



PUBLIC NOTICE

Federal Communications Commission
445 12th Street, S.W.
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DA 06-1727
Released: August 29, 2006

DOMESTIC SECTION 214 APPLICATION FILED FOR THE TRANSFER OF CONTROL OF ONE EIGHTY COMMUNICATIONS, INC. TO ESCHELON TELECOM, INC.

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 06-165

Comments Due: September 12, 2006
Reply Comments Due: September 19, 2006

On August 11, 2006, OneEighty Communications, Inc. (“OCI”) and Eschelon Telecom, Inc. (“ETI”) (together, the “Applicants”), filed an application, pursuant to section 63.04 of the Commission’s rules,¹ requesting authority to transfer control of OCI to ETI.² OCI 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 services or exchange access services, if at all, exclusively in geographic areas served by a dominant local exchange carrier that is not a party to the transaction and; (iii) neither of the Applicants is dominant with respect to any service.³

OCI is a privately-owned Montana corporation that provides resold and facilities-based local, resold long distance, and data services to small and medium-sized business and residential customers in Montana. OCI has no affiliates that offer telecommunications service.

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

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 47 C.F.R. § 63.03(b)(2)(i).

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 and fewer than 10 business customers in Idaho. Eschelon Operating Company (“OPCO”), a Minnesota corporation, functions as a holding company and is a direct, wholly-owned subsidiary of ETI.⁴ Degree Merger Sub, Inc., a Montana 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%).⁵ 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.⁶ 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.⁷ Applicants state that no other entity holds a ten percent or greater direct or indirect interest in ETI.⁸

⁴ 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; Eschelon Telecom of Nevada, Inc., offering service in Nevada; Eschelon Telecom of Utah, Inc., offering service in Utah; Eschelon Telecom of Oregon, Inc., offering service in Oregon, and Oregon Telecom, Inc., offering service in Oregon and Washington; and Eschelon Telecom of Washington, Inc., offering service in Washington. There are no other affiliates of ETI that offer domestic telecommunications services.

⁵ 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.

⁶ 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.

⁷ 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.

⁸ On July 6, 2006, ETI and Mountain Telecommunications, Inc. (“MTI”) filed a Joint International and Domestic Application for consent to transfer control of MTI to ETI. The domestic application was granted on August 28, 2006. See Notice of Streamlined Domestic 214 Applications Granted, Transfer of Control of Mountain Telecommunications, Inc. to Eschelon Telecom, Inc., WC Docket No. 06-141, Public Notice, DA 06-1725 (rel.

Pursuant to an agreement and plan of merger, dated August 9, 2006, Degree Merger Sub, Inc. will be merged into OCI, with OCI to be the surviving corporation of the merger. As a result, the separate corporate existence of Degree Merger Sub, Inc. will cease, and OCI 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 OCI'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 OCI and ETI do not provide service in the same markets, and there are incumbent carriers and other competitive carriers in all the markets that they serve.

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 September 12, 2006 and reply comments on or before September 19, 2006.**⁹ 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.¹⁰ 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

Aug. 28, 2006). MTI provided telecommunications service in Arizona. Mountain Acquisition Corp., a Delaware corporation, is a directly, wholly-owned subsidiary of OPCO that, pursuant to the MTI/ETI plan of merger, will be merged into MTI, and MTI will continue as a wholly-owned subsidiary of OPCO.

⁹ See 47 C.F.R. § 63.03(a).

¹⁰ Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

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, 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.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;
- (3) Jodie May, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C234, Washington, D.C. 20554; e-mail: jodie.may@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) Jim Bird, Office of General Counsel, 445 12th Street, S.W., Room 8-C824, Washington, D.C. 20554; e-mail: 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.

For further information, please contact Cecilia Seppings at (202) 418-1588, or Jodie May at (202) 418-0913.

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