HOBBS, STRAUS, DEAN & WALKER, LLP
ATTORNEYS AT LAW
806 S.W. BROADWAY • SUITE 900 • PORTLAND, OR 97205
TEL: 503.242.1745 • FAX: 503.242.1072
WWW.HSDWLAW.COM

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July 15, 2005

Via Overnight Mail Delivery

Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743

DOCKET FILE COPY ORIGINAL

Re: In The Matter Of Request For Review Of Decision Of Universal Service Administrator By The Council Of Athabascan Tribal Governments – Docket Nos. 96-45 and 97-21

Dear Sir or Madame:

Enclosed is an original and four copies of an appeal of the May 18, 2005, decision of the Rural Health Care Division, Universal Service Administrative Company, submitted on behalf of the Council of Athabascan Tribal Governments pursuant to 47 C.F.R. § 54.719(c). A certificate of service is also provided under 47 C.F.R. § 1.47(g).

Should you have any questions about this appeal, please contact Marsha Schmidt at 301-949-5176, or Geoff Strommer or Starla Roels at 503-242-1745.

Sincerely,

HOBBS, STRAUS, DEAN & WALKER, LLP

By: Marsha K. Schmidt
Marsha K. Schmidt
/bysmr

Enclosure

cc: Craig Fleener, Chief Administrative Officer, CATG
Jimmy Jackson, GCI Communications Corp.

0+4

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Federal Communications Commission

IN THE MATTER OF REQUEST FOR REVIEW OF DECISION OF
UNIVERSAL SERVICE ADMINISTRATOR BY THE
COUNCIL OF ATHABASCAN TRIBAL GOVERNMENTS

Rural Health Care Division, Universal Service Administrative Company
Docket Nos. 96-45 and 97-21

Pursuant to 47 C.F.R. § 54.719(c), the Council of Athabascan Tribal Governments (CATG) hereby seeks the Federal Communications Commission's (FCC) review of the enclosed decision made by the Rural Health Care Division (RHCD), Universal Service Administrative Company (USAC) on May 18, 2005. See Exhibit A. The USAC's decision denies funding to the CATG for Funding Year (FY) 2002 for failing to comply with the 28-day deadline of the USAC's competitive bidding process. Since CATG already entered into a long-term contract for services in FY 2001 after engaging in a competitive bidding process, CATG was not required to engage in competitive bidding. Therefore, USAC's basis for denying CATG's FY 2002 funding conflicts with prior FCC rulings on how to handle multi-year contracts. CATG's request for funding for FY 2002 should thus be approved.

CATG's Interest

The CATG is an Alaska Native non-profit organization created in 1985 by a consortium of ten Alaska Native tribes whose traditional homeland encompasses the Yukon Flats region of the Interior of rural Alaska. The purpose of the CATG is to provide essential services to its member villages, including health care pursuant to a compact CATG has with the Department of Health and Human Services under the Indian

Self-Determination and Education Assistance Act, P.L. 93-638, as amended, 25 U.S.C. §§ 450-458aaa-18.

As a rural health care provider, CATG is qualified to receive support under 47 C.F.R. § 54.601 through the universal services fund for discounted telecommunications services, which is managed by the RHCD of the USAC.

Facts

For a number of years, CATG has participated in the universal service support mechanism under the RHCD. It originally contracted with ATT Alascom/TelAlaska under a contract that was set to expire in December 2002. In order to allow enough to time to consider bids before the expiration of that contract, CATG began a competitive bidding process in August 2001 when it sent Form 465s to the RHCD requesting bids for multiple Health Care Provider locations for FY 2001. See, e.g., Exhibit B (Form 465 signed and dated by CATG Executive Director (Aug. 20, 2001)); 47 C.F.R. § 54.603(b) (requiring Form 465s to trigger competitive bidding).[1]

As a result of those Form 465 bid solicitations, CATG received two proposals – one from GCI Communication Corporation (GCI) and a joint proposal from AT&T and TelAlaska. Exhibit C (exhibits 3, 4). These proposals were formally presented at a CATG Board meeting in January 2002, with both AT&T and GCI in attendance, and

[1] CATG understood that a new contractor would probably need some lead time to put in place the necessary infrastructure to provide the new service sought by CATG and that there might be some delay. But if CATG had been unwilling to accept a gap between the contract date and the start date, then there would have been no competition in its bid process because the only company that already had necessary infrastructure in place in the villages was ATT Alascom. So CATG did not limit the bidding only to companies who already had a presence in the villages. Thus, CATG had to begin its process for seeking bids for service long before the ATT contract expiration date. CATG posted its request for bid in August 2001. See Exhibit C (Letter from Hobbs, Straus, Dean & Walker, LLP to RHCD (Oct. 31, 2003) and exhibits 1-8 and 10-16).

were fully discussed by the CATG Board. Exhibit C (exhibit 11, excerpt of CATG Board Meeting Minutes).

