



PUBLIC NOTICE

Federal Communications Commission
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Washington, D.C. 20554

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DA 22-982

Released: September 20, 2022

**DOMESTIC SECTION 214 APPLICATION FILED FOR
THE TRANSFER OF CONTROL OF NICHOLVILLE TELCO LLC, AND
SLIC NETWORK SOLUTIONS, INC. TO SDC ATLAS ACQUISITIONCO, LLC**

NON-STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 22-309

Comments Due: October 4, 2022

Reply Comment Due: October 11, 2022

By this Public Notice, the Wireline Competition Bureau (Bureau) seeks comment from interested parties on an application filed by Atlas Connectivity, LLC (Atlas), Nicholville Telco LLC (Nicholville), SLIC Network Solutions, Inc. (SLIC) (Nicholville and SLIC, together, the Licensees), and SDC Atlas AcquisitionCo, LLC (SDC Acquisition or Transferee) (Atlas, the Licensees, and SDC Acquisition, 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 Licensees to SDC Acquisition (the Transaction).¹

Atlas, a Delaware limited liability and holding company, wholly-owns Nicholville and SLIC, both New York entities.² Nicholville provides service as a rural local incumbent exchange carrier (LEC) in the Nicholville and Winthrop exchanges in upstate New York.³ Nicholville is also

¹ See 47 U.S.C. § 214; 47 CFR §§ 63.03-04. Application of SDC Atlas AcquisitionCo, LLC, Atlas Connectivity, LLC, Nicholville Telco, LLC, and SLIC Network Solutions, Inc., WC Docket No. 22-309 (filed Aug. 22, 2022) (Application). On September 15, 2022, Applicants filed a supplement to their domestic section 214 application. Letter from Todd B. Lantor, Counsel for Atlas and the Licensees, and Tamar E. Finn, Joshua Bobeck, Patricia Cave, Counsel for SDC Acquisition, to Marlene H. Dortch, Secretary, FCC (Sept. 15, 2022) (on file in WC Docket No. 22-309) (Supplement). Applicants also filed an application for the transfer of authorizations associated with international services. Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

² Application at 3. On August 26, 2022, the Bureau accepted a domestic section 214 application for filing for Atlas to acquire Westelcom Communications, Inc., which wholly-owns Westelcom Network, Inc., a competitive local exchange carrier (LEC) in the counties of Jefferson, Lewis, St. Lawrence, Franklin, Clinton, and Essex in New York. *Domestic Section 214 Application Filed for the Transfer of Westelcom Communications, Inc. to Atlas Connectivity, LLC*, WC Docket No. 22-291, Public Notice, DA 22-894 (WCB 2022). Applicants state that the current proposed transaction is independent of the Westelcom proposed transaction. Application at n.8.

an Eligible Telecommunications Carrier (ETC) in New York.⁴ SLIC provides service as a competitive LEC in the North Country of the State of New York, and also holds an ETC designation in New York.⁵ SLIC receives Connect America Fund (CAF) Phase II Auction 903 support in New York.⁶ On April 15, 2022, the Bureau authorized SLIC to receive \$978,722 of Rural Digital Opportunity Fund (RDOF) Auction 904 support to provide service to 3,660 locations in New York.⁷

SDC Acquisition, a Delaware limited liability company formed for the purposes of this transaction, is indirectly and wholly-owned by SDC Digital Infrastructure Opportunity Fund III, L.P. (the SDC Fund III), a Delaware investment fund that is ultimately controlled by an affiliate of SDC Capital Partners, LLC, a New York based investment firm.⁸ The SDC Fund III is held by SDC Digital Infrastructure III UGP, LLC (SDC UGP) (approximately 86% equity) and the Texas Municipal Retirement System (approximately 11% equity), both U.S. entities.⁹ The members of SDC UGP are TMA DIOF Holdings III, LLC (TMA Holdings) (62% equity and 50% voting) and DMK DIOF Holdings III, LP (DMK LP) (38% equity and 50% voting).¹⁰ TMA Holdings is owned by Jessica Aaron (25%) and Todd Aaron (75%), both U.S. citizens.¹¹ The only 10% or greater interest holder of DMK LP is Douglas Kaden (49% equity), a U.S. citizen.¹² Applicants state that other than what is disclosed in the Application, SDC Acquisition does not hold a 10% or greater interest in any other provider of domestic telecommunications services.¹³

³ Application at 3 and 12. Applicants state that Nicholville receives fixed high-cost universal service fund (USF) support through the Revised Alternative Connect America Model (ACAM-I) mechanism, as well as Intercarrier Compensation (ICC) support. *Id.* Applicants further state that Nicholville was a participating provider in the Emergency Broadband Benefit (EBB) Program and is a participating provider in the Affordable Connectivity Program (ACP) and also provides Lifeline services. *Id.* at 12.

