

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

In the Matter of
Rural Health Care Support Mechanism
Northeast Ohio Regional Health Information
Organization Consortium and
OneCommunity Network Services Request to
Restructure Pilot Program Project
WC Docket No. 02-60

ORDER

Adopted: March 11, 2015

Released: March 11, 2015

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we address a request by OneCommunity, a participant in the Rural Health Care Pilot Program (Pilot Program) and the current project coordinator of the Northeast Ohio Regional Health Information Organization (NEO RHIO) Pilot Program project, to restructure the NEO RHIO Pilot Program project. As discussed below, we find that it is in the public interest to allow NEO RHIO to restructure its consortium and network services agreement in order to institute safeguards similar to those

1 OneCommunity (formerly, OneCleveland) is an Ohio non-profit corporation established in October 2003 for "charitable, scientific, or education purposes" and intended to further its purposes by "developing and providing a system for digital telecommunications transport and storage and related services" to government agencies and educational institutions in Cleveland, including, but not limited to, non-profit hospitals and other healthcare facilities. See State of Ohio Certificate 1418675 (dated Oct. 22, 2003), Attachment to Articles of Incorporation of OneCommunity, at 1 (dated Oct. 20, 2003), available at State of Ohio, Ohio Secretary of State, http://www2.sos.state.oh.us/reports/rwservlet?imgc&Din=200329700804 (last visited Mar. 11, 2015). See also OneCommunity, About, http://www.onecommunity.org/about-onecommunity/ (last visited Mar. 11, 2015).

2 NEO RHIO is an Ohio non-profit corporation established in June 2007 to "promote the health of individuals as well as a healthier community and to improve the quality, safety and efficiency of healthcare in Northeast Ohio through the use of information technology and the secure exchange of health information and access to health information by providers of health care services and their patients." See State of Ohio Certificate 1707650 (dated June 18, 2007), Attachment to Initial Articles of Incorporation of NEO RHIO, at 1 (dated June 15, 2007), available at State of Ohio, Ohio Secretary of State, http://www2.sos.state.oh.us/reports/rwservlet?imgc&Din=200716901636 (last visited Mar. 11, 2015). In June 2012, the Ohio Secretary of State cancelled NEO RHIO's corporate registration because NEO RHIO failed to file a statement of continued existence. See Cancellation, Failure to File Statement of Continued Existence (dated June 21, 2012), available at State of Ohio, Ohio Secretary of State http://www2.sos.state.oh.us/reports/rwservlet?imgc&Din=201217351525 (last visited Mar. 11, 2015).

3 See Appendix (Letter from Universal Service Administrative Company (USAC), to Brett Lindsey, Chief Operating Officer, OneCommunity (dated June 9, 2014)) (USAC June 2014 Letter). A copy of this letter is included in the Appendix at the end of this document.

applied to other Pilot Program participants.⁴ To the extent necessary, on our own motion, we also conditionally waive the Commission's rules and deadlines necessary to enable the restructuring of the NEO RHIO consortium and network services agreement and to allow USAC to effectuate this Order.

II. BACKGROUND

2. *Pilot Program.* On September 26, 2006, the Commission established the Pilot Program, pursuant to section 254(h)(2)(A) of the Communications Act of 1934 (the Act), as amended, 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.⁵ Under the Pilot Program, participants were 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.⁶ On November 16, 2007, the Commission selected 69 applications to participate in the Pilot Program.⁷ There are currently 50 active pilot projects in 42 states and three United States (U.S.) territories.⁸ Many of these projects are statewide or regional networks of health care providers (HCPs).⁹ While no new funding is available under the Pilot Program, some pilot projects continue to accept new HCP sites.¹⁰

3. *Pilot Program Applicable Rules and Requirements.* Under the Pilot Program, only eligible HCPs and consortia that include eligible HCPs may apply for and receive discounts.¹¹ While state organizations, entities that provide eligible service offerings, and not-for-profit ineligible entities may apply for funding on behalf of consortium members and may be selected as a service provider by a Pilot Program participant, they are ineligible to receive funding for services under the Pilot Program unless they satisfy the statutory definition of health care provider under the Act.¹² Thus, any funding or other program benefits received by a state entity, organization or other ineligible entity functioning as a consortium leader under the Pilot Program must be passed on to the consortium members that are eligible

⁴ See *infra* para. 8 and note 43.

⁵ See 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) (*Pilot Program Order*).

⁶ See *Pilot Program Order*, 21 FCC Rcd at 11115, para. 14.

⁷ *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 22 FCC Rcd 20360, 20429, Appendix B (2007) (*Pilot Program Selection Order*).

⁸ See Letter from Craig Davis, Vice President, Rural Health Care Division, USAC, to Sharon Gillett, Chief, Wireline Competition Bureau, FCC, WC Docket No. 02-60, at 1-2 (filed May 4, 2012) (USAC May 2012 Letter); USAC, Rural Health Care Program, Getting Started, <http://www.usac.org/rhcp/about/default.aspx> (last visited Mar. 11, 2015). Of the original 69 projects, several projects merged, withdrew from the program, or failed to meet program deadlines, leaving the total number of projects at 50. See *Wireline Competition Bureau Interim Evaluation of Rural Health Care Pilot Program Staff Report*, WC Docket No. 02-60, Staff Report, 27 FCC Rcd 9387, 9399-9400, para. 20 (2012) (*Pilot Program Evaluation*).

⁹ See USAC May 2012 Letter.

¹⁰ See USAC, Rural Health Care Program, <http://www.usac.org/rhc/> (last visited Mar. 11, 2015).

¹¹ See 47 C.F.R. §§ 54.601(a)(1), (c)(1); *Pilot Program Selection Order*, 22 FCC Rcd at 20395-96, para. 71.

¹² See *Pilot Program Selection Order*, 22 FCC Rcd at 20396-97, paras. 72-73.

HCPs.¹³ Further, Pilot Program participants are responsible for meeting their minimum 15 percent contribution of eligible network costs.¹⁴ This contribution must be derived from an eligible source, such as from the applicant or eligible HCP participants, state grants, funding, or appropriations.¹⁵ Contributions may not come from ineligible sources such as a local exchange carrier or other telecom carrier, contractors, consultants, service providers, or for-profit participants.¹⁶ While a Pilot Program participant cannot sell its network capacity, it can share network capacity with an ineligible entity as long as the ineligible entity pays its fair share of the network costs attributable to the portion of the network capacity used.¹⁷

4. *NEO RHIO Pilot Program Project.* In May 2007, NEO RHIO and OneCommunity submitted a joint application to the Commission to receive funding from the Pilot Program to create HealthNet, a northeast Ohio broadband initiative, in support of the telemedicine and health information exchange.¹⁸ NEO RHIO was a non-profit corporation formed of eligible HCPs, including ten founding medical partners representing 32 facilities.¹⁹ OneCommunity is a non-profit corporation established to connect education, healthcare, government and non-profit organizations together through fiber and wireless broadband facilities.²⁰ Specifically, OneCommunity has a broadband network connecting over 300 sites across Northeast Ohio including 28 hospitals and healthcare facilities.²¹ The goal of HealthNet was to extend OneCommunity's network by installing additional fiber connections to connect 19 rural hospitals located in rural northeastern Ohio.²² This project became known as the NEO RHIO Pilot Project.²³

5. In November 2007, as part of the *Pilot Program Selection Order*, the Commission selected the NEO RHIO and OneCommunity application for funding under the Pilot Program.²⁴ The Commission found that the NEO RHIO Pilot Project demonstrated significant need for Pilot Program funding for health care broadband infrastructure and services to its HCPs and provided the Commission

¹³ *Id.* at 20396-97, paras. 72-73, note 234.

