PUBLIC NOTICE

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

News Media Information 202 / 418-0500
Internet: http://www.fcc.gov
TTY: 1-888-835-5322

DA 10-2252
Released: November 29, 2010

APPLICATIONS GRANTED FOR THE TRANSFER OF CONTROL OF FIBERNET FROM ONE COMMUNICATIONS CORP. TO NTELOS INC.

WC Docket No. 10-158

For the reasons explained below, we grant the applications[1] filed by One Communications Corp. (One Communications), FiberNet of Virginia, Inc., FiberNet, L.L.C., FiberNet Telecommunications of Pennsylvania, LLC, FiberNet of Ohio, LLC (together, FiberNet) and NTELOS Inc. (NTELOS) (together, Applicants) pursuant to section 214 of the Communications Act of 1934, as amended.[2] Applicants seek Commission approval of the transfer of control of FiberNet from One Communications to NTELOS and a waiver of section 652(b), which prohibits a cable operator or its affiliate from obtaining certain interests in a local exchange carrier (LEC) that provides telephone exchange service within the cable operator's local franchise area.[3]

One Communications' operating subsidiaries are common carriers that provide telecommunications services to enterprise customers, predominantly in the Northeast, Mid-Atlantic, and Midwest regions. Each of One Communications' subsidiaries operates pursuant to One Communications' international section 214 authority and provides international services solely on a resale basis.[4] The only subsidiaries of One Communications that are included in the proposed transaction are the FiberNet subsidiaries. FiberNet provides domestic telecommunications services and international services in West Virginia and the surrounding region. NTELOS, a Virginia corporation, provides domestic and international wireline and wireless communications services to consumers and businesses primarily in Virginia and West Virginia. Quadrangle Group LLC (Quadrangle), a private investment firm, and its affiliated entities (all U.S. organized entities) collectively hold a 27.4 percent indirect voting and equity

---

[1] One Communications Corp., FiberNet of Virginia, Inc., FiberNet, L.L.C., FiberNet Telecommunications of Pennsylvania, LLC, and FiberNet of Ohio, LLC and NTELOS Inc. Joint Domestic and International Applications, WC Docket No. 10-158 (filed Aug. 2, 2010) (Application); ITC-ASG-20100802-00314 (filed Aug. 2, 2010). Applicants also provided additional information on the record in various submissions. .

[2] 47 U.S.C. § 214.

[3] 47 U.S.C. § 572(b).

[4] One Communications will retain its international section 214 authority, ITC-214-20040708-00260, post-consummation. Upon consummation of the proposed transaction, FiberNet will provide international services under authority of the international section 214 authorization held by NTELOS, ITC-214-19970710-00390 (Old File No. ITC-97-387), pursuant to section 63.21(h) of the Commission's rules, 47 C.F.R. § 63.21(h).

interest in NTELOS. Quadrangle's current investments also include Suddenlink Communications (Suddenlink), a cable operator providing service in sixteen states, including Virginia and West Virginia (16.64 percent interest). Suddenlink's cable service territory overlaps NTELOS' competitive LEC service territory in fifteen markets in West Virginia, Virginia and Maryland.[5]

On July 19, 2010, NTELOS, One Communications and its direct, wholly-owned subsidiary, Conversant, entered into a purchase agreement by which NTELOS will purchase all of the membership interest of Mountaineer Telecommunications, LLC, the sole parent company of FiberNet. NTELOS' interest in Mountaineer will be held by a new, wholly-owned subsidiary of NTELOS, NTELOS FiberNet Inc. As a result of the proposed transaction, NTELOS will become the new ultimate parent company of FiberNet. One Communications will remain the parent company of Conversant and all other One Communications operating subsidiaries.

