

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

In the Matter of
Rural Health Care Support Mechanism
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

Adopted: December 5, 2008

Released: December 5, 2008

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, the Wireline Competition Bureau (Bureau) grants a request from two participants in the Rural Health Care Pilot Program (Pilot Program), Holzer Consolidated Health Systems (Holzer) and Southern Ohio Health Care Network (SOHCN), to merge their respective Pilot Program projects and designate SOHCN as the successor to Holzer's Pilot Program project.

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 methods 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.

1 Letter from Tom Reid, President Reid Consulting Group, to Thomas Buckley, Federal Communications Commission, WC Docket No. 02-60 (dated Aug. 15, 2008) (filed on behalf of Holzer and SOHCN) (August 15 Letter); Southern Ohio Health Care Network Project Briefing, WC Docket No. 02-60 (dated Aug. 14, 2008) (August 14 Letter); Letter from Kevin Yeager, CFO Holzer Consolidated Health Systems, to Thomas Buckley, Federal Communications Commission, WC Docket No. 02-60 (dated Oct. 16, 2008) (October 16 Letter).

2 47 U.S.C. § 254(h)(2)(A); 47 U.S.C. §§ 151 et seq.; 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); Holzer Consolidated Health Systems Application, WC Docket

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.<sup>4</sup> If a participant is unable to participate in the Pilot Program due to extenuating circumstances, the Bureau may designate a successor.<sup>5</sup>

3. The maximum Pilot Program support the Commission awarded to Holzer is \$1,836,000 and the maximum support the Commission awarded to SOHCN is \$13,929,417.<sup>6</sup> Holzer proposes to replace its current T1-based intra-facility backbone with a dedicated high-speed broadband fiber optic network among eight health care providers located in the Appalachian region of Southern Ohio.<sup>7</sup> SOHCN proposes to construct or purchase a fiber optic network connecting twenty-four health care facilities in south-central and southeastern Ohio.<sup>8</sup>

4. On August 15, 2008, Holzer and SOHCN requested that the Commission allow Holzer's project to merge with SOHCN's project and designate SOHCN as Holzer's successor.<sup>9</sup> Holzer indicates that due to its existing budget restrictions, it is not cost effective to build its own separate network and it is therefore unable to proceed with the project identified in the Holzer Application.<sup>10</sup> Holzer and SOHCN jointly request that Holzer's maximum support amount, awarded in the *2007 RHC PP Selection Order*, be available to SOHCN to build a dedicated broadband fiber optic network connecting the facilities identified in the Holzer Application and the SOHCN Application.<sup>11</sup> Holzer and SOHCN indicate that the benefits of merging the two projects include: (i) avoiding duplication of resources; and (ii) aggregating demand, thus potentially enabling the merged projects to secure lower capital costs and operating fees.<sup>12</sup>

### III. DISCUSSION

5. The Bureau grants Holzer and SOHCN's request to merge their Pilot Program projects and designate SOHCN as the successor to Holzer's project. The Bureau finds that Holzer has demonstrated that, due to extenuating circumstances, it will not be able to fulfill the goals and objectives

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No. 02-60 (filed May 7, 2007) (Holzer Application); Southern Ohio Health Care Application, WC Docket 02-60 (filed May 7, 2007) (SOHCN Application).

<sup>4</sup> *Id.* at 20361, para. 2.

<sup>5</sup> *Id.* at 20422, para. 124. Participants are required to comply with certain Commission rules and administrative requirements for reimbursement under the Pilot Program. For example, pursuant to sections 54.603 and 54.615 of the Commission's rules, each eligible health care provider must participate in a competitive bidding process and follow any additional applicable state, local, or other procurement requirements to select the most cost-effective provider of services eligible for Pilot Program funding. *Id.* at 20412, para. 100; 47 C.F.R. §§ 54.603, 54.615.

<sup>6</sup> *2007 RHC PP Selection Order*, 22 FCC Rcd at 20429-30, Appendix B.

<sup>7</sup> Holzer Application at 4.

<sup>8</sup> SOHCN Application at 21-22.

<sup>9</sup> August 15 Letter at Attachments 1 and 2 (letter from SOHCN dated Aug. 8, 2008 and letter from Holzer dated Aug. 5, 2008).

<sup>10</sup> October 16 Letter. Holzer indicates that it had operating losses of approximately \$6 million in its most recently completed fiscal year, and indicates that it cannot absorb the costs of proceeding with its Pilot Program project at this time. October 16 Letter at 1.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at Attachment 1, 1-2.

detailed in its Pilot Program application.<sup>13</sup> The Bureau also finds that SOHCN has demonstrated that it is committed to fulfilling the goals and objectives identified in Holzer's Pilot Program application, as well as the goals and objectives identified in its own application. Merging the two projects and designating SOHCN as Holzer's successor serves the public interest and furthers the goals of the Pilot Program by connecting eligible health care providers throughout Ohio to a dedicated broadband infrastructure, and bringing the benefits of telemedicine to rural parts of Ohio where the need is most acute.<sup>14</sup>

6. The Commission delegated authority to the Bureau to designate a successor when a participant is unable to participate for the duration of the Pilot Program.<sup>15</sup> Holzer has demonstrated that it will be unable to participate in the Pilot Program for the duration of the Pilot Program because its existing budget restrictions preclude it from building its own separate network.<sup>16</sup> Holzer contends that it faces significant financial obstacles at present and, therefore, likely will be unable to fulfill the goals identified in Holzer's application without the merger.<sup>17</sup> Accordingly, appointing a successor to Holzer is necessary to enable the approved Holzer Pilot Program project to deploy a broadband network among the entities within the Holzer Consolidated Health Systems in the Appalachian region of Southern Ohio.<sup>18</sup>

