

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

In the Matter of)	
)	
Rural Health Care Support Mechanism)	WC Docket No. 02-60
)	
North Carolina TeleHealth Network, Albemarle Health,)	
Western Carolina University, and University Health)	
Systems of Eastern Carolina Request for Merger of Rural)	
Health Care Pilot Program Projects)	

ORDER

Adopted: July 31, 2009

Released: July 31, 2009

By the Acting Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, the Wireline Competition Bureau (Bureau) grants a request from four participants in the Rural Health Care Pilot Program (Pilot Program), the North Carolina TeleHealth Network (NCTN), Albemarle Health (Albemarle), Western Carolina University (WCU), and University Health Systems of Eastern Carolina (UHS), to merge their respective Pilot Program projects and designate NCTN as the successor to Albemarle, WCU, and UHS.¹ Specifically, the Bureau finds that Albemarle, WCU, and UHS have demonstrated that they are unable to continue to participate in the Pilot Program due to extenuating circumstances. The Bureau also finds that NCTN has demonstrated that the public interest would be served by designating NCTN as the successor to Albemarle, WCU, and UHS because NCTN: (1) has committed to fulfill the goals identified in the Albemarle, WCU, and UHS Pilot Program applications; (2) expects that as a result of the merger there will be cost savings and it will be able to connect virtually all of the public non-profit health care providers in North Carolina to a dedicated broadband network; and (3) has identified an eligible source for the 15 percent of costs not funded by the

¹ Letter from J. David Kirby, President, Kirby Information Management Consulting LLC, to Thomas Buckley, Wireline Competition Bureau, WC Docket No. 02-60 (dated May 13, 2009) (Kirby May 13 Letter); Letter from Dr. William F. Pilkington, Director, Cabarrus Health Alliance (Project Coordinator, NCTN), to Thomas Buckley, Wireline Competition Bureau, WC Docket No. 02-60 (dated May 4, 2009) (NCTN May 4 Letter); Letter from Stephen W. Clark, Chief Information Officer, Albemarle, to Thomas Buckley, Wireline Competition Bureau, WC Docket No. 02-60 (dated May 12, 2009) (Albemarle May 12 Letter); Letter from Bill Gibson, Executive Director, Southwestern Commission (Project Coordinator, WCU), to Thomas Buckley, Wireline Competition Bureau, WC Docket No. 02-60 (dated May 5, 2009) (WCU May 5 Letter); Letter from Stuart James, Chief Information Officer, UHS, to Thomas Buckley, Wireline Competition Bureau, WC Docket No. 02-60 (dated May 12, 2009) (UHS May 12 Letter); Letter from J. David Kirby, President, Kirby Information Management Consulting LLC, to Thomas Buckley, Wireline Competition Bureau, WC Docket No. 02-60 (dated June 4, 2009) (Kirby June 4 Letter); Kirby June 4 Letter, Attachment, Letter from Cabarrus Health Alliance, dated May 28, 2009 (NCTN Supplemental Letter); Kirby June 4 Letter, Attachment, Letter from Albemarle dated June 5, 2009 (Albemarle Supplemental Letter); Kirby June 4 Letter, Attachment, Letter from Southwestern Commission dated May 29, 2009 (WCU Supplemental Letter); Kirby June 4 Letter, Attachment, Letter from UHS dated May 12, 2009 (UHS Supplemental Letter). Albemarle is the fiduciary agent for the Albemarle Network Telemedicine Initiative. See Albemarle Network Telemedicine Initiative Application, WC Docket No. 02-60 (filed May 4, 2007) (Albemarle Application).

Pilot Program.

II. BACKGROUND

2. On September 26, 2006, the Commission established the Pilot Program, pursuant to section 254(h)(2)(A) of the Communications Act of 1934, as amended (the Act), 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.² On November 16, 2007, the Commission selected 69 participants, including NCTN, Albemarle, WCU, and UHS, to participate in the Pilot Program.³ 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 information services provided over those networks; (2) connecting to nationwide backbone providers Internet2 or National LambdaRail (NLR); and (3) connecting to the public Internet.⁴ If a participant is unable to participate in the Pilot Program due to extenuating circumstances, the Bureau may designate a successor.⁵

3. NCTN is a consortium of health care facilities whose member organizations include several of the public health agencies and non-profit free clinics that are a part of the Southern Piedmont Partnership for Public Health and the North Carolina Association of Free Clinics.⁶ Among the members of the NCTN consortium is its fiduciary agent and project coordinator, the Cabarrus Health Alliance.⁷ Albemarle is a consortium of health care providers covering seven counties in North Carolina.⁸ Its participating member organizations include seven non-profit health care facilities.⁹ WCU is a consortium of health care providers proposing to serve up to 16 public hospitals in Western North Carolina.¹⁰

² 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*).

