Rural Health Care Committee Meeting

Audit Reports Briefing Book

Monday, July 24, 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 Report Released: April 2023

Entity Name	Number of Findings	Significant Findings	Amount of Support	Monetary Effect	USAC Management Recovery Action	Commitment Adjustment	Entity Disagreement
SCL Health Consortium **Attachment A**	1	• The Beneficiary did not establish fair share for services requested and did not allocate the costs to ineligible sites.	$1,643,717	$230,256	$230,256	$0	Y
Total	**1**		**$1,643,717**	**$230,256**	**$230,256**	**$0**	

Attachment A

RH2021LR001

SCL Health Consortium

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

USAC Audit No. RH2021LR001

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EXECUTIVE SUMMARY

September 29, 2022

Charles Novinskie, System Director Technology Services
SCL Health Consortium
2635 N 7th St,
Grand Junction, CO 81501

Dear Charles:

The Universal Service Administrative Company (USAC or Administrator) Audit and Assurance Division (AAD) audited the compliance of SCL Health Consortium (Beneficiary), Health Care Provider (HCP) Number 55502, using 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 Federal Communications Commission (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 our 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 service providers, the type and amount of services received, as well as performing other procedures AAD considered necessary to make a determination regarding the Beneficiary'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 examination disclosed a detailed audit finding (Finding) discussed in the Audit Result 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 Beneficiary, and the 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

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 RESULT AND COMMITMENT ADJUSTMENT/RECOVERY ACTION

Audit Result	Monetary Effect	Recommended Recovery	Recommended Commitment Adjustment
Finding: 47 C.F.R. §54.639(d) (2017) - Beneficiary Did Not Establish Fair Share for Services Requested and Did Not Allocate the Costs to Ineligible Sites. The Beneficiary did not list all of the ineligible sites on the FCC Form 462 Attachments or the NCWs, apportion the costs to the ineligible sites and ensure the ineligible sites paid their fair share of network costs	$230,256	$230,256	$230,256

USAC MANAGEMENT RESPONSE

USAC management concurs with the audit results and will issue a commitment adjustment and/or seek recovery of the Rural Healthcare program support amount consistent with the FCC Rules. See the chart below for USAC management's recovery action by FRN.

	Finding #1	Total
FRN 18464301	$163,190	$163,190
FRN 18460481	$67,066	$67,066
USAC Commitment Adjustment and/or Recovery Action	$230,256	$230,256
Rationale for Difference (if any) from Auditor Recommended Recovery		

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 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
Ethernet	$935,857.00	$733,416.56
Network Switch (HCP owned)	$592,975.76	$399,274.92
Firewall (HCP owned)	$509,296.32	$40,345.94
Installation of Equipment	$421,373.95	$280,915.97
MPLS	$208,525.20	$188,524.42
Network Shared Infrastructure	$17,496.05	$ -
Maintenance Contract (3 year)	$12,126.40	$ -
T-1 / DS-1	$2,477.44	$1,238.72
Total	**$ 2,700,128.12**	**$1,643,716.53**

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

The committed total represents five FCC Form 462 applications with five Funding Request Numbers (FRNs). AAD selected two FRNs of the five FRNs,[1] which represent $1,739,835 of the funds committed and $1,322,455 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 Beneficiary.

BACKGROUND

The Beneficiary is a consortium of healthcare service providers located in Broomfield, Colorado.

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).

[1] The FRNs included in the scope of this audit were: 18460481 and 18464301.

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 whether ineligible entities, if any, paid their fair share.

B. Competitive Bid Process

AAD obtained and examined documentation to determine whether the Beneficiary properly selected a service provider that provided eligible services and price of the eligible services and goods was the most cost effective. AAD also obtained and examined evidence that the Beneficiary waited the required 28 days from the date the FCC Form 461 was posted on USAC's website before signing contracts with the selected service providers. AAD examined the service provider contracts to determine whether they were properly executed.

C. Eligibility

AAD conducted inquiries and inspection of documentation to determine whether the Beneficiary's eligible HCPs were public or non-profit eligible health care providers. AAD examined documentation to determine whether more than 50 percent of the eligible HCP sites were located in a rural area and determined whether the eligible 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 HCF program may have been funded by the RHC HCF Program for the same services funded by the RHC Telecommunications Program.

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 HCF program disbursements did not exceed 65 percent of the total eligible costs.

E. 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 for eligible HCPs were used for purposes reasonably related to the provision of health care services and in accordance with the FCC Rules.

F. Site Visit

AAD performed a virtual physical inventory to evaluate the location and use of equipment and services to determine whether it was delivered and installed, located in eligible facilities, and utilized in accordance with the FCC Rules. AAD evaluated whether the Beneficiary had the necessary resources to support the equipment and services for which funding was requested. AAD also evaluated the equipment and services purchased by the Beneficiary to determine whether funding was and/or will be used in an effective manner.

DETAILED AUDIT FINDING

Finding: 47 C.F.R. §54.639(d) - Beneficiary Did Not Establish Fair Share for Services Requested and Did Not Allocate the Costs to Ineligible Sites

CONDITION

AAD obtained and examined documentation, including the FCC Form 461, FCC Form 462 and associated attachments, Network Cost Worksheets (NCWs), and network diagram, to determine whether the Beneficiary requested and used Rural Health Care program (RHC) support for approved, eligible sites and services for FRNs 18464301 and 18460481. The Beneficiary did not apportion the costs to the ineligible sites and ensure the ineligible sites paid their fair share of network costs, as required by FCC Rules.[2]

In its FCC Form 461, FCC Form 462 Attachments and NCWs, the Beneficiary included some of the eligible sites and ineligible sites and indicated which sites, services and equipment listed for each FRN were 100 percent eligible for RHC support. However, the Beneficiary informed AAD that both FRNs included ineligible sites that received support and it should have performed a cost allocation to apportion the cost to the ineligible sites.[3]

FRN 18464301

The Beneficiary requested and was approved for funding for 87 circuits listed on its FCC Form 462 Attachment and NCW. AAD determined based on the review of the NCW, the network diagram and inquiries with the Beneficiary that, while the starting point for the circuit was Exempla Lutheran Medical Center – Wheat Ridge, an eligible HCP within the network, the ending point for 38 circuits were various ineligible entities, specifically, (a) 23 entities were either Registered Ineligible, Denied HCP or Approved Ineligible per RHC Portal (e.g., for-profit organization), and (b) 15 entities did not receive an HCP number as eligible recipient with the RHC program and not included in the FCC Form 461.[4] Thus, the funded circuits represented a direct connection between the ineligible sites and the network hub (cloud-to-point connections or direct circuits). Upon AAD's request for its cost allocation methodology, the Beneficiary agreed[5] to give back the funding associated with these 38 circuits in its entirety.[6]

The Beneficiary invoiced the RHC program for undiscounted cost $251,062 for the 38 circuits identified above. Thus, AAD concludes that the Beneficiary over-invoiced the RHC program for $163,190 ($251,062 * 65% HCF discount rate) more than it was eligible to receive for FRN 18464301.

FRN 18460481

The Beneficiary requested and was approved for funding for various types of equipment listed on its FCC Form 462 Attachment and NCW. The Beneficiary informed AAD that all SCL sites use the equipment in the event of

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[2] *See* 47 C.F.R. §§ 54.602(c), 54.630(a), 54.639(d), 54.643(a)(5) (2017).

[3] Beneficiary response to the Audit Inquiries Record (AIR), received Jan. 5, 2022 and Jan. 18, 2022.

[4] FRN 18464301 (committed on May 29, 2019) Line item nos.: 18, 44 - 61, 65 - 68, 70 - 72, 74 - 75, 77 -78, 80 - 88 and 89.

[5] Beneficiary response to the AIR, received Jan. 26, 2022 and Sept. 29, 2022.

[6] The Beneficiary agreed to give back the funding associated with the circuits at ineligible sites. The cost allocation methodology proposed by the Beneficiary reflects eligible usage of the shared services. *See* 47 C.F.R. § 54.639(d)(ii) (2017).

disaster recovery failure.[7] In addition, the Beneficiary informed AAD that only nine sites using the equipment are eligible for support. Upon AAD's request for its cost allocation methodology, the Beneficiary proposed to allocate cost of the equipment between eligible and ineligible sites based on 24,187 active users[8] at eligible sites and 3,085 active users at ineligible sites.[9] AAD determined that 11.31 percent [3,085 users at ineligible sites / (24,187+3,085) total users] of the amount the Beneficiary invoiced to RHC program was ineligible for support.

The Beneficiary invoiced RHC program undiscounted amount of $912,270 for the FRN.[10] AAD determined the undiscounted amount $103,178 ($912,270 * 11.31% attributable to ineligible sites) was not eligible for support. Thus, AAD concludes that the Beneficiary over-invoiced the RHC program for $67,066 ($103,178 * 65% HCF discount rate) more than it was eligible to receive for FRN 18460481.

CAUSE

The Beneficiary did not demonstrate sufficient knowledge of the FCC Rules requiring the identification of ineligible sites on the FCC Form 462 and NCWs, establishing the fair share of the services requested and requiring ineligible sites to pay their fair share of the costs. In addition, the Beneficiary did not have adequate controls and procedures in place to ensure that ineligible sites paid their fair share of network costs and that RHC program is invoiced only for eligible services delivered to eligible sites. Since its 2018 filing, the Beneficiary has experienced staffing changes in management and its consultants relating to its HCF program projects and filings. Upon the initial 2018 Form 462 filing, the Beneficiary had a discussion with RHC Program Management where the Beneficiary described a cloud based network that extended eligible circuits to other eligible HCPs, therefore USAC did not require a cost allocation.[11] However, because the Beneficiary did not include the ineligible sites on its Form 462, the ineligible sites were not factored into the discussion with RHC Program Management.

EFFECT

The monetary effect of this finding is $230,256. This amount represents the ineligible sites' share of the costs over-invoiced to the RHC program for FRN 18464301 ($163,190) and 18460481 ($67,066).

RECOMMENDATION

AAD recommends that USAC Management seek recovery of $163,190 and $67,066 for FRN 18464301 and 18460481, respectively.

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[7] For FRN 18460481, the Beneficiary only listed 1 site as FRN 18460481 reflects the equipment and maintenance required to utilize the circuits in FRN 18464301 to connect medical offices, clinics and remote users into SCL Health's network. For FRN 18464301, the Beneficiary listed 61 sites on its NCW associated with 87 circuits. However, the Beneficiary informed AAD during the audit that it did not include an additional 10 sites on its NCW. *See* Beneficiary response to the AIR, received Feb. 11, 2022.

[8] The Beneficiary used active users at eligible sites vs. active users at ineligible sites as its cost allocation methodology. The cost allocation methodology proposed by the Beneficiary reflects eligible usage of the shared equipment in the event of a disaster recovery failure. *See* 47 C.F.R. § 54.639(d)(ii) (2017).

[9] Beneficiary response to the AIR, received Feb. 23, 2022.

[10] Total of two invoices nos.: 1000082158 and 1000117695.

[11] Beneficiary responses to the Exception Summary, received Mar. 22, 2022.

The Beneficiary must familiarize itself with the FCC Rules and implement policies, controls and procedures to ensure that it identifies all ineligible sites in its FCC Form 462 Attachment and NCW, establish fair share of the services requested, ensure ineligible sites pay their fair share of network costs, and invoice RHC program only for eligible services delivered to eligible sites. The Beneficiary may learn more about the reporting of eligible sites, required cost allocations, and ensuring ineligible location pay their fair share of network costs at https://www.usac.org/rural-health-care/learn/.

BENEFICIARY RESPONSE

"Direct Circuits"

As a result of advances in technology, the original design of the virtual network overlay has been adjusted and SCL Health has concluded that it is appropriate to give back the funding associated the cloud to point connections during the relevant funding period.

"Hub Circuits"

SCL Health disagrees with the conclusion that a point to point circuit between two eligible HCPs must be allocated because the point to point circuit supports the operations of eligible HCPs in their function as a component of an integrated health system. The "Fair Share" principles stated at Paragraph 178 related to ineligible entities use of shared backbone relate to for-profit HCPS. In this instance, the traffic routing between these two eligible HCPs is broadband communications among and between those two eligible HCPs that are the ends of a point to point circuit and relate to the operation and function of these eligible HCPs as part of a health system. As stated by the FCC "Because we define eligible services and equipment for the Healthcare Connect Fund broadly in this Order, we do not anticipate that applicants will encounter many situations in which they purchase or lease a single service or piece of equipment that includes both eligible and ineligible components." As originally contemplated in its application, SCL Health sough funding for the network that comprised of virtual point to point lines, implemented on carrier services that were point to cloud and certain point to point circuits between eligible HCPs. The funding of this network structure was vetted in detail with USAC staff. SCL Health was advised by USAC staff that no allocation of the point to cloud network would be required because each virtual connection was attributed to an eligible HPC and that both the origination and termination ends of the point to point circuits are eligible HCPs. We have produced the written guidance provided by USAC (see attached).

The interpretation of the program rules being put forth now is inconsistent with USAC's prior interpretation of the FCC's order in which SCL Health was instructed that common carrier circuits are eligible for funding provided that the origination site was eligible.

USAC reached the determination that funding of Exempla Lutheran Medical Center was appropriate and that no allocation would be required consistent with the Healthcare Connect Fund order and following extensive written communications and telephone conferences to discuss the application of HCF program funding rules to cloud platforms. (See Attachment 2). The HCP for all of the disputed lines is Exempla Lutheran Medical Center, a hospital and eligible HCP. The Program rules do not require that both endpoints of a broadband circuit be a HCP registered pursuant to the program. Rather the HCF program provides "eligible health care providers may request support from the Healthcare Connect Fund for any advanced telecommunication or information service that enables health care providers to pose their own data, interact with stored data, generate new data or communicate, by providing connectivity over private dedicated networks or public Internet for the provision of health information technology." (54.634). The Act and FCC programs provide that telecommunications services and network capacity provided to an eligible HCP through the healthcare support mechanism many not be "sold, resold or otherwise transferred by [the HCP] in consideration for money or any other thing of value (the resale prohibition"). (See HCF Order at para. 178). The was no sale or other consideration which would serve as a basis for the imposition of the application of a cost recovery allocation. The FRN lines identified of concern in FRN 18464301 all reflect a request by an eligible HCP for advanced telecommunication services that enables it to pose its own data, interact with stored data and generate new data or communicate via a private dedicated network.

"FRN 18460481"
Funding request 18460481 sought funding for equipment located at an off-site data center and supported the provision of broadband services to healthcare providers located in rural Colorado and Montana. No allocation of these expenses was required. To the extent that allocation is determined to be necessary, the appropriate allocation methodology is not based on user as there is no direct correlation between the number of users and the cost of the equipment.

AAD RESPONSE

For the "Direct Circuits," the Beneficiary agreed with AAD's findings for 38 circuits directly connected to ineligible entities and concluded that it is appropriate to give back the funding associated with the cloud to point connections during the relevant funding period. Thus, AAD's position regarding this matter remains unchanged.

For the "Hub Circuits," the Beneficiary disagreed with the conclusion that was previously noted in this finding for five circuits with a point to point circuit between two eligible HCPs must be allocated as the Beneficiary indicated the point to point circuit supports the operations of eligible HCPs in their function as a component of an integrated health system. In addition, the Beneficiary provided a diagram illustrating its connectivity requirements. The Beneficiary explained and established that the traffic routing between these two eligible HCPs is broadband communications among and between those two eligible HCPs that are the ends of a point to point circuit and relate to the operation and function of these eligible HCPs as part of a health system. AAD agrees with the Beneficiary's response to the finding for the 5 circuits and removed them from the language of the condition from its original text. AAD had an $87,501 monetary finding for these 5 circuits. Therefore, AAD reduced the finding's monetary effect for FRN 18464301 from $250,691 to $163,190 and removed it from its original text.

For FRN 18460481, the Beneficiary stated that it "sought funding for equipment located at an off-site data center and supported the provision of broadband services to healthcare providers located in rural Colorado and Montana. No allocation of these expenses was required." AAD understands that the funded equipment supports the provision of broadband services in the event of disaster recovery failure. However, the entities supported by the funded equipment include the same ineligible entities the Beneficiary agreed to give back the funding under FRN 18464301.

Section 54.602(c) of the FCC's Rules states that "[a]n 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."[12] In addition, section 54.639(d)(1) of the FCC's Rules states that "[e]ligible health care provider sites may share expenses with ineligible sites, as long as the ineligible sites pay their fair share of expenses."[13]

The Beneficiary also indicated its disagreement with the cost allocation methodology it proposed previously. AAD provided an opportunity for the Beneficiary to demonstrate another reasonable allocation method.[14] The Beneficiary did not propose any other reasonable allocation method during the audit.

For these reasons, AAD's position on Finding for FRN 18460481 remains unchanged.

CRITERIA

The 47 C.F.R. § 54.639(d) (1) (2017) states:

> "Eligible health care provider sites may share expenses with ineligible sites, as long as the ineligible sites pay their fair share of the expenses. An applicant may seek support for only the portion of a shared eligible expense attributable to eligible health care provider sites. To receive support, the applicant must ensure that ineligible sites pay their fair share of the expense. The fair share is determined as follows:
>
> (i) If the vendor charges a separate and independent price for each site, an ineligible site must pay the full undiscounted price.
>
> (ii) If there is no separate and independent price for each site, the applicant must prorate the undiscounted price for the "shared" service, equipment, or facility between eligible and ineligible sites on a proportional fully-distributed basis. Applicants must make this cost allocation using a method that is based on objective criteria and reasonably reflects the eligible usage of the shared service, equipment, or facility. The applicant bears the burden of demonstrating the reasonableness of the allocation method chosen."

The 47 C.F.R. § 54.602(c) (2017) states:

> "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."

The 47 C.F.R. § 54.630(a) (2017) states:

> "Consortia may include health care providers who are not eligible for support under the Healthcare Connect Fund, but such health care providers cannot receive support for their expenses and must participate pursuant to the cost allocation guidelines in § 54.639(d)."

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[12] 47 C.F.R. § 54.602(c) (2017).
[13] 47 C.F.R. § 54.639(d)(1) (2017).
[14] AAD requested via email on Aug. 23, 2022 and followed up on Sep. 9, 2022 and Sep. 27, 2022.

The 47 C.F.R. § 54.643 (a) (5) (2017) states:

> "Pursuant to § 54.639(d)(3) through (d)(4), where applicable, applicants must submit a description of how costs will be allocated for ineligible entities or components, as well as any agreements that memorialize such arrangements with ineligible entities."

This concludes the report.

Summary of Rural Health Care Support Mechanism Beneficiary Audit Reports Released: May 2023

Entity Name	Number of Findings	Significant Findings	Amount of Support	Monetary Effect*	USAC Management Recovery Action*	Commitment Adjustment	Entity Disagreement
Garnet Health (formerly Greater Hudson Valley Health System) **Attachment B**	2	**Amount Invoiced Exceeded Service Provider Billed Amount.** The Beneficiary and Service Provider over-invoiced the RHC program for an amount exceeding the Service Provider billed costs.	$1,784,107	$146,178	$112,987	$112,987	Y
Total	**2**		**$1,784,107**	**$146,178**	**$112,987**	**$112,987**	

* The Monetary Effect amount includes overlapping recovery; thus, the USAC Management Recovery Action is less than the Monetary Effect.

Attachment B

RH2021LR002

Garnet Health (formerly Greater Hudson Valley Health System)

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

USAC Audit No. RH2021LR002

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EXECUTIVE SUMMARY

December 13, 2022

Craig Filippini, Chief Information Officer
Garnet Health (formally Greater Hudson Valley Health System)
707 East Main Street
Middletown, NY 10940

Dear Mr. Filippini:

The Universal Service Administrative Company (USAC or Administrator) Audit and Assurance Division (AAD) audited the compliance of Garnet Health (formerly Greater Hudson Valley Health System) (Beneficiary), Health Care Provider (HCP) Number 49455 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 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 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 Beneficiary'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 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 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

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[1] (B)	Recommended Recovery (A) - (B)	Recommended Commitment Adjustment
Finding #1: 47 C.F.R. § 54.645(a), (b) (2017) – Form 463 Invoice – Support Amount Invoiced Exceeds Service Provider Billed Amount The Beneficiary and Service Provider over-invoiced the RHC program for an amount exceeding the Service Provider billed costs for certain FRN line items.	$104,690	$0	$104,690	$104,690
Finding #2: 47 C.F.R. § 54.646 (2017) – Beneficiary and Service Provider Invoiced RHC Program for an Unapproved Equipment Substitution The Beneficiary substituted equipment to replace equipment requested on the Beneficiary's FCC Form 462 Attachment, and the Beneficiary did not request a service substitution.	$41,488	$33,190	$8,297	$8,297
Total Net Monetary Effect	**$146,178**	**$33,190**	**$112,987**	**$112,987**

[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. In addition, USAC management will conduct outreach to the Beneficiary 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 18452391	$104,690	$8,297	$**112,987**
USAC Recovery Action	**$104,690**	**$8,297**	**$112,987**
Rationale for Difference (if any) from Auditor Recommended Recovery			

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
Network Server	$1,222,891	$1,222,891
Network Switch	$140,530	$140,530
Warranty	$423,804	$420,686
Total	**$1,787,225**	**$1,784,107**

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

The committed total represents two FCC Form 462 applications with two Funding Request Numbers (FRNs). AAD selected two FRNs,[2] which represent $1,787,225 of the funds committed and $1,784,107 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 Beneficiary.

BACKGROUND
The Beneficiary provides healthcare services within Middletown, New York.

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 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.

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[2] The FRNs included in the scope of this audit were: 18452391 and 18458281.

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 461 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. Eligibility

AAD conducted inquiries and inspection of documentation to determine whether the Beneficiary's eligible HCPs were public or non-profit eligible health care providers. AAD examined documentation to determine whether more than 50 percent of the eligible HCP sites were located in a rural area and determined whether the eligible 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 participating HCPs received funding in the HCF program for the same services for which they requested support in the RHC Telecommunications program.

