



PUBLIC NOTICE

Federal Communications Commission
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DA 17-461
May 12, 2017

DOMESTIC SECTION 214 APPLICATION FILED FOR THE TRANSFER OF CONTROL OF BROADVIEW NETWORKS HOLDINGS, INC. TO WINDSTREAM HOLDINGS, INC.

NON-STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 17-110

Comments Due: May 26, 2017

Reply Comments Due: June 2, 2017

By this Public Notice, the Wireline Competition Bureau seeks comment from interested parties on an application filed by Broadview Networks Holdings, Inc. (Broadview) and Windstream Holdings, Inc. (Windstream) (collectively, Applicants), pursuant to Section 214 of the Communications Act of 1934, as amended, and Section 63.03 of the Commission's rules, requesting approval for the transfer of control of various wholly owned subsidiaries of Broadview to Windstream.¹

Broadview, a Delaware corporation, does not provide telecommunications services itself but serves as a holding company and ultimate parent of subsidiaries that provide, among other services, competitive local exchange carrier (LEC) and interexchange voice and data services primarily to business customers in the District of Columbia and every state except Alaska.²

Windstream, a publicly traded Delaware corporation, is a telecommunications provider with operations serving business and residential customers throughout the United States. As an incumbent LEC, Windstream provides telecommunications services to approximately 1.4 million residential

¹ See 47 U.S.C. § 214; 47 CFR § 63.03. Applicants also filed applications for the transfer of authorizations associated with international services. On May 11, 2017, Applicants filed a supplement to their domestic Section 214 application. Any action on this domestic Section 214 application is without prejudice to Commission action on other related, pending applications.

² Applicants provide, as Exhibit 1 to their application, a list of Broadview's wholly owned subsidiaries which hold Section 214 authorizations: Broadview Networks, Inc.; Broadview NP Acquisition Corp.; BridgeCom International, Inc.; ATX Licensing, Inc.; A.R.C. Networks, Inc.; Eureka Telecom, Inc.; Eureka Telecom of VA, Inc.; InfoHighway of Virginia, Inc.; and TruCom Corporation. Applicants state that Broadview subsidiaries operate a fiber network of approximately 3,000 miles in the Northeast, of which Broadview only owns 19 miles of fiber with the remainder obtained through indefeasible rights of use (IRUs) and leased fiber.

customers primarily located in rural areas.³ Windstream's competitive LEC subsidiaries offer services in portions of all states. Windstream operates a local and long-haul fiber network spanning approximately 150,000 miles and provides services over fixed wireless infrastructure in 40 markets.⁴ Applicants state that Windstream currently has one 10 percent or greater interest holder, The Vanguard Group, Inc. (Vanguard Group) (14.91 percent), a U.S.-based investment management company.⁵

Pursuant to the terms of the proposed transaction, Beethoven Merger Subsidiary Inc. (Merger Sub), a Delaware corporation and wholly owned subsidiary of Windstream Services, LLC,⁶ will be merged with and into Broadview, with Broadview continuing as the surviving corporation. Immediately following the closing of the merger, Broadview and its subsidiaries, will become indirect, wholly owned subsidiaries of Windstream.

Applicants assert that the grant of the transfer of control will serve the public interest. Applicants contend that the combination of Broadview's assets, services, and customer base with Windstream's operations and fiber network will enable the combined company to become a stronger competitor. Applicants project that the transaction will result in annual operating synergies of at least \$30 million within two years of the acquisition. They assert that the proposed transaction will not reduce competition or harm retail or wholesale customers. Applicants state that they do not own overlapping last-mile facilities and that the majority of their fiber networks also do not overlap; out of the 19 miles of fiber that Broadview currently owns, Applicants state that less than three miles overlaps with Windstream's network.⁷ Applicants do not request streamline treatment for the domestic Section 214 application pursuant to Section 63.03 of the Commission's rules.⁸

Domestic Section 214 Application Filed for the Transfer of Control of Broadview Networks Holdings, Inc. to Windstream Holdings, Inc., WC Docket No. 17-110 (filed Apr. 27, 2017).

³ Applicants state that Windstream's incumbent LEC subsidiaries offer services in Alabama, Arkansas, Florida, Georgia, Iowa, Kentucky, Minnesota, Mississippi, Missouri, Nebraska, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, and Texas.

⁴ Applicants state that through EarthLink Holdings Corp., which Windstream acquired in February 2017, it also offers broadband Internet access to approximately 400,000 residential customers over leased facilities.

⁵ Applicants state that the Chairman of the Board, President, and Chief Executive Officer is F. William McNabb III. The remainder of the Board is made up of Emerson U. Fullwood, Rajiv L. Gupta, Amy Gutmann, JoAnn Heffernan Heisen, F. Joseph Loughrey, Mark Loughridge, Scott C. Malpass, André F. Perold, and Peter F. Volanakis. Applicants state that, based on publicly available sources, it appears that at least a majority of the Board are likely U.S. citizens. Applicants further state that, to the best of their knowledge, no person or entity owns 10 percent or more of The Vanguard Group. Applicants provide a list of telecommunications carriers that are affiliated with the Vanguard Group in the application.

⁶ Windstream Services, LLC, a limited liability company, is an indirect, wholly owned subsidiary of Windstream. Applicants provide, as Attachment A to their application, charts depicting the pre and post-transaction corporate ownership structure.

⁷ Applicants state that the three miles of overlap are within Windstream's competitive LEC territory in Connecticut and Massachusetts.

⁸ 47 CFR § 63.03.

GENERAL INFORMATION

The transfer of control identified herein has been found, upon initial review, to be acceptable for filing as a non-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 May 26, 2017**, and reply comments **on or before June 2, 2017**. Pursuant to Section 63.52 of the Commission's rules, 47 CFR § 63.52, commenters must serve a copy of comments on the Applicants no later than the above comment filing date.

Pursuant to Section 63.03 of the Commission's rules, 47 CFR § 63.03, parties to this proceeding should file any documents 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) Gregory Kwan, Competition Policy Division, Wireline Competition Bureau, gregory.kwan@fcc.gov;
- 3) Jim Bird, Office of General Counsel, jim.bird@fcc.gov;
- 4) David Krech, International Bureau, david.krech@fcc.gov; and
- 5) Sumita Mukhoty, International Bureau, sumita.mukhoty@fcc.gov.

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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 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 CFR § 1.1206(b). Participants should familiarize themselves with the Commission's *ex parte* rules.

For further information, please contact Myrva Freeman at (202) 418-1506 or Gregory Kwan at (202) 418-1191.

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