Rural Health Care Committee

Briefing Book - Audit Reports

Monday, July 23, 2018

1:00 p.m. - 2:00 p.m. Eastern Time

Conference Bridge: 1-844-740-1264; Access Code: 732 035 145#

Universal Services Administrative Company

700 12th Street NW, Suite 700

Washington, DC, 20005

Summary of Rural Health Care Support Mechanism Beneficiary Audit Reports: June 1 2018 – June 30, 2018

Entity Name, State	Number of Findings	Material Findings	Amount of Support	Monetary Effect	USAC Management Recovery Action	Entity Disagreement
Oregon Health Network **(Attachment A)**	2	• **Failure to Comply with Fair Share and Excess Capacity Requirements – Service Providers did not Pay Fair Share of Construction or Other Nonrecurring Costs**. The service providers did not demonstrate sufficient knowledge of the Rules. The service providers stated they were not aware of guidance provided by the FCC regarding fair share and excess capacity scenarios.	$18,032,686.86	$1,321,836	$1,321,836	Y
Total	**2**		**$18,032,686**	**$1,321,836**	**$1,321,836**	

UNIVERSAL SERVICE ADMINISTRATIVE COMPANY
Rural Health Care Pilot Program Audit Report
Oregon Health Network

USAC Audit No. RH2016PP030

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BCA Watson Rice LLP
Certified Public Accountants and Advisors

4550 Forbes Blvd.
Suite 130
Lanham, MD 20706
www.bcawatsonrice.com

Telephone: (202) 778-3450
Facsimile: (202) 463-8883

EXECUTIVE SUMMARY

December 27, 2017

Mr. Wayne Scott, Vice President,
USAC Internal Audit Division
Universal Service Administrative Company
700 12th Street, NW, Suite 900
Washington, DC 20005

Dear Mr. Scott:

BCA Watson Rice, LLP (Watson Rice) under contract with the Universal Service Administrative Company (USAC or Administrator) audited the compliance of Oregon Health Network (OHN), Health Care Provider (HCP) Number 17241 (Beneficiary), using regulations and orders governing the federal Universal Service Rural Health Care (RHC) Pilot Program, set forth in the *Pilot Program Selection Order*[1], as well as other program requirements (collectively, the Rules). Compliance with the Rules is the responsibility of the Beneficiary's management. Watson Rice's responsibility is to make a determination regarding the Beneficiary's compliance with the Rules based on the audit.

Watson Rice conducted the audit in accordance with Generally Accepted Government Auditing Standards (GAGAS) issued by the Comptroller General of the United States (2011 Revision, as amended). Those standards require that Watson Rice plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for its findings and conclusions based on the audit objectives. The audit included examining, on a test basis, evidence supporting the competitive bidding process undertaken to select service providers, the type and amount of services received, physical inventory of equipment purchased and maintained, as well as performing other procedures Watson Rice considered necessary to make a determination regarding OHN's compliance with the Rules. The evidence obtained provides a reasonable basis for Watson Rice's findings and conclusions based on the audit objectives.

Based on the test work performed, our examination disclosed two detailed audit findings (Findings). For the purpose of this report, a Finding is a condition that shows evidence of non-compliance with the Rules that were in effect during the audit period.

Certain information may have been omitted from this report concerning communications with USAC management or other officials and/or details about internal operating processes or investigations. This report is intended solely for the use of USAC, the OHN, and the Federal Communications Commission (FCC) and should not be used by those who have not agreed to the procedures and taken responsibility for the sufficiency of those procedures for their purposes. This report is not confidential and may be released to a requesting third party.

[1] *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 22 FCC Rcd 20360 (2007) (*Pilot Program Selection Order*).

We appreciate the cooperation and assistance extended by you and your staff during the audit.

Sincerely,

Albert Lucas, Managing Partner
BCA Watson Rice, LLP

AUDIT RESULTS AND RECOVERY ACTION

Audit Results	Monetary Effect (A)	Recommended Recovery (B)
Finding #1: Pilot Program Selection Order, paras. 47,107,108 (2007) Failure to Comply with Fair Share Requirements – Service Providers did not Pay Fair Share of Construction Costs	$1,321,835.85	$1,321,835.85
Finding #2: Pilot Program Selection Order, para. 98 (2007) Beneficiary Did Not Confirm and Demonstrate that the 15 Percent Minimum Funding Contribution was paid for Each Invoice Submitted to USAC	$0	$0
Total Net Monetary Effect	$1,321,835.85	$1,321,835.85

USAC MANAGEMENT RESPONSE

USAC management concurs with the audit results.

USAC agrees with Watson Rice's recommendation that service providers provide evidence of their fair share allocation and, where evidence is not provided, to recover related funds (up to a total of $1,321,835.85). To that end, USAC requests that the service providers provide evidence of their fair share allocation, particularly network usage reports and/or customer lists, within six months of the final audit report. If USAC has not received acceptable evidence of the fair share allocation within six months of the final audit report, USAC will seek to recover funds.

USAC agrees to the Beneficiary's plan to modify its procedures to ensure that HCPs pay their minimum share before invoicing USAC. To that end, USAC requests that the Beneficiary provide documentation that it has established procedures in accordance with the Healthcare Connect Fund (HCF) invoicing rules within six months of the final audit report.

FRN	Finding #1	Finding #2	Total
42811	$249,564.25	0	$249,564.25
42812	$59,500.00	0	$59,500.00
43819	$479,825.00	0	$479,825.00
46776	$117,228.60	0	$117,228.60
46989	$359,939.30	0	$359,939.30
48613	$55,778.70	0	$55,778.70
USAC Recovery Action	**$1,321,835.85**	**0**	**$1,321,835.85**
Rationale for Difference (if any) from Auditor Recommended Recovery	n/a	n/a	n/a

PURPOSE, SCOPE, BACKGROUND AND PROCEDURES

PURPOSE

The purpose of the audit was to determine whether the Oregon Health Network (OHN) complied with the Rules.

SCOPE

The following chart summarizes the Rural Health Care (RHC) Pilot Program support amounts disbursed to the OHN for Funding Year 2008 (July 1, 2008 to June 30, 2009) and Funding Year 2009(July 1, 2009 to June 30, 2010) the Audit Periods.

Funding Year	Service Type	Amount Committed	Amount Disbursed
2008	Network Design	$174,650.35	$174,650.35
2008	Construction – Infrastructure/Plant Upgrade by Carrier	$128,816.65	$128,816.65
2008	Leased/Tariffed facilities or services	$444,547.60	$444,547.60
2008	Network Management/Maintenance/Operations Cost (not captured elsewhere)	$1,331,100.00	$1,155,235.01
2008	Subtotal	$2,079,114.60	$1,903,249.61
2009	Construction – Infrastructure/Plant Upgrade by Carrier	$4,956,615.01	$4,948,597.35
2009	Leased/Tariffed facilities or services	$11,584,478.53	$10,749,722.41
2009	Network Management/Maintenance/Operations Cost (not captured elsewhere)	$431,194.80	$431,115.49
2009	Subtotal	$16,972,288.34	$16,129,435.25
	Total	**$19,051,402.94**	**$18,032,684.86**

Note: The amounts committed and disbursed reflect funding year activity as of the completion of the audit.

The committed total represents 75 FCC Form 466-A applications with 75 Funding Request Numbers (FRNs). Watson Rice selected 10 FRNs, which represent $6,408,505.15 of the funds disbursed during the audit period, to perform the procedures enumerated below with respect to the Funding Years 2008 and 2009 applications submitted by OHN.

BACKGROUND

In 2007, the Oregon Association of Hospital and Health Systems Research and Education Foundation applied for and received about $20 million in support from USAC to construct the OHN for the Rural Health Care Pilot Program. The OHN Consortium, a non-profit, was formed in Portland, OR, in September 2007 solely to design and build the OHN network. This network was to serve over 220 HCPs mostly in rural areas of Oregon. Funding was made available in 2008 and 2009 and is the subject of this audit.

In April 2013, OHN merged with the Oregon Community Health Information Network (OCHIN) also in Portland, OR. OCHIN continues to operate and manage the network OHN developed. At the time of our audit, over 190 HCPs were connected to the network. OCHIN officials said that some HCPs withdrew from the pilot due to funding issues.

