COVINGTON & BURLING LLP

BEIJING BRUSSELS LONDON NEW YORK
SAN DIEGO SAN FRANCISCO SEOUL
SHANGHAI SILICON VALLEY WASHINGTON

1201 PENNSYLVANIA AVENUE, NW
WASHINGTON, DC 20004-2401
T 202.662.6000
WWW.COV.COM

June 23, 2014

Via ECFS

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Notice of Ex Parte Presentation, WC Docket No. 02-60

Dear Ms. Dortch:

On Thursday, June 19, 2014, the undersigned, as counsel for Yukon-Kuskokwim Health Corporation ("YKHC") and Norton Sound Health Corporation ("NSHC"), together with John Nakahata of Harris, Wiltshire & Grannis LLP, counsel for GCI Communication Corp. ("GCI"), met with the following members of the Telecommunications Access Policy Division of the Wireline Competition Bureau: Christianna Barnhart, Manager of the Rural Healthcare Program; Elizabeth McCarthy, Attorney Advisor; Garnet Hanley, Attorney Advisor; and Matt Dick, Intern. Ms. Hanley participated in the meeting by phone.

During the meeting, we described the facts and circumstances underlying the petitions for review filed in the above-referenced docket by YKHC on October 28, 2013, and May 27, 2014, and by NSHC on April 3, 2014. Each of these petitions sought review of certain erroneous funding determinations made by the Universal Service Administrative Company ("USAC").

As background, YKHC receives telecommunications and Internet services pursuant to an evergreen contract with GCI that expressly contemplates bandwidth increases during its term and provides pricing for a wide range of bandwidth speeds.[1] Due to changes in law and medical needs, YKHC transitioned to electronic health records and deployed telemedicine carts and two-way high definition video teleconferencing equipment. These actions required YKHC to seek an increase in bandwidth levels for six of its facilities pursuant to the terms of its contract with

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[1] *Request for Review by Yukon-Kuskokwim Health Corporation of Decision of Universal Services Administrator*, WCB Docket No. 02-60, filed October 28, 2013 ("YKHC 2013 Review Request"), at 9-10.

GCI.[2] USAC initially approved the funding for these bandwidth increases for Funding Year 2012, but in doing so it revoked the contract's evergreen status and converted it to a month-to-month arrangement.[3] This was in error. USAC later changed course, but rather than correct this error it denied funding entirely for the bandwidth increases at four of the six facilities, claiming that YKHC had not sought bids for the increased bandwidth amounts and therefore committed a competitive bidding violation.[4] This, too, was in error. A year later, YKHC submitted funding requests for Funding Year 2013 for increased bandwidth for these same six facilities.[5] In response to this request, USAC again incorrectly treated the bandwidth upgrades as outside of the scope of the contract and approved funding only on a month-to-month basis and only for three of the six facilities.[6]

NSHC had a similar experience. Like YKHC, it is a party to an evergreen contract with GCI that provides pricing for a wide range of bandwidth speeds and contemplates bandwidth upgrades during the term of the contract.[7] In 2013, consistent with the terms of its contract, NSHC sought to upgrade the bandwidth at one of its facilities and requested funding from USAC for Funding Year 2012 for this increase.[8] USAC approved the funding request, but in doing so revoked the contract's evergreen status.[9] Like its actions vis-à-vis YKHC, this was in error.

During our meeting, we reiterated our position that USAC's various (and inconsistent) revocations and denials were in error because the increases in bandwidth that were the subject of USAC's actions did not constitute a "cardinal change" or "contract modification" and therefore should have been approved without affecting YKHC's and NSHC's contracts' evergreen status. We also explained that each of YKHC and NSHC entered into these multi-year contracts with GCI after properly filing FCC Forms 465 and conducting a compliant competitive bidding process. USAC's training materials specifically advise health care providers to describe their

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[2] *Id.* at 11-12.

[3] *Id.* at 12-13.

[4] *Id.* at 14.

[5] *Request for Review by Yukon-Kuskokwim Health Corporation of Decision of Universal Services Administrator*, WCB Docket No. 02-60, filed May 27, 2014 ("YKHC 2014 Review Request") at 13.

[6] *Id.* at 13-14.

[7] *Request for Review by Norton Sound Health Corporation of Decision of Universal Services Administrator*, WCB Docket No. 02-60, filed April 3, 2014, at 7.

[8] *Id.* at 8.

[9] *Id.* at 8-9.

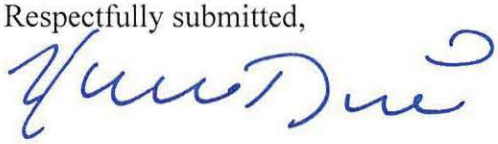
service needs in general terms on the FCC Form 465 instead of requesting specific bandwidth levels. Consistent with USAC's guidance, YKHC and NSHC described the functions for which they required bandwidth and each ultimately determined that GCI's respective proposal would best accommodate its needs. We explained that by revoking the evergreen status of the contracts, USAC treated YKHC and NSHC as if they specified in their respective FCC Forms 465 each facility's specific bandwidth needs, which was not the case. Mr. Nakahata also explained that multi-year contracts providing for volume and term discounts are essential to the ability of health care providers to obtain service meeting their evolving bandwidth needs at a price that is affordable both to the health care providers and to the Rural Health Care Program.

We noted that if the Commission or USAC believes that changes to the Commission's rules are needed, or that guidance about the content of the FCC Form 465 and the permissibility of entering into multi-year contracts that contemplate bandwidth increases is needed, then, consistent with applicable law, these changes should be considered and applied on a prospective basis after giving adequate notice to rural health care providers so that they have an opportunity to comply. Changing policies or processes midstream, as occurred here, violates the Commission's rules and severely compromises a rural health care provider's ability to consistently obtain funding under a contract that USAC has approved. Mr. Nakahata also noted that YKHC and NSHC are not the only rural health care providers in Alaska experiencing challenges with USAC on this issue.

We urged the Commission to act on YKHC's and NSHC's petitions quickly and decisively so that USAC's errors are not perpetuated in future funding years, causing more disruption to the ability of rural health care providers to provide reliable, affordable, and efficient health care services in remote and isolated regions.

Any questions concerning this submission should be directed to the undersigned.

Respectfully submitted,



Yaron Dori
Morgan Kennedy
Michael Beder
Counsel for YKHC and NSHC

cc: Christianna Barnhart, FCC (via e-mail)
Elizabeth McCarthy, FCC (via e-mail)
Garnet Hanley, FCC (via e-mail)
John Nakahata, Counsel for GCI