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**Subject: Re: YKHC-RHCP satellite service**

**Date: Thu, 30 Sep 1999 10:40:02 -0800**

**From: Rebecca\_Grandusky@ykhc.org (Rebecca Grandusky)**

**To: crussell@uui-alaska.com**

Chuck the request for proposals is on the Internet RHCC site. I have requested T1 from each village back to Bethel. The FCC only has tariffs for 128KB or T1, so I chose the T1. I was told by the FCC that I needed to choose a long distance carrier first and then contact the LEC for billing. If you are qualified to provide the long distance service, I would be happy to entertain your bid.

Rebecca

crussell@uui-alaska.com writes:

>Hello Rebecca,  
>I have a copy of your September 17 email to Steve H. regarding USF  
>funding for RHCP's. In that email you mentioned that you were  
>requesting quotes for satellite data services from AT&T and GCT.  
>With the recent successful launch of Telstar 7, which has excellent  
>coverage of western Alaska, Unicom (UUI's LDC affiliate) has access to  
>Ku-band transponder capacity and can provide a quote for facilities  
>based satellite services.  
>Unicom would appreciate an opportunity to provide YKHC a quote for  
>satellite data services. Please contact me by email or in Anchorage at  
>273-5217.  
>Thanks.  
>  
>Chuck  
>  
>

Rebecca A. Grandusky, CIO  
Yukon-Kuskokwim Health Corporation  
Ph: 907-543-6075  
Fax: 907-543-6006

**Subject: Satellite Service**

**Date:** Tue, 05 Oct 1999 13:50:32 -0800

**From:** Chuck Russell <crussell@uui-alaska.com>

**To:** Rebecca Grandusky <Rebecca\_Grandusky@ykhc.org>

Rebecca,

I guess I need some help. I've looked on the internet at the RHC site (rhc.universalservice.org) and reviewed the FCC Form 465. The Bethel 465 lists T-1 and the village 465's list fractional T-1. I can't find a request for proposal or any description of the services you would like the IXC's to quote. Am I looking in the wrong place? Could you send me a description of the services you would like quoted?

Thanks

Chuck

**Subject: Re: Satellite Service**

**Date:** Tue, 05 Oct 1999 17:40:57 -0800

**From:** Rebecca\_Grandusky@ykhc.org (Rebecca Grandusky)

**To:** crussell@uui-alaska.com

You are looking at the correct site. I am requesting a T-1 or fractional t-1 depending on the site. The T-1 and fractional T-1 will connect each site to Bethel WAN.

Rebecca A. Grandusky, CIO  
Yukon-Kuskokwim Health Corporation  
Ph: 907-543-6075  
Fax: 907-543-6006



**From:** "Flowers, MaryAnn" <MFlowers@ALASCOM.ATT.com>  
**To:** "Steve Hamlen" <shamlen@uui-alaska.com>  
**Date:** 11/28/00 5:32PM

Steve - FYI AT&T Alascom has not submitted an official bid in response to either the RHCP's web site postings for YKHC or a bid in response to a RFP from YKHC. I have, in response to a verbal request from YKHC's Chief Information Officer, providing YKHC with T-1 pricing for various sites. 3 or 5 year term pricing was not provided to YKHC since term pricing was not requested.

There was insufficient information on the RHCP web site, and from YKHC, for AT&T Alascom to actually submit a bid. The RHCP web site identified fractional T-1s (without specifying what fraction of a T-1) for many locations which is apparently not what YKHC wanted. Also, the RHCP web site did not identify the term over which YKHC wanted these services nor did the RHCP web site provide other essential info i.e. the date bids were due. I was surprised when I heard in February 2000 that YKHC had awarded GCI a contract(s) for sites that I had provided, in response to YKHC's verbal request, non term pricing for. Should you find out when, and if, any RFPs are going to actually be issued by YKHC, please let me know. AT&T Alascom would also like to have the opportunity to bid for YKHC's services.

