



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

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FCC 09-104

Released: December 1, 2009

**APPLICATION FILED FOR THE ACQUISITION OF CERTAIN ASSETS AND
AUTHORIZATIONS OF CIMCO COMMUNICATIONS, INC. BY COMCAST
PHONE LLC, COMCAST PHONE OF MICHIGAN, LLC AND COMCAST
BUSINESS COMMUNICATIONS, LLC**

PLEADING CYCLE ESTABLISHED

WC Docket No. 09-183

Comment Date: December 31, 2009

Reply Comment Date: January 15, 2010

On October 7, 2009, CIMCO Communications, Inc. (CIMCO), and Comcast Phone, LLC (Comcast Phone), Comcast Phone of Michigan (Comcast Phone Michigan), LLC and Comcast Business Communications, LLC (Comcast Business) (together, Comcast Entities) (CIMCO and Comcast Entities together, Applicants) filed an application¹ pursuant to section 214 of the Communications Act of 1934, as amended.² Applicants seek Commission approval of the transfer of certain CIMCO assets and authorizations to Comcast Entities.

CIMCO, an Illinois corporation, offers various telecommunications services including local exchange, long distance, and data services in Illinois (particularly in the Chicago metropolitan area), Indiana, Michigan, Ohio, and Wisconsin. CIMCO also provides interexchange long distance communications services in 40 other states, plus the District of Columbia.³ CIMCO provides local

¹ CIMCO Communications, Inc. and Comcast Phone, LLC, Comcast Phone of Michigan, LLC, and Comcast Business Communications, LLC Combined International and Domestic Application, WC Docket No. 09-183 (filed October 7, 2009) (Application). Applicants filed a supplement to their Application on October 28, 2009. *See* Letter from Charles W. Logan, Counsel to Assignees to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-183 (filed Oct. 28, 2009) (Oct. 28 *Ex Parte* Letter). At the time of filing their Application, Applicants also filed a request for confidential treatment seeking protection for proprietary or confidential information included in the Application. Accordingly, the Wireline Competition Bureau adopted and released a Protective Order to ensure that any documents containing such information receive adequate protection. *See Applications Filed for the Acquisition of Certain Assets and Authorizations of CIMCO Communications, Inc. by Comcast Phone, LLC, Comcast Phone of Michigan, LLC and Comcast Business Communications, LLC*, Protective Order, WC Docket No. 09-183, DA No. 09-2516 (rel. Dec. 1, 2009).

² 47 U.S.C. § 214.

³ A list of the states in which CIMCO provides service is available in the Application. *See* Application at 8.

exchange telephone services to business customers in approximately 298 local service areas throughout the states identified above in which Comcast or one of its affiliates holds a franchise to offer cable television service. CIMCO states that its customer base consists almost exclusively of medium-sized and enterprise business customers. William A. Capraro, Jr., a U.S. citizen and CIMCO's founder, directly or indirectly controls 100 percent of CIMCO's equity.

Comcast Corporation, a Pennsylvania corporation, provides service through its operating subsidiaries, including the Comcast Entities, which are all Delaware limited liability companies. These subsidiaries provide video and data services to customers in 39 states and the District of Columbia and also provide voice services to customer in 37 of those states plus the District of Columbia.⁴ No party other than Comcast Corporation and its wholly owned intermediate subsidiaries owns a 10 percent or greater direct or indirect interest in Comcast entities. Brian L. Roberts, Comcast Corporation's Chairman and Chief Executive Officer, a U.S. citizen, is the beneficial owner of stock that represents 33 1/3 percent of the combined voting power of the two classes of Comcast Corporation's voting common stock. Mr. Roberts's stock interest is held through his control of BRCC Holdings LLC, a Delaware limited liability company and certain trusts.

