

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )  
 )  
Tata Telecom, Inc. )  
 )  
Application for Authority to Provide )  
International Facilities-Based and Resold )  
Services to All International Points )

File No. ITC-214-20100907-00357

**OPPOSITION TO PETITION TO DENY**

October 5, 2010

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## OPPOSITION TO PETITION TO DENY

Toronto Asia Tele Access Telecom, Inc. d/b/a Tata Telecom, Inc. (“Applicant” or Tata Telecom”)<sup>1</sup> through undersigned counsel and pursuant to Section 1.45(b) of the Federal Communications Commission’s (“FCC” or “Commission”) rules,<sup>2</sup> respectfully submits the following Opposition to the Petition to Deny (“Petition”) filed by Tata Communications (America) Inc. and Tata Communications Services (America) Inc. (“Petitioners”) on September 25, 2010, in the above-captioned proceeding.

### SUMMARY

In their Petition, Petitioners allege that Tata Telecom committed a violation of U.S. trademark laws.<sup>3</sup> Petitioners suggest that such violation “calls into question” Tata Telecom’s “character qualifications.”<sup>4</sup> Further, they claim that Tata Telecom has operated without authority and that its pending Section 214 Application lacks candor.<sup>5</sup> The Commission must summarily reject the Petition on the basis of its procedural and substantive infirmities. First, the Commission must dismiss the Petition as procedurally improper. Petitioners failed to meet the procedural requirements for petitions to deny applications accepted for filing. Thus, pursuant to Sections 1.939(g) and 309(d)(2), the Commission must dismiss the Petition.<sup>6</sup>

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<sup>1</sup> Tata Telecom, Inc. is a d/b/a used by Toronto Asia Tele Access Telecom, Inc. Tata Telecom filed its 214 Application without regulatory counsel. The undersigned counsel has since been retained. Amendments to the application will be filed as needed to ensure strict compliance with applicable requirements.

<sup>2</sup> 47 C.F.R. § 1.45(b).

<sup>3</sup> *In re Application of Tata Telecom INC To Provide International Facilities-Based and Resold Services to All International Points*, Petition to Deny, File No. ITC-214-20100907-00357 (Sept. 25, 2010) (“Petition to Deny”) at 2-5.

<sup>4</sup> Petition to Deny at 4.

<sup>5</sup> Petition to Deny at 5-11.

<sup>6</sup> 47 C.F.R. § 1.939(g) (“The Commission may dismiss any petition to deny that does not comply with the requirements of this section...”); 47 U.S.C. § 302(d)(2) (“If the Commission finds...that a grant of the application would be consistent with subsection (a) of this section...it shall make the grant, deny the petition, and issue a concise statement of the reasons for denying the petition, which statement shall dispose of all substantial issues raised by the petition.”).

Specifically, Petitioners do not qualify as “parties in interest,” neglected to file the requisite affidavit supporting factual allegations in the Petition, and failed to properly serve the Petition on Tata Telecom. As such, Petitioners lack standing to pursue their claim and the Commission must dismiss the Petition pursuant to FCC Rule 1.939(g) and Section 309(d)(2) of the Communications Act of 1934, as amended (“the Act”). Second, Petitioners fail to support their allegations with reliable facts and law. The Petition improperly relies upon a World Intellectual Property Organization (“WIPO”) decision in a domain name dispute which holds absolutely no precedential weight. Further, the Petition relies on unsigned, unverified responses to interrogatories that do not comport with the Federal Rules of Civil Procedure (“FRCP”) and therefore are invalid. Finally, the Petition represents a disingenuous attempt to involve the Commission in a private trademark dispute, which it has no jurisdiction to resolve. Therefore, the Commission must immediately dismiss the Petition.