Sincerely,  
Maryann Flowers  
AT&T Alascom  
mflowers@alasc.com.att.com  
VOICE (907)264-7381  
FAX (907)777-2432  
CELL (907)223-1384





# YUKON-KUSKOKWIM HEALTH CORPORATION

"Fostering Native Self-Determination in Primary Care, Prevention and Health Promotion."

March 29, 2000

Bosco Olson, Sr.  
Chairman / President  
Sea Lion Corporation  
P.O. Box 87  
Hooper Bay, AK 99604

**Via facsimile and certified mail**

Dear Bosco:

Thank you for your recent letter regarding telecommunication services to Michael Hunt, YKHC Chairman.

YKHC would like to clarify our position with regard to purchasing telecommunications services. As we stated to Steve Hamlen, President of United Utilities, Inc. (UUI), YKHC will continue to follow our procurement policies as we have done so in the past. We will be happy to provide for Native preference when our federal compact dollars or YKHC dollars are involved, and when we are not precluded from doing so under any applicable law, regulation, or restriction. Our procurement policies allow for "Indian Preference" as follows:

## 2. Indian Preference

All employees, contractors, and any other Federal, State, Tribe or Tribal organization expending funds on YKHC's behalf, shall purchase property or services (including construction contracts) from Tribes/Tribal Organizations or Indian/Alaska Native-owned economic enterprises to the maximum extent feasible.

Indian Preference shall be provided pursuant to the following criteria:

### (a) Buy-Indian Set Aside:

The CEO/President, or Procurement Officer, will set aside contracts and purchases when there are TWO or more qualified Tribes/Tribal Organizations or Indian/Alaska Native-owned economic enterprises available to satisfy the requirements. Architect and Engineering Solicitation shall require a minimum of THREE.

(b) Full and Open Competition:

- (1) For Small Purchases an award shall be made to the lowest bid of a Tribe/Tribal Organization or Indian/Alaska Native-owned economic enterprise if it is within ten percent (10%) of the lowest bid;
- (2) For Sealed Bidding an award shall be made to the lowest bid of a Tribe/Tribal Organization or Indian/Alaska Native-owned economic enterprise if it is within ten percent (10%) of the lowest bid;
- (3) For Request for Proposals, ten (10) points shall be given to the technical proposal of a Tribe/Tribal Organization or Indian/Alaska Native-owned economic enterprise, and, the award shall be made a Tribe/Tribal Organization or Indian/Alaska-owned economic enterprise if it is within ten percent (10%) of the lowest bid, and/or within ten percent (10%) of the highest technical score, with all price-related factors considered.

YKHC Procurement Policies and Procedures, section I.B.2 at p. 2 (April 15, 1993). For the purchase of telecommunications equipment and/or services, YKHC's Procurement Policy ("Policy") requires a Buy-Indian set aside when there are at least two qualified Native-owned business bidders. Here, we were not able to implement the set-aside because there were no such bidders.

Thus, the Full and Open Competition rules applied to the RFP in question. Under these rules, a preference is granted to Native-owned businesses that bid on the RFP. For Small Purchases (no more than \$25,000), and Scaled Bidding, YKHC will award to the lowest bidding Native-owned business if it is within 10% of the lowest bid received.

With Request for Proposals (RFP) Contracts, YKHC provides for Native preference in two ways. First, YKIIC will award 10 points to Native-owned business' technical proposal. Second, YKHC will award to a Native-owned business if it is within 10% of the lowest bid and/or within 10% off the highest technical score (including price related factors).

In addition to YKHC's own Procurement Policy, YKHC must also comply with any requirements imposed by each granting agency by law, regulation, or grant agreement. YKHC has no control over whether the FCC or any other granting agency will agree to allow us to provide Native preference with their funds. For that reason, when YKHC receives funds from a granting agency, we must seek clarification from that agency whether we can legally earmark their dollars for Native preference.

