



PUBLIC NOTICE

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DA 23-87
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**GRANT OF DOMESTIC AND INTERNATIONAL SECTION 214 APPLICATIONS
FOR THE TRANSFER OF CONTROL OF
EVERSTREAM SOLUTIONS LLC, AND ITS AFFILIATES
TO DB PUMA GIF II GP HOLDCO, LLC**

**WC Docket No. 22-283
ITC-T/C-20220725-00086
ITC-T/C-20220725-00087
ITC-T/C-20220725-00088**

SECTION 310(b)(4) PETITION FOR DECLARATORY RULING GRANTED

IB File No. ISP-PDR-20220725-00007

By this Public Notice, the Wireline Competition Bureau (WCB) and the International Bureau (IB) grant, as conditioned below, applications and a petition for declaratory ruling regarding the transfer of control of Everstream Solutions LLC (Everstream Solutions) and its affiliates from AMP Capital Investors International Holdings Ltd. (AMP Holdings) to DB Puma GIF II GP HoldCo, LLC (DB Puma) (the Transaction).

WCB grants an Application filed by AMP Holdings (Transferor), Everstream Solutions, Everstream GLC Holding Company LLC (Everstream GLC), HRS Internet LLC (HRS Internet), Lynx Network Group, Inc. (Lynx), and DB Puma (Transferee) (collectively, Applicants), pursuant to section 214 of the Communications Act of 1934, as amended (Act), and sections 63.03-04 of the Commission's rules,¹ requesting consent to transfer control of Everstream Solutions, Everstream GLC, HRS Internet, and Lynx (the Licensees) from AMP Holdings to DB Puma.²

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

² Joint Application of AMP Capital Investors International Holdings Ltd., Everstream Solutions LLC, Everstream GLC Holding Company LLC, HRS Internet LLC, Lynx Network Group, Inc. and DB Puma GIF II GP HoldCo, LLC for Consent to Transfer Control of Section 214 Authorizations, WC Docket No. 22-283 (filed Aug. 3, 2022) (Application). Applicants filed supplements to the Application. Letter from F. William LeBeau and Peter Connolly, Counsel for Transferee, and Russell Blau, Danielle Burt, and Leetal Weiss, Counsel for Transferor and Licensees, WC Docket No. 22-283 (filed Sept. 15, 2022) (Sept. 15, 2022 Supplement); Letter from F. William LeBeau and Peter Connolly, Counsel for Transferee, and Russell Blau, Danielle Burt, and Leetal Weiss, Counsel for Transferor and Licensees, WC Docket No. 22-283 (filed Nov. 23, 2022) (Nov. 23, 2022 Supplement); Letter from Russell Blau, Danielle Burt, and Leetal Weiss, Counsel for Transferor and Licensees, WC Docket No. 22-283 (filed Dec. 2, 2022) (Dec. 2, 2022 Supplement); Letter from F. William LeBeau and Peter Connolly, Counsel for Transferee, and Russell Blau, Danielle Burt, and Leetal Weiss, Counsel for Transferor and Licensees, IBFS File Nos. ITC-T/C-20220725-00087/00087/00088, ISP-PDR20220725-00007, WC Docket No. 22-283 (filed Jan. 23, 2023) (Jan. 23, 2023 Supplement).

IB grants three applications for transfer of control of international section 214 authorizations (International 214 Applications) held by Everstream Solutions,³ Everstream GLC,⁴ and HRS Internet,⁵ pursuant to section 214 of the Act and sections 63.18 and 63.24 of the Commission's rules.⁶

In addition, IB grants a petition for declaratory ruling (Petition)⁷ filed by Everstream Solutions (Petitioner), to permit foreign equity and voting interests in Everstream Solutions' controlling U.S. parent, Midwest Fiber Acquisition LLC (Midwest) above the 25% benchmarks in section 310(b)(4) of the Act,⁸ and section 1.5000(a)(1) of the Commission's rules.⁹

On December 2, 2022, WCB and IB released separate public notices seeking comment on the Application, International 214 Applications, and Petition.¹⁰ No comments or petitions were filed in opposition to the Application, International 214 Applications, or Petition.

³ IBFS File No. ITC-T/C-20220725-00087. Everstream Solutions holds international section 214 authorization ITC-214-20160120-00027.

⁴ IBFS File No. ITC-T/C-20220725-00088. Everstream GLC holds international section 214 authorization ITC-214-19970116-00027.

⁵ IBFS File No. ITC-T/C-20220725-00086. HRS Internet holds international section 214 authorization ITC-214-20080612-00268.

⁶ See 47 U.S.C. § 214; 47 CFR §§ 63.18, 63.24.

