

**PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1325 G STREET, NW, SUITE 800
WASHINGTON, DC 20005**

ORDER

May 29, 2019

**FORMAL CASE NO. TA 2012-04, IN THE MATTER OF THE NOTIFICATION
OF A PRO FORMA CHANGE IN THE INTERMEDIATE OWNERSHIP AND
CONTROL OF PEG BANDWIDTH DC, LLC, Order No. 19945**

I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia (“Commission”) accepts PEG Bandwidth DC, LLC’s (“PEG-DC” or “Applicant”) notification to the Commission of its intra-corporate *pro forma* change in intermediate ownership and control. Further, the Commission shall dismiss PEG-DC’s filing for lack of Commission jurisdiction.

II. BACKGROUND

2. On May 16, 2019, PEG-DC filed notification of a proposed *pro forma* change in the intermediate ownership and control structure of PEG-DC with no change in its direct or ultimate owner (the “*Pro Forma Change*”).¹ PEG-DC does not seek Commission approval of this transaction, citing *Formal Case No. 892*, Order No. 17536 for support.² In Order No. 17536, the Commission held that, “for the sake of administrative economy, CLEC transactions concerning corporate reorganizations and restructurings that are purely intra-corporate in nature, and do not involve transfer of ownership or control to an outside entity or organization, shall only require a Notification of the Transaction. Purely intra-corporate CLEC restructurings or reorganizations shall be subject to dismissal by this Commission.”³

A. Description of PEG-DC

3. In its filing, PEG-DC describes itself as a wholly owned, direct subsidiary of Uniti Fiber LLC, a Delaware limited liability company, which in turn is a wholly owned,

¹ *Formal Case No. TA 2012-04, In the Matter of the Notification of a Pro Forma Change in Intermediate Ownership and Control of PEG Bandwidth DC, LLC*, (“*Formal Case No. TA 2012-04*”), filed May 16, 2019 (“*Notification*”).

² *Formal Case No. 892, In the Matter of the Joint Application of Sidera Networks, LLC for Approval of a Pro Forma Intra-Company Transaction* (“*Formal Case No. 892*”), Order No. 17536, rel. July 10, 2014. (“*Order No. 17536*”).

³ *Formal Case No. 892*, Order No. 17536, ¶ 6.

direct subsidiary of Uniti Fiber Holdings Inc. (“Fiber Holdings”), a Delaware corporation.⁴ The Applicant states that Fiber Holdings and PEG-DC are indirect subsidiaries of Uniti Group Inc. (“Parent” and together with its subsidiaries, “Uniti”), a publicly-traded Maryland corporation with its principal offices in Mobile, Alabama. In the District of Columbia (“District”), PEG-DC has been authorized by the Commission to provide resold and facilities-based local exchange services pursuant to authority granted in *Formal Case No. TA 2012-04*, Order No. 16979 on December 4, 2012.⁵

B. Description of the *Pro Forma* Change

4. The Applicant describes the proposed *Pro Forma* Change as involving the removal of two intermediate companies (*i.e.*, Uniti Holdings LP³ and Uniti Holdings GP LLC⁴) from the ownership and control chain between Uniti Group LP and Fiber Holdings and the insertion of four intermediate companies (*i.e.*, CSL Capital, LLC,⁵ CSL National GP, LLC,⁶ CSL National, LP⁷ and a new entity, Uniti Group Finance Holdco Inc. (“NewCo”), which is wholly owned by Uniti Group LP, and was formed for the purposes of completing the *Pro Forma* Change).⁶ PEG-DC states that upon completion of the *Pro Forma* Change, Uniti Group LP will, directly and indirectly through CSL Capital, LLC, CSL National GP, LLC, CSL National, LP and NewCo, own Fiber Holdings and thus PEG-DC. According to PEG-DC, an exception to this ownership structure is that a limited number of individuals that will hold a *de minimis* amount of preferred shares in NewCo—which PEG-DC asserts is necessary to meet certain real estate investment trust tax requirements. Inasmuch as PEG-DC will remain a nearly wholly owned, indirect subsidiary of Uniti Group LP and Parent, the Applicant maintains that the *Pro Forma* Change is *pro forma* in nature.⁷

