

Does the Rural Healthcare Program Need a Check-Up? Program Under Microscope Following \$18.7 Million Proposed Fine for Fraud

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The Rural Health Care Program (“RHCP”) is sure to face increased scrutiny in the wake of a \$18.7 million [proposed fine](#) issued by the Federal Communications Commission (“FCC”) at its January meeting against a telecommunications reseller for allegedly defrauding the program. The FCC claims that DataConnex, one of the top five recipients of RHCP funding, violated the program’s competitive bidding rules and submitted falsified documents to increase the support it received. The FCC recently [ramped up](#) enforcement involving the RHCP and proposed [significant reforms](#) last month aimed at improving oversight and deterring fraud. The FCC’s actions potentially foreshadow additional restrictions on the use of RHCP consultants and the amount of available funding.

The RHCP offers funding to rural health care providers to make telecommunications services more affordable. Under the program, contracts for telecommunications services are awarded through an open [competitive bidding process](#) designed to select the most cost-effective bid. The RHCP’s [Telecom Program](#) allows service providers to receive payments based on the difference between the normally higher rates for telecommunications services in rural areas and the generally lower rates charged in urban areas. The FCC alleges that DataConnex engaged in a [multi-year scheme](#) with a healthcare consultant, through which DataConnex referred rural healthcare providers to the consultant with the understanding that the consultant would direct the healthcare institutions to select DataConnex as their telecommunications service provider. In exchange, DataConnex purportedly paid hundreds of thousands of dollars to a company owned by the consultant. DataConnex also allegedly misrepresented the costs of urban telecommunications services to boost the support it received from the RHCP.

Following [recent trends](#) in enforcement actions involving federal funds, the FCC upwardly adjusted the proposed fine to include a penalty equal to three times the amount DataConnex received from the program and threatened to revoke the company's authorizations to provide service. In addition, recognizing the disruption the enforcement action posed to healthcare providers contracting with DataConnex, the Commission indicated it would consider waiving the competitive bidding rules to allow affected institutions to select a new RHCP service provider.

FCC Chairman Pai [noted](#) that the proposed fine represents the second enforcement action in the past year involving charges of RHCP fraud. Last summer, the FCC issued an [amendment](#) to its first-ever RHCP enforcement action, increasing the proposed penalty against telecommunications service provider Network Services Solutions and its chief executive for allegedly using inside information to gain an unfair advantage in the competitive bidding process. The FCC cited the Network Services Solutions case in support of RHCP reforms it [proposed last month](#). Specifically, the FCC proposed establishing a benchmark to identify outlier requests for RCHP support and subject such requests to increased scrutiny. The FCC also proposed bolstering the RCHP competitive bidding rules and imposing more detailed requirements for determining urban and rural service rates. Critically, the FCC sought comment on whether it should implement disclosure requirements regarding the use of RHCP consultants and restrictions on the receipt of gifts in connection with funding requests.

Through its recent enforcement actions, the FCC appears to be making the case for significant reforms to the RHCP that will impact telecommunications service providers, healthcare institutions, and the healthcare consultant industry. As a result, stakeholders should carefully monitor the FCC's actions and consider participating in the rulemaking process. The attorneys of Kelley Drye & Warren have significant experience with RHCP regulations and compliance, and can assist telecommunications and healthcare providers with navigating new rules and responding to FCC actions.