

**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: July 5, 2012

Released: July 6, 2012

By the Commission: Commissioners McDowell and Clyburn issuing separate statements.

I. INTRODUCTION

1. In this order, we maintain support on a limited, interim, fiscally responsible basis for specific Rural Health Care Pilot Program (Pilot Program) participants that have exhausted their funding this year or will exhaust such funding during funding year 2012.¹ We will provide continued support for the recurring costs of broadband services provided to those health care provider (HCP) sites to ensure that they can continue to benefit from access to these Pilot Program-funded broadband networks, while we consider potential reforms to transition recipients of Pilot funding to a longer-term mechanism for supporting broadband services delivered to rural HCPs. This temporary support will preserve transitioning Pilot Program participants' connectivity and the resulting health care benefits that patients receive from those investments made by the Commission in health care broadband networks. Today's action stays within the budget of the Pilot Program and will therefore not impact overall demand for the universal service fund (USF or Fund).

II. BACKGROUND

2. The USF Rural Health Care support mechanism consists of the "Primary" program and the "Pilot" program.² The Commission created the Pilot Program in 2006 in an effort to examine ways to use the RHC support mechanism to enhance public and non-profit HCPs' access to advanced

¹ A Pilot project participant has "exhausted funds" within the meaning of this order if it has at least one specific health care provider site that (1) has used all of the funds allocated to that site, and (2) cannot receive any additional funding commitments for the particular site because the remainder of the project's original award is committed to other HCP sites in the project. Funding year 2012 runs from July 1, 2012 to June 30, 2013.

² The Rural Health Care telecommunications program, which ensures that rural HCPs pay no more than their urban counterparts for their telecommunications needs in the provision of health care services, and the Rural Health Care Internet access program, which provides a 25 percent discount off the cost of monthly Internet access for eligible rural HCPs, are commonly referred to together as the "Primary Program." See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9093-9161, paras. 608-749 (1997) (*Universal Service First Report and Order*); 47 C.F.R. Part 54, Subpart G (establishing the Rural Health Care program). See also *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 18 FCC Rcd 24546, 24556-24562, paras. 18-29 (2003) (*2003 Order and Further Notice*); 47 C.F.R. § 54.621 (establishing the Internet access program).

telecommunications and information services.³ Participants in the Pilot Program are eligible to receive universal service funding to support up to 85 percent of the cost of construction of state or regional broadband health care networks and of the cost of advanced telecommunications and information services provided over those networks.⁴ Through the Pilot Program, projects have created health broadband networks that consist of multiple interconnected HCPs, often in a hub-and-spoke configuration, that typically connect rural HCPs to larger, more urban medical centers. The networks created by these projects enable rural HCPs to access medical specialists, technical expertise, and other resources that are usually found only within the larger HCPs on the network.⁵

3. The Commission originally selected 69 different projects to participate in the Pilot Program, and 50 projects are currently active.⁶ Several projects merged.⁷ Twelve other projects either withdrew from the program or failed to meet program deadlines, thus becoming ineligible to participate in the Pilot Program.⁸ Funding that was designated to support these twelve projects was collected but never disbursed.

4. Approximately 13 out of the 50 active projects have some individual HCPs that have spent all of the money allocated to them, or are scheduled to do so during funding year 2012.⁹ According to the Universal Service Administrative Company (USAC), some HCPs may exhaust their funding in the last few months of Funding Year 2011,¹⁰ and an estimated 484 HCPs (or 22.5 percent of individual HCP sites participating in the Rural Health Care Pilot projects) are expected to exhaust their allocated funding before or during funding year 2012.¹¹

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 *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 22 FCC Rcd 20360, 20361, para. 2 (2007) (*2007 Pilot Program Selection Order*).

⁵ See Letter from Craig Davis, Vice President of Rural Health Care, Universal Service Administrative Company, to Sharon Gillett, Chief, Wireline Competition Bureau, WC Docket No. 02-60, at 5 (filed Mar. 14, 2012).

