



PUBLIC NOTICE

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DA 21-68
Released: January 15, 2021

DOMESTIC SECTION 214 APPLICATIONS GRANTED SUBJECT TO CONDITION

WC Docket Nos. 20-388, 20-389

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

Domestic Section 214 Application Filed for the Transfer of Control of Southern Kansas Telephone Company, Inc. and SKT, Inc. to Twin Valley Management, Inc., WC Docket No. 20-388 (filed Nov. 20, 2020): On November 30, 2020, the Bureau released a Public Notice seeking comment on an application filed by Southern Kansas Telephone Company, Inc. (Southern Kansas) and SKT, Inc. (SKT) on behalf of their current stockholders and Twin Valley Management, Inc. (TVM), 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 Southern Kansas and SKT to TVM.²

Southern Kansas, a Kansas corporation, provides telecommunications services as an incumbent local exchange carrier (LEC) to approximately 2,494 access lines in south central and southeastern Kansas.³ Southern Kansas did not elect to receive model-based support and receives cost-based universal service support for voice and broadband services.⁴ SKT, a Kansas corporation and an affiliate of Southern Kansas, provides competitive LEC services to approximately 710 access lines in south central and southeastern Kansas.⁵

¹ See 47 U.S.C. § 214; 47 CFR §§ 63.03-63.04. Application of The Southern Kansas Telephone Company, Inc., SKT, Inc. and Twin Valley Management, Inc. for Consent to Transfer Control, WC Docket No. 20-388 (filed Nov. 20, 2020) (Twin Valley/Southern Kansas Application); Application of Lavaca Telephone Company, Inc. and Dobson Technologies, Inc. for Grant of Authority, WC Docket No. 20-389 (filed Nov. 20, 2020) (Dobson/Lavaca Application, together with Twin Valley/Southern Kansas, Applications). A supplement was filed to the Dobson/Lavaca Application on December 4, 2020. Letter from Joshua M. Bobeck, Counsel for Dobson Technologies, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 20-389 (Dec. 4, 2020) (on file in WC Docket No. 20-389) (Dobson/Lavaca Supplement). Any action on the Applications is without prejudice to Commission action on other related, pending applications.

² See 47 U.S.C. § 214; 47 CFR §§ 63.03-04. *Domestic Section 214 Application Filed For The Transfer of Control of Southern Kansas Telephone Company, Inc. and SKT, Inc. to Twin Valley Management, Inc.*, WC Docket No. 20-388, Public Notice, DA 20-1416 (WCB 2020).

³ Southern Kansas provides incumbent LEC services in 13 local exchanges in the counties of Butler, Chautauqua, Cowley, Elk, Greenwood, Sedgwick, Sumner, and Wilson.

⁴ Universal Service Administrative Co., Tools, <https://www.usac.org/high-cost/resources/tools/>.

⁵ Twin Valley/Southern Kansas Application at 1.

TVM, a Kansas corporation, operates as a holding company.⁶ TVM wholly owns Twin Valley Telephone, Inc. (TVT), a Kansas corporation that provides telecommunications services as an incumbent LEC to approximately 3,306 access lines in north central Kansas.⁷ TVT elected to receive universal service support under the Alternative Connect America Cost Model (A-CAM) II.⁸ Twin Valley Communications, Inc. (TVC), a Kansas corporation and a wholly owned subsidiary of TVM, provides competitive LEC services to approximately 750 access lines in north central Kansas.⁹ TVC receives Connect America Fund (CAF) Phase II support.¹⁰ The John G. Foster Trust No. 2, a Kansas Trust, holds a 26.57% interest in TVM.¹¹ Applicants state that TVT's service area does not overlap with or have any adjacent borders with the service areas of Southern Kansas or SKT.¹²