The Applicants request a waiver of the restrictions of section 652(b) of the Communications Act.[6] Section 652(b) prohibits cable operators and their affiliates from acquiring "directly or indirectly, more than a 10 percent financial interest, or any management interest, in any local exchange carrier providing telephone exchange service within such cable operator's franchise area."[7] Section 652(b) is applicable to this transaction because of Quadrangle's holdings in both NTELOS and Suddenlink. Section 652(d)(6) authorizes the Commission to waive section 652(b) if, in relevant part: (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 (LFAs) approve of such waiver.[8]

On September 16, 2010, the International Bureau and the Wireline Competition Bureau released a public notice accepting the applications for non-streamlined processing.[9] In additional to announcing a pleading cycle, the Bureaus followed the procedures the Commission established in the *Comcast/CIMCO* proceeding[10] for determining whether the relevant LFAs approve of a requested waiver of section 652.

---

[5] The September Public Notice gives a fuller account of the relevant entities and the relationships between them. *Applications Filed for the Transfer of Control of FiberNet from One Communications Corp. to NTELOS Inc.*, Public Notice, WC Docket No. 10-158, DA 10-1754 (Sept. 16, 2010) (September Public Notice).

[6] *See* Application at 12–18.

[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).

[9] September Public Notice.

[10] *See Applications Filed for the Acquisition of Certain Assets of CIMCO Communications, Inc. by Comcast Phone LLC, Comcast Phone of Michigan, LLC and Comcast Business Communications, LLC*, WC Docket No. 09-183, Public Notice, 24 FCC Rcd 14815 (Dec. 1, 2010) (*Comcast/CIMCO Notice*); *Applications Filed for the Acquisition of Certain Assets of CIMCO Communications, Inc. by Comcast Phone LLC, Comcast Phone of Michigan, LLC and Comcast Business Communications, LLC,* WC Docket No. 09-183, Memorandum Opinion and Order and Order on Reconsideration, 25 FCC Rcd 3404, para. 15 (Mar. 15, 2010).

Specifically, the September Public Notice established a 60 day period, after proper service by the Applicants, for LFAs to inform the Commission of their decision whether to approve or disapprove of the proposed waiver.[11] The Public Notice explained that if an LFA fails to inform the Commission of its decision within 60 days after proper service by the Applicants, the Commission will deem that LFA to have approved of the proposed waiver of the restrictions of section 652(b).[12]

We grant the Applicants' request for waiver of the restrictions of Section 652(b).[13] First, based on the record, we find that any 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, thus satisfying the public interest factor of section 652(d)(6)(A)(iii).[14] We find that the proposed transaction is unlikely to result in anticompetitive effects because, among other reasons, after consummation, several competitors will remain in each market where the companies currently have overlapping services.[15] We also find, as discussed below, that the grant of the Application will help meet the "convenience and needs of the community to be served" by providing needed capital to maintain and improve FiberNet's telecommunications facilities and encouraging broadband deployment.[16]

Second, we find that the requirement in section 652(d)(6)(B) that "the local franchising authority approve of such waiver" has been met.[17] As discussed above, under the process the Commission established for this transaction, LFAs had 60 days after proper service to express approval or disapproval of the proposed waiver by filing a letter, or other appropriate format, with the Commission.[18] If an LFA failed to inform the Commission of its decision within the specified period, that authority would be deemed to have approved of the proposed waiver of the restrictions of section 652(b).[19] Applicants explained that they provided notice to all relevant LFAs on or before September 27, 2010.[20] The Commission received four approvals and no disapprovals of the requested waiver from the LFAs in the

---

[11] September Public Notice at 7.

[12] *Id*.

[13] 47 U.S.C. § 572(b) (prohibiting cable operators from acquiring "any local exchange carrier providing telephone exchange service within such cable operator's franchise area").

[14] 47 U.S.C. § 572(d)(6)(A)(iii); *see also* 47 C.F.R. § 76.505(d)(6)(i)(C).

[15] *See* Application at 23, Exhibit A.

[16] *See id*. at 19-21; Letter from Christopher S. Koves, Counsel to One Communications Corp. to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-158 at Attach. 2 (filed Nov. 16, 2010) (One Communications November 16 Letter).

