



# PUBLIC NOTICE

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## DOMESTIC SECTION 214 APPLICATION FILED FOR THE TRANSFER OF CONTROL OF MOUNTAIN TELECOMMUNICATIONS, INC. TO ESCHELON TELECOM, INC.

### STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 06-141

**Comments Due: August 9, 2006**

**Reply Comments Due: August 16, 2006**

On July 7, 2006, Mountain Telecommunications, Inc. ("MTI") and Eschelon Telecom, Inc. ("ETI") (together, the "Applicants"), filed an application, pursuant to section 63.04 of the Commission's rules,<sup>1</sup> requesting authority to transfer control of MTI to ETI.<sup>2</sup> MTI holds authorizations under section 214 of the Communications Act to provide domestic telecommunications service.

Applicants submit that this transaction is entitled to presumptive streamlined treatment under 63.03(b)(2)(i) of the Commission's rules because (i) ETI, as the transferee, will hold less than a ten percent share of the interstate, interexchange market; (ii) ETI, as the transferee, will provide competitive telephone exchange or exchange access services, if at all, exclusively in geographic areas served by dominant local exchange carriers (none of which are a party to the proposed transactions) and; (iii) neither of the Applicants is dominant with respect to any service.<sup>3</sup>

<sup>1</sup> 47 C.F.R. § 63.04; *see* 47 U.S.C. § 214.

<sup>2</sup> Applicants filed a supplement to the application on July 21, 2006. *See* Letter from Dennis D. Ahlers, Eschelon Telecom, Inc., to Marlene H. Dortch, FCC, WC Docket No. 06-141 (filed July 21, 2006) (*July 21, 2006 Supplement*). 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.

<sup>3</sup> 47 C.F.R. § 63.03(b)(2)(i).

MTI is a privately-owned Delaware corporation and the parent corporation of Mountain Telecommunications of Arizona (MTA). MTA is an Arizona corporation that provides resold local and long distance voice and data transmission services to small and medium sized businesses in Arizona.

ETI, a Delaware corporation, is authorized to provide telecommunications services in California, Idaho, New Mexico, and New York, but currently provides only long distance resale service to one business customer in New York. Eschelon Operating Company ("OPCO"), a Minnesota corporation, functions as a holding company and is a direct, wholly-owned subsidiary of ETI.<sup>4</sup> Mountain Acquisition Corp, a Delaware corporation, is a newly created, direct, wholly-owned subsidiary of OPCO. The following entities own a ten percent or greater direct or indirect interest in ETI: Wind Point Partners IV, L.P., a Delaware limited partnership (16.7%), Bain Capital Fund VI, L.P., a Delaware limited partnership (20.9%).<sup>5</sup> The general partner of Wind Point Partners IV, L.P. is Wind Point Investors IV, L.P., a Delaware limited partnership. The general partner of Wind Point Investors IV, L.P. is Wind Point Advisors, LLC, a Delaware limited liability company.<sup>6</sup> The general partner of Bain Capital Fund VI, L.P. is Bain Capital Partners VI, L.P., a Delaware limited partnership. The general partner of Bain Capital Partners VI, L.P. is Bain Capital Investors, LLC, a Delaware limited liability company.<sup>7</sup> Applicants state that no other entity holds a ten percent or greater direct or indirect interest in ETI.

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<sup>4</sup> OPCO wholly-owns the following U.S. corporations that provide resold and facilities-based local, resold long distance, and data transmission services to small and medium-sized business in various states: Advanced TelCom, Inc., offering service in Nevada, California, Washington, and Oregon; Eschelon Telecom of Arizona, Inc., offering service in Arizona; Eschelon Telecom of Colorado, Inc., offering service in Colorado; Eschelon Telecom of Minnesota, Inc., offering service in Minnesota; Echelon Telecom of Nevada, offering service in Nevada; Telecom of Utah, Inc., offering service in Utah; Eschelon Telecom of Oregon, Inc. and Oregon Telecom, Inc., both offering service in Oregon; and Eschelon Telecom of Washington, Inc., offering service in Washington. There are no other affiliates of ETI that offer domestic telecommunications services.

<sup>5</sup> Applicants updated the ownership percentages of ETI in the *July 21, 2006 Supplement*. Bain Capital Fund VI, L.P. has a 5.2% ownership interest in US LEC Corp., a telecommunications company. Other Bain entities, which do not have an ownership interest in ETI, own an additional 7.1% interest in US LEC Corp. Applicants state that US LEC Corp. does not provide telecommunications service in any of the markets served by ETI.

<sup>6</sup> Applicants state that the Wind Point Partners IV, L.P. investment in ETI is made through three separate funds and multiple limited partners and that no limited partner of Wind Point Partners IV, L.P. or Wind Point Investors IV, L.P. holds a ten percent or greater ownership interest in ETI. They also state that there is no managing partner of Wind Point Advisors, LLC and that no member of Wind Point Advisors, LLC has a ten percent or greater ownership interest in ETI. The principal business of the Wind Point entities is investments, and they have no other telecommunications interests.

<sup>7</sup> Applicants state that the Bain Capital Fund VI, L.P. investment in ETI is made through ten separate funds with multiple limited partners and that no limited partner of Bain Capital Fund VI, L.P. or Bain Capital Partners VI, L.P. owns a ten percent or greater ownership interest in ETI. They also state that Bain Capital Investors, LLC has no economic interest in Bain Capital Partners VI, L.P., that there is no managing member of Bain Capital Investors, LLC, and that no member of Bain Capital Investors, LLC has a ten percent or greater ownership interest in ETI. The principal business of the Bain entities is investments.

Pursuant to an agreement and plan of merger, dated June 30, 2006, Mountain Acquisition Corp. will be merged into MTI, with MTI being the surviving corporation. As a result, the separate corporate existence of Mountain Acquisition Corp. will cease, and MTI will continue as a wholly-owned subsidiary of OPCO, which will, in turn, continue to be wholly-owned by ETI.

The Applicants state that the proposed transaction serves the public interest because (1) the transaction will be transparent to MTI's customers, and they will continue to receive telecommunications services under existing rates, terms, and conditions; (2) the transaction will increase competition by strengthening ETI's position in the markets it serves; and (3) the transaction will not have anti-competitive effects because, although MTI and ETI both provide service in Arizona, their market share post-merger will not exceed ten percent, and there are other competitors in the market.

### **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 August 9, 2006 and reply comments on or before August 16, 2006.**<sup>8</sup> Unless otherwise notified by the Commission, Applicants are permitted to transfer the assets and related control on the 31<sup>st</sup> day after the date of this notice.<sup>9</sup> 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 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](mailto: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.

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<sup>8</sup> See 47 C.F.R. § 63.03(a).

<sup>9</sup> Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

- 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](mailto: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](mailto: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.bcpweb.com](http://www.bcpweb.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](mailto: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](mailto: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](mailto:susan.o'connell@fcc.gov); and
- (5) Jim Bird, Office of General Counsel, 445 12th Street, S.W., Room 8-C824, Washington, D.C. 20554; e-mail: [jim.bird@fcc.gov](mailto:jim.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.bcpweb.com](http://www.bcpweb.com).

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

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