



PUBLIC NOTICE

Federal Communications Commission
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DA 04-1535
Released: May 26, 2004

DOMESTIC SECTION 214 APPLICATION FILED FOR TRANSFER OF CONTROL OF EL PASO NETWORKS, L.P. TO GENESIS PARK TELECOM PARTNERS, L.P.

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 04-181

Comments Due: June 9, 2004

Reply Comments Due: June 16, 2004

On April 27, 2004, El Paso Networks, L.P. (EPN), filed an application, pursuant to sections 63.03 and 63.04 of the Commission's rules,¹ to request approval to permit EPN to conduct a sale of a partial interest in EPN, which may constitute a *de facto* transfer of control of EPN to Genesis Park Telecom Partners, L.P. (Genesis).²

Applicants assert that this transaction is entitled to presumptive streamlined treatment pursuant to section 63.03(b)(1)(ii) of the Commission's rules because Genesis, and its affiliates, are not telecommunications providers.³

EPN is a Delaware limited partnership providing both facilities-based and resold telecommunications services to customers in the United States, primarily in the state of Texas. EPN's operations consist primarily of competitive local services in the state of Texas, although EPN does provide some limited domestic interstate services. EPN is presently an indirect, wholly-owned subsidiary of the El Paso Corporation, an energy company with extensive natural gas production and distribution operations. El Paso Corporation, in turn, is publicly-traded on

¹ 47 C.F.R §§ 63.03, 63.04; *see* 47 U.S.C. § 214.

² Any action on this domestic section 214 application is without prejudice to Commission action on other related pending applications.

³ 47 C.F.R. § 63.03(b)(1)(ii).

the New York Stock Exchange under the symbol “EP”. El Paso Corporation has two shareholders with ten percent or greater interest: Brandes Investment Partners, LLC (10.8 percent) and Pacific Financial Research, Inc. (12.3 percent). Both of these entities are widely held and no shareholder in either entity owns a ten percent or greater ownership interest in EPN.

Genesis is a Delaware limited partnership with its principal place of business in Houston, Texas. Genesis is a private and venture capital fund that seeks developing and established businesses for strategic investments. Genesis Park LP holds a 35 percent equity interest in Genesis. Genesis Park GP Company LLC is the general partner of Genesis Park LP and owns a 35 percent equity interest in Genesis. No shareholder in Genesis Park GP Company LLC holds a 10 percent or greater ownership interest in EPN.

EPN proposes to conduct a series of transactions (Transactions) whereby a minority interest in EPN will be sold to Genesis. At the conclusion of the proposed Transactions, Genesis will own approximately 28.6% of the limited partnership interests in EPN. While such a minority transfer of ownership may not ordinarily fall under the Commission’s definition of a transfer of control, the Transactions also contemplate that the current make-up of the Board of Directors of EPN will be altered. It is for this reason, and the possibility that it could be considered a *de facto* transfer of control under the Commission’s rules, that EPN has filed this application. Presently, EPN’s Board of Directors has five members, all elected by El Paso Corporation. At the completion of the Transactions, two members of the board will continue to be elected by El Paso Corporation, two will be elected by Genesis, and the fifth member will be chosen by mutual consent of Genesis and the El Paso Corporation. Because of the even division of four of the members of the Board, and due to the fact that the fifth member is subject to the consent of both the El Paso Corporation and Genesis, the Transactions could be considered a relinquishment of “positive control” of EPN, and thus conceivably a *de facto* transfer of control under the Commission’s rules.⁴

EPN states that the proposed transaction is in public interest, because the infusion of new capital from Genesis into EPN will enable EPN to compete more effectively in the telecommunications marketplace. EPN maintains that access to increased capital will all it to provide flexibility in its service offerings and to grow its business. Thus, EPN argues that the increased competitive vigor that EPN receives will allow EPN to compete more forcefully in the telecommunications marketplace, which will inure to the benefit of telecommunications consumers. EPN claims that increases in competitive choices provide consumers with more options, better service, and lower prices.

GENERAL INFORMATION

The transfer of control identified herein has been found, upon initial review, to be

⁴ See, 47 C.F.R. § 63.24(c) (transfers that involve less than fifty percent of the capital stock of a company must be evaluated on a case-by-case basis).

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 on or before June 9, 2004** and **reply comments on or before June 16, 2004**.⁵

Unless otherwise notified by the Commission, Applicants are permitted to transfer control 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, 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 e-mail to ecfs@fcc.gov, and should include the following words in the subject line "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 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, Natek, 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

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.

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: tracey.wilson-parker@fcc.gov;
- (3) Gail Cohen, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C260, Washington, D.C. 20554; e-mail: gail.cohen@fcc.gov;
- (4) Julie Veach, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C124, Washington, D.C. 20554; e-mail: julie.veach@fcc.gov;
- (5) Susan O'Connell, Policy Division, International Bureau, 445 12th Street, S.W., Room 7-B544, Washington, D.C. 20554; email: susan.o'connell@fcc.gov; and
- (6) Christopher Killion, Office of General Counsel, 445 12th Street, S.W., Room 8-C740, Washington, D.C. 20554; e-mail: chris.killion@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, or Dennis Johnson at (202) 418-0809.

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