PUBLIC NOTICE

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DOMESTIC SECTION 214 APPLICATION GRANTED SUBJECT TO CONDITION

WC Docket No. 21-361

By this Public Notice, the Wireline Competition Bureau (Bureau) grants, as conditioned, an application filed by the New Knoxville Telephone Company (NKTC) and Schurz Communications, Inc. (Schurz) (together, Applicants), pursuant to section 214 of the Communications Act of 1934, as amended, and sections 63.03-04 of the Commission's rules,[1] requesting consent to transfer control of NKTC and its subsidiary, GoldStar Communications, LLC (GoldStar) (NKTC and Goldstar, together, the Licensees), to Schurz.[2] On September 28, 2021, 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.

NKTC, an Ohio corporation, provides service as an incumbent local exchange carrier (LEC) in Auglaize County and certain rural portions of Shelby County, Ohio.[4] NKTC elected to receive fixed universal service support under the Alternative Connect America Cost Model (A-CAM II) to deploy broadband services.[5] NKTC holds 98% of the ownership interests in GoldStar, an Ohio limited liability company, that provides competitive LEC services in Allen, Auglaize, Mercer, Shelby, and Van Wert Counties, Ohio, and also provides long distance services in multiple states.[6]

Schurz, an Indiana corporation, through its indirect wholly-owned subsidiary, Long Lines, LLC (Long Lines), provides service as an incumbent LEC in various counties in Iowa and South Dakota and

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

[2] Application of the New Knoxville Telephone Company and Schurz Communications, Inc., for Grant of Authority Pursuant to Section 214 of the Communications Act of 1934, as amended, and Section 63.03 and 63.24 of the Commission's Rules to Transfer Control of Authorization Holders to Schurz Communications, Inc., WC Docket No. 21-361 (filed Sept. 13, 2021) (Application). Applicants also filed an application for the transfer of authorizations associated with international services. On September 23, 2021, Applicants filed a supplement (Supplement) to their domestic section 214 application. Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

[3] *Domestic Section 214 Application Filed for the Transfer of Control of the New Knoxville Telephone Company and GoldStar Communications, LLC to Schurz Communications, Inc.*, WC Docket No. 21-361, Public Notice, DA 21-1214 (WCB Sept. 28, 2021).

[4] Application at 3; Supplement at 1.

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

[6] Application at 3; Supplement at 1-2. Applicants state that the remaining 2% of Goldstar will be assigned to NKTC prior to the consummation of the proposed transaction. Application at 2-3 and n. 1. NKTC also wholly-owns NK Telco, Inc. (NK Telco), an Ohio corporation and cable operator that provides cable TV and Internet service in the communities of New Knoxville, New Bremen, Minster, Fort Loramie, Botkins, Anna, Sidney, Maria Stein, Russia, Jackson Center, Piqua, Ohio. Application at 3; Supplement at 2. The current ownership of NKTC is widely held, and no interest holder has a 10% or greater interest in NKTC. Application at 3.

provides competitive LEC and other services in several states.[7] Long Line's incumbent LECs include: Northwest Iowa Telephone, LLC (Northwest Iowa Telephone), a Delaware limited liability company, providing service in Woodbury and Monona Counties, Iowa; Jordan-Soldier Valley Telephone Company, an Iowa corporation, providing service in Monona County, Iowa; and Jefferson Telephone Company, LLC (Jefferson Telephone Company), a Delaware limited liability company, providing service in Union County, South Dakota. Northwest Iowa Telephone and Jordan-Solider Valley Telephone have elected to receive fixed universal service support under the Alternative Connect America Cost Model (A-CAM).[8] Jefferson Telephone Company did not elect to receive model-based support and receives cost-based universal service support.[9] Applicants state that the service areas of Schurz's affiliates and subsidiaries do not overlap and are not adjacent with NKTC, Goldstar, or NK Telco.[10] Schurz is a privately held company operated by members of the Schurz family, led by Mr. Todd Schurz, a U.S. citizen and President and CEO of Schurz.[11]

