**DA 23-372**

**Released: May 5, 2023**

**DOMESTIC SECTION 214 APPLICATION FILED FOR THE TRANSFER OF CONTROL OF** **ALL WEST COMMUNICATIONS, INC. TO NOVACAP HOLDINGS, INC.**

**NON-STREAMLINED PLEADING CYCLE ESTABLISHED**

**WC Docket No. 22-410**

**Comments Due: May 19, 2023**

**Reply Comment Due: May 26, 2023**

By this Public Notice, the Wireline Competition Bureau seeks comment from interested parties on an application filed by All West Communications, Inc. (All West) and Novacap All West Holdings, Inc. (Novacap Holdings) (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]](#footnote-3) requesting consent for the transfer of control of All West from its current shareholders to Novacap Holdings.[[2]](#footnote-4)

All West, a Utah corporation, is an incumbent local exchange carrier (LEC) that serves six rural local exchanges over approximately 4,200 access lines in its Utah study area and two rural local exchanges over approximately 200 access lines in its Wyoming study area.[[3]](#footnote-5) All West Financial Services d/b/a All West Broadband (AWFS), a Utah corporation and wholly-owned subsidiary of All West, provides broadband Internet access services (BIAS) to customers in the All West incumbent LEC service areas in Utah and Wyoming, and in the All West/Utah, Inc. (All West/Utah) and All West/Wyoming, Inc. (All West/Wyoming) competitive LEC service areas in Utah and Wyoming.[[4]](#footnote-6) All West/Utah, a Utah corporation and wholly-owned subsidiary of AWFS, provides competitive LEC services and other services in and around five Utah communities (Park City, Heber, Huntsville, Morgan, and Salt Lake).[[5]](#footnote-7) All West/Wyoming, a Wyoming corporation and wholly-owned subsidiary of AWFS, provides competitive LEC services in and around five Wyoming communities (Kemmerer, Farson, Evanston, Rock Springs, and Green River).[[6]](#footnote-8) All West/Utah and All West/Wyoming competitive LEC operations, combined, serve approximately 1,100 access lines.[[7]](#footnote-9) All West/Wyoming is authorized to receive a total of $46,648 in Rural Digital Opportunity Fund (RDOF) (Auction 904) to serve 218 locations in 22 eligible census blocks.[[8]](#footnote-10)

 Novacap Holdings, a Delaware corporation, is a holding company and does not provide any telecommunications services.[[9]](#footnote-11) Applicants state that Novacap Holdings will ultimately be controlled by Novacap Management Inc. (Novacap), a Canadian private equity fund.[[10]](#footnote-12) Novacap controls Stratus Networks, Inc. (Stratus), Horizon Telecom, Inc. (Horizon), and Horizon’s wholly-owned subsidiary, The Chillicothe Telephone Company (CTC).[[11]](#footnote-13) CTC provides telecommunications services as an incumbent LEC in Ohio.[[12]](#footnote-14) Stratus offers competitive long distance services and other services in 35 states.[[13]](#footnote-15)CTC also owns and operates a fiber network of approximately 5,974 route miles that offers telecommunications services and other services to businesses, institutions.[[14]](#footnote-16) It also owns and operates wireless tower sites in Ohio, West Virginia, and Indiana.[[15]](#footnote-17) Novacap is wholly-owned by Novacap Fund Management Inc., a Canadian corporation.[[16]](#footnote-18)

Pursuant to the terms of the proposed transaction, All West and Novacap All West Acquisition Company, Inc. (Novacap Acquisition) entered into an Agreement under which Novacap Acquisition, a wholly-owned subsidiary of Novacap Holdings created for the purposes of the proposed transaction, will acquire all of the issued and outstanding equity interests in All West and its subsidiaries.[[17]](#footnote-19) Applicants state that, as a result of the proposed transaction, Novacap Holdings will assume control of All West and its subsidiaries, including all licenses, physical plant, and operations in Utah and Wyoming.[[18]](#footnote-20)

Applicants assert that a grant of the Application would serve the public interest, convenience, and necessity and that Novacap’s capital investment will enhance the Licensees’ ability to meet their service obligations for their RDOF locations under the company’s existing management.[[19]](#footnote-21) Applicants state that “the service areas of Stratus, Horizon Telecom Inc. (together with CTC), and All West, do not and will not overlap.”[[20]](#footnote-22) Because the proposed transaction would involve the exchange and assumption of Universal Service Fund high-cost mechanism obligations, we accept the Application for non-streamlined processing in order to sufficiently analyze whether the proposed transaction would serve the public interest.[[21]](#footnote-23)

Referral to Executive Branch Agencies. Through this Public Notice, pursuant to Commission practice, the Application and the associated international application, ITC-T/C-20221128-00141, 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.[[22]](#footnote-24)

Domestic Section 214 Application Filed for the Transfer of Control of

All West Communications, Inc. to Novacap Holdings, Inc.,

WC Docket No. 22-410 (filed Nov. 28, 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 May 19, 2023**, and reply comments **on or before May 26, 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 <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.[[23]](#footnote-25) 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. Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, tracey.wilson@fcc.gov;
2. Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, dennis.johnson@fcc.gov;
3. David Krech, Office of International Affairs, david.krech@fcc.gov;
4. Nadja Sodos-Wallace, Wireless Telecommunications Bureau, nadja.sodoswallace@fcc.gov; and
5. 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.

