

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

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

ORDER

Adopted: February 18, 2010

Released: February 18, 2010

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, the Wireline Competition Bureau (Bureau) extends by one year, to June 30, 2011, the deadline for participants in the Rural Health Care Pilot Program (Pilot Program) to select a vendor and request a funding commitment from the Universal Service Administrative Company (USAC).¹ Specifically, the Bureau finds that Pilot Program participants may not be able to meet the current June 30, 2010 deadline, and thus may not be able to provide the full benefits of their projects to health care consumers in their respective areas. To provide an additional opportunity for health care institutions to complete the necessary steps to proceed with their funded projects, therefore, the Bureau grants Pilot Program participants a one-year waiver of the current deadline.²

II. BACKGROUND

2. On September 26, 2006, pursuant to section 254(h)(2)(A) of the Communications Act of 1934, as amended (the Act), the Commission established the Pilot Program to examine ways to use the universal service rural health care funding mechanism to enhance public and non-profit health care providers' access to advanced telecommunications and information services.³ On November 16, 2007, the Commission selected 69 projects to participate in the Pilot Program.⁴ Participants are eligible to receive funding, up to their maximum support amount, for up to 85 percent of the costs associated with: (1) the construction of state or regional broadband networks and the advanced telecommunications and

¹ The Pilot Program is a three year program. The first funding year commenced on July 1, 2007; the second funding year commenced on July 1, 2008; and the third funding year commenced on July 1, 2009. *See Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 22 FCC Rcd 20360, 20373, para 33 (2007) (*2007 Pilot Program Selection Order*). On August 10, 2009, the Bureau established June 30, 2010, as the filing deadline to submit forms for the second funding year of the Pilot Program. *See Deadline Established for Completing Funding Year 2008 Application Process for the Rural Health Care Pilot Program*, WC Docket No. 02-60, Public Notice, 24 FCC Rcd 10590 (Wireline Comp. Bur. 2009). In this order the Bureau further extends the deadline.

² Establishing a June 30, 2011 deadline addresses the issues raised by the petitioners listed in the appendix. These petitioners asked for an extension of the June 30, 2010 deadline. *See Appendix*.

³ 47 U.S.C. § 254(h)(2)(A); *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 21 FCC Rcd 11111, para. 1 (2006) (*2006 Pilot Program Order*).

⁴ *See 2007 Pilot Program Selection Order*, 22 FCC Rcd 20360, 20429-30, Appendix B. As a result of the merger of certain projects there are currently 62 participants in the Pilot Program. *See FCC Rural Health Care Pilot Program Webpage*, available at <http://www.fcc.gov/cgb/rural/rhcp.html> (last visited Feb. 18, 2010).

information services provided over those networks; (2) connecting to nationwide backbone providers Internet2 or National LambdaRail (NLR); and (3) connecting to the public Internet.⁵

3. Participants in the Pilot Program are required to select the most cost effective vendor, and in doing so follow the same procedures that apply to the existing rural health care funding mechanism.⁶ First, participants file FCC Form 465 with USAC to make a bona fide request for supported services.⁷ Participants must provide sufficient information to define the scope of the project and network costs to enable an effective competitive bidding process.⁸ USAC posts the completed FCC Form 465 on its website, and the participant must wait at least twenty-eight days before selecting a service provider.⁹ This competitive bidding process is intended to allow participants an opportunity to identify and select the most cost-effective service provider for their proposed network projects.¹⁰ After a vendor is selected, the participant submits a funding request to USAC on FCC Form 466-A.¹¹ After receiving and approving a participant's FCC Form 466-A and related attachments, USAC will issue a funding commitment letter for the requested services.¹² Pursuant to the Commission's rules, a rural health care funding year runs from July 1 through June 30 and rural health care support recipients, including Pilot Program participants, must submit their FCC Forms 466-A for a given funding year by the end of that funding year, i.e., by June 30.¹³ The last funding year of the Pilot Program commenced on July 1, 2009, with a filing deadline of June 30, 2010.¹⁴

4. Seventeen participants in the Pilot Program, listed in the appendix, have requested an extension of the June 30, 2010 deadline.¹⁵ On November 2, 2009, the Bureau issued a public notice

⁵ 2007 Pilot Program Selection Order, 22 FCC Rcd at 20361, para. 2.

