



PUBLIC NOTICE

Federal Communications Commission
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Released: October 12, 2006

**DOMESTIC SECTION 214 APPLICATION FILED FOR THE TRANSFER OF
CONTROL OF DSL.NET, INC., DSLNET COMMUNICATIONS, LLC, AND DSLNET
COMMUNICATIONS VA, INC. TO MDS ACQUISITION, INC.**

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 06-176

Comments Due: October 26, 2006

Reply Comments Due: November 2, 2006

On September 11, 2006, DSL.net, Inc., DSLnet Communications, LLC (DSLnet), and DSLnet Communications VA, Inc. ("DSLnet VA") and MDS Acquisition, Inc. ("MDS") (collectively, the "Applicants"), filed an application, pursuant to section 63.04 of the Commission's rules,¹ requesting authority to transfer control of DSLnet and DSLnet VA to MDS.²

Applicants assert that this transaction is entitled to presumptive streamlined treatment under section 63.03(b)(2)(i) of the Commission's rules because the proposed transaction will result in: (1) Applicants and their affiliates holding less than a 10% share of the interstate, interexchange market; (2) Applicants and their affiliates providing competitive telephone exchange services or exchange access services (if at all) exclusively in geographic area served by dominant local exchange carriers (none of which is a party to the proposed transactions); and (3) none of the Applicants or their affiliates are dominant with respect to any service.³

¹ 47 C.F.R. § 63.04; *see* 47 U.S.C. § 214. On October 10, 2006, the Applicants filed a letter supplementing their application with additional ownership information. Additionally, on October 10, 2006, the Applicants filed a amendment to their application adding DSLnet VA as an applicant to the transaction.

² Applicants are also filing applications for transfer of control associated with authorization for international services. Any action on this domestic 214 application is without prejudice to Commission action on other related, pending applications.

³ *See* 47 C.F.R. § 63.03(b)(2)(i).

DSLnet, a Delaware limited liability company, is authorized to provide intrastate telecommunications services in 47 states and the District of Columbia. DSLnet's affiliate, DSLnet VA, a Virginia corporation, is authorized to provide intrastate telecommunications services in Virginia. DSLnet and DSLnet VA also hold blanket domestic Section 214 authority to provide interstate telecommunications services. DSLnet and DSLnet VA, Inc. are wholly owned subsidiaries of DSL.net, Inc., a publicly traded Delaware corporation.

The following entities own or control 10 percent or more of either DSLnet or DSLnet VA through ownership or control of DSL.net, Inc., the parent company to DSLnet and DSLnet VA: (1) VantagePoint Venture Partners III(Q), L.P., a U.S. limited partnership (12%); and (2) VantagePoint Venture Associates III, L.L.C., a U.S. limited liability partnership (14.0%). VantagePoint Venture Associates III, L.L.C.'s ownership arises from being general partner with VantagePoint Venture Partners III(Q), L.P. and VantagePoint Venture Partners III, L.P., a U.S. limited partnership, which owns 1.6% of DSL.net, Inc.

MDS, a Delaware corporation, is a wholly owned subsidiary of MegaPath Inc. ("MegaPath") that has been formed for the purpose of acquiring DSL.net, Inc. and its subsidiaries. MegaPath is a provider of a variety of managed Internet Protocol ("IP") services including cable and satellite system broadband Internet access, mobility services such as digital certificates, global remote access, personal firewalls, and remote access virtual private networks ("VPN"), and security service. MegaPath and its affiliates, including MDS, do not currently offer any regulated telecommunications services and therefore do not hold any telecommunications authorizations from the Commission or any state regulatory authority.

