

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Request for Review of a	)	
Decision of the	)	
Universal Service Administrator by	)	
	)	
Yukon-Kuskokwim Health Corporation	)	HCP 10174, <i>et al.</i>
	)	
GCI Communication Corp.	)	
	)	
Rural Health Care Universal Service	)	CC Docket No. 02-60
Support Mechanism	)	

**ORDER**

**Adopted: May 9, 2012**

**Released: May 9, 2012**

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

**I. INTRODUCTION**

1. In this order, we grant the requests filed by Yukon-Kuskokwim Health Corporation (YKHC) and GCI Communication Corp. (GCI) seeking review of decisions by the Rural Health Care Division of the Universal Service Administrative Company (USAC or the Administrator).<sup>1</sup> USAC denied portions of 38 Funding Year (FY) 2008 requests for support under the federal rural health care universal service support mechanism because it determined the services for which YKHC sought support were not necessary for the provision of health care until YKHC installed specific equipment.<sup>2</sup> Upon review of the record before us, we find that USAC erred in its decision, and we therefore remand YKHC's application to USAC for further processing consistent with this order.

**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.<sup>3</sup> To obtain discounted telecommunications or Internet services, applicants must make a bona fide request for telecommunications and/or Internet

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<sup>1</sup> See Letter from Yaron Dori, Counsel for YKHC to Federal Communications Commission, WC Docket No. 02-60 (filed Aug. 23, 2010) (YKHC Request for Review); Letter from John T. Nakahata, Counsel for GCI, to Federal Communications Commission (Commission), WC Docket No. 02-60 (filed Aug. 23, 2010) (GCI Request for Review). See Section 54.719(c) of the Commission's rules which provide that any person aggrieved by an action taken by a division of USAC may seek review from the Commission. 47 C.F.R. § 54.719(c).

<sup>2</sup> See Letter from USAC, Rural Health Care Division, to David Hodges, YKHC, (dated June 24, 2010) (YKHC 2008 Funding Commitment Decision Letter (FCDL)); GCI Request for Review at Attachments B and R; YKHC Request for Review at Attachments B and R.

<sup>3</sup> 47 C.F.R. § 54.601.

services by filing an FCC Form 465 with the Administrator.<sup>4</sup> USAC posts the FCC Form 465 to its website for telecommunications carriers to review.<sup>5</sup> Applicants must then wait at least 28 days before entering into a service agreement and submitting Form 466 (for telecommunications services) and/or Form 466-A (for Internet services).<sup>6</sup> Applicants use the Form 466 and/or Form 466-A to verify the type of services ordered and to certify that they considered all bids received and selected the most cost-effective method of providing the requested services. After reviewing the funding requests, USAC issues funding decisions in accordance with the Commission's rules.

3. On April 9, 2008, USAC posted YKHC's FY 2008 FCC Form 465 to initiate the competitive bidding process for various products and services under the federal rural health care universal service mechanism.<sup>7</sup> On August 12, 2008, YKHC entered into a contract with GCI for the requested services and filed FCC Forms 466/466-A with USAC.<sup>8</sup> Due to the complexity of YKHC's funding requests during the applicant review process, USAC sought and YKHC provided additional information concerning YKHC's funding requests.<sup>9</sup> In June 2010, USAC issued funding commitment decisions to YKHC for 38 health care facilities.<sup>10</sup> In its decision, USAC stated that it "focused on YKHC's need for higher bandwidth service to support high definition video teleconferencing (VTC) equipment for telepsychiatry while maintaining the capability to transmit images and data from other health care equipment and systems."<sup>11</sup> USAC concluded that for sites where YKHC requested higher bandwidth to support the requested VTC equipment, the increased bandwidth was not necessary for the provision of health care until the VTC equipment had been installed at the site, and therefore denied some of the funding requested by YKHC.<sup>12</sup> In support of this decision, USAC stated that the FCC "expects health care providers to obtain the necessary internal connections or equipment before ordering services."<sup>13</sup> USAC further noted that while equipment delays may have been caused by the onset of winter and remoteness of some of the health care facilities, such factors are foreseeable given YKHC's location.<sup>14</sup>

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<sup>4</sup>47 C.F.R. § 54.603.

