

WC 06-192

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of

TELESPHERE NETWORKS LTD.,
Transferor and Licensee

and

RALLY CAPITAL, LLC,
Transferee

Application for *Nunc Pro Tunc* Consent to Transfer Control of a Telecommunications Carrier Authorized to Provide Global Facilities-Based and Global Resale International Telecommunications Services and to Transfer Control of Domestic Common Carrier Transmission Lines, Pursuant to Section 214 of the Communications Act of 1934, as Amended

File No. ITC-T/C-200610__-__

WC Docket No. 06-__

FORWARDED
OCT 12 2006

**CONSOLIDATED APPLICATION —
STREAMLINED PROCESSING REQUIRED**

Pursuant to Section 214 of the Communications Act of 1934, as amended (the "Act"), and Sections 63.04 and 63.18(e)(3) of the Commission's rules, Telesphere Networks Ltd. ("Telesphere," FRN No. 0015328032), and Rally Capital, LLC ("Rally Capital," FRN No. 0015577208) (collectively, "Applicants"), request that the Commission consent *nunc pro tunc* to the transfer of control to Rally Capital of Telesphere's international Section 214 authorization for global facilities-based and global resale services, and of Telesphere's domestic common-carrier

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transmission lines.¹ As described in part I.B below, the Applicants acted under extreme time pressure to reorganize Telesphere's debt and equity. Rally Capital converted the Telesphere debt it held and acquired a majority of Telesphere's equity ("Reorganization Transactions"). The Applicants regret that exigent financial circumstances precluded them from seeking timely transaction consent from the Commission, and commit that such actions shall not be repeated in the future.

This consolidated application qualifies for presumptive streamlined processing under Sections 63.03(b)(1)(ii) and 63.12 of the Commission's rules, and the Applicants therefore request such treatment.²

I. BACKGROUND

A. Parties to the Proposed Transaction

Telesphere Networks Ltd.: Telesphere is a Washington corporation headquartered in Scottsdale, Arizona. Telesphere is an IP Ethernet carrier providing domestic interstate and international IP-based voice, video, and data services. Its IP network connects 350 cities in 52 countries. Telesphere is a non-dominant carrier holding authority to provide global facilities-based and resale-based international telecommunications services. Prior to the Reorganization Transactions, Telesphere had no controlling shareholder.

Rally Capital, LLC: Rally Capital is Kirkland, Washington-based venture capital group organized as a limited-liability company under the laws of the State of Washington. Rally Capital specializes in communications investments.

¹ See 47 U.S.C. § 214; 47 C.F.R. §§ 63.04, 63.18(e)(3). Section 63.04(b) of the Commission's rules permits the Applicants to file a joint transfer and/or assignment applications for domestic and international Section 214 authorizations. See also *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations, Report and Order*, 17 FCC Rcd. 5517 (2002).

B. The Reorganization Transactions

In September 2006, Rally Capital—as Telesphere’s secured (and only) lender—accelerated conversion of Telesphere debt to Telesphere equity. Effective September 20, 2006, Rally Capital acquired 64.9 percent of Telesphere’s capital stock. Effective October 4, 2006, Rally Capital acquired an additional 2.1 percent of Telesphere’s capital stock. Thus, on September 20, 2006, Rally Capital acquired control of Telesphere’s international Section 214 authorization for global facilities-based and global resale services and of Telesphere’s domestic common-carrier transmission lines.

Telesphere is mindful that the Commission disfavors *nunc pro tunc* applications for transaction consent.³ Nevertheless, financial circumstances required the Applicants to act swiftly to improve the financial position of Telesphere. And the Applicants have filed this application with the Commission as promptly as possible given the circumstances, and certainly within the 30 days following the Reorganization Transactions—the timeframe for such filings in the event of involuntary transfers of control.⁴

Rally Capital’s acquisition of control of Telesphere strengthens Telesphere’s financial position, allowing it to expand its service offerings and compete more effectively with other carriers in the market. The Reorganization Transactions raise no competition or other public interest concerns that would warrant a denial of streamlined processing. Consequently, the

² See 47 C.F.R. §§ 63.03, 63.12.

