

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Rural Health Care Support Mechanism) WC Docket No. 02-60

ORDER ON RECONSIDERATION

Adopted: February 5, 2007

Released: February 6, 2007

By the Commission:

I. INTRODUCTION

1. In this Order, we grant a Petition filed by National LambdaRail, Inc. (NLR)¹ seeking reconsideration or, in the alternative, clarification of the Commission's order establishing a rural health care pilot program to encourage the provision of telehealth and telemedicine services throughout the nation.² Specifically, we find that pilot program applicants may request and, if selected, may receive funding to support up to 85 percent of the cost of connecting state and regional broadband networks to the University Corporation for Advanced Internet Development, Inc. (Internet2) or NLR. We further find that an applicant that proposes to connect its state or regional broadband networks to Internet2 or NLR may either (1) pre-select Internet2 or NLR; or (2) seek a competitive bid for the provision of nationwide backbone services from Internet2 or NLR. To ensure the success of the pilot program, we expect that Internet2 and NLR will interconnect or peer with each other. Finally, we provide applicants with an additional thirty (30) days time to submit their applications to the Commission.

II. BACKGROUND

2. On September 26, 2006, the Commission established a pilot program, pursuant to section 254(h)(2)(A) of the Telecommunications Act of 1996 (Act),³ to examine how the universal service rural health care funding mechanism can be used to enhance public and non-profit health care providers' access to advanced telecommunications and information services.⁴ Specifically, the pilot program will provide funding to support up to 85 percent of the cost of the construction of state or regional broadband networks and advanced telecommunications and information services provided over those networks.⁵ In addition, the Commission specified that the pilot program would provide funding to support up to 85 percent of the

¹*Rural Health Care Support Mechanism*, WC Docket No. 02-60, Petition for Reconsideration or, in the Alternative, Clarification by National LambdaRail, Inc. (filed Oct. 30, 2006) (Petition).

² See generally *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 21 FCC Rcd 11111 (2006) (*Rural Health Care Pilot Program Order*).

³ 47 U.S.C. § 254(h)(2)(A).

⁴ See generally *Rural Health Care Pilot Program Order*, 21 FCC Rcd 11111.

⁵ See *id.* at 11111-12, 11115, paras. 1, 3, 14. Because participants are authorized to spend program funds on the costs of advanced telecommunications and information services, applicants are permitted to request funding to connect their proposed networks to the public Internet.

cost of connecting the state or regional broadband networks to Internet2, a nationwide backbone provider.⁶ While the Commission indicated that funding provided by the pilot program could be used to connect constructed state or regional broadband networks to Internet2, we did not indicate that such a connection was required.⁷ Thus, under the pilot program, applicants are free to propose the construction of state or regional broadband networks that would not be connected to any nationwide backbone.

3. On October 30, 2006, NLR filed a Petition for Reconsideration or, in the Alternative, Clarification of the Commission's *Rural Health Care Pilot Program Order*.⁸ In its Petition, NLR asked the Commission to reconsider or clarify the *Rural Health Care Pilot Program Order* "by finding that . . . the pilot program will also provide funding to support the cost of connecting state and regional networks to NLR."⁹

4. The Wireline Competition Bureau sought comment on the Petition on November 6, 2006.¹⁰ Most commenters supported the Petition, asserting that funding connections to NLR would lower costs, provide redundancy, and promote competitive neutrality, as required by section 254(h)(2)(A) of the Act.¹¹ Other commenters opposed the Petition, arguing that connecting to a single dedicated nationwide backbone provider, Internet2, is more efficient and would ensure that participating health care networks are interoperable.¹²

III. DISCUSSION

5. In this Order, we grant NLR's Petition and find that a pilot program applicant may request and, if selected, may receive funding to support up to 85 percent of the cost of connecting state and regional broadband networks to Internet2 or NLR.¹³ The Commission finds that it will serve the public interest to allow applicants to request funding to support the cost of connecting state and regional broadband networks to NLR as well. We limit our decision here by providing for the inclusion in the

⁶ See *id.* at 11111, para. 2. Further, the Commission capped the amount of money available for the pilot program for each funding year at \$100 million, less the amount committed to the existing rural health care mechanism for the appropriate funding year. *Id.* at 11115, para. 12.

⁷ *Rural Health Care Pilot Program Order*, 21 FCC Rcd at 11111-2, para. 1-2, ("[T]he pilot program will provide funding to support the construction of state or regional broadband networks and services provided over those networks. . . . In addition, the pilot program will provide funding to support the cost of connecting the state or regional networks to Internet2."), *id.* at 11115, para. 14 ("The funding provided under this pilot program may be used to fund up to 85% of the costs incurred by the applicants to . . . connect [its] network to Internet2").

⁸ See generally Petition.

