

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of )
Request for Review )
St. Vincent Health Suburban Health Organization )
Indianapolis, Indiana )
Rural Health Care Universal Service ) WC Docket No. 02-60
Support Mechanism )

ORDER

Adopted: October 2, 2015

Released: October 2, 2015

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

I. INTRODUCTION

1. In this order, we deny a request from St. Vincent Health Suburban Health Organization (St. Vincent Health SHO)<sup>1</sup> seeking review of decisions made by the Universal Service Administrative Company (USAC) under the rural health care universal service support mechanism (also known as the Rural Health Care (RHC) Program).<sup>2</sup> In its decisions, USAC found 61 out of St. Vincent Health SHO’s 146 service locations ineligible to receive support from the Healthcare Connect Fund—a component of the RHC Program.<sup>3</sup> We affirm USAC’s determinations and find that these sites are neither “non-profit

1 See Request for Review by St. Vincent Health Suburban Health Organization, WC Docket No. 02-60 (filed Aug. 8, 2014) (St. Vincent Health SHO Request for Review). The St. Vincent Health SHO consortium is comprised of 11 Indiana nonprofit corporations and Indiana County Hospitals serving the needs of central Indiana. Id. at 1; St. Vincent Heart Center, Programs and Services, Other Programs and Services, http://www.stvincent.org/St-Vincent-Heart-Center/Programs-And-Services/Other-Programs-Services/Suburban-Health-Organization-Partner.aspx (last visited Sept. 17, 2015) (St. Vincent SHO). The principal purpose or function of each member is the provision of hospital services through one or more licensed acute care facilities together with a broad array of ambulatory care services. St. Vincent Health SHO Request for Review at 1.

2 Section 54.722(a) of the Commission’s rules provides “[r]equests for review of [USAC] decisions that are submitted to the Federal Communications Commission shall be considered and acted upon by the Wireline Competition Bureau; provided, however, that requests for review that raise new or novel questions of fact, law or policy shall be considered by the full Commission.” 47 C.F.R. § 54.722(a). The Commission has previously noted that “[t]o the extent clarification of our rules are necessary, . . . , we delegate to the Chief, Common Carrier Bureau the authority to issue orders interpreting our rules as necessary to ensure that support for services provided to . . . rural healthcare providers operate to further our universal service goals. We find that this action is ‘necessary to the proper functioning of the Commission and the prompt and orderly conduct of its business.’” See Federal-State Joint Board on Universal Service, Third Report and Order, CC Docket No. 96-45, 12 FCC Rcd 22485, 22488-89, para. 6 (1997) (footnotes omitted).

3 See, e.g., Email from Amy Kavelman, USAC, to Michael T. Batt, counsel for St. Vincent Health SHO (dated July 17, 2014) (USAC Eligibility Decision); St. Vincent Health SHO Request for Review, List of Exhibits. Although St. Vincent Health SHO indicates in its appeal that USAC denied 62 service locations, it only lists 60 locations as part of its List of Exhibits. See St. Vincent Health SHO Request for Review, List of Exhibits. USAC, however, determined one additional service location (SVMG White Street, Healthcare Provider Number 38091) ineligible to receive support from the Healthcare Connect Fund – thus totaling 61 service locations at issue in this request for

hospitals” nor “rural health clinics” as defined by section 254(h)(7)(B) of the Communications Act of 1934 (the Act) and section 54.600(a) of the Commission’s rules, and therefore ineligible to receive support under the Healthcare Connect Fund.<sup>4</sup>

## II. BACKGROUND

2. As part of the Telecommunications Act of 1996, Congress recognized the value of providing rural health care providers with “an affordable rate for the services necessary for the provision of telemedicine and instruction relating to such services.”<sup>5</sup> Eligible health care providers, as defined in the 1996 Act and implemented in the Commission’s rules, are limited to: (1) post-secondary educational institutions offering health care instruction, teaching hospitals, and medical schools; (2) community health centers or health centers providing health care to migrants; (3) local health departments or agencies; (4) community mental health centers; (5) not-for-profit hospitals; (6) rural health clinics; and (7) consortium of health care providers consisting of one or more entities falling into the first six categories.<sup>6</sup> In addition, eligible health care providers must be non-profit or public.<sup>7</sup>

