



# PUBLIC NOTICE

Federal Communications Commission  
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DA 22-388  
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## DOMESTIC SECTION 214 APPLICATION GRANTED FOR THE TRANSFER OF CONTROL OF CABLESOUTH MEDIA III, LLC TO ITC BROADBAND HOLDINGS, LLC

### WC Docket No. 22-11

By this Public Notice, the Wireline Competition Bureau (Bureau) grants an application filed by Hunt Land Holdings, LLC (Hunt Land Holdings), CableSouth Media III, LLC d/b/a Media3 (CableSouth), and ITC Broadband Holdings, LLC (ITC Holdings) (collectively, Applicants), 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 consummate a transaction in which ITC Holdings will indirectly acquire a 35% ownership interest in, and control of, CableSouth.<sup>1</sup>

On January 31, 2022, the Bureau released a public notice seeking comment on the Application.<sup>2</sup> The Bureau did not receive comments or petitions in opposition to the Application.

### Applicants and Description of Transaction

CableSouth, a Tennessee limited liability company, is wholly-owned by CableSouth Media, LLC, a Tennessee limited liability company that is, in turn, wholly-owned by Hunt Land Holdings, a Louisiana limited liability company that does not itself provide telecommunications services.<sup>3</sup> Hunt Land Holdings and CableSouth, bidding through the Segnem Egere Consortium (Consortium), participated in and won the rights to provide service to 57,387 locations in Arkansas, Louisiana, and Mississippi through Phase I of the Rural Digital Opportunity Fund (RDOF) Auction.<sup>4</sup> The Consortium assigned its winning RDOF

<sup>1</sup> See 47 U.S.C. § 214; 47 CFR §§ 63.03-04; Application of Hunt Land Holdings, LLC and ITC Broadband Holdings, LLC for Consent to Transfer Control of Domestic Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, WC Docket No. 22-11 (filed Jan. 5, 2022) (Application). On January 26, 2022, Applicants filed a supplement to their Application. Letter from Leon Nowalsky, Counsel for Hunt Land Holdings and CableSouth, and John Beahn and Dana Zelman, Counsel for ITC Holdings, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-11 (filed Jan. 26, 2022) (Supplement). On March 2, 2022, Applicants filed a further supplement. Letter from Leon Nowalsky, Counsel for Hunt Land Holdings and CableSouth, and John Beahn and Dana Zelman, Counsel for ITC Holdings, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-11 (filed Mar. 2, 2022) (Further Supplement). Any action on this domestic section 214 application is without prejudice to Commission action on any other pending applications.

<sup>2</sup> *Domestic Section 214 Application Filed for the Transfer of Control of CableSouth Media III, LLC to ITC Broadband Holdings, LLC*, WC Docket No. 22-11, Public Notice, DA 22-99 (WCB 2022).

<sup>3</sup> Application at 2, 8. Hunt Land Holdings is owned by several U.S. citizens and U.S.-based family trusts. Supplement at Exh. B (Management and Ownership for Hunt Land Holdings, LLC).

<sup>4</sup> Application at 2-3 and n.2; Supplement at n.3 (stating that CableSouth was awarded \$152,854,440.70 over a 10 year period). See *Rural Digital Opportunity Fund Phase I Auction (Auction 904) Closes; Winning Bidders Announced*, AU Docket No. 20-34, WC Docket No. 19-126, WC Docket No. 10-90, Public Notice, 35 FCC Rcd

(continued....)

bids to CableSouth.<sup>5</sup> On March 15, 2022, the Bureau authorized CableSouth to receive RDOF support.<sup>6</sup> CableSouth is designated as an eligible telecommunications carrier (ETC) in each of the jurisdictions in which it won RDOF bids.<sup>7</sup> Under the brand names, SwyftConnect and Swyft Fiber, CableSouth currently offers broadband, video, and voice services in Arkansas, Louisiana, and Mississippi.<sup>8</sup>

