



PUBLIC NOTICE

Federal Communications Commission
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DA 06-2363
Released: November 22, 2006

DOMESTIC SECTION 214 APPLICATION FILED FOR THE ACQUISITION OF CERTAIN ASSETS OF RCN TELECOM SERVICES, INC. BY ASTOUND BROADBAND, LLC

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 06-209

Comments Due: December 6, 2006
Reply Comments Due: December 13, 2006

On November 6, 2006, RCN Telecom Services Inc. (“Transferor” or “RCN”), and Astound Broadband, LLC (“Transferee” or “Astound”) (collectively, the “Applicants”), filed a joint application, pursuant to section 63.04 of the Commission’s rules,¹ requesting authority for the acquisition of certain assets of RCN by Astound.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: (1) Applicants and their affiliates combined will hold less than a 10% share of the interstate, interexchange market; (2) Applicants and their Affiliates will provide local exchange service only in areas served by dominant local exchange carriers (none of which is a party to the proposed transaction) and; (3) none of the Applicants or their Affiliates is dominant with respect to any service that they provide.³

RCN, a Pennsylvania corporation, is a wholly-owned subsidiary of RCN Corporation, a publicly-traded Delaware corporation. RCN and certain of its affiliates provide video, data and voice services in the Boston, New York, Philadelphia/Lehigh Valley, Chicago, Los Angeles, San Francisco, and Washington, D.C. metropolitan markets.⁴ All of the services provided by RCN and its affiliates are

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

² Applicants have also filed 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).

⁴ RCN Affiliates that provide competitive telecommunications services outside of California include: RCN Telecom Services of Illinois, LLC; RCN Telecom Services of Washington, D.C., Inc.; RCN Telecom Services of Massachusetts, Inc.; RCN Telecom Services of Philadelphia, Inc.; RCN-BecoCom, Inc.; RCN Communications of New York, LLP; and Starpower Communications, LLC.

competitive in nature and neither RCN nor any of its affiliates holds a dominant position in any market. RCN holds blanket domestic Section 214 authority to provide global facilities-based and global resale service. RCN is also authorized to provide local exchange and intrastate interexchange telecommunications services in California and is making the necessary filings to the California Public Utilities Commission to assign those operations to Astound.

Astound, a Washington limited liability company, is a direct, wholly-owned subsidiary of WaveDivision Holdings, LLC (“Wave”), a Delaware limited liability company. Together, Wave and Astound currently serve approximately 155,000 cable television, high-speed data and telephone customers in western Washington and California. Astound holds blanket domestic Section 214 authority to provide global resale service. The following entities directly or indirectly own or control a 10% or greater equity interest in Astound: WaveDivision Capital, LLC (10% of Class A Units in Wave),⁵ a U.S. entity; Sandler Capital Partners V, L.P. (60.19% Class A Units in Wave), a U.S. entity; SCP V FTE WaveDivision Holdings, L.P. (27.01 % Class A Units in Wave), a U.S. entity; WaveDivision Networks, LLC (85% of Class B & C Units in Wave), a U.S. entity; and Steve Friedman (15% of Class B & C Units in Wave), a U.S. citizen. The following individuals, each a U.S. citizen, are members of WaveDivision Capital, LLC: Stanley A. Roberts, Rebecca M. Roberts, David E. Roberts, Vicki J. Golden-Roberts, Steven B. Weed, Marie McCauley, Steve Friedman, Sharon Friedman, Richard Kemp, Lynn Kemp, and Jon Staenberg. The general partner of Sandler Capital Partners V, L.P. and SCP V FTE WaveDivision Holdings, L.P. is Sandler Investment Partners, L.P., a U.S. entity. Sandler Capital Management, a U.S. entity, is the general partner of Sandler Investment Partners, L.P. The following individuals, each a U.S. citizen, own or control 10% or more of Sandler Capital Management: Andrew Sandler, Michael Marocco, John Kornreich, Douglas Schimrnel, and Harvey Sandler. The sole member of WaveDivision Networks, LLC is Steven Weed, a U.S. citizen. No other person or entities will directly or indirectly own a 10% or greater interest in Astound, and none of the aforementioned entities or persons have a 10% or greater interest in any telecommunications carrier other than Astound.

Pursuant to an Asset Purchase Agreement dated August 17, 2006, Applicants propose to complete a transaction through which Astound will acquire certain assets of RCN, including the customer accounts associated with RCN’s domestic interstate telephone service in Northern California. The proposed transaction will not affect RCN’s operations outside of the affected service area. Upon the transfer of the customers and related assets, Astound will provide service to these customers under comparable rates, terms, and conditions as currently being provided by RCN. All of the affected customers will receive notice in compliance with the Commission's rules.⁶

Applicants assert that the proposed transaction will serve the public interest because the transaction will invigorate competition in Northern California by expanding Astound’s customer base, giving Astound a greater presence in the telecommunications market in California, and making it a more viable competitor in all of its markets. The Applicants state that RCN’s business has been primarily focused on the Boston-to-Washington northeast corridor and Chicago, and its operations in California have not been of sufficient scope and scale to enable it to become an effective competitor in the

⁵ The limited liability company agreement pursuant to which WaveDivision Holdings, LLC is organized authorizes the issuance of three classes of units - A, B, and C. The three classes of units hold different rights to distribution of proceeds of the company (akin to common and preferred stock in a corporation).

⁶ Applicants state that, in addition to the telecommunications assets described, RCN has also agreed to sell its cable television and open video system operations in Northern California to Astound.

marketplace. Additionally, the applicants state that the proposed transaction will not adversely impact existing RCN customers, as it is structured to assure an orderly transition of the affected customers from RCN to Astound. Astound proposes to provide service on comparable rates, terms and conditions of the services that RCN currently provides, and the Applicants expect the transaction to be virtually transparent to the customers in terms of the service they receive.

GENERAL INFORMATION

The transfer of assets 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 December 6, 2006** and **reply comments on or before December 13, 2006**.⁷ Unless otherwise notified by the Commission, Applicants are permitted to transfer the assets and related control on the 31st day after the date of this notice.⁸ 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.

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.

⁷ See 47 C.F.R. § 63.03(a).

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

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.

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.bcpweb.com; telephone: (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) Alex Johns, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C317, Washington, D.C. 20554; e-mail: alexis.johns@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) James 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 CY-B402, Washington, D.C. 20554, telephone: (202) 488-5300, fax: (202) 488-5563, or via e-mail: www.bcpweb.com.

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).

For further information, please contact Cecilia Seppings at (202) 418-1588, or Alex Johns at (202) 418-1167.

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