⁷ Everstream Solutions LLC, Petition for Declaratory Ruling Under Section 310(b)(4) of the Act. On July 25, 2022, Everstream Solutions filed a petition, pursuant to section 310(b)(4) of the Act, File No. ISP-PDR-20220725-00007 (filed Jul. 25, 2022) (Petition). Restated Petition for Declaratory Ruling Under Section 310(b)(4) of the of the Communications Act of 1934, as amended, File No. ISP-PDR-20220725-00007 (filed Sep. 6, 2022) (Restated Petition). On September 6, 2022 Petitioner filed a letter notification pursuant to section 1.5004(f) of the Commissioner's rules. 47 CFR § 1.5004(f). Letter from Danielle Burt, Russell Blau, and Leetal Weiss, counsel to Everstream Solutions LLC, to Marlene H. Dortch, Secretary, FCC, IBFS File No. ISP-PDR-20201102-00012 (filed Sept. 20, 2022) (1.5004 Letter) (stating that Everstream Solutions is out of compliance with its current foreign ownership ruling). On September 20, 2022 Everstream Solutions LLC filed a supplement. Letter from Danielle Burt, Russell Blau, and Leetal Weiss, counsel to Everstream Solutions LLC, to Marlene H. Dortch, Secretary, FCC, IBFS File No. ISP-PDR-20201102-00012 (filed Sept. 20, 2022) (Vanguard Letter) (providing ownership information regarding The Vanguard Group, Inc.). On November 18, 2022, Petitioner filed a notification. Letter from Danielle Burt, Russell Blau, and Leetal Weiss, counsel to Everstream Solutions LLC, to Marlene H. Dortch, Secretary, FCC, IBFS File No. ISP-PDR-20220725-00007 (filed Nov. 18, 2022). On November 23, 2022 Everstream Solutions LLC filed a supplement. Letter from Danielle Burt, Russell Blau, and Leetal Weiss, counsel to Everstream Solutions LLC, to Marlene H. Dortch, Secretary, FCC, IBFS File No. ISP-PDR-20201102-00012 (filed Nov. 23, 2022) (Executive Branch Exclusion Letter) (stating the grounds on which the Commission should find that the International 214 Applications for Everstream Solutions LLC should be excluded from Executive Branch review); Letter from F. William LeBeau and Peter Connolly, Counsel for Transferee, and Russell Blau, Danielle Burt, and Leetal Weiss, Counsel for Transferor and Licensees, IBFS File Nos. ITC-T/C-20220725-00087/00087/00088, ISP-PDR20220725-00007, WC Docket No. 22-283 (filed Jan. 23, 2023) (Jan. 23, 2023 Supplement).

⁸ 47 U.S.C. § 310(b)(4).

⁹ 47 CFR § 1.5000(a)(1).

¹⁰ Domestic Section 214 Application Filed for the Transfer of Control of Everstream Solutions LLC, Everstream GLC Holding Company LLC, HRS Internet LLC, and Lynx Network Group, Inc. to DB Puma GIF II GP Holdco, LLC; Non-Streamlined Pleading Cycle Established; WC Docket No. 22-283, Public Notice, DA 22-1252 (WCB rel. Dec 2, 2022) (*WCB Public Notice*); Non Streamlined International Applications/Petition Accepted for Filing, Rep. No. TEL-02235NS (IB rel. Dec. 2, 2022) (*IB Public Notice*).

The Licensees

The Licensees are direct and indirect subsidiaries of Midwest, a Delaware limited liability company.¹¹ Midwest is an indirect wholly-owned subsidiary of Midwest Fiber Holdings LP, a Delaware limited partnership.¹² The Licensees provide fiber-based voice and data services in the Midwest and Mid-Atlantic.¹³ Everstream Solutions, an Ohio limited liability company, is authorized to provide competitive telecommunications services in Delaware, Kentucky, Maryland, Missouri, New Jersey, New York, Ohio, Pennsylvania, and West Virginia.¹⁴ Everstream Solutions holds 336 common carrier fixed point-to-point microwave licenses.¹⁵ GLC, a Delaware limited liability company, is authorized to provide competitive telecommunications services in Illinois, Indiana, Michigan, and Wisconsin.¹⁶ HRS Internet, an Indiana limited liability company, is authorized to provide competitive telecommunications services in Indiana.¹⁷ Lynx, a Michigan corporation, is authorized to provide competitive telecommunications services in Michigan.¹⁸

The Transaction

Midwest Fiber Holdings LP is indirectly owned by four limited partnerships organized in Luxembourg: AMP Capital Global Infrastructure Fund II A LP SCSp; AMP Capital Global Infrastructure Fund II B LP SCSp; AMP Capital Global Infrastructure Fund II C LP SCSp; and AMP Capital Global Infrastructure Fund II E LP SCSp (collectively referred to as GIF II), with a 1.5% ownership interest held by a management-owned vehicle, Midwest Fiber Management LP, a Delaware limited partnership (the Management-Owned Vehicle).¹⁹ AMP Capital Investors (GIF II GP) S.à.r.l., a Luxembourg company, is the general partner of Midwest Fiber Holdings LP, the Management-Owned Vehicle, and the four Luxembourg limited partnerships.²⁰

DB Puma is one of three Delaware limited liability companies that DigitalBridge Operating Company, LLC (DBOC), also a Delaware limited liability company, formed as its subsidiaries for the purposes of the proposed Transaction.²¹ DBOC is a subsidiary of DigitalBridge Group, Inc. (DigitalBridge) (92% ownership), a publicly traded Maryland corporation.²² DigitalBridge is affiliated

¹¹ HRS Internet is a direct wholly-owned subsidiary of Everstream Solutions and Lynx is a direct wholly-owned subsidiary of Everstream GLC. Everstream Solutions and Everstream GLC are directly wholly-owned subsidiaries of Midwest. Application at 4-5.

¹² *Id.* at 4.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Restated Petition at Exh. E.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 5.

¹⁹ Application at 2.

²⁰ *Id.*

²¹ *Id.* at 5.