ITC Holdings, a Delaware limited liability company, is affiliated with incumbent local exchange carriers (LECs) and other telecommunications service providers in Colorado, Georgia, Kansas, Nebraska, and Texas.<sup>9</sup> ITC Holdings is affiliated with several incumbent LECs and other providers through its ownership of US Connect Holdings, Inc.<sup>10</sup> These incumbent LECs receive universal service fund high-cost support through the different mechanisms of cost-based support and fixed model-based support. Specifically, South Park, Rye, Dalton Telephone, Elsie, and S&A Telephone elected to receive fixed universal service support under the Alternative Connect America Cost Model (A-CAM).<sup>11</sup> Livingston and Waverly Hall Telephone did not elect to receive model-based support and receive cost-based universal service support.<sup>12</sup>

Following consummation of the proposed transaction, Applicants state that the following U.S.-based investment entities will own a 10% or greater equity interest in ITC Holdings: HF Direct Investments Pool LLC (14.5%); 4612-Broadband Holdco, LP (14.5%); ITC Broadband Investments (QP),

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13888, Attach. A (Winning Bidder Summary) (2020); *Rural Digital Opportunity Fund Support for 7,608 Winning Bids Ready to be Authorized, Bid Defaults Announced*, AU Docket No. 20-34, WC Docket Nos. 19-126, 10-90, Public Notice, DA 21-1582, Attach. A (Ready to Authorize Long-Form Applicants and Winning Bids) (WCB 2021).

<sup>5</sup> Application at 2.

<sup>6</sup> *Rural Digital Opportunity Fund Support Authorized for 5,657 Winning Bids*, AU Docket No. 20-34, WC Docket Nos. 19-126, 10-90, Public Notice, DA 22-280, Attach. A (Authorized Long-Form Applicants and Winning Bids) (WCB 2022) (RDOF Authorization Public Notice). Applicants state that authorization of RDOF support is a condition to closing the proposed transaction. Application at 4, 10.

<sup>7</sup> Application at 2-3 (citing Arkansas Public Service Commission, Docket No. 21-037-U, Order No. 3 (May 25, 2021); Order, Louisiana Public Service Commission Docket No. S-35904 (May 25, 2021); Order, Mississippi Public Service Commission, Docket 21-UA-39 (May 17, 2021)); Supplement at 2.

<sup>8</sup> Application at 2; Supplement at 1. Applicants state that CableSouth is not affiliated with any ETCs through its existing ownership. Supplement at n.2.

<sup>9</sup> Application at 2-3; Supplement at n.2. On December 15, 2021, the Bureau granted the domestic section 214 application of ITC Broadband Operating, LLC, wholly-owned by ITC Holdings, to acquire control of Aspire Networks 1, LLC, a competitive LEC and RDOF recipient in Michigan. *Domestic Section 214 Application Granted for the Transfer of Control of Aspire Networks 1, LLC to ITC Broadband Operating, LLC*, WC Docket No. 21-415, Public Notice 21-1574 (WCB 2021) (*Aspire/ITC Public Notice*). ITC Broadband Operating, LLC consummated that transaction on December 21, 2021. Notice of Consummation, WC Docket No. 21-415 (filed Jan. 4, 2022).

<sup>10</sup> *Notice of Domestic Section 214 Authorizations Granted*, WC Docket Nos. 21-229 and 21-262, Public Notice, DA 21-903 (WCB 2021); Notice of Consummation, WC Docket No. 21-229 (filed Nov. 15, 2021). The US Connect Holdings, Inc. operating licensees are: (1) The Livingston Telephone Company (Livingston); (2) Telecom Supply, Inc. (Telecom Supply); (3) Waverly Hall Communications, Inc. (Waverly Hall Comm); (4) Waverly Hall Telephone LLC (Waverly Hall Telephone); (5) S&A Telephone Company, Inc. (S&A Telephone); (6) S&A Communications, Inc. (S&A Communications); (7) South Park LLC d/b/a South Park Telephone Company (South Park); (8) The Rye Telephone Company (Rye); (9) CableCo, LLC (CableCo); (10) Dalton Telephone Company, Inc. (Dalton Telephone); (11) Dalton Communications, Inc. (DTI); (12) Elsie Communications, Inc. (Elsie). Joint Application of USConnect Holdings, Inc. and ITC Broadband Holdings, LLC, WC Docket No. 21-229, at 1-2 (filed May 21, 2021).

