA 19-8 (rel. Jan. 2, 2019) (“Public Notice”) at fn. 2 (Appendix A).

⁴⁴ See Letter to John T. Nakahata and Jennifer P. Bagg, Harris, Wiltshire, and Grannis, LLP, Counsel for GCI Communications Corp., from Elizabeth Drogula, Deputy Chief, Telecommunications Access Policy Division, Wireline Competition Bureau, FCC, at 2 (Oct. 10, 2018) (*GCI Decision*).

⁴⁵ 47 C.F.R. § 54.607(a) (2016).

⁴⁶ See *Rural Health Care Support Mechanism et al.*, WC Docket No. 02-60, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 18 FCC Rcd 24546, 24563-64, paras. 33-34 (2003) (establishing functional equivalence standard and safe-harbor bandwidth tiers).

⁴⁷ See *id.*, 18 FCC Rcd 24564, para. 34 (for purposes of the RHC Program, the following advertised speed categories are deemed to be functionally equivalent: (1) low - 144-256 Kbps; (2) medium - 257-768 Kbps; (3) high - 769-1400 Kbps (1.4 Mbps); (4) T-1 - 1.41-8 Mbps; and (5) T-3 - 8.1-50 Mbps).

Non-HCP Commercial Customers	Identical or Similar Service Received	Rate Charged
Northeast Texas Regional Education Telecommunications Network (NTxRETN)	1000 Mbps Ethernet	\$4,123
Windstream Communications	1 GB Ethernet	\$28,789
Windstream Communications	1 GB Ethernet	\$28,998
Windstream Communications	1 GB Ethernet	\$28,500
Total Rate Charged Amount (A)		\$90,410
Total Non-HCP Commercial Customers (B)		4
Recalculated Rural Rate (A/B)		\$22,603

Using the calculation above, RHC program over-committed and over-disbursed \$141,528, as follows:

FRN Number	Rural Rate Per FCC Form 466	Recalculated Rural Rate	Difference	No. of Months Services Provided	Monetary Effect
1726830	\$28,500	\$22,603	\$5,897	12	\$70,764
1726842	\$28,500	\$22,603	\$5,897	12	\$70,764
Total					\$141,528

CAUSE

The Service Provider did not demonstrate a sufficient knowledge of the FCC Rules requiring the determination of its rural rates. The Service Provider asserts that it did not have to include E-Rate customers in its rural rate calculation because the FCC Rules did not specify that E-Rate customers should be included in the rural rate calculation.

EFFECT

The monetary effect of this finding is \$141,528. This amount represents the amount disbursed for rural rates requested in the FCC Forms 466 in excess of the rural rates substantiated during the audit, as summarized below:

FRN Number	Monetary Effect	Overlapping Recovery and Commitment Adjustment	Recommended Recovery and Commitment Adjustment⁴⁸
1726830	\$70,764	\$70,764	\$0
1726842	\$70,764	\$70,764	\$0
Total	\$141,528	\$141,528	\$0

RECOMMENDATION

AAD recommends that USAC management seek recovery of \$141,528 from the Service Provider to the extent funds are not already recovered as a result of other findings included in this audit report. AAD also recommends USAC management issue a downward commitment adjustment for \$141,528 to the extent funds are not already downward adjusted as a result of other findings included in this audit report.

⁴⁸ To prevent double-recovery, the recommended recovery amount is less than the monetary effect given that \$141,528 overlaps with the recommended recovery in Finding #1.

The Service Provider must familiarize itself with the FCC Rules requiring the determination of rural rates to ensure its rural rate is the average of the rates actually being charged to commercial customers, other than health care providers, including E-Rate customers, for identical or similar services provided by the Service Provider in the rural area in which the HCP is located to demonstrate compliance with the FCC Rules. The Service Provider can learn more about the rural rates on USAC’s website at <https://www.usac.org/wp-content/uploads/rural-health-care/documents/handouts/TelecomRuralUrbanRateInfo-1.pdf> and trainings offered by USAC at <https://www.usac.org/rural-health-care/learn/>.

