

ATTACHMENT E:
GCI APPEAL LETTER AND USAC DENIAL
FOR FRN 1690144 (KOYUK)

Administrator's Decision on Rural Health Care Program AppealVia Electronic Mail

September 30, 2019

Mr. Timothy J. Simeone
Harris, Wiltshire & Grannis LLP
1919 M Street NW, Eighth Floor
Washington, DC 20036

Re: General Communications, Inc. – Appeal of USAC's Decision for
Funding Request Number 1690144

Dear Mr. Simeone:

The Universal Service Administrative Company (USAC) has completed its evaluation of the August 27, 2018 letter of appeal (Appeal) submitted on behalf of General Communications Inc. (GCI) for Koyuk Clinic, health care provider number 10677.¹ On August 16, 2018, USAC issued a Notification of Commitment Adjustment Letter (COMAD Letter), seeking recovery of funds disbursed to Koyuk Clinic in the federal Rural Health Care Telecommunications Program (Telecom Program) for funding year 2016 (FY 2016).² The Appeal requests that USAC adjust the service dates for FY 2016 funding request number (FRN) 1690144 or, in the alternative, waive the FCC Form 467 (Connection Certification) instructions and permit Koyuk Clinic to input a date of disconnection on the FCC Form 467 that is later than the funding end date for FRN 1690144.³

USAC has reviewed the Appeal and the facts related to this matter and has determined that Federal Communications Commission (FCC) rules and requirements support the recovery of funds disbursed under FRN 1690144. Specifically, as discussed in detail below, USAC is not authorized to grant the requested relief to allow Koyuk Clinic to receive support in excess of

¹ See Letter from Timothy J. Simeone, Counsel for General Communications Inc., Harris, Wiltshire & Grannis LLP, on behalf General Communications Inc., to Rural Health Care Division, USAC (Aug. 27, 2018) (Appeal).

² See Notification of Commitment Adjustment Letter from Rural Health Care Division, USAC, to Koyuk Clinic (Aug. 16, 2018) (Administrator's COMAD). Although the COMAD letter is dated May 25, 2018, USAC's records indicate that it was not issued until August 16, 2018. See Email to GCI Communication Corp., from Rural Health Care Division, USAC (Aug. 16, 2018).

³ See Appeal at 1, 4-5. The Appeal also requests that USAC waive the 60-day appeal deadline because GCI submitted the Appeal 94 days after the date noted on the COMAD letter. See *id.* at 3-4; Administrator's COMAD; 47 C.F.R. § 54.720(b) ("An affected party requesting review of an Administrator decision by the Administrator pursuant to § 54.719(a), shall file such a request within sixty (60) days from the date the Administrator issues a decision."). However, as noted above, USAC's records indicate that the date noted on the COMAD letter was incorrect and that GCI submitted its appeal within 60 days of the actual date of issuance. See *supra* note 2; Appeal. Therefore, USAC finds that the Appeal was timely submitted.

the approved commitment amount for FRN 1690144. Therefore, USAC denies the Appeal.

Background

The Telecom Program provides eligible health care providers (HCPs) with universal service support for the difference between urban and rural rates for eligible telecommunications services, subject to limitations set forth in the Commission's rules.⁴ FCC rules require HCPs applying for discounts for services under the Telecom Program to submit a request for discounts by filing an FCC Form 466 (Funding Request and Certification Form).⁵ The HCP uses the FCC Form 466 to provide information about the services selected and to certify that those services are the most cost-effective options of the offers received.⁶ After reviewing the funding request, USAC issues a Funding Commitment Letter (FCL) or denial.⁷ The FCL identifies, among other things, the funding start and end dates, and the total amount of support that the HCP is eligible to receive.⁸ Support provided under the FCL is capped at the amount provided in the letter, and applicants are unable to receive additional support.⁹ To the extent that support has been improperly committed or disbursed, USAC must recover such funds through its normal processes.¹⁰ USAC is not authorized to make policy or waive the FCC's rules and requirements for the Telecom Program.¹¹

⁴ See 47 C.F.R. §§ 54.602(a), 54.604(b).

⁵ See Health Care Providers Universal Service, Funding Request and Certification Form, OMB 3060-0804 (July 2014) (FCC Form 466).

⁶ See Step 4 Submit Funding Requests, available at <https://www.usac.org/rhc/telecommunications/health-care-providers/step04/default.aspx> (last visited Aug. 12, 2019).

⁷ See *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678, 16803, para. 302 (2012) (*Healthcare Connect Fund Order*).

⁸ See *id.*

⁹ See *id.* at 16807, para. 315. Although applicants may request a site or service substitution under certain circumstances, support for a qualifying site and service substitution is only guaranteed if the substitution will not cause the total amount of support under the FCL to increase. See *id.*

¹⁰ See *Comprehensive Review of the Universal Service Fund Management, Administration, & Oversight, Federal-State Joint Board on Universal Service Schools & Libraries Universal Service Support Mechanism, Rural Health Care Support Mechanism, Lifeline & Link-Up Changes to the Board of Directors for the National Exchange Carrier Association, Inc.*, WC Docket Nos. 05-195, 02-60, and 03-109, CC Docket Nos. 96-45, 02-6, and 97-21, Report and Order, 22 FCC Rcd. 16372, 16386, para. 30 (2007) (“[F]unds disbursed from the high-cost, low-income, and rural health care support mechanisms in violation of a Commission rule that implements the statute or a substantive program goal should be recovered.”). *C.f.* *Changes to the Board of Directors of the National Exchange Carrier Association, Inc. Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd. 7197, 7200, para. 8 (1999) (*Commitment Adjustment Order*) (finding that Congress requires the Commission to recover monies erroneously disbursed under the E-rate program); *Changes to Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket No. 97-21, Order, 15 FCC Rcd. 22975, 22977, para. 3 (2000) (“As explained in the *Commitment Adjustment Order*, both the Debt Collection Improvement Act (DCIA) and the Commission's rules require collection of any disbursements it made in violation of the Act.”).

¹¹ See generally, 47 C.F.R. § 54.702(c) (“[USAC] may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress.”); 47 C.F.R. § 1.3 (“The provisions of this chapter may be suspended, revoked, amended, or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedures Act and the provisions of this chapter.”); 47 C.F.R. § 54.719(c) (“Parties seeking waivers of the Commission's rules shall seek relief directly from the Commission.”).

Koyuk Clinic's Funding Request

On September 22, 2016, Koyuk Clinic submitted an FCC Form 466 seeking support for services provided by GCI in the Telecom Program, under FRN 1690144.¹² On April 11, 2017, USAC issued an FCL to Koyuk Clinic for FRN 1690144, approving a total support amount of \$336,848.33 for the funding period between July 1, 2016 and December 31, 2016.¹³ However, on its FCC Form 467, Koyuk Clinic entered a date of disconnection of June 30, 2017, which was after the funding end date specified on the FCL for FRN 1690144.¹⁴ As a result, Koyuk Clinic received a total disbursement of \$673,696.66, which was \$336,848.33 more than the total amount of support committed for FRN 1690144.¹⁵ On August 16, 2018, USAC issued a COMAD letter seeking recovery of the unapproved Telecom Program funding disbursed to Koyuk Clinic for FRN 1690144.¹⁶

GCI's Appeal

On August 27, 2018, GCI appealed USAC's decision to seek recovery of the unapproved support disbursed under FRN 1690144.¹⁷ In its Appeal, GCI argues the following: (1) USAC's finding that unapproved support was disbursed is incorrect because USAC issued two FCLs that, in combination, covered the service period at issue;¹⁸ (2) the total disbursement for services provided to Koyuk Clinic by GCI was less than the total amount of support committed to Koyuk Clinic in the two FCLs;¹⁹ (3) it is not always possible to estimate the installation date for new services, and USAC should not allow its administrative processes to become practical impediments to the goals of the Telecom Program;²⁰ and (4) USAC can resolve the administrative problem presented in the Appeal by amending the FCL at issue and adjusting the underlying funding commitment, or by permitting Koyuk Clinic to enter a date of disconnection on its FCC Form 467 that is later than the funding end date specified in the FCL.²¹ USAC addresses each of the arguments raised by GCI below.

¹² See FCC Form 466 for FRN 1690144 (Sept. 22, 2016).

¹³ See Email from Rural Health Care Division, USAC, to Koyuk Clinic for FRN 1690144 (Apr. 11, 2017)(FCL for FRN 1690144).

¹⁴ See FCC Form 467 for FRN 1690144 (July 17, 2017).

¹⁵ See Rural Health Care Remittance Statement for SPIN 143001199 (Sept. 6, 2017).

¹⁶ See Administrator's COMAD.

¹⁷ See Appeal.

¹⁸ See *id.* at 1, 3.

¹⁹ See *id.* at 1, 5.

²⁰ See *id.* at 4-5.

²¹ See *id.* at 1, 4-5. The Appeal also asserts that neither GCI nor Koyuk Clinic received the COMAD letter on the date noted on the letter. See Appeal at 2. However, because this argument is pertinent only to GCI's request for a waiver of the 60-day appeal deadline, and USAC finds that the Appeal was timely submitted, we dismiss this argument as moot. See *supra* note 3.

1 – USAC’s finding that unapproved support was disbursed is incorrect because USAC issued two FCLs that, in combination, covered the service period at issue.

First, GCI argues that USAC was incorrect in finding that the disbursements at issue were not approved because Koyuk Clinic received two funding commitments that, in combination, covered the period in which it was receiving services from GCI.²² We reject this argument. Although USAC approved a second funding request for services GCI provided after the service end date for FRN 1690144, this funding request was not for the same services.²³ Therefore, USAC’s approval of Koyuk Clinic’s second funding request did not constitute approval of additional funding for FRN 1690144.

2 – The total disbursement for services provided to Koyuk Clinic by GCI was less than the total amount of support committed to Koyuk Clinic in the two FCLs.

Second, GCI argues that USAC should reverse its decision to seek recovery of support disbursed for FRN 1690144 because the total support disbursed for this funding request and the second funding request referenced above was less than the total amount originally committed for these two funding requests.²⁴ However, as explained above, if USAC issues an FCL approving an HCP’s funding request, support for the requested services is capped at the amount specified in the letter.²⁵ The fact that additional support amounts may be offset by a reduction in the amount of funding disbursed for a separate commitment is immaterial, as USAC is not authorized to waive FCC rules.²⁶ Therefore, we dismiss this argument.

3 – It is not always possible to estimate the installation date for new services, and USAC should not allow its administrative processes to become practical impediments to the goals of the Telecom Program.

GCI also argues that USAC’s failure to permit HCPs to extend the funding period for individual commitments impedes the substantive goals of the Telecom Program because it is not always possible to estimate the installation dates for new services.²⁷ Specifically, GCI explains that applicants seeking to change services during a given funding year must submit separate funding requests for the old and new services.²⁸ Because the funding periods for the two funding requests cannot overlap, applicants experience gaps in support if installation of the new service is delayed

²² See *id.* at 1, 3. Specifically, GCI refers to the FCL for FRN 1690545, which approved support for upgraded services from GCI for the funding period between January 1, 2017 and June 30, 2017. See Email from Rural Health Care Program, USAC, to Koyuk Clinic for FRN 1690545 (Apr. 11, 2017)(FCL for FRN 1690545).

²³ Compare FCL for FRN 1690144 (approving support for 15 Mbps Satellite Service), and FCL for FRN 1690545 (approving support for 15 Mbps MPLS).

²⁴ See Appeal at 1, 5.

²⁵ See *supra* note 9.

²⁶ See *supra* notes 9, 11.

²⁷ See Appeal 4-5.

²⁸ See *id.* at 4.

and the funding end date for the old services is not extended.²⁹ However, because these issues are questions of policy, and USAC is not authorized to make policy,³⁰ we do not address these claims.

4 – USAC can resolve the administrative problem presented in the Appeal by amending the FCL at issue and adjusting the underlying funding commitment, or by permitting Koyuk Clinic to enter a date of disconnection on its FCC Form 467 that is later than the funding end date.