⁶ Letter from Craig Davis, Vice President, Rural Health Care Division, Universal Service Administrative Company, to Sharon Gillett, Chief, Wireline Competition Bureau, FCC, WC Docket No. 02-60, at 1-2 (filed May 4, 2012) (USAC May 4 Data Letter).

⁷ Between 2008 and 2009, twelve projects merged in five states, leaving a total of 62 projects in May 2011. USAC May 4 Data Letter at 1.

⁸ USAC May 4 Data Letter at 2. The original deadline for requesting “commitments” for the full amount awarded to each Pilot project was June 30, 2010. The Bureau subsequently extended until June 30, 2012, the deadline to select a vendor and submit all remaining funding requests to USAC, which administers the Pilot Program. In the interim, projects that were unable to receive at least one funding commitment by June 30, 2011 were deemed “no longer capable of continuing in the Pilot Program.” See *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 26 FCC Rcd 6619, 6625, para. 10 (Wireline Comp. Bur. 2011).

⁹ Letter from Craig Davis, Vice President, Rural Health Care Division, Universal Service Administrative Company, to Sharon Gillett, Chief, Wireline Competition Bureau, Federal Communications Commission, WC Docket No. 02-60 at 4 (filed May 30, 2012) (USAC May 30 Data Letter).

¹⁰ *Id.*

¹¹ Letter from Craig Davis, Vice President of Rural Health Care, Universal Service Administrative Company, to Sharon Gillett, Chief, WCB, WC Docket No. 02-60 at 1 (filed February 17, 2012) (USAC Feb. 17 Letter).

5. The Commission has long recognized that there might be a need for a mechanism to transition the Pilot Program participants to ongoing support from the Rural Health Care support program. When the Commission initiated the Pilot Program, it noted that it might continue to fund Pilot Program participants who were “already accepted into the program, upon request, and subject to availability of funds.”¹² Although the Commission required Pilot projects in the *2007 Pilot Selection Report and Order* to demonstrate that their proposed networks would be self-sustaining, it explicitly allowed projects to include reliance upon the existing RHC support mechanism (*i.e.* the Primary Program) as a component of their sustainability showings.¹³

6. At the same time, the *2007 Pilot Selection Order* noted several differences between the Pilot and Primary Programs.¹⁴ Unlike the Primary Program, support under the Pilot Program is not limited to subsidizing the urban-rural price differential for telecommunications service providers.¹⁵ Instead, Pilot Program participants may choose any technology and provider of high capacity broadband services, and funding would provide up to an 85percent fixed discount. In addition, the Commission opened participation in the Pilot Program to all eligible public and non-profit health care providers (not just those that met the Commission’s definition of a rural health care provider) as long as the pilot network served rural areas.¹⁶ Pilot Program participants have also noted that the process to apply for and determine support differs substantially between the Pilot Program and the Primary Program.¹⁷

7. In the *2010 RHC NPRM*, the Commission proposed significant changes to the rural health care mechanism, including a proposed Broadband Services Program with a flat rate discount approach similar to that utilized in the Pilot Program. In light of these proposals, the Commission noted that some Pilot participants “may wish to transition to the [proposed] new health broadband services program to subsidize the recurring costs formerly funded by the Pilot Program.”¹⁸ The Commission sought comment

¹² See *2006 Pilot Program Order*, 21 FCC Rcd at 1115, para. 13, n. 18.

¹³ *2007 Pilot Program Selection Order*, 22 FCC Rcd at 20388-89, para. 54.

¹⁴ *Id.* at 20420-22, paras. 118-122.

¹⁵ *Id.* at 20421-22, paras. 119, 122.

¹⁶ *Id.* at para. 120.

