

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

In the Matter of
Request for Review
Hope Community Resources, Inc. – Barrow MH
Anchorage, Alaska
Rural Health Care Universal Service
Support Mechanism
HCP No. 33986
WC Docket No. 02-60

ORDER

Adopted: July 28, 2016

Released: July 28, 2016

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

I. INTRODUCTION

1. In this order, we deny a request from Hope Community Resources, Inc. (Hope Community) seeking review of a decision 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) for funding year 2013. In its decision, USAC determined that Hope Community’s Barrow facility, Hope Community Resources, Inc.– Barrow MH (Hope Barrow), was ineligible to receive support under the RHC Telecommunications Program as a “community mental health center.” Based on the record before us, we affirm USAC’s determination and find that, despite repeated requests, Hope Community failed to provide documentation to demonstrate that its Hope Barrow facility was eligible to

1 See Hope Community Resources, Inc. Request for Review of USAC Denial of Appeal, WC Docket No. 02-60 (filed Oct. 17, 2014) (Hope Community Request for Review); see also Hope Community Resources, Inc. Request for Review of USAC Denial of Appeal, WC Docket No. 02-60 (filed Nov. 30, 2015) (Hope Community First Supplement) and Hope Community Resources, Inc. Request for Review of USAC Denial of Appeal, WC Docket No. 02-60 (filed Dec. 22, 2015, Confidential) (Hope Community Second Supplement). Hope Community is a non-profit organization that provides community-based support to families and individuals who experience intellectual and developmental disabilities throughout the state of Alaska, including Barrow, Alaska. Hope Community Request for Review at 2; Hope Community Resources, Inc., About Us, http://www.hopealaska.org/about-us (last visited July 28, 2016). Hope Community’s Barrow facility opened in 2001 and began providing mental healthcare services to community members in late March 2014. See Hope Community First Supplement; Hope Community Second Supplement.

2 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 CFR § 54.719(c). 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 Red 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 July 28, 2016). Funding year 2013 started on July 1, 2013 and ended on June 30, 2014.

3 See Letter from USAC, to Stephen Lesko, Hope Community, Inc. (Aug. 18, 2014) (Administrator’s Decision on Appeal). See also Email from USAC, to Jim Haacke, Hope Community, Inc. (Nov. 19, 2013) (USAC Eligibility Decision).

receive RHC Program support for the time period at issue here (i.e., during funding year 2013). Specifically, it did not show that the Hope Barrow facility qualified as a “community mental health center,” 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.⁴ We also decline to grant Hope Community’s request for a conditional waiver.⁵

II. BACKGROUND

2. Under the RHC Telecommunications Program, 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.⁶ In order to be eligible to receive support from the RHC Telecommunications Program a health care provider must: (1) be a public or non-profit health care provider⁷ and (2) qualify as one of the eligible health care provider types under the Act and the Commission’s rules.⁸ Health care providers must then make a bona fide request for eligible services by submitting a Description of Services Requested and Certification Form (FCC Form 465) to USAC.⁹ The FCC Form 465 also certifies to USAC that the health care provider is eligible to participate in the RHC Program.¹⁰ The health care provider therefore must indicate on the FCC Form 465 the eligibility category of the health care provider.¹¹ USAC then reviews the information provided on the FCC Form 465 to determine whether the health care provider qualifies as an eligible health care provider at the time of its request for purposes of the RHC Telecommunications Program.¹²

3. To verify the eligibility of a “community mental health center” to participate in the RHC

⁴ See 47 U.S.C. § 254(h)(7)(B) and 47 CFR § 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.”). Section 254 was added to the Act by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). See also Frank R. Lautenberg Chemical Safety for the 21st Century Act, Title II – Rural Healthcare Connectivity, Pub. L. No. 114-182 (2016) (amending the Act to now also include skilled nursing facilities (SNFs) (as defined in section 1819(a) of the Social Security Act) amongst the list of eligible health care providers).

⁵ This denial does not preclude Hope Barrow from receiving RHC Telecommunications Program support in future funding years if Hope Community can demonstrate with supporting documentation that Hope Barrow qualifies as a “community mental health center,” or as one of the other eligible health care providers as entities specified in the Act and the Commission’s rules. See *supra* note 4.