⁴ *Id.* at 3.

⁵ *Id.* at 3 and 12. Applicants state that SLIC was a participating provider in the EBB program, is a participating provider in the ACP, and also provides Lifeline services. *Id.* at 12.

⁶ *Id.* SLIC receives CAF-II support pursuant to a waiver granted by the Commission to permit use of CAF-II support in CAF-eligible areas in New York in coordination with the New NY Broadband Program. *See Connect America Fund Phase II Support Authorized for Five New York Winning Bidders*, WC Docket No. 10-90, Public Notice, 34 FCC Rcd 6094 (WCB 2019); *Connect America Fund Phase II Auction Support Authorized for a New York Winning Bidder*, WC Docket No. 10-90, Public Notice, 36 FCC Rcd 236 (WCB 2021).

⁷ Application at 4, 12; *Rural Digital Opportunity Fund Support Authorized for 1,345 Winning Bids*, AU Docket No. 20-34, WC Docket Nos. 19-126 and 10-90, Public Notice, DA 22-402, Attach. A (Authorized Long-Form Applicants and Winning Bids) (WCB 2022).

⁸ Application at 2. Applicants provide post-ownership charts and information of the Licensees. Application at Exh. A (Current, Post-Preferred Unit Purchase, and Post-Transaction Corporate Ownership Structure Charts) and Exh. B (Post-Transaction Ownership of the Licensees).

⁹ Application at Exh. A at 5-6 and Exh. B at 3 and 5.

¹⁰ *Id.* at Exh. A. at 6 and Exh B. at 3-4.

¹¹ *Id.* at Exh. A at 6 and Exh. B at 4.

¹² *Id.*

¹³ Application at 15. Applicants state that SDC Acquisition is affiliated with following two competitive LECs: ALLO Communications LLC, providing service in Nebraska and Colorado, and Fatbeam LLC, providing service in Arizona, Nevada, New Mexico, Oregon, Washington, and Idaho. *Id.* at 14-15.

Pursuant to terms of the proposed transaction, Atlas will become a direct, wholly-owned subsidiary of SDC Acquisition, and Nicholville and SLIC will become indirect, wholly-owned subsidiaries of SDC Acquisition.¹⁴

Applicants assert that a grant of the Application would serve the public interest, convenience, and necessity.¹⁵ They affirm that SLIC will continue to meet its CAF-II and RDOF obligations post-transaction, and that Transferee will provide Licensees with additional financial and operational resources to invest in fiber deployment and meet all of their universal service obligations.¹⁶ They further affirm that do not expect changes with respect to Licensees' management and technology following completion of the proposed transaction, and that "existing debt of Atlas and SLIC will be paid off at closing and subsequently may be replaced by new debt facilities. Nicholville currently does not have third-party debt and will not incur debt following completion of the Transaction."¹⁷

Applicants request streamlined processing for the Application,¹⁸ however, 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.¹⁹

Domestic Section 214 Application Filed for the Transfer of Control of
Nicholville Telco LLC, and SLIC Network Solutions, Inc. to
SDC Atlas AcquisitionCo, LLC, WC Docket No. 22-309 (filed Aug. 22, 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.

Interested parties may file comments **on or before October 4, 2022**, and reply comments **on or before October 11, 2022**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by paper.

¹⁴ Application at 4-5. Applicants provide further details about the proposed transaction including a series of transactions contemplated in an Equity Interests Purchase Agreement (Agreement), dated July 26, 2022, pursuant to which, "upon signing of the Agreement, Atlas issued to SDC Acquisition, and SDC Acquisition purchased from Atlas, 100,000 non-voting Series D Preferred Units of Atlas accompanied by certain limited minority investor protections pending receipt of required regulatory approvals (the Initial Preferred Unit Purchase). During the period between signing and closing, Atlas may issue, and SDC Acquisition may purchase from Atlas, an additional 300,000 non-voting Series D Preferred Units (the 'Subsequent Preferred Unit Purchases' together with the Initial Preferred Unit Purchase, the 'Preferred Unit Purchase'), for a total of up to 400,000 non-voting Series D Preferred Units. Following receipt of the required regulatory approvals, including the Commission's approval, SDC Acquisition will acquire all of the outstanding equity interests in Atlas and the Series D Preferred Units will convert into common units of Atlas." *Id.*

¹⁵ *Id.* at 5-7.

¹⁶ Supplement at 1.

¹⁷ *Id.* at 1.

¹⁸ Application at 15.

¹⁹ See 47 CFR § 63.03(c)(1)(v).

- 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 and 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 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.

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 Rcd 2788 (Mar. 19, 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

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 at (202) 418-1191.

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²¹ See 47 CFR § 1.45(c).