¹⁷ Letter from Jeffrey Mitchell, Counsel for FRC, LLC, on behalf of FRC and PSPN, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-60 at 2 (filed Jan. 31, 2012) (noting the importance of being able to submit a single application for support for the entire network, as opposed to individual applications for each HCP within the network, and the complications involved in determining a discount rate under the Primary Program, as opposed to the flat rate method used in the Pilot Program). See also Letter from W. Roger Poston II, Palmetto State Providers Network, to Christianna Lewis Barnhart, Attorney Advisor, Federal Communications Commission, WC Docket No. 02-60 at 2 (filed Feb. 23, 2012) (explaining that rural health centers currently participating in the Pilot Program do not have the capacity to seek support as individual entities if they are required to transition to the current Primary Program); Letter from Christianna Barnhart, Attorney Advisor, Federal Communications Commission, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-60 at 3 (filed Mar. 13, 2012) (describing conversations with representatives of several Pilot projects, who stated that the flat discount rate and the consistent funding levels of the Pilot Program, as compared to the Primary Program, make it easier for them to apply for support); Letter from Linda Oliver, Attorney Advisor, Federal Communications Commission, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-60 at 4 (filed Mar. 26 2012) (describing conversations with representatives of several Pilot projects, who discussed the relative simplicity of the application process and the determination of the discount they will receive in the Pilot Program as compared to the Primary Program).

¹⁸ *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Notice of Proposed Rulemaking, 25 FCC Rcd 9371, 9415, para. 113 (2010).

on the mechanics of this transition – specifically, whether Pilot Program participants should be permitted to transition to the proposed health care Broadband Services Program without undergoing a new competitive bidding process.¹⁹

8. Following up on the *2010 RHC NPRM*, on February 27, 2012, the Wireline Competition Bureau (Bureau) sought more detailed comment on ways the Commission might help transition Pilot Program participants to a permanent RHC support mechanism. In that regard, the *Bridge Public Notice* sought comment on whether the Commission should consider providing support to Pilot Program participants “to ‘bridge’ the disparity in funding and application requirements between the Pilot Program and Primary Program for the 2012-2013 funding year.”²⁰ The *Bridge Public Notice* explained that “bridge funding” could provide additional time for the Commission to consider how best to transition Pilot Program participants into the permanent RHC support mechanism, while at the same time preserving the connectivity that had been developed under the Pilot Program.²¹ The *Bridge Public Notice* noted that funds that were previously designated for projects that withdrew from the Program or failed to meet program deadlines could be used to support these transitioning Pilot Program participants without increasing overall Fund demand.²² The *Bridge Public Notice* also noted USAC’s estimate that it would cost approximately \$10 million to provide transitioning health care providers with their recurring costs during funding year 2012.²³

9. In its comments in response to the *Bridge Public Notice*, the U.S. Department of Health and Human Services (HHS) recognized the importance of the “FCC’s ongoing commitment to ensuring that rural health care providers have access to high-speed internet access and telehealth systems to facilitate delivery of high-quality care to rural residents.”²⁴ Many of the projects potentially eligible for bridge funding exemplify these health care benefits. For example, the Geisinger Health System (Geisinger) network has given rural hospitals in Pennsylvania “the ability to offer specialty services that would otherwise be unavailable to [their] predominantly elderly population[s], and allow[ed] these patients and families to receive high quality medical care within the community in which they live.”²⁵ Similarly, the Palmetto State Providers Network (PSPN) states that significant savings have been achieved through the specialized care that can be provided by rural health care facilities over Pilot Program networks.²⁶ In addition to providing telemedicine, Pilot Program project networks have also enabled HCPs in rural areas to receive medical training and education. For example, the South Carolina Area Health Education Consortium (SC AHEC), a PSPN HCP, offers continuing education for rural health care practitioners and supports students while they are on clinical rotations to rural and underserved areas.²⁷

¹⁹ *Id.*

²⁰ *Wireline Competition Bureau Seeks Comment on Funding Pilot Program Participants Transitioning Out of the Rural Health Care Pilot Program in Funding Year 2012*, WC Docket No. 02-60, Public Notice, 27 FCC Rcd 2064, 2066, para. 5 (Wireline Comp. Bur. 2012) (*Bridge Public Notice*).

²¹ *Id.* at para. 5.

²² *Id.*

²³ *Id.* at para. 7, citing USAC Feb. 17 Letter.