⁶ 47 CFR § 54.601(a). Internet access support under the RHC Telecommunications Program ended at the conclusion of Funding Year 2013 (June 30, 2014). The RHC Telecommunications Program now only provides telecommunications services support and Internet access support is provided under the Healthcare Connect Fund Program. See *Healthcare Connect Fund Order*.

⁷ See 47 CFR § 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”).

⁸ See *supra* note 4.

⁹ See 47 CFR § 54.603(b); Health Care Providers Universal Service, Description of Services Requested and Certification Form, OMB 3060-0804 (July 2014) (FCC Form 465).

¹⁰ See FCC Form 465.

¹¹ See *id.*; FCC Form 465 Instructions, Rural Health Care Universal Service Mechanism, OMB 3060-0804, at 4 (July 2014) (FCC Form 465 Instructions) (“Line 27 requires checking the box indicating the eligibility category of the [health care provider]. Only public or non-profit health care providers located in rural areas that fall into one of the categories listed in Line 27 are eligible to benefit from this universal service support mechanism.”).

¹² See FCC Form 465 Instructions at 1; 47 CFR § 54.600(a).

Program, USAC also requires applicants to complete the Community Mental Health Center (CMHC) Checklist.¹³ The CMHC Checklist requires a community mental health center to identify the types of services it provides, including outpatient mental health treatment, as well as 24-hour emergency care, day hospital care, and other partial hospitalization services for mental health patients.¹⁴ The CMHC Checklist must be submitted with the FCC Form 465.¹⁵ Moreover, current RHC Program rules do not permit USAC to approve funding for residential facilities.¹⁶ To the extent a community mental health center includes a long-term care facility, such as a residential substance abuse treatment center, that portion is not eligible for support.¹⁷

4. *Hope Community Request for Review.* In November 2013, Hope Barrow submitted its funding year 2013 FCC Form 465 to USAC seeking an eligibility determination and bids for the requested supported services.¹⁸ On its FCC Form 465, Hope Barrow indicated that it is a “community mental health center.”¹⁹ On its accompanying CMHC Checklist, Hope Community checked the boxes to indicate that it provides outpatient mental health treatment and psychosocial rehabilitation services.²⁰ During USAC’s review of Hope Barrow’s FCC Form 465, USAC requested that Hope Barrow provide certain documentation verifying its eligibility as a “community mental health center.”²¹ Based on Hope Community’s response and further independent research by USAC, USAC informed Hope Community that it determined that Hope Barrow was operating as a residential assisted living facility and therefore USAC planned to deny the application.²² Subsequently, USAC issued its determination that Hope Barrow was ineligible to participate in the RHC Program because it was an ineligible health care provider type.²³

5. In January 2014, Hope Community appealed USAC’s eligibility determination for the Barrow, Alaska location.²⁴ In its appeal, Hope Community stated that USAC’s characterization of Hope Barrow solely as an assisted living facility was erroneous and that, even if Hope Barrow offered residential services, this does

¹³ See USAC, Rural Health Care Universal Service, Community Mental Health Center Checklist, OMB 3060-0804, <http://www.usac.org/res/documents/rhc/pdf/forms/2013/CMHC-Certification-Checklist.pdf> (last visited July 28, 2016) (CMHC Form).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See *Rural Health Care Support Mechanism*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 18 FCC Rcd 24546, 24555, para. 16 (2003) (*RHC 2003 Report and Order*) (declining to expand the definition of health care provider to include nursing homes, hospices, and other long-term care facilities).

¹⁷ *Id.* at 24554-55, para. 15 (concluding that “entities listed in section 254(h)(7)(B) include non-profit entities that function as one of the listed entities on a part-time basis. Pursuant to this modification, non-profit entities that provide ineligible services, even on a primary basis, would be able to receive prorated support commensurate with their provision of eligible rural health care services.”). See also CMHC Form.

¹⁸ See Hope Community Resources – Barrow MH, FCC Form 465 (Nov. 8, 2013).

