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

In the Matter of	)	
	)	
Joint Application of	)	WC Docket No. 18-52
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	)	

MEMORANDUM OPINION AND ORDER

Adopted: May 10, 2018 **Released: May 11, 2018**

By the Commission: Commissioner O'Rielly issuing a statement.

I. INTRODUCTION

1. By this Memorandum Opinion and Order, we approve, subject to a condition, an application filed by Hargray Communications Group, Inc. (Hargray) and W. Mansfield Jennings Limited Partnership (Mansfield) (collectively, Applicants) for the transfer of control of ComSouth Corporation (ComSouth) from Mansfield to Hargray.[1]

2. For the reasons set forth below, we conclude that, with the adoption of a condition designed to address a potential harm involving federal universal service fund (USF) high-cost support, the proposed transaction will serve the public interest and meets the requirements of section 214 of the Communications Act of 1934, as amended (the Act), and our rules for transfers of authorizations.[2] Accordingly, we grant the Application subject to the specified condition.

II. BACKGROUND

3. *Applicants and Transaction*. ComSouth, a Georgia corporation, provides local and long distance telephone, broadband, and video services through its subsidiaries and affiliates in the cities of Hawkinsville, Perry, Fort Valley, Cochran, Unadilla, Pinehurst, Marshallville, Kathleen, and Bonaire, and in the counties of Peach and Macon in Georgia.[3] ComSouth Telecommunications, Inc., a subsidiary of ComSouth, is an incumbent local exchange carrier (LEC) serving 3,339 lines in those areas.[4] ComSouth

[1] Application of W. Mansfield Jennings Limited Partnership, Transferor, and Hargray Communication Group, Inc., Transferee, For Consent to the Transfer of Control of ComSouth Corporation Pursuant to Section 214 of the Communications Act of 1934, as Amended, WC Docket No. 18-52 (filed Feb. 22, 2018) (Application). Applicants filed supplements to their Application on February 27 and 28, 2018. Letter from Rebekah P. Goodheart, Counsel to Hargray Communications Group, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-52 (filed Feb. 28, 2018) (Hargray Feb. 28 Supplement Letter); Letter from Rebekah P. Goodheart, Counsel to Hargray Communications Group, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-52 (filed Feb. 27, 2018) (Hargray Feb. 27 Supplement Letter).

[2] *See* 47 U.S.C. § 214; 47 CFR §§ 63.03-04.

[3] Application at 5.

[4] Hargray Feb. 27 Supplement Letter at 1.

Telenet, Inc. and ComSouth Teleservices, Inc., both subsidiaries of ComSouth, provide interstate telecommunications services in those areas.[5] ComSouth is currently held by Mansfield, a Georgia limited partnership, which is controlled by a general partner, Genelle B. Jennings, who holds a one percent interest, and has four limited partners each holding a 24.75 percent interest: W. Mansfield Jennings, III, Meredith Jennings McDaniel, Jennings Family Trust III, and Jennings Family Trust IV.[6]

4. Hargray, a South Carolina corporation, through the followings subsidiaries and affiliates, provides telecommunications services in South Carolina and Georgia: Hargray, Inc. is a competitive LEC in southeastern South Carolina; Hargray of Georgia, Inc. is a competitive LEC in south and northeastern Georgia; Hargray Telephone Company, Inc. is an incumbent LEC serving residential and business customers in Hilton Head, Hardeeville, and Jasper, South Carolina; Bluffton Telephone Company, Inc. is an incumbent LEC serving residential and business customers in Bluffton, South Carolina; and Low Country Carriers, Inc. (d/b/a Hargray Long Distance Co.) provides interexchange telecommunications services in South Carolina and Georgia exclusively to customers of affiliated carriers.[7] Hargray is a wholly owned subsidiary of Hargray Acquisition Holdings, LLC (Hargray Acquisition).[8] The following U.S. entities hold a 10 percent or greater interest in Hargray Acquisition: TPO-Hargray, LLC (TPO-Hargray) (49.88 percent interest); Redwood Cable Holdings, LLC (Redwood Cable) (21.38 percent interest); and Stephens Hargray Cable, LLC (Stephens Cable) (18.68 percent interest).[9]

5. ComSouth and Hargray both provide incumbent LEC service through rate-of-return subsidiaries in high-cost, rural areas. They receive reimbursement from the high-cost USF based on their costs of providing service and pursuant to section 254 of the Act and the Commission's rules.[10] Under the Commission's rules governing the high-cost program, incumbent LECs, like ComSouth and Hargray, designated as eligible telecommunications carriers (ETCs) may receive high-cost support to provide broadband and other services.[11]

6. Pursuant to the terms of the proposed transaction, Mansfield, ComSouth, and Hargray entered into a Stock Purchase Agreement whereby Hargray agreed to purchase 100 percent of ComSouth's common stock from Mansfield.[12] As a result of the proposed transaction, ComSouth and its subsidiaries will become wholly owned subsidiaries of Hargray. Applicants state that ComSouth and Hargray have no overlapping or adjacent service areas.[13]

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[5] Application at 5.

[6] *Id.* The Jennings Family Trust III and the Jennings Family Trust IV are organized for the benefit of W. Mansfield Jennings III and Meredith Jennings McDaniel, respectively. *Id*.

[7] *Id.* at 3-4.

[8] *Id.* at 3.