### **BACKGROUND**

On August 18, 2010, Tata Telecom filed an application pursuant to Section 214 of the Act,<sup>7</sup> (the “214 Application”) requesting authority to provide facilities-based and resold international telecommunications service in accordance with the Commission’s rules.<sup>8</sup> On September 17, 2010, the Commission released a Public Notice accepting the 214 Application for streamlined processing.<sup>9</sup> On September 25, 2010, Petitioners filed a Petition to Deny the 214 Application (“Petition”).<sup>10</sup> The Petition fails to comply with statutory and regulatory requirements and must be dismissed.

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<sup>7</sup> 47 U.S.C. § 214.

<sup>8</sup> 47 C.F.R. § 63.18(e).

<sup>9</sup> Public Notice, Streamlined International Applications Accepted for Filing, Section 214 Applications, (47 C.F.R. § 63.18); Section 310(B)(4) Requests (Sept. 17, 2010) (“214 Public Notice”).

<sup>10</sup> See Petition to Deny.

Petitioners are affiliated with Tata Sons Limited (“Tata Sons”), a party to trademark litigation in the United States District Court for the Western District of Washington (“Litigation”).<sup>11</sup> Other than the Litigation, Petitioners have no interest in the 214 Application and do not raise any issues affecting the public interest. The Petition is a “strike application” seeking to embroil the Commission in private litigation. For this and other reasons set out following, the Commission is required by law to dismiss the Petition.

### **FATAL PROCEDURAL ERRORS**

The Petition fails to comply with statutory and regulatory requirements and must be dismissed.<sup>12</sup> Petitioners are not real parties in interest, did not comply with the express requirements for submission of affidavits to support factual allegations, and failed to properly serve the Petition. All of these requirements are statutorily mandated, cannot be waived and must be enforced.<sup>13</sup>

### **Petitioners Are Not Real Parties in Interest**

Section 309(d)(1) of the Act and FCC Rule 1.939(a)(2) govern the filing of petitions to deny, entitling “any party in interest” to file a petition to deny “any application listed in a Public Notice as accepted for filing.”<sup>14</sup> Petitioners are not real parties in interest. To qualify as a party in interest a petitioner:

must make specific allegations of fact sufficient to demonstrate that grant of the challenged [] Application[] would cause the petitioner[] to suffer a direct injury ...[and]

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<sup>11</sup> *Toronto Asia Tele Access Telecom Inc., now known as TATA Telecom, Inc., et al., v. Tata Sons Limited*, U.S. Dist. Ct., Western District of Washington (Seattle), 2:09-cv-01346 RSM (“Washington Litigation”).

<sup>12</sup> The Commission’s general rules mandate immediate dismissal of procedurally deficient petitions to deny that fail to meet the statutory requirements for such petitions as set forth in Section 309(d)(1) of the Act as implemented in Section 1.939 of the Commission’s rules. 47 C.F.R. § 1.939. *See also* 47 U.S.C. § 309.

<sup>13</sup> 47 C.F.R. § 1.939(g) (“The Commission may dismiss any petition to deny that does not comply with the requirements of this section...”).

<sup>14</sup> 47 U.S.C. § 309(d)(1); 47 C.F.R. § 1.939(a)(2).

... must establish a causal link by demonstrating that the injury can be traced to the grant [of the Application]<sup>15</sup>

and must establish that:

these injuries fairly can be traced to the challenged action, and [that] the injury would be prevented or redressed by the relief requested.<sup>16</sup>

In short, the petitioner must demonstrate a causal connection between the application and its grant and some cognizable and legitimate interest in the application. And, it is incumbent upon the petitioner to “specifically plead and establish standing in the Petition.”<sup>17</sup> Petitioners ignored these requirements.<sup>18</sup> Petitioners allege that Tata Telecom has violated U.S. trademark laws. But, Petitioners’ trademark rights are not affected by the grant of the Application. The authority to engage in international resale can cause no harm to Petitioners as there are hundreds of companies so engaged, and FCC policy favors competition. Hence, Petitioners would not suffer a direct injury as a result of granting the 214 Application. Indeed, Petitioners claim no injury that would result from a grant of Tata Telecom’s 214 Application.<sup>19</sup> Because a nexus cannot be shown between the use of the Applicant’s d/b/a and grant of the 214 Application, Petitioners have no standing.<sup>20</sup> The only “injury” Petitioners complain of relates to their unproven trademark claims. The Commission has no jurisdiction to consider trademark disputes.<sup>21</sup>

