PUBLIC NOTICE

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DOMESTIC SECTION 214 APPLICATION FILED FOR ACQUISITION OF ASSETS OF DIGITAL TELEPORT, INC. BY CENTURYTEL FIBERCOMPANY II, LLC

NON-STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 03-99

On April 3, 2003, Digital Teleport, Inc. ("DTI") and CenturyTel Fiber Company II, LLC ("CTF II") (collectively "Applicants"), filed an application pursuant to section 63.04 of the Commission's rules,[1] for consent to allow CTF II to acquire all the operating assets of DTI, as approved by the United States Bankruptcy Court for the Eastern District of Missouri.[2] CTF II, a subsidiary of CenturyTel, Inc., (CenturyTel) proposes to acquire the core domestic telecommunications assets of DTI, including the equipment, fiber routes and customers of DTI (the "Transaction").[3]

Applicants acknowledge that this application does not fit into the presumptive streamlining categories of section 63.03(b) of the Commission's rules because some of the geographic areas in which DTI provides dedicated transport services are served by a dominant local exchange carrier (LEC) that is an affiliate of CTF II.[4] Applicants request streamlined treatment nonetheless, asserting that the transaction does not raise significant competition concerns, and that the failure to obtain approval of the transaction in a timely manner would result in a diminution of competition, since DTI's current financial position has impeded its ability to compete aggressively in telecommunications markets. The Bureau finds that this

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1 47 C.F.R § 63.04; *see* 47 U.S.C. § 214.

2 DTI and certain of its affiliates filed for bankruptcy on December 31, 2001, and currently operate under Chapter 11 of the U.S. Bankruptcy Code in a case before the U.S. Bankruptcy Court for the Eastern District of Missouri (the "Bankruptcy Court"). *See In re: Digital Teleport, Inc., Order Approving Asset Purchase Agreement with CenturyTel Fiber Company II, LLC and Authorizing Sale of Assets Free and Clear of Liens, Interests, and Encumbrances*; *and Approving Assignment of Certain Executory Contracts and Unexpired Lease Pursuant to Sections 363 and 365 of the Bankruptcy Code*, Case No. 01-54369-399 (Bankr. E.D. Mo. Feb. 13, 2003) (hereinafter, "Sale Order").

3 Applicants state that they are also filing an application with the Wireless Telecommunications Bureau for the assignment of two private microwave licenses. Any action on this domestic 214 application is without prejudice to Commission action on other related pending applications.

4 *See, e.g.,* 47 C.F.R. § 63.03(b)(2)(ii).

application is not appropriate for streamlined treatment under the Commission's rules because the proposed transaction involves an acquisition by a dominant carrier of another carrier's in-region assets.[5] However, in light of the exigent circumstances noted by Applicants, we will provide for an expedited comment cycle on this non-streamlined transaction.

CenturyTel is a Louisiana corporation with principal offices in Monroe, Louisiana. CenturyTel and its subsidiaries provide communications services, including local, long distance, Internet access and data services to more than 3 million customers in 22 states. At the end of 2002, CenturyTel had nearly 2,415,000 access lines in service and was providing long distance service to almost 650,000 subscribers. CTF II is a wholly-owned direct subsidiary of CenturyTel that was formed specifically in conjunction with the proposed acquisition of the core domestic telecommunications assets and operations of DTI.

DTI provides wholesale fiber optic transport services in secondary and tertiary Midwest markets to national and regional telecommunications carriers.[6] The company's network spans 5,700 route miles across Arkansas, Illinois, Iowa, Kansas, Missouri, Nebraska, Oklahoma and Tennessee. DTI purchased a nationwide network of dark fiber with plans to build a national long-haul transmission network, but was unable to obtain the funding to complete and operate such a network. DTI is a wholly-owned operating subsidiary of DTI Holdings, Inc. (DTI Holdings), a Missouri corporation with principal offices in Chesterfield, Missouri. As noted, DTI Holdings, together with DTI, has filed for reorganization pursuant to Chapter 11 of the U.S. Bankruptcy Code. DTI Holdings will be liquidated upon the closing of the sale of DTI's assets to CTF II.