SERVICE PROVIDER RESPONSE

For purposes of the Telecom Program, FCC rules require that rural rates represent “the average of the rates actually being charged to *commercial customers*, other than the health care providers, for identical or similar services provided by the telecommunications carrier providing the services in the rural area in which the health care provider is located.”⁴⁹ Accordingly, in order to calculate the rural rate for FY2017, Peoples utilized bills for 1 Gigabit point-to-point Ethernet services charged to other commercial customers, other than health care providers in the rural area in which HCP is located, and provided these documents to AAD in conjunction with its audit.⁵⁰

While AAD acknowledged these documents, it asserts that because Peoples did not include any of its E-Rate customers in the rural rate calculation, the rural rates were improperly determined.⁵¹ However, the rural rates that Peoples submitted for FY2017 were properly determined according to the FCC’s Rules and for the guidance available *at that time*. Indeed, FCC Rule 54.067(a), the statutory language that Peoples relied on, does not require service providers to include the undiscounted rates charged to schools under the E-rate program in the rural rate calculation, instead specifying only “commercial customers.” Notwithstanding, AAD misinterprets a decision by the Wireline Competition Bureau (the “GCI Decision”)⁵² from October 10, 2018 – nearly two years after Peoples calculated the rural rate for FY2017– to support its flawed finding that Peoples erred in not including E-rate customers in its calculation.

In the GCI Decision, the FCC approved cost-based rates for GCI’s funding requests for FY2017, explaining that GCI had not met the Method 1 requirements because it did not “document or

⁴⁹ 47 C.F.R. § 54.607(a) (emphasis added). This method of calculation is referred to as “Method 1.” As an alternative, if a telecommunications carrier serving the health care provider is not providing similar services in the rural area, then “the rural rate shall be the average of the tariffed and other publicly available rates If there are no tariffed or publicly available rates for such services in that rural area, or if the carrier reasonably determines that this method for calculating the rural rate is unfair, then the carrier shall submit for the state commission’s approval, for intrastate rates, or the Commission’s approval, for interstate rates, a cost-based rate for the provision or the service in the most economically efficient, reasonably available manner.” 47 C.F.R. § 54.607(b).

⁵⁰ DAF at 8.

⁵¹ *Id.*

⁵² Letter from Elizabeth Drogula, Deputy Div. Chief, Wireline Comp. Bur., to J. Nakahata & J. Bagg, Counsel for GCI (Oct. 10, 2018).

substantiate the legality of its requested rural rates based on rates for the same or similar services that it or other service providers offer to non-health care providers in the same rural areas.”⁵³ The FCC noted that in its attempt to substantiate its rates using Method 1, GCI had “included commercial contracts *as well as* E-Rate contracts setting forth rates for services that it provides schools and libraries.”⁵⁴ From this statement alone, it is clear that the FCC did not consider E-Rate contracts to be *commercial* contracts, but rather a separate category of service contract. Notably, the FCC further stated that “GCI had not apparently used the E-Rate contract rates to calculate the rural rates proffered in the FY 2017 FRNs submitted to USAC, but instead used them as an after-the-fact justification that it was charging similar rates to E-Rate customers.”⁵⁵ From this, however, AAD somehow incorrectly extrapolated that the GCI decision held that “GCI, and therefore other service providers, *should have been* using undiscounted E-Rate services in its calculation.”⁵⁶ It simply did not.

Nowhere in the GCI Decision did the FCC state that GCI should have been using E-Rate contracts as part of their rural rate calculation. Rather, the FCC argued that GCI had not used an appropriate set of E-Rate contracts in that after-the-fact justification, and “[t]o aid GCI’s compliance efforts, on May 7, 2018, Bureau staff provided GCI with a larger set of similar end-to-end services that GCI offered to E-Rate customers that *could be* used to calculated corrected rural rates.”⁵⁷

There is nothing in Rule 54.607(a) or any guidance available prior to the issuance of the GCI Decision to indicate that E-Rate contracts should have been treated as commercial customer contracts. Indeed, the GCI Decision is the first instance of such informal guidance that the Commission issued in response to a specific service provider’s limited use of E-Rate contracts. While this guidance was not purposely issued for broader use, Peoples has included E-Rate contracts in their calculation of the rural rate for subsequent funding years when it no longer had rural commercial customers subscribing to 1 Gigabit services since the FCC’s GCI Decision seemed to indicate that using E-Rate contracts was permissible when a service provider lacked other documentation.

AAD RESPONSE

In its response, the Service Provider stated, “it is clear that the FCC did not consider E-Rate contracts to be *commercial* contracts, but rather a separate category of service contract.” Per 47 U.S.C. 254(h)(1)(A), “A telecommunications carrier...shall be entitled to have an amount equal to the difference, if any, between the rates for services provided to health care providers for rural areas in a State and the rates for similar services provided to other customers in comparable rural areas in that State treated as a service obligation as a part of its obligation to participate in the mechanisms to preserve and advance universal service.”⁵⁸ Thus, commercial customers and non-residential customers are included within the term “other customers” in § 254(h)(1)(A) and therefore, these include E-Rate customers.

