



South Carolina House of Representatives

P.O. Box 11867
Columbia, South Carolina 29211

May 17, 2016

Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

ATTN: Steve Vieux, Attorney for the US Federal Trade Commission-Bureau of Competition
ATTN: Alan Friedman, Attorney for the US Federal Trade Commission-Bureau of Competition

Re: FTC Investigation of the Greenville Health System Takeover/Privatization/Lease Plan

Dear Mr. Vieux and Mr. Friedman:

We have become aware that the US Federal Trade Commission has been looking into the Greenville Health System's privatization/lease/takeover plan in Greenville, SC. As South Carolina State Lawmakers, we are very concerned that this plan will severely reduce competition in our healthcare marketplace which will in-turn have a negative impact on healthcare prices, healthcare quality, on the poor, our local businesses and our community as a whole. We are asking your organization to take a very close look at this GHS plan before it is implemented. Please consider the following points below as you investigate our healthcare market place and the GHS plan.

1. The primary focus of the FTC is to protect consumers and promote competition.

"The FTC is a bipartisan federal agency with a unique dual mission to protect consumers and promote competition. For one hundred years, our collegial and consensus-driven agency has championed the interests of American consumers. As we begin our second century, the FTC is dedicated to advancing consumer interests while encouraging innovation and competition in our dynamic economy.

The FTC will challenge anticompetitive mergers and business practices that could harm consumers by resulting in higher prices, lower quality, fewer choices, or reduced rates of innovation. We monitor business practices, review potential mergers, and challenge them when appropriate to ensure that the market works according to consumer preferences, not illegal practices. (<https://www.ftc.gov/about-ftc/what-we-do>)"

2. Hospital executives contend that healthcare consolidation/reduced competition will allow more charity care, increase efficiencies, increase access, raise quality and lower costs. We agree that there exist certain economies of scale for any market participant, however GHS has grown well past any maximum operating efficiency and further consolidation will only hurt our communities, especially the poor. FTC research has found that when competition is reduced (via consolidation and/or anti-competitive practices), hospitals do not increase amount of charity care they provide. Less competition also leads lower quality care and to increase healthcare prices that also hurt the poor and uninsured by taking away dollars those consumers could spend on other badly needed goods.

3. Over the past several years, Greenville Health System has been horizontally, vertically and geographically expanding throughout a 6 county region to now be the overly dominant hospital system in the Upstate SC with over 75-100% market share including multi sole source county providers in several local markets. GHS has acquired county hospitals, a ~300-employee cancer treatment group, numerous physician clinics throughout the 6 county region, and other organizations. GHS has a joint venture with a large hospital group, Palmetto Health, in Columbia, SC and is in current low level financial discussions with a large hospital group in Western NC. Upstate SC now has a Healthcare HHI Index of greater than 5,000, twice the level that the FTC considers very uncompetitive. GHS is the largest healthcare system in SC and one of the largest in the Southeast. . GHS has developed several exclusive contracts with Well Care Medicaid Greenville, SC, Blue Cross Medicaid Greenville, SC, Blue Cross Blue Commercial, United Healthcare Medicare Advantage, these are the contracts we are aware of and there could be others. In areas that have a single provider, hospital, if GHS buys or contracts with the sole provider; the market for independent physician groups becomes nonexistent.

4. Very similar to the events that led to FTC vs. Phoebe Putney Hospital Inc. landmark case in Albany Georgia, GHS plans to lease out its entire assets and operations to a private corporation called Upstate Affiliate Organization (UAO) via a 40-100-year lease agreement. The GHS plan is not simply a governance change, rather it is a wholesale transfer of all healthcare system operations/assets/etc. from a political subdivision, GHS, to a private entity, UAO. The long-term lease agreement/contract between GHS and UAO should be considered a capital lease which in itself is a sale. To make matters even worse, the lease agreement is a non-quid-pro-quo, one-sided lease agreement in favor of the lessee, UAO. Why else would there be complex contract if GHS was just changing its governance structure? This GHS takeover/lease/privatization plan will instantly create the largest private monopolistic healthcare corporation in the upstate market, in SC and one of the largest private healthcare systems in the Southeast. The political subdivision that is GHS will become an empty shell that could potentially be used by the private UAO and/or SCO for future anti-competitive activities if the FTC does not apply current legal precedent mentioned in the points below. We believe that the entire structure is designed to garner more market share.

5. Once the long-term lease is accomplished, hospital executives will then turn control of the private UAO over to another separate private corporation call the Strategic Coordination Organization (SCO) via a master affiliation agreement/contract. Using the SCO, hospital executives plan to create and control many more private corporations called Affiliated Organizations that will contain other regional healthcare systems across the entire state of SC and into Western NC. Hospital executives will call these acquisitions partnerships, however having full control of a healthcare system is not a simple collaboration or partnership. The all-controlling SCO will become a super-regional healthcare system, which will further and dramatically reduce healthcare competition throughout SC and beyond. This expansion plan (via the UAO, AOs and SCO) is per FOIA-obtained GHS documents and per public statements made by GHS leadership.

6. It is our grave concern that GHS, a political subdivision of SC, has used its enormous financial and political muscle to influence state laws and the political process in their favor to become unaccountable to lawmakers, voters and taxpayers. GHS has become a super-regional monopolistic powerhouse answerable to no one. It has achieved market dominance by hiding behind the state-entity-antitrust-exemption shield while having little or no regulatory oversight within our state. GHS used its financial and political influence to severely curtail public debate via local media about the takeover plan and to avoid a voter referendum on the plan (in 1996, voters turn down a massive GHS upstate healthcare consolidation plan by a 4:1 margin). GHS leaders have also violated citizens' constitutional rights and state/federal laws via the use of illegal closed-door meetings, SLAPP letters and the newly-formed GHS police force.

