



PUBLIC NOTICE

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DA 23-796

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DOMESTIC SECTION 214 APPLICATION GRANTED FOR THE TRANSFER OF INDIRECT CONTROL OF SIUSLAW BROADBAND, LLC D/B/A HYAK TO CONCEPT COMMUNICATIONS, LLC

WC Docket No. 23-222

By this Public Notice, the Wireline Competition Bureau grants an application filed by Siuslaw Broadband, LLC d/b/a Hyak (Hyak) and Concept Communications, LLC (Concept) (collectively, Applicants), pursuant to section 214(a) of the Communications Act of 1934, as amended (the Act), and sections 63.03-04 of the Commission's rules,¹ requesting consent to consummate the sale of 100% of all issued and outstanding membership interest of Hyak to Concept.²

On July 27, 2023, the Bureau released a public notice seeking comment on the Application.³ We did not receive comments or petitions in opposition to the Application.

Applicants and Description of Transaction

Hyak is a limited liability company. In Oregon, Hyak is authorized as a local exchange and interexchange service provider and is designated as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider.⁴ Hyak provides fiber internet services, wireless internet services, Voice over Internet Protocol services, and managed services to residential and business customers. In addition, Hyak receives high-cost universal service support through the Rural Digital

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

² See Application of Concept Communications LLC and Siuslaw Broadband LLC d/b/a Hyak for Consent to Transfer Indirect Control of Domestic Section 214 Authority Under the Communications Act of 1934, as Amended, WC Docket No. 23-222 (filed June 28, 2023) (Application). Applicants filed supplements to the Application on July 13, 2023 and August 2, 2023. Supplement to Domestic Section 214 Application Filed for the Transfer of Indirect Control of Concept Communications LLC-Siuslaw Broadband LLC d/b/a Hyak, WC Docket No. 23-222 (filed July 13, 2023) (July Supplement); Supplement to Domestic Section 214 Application Filed for the Transfer of Indirect Control of Concept Communications LLC-Siuslaw Broadband LLC d/b/a Hyak, WC Docket No. 23-222 (filed Aug. 2, 2023) (August Supplement). Applicants also filed an application for the transfer of authorizations associated with wireless licenses. Application at 9. Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

³ *Domestic Section 214 Application Filed for the Transfer of Control of Siuslaw Broadband, LLC d/b/a Hyak Communications, LLC to Concept Communications, LLC*, WC Docket No. 23-222, Public Notice, DA 23-643 (WCB 2023).

⁴ Application at 2.

Opportunity Fund (RDOF) Phase 1 (Auction 904) support mechanism.⁵ The majority owners of Hyak are two individuals, Neil Ecker and Robbie Wright, and no other individual or entity currently owns more than 10% of Hyak.

Concept, a Washington limited liability company, is a provider of cable service and Internet services in Washington. Concept is 95.8% owned by MiFiber Holding, LLC (MiFiber Holding), a Delaware limited liability company.⁶ MiFiber Holding's 10% or greater direct owners are: 2PS Investments II, LLC (35.61%); Valley Oak Growth Tech B, LP (11.23%); and MFB Investment, LLC (11.23%).⁷ The managers of MiFiber Holding's Board, each holding a 16.25% indirect interest in MiFiber Holding through their respective interests in 2PS Investments II, LLC and another entity with less than a 5% direct interest in MiFiber Holding, are Karnig Ross Baron Porter, a U.S. citizen, and Louis-Alexandre Pfyffer von Altishofen, a Switzerland citizen.⁸ Juan Carlos Serrano, an Ecuadorian citizen, indirectly holds a 19.99% interest in MiFiber Holding through interests in 2 PS Investments II, LLC and MFB Investment, LLC.⁹

Concept owns (1) NCI Data.com, LLC, a Washington limited liability company, which is a competitive local exchange provider in Washington and an FCC microwave license holder, and (2) Wind Wireless, LLC, a Washington limited liability company and an FCC microwave license holder. Neither Concept nor any of its affiliates or subsidiaries holds a 10% or greater ownership interest in any other providers of domestic telecommunications services.¹⁰ Additionally, neither Concept nor any of its affiliates or subsidiaries provides telecommunications services in Oregon, and thus there is no service area overlap with Hyak.¹¹

Pursuant to the terms of an Equity Purchase Agreement, Concept will acquire 100% of the outstanding membership interests of Hyak and will then insert a holding company, Hyak Oregon Holdings, LLC (Hyak Holdings), between Concept and Hyak.¹² The Applicants state that, as a result of the proposed transaction, Hyak will become a wholly-owned subsidiary of Hyak Holdings and an indirect, wholly-owned subsidiary of Concept, and Concept will indirectly control Hyak.¹³ Moreover, Concept will seek to optimize Hyak's existing assets to support investment in new infrastructure and to continue offering innovative and high-quality services to customers.¹⁴

