



# PUBLIC NOTICE

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## DOMESTIC SECTION 214 APPLICATIONS GRANTED SUBJECT TO CONDITION

### WC Docket Nos. 20-275 and 20-355

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

**Domestic Section 214 Application Filed for the Transfer of Control of Otelco, Inc. and its Subsidiaries to Future Fiber FinCo, Inc., WC Docket No. 20-275 (filed Aug. 25, 2020):** On September 10, 2020, the Bureau released a Public Notice seeking comment on an application filed by Otelco Inc. (Otelco) and Future Fiber FinCo, Inc. (Future Fiber FinCo), 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 Otelco and its subsidiaries (the Otelco Subsidiaries) to Future Fiber FinCo.<sup>2</sup>

Otelco, a publicly traded Delaware corporation and holding company, provides, through the Otelco Subsidiaries, incumbent local exchange carrier (LEC) and competitive LEC telecommunications services in Alabama, Maine, Massachusetts, Missouri, New Hampshire, Vermont, and West Virginia.<sup>3</sup>

<sup>1</sup> See 47 U.S.C. § 214; 47 CFR §§ 63.03-63.04. The transferee in both of these transactions is, or is indirectly, wholly owned by, Future Fiber Parent, L.P. (FF-Parent), a Delaware limited partnership. Application to Transfer Indirect Control of the Subsidiaries of Otelco Inc. to Future Fiber FinCo, Inc., WC Docket No. 20-275 (filed Aug. 25, 2020) (Otelco/Future Fiber Application); Application of Future Fiber Parent, L.P. et al. for Grant of Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, and Section 63.04 to Transfer Control of the Section 214 Holders to Future Fiber Parent, L.P., WC Docket No 20-355 (filed Oct. 30, 2020) (Ontario/Future Fiber Application; together with the Otelco/Future Fiber Application, Applications; and applicants, collectively, for the Applications, the Applicants). Supplements were filed to the Otelco/Future Fiber Application on September 3, 2020, September 16, 2020, and November 17, 2020. Letter from Brett P. Ferenchak, Counsel to Future Fiber FinCo, Inc., to Marlene H. Dortch, Secretary, FCC (Sept. 3, 2020) (on file in WC Docket No. 20-275) (Otelco Sept. 3, 2020 Supplement); Letter from Marc D. Machlin, Counsel to Otelco, Inc., to Marlene H. Dortch, Secretary, FCC (Sept. 16, 2020) (on file in WC Docket No. 20-275); Third Supplement, WC Docket No. 20-275 (Nov. 17, 2020) (on file in WC Docket No. 20-275) (Otelco Nov. 17, 2020 Supplement). Any action on these Applications is without prejudice to Commission action on other related, pending applications.

<sup>2</sup> 47 U.S.C. § 214; 47 CFR §§ 63.03-63.04; *Domestic Section 214 Application Filed for The Transfer of Control of Otelco, Inc. and Its Subsidiaries to Future Fiber FinCo, Inc.*, WC Docket No. 20-275, Public Notice, DA 20-1063 (WCB 2020). Future Fiber FinCo, Inc. is indirectly wholly owned by FF-Parent, discussed more fully below.

<sup>3</sup> The Otelco Subsidiaries are: Blountsville Telephone LLC, Brindlee Mountain Telephone LLC, Hopper Telecommunications LLC, and Otelco Telephone LLC, each rural incumbent LECs serving Alabama; Mid-Maine Telecom LLC, Pine Tree Telephone LLC (Pine Tree), and Saco River Telephone LLC (Saco River), each rural incumbent LECs serving Maine; Granby Telephone LLC, a rural incumbent LEC and interexchange carrier serving Massachusetts; Otelco Mid-Missouri LLC (OMM), a rural incumbent LEC and interexchange carrier serving Missouri; Shoreham Telephone LLC (Shoreham), a rural incumbent LEC serving Vermont; War Telephone LLC, a rural incumbent LEC and interexchange carrier serving West Virginia; CRC Communications LLC, a competitive LEC and interexchange carrier serving Maine, Massachusetts, Missouri, New Hampshire, and Vermont; Mid-Maine  
(continued....)

