



PUBLIC NOTICE

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DOMESTIC SECTION 214 APPLICATION GRANTED FOR THE TRANSFER OF CONTROL OF MERCURY WIRELESS INDIANA, LLC AND MERCURY WIRELESS KANSAS, LLC TO NCP MERCURY AIV LP

WC Docket No. 22-279

By this Public Notice, the Wireline Competition Bureau (Bureau) grants an application filed by Mercury Holdings, Inc. (MHI or Transferor), Mercury Wireless Indiana, LLC (MWI), Mercury Wireless Kansas, LLC (MWK, and together with MWI, Licensees), and NCP Mercury AIV LP (NCP Mercury or Transferee) (collectively, Applicants),¹ 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 MWK and MWI to NCP Mercury.²

On August 3, 2022, the Bureau released a Public Notice seeking comment on the Application.³ The Bureau did not receive comments or petitions in opposition to the Application.

Applicants and Description of Transaction

MHI, a Kansas corporation, currently holds 92.71% of the equity and voting interests in Mercury Broadband, LLC (Mercury Broadband), a Kansas limited liability company and the direct parent and sole member of Licensees.⁴ MWK is a limited liability company organized under the laws of Indiana, an Eligible Telecommunications Carrier (ETC) in Illinois, Kansas, and Missouri, and currently provides wireless broadband and voice services in Kansas and Missouri.⁵ MWK receives Connect America Fund (CAF) Phase II Auction 903 support in Kansas and Missouri.⁶ On July 14, 2022, the Bureau authorized MWK to receive \$8,228,680.40 in Rural Digital Opportunity Fund (RDOF) Auction 904 support to

¹ See Application of Mercury Holdings, Inc. and NCP Mercury AIV, L.P. for Domestic Section 214 Transfer of Control, WC Docket No. 22-279 (filed July 21, 2022) (Application). Applicants have also filed applications for the transfer of authorizations associated with wireless services. Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

² See 47 U.S.C. § 214; 47 CFR §§ 63.03-04.

³ See *Domestic Section 214 Application Filed for the Transfer of Control of Mercury Wireless Indiana, LLC and Mercury Wireless Kansas, LLC to NCP Mercury AIV LP*, WC Docket No. 22-279, Public Notice, DA 22-814 (WCB Aug. 3, 2022).

⁴ Application at 2.

⁵ *Id.* at 2, 10-11, 24.

⁶ *Id.* Applicants state that MWK has satisfied the 40% milestone requirement in Kansas and Missouri and has submitted the requisite information to the High-Cost Universal Broadband (HUBB) to demonstrate such compliance. Application at 2, n.1. See *Connect America Fund Phase II Auction Support Authorized for 2,413 Winning Bids*, WC Docket No. 10-90, AU Docket No. 17-182, Public Notice, 34 FCC Red 5966, Attach. A (Authorized Long-Form Applicants and Winning Bids) (WCB 2019) (*CAF Phase II Public Notice*).

provide service to 13,450 estimated locations in Kansas, Missouri, and Illinois.⁷ MWI is a limited liability company organized under the laws of Indiana, an ETC in Indiana, Michigan, and Ohio, and provides wireless broadband and voice services in Indiana and Michigan.⁸ MWI receives CAF-II support in Indiana, Michigan, and Ohio.⁹ On July 14, 2022, the Bureau authorized MWI to receive \$53,493,220.80 in RDOF support to provide service to 109,296 estimated locations in Indiana, Michigan, and Ohio.¹⁰ Applicants state that the proposed transaction will not adversely impact any buildout or performance obligations associated with this funding.¹¹

NCP Mercury is a Delaware limited partnership that was formed for purposes of the transaction to acquire indirect control of Licensees through its direct wholly-owned subsidiary, Mercury TopCo, LLC (Mercury TopCo).¹² NCP Mercury and Mercury TopCo are holding companies and do not hold any Commission licenses or authorizations or provide telecommunications services.¹³ NCP Mercury is ultimately controlled by Northleaf Capital Group, Ltd. (Northleaf), a Canadian investment entity.¹⁴ Applicants state that Northleaf is controlled (50.1%) by its three founders, Michael W. Flood, Jeffrey E. Pentland, and Stuart D. Waugh, all Canadian citizens, and certain other members of its senior leadership team, who generally vote in a block pursuant to a shareholders' agreement.¹⁵ Armstrong, L.P., a Canadian entity, holds the remaining 49.9% non-controlling interest in Northleaf.¹⁶

Through a two-step transaction, NCP Mercury will acquire indirect control of the Licensees. According to Applicants, "First, Transferor will contribute its interest in Mercury Broadband, the direct parent of Licensees, to Mercury TopCo in exchange for preferred units in Mercury TopCo. As a result,

