



PUBLIC NOTICE

Federal Communications Commission
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DA 20-1387
November 20, 2020

**APPLICATIONS FILED FOR THE ACQUISITION OF CERTAIN ASSETS OF THE
PEG BANDWIDTH ENTITIES, SOUTHERN LIGHT, LLC,
AND UNITI FIBER LLC BY EVERSTREAM SOLUTIONS LLC**

PLEADING CYCLE ESTABLISHED

WC Docket No. 20-359

Comments Due: December 4, 2020

Reply Comments Due: December 11, 2020

By this Public Notice, the Wireline Competition Bureau and International Bureau (Bureaus) seek comment from interested parties on applications filed by PEG Bandwidth DE, LLC, PEG Bandwidth MD, LLC, PEG Bandwidth NJ, LLC, PEG Bandwidth NY Telephone Corp., PEG Bandwidth PA, LLC, PEG Bandwidth TX, LLC, PEG Bandwidth VA, LLC, Southern Light, LLC, and Uniti Fiber LLC (collectively, Transferors) and Everstream Solutions LLC (Everstream Solutions) (collectively, Applicants), pursuant to section 214 of the Communications Act of 1934, as amended (the Act),¹ and sections 63.03-04 of the Commission's rules, to transfer certain customer contracts and telecommunications assets (Transferring Assets) from the Transferors to Everstream Solutions (the Transaction).² Everstream Solutions also filed a petition for declaratory ruling (Petition) to permit foreign investment in the Transferring Assets above the 25% benchmark in section 310(b)(4) of the Act and section 1.5000(a)(1) of the Commission's rules.³

¹ See 47 U.S.C. § 214. Application to Transfer Certain Assets of PEG Bandwidth DE, et al. to Everstream Solutions LLC, WC Docket No. 20-359 (filed Nov. 2, 2020) (Lead Application). Applicants filed a supplement to the Lead Application on November 19, 2020. Letter from Danielle Burt, Counsel for Applicants, to Marlene H. Dortch, Secretary, FCC (Nov. 19, 2020) (on file in WC Docket 20-359) (Applicants' Supplement).

² 47 CFR §§ 63.03-04.

³ 47 U.S.C. § 310(b)(4); 47 CFR § 1.5000(a)(1). Everstream Solutions LLC, Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as amended, IBFS File No. ISP-PDR-20201102-00012 (filed November 2, 2020) (Petition). As referenced in Attachment A to this Public Notice, Applicants have filed a domestic section 214 application and the Petition. Applicants filed the Petition in connection with their separately filed application to assign certain microwave licenses from Uniti Fiber LLC to Everstream Solutions. *Wireless Telecommunications Bureau, Assignment of License Authorization Applications, et al.*, Report Number 15435, Public Notice, File Number 0009280198 (rel. Nov. 12, 2020). See Lead Application at 27.

Applicants

The Transferors are subsidiaries of Uniti Group Inc. (Uniti Group, together with its subsidiaries, Uniti), a publicly traded real estate investment trust that provides telecommunications services through its subsidiaries.⁴

Everstream Solutions, an Ohio limited liability company, and its affiliates currently provide competitive telecommunications services in Ohio and Missouri.⁵ Everstream Solutions is a wholly owned subsidiary of Midwest Fiber Acquisition LLC (Midwest), a Delaware limited liability company. Midwest, through Everstream Solutions and its affiliates, has more than 10,000 route miles and comprehensive data center connectivity at 100 Gbps.⁶ Midwest is owned by Midwest Fiber Holdings LP, a Delaware limited partnership, and is ultimately indirectly owned by four limited partnerships organized in Luxembourg (AMP Capital Global Infrastructure Fund II A LP, AMP Capital Global Infrastructure Fund II B LP, AMP Capital Global Infrastructure Fund II C LP, and AMP Capital Global Infrastructure Fund II E LP) (collectively, GIF II),⁷ through a number of intermediate holding companies organized in the United States. The general partner of GIF II is AMP Capital Investors (GIF II GP) S.à.r.l., a Luxembourg company,⁸ which also is the general partner for Midwest and the intermediate U.S. holding companies in the ownership chain.⁹ AMP Capital Investors (GIF II GP) S.à.r.l. is indirectly owned by AMP Capital Holdings Limited (AMP Capital), an Australian investment manager, which is a downstream subsidiary of AMP Limited, an Australian pension provider.¹⁰