²⁴ HHS Comments at 2.

²⁵ Geisinger Comments at 4.

²⁶ PSPN Comments at 1.

²⁷ SC AHEC Comments at 1.

III. DISCUSSION

10. We conclude it is appropriate to provide funds on a temporary basis to support ongoing connectivity to Pilot Program HCPs that will exhaust funding allocated to them before or during funding year 2012.²⁸ Such funding is necessary to “bridge” their participation in the Pilot Program and their participation in any reformed Rural Health Care programs under consideration. Accordingly, as discussed below, we direct USAC to provide continued support to Pilot projects for up to 85 percent of eligible recurring costs for those individual HCP sites on their networks that will exhaust their funding on or before June 30, 2013, including those that will have exhausted their funding before the effective date of this order.²⁹ Bridge funding will maintain support for this limited number of HCPs and in doing so help ensure that they will remain connected to the broadband networks developed with Pilot Program funding, while providing the Commission additional time to consider how best to transition Pilot Program participants to permanent Rural Health Care funding programs. Thus, this support will help maintain the *status quo* for the many patients and communities that benefit from the telemedicine and other telehealth applications made available by the Pilot projects during this transition period.³⁰ Consistent with this objective, the support is limited in time and scope and does not provide new funds for Pilot projects to expand their networks.

11. This bridge funding will not increase the demand on the Fund relative to what was already designated for Pilot Program projects.³¹ Accordingly, we direct USAC to use up to \$15 million of the Pilot Program funds that were previously set aside for projects that either withdrew from the Program or otherwise failed to meet program deadlines to provide bridge funding to transitioning Pilot project participants.³² These funds were designated for Funding Year 2009 and have already been collected.³³ Thus, there will be no effect on Fund demand for the next year as a result of our action today.

12. We are mindful that if we do not provide bridge funding, Pilot project participants that will exhaust their support under the Pilot Program could be required to “transition” twice, within a relatively short time period, to different RHC programs – the Primary Program and, potentially, any programs that may ultimately be adopted by the Commission in the pending Rural Health care rulemaking. As

²⁸ See *supra* note 1, regarding the term “exhausted funds.”

²⁹ As defined in the Pilot Program, recurring costs include the cost of operating and maintaining an operational network; specific personnel costs, training costs, and program administration costs; and other costs. See *2007 Pilot Program Selection Order*, 22 FCC Rcd at 20398, paras. 74-75. Sites that have exhausted funding before the effective date of this order, and that have purchased eligible services between their exhaustion date and that effective date, can request a funding commitment from USAC for those services. If an HCP has already paid the full vendor-invoiced amounts for those services, and the HCP receives a funding commitment letter for those services pursuant to this order, the vendor should provide a credit on the HCP’s bills reflecting the discount the HCPs would have received had it not exhausted its funding.

³⁰ See *supra* paras. 8-9.

³¹ See *infra* paras. 14-17.

³² In February 2012 USAC estimated that it would cost approximately \$9.4 million in Funding Year 2012 to fund those HCPs that will have exhausted their Pilot funding. See USAC Feb. 17 Letter at 1. USAC’s estimate was based on certain assumptions and then-available data, all of which are subject to change as the 2011 Funding Year comes to a close on June 30, 2012, and final funding commitments and invoices for that funding year are submitted by projects to USAC. To ensure that all HCPs eligible for bridge funding are able to receive funding, we are authorizing USAC to spend up to \$15 million for this purpose.

