**DA 21-1574**

**Released: December 15, 2021**

**DOMESTIC SECTION 214 APPLICATION GRANTED FOR**

**THE TRANSFER OF CONTROL OF ASPIRE NETWORKS 1, LLC TO**

**ITC BROADBAND OPERATING, LLC**

**WC Docket No. 21-415**

By this Public Notice, the Wireline Competition Bureau (Bureau) grants an application,[[1]](#footnote-3) filed pursuant to section 214 of the Communications Act of 1934, as amended (Act), and sections 63.03-04 of the Commission’s rules, to transfer control of Aspire Networks 1, LLC (Aspire), an indirect, wholly-owned subsidiary of Atlantic Engineering Group, Inc. (AEG), to ITC Broadband Operating, LLC (ITC Operating) (ITC Operating, together with AEG and Aspire, Applicants).[[2]](#footnote-4)

On November 5, 2021, the Bureau released a public notice seeking comment on the Application.[[3]](#footnote-5) The Bureau did not receive comments or petitions in opposition to the Application.

**Applicants and Description of Transaction**

AEG, a Georgia corporation, is the ultimate parent company of Aspire, a Delaware limited liability company that is authorized as a competitive local exchange carrier (LEC) and eligible telecommunications carrier in Michigan.[[4]](#footnote-6) AEG is part of a consortium of AEG and Heron Broadband I, which participated in and was awarded support to provide service to 48,449 locations in Michigan through Phase I of the Rural Digital Opportunity Fund (RDOF) Auction.[[5]](#footnote-7) The consortium assigned its winning RDOF bids to Aspire.[[6]](#footnote-8) On December 14, 2021, the Bureau authorized Aspire to receive Auction 904 support.[[7]](#footnote-9)

Transferee, ITC Operating, is a Delaware limited liability company owned by ITC Broadband Holdings, LLC (ITC Holdings), a U.S. entity.[[8]](#footnote-10) ITC Operating is affiliated with incumbent LEC and other telecommunications service providers in Colorado, Georgia, Kansas, Nebraska, and Texas.[[9]](#footnote-11) Post-transaction, Applicants state the following U.S.-based investment entities will own a 10% or greater equity interest in ITC Operating and indirectly an equal interest in Aspire: HF Direct Investments Pool LLC (14.5%); 4612-Broadband Holdco, LP (14.5%); ITC Broadband Investments (QP), LLC (17.8%); Kinetic-ITC Broadband Investments, LLC (13.9%); AEG (16.2%), and ITC Broadband Management, LP (15%).[[10]](#footnote-12) Applicants state that no other entity or individual will hold directly or indirectly a 10% or greater interest in Aspire.[[11]](#footnote-13)

Pursuant to the terms of the proposed transaction, ITC Operating will acquire the interests in Aspire from AEG, and Aspire will become a wholly-owned subsidiary of ITC Operating.[[12]](#footnote-14) Applicants state that authorization of RDOF support is a condition to closing the proposed transaction.[[13]](#footnote-15) The Applicants further state that they will “work jointly to continue building out Aspire’s RDOF supported network, which began providing service to residential customers in Michigan in October 2021.”[[14]](#footnote-16) Specifically, Aspire will provide “gigabit-speed broadband and VoIP service to residential end user customers in census blocks in the Upper Peninsula of Michigan, including within the tribal lands of the Hannahville Indian Community.”[[15]](#footnote-17)

**Discussion**

We find, upon consideration of the record, that a grant of the Application will serve the public interest, convenience, and necessity. To make this determination under Commission precedent, we first consider whether the proposed transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes.[[16]](#footnote-18) We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.[[17]](#footnote-19) The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.[[18]](#footnote-20)

We find that there are no potential public interest harms identified in the record. The proposed transaction will not result in a significant reduction in competition because none of ITC Operating’s other subsidiaries operate within the Michigan areas that Aspire serves.[[19]](#footnote-21) Moreover, Aspire remains financially, managerially, and technically obligated to meet all public interest and performance obligations associated with the receipt of RDOF funding in accordance with the Commission’s pre-transaction approval of its qualifications. We expect that the proposed transaction will not negatively impact these obligations. To that end, Applicants have confirmed that the proposed transaction “will not result in any alteration to the buildout plans submitted to the Commission in order to qualify for RDOF Auction funding.”[[20]](#footnote-22) Indeed, Applicants submit the proposed transaction will “serve to better safeguard RDOF funds by providing Aspire with additional resources to address any unexpected challenges it may encounter during network build-out.”[[21]](#footnote-23) Applicants have also stated on the record that the proposed transaction will not result in an increase to the debt load of ITC Operating post-transaction.[[22]](#footnote-24) With respect to management, Applicants state that there are no plans to change the existing management of AEG, which will retain a 16.2% ownership interest in Aspire as a partner in ITC Holdings,[[23]](#footnote-25) and they have provided information detailing the telecommunications industry experience of the ITC managers who will join Aspire as its “primary managers.”[[24]](#footnote-26) Finally, Applicants have certified that Aspire will meet all of its relevant RDOF support obligations.[[25]](#footnote-27)

