Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20054

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Rural Health Care Support Mechanism	)	WC Docket No. 02-60
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REPLY COMMENTS OF AT&T INC.

AT&T Inc. (AT&T) hereby responds to comments filed by Internet2 in opposition to National LambdaRail, Inc.'s (NLR) request that the Commission clarify that applicants seeking funding to connect broadband networks pursuant to the Commission's *Rural Health Care Pilot Program Order* may connect to AT&T, NLR, Internet2 or any managed IP backbone capable of providing a secure and reliable network environment.[1] Internet2's opposition to NLR's petition is long on self-serving platitudes, many of which are wholly irrelevant to the issue at hand – backbone service, but woefully short on substance and logical consistency. If there are unique concerns regarding issues such as network security and reliability, AT&T believes that the adoption of basic network performance criteria that would apply to any backbone seeking to participate in the program would serve as a more appropriate option than simply naming Internet2 as the only backbone provider eligible for funding under the pilot program.

Sound public policy requires the Commission to grant NLR's request for clarification so that applicants and the rural health care mechanism may benefit from competitive backbone offerings, which AT&T believes was the Commission's intention in establishing a

[1] Comments of Internet2 Regarding National LambdaRail, Inc.'s Petition for Reconsideration or Clarification, WC Docket No. 02-60 (filed Nov. 21, 2006) (Internet2 Comments). *See also* Petition for Reconsideration or, in the Alternative, Clarification by National LambdaRail, Inc., WC Docket No. 02-60 (filed Oct. 30, 2006) (Petition); *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, FCC 06-144 (rel. Sept. 29, 2006) (*Rural Health Care Pilot Program Order*).

"competitively neutral" and "economically reasonable" program.[2] The Commission therefore should reject Internet2's efforts to treat this innovative pilot program as a sole-source contract. To rule otherwise could unfairly tip the balance in favor of Internet2 by incenting health care networks to connect to Internet2's backbone only. In these circumstances, Internet2 would have no incentive to interconnect with AT&T, NLR and other providers of backbone services for health care networks.

Discussion. *Commission's Pilot Program Must be Competitively Neutral.* As AT&T explained in its comments, to be consistent with its statutory obligation to establish rural health care rules that are competitively neutral, the Commission should grant NLR's petition and clarify that applicants may connect their state or regional broadband health care networks to backbone providers other than Internet2 and that the Commission will fund those connections on the same basis.[3] Absent express forbearance, the Commission cannot suspend this statutory requirement, even for a two-year pilot program. But rather than from forbearing from section 254(h)(2), the Commission was careful to explain that its pilot program was, in fact, consistent with the competitive neutrality requirement in that section insofar as applicants may choose any provider of broadband connectivity.[4] Moreover, since the release of this Order, the Commission has stated on its web site and in the Public Notice requesting comment on NLR's petition, that "[c]onnection to Internet2 is not required, but may be requested by the applicants."[5] It is

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[2] *Rural Health Care Pilot Program Order* at para. 11.

[3] AT&T Comments, WC Docket No. 02-60, at 2 (filed Nov. 21, 2006) (citing 47 U.S.C. § 254(h)(2)).

[4] *Rural Health Care Pilot Program Order* at para. 11.

[5] *See* http://www.fcc.gov/cgb/rural/rhcp.html#faqs (responding to frequently asked questions about the rural health care pilot program); *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, DA 06-2279, at n.3 (rel. Nov. 6, 2006).

important that the Commission also clarify that funding will be available to applicants to defray up to 85 percent of their costs of connecting to backbone providers other than Internet2. Clarifying that applicants may connect their networks to AT&T and other backbone providers without also clarifying that funding available through the pilot program will support the costs of doing so would have the effect of giving Internet2 the no-bid monopoly that it is plainly seeking.

