

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Request for Review)	
)	
Portland Area Indian Health Service)	File No. RHCP-11715
)	
)	
Rural Health Care Universal Service)	CC Docket No. 02-60
Support Mechanism)	

ORDER

Adopted: September 13, 2010

Released: September 13, 2010

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we grant a request for review of a decision by the Universal Service Administrative Company (USAC or Administrator), denying funding for discounted services under the Rural Health Care universal service support mechanism to the Portland Area Indian Health Service (Portland).¹ In so doing, we waive section 54.603(b)(3) of the Commission's rules, which establishes that applicants must wait 28 days after their FCC Form 465 is posted to USAC's website before entering into an agreement with a service provider.² We find that good cause exists to grant the appeal and remand the application to USAC for action consistent with this order. To ensure that this matter is resolved expeditiously, we direct USAC to complete its review and analysis no later than 60 days from the release date of this order.

II. BACKGROUND

2. Under the rural health care universal service support mechanism, eligible rural health care providers and consortia that include eligible rural health care providers may apply for discounts for eligible telecommunications services and Internet access.³ To obtain discounted telecommunications and/or Internet services, applicants must make a bona fide request for telecommunications and/or Internet services by filing an FCC Form 465 with the Administrator.⁴

¹Letter from D. Scott Barash, Universal Administrative Company, to William Caton, Federal Communications Commission (dated Feb. 8, 2002)(USAC Referral Letter). Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Universal Service Administrative Company may seek review from the Commission. 47 C.F.R. § 54.719(c).

²47 C.F.R. § 54.603(b)(3).

³47 C.F.R. § 54.601.

⁴ 47 C.F.R. § 54.603.

USAC posts the FCC Form 465 to its website for providers to review.⁵ Applicants must then wait at least 28 days before entering into a service agreement and submitting FCC Form 466 (for telecommunications services) and/or FCC Form 466-A (for Internet services).⁶ Applicants use the FCC Form 466 and/or FCC Form 466-A to verify the type of services ordered and to certify that the selected service provider it selected is the most cost-effective. The deadline for submission of all required forms (including FCC Forms 466 and 466-A) to the Administrator is June 30 for the funding year that begins on the previous July 1.⁷ After reviewing the funding requests, USAC issues funding decisions in accordance with the Commission's rules.

3. *The Portland Area IHS Appeal.* On June 28, 2001, Portland filed 34 FCC Forms 465 with USAC for Funding Year 2001.⁸ During the review process, USAC discovered that several of the applications contained invalid information, which prevented USAC from verifying whether the discounts would be provided to eligible rural health care providers.⁹ On July 8, 2001, USAC posted 23 of the 34 applications to its website, and pursuant to the Form 465 postings and subsequent agreement with the selected service provider, these applicants were eligible for program support beginning on August 8, 2001.¹⁰ USAC reviewed the remaining 11 applications again in November 2001 and concluded that four of the remaining sites were not eligible rural health care providers and therefore the applications should not be posted to its website.¹¹ On November 28, 2001, USAC posted the seven remaining applications to its website and notified Portland of the posting.¹² Pursuant to Commission rules, these seven health care providers were required to wait 28 days after November 28, 2001 to enter into a service agreement and file their Form 466.¹³ These seven health care providers were therefore eligible for support on December 26, 2001, instead of August 8, 2001.

4. On January 16, 2002, Portland filed an appeal with USAC, arguing that there was an unexplained delay in the posting of 7 of its funding applications.¹⁴ USAC responded that the

⁵*Id.*

⁶*Id.*

⁷ 47 C.F.R. § 54.623(c)(1).

⁸ FCC Forms 465, Portland Area Indian Health Service, filed June 28, 2001.

⁹ See USAC Referral Letter.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* See also Letters from Rural Health Care Division, Universal Service Administrative Company, to Lee Ann Wermey, Portland Area Indian Health Service (dated Nov. 28, 2001) (posting the following applications to its website: HCP No. 11697 Stillaguamish, HCP No. 11711 Yakama Health Center, HCP No. 11713 Nooksack Tribal Health Center, HCP No. 11715 Neah Bay Health Center, HCP No. 11718 Tulalip Health Clinic, HCP No. 11719 Muckleshoot Tribal Clinic, HCP No. 11722 Sauk-Suiattle Health Center) (USAC Notification Letters).

¹³ 47 C.F.R. § 54.603.

