

streamlined application.⁵ As noted above, on December 2, 2009, APCC Services filed comments asking the Commission to deny or remove the Section 214 Application from streamlined processing.⁶ Next-G believes the FCC should act promptly to reject APCC Services' efforts to derail the license and restore Next-G's 214 Application to the streamlined process.

As demonstrated below, APCC Services' comments are improper and should not be considered in the context of the Section 214 Application. APCC Services' comments are a procedurally dubious attempt to use the pending Section 214 Application proceeding to resolve a private dispute with Next-G; a dispute over payphone compensation which has absolutely no relationship to the instant proceeding or to the "public" purpose of the 214 licensing process, in general. This proceeding is governed by section 63.12 of the Commission's rules⁷, which does not contain any provision or procedure to allow private parties to file comments or complaints to deny or remove a Section 214 Application from streamlined processing.⁸ Likewise, the Commission's Public Notice accepting the Section 214 Application as a streamlined application does not provide any guidance regarding the filing of comments concerning Section 214 applications either.⁹ In fact, APCC Services' comments admit that "[t]he Commission's Rules specify no particular procedure or time for filing comments, requests, oppositions, or any other pleading with respect to streamlined international Section 214 applications."¹⁰ The reason for this lack of any formal procedure is due to the unusual (and improper) nature of APCC

⁵ Public Notice, Report No. TEL-01397S (November 20, 2009).

⁶ APCC Services' Comments, pg. 4.

⁷ 47 C.F.R. § 63.12.

⁸ See *Id.*

⁹ See Public Notice, Report No. TEL-01397S (November 20, 2009).

¹⁰ APCC Services' Comments, Footnote 1.

Services' request. In fact, APCC Services' actions are so extraordinary and outside the norm because actions such as private interventions, regarding private billing disputes, simply have no place in a Section 214 licensing proceeding. The actions taken by APCC Services are clearly not in the interest of maintaining and improving communications service to consumers but rather merely serve its own narrow interests. Allowing the 214 licensing process to be hijacked in an attempt to resolve a private dispute would be an unwise and improper course for the Commission to pursue.

The issue in the instant proceeding is whether the granting of authority for Next-G to provide international telecommunications service is in the public interest, not whether the narrow interests of APCC Services and its members would be served by delaying that transaction. SBC Communications Inc. v. FCC, 56 F.3d 1484, 1492-1493 (DC Cir. 1995). "The purpose of the Act is to protect the public interest rather than to provide a forum for the settlement of private disputes." United Telephone Co. of the Carolinas, Inc. v. FCC, 559 F.2d 720, 723 (D.C. Cir. 1977). The interests of American consumers will not be furthered if they can be used as pawns in a private dispute. Under similar circumstances, the DC Circuit has rejected the imposition of conditions on a transaction that serve only the narrow interests of private service providers, like APCC Services' members, at the expense of consumers and the broader public interest.¹¹ SBC Communications Inc. v. FCC, 56 F.3d at 1492-1493.

In the instant proceeding, APCC Services' requests for delay do not further any public interest and thus should be rejected. APCC Services' allegations fall outside the scope of this proceeding. They have nothing to do with how a grant of the Section 214 Application will affect

¹¹ Id.

the public. The allegations posed by APCC Services either involve matters that have already been settled or APCC Services invoices that Next-G is in the process of investigating and which it will be addressing through appropriate dispute resolution procedures.

Although the specific facts of the dispute are irrelevant to the Commission's obligation to dismiss APCC Services' intervention and restore Next-G's 214 Application to the streamlined process, Next-G nevertheless feels obligated to establish a clear record for both the International Bureau and the Enforcement Bureau. The basis for Next-G's withholding compensation to APCC Services are its grave and very real concerns regarding the authenticity of APCC Services' demands for compensation of tens of thousands of ANIs which are allegedly assigned to payphones. After conducting sample testing of certain ANIs submitted by APCC Services and claimed to be assigned to active payphones during the compensable quarter, Next-G became concerned about the volume of ANIs which were apparently NOT assigned to active payphones. Next-G withheld all payments pending further investigation. Since withholding payment, Next-G has engaged in additional testing and auditing of alleged payphone ANIs relative to the Q4 2008 through Q2 2009 periods. Preliminary results of Next-G's investigation reveal that of the approximately 200,000 ANIs submitted for Q4 2008 alone, more than approximately 33,000 ANIs were NOT assigned to active payphones during the compensable period.¹² Next-G's investigation is on-going and although Next-G intends to pay compensation

¹² Next-G was tipped off to the apparently flawed data by numerous complaints from its own customers. Customers complained about the assessment of Payphone Surcharges on calls the consumers claimed were originated from telephone numbers which were not assigned to payphones, but to their home or wireless telephone service. Although its internal investigation is incomplete, Next-G has already identified similar errors related to thousands of ANIs allegedly assigned to payphones in and around Las Vegas, San Antonio, Austin, Fresno, San Diego and Bakersfield, among other areas.

for all completed calls originating from ANIs which it confirms to be legitimate, this remains a private matter that is appropriately being cared for privately.

