



## Copper River Native Association

(AHTNA'T'AENE NENE')

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Received & Inspected

JUN - 4 2010

FCC Mail Room

27 May 2010

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

### Re Appeal of Funding Commitments regarding four HCPs:

HCP# 13015, Native Village of Kluti-Kaah Health Clinic, FRN 40691  
 HCP# 13016, Native Village of Tazlina Health Clinic, FRN 40124  
 HCP# 13017, Cantwell Health Clinic, FRN 41348  
 HCP# 13019, Gulkana Health Clinic, FRN 40416

#### FCC Appeals Reviewer:

Copper River Native Association (CRNA) wishes to appeal the USAC decision regarding funding for the above-referenced Health Care Providers. Since these are all HCPs that are managed by CRNA, and since the issues relating to this appeal are similar for each HCP, the appeal is being filed for all four health clinics with this one letter. Copies of Funding Commitment Letters are included here for all clinics, along with the USAC denial of the appeal filed in December of 2009 by CRNA.

**Background:** CRNA owns and operates a series of rural Health Clinics in the Copper River Basin in Alaska. These clinics are connected to each other and to the distant resource city of Anchorage via a Wide Area Network. During the whole of FY2008, this network consisted of four T1 circuits, two of which were comparatively expensive circuits purchased from AT&T (HCP#13015 and HCP#13017), and two of which were less costly circuits purchased from the local carrier, Copper Valley Telephone Cooperative (HCP# 13016 and HCP# 13019).

Some months before the beginning of FY2008, CRNA had staff changes in key positions, including the position directly responsible for the filing of USAC forms, and also the Director of the Health Department, which supervises the Health Clinics. The Director, after only a few month in the position, resigned within weeks of the due dates for the filing of FY2008 forms. This resulted in confusion and a leadership vacuum at a critical time.

**The Issue:** In the Funding Commitment Letter for each HCP, the "Eligible Support Start Date" is entered as 23 July 2008. This means that more than 3 weeks during the month of July are not scheduled for reimbursement. Especially for circuits purchased from AT&T, this amounts to very significant costs. CRNA, being a small non-profit service organization, cannot reasonably absorb these kinds of expenses.

**The requested change:** In all four cases, we feel that the USAC decision to deny funding for the first part of July is unwarranted and we ask to have that decision reversed.

**The reasons:** The first few weeks of July 2008 were denied funding due to the requirement that providers be granted a 28-day bidding period, starting on the date of filing of the forms 465. For all four HCPs, form 465

for FY2008 was filed on 25 June 2008. However, as is discussed below, the bidding process was neither disrupted nor affected in any way.

CRNA was at the time under contract with AT&T to provide the two most costly circuits (HCP#13015 and HCP#13017), both of which terminated on one end outside of the local area. This was a three-year contract, in effect throughout the entirety of both FY2007 and FY2008. Although USAC has determined that this contract did not meet its criteria as an "evergreen" contract, it nonetheless was binding on both CRNA and AT&T, and effectively discouraged any change of provider for these circuits. In previous years, when forms 465 were filed earlier (so that this issue did not arise), occasional calls from other providers resulted in loss of interest when they found that an existing contract was in effect, even though that contract was not technically classed as "evergreen." In fact, although CRNA did receive a very few exploratory contacts from other providers in those previous years, not one competing bid was received until the time of the expiration of the AT&T contract in FY2009.

For the remaining two Health Clinics (HCP#13016 and HCP#13019), there were never any competing bids for the reason that there were no other possible providers for these local circuits. Our LEC, Copper Valley Telephone Cooperative (CVTC), is the only provider of such circuits in the Copper River Basin. If an outside provider wished to bid on these services, they would have to first purchase the circuits from CVTC, then resell them. Reselling these two circuits did not become practical until August of the current fiscal year (2009), when the expiration of the AT&T contract permitted the two circuits to be included in an overall package unifying all circuits under a redesigned WAN. Again, because of the extant contract with AT&T, this approach was not practical during any part of FY2008.

It is clear, then, that the filing of forms 465 at the end of June 2008 did not in any way affect, adversely or otherwise, the competitive bidding process for any portion of FY2008.

It is also important to note that there was no interruption of service to the clinics. During the period for which funding has been denied, the telemedicine WAN was kept up and running, performing the service for which it was designed and which USF support is intended to make possible.

**Conclusion:** For these reasons it is apparent that the denial of funding for the start of FY2008 does not fulfill the intent of the Universal Service Fund. It is also clear that the late filing of forms 465 did not alter or affect the process of bidding which the 28-day waiting period is intended to provide.

