

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Review
Franciscan Skemp Waukon Clinic
Waukon, Iowa
Rural Health Care Universal Service
Support Mechanism
File No. RHCD-12657
WC Docket No. 02-60

ORDER

Adopted: October 2, 2014

Released: October 2, 2014

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

I. INTRODUCTION

1. In this order, we deny a request from Franciscan Skemp Waukon Clinic (Waukon) seeking review of a decision made by the Universal Service Administrative Company (USAC) to deny funding under the rural health care universal service support mechanism.

II. BACKGROUND

2. Under the rural health care universal service support mechanism, 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.

1 Letter from Michael O'Connor, Universal Service Fund (USF) Consultants, on behalf of Franciscan Skemp Waukon Clinic, to Office of the Secretary, Federal Communications Commission, WC Docket No. 02-60 (filed May 15, 2008) (Waukon Appeal) (regarding Funding Year 2005 Funding Request Number (FRN) 22509 and Funding Year 2006 Packet 73716).

2 47 C.F.R. § 54.603(b)(3).

3 See 47 C.F.R. § 54.723.

4 47 C.F.R. § 54.603.

5 47 C.F.R. § 54.601 (2005).

6 47 C.F.R. § 54.603; Health Care Providers Universal Service, Description of Services Requested and Certification Form, OMB 3060-0804 (January 2004) (FCC Form 465).

days before entering into a service agreement with the selected service provider.⁷ Once the applicant has selected a provider and entered into a service contract, the applicant must submit its request for discounts to USAC by filing an FCC Form 466 (for telecommunications services) and/or an FCC Form 466-A (for Internet services).⁸ The applicant uses the FCC Form 466 and/or FCC Form 466-A to verify the type of services ordered and to certify that the selected service provider is the most cost-effective.⁹ After reviewing the funding requests, USAC issues funding decisions in accordance with the Commission's rules.

3. The Commission's competitive bidding requirements prohibit applicants from signing a service contract before the expiration of the 28-day waiting period.¹⁰ In the *Kalamazoo Order*, however, the Commission determined that applicants may use contracts signed before the expiration of the 28-day waiting period if: (i) the applicant is choosing to continue service under an existing contract; (ii) the applicant competitively bid the services for the new funding year; and (iii) the applicant decides, after reviewing the competitive bids, to continue with the existing contract.¹¹ The Commission encouraged applicants to memorialize, at the conclusion of the 28-day waiting period, its decision to continue under the existing contract and to enter the date of its memorialization as the contract award date.¹²

4. *Waukon Appeal*. Waukon submitted two FCC Form 465 applications to USAC in 2005 to initiate the competitive bidding process for telecommunications and Internet access services.¹³ USAC posted Waukon's first FCC Form 465 on April 14, 2005, designating an allowable contract date of May 12, 2005, pursuant to the Commission's rules.¹⁴ According to Waukon, this FCC Form 465 requested bids for the provision of services for a limited time period remaining in Funding Year 2004.¹⁵ USAC posted Waukon's second FCC Form 465 on April 26, 2005, designating an allowable contract date of May 24, 2005.¹⁶ Sixteen days before the allowable contract date for the first FCC Form 465 and one day before Waukon posted the second FCC Form 465, Waukon signed a multi-year contract with Charter Fiberlink (Charter) to provide the desired services.¹⁷ Waukon then submitted its Funding Year 2005 FCC

⁷ 47 C.F.R. § 54.603(b)(3).

⁸ Health Care Providers Universal Service, Funding Request and Certification Form, OMB 3060-0804 (Jan. 2005) (FCC Form 466); Health Care Providers Universal Service, Internet Service Funding Request and Certification Form, OMB 3060-0804 (Nov. 2012) (FCC Form 466-A).

⁹ See FCC Form 466; FCC Form 466-A.

¹⁰ See 47 C.F.R. § 54.603.

¹¹ See *Request for Review of the Decision of the Universal Service Administrator by Kalamazoo Public Schools*, CC Docket No. 96-45, Order on Reconsideration, 17 FCC Rcd 22154, 22157-58, paras. 6-7 (Wireline Comp. Bur. 2002) (*Kalamazoo Order*).

