



# 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 23-1167

Released: December 15, 2023

**DOMESTIC SECTION 214 APPLICATION FILED FOR THE  
ACQUISITION OF CERTAIN ASSETS OF THE AVAIL GROUP, LLC BY  
ELEMENT 78 PARTNERS, LLC**

**STREAMLINED PLEADING CYCLE ESTABLISHED**

**WC Docket No. 23-383**

**Comments Due: December 29, 2023**

**Reply Comment Due: January 5, 2024**

By this Public Notice, the Wireline Competition Bureau seeks comment from interested parties on an application filed by The Avail Group, LLC (Avail) and Element 78 Partners, LLC (E78) (together, Applicants), pursuant to section 214(a) of the Communications Act of 1934, as amended, and sections 63.03-04 of the Commission's rules,<sup>1</sup> requesting consent to transfer certain assets from Avail to E78, including customer accounts.<sup>2</sup>

Avail, a New Jersey limited liability company, resells telecommunication circuits to its customers under resale arrangements with other carriers. Avail provides Multiprotocol Label Switching (MPLS) and other point-to-point services in Florida, Connecticut, Illinois, New Jersey, New York, and Utah.

E78, a Delaware limited liability company, provides a wide range of telecommunication expense management services, telecommunication consulting services, and other services. E78 does not currently hold any Commission licenses or authorizations. E78 is held by multiple intermediate domestic and foreign holding companies and investment funds, but is ultimately held and controlled by Pierre Olivier Sarkozy, a citizen of the United States and France.

Pursuant to the terms of the proposed transaction, the Applicants entered into a Letter of Intent for the purchase by E78 of substantially all of the assets of Avail, including its customer base. The assets to be acquired under the proposed transaction include the authorizations, customer contracts, intellectual property, vendor and software contracts, and other assets necessary to operate the business.

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<sup>1</sup> See 47 U.S.C. § 214(a); 47 CFR §§ 63.03-04.

<sup>2</sup> Domestic Section 214 Application Filed for the Assignment of Certain Assets and Customer Base from The Avail Group, LLC to Element 78 Partners, LLC, WC Docket No. 23-383 (filed Nov. 7, 2023) (Application). Applicants also filed an application for the transfer of authorizations associated with international services (ITC-ASG-20231107-00140). Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

Applicants request streamlined treatment of the proposed transaction under the Commission's rules and assert that a grant of the application would serve the public interest, convenience, and necessity. We accept the application for filing under section 63.03(b)(1)(ii) of the Commission's rules.<sup>3</sup>

Executive Branch Review. The Commission determined in the *Executive Branch Review Process Order* that it would not routinely refer to the Executive Branch applications "where the only reportable foreign ownership is through wholly owned intermediate holding companies and the ultimate ownership and control is held by U.S. citizens or entities."<sup>4</sup> The Commission, however, retains the discretion to refer such applications should it find that a particular application may raise national security, law enforcement, foreign policy, and trade policy concerns for which it would benefit from the advice of the Executive Branch.<sup>5</sup> The parties assert that the Application falls under this exclusion and that the Commission should not refer them to the Executive Branch agencies.<sup>6</sup> We find that the parties have made a showing that the Application comes within the exclusion from referral to the Executive Branch for national security, law enforcement, foreign policy, and trade policy review. While we are not referring the Application, we will provide a courtesy copy of this public notice to the Executive Branch agencies.<sup>7</sup>

Domestic Section 214 Application Filed for the Assignment of  
Certain Assets and Customer Base from The Avail Group, LLC  
to Element 78 Partners, LLC, WC Docket No. 23-383 (filed Nov.7, 2023).

## **GENERAL INFORMATION**

The transfer of assets identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Pursuant to section 63.03(a) of the Commission's rules, 47 CFR § 63.03(a), interested parties may file comments **on or before December 29, 2023**, and reply comments **on or before January 5, 2024**. Pursuant to section 63.52 of the Commission's rules, 47 CFR § 63.52, commenters must serve a copy of comments on the Applicants no later than the above comment filing date. Unless otherwise notified by the Commission, the Applicants may transfer control on the 31st day after the date of this notice.

Pursuant to section 63.03 of the Commission's rules, 47 CFR § 63.03, parties to this proceeding should file any documents using the Commission's Electronic Comment Filing System (ECFS): <http://apps.fcc.gov/ecfs/>.

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<sup>3</sup> 47 CFR § 63.03(b)(1)(ii).

<sup>4</sup> *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, 10936, 10939, paras. 25, 30 (2020) (*Executive Branch Review Process Order*).

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

<sup>6</sup> Application at 14-15.

<sup>7</sup> See *Executive Branch Review Process Order* at 10941, para. 36, n. 99; see also *id.* at 10939, para 30, n. 81.

**In addition, e-mail one copy of each pleading to each of the following:**

- 1) Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, [tracey.wilson@fcc.gov](mailto:tracey.wilson@fcc.gov);
- 2) Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, [dennis.johnson@fcc.gov](mailto:dennis.johnson@fcc.gov);
- 3) David Krech, Office of Internal Affairs, [david.krech@fcc.gov](mailto:david.krech@fcc.gov); and
- 4) Jim Bird, Office of General Counsel, [jim.bird@fcc.gov](mailto:jim.bird@fcc.gov).

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](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418-0530.

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.

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.<sup>8</sup> 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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<sup>8</sup> See 47 CFR § 1.45(c).