We next consider whether the proposed transaction is likely to generate verifiable, transaction-specific public interest benefits.[[26]](#footnote-28) Applicants must provide evidence of a claimed benefit to allow the Commission to verify its likelihood and magnitude.[[27]](#footnote-29) Where potential harms appear unlikely, as is the case with the Application before us here, the Commission accepts a lesser degree of magnitude and likelihood than when harms are present.[[28]](#footnote-30)

Applicants claim that the proposed transaction will provide Aspire with “extensive financial resources and managerial and technical expertise in building out broadband networks”[[29]](#footnote-31) and will “better position Aspire to accelerate its network deployment and provide high quality broadband service to customers in Michigan in the near term, as well as fulfill its RDOF public interest obligations.”[[30]](#footnote-32) Applicants maintain that ITC Operating’s investment will provide it with additional resources to address any unexpected challenges it may encounter during network build-out.[[31]](#footnote-33)

The Commission has specified that ensuring consumers receive new or additional services is an important public interest factor,[[32]](#footnote-34) and accelerating private sector deployment of advanced services is one of the aims of the Communications Act.[[33]](#footnote-35) In light of the Applicants’ commitments to meet Aspire’s federal high cost funding obligations and their statement that ITC Operating is prepared to increase capital and other resources for Aspire to accelerate and expand facilities-based service offerings, we find it likely that the proposed transaction would result in some public interest benefits. In addition, as the Commission has found, the combination of competitive providers can result in a stronger and more effective competitor against larger cable and incumbent LEC providers.[[34]](#footnote-36) Absent any potential harms, and considering that the proposed transaction is likely to yield some benefits, we find, on balance, that the proposed transaction serves the public interest.

Therefore, pursuant to section 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 C.F.R. §§ 0.91, 0.291, 63.03, and 63.04, the Bureau hereby grants the Application discussed in this Public Notice.

Pursuant to section 1.103 of the Commission's rules, 47 C.F.R. § 1.103, the grant is effective upon release of this Public Notice.[[35]](#footnote-37) Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.115, may be filed within 30 days of the date of this Public Notice.

For further information, please contact Heather Hendrickson, Wireline Competition Bureau, Competition Policy Division, (202) 418-7295.

