



PUBLIC NOTICE

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DA 16-1008
September 2, 2016

DOMESTIC SECTION 214 APPLICATION FILED FOR THE TRANSFER OF CONTROL OF UNITE PRIVATE NETWORKS, LLC AND UNITE PRIVATE NETWORKS-ILLINOIS, LLC TO COX COMMUNICATIONS, INC.

NON-STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 16-241

Comments Due: September 16, 2016

Reply Comments Due: September 23, 2016

Unite Private Networks, LLC, United Private Networks-Illinois, LLC (together, UPN or the UPN Companies), REP UP, L.P. (REP UP), and Cox Communications, Inc. (Cox) (collectively, Applicants) filed an application¹ pursuant to section 214 of the Communications Act of 1934, as amended, and section 63.03 of the Commission's rules, requesting authorization to transfer control of UPN from REP UP to Cox.²

The UPN Companies, both Delaware limited liability companies, provide domestic telecommunications services over more than 6,200 fiber route miles to 3,750 on-net buildings for customers in Arizona, Arkansas, Colorado, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Missouri, Montana, Nebraska, New Mexico, Ohio, Oklahoma, Texas, Virginia, Washington, Wisconsin, and Wyoming.³ UPN offers telecommunications services to schools, local and state governments, carriers, data centers, hospitals, and enterprise customers in the areas it serves within those states.⁴ UPN does not offer residential services. REP UP is a Delaware limited partnership that holds 84.9 percent of the equity interest in UPN Holdings, LLC, a Delaware limited liability company.⁵ UPN Holdings, LLC owns 100

¹ Application of Unite Private Networks, LLC and Unite Private Networks-Illinois, LLC, REP UP, L.P. and Cox Communications, Inc. for Consent to Transfer Control of Domestic Authority Pursuant to Section 214, WC Docket No. 16-241 (filed July 27, 2016) (Application). Applicants filed a supplement to the Application on August 24, 2016. See Letter from J.G. Harrington, Counsel for Cox Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-241 (filed Aug. 24, 2016) (Supplement).

² See 47 U.S.C. § 214; 47 CFR § 63.03.

³ Application at 4. Applicants state that UPN also provides interstate services in California to one customer with a small number of leased facilities. *Id.* at n.6

⁴ *Id.* at 4.

⁵ *Id.* at 10.

percent of UPN Intermediate Holdings, LLC (UPN-I), a Delaware entity, which owns 100 percent of the UPN Companies.⁶

Cox, a Delaware corporation, and its affiliates provide domestic and international telecommunication services, broadband service, and video service in 18 states, serving more than six million customers in the residential, small and medium business, and enterprise markets.⁷ Cox has service areas in Arizona, Arkansas, California, Connecticut, Florida, Georgia, Idaho, Iowa, Kansas, Louisiana, Massachusetts, Missouri, Nebraska, Nevada, Ohio, Oklahoma, Rhode Island, and Virginia with more than 30,000 route miles of fiber in place today.⁸ Cox provides video service, but not telecommunications service, in North Carolina.⁹ Cox is wholly owned by Cox Enterprises, Inc. (CEI) via a 95.4 percent direct interest and a 4.6 percent indirect interest by virtue of CEI's 100 percent ownership of Cox minority owner Cox DNS, Inc.¹⁰ Applicants state that voting control of CEI is vested in the Cox Family Voting Trust, which holds 100 percent of the voting stock of CEI.¹¹

Pursuant to the terms of the membership interest and stock purchase transaction, Cox will acquire an indirect majority interest in UPN-I.¹² Applicants state that following completion of the proposed transaction, if approved, Cox will hold a combined 66 percent equity interest in Fiber Platform, LLC (Fiber Platform), a Delaware limited liability company, through Cox's wholly-owned subsidiaries.¹³ Ridgemont, which currently controls REP UP, will hold approximately a 28 percent equity interest in Fiber Platform through three of its investment funds.¹⁴ The remainder of the equity of Fiber Platform will

⁶ *Id.* at 10. Applicants state that two of UPN's current interest holders, Ridgemont Equity Partners (Ridgemont), a U.S.-based equity investor, and J. Travis Hain, a U.S. citizen, hold a greater than ten percent indirect equity interest in Cross River Fiber, LLC, which provides competitive access provider services in New Jersey and New York. Applicants further state that another UPN interest holder, Goldman, Sachs & Co., also holds an indirect 17.5 percent interest in Perseus Telecom Limited, a non-dominant carrier authorized to provide domestic and international services. *Id.* at 10-11.