On March 21, 2002, well after the 28-day waiting period required under the USAC's competitive bidding process, 47 C.F.R. § 54.603(b)(3), CATG and GCI entered into a five-year contract to begin providing broadband and satellite services. During the first year of the contract with GCI, CATG continued to receive telecommunications services from AT&T while GCI installed equipment and upgraded basic infrastructure as necessary to perform under the terms of the multi-year contract. Full services by GCI were phased in between January and February 2003.[2]

While CATG had already entered into a multi-year contract with GCI, CATG sent Form 465 requests for bids to USAC for FY 2002, which the RHCD posted to its website on November 25, 2002. See, e.g., Exhibit D (Letter of the USAC to Anna Huntington-Kriska (Nov. 25, 2002)). At that time, there was uncertainty as to whether CATG had to post the form requesting bids given it had an existing multi-year contract with GCI.

On December 20, 2002, CATG submitted two Form 466s to the RHCD certifying the selection of GCI under its multi-year contract and requesting discounts for services

[2] It was clear from the beginning that it probably would not be possible to have services begin in the FY 2001 funding year. First, the expiration date of ATT's contract was in the middle of the FY 2002 funding year since it was a calendar year contract. In addition, the CATG bid process took a few months. GCI was selected in March 2002 to begin providing services upon the expiration of the ATT contract in December 2002. Second, the construction process in Alaska differs from that in the lower 48. GCI had to lease land and build an infrastructure in nine villages. Leasing land in Alaska is complex because of the ownership patterns. In rural Alaska, the construction process is logistically complex and is determined by seasonal construction and barge schedules. This lag time accounts for the fact that CATG did not seek funding for the first year of the GCI contract. See Exhibit C.

provided by GCI – one for FY 2001 and one for FY 2002. Thereafter, AT&T sent what it deemed a bid to CATG on December 23, 2002.[3]

The RHCD did not act on CATG's Form 466 for FY 2001 because CATG submitted the form after the October 2002 filing deadline. Exhibit E (Letter of the USAC to Anna Huntington-Kriska (April 28, 2003)). Regarding the certification and funding request for FY 2002, the USAC denied CATG's applications for support on the ground that CATG's Form 466 improperly certified that no bids were received by CATG. USAC concluded that AT&T had submitted a bid that CATG should have acknowledged and considered. Exhibit F (Letter of the USAC to Anna Huntington-Kriska (March 28, 2003)).

On May 22, 2003, CATG filed an appeal to the USAC arguing that the AT&T bid was one day late and thus CATG did not have to consider it, and that the certification was made before the bid was received. Exhibit G (Letter of Appeal from Hobbs, Straus, Dean & Walker, LLP to the RHCD/USAC (May 22, 2003)). CATG filed supplemental

[3] Despite USAC's finding below, CATG has always contested that this communication constituted a bid. The proposal which came via email did not provide the details of the entire cost of the service. In its bid, ATT Alascom quotes the "CATG Cost for Wide Area Network." It appears that this proposal sets forth only that portion of the cost that is charged to CATG, the Urban Rate. The rate quoted by ATT Alascom exactly matched the urban rates of $664.95 MRC and $437.35 NRC listed on the urban rate chart set by the Regulatory Commission of Alaska effective as of June 1, 2001, as the rate for Frame Relay - 768 Kbps CIR/1.544 Mbps Port Speed. The bid gave no information about the *total* cost of the service that would be passed on to RHCD nor did the bid provide any detail on the kind of service that ATT intended to provide. As a consequence, ATT's bid did not provide the detail necessary to determine the overall cost of service, which is the factor most important to RHCD in determining the overall cost to the agency. Without this information, this bid could not be compared to GCI's contract rate. The CATG Executive Director understood that ATT was going to follow up the bid email with further written information. Indeed, the bid is not self explanatory to a lay person in terms of the type of service that ATT intended to provide. ATT never followed up with hard copies or further information.

information with the USAC on October 31, 2003 in response to USAC's request for documentation about CATG's contract with GCI and the competitive bidding process that resulted in CATG's selection of GCI in March 2002. Exhibit C.

USAC issued a decision denying CATG's appeal on May 18, 2005. Exhibit A. Although USAC continues to assert that CATG should have considered the AT&T bid even though it was late, it denied funding on the ground that CATG improperly signed and submitted the Form 466s for GCI services two days before the end of the 28-day competitive bidding period. Id. The USAC therefore held that CATG's appeal must be denied because CATG did not "comply with program rules pertaining to competitive bidding." Id. It is this USAC decision which is the subject of this appeal.

Question Presented & Discussion

The question presented in this appeal is whether the funding requested by CATG for FY 2002 should be approved by the USAC because CATG had an existing multi-year contract with GCI and thus, having already engaged in competitive bidding, CATG was permitted to use the GCI contract as a bid without having to conduct further competitive bidding during the term of the multi-year contract.