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1. Application of Atlantic Engineering Group, Inc., Aspire Networks 1, LLC, and ITC Broadband Operating, LLC for Consent to Transfer Control of Domestic Authority Pursuant to Section 214 of the Communications, Act, as Amended, WC Docket No. 21-415 (filed Oct. 21, 2021), [https://ecfsapi.fcc.gov/file/1021520326727/Aspire%20214  
   %20application%20102121.pdf](https://ecfsapi.fcc.gov/file/1021520326727/Aspire%20214%20application%20102121.pdf) (Application). [↑](#footnote-ref-3)
2. *See* 47 U.S.C. § 214; 47 CFR §§ 63.03-04. On November 3, 2021, Applicants filed a supplement to the Application. Letter from Phillip Marchesiello and Mark Wiranowski, Counsel for AEG and Aspire, and John Beahn and Dana Zelman, Counsel for ITC Operating, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-415 (filed Nov. 3, 2021) [https://ecfsapi.fcc.gov/file/11041256618169/Aspire%20214%20Supplement%20110321%20.pdf](https://ecfsapi.fcc.gov/file/11041256618169/Aspire%20214%20Supplement%20110321%20.pdf%20) (Supplement). [↑](#footnote-ref-4)
3. *Application Filed for the Transfer of Control of Aspire Networks 1, LLC to ITC Broadband Operating, LLC*, WC Docket No. 21-415, Public Notice, DA 21-1391 (WCB 2021). [↑](#footnote-ref-5)
4. *Id*. (citing Michigan Public Service Commission Cases U-20956 and U-20957). [↑](#footnote-ref-6)
5. Application at 2 and n.1; *see also Rural Digital Opportunity Fund Phase I Auction (Auction 904) Closes; Winning Bidders Announced,* AU Docket No. 20-34, WC Docket No. 19-126, WC Docket No. 10-90, Public Notice, 35 FCC Rcd 13888, Attach. A (Winning Bidder Summary) (2020); *Rural Digital Opportunity Fund Support for 1,774 Winning Bids Ready to be Authorized*, AU Docket No. 20-34, WC Docket Nos. 19-126, 10-90, Public Notice, DA 21-1310, Attach. A (Ready to Authorize Long-Form Applicants and Winning Bids) (WCB 2021). [↑](#footnote-ref-7)
6. Application at 2. [↑](#footnote-ref-8)
7. *Rural Digital Opportunity Fund Support Authorized for 2,008 Winning Bids*, AU Docket No. 20-34, WC Docket Nos. 19-126, 10-90, Public Notice, DA 21-1560, Attach. A (Authorized Long-Form Applicants and Winning Bids) (WCB/OEA 2021). [↑](#footnote-ref-9)
8. Application at 2-3. [↑](#footnote-ref-10)
9. *Id*. [↑](#footnote-ref-11)
10. *Id*. at 5-7 and Exh. A. (Pre-and Post-Transaction Ownership Charts). [↑](#footnote-ref-12)
11. *Id.* at 7; Supplement at 1-2. All individual members and majority owners of the ITC Operating entities, who are identified in the Supplement, are U.S. citizens. Supplement at 1-2 and Exh. A (Management and Ownership for AEG) and Exh. B (Senior Management Team of ITC Broadband Operating, LLC). [↑](#footnote-ref-13)
12. Application at 3. [↑](#footnote-ref-14)
13. *Id*. at 3, 9. [↑](#footnote-ref-15)
14. *Id.* at 3. [↑](#footnote-ref-16)
15. *Id*. at 8. [↑](#footnote-ref-17)
16. *See, e.g.*, *Application of Verizon Communications Inc. and América Móvil S.A.B. de C.V for Consent to Transfer Control of International Section 214 Authorization*, GN Docket No. 21-112; IBFS File No. ITC-T/C-20200930-00173, Memorandum Opinion and Order, FCC 21-121, at para. 21 (rel. Nov. 22, 2021) (*Verizon-TracFone Order*) (citing *China Mobile International (USA) Inc., Application for Global Facilities-Based and Global Resale International Telecommunications Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended*, Memorandum Opinion and Order, 34 FCC Rcd 3361, 3366, para. 9 (2019); *Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corporation (and subsidiaries, debtors-in-possession), Assignors, to Time Warner Cable Inc. (subsidiaries), Assignees; Adelphia Communications Corporation, (and subsidiaries, debtors-in-possession), Assignors and Transferors et al*., MB Docket No. 05-192, Memorandum Opinion and Order, 21 FCC Rcd 8203, 8219-21, paras. 27-28 (2006) (*Adelphia-TWC Order*)). [↑](#footnote-ref-18)
17. *See Verizon-TracFone Order* at para. 21 (citing *Applications of AT&T Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 14-90, Memorandum Opinion and Order, 30 FCC Rcd 9131, 9140, para. 18 (2015) (*AT&T-DIRECTV Order*) (further internal citations omitted)). [↑](#footnote-ref-19)
18. *See Verizon-TracFone Order* at para. 21 (citing *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 18; *Adelphia-TWC Order*, 21 FCC Rcd at 8217, para. 23; *Application of EchoStar Communications Corp., General Motors Corp., and Hughes Electronics Corp., Transferors, and EchoStar Communications Corp., Transferee*, CS Docket No. 01-348, Hearing Designation Order, 17 FCC Rcd 20559, 20574, para. 25 (2002) (*EchoStar-DIRECTV HDO*) (further internal citations omitted)). [↑](#footnote-ref-20)
19. Application at 3, 11. [↑](#footnote-ref-21)
20. *Id*. at 10. [↑](#footnote-ref-22)
21. *Id*. at 8-9. [↑](#footnote-ref-23)
22. Supplement at 2. [↑](#footnote-ref-24)
23. Application at 5-7, 9 and Exh. A. *See* Supplement at 1 and Exh. A (Management and Ownership for AEG). [↑](#footnote-ref-25)
24. Supplement at 1 and Exh. B (Senior Management Team of ITC Broadband Operating, LLC). *See* Application at 9. [↑](#footnote-ref-26)
25. Supplement, Certifications of Robert Mills, Chief Financial Officer, ITC Broadband Operating, LLC, and James H. Salter, President, Atlantic Engineering Group. [↑](#footnote-ref-27)
26. *See AT&T/DIRECTV Order*, 30 FCC Rcd at 9237, para. 273-274. [↑](#footnote-ref-28)
27. *See id*. at 9237-38, paras. 275-76. [↑](#footnote-ref-29)
28. *See id*. [↑](#footnote-ref-30)
29. Applicationat 9. [↑](#footnote-ref-31)
30. *Id*. [↑](#footnote-ref-32)
31. *Id*. at 9-10. [↑](#footnote-ref-33)
32. *See, e.g.*, *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 19. [↑](#footnote-ref-34)
33. *See Verizon-TracFone Order* at para. 22 (citing 47 U.S.C. §§ 254, 332(c)(7), 1302; Telecommunications Act of 1996, Preamble, Pub. L. No. 104-104, 110 Stat. 56 (1996) (one purpose of the Act is to “accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services”)). [↑](#footnote-ref-35)
34. *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, among others, particularly outside of Century Link's incumbent LEC region, where it, like Level 3, operates as a competitive LEC.”). [↑](#footnote-ref-36)
35. We direct Applicants to submit, within 30 days of closing the proposed transaction, a notice in WC Docket No. 21-415 that the proposed transaction has closed, including the consummation date, and also provide a courtesy copy of the notice to hcinfo@usac.org. [↑](#footnote-ref-37)