



PUBLIC NOTICE

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DOMESTIC SECTION 214 APPLICATIONS GRANTED SUBJECT TO CONDITION

WC Docket Nos. 19-307, 19-336

By this Public Notice, the Wireline Competition Bureau (Bureau) grants the following applications, as conditioned, and pursuant to section 214 of the Communications Act of 1934, as amended, and sections 63.03 and 63.04 of the Commission's rules.¹ The Bureau received no comments in opposition to a grant of the Applications.

Domestic Section 214 Application Filed for the Transfer of Control of Helix Telephone Company to Oregon Telephone Corporation, WC Docket No. 19-307 (filed Oct. 23, 2019): On November 6, 2019, the Bureau released a Public Notice seeking comment on an application filed by James A. Smith, Timothy J. Smith, and Oregon Telephone Corporation (OTC) requesting approval to transfer control of Helix Telephone Company (Helix) from James A. Smith and Timothy J. Smith to OTC.² Helix, an Oregon corporation, provides telecommunications services as a rural incumbent local exchange carrier (LEC) to 187 loops in the exchanges of Helix and Meacham, Oregon.³ Helix elected to receive universal service support under the Alternative Connect America Cost Model (A-CAM).⁴

OTC, an Oregon corporation, provides service as a rural incumbent LEC to 1,358 loops in the Mt. Vernon, Bates, Prairie City, Dayville, Hereford-Unity, Harper, and Juntera exchanges in Oregon.⁵ Mr.

¹ See 47 U.S.C. § 214; 47 CFR §§ 63.03-63.04. Application of James A. Smith and Timothy J. Smith and Oregon Telephone Corporation, WC Docket No. 19-307 (filed Oct. 23, 2019) (Helix/OTC Application). Applicants filed a supplement to the Helix/OTC Application on November 1, 2019. Letter from Richard A. Finnigan, Counsel to Applicants, to Marlene Dortch, Secretary, FCC (filed Nov. 1, 2019) (on file in WC Docket No. 19-307) (OTC *Ex Parte* Letter); Application of Charles W. Crow, Ruth Ann Crow and David R. Crow and New Florence Telephone Company for Consent for Transfer of Control, WC Docket No. 19-336 (filed Nov. 12, 2019) (Farber/New Florence Application, together with Helix/OTC Application, Applications). Any action on the Applications is without prejudice to Commission action on other related, pending applications.

² *Domestic 214 Application Filed for the Transfer of Control of Helix Telephone Company to Oregon Telephone Corporation*, WC Docket No. 19-307, Public Notice, DA 19-1151 (rel. Nov. 6, 2019).

³ Helix/OTC Application at 5.

⁴ Universal Service Administrative Co., Tools, <https://www.usac.org/high-cost/resources/tools/>. See *Wireline Competition Bureau Authorizes 182 Rate-of-Return Companies to Receive \$454 Million Annually in Alternative Connect America Cost Model Support to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, 32 FCC Rcd 842 (WCB Jan. 24, 2017) (*A-CAM Public Notice*). The Commission adopted a voluntary path by which rate-of-return carriers could elect to receive a fixed amount of universal service support under A-CAM, a forward-looking broadband cost model, for 10 years, in exchange for deploying broadband-capable networks to eligible locations. *Connect America Fund et al.*, Report and Order, Order and Order on Reconsideration and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3090, para. 4, 3096-3117, paras. 20-79 (2016).

⁵ Helix/OTC Application at 5; OTC *Ex Parte* Letter at 1.