7. In the past, GHS acquisitions, expansions, consolidations and other activities have all been shielded from anti-trust and anti-competitive oversight by the FTC and the US DOJ because GHS was/is a political subdivision of SC (a state entity). Parker vs. Brown (1943) had established that all state entities were exempt federal anti-trust laws and thus exempt from FTC/DOJ oversight.

8. However in 2013, the US Supreme Court ruled 9-0 in the FTC vs. Phoebe Putney Hospital System, Inc. case that state action immunity does not apply if the state lawmakers did not clearly allow anti-competitive activity by a state entity, i.e.

GHS. We firmly agree with the FTC vs Phoebe ruling and think it was a major victory for healthcare consumers everywhere. Healthcare executives have and will use any legal means possible to circumvent competitive forces in the healthcare market place. It is much easier to hire an army of lawyers to construct anti-competitive legal frameworks than to actually compete in the market place. The Phoebe ruling removes a dangerous legal weapon from the hospital executive legal arsenal.

9. Based on the Phoebe ruling and the fact that GHS has a medical CON but no medical COPA, GHS is no longer exempt from anti-trust/anti-competitive oversight since FTC vs. Phoebe in 2013. All potential GHS anti-competitive and anti-trust activities since Feb. 2013 should be subject to FTC and DOJ review, oversight and/or possible adjudication.

10. The Hart-Scott-Rodino Antitrust Improvement Act of 1976 (HSR Act) amended prior antitrust laws by requiring certain corporate acquisition, merger and/or transfer plans to be pre-filed with the FTC for FTC review and/or approval. HSR Act originally exempted all federal, state and political subdivision activities from the HSR pre-filing requirements. However, since the 2013 FTC vs Phoebe ruling applies to all anti-trust laws including the HSR Act, GHS and/or UAO should be compelled to pre-file their privatization/lease/takeover plans with the FTC before moving forward with such plans. Additionally, UAO and/or SCO should also be compelled to pre-file their planned control transfer from UAO to SCO per the HSR Act before moving forward with the master affiliation agreement/contract. The Greenville Health System has rapidly expanded to encompass an 6 county upstate region with stated plans to further expand state wide. In this expansion they have habitually practiced the execution of exclusive contract agreements with acquired entities. This leads us to conclude that their anti-market behavior is not only intentionally non competitive and thus is in violation of Section 2 of the Sherman Antitrust Act. The FTC and/or the US DOJ should also investigate prior acquisitions/activities by GHS in addition to monitoring any future GHS anti-competitive practices. We would rather see a massive problem prevented rather than waiting for anti-competitive market-place damage to take place and then incurring the enormous cost and bureaucratic complications to undo such damage in our communities in the future. Successfully applying the HSR Act requirements in combination with the Phoebe ruling to the GHS plan and activities will also have far-reaching positive healthcare-consumer implications in other communities across the US.

11. We are asking the FTC to step in and stop the lease agreement between GHS and UAO that will instantly create a massive private monopolistic corporation. We are also asking the FTC to prevent GHS and/or UAO and/or SCO from expanding and merging with other regional healthcare systems before they become entangled thereby making it nearly impossible to unscramble the eggs.

12. The FTC and DOJ have also been active in South Carolina over the last decade preventing anti-competitive activities in our state's healthcare markets and prosecuting illegal and fraudulent healthcare activities by various healthcare providers.

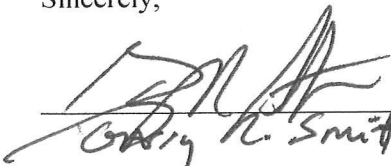
13. GHS plans are only in their infancy when compared to Phoebe, but we saw what happened over the years as Phoebe implemented their public/private legal strategies. GHS is already a much larger healthcare system than Phoebe in terms of annual revenues and covered marketplace population, and the GHS lease/takeover/privatization plan calls for a healthcare system that is at least 3 times bigger than the current \$2 Billion GHS annual revenue. For these two reasons, preventative FTC actions could have a very large positive impact for our healthcare market.

14. GHS leadership has refused to work with state legislators to find a legal privatization plan that is amenable to state lawmakers, citizens, taxpayers (true owners of GHS) and a plan that is truly beneficial for healthcare consumers. If GHS executives wanted to implement a pro-consumer and pro-taxpayer privatization plan, then they would work with state lawmakers to truly privatize GHS into two or more completely-private health care systems that would compete with each other while compensating the taxpayer-owners for the true current value of GHS. Instead, GHS leadership has twisted and squeezed the meaning and intent existing state law (SC Act 432 that created GHS as a political subdivision of SC) to justify a public/private structure and illegal takeover plan to simply do an end run around antitrust laws while taking a multi-billion-dollar taxpayer asset for nothing.

15. GHS via its support of the SC Hospital Association has used its political influence in the SC State Senate to effectively kill a state medical CON sunset bill. That bill was encouraged by a joint letter from the FTC and DOJ, was supported by SC Governor Nikki Haley and had passed the SC State House 103-1, yet it died in the SC Senate Medical Affairs Committee by a vote of 3-2. That CON sunset bill would have increased competition in our state's healthcare markets.

Based on the points above, we asking the US Federal Trade Commission to thoroughly investigate the GHS takeover plan and exclusive activities; and to prevent this anti-competitive plan from being implemented. Please let us know if you have any questions or concerns. We look forward to hearing from you about this very important issue facing our community.

Sincerely,


Cory R. Smith O-27


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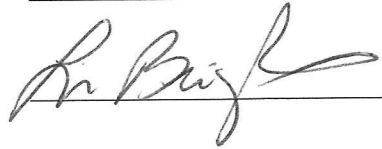
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