



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

May 26, 2016

The Honorable John Thune
Chairman
Committee on Commerce, Science, and Transportation
United States Senate
254 Russell Senate Office Building
Washington, D.C. 20510

Dear Chairman Thune:

Thank you for your letter regarding two of the universal service fund (USF) programs: the Rural Health Care (RHC) and Schools and Libraries (E-rate) program. We appreciate your strong support for the goals of the RHC program, and by extension the E-rate program. We also share some of the concerns expressed in your letter about the cost to RHC and E-rate applicants of hiring consultants to assist with paperwork and compliance with the other requirements of the two programs. Importantly, however, neither the RHC nor the E-rate program provides support of the sort described in your letter. Specifically, our rules do not allow RHC or E-rate funding to go to consultants that provide administrative support to program applicants.

Pursuant to statute and the rules adopted by the FCC to implement the statute, the RHC program provides support only for telecommunications services and Internet access to eligible health care providers.¹ Likewise, the E-rate program only provides support for telecommunications services, Internet access, and internal connections (WiFi) for eligible schools and libraries.²

We recognize that there are administrative expenses associated with participating in both programs. Those expenses are borne by the applicants, not by the USF. In recent years, the Commission adopted orders modernizing both programs, and one of its goals in modernizing those programs was to reduce the administrative burdens of the programs, while still collecting high quality data to ensure data driven decision making and putting in place protections against

¹ See 47 U.S.C. §§254(h)(1)(A), (h)(2)(A); 47 C.F.R. §§54.602(a), 54.604(b)(Telecommunications Program); 47 C.F.R. §§54.602(b), 54.634 (Healthcare Connect Fund).

² See 47 U.S.C. §§254(h)(1)(B), (h)(2)(A); 47 C.F.R. 54.502(a). Design and engineering services and project management services, which are sometimes labeled as "network consulting services," are eligible for E-rate support if they are an integral component to the installation of E-rate eligible services. See generally USAC website, Eligible Services List, <http://www.usac.org/sl/applicants/beforeyoubegin/eligible-services-list.aspx> (last visited May 16, 2016). These services are different from E-rate consulting services because they involve planning the installation of eligible services rather than managing the administrative aspects of the E-rate application process.

waste, fraud and abuse.³ Indeed, in its 2013 *E-rate Modernization Notice of Proposed Rulemaking*, the Commission recognized that, while consultant fees cannot be paid using E-rate funds, they are a cost to program participants, and therefore may reduce the net benefits that schools and libraries realize from participation in the E-rate program.⁴ The Commission sought ways to simplify and streamline the application and disbursement processes in part to reduce the reliance on consultants.⁵

The current structure leaves it up to the applicant's judgment as to whether to have existing employees do the administrative work associated with participation in the program or hire an outside consultant to do that work. And, different applicants take different approaches. In our experience, some applicants have in-house experts, others use experts who work for their state government, and still others hire private consultants.

With that in mind, please find answers to the specific questions you ask in the body of your letter below.

Responses to Specific Committee Questions

1. Does the FCC or USAC monitor the percentage of funding awarded under the RHC 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.
 - 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?

Response: As explained above, the RHC program does not provide funding for consulting fees. Accordingly, neither the FCC nor USAC currently monitors or tracks monies that beneficiaries pay to consultants in connection with the beneficiaries' participation in the RHC program.

³ See *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678 (2012) (*Healthcare Connect Fund Order*); *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, 8891-94, paras. 55-62 (2014) (*E-rate Modernization Order*).

⁴ See *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Notice of Proposed Rulemaking, 28 FCC Rcd 11304, 11362, para. 224 (2013) (*E-rate Modernization NPRM*).

⁵ See *id.*

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 no, why not?

Response: As indicated above, such USF expenditures are not allowed. Neither the statute, nor the FCC's rules for the RHC and E-rate programs permit the expenditure of USF funds on consulting fees or similar expenses. For example, RHC program funding may only be used for eligible telecommunication and broadband services, equipment, and/or network construction required to allow for the provision of healthcare services.⁶ Therefore, USAC may only approve and obligate funding commitments for eligible broadband and telecommunications services, equipment and/or network construction.

3. Do excessive consulting fees fall under 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?

Response: No, consulting fees are not eligible for funding under the FCC's rules for the RHC and E-rate programs and thus the issue of whether the level of such fees constitutes an improper payment has not arisen.

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 the auto-renewal.