Single, Closed Backbone Provider Requirement Unnecessary to Achieve Commission's Goals. Internet2 would have the Commission believe that the country will never achieve a "ubiquitous nationwide broadband network dedicated to health care" unless the Commission designates Internet2 as the sole backbone provider connecting all health care providers. It claims repeatedly that a health care provider connected only to Internet2's backbone could not communicate with another health care provider connected only to NLR's backbone.[6] Internet2 fails to explain, however, why NLR, AT&T or any other qualified backbone provider could not *interconnect* with Internet2 as a technical matter, while agreeing to honor any necessary security protocols or levels of reliability, to the extent required by the program. Indeed, it is astounding that Internet2 goes to such lengths to explain how participants on unconnected networks cannot communicate while ignoring the simple but obvious truth that backbone providers can and do interconnect. In fact, that is exactly what the Internet is – a collection of independent IP networks that have voluntarily agreed to interconnect and exchange traffic. Ironically, Internet2 touts its "arrangement" with Level 3, which it claims "will enable it to offer services across the

[6] Internet2 Comments at 7, 8 ("unconnected health care networks would also be incapable of achieving the Commission's national security aims or the President's goal of developing a nationwide database of electronic medical records"), & 10 ("adding NLR to the pilot program risks balkanizing it: a local health care network that connects only to NLR's backbone would be unable to access important resources connected only to Internet2").

entire Level 3 network, even beyond Internet2's current far-reaching backbone."[7] Absent interconnection, a concept that based on its comments seems foreign to Internet2, one wonders how this arrangement is possible. Indeed, AT&T, as well as countless other backbone providers, already interconnect with Level 3.

Internet2 also conveniently ignores the scope of the Commission's pilot program, which is to connect health care providers operating in underserved, mainly rural, areas. If Internet2's interpretation of the Commission's goal is correct, then Internet2, simply by regulatory fiat, would also have to be the sole backbone provider for *every* health care provider and institution in the entire country – a result plainly at odds with the Commission's goal of establishing a "competitively neutral" and "economically reasonable" program. And while Internet2 claims that it has no position on whether the Commission's permanent program should include access to additional backbones,[8] it clearly does. It states that "Internet2 is uniquely situated among backbone providers to further [the] goal [of implementing a national database of electronic medical records]."[9] It appears that Internet2 is treating this pilot program as if it were a non-compete award. If indeed the Commission had envisioned this aspect of its pilot program as a procurement, which we do not believe to be the case, then at a minimum it should have been put out for competitive bidding from multiple backbone providers, rather than simply earmarked for Internet2. AT&T would like the opportunity to compete, as would at least one other backbone provider, NLR.

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[7] *Id.* at 11.

[8] *Id.* at 4-5.

[9] *Id.* at 13.

Internet2's Assertions are Unfounded. Internet2's comments are laden with self-serving inaccuracies. Internet2 attempts to distinguish itself by falsely claiming that "[o]nly Internet2 has a ubiquitous nationwide network that already provides connections in all fifty states, Puerto Rico, and the District of Columbia," "[o]nly Internet2 has a long institutional history and a demonstrated record of network reliability and financial stability," and "only Internet2 has shown that it is capable of integrated local and regional networks into a nationwide whole . . ."[10] As a provider of backbone service, Internet2 fails to explain the relevance of its claim that "[o]nly Internet2 has extensive experience in health care," a claim that, in any event, is belied by the existence of NLR and AT&T's experience serving health care providers.[11] Backbone providers distinguish themselves through the security that they offer customers along with the reliability of their networks at economical cost. AT&T excels in all of these categories and all of these factors may be appropriate criteria for the Commission to establish for purposes of qualifying backbone providers for eligibility to participate in this pilot program and for applicants to use in deciding which backbone provider to select. Internet2 also states that it has a "long and proven record of providing a backbone network with carrier-class reliability, cutting-edge security, and highly scalable bandwidth."[12] It is an understatement for AT&T to say that it does too.

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[10] *Id.* at 9.

[11] It appears from its comments that Internet2 provides more than just backbone services to health care providers and institutions. *See id.* at 11-14. While AT&T commends Internet2 for these service offerings, it is unclear to AT&T what the relevance of these services is to the service at issue in the instant petition: backbone service. Although not mentioned in its comments, AT&T believes that Internet2's non-profit status should also be irrelevant to the Commission and to applicants for purposes of this pilot program.

[12] *Id.* at 16.

Internet2's assertion that a "ubiquitous nationwide broadband network dedicated to health care"[13] can only mean that it must have a monopoly on providing backbone service to all health care providers is undermined by the Commission's own statement that "[c]onnection to Internet2 is not required, but may be requested by applicants."[14] Internet2 makes no attempt to square this Commission statement with its view that participating health care providers can only be connected to its network. If the Commission were to rely on a closed network, which Internet2 would lead the reader to believe it is, it is unclear how the Commission will ever achieve its stated goals of "enhanc[ing] the health care community's ability to provide a rapid and coordinated response in the event of a national crisis" and "facilitat[ing] the President's goal of implementing electronic medical records nationwide."[15] The Commission could not, nor should it want to, force every single health care network, regardless of whether it participates in the Commission's rural health care pilot program,[16] to select Internet2 as its backbone provider. As noted above, ensuring the security of an individual's medical records and the reliability of the network over which this information is carried should be of utmost importance to the Commission, applicants, and backbone providers. Security, reliability, and permitting applicants to connect their state or regional networks to the backbone provider of their choosing are not mutually exclusive concepts, as Internet2 would have the Commission believe.

Internet2 attempts to downplay the precedential effect of giving it a monopoly during the pendency of the pilot program by emphasizing its two-year term and mentioning that the

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[13] *Rural Health Care Pilot Program Order* at para. 2.

[14] *See* supra at note 5.

[15] *Rural Health Care Pilot Program Order* at paras. 2, 4.

[16] As noted on the Commission's web site, for-profit health care providers and institutions, such as private physician offices and clinics, and for-profit hospitals, are not eligible for funding. *See* http://www.fcc.gov/cgb/rural/rhcp.html#faqs.

Commission will issue a report that "will inform the establishment of a broader program, which would presumably be open to more entities."[17] It fails, however, to mention the sizable sum that will be available to applicants - $55-60 million per year, according to the Commission – and that the program may fund up to 85 percent of the applicant's cost of connecting to a backbone.[18] to Internet2's claim that allowing applicants to receive funding for their costs of connecting to AT&T's or NLR's backbone would "undermine the robustness of the Commission's pilot program" because it would spread funding more thinly among multiple backbones is laughable.[19] By granting NLR's petition, it is true that Internet2 would receive less funding because it would not have a monopoly on being the sole backbone provider; however, applicants and the Commission will benefit through lower connection costs resulting from competition among backbone providers, which obviously makes the program more "robust." Similarly, Internet2 makes unfounded claims about how opening up the pilot program to competition "threatens to decrease the program's value as a test and delay bringing the important benefits of telemedicine to rural areas."[20] Internet2 offers no support for this ridiculous statement, nor could it. A more plausible explanation is that Internet2 is attempting to cement its position as the main recipient of this funding from the start.

Conclusion. For the foregoing reasons, AT&T respectfully requests that the Commission grant NLR's request to clarify both that applicants are not required to select Internet2 as their backbone provider *and* that the pilot program will support their costs of connecting to another backbone provider. AT&T is supportive of the Commission establishing

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[17] Internet2 Comments at 3.

[18] *Rural Health Care Pilot Program Order* at n.17; http://www.fcc.gov/cgb/rural/rhcp.html#faqs.

[19] Internet2 Comments at 5.

[20] *Id.* at 8.

objective, meaningful criteria (*i.e.*, security, reliability, ubiquity, and cost) that applicants should use when deciding which backbone provider to choose. As AT&T explained in its comments and above, it believes that the Commission intended this pilot program to be competitively neutral and the Commission's statements post-Order are consistent with AT&T's understanding. Allowing applicants to select backbone providers other than Internet2 (and to receive funding for that decision) is the best means to ensure that the Commission's important rural health care pilot program is consistent with the Commission's statutory obligations.

Respectfully Submitted,

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