³³ Federal Universal Service Administrative Company, *Federal Universal Service Support Mechanism Fund Size Projection for Third Quarter 2012*, WC Docket No. 02-60 at 19 (filed Apr. 26, 2012).

discussed above, there are significant differences between the Pilot Program and the Primary Program,³⁴ and the Commission is still considering how best to reform the existing program consistent with our overarching goals to promote access to broadband for health care providers. Almost every commenter responding to the *Bridge Public Notice* supports the provision of “bridge” funding for funding year 2012.³⁵ These commenters state that without an orderly transition, many of the individual HCP sites are at risk of discontinuing participation in their respective networks. For example, PSPN states that its individual members, especially in rural locations, “often do not have the resources or time to navigate the RHC Primary program process” and that allowing the RHC Pilot networks to continue to bill and operate as a consortium would be more administratively efficient.³⁶ PSPN, a state-wide backbone network that connects rural and underserved areas in South Carolina, notes that uncertainty regarding the transition of HCPs from the Pilot Program has caused some of its HCPs to consider discontinuing their participation despite the demonstrated benefits of the network.³⁷ Similarly, the two Colorado Pilot projects state that “the value developed under the Pilot Program would be placed at risk if certain Pilot projects have to face the significant difficulties of temporarily transitioning to the existing Primary Program.”³⁸ Geisinger also states that ending Pilot Program support for HCPs on its network, without providing a process to transition them into a permanent RHC support mechanism, may cause some members of its network to drop out.³⁹

13. We are not persuaded by the Montana Telecommunications Association’s (MTA’s) opposition to providing bridge funding for one year. MTA – the sole commenter objecting to the provision of bridge funding on an interim basis – argues that the Commission should not consider bridge funding until after it acts to adopt a permanent funding mechanism in the pending rural health care rulemaking proceeding.⁴⁰ We disagree. The very purpose of providing bridge funding here is to maintain the benefits of the Pilot project networks while the Commission is in the process of considering whether to adopt a permanent Broadband Services Program in its pending rulemaking. As noted above, the Commission explicitly contemplated, in the *2007 Pilot Program Selection Order* and the *2010 RHC NPRM*, the possibility of HCPs in Pilot projects being transitioned into the permanent RHC support mechanism.⁴¹ Bridge funding is simply a short-term measure during the pendency of the broader rulemaking proceeding to preserve the *status quo* for Pilot project networks and reduce churn for those

³⁴ See *supra* para. 6.

³⁵ HHS Comments at 1 (stating that bridge funding is particularly important if differences between Pilot and Primary Program eligibility and funding rules make it difficult for Pilot Program participants to apply for funding in the Primary Program); CareSouth Comments at 1; CHCC Comments at 1; HUBNet Comments at 1 (stating that “[p]roviding additional funding to extend support for those HCPs for the entire funding year 2012 would significantly help ease the transition of those circuits to the permanent Rural Health Care support program or other support mechanisms that may become available”); IRHTP Comments at 1; PSPN Comments at 1; RMHN Comments at 1; SC AHEC Comments at 1; Sumter Comments at 1; Geisinger Comments at 1.

³⁶ PSPN Comments at 2.

³⁷ *Id.* at 1; see also Letter from Jeffrey Mitchell, Counsel for FRC, LLC, on behalf of FRC and PSPN, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-60 at 2 (filed June 22, 2012) (explaining that without bridge funding 55 out of 120 sites on the PSPN network may discontinue service by September 2012).

³⁸ RMHN Comments at 1-2; CHCC Comments at 2.

³⁹ Geisinger Comments at 2.

⁴⁰ MTA Comments at 5.

⁴¹ See *supra* paras. 5-7.

limited number of HCP sites that will exhaust their Pilot funding during the coming year. Waiting until after the rulemaking is completed could potentially cause HCP sites on those networks to drop off the networks, as discussed above. And, as noted above in paragraph 6, the differences in funding and application requirements between the Pilot and Primary Programs may make it difficult in some cases for HCPs immediately to transition to Primary Program funding. Therefore, we find that it is proper to provide additional support now until a process to transition HCPs out of the Pilot Program is established.⁴²

14. *Duration of Bridge Funding.* We provide support only through the end of funding year 2012 (through June 30, 2013). RMHN and CCHC suggest that the Commission extend bridge funding beyond funding year 2012, until a permanent rural health care program is established and participants are able to complete the application and award process.⁴³ Geisinger suggests that the Commission should continue to provide support through the Pilot Program until all rural and underserved areas have the same connectivity opportunities as urban areas.⁴⁴ As discussed above, we intend bridge funding to be a temporary measure, and we expect to issue an Order on reform of the permanent rural health care mechanism by the end of this year, which will make additional bridge funding unnecessary. We therefore decline to grant these requests to extend bridge funding beyond June 30, 2013.