¹⁹ See *id.*

²⁰ See Hope Community Resources, Inc. CMHC Checklist (Nov. 12, 2013). The CMHC Checklist was submitted after the FCC Form 465 in response to USAC’s request for the required checklist. See Email from Rose Fioretti-Phillips, USAC, to Jim Haacke, Hope Community Resources, Inc. (Nov. 12, 2013).

²¹ See Email from Rose Fioretti-Phillips, USAC to Jim Haacke, Hope Resources Community, Inc. (Nov. 12, 2013).

²² See Email from Rose Fioretti-Phillips, USAC to Jim Haacke, Hope Resources Community, Inc. (Nov. 19, 2013) (noting that further investigation revealed a website listing Hope Community as an assisted living facility). See also Email from Jim Haacke, Hope Resources Community, Inc., to Rose Fioretti-Phillips, USAC (Nov. 13, 2013).

²³ See Email from USAC, to Jim Haacke, Hope Community Resources, Inc. (Nov. 19, 2013).

²⁴ See Letter from Jim Haacke, Director of Information Technology, Hope Community Resources, Inc., to USAC (Jan. 17, 2014) (Hope Community USAC Appeal).

not prevent the site from receiving support under the RHC Program, to the extent that it also offers, as a primary function, services that meet the statutory eligibility criteria.²⁵ Hope Community also indicated that it will offer primarily outpatient mental health treatment and “will not be a residential treatment facility.”²⁶ In addition, Hope Community explained that it “anticipates that the primary focus of Hope Barrow will be offering outpatient services, but a portion of the building will also provide long term residential services and ‘one short term stay bed,’ which should not be considered a long-term residential option.”²⁷ Hope Community further explained that its outpatient mental health services will not constitute long-term care and are “distinct from the ancillary services the facility offers of a residential nature,” and that Hope Barrow qualifies for pro-rated RHC Program support for those services.²⁸ Hope Community provided a new document with its appeal describing the resources and services available at Hope Barrow (Program Description) and requested that USAC reconsider its eligibility determination based on the additional information.²⁹ This document, however, was phrased in the future tense with regard to the relevant mental health services, without any indication of when those services would in fact be provided.³⁰

6. After Hope Community submitted its appeal to USAC, USAC requested additional information concerning the services that Hope Barrow provided to patients that were non-residents.³¹ In response, Hope Community again could not confirm that it was actually providing outpatient services at the Barrow facility. Hope Community explained that the services “that will be delivered at the site are not solely for the residents of that location” and that “staff members at the site are intended to serve other individuals in the community by providing outreach, training, organizational wellness and educational outpatient services to the community from this location. . . . In the future, Hope looks to develop direct clinical supports to the community.”³²

7. In August 2014, USAC denied Hope Community’s appeal, determining that Hope Community failed to demonstrate that its Hope Barrow facility qualified as a “community mental health center” for purposes of the RHC Program.³³ Specifically, USAC indicated that Hope Community did not demonstrate that Hope Barrow provided outpatient community mental health services.³⁴ Among other things, USAC found that, although Hope Community asserted that Hope Barrow provides outpatient mental health services, the newly produced Program Description document, Hope Community’s appeal, and Hope Community’s responses to USAC’s requests for information all use the future tense to describe Hope Barrow’s outpatient mental health services.³⁵ Because residential facilities are ineligible for RHC Program support, USAC therefore determined

²⁵ See Hope Community USAC Appeal at 3-6.

²⁶ *Id.* at 4.

²⁷ *Id.*

²⁸ *Id.* at 5-6.

²⁹ *Id.* at 7; The Barrow Herman Street Location, Program Description, Hope Community Resources, Inc. (Feb. 2012) (Program Description).

³⁰ See, e.g., Program Description at 2 (“The individuals residing at this facility *will be* empowered to be responsible for their own recovery . . .” “It *will be* a therapeutic environment that *will* embrace the principles of the recovery model.” “The formalized services that *will be* provided include Professional Behavioral Health Assessment, Comprehensive Community Support Services, Therapeutic Behavioral Health Services, Recipient Support Services, Case Management Services and Nursing Services.”) (emphasis added).

³¹ See Email from Tori Schwetz, USAC to Jim Haacke, Hope Community Resources, Inc. (Mar. 19, 2014).

