PUBLIC NOTICE

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DA 20-981
Released: August 28, 2020

DOMESTIC SECTION 214 APPLICATION GRANTED SUBJECT TO CONDITION

WC Docket No. 20-193

By this Public Notice, the Wireline Competition Bureau (Bureau) grants an application filed by Chad Miles and Great Plains Communications LLC (GP Communications) (collectively, Applicants), pursuant to section 214 of the Communications Act of 1934, as amended, and sections 63.03-63.04 of the Commission's rules, requesting consent to transfer control of Miles Enterprises, Inc. (Miles Enterprises) and its regulated subsidiaries, Miles Communications, Inc. (Miles Communications), Sunman Telecommunications Corporation (Sunman Telecommunications), and Sunman Telecommunications Corporation Long Distance (Sunman Telecommunications LD) (together, Miles Communications, Sunman Telecommunications, and Sunman Telecommunications LD, Licensees) from Chad Miles to GP Communications.[1] On July 6, 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.

Applicants and Description of Transaction

Sunman Telecommunications provides service as an incumbent local exchange carrier (LEC) in southeast Indiana.[3] It did not elect to receive fixed universal service support and receives cost-based support for its incumbent LEC services.[4] Miles Communications provides facilities-based competitive LEC services in southeast Indiana.[5] Sunman Telecommunications LD provides competitive resold long-distance services in Indiana.[6] Together, Sunman Telecommunications and Miles Communications serve 10 counties in southeastern Indiana with a nearly 700-mile fiber network.[7]

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[1] *See* 47 U.S.C. § 214; 47 CFR §§ 63.03-04. Joint Application of Chad Miles and Great Plains Communications LLC, WC Docket No. 20-193 (filed June 24, 2020) (Application). 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 Miles Enterprises, Inc. and its Subsidiaries to Great Plains Communications LLC*, WC Docket No. 20-193, Public Notice, DA 20-711 (WCB 2020).

[3] Application at 3.

[4] *Id.* at 7; Universal Service Administrative Co., Tools, "ACAM, ACAM II and CAF-BLS Buildout Requirements," https://www.usac.org/high-cost/resources/tools/. The Commission adopted a voluntary path by which rate-of-return carriers could elect to receive a fixed amount of universal service support under the Alternative Connect America Cost Model (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] Application at 3.

[6] *Id.*

[7] *Id.*

GP Communications and its wholly-owned subsidiaries, Great Plains Broadband LLC (GP Broadband) and Great Plains Communications Long Distance LLC (GP Long Distance), all Delaware limited liability companies, together provide residential, business, and enterprise telecommunications, cable television, and other services.[8] GP Communications serves 92 communities over an 11,500-mile regional fiber network in Nebraska.[9] It provides incumbent LEC services in Nebraska and in a few areas of Colorado, Kansas, and South Dakota.[10] GP Broadband provides facilities-based competitive LEC services in Nebraska.[11] GP Long Distance provides competitive resold long distance services in Nebraska.[12] GP Communications' subsidiary, InterCarrier Networks, LLC (ICN), a Michigan limited liability company, provides competitive LEC and other services in Illinois and Indiana.[13] Applicants confirmed that there is no physical overlap between the service areas of GP Communications and ICN with the service area of the Licensees.[14]

GP Communications elected to receive fixed universal service support under the Alternative Connect America Cost Model (A-CAM) for its incumbent LEC services.[15] GP Communications also has affiliates providing telecommunications services as follows: E. Ritter Telephone Company, LLC and Tri-County Telephone Company, LLC operate as incumbent LECs in Arkansas; Millington Telephone Company, LLC operates as an incumbent LEC in Tennessee; and E. Ritter Communications, LLC operates as a competitive LEC in Arkansas, Tennessee, and Texas.[16] E. Ritter Telephone Company, LLC and Tri-County Telephone Company, LLC elected to receive fixed universal service support under A-CAM for their incumbent LEC services.[17] Millington Telephone Company, LLC elected to receive fixed universal service support under A-CAM II.[18]

Pursuant to the terms of a Membership Interest Purchase Agreement, GP Communications will acquire control of Miles Enterprises and the Licensees.[19]

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[8] *Id.* at 4.

[9] *Id*.

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.* at 5. In addition, ICN has received authority to operate in Kentucky but currently only provides dark fiber to a small number of wireless sites. *Id*.

[14] *Id*. at 7.

[15] Universal Service Administrative Co., Tools, "ACAM, ACAM II and CAF-BLS Buildout Requirements," https://www.usac.org/high-cost/resources/tools/. *See Connect America Fund; ETC Annual Reports and Certifications; Establishing Just and Reasonable Rates for Local Exchange Carriers; Developing a Unified Intercarrier Compensation Regime*; WC Docket Nos. 10-90, 14-58, and 07-135, CC Docket No. 01-92; Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, 33 FCC Rcd 11893 (2018).

[16] Application at 11-12.

[17] Universal Service Administrative Co., Tools, "ACAM, ACAM II and CAF-BLS Buildout Requirements," https://www.usac.org/high-cost/resources/tools/.

[18] *Id*.

[19] Application at 5. Applicants state that prior to closing, Chad Miles will contribute all his outstanding equity interests to Miles Capital, Inc., a newly formed entity created for the purposes of the proposed transaction that he will wholly own. *Id*.

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.[20] 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.[21] 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.[22] Such an outcome is inconsistent with the Commission's general expectation that transactions generate efficiencies that reduce the combined company's costs.[23] 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.[24]

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.[25] 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.[26]

GP Communications, a fixed based support company, seeks to acquire the operations of Sunman Telecommunications, a cost-based support company.[27] 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*.[28] The combined operating expenses of the post-consummation company's rate-of-return affiliates[29] 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.[30]

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[20] *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*).

[21] *Id*. at 4785-86, para. 20.

[22] *Id*.

[23] *Id*.

[24] *Id*. at 4786, para. 21.

[25] *Id*. at 4788-90, paras. 26-31.

[26] *Id*. at 4789, para. 27, n.72.

[27] Application at 7.

[28] *Hargray/ComSouth Order*, 33 FCC Rcd at 4788-90, paras. 26-31.

[29] *See* 47 U.S.C. § 153(1).

[30] *Hargray/ComSouth Order*, 33 FCC Rcd 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

(continued….)

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.[31] 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%.[32] 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.[33]

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.[34] This cap shall remain in effect for seven years from the consummation of the transaction.[35] 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.[36]

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.[37] 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.[38]

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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.

[31] *Id*. at 4789, para. 28.

[32] *Id.*

[33] *Id.*

[34] *Id.* at 4790, para. 30.

[35] 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 transaction.

[36] *Id*. at 4789-90, para. 29.

[37] *See* 47 U.S.C. § 214(a); 47 CFR § 63.03.

[38] 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.

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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