⁵³ GCI Decision at 2.

⁵⁴ *Id.* (emphasis added) (note that the Commission used the term “as well as,” rather than “including”).

⁵⁵ *Id.*

⁵⁶ DAF at 9 (emphasis added).

⁵⁷ GCI Decision at 2 (emphasis added).

⁵⁸ See 47 U.S.C. § 254(h)(1)(A).

The Service Provider further asserts that “AAD somehow incorrectly extrapolated that the GCI decision held that ‘GCI, and therefore other service providers, *should have been* using undiscounted E-Rate services in its calculation.’” As stated before, in the *GCI Decision* letter, the Wireline Competition Bureau staff provided GCI with a larger set of similar end-to-end services that GCI offered to E-Rate customers that could be used to calculate corrected rural rates.⁵⁹ As stated in the FCC Rules, the rural rate is the “average of the rates actually being charged to commercial customers, other than HCP, for identical or similar services....”⁶⁰ Since E-Rate customers are commercial customers, the rates charged to E-Rate customers could be included in the Service Provider’s rural rate calculation. Thus, AAD took a conservative approach and included the Service Provider’s other non-HCP commercial customers, including its E-Rate customers receiving same or similar services, within AAD’s calculation of the rural rate in the Condition of this finding.

Thus, AAD’s conclusion for this finding remains unchanged.

⁵⁹ See Letter to John T. Nakahata and Jennifer P. Bagg, Harris, Wiltshire, and Grannis, LLP, Counsel for GCI Communications Corp., from Elizabeth Drogula, Deputy Chief, Telecommunications Access Policy Division, Wireline Competition Bureau, FCC, at 2 (Oct. 10, 2018) (*GCI Decision*).

⁶⁰ 47 C.F.R. § 54.607(a) (2016).

CRITERIA

Finding	Criteria	Description
#1	47 C.F.R. § 54.603(a) (2016).	Competitive bidding requirement. To select the telecommunications carriers that will provide services eligible for universal service support to it under the Telecommunications Program, each eligible health care provider shall participate in a competitive bidding process pursuant to the requirements established in this section and any additional and applicable state, Tribal, local, or other procurement requirements.
#1	47 C.F.R. § 54.615(a) (2016).	In selecting a telecommunications carrier, a health care provider shall consider all bids submitted and select the most cost-effective alternative.
#1	<i>Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company</i> , CC Docket No. 02-6, et al., Public Notice, 31 FCC Rcd. 9615, 9622, n. 19, 20 (2016).	<i>See, e.g., Federal-State Joint Board on Universal Service</i> , CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9076, para. 480 (1997) (subsequent history omitted) (requiring competitive bidding processes to be fair and open such that no bidders receive an unfair advantage);... We are deeply concerned about conduct which suppresses fair and open competitive bidding.
#1	<i>Federal-State Joint Board on Universal Service</i> , CC Docket No. 96-45, Report and Order, 12 FCC Rcd. 8776, 9133-34, paras. 686,688 (1997).	Consistent with the Joint Board's recommendation for eligible schools and libraries, we conclude that eligible health care providers shall be required to seek competitive bids for all services eligible for support pursuant to section 254(h) by submitting their bona fide requests for services to the Administrator.... We adopt a competitive bidding requirement because we find that this requirement should help minimize the support required by ensuring that rural health care providers are aware of cost-effective alternatives. Like the language of section 254(h)(1) targeting support to public and nonprofit health care providers, this approach "ensures that the universal service fund is used wisely and efficiently."
#1	<i>Rural Health Care Support Mechanism et al.</i> , WC Docket No. 02-60, Order, 22 FCC Rcd. 20360, 20414, para. 102 (2007) (<i>RHC Pilot Program Selection Order</i>).	The competitive bidding requirements ensure that selected participants are aware of the most cost-effective method of providing service and ensures that universal service funds are used wisely and efficiently, thereby providing safeguards to protect against waste, fraud, and abuse. Additionally, the competitive bidding rules are consistent with section 254(h)(2)(A) of the 1996 Act because competitive bidding furthers the requirement of "competitively neutrality" by ensuring that universal service support does not disadvantage one provider over another, or unfairly favor or disfavor one technology over the other.
#1	<i>Requests for Review of Decisions of the Universal Service</i>	The Commission has consistently stated that the competitive bidding process must be fair and open and must not have been compromised because of improper conduct by the applicant, service provider, or