¹⁴ *Id.* at 20399-400, para. 77.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See 47 U.S.C. § 254(h)(3) (stating that “telecommunications services and network capacity provided to a public institutional telecommunications user under this subsection may not be sold, resold, or otherwise transferred by such user in consideration for money or any other thing of value”); *Pilot Program Selection Order*, 22 FCC Rcd at 20416, paras. 107-108. See also *id.* at 20416, para. 18 (requiring participants to identify all for-profit or other ineligible entities, how their fair share of network costs was assessed, and proof that these entities paid or will pay for their costs).

¹⁸ See NEO RHIO and OneCommunity Application, WC Docket No. 02-60, at 3 (filed May 5, 2007) (NEO RHIO and OneCommunity Application).

¹⁹ *Id.* at 4, 43-44; *supra* note 1.

²⁰ See NEO RHIO and OneCommunity Application at 3; *supra* note 1.

²¹ See NEO RHIO and OneCommunity Application at 3.

²² *Id.* at 5-6.

²³ *Id.* at 2.

²⁴ See *Pilot Program Selection Order*, 22 FCC Rcd at 20429, Appendix B. In the *Pilot Program Selection Order*, the Commission also provided additional guidance on the administration of the Pilot Program. See *Pilot Program Selection Order*.

with a sufficiently detailed proposal explaining the goals and objectives of its proposed network.²⁵ The maximum Pilot Program support the Commission awarded to the NEO RHIO Pilot Project was \$11,286,200.²⁶

6. The *Pilot Program Selection Order* set a deadline of June 30, 2010 for completion of the Pilot Program projects.²⁷ Consistent with this timeline, NEO RHIO submitted its request for proposal (RFP) for posting by USAC in August 2008 in time for competitive bidding to be initiated in January 2009.²⁸ The RFP sought bids for construction of a fiber optic network and equipment required to deliver high bandwidth services to connect hospitals spanning 22 counties in Northeastern Ohio.²⁹ In late 2009 (with only about half a year left until the intended end of the Pilot Program), OneCommunity informed USAC that it would serve as the project coordinator for the NEO RHIO Pilot Project and submitted requests to USAC for funding on behalf of the eligible HCPs that participated in the NEO RHIO Pilot Project, which were approved in January 2010.³⁰ USAC subsequently disbursed \$10,558,351 to the service providers that provided the equipment and/or constructed the proposed fiber network,³¹ and services commenced to the HCPs in February 2010.³²

7. In April 2011, USAC selected the NEO RHIO Pilot Program project for a site visit.³³ In preparation for the visit, USAC discovered that the original NEO RHIO consortium had disbanded in 2009 and that OneCommunity owned the fiber and equipment funded by the Pilot Program.³⁴ USAC also

²⁵ See *id.* at 20374-75, para. 37.

²⁶ See *id.* at 20429, Appendix B.

²⁷ See *Pilot Program Selection Order*, 22 FCC Rcd at 20370, para. 23. The Bureau subsequently extended the time for projects to receive funding commitments from USAC for the entirety of their awards from June 30, 2010 to June 30, 2012. See *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 25 FCC Rcd 1423 (Wireline Comp. Bur. 2010).

²⁸ See NEO RHIO HealthNet, FCC Form 465, Health Care Providers Universal Service, Description of Services Requested & Certification Form (dated Sept. 12, 2008); NEO RHIO, Request for Proposal, Rural Health Care Pilot Program, HealthNet Network Construction and Services (dated Aug. 12, 2008) (NEO RHIO RFP).

²⁹ See NEO RHIO RFP.

³⁰ See Letter from Mark T. Ansboury, OneCommunity, to USAC (dated Jan. 30, 2008) (providing that Mark T. Ansboury and Lawrence J. Voyten, both of OneCommunity, would serve as the Project Coordinator and Associate Project Coordinator, respectively, for the NEO RHIO Pilot Project); USAC June 2014 Letter at 2. See, e.g., NEO RHIO, FCC Form 466-A, Health Care Providers Universal Service, Internet Service Funding Request and Certification Form (dated Aug. 15, 2009) (for services from OneCommunity). NEO RHIO, FCC Form 466-A, Health Care Providers Universal Service, Internet Service Funding Request and Certification Form (dated Aug. 15, 2009) (for services from MultiLink). See also *Pilot Program Selection Order*, 22 FCC Rcd at 20396-97, paras. 72-73; USAC, Rural Health Care, Automated Search of Commitments, available at <https://www.rhc.universalservice.org/funding/asc/> (last visited Mar. 11, 2015).

³¹ See USAC June 2014 Letter at 2, note 11.

³² See, e.g., NEO RHIO, FCC Form 467, Health Care Providers Universal Service, Connection Certification (dated Feb. 23, 2010) (for services from OneCommunity); NEO RHIO, FCC Form 467, Health Care Providers Universal Service, Connection Certification (dated Mar. 9, 2010) (for services from MultiLink).

³³ See USAC June 2014 Letter at 3; *Pilot Program Selection Order*, 22 FCC Rcd at 20411, para. 98 (directing USAC to conduct random site visits to ensure support is being used for its intended purposes, as well as to conduct site visits as necessary and appropriate based on USAC's review of the selected participants' data submissions).

³⁴ *Id.*

determined that OneCommunity had paid the HCPs' 15 percent contribution towards the eligible costs and had dedicated a portion of the Pilot Program-funded network for use by ineligible entities that had not paid a fair share of the network costs.³⁵ In March 2012, USAC conducted the site visit of the NEO RHIO Pilot Project.³⁶ USAC's site visit report indicated that the NEO RHIO Pilot Project provided a broadband network through 20 counties across Northeast Ohio³⁷ and, through its connection to the larger OneCommunity network, linked rural HCPs in those counties to major health centers in Cleveland.³⁸ Specifically, the OneCommunity network provided the HCPs the ability to use innovative technologies such as electronic health records, telemedicine, mobile and home monitoring, televideo patient education programs, and statewide health information exchange.³⁹ As a further benefit, USAC noted that OneCommunity has a core network of 117 hospitals on its own private fiber backbone and interconnects the services supported by the Pilot Program to the core network, allowing for greater connectivity and interoperability between and among HCPs.⁴⁰

8. In establishing the Pilot Program, the Commission expected that Pilot Program projects would construct dedicated health care networks, but also allowed for the possibility that a participant would subscribe to carrier-provided transmission services in lieu of building its own broadband network.⁴¹ A key purpose of the Pilot Program was to "explore, from the ground up, how to best encourage the deployment" of such broadband facilities.⁴² During the implementation process, USAC recommended that certain Pilot Program projects requesting funding for service provider build-out should consider obtaining safeguards from their service providers to ensure that all of the benefits from Pilot Program funding were passed through to eligible HCPs, and that the Commission's and the HCPs' interest in supported facilities would be preserved if the service provider was unable to fulfill its service obligations over the contract term.⁴³ As one of the early Pilot Program projects, similar safeguards were

³⁵ *Id.* Specifically, using Pilot Program funds, OneCommunity extended its fiber network to include 24 fibers (25 percent of the network) for healthcare use and 72 additional fibers (75 percent of the network) for use by ineligible entities. See USAC June 2014 Letter at 4, note 15, 8-9.