[9] Hargray Feb. 28 Supplement Letter at 1-2. TPO-Hargray is owned by U.S. trusts held for the benefit of Thomas J. Pritzker, a U.S. citizen. Redwood Cable has one member, Redwood Capital Investments, LLC, which is controlled by James C. Davis, a U.S. citizen. The Warren and Harriet Stephens Children's Trust UID 9/30/87 (Children's Trust), formed under Arkansas law holds approximately 60 percent of Stephens Cable. The trustees of Children's Trust are Harriet Stephens and John N. Calhoun II, each of whom is a U.S. citizen. The beneficiaries of all the trusts are U.S. citizens. Application at 10-11.

[10] 47 U.S.C. § 254; 47 CFR Part 54; *see Connect America Fund et al.*, Report and Order, Order and Order on Reconsideration and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3117-18, para. 81 (2016) (*Rate-of-Return Reform Order*).

[11] 47 U.S.C. § 254; 47 CFR Part 54, Subparts B and C.

[12] Application at 5-6.

[13] *Id.* at 13.

7. On February 27, 2018, the Wireline Competition Bureau (Bureau) released a public notice requesting comment on the Application.[14] No comments were filed in response to the Application.

8. *High Cost Universal Service Support.* Since 2011, the Commission has undertaken reforms to modernize the universal service high-cost program with the primary goal of adopting mechanisms that both support broadband offerings and efficiently target support to areas that need it most.[15] In the *USF/ICC Transformation Order*, the Commission emphasized that universal service funding is a limited resource ultimately paid for by fees levied upon consumers and businesses on their communications bills.[16] With that concept at the forefront of its policies, the Commission created the Connect America Fund (CAF), which will ultimately replace all high-cost support mechanisms. The CAF "will rely on incentive-based, market-driven policies, including competitive bidding, to distribute universal service funds as efficiently and effectively as possible."[17] As part of its modernization effort, the Commission undertook high-cost support reform for price cap carriers in phases. In Phase I, it froze their legacy high-cost support.[18] In Phase II, the Commission adopted rules to transition price cap carriers from Phase I frozen support to support based on a forward-looking broadband cost model, the Connect America Cost Model (CAM). The CAM calculates the cost of providing service in rural and high-cost areas and sets a fixed monthly amount of support available to the carrier serving the area.[19]

9. In April 2014, the Commission proposed a transition framework for a voluntary election by rate-of-return carriers to receive model-based support and directed the Bureau to adjust the CAM for use in areas served by rate-of-return carriers.[20] In the 2016 *Rate-of-Return Reform Order*, the Commission adopted a cost model referred to as the Alternative Connect America Cost Model (A-CAM) for distributing support to rate-of-return carriers.[21] The Commission adopted a voluntary path by which rate-of-return carriers could elect to receive fixed, model-based support under A-CAM for 10 years in exchange for deploying broadband-capable networks to eligible locations.[22] The Commission expects that the A-CAM path "will spur new broadband deployment in rural areas, which will help close the digital divide among rate-of-return carriers."[23] Those rate-of-return carriers opting not to receive model-based support continue to receive support based on their own embedded costs (hereinafter cost-based support companies), consistent with Commission rules.[24]

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[14] *Domestic Section 214 Application Filed for the Transfer of Control of ComSouth Corporation to Hargray Communications Group, Inc*., WC Docket No. 18-52, Public Notice, DA 18-195 (WCB Feb. 27, 2018).

[15] *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17667, 17667, para. 1 (2011) (*USF/ICC Transformation Order* and/or *FNPRM*), *aff'd sub nom. In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

[16] *USF/ICC Transformation Order*, 26 FCC Rcd at 17672-73, paras. 17-18.

[17] *See id.* at 17673, para. 20.

[18] *Id.* at 17673, para. 22.

[19] *Id.* at 17673-74, paras. 23-24; *Connect America Fund et al*., WC Docket No. 10-90 et al., Report and Order et al., 29 FCC Rcd 7051 (2014) (*April 2014 Connect America Order and/or FNPRM*).

[20] *April 2014 Connect America FNPRM*, 29 FCC Rcd at 7139-43, paras. 276, 283-91; *April 2014 Connect America Order*, 29 FCC Rcd at 7074, para. 70.

[21] *Rate-of-Return Reform Order*, 31 FCC Rcd at 3090, para. 4.

[22] *Id.* at 3090, para. 4, 3096-3117, paras. 20-79.

[23] *Id.* at 3096, para. 20.

[24] *Id.* at 3117, para. 80.

10. Companies electing A-CAM support are subject to "defined performance and deployment obligations" for "specific and predictable support amounts."[25] In other words, A-CAM calculates a fixed amount of support available to carriers to build out broadband-capable networks to a designated number of locations. The creation of the A-CAM model and related performance and deployment obligations represented "additional steps to fulfill the Commission's longstanding objective of providing support based on forward-looking efficient costs."[26] The Commission explained that carriers electing model-based support (hereinafter model-based support companies) are subject to a "different regulatory paradigm" centered on incentive regulation, unlike cost-based support companies.[27]

11. ComSouth voluntarily elected to receive support under A-CAM, so it is a model-based support company.[28] Hargray, by contrast, did not elect to receive model-based support.[29] As a cost-based support company, Hargray receives universal service high-cost support based on its embedded costs of providing regulated service to locations in high-cost areas. Because we find no competitive concerns with the proposed transaction, our analysis centers upon ComSouth's model-based incumbent LEC subsidiary becoming a subsidiary of Hargray and, thereby, an affiliate of Hargray's cost-based support subsidiaries.[30]

III. STANDARD OF REVIEW AND PUBLIC INTEREST FRAMEWORK

12. Pursuant to section 214(a) of the Act,[31] the Commission must determine whether the proposed transfer of control of certain licenses and authorizations held and controlled by ComSouth to Hargray will serve the public interest, convenience, and necessity.[32]

13. In making this determination, the Commission first assesses whether the proposed transaction complies with the specific provisions of the Act, other applicable statutes, and the Commission's rules.[33] If the proposed transaction does not violate a statute or rule, then the Commission

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[25] *Id.* at 3096, para. 20.