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

<sup>12</sup> Universal Service Administrative Co., Tools, “ACAM, ACAM II and CAF BLS Buildout Requirements,” <https://www.usac.org/high-cost/resources/tools/>. Livingston receives cost-based support as an average schedule company. *Id.*

LLC (17.8%); Kinetic-ITC Broadband Investments, LLC (13.9%); Atlantic Engineering Group, Inc. (16.2%); and ITC Broadband Management, LP (15%).<sup>13</sup> Applicants state that no other entity or individual will hold directly or indirectly a 10% or greater interest in ITC Holdings.<sup>14</sup>

Pursuant to the terms of the proposed transaction, which Applicants state will occur through a series of steps, ITC Holdings will indirectly acquire approximately 35% of the voting and equity interests in CableSouth from Hunt Land Holdings, along with certain shareholder rights.<sup>15</sup> Post-consummation, ITC Holdings will “have the right to designate a minority of the members of the board of CableSouth’s parent company and an observer seat, as well as have the right to select two of the six planned managers for the board of CableSouth’s parent company going forward. The managers designated by ITC Holdings can be removed or replaced only by ITC Holdings or its designees. ITC Holdings (or its appointed managers) will also acquire a veto right over a variety of business activities, including, but not limited to: (i) effectuating a sale of the company, pledging all or substantially all assets of any CableSouth entity, filing for bankruptcy or liquidation, or merging or consolidating with any other person; (ii) amending any operative governance documents of the company; (iii) approving an annual budget; and (iv) establishing compensation levels for and removal of officers.”<sup>16</sup> Applicants acknowledge that these rights, coupled with a 35% indirect ownership stake, would provide ITC Holdings with a *de facto* controlling interest in CableSouth.<sup>17</sup> Upon consummation, the existing beneficial owners of CableSouth will continue to indirectly hold a 65% interest in CableSouth.<sup>18</sup>

Applicants assert that a grant of the Application would serve the public interest, convenience, and necessity.<sup>19</sup> They certify that the proposed transaction would not result in any alteration to CableSouth’s RDOF network buildout plans,<sup>20</sup> that they will adhere to all Commission requirements associated with RDOF funding,<sup>21</sup> and that “following the construction of its RDOF network, CableSouth will provide gigabit broadband and VoIP service to end-user customers in Arkansas, Louisiana, and Mississippi.”<sup>22</sup> They assert that ITC Holdings has significant industry and financial expertise in managing and investing in fiber networks and that “by leveraging this expertise and its extensive financial resources, ITC Holdings will better enable CableSouth to address technical and engineering matters and optimize build-out of its RDOF-supported network, whether in Arkansas, Louisiana, or Mississippi.”<sup>23</sup> They state that the proposed transaction would be transparent to prospective customers and to CableSouth’s existing customers, who would continue to receive service pursuant to existing terms and conditions.<sup>24</sup>

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<sup>13</sup> Application at 6-8; Supplement at 2-3 and Exh. C (Pre- and Post-Transaction Ownership Charts). All individual members and majority owners of ITC Holdings, who are identified in the Supplement, are U.S. citizens. Supplement at 2-3 and Exh. A (Senior Management Team of ITC Broadband Holdings, LLC)..

<sup>14</sup> Application at 8.

<sup>15</sup> *Id.* at 3-4.

<sup>16</sup> Supplement at 2.

<sup>17</sup> Application at n.7; Supplement at 2.

<sup>18</sup> Application at 4; Supplement at 2.

<sup>19</sup> Application at 9-11; Supplement at 3.

<sup>20</sup> Application at 10; Supplement at 2.

