

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Connect America Fund |) | AU Docket No. 17-182 |
| |) | |
| Petition of Sunset Digital Communications, Inc. |) | WC Docket No. 10-90 |
| Waiver of Section 54.315(b)(6)(iv) of the |) | |
| Commission's Rules |) | |

ORDER

Adopted: August 6, 2019

Released: August 6, 2019

By the Chief, Wireline Competition Bureau and the Acting Chief, Office of Economics and Analytics:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (WCB), in conjunction with the Rural Broadband Auctions Task Force and the Office of Economics and Analytics,¹ grants the petition of Sunset Digital Communications, Inc. (SDC), a winning bidder in the Connect America Fund (CAF) Phase II auction, requesting waiver of section 54.315(b)(6)(iv) of the Commission's rules to allow SDC to make a major modification to its long-form application.² We find that the public interest will be served by the grant of the requested waiver, so that upon the consummation of a transaction approved by WCB in a section 214 domestic transfer of control application, SDC can modify its long-form application for CAF Phase II support without the application being subject to denial on that basis.³

II. BACKGROUND

2. The CAF Phase II reverse auction (Auction 903) allocated \$1.488 billion over 10 years to service providers that commit to offer voice and broadband services to fixed locations in unserved high-cost areas.⁴ On February 1, 2018, the Commission released a public notice that established application and bidding procedures for Auction 903.⁵ Among other things, the *Auction 903 Procedures Public Notice*

¹ See 47 CFR §§ 0.91(p), 0.131(a); *see also id.* §§ 0.21(m), (o).

² See 47 CFR § 54.315(b)(6)(iv) (prohibiting major modifications, including ownership changes that constitute an assignment or change of control, or the identity of the applicant, to a post-auction long-form application). *See also* Petition of Sunset Digital Communications, Inc. for Waiver of 54.315(b)(6)(iv) of the Commission's rules, AU Docket No. 17-182, WC Docket Nos. 10-90, 17-207, at 2 (filed Nov. 26, 2018) (SDC Petition for Waiver).

³ SDC Petition for Waiver at 1. *See also Domestic Section 214 Application Filed for the Transfer of Control of Sunset Digital Communications, Inc.*, Public Notice, 33 FCC Rcd 3927 (2018) (*Section 214 Application Comment Public Notice*); *Notice of Domestic Section 214 Authorization Granted*, Public Notice, 33 FCC Rcd 5203 (2018).

⁴ *See Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17692-94, 17695, paras. 77-83, 86 (2011), *aff'd sub nom. In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014); *Connect America Fund Phase II Auction (Auction 903) Closes, Winning Bidders Announced, FCC Form 683 Due October 15, 2018*, Public Notice, 33 FCC Rcd 8257 (2018) (*Auction 903 Closing Public Notice*).

⁵ *Connect America Fund Phase II Auction Scheduled for July 24, 2018; Notice and Filing Requirements and Other Procedures for Auction 903*, Public Notice, 33 FCC Rcd 1428, 1432, para. 8 (2018) (*Auction 903 Procedures Public Notice*).

required entities seeking to participate in Auction 903 to file a short-form application (FCC Form 183) by March 30, 2018.⁶ Each Auction 903 applicant was required to fully disclose in this application information regarding its real party- or parties-in-interest and its ownership structure, including both direct and indirect ownership interests of 10 percent or more, as prescribed in section 1.2112(a) of the Commission's rules.⁷

3. On March 30, 2018, SDC filed an FCC Form 183 to participate in Auction 903.⁸ This application disclosed that Paul and Ryan Elswick each held a 50% ownership interest in SDC.⁹ It also reported that SDC had two agreements: one, labeled as "Agreement 1, Operational," to which Point Broadband, LLC (Point Broadband) and ITC Capital Partners LLC (ITC) were listed as parties; and a second, labeled as "Agreement 2, Spectrum Lease," to which Point Broadband was listed as a party.¹⁰ The description of the spectrum lease agreement discloses that "Point Broadband has an agreement in place to acquire Sunset Digital Communications, Inc. as of the March 30, 2018 short-form deadline."¹¹

