

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Domestic Section 214 Applications Granted,)	WC Docket Nos. 22-421 and 23-29
Subject to Condition, for the Transfer of Control of)	
Germantown Telephone Company, Inc. and)	
Valstar, Inc. to Archtop Fiber LLC and Hancock)	
Telephone, Inc. and Hancock Long Distance, Inc.)	
to Archtop Fiber LLC)	

ORDER ON RECONSIDERATION

Adopted: September 1, 2023

Released: September 1, 2023

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order on Reconsideration, the Wireline Competition Bureau (Bureau) *sua sponte* reconsiders one aspect of its decision to grant, as conditioned, two domestic section 214 transfer of control applications related to the same transferee, Archtop Fiber LLC (Archtop), pursuant to section 214(a) of the Communications Act of 1934, as amended (Act), and sections 63.03-63.04 of the Commission’s rules.¹ Pursuant to section 1.113(a) of the Commission’s rules, the Bureau may, on its own motion, reconsider any action made or taken within 30 days from the date of public notice of such action.²

¹ See 47 U.S.C. § 214; 47 CFR §§ 63.03-04. The first application, filed by Donald C. and Madeline S. Bohnsack Irrevocable Trust I, Catherine B. Bohnsack, Christina N. Bohnsack, Corey A. Bohnsack Smith, Laurel Jurkowski, and Leslie Tompkins (collectively, the GTel Transferors), Germantown Telephone Company, Inc.(GTel), Valstar, Inc. (Valstar) (together, with GTel, the GTel Licensees), and Archtop, requested consent to transfer control of the GTel Licensees from the GTel Transferors to Archtop. See Application for Consent to Transfer Control of Domestic and International Section 214 Authorization Holders, WC Docket No. 22-421 (filed Dec. 1, 2022) (GTel Application). The second application, filed by RCW Family, LLC, the Margaret J.B. Reese Credit Shelter Trust, Suzanne B. Feehan, Maureen L. Mackin, and June B. Nolan (collectively, the Hancock Transferors), the Hancock Telephone Company, Inc., Hancock Long Distance, Inc. (together, the Hancock Licensees), and Archtop, requested consent to transfer control of the Hancock Licensees from the Hancock Transferors to Archtop. See Application for Consent to Transfer Control of Domestic and International Section 214 Authorization Holders, WC Docket No. 23-29 (filed Jan. 12, 2023) (Hancock Application). On February 24, 2023, the Bureau released a public notice seeking comment on the GTel Application and the Hancock Application (together, the Applications). *Domestic Section 214 Applications Granted, Subject to Condition, for the Transfer of Control of Germantown Telephone Company, Inc. and Valstar, Inc. to Archtop Fiber LLC*, WC Docket Nos. 22-421 and 23-29, DA 23-147 (WCB 2023) (*Archtop Accepted-for-Filing Public Notice*). The Bureau did not receive any comments or petitions in opposition to the Applications. On August 3, 2023, the Bureau released a public notice granting the Applications. See *Domestic Section 214 Applications Granted, Subject to Condition, for the Transfer of Control of Germantown Telephone Company, Inc. and Valstar, Inc. to Archtop Fiber LLC*, WC Docket Nos. 22-421 and 23-29, DA 23-657 (WCB 2023) (*Archtop Grant Public Notice*). Archtop is also the transferee in a pending transfer of control application with the Commission. See *Domestic Section 214 Application Filed for the Transfer of Control of Alteva of Warwick LLC to Archtop Fiber LLC*, WC Docket No. 23-178, Public Notice, DA 23-683 (WCB 2023).

² 47 CFR § 1.113(a).

In doing so, the Bureau may take any action it could take in acting on a petition for reconsideration, including reversing or modifying the original order.³

2. On our own motion, we modify our August 3, 2023 *Archtop Grant Public Notice* as it pertains to the entities to which we applied the “mixed support condition” that the Commission adopted in the *Hargray/ComSouth Order*.⁴ Specifically, we exclude from the scope of the mixed support condition Lavaca Telephone Company of Arkansas (Lavaca Arkansas) and Lavaca Telephone Company of Oklahoma (Lavaca Oklahoma), which are subsidiaries of Dobson Fiber, LLC (Dobson; Lavaca Arkansas and Lavaca Oklahoma, together, Dobson Subsidiaries). The Dobson Subsidiaries are owned in part by a disclosable interest holder of Archtop. As stated in the *Archtop Grant Public Notice*, the condition will remain in place for all other “post-consummation company’s rate-of-return affiliates receiving cost-based support,” including Germantown Telephone Company, Inc. (GTel) and Hancock Telephone Company Inc. (Hancock, together, the Archtop Subsidiaries).⁵