On September 16, 2009, CIMCO and Comcast Entities entered into an Asset Purchase Agreement (Agreement) by which CIMCO will sell to Comcast Entities and their operating subsidiaries a variety of domestic and international telecommunications assets, including telephone service customer accounts and related data, databases, and customer records needed to support the provision of interstate, interexchange and international telecommunications services to those customers in 45 states and the District of Columbia. The terms described in the Application are part of a larger transaction in which the Comcast entities will, directly and through their operating subsidiaries, acquire CIMCO's telecommunications operating assets applicable to their individual service areas and Comcast Phone of Illinois, LLC (Comcast Illinois) will acquire the assets and business of Capraro Development through the merger of Capraro Development with and into Comcast Illinois.⁵

LOCAL FRANCHISING AUTHORITY APPROVAL

The Applicants request a waiver of the restrictions of section 652(b) of the Communications Act in the event the Commission deems this provision applies to the proposed transaction.⁶ Section 652(b) prohibits cable operators from acquiring "directly or indirectly, more than a 10 percent financial interest,

⁴ Lists of the states in which Comcast provides voice services, video and data services, and wholesale services are provided in Appendix A of the Applicants' supplement. See Oct. 28 *Ex Parte* Letter at A-1, A-2.

⁵ Applicants state that Capraro Development provides resold wholesale local exchange service on an intracompany basis only to CIMCO in Illinois. Applicants submit that Capraro operates solely as a private carrier and thus contend that the merger of Capraro Development with and into Comcast-Illinois will not involve the transfer of any customers or lines that would constitute an assignment requiring Commission approval pursuant to Section 214.

⁶ Application at 9. The Applicants contend that the Commission reasonably could interpret section 652(b) as not applying to the proposed transaction because CIMCO did not begin offering telephone exchange service until after January 1, 1993. Application at 11 n.15, citing 47 U.S.C. § 572(e) (defining the term "telephone service area"). Nevertheless, the Applicants request that the Commission "process their application on the basis of their waiver request, and to assume that section 652(b) applies to this transaction without deciding whether, in the context of a cable operator's acquisition of a CLEC, section 652(b) applies to competitive local exchange carriers (LECs) that were not providing telephone exchange service as of January 1, 1993." *Id.*

or any management interest, in any local exchange carrier providing telephone exchange service within such cable operator's franchise area."⁷ Section 652(d)(6)(iii) authorizes the Commission to waive section 652(b) if: (1) "the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served" and (2) the relevant local franchising authorities approve of such waiver.⁸

The Applicants claim the proposed transaction satisfies the public interest prong of section 652(d)(6).⁹ In particular, the Applicants argue that the proposed transaction has "no anticompetitive effects, because CIMCO and Comcast have focused their voice services on different market segments and for the most part do not compete with each other."¹⁰ Further, the Applicants argue that the proposed transaction will help meet "the convenience and needs of the community to be served" because the effect of the transaction would be to: "(i) help Comcast to compete more effectively in the medium-sized and enterprise business marketplace, (ii) provide substantial benefits to CIMCO's existing customers, and (iii) promote facilities-based competition."¹¹ We seek comment from the public on whether the proposed transaction and present record satisfy the waiver criteria set forth in section 652(d)(6)(A)(iii). If not, is there any additional evidence that might demonstrate whether the section 652(d)(6)(A)(iii) criteria are satisfied?

The Commission may waive the restrictions of subsection 652(b) only if it finds the relevant local franchising authorities approve of such waiver.¹² We note that neither the Communications Act nor our Rules establish a particular process for a local franchising authority to express its approval or disapproval of the Commission's possible waiver of the restrictions of section 652(b), and we are aware of no prior instance where an applicant has sought such a waiver. The Applicants propose that the Commission establish a process for obtaining approvals from local franchise authorities, under which the Commission will deem a local franchise authority to have approved of the waiver request if the authority "does not file comments within thirty days of being served with the Public Notice."¹³ While we agree with the Applicants that establishing a process for determining whether a local franchising authority approves of the proposed waiver is within the Commission's discretion and serves Congress' goals in section 652,¹⁴

⁷ 47 U.S.C. § 572(b). Section 652(a) places a converse prohibition on local exchange carriers and their affiliates. 47 U.S.C. § 572(a). In addition, section 652 prohibits cable operators and LECs from entering "into any joint venture or partnership to provide video programming directly to subscribers or to provide telecommunications services" in the overlap area of the providers' cable franchise area and telephone service area, respectively. 47 U.S.C. § 572(c). Section 652 is implemented in the Commission's rules at 47 C.F.R. § 76.505.