³⁶ See Letter from Craig Davis, Rural Health Care Division, USAC, to Sharon Gillett, Chief, Wireline Competition Bureau, FCC (dated Mar. 16, 2012) (USAC March 2012 Site Visit).

³⁷ See USAC March 2012 Site Visit. See also OneCommunity, Hospital Broadband Services: Building a Platform for Better Health Care, <http://www.onecommunity.org/community-technology-programs/hospital-broadband-services/> (last visited Mar. 11, 2015) (OneCommunity Better Health Care).

³⁸ See USAC March 2012 Site Visit; OneCommunity Better Health Care. See also OneCommunity and NEO RHIO Rural Health Care Pilot Program Annual Data Report, WC Docket No. 02-60 (filed Sept. 12, 2014).

³⁹ See USAC March 2012 Site Visit. See also OneCommunity Better Health Care.

⁴⁰ See USAC March 2012 Site Visit.

⁴¹ See *Pilot Program Order*, 21 FCC Rcd at 11111-12, para. 3 (stating that "all public and non-profit health care providers may apply for funding to construct a dedicated broadband network that connects health care providers in a state or region"); *Pilot Program Selection Order*, 22 FCC Rcd at 20397-8, para. 74.

⁴² *Pilot Program Selection Order*, 22 FCC Rcd at 20366, para. 15.

⁴³ See *Pilot Program Evaluation* at 9418-19, para. 51 and Fig. 11 (explaining that some Pilot Program projects chose to build their networks by purchasing IRUs or long-term prepaid leases). These safeguards are not specified in the Commission's rules or orders and were voluntarily instituted by certain individual Pilot Program projects. See, e.g., Southern Ohio Health Care Network Rural Health Care Pilot Program Annual Data Report, WC Docket No. 02-60 (filed Sept. 2, 2014); New England Telehealth Consortium Rural Health Care Pilot Program Annual Data Report, WC Docket No. 02-60 (filed Sept. 30, 2013).

not instituted for the NEO RHIO Pilot Program project.⁴⁴ Therefore, in June 2011, after learning about the structure of the NEO RHIO Pilot Project, the Commission, USAC, and OneCommunity entered into discussions concerning the NEO RHIO Pilot Project and OneCommunity's compliance with the Commission's Pilot Program requirements.⁴⁵ Subsequently, on June 9, 2014, USAC sent OneCommunity a letter to memorialize OneCommunity's proposed steps to restructure the NEO RHIO consortium as well as the consortium's network services agreement with OneCommunity in order to institute safeguards similar to other Pilot Program projects that received funding for service provider build-out.⁴⁶ USAC and OneCommunity have taken no further actions on the proposed restructuring plan, and USAC has held the remaining funding associated with the NEO RHIO Pilot Project pending a decision by the Commission addressing One Community's request.

III. DISCUSSION

9. We approve the proposal of NEO RHIO and One Community to restructure the Pilot Program project and designate the restructured NEO RHIO consortium as the lead entity with a prepaid lease agreement and a back-up IRU agreement with its service provider, OneCommunity, for services provided to the HCPs. We find that the restructuring of the NEO RHIO Pilot Program project will address the issues raised by USAC and ensure that Pilot Program funding is disbursed only for the benefit of eligible HCPs.⁴⁷ Further, restructuring the NEO RHIO consortium serves the public interest and furthers the goals of the Pilot Program by stimulating the deployment of infrastructure necessary to support innovative telehealth, in particular, telemedicine services in rural areas within Northeast Ohio where the need for those services is most acute.⁴⁸

10. USAC has raised three primary concerns regarding the current structure of the NEO RHIO Pilot Project: (1) OneCommunity owns the equipment and facilities funded through the Pilot Program but is not itself an eligible HCP, thus must pass through any funding or benefits from the Pilot Program to eligible HCPs; (2) the individual eligible HCPs failed to pay a contribution of at least 15 percent of the eligible network costs; and (3) a dedicated portion of the Pilot Program-funded network is used by ineligible entities who had not paid a fair share of the network costs.⁴⁹ We find that the restructuring of the NEO RHIO consortium and network services agreement will address these concerns.

11. As outlined in the proposed restructuring plan:

- Sixteen eligible HCPs from the former NEO RHIO project will join to create the new eligible NEO RHIO consortium and will serve as the lead entity for the restructured NEO RHIO Pilot Project.⁵⁰

⁴⁴ See generally USAC June 2014 Letter; NEO RHIO and OneCommunity Application.

⁴⁵ See *supra* para. 7; USAC June 2014 Letter at 3.

⁴⁶ See USAC June 2014 Letter. On this same date, Brett Lindsey, Chief Operating Officer for OneCommunity, signed this letter to acknowledge that it accurately represented OneCommunity's restructuring proposal for the NEO RHIO Pilot Project. *Id.* at 11.

⁴⁷ See *supra* para. 7.

⁴⁸ See *Pilot Program Order* at 11111, para. 1, 11113, para. 9.

⁴⁹ See USAC June 2014 Letter at 2-3.

⁵⁰ *Id.* at 5-7.

- OneCommunity will execute a prepaid lease with a backup IRU agreement, which will provide NEO RHIO's HCPs greater certainty and the right to use the Pilot Program-funded network.⁵¹ In the event that OneCommunity ceases to exist, is acquired, or is liquidated in bankruptcy, the backup IRU will also require transfer of the Pilot Program-funded assets and equipment to the newly formed NEO RHIO consortium.⁵² The prepaid lease and back-up IRU agreement shall have a term that is equivalent to the life of the Pilot Program-funded fiber assets (typically 20 years).⁵³
- OneCommunity will execute separate service agreements with each of the 16 individual HCPs, which meet certain rate requirements and contain terms for the life of the lease, and will provide the HCPs with certain minimum levels of service⁵⁴ and.⁵⁵
- The required 15 percent Pilot Program participant contribution of \$1.99 million, previously provided by OneCommunity, will be repaid to OneCommunity by the 16 NEO RHIO HCPs.⁵⁶
- All ineligible entities on the Pilot Program-funded network will pay to OneCommunity their fair share of the network costs for the use of the excess network capacity and OneCommunity will pass along to the 16 HCPs no less than \$11.28 million (representing the Pilot Program funding amount for the NEO RHIO Pilot Project) over the life of the prepaid lease.⁵⁷

Considered together, these proposed changes appropriately ensure that all of the benefits from Pilot Program funding are passed to eligible HCPs, and that the Commission's and the HCPs' interest in supported facilities are preserved if OneCommunity is unable to fulfill its service obligations over the contract term.