PROCEDURES

Watson Rice performed the following procedures:

A. Application Process

Watson Rice obtained an understanding of OHN's processes relating to the RHC Pilot Program. Specifically, Watson Rice examined documentation to support its effective use of funding and that adequate controls exist to determine whether funds were used in accordance with the Rules. Watson Rice used inquiry and direct observation/inspection of documentation to determine whether OHN used funding as indicated in its Network Cost Worksheets (NCWs).

Watson Rice examined documentation to determine whether the OHN Project Coordinator obtained Letters of Agency from the network HCPs and/or the HCP's health systems authorizing OHN and/or the Project Coordinator to act on their behalf. Watson Rice also examined documentation to confirm the HCP's agreement to participate in the network, and that the entities agreed to avoid improper duplicate support for any HCPs participating in multiple networks.

Watson Rice examined the FCC Forms 466-A and the FCC Form 466-A attachments to determine whether the Beneficiary identified the participating HCPs and documented the allocation of eligible costs related to the provision of health care services. Watson Rice also examined the NCWs to determine whether ineligible costs, if any, were identified and ineligible entities, if any, paid their fair share. Watson Rice did not assess the reasonableness of any fair share amount since the Rules do not define what is considered reasonable.

B. Competitive Bid Process

Watson Rice examined documentation to determine whether all bids for the services received were properly evaluated. Watson Rice used inquiry and examined documentation to ensure the OHN Pilot Program Coordinator considered price and the required non-cost factors including prior experience, personal qualifications, management capability, and environmental objectives (if appropriate). Watson Rice did not assess the reasonableness of the weight assigned to the non-cost factors since the Rules do not define how to value the non-cost factors. Watson Rice examined evidence the OHN Pilot Program Coordinator waited the required 28 days from the date the FCC Form 465 was posted on USAC's website before selecting or signing contracts with the selected service provider(s). Watson Rice evaluated the services requested and purchased for cost-effectiveness.

C. Eligibility

Watson Rice used inquiry and direct observation/inspection of documentation to substantiate the OHN member HCPs were public or non-profit eligible HCPs. Watson Rice examined documentation to ensure OHN connected more than a *de minimis* number of eligible rural HCPs. For the purposes of our audit, *de minimis* is defined as one, since the Rules do not define *de minimis*. Watson Rice verified that a *de minimis* number of eligible HCPs are located in rural areas and verified the eligible HCPs' physical addresses were the same as listed on the applications. Watson Rice verified through inquiry and examined documentation to determine whether the HCPs participating in the Pilot Program were not funded by a RHC Primary Program for the same services.

Watson Rice used inquiry and examined documentation to ensure ineligible entities, if any, were properly reported on the FCC Form 465. OHN properly reported ineligible entities on its FCC Forms 465 attachments where appropriate.

D. Invoicing Process

Watson Rice examined invoices for which payment was disbursed by USAC to determine whether the services identified on the service provider invoices submitted to USAC and the corresponding service provider bills submitted to OHN were consistent with the terms and specifications of the service provider agreements. Watson Rice examined documentation to determine whether OHN provided proper notice of the services' initiation to the FCC and USAC. In addition, Watson Rice examined documentation to determine whether OHN paid its required 15 percent minimum contribution and the required contribution was from eligible sources. Watson Rice also examined documentation to determine whether the Pilot Program's disbursements did not exceed 85 percent of the total costs.

E. Reporting Process

Watson Rice examined documentation to determine whether OHN timely submitted its quarterly reports to USAC and the FCC and the reports included required information, including an update on the OHN's Sustainability Plan. Watson Rice examined OHN's Sustainability Plan to determine whether it included the required contents. Watson Rice did not conclude on the reasonableness of the Sustainability Plan or whether OHN can meet or maintain the objectives described in that plan since the Rules do not define how to assess the reasonableness of the content included in the Sustainability Plan.

F. Health Care Provider Location

Watson Rice determined through inquiry and direct observation/inspection of documentation whether the services provided existed and were functional. Watson Rice also determined through inquiry and direct observation/inspection of documentation whether the supported services for eligible HCPs were used for purposes reasonably related to the provision of health care services and in accordance with the Rules.

Finding #1: *Pilot Program Selection Order*, paras. 47, 107,108 (2007) Failure to Comply with Fair Share and Excess Capacity Requirements – Service Providers did not Pay Fair Share of Construction or Other Nonrecurring Costs

CONDITION

OHN received Rural Health Care Pilot Program (RHCPP) support to establish a broadband network that included last mile and middle mile connectivity to rural and small hospitals and clinics throughout the state of Oregon. 40 FRNs out of the 75 FRNs awarded to OHN incurred construction or other non-recurring costs. The Rules provide RHCPP support for eligible construction and other costs to extend broadband service to eligible HCPs only. Although ineligible entities can join the network, those entities must pay a fair share for the construction and other nonrecurring costs incurred to extend services to the ineligible entities. The Rules also require that any excess capacity be identified and, in instances where the excess capacity will be used to support ineligible entities, those costs are to be reasonably allocated between eligible and ineligible entities on a fair share basis. Documentation supporting the methodology used to allocate those costs between eligible and ineligible entities must be maintained. Further, the Rules require OHN and its service providers keep documentation and records supporting their billing and compliance with the Rules.

To determine compliance with the Rules, Watson Rice selected a sample of 8 FRNs out of the 40 FRNs with construction and other non-recurring costs and conducted inquiries of service providers, examined service provider bills, and reviewed service provider documentation showing network segments built, fiber miles laid and capacity utilization. Based on the responses received and review of the documentation provided, Watson Rice determined that for the 6 FRNs in the table below, the service providers either installed excess capacity owned by the service providers and made it available to ineligible entities not part of OHN's network or did not provide documentation demonstrating services that were invoiced to RHCPP were installed exclusively for OHN's eligible HCPs. The service providers also did not demonstrate that they paid their fair share of construction and other nonrecurring costs as it relates to the installed excess capacity.

Service Provider	FRN	Amount Disbursed for Construction
CoastCom, Inc.	46989	$359,939.30
Integra Telecom of Oregon, Inc.	42812	$59,500.00
Lightspeed Networks Inc.	42811	$249,564.25
	43819	$479,825.00
	46776	$117,228.60
	48613	$55,778.70
Lightspeed Subtotal		*$902,396.55*
Total		$1,321,835.85

Although CoastCom for FRN 46989 and Lightspeed (LS) Networks for FRNs 42811, 43819, and 46776, acknowledged they had installed excess capacity along the RHCPP-funded portions of OHN's network, OHN stated that it was not aware that excess capacity had been installed on the network; and, as a result, the network cost worksheets and other supporting documentation did not identify any excess capacity or allocate the costs between eligible and ineligible entities. In addition, CoastCom and LS Networks invoiced RHCPP for their 85 percent share of the total costs of construction and other nonrecurring costs seeking and receiving RHCPP reimbursement.

For FRN 42812, Integra Telecom invoiced RHCPP for its 85 percent of the total costs of construction and other nonrecurring costs seeking and receiving RHCPP reimbursement, but did not provide any information on network capacity and utilization other than to verbally confirm that, during the Funding Year 2009, only eligible HCPs were on this portion of its network.

CAUSE

The service providers did not demonstrate sufficient knowledge of the Rules. The service providers stated they were not aware of guidance provided by the FCC regarding fair share and excess capacity scenarios.

In its application to USAC for RHCPP support, OHN stated its intent for service providers to own all the last mile and middle mile facilities. In exchange, service providers would provide favorable rates to participating HCPs during the Pilot Program and beyond. OHN disclosed that service providers would own the RHCPP supported facilities in its Pilot Program application and in its April 2009 Sustainability Plan. In addition, in its application, OHN said the service providers would be permitted to use the facilities to serve other customers provided they could maintain the desired type and quality of services to HCPs participating in RHCPP.

EFFECT

The monetary effect of this finding is $1,321,835.85. This represents the 85 percent share of construction and other nonrecurring costs invoiced to RHCPP for the sampled FRNs in which the service providers could not demonstrate they paid their fair share for the installation of excess capacity. Because the service providers did not provide documentation, Watson Rice cannot determine the service providers estimated fair share for network construction costs.

RECOMMENDATION

Watson Rice recommends the service providers (CoastCom, Integra Telecom, and LS Networks) examine all documentation, including (but not limited to) the service providers' bills, network design plans, network maps, and circuit utilization reports to determine the amount of construction and other nonrecurring costs incurred for excess capacity and determine the service providers' fair share for the excess capacity. If the service providers cannot provide evidence for the excess capacity installed and its fair share for owning the excess capacity, Watson Rice recommends USAC management seek recovery for the amount identified in the Effect above.