Domestic Section 214 Application Filed for the Transfer of Control of Lavaca Telephone Company, Inc. to Dobson Technologies, Inc., WC Docket No. 20-389 (filed Nov. 20, 2020): On December 9, 2020, the Bureau released a Public Notice seeking comment on an application filed by Lavaca Telephone Company, Inc. d/b/a Pinnacle Communications (Lavaca) and Dobson Technologies, Inc. (Dobson), 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 Lavaca and its subsidiaries, Pinnacle Telecom, LLC (Pinnacle) and Vantage Telecom LLC d/b/a Pinnacle Telecom (Vantage), to Dobson.¹³

Lavaca, an Arkansas corporation, provides service as an incumbent LEC to approximately 1,748 access lines in the Lavaca exchange in rural western Arkansas and the Panama/Shady Point exchange in rural eastern Oklahoma.¹⁴ Lavaca did not elect to receive model-based support and receives cost-based universal service support for voice and broadband services.¹⁵ Pinnacle, an Arkansas limited liability company and wholly owned subsidiary of Lavaca, is authorized to provide service as a competitive LEC in Arkansas in areas where it has obtained interconnection agreements, and in limited areas in Oklahoma.¹⁶ Pinnacle holds a 51% membership interest in Vantage, an Arkansas limited liability company, which provides service as a competitive LEC in Arkansas and Oklahoma, as well as wholesale

⁶ *Id.* at 2.

⁷ *Id.* TVT provides incumbent LEC services in 19 local exchanges in the counties of Clay, Cloud, Dickinson, Geary, Lincoln, Mitchell, Pottawatomie, Republic, Riley, Saline, and Washington. *Id.* at 9.

⁸ 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).

⁹ Twin Valley/Southern Kansas Application at 9.

¹⁰ *Id.* at 3; *FCC Authorizes Over \$61.8 Million in Funding for Rural Broadband*, News Release (Oct. 10, 2019) (listing providers receiving support from the 2018 CAF Phase II auction).

¹¹ Twin Valley/Southern Kansas Application at 8.

¹² *Id.* at 2.

¹³ See 47 U.S.C. § 214; 47 CFR §§ 63.03-04. *Domestic Section 214 Application Filed for the Transfer of Control of Lavaca Telephone Company, Inc. to Dobson Technologies, Inc.*, WC Docket No. 20-389, Public Notice, DA 20-1467 (WCB 2020).

¹⁴ Dobson/Lavaca Application at 11.

¹⁵ Universal Service Administrative Co., Tools, <https://www.usac.org/high-cost/resources/tools/>.

¹⁶ Dobson/Lavaca Application at 11-12. Applicants state that Pinnacle is limited initially to the service territories in Oklahoma of Southwestern Bell Telephone Company, d/b/a AT&T Oklahoma and Valor Communications of Texas, LP d/b/a Windstream Communications Southwest. Applicants also state that Pinnacle currently does not provide telecommunications services to any customers. *Id.*

telecommunications services in Missouri.¹⁷

Dobson, an Oklahoma corporation, through its wholly owned subsidiaries, owns and operates a 4,000-mile fiber optic network in Oklahoma/Texas.¹⁸ Dobson Telephone Company (Dobson Telephone), an Oklahoma corporation and wholly owned subsidiary of Dobson, provides service as an incumbent LEC to approximately 7,291 access lines in western and eastern Oklahoma.¹⁹ Dobson Telephone elected to receive universal service support under the A-CAM.²⁰ Dobson Technologies-Transport and Telecom Solutions, LLC (Dobson Transport), an Oklahoma limited liability company and wholly owned subsidiary of Dobson, provides fiber-based competitive LEC services in Oklahoma and Texas.²¹ Applicants state that, post consummation, the following Oklahoma limited partnership and Cayman Islands entity will hold a 10% or greater direct interest in Dobson: Dobson CC, L.P. (Dobson CC) (77.12% equity and 100% voting interest) and Eight Bar Financial Partners I, L.P. (Eight Bar) (22.88% equity interest).²² Applicants further state that Dobson CC holds a 32.34% indirect interest in Fort Mojave Telecommunications, Inc. (Fort Mojave), an incumbent LEC serving the Fort Mojave Indian Tribe in Arizona, California, and Nevada.²³ Fort Mojave did not elect to receive model-based support and receives cost-based universal service support for its for voice and broadband services.²⁴

Discussion. The Applicants request approval to consummate transactions 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.²⁵ 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.²⁶ 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.²⁷ Such an outcome is inconsistent with the Commission's general expectation that transactions generate efficiencies that reduce the combined company's costs.²⁸

¹⁷ *Id.* at 3.