12. Further, in permitting the proposed restructuring plan, we find that granting OneCommunity's request to restructure the NEO RHIO consortium will also serve the public interest and is consistent with the goals of the Pilot Program. As noted in the *Pilot Project Selection Order*, one of the goals of the Pilot Program is to "stimulate deployment of the broadband infrastructure necessary to

⁵¹ *Id.* at 7-8.

⁵² *Id.* at 8.

⁵³ *Id.* at 7.

⁵⁴ *Id.* at 8-9 (OneCommunity will provide the 16 participating HCPs with: (1) 1 Gbps transport service, scalable as needed; (2) 100 Mbps intranet service at no cost to the HCP; (3) maintenance of the fiber strands dedicated to the HCPs at no cost to the HCP; and (4) maintenance, repair and replacement coverage of the OneCommunity-owned network edge devices that have been or will be installed at the edge of the network for the 16 NEO RHIO HCPs.).

⁵⁵ *Id.* at 9-10 (OneCommunity will enter into the individual service agreements with the 16 HCPs to address their individual internet access and maintenance service needs, and at a minimum will include the following services and rates: (1) Internet access at \$25 per month per Mbps; and (2) starting in year seven of the prepaid lease, each HCP will have the option of obtaining service from OneCommunity for maintenance, repair and replacement for the network edge equipment necessary to connect their internal router(s) at a \$500 per month rate.).

⁵⁶ *Id.* at 10 (The \$180,000 interest payment on the OneCommunity loan, which was secured to pay the mandatory 15 percent contribution, will remain the responsibility of OneCommunity and will not be passed on to the 16 HCPs.).

⁵⁷ *Id.* at 4-5, Table 1. OneCommunity has proposed network contributions of \$18.56 million over the term of the lease. *Id.*

support innovative telehealth and, in particular, telemedicine services to those areas of the country where the need for those benefits is most acute.”⁵⁸ In selecting the NEO RHIO Pilot Program project as part of the Pilot Program, the Commission found that the project would advance these goals by bringing the benefits of telemedicine to rural communities.⁵⁹ As indicated above, the OneCommunity network is providing important connectivity to rural hospitals in Northeastern Ohio.⁶⁰ The network, through its connection to the larger OneCommunity network, links the rural HCPs to major health centers in Cleveland.⁶¹ Specifically, the OneCommunity network is providing the HCPs the ability to use innovative technologies such as electronic health records, telemedicine, mobile and home monitoring, televideo patient education programs, and statewide health information exchange.⁶² As a further benefit, the OneCommunity has a core network of 117 hospitals on its own private fiber backbone and interconnects the services supported by the Pilot Program to the core network, allowing for greater connectivity and interoperability between and among HCPs.⁶³ Restructuring the NEO RHIO consortium and network services agreement with OneCommunity will continue to make Pilot Program funds available for connecting eligible HCPs throughout Ohio to a dedicated broadband infrastructure, bringing the benefits of telemedicine to rural hospitals in the state that otherwise do not have the resources themselves to take over management of the underlying network, and even if they did, would lose the benefits of utilizing a community broadband provider with built-in connectivity to major medical centers in large urban areas. Further, in this instance, there is no evidence of waste, fraud or abuse, intentional misuse of funds, or a failure to adhere to the Pilot Program rules and requirements regarding excess capacity and fair use.

13. Moreover, we have previously allowed Pilot Program participants to merge with other pilot projects to further the goals of the Pilot Program and/or in order to use the Pilot Program funds more efficiently.⁶⁴ The goal of the Pilot Program was to lay the foundation for a future rulemaking that would

⁵⁸ *Pilot Program Selection Order*, 22 FCC Rcd at 20361, para. 1.

⁵⁹ *Id.* at 20376, para. 39.

⁶⁰ *See supra* paras. 4, 6.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *See, e.g., Rural Health Care Support Mechanism, 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) (finding that the Pilot project was unable to continue as a participant in the Pilot Program due to the consortium’s resource limitations and resignation and withdrawal of the consortium’s project coordinator, and that appointing a successor was necessary to enable the approved Pilot Program project to fulfill the goals and objectives detailed in its Pilot Program application); *Rural Health Care Support Mechanism, North Carolina TeleHealth Network, Albemarle Health, Western Carolina University, and University Health Systems of Eastern Carolina Request for Merger of Pilot Program Projects*, WC Docket No. 02-60, Order, 24 FCC Rcd 10040 (Wireline Comp. Bur. 2009) (finding that the Pilot projects were unable to participate in the Pilot Program for the duration of the Pilot Program because each lacked the financial resources to implement and sustain its approved project, and that appointing a successor was necessary to enable the approved Pilot Program projects to fulfill the goals and objectives detailed in its Pilot Program applications); *Rural Health Care Support Mechanism, Juniata Valley Network and Pennsylvania Mountains Healthcare Alliance Request for Merger of Rural Health Care Pilot Program Projects*, WC Docket No. 02-60, Order, 24 FCC Rcd 10606 (Wireline Comp. Bur. 2009) (finding that the Pilot project was unable to continue in the Pilot Program because it lacked the financial resources to implement and sustain its approved project, and that appointing a successor was necessary to enable the approved Pilot Program project to fulfill the goals and objectives detailed in its Pilot Program application).

institute permanent rules to enhance access to advanced services for public and non-profit healthcare providers.⁶⁵ Thus, the Pilot Program was intended in large part to allow the Commission to explore the type of issues raised in this matter as it considered adoption of rules for a permanent program.⁶⁶ NEO RHIO's and OneCommunity's initial application stated that the goal of the project was to "extend the current network" to approximately 19 rural HCPs in Northeastern Ohio so that those HCPs could enjoy the benefits of being connected to major health care providers in the greater Cleveland area.⁶⁷ The application also disclosed the applicants' intent to include excess capacity for use by ineligible entities in the Pilot Program-supported network.⁶⁸ Although the *Pilot Program Selection Order* explicitly allowed ineligible entities to participate in a Pilot Program network if the ineligible entities paid their fair share of network costs, implementation of the "fair share" concept was explored and developed over a period of time through the implementation of the numerous Pilot projects.⁶⁹ Because NEO RHIO, unlike many other projects, progressed quickly on its network in a timeframe consistent with the original deadlines in the *Pilot Program Selection Order*, it was unable to take advantage of the additional guidance regarding excess capacity and other structural safeguards that were recommended for other Pilot Program projects.⁷⁰ We thus find that NEO RHIO should not be penalized for its efficiency in moving forward with its Pilot Program project in a timely fashion and its compliance with the deadlines in place at the time, despite the lack of guidance available at the time.

14. For these reasons, we find that it is in the public interest to allow One Community and NEO RHIO to restructure its consortium and network services agreement consistent with OneCommunity's proposed restructuring plan as outlined in the USAC June 2014 letter. We direct NEO RHIO and OneCommunity to complete the restructuring consistent with the proposal within one year of the release date of this Order.⁷¹ On our own motion, we also grant any waivers of the Commission's rules necessary to enable the restructuring of the NEO RHIO consortium and network services agreement, and

⁶⁵ See *Pilot Program Order*, 21 FCC Rcd at 11112, para. 4.