BENEFICIARY RESPONSE

The following is Watson Rice's summary of the beneficiary's response, which includes responses from OCHIN and from service providers, Integra, CoastCom, and LS Networks (collectively Beneficiary Response). **Appendix 1** contains the full unedited responses from OCHIN and from each of the three service providers to which this finding relates. OCHIN and two of the service providers (Integra and CoastCom) disagree with the finding in its entirety. The third service provider, LS Networks, partially agrees and offers a $9,695.41 settlement payment.

In its response, OCHIN argues that it does not own or control any network facilities; and, therefore, the fair share and excess capacity requirements do not apply to OHN because these requirements only apply where the applicant has ownership or control over physical network capacity. Specifically, OCHIN asserts that, because OHN is a 'services only' network, where no network facilities were procured, or are owned or controlled by OCHIN , fair share requirements do not apply to the network. As a result, according to OCHIN, because it is not subject to the fair share and excess capacity requirements, it was not required to maintain documentation supporting the methodology used to allocate between eligible and ineligible entities.

OCHIN further asserts that because the Rules did not codify excess capacity requirements, they do not apply to the RHC Pilot Program. OCHIN argues that the excess capacity requirements are inapplicable because the excess capacity guidance documents (Excess Capacity Scenarios and a Wireline Competition Bureau Letter) were not codified in the Rules; and, thus, USAC is not permitted to seek recovery for violations based on guidance, rather than formal rules. Notwithstanding, OCHIN asserts that there was no excess capacity on the OHN network. Lastly, OCHIN claims that the only obligation it and its member HCPs had regarding the build-out or other construction costs was to meet the competitive bidding and cost effectiveness requirements in the Rules.

Integra and Coastcom generally agree with OCHIN's interpretation of the Rules. These two service providers also state that fair share and excess capacity requirements do not apply because neither had ineligible entities on their networks. Integra further argues that the Rules on which the *Pilot Program Selection Order's* fair share discussion are based place restrictions on services purchased pursuant to universal service support mechanisms, and not to the providers of such services.

LS Networks, the third service provider, indicates that it was unaware of the FCC's excess capacity guidance, but acknowledges that ineligible entities had joined the network segments funded under FRNs 42811, 43819 and 46776 without a fair share contribution from those entities. LS Networks estimates it installed 36 extra fiber strands per segment over a total of about 30 miles for FRNs 42811, 43819, 46776 and 48613. It estimates the cost of installing the extra fiber strands to be 17 cents a foot for a total excess cost of $27,287.04. Prorating costs for fiber pairs used by ineligible activities, LS Networks added an additional $1,799.19. Without admitting any wrongdoing, LS Networks offers to repay the Universal Service Fund $9,695.41, the average of the three FRNs total excess capacity cost estimated above (($27,287.04 +$1,799.19)/3).

WATSON RICE RESPONSE TO BENEFICIARY RESPONSE

In its response, OCHIN states, and Integra and Coastcom concur, that because the "Commission never promulgated or codified any rules to govern the RHCPP [fair share and excess capacity rules]," USAC cannot seek recovery for their violation. Watson Rice does not agree. As an initial matter, the FCC established the Pilot Program under the authority of section 254(h)(2)(A) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996.[2] Pursuant to this authority, the *2006 Pilot Program Order* set out those requirements governing participation in the program, including eligibility requirements.[3] The subsequent *2007 Pilot Program Selection Order* further clarified these requirements, added additional requirements, and established an audit and oversight mechanism for the Pilot Program "to guard against waste, fraud, and abuse, and to ensure that funds disbursed through the Pilot Program are used for appropriate purposes."[4] To the extent an audit or investigation reveals that a beneficiary or service provider improperly used Pilot Program funds in a manner inconsistent with the program, the Commission specified that USAC is required to recover such funds, including those "funds disbursed in violation of…a substantive program goal."[5]

Moreover, the Rules specify that "services purchased pursuant to universal service support mechanisms…shall not be sold, resold, or transferred in consideration for money or any other thing of value."[6] Notwithstanding this prohibition on resale, the Commission clarified that the prohibition does not forbid an RHC Pilot Program participant from sharing network capacity with an ineligible entity, so long as the ineligible entity pays its fair share of network costs attributable to the portion of the network capacity used.[7] Further, to prevent against violation of the prohibition on resale of supported services and further prevent waste, fraud, and abuse, the FCC requires participants in the program to identify all for-profit or other ineligible entities, how their fair share of network costs were assessed, and proof that these entities paid or will pay for their costs.[8]

Thus, while neither the *2006 Pilot Program Order* nor *2007 Pilot Program Selection Order* explicitly refer to "excess capacity," the *2007 Pilot Program Order* lays out the general requirements for network capacity usage, which includes use of excess capacity by ineligible entities. The publicly available guidance documents referenced in the Beneficiary response, including a 2008 FCC Letter to USAC, the excess capacity scenarios guidance provided by the FCC, and FAQs on the Commission's website, further expand on and clarify these requirements in the context of excess capacity specifically.[9] For example, on

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[2] 47 C.F.R. § 254(h)(2)(A); 47 U.S.C. §§ 151 *et seq*.; Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 21 FCC Rcd 11111, para. 1 (2006 (*2006 Pilot Program Order*).

[3] *See generally 2006 Pilot Program Order*.

[4] *See Rural Health Care Support Mechanism*, WC Docket 02-60, 22 FCC Rcd 20360, 20362, paras. 6, 125 n.407 (*2007 Pilot Program Selection Order*).

[5] *See id.* at 20423, paras. 6, 125, 125 n.407.

[6] *See* 47 C.F.R. § 54.617(a); *2007 Pilot Program Selection Order*, 22 FCC Rcd at 20415-16, paras. 105-108.

[7] *See 2007 Pilot Program Selection Order*, 22 FCC Rcd at 20416, para. 107.

[8] *Id.* at 20416, para. 108.

[9] *See* Letter from Dana Shaffer, Chief, FCC to Scott Barash, CEO, USAC at https://transition.fcc.gov/cgb/rural/wcbletter.pdf (Oct. 24, 2008) (*2008 FCC Letter to USAC*); FCC's website at https://www.fcc.gov/general/rural-health-care-pilot-program#faq27 (last checked Mar. 28, 2018) (*FCC Excess Capacity Guidelines and FAQs*); *In the Matter of Rural Health Care Support Mechanism*, WC Docket No. 02-6030, Order, 30 FCC Rcd 2138, 2155 (2015) (referencing Excess Bandwidth and Excess Capacity Scenarios at 1, 6 (Mar. 17. 2009)); *see also* Universal Service Administrative Company, *Telecommunications RFP 01 for Adirondack – Champlain Telemedicine Information Network (ACTION)*, 1, 16-21, https://www.usac.org/_res/documents/rhc-pilot-program/pdf/search-postings/2009/Adirondack-Champlain-scope-01.pdf (last visited Mar. 28, 2018); Universal Service Administrative Company, *Telecommunications RFP 02 For Adirondack – Champlain Telemedicine Information Network (ACTION)*, 1, 16-21, https://www.usac.org/_res/documents/rhc-pilot-program/pdf/search-postings/2009/Adirondack-Champlain-scope-02.pdf (last visited Mar. 28, 2018).

the FCC's website, and consistent with the general network usage requirements noted in the *2007 Pilot Program Selection Order*, the Commission notes:

> *If the project includes excess capacity to be used for any purpose other than the dedicated health care network, explain the funding for such excess capacity. In doing so: (i) indicate how users of such excess capacity are paying their fair share; and (ii) describe generally agreements made between the health care network portion of the project and the excess capacity portion of the project (e.g., cost allocation, sharing agreements, maintenance and access, ownership).*[10]

With respect to OCHIN, Integra, and Coastcom's claims that the fair share and excess capacity requirements do not apply to the OHN network because OCHIN does not own or control any network facilities, Watson Rice similarly finds these arguments unpersuasive. Nothing in the Rules indicates that the network must be owned or controlled by the participant in order for the fair share and excess capacity requirements to apply. In fact, the guidance provided in the excess capacity scenarios document explicitly contemplates use of excess capacity where the participant leases the services.[11] And, as indicated above, in order for a service provider to provide network capacity to ineligible entities, the ineligible entity(ies), which may include the service provider, is required to pay a fair share for the network capacity used.[12]

Regarding OCHIN's claim that it is not required to maintain documentation supporting its cost allocation methodology, Watson Rice does not concur. The Rules require health care providers participating in the RHC Pilot Program to maintain documentation of their purchases of service, including "records of allocations for…entities that engage in eligible and ineligible activities" for a period of five years.[13] The FCC has clarified that this documentation retention requirement also applies to service providers that receive support for serving rural health care providers.[14] Participants and service providers must also make available all such documentation to the Commission's Office of Inspector General, to USAC, and to their auditors upon request.[15] Thus, for the reasons stated above, Watson Rice does not agree that the fair share and excess capacity requirements do not apply to OCHIN and that USAC cannot seek recovery for their violation.