Finding	Criteria	Description
	<p><i>Administrator by Hospital Networks Management, Inc. Manchaca, Texas et al., WC Docket No. 02-60, Order, 31 FCC Rcd. 5731, 5733, para. 4 (2016) (Hospital Networks Management Order).</i></p>	<p>both parties. In essence, all potential bidders and service providers must have access to the same information and must be treated in the same manner throughout the procurement process. Under the Commission's rules, a service provider participating in the competitive bidding process cannot be involved in the preparation of the applicant's technology plan, FCC Form 465, request for proposal (RFP), or the vendor selection process. Consultants who have an ownership interest, sales commission arrangement, or other financial stake with respect to a bidding service provider are also prohibited from performing any of those tasks on behalf of the applicant.</p>
#2	<p>47 C.F.R. § 54.602(d) (2016).</p>	<p>Services for which eligible health care providers receive support from the Telecommunications Program or the Healthcare Connect Fund must be reasonably related to the provision of health care services or instruction that the health care provider is legally authorized to provide under the law in the state in which such health care services or instruction are provided.</p>
#2	<p>47 C.F.R. § 54.600(a) (2016).</p>	<p>A "health care provider" is any: is any: (1) Post-secondary educational institution offering health care instruction, including a teaching hospital or medical school;...</p>
#2	<p><i>Form 465 Instructions, (OMB 3060-0804), July 2014, at 5, Block 6, Line 33.</i></p>	<p>Line 33 requires the authorized representative to certify that the services for which the health care provider receives a discount will not be used for unauthorized purposes. Specifically, the representative must certify that such services will be used solely for purposes reasonably related to the provision of health care or instruction that the health care provider is legally authorized to provide under the law of the state in which the services are provided. The representative must also certify that the discounted services that the HCP receives will not be sold, resold, or transferred in consideration for money or any other thing of value.</p>
#2	<p>47 C.F.R. § 54.602(c) (2016).</p>	<p>An eligible health care provider that engages in both eligible and ineligible activities or that collocates with an ineligible entity shall allocate eligible and ineligible activities in order to receive prorated support for the eligible activities only. Health care providers shall choose a method of cost allocation that is based on objective criteria and reasonably reflects the eligible usage of the facilities.</p>
#2	<p>47 C.F.R. § 54.615(c)(4) (2016).</p>	<p>The requested service or services will be used solely for purposes reasonably related to the provision of health care services or instruction that the health care provider is legally authorized to provide under the law in the state in which such health care services or instruction are provided;....</p>
#2	<p>47 C.F.R. § 54.675(b), (d)-(e) (2016).</p>	<p>(b) Funding year. A funding year for purposes of the health care providers cap shall be the period July 1 through June 30. (d) Annual filing requirement. Health care providers shall file new funding requests for each funding year, except for health care providers who have received a multi-year funding commitment under §54.644. (e) Long-term contracts. If health care providers enter into long-term contracts for eligible services, the Administrator shall only commit</p>

Finding	Criteria	Description
		funds to cover the portion of such a long-term contract scheduled to be delivered during the funding year for which universal service support is sought, except for multi-year funding commitments as described in §54.644.
#2	<i>Federal-State Joint Board on Universal Service</i> , CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9144, para. 714 (1997);	Advance Payment for Multi-Year Contracts. We conclude that providing funding in advance for multiple years of recurring charges could enable an individual health care provider to guarantee that its full needs over a multi-year period were met, even if other health care providers were unable to obtain support due to insufficient funds. Moreover, we are also concerned that funds would be wasted if a prepaid service provider's business failed before it had provided all of the prepaid services. At the same time, we recognize that health care providers often will be able to negotiate better rates for pre-paid/multi-year contracts, reducing the costs that both they and the universal service support mechanisms incur. Therefore, we conclude that while eligible health care providers should be permitted to enter into pre-paid/multi-year contracts for supported services, the Administrator will only commit funds to cover the portion of a long-term contract that is scheduled to be delivered during the funding year. Eligible health care providers may either structure their contracts so that payment is required on at least a yearly basis or, if they wish to enter into contracts requiring advance payment for multiple years of service, they may use their own funds to pay full price for the portion of the contract exceeding one year (pro rata), and request that the service provider rebate the payments from the support mechanism that it receives in subsequent years to the eligible health care provider.
#2	<i>Rural Health Care Support Mechanism</i> , WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678, 16818, para. 352 and 16795, para. 273 (2012)	<p>273. Background. Under current rules, requests for funding may be submitted at any point during the funding year. Although USAC cannot commit funds to a HCP until it receives a funding request, the applicant may request support for services provided at any time during the funding year after it signs a valid contract (or otherwise enters into a service agreement) with its selected service provider. In the current Primary Program, applicants frequently initiate services at their own risk while their funding requests are pending. For example, if a HCP enters into a valid contract on July 1 and begins receiving services on July 2, it may submit a funding request on October 1 that requests funding beginning on July 2.</p> <p>352. Discussion. In this Order, we adopt for the Healthcare Connect Fund the same general funding schedule that is currently used in the Telecommunications and Internet Access Programs. Thus, applicants seeking support under the Healthcare Connect Fund may start the competitive bidding process anytime after January 1 (six months before the July 1 start of the funding year) and can submit a request for funding at any time during that funding year (i.e. between July 1 and June 30) for services received during that funding year.⁸⁰⁴ This process is described in more detail in Section VI above (Funding Process).</p>

