

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

In the Matter of	)	
	)	
Rural Health Care Support Mechanism	)	WC Docket No. 02-60
	)	
Texas Healthcare Network and Texas Health Information	)	
Network Collaborative Request for Merger of Rural	)	
Health Care Pilot Program Projects	)	

**ORDER**

**Adopted: April 16, 2009**

**Released: April 16, 2009**

By the Acting 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), the Texas Healthcare Network (THN) and the Texas Health Information Network Collaborative (THINC), to merge their respective Pilot Program projects and designate THINC as the successor to THN's Pilot Program project.<sup>1</sup> Specifically, the Bureau finds that THN has demonstrated that it is unable to continue to participate in the Pilot Program due to extenuating circumstances. The Bureau also finds that THINC has demonstrated that the public interest would be served by designating THINC as the successor to THN because THINC: (1) has committed to fulfill the goals identified in THN's Pilot Program application; (2) will use any funds saved by combining the projects to broaden the goals identified in both applications; and (3) has identified an eligible source for the 15 percent of costs not funded by the 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.<sup>2</sup> On November 16, 2007,

<sup>1</sup> Letter from David Pearson, President and CEO Texas Organization of Rural & Community Hospitals, to William England, Universal Service Administrative Company, WC Docket No. 02-60 (dated Dec. 22, 2008) (TORCH December 22 Letter); Letter from George S. Conklin, Project Coordinator THINC and Senior Vice-President and CIO CHRISTUS Health, and David Pearson, President and CEO Texas Organization of Rural & Community Hospitals, to William England, Universal Service Administrative Company, WC Docket No. 02-60 (dated Jan. 28, 2009) (January 28 Letter); Letter from Quang Ngo, President and CEO TORCH Foundation, to Marlene H. Dortch, Federal Communications Commission, WC Docket No. 02-60 (dated Mar. 25, 2009) (TORCH Foundation March 25 Letter); Letter from Shannon S. Calhoun, Executive Director Southeast Texas Health System, to Marlene H. Dortch, Federal Communications Commission, WC Docket No. 02-60 (dated Mar. 25, 2009) (STHS March 25 Letter).

<sup>2</sup> 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*).

the Commission selected 69 participants, including THN and THINC, to participate in the Pilot Program.<sup>3</sup> 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.<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. THN is a consortium of health care providers.<sup>6</sup> Its member organizations include the Texas Organization of Rural & Community Hospitals (TORCH); the TORCH Foundation (formerly the Community Hospital Foundation of Texas); Southeast Texas Health System (STHS); and its fiduciary agent and project coordinator, Hospital Networks Management, Inc., doing business as (d/b/a) Texas Healthcare Network (HNMI).<sup>7</sup>

4. THINC is a consortium of health care providers whose member organizations include TORCH; the University of Texas Medical Branch; the Texas A&M Health Science Center; East Texas Area Health Education Center; the Rural and Community Health Institute; TeleCommunity Resource Center; and its fiduciary agent, CHRISTUS Health System (CHRISTUS Health).<sup>8</sup>

5. The maximum Pilot Program support the Commission awarded to THN is \$4,889,200, and the maximum Pilot Program support the Commission awarded to THINC is \$11,042,096.<sup>9</sup> THN proposed to upgrade an existing dedicated broadband network serving approximately 40 rural health care facilities and expand it to encompass 150 rural hospitals and more than 120 rural health clinics throughout Texas.<sup>10</sup> THN planned to enhance that network by: (1) providing increased bandwidth of at least 45 Mbps to eligible facilities; (2) establishing secure gateways to the network to facilitate collaboration with other health care networks statewide and nationwide; and (3) developing a plan for the deployment of

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<sup>3</sup> 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*); Texas Healthcare Network Application, WC Docket No. 02-60 (filed May 4, 2007) (THN Application); Texas Health Information Network Collaborative Application, WC Docket No. 02-60 (filed May 7, 2007) (THINC Application).

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

<sup>5</sup> *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.”). On December 5, 2008, under its delegated authority, the Bureau granted a merger request to designate the University of Mississippi Medical Center as the successor to As One Together for Health’s Pilot Program project. *Rural Health Care Support Mechanism, 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*). On the same day, the Bureau granted a request to designate the Southern Ohio Health Care Network as the successor to Holzer Consolidated Health Systems’ Pilot Program project. *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, 23 FCC Rcd 17396 (Wireline Comp. Bur. 2008) (*Holzer Merger Order*).

<sup>6</sup> THN Application at 6-9.

<sup>7</sup> *Id.* at 8-9; TORCH December 22 Letter at 1; TORCH Foundation March 25 Letter.

<sup>8</sup> THINC Application at 3, 48-50.

<sup>9</sup> *2007 RHC PP Selection Order*, 22 FCC Rcd at 20430, Appendix B.