The Commission's International Bureau's involvement is both unnecessary and unwarranted, now and in the future. In due course, if APCC Services is dissatisfied with Next-G's efforts to address the disputed matters, it may seek recourse through the Enforcement Bureau or with an appropriate court. In the past, the Commission has rejected similar arguments from APCC Services in the context of a transfer of control proceeding and noted the opportunity for recourse through the FCC's Enforcement Bureau.¹³ It is simply inappropriate for APCC Services to pursue its complaints in the context of a 214 license application proceeding.

Furthermore, as there has been no determination of whether these claims have any merit¹⁴, there is no legal basis upon which to include them in any analysis of Next-G's qualifications or the public interest inquiry under Section 214. It is well-settled that a request for authority pursuant to Section 214 will not be delayed on the basis of private claims that can

¹³ In the Matter of UCN, Inc., Transferee, Transtel Communications, Inc. Tel America of Salt Lake City, Inc. Extelcom, Inc. Transferors, Joint International and Domestic Application for Authority Pursuant to Section 214 of the Communications Act of 1934, as amended, to Transfer Certain Assets of Authorized International and Domestic Carriers, Order On Reconsideration at ¶ 9, DA 05-2796 (released October 25, 2005).

¹⁴ In its filed Comments, APCC Services refers to an investigation of Next-G by the FCC's Enforcement Bureau. See APCC Services' Comments, pp. 2-4, citing, Next -G Communications, Inc., Order and Consent Decree, File No. EB-05-IH-2010, DA 09-2068 (released November 12, 2009) ("*Next-G Order*" and "*Next-G Consent Decree*"). The *Next-G Consent Decree* cited by APCC Services specifically states that it "does not constitute either an adjudication on the merits or a factual or legal determination regarding any compliance or non-compliance." *Next-G Consent Decree* ¶ 17. Moreover, the *Next-G Order* cited by APCC Services states the following, "In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether Next-G possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization. *Next-G Order* ¶ 4.

be handled through Commission's complaint process or privately resolved.¹⁵ Moreover, the grant of the Section 214 Application will not affect whatever relief APCC Services and its members are entitled to, if any, through the Commission's complaint processes.

Based on the foregoing, the Commission should reject APCC Services' self-serving requests for delay and grant the Section 214 Application on a streamlined basis in furtherance of what is best for consumers.

Respectfully submitted,

By: /s/

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¹⁵ Application of General Electric Co., Memorandum Opinion and Order, 3 FCC Rcd 2803, 2809-2810 (1988) ("It would be premature for us to deny the proposed transfer of control or impose conditions merely on the basis of pleadings raising issues that have not yet been adjudicated"); See also, Bell Atlantic Mobile Systems, Inc. and NYNEX Mobile Communications Company Application for Transfer of Control of Eighty-two Cellular Radio Licenses to Cellco Partnership, Order, 10 FCC Rcd 13368, 13380-13381 (1995) ("the proper forum for specific complaints against common carriers is a Section 208 complaint proceeding, not a license assignment/transfer of control proceeding"), aff'd, 12 FCC Rcd 22280, 22292 (1997) (holding that the proper forum for adjudicating claims of isolated misconduct is the section 208 complaint process, not a license/transfer of control proceeding); Communications Satellite Corp., Memorandum Opinion and Order, 3 FCC Rcd 7277, 7278 (1988) (the Commission's complaint procedure is the appropriate vehicle to redress alleged unlawful practices, not a transfer of control proceeding); Applications of Craig McCaw, Memorandum Opinion and Order, 9 FCC Rcd 5836, 5911 (1994) (the allegations against the transferor in a pending complaint proceeding do not concern the transferee and are not relevant to the Commission's analysis in a transfer of control proceeding). Please note that, in each of the preceding cited cases, the Commission was dealing with transfer of control applications pursuant to Section 214 instead of an application for authorization to provide international telecommunications service under Section 214. However, the precedent applies equally to both types of proceedings, because, in both types of proceedings, the FCC is evaluating the qualifications of the applicant to serve in the public interest.

CERTIFICATE OF SERVICE

I hereby certify that on December 9, 2009, I caused a copy of the foregoing Reply Comments to be served by Electronic Mail or First-Class Mail on the following:

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