



# PUBLIC NOTICE

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## DOMESTIC SECTION 214 APPLICATION GRANTED SUBJECT TO CONDITION

### WC Docket No. 22-99

By this Public Notice, the Wireline Competition Bureau (Bureau) grants, as conditioned, an application filed by the former shareholders of the Pennsylvania Telephone Company, Inc. (PTC) and by New Lisbon Holdings, Inc. (NLHI) and its wholly-owned subsidiary, New Lisbon Telephone Company, Inc. (NLTC) (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 transfer control of PTC to NLTC, which occurred on July 31, 2020.<sup>1</sup>

On March 9, 2022, the Bureau released a public notice seeking comment on the Application.<sup>2</sup> We did not receive comments or petitions in opposition to the Application.

### Applicants and Description of Transaction

PTC, a Pennsylvania corporation, provides service to approximately 840 access lines as a rural incumbent local exchange carrier (LEC) in the southern portions of Clinton and Lycoming Counties in south central Pennsylvania.<sup>3</sup> PTC did not elect to receive model-based support and receives cost-based universal service support.<sup>4</sup>

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<sup>1</sup> See 47 U.S.C. § 214; 47 CFR §§ 63.03-04. Application for the Transfer of Control of Domestic Authorization of Pennsylvania Telephone Company, WC Docket No. 22-99 (filed February 25, 2020) (Application). Applicants consummated the transaction without prior authorization from the Commission and filed a request for special temporary authority (STA) to allow them to continue to provide service to customers while the domestic section 214 application is pending. On March 9, 2022, the Bureau granted the STA for a period of 60 days. Letter from Charles E. Thomas, Jr., Counsel to the Former Shareholders of Pennsylvania Telephone Company, Inc., and Thomas J. Moorman, Counsel to the Current Shareholders of New Lisbon Telephone Company, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-99 (filed Feb. 25, 2022). On May 5, 2022, the Bureau granted the Applicant's request to extend the STA for a period of 60 additional days. Letter from Charles E. Thomas, Jr., Counsel to the Former Shareholders of Pennsylvania Telephone Company, Inc., and Thomas J. Moorman, Counsel to the Current Shareholders of New Lisbon Telephone Company, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-99 (filed May 4, 2022). A grant of the domestic section 214 application is without prejudice to any enforcement action by the Commission for non-compliance with the Communications Act of 1934, as amended, or the Commission's rules.

<sup>2</sup> *Domestic Section 214 Application Filed for the Transfer of Control of Pennsylvania Telephone Company, Inc. to New Lisbon Holdings, Inc.*, WC Docket No. 22-99, Public Notice, DA 22-243 (WCB 2022).

<sup>3</sup> Application at 2, n.2, 10.

<sup>4</sup> *Id.* at 2-3. See Universal Service Administrative Co., Tools, "ACAM, ACAM II and CAF BLS Buildout Requirements," <https://www.usac.org/high-cost/resources/tools/>.

NLTC, an Indiana corporation, provides service as a rural incumbent LEC in Henry County in south central Indiana.<sup>5</sup> NLTC did not elect to receive model-based support and receives cost-based universal service support.<sup>6</sup>

NLHI, a holding company, does not provide telecommunications services and is owned and controlled by a Board of Directors that is comprised of eight U.S. citizens.<sup>7</sup> NLHI's wholly-owned subsidiary, New Lisbon Broadband and Communications, LLC (NLBC), is a competitive LEC in Indiana.<sup>8</sup> NLBC received authorization for Rural Broadband Experiments (RBE) support for a 10-year term beginning in 2016.<sup>9</sup> NLBC also participated in and won the rights to provide service to 281 locations in Indiana through Phase I of the Rural Digital Opportunity Fund (RDOF) Auction.<sup>10</sup>

The former shareholders of PTC sold 100% of all issued and outstanding shares to NLTC on July 31, 2020 without prior authorization from the Commission.<sup>11</sup> On August 14, 2021, Applicants consummated a *pro forma* transaction resulting in NLTC, PTC, and NLBC becoming wholly-owned subsidiaries of NLHI.<sup>12</sup>

### **Discussion**

The Applicants have consummated 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>13</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 model-based support company to the cost-based support company.<sup>14</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>15</sup> Such an outcome is inconsistent with the Commission's general

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<sup>5</sup> Application at 10.