5. Thus, according to the Applicant, aside from the *de minimis* number of preferred shares issued by NewCo described above, the *Pro Forma* Change will not result in any changes to the ultimate ownership of PEG-DC, which will remain with the Parent and its shareholders.⁸ Rather, the Applicant maintains that PEG-DC will have different intermediary entities between it and Parent. PEG-DC asserts that following the *Pro Forma* Change, it will continue to conduct all of its operations as they are currently conducted and will remain qualified to provide service to its customers and that its operations will continue to be overseen by the same management team with substantial telecommunications experience and technical expertise.⁹

⁴ Notification at 2.

⁵ Notification at 2.

⁶ Notification at 3.

⁷ Notification at 3. *See* Exhibit A for a chart illustrating the current and post-*Pro Forma* Change corporate ownership structure of PEG-DC.

⁸ Notification at 3.

⁹ Notification at 3.

C. Public Interest Considerations

6. PEG-DC asserts that the proposed changes in Uniti's entity ownership and control structure will provide Uniti additional financial flexibility with respect to its status as a real estate investment trust ("REIT"). The Applicant contends that inasmuch as the *Pro Forma* Change only involves the reorganization of entities from Uniti's corporate structure, it is purely *pro forma* in nature, it will not result in any new owners of PEG-DC other than those in existence immediately before the *Pro Forma* Change takes place (aside from the *de minimis* number of preferred share owners of NewCo), and it will not directly involve PEG-DC or its operations.¹⁰

7. PEG-DC contends that the net effect of the *Pro Forma* Change will be to change entities in PEG-DC's intermediate ownership and control chain. The Applicant states that there will be no change in actual working control of PEG-DC, that PEG-DC will remain qualified to provide service to customers, and that their operations will continue to be overseen by their existing management teams. PEG-DC maintains that the telecommunications services it provides, including the rates, terms and conditions of those services will not change as a result of the *Pro Forma* Change, and that PEG-DC's customers will not be affected in any way by the *Pro Forma* Change.¹¹

8. PEG-DC states that, in sum, the *Pro Forma* Change will provide Uniti additional flexibility under its REIT status. PEG-DC affirms it will continue to have the same requisite managerial, technical and financial capabilities to provide quality communications services.¹² The Applicant states that its customers will receive the same full range of products and services that they received prior to the *Pro Forma* Change at the same prices and under the same terms and conditions. The Applicant asserts that the aforementioned statements demonstrate that the *Pro Forma* Change is in the public interest.¹³

III. COMMISSION DECISION

A. Transfer of Control

9. D.C. Code § 34-1001 sets forth the Commission's authority to review the transactions filed for Commission consideration and approval. In addition, 15 DCMR § 2511.2 provides the application requirements for entities seeking Commission approval for

¹⁰ Notification at 3.

¹¹ Notification at 3-4.

¹² Notification at 4.

¹³ Notification at 4.

a corporate restructuring.¹⁴ The first step in this process, however, is for the Commission to determine whether it has authority to review and approve an application for transfer of control or a corporate restructuring, in accordance with D.C. Code § 34-1001. If it determines that it has authority to review the transaction in accordance with D.C. Code § 34-1001, then the Commission will conduct an analysis of the application based on the requirements provided in 15 DCMR § 2511.2.¹⁵

10. The Commission has interpreted D.C. Code §§ 34-1001, 34-214, 34-220 and 34-221 to mean that if a Competitive Local Exchange Carrier (“CLEC”) has facilities in the District of Columbia, then it can be classified as a public utility under the D.C. Code and therefore certain transactions, such as assignments or transfers, require prior Commission review and approval.¹⁶ PEG-DC represents that it does not provide retail telecommunications services and it does not own or lease facilities in the District of Columbia.¹⁷ Inasmuch as PEG-DC has no facilities in the District, it does not meet the definition of a public utility. Because PEG-DC does not meet the statutory definition of a public utility, and because the transaction is purely intra-corporate in nature, there is no need for the Commission to analyze the merits of this transaction in accordance with 15 DCMR § 2511.2. Consequently, the Commission accepts PEG-DC’s notification of its *Pro Forma* intra-corporate restructuring and the Commission shall dismiss PEG-DC’s filing for lack of jurisdiction.¹⁸

