



# PUBLIC NOTICE

Federal Communications Commission  
45 L Street NE  
Washington, DC 20554

News Media Information 202 / 418-0500  
Internet: <https://www.fcc.gov>  
TTY: 888-835-5322

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## DOMESTIC SECTION 214 APPLICATION GRANTED FOR THE TRANSFER OF CONTROL OF VISIONARY COMMUNICATIONS, LLC TO VISIONARY BUYER, LLC

### WC Docket No. 22-70

By this Public Notice, the Wireline Competition Bureau (Bureau) grants an application filed by Visionary Broadband Seller, Inc. (Visionary Seller) and Visionary Buyer, LLC (Visionary Buyer) (collectively, Applicants),<sup>1</sup> 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 Visionary Communications, LLC (Visionary LLC) to Visionary Buyer.<sup>2</sup>

On March 11, 2022, the Bureau released a Public Notice seeking comment on the Application.<sup>3</sup> The Bureau did not receive comments or petitions in opposition to the Application.

### Applicants and Description of Transaction

Visionary Seller, a Wyoming corporation, wholly owns Visionary.<sup>4</sup> Visionary currently provides domestic IP-enabled services, broadband services, and VoIP services in Colorado, Montana, Nebraska, New Mexico, Washington, and Wyoming.<sup>5</sup> The Commission authorized Visionary Inc. on February 14, 2022 to receive Rural Digital Opportunity Fund (RDOF) Auction support to provide service to 4,184

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<sup>1</sup> See Application of Visionary Broadband Seller, Inc. and Visionary Buyer, 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 to Complete a Transfer of Control, WC Docket No. 22-70 (filed Feb. 18, 2022), [https://ecfsapi.fcc.gov/file/10218258378077/Visionary%20GTCR%20Section%20214%20Transfer%20Application%20\(FINAL\).pdf](https://ecfsapi.fcc.gov/file/10218258378077/Visionary%20GTCR%20Section%20214%20Transfer%20Application%20(FINAL).pdf) (Application). On March 2, 2022 and March 9, 2022, Applicants filed supplements to the Application. Letter from Matthew S. DelNero and Andrew P. Longhi, Counsel for Visionary Buyer, LLC, and Stephen E. Coran, Counsel for Visionary Broadband Seller, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-70 (filed Mar. 2, 2022) (Supplement); Letter from Matthew S. DelNero and Andrew P. Longhi, Counsel for Visionary Buyer, LLC, and Stephen E. Coran, Counsel for Visionary Broadband Seller, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-70 (filed Mar. 9, 2022). 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.

<sup>2</sup> See 47 U.S.C. § 214; 47 CFR §§ 63.03-04. As part of the proposed transaction and through an internal reorganization, Visionary Communications, Inc. (Visionary Inc.), a Wyoming corporation and the licensee, will convert to Visionary LLC, a Wyoming limited liability company. Application at 4, 11; Supplement at 1. Applicants state that Visionary Inc. and Visionary LLC have the same ownership and management. Application at 4. Unless otherwise stated, we will collectively refer to Visionary Inc. and Visionary LLC herein as Visionary.

<sup>3</sup> *Domestic Section 214 Application Filed for the Transfer of Control of Visionary Communications, LLC to Visionary Buyer, LLC*, WC Docket No. 22-70, Public Notice, DA 22-262 (WCB Mar. 11, 2022).

<sup>4</sup> Application at 3. The largest shareholders of Visionary Seller are two U.S. citizens: Brian Worthen, who owns 42.2%, and Greg Worthen, who owns 33.6%. *Id.* No other shareholder owns 10% or more of Visionary Seller. *Id.*

<sup>5</sup> *Id.*

locations in Colorado and Wyoming.<sup>6</sup> Applicants state that the proposed transaction will not adversely impact any buildout or performance obligations associated with this funding.<sup>7</sup>

Visionary Buyer is a Delaware limited liability company created specifically for the purposes of this proposed transaction to become the new parent company of Visionary.<sup>8</sup> Visionary Buyer is managed by GTCR, LLC (GTCR), a U.S.-based private equity firm. Applicants state that the following U.S.-based entities will have indirect ownership interests in Visionary Buyer: GTCR Broadband Aggregator, LLC (Broadband Aggregator) (57%),<sup>9</sup> Visionary Broadband Management Holdings, LLC (Visionary Management) (10%),<sup>10</sup> and Visionary Seller (32%).<sup>11</sup>