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<sup>15</sup> *In the Matter of Application to Assign Wireless Licenses from Worldcom, Inc. to Nextel Spectrum Acquisition*, 19 F.C.C.R. 6232, 6239-40 (2004) (“Worldcom, Inc. Application”).

<sup>16</sup> *In Re of Commco Tech., L.L.C.*, 16 F.C.C.R. 19485, 14487 (2001).

<sup>17</sup> *In the Matter of Wireless Properties of Virginia, Inc. Assignor & Nextel Spectrum Acquisition Corp. Assignee*, 23 F.C.C.R. 7474, 7478 (2008).

<sup>18</sup> It is noted that Petitioners filed on September 25th, only 8 days after the 214 Application was placed on Public Notice. A petition to deny was not due until October 25th. See 47 C.F.R. § 1.939(a)(2). From Petitioners’ rush to file, it seems obvious that the Petition was filed to gain leverage in the Litigation and the hurry to do so would explain why there is no compliance with the filing requirements imposed by statute and FCC rules.

<sup>19</sup> As the Commission is aware, international resale has many forms. Petitioners have not alleged a single fact about their services or attempted to show that Tata Telecom’s services are akin to theirs.

<sup>20</sup> Worldcom, Inc. Application at 6240.

<sup>21</sup> The FCC has jurisdiction only over interstate and foreign communications which originate or terminate within the United States. 47 U.S.C. § 152.

Because Tata Telecom's use of the acronym for its full corporate name in no way relates to its 214 Application or Tata Telecom's ability to provide telecommunications services,<sup>22</sup> Petitioners do not qualify as real parties in interest, and the Commission must dismiss the Petition.<sup>23</sup>

Further, Section 1.939(d) requires that:

A petition to deny must contain specific allegations of fact sufficient to make a *prima facie* showing that ... a grant of the application would be inconsistent with the public interest, convenience and necessity.<sup>24</sup>

The Petition makes no showing, much less a *prima facie* showing, that grant of the 214 Application would be inconsistent with the public interest. On the contrary, using the Commission to deny an application for a qualified applicant to further private interests is definitely inconsistent with the public interest.<sup>25</sup> Petitioners' assertion of their belief "... that the 214 Applicant chose to use the name 'Tata' with the intent of deceiving consumers ..."<sup>26</sup> is self-serving, speculative, demonstratively false and duplicitous.<sup>27</sup> Petitioners are fully aware that "TATA" is the acronym for the company's full corporate name. Moreover, there is absolutely

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<sup>22</sup> Thus, even if alleged trademark violations were proven true, they have no impact on the 214 Application or Tata Telecom's provisioning of services pursuant thereto. *See, e.g., In Re Minnesota Pcs Ltd. P'ship*, 17 F.C.C.R. 126, 128 (2002) (dismissing for lack of standing a petition to deny application under Section 1.939 where petitioner failed "to demonstrate the nature of any such alleged harm and how granting...these particular [] Applications would cause harm and finding that such "vague and general assertions are insufficient to confer standing").

<sup>23</sup> 47 C.F.R. § 1.939(g).

<sup>24</sup> 47 C.F.R. § 1.939(d).

