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United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

WEBSITE: <http://commerce.senate.gov>

May 10, 2016

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

Mr. Chris Henderson
Chief Executive Officer
Universal Service Administrative Company
2000 L Street NW, Suite 200
Washington, D.C. 20036

Dear Chairman Wheeler & Mr. Henderson:

We write today to request information regarding Federal Communications Commission (FCC) oversight of the Universal Service Administrative Company (USAC). In particular, we wish to express our concern that rate-payer dollars dedicated to programs under USAC's stewardship, such as the Rural Health Care (RHC) program, are going toward unnecessary or excessive consulting fees rather than their intended purpose – helping rural health care providers gain access to essential telecommunications and broadband services.

Created in 1997, USAC is an independent, not-for-profit corporation responsible for overseeing the four programs supported by the federal Universal Service Fund (USF).¹ In calendar year 2015, USAC was authorized to disburse over \$8.3 billion through the four USF programs: High-Cost Support (known as the Connect America Fund), Low-Income Support (Lifeline), the Schools and Libraries program (E-rate), and the RHC program.² USAC is charged with protecting the integrity of the universal service programs, collecting and distributing USF funds, and ensuring compliance with program requirements.³

The RHC program is intended to help public and non-profit health care providers in rural areas to access telecommunications services at rates that are “reasonably comparable” to those available in urban areas.⁴ USAC provides RHC funding through three subordinate programs: the Telecommunications Program, the Healthcare Connect Fund (HCF), and a Pilot Program for the construction and implementation of statewide or regional broadband networks.⁵ The HCF program provides a 65 percent discount on expenses related to broadband connectivity for individual rural health care providers as well as consortia that include a majority of such

¹ Universal Service Administrative Company (hereinafter USAC), *Who We Are*, <http://www.usac.org/about/about/who-we-are/default.aspx> (last visited May 10, 2016).

² USAC, *Building the Foundation: 2015 Annual Report*, 41 (2016), *available at* http://usac.org/_res/documents/about/pdf/annual-reports/usac-annual-report-interactive-2015.pdf.

³ *Id.*

⁴ See 47 U.S.C. § 254(h)(1)(A).

⁵ USAC, *Rural Health Care*, <http://www.usac.org/rhc/> (last visited May 10, 2016).

providers.⁶ The total annual funding cap for all three RHC programs is \$400 million.⁷ In fiscal year 2015, total disbursements through the HCF program amounted to approximately \$7.6 million.⁸

We strongly support the goals of the RHC program, but we are concerned that an unreasonable portion of RHC funds may be going to so-called “application mills” rather than toward funding the broadband services for rural hospitals and clinics as intended. An analysis of USAC’s online database of RHC program applications, which lists points of contact and other information for each application, shows that a handful of individuals have mass-filed hundreds of applications across dozens of states on behalf of individual rural health care providers.⁹ According to information we have obtained, these individuals or firms contact rural providers, inform them that USF money is available for rural broadband connectivity, and contract with them to handle the application paperwork in exchange for a percentage of the funding. These contracts can also have an auto-renewal clause such that the arrangement continues if the rural health care provider does not object to renewal within a certain time before the contract would expire.

Consulting firms are entitled to offer assistance to entities in completing potentially onerous application processes in exchange for a fee. Indeed, rural hospitals and clinics may not have the resources to submit complex applications and may be willing to pay for the convenience of consultant assistance. The application form for the RHC HCF program for individual providers, however, is only four pages long and is certified by the Office of Management and Budget to take only up to one hour to complete.¹⁰

If a significant portion of RHC funding is going to consultants in exchange for an hour’s work on a short application, there exists a legitimate concern that the program’s intended beneficiaries may not be receiving its full, intended support. In addition, if this type of behavior is common in other USF programs such as E-rate, which has an annual funding cap of \$3.9 billion,¹¹ the amount of rate-payer dollars diverted from their intended purpose across all USF programs could be far greater than in RHC alone.

In light of the foregoing, and pursuant to the Committee’s oversight responsibilities, please provide responses to the following:

- 1) Does the FCC or USAC monitor the percentage of funding awarded under the RHC program that beneficiaries pay to consultants? If so,

⁶ *Id.*

⁷ USAC, Rural Health Care Funding Information, <http://www.usac.org/rhc/healthcare-connect/funding-information/default.aspx> (last visited May 10, 2016).