II. BACKGROUND

3. On August 3, 2023, the Bureau released the *Archtop Grant Public Notice*.⁶ To mitigate the potential for cost shifting arising as a result of the proposed transactions, we applied the mixed support condition to the grant of the Applications. Because Archtop sought to acquire control of GTel, which receives cost-based universal service support, and Hancock, which receives model-based universal service support, we referred to this as a “mixed support” transaction and identified a risk that the combined companies could have an economic incentive to shift certain shared or common costs from the model-based support company to the cost-based support company.⁷ Pursuant to established precedent in the *Hargray/ComSouth Order*, we stated that the combined operating expenses of each post-consummation company’s rate-of-return affiliates receiving cost-based support 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.⁸ We also explained that a disclosable interest holder of Archtop, OPSEU Pension Plan Trust Fund (OPTrust), through affiliates holds a greater than 10% interest in Dobson Technologies, Inc. d/b/a Dobson Fiber, which in turn wholly owns several incumbent LECs, including Lavaca Arkansas and Lavaca Oklahoma, which both receive cost-based support.⁹ We concluded with regard to the Applications that “the result of consummation of these mergers would be that the respective previous three-year average of the operating expense would be used to set a seven-year cap for the operating expense for Hancock Telephone Company (SAC 150099), Germantown Telephone Company (SAC 150097), Lavaca Telephone Company of Arkansas (SAC 401704), and Lavaca Telephone Company of Oklahoma (SAC 431704). The cap will apply to the combined operating expenses of the post-consummation companies and any other existing rate-of-return

³ 47 CFR §§ 1.106(k)(1), 1.113(a).

⁴ *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*), recon., *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, 36 FCC Rcd 8859, 8864, para. 14 (2021) (*Dobson Reconsideration Order*).

⁵ See *Archtop Grant Public Notice* at 4-5 and n. 28.

⁶ *Archtop Grant Public Notice* at 1-7.

⁷ *Archtop Grant Public Notice* at 4-5. GTel wholly owns Valstar, a telecommunications entity that receives fixed Auction 903 universal support. *Id.* at 3-5.

⁸ *Archtop Grant Public Notice* at 5.

⁹ *Archtop Grant Public Notice* at 2, n.7, 4-5; *Archtop Accepted-for-Filing Public Notice*, at 2, n.6.

affiliates that it may acquire during the time in which the condition is in effect (together, covered entities).”¹⁰

4. Applicants had identified the fixed and model-based support entities described above in the record and acknowledged that the Applications “separately, and when considered together, present mixed support scenarios.”¹¹ On August 23, 2023, Applicants filed a supplement clarifying that the common disclosable interest holder Archtop and Dobson share, OPTrust, “is simply an institutional investor that holds disclosable interests in several different FCC licensees who happens to have operating subsidiaries that receive cost-based and model support,” and does not exert control over Archtop and Dobson.¹² Applicants assert that the Dobson Subsidiaries are not within the scope of Archtop’s operations and have no direct relation to the Archtop Subsidiaries.¹³ Applicants state that Archtop has no ability to control the operating expenses of Dobson or its subsidiaries, and Dobson has no ability to control the operating expenses of Archtop or its subsidiaries.¹⁴ Overall, Applicants state that the Archtop Subsidiaries do not share operations or common costs with the Dobson Subsidiaries, that the companies’ books and accounts are entirely unrelated and separate, and the companies operate in different states.¹⁵

III. DISCUSSION

5. We find that Applicants have demonstrated that there is likely no risk of cost shifting that would result from Archtop’s investor’s ownership of the Dobson Subsidiaries, and thus we do not find it “necessary” to apply a condition capping support to the Dobson Subsidiaries.¹⁶ In the *Hargray/ComSouth*