3. *Healthcare Connect Fund.* In 2012, the Commission adopted the *Healthcare Connect Fund Order*, which permanently reformed and modernized the RHC Program.<sup>8</sup> The Healthcare Connect Fund provides support for high-capacity broadband connectivity to eligible health care providers, encourages the formation of state and regional broadband networks, and expands the benefits of telemedicine nationwide.<sup>9</sup> A health care provider is eligible to receive support from the Healthcare Connect Fund if it: (1) is a public or non-profit health care provider<sup>10</sup> and (2) qualifies as a “health care provider” under the Act and the Commission’s rules.<sup>11</sup> To keep the focus of the program on rural needs, the Healthcare Connect Fund specifically targets funding to eligible rural health care providers, who can receive a 65 percent discount on all eligible expenses.<sup>12</sup> Recognizing that there can be benefits to rural health care by

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review. The Commission’s RHC Program is currently made up of the Telecommunications Program, the RHC Pilot Program, and the Healthcare Connect Fund Program. *See generally Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678 (2012) (*Healthcare Connect Fund Order*) (providing background on the then-current RHC programs and adopting the Healthcare Connect Fund); USAC, Rural Health Care, <http://www.usac.org/rhc/> (last visited Sept. 17, 2015).

<sup>4</sup> See 47 U.S.C. § 254(h)(7)(B); 47 C.F.R. § 54.600(a). Section 254 was added to the Act by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). USAC found that of the 61 denied sites, 58 were denied as “non-profit hospitals” and three were denied as “rural health clinics.”

<sup>5</sup> Joint Explanatory Statement of the Committee of Conference, 104<sup>th</sup> Cong., 2d Sess. at 133 (1996). *See also* 47 U.S.C. § 254(b)(3), (h)(1)(A).

<sup>6</sup> 47 U.S.C. § 254(h)(7)(B). *See also* 47 C.F.R. § 54.600(a).

<sup>7</sup> 47 U.S.C. § 254(h)(1)(A), (h)(2)(A), (h)(4). *See also* 47 C.F.R. § 54.601(a).

<sup>8</sup> *See generally Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678 (2012) (*Healthcare Connect Fund Order*).

<sup>9</sup> *See id.* at 16681, para. 3.

<sup>10</sup> *See* 47 C.F.R. § 54.601(a) (providing that “[o]nly an entity that is either a public or non-profit health care provider, as defined in this subpart, shall be eligible to receive support under this subpart”).

<sup>11</sup> *See* 47 U.S.C. § 254(h)(7)(B), 47 C.F.R. § 54.600(a) (providing that a “health care provider” must be a: “(1) post-secondary educational institution offering health care instruction, including a teaching hospital or medical school; (2) community health center or health center providing health care to migrants; (3) local health department or agency; (4) community mental health center; (5) not-for-profit hospital; (6) rural health clinic; or (7) consortium of health care providers consisting of one or more entities described in paragraphs (a)(1) through (a)(6) of this section.”). *See also* 47 C.F.R. § 54.600(c) (“A “rural health care provider” is an eligible health care provider site located in a rural area.”); 47 U.S.C. § 254(h)(1)(A) (mandating that telecommunications carriers provide telecommunications services for health care purposes to rural public or non-profit health care providers . . .”).

