PUBLIC NOTICE

Federal Communications Commission
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AUG 0 2 2006

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DA 06-1556
July 31, 2006

DOMESTIC AUTHORIZATION GRANTED

Application for Transfer of Control of Mpower Communications Corp. from Mpower Holding Corporation to U.S. TelePacific Holdings Corp.

WC Docket No. 06-107

By the Chief, Wireline Competition Bureau:

On May 18, 2006, Mpower Holding Corporation ("MPHC") and U.S. TelePacific Holdings Corp. ("Holdings") (collectively, the "Applicants"), filed an application, pursuant to section 63.04 of the Commission's rules,[1] requesting authority to transfer control of Mpower Communications Corp. ("Mpower") to Holdings.[2]

The Commission released a public notice accepting this application for streamlined processing on June 7, 2006.[3] On June 21, 2006, the Department of Justice, including the Federal Bureau of Investigation, with the concurrence of the Department of Homeland Security (collectively, the "Executive Branch Agencies"), filed a letter requesting that the Commission defer grant of this application while the Executive Branch Agencies address potential national security, law enforcement, and public safety concerns.[4] On July 25, 2006, the Executive Branch Agencies withdrew their June 21, 2006 request to defer action on the application noting that they have no objection to the application.[5]

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[1] 47 C.F.R § 63.04; *see* 47 U.S.C. § 214.

[2] Applicants filed a supplement to the application on June 2, 2006. Applicants have also filed 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] *Domestic Section 214 Application Filed For the Transfer of Control of Mpower Communications Corp. from Mpower Holding Corporation to U.S. TelePacific Holdings Corp.*, WC Docket No. 06-107, Public Notice, DA 06-1225 (rel. June 7, 2006).

[4] *See* Letter from Benton Campbell, Acting Deputy Assistant Attorney General, United States Department of Justice, to Marlene H. Dortch, FCC, WC Docket No. 06-107 and ITC-T/C-20060518-00282 (filed June 21, 2006); *see also Notice of Removal of Domestic Section 214 Applications From Streamlined Treatment*, WC Docket Nos. 06-64 & 06-107, Public Notice, DA 06-1346 (rel. June 28, 2006).

[5] *See* Letter from Sigal Mandelker, Deputy Assistant Attorney General, United States Department of Justice, to Marlene H. Dortch, FCC, WC Docket No. 06-107 and ITC-T/C-20060518-00282 (filed July 25, 2006).

The Wireline Competition Bureau finds, upon consideration of the record, that grant of the application will serve the public interest, convenience, and necessity. Upon consummation of the transaction, Holdings will have a market share in the interstate, interexchange market of less than 10 percent, and 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 transaction. In addition, none of the Applicants or their affiliates are dominant with respect to any service.

Consistent with Commission precedent, the Bureau accords the appropriate level of deference to the Executive Branch Agencies' expertise on national security and law enforcement issues.[6] Therefore, pursuant to section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and section 0.291 of the Commission's rules,[7] the Wireline Competition Bureau hereby grants the application discussed in this Public Notice.

Pursuant to section 1.103 of the Commission's rules, the grant is effective upon release of this Public Notice.[8] Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules may be filed within 30 days of the date of this Public Notice.[9]

For further information, please contact Adam Kirschenbaum at (202) 418-7280.

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[6] The Commission considers national security, law enforcement, foreign policy, and trade policy concerns when analyzing a transfer of control or assignment application in which foreign ownership is an issue. *See Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Satellites Providing Domestic and International Service in the United States*, Report and Order, 12 FCC Rcd 24094, 24170-72, paras. 178-82 (1997); *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23919-21, paras. 61-66 (1997) ("*Foreign Participation Order*"), Order on Reconsideration, 15 FCC Rcd 18158 (2000). In assessing the public interest, the Commission considers the record and accords the appropriate level of deference to Executive Branch expertise on national security and law enforcement issues. *See Foreign Participation Order*, 12 FCC Rcd at 23919-21, paras. 61-66.

[7] 47 C.F.R. § 0.291.

[8] *See* 47 C.F.R. § 1.103.

[9] *See* 47 C.F.R. §§ 1.106, 1.115.