

FACT SHEET*

**Domestic Section 214 Application for the Transfer of Control of
Lavaca Telephone Company, Inc. to Dobson Technologies, Inc.**

Order on Reconsideration – WC Docket No. 20-389

Background: Section 214 transfer of control transactions involving companies that receive high-cost universal service support under different support mechanisms – “mixed support transactions” -- raise potential public interest concerns. When a company receiving a fixed level of support acquires or is acquired by a company receiving cost-based support, the combined companies could have an incentive to shift shared or common costs from the model-based support company to the cost-based support company, which could mean that the combined company would receive additional universal service support because of accounting procedures rather than increased investment or expenses. The Commission mitigates this potential cost shifting through mixed support transactions by conditioning such transactions on the post-transaction company being subject to a high cost universal service support cap. This “mixed support condition,” first applied by the Commission in 2018, caps the combined operating expenses of the post-consummation company’s cost-based support rate-of-return affiliates for seven years.

On January 15, 2021, the Wireline Competition Bureau (Bureau) approved a mixed support-conditioned domestic section 214 application to transfer control of Lavaca Telephone Company, Inc. (Lavaca), an incumbent LEC receiving cost-based universal service support, to Dobson Technologies, Inc. (Dobson), which wholly owns an incumbent LEC, Dobson Telephone Company, that receives universal service support under the Alternative Connect America Model. Dobson also holds an indirect 32.34% non-controlling interest in Fort Mojave Telecommunications, Inc. (Fort Mojave), a rate-of-return incumbent LEC serving the Fort Mojave Indian Tribe in Arizona, California, and Nevada that receives cost-based universal service support.

On February 16, 2021, Dobson filed a Petition for Partial Reconsideration objecting to including Fort Mojave’s operating expenses in the combined operating expenses that cap Lavaca’s operating expenses. Dobson requests that the mixed support condition be modified so as not to apply to Fort Mojave because Dobson has no ability to control Fort Mojave’s operating expenses, and no costs are shared between Fort Mojave and Lavaca.

What the Order on Reconsideration Would Do:

- Grant the Petition and exclude Fort Mojave from the mixed support condition based on Dobson’s newly submitted record evidence that it has no current controlling relationship with Fort Mojave in any capacity, the companies do not share any common costs, and the companies’ books and accounts are entirely unrelated and separate.
- Find that the cost shifting harm that the mixed support condition was designed to address, which is tied to shared or common cost between merger affiliates, is not present.
- Reaffirm the Commission’s delegation of authority to the Bureau to continue to apply the mixed merger condition where necessary to remedy a potential public interest harm, including to only certain affiliates in a mixed support transaction.

* This document is being released as part of a “permit-but-disclose” proceeding. Any presentations or views on the subject expressed to the Commission or its staff, including by email, must be filed in WC Docket No. 20-389, which may be accessed via the Electronic Comment Filing System (<https://www.fcc.gov/ecfs/>). Before filing, participants should familiarize themselves with the Commission’s ex parte rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission’s meeting. See 47 CFR § 1.1200 *et seq.*

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

In the Matter of)
)
Domestic Section 214 Application for the Transfer) WC Docket No. 20-389
of Control of Lavaca Telephone Company, Inc. to)
Dobson Technologies Inc.)

ORDER ON RECONSIDERATION*

Adopted: []

Released: []

By the Commission:

I. INTRODUCTION

1. In this Order on Reconsideration, we grant a Petition for Partial Reconsideration (Petition) filed on February 16, 2021 by Dobson Technologies, Inc. (Dobson), pursuant to section 1.106 of the Commission’s rules.1 In the Petition, Dobson requests that the Commission reconsider and modify a January 15, 2021 decision by the Wireline Competition Bureau (Bureau) approving, as conditioned, the domestic section 214 application to transfer control of Lavaca Telephone Company, Inc. (Lavaca) and its subsidiaries to Dobson (the Transaction).2 Dobson requests that the Commission exclude Fort Mojave Telecommunications, Inc. (Fort Mojave), an affiliate in which Dobson’s upstream ownership has a non-controlling minority interest, from the condition to prevent cost shifting that the Bureau applied to all Dobson affiliates receiving cost-based universal service support.3 As explained below, we grant the Petition to the extent that: Dobson continues to have only a minority, non-controlling interest in Fort Mojave; Fort Mojave engages in no cost sharing with any Dobson affiliates; and Fort Mojave maintains separate financial accounting from all other Dobson affiliates.

