



PUBLIC NOTICE

Federal Communications Commission
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DA 21-576
May 14, 2021

**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**

By this Public Notice, the Wireline Competition Bureau grants the application filed by PEG Bandwidth DE, LLC, PEG Bandwidth MD, LLC, PEG Bandwidth NJ, LLC, PEG Bandwidth NY Telephone Corp., PEG Bandwidth PA, LLC, PEG Bandwidth TX, LLC, PEG Bandwidth VA, LLC, Southern Light, LLC, and Uniti Fiber LLC (collectively, Transferors) and Everstream Solutions LLC (Everstream Solutions) (collectively, Applicants), pursuant to section 214 of the Communications Act of 1934, as amended (the Act),¹ and sections 63.03-04 of the Commission's rules, to transfer certain customer contracts and telecommunications assets (Transferring Assets) from the Transferors to Everstream Solutions (the Transaction).² The International Bureau (together with the Wireline Competition Bureau, Bureaus) grants a petition filed by Everstream Solutions for declaratory ruling (Petition) to permit foreign investment in the Transferring Assets above the 25% benchmarks in section 310(b)(4) of the Act and section 1.5000(a)(1) of the Commission's rules.³

¹ See 47 U.S.C. § 214. Application to Transfer Certain Assets of PEG Bandwidth DE, et al. to Everstream Solutions LLC, WC Docket No. 20-359 (filed Nov. 2, 2020) (Application). Applicants filed a supplement to the Application on November 19, 2020. Letter from Danielle Burt, Counsel for Applicants, to Marlene H. Dortch, Secretary, FCC, WC Docket 20-359 (dated Nov. 19, 2020) (Supplement).

² 47 CFR §§ 63.03-04.

³ 47 U.S.C. § 310(b)(4); 47 CFR § 1.5000(a)(1). Everstream Solutions LLC, Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as amended, File No. ISP-PDR-20201102-00012 (filed Nov. 2, 2020) (Petition). As referenced in Attachment A to the Public Notice, Applicants have filed a domestic section 214 application and the Petition. Applicants filed the Petition in connection with their separately filed application to assign certain microwave licenses from Uniti Fiber LLC to Everstream Solutions. *Wireless Telecommunications Bureau, Assignment of License Authorization Applications, et al.*, Report Number 15435, Public Notice, File Number 0009280198 (rel. Nov. 12, 2020). See Application at 27. Action in this Public Notice is without prejudice to Commission action on other related, pending applications.

On November 20, 2020, the Bureaus released a public notice seeking comment on the Application and Petition.⁴ The Bureaus did not receive comments or petitions in opposition to the Application or Petition. On April 23, 2021, the National Telecommunications and Information Administration (NTIA), on behalf of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee), filed a letter stating that the Committee has reviewed the Application and Petition and has no recommendation at this time to the Commission approving them and no objection to the Commission granting them.⁵

Applicants

The Transferors are subsidiaries of Uniti Group Inc. (Uniti Group, together with its subsidiaries, Uniti), a publicly traded real estate investment trust that provides telecommunications services through its subsidiaries.⁶

Everstream Solutions, an Ohio limited liability company, and its affiliates currently provide competitive intrastate telecommunications services in Ohio and Missouri.⁷ Everstream Solutions is a wholly owned subsidiary of Midwest Fiber Acquisition LLC (Midwest), a Delaware limited liability company. Midwest, through Everstream Solutions and its affiliates, has more than 10,000 route miles and comprehensive data center connectivity at 100 Gbps.⁸ Midwest is owned by Midwest Fiber Holdings LP, a Delaware limited partnership, and is ultimately indirectly owned by four limited partnerships organized in Luxembourg (AMP Capital Global Infrastructure Fund II A LP, AMP Capital Global Infrastructure Fund II B LP, AMP Capital Global Infrastructure Fund II C LP, and AMP Capital Global Infrastructure Fund II E LP) (collectively, GIF II),⁹ through a number of intermediate holding companies organized in the United States. The general partner of GIF II is AMP Capital Investors (GIF II GP) S.à.r.l., a Luxembourg company,¹⁰ which also is the general partner for Midwest and the intermediate U.S. holding companies in the ownership chain.¹¹ AMP Capital Investors (GIF II GP) S.à.r.l. is indirectly owned by AMP Capital Holdings Ltd. (AMP

⁴ *Applications Filed 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, Public Notice, 35 FCC Rcd 13082 (WCB/IB 2020) (2020 Public Notice).