¹⁰ *Id.* at n.28. As we noted in the *Archtop Grant Public Notice*, in authorizing certain previous transactions, the Bureau applied the mixed support condition to Lavaca Telephone Company, Inc. d/b/a Pinnacle Communications (Lavaca), which is the parent company of Lavaca Arkansas and Lavaca Oklahoma. *Archtop Grant Public Notice* at 4 and n.22 (“Because Archtop’s subsidiary, DTC, receives fixed A-CAM model support, while DTC’s subsidiary, Lavaca, receives cost-based CAF-BLS/HCLS support, these entities are already subject to the *Hargray/ComSouth Order*.”); see *Domestic Section 214 Applications Granted Subject to Condition*, WC Docket Nos. 20-388 and 20-389, Public Notice, 36 FCC Rcd 320, 323-24 (WCB 2021) (*2021 Dobson/Lavaca Grant Public Notice*); *Domestic 214 Application Granted for the Transfer of Control of Hargray Acquisition Holdings, LLC and its Subsidiaries to Cable One, Inc.*, WC Docket No. 21-69, 36 FCC Rcd 7647, n.28; *Notice of Domestic Section 214 Authorization Granted*, WC Docket No. 21-378, DA 21-1430, n.4 (WCB 2021); *Notice of Domestic Section 214 Authorization Granted*, WC Docket No. 21-378, Public Notice, DA 21-1430, n.4 (WCB 2022); *Domestic Section 214 Application Granted Subject to Condition*, WC Docket No. 22-110, Public Notice, DA 22-1092, n.4 (WCB 2022); *Dobson Reconsideration Order*, 36 FCC Rcd at 8860, para. 5, 8862, para. 10 (excluding an entity, Fort Mojave Telecommunications, Inc., from the Dobson mixed support condition, based on information from Dobson that the entity shared no costs with any Dobson affiliates and maintained separate financial counting). The *Archtop Grant Public Notice* would have reset, or started again from year one, the seven year sunset date that we previously imposed on Lavaca and the Dobson Subsidiaries, as well as requiring an update to the averaged combined operating expenses of the three calendar years preceding the transactions’ closing date. *Archtop Grant Public Notice* at n.28

¹¹ Letter from Keith J. Roland, Counsel to Transferors and Licensees, and K.C. Halm, Counsel to Transferee, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-421, at 2 (filed Feb. 13, 2023).

¹² Letter from K.C. Halm, Paul B. Hudson, John C. Nelson, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-421, at 3 (filed Aug. 23, 2023) (*August 23 Supplement*).

¹³ *Id.* at 2-3.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Dobson Reconsideration Order*, 36 FCC Rcd at 8864, para. 14 (reaffirming the Commission’s delegation of authority to the Bureau to “continue to apply the condition where necessary to remedy a potential public interest harm caused by a mixed support transaction, including in transactions in which post-merger affiliates have common control, common costs, cost sharing, or consolidation of corporate books. We also direct the Bureau to exclude specific affiliates in a mixed support transaction from the condition if no potential public interest harm could occur

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Order, the Commission sought to prevent cost shifting and to protect the finite resources of the high-cost universal service fund by imposing in certain transactions a limited condition that capped high-cost universal service support based on the operating expenses of the entity receiving cost-based support.¹⁷ Because the cost shifting incentive remediated through the mixed support condition is directly tied to “shared or common costs,”¹⁸ the Commission has found that there could be an exception to the risk of cost shifting and thus no harm to remedy in cases where there are no common costs, cost sharing, or consolidation of corporate books between the post-consummation companies in a transaction.¹⁹ In such cases, the Commission allows the Bureau to exclude transaction entities from the mixed support condition.²⁰

6. In the specific circumstances in these transactions and based on the information in the *August 23 Supplement*, we agree with Applicants that the cost shifting that the mixed support condition was designed to address is likely not possible between the Dobson Subsidiaries and Archtop.²¹ The Applicants attest to the fact that the Dobson Subsidiaries are not within Archtop’s ownership or control.²² Applicants demonstrate that, although OPTrust has a disclosable interest in Archtop, it does not share common control nor is it a parent company of Archtop.²³ The Commission has stated that the cost shifting incentive remediated through the mixed support condition is directly tied to “shared or common costs.”²⁴ Applicants attest to the fact that Archtop and Dobson do not share any common costs; lack the ability to control the operating expenses of each other; and that the Archtop Subsidiaries do not share operations with the Dobson Subsidiaries.²⁵ Additionally, the Applicants assert that the companies’ books and accounts are entirely unrelated and separate, and the companies operate in different states.²⁶ We find

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because of the lack of majority control and common costs, cost sharing, and/or consolidation of financial accounts.”).