Intergra in its response and CoastCom during the audit both acknowledged that they installed more fiber than what was needed to service the HCPs in the RHC Pilot Program. However, neither CoastCom nor Integra provided the network usage reports or customer lists, which Watson Rice requested, to document their claims that they serviced only eligible entities. Further, CoastCom and Integra claimed they offered broadband services to member HCPs at a discount, but they were unable to provide copies

[10] *See* FCC's website at https://www.fcc.gov/general/rural-health-care-pilot-program#faq24.

[11] *In the Matter of Rural Health Care Support Mechanism*, WC Docket No. 02-6030, Order, 30 FCC Rcd 2138, 2155 (2015) (referencing Excess Bandwidth and Excess Capacity Scenarios at 1, 6 (Mar. 17. 2009)); *see also* Universal Service Administrative Company, *Telecommunications RFP 01 for Adirondack – Champlain Telemedicine Information Network (ACTION)*, 1, 16-21, https://www.usac.org/_res/documents/rhc-pilot-program/pdf/search-postings/2009/Adirondack-Champlain-scope-01.pdf (last visited Mar. 28, 2018); Universal Service Administrative Company, *Telecommunications RFP 02 For Adirondack – Champlain Telemedicine Information Network (ACTION)*, 1, 16-21, https://www.usac.org/_res/documents/rhc-pilot-program/pdf/search-postings/2009/Adirondack-Champlain-scope-02.pdf (last visited Mar. 28, 2018).

[12] *See 2007 Pilot Program Selection Order*, 22 FCC Rcd. 20360, 20404 at paras. 107, 108 (2007).

[13] *See 2007 Pilot Program Selection Order*, 22 FCC Rcd. 20360, 20404 at para. 83 n.277 (2007).

[14] *Id.*

[15] *Id.*

of commercial contracts or publicly available price lists from the same time period to support the discount provided. Therefore, CoastCom and Integra have not provided conclusive evidence that their network segments serve only eligible entities or that they provided service discounts to the HCPs served. As previously stated, service providers receiving support under the RHC Pilot Program are required to maintain such documentation and make it available to USAC or its auditors upon request.[16]

LS Networks, the third service provider, acknowledged installing excess capacity on network segments funded by three FRNs. Although LS Networks did provide a spreadsheet showing that ineligible entities were on three RHCPP funded segments, it did not provide actual network usage reports and customer lists that Watson Rice requested. Therefore, LS Networks has not conclusively proven that these are the only ineligible entities on these segments. Thus, Watson Rice offers no opinion on the adequacy of the methodology LS Networks used to calculate the fair share amount it offers to repay for the ineligible entities it acknowledges. LS Networks also claimed that it provided discounts to the HCPs but, similar to CoastCom and Integra, did not provide commercial contracts or publicly available price lists from the period to support the discount provided.

For the reasons stated above, Watson Rice's position on this finding remains unchanged.

Finding #2: *Pilot Program Selection Order*, para. 98 (2007) Beneficiary Did Not Confirm and Demonstrate That the 15 Percent Minimum Funding Contribution Was Paid for Each Invoice Submitted to USAC

CONDITION

The Rules require the Beneficiary pay a minimum 15 percent funding contribution of eligible network costs and that it confirm and demonstrate to USAC the 15 percent minimum funding contribution has been provided to the service provider for each invoice submitted to USAC when submitting invoices. For three FRNS, 42811, 42812, 43819, the Beneficiary did not confirm and demonstrate the 15 percent minimum contribution had been provided to the service provider when the Beneficiary submitted invoices to USAC. For FRN 42811, OHN or its participating HCPs had not fully paid 21 of 46 invoices (46%) at the time USAC was billed. Late payment of the 21 invoices ranged from 1 to 100 days. For FRN 42812, OHN or its participating HCPs had not fully paid 15 of 30 invoices (50%) at the time USAC was billed. Late payment of the 15 invoices ranged from 7 to 146 days. For FRN 43819, OHN or its participating HCPs had not fully paid 11 of 25 invoices (44%) at the time USAC was billed. Late payment of the 11 invoices ranged from 5 to 33 days. Further, Integra Telecom, a service provider, represented that they are still working with one HCP to reconcile past due amounts from the Pilot Program and Healthcare Connect Fund.

CAUSE

Although the Beneficiary had billing process procedures in place, those procedures specifically did not require that USAC not be billed prior to verifying that the participating HCPs had paid their 15 percent minimum funding contribution to the service provider. Further, although the procedures required that participating HCPs submit copies of checks to OHN when submitting vendor invoices for payment by USAC, the participating HCPs did not always submit copies of the checks with the invoices, making it difficult for OHN to verify the service provider had been paid before submitting invoices to USAC.

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[16] *See 2007 Pilot Program Selection Order*, 22 FCC Rcd. 20360, 20404 at para. 83 n.277 (2007).

EFFECT

Watson Rice did not calculate a monetary effect for this finding because, for the three FRNs, OHN ultimately paid its 15 percent minimum funding contribution. However, not having a process in place to confirm that OHN pays its 15 percent minimum funding contribution before submitting invoices to USAC allows for the possibility that future payments could be missed.

RECOMMENDATION

Watson Rice recommends OCHIN modify its procedures to ensure that HCPs follow the Rules in regard to paying their minimum share before invoicing USAC. We further recommend OCHIN ensure its participating HCPs follow OCHIN billing procedures and submit checks or other proof of payment with the invoices they submit.

BENEFICIARY RESPONSE

OCHIN will seek to implement the auditor's recommendations from Finding #2.

CRITERIA

Findings	Criteria	Description
#1	Pilot Program Selection Order, paras. 47, 107,108 (2007)	Failure to Comply with Fair Share and Excess Capacity Requirements – Service Providers did not Pay Fair Share of Construction or Other Nonrecurring Costs
#2	*Id*. at 20411, para. 98.	"USAC will disburse Pilot Program funds based on monthly submissions (*i.e.*, invoices) of actual incurred eligible expenses....Service providers shall submit detailed invoices to USAC on a monthly basis for actual incurred costs....All invoices shall also be approved by the lead project coordinator authorized to act on behalf [of] the health care provider(s), confirming the network build-out or services related to the itemized costs were received by each participating health care provider. The lead project coordinator shall also confirm and demonstrate to USAC that the selected participant's 15 percent minimum funding contribution has been provided to the service provider for each invoice."

APPENDIX 1

USAC AUDIT NO. RH2016PP030

BENEFICIARY RESPONSE TO DRAFT FINDING #1

Until OCHIN has had a chance to review the respective responses from CoastCom, Integra Telecom, and LS Networks (collectively, the "Carriers") to Finding #1, OCHIN cannot itself fully respond and reserves the right to revise its provisional response provided below. Notwithstanding, OCHIN disagrees with Finding #1 in its entirety and offers the following provisional response explaining the basis for this disagreement:

The Oregon Healthcare Network (OHN) does not own or control any network facilities. Therefore, the "fair share" and "excess capacity" requirements in the RHCPP do not apply to OHN. RHCPP fair share requirements apply only in cases involving construction of dedicated network facilities that result in the applicant (or "participant") having ownership or control over physical network capacity.[1] OHN is a "services only" network where no physical network facilities were procured, or are owned or controlled by OCHIN[2] – thus there are no dedicated network facilities to which fair share requirements could attach. In response to OHN RFPs requesting services only, the Carriers priced their services to include one-time build-out charges necessary to deliver the requested services at the offered prices. Pricing of both the recurring monthly service charges and any one-time build-out charges was determined by the market and through the competitive bidding process. These recurring and one-time charges were reviewed and found by OCHIN, and by USAC staff, to meet the cost-effectiveness requirements of the RHCPP. Because the fair share and excess capacity requirements do not apply to OHN, OCHIN is not required to maintain documentation supporting "the methodology used to allocate . . . costs between eligible and ineligible entities."