Finally, GCI argues that USAC can address the potential gap in funding for Koyuk Clinic by extending the service end date in the FCL for FRN 1690144 and adjusting the underlying commitment to cover services provided after the original funding end date.³¹ Alternatively, GCI asserts that USAC can permit Koyuk Clinic to enter a date of disconnection on its FCC Form 467 that is later than the funding end date for FRN 1690144, thereby permitting it to receive funding for services provided after the service end date specified in the FCL.³² We reject this argument. As previously explained, if USAC approves an HCP's funding request, support is capped at the amount provided in the FCL for that commitment.³³ Because USAC is not authorized to waive this requirement and approve additional support for FRN 1690144,³⁴ we are unable to grant the relief requested in the Appeal. To the extent GCI seeks a waiver of Telecom Program rules and requirements, it must seek relief directly from the FCC.³⁵

Administrator's Decision on Appeal

Based on a review of the facts, USAC finds that Koyuk Clinic received a disbursement of unapproved support in the amount of \$336,848.33 for FRN 1690144. As stated above, support provided for an approved funding request is capped at the amount specified in the applicable FCL,³⁶ and USAC is required to recover support improperly committed or disbursed.³⁷ Because USAC is not authorized to waive FCC rules and requirements for the Telecom Program, USAC denies the Appeal.

If you wish to appeal this decision or request a waiver, you can follow the instructions pursuant to 47 C.F.R. Part 54, Subpart I (47 C.F.R. §§ 54.719 to 725). Further instructions for filing appeals or requesting waivers are available at:

<http://www.usac.org/about/about/program-integrity/appeals.aspx>.

Sincerely,

²⁹ See *id.*

³⁰ See *supra* note 11.

³¹ See Appeal at 1, 4-5.

³² See *id.*

³³ See *supra* note 9.

³⁴ See *supra* note 11.

³⁵ See *supra* note 11.

³⁶ See *supra* note 9.

³⁷ See *supra* note 10.

GCI Communication Corp.

September 30, 2019

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/s/ Universal Service Administrative Company

cc: Richard Wideman, Koyuk Clinic
Ariel Burr, General Communications, Inc.

August 27, 2018

VIA ELECTRONIC MAIL

Rural Health Care Division
Universal Service Administrative Company
Attention: Letter of Appeal
700 12th Street, NW, Suite 900
Washington, DC

Re: Notification of Commitment Adjustment Letter dated 5/25/2018: Funding Request Number 1690144, FCC Registration Number 0014835128

To Rural Health Care Appeals:

General Communication, Inc. (“GCI”)¹ hereby appeals the Universal Service Administration Company Rural Health Care Division’s (“RHCD”) denial of funding for certain services provided by GCI in Alaska.² Specifically, as reflected in Attachment 1, RHCD denied funding for services provided to Koyuk Clinic—a Healthcare Provider (“HCP”) located on Norton Bay in rural Alaska—on the basis that the HCP committed a rule violation by submitting a Form 467 reflecting a Date of Disconnection later than the Funding End Date on the corresponding Funding Commitment Letter (“FCL”).³ According to the Notification of Commitment Adjustment Letter (“COMAD letter”), this “result[ed] in the disbursement of an additional 181 days of unapproved funding.”⁴

But RHCD’s conclusion that “unapproved funding” was disbursed is incorrect. Significantly, RHCD issued *two* FCLs covering GCI’s services to NSHC for the relevant period.⁵ Those two FCLs must be viewed together, and together they committed far *more* funding than NSHC ultimately sought in its Form 467s. In other words, as further set forth below, the total amount disbursed was far less than the approved amount for the period at issue.

GCI accordingly requests that RHCD adjust the service dates of the relevant FCLs to reflect the services actually provided, or, in the alternative, that RHCD grant a waiver of its Form 467 instructions to permit a Date of Disconnection later than the Funding End Date for the FCL that was the subject of RHCD’s Funding Commitment Adjustment.

¹ GCI’s Service Provider Identification Number is 143001199.

² See Attachment 1 (“Notification of Commitment Adjustment Letter,” dated 5/25/2018).

³ Koyuk Clinic (HCP 10677) is among the health services provided by the Norton Sound Health Corporation, and is hereafter referred to as “NSHC” in this letter.

⁴ Notification of Commitment Adjustment Letter (final page, unnumbered).

⁵ See Attachment 2 (FCL for FRN 1690144) and Attachment 3 (FCL for FRN 1690545).

Background

An important threshold procedural matter here is that while the COMAD letter that GCI appeals was dated May 25, 2018, neither GCI nor its customer, NSHC, received the letter at that time. Rather, GCI and NSHC became aware of this COMAD letter upon receiving a Notification of Demand for Payment Letter dated August 3, 2018. That prompted GCI to request copies of the earlier COMAD letter.⁶ GCI also asked USAC to “confirm if there were any other COMAD letters related to GCI’s SPIN 14001199.”⁷ That request resulted in USAC emailing *eight* letters on August 16, 2018, all purportedly originally “sent 5/31/18.”⁸ Those eight letters included five letters *not* received at the time they were issued by either GCI or its customers—three for NSHC clinics, and two for APIA clinics. GCI is filing appeals as to all five of those letters today, approximately ten days after receiving them.

Turning to the merits, this Letter of Appeal—like GCI’s three recently filed appeals challenging the three of those eight 5/31/18 COMAD letters that GCI *did* receive in a timely manner⁹—reflects the practical reality that because of climate, weather, and other considerations specific to Alaska, it is not always possible to determine in advance precisely when new services will be installed. In such situations, HCPs will often seek to separate FCLs, one for the old service and one for the to-be-upgraded service. Unfortunately, the HCP can only estimate the upgrade date. That estimate may be incorrect. GCI often has little choice but to continue to provide services even after the Funding End Date of the initial FCL, pending the installation of new services that are the subject of a subsequent FCL. As RHCD is aware, however, once an FCL has issued, RHCD’s rules do not contemplate a specific method for revising its service dates to accurately reflect the services provided.

As relevant here, GCI provided services to NSHC at the Koyuk Clinic from July 1, 2016 until June 30, 2017. These services were the subject of two FRNs—1690144 and 1690545—which, as noted above, resulted in two FCLs. The first—with a Funding Start Date of July 1, 2016 and a Funding End Date of December 31, 2016—provided a Committed Funding Amount of \$336,848.33.¹⁰ The second—with a Funding Start Date of January 1, 2017 and a Funding End Date of June 30, 2017—provided a Committed Funding Amount of \$461,816.70.¹¹ The total

⁶ See email from Patrick Lynn, Rural Health Care Division to Ariel Burr, GCI (Aug. 15, 2018) (acknowledging GCI’s request for COMAD letter) (Attachment 4).

⁷ See email from Ariel Burr, GCI to Patrick Lynn, Rural Health Care Division (Aug. 15, 2018) (Attachment 4).

⁸ See email from Patrick Lynn to Ariel Burr (August 16, 2018) (also in Attachment 4).

⁹ See, e.g., three Letters of Appeal from Timothy Simeone to Rural Health Care Division (all filed July 27, 2018) (appealing COMAD letters for FRN 1694661, FRN 1694664, and FRN 1690091) (“7/27/17 GCI Appeals”) (all appended as Attachment 5).

¹⁰ See Attachment 2 (FCL for FRN 1690144).

¹¹ See Attachment 3 (FCL for FRN 1690545).

Committed Funding Amount for the entire period from July 29, 2016 to June 30, 2017 was thus \$798,665.03.

As these figures demonstrate, the monthly funding commitment under the second FCL was considerably higher than under the first FCL—approximately \$77,000/mth versus approximately \$48,000/mth. That is because the services to be provided under the second FCL included 10 Mbps of Terrestrial Service and 5 Mbps of Satellite, whereas the earlier 15 Mbps service was entirely Satellite service.¹²

The transition from the less to the more costly service did not, however, take place as expected on December 1, 2016. Instead, the less costly original service continued to be provided through the end of June, 2017. As a result, when NSHC submitted its Form 467 in connection with the first of the two FCLs, it accurately reported an end date of June 30, 2017.¹³ This resulted in a total disbursement under the first FCL—in connection with services from July 29, 2016 until June 30, 2017—of \$673,696.66. No funds were disbursed under the second FCL.¹⁴

The total disbursement for the entire time period covered by the two FCLs was thus limited to the \$673,696.66 disbursed under the first FCL. This total disbursement was \$124,968.37 *less* than the total Committed Funding Amount for this period.

As noted above, RHCD issued a Notification of Commitment Adjustment Letter on June 31, 2018. That letter sought recovery of \$336,848.33 from Koyuk Clinic on the ground that the Date of Disconnection was later than the Funding End Date on the corresponding FCL.

Requests for Relief

1. Waiver of 60-day appeal deadline or clarification that 60 days runs from actual notice: GCI requests that under the circumstances described above, RHCD waive the usual requirement that “USAC must receive [an] appeal within 60 days following the date when USAC issued the decision.”¹⁵ As set forth above, neither GCI nor NSHC received the COMAD letter at issue here until *more than 60 days after the date when USAC issued the decision*.

As USAC is aware, the 60-day deadline for appeals is a USAC rule rather than an FCC requirement. While the relevant Commission rules mandate that a party seeking review of a USAC decision “by the Commission . . . shall file such a request within sixty (60) days from the date the Administrator issues a decision,”¹⁶ the corresponding provision requiring parties to first

¹² See Attachment 6 (containing chart provided by NSHC to RHCD indicating circuit types to be provided under relevant FRNs).

¹³ See Attachment 7 (HCP Support Schedule for FRN 1690144).

¹⁴ See Attachment 8 (HCP Support Schedule for FRN 1690545).

¹⁵ See <https://www.usac.org/about/about/program-integrity/appeals.aspx>.

¹⁶ 47 C.F.R. § 54.720(a).

appeal to the Administrator contains no deadline.¹⁷ USAC therefore has authority to grant a waiver of its own rule. Given that GCI and the HCP in this case failed to receive the COMAD letter at issue through no fault of their own, USAC should exercise that authority here.

In the alternative, USAC could also simply clarify that, for purposes of its 60-day rule, the phrase “within 60 days following the date when USAC issued the decision,”¹⁸ means “issues” *to the service provider or HCP*—i.e., that the 60-day period runs from the date of *actual* notice. COMAD letters are not, of course (unlike most Commission decisions) published, but rather provided directly to the affected parties. As a result, however, parties cannot reasonably be charged with knowledge of such letters unless they actually receive them. Under these circumstances, an actual notice trigger simply makes sense, and USAC should explicitly adopt it.

2. Adjustment of service dates of FCLs: GCI also requests that RHCD adjust the service dates of the two FCLs at issue here to reflect the services actually provided and to correspond with the dates in the Form 467 certifications. If RHCD determines that it cannot make those adjustments, GCI requests that RHCD grant a waiver of its Form 467 instructions to permit a Date of Disconnection later than the Funding End Date for the FCL that was the subject of the challenged Funding Commitment Adjustment.

As RHCD is aware, applicants seeking uninterrupted service while also desiring to modify or upgrade their service during the course of a funding year face a practical problem—what date to provide for the end of the old service and the beginning of the new one. It simply is not always possible to determine with certainty when new services will be able to be installed in rural Alaska, given the unique challenges of providing services there.

In 2016, RHCD staff recognized this problem. It specifically advised GCI that FCLs could be adjusted after issuance to address it. RHCD indicated that “commitments are not finalized until the FCC Form 467 is received from the HCP and the HSS is produced.”¹⁹ GCI and its customers thus understood that the FCLs would—precisely as GCI requests here—be adjusted after submission of Form 467s to reflect the services actually provided.

Notably, until recently—prior to FY 2016—applicants seeking uninterrupted services could address upgrade situations by obtaining two funding commitments and providing tentative start/end dates reflecting approximately when the upgraded services would be available. To take account of uncertainty, the funding commitments might overlap—the old service would be funding beyond the estimated start date, to provide flexibility in case installation of the new service was delayed. Beginning in FY 2016, however, RCD sought to eliminate such overlaps, requiring applicants to choose non-overlapping start and end dates.

¹⁷ *Id.* § 54.719(b); *see also* <https://www.usac.org/about/about/program-integrity/appeals.aspx> (citing 47 C.F.R. § 54.719(b)).