15. *Service Substitutions.* HCPs that will exhaust funding allocated to them before or during year 2012 may use bridge funding support for service substitutions.⁴⁵ The Pilot Program has demonstrated that service substitutions allow HCPs to manage their networks efficiently, and have the effect of decreasing overall demand on the Fund.⁴⁶ USAC notes that over time Pilot projects have requested three types of service substitutions: (1) upgrading to fiber when it becomes available through the project's services provider; (2) increasing the bandwidth of an HCP on their network; and (3) disconnecting service to a participating HCP site.⁴⁷ Bridge funding can be used for recurring and non-recurring charges, such as installation charges, associated with service substitutions that will allow participating sites to upgrade or downgrade their existing circuits. Bridge funding may not be used to add new circuits to a site, unless adding or replacing a circuit is necessary to complete a service substitution for an existing circuit or service. Allowing HCPs the ability to substitute their existing service with more or less bandwidth will ensure that their connectivity needs are being met, allowing them to increase or decrease bandwidth on existing circuits depending on their assessment of their own healthcare-related needs, and will help ensure that the Fund is used efficiently.

16. *Non-Recurring Charges.* Bridge funding cannot be used for any non-recurring costs other

⁴² MTA also argues that providing bridge funding would discriminate against those HCPs that have not yet exhausted their funding. MTA Comments at 6. Again, we disagree. HCPs that have not yet exhausted their funding will continue to receive funding under the Pilot program.

⁴³ RMHN Comments at 3; CHCC Comments at 3.

⁴⁴ See Geisinger Comments at 1.

⁴⁵ See Universal Service Administrative Company, "Site & Service Substitutions," available at http://www.universalservice.org/_res/documents/rhc-pilot-program/pdf/Site-and-Service-Substitution.pdf (last visited June 22, 2012).

⁴⁶ USAC May 30 Data Letter at 4 (explaining that as of April 30, 2012, the impact of site and service substitutions requested in the Pilot Program decreased demand on the fund by \$247,075.56).

⁴⁷ *Id.*

than those associated with service substitutions.⁴⁸ The limited purpose of this interim funding is to maintain Pilot project HCP connectivity while we consider how best to transition the projects to a long-term funding program, not to fund additional construction or network expansion during this time. We note that no commenters suggested that funding for non-recurring charges (other than for service substitutions) is necessary to maintain the individual HCP sites on the Pilot project networks during this period.

17. *Site Substitutions.* Bridge funding may only be used to support eligible HCP sites that participated in the Pilot Program at a specified location before June 30, 2012. Projects cannot use bridge funding to substitute sites or add new sites to their network, or to fund existing sites that move to a new location after June 30, 2012. However, Pilot project HCP sites that have exhausted their funding before the effective date of this order may use bridge funding to “reconnect” sites that participated in the Pilot Program at a specified location during funding year 2011. As discussed above, the purpose of this funding is to maintain the *status quo* and to avoid unnecessary churn for the Pilot projects, and we decline to provide funds to enable Pilot projects to expand or modify their networks.

18. *Process for Obtaining Bridge Funding.* Pilot Program participants eligible to receive bridge funding must submit a new FCC Form 466-A package for all eligible funding requests by March 30, 2013. Invoices of actual incurred eligible expenses must be submitted to USAC by December 31, 2013.⁴⁹ These measures will help ensure that bridge funding is efficiently managed, and will protect against potential waste, fraud, and abuse. HCPs currently receiving support for services eligible for bridge funding do not have to re-file an FCC Form 465 to continue receiving support in funding year 2012, as long as the contract under which those services are provided is valid until June 30, 2013.⁵⁰ Because HCPs have already gone through the competitive bidding process to identify and select the most cost-effective service provider in instituting these contracts, sufficient safeguards are in place to protect against waste, fraud, and abuse, without requiring HCPs to conduct a competitive bidding process again.⁵¹ However, in instances where the contract for eligible services ends before or during funding year 2012, or is not an “evergreen” contract that is valid until June 30, 2013, HCPs seeking bridge funding must complete the competitive bidding process and submit a Form 465 to seek additional funding for the period of time not covered by their existing contract.⁵² We find that requiring these HCPs to complete the competitive bidding process is consistent with Pilot Program procedures, will help protect against waste,