The FCC's Wireline Competition Bureau decision in In the Matter of Request for Review of the Decision of the Universal Service Administrator by Kalamazoo Public Schools, 17 F.C.C.R. 22,154, 17 FCC Rcd. 22,154, 2002 WL 31444437 (Nov. 4, 2002) (hereinafter "Kalamazoo"), is dispositive. Just as in CATG's situation, USAC denied funding to the Kalamazoo Public Schools on the basis that Kalamazoo violated the competitive bidding requirement by entering into a service agreement before the bidding process was complete, even though Kalamazoo had an existing multi-year contract with a

service provider. Id. at ¶ 1, p. 22,154. In its ruling overturning the USAC's decision, the Bureau explained:

> Once an applicant submits an FCC Form 470 [the Schools and Libraries Division equivalent of the RHCD's Form 465 request for bids] and complies with the 28-day posting period, the applicant may enter into a long-term agreement at that time and, having complied with the competitive bidding requirement prior to entering into the service contract, the applicant need not submit any additional FCC Form 470s for the duration of the contract.

Id. at 3, pp. 22,155-22,156 (citing Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Order, DA 99-1773, 1999 WL 680424, ¶ 10 (Com. Car. Bur. 1999) ("We conclude that permitting a school or library to commit to a long-term contract after participating in the competitive bidding process does not compromise the benefits derived from competition. As long as all providers have had the opportunity to compete for the same contract, schools or libraries can enter into renewable contracts of any length or form, as permitted by state law.")). See also Request for Review Decision of the Universal Administrator by Cochrane-Fountain City School District, File No. SLD-140683, 15 F.C.C.R. 16628 (May 17, 2000).

While it is true that the Form 466 for FY 2001 was returned by USAC since it was submitted after the deadline, this does not change the fact that CATG engaged in the competitive bidding process before selecting GCI.[4] As described above, CATG submitted its request for bids and complied with the 28-day waiting period in FY 2001, and thereafter selected one of two bid proposals and entered into a long-term agreement with GCI. The benefits of competitive bidding were thus realized.

---

[4] CATG's FY 2001 Form 466 was not acted upon but since GCI was building infrastructure and had not provided services during that time period, CATG would not have received any funding for that year in any case.

In Request for Review Middle Peninsula Juvenile Detention Comm'n Merrimac Center, File No. SLD-292735, 19 F.C.C.R. 4007 (May 4, 2004), the Wireline Competition Bureau applied the Kalamazoo rationale in a situation where an applicant had withdrawn an approved FY 2000 request for funding and later relied on the bidding process in the FY 2000 year to support a request for funding in FY 2002. Despite the fact that the FY 2000 funding request had been withdrawn, i.e., no funding was provided to the applicant, the Bureau did not find a reason to distinguish Kalamazoo. Overturning a USAC decision to deny funding based on a violation of the competitive bidding rules, the Bureau stated: [T]he relevant question is whether, after Merrimac posted its service for bidding with a Funding year 2000 FCC Form 470 and waited the 28-day competitive bidding period, it carefully considered all bids before choosing to continue service under its existing contract."

CATG did just that in FY 2001. At the time the FY 2002 bids request was posted, the FCC's decision in Kalamazoo had just been issued and it was not clear how to proceed. We now know that, under Kalamazoo, having engaged in competitive bidding prior to entering into the service contract with GCI, CATG was not required to conduct further competitive bidding in FY 2002 or for the remaining duration of the multi-year contract with GCI.

Therefore, because CATG had a pre-existing, multi-year contract with GCI and was not required to engage in a competitive bidding process in FY 2002, the date of CATG's certification on Form 466 for FY 2002 is irrelevant. CATG chose to use GCI as its contractor for that year under its existing contract. Accordingly, the USAC's denial of

CATG's requested funding for FY 2002 for violating the competitive bidding requirement should be overturned.

Relief Sought

For the foregoing reasons, the CATG respectfully requests that the FCC reverse the USAC decision denying CATG's funding request for FY 2002 under its multi-year contract with GCI and direct the USAC to award CATG's requested funding for that period.

Respectfully submitted,

Marsha K. Schmidt /by SKR

Marsha K. Schmidt, DC Bar No. 387971
Starla K. Roels, OR Bar No. 96262

HOBBS, STRAUS, DEAN & WALKER, LLP
2120 L. Street, NW, Suite 700
Washington, DC 20037
Telephone: (202) 822-8282
Facsimile: (202) 296-8834
Attorneys for CATG

DATED: July 15th, 2005

Certificate of Service

I hereby certify that on this 15th day of July, 2005, the original and four copies of *In The Matter Of Request For Review Of Decision Of Universal Service Administrator By The Council Of Athabascan Tribal Governments – Docket Nos. 96-45 and 97-21* was sent to the FCC and a copy was served upon the following via overnight mail, postage prepaid:

Administrator
Universal Service Administrative Company
Rural Health Care Division
80 S. Jefferson
Whippany, NJ 07981

Starla K. Roels

July 15, 2005

EXHIBIT A

USAC
80 S. Jefferson
Whippany, NJ 07981
Phone: 1-800-229-5476

Universal Service Administrative Company
Rural Health Care Division

Craig E. Moen
Council of Athabascan Tribal Governments
E. 3rd & Birch Street
Fort Yukon, AK 99740

May 18, 2005

RE: Your correspondence received May 23, 2003 (dated May 22, 2003) concerning HCPs # 11011, 11012, 11013, 11014, 11015, 11016, 11017, 11018, 11019, 11022, and 11023.