¹⁸ *See* <https://www.usac.org/about/about/program-integrity/appeals.aspx>.

¹⁹ *See* email from Bernie Manns, RHCD to Ariel Burr, GCI (October 20, 2016) (Attachment 9).

The result, unfortunately, is the kind of situation presented here. Specifically, cases like this transform administrative, essentially clerical, problems into real-world financial hardships. That serves no purpose. From a big-picture perspective, the delay in installing new services here not only did not cost the Rural Health Care Program anything—it actually saved the program well over \$100,000 because the old services were less costly than the new ones. Yet the Funding Commitment Adjustment from which GCI appeals here took an additional \$336,848.33 back from the Koyuk Clinic.

RHCD should not allow its administrative processes to become practical impediments to the goals of the Program. The Commission has repeatedly recognized this fact, directing RHCD in the past to revise its processes when they sacrificed the substantive goals of the Program to administrative “efficiency.”²⁰

The administrative problem presented by this appeal is amenable to a clerical “fix” with just a few keystrokes. Again, GCI believes that the most straightforward solution is for RCHP to simply amend the FCLs at issue here to reflect the correct dates for the services actually provided, and to make corresponding adjustments to the underlying funding commitments. But as also noted above, in the alternative, RHCD has authority to grant a waiver of its own Form 467 instructions to permit a Date of Disconnection later than the Funding End Date for the FCL that was the subject of RHCD’s Funding Commitment Adjustment.

Respectfully submitted,



Timothy J. Simeone
tsimeone@hwglaw.com
202-730-1332

Counsel for General Communications, Inc.

²⁰ See, e.g., *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, Federal-State Joint Board on Universal Service, Sixth Order on Reconsideration in CC Docket No. 97-21 and Fifteenth Order on Reconsideration in CC Docket No. 96-45, 14 FCC Rcd 18756, ¶ 59 (1999) (finding that administrative difficulties were not so great as to justify barring applicants from adding new entities to existing contracts by submitting a new Form 465); *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket Nos. 96-45, 02-6, WC Docket Nos. 02-60, 06-122, DA 14-1526, 6-7 (2014) (granting appeals of applicants where RHCD had refused to process mid-year service upgrades).

Attachment 1

NOTIFICATION OF COMMITMENT ADJUSTMENT LETTER

5/25/2018

Fanni Nassuk
Koyuk Clinic
70 Poplar St.
Koyuk, AK 99753

Re: **Health Care Provider (HCP) Number: 10677**
 Funding Year: 2016
 FCC Form 465 Number: 43160007
 Funding Request Number: 1690144
 FCC Registration Number: 0014835128
 SPIN: 143001199
 Service Provider Name: GCI Communication Corp
 Service Provider Contact Person: Ariel Burr

Our routine review of Rural Health Care (RHC) program funding commitments revealed certain applications in which funds were disbursed in violation of RHC program rules.

In order to be sure that no funds are used in violation of RHC program rules, the Universal Service Administrative Company (USAC) must now adjust your overall funding commitment. The purpose of this letter is to make the required adjustments to your funding commitment, and to give you an opportunity to appeal this decision. USAC has determined the Health Care Provider is responsible for all or some of the violations. Therefore, the service provider is responsible to repay all or some of the funds disbursed in error (if any).

This is NOT a bill. If recovery of disbursed funds is required, the next step in the recovery process is for USAC to issue you a Demand Payment Letter. The balance of the debt will be due within 30 days of that letter. Failure to pay the debt within 30 days from the date of the Demand Payment Letter could result in interest, late payment fees, administrative charges and implementation of the "Red Light Rule." The Federal Communications Commission's (FCC) Red Light Rule requires USAC to dismiss pending FCC Form 462 or 466 applications if the entity responsible for paying the outstanding debt has not paid the debt, or otherwise made satisfactory arrangements to pay the debt within 30 days of the notice provided by USAC. For more information on the Red Light Rule, please see <https://www.fcc.gov/encyclopedia/red-light-frequently-asked-questions>.

TO APPEAL THIS DECISION:

If you wish to appeal the Commitment Adjustment Decision indicated in this letter to USAC, your appeal must **be received or postmarked within 60 days of the date of this letter**. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, and email address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify the date of the Notification of the Commitment Adjustment Letter and the Funding Request Number(s) (FRNs) you are appealing. Your letter of appeal must include the following:
 - Billed Entity Name,
 - Billed Entity Number, and
 - FCC Registration Number (FCC EN) from the top of your letter.
3. When explaining your appeal, copy the language or text from the Notification of Commitment Adjustment Letter that is the subject of your appeal to allow USAC to more readily understand your appeal and respond appropriately. Please keep your letter to the point and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal including any correspondence and documentation.
4. If you are an applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are a service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.
5. Provide an authorized signature on your letter of appeal.

We strongly recommend that you use one of the electronic filing options. To submit your appeal to USAC by email, email your appeal to RHC-appeals@usac.org. USAC will automatically reply to incoming emails to confirm receipt.

To submit your appeal to us on paper, send your appeal to:

Universal Service Administrative Co.
Rural Health Care
Attn: Letter of Appeal
700 12th Street, NW, Suite 900
Washington, DC 20005

Parties seeking waivers of FCC rules can appeal directly to the FCC. Detailed instructions for filing appeals are available at: <http://www.usac.org/about/about/program-integrity/appeals.aspx>. If you have questions or need help, you may call the Customer Service Support Center at 1-800-453-1546.

TO PAY THE DEBT

Please remit payment for the full "Funds to be Recovered from Koyuk Clinic" amount shown in the Report below.

Payment of the Debt should be made at www.usac.org/pay.

Sincerely,

USAC

CC: Ariel Burr
GCI Communication Corp

A Guide to the Funding Commitment Adjustment Report

On the page following this letter, we have provided a Funding Commitment Adjustment Report (Report) for the Form 465 application cited above. The enclosed Report includes the Funding Request Number (FRN) from your application for which adjustments are necessary. USAC is also sending this information to the applicant for informational purposes. If USAC has determined the applicant is also responsible for any rule violation related to the FRN, a separate letter will be sent to the applicant detailing the necessary applicant action.

Note that if the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount. Review the Funding Commitment Adjustment Commitment(s). Please ensure that any invoices that you or the applicant submits to USAC are consistent with RHC program rules as indicated in the Funding Commitment Adjustment Explanation. If the Funds Disbursed to Date amount exceeds your Adjusted Funding Commitment amount, USAC will have to recover some or all of the disbursed funds. The Report explains the exact amount (if any) the service provider is responsible for repaying.

- ◆ **Funds to be Recovered:** This represents the amount of Funds Disbursed to Date that exceeds the Adjusted Funding Commitment amount. These funds will have to be recovered.
- ◆ **Funds Disbursed to Date:** This represents the total funds which have been paid up to now to the identified service provider for this FRN.
- ◆ **Adjusted Funding Commitment:** This represents the adjusted total amount of funding that the RHC program has committed to this FRN. If this amount exceeds the Funds Disbursed to Date, the RHC program will continue to process properly filed invoices up to the new commitment amount.
- ◆ **Funding Request Number (FRN):** An FRN is assigned by the RHC program to each Funding Commitment Letter. This number is used to report to applicants and service providers the status of funding requests for all RHC programs.
- ◆ **Service Provider Identification Number (SPIN):** A unique number assigned by USAC identify service providers seeking payment from universal service fund programs.

**Funding Commitment Adjustment Report for
Funding Request Number: 1690144****Koyuk Clinic**

Funding Year: 2016
HCP Number 10677
HCP Contact Person: Fannie Nassuk
RHC Program: Telecom

SPIN: 143001199
Service Provider Name: GCI Communication Corp

Total Original Funding Commitment: \$ 336,848.33
Total Commitment Adjustment Amount: \$ 336,848.33
Total Adjusted Funding Commitment: \$ 336,848.33
Total Funds Disbursed to Date: \$ 673,696.66
**Total Funds to be Recovered from
Koyuk Clinic:** \$ 336,848.33

Funding Commitment Adjustment Explanation:

USAC's records indicate that Koyuk Clinic submitted an FCC Form 467 (Connection Certification) for the FRN referenced above in the Rural Health Care Telecommunications Program (Telecom Program). When submitting this form, Koyuk Clinic selected a Date of Disconnection later than the original Funding End Date shown on the Funding Commitment Letter (FCL). However, pursuant to FCC rules and requirements governing the Telecom Program, the Date of Disconnection cannot be later than the Funding End Date noted on the FCL. Further, applicants may only submit a Date of Disconnection if the service was installed or switched on later than the Funding Start Date shown on the FCL or the service was disconnected earlier than Funding End Date shown on the FCL. See Health Care Providers Universal Service Connection Certification, FCC Form 467 Instructions, Rural Health Care Universal Service Mechanism, OMB 3060-0804 at 4 (July 2014) (Form 467 Instructions) ("Line 12 requires the date service was or will be disconnected, if Form 467 is being submitted to notify RHCD that the discounted service has been terminated. If there are no plans to disconnect the service, leave this item blank.").

In this case, the FRN referenced above was approved for funding, and had a Funding Start Date of July 1, 2016 and a Funding End Date of December 31, 2016, as stated in the FCL for the funding request. However, on its FCC Form 467, Koyuk Clinic entered June 30, 2017 as the Date of Disconnection, resulting in the disbursement of an additional 181 days of unapproved funding (Service Provider Invoice Number NSHC FY2016 352162).

Because the HCP is required to certify that it satisfies each of the specific requirements set forth in the Form 467 and its instructions, and that it will abide by all relevant requirements of 47 U.S.C. Sec. 254, USAC finds that Koyuk Clinic is responsible for the violation in this case. See Form 467 Instructions at 4. Therefore, USAC is seeking recovery of the unapproved funding from Koyuk Clinic.

Attachment 2

From: Ariel Burr
To: [Jennifer Bachman](#)
Subject: FW: RHC Telecommunications Program - Funding Commitment Letter (FCL) - HCP # 10677 - FRN 16901441
Date: Tuesday, April 11, 2017 11:23:18 PM

From: rhc-assist@usac.org
Sent: Tuesday, April 11, 2017 7:22:17 PM (UTC-09:00) Alaska
To: Ariel Burr
Subject: RHC Telecommunications Program - Funding Commitment Letter (FCL) - HCP # 10677 - FRN 16901441

[External Email]

Date: 11-Apr-2017
Program: Telecommunications Program
Funding Year: 2016
Health Care Provider (HCP) Name: Koyuk Clinic
HCP Number: 10677
HCP Contact Name: Richard B Wideman
HCP Contact Email: [REDACTED]
HCP Contact Phone: [REDACTED]
FCC Form 465 Application Number: 43160007
Funding Request Number (FRN): 16901441

The Universal Service Administrative Company (USAC)'s Rural Health Care (RHC) Program completed the review of the Funding Request and Certification Form (FCC Form 466) submitted on behalf of the HCP referenced above. Based on the information provided, USAC determined that the HCP is eligible for the funding shown below. Additionally, if the HCP submitted a contract or service agreement with the form, the outcome of the contract review is included in this letter.

HCP Physical Location: 70 Poplar St., Koyuk, AK, 99753
Service Type: Satellite Service
Bandwidth: 15 Mbps
Service Provider Name: GCI Communication Corp
SPIN/498 Filer ID: 143001199
Billing Account Number: RH000220008
Contract ID: 882461
Contract Friendly Name: HC-462
Contract Expiration Date: 25-Jan-2021

Funding Start Date	Funding End Date	Months of Funding	Non-Recurring Funding Amount	Monthly Recurring Funding Amount	Total Funding Amount	Committed Funding Amount*
01-Jul-	31-Dec-					

2016	2016	6.00000	\$0.00	\$60,675.00	\$364,050.00	\$336,848.33
------	------	---------	--------	-------------	--------------	--------------

The pro-rata factor for this filing window period is 92.52804%*

*This funding request was submitted during the FY2016 Filing Window 2 period. All qualifying requests (i.e., FCC Forms 466) submitted by the close of the filing window period are guaranteed to receive at least a percentage of the funding requested. For each filing window period, if the total demand for RHC Program funding exceeds the total remaining funding available for the funding year, USAC will apply a pro-rata factor to each funding request. Learn more about funding request filing window periods [here](#).