Finding	Criteria	Description
#3	47 C.F.R. § 54.607(a) (2016).	The rural rate shall be the average of the rates actually being charged to commercial customers, other than health care providers, for identical or similar services provided by the telecommunications carrier providing the service in the rural area in which the health care provider is located. The rates included in this average shall be for services provided over the same distance as the eligible service. The rates averaged to calculate the rural rate must not include any rates reduced by universal service support mechanisms. The “rural rate” shall be used as described in this subpart to determine the credit or reimbursement due to a telecommunications carrier that provides eligible telecommunications services to eligible health care providers.
#3	47 C.F.R. § 54.607(b) (2016).	If the telecommunications carrier serving the health care provider is not providing any identical or similar services in the rural area, then the rural rate shall be the average of the tariffed and other publicly available rates, not including any rates reduced by universal service programs, charged for the same or similar services in that rural area over the same distance as the eligible service by other carriers. If there are no tariffed or publicly available rates for such services in that rural area, or if the carrier reasonably determines that this method for calculating the rural rate is unfair, then the carrier shall submit for the state commission’s approval, for intrastate rates, or the Commission’s approval, for interstate rates, a cost-based rate for the provision of the service in the most economically efficient, reasonably available manner
#3	<i>Rural Health Care Support Mechanism et al.</i> , WC Docket No. 02-60, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 18 FCC Rcd. 24563, para. 33 (2003)	We alter our current policy to allow rural health care providers to compare the urban and rural rates for <i>functionally</i> similar services as viewed from the perspective of the end user. We agree with commenters that our current policy of comparing technically similar services offered in urban areas are not always available in rural areas. In particular, new technologies are often first deployed in urban areas, and such services may be less expensive than services in rural areas based on older technologies. This modification to our rules will better effectuate the mandate of Congress to ensure comparable services for rural areas, as provided in section 254 of the Act, by allowing rural health care providers to benefit from obtaining telecommunications services at rates equivalent to those in urban areas. Eligible health care providers must purchase telecommunications services and compare their service to a functionally equivalent telecommunications service in order to receive this discount.
#3	<i>Rural Health Care Support Mechanism et al.</i> , WC Docket No. 02-60, Report and Order, Order on Reconsideration, and Further Notice of Proposed	Accordingly, we create “safe harbor” categories of functionally equivalent services based on the advertised speed and nature of the service. For purposes of the rural health care support mechanism only, we establish the following advertised speed categories as functionally equivalent: low – 144-256 kbps; medium – 257-768 kbps; high – 769-1400 kbps (1.4 mbps); T-1 – 1.41-8 mbps; T-3 – 8.1-50 mbps. We will also consider whether a service is symmetrical or asymmetrical when determining functional equivalencies.

Finding	Criteria	Description
	Rulemaking, 18 FCC Rcd. 24564, para. 34 (2003).	Telecommunications services will be considered functionally similar when operated at advertised speeds within the same category (low, medium, high, T-1, or T-3) and when the nature of the service is the same (symmetrical or asymmetrical). For example, a symmetrical fractional T-1 service operating at an advertised speed of 144 kbps would be considered functionally similar to a symmetrical DSL transmission service with an advertised speed of 256 kbps. By developing “safe harbor” categories of functionally equivalent speeds, we hope to minimize the disparity in rates of services available in rural and urban areas in an administratively easy fashion. We will update these categories, as needed, to reflect technological developments.
#3	47 U.S.C. § 254(h)(1)(A) (2016).	Health care providers for rural areas A <u>telecommunications carrier</u> shall, upon receiving a bona fide request, provide <u>telecommunications services</u> which are necessary for the provision of health care services in a <u>State</u> , including instruction relating to such services, to any public or nonprofit <u>health care provider</u> that serves <u>persons</u> who reside in rural areas in that <u>State</u> at rates that are reasonably comparable to rates charged for similar services in urban areas in that <u>State</u> . A <u>telecommunications carrier</u> providing service under this paragraph shall be entitled to have an amount equal to the difference, if any, between the rates for services provided to <u>health care providers</u> for rural areas in a <u>State</u> and the rates for similar services provided to other customers in comparable rural areas in that <u>State</u> treated as a service obligation as a part of its obligation to participate in the mechanisms to preserve and advance universal service.