<sup>10</sup> THN Application at 11-12, 18, 29.

advanced health care applications.<sup>11</sup> THINC proposes to build a Texas statewide broadband network, connected to Internet2 or NLR, linking more than two hundred health care facilities.<sup>12</sup> THINC plans to use this network to: (1) enhance broadband connectivity for rural health care providers; (2) provide access to advanced medical services, resources, and other telehealth applications; (3) reduce the costs of health care service delivery through aggregation and resource sharing; (4) enable teleconference peer meetings, remote telemetry, monitoring, diagnostics, and consultations; (5) allow for secure Health Insurance Portability and Accountability Act (HIPAA)-compliant intranets for medical information and health records exchange; (6) provide consumer health education and outreach, information, and professional training; (7) enhance community health/emergency preparedness/disaster management network components; (8) enable the provision of electronic medical records/health records to clinicians and individuals; and (9) allow for access to government agencies' web tools and services by rural health care providers.<sup>13</sup>

6. On December 22, 2008, THN provided notice that it was unable to continue as a participant in the Pilot Program due to the consortium's resource limitations.<sup>14</sup> The THN members also assert that the remaining members of the consortium lack the project management, broadband network expertise, and resources to continue in the Pilot Program after the resignation and withdrawal of the consortium's project coordinator.<sup>15</sup> In separate correspondence dated December 22, 2008, TORCH requested that the Commission allow the THN project to merge with THINC's project and designate THINC as successor to THN.<sup>16</sup> CHRISTUS Health will serve as the fiduciary agent for the merged projects.<sup>17</sup> The health care provider members of THN (TORCH, the TORCH Foundation and STHS) and THINC jointly request that the maximum support amount awarded to THN in the *2007 RHC PP Selection Order* be available to THINC to: (1) upgrade existing network connections to provide high speed bandwidth to rural health care facilities; (2) deploy the services proposed in THN's Pilot Program application; and (3) increase the number of facilities with access to the broadband network proposed by THN.<sup>18</sup> THINC and the health care provider members of THN indicate that the benefits of merging the two projects include (i) reducing management and administration costs, (ii) achieving the goals of both projects in a more timely and coordinated manner, and (iii) expanding the project to include additional facilities.<sup>19</sup>

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<sup>11</sup> *Id.* at 10-12.

<sup>12</sup> THINC Application at 3-6, 24.

<sup>13</sup> *Id.* at 4; January 28 Letter at 3.

<sup>14</sup> Letter from Randall Zunke, President Hospital Networks Management, Inc., d/b/a Texas Healthcare Network, to William England, Universal Service Administrative Company, WC Docket No. 02-60 (dated Dec. 22, 2008) (THN December 22 Letter).

<sup>15</sup> *See* January 28 Letter at 1-2.

<sup>16</sup> TORCH December 22 Letter; *see also* TORCH Foundation March 25 Letter; STHS March 25 Letter. HNMI, the fiduciary agent and project coordinator of THN, did not join the December 22, 2008 merger request. The Bureau notes, however, that HNMI did not provide comments during the applicable comment period in opposition to the merger. The health care provider members of THN and THINC expressed joint support for the proposal in a January 28, 2009 letter. *See* January 28 Letter.

<sup>17</sup> January 28 Letter at 6.

<sup>18</sup> *Id.* at 4.

<sup>19</sup> *Id.* at 4-5.

### III. DISCUSSION

7. The Bureau grants the request by THINC and the health care provider members of THN to merge their Pilot Program projects and designate THINC as the successor to THN's project. Consistent with past Pilot Program merger decisions, the Bureau finds that the health care provider members of THN have demonstrated that, due to extenuating circumstances, THN will not be able to fulfill the goals and objectives detailed in its Pilot Program application.<sup>20</sup> The Bureau also finds that THINC has demonstrated that it is committed to fulfilling the goals and objectives identified in THN's Pilot Program application, as well as the goals and objectives identified in its own application.<sup>21</sup> Merging the two projects and designating THINC as successor to THN serves the public interest and furthers the goals of the Pilot Program by connecting eligible health care providers throughout Texas to a dedicated broadband infrastructure, and bringing the benefits of telehealth and telemedicine services to areas within Texas where the need for those services is most acute.<sup>22</sup>

8. The THN consortium has demonstrated that it will be unable to participate in the Pilot Program for the duration of the Pilot Program because its fiduciary agent and project coordinator, HNMI, withdrew from participation in the Pilot Program project.<sup>23</sup> Accordingly, appointing a successor to THN is necessary to enable the approved Pilot Program project to deploy a dedicated, high-speed broadband network connecting rural Texas health care providers and other network members and enabling access to advanced telehealth and telemedicine services.<sup>24</sup>

9. THINC has committed to, and is qualified to achieve the goals identified in THN's application. Specifically, in selecting THINC as a participant, the Commission has already determined that THINC is qualified to participate in the Pilot Program.<sup>25</sup> For example, the Commission found that THINC demonstrated that it was capable of leveraging existing technologies and aggregating the specific needs of health care providers.<sup>26</sup> As successor to THN, THINC has committed to fulfill the project goals

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<sup>20</sup> *2007 RHC PP Selection Order*, 22 FCC Rcd at 20422, para. 124; *see As One Together Merger Order*, 23 FCC Rcd at 17403, para. 6; *Holzer Merger Order*, 23 FCC Rcd at 17398, para. 6; THN December 22 Letter; January 28 Letter.