³ See *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 22 FCC Rcd 20360, 20429-30, Appendix B (2007) (*2007 RHC PP Selection Order*); North Carolina Telehealth Network Application, WC Docket No. 02-60 (filed May 7, 2007) (NCTN Application); Albemarle Application; Western Carolina University Application, WC Docket No. 02-60 (filed May 14, 2007) (WCU Application); University Health Systems of Eastern Carolina Application, WC Docket No. 02-60 (filed May 7, 2007) (UHS Application).

⁴ *2007 RHC PP Selection Order*, 22 FCC Rcd at 20361, para. 2.

⁵ *Id.* 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.”). Under its delegated authority, the Bureau has previously granted merger requests to designate successors to Pilot Program projects in Mississippi, Ohio, and Texas. See *As One Together for Health and the University of Mississippi Medical Center Request for Merger of Rural Health Care Pilot Program Projects*, WC Docket No. 02-60, Order, 23 FCC Rcd 17401 (Wireline Comp. Bur. 2008) (*As One Together Merger Order*); *Holzer Consolidated Health Systems and Southern Ohio Health Care Network Request for Merger of Rural Health Care Pilot Program Projects*, WC Docket No. 02-60, Order, 23 FCC Rcd 17396 (Wireline Comp. Bur. 2008) (*Holzer Merger Order*); *Texas Healthcare Network and Texas Health Information Network Collaborative Request for Merger of Rural Health Care Pilot Program Projects*, WC Docket No. 02-60, Order, 24 FCC Rcd 4587 (Wireline Comp. Bur. 2009) (*Texas Healthcare Network Merger Order*).

⁶ NCTN Application. at 3, 17-18.

⁷ See *id.* at 7, 17; NCTN May 4 Letter at 1.

⁸ Albemarle Application at 2, 6.

⁹ *Id.* at 6.

¹⁰ Western Carolina University, Quarterly Data Report Requirements, WC Docket No. 02-60 (dated Feb. 5, 2009).

Southwestern Commission is the lead entity and project coordinator for the WCU project.¹¹ Lastly, UHS is a consortium of health care facilities consisting of a partnership between eight rural health centers, eight hospitals, the Brody School of Medicine, the North Carolina Office of Rural Health and Community Care, and the project's fiduciary agent, University Health Systems of Eastern North Carolina, Inc.¹² The maximum support amount the Commission awarded to the four North Carolina projects is an aggregate of \$12,164,290, as follows: (1) NCTN: \$6,023,985; (2) Albemarle: \$1,583,076; (3) WCU: \$3,596,290; (4) UHS: \$960,939.¹³

4. In its Pilot Program application, NCTN proposed to: (1) connect regional health-related service providers (e.g., public health clinics, free clinics, and private medical practices) with patients in their homes, at work, and in other public locales; (2) create a design for a sustainable business and technical model for reaching rural North Carolina in ways that support the use of broadband for services that improve health and health care; (3) build a state-wide broadband network by engaging a set of regional public health groups and an existing state-wide association of free clinics as "anchor" clients to the network; and (4) help the Commission to explore ideas for policy change in areas that NCTN believes may have contributed to low rural broadband penetration rates.¹⁴ Albemarle proposed to provide high speed bandwidth to health care providers and other health agencies in a seven-county area to enable access to and the transference of health data and electronic images.¹⁵ In its Pilot Program application, WCU stated that its primary goal is to enhance public and non-profit health care providers' access to advanced telecommunications and information services.¹⁶ Additionally, WCU proposed to: (1) provide useful information as to the feasibility of revising the Commission's current rural health care rules in a manner that best achieves the objectives set forth by Congress; (2) offer an affordable rate for the services necessary for the provision of telemedicine and instruction relating to such services; (3) connect outlying tribal health clinics to the main health care system at the Eastern Band of the Cherokee Indians (EBCI) main hub; (4) enable health care providers to obtain and become exposed to culturally competent health care for members of the EBCI, including participation in the Culturally Based Native Health Program; (5) improve emergency preparedness among the more vulnerable populations in the rural areas of western North Carolina; and (6) leverage EBCI's Distance Learning and Telemedicine initiative, which was under consideration for grant funding by the United States Department of Agriculture.¹⁷ UHS stated that the goal of its Pilot Program project is to improve communication among health care providers in eastern North Carolina through increased access and use of a dedicated, fiber-based broadband network, thus improving patient care.¹⁸

5. On May 13, 2009, NCTN, Albemarle, WCU, and UHS requested that the Commission allow the four Pilot Program projects to merge and designate NCTN as the successor to Albemarle, WCU,

¹¹ *Id.* at 1; WCU May 5 Letter at 1.