Applicants assert that a grant of the Application would serve the public interest, convenience, and necessity.¹⁵

⁵ *Id.* at 2, 10 (confirming that the transaction “does not involve any changes to Hyak that will compromise its ability to meet its service obligations, and Applicants anticipate that Hyak will continue to meet its RDOF obligations”); *Rural Digital Opportunity Fund Support Authorized for 1,345 Winning Bids*, AU Docket No. 20-34, WC Docket Nos 19-126, 10-90, Public Notice, 37 FCC Rcd 4897 (WCB 2022) (authorizing Hyak to receive \$1,611,684.90 over 10 years to serve 554 locations in Oregon) (*RDOF Public Notice*). Hyak also offers Lifeline and Oregon Telephone Assistance Program services to its customers. Application at 2. Hyak does participate in the Affordable Connectivity Program, but not in the E-Rate or Rural Health Care funding programs. *Id.* at 11; August Supplement at 1.

⁶ Neither Concept nor any of its affiliates receives USF high cost support. Application at 10.

⁷ *Id.* at Exh. B.

⁸ *Id.* at 3, Exh. B.

⁹ *Id.*

¹⁰ *Id.* at 1, Exh. B.

¹¹ July Supplement at 1.

¹² Application at 3.

¹³ *Id.*

¹⁴ *Id.* at 5-6.

Discussion

We find, upon consideration of the record, that a grant of the Application will serve the public interest, convenience, and necessity. To make this determination under Commission precedent, we consider whether the proposed transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes.¹⁶ We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.¹⁷ The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.¹⁸

We find that there are no potential public interest harms identified in the record. First, the proposed transaction will not result in a significant reduction of competition. Neither Concept nor any of its affiliates or subsidiaries provides telecommunications services in Oregon.¹⁹ Thus, there will be no physical overlap or reduction in service providers in any markets as a result of the transaction. Applicants state further that Concept “will seek to optimize Hyak’s existing assets to support investment in new infrastructure and continue offering innovative and high-quality services to Hyak’s business and residential customers,”²⁰ and we thus expect no potential harm to existing customers to result from the transaction.

Second, Concept remains financially, managerially, and technically obligated to meet all public interest and performance obligations associated with the receipt of RDOF funding in accordance with the Commission’s pre-transaction approval of its qualifications, and we expect that the proposed transaction will not negatively impact these obligations. Indeed, Applicants assert the transaction will actually “enhance Hyak’s ability to meet its RDOF support and public interest obligations” by providing access to additional capital and “financial, technical, and operational expertise to support and accelerate” Hyak’s RDOF service obligations.²¹ Applicants confirm that the proposed transaction does not involve any changes to Hyak that will compromise its ability to meet its service obligations.²²

¹⁵ *Id.*

¹⁶ See, e.g., *Application of Verizon Communications Inc. and América Móvil S.A.B. de C.V for Consent to Transfer Control of International Section 214 Authorization*, GN Docket No. 21-112, IBFS File No. ITC-T/C-20200930-00173, Memorandum Opinion and Order, 36 FCC Rcd 16994, 16999, para. 21 (2021) (*Verizon-TracFone Order*) (citing *China Mobile International (USA) Inc., Application for Global Facilities-Based and Global Resale International Telecommunications Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended*, ITC-214-20110901-00289, Memorandum Opinion and Order, 34 FCC Rcd 3361, 3366, para. 9 (2019); *Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corporation (and Subsidiaries, Debtors-in-Possession), Assignors, to Time Warner Cable Inc. (Subsidiaries), Assignees; Adelphia Communications Corporation, (and Subsidiaries, Debtors-in-Possession), Assignors and Transferors et al.*, MB Docket No. 05-192, Memorandum Opinion and Order, 21 FCC Rcd 8203, 8219-21, paras. 27-28 (2006) (*Adelphia-TWC Order*)).

¹⁷ See *Verizon-TracFone Order* at 16999, para. 21 (citing *Applications of AT&T Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 14-90, Memorandum Opinion and Order, 30 FCC Rcd 9131, 9140, para. 18 (2015) (*AT&T-DIRECTV Order*)) (further citations omitted).

¹⁸ See *Verizon-TracFone Order* at 16999, para. 21 (citing *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 18; *Adelphia-TWC Order*, 21 FCC Rcd at 8217, para. 23; *Application of EchoStar Communications Corp., General Motors Corp., and Hughes Electronics Corp., Transferors, and EchoStar Communications Corp., Transferee*, CS Docket No. 01-348, Hearing Designation Order, 17 FCC Rcd 20559, 20574, para. 25 (2002)) (further citations omitted).