Garrin Bott, a U.S. citizen, wholly owns OTC.⁶ OTC elected to receive universal service support under the A-CAM II.⁷ Applicants state that OTC holds 95% of the interest in North-State Telephone Co. (North-State), an Oregon corporation, serving as a rural incumbent LEC in the Dufur exchange in Oregon,⁸ and wholly owns New Florence Telephone Company (New Florence), a Missouri corporation, serving as a rural incumbent LEC in the New Florence exchange in Missouri.⁹ OTC's affiliates receive high cost support through different mechanisms. New Florence, and its incumbent LEC subsidiaries, and North-State, along with two of its incumbent LEC subsidiaries, Home Telephone and Pine Telephone, elected to receive universal service support under the A-CAM and A-CAM II.¹⁰ North-State's other incumbent LEC subsidiary, Skyline Telecom, did not elect to receive model-based support and receives cost-based universal service support for its incumbent LEC services.¹¹ Applicants further state that OTC wholly owns MD Communications, an Oregon corporation, providing long distance services in Oregon, including the exchanges served by North-State, Home Telephone, and Pine Telephone.¹² Helix and OTC, together with their affiliates, have no overlapping or adjacent incumbent LEC service areas.¹³

Domestic Section 214 Application Filed for the Transfer of Control of Farber Telephone Company to New Florence Telephone Company, WC Docket No. 19-336 (filed Nov. 12, 2019): On November 20, 2019, the Bureau released a Public Notice requesting comment on an application filed by Charles W. Crow, Ruth Ann Crow, and David R. Crow (Transferors) and New Florence requesting consent to transfer control of Farber Telephone Company (Farber) from Transferors to New Florence.¹⁴ Farber, a Missouri corporation, provides services as a rural incumbent LEC to 103 loops in the Farber exchange in Missouri.¹⁵ Farber did not elect to receive model-based support and receives cost-based universal service support for its incumbent LEC services.¹⁶

New Florence, as described above, is an incumbent LEC in the New Florence exchange in Missouri. Its incumbent LEC subsidiaries elected to receive universal service support under the A-CAM

⁶ Helix/OTC Application at 3-4.

⁷ Universal Service Administrative Co., Tools, <https://www.usac.org/high-cost/resources/tools/>. On August 22, 2019, the Commission authorized 171 rate-of-return companies that elected 184 offers of A-CAM II support to receive model-based support. See *Wireline Competition Bureau Authorizes 171 Rate-Of-Return Companies to Receive \$491 Million Annually in Alternative Connect America Cost Model Support to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, DA 19-808 (WCB Aug. 22, 2019) (*A-CAM II Public Notice*); *Wireline Competition Bureau Announces Alternative Connect America Cost Model II Support Amounts Offered to Rate-of-Return Carriers to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, DA 19-372 (WCB May 2, 2019) (*A-CAM II Offer Public Notice*); *Wireline Competition Bureau Issues Corrected Connect America Model II Offers to 37 Companies, Extends the Election Deadline, and Seeks Comment on Location Adjustment Procedures*, WC Docket No. 10-90, Public Notice, DA 19-504 (WCB June 5, 2019). Authorization Report 6.0 shows the authorization amount and deployment obligations for each carrier that elected an offer under ACAM II. The report is available at <https://docs.fcc.gov/public/attachments/DOC-359222A1.xlsx> (Authorization Report 6.0).

⁸ OTC *Ex Parte* Letter at 1. Applicants state that Mr. Bott holds the other 5% of North-State. North-State wholly owns three rural incumbent LECs: Home Telephone Company (Home Telephone), an Oregon corporation, serving the Condon exchange in Oregon; Pine Telephone System, Inc. (Pine Telephone), an Oregon corporation, serving the Halfway, Granite, and Three Rivers exchanges in Oregon; and Skyline Telecom, Inc. (Skyline Telecom), a Washington corporation, serving the Mt. Hull and Beaver Creek exchanges in Washington. *Id.* at 1-2.

⁹ New Florence wholly owns the following three rural incumbent LECs, all Missouri corporations providing service in Missouri: New London Telephone Company, serving the New London exchange; Stoutland Telephone Company, serving the Southerland exchange; and Orchard Farm Telephone Company, serving the Orchard Farm exchange. *Id.* at 2; Farber/New Florence Application at 5-6. Applicants provided the study area codes for the entities receiving universal service support. Farber/New Florence Application at 4-6.