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 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.

E. 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. § 54.645(a), (b) (2017) - Form 463 Invoice – Support Amount Invoiced Exceeds Service Provider Billed Amount

CONDITION

AAD obtained and examined documentation, including FCC Form 462 Healthcare Connect Fund Funding Request Form and Attachments, FCC Form 463 Invoice and Request for Disbursement Form, the relevant contract, and the corresponding Service Provider bills provided by the Beneficiary to determine whether the Rural Health Care (RHC) program was invoiced only for the approved, eligible services for FRN 18452391. The Beneficiary and Service Provider over-invoiced the RHC program for an amount exceeding the Service Provider billed costs for certain FRN line items. Thus, AAD concludes the Beneficiary over-invoiced the RHC program by a discounted amount of $104,690 as detailed below:

FRN Line Item	Discounted Cost per Service Provider Bill (A)	Discounted Amount Committed and Disbursed (B)	Amount Over-Invoiced to RHC Program (B-A)
2	$5,643	$6,945	$1,302
3	$482,810	$519,930	$37,120
4	$43,754	$53,851	$10,097
7	$5,643	$6,945	$1,302
8	$482,810	$519,930	$37,120
9	$43,754	$53,851	$10,097
12	$5,643	$6,945	$1,302
14	$10,939	$13,463	$2,524
17	$5,643	$6,945	$1,302
19	$10,939	$13,463	$2,524
		Total	**$104,690**

CAUSE

The Beneficiary and the Service Provider did not have adequate controls and procedures in place to ensure it invoiced the RHC program for support based on actual charges. The Service Provider's process did not include an adequate review and reconciliation to compare the equipment provided to the Beneficiary to the equipment billed and invoiced to USAC's RHC program.

EFFECT

The monetary effect of this finding is $104,690. This amount represents amounts disbursed by the RHC program for the amount exceeding the actual costs during the funding year.

RECOMMENDATION

AAD recommends that USAC Management seek recovery of the recommended recovery amount identified in the Effect section above.

The Beneficiary and Service Provider must implement controls and procedures to ensure the RHC program is invoiced only for approved, eligible services that are requested on the FCC Form 462, including the FCC Form

462 Attachment, and committed in a Funding Commitment Letter. In addition, AAD recommends the Beneficiary and Service Provider take advantage of the training and outreach available from the RHC program on USAC's website at https://www.usac.org/rural-health-care/learn/.

BENEFICIARY RESPONSE

Garnet Health disagrees with the assessment of $104,690 for the funding year 2018 FRN 18452391. The PQA division reviewed all [Form] 463s associated with FRN# 18452391. The first PQA assessment (RHC-2019-07-CASE-181) reviewed the first 2 [Form] 463's and reported no exceptions found. The same information was provided to the PQA division for the second assessment (RHC-2020-08-CASE-212) and the finding stated the service provider bills did not support the funds received.

Our concerns were expressed to *[redacted]* on the AAD team with the USAC website when submitting the final [Form] 463. The only editable fields on the [Form] 463 web form were the date columns. Garnet will refine the funding process with the service providers involved. Garnet Health's staff is using the training webinars USAC provides and will move the USAC funding process to a team better equipped to handle the Rural Healthcare funding requests.

SERVICE PROVIDER RESPONSE

We are reviewing the details associated with Finding #1 and it appears that some of the line item numbers should have been adjusted. The root cause does not appear to be systematic and was more tied to unique, one-off set of circumstances associated with this complex arrangement. Our review indicated that Garnet Health and Presidio were acting in good faith throughout the process with an intention to fully comply with all rules and procedures. Presidio understands its requirements to comply with the USAC and applicable Rural Health Care Program procedures. We do not agree and would request deletion of the statement that, "the Service Provider did not have adequate controls and procedures in place." In fact, we are a long-standing service provider who has maintained compliance and good standing with USAC and its Beneficiaries over many years. However, we are committed to continuous improvement and are taking immediate steps to enhance our process with additional controls to promote compliance. One change has already been authorized for implementation since 2021 is the segmentation of our State, Local and Education (SLED) organization and staff to manage all SLED business by designated region. This includes establishment of a dedicated SLED Contract Management Team and SLED Sales Operations teams that are designed to control, monitor and manage all SLED proposals and orders under these types of Programs. These recent organizational changes and improvements will ensure that Presidio has trained and informed subject matter experts that are aligned with any and all SLED quotes, orders and invoices. We are also taking action to institute an additional process by collaborating with our Beneficiaries and USAC under the E-Rate and Rural Health Care Programs. Specially, we are focused on including an additional invoice submission verification control point with our Beneficiary into our overall procedures. This will act as a supplementary check and balance that is conducted with our Beneficiary and USAC to monitor and verify compliance (in addition to general reviews and processes). Finally, please note that we can confirm that we are actively taking advantage of the training and outreach available from the RHC Program (in-line with your general recommendation).

AAD RESPONSE TO BENEFICIARY

In its response, the Beneficiary referred to two specific payment quality assurance (PQA) assessments, RHC-2019-07-CASE-181 and RHC-2020-08-CASE-212. AAD clarified that the Beneficiary submitted two FCC Form 463s for FRN 18452391. RHC-2019-07-CASE 181 performed a PQA assessment on the first FCC Form 463, which resulted in no exceptions; however, RHC-2020-08-CASE-212 performed a PQA assessment on the second FCC Form 463, which resulted in exceptions. The notification letter of the PQA assessment closed for RHC-2020-08-CASE-212,[3] stated "[the Beneficiary]'s service provider bills did not support the funds received from USAC. Based on the review, it was determined that [the Service Provider] did not invoice USAC based upon actual charges. The cost of services were higher on the FCC Form 463 than the cost of services received per the service provider bills." These PQA results are similar to the finding AAD presents in the Condition above. AAD further clarifies that PQA assessments are different from an audit conducted by AAD. PQA assessments are performed on one month's disbursements, whereas an audit determines whether disbursements for the full funding year are in compliance with the FCC Rules and RHC program requirements. PQA assessments are performed independently of audits; therefore, the PQA assessment results do not impact the audit's results.

In addition, the Beneficiary stated in its response, "[t]he only editable fields on the [Form] 463 web form were the date columns." AAD does not disagree with this statement, and the form was functioning as intended. When the FCC Form 463 was filed, the requested support was not prorated and 100% of the upfront payments were requested, which exceeded the maximum cap the RHC program allotted to be disbursed for the year. As a result, the form would not allow any additional funds to be invoiced for the FRN line items that reached the cap. AAD identified line items for FRN 18452391 that received the maximum cap when the actual charges were less than the capped amount. Therefore, an overpayment of USF funds occurred, as noted in the Condition above. Thus, AAD's position on this finding remains unchanged.

Lastly, the Beneficiary may contact a RHC program representative for future Form submission inquiries or assistance. The Beneficiary can refer to the RHC Customer Service Center Tip Sheet to learn about what the RHC Customer Service Center can and cannot help with.[4]

AAD RESPONSE TO SERVICE PROVIDER

The Service Provider stated they "do not agree and would request deletion of the statement that, 'the Service Provider did not have adequate controls and procedures in place." AAD acknowledges the Service Provider's comments that they have taken recent action and implemented changes. AAD also acknowledges that this Finding may have resulted from a "unique, one-off set of circumstances." However, both the Beneficiary and Service Provider did not have controls or procedures in place to prevent or detect specific items within this Finding from being over-invoiced to the RHC program. Thus, AAD's position on this finding remains unchanged.

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[3] AAD acknowledges that FRN line items 3, 4, 8, and 9 were part of an appeal for RHC-2020-08-CASE-212, which USAC Management has not resolved as of the release of this report.

[4] https://www.usac.org/wp-content/uploads/rural-health-care/documents/training/RHC-Customer-Service-Center-Tip-Sheet.pdf (website accessed January 31, 2023).

Finding #2: 47 C.F.R. § 54.646 (2017) – Beneficiary and Service Provider Invoiced RHC Program for an Unapproved Equipment Substitution

CONDITION

AAD obtained and examined documentation, including the FCC Form 462 Healthcare Connect Fund Funding Request Form, FCC Form 463 Invoice and Request for Disbursement Form, the relevant contract, and the corresponding Service Provider bills provided by the Beneficiary to determine whether the Rural Health Care program (RHC) was invoiced only for approved eligible equipment for FRN 18452391. AAD determined that the Beneficiary substituted equipment to replace equipment requested on the Beneficiary's FCC Form 462 Attachment, and the Beneficiary did not request a service substitution.[5]

On the Beneficiary's FCC Form 462 Attachment, the Beneficiary requested and was approved for HGST Solid State Drives with a capacity of 1.6TB. Per the service provider bills, the Beneficiary purchased Cisco Enterprise Performance Solid State Drives with a capacity of 800GB. The Cisco Enterprise Performance Solid State Drives were not requested on the FCC Form 462 Attachment or approved in the Funding Commitment Letter. The Beneficiary did not submit a service substitution request for the Cisco Enterprise Performance Solid State Drives received by the Beneficiary to replace the HGST Solid State Drives requested on the Beneficiary's FCC Form 462 Attachment and approved in the Funding Commitment Letter. As such, the Cisco Enterprise Performance Solid State Drives that were billed to the Beneficiary and invoiced to the RHC program were not approved eligible equipment. This unapproved service substitution impacted four of the 22 FRN line items requested in the Beneficiary's FCC Form 462 for FRN 18452391, as calculated below:

FCC Form 462				Service Provider Bill		
FRN Line Item	**Equipment**	**Undiscounted Cost**	**Discounted Cost**	**Equipment**	**Undiscounted Cost**	**Discounted Cost**
3	HX-NVMEHW-H1600 HGST Solid State Drive	$24,483	$15,914	HX-SD800GBENK9 – Cisco Solid State Drive	$25,531	$16,595
8	HX-NVMEHW-H1600 HGST Solid State Drive	$24,483	$15,914	HX-SD800GBENK9 – Cisco Solid State Drive	$25,531	$16,595
13	HX-NVMEHW-H1600 HGST Solid State Drive	$6,121	$3,979	HX-SD800GBENK9 – Cisco Solid State Drive	$6,383	$4,149
18	HX-NVMEHW-H1600 HGST Solid State Drive	$6,121	$3,979	HX-SD800GBENK9 – Cisco Solid State Drive	$6,383	$4,149
Total Cost for Equipment Not Approved					**$63,828**	**$41,488**

[5] Beneficiary response to audit inquiries, received Sep. 8, 2021.

Thus, the Beneficiary and Service Provider over-invoiced the RHC program by $41,488 (the undiscounted cost of $63,828 multiplied by the Beneficiary's discount rate of 65 percent) for equipment that was not requested in its FCC Form 462 nor approved in the Funding Commitment Decision Letter.[6]

CAUSE

The Beneficiary did not demonstrate sufficient knowledge of the FCC Rules prescribing service substitutions as the Beneficiary did not understand that services invoiced to the RHC program must only be for approved eligible equipment. The Beneficiary informed AAD that an oversight of review caused the error in substitution approval.[7]

EFFECT

The monetary effect of this finding is $41,488.[8] This amount represents the amount of funds disbursed by the RHC program for unapproved equipment costs.

RECOMMENDATION

AAD recommends that USAC Management seek recovery of the recommended recovery amount identified in the Effect section above after adjusting for any overlap with Finding 1.

The Beneficiary and Service Provider must implement controls and procedures to ensure the RHC program is invoiced only for approved eligible services that are requested on the FCC Form 462, including the FCC Form 462 Attachment, and committed in a Funding Commitment Letter or approved in a service substitution request. The Beneficiary must submit a service substitution request to the RHC program when the eligible services provided by the Service Provider are not the same as the services specified in the FCC Form 462 Attachment. In addition, AAD recommends the Beneficiary and Service Provider take advantage of the training and outreach available from the RHC program on USAC's website at https://www.usac.org/rural-health-care/learn/.

BENEFICIARY RESPONSE

Garnet Health (formally Greater Hudson Valley Healthcare System) disagrees with the sites and services assessment penalty of $41,488. Garnet Health's original purchase order listed the correct part number. HX-SD800GBENK9-Cisco Solid State Drive. The service provider Presidio and the equipment manufacturer Cisco changed the price and part number. We believe the $41,488 assessment is excessive. The overall price difference between the 2-part numbers is $2,620. We will request the service provider carefully reviews all funding requests and reject any that do not match the part numbers or price of equipment in the original NCW.

[6] The total amount committed did not increase, nor did the HCP exceed their total commitment amount when invoicing USAC.

[7] Beneficiary response to audit inquiries, received Sep. 8, 2021.

[8] This monetary effect overlaps with FRN line items 3 and 4, within Finding #1. The overlap in monetary effect with Finding #1 is $33,190, with $8,297 remaining for recommended recovery within Finding #2.

SERVICE PROVIDER RESPONSE

We are continuing to review the details and assess Finding #2. Presidio understands its requirements to ensure compliance associated with equipment substitutions. As a matter of our commitment to continuous improvement, we are re-evaluating our process to ensure we have the right controls in place to determine any changes to the FRN prior to invoice approval. One broad change that has already begun is tied to the segmentation of our SLED business. This re-organization of our operations will ensure that every order and invoice is processed and validated through a new control point managed by a dedicated set of SLED experts who understand the RHC funding process. We have also already taken steps to institute a new procedure which includes holding a joint review with the beneficiary prior to any submission of the Form 463 to help ensure that all BOM updates/changes have been accounted for in the documentation. Further, we are putting additional time and focus into our process schedule for us to notify the beneficiary (who would make the necessary adjustments) should any line item discrepancies be identified prior to the 463 approval. Finally, please note that we can confirm that we are actively taking advantage of the training and outreach available from the RHC Program (in-line with your general recommendation).

AAD RESPONSE TO BENEFICIARY

The Beneficiary's original quote, #2003318812775-02, dated June 27, 2018, received from the Service Provider, specified the original equipment per the "FCC Form 462" columns in the chart above and was uploaded with the FCC Form 462. AAD acknowledges there was a subsequent quote provided to the Beneficiary from the Service Provider, #2003318822071-04, dated November 14, 2018, that showed the replaced equipment per the "Service Provider Bill" columns in the chart above, which was submitted at the time the Beneficiary invoiced the RHC program. Despite having enough previously committed funds to cover the cost of the more expensive replacement equipment, per the FCC Rules, the Beneficiary should have requested the equipment substitution and obtained an approval before proceeding with buying different equipment.[9] Unapproved equipment is not eligible for support. Further, AAD acknowledges that the Beneficiary's subsequent purchase order, #321080, dated December 5, 2018, and quote may have listed the correct part number, HX-SD800GBENK9-Cisco Solid State Drive; however, the Beneficiary must submit a service substitution request to the RHC program when the eligible equipment provided by the Service Provider is not the same as the equipment specified in the FCC Form 462 Attachment. The RHC program should be invoiced only for approved eligible equipment that is requested on the FCC Form 462. Therefore, AAD's position on this finding remains unchanged.

[9] *See* 47 C.F.R. § 54.646 (2017).

CRITERIA

Finding	Criteria	Description
#1	47 C.F.R § 54.645 (2017)	(a) The Consortium Leader (or health care provider, if participating individually) must certify to the Administrator that it has paid its contribution to the vendor before the invoice can be sent to Administrator and the vendor can be paid. (b) Before the Administrator may process and pay an invoice, both the Consortium Leader (or health care provider, if participating individually) and the vendor must certify that they have reviewed the document and that it is accurate. All invoices must be received by the Administrator within six months of the end date of the funding commitment.
#2	47 C.F.R. § 54.646 (2017)	(a) A Consortium Leader (or health care provider, if participating individually) may request a site or service substitution if: (1) The substitution is provided for in the contract, within the change clause, or constitutes a minor modification; (2) The site is an eligible health care provider and the service is an eligible service under the Healthcare Connect Fund; (3) The substitution does not violate any contract provision or state, Tribal, or local procurement laws; and (4) The requested change is within the scope of the controlling request for services, including any applicable request for proposal used in the competitive bidding process. (b) Support for a qualifying site and service substitution will be provided to the extent the substitution does not cause the total amount of support under the applicable funding commitment to increase.

This concludes the report.

Summary of Rural Health Care Support Mechanism Beneficiary Audit Reports Released: June 2023

Entity Name	Number of Findings	Significant Findings	Amount of Support	Monetary Effect*	USAC Management Recovery Action*	Commitment Adjustment	Entity Disagreement
Indian Health Service Consortium **Attachment C**	2	Amount Invoiced Exceeded Service Provider Billed Amount: The Beneficiary and Service Provider over-invoiced the RHC program for an amount exceeding the Service Provider billed costs.	$3,188,033	$137,002	$137,002	$0	Partial
Consolidated Communications of Fort Bend **Attachment D**	3	Competitive Bidding Process Not Fair and Open: The Beneficiary had a conflict of interest, and therefore, did not conduct a fair and open competitive bidding process when seeking services.	$1,836,948	$2,151,747	$1,836,948	$1,836,948	Y
Eastern Nebraska Healthcare Communications Consortium **Attachment E**	3	Healthcare Connect Fund Support Used for Ineligible Equipment: The Beneficiary received network equipment support for access switches that are operating as internal connections, which is an	$674,582	$427,922	$427,922	$0	Y

Available For Public Use

Entity Name	Number of Findings	Significant Findings	Amount of Support	Monetary Effect*	USAC Management Recovery Action*	Commitment Adjustment	Entity Disagreement
		ineligible expense for HCF support.					
Total	**8**		**$5,699,563**	**$2,716,671**	**$2,401,872**	**$1,836,948**	

* The Monetary Effect amount includes overlapping amounts; thus, the USAC Management Recovery Action amount is less than the Monetary Effect to prevent double recovery.

DP George & Company

Indian Health Service Consortium

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

USAC Audit No. RH2019BE004

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DP George & Company

EXECUTIVE SUMMARY

May 16, 2023

Ms. Teleshia Delmar, Vice President – Audit and Assurance Director
Universal Service Administrative Company
700 12st Street, NW, Suite 900
Washington, DC 20005

Dear Ms. Delmar:

DP George & Company, LLC (DPG) audited the compliance of Indian Health Service Consortium (Beneficiary), Health Care Provider Number (HCP) 35344, using regulations and orders governing the federal Universal Service Rural Health Care Support Mechanism, Healthcare Connect Fund program set forth in 47 C.F.R. Part 54, as well as other program requirements (collectively, the Federal Communications Commission (FCC) Rules). Compliance with the FCC Rules is the responsibility of the Beneficiary's management. DPG's responsibility is to make a determination regarding the Beneficiary's compliance with the FCC Rules based on our audit.

DPG conducted the audit in accordance with Generally Accepted Government Auditing Standards (GAGAS) issued by the Comptroller General of the United States (2018 Revision). Those standards require that DPG 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 DPG considered necessary to make a determination regarding the Beneficiary's compliance with the FCC Rules. The evidence obtained provides a reasonable basis for DPG'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 Beneficiary, and the 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.

Sincerely,

DP George & Company, LLC

DP George & Company, LLC
Alexandria, Virginia

cc: Radha Sekar, USAC Chief Executive Officer
Mark Sweeney, USAC Vice President, Rural Health Care Division

AUDIT RESULTS AND RECOVERY ACTION

Audit Results	Monetary Effect	Recommended Recovery
Finding #1: 47 C.F.R. § 54.645 (b) (2016) – Amount Invoiced Exceeds Service Provider Billed Amount. The amount reflected on service provider bills selected for sampling supported a lower amount than the amount submitted on the FCC Form 463 invoice.	$ 137,002	$ 137,002
Finding #2: 47 C.F.R. § 54.648 (b) (1) (2016) – Lack of Documentation: Percentages Used to Allocate Fair Share of Expenses Were Not Supported. The Beneficiary did not maintain the necessary documentation to support fair share allocation percentages between eligible and ineligible entities.	$ 0	$ 0
Total	**$ 137,002**	**$ 137,002**

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. In addition, USAC management will conduct outreach to the Beneficiary 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.

FRN	FRN Line Item Number	Finding #1	Finding #2	Total
17130671	19	$ 9,386	$0	$ 9,386
17146611	47	$ 954	$0	$ 954
	48	$ 1,926	$0	$ 1,926
	49	$ 5,047	$0	$ 5,047
	50	$ 2,083	$0	$ 2,083
	52	$ 3,933	$0	$ 3,933
17153631	2	$ 2,712	$0	$ 2,712
	5	$ 1,042	$0	$ 1,042
	7	$ 1,055	$0	$ 1,055
	11	$ 1,067	$0	$ 1,067
	15	$ 1,040	$0	$ 1,040
	19	$ 1,839	$0	$ 1,839
17157141	3	$ 1,849	$0	$ 1,849
	7	$ 1,913	$0	$ 1,913
	10	$ 1,849	$0	$ 1,849
	19	$ 760	$0	$ 760
17165091	13	$ 5,337	$0	$ 5,337
17193201	1	$ 16,165	$0	$ 16,165
	9	$ 14,579	$0	$ 14,579
	15	$ 1,385	$0	$ 1,385

FRN	FRN Line Item Number	Finding #1	Finding #2	Total
	18	$ 2,116	$0	$ 2,116
	22	$ 633	$0	$ 633
	24	$ 272	$0	$ 272
17196141	2	$ 10,251	$0	$ 10,251
	3	$ 10,251	$0	$ 10,251
	6	$ 9,938	$0	$ 9,938
	8	$ 9,939	$0	$ 9,939
17485181	5	$ 7,285	$0	$ 7,285
17485291	3	$ 10,396	$0	$ 10,396
Total		**$ 137,002**	$0	**$ 137,002**
USAC Recovery Action		**$ 137,002**	$0	**$ 137,002**
Rationale for Difference (If any) from Auditor Recommended Recovery				

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 overall Healthcare Connect Fund (HCF) program support amounts committed and disbursed to the Beneficiary for Funding Year (FY) 2017 (audit period):

Service Type	Amount Committed	Amount Disbursed
Leased/Tariffed Facilities or Services – Bonded T1	$ 39,697	$ 39,697
Leased/Tariffed Facilities or Services – Ethernet	$ 1,100,217	$ 1,024,300
Leased/Tariffed Facilities or Services – Installation of Recurring Services	$ 5,730	$ 5,730
Leased/Tariffed Facilities or Services – Integrated Digital Service Network (ISDN) Primary Rate Interface (PRI)	$ 7,588	$ 7,588
Leased/Tariffed Facilities or Services – T-1/DS-1	$ 76,200	$ 76,200
Leased/Tariffed Facilities or Services – T-3/DS-3	$ 127,758	$ 127,758
Leased/Tariffed Facilities or Services – Virtual Private Network (VPN)	$ 1,841,420	$ 1,906,730
Total	**$ 3,198,610**	**$ 3,188,003**

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

The committed total represents 16 FCC Form 462 applications with 16 Funding Request Numbers (FRNs). DPG selected 10 FRNs[1] issued in FY 2017, which represents $2,927,077 of the funds committed and $2,916,461 of the funds disbursed during the audit period, to perform the procedures enumerated below with respect to the FY 2017 applications submitted by the Beneficiary.

