



PUBLIC NOTICE

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

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

DA 20-729
July 13, 2020

**DOMESTIC SECTION 214 APPLICATION FILED FOR THE AQUISITION
OF CERTAIN ASSETS OF WINDSTREAM HOLDINGS, INC. BY
UNITI GROUP FINANCE INC. AND UNITI NATIONAL LLC**

NON-STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 20-161

Comments Due: July 27, 2020
Reply Comments Due: August 3, 2020

By this Public Notice, the Wireline Competition Bureau (Bureau) seeks comment from interested parties on an application filed by Business Telecom, LLC, Cavalier Telephone Mid-Atlantic, LLC, DeltaCom, LLC, Intellifiber Networks, LLC, McLeodUSA Telecommunications Services, L.L.C., Windstream FiberNet, LLC f/k/a EarthLink Business, LLC, Windstream NuVox, LLC (collectively, Windstream Licensees), Uniti Group Finance, Inc. (Uniti Group Finance), and Uniti National LLC (Unity National, and together with Uniti Group Finance, Purchasers; Purchasers together with Windstream Licensees, Applicants), pursuant to section 214 of the Communications Act of 1934, as amended, and sections 63.03-04 of the Commission's rules, requesting approval for the Windstream Licensees to transfer certain fiber optic assets to Purchasers.¹

The Windstream Licensees, all U.S.-based, provide competitive voice and data services in multiple states and are wholly-owned, indirect subsidiaries of Windstream Holdings, Inc. (Windstream Holdings), a Delaware corporation.² While Windstream Holdings does not itself provide telecommunications services, it is the parent company of multiple operating subsidiaries that provide incumbent and competitive local exchange carrier (LEC) services in the District of Columbia and all states. The proposed transaction does not include any assets that are owned or controlled by Windstream Holdings' incumbent LEC operating subsidiaries.

¹See 47 U.S.C. § 214; 47 CFR §§ 63.03-04; Joint Application of Windstream Licensees and Uniti Group Finance Inc. and Uniti National LLC for Grant of Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, and Section 63.04 of the Commission's Rules, WC Docket No. 20-161 (filed June 3, 2020). Applicants filed supplements to their domestic section 214 application on June 19 and July 9, 2020.

² The assets of the Windstream Licensees that are subject to the proposed transaction are located in Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Massachusetts, Mississippi, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, and Texas.

Uniti Group Finance and Uniti National are both Delaware entities and subsidiaries of Uniti Group Inc. (Uniti Group), a Maryland corporation.³ Uniti Group is a publicly-traded, widely-held real estate investment trust that engages in the acquisition and construction of infrastructure used by the communications industry.⁴ Uniti Group does not provide telecommunications services, but owns and operates competitive telecommunications providers in multiple states and the District of Columbia. Applicants state that there are overlaps between the fiber assets being acquired by Purchasers and the existing fiber network of Purchasers' affiliates.

The proposed transaction is part of a larger settlement between Windstream Holdings and Uniti Group to resolve a number of disputes between the two organizations. On February 25, 2019, Windstream Holdings filed voluntary petitions for relief for itself and its subsidiaries under Chapter 11 of the Bankruptcy Code.⁵ On April 20, 2020, Windstream Holdings and its subsidiaries, including the Windstream Licensees, and Uniti Group, along with its relevant subsidiaries, agreed to enter into series of agreements intended to settle the disputes between them, including an Asset Purchase Agreement (Agreement) pursuant to which Uniti Finance will acquire certain assets of Windstream Holdings' competitive telecommunications subsidiaries. Specifically, under the Agreement, the Windstream Licensees will sell approximately 3,966 fiber route miles (the APA Fiber) to Uniti Group Finance and, pursuant to a partial assignment of the Agreement prior to consummation, to Uniti National. Uniti Group will then grant to the Windstream Holdings' subsidiaries an indefeasible right of use with an initial term of 20 years for those fiber assets that the subsidiaries use to provide services, along with additional fiber to provide the subsidiaries with spare capacity.⁶

