

Sandralyn Bailey

02-60

From: Rita Bolden [rbolden@ntca.org]
Sent: Tuesday, November 21, 2006 4:00 PM
To: Rita Bolden
Subject: NTCA Comments - Rural Health Care Support Mechanism, WC 02-60

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Federal Communications Commission
Office of the Secretary



DA 06-2279 initial
comments - ...

Greetings,

Please find for your review, NTCA comments in In the Matter of Rural Health Care Support Mechanism - Petition for Reconsideration Or, In The Alternative, Clarification Filed by National LambdaRail, Inc. WC 02-60, DA 06-2279

Have a wonderful Thanksgiving Holiday with family and friends!!

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02-60

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

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| In the Matter of |) | |
| |) | |
| Rural Health Care Support Mechanism |) | WC Docket No. 02-60 |
| |) | DA 06-2279 |
| Petition for Reconsideration Or, In The |) | |
| Alternative, Clarification Filed By National |) | |
| LambdaRail, Inc. |) | |

**NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
INITIAL COMMENTS**

**NATIONAL TELECOMMUNICATIONS
COOPERATIVE ASSOCIATION**

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**NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
INITIAL COMMENTS**

The National Telecommunications Cooperative Association (NTCA)¹ submits these comments in response to the Federal Communications Commission’s (Commission’s or FCC’s) Public Notice seeking comment on National LambdaRail, Inc.’s (NLR) Petition for Reconsideration or, in the alternative, Clarification (Petition)² of the Commission’s September 29, 2006 Order (Order)³ establishing the Rural Health Care Pilot Program (Pilot Program). NTCA encourages the Commission to grant the Petition and allow rural health care providers and their local carriers to have more choices for access to a dedicated national backbone using funding from the Pilot Program within the Rural Health Care Universal Service Fund (USF).

I. INTRODUCTION

On September 29, 2006, the Commission released its Order establishing a two-year funding program worth about \$65 million per year called the Rural Health Care Pilot Program

¹ NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents more than 570 rural rate-of-return regulated telecommunications providers. All of NTCA’s members are full service local exchange carriers (LECs) and many of its members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a “rural telephone company” as defined in the Communications Act of 1934, as amended (Act). NTCA’s members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

² *Petition for Reconsideration, or, in the Alternative, Clarification of National LambdaRail, Inc.*, WC Docket No. 02-60 (filed October 30, 2006) (NLR Petition or Petition).

³ *In the Matter of Rural Health Care Support Mechanism*, WC Docket No. 02-60 (rel. Sept. 29, 2006) (Order).

(Pilot Program).⁴ The Pilot Program's purpose is to "enhance public and non-profit health care providers' access to advanced telecommunications and information services ... [and] to support the construction of state or regional broadband networks and services provided over those networks ... to bring the benefits of innovative telehealth and, in particular, telemedicine services to those areas of the country where the need for those benefits is most acute."⁵ The Commission, in its Order, also directs the Pilot Program to "provide funding to support the cost of connecting the state or regional networks to Internet2, a dedicated nationwide backbone."⁶ The Commission did not, however, open an investigation or seek any public comment on the Pilot Program prior to its creation, so interested or affected parties had no opportunity to explore with the Commission various aspects of the Pilot Program, including which dedicated nationwide backbones should be permitted to participate. Likewise, commenters had no opportunity to express their views on whether other dedicated nationwide backbone providers should be considered as part of the Pilot Program.

On October 30, 2006, National LambdaRail, Inc. (NLR) filed its Petition for reconsideration or clarification in this docket. NLR states that it is "a not-for-profit organization that was incorporated to advance and serve the research, clinical and educational goals of its members and other institutions through its dedicated, nationwide, advanced network infrastructure that is connected to regional (broadband) optical networks (RONs)."⁷ NLR believes it has been adversely affected by the FCC Order because the Rural Health Care Pilot Program will only provide pilot federal funding to telehealth projects that connect to Internet2,

⁴ The Pilot Program is designed not to replace existing RHC USF recipient support but to increase its utilization to \$100 million annually, which is well below the authorized USF cap of \$400 million. Order ¶¶ 8, 12.

⁵ Order ¶ 1.

⁶ Order ¶ 2.

⁷ NLR Petition at pp. 1-2.

and not to other options, such as NLR, which also provides regional and statewide broadband connectivity for telehealthcare projects but does not connect to Internet2.⁸

NLR framed its request to be considered as an alternate access point under the Pilot Program by means of a petition for reconsideration or alternatively as a petition for clarification. In order to prevail on a petition for reconsideration under 47 USC § 1.106, the petitioner must be either a party to the underlying proceeding or a person “whose interests are adversely affected by any action taken by the Commission.” Non-party persons adversely affected by a Commission action must also show how they are adversely affected and explain why they could not participate in the earlier proceeding. 47 USC § 1.106(b)(1). A petition relying on facts not known previously to the Commission must show either new facts or changed circumstances, or the Commission deems consideration to be in the public interest. 47 USC §§ 1.106(b),(c). The petition must request a specific form of relief and cite the erroneous facts or circumstances. 47 USC § 1.106(d). The petition must be filed within 30 days of the public notice of the final order 47 USC § 1.106(f).

II. THE COMMISSION SHOULD GRANT THE PETITION AND SHOULD ALLOW RURAL HEALTH CARE PROVIDERS TO CONNECT TO ANY NATIONAL INTERNET BACKBONE.