BACKGROUND

The Beneficiary is a consortium of health care providers located across the United States (U.S.) that are either Federally or Tribally managed under the Indian Health Service (IHS). IHS is an operating division within the U.S. Department of Health and Human Services that provides health services to members of Federally recognized tribes. It has participated as a consortium in the RHC HCF program since FY 2013. Its members also participated individually in the RHC Telecommunications program in years prior to FY 2013. During FY 2017, the consortium received funding for sites that provided healthcare services in 19 states, including HCPs located throughout the Great Plains and Western areas of the United States. The primary areas of coverage are in six states: Arizona, California, Montana, New Mexico, Oklahoma, and South Dakota with major data centers in Rockville, Maryland and Albuquerque, New Mexico. Funding provided by the 16 FRNs approved in FY 2017 was used to support network connections for VPN services via Bonded T1, T-1/DS-1, T3/DS-3, Ethernet, and ISDN PRI circuits. The HCF funded connections support remote site connections to access patient information systems maintained at intermediary hospitals, area offices, and/or IHS data centers. Connecting remote clinics to the IHS networks allow the clinics, hospitals, and area offices to access resources such as primary Electronic Medical Record (EMR) applications as well as the ability to utilize Enterprise-wide internet services for additional connectivity.

PROCEDURES

DPG performed the following procedures:

A. Application Process

DPG obtained an understanding of the Beneficiary's processes relating to the Rural Health Care (RHC) HCF program application process. Specifically, DPG obtained and reviewed the FCC Form(s) 460 and related attachments to determine whether the Beneficiary identified the participating HCPs in the network. DPG conducted inquiries and interviews to confirm its understanding of the Beneficiary's FCC Form 460 application process and related controls, the role of the Consortium Leader in the application process, and any outside support received from third parties with respect to the application process.

DPG obtained and reviewed documentation to determine whether the Consortium Leader obtained the appropriate Letters of Agency or Letters of Exemption for the consortium members and/or consortium HCPs authorizing the Consortium Leader to act on their behalf and participate in the network.

B. Competitive Bid Process

DPG obtained an understanding of the Beneficiary's competitive bidding process. Specifically, DPG conducted inquiries and interviews to confirm its understanding of the Beneficiary's FCC Form 461 preparation process, bid posting and bid receipt process, and bid review and evaluation process, including related controls.

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[1] The FRNs included in the scope of this audit were: FRNs 17130671, 17146611, 17153631, 17157141, 17165091, 17167021, 17193201, 17196141, 17485181, and 17485291.

DPG obtained and reviewed documentation to determine whether the Beneficiary conducted a fair and open competitive bidding process in selecting a service provider to provide eligible services. DPG used inquiry and review of documentation to determine whether the Beneficiary established evaluation criteria where no factor was weighted more heavily than price, properly considered and declared any assistance provided, prepared a request for proposal (where required), prepared a network plan, and posted the appropriate bidding documents to the USAC website. DPG obtained evidence that the Beneficiary waited the required 28 days from the date the FCC Form 461 was posted on USAC's website before selecting a service provider or met the requirements for any competitive bidding exemptions claimed. DPG evaluated the services requested and purchased to determine whether the Beneficiary selected the most cost-effective option.

C. Funding Request Process

DPG obtained an understanding of the Beneficiary's funding request process. Specifically, DPG conducted inquiries and interviews to confirm its understanding of the Beneficiary's FCC Form 462 and related Network Cost Worksheet (NCW) preparation processes and related controls.

DPG obtained and reviewed the FCC Forms 462 and its 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. DPG also obtained and reviewed the NCWs to determine whether ineligible costs, if any, were identified and ineligible entities, if any, paid their fair share. DPG used inquiry, direct observation, and inspection of documentation to determine whether the Beneficiary used funding as indicated in its NCWs.

DPG used inquiry, direct observation, and inspection of documentation to determine whether the Beneficiary's member HCPs were public or non-profit eligible health care providers and that a fair share allocation was properly applied for any ineligible entities. DPG determined whether the eligible HCPs' physical addresses were the same as those listed on the FCC Form 462 applications and NCWs. DPG used inquiry and inspection of documentation to determine whether funding requested for any non-rural hospital sites with 400 or more licensed patient beds was consistent with limits set forth in the FCC Rules. DPG used inquiry and reviewed documentation to determine whether the HCPs participating in the consortium received funding in the HCF program for the same services they requested support in the RHC Telecommunications program. DPG also obtained and reviewed documentation to determine whether more than 50 percent of the sites in the consortium were rural HCPs within three years from its first request for HCF support.

D. Health Care Provider Location

DPG determined through inquiry, direct observation, and inspection of documentation whether the services were provided and were functional. DPG also determined through inquiry, direct observation, 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.

E. Invoicing Process

DPG obtained an understanding of the Beneficiary's invoicing process. Specifically, DPG conducted inquiries and interviews to confirm its understanding of the Beneficiary's FCC Form 463 preparation and submission process.

DPG obtained and reviewed a sample of 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. DPG obtained and reviewed documentation to determine whether the Beneficiary paid its required 35 percent minimum contribution and that the required contribution was from eligible sources. DPG also obtained and reviewed documentation to determine whether the HCF program disbursements did not exceed 65 percent of the total eligible costs.

F. Reporting Process

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

DETAILED AUDIT FINDINGS

Finding #1: 47 C.F.R. § 54.645 (b) (2016) – Amount Invoiced Exceeds Service Provider Billed Amount

CONDITION

DPG obtained and examined documentation, including the FCC Forms 462 Healthcare Connect Fund Funding Request Form and attachments, associated NCWs, FCC Forms 463 Invoice and Request for Disbursement Form, and the corresponding service provider bills provided by the Beneficiary to determine whether the HCF program was invoiced only for the cost of service supported by service provider bills for FRNs 17130671, 17146611, 17153631, 17157141, 17165091, 17193201, 17196141, 17485181, and 172485291. DPG determined that the amounts invoiced to the HCF program for services were billed at a lower monthly cost than the amounts requested on the Beneficiary's FCC Form 462 Attachments and associated NCWs for FRNs 17130671, 17146611, 17153631, 17157141, 17165091, 17193201, 17196141 and 17485181. DPG also determined that amounts were invoiced for duplicate support for FRNs 17146611 and 17193201 and disconnected services for FRN 17485291.[2]

Lower Monthly Cost

Based on our review of the service provider billing detail reports supporting the FCC Forms 463, DPG identified 26 FRN line items where some or all of the monthly recurring costs billed by the service provider were lower than the amounts used by the Beneficiary to establish the "Total Cost Invoiced (Undiscounted)" amount on the Form 463. In these instances, the Beneficiary used the amounts in the NCW to establish the "Total Cost Invoiced (Undiscounted)" amount instead of the actual monthly undiscounted costs billed by the service provider.

Duplicate Support

Based on our review of the service provider billing detail reports supporting the FCC Forms 463, DPG identified two FRN line items for which the amount reflected on the FCC Form 463 submission included costs billed for the same service under another FRN. DPG determined that for FRN 17146611, line items 51 and 52 (Ethernet service), the Beneficiary submitted site and service substitutions for the California Area Office Indian Health Service (HCP 36543). The requested substitution approved for FRN line item 51 included costs for Dedicated Access Arrangement (DAA) Domestic Broadband Ethernet Access at 50 Mbps, installed on October 3, 2017. The monthly undiscounted cost of $1,560 was invoiced for 11 months and 29 days.

The requested substitution approved for FRN line item 52 included costs for National Security and Emergency Preparedness (NS/EP)/Telecommunications Priority Service (TSP) that was subsequently added to the Ethernet service funded under FRN line item 51. The new service was installed on February 22, 2018, and referenced the same circuit ID. The monthly undiscounted cost of $2,749 associated with the circuit was approved and invoiced for seven months and seven days. However, the $2,749 included the cost for the Ethernet service already funded under FRN line item 51. As a result, duplicate costs of $1,560 per month were included in the "Total Cost Invoiced (Undiscounted)" amount on the FCC Form 463 for the months of February through September 2018. All of the duplicate support for this FRN is attributed to FRN line item 52.

DPG also determined that FRN 17193201 line item 1 (Bonded T1 service) and line item 24 (TS-3/DS-3 service) were requested and approved for the Navajo Area IHS – Inscription House Health Center (HCP 11201). The cost for FRN line item 1 included in the original Form 462 and NCW submission referenced circuit ID MGBJ1KNJ0001. The requested services included a Domestic Private Line Service (PLS) Fractional T3 DS1x3 Full Channel circuit

[2] *See* 47 C.F.R. §54.645(b) (2016).

bundled with a Wireline Access Arrangement Service (WLNAS) for two Domestic Wireline FT3 – DS1 x 3 circuits. The Beneficiary then requested funding for FRN line item 24 by submitting site and service substitutions associated with circuit ID MGBJ1KNJ0004 that was not listed in the original NCW. The requested services also listed WLNAS for two Domestic Wireline FT3 – DS1 x 3 circuits. However, based on review of the FCC Form 462 Attachment (service provider bill) and the detail billing reports, DPG determined that the costs associated with the WLNAS listed for line items 1 and 24 were for the same two Domestic Wireline FT3 – DS1 x 3 circuits. DPG confirmed based on the billing that PLS base costs of $941 per month were billed by the service provider against circuit ID MGBJ1KNJ0001 while WLNAS base costs of $1,628 per month were billed against both circuit IDs MGBJ1KNJ0001 and MGBJ1KNJ0004 during the funding period. The Beneficiary indicated in response to DPG inquiry that during September 2017, the service provider renamed the access points from circuit ID MGBJ1KNJ0001 to circuit ID MGBJ1KNJ0004.[3] Total discounted costs varied slightly from month to month due to fluctuation in the taxes and fees. As a result, duplicate costs of $2,073 per month were included in the "Total Cost Invoiced (Undiscounted)" amount on the FCC Form 463 for the months of October 2017 through September 2018. All of the duplicate support for this FRN is attributed to FRN line item 1.

Disconnected Service

Based on our review of the service provider billing detail reports supporting FCC Form 463 invoice number 1000066876 for FRN 17485291, DPG determined that FRN line item 3 (VPN service) was invoiced by the Beneficiary for periods occurring after the disconnect date of the funded services. The monthly undiscounted cost of $4,940 was invoiced on the FCC Form 463 for the period of June through September 2018. However, the service for this FRN line item was disconnected on June 25, 2018.[4]

The following table summarizes information by FRN, FRN line item number, and RHC Invoice number for the excess support received:

FRN	FRN Line Item Number	RHC Invoice Number	Issue	Number of Months / Days of Excess Support	Form 463 Amount of Excess Support
17130671	19	1000067348	Lower Monthly Cost	7 Months 4 Days	$ 9,386
17146611	47	1000068077	Lower Monthly Cost	5 Months 28 Days	$ 954
	48	1000068077	Lower Monthly Cost	5 Months 26 Days	$ 1,926
	49	1000068077	Lower Monthly Cost	11 Months 2 Days	$ 5,047
	50	1000068077	Lower Monthly Cost	7 Months 3 Days	$ 2,083
	52	1000068082	Duplicate Support	7 Months 7 Days	$ 3,933
17153631	2	1000064682	Lower Monthly Cost	12 Months	$ 2,712
	5	1000064682	Lower Monthly Cost	12 Months	$ 1,042
	7	1000064682	Lower Monthly Cost	12 Months	$ 1,055
	11	1000064682	Lower Monthly Cost	12 Months	$ 1,067
	15	1000064682	Lower Monthly Cost	12 Months	$ 1,040
	19	1000067441	Lower Monthly Cost	12 Months	$ 1,839
17157141	3	1000064865	Lower Monthly Cost	12 Months	$ 1,849
	7	1000064865	Lower Monthly Cost	12 Months	$ 1,913
	10	1000064865	Lower Monthly Cost	12 Months	$ 1,849
	19	1000067455	Lower Monthly Cost	12 Months	$ 760
17165091	13	1000067505	Lower Monthly Cost	7 Months 1 Day	$ 5,337

[3] DPG received response on April 29, 2021

[4] *See id*.

FRN	FRN Line Item Number	RHC Invoice Number	Issue	Number of Months / Days of Excess Support	Form 463 Amount of Excess Support
17193201	1	1000064704	Duplicate Support	12 Months	$ 16,165
	9	1000065480	Lower Monthly Cost	3 Months 24 Days	$ 14,579
	15	1000064704	Lower Monthly Cost	12 Months	$ 1,385
	18	1000064704	Lower Monthly Cost	12 Months	$ 2,116
	22	1000068083	Lower Monthly Cost	10 Months	$ 633
	24	1000068083	Lower Monthly Cost	12 Months	$ 272
17196141	2	1000064807	Lower Monthly Cost	12 Months	$ 10,251
	3	1000064807	Lower Monthly Cost	12 Months	$ 10,251
	6	1000064807	Lower Monthly Cost	12 Months	$ 9,938
	8	1000064807	Lower Monthly Cost	12 Months	$ 9,939
17485181	5	1000066867	Lower Monthly Cost	12 Months	$ 7,285
17485291	3	1000066876	Disconnected Service	3 Months 5 Days	$ 10,396
Total					**$ 137,002**

CAUSE

The Beneficiary prepared the FCC Form 463 invoices based on the costs listed in the NCW and did not realize that the monthly costs had decreased during the funding period or that the services were disconnected prior to the end of the funding period. The Beneficiary also did not recognize that funding established for two site and service substitutions included costs already funded by another FRN line item.

EFFECT

DPG calculated the monetary effect by determining the amount of support the Beneficiary should have claimed based on the actual service provider billed amounts and disconnect dates and subtracting that amount from the amount invoiced by the Beneficiary on the corresponding FCC Form 463. DPG summarized the results below:

FRN	Funding Year	Monetary Effect	Recommended Recovery
17130671	2017	$ 9,386	$ 9,386
17146611	2017	$ 13,943	$ 13,943
17153631	2017	$ 8,755	$ 8,755
17157141	2017	$ 6,371	$ 6,371
17165091	2017	$ 5,337	$ 5,337
17193201	2017	$ 35,150	$ 35,150
17196141	2017	$ 40,379	$ 40,379
17485181	2017	$ 7,285	$ 7,285
17485291	2017	$ 10,396	$ 10,396
Total		**$ 137,002**	**$ 137,002**

RECOMMENDATION

DPG recommends USAC management seek recovery of the amounts identified in the Effect section above and that USAC management review FY 2018 invoices to determine whether duplicate support was also paid in FY 2018 for the circuits identified. DPG also recommends that the Beneficiary establish control procedures to ensure amounts included in funding requests are not for duplicative services. DPG further recommends that the Beneficiary establish control procedures to confirm amounts invoiced are consistent with service provider bills and ensure that accurate billing end dates are listed on the FCC Form 463 when performing invoicing.

BENEFICIARY RESPONSE

The IHS concurs with the recommendation to recover the $137,002 identified in the report, however we disagree that the 2018 submissions should be audited. We have performed a random sampling of the 2018 invoices and submissions to USAC and determined that the procedural errors responsible for the over collection in 2017 were not present in the 2018 submission, and any additional auditing would be a waste of taxpayer funding given the relatively small amount of the 2017 finding. IHS concurs with the recommendation to update procedures and has updated the appropriate operating procedures to include a quality assurance check comparing invoice amounts with FCC Form 463 amounts prior to submission. We believe these procedural changes will eliminate any erroneous or duplicative submissions in the future.

DPG RESPONSE

DPG clarifies that its recommendation for USAC to review FY 2018 submissions is specific to the two FRN line items identified by our audit and is not a recommendation to audit all 2018 submissions. Because these FRN line items were claimed through the end of the 2017 funding year, we maintain our recommendation that USAC review the 2018 Form 463 submissions to determine if the same two circuits continued to be claimed for duplicate support in 2018.

IHS submitted a signed response letter to our report. DPG provided a copy of the letter to USAC management separately and incorporated the IHS responses into this report.

Finding #2: 47 C.F.R. § 54.648(b)(1) (2016) – Inadequate Documentation: Percentages Used to Allocate Fair Share of Expenses Were Not Supported

CONDITION

DPG reviewed the FCC Forms 462 and associated attachments, the NCWs, the network diagrams, and other documentation provided by the Beneficiary explaining the process used to develop fair share allocation percentages for services shared between eligible and ineligible HCPs to determine whether fair share percentages were properly supported. DPG determined that fair share percentages were established for Off-Site Data Centers and Off-Site Administrative Offices based on the total count of eligible sites served by the data center or office relative to the total number of eligible and ineligible sites using the data center or office. The counts used for the percentages were determined using billing information available through the Networx master services agreement contract. The Beneficiary identified the counts and percentages in a memo dated June 6, 2017.[5]

DPG requested the Networx billing information to support the counts of the individual sites identified within the memo and to confirm the eligibility status and fair share allocation percentages.[6] The Beneficiary was unable to provide documentation identifying the specific sites establishing the counts and percentages in the memo that would allow us to perform confirmation. DPG performed alternative procedures using billing data and Open Data information from USAC's website to identify the sites receiving services and their eligibility status. DPG's alternative procedures determined that the fair share percentages used by the Beneficiary were reasonable. However, the FCC Rules require Beneficiaries to maintain records documenting compliance with program rules and orders for at least 5 years after the last day of service delivered in a particular funding year.[7] This documentation was not maintained with respect to the original allocation memo.

[5] *See* 47 C.F.R. §§ 54.602(c), 54.639(d)(1), and 54.643(a)(5) (2016).

[6] Request was made October 8, 2021.

[7] *See* 47 C.F.R. §54.648(b)(1), (3) (2016).

CAUSE

The Beneficiary did not adequately document and maintain the information used to support the fair share cost allocation of services for eligible and ineligible entities within the overall network.

EFFECT

There is no monetary effect for this finding as DPG determined the reasonableness of the fair share percentages by performing alternative procedures.

RECOMMENDATION

DPG recommends that the Beneficiary establish control procedures to ensure that future fair share allocations are adequately documented and maintained.

BENEFICIARY RESPONSE

The IHS concurs with the recommendation to ensure complete documentation of the fair share allocations are retained and archived in accordance with federal records retention and disposition schedules for financial records.

DPG RESPONSE

IHS submitted a signed response letter to our report. DPG provided a copy of the letter to USAC management separately and incorporated the IHS responses into this report.

CRITERIA

Finding	Criteria[8]	Description
#1	47 C.F.R.§54.645(b) (2016)	(b) Before the Administrator may process and pay an invoice, both the Consortium Leader (or health care provider, if participating individually) and the vendor must certify that they have reviewed the document and that it is accurate. All invoices must be received by the Administrator within six months of the end date of the funding commitment.
#2	47 C.F.R. §54.602(c) (2016)	(c) *Allocation of discounts.* 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.
#2	47 C.F.R. § 54.639(d)(1) (2016)	(1) *Ineligible sites.* Eligible health care provider sites may share expenses with ineligible sites, as long as the ineligible sites pay their fair share of the expenses. An applicant may seek support for only the portion of a shared eligible expense attributable to eligible health care provider sites. To receive support, the applicant must ensure that ineligible sites pay their fair share of the expense. The fair share is determined as follows: (i) If the vendor charges a separate and independent price for each site, an ineligible site must pay the full undiscounted price. (ii) If there is no separate and independent price for each site, the applicant must prorate the undiscounted price for the ''shared'' service, equipment, or facility between eligible and ineligible sites on a proportional fully distributed basis. Applicants must make this cost allocation using a method that is based on objective criteria and reasonably reflects the eligible usage of the shared service, equipment, or facility. The applicant bears the burden of demonstrating the reasonableness of the allocation method chosen.
#2	47 C.F.R.§54.643(a)(5) (2016)	(5) *Cost Allocation for ineligible entities or components. Pursuant* to § 54.639(d)(3) through (d)(4), where applicable, applicants must submit a description of how costs will be allocated for ineligible entities or components, as well as any agreements that memorialize such arrangements with ineligible entities.
#2	47 C.F.R.§54.648(b)(1), (3) (2016)	(1) Participants, including Consortium Leaders and health care providers, shall maintain records to document compliance with program rules and orders for at least 5 years after the last day of service delivered in a particular funding year. (3) Both participants and vendors shall produce such records at the request of the Commission, any auditor appointed by the

[8] The referenced criteria cite the applicable section of the rules in effect during the audit period. The Rural Health Care Support Mechanism rules were subsequently re-codified and the comparable rules section under the current Code of Federal Regulations (C.F.R.) may be different.

Finding	Criteria[8]	Description
		Administrator or the Commission, or of any other state or federal agency with jurisdiction.

This concludes the report.