* This document has been circulated for tentative consideration by the Commission at its May 20, 2021 open meeting. The issues referenced in this document and the Commission’s ultimate resolution of those issues remain under consideration and subject to change. This document does not constitute any official action by the Commission. However, the Acting Chairwoman has determined that, in the interest of promoting the public’s ability to understand the nature and scope of issues under consideration, the public interest would be served by making this document publicly available. The FCC’s ex parte rules apply and presentations are subject to “permit-but-disclose” ex parte rules. See, e.g., 47 C.F.R. §§ 1.1206, 1.1200(a). Participants in this proceeding should familiarize themselves with the Commission’s ex parte rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission’s meeting. See 47 CFR §§ 1.1200(a), 1.1203.

1 47 CFR § 1.106; Dobson Technologies, Inc. Petition for Partial Reconsideration of Mixed Support Condition, WC Docket No. 20-389, at 1-2, 7 (Jan. 15, 2021) (Petition). No party filed an opposition to the Petition. See 47 CFR § 1.106(g).

2 47 U.S.C. § 214; Domestic Section 214 Applications Granted Subject to Condition, WC Docket Nos. 20-388, 20-389, Public Notice, DA 21-68 (WCB 2021) (Dobson/Lavaca Grant Public Notice).

3 Petition at 2-7.

II. BACKGROUND

2. On November 20, 2020, 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, filed an application 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.⁴ On December 9, 2020, the Bureau released a public notice seeking comment on the Application by interested parties.⁵ No party filed comments or petitions in opposition to a grant of the Application. After receiving consent from the Bureau, as described below, Dobson consummated the Transaction on February 19, 2021.⁶

3. Lavaca, an Arkansas corporation, provides service as a rate-of-return incumbent local exchange carrier (LEC) in the Lavaca exchange in rural western Arkansas and the Panama/Shady Point exchange in rural eastern Oklahoma.⁷ Lavaca did not elect to receive model-based support and receives cost-based universal service support for voice and broadband services.⁸

4. Dobson, an Oklahoma-based holding company, through its wholly owned subsidiaries, owns and operates a fiber optic network in Oklahoma and Texas.⁹ Dobson Telephone Company (Dobson Telephone), an Oklahoma corporation and wholly owned subsidiary of Dobson, provides service as a rate-of-return incumbent LEC in western and eastern Oklahoma.¹⁰ Dobson Telephone elected to receive universal service support under the Alternative Connect America Model (A-CAM).¹¹ After consummation of the Transaction, the following entities hold a 10% or greater 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).¹² Dobson CC also holds a 32.34% indirect interest in Fort Mojave Telecommunications, Inc. (Fort Mojave), a rate-of-return incumbent LEC serving the Fort

⁴ Application of Lavaca Telephone Company, Inc. and Dobson Technologies, Inc. for Grant of Authority, WC Docket No. 20-389 (filed Nov. 20, 2020) (Application). Dobson filed a supplement to the 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).

⁵ *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).

⁶ Letter from Joshua M. Bobeck, Counsel for Dobson Technologies, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 20-389 (Feb. 26, 2020).

⁷ Application at 11.

⁸ *Dobson/Lavaca Grant Public Notice* at 2 (citing Universal Service Administrative Co., Tools, <https://www.usac.org/high-cost/resources/tools/>).

⁹ Application at 2.

¹⁰ *Id.* at 10.

¹¹ *Dobson/Lavaca Grant Public Notice* at 3 (citing 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)).

¹² Application at 8 and Exh. A (Post-Transaction Corporate Structure).