⁹ *Id.* at 6. A list of commenters is provided in the Attachment.

¹⁰ *Wireline Competition Bureau Seeks Comment on the Petition for Reconsideration or, in the Alternative, Clarification Filed By National LambdaRail, Inc.*, WC Docket No. 02-60, Public Notice, 21 FCC Rcd 13125 (2006).

¹¹ See, e.g., Comments of the American Telemedicine Association, WC Docket No. 02-60 at 2-5 (filed Nov. 21, 2006); Comments of the University Corporation for Atmospheric Research, WC Docket No. 02-60 (filed Nov. 27, 2006); Comments of NetworkVirginia, WC Docket No. 06-20 (filed Nov. 28, 2006); Reply Comments of AT&T, Inc., WC Docket No. 02-60 at 2-5 (filed Nov. 28, 2006); Reply Comments of NTCA, WC Docket No. 02-60 at 2 (filed Nov. 28, 2006).

¹² See Comments of Internet2 Regarding National LambdaRail, Inc.'s Petition for Reconsideration or Clarification, WC Docket No. 02-60 at 3-4 (filed Nov. 21, 2006); Letter from Michael M. Crow, President, Arizona State University, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-60 at 2 (filed Nov. 21, 2006).

¹³ See generally Petition; Comments of LEARN, WC Docket No. 02-60 (filed Nov. 28, 2006).

pilot program of NLR in addition to Internet2.¹⁴ In reaching this conclusion, we emphasize that the pilot program is limited in scope and is intended as a “trial program that will . . . inform our examination” of how to effectively bring the benefits of broadband connectivity to health care providers and patients, and is not intended as a permanent revision to the rural health care program.¹⁵ Moreover, it is reasonable to limit the pilot program to Internet2 and NLR. As noted in our initial Order, Internet2 is a non-profit entity that already links a number of institutions, such as government research institutions and academic, public and private health care providers that house significant medical expertise.¹⁶ Significantly, NLR is also a non-profit entity that is connected to these types of institutions. Thus, it would provide similar opportunities to pilot program applicants as Internet2 does. Moreover, supporting connections to NLR would expand health care providers’ ability to access institutions that may be currently connected to only one backbone or to otherwise address network or clinical needs unique to an applicant.¹⁷

6. The participation of more than one non-profit nationwide backbone provider would also provide redundancy, which “will enhance the health care community’s ability to provide a rapid and coordinated response in the event of a national crisis.”¹⁸ Indeed, as stated above, a number of health care entities are already connected to NLR as well as to Internet2.¹⁹ Accordingly, in order to enhance public safety and homeland security, we expect that Internet2 and NLR will facilitate the exchange of traffic between their networks by establishing peering or other interconnection arrangements.²⁰ Such arrangements will also enhance the utility of the pilot program as a tool for examining the communications needs of health care providers, as well as enhance health care providers’ access to the infrastructure and the medical resources connected to these networks that are necessary to develop a ubiquitous dedicated health care network.²¹

7. We further allow applicants to either pre-select Internet2 or NLR, or to seek competitive bids from NLR and Internet2 through the normal competitive bidding process. We find that allowing an

¹⁴ See Rural Health Care Pilot Program Order, 21 FCC Rcd at 11111, 11112, paras. 1, 4; *but see* Comments of AT&T Inc., WC Docket No. 02-60 at 2 (filed Nov. 21, 2006) (advocating funding for all backbone providers); Reply Comments of AT&T Inc., WC Docket No. 02-60 at 2 (filed Nov. 28, 2006) (same); Comments of NTCA, WC Docket No. 02-60 at 4 (filed Nov. 21, 2006) (same).

¹⁵ *Rural Health Care Pilot Program Order*, 21 FCC Rcd at 11113, para. 9.

¹⁶ *Rural Health Care Pilot Program Order*, 21 FCC Rcd at 11111, para. 2.

¹⁷ *See generally*, Reply Comments of NLR, WC Docket No. 02-60 at 6, 10-15 (filed Nov. 28, 2006) (suggesting that connections to Internet2 or NLR may fulfill different needs for different health care providers to access different institutions); Comments of American Telemedicine Association, WC Docket No. 02-60 (filed Nov. 21, 2006) (stressing that health care providers’ connectivity decisions are driven by the need to access a variety of clinical services).

¹⁸ *Rural Health Care Pilot Program Order* at 11111, paras. 2, 4; *See* Reply Comments of NTCA, WC Docket No. 02-60 at 2 (filed Nov. 28, 2006).

¹⁹ *See* Petition at Attachment A; Comments of LEARN, WC Docket No. 02-60 (filed Nov. 28, 2006); Comments of NetworkVirginia, WC Docket No. 02-60 (filed Nov. 28, 2006); Comments of National Center for Atmospheric Research, WC Docket No. 06-20 (filed Nov. 27, 2006).

