

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

Pro Forma ITC-ASG-19990304-00156  
ICN/COMM-SOURCE NETWORK SERVICES, LLC

In the Matter of

ICN/Commsource Network Services, LLC,  
Transferor

and

DTI Network Services, LLC, Transferee

Application for Authority Pursuant to  
Section 214 of the Communications Act, as  
amended, for a *Pro Forma* Transfer of Control

**APPLICATION**

ICN/Commsource Network Services, LLC ("ICN" or "Transferor") and DTI Network Services, LLC ("DTI" or "Transferee"), by their undersigned counsel, and pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214 (1982) (the "Act"), and Section 63.18 of the Commission's Rules, 47 C.F.R. § 63.18 (1998), hereby request approval for a *pro forma* transfer of control of ICN and its Section 214 authorization to DTI. ICN is currently authorized to provide international telecommunications services pursuant to Section 214. As described below, the proposed transaction does not alter the ultimate control or management of ICN and will not affect ICN's services. Accordingly, the transfer of control is *pro forma*.

Applicant respectfully requests streamlined treatment of this application pursuant to Section 63.12 of the Commission's Rules, 47 C.F.R. § 63.12 (1998). DTI is not a foreign carrier or affiliated with a foreign carrier that possesses market power to the affiliated destination country. Nor is DTI affiliated with a dominant U.S. carrier whose international switched or private line services it seeks

File No. ITC-ASG-19990304-00156
Telecommunications Division
<b>dated</b> MAR 24 1999
<b>authorized INTERNATIONAL BUREAU</b>
signature <i>Gregory J. Barakat</i> Gregory J. Barakat, Esq. & Partners, P.A.

COPY

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FCC/MELLON MAR 04 1999

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March 4, 1999

VIA COURIER

Federal Communications Commission  
International Bureau Telecommunications Division  
P.O. Box 358115  
Pittsburgh, PA 15251-5115

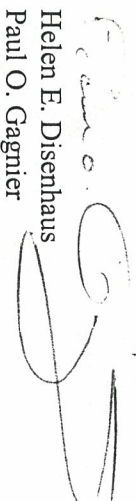
Re: **EXPEDITED CONSIDERATION REQUESTED** -- Application of ICN/Commsource  
Network Services, LLC and DTI Network Services, LLC Pursuant to Section 214 of the  
Communications Act of 1934, as amended, for a *Pro Forma* Transfer of Control

Dear Sir or Madam:

Enclosed for filing with the Commission are an original and six (6) copies of the application of ICN/Commsource Network Services, LLC ("ICN") and DTI Network Services, LLC ("DTI") for a pro forma transfer of control of ICN and its Section 214 Authorization to DTI pursuant to Section 214 of the Communications Act of 1934, as amended. Applicants respectfully request expedited treatment of their application to permit them to consummate the transfer of control described in the application as soon as possible.

As required by the Commission's Rules, a check in the amount of \$780.00 is enclosed. Please date-stamp the extra copy of this application and return it to our courier. Any questions regarding the enclosed application should be addressed to the undersigned.

Respectfully submitted,

  
Helen E. Disenhaus  
Paul O. Gagnier

Counsel for ICN/Commsource Network Services, LLC

Enclosures

cc: Troy Tanner (FCC)  
Roger Sheppard  
Tom Hakel

271512.1

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

In the Matter of

**ICN/Commsource Network Services, LLC,**  
Transferor

File No. I-T-C-

and

**DTI Network Services, LLC,** Transferee

Application for Authority Pursuant to  
Section 214 of the Communications Act, as  
amended, for a *Pro Forma* Transfer of Control

**APPLICATION**

ICN/Commsource Network Services, LLC ("ICN" or "Transferor") and DTI Network Services, LLC ("DTI" or "Transferee"), by their undersigned counsel, and pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214 (1982) (the "Act"), and Section 63.18 of the Commission's Rules, 47 C.F.R. § 63.18 (1998), hereby request approval for a *pro forma* transfer of control of ICN and its Section 214 authorization to DTI. ICN is currently authorized to provide international telecommunications services pursuant to Section 214. As described below, the proposed transaction does not alter the ultimate control or management of ICN and will not affect ICN's services. Accordingly, the transfer of control is *pro forma*.