<sup>21</sup> *See* January 28 Letter at 3-5; *see also As One Together Merger Order*, 23 FCC Rcd at 17403, para. 7; *Holzer Merger Order*, 23 FCC Rcd at 17398, para. 7.

<sup>22</sup> *See* THN Application at 10-12; *As One Together Merger Order*, 23 FCC Rcd at 17403, para. 8; *Holzer Merger Order*, 23 FCC Rcd at 17398-99, para. 8.

<sup>23</sup> TORCH December 22 Letter at 1; January 28 Letter at 1-2.

<sup>24</sup> *See* THN Application at 10-12. 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.

<sup>25</sup> *2007 RHC PP Selection Order*, 22 FCC Rcd at 20429-30, Appendix B.

<sup>26</sup> *Id.* at 20376-78, paras. 40 and 41.

identified in THN's project application as well as those in THINC's own project application.<sup>27</sup> Furthermore, THINC has committed to provide the required 15 percent of non-funded eligible costs for the combined projects.<sup>28</sup>

10. The Bureau finds that it will serve the public interest, and is consistent with the goals of the Pilot Program, to designate THINC as successor to THN. 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>29</sup> In selecting THN for participation in the Pilot Program, the Commission found that its project will advance the goals of the Pilot Program by bringing the benefits of telemedicine to rural communities.<sup>30</sup> Designating THINC as successor to THN will continue to make Pilot Program funds available for connecting eligible health care providers throughout Texas to a dedicated broadband infrastructure, bringing the benefits of telemedicine to rural parts of the state.

11. Appointing THINC as successor to THN also serves the public interest because it will ensure that Pilot Program funds are used efficiently.<sup>31</sup> Specifically, THN and THINC indicate that merging the two projects will reduce management and administration costs, and will achieve the goals of both projects in a more timely and coordinated manner.<sup>32</sup> THINC has committed to use any funds saved by merging the two projects to add more rural health care facilities to the network than were included in the original two project applications.<sup>33</sup>

12. For these reasons, the Bureau finds that THN and THINC have demonstrated that it is in the public interest to merge the two projects and designate THINC as successor to THN. Accordingly, the maximum funding available to THINC for the combined THINC/THN project over the three funding years is \$15,931,296 (\$5,310,432 over three funding years).<sup>34</sup> 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.<sup>35</sup>

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<sup>27</sup> January 28 Letter at 5-6.

<sup>28</sup> *Id.* at 4.

<sup>29</sup> *2007 RHC PP Selection Order*, 22 FCC Rcd at 20361, para. 1.

<sup>30</sup> *Id.* at 20376, para. 39.

<sup>31</sup> *See As One Together Merger Order*, 23 FCC Rcd at 17403-04, para. 9; *Holzer Merger Order*, 23 FCC Rcd at 17399, para. 9.

<sup>32</sup> January 28 Letter at 3-4. *See also 2007 RHC PP Selection Order*, 22 FCC Rcd at 20406, para. 87, n.291.

<sup>33</sup> January 28 Letter at 4-5.

<sup>34</sup> To determine the maximum funding amount available to the combined THINC/THN project, the Bureau added the maximum funding amounts the Commission awarded to THINC, \$11,042,096, and THN, \$4,889,200. To the extent THINC 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>35</sup> *2007 RHC PP Selection Order*, 22 FCC Rcd at 20422, para. 124; *As One Together Merger Order*, 23 FCC Rcd 17401; *Holzer Merger Order*, 23 FCC Rcd at 17396.



13. THINC shall follow the network plans set forth in THN's and THINC's applications. To the extent THINC seeks to modify those plans, THINC must follow the network modification requirements detailed in the *2007 RHC PP Selection Order*.<sup>36</sup> The Bureau also reminds THINC 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>37</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>38</sup>

#### IV. ORDERING CLAUSES

14. 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 Texas Healthcare Network and the Texas Health Information Network Collaborative IS GRANTED to the extent provided herein.

15. 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

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<sup>36</sup> *2007 RHC PP Selection Order*, 22 FCC Rcd at 20401, para. 80.

<sup>37</sup> *Id.* at 20422, para. 125.

<sup>38</sup> *Id.* at 20423, para. 125.