Dear Mr. Moen:

After thorough review and investigation, the Rural Health Care Division ("RHCD") of the Universal Service Administrative Company has completed its evaluation of your letter of appeal concerning Universal Service support of telecommunications services for the Council of Athabascan Tribal Governments (Athabascan) sites listed above. This letter sets forth RHCD's decision concerning the above-referenced letter.

Decision on Appeal: Denied

Explanation of Decision: Applicants to the Rural Health Care Support Mechanism must post their request for services (Form 465) for 28-days prior to selection of a telecommunications carrier. Your request for support was previously denied for failing to acknowledge Alascom's bid received December 23, 2002 in response to your November 25, 2002 posting of Form 465 for Funding Year 2002 (allowable contract date 12/23/02). In your Letter of Appeal, you noted that Alascom's bid was received on the 29th day of posting and was therefore considered untimely and unnecessary to acknowledge. However, the certification that you, "considered all bids received and ...selected the most cost effective" is not limited to bids received during the 28-day posting. If a bid was received, it should be acknowledged and considered.

More significantly, your certification of no bids and the selection of GCI on Form 466 occurred when the form was signed on December 20, 2002, which was before Alascom's bid and before completion of the required 28 day posting. Thus, while the certification of no bids may have been correct on December 20th, that certification violated the 28-day competitive bidding requirement. As noted in the Form 466 instructions, "...there are certain prerequisites for completing Form 466. The HCP or its authorized representative must select the carrier before completing Form 466. However, in order to satisfy the FCC's competitive bidding requirement, an HCP must wait at least 28 days after the descriptions set forth in the HCP's Form 465 are posted on the RHCD web site, before signing a contract or otherwise selecting the telecommunications carrier to provide the services." Because you failed to comply with program rules pertaining to competitive bidding, your appeal must be denied.

If you continue to disagree with this decision, you may submit an appeal to the FCC within 60 days of the date of this letter.

Exh. A

The FCC address where you may direct an appeal is:

Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Room TW-A325
Washington, DC 20554

Documents sent by Federal Express or any other express mail should use the following address:

Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743

The FCC will no longer accept hand-delivered or messenger-delivered paper filings at its headquarters. They will be accepted only at the following address:

Federal Communications Commission
Office of the Secretary
236 Massachusetts Avenue, NE, Suite 110
Washington, DC 20002

For security purposes, hand-delivered or messenger-delivered filings will not be accepted for filing if they are enclosed in an envelope.

Appeals may also be submitted to the FCC electronically, either by the Electronic Comment Filing System (ECFS) or by fax. The FCC recommends filing with the ECFS to ensure timely filing. Instructions for using ECFS can be found on the ECFS page of the FCC web site. Appeals to the FCC filed by fax must be faxed to 202-418-0187. Electronic appeals will be considered filed on a business day if they are received at any time before 12:00 a.m. (midnight), Eastern Standard Time. Fax transmissions will be considered filed on a business day if the complete transmission is received at any time before 12:00 a.m.

Please be sure to indicate Docket Nos. 96-45 and 97-21 on all communications with the FCC.

Sincerely,

RHCD-USAC
Rural Health Care Division
Universal Service Administrative Company

Cc: Marsha K. Schmidt

EXHIBIT B

FCC Form 465

Health Care Providers Universal Service

Description of Services Requested & Certification Form

OMB Approval 3060-0804

To be completed by Health Care Provider

Estimated Average Burden Hours Per Response: 2.5 hours

Read all instructions thoroughly before completing form. Failure to comply may cause delayed or denied funding

Block 1: Form Identification Information

1 Form 465 Application Number (assigned by RHCD): 3876
2 Applicant Form Identifier: **02-2**

Block 2: Funding Year Information

3 Funding Year (Check only one box)	4 Did the health care provider (HCP) apply for Universal Service funds for the **RHC program** in a previous funding year?
Year 4 (7/1/2001 - 6/30/2002) Year 5 (7/1/2002 - 6/30/2003) Year 6 (7/1/2003 - 6/30/2004)	**Yes** No

Block 3: HCP Location Information

Information required in this block applies to the **physical location** of the HCP. Do not enter a "PO Box" or "Rural Route" address.

5 HCP Name: **Council of Athabascan Tribal Governments - Spruce Street**	6 Consortium Name:
7 HCP Number: **11012**	
8 Contact Name **Patricia J. Stanley**	9 Contact Phone Number **907-662-2587 Ext.**
10 Address Line 1 **Spruce Street**	
11 Address Line 2	
12 City: **Fort Yukon**	13 State: **AK** 14 Zip Code: **99740**
15 E-Mail Address **pstanley@catg.org**	16 Fax Number **907-662-3333**
17 County: **AK-Yukon-Koyukuk**	*18 Goldsmith Modification Area (Assigned by RHCD)*
Nearest Large City **AK-Anchorage**	MAD **402**

Block 4: HCP Mailing Information

19 Is the HCPs mailing address (i.e., where correspondence should be sent) different from its physical location as described in Block 3?
Yes
No, go to Block 5

20 Send correspondence to: **Council of Athabascan Tribal Governments**

21 Contact Name **Patricia J. Stanley**	22 Contact Phone Number **907-662-2587** Ext.
23 Address Line 1 **E. 3rd & Birch Street**	
24 Address Line 2	
25 City: **Fort Yukon**	26 State: **AK** 27 Zip Code: **99740**
28 E-Mail Address **pstanley@catg.org**	29 Fax Number **907-662-3333**

Exh. B

Block 5: Eligibility

30 Is the HCP a not-for-profit or public entity?
Yes, proceed to Item 31
No, STOP. Only public or not-for-profit HCPs are eligible to participate in this program.

