

March 23, 2018

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VIA ECFS

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: *In the Matter of W. Mansfield Jennings Limited Partnership, and Hargray Communications Group, Inc.*, WC Docket 18-52

Dear Ms. Dortch:

On March 21, 2018, Trey Judy, Director, Hargray Communications Group, Inc. (“Hargray”) and the undersigned met via telephone with Suzanne Yelen, Joseph Sorresso, Daniel Kahn, Jodie May, and Dennis Johnson of the Wireline Competition Bureau (“Bureau”) to discuss Hargray’s pending Application to Transfer ComSouth’s Domestic Section 214 Authority to Hargray.<sup>1</sup>

During the meeting, we reiterated the benefits of the transaction, including increased investment in rural areas and operational efficiencies.<sup>2</sup> Although we continue to believe that the Federal Communications Commission’s (“Commission”) existing rules, bolstered by Hargray’s robust internal procedures, are sufficient to address any concerns about potential unreasonable allocation of shared costs,<sup>3</sup> Hargray discussed a proposal to cap operating expenditures (“opex”) to address the Commission’s concerns. An opex cap would include Plant Specific Expense, Plant Non-Specific Expense (excluding depreciation expense), Customer Operations Expense, Corporate Operations Expense, and Ad Valorem. The cap would be calculated after removal of non-regulated expenses pursuant to part 64, but before jurisdictional and support calculations in parts 36, 69, and 54.<sup>4</sup> This approach includes the same relevant operating expenses as the

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<sup>1</sup> See *Application to Transfer Control of Domestic Section 214 Authority*, Application, WC Docket 18-52 (filed Feb. 22, 2018) (“Application”).

<sup>2</sup> See Letter from Rebekah P. Goodheart, counsel to Hargray, to Marlene H. Dortch, Secretary, FCC, WC Docket 18-52 (filed Mar. 1, 2018).

<sup>3</sup> See *id.*

<sup>4</sup> See generally 47 C.F.R. pts. 36, 54, 64, and 69.

Commission's existing opex limitations,<sup>5</sup> but would be easier to monitor because it would be applied before separations and does not involve any per location calculations.

The opex limitation would be calculated by combining the operating expenses of Hargray's two existing rate of return subsidiaries, Hargray Telephone Company and Bluffton Telephone Company, using their 2016 cost studies. The 2016 cost studies were finalized at the end of 2017 and therefore not subject to changes or potential gaming. This total opex number would be the cap. For example, if Hargray's total cap is \$45 million, any future cost studies at or below this number would not require any additional action. If, however, the combined opex of Hargray Telephone Company and Bluffton Telephone Company in future cost studies is above the \$45 million cap, Hargray's expenses would be reduced ratably in the same fashion as identified in the 2016 Order. Hargray proposes that the opex cap remain in place for up to five (5) years adjusted for inflation using a labor based metric such as the Employment Cost Index.

This remedy is simple, clear, and easy to enforce and audit. Hargray could certify compliance with USAC annually on December 31<sup>st</sup>. Compliance would largely be self-executing as USAC's existing audit procedures could monitor compliance. The approach is narrowly targeted to address the concerns about unreasonable shifting of shared costs away from model-based companies and ensures efficient use of finite universal service resources. The proposal does not have unintended consequences of deterring broadband investment and deployment in rural areas or creating any disincentives for future consolidation.

The Bureau has ample authority to adopt the cap as a condition of approval. Section 0.291 of the Commission's rules delegates authority to the Bureau to act on any formal or informal common carrier applications or Section 214 applications for common carrier services, except those application that are "in hearing status" or "present novel questions of fact, law or policy which cannot be resolved under outstanding precedents and guidelines."<sup>6</sup> There are no new or novel questions of fact, law or policy presented here. Hargray is not asking the Bureau to make any changes to the Commission's methodology for calculating operating expenses eligible for support under rate-of-return mechanisms. Rather, Hargray is merely proposing that the Bureau cap the amount of opex that may be used to calculate Hargray's high-cost support for the next three (3) years. Such a condition is consistent with Commission precedent. Indeed, the Commission has, on several occasions, capped or frozen an applicant's high-cost support as a condition of approving a transaction.<sup>7</sup>

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<sup>5</sup> See *In re Connect America Fund*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3156 ¶ 185 n.413 (2016) ("*2016 USF Reform Order*").

<sup>6</sup> 47 C.F.R. § 0.291(a).

<sup>7</sup> *In re 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 ¶ 43 (2011) (requiring CenturyLink to freeze interstate common line support ("ICLS") on a per-line basis for its three remaining average schedule

Marlene H. Dortch

March 23, 2018

Page 3

Please contact me if you have any questions regarding these matters.

Sincerely,

/s/ *Rebekah P. Goodheart*  
Rebekah P. Goodheart

cc: Suzanne Yelen  
Joseph Sorresso  
Daniel Kahn  
Jodie May  
Dennis Johnson

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companies as a condition of approving transfer of control of licenses and authorization from Qwest to CenturyLink); *In re Applications of Alltel Corp., Transferor, & Atlantis Holdings LLC, Transferee*, Memorandum Opinion and Order, 22 FCC Rcd 19,517, 19,521 ¶ 9 (2007) (imposing an interim cap on high-cost, competitive ETC support provided to ALLTEL as a condition of approving transfer of control of certain wireless licenses, leases, and domestic and international Section 214 authorizations from ALLTEL to Atlantis); *In re at&t Inc. & Dobson Commc'ns Corp.*, 22 FCC Rcd 20,295, 20,330 ¶ 72 (2007) (conditioning proposed transaction on voluntary commitment to interim cap on high-cost, competitive ETC support). Moreover, given that the proposed cap would merely be an input and does not make any changes to the opex caps that the Commission adopted in 2016, the Bureau likely has additional delegated authority to approve this transaction subject to the proposed condition. *See 2016 USF Reform Order*, 31 FCC Rcd at 3156 ¶ 185 n.413 (delegating authority to the Bureau “to take all necessary administrative steps to implement the reforms adopted in [the] Order.”).