<sup>25</sup> Petitioners' claim that Tata Telecom has "apparently" violated the Act and the Commission's rules is equally without merit, self-serving and wholly unsupported. *See, e.g., In the Matter of Application of Sprintcom, Inc. & Alaska Digitel, L.L.C. for Long-Term De Facto Transfer Spectrum Leasing Arrangement*, 24 F.C.C.R. 435, 445 (2009) (rejecting petition to deny under Section 1.939 as procedurally defective for offering only "unsupported speculation" as opposed to "specific allegations" meeting the *prima facie* requirement); *In the Matter of Applications of Cellco P'ship d/b/a Verizon Wireless & Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, & Spectrum Manager & De Facto Transfer Leasing Arrangements*, 23 F.C.C.R. 17444, 17537-38 (2008) (dismissing as procedurally deficient a petition to deny supported only by speculative assertions).

<sup>26</sup> Petition to Deny at 4.

<sup>27</sup> *See, e.g., In the Matter of Mar. Communications/Land Mobile, LLC Paging Sys., Inc.*, 21 F.C.C.R. 8794, 8796-97 (2006) (dismissing petition to deny for failure to make a *prima facie* showing because it "contains broad, conclusory assertions of wrongdoing" and "relies for substantiation on cross-referenced exhibits that, in fact, do not support those assertions.").

no evidence to show how or why Tata Telecom could possibly hope to “deceive” consumers. Indeed, Tata Telecom is willing to use a disclaimer disassociating itself from any connection to Petitioners or their affiliates.

Petitioners further challenge the 214 Application as inaccurate and lacking candor.<sup>28</sup> The Commission, however, has found that “[a] necessary element of misrepresentation and lack of candor is an intent to deceive the Commission.”<sup>29</sup> The FCC has dismissed petitions to deny that challenge applications or an applicant’s character as untruthful wherein the petitioner fails to make a *prima facie* showing of intent to deceive.<sup>30</sup> Here, there is no intent to deceive, nor do Petitioners present any credible evidence of intent to deceive the Commission.<sup>31</sup> Rather, Petitioners focus their tired allegations on Tata Telecom’s supposed intent to deceive consumers in the use of its trademark. Again, Petitioners attempt to improperly inject the private trademark dispute into this proceeding. In short, rather than making a case against Tata Telecom, Petitioners have shown that a case can be made against them for their intent to deceive the Commission with their baseless claims - revealing that Petitioners’ real interest is to harass Tata Telecom because of the trademark dispute.

### **Lack of Supportive Affidavit**

Section 1.939(d) requires petitioners to enumerate specific allegations of fact<sup>32</sup> and,

[s]uch allegations of fact, except for those of which official notice may be taken, shall be supported by affidavit of a person or persons with personal knowledge thereof.<sup>33</sup>

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<sup>28</sup> Petition to Deny at 7.

<sup>29</sup> *In the Matter of Neptuno Media*, 22 F.C.C.R. 7516, 7518 (2007) (emphasis added).

<sup>30</sup> *Id.*

<sup>31</sup> As already indicated, the 214 Application was not prepared with the assistance of regulatory counsel. Any ministerial errors are wholly inadvertent and innocent. As indicated, the 214 Application will be amended as necessary to ensure complete compliance.

<sup>32</sup> 47 C.F.R. § 1.939(d).

<sup>33</sup> 47 C.F.R. § 1.939(d) (emphasis added).



While a federal agency may take official notice of “legislative facts,”<sup>34</sup> “technical or scientific facts,”<sup>35</sup> facts which are “obvious and notorious” within the agency’s field of expertise and “facts contained in reports and records in the agency’s files,”<sup>36</sup> official notice is not appropriate for matters subject to dispute.<sup>37</sup> Petitions to deny that are not accompanied by the required affidavit must be dismissed.<sup>38</sup>

The Petition relies exclusively on disputed facts subject to ongoing litigation. Because the facts outlined in the Petition do not qualify for official notice, pursuant to Sections 1.939(d) and 309(d)(1), an affidavit must accompany the Petition.<sup>39</sup> Petitioners filed no supportive affidavit with their Petition as required by Sections 1.939(d) and 309(d)(1), and thus, the Petition must be dismissed.