31 Only the following types of HCPs are eligible. Indicate which category describes the applicant (check only one).

- ○ Post-secondary educational institution offering health care instruction, teaching hospital or medical school
- ○ Community health center or health center providing health care to migrants
- ◉ Local health department or agency
- ○ Community mental health center
- ○ Not-for-profit hospital
- ○ Rural health clinic

32 Is the HCP Applicant located in a **rural area**? Note that "rural area" means a non-metropolitan county as identified in the Office of Management and Budget's list of Metropolitan Statistical Areas or a non-urban area of those metropolitan counties identified in the Goldsmith Modification. Visit the RHCD web site (**www.rhc.universalservice.org**) or contact RHCD at 1-800-229-5476 for a listing of the rural areas.
Yes
No, only HCPs located in rural areas are eligible to receive telecommunications services at a reduced rate. However, HCPs located in **rural and urban** areas may qualify for Internet support according to the guidelines outlined in Block 4.

Block 6: Internet Access Support Eligibility

33 Is the HCP currently connected to the Internet?
Yes No

34 Does the HCP have to pay a toll or long distance charge to access an Internet service provider? (Note that this does not include any monthly fees assessed for using the Internet (e.g., $19.95 per month).
Yes No, the HCP is not eligible for Internet access support.

Block 7: Request for Telecommunication Services and Contract Information

35 Is the HCP requesting reduced rates for a telecommunications service it is currently receiving?
Yes
No, go to Item 37.

A sample of the eligible services is provided below:

- Dedicated (i.e., point to point) T1
- Dedicated Fractional T1 (e.g., 772Kbps)
- ISDN (BRI and PRI)
- Frame Relay
- Foreign Exchange
- Off-premise extension
- Satellite/Microwave service
- Centrex
- Dedicated private line service

A request for service that is not based upon a contract signed before July 10, 1997 must be posted by RHCD on its website for 28 days before the HCP can receive the benefit of a discount for it.

36 Is the service purchased pursuant to a service contract?
Yes
No

37 HCPs must tell us how the health care provider is going to use the telecommunications service. Some examples are to transmit data and medical images such as X-rays; health care provider-to-provider consultation between professionals in a rural hospital and professionals in other locations; and provider-to-patient consultation, including examination and counseling. Please describe below.

Telecommunications service is to transmit data and medical images to enable health care, provider to provider consultation, provider to patient consultation, acciss to medical research/information and instruction.

> Block 8: Certification

38 I certify that I am authorized to submit this request on behalf of the above-named entity or entities, that I have examined this request, and that to the best of my knowledge, information, and belief, all statements of fact contained herein are true.

39 I certify that the health care provider has followed any applicable State or local procurement rules.

40 I certify that the telecommunications services that the HCP receives at reduced rates as a result of the HCPs participation in this program, pursuant to 47 U.S.C. Sec. 254 as implemented by the Federal Communications Commission, will be used solely for purposes reasonably related to the provision of health care service or instruction that the HCP is legally authorized to provide under the law of the state in which the services are provided and will not be sold, resold, or transferred in consideration for money or any other thing of value.

41 Pursuant to 47 C.F.R. Secs. 54.601 and 54.603, I certify that the HCP or consortium that I am representing satisfies all of the requirements herein and will abide by all of the relevant requirements with respect to funding provided under 47 U.S.C. Sec. 254.

42 Signature Patricia J Stanley	43 Date Aug 20, 2001
44 Printed name of authorized person (First name, MI, Last name) Patricia J Stanley	45 Title or position of authorized person Executive Director

Persons willfully making false statements on this form can be punished by fine or forfeiture under the Communication Act, 47 U.S.C. Secs. 502, 503 (b), or fine or imprisonment under Title 18 of the united States Code, 18 U.S.C. Sec. 1001.

NOTICE TO INDIVIDUALS: Section 54.615(c) of the Federal Communications Commission's rules requires all health care providers requesting direct benefits from this support mechanism to certify to their elibibility to receive them. 47 C.F.R. §54.615 (C). In addition, Section 54.603 of the Federal Communications Commission's rules requires eligible health care providers to participate in a competitive bidding process prior to receiving telecommunications services at reduced rates. 47 C.F.R. §54.603. The collection of information stems from the Commission's authority under Section 254 of

This form should be submitted to:
Rural Health Care Division
80 S. Jefferson
Whippany, NJ 07981

Please remember:

- Form 465 is the **FIRST** step a health care provider must take in order to receive the benefit of reduced rates resulting from participation in this universal service support program.
- After the HCP submits a complete and accurate Form 465, the RHCD will post it on the RHCD web site for 28 days.
- HCPs may not enter into agreements to purchase eligible services from service providers before the 28 days expire.
- Entering into any agreement during the 28 day posting period is **prohibited**
- After the HCP selects a carrier, the HCP must initiate the next step in the application process, the filing of Forms 466 & 468.