Attachment C

RH2019BE004

Attachment D

RH2019SP008

Available For Public Use

Consolidated Communications of Fort Bend Company

Limited Review Performance Audit on Compliance with the Federal Universal Service Fund Rural Health Care Support Mechanism Rules
USAC Audit No. RH2019SP008

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EXECUTIVE SUMMARY

November 4, 2022

Stephanie J. Sapp, Manager
Consolidated Communications of Fort Bend Company
121 South 17th Street
Mattoon, IL 61938

Dear Stephanie J. Sapp,

The Universal Service Administrative Company (USAC or Administrator) Audit and Assurance Division (AAD) audited the compliance of Consolidated Communiations of Fort Bend Company (Service Provider), Service Provider Identification Number (SPIN) 143002427, 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

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[1] (B)	Recommended Recovery (A) - (B)	Recommended Commitment Adjustment
Finding #1: Hospital Networks Management Order, para. 4 (2016) - Beneficiary's 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.	$1,836,948	$0	$1,836,948	$1,836,948
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 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.	$314,799	$314,799	$0	$0
Finding #3: 47 C.F.R. §§ 54.607(b) and 54.619(a)(1) (2016) – Service Provider's Rural Rates Could Not Be Substantiated The Service Provider did not provide adequate documentation to demonstrate compliance with its method of calculating rural rates.	$0	$0	$0	$0
Total Net Monetary Effect	**$2,151,747**	**$314,799**	**$1,836,948**	**$1,836,948**

[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. In addition, USAC management will conduct outreach to the Beneficiary and Service Provider 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.

FRN	Finding #1	Finding #2	Monetary Effect (A)	Overlap (B)	Recommended Recovery (A) - (B)	Commitment Adjustment
1726517	$78,996	$0	$78,996	$0	$78,996	$78,996
1726854	$54,000	$0	$54,000	$0	$54,000	$54,000
1726856	$54,000	$0	$54,000	$0	$54,000	$54,000
1726858	$54,000	$0	$54,000	$0	$54,000	$54,000
1726861	$54,000	$0	$54,000	$0	$54,000	$54,000
1726865	$54,000	$0	$54,000	$0	$54,000	$54,000
1726866	$54,000	$0	$54,000	$0	$54,000	$54,000
1726867	$54,000	$0	$54,000	$0	$54,000	$54,000
1726869	$54,000	$0	$54,000	$0	$54,000	$54,000
1726872	$54,000	$0	$54,000	$0	$54,000	$54,000
1726875	$54,000	$0	$54,000	$0	$54,000	$54,000
1726877	$54,000	$0	$54,000	$0	$54,000	$54,000
1726878	$54,000	$0	$54,000	$0	$54,000	$54,000
1726879	$54,000	$0	$54,000	$0	$54,000	$54,000
1726881	$54,000	$0	$54,000	$0	$54,000	$54,000
1726885	$54,000	$0	$54,000	$0	$54,000	$54,000
1727030	$78,996	$0	$78,996	$0	$78,996	$78,996
1727032	$78,996	$78,996	$157,992	$78,996	$78,996	$78,996
1727034	$78,996	$0	$78,996	$0	$78,996	$78,996
1727036	$78,996	$3,709	$82,705	$3,709	$78,996	$78,996
1727038	$78,996	$78,996	$157,992	$78,996	$78,996	$78,996
1727041	$78,996	$10,394	$89,390	$10,394	$78,996	$78,996
1727043	$78,996	$0	$78,996	$0	$78,996	$78,996
1727046	$78,996	$0	$78,996	$0	$78,996	$78,996
1727047	$78,996	$0	$78,996	$0	$78,996	$78,996
1727048	$78,996	$63,708	$142,704	$63,708	$78,996	$78,996
1727052	$78,996	$78,996	$157,992	$78,996	$78,996	$78,996
1727056	$78,996	$0	$78,996	$0	$78,996	$78,996
Total	**$1,836,948**	**$314,799**	**$2,151,747**	**$314,799**	**$1,836,948**	**$1,836,948**

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	$1,951,824	$1,836,948

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

The committed total represents thirty FCC Form 466 applications with thirty Funding Request Numbers (FRNs). AAD selected eight FRNs,[2] which represent $531,984 of the funds committed and $531,984 of the funds disbursed during the audit period, to perform the procedures enumerated below with respect to the Funding Year 2017 applications submitted by Consolidation Communications of Fort Bend Company.

BACKGROUND

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

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 whether any 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 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

[2] The FRNs included in the scope of this audit were: 1726856, 1726858, 1726867, 1726879, 1727030, 1727046, 1727047, 1727048.

whether it was properly executed. AAD evaluated the services requested and purchased for cost-effectiveness as well.

C. Rural and Urban Rates
AAD conducted inquiries and examined the Service Provider's contracts, tariffs, and 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 the USAC and the corresponding service provider bills submitted to the Beneficiary 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 provided existed and were functional. AAD also determined through inquiry and inspection of documentation whether the supported services for eligible HCPs 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, 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 1726856, 1726858, 1726867, 1726879, 1727030, 1727046, 1727047, and 1727048. Under FCC Rules, applicants in the RHC Telecommunications Program are required to competitively bid supported services, unless they qualify for an exemption.[3] When conducting a competitive bidding process, the Beneficiary 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 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 1726856, 1726858, 1726867, 1726879, 1727030, 1727046, 1727047, and 1727048, 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 support[4] 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.[5] The Beneficiary also informed AAD that CFT Filings solicited new bids and selected the Service Provider to provide services to various Beneficiary locations.[6]

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

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[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").
[4] *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*).
[5] Attachment B to Beneficiary response to competitive bidding questionnaire sent by AAD, received Aug. 17, 2020 (University of Texas Health Northeast notes from USAC meeting dated June 6, 2017).
[6] *Id.*

former service provider.[7] The Service Provider informed AAD that it utilizes Intelisys as a channel partner.[8] The Beneficiary inquired with the Service Provider and the Service Provider reported to the Beneficiary that there was a contractual relationship with Intelisys, a master sales agent, and Intelisys referred business to the Service Provider through sub-agents, one of whom was Gary Speck; however, the Service Provider stated that they had no direct relationship with ABS, CFT, or Gary Speck, nor was it aware of any relationship between Gary Speck and ABS or CFT.[9] Public records suggest that Gary Speck is married to Amy Speck, who was also a Director at ABS during the same time period, and at the time the Form 465 was filed in October 2016.[10]

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, was the Managing Member and Founder of CFT Filings.[11]

The Beneficiary asserts that it was not initially aware of the relationship between ABS and CFT Filings.[12] 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 the Founder of CFT Filings.[13] 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 may 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.

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[7] *See* https://www.lexisnexis.com/en-us/gateway.page and https://www.corporationwiki.com/Texas/Plano/abs-telecom-llc/37293402.aspx (last visited Dec. 5, 2019). *See also* http://www.buzzfile.com/business/ABS-Telecom-LLC-972-407-0063 and https://www.zoominfo.com/c/abs-telecom-llc/347008520 (last visited Dec. 5, 2019).
[8] *See* Service Provider's response to the audit *Background Questionnaire*, received Nov. 13, 2019
[9] *See* Beneficiary's response to the *Process Interview Questionnaire*, received Aug. 17, 2020.
[10] *See* https://www.lexisnexis.com/en-us/gateway.page and https://www.corporationwiki.com/Texas/Plano/abs-telecom-llc/37293402.aspx (last visited Dec. 5, 2019).
[11] *See* https://www.lexisnexis.com/en-us/gateway.page and https://www.corporationwiki.com/p/2rgtul/cft-filings-llc (last visited Dec. 5, 2019).
[12] Attachment B to Beneficiary response to competitive bidding questionnaire sent by AAD, received Aug. 17, 2020 (University of Texas Health Northeast notes from USAC meeting dated June 6, 2017).
[13] According to the FCC, it can be presumed that Amy Speck created CFT Filing to avoid a Conflict of Interest between ABS Telecom and CFT Filings. *See Windstream Order*, 35 FCC Rcd at 10316, n.26.

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 consultants 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 Intelisys maintained direct relationships with[15] 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 1726856, 1726858, 1726867, 1726879, 1727030, 1727046, 1727047, and 1727048.

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 not demonstrate a sufficient knowledge of the FCC Rules prescribing 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 $1,836,948. This amount represents the total amount committed and disbursed for Funding Year 2017 for the eight FRNs in the original scope of the audit (i.e., FRNs 1726856, 1726858, 1726867, 1726879, 1727030, 1727046, 1727047, and 1727048) 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
1726865	$54,000
1726879	$54,000
1726881	$54,000
1727036	$78,996
1726517	$78,996
1727048	$78,996
1727056	$78,996
1727041	$78,996
1726854	$54,000
1726869	$54,000
1726877	$54,000
1726872	$54,000
1727034	$78,996
1726878	$54,000
1726858	$54,000
1727032	$78,996
1727030	$78,996

[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).

FRN Number	Monetary Effect
1726861	$54,000
1727052	$78,996
1726856	$54,000
1726875	$54,000
1727047	$78,996
1726885	$54,000
1726866	$54,000
1726867	$54,000
1727043	$78,996
1727046	$78,996
1727038	$78,996
Total	**$1,836,948**

RECOMMENDATION

AAD recommends that USAC management seek recovery of the amount identified in the Effect section above from the Service Provider and the Beneficiary. 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 and procedures 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 familiarize itself with 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

Under this Audit finding, the USAC Audit and Assurance Division ("AAD") concluded that the University of Texas Health Science Center at Tyler (the "Beneficiary") had a conflict of interest and, therefore, did not conduct a fair and open competitive bidding process when seeking services."

For the reasons discussed below, Consolidated Communications (referenced as the Service Provider in Audit Finding #1, hereinafter "CCI") believes that the audit record does not support that any competitive bidding violation occurred and, therefore, this Finding should be removed.

Even if AAD believes that there was a technical violation of the competitive bidding rules, the financial impact of this Finding – over $1.8 million for Funding Year 2017, plus AAD's recommendation "that USAC management examine [sic] additional FRNs associated with other funding years to determine whether similar issues exist" – is wholly disproportionate. CCI was the only bidder to respond to the

Beneficiaries' Form 465s, so any technical violation could not have impacted the outcome of the competitive bidding process. Moreover, even if such a technical violation were shown, it occurred between individuals that were only indirectly associated with the principals (the Beneficiaries and CCI, respectively) through multiple successive layers of contractual relationships and organizational structures. In such a case, AAD's recommended recovery is grossly inequitable.

In any event, to the extent that AAD concludes that any competitive bidding violation occurred, it arose solely from the conduct of the Beneficiary and, therefore, any recovery should be sought solely from the Beneficiary, and not from CCI.

Factual Background
There are two Beneficiaries within the scope of this audit, Trinity Valley Community College ("TVCC," HCP No. 26649) and The Burke Center – West Austin Street ("The Burke Center," HCP No. 33149).[16]

This Finding arises solely from the Beneficiary's decision to engage a consultant, CFT Filings LLC ("CFT Filings") to conduct its Funding Year 2016 competitive bidding process for services supported under the Rural Healthcare ("RHC") Telecommunications Program.

As shown by its initial Certificate of Formation (attached as **Exhibit A**), CFT Filings was originally formed under Texas law on February 24, 2016, with one "Amy C. Speck" named as the sole Managing Member and registered agent. That association, however, was short-lived. On May 12, 2016, CFT filed a "Certificate of Amendment" (attached as **Exhibit B**) with the Texas Secretary of State, which "amended and restated [the Certificate of Formation] in its entirety." The Certificate of Amendment named "Warren Lai" as the only Managing Member and as the company's registered agent. Confirming that information, the Certificate of Amendment itself was signed by Mr. Lai as CFT's authorized representative.

Subsequently, on September 9, 2016, CCI and Intelisys, Inc. ("Intelisys") entered into a Master Agency Agreement, under which Intelisys would serve as an independent sales agent under with CCI. The Master Agency Agreement permitted Intelisys, in its discretion, to perform its obligations through subagents engaged for that purpose. Intelisys did in fact enter into such a subcontractor relationship with ABS Telecom, LLC ("ABS Telecom"), of which Gary Speck was an employee. CCI had no direct relationship with Gary Speck, ABS Telecom, or CFT Filings, nor was CCI aware Gary Speck's relationship to ABS Telecom when that firm was engaged by Intelisys. Nevertheless, since ABS Telecom had terminated its role as consultant to the Beneficiaries, CCI believed that the previous conflict of interest had been successfully eliminated.

[16] The FCC's Wireline Competition Bureau previously found a conflict of interest involving a prior competitive bidding process conducted by these Beneficiaries, in which CCI was not involved in any way. *See Rural Health Care Universal Service Support Mechanism, Requests for Review of Decisions of the Universal Service Administrator by Windstream Communications, LLC, Little Rock, Arkansas*, WC Docket No. 02-60, Order, DSA 20-1085, 35 FCC Rcd 10312 (2020) ("*Windstream*"). That conduct did not involve CCI and was unrelated to the circumstances within the scope of this audit. As such, any findings by USAC or the Wireline Competition Bureau related to the *Windstream* audit and related proceedings should not carry over to the present audit at issue.

The Beneficiaries began the competitive bidding process reviewed in this Audit with [F]orm 465 filings on October 17, 2016, both signed by Warren Lai of CFT Filings.[17] Through Intelisys, CCI submitted a responsive bid to each of the Beneficiaries' Form 465 filings in November 2016. To CCI's knowledge, when preparing that bid, neither it nor its sales agents had access to any information that was not available to all other potential bidders.

CCI was the only bidder, and the Beneficiaries selected it as the prevailing respondent to the bid process during November 2016. CCI and the Beneficiaries signed five-year contracts for the relevant services later that month, which was after the allowable contract start date permitted under the relevant Form 465 filings. The USAC Rural Health Care Division carefully reviewed the subsequent funding requests, found them to comply with all applicable FCC rules, and committed and disbursed funding, including for the Funding Year 2017 FRNs under review here.

AAD's Finding that the competitive bidding process was not fair and open apparently rests on the statement that, "Public records suggest that Gary Speck is married to Amy Speck, who was also a Director at ABS during the same time period, and at the time the Form 465 was filed." The Finding contains no reliable evidence in support of these claims. Instead the Finding cites only to a Lexis-Nexis login page that contains no relevant information on this point, as well as unreliable hearsay from a third-party website, "CorporationWiki."

Discussion

Whether a competitive bidding process is fair and open, or was compromised by the existence of a conflict of interest, is a highly fact-specific inquiry that requires an assessment of the conduct of the parties involved, as well as clear documentation of any purported conflict.

In this case, the Finding that the competitive bidding process was not "fair and open" rests on a purported conflict of interest arising through the consultant for the Beneficiaries and CCI, but the Audit has failed to produce any evidence of impropriety. Amy Speck's brief involvement of [sic] in the initial formation of CFT Filings ended well before the indirect relationship formed between ABS Telecom and CCI, and also well before the start of the Beneficiaries' competitive bidding process. In such circumstances, there was no violation of the FCC's competitive bidding rules, and certainly nothing that would warrant the draconian sanction recommended in the Finding.

1. The Beneficiaries' Engagement of CFT Filings Did Not Create a Conflict of Interest

The FCC first articulated explicit prohibitions on conflicts of interest in the competitive bidding process in the 2000 *MasterMind* Order, applicable in the E-Rate context. There, the FCC stated that the applicant violates the Commission's competitive bidding requirements "when it surrenders control of the bidding process to a service provider that participates in that bidding process."[18] The Bureau

[17] *See* Trinity Valley Community College, HCP No. 26649, Form 465 No. 43167725 (filed Oct. 17, 2016); The Burke Center - West Austin Street, HCP No. 33149, Form 465 No. 43167724 (filed Oct. 17, 2016).

[18] *Federal-State Joint Board on Universal Service, Request for Review of Decisions of the Universal Service Administrator by MasterMind Internet Services, Inc.*, CC Docket No. 96-45, Order, FCC 00-167, 16 FCC Rcd 4028 (2000), at ¶ 10 ("*MasterMind*").

extended the *MasterMind* precedent to the RHC Program in the 2016 *Hospital Management Networks* Order.[19] In *Hospital Management Networks*, the Bureau explained 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 . . . . 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."[20]

The Finding asserts that, "The Beneficiary terminated its agreement with ABS [Telecom] and hired CFT Filings as its consultant in March 2016. The Beneficiary informed AAD that ABS [Telecom] referred the Beneficiary to CFT Filings." CCI has no knowledge of the events surrounding the Beneficiaries' engagement of CFT Filings but, even accepting these assertions as true, they do not establish any conflict of interest. At the time of the referral, neither entity had any relationship to CCI, because ABS Telecom's indirect relationship to CCI did not materialize until, at the earliest, September 9, 2016. And, by that time, Amy Speck no longer had an ownership interest or other financial stake in CFT Filings. Moreover, the Finding does not identify any financial aspect or other obligation tied to the alleged referral that would prevent the subsequent competitive bidding process from being "fair and open" in violation of the *Mastermind* proscriptions.

Indeed, the record documents that Amy Speck's involvement with CFT Filings as a consultant to the Beneficiary (if she had such a relationship) ended many months before the indirect relationship arose between ABS Telecom and CCI. By the time CCI and Intelisys entered into their Master Agency Agreement on September 9, 2016, Amy Speck had long ago terminated her association with CFT Filings. As a matter of public record, CFT Filings had removed Amy Speck as a member of that entity at the latest by May 12, 2016, the date it submitted its Certificate of Amendment to the Texas Secretary of State that made a different individual, Warren Lai, the sole member of the LLC.

Thus, the Finding is simply incorrect when it states that, "According to public records, Amy Speck . . . is identified as a Managing Member of CFT Filings." She *was* so identified for a brief time that ended well before any conflict of interest could have arisen. For the same reason, the Finding offers no support for its assertion that "Intelisys maintained direct relationships with the Service Provider as its channel

[19] *Rural Health Care Support Mechanism; Requests for Review of Decisions of the Universal Service Administrator by Hospital Networks Management, Inc. Manchaca, Texas*, WC Docket No. 02-60, Order, DA 16-619, 31 FCC Rcd 5731 (Wir. Comp. Bur. 2016), at ¶ 20 (explaining 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 both parties"). The Commission did not codify the application of the "fair and open" standard to the RHC Telecom Program until 2019, subsequent to the conduct challenged in this proposed Audit Finding. *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Report and Order, FCC 19-78, 34 FCC Rcd 7335 (2019) ("*Rural Healthcare Reform Order*"), at ¶ 160 ("*Promoting Telehealth Order*"), *appeal pending sub nom. GCI Communication Corp. v. FCC*, No. 19-1217 (D.C. Cir., filed Oct. 21, 2019). Given USAC's administrative, non-policymaking role, 47 C.F.R.§ 54.702(c), Consolidated Communications does not challenge the application of the "fair and open" standard to these 2016 events at this time, but reserves the right to do so in future proceedings related to this Audit.
[20] *Hospital Management Networks* at ¶ 4 (*citing Schools and Libraries Universal Service Support Mechanism, Requests for Review of the Decision of the Universal Service Administrator by SEND Technologies, LLC*, CC Docket No. 02-6, DA 07- 1270, 22 FCC Rcd 4950 (Wir. Comp. Bur. 2007) ("*SEND Technologies*")).

partner and with CFT Filings through Ms. Speck." To the contrary, Intelisys had no relationship to CCI until September 9, 2016, by which time Amy Speck no longer had any interest in CFT Filings.

2. The Finding Does Not Identify Any Impermissible Involvement of Amy Speck or Gary Speck in the Beneficiaries' FY 2016 competitive bidding process.

The Finding asserts that "Amy Speck . . . was also a Director at ABS [Telecom] at the time the Form 465 was filed in October 2016." In support of this assertion, the Finding again cites only a Lexis-Nexis login page that contains no substantive information relevant to this topic, and an unreliable hearsay profile of ABS Telecom from the third-party website, "CorporationWiki."

Even assuming that both Specks had a relationship to ABS Telecom, that fact alone would not establish a conflict of interest or prevent the Beneficiaries' competitive bidding process from being "fair and open." As explained above, ABS Telecom had an indirect relationship through Intelisys as an independent sales agent for CCI. There is no evidence of any improper involvement of ABS Telecom in the competitive bidding process on behalf of the Beneficiaries. Rather ABS Telecom's role was limited solely to its efforts on behalf of the bidder, CCI.

While the Finding states that, "CFT Filings solicited new bids and selected the Service Provider to provide services to various Beneficiary locations," no conflict of interest arose from those actions. Warren Lai of CFT Filings signed the Beneficiaries' Form 465 filings, and may have performed additional duties in support of the Beneficiaries' competitive bidding process. Those actions took place months after Amy Speck's brief involvement in the formation of CFT Filings was over. The Finding fails to document any continuing association of Amy Speck with CFT Filings while the competitive bidding process was underway, nor that she was otherwise personally involved in those activities on behalf of the Beneficiary, nor even that she obtained any confidential "insider" information concerning the Beneficiaries' competitive bidding process before her departure from CFT Filings on May 12, 2016. Indeed, CCI is unaware of any documentation in the record of this Audit, nor has AAD provided to CCI any documentation, demonstrating that (i) Amy Speck continued to be involved in the operation or work of CFT Filings during the conduct of the Beneficiaries' competitive bidding process or (ii) that Amy Speck in fact was married to Gary Speck at the time of the Beneficiary's competitive bidding process.

Plainly, Amy Speck's brief early involvement with CFT Filings, without more, is not sufficient to taint ABS Telecom's involvement on behalf of CCI. Compliance with the rules and procedures governing the RHC Support Mechanism requires specialized knowledge and experience. It is therefore commonplace for individuals with the necessary skills to move over time between roles in which they support healthcare providers ("HCPs") and service providers. The FCC's *Hospital Management Networks* decision makes clear that, "[j]ust as an applicant is prohibited from acting ***simultaneously*** as the potential service provider, so too is the applicant's consultant."[21] But, RHC consulting is not a lifetime bond of indentured servitude. The FCC has never prohibited individuals from moving from one role to another over time, provided that they do not participate in a single bidding process on behalf of multiple parties simultaneously.

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[21] *Hospital Management Networks* at ¶ 18 (emphasis added).

3. The Purported Marriage between Amy Speck and Gary Speck Is Unproven and Irrelevant

The Finding asserts that, "Public records suggest that Gary Speck is married to Amy Speck," but it contains no citation to any such public record.[22] The Finding therefore fails to establish whether the Specks are married or, indeed, that they share any other close familial relationship, apart from having the same last name.