⁵ Letter from Kathy Smith, Chief Counsel, National Telecommunications and Information Administration, to Tom Sullivan, Chief, International Bureau, FCC, WC Docket No. 20-359; ISP-PDR-20201102-00012 (dated Apr. 23, 2021) (No Objection Letter).

⁶ Application at 14.

⁷ *Id.* at 15, 26. Everstream Solutions is affiliated with Everstream GLC Holding Company LLC, which provides competitive telecommunications services in Illinois, Indiana, Michigan, and Wisconsin; Lynx Network Group, Inc., which provides competitive telecommunications services in Michigan; and HRS Internet, LLC, which provides competitive telecommunications services in Indiana. *Id.* Applicants state that neither they nor their affiliates provide dominant telecommunications services. *Id.* at 14 (citing 47 CFR § 63.03).

⁸ *Id.* at 16.

⁹ Between Midwest Fiber Holdings LP and GIF II, there are a number of intervening entities in the ownership chain (Midwest Fiber Intermediate US LP, Midwest Fiber Midco LP and GIF II US Aggregator LP). *Id.* at 16.

¹⁰ *Id.* GIF II GP is wholly owned by AMP Capital Investors International Holdings Ltd., which is an Australian entity. Petition Exh. A.

¹¹ Application at 16.

Capital), an Australian investment manager, which is a downstream subsidiary of AMP Limited, an Australian pension provider.¹²

Description of the Transaction

Pursuant to an Asset Purchase Agreement entered on October 20, 2020, Everstream Solutions will acquire from Transferors 25 customer contracts, including contracts to serve other carriers, cable companies, and enterprise customers located in the following states: Delaware, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, and West Virginia.¹³ The customer contracts include telecommunications equipment, certain microwave assets, and domestic fiber optic assets.¹⁴ Applicants state that the affected customers will continue to receive their services over the same facilities.¹⁵ Applicants further state that the Transferors will continue to offer service to other customers post-transaction.¹⁶

Statement of Public Interest

Applicants assert that a grant of the application would serve the public interest, convenience, and necessity and that Everstream Solutions will obtain valuable assets allowing it to provide facilities-based services on a competitive basis to consumers in several states.¹⁷ Applicants state that customers will continue to receive service from Everstream Solutions at the same rates, terms, and conditions as they currently receive.¹⁸

National Security, Law Enforcement, Foreign Policy, and Trade Policy Concerns

When analyzing a transfer of control or assignment application that includes foreign investment, we also consider public interest issues related to national security, law enforcement, foreign policy, or trade concerns.¹⁹ As part of our public interest analysis, the Commission

¹² AMP Limited has six directors; five are Australian citizens, and one is a Swiss/Italian citizen. Applicants state that no person or entity holds a 10% or greater interest in AMP Limited. *Id.* at 25. AMP Capital Holdings Ltd. is wholly owned by AMP Holdings Ltd., an Australian entity, which is wholly owned by AMP Group Holdings Ltd., also an Australian entity. AMP Group Holdings Ltd., in turn, is wholly owned by AMP Limited, an Australian entity. *See* Petition Exh. A.

¹³ *Id.* at 26, Supplement at 1.

¹⁴ Application. at 17, Supplement at 1.

