



PUBLIC NOTICE

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**APPLICATION GRANTED FOR THE ACQUISITION OF CERTAIN ASSETS OF
WINDSTREAM HOLDINGS, INC. BY UNITI GROUP FINANCE INC.
AND UNITI NATIONAL LLC**

WC Docket No. 20-161

By this Public Notice, the Wireline Competition Bureau (Bureau) grants 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 competitive telecommunications assets to Purchasers.¹

On July 13, 2020, the Bureau released a public notice seeking comment on the Application.² The Bureau did not receive comments or petitions in opposition to the Application.

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.³ Windstream Holdings is the parent company of multiple operating subsidiaries that provide incumbent and competitive local exchange carrier (LEC) services in the District

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) (Application). Applicants filed supplements to their domestic section 214 application on June 19 and July 9, 2020. Letter from Brett P. Ferenchak, et al., Counsel to Purchasers, to Marlene H. Dortch, Secretary, FCC (June 19, 2020) (on file in WC Docket No. 20-161) (June 19 Supplement Letter); Letter from Brett P. Ferenchak, et al., Counsel to Purchasers, to Marlene H. Dortch, Secretary, FCC (July 9, 2020) (on file in WC Docket No. 20-161) (July 9 Supplement Letter). A grant of the domestic section 214 application is without prejudice to Commission action on other related, pending applications.

² *Domestic Section 214 Application Filed for the Acquisition of Certain Assets of Windstream Holdings, Inc. by Uniti Group Finance Inc. and Uniti National LLC*, WC Docket No. 20-161, Public Notice, DA 20-729 (WCB 2020).

³ 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. Application at 10.

of Columbia and all states.⁴ The proposed transaction does not include any assets that are owned or controlled by Windstream Holdings' incumbent LEC operating subsidiaries.⁵

Uniti Group Finance and Uniti National are both Delaware entities and subsidiaries of Uniti Group Inc. (Uniti Group), a Maryland corporation.⁶ 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.⁷ Uniti Group does not provide telecommunications services, but owns and operates competitive telecommunications providers in multiple states and the District of Columbia.⁸

The proposed transaction is part of a larger settlement between Windstream Holdings and Uniti Group to resolve disputes between the two organizations.⁹ On February 25, 2019, Windstream Holdings filed voluntary petitions for relief for itself and its subsidiaries under Chapter 11 of the Bankruptcy Code.¹⁰ 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.¹¹ 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.¹² Uniti Group will then grant to the Windstream Holdings' subsidiaries an indefeasible right of use with an initial term of 20

⁴ Application at 4-5.

⁵ *Id.* at 2-3.

⁶ 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 Unity 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). Application at 8-11.

⁷ 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. June 19 Supplement Letter at 2.

⁸ Application at 4-5. Applicants state that there are overlaps between the fiber assets being acquired by Purchasers and the existing fiber network of Purchasers' affiliates. July 9 Supplement Letter at Attach. A (Metro Fiber Overlap).

⁹ Application at 2.

¹⁰ *Windstream Holdings, Inc., Debtors*, Chapter 11, Case No. 19-22312 (Bankr. S.D.N.Y. 2019). On June 26, 2020, the Bankruptcy Court approved the plan of reorganization. Findings of Fact, Conclusions of Law, and Order Confirming the First Amended Joint Chapter 11 Plan of Reorganization of Windstream Holdings, Inc. *et al.*, Pursuant to Chapter 11 of the Bankruptcy Code, Case No. 19-22312 (Bankr. S.D.N.Y. entered June 26, 2020). On August 28, 2020, the Wireline Competition Bureau, International Bureau, and Wireless Telecommunications Bureau granted applications filed by Windstream Holdings, Inc., Debtor-in Possession, its subsidiary Windstream Services, LLC, and post-bankruptcy Windstream Holdings, Inc., reorganized as Windstream Holdings LLC, for consent to transfer control of licenses and authorizations held by Windstream and its subsidiaries to New Windstream. See *Applications Granted for the Transfer of Control of Windstream Holdings, Inc., Debtor-In-Possession, and Subsidiaries*, WC Docket No. 20-151, AU Docket No. 19-244, Public Notice, DA 20-985 (WCB, IB, OEA, WTB 2020).

¹¹ Application at 5.

¹² *Id.*

years for those fiber assets that the subsidiaries use to provide services, along with additional fiber to provide the subsidiaries with spare capacity.¹³

We find, upon consideration of the record, that the proposed transfer will serve the public interest, convenience, and necessity.¹⁴ The proposed transfer presents no significant competitive harms and should result in a financially healthier provider and a stronger competitor to larger integrated providers.¹⁵

Pursuant to sections 214 of the Act, 47 U.S.C. §§ 214 and sections 0.91, 0.291, 63.03, and 63.04 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 63.03, and 63.04, we grant the Application. Pursuant to section 1.103 of the Commission's rules, 47 CFR § 1.103, the consent granted herein is effective upon the release of this Public Notice. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 CFR §§ 1.106, 1.115, may be filed within 30 days of the date of this Public Notice.

For further information, please contact Dennis Johnson, Wireline Competition Bureau, (202) 418-1191.

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¹³ 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. *Id* at 5.

¹⁴ See 47 U.S.C. § 214(a); 47 CFR § 63.03.

¹⁵ See, e.g., *Applications of Level 3 Communications, Inc. and CenturyLink, Inc. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 32 FCC Rcd 9581, 9594, 9605, paras. 26 and 52 (2017) (finding no harm to competition where applicants operate as competitive LECs, and further finding that the transaction will expand the on-net reach of the newly combined firm resulting in a more effective and stronger competitor against larger cable and incumbent LEC competitors).