⁸ 47 U.S.C. § 572(d)(6)(A)(iii) & (B). The Applicants do not claim to satisfy the other waiver criteria set forth in section 652(d)(6)(A). See 47 U.S.C. § 572(d)(6)(A)(i) & (ii).

⁹ 47 U.S.C. § 572(d)(6)(A)(iii).

¹⁰ Application at 12.

¹¹ *Id.*

¹² 47 U.S.C. § 572(d)(6)(B).

¹³ See Application at 21

¹⁴ *Id.* (stating that "[n]either section 652 nor the legislative history defines the process for obtaining such local franchising authority (LFA) approvals, leaving it to the Commission's reasonable discretion to do so"); see also *Core Commc'ns, Inc. v. Verizon PA, Inc.*, 493 F.3d 333, 343 (3d Cir. 2007) (upholding the procedures the Commission adopted for state section 252 arbitrations, stating that "*Chevron* deference is premised on the idea that (continued . . .)

we disagree with the Applicants that 30 days is a sufficient time for us to conclude that any local franchising authority that has not yet objected to the Commission's waiver of the restrictions of section 652(b) approves of such waiver.¹⁵ We accordingly provide local franchising authorities with 60 days from the date of service by the Applicants, as discussed below, to object to a waiver of the restrictions of section 652(b).

According to the Application, there are 274 franchising authorities implicated by the waiver approval process for the proposed transaction.¹⁶ The Applicants state they expect that a significant number of these local franchising authorities may "take no steps to express their view regarding the waiver request, even though they have no objection to the request."¹⁷ Among other reasons, the Applicants argue that inaction on the part of some local franchising authorities is likely because the "proposed transaction involves very few customers in any individual local franchising authority, as well as the fact that the local franchising authorities do not regulate CIMCO's service and CIMCO does not use any local rights of way."¹⁸ The Applicants further contend that the "delays and uncertainty created by an indefinite [local franchising authority] approval process would have a significant adverse impact on CIMCO's business," and that without some time limit on the local franchising authority approval process, Congress's intent in establishing the waiver process would be undermined.¹⁹

Although we encourage all relevant franchising authorities to inform the Commission directly as to whether they approve or disapprove of the proposed waiver, we find that the Applicants' procedural concerns are reasonable. Consequently, we adopt the process described below for soliciting responses from the relevant local franchising authorities and for determining whether a local franchising authority "approves of" a Commission waiver of the restrictions of section 652(b). We believe this process will help ensure that, if the Commission finds that a waiver of the restrictions of section 652(b) is warranted, the Commission's decision is not delayed by inaction of a local franchising authority.

Local Franchising Authority Approval or Disapproval of a Requested Waiver of the Restrictions of Section 652(b). We direct the Applicants to serve, within 10 days of release of this Public Notice, a copy of this Public Notice on any entity in the overlap areas that currently has local franchising authority over Comcast. Service shall be made by a method recognized under the civil rules of the state courts of the appropriate jurisdiction. Within 15 days of the release of this Public Notice, the

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where Congress has left a gap or ambiguity in a statute within an agency's jurisdiction, that agency has the power to fill in or clarify the relevant provisions").

¹⁵ See Application at 23 n.47 (providing other situations in which local franchising authorities are deemed to have approved a transaction or application if not acted on within 30 days or less).

¹⁶ Application at 23 (explaining that the service territories of Comcast and CIMCO overlap in 298 local franchising authority areas and that 25 of these local franchising authorities are in Indiana where the Indiana Utility Regulatory Commission has been designated as the sole franchising authority for the provision of video service); see also Letter from Charles W. Logan, Counsel to Comcast Corporation, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-183, Attach. (filed Oct. 22, 2009) (Oct. 22 LFA Update Letter) (updating list of Comcast's local franchising areas in which CIMCO is providing telephone exchange service).