Description of the Transaction

Pursuant to an Asset Purchase Agreement entered on October 20, 2020, Everstream Solutions will acquire from Transferors 25 customer contracts, including contracts to serve other carriers, cable companies, and enterprise customers located in the following states: Delaware, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, and West Virginia.¹¹ The customer contracts include telecommunications equipment, certain microwave assets, and domestic

⁴ Lead Application at 14.

⁵ *Id.* at 15, 26. Everstream Solutions is affiliated with Everstream GLC Holding Company LLC, which provides competitive telecommunications services in Illinois, Indiana, Michigan, and Wisconsin; Lynx Network Group, Inc., which provides competitive telecommunications services in Michigan, and HRS Internet, LLC, which provides competitive telecommunications services in Indiana. *Id.*

⁶ *Id.* at 16.

⁷ Between Midwest Fiber Holdings LP and GIF II, there are a number of intervening entities in the ownership chain (Midwest Fiber Intermediate US LP, Midwest Fiber Midco LP, and GIF II US Aggregator LP). *Id.* at 16.

⁸ *Id.*

⁹ *Id.*

¹⁰ AMP Limited has six directors; five are Australian citizens, and one is a Swiss/Italian citizen. Applicants state that no person or entity holds a 10% or greater interest in AMP Limited. *Id.* at 25.

¹¹ *Id.* at 26, Applicants' Supplement.

fiber optic assets.¹² Applicants state that the affected customers will continue to receive their services over the same facilities.¹³ Applicants further state that the Transferors will continue to offer service to other customers post-transaction.¹⁴

Statement of Public Interest

Applicants assert that a grant of the applications would serve the public interest, convenience, and necessity and that Everstream Solutions will obtain valuable assets allowing it to provide facilities-based services on a competitive basis to consumers in several states.¹⁵ Applicants state that customers will continue to receive service from Everstream Solutions at the same rates, terms, and conditions as they currently receive.¹⁶

Petition for Declaratory Ruling Under Section 310(b)(4)

As noted above, Everstream Solutions (Petitioner) has filed a petition for declaratory ruling (Petition), pursuant to section 310(b)(4) of the Act and section 1.5000(a)(1) of the Commission's rules,¹⁷ to permit post-closing foreign ownership of the proposed, controlling U.S. parent, Midwest, to exceed the 25% benchmark specified in section 310(b)(4) of the Act. Petitioner asserts that the proposed foreign ownership of Midwest would serve the public interest.¹⁸

According to the Petition, upon completion of the Transaction, Midwest would have aggregate indirect foreign equity and voting interests of 100%.¹⁹ Pursuant to section 1.5001(i) of the rules, Petitioner requests that the Commission specifically approve foreign equity/or voting interest that would be indirectly held in Midwest upon completion of the Transaction by foreign-organized entities as follows:

AMP Capital Global Infrastructure Funds II A LP (7.26% equity and voting) (Luxembourg);
AMP Capital Global Infrastructure Funds II B LP (45.12% equity and voting)
(Luxembourg);
AMP Capital Global Infrastructure Funds II C LP (26.12% equity and voting)
(Luxembourg);

¹² *Id.* at 17, Applicants' Supplement.

¹³ Lead Application at 17. Applicants note that Uniti is entering into two, 20-year IRUs with Everstream whereby Everstream will access Uniti-owned fiber and use the Transaction Assets in combination with its own equipment to operate such fiber assets. Applicants' Supplement.