¹² UHS Application at 2, 7-8.

¹³ *2007 RHC PP Selection Order*, 22 FCC Rcd at 20429-30, Appendix B.

¹⁴ NCTN Application at 3-7.

¹⁵ Albemarle Application at 2.

¹⁶ WCU Application at 3.

¹⁷ *Id.* at 3-6. WCU's Pilot Program application noted that EBCI was in the process of applying for grant funding through the U.S. Department of Agriculture, and that EBCI intended to employ these funds, in addition to any funds received from the Pilot Program, to connect outlying clinics and health care facilities to the main hub on the Cherokee Reservation. *Id.* at 2.

¹⁸ UHS Application at 5-6.

and UHS.¹⁹ The Cabarrus Health Alliance will serve as the project coordinator for the merged project.²⁰ Although Albemarle, WCU, and UHS initially began to advance their projects individually, they subsequently determined that a merger of their respective projects could better advance the goals of the Pilot Program by creating a dedicated network for public non-profit health care providers in North Carolina.²¹ Albemarle, WCU, and UHS each determined that absent a merger of their projects, they may end their participation in the Pilot Program.²² The four parties jointly request that the maximum support amount awarded to Albemarle, WCU, and UHS in the *2007 RHC PP Selection Order* be available to NCTN to build and operate a telecommunications network connecting non-profit hospitals throughout North Carolina.²³ NCTN intends to connect the hospital network with the network proposed in its Pilot Program application, a broadband network connecting public health agencies and free clinics in North Carolina.²⁴ NCTN, Albemarle, WCU, and UHS affirm that all entities that were to be offered broadband connections and/or services as part of one of the approved Pilot Program projects will be offered those connections and/or services as part of the merged project in a way that will satisfy the goals of each approved Pilot Program project.²⁵ The parties indicate that the benefits of merging the four projects include (i) potential cost savings due to their ability to purchase broadband services in bulk,²⁶ and (ii) the connection of virtually all of the public non-profit health care providers in North Carolina to a dedicated broadband network, enabling interconnection between hospitals, public health agencies, and free clinics statewide.²⁷

III. DISCUSSION

6. The Bureau grants the request by NCTN, Albemarle, WCU, and UHS to merge their Pilot Program projects and designate NCTN as the successor to Albemarle, WCU, and UHS. Consistent with past Pilot Program merger decisions, the Bureau finds that Albemarle, WCU, and UHS have demonstrated that absent a merger, due to extenuating circumstances, they will not be able to fulfill the goals and objectives detailed in their respective Pilot Program applications.²⁸ The Bureau also finds that NCTN has demonstrated that it is committed to fulfilling the eligible funding goals and objectives identified in Albemarle, WCU, and UHS's Pilot Program applications, as well as the goals and objectives

¹⁹ Kirby May 13 Letter at 1-2; NCTN May 4 Letter at 1-2; WCU May 5 Letter at 1; Albemarle May 12 Letter at 1; UHS May 12 Letter at 1.

²⁰ Kirby May 13 Letter at 1.

²¹ *See id.* at 2; NCTN May 4 Letter at 1-2.

²² Albemarle Supplemental Letter at 1; WCU Supplemental Letter at 1; UHS Supplemental Letter at 1.

²³ NCTN May 4 Letter at 1; Albemarle May 12 Letter at 1; WCU May 5 Letter at 1; UHS May 12 Letter at 1.

²⁴ Kirby May 13 Letter at 1-2.

²⁵ *See* NCTN Supplemental Letter at 1; Albemarle Supplemental Letter at 1; WCU Supplemental Letter at 1; UHS Supplemental Letter at 1.

²⁶ NCTN Supplemental Letter at 1; Albemarle Supplemental Letter at 1; WCU Supplemental Letter at 1; UHS Supplemental Letter at 1.

²⁷ *See* Kirby May 13 Letter at 2; NCTN May 4 Letter at 1-2.