### **Improper Service**

Petitioners did not comply with the service requirements of Section 1.939(c). Section 1.939(c) provides that “a petitioner shall serve a copy of its petition to deny on the applicant and on all other interested parties pursuant to § 1.47.”<sup>40</sup> Section 1.47 requires that service be made “on or before the day on which the document is filed” with the Commission.<sup>41</sup> The Petition is

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<sup>34</sup> *City of Erie v. Pap's A.M.*, 529 U.S. 277, 298 (2000).

<sup>35</sup> *See also McLeod v. I.N.S.*, 802 F.2d 89, 96 (3d Cir. 1986).

<sup>36</sup> *Falasco v. Com., Pennsylvania Bd. of Prob. & Parole*, 521 A.2d 991, 995 (Pa. Commw. Ct. 1987).

<sup>37</sup> *See, e.g., Union Elec. Co. v. F.E.R.C.*, 890 F.2d 1193, 1202-03 (D.C. Cir. 1989).

<sup>38</sup> *See, e.g., In the Matter of Application of Wireless Us, LLC, Assignor, Nextel of California, Inc., Assignee, for Consent to Assignment of 851.1625 Mhz from Station Wnxg805*, 22 F.C.C.R. 8643, 8645-46 (2007) (dismissing petition to deny where the petition included “a number of allegations of fact for which official notice cannot be taken” that were not supported by an affidavit); *In the Matter of Application of Am. Tower Corp. for Tower Registration with Envtl. Assessment*, 21 F.C.C.R. 1680, 1683 (2006) (dismissing as “improperly filed” petitions to deny not supported by affidavits); *In the Matter of United States Cellular Corp. Constructed Tower Near Fries, Virginia*, 24 F.C.C.R. 8729, 8734 (2009) (dismissing pursuant to Section 1.939(g) a petition to deny lacking the requisite affidavit).

<sup>39</sup> 47 C.F.R. § 1.939(d); 47 U.S.C. § 309(d)(1).

<sup>40</sup> 47 C.F.R. § 1.939(c).

<sup>41</sup> 47 C.F.R. § 1.47(b).

dated September 25, 2010. Yet, Petitioners failed to serve the Petition upon Tata Telecom until September 27, 2010.<sup>42</sup>

Furthermore, Petitioners failed to serve all interested parties as required by the rule. Despite undersigned counsel's entry of an appearance in the ongoing litigation between the parties and its notice to opposing counsel of its representation of Tata Telecom on September 16, 2010, Petitioners nonetheless did not serve Tata Telecom's counsel.<sup>43</sup>

Section 1.47 further requires that "[p]roof of service, as provided in this section, shall be filed before action is taken."<sup>44</sup> Such proof "shall show the time and manner of service, and may be by written acknowledgement of service, by certificate of the person effecting the service, or by other proof satisfactory to the Commission."<sup>45</sup> Yet, the copy served upon Tata Telecom includes no proof of service.

In sum, Petitioner failed to properly serve its Petition upon Tata Telecom as required by Sections 1.939(c) and 1.47. Service did not occur until *after* the Petition was filed in violation of Section 1.47(b); Petitioners failed to serve Tata Telecom's counsel; and, the Petition, as served, includes no certificate of service evidencing proper service under the Rules.

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<sup>42</sup> See attached hereto as Exhibit A email from Catherine Wang to [info@tata-telecom.com](mailto:info@tata-telecom.com). Notably, this belated service prejudiced Tata Telecom, as pursuant to FCC rules, it has 10 days to file its opposition from the day the Petition was filed (not served). 47 C.F.R. § 1.45(b). While the Petition was filed on September 25<sup>th</sup>, Tata Telecom had no knowledge of it until the 27<sup>th</sup>, but nonetheless, the Rules require that it file its response within 10 days of the 25<sup>th</sup>. Therefore, Tata Telecom had only 8 days to respond, rather than the 10 allotted under FCC rules.