¹⁵ Application at 17. Applicants note that Uniti is entering into two, 20-year IRUs with Everstream Solutions whereby Everstream Solutions will access Uniti-owned fiber and use the Transaction Assets in combination with its own equipment to operate such fiber assets. Supplement at 1.

¹⁶ Application at 17.

¹⁷ *Id.* at 18.

¹⁸ *Id.* at 17.

¹⁹ *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 (2020) (setting rules and procedures for referring applications for Executive Branch review consistent with Executive Order No. 13913) (*Executive Branch Review Order*); *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23918-21, paras. 59-66 (1997) (*Foreign Participation Order*), *recon. denied*, 15 FCC Rcd 18158 (2000) (in opening the U.S. telecommunications market to foreign entry in 1997, the Commission affirmed that it would consider national security, law enforcement, foreign policy, and trade policy concerns related to reportable foreign ownership as part of its overall public interest review of applications for international section 214 authority, submarine cable landing licenses, and

coordinates with the relevant Executive Branch agencies that have expertise in these particular issues.²⁰ The Commission accords deference to the expertise of these Executive Branch agencies in identifying issues related to national security, law enforcement, foreign policy, or trade policy concerns raised by the relevant Executive Branch agencies.²¹ The Commission, however, ultimately makes an independent decision on the application based on the record in the proceedings.²²

Pursuant to Commission practice, the Application and Petition was referred to the relevant Executive Branch agencies for their review of any national security, law enforcement, foreign policy, or trade policy concerns related to the foreign ownership of the Applicants.²³ On November 24, 2020, the Committee notified the Commission that it was reviewing the Application and Petition and requested that the Commission defer action on the Application and Petition.²⁴ We deferred action in response to this request from the Committee. On January 28, 2021, the Committee notified the Commission that the Applicants had provided complete responses to the Committee's initial questions and that the Committee was conducting an initial review to assess whether granting the Application and Petition would pose a risk to the national security or law enforcement interests of the United States.²⁵ On April 23, 2021, NTIA filed the No Objection Letter, which advised the Commission that the Committee has reviewed the Application and Petition and has no recommendation at this time and no objection to the Commission granting the Application and Petition.²⁶

declaratory rulings to exceed the foreign ownership benchmarks of section 310(b) of the Act). *See also Applications of T-Mobile US, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations, et al.*, WT Docket 18-197, Memorandum Opinion and Order, Declaratory Ruling, and Order of Proposed Modification, 34 FCC Rcd 10578, 10732-33, para. 349 (2019) (*T-Mobile/Sprint Order*).

²⁰ *See Executive Branch Review Order*, 35 FCC Rcd at 10935-36, paras. 17, 24.

²¹ *Id.* at 10930, para. 7 (citing *Foreign Participation Order*, 12 FCC Rcd at 23920-21, paras. 65-66; *Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States; Amendment of Section 25.131 of the Commission's Rules and Regulations to Eliminate the Licensing Requirement for Certain International Receive-Only Earth Stations*, IB Docket No. 96-111, CC Docket No 93-23, RM-7931, Report and Order, 12 FCC Rcd 24094, 24171-72, paras. 179, 182 (1997)). *See also T-Mobile/Sprint Order*, 34 FCC Rcd at 10733, paras. 349; *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, 31 FCC Rcd 11271, 11277, para. 6 (2016) (*2016 Foreign Ownership Order*), *Pet. for recon. dismissed*, 32 FCC Rcd 4780 (2017).

²² 47 CFR § 1.40001(b) (“The Commission will consider any recommendations from the [E]xecutive [B]ranch on pending application(s) . . . that may affect national security, law enforcement, foreign policy, and/or trade policy as part of its public interest analysis. The Commission will evaluate concerns raised by the [E]xecutive [B]ranch and will make an independent decision concerning the pending matter.”).

²³ *See 2020 Public Notice*, 35 FCC Rcd at 13085 (citing *Executive Branch Review Order*, 35 FCC Rcd at 10935-36, paras. 17, 24; *Foreign Participation Order*, 12 FCC Rcd 23891, 23191, paras. 61-63).