¹⁷ Application at 23.

¹⁸ Application at 24.

¹⁹ Application at 23-25.

Applicants shall file with the Commission a certificate (or certificates) of service attesting that the Public Notice was timely served on each relevant local franchising authority by an appropriate method. In addition, because we anticipate that Comcast will have ongoing communications with its local franchising authorities in the relevant areas, we expect the Applicants to inform the relevant authorities informally of this Public Notice and of the procedures we have established for local franchising authorities to notify the Commission of their approval or disapproval.

To the extent a local franchising authority wishes to express approval or disapproval of the proposed waiver, which we encourage it to do, it should do so by following the filing instructions set forth below. If a local franchise authority fails to inform the Commission of its decision within 60 days after proper service by the Applicants, the Commission will deem that authority to have approved of the proposed waiver of the restrictions of section 652(b).²⁰ We note that, before filing an approval or disapproval with the Commission, local franchising authorities will have an opportunity to view petitions to deny, comments, and replies that may be filed in this proceeding. These materials will be available online through the Commission’s Electronic Comment Filing System (ECFS), as described below. We find that providing local franchising authorities 60 days to file their approval or disapproval – including a minimum of 15 days (and as many as 25 days) following the close of the public comment period – provides them adequate time to consider the merits of the proposed waiver.

SECTION 214 AUTHORIZATIONS

The following applications for consent to the transfer of control of section 214 authorizations to Comcast have been assigned the file numbers listed below.

A. International

<u>File No.</u>	<u>Authorization Holder</u>	<u>Authorization Number</u>
ITC-ASG-20091007-00438	CIMCO Comm., Inc.	ITC-214-19930419-00064

B. Domestic

Applicants filed an application for consent to transfer certain assets from CIMCO to Comcast. Applicants do not request streamlined treatment. Further, the Applicants seek a waiver of the restrictions of 652(b) of the Communications Act, which involves a notification and response period for local franchise authorities to respond to the waiver request. Accordingly, Applicants’ domestic transfer of control application is not subject to streamlined treatment.

²⁰ Because the statutory criteria for whether a waiver of the restrictions of section 652(b) is warranted depends, in relevant part, on whether “the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served,” any local franchising authority objections to the waiver should be based on reasons related to the proposed transaction rather than extraneous matters. *See* Application at 22 n.46. We therefore request any local franchising authority that does not approve of the requested waiver to explain the reasons for its disapproval.

EX PARTE STATUS OF THIS PROCEEDING

Pursuant to section 1.1200(a) of the Commission's rules,²¹ the Commission may adopt modified or more stringent *ex parte* procedures in particular proceedings if the public interest so requires. We announce that this proceeding will be governed by permit-but-disclose *ex parte* procedures that are applicable to non-restricted proceedings under section 1.1206 of the Commission's rules.²²

We direct parties making oral *ex parte* presentations to the Commission's statement re-emphasizing the public's responsibility in permit-but-disclose proceedings. Parties are reminded that memoranda summarizing the presentation must contain the presentation's substance and not merely list the subjects discussed.²³ More than a one- or two-sentence description of the views and arguments presented is generally required.²⁴ Other rules pertaining to oral and written presentations are set forth in section 1.1206(b) as well.²⁵ We urge parties to use the Electronic Comment Filing System (ECFS) to file *ex parte* submissions.

GENERAL INFORMATION

The application referenced 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 or policies. The Commission will not take final action on this application before 60 days have elapsed following Applicants' filing of a certificate of service attesting that all the relevant local franchising authorities have been served with a copy of this Public Notice.²⁶

Interested parties must file comments or petitions to deny no later than December 31, 2009. Persons and entities that timely file comments or petitions to deny may participate fully in the proceeding, including seeking access to any confidential information that may be filed under a protective order (subject to the restrictions contained in the protective order) and seeking reconsideration of decisions. Replies or oppositions to comments and petitions must be filed no later than January 15, 2010.