Mojave Indian Tribe in Arizona, California, and Nevada.¹³ Fort Mojave did not elect to receive model-based support and receives cost-based universal service support for its for voice and broadband services.¹⁴

5. In the *Dobson/Lavaca Grant Public Notice*, the Bureau found that the Transaction was a “mixed support transaction”, *i.e.*, it involved companies that receive high-cost universal service support under the different mechanisms of fixed model-based support and cost-based support.¹⁵ Dobson, which is affiliated with a model-based support company, Dobson Telephone, and a cost-based support company, Fort Mojave, sought to acquire Lavaca, a cost-based support company. The Commission previously found in the *Hargray/ComSouth Order* 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.¹⁶ 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.¹⁷ 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.¹⁸ Such an outcome is inconsistent with our general expectation that transactions generate efficiencies that reduce the combined company’s costs.¹⁹ Moreover, the Commission found that 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.²⁰ Accordingly, in the *Dobson/Lavaca Grant Public Notice*, the Bureau found that the potential for harm caused by cost-shifting as a result of the Transaction was transaction-specific.²¹

6. To mitigate the potential for cost shifting arising as a result of the Transaction, the Bureau applied the condition that the Commission adopted in the *Hargray/ComSouth Order* (mixed support condition) to cap the high cost universal service support Dobson receives.²² Specifically, the

¹³ Supplement at 1. The Fort Mojave Indian Tribe is the majority owner (51%) of Fort Mojave. *Id.* Under section 63.04(a)(7) of the Commission’s rules, a carrier seeking domestic section 214 authorization for transfer of control, must provide a “description of the geographic areas in which the transferor and transferee (and their affiliates) offer domestic telecommunications services, and what services are provided in each area.” 47 CFR § 63.04(a)(7).

¹⁴ *Dobson/Lavaca Grant Public Notice* at 3 (citing Universal Service Administrative Co., Tools, <https://www.usac.org/high-cost/resources/tools/>).

¹⁵ *Dobson/Lavaca Grant Public Notice* at 3-4.

¹⁶ *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*).

¹⁷ *Id.* at 4785-86, para. 20.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 4786, para. 21.

²¹ *Dobson/Lavaca Grant Public Notice* at 4.

²² *Id.* at 4-5 (citing *Hargray/ComSouth Order*, 33 FCC Rcd at 4789, para. 27 and n.72). The Commission directed the Bureau to impose the *Hargray/ComSouth* mixed support condition on future transactions between parties receiving different types of high-cost universal service support “where necessary to remedy a public interest harm.” *Hargray/ComSouth Order*, 33 FCC Rcd at 4789, para. 27, n.72. The Bureau has imposed the condition on grants of multiple mixed support transactions. *See, e.g., Domestic Section 214 Application Granted for the Transfer of Control of Prairieburg Incorporated*, WC Docket No. 21-30, Public Notice, DA 21-333 (WCB 2021); *Domestic Section 214 Application Granted Subject to Condition*, WC Docket No. 20-432, Public Notice, DA 21-114 (WCB

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combined operating expenses of the post-consummation company's rate-of-return affiliates that receive cost-based support are 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.²³

7. On February 16, 2021, Dobson filed a Petition for Partial Reconsideration objecting to inclusion of Fort Mojave's operating expenses in the combined operating expenses that serve as the cap on Lavaca's operating expenses.²⁴ Dobson states that it has no ability to control Fort Mojave's operating expenses and requests that the mixed support condition be modified such that it would not apply to Fort Mojave.²⁵ According to Dobson, Dobson CC has only a non-controlling minority interest in Fort Mojave, and shares no operations, common expenses, or management with Fort Mojave.²⁶ Dobson argues that "[b]ecause Dobson [] has no control over [Fort Mojave] it has no incentive or ability to shift costs between Dobson Telephone and [Fort Mojave] and thus the technical affiliation between these entities does not raise the prospect of harm" that the mixed support condition is designed to address.²⁷ Further, Dobson argues that application of the condition to Fort Mojave could have harmful effects. Dobson claims that if Fort Mojave were to increase its operating expenses, this increase could absorb much of the expense cap and arbitrarily force Lavaca to cut expenses even though there is no connection between Fort Mojave and Lavaca.²⁸