Furthermore, the Finding does not explain the relevance of the purported marriage, assuming it exists. This aspect of the Finding appears to rest on the unproven assumption that Amy Speck continued to be involved in the competitive bidding process on behalf of the Beneficiaries, while her supposed husband, Gary Speck, had an indirect relationship to the service provider, CCI. As discussed above, there is no evidence that either of the Specks were active in the Beneficiaries' 2016 competitive bidding process, or otherwise maintained a relationship with CFT Filings while that process was underway.

In any event, even if the Specks were married and Amy Speck were [sic] acting for the Beneficiaries while Gary Speck was engaged indirectly as an independent sales agent for CCI, the FCC has never held that such a spousal relationship necessarily creates a *per se* conflict of interest in all cases. Rather, the focus of *Hospital Management Networks* and other FCC precedent is conflicts of interest that may arise within an individual HCP or its consultant during the competitive bidding process. So, for example, the FCC has held that a conflict of interest arises if an applicant's consultant itself has a direct financial incentive to give preferential treatment to a bidding service provider or otherwise influence the outcome of the selection process.[23]

Here, even if Amy Speck were to have had a continuing role with CFT Filings or the Beneficiaries during the November 2016 competitive bidding process – and, again, no such role has been shown – any potential conflict of interest would involve at least two distinct individual parties. The FCC has never found that a conflict of interest necessarily arises solely from the existence of the marriage, if one

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[22] Similarly to the other cases discussed above, the Finding cites only a Lexis-Nexis login page that contains no substantive information relevant to the purported marriage, and an unreliable hearsay profile of ABS Telecom from the third-party website, "CorporationWiki." CCI knows of no information in the record of this Audit documenting that these two Specks were married in October-November 2016, and otherwise has no knowledge of whether any personal relationship of any kind may have existed between them.

[23] *Federal-State Joint Board on Universal Service; Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District, El Paso, TX, et al.*, CC Docket No. 96-45, Order, FCC 03-313, 18 FCC Rcd 26406 (2003), at ¶ 60 (where the Commission "stress[ed] that direct involvement in an application process by a service provider would thwart the competitive bidding process"); *SEND Technologies* at ¶ 6 (finding a conflict of interest where the contact person identified on the applicant's FCC Form 470 was an employee of the applicant and also directly owned a 15 percent interest in the selected service provider); *see also* 47 C.F.R. §54.503(a) note (identifying a conflict of interest where "[a]n applicant employee with a role in the service provider selection process also has an ownership interest in the service provider seeking to participate in the competitive bidding process").

spouse were to serve as a consultant for an applicant while the other worked for a bidding service provider.[24]

Questions as to the extent, if any, to which a conflict of interest exists when spouses or their colleagues are involved on opposite sides of a legal or commercial transaction arise in many domains beyond the FCC's universal service programs. There are few *per se* rules; rather, any determination whether a conflict of interest exists must rest on a careful and fact-specific analysis of the parties' specific roles, as well as any safeguards that may be in place.

For example, in a recent Opinion, the Professional Ethics Committee for the State Bar of Texas had the opportunity to consider the extent to which a conflict of interest may arise "where attorneys, who are married to each other, either represent, or are members of firms who represent, opposing parties to the same civil matter." The Committee concluded that whether a conflict of interest arises from "a marriage between lawyers affiliated with opposing firms engaged on the same adverse matter . . . will depend on the circumstances."[25] As the Committee explained:

> [R]esolution of the issue requires consideration of all the circumstances, including, without limitation, (1) the nature of the matter and the issues involved; (2) whether either spouse will be directly involved in the representation, and if so the nature and extent of such involvement; (3) whether and to what extent the outcome of the representation may have a financial effect on either spouse; (4) the positions of the spouses within their firms; and (5) whether the lawyers handling the representation have a close working relationship with the lawyer-spouse in the same firm.[26]

A similar fact-specific approach would also be necessary here to establish whether a conflict of interest prevented the conduct of a "fair and open" competitive bidding process in violation of the Commission's rules and orders governing the RHC Telecom Program. Knowledge and financial interests of one spouse may not be automatically imputed to the other for purposes of establishing that a competitive bidding process was not "fair and open," making this case fundamentally different from those the Commission has previously considered involving conflicts that arise based on the financial interests of a specific individual person or firm.

To sustain this Finding, therefore, AAD would need to clearly document how the nature of that relationship created an impermissible conflict of interest and analyze the impact it had on the competitive bidding process. No such analysis is possible based upon the present record evidence,

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[24] Indeed, the Bureau has previously suggested that the Specks' formation of CFT Filings "address[ed] the perceived conflict of interest," rather than extending it. *Windstream Review Order* at ¶ 7, n.26 ("On or about February 24, 2016, the wife of Mr. Speck formed CFT Filings, LLC (CFT) presumably to address the perceived conflict of interest . . . . CFT was to assume the consulting role for HCPs participating in the Telecom Program and was authorized by UTHSCT to act on its behalf before USAC in matters relating to the Telecom Program for FYs 2015-2018."). The *Windstream Review Order* raises no objection to the effectiveness of this intended solution, even without discussing the fact that Ms. Speck relinquished her role with CFT less than three months later.

[25] Professional Ethics Committee for the State Bar of Texas, Opinion No. 666 (Dec. 2016), at 4.

[26] *Id.* at 2; *see also, e.g.,* National Society of Professional Engineers, Board of Ethical Review, "Conflict of Interest –Spouse as Employee of Vendor," Case No. 06-10 (Apr. 6, 2007) (encouraging disclosure but finding no *per se* conflict).

since the Finding contains no evidence at all that either spouse was involved with the Beneficiaries' competitive bidding process or otherwise maintained a financial relationship with CFT Filings during the relevant time.

Even if such evidence exists, AAD would need to gather additional evidence to determine whether the spousal relationship actually existed and actually created the opportunity and financial incentive for Ms. Speck to engage in prohibited conduct. The Commission has not previously explored such issues in that context, and USAC is not permitted to create such a policy itself.[27] Nevertheless, relevant factors might include:

- Valid proof of a spousal relationship, such as a marriage license or affirmative statements in FCC filings of a marriage relationship.
- Whether Ms. Speck actually stood to benefit financially from the selection of CCI as the successful bidder in this audit or whether, for example, the couple kept separate finances, either completely or with respect to Mr. Speck's work for ABS Telecom;[28]
- Whether CFT Filings established safeguards to shield Amy. Speck from any information concerning its work for the Beneficiaries; and
- Whether the Specks established any safeguards to prevent Mr. Speck from gaining access to confidential information concerning the Beneficiaries from Ms. Speck or CFT Filings.

At a minimum, any finding that a conflict of interest had an adverse impact on the fair and open nature of the bidding process must rest on a factual analysis of factors such as these demonstrating that Ms. Speck actually had "an ownership interest, sales commission arrangement, or other financial stake with respect to a bidding service provider," as required under Commission precedent. Such a conflict cannot be inferred based solely
on her purported (but unsubstantiated) marriage to Gary Speck.[29]

4. Any Conflict of Interest Was a Nullity because CCI was the Only Bidder

The Beneficiaries operate in relatively rural areas of western Texas, and their Funding Year 2016 Form 465 filings requested services covering a large geographic area. As a result, CCI was the only bidder to submit a bid in response to the Beneficiaries' Form 465 filings.

The FCC has held that a "a critical requirement of the competitive bidding process is to "competitive bidding process is to ensure that it is conducted in a manner that does not give one bidder an unfair

[27] 47 C.F.R. § 54.702(c),

[28] *Cf. Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals*, CG Docket No. 10-210, Report and Order, FCC 16-101, 31 FCC Rcd 9178 (2016) at ¶ 74 (In determining eligibility for low-income support end-user equipment for those who are deaf-blind, "an applicant's income will not include the income of other adults in a household if such adults do not contribute to and share in the income and expenses of the household").

[29] *See Schools and Libraries Universal Service Support Mechanism, Request for Review of the Decision of the Universal Service Administrator by Academy of Careers and Technologies, San Antonio, TX*, CC Docket No. 02-6, Order, FCC 06-55, 21 FCC Rcd 5348 (2006) ("*Academy of Careers Order*"), at ¶ 6 (USAC may not presume an applicant "violated the competitive bidding rules," but must "perform[] applicant-specific evaluations").

advantage over another bidder."[30] Here, the Beneficiaries did not have two or more bids to consider, and therefore they had no opportunity to favor one bidder over another, even if some as-yet-unidentified conflict of interest might have provided an incentive to do so. Rather, the Beneficiaries "selected" CCI as the winner because CCI was the only option available. Moreover, there is no evidence of circumstances that may have deterred any bidders from participating in the Beneficiaries' competitive bidding process.[31] Indeed, the Beneficiaries' Form 465 filings were extremely general, stating in each case a "[n]eed to stream media, provide telemedicine and link facilities for educational events such as Gran[t] Rounds, Center for Disease Control satellite feeds and healthcare professional education."[32] They were not tailored in any way to favor CCI.

5. Any Recover* [sic] *Should Be Directed Solely Against the Beneficiaries

The FCC has directed USAC, in pursuing recovery of any funds, to "make the determination, in the first instance, to whom recovery should be directed in individual cases."[33] In doing so, the FCC directed USAC to consider factors including which party was in [sic] 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.[34]

As described above, CCI believes that no recovery is warranted because no violation of the competitive bidding rules has occurred. Nevertheless, the Finding's recommendation to seek recovery against both parties is plainly inconsistent with the substance of the Finding. Thus, if USAC continues to maintain this Finding, it should recommend recovery solely against the Beneficiaries.

Because any conflict of interest, if it existed, would have involved two separate and distinct individuals, it differs fundamentally from previous cases where the conflict arises from the conduct of a single individual or entity. In assessing responsibility for the violation, USAC must assess each party's role separately, and may not simply assume that the "fault" is equally shared, as it frequently does where a single individual or entity causes the conflict. Here, in particular, USAC cannot impute any knowledge held by Amy Speck equally to both parties. Simply put, even if Gary Speck is married to Amy Speck, he cannot know her thoughts or actions unless and until she tells him. Any taint in the competitive bidding process arising from a conflict of interest – if one were demonstrated – would be the result of Amy Speck revealing the Beneficiaries' confidential non-public information. Such actions

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[30] *Windstream* at ¶ 4.

[31] *See, e.g., Schools and Libraries Universal Service Support Mechanism, Request for Review of Decisions of the Universal Service Administrator by Consorcio de Escuelas y Bibliotecas de Puerto Rico*, CC Docket No. 02-6, Order, DA 13-13 (Wir. Comp. Bur. 2013), at ¶ 13 (excusing the applicant's technical violation of the competitive bidding rules where there was only one bidder and no reason to believe any bidders were actually deterred); *Schools and Libraries Universal Service Support Mechanism, Request for Review of a Decision of the Universal Service Administrator by Ramirez Common School District, Realitos, Texas*, CC Docket No. 02-6, Order, DA 11-1039 (Wir. Comp. Bur. 2011), at ¶ 7 (excusing competitive bidding violation where the school "only received one bid and there was no contact by any other prospective vendors during the bidding process").

[32] The Burke Center Form 465 No. 43167724, Block 29; TVCC Form 465 No. 43167725, Block 29.

[33] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order on Reconsideration and Fourth Report and Order, FCC 04-181, 19 FCC Rcd 15252 (2004) ("*Fourth Report and Order*"), at ¶ 15.

[34] *Id.*

would be solely within her discretion, and fully outside of the control of CCI, Intelisys, ABS Telecom, or even Gary Speck.

As such, recovery should lie, if at all, against the Beneficiaries. The Commission's rules and precedents give the Beneficiaries primary responsibility for conducting a fair and open competitive bidding process.[35] As described in the *MasterMind Order*, a violation occurs when an *applicant* improperly surrenders control of the competitive bidding process.[36] There is otherwise no opportunity for the service provider to seize such control. Similarly, in *Hospital Management Networks*, the Bureau explained 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."[37] Those are inherently responsibilities of the applicant healthcare provider. Plainly, CCI would be unable to control the Beneficiaries' treatment of any other potential bidder, or to know whether information revealed by Amy Speck had been shared with all bidders equally.

For these reasons, when the FCC directed USAC to determine which party is responsible for any rule violation, and therefore liable for the recovery of funds, it stated, that the "school or library [applicant] is likely to be the entity that commits an act or omission that violates our competitive bidding requirements."[38]

Here, there is no evidence of any wrongdoing by CCI, Intelisys, ABS Telecom, or Mr. Speck. Rather, the only *possible* (but unproven) source of a prohibited conflict of interest would be through the Beneficiaries' consultant, CFT Filings, as a result of some involvement by Amy Speck. Any such actions would have been the product of unilateral decisions and conduct solely by CFT Filings and Amy Speck. Clearly, neither CCI, nor Intelisys, nor ABS Telecom, nor Gary Speck himself had any independent ability to influence the Beneficiaries' selection process.

Indeed, the Finding itself makes that conclusion clear. At various points, the Finding frames the responsibility for conducting a fair and open competitive bidding process as one for the Beneficiaries. The Finding states, for example: "[T]the **Beneficiary** must ensure that the competitive bidding process does not disadvantage one service provider over another. 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" (emphasis added). Later, as a cause of the alleged violation, the Finding states, "[t]he **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" (emphasis added).

While the Finding attempts to identify causes for the alleged violation for which the service provider was responsible, the effort falls short. The Finding claims that CCI "did not demonstrate a sufficient

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[35] *E.g.*, 47 C.F.R. § 54.622(b)(1) ("*Applicants* participating in the Telecommunications Program or Healthcare Connect Fund Program must conduct a fair and open competitive bidding process") (emphasis added).
[36] *MasterMind Order* at ¶ 10 (finding that "*an applicant* violates the Commission's competitive bidding requirements when it surrenders control of the bidding process to a service provider that participates in that bidding process") (italics added for emphasis).
[37] *Hospital Management Networks* at ¶ 4.
[38] *Fourth Report and Order* at ¶ 15.

knowledge of the FCC Rules prescribing its role in preventing the Service Provider from gaining an unfair competitive advantage in the competitive bidding process." Nothing in the Finding supports that conclusion. CCI is aware of the requirement that the RHC competitive bidding process be "fair and open." In this case, however, information available to CCI showed no apparent conflict of interest. Contemporaneous annual Public Information Report filings from ABS Telecom's with the Texas Secretary of State name both Amy Speck and Gary Speck as managers of ABS Telecom, and analogous information from CFT Filings shows that Amy Speck terminated her role with that firm shortly after it was formed and well before the Beneficiaries' competitive bidding process began.

If Amy Speck did continue her involvement with CFT Filings, there was certainly no reasonable way that CCI or Intelisys could have discovered it, especially if the May 2016 Amendment was intended to conceal that fact. Moreover, shortly thereafter, CFT Filings forfeited its charter by action of the Texas Secretary of State, and ceased to exist by January 26, 2018 (see **Exhibit C**), further complicating any effort today to ascertain Amy Speck's role, if any, in the Beneficiaries' Funding Year 2016 competitive bidding process.

Rather, the Beneficiaries were in a far better position than CCI to know of any "behind the scenes" involvement of Amy Speck in their own competitive bidding process. Amy Speck's role with ABS Telecom was a matter of public record, while any continuing involvement with the Beneficiaries or CFT [Filings] was actively concealed.

Similarly, the Finding claims as a cause of the alleged violation that, "[t]he Service Provider's channel partner recommended the Beneficiary use a consulting company that was created by the channel partner's spouse." But, any such recommendation was made *before* ABS Telecom became an indirect channel partner of CCI, and Amy Speck's mere creation of the firm hired by the Beneficiaries, followed by her speedy withdrawal, is not sufficient under these circumstances to cause a conflict of interest. Moreover, the decision to hire CFT Filings was the Beneficiaries' alone, irrespective of any recommendation, and there is no apparent financial interest tied to the recommendation. CCI should not be held responsible for events that took place well before it became associated with ABS Telecom or Gary Speck.

Conclusion

For the foregoing reasons, CCI requests that AAD remove this Finding or, at a minimum, recommend recovery solely against the Beneficiaries.

Exhibit A to Service Provider Response
Certificate of Formation, CFT Filings, LLC, Filing No. 802399097 (Feb. 24, 2016)

Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
FAX: 512/463-5709

Filing Fee: $300

THE STATE OF TEXAS

Certificate of Formation
Limited Liability Company

Filed in the Office of the Secretary of State of Texas
Filing #: 802399097 02/24/2016
Document #: 657847460002
Image Generated Electronically for Web Filing

Article 1 - Entity Name and Type

The filing entity being formed is a limited liability company. The name of the entity is:

CFT Filings LLC

Article 2 – Registered Agent and Registered Office

☐ A. The initial registered agent is an organization (cannot be company named above) by the name of:

OR

☑ B. The initial registered agent is an individual resident of the state whose name is set forth below:

Name:
Amy C Speck

C. The business address of the registered agent and the registered office address is:

Street Address:
5849 Bridle Bend Court Plano TX 75093

Consent of Registered Agent

☐ A. A copy of the consent of registered agent is attached.

OR

☑ B. The consent of the registered agent is maintained by the entity.

Article 3 - Governing Authority

☐ A. The limited liability company is to be managed by managers.

OR

☑ B. The limited liability company will not have managers. Management of the company is reserved to the members.

The names and addresses of the governing persons are set forth below:

Managing Member 1: **Amy C Speck** Title: **Managing Member**

Address: **5849 Bridle Bend Court Plano TX, USA 75093**

Article 4 - Purpose

The purpose for which the company is organized is for the transaction of any and all lawful business for which limited liability companies may be organized under the Texas Business Organizations Code.

Supplemental Provisions / Information

[The attached addendum, if any, is incorporated herein by reference.]

Organizer

The name and address of the organizer are set forth below.

Amy C. Speck **5849 Bridle Bend Court, Plano TX 75093**

Effectiveness of Filing

☑ A. This document becomes effective when the document is filed by the secretary of state.

OR

☐ B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of its signing. The delayed effective date is:

Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Amy C. Speck

Signature of Organizer

FILING OFFICE COPY

Exhibit B to Service Provider Response
Certificate of Amendment, CFT Filings, LLC, (May 12, 2016)

Form 424
(Revised 05/11)
Submit in duplicate to:
Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
512 463-5555
FAX: 512/463-5709
Filing Fee: See instructions

Certificate of Amendment

This space reserved for office use.

FILED
In the Office of the
Secretary of State of Texas
MAY 12 2016
Corporations Section

Entity Information

The name of the filing entity is:

CFT Filings LLC

State the name of the entity as currently shown in the records of the secretary of state. If the amendment changes the name of the entity, state the old name and not the new name.

The filing entity is a: (Select the appropriate entity type below.)

- ☐ For-profit Corporation
- ☐ Nonprofit Corporation
- ☐ Cooperative Association
- ☒ Limited Liability Company
- ☐ Professional Corporation
- ☐ Professional Limited Liability Company
- ☐ Professional Association
- ☐ Limited Partnership

The file number issued to the filing entity by the secretary of state is: 802399097

The date of formation of the entity is: 2/24/2016

Amendments

1. Amended Name

(If the purpose of the certificate of amendment is to change the name of the entity, use the following statement)

The amendment changes the certificate of formation to change the article or provision that names the filing entity. The article or provision is amended to read as follows:

The name of the filing entity is: (state the new name of the entity below)

The name of the entity must contain an organizational designation or accepted abbreviation of such term, as applicable.

2. Amended Registered Agent/Registered Office

The amendment changes the certificate of formation to change the article or provision stating the name of the registered agent and the registered office address of the filing entity. The article or provision is amended to read as follows:

Registered Agent
(Complete either A or B, but not both. Also complete C.)

☐ A. The registered agent is an organization (cannot be entity named above) by the name of:

OR

☒ B. The registered agent is an individual resident of the state whose name is:

Warren		Lai	
First Name	*M.I.*	*Last Name*	*Suffix*

The person executing this instrument affirms that the person designated as the new registered agent has consented to serve as registered agent.

C. The business address of the registered agent and the registered office address is:

421 Mordred Lane	Lewisville	TX	75056
Street Address (No P.O. Box)	*City*	*State*	*Zip Code*

3. Other Added, Altered, or Deleted Provisions

Other changes or additions to the certificate of formation may be made in the space provided below. If the space provided is insufficient, incorporate the additional text by providing an attachment to this form. Please read the instructions to this form for further information on format.

Text Area (The attached addendum, if any, is incorporated herein by reference.)

☐ Add each of the following provisions to the certificate of formation. The identification or reference of the added provision and the full text are as follows:

☒ Alter each of the following provisions of the certificate of formation. The identification or reference of the altered provision and the full text of the provision as amended are as follows:
Please see attachment hereto.

☐ Delete each of the provisions identified below from the certificate of formation:

Statement of Approval

The amendments to the certificate of formation have been approved in the manner required by the Texas Business Organizations Code and by the governing documents of the entity.

Effectiveness of Filing (Select either A, B, or C)

A. ☒ This document becomes effective when the document is filed by the secretary of state.

B. ☐ This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: ____________________

C. ☐ This document takes effect upon the occurrence of a future event or fact, other than the passage of time. The 90th day after the date of signing is: ____________________

The following event or fact will cause the document to take effect in the mann er des cri bed below:

Execution

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Date: May 11, 2016

By: ____________________

Signature of authorized person

Warren Lai

Printed or typed name of authorized person (see instructions)

Attachment to Form 424 - Certificate of Amendment

CFT Filings LLC
File Number: 802399097

Article 3 of the Certificate of Formation, filed on February 24, 2016, is hereby amended and restated in its entirety as follows:

"Article 3 - Governing Authority

The limited liability company will not have managers. Management of the company is reserved to the members. The names and addresses of all the members are set forth below:

Warren Lai
Managing Member
421 Mordred Lane
Lewisville, TX 75056."