<sup>5</sup>*Id.*

<sup>6</sup>*Id.*

<sup>7</sup> YKHC's FCC Form 465 specifically requested "services and technology required for transmitting health care data, patient records and medical images from health aide to physician consultants," services for "EMR, VTC and Telepsychiatry, and including CT scanner images, PACS images and Internet services," and additional "T-1s or greater ... for supporting additional healthcare service needs and technology requirements." See FCC Form 465, YKHC (posted Apr. 9, 2008), see GCI Request for Review at Attachment S.

<sup>8</sup> GCI Request for Review at 3, YKHC Request for Review at Attachments B.

<sup>9</sup> YKHC 2008 FCDL at 2.

<sup>10</sup> See YKHC 2008 FCDL at 1; GCI Request for Review at Attachment B and R, and YKHC Request for Review at Attachments B and R.

<sup>11</sup> Funding Commitment Decision Letter at 2.

<sup>12</sup> *Id.* The funding denial at issue concerns the difference between the circuit start date and the VTC equipment installation date. YKHC notes that the circuit start dates under its contract with GCI ranged from August to November 2008; however, the VTC equipment was not installed at many facilities until early 2009. See YKHC Request for Review at 6-7. For example, the circuit start date for the Nightmute Village was August 16, 2008, but its VTC equipment was installed on January 19, 2009. See GCI Request for Review at Attachment A.

<sup>13</sup> YKHC 2008 FCDL at 3 (citing the Commission's *Universal Service Order, Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776 (1997) (*Universal Service Order*)).

<sup>14</sup> YKHC 2008 FCDL at 3.

4. Both GCI and YKHC ask the Commission to reverse USAC's decision and award YKHC the full amount of requested support.<sup>15</sup> In its request for review, YKHC states that in 2007 it began upgrading and expanding its technology and the use of telemedicine through the installation and use of Alaska Federal Health Care Access Network (AFHCAN) telemedicine carts and high-definition VTC equipment to transmit and receive medical information and facilitate telepsychiatry service.<sup>16</sup> YKHC states that in August 2008, it entered into a service agreement with GCI and secured a matching grant from the Department of Agriculture's Rural Utilities Service (RUS) to assist in the purchase of the required VTC equipment.<sup>17</sup> YKHC states that its initial plan was to contract with an affiliate to install the VTC equipment, but the terms of the RUS grant prohibited such an arrangement, and without the affiliate's assistance in installing the equipment, it would incur additional costs.<sup>18</sup> YKHC claims that its project was delayed because it had not budgeted for these additional installation costs and that additional delays were caused by the onset of winter in the remote region.<sup>19</sup>

5. YKHC states that USAC denied funding for additional bandwidth at each health care facility for the period prior to the date the VTC equipment was actually installed, but argues that it should be awarded the denied support because the circuits used for the additional bandwidth were used for a range of supported services beginning on the circuit start dates.<sup>20</sup> YKHC also argues that some delay between the circuit start date and the date on which the VTC equipment was installed is reasonable and unavoidable.<sup>21</sup> YKHC also notes that the requested bandwidth is well below the estimates in the National Broadband Plan of rural health care provider needs.<sup>22</sup>

6. In its request for review, GCI argues that USAC's decision is contrary to prior Commission decisions and exceeds USAC's authority.<sup>23</sup> GCI challenges USAC's findings that providers must "seek and receive the assistance they need [for equipment and internal connections] *before* they order services" and "the FCC expects health care providers to obtain the necessary internal connections or equipment before ordering services."<sup>24</sup> GCI argues that under the Commission's rules, the rural health care provider, not USAC, is entitled to make decisions about its telecommunications needs.<sup>25</sup> Additionally, GCI argues

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<sup>15</sup> GCI Request for Review at 16; YKHC Request for Review at 8, 10.

<sup>16</sup> YKHC Request for Review at 4, 5.

<sup>17</sup> YKHC Request for Review at 5, 6.

<sup>18</sup> YKHC Request for Review at 6. YKHC states that in 2009, it was "able to recruit the resources of the U.S. Marine Corps" to complete the installations. *Id.* at 6.