²² *Id.* at 13. Applicants state that Vanguard Group, Inc., a Pennsylvania investment entity affiliated with several telecommunications entities, will hold a 10.8% voting interest in the Licensees because it holds an 11.2% of DigitalBridge's issued and outstanding Class A common stock. *Id.* and Sept. 15 Supplement at 1-2 and Exh. A (currently known FCC Regulated Businesses in which The Vanguard Group, Inc. holds 10% or greater Interest, pursuant to Sec SC 13G/A & 13F-HR filings).

with Zayo Group, LLC (Zayo), which is authorized to provide competitive telecommunications services in the District of Columbia and every state except Alaska.²³

Pursuant to terms of the proposed Transaction, DigitalBridge, through DBOC and DigitalBridge Investment Holdco, LLC (DBIH), a Delaware limited liability company and a wholly-owned subsidiary of DBOC, entered into an Equity Purchase Agreement (Agreement) with AMP Group Holdings Limited and AMP Holdings whereby DBOC will acquire “certain interests comprising [AMP Holdings’] global infrastructure equity investment management business.”²⁴ Prior to completion of the proposed Transaction, DBIH will assign its right to acquire a 100% ownership interest in AMP Capital Investors (GIF II GP) S.à.r.l. to DB Puma, and, accordingly, pursuant to this Agreement, DB Puma will acquire from Transferor a 100% ownership interest in AMP Capital Investors (GIF II GP) S.à.r.l.²⁵ Applicants state that “upon completion, [DB Puma] will have ownership and control of AMP Capital Investors (GIF II GP) S.à.r.l. and will therefore have voting control of Licensees. Following the Transaction, Licensees will remain under the indirect voting control of AMP Capital Investors (GIF II GP) S.à.r.l., the general partner of Midwest Fiber Holdings LP, the Management-Owned Vehicle, and GIF II, and will continue to be indirect, wholly-owned subsidiaries of Midwest Fiber Holdings LP which has its equity interests 100% owned by GIF II and the Management-Owned Vehicle.”²⁶

Foreign Ownership Ruling

In 2021, the Commission issued a foreign ownership ruling to Everstream Solutions,²⁷ finding that the public interest would not be served by prohibiting direct and indirect foreign ownership of Midwest in excess of the 25% benchmarks in section 310(b)(4) of the Act.²⁸ The 2021 Ruling authorized 100% aggregate indirect foreign ownership of Midwest, as the controlling U.S. parent of Everstream Solutions.²⁹ It also granted specific approval for indirect foreign equity and/or voting interests in Midwest by five Luxemburg entities: (1) AMP Capital Global Infrastructure Funds II A LP (GIF II A Fund) (7.26% equity and voting) (Luxembourg), (2) AMP Capital Global Infrastructure Funds II B LP (GIF II B Fund) (45.12% equity and voting) (Luxembourg), (3) AMP Capital Global Infrastructure Funds II C LP (GIF II C Fund) (26.12% equity and voting) (Luxembourg), and (4) AMP Capital Global Infrastructure Funds II E LP (GIF II E Fund) (13.33% equity and voting) (Luxembourg) (collectively, “GIF II”); and (5) AMP Capital Investors (GIF II GP) S.à.r.l (0% equity; 100% voting) (Luxembourg).³⁰ The 2021 Ruling also granted specific approval for indirect foreign equity and/or voting interests by five Australian entities: (1) AMP Capital Investors International Holdings Ltd. (0% equity; 100% voting)

²³ Application at 17. Zayo also provides wireless backhaul services in multiple states and also indirectly holds Electric Lightwave, LLC, which provides competitive telecommunications services to business and carrier customers in multiple states, and Education Networks of America, Inc., which provides telecommunications services to rural healthcare and school districts in the U.S. *Id.* at 17-20.

²⁴ *Id.* at 5.

²⁵ *Id.*

²⁶ *Id.* at 6.

²⁷ Everstream Solutions holds 336 common carrier fixed point-to-point microwave licenses. Restated Petition at Exh. E.

²⁸ See Section 214 Application Granted For The Acquisition Of Certain Assets Of The Peg Bandwidth Entities, Southern Light, LLC, And Uniti Fiber LLC By Everstream Solutions LLC, WC Docket No. 20-359; Petition for Declaratory Ruling Granted ISP-PDR-20201102-00012, Public Notice, 36 FCC Rcd 8505 (WCB/IB 2021) (2021 Ruling).

²⁹ *Id.*

³⁰ *Id.*

(Australia), (2) AMP Capital Holdings Ltd. (0% equity; 100% voting) (Australia),³¹ (3) AMP Holdings Ltd. (0% equity; 100% voting) (Australia), (4) AMP Group Holdings Ltd. (0% equity; 100% voting) (Australia), and (5) AMP Limited (0% equity; 100% voting) (Australia).³²

According to the 1.5004(f) letter, while preparing the Petition, Everstream Solutions uncovered an inadvertent calculation error which resulted in it no longer being in compliance with the 2021 Ruling.³³ Specifically, Petitioner states that the equity interests held in GIF II US Aggregator LP, a Delaware limited partnership and indirect owner of Midwest, were divided among the four Luxembourg entities referred to as GIF II.³⁴ But, the equity interest in GIF II US Aggregator LP should have been divided among only three of the Luxembourg entities in GIF II, and should have not included GIF II A Fund which holds a 7.36% equity interest in Midwest Fiber Intermediate US LP, a Delaware limited partner, and not in GIF II US Aggregator LP.³⁵ According to the Restated Petition, the correct ownership in GIF II US Aggregator LP is: (1) GIF II B Fund (53.36% equity and voting); (2) GIF II C Fund (30.88% equity and voting); and (3) GIF II E Fund (15.76% equity and voting).³⁶ As a result, the indirect foreign equity and voting interests held by each of the three Luxembourg entities in Midwest are slightly higher than approved in the 2021 Ruling: (1) GIF II B Fund - 48.69% (rather than 45.12%); (2) GIF II C Fund - 28.18% (rather than 26.12%); and (3) GIF II E Fund - 14.38% (rather than 13.33%).³⁷