⁶⁶ *Id.* Subsequently, the Commission released the *Healthcare Connect Fund Order* establishing a fund and providing specific rules related to expanding HCP access to broadband, especially in rural areas, and encouraging the creation of state and regional broadband health care networks. See *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678 (2012) (*Healthcare Connect Fund Order*).

⁶⁷ See NEO RHIO and OneCommunity Application at 3-5, 15-16, 18. See also USAC March 2012 Site Visit.

⁶⁸ See NEO RHIO and OneCommunity Application at 5.

⁶⁹ In the *Pilot Program Selection Order*, the Commission provided additional guidance on the administration of the Pilot Program. See *Pilot Program Selection Order*, 22 FCC Rcd at 20395-20422, paras. 70-124. This guidance, however, was provided subsequent to NEO RHIO's and OneCommunity's application to the Commission and concurrent with the Commission's selection of the NEO RHIO Pilot Project. Further, among other things, the guidance provided in the *Pilot Program Selection Order* did not explicitly address the situation where a non-profit entity serves as both the lead entity of a Pilot Program consortium and as the service provider. *Id.* at 20396-97, paras. 72-73.

⁷⁰ A number of other pilot projects experienced difficulties meeting the original timeline. See *Pilot Program Evaluation* at 9392, 9399-9400, paras. 3, 19-20. NEO RHIO and OneCommunity also made good faith efforts to comply with the *Pilot Program Selection Order*. For example, while the initial participants in the NEO RHIO Pilot Project were all non-profit hospitals, NEO RHIO and OneCommunity anticipated that a number of for-profit healthcare providers would join the NEO RHIO consortium. NEO RHIO and OneCommunity required these for-profit entities to pay membership fees for participation and pay for any construction and services fees associated with the delivery of services based on their level of participation. See NEO RHIO and OneCommunity Application at 7-8.

⁷¹ See USAC June 2014 Letter.

condition those waivers on compliance with this Order.⁷²

15. Although we allow NEO RHIO and OneCommunity to restructure their Pilot Program project in order to institute safeguards similar to those applied to other Pilot Program participants, we emphasize the limited nature of this decision. Adherence to Pilot Program rules and requirements is necessary for the efficient administration of the Pilot Program. Thus, this limited waiver does not reduce or eliminate any Pilot Program procedures or lessen the program requirements with which participants must comply to receive funding under the Pilot Program. All existing Pilot Program rules and requirements will apply after the restructuring is complete. Indeed, we retain our commitment to detecting and deterring potential instances of waste, fraud, and abuse by ensuring that USAC continues to scrutinize Pilot Program projects and takes steps to educate selected participants in a manner that fosters program participation and integrity.

IV. ORDERING CLAUSES

16. 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 sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, we allow and direct the Northeast Ohio Regional Health Information and OneCommunity to restructure the NEO RHIO Pilot Project, subject to the conditions described herein.

17. IT IS FURTHER ORDERED that NEO RHIO and OneCommunity SHALL COMPLETE the implementation of the restructure of the NEO RHIO consortium and network services agreement within one year of the release date of this Order.

18. 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
Chief
Wireline Competition Bureau

⁷² Generally, the Commission's rules may be waived if good cause is shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is appropriate if (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

APPENDIX

Letter from the Universal Service Administrative
Company to OneCommunity

(dated June 9, 2014)



June 9, 2014

Via Electronic Mail

Mr. Brett Lindsey
Chief Operating Officer
OneCommunity
800 W. St. Clair Ave.
Second Floor
Cleveland, Ohio 44113

Re: Proposed Steps to Restructure the NEO RHIO Consortium

Dear Mr. Lindsey,

The Universal Service Administrative Company (USAC) administers the federal Universal Service Rural Health Care (RHC) Support Mechanism pilot program (RHC Pilot Program) for the Federal Communications Commission (FCC or Commission).¹ USAC is responsible for verifying that RHC Pilot Program beneficiaries comply with FCC rules when receiving funds committed and disbursed for the RHC Pilot Program.² FCC rules also require USAC to review and approve funding requests for the RHC Pilot Program in accordance with the Commission's rules and orders³ and to protect RHC Pilot Program funding from waste, fraud and abuse.⁴

On May 4, 2007, the Northeast Ohio Regional Health Information Organization (NEO RHIO)⁵ and OneCommunity, an Ohio non-profit corporation (OneCommunity),⁶ jointly

¹ 47 C.F.R. § 54.702(a).

² See generally 47 C.F.R. § 54.601, *et seq.* See also §§ 54.705(b) (authorizing USAC to establish procedures for administering the RHC support programs); 54.707 (authorizing USAC to verify discounts, offsets, and support amounts provided by the universal service support programs).

³ *Id.*

⁴ 47 C.F.R. § 54.702(g).

⁵ On June 18, 2007, NEO RHIO was incorporated as an Ohio non-profit corporation to "promote the health of individuals as well as a healthier community and to improve the quality, safety and efficiency of healthcare in Northeast Ohio through the use of information technology and the secure exchange of health information and access to health information by providers of health care services and their patients." State of Ohio Certificate 1707650 (June 18, 2007); Attachment to Initial Articles of Incorporation of NEO RHIO, at 1 (June 15, 2007), available at, Ohio Secretary of State's website: <http://www2.sos.state.oh.us/reports/rwservlet?imgc&Din=200716901636>. NEO RHIO intended to further its purposes by "develop[ing] a health information exchange." Attachment to Initial Articles of Incorporation of NEO RHIO (June 15, 2007). On June 21, 2012, the Ohio Secretary of State cancelled NEO RHIO's corporate registration because NEO RHIO failed to file a statement of continued existence.

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submitted an application to receive funding from the RHC Pilot Program.⁷ The project became known as the NEO RHIO Pilot Project.⁸ NEO RHIO was not an eligible health care provider (HCP), but was a consortium formed of eligible HCPs. On November 19, 2007, the NEO RHIO Pilot Project was selected by the Commission for the RHC Pilot Program and received a funding commitment in the amount of \$11,286,200.⁹ After release of the *Pilot Program Selection Order*, OneCommunity informed USAC that it would serve as the lead entity for the NEO RHIO Pilot Project and submitted the RHC funding applications on behalf of the eligible HCPs that participated in the NEO RHIO Pilot Project.¹⁰ USAC committed the full \$11,286,200 for the NEO RHIO Pilot Project and to date has disbursed \$10,558,351 for fiber assets and equipment purchased and installed for the NEO RHIO Pilot Project.¹¹

Although FCC rules allow ineligible, not-for-profit entities to apply for funding on behalf of eligible HCPs as part of a consortium and to function in an administrative capacity on behalf of the eligible HCPs within the consortium, the ineligible entity itself is prohibited from receiving direct funding through the RHC Pilot Program for services, facilities, or equipment purchased using RHC Pilot Program funding.¹² Any funding secured by

Cancellation, Failure to File Statement of Continued Existence (June 21, 2012), available at, <http://www2.sos.state.oh.us/reports/rwservlet?imgc&Din=201217351525>.

