



PUBLIC NOTICE

Federal Communications Commission
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Washington, D.C. 20554

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DA 22-1115

Released: October 21, 2022

DOMESTIC SECTION 214 APPLICATION FILED FOR THE TRANSFER OF CONTROL OF FIBERLIGHT, LLC TO FIBER BIDCO, LLC

NON-STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 22-256

Comments Due: November 4, 2022

Reply Comment Due: November 14, 2022

By this Public Notice, the Wireline Competition Bureau (Bureau) seeks comment from interested parties on an application filed by Thermo Acquisitions, Inc. (Thermo), FiberLight, LLC (FiberLight or Licensee), and Fiber BidCo LLC (Fiber BidCo) (collectively, Applicants), pursuant to section 214 of the Communications Act of 1934, as amended, and sections 63.03-04 of the Commission's rules, requesting consent to transfer ownership and control of FiberLight to Fiber BidCo (the Transaction).¹

FiberLight, a Delaware limited liability company and indirect subsidiary of Thermo, a Delaware corporation, constructs and operates fiber optic networks and is authorized to provide competitive local exchange carrier (LEC), competitive access, private line, and/or interexchange telecommunications services in Alabama, Florida, Georgia, Louisiana, Maryland, Mississippi, New Mexico, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas, Washington DC, and West Virginia.² FiberLight is an Eligible Telecommunications Carrier (ETC) in Georgia.³

¹ See 47 U.S.C. § 214; 47 CFR §§ 63.03-04. Application of Thermo Acquisitions, Inc., FiberLight, LLC, and FiberBidCo LLC for Grant of Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, and Sections 63.04 and 63.24 of the Commission's Rules, WC Docket No. 22-256 (filed July 5, 2022) (Application). On August 4, 2022 and October 6, 2022, Applicants filed supplements to the Application providing, among other things, corrections and updates to the ownership interests of upstream entities related to Fiber BidCo. Letter from James C. Falvey, Counsel to Thermo Acquisitions, Inc. and FiberLight, LLC, and Andrew D. Lipman, Counsel to Fiber BidCo LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-256 (filed Aug. 4, 2022) (August Supplement); Letter from James C. Falvey, Counsel to Thermo Acquisitions, Inc. and FiberLight, LLC, and Andrew D. Lipman, Counsel to Fiber BidCo LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-256 (filed Oct. 6, 2022) (October Supplement). Applicants also filed applications for the transfer of authorizations associated with international services and wireless services, and a petition for declaratory ruling asking the Commission to find that it would serve the public interest to permit foreign ownership of the proposed controlling U.S. parent, Fiber BidCo, to exceed the 25% benchmarks in section 310(b)(4) of the Act, 47 U.S.C. § 310(b)(4). Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

² Application at 3 and 11.

FiberLight’s affiliate, FiberLight of Virginia, LLC (FiberLight-VA), a Virginia limited company, provides competitive intrastate telecommunications services in Virginia and is an ETC in Virginia.⁴ On July 14, 2022, the Bureau authorized FiberLight and FiberLight-VA to receive Rural Digital Opportunity Fund (RDOF) Auction 904 support to provide service to locations in Georgia and Virginia.⁵ FiberLight is directly owned (99.998%) by FiberLight Holdings II, LLC (FH II),⁶ which, in turn, is directly wholly-owned by FiberLight Holdings I, LLC (FH I), both Colorado limited liability companies.⁷ Thermo directly owns (over 95%) of FH I.⁸

Fiber BidCo, a Delaware limited liability holding company, was created for the purposes of the proposed transaction and does not itself provide telecommunications services.⁹ Fiber BidCo is indirectly wholly-owned by Fiber HoldCo L.P. (Fiber LP).¹⁰ Fiber LP is controlled by its general partner Fiber GP LLC (Fiber GP), a Delaware limited liability company. Upon completion of the Transaction, Fiber GP, in turn, will be owned by: (1) Fiber MCO L.P. (MCO LP) (49.5% equity, 50% voting), a Delaware limited partnership owned by The Morrison & Co Infrastructure Partnership Master Fund SCSp (MCO IP), a Luxembourg special limited partnership, registered with the Luxembourg Trade and Companies Register; (2) Australian Retirement Trust Pty Ltd as trustee for Sunsuper Pooled Superannuation Trust (ART Trustee) (36.12% equity, 100% voting); and (3) Golden VinzClortho, LLC (GVC) (24.5% equity, 100% voting). Through MCO LP, MCO IP currently holds 50% of the equity interest and 50% of the voting interests of Fiber GP, while ART and GVC each hold 25% of the equity and 5% voting interests.¹¹ The board of Fiber GP will be comprised of up to eight directors chosen by MCO IP, ART, and GVC as determined by their respective equity interests (i.e., 4 chosen by MCO IP, 2 chosen by ART, and 2 chosen by GVC).¹² Applicants state that, post-Transaction, and other than what is described in the Application, no

³ *Id.* at 12.