Response: Because the RHC program does not provide support for consultant fees, USAC does not have authorization to request or collect information regarding the RHC program beneficiaries' use of consultants, including any contracts governing the relationships between RHC beneficiaries and consultants. As such, neither the FCC nor USAC has any information regarding whether the contracts may include auto-renewal provisions.

5. According to a recent USAC filing, the USAC Internal Controls Team will complete testing of internal controls surrounding the HCF in the second quarter of 2016. Do these reviews of internal controls examine payments from the HCF made to consultants? If not, please explain why not.

Response: Consulting fees are not an eligible service in the RHC program and no payments go from HCF or any other RHC program to consultants. Accordingly, USAC's Internal Controls Team testing and reviews do not address payments made by program beneficiaries to consultants.

⁶ See 47 U.S.C. §§254(h)(1)(A), (h)(2)(A); 47 C.F.R. §§54.602(a), 54.604(b)(Telecommunications Program); 47 C.F.R. §§54.602(b), 54.634 (Healthcare Connect Fund).

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

Response: USAC's audit authority is to verify RHC beneficiaries are complying with FCC rules and orders. A significant portion of the audit includes verification that the RHC beneficiaries are eligible to participate in the RHC program, and the beneficiaries are seeking reimbursement by the RHC program for eligible equipment and services.

RHC's audits include procedures designed to test compliance with FCC rules and orders. To assist in the accomplishment of that objective, each of the 31 planned audits was to test the following areas:

- *Application Process* – Verification of documentation to support effective use of funding and verify that the beneficiary has the resources to support the services and equipment funded.
- *Competitive Bidding* – Verify documentation exists to support the beneficiary selects a service provider to provide eligible services and equipment and the services and equipment are cost-effective.
- *Eligibility* – Obtain documentation that the beneficiary is a public or non-profit eligible health care provider. Also verify the beneficiary is in a rural area.
- *Invoicing* – Test invoices to verify products and services agree with contract terms and are eligible. Also verify the beneficiary timely paid its share of the non-discounted part of costs.
- *Health Care Provider Verification* – Verify that the services and equipment were provided and were functional. Determine if supported services or equipment were used for purposes reasonably related to the provision of health care services and in accordance with FCC rules.

The testing areas noted are designed to identify ineligible products and services, such as consulting fees. In instances where the audit report shows that ineligible beneficiaries or ineligible products or services were paid for by program funds, the audit report will recommend recovery of such funds to the RHC program by the beneficiary.

The 31 planned audits for the RHC program for fiscal years 2014 and 2015 represent the number of audits USAC planned to start by September 30, 2015 and expected to complete in 2016.

Below is the status of those audits:

- USAC's Board has approved 24 completed audits.⁷
- Four audits are in progress.
- USAC will not initiate three audits. These audits were cancelled and supporting resources were reassigned to higher risk entities based on a revised risk assessment framework.

We are providing to your staff copies of all audit reports completed and approved by the USAC Board. Further, upon request from your staff, we can provide the final reports for those audits that are in progress once those reports are complete and approved by USAC's Board. If there are issues you or your staff wish to discuss regarding those audits that are in progress, we will ensure that the necessary staff members are available to do so.

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.

Response: As explained above, the E-rate program does not provide funding for consulting fees. Accordingly, neither the FCC nor USAC currently monitors or tracks monies that beneficiaries pay to consultants in connection with the costs they incur in applying to participate in the E-rate program.

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 the E-rate program? 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.

⁷ USAC reported that its Board had approved 21 audits as of December 31, 2015. See USAC, Federal Universal Service Support Mechanisms Fund Size at 6 (Feb. 1, 2016), <http://www.usac.org/about/tools/fcc/filings/2016/Q2/Fund%20Size%20Projection%20Summary.pdf> (Projections for Second Quarter 2016). Since that time, USAC's Board has approved an additional three audits.

Response: USAC's audit authority is to verify E-rate beneficiaries are complying with FCC rules and orders. A significant portion of the audit includes verification that the E-rate beneficiaries are eligible to participate in the E-rate program and the beneficiaries are seeking reimbursement by the E-rate program for eligible equipment and services.