³ See *International Bureau and Enforcement Bureau Announce Program to Increase Compliance with Licensing Requirements for Carriers that Provide International Telecommunications Services and Operators of International Telecommunications Facilities Pursuant to Section 214 of the Communications Act and Sections 34-39 of the Submarine Cable Landing License Act, Public Notice*, 16 FCC Rcd. 3857 ¶ 7 (Int’l and Enf. Burs. 2001).

⁴ See 47 C.F.R. § 63.24(g).

Applicants believe that Commission grant of this transfer application will serve the public interest, convenience, and necessity.

II. INFORMATION REQUIRED BY SECTION 63.18 OF THE COMMISSION'S RULES REGARDING THE TRANSFER OF CONTROL TO RALLY CAPITAL OF TELESPIHERE'S INTERNATIONAL SECTION 214 AUTHORIZATION FOR GLOBAL FACILITIES-BASED AND GLOBAL RESALE SERVICES

Pursuant to Section 63.18 of the Commission's rules, the Applicants provide the following information in support of the Applicants' request for consent to transfer control to Rally Capital the international Section 214 authorization of Telesphere:

- (a) The name, address, and telephone number of the Applicants are:

Assignor/Licensee

TELESPIHERE NETWORKS LTD.
4150 N. Drinkwater, Suite 500
Scottsdale, Arizona 85241
+1 480 385 7000 tel

FRN No. 0015328032

Assignee

RALLY CAPITAL, LLC
2365 Carillon Point
Kirkland, Washington 98033
+1 425 889 4331 tel

FRN No. 0015577208

- (b) Telesphere is a corporation organized under the laws of the State of Washington.

Rally Capital is a limited-liability company organized under the laws of the State of Washington.

- (c) Correspondence concerning this application should be sent to:

Transferor/Licensee

Dennis James
Chief Operating Officer
TELESPIHERE NETWORKS LTD.
4150 N. Drinkwater, Suite 500
Scottsdale, Arizona 85241
+1 480 385 7000 tel
+1 480 385 7007 fax

Transferee

Dennis Weibling
Managing Director
RALLY CAPITAL, LLC
2365 Carillon Point
Kirkland, Washington 98033
+1 425 889 4331 tel
+1 425 803 0758 fax

with a copy to:

Kent D. Bressie
HARRIS, WILTSHIRE & GRANNIS LLP
1200 18th Street, N.W., Suite 1200
Washington, D.C. 20036-2560
+1 202 730 1337 tel
+1 202 730 1301 fax

Counsel for Telesphere Networks Ltd.

with a copy to:

Matt Topham
PRESTON, GATES & ELLIS
925 Fourth Ave, Suite 2900
Seattle, Washington 98104-1158
+1 206 623 7580 tel
+1 206 623 7022 fax

Counsel for Rally Capital, LLC

(d) Telesphere holds a single international Section 214 authorization for the provision of global facilities-based and global resale services.⁵ The Commission has not regulated Telesphere as dominant for the provision of any service on any international route.

(e)(3) The Applicants seek Commission consent to transfer control of the international Section 214 authorization listed in part II(d) above.

(f) No response is required.

(g) No response is required.

(h) Prior to the Reorganization Transactions, Telesphere had three 10-percent-or-greater shareholders:

- (1) Dave Thomas
CEO and Director of Telesphere Networks Ltd.
4150 N. Drinkwater, Suite 500
Scottsdale, Arizona 85251
U.S. Citizen
Principal Business: telecommunications
Owned or controlled 29.9 percent of Telesphere's capital stock

⁵ See *International Authorizations Granted, Public Notice*, 20 FCC Rcd. 14,650, 14,651 (2005) (granted in the name of Clear Sky Broadband, Inc.); File No. ITC-ITC-214-20050824-00344. On July 27, 2006, Telesphere notified the FCC by letter of its name change, from Clear Sky Broadband, Inc.