¹⁸ *Id.* at 2.

¹⁹ *Id.* at 10. Dobson provides incumbent LEC services in the Taloga, Leedey, Cheyenne, Erick, Reydon, Camargo, Roger Mills, Vici, McLoud, Newalla, Sweetwater, and Stella exchanges. Dobson serves a single cell site in Lavaca's incumbent LEC territory. In the markets served by Lavaca's competitive LEC affiliates, Pinnacle and Vantage, Dobson has fiber facilities in Poteau, Oklahoma, and Muskogee, Oklahoma. *Id.* at 13.

²⁰ 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).

²¹ Dobson/Lavaca Application at 2.

²² *Id.* at 8 and Exh. A (Post-Transaction Corporate Structure).

²³ Dobson/Lavaca Supplement at 1.

²⁴ Universal Service Administrative Co., Tools, <https://www.usac.org/high-cost/resources/tools/>.

²⁵ *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*).

²⁶ *Id.* at 4785-86, para. 20.

²⁷ *Id.*

²⁸ *Id.*

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.²⁹

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.³⁰ 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.³¹

In the TVM/Southern Kansas transaction, TVM, which is affiliated with a fixed model-based support company, TVT, seeks to acquire Southern Kansas, a cost-based support company. In the Dobson/Lavaca transaction, Dobson, which is affiliated with a model-based support company, Dobson Telephone, and a cost-based support company, Fort Mojave, seeks to acquire Lavaca, a cost-based support company. Therefore, the potential for harm caused by cost-shifting is specific to both transactions. Accordingly, to mitigate the potential for cost shifting, we grant the Applications subject to the condition adopted in the *Hargray/ComSouth Order*.³² The combined operating expenses of each post-consummation company's rate-of-return affiliates³³ 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.³⁴

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.³⁵ 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%.³⁶ For purposes of this cap, operating expenses shall include maintenance, network support/network operations/general, benefits, rent expenses, and corporate

²⁹ *Id.* at 4786, para. 21.

³⁰ *Id.* at 4788-90, paras. 26-31.

³¹ *Id.* at 4789, para. 27, n.72.

³² *Id.* at 4788-90, paras. 26-31.

³³ *See* 47 U.S.C. § 153(1).

³⁴ *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.

³⁵ *Id.* at 4789, para. 28.

³⁶ *Id.*

operations, while depreciation, return on investment, and taxes shall be excluded.³⁷

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.³⁸ This cap shall remain in effect for seven years from the consummation of the transactions.³⁹ 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.⁴⁰

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.⁴¹ 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.⁴²

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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³⁷ *Id.*

³⁸ *Id.* at 4790, para. 30.

³⁹ 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.

⁴⁰ *Id.* at 4789-90, para. 29.

⁴¹ See, e.g., *Applications of Level 3 Communications, Inc. and CenturyLink, Inc. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 32 FCC Rcd 9581, 9594, 9605, paras. 26 and 52 (2017) (finding no harm to competition in CenturyLink's incumbent LEC territory, nor outside of CenturyLink's incumbent LEC territory, where applicants operate as competitive LECs, and further finding that the transaction "will expand the on-net reach of the newly combined firm resulting in a more effective and stronger competitor against larger cable and incumbent LEC competitors, among others, particularly outside of Century Link's incumbent LEC region, where it, like Level 3, operates as a competitive LEC.").

⁴² 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.