[26] *Id.* at 3096, para. 20 & n.43.

[27] *Id.* at 3097, para. 21.

[28] *Wireline Competition Bureau Authorizes 182 Rate-of-Return Companies to Receive $454 Million Annually in Alternative Connect America Cost Model Support to Expand Rural Broadband,* WC Docket No. 10-90, Public Notice, 32 FCC Rcd 842 (WCB Jan. 24, 2017).

[29] Universal Service Administrative Co., Tools, https://www.usac.org/hc/tools/default.aspx (last visited May 7, 2018) (listing carriers that elected to receive support for loop costs based on existing methodologies).

[30] Application at 5, 7.

[31] 47 U.S.C. § 214(a).

[32] *See id.*); 47 CFR § 63.03(c)(1)(v) (noting that an analysis under section 214(a) includes a determination of "whether a proposed transfer of control would serve the public interest"); s*ee also, 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, 9585, para. 8 (2017) (*CenturyLink/Level 3 Order*); *Joint Application of Securus Investment Holdings, LLC, Securus Technologies, Inc., T-NETIX, Inc., T-NETIX Telecommunications Services, Inc. and SCRS Acquisition Corporation for Grant of Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, and Sections 63.04 and 63.24 of the Commission's Rules to Transfer Indirect Ownership and Control of Licensees*, Memorandum Opinion and Order, 32 FCC Rcd 9564, 9569 n.33 (2017) (*Securus Transfer Order*); *Applications filed by Qwest Communications International Inc. and CenturyTel, Inc. d/b/a CenturyLink for Consent to Transfer Control*, WC Docket No. 10-110, Memorandum Opinion and Order, 26 FCC Rcd 4194, 4198-99, para. 7 (2011) (*CenturyLink/Qwest Order*); *AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd 5662, 5672, para. 19 (2007) (*AT&T/BellSouth Order*).

[33] *CenturyLink/Level 3 Order*, 32 FCC Rcd at 9585, para. 8; *Securus Transfer Order*, 32 FCC Rcd at 9569, para. 10; *CenturyLink/Qwest Order,* 26 FCC Rcd at 4199, para. 7.

considers whether the transaction could result in public interest harms by substantially frustrating or impairing the objectives or the implementation of the Act or related statutes.[34]

14. Our competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.[35] The DOJ has independent authority to examine the competitive impacts of proposed mergers and transactions involving transfers of Commission licenses, but the Commission's competitive analysis under the public interest standard is somewhat broader. Notably, the Commission may impose and enforce narrowly tailored, transaction-specific conditions that address the potential harms of a transaction.[36] Specifically, the Commission has repeatedly held that it will impose conditions "only to remedy harms that arise from the transaction (i.e., transaction-specific harms)" and "related to the Commission's responsibilities under the Communications Act and related statutes," and it "will not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction."[37]

15. If the Commission has determined that a transaction raises no public interest harms or that any such harms will be ameliorated by narrowly tailored conditions, the Commission next considers a transaction's public interest benefits. Notably, the Commission has long recognized the clear public interest benefits in a license or authorization holder being able to assign or transfer control of its license or authorization freely.[38] Indeed, the Commission has adopted streamlining procedures—including the automatic approval of a transaction—when a "transaction is unlikely to raise public interest concerns."[39] The Commission will also review other claimed public interest benefits of a transaction, with the applicants bearing the burden of proving those benefits by a preponderance of the evidence.[40]

16. Finally, if the Commission is able to find that narrowly tailored, transaction-specific conditions are able to ameliorate any public interest harms and the transaction is in the public interest, it may approve the transaction as so conditioned.[41] In contrast, if the Commission is unable to find that a

[34] *See CenturyLink/Level 3 Order*, 32 FCC Rcd at 9585, para. 9; *Securus Transfer Order*, 32 FCC Rcd at 9569, para. 11; *CenturyLink/Qwest Order,* 26 FCC Rcd at 4199, para. 7.

[35] *See Satellite Bus. Sys.*, 62 FCC 2d 997, 1068-73, 1088 (1977), *aff'd sub nom United States v. FCC*, 652 F.2d 72 (D.C. Cir. 1980) (*en banc*); *Northeast Utils. Serv. Co. v. FERC*, 993 F.2d 937, 947 (1st Cir. 1993) (public interest standard does not require agencies "to analyze proposed mergers under the same standards that the Department of Justice . . . must apply"); *CenturyLink/Level 3 Order*, 32 FCC Rcd at 9585, para. 9; *Securus Transfer Order*, 32 FCC Rcd at 9569, para. 12; *CenturyLink/Qwest Order,* 26 FCC Rcd at 4199, para. 9.

[36] *CenturyLink/Level 3 Order*, 32 FCC Rcd at 9585-86, para. 9; *Securus Transfer Order*, 32 FCC Rcd at 9569, para. 12; *CenturyLink/Qwest Order,* 26 FCC Rcd at 4199, para. 10.

[37] *CenturyLink/Level 3 Order*, 32 FCC Rcd at 9586, para. 9; *Securus Transfer Order*, 32 FCC Rcd at 9569, para. 12; *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18290, 18303, para. 19 (2005) (*SBC/AT&T Order*).

[38] *See CenturyLink/Level 3 Order*, 32 FCC Rcd at 9586, para. 10 and n.33 (citing relevant history).