⁷ *Id.* at 2.

⁸ *Id.* at 2, n.2.

⁹ *Id.*

¹⁰ *Id.* at 12.

¹¹ The following U.S. Citizens are the trustees of the Cox Family Trust: James C. Kennedy, Alexander Taylor, and John M. Dyer. Application at 12. Applicants further state that Trailsend Ventures, LLC owns 29.49 percent of the equity of CEI, and JKR Ventures, L.P. owns 23.28 percent of the equity of CEI, both of which are Delaware entities. *Id.* at 13. The 10 percent or greater owners of Trailsend Ventures, LLC and JKR Ventures, L.P. are U.S.-based trusts. *Id.* at 13-15.

¹² *Id.* at 2.

¹³ These subsidiaries are Fiber Platform Holdings, LLC, a Delaware limited liability company (which will have approximately a 34 percent interest in Fiber Platform) and Fiber Platform Blocker, Inc. (Fiber Platform Blocker), also a Delaware limited liability company (which will have approximately a 32 percent interest in Fiber Platform).

¹⁴ The Applicants state that, under the proposed agreement, the interests reported may vary depending on what interests UPN management retains following the proposed transaction. Cox, through Fiber Platform Holdings and Fiber Platform Blocker, will have an interest of approximately 66 to 69 percent interest in UPN. Ridgemont,

be owned by members of the management of UPN, none of whom will hold a ten percent or greater equity interest.¹⁵ Fiber Platform, in turn, will own 100 percent of UPN-I.¹⁶ Applicants state that UPN-I will continue to operate as a stand-alone business as a direct subsidiary of Fiber Platform, which will be governed by a Board of Managers that consists of Managers appointed by Cox, Ridgemont, and the management of UPN.¹⁷

Applicants assert that the transaction is in the public interest. Applicants state that UPN will have access to an increased credit facility for capital projects, including expanding UPN's fiber footprint within and outside of its current markets.¹⁸ Applicants contend that the transaction will "enable Cox and UPN to serve customers with regional fiber network needs that neither party can serve on its own today, thereby increasing competition."¹⁹ Applicants further state that the proposed transaction will: expand the service areas of both companies; result in the combined company being a stronger competitor to incumbent local exchange carriers in local markets and regionally; and enable the combined company to provide customers with access to metro and regional fiber infrastructure that will connect all major markets in the Midwest.²⁰ Applicants maintain that "UPN's service area overlaps with the Cox service area only in the Fayetteville, Arkansas; Macon/Warner Robins, Georgia; Manhattan, Barton County, and Geary County, Kansas; Omaha, Nebraska/Iowa; and Oklahoma City, Oklahoma markets."²¹ Applicants contend that there are "only minimal overlaps in those states" and that there are "a wide range of competitors" for the companies' services.²² Because this transaction is more complex than usual, in order to analyze whether the proposed transaction would serve the public interest, this application will not be streamlined.²³

Domestic Section 214 Application Filed for the Transfer of Control of Unite Private Networks, LLC and Unite Private Networks-Illinois, LLC to Cox Communications, Inc., WC Docket No. 16-241 (filed July 27, 2016).

collectively through REP UPN, L.P., REP UPN II, L.P., and Ridgemont Equity Partners Affiliates II-B, L.P., all three of which are Delaware limited partnerships, will hold approximately a 27-30 percent equity interest in UPN post-transaction. J. Travis Hain will also own an indirect interest of approximately 12 percent in UPN post-transaction through a combination of ownership interests. See Application at 2-4; 10-16 for a complete description of UPN's ownership pre- and post-transaction.

¹⁵ *Id.* at 2.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Supplement at 4.

¹⁹ *Id.*

²⁰ Application at 4-7.

²¹ *Id.* at 7, 8.

²² *Id.* at 7. Applicants state that the total number of buildings where both Cox and UPN provide service is 167. Supplement at Attach. 3.

²³ 47 CFR 63.03(c)(1)(v).

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 September 16, 2016**, and reply comments **on or before September 23, 2016**. 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://apps.fcc.gov/ecfs/>.

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) Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, dennis.johnson@fcc.gov;
- 3) Jim Bird, Office of General Counsel, jim.bird@fcc.gov;

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The proceeding in this Notice shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. 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 Dennis Johnson at (202) 418-0809.

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