

Albany Herald

Federal Trade Commission mum on Lee County Medical Center opposition

By: Jennifer Parks

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Georgia Alliance of Community Hospitals files formal letter of opposition to proposed Lee County hospital

LEESBURG — The Federal Trade Commission is not saying whether it will get involved in the process of the state of Georgia approving or denying a certificate of need for the proposed Lee County Medical Center.

Lee County officials told The Albany Herald last week that the FTC was watching the process, and the Lee County Commission has asked FTC officials to comment on the issue with the Georgia Department of Community Health, which will make a decision on the CON request.

The Herald asked Betsy Lordan, senior public affairs specialist with the FTC, to confirm whether the FTC has been in contact with Lee County officials, what the nature of any contact may have been and what plans — if any — the agency has to intervene.

“You may not recall,” Lordan responded, “but the FTC does not confirm the existence of investigations, or comment on them if they have been confirmed by the parties. (In the case of Phoebe Putney, the matter had already been litigated in court, and as such, many of the legal documents were a matter of public record.)

“Under the Hart Scott Rodino Act, parties to a merger or a potential merger are afforded a high degree of confidentiality. Thus, generally speaking, any information about a deal needs to come from the parties and not from the FTC.”

When the settlement allowing the Hospital Authority of Albany-Dougherty County to retain Phoebe North was finalized on March 31, 2015, one of the stipulations put in place was that Phoebe was barred from contesting a certificate of need filed by a potential new hospital provider in the immediate area “for up to five years.”

The Georgia Alliance of Community Hospitals, the Dougherty County Commission and Crisp Regional Hospital have publicly stated opposition to approval of a CON for the proposed Lee Medical Center.

Phoebe officials have stated the results of a study that has shown a Lee County hospital would cost the Albany hospital as much as \$40 million a year in lost revenue.

The Georgia Alliance on Community Hospitals is the most recent entity to announce that it has filed a notice of opposition to the CON ahead of a letter to the Georgia Department of Community Health next month further detailing its concerns.

“The purpose of our organization is to protect the viability of all nonprofit hospitals throughout our state and, in turn, access to care for all Georgians,” Alliance Board Chair Jerry Fulks, president of West Georgia Medical Center in LaGrange, said. “The proposed new hospital does not meet the established criteria for new facilities under Georgia law.

“More importantly, we believe that its construction will have an adverse impact on existing facilities throughout the Southwest Georgia region.”

The GACH said it made the decision to formally announce its opposition last week based on data showing “significant underutilization” of hospital beds in the region, as well as concerns that the developer is seeking to be excused from complying with need and impact standards based on an unprecedented financing structure.

Crisp Regional officials said they oppose the hospital based on a perceived lack of need and potential for compromised economic viability connected to its existence.

Lee County Development Authority Director Winston Oxford told The Herald last week that officials with the FTC have been in contact with Lee County officials and that the FTC has maintained a keen interest in how the situation is unfolding.

The Lee County Commission passed a resolution at its Sept. 12 meeting asking the FTC to file comments with the Georgia DCH concerning the proposed Lee hospital’s CON application. Oxford said Friday that recent communications between officials associated with the proposed hospital and the FTC indicate “the FTC is going to come knocking on someone’s door soon.”

“I’m certainly not saying the FTC is bringing the wrath of God down on Phoebe, but it sounds like they’ve been investigating this case for a while now,” Oxford said Friday. “From our communications with them, (FTC officials) have been all over this for the past 60 to 90 days. We send them information, but they’ve assured us they’re reading the papers.

“I think it’s important to note that the FTC has reached out to us. We haven’t had to call them to touch base. Our county attorney (Jimmy Skipper) sent a copy of the letter the (Lee) County Commission sent to Dougherty County (on Tuesday), and they acknowledged that they received the copy. One of the things they’ve mentioned in their conversations is that they think the CON laws in Georgia are antiquated, so they’re very interested in our application.”

Phoebe officials have maintained that they have not in any way violated the agreement with the Federal Trade Commission.

“Any implication that Phoebe has violated our consent order with the Federal Trade Commission is flatly false,” Phoebe officials said following an Aug. 14 meeting of the Dougherty Commission. “We take our responsibility very seriously and have done nothing to join the discourse about the certificate of need application for the proposed hospital in Lee County. We appreciate that citizens are taking an active interest in health care in our region, but many of the statements made during today’s Dougherty County Commission meeting show a complete lack of understanding of the health care system and include blatantly inaccurate statements about Phoebe.”

Phoebe provided \$9 million in indigent care for Lee County residents in Fiscal Year 2016. Lee officials said the county's proposed hospital is expected to provide \$6 million of such care its first year of operation.

"If that is the case, and the plan is to step forward and provide that care, then we could spend that \$9 million on other things," Phoebe Health System CEO Joel Wernick said in February in response to Lee officials' statement.

The CON for Lee County Medical Center is in the review phase, and a decision is anticipated by Nov. 15. If the CON is approved, a construction period of about 15-18 months would begin at the former Grand Island Golf Club site.

Carlton Fletcher contributed to this report.