⁴ *Id.*

⁵ *Rural Digital Opportunity Fund Support Authorized for 1,605 Winning Bids*, AU Docket No. 20-34 et al., Public Notice, DA 22-759, at 8 and Attach. A (Authorized Long-Form Applicants and Winning Bids) (WCB July 14, 2022) (stating that eligible telecommunication carriers “seeking to transfer control of their domestic authorizations to operate pursuant to section 214 of the Communications Act of 1934, as amended, 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”) (*Eleventh RDOF Authorization Public Notice*). The Commission authorized FiberLight to receive \$458,892.20 for 687 estimated locations in Georgia and FiberLight-VA to receive \$1,067,075.80 for 3,038 estimated locations in Virginia over a 10-year period. *See Eleventh RDOF Authorization Public Notice* at Attach. A.

⁶ Application at 4. Michael Miller, a U.S. citizen, holds the other .002% of FiberLight. *Id.*

⁷ *Id.*

⁸ *Id.* The remainder of FH I is held by FiberLight executives, Christopher Rabii, Ronald Kormos, and Jon Couch. *Id.* Thermo, along with other parent entities, hold a 10% or greater ownership in Globalstar, Inc. (Globalstar), a provider of global mobile satellite voice and data services. *Id.*

⁹ *Id.* at 1. Fiber BidCo is affiliated with OpenFiber Kentucky Company, LLC d/b/a Acelecom, a provider of enterprise and wholesale communications services in Kentucky and is authorized to provide intrastate telecommunications services in Ohio. *Id.* at 13.

¹⁰ *Id.* at 2.

¹¹ October Supplement at Further Revised Exh. B at paras. 7-16.

¹² Application at 2.

person or entity holding a 10% or greater interest in Fiber BidCo will hold a 10% or greater interest in any other provider of domestic telecommunications services.¹³

Pursuant to terms of the Transaction, Applicants intend to engage in a series of transactions that will result in Fiber BidCo LLC acquiring indirect ownership and control of FiberLight.¹⁴ As a result, Fiber BidCo LLC will indirectly own all the equity in FH I and, in turn, all the equity in FH II and FiberLight, LLC.¹⁵

Applicants assert that a grant of the Application would serve the public interest, convenience, and necessity.¹⁶ They certify that the proposed transaction will not result in any changes to “management or technology that would result from the proposed Transaction, nor do Applicants expect any changes to debt that might compromise Licensee’s or FiberLight-VA’s ability to meet their RDOF service obligations,” and that “the proposed Transaction will enhance Licensee’s and FiberLight-VA’s managerial, technical, and financial capabilities which will enhance their ability to meet their RDOF service obligations.”¹⁷

Applicants do not request streamlined processing for the Application, and we accept it for non-streamlined processing under the Commission's rules.¹⁸

Referral to Executive Branch Agencies. Through this Public Notice, pursuant to Commission practice, the Application and the associated international application, ITC-T/C-20220705-00080, are being referred to the relevant Executive Branch agencies for their views on any national security, law enforcement, foreign policy, or trade policy concerns related to the foreign ownership of the Applicants.¹⁹

Domestic Section 214 Application Filed for the Transfer of Control of
FiberLight, LLC to Fiber BidCo, LLC, WC Docket No. 22-256 (filed July 5, 2022).

GENERAL INFORMATION

The application identified herein has been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any application if, upon further examination, it is determined to be defective and not in conformance with the Commission’s rules and policies.

¹³ *Id.* at 13.

¹⁴ *Id.* at 4-5.

¹⁵ *Id.*

¹⁶ *Id.* at 5-7.

¹⁷ *Id.* at 12. *See also* August Supplement at 1-2.

¹⁸ 47 C.F.R. § 63.03(c)(1)(v).

¹⁹ 47 CFR § 1.40001. *See Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket 16-155, Report and Order, 35 FCC Rcd 10927 (2020), Erratum (Appendix B — Final Rules), DA 20-1404 (OMD/IB rel. Nov. 27, 2020). *See also Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket Nos. 97-142 and 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23918-19, paras. 61-63 (1997) (*Foreign Participation Order*), recon. denied, 15 FCC Rcd 18158 (2000).

Interested parties may file comments **on or before November 4, 2022**, and reply comments **on or before November 14, 2022**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by paper.

- **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. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
 - Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail.²⁰ All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - 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 45 L Street, NE, Washington, DC 20554.

People with Disabilities: We ask that requests for accommodations be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530.

In addition, e-mail one copy of each pleading to each of the following:

- 1) Gregory Kwan, Competition Policy Division, Wireline Competition Bureau, gregory.kwan@fcc.gov;
- 2) David Krech, Telecommunications and Analysis Division, International Bureau, david.krech@fcc.gov; and
- 3) Jim Bird, Office of General Counsel, jim.bird@fcc.gov.

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The proceeding in this Notice shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. 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

²⁰ Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Red 2788 (OS 2020).

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), 47 CFR § 1.1206(b). 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 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.²¹ 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 Gregory Kwan, Wireline Competition Bureau, (202) 418-1191.

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²¹ See 47 CFR § 1.45(c).