Applicant respectfully requests streamlined treatment of this application pursuant to Section 63.12 of the Commission's Rules, 47 C.F.R. § 63.12 (1998). DTI is not a foreign carrier or affiliated with a foreign carrier that possesses market power to the affiliated destination country. Nor is DTI affiliated with a dominant U.S. carrier whose international switched or private line services it seeks

to resell. Consequently, this application for approval of a *pro forma* transfer of control pursuant to Section 214 is eligible for streamlined processing.<sup>1</sup>

#### **I. Description of the Transfer**

The Commission recently proposed a rule that specifically addresses the parameters of Section 214 "*pro forma*" transfers of control and assignments.<sup>2</sup> In the absence of express guidance regarding the definition of *pro forma* in the context of Section 214 applications for transfers of control, the Commission looked to its analysis in the *Section 310(d) Forbearance Order*<sup>3</sup> as precedent to develop this new rule.<sup>4</sup> In the *Section 310(d) Forbearance Order*, the Commission stated that a *pro forma* transfer is one that does not cause a "substantial change in ownership or control" of the licensee.<sup>5</sup> In its *Section 214 NPRM*, the Commission proposed that in the context of Section 214 authorizations, a change in ownership or control is "substantial" if "50 percent or more of the stock of the licensee is transferred, or if, as a result of the transaction, the licensee will

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<sup>1</sup> See *Streamlining the International 214 Authorization Process and Tariff Requirements*, Report and Order, 11 FCC Rcd. 12884 (1996) ("*Streamlining Order*"); 47 C.F.R. § 63.12 (1998).

<sup>2</sup> In the *Matter of 1998 Biennial Regulatory Review – Review of International Common Carrier Regulations*, Notice of Proposed Rulemaking, IB Docket No. 98-118, Report No. IB 98-39, ¶¶ 12-21 (rel. July 14, 1998) ("*Section 214 NPRM*").

<sup>3</sup> See *Federal Communications Bar Association's Petition for Forbearance from Section 310(d) of the Communications Act Regarding Non-Substantial Assignments of Wireless Licenses and Transfers of Control Involving Telecommunications Carriers*, Memorandum Opinion and Order, 13 FCC Rcd. 6293(1998) ("*Section 310(d) Forbearance Order*").

<sup>4</sup> *Section 214 NPRM*, ¶ 13.

<sup>5</sup> *Section 310(d) Forbearance Order*, ¶ 7.

be controlled by persons who were not previously in control of the licensee."<sup>6</sup> "Control" is either (1) *de jure*, i.e., ownership of 50 percent or more in an entity or (2) *de facto*, i.e., control in-fact or actual control that exists regardless of the amount of ownership.<sup>7</sup> *De facto* control, generally defined as the power to control or dominate the management of the licensee, is typically determined on a case-by-case basis.<sup>8</sup>

In this case, the ownership of ICN and DTI is identical. Currently, ICN is owned in equal shares (25% each) by the following persons and entities: R&T Family Partners (Roger Sheppard, General Partner); John A. Jenkins; Thomas A. Hakel; and Joseph Tae Yoon Kim. DTI will be owned by the same parties in the same percentages. Thus, there is no change in the *de jure* ownership of the licensee. Likewise, the actual control and management of the licensee will remain the same, so no *de facto* change will occur. Therefore, the transfer is not "substantial" under the guidelines of the *Section 310(d) Forbearance Order* and is *pro forma*.

## II. Public Interest Considerations

Because the transaction described above does not change the underlying control of ICN or its authorizations, this event results merely in a *pro forma* transfer of control of ICN and its Section 214 authorizations. ICN will continue to provide high-quality international telecommunications services in furtherance of the public interest.

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<sup>6</sup> *Section 214 NPRM*, ¶ 14.

<sup>7</sup> *Id.*

<sup>8</sup> *Section 310(d) Forbearance Order*, ¶ 7.

**III. Information Required by Section 63.18**

Pursuant to Section 63.18 of the Commission's Rules, 47 C.F.R. § 63.18, ICN and DTI submit the following information:

(a) Names, addresses and telephone numbers:

Transferor: ICN/Commsource Network Services, LLC  
700 Flower Street, Suite 420  
Los Angeles, California 90017  
Tel: (213) 627-7492  
Fax: (213) 627-6493

Transferee: DTI Network Services, LLC  
700 Flower Street, Suite 420  
Los Angeles, California 90017  
Tel. and Fax: (707) 588-8047

(b) Transferor and transferee are both limited liability companies organized under the laws of the State of California.