The Otelco Subsidiaries include rural incumbent LECs that have elected to receive fixed universal service support under the Alternative Connect America Cost Model (A-CAM).<sup>4</sup> Otelco's subsidiary, CRC Communications, LLC, receives fixed Connect America Fund Phase II support.<sup>5</sup>

On September 16, 2020, the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee) notified the Commission that it was reviewing the Otelco/Future Fiber Application.<sup>6</sup> We deferred action in response to this request from the Committee. On December 15, 2020, the Committee notified the Commission that the Applicant had provided complete responses to initial questions posed by the Committee and that the Committee was conducting an initial review to assess whether granting the Otelco/Future Fiber Application would pose a risk to the national security or law enforcement interests of the United States.<sup>7</sup>

On March 16, 2021, the National Telecommunications and Information Administration informed the Commission that "the Committee has reviewed the application and has no recommendation at this time to the Commission approving the application and no objection to the Commission granting it" and that the Committee "reserves the right to review any resulting authorization in the future to identify any additional or new risks to U.S. national security or law enforcement interests."<sup>8</sup>

**Domestic Section 214 Application Filed for the Transfer of Control of Ontario Telephone Company, Inc., Trumansburg Telephone Company, Inc., and Finger Lakes Communications Group Inc. to Future Fiber Parent, L.P., WC Docket No. 20-355 (filed Oct. 30, 2020):** On November 6, 2020, the Bureau released a Public Notice seeking comment on an application filed by Ontario Telephone Company, Inc., (OTC), Trumansburg Telephone Company, Inc. (TTC), Finger Lakes Communications Group Inc. (FLCG) (OTC, TTC, and FLCG, collectively, the Ontario Licensees), and FF-Parent, 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 of control of the Ontario Licensees to FF-Parent.<sup>9</sup>

The Ontario Licensees, each New York corporations, provide telecommunications services to

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Telplus LLC, a competitive LEC and interexchange carrier serving Maine; and Otelco Telecommunications LLC, a toll reseller and cable provider in Alabama and interexchange carrier serving Missouri, Vermont, and West Virginia. Otelco/Future Fiber Application at Exh. A (List of Licensees). Otelco Telephone LLC, Pine Tree, and Saco River also provide interexchange services. In addition, Internet Services LLC, a subsidiary of OMM, holds multiple wireless licenses. *Id.* at 16.

<sup>4</sup> Universal Service Administrative Co., Tools, <https://www.usac.org/high-cost/resources/tools/> (ACAM, ACAM II and CAF BLS Buildout Requirements).

<sup>5</sup> *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).

<sup>6</sup> Letter from Megan Fluckiger, U.S. Department of Justice, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 20-275; IB File Nos. ITC-T/C-20200825-00160, ITC-T/C-20200825-00161, ITC-T/C-20200825-00162, ITC-T/C-20200825-00163, ITC-T/C-20200825-00164 (Sept. 16, 2020) (on file in WC Docket No. 20-275).

<sup>7</sup> Letter from Megan Fluckiger, U.S. Department of Justice, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 20-275; IB File Nos. ITC-T/C-20200825-00160, ITC-T/C-20200825-00161, ITC-T/C-20200825-00162, ITC-T/C-20200825-00163, ITC-T/C-20200825-00164 (Dec. 15, 2020) (on file in WC Docket No. 20-275).

<sup>8</sup> Letter from Kathy Smith, U.S. Department of Commerce, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 20-275; IB File Nos. ITC-T/C-20200825-00160, ITC-T/C-20200825-00161, ITC-T/C-20200825-00162, ITC-T/C-20200825-00163, ITC-T/C-20200825-00164 (March 16, 2021) (on file in WC Docket No. 20-275).

<sup>9</sup> See 47 U.S.C. § 214; 47 CFR §§ 63.03-04. *Domestic Section 214 Application Filed for the Transfer of Control of Ontario Telephone Company, Inc., Trumansburg Telephone Company, Inc., and Finger Lakes Communications Group Inc. to Future Fiber Parent, L.P.*, WC Docket No. 20-355, Public Notice, DA 20-1326 (WCB 2020).

business and residential customers in north central New York.<sup>10</sup> OTC and TTC, which operate as rural incumbent LECs in New York, did not elect to receive model-based support and receive cost-based universal service support.<sup>11</sup> FLCG is a resale provider of intrastate and interstate long distance services within the areas served by OTC and TTC.<sup>12</sup>

*FF-Parent.* FF-Parent, a Delaware limited partnership, is primarily owned and controlled by funds and entities affiliated with Oak Hill Capital Management (Oak Hill), a private equity fund based in the United States but whose funds are organized in the Cayman Islands.<sup>13</sup> FF-Parent is directly owned by five different Oak Hill Capital Partners V limited partners (collectively, the Oak Hill V Entities), each Cayman Islands entities.<sup>14</sup> The Oak Hill V Entities are ultimately controlled by three shareholders, Brian Cherry, Steven G. Puccinelli, and Tyler Wolfram, each a U.S. citizen, and Jefferies Financial Group, Inc. (Jefferies), a publicly traded Delaware corporation.<sup>15</sup>

*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.<sup>16</sup> 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

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<sup>10</sup> Ontario/Future Fiber Application at 2.

