



PUBLIC NOTICE

Federal Communications Commission
45 L St., N.E.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>

DA 22-585
Released: May 25, 2022

**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.**

NON-STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 22-155

Comments Due: June 8, 2022
Reply Comment Due: June 15, 2022

By this Public Notice, the Wireline Competition Bureau seeks comment from interested parties on 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 Empire Telephone, ELD, North Penn Telephone, and NPLD (together, the Section 214 Holders) to Endurance.¹

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.² 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.³ Lantelco, a New York corporation, owns 91.62% of

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 a supplement to the Application on May 24, 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) (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 Application at 3, 17, 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.

the voting interests in Empire Telephone, and, indirectly through Empire Telephone, owns the same percentage of ELD.⁴ Lantelco does not provide telecommunications services.⁵

North Penn Telephone, a Pennsylvania corporation, is a rural incumbent LEC providing service in Bradford and Tioga counties in Pennsylvania.⁶ NPLD, also a Pennsylvania corporation, is a competitive LEC in Bradford and Tioga counties.⁷ 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.⁸ Barch does not provide telecommunications services.⁹

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).¹⁰ Endurance Holdco is a direct, wholly-owned subsidiary of Endurance Parent Holdings, LP (Holdings).¹¹ Holdings is indirectly majority owned and wholly controlled by a group of investment funds, which are, collectively, the Antin Mid Cap Funds.¹² 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.¹³ Antin France is wholly-owned by Antin Infrastructure Partners SA (AIP), a French publicly traded company. 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.¹⁴ 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.¹⁵

Applicants describe proposed transaction as follows: “(1) Empire Telephone will contribute the stock of ELD and EVSC to Lantelco (the ‘*Pro Forma Contributions*’) and immediately

³ *Id.* at 3, 18; Supplement at 1. Empire Telephone participates in the Lifeline program and the Emergency Broadband Benefit (EBB) and Affordable Connectivity Programs (ACP), and ELD participates in the EBB and ACP programs. Application at 17-18.

⁴ Application at 3.

⁵ *Id.*

⁶ *Id.* at 3, 18.

⁷ *Id.* North Penn Telephone participates in the Lifeline program and the EBB and ACP programs, and NPLD participates in the EBB and ACP programs. Application at 18.

⁸ *Id.* at 3. Lantelco and Barch have common ownership. *Id.* at 4-6.

⁹ *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.

¹⁰ *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).

¹¹ *Id.* All of the Endurance entities are Delaware corporations. *Id.* at Exh. B. at 1-2.

¹² *Id.* at 2.

¹³ *Id.*

¹⁴ *Id.* at 2 and Exh. B at 8.

¹⁵ *Id.* at 19-21; Supplement at 1-5 and Exh. A (Section 214 Holders Networks Maps) and Exh. B (FirstLight Network Map (New York and Pennsylvania)). The FirstLight subsidiaries that provide incumbent LEC services are located in Maine. Application at 19-20.

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’).¹⁶ 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.¹⁷

Applicants assert that the proposed transaction is consistent with the public interest, convenience and necessity, will be transparent to customers, and not negatively impact competition.¹⁸ Although the Section 214 Holders’ service area and FirstLight and its affiliates’ service areas overlap in multiple counties in New York and Pennsylvania, Applicants assert that they primarily serve different types of customers and that there are multiple competitors in each county.¹⁹

Applicants do not request streamlined processing for the Application, and we accept it for non-streamlined filing under the Commission’s rules.²⁰

Referral to Executive Branch Agencies. Through this Public Notice, pursuant to Commission practice, the Application and the associated international applications, ITC-T/C-20220414-00054 and ITC-T/C-20220414-00055, 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.²¹

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 (filed Apr. 14, 2022).

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¹⁶ *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 contribute 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.

¹⁷ *Id.* Applicants describe certain other *pro forma* steps of the proposed transaction in the Application. *Id.* at 7-8.

¹⁸ *Id.* at 8-11.

¹⁹ *Id.* at 10-11; Supplement at 1-5.

²⁰ Application at 22; 47 CFR § 63.03(c)(1)(v).

²¹ 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).

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.

Interested parties may file comments **on or before June 8, 2022**, and reply comments **on or before June 15, 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.²² 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) Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, dennis.johnson@fcc.gov;
- 2) David Krech or Sumita Mukhoty, Telecommunications and Analysis Division, International Bureau, david.krech@fcc.gov; sumita.mukhoty@fcc.gov; and
- 3) Jim Bird, Office of General Counsel, jim.bird@fcc.gov

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

²² 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 Rcd 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.²³ 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 Dennis Johnson at (202) 418-0809.

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²³ See 47 CFR § 1.45(c).