- (2) Jeff Rice
 President and Director of Telesphere Networks Ltd.
 4150 N. Drinkwater, Suite 500
 Scottsdale, Arizona 85251
 U.S. Citizen
 Principal Business: telecommunications
 Owned or controlled 23.5 percent of Telesphere's capital stock

- (3) Brad Green
 Director of Telesphere Networks Ltd.
 Principal of Conover Insurance
 11250 Kirkland Way #100
 Kirkland, Washington 98033
 U.S. Citizen
 Principal Business: insurance
 Owned or controlled 10.7 percent of Telesphere's capital stock

As noted in part I.B above, consummation of the Reorganization Transactions reduced the interests of existing Telesphere shareholders. By its signature below, Rally Capital certifies that the following persons own a 10-percent-or-greater direct or indirect interest in Telesphere's capital stock following the Reorganization Transactions:

- (1) Rally Capital (as described in part I.A above)

- (2) Teledesic LLC
 2365 Carillon Point
 Kirkland, Washington 98033
 +1 425 889 4331 tel
 Delaware limited-liability partnership
 Principal Business: holding company
 Owns or controls 100 percent of Rally Capital's units and (indirectly) 67 percent of Telesphere's capital stock

- (3) Teledesic Corporation
 2365 Carillon Point
 Kirkland, Washington 98033
 +1 425 889 4331 tel
 Delaware corporation
 Principal Business: holding company
 Owns or controls 99 percent of Teledesic LLC's units and (indirectly) approximately 66 percent of Telesphere's capital stock

- (4) Mente LLC
2365 Carillon Point
Kirkland, Washington 98033
+1 425 889 4331 tel
Washington corporation
Principal business: investments
Owns or controls 88 percent of Teledesic Corporation's capital stock and
 (indirectly) approximately 58 percent of Telesphere's capital stock

- (5) William H. Gates
Chairman of Microsoft Corporation
2365 Carillon Point
Kirkland, Washington 98033
+1 425 889 4331 tel
U.S. citizen
Principal businesses: technology and philanthropy
Owns or controls the sole membership interest in Menta LLC and
 (indirectly) approximately 58 percent of Telesphere's capital stock

Telesphere has no interlocking directorates with any foreign carrier.

(i) By its signature below, Rally Capital certifies that Telesphere has no affiliations with any foreign carrier as a result of the Reorganization Transactions.

(j) By its signature below, Rally Capital certifies that following the consummation of the Reorganization Transactions, (1) Telesphere is not a foreign carrier in any destination country to which it seeks to provide international telecommunications services; (2) Telesphere does not control a foreign carrier in any destination country to which it seeks to provide international telecommunications services; (3) no entity controlling a foreign carrier in any destination country to which Telesphere seeks to provide international telecommunications services owns more than twenty-five percent (25%) of Telesphere, or controls Telesphere; and (4) no foreign carriers (or parties that control foreign carriers) in any destination country to which Telesphere seeks to provide international telecommunications services own, in the aggregate, more than twenty-five percent (25%) of Telesphere or are parties to, or the

beneficiaries of, a contractual relation affecting the provision or marketing of international basic telecommunications services in the United States..

(k) As Rally Capital has not made any affirmative certifications regarding foreign carrier affiliations, in response to Section 63.18(j) of the Commission's rules, Rally Capital need not make a showing regarding WTO status, under Section 63.18(k) of the Commission's rules.

(l) As Rally Capital has not made any affirmative certifications regarding WTO status, in response to Section 63.18(k) of the Commission's rules, Rally Capital need not make a showing regarding the resale of international switched services of an unaffiliated carrier, under Section 63.18(l) of the Commission's rules.

(m) As Rally Capital has not made any affirmative certifications regarding resale of international switched services, in response to Section 63.18(l) of the Commission's rules, Rally Capital need not make a showing regarding non-dominant status, under Section 63.18(m) of the Commission's rules.

(n) By its signature below, Rally Capital certifies that neither it nor Telesphere has 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 any such agreements in the future.

(o) By its signature below, Rally Capital certifies that no party to this application is subject to a denial of federal benefits under Section 5301 of the Anti-Drug Abuse Act of 1988, as amended.⁶

(p) The Applicants seek streamlined processing of this request for consent to transfer control of Telesphere's international Section 214 authorization under Section 63.12 of the

⁶ See 21 U.S.C. § 853(a).

Commission's rules because neither Rally Capital nor Telesphere is affiliated with any foreign carrier. Moreover, the Reorganization Transactions raise no competition or other public interest concerns that would warrant a denial of streamlined processing.