<sup>11</sup> Universal Service Administrative Co., Tools, <https://www.usac.org/high-cost/resources/tools/> (ACAM, ACAM II and CAF BLS Buildout Requirements).

<sup>12</sup> Ontario/Future Fiber Application at 2. The respective service areas of OTC and TTC are not adjacent and do not overlap. FLCG has secured authority to operate as a competitive LEC in New York, although it is not yet providing such services. *Id.*

<sup>13</sup> *Id.* at 10-14. Applicants further state that, through related Oak Hill funds, FF-Parent is currently affiliated with several carriers that provide competitive LEC, cable, and other services in multiple states, and explained that FF-Parent would be affiliated with the Otelco Subsidiaries once that transaction is consummated. Ontario/Future Fiber Application at 16-18; *see also* Application Granted for the Transfer of Control of Race Telecommunications, Inc. to Hometown Purchaser, LLC, WC Docket No. 20-360, Public Notice, DA 20-1503 (WCB 2020) (granting the transfer of control of Race Telecommunications, Inc., a competitive provider in California, to Hometown Purchaser, LLC, an affiliate of the Oak Hill funds). Applicants state that the service territories of the Ontario Licensees are not adjacent to and do not overlap with the service territories of the Otelco Subsidiaries. *Id.* at 17-18. At the time the Applications were filed, FF-Parent was affiliated with Clarity Telecom, LLC d/b/a Vast Broadband (Clarity), which provides incumbent LEC service in South Dakota and competitive LEC service in Minnesota and South Dakota. Otelco/Future Fiber Application at 16; Ontario/Future Fiber Application at 17-18. Clarity has since been acquired by an entity unrelated to FF-Parent. *Notice of Domestic Section 214 Application Granted*, WC Docket No. 20-371, Public Notice, DA 20-1517 (WCB 2020) (granting the transfer of control of Clarity to GI DI Rushmore TopCo LLC); Letter from Henry Shi, Counsel for GI DI Rushmore TopCo, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 20-371 (filed Feb. 8, 2021) (notifying the Commission of consummation of the Clarity transaction).

<sup>14</sup> Applicants provide more detailed information about entities holding a 10% or greater direct or indirect interest in FF-Parent, including pre and post-transaction ownership charts. Otelco/Future Fiber Application at 9-15 and Exh. B; Otelco Nov. 17, 2020 Supplement, Attach. 1 at 1-6; Ontario/Future Fiber Application at 9-16 and Exh. B.

<sup>15</sup> Otelco/Future Fiber Application at 10-13; Otelco Sept. 3, 2020 Supplement at 1-2; Otelco Nov. 17, 2020 Supplement, Attach. 1 at 5-7; Ontario/Future Fiber Application at 11-14.

<sup>16</sup> *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*).

the model-based support company to the cost-based support company.<sup>17</sup> 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.<sup>18</sup> Such an outcome is inconsistent with the Commission's general expectation that transactions generate efficiencies that reduce the combined company's costs.<sup>19</sup> 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.<sup>20</sup>

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.<sup>21</sup> 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.<sup>22</sup>

Following the consummation of the transactions described in the Applications, FF-Parent will be affiliated with both fixed model-based support companies and cost-based support companies. The potential for harm caused by cost-shifting is specific to the transactions. Accordingly, to mitigate the potential for cost shifting, we grant the Applications subject to the condition adopted in the *Hargray/ComSouth Order*.<sup>23</sup> The combined operating expenses of each post-consummation company's rate-of-return affiliates<sup>24</sup> 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.<sup>25</sup>

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

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<sup>17</sup> *Id.* at 4785-86, para. 20.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 4786, para. 21.

<sup>21</sup> *Id.* at 4788-90, paras. 26-31.

<sup>22</sup> *Id.* at 4789, para. 27, n.72.

<sup>23</sup> *Id.* at 4788-90, paras. 26-31.

<sup>24</sup> *See* 47 U.S.C. § 153(2).

<sup>25</sup> *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 dockets a notice that the proposed transactions have closed with the consummation dates and also provide a courtesy copy of the notice to [hcinfo@usac.org](mailto:hcinfo@usac.org).

HCLS and CAF-BLS.<sup>26</sup> 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%.<sup>27</sup> 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.<sup>28</sup>

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.<sup>29</sup> This cap shall remain in effect for seven years from the consummation of the transactions.<sup>30</sup> 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.<sup>31</sup>

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.<sup>32</sup> 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.<sup>33</sup>

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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<sup>26</sup> *Id.* at 4789, para. 28.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 4790, para. 30.

<sup>30</sup> 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.

<sup>31</sup> *Id.* at 4789-90, para. 29.

<sup>32</sup> See 47 U.S.C. § 214(a); 47 CFR § 63.03.

<sup>33</sup> 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.