PUBLIC NOTICE

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DOMESTIC SECTION 214 APPLICATIONS GRANTED SUBJECT TO CONDITION

WC Docket Nos. 18-342, 18-343

By this Public Notice, the Wireline Competition Bureau (Bureau) grants the following applications, as conditioned, and pursuant to section 214 of the Communications Act of 1934, as amended, and sections 63.03 and 63.04 of the Commission's rules.[1] The Bureau received no comments in opposition to a grant of the Applications.

Domestic Section 214 Application Filed for the Transfer of Control of Le-Ru LD Telephone Company to STEL-CO, WC Docket No. 18-342 (filed Nov. 13, 2018). On November 20, 2018, the Bureau released a Public Notice requesting comment on an application filed by Robert L. Hart and STEL-CO (collectively, Applicants) requesting approval for the transfer of control of Le-Ru Telephone Company (Le-Ru Telephone) and its wholly owned subsidiary, Le-Ru Long Distance Company (Le-Ru LD), from Mr. Hart to STEL-CO.[2] Le-Ru Telephone, a Missouri corporation, provides incumbent local exchange carrier (LEC) services in southwest Missouri.[3] Le-Ru Telephone receives universal service support under the Alternative Connect America Cost Model (A-CAM).[4]

STEL-CO, a newly-formed Missouri corporation, does not provide telecommunications services. STEL-CO is wholly owned by W. Jay Mitchell, a U.S. citizen.[5] Mr. Mitchell also owns controlling interests (50 percent), through various revocable trusts, of the stock of Seneca Telephone Company (Seneca), Goodman Telephone Company (Goodman), and Ozark Telephone Company (Ozark) that

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[1] *See* 47 U.S.C. § 214; 47 CFR §§ 63.03-63.04. Joint Application of Robert L. Hart and STEL-CO for Consent to Transfer Control, WC Docket No. 18-342 (filed Nov. 13, 2018) (STEL-CO/Le-Ru Application); Application for Transfer of Control of Border to Border Communications, Inc. to Hilliary Acquisition B2B, LLC, WC Docket No. 18-343 (filed Nov. 13, 2018) (Hilliary/Border Application) (STEL-CO/LeRu Application, together with Hilliary/Border Application, Applications). Any action on the Applications is without prejudice to Commission action on other related, pending applications.

[2] *Domestic Section 214 Application Filed for the Transfer of Control of Le-Ru Telephone Company to STEL-Co*, WC Docket No. 18-342, Public Notice, DA 18-1185 (rel. Nov. 20, 2018).

[3] STEL-CO/Le-Ru Application at 2.

[4] *Id*. at 2-3; Universal Service Administrative Co., Tools, https://www.usac.org/about/tools/fcc/filings/default.aspx. *See 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) (*A-CAM Public Notice*). The Commission adopted a voluntary path by which rate-of-return carriers could elect to receive a fixed amount of universal service support under A-CAM, a forward-looking broadband cost model, for 10 years in exchange for deploying broadband-capable networks to eligible locations. *Connect America Fund et al.*, Report and Order, Order and Order on Reconsideration and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3090, para. 4, 3096-3117, paras. 20-79 (2016).

[5] STEL-CO/Le-Ru Application at 3, 7.

provide incumbent LEC services in Arkansas, Missouri and Oklahoma.[6] Applicants state that Goodman's service area is adjacent to that of Le-Ru Telephone.[7] Through a revocable trust, Mr. Mitchell also owns 50 percent of ARK-O Holding Company, a Missouri corporation, which, in turn, owns the common stock of Cleveland County Telephone Company (Cleveland), Decatur Telephone Company (Decatur), and Wyandotte Telephone Company (Wyandotte) that provide incumbent LEC services in Arkansas and Oklahoma.[8] Seneca, Goodman, Ozark, Cleveland, Decatur, and Wyandotte did not elect to receive model-based support and receive cost-based universal service support for their incumbent LEC services.[9]

Domestic Section 214 Application Filed for the Transfer of Control of Border to Border Communications, Inc. to Hilliary Acquisition B2B, LLC, WC Docket No. 18-343 (filed Nov. 13, 2018). On November 29, 2018, the Bureau released a Public Notice requesting comment on an application filed by Curtis H. Hunt, Herman C. Roark, Jr., and Hilliary Acquisition B2B, LLC (Hilliary) requesting approval for the transfer of control of Border to Border Communications, Inc. (Border) from Mr. Hunt and Mr. Roark to Hilliary.[10] Border, a Texas corporation, is a rural incumbent LEC serving the Falcon exchange in Zapata County, Texas. Border did not elect to receive model-based support and currently receives cost-based support for its incumbent LEC services.[11]

Hilliary, an Oklahoma limited liability company, does not offer domestic telecommunications services itself but is a holding company equally owned (each holding a 25 percent interest) by the following U.S. citizens: Edward E. Hilliary, Jr., Dustin J. Hilliary, Michael J. Hilliary, and Douglas J. Hilliary (collectively, the Hilliary Owners).[12] Hilliary is affiliated with Oklahoma Western Telephone Company, Inc. (Oklahoma Western), an incumbent LEC serving southwest Oklahoma which, in turn, wholly owns Phoenix Long Distance, Inc., a competitive LEC, also providing service in southwest Oklahoma.[13] The Hilliary Owners also each hold a 25 percent interest in Wichita Online, LLC and Southern Plains Cable, LLC, both competitive LECs providing service in southwest Oklahoma, as well as Texhoma Fiber, LLC, an interexchange provider in southwest Oklahoma.[14] Hilliary Family First, LLC wholly owns Medicine Park Telephone Company, Inc., a rural incumbent LEC providing service in South Western Oklahoma.[15] Hilliary's affiliate, Hilliary Acquisition Corp. Texas, LLC, owns Electra Telephone

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[6] *Id.* at 3.

[7] *Id*. at 9, n.5.

[8] *Id.* at 3-4. Mr. Mitchell also owns 50 percent of S-GO Leasing Company d/b/a S-GO Long Distance and d/b/a SGO Broadband, a Missouri corporation, which provides resold long distances services. *Id*. at 4.

[9] *Id*.; Universal Service Administrative Co., Tools, https://www.usac.org/about/tools/fcc/filings/default.aspx.

[10] *Domestic 214 Application Filed for the Transfer of Control of Border to Border Communication, Inc. to Hilliary Acquisition B2B, LLC*, WC Docket No. 18-343, Public Notice, DA 18-1215 (rel. Nov. 29, 2018). Applicants filed a supplement to their application. Letter from Carri Bennet and Marjorie Spivak, Womble Bond Dickinson (US) LLP, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-343 (filed Nov. 28, 2018) (Hilliary/Border *Ex Parte* Letter).

[11] Hilliary/Border Application at 7; Universal Service Administrative Co., Tools, https://www.usac.org/hc/tools/default.aspx.

[12] Hilliary/Border Application at 3.

[13] *Id.* at 4, 7.

[14] *Id.* at 7.

[15] Hilliary/Border Application at 7; Hilliary Family First, LLC is co-owned (each 50 percent) by the Edward A. Hilliary, Jr. Revocable Trust (EAH Trust) and the Alice Jo Hilliary Revocable Trust (AJH Trust). Applicants state that the following U.S. citizens each hold a 14.29 percent equity interest in, and are beneficiaries of, both the EAH Trust and the AJH Trust and, therefore, each hold a 14.29 percent interest in Medicine Park: Douglas J. Hilliary,

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Company, Inc. (Electra) and Tatum Telephone Company, Inc. (Tatum), two incumbent LECs providing service in Texas.[16] Hilliary's affiliates receive high cost support through different mechanisms. Oklahoma Western voluntarily elected to receive universal service support under the A-CAM.[17] Medicine Park, Electra, and Tatum receive cost-based support for their incumbent LEC services.[18] Border and Hilliary, together with their affiliates, have no overlapping or adjacent incumbent LEC service areas.[19]

Discussion. The Applicants request approval to consummate transactions involving companies that receive high-cost universal service support under the different mechanisms of fixed model-based support and cost-based support. The Commission has found that these types of mixed support transactions could result in potential harm to its goal of ensuring that limited universal service funding is distributed efficiently and effectively.[20] 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.[21] 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.[22] Such an outcome is inconsistent with the Commission's general expectation that transactions generate efficiencies that reduce the combined company's costs.[23] Moreover, providing additional universal service support to a company as a result of cost shifting solely because it acquired or merged with another company is not an efficient use of limited universal service resources.[24]

In the *Hargray/ComSouth Order*, in which the Commission approved a mixed support transaction, it sought to prevent cost shifting and to protect the finite resources of the high-cost universal service fund by imposing a limited condition that capped high-cost universal service support based on the operating expenses of the entity receiving cost-based support.[25] The Commission also directed the

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Edward E. Hilliary, Jr., Michael J. Hilliary, Dustin J. Hilliary, Dacia N. Hilliary, Cody K. Hilliary, and Edward E. Hilliary.

[16] Hilliary/Border *Ex Parte* Letter at 1; *Domestic Section 214 Applications Granted Subject to Condition*, WC Docket Nos. 18-301, 18-302, Public Notice, DA 18-1265 (WCB 2018) (*Tatum/Electra Grant PN*).

[17] Hilliary/Border Application at 7; Hilliary/Border *Ex Parte* Letter at 1-2; Universal Service Administrative Co., Tools, https://www.usac.org/hc/tools/default.aspx.

[18] Hilliary/Border *Ex Parte* Letter at 2; Universal Service Administrative Co., Tools, https://www.usac.org/hc/tools/default.aspx. In the *Tatum/Electra Grant PN*, the Bureau conditioned its grant by capping combined operating expense of Tatum, Electra, Medicine Park, and any other rate-of-return affiliates at the averaged combined operating expense of the three calendar years preceding the transactions' closing date for which the operating expense data are available. *Tatum/Electra Grant PN* at 3.

[19] Hilliary/Border *Ex Parte* Letter at 1.

[20] *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, FCC 18-62, para. 19 (rel. May 11, 2018). (*Hargray/ComSouth Order*).

[21] *Id*. at para. 20.

[22] *Id*.

[23] *Id*.

[24] *Id*. at para. 21.

[25] *Id*. at paras. 26-31.

Bureau to impose the same limited condition on future transactions between parties receiving different types of high-cost universal service support.[26]

In the STEL-CO/Le-Ru transaction, STEL-CO, which is affiliated with cost-based support companies, seeks to acquire Le-Ru, a fixed model-based support company, while in the Hilliary/Border transaction, Hilliary, which is affiliated with both a fixed model-based support company as well as several cost-based support companies, seeks to acquire Border, another cost-based support company. The potential for harm caused by cost-shifting is therefore specific to both transactions. Accordingly, to mitigate the potential for cost shifting, we grant the Applications subject to the condition adopted in the *Hargray/ComSouth Order*.[27] The combined operating expense of each post-consummation company's rate-of-return affiliates[28] shall be capped at the averaged combined operating expense of the three calendar years preceding the transactions' closing date for which the operating expense data are available.[29]

The cap will apply to cost recovery under both HCLS and CAF-BLS and will be applied proportionately to each affiliate's accounts used to determine the affiliate's eligible operating expense for HCLS and CAF-BLS.[30] For example, if the cap requires that a post-consummation company's eligible operating expense be reduced by 10 percent, then each account used to determine each rate-of-return affiliate's eligible operating expense shall be reduced by 10 percent.[31] 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.[32]

For all covered entities, the new cap shall also include an annual adjustment for inflation based on the Gross Domestic Product-Channel Price Index (GDP-CPI) for the years in which the new cap remains in effect.[33] This cap shall remain in effect for seven years from the consummation of the transactions.[34] The condition will also sunset if all of a post-consummation company's rate-of-return affiliates become

[26] *Id*. at para. 27, n.72.

[27] *Id.* at paras. 26-31.

[28] *See* 47 U.S.C. § 153(1).

[29] *Hargray/ComSouth Order* at para. 27. The cap will apply to the combined operating expenses of the post-consummation companies and any other existing rate-of-return affiliates that they may acquire during the time in which the condition is in effect (together, covered entities). To monitor compliance with the condition adopted herein, to the extent it does not already do so, we direct the covered entities to submit their relevant cost data to the National Exchange Carrier Association (NECA). We direct NECA to provide the dollar amount of the operating expense costs that will be capped pursuant to this Public Notice to the Universal Service Administrative Company (USAC) within 30 days following submission of any covered entity's cost data. We further direct NECA to provide USAC with the reductions in High-Cost Loop Support (HCLS) and Connect America Fund-Broadband Loop Support (CAF-BLS) for any covered entity pursuant to this Public Notice for each year following the effective date of this Public Notice. USAC shall validate all calculations received from NECA before making disbursements subject to any such support reductions. We also direct all covered entities to provide USAC with an annual certification of compliance on or before December 31 of each year for the duration of the condition. With the certification, each covered entity must also submit its latest audited financial statements to USAC, including all notes and consolidating statements, on an annual basis, by December 31 of each year. *Id*. at para. 31. STEL-CO requests that "the condition reflect that if the financial statements of any operating company are not otherwise required to be audited, and are not audited in the ordinary course of business, that STEL-CO and such operating company may submit reviewed financial statement in satisfaction of the *Hargray* condition, rather than audited financial statements, consistent with the *Hargray/ComSouth Order* and FCC Rule 54.313(f)(2)(iii), 47 C.F.R. §54.313(f)(2)(iii), and the instructions to the FCC Form 481." STEL-Co/Le-Ru Application at 5-6. As the Commission allowed in the *Hargray/ComSouth Order*, if a covered entity does not maintain audited financial statements in the ordinary course of business, it may submit financial statements that meet the requirements of Form 481. *Hargray/ComSouth Order* at para. 31, n.82.

model-based support companies at any point during the seven-year period.[35]

We find, upon consideration of the record, that grant of the Applications listed above, subject to compliance with the condition, will serve the public interest, convenience, and necessity.[36] Therefore, pursuant to section 214 of the Act, 47 U.S.C. § 214, and sections 0.91, 0.291, 63.03, and 63.04 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 63.03, and 63.04, the Bureau hereby grants the Applications discussed in this Public Notice subject to compliance with the condition described above.[37]

Pursuant to section 1.103 of the Commission's rules, 47 CFR § 1.103, the grant is effective upon release of this Public Notice. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 CFR §§ 1.106, 1.115, may be filed within 30 days of the date of this Public Notice. For further information, please contact Dennis Johnson, Wireline Competition Bureau, Competition Policy Division, (202) 418-0809.

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[30] *Hargray/ComSouth Order* at para. 28.

[31] *Id.*

[32] *Id.*

[33] *Id.* at para. 30.

[34] The Commission has found seven years to be an appropriate period over which to monitor enforcement of the condition and to ensure that the combined entity, which will continue to receive support, does not shift costs from year-to-year. *Id*. at para. 29, fn.78. The cap will not apply if the parties do not consummate the proposed transactions.

[35] *Id*. at para. 29.

[36] *See* 47 U.S.C. § 214(a); 47 CFR § 63.03; *See Joint Applications of Global Crossing Ltd. and Citizens Communications Company for Authority to Transfer Control of Corporations Holding Commission Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 20, 22, 63, 78, 90, and 101 of the Commission's Rules*, File Nos. ITC-T/C-20000828-00530, CCBPol No. 00-1 20001005AD-09 0000209675, et al., Memorandum Opinion and Order, 16 FCC Rcd 8507, 8510-11, paras. 7-9 (CCB, IB, CSB, WTB 2001) (granting transfer of control involving incumbent LECs with adjacent exchanges where merger would provide service efficiencies).

[37] The Applicants in this proceeding provide incumbent LEC services in their respective study areas. Within 30 days of closing the proposed transactions, they must notify USAC so that it can make any appropriate changes to the High Cost Universal Broadband (HUBB) on-line location reporting portal for universal service recipients.