Note that the funding end date will coincide with the contract expiration date. Therefore, if the contract ends during this funding year, the HCP must participate in competitive bidding before selecting a new service provider (or continuing formerly contracted services on a month-to-month basis) to be eligible for funding for the entirety of the funding year.

It is the HCP's responsibility to review and verify that all information on this FCL is accurate. All account holders and the service provider listed on the form have received this FCL, and it is saved in the *My Documents* section of *My Portal*.

Contract/Service Agreement Endorsement Determination: Evergreen

Evergreen: For the life of the contract, the HCP is exempt from competitive bidding for the service(s) identified above, and therefore is not required to post a FCC Form 465 (Description of Services Requested and Certification Form). However, the HCP must submit the FCC Form 466 (and the FCC Form 467) to receive funding each year.¹

The Evergreen endorsement and competitive bidding exemption end when the contract expires. The HCP must participate in competitive bidding at the expiration of the contract. This means that the HCP must post a new FCC Form 465 and wait 28 days before selecting a new service provider (or when continuing the formerly contracted service on a month-to-month basis). Funding Requests (FCC Form 466) must be subsequently submitted in all cases.

If, at any time, the funded services are not provided to the HCP, or the HCP is not otherwise receiving the approved funding, the HCP must notify USAC immediately.

The HCP entered Billing Account Number, certifications, and all other information provided on FCC Forms 465, 466, and 467 may be subject to audit by USAC and the FCC.² HCPs are subject to audits and other reviews that USAC and/or the FCC may undertake to ensure that the universal service support is used in compliance with FCC program rules. If the funded service(s) is not used in compliance with program rules, program participants will be subject to enforcement activities and other means of recourse by USAC and other appropriate federal, state, and local authorities.

Next Steps

Submit an FCC Form 467 (*Connection Certification Form*), which confirms receipt of the services for which funding has been approved, and the date on which the service provider

began providing those services (and when those services ended, if prior to the end of the funding year). To submit the FCC Form 467, go to the *My Forms* tab of *My Portal* and find the applicable Form 466 or FRN, and click on the "Create 467" button. Once the Form 467 is approved, the HCP and the service provider will receive a copy of the HCP Support Schedule (HSS). Receipt of the HSS means that the service provider must begin crediting the HCP for the funding amount (if it has not yet done so) and may begin to invoice USAC.

Errors and Corrections:

If the funding amount, funding dates, or contract information is incorrect or missing, please contact the Rural Health Care Program Help Desk immediately by phone at (800)-453-1546 or by email at RHC-Assist@usac.org.

Appeals:

Before appealing a funding decision, contact the RHC Help Desk. To appeal this funding decision, deliver a letter of appeal to USAC within 60 days of the date of this letter. Detailed instructions for filing appeals are available at: <http://www.usac.org/about/about/program-integrity/appeals.aspx>. Details about and definitions of all terms used in this FCL are provided on the USAC website (www.usac.org/rhc).

For More Information:

Please do not reply directly to this email, as emails to this account will not be delivered to the RHC Program team. For questions or assistance, contact the Rural Health Care Program Help Desk at (800)-453-1546 or by email at RHC-Assist@usac.org.

For more information about the Telecommunications Program application process, refer to the Telecom Program Process Overview web page on the USAC web site at <http://www.usac.org/rhc/telecommunications/process-overview/default.aspx/>.

For more information about the FCC Form 467, visit the Telecommunications Program Forms web page at <http://www.usac.org/rhc/telecommunications/tools/forms/>.

The primary account holder will be copied on this and all correspondence from USAC related to this HCP.

¹ 47 C.F.R. 54.623(d).

² 47 C.F.R. 54.619(c).

Attachment 3

From: Ariel Burr
To: [Jennifer Bachman](#)
Subject: FW: RHC Telecommunications Program - Funding Commitment Letter (FCL) - HCP # 10677 - FRN 16905451
Date: Tuesday, April 11, 2017 11:25:12 PM

From: rhc-assist@usac.org
Sent: Tuesday, April 11, 2017 7:24:32 PM (UTC-09:00) Alaska
To: Ariel Burr
Subject: RHC Telecommunications Program - Funding Commitment Letter (FCL) - HCP # 10677 - FRN 16905451

[External Email]

Date: 11-Apr-2017
Program: Telecommunications Program
Funding Year: 2016
Health Care Provider (HCP) Name: Koyuk Clinic
HCP Number: 10677
HCP Contact Name: Richard B Wideman
HCP Contact Email: [REDACTED]
HCP Contact Phone: [REDACTED]
FCC Form 465 Application Number: 43160007
Funding Request Number (FRN): 16905451

The Universal Service Administrative Company (USAC)'s Rural Health Care (RHC) Program completed the review of the Funding Request and Certification Form (FCC Form 466) submitted on behalf of the HCP referenced above. Based on the information provided, USAC determined that the HCP is eligible for the funding shown below. Additionally, if the HCP submitted a contract or service agreement with the form, the outcome of the contract review is included in this letter.

HCP Physical Location: 70 Poplar St., Koyuk, AK, 99753
Service Type: MPLS
Bandwidth: 15 Mbps
Service Provider Name: GCI Communication Corp
SPIN/498 Filer ID: 143001199
Billing Account Number: RH000220008
Contract ID: 882461
Contract Friendly Name: HC-462
Contract Expiration Date: 25-Jan-2021

Funding Start Date	Funding End Date	Months of Funding	Non-Recurring Funding Amount	Monthly Recurring Funding Amount	Total Funding Amount	Committed Funding Amount*
01-Jan-	30-Jun-					

2017	2017	6.00000	\$0.00	\$83,185.00	\$499,110.00	\$461,816.70
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The pro-rata factor for this filing window period is 92.52804%*

*This funding request was submitted during the FY2016 Filing Window 2 period. All qualifying requests (i.e., FCC Forms 466) submitted by the close of the filing window period are guaranteed to receive at least a percentage of the funding requested. For each filing window period, if the total demand for RHC Program funding exceeds the total remaining funding available for the funding year, USAC will apply a pro-rata factor to each funding request. Learn more about funding request filing window periods [here](#).

Note that the funding end date will coincide with the contract expiration date. Therefore, if the contract ends during this funding year, the HCP must participate in competitive bidding before selecting a new service provider (or continuing formerly contracted services on a month-to-month basis) to be eligible for funding for the entirety of the funding year.

It is the HCP's responsibility to review and verify that all information on this FCL is accurate. All account holders and the service provider listed on the form have received this FCL, and it is saved in the *My Documents* section of *My Portal*.

Contract/Service Agreement Endorsement Determination: Evergreen

Evergreen: For the life of the contract, the HCP is exempt from competitive bidding for the service(s) identified above, and therefore is not required to post a FCC Form 465 (Description of Services Requested and Certification Form). However, the HCP must submit the FCC Form 466 (and the FCC Form 467) to receive funding each year.¹

The Evergreen endorsement and competitive bidding exemption end when the contract expires. The HCP must participate in competitive bidding at the expiration of the contract. This means that the HCP must post a new FCC Form 465 and wait 28 days before selecting a new service provider (or when continuing the formerly contracted service on a month-to-month basis). Funding Requests (FCC Form 466) must be subsequently submitted in all cases.

If, at any time, the funded services are not provided to the HCP, or the HCP is not otherwise receiving the approved funding, the HCP must notify USAC immediately.

The HCP entered Billing Account Number, certifications, and all other information provided on FCC Forms 465, 466, and 467 may be subject to audit by USAC and the FCC.² HCPs are subject to audits and other reviews that USAC and/or the FCC may undertake to ensure that the universal service support is used in compliance with FCC program rules. If the funded service(s) is not used in compliance with program rules, program participants will be subject to enforcement activities and other means of recourse by USAC and other appropriate federal, state, and local authorities.

Next Steps

Submit an FCC Form 467 (*Connection Certification Form*), which confirms receipt of the services for which funding has been approved, and the date on which the service provider

began providing those services (and when those services ended, if prior to the end of the funding year). To submit the FCC Form 467, go to the *My Forms* tab of *My Portal* and find the applicable Form 466 or FRN, and click on the "Create 467" button. Once the Form 467 is approved, the HCP and the service provider will receive a copy of the HCP Support Schedule (HSS). Receipt of the HSS means that the service provider must begin crediting the HCP for the funding amount (if it has not yet done so) and may begin to invoice USAC.

Errors and Corrections:

If the funding amount, funding dates, or contract information is incorrect or missing, please contact the Rural Health Care Program Help Desk immediately by phone at (800)-453-1546 or by email at RHC-Assist@usac.org.

Appeals:

Before appealing a funding decision, contact the RHC Help Desk. To appeal this funding decision, deliver a letter of appeal to USAC within 60 days of the date of this letter. Detailed instructions for filing appeals are available at: <http://www.usac.org/about/about/program-integrity/appeals.aspx>. Details about and definitions of all terms used in this FCL are provided on the USAC website (www.usac.org/rhc).

For More Information:

Please do not reply directly to this email, as emails to this account will not be delivered to the RHC Program team. For questions or assistance, contact the Rural Health Care Program Help Desk at (800)-453-1546 or by email at RHC-Assist@usac.org.

For more information about the Telecommunications Program application process, refer to the Telecom Program Process Overview web page on the USAC web site at <http://www.usac.org/rhc/telecommunications/process-overview/default.aspx/>.

For more information about the FCC Form 467, visit the Telecommunications Program Forms web page at <http://www.usac.org/rhc/telecommunications/tools/forms/>.

The primary account holder will be copied on this and all correspondence from USAC related to this HCP.

¹ 47 C.F.R. 54.623(d).

² 47 C.F.R. 54.619(c).

Attachment 4

From: Patrick Lynn
To: [Ariel Burr](#)
Cc: [Jennifer Bachman](#)
Subject: RE: Please confirm - Documents Requested by Jennifer Bachman
Date: Thursday, August 16, 2018 8:00:09 AM
Attachments: [COMAD Letter FRN 16946641.pdf](#)
[COMAD Letter FRN 16946571.pdf](#)
[COMAD Letter FRN 16900911.pdf](#)
[COMAD Letter FRN 16896431.pdf](#)
[COMAD Letter FRN 16946611.pdf](#)
[COMAD Letter FRN 16896371.pdf](#)
[COMAD Letter FRN 16901441.pdf](#)
[COMAD Letter FRN 16946631.pdf](#)

[EXTERNAL EMAIL - CAUTION: Do not open unexpected attachments or links.]

Good morning,

Please see 8 attached COMAD letters sent 5/31/18.

Thank you,
Patrick

From: Ariel Burr [REDACTED]
Sent: Wednesday, August 15, 2018 4:40 PM
To: Patrick Lynn [REDACTED]
Cc: Jennifer Bachman [REDACTED]
Subject: RE: Please confirm - Documents Requested by Jennifer Bachman

Hi Patrick,

Yes that is fine. Please email the COMAD Letters for those FRNs.

Could you please confirm if there were any other COMAD letters related to GCI's SPIN 143001199? We believe there were 6 total, two for Aleutian Pribilof Island Association, and 4 for Norton Sound Health Corp. But, since we did only received some not all of the letters, we would like USAC to confirm.

We want to make sure we don't miss any deadlines.

Thank you,
Ariel

From: Patrick Lynn [REDACTED]
Sent: Wednesday, August 15, 2018 11:28 AM
To: Ariel Burr
Subject: Please confirm - Documents Requested by Jennifer Bachman

[EXTERNAL EMAIL - CAUTION: Do not open unexpected attachments or links.]

Good afternoon Ariel,

Please confirm that you are requesting an electronic copy of 3 COMAD Letters issued 5/31 for FRNs below:

- FRN 16896371
- FRN 16896431
- FRN 16901441

This is in response to a phone call I have had with Jennifer Bachman, a colleague of yours who does not have access to the Form 498. Please add her as an account holder by making a change to the Form 498.