According to the Restated Petition, AMP Holdings is selling its 100% ownership interest in GIF II GP to DP Puma, resulting in a change in the voting control of Everstream Solutions.³⁸ As a result, Everstream Solutions will continue to be an indirectly, wholly-owned subsidiary of Midwest and Midwest Fiber Holdings LP, which will remain indirectly owned by GIF II, the four limited partnerships organized in Luxembourg, with a 1.5% ownership interest held by Midwest Fiber Management LP. Petitioner states that as a result of the Transaction, the previously approved Australian entities will transfer their interests to DigitalBridge Group, Inc. (DigitalBridge), a U.S. corporation, through four U.S. subsidiaries formed in Delaware: DB Puma GIF II GP HoldCo, LLC, DB Puma GP Holdings, LLC, DB Puma Master Holdco, LLC, and DigitalBridge Operating Company, LLC.³⁹ Petitioner states that DigitalBridge has only a single 5% or greater non-U.S. investor, Wafra Strategic Holdings LP (Wafra).⁴⁰ Wafra is beneficially owned by

³¹ Petitioner states that in February of 2022, AMP Capital Holdings Ltd. changed its name to Collimate Capital Ltd. Restated Petition at Exh. C at 1.

³² 2021 Ruling.

³³ 1.5004 Letter at 1.

³⁴ *Id.* at 2.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* at 1-2.

³⁸ Restated Petition at 3-4.

³⁹ *Id.*

⁴⁰ *Id.* at 4 n.6 (stating that “Wafra, a Bermuda limited partnership, holds 14,435,400 shares of DigitalBridge Class A common stock, equating to approximately 8.8% of the Class A common stock (and 8.5% of the voting rights in DigitalBridge). In addition, Wafra holds unexercised warrants to acquire 6,690,000 shares of Class A common stock. DigitalBridge has the option to settle the exercise of such warrants in cash in lieu of issuing additional shares if issuing additional shares would result in Wafra owning more than 9.8% of the Class A common stock. Wafra is a passive investor, has no governance or veto rights, and reports its ownership of Class A common stock and warrants on Schedule 13G per Rule 13d-1(c), which expressly requires the absence of any purpose of changing or influencing the control of DigitalBridge.”); *see also id.* at Exh. F.

the Public Institution for Social Security (Public Institution), which is an autonomous agency controlled by the State of Kuwait.⁴¹

Petitioner requests approval of up to an aggregate 100% indirect foreign equity and voting interest in Everstream Solutions' controlling U.S. parent, Midwest.⁴² Pursuant to section 1.5001(i) of the Commission's rules, Petitioner requests that the Commission specifically approve foreign equity and/or voting interests that, upon completion of the Transaction, would be indirectly held in Midwest by foreign-organized entities as follows:⁴³

AMP Capital Global Infrastructure Fund II A LP SCSp (7.25% equity and 7.25% voting) (Luxemburg);
AMP Capital Global Infrastructure Fund II B LP SCSp (48.69% equity and 48.69% voting) (Luxemburg);
AMP Capital Global Infrastructure Fund II C LP SCSp (28.18% equity and 28.18% voting) (Luxemburg);
AMP Capital Global Infrastructure Fund II E LP SCSp (14.38% equity and 14.38% voting) (Luxemburg); and
AMP Capital Investors (GIF II GP) S.à.r.l (100% voting and 0% equity) (Luxemburg).

Petitioner contends that Wafra and Public Institution should be treated as institutional investors under section 1.5001(i)(3)(ii)(A) of the Commission's rules, and therefore, should not require specific approval.⁴⁴ According to the Restated Petition, Wafra indirectly holds 8.5% voting interest and 0.22%

⁴¹ Restated Petition at 4 n.2; *id.* at Exh. F.

⁴² *Id.* at 2.

⁴³ *Id.* at Exh. D.

⁴⁴ 47 CFR § 1.5001(i)(3). In the alternative, Petitioner requested specific approval for: Wafra Strategic Holdings LP (8.5% voting and 0.22% equity) (Bermuda); and The Public Institution for Social Security (8.5% voting and 0.22% equity) (Kuwait). Restated Petition at Exh. D. On October 4, 2022, Petitioner filed multiple supplements in support of its contention that Wafra and Public Institution should be regarded as passive institutional investors: Letter from Danielle Burt, Russell Blau, and Leetal Weiss, counsel to Everstream Solutions LLC, to Marlene H. Dortch, Secretary, FCC, IBFS File No. ISP-PDR- 20220725-00007 (filed Oct. 04, 2022) (October 4, 2022 Filings Cover Letter) (summarizing the information and materials provided related to DigitalBridge and reasons why such information and material are relevant to Wafra Strategic Holdings LP and The Public Institution for Social Security being passive investors); Certified Maryland Corporate Charter for DigitalBridge from Danielle Burt, Russell Blau, and Leetal Weiss, counsel to Everstream Solutions LLC, to Marlene H. Dortch, Secretary, FCC, IBFS File No. ISP-PDR- 20220725-00007 (filed Oct. 04, 2022) (DigitalBridge Charter) (providing confirmation that DigitalBridge is a Maryland corporation with customary shareholder rights for holders of Class A Common Stock, including generally one vote per share); Articles of Amendment to DigitalBridge Charter filed by Danielle Burt, Russell Blau, and Leetal Weiss, counsel to Everstream Solutions LLC, to Marlene H. Dortch, Secretary, FCC, IBFS File No. ISP-PDR- 20220725-00007 (filed Oct. 04, 2022) (DigitalBridge Charter Amendment) (providing information regarding the August 2022 amendment to the charter which resulted in four-to-one reverse stock-split such that four shares of DigitalBridge Class A Common Stock were combined into a single share); Agreement of Purchase and Sale by and among DigitalBridge Digital IM Holdco, LLC, Wafra Strategic Holdings LP, et al. from Danielle Burt, Russell Blau, and Leetal Weiss, counsel to Everstream Solutions LLC, to Marlene H. Dortch, Secretary, FCC, IBFS File No. ISP-PDR- 20220725-00007 (filed Oct. 04, 2022) (DigitalBridge Purchase Agreement) (providing information the Purchase Agreement describes how Wafra Strategic Holdings LP and its affiliated entities acquired its current interest in DigitalBridge); DigitalBridge 13G Filing from Danielle Burt, Russell Blau, and Leetal Weiss, counsel to Everstream Solutions LLC, to Marlene H. Dortch, Secretary, FCC, IBFS File No. ISP-PDR- 20220725-00007 (filed Oct. 04, 2022) (DigitalBridge Schedule 13G Filing) (providing the latest Schedule 13G that was filed by DigitalBridge with the Securities and Exchange Commission on May 22, 2022. The Schedule 13G filing shows that both Wafra and Public Institution filed a Schedule 13G pursuant to section 13d-1(c) of SEC's rules); Amended and Restated Class A Common Stock Purchase Warrant from Danielle Burt, Russell Blau, and Leetal Weiss, counsel to