⁶ See *id.* at 20400-03, paras. 78, 86.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ See *id.* at 20413-14, para 101.

¹¹ See *id.* at 20403-04, para 83.

¹² See *id.* at 20408-09, para 93.

¹³ 47 C.F.R. §54.623(b)-(c); see also, FCC Form 466-A Instructions, available at <http://www.usac.org/rhc/tools/required-forms.aspx> (last visited Feb. 18, 2010).

¹⁴ 2007 Pilot Program Selection Order, 22 FCC Rcd at 20370, para. 23.

¹⁵ Letter from William Pilkington, Director Cabarrus Health Alliance – North Carolina Telehealth Network, to Thomas Buckley, Wireline Competition Bureau, WC Docket No. 02-60 (dated Oct. 2, 2009) (NCTN Petition); Letter from Kim Lamb, Executive Director Oregon Health Network, to Thomas Buckley, Wireline Competition Bureau, WC Docket No. 02-60 (dated Oct. 23, 2009) (OHN Petition); Letter from Rebecca Madison, Project Manager Alaska Native Tribal Health Consortium, to Sharon Gillett, Chief Wireline Competition Bureau, WC Docket No. 02-60 (dated Nov. 3, 2009) (ANTHC Petition); Letter from Brian Thibeau, President New England Telehealth Consortium, to Sharon Gillett, Chief Wireline Competition Bureau, WC Docket No. 02-60 (dated Nov. 6, 2009) (NETC Petition); Letter from Suzanne Leslie, Project Coordinator Arkansas Telehealth Network, to Sharon Gillett, Chief Wireline Competition Bureau, WC Docket No. 02-60 (dated Nov. 16, 2009) (ATN Petition); Letter from Kenneth Oakley, Project Coordinator Western New York Rural Area Health Education Center, to Sharon Gillett, Chief Wireline Competition Bureau, WC Docket No. 02-60 (dated Nov. 17, 2009) (R-AHEC Petition); Letter from Jeffrey Taylor, Executive Director Michigan Public Health Institute, to Sharon Gillett, Chief Wireline Competition Bureau, WC Docket No. 02-60 (dated Nov. 20, 2009) (MPHI Petition); Letter from Don Kelso, Executive Director Indiana Telehealth Network, to Sharon Gillett, Chief Wireline Competition Bureau, WC Docket No. 02-60 (dated Dec. 3, 2009) (ITN Petition); Letter from Kipman Smith, Executive Director Health Information (continued...)

seeking comments on the first such petition, which was filed by the North Carolina TeleHealth Network (NCTN).¹⁶ On December 22, 2009, the Bureau issued a public notice stating that NCTN's filing would be treated as a request for a one year extension for all participants in the Pilot Program, and extension requests filed by participants after the NCTN petition would be treated as *ex parte* comments in the open proceeding initiated by NCTN.¹⁷ No comments were filed in opposition of granting a one year extension.¹⁸ The University of Virginia Office of Telemedicine (UVA), however, requested an eighteen month extension.¹⁹ Some petitioners, in addition to asking for an extension of the June 30, 2010 deadline, also asked that the Pilot Program be extended by an additional funding year.²⁰ The Indiana Telehealth Network (ITN) and the Texas Health Information Network Collaborative (THINC) requested six years (rather than five) to submit invoices.²¹