<sup>12</sup> *See Healthcare Connect Fund Order* at 16681, 16705, paras. 5-6, 59.

including non-rural participants as well, the Healthcare Connect Fund also provides funding to certain non-rural entities. Specifically, eligible non-rural health care providers (satisfying criteria (1) and (2)) can receive a 65 percent discount on all eligible expenses if they are members of a consortium in which more than 50 percent of the sites are rural health care provider sites.<sup>13</sup> Ineligible non-rural entities (not satisfying criteria (1) and (2)), while permitted to participate as members of a consortium, cannot receive support from the Healthcare Connect Fund and must pay their “fair share” of the network costs.<sup>14</sup>

4. Consistent with the Commission’s rules, in order to seek funding under the Healthcare Connect Fund, eligible health care providers or a consortium of eligible health care providers must submit an FCC Form 460 to USAC to obtain an eligibility determination from USAC for each health care provider site.<sup>15</sup> On the FCC Form 460, the health care provider or the health care provider consortium must indicate the eligible health care provider type for each site and provide a brief explanation of why the site is eligible and qualifies as the specific health care provider type.<sup>16</sup> Furthermore, if a site is a not-for-profit hospital, it must also indicate whether: (1) it is a Critical Access Hospital and (2) how many licensed patient beds are at the site.<sup>17</sup> USAC then reviews the information provided on the FCC Form 460 to determine whether each health care provider site qualifies as an eligible health care provider for purposes of the Healthcare Connect Fund program.<sup>18</sup>

5. *St. Vincent Health SHO Request for Review.* In July 2014, USAC denied eligibility to 61 out of 146 of St. Vincent Health SHO’s sites based on its review of St. Vincent Health SHO’s FCC Form 460 package.<sup>19</sup> St. Vincent Health SHO claimed 146 sites were either “non-profit hospitals” or “rural health clinics” but, based on a review of the sites, USAC determined that 61 sites were not eligible as “non-profit hospitals” or “rural health clinics.”<sup>20</sup> USAC staff also found that some of St. Vincent Health SHO’s 61 sites did not have any licensed hospital beds.<sup>21</sup> Subsequently, in August 2014, the St. Vincent

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

<sup>14</sup> *Id.* at 16709-10, para. 66.

<sup>15</sup> See 47 C.F.R. § 54.601(a)(2) (“Each separate site or location of a health care provider shall be considered an individual health care provider for purposes of calculating and limiting support under this subpart.”); *Healthcare Connect Fund Order*, 27 FCC Rcd at 16773, para. 215 (“For each [health care provider] listed, applicants will be required to provide the [health care provider’s] address and contact information, identify the eligible [health care provider] type....provide a brief explanation of why the [health care provider] is eligible under the Act and Commission’s rules and orders.”); FCC Form 460 Instructions, Rural Health Care Universal Service, Eligibility and Registration Form, OMB 3060-0804 at 2 (FCC Form 460 Instructions) (“Each participating entity of a consortium must file a Form 460 to determine the eligibility of that physical location.” “All individual [health care providers], consortia, and consortium members must obtain an eligibility determination via Form 460 to receive Fund support.”).

<sup>16</sup> See FCC Form 460 Instructions at 9 (“Line 43: Requires selecting the category that describes the type of health care provider requesting an eligibility determination. Only public or non-profit health care providers that qualify under one of the categories listed in Block 5 are eligible for [Healthcare Connect Fund program] support.”).

<sup>17</sup> See FCC Form 460 Instructions at 10.

<sup>18</sup> See 47 C.F.R. § 54.600(a).

<sup>19</sup> See St. Vincent Health SHO Request for Review, List of Exhibits; USAC Eligibility Decision.

<sup>20</sup> See USAC Eligibility Decision. USAC found that of the 61 denied sites, 58 were denied as “non-profit hospitals” and three were denied as “rural health clinics.”

<sup>21</sup> See St. Vincent Health SHO Request for Review at 2-3, 9. Email from Amy Kavelman, USAC, to Megan E. Herring, Paralegal, Hall, Render, Killian, Heath & Lyman, P.C., counsel to St. Vincent Health SHO (dated June 11, 2014).