This concludes the report.

Attachment E

RH2021SP014

Available For Public Use

Peninsula Fiber Network, LLC

Performance Audit on Compliance with the Federal Universal Service
Fund Rural Health Care Support Mechanism Rules

USAC Audit No. RH2021SP014



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EXECUTIVE SUMMARY

October 5, 2022

Jim Bednarek, Controller
Peninsula Fiber Network, LLC
1901 West Ridge Street, Suite 2
Marquette, MI 49955

Dear Mr. Jim Bednarek:

The Universal Service Administrative Company (USAC or Administrator) Audit and Assurance Division (AAD) audited the compliance of Peninsula Fiber Network, LLC (Service Provider), Service Provider Identification Number (SPIN) 143033342, using the regulations and orders governing the federal Universal Service Rural Health Care Support Mechanism, set forth in 47 C.F.R. Part 54, as well as other program requirements (collectively, the FCC Rules). Compliance with the FCC Rules is the responsibility of the Service Provider's management. AAD's responsibility is to make a determination regarding the Service Provider's compliance with the FCC Rules based on the performance audit.

AAD conducted the audit in accordance with Generally Accepted Government Auditing Standards (GAGAS) issued by the Comptroller General of the United States (2018 Revision, as amended). Those standards require that AAD plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for its findings and conclusions based on the audit objectives. The audit included examining, on a test basis, evidence supporting the competitive bidding process undertaken to select the Service Provider, the type and amount of services provided, as well as performing other procedures AAD considered necessary to make a determination regarding the Service Provider's compliance with the FCC Rules. The evidence obtained provides a reasonable basis for AAD's findings and conclusions based on the audit objectives.

Based on the test work performed, our audit did not disclose any areas of non-compliance with the FCC Rules that were examined and in effect during the audit period.

Certain information may have been omitted from this report concerning communications with USAC management or other officials and/or details about internal operating processes or investigations. This report is intended solely for the use of USAC, the Service Provider, and the Federal Communications Commission (FCC) and should not be used by those who have not agreed to the procedures and taken responsibility for the sufficiency of those procedures for their purposes. This report is not confidential and may be released to a requesting third party.

We appreciate the cooperation and assistance extended by you and your staff during the audit.

Sincerely,



Jeanette Santana-Gonzalez
USAC Senior Director, Audit and Assurance Division

cc: Radha Sekar, USAC Chief Executive Officer
Mark Sweeney, USAC Vice President, Rural Health Care Division
Teleshia Delmar, USAC Vice President, Audit and Assurance Division

PURPOSE, SCOPE, BACKGROUND AND PROCEDURES

PURPOSE

The purpose of the audit was to determine whether the Service Provider complied with the FCC Rules.

SCOPE

The following chart summarizes the Rural Health Care Telecommunications program support amounts committed and disbursed to the Service Provider for Funding Year 2018 (audit period):

Service Type	Amount Committed	Amount Disbursed
Bonded T1(s)	\$6,851	\$6,851
Central Office Terminal (COT) Line(s)	\$3,206	\$3,206
Ethernet	\$166,582	\$166,582
ISDN	\$14,504	\$14,504
T1 or DS1	\$12,476	\$12,476
Total	\$203,619	\$203,619

Note: The amounts committed and disbursed reflect funding year activity as of the date of the commencement of the audit.

The committed total represents 28 FCC Form 466 applications with 28 Funding Request Numbers (FRNs). AAD selected four FRNs,¹ which represent \$56,810 of the funds committed and \$56,810 of the funds disbursed during the audit period, to perform the procedures enumerated below with respect to the Funding Year 2018 applications submitted by the Beneficiaries.

BACKGROUND

The Service Provider provides telecommunications services to its health care provider customers and its headquarters are located in Marquette, Michigan.