<sup>21</sup> Application at 10.

<sup>22</sup> *Id.* at 8.

<sup>23</sup> Supplement at 1.

<sup>24</sup> Application at 5, 11.

## Discussion

We find, upon consideration of the record, that grant of the Application will serve the public interest, convenience, and necessity.<sup>25</sup> To make this determination under Commission precedent, we consider whether the proposed transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes.<sup>26</sup> We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.<sup>27</sup> The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.<sup>28</sup>

We find that there are no potential public interest harms identified in the record. First, the proposed transaction likely will not adversely affect or eliminate competition as ITC Holdings' affiliates do not operate in the areas in which CableSouth provides service.<sup>29</sup> Further, Applicants state that the proposed transaction will be transparent to the customers of the Applicants, who will continue to be served pursuant to each Applicant's existing operations and existing terms and conditions, and therefore, we expect no harm to existing customers to result from the transaction.<sup>30</sup>

Second, Applicants certify that they will meet all relevant RDOF support obligations,<sup>31</sup> and we expect that the proposed transaction will not negatively impact these obligations. CableSouth and ITC Holdings, which will both hold ownership interests post-transaction, assert that they will "work together to build out CableSouth's new RDOF-supported network in Arkansas, Louisiana, and Mississippi, over which they will provide gigabit broadband service to residential customers."<sup>32</sup> Indeed, Applicants have confirmed that "the transaction will not result in any alternation to the buildout plans" that CableSouth

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<sup>25</sup> 47 U.S.C. § 214(a); 47 C.F.R. § 63.03; *Telecommunications Carriers Eligible for Universal Service Support*, WC Docket No. 09-197, *Connect America Fund*, WC Docket No. 10-90, Order, 36 FCC Rcd 9384, para. 30 (WCB 2021) ) (requiring ETCs to receive approval from the Commission prior to undertaking a transfer of control or assets).

<sup>26</sup> See, e.g., *Application of Verizon Communications Inc. and América Móvil S.A.B. de C.V for Consent to Transfer Control of International Section 214 Authorization*, GN Docket No. 21-112; IBFS File No. ITC-T/C-20200930-00173, Memorandum Opinion and Order, FCC 21-121, at para. 21 (rel. Nov. 22, 2021) (*Verizon-TracFone Order*) (citing *China Mobile International (USA) Inc., Application for Global Facilities-Based and Global Resale International Telecommunications Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended*, Memorandum Opinion and Order, 34 FCC Rcd 3361, 3366, para. 9 (2019); *Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corporation (and subsidiaries, debtors-in-possession), Assignors, to Time Warner Cable Inc. (subsidiaries), Assignees; Adelphia Communications Corporation, (and subsidiaries, debtors-in-possession), Assignors and Transferors et al.*, MB Docket No. 05-192, Memorandum Opinion and Order, 21 FCC Rcd 8203, 8219-21, paras. 27-28 (2006) (*Adelphia-TWC Order*)).

<sup>27</sup> See *Verizon-TracFone Order* at para. 21 (citing *Applications of AT&T Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 14-90, Memorandum Opinion and Order, 30 FCC Rcd 9131, 9140, para. 18 (2015) (*AT&T-DIRECTV Order*) (further internal citations omitted).

<sup>28</sup> See *Verizon-TracFone Order* at para. 21 (citing *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 18; *Adelphia-TWC Order*, 21 FCC Rcd at 8217, para. 23; *Application of EchoStar Communications Corp., General Motors Corp., and Hughes Electronics Corp., Transferors, and EchoStar Communications Corp., Transferee*, CS Docket No. 01-348, Hearing Designation Order, 17 FCC Rcd 20559, 20574, para. 25 (2002) (*EchoStar-DIRECTV HDO*) (further internal citations omitted).

<sup>29</sup> Application at 11.

<sup>30</sup> *Id.* at 5, 11.

<sup>31</sup> Supplement at Attachs. (Certification of Robert Mills, Chief Financial Officer, ITC Holdings; Certification of Robert Leithman, Manager, Hunt Land Holdings).