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Exchange of Montana, to Thomas Buckley, Wireline Competition Bureau, WC Docket No. 02-60 (dated Dec. 4, 2009) (HIEM Petition); Letter from Dale Alverson, Project Coordinator Southwest Telehealth Access Grid, to Sharon Gillett, Chief Wireline Competition Bureau, WC Docket No. 02-60 (dated Dec. 21, 2009) (SWTAG Petition); Letter from George Conklin, Project Coordinator Texas Health Information Network Collaborative, to Sharon Gillett, Chief, Wireline Competition Bureau, WC Docket No. 02-60 (dated Dec. 28, 2009) (THINC Petition); Letter from L. Dan Kaelin, Chairman Big Bend RHIO, to Thomas Buckley, Wireline Competition Bureau, WC Docket No. 02-60 (dated Dec. 29, 2009) (BBRHIO Petition); Letter from Alan Kraus, Project Coordinator Illinois Rural HealthNet Consortium, to Thomas Buckley, Wireline Competition Bureau, WC Docket No. 02-60 (dated Jan. 4, 2010) (IRHN Petition); Letter from Bradley Williams, Project Coordinator Kansas Board of Regents – Kan-ed RHCPP Project, to Sharon Gillett, Chief, Wireline Competition Bureau, WC Docket No. 02-60 (dated Jan. 5, 2010) (Kan-ed Petition); Letter from R. John Ragsdale, Project Coordinator Louisiana Department of Health and Hospitals Rural Health Care Pilot Program, to Sharon Gillett, Chief, Wireline Competition Bureau, WC Docket No. 02-60 (dated Jan. 7, 2010) (LDHH Petition); Letter from Eugene Sullivan, Director Office of Telemedicine University of Virginia, to Thomas Buckley, Wireline Competition Bureau, WC Docket No. 02-60 (dated Jan. 11, 2010) (UVA Petition); Letter from Joy Grosser, Vice President and Chief Information Officer Iowa Health System, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-60 (dated Jan. 19, 2010) (IHS Petition); Letter from Mike Burgess, ALPHA Project Coordinator – Children's Hospital of Alabama, to Thomas Buckley, Wireline Competition Bureau, WC Docket No. 02-60 (dated Jan. 25, 2010) (ALPHA Petition); Letter from Frank Clark, Project Coordinator Palmetto State Providers Network – Medical University of South Carolina, to Ernesto Beckford, Wireline Competition Bureau, WC Docket No. 02-60 (dated Jan. 26, 2010) (PSPN Petition); Letter from Deb LaMarch, Project Coordinator Utah Telehealth Network, to Thomas Buckley, Wireline Competition Bureau, WC Docket No. 02-60 (dated Feb. 2, 2010) (UTN Petition); Letter from Todd Sorenson, President Rural Nebraska Healthcare Network, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-60 (dated Feb. 1, 2010) (RNHN Petition).

¹⁶ See *Comment Sought on NCTN Telehealth Network Request for Extension of the June 30, 2010 Deadline for Funding Commitment Requests Under the Rural Health Care Pilot Program*, WC Docket No. 02-60, Public Notice, 24 FCC Rcd 13490 (Wireline Comp. Bur. 2009).

¹⁷ See *Requests for Extension of the June 30, 2010 Deadline for Funding Commitments Under the Universal Service Rural Health Care Pilot Program*, WC Docket No. 02-60, Public Notice, 24 FCC Rcd 14608 (Wireline Comp. Bur., 2009).

¹⁸ Comments were received in favor of granting a one year extension. See Letter from Charlie Crist, Governor State of Florida, to Thomas Buckley, Wireline Competition Bureau, WC Docket No. 02-60 (dated Jan 12, 2010).

¹⁹ See UVA Petition at 1.

²⁰ See ATN Petition at 1, 2; R-AHEC Petition at 1; MPHI Petition at 1; ITN Petition at 1; THINC Petition at 1, 2; Kan-ed Petition at 1.

