



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <https://www.fcc.gov>
TTY: 1-888-835-5322

DA 20-696
Released: June 30, 2020

DOMESTIC SECTION 214 APPLICATION GRANTED SUBJECT TO CONDITION

WC Docket No. 20-112

By this Public Notice, the Wireline Competition Bureau (Bureau) grants an application filed by William Douglas DeVore (Mr. DeVore) and BHT Investments, LLC (BHTI) (collectively, Applicants), pursuant to section 214 of the Communications Act of 1934, as amended, and sections 63.03-04 of the Commission's rules, requesting consent to transfer control of Bush-Tell, Inc. (Bush-Tell) from Mr. DeVore to BHTI.¹ On May 12, 2020, the Bureau released a Public Notice seeking comment on the Application.² The Bureau received no comments in opposition to a grant of the Application.

Bush-Tell, an Alaska corporation, provides services as an incumbent local exchange carrier (LEC) to 10 village exchanges in southwestern Alaska (approximately 555 access lines).³ Bush-Tell receives fixed universal service support through the Alaska Plan.⁴

BHTI, a Wyoming limited liability company, is a holding company that does not directly provide any domestic telecommunications services.⁵ BHT Investment Holdings, LLC (BHTI Parent), a Wyoming limited liability company, is the parent company of BHTI and does not directly provide any telecommunications services.⁶ The following U.S. citizens and entities hold a 10% or greater interest in

¹ See 47 U.S.C. § 214; 47 CFR §§ 63.03-04. Application for Transfer of Control of Domestic Section 214 Authorization, WC Docket No. 20-112 (filed Apr. 24, 2020) (Application). Applicants filed a supplement to the Application on May 1, 2020. Applicants also filed an application for the transfer of authorizations associated with wireless services. Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

² *Domestic Section 214 Application Filed for the Transfer of Control of Bush-Tell, Inc.*, WC Docket No. 20-112, Public Notice, DA 20-506 (WCB May 12, 2020).

³ Application at 1.

⁴ *Wireline Competition Bureau Authorizes Alaska Plan Support for 13 Alaskan Rate-Of-Return Companies*, Public Notice, WC Docket Nos. 10-90 and 16-271, Public Notice, 31 FCC Rcd 13347 at Appendix A (WCB 2016). On August 23, 2016, the Federal Communications Commission (Commission) adopted the *Alaska Plan Order*. In the *Alaska Plan Order*, the Commission provided a one-time opportunity for Alaskan rate-of-return carriers to elect to receive support frozen at adjusted 2011 levels for a 10-year term in exchange for meeting individualized performance obligations — offering voice and broadband services meeting specific service obligations at specified minimum speeds by five-year and 10-year service milestones to a specified number of locations. *Connect America Fund, et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 10139 (2016) (*Alaska Plan Order*).

⁵ Application at 2.

⁶ *Id.* at 7.

BHTI Parent: Neil Schlenker (30%); Kelly Fowler (30%); Colonnade Venture Partners, LLC (30%); LoLo Investments, LLC (10%).⁷ BHTI is affiliated with Tri-County Telephone Association, Inc. (Tri County), a Wyoming corporation and incumbent LEC that provides service in four local exchanges (approximately 707 access lines) in Wyoming, and TCT West, Inc. (TCT), a Wyoming corporation and wholly owned subsidiary of Tri-County that provides incumbent LEC services and competitive LEC services within seven local exchanges (approximately 3,675 access lines) in northern Wyoming and southern Montana.⁸ Tri-County did not elect to receive fixed support and receives cost-based universal service support for its incumbent LEC services.⁹

Pursuant to the terms of the proposed transaction, Mr. DeVore will transfer 100% of the issued and outstanding stock of Bush-Tell to BHTI.¹⁰ The Applicants state that completion of the proposed transaction will give BHTI control of Bush-Tell.¹¹

Discussion. The Applicants request approval to consummate a transaction involving companies that receive high-cost universal service support under the different mechanisms of fixed 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.¹² 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 fixed support company to the cost-based support company.¹³ 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.¹⁴ Such an outcome is inconsistent with the Commission's general expectation that transactions generate efficiencies that reduce the combined company's costs.¹⁵ 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.¹⁶

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

⁷ Eric Steinman, a U.S. citizen, holds over 75% of the equity and voting interest of Colonnade Venture Partners, LLC. Chris Davidson, a U.S. citizen, wholly owns LoLo Investments, LLC. Applicants state that, after consummation of the proposed transaction, no other individual or entity will hold a 10% or greater interest in Bush-Tell.

⁸ Applicants provided a description of BHTI's other operating affiliates in the Application. Application at 7.

⁹ Universal Service Administrative Co., Tools, <https://www.usac.org/high-cost/resources/tools/>.

¹⁰ Application at 2.

¹¹ *Id.*

¹² *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 (2018) (*Hargray/ComSouth Order*).

¹³ *Id.* at 4785-86, para. 20.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 4786, para. 21.

operating expenses of the entity receiving cost-based support.¹⁷ 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.¹⁸

BHTI, which is affiliated with Tri-County, a cost-based support company, seeks to acquire the operations of Bush-Tell, a fixed based support company. Therefore, the potential for harm caused by cost-shifting is a transaction-specific harm. Accordingly, to mitigate the potential for cost shifting, we grant the Application subject to the condition adopted in the *Hargray/ComSouth Order*.¹⁹ The combined operating expenses of the post-consummation company's rate-of-return affiliates²⁰ shall be capped at the averaged combined operating expenses of the three calendar years preceding the transaction's closing date for which the operating expense data are available.²¹

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.²² For example, if the cap requires that a post-consummation company's eligible operating expense be reduced by 10%, then each account used to determine each rate-of-return affiliate's eligible operating expenses shall be reduced by 10%.²³ 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.²⁴

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.²⁵ This cap shall remain in effect for seven years from the consummation of the transaction.²⁶

¹⁷ *Id.* at 4788-90, paras. 26-31.

¹⁸ *Id.* at 4789, para. 27, n.72.

¹⁹ *Id.* at 4788-90, paras. 26-31.

²⁰ *See* 47 U.S.C. § 153(1).

²¹ *Hargray/ComSouth Order* at 4788-89, para. 27. The cap will apply to the combined operating expenses of the post-consummation company and any other existing rate-of-return affiliates acquired 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.

²² *Id.* at 4789, para. 28.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 4790, para. 30.

²⁶ 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

(continued....)

The condition will also sunset if all of a post-consummation company's rate-of-return affiliates become fixed support companies at any point during the seven-year period.²⁷

We find, upon consideration of the record, that grant of the Application listed above, subject to compliance with the condition, will serve the public interest, convenience, and necessity.²⁸ 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 Application discussed in this Public Notice subject to compliance with the condition described above.²⁹

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.

-FCC-

(Continued from previous page) _____
year-to-year. *Id.* at 4789-90, para. 29, fn.78. The cap will not apply if the parties do not consummate the proposed transaction.

²⁷ *Id.* at 4789-90, para. 29.

²⁸ *See* 47 U.S.C. § 214(a); 47 CFR § 63.03.

²⁹ The Applicants provide incumbent LEC services in their respective study areas. Within 30 days of closing the proposed transaction, 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.