⁴⁸ Under the Pilot Program, “eligible non-recurring costs include those for design, engineering, materials, and construction of fiber facilities or other broadband infrastructure, and the costs of engineering, furnishing...and installing network equipment.” See *2007 Pilot Program Selection Order*, 22 FCC Rcd at 20398, para. 74.

⁴⁹ Pilot projects submit a Form 466-A to USAC to specify the vendors that a HCP has selected and the cost of the selected service. See *2007 Pilot Program Selection Order*, 22 FCC Rcd at 20407, para. 89.

⁵⁰ The Form 465 is the mechanism by which an applicant requests bids for supported services and certifies to USAC that the applicant is eligible to receive support from the RHC support mechanism. *2007 Pilot Program Selection Order*, 22 FCC Rcd at 20403, para. 83. Participants must provide sufficient information to define the scope of the project and network costs to enable an effective competitive bidding process. See *id.* at 20400, 20403, paras. 78, 86.

⁵¹ See *2007 Pilot Program Selection Order*, 22 FCC Rcd at 20413-414, paras. 101-102 (stating that the competitive bidding process in the Pilot Program ensures that HCPs will “have an opportunity to identify and select the most cost-effective service provider” and “protects against waste, fraud, and abuse”).

⁵² A contract is “evergreen” if it includes more than one Fund Year and is endorsed by USAC. HCPs with evergreen contracts do not need to file the FCC Form 465 or engage in competitive bidding for the life of the contract. See Universal Service Administrative Company, “Evergreen Contracts,” available at <http://www.usac.org/rhc/health-care-providers/evergreen-contracts.aspx> (last visited June 22, 2012).

fraud, and abuse, and will help ensure that HCPs will choose the most cost-effective alternatives.⁵³

19. *Reporting Requirements.* USAC should allocate and account for bridge funding as part of the last funding year of the Pilot Program (funding year 2009) in its reports to the Commission. The overall award for those Pilot projects receiving bridge funding will be amended to reflect the original amount awarded to the projects plus any bridge funding received.

20. *Program Rules.* Except as otherwise discussed in this order, all rules regarding the Pilot Program remain in effect and are applicable to any bridge funding received by Pilot Program participants.

21. *Effective Date.* We find good cause to make this order effective upon publication in the Federal Register rather than 30 days after publication.⁵⁴ Some Pilot project HCPs may exhaust all of the funding allocated to them in the last few months of Funding Year 2011.⁵⁵ As a result, until this order becomes effective, these projects may be required by their service providers to pay the entirety of their recurring services charges until they are able to receive RHC support again, which could create hardship for some. Moreover, it takes approximately four weeks for USAC to process and send funding commitment letters to projects, which allows the projects to receive discounted rates from service providers. Requiring projects to wait an additional 30 days after publication in the Federal Register to file requests for funding commitment letters will only result in further delay, as many projects will be ready to request funding from USAC as soon as this order is released. Accordingly, we find that there is good cause to make this order effective immediately upon publication in the Federal Register, in order to eliminate a potential gap in RHC support and to preserve connectivity that has been developed under the Pilot Program.

IV. PROCEDURAL MATTERS

A. Final Regulatory Flexibility Certification

22. The Regulatory Flexibility Act of 1980, as amended (RFA),⁵⁶ requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”⁵⁷ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁵⁸ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁵⁹ A “small business concern” is one which: (1) is independently owned and

⁵³ See *2007 Pilot Program Selection Order*, 22 FCC Rcd at 20413-414, paras. 101-102.