<sup>32</sup> *Id.* at 4-5.

submitted to the Commission to qualify for RDOF funding.<sup>33</sup> Moreover, CableSouth remains financially, managerially, and technically obligated to meet all public interest and performance obligations associated with the receipt of RDOF funding in accordance with the Commission’s pre-transaction approval of its qualifications. Applicants have attested that, following consummation of the proposed transaction, CableSouth will continue to have the necessary managerial and operational expertise to meet these RDOF commitments.<sup>34</sup> They further state that ITC Holdings will provide equity financing for CableSouth, which is in addition to the amount that Hunt Land Holdings contemplated investing in connection with the RDOF funding.<sup>35</sup> We expect that this additional funding, together with certain debt financing contemplated by a credit agreement that Applicants described in the record, will not compromise CableSouth’s support obligations and should place it in a strong position to meet its obligations. In addition, CableSouth will be subject to ongoing oversight and must comply with annual RDOF reporting and certification requirements.<sup>36</sup>

We next consider whether the proposed transaction is likely to generate verifiable, transaction-specific public interest benefits.<sup>37</sup> Applicants must provide evidence of a claimed benefit to allow the Commission to verify its likelihood and magnitude.<sup>38</sup> Where potential harms appear unlikely, as is the case with the Application before us here, the Commission accepts a lesser degree of magnitude and likelihood than when harms are present.<sup>39</sup>

Applicants state that following construction of the RDOF network, CableSouth will provide gigabit broadband service and VoIP service to end user customers and anticipate that “the additional financial resources from ITC Holdings, as well as its managerial and technical expertise in building out broadband networks, will put CableSouth in an optimal position to accelerate its network deployment and provide high quality broadband service to customers in Arkansas, Louisiana, and Mississippi in the near term, as well as fulfill its RDOF public interest obligations in the long term.”<sup>40</sup> The Commission has specified that ensuring consumers receive new or additional services is an important public interest factor<sup>41</sup> and accelerating private sector deployment of advanced services is one of the aims of the Act.<sup>42</sup> Based on the record of this proceeding, we find it likely that the proposed transaction would result in some public interest benefits, including an investment of capital from ITC Holdings that is in addition to CableSouth’s own investment.<sup>43</sup> This could accelerate broadband deployment so that CableSouth can

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<sup>33</sup> Application at 10; Supplement at 2.

<sup>34</sup> Supplement at 2 and Exh. A (confirming that the existing owners of Hunt Land Holdings will remain majority beneficial owners and that there are no plans to change that existing management, and providing information about the ITC Holdings’ managers); *see also Aspire/ITC Public Notice* at 3-4 (referencing the senior management team of ITC Holdings).

<sup>35</sup> *See* Further Supplement at 1-2 and Attach. B (credit agreement).

<sup>36</sup> *See RDOF Authorization Public Notice* at 1-8.

<sup>37</sup> *See AT&T/DIRECTV Order*, 30 FCC Rcd at 9237, para. 273-74.

<sup>38</sup> *See id.* at 9237-38, paras. 275-76.

<sup>39</sup> *See id.*

<sup>40</sup> Application at 8, 10.

<sup>41</sup> *See, e.g., AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 19.

<sup>42</sup> *See Verizon-TracFone Order* at para. 22 (citing 47 U.S.C. §§ 254, 332(c)(7), 1302; Telecommunications Act of 1996, Preamble, Pub. L. No. 104-104, 110 Stat. 56 (1996) (one purpose of the Act is to “accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services”)).

<sup>43</sup> Applicants state that ITC Holdings has made a \$50 million additional funding commitment to CableSouth. Further Supplement at 1. They state that they are “developing a strategy for accelerating network deployment but no timeline has been established.” Supplement at 1.

expand service offerings more quickly and better compete. Absent any potential harms, and considering that the proposed transaction is likely to yield some benefits, we find, on balance, that the proposed transaction serves the public interest.