The CONDITION for Finding #1 references various RHCPP "Rules" that purportedly govern "fair share" and "excess capacity," however the Commission never promulgated or codified any rules to govern the RHCPP. The governing documents for the RHCPP are the *Pilot Program Order* and the *Pilot Program Selection Order*. Notably, however, neither of these documents even reference the term "excess capacity." References to "fair share" in the *Pilot Program Order* and the *Pilot Program Selection Order* pertain exclusively to how RHCPP participants are supposed to handle entities that are ineligible for RHCPP support, but that will utilize *dedicated network facilities constructed in part with RHCPP funding*.[3] Because OHN is a services only network with no dedicated network facilities, the fair share requirements set forth in these two orders are inapplicable to OHN.

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[1] *See Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 21 FCC Rcd 11111, ¶ 3 (2006) (*Pilot Program Order*) ("Under this pilot program, all public and non-profit health care providers may apply for funding *to construct a dedicated broadband network* that connects health care providers in a state or region.") (emphasis added); *see also id.* at ¶ 17 (asking applicants to discuss proposed network costs and "[d]escribe how for-profit network participants will pay their fair share" of such costs); *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 22 FCC Rcd 20360, 20416, ¶ 107 (2007) (*Pilot Program Selection Order*) ("A selected participant cannot sell its *network capacity* supported by funding under the Pilot Program but could share *network capacity* with an ineligible entity as long as the ineligible entity pays its fair share of network costs attributable to the portion of *network capacity* used.") (emphasis added); *id.* at 20416, ¶ 108 ("[W]e require [RHCPP] participants to identify all for-profit or other ineligible entities, how their fair share of network costs was assessed, and proof that these entities paid or will pay for their costs").

[2] *See Pilot Program Selection Order*, 22 FCC Rcd at 20398 at ¶ 74 ("[T]o the extent that a selected participant subscribes to carrier-provided transmission services (e.g., SONET, DS3s) in lieu of deploying its own broadband network and access to advanced telecommunications and information services, the costs for subscribing to such facilities and services are also eligible.").

[3] *See* n.1, above.

Similarly, any potential requirements related to excess capacity are also inapplicable to the OHN. As noted, the term "excess capacity" does not appear in either the *Pilot Program Order* or the *Pilot Program Selection Order*. That term appears for the first time in several FCC guidance documents: (1) an October 2008 letter from then Chief of the FCC's Wireline Competition Bureau, Dana Schaffer, to USAC's then CEO, Scott Barash (*Schaffer Letter*); and (2) the "Excess Bandwidth and Excess Capacity Scenarios" (*Excess Capacity Scenarios*) dated March 17, 2009, issued by the FCC's Wireline Competition Bureau but no longer publicly accessible; and (3) FCC "Frequently Asked Questions" related to the RHCPP (*RHCPP FAQ*).[4] These guidance documents do not constitute program rules because they have not been through the notice and comment requirement of the Administrative Procedure Act. Moreover, USAC is not permitted to recover funding for violations that are based on guidance rather than a formal rule.[5]

Notwithstanding the fact that guidance does not constitute FCC rules, and that USAC can only seek recovery of funds based on rule violations, there is no excess capacity on the OHN. Thus any guidance pertaining to excess capacity is inapplicable to the OHN. For example, the *Schaffer Letter* guidance on excess capacity pertains to the construction of network facilities such as dark fiber.[6] Because the *Excess Capacity Scenarios* guidance is no longer publicly available,[7] it is unclear whether it remains in effect and can be relied on by USAC.[8] With respect to the *RHCPP FAQs* addressing excess capacity, they also expressly pertain to situations where the participant will own or control dedicated broadband facilities.[9] Again, because OHN does not own or control dedicated broadband facilities, none of the FCC guidance documents addressing excess capacity are applicable to OHN.

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[4] *See* https://www.fcc.gov/general/rural-health-care-pilot-program#faqs (last checked Dec. 7, 2017).

[5] *See Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight*, WC Docket No. 05-195, Report and Order, 22 FCC Rcd 16372, at ¶ 30 (2007) (directing USAC to recover "funds disbursed from the . . . rural health care support mechanisms *in violation of a Commission rule* that implements the statute or a substantive program goal.") (emphasis added); *cf. Pilot Program Selection Order*, 22 FCC Rcd at 20432, ¶ 125, n.407 ("We intend that funds disbursed in violation of a Commission rule that implements section 254 or a substantive program goal will be recovered.").

[6] *See Shaffer Letter* at 2-3 ("Any participant that intends to construct excess capacity not funded by universal service funds (*e.g.*, dark fiber) to be used by a for-profit entity or other ineligible participant (an ineligible cost), must: (i) allocate the trench costs between eligible and ineligible cost components, on a tangible basis . . ."); *see also id.* at 3 (providing excess capacity guidelines in the context of "instances where a participant intends to sell or lease excess [network] capacity").

[7] *See* https://www.fcc.gov/general/rural-health-care-pilot-program (last checked Dec. 7, 2017).

[8] Even if this guidance remains effective, only "Scenario 7. Vendor On Its Own Initiative, Lays Down Excess Capacity" (*Scenario 7*) could potentially apply here. However, *Scenario 7* on its face applies in "an IRU or [fiber] lease situation" or in "a construction situation" where the RHCPP participant will own or control some of the actual facilities that are being constructed. In such a case, "[t]he participant is charged with knowing the specifics of what is built and installed *in a construction contract; in an IRU or lease situation*, the participant must exercise due diligence in contracting for *the dedicated network*…". *See Excess Capacity Scenarios* at 5 (emphasis added).

[9] *See RHCPP FAQ Question #24* ("Excess Capacity: If the project includes excess capacity to be used for any purpose other than the dedicated health care network, explain the funding for such excess capacity. In doing so: (i) indicate how users of such excess capacity are paying their fair share . . .".). This language contemplates excess capacity in the context of a "dedicated health care network." *RHCPP FAQ Question #27* addresses the situation where the participant wants to consider in the vendor selection process the installation of by the vendor of excess network capacity for community use. This is permitted as long as the vendor-installed excess capacity does "not increase the cost of *the dedicated broadband health care network*." (Emphasis added.)

Regarding non-recurring build-out charges generally, the Commission has long-recognized that such charges are necessary and can help reduce monthly recurring pricing for eligible services.[10] The *HCF Order* recognized that these charges were not only beneficial but that in the Pilot Program, they could be substantial:

> In the Pilot Program, approximately 87 percent of HCPs have received commitments for some amount of non-recurring charges (excluding ordinary installation charges [of $5000 or less]). Total support for nonrecurring charges was $25,000 or less per site for approximately 68 percent of Pilot sites; $50,000 or less per site for approximately 80 percent of sites; and $100,000 or less per site for approximately 88 percent of sites.[11]

The RHCPP established no rules applying fair share on such non-recurring build-out charges. Moreover, the HCF, after reviewing the RHCPP data on build-out costs referenced above, also did not impose fair share requirements on non-recurring build-out costs.[12] All that was necessary in the RHCPP is that such costs met the competitive bidding and cost-effectiveness requirements that have long been a feature of the RHC program.[13]

Finally, with respect to Finding #1, if OCHIN or the affected HCPs had any specific obligations under FCC rules (other than to conduct a fair and open competitive bid and select the most cost-effective offer), it was to inform bidders of their ultimate obligation to comply with any applicable FCC rules. All of the RFPs relevant to Finding #1 included a hyperlink reference to the *Pilot Program Selection Order* – indicating that this document governed the RHCPP process – and at least the following language: *"RHCPP Requirements. All bidders must comply with all regulations and requirements of the Federal Communications Commission (FCC) and the Universal Service Administrative Company (USAC) related to the FCC's Rural Health Care Pilot Program (RHCPP)."* OCHIN therefore fulfilled any obligation to notify bidders and vendors of their obligations.