PROCEDURES

AAD performed the following procedures:

A. Eligibility Process

AAD obtained an understanding of the Service Provider's processes and internal controls governing its participation in the Rural Health Care (RHC) program. Specifically, AAD conducted inquiries of the Service Provider and the selected Beneficiaries and examined documentation to obtain an understanding of the controls that exist to determine whether services were eligible, delivered, and installed in accordance with the FCC Rules. AAD conducted inquiries and examined documentation to determine whether the Service Provider assisted with the completion of each selected Beneficiary's FCC Form 465.

¹ The FRNs included in the scope of this audit were: 1832995, 1832895, 1833012 and 1839304.

B. Competitive Bid Process

AAD conducted inquiries of the Beneficiaries to determine that no bids were received for the requested services. AAD examined evidence that the Beneficiaries waited the required 28 days from the date the FCC Form 465 was posted on USAC's website before signing contracts with the selected Service Provider or properly retaining services with the incumbent Service Provider under an existing contract. If a contract was executed for the funding year under audit, AAD reviewed the Service Provider contract to determine whether it was properly executed. AAD evaluated the services requested and purchased to determine whether the Beneficiary selected the most cost-effective option.

C. Rural and Urban Rates

AAD conducted inquiries and examined the Service Provider's contracts, service agreements, service quotes, tariffs, and/or other documentation to determine whether the Service Provider's rural rate was established in accordance with the FCC Rules. AAD also conducted inquiries and examined documentation to substantiate the urban rate listed in the FCC Forms 466.

D. Invoicing Process

AAD examined invoices for which payment was disbursed by USAC to determine whether the services identified on the service provider invoices submitted to USAC and the corresponding service provider bills submitted to the Beneficiaries were consistent with the terms and specifications of the Service Provider's agreements. AAD examined documentation to determine whether each Beneficiary paid its non-discounted share in a timely manner.

E. Billing Process

AAD examined the Service Provider bills for the RHC program supported services to determine whether the services identified were consistent with the terms and specifications of the Service Provider's contracts, or other service agreements, and eligible in accordance with the FCC Rules. In addition, AAD examined documentation to determine whether the Service Provider billed the selected Beneficiaries for the rural rate and only collected payment for the selected Beneficiaries' equivalent of the urban rate for the eligible services purchased with universal service discounts.

F. Health Care Provider Location

AAD determined through inquiry and inspection of documentation whether the services were provided and were functional. AAD also determined through inquiry and inspection of documentation whether the supported services were used for purposes reasonably related to the provision of health care services and in accordance with the FCC Rules.

This concludes the report.

Summary of Rural Health Care Support Mechanism Beneficiary Audit Report Released: December 2022

Entity Name	Number of Findings	Significant Findings	Amount of Support	Monetary Effect	USAC Management Recovery Action	Commitment Adjustment	Entity Disagreement
Frontier North, Inc. Attachment F	0	<ul style="list-style-type: none"> • Not Applicable 	\$126,637	\$0	\$0	\$0	N/A
Total	0		\$126,637	\$0	\$0	\$0	

Available For Public Use

Attachment F

RH2021SP015

Available For Public Use

Frontier North, Inc.

Limited Scope Performance Audit on Compliance with the Federal
Universal Service Fund Rural Health Care Support Mechanism Rules

USAC Audit No. RH2021SP015



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EXECUTIVE SUMMARY

October 31, 2022

Jessica Matushek, Director
Frontier North, Inc.
100 CTE Drive
Dallas, PA 18612

Dear Jessica Matushek:

The Universal Service Administrative Company (USAC or Administrator) Audit and Assurance Division (AAD) audited the compliance of Frontier North, Inc. (Service Provider), Service Provider Identification Number (SPIN) 143004791, using the regulations and orders governing the federal Universal Service Rural Health Care Support Mechanism, set forth in 47 C.F.R. Part 54, as well as other program requirements (collectively, the FCC Rules). Compliance with the FCC Rules is the responsibility of the Service Provider's management. AAD's responsibility is to make a determination regarding the Service Provider's compliance with the FCC Rules based on the limited scope performance audit.

AAD conducted the audit in accordance with Generally Accepted Government Auditing Standards (GAGAS) issued by the Comptroller General of the United States (2018 Revision, as amended). Those standards require that AAD plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for its findings and conclusions based on the audit objectives. The audit included examining, on a test basis, evidence supporting the competitive bidding process undertaken to select the Service Provider, the type and amount of services provided, as well as performing other procedures AAD considered necessary to make a determination regarding the Service Provider's compliance with the FCC Rules. The evidence obtained provides a reasonable basis for AAD's findings and conclusions based on the audit objectives.

