



PUBLIC NOTICE

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

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DA 23-305
Released: April 7, 2023

**DOMESTIC SECTION 214 APPLICATION FILED FOR THE TRANSFER OF CONTROL
OF CERTAIN ASSETS OF BROADLIFE COMMUNICATIONS, INC.
TO YELLOWHAMMER NETWORKS, LLC**

**PETITION FILED FOR THE DESIGNATION OF YELLOWHAMMER NETWORKS, LLC AS
AN ELIGIBLE TELECOMMUNICATIONS CARRIER**

NON-STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket Nos. 23-23, 09-197

Comments Due: April 21, 2023

Reply Comment Due: April 28, 2023

By this Public Notice, the Wireline Competition Bureau (Bureau) seeks comment from interested parties on an application filed by BroadLife Communications, Inc. (BroadLife) and Yellowhammer Networks, LLC (Yellowhammer) (collectively, Applicants), pursuant to section 214 of the Communications Act of 1934, as amended, and sections 63.03-04 of the Federal Communications Commission's (Commission) rules,¹ requesting consent for the transfer of certain assets from BroadLife to Yellowhammer.² The Bureau also seeks comment on the petition of Yellowhammer for designation as an Eligible Telecommunications Carrier (ETC) in the Assigned Census Blocks.³

BroadLife, a Delaware corporation, is a “developer and potential provider of broadband Internet access service over fiber-based networks.”⁴ BroadLife is an ETC that is authorized to receive \$26,461,542 in Rural Digital Opportunity Fund (RDOF) support over ten years to provide service to

¹ See 47 U.S.C. § 214; 47 CFR §§ 63.03-04.

² Application of BroadLife Communications, Inc. (BroadLife) and Yellowhammer Networks, LLC for Consent to Assignment of Domestic Section 214 Authorization, WC Docket No. 23-23 (filed Jan. 13, 2023), <https://www.fcc.gov/ecfs/document/1011389787924/1> (Application). Applicants filed a supplement to their application on February 15, 2023. Letter from Stephen Coran, Counsel to Yellowhammer Networks, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No.23-23 (filed Feb. 15, 2023) (Supplement Letter).

³ See Yellowhammer Networks, LLC, Petition for Eligible Telecommunications Carrier Designation, WC Docket No. 09-197 (filed Jan. 13, 2023), <https://www.fcc.gov/ecfs/document/101131998121584/1> (ETC Petition). After closing, BroadLife will relinquish its ETC designation for the Assigned Census Blocks. Application at 9.

⁴⁴ Application at 3.

7,483 locations in Alabama, the “Assigned Census Blocks.”⁵ BroadLife does not currently offer domestic telecommunications services in the Assigned Census Blocks.⁶

Yellowhammer, a Delaware limited liability company, and its affiliates are infrastructure development companies that do not currently offer domestic telecommunications services.⁷ Applicants state that Yellowhammer will assume and satisfy BroadLife’s RDOF obligations in the Assigned Census Blocks and provide the supported services consistent with its obligations as an ETC.⁸ Yellowhammer will work with “one or more local partners that will provide sales and customer service support (Local Partners).”⁹ Applicants maintain that Yellowhammer will “engineer, construct, and own the entire lit network from the internet to end users, and will be responsible for day-to-day control and maintenance of network operations.”¹⁰ Applicants state that “Yellowhammer will ensure that Affordable Connectivity Program benefits are made available to all qualifying households in the Assigned Census Blocks.”¹¹ Applicants further state that Yellowhammer is held by private equity funds Meridiam Infrastructure North America Fund III, LP and its parallel funds (collectively, Meridiam Fund III), and thus held indirectly through limited partnership and limited liability company interests by numerous investors.¹² Meridiam Fund III and all its subsidiaries, including Yellowhammer, are managed by Meridiam Infrastructure North America Corporation (Meridiam), a Delaware corporation.¹³ Yellowhammer is ultimately controlled by Thierry Déau, the President of Meridiam, a citizen of France.¹⁴

Transaction Details and Public Interest

Pursuant to the terms of the proposed transaction, Yellowhammer will acquire the RDOF obligations and support for the Assigned Census Blocks in Alabama.¹⁵ Applicants state that regarding the Assigned Census Blocks, “Yellowhammer will receive all of the RDOF support BroadLife has received

⁵ *Id.* at 3, Exh. 1 (List of Assigned Census Blocks); *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/OEA/RBATF rel. 2022) (*RDOF Public Notice*); *see id.* at 8-9 (stating that ETCs seeking to transfer control of their domestic authorizations to operate pursuant to 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 3.

