

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Request for Review
Indian Health Service/Portland Area,
White Swan Health Station
Rural Health Care Universal Service
Support Mechanism
File No. RHCP 16966
WC Docket No. 02-60

ORDER

Adopted: March 11, 2014

Released: March 11, 2014

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we deny an appeal of a Universal Service Administrative Company (USAC) decision in which USAC denied Indian Health Service/Portland Area, White Swan Health Station (IHS/White Swan) Funding Year (FY) 2011 support for discounted services under the rural health care (RHC) universal service support mechanism. We affirm USAC's conclusion that IHS/White Swan is located in a non-rural area and therefore is ineligible to receive universal service support under the RHC Telecommunications and Internet Access programs.

II. BACKGROUND

2. Under the RHC Telecommunications and Internet Access programs, eligible rural health care providers (HCPs) and consortia that include eligible rural HCPs may apply for discounts for eligible telecommunications services and Internet access. To obtain discounted service, applicants must make a request for Telecommunications and/or Internet Access services by filing an FCC Form 465 with USAC. HCPs must meet two criteria to be eligible for support under the RHC Telecommunications and Internet Access programs: 1) an HCP must fall within one of the categories listed in the Commission's definition

1 Letter from George T. Huggins, Indian Health Service, to Secretary, Federal Communications Commission, WC Docket No. 02-60 (filed Dec. 1, 2011) (IHS/White Swan Appeal). 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 See 47 U.S.C. §§ 254(h)(1)(A), (h)(2)(A); 47 C.F.R. § 54.600(b)(1) (2013). See also 47 C.F.R. § 54.5 (2012).

3 47 U.S.C. §§ 254(h)(1)(A), (h)(2)(A); 47 C.F.R. §§ 54.600(a), (b), (c), 54.601(a), 54.602(a), 54.604(a) (2013). See also 47 C.F.R. §§ 54.601(a), (b) (2012).

4 47 C.F.R. § 54.603(b).

of “health care provider”;<sup>5</sup> and 2) an HCP must be located in a “rural area.”<sup>6</sup> For purposes of the RHC universal service support programs, the Commission defines “rural area” as:

[A]n area that is entirely outside of a Core Based Statistical Area; is within a Core Based Statistical Area that does not have any Urban Area with a population of 25,000 or greater; or is in a Core Based Statistical Area that contains an Urban Area with a population of 25,000 or greater, but is within a specific census tract that itself does not contain any part of a Place or Urban Area with a population of greater than 25,000.<sup>7</sup>

HCPs can determine if they are located in an eligible rural area under the Commission’s definition by using the Eligible Rural Areas Search “look-up table” on USAC’s Rural Health Care website.<sup>8</sup>

3. On September 21, 2011, IHS/White Swan filed its FY 2011 FCC Form 465, requesting support for both telecommunications and Internet services.<sup>9</sup> On October 3, 2011, USAC informed IHS/White Swan that IHS/White Swan is located in a non-rural area and therefore ineligible for RHC support under the Telecommunications and Internet Access programs.<sup>10</sup> On December 1, 2011, IHS/White Swan appealed USAC’s decision to the Commission.<sup>11</sup>

4. In its appeal, IHS/White Swan acknowledges that IHS/White Swan’s location on Yakama Indian Reservation within Yakima County, Washington, is non-rural under the Commission’s definition of rural area.<sup>12</sup> IHS/White Swan argues that, despite this, its location in White Swan, Washington should be designated rural because it possesses many characteristics associated with rural areas.<sup>13</sup> Specifically, IHS/White Swan notes that its location is sparsely populated; lacks improved roads and access to most of its land; is 31 miles from the nearest city; and suffers from high unemployment.<sup>14</sup> Additionally, IHS/White Swan suggests that it should be eligible for RHC support because IHS’s Yakama Health Center in Toppenish, Washington is eligible for RHC support. In defense of this suggestion, IHS/White Swan states that Toppenish is less remote and has a higher population than White Swan.<sup>15</sup> Finally, IHS/White Swan argues that, as an HCP providing health care to remotely-located Tribal patients, it

<sup>5</sup> See 47 C.F.R. § 54.600(a) (2013) (previously found at 47 C.F.R. § 54.601(a)).

<sup>6</sup> 47 C.F.R. § 54.600(b)(1) (2013). Prior to 2013, the Commission’s definition of “rural” for purposes of the RHC programs was found at 47 C.F.R. § 54.5.

<sup>7</sup> 47 C.F.R. § 54.600(b)(1) (2013).

<sup>8</sup> See USAC, Rural Health Care, Eligible Rural Areas Search, <http://www.usac.org/rhc/telecommunications/tools/Rural/search/search.asp> (last visited March 10, 2014).

<sup>9</sup> FCC Form 465, IHS/White Swan Health Station (filed Sept. 21, 2011). On its FCC Form 465, IHS/White Swan notes its physical location as 514 Signal Peak Rd., White Swan, WA, 98952. *Id.*

<sup>10</sup> Letter from USAC, Rural Health Care Division, to Renita Curtis, Indian Health Service Office of Information Technology (dated Oct. 3, 2011).