¹⁰ Universal Service Administrative Co., Tools, <https://www.usac.org/high-cost/resources/tools/>; <https://docs.fcc.gov/public/attachments/DOC-359222A1.xlsx> (Authorization Report 6.0).

and A-CAM II.¹⁷ Applicants state that New Florence and its incumbent LEC subsidiaries do not overlap, and are not adjacent to, Farber.¹⁸

Discussion. The Applicants request approval to consummate transactions involving companies that receive high-cost universal service support under the different mechanisms of fixed model-based support and cost-based support. The Commission has found that this type of mixed support transaction could result in potential harm to its goal of ensuring that limited universal service funding is distributed efficiently and effectively.¹⁹ When a company receiving a fixed level of support acquires or is acquired by a company receiving support based on its costs, the combined companies could, and in some instances might have an economic incentive to, shift certain shared or common costs from the model-based support company to the cost-based support company.²⁰ If cost shifting were to occur, the combined company, post-transaction, could obtain more high cost universal service support than the two companies did as separate entities, not because of any new investment, expense, or buildout, but rather solely because of the application of accounting procedures.²¹ Such an outcome is inconsistent with the Commission's general expectation that transactions generate efficiencies that reduce the combined company's costs.²² Moreover, providing additional universal service support to a company as a result of cost shifting solely because it acquired or merged with another company is not an efficient use of limited universal service resources.²³

In the *Hargray/ComSouth Order*, in which the Commission approved a mixed support transaction, it sought to prevent cost shifting and to protect the finite resources of the high-cost universal service fund by imposing a limited condition that capped high-cost universal service support based on the operating expenses of the entity receiving cost-based support.²⁴ The Commission also directed the Bureau to impose the same limited condition on future transactions between parties receiving different types of high-cost universal service support.²⁵

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¹¹ Universal Service Administrative Co., Tools, <https://www.usac.org/high-cost/resources/tools/>.

¹² OTC *Ex Parte* Letter at 2.

¹³ *Id.* at 1-2.

¹⁴ *Domestic 214 Application Filed for the Transfer of Control of Farber Telephone Company to New Florence Telephone Company*, WC Docket No. 19-336, Public Notice, DA 19-1197 (rel. Nov. 20, 2019).

¹⁵ Farber/New Florence Application at 5.

¹⁶ Universal Service Administrative Co., Tools, <https://www.usac.org/high-cost/resources/tools/>.

¹⁷ Farber/New Florence Application at 9; Universal Service Administrative Co., Tools, <https://www.usac.org/high-cost/resources/tools/>; <https://docs.fcc.gov/public/attachments/DOC-359222A1.xlsx> (Authorization Report 6.0).

¹⁸ Farber/New Florence Application at 6.

¹⁹ *Joint Application of W. Mansfield Jennings Limited Partnership and Hargray Communications Group, Inc. for Consent to the Transfer of Control of ComSouth Corporation Pursuant to Section 214 of the Communications Act of 1934*, WC Docket 18-52, Memorandum Opinion and Order, 33 FCC Rcd 4780, 4784, para. 19 (rel. May 11, 2018). (*Hargray/ComSouth Order*).

²⁰ *Id.* at 4785-86, para. 20.

²¹ *Id.*

²² *Id.*

²³ *Id.* at 4786, para. 21.

²⁴ *Id.* at 4788-90, paras. 26-31.

²⁵ *Id.* at 4789, para. 27, n.72.

In the Helix/OTC transaction, OTC, which is affiliated with a cost-based support company, Skyline Telecom, seeks to acquire Helix, a fixed model-based support company. In the Farber/New Florence transaction, New Florence, a model-based support company that is also affiliated with OTC, seeks to acquire Farber, a cost-based support company. Therefore, the potential for harm caused by cost-shifting is specific to both transactions. Accordingly, to mitigate the potential for cost shifting, we grant the Applications subject to the condition adopted in the *Hargray/ComSouth Order*.²⁶ The combined operating expenses of each post-consummation company's rate-of-return affiliates²⁷ shall be capped at the averaged combined operating expenses of the three calendar years preceding the transactions' closing date for which the operating expense data are available.²⁸