<sup>43</sup> Petitioners' counsel's failure to serve Tata Telecom's counsel conflicts with professional ethics that forbid direct contacts with parties represented by counsel. *See, e.g., Blair v. Shenandoah Women's Center, Inc.*, 757 F.2d. 1435 (4th Cir. 1985).

<sup>44</sup> 47 C.F.R. § 1.47(g).

<sup>45</sup> *Id.*

## MISREPRESENTATIONS<sup>46</sup>

### **Petitioners Overstate Relevancy of WIPO Decision**

Petitioners frequently cite a World Intellectual Property Organization (“WIPO”) decision concerning a domain name dispute between Tata Sons, Ltd. and Tata Telecom. WIPO decisions receive no deference in later proceedings -- before any court of competent jurisdiction or the Commission.

[D]omain names are issued pursuant to contractual arrangements under which the registrant agrees to a dispute resolution process, the UDRP [Uniform Domain-Name Dispute Resolution Policy], which is designed to resolve a large number of disputes involving domain names, but this process is not intended to interfere with or modify any “independent resolution” by a court of competent jurisdiction. ... Rather, it forms part of a contractual policy developed by ICANN [Internet Corporation for Assigned Names and Numbers] for use by registrars in administering the issuance and transfer of domain names. Indeed, it explicitly anticipates that judicial proceedings will continue under various nations' laws applicable to the parties.<sup>47</sup>

In short, courts consider a decision made by a panel under the UDRP to be nothing more “than an agreed-upon administration that is *not* given any deference.”<sup>48</sup> Petitioners self-servingly and predictably embrace the WIPO decision. Astonishingly, however, Petitioners unabashedly portray the WIPO decision as precedential. And, Petitioners neglect to disclose that the WIPO decision is currently subject to a Section 15 U.S.C. §1114(2)(D)(v) challenge, seeking reversal of the decision.<sup>49</sup>

A domain name registrant whose domain name has been suspended, disabled, or transferred under a policy described under clause (ii)(II) may, upon notice to the mark owner, file a civil action to establish that the registration or use of the domain name by such registrant is not unlawful under this chapter.<sup>50</sup>

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<sup>46</sup> For the record, Commission Rule 1.17 provides that only truthful and accurate statements be made to the Commission. 47 C.F.R. § 1.17.

<sup>47</sup> *Barcelona.com, Inc. v. Excelentísimo Ayuntamiento De Barcelona*, 330 F.3d 617, 626 (4th Cir. 2003).

<sup>48</sup> *Id.*

<sup>49</sup> *Ricks v. BMEZINE.COM, LLC*, 2010 WL 2985795 (D. Nev 2010).

<sup>50</sup> 15 U.S.C. § 1114(2)(D)(v).

After the WIPO panel's decision was rendered, Tata Telecom instituted the Litigation securing a *de novo* review by the federal court in Washington. Tata Telecom instituted its suit in accordance with the procedures provided by statute. Petitioners' allegation that Tata Telecom frivolously initiated a legal proceeding against Tata Sons is simply another self-serving misrepresentation.<sup>51</sup> The contest under law is whether Tata Sons is an overreaching trademark owner abusing its trademark. And, Tata Telecom is simply pursuing this issue using the procedures of the Anti-cybersquatting Consumer Protection Act ("ACPA").<sup>52</sup> Trademark laws protect all – large and small companies as does the Commission by following a rule of law.<sup>53</sup> In short, Petitioners' claims based on the WIPO decision are speculative, self-serving and irrelevant to Tata Telecom's qualifications or the applicable public interest inquiry under Section 214.

#### **Petitioners' Reliance on Interrogatories Is Disingenuous**

Petitioners rely on responses to interrogatories but fail to disclose that these responses are unsigned and unverified.<sup>54</sup> As such, they are invalid as they do not comply with the Federal Rules of Civil Procedure ("FRCP") and are of no value.<sup>55</sup> Tata Telecom never reviewed or confirmed the accuracy of the document attached to the Petition that includes its purported answers. Consequently, the responses are irrelevant and meaningless.