Thank you,

Patrick Lynn

Program Analyst | Rural Health Care
Universal Service Administrative Company (USAC)



RHC-Invoicing@USAC.org | www.USAC.org

The information contained in this electronic communication and any attachments and links to websites are intended for the exclusive use of the addressee(s) and may contain confidential or privileged information. If you are not the intended recipient, or the person responsible for delivering this communication to the intended recipient, be advised you have received this communication in error and that any use, dissemination, forwarding, printing or copying is strictly prohibited. Please notify the sender immediately and destroy all copies of this communication and any attachments.

The information contained in this electronic communication and any attachments and links to websites are intended for the exclusive use of the addressee(s) and may contain confidential or privileged information. If you are not the intended recipient, or the person responsible for delivering this communication to the intended recipient, be advised you have received this communication in error and that any use, dissemination, forwarding, printing or copying is strictly prohibited. Please notify the sender immediately and destroy all copies of this communication and any attachments.

Attachment 5

July 27, 2018

VIA ELECTRONIC MAIL

Rural Health Care Division
Universal Service Administrative Company
Attention: Letter of Appeal
700 12th Street, NW, Suite 900
Washington, DC

**Re: 5/31/18 Notification of Commitment Adjustment Letter: Funding Request
Number 1690091, FCC Registration Number 0014835128**

To Rural Health Care Appeals:

General Communication, Inc. (“GCI”)¹ hereby appeals the Universal Service Administration Company Rural Health Care Division’s (“RHCD”) Commitment Adjustment Letter for certain services provided by GCI in Alaska.² Specifically, as reflected in Attachment 1, RHCD denied funding for services provided to White Mountain Clinic—a Healthcare Provider (“HCP”) located in the inland village of White Mountain on the Seward Peninsula—on the basis that the HCP committed a rule violation by submitting a Form 467 reflecting a Date of Disconnection later than the Funding End Date on the corresponding Funding Commitment Letter (“FCL”).³ According to the Notification of Commitment Adjustment Letter, this “result[ed] in the disbursement of an additional sixty-nine days of unapproved funding.”⁴

But RHCD’s conclusion that “unapproved funding” was disbursed is incorrect. Significantly, RHCD issued *two* FCLs covering GCI’s services to NSHC for the relevant period.⁵ Those two letters must be viewed together, and together they committed *more* funding than NSHC ultimately sought in its Form 467s. In other words, as further set forth below, the total amount disbursed was significantly *less* than the approved amount for the period at issue.

GCI accordingly requests that RHCD adjust the service dates of the relevant FCLs to reflect the services actually provided, or, in the alternative, that RHCD grant a waiver of its Form 467

¹ GCI’s Service Provider Identification Number is 143001199.

² See Attachment 1 (“5/31/2018 Notification of Commitment Adjustment Letter”).

³ White Mountain Clinic (HCP 10686) is among the health services provided by the Norton Sound Health Corporation, and is hereafter referred to as “NSHC” in this letter.

⁴ *Id.* (final page, unnumbered).

⁵ See Attachment 2 (FCL for FRN 1690091) and Attachment 3 (FCL for FRN 1690548).

instructions to permit a Date of Disconnection later than the Funding End Date for the FCL that was the subject of RHCD's Funding Commitment Adjustment.

Background

Like other recent GCI appeals,⁶ this Letter of Appeal reflects the practical reality that because of climate, weather, and other considerations specific to Alaska—including the often very isolated locations of HCPs in the state—it is not always possible to determine in advance precisely when new services will be installed. In such situations, HCPs will often seek to separate FCLs, one for the old service and one for the to-be-upgraded service. Unfortunately, the HCP can only estimate the upgrade date. That estimate may be incorrect. GCI often has little choice but to continue to provide services even after the Funding End Date of the initial FCL, pending the installation of new services that are the subject of a subsequent FCL. As RHCD is aware, however, once an FCL has issued, RHCD's rules do not contemplate a specific method for revising its service dates to accurately reflect the services provided.

As relevant here, GCI provided services to NSHC at the White Mountain Clinic from July 1, 2016 until June 30, 2017. These services were the subject of two FRNs—1690091 and 16905481—which, as noted above, resulted in two FCLs. The first—with a Funding Start Date of July 1, 2016 and a Funding End Date of December 31, 2016—provided a Committed Funding Amount of \$336,848.33.⁷ The second—with a Funding Start Date of January 1, 2017 and a Funding End Date of June 30, 2017—provided a Committed Funding Amount of \$461,816.70.⁸ The total Committed Funding Amount for the entire period from July 1, 2016 to June 30, 2017 was thus \$798,665.03.

As these figures demonstrate, the monthly funding commitment under the second FCL was higher than under the first FCL—approximately \$56,000/mth versus approximately \$77,000/mth. That is because the data services to be provided under the second FCL (10 Mbps Terra, 5 Mbps Satellite) were more expensive than under the first FCL (15 Mbps Satellite).⁹

The transition from the less to the more costly service did not, however, take place as expected on December 31, 2016, but rather on March 11, 2017.¹⁰ GCI thus continued to provide the less expensive service until March 10, 2017. As a result, when APAI submitted its Form 467 in

⁶ See, e.g., Attachment 4, letter from Jeffrey Mitchell, Lukas La Faria Gutierrez & Sachs LLP, to Rural Health Care Division (Nov. 20, 2017) (appealing a number of denials of requests to submit Form 467s with corrected service dates) ("11/20/17 GCI Appeal").

⁷ See Attachment 2 (FCL for FRN 1690091).

⁸ See Attachment 3 (FCL for FRN 1690548).

⁹ See Attachments 2 & 3.

¹⁰ See Attachment 5, 04/25/2017 email from Jennifer Bachman to Bobby Piscoya, copy to Ariel Burr (indicating start date of new service (10 Mbps Terra, 5 Mbps Satellite) of 03/11/2017 at White Mountain Clinic).

connection with the first of the two FCLs, it accurately reported the Date of Disconnection as March 10, 2017.¹¹ This resulted in a total disbursement under the first FCL—in connection with services from July 1, 2016 until March 10, 2017—of \$467,241.19.¹²

APAI's second Form 467 covered the period from March 11, 2017 until the Date of Disconnection of June 30, 2017.¹³ This resulted in a disbursement of \$283,048.99 for this second time period.¹⁴ The total disbursement for the entire time period covered by the two FCLs was thus \$750,290.18. This total disbursement was \$48,374.85 *less* than the Total Adjusted Funding Commitment for this period.

As noted above, RHCD issued a Notification of Commitment Adjustment Letter on June 31, 2018. That letter sought recovery of \$130,392.86 from St. George Traditional Clinic on the ground that the Date of Disconnection was later than the Funding End Date on the corresponding FCL. According to the Funding Commitment Adjustment Report, that amount represented “disbursement of an additional sixty-nine days of unapproved funding.”¹⁵

Request for Relief

GCI requests that RHCD adjust the service dates of the two FCLs at issue here to reflect the services actually provided and correspond with the dates in the Form 467 certifications. If RHCD determines that it cannot make those adjustments, GCI requests that RHCD grant a waiver of its Form 467 instructions to permit a Date of Disconnection later than the Funding End Date for the FCL that was the subject of RHCD's Funding Commitment Adjustment.

As RHCD is aware, applicants seeking uninterrupted service while also desiring to modify or upgrade their service during the course of a funding year face a practical problem—what date to provide for the end of the old service and the beginning of the new one. As GCI has noted in discussions with RHCD staff and in filings,¹⁶ it simply is not always possible to determine with certainty when new services will be able to be installed in rural Alaska, given the unique challenges of providing services there.

Until recently—prior to FY 2016—applicants seeking uninterrupted services could address upgrade situations by obtaining two funding commitments and providing tentative start/end dates reflecting approximately when the upgraded services would be available. To take account of uncertainty, the funding commitments might overlap—the old service would be funding beyond the estimated start date, to provide flexibility in case installation of the new service was delayed.

¹¹ See Attachment 6 (Form 467 for FRN 1690091).

¹² See Attachment 7 (“HCP Support Schedule for FRN 1690091”).

¹³ See Attachment 8 (Form 467 for FRN 1690458).

¹⁴ See Attachment 9 (“HCP Support Schedule for FRN 1690548”).

¹⁵ See Attachment 1 (final page, unnumbered).

¹⁶ See, e.g., 11/20/17 GCI Appeal at 1.

Beginning in FY 2016, however, RCD sought to eliminate such overlaps, requiring applicants to choose non-overlapping start and end dates.

The result, unfortunately, is the kind of situation presented here. Specifically, cases like this transform administrative, essentially clerical, problems into real-world financial hardships. That serves no purpose. From a big-picture perspective, the delay in installing new services here not only did not cost the Rural Health Care Program anything—it actually saved the program over \$50,000 because the old services were less costly than the new ones. Yet the Funding Commitment Adjustment from which GCI appeals here took an additional \$130,392.86 back from the White Mountain Clinic.

It simply does not make sense for RHCD to allow its administrative processes to become practical impediments to the goals of the Program. The Commission has repeatedly recognized this fact, directing RHCD in the past to revise its processes when they sacrificed the substantive goals of the Program to administrative “efficiency.”¹⁷

The administrative problem presented by this appeal is amenable to a clerical “fix” with just a few keystrokes. Again, GCI believes that the most straightforward solution is for RCHP to simply amend the FCLs at issue here to reflect the correct dates for the services actually provided, and to make corresponding adjustments to the underlying funding commitments. But as also noted above, in the alternative, RHCD has authority to grant a waiver of its own Form 467 instructions to permit a Date of Disconnection later than the Funding End Date for the FCL that was the subject of RHCD’s Funding Commitment Adjustment.

Respectfully submitted,



Timothy J. Simeone

tsimeone@hwglaw.com

202-730-1332

Counsel for General Communications, Inc.

¹⁷ See, e.g., *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, Federal-State Joint Board on Universal Service, Sixth Order on Reconsideration in CC Docket No. 97-21 and Fifteenth Order on Reconsideration in CC Docket No. 96-45, 14 FCC Rcd 18756, ¶ 59 (1999) (finding that administrative difficulties are not so great as to justify barring applicants from adding new entities to existing contracts by submitting a new Form 465); *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket Nos. 96-45, 02-6, WC Docket Nos. 02-60, 06-122, DA 14-1526, 6-7 (2014) (granting appeals of applicants where RHCD had refused to process mid-year service upgrades).

July 27, 2018

VIA ELECTRONIC MAIL

Rural Health Care Division
Universal Service Administrative Company
Attention: Letter of Appeal
700 12th Street, NW, Suite 900
Washington, DC

**Re: 5/31/18 Notification of Commitment Adjustment Letter: Funding Request
Number 1694661, FCC Registration Number 0014767388**

To Rural Health Care Appeals:

General Communication, Inc. (“GCI”)¹ hereby appeals the Universal Service Administration Company Rural Health Care Division’s (“RHCD”) denial of funding for certain services provided by GCI in Alaska.² Specifically, as reflected in Attachment 1, RHCD denied funding for services provided to St. George Traditional Clinic—a Healthcare Provider (“HCP”) located in the remote Pribilof Islands—on the basis that the HCP committed a rule violation by submitting a Form 467 reflecting a Date of Disconnection later than the Funding End Date on the corresponding Funding Commitment Letter (“FCL”).³ According to the Notification of Commitment Adjustment Letter, this “result[ed] in the disbursement of an additional 149 days of unapproved funding.”⁴

But RHCD’s conclusion that “unapproved funding” was disbursed is incorrect. Significantly, RHCD issued *two* FCLs covering GCI’s services to APIA for the relevant period.⁵ Those two letters must be viewed together, and together they committed far *more* funding than APIA ultimately sought in its Form 467s. In other words, as further set forth below, the total amount disbursed was far less than the approved amount for the period at issue.

GCI accordingly requests that RHCD adjust the service dates of the relevant FCLs to reflect the services actually provided, or, in the alternative, that RHCD grant a waiver of its Form 467

¹ GCI’s Service Provider Identification Number is 143001199.

² See Attachment 1 (“Notification of Commitment Adjustment Letter,” issued 5/31/2018).

³ St. George Traditional Clinic (HCP 11608) is among the tribal health services provided by the Aleutian Pribilof Islands Association, Inc. (“APIA”), and is hereafter referred to as “APIA” in this letter.