Exhibit C to Service Provider Response
Forfeiture pursuant to Section 171.309 of the Texas Tax Code, CFT Filings, LLC,
File No. 802399097 (Jan. 26, 2018)

Corporations Section
P.O.Box 13697
Austin, Texas 78711-3697

Rolando B. Pablos
Secretary of State

Forfeiture pursuant to Section 171.309 of the Texas Tax Code
of
CFT Filings LLC

File Number : 802399097 Certificate / Charter forfeited : January 26, 2018

The Secretary of State finds that:

1. The Secretary has received certification from the Comptroller of Public Accounts under Section 171.302 of the Texas Tax Code indicating that there are grounds for the forfeiture of the taxable entity's charter, certificate or registration; and
2. The Comptroller of Public Accounts has determined that the taxable entity has not revived its forfeited privileges within 120 days after the date that the privileges were forfeited.

Therefore, pursuant to Section 171.309 of the Texas Tax Code, the Secretary of State hereby forfeits the charter, certificate or registration of the taxable entity as of the date noted above and records this notice of forfeiture in the permanent files and records of the entity.

THE STATE OF TEXAS

RBP
Rolando B. Pablos
Secretary of State

BENEFICARY 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 never ripened into an actual conflict of interest and 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 August 17, 2020, the facts underlying the Consolidated 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 Consolidated 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 [sic] from a disproportionate incidence of chronic diseases and psychiatric illness. Specifically, the Burke Center provides complete mental health services to adults and children in Northeast Texas including a 24-hour crisis line, innovative counseling and therapy, and a state-of-the-art mental health emergency center in Lufkin, and TVCC offers a wide range of clinical programs to train healthcare workers throughout Northeast 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 Consolidated 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, but the University did not believe that Mr. Speck had any ownership interest in CFT Filings. 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 Consolidated about its possible relationships with Gary Speck, ABS Telecom, and CFT Filings. Consolidated reported that: (1)

Consolidated had a contractual relationship with Intelisys, a master sales agent; and (2) Intelisys refers business to Consolidated through sub-agents, one of which is Gary Speck. However, Consolidated reported it had no direct relationship with Mr. Speck, ABS Telecom, or CFT Filings, nor was it aware of any relationship between Mr. Speck and ABS Telecom on the one hand and CFT Filings on the other. The University also uncovered some information after the procurement that suggested a possible business relationship between Mr. Speck and CFT Filings. That said, the University was not aware of any such relationship when CFT Filings conducted the procurement, and Consolidated has advised the University that it had no relationship with CFT Filings and that it is unaware of any possible relationship between Mr. Speck and CFT Filings.

Even if Mr. Speck's relationship with Intelisys (which was a sales agent for Consolidated) 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 Intelisys and CFT Filings did not create an actual conflict of interest within the Telecom Program rules, 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 Intelisys 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 Consolidated circuits, UTHSCT was not aware of the fact that in addition to being a channel partner for Windstream, Gary Speck was a subagent for Intelisys, which referred business to Consolidated.

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 Consolidated, in response to the instant audit. However, because there is no evidence that Consolidated (unlike Windstream) paid any sales commission to either Intelisys or Mr. Speck as part of this procurement, this potential conflict of interest never ripened into a genuine conflict of interest.

Third, Consolidated 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 health care providers in question. Therefore, UTHSCT had only one service provider from which to choose to provide service to these facilities regardless of any alleged conflicts of interest.

Fourth, Consolidated's bid rates were much lower than that of the incumbent provider, Windstream. For example, for the Burke Center, the total monthly cost for all circuits was $326,670 when purchased from Windstream and Consolidated's bid was $75,000 for these circuits. Similarly, for Trinity Valley Community College, the total monthly cost for all circuits was $225,987.24 when purchased from Windstream and Consolidated's bid amount was $84,996 for these circuits. Attachment A, Competitive Bidding Documents, Bid Summaries.

Finally, the Telecom Program did not reimburse Consolidated according to the contract (bid) rates. Rather, Consolidated's rural rates have been reviewed and revised by USAC for every funding year from FY17-FY21 for the circuits/FRNs in question. In particular, Consolidated's rates are based on USAC Method 2—the average rates charged by other service providers in the rural areas in question, as reflected in the USAC e-rate [sic] and rural healthcare rate database. Because the rates database was subject to revision every year, so were Consolidated's rates as reimbursed by the Telecom Program.

Given that the rural rates were reviewed by USAC every funding year, any apparent defects in the procurement could not have resulted in an overcharge to the Telecom Program.

[Attachment A]

The Burke Center - Bid Summary November 2016

A location	NPA/NXX	Z Location	NPA/NXX	Current MMR	Current Carrier	New Bid MMR	New Carrier
1401 West Austin St. Crockett, Tx 75835	936/544	2211 JOHN REDDITT DR, LUFKIN, TX 75901	936/634	$ 22,870.00	Windstream	$ 5,000.00	Consolidated
1401 West Austin St. Crockett, Tx 75835	936/544	2003 S MEDFORD DR, LUFKIN, TX 75901	936/633	$ 21,700.00	Windstream	$ 5,000.00	Consolidated
1401 West Austin St. Crockett, Tx 75835	936/544	1915 OLD MILL RD, LUFKIN, TX 75904	936/639	$ 21,700.00	Windstream	$ 5,000.00	Consolidated
1401 West Austin St. Crockett, Tx 75835	936/544	105 MAYO PL, LUFKIN, TX 75904	936/674	$ 21,700.00	Windstream	$ 5,000.00	Consolidated
1401 West Austin St. Crockett, Tx 75835	936/544	2105 N JOHN REDDITT DR, LUFKIN, TX 75904	936/639	$ 21,700.00	Windstream	$ 5,000.00	Consolidated
1401 West Austin St. Crockett, Tx 75835	936/544	2704 HOMER ALTO RD, LUFKIN, TX 75904	936/634	$ 21,700.00	Windstream	$ 5,000.00	Consolidated
1401 West Austin St. Crockett, Tx 75835	936/544	4632 NE STALLINGS DR, NACOGDOCHES, TX 75965	936/558	$ 21,700.00	Windstream	$ 5,000.00	Consolidated
1401 West Austin St. Crockett, Tx 75835	936/544	583 EL CAMINO CROSSING,SAN AUGUSTINE, TX 75972	936/275	$ 21,700.00	Windstream	$ 5,000.00	Consolidated
1401 West Austin St. Crockett, Tx 75835	936/544	1936 NORTH ST, NACOGDOCHES, TX 75962	936/468	$ 21,700.00	Windstream	$ 5,000.00	Consolidated
1401 West Austin St. Crockett, Tx 75835	936/544	11937 US HWY 271, TYLER, TX 75708	903/877	$ 21,700.00	Windstream	$ 5,000.00	Consolidated
1401 West Austin St. Crockett, Tx 75835	936/544	1718 S UNIVERSITY DR, NACOGDOCHES, TX 75961	936/569	$ 21,700.00	Windstream	$ 5,000.00	Consolidated
1401 West Austin St. Crockett, Tx 75835	936/544	1522 FRANK ST, LUFKIN, TX 75904	936/634	$ 21,700.00	Windstream	$ 5,000.00	Consolidated
1401 West Austin St. Crockett, Tx 75835	936/544	910 SOUTH MARGARET ST, KIRBYVILLE, TX 75956	409/423	$ 21,700.00	Windstream	$ 5,000.00	Consolidated
1401 West Austin St. Crockett, Tx 75835	936/544	1100 OGLETREE DR, LIVINGSTON, TX 77351	936/327	$ 21,700.00	Windstream	$ 5,000.00	Consolidated
1401 West Austin St. Crockett, Tx 75835	936/544	1250 MARVIN HANCOCK DR, JASPER, TX 75951	409/384	$ 21,700.00	Windstream	$ 5,000.00	Consolidated
		Comparison of MMR for Existing 15 Circuits (does not include diverse route - see note below)		**$ 326,670.00**		**$ 75,000.00**	

Note - Diverse Route on Windstream is currently $32,000; Consolidated will provide a diverse route for $5000.

Trinity Valley Community College Bid Summary Nov 2016

A location	NPA/NXX	Z Location	NPA/NXX	Existing MRR	Existing Carrier	New Bid MMR	New Carrier
100 CARDINAL DR ATHENS TX 75751	903/675	1109 W PANOLA, CARTHAGE TX 75633	903/693	$ 24,150.00	Windstream	$ 7,083.00	Consolidated
100 CARDINAL DR ATHENS TX 75751	903/675	2100 SOUTH LOOP 256, PALESTINE, TX 75801	903/727	$ 47,963.97	Windstream	$ 7,083.00	Consolidated
100 CARDINAL DR ATHENS TX 75751	903/675	2970 N STATE HWY 19, PALESTINE, TX 75802	903/729	$ 33,350.34	Windstream	$ 7,083.00	Consolidated
100 CARDINAL DR ATHENS TX 75751	903/675	100 UNIVERSITY BLVD, PALESTINE,TX 75801	903/727	$ 33,350.34	Windstream	$ 7,083.00	Consolidated
100 CARDINAL DR ATHENS TX 75751	903/675	11937 US HWY 271, TYLER, TX 75708	903/877	$ 3,526.50	Windstream	$ 7,083.00	Consolidated
100 CARDINAL DR ATHENS TX 75751	903/675	1936 NORTH STREET, NACOGDOCHES TX 75962	936/468	$ 3,985.50	Windstream	$ 7,083.00	Consolidated
100 CARDINAL DR ATHENS TX 75751	903/675	3500 SOUTH FIRST ST, LUFKIN TX 75904	936/633	$ 20,000.00	Windstream	$ 7,083.00	Consolidated
100 CARDINAL DR ATHENS TX 75751	903/675	800 TEXAS 243, KAUFMAN TX 75142	972/932	$ 45,554.59	Windstream	$ 7,083.00	Consolidated
100 CARDINAL DR ATHENS TX 75751	903/675	3600 LOOP 500 E, CENTER, TX 75935	936/598	n/a	n/a	$ 7,083.00	Consolidated
				$ 211,881.24		$ 63,747.00	
		Comparison of MRR for Existing 12 Circuits (Note: 5 end in Tyler location)		**$ 225,987.24**		**$ 84,996.00**	

AAD RESPONSE TO SERVICE PROVIDER

In its response, the Service Provider states "CCI was the only bidder to respond to the Beneficiaries' Form 465s, so any technical violation could not have impacted the outcome of the competitive bidding process." The Service Provider also stated, "the Beneficiaries did not have two or more bids to consider, and therefore they had no opportunity to favor one bidder over another, even if some as-yet-unidentified conflict of interest might have provided an incentive to do so." Additionally, the Service Provider stated, "there is no evidence of circumstances that may have deterred any bidders from participating in the Beneficiaries' competitive bidding process." AAD neither agrees nor disagrees with these statements. However, regardless of whether the violation would have impacted the outcome of the competitive bidding process, the Beneficiary is required to comply with FCC competitive bidding rules, which require a fair and open competitive bidding process.[39]

[39] *Supra* Note 13.

In its response, the Service Provider states, "…even if such a technical violation were shown, it occurred between individuals that were only indirectly associated with the principals (the Beneficiaries and CCI, respectively) through multiple successive layers of contractual relationships and organizational structures." AAD does not concur with this statement. The FCC competitive bidding rules not only apply to the Beneficiary and Service Provider but also to third parties acting on their behalf, such as consultants.[40]

The Service Provider states, "…since ABS Telecom had terminated its role as consultant to the Beneficiaries, CCI believed that the previous conflict of interest had been successfully eliminated." AAD does not agree or disagree with this statement. However, the conflict of interest is the relationship between Amy Speck (CFT Filings' Founder and Managing Member, and Director of ABS Telecom) and Gary Speck (President and Director of ABS). According to the FCC, it can be presumed that Amy Speck created CFT Filing to avoid a Conflict of Interest between ABS Telecom and CFT Filings.[41]

In its response, the Service Provider states, "Amy Speck's brief involvement of [sic] in the initial formation of CFT Filings ended well before the indirect relationship formed between ABS Telecom and CCI, and also well before the start of the Beneficiaries' competitive bidding process." The Service Provider also states, "CCI has no knowledge of the events surrounding the Beneficiaries' engagement of CFT Filings but, even accepting these assertions as true, they do not establish any conflict of interest." Further, the Service Provider states, "Thus, the Finding is simply incorrect when it states that, 'According to public records, Amy Speck . . . is identified as a Managing Member of CFT Filings.' She was so identified for a brief time that ended well before any conflict of interest could have arisen." Although Amy Speck's tenure as CFT Filing's Founder and Managing Member may have ended in May 2016, Amy's role as the Founder and Managing Member of CFT Filings overlaps with her employment at ABS Filings.[42]

In its response, the Service Provider states "[t]he Finding, therefore, fails to establish whether the Specks are married or, indeed, that they share any other close familial relationship, apart from having the same last name." Public records list Gary Speck and Amy Speck as husband and wife, and evidence of their joint home ownership.[43] In addition, a Google search indicates that they live at the same address and carry the same surname, which further indicates a familial relationship. Further, the FCC previously found that Amy Speck is Gary Speck's wife.[44]

In its response, the Service Provider states, "[i]n any event, even if the Specks were married and Amy Speck were [sic] acting for the Beneficiaries while Gary Speck was engaged indirectly as an independent sales agent for CCI, the FCC has never held that such a spousal relationship necessarily creates a per se conflict of interest in all cases." The Service provider also states, "[t]he FCC has never found that a conflict of interest necessarily arises solely from the existence of the marriage, if one spouse were to serve as a consultant for an applicant while the other worked for a bidding service provider." Lastly, the Service Provider states, "[t]o sustain this

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[40] *Id.* ("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.")
[41] *See Windstream Order*, 35 FCC Rcd at 10316, n.26.
[42] *See* https://www.linkedin.com/in/amy-carlson-speck-0056932b, accessed on February 15, 2023.
[43] See https://collin.tx.publicsearch.us/doc/110789361?highlight=%225849%20Bridle%20Bend%22, and https://www.losaltosonline.com/people/obituaries/catharine-cathy-valline-carlson/article_c5810ac5-90fa-5e09-9dd1-aa8a7d0f1505.html, accessed on February 15, 2023.
[44] *See Windstream Order*, 35 FCC Rcd at 10316, n.26.

Finding, therefore, AAD would need to clearly document how the nature of that relationship created an impermissible conflict of interest and analyze the impact it had on the competitive bidding process." 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."[45] Amy Speck has a financial interest as it relates to ABS Telecom, as she was affiliated with ABS Telecom during the period in which the competitive bidding occurred.[46] Additionally, as the wife of the subcontractor used by the Service Provider's channel partner (i.e., dealer), Amy Speck has a clear and direct financial interest when the outcome of the competitive bidding process results in her husband earning a sales commission.

The Service Provider states "[t]he Finding asserts that 'Amy Speck . . . was also a Director at ABS [Telecom] at the time the Form 465 was filed in October 2016.' In support of this assertion, the Finding again cites only a Lexis-Nexis login page that contains no substantive information relevant to this topic…" AAD identified publicly-available Linkedin pages that show Amy Speck was affiliated with ABS Telecom from 2007 through at least March 2023.[47] These records demonstrate Amy Speck's concurrent affiliation with both ABS Telecom and CFT Filings, during the time of CFT Filings incorporation in early 2016.

Lastly, the Service Provider states, "USAC Rural Health Care Division carefully reviewed the subsequent funding requests, found them to comply with all applicable FCC rules, and committed and disbursed funding, including for the Funding Year 2017 FRNs under review here." The Rural Health Care Division procedures and application review processes are separate from an audit by USAC's Audit and Assurance Division and the initial funding approvals do not negate either the audit results herein or, most importantly, the application of the competitive bidding rules, which require a fair and open competitive bidding process.[48]

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 Consolidated about its possible relationships with Gary Speck, ABS Telecom, and CFT Filings. Consolidated reported that: (1) Consolidated had a contractual relationship with Intelisys, a master sales agent; and (2) Intelisys refers business to Consolidated through sub-agents, one of which is Gary Speck. However, Consolidated reported it had no direct relationship with Mr. Speck, ABS Telecom, or CFT Filings, nor was it aware of any relationship between Mr. Speck and ABS Telecom on the one hand and CFT Filings on the other." 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

[45] *Hospital Networks Management Order*, 31 FCC Rcd at 5733, para. 4.
[46] See https://www.linkedin.com/in/amy-carlson-speck-0056932b, accessed on February 15, 2023.
[47] See https://www.linkedin.com/in/amy-carlson-speck-0056932b, accessed on March 15, 2023; https://www.linkedin.com/company/abs-telecom-llc?trk=public_profile_topcard-current-company, accessed on March 15, 2023.
[48] *Supra* Note 13.

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."[49] Thus, the Beneficiary was required to ensure its competitive bidding process was fair and open and 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 reported information regarding CFT Filings as a potential conflict of interest before it filed its FY2017 funding request and that the Beneficiary only had one service provider, Consolidated, from which to choose to provide the necessary services after Windstream, a fact that AAD confirmed through audit fieldwork testing. Considering that the Beneficiary was a party to the *Windstream Order* under which the FCC upheld USAC's denial of the Beneficiary's FY 2012-2016 funding requests because of the conflict of interest between ABS / Gary Speck and the Beneficiary's prior service provider, the Beneficiary should have implemented controls and processes to examine potential conflict of interest with CFT, the consultant that was referred to it by ABS, including inquiring and researching potential involvement of a channel partner working as a sales agent for a service provider. The Beneficiary appears to not have performed any research on CFT Filings prior to forming a relationship with it to determine whether there was the possibility of conflict. In the *Windstream Order*, of which the Beneficiary is a party, the FCC found that Amy Speck, Gary Speck's wife, formed CFT Filings "presumably to address the perceived conflict of interest [between ABS and the Beneficiary's former service provider.]"[50] As stated above, once the Beneficiary was aware of the potential conflict of interest, the Beneficiary was required to conduct a fair and open competitive bidding process without the existence of any conflicts of interest.

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. Regardless of whether the conflict affected the actual result of the competitive bidding process, the Beneficiary is required to adhere to the FCC competitive bidding rules, which state that the competitive bidding process must be fair and open.[51]

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

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 obtained and examined documentation, including the FCC Forms 465 and 466, service provider bills, and network diagrams, to determine whether the services requested by the Beneficiary (Trinity Valley Community College) were used within the funding year for which the support was sought for purposes reasonably related to the provision of health care or instruction that the Health Care Provider (HCP) was legally authorized to provide under applicable state law for FRNs 1727030, 1727046, 1727047, and 1727048, as required by FCC

[49] *Id*.

[50] *See Windstream Order*, 35 FCC Rcd at 10316, n.26.

[51] *See Hospital Networks Management Order*, 31 FCC Rcd at 5733, para. 4.

rules.[52] 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 to receive prorated support for the eligible activities only.

In its FCC Form 465, the Beneficiary identified itself as a "Post-secondary educational institution offering health care instruction, teaching hospital or medical school" 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 post-secondary learning institutions[53] that offered non-healthcare 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 by the RHC program in its Funding Commitment Letter.

The FRNs with circuit termination locations at post-secondary educational institutions included 1727048 (from the original sample), 1727032, 1727036, 1727038, 1727041, and 1727052 (additional FRNs selected). For these FRNs, the Beneficiary provided the quantity of health care-related versus non-health care-related courses, the quantity of students[54] 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.[55] The Beneficiary provided supporting documentation to support the quantity of students enrolled in health care-related courses versus non-health care-related courses for FRNs 1727048, 1727041, and 1727036.[56] The Beneficiary did not provide supporting documentation to show the quantity of students enrolled in health care-related courses versus non-health care-related courses for FRNs 1727032, 1727038, and 1727052. For these FRNs with a lack of documentation,[57] AAD could not determine the percent of students enrolled in health care-related courses.

In determining an allocation between eligible and ineligible services, AAD utilized the students enrolled in health care-related courses offered by each post-secondary education institution, and identified the following:

College Name	**Angelina Community College**	**University of Texas - Tyler University Academy at Palestine**	**Palestine Main Campus Location**
FRN	**1727048**	**1727041**	**1727036**
Total Students Enrolled	4,263	152	213
Students Enrolled in Health Care-Related Courses	825	132	203
Percent of Students in Health Care-Related Courses	19.35%	86.84%	95.31%
Percent of Students in Non-Health Care-Related Courses	80.65%	13.16%	4.69%

[52] *See* 47 C.F.R. §§ 54.602(d); 54.615(c)(4) (2016).
[53] *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").
[54] Student count includes full time students and continuing healthcare education students.
[55] *See* Beneficiary response to audit inquiries, received Nov. 5, 2020.
[56] *See* Beneficiary response to audit inquiries, received Mar. 28, 2022, May 16, 2022, and June 13, 2022, respectively.
[57] *See* 47 C.F.R. § 54.619(a)(1) (2016).

Because the Beneficiary received RHC Telecommunications Program support for 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 state[58] 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,[59] AAD concludes that the RHC program was over-invoiced for $390,086 in support committed for FRNs 1727048, 1727032, 1727036, 1727038, 1727041, and 1727052, as shown in the chart below:

FRN	1727048	1727032	1727036	1727038	1727041	1727052	Total
Committed Funds [**A**]	$78,996	$78,996	$78,996	$78,996	$78,996	$78,996	$473,976
Non-Healthcare Rate [**B**]	80.65%	100%	4.69%	100%	13.16%	100%	-
Amount Over-Committed [**A*****B**]	$63,708	$78,996	$3,709	$78,996	$10,394	$78,996	**$314,799**

CAUSE

The Beneficiary did not demonstrate a sufficient knowledge of FCC Rules requiring allocating eligible and ineligible costs. The Beneficiary did not have adequate document retention procedures to ensure evidence demonstrating RHC Telecommunications Program support was used for the provision of health care.