Copper River Native Association therefore requests that funding be granted for each of the Health Clinics listed above for the full duration of FY2008, beginning 1 July 2008 and extending through 30 June 2009.

**Contact:** CRNA's representative in this matter is David T. Wellman. Please direct questions and requests for further information regarding this appeal to him using the contact information shown below. I will be in close communication with Mr. Wellman regarding this important process.

**David T. Wellman • HC60 Box 227 • Copper Center, AK 99573**

Telephone: 907-822-3418  
Cell: 907-259-4545  
Fax (call first): 907-822-3418  
Email: dave@cynosurenorth.com

We appreciate your fair consideration of this very significant issue.

Thank you,



Paula Vrana  
Chief Operations Officer, Copper River Native Association



*Administrator's Decision on Rural Health Care Program Appeal*

*Via Electronic and Certified Mail*

April 20, 2010

Mr. David T. Wellman  
Telemedicine Contact  
Copper River Native Association  
P.O. Box H  
Mile 104, Old Richardson Highway  
Copper Center, AK 99573

Re: Request for Full Year Support  
Multiple HCPs (see attached list)

Dear Mr. Wellman:

The Universal Service Administrative Company (USAC) has completed its evaluation of your letter of appeal dated December 24, 2009, submitted on behalf of Copper River Native Association (CRNA). Your appeal requests that USAC allow CRNA to obtain a full year of support for Funding Year 2008 even though the FCC Form 465s for the attached list of health care providers (HCPs) were submitted after the required deadline to receive support for the full funding year.

Decision on Appeal and Explanation: Denied

Funding Year 2008 began on July 1, 2008 and ended June 30, 2009.<sup>1</sup> In order to receive support for the full funding year, an HCP is required to submit and post a FCC Form 465 – *Description of Services Requested & Certification Form* – at least 28 days before the end of the previous fund year.<sup>2</sup> CRNA's FCC Form 465 was required to be posted by June 2, 2008. CRNA requests that USAC waive the 28-day competitive bidding requirement and issue support beginning on July 1, 2008 despite the fact that the Form 465s were not posted until June 25, 2008.

<sup>1</sup> 47 C.F.R. § 54.623(b). See also, *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, Ninth Order on Reconsideration, FCC 98-346, 14 FCC Rcd. 377, ¶. 2 (1998).

<sup>2</sup> 47 C.F.R. § 54.603(b)(3) ("the health care provider shall wait at least 28 days from the date on which its FCC Form 465 is posted on the [USAC] website before making commitments with the selected telecommunications carrier(s).").

Mr. David Wellman  
April 20, 2010  
Page 2 of 3

In the appeal, CRNA states that two of the HCPs (13015 and 13017) were under a three-year contract with AT&T that was in effect through Funding Year 2008. During a previous review of this contract, USAC determined that the AT&T contract was not a valid evergreen contract. USAC considers a service agreement to have evergreen status when both parties are identified within the agreement; both parties sign and date the agreement; the service agreement specifies the type and term of the service; and the agreement has a specified duration.<sup>3</sup> CRNA's master service agreement with AT&T was not designated as an evergreen contract because it did not include the HCP addresses or the type of service provided. CRNA acknowledges in its appeal that "although USAC determined that this contract did not meet its criteria as an 'evergreen' contract, it nonetheless was binding on both CRNA and AT&T, and effectively discouraged any change of provider for these circuits."<sup>4</sup> Because the contract with AT&T did not meet the criteria for an evergreen contract, CRNA was required to re-compete the services under the contract and post the FCC Form 465 for 28-days to meet competitive bidding requirements.

The remaining two HCPs (13016 and 13019) were not under a service agreement during Funding Year 2008. These two sites were receiving month-to-month services from Copper Valley Telephone Cooperative (CVTC). When asked by RHC during the review process to provide its service agreement with CVTC, CRNA instructed RHC to "process the application as month-to-month."

USAC does not have the discretion to waive competitive bidding requirements and permit retroactive posting of Form 465s. Although CRNA states it was discouraged from changing providers based on its contract with AT&T, it is still required to allow for fair and open bidding during the entire 28-day bidding window. Additionally, the fact that no other carriers are able to provide service to HCPs 13016 and 13019 has no bearing on the requirement to post the Form 465 by June 2, 2008 to receive a full year of funding. Therefore, the request for a full year of support is denied.