Based on the test work performed, our audit did not disclose any areas of non-compliance with the FCC Rules that were examined and in effect during the audit period.

Certain information may have been omitted from this report concerning communications with USAC management or other officials and/or details about internal operating processes or investigations. This report is intended solely for the use of USAC, the Service Provider, and the Federal Communications Commission (FCC) and should not be used by those who have not agreed to the procedures and taken responsibility for the sufficiency of those procedures for their purposes. This report is not confidential and may be released to a requesting third party.

We appreciate the cooperation and assistance extended by you and your staff during the audit.

Sincerely,



Jeanette Santana-Gonzalez
USAC Senior Director, Audit and Assurance Division

cc: Radha Sekar, USAC Chief Executive Officer
Mark Sweeney, USAC Vice President Rural Health Care Division
Teleshia Delmar, USAC Vice President, Audit and Assurance Division

PURPOSE, SCOPE, BACKGROUND AND PROCEDURES

PURPOSE

The purpose of the audit was to determine whether the Service Provider complied with the FCC Rules.

SCOPE

The following chart summarizes the Rural Health Care Telecommunications program support amounts committed and disbursed to the Service Provider for Funding Year 2018 (audit period):

Service Type	Amount Committed	Amount Disbursed
Telecommunications	\$136,014	\$126,637
Total	\$136,014	\$126,637

Note: The amounts committed and disbursed reflect funding year activity as of the date of the commencement of the audit.

The committed total represents 55 FCC Form 466 applications with 55 Funding Request Numbers (FRNs). AAD selected seven FRNs,¹ which represent \$42,404 of the funds committed and \$42,404 of the funds disbursed during the audit period, to perform the procedures enumerated below with respect to the Funding Year 2018 applications submitted by the Beneficiaries.

BACKGROUND

The Service Provider provides telecommunications services to its health care provider customers and its headquarters are located in Norwalk, Connecticut.

PROCEDURES

AAD performed the following procedures:

A. Eligibility Process

AAD obtained an understanding of the Service Provider's processes and internal controls governing its participation in the Rural Health Care (RHC) program. Specifically, AAD conducted inquiries of the Service Provider and the selected Beneficiaries and examined documentation to obtain an understanding of the controls that exist to determine whether services were eligible, delivered, and installed in accordance with the FCC Rules. AAD conducted inquiries and examined documentation to determine whether the Service Provider assisted with the completion of each selected Beneficiary's FCC Form 465.

B. Competitive Bid Process

AAD conducted inquiries of the Beneficiaries to determine that no bids were received for the requested services. AAD examined evidence that the Beneficiaries waited the required 28 days from the date the FCC Form 465 was posted on USAC's website before executing month-to-month contracts with the selected Service Provider or properly retaining services with the incumbent Service Provider under an existing

¹ The FRNs included in the scope of this audit were: 1843729, 1842121, 1842259, 1838450, 1837243, 1838453, and 1842116.

contract. If a contract was executed for the funding year under audit, AAD reviewed the Service Provider contract to determine whether it was properly executed. AAD evaluated the services requested and purchased to determine whether the Beneficiary selected the most cost-effective option.

C. Rural and Urban Rates

AAD conducted inquiries and examined the Service Provider's contract and tariffs to determine whether the Service Provider's rural rate was established in accordance with the FCC Rules. AAD also conducted inquiries and examined documentation to substantiate the urban rate listed in FCC Forms 466.

D. Invoicing Process

AAD examined invoices for which payment was disbursed by USAC to determine whether the services identified on the service provider invoices submitted to USAC and the corresponding service provider bills submitted to the Beneficiaries were consistent with the terms and specifications of the Service Provider's agreements. AAD examined documentation to determine whether each Beneficiary paid its non-discounted share in a timely manner.

E. Billing Process

AAD examined the Service Provider bills for the RHC program supported services to determine whether the services identified were consistent with the terms and specifications of the Service Provider's contracts, and eligible in accordance with the FCC Rules. In addition, AAD examined documentation to determine whether the Service Provider billed the selected Beneficiaries for the rural rate and only collected payment for the selected Beneficiaries' equivalent of the urban rate for the eligible services purchased with universal service discounts.

F. Health Care Provider Location

AAD determined through inquiry and inspection of documentation whether the services were provided and were functional. AAD also determined through inquiry and inspection of documentation whether the supported services were used for purposes reasonably related to the provision of health care services and in accordance with the FCC Rules.

**This concludes the report. **