Applicants assert that a grant of the application would serve the public interest, convenience, and necessity. They state that the proposed transaction is part of the court-approved resolution of the disputes between Windstream Holdings and Uniti Group and is part of the process allowing Windstream Holdings and its subsidiaries to emerge from Chapter 11 bankruptcy. Applicants submit that the proposed transaction allows the Windstream Licensees and other Windstream Holdings entities to maintain access to the APA Fiber assets. In return, the Uniti entities will receive access to unused fiber assets that they can sell, lease, or otherwise use. Applicants claim that the proposed transaction would have no adverse impact on the customers of

³ The following entities, directly or indirectly, own or control 10% or more of Uniti Group Finance: CSL Capital, LLC (99% direct); Uniti Group LP (99% indirect); and Uniti Group Inc. (100% indirect). Applicants also state that only one entity has an attributable 10% or greater ownership interest in Uniti Group—BlackRock, Inc., an investment entity that does not have the power to individually elect members of the Board of Uniti Group or control its operations. According to Applicants, Uniti Group may be affiliated through BlackRock, Inc. with the following entities that provide wireline domestic telecommunications services: Cincinnati Bell and Hawaiian Telecom (and their affiliates); Cogent Communications; Consolidated Communications (and its affiliates); Frontier Communications; General Communications, Inc.; and Inteliquent (and its affiliates).

⁴ Uniti Group's Board of Directors consists of the following six U.S. citizens: Jennifer S. Banner, Scott G. Bruce, Francis X. Frantz (Chairman), Kenneth A. Gunderman (President and CEO), Carmen Perez-Carlton, and David L. Solomon.

⁵ *Windstream Holdings, Inc., Debtors*, Chapter 11, Case No. 19-22312 (Bankr. S.D.N.Y. 2019). On May 21, 2020, Windstream Holdings as debtor-in possession filed applications to transfer licenses and authorizations to post-bankruptcy Windstream Holdings, Inc. *Applications Filed for the Transfer of Control of Windstream Holdings, Inc., Debtor-in-Possession, to Windstream Holdings, Inc.*, WC Docket No. 20-151, Public Notice, DA 20-675 (WCB, IB, WTB 2020).

⁶ Uniti Finance and Uniti National will have the ability to sublease or otherwise use those fiber assets that are not being granted back to the Windstream Holdings subsidiaries.

the Windstream Licensees, would be transparent to customers, and would allow the Windstream Licensees to continue to provide service to existing customers at the same rates, terms, and conditions as governed by existing contracts.

Because the proposed transaction is more complex than usual, in order to analyze whether it would serve the public interest, this application will not be streamlined.⁷

General Information

The application referenced herein has been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return the Joint 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 July 27, 2020**, and reply comments or oppositions to petitions **on or before August 3, 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. Paper filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail.⁸
 - 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.
 - 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 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, please provide one copy of each pleading to each of the following:

- (1) Mike Ray, Wireline Competition Bureau, michael.ray@fcc.gov;
- (2) Jim Bird, Office of the General Counsel, jim.bird@fcc.gov.

This proceeding will be treated as a permit-but-disclose proceeding in accordance with the Commission's *ex parte* rules.⁹ Persons making *ex parte* presentations must file a copy of any

⁷ 47 CFR § 63.03(c)(1)(v).

⁸ In response to the COVID-19 pandemic, the Commission 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>.

⁹ 47 CFR §§ 1.1200 *et seq.*

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 data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, then the presenter may provide citations to such data or arguments in the 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 section 1.1206(b) of the Commission's Rules.¹⁰ 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 Joint 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.¹¹ 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.

For further information, please contact Mike Ray, Wireline Competition Bureau, (202) 418-0357.

- FCC -

¹⁰ 47 CFR § 1.1206(b).

¹¹ See 47 CFR § 1.45(c).