(continued....)

equity interest into Midwest, and Public Institution also indirectly holds 8.5% voting and 0.22% equity interest into Midwest.⁴⁵

Pursuant to section 310(b)(4) of the Act, the Commission requires common carrier licensees to identify and request specific approval for any foreign individual, entity, or group of foreign individuals or entities that holds or would hold directly, or indirectly through one or more intervening U.S. or foreign organized entities, more than 5% of the U.S. parent's total outstanding voting or equity interest, or a controlling interest in the U.S. parent.⁴⁶ In certain limited circumstances, the Commission requires specific approval of a foreign individual's or entity's non-controlling interest only when it would exceed, directly or indirectly, 10% of the equity and/or voting interest in a U.S. parent.⁴⁷ With respect to the exemption, Section 1.5001(i)(3)(ii)(A) of the Commission's rules states that the Commission will presume such criterion is satisfied "[w]here the petitioning applicant or licensee, controlling U.S. parent, or entity holding a direct or indirect equity and/or voting interest in the applicant/licensee or U.S. parent is a 'public company' as defined in § 1.5000(d)(9), provided that the foreign holder is an institutional investor that is eligible to report its beneficial ownership interests in the company's voting, equity securities in excess of 5 percent (not to exceed 10 percent) pursuant to Exchange Act Rule 13d-1(b), 17 CFR 240.13d-1(b), or a substantially comparable foreign law or regulation."⁴⁸

Petitioner provided information and materials regarding DigitalBridge, a publicly traded company,⁴⁹ in support of the argument that the investments of Wafra and Public Institution should be

Everstream Solutions LLC, to Marlene H. Dortch, Secretary, FCC, IBFS File No. ISP-PDR- 20220725-00007 (filed Oct. 04, 2022) (DigitalBridge Class A Common Stock Purchase Warrant) (describing the five sets of Warrants held by Wafra and conveying that "[t]o the extent that any proposed exercise of one or more Warrants would result in Wafra 'beneficially owning in excess of 9.8% of the issued and outstanding shares of Common Stock within the meaning of Section 13(d) of the Exchange Act, the Company may elect to settle, in whole or in part, the exercise of this Warrant through payment of cash' . . ." and stating that "[a]long with other provisions, this language effectively enables DigitalBridge to limit any Wafra interest through its exercise of the Warrants to less than 10 percent of DigitalBridge"). On October 20, 2022 Petitioner filed a supplement to the October 4, 2022 filings. Letter from Danielle Burt, Russell Blau, and Leetal Weiss, counsel to Everstream Solutions LLC, to Marlene H. Dortch, Secretary, FCC, IBFS File No. ISP-PDR- 20220725-00007 (filed Oct. 20, 2022) (October 20, 2022 Letter) (summarizing relevant parts of the seven supplements that were filed on October 4, 2020 and providing a declaration signed under the penalty of perjury by Ronald M. Sanders, the Executive Vice President, Chief Legal Officer, and Secretary of DigitalBridge).

⁴⁵ Restated Petition at Exh. D.

⁴⁶ 47 CFR § 1.5001(i). *Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, IB Docket No. 11-133, Second Report and Order, 28 FCC Rcd 5741, 5767, para. 47 (2013) (*2013 Foreign Ownership Second Report and Order*); see also *Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended, Report and Order*, GN Docket No. 15-236, Report and Order, 31 FCC Rcd 11272 (2016) (*2016 Foreign Ownership Order*).

⁴⁷ Specifically, a foreign investment is exempt from specific approval requirements where (i) the foreign interest is no more than 10 percent of the equity and/or voting interests of the U.S. parent or the petitioning applicant or licensee; and (ii) "the foreign individual or entity does not hold, and would not hold, a controlling interest in the petitioner or any controlling parent company, does not plan or intend to change or influence control of the petitioner or any controlling parent company, does not possess or develop any such purpose, and does not take any action having such purpose or effect." 47 CFR § 1.5001(i)(3); *2013 Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5768-79, paras. 48-68.

⁴⁸ 47 CFR § 1.5001(i)(3)(ii)(A).