⁷ *Id.* at 4.

⁸ *Id.* at 3.

⁹ *Id.* at 5.

¹⁰ *Id.*

¹¹ *Id.* at 10.

¹² *Id.* at 4. The funds that comprise Meridiam Fund III include: Meridiam Infrastructure North America Fund III, LP; Meridiam Infrastructure North America Fund III (Domestic), LP; Meridiam Infrastructure North America Fund III Parallel I, LP; and Meridiam Infrastructure North America Fund III Parallel III, LP. Supplement at 2 (Declaration).

¹³ Application at 4; Supplement at 2 (Declaration).

¹⁴ Supplement at 2 (Declaration).

¹⁵ Application at 8.

as of the closing, net of RDOF support equal to the amount of state and federal income tax owed on the RDOF support received by BroadLife in 2022, and monthly support thereafter.”¹⁶

Applicants assert that the proposed transaction would serve the public interest, convenience, and necessity.¹⁷ Applicants state that “BroadLife has determined that, due to unanticipated changes to its business circumstances in Alabama, it will be unable to assume the costs and obligations of the RDOF program.”¹⁸ Applicants state that “with the financial, managerial, and technical resources and operational efficiencies Yellowhammer offers, especially in the context of the larger Western Alabama fiber network Meridium will deploy, consumers will be able to receive RDOF services in the Assigned Census Blocks more quickly than if BroadLife were inclined to move forward.”¹⁹ Applicants contend that “Yellowhammer can leverage its financial resources, infrastructure experience, and operational capabilities to rapidly and cost-effectively build out the Assigned Census Blocks as it expands its broadband operations.”²⁰ Applicants state that Yellowhammer has “set aside dedicated capital to fund the costs of deploying these network facilities to provide RDOF capable service in the Assigned Census Blocks and does not at this time anticipate the need to borrow money or incur debt in order to meet the milestone and performance standards in the Assigned Census Blocks.”²¹ Applicants further state that Yellowhammer will meet BroadLife’s RDOF buildout milestones and RDOF obligations as well as Yellowhammer’s ETC obligations.²² Applicants further maintain that the proposed transaction will not adversely affect competition.²³

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.²⁴

Domestic Section 214 Application Filed for the Transfer of Control of Certain Authorizations of BroadLife Communications, Inc. To Yellowhammer Networks, LLC
WC Docket No. 23-23 (filed Jan. 13, 2023).

ETC Petition

Yellowhammer seeks ETC designation for the purpose of becoming eligible to receive the RDOF support associated with the Assigned Census Blocks in Alabama pursuant to Commission approval and consummation of the transaction described in the Application.²⁵ The Commission has authorized BroadLife to receive \$26,461,542.00 in RDOF support to serve 7,483 locations within the Assigned Census Blocks.²⁶ Accordingly, Yellowhammer’s ETC designation for the purpose of receiving RDOF support will be conditioned upon approval of the Application and authorization to receive the associated support.

¹⁶ *Id.* at 9.

¹⁷ *Id.* at 7-10.

¹⁸ *Id.* at 12.

¹⁹ *Id.* at 13.

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 12, 18-19.

²³ *Id.* at 14.

²⁴ 47 CFR § 63.03(c)(1)(v).

²⁵ ETC Petition.

²⁶ *RDOF Public Notice*, DA 22-402, Attach. A.

ETC designation is a prerequisite to receiving universal service support available through the high-cost and Lifeline programs.²⁷ To receive an ETC designation, a petitioner must, in addition to meeting high-cost program requirements and other related obligations as specified below, offer the Lifeline discount on all qualifying services in areas where it receives high-cost support, deploy a network capable of delivering service that meets the Lifeline program’s minimum service standards, and commercially offer such service pursuant to its high-cost obligations.²⁸

Requirements for FCC ETC Designation

Section 254(e) of the Communications Act of 1934, as amended (the Act), provides that “only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific federal universal service support.”²⁹ Congress gives primary authority for ETC designations to state commissions.³⁰ The Commission has authority only when “a common carrier [is] providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission.”³¹ The petitioner for ETC designation must demonstrate that the FCC has jurisdiction and may do so by submitting an “affirmative statement from the state commission or a court of competent jurisdiction that the carrier is not subject to the state commission’s jurisdiction.”³² The Commission has delegated authority to the Bureau to consider appropriate ETC designation requests.³³