EFFECT

The monetary effect of this finding is $314,799. This amount represents the total amount committed and disbursed by the RHC program for services not pro-rated during the funding year for purposes reasonably related to the provision of health care during Funding Year 2017, as follows:

Funding Request Number	Monetary Effect	Overlapping Recovery and Commitment Adjustment	Recommended Recovery and Commitment Adjustment[60]
1727032	$78,996	$78,996	$0
1727036	$3,709	$3,709	$0
1727038	$78,996	$78,996	$0
1727041	$10,394	$10,394	$0
1727048	$63,708	$63,708	$0
1727052	$78,996	$78,996	$0
Total	**$314,799**	**$314,799**	**$0**

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

[59] *See* 47 C.F.R. § 54.602(c) (2016).

[60] To prevent double-recovery, the recommended recovery amount is less than the monetary effect given that $314,799 overlaps with the recommended recovery in Finding #1.

RECOMMENDATION

AAD recommends that USAC management seek recovery of $314,799 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 that USAC management issue a downward commitment adjustment for $314,799 to the extent funds are not already downward adjusted as a result of other findings included in this audit report.

The Beneficiary must retain adequate records to demonstrate that its network is appropriate and must maintain documentation to demonstrate compliance with FCC Rules. The Beneficiary must develop and implement policies, procedures, and processes that describe how the Beneficiary will ensure that it retains adequate records to demonstrate its network meets the requirements for RHC program purposes. The Beneficiary may learn more information about documentation and reporting requirements on USAC's website at https://www.usac.org/about/appeals-audits/beneficiary-and-contributor-audit-program-bcap/common-audit-findings-rural-health-care-program/ and https://www.usac.org/rural-health-care/additional-program-guidance/document-retention/.

In addition, 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 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. Further, AAD recommends that the Beneficiary and Service Provider take advantage of the training and outreach available from the RHC program on USAC's website at https://www.usac.org/rural-health-care/learn/.

BENEFICIARY RESPONSE

Initial Response from the Beneficiary[61] :

TVCC-WEC Palestine: FRN 1707232 [sic]
USAC used the ratio of healthcare students (28) to all students (36), excluding the professional/continuing healthcare education students (8), to calculate a 28/36 (77.7%) allocator.

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 no reduction in the funds allocated to FRN 1707232 based on eligibility criteria. Therefore, the facility should be 100% (28+8/36) eligible.

Angelina College Location FRN 1727048
USAC used the ratio of students enrolled in healthcare courses (541) to total students (4255) to calculate a 541/4255 (12.7%) allocator.

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[61] Beneficiary responses to audit results summary received December 9, 2021.

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 1727048 based on eligibility criteria. Therefore, the 262 continuing healthcare education students should be added to the 541 healthcare students for an eligibility ratio of (262+541)/4255, or 18.9%.

TVCC-Panola College Carthage Location: FRN 1727052
USAC used the ratio of students enrolled in healthcare courses (369) to total students (2503) to calculate a 369/2503 (14.7%) allocator.

UTHSCT does not dispute this finding.

TVCC- Panola College Center Location FRN 1727038
USAC used the ratio of students enrolled in healthcare courses (41) to total students (268) to calculate a 41/268 (15.2%) allocator.

UTHSCT does not dispute this finding.

Palestine Main Campus Location FRN 1727036
USAC used the ratio of face-to-face students enrolled in healthcare courses (19) to total students (105) to calculate a 19/105 (18%) allocator.

UTHSCT does not dispute this finding.

UT Tyler University Academy at Palestine Location FRN 1727041
USAC used the ratio of students enrolled in healthcare courses (132) to total students (152) to calculate a 132/152 (86.8%) allocator.

UTHSCT does not dispute this finding.

Updated response from the Beneficiary[62]:

Inclusive of the information provided, UTHSCT has no additional information to add to its previous responses to USAC's audit requests involving these FRNs.

AAD RESPONSE TO BENEFICIARY

During the audit fieldwork, the Beneficiary provided to AAD an allocation ratio for each FRNs within this Finding,[63] as reflected in its response. The Beneficiary also provided documentation to support the number of

[62] *See* Beneficiary response to audit inquiry, received January 10, 2023.
[63] *Supra* Note 49.

students enrolled in health care-related courses versus non-health care-related courses for FRNs 1727048, 1727041, and 1727036.[64]

The Beneficiary states that for FRN 1727048, "262 continuing healthcare education students should be added to the 541 healthcare students for an eligibility ratio of (262+541)/4255, or 18.9%." However, the documentation provided supports a total of 825 healthcare students and 4,263 total students, or a healthcare enrollment percentage of 19.35% (or a non-healthcare rate of 80.65%, as reflected in the Condition). Therefore, 80.65% was used in AAD's calculation of the monetary effect.

The Beneficiary states that for FRN 1727036, "USAC used the ratio of face-to-face students enrolled in healthcare courses (19) to total students (105) to calculate a 19/105 (18%) allocator. UTHSCT does not dispute this finding." However, the documentation provided supports a total of 203 healthcare students and 213 total students, or a healthcare enrollment percentage of 95.31% (or a non-healthcare rate of 4.69%, as reflected in the Condition). Therefore, 4.69% was used in AAD's calculation of the monetary effect.

As stated in the Condition, the Beneficiary did not provide supporting documentation to show the number of students enrolled in health care-related courses versus non-health care-related courses for FRNs 1727032, 1727038, and 1727052.

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

Finding #3: 47 C.F.R. §§ 54.607(b) and 54.619(a)(1) – Service Provider's Rural Rates Could Not Be Substantiated

CONDITION

AAD conducted inquiries and obtained and examined documentation, including the FCC Forms 466 and USAC's Open Data platform, to determine whether the Service Provider established its rural rate in accordance with FCC Rules for FRNs 1726856, 1726858, 1726867, 1726879, 1727030, 1727046, 1727047, and 1727048. In its FCC Forms 466, the Beneficiary requested Rural Health Care (RHC) Telecommunications program support for "Ethernet 1 Gigabyte per second (GBPS)" and identified a rural rate of $5,000 for FRNs 1726856, 1726858, 1726867, and 1726879, and a rural rate of $7,083 for FRNs 1727030, 1727046, 1727047, and 1727048. The Service Provider informed AAD that it used method 2 to calculate its rural rate.[65] However, the Service Provider did not provide adequate documentation to demonstrate compliance with this method of calculating rural rates.

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."[66] The Service Provider provided documentation to AAD demonstrating that its rural rate was lower than the average

[64] *See* Beneficiary response to audit inquiries, received Mar. 28, 2022, May 16, 2022, and June 13, 2022, respectively.
[65] *See* Service Provider's narrative documentation, received Aug. 11, 2020.
[66] *See* 47 C.F.R. § 54.607(b) (2016).

of other publicly available rates.[67] However, the Service Provider did not provide adequate documentation to demonstrate how its actual reported rural rates were calculated as per the FCC Rules. AAD examined USAC's Open Data platform for other publicly available rates and identified other service providers' health care providers (HCP) customers with identical or similar services within the same geographic rural area to calculate an average rural rate. AAD determined that the Service Provider's rural rates did not exceed AAD's calculated average rural rates utilizing publicly available data for same or similar services within the same geographic rural area.

USAC is required to conduct audits in accordance with generally accepted government auditing standards,[68] which require AAD to obtain sufficient, appropriate evidence to substantiate audit findings and conclusions.[69] Because the Service Provider did not provide sufficient documentation demonstrating support of the rural rates stated on the Beneficiary's FCC Forms 466, AAD concludes that the Service Provider was not in compliance with FCC Rules prescribing document retention.

CAUSE

The Service Provider did not demonstrate a sufficient knowledge of the FCC Rules prescribing document retention. The Service Provider did not have adequate document retention procedures to ensure evidence demonstrating support for the determination of its rural rates.

EFFECT

There is no monetary effect for this finding as AAD was able to perform alternative procedures to determine that the Service Provider's rural rates reported in the FCC Forms 466 did not exceed AAD's calculated average rural rates utilizing publicly available data for same or similar services within the same geographic rural area.

RECOMMENDATION

The Service Provider must establish policies, procedures and controls to ensure it retains sufficient documentation for the application and receipt of RHC program supported services, including its rural rate calculations and commercial customer lists. The Service Provider must familiarize itself with the FCC Rules prescribing 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 in the rural area for the same or similar services 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

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[67] *Id.; See* Service Provider's documentation, received Aug. 21, 2020 and May 24, 2022.

[68] *See* 47 C.F.R. § 54.702(n) (2016).

[69] *See* U.S. Government Accountability Office, *Government Auditing Standards*, GAO-12-331G, para. 6.56 (Rev. Dec. 2011) ("Auditors must obtain sufficient, appropriate evidence to provide a reasonable basis for their findings and conclusions.").

submit the cost-based rates to the FCC for approval (for interstate rates).[70] The Service Provider can learn more about rural rates by visiting USAC's website at https://www.usac.org/wp-content/uploads/rural-health-care/documents/handouts/TelecomRuralUrbanRateInfo-1.pdf and at https://www.usac.org/rural-health-care/telecommunications-program/step-4-submit-funding-requests/.

The Service Provider must establish policies, procedures and controls to ensure it retains sufficient documentation for the application and receipt of RHC program supported services, including its rural rate calculations. The Service Provider may visit USAC's website at https://www.usac.org/rural-health-care/additional-program-guidance/document-retention/ to learn more about document retention for rural rates.

SERVICE PROVIDER RESPONSE

Under this Audit finding, the USAC Audit and Assurance Division ("AAD") concluded that Consolidated Communications ("CCI") "did not provide adequate documentation to demonstrate compliance" with the FCC's "Method 2" for calculating rural rates under the Telecommunications Program of the Rural Health Care Universal Service Support Mechanism.

Because AAD was able to perform alternative procedures to determine that the Service Provider's rural rates reported in the FCC Forms 466 did not exceed AAD's calculated average rural rates utilizing publicly available data for same or similar services within the same geographic rural area, this Finding has no monetary effect.

Like many carriers, CCI found that by 2017, the FCC's old three-tiered rural rate rule used in the Rural Health Care ("RHC") Telecommunications Program had become outdated and exceedingly difficult to apply. The FCC created that rural rate rule in 1997, at the same time that it originally created the RHC Telecommunications Program. Over the ensuing decades, the FCC had never updated the rural rate rules, despite profound changes in the competitive market environment, the evolution of telecommunications from circuit switched TDM to broadband IP services, concomitant changes to the FCC's rate regulation and tariffing rules, and transformation of participating healthcare providers' service needs.

While the Finding does not include enough information for CCI to replicate AAD's Method 2 analysis, CCI agrees with the ultimate conclusion that there was no monetary impact, *i.e.*, that CCI's rural rates were at or below the permissible average.

The Finding recommends that CCI "establish policies, procedures and controls to ensure it retains sufficient documentation for the application and receipt of RHC program supported services, including its rural rate calculations." While CCI believes it has such policies, procedures and controls in place, and further believes it worked in good faith to comply with FCC rules existing as of the dates of the Beneficiary's funding requests, CCI is aware that the FCC is working diligently to modernize the

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[70] *See* 47 C.F.R. § 54.607(b) (2016) ("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…") (Method 3).

RHC Telecommunications Program's rural rate requirements that gave rise to this finding.[71] CCI will work diligently to ensure that it complies with all program document retention rules in the future.

[71] *See, e.g., Promoting Telehealth in Rural America*, WC Docket No. 17-310, Further Notice of Proposed Rulemaking, FCC 22-15 (rel. Feb. 22, 2022).

CRITERIA

Finding	Criteria	Description
#1	*Requests for Review of Decisions of the Universal Service 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*).	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 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.
#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	*Federal-State Joint Board on Universal Service*, 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	*In the Matter of Rural Health Care Support Mechanism,* WC Docket No. 02-60, Order, 22 FCC Rcd. 20360, para. 102 (2007) (*RHC Pilot Program Selection Order*).	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.

Finding	Criteria	Description
#1	*Windstream Order*, 35 FCC Rcd at 10316, n.26 (2020).	26 Windstream Request for Review at 5. Windstream asserts that it first learned of the dual role on or about February 12, 2016. Speck Decl. 7. But see ABS Opposition at 14 (Windstream had no "reasonable basis" for representing that it was unaware of Mr. Speck's dual role). On or about February 24, 2016, the wife of Mr. Speck formed CFT Filings, LLC (CFT) presumably to address the perceived conflict of interest. Windstream Request for Review at 5; Speck Decl. 9. CFT was to assume the consulting role for HCPs participating in the Telecom Program and was authorized by UTHSCT to act on its behalf before USAC in matters relating to the Telecom Program for FYs 2015-2018. Windstream Request for Review at 5-6.
#2	47 C.F.R. § 54.602(d) (2016).	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.
#2	47 C.F.R. § 54.615(c)(4) (2016).	(4) 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;
#2	47 C.F.R. § 54.600(a) (2016).	A "health care provider" is any: is any: (1) Post-secondary educational institution offering health care instruction, including a teaching hospital or medical school;….
#2	*Form 465 Instructions*, (OMB 3060-0804), July 2014, at 5, Block 6, Line 33.	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.
#2	47 C.F.R. § 54.602(c) (2016).	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.
#2, #3	47 C.F.R. § 54.619(a)(1) (2016).	Health care providers shall maintain for their purchases of services supported under the Telecommunications Program documentation for five years from the end of the funding year sufficient to establish compliance with all rules in this subpart. Documentation must include, among other things, records of allocations for consortia and

Finding	Criteria	Description
		entities that engage in eligible and ineligible activities, if applicable. Mobile rural health care providers shall maintain annual logs indicating: The date and locations of each clinic stop; and the number of patients served at each such clinic stop.
#3	47 C.F.R. § 54.702(n) (2016).	The Administrator shall account for the financial transactions of the Universal Service Fund in accordance with generally accepted accounting principles for federal agencies and maintain the accounts of the Universal Service Fund in accordance with the United States Government Standard General Ledger. 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. In administering the Universal Service Fund, the Administrator shall also comply with all relevant and applicable federal financial management and reporting statutes.
#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	*See* U.S. Government Accountability Office, *Government Auditing Standards*, GAO-12-331G, para. 6.56 (Rev. Dec. 2011)	Auditors must obtain sufficient, appropriate evidence to provide a reasonable basis for their findings and conclusions.

This concludes the report.

Attachment E

RH2021LR005

Available For Public Use

Eastern Nebraska Healthcare Communications Consortium (Methodist Health System)

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

USAC Audit No. RH2021LR005

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EXECUTIVE SUMMARY

March 17, 2023

Kent Sona, Vice President and CIO
Eastern Nebraska Healthcare Communications Consortium (Methodist Health System)
825 S. 169th Street
Omaha, NE 68118

Dear Mr. Sona:

The Universal Service Administrative Company (USAC or Administrator) Audit and Assurance Division (AAD) audited the compliance of Eastern Nebraska Healthcare Communications Consortium (Methodist Health System) (Beneficiary), Health Care Provider (HCP) Number 50553, 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 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 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 Beneficiary'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 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

AUDIT RESULTS AND COMMITMENT ADJUSTMENT/RECOVERY ACTION

Audit Results	Monetary Effect	Recommended Recovery	Recommended Commitment Adjustment
Finding #1: 47 C.F.R. § 54.639(b) (2017) – Healthcare Connect Fund used for Ineligible Equipment. The Beneficiary received network equipment support for access switches that are operating as internal connections, which is an ineligible expense for HCF support.	$367,378	$367,378	$0
Finding #2: 47 C.F.R. § 54.634(b)(2) (2017) – Insufficient Information in the Request for Proposal for Dark and Lit Fiber Services. The Beneficiary's solicitation for proposals did not include the requirement to provide service over lit fiber over a time period compatible with the duration of the dark fiber lease.	$50,310	$50,310	$50,310
Finding #3: 47 C.F.R. § 54.602(d) (2017) – Beneficiary received RHC Healthcare Connect Fund Support Not Used for the Provision of Health Care. The Service Provider did not provide the installation service and the Beneficiary did not inform the RHC program of the need to reduce the funding request commitment for which support was requested.	$10,234	$10,234	$10,234
Total Net Monetary Effect	**$427,922**	**$427,922**	**$60,544**

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. In addition, USAC management will conduct outreach to the Beneficiary 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	Finding #3	Total
FRN 18454951	$367,378	$0	$10,234	$377,612
FRN 18440531	$0	$50,310	$0	$50,310
USAC Recovery Action	**$367,378**	**$50,310**	**$10,234**	**$427,922**
Rationale for Difference (if any) from Auditor Recommended Recovery				

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
Leased Facilities or Services	$50,310	$50,310
Network Equipment	$398,081	$377,612
Ethernet	$147,127	$147,127
Telecommunications	$78,680	$78,680
Internet Access	$20,853	$20,853
Total	**$695,051**	**$674,582**

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

The committed total represents 13 FCC Form 462 applications with 13 Funding Request Numbers (FRNs). AAD selected three FRNs,[1] which represent $521,712 of the funds committed and $501,243 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 Beneficiary.

BACKGROUND
The Beneficiary is a consortium of health care providers located in the states of Nebraska and Iowa.

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 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

[1] The FRNs included in the scope of this audit were: 18414131, 18454951, and 18440531.

determine whether ineligible costs, if any, were identified and ineligible entities, if any, paid their fair share.

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 were 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 contracts 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.

C. Eligibility

AAD conducted inquiries and inspection of 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.

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.

E. 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.

F. Site Visit

AAD performed a virtual site visit to evaluate the location and use of equipment and services to determine whether it was delivered and installed, located in eligible facilities, and utilized in accordance with the FCC Rules.

DETAILED AUDIT FINDINGS

Finding #1: 47 C.F.R. § 54.639(b) (2017) – Healthcare Connect Fund Support Used for Ineligible Equipment

CONDITION

AAD obtained and examined the FCC Form 461 and the fixed asset listing (FAL), and observed selected equipment via virtual site visit, to determine whether the Rural Health Care program (RHC) was invoiced for in use, eligible and approved equipment for FRN 18454951 (line item 16). Per observation during the site visit and discussions with Children's Hospital IT department representatives, AAD determined that the purchased network switches operate as access switches[2] that connect upstream (i.e., to the distribution layer switches or directly to core layer switches) and distribute service on the selected floors. None of the eligible broadband services connect directly to these access switches. Since the access switches operate as internal connections, the access switches are ineligible for support under the Healthcare Connect Fund (HCF) program.[3]

The Beneficiary explained that there was no clear guidance to determine eligible equipment at the time of submitting the equipment request for the HCF support.[4] However, FCC Order 12-150, paragraphs 156 – 163 and 164 - 170,[5] provides an explanation of the eligible and ineligible support for network equipment. The FCC in Paragraph 170 specifically declined to provide support for inside wiring or internal connections.[6] This prohibition on support for inside wiring and internal connections is contained in the FCC Rules at section 54.639(b).[7]

CAUSE

The Beneficiary did not demonstrate sufficient knowledge of FCC Rules establishing the determination of ineligible expenses under the HCF program.[8]

EFFECT

The monetary effect of this finding is $367,378. This amount represents the total amount disbursed by the RHC program for the cost of the access switches serving as internal connections for FRN 18454951.

RECOMMENDATION

AAD recommends that USAC Management seek recovery of $367,378 from the Beneficiary.

The Beneficiary must implement policies, controls and procedures to ensure awareness of the RHC program rules. Specifically, the Beneficiary must familiarize itself with the RHC program rules that prescribe the types of equipment and its uses that are eligible for RHC support purposes. In addition, the Beneficiary may visit

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[2] Access layer connects directly to the end-user equipment (e.g., laptops and workstations) providing access to the local area network (LAN).

[3] 47 C.F.R. § 54.639(b) (2017).

[4] See response to AIR #38b received on July 15, 2022.

[5] *Rural Health Care Support Mechanism,* WC Docket No. 02-60, Order, 27 FCC Rcd 16678, paras. 156 – 170 (2012).

[6] *Id*. at para. 170.

[7] 47 C.F.R. § 54.639(b) (2017).

[8] Beneficiary response to Exception Summary, received on September 19, 2022.

USAC's website at https://www.usac.org/rural-health-care/healthcare-connect-fund-program/step-4-submit-funding-requests/ to learn more about submitting funding requests for support for eligible expenses under the HCF program.

BENEFICIARY RESPONSE:

Background:

In 2018, SpectraCorp and PEM Filings, on behalf of the Eastern Nebraska Healthcare Communications (ENH) Consortium, submitted a funding request for $838,507 with Sirius as the winning bidder. The funding request was submitted based upon FCC order FCC12-150 which was adopted in December 2012.

The order states the following: *FCC12-150 Appendix D Final Rules reference: § 54.635 Eligible equipment (5) Equipment that is a necessary part of healthcare provider-owned network facilities.*
Additional Clarification was provided in August 2019 which was after Fund Year 2018 was over. *FCC 19-78 § 54.613 Eligible equipment (5) Equipment that is a necessary part of healthcare provider-owned network facilities.*

In May 2019, RHC first reviewed the filing and then issued a Funding Commitment Letter for $398,081 for the 73 access switches installed at Children's Hospital & Medical Center. Then again in July of 2019, RHC reviewed the filing and issued a Funding Approval Letter.

In late 2019, RHC distributed an equipment tip sheet where they gave a further interpretation of the order. In this interpretation, the document stated that equipment 'delivering services to workstations' does not qualify. By this point in time, RHC had previously reviewed and approved the hardware three times. Children's Hospital & Medical Center, a member of the Consortium, takes issue with this and requests that there be no charge back or attempt to recoup payments that have been received, based on the guidance that was in effect at the time.

Response*:*

The HCP has submitted a list of ways the equipment was needed to support the approved services. The HCP/its consultants verbally inquired more than once to USAC RHC about the type of equipment allowed and were consistently told RHC does not review in advance and that a Form 462 should be submitted and the USAC RHC would provide guidance and direction during the review process. Subsequently, USAC RHC reviewed this funding several times and approved the funding at each of these steps: when the equipment was initially filed which resulted in the equipment receiving a Funding Commitment Letter on May 29, 2019.

(2) at the time of true-up which resulted in two Funding Commitments. The first commitment is dated July 22, 2019, and the second is dated January 19, 2021.