[39] *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, Report and Order, 17 FCC Rcd 5517, 5533-35, paras. 29-34 (2002) (*2002 Streamlining Order*).

[40] *See CenturyLink/Level 3 Order*, 32 FCC Rcd at 9586, para. 10; *Securus Transfer Order*, 32 FCC Rcd at 9570, para. 13; *CenturyLink/Qwest Order,* 26 FCC Rcd at 4199, para. 7.

[41] In practice, the Commission has not allowed potential competitive harms to go unremedied nor allowed them to be offset by benefits that are not transaction-specific, *i.e.*, benefits that do not naturally arise from the transaction at issue. *See CenturyLink/Level 3 Order*, 32 FCC Rcd at 9586, para. 11; *Securus Transfer Order*, 32 FCC Rcd at 9570, para. 14.

proposed transaction even with such conditions serves the public interest or if the record presents a substantial and material question of fact, then it may deny the application or designate it for hearing.[42]

IV. QUALIFICATIONS OF APPLICANTS AND COMPLIANCE WITH COMMUNICATIONS ACT AND FCC RULES AND POLICIES

17. As part of its public interest review, the Commission generally considers the qualifications of the transferee in a proposed transaction.[43] The Commission generally does not reevaluate the qualifications of transferors unless issues related to basic qualifications have been sufficiently raised in petitions to warrant designation for hearing.[44] The record does not raise any concerns regarding ComSouth's basic qualifications to hold any Commission license or authorization. Similarly, the record in this transfer of control proceeding does not raise any issues with regard to the character, financial, technical, or other qualifications of Hargray. Accordingly, we find that Applicants hold the basic qualifications to be Commission licensees under the Act and our rules and policies.

18. The proposed transaction must comply with the Act, other applicable statutes, and the Commission's rules before we can find that it is in the public interest, unless a waiver is granted.[45] The record discloses no violations of any statutory provision or Commission rule, and we find that the transaction will not result in any such violation.

V. POTENTIAL PUBLIC INTEREST HARMS AND BENEFITS

A. Potential Harms

19. ComSouth and Hargray state that they do not compete to provide services in geographic areas that overlap, and because there are no comments in the record, we find no significant risk of competitive harm as a result of the proposed transaction.[46] However, we find that the combination of two companies that receive high-cost universal service support under different mechanisms, one fixed and one cost-based, could result in potential harm to the Commission's goal of ensuring that limited universal service resources are distributed efficiently and effectively. We therefore impose a condition to remedy this potential public interest harm.

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[42] *See CenturyLink/Level 3 Order*, 32 FCC Rcd at 9586-87, para. 11; *Securus Transfer Order*, 32 FCC Rcd at 9570, para. 14; *CenturyLink/Qwest Order,* 26 FCC Rcd at 4199, para. 7. Unlike the case with Title III licenses, *see* 47 U.S.C. § 309(e), the Commission is not required to designate for hearing applications for the transfer or assignment of Title II authorizations when it is unable to find that the public interest would be served by granting the applications, *see ITT World Communications, Inc. v. FCC*, 595 F.2d 897, 901 (2d Cir. 1979), but may do so if it finds that a hearing would be in the public interest.

[43] *See Applications of Softbank Corp., Starburst II, Inc., Sprint Nextel Corporation, and Clearwire Corporation for Consent to Transfer Control of Licenses and Authorizations; Petitions for Reconsideration of Applications of Clearwire Corporation for Pro Forma Transfer of Control*, IB Docket No. 12-343, Memorandum Opinion and Order, Declaratory Ruling, and Order on Reconsideration, 28 FCC Rcd 9642, 9652-53, paras. 26-27 (2013) (explaining the general character qualifications the Commission reviews under Title III of the Act); *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1209-10 (1986), *modified* 5 FCC Rcd 3252 (1990), *recon. granted in part*, 6 FCC Rcd 3448 (1991), *modified in part*, 7 FCC Rcd 6564 (1992). Although not directly applicable to common carriers, the character qualifications standards adopted in the Title III context can provide guidance in the common carrier area as well. *See MCI Telecommunications Corporation Petition for Revocation of Operating Authority*, Order and Notice of Apparent Liability, 3 FCC Rcd 509, 515, para. 31 n.14 (1988) (applying the broadcast character standards in a common carrier case).

[44] *See CenturyLink/Level 3 Order*, 32 FCC Rcd at 9587, para. 12; *Securus Transfer Order*, 32 FCC Rcd at 9571, para. 15.

[45] *See, e.g.*, *CenturyLink/Level 3 Order*, 32 FCC Rcd at 9587, para. 14; *Securus Transfer Order*, 32 FCC Rcd at 9575, para. 26.

[46] *See 2002 Streamlining Order*, 17 FCC Rcd at 5534, para. 32.

20. When a company receiving a fixed level of support, like ComSouth, acquires or is acquired by a company receiving support based on its costs, like Hargray, 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. Such cost shifting would be possible because of the way cost allocators under our rules for rate-of-return companies function.[47] If such cost shifting were to happen in this case, Hargray, as the cost-based support company, could seek to recover high-cost support above its pre-merger level despite making no change in either service offerings or deployment, while ComSouth would continue to receive the same fixed level of support under A-CAM as it did prior to the transaction.[48] As a result, the combined company, post-transaction, could obtain more universal service support than the two companies did as separate entities,[49] not because of any new investment, expense, or buildout, but rather solely because of the application of accounting procedures. Such an outcome contrasts with our general expectation that transactions generate efficiencies that reduce the combined company's costs, and Applicants have specifically asserted that this transaction will result in such reduced costs.[50] Thus, if a mixed support transaction were to impact the amount of high-cost support the combined company should receive post-consummation—assuming no change in either service offerings or deployment—we would anticipate a reduction, not an increase, in the amount of support it receives.