¹⁴ Email from Lee Ann Wermey, Portland Area Indian Health Service, to Rural Health Care Division, Universal Service Administrative Company (dated Jan. 16, 2002) (USAC Appeal).

delay in the posting of the seven applications was the result of an USAC administrative error.¹⁵ USAC, however, indicated that it lacked the authority to waive the Commission's 28-day posting requirement.¹⁶ USAC therefore forwarded Portland's appeal to the Commission for further review.¹⁷

5. Subsequent to USAC submitting the appeal to the Commission, USAC determined that not all of the seven applications were eligible for support. Specifically, USAC determined that four of the seven applications sought funding for urban areas and therefore denied those four applications.¹⁸ In addition, Portland did not complete the application processes necessary to receive support for two applications.¹⁹ Thus, the instant appeal relates only to the Neah Bay Health Center (Neah Bay) application. Specifically, this appeal considers whether we should waive the Commission's 28-day waiting period and allow Neah Bay to receive support from August 8, 2001 through December 26, 2001.

III. DISCUSSION

6. We find that good cause exists to waive section 54.603(b)(3) of the Commission's rules, which requires applicants to wait 28 days after posting an FCC Form 465 USAC's website before entering into an agreement with a service provider for the requested services.²⁰ On June 28, 2001, Portland timely submitted its application for Neah Bay. Through no fault of its own, the FCC Form 465 was not posted until November 28, 2001, rather than July 8, 2001. As a result of the delayed posting, Neah Bay lost more than four months of universal service support.²¹ Our competitive bidding rules are important to ensure a fair bidding process. In this instance, however, the public interest justifies waiver because the delay in posting is attributable to the Administrator. Rigid adherence to program rules would deny Neah Bay rural health care funding through no fault of its own and therefore would not further the public interest or the purposes of section 254(h) of the Communications Act of 1934, as amended. Because we find that the

¹⁵ See Letter from Rural Health Care Division, Universal Service Administrative Company, to Lee Ann Wermey, Portland Area Indian Health Service, dated February 8, 2002 (Administrator's Decision on Appeal). USAC also noted that the delay in posting the applications would cause a reduction in the support awarded to Portland Area IHS. Specifically, the delay in posting caused the Portland Area entities to lose more than four months of universal service support, with funding beginning on December 26, 2001, instead of August 8, 2001.

¹⁶ *Id.*

¹⁷ See USAC Referral Letter at 1-2.

¹⁸ Letter from William England, Rural Health Care Division, Universal Service Administrative Company, to Mark Seifert, Federal Communications Commission (dated Oct. 4, 2002). The four applications were: HCP No. 11697 Stillaguamish, HCP No. 11713 Nooksack Tribal Health Center, HCP No. 11718 Tulalip Health Center, and HCP No. 11719 Muckleshoot Tribal Clinic.

¹⁹ See 47 C.F.R. § 54.603 (providing that applicants must submit FCC Form 466 to verify the type of service ordered and certify the selected service provider). Portland did not submit FCC Forms 466 for HCP No. 11711 Yahama Health Center and HCP No. 11722 Sauk-Suiattle Health Center.

²⁰ See 47 C.F.R. § 54.603(b)(3).

²¹ See *supra* n.10. Had USAC timely posted the application, Neah Bay Health Center would have been eligible for support beginning August 8, 2001.

reduction in funding resulted from an Administrator's error, we are not concerned about waste, fraud, or abuse in this instance. We therefore waive section 54.603(b)(3) of our rules and remand the application back to USAC for further consideration. We instruct USAC to consider the Funding Year 2001 FCC Form 465 for Neah Bay Health Center as filed on July 8, 2001, the same date that Portland's other applications were posted.²² We instruct USAC to review Neah Bay's application, and if otherwise appropriate, to grant support beginning on August 8, 2001.²³

7. We emphasize the limited nature of this decision. The competitive bidding rules help ensure efficient prices for services purchased by rural health care providers. All applicants must comply with our rules and procedures and continue to submit complete and accurate information to USAC as part of the application review process.

IV. ORDERING CLAUSES

8. ACCORDINGLY, IT IS ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 1.3 and 54.722(a), that the appeal filed by Portland Area Indian Health Service, Portland, Oregon, IS GRANTED and REMANDED to USAC for further consideration.

9. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 1.3 and 54.722(a), that section 47. C.F.R. § 54.603(b)(3) IS WAIVED.

10. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 1.3 and 54.722(a), USAC SHALL COMPLETE its review of the remanded application and issue an award or denial based on a complete review and analysis of the funding commitment no later than 60 calendar days from release of this Order.

11. IT IS FURTHER ORDERED that this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Sharon E. Gillett
Chief
Wireline Competition Bureau

²²See USAC Referral Letter at 2.

²³*Id.* at 4.