



PUBLIC NOTICE

Federal Communications Commission
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DA 22-814
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**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**

NON-STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 22-279

Comments Due: August 17, 2022
Reply Comment Due: August 24, 2022

By this Public Notice, the Wireline Competition Bureau (Bureau) seeks comment from interested parties on 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), pursuant to section 214 of the Communications Act of 1934, as amended, and sections 63.03-04 of the Commission's rules,¹ requesting consent to transfer control of MWK and MWI to NCP Mercury.

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.² 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.³ MWK receives Connect America Fund (CAF) Phase II Auction 903 support in Kansas and Missouri.⁴ On July 14, 2022, the Bureau authorized MWK to receive \$8,228,680.40 in Rural Digital Opportunity Fund (RDOF) Auction 904 support to provide service to 13,450 locations in Kansas, Missouri, and Illinois.⁵ MWI is a limited liability company

¹ See 47 U.S.C. § 214; 47 CFR §§ 63.03-04; 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 are also filing 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 pending applications.

² Application at 2.

³ *Id.* at 2, 10-11, 24.

⁴ *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*).

⁵ 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

(continued...)

organized under the laws of Indiana, an ETC in Indiana, Michigan, and Ohio, and provides wireless broadband and voice services in Indiana and Michigan.⁶ MWI receives CAF-II support in Indiana, Michigan, and Ohio.⁷ On July 14, 2022, the Bureau authorized MWI to receive \$53,493,220.80 in RDOF support to provide service to 109,296 locations in Indiana, Michigan, and Ohio.⁸

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).⁹ NCP Mercury and Mercury TopCo are holding companies and do not hold any Commission licenses or authorizations or provide telecommunications services.¹⁰ NCP Mercury is ultimately controlled by Northleaf Capital Group, Ltd. (Northleaf), a Canadian investment entity.¹¹ 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.¹² Armstrong, L.P., a Canadian entity, holds the remaining 49.9% non-controlling interest in Northleaf.¹³ Applicants state that other than the three founders, none of the other senior leadership team holds a 10% or greater interest in NCP Mercury.¹⁴ Applicants state that neither NCP Mercury nor Northleaf are affiliated with any domestic telecommunications carriers.¹⁵

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, 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

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 forbore from the application of section 214, this requirement applies to all transfers of control or asset acquisitions involving ETCs.").

⁶ Application at 2, 10-11, 24.

⁷ *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.

⁸ Application at 3; *RDOF Public Notice* at Attach. A.

⁹ Application 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.

¹⁰ *Id.* at 3.

¹¹ *Id.*

¹² *Id.* at 3-4, 15-24 and Exh. A (Structure Charts). Applicants have provided detailed post-consummation ownership structures in the Application at Exh. A.

¹³ *Id.* at 15-24 and Exh. A.

¹⁴ *Id.* at Exh. A (Post-Consummation Ownership Structure: Voting Control of NCP Mercury AIV LP).

¹⁵ *Id.* at 24.

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."¹⁶

Applicants assert that a grant of the Application would serve the public interest, convenience, and necessity.¹⁷ They state that MWK currently provides wireless broadband and voice services in Kansas and Missouri, with additional network construction planned for Illinois as part of the RDOF buildout.¹⁸ MWI provides wireless broadband and voice services in Indiana and Michigan, with additional network construction planned for Ohio as part of the CAF-II buildout for end-of-year 2022 and as part of the RDOF buildout.¹⁹ They certify that the proposed transaction will not result in any alteration to MWK's and MWI's RDOF buildout plans or an increased debt load of the Licensees,²⁰ that MWK and MWI will continue to meet all obligations associated with RDOF and CAF-II funding,²¹ and that the 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, thereby advancing the Commission's goal of 'bridging the rural digital divide.'"²²

Because the proposed transaction would involve the exchange and assumption of Universal Service Fund high-cost mechanism obligations, in order to sufficiently analyze whether the proposed transaction would serve the public interest, we accept the Application for non-streamlined processing.²³

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 (filed July 21, 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.

¹⁶ *Id.* at 4-5.

¹⁷ *Id.* at 6.

¹⁸ *Id.* at 24.

¹⁹ *Id.*

²⁰ *Id.* at 2.

²¹ *Id.* at 7-8.

²² *Id.* at 6.

²³ See 47 CFR § 63.03(c)(1)(v). In the *Executive Branch Review Process Order*, the Commission set out categories of applications with reportable foreign ownership that may be excluded from referral to the Executive Branch for review for national security, law enforcement, foreign policy, and trade policy issues. 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, 10938-42, paras. 29-39 (2020) (*Executive Branch Review Process Order*). Applicants have made a showing that the Application falls into a category of exclusion from referral to the Executive Branch because it involves the transfer of control of carriers that hold only domestic section 214 authority. Application at n.9. We are exercising our discretion and are not referring this application to the Executive Branch agencies. See *Executive Branch Review Process Order*, 35 FCC Rcd at 10941, para. 36, n.99; see also *id.* at 10957, para. 81, n.205.

Interested parties may file comments **on or before August 17, 2022**, and reply comments **on or before August 24, 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 <https://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.²⁴ 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, email one copy of each pleading to each of the following:

- 1) Myrva Charles, Competition Policy Division, Wireline Competition Bureau, myrva.charles@fcc.gov;
- 2) John Visclosky, Competition Policy Division, Wireline Competition Bureau, john.visclosky@fcc.gov; and
- 3) Jim Bird, Office of General Counsel, jim.bird@fcc.gov.

The proceeding in this Public 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 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).²⁵ 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

²⁴ 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).

²⁵ 47 CFR § 1.1206(b).

initial filings. New issues may not be raised in responses or replies.²⁶ 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 Myrva Charles at (202) 418-1506 or John Visclosky at (202) 418-0825, Wireline Competition Bureau.

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²⁶ *See id.* § 1.45(c).