



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <https://www.fcc.gov>
TTY: 1-888-835-5322

DA 20-178

Released: February 20, 2020

WIRELINE COMPETITION BUREAU SEEKS COMMENT ON A PETITION FOR PREEMPTION AND DECLARATORY RULING FILED BY MISSOURI NETWORK ALLIANCE, LLC D/B/A BLUEBIRD NETWORK AND UNITI LEASING MW LLC

WC Docket No. 20-46

Comments Due: March 23, 2020

Reply Comments Due: April 7, 2020

The Wireline Competition Bureau seeks comment on a petition for preemption and declaratory ruling filed on February 13, 2020 by Missouri Network Alliance, LLC d/b/a Bluebird Network (Bluebird) and Uniti Leasing MW LLC (Uniti Leasing) (collectively, Petitioners).¹ Bluebird is a provider of Internet access, fiber transport, and tandem services and has entered into right-of-way use agreements with the cities of Joplin, Cameron, St. Joseph, and Maryville in the State of Missouri (the Cities).² Uniti Leasing is the owner of the fiber optic network that Bluebird uses to provide services to customers in the Cities (Network).³

Petitioners ask the Commission to declare that it is unlawful for the Cities to require Uniti Leasing to enter into separate right-of-way use agreements for the Network and pay use fees that they assert are duplicative of those required by Bluebird's right-of-way use agreements with the Cities.⁴ Petitioners argue that requiring both Bluebird (as the operator of the Network and provider of telecommunications services) and Uniti Leasing (as the owner of the Network) to pay right-of-way fees conflicts with section 253(a) of the Communications Act.⁵ Petitioners therefore request that the

¹ *Petition of Missouri Network Alliance, LLC d/b/a Bluebird Network and Uniti Leasing MW LLC for Preemption and Declaratory Ruling Pursuant to Section 253(d) of the Communications Act of 1934* (filed Feb. 13, 2020), <https://www.fcc.gov/ecfs/filing/102131703729463> (Petition).

² Petition at 4, 6-8.

³ Petition at 1, 6. Petitioners explain that a leaseback arrangement exists between Bluebird and Uniti Leasing due to a transaction in which indirect ownership of Bluebird was transferred to MIP IV Midwest Fiber, LLC (MIP), MIP sold the Network and real property interests (previously owned by Bluebird's parent, Bluebird LLC) to Uniti Leasing, and Uniti Leasing leased the Network and real property interests back to Bluebird, which continues to operate and use it to serve telecommunications customers. *Id.* at 2, 5-6. Petitioners assert that Uniti Leasing does not provide communications services or use, operate, or maintain the Network. *Id.* at 2.

⁴ Petition at 8-11.

⁵ 47 U.S.C. § 253(a) (providing that “[n]o State or local statute or regulation, or other State or local requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service”).

Commission preempt, pursuant to section 253(d) of the Act,⁶ the Cities' requirement that Uniti Leasing pay additional right-of-way use fees.

Interested parties may file comments or oppositions to the Petitions on or before **March 23, 2020** and reply comments on or before **April 7, 2020**. Comments and replies thereto, should reference **WC Docket No. 20-46** and may be filed using the Commission's Electronic Comment Filing System (ECFS).⁷

- Electronic Filers: Comments and oppositions may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street, SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes 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 must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disability es (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) or (202) 418-0432 (tty).

The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.⁸ 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). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment

⁶ 47 U.S.C. § 253(d) (providing that the Commission shall, after notice and an opportunity for public comment, preempt the enforcement of a State or local government statute, regulation, or legal requirement that it determines violates Section 253(a) or (b) of the Communications Act "to the extent necessary to correct such violation or inconsistency").

⁷ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

⁸ 47 CFR § 1.1200 *et seq.*

filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

For further information, please contact John Visclosky, Competition Policy Division, Wireline Competition Bureau, at (202) 418-0825 or via e-mail at John.Visclosky@fcc.gov.

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