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[10] *See Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678, 16748, ¶ 153 (2012) (*HCF Order*) (agreeing with commenters that Healthcare Connect Fund support for one-time service provider build-out charges "will result in cost-effective pricing . . . which in turn reduces the cost to the Fund."); *see also Request for Review by the Department of Education of the State of Tennessee of the Decision of the Universal Service Administrator, Request for Review by Integrated Systems and Internet Solutions, Inc. of the Decision of the Universal Service Administrator, Request for Review by Education Networks of America of the Decision of the Universal Service Administrator, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, Order, CC Docket Nos. 96-45, 97-21, FCC 99-216, 14 FCC Rcd 13734, 13749, ¶ 29 (1999) (*Tennessee Order*) (holding that capital investment costs necessary to deliver an eligible service to eligible schools and libraries were eligible for E-rate support); *Modernizing the E-rate Program for Schools and Libraries, Connect America Fund*, WC Docket Nos. 13-184, 10-90, Second Report and Order and Order on Reconsideration, FCC 14-189, ¶¶ 16 (2014) (*Second E-rate Modernization Order*) (adopting E-rate program changes to encourage build-out).

[11] *See HCF Order* at ¶ 186 (footnote omitted).

[12] *See, e.g.*, 47 C.F.R. § 54.638. Upfront Payments.

[13] *See Pilot Program Selection Order*, 22 FCC Rcd at 20400, ¶ 78 ("The Commission has defined 'cost-effective' for purposes of the existing RHC support mechanism as 'the method that costs the least after consideration of the features, quality of transmission, reliability, and other factors that the health care provider deems relevant to ... choosing a method of providing the required health care services.'"); *cf.* 47 C.F.R. § 54.642(c) ("For purposes of the Healthcare Connect Fund, 'cost-effective' is defined as the method that costs the least after consideration of the features, quality of transmission, reliability, and other factors that the health care provider deems relevant to choosing a method of providing the required health care services.").

For the reasons stated herein, OCHIN disagrees with Finding #1 in its entirety. Again, OCHIN reserves the right to amend or revise this response pending the receipt of additional information from the affected Carriers.

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BENEFICIARY RESPONSE TO DRAFT FINDING #2

OCHIN will seek to implement the auditor's recommendations from Finding #2.

CoastCom, Inc.

USAC AUDIT NO. RH2016PP030

COASTCOM RESPONSE TO DRAFT FINDING #1

CoastCom, Inc. (CoastCom) provides the following response to draft audit finding #1 (Finding #1). For the following reasons, CoastCom disagrees with Finding #1 as applied to CoastCom. The "Condition" section of Finding #1 states in part:

> The Rules provide RHCPP [sic] maintain documented support for eligible construction and other costs to extend broadband service to eligible HCPs only. Although ineligible entities can join the network, those entities must pay a fair share for the construction and other nonrecurring costs incurred to extend services to the ineligible entities. The Rules also require that any excess capacity be identified and, in instances where the excess capacity will be used to support ineligible entities, those costs are to be reasonably allocated between eligible and ineligible entities on a fair share basis. Documentation supporting the methodology used to allocate those costs between eligible and ineligible entities must be maintained.

First, as OCHIN on behalf of the Oregon Healthcare Network (OHN) has explained, the "fair share" and "excess capacity" requirements in the RHCPP do not apply to OHN.[1] These requirements only apply in situations where the RHCPP applicant owns or controls dedicated network capacity (*i.e.*, dark fiber, indefeasible rights of use (IRU), or other network facilities).[2] In CoastCom's case, because it did not supply dedicated network capacity to OHN, fair share or excess capacity requirements do not and cannot apply to CoastCom.

CoastCom responded to OHN's Request for Proposal Number 5 (RFP #5), dated March 15, 2010. Funding request number (FRN) 46989, which is covered by Finding #1, was submitted in connection with CoastCom's bid response to RFP #5 and subsequent Master Services Agreement. OHN RFP #5 clearly states: "OHN is not requesting dedicated, leased line type of network capacity."[3] The introduction section of RFP #5 provides further background on OHN, again making clear that "OHN is not seeking to purchase or lease telecommunications infrastructure that is exclusively dedicated to health applications."[4] Instead, RFP #5 explains that OHN relies on "network connectivity" and a network operations center (NOC), all procured as a service using non-dedicated facilities: "This RFP #5 asks for proposals for

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[1] OHN has shared its provisional response to draft Finding #1 with CoastCom.

[2] *See Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 21 FCC Rcd 11111, ¶ 3 (2006) (*Pilot Program Order*) ("Under this pilot program, all public and non-profit health care providers may apply for funding *to construct a dedicated broadband network* that connects health care providers in a state or region.") (emphasis added); *see also id.* at ¶ 17 (asking applicants to discuss proposed network costs and "[d]escribe how for-profit network participants will pay their fair share" of such costs); *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 22 FCC Rcd 20360, 20416, ¶ 107 (2007) (*Pilot Program Selection Order*) ("A selected participant cannot sell its *network capacity* supported by funding under the Pilot Program but could share *network capacity* with an ineligible entity as long as the ineligible entity pays its fair share of network costs attributable to the portion of *network capacity* used.") (emphasis added); *id.* at 20416, ¶ 108 ("[W]e require [RHCPP] participants to identify all for-profit or other ineligible entities, how their fair share of network costs was assessed, and proof that these entities paid or will pay for their costs"). As OCHIN explained in its response to Finding #1, OHN was and is a "services only" network. *See Pilot Program Selection Order*, 22 FCC Rcd at 20398 at ¶ 74 ("[T]o the extent that a selected participant subscribes to carrier-provided transmission services (e.g., SONET, DS3s) in lieu of deploying its own broadband network and access to advanced telecommunications and information services, the costs for subscribing to such facilities and services are also eligible.").

[3] OHN RFP #5 at 12.

[4] *Id.* at 2.

connectivity for yet more sites. Service to additional sites will be requested in subsequent requests for proposals."[5] OHN further explained:

> OHN anticipates that new facility construction will be required to provide service to many of the locations. Bids are requested for both the one-time construction and/or installation costs plus monthly recurring costs (under multi-year contracts). Service providers are requested to propose alternatives to the specifications described below when they believe alternative specifications will be more cost-effective, while meeting the general intent.[6]
>
> * * * *
>
> The data access and transport proposals must offer a price schedule that specifies the one-time non-recurring construction and/or installation charges and the monthly recurring prices for a three-year service contract or for a period ending May 21, 2014, with options for renewal for up to ten years from the start of service.[7]

CoastCom understood this language to mean it had the option to do one of the following: (1) recover any necessary one-time construction costs through the monthly cost of service over a 3-year term; or (2) to set a lower monthly cost of service over a 3-year term, and to recover one-time construction costs through a non-recurring charge. CoastCom chose to proceed under the second option and to include in our price those one-time build-out charges that were necessary to deliver the requested services at the offered monthly price over a 3-year term.[8] For this reason, it would both improper and unfair to effectively adjust the non-recurring component of the price retroactively, without a corresponding adjustment to the recurring price component.

Moreover, we can state categorically that CoastCom's bid reflected competitive pricing to deliver only the requested services to only the eligible locations specified by OHN RFP #5. *CoastCom did not bid or offer to serve any ineligible locations and our pricing did not reflect any costs associated with delivering services to any ineligible location.* Because no ineligible locations were part of CoastCom's bid, the fair share and excess capacity requirements did not apply in this situation. Thus CoastCom was not required to maintain documentation supporting "the methodology used to allocate . . . costs between eligible and ineligible entities."

Secondly, the *Pilot Program Order* and the *Pilot Program Selection Order* which govern the RHCPP do not support the "condition" language from Finding #1 noted above. Neither of these documents reference the term "excess capacity" and reference "fair share" only in the context of RHCPP participants which both (1) constructed dedicated network facilities *and* (2) shared those RHCPP-funded dedicated facilities with ineligible entities.[9] CoastCom did not

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[5] *Id.; see also id.* at 3 ("The NOC is not exclusively dedicated to OHN. However, OHN will pay the NOC vendor only for services provided to OHN.").

[6] *Id.* at 12.

[7] *Id.* at 16.

[8] *Cf. Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678, 16748, ¶ 153 (2012) (*HCF Order*) (agreeing with commenters that HCF support for one-time service provider build-out charges "will result in cost-effective pricing . . . which in turn reduces the cost to the Fund."); *id.* at 16747, ¶ 151 n.410 ("In some cases, telecommunications providers may choose to recover the cost of deploying or upgrading facilities by simply incorporating those costs into monthly recurring charges. As [one commenter] notes, however, this can make the recurring costs unaffordable.").