(c) Correspondence concerning this application (for both Transferor or Transferee) should be sent to

Helen E. Disenhaus  
Paul O. Gagnier  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007  
Tel: (202) 424-7837  
Fax: (202) 424-7645

with copies to:

John A. Jenkins  
ICN/Commsource Network Services, LLC  
700 South Flower Street, Suite 420  
Los Angeles, California 90017  
Tel. (213) 627-7492  
Fax (213) 627-6493

and

Thomas A. Hakel  
DTI Network Services, LLC  
700 South Flower Street, Suite 420  
Los Angeles, California 90017  
Tel. and Fax: (707) 588-8047

- (d) ICN currently is an authorized non-dominant international facilities-based carrier and reseller of international services. ICN received authorization pursuant to Section 214 of the Act effective October 16, 1998.<sup>9</sup> DTI does not currently have any authority under Section 214.
- (e)(5) The authorization sought in this application will approve an event that constitutes a *pro forma* transfer of control.
  - (f) Not applicable.
  - (g) Not applicable.
  - (h) DTI certifies that it is not a foreign carrier and has no affiliation with any foreign carrier, as defined by Section 63.18(h)(1) of the Commission's Rules. DTI further certifies that it is not affiliated with any U.S. carrier(s) whose facilities-based service(s) it may resell (either directly or indirectly through the resale of another reseller's service).
    - (1) The following entities and individuals are 10% or greater direct or indirect shareholders of DTI:

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<sup>9</sup> See *In re ICN/Commsource Network Services, LLC Application for Authorization Pursuant to Section 214 of the Communications Act of 1934 to Provide International Facilities-Based Services, and International Switched Resale Services, On A Global Basis*, File No. ITC-214-19980820-00610, Report No. TEL-00021, DA No. 98-2118 (rel. Oct. 22, 1998).

Name: R&T Family Partners (Roger Sheppard, General Partner)  
Address: 14 Bracken Court  
San Rafael, California 94901  
Percentage Held: 25  
Citizenship: U.S.  
Principal Business: Telecommunications

Name: John A. Jenkins  
Address: 700 South Flower Street, Suite 420  
Los Angeles, California 90017  
Percentage Held: 25  
Citizenship: U.S.  
Principal Business: Telecommunications

Name: Thomas A. Hakel  
Address: 328 Firehorn Drive  
Rohnert Park, California 94928  
Percentage Held: 25  
Citizenship: U.S.  
Principal Business: Telecommunications

Name: Joseph Tae Yoon Kim  
Address: 31-34 Sungbook 2-dong  
Sungbook-Ku  
Seoul, South Korea  
Percentage Held: 25  
Citizenship: South Korean  
Principal Business: Telecommunications

(2) The directors and officers of DTI have no interlocking directorates.

- (i) As required by Section 63.18 (i) of the Commission's Rules, 47 C.F.R. § 63.18(i), DTI certifies that it has not agreed to accept nor shall it accept in the future any special concessions, as defined by the Commission's Rules, directly or indirectly from any foreign carrier or administration with respect to traffic or revenue flows on any U.S. international route where the foreign carrier possesses sufficient market



power on the foreign end of the route to affect competition adversely in the U.S. market.

- (j) DTI certifies that it is not subject to a denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988. DTI's certification pursuant to Section 1.2002 of the Commission's Rules (implementing the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 3301) is attached.

CONCLUSION

For the reasons stated above, ICN and DTI respectfully submit that the public interest, convenience, and necessity would be furthered by a grant of this *pro forma* Section 214 Application.

Respectfully submitted,

By:



Helen E. Disenhaus

Paul O. Gagnier

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

3000 K Street, N.W., Suite 300

Washington, DC 20007

(202) 424-7837 (tel)

(202) 424-7645 (fax)

Counsel for ICN/Commsource Network Services,  
LLC and DTI Network Services, LLC


Dated: March 3, 1999

**CERTIFICATION OF APPLICANT**

On behalf of DTI Network Services, LLC and in accordance with Section 1.2001-1.2003 of the Commission's Rules, 47 C.F.R. §§ 1.2001-1.2003, I hereby certify that no party to this Application is subject to a denial of Federal benefits that includes FCC benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988. See 21 U.S.C. § 853a. I also hereby certify that the statements in the foregoing Application for Section 214 authority are true, complete, and correct to the best of my knowledge and are made in good faith.

To the extent required by the Commission's rules, DTI Network Services, LLC has not agreed to accept nor shall it accept in the future any special concessions, as defined by the Commission's Rules, directly or indirectly from any foreign carrier or administration with respect to traffic or revenue flows on any U.S. international route where the foreign carrier possesses sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market.

**DTI NETWORK SERVICES, LLC**

By:   
Name: Thomas A. Hakel  
Title: Manager  
Date: February 23, 1999