

W C 05-108
a Return copy
FCC/COOP (ORIG)
NOWALSKY, BRONSTON & GOTHARD

A Professional Limited Liability Company

Attorneys at Law

Leon L. Nowalsky
Benjamin W. Bronston
Edward P. Gothard

3500 North Causeway Boulevard
Suite 1442
Metairie, Louisiana 70002
Telephone: (504) 832-1984
Facsimile: (504) 831-0892

Monica Borne Haab
EllenAnn G. Sands
Philip R. Adams, Jr.

Of Counsel
Bruce C. Betzer

March 31, 2005

BY OVERNIGHT DELIVERY

Federal Communications Commission
Common Carrier Bureau
445 12th Street S.W.
Washington, D. C. 20554

FCC/MELLON

APR 01 2005

FCC c/o Mellon Bank
500 Ross Street, 6th Floor
Pittsburgh, PA 15251

ATTN: Wholesale Lockbox Shift Supervisor

RE: Application for Special Temporary Authority on behalf of Empire One
Telecommunications, Inc. to consummate the bankruptcy reorganization and transfer
control of an entity which has Blanket Domestic 214 Authority
(Separate application has been filed with the International Bureau)

Dear Sir or Madam:

Enclosed please find the following documents submitted on behalf of Empire One
Telecommunications, Inc. Debtor-in-Possession and Empire One Telecommunications, Inc.:

1. The original and four (4) copies of a Request for Special Temporary Authority to consummate the bankruptcy reorganization and transfer control of Domestic 214 authority of Empire One Telecommunications, Inc.
2. The original and four (4) copies of FCC Form 159 along with credit card information for payment.

Should you have any questions or require additional information, please do not hesitate to contact me.

I would appreciate if you would return a copy of this letter, date-stamped, in the envelope provided.

Sincerely,


EllenAnn G. Sands

Enclosures

READ INSTRUCTIONS CAREFULLY
BEFORE PROCEEDING

FEDERAL COMMUNICATIONS COMMISSION
REMITTANCE ADVICE

Approved by OMB
3060-0589
Page 1 of 1

(1) LOCK BOX #		SPECIAL USE ONLY	
		FCC USE ONLY	
SECTION A - PAYER INFORMATION			
(2) PAYER NAME (if paying by credit card enter name exactly as it appears on the card) Empire One Telecommunications, Inc.		(3) TOTAL AMOUNT PAID (U.S. Dollars and cents) \$895.00	
(4) STREET ADDRESS LINE NO. 1 55 Washington Street, 9th Floor			
(5) STREET ADDRESS LINE NO. 2			
(6) CITY Brooklyn		(7) STATE NY	(8) ZIP CODE 11201
(9) DAYTIME TELEPHONE NUMBER (include area code) (504) 832-1984		(10) COUNTRY CODE (if not in U.S.A.)	
FCC REGISTRATION NUMBER (FRN) REQUIRED			
(11) PAYER (FRN) 0004343596		(12) FCC USE ONLY	
IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C) COMPLETE SECTION BELOW FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET			
(13) APPLICANT NAME			
(14) STREET ADDRESS LINE NO. 1			
(15) STREET ADDRESS LINE NO. 2			
(16) CITY		(17) STATE	(18) ZIP CODE
(19) DAYTIME TELEPHONE NUMBER (include area code)		(20) COUNTRY CODE (if not in U.S.A.)	
FCC REGISTRATION NUMBER (FRN) REQUIRED			
(21) APPLICANT (FRN)		(22) FCC USE ONLY	
COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET			
(23A) CALL SIGN/OTHER ID	(24A) PAYMENT TYPE CODE CUT	(25A) QUANTITY 1	
(26A) FEE DUE FOR (PTC)	(27A) TOTAL FEE \$895.00	FCC USE ONLY	
(28A) FCC CODE 1		(29A) FCC CODE 2	
(23B) CALL SIGN/OTHER ID	(24B) PAYMENT TYPE CODE	(25B) QUANTITY	
(26B) FEE DUE FOR (PTC)	(27B) TOTAL FEE	FCC USE ONLY	
(28B) FCC CODE 1		(29B) FCC CODE 2	
SECTION D - CERTIFICATION			

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

EMPIRE ONE
TELECOMMUNICATIONS, INC., DIP
Transferor

EMPIRE ONE TELECOMMUNICATIONS, INC.
Transferee

Application Pursuant to Section 214 of the
Communications Act of 1934 and
Section 63.24 of the Commission's Rules for
Consent to the Transfer of Control of
Empire One Telecommunications, Inc., DIP
to Empire One Telecommunications, Inc.

and

Application Pursuant to Section 214 of the
Communications Act of 1934 and
Section 63.04 of the Commission's Rules for
Consent to the Transfer of Control of
Empire One Telecommunications, Inc., DIP
to Empire One Telecommunications, Inc.

