



PUBLIC NOTICE

Federal Communications Commission
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DA 06-2107
Released: October 24, 2006

**DOMESTIC SECTION 214 APPLICATION FILED FOR THE TRANSFER
OF CONTROL OF TALK AMERICA INC., LDMI TELECOMMUNICATIONS INC.,
NETWORK TELEPHONE CORPORATION, AND
THE OTHER PHONE COMPANY, INC., FROM TALK AMERICA HOLDINGS, INC.
TO CAVALIER TELEPHONE CORPORATION**

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 06-191

Comments Due: November 7, 2006
Reply Comments Due: November 14, 2006

On October 2, 2006, Cavalier Telephone Corporation ("CTC" or "Transferee"), Talk America Holdings, Inc. ("TA Holdings"), Talk America, Inc. ("Talk America"), LDMI Telecommunications, Inc. ("LDMI"), Network Telephone Corporation ("NTC"), and The Other Phone Company, Inc. ("OPC") (collectively, the "Applicants"), filed an application, pursuant to section 63.04 of the Commission's rules,¹ seeking authority to transfer control of Talk America, LDMI, NTC, and OPC from TA Holdings to CTC.²

Applicants assert that this transaction is entitled to presumptive streamlined treatment under 63.03(b)(2)(i) of the Commission's rules because the proposed transaction will result in: (1) Transferee having a market share in the interstate, interexchange market of less than 10 percent; (2) Transferee providing 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 (3) none of the Applicants being dominant with respect to any service.³

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

² Applicants filed a supplement to the Application on October 23, 2006. Applicants are also filing an application for transfer of control associated with authorization for international services. Any action on this domestic 214 application is without prejudice to Commission action on other related, pending applications.

³ 47 C.F.R. § 63.03(b)(2)(i).

TA Holdings, a publicly-held Delaware corporation, provides local and long distance telecommunications through its following wholly-owned subsidiaries: Talk America, a Pennsylvania corporation, is authorized to provide local and long distance telecommunications virtually nationwide; LDMI, a Michigan corporation, is authorized to provide local and long distance telecommunications in Illinois, Michigan, and Ohio, and long distance telecommunications services virtually nationwide; NTC, a Florida corporation, is a facilities-based telecommunications company that provides local and long distance telephone service to small and medium sized business customers in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee; OPC, a Florida corporation, also provides local and long distance telephone service in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee.⁴

CTC, a Delaware corporation, wholly owns Cavtel Holdings, LLC (“Cavtel Holdings”), a Delaware limited liability company. Cavtel Holdings' wholly-owned direct and indirect subsidiaries are Cavalier Telephone, LLC (“Cavalier”), a Virginia limited liability company, Cavalier Telephone Mid-Atlantic, LLC (“CTMA”), a Delaware limited liability company, Elantic Networks, Inc, a Delaware corporation that owns 100 percent of Elantic Telecom, Inc. (Elantic”), a Virginia corporation, Cavalier Networks, LLC (“Networks”), a Delaware corporation, Phonom, LLC, a Delaware limited liability company, and Cavalier Acquisition Corp., a Delaware corporation. Cavalier, CTMA, and Elantic each hold domestic Section 214 authorizations from the Commission, and each is authorized to act as a common carrier and seller of facilities-based local exchange and interexchange telecommunications services in certain states.⁵

The following U.S.-based entities hold a 10 percent or greater ownership interest in CTC: M/C Venture Partners IV LP, a Delaware limited partnership (22.27%); M/C Venture Partners V, LP, a Delaware limited partnership (29.99%); Banc America Capital Investors SBIC I, LP (BACI”), a Delaware limited partnership (17.22%); KDZ Holdings, LLC, a Delaware limited liability company (14.74%). The sole general partner of M/C Venture Partners IV, LP is M/C VP IV LLC, a Massachusetts limited liability company. In turn, M/C VP IV LLC is controlled by the following U.S. citizens: James F. Wade (50%); David D. Croll (30%); and Mathew J. Rubbins (20%).⁶ The sole general partner of M/C Venture Partners V LP is M/C VP V LLC, a

⁴ TA Holdings wholly owns several other U.S.-based entities identified in the Application.

⁵ Applicants state that Cavalier Telephone, LLC is authorized to provide telecommunications services in Virginia. Cavalier Telephone Mid-Atlantic, LLC is authorized to provide telecommunications services in Delaware, the District of Columbia, Maryland, New Jersey, and Pennsylvania. Elantic Telecom, Inc. is currently authorized to provide telecommunications services in Connecticut, Florida, Georgia, Indiana, Massachusetts, Maryland, Michigan, North Carolina, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, and Virginia. Cavalier Networks, LLC is authorized to provide telecommunications services in Pennsylvania and Ohio.

⁶ Applicants state that, in addition, M/C VP IV LLC has the following Class B members with no voting rights: Peter H.O. Cloudy, John P. Ward, Neil N. Sheth, Joseph S. Monaco, Russell T. Pyle, and Peter A. Schober. All of these members are U.S. citizens, except Peter A. Schober, who is an Austrian citizen. Applicants state that non-U.S. citizens hold less than 3 percent of the company.