<sup>11</sup> IHS/White Swan Appeal.

<sup>12</sup> *Id.* at 1.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 2.

needs RHC support to “offset the cost of health-related telecommunications services and upgrade future telecommunication services.”<sup>16</sup>

### III. DISCUSSION

5. We affirm USAC’s conclusion that because IHS/White Swan’s location is non-rural, it is not eligible to receive support in the Telecommunications and Internet Access programs. As explained above, the Commission defines “rural area” for the RHC programs in section 54.600(b)(1) of its rules.<sup>17</sup> IHS/White Swan acknowledges that it is not located within a rural area under the Commission’s definition.<sup>18</sup>

6. While IHS/White Swan’s location may possess characteristics associated with rural areas, it is not considered “rural” under the Commission’s definition, and therefore is ineligible for support under the RHC Telecommunications and Internet Access programs, which provide support only to “rural” HCPs.<sup>19</sup> As the Commission explained in its 2012 *Healthcare Connect Fund Order*, its “longstanding definition of ‘non-rural’ HCPs encompasses a wide range of locales, ranging from large cities to small towns surrounded by rural countryside.”<sup>20</sup> The Commission further noted that “[m]any HCPs that are technically classified as non-rural within [its] rules in fact are located in relatively sparsely populated areas.”<sup>21</sup> The Commission nevertheless recognized that such sites are considered “non-rural” under its rules.<sup>22</sup> It did, however, allow eligible non-rural HCPs to participate as part of a consortium in the new Healthcare Connect Fund (HCF), as long as a majority of the HCP sites in the consortium are “rural.”<sup>23</sup> The Commission included “non-rural” sites in the new program partly in recognition that many sites classified as “non-rural” under the RHC rules have characteristics similar to “rural” areas – as IHS/White Swan claims of its location.<sup>24</sup>

7. IHS/White Swan also points out that another health care provider, Yakama Health Center in Toppenish, Washington, is eligible for RHC support yet appears less rural than IHS/White Swan.

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<sup>16</sup> *Id.*

<sup>17</sup> *See supra* para. 2.

<sup>18</sup> *See* IHS/White Swan Appeal at 1.

<sup>19</sup> 47 C.F.R. § 54.602(a) (2013) (restricting support in the Telecommunications Program to “rural health care providers”); 47 C.F.R. § 54.601(a) (2012) (restricting support in the Telecommunications and Internet Access programs to “rural health care providers” prior to 2013); 47 C.F.R. § 54.600(b)(1) (defining “rural”). *See also* 47 U.S.C. § 254(h)(1)(A) (providing support to “any public or nonprofit health care provider that serves persons that reside in rural areas”).

<sup>20</sup> *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678, 16706, para. 60 (2012) (*Healthcare Connect Fund Order*).

<sup>21</sup> *Id.*

<sup>22</sup> *See id.*

<sup>23</sup> *See id.* at 16705-07, paras. 59-61. We note that the Internet Access Program will continue only through FY2013, as participants transition to the HCF, which provides a much higher (65 percent) discount for Internet Access, and for which funding was available beginning January 2014. *Id.* at 16699-700, 16814-15, paras. 46, 342. The Telecommunications Program will remain in place, but the Commission expects significant migration of HCPs from the Telecommunications Program to the HCF due to the many advantages of HCF. *Id.* at 16814-15, para. 342.

<sup>24</sup> *See id.* at 16705-07, para. 60.

IHS/White Swan states that it therefore also should be eligible for support.<sup>25</sup> As discussed above, the Commission's definition of "non-rural" encompasses a wide range of places and, as such, it is not always obvious which locations are "rural" and "non-rural."<sup>26</sup> Accordingly, RHC program applicants can use the "look-up table" noted above to quickly determine whether their location is "rural" or "non-rural" under the Commission's definition.<sup>27</sup>

8. We recognize that Tribal communities, such as that served by IHS/White Swan, are often in need of basic modern telecommunications services, and could benefit greatly from RHC support, as IHS/White Swan points out. IHS/White Swan contends that because of this community need, it should be deemed "rural" and thus eligible for support under the RHC Telecommunications and Internet Access programs.<sup>28</sup> However, as discussed above, only those HCPs meeting the Commission's definition of "rural" are eligible for support in these two programs.<sup>29</sup>

#### IV. ORDERING CLAUSES

9. 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 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 Indian Health Service/Portland Area, White Swan Health Station on December 1, 2011, IS DENIED.

10. IT IS FURTHER ORDERED that, pursuant to 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

Julie A. Veach  
Chief  
Wireline Competition Bureau

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<sup>25</sup> See IHS/White Swan Appeal at 2.

<sup>26</sup> See *supra* para. 6.

<sup>27</sup> See *supra* n.8 and accompanying text.

<sup>28</sup> See IHS/White Swan Appeal at 2.

<sup>29</sup> See *supra* para. 2.