As noted above, E-rate audits include procedures designed to test compliance with FCC rules and orders. To assist in the accomplishment of that objective, each audit includes procedures to test in the following areas:

- *Application Process* – Verification of documentation to support effective use of funding and determine whether the beneficiary has the resources to support the services or equipment funded. Testing procedures are performed to verify the process the beneficiary used to calculate its discount percentage and validate its accuracy.
- *Competitive Bidding* – Verify documentation exists to support the beneficiary selects a service provider to provide eligible services and/or equipment and the services and/or equipment are cost-effective.
- *Invoicing* – Invoices are examined to determine whether the equipment and services were eligible and consistent with the contract terms. Testing is also performed to determine whether the beneficiary timely paid its non-discounted share of costs.
- *Site Visit* – When applicable, physical inventories are performed to evaluate the location and use of equipment and services to determine whether it was delivered and installed, located in eligible facilities, and utilized in accordance with FCC rules. Audit procedures are also performed to verify the beneficiary had the necessary resources to support the E-rate funded equipment and services.

The testing areas noted above are designed to identify ineligible products and services, such as consulting fees. When ineligible beneficiaries or ineligible products and services are paid by program funds, the audit report will recommend recovery of such funds to the E-rate program by the beneficiary.

The 145 planned audits for the E-rate program for fiscal years 2014 and 2015 represents the number of audits USAC planned to start by September 30, 2015 and expected to complete in 2016. Below is the status of those audits:

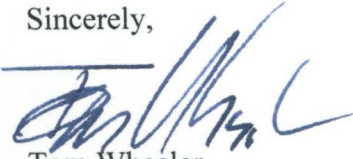
- USAC's Board has approved 73 completed audits.⁸
- Fifty-seven audits are in progress.
- USAC will not initiate fifteen audits. These audits were cancelled and supporting resources were reassigned to higher risk entities based on a revised risk assessment framework.

⁸ USAC reported that its Board had approved 63 audits as of December 31, 2015. *See* Projections for Second Quarter 2016. Since that time, USAC's Board has approved an additional 10 audits.

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We appreciate your interest in this matter. Please let us know if we can be of any further assistance.

Sincerely,

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Tom Wheeler,
Chairman,
Federal Communications Commission

Sincerely,

A handwritten signature in blue ink, appearing to read "Chris Henderson", consisting of two distinct, stylized parts.

Chris Henderson,
Chief Executive Officer,
Universal Service Administrative Company



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OFFICE OF
THE CHAIRMAN

May 26, 2016

The Honorable Cory Gardner
United States Senate
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Washington, D.C. 20510

Dear Senator Gardner:

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We recognize that there are administrative expenses associated with participating in both programs. Those expenses are borne by the applicants, not by the USF. In recent years, the Commission adopted orders modernizing both programs, and one of its goals in modernizing those programs was to reduce the administrative burdens of the programs, while still collecting high quality data to ensure data driven decision making and putting in place protections against waste, fraud and abuse.³ Indeed, in its 2013 *E-rate Modernization Notice of Proposed*

¹ See 47 U.S.C. §§254(h)(1)(A), (h)(2) (A); 47 C.F.R. §§54.602(a), 54.604(b)(Telecommunications Program); 47 C.F.R. §§54.602(b), 54.634 (Healthcare Connect Fund).

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Rulemaking, the Commission recognized that, while consultant fees cannot be paid using E-rate funds, they are a cost to program participants, and therefore may reduce the net benefits that schools and libraries realize from participation in the E-rate program.⁴ The Commission sought ways to simplify and streamline the application and disbursement processes in part to reduce the reliance on consultants.⁵

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With that in mind, please find answers to the specific questions you ask in the body of your letter below.

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Response: As explained above, the RHC program does not provide funding for consulting fees. Accordingly, neither the FCC nor USAC currently monitors or tracks monies that beneficiaries pay to consultants in connection with the beneficiaries' participation in the RHC program.

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Response: As indicated above, such USF expenditures are not allowed. Neither the statute, nor the FCC's rules for the RHC and E-rate programs permit the expenditure of USF funds on consulting fees or similar expenses. For example, RHC program funding may only be used for eligible telecommunication and broadband services, equipment, and/or network construction required to allow for the provision of healthcare services.⁶ Therefore, USAC may only approve and obligate funding commitments for eligible broadband and telecommunications services, equipment and/or network construction.

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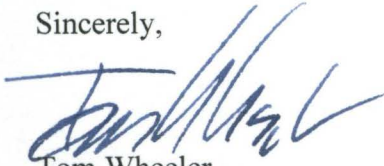
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We appreciate your interest in this matter. Please let us know if we can be of any further assistance.

Sincerely,

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Tom Wheeler,
Chairman,
Federal Communications Commission

Sincerely,

A handwritten signature in blue ink, appearing to read "Chris Henderson", with a stylized flourish at the end.

Chris Henderson,
Chief Executive Officer,
Universal Service Administrative Company