

July 21, 2008

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*Via Electronic Filing*

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

**GRANTED**

*Julie Seach/jm  
JUL 22 2008*

COMPETITION POLICY DIVISION  
WIRELINE COMPETITION BUREAU

*effective for 60 days*

Re: Domestic Section 214 Request for Special Temporary Authority to Assign the Assets of Empire State Independent Network, LLC to ION HoldCo, LLC  
WC Docket No. 08-89

Dear Ms. Dortch:

Pursuant to Section 63.04 of the Commission's rules,<sup>1</sup> ION HoldCo, LLC ("ION") and Empire State Independent Network, LLC ("Empire") request special temporary authority ("STA") for ION to acquire the assets of Empire. As further explained below, the Commission has before it an application filed on June 9, 2008 seeking consent for ION to acquire Empire's assets. Although the parties anticipate obtaining the necessary Commission approvals within the next 30 days, Empire is in bankruptcy and faces significant obstacles regarding the continued funding and operation of its network. Accordingly, the parties request that the Commission grant an STA as soon as possible, and no later than July 28, 2008, for a period of sixty (60) days. Grant of this STA request would allow the parties to close by July 31 while the Commission continues to consider the Joint Application and would ensure the continued provision of services to Empire's customers.

Empire filed on December 14, 2007 a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the Northern District of New York (the "Bankruptcy Court"). Empire and ION entered into an Asset Purchase Agreement, executed on May 29, 2008, pursuant to which Empire agreed to sell, and ION agreed to purchase, substantially all of Empire's assets, including network assets, customers and FCC authorizations. The Bankruptcy Court issued an order on July 8, 2008 approving the sale of Empire's assets to ION.

<sup>1</sup> 47 C.F.R. § 63.04.

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On June 9, 2008, Empire and ION filed a Joint Application seeking the Commission's consent of the acquisition under Section 214 of the Communications Act.<sup>1</sup> The Wireline Competition Bureau issued a public notice on July 11, 2008 seeking comment on the transaction and concluding that, unless otherwise notified by the Commission, the parties could consummate the transaction on the 31<sup>st</sup> day after the date of the public notice (*i.e.*, August 11, 2008).<sup>2</sup>

As explained in the Joint Application, ION intends to acquire Empire's network and existing customers, and Empire has no plans to discontinue service to any subscribers. Empire's corporate lender, however, has stated that it does not intend to provide the company with further financing beyond July 31, 2008. In order to secure the funding necessary to continue operating the network, the parties must close the proposed transaction no later than July 31.

In addition, a company from which Empire leases dark fiber at substantially above-market rates has been unwilling to negotiate a new dark fiber lease agreement with ION at current market rates. In order to maintain Empire's network, ION must replace the affected portions of the network, either by finding an alternative dark fiber provider or building its own facilities. Because ION cannot expend any capital to replace this dark fiber until the transaction is consummated, it is urgent that the parties close as quickly as possible.

Grant of this STA request serves the public interest. Absent an STA, the Joint Application cannot be granted in time under the Commission's processing rules to ensure continuity of services to customers and the expeditious replacement of critical network facilities. The new funding through ION's acquisition of the network, however, will allow ION to continue to develop and provide services to existing and new customers and avoid the substantial financing obstacles now facing Empire.

The parties acknowledge that the grant of this STA will not prejudice any action the Commission may take on the underlying application seeking Commission consent for the assignment of Empire's assets. The parties further acknowledge that this STA can be revoked by the Commission upon its own motion without a hearing.

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<sup>1</sup> See Joint Application to Assign the International and Domestic Section 214 Authorizations of Empire State Independent Network, LLC to ION HoldCo, LLC, WC Docket No. 08-89, File No. ITC-ASG-20080609-00259 (filed June 9, 2008, supplemented July 9, 2008 and July 10, 2008) ("Joint Application").

<sup>2</sup> See FCC Public Notice, *Domestic Section 214 Application Filed for the Acquisition of Certain Assets of Empire State Independent Network, LLC by ION HoldCo, LLC*, WC Docket No. 08-89 (rel. July 11, 2008).

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A completed Form 159 in satisfaction of the applicable filing fee for this STA request is being submitted concurrently to the U.S. Bank in St. Louis, Missouri. If you have any questions regarding this STA request, please contact the undersigned.

Very truly yours,

/s/ Jennifer L. Kostyu

Jennifer L. Kostyu  
Morrison & Foerster LLP  
Counsel to ION HoldCo, LLC

/s/ Keith J. Roland

Keith J. Roland  
Herzog Law Firm P.C.  
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