III. DISCUSSION

8. Pursuant to our authority in section 1.106(a) of the Commission's rules to act on petitions requesting reconsideration of final actions taken pursuant to delegated authority, we grant the Petition.²⁹

9. Section 1.106(c)(2) states that a petition for reconsideration which relies on facts not previously presented to the Commission or to the designated authority may be granted if the Commission or the designated authority determines that consideration of the facts relied on is required in the public interest.³⁰ Dobson has raised additional facts regarding its affiliate relationship with Fort Mojave that warrant our reconsideration.³¹ These facts were not available to the Bureau at the time it acted on the

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2021); *Domestic Section 214 Application Granted Subject to Condition*, WC Docket No. 20-373, Public Notice, DA 20-1509 (WCB 2020).

²³ *Dobson/Lavaca Grant Public Notice* at 4-5 and n.33 (citing 47 U.S.C. § 153). Consistent with the application of the condition to the grants of other mixed support conditions, the Bureau stated that the "cap will apply to cost recovery under both HCLS [High-Cost Loop Support] and CAF-BLS [Connect America Fund-Broadband Loop Support] and will be applied proportionately to each affiliate's accounts used to determine the affiliate's eligible operating expense for HCLS and CAF-BLS. *Id.* at 4. The Act defines "affiliate" as "a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term 'own' means to own an equity interest (or the equivalent thereof) of more than 10 percent." 47 U.S.C. § 153(2); *see* 47 CFR § 63.03(b)(3) ("For purposes of (b)(1) and (2) of this paragraph, the terms "applicant," "carrier," "party," and "transferee" (and their plural forms) include any affiliates of such entities within the meaning of section 3(1) of the Communications Act of 1934, as amended.").

²⁴ Petition at 4.

²⁵ *Id.* at 2.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at 5-6.

²⁹ 47 CFR § 1.106(a).

³⁰ 47 CFR § 1.106(c)(2).

³¹ *See, e.g., Washington County Network (WCCCA-C800-Newberg), Beaverton, Oregon Petition for Reconsideration*, Call Sign WRBK826, Order, DA 20-1198 at para. 6 (PSHSB 2020) (denying petition for reconsideration on other grounds, but finding that a petitioner met the threshold under section 1.106(c)(2) of the

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Transaction. We therefore find it reasonable and in the public interest to modify the application of the mixed support condition in the narrow circumstances in this proceeding.

10. In its Petition, Dobson requests that we exclude Fort Mojave from the mixed support condition adopted in the *Dobson/Lavaca Grant Public Notice*.³² Dobson argues that because Dobson CC has only a non-controlling minority interest in Fort Mojave and there is no cost sharing or other connection between Fort Mojave and any other Dobson affiliate, the cost-shifting harms that the mixed support condition was designed to address cannot occur in this case.³³ While Dobson described the affiliate connection between Dobson CC and Fort Mojave in the Supplement to its Application and stated that, “Dobson CC LP has a single representative on the seven member [Fort Mojave] Board of Directors and does not exercise any control, either de jure or de facto, over [Fort Mojave],”³⁴ it has now provided more detailed facts regarding its pre- and post-consummation relationship with Fort Mojave. Dobson does not dispute that Lavaca will be a wholly-owned subsidiary of Dobson and under its common control and appropriately subject to the mixed support condition.³⁵ It states, however, that there is “no risk of cost shifting and thus no harm to remedy” by applying the condition to Fort Mojave.³⁶ Supported by a sworn declaration submitted by its Chief Financial Officer, Dobson explains that it has never shared operations with Fort Mojave, which is controlled by the Fort Mojave Tribe and operates in a different state from Dobson’s other affiliates, Dobson has no current controlling relationship with Fort Mojave in any capacity, the companies do not share any common costs, and the companies’ books and accounts are entirely unrelated and separate.³⁷