NTCA applauds the Commission for creating the Pilot Program as it will provide a very good opportunity for rural carriers to assist health care providers in their service territories to bring the benefits of telehealth and telemedicine services to rural areas. The Pilot Program provides rural health care USF funding for two purposes:

1. To build statewide and regional broadband networks designed to bring the benefits of telehealth and telemedicine services to rural areas; and
2. To connect statewide and regional broadband networks to Internet2.⁹

⁸ *Id.* at pp. 5-6.

The Order appears to specifically limit the second type of rural health care USF funding to carriers/statewide or regional networks that connect to Internet2 only, which may not allow health care providers to use any other dedicated national backbone provider such as NLR. The Commission should take the opportunity presented by the Petition to reconsider or clarify whether it is in the public interest to restrict USF funding for telemedicine to one dedicated national backbone provider, or whether it is in the public interest (as NTCA asserts) to allow all dedicated backbone providers with national footprints to also participate in the Pilot Program.

NLR and Internet2 appear to cover some or all of the same territory and appear to compete for similar rural telehealth customers.¹⁰ The Commission should encourage competition among dedicated national backbone providers as a means for providing consumers, health care providers and rural carriers with advanced applications and ubiquitous access to information. Internet2, which is partnering with Level 3 Communications, is a dedicated national backbone which links a number of government research institutions as well as academic, public and private healthcare institutions that are repositories of medical expertise and information.¹¹ NLR, a non-profit organization that is not backed by a private commercial carrier, is a competing dedicated national backbone which also links academic, public and private healthcare institutions.¹² NLR's Petition asks the FCC to allow regional and statewide broadband networks to connect to NLR and/or Internet2 in order for these statewide and regional networks to take advantage of the Type 2 rural healthcare USF funding listed above.¹³ NLR

⁹ Order ¶¶ 1-3.

¹⁰ Compare NLR Petition service map at NLR Petition, Attachment A, and NLR URL: <http://www.nlr.net/services/map/>, with Internet2 service map, URL: <http://www.internet2.edu/network/library/Networkmap.jpg>. Compare also NLR Petition, Attachment B (membership list) with Internet2 membership URL: <http://www.internet2.edu/membership/>.

¹¹ See Internet2 web site: <http://www.internet2.edu/network>

¹² NLR Petition at p. 5.

¹³ *Id.* at pp. 5-6.

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argues that if the FCC only limits the second type of funding to Internet2, it will be unfairly discriminate against NLR and harm NLR's ability to compete against Internet2.¹⁴ NTCA agrees.

NTCA also believes that there may be other dedicated national backbones existing today or in the future that can or will rival Internet2 and NLR in connecting rural health care providers. In submitting these comments, NTCA asserts that the public interest is best served by allowing all dedicated national backbone providers, including but not limited to Internet2 and NLR, the opportunity to compete for revenues associated with statewide and regional broadband networks connecting to a national dedicated backbone provider under the Pilot Program. Consequently, the Commission should reconsider that portion of its Order that appears to limit participation just to Internet2.

III. NLR'S PETITION IS PROCEDURALLY APPROPRIATE AND SHOULD BE GRANTED.

NLR correctly framed its Petition as a request for reconsideration or alternatively a petition for clarification and satisfies the appropriate standard of review. NLR has demonstrated that neither it nor other dedicated national backbone providers had any opportunity to participate as parties under 47 USC § 1.106(b)(1) to the underlying proceeding because the Commission did not offer its Order for public comment.¹⁵ NLR and other dedicated national backbone providers clearly are interested and adversely affected persons "whose interests are adversely affected by any action taken by the Commission" because the Order appears to exclude them from serving as access points for rural health care providers under the Pilot Program.¹⁶ Based on the Order, it appears that the Commission may not have known about NLR or other dedicated national backbone providers, and it is reasonable to infer that the Commission may have opened the

¹⁴ *Ibid.*

¹⁵ *Id.* at p. 1, n. 1.

¹⁶ *Id.* at p. 6.

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national backbone provider eligibility rolls had the Commission been alerted to NLR's and other providers' interest in participation. Providing the Commission, the rural health care providers and the general public with a list of alternative dedicated national backbone providers is in the public interest and meets the standards of 47 USC §§ 1.106(b), (c). Surely the Commission did not intend to designate Internet2 as a monopolist participant under the Pilot Program. The NLR Petition specifies a particular form of relief and cites the erroneous facts or circumstances, per 47 USC § 1.106(d).¹⁷ Finally, the Petition was filed within 30 days of the public notice of the final order 47 USC § 1.106(f). Accordingly, the Commission should grant the Petition and should open the roster of eligible dedicated national backbone providers to include NLR and any other dedicated national backbone provider.

IV. CONCLUSION

For these reasons, NTCA urges the Commission to grant the NLR Petition and allow any dedicated national backbone provider to assist rural health care providers under the Pilot Program to promote more choices for rural access to advanced services.

Respectfully submitted,

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¹⁷ *Id.* at pp. 5-6.

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CERTIFICATE OF SERVICE

I, Rita H. Bolden, certify that a copy of the foregoing Initial Comments of the National Telecommunications Cooperative Association in WC Docket No. 02-60, DA 06-2279 was served on this 21st day of November 2006 via electronic mail to the following persons:

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