4. On March 30, 2018, the same day that it filed its Auction 903 application, SDC also filed an application pursuant to section 214 of the Communications Act of 1934, as amended, and sections 63.03-04 of the Commission's rules,¹² requesting approval of a stock acquisition transaction that would transfer control of SDC and its wholly owned subsidiary, Sunset Fiber, LLC, to Sunset Digital Holding, LLC (Sunset Digital Holding).¹³ The SDC Section 214 Application included information about SDC, ITC, and Point Broadband, and explained that Sunset Digital Holding was a newly organized holding company wholly owned by Point Broadband and would become the direct parent of SDC.¹⁴ SDC's Section 214 Application further explained that following the consummation of the proposed transaction, Point Broadband would hold a 59.5% interest in Sunset Digital Holding, Paul Elswick and Ryan Elswick would each hold a 16.5% interest, and ITC would hold a 7% interest.¹⁵ SDC further stated that ITC would continue to hold a 36.06% interest in Point Broadband.¹⁶ On April 25, 2018, WCB issued a public notice seeking comment on SDC's Section 214 Application.¹⁷ On May 29, 2018, WCB approved SDC's

⁶ *Id.*, 33 FCC Rcd. at 1433, para. 10. FCC Form 183 requires each applicant to provide specific information and certifications, under penalty of perjury, regarding its qualifications. *See id.* at 1438, para. 20.

⁷ *See* 47 CFR §§ 1.2112(a), 54.315(a)(1) (requiring the disclosure on the short-form application of the applicant's ownership information as set forth in 47 CFR § 1.2112(a)); *see also Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1440, para. 28. Pursuant to the Commission's rules, those individuals and entities that have an ownership or other interest in the applicant that must be disclosed and reported on the short-form and long-form auction applications (Forms 183 and 683, respectively) are considered to be "disclosable interest holders" (or DIHs) in the applicant. *See FCC Form 183 Application to Participate in Connect America Fund Phase II Auction*, Instructions, section 3.4; *FCC Form 683 Application for Connect America Fund Phase II Auction Support*, Instructions, section 6.5, posted under the "Education" tab at: <https://www.fcc.gov/auction/903>.

⁸ FCC Form 183 of Sunset Digital Communications, Inc., FCC File No. 0008155732 (filed Mar. 30, 2018) (SDC's FCC Form 183).

⁹ *See id.*

¹⁰ *See id.*, Agreements tab.

¹¹ *See id.*, Spectrum Access Agreement 2. Subsequently, on April 17, 2018, SDC filed a petition seeking waiver of the prohibition on major modifications with respect to its Auction 903 application. *See* Petition of Sunset Digital Communications, Inc. for Waiver of the Commission's rules, AU Docket No. 17-182, WC Docket No. 10-90 (filed April 17, 2018). Later, SDC withdrew this petition for waiver, explaining that the transaction with ITC and Point Broadband was being reformed as an asset purchase transaction and would not be completed prior to the completion of the auction. *See* Letter from James C. Falvey, Esq. to Marlene H. Dortch, FCC Secretary (filed June 7, 2018).

¹² *See* 47 U.S.C. § 214; 47 CFR §§ 63.03-04.

¹³ *See* Application for Authorization Pursuant to Section 214 of the Communications Act of 1934, as Amended, for Assignment of Assets and/or Transfer of Control, WC Docket No. 18-98, (filed March 30, 2018);

(continued....)

Section 214 Application.¹⁸ However, SDC did not consummate the transaction at that time.

