



PUBLIC NOTICE

Federal Communications Commission
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DA 03-66
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DOMESTIC SECTION 214 APPLICATION FILED FOR ACQUISITION OF ASSETS OF YIPES TRANSMISSION, INC. AS PART OF BANKRUPTCY REORGANIZATION

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 03-01

On December 16, 2002, Yipes Enterprise Services, Inc. (“New Yipes”) and Yipes Transmission, Inc. (Debtor-in-Possession) (“Old Yipes”) (together “Applicants”), filed an application pursuant to section 63.03 of the Commission’s rules,¹ for consent to enable New Yipes to acquire the assets of Old Yipes. Since April 19, 2002, Old Yipes has been operating under the protection of the Bankruptcy Court for the Northern District of California (San Francisco Division) pursuant to Chapter 11 of the Bankruptcy Code.² New Yipes has agreed to acquire the operations, authorizations and assets of Old Yipes, subject to necessary approvals. The proposed transaction will be accomplished by implementation of the Plan of Reorganization (“Plan”), jointly sponsored by Applicants and approved by the Bankruptcy Court on November 8, 2002.

Applicants assert that this transaction is entitled to presumptive streamlined treatment pursuant to section 63.03(b)(2)(i) of the Commission’s rules because immediately following the transaction, (1) New Yipes and its affiliates will hold less than a ten percent (10%) share of the interstate, interexchange market; (2) neither Applicant currently provides presubscribed local exchange service and immediately following the transaction, New Yipes will provide local exchange service, if at all, only in areas served by dominant local exchange carriers (none of which are parties to the transaction) and; (3) none of the Applicants or their affiliates are dominant with respect to any service.³

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

² *See* In re Yipes Transmission, Inc. and Yipes Transmission Virginia, Inc., Case No. 02-30750-DM (Bankr. N.D. Cal. (San Francisco)). Pursuant to section 63.03(d) of the Commission’s rules, 47 C.F.R. § 63.03(d), Old Yipes advised the Commission of the status of Old Yipes as Debtor-in-Possession by letter dated December 12, 2002.

³ 47 C.F.R. § 63.03(b)(2)(i).

New Yipes is a Delaware corporation with principal offices located at 114 Sansome Street, San Francisco, California. At the time that the Plan is implemented, New Yipes will be a wholly owned subsidiary of Yipes Holdings, Inc. (“Yipes Holdings”), a Delaware corporation. Yipes Holdings will, in turn, be owned by a number of institutional investors, the largest of which include affiliates of Norwest Investing Funds, New Enterprise Investing Funds, Sprout Investing Funds and J.P. Morgan Partners Investing Funds (“Investors”). None of the Investors holds a controlling interest in Yipes Holdings or, therefore, in New Yipes and, as a result, ultimate corporate control of New Yipes will remain with Yipes Holdings.⁴

New Yipes states that it has the financial resources required to acquire the assets of Old Yipes and provide service and assume responsibility for the interstate operations of Old Yipes. In particular, Yipes obtained commitment on a round of funding from its Investors in the amount of approximately \$57 million. New Yipes has already received more than \$40 million of this funding and New Yipes expects that it will receive the balance of the funds after a second closing scheduled to occur later this year. New Yipes expects that the most recent funding round should suffice to allow the company to operate until New Yipes turns cash flow positive, which is expected to occur near the end of next year.

New Yipes also asserts that it has the managerial and technical resources necessary to operate the interstate operations of Old Yipes that New Yipes proposes to acquire. Because certain key members of Old Yipes’s former senior management team hold comparable management positions with New Yipes, upon closing of the Plan, New Yipes will have managerial qualifications similar to those of Old Yipes.

Old Yipes is a California corporation with principal offices at 114 Sansome Street, San Francisco, California. Old Yipes is authorized to provide facilities-based competitive local exchange services in more than ten states, and Old Yipes provides interstate services on a deregulated basis.

Through implementation of the Plan, New Yipes will acquire the interstate operations of Old Yipes. Thereafter, New Yipes will continue to provide services to existing customers under the same rates, terms and conditions of services as that service is currently provided. New Yipes will continue to provide service under the “Yipes” brand name. As a result, Applicants state that implementation of the Plan will be virtually transparent to customers because they will experience no change in the services they receive. In order to avoid customer confusion, Applicants will provide pre-consummation notice of the Plan to customers.

⁴ Although a number of investment companies have made investments in Yipes Holdings, only four entities hold interests greater than ten percent (10%) of Yipes Holdings. Those entities are Norwest Venture Partners IX, L.P., Sprout Capital VIII, L.P., J.P. Morgan Partners (BHCA), L.P. and New Enterprise Associates 10, L.P. Although collectively these entities own nearly eight percent (80%) of Yipes Holdings, the shares are distributed such that no entity owns or controls more than thirty percent (30%) of Yipes Holdings. Applicants assert that the four investors do not act in concert and none of these entities will exercise control over the day to day operations of New Yipes.

Applicants state that this application will serve the public interest. In particular, Applicants assert that consummation of the Plan will increase competition in the interstate telecommunications market by reinforcing Applicants' status as a viable competitor. Applicants state that the proposed transaction will allow New Yipes to build on the foundation provided by Old Yipes and position New Yipes to compete effectively as a leading provider of services using Gigabit Ethernet and Internet Protocol. Furthermore, Applicants state that this transaction will facilitate the ability of New Yipes to offer alternative high-quality, competitively priced services to a substantial number of potential customers in its operating areas under a refocused business plan and with an ability to compete effectively with the incumbents and other providers of telecommunications services.

Applicants state that existing Yipes customers, in particular, will realize significant public interest benefits from consummation of the Plan. In light of the precarious financial position of Old Yipes, the proposed Plan will provide greater stability to customers who receive services from New Yipes and ensure that those customers can continue to enjoy high quality, affordable service without interruption. Moreover, given that the Plan will not cause a change in the rates, terms and conditions of services that Yipes customers currently receive, Applicants expect that implementation of the Plan will be virtually transparent to customers.

GENERAL INFORMATION

The transfer of control application 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 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.⁵ Unless otherwise notified by the Commission, an applicant is permitted to transfer control of the domestic lines or authorization to operate on the 31st day after the date of this notice.⁶ 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,

⁵ See 47 C.F.R. § 63.03(a).

⁶ Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

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.

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 appear 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, Vistrionix, 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; and
- (5) Nandan Joshi, Office of General Counsel, 445 12th Street, S.W., Room 8-A820, Washington, D.C. 20554; e-mail: njoshi@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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