Pursuant to the terms of the proposed transaction, Visionary Inc., a wholly-owned subsidiary of Visionary Seller, will undergo a pro forma conversion to Visionary LLC, and Visionary Buyer will acquire all ownership interests in Visionary LLC.<sup>12</sup> Applicants state that the transaction will not impact Visionary's customers and that, after consummation, Visionary "will continue to provide service pursuant to then-existing rates, terms, and conditions for the near term."<sup>13</sup> Applicants further state that "all personnel of the Company, including all existing officers and employee managers, will continue to work for Visionary LLC."<sup>14</sup>

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<sup>6</sup> See *id.* at 2; Supplement at 1; *Rural Digital Opportunity Fund Support Authorized for 2,576 Winning Bids*, AU Docket No. 20-34 et al., Public Notice, DA 22-151, at 9, Attach. A (Authorized Long-Form Applicants and Winning Bids) (WCB/OEA Feb. 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") (*Sixth RDOF Authorization Public Notice*). Visionary Inc. was awarded \$4,450,264.40 over a 10-year period. See *Sixth RDOF Authorization Public Notice*, Attach. A.

<sup>7</sup> Application at 8; Supplement at 1-2.

<sup>8</sup> Application at 4.

<sup>9</sup> Broadband Aggregator is owned by GTCR Fund XIII/B LP (Fund XIII/B) (73%) and GTCR Broadband Splitter LP (Broadband Splitter) (27%). The general partner of Fund XIII/B and Broadband Splitter is GTCR Partners XIII/B LP (Partners XIII/B). The limited partner of Broadband Splitter is GTCR Visionary Blocker Corp., which is owned by GTCR Fund XIII/C LP (Fund XIII/C). The general partner of Fund XIII/C is GTCR Partners XIII/A&C LP (Partners XIII/A&C). The general partner of Partners XIII/B and Partners XIII/A&C is GTCR Investment XIII LLC, control of which is held by Mark M. Anderson, Craig A. Bondy, Aaron D. Cohen, Sean L. Cunningham, Benjamin J. Daverman, David A. Donnini, Dean S. Mihas, and Collin E. Roche, all U.S. citizens. All entities are U.S.-based. *Id.* at 11-14, Exh. A (Pre- and Post-Transaction Ownership Charts).

<sup>10</sup> Control of Visionary Management is held by a board consisting of up to two members designated by Fund XIII/B, one member designated by Fund XIII/C, the Chief Executive Officer of Visionary LLC, and one member designated by Visionary Seller, all U.S. citizens. *Id.* at 12.

<sup>11</sup> *Id.* at 4, 11-14, Exh. A (Pre- and Post-Transaction Ownership Charts). Applicants state that managing directors of GTCR have a controlling interest in Point Broadband Fiber Holding, LLC and its subsidiaries, which provide telecommunications services in Tennessee and Virginia, and VoIP services in Alabama, Georgia, Maryland, Michigan, Ohio, and New York. *Id.* at 14-15. The managing members of GTCR also have a minority interest in Clearwave Fiber LLC, which has subsidiaries that provide competitive telecommunications and other services in Illinois, Indiana, Missouri, Florida, and Georgia. *Id.*

<sup>12</sup> Supplement at 1; see also Application at 4, 11. Applicants state that the proposed transaction will entail a change in the ultimate equity ownership of Visionary and that there will be no sale of individual assets or liabilities. Supplement at 1.

<sup>13</sup> Application at 5.

<sup>14</sup> *Id.*

Applicants assert that a grant of the Application would serve the public interest, convenience, and necessity.<sup>15</sup>

## **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.<sup>16</sup> We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.<sup>17</sup> The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.<sup>18</sup>

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 because the affiliates of Visionary Buyer do not operate in the areas Visionary serves.<sup>19</sup> Further, Applicants state that the proposed transaction will be transparent to the customers of Visionary LLC, who will continue to receive service under existing rates, terms, and conditions, and, therefore, we expect no harm to existing customers to result from the transaction.<sup>20</sup>

Second, Visionary 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, 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 enable Visionary to "accelerate its network construction and provision of services to rural consumers" in Colorado and Wyoming.<sup>21</sup> Applicants have confirmed that, following the proposed transaction, Visionary's deployment plans "will remain the same,"<sup>22</sup> and that the

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<sup>15</sup> *Id.* at 5-9.

<sup>16</sup> 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*)).

<sup>17</sup> 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).