[9] *See* n.2, above.

provided any dedicated network facilities to OHN and, to CoastCom's knowledge, none of the services CoastCom provided to OHN were provided to ineligible entities. Thus these requirements do not apply to CoastCom with respect to FRN 46989.

We agree with OCHIN that FCC guidance documents addressing "excess capacity" are both inapplicable and are unenforceable because they constitute guidance rather than rules. We also agree that fair share and excess capacity requirements have never applied to non-recurring build-out charges, either in the E-rate program, the RHCPP, or the Healthcare Connect Fund (HCF). Notably, as OCHIN noted, the FCC in establishing the HCF reviewed the RHCPP data on build-out costs and did not impose fair share requirements on such costs in the HCF.[10] All that was necessary in the RHCPP is that such costs met the competitive bidding and cost-effectiveness requirements.[11]

For the reasons stated herein, CoastCom disagrees with Finding #1 in its entirety. We reserve the right to amend or revise this response pending the receipt of additional information, revision of the finding by the auditors, or USAC's eventual management response.

Sincerely,

Greg Palser
President
CoastCom, Inc.

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[10] *See, e.g.*, 47 C.F.R. § 54.638. Upfront Payments. *See also* n.8 above.

[11] *See Pilot Program Selection Order*, 22 FCC Rcd at 20400, ¶ 78 ("The Commission has defined 'cost-effective' for purposes of the existing RHC support mechanism as 'the method that costs the least after consideration of the features, quality of transmission, reliability, and other factors that the health care provider deems relevant to ... choosing a method of providing the required health care services.'"); *cf.* 47 C.F.R. § 54.642(c) ("For purposes of the Healthcare Connect Fund, 'cost-effective' is defined as the method that costs the least after consideration of the features, quality of transmission, reliability, and other factors that the health care provider deems relevant to choosing a method of providing the required health care services.").

Integra Telecom of Oregon, Inc. Response to USAC Audit No. RH2016PP030

Rural Health Care Pilot Program Finding 1 – Service providers

Integra Telecom of Oregon, Inc. ("Integra") respectfully provides the following comments in response to Universal Service Administrative Company, Rural Health Care Pilot Program Finding 1 – Service Providers Draft Oregon Health Network related to USAC Audit No. RH2016PP030 ("Draft Finding #1").

Draft Finding #1 references the "*Pilot Program Selection Order*, paras 47, 107, 108 (2007) Failure to Comply with Fair Share and Excess Capacity Requirements – Service Providers did not Pay Fair Share of Construction or Other Nonrecurring Costs."[1]

The *Fair Share* requirements in the Pilot Program Selection Order referenced above applied to limitations on the Health Care provider, participant, from selling network capacity supported by funding to for-profit providers without allocating fair cost. The Oregon Health Network ("OHN") does not own or control the network facilities provided by Integra and thus these restrictions do not apply.

In order to receive the best possible commercial pricing from network providers OHN issued a request for proposal identifying various routes for which network providers could bid. The FCC recognized that a competitive bidding process would minimize support and ensure wise use of universal service funds.[2] Integra, along with a number of other network providers, bid on various routes. In competitive bids Integra takes into account its existing network, any required construction, as well as the likelihood of adding additional carriers to a newly constructed network. Failing to take all relevant factors into account could result in the loss of the bid to a competitor. Thus, in a competitive bid scenario, it is unnecessary to mandate network cost allocation because a competitive bid will account for these opportunities to the extent they exist. This is probably why the Pilot Program Selection Order refers to "participants" rather than "providers." Further, C.F.R. § 54.617(a) upon which the Pilot Program Selection Order *Fair Share* discussion is based places restrictions on "services purchased pursuant to universal service support mechanisms" not to the providers of such services. Despite this, as explained below, Integra did not have opportunities to provide services on the network constructed for OHN participants to non-participant carriers. and thus a *Fair Share* allocation of network construction (even if required for network providers) would not apply to Integra.

USAC Draft Finding #1 Summary

Draft Finding #1 makes a number of claims with respect to the identified service providers. These claims are summarized below.

Draft Finding #1 identifies specific providers and FRNs and concludes that these providers either: (1) "installed excess capacity owned by the service providers and make it available to ineligible entities not

[1] Draft Finding # 1, p. 1.
[2] Pilot Program Selection Order, ¶ 101.

part of OHN's network;"[3] or (2) "did not provide documentation demonstrating services that were invoiced to RHCPP were installed exclusively for OHN's eligible HCPs."[4]

Draft Finding #1 also claims, (3) "that the service providers did not demonstrate that they paid their fair share of construction and other nonrecurring costs as it relates to the installed excess capacity."[5]

Specifically, with respect to Integra, Draft Finding #1 claims, (4) that Integra, "did not provide any information on network capacity and utilization other than to verbally confirm that during the Funding Year 2009, only eligible HCPs were on this portion of its network."[6]

Integra's Response to Draft Finding #1 Claims

Claim 1 – excess capacity was made available to ineligible entities

For FRN 42812 Integra constructed a ring off of its existing ring in order to serve two locations for FRN 42812. This expansion was built for FRN 42812, and no other entity connected to the network built for FRN 42812 during the pilot program. In addition, to this day, no other entity connects to Integra's network by attaching to the network built for FRN 42812.[7]

Claim 2 – failed to demonstrate services invoiced to RHCPP were installed exclusively for OHN's eligible HCPs

See the response to Claim 1 above. The network constructed for FRN 42812 was used exclusively to benefit the two locations a part of FRN 42812.

Claim 3 – failed to demonstrate that the service provider paid their fair share of construction

Since the network constructed was built and used exclusively by the two locations a part of FRN 42812, to the extent *Fair Share* costs apply, Integra's *Fair Share* of construction costs would be zero. The two locations connected to the network were on the edge of urban growth, and at the time of construction no other potential entities existed along the expanded route. In addition, there was no guarantee that the opportunity for additional customers would exist at some point in the future. Further, as described above, to this day Integra has not added any additional customers along this route.

It should also be noted that the construction costs incurred by Integra to build this network were more than 30% higher than what was billed to the customer. The original Oregon Health Network bid was put out as a competitively bid RFP. Integra bid against a number of other carriers for various routes contained in the RFP. At the time of the bid construction costs had not been incurred and were thus estimated for the purpose of bidding. To the extent actual construction costs came in higher than the amount bid on the project, Integra incurred these costs and did not pass them onto the customer. Therefore these costs were not supported by rural health care funding.[8]

[3] Draft Finding # 1, p. 1.
[4] Draft Finding # 1, p. 1.
[5] Draft Finding # 1, p. 1.
[6] Draft Finding # 1, p. 2.
[7] Integra provided this information in data responses to question 5 during the audit process.
[8] Integra provided this information in data responses to question 1 during the audit process.

Claim 4 – failed to provide adequate information on network capacity and utilization

As described above the network was built specifically for the two locations a part of FRN 42812 and no other entity has connected to that network either during the pilot program or after. As a result, network capacity and utilization on the network is irrelevant since the network would not have been built except at the request of the customer.

Although Integra believes this information to be irrelevant, Integra discloses that it placed 48 fibers along the route constructed for FRN 42812 and that FRN 42812 used 4 of these fibers during the pilot program. Because the cost of fiber is a minimal component of total construction costs it is standard practice to place more fibers than the minimal number of fibers required as part of a bid. Integra routinely places at least 48 fibers along its construction routes. This can benefit the customer over time, if its bandwidth needs grow, as the cost to turn up additional fibers is much smaller than the cost of attempting to add fibers to an existing network.

Conclusion

Draft Finding #1 recommends that Integra examine its records to, "determine the service providers' fair share for the excess capacity."[9]

As was explained above, Integra does not believe that the *Fair Share* requirements apply to network providers. To the extent they do apply, Integra believes that its fair share of the cost to build the network to serve the two locations a part of FRN 42812 should be 0%. The two locations served by the network build for FRN 42812 belonged to a single customer and it was the only customer utilizing the network during the pilot program, and continues to be the only customer utilizing the network today. It would be inappropriate to allocate additional build costs to Integra for highly speculative demand that did not exist at the time of the pilot program and does not exist today. Further, to the extent it is determined that Integra should bear some of the cost of the network built for FRN 42812, Integra notes that its actual construction costs were in excess of what Integra recovered from the building of this network, and thus it has already paid network costs in excess of what was recovered from the customer and the rural health care program.