[17] 47 U.S.C. § 572(d)(6)(B); *see also* 47 C.F.R. § 76.505(d)(6)(ii).

[18] September Public Notice at 7. .

[19] *Id*. at 7.

[20] *See* One Communications November 16 Letter Attach. 1 at 1 (explaining that all but two of the relevant LFAs were served via U.S. Express Mail on September 20, 2010 and that the last LFS was served via U.S. Express Mail on September 27, 2010).

overlap areas.[21] Thus, pursuant to the procedures announced in our September Public Notice, we find that the LFAs have all approved of the requested waiver. We therefore grant the Applicants' request for waiver of section 652(b) of the Act.

Pursuant to sections 4(i) and (j), 214, and 652 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 214, and 572, and section 76.505 of the Commission's rules, 47 C.F.R. § 76.505, the International Bureau and the Wireline Competition Bureau, under delegated authority, hereby approve the waiver request and applications listed herein. The Bureaus find, upon consideration of the record, that grant of the applications will serve the public interest, convenience, and necessity.[22] We find that the transaction poses no significant competitive harms[23] and should provide likely benefits to residential and business customers resulting from NTELOS investing in the newly acquired network[24] and offering new and expanded broadband services in its service territory.[25] Further, NTELOS' acquisition of FiberNet will enable it to compete more effectively with incumbent LECs and cable companies.[26] No comments were filed opposing grant of the transaction.

Pursuant to Section 1.103 of the Commission's rules,[27] the consent granted herein is effective upon release of this Public Notice. By this approval, the parties are authorized to consummate the transaction described in their applications.[28] Pursuant to Sections 1.106 and 1.115 of the Commission's rules, petitions for reconsideration and applications for review may be filed within thirty days of the release of this Public Notice.[29]

---

[21] Letter from Betty Crookshank, President Greenbrier County Commission, Lewisburg, WV, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-158 (filed Nov. 29, 2010); Letter from Essie Ford, Mayor, Town of Handley, West Virginia to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-158 (filed Nov. 22, 2010); Letter from Joe Blankenship, Mayor, City of Hinton, West Virginia to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-158 (filed Nov. 17, 2010); Letter from Frank Mullens, Mayor, City of South Charleston, West Virginia to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-158 (filed Nov. 9, 2010).

[22] *See* 47 U.S.C. § 214(a).

[23] *See* text accompanying note 13;Application at 19-21; *see also XO Communications, Inc. for Consent to Transfer Control of Licenses and Authorizations Pursuant to Section 214 and 310(d) of the Communications Act and Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act*, IB Docket No. 02-50, 17 FCC Rcd 19212, 19225, para. 30 (IB/WTB/WCB 2002) (finding no anticompetitive effects resulting from the combined operation of two overlapping competitive local exchange carriers because of the presence of other competitors and the transaction resulting in public interest benefits).

[24] One Communications November 16 Letter at Attach. 2 (stating that NTELOS has already invested significant revenue to maintain FiberNet's network as a response to recent service disruptions and that NTELOS intends to further invest in the network post-consummation).

[25] Application at 21.

[26] Application at 19.

[27] 47 C.F.R. § 1.103.

[28] The transferee must notify the Commission no later than 30 days after consummation of the proposed transfer of control of the international Section 214 authorizations. 47 C.F.R. § 63.24(e)(4).

[29] 47 C.F.R. §§ 1.106(f), 1.115(a); s*ee also* 47 C.F.R. § 1.106(b)(1).

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

SECTION 214 AUTHORIZATIONS

A. International

File No.	**Authorization Holder**	**Authorization Number**
ITC-ASG-20100802-00314	**One Communications Corp.**	**ITC-214-20040708-00260**

B. Domestic

The Wireline Competition Bureau grants the application to transfer control of the FiberNet entities to NTELOS.

-FCC-