



PUBLIC NOTICE

Federal Communications Commission
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DA 22-1361

Released: December 22, 2022

DOMESTIC SECTION 214 APPLICATION GRANTED

WC Docket No. 22-155

By this Public Notice, the Wireline Competition Bureau grants an application filed by Endurance Parent, Inc. (Endurance), Lantelco, Inc. (Lantelco), Barch Corporation (Barch), Empire Telephone Corporation (Empire Telephone), Empire Long Distance Corporation d/b/a Empire Access (ELD), North Penn Telephone Company (North Penn Telephone), and North Penn Long Distance Corporation (NPLD) (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 control of the Empire Telephone, ELD, North Penn Telephone, and NPLD (together, the Section 214 Holders) to Endurance.¹

On March 21, 2022, the Bureau released a public notice seeking comment on the Application.² We did not receive comments or petitions in opposition to the Application.

Empire Telephone, a New York corporation, is a rural incumbent local exchange carrier (LEC) in New York providing service in Chemung, Genesee, Schuyler, Seneca, Steuben, and Yates counties.³

¹ See 47 U.S.C. § 214; 47 CFR §§ 63.03-04. Joint Application for the Transfer of Control of Empire Telephone Corporation, Empire Long Distance Corporation d/b/a Empire Access, North Penn Telephone Company, and North Penn Long Distance Corporation, WC Docket 22-155 (filed Apr. 14, 2022) (Application). Applicants filed supplements to the Application on May 24, 2022 and December 1, 2022. Letter from Thomas J. Moorman, Counsel for the Section 214 Holders, and Brett P. Ferenchak, *et. al.*, Counsel for Endurance, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-155 (filed May 24, 2022) (May 24 Supplement); Letter from Thomas J. Moorman, Counsel for the Section 214 Holders, and Brett P. Ferenchak, *et. al.*, Counsel for Endurance, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-155 (filed Dec. 1, 2022) (Dec. 1 Supplement). Applicants also filed applications for the transfer of authorizations associated with international and wireless services. Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

² *Domestic Section 214 Application Filed for the Transfer of Control of Empire Telephone Corporation, Empire Long Distance Corporation d/b/a Empire Access, North Penn Telephone Company and North Penn Long Distance Corporation to Endurance Parent, Inc.*, WC Docket No. 22-155, Public Notice, DA 22-585 (WCB 2022) (*Initial Public Notice*).

³ Application at 3, 17, May 24 Supplement at 1. Empire Telephone's subsidiary, Empire Video Services Corp. (EVSC), is a cable operator holding cable franchises from multiple localities in New York. Application at 3. Applicants state that Empire Telephone and North Penn Telephone (Empire Group ILECs) participate, in the aggregate, in the following Universal Service Fund (USF) programs: Revised Alternative Connect America Model-based high-cost support, Emergency Broadband Benefit/Affordable Connectivity Program, and Lifeline. Application at 10, 17-18; Dec. 1 Supplement at 3. Post-transaction, Endurance and its affiliates must continue to comply with all applicable universal service obligations.

ELD, also a New York corporation, is a competitive facilities-based provider and reseller of local exchange and interexchange service in the same counties served by Empire Telephone, as well as in several other counties in New York.⁴ Lantelco, a New York corporation, owns 91.62% of the voting interests in Empire Telephone, and, indirectly through Empire Telephone, owns the same percentage of ELD.⁵ Lantelco does not provide telecommunications services.⁶

North Penn Telephone, a Pennsylvania corporation, is a rural incumbent LEC providing service in Bradford and Tioga counties in Pennsylvania.⁷ NPLD, also a Pennsylvania corporation, is a competitive LEC in Bradford and Tioga counties.⁸ Barch, a New York corporation, owns 82.1% of the voting interests in North Penn Telephone, and, indirectly through North Penn Telephone, owns the same percentage of NPLD.⁹ Barch does not provide telecommunications services.¹⁰

