



PUBLIC NOTICE

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DOMESTIC SECTION 214 APPLICATION GRANTED SUBJECT TO CONDITION

WC Docket No. 20-432

By this Public Notice, the Wireline Competition Bureau (Bureau) grants, as conditioned, an application filed by W. Jay Mitchell, Brian J. Mitchell, and New Florence Telephone Company (New Florence) (collectively, Applicants), pursuant to section 214 of the Communications Act of 1934, as amended (Act), and sections 63.03-04 of the Commission's rules,¹ requesting consent to transfer control of Seneca Telephone Company (Seneca), Ozark Telephone Company (Ozark), Goodman Telephone Company (Goodman), Cleveland County Telephone Company (Cleveland), Decatur Telephone Company (Decatur), Wyandotte Telephone Company (Wyandotte), and S-GO Leasing Company (S-GO) (collectively, the Mitchell Companies) to New Florence.² On December 21, 2020, the Bureau released a Public Notice seeking comment on the Application.³ The Bureau received no comments in opposition to a grant of the Application.

Mr. W. Jay Mitchell and Mr. Brian J. Mitchell, both U.S. citizens, own controlling interests in the Mitchell Companies, which all provide rural incumbent local exchange carrier (LEC) service, except for S-GO, which provides interexchange and broadband services in the exchanges of the other Mitchell Companies.⁴ Seneca serves 1,783 access lines in the Seneca and Tiff City exchanges in Missouri and eastern Oklahoma; Ozark serves 1,443 access lines in the Noel and Southwest City exchanges in southwest Missouri, eastern Oklahoma, and northwest Arkansas; Goodman serves 943 access lines in the Goodman and Lanagan exchanges in southwest Missouri; Cleveland serves 1,666 access lines in the Kingsland, Rison, and Rowell exchanges in southeast Arkansas; Decatur serves 405 access lines in the Decatur exchange in northwest Arkansas; and Wyandotte serves 391 access lines in the Wyandotte

¹ See 47 U.S.C. § 214; 47 CFR §§ 63.03-04.

² Application of W. Jay Mitchell and Mr. Brian J. Mitchell and New Florence Telephone Company for Consent for Transfer of Control, WC Docket No. 20-432 (filed Dec. 17, 2020) (Application). Two supplements to the Application were filed on December 21, 2020. See Letter from Richard A. Finnigan, Counsel for New Florence Telephone Company, to Marlene Dortch, Secretary, FCC, WC Docket No. 20-432 (Dec. 21, 2020) (First Supplement); Letter from Richard A. Finnigan, Counsel for New Florence Telephone Company, to Marlene Dortch, Secretary, FCC, WC Docket No. 20-432 (Dec. 21, 2020) (Second Supplement). Any action on the Application is without prejudice to Commission action on other related, pending applications.

³ *Domestic Section 214 Application Filed for the Transfer of Control of Seneca Telephone Company, Ozark Telephone Company, Goodman Telephone Company, Cleveland County Telephone Company, Decatur Telephone Company, Wyandotte Telephone Company, and S-Go Leasing Company to New Florence Telephone Company*, WC Docket No. 20-432, Public Notice, 35 FCC Rcd 14697 (WCB 2020).

⁴ Application at 4 & n.2.

exchange in eastern Oklahoma.⁵ These incumbent LECs did not elect to receive model-based support and receive cost-based universal service support for voice and broadband services.⁶

New Florence, a Missouri corporation, provides rural incumbent LEC service to 212 access lines in the New Florence exchange in Missouri.⁷ Oregon Telephone Corporation (OTC), an Oregon corporation that provides incumbent LEC service in Oregon, owns 100% of the equity of New Florence.⁸ Mr. Garrin Bott, a U.S. citizen, owns 100% of the equity of OTC.⁹ New Florence and OTC own multiple other rural incumbent LECs in several states, including Missouri. New Florence elected to receive universal service support under the Alternative Connect America Cost Model (A-CAM), and its incumbent LEC subsidiaries receive both cost-based and A-CAM support for voice and broadband services.¹⁰ Applicants state that the service territories of these other LECs are not adjacent to and do not overlap with the exchanges of the Mitchell Companies.¹¹