<sup>18</sup> 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).

<sup>19</sup> See Application at 8-9 & n.6, 14-15.

<sup>20</sup> *Id.* at 4-5.

<sup>21</sup> *Id.* at 7; see also Supplement at 1.

proposed transaction will “not result in any harms to [Visionary’s] existing customers and will accelerate its ongoing efforts to expand broadband service to unserved areas.”<sup>23</sup> They have stated on the record that any debt issued in connection with the proposed transaction will be modest and will not increase Visionary’s costs to deploy service or negatively affect its deployment timetable.<sup>24</sup> Applicants have also confirmed that Visionary’s existing management team will not change as a result of the proposed transaction,<sup>25</sup> and that Visionary Buyer will ensure that all RDOF performance and buildout obligations of Visionary are met post-transaction.<sup>26</sup>

We next consider whether the proposed transaction is likely to generate verifiable, transaction-specific public interest benefits.<sup>27</sup> Applicants must provide evidence of a claimed benefit to allow the Commission to verify its likelihood and magnitude.<sup>28</sup> 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.<sup>29</sup>

Applicants claim that the proposed transaction will provide Visionary with access to capital and GTCR’s managerial expertise in RDOF and non-RDOF areas to “enable increased investment and competition for telecommunications and broadband services in Colorado, Montana, Nebraska, New Mexico, Washington and Wyoming.”<sup>30</sup> Specifically, Applicants state that with the addition of GTCR’s capital supporting network construction, “Visionary will be well-positioned to accelerate its network construction and provision of services to rural consumers,”<sup>31</sup> and “in many cases bring Gigabit speed . . . to areas that do not have this level of service available.”<sup>32</sup> Applicants further state that GTCR has extensive experience investing in and managing telecommunications companies,<sup>33</sup> and that leveraging these additional managerial resources with the continuity of Visionary’s existing management will provide Visionary the “expertise to execute at scale and capitalize on the tremendous growth opportunities it has developed in underserved and rural markets.”<sup>34</sup>

The Commission has specified that ensuring consumers receive new or additional services is an

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<sup>22</sup> Supplement at 1; *see also* Application at 7 (“[T]he Transaction will not affect [Visionary’s] ability to meet the buildout milestones or performance obligations for its RDOF locations.”).

<sup>23</sup> Application at 8.

<sup>24</sup> March Supplement at 1; *see also* Application at 7-8. Applicants state that Visionary will re-finance its current debt balance into a new credit facility with approximately the same gross debt balance. March Supplement at 1. Applicants further state that Visionary will put \$5–\$10 million in cash on the balance sheet at closing, which is expected to decrease Visionary’s net debt balance and “help to facilitate the continued expansion by Visionary to provide broadband to additional communities, including through its Rural Digital Opportunity Fund obligations.” March Supplement at 1; *see also* Application at 7-8.

<sup>25</sup> Application at 2.

<sup>26</sup> Supplement at 2.

<sup>27</sup> *See AT&T/DIRECTV Order*, 30 FCC Rcd at 9237, paras. 273-74.

<sup>28</sup> *See id.* at 9237-38, paras. 275-76.

<sup>29</sup> *See id.*

<sup>30</sup> Application at 8.

<sup>31</sup> *Id.* at 7.

<sup>32</sup> *Id.* at 8.

<sup>33</sup> *See id.* at 6, 8.

<sup>34</sup> *Id.* at 6.

important public interest factor,<sup>35</sup> and accelerating private sector deployment of advanced services is one of the aims of the Communications Act.<sup>36</sup> In light of the Applicants' commitments to meet Visionary's federal high cost funding obligations and the fact that Visionary Buyer's owners are prepared to increase capital and other resources for Visionary 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.<sup>37</sup> 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.<sup>38</sup>

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.<sup>39</sup> 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 Erik Beith, Wireline Competition Bureau, Competition Policy Division, (202) 418-0756.

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<sup>35</sup> See, e.g., *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 19.

<sup>36</sup> 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")).

<sup>37</sup> 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, 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.").

<sup>38</sup> See *Sixth RDOF Authorization Public Notice* at 1-9 (listing obligations of authorized Auction 904 support recipients).

<sup>39</sup> We direct Applicants to submit, within 30 days of closing the proposed transaction, a notice in WC Docket No. 22-70 that the proposed transaction has closed, with the consummation date, and also provide a courtesy copy of the notice to [hcinfo@usac.org](mailto:hcinfo@usac.org).