Endurance is a direct, wholly-owned subsidiary of Endurance Midco, Inc., which is, in turn, a direct, wholly-owned subsidiary of Endurance Parent Holdco, Inc. (Endurance Holdco).¹¹ Endurance Holdco is a direct, wholly-owned subsidiary of Endurance Parent Holdings, LP (Holdings).¹² Holdings is indirectly majority owned and wholly controlled by a group of investment funds, which are, collectively, the Antin Mid Cap Funds.¹³ The Antin Mid Cap Funds are private equity funds that are directly or indirectly managed and controlled by Antin Infrastructure Partners S.A.S. (Antin France), a French private equity firm.¹⁴ Antin France is wholly-owned by Antin Infrastructure Partners SA (AIP), a French publicly traded company.¹⁵ Mark Crosbie (17.8%), a United Kingdom citizen, and Alain Rauscher (30.9%), a French citizen, are the only individuals owning a 10% or greater ownership interest in AIP.¹⁶ Applicants state that, through funds controlled by Antin France, Endurance is affiliated with FirstLight Fiber, Inc. and its subsidiaries, which provide incumbent LEC and competitive telecommunications services in multiple states.¹⁷

⁴ *Id.* at 3, 18; May 24 Supplement at 1.

⁵ Application at 3.

⁶ *Id.*

⁷ *Id.* at 3, 18.

⁸ *Id.*

⁹ *Id.* at 3. Lantelco and Barch have common ownership. *Id.* at 4-6.

¹⁰ *Id.* Barch's subsidiary, Community Cable Corp. of Pennsylvania (Community), is a cable operator holding cable franchises from multiple localities in New York and Pennsylvania. *Id.* at 3-4.

¹¹ *Id.* at 2 and Exh. A (Current, Post-Transactions and Post-*Pro Forma* Contribution Organizational Ownership Structure Charts) and Exh. B (Description of Post-Transactions Ownership of the Section 214 Holders).

¹² *Id.* All of the Endurance entities are Delaware corporations. *Id.* at Exh. B. at 1-2.

¹³ *Id.* at 2.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 2 and Exh. B at 8.

¹⁷ *Id.* at 19-21; May 24 Supplement at 1-5 and Exh. A (Section 214 Holders Networks Maps) and Exh. B (FirstLight Network Map (New York and Pennsylvania)). The FirstLight incumbent LEC subsidiaries, Oxford Telephone and Oxford West, are located in Maine. Application at 19-20. Oxford Telephone and Oxford West did not elect to receive model-based support and receive cost-based universal service support. Application at 19-20; Dec. 1 Supplement at 3. In the *Hargray/ComSouth Order*, the Commission found that "the combination of two companies that receive high-cost universal service support under different mechanisms, one fixed and one cost-based, could result in potential harm to the Commission's goal of ensuring that limited universal service resources are distributed

Applicants describe the proposed transaction as follows: “(1) Empire Telephone will contribute the stock of ELD and EVSC to Lantelco (the ‘*Pro Forma Contributions*’) and immediately thereafter (2) Lantelco will merge with and into [Endurance Merger Sub 1, Inc.] Merger Sub 1 and Barch will merge with and into [Endurance Merger Sub 2, Inc.] Merger Sub 2, with Lantelco and Barch surviving the respective mergers (the ‘*Mergers*’). In addition, immediately or shortly after the Mergers, Transferors will be removed from the ownership chains of the Section 214 Holders (together with the Redemptions, *Pro Forma Exchange*, *Pro Forma Contributions* and Mergers, the ‘*Transactions*’).”¹⁸ As a result, Empire Telephone, ELD, EVSC, and North Penn Telephone will be direct subsidiaries of Endurance, and NLPD will be an indirect subsidiary of Endurance.¹⁹

Pursuant to Commission practice, the Application and the associated international section 214 transfer applications, IB File No. ITC-T/C-20220414-00054 and IB File No. ITC-T/C-20220414-00055, were 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.²⁰ On May 13, 2022, the U.S. Department of Justice (DOJ) on behalf of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee) informed the Commission that the Committee was reviewing the Application for any national security and law enforcement concerns that may be raised by foreign participation in the United States telecommunications services sector and requested that the Commission defer action on the Application.²¹ We deferred action