⁶ On October 22, 2003, OneCleveland (now OneCommunity) was incorporated as an Ohio non-profit corporation that was formed for “charitable, scientific, or education purposes” and intended to further its purposes by “developing and providing a system for digital telecommunications transport and storage and related services” to government agencies and educational institutions in Cleveland, including, but not limited to, non-profit hospitals and other healthcare facilities. State of Ohio Certificate 1418675 (Oct. 22, 2003); Attachment to Articles of Incorporation of OneCommunity at 1 (Oct. 20, 2003), available at, Ohio Secretary of State’s website at <http://www2.sos.state.oh.us/reports/rwservlet?imgc&Din=200329700804>.

⁷ NEO RHIO and OneCommunity HealthNet Partnership was the name of the applicant that submitted the application to the Commission to receive RHC Pilot Program funding. NEO RHIO and OneCommunity HealthNet Partnership Application to the FCC Rural Health Care Pilot Program, at 1 (May 5, 2007).

According to its application, OneCommunity and NEO RHIO created HealthNet, which was a broadband initiative to support a telemedicine health information exchange in Ohio. *Id.* at 3.

⁸ *In the Matter of Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, FCC 07-198, 22 FCC Rcd 20360, 20429, Appendix B (2007) (*Pilot Program Selection Order*) (identifying the applicant as “Northeast Ohio Regional Health Information Organization.”).

⁹ *Pilot Program Selection Order*, 22 FCC Rcd at 20429, Appendix B.

¹⁰ Letter from Mark T. Ansboury, OneCommunity, to USAC (Jan. 30, 2008) (providing that Mark T. Ansboury and Lawrence J. Voyten, both of OneCommunity, would serve as the Project Coordinator and Associate Project Coordinator, respectively for the NEO RHIO Pilot Project).

¹¹ USAC disbursed funding for the NEO RHIO Pilot Project to the service providers that provided the equipment and/or constructed the fiber network that is owned by OneCommunity.

¹² *Pilot Program Selection Order*, 22 FCC Rcd at 20397, ¶ 73 (providing “other not-for-profit ineligible entities may apply on behalf of eligible health care providers as part of a consortium (e.g., as consortia leaders), and otherwise function in an administrative capacity for eligible health care providers within the consortium. Like state organizations and entities, these not-for-profit entities are prohibited from receiving any funding from the Pilot Program.”).

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ineligible entities of the consortium must be passed through to the eligible HCPs that are members of the consortium.¹³

In April 2011, USAC selected the NEO RHIO RHC Pilot Project for a site visit. During document review in preparation for the site visit, USAC learned that the original NEO RHIO consortium had disbanded in early 2009 and that OneCommunity owns the fiber and equipment funded through the RHC Pilot Program. After the NEO RHIO consortium disbanded, OneCommunity assumed ownership of the RHC Pilot Program-funded equipment and facilities that were constructed for the NEO RHIO Pilot Project. USAC also learned that OneCommunity: (1) paid the HCPs' mandatory 15 percent contribution of the eligible costs, and (2) dedicated a portion of RHC Pilot Program-funded network for use by ineligible entities.¹⁴

Starting in July 2011 and continuing through the present, the Commission, USAC, and OneCommunity have discussed how to address the questions concerning the NEO RHIO Pilot Project and OneCommunity's compliance with FCC rules for the RHC Pilot Program. As a result of these ongoing questions and at the direction of the FCC, USAC is currently holding funding for the NEO RHIO Pilot Project.

Below is a summary of the steps that OneCommunity proposes, after discussions with USAC, to restructure the NEO RHIO consortium, contingent upon FCC approval. Table 1 below summarizes the information provided by OneCommunity concerning the estimated network costs that OneCommunity will be responsible for and the estimated savings to the eligible HCP consortium members under the proposed steps outlined in this letter. Table 2 below provides the names and addresses of the 16 participating HCPs in the original NEO RHIO consortium to which OneCommunity will provide the services outlined in Section III of this letter. OneCommunity is required to notify USAC in advance of any changes to the costs identified in Table 1 or for the list of HCPs in Table 2.

¹³ *Id.* n.234 ("We clarify here and make explicit that any discounts, funding, or other program benefits secured by the state entity or organization or other ineligible entity functioning as a consortium leader under the Pilot Program must be passed on to consortia members that are eligible health care providers.").

¹⁴ See *Pilot Program Selection Order*, FCC 07-198, 22 FCC Rcd at 20416, ¶ 107 (providing that selected participants "could share network capacity with an ineligible entity as long as the ineligible entity pays its fair share of network costs attributable to the portion of network capacity used."); *Id.* at 20416, ¶ 108 (providing "we require participants to identify all for-profit or other ineligible entities, how their fair share of network costs was assessed, and proof that these entities paid or will pay for their costs."); *Id.* at 20399, ¶ 77 (providing that Pilot Program participants are required to pay a "minimum 15 percent contribution of eligible network costs"); *Id.* at 20416, ¶ 106 (prohibiting "resale of any services purchased pursuant to the section 254(h) discount for services under the under the RHC support mechanism.").

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Table 1: Estimated HCP Savings and Network Costs to be Assumed by OneCommunity¹⁵

Element	20/yr. Fair Share	Notes
HCP savings for 1 Gbps transport service and 20 Mbps Internet access	\$1,991,682	OneCommunity committed to providing HCPs with an additional \$1,991,682 in savings. OneCommunity represented to USAC that it is currently charging each HCP participating in the original NEO RHIO consortium \$1,975 per month for 1 Gbps of bandwidth (\$1,475 per month) and 20 Mbps Internet access (\$500 per month). ¹⁶ Assuming all sixteen HCPs listed in Table 2 to this letter would have received Internet and transport services from OneCommunity at the discounted rates outlined above, if OneCommunity instead provided the services without charge for at least 5.25 years, each HCP would save \$23,700 per year.
Pole rental costs to be paid by OneCommunity	\$3,570,660	OneCommunity represented to USAC that it will pay the annual pole rental costs of \$178,533 per year for the life of the RHC Pilot Program-funded fiber assets (typically 20 years) and will not pass through these costs to the 16 HCPs listed in Table 2 to this letter. ¹⁷

¹⁵ OneCommunity has indicated that the capacity of the RHC Pilot Program-funded network is 40 Gbps; of that amount, OneCommunity has indicated that it would allocate 10 Gbps to support the 1 Gbps connections for the health care providers in the Pilot Program-funded network. See Email from Brett Lindsey, OneCommunity, to Donald Lewis, USAC (Feb. 23, 2012). Under FCC rules for the RHC Pilot Program, non-eligible entities can share network capacity with ineligible entities provided the ineligible entities are responsible for their own costs. *Pilot Program Selection Order*, FCC 07-198, 22 FCC Red at 20416, ¶ 107 (providing that selected participants “could share network capacity with an ineligible entity as long as the ineligible entity pays its fair share of network costs attributable to the portion of network capacity used.”); *id.* at ¶ 108 (providing “we require participants to identify all for-profit or other ineligible entities, how their fair share of network costs was assessed, and proof that these entities paid or will pay for their costs.”). OneCommunity has represented to USAC that the full budgeted cost of the RHC Pilot Program funded fiber network was approximately \$13.27 million. HealthNet Fair Share Methodology (Dec. 3, 2009). If one calculates “fair share” based on the full budgeted cost of the network and assumes that 75 percent of the network (30 of 40 Gbps) is dedicated for use by ineligible entities, OneCommunity’s “fair share” of the network costs would be approximately \$9.9 million. *Id.* The 16 HCPs’ required 15 percent contribution would be approximately \$1,991,682. *Id.*

¹⁶ Addendum B to Letter of Agency for Rural Health Care Pilot Program for Samaritan Regional Health System (Nov. 2, 2010); OneCommunity’s FCC RHCPP Prepaid Lease Agreement Structure (July 28, 2011).