Local franchising authorities should follow the same directions as other filers when submitting materials to this docket. Expressions of approval or disapproval of the proposed waiver of the restrictions of section 652(b) should be filed no later than 60 days after the Applicants serve the local franchising authority with a copy of this Public Notice.²⁷ Such expressions of approval or disapproval of the

²¹ 47 C.F.R. § 1.1200(a).

²² *Id.* § 1.1206.

²³ *See Commission Emphasizes the Public's Responsibilities in Permit-But-Disclose Proceedings*, Public Notice, 15 FCC Rcd 19945 (2000).

²⁴ *See* 47 C.F.R. § 1.1206(b)(2).

²⁵ *Id.* § 1.1206(b).

²⁶ *See* 47 U.S.C. § 309(b).

²⁷ *See supra* text accompanying note 20.

proposed waiver may be in the form of a letter from the local franchising authority to Marlene H. Dortch, Secretary, FCC, or other appropriate format, and filed in this docket according to the instructions below.

All filings concerning matters referenced in this Public Notice should refer to **FCC 09-104** and **WC Docket No. 09-183**, as well as the specific file numbers of the individual applications or other matters to which the filings pertain.

Under the Commission's procedures for the submission of filings and other documents,²⁸ submissions in this matter may be filed electronically (*i.e.*, through ECFS) or by hand delivery to the Commission's Massachusetts Avenue location.

- **Electronic Filers:**²⁹ Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/>. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number. Parties also may submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554.

One copy of each pleading must be delivered electronically, by e-mail or facsimile, or if delivered as paper copy, by hand or messenger delivery, by commercial overnight courier, or by first-class or

²⁸ See *Implementation of Interim Electronic Filing Procedures for Certain Commission Filings*, Order, 16 FCC Rcd 21483 (2001); see also *FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence*, Public Notice, 16 FCC Rcd 22165 (2001); *Reminder: Filing Locations for Paper Documents and Instructions for Mailing Electronic Media*, Public Notice, 18 FCC Rcd 16705 (2003).

²⁹ See *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998).

overnight U.S. Postal Service mail (according to the procedures set forth above for paper filings), to the Commission's duplicating contractor, Best Copy and Printing, Inc., at fcc@bcpiweb.com or 202 / 488-5563 (facsimile).

Additionally, filers must deliver courtesy copies by email or facsimile to the following Commission staff:

- Jim Bird, Office of General Counsel, at Jim.Bird@fcc.gov or 202 / 418-2822 (facsimile);
- Christopher Killion, Office of General Counsel, at Christopher.Killion@fcc.gov or 202 / 418-2822 (facsimile);
- Donald Stockdale, Wireline Competition Bureau, at Donald.Stockdale@fcc.gov or 202 / 418-2825 (facsimile);
- William Dever, Wireline Competition Bureau, at William.Dever@fcc.gov or 202 / 418-1413 (facsimile);
- Tim Stelzig, Competition Policy Division, Wireline Competition Bureau, at Tim.Stelzig@fcc.gov or 202 / 418-1413 (facsimile);
- David Krech, Policy Division, International Bureau, at David.Krech@fcc.gov or 202 / 418-2824 (facsimile).

Copies of the Applications and any subsequently-filed documents in this matter may be obtained from Best Copy and Printing, Inc., in person at 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, via telephone at 202 / 488-5300, via facsimile at 202 / 488-5563, or via e-mail at fcc@bcpiweb.com. The Applications and any associated documents are also available for public inspection and copying during normal reference room hours at the following Commission office: FCC Reference Information Center, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. The Applications also are available electronically through the Commission's ECFS, which may be accessed on the Commission's Internet website at <http://www.fcc.gov>.

People with Disabilities: To request this Public Notice in accessible formats (computer diskette, large print, audio recording, and Braille) send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202 / 418-0530 (voice), 202 / 418-0432 (tty).

For further information, contact Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, at 202 / 418-0809; David Krech, Policy Division, International Bureau, at 202 / 418-7443.

Action taken by the Commission on December 1, 2009.

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