²⁴ Letter from Christine M. Quinn, Department of Justice, to Marlene H. Dortch, FCC, WC Docket No. 20-359; ISP-PDR-20201102-00012 (filed Nov. 24, 2020).

²⁵ Letter from Christine M. Quinn, Department of Justice, to Marlene H. Dortch, FCC, WC Docket No. 20-359; ISP-PDR-20201102-00012 (filed Jan. 28, 2021).

²⁶ No Objection Letter at 1.

Petition for Declaratory Ruling Under Section 310(b)(4)

Section 310(b)(4) of the Act establishes 25% benchmarks for investment by foreign individuals, governments, and corporations in the U.S.-organized entities that directly or indirectly control U.S. common carrier wireless licensees.²⁷ This section of the Act also grants the Commission discretion to allow higher levels of foreign ownership in a licensee's controlling U.S.-organized parent unless the Commission finds that the public interest would be served by refusing to permit such foreign ownership.²⁸ The Commission's public interest analysis under section 310(b)(4) also considers national security, law enforcement, foreign policy, or trade issues that may be raised by the foreign ownership.²⁹

Everstream Solutions (Petitioner) holds common carrier microwave licenses and therefore has filed a petition for declaratory ruling, pursuant to section 310(b)(4) of the Act and section 1.5000(a)(1) of the Commission's rules,³⁰ to permit post-closing foreign ownership of the proposed controlling U.S. parent, Midwest, to exceed the 25% benchmarks specified in section 310(b)(4) of the Act. Petitioner asserts that the proposed foreign ownership of Midwest would serve the public interest.³¹

According to the Petition, upon completion of the Transaction, Midwest would have aggregate indirect foreign equity and voting interests of 100%.³² Pursuant to section 1.5001(i) of the 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:

AMP Capital Global Infrastructure Funds II A LP (7.26% equity and voting) (Luxembourg);
AMP Capital Global Infrastructure Funds II B LP (45.12% equity and voting) (Luxembourg);
AMP Capital Global Infrastructure Funds II C LP (26.12% equity and voting) (Luxembourg);
AMP Capital Global Infrastructure Funds II E LP (13.33% equity and voting) (Luxembourg);
AMP Capital Investors (GIF II GP) S.à.r.l (0% equity; 100% voting) (Luxembourg);
AMP Capital Investors International Holdings Ltd. (0% equity; 100% voting) (Australia);
AMP Capital Holdings Ltd. (0% equity; 100% voting) (Australia);

²⁷ 47 U.S.C. § 310(b)(4) (“No broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license shall be granted to or held by . . . any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representatives thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.”).

²⁸ 47 U.S.C. § 310(b)(4). Under Commission's secondary market rules, spectrum lessees (and spectrum sublessees) providing common carrier service are subject to the same foreign ownership requirements that apply to common carrier licensees under section 310(a) and (b) of the Act. 47 CFR §§ 1.9020(d)(2)(ii), 1.9030(d)(2)(ii), 1.9035(e)(1).

²⁹ *T-Mobile/Sprint Order*, 34 FCC Rcd at 10736, para. 355; *Foreign Participation Order*, 12 FCC Rcd at 23918-21; *2016 Foreign Ownership Order*.

³⁰ 47 CFR § 1.5000(a)(1).

³¹ Petition Exh. B at 14-16.

³² Petition Exh. A at 13.

AMP Holdings Ltd. (0% equity; 100% voting) (Australia);
AMP Group Holdings Ltd. (0% equity; 100% voting) (Australia); and
AMP Limited (0% equity; 100% voting) (Australia).

We received no comments regarding foreign ownership, and, as discussed above, NTIA, on behalf of the Committee, advised the Commission that the Committee has no recommendation at this time to the Commission and has no objection to the Commission granting the Application and Petition.