File No. ITC/T/C-2004 _____

WC Docket No. 04-_____

Attention: International Bureau and Wireline Competition Bureau

**JOINT INTERNATIONAL AND DOMESTIC APPLICATION
FOR TRANSFER OF CONTROL**

Pursuant to section 214 of the Communications Act of 1934, as amended (the "Act"), and sections 63.04 and 63.24 of the Commission's rules, this Application seeks Commission approval to transfer control of Empire One Telecommunications, Inc., Debtor in Possession ("DIP") to Empire One Telecommunications, Inc. ("EOT") (together referred to as "Applicants"). EOT holds authority to provide domestic and international telecommunications services pursuant

to section 214 of the Act.¹

I. INTRODUCTION

A. Summary of Transaction

On April 2, 2001, each of the wholly owned subsidiaries of Sonus Communications Holdings, Inc., filed a Petition for Relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York. At the time of the bankruptcy filing, the subsidiaries affected were as follows: Empire One Telecommunications, Inc. (EOT) holder of the 214 authorization, Sonus Communications, Inc. (“Sonus”), EOT Telecommunications of Canada, Inc. and Empire One Power, Inc.² At the time, Applicants did not seek Federal Communications Commission (the “Commission”) approval for the transfer of EOT’s 214 authorization. Grant of the requested authority will approve the transfer of ownership to implement a Plan of Reorganization that allowed EOT to emerge from Chapter 11 Bankruptcy. As described below, because the transaction was purely a stock acquisition, the proposed transaction did not result in any immediate change in the rates, terms or conditions of the services provided to EOT customers. The transaction enabled EOT to emerge from bankruptcy as a more effective competitor offering high quality, affordable telecommunications services to U.S. consumers. Accordingly, the Applicants respectfully submit that the transaction served the public interest and it would be in the best interest of EOT and its customers for the Commission to approve the transaction.

¹ EOT Acquisition Corporation (File Number ITC-ASG-19991202-00780) effected a corporate name change to Empire One Telecommunications, Inc. Corporate address 55 Washington St. New York, NY 11201. The contact person is Paul Butler (718) 260-0800.

² See Notice of Bankruptcy Reorganization filed with the Federal Communications Commission on January 27, 2005.

B. Request for Expedited Consideration

Expeditious grant of Commission approval is requested. The Plan of Reorganization was approved by the Bankruptcy Court and implemented by the Applicants without approval of the Commission. Applicants respectfully request that the Commission act upon this Application expeditiously in order to allow Applicants to move forward with provision of uninterrupted, quality service to their customers.

C. This Application is Eligible for Streamlined Processing

Applicants respectfully submit that this Application is eligible for streamlined processing pursuant to Sections 63.03 and 63.12 of the Commission's Rules. 47 C.F.R. §§ 63.03, 63.12. With respect to the domestic authority, this Application is eligible for streamlined processing pursuant to Section 63.03(b)(2)(I) because, immediately following the transaction: (1) Applicants and their affiliates combined will hold less than a ten percent (10%) share of the interstate, interexchange market; (2) to the extent that Applicants or their Affiliates provide U.S. local exchange services or exchange access services, those services are provided only in geographic areas served by a dominant local exchange carrier that is not a party to the transaction; and (3) none of the Applicants or their affiliates is dominant with respect to any U.S. domestic telecommunications service. With respect to international authority, this Application is eligible for streamlined processing pursuant to Section 63.12(a)-(b) of the Commission's Rules. 47 C.F.R. § 63.12(a)-(b). In particular, Section 63.12(c)(1) is inapplicable because none of the Applicants is affiliated with any foreign telecommunications carriers except for foreign telecommunications carriers that qualify for a presumption of non-dominance pursuant to Section 63.10(a)(23) of the Commission's Rules, and none of the scenarios outlined in Section 63.12(c)(2)-(4) of the Commission's Rules applies.