21. Providing additional universal service support to a company as a result of cost shifting, solely because it acquired or merged with another company and not because of any increased broadband service to consumers, is not an efficient use of limited universal service resources.[51] The Commission has been clear that efficiency comes from providing support that is sufficient to advance broadband deployment but that is not excessive.[52] Guarding against providers receiving more high-cost support than necessary "is especially important in the context of limited high-cost support, because overpayment to some carriers reduces the funding available to other providers."[53] Indeed, an essential element of fixed, model-based support is that a carrier commits to defined performance and deployment obligations in exchange for specific and predictable support amounts based on forward-looking efficient costs.[54] Allowing costs to be shifted from a company receiving model-based support to a company receiving cost-based support simply because a transaction brought two previously unrelated companies into the same corporate structure would threaten the financial viability of the fund.

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[47] *See, e.g.*, 47 CFR Part 36; 47 CFR § 64.901.

[48] This risk of harm exists when a fixed support company, regardless of whether it is receiving support though CAM, A-CAM, or through frozen support, acquires or is acquired by a cost-based support company without altering the companies' study area boundaries. A "study area" is the geographic area served by an incumbent LEC within a state and consists of one or more exchanges. *See* 47 CFR § 69.703(e).

[49] For convenience, we refer to transactions between cost companies and fixed-support companies as "mixed support transactions."

[50] Letter from Rebekah P. Goodheart, Counsel to Hargray, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-52, at 1 (filed March 1, 2018) (Applicants' March 1 *Ex Parte* Letter).

[51] *See, e.g.,* 47 CFR § 65.450 (permitting rate-of-return carriers to include in their revenue requirement only such expenses that are "recognized by the Commission as necessary to the provision" of interstate telecommunications services); 47 U.S.C. § 254(e) (requiring that high-cost support provided to an ETC be used "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended").

[52] *USF/ICC Transformation Order*, 26 FCC Rcd at 17682, para. 57.

[53] *Connect America Fund et al.*, Report and Order et al., FCC 18-29, at 6, para. 13 (rel. Mar. 23, 2018) (*CAF 2018 Order*).

[54] *Rate-of-Return Reform Order*, 31 FCC Rcd at 3096-97, para. 20.

22. Further, allowing a combined company to shift costs and obtain increased high-cost support for no reason other than a transaction would be inconsistent with the function and purpose of the model that the Commission established.[55] In the *Rate-of-Return Reform Order*, the Commission confirmed that it had made all necessary decisions regarding A-CAM and concluded that the "final version of A-CAM will sufficiently estimate the cost of serving rate-of-return areas and that further adjustments are not necessary."[56] It explained that support amounts depend on the mechanism utilized in A-CAM to keep total support within a given budget.[57] Companies electing the model had full information regarding the model inputs and processes, and elected the model accordingly. Nothing suggests that the Commission, in approving the final version of the model, intended to allow the possibility that some costs associated with serving rate-of-return areas could simply be shifted to another provider.

23. In addition to impacting the functioning of model-based support, cost shifting would also have an adverse effect on existing rate-of-return carrier support mechanisms by increasing the level of support claimed by Hargray. Any increase in the level of support claimed would put pressure on the high-cost fund. The Commission reformed the existing support mechanisms to distribute support equitably and efficiently so that "all rate-of-return carriers will benefit from the opportunity to extend broadband service where it is cost-effective to do so,"[58] and post-transaction cost shifting would negatively impact this effort.

24. The potential harm we have identified here is consistent with the Commission's finding in the rate regulation context that cost shifting that can occur as a result of a transaction is not in the public interest. The "all-or-nothing" rule, for example, requires that when a carrier subject to price cap regulation acquires, is acquired by, or merges with a non-price cap company, the non-price cap company must become subject to price cap regulation.[59] The Commission explained that, in the absence of the rule, a company might attempt to shift costs from its price cap affiliate to its non-price cap affiliate.[60] This cost shifting would allow the non-price cap affiliate to charge higher rates than would otherwise be possible (because of the increased costs), while at the same time increasing profits of the price cap affiliate as a result of its cost savings.[61] Similarly, cost shifting in the context of a mixed support transaction leads to increased costs for the cost-based company that can put pressure on universal service support and is not in the public interest.[62] The condition we impose below functions as a safeguard to limit the potential effect of cost shifting in the transaction context.

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[55] *Id.* at 3090-91, para 4; *USF/ICC Transformation Order*, 26 FCC Rcd at 17663, para. 24; Connect America Cost Model, available at https://transition.fcc.gov/wcb/CAM%20v.4.2%20Methodology.pdf.

[56] *Rate-of-Return Reform Order*, 31 FCC Rcd at 3102, para. 38.

[57] *Id.* at 3104, para. 42.

[58] *Id.* at 3117, para. 80.

[59] 47 CFR § 61.41(c)(2).

[60] *See Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers; Federal-State Joint Board on Universal Service*, Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 19613, 19781, para. 261 (2001) (*MAG Order*).

[61] *Id.*

[62] The Commission has recognized that "potential universal service support payments may influence unduly a carrier's decision to purchase exchanges from other carriers" and imposed a rule on the sale of exchanges so that a carrier that purchases a high cost exchange should receive the same level of support per line as the seller received prior to the sale. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8942-43, para. 308 (1997); 47 CFR § 54.902 (stating that "[i]n the event that a rate-of-return carrier acquires exchanges from an entity that is also a rate-of-return carrier, CAF BLS (Connect America Fund Broadband Loop Support) for the transferred exchanges shall be distributed as follows [in the rule]"). The Commission stated that the term, "exchanges" in this requirement does not apply to entire study areas, but instead to areas smaller than a complete study area. *Connect America Fund, ETC Annual Reports and Certifications Establishing Just and*

(continued….)

