



PUBLIC NOTICE

Federal Communications Commission
45 L St., N.E.
Washington, D.C. 20554

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DOMESTIC SECTION 214 APPLICATION GRANTED FOR THE TRANSFER OF CONTROL OF LIPAN TELEPHONE CO., INC. TO HILLIARY ACQUISITION TEXAS II, LLC

WC Docket No. 24-178

By this Public Notice, the Wireline Competition Bureau (Bureau) grants the application filed by Lipan Telephone Co., Inc. (Lipan), and Hilliary Acquisition Texas II, LLC (Hilliary) (collectively, Applicants), pursuant to section 214 of the Communications Act of 1934 (Act), as amended, and sections 63.03-04 of the Commission's rules,¹ requesting consent for the transfer of control of Lipan to Hilliary.²

On July 16, 2024, the Bureau released a public notice seeking comment on the Application.³ The Bureau did not receive comments or petitions in opposition to the Application.

Lipan, a privately held Texas corporation and Eligible Telecommunications Carrier (ETC), provides local exchange telephone services, including interstate exchange access, as an incumbent local exchange carrier (LEC), as well as broadband Internet services to residential consumers and business customers in Erath, Hood, Palo Pinto, and Parker Counties in the State of Texas.⁴ Lipan is wholly owned by parent holding company Lipan Telecommunications Inc. (LTI), which in turn is wholly-owned and controlled by John M. Howard, a U.S. citizen who is also President of Lipan.⁵ Lipan currently receives cost-based high-cost universal service fund support through the Connect America Fund Broadband Loop Support (CAF-BLS) and High-Cost Loop Support (HCLS)

¹ See 47 U.S.C. § 214; 47 CFR §§ 63.03-04.

² Application filed for the Consent to Transfer Control of Lipan Telephone Co., Inc., to Hilliary Acquisition Texas II, LLC, Pursuant to Section 214 of the Communications Act of 1934, as Amended, WC Docket No. 24-178 (filed on June 10, 2024) (Application). Applicants filed a supplement to the Application on July 11, 2024. Letter from Robert A. Silverman, Counsel to Hilliary Acquisition Texas II, LLC, and James Howard, Counsel to Lipan Telephone Co., Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 24-178 (filed on July 11, 2024) (Supplement). Applicants also filed an application to transfer control of Lipan's international 214 authorization. Application at 11. Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

³ *Domestic Section 214 Application Filed for the Transfer of Control of Lipan Telephone Co., Inc., to Hilliary Acquisition Texas II, LLC*, WC Docket No. 24-178, Public Notice, DA 24-687 (WCB 2024).

⁴ Application at 1-2.

⁵ *Id.*

mechanisms.⁶

Hilliary, an Oklahoma limited liability holding company, does not itself provide telecommunications services and was newly formed to acquire a controlling interest in Lipan.⁷ Hilliary is wholly owned by Hilliary Acquisition Corp. 2016, LLC, an Oklahoma limited liability company that is owned in equal parts by Edward E. Hilliary, Jr., Dustin J. Hilliary, Michael J. Hilliary, and Douglas J. Hilliary, all U.S. citizens each individually holding a 25% membership interest.⁸ Hilliary is affiliated with several companies that provide local exchange and interexchange services in Oklahoma, Texas, and Iowa.⁹ In Oklahoma, the affiliated companies are: Medicine Park Telephone Company, Inc. (Medicine Park), an incumbent LEC; Oklahoma Western Telephone Company, Inc. (Oklahoma Western), an incumbent LEC; Phoenix Long Distance, Inc., an interexchange carrier; Wichita Online, LLC, a competitive LEC and interexchange carrier; Oklahoma Fiber Network, LLC, an interexchange carrier; Southern Plains Cable, LLC (Southern Plains), a competitive LEC and interexchange carrier; Texhoma Fiber, LLC (Texhoma), an interexchange carrier; and Southwest Oklahoma Telephone Company (Southwest), an incumbent LEC.¹⁰ In Texas, the affiliated companies are: Tatum Telephone Company, Inc., an incumbent LEC; Electra Telephone Company, Inc., an incumbent LEC; and Border to Border Communications, Inc. (Border to Border), an incumbent LEC.¹¹ In Iowa, the affiliated company is Prairieburg Telephone Company, Inc.(Prairieburg), an incumbent LEC.¹² Among Hilliary's affiliates, some receive model-based high cost support and others receive cost-based support. Hilliary's affiliates receiving model-based high-cost universal service support are: Texhoma, Oklahoma Western, and Southern Plains, receiving Connect America Fund (CAF) Phase II Auction support; and Medicine Park, Oklahoma Western, and Southwest, receiving Enhanced Alternative Connect America Cost Model (A-CAM) support.¹³ Hilliary's affiliates receiving cost-based high-cost universal service support are: Prairieburg, receiving HCLS; and Electra, Tatum, and Border to Border, receiving CAF-BLS and HCLS.¹⁴

Pursuant to the terms of the proposed transaction, Hilliary will purchase all outstanding shares of Lipan stock from LTI and, upon consummation, Lipan will be 100% controlled by Hilliary.¹⁵ Applicants assert that this transaction will have not have an impact on competition in domestic telecommunications markets.¹⁶ Applicants also state that Hilliary's plans to expand the

⁶ *Id.* at 7.