²⁸ *See* NCTN May 4 Letter at 1; Albemarle Supplemental Letter at 1; WCU Supplemental Letter at 1; UHS Supplemental Letter at 1; *see also 2007 RHC PP Selection Order*, 22 FCC Rcd at 20422, para. 124; *As One Together Merger Order*, 23 FCC Rcd at 17403, para. 6; *Holzer Merger Order*, 23 FCC Rcd at 17398, para. 6; *Texas Healthcare Network Merger Order*, 24 FCC Rcd at 4590, para. 8.

identified in its own application.²⁹ Merging the four projects and designating NCTN as successor to Albemarle, WCU, and UHS serves the public interest and furthers the goals of the Pilot Program by connecting eligible health care providers throughout North Carolina to a dedicated broadband infrastructure, and bringing the benefits of telemedicine to rural parts of North Carolina where the need is most acute.³⁰

7. Albemarle, WCU, and UHS have demonstrated that they will be unable to participate in the Pilot Program for the duration of the Pilot Program because each lacks the financial resources to implement and sustain its approved project.³¹ Accordingly, appointing a successor is necessary to enable the three approved Pilot Program projects to deploy a dedicated broadband network to underserved North Carolina health care facilities and to provide access to advanced telecommunications and information services, including telemedicine applications.³²

8. NCTN has committed and is qualified to achieve the goals identified in Albemarle, WCU, and UHS's Pilot Program applications. Specifically, in selecting NCTN as a participant, the Commission has already determined that NCTN is qualified to participate in the Pilot Program.³³ For example, the Commission found that NCTN demonstrated that it was capable of leveraging existing technologies and aggregating the specific needs of health care providers.³⁴ As successor to Albemarle, WCU, and UHS, NCTN has committed to fulfill the project goals identified in the Albemarle, WCU, and UHS project applications, as well as those in NCTN's own project application.³⁵ Furthermore, the members of the NCTN consortium have committed to provide the required 15 percent of non-funded eligible costs for the combined projects.³⁶

²⁹ See NCTN Supplemental Letter at 1; Albemarle Supplemental Letter at 1; WCU Supplemental Letter at 1; UHS Supplemental Letter at 1; *see also As One Together Merger Order*, 23 FCC Rcd at 17403, para. 7; *Holzer Merger Order*, 23 FCC Rcd at 17398, para. 7; *Texas Healthcare Network Merger Order*, 24 FCC Rcd at 4590-91, para. 9.

³⁰ See Albemarle Application at 2-3; WCU Application at 3-6; UHS Application at 4-6; *see also As One Together Merger Order*, 23 FCC Rcd at 17403, para. 8; *Holzer Merger Order*, 23 FCC Rcd at 17398-99, para. 8; *Texas Healthcare Network Merger Order*, 24 FCC Rcd at 4591, para. 10.

³¹ See Albemarle Supplemental Letter at 1; WCU Supplemental Letter at 1; UHS Supplemental Letter at 1.

³² See Albemarle Application at 2-3; WCU Application at 3-6; UHS Application at 5-6. A dedicated broadband network may be used for the provision of medical care or medical expertise from a distance using telecommunications technology (telemedicine or telehealth) for long-distance clinical care, consumer and professional health-related education, public health, health administration, research, and electronic health records, as permitted by the *2006 Pilot Program Order* and the *2007 RHC PP Selection Order*. See *2006 Pilot Program Order*, 21 FCC Rcd at 11111-12, paras. 1 n.2, 5; *2007 RHC PP Selection Order*, 22 FCC Rcd at 20367-68, para. 16. Eligible health care providers are: (i) post-secondary educational institutions offering health care instruction, teaching hospitals, and medical schools; (ii) community health centers or health centers providing health care to migrants; (iii) local health departments or agencies; (iv) community mental health centers; (v) not-for-profit hospitals; (vi) rural health clinics; and (vii) consortia of health care providers consisting of one or more entities described in clauses (i) through (vi). 47 U.S.C. § 254(h)(7)(B); *see also 2007 RHC PP Selection Order*, 22 FCC Rcd at 20368, para. 18. Other network members may include ineligible health care providers that use the dedicated network for health-related purposes. See *2007 RHC PP Selection Order*, 22 FCC Rcd at 20395-96, para. 71.

³³ *2007 RHC PP Selection Order*, 22 FCC Rcd at 20429-30, Appendix B.

³⁴ *Id.* at 20376-78, paras. 40 and 41.

