



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

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DA 15-338
Released: March 16, 2015

DOMESTIC SECTION 214 APPLICATION FILED FOR THE ACQUISITION OF CERTAIN ASSETS OF XAND CLEC, LLC BY TIERPOINT, LLC

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 15-14

Comment Date: March 30, 2015
Reply Comment Date: April 6, 2015

On January 16, 2015, XAND CLEC, LLC (XAND CLEC) and TierPoint, LLC (TierPoint) (together, Applicants) filed an application pursuant to section 63.03 of the Commission's rules to transfer certain assets from XAND CLEC to TierPoint.¹

XAND CLEC, a Delaware limited liability company, leases and operates fiber optic cable in New York as part of the application hosting and data storage services made available in TierPoint's data centers. ABRY Senior Equity III, L.P. (ASE), a Delaware limited partnership, owns approximately eighty-eight percent of XAND CLEC. The general partner of ASE III is ABRY Senior Equity Investors III, L.P., a Delaware limited partnership. The general partner of ABRY Senior Equity Investors III, L.P., is ABRY Senior Equity Holdings III, LLC, a Delaware limited liability company. The sole member of ABRY Senior Equity Holdings III, LLC, is Royce Yudkoff, a United States citizen. Cube Capital Group, LLC, a Wyoming limited liability company, owns approximately 10 percent of XAND CLEC. The sole member of Cube Capital is Lee Weinstein, a United States citizen.

TierPoint, a Delaware limited liability company, serves as XAND CLEC's agent for marketing and billing collection of the telecommunications services it provides. The following entities hold a ten percent or greater indirect interest TierPoint: Redbird Capital Partners Management, LLC (13.66 percent), a Delaware limited liability company; The Stephens Group, LLC (13.66 percent), an Arkansas limited liability company; Cequel Investment Partners I, LLC and Cequel Investment Partners II, LLC (16.13 percent), both of which are Delaware limited liability companies; and the Ontario Teacher's Pension Plan Board (OTPPB) (31.24 percent), an Ontario corporation.² OTPPB indirectly holds a 31.24 percent ownership interest in TierPoint. Applicants state that there are no other investors that hold a ten percent or greater interest in TierPoint.

¹ 47 C.F.R § 63.03; *see* 47 U.S.C. § 214.

² Applicants state that Redbird Capital Partners Management is ultimately controlled by Gerry Cardinale, a U.S. citizen. The Stephens Group, LLC is ultimately controlled by W.R. Stephens, Jr. and Elizabeth S. Campbell, each of whom is a U.S. citizen. Cequel Entities are ultimately controlled by Jerald L. Kent, a U.S. citizen. The current members of the OTPPB's Board are Jean Turmel, Rod Albert, Bill Chinery, Steve McGirr, John Murray, Barbara Palk, Sharon Sallows, David Smith, and Daniel Sullivan, each of who is a Canadian citizen.

On October 20, 2014, TierPoint and XAND CLEC entered into an Asset Purchase Agreement (Agreement) for TierPoint to acquire all the assets of XAND CLEC, including all fiber optic cable owned by XAND CLEC and all of XAND CLEC's right, title, and interest in and to all agreements with Con Edison and Verizon pertaining to XAND CLEC's fiber optic cable. Pursuant to the terms of the Agreement, XAND CLEC will transfer all of its telecommunications-related assets to TierPoint. TierPoint will provide service to existing customers at the same rates, terms, and conditions as currently provided by XAND CLEC. Applicants assert that the proposed transaction is entitled to presumptive streamlined treatment under section 63.03(b)(1)(ii) of the Commission's rules and that a grant of the application will serve the public interest, convenience, and necessity.³

Domestic Section 214 Application Filed for Transfer of the Acquisition of Certain Assets of XAND CLEC, LLC to TierPoint, LLC, WC Docket No. 15-14 (filed Jan. 16, 2015).

GENERAL INFORMATION

The transfer of assets identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Pursuant to section 63.03(a) of the Commission's rules, 47 CFR § 63.03(a), interested parties may file comments **on or before March 30, 2015**, and reply comments **on or before April 6, 2015**. Pursuant to section 63.52 of the Commission's rules, 47 C.F.R. § 63.52, commenters must serve a copy of comments on the Applicants no later than the above comment filing date. Unless otherwise notified by the Commission, the Applicants may transfer control on the 31st day after the date of this notice.

Pursuant to section 63.03 of the Commission's rules, 47 CFR § 63.03, parties to this proceeding should file any documents in this proceeding using the Commission's Electronic Comment Filing System (ECFS): <http://apps.fcc.gov/ecfs/>.

In addition, e-mail one copy of each pleading to each of the following:

- 1) Myrva.Freeman, Competition Policy Division, Wireline Competition Bureau, myrva.freeman@fcc.gov;
- 2) Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, dennis.johnson@fcc.gov;
- 3) Jim Bird, Office of General Counsel, jim.bird@fcc.gov.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (tty).

The proceeding in this Notice shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation

³ 47 C.F.R. § 63.03(b)(1)(ii).

consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule 1.1206(b), 47 C.F.R. § 1.1206(b). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

For further information, please contact Myrva Freeman at (202) 418-1506 or Dennis Johnson at (202) 418-0809.

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