FCC Form465
December 2000

EXHIBIT C

HOBBS, STRAUS, DEAN & WALKER, LLP
ATTORNEYS AT LAW
2120 L STREET, NW • SUITE 700 • WASHINGTON, DC 20037
TEL: 202.822.8282 • FAX: 202.296.8834
WWW.HSDWLAW.COM

October 31, 2003

Via Hand Delivery
Rural Health Care Division,
USAC
2120 L Street, N.W. Suite 600
Washington, D.C. 20037

Re: Council of Athabascan Tribal Government's Response to Additional Questions Regarding the FY Year 2002 Applications Appeal

Dear Sir or Madam:

On July 17, 2003 USAC, RHCD requested information and documentation about the CATG contract, the competitive bidding and vendor selection process for CATG's contract with GCI, the subject of CATG's request for funding for FY 2002.

Attached to this letter are documents and information that respond to those questions. Some of this information, particularly contract terms, is confidential in nature and CATG asks that USAC maintain that confidentiality.

CATG is providing the requested information even though it is not clear how the requests relate to the pending appeal. As we understand it, USAC denied funding for CATG on the ground that CATG had violated the competitive bidding process of FY 2002 by failing to acknowledge, consider, and accept a bid by ATT Alascom for FY 2002. CATG responded in its appeal that it had not received this bid within the specified time frame. In response, USAC has now requested further information to investigate the GCI contract. It is not clear to CATG what relevance many of these requests have to the issues presented in the present appeal. As USAC is aware, under the FCC rules, the burden is on the appellant to respond to and make a record before the agency prior to any further administrative appeal. If USAC intends to rely upon a different ground for denying the funding request we respectfully request that CATG have the opportunity to address that new basis through additional briefing if necessary.

Question No. 1 - The contract for services for which you are requesting support for Funding Year 2002 (July 1, 2002-June 30, 2003) was signed on March 21, 2002, during Funding Year 2001 (July 1, 2001 - June 30, 2002). Please indicate the date on

806 S.W. BROADWAY • SUITE 900 • PORTLAND, OR 97205 • TEL 503.242.1745 • FAX 503.242.1072
117 PARK AVENUE • SECOND FLOOR • OKLAHOMA CITY, OK 73102 • TEL 405.602.9425 • FAX 405.602.9426

Exh. C

which the service for which you are requesting support started for CATG under this contract or the date you expect it to start. Please provide an explanation of the gap between the date the contract was signed and the date service began. This explanation should include any relevant documentation including project schedules, work orders, progress notes, meeting minutes or similar items to explain and document the delay.

Service began in phases between January and February 2003. CATG requested assistance from its contractor, GCI, to provide the details of the project work requested. Attached is an affidavit from Martin Cary, Vice President--Broadband Services for GCI. CATG Exhibit 1. Mr. Cary's affidavit explains the "gap" between the contract date and the date service began and provides exhibits responsive to USAC's request for documentation. CATG has also provided an affidavit from Patricia Stanley, the former Executive Director of CATG who assisted the Board in conducting the bidding process. CATG Exhibit 2. Ms. Stanley explains the bid process including the timing.

In sum, the prior ATT contract was set to expire in December 2002. Ms. Stanley's affidavit confirms that CATG understood that a new contractor would probably need some lead time to put in place the necessary infrastructure to provide the new service sought by CATG and that there might be some delay. Stanley Aff., ¶ 7. But if CATG had been unwilling to accept a gap between the contract date and the start date, then there would have been no competition in its bid process because the only company that already had necessary infrastructure in place in the villages was ATT Alascom. So CATG did not limit the bidding only to companies who already had a presence in the villages.

Thus, CATG had to begin its process for seeking bids for service long before the ATT contract expiration date. CATG posted its request for bid in August 2001. It was clear from the beginning that it probably would not be possible to have services begin in the FY 2001 funding year. First, the expiration date of ATT's contract was in the middle of the FY 2002 funding year since it was a calendar year contract. In addition, the CATG bid process took a few months. GCI was selected in March 2002 to begin providing services upon the expiration of the ATT contract in December 2002.

According to Mr. Cary, once selected, the company immediately began the planning and purchase process to provide the new service. Cary Aff., ¶ 19. But the construction process in Alaska differs from that in the lower 48. First, GCI had to lease land and build an infrastructure in nine villages. Leasing land in Alaska is complex because of the ownership patterns. In rural Alaska, the construction process is logistically complex and is determined by seasonal construction and barge schedules. Cary Aff., ¶ 18. In addition, in the villages, GCI ran into problems that would not likely be faced in other areas of the country such as the need to upgrade basic electrical infrastructure to support the satellite facility. The affidavit also includes project schedules and correspondence regarding issues that arose during the building process and details the steps taken by GCI to have service up and running within the Funding Year 2002.