7. SOHCN has committed to, and is qualified to achieve the goals identified in Holzer's application. Specifically, in selecting SOHCN as a participant, the Commission has already determined that SOHCN is qualified to participate in the Pilot Program.<sup>19</sup> For example, the Commission found that SOHCN demonstrated that it was capable of leveraging existing technologies and aggregating the specific needs of health care providers.<sup>20</sup> As Holzer's successor, SOHCN has committed to fulfill the project goals identified in Holzer's application as well as those in its own application.<sup>21</sup> Furthermore, SOHCN has committed to provide the fifteen percent of non-funded eligible costs for the combined project.<sup>22</sup>

8. The Bureau finds that it will serve the public interest, and is consistent with the goals of the Pilot Program, to designate SOHCN as Holzer's successor. 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."<sup>23</sup> In selecting Holzer for participation in the Pilot Program, the Commission found that the Holzer project will advance the goals of the Pilot Program

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<sup>13</sup> *2007 RHC PP Selection Order*, 22 FCC Rcd at 20422, para. 124.

<sup>14</sup> See August 14 Letter at 11, 17 (the merged project will connect health care providers in 23 rural counties (15 counties in phase 1 of the project and 8 additional counties in phase 2 of the project), including the 10 poorest counties in Ohio).

<sup>15</sup> *2007 RHC PP Selection Order*, 22 FCC Rcd at 20422, para. 124.

<sup>16</sup> October 16 Letter.

<sup>17</sup> *Id.*

<sup>18</sup> Holzer Application at 1-4.

<sup>19</sup> *2007 RHC PP Selection Order*, 22 FCC Rcd at 20430, Appendix B.

<sup>20</sup> *Id.* at 203776-78, paras. 40 and 41.

<sup>21</sup> August 15 Letter at Attachment 1, 2.

<sup>22</sup> *Id.*

<sup>23</sup> *2007 RHC PP Selection Order*, 22 FCC Rcd at 20361, para. 1.

by bringing the benefits of telemedicine to rural communities.<sup>24</sup> Designating SOHCN as Holzer's successor will enable funding to continue to be available to connect eligible health care providers throughout Ohio to a dedicated broadband infrastructure, bringing the benefits of telemedicine to rural parts of Ohio where the need is most acute.

9. Appointing SOHCN as Holzer's successor also serves the public interest because it will ensure that Pilot Program funds are used efficiently. By merging the two projects, SOHCN can avoid the duplication of efforts and expenditure of money that may occur if Holzer and SOHCN separately attempted to achieve their project goals. Specifically, in their applications, Holzer and SOHCN identified some of the same facilities that they individually intended to connect to their separate healthcare networks.<sup>25</sup> SOHCN has committed to use any funds saved to broaden the scope of the merged project by connecting to additional rural health care facilities or increasing the connection speeds to eligible health care facilities already included in the scope of the merged project.<sup>26</sup> The merged project will create one comprehensive regional health care network (avoiding duplication of resources) across southern Ohio.<sup>27</sup>

10. For these reasons, the Bureau finds that, in this unique circumstance, Holzer and SOHCN have demonstrated that it is in the public interest to merge the two projects and designate SOHCN as Holzer's successor. Accordingly, the maximum funding amount available to SOHCN for the combined SOHCN/Holzer project over the three funding years is \$15,765,417 (\$5,255,139 over three funding years).<sup>28</sup>

11. SOHCN shall follow the network plans set forth in Holzer and SOHCN's applications. To the extent SOHCN seeks to modify those plans, SOHCN must follow the network modification requirements detailed in the *2007 RHC PP Selection Order*.<sup>29</sup> The Bureau also reminds SOHCN 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 compliance with the Pilot Program, Commission rules and orders, and section 254 of the Act.<sup>30</sup> In addition, if funds are not distributed or used in accordance with the *2007 RHC PP Selection Order*, the Commission will recover such funds.<sup>31</sup>

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<sup>24</sup> *Id.* at 20374-75, para. 37.

<sup>25</sup> Compare SOHCN Application at 34-35 with Holzer Application at 7-8; see also *2007 RHC PP Selection Order*, 22 FCC Rcd at 20406, para. 87, n 291. Both Holzer and SOHCN intended to connect health care providers in Gallia and Jackson counties in Ohio. The combined project will connect health care providers in 23 rural counties (15 counties in phase 1 of the project and 8 additional counties in phase 2 of the project), in southern Ohio. August 14 Letter at 11, 17.

<sup>26</sup> August 15 Letter at Attachment 1, 2.

<sup>27</sup> *Id.* at Attachment 1, 1.

<sup>28</sup> To determine the maximum funding amount available to the combined SOHCN/Holzer project, the Bureau added the maximum funding amounts the Commission awarded to SOHCN, \$13,929,417, and Holzer, \$1,836,000. To the extent SOHCN 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 to Scott Barash, Acting Chief Executive Officer, Universal Service Administrative Company, from Dana Shaffer, Chief, Wireline Competition Bureau, Federal Communications Commission (Jan. 17, 2008) (available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-279603A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-279603A1.pdf)).

<sup>29</sup> *2007 RHC PP Selection Order*, 22 FCC Rcd at 20401, para. 80.

<sup>30</sup> *Id.* at 40422, para. 125.

<sup>31</sup> *Id.* at 40423, para. 125.

**IV. ORDERING CLAUSES**

12. 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. §§ 151-154, 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 Holzer Consolidated Health Systems and Southern Ohio Health Care Network IS GRANTED to the extent provided herein.

13. 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

Dana R. Shaffer  
Chief  
Wireline Competition Bureau