



Federal Communications Commission  
Office of the Secretary  
Attention: Rural Health Care Program Appeal  
9300 East Hampton Drive  
Capitol Heights, MD 20743

November 10<sup>th</sup>, 2002

Docket nos. 96-45 and 97-21

**Re: In the Matter of: Request for Review by Rural Wisconsin Health Cooperative of Decision of Universal Service Administrator: Rescindment Of Eligibility of Universal Service Support For Funding Years 2001 and 2002 for Rural Wisconsin Health Cooperative, HCP# 12646.**

Dear Secretary Dortch:

Please accept this letter as an appeal to the Federal Communications Commission (FCC) of the decision by the Rural Health Care Division (RHCD) of the Universal Service Administrative Company (USAC) to rescind their authorization of the Rural Wisconsin Health Cooperative's (RWHC) eligibility for Universal Service Support for Funding Years 2001 and 2002.<sup>1</sup>

RHCD staff told RWHC that it should appeal directly to the FCC as RHCD believes that RWHC's applications involve a policy issue which RHCD is not in a position to resolve.

RHCD's September 19<sup>th</sup> letter rescinding their earlier eligibility determinations states that RWHC does not fall within an eligible category to benefit from Universal Service Support; RHCD lists what they accept as eligible provider types. The RHCD list includes the first six of seven categories authorized in FCC 97-157 (rel. May 8, 1997), Section 653. But without explanation, RHCD omits the seventh category of "consortia of health care providers." RWHC is a consortia of health care providers.<sup>2</sup>

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<sup>1</sup> RHCD's letters initially approving RWHC eligibility for Funding Years 2001 and 2002 and their letter rescinding both of these letters, dated September 19<sup>th</sup>, 2002, are attached as Exhibits A, B and C, respectively. Please note that RHCD's September 19<sup>th</sup> reference to "Funding Years 2000 and 2001" appears to be a typographical error.

<sup>2</sup> RWHC Articles of Incorporation and a list of Members and Member locations are attached as Exhibit D and E, respectively.

Section 653 provides:

The 'Definitions' provision of section 254 states that: For purposes of this subsection (47 U.S.C. § 254(h)(5)(B)). . . [t]he term 'health care provider' means -- (i) post-secondary educational institutions offering health care instruction, teaching hospitals, and medical schools; (ii) community health centers or health centers providing health care to migrants; (iii) local health departments or agencies; (iv) community mental health centers; (v) not-for-profit hospitals; (vi) rural health clinics; and **(vii) consortia of health care providers consisting of one or more entities described in clause (i) through (vi).**

Section 654 also states:

In response to commenters who raised the issue of the definition of the term 'health care provider,' the Joint Board recommended that the Commission attempt no further clarification of the term. It found that section 254(h)(5)(B) adequately describes those entities Congress intended to be eligible for universal service support.

This position was confirmed by the FCC in FCC 02-122 (rel. April 19, 2002). In the Notice of Proposed Rulemaking, the FCC stated "[i]n this Notice we again affirm that eligible health care providers are limited to the **seven** categories enumerated in the statutory definition of 'health care provider'." FCC 02-122, Section 16 (emphasis added).

Consequently, RWHC objects to RHCD's narrowing the definition of "health care provider" to exclude consortia entities. "Consortia" of eligible entities as well as another eligible entity—"post-secondary educational institutions offering health care instruction," are not typically referred to as "health care providers," but both Congress and the FCC are very explicit that for purposes of the Universal Service Support, they are as much a "health care provider" as any other eligible entity.

**RWHC asserts that as a consortia of health care providers consisting of not-for-profit hospitals (category "(v)), it is an eligible "health care provider" for purposes of 47 U.S.C. § 254(h)(5)(B) as reiterated in FCC 97-157 (rel. May 8, 1997), Section 653 and FCC 02-122 (rel. April 19, 2002), Section 6. See also, 47 CFR § 54.601(a).**

RWHC is a consortium of twenty-eight not-for-profit Wisconsin hospitals. RWHC, incorporated in Wisconsin as a cooperative, is wholly owned and operated by these hospitals. Twenty-five are located outside of a Metropolitan Statistical Area and are in their own right eligible for Universal Services Support. The remaining three hospitals are considered rural hospitals by Wisconsin law but are located within Metropolitan Statistical Areas. The RWHC consortium office is located in Sauk County, Wisconsin, outside of a Metropolitan Statistical Area.

Subsequent to the 28-day posting period for Funding Year 2002, RWHC was notified by phone that RHCD was reversing its original positions and that RWHC was not now eligible to proceed with the process. In its letter of denial, RHCD has indicated that RWHC is not eligible because it is not a “not-for-profit hospital.” As one of the oldest and best known rural health consortia in the country, RWHC has never claimed it is a “not-for-profit hospital.”