A petition for ETC designation by the Commission must include: (1) a certification that the petitioner offers or intends to offer all services designated for support by the Commission pursuant to section 254(c) of the Act; (2) a certification that the petitioner offers or intends to offer the supported services either using its own facilities or a combination of its own facilities and resale of another carrier’s services;³⁴ (3) a description of how the petitioner advertises the availability of the supported services and the charges therefor using media of general distribution;³⁵ (4) a detailed description of the geographic service area for which the petitioner requests to be designated as an ETC;³⁶ and (5) a certification that neither the petitioner nor any party to the application is subject to a denial of federal benefits pursuant to the Anti-Drug Abuse Act of 1988.³⁷

²⁷ 47 U.S.C. § 254(e).

²⁸ 47 CFR part 54, subpts. D, K-M.

²⁹ 47 U.S.C. § 254(e).

³⁰ *Id.* § 214(e)(2).

³¹ *Id.* § 214(e)(6).

³² See *Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12267, para. 120 (2000); 47 U.S.C. § 214(e)(6).

³³ See *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, CC Docket No. 96-45, Public Notice, 12 FCC Rcd 22947, 22948 (1997).

³⁴ 47 U.S.C. § 214(e)(1); 47 CFR § 54.201(d)(1).

³⁵ 47 U.S.C. § 214(e)(1); 47 CFR § 54.201(d)(2).

³⁶ An ETC’s “service area” is set by the designating authority and is the geographic area within which an ETC has universal service obligations and may receive universal service support. 47 U.S.C. § 214(e)(5); 47 CFR § 54.207(a). Although section 214(e)(5) of the Act, requires conformance of a competitive ETC’s service area and an incumbent rural telephone company’s service area, 47 U.S.C. § 214(e)(5), the Commission has separately forborne from imposing such requirements on Auction 904 support recipients. See *Rural Digital Opportunity Fund; Connect America Fund*, WC Docket Nos. 19-126, 10-90, Report and Order, 35 FCC Rcd 686, 728, paras. 93-94 (2020).

³⁷ 21 U.S.C. § 862; 47 CFR § 1.2002(a)-(b).

In addition, a petitioner must demonstrate its ability to meet certain service standards. A petitioner seeking an ETC designation for purposes of becoming eligible to receive RDOF support must: (1) certify that it will comply with the service requirements applicable to the support that it receives; (2) demonstrate its ability to remain functional in emergency situations; and (3) demonstrate its ability to satisfy applicable consumer protection and service quality standards.³⁸ Further, prior to designating a petitioner as an ETC pursuant to section 214(e)(6) of the Act, the Commission must determine whether such designation is in the public interest.³⁹

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 filing comments on the transfer of control application must reference **WC Docket No. 23-23**. All pleadings for the ETC Petition must reference **WC Docket Nos. 09-197 and 23-23**.

Comments must be filed **on or before April 21, 2023**, and reply comments **on or before April 28, 2023**. 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.⁴⁰ 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.

³⁸ See 47 CFR § 54.202(a).

³⁹ 47 U.S.C. § 214(e)(6); 47 CFR § 54.202(b). For Auction 904 support recipients, the Bureau waived certain requirements in section 54.202 of the Commission's rules and adopted a presumption that designation will serve the public interest. *Rural Digital Opportunity Fund Phase I Auction (Auction 904) Closes; Winning Bidders Announced; FCC Form 683 Due January 29, 2021*, WC Docket No. 19-126 et al., Public Notice, 35 FCC Rcd 13888, 13901 n.71 (RBATF/OEA/WCB 2020). Because Yellowhammer will stand in the shoes of BroadLife upon approval of the Application with respect to service and support for the Assigned Census Blocks, the Bureau finds that Yellowhammer is in the same position as an RDOF support awardee and is entitled to the same waivers and presumption.

⁴⁰ 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).

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) Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, dennis.johnson@fcc.gov;
- 3) Nissa Laughner, Telecommunications Access Policy Division, Wireline Competition Bureau, Nissa.Laughner@fcc.gov and
- 4) 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).⁴¹ 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.⁴² 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 regarding the transfer of control application, please contact Myrva Charles at (202) 418-1506 or Dennis Johnson at Dennis.Johnson@fcc.gov, Wireline Competition Bureau. For further information regarding the ETC petition, please contact Nissa Laughner at Nissa.Laughner@fcc.gov.

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⁴¹ 47 CFR § 1.1206(b).

⁴² *See id.* § 1.45(c).