



# PUBLIC NOTICE

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**DA 04-927**  
**Released: April 1, 2004**

## DOMESTIC SECTION 214 APPLICATION FILED FOR TRANSFER OF CONTROL OF FOCAL COMMUNICATIONS CORPORATION TO CORVIS CORPORATION

### STREAMLINED PLEADING CYCLE ESTABLISHED

**WC Docket No. 04-126**

**Comments Due: April 15, 2004**  
**Reply Comments Due: April 22, 2004**

On March 18, 2004, Focal Communications Corporation (Focal) and Corvis Corporation (Corvis) (together, Applicants), filed an application, pursuant to sections 63.03 and 63.04 of the Commission's rules,<sup>1</sup> requesting approval to transfer control of Focal and its operating subsidiaries, including Focal Telecommunications Corporation (Focal Telecommunications), to Corvis.<sup>2</sup>

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 Corvis having a market share in the interstate, interexchange market of substantially less than 10 percent; Corvis would provide competitive telephone exchange services or exchange access services (if at all) exclusively in geographic areas served by a dominant local exchange carrier (LEC) that is not a party to the transaction; and neither Focal nor Corvis is dominant with respect to any service.<sup>3</sup>

Focal is a privately held, Delaware corporation with its principal place of business in

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

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

<sup>3</sup> 47 C.F.R. § 63.03(b)(2)(i).

Chicago, Illinois. Through its subsidiaries, Focal is authorized to provide local and long distance services in approximately 20 states and is also authorized by the Commission to provide domestic services nationwide as a non-dominant carrier.<sup>4</sup> Applicants state that Focal is primarily a competitive LEC with 4,000 enterprise and wholesale/carrier customers. Focal's affiliates offer their customers a variety of regulated and unregulated services, including TI, PRI, switched local service, long distance, toll-free, international long distance, international toll-free, Internet access and private networking, collocation space, integrated voice and data circuits, audio conferencing, and calling card services. Focal predominantly provides these services in conjunction with its competitive local exchange operations. Applicants state that virtually all of Focal's long distance services are offered on a resale basis.

Corvis is a publicly traded Delaware corporation with its principal executive offices in Columbia, Maryland. Corvis operates two divisions within the telecommunications industry. Its communications services division, managed within its Broadwing Communications, LLC subsidiary (Broadwing), is a provider of data, voice and video solutions to carrier and enterprise customers delivered over an 18,700 route mile fiber optic network connecting 137 cities nationwide. Broadwing, a Delaware limited liability company, is a wholly owned subsidiary of C III Communications, LLC, which, in turn, is a subsidiary of Corvis.<sup>5</sup> Corvis acquired Broadwing on June 13, 2003, through the purchase of the assets of Broadwing Communications Services, Inc., and its wholly owned subsidiary Broadwing Telecommunications, Inc. Broadwing owns and operates a long haul, all-optical network and IP backbone. Broadwing does not provide local services but currently provides long distance, ATM, Frame Relay, Dial IP, Dedicated Internet, Private Line and sDSL throughout the country. Corvis also wholly owns Corvis Acquisition Company, Inc., which will be merged with and into Focal upon the consummation of the proposed transaction. Corvis Acquisition was created to effectuate the transaction described herein and does not hold any authority to provide telecommunications services. Following closing of the proposed transaction, David R. Huber will hold 19-21 percent equity interest of the merged company.

Pursuant to the Merger Agreement executed by the Applicants on March 3, 2004, the Applicants have agreed to merge Corvis Acquisition with and into Focal.<sup>6</sup> Through the proposed

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<sup>4</sup> Focal provides regulated services through its operating subsidiaries in California, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New York, Ohio, Pennsylvania, Texas, Virginia, and Washington, as well as in Washington, DC. *See* Letter from Robert E. Stup, Jr., Counsel for Corvis Corporation and Catherine Wang, Counsel for Focal Communications Corporation to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 04-126 (filed March 26, 2004) (March 26 Letter).

<sup>5</sup> Broadwing was originally named C III Communications Operations, LLC. The name was later changed to Broadwing Communications, LLC. Corvis owns a 97% economic interest in C III Communications, LLC, and maintains full board control. Cincinnati Bell, previously the parent company of the predecessor of Broadwing Communications, LLC retained a 3% non-voting equity interest in C III Communications, LLC.

<sup>6</sup> Depending on Corvis' share price at the time of the closing of the merger, approximately 6% to 16% of Corvis' total outstanding common stock will be transferred to Focal's shareholders. Applicants state that transfer of stock will not cause a transfer of control requiring Commission approval.

transaction, Focal and Focal Telecommunications will become direct and indirect wholly-owned subsidiaries of Corvis, respectively, and the ultimate control of Focal Telecommunications will transfer to Corvis. Upon merger consummation, Focal Telecommunications and Broadwing will become affiliated sister companies.

Applicants contend that consummation of the proposed transaction will serve the public interest. First, Applicants state that the proposed transaction will be seamless and transparent to customers. Applicants maintain that there will be no change in the name of any providing carrier, no change in the format or appearance of the customers' bills, no change in the terms, conditions and price of service, and no change in customer service. Moreover, Applicants state that Focal and its affiliates will be able to rely on its new ultimate parent company, Corvis, to support its financial ability to continue to provide service as well as enable Focal's affiliates to continue to further expand their services. Finally, Applicants state that the proposed transaction raises no harm to competition because Broadwing does not provide local services, which is the focus of Focal's operations. Although Applicants concede that Focal and Broadwing may offer competing long distance products in some metropolitan areas, they argue that neither entity controls a dominant market share in of these geographic areas and that they face numerous competitors.<sup>7</sup>

## **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 15, 2004** and **reply comments on or before April 22, 2004**.<sup>8</sup> Unless otherwise notified by the Commission, Applicants are permitted to transfer control on the 31<sup>st</sup> day after the date of this notice.<sup>9</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

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<sup>7</sup> March 26 Letter at 2.

<sup>8</sup> *See* 47 C.F.R. § 63.03(a).

<sup>9</sup> Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

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 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 12<sup>th</sup> Street, S.W., Room CY-B402, Washington, D.C. 20554; e-mail: [qualexint@aol.com](mailto:qualexint@aol.com); facsimile: (202) 863-2898; phone: (202) 863-2893;
- (2) Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, 445 12<sup>th</sup> Street, S.W., Room 5-C437, 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, 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](mailto: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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