Massachusetts limited liability company. In turn, M/C VP V LLC is controlled by the following U.S. citizens: James F. Wade (37.5%); David D. Croll, (18.9%); Mathew J. Rubbins (9.5%); John W. Watkins (22.7%); and John O. Van Hooser (11.4%).⁷ The general partner of BACI is Bank of America Capital Management SBIC, LLC a Delaware limited liability company. BA SBCI Sub, Inc. a Delaware corporation, holds 99.5% of BACI's limited partnership interests. BA SBCI Sub, Inc. is a wholly-owned subsidiary of Bank of America Bank N.A., which in turn is wholly-owned by the Bank of America Corporation, a publicly-traded Delaware corporation. Applicants state that Bank of America Corporation's capital is widely-held. Brad Evans, a U.S. citizen, is the managing member of KDZ Holdings, LLC and has a 10% membership interest in it. In addition, the following U.S. citizens hold a 22.5% membership interest in KDZ Holdings, LLC: Breanne Evans, Darrin Evans, Kirk Evans, and Kyle Evans. Applicants state that there are no other shareholders of CTC who directly or indirectly own 10 percent or more of Cavtel Holdings and thus will own 10% or more of Talk America, LDMI, NTC, and OPC's equity after the proposed transaction is complete.⁸

Pursuant to an Agreement and Plan of Merger dated September 22, 2006, the proposed transaction will be accomplished by a series of steps: (1) CTC's direct subsidiary, Cavtel Holdings, borrowing sufficient capital to effect the acquisition; (2) CTC (indirectly through Cavtel Holdings), acquiring all of the issued and outstanding shares of TA Holdings; and (3) TA Holdings being merged into Cavalier Acquisition Corp. with TA Holdings surviving. As a result of these steps, Cavtel Holdings, and by extension CTC, will indirectly control Talk America, LDMI, NTC, and OPC. Following the transaction, CavTel Holdings will hold a 100% direct ownership interest in each of Talk America, LDMI, NTC, and OPC. CTC will continue to hold 100% direct ownership interest in CavTel Holdings.

The Applicants state that the transfer of control to CTC will serve the public interest because (1) it will lead to the emergence of a stronger, more efficient, and better-financed competitor in the telecommunications markets Talk America, LDMI, NTC, and OPC serve; (2)

⁷ Applicants state that, in addition, M/C VP V LLC has the following Class B members with no voting rights: Peter H.O. Cloudy, John P. Ward, Neil N. Sheth, Joseph S. Monaco, Russell T. Pyle, Brian M. Clark, Edward J. Keele, David D. Croll, Peter A. Schober, and Adrian Bachmann. All of these members are U.S. citizens, except Peter A. Schober, who is an Austrian citizen, and Adrian Bachmann, who is a citizen of Switzerland. Applicants state that non-U.S. citizens hold less than 3 percent of the company

⁸ Applicants further state that CTC's direct 10 percent or greater shareholders are affiliated with the following telecommunications carriers: M/C Venture Partners IV, L.P. is not affiliated with any carrier other than CTC; M/C Venture Partners V L.P. has a 48 percent interest in FDN Holdings, LLC and its operating subsidiaries, which is a non-dominant facilities-based competitive local exchange carrier based in Orlando, Florida, a 42 percent interest in Cleveland Unlimited, LLC and its operating subsidiaries, which is a non-dominant wireless local and long distance carrier based in Cleveland, Ohio, a 24 percent interest in Coral Wireless, LLC and its operating subsidiaries, which is a non-dominant wireless carrier based in Honolulu, Hawaii, and a 40 percent interest in Cellular One of East Texas and its operating subsidiaries, which is a non-dominant wireless carrier based in Lufkin, Texas; BACI has a 26 percent interest in Fibertech Networks, LLC, a non-dominant competitive provider of fiber optic transport services in mid-sized cities in the Eastern and Central regions of the United States, and KDZ Holdings, LLC is not affiliated with any telecommunications carrier other than CTC.

the proposed transaction will be transparent to customers and will not result in a change in the rates, terms, and conditions of service; (3) the proposed transaction will result in the provision of more advanced telecommunications services for customers, and (4) grant of the Application will not result in an anti-competitive impact.

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. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file **comments on or before November 7, 2006** and **reply comments on or before November 14, 2006**.⁹ Unless otherwise notified by the Commission, Applicants are permitted to transfer the control on the 31st day after the date of this notice.¹⁰ Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers 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, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
- **Paper Filers:** 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, filers must submit two additional copies for each additional docket or rulemaking number.

⁹ See 47 C.F.R. § 63.03(a).

¹⁰ Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

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). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

The Commission's contractor 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, Express, and Priority mail should be addressed to 445 12th Street, S.W., Washington D.C. 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

You may submit comments, identified by the above noted docket number, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Federal Communications Commission's Web Site: <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 202-418-0432.

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, S.W., Room CY-B402, Washington, D.C. 20554, www.bcpiweb.com; phone: (202) 488-5300 fax: (202) 488-5563;
- (2) Cecilia Seppings, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C230, Washington, D.C. 20554; email: cecilia.seppings@fcc.gov;
- (3) Jodie May, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C234, Washington, D.C. 20554; e-mail: jodie.may@fcc.gov;
- (4) 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

(5) Jim Bird, Office of General Counsel, 445 12th Street, S.W., Room 8-C824, Washington, D.C. 20554; e-mail: jim.bird@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, S.W., Room CY-A257, Washington, D.C. 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CYB402, Washington, D.C. 20554, telephone: (202) 488-5300, fax: (202) 488-5563, or via e-mail www.bcpiweb.com.

For further information, please contact Cecilia Seppings at (202) 418-1588, or Jodie May at (202) 418-0913.

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