PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

News Media Information 202-418-0500
Internet: www.fcc.gov
TTY: 888-835-5322

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DOMESTIC SECTION 214 APPLICATION GRANTED FOR THE ACQUISITION OF CERTAIN ASSETS OF NEMONT TELEPHONE COOPERATIVE, INC. AND MISSOURI VALLEY COMMUNICATIONS, INC. BY NORTHWEST COMMUNICATIONS COOPERATIVE, INC.

WC Docket No. 24-268

By this Public Notice, the Wireline Competition Bureau grants, as conditioned below, an application filed by Nemont Telephone Cooperative, Inc. (Nemont) and its subsidiary, Missouri Valley Communications, Inc. (MVC) (together Transferors) and Northwest Communications Cooperative, Inc. (NCC) (collectively, Applicants), pursuant to section 214(a) of the Communications Act of 1934, as amended, and sections 63.03-04 of the Commission's rules,[1] requesting consent for the transfer of Study Area Code 382247 (Study Area) located in North Dakota from Transferors to NCC.[2]

On September 13, 2024, the Bureau released a public notice seeking comment on the Application.[3] The Bureau did not receive any comments or petitions in opposition to the Application.

Nemont, a Montana cooperative association, provides services as a rural cooperative incumbent local exchange carrier (LEC).[4] Nemont is designated as an eligible telecommunications carrier (ETC)[5] and offers local telecommunications services and high-speed Internet access services that serve Division 1 of the Study Area – the portion of the Study Area that includes customers served by the Ambrose, Fortuna, and East Westby Exchanges.[6] Nemont elected to receive model-based universal service support through the Alternative Connect America Cost Model II (A-CAM II).[7]

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[1] *See* 47 U.S.C. § 214(a); 47 CFR §§ 63.03-04.

[2] *See* Domestic Section 214 Application for Acquisition of Certain Assets of Nemont Telephone Cooperative, Inc. and its Subsidiary Missouri Valley Communications, Inc. to Northwest Communications Cooperative, Inc., WC Docket No. 24-268 (filed Aug. 27, 2024) (Application). Applicants state that they also filed an application for the transfer of international authorizations. 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 Acquisition of Certain Assets of Nemont Telephone Cooperative, Inc. and Missouri Valley Communications, Inc. By Northwest Communications Cooperative, Inc.*, WC Docket No. 24-268, Public Notice, DA 24-944 (WCB 2024).

[4] Application at 2, 3.

[5] *Id.* at 11.

[6] Application at 4, 8.

MVC, a North Dakota corporation and a wholly-owned subsidiary of Nemont, provides services as a rural incumbent LEC corporation.[8] MVC is designated as an ETC and offers local telecommunications and high-speed Internet access services that serve Division 2 – the portion of the Study Area that includes customers served by the Williston Exchange.[9]

NCC, a North Dakota cooperative association, provides services as a rural incumbent LEC.[10] NCC is designated as an ETC[11] and offers local telecommunications services and high-speed Internet access services over an all-fiber communications network to its entire study area, which includes the exchanges of Alamo, Bowbells, Columbus, Crosby, Epping, Flaxton, Grenora, Lignite, Marmon, McGregor, Noonan, Portal, Powers Lake, Ray, Round Prairie, Tioga, and Wildrose, in the state of North Dakota.[12] Applicants state that NCC did not elect to receive model-based universal service support and receives cost-based support.[13] NCC is owned by its member-subscribers, with no individual holding more than 10% of the equity interest in NCC.[14] NCC's Board of Directors controls NCC, and all of the Board members are U.S. citizens.[15]

Pursuant to the terms of the proposed transaction, NCC would acquire all assets, property, rights, and interest from Transferors to provide voice and internet services to customers in the telecommunications and broadband network exchanges and local exchange telephony located within the Study Area.[16] The Study Area is comprised of two "divisions."[17] One division (Division 1) is owned and operated by Nemont and provides voice and internet services to customers in and around the communities of Ambrose, Fortuna, and East Westby (the Ambrose, Fortuna, and East Westby Exchanges) while the second division (Division 2) is owned and operated by MVC and provides voice and internet services to customers in and around the communities of Williston and Trenton (the Williston Exchange).[18] The result of the proposed transaction would be that the Study Area will become part of NCC's service area and, post-consummation, NCC will provide services to customers in the Study Area.[19]

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[7] Application at 6; *see also Wireline Competition Bureau Announces Carriers That Have Accepted Enhanced Alternative Connect America Cost Model Support to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, DA 23-920 (Oct. 4, 2023). Universal Service Administrative Co., Tools, "ACAM, ACAM II and CAF BLS Buildout Requirements," https://www.usac.org/high-cost/resources/tools/.

[8] Application at 2, 3.

[9] *Id.* at 8.

[10] *Id.* at 2, 6.

[11] *Id.* at 11. NCC participates in the Lifeline program in North Dakota and state that it will do so in the Study Area once the transaction has been consummated and it receives ETC designation for the area. *Id.* at 12.