⁴⁹ DigitalBridge is a publicly traded U.S. corporation (NYSE: DBRG) in accordance with section 1.5000(d)(9) of the Commission's rules. Restated Petition at 2; 47 CFR § 1.5000(d)(9).

considered exempt under 1.5001(i)(3)(ii)(A) of the Commission’s rules.⁵⁰ Specifically, Petitioner filed multiple supplements to demonstrate the passive nature of the investments. The DigitalBridge Class A Common Stock Purchase Warrant states that the “[w]arrant does not entitle the Registered Holder to (a) receive dividends or other distributions, (b) consent to any action of the stockholders of the Company, (c) receive notice of or vote at any meeting of the stockholders, (d) receive notice of any other proceedings of the Company or (e) exercise any other rights whatsoever, in any such case, as a stockholder of the Company.”⁵¹ Petitioner states that both Wafra and Public Institution reported their beneficial ownership interest to the Securities and Exchange Commission (SEC) on Schedule 13G pursuant to SEC’s rules.⁵² In general, the SEC rules require that beneficial ownership interests be reported by filing a Schedule 13D with the SEC.⁵³ However, the SEC permits certain beneficial ownership interests to be filed under a Schedule 13G, a short-form statement, in lieu of a Schedule 13D filing.⁵⁴ To be eligible to file a Schedule 13G, the SEC requires that a person “has not acquired the securities with any purpose, or with the effect, of changing or influencing the control of the issuer, or in connection with or as a participant in any transaction having that purpose or effect” along with certain other requirements specific to each rule.⁵⁵

⁵⁰ See October 4, 2022 Filings Cover Letter; DigitalBridge Charter; DigitalBridge Charter Amendment; DigitalBridge Purchase Agreement; DigitalBridge Schedule 13G Filing; Wafra Class A Common Stock Purchase Warrant; and October 20, 2022 Letter.

⁵¹ DigitalBridge Class A Common Stock Purchase Warrant at 11, para. 12; *see also id.* at 4-5, para. 1(g) (stating that “Registered Holder or any of its Affiliates shall not have the right to exercise any portion of this Warrant or any Other Warrant pursuant to Section 1 hereof or otherwise, to the extent that after giving effect to such issuance after exercise as set forth on the applicable Exercise Notice, the Registered Holder (together with -5- the Registered Holder’s Affiliates, and any other Persons acting as a group together with the Registered Holder or any of the Registered Holder’s Affiliates), would beneficially own in excess of the Beneficial Ownership Limitation. For purposes of this Section 1(g), beneficial ownership shall be calculated in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) and the rules and regulations promulgated thereunder, it being acknowledged and agreed by the Registered Holder that the Company makes no representation to the Registered Holder that such calculation is in compliance with Section 13(d) of the Exchange Act, and that the Registered Holder shall be solely responsible for any schedules required to be filed in accordance therewith.”) On August 18, 2022, DigitalBridge filed articles of amendment to its charter with the Maryland secretary of state, which resulted in four-to-one reverse stock-split such that four shares of DigitalBridge Class A Common Stock were combined into a single share. *See* DigitalBridge Charter Amendment. The DigitalBridge Class A Common Stock Purchase Warrant states “[i]f the Company shall at any time or from time to time after the date on which this Warrant was first issued (or, if this Warrant was issued upon partial exercise of, or in replacement of, another warrant of like tenor, then the date on which such original warrant was first issued) (the “Original Issue Date”) effect a subdivision of the outstanding shares of Common Stock or a distribution or dividend in respect of the Common Stock payable in shares of Common Stock or Common Stock Equivalents, the Purchase Price then in effect immediately before that subdivision or dividend, as applicable, shall be proportionately decreased and the number of Warrant Shares shall be proportionately increased.” DigitalBridge Class A Common Stock Purchase Warrant at 6, para. 2(a).

⁵² Restated Petition at Exh. F at 3. In general, section 13(d) of the Exchange Act requires a person or “group” that becomes, directly or indirectly, the “beneficial owner” of more than five percent of a class of equity securities registered under section 12 of the Exchange Act to report the acquisition to the SEC. 17 CFR § 240.13d-1(c). While the reporting requirements are expressly intended for the protection of a company’s shareholders and for the informational purposes of issuers and participants in the stock market generally, the FCC takes these filings into consideration as they are directed at identifying interests with the potential for significant influence or control. *2013 Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5770-71, para. 53.

⁵³ 17 CFR § 240.13d-1.

⁵⁴ *Id.*; 17 CFR § 240.13d-102; 17 CFR § 240.13d-101.

⁵⁵ 17 CFR § 240.13d-1(b)(1)(i); 17 CFR § 240.13d-1(c)(1). Under section 240.13d-1(g), any person who has reported pursuant to Schedule 13G or has become obligated to report on Schedule 13G but “thereafter ceases to be a person specified in paragraph (b)(1)(ii) of this section or determines that it no longer has acquired or holds the

(continued....)

While the Commission presumes that criterion for an exemption from specific approval requirements is satisfied when, among other things, the foreign holder is eligible to report its beneficial ownership interests pursuant to Exchange Act Rule 13d-1(b), 17 CFR 240.13d-1(b), Wafra reported its beneficial ownership interests pursuant to Exchange Act Rule 13d-1(c), 17 CFR 240.13d-1(c). Petitioner contends that Wafra’s “Rule 13d-1(c) attestation of passive intent is consistent with the plain text and intent of the second prong of the exemption from specific approval in Section 1.5001(i)(3) of the Commission’s Rules, as well as closely tracking similar ‘passive intent’ language under SEC Rule 13d-1(b).”⁵⁶