<sup>6</sup> *Id.* at 2-3. See Universal Service Administrative Co., Tools, "ACAM, ACAM II and CAF BLS Buildout Requirements," <https://www.usac.org/high-cost/resources/tools/>.

<sup>7</sup> Application at 9.

<sup>8</sup> *Id.* at 2, n.3. NLBC provides wholesale broadband services within the NLTC service area, as well as cable television service in Henry County, Randolph County, and Wayne County in Indiana. *Id.*

<sup>9</sup> *Id.* at 3 (citing *Rural Broadband Experiment Support Authorized for Winning Bid Submitted by New Lisbon Broadband and Communications, LLC*, WC Docket Nos. 10-90, 14-259, Public Notice, 31 FCC Rcd 4405 (WCB 2016)).

<sup>10</sup> *Rural Digital Opportunity Fund Support Authorized for 2,576 Winning Bids*, AU Docket No. 20-34, WC Docket Nos. 10-90, 19-126, Public Notice, DA 21-151, Attach. A (Authorized Long Form Applicants and Winning Bids) (WCB/OEA, Feb. 14, 2022).

<sup>11</sup> Application at 1-3, 9.

<sup>12</sup> *Id.* at 2, n.3.

<sup>13</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>14</sup> *Id.* at 4785-86, para. 20.

<sup>15</sup> *Id.*

expectation that transactions generate efficiencies that reduce the combined company's costs.<sup>16</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>17</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>18</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>19</sup>

NLHI wholly-owns NLTC and, as a result of the transaction, PTC. Both NLTC and PTC receive cost-based support. NLHI also wholly-owns NLBC, which, at the time of the transaction closing, received a fixed level of high-cost support through the RBE program, and will now also receive a fixed level of RDOF auction support. Because the companies received high-cost universal service support under different support mechanisms when the transaction closed, the potential for harm caused by cost-shifting is specific to this transaction. Accordingly, to mitigate the potential for cost shifting, we grant the Application subject to the condition adopted in the *Hargray/ComSouth Order*.<sup>20</sup> The combined operating expenses of the post-consummation company's rate-of-return affiliates<sup>21</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>22</sup> This cap shall remain in effect for seven years from the consummation of the transaction.<sup>23</sup> The condition will 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>24</sup>

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 4786, para. 21.

<sup>18</sup> *Id.* at 4788-90, paras. 26-31.

<sup>19</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>20</sup> *Hargray/ComSouth Order*, 33 FCC Rcd at 4788-90, paras. 26-31.

<sup>21</sup> See 47 U.S.C. § 153(2).

<sup>22</sup> The cap will apply to cost recovery under both High-Cost Loop Support (HCLS) and Connect America Fund-Broadband Loop Support (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. 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%. 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. See *Hargray/ComSouth Order*, 33 FCC Rcd at 4789, para. 28. 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. *Id.* at 4790, para. 30.

<sup>23</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.

<sup>24</sup> *Id.* at 4789-90, para. 29.

Because the transaction closed without prior Commission approval on July 31, 2020, we direct NLHI, NLTC, and PTC to work with the National Exchange Carrier Association (NECA) to establish a process for promptly coming into compliance with the *Hargray/ComSouth* condition, and to submit a status report in WC Docket No. 22-99 within 30 days of the date of this Public Notice explaining the process and steps they will take to comply with the condition. We further direct NLHI, NLTC, and PTC to provide a courtesy copy of the status report to the Universal Service Administrative Company (USAC) at [hcinfo@usac.org](mailto:hcinfo@usac.org).<sup>25</sup>

We find that grant of the Application listed above, subject to compliance with the condition, will serve the public interest, convenience, and necessity.<sup>26</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 Application discussed in this Public Notice subject to compliance with the condition described above.<sup>27</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 Dennis Johnson, Wireline Competition Bureau, Competition Policy Division, (202) 418-0809.

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<sup>25</sup> *Id.* 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, we direct the covered entities to submit their relevant cost data to NECA. We direct NECA to provide the dollar amount of the operating expense costs that will be capped pursuant to this Public Notice to USAC within 30 days following submission of any covered entity's cost data. We further direct NECA to provide USAC with the reductions in HCLS and 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>26</sup> See 47 U.S.C. § 214(a); 47 CFR § 63.03.

<sup>27</sup> The Applicants provide incumbent LEC services in their respective study areas. Within 30 days of this Public Notice, 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.