¹⁴ Lead Application at 17.

¹⁵ *Id.* at 18.

¹⁶ *Id.* at 17.

¹⁷ 47 CFR § 1.5000(a)(1).

¹⁸ Petition Exh. B at 14-16.

¹⁹ Petition Exh. A at 13.

AMP Capital Global Infrastructure Funds II E LP (13.33% equity and voting) (Luxembourg);
AMP Capital Investors (GIF II GP) S.à.r.l (0% equity; 100% voting) (Luxembourg);
AMP Capital Investors International Holdings Ltd. (0% equity; 100% voting) (Australia);
AMP Capital Holdings Ltd. (0% equity; 100% voting) (Australia);
AMP Holdings Ltd. (0% equity; 100% voting) (Australia);
AMP Group Holdings Ltd. (0% equity; 100% voting) (Australia); and
AMP Limited (0% equity; 100% voting) (Australia).

Referral to Executive Branch Agencies. Through this Public Notice, pursuant to Commission practice, these applications and the associated Petition for Declaratory Ruling, are being referred to the relevant Executive Branch agencies for their views on any national security, law enforcement, foreign policy or trade policy concerns related to the foreign ownership of the Applicants.²⁰

GENERAL INFORMATION

The applications identified herein has been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies.

Interested parties may file comments and petitions **on or before December 4, 2020** and reply comments or oppositions to petitions **on or before December 11, 2020**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by paper. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- **Electronic Filers:** Comments may be filed electronically by accessing ECFS at <http://apps.fcc.gov/ecfs/>.
- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit one additional copy for each additional docket or rulemaking number.
 - Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail.²¹ All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

²⁰ See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket Nos. 97-142 and 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23918-19, paras. 61-63 (1997) (*Foreign Participation Order*), recon. denied, 15 FCC Rcd 18158 (2000). See also *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket 16-155, Report and Order, FCC 20-133 (rel. Oct 1, 2020)

²¹ In response to the COVID-19 pandemic, the FCC has closed its current hand-delivery filing location at FCC Headquarters. We encourage outside parties to take full advantage of the Commission's electronic filing system. Any party that is unable to meet the filing deadline due to the building closure may request a waiver of the comment or reply comment deadline, to the extent permitted by law. *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, DA 20-304 (rel. Mar. 19, 2020). <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

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 and Governmental Affairs Bureau at 202-418-0530 (voice), 1-888-835-5322 (tty).

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

- 1) Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, dennis.johnson@fcc.gov;
- 2) Kimberly Cook, Telecommunications & Analysis Division, International Bureau, kimberly.cook@fcc.gov;
- 3) Linda Ray, Broadband Division, Wireless Telecommunications Bureau, linda.ray@fcc.gov; and
- 4) Jim Bird, Office of General Counsel, jim.bird@fcc.gov.

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 CFR § 1.1206(b). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

To allow the Commission to consider fully all substantive issues regarding the application in as timely and efficient a manner as possible, petitioners and commenters should raise all issues in their initial filings. New issues may not be raised in responses or replies.²² A party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously. Submissions after the pleading cycle has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission.

²² See 47 CFR § 1.45(c).

For further information, please contact Dennis Johnson, Wireline Competition Bureau, (202) 418-0809; Kimberly Cook, International Bureau, (202) 418-7532; Linda Ray, Broadband Division, Wireless Telecommunications Bureau, (202) 418-0257.

ATTACHMENT A

SECTION 214 AUTHORIZATION

The Applicants filed an application to transfer control of domestic section 214 authority in connection with the proposed transaction – WC Docket No. 20-359. In light of the multiple applications pending before the Commission with respect to this transaction and the public interest review associated with them, the domestic transfer of control application is not subject to streamlined treatment.²³

PETITION FOR DECLARATORY RULING UNDER SECTION 310(B)(4)

The Petition has been assigned File No. ISP-PDR-20201102-00012.

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²³ 47 CFR § 63.03.