



PUBLIC NOTICE

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

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DA 18-284
March 22, 2018

**DOMESTIC SECTION 214 APPLICATION FILED FOR THE ACQUISITION OF CERTAIN
ASSETS OF CENTURYLINK, INC. BY UNITE PRIVATE NETWORKS, LLC**

NON-STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 18-79

Comments Due: April 5, 2018
Reply Comments Due: April 12, 2018

By this Public Notice, the Wireline Competition Bureau seeks comment from interested parties on an application¹ filed by CenturyLink, Inc. (CenturyLink) and Unite Private Networks, LLC (UPN) (collectively, Applicants), pursuant to section 214 of the Communications Act of 1934, as amended, and sections 63.03-04 of the Commission's rules, requesting approval for the transfer of certain assets (the Albuquerque Metropolitan Statistical Area (MSA) Divestiture Assets) of CenturyLink located in the Albuquerque, New Mexico MSA (Albuquerque MSA).² Level 3 Communications (Level 3) formerly operated the Albuquerque MSA Divestiture Assets prior to CenturyLink's acquisition of Level 3, which was consummated on November 1, 2017. Applicants state that they are undertaking the proposed transaction in compliance with the requirements of the Final Judgment issued by the Department of Justice in connection with CenturyLink's acquisition of Level 3.³ The Final Judgment ordered CenturyLink to divest, among other things, the Albuquerque MSA Divestiture Assets within certain timeframes and as expeditiously as possible.⁴

¹ CenturyLink, Inc. and Unite Private Networks, LLC, Joint Application for Consent to Assignment of Assets, WC Docket No. 18-79 (filed Mar. 14, 2018) (Application). Applicants filed a supplement to their Application on March 19, 2018. See Letter from Yaron Dori, Counsel to CenturyLink, Inc. and Joshua Bobeck, Counsel to Unite Private Networks, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-79 (filed March 19, 2018). Any action on this Application is without prejudice to any separately filed applications.

² See 47 U.S.C. § 214; 47 CFR §§ 63.03-04.

³ Application at Exh. A (*U.S. v. CenturyLink, Inc. and Level 3 Communications, Inc.*, Civil Action No. 1:17-cv-02028-KBJ, Final Judgment (Mar. 6, 2018) (Final Judgment)). CenturyLink filed with the Commission a separate domestic 214 application for the transfer of certain assets formerly owned by Level 3 in the Boise, Idaho MSA to Syringa Networks, LLC. See CenturyLink, Inc. and Syringa Networks, LLC, Joint Application for Consent to Assignment of Assets, WC Docket No. 18-76 (filed Mar. 13, 2018). CenturyLink will subsequently file a third application for the transfer of certain assets formerly owned by Level 3 in the Tucson, Arizona MSA.

⁴ Final Judgment at 7-8.

CenturyLink, a Louisiana corporation, provides telecommunications services and other services over a 450,000-route-mile U.S. fiber network. CenturyLink's operating subsidiaries provide telecommunications services in all 50 states and the District of Columbia, as well as Puerto Rico and the U.S. Virgin Islands. CenturyLink provides telecommunications services as an incumbent local exchange carrier in 37 states, including in the Albuquerque, New Mexico MSA.

UPN, a Delaware limited liability company, provides competitive telecommunications services and other services over more than 8,500 fiber route miles to 5,300 on-net buildings for customers in multiple states.⁵ UPN does not provide service to residential customers. UPN is majority owned and controlled by Cox Communications, Inc. (Cox), a Delaware corporation.⁶ Cox and its affiliates provide competitive telecommunications services, video, and other services in 18 states, serving more than six million customers. Neither UPN or Cox provide telecommunications service or cable service in New Mexico.⁷

Pursuant to the terms of an Asset Purchase Agreement (APA), CenturyLink agreed to sell the Albuquerque MSA Divestiture Assets to UPN, thus facilitating CenturyLink's compliance with the divestiture requirements of the Final Judgment. The Albuquerque MSA Divestiture Assets consist of all of the assets, tangible or intangible, used for the operations of the network previously operated by Level 3 that provide telecommunications service in the Albuquerque MSA.⁸ Applicants have also entered into a Transition Services Agreement pursuant to which CenturyLink will continue to maintain, operate, provision, monitor and otherwise support the Albuquerque MSA Divestiture Assets for approximately one year post-transaction.

Applicants assert that the proposed transaction will serve the public interest. Applicants state that customers will be able to select their future service provider of choice and continue to receive service on a seamless and uninterrupted basis. Applicants contend that the proposed transaction will enhance competition and benefit customers by enabling UPN to expedite its entry in the Albuquerque MSA as a provider of fiber-based telecommunications and other services.⁹ Applicants claim that the transaction will strengthen UPN's ability to compete with services offered by CenturyLink and local cable operators in

⁵ UPN holds a certificate issued by the New Mexico Public Regulation Commission to provide competitive local exchange services, however, UPN neither currently serves customers nor has deployed fiber in New Mexico.

⁶ See Application at 12-15 for a complete description of UPN's ownership.

⁷ Application at 5.

⁸ The transaction excludes those assets that are used for provision of telecommunications services outside the MSA or between the MSA and other locations outside the MSA. Also excluded are customer contracts, cash, contracts that affect the former Level 3 operations both inside and outside the MSA, intellectual property, assets related to service to specified excluded customers, assets of CenturyLink (other than those of the former Level 3), and certain municipal franchise and license agreements. See Application at Exh. B (Summary of MSA Divestiture Assets).

⁹ Applicants state that on March 9, 2018, the Department of Justice Antitrust Division notified CenturyLink of its approval of UPN as the Albuquerque MSA Divestiture buyer. Application at n.3.

the Albuquerque market as well as regionally. Because of the public interest review associated with this proposed transaction, the application is not subject to streamlined treatment.¹⁰

Domestic Section 214 Application Filed for the Acquisition of Certain Assets of CenturyLink, Inc., by Unite Private Networks, LLC, WC Docket No. 18-79 (filed Mar. 14, 2018).

GENERAL INFORMATION

The application identified 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 and policies.

Interested parties may file comments and petitions **on or before April 5, 2018**, and reply comments or oppositions to petitions **on or before April 12, 2018**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by paper. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- ☐ Electronic Filers: Comments may be filed electronically by accessing ECFS at <http://apps.fcc.gov/ecfs/>.
- ☐ Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Paper filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail.
 - ☐ All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. All envelopes and boxes 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 9050 Junction Drive, Annapolis Junction, MD 20701.
 - ☐ U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 1-888-835-5322 (tty).

In addition, please provide one copy of each pleading to each of the following:

- 1) Jim Bird, Office of General Counsel, transactionteam@fcc.gov;
- 2) Dennis Johnson, Wireline Competition Bureau, dennis.johnson@fcc.gov;

¹⁰ 47 CFR § 63.03(c)(1).

- 3) Myrva Charles, Competition Policy Division, Wireline Competition Bureau,
myrva.charles@fcc.gov.

The proceeding in this Notice shall be treated as a permit-but-disclose proceeding in accordance with the Commission's *ex parte* rules.¹¹ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, then the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b), 47 CFR § 1.1206(b). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

To allow the Commission to consider fully all substantive issues regarding the Applications in as timely and efficient a manner as possible, petitioners and commenters should raise all issues in their initial filings. New issues may not be raised in responses or replies.¹² A party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously. Submissions after the pleading cycle has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission.

For further information, please contact Myrva Charles at (202) 418-1506 or Dennis Johnson at (202) 418-0809.

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¹¹ 47 CFR § 1.1200 *et seq.*

¹² See 47 CFR § 1.45(c).