Based on our review of the record, under section 310(b)(4) of the Act and the Commission's foreign ownership rules and policies, we find that the public interest would not be served by prohibiting foreign ownership of Midwest, the controlling U.S. parent, 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, first, 100% aggregate foreign ownership of Midwest, as the controlling U.S. parent of the licensees, subject to the terms and conditions set forth in section 1.5004 of the Commission's rules.³³ In addition, pursuant to section 1.5001(i) of the rules, we approve the foreign equity and voting interests that would be held in Midwest, the controlling U.S. parent, by each of the above-listed foreign entities and individuals in the amounts specified above. We note that Petitioner did not seek advance approval for any foreign persons or entities to increase their interests, at some future time, up to any amount, including 100% of the direct and/or indirect equity and/or voting interests in the controlling U.S. parent.³⁴

Finally, under this ruling, Midwest has an affirmative duty to monitor its foreign equity and voting interests, calculate its 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 rules,³⁵ and otherwise ensure continuing compliance with the provisions of section 310(b) of the Act.³⁶

Grant of Application and Petition

After a review of the Application and record in the proceeding, we find that the proposed transfer will serve the public interest, convenience, and necessity.³⁷ We also find that the public interest would not be served by prohibiting the foreign ownership of Midwest, the controlling U.S.

³³ 47 CFR § 1.5004. A few of the terms and conditions set forth in section 1.5004 of the Commission's rules are as follows: (1) where a previously unapproved foreign-organized entity is inserted into the vertical ownership chain of a licensee, or its controlling U.S.-organized parent, without prior Commission approval, the licensee shall file a letter to the attention of the Chief, International Bureau, within 30 days after the insertion of the new, foreign-organized entity; (2) a licensee that has received a foreign ownership ruling, including a U.S.-organized successor-in-interest to such licensee as part of a pro forma reorganization, or any subsidiary or affiliate relying on such licensee's ruling, shall file a new petition for declaratory ruling under § 1.5000 to obtain Commission approval before its foreign ownership exceeds the routine terms and conditions of this section, and/or any specific terms of conditions of its rulings; and (3) if at any time the licensee, including any successor-in interest and any subsidiary or affiliate knows, or has reason to know, that it is no longer in compliance with its foreign ownership rulings or the Commission's rules relating to foreign ownership, it shall file a statement with the Commission explaining the circumstances within 30 days of the date it knew, or had reason to know, that it was no longer in compliance.

³⁴ Petition at 4. See 47 CFR § 1.5002(k).

³⁵ 47 CFR §§ 1.5002-1.5003.

³⁶ 47 CFR § 1.5004 (Routine terms and conditions).

³⁷ See 47 U.S.C. § 214(a); 47 CFR § 63.03

parent, in excess of the 25% benchmark in section 310(b)(4) of the Act. We, therefore, grant the Application and we grant the Petition subject to the conditions set out herein.

Therefore, pursuant to sections 4(i) and (j), 5(c), 214(a), 214(c), 303(r) and 310(b) of the Act, 47 U.S.C. §§ 154(i), 154(j), 155(c), 214(a), 214(c), 303(r), 310(b), and sections 1.5001-04 , 63.03-04 of the Commission's rules, 47 C.F.R. §1.5001-04, 63.03-04 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, 0.291, we grant the Application and Petition for Declaratory Ruling listed in Attachment A as conditioned in this Public Notice.

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, Competition Policy Division, Wireline Competition Bureau, at (202) 418-0809 or Leah Kim, Telecommunications and Analysis Division, International Bureau, at (202) 418-0722.

ATTACHMENT A

SECTION 214 AUTHORIZATION

The Wireline Competition Bureau grants the application to transfer control of domestic section 214 authority in connection with the proposed transaction – WC Docket No. 20-359.

PETITION FOR DECLARATORY RULING UNDER SECTION 310(B)(4)

The International Bureau grants, as conditioned, the Petition - File No. ISP-PDR-20201102-00012.

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