



PUBLIC NOTICE

Federal Communications Commission
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DOMESTIC SECTION 214 APPLICATION FILED FOR THE TRANSFER OF CONTROL OF THE LICENSEES OF BROADVIEW NETWORK HOLDINGS, INC.

NON-STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 12-262

Comments Due: October 4, 2012

Reply Comments Due: October 11, 2012

On September 14, 2012, Broadview Networks Holdings, Inc. (Broadview Holdings) and direct and indirect non-dominant carrier licensees¹ (collectively, Applicants) filed an application pursuant to section 63.04 of the Commission's rules² seeking approval to transfer control, as described below, of Licensees from the current shareholders of Broadview Holdings.³ Applicants do not request streamlined treatment for this application pursuant to section 63.03 of the Commission's rules.⁴

Broadview Holdings, a Delaware corporation, is a holding company that is the ultimate parent company of Licensees. Broadview Holdings does not directly hold domestic section 214 authority. Through its subsidiaries, described below, Broadview Holdings provides competitive telecommunications services in the District of Columbia and all states except Alaska and Hawaii.

A.R.C., a New York corporation, ATX, a Delaware corporation, and Eureka, a Delaware corporation, are authorized to provide competitive telecommunications services in approximately 11 states and the District of Columbia, but do not currently provide any telecommunications service.

¹ A.R.C. Networks, Inc. (A.R.C.), ATX Licensing, Inc. (ATX), Broadview Networks, Inc. (Broadview Networks), Broadview NP Acquisition Corp. (Broadview NP), BridgeCom International, Inc. (BridgeCom), Eureka Telecom, Inc. (Eureka), Eureka Telecom of VA, Inc. (Eureka-VA), InfoHighway of Virginia, Inc. (InfoHighway-VA), and TruCom Corporation (TruCom) (collectively, Licensees).

² 47 C.F.R. § 63.04; *see* 47 U.S.C. § 214. Applicants are also filing applications for transfer of control associated with authorization for international services. Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

³ The application was filed in connection with pending voluntary petitions for relief under Chapter 11 of the U.S. Bankruptcy Code filed by Applicants on August 22, 2012. *See* Broadview Network Holdings, Inc., *et al.*, Case No. 12-13581 (SCC), Order (A) Scheduling Combined Hearing on Adequacy of Disclosure Statement and Confirmation of Prepackaged Plan, (B) Establishing Procedures for Objecting to Disclosure Statement and Prepackaged Plan, (C) Approving Form and Manner of Notice of Combined Hearing (Bank. S.D.N.Y., Aug. 23, 2012).

⁴ 47 C.F.R. § 63.03.

Broadview Networks, a New York corporation, is authorized to provide competitive telecommunications services in 48 states and the District of Columbia. Broadview NP, a Delaware corporation, is authorized to provide competitive telecommunications services in 12 states and the District of Columbia, but does not currently provide any telecommunications service.

BridgeCom, a Delaware corporation, is authorized to provide competitive telecommunications services in 7 states, but does not currently provide any telecommunications service.

Eureka-VA, and InfoHighway-VA, both Virginia corporations, are authorized to provide competitive telecommunications services in Virginia, but do not currently provide any telecommunications service.

TruCom, a New York corporation, is authorized to provide competitive telecommunications services in New Jersey and New York but does not currently provide any telecommunications service.

Applicants state that, following the consummation of the proposed transaction, MSD Credit Opportunity Fund, L.P., a Delaware limited partnership (MSD Fund), and High River Limited Partnership, a New York limited partnership (High River), will be the only parties to own at least ten (10) percent of the equity of Broadview Holdings, with each owning 16 percent of the equity of Broadview Holdings.

The sole General Partner of MSD Fund is MSD Capital (GP) II, LLC, a Delaware limited liability company (MSD Capital). Michael S. Dell, a U.S. citizen, will hold an approximate 10.6% indirect ownership interest in the equity of Broadview Holdings as a result of his limited partnership interest in MSD Fund. MSD Capital is controlled by Glenn R. Fuhrman, John C. Phelan, and Marc R. Lisker, all of whom are U.S. citizens. The sole General Partner of High River is Hopper Investments LLC, a Delaware limited liability company. The sole Member of Hopper Investments LLC is Barberry Corp., a Delaware corporation. Barberry Corp. is wholly owned by Carl Icahn, a U.S. citizen. Barberry Corp. and Carl Icahn indirectly own XO Communications, LLC, an entity providing competitive telecommunications services in 49 states and the District of Columbia, and Nextlink Wireless, LLC, an entity authorized to hold wireless licenses. Applicants state that they do not expect that any other person or entity will directly or indirectly own 10 percent or more of the equity of Broadview Holdings.

Pursuant to the terms of the proposed transaction, Broadview Holdings plans to exchange outstanding notes for equity in the company, which will result in an indirect transfer of control of Licensees. Applicants state that Broadview Holdings has entered into an agreement with a majority of its equity holders and note holders for a restructuring of its outstanding obligations. Pursuant to that agreement, the existing note holders will obtain approximately 97 percent of Broadview Holdings' common shares and additional senior notes. Applicants state that Broadview Networks has obtained agreement to this arrangement from the company's note holders who hold more than two-thirds of the aggregate principal amount of outstanding senior secured notes and the equity holders who hold more than 70 percent of the existing preferred equity interests. Applicants state that, in order to complete the transaction, Broadview Holdings filed the "prepackaged" bankruptcy. Applicants state that they expect to emerge from bankruptcy in October, 2012. They assert that the transaction is in the public interest and that they do not anticipate a change in senior management, and will continue to maintain the technical, managerial, and financial qualifications to operate and provide telecommunications services following the proposed transaction. Applicants also state that they will continue to offer service with no immediate change in the rates or terms and conditions of service.

GENERAL INFORMATION

The transfer of control identified herein has been found, upon initial review, to be acceptable for filing as a non-streamlined application. The Commission reserves the right to return any transfer application if, upon further examination, it is determined to be defective and not in conformance with the

Commission's rules and policies. Pursuant to section 63.03(a) of the Commission's rules, 47 CFR § 63.03(a), interested parties may file comments **on or before October 4, 2012**, and reply comments **on or before October 11, 2012**. Pursuant to section 63.52 of the Commission's rules, 47 C.F.R. § 63.52, commenters must serve a copy of comments on the Applicants no later than the above comment filing date.

Pursuant to section 63.03 of the Commission's rules, 47 CFR § 63.03, parties to this proceeding should file any documents in this proceeding using the Commission's Electronic Comment Filing System (ECFS): <http://fjallfoss.fcc.gov/ecfs2/>.

In addition, e-mail one copy of each pleading to each of the following:

- 1) Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, tracey.wilson@fcc.gov;
- 2) Christopher Sova, Competition Policy Division, Wireline Competition Bureau, christopher.sova@fcc.gov;
- 3) David Krech, Policy Division, International Bureau, david.krech@fcc.gov; and
- 4) Jim Bird, Office of General Counsel, jim.bird@fcc.gov.

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).

The proceeding in this Notice shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.⁵ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b), 47 C.F.R. § 1.1206(b). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

For further information, please contact Tracey Wilson at (202) 418-1394 or Christopher Sova at (202) 418-1868.

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⁵ 47 C.F.R. §§ 1.1200 *et seq.*