[12] *Id.* at 2, 8.

[13] *Id.* at 11 (stating that NCC receives High-Cost Loop Support and Broadband Loop Support); *see also* Universal Service Administrative Co., Tools, "ACAM, ACAM II and CAF BLS Buildout Requirements," https://www.usac.org/high-cost/resources/tools/.

[14] Application at 6.

[15] *Id.*

[16] *Id.* at 2, 7.

[17] *Id.* at 1.

[18] *Id.* at 1-2.

[19] *Id*. at 7.

Discussion

We find, upon consideration of the record, that a grant of the Application will serve the public interest, convenience, and necessity. To make this determination under Commission precedent, we consider whether the proposed transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes.[20] We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.[21] The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.[22]

At the outset, we address one potential harm arising from Applicants' request for approval to consummate a transaction involving companies that receive high-cost universal service support under the different support mechanisms of fixed model-based support and cost-based support (a mixed support transaction).[23] Specifically, NCC, which receives cost-based support,[24] is acquiring the Study Area from Nemont, which receives fixed support through the A-CAM II program.[25] The Commission has found that this type of transaction could result in potential harm to its goal of ensuring that limited universal service funding is distributed efficiently and effectively.[26] 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.[27] 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

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[20] *See, e.g.*, *Application of Verizon Communications Inc. and América Móvil S.A.B. de C.V for Consent to Transfer Control of International Section 214 Authorization*, GN Docket No. 21-112, IBFS File No. ITC-T/C-20200930-00173, Memorandum Opinion and Order, 36 FCC Rcd 16994, 17001, para. 21 (2021) (*Verizon-TracFone Order*) (citing *China Mobile International (USA) Inc., Application for Global Facilities-Based and Global Resale International Telecommunications Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended*, ITC-214-20110901-00289, Memorandum Opinion and Order, 34 FCC Rcd 3361, 3366, para. 9 (2019); *Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corporation (and Subsidiaries, Debtors-in-Possession), Assignors, to Time Warner Cable Inc. (Subsidiaries), Assignees; Adelphia Communications Corporation, (and Subsidiaries, Debtors-in-Possession), Assignors and Transferors et al.*, MB Docket No. 05-192, Memorandum Opinion and Order, 21 FCC Rcd 8203, 8219-21, paras. 27-28 (2006) (*Adelphia-TWC Order*)).

[21] *See Verizon-TracFone Order*, 36 FCC Rcd at 17001, para. 21 (citing *Applications of AT&T Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 14-90, Memorandum Opinion and Order, 30 FCC Rcd 9131, 9140, para. 18 (2015) (*AT&T-DIRECTV Order*)) (further citations omitted).

[22] *See Verizon-TracFone Order*, 36 FCC Rcd at 17001, para. 21 (citing *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 18; *Adelphia-TWC Order*, 21 FCC Rcd at 8217, para. 23; *Application of EchoStar Communications Corp., General Motors Corp., and Hughes Electronics Corp., Transferors, and EchoStar Communications Corp., Transferee*, CS Docket No. 01-348, Hearing Designation Order, 17 FCC Rcd 20559, 20574, para. 25 (2002)) (further citations omitted).

[23] Application at 11-13.

[24] *Id*. (stating that NCC receives CAF-BLS, HLS, and CAF-ICC support in North Dakota) for Study Area Code (SAC) 320813).

[25] *Id*. at 11 (stating that Nemont has been authorized to receive A-CAM II support for SAC 382247).

[26] *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, 33 FCC Rcd 4780, 4784, para. 19 (2018) (*Hargray/ComSouth Order*).

[27] *Id*. at 4785-86, para. 20.

solely because of the application of accounting procedures.[28] Such an outcome is inconsistent with the Commission's general expectation that transactions generate efficiencies that reduce the combined company's costs.[29] 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 resources.[30]

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.[31] The Commission has directed the Bureau to apply the *Hargray/ComSouth* condition where necessary to remedy a potential public interest harm caused by a mixed support transaction.[32]

Accordingly, to mitigate the potential for cost shifting, we grant the Application subject to the condition adopted in the *Hargray/ComSouth Order*.[33] The combined operating expenses of the post-consummation company's rate-of-return affiliates[34] shall be capped at the averaged combined operating expenses of the three calendar years preceding the transaction's closing date for which the operating expense data are available.[35] This cap shall remain in effect for seven years from the consummation of

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28 *Id*.

29 *Id*.

30 *Id*. at 4786, para. 21.

31 *Id*. at 4788-90, paras. 26-31.

32 *Id.* at 4789 n.72 ("We direct the Bureau to apply the condition where necessary to remedy a potential public interest harm caused by a mixed support transaction."); *see also Domestic Section 214 Application for the Transfer of Control of Lavaca Telephone Company, Inc. to Dobson Technologies Inc*., WC Docket No. 20-389, Order on Reconsideration, 36 FCC Rcd 8859, 8864, para. 14 (2021) (reaffirming the Commission's delegation to the Bureau to continue to apply the mixed support condition where necessary).

