

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Request for Review)	
)	
Ozark Guidance Center)	File Nos. RHCD-13825, 13826, 22247
Springdale, Arizona)	
)	
Rural Health Care Universal Service)	WC Docket No. 02-60
Support Mechanism)	

ORDER

Adopted: November 24, 2014

Released: November 24, 2014

By the Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we grant a request from Ozark Guidance Center (Ozark) seeking review of decisions made by the Universal Service Administrative Company (USAC) to deny funding under the rural health care universal service support mechanism.¹ In its decisions, USAC determined that Ozark violated section 54.603 of the Commission’s rules because it discouraged potential bidders from submitting proposals in response to its FCC Forms 465.² Upon review of the record,³ we disagree with USAC’s determinations and find that Ozark did not violate the Commission’s competitive bidding requirements.⁴ We therefore grant Ozark’s appeal and remand the associated applications to USAC for further action consistent with 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.⁵ Applicants must make a bona fide request for eligible services by posting an FCC Form 465 to USAC’s website for telecommunications carriers to review.⁶ Applicants must review all bids submitted in response to the FCC Form 465 and wait at least 28

¹ Letter from Mike Gross, Assistant Information Systems Director, Ozark Guidance Center, to Office of the Secretary, Federal Communications Commission, WC Docket No. 02-60 (filed Apr. 23, 2013) (Ozark Appeal) (regarding Funding Year 2011 Packet Nos. 113865, 113762, and 113871). Section 54.719(c) of the Commission’s rules provides that any person aggrieved by an action taken by a division of USAC may seek review from the Commission. 47 C.F.R. § 54.719(c).

² 47 C.F.R. § 54.603.

³ See 47 C.F.R. § 54.723.

⁴ 47 C.F.R. § 54.603.

⁵ 47 C.F.R. § 54.601.

⁶ 47 C.F.R. § 54.603; Health Care Providers Universal Service, Description of Services Requested and Certification Form, OMB 3060-0804 (January 2004) (FCC Form 465).

days before entering into a service agreement with the selected service provider.⁷ Once the applicant has selected a provider and entered into a service contract, the applicant must submit its request for discounts to USAC by filing an FCC Form 466 (for telecommunications services) and/or an FCC Form 466-A (for Internet services).⁸ The applicant uses 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 is the most cost-effective.⁹ After reviewing the funding requests, USAC issues funding decisions in accordance with the Commission's rules.

3. *Ozark Appeal.* Ozark submitted three FCC Form 465 applications to USAC between December 14, 2011 and January 6, 2012, to initiate the competitive bidding processes for eligible telecommunications and Internet access services.¹⁰ After waiting 28 days, Ozark signed a contract with Windstream Communications, Inc., to provide the desired services.¹¹ Ozark then submitted its FCC Form 466 applications seeking support for the desired services.¹² Ozark indicated on its applications that it had received multiple bids in response to its FCC Forms 465.¹³ When asked to provide copies of these bids during the application review process, Ozark clarified that it received telephone inquiries about the procurement but did not receive bids from those that inquired.¹⁴ USAC then denied Ozark's funding requests after determining that the services were not competitively bid.¹⁵ Ozark appealed USAC's decisions arguing that it signed a service contract with Windstream after waiting 28 days, consistent with the Commission's competitive bidding requirements.¹⁶ Ozark also explained in its appeal that, before it selected Windstream, it received inquiries from prospective bidders wanting to know the name of its current service provider and whether Ozark had received other bids in response to its FCC Form 465.¹⁷ Ozark told each prospective bidder that its existing service provider was Windstream and that

⁷ 47 C.F.R. § 54.603(b)(3).

⁸ Health Care Providers Universal Service, Funding Request and Certification Form, OMB 3060-0804 (Jan. 2005) (FCC Form 466); Health Care Providers Universal Service, Internet Service Funding Request and Certification Form, OMB 3060-0804 (Nov. 2012) (FCC Form 466-A).

⁹ See FCC Form 466; FCC Form 466-A.

¹⁰ See FCC Form 465, Ozark Guidance Center (posted Dec. 14, 2011); FCC Form 465, Ozark Guidance Center (posted Jan. 1, 2012); FCC Form 465, Ozark Guidance Center (posted Jan. 6, 2012) (all stating that the requested services "need to connect to the existing MPLS network"). Note that funding for Internet access continued through the end of funding year 2013, which ended on June 14, 2014. Beginning in January 2014, applicants receiving support for Internet access can apply for support for those same services through the new Healthcare Connect Fund Program. See USAC, Rural Health Care, <http://www.usac.org/rhc/> (last visited Nov. 10, 2014).