¹⁴ See 15 DCMR § 2511.2 (2015). Specifically, 15 DCMR § 2511.2 states: For any change of ownership or control involving a certificated local exchange carrier that must be approved by the Commission pursuant to D.C. Official Code § 34-1001 (2001), all of the entities involved in the transaction must file an application with the Commission at least sixty (60) days before the proposed closing date of the transaction.

¹⁵ See 15 DCMR § 2511.2(d) (2015) stating the five standards an application for transfer of control or other type of corporate reorganization must meet in order to receive Commission approval.

¹⁶ See *Formal Case No. 990, In the Matter of Development of Local Exchange Carrier Quality of Service Standards for the District*, Order No. 13139, ¶ 22, rel. March 25, 2004; See also *Formal Case No. 892, In the Matter of Joint Application of CTC Communications Corp., Conversant Communications Resale, L.L.C., and Choice One Communications Resale, L.L.C. for Approval of Pro Forma Intra-Company Changes*, Order No. 16933, rel. October 12, 2012, citing *Formal Case No. 968, Joint Application of AT&T Corporation and Teleport Communications Group, Inc., for Approval of a Transfer of a Franchise*, Order No. 11532 at 5, rel. November 5, 1999, which provided the context for the Commission’s authority to review certain transactions. See also *Formal Case No. 892, In the Matter of Joint Application of Crown Castle International Corp., LTS Group Holdings LLC, and Lightower Fiber Networks I, LLC, and Lightower Fiber Networks II, LLC for Approval to Transfer Indirect Control of Lightower fiber Networks, I LLC and Lightower Fiber Networks II, LLC to Crown Castle International Corp.*, Order No. 19116, rel. September 21, 2017, wherein the Commission approved the joint application for transfer of control, finding the Applicants to be public utilities under Commission statutes and rules.

¹⁷ PEG-DC’s most recent Survey Responses indicate that it does not provide retail telecommunications services (except non-jurisdictional services) or have any telephone lines or facilities in the District of Columbia. See *ASMT2019-79-T-2*, Survey Response of Competitive Local Exchange Carrier: PEG Bandwidth DC, LLC, filed March 28, 2019. Notification at 2, n.2.

¹⁸ *Formal Case No. 892*, Order No. 17536. See also, *Formal Case No. TA 2012-04, In the Matter of the Notification of a Pro Forma Change in the Intermediate Ownership and Control of PEG Bandwidth DC, LLC*, Order No. 19360, rel. May 23, 2018. In that Order, the Commission dismissed a PEG-DC filing describing a similar intra-corporate transaction for reasons of lack of jurisdiction. In the intra-corporate

THEREFORE, IT IS ORDERED THAT:

11. PEG Bandwidth DC, LLC's Notification of its intra-corporate *Pro Forma* Change is accepted as adequate notification and, further, the Commission shall dismiss the filing for lack of Commission jurisdiction.

A TRUE COPY:**BY DIRECTION OF THE COMMISSION:****CHIEF CLERK:****BRINDA WESTBROOK-SEDGWICK
COMMISSION SECRETARY**

transaction described in the filing, the *Pro Forma* change involved the removal of two intermediate companies, Uniti Holdings LP and Uniti Holdings GP LLC, from the ownership and control chain between Uniti Group LP and Fiber Holdings. Upon completion of the transaction, Fiber Holdings became a direct subsidiary of Uniti Group LP and no longer a subsidiary of Uniti Holdings LP, controlled by its non-economic general partner, Uniti Holdings GP LLC. Through the *Pro Forma* Change, Uniti Holdings LP and Uniti Holdings GP LLC would no longer be in the ownership and control chain of PEG-DC.