25. We disagree with Applicants' assertion that our existing rules, combined with Hargray's "robust internal procedures," sufficiently address potential harms that could arise from unreasonable allocation of costs that occur post-consummation.[63] Applicants generally reference Parts 32, 36, 54, 64, and 69 of the Commission's rules but do not specify any particular provision that would address cost shifting in the context of mixed support transactions such as this.[64] Our cost allocation and accounting rules do not address cost shifting in the transaction context, where the question is not whether the costs are eligible for recovery but rather which entity should report the costs for accounting purposes.[65] For example, shared operating expense accounts can be apportioned in the same manner as a carrier's related plant accounts.[66] Expense accounts that are not directly related to a single plant account can be allocated based on a combination of plant or expense accounts.[67] To illustrate, if a company receiving model-based support rents a building used as company headquarters, the model-based support company could, after acquiring or merging with a cost-based company, allocate a share of those rental costs to the cost-based support company after the transaction such that the cost-based company now has higher rent expenses than it had previously. This approach may be reasonable from an accounting perspective, but the result would be that the cost-based company is eligible for higher universal service support even though neither company had increased investment or deployed additional network. Moreover, although Hargray asserts that it has certain internal procedures for cost allocation,[68] it can change those procedures at any time and, indeed, may face incentives to do so in the absence of external constraint. Therefore, we find such non-specific procedures to be inadequate to address the potential harm.

26. *Condition*. To prevent the transaction-specific harm of potential cost shifting, we impose a limited condition to cap high-cost universal service support based on Hargray's operating expenses.[69] This condition furthers our duty to protect the public from waste, fraud, and abuse in the context of

(Continued from previous page)
Reasonable Rates for Local Exchange Carriers Developing a Unified Intercarrier Compensation Regime, WC Docket Nos. 10-90, 14-58, 07-135, Report and Order, Third Order on Reconsideration, and Notice of Proposed Rulemaking, FCC 18-20, para. 91 (2018). The transfer of a complete study area is at issue in the current transaction.

[63] Letter from Rebekah P. Goodheart, Counsel to Hargray, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-52, at 1 (filed Mar. 23, 2018) (Applicants' March 23 *Ex Parte* Letter).

[64] Applicants' March 1 *Ex Parte* Letter at 1.

[65] The rules allow carriers discretion to use any reasonable method of allocating costs, and while this reasonableness standard functions as a general safeguard, it does not specifically prevent misallocation as a result of a mixed support transaction. *See Tennessee Cable Telecommunications Ass'n, et al., and Cable Television Association of Georgia, et al. v. BellSouth Telecommunications, Inc.*, Order on Review, 15 FCC Rcd 16237, 16241, para. 10 (2000) (stating that the Commission's cost allocation requirements establish a reasonableness standard).

[66] *See, e.g.*, 47 CFR § 36.310(b).

[67] *See, e.g.*, 47 CFR Part 36, Subpart D.

[68] *See* Applicants' March 1 *Ex Parte* Letter at 1-2.

[69] We do not find that a similar cap is necessary to prevent shifting of capital expenses. Most local loop capital expenses are incurred for specific pieces of equipment that are installed in the network. These expenditures can be directly assigned to the study area for which that part of the network provides service, such as for specific circuit switching or fiber cable equipment. Because most of these expenses are directly allocated, there is less opportunity for cost shifting between study areas. Although certain capital expenses are allocated by general allocators, these expenses make up a small portion of overall loop capital expense, so the burdens imposed by a capital expense limitation would exceed the benefit of preventing the amount of cost shifting that is possible. *See Connect America Fund; High-Cost Universal Service Support*, WC Docket Nos. 10-90, 05-337, Order, 27 FCC Rcd 4235, 4242, para. 18 (WCB 2012) (defining capital expenses in the methodology used to determine rate-of-return cost benchmarks for support distribution).

limited high-cost support.[70] It is also aligned with our directive to avoid overpayment to some carriers which would, in turn, reduce the funding available to other providers.[71]

27. We find that mixed support transactions warrant a safeguard to protect the financial stability of the CAF as a limited resource.[72] To mitigate the potential for cost shifting, and consistent with similar precautions to protect the public interest in prior transaction reviews,[73] we impose the following condition: the combined operating expense as defined below for Hargray's two existing rate-of-return subsidiaries, Hargray Telephone Company and Bluffton Telephone Company, shall be capped at the averaged combined operating expense of the three calendar years preceding the transaction closing date for which the operating expense data are available.[74] Capping Hargray's operating expenses in this way will help ensure, without being unnecessarily burdensome, that the combined entity does not receive additional or inflated universal service support merely because of cost accounting that shifts costs from ComSouth to Hargray.

28. The cap will apply to cost recovery under both High-Cost Loop Support (HCLS) and CAF-BLS and will be applied proportionately to each subsidiary's accounts used to determine a carrier's eligible operating expense for HCLS and CAF-BLS. For example, if the cap requires that Hargray's eligible operating expense be reduced by 10 percent, then each account used to determine each subsidiary's eligible operating expense shall be reduced by 10 percent. For purposes of this cap, operating expense shall include maintenance, network support/network operations/general, benefits, rent expenses, and corporate operations, while depreciation, return on investment, and taxes shall be excluded. This approach is consistent with the operating expense limitation that the Commission adopted in the

[70] *CAF 2018 Order* at 6, para. 13.