Based on this information it is CATG's position that the gap between the contract date and the start of service date is fully explained and justified.

2. Please provide complete copies of any and all requests for bids or proposals (RFPs), invitations to bid, or other bid solicitations associated with your selection and contracting for services for which you are requesting support. You need not provide copies of Form 465s. If no solicitation took place other than posting of Form 465s, please so state.

The only solicitation by CATG is the Form 465.

3. Please provide complete copies of any and all proposals, bid responses, etc., received from vendors in response to the Form 465s or any RFP, or other solicitation in any way associated with your support requests for Funding Year 2002.

CATG received two proposals in FY 2001, one from GCI, CATG Exhibit 3, and the joint proposal from ATT Alascom and TelAlaska. CATG Exhibit 4. As explained in the affidavits and in the meeting minutes, these proposals were presented formally at a CATG Board meeting in January 2002. CATG has searched its records and examined the meeting packets handed out to Board members for those meetings. So far as we can determine, the only information provided by ATT Alascom/TelAlaska was a proposal that had been prepared for the Yukon Flats School District and two term sheets applicable to CATG. CATG assumes that the purpose of providing the Yukon Flats proposal was to give the Board information about the companies. We have searched all records of that meeting and do not find any other information that would explain ATT/Alascom and TelAlaska's proposal regarding telemedicine. Moreover, the presentation minutes do not clarify the proposal terms.

The ATT Alascom/TelAlaska term sheet, which is confusing, provides two options. The first is a bid for a dedicated 512 kbps at $5,435 plus another $353 for each local T-1 loop and a hardware lease of $435 per month. The second is for a dedicated T-1 line at $12,000 per month. Thus, part of the ATT Alascom/TelAlaska primary bid was for less than T-1 service.

The GCI proposal gives significant details of its telemedicine services and the customer service that would be available to CATG. GCI placed a bid for T-1 service at a cost of $11,515 and the local T-1 loops at $353 per month.[1]

Thus, just by cost alone, comparing T-1 service rates, GCI's bid was lower ($11,515 compared to $12,000).

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[1] The term sheet lists the local loop price as $353. The ultimate contract price was $383 based on the then applicable tariffs.

For FY 2002, the only proposal of which CATG is aware is one from ATT Alascom. CATG Exhibit 5.[2] The proposal does not provide the details of the entire cost of the service. In its bid, ATT Alascom quotes the "CATG Cost for Wide Area Network." It appears that this proposal sets forth only that portion of the cost that is charged to CATG, the Urban Rate. CATG Exhibit 6 lists the urban rates set by the Regulatory Commission of Alaska effective as of June 1, 2001. The rate quoted by ATT Alascom exactly matches the rates of $664.95 MRC and $437.35 NRC listed on the urban rate chart as the rate for Frame Relay - 768 Kbps CIR/1.544 Mbps Port Speed.[3] Of course, CATG would be charged the same urban rate by any provider offering the same level of service.[4] The bid gives no information about the *total* cost of the service that would be passed on to RHCD nor does the bid provide any detail on the kind of service that ATT intended to provide. As a consequence, ATT's bid does not provide the detail necessary to determine the overall cost of service, which is the factor most important to RHCD in determining the overall cost to the agency. Without this information, this bid cannot be compared to GCI's contract rate.

As CATG noted in its prior filing, the CATG Executive Director Anna Huntington-Kriska understood that ATT was going to follow up the email with further written information. Indeed, the bid is not self explanatory to a lay person in terms of the type of service that ATT intended to provide. ATT never followed up with hard copies or further information.

4. Please provide documentation regarding any and all meetings that took place between CATG and potential bidders in regard to the Form 465 postings, RFP or other solicitation vehicles. This documentation should include a list of each meeting including the date and location of the meeting, and meeting attendance sheets or lists of the persons known to have attended the meeting. RHCD has received conflicting information regarding whether at least one such meeting was video or audio taped. In March 2002, USAC asked Pat Stanley, Executive Director of CATG, for a copy of any such videotape and she responded that there were not video taped presentations. If there were video or audio tapes of any of the presentations, please provide a copy of each.

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2 GCI was already operating under a multi-year contract and did not make a separate proposal for that FY.

3 Apparently, ATT used an RCA rate chart that was not in effect at the time of the bid (the chart was effective as of June 2001 and applicable through May, 2002). See also Exh. 6 for the rates applicable in December 2002, the date of the ATT bid.

4 For example, GCI's service, though not a frame relay but a broad packet satellite delivery T-1, is considered by the RCA to be roughly equivalent and therefore in the same rate category as the Frame Relay-768 Kbps. See CATG Exhibit 7. Hence, there is no difference in what would have been charged to CATG by either service provider.

A preliminary meeting with between GCI and CATG took place October 18, 2001 at Fort Yukon. CATG Exhibit 8. At that meeting GCI not only outlined its telemedicine services but also discussed its broad range plans for providing internet access to the villages represented by CATG. The Board did not make any decision on contracting after that meeting.