5. Shortly after the SDC Section 214 Application was approved, SDC amended its FCC Form 183 to include a statement that “[t]he Purchase Agreement dated March 30, 2018 that was disclosed in the initial short-form application is being replaced by an Asset Purchase Agreement by which Point Broadband plans to acquire control of the assets of [SDC] after the auction is concluded.”¹⁹ SDC also stated that Paul and Ryan Elswick would each remain 50% co-owners of SDC at all times during the auction.²⁰

6. Bidding in Auction 903 began on July 24, 2018 and concluded on August 21, 2018.²¹ SDC was one of the 103 winning bidders in the auction. It won \$5,595,554.80 in CAF Phase II support for 2,095 locations in Tennessee, and \$23,979,452.60 in support for 6,998 locations in Virginia.²²

7. On October 15, 2018, SDC filed an FCC Form 683 long-form application for CAF-II auction support.²³ On November 26, 2018, SDC filed its Petition for Waiver seeking permission to make a major modification to its pending FCC Form 683.²⁴ Specifically, SDC seeks relief from section 54.315(b)(6)(iv) of the Commission’s rules, which prohibits an Auction 903 applicant from making a major modification to a long-form application, so that upon consummation of the asset purchase agreement with Sunset Digital Communications, LLC (SDC, LLC), SDC can amend its FCC Form 683 to reflect SDC, LLC’s acquisition of SDC’s assets, including its rights and obligations as a winning bidder in the CAF-II auction.²⁵ As explained in SDC’s Petition for Waiver, the transaction described in SDC’s Section 214 Application varies from the transaction that the parties now seek to consummate in that SDC, LLC, which is a wholly owned subsidiary of Sunset Digital Holding, will be the party to acquire the assets of SDC instead of Sunset Digital Holding acquiring the stock of SDC.²⁶

8. In support of its request for waiver, SDC argues that because the Commission and the

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[https://ecfsapi.fcc.gov/file/10331015717887/SUNSET%20214%20APPLICATION%20%5BFINAL%5D%20\(N0284597xA35AA\).pdf](https://ecfsapi.fcc.gov/file/10331015717887/SUNSET%20214%20APPLICATION%20%5BFINAL%5D%20(N0284597xA35AA).pdf) (SDC’s Section 214 Application).

¹⁴ See *id.*

¹⁵ See *id.*

¹⁶ See *id.* SDC’s Section 214 Application includes copies of the proposed pre- and post-closing organizational charts. *Id.*

¹⁷ *Section 214 Application Comment Public Notice*. In that Public Notice, WCB explained that the proposed transaction was related to two Section 214 domestic transfer of control applications that the Bureau had previously granted jointly via Public Notice on January 16, 2018, in WC Docket Nos. 17-353, 17-268, and 17-273. In the first, the Bureau granted the acquisition of certain assets of the Bristol Virginia Utilities Authority by Sunset Fiber (a subsidiary of Sunset Digital). See *Notice of Domestic Section 214 Authorizations Granted*, Public Notice, 33 FCC Rcd 165, 166 (2018). In the second, the Bureau had granted a transfer of control application with an unrelated purchaser, H.I.G. Capital Partners V, L.P., which had not been consummated and which was being abandoned and replaced by the proposed transaction with ITC/Point Broadband. See *id.*; see also SDC’s *Section 214 Application Comment Public Notice*, 33 FCC Rcd 3927, 3927 at n.2 (citing Letter from Robert J. Gastner, counsel to Applicants, to Marlene Dortch, Secretary, FCC, WC Docket No. 17-273 (filed April 17, 2018)).

¹⁸ See *Notice of Domestic Section 214 Authorization Granted*, Public Notice, 33 FCC Red 5203 (2018).

¹⁹ See SDC’s FCC Form 183, Agreement 1. SDC amended its short-form application to disclose ITC and Point Broadband in the DIH data fields of its FCC Form 183, with the ownership percentages held by each of the DIHs being the same as those proposed in SDC’s Section 214 Application. See SDC’s FCC Form 183, DIH entries under Ownership tab. In addition to confirming that the Elswicks would remain the co-owners during the course of the auction, SDC also stated in an update to its application that “[r]eferences to other Disclosable Interest Holders are therefore removed,” but it did not remove those names from the Form 183 data fields on its application. See SDC’s FCC Form 183, Agreement 1-Resubmission.