If you wish to appeal this decision, you may file an appeal with the FCC. Detailed instructions for filing appeals are available at:

<http://www.usac.org/rhc/about/filing-appeals.aspx>

Sincerely,

USAC

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<sup>3</sup> See USAC, Rural Health Care, Glossary of Terms, <http://www.usac.org/rhc/tools/glossary-terms.aspx#evergreen>.

<sup>4</sup> Letter of Appeal, 1.

## ATTACHMENT A

### Listing of Health Care Providers Subject to this Appeal

HCP No.	HCP Name	FRN
13015	Native Village of Kluti-Kaah Health Clinic	40691
13016	Native Village of Tazlina Health Clinic	40124
13017	Cantwell Health Clinic	41348
13019	Gulkana Health Clinic	40416



Rural Health Care Division

80 South Jefferson Road  
Whippany, NJ 07981

www.rhc.universalservice.org  
Phone: 1-800-229-5476

November 19, 2009

David T Wellman  
Copper River Native Association  
P.O. Box H, Mile 104 Old Richardson Highway  
Copper Center, AK 99573

**Re: Funding Commitment for Funding Year 2008, Packet ID# 86693**

Dear David Wellman:

The Rural Health Care Division (RHCD) of the Universal Service Administrative Company (USAC) has completed a review of your FCC Forms 466 or 466A and made decisions with respect to your request for support of telecommunications or Internet services. This letter is to advise you of our decisions. We have sent this letter to both the rural HCP mailing address (above) and the rural HCP physical location (below) if these addresses are different.

**HCP Number:** 13015  
**HCP Contact Name:** David T Wellman  
**HCP Name:** Native Village of Kluti-Kaah Health Clinic  
**HCP Address:** Mile 104 Old Richardson Highway  
Copper Center, AK 99573

In addition, a copy of this letter has been sent to your service provider listed below.

**Service Provider Name:** AT&T Communications - Alascom Inc  
**Service Provider Identification Number (SPIN):** 143005617

Based on the information provided on your applications, the RHCD determined that the rural HCP may receive the onetime (non-recurring) and monthly recurring support amounts shown below for Funding Year 2008 (7/1/08 to 6/30/09). The estimated total support amount listed below is what the RHCD has reserved for your request.

**Service:** T1 or DS1 - 1544 Kbps  
**Billing Account Number:** 8002-268-3165

Type of Service Agreement	Eligible Support Start Date	Support End Date	Estimated Months of Support	Non-Recurring Support Amount	Monthly Recurring Support Amount	Estimated Total Support Amount	Funding Request Number
Month to Month	7/23/2008	6/30/2009	11.29	\$0.00	\$7,850.53	\$86,374.48	40691

To help you understand the information provided in this letter, the following definitions are provided:

- **Service:** The type of service ordered from the service provider as shown on Form 466 or 466A.



**Rural Health Care Division**

80 South Jefferson Road  
Whippany, NJ 07981

www.rhc.universalservice.org  
Phone: 1-800-228-5478

November 05, 2009

David T Wellman  
Copper River Native Association  
P.O. Box H, Mile 104 Old Richardson Highway  
Copper Center, AK 99573

**Re: Funding Commitment for Funding Year 2008, Packet ID# 87377**

Dear David Wellman:

The Rural Health Care Division (RHCD) of the Universal Service Administrative Company (USAC) has completed a review of your FCC Forms 486 or 486A and made decisions with respect to your request for support of telecommunications or Internet services. This letter is to advise you of our decisions. We have sent this letter to both the rural HCP mailing address (above) and the rural HCP physical location (below) if these addresses are different.

**HCP Number:** 13016  
**HCP Contact Name:** David T Wellman  
**HCP Name:** Native Village of Tazlina Health Clinic  
**HCP Address:** Mile 110.5 Richardson Highway 82d  
04m N Lat, 146d 27m W Long  
Glennallen, AK 99588

In addition, a copy of this letter has been sent to your service provider listed below.

**Service Provider Name:** Copper Valley Telephone Coop  
**Service Provider Identification Number (SPIN):** 143006030

Based on the information provided on your applications, the RHCD determined that the rural HCP may receive the onetime (non-recurring) and monthly recurring support amounts shown below for Funding Year 2008 (7/1/08 to 6/30/09). The estimated total support amount listed below is what the RHCD has reserved for your request.