¹⁷ FCC USAC Notes (Feb. 23, 2012) (stating that the annual pole rental expense is \$178,533 and that pole rental expenses over 20 years would be \$3,570,660 and stating “Pole rental [expenses] will be paid by OneCommunity.”). See also, e.g., Wireline Competition Bureau Evaluation of Rural Health Care Pilot Program Staff Report, WC Docket No. 02-60, 27 FCC Red 9387, n.163 (2012) (providing “[a]n IRU is an

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Element	20/yr. Fair Share	Notes
Core network maintenance costs to be paid by OneCommunity	\$13,000,000	OneCommunity represented to USAC that it is currently paying \$2.6 million per year for core network maintenance and that 10 Gbps (twenty-five percent) of the 40 Gbps core network is dedicated for use of the NEO RHIO Pilot Project. ¹⁸
Total	\$18,562,342	This amount represents OneCommunity's total contribution to the network over the life of the RHC Pilot Program-funded fiber assets (typically 20 years) based on information that OneCommunity provided to USAC.

Table 2: List of 16 HCPs That Participated in the Original NEO RHIO Consortium¹⁹

HCP Name	Address
1. Ashtabula County Medical Center	2420 Lake Ave., Ashtabula, Ohio 44004
2. Firelands Regional Medical Center, Firelands South Campus	1912 Hayes Ave., Sandusky, Ohio 44870
3. Firelands Regional Medical Center, Vermillion Collection Center	1605 State Rte. 60, Vermillion, Ohio 44089
4. Firelands Regional Medical Center	1111 Hayes Ave., Sandusky, Ohio 44870
5. Fisher Titus Medical Center	272 Benedict Ave., Norwalk, Ohio 44857
6. Glenbeigh Hospital of Rockcreek	2863 State Rte. 45, Rock Creek, Ohio 44084

indefeasible right to use facilities for a certain period of time that is commensurate with the remaining useful life of the asset, usually 20 years.”).

¹⁸ Email from Brett Lindsey, OneCommunity, to Donald Lewis, USAC (Feb. 23, 2012) (providing “the cost to operate our core network is \$2.6M per year. Our current available capacity is 40G. We would allocate 10G of that to RHCPP to support the 16 1G connections at the HCPs.”).

¹⁹ Email from Brett Lindsey, OneCommunity, to Donald Lewis, USAC (Mar. 11, 2014). This list of 16 HCPs reflects changes to the HCPs participating in the original NEO RHIO consortium since OneCommunity submitted the HealthNet Fair Share Methodology document to USAC in December 2009.

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7. H. B. Magruder Memorial Hospital	615 Fulton St., Port Clinton, Ohio 46452
8. Jefferson Health Center	234 North Chestnut St., Jefferson, Ohio, 44047
9. Memorial Hospital	715 S. Taft Ave., Fremont, Ohio 43420
10. Samaritan Regional Health System	1025 Center St., Ashland, Ohio 44805
11. Bellevue Hospital	1400 W. Main St., Bellevue, Ohio 44811
12. NOMS Healthcare-Bellevue	1255 W. Main St., Bellevue, Ohio 44811
13. NOMS Healthcare	2500 W. Strub Rd., Sandusky, Ohio 44870
14. University Hospital Health Systems Conneaut Medical Center	158 W. Main St., Conneaut, Ohio 44030
15. University Hospital Health Systems Geneva Medical Center	870 W Main St., Geneva, Ohio 44041
16. Wooster Community Hospital	1761 Beall Ave., Wooster, Ohio 44691

OneCommunity’s Proposed Plan for Restructuring the NEO RHIO Consortium

I. Restructuring of the NEO RHIO Consortium

- A. OneCommunity will work with the 16 HCPs listed in Table 2 to this letter, as part of an eligible consortium (the restructured NEO RHIO consortium) of HCPs as required by FCC rules. A new board of directors created with representatives of the 16 participating HCPs will be formed for the restructured NEO RHIO consortium. Because the original NEO RHIO consortium is no longer an active corporation in the state of Ohio, the restructured NEO RHIO consortium will need to submit the necessary paperwork to establish itself as an Ohio non-profit corporation.²⁰

²⁰ *Id.* See also *supra* n.5.

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- B. The restructured NEO RHIO consortium will serve as the lead for the NEO RHIO Pilot Project. The restructured NEO RHIO consortium will execute letters of agency (LOAs) with the participating HCPs, submit site and service substitution requests for the services to be provided under the prepaid lease and back-up indefeasible right of use (IRU) between OneCommunity and the restructured NEO RHIO consortium, to be executed pursuant to Section II of this letter. The restructured NEO RHIO consortium shall submit a new FCC Form 466-A application to request funding for the NEO RHIO Pilot Project.
- II. OneCommunity Will Execute a Prepaid Lease with a Back-up IRU Agreement for its Pilot Program-funded Fiber Assets with the Restructured NEO RHIO Consortium
- A. OneCommunity will execute a prepaid lease agreement with the restructured NEO RHIO consortium and a back-up IRU agreement for OneCommunity's fiber network that was funded with RHC Pilot Program funding.²¹
1. OneCommunity will send USAC a draft of the prepaid lease agreement and back-up IRU agreement so USAC can verify that the agreements comply with the terms of this letter.
 2. The prepaid lease and back-up IRU agreement shall have a term that is equivalent to the life of the Pilot Program-funded fiber assets (typically 20 years) that are currently owned by OneCommunity.
 3. Under the prepaid lease agreement between OneCommunity and the restructured NEO RHIO consortium, the RHC Pilot Program-funded fiber network and equipment assets will remain the property of OneCommunity. The prepaid lease agreement should include a provision concerning service quality and a provision requiring OneCommunity to return any unearned lease payments if OneCommunity breaches the prepaid lease agreement.²²

²¹ Prepaid leases and IRUs in which the eligible HCPs do not actually own the fiber assets are permitted under FCC Pilot Program rules. *In the Matter of Rural Health Care Support Mechanism*, WC Docket No. 02-60, Notice of Proposed Rulemaking, FCC 10-125, 25 FCC Rcd 9371, 9395, ¶ 55 (2010) (providing “[t]he Pilot Program did not restrict the form of agreement that health care providers could enter into with vendors for projects funded by that program.”); Excess Bandwidth and Excess Capacity Scenarios at 1, 6 (Mar. 17, 2009) (explaining that where HCPs participating in the Pilot Program have an IRU “[a]ny capacity paid for by universal service funds belongs to the participant” and describing the requirements for situations where HCPs participating in the Pilot Program can enter into a prepaid lease.).