¹² *Id.* at 22157-58, para. 7.

¹³ See FCC Form 465, Franciscan Skemp Waukon Clinic (posted Apr. 14, 2005) (Funding Year 2004 FCC Form 465); FCC Form 465, Franciscan Skemp Waukon Clinic (posted Apr. 26, 2005) (Funding Year 2005 FCC Form 465) (each requesting "provider to provider and provider to patient information transfer [(sic)] including Voice, data, image, and video").

¹⁴ See Funding Year 2004 FCC Form 465; 47 C.F.R. § 54.603(b)(3).

¹⁵ See Funding Year 2004 FCC Form 465.

¹⁶ See Funding Year 2005 FCC Form 465. This FCC Form 465 covered Funding Years 2005, 2006, and 2007.

¹⁷ See *Waukon Appeal* at 2. Waukon executed the contract with Charter on April 25, 2005. *Id.*

Form 466 application seeking support for eligible telecommunications services.¹⁸ USAC subsequently approved the funding request in Waukon's Funding Year 2005 application.¹⁹

5. During post-funding review, USAC rescinded Waukon's funding commitment on the ground that Waukon executed its service contract before the expiration of the 28-day waiting period mandated under the Commission's rules.²⁰ Waukon appealed USAC's decision arguing that after it signed a service contract with Charter, it took appropriate action to seek competitive bids by posting an FCC Form 465, and that it received no bids in response to that posting.²¹ On March 17, 2008, USAC denied Waukon's appeal finding that it had properly disallowed support for the Charter contract because Waukon executed the contract before the expiration of the 28-day waiting period for both FCC Form 465 applications.²² Waukon then filed the instant appeal with the Commission.²³

6. In its appeal, Waukon disputes USAC's determination that Waukon violated the 28-day waiting period by signing a service contract on April 25, 2005.²⁴ Waukon states that it posted two distinct FCC Form 465 applications to initiate the competitive bidding process for distinct periods.²⁵ Waukon explains that its first FCC Form 465 solicited bids for the provision of telecommunications and Internet access services for part of Funding Year 2004 and is not relevant to the funding request at issue.²⁶ Waukon maintains that the second FCC Form 465, posted after Waukon executed a contract with Charter, covered services that were to commence in August of Funding Year 2005.²⁷ Waukon states that it did not receive any other bids during the 28-day waiting period for the second FCC Form 465.²⁸ Thus, Waukon argues that its contract with Charter qualifies as an existing contract consistent with the *Kalamazoo Order* and is eligible for support.²⁹

¹⁸ See FCC Form 466, Franciscan Skemp Waukon Clinic (filed June 29, 2006).

¹⁹ See Letter from Rural Health Care Division, USAC, to Mike O'Connor, USF Consultants, on behalf of Franciscan Skemp Waukon Clinic (dated Oct. 19, 2006).

²⁰ See Letter from Rural Health Care Division, USAC, to Mike O'Connor, USF Consultants, on behalf of Franciscan Skemp Waukon Clinic (dated Sept. 12, 2007); 47 C.F.R. § 54.603(b)(3).

²¹ See Letter from Michael O'Connor, Universal Service Fund (USF) Consultants, on behalf of Franciscan Skemp Waukon Clinic, to Rural Health Care Division, USAC (dated Nov. 28, 2007).

²² See Letter from Rural Health Care Division, USAC, to Mike O'Connor, USF Consultants, on behalf of Franciscan Skemp Waukon Clinic (dated Mar. 17, 2008) (regarding Funding Year 2005 funding request number (FRN) 22509 and Funding Year Packet 73716).

²³ See Waukon Appeal.

²⁴ *Id.* at 2-3.

²⁵ *Id.* at 3. The Funding Year 2004 FCC Form 465 initiated a competitive bidding process for the provision of telecommunications and Internet access services for a limited amount of time remaining in Funding Year 2004. The Funding Year 2005 FCC Form 465 initiated a competitive bidding process for the same services in Funding Years 2005, 2006, and 2007. See Funding Year 2004 FCC Form 465; Funding Year 2005 FCC Form 465; Waukon Appeal at 3.

