

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

In the Matter of
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

Adopted: May 20, 2021

Released: May 21, 2021

By the Commission: Acting Chairwoman Rosenworcel and Commissioner Starks issuing separate statements.

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. 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). 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. 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.

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. On December 9,

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.

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).

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 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

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).

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.

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 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

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 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.").

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 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

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 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.

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 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

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.

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).

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.

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

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

**STATEMENT OF
ACTING CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *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 (May 20, 2021).

There is no shortage of complex issues that come before the Federal Communications Commission. But mixed support mergers between telecommunications carriers may be among the most obscure of the complex issues that the agency is called on to address. So let me try to explain why they are important. Rural telephone carriers that rely on our universal service system to keep their communities connected can receive support in one of two ways. Some receive support based on our traditional methodology, which is based on their costs. Others have elected to receive their support based on a model that provides them a fixed amount.

When a cost-based company combines with a model-based company, we have a regulatory wrinkle. The combined entity will have an incentive to shift costs to the cost-based company in order to receive more support. To iron this accounting situation out, we have required that when these mixed support transactions take place, the expenses of the cost-based affiliates are capped based on average expenses from the last three years. This prevents cost shifting.

Here, when Dobson, a model-based company, and Lavaca, a cost-based company, sought to combine, the Wireline Competition Bureau imposed this mixed support condition on the transaction. No one disputes that was correct.

However, Fort Mojave Telephone, a cost-based carrier serving the Fort Mojave Indian Tribe, was also subject to the condition because Dobson holds an indirect interest in Fort Mojave Telephone. But the parties have now shown that Dobson exercises no control over Fort Mojave Telephone, which is majority owned by the Fort Mojave Indian Tribe. That means there's no danger of cost shifting to Fort Mojave, and in fact, Fort Mojave's Tribal broadband deployment plans could be hindered by the mixed support condition. So today we exempt Fort Mojave Telephone from the mixed support condition and lay out a framework for the Bureau to do the same in other transactions in the future where the facts support it.

Like I said at the start, this is complex. But going forward we will fine-tune our policy so it will not get in the way of deployment in rural areas and Tribal lands. So a hefty thank you to Pam Arluk, Justin Faulb, Dennis Johnson, Jodie May, Sue McNeil, Kris Monteith, Terri Natoli, Ryan Palmer, Joe Sorresso, and Suzanne Yelen of the Wireline Competition Bureau; and Malena Barzilai, Jim Bird, Bill Dever, Michele Ellison, Richard Mallen, Linda Oliver, Joel Rabinovitz, and Bill Richardson of the Office of General Counsel.

**STATEMENT OF
COMMISSIONER GEOFFREY STARKS**

Re: *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 (May 20, 2021).

When it considers transfers of control of lines or authorizations to operate pursuant to Section 214 of the Communications Act, the Commission has an important responsibility to protect the Universal Service Fund. The Order on Reconsideration we adopt today carefully delineates circumstances where one of our tools for protecting the Fund, the “mixed support condition,” is not necessary. I am pleased to approve that decision and to reaffirm our delegation of authority to the Wireline Competition Bureau to continue applying the mixed support condition in appropriate cases.

Americans have, quite reasonably, high expectations for the expanded broadband access that the Commission will support with billions of dollars in the coming years. Going forward, we must continue to carefully evaluate any proposed transactions that come before the Commission to ensure both that USF funding will be used effectively and efficiently, and that the parties who take on USF obligations have the required technical and financial capabilities to perform. I thank the staff of the Wireline Competition Bureau for their work on this item and their ongoing work safeguarding the Fund.