⁷ Application at 2-3; *Rural Digital Opportunity Fund Support Authorized For 1,605 Winning Bids*, AU Docket No. 20-34, WC Docket Nos. 19-126, 10-90, Public Notice, DA 22-759, at 8 and Attach. A (WCB, July 14, 2022) (*RDOF Public Notice*) (stating that ETCs seeking to transfer control of their domestic authorizations to operate pursuant to section 214 of the Act, or to engage in the sale of assets under section 214 "must first receive approval from the Commission in accordance with sections 63.03 and 63.04 of the Commission's rules governing the procedures for domestic transfer of control/asset applications. Transfers of control and assignments of international section 214 authorizations are separately subject to section 63.24 of the Commission's rules. Except where the Commission has forborne from the application of section 214, this requirement applies to all transfers of control or asset acquisitions involving ETCs.").

⁸ Application at 2, 10-11, 24.

⁹ *Id.* at 3. See *CAF Phase II Public Notice* at Attach 1. Applicants state that MWI has satisfied the 40% milestone requirement in Indiana and has submitted the requisite information to the HUBB to demonstrate such compliance. In addition, they state that MWI is on track to timely satisfy this obligation in Michigan and Ohio. Application at 3, n.3.

¹⁰ Application at 3; *RDOF Public Notice* at Attach. A.

¹¹ Application at 7-8.

¹² *Id.* at 3. Although Mercury TopCo it is currently wholly-owned by NCP Mercury, MHI will hold a minority interest in Mercury TopCo following consummation of the transaction. *Id.* at 15-16. Applicants state that NCP Mercury will temporarily hold nearly all of its financial interest in Mercury TopCo in the form of convertible debt, and that the parties intend for NCP Mercury's financial interest to convert to equity following the occurrence of certain conditions. *Id.* at 12 and n.15.

¹³ *Id.* at 3.

¹⁴ *Id.*

¹⁵ *Id.* at 3-4, 15-24, and Exh. A (Structure Charts). Applicants provided detailed post-consummation ownership structures in the Application at Exh. A.

¹⁶ *Id.* at 15-24 and Exh. A. Applicants state that other than the three founders, none of the other senior leadership team holds a 10% or greater interest in NCP Mercury. Application at Exh. A (Post-Consummation Ownership Structure: Voting Control of NCP Mercury AIV LP). Neither NCP Mercury nor Northleaf are affiliated with domestic telecommunications providers. *Id.* at 24.

Mercury TopCo will become the direct parent of Mercury Broadband and the indirect parent of Licensees, both of which will remain direct, wholly owned subsidiaries of Mercury Broadband. Second, Transferor, Transferee and Mercury TopCo will enter into an Amended and Restated Limited Liability Operating Company Agreement of Mercury TopCo, Inc. ('LLCA'), pursuant to which NCP Mercury will acquire indirect control of Mercury Broadband (and Licensees) by virtue of its control of the board of managers ('Board') of Mercury TopCo. Specifically, the LLCA provides that, upon receipt of the required regulatory approvals, NCP Mercury will have the right to designate up to four (but no less than a majority) of the five members of the Board of Mercury TopCo and, as such, will control the Board. The remaining Board seat will be designated by Transferor."¹⁷

Applicants assert that a grant of the Application would serve the public interest, convenience, and necessity.¹⁸

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 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.¹⁹ We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.²⁰ The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.²¹

We find that there are no potential public interest harms identified in the record. First, the proposed transaction will not result in a significant reduction of competition. The transferee and Northleaf are not affiliated with any domestic telecommunications carriers,²² and there will thus be no physical overlap or reduction in service providers in any markets as a result of the transaction. Further, Applicants state that, because the transaction is occurring at the holding company level, it will be "entirely seamless to customers" and will have no impact on Licensees' day-to-day operations and service

¹⁷ *Id.* at 4-5.

¹⁸ *Id.* at 6-9.

¹⁹ 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 8, para. 21 (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*, ITC-214-20110901-00289, 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*)).

²⁰ See *Verizon-TracFone Order* at 8, 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 citations omitted).

²¹ See *Verizon-TracFone Order* at 8, 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)) (further citations omitted).

²² Application at 24.

offerings.²³ Applicants state further that Licensees will “continue to provide high-quality communications offerings to their customers at the same rates, terms, and conditions without interruption,”²⁴ and we thus expect no potential harm to existing customers to result from the transaction.