The next meeting occurred January 17, 2002 at Fort Yukon. At this meeting, GCI and ATT Alascom/TelAlaska made formal presentations of their bid for services. The ATT Alascom/TelAlaska presentation was made jointly and both companies had a representative present. Stanley Aff., ¶ 3. Relevant audio tapes from that meeting as well as a typed transcript of that portion of the meeting devoted to the bid presentations are attached at CATG Exhibit 9 and 10.[5] This meeting was not videotaped. Also included is an excerpt from the official meeting minutes, which includes the Board's discussion of the presentations. CATG Exhibit 11. The minutes list those Board members in attendance but this meeting was a public meeting and many unidentified tribal members were also in attendance.

Martin Cary's affidavit provides some interpretation of the events that occurred at that meeting. Cary Aff., ¶¶ 3-7. In addition, Pat Stanley explains how the presentations came about. Stanley Aff., ¶3.

These meetings are discussed further below at Question 6.

5. Please provide copies of any and all correspondence other than bid reponses between CATG and potential bidders in regard to the Form 465s, RFPs, or other solicitation vehicles. This should include any emails between CATG and potential bidders.

CATG did not identify any documents responsive to this request.

6. Please provide complete documentation indicating how and why you selected your service provider. This documentation should include a description of your evaluation process, and the factors used to determine the winning bid. If more than one factor was used in the evaluation process, please indicate how those factors were weighted. This documentation should also include copies of all CATG meeting minutes

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5 CATG tapes its Board meetings and then has the minutes transcribed locally. For the January 17, 2002 meeting, CATG had prepared official minutes that did not include the presentation portion of the meeting. These minutes are at CATG Exhibit 11. (The audio for the entire meeting, which lasted two days is contained on 10 audio tapes.) In response to RHCD's request, CATG transcribed that portion of the meeting where the companies made their presentations. Exhibit 10. The tapes were transcribed verbatim and have not been edited. As is obvious, the person transcribing the tape was not familiar with many technical terms and in some places was unable to identify or misidentifies the particular person speaking. The tape quality varies with some discussion being obscured by activity in the room. In addition, since the presentation is contained on two tapes, there may have been some discussion lost because of the need to change tapes during the course of proceedings. Thus, the transcript is not entirely accurate and the reader may have to interpret some of the discussion.

that are relevant to the service provider selection decision. Please provide completed copies of the Telehealth Proposal Evaluation in Attachment 4 of your recently filed appeal if that was used to score the winning proposal.

The CATG evaluation process included oral presentations, several discussions among Board members, and advice from third party neutrals. There was no written evaluation process. CATG has provided its meeting minutes which document the oral presentations made by the telecommunications providers to the Board. Those minutes also provide a transcript of the discussion that took place within the Board regarding the proposals. The Board members considered and discussed cost. Exh. 11. Pat Stanley avers that it was important that GCI's service would cost less. CATG is a small tribe with limited resources and it is always concerned with keeping down costs. In this case, with the higher level of service, it was clear that the costs would increase. The issue was how to get the most for the money. Stanley Aff., ¶ 4.

The minutes also reflect that the Board placed great weight on the customer service that came with it. As Evon Peter stated, "I am leaning toward GCI [because] we have been with TelAlaska and AT&T for the last five years and I don't feel like we receive the services and technical support and other things that we currently need right now." Exh. 11, p. 25. Pat Stanley also states that GCI's experience with telemedicine, including having a person dedicated to those issues and the 24/7 technical support policy were very important given CATG's past experience with ATT. Stanley Affidavit, ¶ 4. CATG did not take GCI's word for it. The Board made an effort to find out if the service promised by GCI was real. Members of the CATG Board and Pat Stanley traveled to Kotzebue where GCI was providing service to the local tribal health provider (Maniilaq). The feedback was positive.

It should be expressly pointed out that the Board did not take into consideration offers of training and equipment that were made by the GCI salesman but were later identified as factors that could not be considered in selecting the service provider. Pat Stanley attests to this fact and the meeting minutes also reflect the significant points that were of concern to the Board were cost and service. There was no discussion or consideration of any extras or benefits. See Stanley Affidavit, ¶ 4; Exhs. 11 and 12.

Rather than make a final decision on January 17, the Board voted to secure advice from a third party. Pat Stanley contacted AFHCAN and two employees volunteered to review the two proposals. After reviewing the proposals, the AFHCAN employees met with the Board by teleconference on January 29. The transcript of that meeting is presented in CATG Exhibit 12. The AFHCAN employees did not provide any written evaluation. See Affidavit from Thomas Bunger, an AFHCAN employee who assisted CATG. CATG Exhibit 13. In that teleconference, the AFHCAN employees noted the difference in technical support that would be provided by GCI. The minutes make clear that the AFHCAN employees recognized that GCI had a lower price and a substantially different presentation in terms of service. GCI also intended to upgrade the routers at no cost to CATG since GCI would own them. This factor was also considered an important