⁴ Notification of Commitment Adjustment Letter (final page, unnumbered).

⁵ See Attachment 2 (FCL for FRN 1694661) and Attachment 3 (FCL for FRN 1694673).

instructions to permit a Date of Disconnection later than the Funding End Date for the FCL that was the subject of RHCD's Funding Commitment Adjustment.

Background

Like other recent GCI appeals,⁶ this Letter of Appeal reflects the practical reality that because of climate, weather, and other considerations specific to Alaska—including the often very isolated locations of HCPs in the state—it is not always possible to determine in advance precisely when new services will be installed. In such situations, HCPs will often seek to separate FCLs, one for the old service and one for the to-be-upgraded service. Unfortunately, the HCP can only estimate the upgrade date. That estimate may be incorrect. GCI often has little choice but to continue to provide services even after the Funding End Date of the initial FCL, pending the installation of new services that are the subject of a subsequent FCL. As RHCD is aware, however, once an FCL has issued, RHCD's rules do not contemplate a specific method for revising its service dates to accurately reflect the services provided. In this instance, APIA and GCI contacted RHCD to seek assistance with the change, and even RHCD recognized the limitations of the current system.⁷

As relevant here, GCI provided services to APIA at the St. George Traditional Clinic from July 29, 2016 until June 30, 2017. These services were the subject of two FRNs—1694661 and 1694673—which, as noted above, resulted in two FCLs. The first—with a Funding Start Date of July 29, 2016 and a Funding End Date of November 30, 2016—provided a Committed Funding Amount of \$44, 618.21.⁸ The second—with a Funding Start Date of December 1, 2016 and a Funding End Date of June 30, 2017—provided a Committed Funding Amount of \$263,061.84.⁹ The total Committed Funding Amount for the entire period from July 29, 2016 to June 30, 2017 was thus \$307,680.05.

As these figures demonstrate, the monthly funding commitment under the second FCL was considerably higher than under the first FCL—approximately \$35,000/mth versus approximately \$11,000/mth. That is because the services to be provided under the second FCL had much

⁶ See, e.g., letter from Jeffrey Mitchell, Lukas La Faria Gutierrez & Sachs LLP, to Rural Health Care Division (Nov. 20, 2017) (appealing a number of denials of requests to submit Form 467s with corrected service dates) (“11/20/17 GCI Appeal”) (Attachment 4).

⁷ See, e.g., email from Ariel Burr to Bernie Manns, copy to Joe Furrer, Jennifer Bachman, Robert Taylor, Christina Hensley (November 15, 2016) (noting that logistics issues resulted in installation date changes) (Attachment 5); email from Bernie Manns to Joe Furrer, copy to Ariel Burr, Jennifer Bachman, Robert Taylor, Christina Hensley (November 28, 2016) (indicating that withdrawing Form 467s would “in essence cancel[] the commitment request” rather than resulting in a change to the funding dates on the FCL) (Attachment 6).

⁸ See Attachment 2 (FCL for FRN 1694661).

⁹ See Attachment 3 (FCL for FRN 1694673).

higher bandwidth (10 Mbps) than under the first FCL (3 Mbps), and were therefore more expensive.¹⁰

The transition from the less to the more costly service did not, however, take place as expected on December 1, 2016, but rather four months later on April 28, 2017.¹¹ GCI thus continued to provide the less expensive service until that later date. As a result, when APAI submitted its Form 467 in connection with the first of the two FCLs, it accurately reported the Date of Disconnection as April 28, 2017.¹² This resulted in a total disbursement under the first FCL—in connection with services from July 29, 2016 until April 28, 2017—of \$98,347.44.

APAI's second Form 467 covered the period from April 29, 2017 until the Date of Disconnection of June 30, 2017.¹³ This resulted in a disbursement of \$77,666.00 for this second time period. The total disbursement for the entire time period covered by the two FCLs was thus \$176,013.44. This total disbursement was \$131,666.61 *less* than the total Committed Funding Amount for this period.

As noted above, RHCD issued a Notification of Commitment Adjustment Letter on June 31, 2018. That letter sought recovery of \$53,729.23 from St. George Traditional Clinic on the ground that the Date of Disconnection was later than the Funding End Date on the corresponding FCL.

Request for Relief

GCI requests that RHCD adjust the service dates of the two FCLs at issue here to reflect the services actually provided and to correspond with the dates in the Form 467 certifications. If RHCD determines that it cannot make those adjustments, GCI requests that RHCD grant a waiver of its Form 467 instructions to permit a Date of Disconnection later than the Funding End Date for the FCL that was the subject of the challenged Funding Commitment Adjustment.

As RHCD is aware, applicants seeking uninterrupted service while also desiring to modify or upgrade their service during the course of a funding year face a practical problem—what date to provide for the end of the old service and the beginning of the new one. As GCI has noted in discussions with RHCD staff and in filings,¹⁴ it simply is not always possible to determine with

¹⁰ See Attachment 2 (FCL for FRN 1694661) (3 Mbps service to be provided from July 29, 2016 to November 30, 2016); Attachment 3 (FCL for FRN 1694673) (10 Mbps service to be provided from December 1, 2016 to June 30, 2017).

¹¹ See 06/02/2016 Customer Acceptance Form (indicating installation date of 04/28/2017 for 10 Mbps MPLS at St. George Traditional Clinic) (Attachment 7).

¹² See Attachment 8 (HCP Support Schedule for FRN 1694661).

¹³ See Attachment 9 (HCP Support Schedule for FRN 1694673).

¹⁴ See, e.g., Attachment 4 (11/20/17 GCI Appeal at 1).

certainty when new services will be able to be installed in rural Alaska, given the unique challenges of providing services there.

Until recently—prior to FY 2016—applicants seeking uninterrupted services could address upgrade situations by obtaining two funding commitments and providing tentative start/end dates reflecting approximately when the upgraded services would be available. To take account of uncertainty, the funding commitments might overlap—the old service would be funding beyond the estimated start date, to provide flexibility in case installation of the new service was delayed. Beginning in FY 2016, however, RCD sought to eliminate such overlaps, requiring applicants to choose non-overlapping start and end dates.

The result, unfortunately, is the kind of situation presented here. Specifically, cases like this transform administrative, essentially clerical, problems into real-world financial hardships. That serves no purpose. From a big-picture perspective, the delay in installing new services here not only did not cost the Rural Health Care Program anything—it actually saved the program well over \$100,000 because the old services were less costly than the new ones. Yet the Funding Commitment Adjustment from which GCI appeals here took an additional \$53,739.23 back from the St. George Traditional Clinic.

It simply does not make sense for RHCD to allow its administrative processes to become practical impediments to the goals of the Program. The Commission has repeatedly recognized this fact, directing RHCD in the past to revise its processes when they sacrificed the substantive goals of the Program to administrative “efficiency.”¹⁵

The administrative problem presented by this appeal is amenable to a clerical “fix” with just a few keystrokes. Again, GCI believes that the most straightforward solution is for RCHP to simply amend the FCLs at issue here to reflect the correct dates for the services actually provided, and to make corresponding adjustments to the underlying funding commitments. But as also noted above, in the alternative, RHCD has authority to grant a waiver of its own Form 467 instructions to permit a Date of Disconnection later than the Funding End Date for the FCL that was the subject of RHCD’s Funding Commitment Adjustment.

¹⁵ See, e.g., *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, Federal-State Joint Board on Universal Service, Sixth Order on Reconsideration in CC Docket No. 97-21 and Fifteenth Order on Reconsideration in CC Docket No. 96-45, 14 FCC Rcd 18756, ¶ 59 (1999) (finding that administrative difficulties were not so great as to justify barring applicants from adding new entities to existing contracts by submitting a new Form 465); *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket Nos. 96-45, 02-6, WC Docket Nos. 02-60, 06-122, DA 14-1526, 6-7 (2014) (granting appeals of applicants where RHCD had refused to process mid-year service upgrades).

Rural Health Care Division, USAC

July __, 2018

Page 5 of 5

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'TJS', is positioned above a horizontal line.

Timothy J. Simeone

tsimeone@hwglaw.com

202-730-1332

Counsel for General Communications, Inc.

July 27, 2018

VIA ELECTRONIC MAIL

Rural Health Care Division
Universal Service Administrative Company
Attention: Letter of Appeal
700 12th Street, NW, Suite 900
Washington, DC

**Re: 5/31/18 Notification of Commitment Adjustment Letter: Funding Request
Number 1694664, FCC Registration Number 43163914**

To Rural Health Care Appeals:

General Communication, Inc. (“GCI”)¹ hereby appeals the Universal Service Administration Company Rural Health Care Division’s (“RHCD”) denial of funding for certain services provided by GCI in Alaska.² Specifically, as reflected in Attachment 1, RHCD denied funding for services provided to Atka Clinic—a Healthcare Provider (“HCP”) located in the remote Andreanof Islands—on the basis that the HCP committed a rule violation by submitting a Form 467 reflecting a Date of Disconnection later than the Funding End Date on the corresponding Funding Commitment Letter (“FCL”).³ According to the Notification of Commitment Adjustment Letter, this “result[ed] in the disbursement of an additional 142 days of unapproved funding.”⁴

But RHCD’s conclusion that “unapproved funding” was disbursed is incorrect. Significantly, RHCD issued *two* FCLs covering GCI’s services to APIA for the relevant period.⁵ Those two letters must be viewed together, and together they committed far *more* funding than APIA ultimately sought in its Form 467s. In other words, as further set forth below, the total amount disbursed was far less than the approved amount for the period at issue.

GCI accordingly requests that RHCD adjust the service dates of the relevant FCLs to reflect the services actually provided, or, in the alternative, that RHCD grant a waiver of its Form 467 instructions to permit a Date of Disconnection later than the Funding End Date for the FCL that was the subject of RHCD’s Funding Commitment Adjustment.

¹ GCI’s Service Provider Identification Number is 143001199.

² See Attachment 1 (“Notification of Commitment Adjustment Letter,” issued 5/31/2018).

³ Atka Clinic (HCP 10759) is among the tribal health services provided by the Aleutian Pribilof Islands Association, Inc. (“APIA”), and is hereafter referred to as “APIA” in this letter.

⁴ Notification of Commitment Adjustment Letter (final page, unnumbered).

⁵ See Attachment 2 (FCL for FRN 1694664) and Attachment 3 (FCL for FRN 1694665).

Background

Like other recent GCI appeals,⁶ this Letter of Appeal reflects the practical reality that because of climate, weather, and other considerations specific to Alaska—including the often very isolated locations of HCPs in the state—it is not always possible to determine in advance precisely when new services will be installed. In such situations, HCPs will often seek to separate FCLs, one for the old service and one for the to-be-upgraded service. Unfortunately, the HCP can only estimate the upgrade date. That estimate may be incorrect. GCI often has little choice but to continue to provide services even after the Funding End Date of the initial FCL, pending the installation of new services that are the subject of a subsequent FCL. As RHCD is aware, however, once an FCL has issued, RHCD's rules do not contemplate a specific method for revising its service dates to accurately reflect the services provided.

As relevant here, GCI provided services to APIA at the Atka Clinic from July 29, 2016 until June 30, 2017. These services were the subject of two FRNs—1694664 and 1694665—which, as noted above, resulted in two FCLs. The first—with a Funding Start Date of July 29, 2016 and a Funding End Date of November 30, 2016—provided a Committed Funding Amount of \$44,618.21.⁷ The second—with a Funding Start Date of December 1, 2016 and a Funding End Date of June 30, 2017—provided a Committed Funding Amount of \$261,021.60.⁸ The total Committed Funding Amount for the entire period from July 29, 2016 to June 30, 2017 was thus \$305,639.81.

As these figures demonstrate, the monthly funding commitment under the second FCL was considerably higher than under the first FCL—approximately \$35,000/mth versus approximately \$11,000/mth. That is because the services to be provided under the second FCL had much higher bandwidth (10 Mbps) than under the first FCL (3 Mbps), and were therefore more expensive.⁹

The transition from the less to the more costly service did not, however, take place as expected on December 1, 2016, but rather four months later on April 21, 2017.¹⁰ GCI thus continued to provide the less expensive service until that later date. As a result, when APAI submitted its

⁶ See, e.g., letter from Jeffrey Mitchell, Lukas La Faria Gutierrez & Sachs LLP, to Rural Health Care Division (Nov. 20, 2017) (appealing a number of denials of requests to submit Form 467s with corrected service dates) (“11/20/17 GCI Appeal”) (Attachment 4).