We believe retroactively changing the type of items allowed well after the fund year is unjust and goes beyond the authority of the RHC. Furthermore, it is a well-established principle of administrative law that retroactive rulemaking is prohibited, which is what this change in interpretation amounts to. See: *Bowen v. Georgetown Univ. Hospital,* 488 U.S. 204 (1988) The decision to request equipment funding was based upon FCC 12-150 which was in effect at the time: FCC 12-150 - Section 157 - The order states "*We will provide support for network equipment necessary to make a broadband service* *functional in conjunction with providing support for the broadband service. In addition, for consortium applicants, we will provide support for equipment necessary to manage, control, or maintain a broadband service or a dedicated health care broadband network."*

Section 162 - states the equipment cost includes: Eligible equipment costs include the following: *Equipment that terminates a carrier's or other provider's transmission facility and any router/switch that is directly connected to either the facility or the terminating equipment. This includes equipment required to light dark fiber, or equipment necessary to connect dedicated health care broadband networks or individual HCPs to middle mile or backbone networks. Computers, including servers, and related hardware (e.g., printers, scanners, laptops) that are used exclusively for network management. Software used for network management, maintenance, or other network operations, and development of software that supports network management, maintenance, and other network operations. Costs of engineering, furnishing (i.e., as delivered from the manufacturer), and installing network equipment. Equipment that is a necessary part of HCP-owned facilities.*

COMMENT: Closet switches are supported based on what is defined in Section 157 and 162.
Section 167 - talks extensively about end user devices, wireless devices video equipment etc., not qualifying.
COMMENT: The order never stated that closet switches do not qualify.
Section 170 - in this section, the commission acknowledges the difficulty in distinguishing between "internal connections" and ineligible computers or other peripheral equipment.
COMMENT: A Funding Approval was issued and that decision should stand.

In addition, in 2019 USAC released an equipment tip sheet which clarified by stating that all equipment which fell into the category of Part B must manage, maintain or control an "external" network and not function to deliver service inside of a building or to workstations, computers or phones. This includes wireless networks inside of buildings or campuses.

COMMENT: This statement is the first definitive statement by USAC establishing that closet switches did not qualify. This statement was presented after the initial equipment filing. Children's relied on the earlier positions of the USAC and should not be penalized for this subsequent change in position.

The above summarizes the beneficiary's position that the approval should not be charged back. Children's respectfully requests that the amount of $367,378 NOT be charged back and that no attempt be made to recoup these funds, which Children's Hospital & Medical Center has relied on and used in good faith.

AAD RESPONSE:

In its response, the Beneficiary cites Order FCC 12-150 paragraphs 157, 162, and 170, and AAD agrees that is the language quoted in the cites. However, AAD's focus is not whether switches are eligible by definition, but the focus is on how the switches actually function and whether the type of expense is eligible. FCC Order 12-150, paragraph 170 states "it will provide support for service provider build-out to the customer demarcation point, and for network equipment necessary to make a broadband connection functional" (emphasis added). AAD focused on the following language, "to the customer demarcation point" and "necessary to make a broadband connection functional." AAD found the switches to be supporting internal connections within the HCP premises, not bringing in broadband activity from the service provider. Here, the equipment (switches) function as internal connections within the HCP premises. Therefore, these expenses are ineligible for support under the Healthcare Connect Fund. AAD's recommendation remains unchanged.

Finding #2: 47 C.F.R. § 54.634(b)(2) (2017) – Insufficient Information in the Request for Proposal for Dark and Lit Fiber Services

CONDITION

AAD obtained and examined documentation, including the FCC Form 461 with Request for Proposal (RFP) and the FCC Form 462, to determine whether the Beneficiary's RFP included all required information necessary for bidders to understand the Beneficiary's needs for FRN 18440531. Based on the review of the documents provided, the Beneficiary's RFP did not state that the Beneficiary was seeking dark fiber solutions over lit fiber for the time period of the dark fiber lease, a requirement for the RFP because the Beneficiary is part of a consortium.[9]

The Beneficiary was in a 10-year contract, effective December 2013 and prior to joining the consortium, for a dark fiber lease with its current service provider. The Beneficiary's RFP submitted with the FCC Form 461 (certified on January 17, 2018) requested only "broadband system (private intranet) and public internet services system architecture development" including "the cost for owning and leasing any proposed infrastructure" (i.e., dark fiber) for the circuit site under the 10-year contract.

The Beneficiary explained that subsequent to the FCC Form 461 (certified on January 17, 2018), the Beneficiary provided additional instruction and information to prospective bidders who communicated their intent to bid. This information included a current circuit listing and instruction via email that a bidder could bid the solution that "best reflects the RFP, Network Plan, and Form 461."[10] This circuit listing noted the two circuits that were included in the dark fiber lease. An RFP for dark fiber solutions must also solicit proposals to provide the needed services over lit fiber.[11] The email and RFP did not mention lit fiber specifically.

In its FCC Form 462 for funding year 2018, the Beneficiary selected to continue service with its current service provider of the dark fiber lease (without the lit fiber component), as the Beneficiary did not receive any qualified bids to the service request of its FCC Form 461 certified on January 17, 2018.

Although the Beneficiary selected to continue with its current dark fiber lease contract, AAD concludes that the Beneficiary's FCC Form 461 certified on January 2018 and associated RFP did not clearly state the need to obtain both dark fiber services over lit fiber over a time period comparable to the duration of the dark fiber lease or indefeasible right of use as FCC required for a consortium for FRN 18440531.

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[9] 47 C.F.R. § 54.642 (e)(4)(iii)(A) (2017) and 47 C.F.R § 54.634(b)(2) (2017).
[10] See response to AIR #23a, received on March 18, 2022.
[11] *Rural Health Care Support Mechanism,* WC Docket No. 02-60, Order, 27 FCC Rcd 16678 (20), para. 125 (2012).

CAUSE

The Beneficiary did not demonstrate sufficient knowledge of the FCC Rules establishing the eligibility of dark fiber under the HCF program.[12] The Beneficiary believed that implying solutions for the Service Provider to best reflect the posting satisfies the compliance of the competitive bidding requirement under the HCF program and was not aware that if soliciting for dark fiber, its RFP must also seek solicitation for lit fiber.

EFFECT

The monetary effect of this finding is $50,310. This amount represents the full amount committed and disbursed by Rural Health Care program for FRN 18440531.

RECOMMENDATION

AAD recommends that USAC Management seek recovery of $50,310 from the Beneficiary and issue a downward commitment adjustment for $50,310.

The Beneficiary must implement policies, controls, and procedures to ensure awareness of the RHC program rules. Specifically, the Beneficiary must familiarize itself with the RHC rules establishing requirements for a fair and open competitive bidding process, including a description of the services needed such as dark versus lit fiber. In addition, the Beneficiary may visit USAC's website at https://www.usac.org/rural-health-care/healthcare-connect-fund-program/step-4-submit-funding-requests/ to learn more about submitting funding requests for support for eligible expenses under the RHC Healthcare Connect Fund program.

BENEFICIARY RESPONSE:

> USAC reviewers made no mention of this issue prior to Fund Year 2022. The 461 was posted and the checkbox for "similar services allowed" was selected. The bidders were also sent (via email) a sample listing of circuits and were instructed to bid their own solution(s). The healthcare provider's (HCP) intent was to review any carrier solution that would fulfill their needs and to select the most cost-efficient.[13] Children's disagrees with this finding and respectfully requests that the RHAC [sic] not seek recovery of $50,310.

AAD RESPONSE:

In its response, the Beneficiary states "USAC reviewers made no mention of this issue prior to Fund Year 2022. The 461 was posted and the checkbox for "similar services allowed" was selected. The bidders were also sent (via email) a sample listing of circuits and were instructed to bid their own solution(s). The healthcare provider's (HCP) intent was to review any carrier solution that would fulfill their needs and to select the most cost-efficient." AAD agrees that the funding was approved by the RHC program and that "similar services allowed" was selected. However, AAD cannot validate the Beneficiary's intent to "review any carrier solution that would fulfill [its] needs" and to select the most cost-efficient carrier. In addition, merely checking the similar services allowed box alone does not satisfy the requirement that the RFP also seek bids over lit fiber. Information required under FCC rules was not sent to all potential bidders. FCC Order 12-150, paragraph 125 states "requests for proposals (RFPs) that allow for dark fiber solutions must also solicit proposals to provide

[12] Beneficiary response to Exception Summary, received on September 19, 2022.

[13] Beneficiary response to the DAF, received on March 17, 2023. Response included a screenshot of an email to a service provider that sent a letter of intent to bid. Email subject states, "Eastern Nebraska Healthcare Communications Consortium Network – Letter of Intent to Bid" and is dated February 8, 2018.

the needed services over lit fiber over a time period comparable to the duration of the dark fiber lease or IRU." Because the Beneficiary did not include specific information related to soliciting proposals "to provide the needed services over lit fiber over a time period comparable to the duration of the dark fiber or IRU" in the RFP, AAD's recommendation remains unchanged.

Finding #3: 47 C.F.R. § 54.602(d) (2017) – Beneficiary and Service Provider Invoiced RHC for Services Not Rendered

CONDITION

AAD obtained and examined documentation, including the FCC Form 462 with the Network Cost Worksheet, the FCC Form 463, and corresponding service provider invoices totaling $377,612 to determine whether the Rural Health Care program (RHC) was invoiced for eligible and approved equipment and services for FRN 18454951. The Beneficiary (Children's Hospital & Medical Center) requested 73 network switch units[14] and installation service per the FCC Form 462. Per the FCC Forms 463, the Beneficiary and Service Provider listed the equipment and installation service received as of June 30, 2019. However, per Service Provider bills, AAD identified that installation costs for these 73 network switch units were not billed to the Beneficiary. During the audit, the Beneficiary and Service Provider informed AAD that the installation service was never rendered but invoiced USAC without a proper reconciliation between actual services billed and items included in the FCC Form 463 for FRN 18451951 (line item 18).[15] The Service Provider over-invoiced the RHC program by $10,234 for installation services that were not rendered, thus, the RHC program disbursed funds for services not related to the provision of health care services for funding year 2018.[16]

CAUSE

The Beneficiary did not have adequate controls and procedures in place to ensure it requested RHC program support only for eligible services provided by the Service Provider. The Service Provider did not have adequate controls and procedures in place to ensure that the RHC program was invoiced only for services rendered. The Service Provider's process did not include an adequate review/reconciliation between actual services provided to the services billed and invoiced to the RHC program.[17]

EFFECT

The monetary effect of this finding is $10,234. This amount represents the total amount disbursed by RHC program for the over-invoiced amount.

RECOMMENDATION

AAD recommends that USAC Management seek recovery of $10,234 from the Service Provider and issue a downward commitment adjustment for $10,234.

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[14] AAD identified a finding related to the eligibility of these switches, refer to Finding 1 - 47 C.F.R. § 54.639(b) (2017) – Healthcare Connect Fund used for Ineligible Equipment for further details.

[15] See responses and support for AIR #19a, received June 1, 2022.

[16] 47 C.F.R. § 54.602(d) (2017) and 47 C.F.R § 54.645(b) (2017).

[17] See Beneficiary response to Exception Summary, received September 19, 2022.

The Beneficiary must implement policies, controls and procedures to ensure that it only requests RHC program support for services rendered. The Beneficiary may visit USAC's website at https://www.usac.org/rural-health-care/healthcare-connect-fund-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, the Service Provider must implement policies, controls and procedures to ensure that the RHC program is invoiced only for services provided to the Beneficiary. The Service Provider may also visit USAC's website at https://www.usac.org/rural-health-care/healthcare-connect-fund-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

We do not disagree with this finding.

SERVICE PROVIDER RESPONSE

The Service Provider did not provide a response as of March 17, 2023. Therefore, AAD's recommendation remains unchanged.

CRITERIA

Finding	Criteria	Description
#1, #3	47 C.F.R. § 54.639(b) (2017)	(b) Inside wiring/internal connections. Expenses associated with inside wiring or internal connections are ineligible for support under the Healthcare Connect Fund.
#1	*Rural Health Care Support Mechanism,* WC Docket No. 02-60, Order, 27 FCC Rcd 16678 (20), paras. 156-170 (2012)	*156.* *Background.* Prior to the Pilot Program, the RHC support mechanism did not provide support for any form of equipment. In the Pilot Program, the Commission allowed support for certain network equipment, in both HCP-owned networks and in networks utilizing third-party services. Pilot projects were allowed to use support to purchase or lease equipment at both the "edge" (*i.e.*, equipment necessary for individual HCPs to make their broadband connections function), and at the "core" (equipment necessary to manage the health care broadband network as a whole). Such equipment can include, for example, servers, firewalls, routers, and switches. In response to the *July 19 Public Notice*, commenters emphasized the importance of providing support in a reformed program for both "edge" equipment and "core" equipment that enables the formation of networks. *157.* *Discussion.* We will provide support for network equipment necessary to make a broadband service functional in conjunction with providing support for the broadband service. In addition, for consortium applicants, we will provide support for equipment necessary to manage, control, or maintain a broadband service or a dedicated health care broadband network. Equipment support is not available for networks that are not dedicated to health care. We conclude that providing support for such equipment is important to advancing our goals of increasing access to broadband for HCPs and fostering the development and maintenance of broadband health care networks, for three reasons. *158.* First, providing support for equipment will help HCPs to upgrade to higher bandwidth services. USAC states that Pilot Program funding for equipment allowed such HCPs to upgrade bandwidth without restrictions based on what their existing equipment would allow. We note that small rural hospitals and clinics often lack the IT expertise to know that they will need new equipment to use new or upgraded broadband connections, and finding funding to pay for the equipment can cause delays. *159.* Second, support for the equipment necessary to operate and manage dedicated broadband health care networks can facilitate efficient network design. USAC states that urban centers, where most specialists are located, are natural "hubs" for telemedicine networks, but the cost of equipment required to serve as a hub can be a barrier for these facilities to serve as hubs. In the Pilot Program, funding network equipment eliminated this barrier to entry. OHN explains that connecting to urban hubs can also reduce the need for rural sites to manage firewalls at their locations, which allows the rural sites to

Finding	Criteria	Description
		reduce equipment costs while adhering to security industry best practices and standards. *160.* Finally, support for network equipment can also help HCPs ensure that their broadband connections maintain the necessary reliability and quality of service, which can be challenging even if the HCP has a service level agreement (SLA) with its telecommunications provider. Support for network equipment has enabled some Pilot projects to set up Network Operations Centers (NOCs) that can manage service quality and security in a cost-effective manner for all of the HCPs on the network. The NOC can proactively monitor all circuits and contact both the service provider and HCP whenever the status of a link drops below the conditions specified in the SLA. This allows proactive monitoring to find and deal with adverse network conditions "in real time and before they have a chance to impact the delivery of patient care." A HCP-operated NOC in some cases may be more cost-effective for larger networks (*e.g.*, statewide, or even multi-state networks), particularly when the NOC may be monitoring and managing circuits from multiple vendors. *161.* We do not express a preference for single- or multi-vendor networks here, nor do we suggest that it is always more efficient for a dedicated health broadband network to have its own NOC. For example, a network that chooses to obtain a single-vendor solution and obtain NOC service from that vendor may receive support for the NOC service as a broadband service, if that solution is the most cost-effective. Our actions today simply facilitate the ability of a consortium to operate its own NOC, if that is the most cost-effective option. *162.* Eligible equipment costs include the following: • Equipment that terminates a carrier's or other provider's transmission facility and any router/switch that is directly connected to either the facility or the terminating equipment. This includes equipment required to light dark fiber, or equipment necessary to connect dedicated health care broadband networks or individual HCPs to middle mile or backbone networks; • Computers, including servers, and related hardware (*e.g.*, printers, scanners, laptops) that are used exclusively for network management; • Software used for network management, maintenance, or other network operations, and development of software that supports network management, maintenance, and other network operations; • Costs of engineering, furnishing (*i.e.*, as delivered from the manufacturer), and installing network equipment; and Equipment that is a necessary part of HCP-owned facilities. *163.* Support for network equipment is limited to equipment purchased or leased by an eligible HCP that is used for health care

Finding	Criteria	Description
		purposes. We do not authorize support, for example, for network equipment utilized by telecommunications providers in the ordinary course of business to operate and manage networks they use to provide services to a broader class of enterprise customers, even if eligible HCPs are utilizing such services. Non-recurring costs for equipment purchases are subject to the limitations below on all upfront charges. Ineligible Costs *164.* Services and equipment eligible for support under the Healthcare Connect Fund are limited to those listed in sections V.A and V.B above. For administrative clarity, however, we also list below some specific examples of costs that are not supported. Equipment or Services Not Directly Associated with Broadband Services *165.* *Background.* Broadband services and dedicated health broadband networks enable HCPs to run numerous broadband-enabled health care applications (for example, videoconferencing, medical image transfer, and EHRs). Some commenters requested that the Fund support equipment or services associated with these applications. *166.* *Discussion.* In keeping with our goals to increase access to broadband, foster development of broadband health care networks, and maximize cost-effectiveness, we provide support under the Healthcare Connect Fund for the cost of equipment or services necessary to make a *broadband service* functional, or to manage, control, or maintain a *broadband service* or a *dedicated health care broadband network.* Certain equipment (*e.g.*, switches, routers, and the like) are necessary to make the broadband service functional – conceptually, these are "inputs" into the broadband service. Other equipment or services (*e.g.*, telemedicine carts, or videoconferencing equipment, or even a simple health care-related application) "ride over" the broadband connection – *i.e.*, in those cases, the broadband connectivity is an "input" to making the equipment or service functional. In this latter case, the equipment or service is not eligible for support. This distinction is consistent with that utilized in the Pilot Program. *167.* In particular, costs associated with general computing, software, applications, and Internet content development are not supported, including the following: • Computers, including servers, and related hardware (*e.g.*, printers, scanners, laptops), (unless used exclusively for network management, maintenance, or other network operations);

Finding	Criteria	Description
		• End user wireless devices, such as smartphones and tablets; • Software (unless used for network management, maintenance, or other network operations); • Software development (excluding development of software that supports network management, maintenance, and other network operations); • Helpdesk equipment and related software, or services (unless used exclusively in support of eligible services or equipment); • Web hosting; • Website portal development; • Video/audio/web conferencing equipment or services; and • Continuous power source. *168.* Furthermore, costs associated with medical equipment (hardware and software), and other general HCP expenses are not supported. For example, the following is not supported: • Clinical or medical equipment; • Telemedicine equipment, applications, and software; • Training for use of telemedicine equipment; • Electronic medical records systems; and • Electronic records management and expenses. Inside Wiring/ Internal Connections *169.* *Background.* The RHC Telecommunications Program has not historically provided support for “inside wiring” or “internal connections.” “Inside wiring” is customer-owned or controlled wire on the *customer’s* side of the demarcation point. “Internal connections” is a concept used in the context of the E-rate program, and refers to services used for internal networks within school or library premises – more specifically, services “necessary to transport information within one or more instructional buildings of a single school campus or within one or more non-administrative buildings that comprise a single library branch.” Internal connections can be either wired or wireless. *170.* *Discussion.* The American Telemedicine Association requests that the Commission provide support for “internal wiring.” As

Finding	Criteria	Description
		discussed above, the Healthcare Connect Fund will provide support for service provider build-out to the customer demarcation point, and for network equipment necessary to make a broadband connection functional. We conclude that support is better targeted at this time toward providing broadband connectivity *to* the HCP rather than internal networks *within* HCP premises. The record does not indicate that small HCPs (such as clinics) likely will incur large expenses for inside wiring or internal connections in order to utilize their broadband connectivity. For larger institutions such as hospitals, however, the cost of providing discounts for internal connections could be substantial. Furthermore, as the Commission has acknowledged, it can be difficult to distinguish from "internal connections" and ineligible computers or other peripheral equipment. In the E-rate context, the Commission relied on the congressional directive that the Fund provide connectivity all the way to *classrooms.* There is no similar statutory directive with respect to HCPs. For these reasons, we decline to provide support for inside wiring or internal connections under the Healthcare Connect Fund.
#2	47 C.F.R. § 54.634(b)(2) (2017)	(b) Eligibility of dark fiber. A consortium of eligible health care providers may receive support for ''dark'' fiber where the customer, not the vendor, provides the modulating electronics, subject to the following limitations: (2) Requests for proposals (RFPs) that solicit dark fiber solutions must also solicit proposals to provide the needed services over lit fiber over a time period comparable to the duration of the dark fiber lease or indefeasible right of use.
#2	47 C.F.R. § 54.642(e)(4)(iii)(A) (2017)	(e) Request for services. Applicants must submit the following documents to the Administrator in order to initiate competitive bidding. (4) Request for proposal (if applicable). (iii) RFP requirements. (A) An RFP must provide sufficient information to enable an effective competitive bidding process, including describing the health care provider's service needs and defining the scope of the project and network costs (if applicable). (A) Goals and objectives of the net- work;
#2	Rural Health Care Support Mechanism, WC Docket No. 02-60, Order, 27 FCC Rcd 16678 (20), para. 125 (2012)	In order to further ensure that dark fiber is the most cost-effective solution, however, we will limit support for dark fiber in two ways. First, requests for proposals (RFPs) that allow for dark fiber solutions must also solicit proposals to provide the needed services over lit fiber over a time period comparable to the duration of the dark fiber lease or IRU. Second, if an applicant intends to request support for equipment and maintenance costs associated with lighting and operating dark fiber, it must include such elements in the same RFP as the dark fiber so that USAC can review all costs associated with the fiber when determining whether the applicant chose the most cost-effective bid.
#3	47 C.F.R. § 54.602(d) (2017)	(d) Health care purpose. Services for which eligible health care providers receive support from the Telecommunications Program or the Healthcare Connect Fund must be reasonably related to the

Finding	Criteria	Description
		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.
#3	47 C.F.R. § 54.645(b) (2017)	(b) Before the Administrator may process and pay an invoice, both the Consortium Leader (or health care provider, if participating individually) and the vendor must certify that they have reviewed the document and that it is accurate. All invoices must be received by the Administrator within six months of the end date of the funding commitment.

This concludes the report.