²¹ See ITN Petition at 1; THINC Petition at 1,2. Pilot Program participants have five years from the date of their initial funding commitment letter to submit invoices for their projects. See *2007 Pilot Program Selection Order*, 22 FCC Rcd at 20362, 20409, paras. 3, 94.

5. Generally, the petitioners argue that, although significant progress has been made on their respective projects, they are concerned that they will still be unable to meet the June 30, 2010 funding commitment request deadline.²² The petitioners state that it took some time for them to become familiar with program requirements, legal processes, and paperwork preparation related to the Pilot Program.²³ In addition, projects with many participating sites in their networks (often exceeding 200), have experienced delay due to the extensive coordination necessary to deploy their networks to these facilities under the Pilot Program.²⁴ Due to the economic downturn, some participants have also experienced difficulty in raising funds not covered by the Pilot Program, including the 15 percent funding match requirement.²⁵ In addition, some projects incurred delays as they sought to merge projects within the same state or region.²⁶ Moreover, some participants report that preparing and posting requests for proposals (RFPs) and negotiating with vendors for complex networks is time consuming and has delayed funding commitment requests.²⁷ One petitioner reported incurring delay as it was applying for stimulus grants under the America Recovery and Reinvestment Act (ARRA) that could complement its Pilot Program project.²⁸ The petitioners, therefore, argue that a one year extension is appropriate to ensure that Pilot Program projects are afforded sufficient opportunity to complete their network deployment.²⁹

III. DISCUSSION

6. In the *2007 Pilot Program Selection Order* the Commission delegated authority to the Bureau to waive the relevant sections of Subpart G of Part 54 of the Commission's rules "to the extent they prove unreasonable or inconsistent with the sound and efficient administration of the Pilot Program."³⁰ Absent a waiver of the funding year filing deadline, projects would suffer substantial hardship in meeting the existing June 30, 2010 funding commitment request deadline, thereby endangering the success of their projects.³¹ In particular, although over one-third of projects have received funding commitments to date, the majority of the remaining projects continue to prepare RFPs, select or negotiate with vendors, or

²² See NCTN Petition at 1; OHN Petition at 1; ANTHC Petition at 1; ATN Petition at 1; R-AHEC Petition at 1; HIEM Petition at 1; SWTAG Petition at 1; THINC Petition at 1; Kan-Ed Petition at 1; LDHH Petition at 1; UVA Petition at 1; IHS Petition at 2; UTN Petition at 1.

²³ See MPHI Petition at 1; HIEM Petition at 1; THINC Petition at 1; LDHH Petition at 1.

²⁴ See OHN Petition at 1; ANTHC Petition at 1; MPHI Petition at 1; SWTAG Petition at 1; THINC Petition at 1; UVA Petition at 1.

²⁵ See OHN Petition at 1; ITN Petition at 1; HIEM Petition at 1; IRHN Petition at 1; LDHH Petition at 4; BBRHIO Petition at 1; IHS Petition at 2.

²⁶ See THINC Petition at 1.

²⁷ See NETC Petition at 1; R-AHEC Petition at 1; MPHI Petition at 1; ITN Petition at 1; HIEM Petition at 1; IRHN Petition at 1, 2.

²⁸ See THINC Petition at 1.

²⁹ See ATN Petition at 2; R-AHEC Petition at 1; ITN Petition at 1; HIEM Petition at 1; SWTAG Petition at 1; THINC Petition at 1.

³⁰ *2007 Pilot Program Selection Order*, 22 FCC Rcd. at 20422, para. 124.