Pursuant to a bidding process overseen by the Bankruptcy Court, CTF II has agreed to acquire the core domestic telecommunications assets of DTI pursuant to Sections 363 and 365 of the Bankruptcy code and will operate those assets and continue to provide services to DTI's customers. In order to complete the Transaction, CTF II entered into an Asset Purchase Agreement with DTI for the sale of substantially all of the assets utilized by DTI to operate its domestic telecommunications business, as well as the assignment of certain contracts and leases. In consideration for these assets, CTF II will provide the DTI bankruptcy estate $38 million in immediately available funds upon closing the Transaction. The Asset Purchase Agreement was approved by the Bankruptcy Court on February 13, 2003. The Court found that the approval of the sale to CTF II was in the best interest of DTL, its creditors, its estate, and other parties in interest.

Applicants contend that grant of this transaction is in the public interest because: (1) it will prevent disruption of the business of DTI and will be conducted in manner that will be

[5] *See* 47 C.F.R. § 63.03(c); *Implementation of Further Streamlining Measures for Domestic 214 Authorizations,* 17 FCC Rcd 5517, 5531-32 (2002) (providing that the Commission, acting through the [Wireline Competition] Bureau, will decide on a case-by-case basis whether streamlined treatment should be afforded to a particular application).

[6] Applicants state that all of DTI's customers are telecommunications carriers, government agencies, or large enterprises purchasing dedicated services under contract.

virtually transparent to its customers,[7] and (2) the establishment of CTF II as a strong competitor in the telecommunications market will assure that the benefits of competition generated by DTI's presence will not be lost to consumers.

Applicants state that the Transaction does not raise significant competition concerns because DTI, the transferor, and CTF II, the transferee, together with their affiliates, hold significantly less than 10 percent of the interstate, interexchange market combined. Furthermore, Applicants state that DTI does not offer local exchange services, and therefore is not an existing competitor of CenturyTel's local exchange subsidiaries. Upon consummation of the Transaction, CTF II would begin providing dedicated transport services to geographic areas in the following 13 states: Arkansas, Colorado, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Missouri, Nebraska, Oklahoma, Tennessee, and Texas. Of these 13 states with over 300 potential service delivery locations, less than 10 percent of these locations are in service areas where an affiliate is the dominant LEC, and all of these locations are in only three states: Arkansas, Colorado, and Missouri. Applicants state that CTF II will also be providing dedicated transport services in many other exchange service areas in these states, as well as in the other 10 states, where the dominant LEC is neither a party to, nor an affiliate of a party to, this Transaction. Finally, Applicants state that less than 15 percent of DTI's revenue is derived from service areas where an affiliate of CTF II is the dominant (LEC).

GENERAL INFORMATION

The transfer of control application 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 of control application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Interested parties may file **comments within 14 days** and **reply comments within 21 days** of this notice.[8] Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

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[7] Applicants state that in order to assure that the transaction will be virtually transparent to DTI's existing customers, CTF II will adopt the existing DTI tariffs and service contracts so that customers can continue to receive the same rates and services during the transition to CTF II.

[8] *See* 47 C.F.R. § 63.52(b).

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

In addition, one copy of each pleading must be sent to each of the following:

(1) the Commission's duplicating contractor, Qualex International, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554; e-mail: qualexint@aol.com; facsimile: (202) 863-2898; phone: (202) 863-2893.

(2) Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C437, Washington, D.C. 20554; e-mail: twilson@fcc.gov, and

(3) Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 6-A461, Washington, D.C. 20554; e-mail: dcjohnso@fcc.gov, and

(4) William Dever, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C266, Washington, D.C. 20554; e-mail: wdever@fcc.gov.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. They may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

For further information, please contact Tracey Wilson, at (202) 418-1394, Dennis Johnson (202) 418-0809, or William Dever, Competition Policy, Wireline Competition Bureau at (202) 418-1578.

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