²⁰ *See* Reply Comments of NLR, WC Docket No. 02-60 at 10-12 (filed Nov. 28, 2006) (suggesting that institutions connected to NLR are already indirectly connected to Internet2, and that NLR has offered to peer with Internet2 in the past); *See also*, Reply Comments of AT&T, Inc., WC Docket No. 02-60 at 3 (filed Nov. 28, 2006); Comments of Internet2, WC Docket No. 02-60 at 10 (filed Nov. 21, 2006) (suggesting that institutions connected to NLR could easily connect to Internet2).

²¹ *See* note 17, *supra*.

applicant to pre-select NLR or Internet2 will provide the applicant with an opportunity to more fully develop the specific elements of its infrastructure proposal, particularly where only a specific non-profit nationwide backbone provider will fulfill the applicant's network plan or meet its need to access a particular institution that is currently connected to only one nationwide network.²²

8. For these reasons, where an applicant proposes to pre-select Internet2 or NLR, pursuant to section 1.3 of the Commission's rules, we waive, on our own motion, the rural health care program's competitive bidding and cost-effectiveness rules for pilot program applicants.²³ Alternatively, those applicants who have not yet selected a backbone provider at the time of their applications may request funding for such a connection and, if selected, seek bids through the established rural health care competitive bidding mechanism by submitting the appropriate forms to the Universal Service Administrative Company (USAC).²⁴ We also remind applicants that regardless of whether they choose to pre-select NLR or Internet2, pilot program participants will be subject to the Commission's audit authority, and we emphasize that we retain the discretion to evaluate the activities of applicants and determine on a case-by-case basis whether waste, fraud, or abuse has occurred and whether corrective action is necessary.

9. Finally, in light of our decision here, we provide applicants with additional time to submit their proposals to the Commission. In the *Rural Health Care Pilot Program Order*, the Commission required that applications be filed with the Commission thirty (30) days from the date that the Commission receives Office of Management and Budget (OMB) approval of the information collection requirements contained in the *Rural Health Care Pilot Program Order*.²⁵ In order to provide applicants with sufficient time to consider this Order in formulating their proposals, we extend that deadline by thirty (30) days for all applicants and require that proposals be submitted to the Commission sixty (60) days from the receipt of OMB approval of the information collection requirements.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 4(i), 4(j), 10, 201-205, 214, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 160, 201-205, 214, 254, and 403, and section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, the Petition filed by National LambdaRail, Inc. on October 30, 2006, IS GRANTED to the extent provided herein.

²²See note 17, *supra*.

²³As the Commission stated in the *Rural Health Care Pilot Program Order*, waivers may be necessary to effectuate the purposes of the pilot program. See *Rural Health Care Pilot Program Order*, 21 FCC Rcd at 11117, para. 18. The Commission may waive any provision of its rules on its own motion for good cause shown. 47 C.F.R. § 1.3. A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *affirmed by WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972). In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule. *Northeast Cellular*, 897 F.2d at 1166; 47 C.F.R. § 1.3; 47 C.F.R. §§ 54.603, 54.603(b)(4), 54.615(a), 54.615(c)(7).

²⁴See 47 C.F.R. § 54.603; *Rural Health Care Pilot Program Order*, 21 FCC Rcd at 11117, para. 18.

²⁵*Rural Health Care Pilot Program Order*, 21 FCC Rcd at 11117, 11118, paras. 20, 24.

11. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and pursuant to section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, that sections 54.603, 54.603(b)(4), 54.615(a), and 54.615(c)(7) of the Commission's rules, 47 C.F.R. §§ 54.603, 54.603(b)(4), 54.615(a), and 54.615(c)(7), ARE WAIVED to the extent provided herein.

12. IT IS FURTHER ORDERED that applications to participate in the pilot program SHALL BE FILED sixty (60) days from the receipt of OMB approval of the information collection requirements contained in the *Rural Health Care Pilot Program Order*. The Commission will issue a public notice announcing the date upon which the information collection requirements shall become effective following receipt of such approval.

13. IT IS FURTHER ORDERED that, pursuant to section 408 of the Communications Act of 1934, as amended, 47 U.S.C. § 408, this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX**LIST OF COMMENTERS**

American Telemedicine Association
Arizona State University
AT&T, Inc.
Internet2
University of Louisville
National Telecommunications Cooperative Association

LIST OF REPLY COMMENTERS

AT&T, Inc.
Florida LambdaRail (filed in CC Docket No. 02-6)
Healthcare Information and Management Systems Society (late filed)
Lonestar Education and Research Network
MAGPI Power Networking
National Center for Atmospheric Research
National LambdaRail, Inc.
National Telecommunications Cooperative Association
Network Virginia
Southern Crossroads