²⁰ See *id.*

public were made aware of the material details of the transaction for acquiring SDC's assets "prior to the Auction 903 deadline, and prior to the commencement of the auction," SDC should be afforded similar treatment as the petitioners in the *Hawaiian Telecom* matter. In that case, the petitioners were permitted to participate in Auction 903 after the grant of a waiver allowing them to make a major modification of their respective auction short-form applications.²⁷ SDC also argues that grant of the requested waiver would be in the public interest because it would permit the influx of significant new capital, as well as access to the technical and operational experience of Point Broadband and ITC, which would help the post-consummation entity secure the required letters of credit and accelerate the deployment of fixed broadband networks to serve rural locations in Tennessee and Virginia.²⁸

III. DISCUSSION

9. The Commission may waive its rules and requirements where there is "good cause shown" to do so.²⁹ Good cause, in turn, may be found "where particular facts would make strict compliance inconsistent with the public interest."³⁰ In making this determination, the Commission may "take into account considerations of hardship, equity, or more effective implementation of overall policy."³¹ A waiver is therefore "appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."³² To make such a public interest determination, the waiver cannot undermine the purposes of the rule, and there must be a stronger public interest benefit in granting the waiver than in applying the rule.³³

10. We conclude that there is good cause for granting the requested waiver. We find that special circumstances warrant deviating from the application of the rule prohibiting a major modification of a pending Auction 903 long-form application. SDC observes that Commission staff had concluded that granting relief to petitioners in *Hawaiian Telecom* would not undermine the underlying purpose of the rule prohibiting a major modification of a short-form application in Auction 903 because the parties had "disclosed their future real parties-in-interest prior to the short-form deadline in their Section 214

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²¹ See *Auction 903 Closing Public Notice*, 33 FCC Rcd 8257.

²² See *id.*, Attach. A.

²³ See *134 Long-Form Applicants in the Connect America Fund Phase II Auction (Auction 903)*, Public Notice, 33 FCC Rcd 10967 (2018).

²⁴ SDC Petition for Waiver. Absent the grant of a waiver, if an applicant makes a major modification to its long-form application, the application shall be denied. Major modifications include, but are not limited to, any changes in the ownership of the applicant that constitute an assignment or transfer of control, or changes in the identity of the long-form applicant. See 47 CFR § 54.315(b)(6)(iv).

²⁵ The proposed post-consummation ownership percentages are the same as those listed in the stock acquisition transaction that had initially been described in SDC's Section 214 Application; namely, Point Broadband would hold a 59.5% interest in Sunset Digital Holding, and Paul Elswick and Ryan Elswick would each hold a 16.5% interest in Sunset Digital Holding. See SDC Petition for Waiver at Attachment A. SDC contends that this asset purchase transaction is not "materially different" than the transaction approved by WCB. See SDC Petition for Waiver at 2-3.

²⁶ See SDC Petition for Waiver at 3.

²⁷ *Id.* at 3-4, citing *Connect America Fund, Petition of Hawaiian Telecom Inc. et. al.* Order, 33 FCC Rcd 6208 (WCB/WTB 2018) (*Hawaiian Telecom*) (granting waivers to permit auction applicants to make a major modification to their Auction 903 short-form applications).

²⁸ SDC Petition for Waiver at 6-7.

²⁹ 47 CFR § 1.3 ("Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.").

³⁰ *Ne. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

filings, and included relevant information on their post-transaction ownership in their short-form applications” and SDC contends that similar facts exist here.³⁴ We agree.

11. Contemporaneous with the filing of its Auction 903 short-form application, SDC filed a section 214 domestic transfer of control application, seeking approval of the transaction between SDC and Sunset Digital Holding, a holding company that upon consummation would be held by Point Broadband, the Elswicks, and ITC.³⁵ While SDC’s short-form application initially disclosed that Paul and Ryan Elswick each held a 50 percent ownership interest in SDC, it also disclosed that the spectrum access to be used to fulfill the CAF-II obligations would be provided by ITC’s subsidiary, Point Broadband.³⁶ Shortly after WCB approved the proposed transaction, SDC amended its short-form application to list ITC, Point Broadband, and Sunset Digital Holdings as DIHs.³⁷ SDC also updated its application to explain that the transaction between SDC and Sunset Digital Holding would be accomplished through an asset acquisition agreement, which would not be consummated until after the conclusion of Auction 903.³⁸ SDC further explained that Paul and Ryan Elswick would each remain 50 percent co-owners of SDC at all times during the auction.³⁹