In addition, Petitioner submitted supplements in support of the argument that Wafra and Public Institution are institutional in nature even though both reported their beneficial ownership filings pursuant to section 13d-1(c) of the SEC rules. Wafra has confirmed that it is “the type of SEC-registered investment advisory eligible to use paragraph (b) under SEC Rule 13d-1.”⁵⁷ However, Petitioner asserts that Wafra did not file a Schedule 13G pursuant to SEC Rule 13d-1(b) because, “certain of its affiliates who are also deemed to beneficially own the shares of DigitalBridge Group, Inc., Class A common stock” are not such regulated entities.⁵⁸ Furthermore, Petitioner states that “[a]lthough the [Public] Institution is not a type of institutional investor that falls within one of the categories enumerated in clause (ii) of Rule 13d-1(b), the [Public] Institution bears important similarities to these organizations.”⁵⁹ Specifically, Petitioner states that Public Institution “was established to be the competent authority to provide sustainable insurance and social services, ensuring a decent living for citizens working in the country and abroad after retirement or work stoppage,”⁶⁰ and further explains that Public Institution “has a professional investment team at Wafra and maintains a broadly diversified multi-asset portfolio designed to deliver optimized risk-adjusted returns to meet the Institution’s long-term funding obligations.”⁶¹

securities in the ordinary course of business shall immediately become subject to § 240.13d-1(a) or § 240.13d-1(c) (if the person satisfies the requirements specified in § 240.13d-1(c)), and §§ 240.13d-2 (a), (b) or (d), and shall file, within 10 days thereafter, a statement on Schedule 13D (§ 240.13d-101) or amendment to Schedule 13G, as applicable, if the person is a beneficial owner at that time of more than five percent of the class of equity securities.” 17 CFR § 240.13d-1(g).

⁵⁶ October 4, 2022 Filings Cover Letter at 2.

⁵⁷ October 20, 2022 Letter at 2 and n.1 (citing email from Wafra sent Friday, Oct. 17, 2022).

⁵⁸ *Id.*

⁵⁹ Restated Petition at Exh. F at 2.

⁶⁰ According to the October 20, 2022 Letter, “[a]s set forth on the [Public] Institution’s website: ‘The Public Institution for Social Security was established to undertake the implementation of the system issued by it in accordance with Article 11 of the Kuwaiti constitution that states ‘the state guarantees aid to citizens in old age, sickness, or inability to work. It also provides them with social security services, social aid and health care.’” October 20, 2022 Letter at 3. The October 20, 2022 Letter refers to a website that states “[a]s of March 2019, the number of insured persons reached approximately 382,000 individuals, and the number of pensioners was approximately 149,000, while the number of the heirs of the retired pensioners was approximately 88,000, bringing the total to approximately 619,000 beneficiaries of Kuwait’s social security system. The total amount paid to various beneficiaries and retirees in the last five years up to December 2019 was approximately KD 8.44 billion.” *See id.* at 3, n.3 (citing <https://www.pifss.gov.kw/sites/En/pages/abouttaminat/ourjourney.aspx> (last viewed on Jan. 27, 2022)).

⁶¹ Restated Petition at Exh. F at 2. The October 20, 2022 Letter also states “[i]n addition to its self-declared mission as a public pension fund, the market also commonly views the [Public] Institution as a public pension fund and institutional investor. News reports further confirm that the [Public] Institution is a pension fund and institutional investor of the sort commonly treated as institutional investors by the Commission. For example, in October 2022, Pensions & Investments noted how the [Public] Institution is a member of a ‘consortium of institutional asset owners’ (i.e., Capital Constellation, also founded by Wafra), along with such institutional investors as the New York State Common Retirement Fund, the Third Swedish National Pension Fund, the Canada Pension Plan Investment Board, Toronto, and Railpen, a U.K. pension fund.” October 20, 2022 Letter at 3 (citing

(continued...)

We find that Wafra and Public Institution have made a sufficient showing that both should be treated in a similar manner to passive institutional investors pursuant to section 1.5001(i)(3)(ii)(A) of the Commission's rules.⁶² Since both Wafra and Public Institution's equity and voting interests fall below 10%, we find, based on Petitioner's showing, both entities to be exempt from specific approval under the 5% rule.⁶³ Although we have found that Wafra and Public Institution should be treated in a similar manner to passive institutional investors with respect to the exemption set forth in section 1.5001(i)(3)(ii)(A) of the Commission's rules, we note that a petition for declaratory ruling must be filed and specific approval must be sought and granted in accordance with the section 310(b)(4) of the Act and section 1.5001(i) of the Commission's rules prior to Wafra and/or Public Institution's equity and/or voting interests into Midwest rising above 10%.⁶⁴

We find that public interest would not be served by prohibiting foreign ownership of Midwest in excess of the 25% benchmarks in section 310(b)(4) of the Act. We, therefore, grant the Petition subject to the conditions set out herein. This ruling authorizes 100% aggregate foreign ownership of Midwest, as the controlling U.S. parent of Everstream Solutions, subject to the terms and conditions set forth in section 1.5004 of the Commission's rules including the requirement to obtain Commission approval before foreign ownership of Midwest exceeds the terms and conditions of this ruling.⁶⁵ Specifically, pursuant to section 1.5001(i) of the rules,⁶⁶ we grant Petitioner's request to permit the above listed foreign-organized entities to hold, directly and/or indirectly, equity and/or voting interests in Everstream Solutions' controlling U.S. parent, Midwest. Pursuant to section 1.5001(k) of the Commission's rules, this ruling also grants advance approval for AMP Capital Global Infrastructure Fund II A LP SCSp, AMP Capital Global Infrastructure Fund II B LP SCSp, AMP Capital Global Infrastructure Fund II C LP SCSp, and AMP Capital Global Infrastructure Fund II E LP SCSp to acquire up to a non-controlling 49.99% indirect equity and/or voting interest in Midwest and for AMP Capital Investors (GIF II GP) S.à.r.l to acquire up to a 100% voting interest and 49.99% equity interest in Midwest.