In all of RWHC’s numerous conversations with RHCD over the last two years and in its completed Form 465, RWHC consistently indicated that it was and is a consortium, a consortium comprised of “not-for-profit hospitals.” RWHC indicated on its Form 465 (item #6) for Year 4 that it is a “consortium” and based on the explicit verbal direction of RHCD Customer Service Support Staff, it checked “not-for-profit hospital” on Form 465 (item #31) to indicate its consortium type but also stated in bold print on Form 465 (item #37) that “RWHC is a consortium.”<sup>3</sup>

RWHC embodies the consortia concept and purpose as defined by Webster’s Ninth New Collegiate Dictionary’s first definition of a “consortium” – “an agreement, combination, or group (as of companies) formed to undertake an enterprise beyond the resources of any one member.” In part based on assurances by RHCD of RWHC’s eligibility for Universal Service Support, RWHC has made substantial investments to develop a Wide Area Network for the benefit of the consortium’s not-for-profit hospital members.

In taking this approach, RWHC is following the advice of many experts, including the FCC’s Schools and Libraries Corporation (SLC). The following is from the SLC web site:

Consortia are not required but are encouraged. Consortia advantages are:

- Aggregating demand attracts competitors and allows negotiating lower prices.
- Consolidating services achieves improved efficiency.
- Sharing both network infrastructure and knowledge results in lower costs for all.
- Sharing facilities reduces costs.
- Sharing technical staff reduces costs.

To gain all of these advantages, an entity is required and RWHC is that entity for the not-for-profit hospitals that own and operate RWHC. A recent article by a major consulting firm serving rural hospitals strongly supports the FCC’s decision to encourage rural consortia.<sup>4</sup>

While RHCD has told RWHC that the FCC does not allow the RHCD to fund “consortia” they did allow that RWHC could collect and submit in one “batch,”

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<sup>3</sup> Form 465 is attached as Exhibit F

<sup>4</sup> The Eide Bailly article is attached as Exhibit G.

applications from individual eligible hospital members. But this limited approach does not recognize RWHC as a “health care provider” or “eligible entity” in its own right.

RWHC’s application focuses on eligible telecommunications services relating to a recently developed Wide Area Network that has begun to provide a host of shared applications and services to RWHC not-for-profit hospitals. RWHC is serving as the network administrator and data center, incurring the cost of two T1 lines for which it seeks USF program support. As part of an array of services, RWHC not-for-profit hospitals participating in the Wide Area Network also access the Internet through these T1 lines, after having gone through the “firewall” housed in the RWHC Data Center.<sup>5</sup> All the shared expenses are borne by the participating not-for-profit hospitals.

RWHC is partnering with an established, regional telecommunications carrier on the wide area network: Norlight Telecommunications. Independent consultants and Norlight engineers spent an entire year designing and refining the network configuration for the rural hospitals so that it would require a minimal number of T1 connections and be as efficient as possible. It is largely support for the two T1 connections between RWHC and Norlight that is effected by the RHCD denial.

Norlight has experience with the USF program and has provided guidance to Wisconsin rural not-for-profit hospitals with their funding applications for this project—bringing a great deal of much-needed publicity to the program. The enclosed promotional announcement speaks to the enhanced performance and cost savings a Wide Area Network brings to rural providers. Needless to say, they are convinced that RWHC is a critical partner in the project; with the project’s budget based on support from USF.<sup>6</sup>

RWHC is aware that most eligible rural providers have not taken advantage of Universal Service Support and that a substantial portion of the funds allocated for them go unused each year. RWHC strongly believes that consortia of rural providers working together (as envisioned by the FCC in their comments about schools and libraries) is the future for rural health care providers. It is the best way for RHCD and USAC to bring the advantages of telemedicine & telehealth to rural America. We are asking for the opportunity to help RHCD fulfill that mission. In any event, we remain committed to working with the RHCD to further their outreach to rural providers.<sup>7</sup>

In summary, RWHC is a consortia of health care providers consisting of not-for-profit hospitals (category “(v)”), that is an eligible “health care provider” for purposes of 47 U.S.C. § 254(h)(5)(B) as reiterated in FCC 97-157 (rel. May 8, 1997), Section 653 and FCC 02-122 (rel. April 19, 2002), Section 6. See also, 47 CFR §

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<sup>5</sup> A copy of Norlight’s promotional announcement is attached as Exhibit H.

<sup>6</sup> *ibid.*

<sup>7</sup> Letters of support for this appeal from the Wisconsin Hospital Association, the Wisconsin Federation of Cooperatives, the National Rural Health Association and the National Cooperative Business Association are attached as Exhibits I, J, K and L, respectively.

54.601(a). Accordingly, RWHC requests that the FCC rescind the September 19<sup>th</sup> letter and find that RWHC is eligible for Funding Years 2001 and 2002.

We would appreciate a prompt response and thank you for your thoughtful deliberations. In any event, we remain committed to working with the FCC and RHCD to further outreach to rural providers and consortia of rural providers.

Sincerely,

A handwritten signature in black ink that reads "Tim Size". The signature is written in a cursive, slightly slanted style.

Tim Size  
Executive Director

cc: RWHC Hospitals  
Wisconsin Hospital Association  
Wisconsin Federation of Cooperatives  
National Rural Health Association  
National Cooperative Business Association  
Rural Health Care Division (RHCD) of the  
Universal Service Administrative Company