December 15, 2017

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Douglas Denney
Integra Telecom of Oregon, Inc.
Vice President, Costs & Policy

[9] Draft Finding # 1, p. 3.

921 SW Washington Street, Suite 370
Portland, OR 97205
503-294-5300

December 11, 2017

Frank Smith
BCA Watson Rice

Subject: USAC Audit No. RH2016PP030

Dear Mr. Smith:

LS Networks has reviewed your document entitled

UNIVERSAL SERVICE ADMINISTRATIVE COMPANY
Rural Health Care Pilot Program Finding 1 – Service Providers
DRAFT
Oregon Health Network

and has studied all appropriate internal documentation surrounding the FRNs that were referenced in that document.

As you reported, we were informed by OHN that we as a service provider would own the RHCPP supported facilities. You also reported that OHN disclosed this in its Pilot Program application and in its April 2009 Sustainability Plan. In addition, in its application, OHN said the service providers would be permitted to use the facilities to serve other customers provided they could maintain the desired type and quality of services to HCPs participating in the pilot program.

Notwithstanding that we were not aware of the guidance provided by the FCC regarding fair share and excess capacity scenarios and the reporting thereof, and while we have been unable to find a definition of "excess capacity", we would like to provide the following response regarding the valuation of that excess capacity, should it be determined to apply:

Scenarios

At the time of contracting services with our end use customer and OHN, no new revenue customers were contemplated – our first new non-HCP customer contracted that leveraged the infrastructure developed for the program was 17 months after a HCP customer was contracted. The most cost-effective route was chosen and constructed rather than a more serendipitous route that could have additional justification for commercial reasons. Since at the time of construction there were no additional customers identified and contracted, there was no excess capacity. In this scenario, there would be no excess capacity cost to LS Networks.

The minimum number of fiber strands that one can utilize for construction of transport facilities is 12 strands. 48 strand fiber cable was constructed, thus 36 strands, or 18 excess fiber pairs were installed. Other than the cost for the fiber itself, there were no additional costs associated with installing a higher count fiber cable; the labor, machines, permits, easements, access to rights of way, etc., are all the same. The cost difference between 12 count fiber cable and 48 count fiber cable is 17¢ per foot. If it were concluded that *any* fiber constructed above the bare minimum were excess capacity, then excess capacity costs to LS Networks would be $27,287.04:

Enclosure: Fiber price quote

LS NETWORKS
921 SW Washington Street, Suite 370
Portland, OR 97205
503-294-5300

FRN	USAC Disbursed	Approx. Miles	Cost of 48 vs 12 fibers
42811	$249,564.25	12.0	$10,771.20
43819	$479,825.00	14.9	$13,374.24
46776	$117,228.60	1.5	$1,346.40
48613	$55,778.70	2.0	$1,795.20
	$902,396.55	30.4	$27,287.04

The initial contract term for the OHN agreements were 60 months. While we didn't know that there would be new customers on the infrastructure at time of signature, there were some new customers on some segments during the course of the agreements' term. Each of those new customers used one pair of fiber. The total number of months that services were contracted by others (non HCPs) during the OHN initial term was 213. By prorating the actual utilization of the fiber from a cost basis perspective, the <u>excess capacity costs to LS Networks would be $1,799.19</u>:

FRN	USAC Disbursed	Approx. Miles	Cost of 48 vs 12 fibers	Incremental monthly cost per "excess" fiber pair	Pair* months utilized by others	Realized cost benefit
42811	$249,564.25	12.0	$10,771.20	$9.97	103	$1,027.25
43819	$479,825.00	14.9	$13,374.24	$12.38	57	$705.86
46776	$117,228.60	1.5	$1,346.40	$1.25	53	$66.07
48613	$55,778.70	2.0	$1,795.20	$1.66	0	$0.00
	$902,396.55	30.4	$27,287.04	$25.27	213	$1,799.19

LS Networks believes it acted in the best interest of the Rural HCPs and ethically performed its obligations consistent with the spirit and intent of the program. Without admitting any wrongdoing, if a form of financial restitution is perceived necessary, LS Networks would offer to close this matter for $9,695.41, an averaged approach of these three measurements of "excess capacity" costs:

At time of contract, there was no excess capacity	$0.00
All strands above bare minimum are "excess"	$27,287.04
Pro rata cost of excess capacity used during contract	$1,799.19
Average	$9,695.41

Respectfully,

Michael Weidman
President and CEO

Enclosure: Fiber price quote

GEN-PAC

This quotation constitutes an offer to sell which offer expressly limits acceptance to the standard General Pacific terms and conditions. This offer shall be firm for a period of fifteen (15) business days from the date of this offer. Subject to Buyer's credit worthiness, the return of this form with a Purchase Order number or any other reasonable manner of acceptance will be sufficient to form an agreement based on the General Pacific standard terms and conditions.

Quotation

09/21/16

Project name: LSN Budget #

No Pages: 1

Attn:

Sales Person: Zach Poulsen/Diane Carlson

Phone:971-313-4642/503-907-2860

Item	Qty	Description	Price	UM	Total Price	Ship
	1	NEW FCA243636 24x36x36 Incidental Traffic Only	$385.000	e		
	1	NEW FCA173024T 17x30x24 Incidental Traffic Only	$185.000	e		
	8000	POL HDPE1.25SDR11ORGSILICORE 8000' reels	$0.400	ft		
	3500	POL HDPE2.00SDR11ORGSILICORE 3500' reels	$0.810	ft		
	700	POL HDPE4.00SDR11ORG 700' reels	$3.600	ft		
	2500	WIR 10CCTRACERORG 2500FT	$0.114	ft		
	6600	PVC 1.25X20S40ULGRY 6600'/lift	$0.420	ft		
	4500	PVC 1.50X20S40ULGRY 4500'/lift	$0.480	ft		
	2800	PVC 2X20S40ULGRY 2800'/lift	$0.620	ft		
	1140	PVC 4X20S40ULGRY 1140'/lift	$1.630	ft		
	3281	AT-3BE12YT-288_ FORTEX DT-100% DRY SGL PE JKT	$1.820	ft		30-34 wks
	3281	AT-3BE12YT-144_ FORTEX DT-100% DRY SGL PE JKT	$1.000	ft		30-34 wks
	3281	AT-3BE12YT-096_ FORTEX DT-100% DRY SGL PE JKT	$0.693	ft		30-34 wks
	3281	AT-3BE12YT-048_ FORTEX DT-100% DRY SGL PE JKT	$0.381	ft		30-34 wks
	4003	AT-3BE8T7T-012_ Mini LT-Flat Tonable Drop	$0.211	ft		10-12 wks
		Slimbox drop terminal (8 port SC-UPC option)				
	1	Slimbox Drop terminal 3.00mm grip/grommet	$15.690	e		
	1	Slimbox Drop terminal 4.8mm grip/grommet	$15.690	e		
	1	Slimbox Drop terminal 7.0mm grip/grommet	$15.690	e		
	1	Slimbox Drop Terminal-Adapter Tray SC	$4.580	e		
	1	Slimbox Drop Terminal-Angle Strand Hdwe	$24.710	e		
	1	Slimbox Drop Terminal-Empty	$110.780	e		
	1	Slimbox Drop Terminal Flat Grip/Grommet	$15.690	e		
	1	Slimbox Drop terminal Front Splice Tray	$4.450	e		
	1	Slimbox Drop Terminal Kevlar Plate 10pk	$92.000	e		
	1	Slimbox Drop Terminal Oval Grip/Grommet	$15.690	e		
	1	Slimbox Drop Terminal-16 splice tray kit	$9.460	e		
	1	Slimbox Drop Terminal-24 splice tray kit	$9.460	e		
	1	Slimbox Drop Terminal w/4 splice trays	$140.110	e		
		Slimbox CSP				
	1	Slimbox-H Indoor CSP-4 Fiber	$13.590	e		
	1	Slimbox-H Outdoor CSP-4 Fiber	$13.590	e		
	1	PLP COYD919B-000 9.5"x19" Dome (Up to 12 trays)	$312.650	e		
	8	PLP 80809958 Splice Tray 24ct tray	$20.750	e		
	1	PLP 8006951 Coyote In-Line Runt	$121.500	e		
	4	PLP 80809958 Splice Tray 24ct tray	$20.750	e		
			Page Total:		**$32,141.227**	

Freight PPD via best way to first destination.
FOB point of shipment.