¹⁷ *Hargray/ComSouth Order*, 33 FCC Rcd at 4788-90, paras. 26-31. 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. *Id.* at 4789, para. 27, n.72; *Dobson Reconsideration Order*, 36 FCC Rcd at 8864, para. 14.

¹⁸ *Dobson Reconsideration Order*, 36 FCC Rcd at 8863, para. 11.

¹⁹ *Id.* at 8859 and 8863-64. For example, in the context of the *Dobson Reconsideration Order*, the Commission found cost-shifting to be unlikely there because (1) there was no connection between the companies other than a single director on the board of an affiliate in which Dobson’s upstream ownership had a non-controlling minority interest, and (2) Dobson has affirmed that it had no control over the costs, business decisions, or management of that affiliate. *Id.* at 8862-64, paras. 8-14.

²⁰ *Dobson Reconsideration Order*, 36 FCC Rcd at 8864, para. 14

²¹ *August 23 Supplement* at 1-3.

²² *Id.* at 2.

²³ *Id.*

²⁴ *Hargray/ComSouth Order*, 33 FCC Rcd at 4785-86, para. 20. In the *Hargray/ComSouth Order*, the Commission contemplated the presence of a common control relationship in order to shift costs, citing an example in which a company receiving model-based support rents a headquarters building, and after merging with a legacy cost-based company, allocates a share of the rental costs to the cost-based company, thereby making the cost-based company eligible for higher universal service support even though neither company had increased investment. *Id.* at 4787-88, para. 25.

²⁵ *August 23 Supplement* at 2.

²⁶ *Id.* By contrast, in cases where there are common costs, cost sharing, or consolidation of corporate books, it would be difficult for parties holding partial interests in a legacy cost-based entity to show that there is no possibility of the type of cost shifting that the mixed support condition is designed to address. For example, the Commission has stated that a minority interest holder can have control when it possesses the ability to “dominate the

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Applicants' arguments convincing and hold that, based on these facts, we will modify the application of the mixed support condition in the *Archtop Grant Public Notice* to exclude the Dobson Subsidiaries.

7. Therefore, on our own motion, we modify the *Archtop Grant Public Notice* to exclude the Dobson Subsidiaries from the application of the mixed support condition. The Dobson Subsidiaries will be subject to the continued application of the mixed support condition that we previously applied to Lavaca and the Dobson Subsidiaries.²⁷ We uphold our decision in the *Archtop Grant Public Notice* to apply the mixed support condition to the Archtop Subsidiaries, and the condition will remain in place for all other "post-consummation company's rate-of-return affiliates receiving cost-based support."²⁸ All other findings in the *Archtop Grant Public Notice* remain as stated.

8. The relief granted herein is dependent upon Archtop and Dobson continuing to have non-controlling interests in each other, as well as sharing no costs and maintaining separate financial accounting. If any of these factors cease to apply, Applicants must notify the Commission within 30 days so that the Bureau can re-apply the mixed support condition, if warranted, to the Dobson Subsidiaries in accordance with the Commission's directive in the *Hargray/ComSouth Order*.

IV. ORDERING CLAUSES

9. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 USC §§ 151-154 and 254, and sections 0.91, 0.291, 1.1, 1.3, and 1.113 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.1, 1.3, and 1.113, that this Order on Reconsideration IS ADOPTED.

10. IT IS FURTHER ORDERED, that pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.1.02(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Trent Harkrader
Chief
Wireline Competition Bureau

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corporation's affairs" through board influence or management factors in spite of holding a small ownership interest. *See News Corporation and DirectTV Group, Inc. and Liberty Media Corporation for Authority to Transfer Control*, MB Docket No. 07-18, Memorandum Opinion and Order, 23 FCC Rcd 3264, 3284-86, paras. 42-43 (2008). Factors such as the authority to appoint directors, make management decisions, pay financial obligations, including expenses arising out of operations, and unfettered use of equipment and facilities are relevant to a determination of whether an entity has control over another entity. 47 CFR § 63.24(d), n.1 (specifying factors relevant to company control in international assignments and transfers of control).

²⁷ See *Archtop Grant Public Notice* at 4 and n.22.

²⁸ *Archtop Grant Public Notice* at 5-6 and n.28.