³¹ See NCTN Petition at 1; OHN Petition at 1; ANTHC Petition at 1; ATN Petition at 1; R-AHEC Petition at 1; HIEM Petition at 1; SWTAG Petition at 1; THINC Petition at 1; Kan-Ed Petition at 1; LDHH Petition at 1; UVA Petition at 1; IHS Petition at 2; UTN Petition at 1. Out of the 62 projects participating in the Pilot Program, to date 22 projects (or 36%) have received funding commitment letters. Per Appendix B of the *2007 Pilot Program Selection Order*, the maximum allowable funding for such participants is \$192 million, which is equal to 46% of the \$418 million maximum allowable funding for all participants. See, *2007 Pilot Program Selection Order*, Appendix B, 22 FCC Rcd. at 20429-30.

prepare funding commitment requests.³² As discussed above, delays for these projects have been due to, among other things, the economic downturn affecting the ability to raise the 15 percent funding match requirement, ongoing negotiations over complex network deployment agreements with vendors, and coordination of projects with potential ARRA funding.³³ We therefore find that waiver of section 54.623(b) is necessary for the sound and efficient administration of the Pilot Program, and thus is in the public interest.

7. In addition, the goal of the Pilot Program is to stimulate deployment of the 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.³⁴ Denying requests for a one year extension of the second and third funding year filing deadlines would likely prevent numerous projects from deploying their funded networks, thereby undermining this goal.³⁵ We therefore find that waiver of the June 30, 2010 deadline serves the public interest and is consistent with the sound and efficient administration of the Pilot Program. Accordingly, June 30, 2011, is now the filing deadline for participants to submit their FCC Form 466-A funding requests for the second and third funding years of the Pilot Program. Pilot Program participants must file all of their funding commitment requests (FCC Forms 466-A) with USAC by June 30, 2011, to be eligible for Pilot Program universal service support for such funding years.

8. We find a one year extension establishes an appropriate timeframe for submission of funding commitment requests and we decline to extend the deadline for eighteen months as requested by UVA. All of the petitioners, with the exception of UVA, have requested a one year extension, which they indicate is adequate to ensure that they are afforded sufficient opportunity to request funding for their networks under the Pilot Program.³⁶ UVA offers no additional evidence, beyond that submitted by the parties seeking a one year extension, to support its request for an eighteen month extension; therefore, we do not find that an eighteen month extension is necessary. We also decline to extend the period of time in which projects must submit invoices as requested by ITN and THINC.³⁷ While we find that grant of a one year extension of the funding request filing deadline is warranted based on the circumstances described by the participants, it is also important to promote timely deployment of these projects, consistent with the sound and efficient administration of the Pilot Program. We remind the participants that, although they are required to submit their requests for funding by June 30, 2011, they have five years from the date of their initial funding commitment letter in which they can submit invoices to USAC for reimbursement under the Pilot Program.³⁸

³² See NETC Petition at 1; R-AHEC Petition at 1; MPHI Petition at 1; ITN Petition at 1; HIEM Petition at 1; IRHN Petition at 1, 2.

³³ See *supra* para. 5.

³⁴ See *2006 Pilot Program Order*, 21 FCC Rcd at 11111, para. 1.

³⁵ See MPHI Petition at 1. Absent an extension of the filing deadline for the second funding year, participants that posted a request for services on FCC Form 465 during the second funding year but did not select a vendor on or before June 30, 2010, would have to repost such requests.

³⁶ See ATN Petition at 2; R-AHEC Petition at 1; ITN Petition at 1; HIEM Petition at 1; SWTAG Petition at 1; THINC Petition at 1; IHS Petition at 2.

³⁷ See ITN Petition at 1, THINC Petition at 1, 2. We also find it unnecessary to extend the Pilot Program for an additional funding year because a one year extension of the funding year deadline accomplishes the same purpose of allowing additional time for participants to submit a funding commitment request. See ATN Petition at 1, 2, R-AHEC Petition at 1, MPHI Petition at 1, ITN Petition at 1, THINC Petition at 1, 2, Kan-ed Petition at 1; UTN Petition at 1.

³⁸ See *2007 Pilot Program Selection Order*, 22 FCC Rcd at 20362, 20409, paras. 3, 94.