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<sup>51</sup> Petition to Deny at 5.

<sup>52</sup> The ACPA provides protection to domain name registrants, like Tata Telecom, against "overreaching trademark owners," like Tata Sons, who "reverse hijack" a domain name from a registrant. *Barcelona.com, Inc.*, 330 F.3d at 625 & n.1 ((citations omitted).

<sup>53</sup> *See, e.g., Dreamwerks Production Group, Inc. v. SKG Studio, d/b/a Dreamworks SKG*, 142 F.3d 1127 (9th Cir. 1998).

<sup>54</sup> Petition to Deny at 6.

<sup>55</sup> Pursuant to FRCP 33(b)(3), each interrogatory must be answered in writing under oath. Moreover, under FRCP 33(b)(5), the person who makes the answers must sign them. Neither of these requirements was met. *See* Fed. R. Civ. P. 33(b). Upon information and belief, Tata Telecom's prior counsel was responsible for providing these "responses" to Tata Sons based on his view of the case. Undersigned counsel is working with Tata Telecom to revise and supplement the responses in compliance with the FRCP.

## NO JURISDICTION

A grant of authority pursuant to Section 214 cannot be delayed or denied because of private claims in litigation.<sup>56</sup> Petitioners are aware of this requirement but blatantly ignore it.<sup>57</sup> But, “the purpose of the Act is to protect the public interest rather than to provide a forum for the settlement of private disputes.”<sup>58</sup> One seeking to air a private dispute before the Commission simply proves it is not a real party in interest. Knowing there is no standing but nevertheless invoking the Commission processes for a private trademark dispute is an abuse of those processes that cannot be tolerated. The Commission should not allow the 214 licensing process to be hijacked in order to leverage power in a private dispute. The issue is whether the granting

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<sup>56</sup> See *In the Matter of Application of Comscape Communications, Inc. & E. Kentucky Network, LLC*, 23 F.C.C.R. 5753, 5754-55 (2008) (rejecting a petition to deny where the matters involved, which related to employment concerns, were “not relevant to the Commission’s duty to determine whether the Applicants involved have demonstrated that the [applications] would serve the public interest, convenience, and necessity”); *Application of General Electric Co., Memorandum Opinion and Order*, 3 FCC Rcd. 2803, 2809-10 (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 Celco Partnership*, Order, 10 FCC Rcd. 13368, 13380-81 (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). Note that the foregoing cited cases address transfer of control applications pursuant to Section 214. However, the precedent applies equally to initial applications to provide service pursuant to Section 214 because, in both types of proceedings, the FCC evaluates the qualifications of the applicant to serve the public interest.

<sup>57</sup> See Petition to Deny at 3 (“Petitioners understand that the Commission is not tasked with resolving commercial trademark disputes ....”).

<sup>58</sup> *United Telephone Co. of the Carolinas, Inc. v. FCC*, 559 F.2d 720, 723 (D.C. Cir. 1977) (emphasis added).

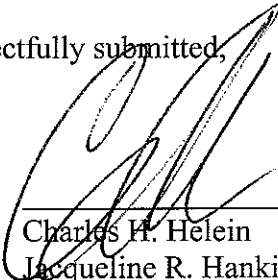
of authority for Tata Telecom to provide international telecommunications service is in the public interest.<sup>59</sup> The public interest is not served by airing Petitioners' trademark claims.<sup>60</sup>

### CONCLUSION

The filing of the Petition clearly violates Section 309(d)(1) of the Act and Section 1.939 of the Commission's rules in all three of the fundamental requirements – no real party in interest showing, allegations unsupported by affidavits of persons with specific knowledge, and failure to effect proper service. Under the circumstances, it is not Tata Telecom's character at issue, but Petitioners'. For the foregoing reasons, the Petition must be dismissed.

