PUBLIC NOTICE

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DOMESTIC SECTION 214 APPLICATION GRANTED SUBJECT TO CONDITION

WC Docket No. 18-223

By this Public Notice, the Wireline Competition Bureau (Bureau) grants, subject to condition, the application requesting approval to transfer control of Inter-Community Telephone Company, L.L.C. (ICTC Telephone) and Valley Communications, Inc. (Valley) from ICTC Group, Inc. (ICTC Group) to BEK Communications Cooperative (BEK) (BEK together with ICTC Group, Applicants).[1]

Background. ICTC Group, a Delaware corporation, wholly owns Lynch Telephone II, L.L.C. (Lynch), a Delaware limited liability company. Lynch, in turn, is the sole shareholder of ICTC Telephone and Valley. ICTC Telephone, a North Dakota corporation, is a rural incumbent local exchange carrier (LEC) serving approximately 1,533 customers in nine exchanges in Barnes, Griggs, Steele, Cass, and Ransom Counties, North Dakota. ICTC Telephone voluntarily elected to receive universal service support under the Alternative Connect America Cost Model (A-CAM).[2] Valley, also a North Dakota corporation, provides competitive broadband and telephone services in and around Valley City, North Dakota to approximately 40 customers.

BEK, a North Dakota cooperative, is a rural incumbent LEC serving approximately 850 business and 6,500 residential lines in 20 rural exchanges in Emmons, McIntosh, Logan, Kidder, Burleigh, McLean, Barnes, and Morton Counties, North Dakota. BEK is a rate-of-return carrier and receives cost-based high cost universal service support.[3] BEK also provides competitive services in and around Valley City, North Dakota. Applicants state that the service areas of Valley and BEK overlap in certain areas in

[1] *See* 47 U.S.C. § 214; 47 CFR §§ 63.03-63.04; Application for Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, for Consent to Transfer Control of Inter-Community Telephone Company, L.L.C. and Valley Communications, Inc., WC Docket No. 18-223 (filed July 18, 2018) (Application). On July 25, 2018, the Bureau released a Public Notice requesting comment on the Application. *Domestic Section 214 Application Filed for the Transfer of Control of ICTC Group, Inc. to BEK Communications Cooperative*, WC Docket No. 18-223, Public Notice, DA 18-772 (rel. July 25, 2018). The Bureau received no comments regarding the Application.

[2] *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). The Commission has 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).

[3] Universal Service Administrative Co., Tools, https://www.usac.org/hc/tools/default.aspx.

and around Valley City, North Dakota where both provide competitive services.[4] BEK is owned by its member-subscribers with no member-subscriber controlling more than a five percent equity interest.[5]

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 its goal of ensuring that limited universal service funding is distributed efficiently and effectively.[6] 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.[7] 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. Such an outcome is inconsistent with the Commission's general expectation that transactions generate efficiencies that reduce the combined company's costs.[8] The Commission has therefore 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.[9]

The Commission therefore has found that mixed support transactions warrant a safeguard to prevent cost shifting and to protect the finite resources of the high cost universal service fund. It directed the Bureau to impose a limited 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 company.[10]

In this proceeding, because BEK, a cost-based support company, is acquiring ICTC Telephone, a fixed model-based support company, the potential for harm caused by cost-shifting is a transaction-specific harm. Accordingly, to mitigate the potential for cost shifting, we grant the Application subject to the condition adopted in the *Hargray/ComSouth Order*.[11] The combined operating expense of BEK and any rate-of-return subsidiaries shall be capped at the averaged combined operating expense of the three

[4] Application at 14.

[5] BEK is controlled by its Board of Directors, all of whom are U.S. citizens.

[6] *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*).

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

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

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

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

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

calendar years preceding the transaction closing date for which the operating expense data are available.[12]
The cap will apply to cost recovery under both High-Cost Loop Support (HCLS) and CAF-Broadband Loop Support (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.[13] 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.[14] 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.[15]

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 new cap remains in effect.[16] This cap shall remain in effect for seven years from the consummation of the transaction.[17] 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.[18]

The Bureau finds, upon consideration of the record, that grant of the Application listed above,

[12] *Id.* at para. 27. To ensure consistency, the cap would apply to the combined operating expenses of BEK and any existing rate-of-return subsidiaries and any rate-of-return subsidiaries that BEK may acquire during the time in which the condition is in effect. To monitor compliance with the condition adopted herein, to the extent it does not already do so, we direct BEK to submit its relevant cost data to the National Exchange Carrier Association (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*. *Connect America Fund et al.*, Report and Order, Order and Order on Reconsideration and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3125-26 paras. 98-104 (2016) (*Rate-of-Return Reform Order*). *See* FCC Operating Expense worksheet at https://NECA.org/Home.aspx. Within 30 days following such submission, the Bureau directs NECA to provide the Universal Service Administrative Company (USAC) with the dollar amount of the operating expense costs that will be capped by this Public Notice. For each year following the effective date of this Public Notice, the Bureau directs NECA to provide USAC with the reductions in HCLS and CAF-BLS for BEK under this Public Notice. USAC shall validate all calculations received from NECA before making disbursements subject to any such support reductions. We direct BEK to certify compliance with USAC annually for the duration of the condition on or before December 31. With the certification, BEK 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. *Hargray/ComSouth Order* at para. 31.

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

[14] *Id.*

[15] *Id.*

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

[17] 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.

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

subject to compliance with the condition, will serve the public interest, convenience, and necessity.[19] 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.[20]

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] *See* 47 U.S.C. § 214(a); 47 CFR § 63.03; *see also 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, 9606, para. 54 (2017) (finding that the transaction would advance the public interest by expanding the reach and service capacity of the combined entity); *Applications Filed by Qwest Communications and CenturyTel, Inc. d/b/a CenturyLink for Consent to Transfer Control*, Memorandum Opinion and Order, 26 FCC Rcd 4194, 4202, para. 15 (2011) (referring to Applicants' overlapping competitive LEC operations and stating "[r]ather than harming competition, we believe that the combination of the Applicants' facilities in these markets could result in a stronger competitive LEC and enhance the merged company's ability to compete against the incumbent LEC.").

[20] The applicants in this proceeding provide incumbent LEC services in their respective territories. Within 30 days of closing the proposed transaction, 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.