12. SDC maintains that SDC, LLC’s asset acquisition is not a material change to the transaction approved in SDC’s Section 214 Application because, upon consummation, ITC and Point Broadband will still control the assets of SDC through its wholly owned subsidiary, SDC, LLC.⁴⁰ SDC represents that the ownership percentages held by the owners of Sunset Digital Holding are the same under the asset transaction as they would have been through the stock acquisition of SDC.⁴¹ Accordingly, we conclude that the proposed change in the transaction terms is consistent with SDC’s Section 214 Application that was previously approved by WCB. Moreover, in its Petition for Waiver, SDC notes that its short-form application also included a certification “that all attendant representations and certification shall remain effective and enforceable notwithstanding the transaction” and the parties to the transaction would “be bound by the Application and the Applicant’s actions in the auction both before and after the closing of the transaction.”⁴² Thus, we agree with SDC that its circumstances are analogous to those presented by the other Auction 903 applicants that were permitted to undertake a major amendment of an

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³¹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

³² *Ne. Cellular Tel. Co.*, 897 F.2d at 1166.

³³ *See, e.g., Request for Permanent Renewal of, and Changes to Conditions on, Waiver Granted to SafeView, Inc.*, Order, 26 FCC Rcd 10250, 10252 (OET 2011) (citing *Ne. Cellular Tel. Co.*, 897 F.2d at 1166); *see also WAIT Radio*, 418 F.2d at 1155, 1157. The waiver standard applied under Section 1.3 is substantially the same as the waiver standard applied under Section 1.925 in the context of wireless radio services licenses. *See Delta Radio, Inc.*, Memorandum Opinion and Order, 18 FCC Rcd 16889, 16891, para. 7 & n.19 (2003) (citing *Bellsouth Corp. v. FCC*, 162 F.3d 1215, 1225 n.10 (D.C. Cir. 1999)); 47 CFR § 1.925.

³⁴ *See* SDC Petition for Waiver at 3-6, citing *Hawaiian Telecom*, 33 FCC Rcd at 6211, para. 9.

³⁵ *See* SDC Section 214 Application. The application included pre- and post-closing organizational charts.

³⁶ *See* SDC’s FCC Form 183, Admin. Tab, Spectrum Access, Agreement 2, and Spectrum Attachment – Resubmission attachments.

³⁷ The Commission and the public were on notice that all the parties were continuing to pursue a transaction that would be consummated after the close of Auction 903. *See* SDC’s FCC Form 183, Admin. Tab, Other Attachment.

³⁸ *Id.*, Admin. Tab, Other Attachment. SDC Petition for Waiver at 3, fn. 8.

³⁹ *See* SDC’s FCC Form 183, Admin. Tab, Other Attachment.

⁴⁰ SDC Petition for Waiver at 3.

⁴¹ *Id.*

⁴² *Id.* at 5.

auction application to reflect a change of control without disqualifying them from participation in Auction 903.⁴³

13. We conclude that deviation from the rule in these circumstances is in the public interest. Granting the requested waiver will not undermine the purposes of the rule prohibiting major modifications of a pending long-form application. That rule promotes the same policy objectives as those underlying the prohibition against major modifications to Auction 903 short-form applications: “including, but not limited to, assuring that an auction applicant’s ownership structure, financial condition, and real parties-in-interest are fully disclosed and can be assessed prior to the auction; the representations and certifications in the application remain effective and enforceable while the application is pending; the pre-auction process is transparent; and the Commission, auction participants, and other applicants have consistent and transparent information about the identity of other applicants, which enhances auction competition by leveling the informational playing field.”⁴⁴ SDC had disclosed its current and future real parties-in-interest in its short-form application as well as the SDC Section 214 Application. Also, like the petitioners in *Hawaiian Telecom*, SDC confirmed the continuing effectiveness of the representations made in its short-form application.⁴⁵ Moreover, SDC has indicated that, upon consummation of the proposed transaction, the parties in the modified long-form application will continue to be bound by SDC’s actions in Auction 903 and will fulfill its CAF Phase II obligations.⁴⁶ Thus, we conclude that the rule’s purpose of safeguarding the integrity of the Auction 903 post-auction application review and qualification process does not require strict application of the rule prohibiting major amendments of a long-form application in these special circumstances, and that deviation from the general rule is warranted.⁴⁷