efficiently and effectively” as a result of the companies having an incentive to shift costs from the model-based support company to the cost-based support company. *Hargray/ComSouth Order*, 33 FCC Rcd 4780, 4784, para. 19 (2018) (*Hargray/ComSouth Order*). Although the Section 214 Holders and FirstLight will ultimately have the same controlling parent entity, AIP, Applicants state that the parent will not have the ability to engage in improper cost shifting as a result of its affiliates receiving universal service support under different mechanisms. Dec. 1 Supplement at 3-4. They affirm that Endurance (and post-transaction, the Section 214 Holders) and FirstLight will not have common control, shared or common costs, or consolidation of corporate books. Dec. 1 Supplement at 3-4. Specifically, Applicants state that Endurance (and post-transaction, the Section 214 Holders) is indirectly owned by the Antin Mid Cap Funds, whereas FirstLight is indirectly owned by other funds managed by AIP (referred to as the Antin III Funds). Dec. 1 Supplement at 3-4, Attach. A (Post-Transactions Ownership and Control Structure of Empire Group ILECs), and Attach. B (Ownership and Control Structure of FirstLight ILEC Subsidiaries) (charting the Endurance and FirstLight ownership and stating that the various Antin funds are separately managed and controlled and that “[P]ursuant to governance, management, and advisory agreements with each individual Antin fund investor group, Antin France would have a fiduciary obligation to keep the funds and their respective portfolio companies separate and independent from one another. Further, the Antin Mid Cap Funds and Antin III Funds must maintain distinct financial and operational records for their portfolio so that they can accurately report the performance of the respective funds to their investors.”). See *Order on Reconsideration*, 36 FCC Rcd 8859, at 8864, para. 14 (2021) (stating that the Bureau should continue to apply the *Hargray/ComSouth* condition to remedy a potential public interest harm caused by a mixed support transaction, including in transactions in which post-merger affiliates have common control, common costs, cost sharing, or consolidation of corporate books). In light of the separate operations of the Antin funds as demonstrated on this record, we do not find a potential public interest harm associated with a mixed support transaction that we need to address, and therefore exercise our authority to exclude the specific affiliates here from the *Hargray/ComSouth* condition. We therefore grant the Application without applying the mixed support condition.

¹⁸ *Id.* at 7. Applicants describe that other related steps would include “(1) the preferred shareholders of Lantelco and Barch shall each be redeemed pursuant to the charters of those companies (the ‘*Redemptions*’), (2) each of Brendan Wagner and Wagner Limited Partnership will the stock they hold directly in Empire Telephone to Lantelco in exchange for pro rata shares in Lantelco (the ‘*Pro Forma Lantelco Exchange*’). *Id.* at 7, n.9 and Exh. B at 3.

¹⁹ *Id.* Applicants describe certain other *pro forma* steps of the proposed transaction in the Application. *Id.* at 7-8.

²⁰ See *Initial Public Notice* at 3 (and citations therein).

²¹ Letter from David P. Palmer, Department of Justice, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-155; ITC-T/C-20220414-00054, ITC-T/C-20220414-00055, and Attach. (filed May 13, 2022).

in response to this request. On December 14, 2022, the National Telecommunications and Information Administration notified the Commission that the Committee had reviewed the Application and has no objection to the Commission granting the Applications.²² Further, the Committee reserved the right to review any resulting authorizations in the future to identify any additional or new risks to U.S. national security or law enforcement interests.²³

We find that grant of the Application will serve the public interest, convenience, and necessity.²⁴ Pursuant to section 1.103 of the Commission's rules, 47 CFR § 1.103, the grant is effective upon 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, Competition Policy Division, (202) 418-0809.

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²² Letter from Stephanie Weiner, Chief Counsel (Acting), National Telecommunication and Information Administration, to Tom Sullivan, Chief, International Bureau, FCC, WC Docket No. 22-155; ITC-T/C-20220414-00054, ITC-T/C-20220414-00055 and Attach. (filed Dec. 14, 2022).

²³ *Id.* at 1.

²⁴ Although FirstLight's competitive LEC service areas overlap the Section 214 Holders' incumbent LEC service areas in certain counties in New York and Pennsylvania, Applicants state that they primarily serve different types of customers (FirstLight only serves business (primarily larger enterprise) and wholesale customers, whereas the Section 214 Holders' primarily serve residential customers and their business customers are primarily small and mid-sized businesses and that there are multiple competitors in each county. Application at 10-11; May 24 Supplement at 1-5. The Commission has not found significant competitive harm in certain transactions involving the combination of providers. 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 in CenturyLink's incumbent LEC territory, nor outside of CenturyLink's incumbent LEC territory, 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."); *Joint Applications of Telephone and Data Systems, Inc. and Chorus Communications, Ltd. For Authority to Transfer Control of Commission Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 22, 63 and 90 of the Commission's Rules*, Memorandum Opinion and Order, 16 FCC Rcd 15293, 15296-99, para. 9-10 (CCB/WTB 2001) (authorizing a transfer of control involving an incumbent LEC and a competitive in-region provider of local exchange and exchange access services where overlap was limited and the transaction overall resulted in public interest benefits).