

Justification for Emergency Clearance

The Federal Communications Commission (Commission) is requesting approval under the “emergency processing” provisions of the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. § 3507, for the revised information collection requirements, for OMB Control Number 3060-0804, contained in the attached Order.¹ Specifically, we request that OMB approve the information collection requirements by January 22, 2008, pursuant to 5 C.F.R. § 1320.13(b).

In 2004, President George W. Bush issued an Executive Order calling for the development and implementation of a national interoperable health information technology infrastructure.² A key element of this plan is the National Health Information Network (NHIN) initiative which promotes a “network of networks,” where state and regional health information exchanges and other networks that provide health information services work together, through common architecture.

In the Telecommunications Act of 1996 (1996 Act),³ Congress specifically intended that rural health care providers be provided with “an affordable rate for the services necessary for the provision of telemedicine and instruction relating to such services.”⁴ In 1997, the Commission implemented this statutory directive by adopting the current RHC support mechanism, which provides universal service support to ensure that rural health care providers pay no more than their urban counterparts for their telecommunications needs in the provision of health care services. Despite the Commission’s efforts to increase the utility of the Rural Health Care support mechanism, the program has yet to fully achieve the benefits intended by the statute and the Commission. In particular, health care providers continue to lack access to the broadband facilities needed to support the types of advanced telehealth applications, like telemedicine, that are so vital to bringing medical expertise and the advantages of modern health technology to rural areas of the Nation.

In response to the need for broadband facilities to support telehealth services in rural America, which imperils execution of the President’s 2004 Executive Order, on November 19, 2007, the Commission issued the *2007 Pilot Program Selection Order*. This Order selected 69 participants for the universal service Rural Health Care Pilot Program, which was originally established by the Commission in September 2006. These 69 participants represent 42 states and 3 U.S. territories and will be eligible for approximately \$417 million in universal service support over three funding commitment years (or \$139 million per funding year). Among other things, selected participants: (1) will be eligible for funding to support up to 85 percent of the costs associated with the construction of state or regional broadband health care networks and with the advanced telecommunications and information services provided over those networks; (2) will be eligible for funding for up to 85 percent of the costs of connecting to Internet2 or National LambdaRail, which are both dedicated nationwide backbones, or to the public Internet; and (3) must use funding in a manner consistent with the Department of Health and Human Service’s (HHS) health information technology initiatives and coordinate in the use of their health care networks with HHS and, in particular, with its Centers for Disease Control and Prevention (CDC) in instances of national, regional, or local public health emergencies (e.g., pandemics,

¹ *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, FCC 07-198 (rel. Nov. 19, 2007) (*2007 Pilot Program Selection Order*).

² Incentives for the Use of Health Information Technology and Establishing the Position of the National Health Information Technology Coordinator, Exec. Order No. 13335, 69 FR 24059 (April 27, 2004).

³ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); 47 U.S.C. §§ 151 et seq.

⁴ Joint Explanatory Statement of the Committee of Conference, 104th Cong., 2d Sess. At 133 (1996); see also 147 U.S.C. § 254(h)(b)(3).

bioterrorism).

In an effort to facilitate inter-agency awareness and to identify areas for possible collaboration and shared expertise for the Pilot Program, the Commission has coordinated with HHS, including numerous meetings with the Office of the National Coordinator for Health Information Technology and participation in a Joint Working Group on Telehealth chaired by the Health Resources and Service Administration to discuss the Pilot Program. The Commission intends to continue to conduct interagency coordination concerning the Pilot Program.

In light of the importance of the advancement of a health information technology infrastructure to the public interest, the Commission has sought to implement the Pilot Program within an aggressive timeframe. Doing so is crucial given the consumer and public safety benefits of deploying broadband infrastructure necessary to support innovative telehealth and, in particular, telemedicine services to those areas of the country where the need for those benefits is most acute. For example, timely construction of broadband networks allows patients in rural areas throughout the country to access critically needed medical specialists in variety of practices, including cardiology, pediatrics, and radiology, without traveling long distances. The need for timely implementation of the Pilot Program is also evidenced in the Pandemic and All-Hazards Preparedness Act, P.L. 109-417, § 202 (2006), *codified at* 42 U.S.C. § 247d-4(f)(1)(B), in which Congress recognized the Commission's pilot program as a first step for health care networks that will be expanded in the future. The *2007 Pilot Program Selection Order*, also provides funding to enable broadband networks to further the goals of the NHIN initiative by requiring selected participants, where feasible, to provide access to HHS and CDC instances of public health emergencies and to use their funding in a manner consistent HHS's health information technology initiatives.

OMB emergency approval thus is vital to the timely implementation of these critical networks to advance telemedicine to rural areas throughout the Nation and to enhance the health care community's ability to provide a rapid and coordinated response in the event of a public health crisis. Otherwise, the start of broadband deployment proposed by selected Pilot Program participants will be further delayed. The Commission therefore cannot comply with the normal clearance procedures set forth in 5 C.F.R. § 1320 because the use of normal clearance procedures likely would stall the development of health information technology networks throughout the areas of the Nation where the need is most acute and further delay the NHIN initiatives discussed in the *2007 Pilot Program Selection Order*.

This request for emergency processing is consistent with section 1320.13(a)(2)(i) of OMB regulations, which states that requests for emergency processing shall be accompanied by a written determination that the agency cannot reasonably comply with the normal clearance procedures under this part because "Public harm is reasonably likely to result if normal clearance procedures are followed."