11. The Commission has stated that the cost shifting incentive remediated through the mixed support condition is directly tied to “shared or common costs.”³⁸ The *Hargray/ComSouth Order* 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.³⁹

12. In the specific circumstances in this transaction, we agree with Dobson that the cost shifting the mixed support condition was designed to address is likely not possible between Fort Mojave and Dobson’s other affiliates because there is no connection between the companies other than the single director on the Fort Mojave Board of Directors.⁴⁰ Further, Dobson has affirmed that it has no control over

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Commission’s rules by raising facts not previously presented regarding its station construction notices that the Commission should consider as being in the public interest); *Mark Van Bergh, Esq., Donald E. Martin, Esq.*, File No. BNPED-200071016AJF, Letter, 26 FCC Rcd 15135 (MB 2011) (finding under section 1.106(c)(2) of the Commission’s rules that it was in the public interest to grant a reconsideration petition based on new facts raised regarding station site availability).

³² Petition at 1-2.

³³ *Id.* at 2.

³⁴ Supplement at 1.

³⁵ Petition at 2, 4; Application at 3-4.

³⁶ Petition at 2-3.

³⁷ *Id.* at 4; Declaration of Trent LeForce, Dobson Technologies, Inc., in Support of Petition for Partial Reconsideration of Mixed Support Condition, WC Docket No. 20-389, paras. 7-9 (filed Feb. 16, 2021).

³⁸ *Hargray/ComSouth Order*, 33 FCC Rcd at 4785-86, para. 20.

³⁹ *Id.* at 4787-88, para. 25.

⁴⁰ Petition at 2-3.

the costs, business decisions, or management of Fort Mojave.⁴¹ 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.⁴²

13. Therefore, we grant the request in the Petition to exclude Fort Mojave from the mixed support condition in the *Dobson/Lavaca Grant Public Notice*. The condition will remain in place for all other Dobson affiliates that receive cost-based universal service support. The relief granted herein is dependent upon: Dobson and any of its affiliated entities continuing to have only a minority, non-controlling interest in Fort Mojave; Fort Mojave sharing no costs with any Dobson affiliates; and Fort Mojave maintaining separate financial accounting from all other Dobson affiliates. If any of these factors ceases to apply, Dobson must notify the Commission within 30 days so that the Bureau can re-apply the mixed support condition to Dobson's affiliate relationship with Fort Mojave in accordance with the Commission's directive in the *Hargray/ComSouth Order*.

14. Finally, consistent with the Commission's prior directive in the *Hargray/ComSouth Order*,⁴³ we reaffirm our 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 because of the lack of majority control and common costs, cost sharing, and/or consolidation of financial accounts.

IV. CONCLUSION

15. After thoroughly reviewing the Petition and the record in this proceeding, we conclude that a grant of the Petition, subject to the terms set forth herein, is in the public interest and is consistent with our stewardship of the high-cost universal service program. We therefore grant the Petition.

V. ORDERING CLAUSES

16. Accordingly, **IT IS ORDERED**, pursuant to sections 4(i) and (j), 5(c), 214(a), 214(c), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 155(c), 214(a), 214(c), and 254, and section 1.106 of the Commission's rules, 47 CFR § 1.106, that the Petition for Partial Reconsideration filed on February 16, 2021 by Dobson Technologies, Inc. **IS GRANTED**, to the extent provided herein.

⁴¹ *Id.* at 7.

⁴² For example, the Commission has stated that a minority interest holder can have control when it possesses the ability to "dominate the 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), note 1 (specifying factors relevant to company control in international assignments and transfers of control).

⁴³ *Hargray/ComSouth Order*, 33 FCC Rcd at 4789, para. 27 n.72.

17. **IT IS FURTHER ORDERED** that this Memorandum Opinion and Order **SHALL BE EFFECTIVE** upon release, in accordance with section 1.103 of the Commission's rules, 47 CFR § 1.103.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary