



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <https://www.fcc.gov>
TTY: 1-888-835-5322

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DOMESTIC SECTION 214 APPLICATION GRANTED SUBJECT TO CONDITION

WC Docket Nos. 18-129

By this Public Notice, the Wireline Competition Bureau (Bureau) grants the following application, 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, requesting approval to transfer control of Hospers Telephone Exchange, Inc. d/b/a HTC Communications (Hospers) to Mutual Telephone Company of Sioux Center, Iowa d/b/a Premier Communications (Mutual).¹ On June 1, 2018, the Bureau released a Public Notice requesting comment on the Application.² The Bureau received no comments in opposition to a grant of the Application.³

Hospers is a rural incumbent local exchange carrier (LEC) that provides local and long distance telecommunications services, high speed Internet access services, video and other services in the Hospers local exchange in Iowa. Hospers receives cost-based universal service support as an average schedule company for serving the Hospers exchange.⁴ Hospers also provides competitive LEC, video, and other services in the Sheldon local exchange area, and in the towns of Sibley, Ocheyedan, and Ashton, Iowa.⁵

Mutual provides services as a rural incumbent LEC in the Sioux Center, Iowa exchange. Mutual

¹ See 47 U.S.C. § 214; 47 CFR §§ 63.03-63.04. Domestic Section 214 Application for Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, for Consent to Transfer Control of Hospers Telephone Exchange, Inc. d/b/a HTC Communications to Mutual Telephone Company of Sioux Center, Iowa d/b/a Premier Communications, WC Docket No. 18-129 (filed Apr. 30, 2018) (Application). Applicants filed supplemental letters addressing the Application. Letter from John Kuykendall, JSI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-139 at 1 (filed May 15, 2018); Letter from John Kuykendall, JSI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-139 (filed June 14, 2018); Letter from John Kuykendall, JSI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-139 (filed July 18, 2018); Letter from John Kuykendall, JSI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-139 (filed July 19, 2018) (Applicants July 19 *Ex Parte* Letter). Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

² *Domestic Section 214 Application Filed for the Transfer of Control of Hospers Telephone Exchange, Inc. d/b/a HTC Communications to Mutual Telephone Company of Sioux Center, Iowa d/b/a Premier*, WC Docket No. 18-129, Public Notice, DA 18-569 (rel. June 1, 2018).

³ The Rural Broadband Association (NTCA) and the Iowa Communications Alliance (ICA) filed joint comments supporting a grant of the Application. See NTCA and ICA Comments at 1-2.

⁴ Universal Service Administrative Co., Tools, <https://www.usac.org/hc/tools/default.aspx>. Average schedule companies receive support based on formulas that use the reported costs of the companies. See, e.g., *National Exchange Carrier Association, Inc. 2018 Modification of Average Schedule Universal Service Support Formula, High-Cost Universal Service Support*, Order, 32 FCC Rcd 7654 (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).

⁵ Applicants state that Hospers is an Eligible Telecommunications Carrier for Lifeline services in Sheldon and Sibley.

also wholly owns the following three incumbent LECs: Northern Iowa Telephone Company (Northern), which serves the Iowa exchanges of Hinton, Matlock, Maurice, Sanborn, Little Rock, and Granville; Webb-Dickens Telephone Corporation (Webb-Dickens), which serves the Iowa exchanges of Dickens and Webb; and Heartland Telecommunications Company of Iowa (Heartland), which serves the Iowa exchanges of Akron, Boyden, Doon, Hawarden, Hull, Ireton, Rock Rapids, Rock Valley, and Sibley, as well as several exchanges in Minnesota and South Dakota. Mutual also wholly owns Premier Communications, Inc. (Premier), which serves as a competitive LEC in Iowa.⁶ Mutual, Northern, and Webb-Dickens receive cost-based, non-average schedule, universal service support.⁷ Heartland receives universal service support under the Connect America Model (CAM).⁸

Applicants state that no single individual or entity holds more than a 10 percent interest in Mutual. Applicants further state that the incumbent LEC service areas for Northern and Heartland are partially adjacent to Hospers' incumbent LEC exchange. Hospers' four competitive LEC exchanges are also adjacent to portions of the Northern and Heartland incumbent LEC exchanges with minimal overlap in the Sibley exchange.⁹

Discussion. The Application requests approval to consummate a transaction 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 the Commission's goal of ensuring that our limited universal service resources are distributed efficiently and effectively.¹⁰ 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.¹¹ The Commission, therefore, has found that mixed support transactions warrant a safeguard to protect the financial stability of the CAF as a finite resource and has directed the Bureau to impose a limited

⁶ Applicants state that Mutual also holds a 20 percent interest in FiberComm, L.C. (FiberComm) that provides competitive LEC services in Sioux City, Iowa; a 20.4 percent interest in FiberNet Communications L.C. (FiberNet) that provides transport and special access telecommunications services in Iowa; and a 37.5 percent interest in Milford Communications, LLC (Milford), that provides cable and broadband services in Milford and Fostoria, Iowa. Applicants also state that Northern also holds a 23.34 percent interest in FiberNet. Applicants state that none of the service areas of FiberComm, FiberNet, nor Milford overlap the service areas of Hospers' incumbent or competitive LEC service areas.

⁷ Universal Service Administrative Co., Tools, <https://www.usac.org/hc/tools/default.aspx>.

⁸ Heartland is regulated as a price cap company and receives Connect America Fund (CAF) Phase II model-based support. CAM refers to the forward-looking model that calculates the cost of providing services in high cost areas and sets a fixed amount of support for price cap carriers serving those areas that is available through CAF. *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17667, 17673-74, paras. 20-24 (2011) (*USF/ICC Transformation Order* and/or *FNPRM*), *aff'd sub nom. In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014); *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*); Universal Service Administrative Co. (USAC) 2018 Second Quarter Filings, HCO1-High Cost Support Projected by State by Study Area, <https://www.usac.org/about/tools/fcc/filings/2018/q2.aspx>.

⁹ Applicants July 19 *Ex Parte* Letter at 1.

¹⁰ *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*).

¹¹ *Id.* at para. 20.

condition on transactions between parties receiving different types of support to cap high-cost universal service support based on the operating expenses of the cost-based companies.¹²

In this proceeding, because Mutual's affiliate, Heartland, is a fixed model-based support company, the potential for a transaction-specific harm exists if Hospers converts from an average schedule company to a cost company, thereby triggering an incentive to shift costs from Heartland to Hospers. Accordingly, to mitigate the potential for cost shifting, we grant the Application subject to the following condition: if Hospers converts to a non-average schedule cost company, that conversion will trigger application of the condition established in the *Hargray/ComSouth Order*¹³ and discussed in the *Average Schedule Grant Public Notice*.¹⁴ If Hospers converts, the newly converted cost company's operating expense would be capped at the average of the three previous years' operating expense and combined with the inflation-adjusted operating expense data of any other affiliated cost companies.¹⁵

Once triggered, the cap would apply to cost recovery under both HCLS and CAF-BLS and would be applied proportionately to each affiliate's accounts used to determine the affiliate's eligible operating expense for HCLS and CAF-BLS.¹⁶ 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.¹⁷ 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.¹⁸

For all entities to which it applies, 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

¹² *Id.* at paras. 26-31. The condition requires that the combined operating expense, as defined, for each post-consummation company's rate-of-return affiliates shall be capped at the averaged combined operating expense of the three calendar years preceding the transaction closing date for which operating expense data are available. *Id.* at para. 27. Thus, for example, if the post-consummation company has three rate-of-return affiliates, the averaged prior-three-years combined operating expense would serve as a cap for those affiliates' operating expenses. Capping 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 the affiliates receiving fixed support (such as CAM or Alternative-CAM support) to the affiliates receiving cost-based support. *Id.*

¹³ *Id.* at n.72.

¹⁴ *Domestic Section 214 Applications Granted Subject to Condition*, WC Docket Nos. 17-101, 17-365, 18-68, 18-94, 18-95, 18-77, Public Notice, DA 18-742 (WCB July 18, 2018) (*Average Schedule Grant Public Notice*).

¹⁵ If it has not previously done so, Hospers, if it becomes a newly converted cost company, must submit its prior three years of operating expense data to the National Exchange Carrier Association (NECA). NECA will then (1) validate and calculate that company's average operating expense for those three years and (2) combine this three-year averaged capped operating expense with the current year's inflation-adjusted operating expense data of any other affiliated cost companies to calculate the new total combined operating expense at which the newly converted and other cost-company affiliates will be capped. The new combined, capped operating expense will then be applied to determine High-Cost Loop Support (HCLS) and CAF-Broadband Loop Support (CAF-BLS). If the actual three-year operating expense average cannot be calculated for the newly converted cost company, NECA, in consultation with the Bureau, will use estimates based on NECA's average schedule support formula. *See id.* ("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)."); *Average Schedule Grant Public Notice* at 5, n.31.

¹⁶ *Hargray/ComSouth Order* at para. 28.

¹⁷ *Id.*

¹⁸ *Id.*

new cap remains in effect.¹⁹ This cap shall remain in effect for seven years from the consummation of the transaction.²⁰ The condition will also sunset if all of a post-consummation company's rate-of-return subsidiaries become model-based support companies at any point during the seven-year period.²¹

The Bureau finds, upon consideration of the record, that grant of the Application listed above, subject to compliance with the condition, will serve the public interest, convenience, and necessity.²² 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 Application discussed in this Public Notice subject to compliance with the condition described above.²³

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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¹⁹ *Id.* at para. 30.

²⁰ 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 11, para. 29. The cap will not apply if the parties do not consummate the proposed transaction or if Hospers does not convert to a cost company.

²¹ *Id.* at para. 29.

²² 47 CFR § 63.03(b); *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, CCB Pol 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); *Applications of Level 3 Communications, Inc. and CenturyLink for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 32 FCC Rcd 9581, 9608, para. 62 (2017) (finding that a transaction involving the combination of incumbent and competitive LEC assets, where there were a small number of locations in which the applicants had overlapping service territories, would result over the long run in cost savings from synergies and operational efficiencies and, consequently, could result in public interest benefits).

²³ The applicants in these proceedings provide incumbent LEC services in their respective territories. 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.