[71] *Id*.

[72] We direct the Bureau to apply the condition where necessary to remedy a potential public interest harm caused by a mixed support transaction. We also direct the Bureau to apply the same condition to a merger between an average schedule company and a model-based support company, and in such cases the condition would be triggered if the average schedule company converts to a cost company. Under the condition, we permit "average schedule companies" to estimate universal service support pursuant to a formula developed by the National Exchange Carrier Association (NECA). *See, e.g., National Exchange Carrier Association, Inc. 2018 Modification of Average Schedule Universal Service Support Formula, High-Cost Universal Service Support,* Order, DA 17-1039 (WCB 2017). An incumbent LEC may convert from an average schedule company to a cost company, but a carrier must obtain a waiver of the definition of "average schedule company" in section 69.605(c) to change from a cost company to an average schedule company. *See* 47 CFR § 69.605(c).

[73] Applicants' March 23 *Ex Parte* Letter at 2-3 & n.7 (proposing voluntary conditions capping the operating expense number for the combined entity post-consummation) (citing *Applications Filed by Qwest Commc'ns Int'l Inc. & CenturyTel, Inc. d/b/a CenturyLink for Consent to Transfer Control*, Memorandum Opinion and Order, 26 FCC Rcd 4194, 4214, para. 43 (2011) (requiring CenturyLink to freeze interstate common line support (ICLS) on a per-line basis for its three remaining average schedule companies as a condition of approving transfer of control of licenses and authorization from Qwest to CenturyLink); *Applications of Alltel Corp., Transferor, & Atlantis Holdings LLC, Transferee*, Memorandum Opinion and Order, 22 FCC Rcd 19517, 19521, para. 9 (2007) (imposing an interim cap on high-cost, competitive ETC support provided to ALLTEL as a condition of approving the transfer of control of certain licenses and authorizations, including the domestic 214 authorization from ALLTEL to Atlantis); *Applications of AT&T Inc. & Dobson Commc'ns Corp. for Consent to Transfer Control of Licenses and Authorizations*, 22 FCC 20295, 20330, para. 72 (2007) (conditioning proposed transaction on voluntary commitment to an interim cap on high-cost, competitive ETC support).

[74] *See* Applicants' March 23 *Ex Parte* Letter at 1-2. To ensure consistency, the cap would apply to the combined operating expenses of Hargray's existing rate-of-return subsidiaries and any rate-of-return subsidiaries that Hargray may acquire during the time in which the condition is in effect.

Rate-of-Return Reform Order to ensure that companies do not receive more high-cost support than is necessary.[75]

29. This cap shall remain in effect for seven years from the consummation of the transaction.[76] Although Applicants proposed that a cap remain in place for five years,[77] we find seven years to be an appropriate duration in 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.[78] The condition will sunset if Hargray's rate-of-return subsidiaries become model-based support companies at any point during the seven-year period.

30. For each year following the consummation of the transaction for seven years, Hargray's capped operating expense costs shall include an annual adjustment to account for the percentage change in the United States Department of Commerce's Gross Domestic Product–Chained Price Index (GDP–CPI). The GDP–CPI is the same adjustment factor proposed by industry that the Commission has used to calculate the Rural Growth Factor (RGF).[79] This adjustment will ensure that operating expenses do not become capped solely because of inflation.

31. To monitor compliance with the condition adopted herein, to the extent it does not already do so, we direct Hargray to submit its relevant cost data to NECA. The relevant cost data should not be overly burdensome to produce as it is the same data that rate-of-return carriers submit for calculation of the operating expense limitation that the Commission adopted in the *Rate-of-Return Reform Order*.[80] Within 30 days following such submission, we direct NECA to provide the Universal Service Administrative Company (USAC)[81] with the dollar amount of the operating expense costs that will be capped by this Order. For each year following the effective date of this Order, we direct NECA to provide USAC with the reductions in HCLS and CAF-BLS for Hargray under this Order. USAC shall validate all calculations received from NECA before making disbursements subject to any such support reductions. We direct Hargray to certify compliance with USAC annually for the duration of the condition on or before December 31. With the certification, Hargray must also submit its latest audited financial statements to USAC, including all notes and consolidating statements, on an annual basis, by

[75] *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3124-26, paras. 95-104.

[76] The cap will not apply if the proposed transaction does not consummate.

[77] Applicants' March 23 *Ex Parte* Letter at 2.

[78] Applying the condition for seven years is consistent with the length of conditions imposed in prior transaction orders. For example, in the universal service context, the Commission required CenturyLink to meet broadband deployment and adoption commitments for seven years following its transaction closing date with Qwest by relying on private investment and not on public funding sources such as universal service support. *Qwest/CenturyLink Order,* 26 FCC Rcd at 4210-11, paras. 34-35 and App. C. The Commission has also accepted or required commitments lasting seven years in other transactions to address potential harms. *See id*. at 4203, para. 17 and App. C (accepting applicants' commitment not to increase rates for seven years in certain buildings in which there would be a reduction in competition as a result of the transaction); *Comcast/NBCU Order*, 26 FCC Rcd at 4312, para. 178 (explaining that the Commission placed a seven-year time limit on the condition for affiliate programming agreements); *Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership For Consent to Assign or Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 31 FCCR 6327, 6330, 6347, paras. 9, 48 (limiting a condition on data caps to seven years to allow markets for services to develop).

[79] 47 CFR § 54.1303.

[80] *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3125-26, paras. 98-104. *See* FCC Operating Expense worksheet at https://NECA.org/Home.aspx (last visited May 7, 2018).