III. INFORMATION REQUIRED BY SECTION 63.04 OF THE COMMISSION'S RULES REGARDING THE TRANSFER OF CONTROL OF TELESHERE'S DOMESTIC COMMON-CARRIER TRANSMISSION LINES

The Applicants submit the following information, pursuant to Section 63.04 of the Commission's rules, in support of the Applicants' request for consent to transfer control of Telesphere's domestic common-carrier transmission lines:

(a)(1) See response to part II(a) above for the names, addresses, and telephone numbers of the Applicants.

(a)(2) See response to part I.A above for the state laws under which Telesphere and Rally Capital are organized.

(a)(3) See response to part II(c) above for the contact information to whom correspondence concerning this application is to be addressed.

(a)(4) See response to part II(h) above for a list of persons or entities that directly or indirectly own at least 10 percent of the equity of Rally Capital, and the percentage of equity owned by each of those entities.

(a)(5) By its signature below, Rally Capital certifies that no party to this application is subject to a denial of federal benefits under Section 5301 of the Anti-Drug Abuse Act of 1988, as amended.

(a)(6) The Applicants set forth a complete description of the Reorganization Transactions in part I.B above.

(a)(7) Telesphere provides domestic interstate interconnected VoIP, data, and video services throughout the United States. To the extent Telesphere offers domestic interstate common carrier services, it does so pursuant to the blanket domestic Section 214 authorization in Section 63.01 of the Commission's rules. Rally Capital is not a telecommunications provider.

(a)(8) The request for consent to transfer control of Telesphere's domestic common carrier lines qualifies for presumptive streamlined processing under Section 63.03(b)(1)(ii) of the Commission's rules because Rally Capital is not a telecommunications provider. Consummation of the Reorganization Transactions have no effect whatsoever on Telesphere's market share in any telecommunications market.

(a)(9) The Applicants have not filed any other applications in connection with the Reorganization Transactions.

(a)(10) For the reasons set forth in part I.B above, the Applicants request *nunc pro tunc* consent for transfer of control of Telesphere's domestic common-carrier transmission lines.

(a)(11) The Applicants have not filed any waiver requests in connection with the Reorganization Transactions.

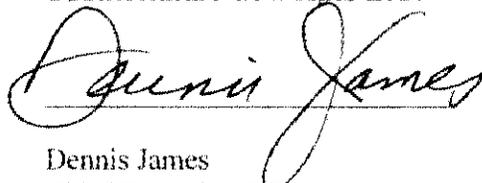
(a)(12) Rally Capital's acquisition of control of Telesphere strengthens Telesphere's financial position, allowing it to expand its service offerings and compete more effectively with other carriers in the market. The Reorganization Transactions will have no impact on any participant's share of the local exchange, exchange access, or interstate interexchange market segments. Telesphere provides no local exchange or exchange access services and is not regulated as dominant for the provision of any service. Rally Capital is not a telecommunications provider. Consequently, the Applicants believe that Commission grant of this transfer application will serve the public interest, convenience, and necessity.

CONCLUSION

The Applicants respectfully request that the Commission grant this application for *non pro tunc* consent to the transfer of control to Rally Capital of Telesphere's international Section 214 authorization and domestic common-carrier transmission lines.

Respectfully submitted,

TELESPHERE NETWORKS LTD.

A handwritten signature in cursive script that reads "Dennis James". The signature is written in black ink and is positioned above a horizontal line.

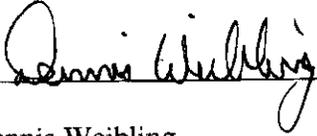
Dennis James
Chief Operating Officer

Kent D. Bressie
HARRIS, WILTSHIRE & GRANNIS LLP
1200 18th Street, N.W., Suite 1200
Washington, D.C. 20036-2560
+1 202 730 1337 tel

Counsel for Telesphere Networks Ltd.

4150 N. Drinkwater
Suite 500
Scottsdale, Arizona 85241
+1 480 385 7000 tel

RALLY CAPITAL LLC



A handwritten signature in cursive script, appearing to read "Dennis Weibling", is written over a horizontal line.

Dennis Weibling
Managing Director

RALLY CAPITAL LLC
2365 Carillon Point
Kirkland, Washington 98033
+1 425-889-4331 tel

 October 2006