⁷ *Id.* at 2.

⁸ *Id.* Dustin J. Hilliary is the managing member of Hilliary. *Id.* at 3.

⁹ *Id.* at 2. Applicants provide further ownership information on each of Hilliary's affiliates that provide domestic telecommunications services in their application and supplement. *Id.* at 7-11; Supplement at 1.

¹⁰ Application at 2, 7-9; Supplement at 1.

¹¹ Application at 2, 10-11.

¹² *Id.* at 2, 9. Applicants state that other than what is disclosed in the Application, neither Hilliary nor any of its affiliates hold a 10% or greater interest in any other provider of domestic telecommunications services. Supplement at 2.

¹³ *Id.* at 1; Application at 8-9.

¹⁴ Application at 9-11.

¹⁵ *Id.* at 2-3, 5.

¹⁶ *Id.* at 12.

high quality communications service offerings in Texas will benefit consumers.¹⁷ Further, Applicants assert that there are no service area overlaps or adjacencies between Lipan and Hilliary and its subsidiaries and affiliates.¹⁸ Accordingly, Applicants aver that the proposed transaction is consistent with the public interest, convenience, and necessity.¹⁹

We find that grant of the Application, subject to Applicants' continuing compliance with the *Hargray/ComSouth* condition,²⁰ will serve the public interest, convenience, and necessity.²¹ 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 Hilliary's compliance with the condition described above.²²

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

¹⁷ *Id.* at 12.

¹⁸ Supplement at 1.

¹⁹ Application at 12; Supplement at 2-3. In the *Hargray/ComSouth Order*, the Commission found that "the combination of two companies that receive high-cost universal service support under different mechanisms, one fixed and one cost-based, could result in potential harm to the Commission's goal of ensuring that limited universal service resources are distributed efficiently and effectively" as a result of the companies having an incentive to shift costs from the model-based support company to the cost-based support company. *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 No. 18-52, Memorandum Opinion and Order, 33 FCC Rcd 4780, 4784, para. 19 (2018) (*Hargray/ComSouth Order*). Following consummation of the proposed transaction, Lipan, which is a recipient of cost-based universal service support, will be affiliated with companies through Hilliary that receive universal service support under the different mechanisms of fixed model-based support and cost-based support. Application at 9-11; Supplement at 1-2. Similar to other transactions involving certain Hilliary affiliates that receive universal service support under the different mechanisms of fixed model-based support and cost-based support, to mitigate the potential for cost shifting, we grant the Application subject to the continued application of the *Hargray/ComSouth* condition capping the combined operating expenses of the post-consummation company's rate of return affiliates. *Domestic Section 214 Application Granted*, WC Docket No. 21-378, Public Notice, 36 FCC Rcd 16139 & n.4 (WCB 2021); *Domestic Section 214 Application Granted for the Transfer of Control of Prairieburg Telephone Company, Incorporated*, WC Docket No. 21-30, Public Notice, 36 FCC Rcd 5672, 5673-74 & n.7 (WCB 2021) (both citing *Hargray/ComSouth Order*, 33 FCC Rcd at 4784, para. 19 and granting the transfer of a cost-based, average schedule support company to Hilliary Acquisition Iowa, LLC, subject to the condition in the *Hargray/ComSouth Order*, and citing previous acquisitions by Hilliary also subject to the condition); *see also Domestic Section 214 Application Granted for the Transfer of Control of Hargray Acquisition Holdings, LLC and its Subsidiaries to Cable One, Inc.*, WC Docket No. 21-69, Public Notice, DA 21-502, at 3-4 (WCB 2021) (granting the application subject to the continued application of the *Hargray/ComSouth* condition to the applicants).

²⁰ Applicants have acknowledged the continuing applicability of the mixed support condition. Supplement at 2.

²¹ *See* 47 U.S.C. § 214(a); 47 CFR § 63.03.

²² Within 30 days of closing the proposed transactions, Applicants 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. In addition, we direct Applicants to submit, in the domestic section 214 docket, WC Docket No. 24-178, a notice that the proposed transaction has closed with the consummation date, and also provide a courtesy copy of the notice to hcinfo@usac.org.

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 Megan Danner, Wireline Competition Bureau, Competition Policy Division, at megan.danner@fcc.gov.

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