[81] USAC administers USF programs subject to management and oversight by the Commission. 47 CFR § 54.701.

December 31 of each year.[82] We find that the transaction, subject to the condition adopted herein, is unlikely to result in public interest harm.

B. Potential Benefits

32. Having addressed and remediated with a narrowly targeted condition any potential public interest harms of the transaction, we next review the public interest benefits, beyond fostering the free transferability of licenses and authorizations.[83] The Commission finds a claimed benefit to be cognizable only if it is transaction-specific—meaning it naturally arises as a result of the transaction[84]—and verifiable.[85]

33. We find that there is some indication in the record that the transaction may result in modest additional public interest benefits beyond fostering free transferability. Applicants contend that the transaction will result in public interest benefits as a result of: efficiencies from the transaction that could produce "nearly $2 million in savings";[86] Hargray's management experience; enhancing ComSouth's ability to compete with other providers; and a seamless transition for customers as Applicants state they have no plans to implement any changes in rates, terms, or conditions.[87] Applicants claim that the transaction will result in continued and improved services for ComSouth customers and result in transaction-specific public interest benefits by making increased capital resources available to ComSouth, thereby strengthening ComSouth's ability to "enhance and expand its offerings and provide more advanced communications services throughout its service areas, which includes rural areas in Georgia."[88] We find that it is likely that the transaction will result in continued, and perhaps improved, financing for ComSouth, which may result in a greater incentive or ability to enhance and extend its service offerings.[89]

VI. CONCLUSION

34. After thoroughly reviewing the proposed transaction and the record in this proceeding, we conclude that the transfer of control, subject to the condition 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 Application.

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[82] This submission should not be burdensome because carriers already submit most of this information in financial statements to USAC annually. *See* 47 CFR §§ 54.313, 54.422 (describing the Carrier Annual Reporting Data Collection Form process, referred to as Form 481). If Hargray does not maintain audited financial statements in the ordinary course of business, it may submit financial statements that meet the requirements of Form 481. Within thirty days of closing, Hargray must notify USAC so that USAC can make appropriate changes to the HUBB (High Cost Universal Broadband) portal.

[83] *See CenturyLink/Level 3 Order*, 32 FCC Rcd at 9604, para. 50.

[84] Or as the Commission has previously put it, "likely to be accomplished as a result of the merger but unlikely to be realized by other means that entail fewer anticompetitive effects." *AT&T/BellSouth Order*, 22 FCC Rcd. at 5761, para. 202.

[85] *CenturyLink/Level 3 Order*, 32 FCC Rcd at 9604, para. 50 (citing *AT&T/BellSouth Order*, 22 FCC Rcd. at 5761, para. 202).

[86] Applicants' March 1 *Ex Parte* Letter at 1.

[87] Application at 7.

[88] *Id.* at 6.

[89] *See CenturyLink/Level 3 Order*, 32 FCC Rcd at 9605, para. 53 (finding that a larger, better capitalized combined company is more likely to expand or improve fiber network); *Applications of National Rural Utilities Cooperative Finance Corporation and Atlantic Tele-Network, Inc.*, Memorandum Opinion and Order, 31 FCC Rcd 6913, 6924-25, paras. 33, 36 (finding that improved financing for a telecommunications provider was likely to result in improved operations overall and improved broadband services, thereby serving the public interest).

VII. ORDERING CLAUSES

35. Accordingly, having reviewed the record in this matter, 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 sections 63.03-04 of the Commission's rules, 47 CFR §§ 63.03-04, that the Application to transfer control of the authorizations of ComSouth Corporation to Hargray Communications Group, Inc. **IS GRANTED** as specified in this Memorandum Opinion and Order and subject to the condition specified herein.

36. **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. Petitions for reconsideration under section 1.106 of the Commission's Rules, 47 CFR § 1.106, may be filed within thirty days of the release date of this Memorandum Opinion and Order.

FEDERAL COMMUNICATIONS COMMISSION

Marlene Dortch
Secretary

STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY

Re: *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 No. 18-52.

I appreciate the opportunity to consider this item at the Commission level, and I appreciate the cooperation of my colleagues, especially the Chairman for allowing Commissioners to vote on the matter and Commissioner Carr for supporting my request. This process demonstrates that a defined, balanced delegation process can work, and I hope everyone will consider my previous proposal on the subject to memorialize this structure into our rules.

Substantively, I have repeatedly discussed over the years the need to remove unnecessary regulatory barriers to the *voluntary* consolidation of exchanges or study areas in rural America. As telecommunications and regulatory landscapes have changed, we have heard that it can make economic sense for some rural carriers to increase their scale and diversify their operations through the acquisition of other companies or exchanges. In some instances, such transactions could also reduce reliance on universal service support and/or improve the economic case to expand broadband to additional unserved areas.

One of those barriers has been a lack of clarity regarding the amount and type of federal high-cost universal service support that would be available if one kind of provider buys all or part of another provider's service area. I have been pushing for the Commission to find ways to remove the "parent trap" barrier, having just raised it as part of the recently adopted rate-of-return item, and there are additional combinations that raise the same general issue of whether an area will be limited to a certain type or amount of support.

While the Commission has previously adopted rules addressing the transfer of exchanges among various categories of providers and further clarified those rules earlier this year, some categories were not addressed. Moreover, the entire structure was less than clear-cut. With this order, applicants will now have additional clarity regarding the purchase of A-CAM study areas. I hope that the Commission will soon address any remaining scenarios so that companies will have confidence to move forward with additional deals, subject to the Commission's normal transactions process.

I vote to approve.