Respectfully submitted,

By:



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<sup>59</sup> *SBC Communications Inc. v. FCC*, 56 F.3d 1484, 1492-93 (D.C. Cir. 1995).

<sup>60</sup> Under similar circumstances, the D.C. Circuit has rejected the imposition of conditions on a transaction that serve only the narrow interests of private service providers, like Petitioners, at the expense of consumers and the broader public interest. *SBC Communications Inc.*, 56 F.3d at 1492-93.

**EXHIBIT A**

----- Forwarded message -----

From: **Wang, Catherine** <[Catherine.Wang@bingham.com](mailto:Catherine.Wang@bingham.com)>

Date: 27 September 2010 19:19

Subject: Petition to Deny FCC Application

To: "[info@tata-telecom.com](mailto:info@tata-telecom.com)" <[info@tata-telecom.com](mailto:info@tata-telecom.com)>

Dear Sir or Madame:


Attached is the Petition to Deny the application of Tata Telecom INC to the Federal Communications Commission for Section 214 authority filed by Tata Communications (America) Inc. and Tata Communications Services (America) Inc. at the FCC on September 25, 2010. A copy of the Petition including exhibits is also being sent in the overnight mail to the contact address identified in the application.

Regards, Catherine Wang

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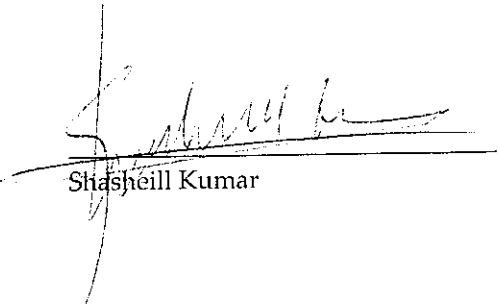


Affidavit

I, Shasheill Kumar, Officer (International Business Development) of Toronto Asia Tele Access Telecom, Inc. d/b/a Tata Telecom, Inc., hereby state and affirm that I have read the "Opposition to Petition to Deny" the application File No. ITC-214-20100907-00357, and that the facts stated therein are true to the best of my knowledge, information and belief.

Further, affiant sayeth not.

Dated 10/5/10

  
Shasheill Kumar

**CERTIFICATE OF SERVICE**

I hereby certify that on the 5<sup>th</sup> day of October, 2010, I caused a copy of the foregoing Opposition to Petition to Deny to be served by Electronic Mail and First-Class Mail on the following:


|  |  |
|--|--|
| Catherine Wang<br>Eliot J. Greenwald<br>Bingham McCutchen LLP<br>2020 K Street, N.W.<br>Washington, DC 20554<br><a href="mailto:Catherine.wang@bingham.com">Catherine.wang@bingham.com</a><br><a href="mailto:Eliot.greenwald@bingham.com">Eliot.greenwald@bingham.com</a> | <input checked="" type="checkbox"/> United States Mail, First Class<br><input type="checkbox"/> By Messenger<br><input type="checkbox"/> By Facsimile<br><input type="checkbox"/> By Overnight Courier<br><input checked="" type="checkbox"/> By Email |
|--|--|

And by First-Class Mail on the following:

|   |   |
|---|---|
| Rogena Harris<br>Jeffrey Marks<br>Tata Communications (America) Inc.<br>Tata Communications Services (America) Inc.<br>2355 Dulles Corner Boulevard<br>Suite 700<br>Herndon, VA 20171 | <input checked="" type="checkbox"/> United States Mail, First Class<br><input type="checkbox"/> By Messenger<br><input type="checkbox"/> By Facsimile<br><input type="checkbox"/> By Overnight Courier<br><input type="checkbox"/> By Email |
|---|---|

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

EXECUTED this the 5<sup>th</sup> day of October 2010.

  
\_\_\_\_\_  
Sherry A. Reese