



PUBLIC NOTICE

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DA 18-1265

Released: December 18, 2018

DOMESTIC SECTION 214 APPLICATIONS GRANTED SUBJECT TO CONDITION

WC Docket Nos. 18-301, 18-302

By this Public Notice, the Wireline Competition Bureau (Bureau) grants, subject to condition, the applications requesting approval to transfer control of Tatum Telephone Company, Inc. (Tatum) and Electra Telephone Company (Electra) to Hilliary Acquisition Corp. Texas, LLC (Hilliary) (together, Applicants).¹ On October 19, 2018, we released a Public Notice requesting comment on the Applications.² We received no comments in opposition to a grant of the Applications.

Background. Tatum and Electra, both Texas corporations, provide service as rural incumbent local exchange carriers (LECs) in Texas.³ Tatum provides service in the Tatum exchange in Rusk and Panola Counties,⁴ and Electra provides service in the Electra exchange in Wichita County.⁵ Tatum and Electra receive cost-based universal service support for their rate-of-return incumbent LEC services.⁶

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

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 Tatum Telephone Company, Inc., WC Docket No. 18-302 (filed Oct. 2, 2018) (Tatum Application); Domestic Section 214 Application for Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, for Consent to Transfer Control of Electra Telephone Company, Inc., WC Docket No. 18-301 (filed Oct. 2, 2018) (Electra Application) (together, Applications). Applicants filed supplemental letters addressing the Applications. Letter from Carri Bennet and Benjamin H. Dickens, Counsel for Applicants, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 18-301, 18-302 (filed Oct. 18, 2018) (Oct. 18 *Ex Parte*). Hilliary subsequently filed another application seeking consent for the transfer of control of Border to Border Communications, Inc. to Hilliary Acquisition B2B, LLC, an affiliate of Hilliary. See *Domestic Section 214 Applications Filed for the Transfer of Control of Border to Border Communications, Inc. to Hilliary Acquisition B2B, LLC*, Public Notice, WC Docket No. 18-343 (WCB 2018). Any action on the Applications is without prejudice to Commission action on other related, pending applications.

² *Domestic Section 214 Applications Filed for the Transfer of Control of Tatum Telephone Company, Inc. and Electra Telephone Company, Inc. to Hilliary Acquisition Corp. Texas, LLC*, Public Notice, WC Docket Nos. 18-301 and 18-302 (WCB 2018) (*Public Notice*).

³ Tatum Application at 1, Electra Application at 1. Townes Telecommunications, Inc. is the ultimate parent company of Tatum and Electra. Tatum Application at 2, Electra Application at 2.

⁴ Tatum Application at 1.

⁵ Electra Application at 1.

⁶ October 18 *Ex Parte* at 2; Universal Service Administrative Co., Tools, <https://www.usac.org/hc/tools/default.aspx>.

following U.S. citizens: Edward E. Hilliary, Dustin J. Hilliary, Michael J. Hilliary, and Douglas J. Hilliary (collectively, the Hilliary Owners).⁷ Hilliary wholly owns Oklahoma Western Telephone Company, Inc. (Oklahoma Western), an incumbent LEC serving southwest Oklahoma.⁸ Oklahoma Western receives universal service support under the Alternative Connect America Cost Model (A-CAM).⁹ Hilliary Family First, LLC, which is indirectly owned by members of the Hilliary family, wholly owns Medicine Park Telephone Company, Inc. (Medicine Park), a rural incumbent LEC providing service in the Medicine Park, Acme, Agawam, Cookietown, and Saddle Mountain areas of Oklahoma.¹⁰ Medicine Park receives cost-based universal service support for its rate-of-return incumbent LEC service.¹¹

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.¹² 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.¹³ 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.¹⁴ Such an outcome is inconsistent with the Commission's general expectation that transactions generate efficiencies that reduce the combined company's costs.¹⁵ 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

⁷ Tatum Application at 2-3; Electra Application at 2-3. 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. Tatum Application at 9; Electra Application at 9.

⁸ Tatum Application at 9; Electra Application at 9. Oklahoma Western wholly owns Phoenix Long Distance, Inc., a competitive LEC, also providing service in southwest Oklahoma. Tatum Application at 9; Electra Application at 9.

⁹ October 18 *Ex Parte* at 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) (*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).

¹⁰ Tatum Application at 9; Electra Application at 9. Medicine Park is wholly owned by Hilliary Family First, LLC, which, in turn, 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). 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, Edward E. Hilliary, Jr., Michael J. Hilliary, Dustin J. Hilliary, Dacia N. Hilliary, Cody K. Hilliary, and Edward E. Hilliary. October 18 *Ex Parte* at 1.

¹¹ October 18 *Ex Parte* at 2; Universal Service Administrative Co., Tools, <https://www.usac.org/hc/tools/default.aspx>.

resources.¹⁶

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.¹⁷ The Commission also directed the Bureau to impose the same limited condition on future transactions between parties receiving different types of high-cost universal service support.¹⁸

In this proceeding, because Hilliary, which holds a fixed model-based support company, Oklahoma Western, is acquiring Tatum and Electra, two cost-based support companies, the potential for harm caused by cost-shifting is a transaction-specific harm. Accordingly, to mitigate the potential for cost shifting, we grant the Applications subject to the condition adopted in the *Hargray/ComSouth Order*.¹⁹ The combined operating expense of Tatum, Electra, Medicine Park, and any other rate-of-return affiliates²⁰ 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.²¹

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.²² 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.²³ 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.²⁴

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¹² *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*).

¹³ *Id.* at para. 20.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at para. 21.

¹⁷ *Id.* at paras. 26-31.

¹⁸ *Id.* at para. 27, n.72.

¹⁹ *Id.* at paras. 26-31.

²⁰ See 47 U.S.C. § 153(1).

²¹ *Hargray/ComSouth Order* at para. 27. The cap will apply to the combined operating expenses of Tatum, Electra, Medicine Park, and any other existing rate-of-return affiliates that Hilliary and its affiliates 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 Tatum, Electra, Medicine Park, and any other covered entity to submit its 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 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.²⁵ This cap shall remain in effect for seven years from the consummation of the transactions.²⁶ The condition will also sunset if all of a post-consummation company's rate-of-return affiliates become model-based support companies at any point during the seven-year period.²⁷

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.²⁸ 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.²⁹

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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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. 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. *Id.* at n.82.

²² *Id.* at para. 28.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at para. 30.

²⁶ 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. The cap will not apply if the parties do not consummate the proposed transactions.

²⁷ *Id.*

²⁸ See 47 U.S.C. § 214(a); 47 CFR § 63.03.

²⁹ 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.