Midwest has an affirmative duty to monitor its foreign equity and voting interests, calculate these

<https://www.swfinstitute.org/profile/598cdaa60124e9fd2d05bc39b> (last viewed Jan. 27, 2023) (description of Institution from Sovereign Wealth Fund Institute, which, per FactSet, is "a global organization designed to study sovereign wealth funds, pensions, endowments, superannuation funds, central banks and other long-term institutional investors in the areas of investing, asset allocation, risk, governance, economics, policy, trade, and other relevant issues.") and Palash Ghosh, "Canada Pension Plan joins Constellation consortium, "Pensions & Investments (Oct. 12, 2022) (last viewed on Jan. 27, 2023, at <https://www.pionline.com/alternatives/canada-pension-plan-joins-constellation-consortium>)).

⁶² Petitioner also presented an alternative assertion stating that the Commission should find that Wafra and Public Institution are exempt under the plain text reading of section 1.5001(i)(3)(i) and 1.5001(i)(3)(ii) of the Commissioner's rules. Restated Petition at Exh. F at 1. Because Petitioner has made a sufficient showing that Wafra and Public Institution should be treated in a similar manner to passive institutional investors pursuant to section 1.5001(i)(3)(ii)(A) of the Commission's rules, it is not necessary to make a finding on the Petitioner's assertions under section 1.5001(i)(3)(i) and 1.5001(i)(3)(ii) of the Commission's rules.

⁶³ Because we have not granted Wafra and Public Institution specific approval, we also deny their request for advance approval. Restated Petition at Exh. D.

⁶⁴ 47 U.S.C. § 310(b)(4); 47 CFR § 1.5001(i); *see also 2013 Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5777-79, para. 67 (stating "[a] petitioner that relies on the ten percent exception for purposes of determining its direct or indirect foreign investors that require identification and specific approval will need to file a new petition for prior approval if, after grant of its initial ruling, a previously unapproved foreign investor would no longer qualify for the ten percent exception").

⁶⁵ 47 CFR § 1.5004.

⁶⁶ 47 CFR § 1.5001(i).

interests consistent with the principles enunciated by the Commission, including the standards and criteria set forth in sections 1.5002 through 1.5003 of the Commission's rules, and otherwise ensure continuing compliance with the provisions of section 310(b) of the Act.⁶⁷

Executive Branch Review

Under our rules and procedures, the Commission will generally refer applications regarding an international section 214 authorization and petitions for section 310(b) foreign ownership rulings for common carrier wireless applicants and licensees and all the associated applications to the Executive Branch agencies (Agencies) for their views on any national security, law enforcement, foreign policy, or trade policy concerns related to the foreign ownership of the Applicants/Petitioner.⁶⁸ We have exercised our discretion and did not formally refer either the domestic and international section 214 transfer of control applications or the Petition to the Agencies because the only reportable foreign ownership in Everstream Solutions and its affiliates will be through wholly-owned intermediate holding companies and the ultimate ownership and control is held by U.S. citizens or entities.⁶⁹ Although we did not formally refer the Application, International 214 Applications, and Petition, per standard practice we provided a courtesy copy of the public notices to the Agencies.⁷⁰

Grant of Applications and Petitions for Declaratory Ruling

We find, upon consideration of the record, that granting the domestic and international section 214 applications for the proposed transfer of control will serve the public interest, convenience, and necessity.⁷¹ We also find that the public interest would not be served by prohibiting the foreign ownership of Midwest, the controlling U.S. parent of Everstream Solutions in excess of the 25% benchmarks in section 310(b)(4) of the Act. The Application, International 214 Applications, and Petition are granted as set out in this Public Notice. Further, grant of the Application, International 214 Applications, and Petition are without prejudice to any enforcement action by the Commission for non-compliance with the Act or the Commission's rules and without prejudice to Commission action on other related, pending applications or petitions.

Pursuant to sections 4(i)-(j), 214(a), 214(c), 303(r) and 310(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i)-(j), 214(a), 214(c), 303(r), 310(b), and sections 1.5001-04, and 63.03-04, 63.18, 63.24 of the Commission's rules, 47 CFR §§ 1.5001-04, 63.03-04, 63.18, 63.24, and pursuant to the authority delegated under sections 0.51, 0.91, 0.261, and 0.291 of the Commission's rules, 47 CFR §§ 0.51, 0.91, 0.261, and 0.291, we grant the Application, International 214 Applications, and Petition as conditioned in this Public Notice. Grant of the applications and the ruling is without prejudice

⁶⁷ 47 CFR §§ 1.5002-1.5003; 47 CFR § 1.5004, Note to paragraph (a).

⁶⁸ See *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, para. 24 (2020) (*Executive Branch Review Process Order*); 47 CFR § 1.40001(a)(1).

⁶⁹ See *Executive Branch Review Process Order*, 35 FCC Rcd at paras. 30, 32.

⁷⁰ *WCB Public Notice* at 3-4; *IB Public Notice* at 5-8; see also *Executive Branch Review Process Order*, 35 FCC Rcd at 10939, para 30 n.81.

⁷¹ See 47 U.S.C. § 214(a); 47 CFR § 63.03; see also, e.g., *Applications of Level 3 Communications, Inc. and CenturyLink, Inc. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 32 FCC Rcd 9581, 9594, 9605, paras. 26 and 52 (2017) (finding no harm to competition in areas where both applicants operate as competitive local exchange carriers (LECs), and further finding that the transaction "will expand the on-net reach of the newly combined firm resulting in a more effective and stronger competitor against larger cable and incumbent LEC competitors, among others, particularly outside of Century Link's incumbent LEC region, where it, like Level 3, operates as a competitive LEC").

to the Commission's action on any other related pending application(s) or petition(s).

Pursuant to section 1.103 of the Commission's rules, 47 CFR § 1.103, the consent granted herein is effective upon the release of this Public Notice. 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 Dennis Johnson, Wireline Competition Bureau, (202) 418-0809 or Fara Mohsenikolour, International Bureau, (202) 418-1429.

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