⁷ See Attachment 2 (FCL for FRN 1694664).

⁸ See Attachment 3 (FCL for FRN 1694665).

⁹ See Attachment 2 (FCL for FRN 1694664) (3 Mbps service to be provided from July 29, 2016 to November 30, 2016); Attachment 3 (FCL for FRN 1694665) (10 Mbps service to be provided from December 1, 2016 to June 30, 2017).

¹⁰ See 06/02/2016 Customer Acceptance Form (indicating installation date of 04/21/2017 for 10 Mbps MPLS at Atka Clinic) (Attachment 5).

Form 467 in connection with the first of the two FCLs, it accurately reported the Date of Disconnection as April 21, 2017.¹¹ This resulted in a total disbursement under the first FCL—in connection with services from July 29, 2016 until April 21, 2017—of \$95,806.23.

APAI's second Form 467 covered the period from April 29, 2017 until the Date of Disconnection of June 30, 2017.¹² This resulted in a disbursement of \$85,764.24 for this second time period. The total disbursement for the entire time period covered by the two FCLs was thus \$181,570.47. This total disbursement was \$124,069.37 *less* than the total Committed Funding Amount for this period.

As noted above, RHCD issued a Notification of Commitment Adjustment Letter on June 31, 2018. That letter sought recovery of \$51,188.02 from Atka Clinic on the ground that the Date of Disconnection was later than the Funding End Date on the corresponding FCL.

Request for Relief

GCI requests that RHCD adjust the service dates of the two FCLs at issue here to reflect the services actually provided and to correspond with the dates in the Form 467 certifications. If RHCD determines that it cannot make those adjustments, GCI requests that RHCD grant a waiver of its Form 467 instructions to permit a Date of Disconnection later than the Funding End Date for the FCL that was the subject of the challenged Funding Commitment Adjustment.

As RHCD is aware, applicants seeking uninterrupted service while also desiring to modify or upgrade their service during the course of a funding year face a practical problem—what date to provide for the end of the old service and the beginning of the new one. As GCI has noted in discussions with RHCD staff and in filings,¹³ it simply is not always possible to determine with certainty when new services will be able to be installed in rural Alaska, given the unique challenges of providing services there.

Until recently—prior to FY 2016—applicants seeking uninterrupted services could address upgrade situations by obtaining two funding commitments and providing tentative start/end dates reflecting approximately when the upgraded services would be available. To take account of uncertainty, the funding commitments might overlap—the old service would be funding beyond the estimated start date, to provide flexibility in case installation of the new service was delayed. Beginning in FY 2016, however, RCD sought to eliminate such overlaps, requiring applicants to choose non-overlapping start and end dates.

The result, unfortunately, is the kind of situation presented here. Specifically, cases like this transform administrative, essentially clerical, problems into real-world financial hardships. That serves no purpose. From a big-picture perspective, the delay in installing new services here not

¹¹ See Attachment 6 (HCP Support Schedule for FRN 1694664).

¹² See Attachment 7 (HCP Support Schedule for FRN 1694665).

¹³ See, e.g., Attachment 4 (11/20/17 GCI Appeal at 1).

only did not cost the Rural Health Care Program anything—it actually saved the program well over \$100,000 because the old services were less costly than the new ones. Yet the Funding Commitment Adjustment from which GCI appeals here took an additional \$53,739.23 back from the Atka Clinic.

It simply does not make sense for RHCD to allow its administrative processes to become practical impediments to the goals of the Program. The Commission has repeatedly recognized this fact, directing RHCD in the past to revise its processes when they sacrificed the substantive goals of the Program to administrative “efficiency.”¹⁴

The administrative problem presented by this appeal is amenable to a clerical “fix” with just a few keystrokes. Again, GCI believes that the most straightforward solution is for RCHP to simply amend the FCLs at issue here to reflect the correct dates for the services actually provided, and to make corresponding adjustments to the underlying funding commitments. But as also noted above, in the alternative, RHCD has authority to grant a waiver of its own Form 467 instructions to permit a Date of Disconnection later than the Funding End Date for the FCL that was the subject of RHCD’s Funding Commitment Adjustment.

Respectfully submitted,



Timothy J. Simeone
tsimeone@hwglaw.com
202-730-1332

Counsel for General Communications, Inc.

¹⁴ See, e.g., *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, Federal-State Joint Board on Universal Service, Sixth Order on Reconsideration in CC Docket No. 97-21 and Fifteenth Order on Reconsideration in CC Docket No. 96-45, 14 FCC Rcd 18756, ¶ 59 (1999) (finding that administrative difficulties were not so great as to justify barring applicants from adding new entities to existing contracts by submitting a new Form 465); *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket Nos. 96-45, 02-6, WC Docket Nos. 02-60, 06-122, DA 14-1526, 6-7 (2014) (granting appeals of applicants where RHCD had refused to process mid-year service upgrades).

Attachment 6

From: Bobby A. Piscoya
To: [Jennifer Bachman](#)
Cc: [Ariel Burr](#)
Subject: RE: 467s Norton Sound
Date: Wednesday, April 26, 2017 1:05:36 PM
Attachments: [image002.jpg](#)

[External Email]

Jennifer,

So I can just process the 467's as they are with the exception of the below correct? As the dates and dollar amount are correct for all others?

Bobby Piscoya

From: Jennifer Bachman [REDACTED]
Sent: Tuesday, April 25, 2017 10:47 AM
To: Bobby A. Piscoya [REDACTED]
Cc: Ariel Burr [REDACTED]
Subject: 467s Norton Sound

Hi Bobby,

When you are ready you may start completing most of your 467s, but please be very careful with dates and dollar amounts. Once they are completed it is very difficult to change. Please make sure you change the dates on the following:

10674	Elim Clinic	15 Mbps Satellite Service	16896371	End Date 3/10/17
10674	Elim Clinic	15 Mbps (10 Mbps Terra, 5 Mbps Satellite)	16905431	Start Date 3/11/2017
10676	Golovin Clinic	15 Mbps Satellite Service	16896431	End Date 3/10/17
10676	Golovin Clinic	15 Mbps (10 Mbps Terra, 5 Mbps Satellite)	16905441	Start Date 3/11/2017
10686	White Mountain Clinic	15 Mbps Satellite Service	16900911	End Date 3/10/17
10686	White Mountain Clinic	15 Mbps (10 Mbps Terra, 5 Mbps Satellite)	16905481	Start Date 3/11/2017

Do not complete Koyuk, Saint Michael, or Stebbins until we have a firm installation date.

10677	Koyuk Clinic	15 Mbps Satellite Service	16901441	Wait
10677	Koyuk Clinic	15 Mbps (10 Mbps Terra, 5 Mbps Satellite)	16905451	Wait
10678	Saint Michael Clinic	15 Mbps Satellite Service	16896451	Wait
10678	Saint Michael Clinic	15 Mbps (10 Mbps Terra, 5 Mbps Satellite)	16905461	Wait
10682	Stebbins Clinic	15 Mbps Satellite Service	16900651	Wait
10682	Stebbins Clinic	15 Mbps (10 Mbps Terra, 5 Mbps Satellite)	16905471	Wait

I also attached the billing analysis for Norton Sound. I have entered the forecasted billing for May. This will not disburse until 31, May, 2017. Call me if you have questions on any 467s that you are completing.

Thank you,

Jennifer Bachman

USF Account Administrator



***The information provided herein is believed to be reliable, however no warranty express or implied is made by GCI regarding its accuracy or completeness. GCI shall not be liable for the use of the information in or attached to this email. The data pertains only to GCI services and is provided for your information only and not as a substitute for actual GCI billing data, other official data, or support program instructions available to the addressee.

Attachment 7

From: Ariel Burr
To: [Jennifer Bachman](#)
Subject: FW: RHC Telecommunications Program - HCP Support Schedule - HCP # 10677 - FRN 16901441
Date: Monday, July 17, 2017 6:10:14 PM

From: rhc-assist@usac.org
Sent: Monday, July 17, 2017 2:10:02 PM (UTC-09:00) Alaska
To: Ariel Burr
Subject: RHC Telecommunications Program - HCP Support Schedule - HCP # 10677 - FRN 16901441

[External Email]

Date: 17-Jul-2017
Program: Telecommunications Program
Funding Year: 2016
Health Care Provider (HCP) Name: Koyuk Clinic
HCP Number: 10677
Funding Request Number (FRN): 16901441
FCC Form 465 Application Number: 43160007

The Universal Service Administrative Company (USAC)'s Rural Health Care (RHC) Program received the FCC Form 467 (Connection Certification Form) submitted for the above-referenced FRN. Based on the information provided on the form, a Health Care Provider Support Schedule (HSS) is attached.

This HSS has been sent to all account holders and the service provider listed on the FCC Form 498:

Service Provider Name: GCI Communication Corp
SPIN/498 ID: 143001199
HCP Entered Billing Account Number: RH000220008
Service Type: Satellite Service
Bandwidth: 15 Mbps

Funding Start Date:	01-Jul-2016
Funding End Date:	30-Jun-2017
Non-Recurring Funding:	\$0.00
Monthly Recurring Funding:	\$60,675.00

The first and last month's monthly recurring funding may be prorated depending on the number of days the service was in place for those months. Approved non-recurring funding will be included in the first month's funding

Approved Funding Details

Date	Total Funding Amount	Committed Funding Amount*
Jul 2016	\$60,675.00	\$56,141.39
Aug 2016	\$60,675.00	\$56,141.39
Sep 2016	\$60,675.00	\$56,141.39
Oct 2016	\$60,675.00	\$56,141.39
Nov 2016	\$60,675.00	\$56,141.39
Dec 2016	\$60,675.00	\$56,141.39
Jan 2017	\$60,675.00	\$56,141.39
Feb 2017	\$60,675.00	\$56,141.39
Mar 2017	\$60,675.00	\$56,141.39
Apr 2017	\$60,675.00	\$56,141.39
May 2017	\$60,675.00	\$56,141.39
Jun 2017	\$60,675.00	\$56,141.39
Total	\$728,100.00	\$673,696.66

The pro-rata factor for this filing window period is 92.52804%*

*This form was submitted during the FY2016 Filing Window 2 period. All qualifying requests (i.e., FCC Forms 466) submitted by the close of the filing window period are guaranteed to receive at least a percentage of the funding requested. For each filing window period, if the total demand for RHC Program funding exceeds the total remaining funding available for the funding year, USAC will apply a pro-rata factor to each funding request.

It is the HCP's responsibility to review the information in this HSS. Contact the RHC Program Help Desk at RHC-Assist@usac.org immediately if, at any time, the supported services are not being provided to the HCP or the HCP is not otherwise receiving the approved support.

The HCP entered Billing Account Number, certifications, and all other information provided on FCC Forms 465, 466, and 467 may be subject to audit by USAC and the FCC.¹ HCPs are subject to audits and other reviews that USAC and/or the FCC may undertake to ensure that the universal service support is used in compliance with FCC program rules. If the funded service(s) is not used in compliance with program rules, program participants will be subject to enforcement activities and other means of recourse by USAC and other appropriate federal, state, and local authorities.

For More Information

Please do not reply directly to this email, as emails to this account will not be delivered to the RHC Program team. For questions or assistance, contact the Rural Health Care Program Help Desk at (800)-453-1546 or by email at RHC-Assist@usac.org.

For more information about the Telecommunications Program application process, refer to the Telecom Program Process Overview web page at <http://www.usac.org/rhc/telecommunications/process-overview/default.aspx>.

For more information about invoices, visit <http://www.usac.org/rhc/telecommunications/service-providers/step06/default.aspx>.

For more information about the HCP Support Schedule, visit
<http://www.usac.org/rhc/telecommunications/service-providers/step05>.

The primary account holder will be copied on this and all correspondence from USAC related to this HCP.