³² Email from Jim Haacke, Hope Community Resources, Inc., to Tori Schwetz, USAC (Mar. 28, 2014).

³³ See Administrator’s Decision on Appeal at 3-4.

³⁴ *Id.* at 3.

³⁵ *Id.* See, e.g., Program Description at 2 (“The formalized services that *will be* provided include Professional Behavioral Health Assessment, Comprehensive Community Support Services, Therapeutic Behavioral Health Services, Recipient Support Services, Case Management Services and Nursing Services.”) (emphasis added); Hope

(continued....)

that Hope Barrow was ineligible for RHC Program support.³⁶

8. Hope Community filed the instant request for review with the Wireline Competition Bureau (Bureau) in October 2014.³⁷ In its appeal, Hope Community asks the Bureau to determine that, with regard to funding year 2013, the Hope Barrow location qualified as a “community mental health center” and therefore was eligible for funding under the RHC Telecommunications Program.³⁸ Hope Community argues that USAC’s denials were based upon flawed conclusions as to the nature of Hope Barrow’s services and facilities.³⁹ In its appeal to the Bureau, Hope Community seeks to respond to USAC’s determination that Hope Barrow was a residential facility by indicating that Hope Barrow does not currently provide any residential services; however, once the residential services are active, they will be provided in a separate location from its current services.⁴⁰ As part of its filing, Hope Community does not provide documentation showing the type of services actually provided at the Hope Barrow location during the time period at issue.⁴¹ In the event the Commission affirms USAC’s determination of ineligibility, Hope Community requests a waiver of the Commission rules due to the uniquely difficult circumstances faced by Barrow, Alaska’s population and the distinctive role that Hope Barrow plays in the community.⁴² In further support of its Request for Review, on November 30 and December 22, 2015, respectively, Hope Community filed supplements to its Request for Review indicating that the Barrow facility began providing mental health services in March 2014 along with copies of mental health screening forms used as part of its mental health intake assessment.⁴³

III. DISCUSSION

9. Based on the record before us, we deny Hope Community’s request for review and affirm USAC’s determination that the Hope Barrow facility is ineligible to receive support as a “community mental health center” under section 54.600(a) of the Commission’s rules, as defined by section

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Community Appeal at 4 (“Hope *anticipates* that the primary focus of Hope Barrow *will be* offering outpatient services, but a portion of the building will also provide long term residential services and ‘one short term stay bed,’”) (emphasis added); Email from Jim Haacke, Hope Community Resources, Inc., to Tori Schwetz, USAC (Mar. 28, 2014) (“[T]he services that *will be* delivered at the site are not solely for the residents of that location. . . . the staff members at the site are intended to serve other individuals in the community by providing outreach, training, organizational wellness and educational outpatient services to the community from this location. These services *will* include training, advocacy, and collaboration with the North Slope Borough. *In the future*, Hope looks to develop direct clinical supports to the community. . . .”) (emphasis added). *See also* Email from Jim Haacke, Hope Resources Community, Inc., to Rose Fioretti-Phillips, USAC (Nov. 13, 2013).

³⁶ *See* Administrator’s Decision on Appeal at 3-4; *RHC 2003 Report and Order*, 18 FCC Rcd at 24555, para. 16.

³⁷ *See* Hope Community Request for Review.

³⁸ *Id.* at 5-8. Hope Community notes that neither the Communications Act nor the Commission’s rules specify the precise services that a community mental health center must or may not provide. *Id.* at 5-6. Hope Community therefore refers to the Community Mental Health Act (CMHA) for guidance. *Id.* at 6-8. Hope Community states that because it screens patients for further services, including whether the patient should be referred to a state facility, it satisfies USAC’s requirements as well as the CMHA, which provides a definition of a “community mental health center.” *Id.* at 6-7.

³⁹ *Id.* at 4-5, 8-9.

⁴⁰ *Id.* at 9.

⁴¹ Rather, Hope Community contends, without documentary support for the time period at issue, that the Hope Barrow facility provides screening services for patients as well as other support services, such as consultative and treatment support, outpatient services, psychosocial rehabilitation services, education and outreach services, facilitating team meetings and providing wellness seminars. *Id.* at 6.

