

ARKANSAS TELEHEALTH OVERSIGHT & MANAGEMENT
UNIVERSITY OF ARKANSAS FOR MEDICAL SCIENCES
4301 WEST MARKHAM - SLOT 518 LITTLE ROCK, ARKANSAS 72205
TEL 501-554-6359

November 16, 2009

Ms. Sharon Gillett, Chief
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20054

Mr. Thomas Buckley, Senior Deputy Division Chief
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20054

Re: Arkansas Telehealth Network
Rural Health Care Pilot Program – WC Docket No. 02-60

Request for One Year Extension of Funding Commitment Deadline to June 30, 2011
Request for Waiver of Three Funding Year Requirement

Dear Ms. Gillett and Mr. Buckley:

On behalf of Arkansas Telehealth Network (ATN), this letter respectfully requests an extension of one (1) year – to June 30, 2011 – of the current June 30, 2010 deadline for funding commitments under the Commission's Rural Health Care Pilot Program ("Pilot Program"). In addition, this letter requests a waiver of the requirement that the Pilot Program be limited to three funding years, for such time as to permit full implementation of ATN's Pilot Program project.

As the Commission is aware, ATN has been selected to develop and implement statewide telehealth connectivity among and between Arkansas' hospitals, community health centers, health departments, and other rural healthcare facilities. This comprehensive program involves the collaboration of 245 healthcare facilities, under the leadership of the University for Arkansas for Medical Sciences (UAMS).

As an initial matter, ATN wishes to express its appreciation for the efforts of the Commission and USAC to process ATN's proposal, and we are pleased to report that some progress has been achieved (e.g., ATN's sustainability plan has received preliminary approval in the first RFP stage). Unfortunately, however, significant delays in the process to date have pushed the timeframe for completion well behind schedule.

The delay experienced by ATN involves a number of factors, including:

- Lengthy review of ATN's network design RFP, involving waiting for USAC feedback, status updates, telephonic discussion of USAC comments, ATN requests for clarification, inherent difficulties of ATN having to coordinate comments and input of numerous participating sites, and finally, obtaining USAC written review.
- Staggered adoption and implementation of requirements and details associated with participant sustainability plans, a process which started in or around February, 2008, and which was completed nearly 15 months later.

While ATN and the Commission are working together to identify solutions for certain of the above difficulties, the fact is that despite ATN's concerted good-faith efforts a majority of the steps necessary for ATN to obtain funding commitments by the current June 30, 2010 deadline have not been completed, and the timely completion of such steps by the deadline is in serious jeopardy. Accordingly, ATN respectfully requests an extension of one (1) year – to June 30, 2011 – of the current June 30, 2010 deadline for funding commitments under the Pilot Program.

Finally, ATN recognizes that extension of the funding commitment deadline to June 30, 2011 may require an associated waiver of the rules requiring that the Pilot Program be limited to three funding years. In this regard, it is well established that the Commission may waive its rules - in whole or in part - "for good cause shown"¹ and if "special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."² In this case, the massive scope of ATN's project, coupled with inherent logistical difficulties and certain programmatic communication-related issues, have combined to create "special circumstances" under which a waiver is appropriate. Furthermore, waiver in this case will not undermine the underlying purpose of the Pilot Program, which is to "stimulate deployment of the broadband infrastructure

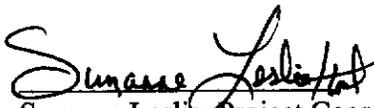
¹ See 47 C.F.R. § 1.3.

² See e.g., *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). Also, with respect to wireless services, requests for waiver of the Commission's rules will be granted where either: "(i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative." See 47 C.F.R. § 1.925(b)(3)(i),(ii).

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.”³ To the contrary, waiver in this case will ensure that ATN is afforded sufficient opportunity to deploy a state-of-the-art telehealth network to the citizens of Arkansas, a state which (i) is substantial medically underserved; (ii) suffers from state-wide healthcare provider and mental health professional shortages; and (iii) is marked by widespread poverty. Accordingly, ATN respectfully requests a waiver of the requirement that the Pilot Program be limited to three funding years, for such time as to permit full implementation of ATN’s Pilot Program project.

Should any questions arise with respect to this request, please do not hesitate to contact the undersigned.

Sincerely,



Suzanne Leslie, Project Coordinator
Arkansas Telehealth Network
University of Arkansas for Medical Sciences

cc: Ernesto Beckford, Attorney Advisor, FCC
Jeffrey Rummel, Esquire, Arent Fox LLP

³ See *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, FCC 07-198 (rel. Nov. 19, 2007).