The following entities own or control 10 percent or more of MDS, through ownership or control of MegaPath, the parent company: (1) Fidelity Investors VI Limited Partnership, a U.S. entity (15%); and (2) US. Venture Partners VII, L.P., a U.S. entity (10.1%). Interest owned by Fidelity Investors VI Limited Partnership is held indirectly through the following entities, each of which has a direct interest in MegaPath of less than 10 percent and is a U.S. entity: Fidelity Ventures IV Limited Partnership, Fidelity Ventures IV-E Limited Partnership, Fidelity Ventures Principals IV Limited Partnership, and Fidelity Ventures Principals IV-E Limited Partnership. Fidelity Investors VI Limited Partnership is controlled by Fidelity Investors Management Corp., a general partner of Fidelity Investors VI Limited Partnership. Fidelity Investors Management Corp. is a U.S. entity and its officers and directors are all U.S. citizens. U.S. Venture Partners VII, L.P., is controlled by Presidio Management Group VII, L.L.C., a U.S. entity, and its managing members are all U.S. citizens. Presidio Management Group VII, L.L.C. is a general partner of U.S. Venture Partners VII, L.P., and is also the general partner of 2180 Associates Fund VII, L.P., USVP Entrepreneur Partners VII-A, L.P., and USVP Entrepreneur Partners VII-B, L.P., each of which holds less than a one percent interest in MegaPath, and is a U.S. entity. No other entity holds a 10% or greater direct or indirect interest in MegaPath. None of the above entities holds a 10% or greater interest in a domestic telecommunications services providers.

Pursuant to the Purchase Agreement, on August 28, 2006, MDS purchased certain convertible promissory notes of DSL.net, Inc. which, by their terms, will allow MDS, subject to obtaining the requisite regulatory and shareholder approvals, to acquire control of DSLnet

through the conversion of these promissory notes into common stock of DSL.net, Inc. MDS will hold approximately 92.4% of the aggregate voting power in DSL.net, Inc.. At that time, or soon as practicable thereafter, MegaPath intends to merge DSL.net, Inc. with and into MDS with (1) MDS surviving and (2) stockholders of DSL.net, Inc., other than MDS, receiving a cash payment for their shares of DSL.net, Inc.'s stock. As a result of these conversions and the merger, MDS will have direct control of DSLnet and DSLnet will become a wholly owned indirect subsidiary of MegaPath.

Applicants state that the proposed transaction will serve the public interest because the transactions will provide critical financial and corporate resources to DSLnet that will allow it to continue to provide high quality services to its customers. Applicants also state that this transaction will allow DSLnet to have access to MegaPath's substantial technical and management expertise and complementary suite of services. In addition, Applicants state that it is anticipated that substantially all current DSLnet's and DSL.net, Inc.'s operational, technical, and managerial personnel will remain with the companies or their successors following the closing of the merger, and that no interruption of service or any change in rates, terms or conditions of service to DSLnet's customers will result from these transactions.

GENERAL INFORMATION

The transfer of control identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer of control application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file **comments on or before October 26, 2006** and **reply comments on or before November 2, 2006**.⁴ Unless otherwise notified by the Commission, Applicants are permitted to transfer the assets and related control on the 31st day after the date of this notice.⁵ Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers

⁴ See 47 C.F.R. § 63.03(a).

⁵ Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also 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. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

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.

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 & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

You may submit comments, identified by the above noted docket number, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Federal Communications Commission's Web Site: <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 202-418-0432.

In addition, one copy of each pleading must be sent to each of the following:

- (1) The Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, www.bcpiweb.com; phone: (202) 488-5300 fax: (202) 488-5563;
- (2) Cecilia Seppings, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C230, Washington, D.C. 20554; email: cecilia.seppings@fcc.gov;
- (3) Gail Cohen, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C111, Washington, D.C. 20554; e-mail: gail.cohen@fcc.gov;
- (4) Susan O'Connell, Policy Division, International Bureau, 445 12th Street, S.W., Room 7-B544, Washington, D.C. 20554; email: susan.o'connell@fcc.gov; and
- (5) James Bird, Office of General Counsel, 445 12th Street, S.W., Room 8-C824, Washington, D.C. 20554; e-mail: james.bird@fcc.gov.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CYB402, Washington, D.C. 20554, telephone: (202) 488-5300, fax: (202) 488-5563, or via e-mail www.bcpiweb.com.

For further information, please contact Cecilia Seppings at (202) 418-1588, or Gail Cohen at (202) 418-0939.

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