Pursuant to the terms of the proposed transaction, New Florence will acquire 100% of the capital stock of the Mitchell Companies.¹²

Discussion. The Applicants request approval to consummate a transaction 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.¹³ 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.¹⁴ 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.¹⁵ Such an outcome is inconsistent with the Commission's general

⁵ *Id.* at 7.

⁶ 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).

⁷ Application at 3, 7.

⁸ *Id.* at 5.

⁹ *Id.* at 5-6.

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). On December 23, 2019, the Bureau granted the domestic section 214 applications of New Florence to acquire Farber Telephone Company and for OTC to acquire Helix Telephone Company, subject to compliance with the condition to cap high-cost universal service support as required by the Commission's finding in *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 (2018) (*Hargray/ComSouth Order*). See *Domestic Section 214 Applications Granted Subject to Condition*, WC Docket Nos. 19-307, 19-336, Public Notice, 34 FCC Rcd 12819 (WCB 2019) (*New Florence 2019 Public Notice*).

¹¹ See First Supplement at 1-2 & Attach. 1 (Oregon Telephone Ownerships); Second Supplement at 1.

¹² Application at 1.

¹³ *Hargray/ComSouth Order*, 33 FCC Rcd at 4784, para. 19.

¹⁴ *Id.* at 4785-86, para. 20.

¹⁵ *Id.*

expectation that transactions generate efficiencies that reduce the combined company's costs.¹⁶ 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.¹⁷

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.¹⁸ 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.¹⁹

New Florence, a model-based support company, seeks to acquire the operations of the Mitchell Companies, cost-based support companies.²⁰ Therefore, the potential for harm caused by cost shifting is specific to the transaction. Accordingly, to mitigate the potential for cost shifting, we grant the Application subject to the condition adopted in the *Hargray/ComSouth Order*.²¹ The combined operating expenses of the post-consummation company's rate-of-return affiliates²² 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.²³

The cap, which New Florence is subject to in the *New Florence 2019 Public Notice*, 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.²⁴ 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

¹⁶ *Id.*

¹⁷ *Id.* at 4786, para. 21.

¹⁸ *Id.* at 4788-90, paras. 26-31.

¹⁹ *Id.* at 4789, para. 27, n.72.

²⁰ One of the Mitchell Companies, S-GO, provides interexchange and broadband services in the territories of the other Mitchell Companies. Application at 2 n.2.

²¹ *Hargray/ComSouth Order*, . 33 FCC Rcd at 4788-90, paras. 26-31.

²² See 47 U.S.C. § 153(1).

²³ *Hargray/ComSouth Order*, 33 FCC Rcd 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.

²⁴ *Id.* at 4789, para. 28; *New Florence 2019 Public Notice*, 34 FCC Rcd at 12820-21.

shall be reduced by 10%.²⁵ 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.²⁶

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.²⁷ This cap shall remain in effect for seven years from the consummation of the transaction.²⁸ 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.²⁹

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.³⁰ 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.³¹

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 Christi Shewman, Wireline Competition Bureau, Competition Policy Division, christi.shewman@fcc.gov.

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²⁵ *Hargray/ComSouth Order*, 33 FCC Rcd at 4788-89, para. 28.

²⁶ *Id.*

²⁷ *Id.* at 4790, para. 30.

²⁸ 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, n.78. The cap will not apply if the parties do not consummate the proposed transactions.

²⁹ *Id.* at 4789-90, para. 29.

³⁰ See [47 U.S.C. § 214\(a\)](#); [47 CFR § 63.03](#).

³¹ The Applicants provide incumbent LEC services in their 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.