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April 19, 2007

Clerk of the Court  
United States Court of Appeals  
for the Ninth Circuit  
95 Seventh Street  
San Francisco, CA 94103

Re: McKenzie-Willamette Hospital v. PeaceHealth,  
Nos. 05-35627 & 05-35640

To the Clerk of the Court:

In response to the Court's order filed March 20, 2007 in the above referenced actions, and pursuant to instructions received from the Clerk's office, the Catholic Health Association of the United States hereby submits this *Letter Amicus Brief* in support of PeaceHealth, regarding the legal treatment of bundled discounts under Section 2 of the Sherman Act.

IDENTITY OF AMICUS AND STATEMENT OF INTEREST

The Catholic Health Association of the United States ("CHA") is the national leadership organization representing the Catholic health care ministry in this country. Founded in 1915, CHA now has over 1950 members in all 50 states, forming the nation's largest group of nonprofit health care systems, hospitals, long term care facilities and related health care organizations.<sup>1</sup> CHA's members operate in urban, suburban, and rural settings and their hospitals range in size from those with over 750 beds to critical access hospitals with fewer than 15 beds. As is discussed below, any

<sup>1</sup> PeaceHealth, the Defendant-Appellee and Defendant-Appellant in these appeals, is a member of CHA.

decision by this Court establishing standards for judging the legality of bundled discounts under the federal antitrust laws may have significant ramifications for CHA's members and for the hospital community as a whole, not just the parties in these cases.

### ARGUMENT

#### A. Bundled Discounts are Commonplace in the Health Care Sector

Today's health care sector in the United States delivers an extraordinarily diverse array of services and products and constitutes a significant component of the U.S. economy. According to statistics from the Centers for Medicare & Medicaid Services, in 2005 Americans spent \$2.0 trillion on health care, which accounted for 16% of the gross domestic product of the nation.<sup>2</sup> Given this, it is obvious that the application of antitrust rules in the health care sector can have a very significant impact on the operation of the domestic economy.

Hospitals frequently utilize bundled pricing and bundled discounts in the delivery of health care services. Bundled discounts can significantly reduce product, service, and transaction costs, and can guarantee a stable and reliable supply of the mix of products and services sought by patients and third-party payors. They thus can significantly facilitate the provision of comprehensive health care services and may significantly aid in cost containment efforts. For example, hospitals, including CHA members, are often asked by third party payors to offer such discounts when negotiating contracts for acute care services, so that the third-party payors can in turn offer their insureds comprehensive coverage at reasonable rates.

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<sup>2</sup> See Press Release, Centers for Medicare & Medicaid Services, January 9, 2007, available at <http://www.cms.hhs.gov/apps/media/press/release.asp?Counter=2069&intNumPerPage=10&checkDate=&checkKey=&srchType=&numDays=3500&srchOpt=0&srchData=&keywordType=All&chkNewsType=1%2C+2%2C+3%2C+4%2C+5&intPage=&showAll=&pYear=&year=&desc=false&cboOrder=date>

