



# PUBLIC NOTICE

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**DA 04-1849**  
**Released: June 24, 2004**

## **DOMESTIC SECTION 214 APPLICATION FILED FOR ACQUISITION OF ASSETS OF COVISTA BY PAETEC COMMUNICATIONS, INC.**

### **STREAMLINED PLEADING CYCLE ESTABLISHED**

**WC Docket No. 04-221**

**Comments Due: July 8, 2004**

**Reply Comments Due: July 15, 2004**

On June 3, 2004, PAETEC Communications, Inc. (PAETEC or Transferee) and Covista, Inc. (Covista), Covista of New York (Covista-NY), and Capsule Communications, Inc. (Capsule) (Covista, Covista-NY, and Capsule, together, the Covista Companies or Transferors) (together, Applicants) filed an application, pursuant to sections 63.03 and 63.04 of the Commission's rules,<sup>1</sup> requesting approval for the Covista Companies to transfer to PAETEC certain telecommunications assets (the Covista Assets), including certain commercial long distance customers served by Covista and Covista-NY.<sup>2</sup> The Applicants request expedited treatment of their application.

Applicants assert that the proposed transaction is eligible for presumptive streamlined treatment under section 63.03(b)(2)(i) of the Commission's rules because the proposed transaction will result in a market share in the interstate, interexchange market of less than 10 percent; the transferee would provide competitive telephone exchange services or exchange access services (if at all) exclusively in geographic areas served by a dominant local exchange carrier that is not a party to the transaction; and none of the Applicants are dominant with respect to any service.

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

<sup>2</sup> The Applicants are also filing an application for consent to transfer assets for international services. Any action on this domestic section 214 application is without prejudice to Commission action on other related pending applications.

PAETEC is a Delaware corporation located in Fairpoint, New York. PAETEC provides broadband services, including advanced voice and video, enhanced data and communications management services to medium-sized and large businesses, educational institutions, governmental organizations and other entities in 27 U.S. markets. PAETEC offers local and long distance services in New Jersey, New York and Pennsylvania. PAETEC is wholly-owned by PAETEC Corp., a holding company. Madison Dearborn Capital Partners III, L.P. (19.8 percent) and Blackstone CCC Capital Partners, L.P. (14.1 percent) own a ten percent or greater equity share in PAETEC. Madison Dearborn Capital Partners III, L.P. holds a 25.3 percent ownership interest in CBeyond Communications, LLC, which is a competitive LEC.<sup>3</sup> Blackstone CCC Capital Partners, L.P. holds a 24 percent ownership interest in Centennial Communications Corp., which operates as a competitive LEC and as a wireless carrier.<sup>4</sup> Arunas A. Chesonis, by virtue of super-voting rights associated with the class of PAETEC Corp. stock he holds, controls PAETEC Corp.

Covista and Covista-NY are organized under the laws of New Jersey. Covista, Inc. and Capsule Communications are direct, wholly-owned subsidiaries of Covista Communications, Inc., a holding company. Covista of New York, Inc. is a direct, wholly-owned subsidiary of Covista, Inc. The Covista Companies offer facilities-based and/or resold local and long distance telecommunications, Internet and data services to retail and wholesale customers principally in the Northeast region of the United States. Covista offers local and long distance services in New Jersey, Pennsylvania, California, Delaware, Florida and Ohio.<sup>5</sup> Covista-NY offers local and long distance services in New York. Capsule is organized under the laws of Delaware. Capsule does not currently offer service in any geographic markets.

Applicants request approval for PAETEC to acquire certain assets of the Covista Companies and a portion of their commercial long distance customer base. PAETEC seeks to acquire commercial long distance customer accounts and two switches, including associated equipment, from the Covista Companies.<sup>6</sup> The assets involved are located in New Jersey, New York, Pennsylvania, California, Delaware, Florida and Ohio. The affected customers are served in the same states.

The Applicants claim that this proposed application will serve the public interest, convenience and necessity by promoting competition among telecommunications carriers. Specifically, Applicants contend that approval of the proposed asset transfer will enable

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<sup>3</sup> See Letter from Grace R. Chiu, Counsel for PAETEC Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 04-221 (filed June 17, 2004).

<sup>4</sup> *Id.*

<sup>5</sup> See Letter from Grace R. Chiu, Counsel for PAETEC Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 04-221 (filed June 21, 2004).

<sup>6</sup> *Id.*

PAETEC to strengthen its competitive presence in the affected markets and to concentrate its resources and expertise on providing innovative and diversified service offerings to their costumers. Applicants maintain that these enhancements will inure directly to the benefit of affected customers of Covista and Covista-NY, as well as indirectly to consumers generally in the telecommunications marketplace.

## **GENERAL INFORMATION**

The acquisition of assets 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 acquisition of assets 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 July 8, 2004** and **reply comments on or before July 15, 2004.**<sup>7</sup> Unless otherwise notified by the Commission, Applicants are permitted to transfer assets on the 31<sup>st</sup> day after the date of this notice.<sup>8</sup> 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](mailto: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

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<sup>7</sup> *See* 47 C.F.R. § 63.03(a).

<sup>8</sup> Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

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, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY-B402, Washington, DC 20554, telephone 1-800-378-3160, or via e-mail [www.bcpweb.com](http://www.bcpweb.com).
- (2) Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, 445 12<sup>th</sup> Street, S.W., Room 5-C212, Washington, D.C. 20554; e-mail: [tracey.wilson-parker@fcc.gov](mailto:tracey.wilson-parker@fcc.gov);
- (3) Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, 445 12<sup>th</sup> Street, S.W., Room 6-A461, Washington, D.C. 20554; e-mail: [dennis.johnson@fcc.gov](mailto:dennis.johnson@fcc.gov);
- (4) Julie Veach, Competition Policy Division, Wireline Competition Bureau, 445 12<sup>th</sup> Street, S.W., Room 5-C124, Washington, D.C. 20554; e-mail: [julie.veach@fcc.gov](mailto:julie.veach@fcc.gov);
- (5) Susan O'Connell, Policy Division, International Bureau, 445 12<sup>th</sup> Street, S.W., Room 7-B544, Washington, D.C. 20554; email: [susan.o'connell@fcc.gov](mailto:susan.o'connell@fcc.gov); and
- (6) Christopher Killion, Office of General Counsel, 445 12<sup>th</sup> Street, S.W., Room 8-C740, Washington, D.C. 20554; e-mail: [chris.killion@fcc.gov](mailto: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, the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, telephone 1-800-378-3160, or via e-mail [www.bcpweb.com](http://www.bcpweb.com).

For further information, please contact Tracey Wilson, at (202) 418-1394, or Dennis Johnson at (202) 418-0809.

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