²² Excess Bandwidth and Excess Capacity Scenarios at 6 (Mar. 17, 2009).

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4. The IRU agreement between OneCommunity and the restructured NEO RHIO consortium will include the bandwidth and dedicated fibers on the Pilot Program-funded network that OneCommunity will use for the NEO RHIO Pilot Project. The IRU agreement will be triggered in the event that OneCommunity materially breaches any of the terms of the prepaid lease agreement. The IRU agreement must contain a provision that requires OneCommunity to transfer the Pilot Program-funded fiber and equipment assets currently owned by OneCommunity to the restructured NEO RHIO consortium if OneCommunity ceases to exist (*e.g.*, goes out of business), is acquired, or is liquidated in bankruptcy during the term of the prepaid lease and/or IRU. In the event that the RHC Pilot Program-funded fiber assets and equipment were transferred, the restructured NEO RHIO consortium would also need to obtain a taxpayer identification number in order to take ownership of the RHC Pilot Program-funded fiber assets and equipment from OneCommunity.
- B. During the term of the prepaid lease between OneCommunity and the restructured NEO RHIO consortium, OneCommunity will also provide the following specific services to the 16 eligible HCPs listed in Table 2:
1. 1 Gbps transport service, scalable as needed. OneCommunity has represented to USAC that each HCP currently pays \$1,475 a month for this service.²³
 2. 100 Mbps intranet service to facilitate collaboration with OneCommunity's other 257 on-net healthcare facilities and any additional on-net healthcare facilities that join OneCommunity's network in the future. This service will be provided at no cost to each HCP listed in Table 2.²⁴
 3. Maintenance service for the 24 fiber strands that have been allocated to provide services to the eligible HCPs listed in Table 2 on the 387 mile fiber route that makes up OneCommunity's fiber

²³ Addendum B to Letter of Agency for Rural Health Care Pilot Program for Samaritan Regional Health System (Nov. 2, 2010) (providing \$1,475 monthly cost for Metro Ethernet service (1000 Mbps)).

²⁴ One Community's FCC RHCPP Prepaid Lease Agreement Structure (July 28, 2011) (providing "OneCommunity will provide RHCPP for a period of 20 years...16 healthcare facilities with 100 Mbps intranet service to facilitate collaboration with OneCommunity's other 86 on-net healthcare facilities" and that the fees for this service "are prepaid by the FCC's RHCPP.").

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backbone. This service will be provided at no cost to the 16 eligible HCPs listed in Table 2.²⁵

4. Maintenance, repair and replacement coverage for the network edge devices (*i.e.*, routers, including, but not limited to, Cisco 356x edge and Jupiter EX 4550 routers, and any replacements or upgrades to the network edge devices) that are located at the edge of the RHC Pilot Program-funded fiber network currently owned by OneCommunity that have been or will be installed at the edge of the network for the 16 HCPs listed in Table 2.

III. OneCommunity Will Execute Service Agreements with the 16 Individual HCPs Listed in Table 2

- A. OneCommunity will enter into separate service agreements with each of the 16 HCPs listed in Table 2 to address their individual Internet access and maintenance service needs. The service agreements with the 16 HCPs will have a term for the duration of the life of the RHC Pilot Program-funded fiber assets (typically 20 years) that are currently owned by OneCommunity.²⁶ OneCommunity will provide USAC with drafts of the service agreements with the 16 HCPs so USAC can verify that the agreements comply with the terms of this letter.
- B. At a minimum, the service agreements with the 16 HCPs listed in Table 2 shall include the following services and rates:
 1. Internet access from OneCommunity at a rate of \$25 per Mbps, per month. OneCommunity has represented to USAC that each HCP currently receive 20 Mbps Internet access at a rate of \$500 per month.²⁷
 2. Starting in Year 7 of the term of the prepaid lease, each HCP will have the option of obtaining service from OneCommunity for maintenance, repair and replacement for the network edge equipment necessary to connect their internal router(s). OneCommunity has represented to USAC that the fee for these services would be \$500 per month.²⁸ This rate may be subject to

²⁵ *Id.* (providing OneCommunity will provide the Rural Health Care Pilot Program for a period of 20 years “[m]aintenance for 24 fibers allocated to providing services to RHCPP on the 387 mile fiber route that makes up the OneCommunity rural network” and that the fees for this service “are prepaid by the FCC’s RHCPP.”).

²⁶ *See supra* n.20.

²⁷ OneCommunity’s FCC RHCPP Prepaid Lease Agreement Structure (July 28, 2011).

²⁸ *Id.* (providing “[e]ach of the participants will pay \$500 per month for equipment maintenance and support”).

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reasonable increases to reflect inflation. The restructured NEO RHIO consortium and OneCommunity will be responsible for negotiating any such rate increases.

IV. Payment of HCPs' Mandatory 15 Percent Contribution of Eligible Costs

- A. The 16 HCPs' mandatory 15 percent contribution of \$1,991,682 will be repaid to OneCommunity by the HCPs until the HCPs' contribution required for the RHC Pilot Program has been paid.²⁹
- B. OneCommunity has represented to USAC that the interest payments for the loan that OneCommunity obtained to cover the required HCPs' 15 percent contribution was \$180,000. OneCommunity will remain responsible for this interest payment of \$180,000 and will not pass through this interest payment to the participating eligible HCPs.

* * *

USAC requires that OneCommunity provide USAC with drafts of the prepaid lease and back-up IRU agreements between OneCommunity and the restructured NEO RHIO consortium and drafts of the service agreements between OneCommunity and the 16 eligible HCPs listed in Table 2. USAC will review the draft agreements to determine whether they comply with the terms of this letter. USAC will also need to receive funding applications and LOAs from the restructured NEO RHIO consortium and the eligible HCP consortium members in order to process any future requests for RHC Pilot Program funding for the NEO RHIO Pilot Project.

A duly authorized officer of OneCommunity should acknowledge within **seven (7) business days** of the date of this letter that the items discussed herein accurately describe the actions that OneCommunity intends to undertake to restructure the NEO RHIO consortium as described above.³⁰ Following receipt of OneCommunity's acknowledgment, USAC will discuss with FCC staff appropriate next steps.

If you have any questions, please contact Donald Lewis at (202) 423-2612.

Sincerely,

//s// USAC

²⁹ HealthNet Fair Share Methodology (Dec. 3, 2009). *See also Pilot Program Selection Order*, at 20399, ¶ 77 (providing that service provider contributions are not an eligible source of funding for the HCPs' mandatory 15 percent share of costs for the RHC Pilot Program).

³⁰ *See Pilot Program Selection Order*, FCC 07-198, 22 FCC Red at 20396-97, 20399-400, 20416, ¶¶ 72-73, 77, 107-108.

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OneCommunity
June 9, 2014
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cc: Chin Yoo, Deputy Chief, Telecommunications Access Policy Division, Wireline
Competition Bureau, Federal Communications Commission (*via electronic mail*)

Acknowledged and agreed,

OneCommunity,

By: 

Print name: BRETT LINDSEY

Title: CHIEF OPERATING OFFICER

Date: 6/9/2014