¹47 C.F.R. 54.619(d).

Attachment 8

From: Ariel Burr
To: [Jennifer Bachman](#)
Subject: FW: RHC Telecommunications Program - HCP Support Schedule - HCP # 10677 - FRN 16905451
Date: Thursday, June 29, 2017 2:10:17 PM

From: rhc-assist@usac.org
Sent: Thursday, June 29, 2017 10:10:06 AM (UTC-09:00) Alaska
To: Ariel Burr
Subject: RHC Telecommunications Program - HCP Support Schedule - HCP # 10677 - FRN 16905451

[External Email]

Date: 29-Jun-2017
Program: Telecommunications Program
Funding Year: 2016
Health Care Provider (HCP) Name: Koyuk Clinic
HCP Number: 10677
Funding Request Number (FRN): 16905451
FCC Form 465 Application Number: 43160007

The Universal Service Administrative Company (USAC)'s Rural Health Care (RHC) Program received the FCC Form 467 (Connection Certification Form) submitted for the above-referenced FRN. Based on the information provided on the form, a Health Care Provider Support Schedule (HSS) is attached.

This HSS has been sent to all account holders and the service provider listed on the FCC Form 498:

Service Provider Name: GCI Communication Corp
SPIN/498 ID: 143001199
HCP Entered Billing Account Number: RH000220008
Service Type: MPLS
Bandwidth: 15 Mbps

Funding Start Date:	
Funding End Date:	
Non-Recurring Funding:	\$0.00
Monthly Recurring Funding:	\$0.00

The first and last month's monthly recurring funding may be prorated depending on the number of days the service was in place for those months. Approved non-recurring funding will be included in the first month's funding

Approved Funding Details

Date	Total Funding Amount	Committed Funding Amount*
Total	\$0.00	\$0.00

The pro-rata factor for this filing window period is 92.52804%*

*This form was submitted during the FY2016 Filing Window 2 period. All qualifying requests (i.e., FCC Forms 466) submitted by the close of the filing window period are guaranteed to receive at least a percentage of the funding requested. For each filing window period, if the total demand for RHC Program funding exceeds the total remaining funding available for the funding year, USAC will apply a pro-rata factor to each funding request.

It is the HCP's responsibility to review the information in this HSS. Contact the RHC Program Help Desk at RHC-Assist@usac.org immediately if, at any time, the supported services are not being provided to the HCP or the HCP is not otherwise receiving the approved support.

The HCP entered Billing Account Number, certifications, and all other information provided on FCC Forms 465, 466, and 467 may be subject to audit by USAC and the FCC.¹ HCPs are subject to audits and other reviews that USAC and/or the FCC may undertake to ensure that the universal service support is used in compliance with FCC program rules. If the funded service(s) is not used in compliance with program rules, program participants will be subject to enforcement activities and other means of recourse by USAC and other appropriate federal, state, and local authorities.

For More Information

Please do not reply directly to this email, as emails to this account will not be delivered to the RHC Program team. For questions or assistance, contact the Rural Health Care Program Help Desk at (800)-453-1546 or by email at RHC-Assist@usac.org.

For more information about the Telecommunications Program application process, refer to the Telecom Program Process Overview web page at <http://www.usac.org/rhc/telecommunications/process-overview/default.aspx>.

For more information about invoices, visit <http://www.usac.org/rhc/telecommunications/service-providers/step06/default.aspx>.

For more information about the HCP Support Schedule, visit <http://www.usac.org/rhc/telecommunications/service-providers/step05>.

The primary account holder will be copied on this and all correspondence from USAC related to this HCP.

¹47 C.F.R. 54.619(d).

Attachment 9

From: [Bernie Manns](#)
To: [Jennifer Bachman](#); [RHC-Assist](#)
Cc: [Robert Taylor](#); [Joe Furrer](#); [Ariel Burr](#); [Johanna Darrough](#)
Subject: RE: Action Required - RHC Telecommunications Program - Submit Requested Information - FCC Form 466 HCP # 10992, FRN 1688624
Date: Thursday, October 20, 2016 10:56:40 AM
Attachments: [image001.png](#)

[External Email]

Yes, it will be adjusted to 9/30/16 to correspond with the anticipated install date of 10/1/16 of the 30M service on FRN 1690396. Once again the commitments are not finalized until the FCC Form 467 is received from the HCP and the HSS is produced.

Regards,

Bernie Manns

Senior Program Analyst | Rural Health Care
USAC

[REDACTED]

[REDACTED]

| www.usac.org

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From: Jennifer Bachman [REDACTED]
Sent: Thursday, October 20, 2016 12:22 PM
To: Bernie Manns; RHC-Assist
Cc: Robert Taylor; Joe Furrer; Ariel Burr; Johanna Darrough
Subject: FW: Action Required - RHC Telecommunications Program - Submit Requested Information - FCC Form 466 HCP # 10992, FRN 1688624

Bernie,

Will the end date be adjusted for FRN 1688624?

Thank you,

Jennifer Bachman
USF Account Administrator

[REDACTED]

[REDACTED]

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support program instructions available to the addressee.

From: Jennifer Bachman
Sent: Wednesday, October 19, 2016 11:42 AM
To: Bernie Manns; RHC-Assist
Cc: Johanna Darrough; Joe Furrer; Robert Taylor; Ariel Burr
Subject: RE: Action Required - RHC Telecommunications Program - Submit Requested Information - FCC Form 466 HCP # 10992, FRN 1688624

Okay I understand trying to budget the numbers. I just want to make sure that if services for the for 3 Mbps FRN 1688624, do not end until for example 11/1/2016 and the new service for 30 Mbps starts on 11/2/2016, but the 466 for FRN 1688624 shows funding end date if 09/30/2016 will this be adjusted on the 467? I think we are just worried about an end date of 9/30/2016 when the services for the 3 Mbps are still in service.

Thank you,

Jennifer Bachman
USF Account Administrator

[REDACTED]
[REDACTED]

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From: Bernie Manns [REDACTED]
Sent: Wednesday, October 19, 2016 11:26 AM
To: Jennifer Bachman; RHC-Assist
Cc: Johanna Darrough; Joe Furrer; Robert Taylor; Ariel Burr
Subject: RE: Action Required - RHC Telecommunications Program - Submit Requested Information - FCC Form 466 HCP # 10992, FRN 1688624

[External Email]

No, the old service would need to end the day prior to the anticipated start of the new service. This is to mitigate the illusion of duplicate funding as it relates to being able to track our progress towards the \$400 million cap. In the scenario you described below the old service and new service would both be counting against the estimated cap for the period of 10/1/16 – 6/30/17. No funding commitment is finalized without the agreement by the submitter, via their 467.

Regards,

Bernie Manns
Senior Program Analyst | Rural Health Care
USAC

[REDACTED]
[REDACTED] | www.usac.org

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From: Jennifer Bachman [REDACTED]
Sent: Wednesday, October 19, 2016 3:18 PM
To: Bernie Manns; RHC-Assist
Cc: Johanna Darrough; Joe Furrer; Robert Taylor; Ariel Burr
Subject: RE: Action Required - RHC Telecommunications Program - Submit Requested Information - FCC Form 466 HCP # 10992, FRN 1688624

So to be clear, ends dates for the old service remain at 06/30/2017 and the new service anticipated installation date remain at 10/1/2016, and the clinic should not complete 467s until both dates are firm.

Thank you,

Jennifer Bachman
USF Account Administrator
[REDACTED]
[REDACTED]

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From: Bernie Manns [REDACTED]
Sent: Wednesday, October 19, 2016 11:09 AM
To: Jennifer Bachman; RHC-Assist
Cc: Johanna Darrough; Joe Furrer; Robert Taylor; Ariel Burr
Subject: RE: Action Required - RHC Telecommunications Program - Submit Requested Information - FCC Form 466 HCP # 10992, FRN 1688624

[External Email]

Jennifer,

As long as the Form 467 is not submitted we can pull the form back into review and alter the funding period, once the firm dates are established.

Regards,

Bernie Manns

Senior Program Analyst | Rural Health Care
USAC

[REDACTED]

[REDACTED] | www.usac.org

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From: Jennifer Bachman [REDACTED]
Sent: Wednesday, October 19, 2016 2:35 PM
To: Bernie Manns; RHC-Assist
Cc: Johanna Darrough; Joe Furrer; Robert Taylor; Ariel Burr
Subject: RE: Action Required - RHC Telecommunications Program - Submit Requested Information - FCC Form 466 HCP # 10992, FRN 1688624
Importance: High

Hi Bernie,

Could you help us with this. To agree to an end date of 9/30/2016 for FRN 1688624 when the we do not have a firm installation date for FRN 1690396, will we not be losing funding? Or can the end date on 1688624 be change on the 467 just like the installation date on upgrade be changed?

How do we assure there is funding for the 3 Mbps is available until the upgrade is installed?

Thank you,

Jennifer Bachman
USF Account Administrator

[REDACTED]
[REDACTED]

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From: Johanna Darrough [REDACTED]
Sent: Wednesday, October 19, 2016 9:57 AM
To: Ariel Burr; Jennifer Bachman
Cc: Joe Furrer
Subject: FW: Action Required - RHC Telecommunications Program - Submit Requested Information - FCC Form 466 HCP # 10992, FRN 1688624
Importance: High

[External Email]

FYI: new request type.

Based on the spreadsheet that was filled out with stop/start dates for funding requests in Funding Year 2016 – this is now a new request.

Information Request

Request Type

Other Information

Deadline

10/31/2016

Requested information.

FRN: 1688624 The funding request submitted by the HCP appears to be for existing 3M MPLS service that will be discontinued upon the installation of a 30M MPLS service related to FRN 1690396. FRN 1690396 reflects an install date of 10/1/16. So to curtail possible duplicate or erroneous funding, the funding end date for FRN 1688624 will be adjusted to 9/30/16. If these are anticipated dates that could possible change please refrain from submitting your FCC Form 467 when you received your Funding Commitment Letter. When you have a firm installation date of the upgrade, if needed please reach out to USAC to make any needed adjustments to the funding start and end dates of the applicable FRNs. Once we receive your 467, this will be considered accurate per the agreed upon certifications. Duplicate funding is not allowed, and is a violation of program rules. Please respond to this information request as soon as possible with your consent to adjust this form on your behalf. A response is required. Responses not received within 14 calendar days may result in a denial of this funding request. For questions or assistance about this information request, contact Bernie Manns at [REDACTED]

Use this space to provide pertinent information and documents being uploaded.

Response

Upload the requested document here.

+ Upload...

Submit Response

So, I think I would respond that I am in agreement to change the end date of 1688624 to 9/30/16. However, the installation date for the 30 MBs was 10/1/2016 and we are now at 10/19/2016. I think I should still agree to their request and then as mentioned wait to file any 467s, etc...

From: rhc-assist@usac.org [<mailto:rhc-assist@usac.org>]
Sent: Monday, October 17, 2016 10:40 AM
To: Johanna Darrough
Subject: Action Required - RHC Telecommunications Program - Submit Requested Information - FCC Form 466 HCP # 10992, FRN 1688624

Date: 17-Oct-2016

HCP Number: 10992
FCC Form 465 Application Number: 43162397
Funding Request Number (FRN): 1688624
Service Type: Satellite Service
Funding Year: 2016

The Rural Health Care (RHC) division of the Universal Service Administrative Company (USAC) has received the FCC Form 466 submitted by the HCP referenced above. However, RHC cannot process the form without information for FRN 1688624. To view and respond to the request for information, log into My Portal at <https://rhc.usac.org/rhc/>, go to Information Requested on the My Documents tab, and click on the "Request Type" hyperlink. Click on "Submit Response" to submit the information requested. Any account holder will be able to respond to an Information Request; once it has been completed, the request is removed from the Information Requests section and the information provided will be saved to your My Documents folder.

The information requested is required to process the above referenced form, and must be submitted to RHC by the deadline. Failure to respond to the email may impact funding.

Do not reply to this email - RHC does not monitor this account. For questions or assistance about the information request, contact the RHC Help Desk at 800-453-1546 or click on the "Contact RHC Help Desk" link in My Portal.

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