¹⁹ July Supplement at 1. Additionally, neither Concept nor any of its affiliates or subsidiaries hold any domestic or international section 214(a) authorization or have a 10% or greater ownership interest in any other providers of domestic telecommunications services. *Id.*

²⁰ *Id.* at 5-6.

²¹ *Id.* at 6, 10.

Specifically, the proposed transaction will not affect Hyak’s deployment plans, existing technology, or management of Hyak following completion of the transition.²³ Applicants state that Hyak’s existing debt, other than its USDA Reconnect loan obtained in the second half of 2022, will be paid off at closing.²⁴ Applicants also confirm that all RDOF funding and any related assets “will remain with Hyak following completion of the proposed transaction” and “are, and will continue to be, used for the provision of covered services by Hyak.”²⁵ Applicants further state that Hyak is expected to meet its buildout obligations under RDOF and that if “Hyak fails to satisfy any support recovery obligations imposed by a final, non-appealable order, [Concept] will be Hyak’s direct parent and will ensure those obligations are met, conditional upon any required regulatory approvals.”²⁶ Overall, we conclude that the record in this proceeding does not support a finding of a public interest harm.

We next consider whether the proposed transaction is likely to generate verifiable, transaction-specific public interest benefits.²⁷ Applicants must provide evidence of a claimed benefit to allow the Commission to verify its likelihood and magnitude.²⁸ Where potential harms appear unlikely, as is the case with the Application before us here, the Commission accepts a lesser degree of magnitude and likelihood than when harms are present.²⁹

Applicants claim that the proposed transaction will provide additional capital and managerial resources that “will support investment in new infrastructure” and ensure that “innovative and high-quality services” continue to be offered to Hyak’s business and residential customers.³⁰ Applicants expect that the infusion of new financial, technical, and operational support resulting from the transaction will enhance and accelerate “Hyak’s ability to meet its RDOF support and public interest obligations.”³¹ Further, Applicants aver that, following the proposed transaction, “the management team that demonstrated the necessary industry expertise to qualify to obtain RDOF funding will remain in place.”³² With the addition of Concept’s capital following the proposed transaction, Applicants state that Hyak will meet its buildout obligations under RDOF, and Concept will ensure that those obligations are met.³³

The Commission has specified that ensuring consumers receive new or additional services is an important public interest factor,³⁴ and accelerating private sector deployment of advanced services is one of the aims of the Act.³⁵ In light of the Applicants’ commitments to meet all of Hyak’s federal high cost funding obligations³⁶ and the fact that Applicants are prepared to devote additional capital to

²² *Id.* at 10.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ See *AT&T/DIRECTV Order*, 30 FCC Rcd at 9237, paras. 273-74.

²⁸ See *id.* at 9237-38, paras. 275-76.

²⁹ See *id.*

³⁰ *Id.* at 5-6.

³¹ *Id.* at 6, 10.

³² *Id.* at 10.

³³ *Id.*

³⁴ See, e.g., *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 19.

³⁵ See *Verizon-TracFone Order* at 9, para. 22 (citing 47 U.S.C. §§ 254, 332(c)(7), 1302; Telecommunications Act of 1996, Pub. L. No. 104-104, Preamble, 110 Stat. 56 (1996) (one purpose of the Act is to “accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services”)).

accelerate facilities-based service offerings,³⁷ we find it likely that the proposed transaction would result in some public interest benefits. Absent any potential harms, and considering that the proposed transaction is likely to yield some benefits, we find, on balance, that the proposed transaction serves the public interest.

Therefore, pursuant to section 214(a) of the Act, 47 U.S.C. § 214(a), and sections 0.91, 0.291, 63.03, and 63.04 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 63.03, and 63.04, the Bureau hereby grants the Application discussed in this Public Notice, subject to Applicants' compliance with all applicable obligations.³⁸

Pursuant to section 1.103 of the Commission's rules, 47 CFR § 1.103, the grant is effective upon release of this Public Notice.³⁹ Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 CFR §§ 1.106, 1.115, may be filed within 30 days of the date of this Public Notice.

For further information, please contact Megan Danner at (202) 418-1151.

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³⁶ Application at 10.

³⁷ *Id.*

³⁸ See *RDOF Public Notice* at 4897-4905 (listing obligations of authorized support recipients).

³⁹ We direct Applicants to submit, within 30 days of closing the proposed transaction, a notice in WC Docket No. 23-222 that the proposed transaction has closed, with the consummation date, and also provide a courtesy copy of the notice to hcinfo@usac.org.