9. Although we recognize that a substantial majority of projects continue to make progress under the Pilot Program, a minority of projects have not yet started preparing their RFPs.³⁹ We are concerned about these projects' ability and commitment to proceed with their Pilot Program projects. We emphasize that where a participant is unable to participate in the Pilot Program, a successor may be designated by the Bureau.⁴⁰ We encourage participants that are unable to continue in the Pilot Program to seek successors for their projects. To the extent these projects are unable to participate in the Pilot Program, or otherwise fail to make progress in the Pilot Program, the Bureau also reserves the right to name a successor on its own initiative. The Bureau will continue its outreach efforts to projects so that we may determine what action, if any, is appropriate to ensure that the benefits of this program flow to health care consumers. To measure the progress and potential success of such projects, the Bureau may recommend that the Commission set milestones to determine whether projects are no longer capable of continuing in the Pilot Program.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-54, 254, and pursuant to authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, section 54.623 of the Commission's rules, 47 C.F.R. § 54.623, IS WAIVED for the second and third funding years of the Pilot Program to the extent described herein.

11. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-54, 254, and pursuant to authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, the deadline for filing FCC Forms 466-A for participants in the Pilot Program seeking funding commitment letters for the second and third funding years, IS SET at June 30, 2011.

12. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-54, 254, and pursuant to authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, the petition for a one year extension of the June 30, 2010 deadline for filing FCC Forms 466-A for the second and third funding years of the Pilot Program, filed by the North Carolina TeleHealth Network, IS GRANTED.

³⁹ As discussed above, all services funded by the Pilot Program must be competitively bid. *See supra* para. 3; *2006 Pilot Program Order*, 21 FCC Rcd at 11117, para. 18. Pilot Program participants begin the bidding process by filing an FCC Form 465 with USAC to make a bona fide request for services. To date, approximately 19 projects (31% of all projects) have yet to submit an FCC Form 465.

⁴⁰ *2007 Pilot Program Selection Order*, 22 FCC Rcd at 20422, para. 124 ("In instances where a selected participant, including a consortium, is unable to participate in the Pilot Program for the three-year term due to extenuating circumstances, a successor may be designated by the Bureau upon request.")

13. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Sharon E. Gillett
Chief
Wireline Competition Bureau

APPENDIX

Petitions Requesting Extension of June 30, 2010 Deadline Under the Rural Health Care Pilot Program

| Petitioner | Petition Filed |
|--|-----------------------|
| North Carolina Telehealth Network | Oct. 2, 2009 |
| Oregon Health Network | Oct. 23, 2009 |
| Alaska Native Tribal Health Consortium | Nov. 3, 2009 |
| New England Telehealth Consortium | Nov. 6, 2009 |
| Arkansas Telehealth Network | Nov. 16, 2009 |
| Western New York Rural Area Health Education Center | Nov. 17, 2009 |
| Michigan Public Health Institute | Nov. 20, 2009 |
| Indiana Telehealth Network | Dec. 3, 2009 |
| Health Information Exchange of Montana | Dec. 4, 2009 |
| Southwest Telehealth Access Grid | Dec. 21, 2009 |
| Texas Health Information Network Collaboration | Dec. 28, 2009 |
| Big Bend Regional Healthcare Information Organization | Dec. 29, 2009 |
| Illinois Rural HealthNet Consortium | Jan. 4, 2010 |
| Kansas University Medical Center (Kan-ed Project) | Jan. 5, 2010 |
| Louisiana Department of Health and Hospitals | Jan. 7, 2010 |
| University of Virginia Office of Telemedicine (VAST Project) | Jan. 11, 2010 |
| Iowa Health System | Jan. 19, 2010 |
| Alabama Pediatric Health Access Network | Jan. 25, 2010 |
| Palmetto State Providers Network | Jan. 26, 2010 |
| Utah Telehealth Network | Feb. 2, 2010 |
| Rural Nebraska Healthcare Network | Feb. 3, 2010 |