For the RFP in question, the Universal Services Fund (USF), which provided the grant dollars to YKHC, required YKHC to post the RFP on the FCC's public web page. YKHC posted twice: on June, 23, 1998, and on June 17, 1999. YKIIC only received two bids: one from AT & T Alascom and one from GCI. YKHC did not receive a bid from UUI.

It is unfortunate that UUI did not bid for the RFP that was publicly posted on the Rural Health Care web page, as required for all such bids for service. Please understand that YKHC is willing to work with UUI, but we cannot do so if UUI chooses not to respond to a public bidding process. In the future we would encourage UUI to submit bids as it feels appropriate. To assist UUI in this regard, YKHC has agreed to send UUI a special invitation to participate. In the interest of fairness, we will also notify other carriers as well.

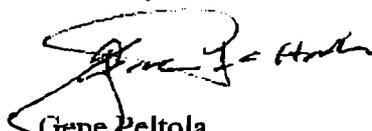
I can assure you that our Technology Department is not "anti-United Utilities, Inc." In fact, when Rebecca Grandusky, Chief Information Officer was notified by the Universal Service Fund that we were to be awarded the grant, she notified Steve Hamlen and Chuck Russell that YKHC would be posting a request for proposals (RFP) on the RIIC web page. They informed her via email that they did not have the capacity to bid on the RFP.

The resolution that was proposed by YKHC a number of years ago was in support of the Telecommunications Act of 1996, which required equal access to long distance service. YKHC's actions then, and our conduct now, should *not* be considered "pro-GCI" or "anti-UUI".

Please let me know when the next UUI Board meeting is, so that I may discuss telecommunications issue further with the board.

Enclosed, for your information is a copy of YKHC's Procurement Policies and Procedures and a copy of the GCI contract. If you have any further questions, please contact Valerie Davidson, General Counsel at (907) 543-6032.

Sincerely,



Gene Peltola  
President / CEO

enclosures

cc: UUI Board of Directors  
YKHC Board of Directors  
Orie Williams, Executive V.P.  
Rebecca Grandusky, CIO  
Valerie Davidson, General Counsel



UNITED STATES COURT OF APPEALS  
FOR DISTRICT OF COLUMBIA CIRCUIT  
JUN 30 2000  
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UNITED STATES COURT OF APPEALS  
FOR DISTRICT OF COLUMBIA CIRCUIT  
FILED JUN 30 2000  
CLERK

ORAL ARGUMENT SCHEDULED FOR SEPTEMBER 7, 2000

Case No. 99-1440

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

YUKON-KUSKOKWIM HEALTH CORPORATION,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

14  
ORIGINAL  
11-30

On Petition for Review from the National Labor Relations Board

BRIEF OF PETITIONER

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Lloyd Benton Miller  
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- a. Tribes operating pursuant to the Self-Determination Act are treated as the equivalent of federal agencies under the Act.

In operating federal public health care programs on behalf of the 58 Delta tribes, YKHC functions not only as an arm of the tribal governments, but also as an integral part of the United States, pursuant to congressional mandate that it is to be treated as a federal agency for a wide range of purposes when carrying out its compacting responsibilities.

Under the ISDA, YKHC essentially “stands in the shoes” of the United States – operating a federal Indian hospital for the same people, in the same service area, using the same rules, and using precisely the same resources, as would – indeed, as did – the United States.<sup>28</sup>

The purpose of the ISDA is to authorize tribal and intertribal operation of *federal* public health programs. *See* 25 U.S.C. §§ 450, 450(a). These federal programs and services, administered by YKHC on behalf of the United States under the ISDA, are creatures of federal statute and federal appropriation, intended to fulfill the federal government’s trust responsibility to Alaska Natives:

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<sup>28</sup> Dr. Donn Kruse, YKHC’s Medical Director until August 1996, and then a full-time provider at the Hospital, began working at the IHS Bethel Hospital in 1983 as a federal employee. DA at 82. As Dr. Kruse testified, the Hospital service area and eligible population have not changed since the transition from IHS to Tribal operation. DA at 94-95; DA at 101-04; DA at 117. Ninety-five percent of the more than 20,000 encounters at the hospital in 1995 were with Alaska Natives/American Indians. DA at 181-82; DA at 829; DA at 831. The remaining five percent reflects the Hospital’s continuation of IHS’s practice of treating non-beneficiaries when no viable health care alternative is available. DA at 101-03; DA at 139; DA at 180; DA at 185-86; *see also* 25 U.S.C. § 1680c (IHS services to otherwise “ineligible” persons).

delegation of authority was strengthened in the Tribal Self-Governance Demonstration Project, through which YKHC and the 58 Delta tribes entered into a government-to-government agreement with the United States. In so doing, YKHC effectively has stepped into the shoes of the federal government and been vested with the funding and privileges of a federal agency. Tribal Self-Governance Demonstration Project, § 303(a)(6).

Under a self-governance compact, the Secretary of HHS must make all of the resources and privileges of the Department available to the tribe or tribal organization.<sup>31</sup> *See* 25 U.S.C. § 450j-1(a)(1); *see also* 25 U.S.C. § 458cc(l) (clarifying that the provisions of Title I of the ISDA apply with equal force to tribal organizations involved in self-governance under Title III and Title IV). Those same privileges of the United States, and more, are also available to compacting tribes. Indeed, under the ISDA, tribal organizations become virtual agencies of the federal government. These federal privileges, conferred on tribal organizations operating under the ISDA, include:

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<sup>30</sup>(...continued)  
federal administrative responsibility to a sovereign Indian tribe, noting that such delegation is far broader than ordinary government contracting, because “the entity exercising delegated authority itself possesses independent authority over the subject matter”).

<sup>31</sup> In addition to all direct program funding, the Secretary is required to make other funds available for contract support costs to permit the tribal organization to carry out tasks not normally carried out by the Secretary in her direct operations or which are carried out by the Secretary but from resources other than those transferred in the compact. 25 U.S.C. § 450j-1(a)(2).

operating pursuant to the ISDA's delegation of authority and a government-to-government compact.

The ISDA both recognizes and delegates sovereign status to compacting tribes and tribal organizations. Indeed, for all practical purposes, a compacting tribal organization like YKHC functions as a federal agency for the delivery of federal services to tribal members. The fact that it delivers these federal services outside an Indian reservation is irrelevant to its sovereign status or its role on behalf of a sovereign under the law.

To hold otherwise, as the Board did, on the basis of a one-dimensional litmus test, is to tolerate plainly irrational results in the application of the NLRA. Two problems are particularly acute:

First, it is irrational to apply the Act differently to the federal government and to a sovereign tribal consortium expressly vested by statute with the rights and privileges of the federal government. Obviously, when IHS was operating the Bethel Hospital prior to 1991, the NLRA did not apply. Since 1991 YKHC has stood in the place of IHS to operate the Hospital, vested with the rights and privileges of IHS. The sovereign nature of the administration of federally-mandated health services, and the fact that those services continue to be administered by a governmental entity, have not changed. Neither should the application of the NLRA.

Second, it is irrational to apply the NLRA differently to two identical intertribal health care consortiums both delivering federal health care services pursuant to the ISDA.

priorities and the desires of Hospital personnel to keep services centralized in Bethel. DA at 89-91.<sup>42</sup> Unless reversed, the decision below may impair the ability of the Delta tribal governments to improve village-based access to health care by leaving personnel and resources concentrated in Bethel.

Similarly, Hospital employees, including nurses, sought an on-site daycare facility. Substantial resources were invested by the Hospital to investigate this benefit. When the estimated \$300,000 annual cost was presented to the Board, it declined to fund it. DA at 62-64; DA at 131-33. Instead, the Board chose to hire village-based alcohol treatment counselors at approximately the same cost. As Board member Hunt testified, however, mandatory bargaining with the nursing unit could well have dictated a contrary result, redirecting limited resources away from the health care needs of tribal members. DA at 174-76.