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.[[24]](#footnote-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 Tracey Wilson at (202) 418-1394 or Dennis Johnson, at (202) 418-0809.

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1. *See* 47 U.S.C. § 214; 47 CFR §§ 63.03-04. [↑](#footnote-ref-3)
2. Restated Joint Section 214 Application of All West Communications, Inc. and Novacap All West Holdings, Inc. for Consent to Transfer Control, WC Docket No. 22-410 (filed Apr. 25, 2023) (Application) (updating the initial application filed on Nov. 28, 2022 (Initial Application)). Applicants filed supplements to the Initial Application on December 16, 2022, January 9, 2023, and May 2, 2023. *See* Letter from John Gasparini, Counsel for Novacap All West Holdings, Inc. to Marlene H. Dortch, Secretary, FCC (filed Dec. 16, 2022); Letter from John Gasparini, Counsel for Novacap All West Holdings, Inc. to Marlene H. Dortch, Secretary, FCC (filed Jan. 9, 2023); Letter from Richard Rubino, Counsel for All West Communications, Inc. and Mathew Weller, President, All West Communications, Inc. to Marlene H. Dortch, Secretary, FCC (filed May 2, 2023) (May 2 Supplement). Applicants also filed applications for the transfer of authorizations associated with international services and wireless services. Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications. [↑](#footnote-ref-4)
3. Application at 2. Applicants state that All West is designated as an eligible telecommunications carrier (ETC) in Utah and Wyoming that participates in the Lifeline program, Emergency Broadband Benefit program, and the Affordable Connectivity Program and that it will continue to support them through company promotion and state outreach programs. *Id.* at 21-22. [↑](#footnote-ref-5)
4. *Id.* [↑](#footnote-ref-6)
5. *Id.* [↑](#footnote-ref-7)
6. *Id.* [↑](#footnote-ref-8)
7. Application at 3. Sweetwater Television Company, a Wyoming corporation and wholly-owned subsidiary of All West/Wyoming, owns cable television plant over which All West/Utah provides digital video services. *Id.* at 4. [↑](#footnote-ref-9)
8. May 2 Supplement at 2; *see also Rural Digital Opportunity Fund Support Authorized For 469 Winning Bids,* AU Docket No. 20-34 et al., Public Notice, DA 21-1287, at Attach. A (Authorized Long-Form Applicants and Winning Bids) (WCB 2021)*.* [↑](#footnote-ref-10)
9. Applicationat 4. [↑](#footnote-ref-11)
10. *Id*. at 5, Exh. B (Post-Closing Ownership Structure Ex. B-3). Applicants state that the following individuals exercise Novacap’s authority as general partner and individually hold a 14.3% interest in the “Novacap Vehicles”: Pascal Tremblay, a Canadian citizen; Stéphane Tremblay, a Canadian citizen; Thadeus Mocarski, a U.S. citizen; Francois Laflamme, a Canadian citizen; David Lewin, a Canadian citizen; Eric Desrosiers, a Canadian citizen; and Benjamin Desmarais, a Canadian citizen. *Id*. at Exh. B (Post-Closing Ownership Structure Ex. B-3). [↑](#footnote-ref-12)
11. *Id.* at 19. [↑](#footnote-ref-13)
12. *Id.* [↑](#footnote-ref-14)
13. *Id.* [↑](#footnote-ref-15)
14. *Id*. at 20. [↑](#footnote-ref-16)
15. *Id*. [↑](#footnote-ref-17)
16. *Id*. at Exh. B (Post-Closing Ownership Structure Ex. B-3). The majority of individuals holding a 10% or greater interest in Novacap Fund Management Inc. are Canadian citizens. *Id*. [↑](#footnote-ref-18)
17. *See id.* at 5, n.2. [↑](#footnote-ref-19)
18. *Id*. at 5. [↑](#footnote-ref-20)
19. *Id*. at 6-7, 21. [↑](#footnote-ref-21)
20. *Id*. at 19. [↑](#footnote-ref-22)
21. *See* 47 CFR § 63.03(c)(1)(v). [↑](#footnote-ref-23)
22. 47 CFR § 1.40001. *See Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket No. 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), recon. denied, 15 FCC Rcd 18158 (2000). [↑](#footnote-ref-24)
23. 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). [↑](#footnote-ref-25)
24. *See* 47 CFR § 1.45(c). [↑](#footnote-ref-26)