¹¹ See Letter from Mike Gross, Assistant Information Systems Director, Ozark Guidance Center, to Rural Health Care Division, Universal Service Administrative Company (filed Oct. 29, 2012) (Ozark RHCD Appeal).

¹² See, e.g., FCC Form 466, Ozark Guidance Center (filed Mar. 19, 2012) (regarding RHCD Number 13825).

¹³ *Id.*

¹⁴ See Email from Mike Gross, Assistant Information Systems Director, Ozark Guidance Center, to Catherine Chen, Rural Health Care Division, Universal Service Administrative Company (dated July 12, 2012); Email from Catherine Chen, Rural Health Care Division, Universal Service Administrative Company, to Mike Gross, Ozark Guidance Center (dated July 12, 2012).

¹⁵ See Letter from Rural Health Care Division, USAC, to Frank Woods, Ozark Guidance Center (dated Oct. 12, 2012) (regarding RHCD Number 13825); Letter from Rural Health Care Division, USAC, to Frank Woods, Ozark Guidance Center (dated Oct. 12, 2012) (regarding RHCD Number 13826); Letter from Rural Health Care Division, USAC, to Frank Woods, Ozark Guidance Center (dated Oct. 12, 2012) (regarding RHCD Number 22247).

¹⁶ See Ozark RHCD Appeal.

¹⁷ *Id.*

Windstream was the only provider so far to submit a bid for the new procurement.¹⁸ Ozark stated that once it provided this information, the prospective bidders advised Ozark that they could not submit a competitive bid.¹⁹ Consequently, upon review of this information, USAC denied Ozark's appeal, concluding that Ozark discouraged prospective vendors from submitting bids.²⁰ Ozark then filed the instant appeal with the Commission, essentially reiterating the arguments presented in its appeal to USAC.²¹

III. DISCUSSION

4. We conclude that USAC erred in denying Ozark's requests for support. The record shows that Ozark received inquiries from multiple vendors in response to its FCC Form 465 postings.²² As indicated above, these vendors wanted to know the name of Ozark's existing service provider and whether Ozark had received any bids in response to its FCC Form 465 postings.²³ The fact that Ozark provided prospective bidders with the name of its existing service provider does not, by itself, give rise to a determination that it discouraged vendors from submitting bids.²⁴ Indeed, the record does not contain any other evidence suggesting that Ozark discouraged the submission of bids or that Ozark otherwise failed to comply with the Commission's competitive bidding requirements. Thus, we find that Ozark conducted a fair and open competitive bidding process for the funding requests at issue.²⁵ In addition, there is no evidence of waste, fraud or abuse, or misuse of funds, or a failure to adhere to core program requirements in the record at this time. We therefore remand the underlying applications to USAC for further action consistent with this Order. To ensure that the underlying applications are resolved expeditiously, we direct USAC to complete its review of each application and issue an award or a denial based on a complete review and analysis no later than 90 calendar days from the release date of this Order. In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or Ozark's applications.

IV. ORDERING CLAUSES

5. 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 pursuant to authority delegated in sections 0.91, 0.291 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291 and 54.722(a), the appeal filed by Ozark Guidance Center, Springdale, Arizona, on April 23, 2013, IS GRANTED.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ See Letter from Rural Health Care Division, USAC, to Michael Gross, Ozark Guidance Center (dated Feb. 25, 2013) (regarding Funding Year 2011 Packet Nos. 113865, 113762, and 113871).

²¹ See Ozark Appeal.

²² See Ozark RHCD Appeal; Ozark Appeal.

²³ *Id.*

²⁴ See, e.g., *Requests for Review of Decisions of the Universal Service Administrator by Conestoga Valley School District*, CC Docket No. 02-6, Order, 27 FCC Rcd 13167, 13168-69, para. 3 (Wireline Comp. Bur. 2012) (finding that Conestoga discouraged prospective bidders from submitting bids, and thus violated the Commission's competitive bidding rules, by indicating to them that it did not intend to change service providers for the funding year at issue, despite having filed an FCC Form 470 to initiate the competitive bidding process).

²⁵ See 47 C.F.R. § 54.603.

6. IT IS FURTHER ORDERED that, pursuant to the authority delegated in section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Ryan D. Palmer
Chief
Telecommunications Access Policy Division
Wireline Competition Bureau