While it may be argued that such internal and external balancing problems are faced by private hospitals everywhere, YKHC's responsibilities differ markedly from those of private facilities operating in a competitive market. DA at 133; DA at 134-35

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<sup>42</sup> The Vice-President for Hospital Services testified that his directive was to follow the Board's priorities, *despite* the resistance of Hospital employees. DA at 145-47. Similarly, former Medical Director Donn Kruse testified about his continuing role in communicating the Board's decentralization message to the Hospital staff, the staff's displeasure and "very high resistance," and his explanation to staff "that's the direction we're going to go because the people who own this system told us what we're going to do." DA at 89-91.

(unlike a private hospital, YKHC’s “mandate is to create an organization that has the potential for being run by Natives for Natives”); DA at 136-41.<sup>43</sup>

Unlike the private arena, tribal health care decisions are not based on balancing profits and market demand against personnel costs. Rather, the Hospital provides essential governmental services, unavailable in the Delta from *any* other source. For better or worse, at this far western edge of the continent, the federal government has an effective monopoly on Delta health care because private facilities, whether nonprofit or for-profit, are simply not economically viable.<sup>44</sup> Fortunately, the Delta is overwhelmingly populated by Alaska Natives, to whom the federal government owes a special trust responsibility to provide health care.

The ISDA was intended to enhance opportunities for sovereignty and self-government by tribes. The Board’s ruling here undermines tribal incentives to assume governmental functions where the result is, at best, submission to another federal regulatory regime at odds with tribal sovereignty and, at worst, a risk of interrupting critical health care services to those most in need.

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<sup>43</sup> See *Moir*, 895 F.2d at 270 n.8 (court finds “persuasive merit” in the argument that there are “fundamental differences” between public and private sector employment because “[w]hile the costs of unionism in the private sector can be passed on by higher prices, the costs of unionism in the public sector can only be passed on through higher taxes”).

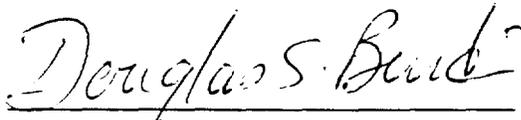
<sup>44</sup> See, DA at 81; DA at 111; DA at 115-16 (describing decline in available services from Bethel Family Clinic, the Delta’s sole private health care facility). See also DA at 102.

YKHC must constantly keep its beneficiaries' needs in mind as its first and foremost interest. DA at 99-100. Subjecting YKHC to the demands of the NLRA would materially interfere with its ability to perform this sovereign function.

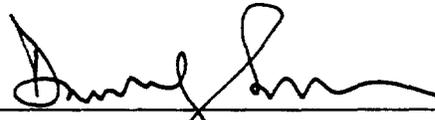
**D. Conclusion**

For the foregoing reasons, this petition for review should be granted, the cross-application for enforcement should be denied, and the decisions and orders below should be vacated.

Respectfully submitted,



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(202) 682-0240

**Declaration of Steve Hamlen**

I, Steve Hamlen, hereby declare:

I am President and CEO of Unicom, Inc. and I am authorized to make this declaration on its behalf. I have read the foregoing "Reply to Oppositions to Petition for Review." The statements of fact contained therein are true and correct to the best of my information and belief.

Executed under penalty of perjury this 14<sup>th</sup> day of December, 2001.

By:   
Steve Hamlen  
President,  
Unicom, Inc.

## CERTIFICATE OF SERVICE

I, Yvette Morgan, hereby certify that the foregoing “Reply to Oppositions to Petition for Review” was served this 14th day of December, 2001, by depositing a true copy thereof with the United States Postal Service, first class postage prepaid, addressed to:

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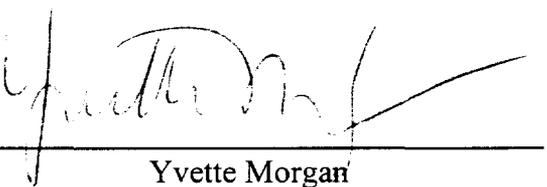
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Yvette Morgan