14. Granting this waiver also offers potential public interest benefits that would not be realized through strict application of the rule. The purpose of Auction 903—identifying the qualified applicants that are willing and able to provide a specified level of service in the eligible high-cost areas in exchange for the lowest public subsidy—will be promoted by avoiding the unnecessary disqualification of SDC.⁴⁸ Based on SDC’s representations, we find that allowing it to complete the transaction and sell its assets to SDC, LLC will result in a long-form applicant that is better able to meet the CAF Phase II public interest obligations. We also find that SDC, LLC will be a stronger entity with greater capital and engineering resources to be injected by ITC and Point Broadband, and will accelerate deployment of fixed broadband service in rural Tennessee and Virginia.⁴⁹ Moreover, SDC contends that SDC, LLC will be better able to obtain the letters of credit required for authorization of CAF Phase II support.⁵⁰ We note

⁴³ See *Hawaiian Telecom*, 33 FCC Rcd 6208.

⁴⁴ *Id.* at 6211, para. 9.

⁴⁵ *Id.*

⁴⁶ See SDC Petition for Waiver at 6.

⁴⁷ See *Hawaiian Telecom*, 33 FCC Rcd at 6211, para. 10.

⁴⁸ Grant of a waiver here is consistent with the Commission’s decision to grant waivers to allow for the transfer of control of an applicant during the Incentive Auction, provided that the assignment or transfer application: (1) had been accepted for filing with the Commission as of the deadline to submit an application to participate in the reverse auction, and (2) included the express representation that the party that would hold the license(s) upon consummation agreed to be bound by the original applicant’s actions in the auction with respect to the license(s). See *Guidance Regarding the Prohibition of Certain Communications During the Incentive Auction, Auction 1000*, Public Notice, 30 FCC Rcd 10794, 10803, paras. 23-24 (WTB 2015).

⁴⁹ SDC Petition for Waiver at 6 (SDC notes that upon consummation of the proposed transaction, SDC, LLC will benefit from an “influx of significant new capital, as well as access to the technical and operational experience of Point Broadband and ITC”).

⁵⁰ See *id.* at 7.

that while a reverse auction was used to allocate CAF Phase II support, circumstances similar to those presented in SDC's request for waiver may not warrant a waiver in other Commission auction contexts, including spectrum auctions. However, we believe the post-auction requirements and public interest obligations unique to CAF Phase II, as well as the circumstances unique to SDC, provide the basis for a waiver in this case.

15. Accordingly, grant of this waiver serves the public interest by preventing denial of SDC's long-form application based solely on a transaction that was disclosed on its auction short-form application and was reviewed and approved by WCB prior to it becoming a qualified bidder. Thus, we conclude that there is good cause for granting the requested waiver.⁵¹ This waiver is conditioned upon SDC's amendment of its long-form application following consummation of the transaction to reflect the post-consummation ownership structure consistent with that described in its Petition for Waiver, and as approved by WCB in SDC's Section 214 Application.

IV. ORDERING CLAUSES

16. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 254, and sections 0.91, 0.131, 0.291, 0.331, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.131, 0.291, 0.331, 1.3, that this Order IS ADOPTED.

17. IT IS FURTHER ORDERED that the Petition for Waiver of § 54.315(b)(6)(iv) of the Commission's rules filed by Sunset Digital Communications, Inc. is GRANTED as described herein.

18. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kris A. Monteith
Chief
Wireline Competition Bureau

Giulia McHenry
Acting Chief
Office of Economics and Analytics

⁵¹ Petitioner shall notify the Commission within 30 days after the effective date of the transfer of control. *See* 47 CFR § 1.65. Pursuant to Section 1.65, each applicant has a continuing obligation to maintain the accuracy and completeness of information furnished in a pending application. *See, id.*