In support of this Application, Applicants state as follows:

II. DESCRIPTION OF APPLICANTS

- A. Empire One Telecommunications, Inc., Debtor-In-Possession and Empire One Telecommunications, Inc.

Empire One Telecommunications, Inc. as a Debtor-In-Possession, was a Delaware corporation and a wholly owned subsidiary of Sonus Communications Holdings, Inc. EOT, the same entity which emerged from Chapter 11 Reorganization, is a Delaware corporation. EOT's principal offices are located in New York City, New York. EOT is a provider of long distance, local, internet access and paging services to both residential and business customers. EOT holds domestic and international Section 214 authority granted by the Commission. (See File Numbers ITC 2141994062400006 and ITC-ASG-19991202-00780).

In April of 2001, each of the wholly owned subsidiaries of Sonus Communications Holdings, Inc. filed a Petition for Relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (case number 01-11894 (AJG)). In December of 2002, the Bankruptcy Court confirmed a Plan of Reorganization ("Plan") through which EOT would emerge as the surviving entity with all other entities being dissolved. The Plan enabled EOT to emerge as a viable provider of competitive telecommunications services.

III. DESCRIPTION OF THE TRANSACTION

On September 11, 2002, the Bankruptcy Court approved and confirmed the Plan of Reorganization wherein exit financing was secured from EOT Lending Corp and equity was distributed in the reorganized debtor. Under the Plan, 100,000 shares of common stock was distributed with Paul Butler owning 15.50% and Herbard Ltd. owning 51.91% (see description of

Herbard Ltd. below) and the remaining 32.59% ownership held by a number of smaller investors, none of which own 10% or more interest in EOT.

Customers were not affected by the change of control. Because the transaction was strictly a stock transaction, the transfer of control from Empire One Telecommunications, DIP to EOT did not result in any change in rates or terms of service to EOT's customers.

IV. PUBLIC INTEREST CONSIDERATIONS

Applicants respectfully submit that the proposed transaction serves the public interest. EOT provided a choice for consumers of high quality, affordably priced telecommunications services. The transaction allowed EOT to emerge from bankruptcy intact. The transfer avoided disruption of customer service. In particular, Applicants submit that: (1) the transaction did not adversely affect Applicants' managerial or technical qualifications and enhanced the financial qualifications of Applicant and (2) the transaction benefitted consumers in the U.S. telecommunications market by enabling EOT to emerge from bankruptcy as a more vibrant competitor; and (3) the transaction assured that there was no disruption of service and was virtually transparent to EOT's existing customers.

Applicants request Commission approval of this transaction.

V. INFORMATION REQUIRED BY SECTION 63.24

Pursuant to Section 63.24(e) of the Commission's Rules, the Applicants submit the following information requested in Section 63.18 (a)-(d) and (h)-(p) in support of this Application.

- (a) The name, address and telephone number of the transferor is:
Empire One Telecommunications, Inc., Debtor-in-Possession
ATTN: Paul Butler
55 Washington Street, 9th Floor
Brooklyn, NY 11201

Phone: (718) 260-0800

The name, address and telephone number of the transferee is:

Empire One Telecommunications, Inc.
ATTN: Paul Butler
55 Washington Street, 9th Floor
Brooklyn, NY 11201
Phone: (718) 260-0800

- (b) Empire One Telecommunications, DIP and Empire One Telecommunications are Delaware corporations.
- (c) Correspondence concerning this Application should be addressed to:

EllenAnn G. Sands
Nowalsky, Bronston & Gothard
3500 N. Causeway Blvd. Suite 1442
Metairie, LA 70002
Phone: (504) 832-1984
Email: esands@nbglaw.com

With copies to:

Paul Butler
Empire One Telecommunications, Inc.
55 Washington Street, 9th Floor
Brooklyn, NY 11201

- d) EOT holds domestic and international authority pursuant to section 214 of the Act. Authority was granted in ITC 2141994062400006 and ITC-ASG-19991202-00780, December 2, 1999.

Responses (e) through (g) are not applicable to this Application.

- (h) The following are the names, addresses, citizenship, and principal businesses of any person or entity that directly or indirectly owned at least ten percent of the equity of Empire One Telecommunications, DIP and will own 10% or more of Empire One Telecommunications, the reorganized entity.