²⁶ Waukon Appeal at 1, 3.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* at 3-4 (citing the *Kalamazoo Order*). See also *supra* para. 3.

III. DISCUSSION

7. We conclude that USAC correctly denied Waukon's request for support. As discussed below, we find that Waukon failed to comply with the Commission's competitive bidding requirements.³⁰

8. The record shows that Waukon signed a multi-year contract for the services at issue before the expiration of the 28-day waiting period for each of the FCC Forms 465 posted in Funding Year 2005.³¹ Assuming *arguendo* that the first FCC Form 465 is not relevant to the funding request at issue and the second FCC Form 465 applies instead, Waukon's funding request is still not eligible for support under Kalamazoo.³² The exception outlined in the *Kalamazoo Order* relates to the continuation of services under an existing contract.³³ Those circumstances are not present here. First, Waukon did not choose to continue Charter's services in Funding Year 2005 under an existing contract. Rather, Waukon signed a new contract on April 25, 2005 for services that did not commence until August 2005, after Funding Year 2005 had already begun.³⁴ Thus, by Waukon's own admission, Charter's services were not a continuation of services from a previous funding year.³⁵ Second, as explained in the *Kalamazoo Order*, applicants must wait 28 days after posting an FCC Form 465 before deciding to continue services under an existing contract.³⁶ Although Waukon submitted an FCC Form 465 to initiate the competitive bidding process for the services at issue, it did not, as mentioned above, decide to continue services under an existing contract after waiting 28 days. Instead, Waukon signed a *new* contract with Charter before the 28-day waiting period had even begun.³⁷ The fact that Waukon did not receive bids from any other service provider during the 28-day waiting period does not cure Waukon's error in prematurely signing a contract with Charter.

9. We find that when an applicant signs a contract with a service provider before the expiration of the 28-day waiting period mandated in the Commission's rules, the applicant impairs its ability to hold a fair and open competitive bidding process.³⁸ We are deeply concerned about practices such as these that undermine the framework of the competitive bidding process. Entering into an agreement with a service provider before the completion of the 28-day waiting period circumvents the competitive bidding process and ultimately damages the integrity of the program. Waukon has not presented sufficient evidence demonstrating that USAC erred in its decision and has not otherwise

³⁰ 47 C.F.R. § 54.603.

³¹ See Funding Year 2004 FCC Form 465; Funding Year 2005 FCC Form 465.

³² See *supra* para. 3 and note 11.

³³ See *id.*

³⁴ See Waukon Appeal at 2-3.

³⁵ *Id.*

³⁶ See *supra* para. 3 and note 11.

³⁷ See *supra* para. 6; Waukon Appeal at 2-3.

³⁸ See, e.g., *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9076-80, paras. 570-80 (1997) (subsequent history omitted), 12 FCC Rcd at 9076-80, paras. 570-80 (requiring applicants to conduct a fair and open competitive bidding process when seeking support for eligible products and services); *Federal-State Joint Board on Universal Service; Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; End User Common Line Charge*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, and 95-72, Report and Order and Fourth Order on Reconsideration, 13 FCC Rcd 5318, 5425-26, para. 185 (1997) (stating that competitive bidding is a key component of the Commission's effort to ensure that universal service funds support services that satisfy the precise needs of an institution, and that the services are provided at the lowest possible rates).

demonstrated compliance with the Commission's competitive bidding requirements.³⁹ We therefore deny Waukon's appeal and affirm USAC's decision to rescind funding for the funding request at issue.

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 pursuant to authority delegated in sections 0.91, 0.291 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291 and 54.722(a), the appeal filed by Franciscan Skemp Waukon Clinic, Waukon, Iowa, on May 15, 2008, IS DENIED.

11. IT IS FURTHER ORDERED that, pursuant to the authority delegated in 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

³⁹ See 47 C.F.R. § 54.603.