**Service:** T1 or DS1 - 1544 Kbps  
**Billing Account Number:** 31779

Type of Service Agreement	Eligible Support Start Date	Support End Date	Estimated Months of Support	Non-Recurring Support Amount	Monthly Recurring Support Amount	Estimated Total Support Amount	Funding Request Number
Month to Month	7/23/2008	6/30/2009	11.29	\$0.00	\$368.76	\$4,163.30	40124

To help you understand the information provided in this letter, the following definitions are provided:

- **Service:** The type of service ordered from the service provider as shown on Form 486 or 466A.



Rural Health Care Division

80 South Jefferson Road  
Whippany, NJ 07981

www.rhc.universalservice.org  
Phone: 1-800-229-5476

December 22, 2009

David T Wellman  
Copper River Native Association  
P.O. Box H, Mile 104 Old Richardson Highway  
Copper Center, AK 99573

**Re: Funding Commitment for Funding Year 2008, Packet ID# 87371**

Dear David Wellman:

The Rural Health Care Division (RHCD) of the Universal Service Administrative Company (USAC) has completed a review of your FCC Forms 466 or 466A and made decisions with respect to your request for support of telecommunications or Internet services. This letter is to advise you of our decisions. We have sent this letter to both the rural HCP mailing address (above) and the rural HCP physical location (below) if these addresses are different.

**HCP Number:** 13017  
**HCP Contact Name:** David T Wellman  
**HCP Name:** Cantwell Health Clinic  
**HCP Address:** 1/4 Mile up Cantwell Community Road  
63d 23m N Lat, 148d 56m W Long  
Cantwell, AK 99729

In addition, a copy of this letter has been sent to your service provider listed below.

**Service Provider Name:** AT&T Communications - Alascom Inc  
**Service Provider Identification Number (SPIN):** 143005617

Based on the information provided on your applications, the RHCD determined that the rural HCP may receive the onetime (non-recurring) and monthly recurring support amounts shown below for Funding Year 2008 (7/1/08 to 6/30/09). The estimated total support amount listed below is what the RHCD has reserved for your request.

**Service:** T1 or DS1 - 1544 Kbps  
**Billing Account Number:** 8002-268-3165

Type of Service Agreement	Eligible Support Start Date	Support End Date	Estimated Months of Support	Non-Recurring Support Amount	Monthly Recurring Support Amount	Estimated Total Support Amount	Funding Request Number
Month to Month	7/23/2008	6/30/2009	11.29	\$0.00	\$8,210.44	\$92,695.87	41348

To help you understand the information provided in this letter, the following definitions are provided:

- **Service:** The type of service ordered from the service provider as shown on Form 466 or 466A.



Rural Health Care Division

80 South Jefferson Road  
Whippany, NJ 07981

www.rhc.universalservice.org  
Phone: 1-800-229-5476

November 12, 2009

David T Wellman  
Copper River Native Association  
P. O. Box H, Mile 104 Old Richardson Highway  
Copper Center, AK 99573

**Re: Funding Commitment for Funding Year 2008, Packet ID# 87390**

Dear David Wellman:

The Rural Health Care Division (RHCD) of the Universal Service Administrative Company (USAC) has completed a review of your FCC Forms 466 or 466A and made decisions with respect to your request for support of telecommunications or Internet services. This letter is to advise you of our decisions. We have sent this letter to both the rural HCP mailing address (above) and the rural HCP physical location (below) if these addresses are different.

**HCP Number:** 13019  
**HCP Contact Name:** David T Wellman  
**HCP Name:** Gulkana Health Clinic  
**HCP Address:** Mile 127 Richardson Highway 62d 16m  
N Lat, 145d 23m W Long  
Gakona, AK 99586

In addition, a copy of this letter has been sent to your service provider listed below.

**Service Provider Name:** Copper Valey Telephone Coop  
**Service Provider Identification Number (SPIN):** 143006030

Based on the information provided on your applications, the RHCD determined that the rural HCP may receive the onetime (non-recurring) and monthly recurring support amounts shown below for Funding Year 2008 (7/1/08 to 6/30/09). The estimated total support amount listed below is what the RHCD has reserved for your request.

**Service:** T1 or DS1 - 1544 Kbps  
**Billing Account Number:** 31779

Type of Service Agreement	Eligible Support Start Date	Support End Date	Estimated Months of Support	Non-Recurring Support Amount	Monthly Recurring Support Amount	Estimated Total Support Amount	Funding Request Number
Month to Month	7/23/2008	6/30/2009	11.29	\$0.00	\$368.76	\$4,163.30	40416

To help you understand the information provided in this letter, the following definitions are provided:

- **Service:** The type of service ordered from the service provider as shown on Form 466 or 466A.