⁴² *Id.* at 9-11.

⁴³ *See* Hope Community First Supplement; Hope Community Second Supplement.

254(h)(7)(B) of the Act, for funding year 2013.⁴⁴ The RHC Program does not provide support to residential facilities, such as nursing homes, hospices, and other long-term care facilities.⁴⁵ We find that Hope Community has failed to demonstrate that the mental health services provided at the Barrow facility were being provided on an outpatient basis and not solely for residential patients.⁴⁶ While Hope Community asserts the Barrow site provides outpatient mental health services, the prospective language contained in the Program Description, Hope Barrow's appeal to USAC, and Hope Barrow's responses to USAC indicate that outpatient services will be provided at a future time.⁴⁷ In fact, Hope Community, by its own admission, asserts that it began to provide mental health services at the Barrow facility to its first patient in March 2014.⁴⁸ Therefore, such services, whether residential or on an outpatient basis, were not being provided at the Barrow facility at the time of Hope Community's request to USAC to receive support as a "community mental health center." Additionally, on appeal to the Bureau, Hope Community did not provide any supporting documentation, other than mental health screening forms, indicating that the mental health services currently being provided are on an outpatient basis. Merely, asserting that certain services are or were provided without supporting documentation does not suffice. For these reasons, we affirm USAC's decision and find that Hope Barrow did not demonstrate that it was eligible as a "community mental health center," at the time of its FCC Form 465 submission for funding year 2013, and therefore was ineligible to receive RHC Telecommunications Program support.

10. As noted above, Hope Community also requests, in the alternative, should the Bureau deny its request, a waiver of any Commission rules that prevent Hope Community from receiving RHC Program support.⁴⁹ Section 254(h)(7)(B) of the Act restricts eligibility for support to specific types of health care providers.⁵⁰ Thus, the Commission's rules require 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.⁵¹ While we are sympathetic to Barrow, Alaska's need for health services for its residents, we find that Hope Community has not provided special circumstances justifying a waiver of the Commission's rules and has not otherwise demonstrated that such waiver will serve the public interest. Geographic and language challenges alone do not outweigh the Commission's statutory responsibility to ensure that only eligible health care providers, as enumerated in the Act, receive RHC

⁴⁴ See 47 CFR § 54.601(a); 47 U.S.C. § 254(h)(7)(B).

⁴⁵ See *RHC 2003 Report and Order*, 18 FCC Rcd at 24555, para. 16.

⁴⁶ See, e.g., Program Description at 9 (stating that Hope Barrow would not provide community based clinical services "unless the community action plan for the Borough is amended and a contract is developed that defines Hope Community Resources as the clinical services provider beyond the clinical oversight required for the provision of the rehabilitative services that will be provided" at the Hope Barrow site.); Email from Jim Haacke, Hope Community Resources, Inc., to Tori Schwetz, USAC (Mar. 28, 2014) ("In the future, Hope looks to develop direct clinical supports to the community.").

⁴⁷ See *supra* paras. 4-6, note 35; Program Description.

⁴⁸ See Hope Community First Supplement; Hope Community Second Supplement.

⁴⁹ See *supra* para. 8; Hope Community Request for Review at 9-12. Generally, the Commission's rules may be waived if good cause is shown. 47 CFR § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

⁵⁰ 47 U.S.C. § 254(h)(7)(B).

⁵¹ See 47 C.F.R. § 54.601(a)(2).

Program support.⁵² We therefore also deny Hope Community's request, in the alternative, for a waiver of the Commission's rules.⁵³

IV. ORDERING CLAUSES

11. 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 CFR §§ 0.91, 0.291, 1.3, 54.722(a), that the Request for Review filed by Hope Community Resources, Inc. on October 17, 2014 IS DENIED.

12. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 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

⁵² See Hope Community Request for Review at 2-4.

⁵³ As indicated above, this denial, however, does not mean that Hope Barrow is excluded from receiving RHC Telecommunications Program support in future funding years if Hope Community can demonstrate with supporting documentation that Hope Barrow also provides outpatient medical services, or that it qualifies under another eligible health care provider category. See *supra* note 4; see also *supra* note 17.