### **Grant Subject to Condition**

The Applicants request approval to consummate a transaction 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>44</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 the fixed model-based support company to the cost-based support company.<sup>45</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>46</sup> Such an outcome is inconsistent with the Commission's general expectation that transactions generate efficiencies that reduce the combined company's costs.<sup>47</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>48</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>49</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>50</sup>

Because ITC Holdings' affiliates, Waverly Hall Telephone and Livingston, receive cost-based support, and ITC Holdings will acquire a controlling ownership interest in CableSouth, which will receive fixed support as an Auction 904 recipient, the potential for harm caused by cost-shifting is specific to the transaction.<sup>51</sup> Accordingly, to mitigate the potential for cost shifting, we grant the Application subject to the condition adopted in the *Hargray/ComSouth Order*.<sup>52</sup> The combined operating expenses of the post-

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<sup>44</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*).

<sup>45</sup> *Id.* at 4785-86, para. 20.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 4786, para. 21.

<sup>49</sup> *Id.* at 4788-90, paras. 26-31.

<sup>50</sup> *Id.* at 4789, para. 27, n.72. See also *Domestic Section 214 Application for the Transfer of Control of Lavaca Telephone Company, Inc. to Dobson Technologies Inc.*, WC Docket No. 20-389, Order on Reconsideration, FCC 21-63, para. 14 (2021) (reaffirming the Commission's delegation to the Bureau to continue to apply the mixed support condition where necessary).

<sup>51</sup> ITC Holdings has also acquired Aspire Networks 1, LLC, which receives RDOF support. See *infra* n.9.

<sup>52</sup> *Hargray/ComSouth Order*, 33 FCC Rcd at 4788-90, paras. 26-31.

consummation company's rate-of-return affiliates<sup>53</sup> 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.<sup>54</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 HCLS and CAF-BLS.<sup>55</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>56</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>57</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>58</sup> This cap shall remain in effect for seven years from the consummation of the transactions.<sup>59</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>60</sup>

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<sup>53</sup> See 47 U.S.C. § 153(2).

<sup>54</sup> *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.

<sup>55</sup> *Id.* at 4789, para. 28. The potential for a transaction-specific harm exists if Livingston converts from an average schedule company to a cost company, thereby triggering an incentive to shift costs from affiliated companies receiving fixed model-based support to Livingston. If Livingston converts to a non-average schedule cost company, that conversion will trigger application of the condition and associated requirements established in the *Hargray/ComSouth Order*, to which ITC Holdings will be subject, and as discussed in the Average Schedule Grant Public Notice. *Domestic Section 214 Applications Granted Subject to Condition*, WC Docket Nos. 17-101, 17-365, 18-68, 18-94, 18-95, 18-177, Public Notice, 33 FCC Rcd 6784 (WCB 2018) (Average Schedule Grant Public Notice) (granting, subject to the Hargray/ComSouth condition, transfers of control involving average schedule companies and fixed model-based support companies).

<sup>56</sup> *Hargray/ComSouth Order*, 33 FCC Rcd at 4789, para. 28.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 4790, para. 30.

<sup>59</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 transaction.

<sup>60</sup> *Id.* at 4789-90, para. 29.

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 by ITC Holdings and CableSouth with all applicable RDOF obligations,<sup>61</sup> and subject to the *Hargray/ComSouth* condition described above.

Pursuant to section 1.103 of the Commission's rules, 47 CFR § 1.103, the grant is effective upon release of this Public Notice.<sup>62</sup> 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 Jodie May, Wireline Competition Bureau, Competition Policy Division, (202) 418-0913.

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<sup>61</sup> See *RDOF Authorization Public Notice* at 1-8 (listing obligations of authorized Auction 904 support recipients).

<sup>62</sup> We direct Applicants to submit, within 30 days of closing the proposed transaction, a notice in WC Docket No. 22-11 that the proposed transaction has closed with the consummation date, and also provide a courtesy copy of the notice to [hcinfo@usac.org](mailto:hcinfo@usac.org).