Second, Licensees remain financially, managerially, and technically obligated to meet all public interest and performance obligations associated with the receipt of CAF Phase II and RDOF funding in accordance with the Commission’s pre-transaction approval of its qualifications, and we expect that the proposed transaction will not negatively impact these obligations. Indeed, Applicants assert that the infusion of capital resulting from the proposed transaction will better position MWI and MWK to “accelerate their network construction and provision of service to rural customers,” and with regard to the RDOF program, will “better safeguard RDOF funds by providing Mercury Broadband with additional resources to address any unexpected challenges it may face during network buildout.”²⁵ Applicants have confirmed that the proposed transaction will not affect Licensees’ deployment plans,²⁶ and that the proposed transaction will enable Mercury Broadband to accelerate the buildout of Licensees’ networks in Indiana, Michigan, Missouri, Ohio, Kansas, and Illinois.²⁷ Applicants have stated that the transaction will not result in an increase to the debt load of Licensees.²⁸ Applicants have also confirmed that it is anticipated that Mercury Broadband’s senior management team “will continue to manage Mercury Broadband and its day-to-day operations” following the proposed transaction, and that, as the indirect parent of the controlling member of Mercury TopCo, Northleaf, in turn, “will supplement the existing management team with its expertise in working with management teams across industries, including its substantial experience with infrastructure companies in its investment portfolio.”²⁹ Overall, we conclude that the record in this proceeding does not support a finding of a public interest harm.

We next consider whether the proposed transaction is likely to generate verifiable, transaction-specific public interest benefits.³⁰ Applicants must provide evidence of a claimed benefit to allow the Commission to verify its likelihood and magnitude.³¹ 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.³²

Applicants claim that the proposed transaction will provide additional capital and managerial resources that will “enable Mercury Broadband to accelerate the buildout of Licensees’ networks in Indiana, Michigan, Missouri, Ohio, Kansas, and Illinois.”³³ Applicants further expect that the infusion of new financial support resulting from the transaction will “drive growth that will strengthen Licensees’

²³ *Id.* at 8.

²⁴ *Id.*.

²⁵ *Id.*.

²⁶ *Id.* at 7-8.

²⁷ *Id.* at 6, 24.

²⁸ *Id.* at 12. Specifically, Applicants clarify that “NCP Mercury will temporarily hold nearly all of its financial interest in Mercury TopCo in the form of convertible debt. The parties fully intend for NCP Mercury’s financial interest to convert to equity following the occurrence of certain conditions. Importantly, the convertible debt issued in connection with the Transaction will not increase Licensees’ costs to deploy service or negatively affect their deployment timetables.” *Id.* at 12.

²⁹ *Id.* at 5, 7 and Exh. B (Mercury Broadband Senior Management Biographies)..

³⁰ See *AT&T/DIRECTV Order*, 30 FCC Rcd at 9237, paras. 273-74.

³¹ See *id.* at 9237-38, paras. 275-76.

³² See *id.*

³³ Application at 6.

existing operations and enhance competition in the marketplace.”³⁴ Further, Applicants aver that, following the proposed transaction, Licensees will “continue to have the expertise to execute on their CAF-II and RDOF commitments, as well as to capitalize on the tremendous growth opportunities Transferor has developed in underserved and rural areas.”³⁵ With the addition of Northleaf’s capital following the proposed transaction, Applicants state that Licensees will be “well-positioned to accelerate their network construction and provision of service to rural customers,” and will possess “additional resources to address any unexpected challenges” that may arise during network buildout.³⁶

The Commission has specified that ensuring consumers receive new or additional services is an important public interest factor,³⁷ and accelerating private sector deployment of advanced services is one of the aims of the Communications Act.³⁸ In light of the Applicants’ commitments to meet all of Licensees’ federal high cost funding obligations³⁹ and the fact that Applicants are prepared to devote additional capital to accelerate facilities-based service offerings,⁴⁰ we find it likely that the proposed transaction would result in some public interest benefits. 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, subject to Applicants’ compliance with all applicable obligations.⁴¹

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.⁴² 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 John Visclosky, Wireline Competition Bureau, Competition Policy Division, (202) 418-0825.

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³⁴ *Id.* at 6.

³⁵ *Id.* at 6-7.

³⁶ *Id.* at 8.

³⁷ See, e.g., *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 19.

³⁸ See *Verizon-TracFone Order* at 9, para. 22 (citing 47 U.S.C. §§ 254, 332(c)(7), 1302; Telecommunications Act of 1996, Pub. L. No. 104-104, Preamble, 110 Stat. 56 (1996) (one purpose of the Act is to “accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services”).

³⁹ Application at 2, 11-12.

⁴⁰ *Id.* at 6, 8, 12.

⁴¹ See *CAF Phase II Public Notice*, 34 FCC Rcd at 5967-71; *RDOF Public Notice* at 1-9 (listing obligations of authorized support recipients).

⁴² We direct Applicants to submit, within 30 days of closing the proposed transaction, a notice in WC Docket No. 22-279 that the proposed transaction has closed, with the consummation date, and also provide a courtesy copy of the notice to hcinfo@usac.org.