The cap will apply to cost recovery under both HCLS and CAF-BLS and will be applied proportionately to each affiliate's accounts used to determine the affiliate's eligible operating expense for HCLS and CAF-BLS.²⁹ For example, if the cap requires that a post-consummation company's eligible operating expense be reduced by 10 percent, then each account used to determine each rate-of-return affiliate's eligible operating expenses shall be reduced by 10 percent.³⁰ For purposes of this cap, operating expenses shall include maintenance, network support/network operations/general, benefits, rent expenses, and corporate operations, while depreciation, return on investment, and taxes shall be excluded.³¹

For all covered entities, the new cap shall also include an annual adjustment for inflation based on the Gross Domestic Product-Channel Price Index (GDP-CPI) for the years in which the new cap remains in effect.³² This cap shall remain in effect for seven years from the consummation of the transactions.³³ The condition will also sunset if all of a post-consummation company's rate-of-return affiliates become model-based support companies at any point during the seven-year period.³⁴

²⁶ *Id.* at 4788-90, paras. 26-31.

²⁷ *See* 47 U.S.C. § 153(1).

²⁸ *Hargray/ComSouth Order* at 4788-89, para. 27. The cap will apply to the combined operating expenses of the post-consummation companies and any other existing rate-of-return affiliates that they may acquire during the time in which the condition is in effect (together, covered entities). To monitor compliance with the condition adopted herein, to the extent it does not already do so, we direct the covered entities to submit their relevant cost data to the National Exchange Carrier Association (NECA). We direct NECA to provide the dollar amount of the operating expense costs that will be capped pursuant to this Public Notice to the Universal Service Administrative Company (USAC) within 30 days following submission of any covered entity's cost data. We further direct NECA to provide USAC with the reductions in High-Cost Loop Support (HCLS) and Connect America Fund-Broadband Loop Support (CAF-BLS) for any covered entity pursuant to this Public Notice for each year following the effective date of this Public Notice. USAC shall validate all calculations received from NECA before making disbursements subject to any such support reductions. We also direct all covered entities to provide USAC with an annual certification of compliance on or before December 31 of each year for the duration of the condition. With the certification, each covered entity must also submit its latest audited financial statements to USAC, including all notes and consolidating statements, on an annual basis, by December 31 of each year. *Id.* at 4790, para. 31.

²⁹ *Hargray/ComSouth Order* at 4789, para. 28.

³⁰ *Id.*

³¹ *Id.*

³² *Id.* at 4790, para. 30.

³³ The Commission has found seven years to be an appropriate period over which to monitor enforcement of the condition and to ensure that the combined entity, which will continue to receive support, does not shift costs from year-to-year. *Id.* at 4789-90, para. 29, fn.78. The cap will not apply if the parties do not consummate the proposed transactions.

We find, upon consideration of the record, that grant of the Applications listed above, subject to compliance with the condition, will serve the public interest, convenience, and necessity.³⁵ Therefore, pursuant to section 214 of the Act, 47 U.S.C. § 214, and sections 0.91, 0.291, 63.03, and 63.04 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 63.03, and 63.04, the Bureau hereby grants the Applications discussed in this Public Notice subject to compliance with the condition described above.³⁶

Pursuant to section 1.103 of the Commission's rules, 47 CFR § 1.103, the grant is effective upon release of this Public Notice. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 CFR §§ 1.106, 1.115, may be filed within 30 days of the date of this Public Notice. For further information, please contact Dennis Johnson, Wireline Competition Bureau, Competition Policy Division, (202) 418-0809.

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³⁴ *Id.* at 4789-90, para. 29.

³⁵ *See* 47 U.S.C. § 214(a); 47 CFR § 63.03.

³⁶ The Applicants in these proceedings provide incumbent LEC services in their respective study areas. Within 30 days of closing the proposed transactions, they must notify USAC so that it can make any appropriate changes to the High Cost Universal Broadband (HUBB) on-line location reporting portal for universal service recipients.