⁸ *Id.*

⁹ USAC, Search Posted Services, <https://rhc.usac.org/hcf/public/searchPosted.htm> (last visited May 10, 2016).

¹⁰ FCC Form 461, *available at* http://www.usac.org/_res/documents/rhc/pdf/forms/FCC-Form-461-Form-and-Instructions.pdf (last visited May 10, 2016).

¹¹ USAC, Schools and Libraries (E-rate) Program Overview (Sept. 2015), *available at* http://usac.org/_res/documents/sl/pdf/handouts/E-rate-Overview.pdf.

please provide the percentage of funding and the corresponding dollar amounts that consultants received for each of fiscal years 2006 through 2015.

- a. If the FCC or USAC does not monitor the amounts paid to consultants under the RHC program, please explain why not.
 - b. If the FCC or USAC does not monitor the amounts paid to consultants under the RHC program, do you think it is in the public interest and spirit of the USF to monitor the amounts paid to consultants in order to ensure the funding recipients receive the intended benefit of the program?
- 2) Do FCC rules prohibit the expenditure of USF funds on consulting fees or similar expenses? Is there a cap for such fees and expenses? If not, why not?
- 3) Do excessive consulting fees fall under the FCC's reporting requirements under the Improper Payments Elimination and Recovery Improvement Act? If not, how do you determine whether an excessive consultant fee does or does not constitute an improper payment?
- 4) Do consulting contracts with USF beneficiaries typically have auto-renewal provisions? If so, provide an example of a typical auto-renewal provision, including the amount of time before the end of a contract within which the USF beneficiary would be required to affirmatively terminate the contract to preclude auto-renewal.
- 5) According to a recent USAC filing, the USAC Internal Controls Team will complete testing of the internal controls surrounding the HCF in the second quarter of 2016. Do these reviews of internal controls examine the payments from HCF made to consultants? If not, please explain why not.
- 6) According to a recent USAC filing, USAC has planned 31 audits of the RHC program for fiscal years 2014 and 2015, and the USAC Board has approved 21. Do any of the 31 planned audits probe the amounts of money beneficiaries of the RHC program paid out to consultants? If not, explain why not.
 - a. Provide a narrative explanation for each of USAC's 31 planned audits of the RHC program.
 - b. Why has the USAC Board not approved 10 of USAC's planned audits of the RHC program? Please identify the 10 audits not

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approved by the USAC Board, and provide an explanation for why each audit was not approved by the USAC Board.

- 7) Does the FCC or USAC monitor the percentage of funding awarded under the E-rate program that beneficiaries pay to consultants? If so, please provide the percentage of funding and the corresponding dollar amounts that consultants received for each of fiscal years 2006 through 2015. If FCC or USAC does not monitor the amounts paid to consultants under the E-rate program, please explain why not.
- 8) According to a recent USAC filing, USAC has planned 145 audits of the E-rate program for fiscal years 2014 and 2015, and the USAC Board has approved 63. Do any of the 145 planned audits probe the amounts of money beneficiaries of the E-rate program paid out to consultants? If not, explain why not.
 - a. Provide a narrative explanation for each of USAC's 145 planned audits of the E-rate program.
 - b. Why has the USAC Board not approved 82 of USAC's planned audits of E-rate? Please identify the 82 audits not approved by the USAC Board, and provide an explanation for why each audit was not approved by the USAC Board.

Please provide the requested information as soon as possible, but by no later than May 24, 2016. In addition, please make arrangements to brief Committee staff on this matter. If you have any questions, please have your staff contact Ashok Pinto or David Quinalty of the Majority staff at (202) 224-1251 or Sam Love of Senator Gardner's staff at (202) 224-5941. Thank you in advance for your prompt attention to this matter.

Sincerely,



JOHN THUNE
Chairman



CORY GARDNER
United States Senator

The Honorable Tom Wheeler & Mr. Chris Henderson

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cc: The Honorable Bill Nelson
Ranking Member

Mr. David L. Hunt
Inspector General
Federal Communications Commission

Dr. Brian L. Talbott
Chair, Board of Directors
Universal Service Administrative Company