<sup>19</sup> YKHC Request for Review at 5-7.

<sup>20</sup> YKHC Request for Review at 7, 8, 10 (indicating that the circuits were used for such services as the transmission of images and data through AFHCAN telemedicine carts, e-mail, Internet access, and remote management and support functionality); *see also* GCI Request for Review at 11-12. YKHC also notes that the requested bandwidth is well below the estimates in the National Broadband Plan of rural health care provider needs. YKHC Request for Review at 9.

<sup>21</sup> YKHC Request for Review at 9.

<sup>22</sup> YKHC Request for Review at 8 (indicating that it had requested support for 3 Mbps for village clinics and 5 Mbps for subregional clinics and citing the *National Broadband Plan's* finding that a health care center with less than five physicians would require 10 Mbps and a single physician practice typically requires 4 Mbps).

<sup>23</sup> GCI Request for Review at 7-10.

<sup>24</sup> GCI Request for Review at 7-8.

<sup>25</sup> GCI Request for Review at 10.

that USAC's denial contravenes the Commission's stated goal of promoting and expanding rural health care.<sup>26</sup>

### III. DISCUSSION

7. We find that USAC improperly denied YKHC's funding requests for the eligible services for the period between the circuit acceptance date and the date on which the VTC equipment was installed at each health care facility and therefore remand YKHC's applications to USAC for further processing consistent with this order. In establishing the rural health care universal service support mechanism, the Commission provided that health care providers requesting supported telecommunications services must make certain certifications in order to establish a bona fide request for services.<sup>27</sup> Health care providers are required to certify that the services requested will be used solely for purposes reasonably related to the provision of health care services or related health care instruction, and that they are ordering the most cost-effective method(s) of providing the requested services.<sup>28</sup>

8. In this case, based on the totality of the circumstances, we find that YKHC sought funding consistent with the rules of the program. YKHC utilized the higher bandwidth circuits for eligible services beginning on the circuit acceptance date; this is not a situation where the requested services were not utilized at all until the associated equipment was installed. Specifically, the record demonstrates that YKHC used the higher bandwidth circuits to transmit images and data through telemedicine carts, for sending and receiving e-mail and accessing the Internet, and for remote management and support functionality.<sup>29</sup> Moreover, although YKHC endured several delays in the installation of VTC equipment, it is clear that YKHC did seek and receive the additional resources necessary to utilize the products and services requested under the rural health care support mechanism, taking action to make alternative arrangements when its original plan to have its affiliate install the equipment encountered an unexpected roadblock. Thus we find that YKHC made a "bona fide request for services" as required under the Commission's rule.<sup>30</sup> Based on these facts, we conclude that YKHC was eligible to receive support for the requested higher bandwidth circuits as of the circuit acceptance date at each of the 38 health care facilities. We therefore remand YKHC's application and instruct USAC, if otherwise appropriate, to award FY 2008 support to each of the relevant health care facilities as of the beginning on the circuit acceptance (start) date.

### IV. ORDERING CLAUSES

9. ACCORDINGLY, IT IS ORDERED, 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 under sections 0.91, 0.291, and 54.722 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 54.722, that the requests for review filed by YKHC and GCI on August 23, 2010, ARE GRANTED to the extent provided herein.

10. IT IS FURTHER ORDERED, 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 under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§

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<sup>26</sup> GCI Request for Review at 13-16.

<sup>27</sup> See *Universal Service Order*, 12 FCC Rcd 9149-52, paras. 724-27; 47 U.S.C. §254(h)(1)(A).

<sup>28</sup> *Id.* at 9151, para. 727. See also 47 U.S.C. § 254(h)(1)(A).

<sup>29</sup> YKHC Request for Review at 8.

<sup>30</sup> See 47 C.F.R. § 54.603

0.91, 0.291, 54.722(a), that YKHC's FY 2008 application IS REMANDED to USAC for further processing consistent with this order.

11. IT IS FURTHER ORDERED, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), that this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Trent Harkrader  
Chief  
Telecommunications Access Policy Division  
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