⁵⁴ Section 553(d) of the Administrative Procedure Act requires a substantive rule to be published not less than 30 days before its effective date, except “as otherwise provided by the agency for good cause found and published with the rule.” 5 U.S.C. § 553(d)(3).

⁵⁵ USAC May 30 Data Letter at 4.

⁵⁶ The RFA, see 5 U.S.C. § 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

⁵⁷ 5 U.S.C. § 605(b).

⁵⁸ 5 U.S.C. § 601(6).

⁵⁹ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁶⁰

23. In this order, we maintain support on an interim basis for Pilot Program participants that will exhaust funding allocated to them before or during funding year 2012 (July 1, 2012-June 30, 2013). The order does not significantly modify the rules of the Pilot Program to create any additional burden on small entities, imposes no new burden on any company, and has no negative economic impact on any company.

24. Accordingly, we certify that the measures taken herein will not have a significant impact on a substantial number of small entities. The Commission will send a copy of this Public Notice, including this certification, to the Chief Counsel for Advocacy of the Small Business Administration.⁶¹ In addition, the notice (or a summary thereof) and certification will be published in the Federal Register.⁶²

B. Paperwork Reduction Act Analysis

25. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

C. Congressional Review Act

26. The Commission will send a copy of this order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

V. ORDERING CLAUSES

27. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Sections 1, 4(i), 4(j), 201, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201, 254, and 403, this order IS ADOPTED, and SHALL BECOME EFFECTIVE upon publication of a summary thereof in the Federal Register, pursuant to 5 U.S.C. § 553(d)(3) and sections 1.4(b)(1), 1.103(a), and 1.427(a) of the Commission's rules, 47 C.F.R. §§ 1.4(b)(1), 1.103(a), 1.427(a).

⁶⁰ 15 U.S.C. § 632.

⁶¹ *Id.*

⁶² *Id.*

28. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX

List of Commenters

Commenter	Date Filed
The Sumter Family Health Center (Sumter)	March 21, 2012
Iowa Rural Health Telecommunications Program (IRHTP)	March 27, 2012
Palmetto State Providers Network (PSPN)	March 27, 2012
Geisinger Health System, <i>et al.</i> (Geisinger)	April 4, 2012
CareSouth Carolina, Inc. (CareSouth)	April 11, 2012
Rocky Mountain HealthNet (RMHN)	April 12, 2012
Colorado Health Care Connections (CHCC)	April 12, 2012
ProForma Healthcare Solutions (Proforma)	April 12, 2012
Heartland Unified Broadband Network (HUBNet)	April 16, 2012
South Carolina Area Health Education Consortium (SC AHEC)	April 18, 2012
Montana Telecommunications Association	April 18, 2012
U.S. Department of Health and Human Services, Health Resources and Services Administration (HHS)	April 18, 2012

**STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL**

Re: *Rural Health Care Support Mechanism*, WC Docket No. 02-60

I support the Commission's extension of the rural health care pilot program's funding for limited purposes, for a time certain, and for up to a specific amount. In so doing, I underscore my long-standing interest in the FCC completing *comprehensive* reform of all components of the universal service fund, including the rural health care program. I look forward to completing this reform in a fiscally responsible way and doing so in a manner that embodies Congress's recognition that the creation of the rural health care program could help rural Americans have access to advanced health care as do urban Americans.

**STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN**

Re: *Rural Health Care Support Mechanism*, WC Docket No. 02-60

The bridge funding provided for in this Order will maintain much-needed support for qualifying Pilot Program participants during the 2012 funding year while we continue our work on the pending rural health care reform. Without it, sites that are integral to providing quality health care to rural America would have gone down.

As we expeditiously move forward, it is important that we focus on rural health care reform and ensure that all consumers, regardless of their location, have access to high quality broadband and the technological capabilities of an advanced and inclusive society. I look forward to working with the Chairman and my fellow Commissioners to complete this proceeding prior to the end of this year.