Health SHO filed the instant request for review with the Commission seeking review of USAC's determinations.<sup>22</sup>

6. In its appeal, St. Vincent Health SHO requests the Commission determine that the denied sites are operated by eligible entities (either as not-for-profit hospitals or local health departments or agencies) and therefore the sites are eligible for funding under the Healthcare Connect Fund Program.<sup>23</sup> St. Vincent Health SHO states that its consortium members are hospitals licensed by the Indiana State Department of Health and identified as Indiana non-profits or Indiana County Hospitals.<sup>24</sup> It also contends that all of its member sites are operated directly or indirectly by an entity which meets the meaning of a "non-profit hospital" under the Internal Revenue Code and which has been exempted from paying federal communications tax.<sup>25</sup> St. Vincent Health SHO also requests the Commission define a "not-for-profit hospital" as a nonprofit or public entity, the principal purpose of which is the promotion of hospital services and which directly or indirectly operates one or more hospital facilities.<sup>26</sup> To the extent that the operations by a public entity do not fall within the meaning of "not-for-profit hospital," St. Vincent Health SHO requests the Commission define "local health departments or agencies" as including all locations of a county hospital or other similar entity, agency or operating unit of a state or local government, the principal purpose of which is the provision of hospital services and which directly or indirectly operates one or more acute care facilities.<sup>27</sup> Finally, St. Vincent Health SHO asks the Commission to clarify that "not-for-profit hospitals" and "local health departments and agencies" should apply to the broader organization operating the site not the individual site.<sup>28</sup>

### III. DISCUSSION

7. We first deny St. Vincent Health SHO's request and affirm USAC's determination that the 61 sites are not eligible to receive support under section 54.600(a) of the Commission's rules, as defined by section 254(h)(7)(B) of the Act.<sup>29</sup> The Commission specified that the Healthcare Connect Fund program would provide support for broadband connectivity to *eligible* health care providers<sup>30</sup> and in order to be eligible to receive support, an applicant must: (1) be a public or non-profit health care provider<sup>31</sup> and (2) qualify as one of the eligible health care provider types under the Act and the Commission's rules.<sup>32</sup> Based on the record before us, these specific sites do not fall under the selected eligible category types. The specific service locations for the sites St. Vincent SHO claims to be not-for-profit hospitals are not, in fact, accredited or licensed as not-for-profit hospitals – making them ineligible

<sup>22</sup> See St. Vincent Health SHO Request for Review.

<sup>23</sup> *Id.* at 11.

<sup>24</sup> *Id.* at 1-2. With respect to the Witham Anson facility, St. Vincent Health SHO contends that it is a free standing emergency room and is identified on the hospital license as an additional address for which Witham provides hospital services. *Id.* at 8-9.

<sup>25</sup> *Id.* at 8.

<sup>26</sup> *Id.* at 1, 8-10.

<sup>27</sup> *Id.* at 1, 10.

<sup>28</sup> *Id.* at 1-2.

<sup>29</sup> See 47 C.F.R. § 54.600(a); 47 U.S.C. § 254(h)(7)(B).

<sup>30</sup> See *Healthcare Connect Fund Order*, 27 FCC Rcd at 16699, para. 44. See also *id.* at 16705, para. 59; FCC, Healthcare Connect Fund – Frequently Asked Questions, <http://www.fcc.gov/encyclopedia/healthcare-connect-fund-frequently-asked-questions>, at no. 11 (last visited Sept. 17, 2015) (stating that "[n]on-rural [health care providers] can receive support from the [Healthcare Connect Fund] program, as long as they apply as part of a consortium that has a majority rural [healthcare provider] sites and are otherwise considered eligible).

<sup>31</sup> See 47 C.F.R. § 54.601(a).