33 *Hargray/ComSouth Order*, 33 FCC Rcd at 4788-90, paras. 26-31.

34 *See* 47 U.S.C. § 153(2).

35 *Hargray/ComSouth Order*, 33 FCC Rcd at 4788-89, para. 27. The cap will apply to the combined operating expenses of the post-consummation company and any other existing rate-of-return affiliates that they 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 the covered entities to submit their 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 HCLS and 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 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 4790, para. 31. 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. For example, if the cap requires that a post-consummation company's eligible operating expense be reduced by 10%, then each account used to determine each rate-of-return affiliate's eligible operating expenses shall be reduced by 10%. For purposes of this cap, operating expenses shall include maintenance, network support/network operations/general, benefits, rent expenses, and corporate operations, while depreciation, return on investment, and taxes shall be excluded. *See id.* at 4789, para. 28. For all covered entities, the new cap shall also include an annual adjustment for inflation based on the Gross Domestic Product-Channel

(continued….)

the transaction.[36] The condition will sunset if all of a post-consummation company's rate-of-return affiliates become fixed model-based support companies at any point during the seven-year period.[37]

We find that there are no other potential public interest harms identified in the record. The transaction will not result in a loss of a competitive provider in the markets in which the Applicants currently operate.[38] Further, Applicants state that Nemont's customers "will not experience any immediate change to rates, terms, or conditions of service, and in no event will the transaction result in the interruption, reduction, loss, or impairment of service."[39]

We next consider whether the proposed transaction is likely to generate verifiable, transaction-specific public interest benefits.[40] Applicants must provide evidence of a claimed benefit to allow the Commission to verify its likelihood and magnitude.[41] Where potential harms appear unlikely, as is the case with the Application before us here, the Commission accepts a lesser degree of magnitude and likelihood than when harms are present.[42]

Applicants assert that the proposed transaction would ensure that rural North Dakota residents and businesses in the Study Area will receive enhancements and upgrades to telecommunications and broadband services as efficiently and timely as possible.[43] Applicants claim that customers in the Study Area "will benefit from the resources and close network proximity of NCC" resulting in "efficiencies of scope and scale … allowing for the more efficient and productive operation of both the service areas included in this transaction."[44] Moreover, Applicants aver that, post-consummation, "NCC will offer the same high-quality voice and broadband services that the Study Area customers receive today with planned network upgrades to allow the customers to receive higher broadband speeds and more capacity."[45]

The Commission has specified that ensuring consumers receive new or additional services is an important public interest factor,[46] and accelerating private sector deployment of advanced services is one of the aims of the Communications Act.[47] In light of the Applicants' commitments to meet all of the

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Price Index (GDP-CPI) for the years in which the new cap remains in effect. *Id.* at 4790, para. 30. NCC acknowledges its obligation to comply with the Hargray condition. Application at 12-13.

[36] 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. *Hargray/ComSouth Order*, 33 FCC Rcd at 4789-90, para. 29 n.78.

[37] *Id*. at 4789-90, para. 29.

[38] Application at 2, 11.

[39] *Id.* at 10.

[40] *See AT&T/DIRECTV Order*, 30 FCC Rcd at 9237, paras. 273-74.

[41] *See id*. at 9237-38, paras. 275-76.

[42] *See id*.

[43] Application at 10.

[44] *Id.*

[45] *Id.*

[46] *See, e.g.*, *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 19.

[47] *See Verizon-TracFone Order*, 36 FCC Rcd at 17002, para. 22 (citing 47 U.S.C. §§ 254, 332(c)(7), 1302; Telecommunications Act of 1996, Pub. L. No. 104-104, Preamble, 110 Stat. 56 (1996) (one purpose of the Act is to "accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services")).

Lifeline USF obligations[48] and the fact that Applicants are prepared to enhance Transferors' facilities-based service offerings,[49] we find it likely that the proposed transaction would result in some public interest benefits. Absent any potential harms, and considering that the proposed transaction is likely to yield some benefits, we find, on balance, that the proposed transaction serves the public interest.

Grant of Application

We find, upon consideration of the record, that grant of the Application listed above will serve the public interest, convenience, and necessity.[50] 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.[51]

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 application 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, at dennis.johnson@fcc.gov.

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[48] Application at 12.

[49] *Id.* at 10.

[50] *See* 47 U.S.C. § 214(a); 47 CFR § 63.03. Applicants note that there is an adjacency of service areas between Transferors and NCC. Application at 9. We conclude that there will be efficiencies that result from these adjacent exchanges and find the proposed transaction in the public interest. *See 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, 9606, para 54 (2017) (finding that the transaction would advance the public interest by expanding the reach and service capacity of the combined entity).

[51] Within 30 days of closing the proposed transactions, NCC 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 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.