Pursuant to the terms of the proposed transaction, NKTC will become a direct, wholly-owned subsidiary of Schurz, and GoldStar and NK Telco will become indirect wholly-owned subsidiaries of Schurz.[12] Specifically, Schurz will acquire control through a wholly-owned subsidiary, Good River Broadband, Inc. (Merger Sub), an Ohio corporation created for the purpose of completing the proposed transaction, and Merger Sub will merge with and into NKTC, whereupon the separate existence of Merger Sub will cease, and NKTC will be the surviving corporation.[13]

Discussion. The Applicants request approval to consummate transactions involving companies that receive high-cost universal service support under the different support mechanisms of fixed model-based support and cost-based support (a mixed support transaction). The Commission has found that this type of transaction could result in potential harm to its goal of ensuring that limited universal service funding is distributed efficiently and effectively.[14] When a company receiving a fixed level of support

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[7] Long Lines wholly-owns the following competitive LECs: Long Lines Metro, LLC, CommChoice of Iowa, L.L.C., and Orange City Communications, LLC, each Delaware limited liability companies providing service in Iowa, and Long Lines Siouxland, LLC, a Nebraska limited liability company, providing service in Nebraska. Supplement at 2-3. Schurz also wholly-owns the following U.S.-based entities providing broadband, video, and voice services: Antietam Broadband, incorporated as Antietam Cable Television, LLC, serving Hagerstown, Maryland and surrounding communities in Washington County, Maryland; Long Lines, LLC, serving sixteen communities in Iowa, Nebraska, and South Dakota; Orbitel Communications, LLC, serving the City of Maricopa, Arizona, and the surrounding planned communities (also in Arizona): Sun Lakes, Sun Bird, Robson Ranch, SaddleBrooke, and SaddleBrooke Ranch; Champlain Broadband, LLC, serving customers in Chittenden County, Vermont; and Hiawatha Broadband Communications, Inc., serving customers in Minnesota and Wisconsin. Application at 8, n. 9; *see also* Supplement at 2-3.

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

[9] *Connect America Fund Phase II Auction Support Authorized for 387 Winning Bids*, AU Docket No. 17-182; WC Docket No. 10-90, Public Notice, 34 FCC Rcd 9406 (WCB 2019).

[10] Application at 4; Supplement at 3.

[11] *Id*. The only 10% or greater interest holder in Schurz is the Schurz Communications Voting Trust Agreement (the Schurz Trust), an Indiana Trust, which holds a 75.17% voting interest in Schurz. The following U.S. citizens are the beneficiaries of the Schurz Trust: Franklin D. Schurz, Jr. (28%); Kathryn F. Schurz (19%); Mary Ann Schurz (19%); and Laura E. Ray (15%). *Id.* at 9-10.

[12] *Id.* at 4.

[13] *Id*.

[14] *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*).

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.[15] 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.[16] Such an outcome is inconsistent with the Commission's general expectation that transactions generate efficiencies that reduce the combined company's costs.[17] 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.[18]

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.[19] 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.[20]

Because Schurz's subsidiary, Jefferson Telephone Company, receives cost-based support and Schurz is acquiring NKTC, which receives model-based support, 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 each post-consummation company's rate-of-return affiliates[22] 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]

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

[16] *Id*.

[17] *Id*.

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

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

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

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

[22] *See* 47 U.S.C. § 153(2).

[23] *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. We further direct Applicants to submit in the domestic section 214 docket a notice that the proposed transaction has closed with the consummation date and also provide a courtesy copy of the notice to hcinfo@usac.org.

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.[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 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 transactions.[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 Gregory Kwan, Wireline Competition Bureau, Competition Policy Division, (202) 418-1191.

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

[25] *Id.*

[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, fn.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 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.