<sup>32</sup> See 47 U.S.C. § 254(h)(7)(B). See also 47 C.F.R. § 54.600(a).

to receive funding from the Healthcare Connect Fund as “not-for-profit hospitals.”<sup>33</sup> Similarly, the sites St. Vincent SHO claims are rural health clinics do not qualify as eligible rural health clinics because the sites do not provide eligible medical services, and, in one instance, the facility is closed. We thus conclude that these sites are not eligible to receive support from the Healthcare Connect Fund as eligible health care providers.<sup>34</sup>

8. We also reject St. Vincent SHO’s contention that the Commission should consider the entity operating the site when determining eligibility for the program rather than the site itself. Section 254(h)(7)(B) of the Act restricts eligibility for support to specific types of health care providers.<sup>35</sup> Thus, in order to ensure the RHC Program operates in accordance with the Act and congressional intent, the Commission requires that each health care provider site or location shall be considered an individual health care provider for purposes of calculating and limiting support under the RHC program.<sup>36</sup> An ineligible entity’s relationship with an eligible entity is an insufficient basis for allowing an entity omitted from the list in the statute to qualify for the benefits of the universal service support mechanism.<sup>37</sup> A health care provider therefore cannot “piggy-back” off another entity’s eligibility status and each site must demonstrate that *by itself* it is an eligible entity. Additionally, one FCC Form 460 must be completed for each site, including each eligible health care provider site, ineligible site, off-site data center, and off-site administrative office.<sup>38</sup> Each consortium and each and every health care provider site, including those participating in a consortium, must obtain an eligibility determination via the FCC Form 460 to receive Healthcare Connect Fund support.<sup>39</sup> USAC therefore properly made its eligibility determinations based on specific site eligibility rather than by determining a site eligible simply because it is owned and/or operated by a licensed hospital organization.

9. This denial, however, does not mean that these health care providers are excluded from the Healthcare Connect Fund program. Even though these sites will not receive support from the Healthcare Connect Fund, they are still permitted to participate in a consortium, and thereby benefit from being part of those health care networks and from the bulk discounts negotiated by the consortium (so long as they pay “fair share”).<sup>40</sup> Additionally, to the extent any of these health care providers fall within another eligible category listed in section 54.600(a) of the Commission’s rules, they are eligible to receive support within the Healthcare Connect Fund as part of a consortium.<sup>41</sup> Therefore, if St. Vincent Health SHO believes its consortium members fall within another eligibility category, they may seek an eligibility

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<sup>33</sup> See 47 C.F.R. § 54.601(a)(2) (“Each separate site or location of a health care provider shall be considered an individual health care provider for purposes of calculating and limiting support under this subpart.”).

<sup>34</sup> St. Vincent Health SHO requests the Commission to define “not-for-profit hospital” and “local health department or agencies” broadly and to clarify that the eligible entity type with respect to “not-for-profit hospitals” and “local health departments and agencies” is an analysis that applies to the organization (the person under the law) not the facility (which is an asset of the organization). See *supra* para. 6. As discussed in this order, the Commission has never adopted the broad reading of these terms that St. Vincent SHO proposes. Moreover, we note that St. Vincent SHO did not seek eligibility as a local health department or agency for any of the sites at issue in its appeal.

<sup>35</sup> 47 U.S.C. § 254(h)(7)(B). See also 47 C.F.R. § 54.600(a).

<sup>36</sup> See 47 C.F.R. § 54.601(a)(2). See also *Healthcare Connect Fund Order*, 27 FCC Rcd at 16773, para. 215; FCC Form 460 Instructions at 2.

<sup>37</sup> See *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21, 96-45, Sixth Order on Reconsideration, Fifteenth Order on Reconsideration, FCC 99-269, para. 49. (1999).

<sup>38</sup> See *supra* n.15.

<sup>39</sup> *Id.*

<sup>40</sup> See *Healthcare Connect Fund Order*, 27 FCC Rcd at 16699, 166709-10, paras. 45, 66.

<sup>41</sup> See 47 C.F.R. § 54.600(a).

determination from USAC. We therefore urge St. Vincent Health SHO, to the extent it has not already done so, to seek an eligibility determination from USAC as appropriate.

**IV. ORDERING CLAUSES**

10. 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, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, 54.722(a), the Request for Review filed by St. Vincent Health Suburban Health Organization on August 8, 2014 IS DENIED as provided herein.

11. 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

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