



PUBLIC NOTICE

Federal Communications Commission
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DA 04-815
Released: March 26, 2004

DOMESTIC SECTION 214 APPLICATION FILED FOR TRANSFER OF CONTROL OF NEWSOUTH COMMUNICATIONS CORP., NUVOX, INC. AND NUVOX COMMUNICATIONS, INC.

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 04-50

Comments Due: April 9, 2004

Reply Comments Due: April 16, 2004

On March 3, 2004, NewSouth Communications Corp. (NewSouth) and NuVox, Inc., and NuVox Communications, Inc. (collectively, NuVox) filed an application to transfer control of those companies,¹ pursuant to sections 63.03 and 63.04 of the Commission's rules.²

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 the proposed transaction would result in the carriers and their affiliates having a market share in the interstate, interexchange market of less than 10 percent; the carriers and their affiliates would provide competitive telephone exchange services or exchange access services exclusively in geographic areas served by a dominant local exchange carrier that is not a party to this transaction; and none of the Applicants is dominant with respect to any service.³

¹ Applicants have also filed a transfer of control application related to international services. Any action on this domestic section 214 application is without prejudice to Commission action on other related pending applications.

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

³ 47 C.F.R. § 63.03(b)(2)(i); *see* 47 C.F.R. § 63.03(b)(3) ("For purposes of (b)(1) and (2) of this paragraph, the terms 'applicant,' 'carrier,' 'party,' and 'transferee' (and their plural forms) include any affiliates of such entities within the meaning of section 3(1) of the Communications Act of 1934, as amended.").

NewSouth, and its parent company, NewSouth Holdings, Inc. (Holdings), are Delaware corporations. Holdings is a holding company for NewSouth's stock. At present, the voting and equity interests of Holdings are held by numerous shareholders, and no single shareholder or group of affiliated shareholders has the power on its own to elect a majority of its Board of Directors or to otherwise control or dominate its affairs. Applicants assert that NewSouth is a non-dominant, facilities-based integrated communications provider of voice and data telecommunications services to end-user small and medium-sized business customers serving the southeastern United States (in particular, Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee). Applicants assert that NewSouth will continue to provide these services following the merger with NuVox.

NuVox, Inc., a Delaware corporation, and NuVox Communications, Inc., a South Carolina corporation, provide facilities-based voice and data telecommunications services to small and medium-sized businesses. NuVox Communications is one of various operating subsidiaries of NuVox, Inc. At present, the voting and equity interests of NuVox, Inc. are held by numerous shareholders, and no single shareholder or group of affiliated shareholders has the power on its own to elect a majority of its Board of Directors or to otherwise control or dominate its affairs. NuVox, Inc., through its operating subsidiaries, markets its services in 13 contiguous states in the midwestern United States and, subsequent to its merger with TriVergent Communications, southeastern United States (in particular, NuVox currently serves customers in Missouri, Kansas, Oklahoma, Arkansas, Illinois, Indiana, Ohio, South Carolina, North Carolina, Georgia, Florida, Kentucky, and Tennessee). NuVox will continue to provide these services following the merger with NewSouth.

The Applicants have entered into an agreement and merger plan whereby NS Transition Corp., a newly-formed, wholly-owned Delaware shell subsidiary of NuVox, will be merged into Holdings, with Holdings surviving and becoming a direct, wholly-owned subsidiary of NuVox. Each Holdings shareholder will receive shares in NuVox at a specified exchange ratio that will provide them with approximately 50 percent of the equity and voting rights in NuVox following the merger. The existing NuVox shareholders will retain their shares and will hold the remaining 50 percent. Because there are overlapping shareholders between NuVox and Holdings, after the merger, three shareholder groups will hold 10 percent or more voting or equity interests in the merged company: (1) NSHI Ventures LLC, a Delaware limited liability company which is indirectly managed and owned by Kohlberg Kravis Roberts & Co., L.P. (KKR), will have 17.5% of the voting and equity interests; (2) Wachovia Corporation, a North Carolina corporation, will have 12.6% of the voting and equity interests. Wachovia Corporation holds these interest through 8 direct or indirect subsidiaries, all of which are owned and ultimately controlled by Wachovia Corporation: Wachovia Capital Partners, Inc.; Wachovia Capital Investments, Inc.; Wachovia Bank, National Association; First Union Merchant Banking 1998-II, LLC; First Union Merchant Banking 1999-II, LLC; Wachovia Capital Partners 2001; Wachovia Capital Partners 2002; and Wachovia Capital Partners 2003; and (3) M/C Venture Partners V, L.P., a Delaware limited partnership, which is affiliated with M/C Partners VP V, L.L.C, Chestnut Venture Partners, L.P., and M/C Venture Investors, L.L.C (generally, the M/C Investors), will have 10.1% of the voting and equity interests. Wachovia Corporation, through

its subsidiaries, holds an ownership interest in NEP Broadcasting, LLC, and BTS Partners (f/k/a Belenos, Inc.) which do not offer telecommunications services. The M/C Investors have an ownership interest in Cavalier Telephone Corporation (Cavalier), a facilities-based competitive local exchange carrier operating its own backbone which offers a full range of telecommunications services in the Tidewater/MidAtlantic region (in particular, Richmond, Virginia; Greater Hampton Road, Virginia; Northern Virginia; Maryland; Delaware; New Jersey; and Pennsylvania). Cavalier offers residential and business local and long distance telephone services, residential and business DSL, business data services, web site hosting, and dial-up Internet services and related features. The M/C Investors are also affiliated with FDN (f/k/a Florida Digital Networks), a facilities-based provider of local, domestic, and international long distance and high speed Internet services as well as Virtual Private Networking, web hosting and DSL services in Florida and Central Georgia to both residential and business customers. Neither Cavalier nor FDN are incumbent local exchange carriers.

The Applicants assert that the proposed transaction serves the public interest. Applicants assert that the creation of a combined company with double the scope and size of the existing companies will enable the combined company to compete more effectively in the highly competitive market for telecommunications services. Applicants assert that the combined company will benefit from increased economies of scale that will permit it to operate more efficiently and thus realize substantial financial synergies that should enable the combined company to increase its operating income and free cash flow. Applicants assert that given the difficulties with which the competitive telecommunications industry is now struggling, the creation of a larger, financially stronger telecommunications competitor would benefit American consumers. Additionally, Applicants assert that the carriers will continue to provide high-quality communications services to their customers without interruption and without change in rates, terms or conditions.

GENERAL INFORMATION

The transfer of control 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 on or before April 9, 2004** and **reply comments on or before April 16, 2004.**⁴ Unless otherwise notified by the Commission, Applicants are permitted to transfer control on the 31st day after the date of this notice.⁵ 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).

⁴ See 47 C.F.R. § 63.03(a).

⁵ Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

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 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-A103, 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) 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 Gail Cohen at (202) 418-0939.

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