Paul Butler

Address: 55 Washington Street, 9th Floor, Brooklyn, NY 11201
Citizenship: United States
Percentage Owned: 15.50%
Principal Business: President

Herbard Ltd.

Address: Tropic Isle Building, Road Town, Tortola, British Virgin Islands

Citizenship: British Virgin Islands

Percentage Owned: 51.91%

Principal Business: Investments

Relationship: subsidiary of AE Finance. Only AE Finance owns 10% or more of this entity.

AE Finance

Address: Tropic Isle Building, Road Town, Tortola, British Virgin Islands

Citizenship: British Virgin Islands

Principal Business: Investments

No other entity has a ten percent or greater direct or indirect interest in EOT.

EOT does not have any interlocking directorates with a foreign carrier.

- (i) Applicants certify that they are not, and following the proposed transaction will not be, affiliated with any foreign carrier within the meaning of section 63.09(d) and (e).
- (j) The Applicants certify that they do not seek authority to provide service to any country described in paragraphs (1) through (4) of section 63.18(j).
- (k) Not applicable.
- (l) Not applicable.
- (m) Not applicable.
- (n) Applicants certify that they have not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses market power on the foreign end of the route and will not enter into such agreements in the future.
- (o) Applicants certify that no party to the Application is subject to a denial of Federal benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988.
- (p) This international section 214 Application qualifies for streamlined processing pursuant to section 63.12 because the applicants are not affiliated with any foreign carriers; are not affiliated with any dominant U.S. carriers whose international switched or private line services the applicant seeks authority to resell; and do not seek authority to provide switched basic services over private lines to a country for which the Commission has not previously authorized the provision of

switched services over private lines. This Application therefore should be granted, pursuant to section 63.12(a), fourteen days after the date of public notice listing this Application as accepted for filing.

II ADDITIONAL INFORMATION REQUIRED BY SECTION 63.04

This Application seeks Commission consent to transfer control of EOT, which holds authority to provide domestic and international telecommunications services pursuant to section 214 of the Act. Pursuant to section 63.04(b) of the Commission's rules, the parties submit the following information in support of this Application in response to items 6 through 12 of section 63.04(a):

- 6) As set forth above, this Application seeks Commission consent to transfer control of EOT, DIP to EOT. Specifically, the Application seeks approval of the transfer of control effected as a result of the bankruptcy reorganization plan. Pursuant to the Plan, Paul Butler and Herbard Ltd. will own 15.50% and 51.91% of EOT, respectively. The remaining 32.59% ownership is held by a number of smaller investors, none of which own 10% or more interest in EOT.
- 7) Empire provides local and/or long distance telecommunications services in California, Colorado, Massachusetts, Michigan, New Jersey, New York, Pennsylvania and Texas.
- 8) This Application qualifies for streamlined processing under section 63.03(b)(2)(I) because the transferee will have a market share in the interstate interexchange market of less than 10 percent, the transferee will provide competitive telephone exchange services or exchange access services exclusively in geographic areas served by a dominant local exchange carrier that is not a party to the proposed transaction, and no party to this Application is dominant with respect to any service.
- 9) The parties are filing a request for Special Temporary Authority to consummate the transactions making up the reorganization of EOT, DIP. The parties intend to file an application to transfer control of EOT to Fonix Corporation.
- 10) Only standard streamlined processing of this domestic section 214 transfer of control application is sought pursuant to Section 63.03.
- 11) No waiver requests are being filed in conjunction with the transaction.
- 12) As discussed above, grant of this Application will approve the transactions which made up the reorganization of EOT, DIP, enabling EOT to remain a strong competitor in the marketplace for local, interstate and international telecommunications service. Grant of this Application will promote competition in the local exchange, interexchange, and international telecommunications

markets and will serve the public interest.

III. CONCLUSION

For the foregoing reasons, Applicants respectfully request that the Commission consent to the change in control of Empire One Telecommunications, DIP to Empire One Telecommunications, Inc. that resulted from the bankruptcy reorganization plan..

Respectfully submitted,

EMPIRE ONE
TELECOMMUNICATIONS, DIP

EMPIRE ONE TELECOMMUNICATIONS, INC.

BY: 
Paul Butler
Chief Operating Officer

Dated: March 1, 2005