³⁵ See NCTN Supplemental Letter at 1; Albemarle Supplemental Letter at 1; WCU Supplemental Letter at 1; UHS Supplemental Letter at 1.

³⁶ NCTN May 4 Letter at 2.

9. The Bureau finds that it will serve the public interest, and is consistent with the goals of the Pilot Program, to designate NCTN as successor to Albemarle, WCU, and UHS. As noted in the *2007 RHC PP Selection Order*, one of the goals 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.”³⁷ In selecting Albemarle, WCU, and UHS for participation in the Pilot Program, the Commission found that these projects will advance the goals of the Pilot Program by bringing the benefits of telemedicine to rural communities.³⁸ Designating NCTN as successor to Albemarle, WCU, and UHS will continue to make Pilot Program funds available for connecting eligible health care providers throughout North Carolina to a dedicated broadband infrastructure, bringing the benefits of telemedicine to rural parts of the state.

10. Appointing NCTN as successor to Albemarle, WCU, and UHS also serves the public interest because it will ensure that Pilot Program funds are used efficiently. Specifically, the parties indicate that merging the four projects will lead to potential cost savings due to the possibility of bulk pricing for purchases.³⁹ Additionally, a merger would allow nearly all of the non-profit health care providers in North Carolina to connect to a single dedicated broadband network.⁴⁰

11. For these reasons, the Bureau finds that NCTN, Albemarle, WCU, and UHS have demonstrated that it is in the public interest to merge the four projects and designate NCTN as successor to Albemarle, WCU, and UHS. Accordingly, the maximum funding available to NCTN for the combined NCTN, Albemarle, and UHS project over the three funding years is \$12,164,290 (\$4,054,763 annually over three funding years).⁴¹ To ensure that the benefits of the Pilot Program are achieved, we encourage other selected participants that are unable to continue their Pilot Program projects to seek the designation of successors, consistent with the *2007 RHC PP Selection Order* and the Bureau’s orders designating Pilot Program project successors.⁴²

12. NCTN shall follow the network plans set forth in the Albemarle, WCU, and UHS applications. To the extent NCTN seeks to modify those plans, NCTN must follow the network modification requirements detailed in the *2007 RHC PP Selection Order*.⁴³ The Bureau also reminds NCTN that it must adhere to the requirements of the *2007 RHC PP Selection Order* and that it shall be subject to audit and investigation by the Commission’s Office of Inspector General to determine

³⁷ *2007 RHC PP Selection Order*, 22 FCC Rcd at 20361, para. 1.

³⁸ *Id.* at 20376, para. 39.

³⁹ NCTN Supplemental Letter at 1; Albemarle Supplemental Letter at 1; WCU Supplemental Letter at 1; UHS Supplemental Letter at 1.

⁴⁰ *See* NCTN May 4 Letter at 1-2.

⁴¹ To determine the maximum funding amount available to the combined project, the Bureau added the maximum funding amounts the Commission awarded to NCTN (\$6,023,985), Albemarle (\$1,583,076), WCU (\$3,596,290), and UHS (\$960,939). *See 2007 RHC PP Selection Order*, 22 FCC Rcd at 20429-30, Appendix B. To the extent NCTN does not use all of the available funds in a funding year, USAC will “carry over” the remaining funds to the following funding year. *See* Letter from Dana Shaffer, Chief, Wireline Competition Bureau, Federal Communications Commission, to Scott Barash, Acting Chief Executive Officer, Universal Service Administrative Company (dated Jan. 17, 2008), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-279603A1.pdf.

⁴² *See 2007 RHC PP Selection Order*, 22 FCC Rcd at 20422, para. 124; *As One Together Merger Order*; *Holzer Merger Order*; *Texas Healthcare Network Merger Order*.

⁴³ *2007 RHC PP Selection Order*, 22 FCC Rcd at 20401, para. 80.

compliance with the Pilot Program, Commission rules and orders, and section 254 of the Act.⁴⁴ In addition, if funds are not distributed or used in accordance with the *2007 RHC PP Selection Order*, the Commission will recover such funds.⁴⁵

IV. ORDERING CLAUSES

13. 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, the request filed by the North Carolina TeleHealth Network, Albemarle Health, Western Carolina University, and University Health Systems of Eastern Carolina IS GRANTED to the extent provided herein.

14. 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

Julie A. Veach
Acting Chief
Wireline Competition Bureau

⁴⁴ *Id.* at 20422, para. 125.

⁴⁵ *Id.* at 20423, para. 125.