

Categories of Services for 214 Applications
(Streamline/Non-streamline)

- LIMITED/GLOBAL RESALE SERVICE
- LIMITED/GLOBAL FACILITIES-BASED SERVICE
- LIMITED/GLOBAL FACILITIES-BASED/RESALE SERVICE
- INDIVIDUAL FACILITIES-BASED SERVICE
- INTERCONNECTED PRIVATE LINE RESALE SERVICE
- INMARSAT AND MOBILE SATELLITE SERVICE
- INTERNATIONAL SPECIAL PROJECT
- SWITCHED RESALE SERVICE
- TRANSFER OF CONTROL
- ASSIGNMENT OF LICENSE
- PRO FORMA TRANSFER/ASSIGNMENT
- SPECIAL TEMPORARY AUTHORITY
- SUBMARINE CABLE LANDING LICENSE

Description of Application: _____

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

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WASHINGTON, DC 20007-5116
TELEPHONE (202) 424-7500
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NEW YORK OFFICE
405 LEXINGTON AVE.
NEW YORK, NY 10174

May 16, 2000

RECEIVED

MAY 16 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA COURIER
Magalie Roman Salas, Secretary
Federal Communications Commission
International Bureau, Telecommunications Division
P.O. Box 358115
Pittsburgh, PA 15251-5115

Re: Application of telx Communications Corporations for Authority Pursuant to Section
214 of the Communications Act of 1934, as amended, to Assign *Nunc Pro Tunc*
Section 214 Authorization

Dear Ms. Salas:

Enclosed for filing with the Commission are an original and six (6) copies of the application of telx Communications Corporations ("TCC") requesting authority, pursuant to Section 214 of the Communications Act of 1934, as amended, to assign *nunc pro tunc* the Section 214 authorization of telx (sub of Connectech), also know as "Connectech, LLC d/b/a telx," to TCC.

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 in the enclosed self-addressed, stamped envelope. Should you have any questions regarding the enclosed application, please contact the undersigned.

Respectfully submitted,



Troy F. Tanner
Rachel D. Flam
Jennifer A. Schneider

Counsel for telx Communications Corporati

Enclosures

cc: Steven Turner

332860.1

READ INSTRUCTIONS CAREFULLY
BEFORE PROCEEDING

(1) LOCKBOX # 358115

FEDERAL COMMUNICATIONS COMMISSION
REMITTANCE ADVICE

APPROVED BY OMB 3060-0589

PAGE NO. 1 OF 1

SPECIAL USE

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MAY 16 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

SECTION A - PAYER INFORMATION

(2) PAYER NAME (if paying by credit card, enter name exactly as it appears on your card)
Swidler Berlin Sherreff Friedman, LLP c/o Jennifer Schneider

(3) TOTAL AMOUNT PAID (dollars and cents)
\$ 780.00

(4) STREET ADDRESS LINE NO. 1
3000 K Street, NW

(5) STREET ADDRESS LINE NO. 2
Suite 300

(6) CITY
Washington

(7) STATE
DC

(8) ZIP CODE
20007

(9) DAYTIME TELEPHONE NUMBER (include area code)
202-424-7742

(10) COUNTRY CODE (if not in U.S.A.)

IF PAYER NAME AND THE APPLICANT NAME ARE DIFFERENT, COMPLETE SECTION B
IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C)

SECTION B - APPLICANT INFORMATION

(11) APPLICANT NAME (if paying by credit card, enter name exactly as it appears on your card)
Telx Communications Corporation

(12) STREET ADDRESS LINE NO. 1
17 State Street

(13) STREET ADDRESS LINE NO. 2
33rd Floor

(14) CITY
New York

(15) STATE
NY

(16) ZIP CODE
10004

(17) DAYTIME TELEPHONE NUMBER (include area code)
(212) 285-4700

(18) COUNTRY CODE (if not in U.S.A.)

COMPLETE SECTION C FOR EACH SERVICE. IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEETS (FORM 159-C)

SECTION C - PAYMENT INFORMATION

(19A) FCC CALL SIGN/OTHER ID	(20A) PAYMENT TYPE CODE (PTC)	(21) QUANTITY	(22A) FEE DUE FOR (PTC) IN BLOCK 20A	(22B) FEE DUE FOR (PTC) IN BLOCK 20B	(22C) FEE DUE FOR (PTC) IN BLOCK 20C	(22D) FEE DUE FOR (PTC) IN BLOCK 20D	(23) QUANTITY	(24) FCC CODE 2	FCC USE ONLY
	C	U	T	1	\$ 780.00				
(23A) FCC CODE 1									
(19B) FCC CALL SIGN/OTHER ID	(20B) PAYMENT TYPE CODE (PTC)	(21B) QUANTITY	(22B) FEE DUE FOR (PTC) IN BLOCK 20B	(22C) FEE DUE FOR (PTC) IN BLOCK 20C	(22D) FEE DUE FOR (PTC) IN BLOCK 20D				FCC USE ONLY
(23B) FCC CODE 1			\$						
(19C) FCC CALL SIGN/OTHER ID	(20C) PAYMENT TYPE CODE (PTC)	(21C) QUANTITY	(22C) FEE DUE FOR (PTC) IN BLOCK 20C	(22D) FEE DUE FOR (PTC) IN BLOCK 20D					FCC USE ONLY
(23C) FCC CODE 1			\$						
(19D) FCC CALL SIGN/OTHER ID	(20D) PAYMENT TYPE CODE (PTC)	(21D) QUANTITY	(22D) FEE DUE FOR (PTC) IN BLOCK 20D						FCC USE ONLY
(23D) FCC CODE 1			\$						

SECTION D - TAXPAYER INFORMATION (REQUIRED)

(25) PAYER TIN
0 1 3 2 6 7 9 6 7 6

(26) COMPLETE THIS BLOCK ONLY IF APPLICANT NAME IS DIFFERENT FROM PAYER NAME IN A-2
APPLICANT TIN
0 1 1 3 2 9 2 1 2 0

SECTION E - CERTIFICATION

(27) CERTIFICATION STATEMENT
I, JENNIFER SCHNEIDER (PRINT NAME) certify under penalty of perjury that the foregoing and supporting information are true and correct to the best of my knowledge, information and belief. SIGNATURE Jennifer Schneider

SECTION F - CREDIT CARD PAYMENT INFORMATION

(28) MASTER/CARDVISA ACCOUNT NUMBER: _____

EXPIRATION DATE: _____

MASTERCARD: _____

VISA: _____

MONTH: _____ YEAR: _____

DATE: _____

AUTHORIZED SIGNATURE: _____

I hereby authorize the FCC to charge my VISA or MASTERCARD for the services/transactions herein described.

SEE PUBLIC BUREAU ESTIMATE ON REVERSE

FCC FORM 159 JULY 1997 (REVISED)

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

In the Matter of)
)
)

telx Communications Corporation)
)

File No. ITC - A/L - 2000 _____

Application for Authority Pursuant to)
Section 214 of the Communications Act)
of 1934, as amended, to assign)
nunc pro tunc the Section 214 authority of an)
international carrier)
)
)
)

APPLICATION

telx Communications Corporation (“TCC” or the “Applicant”), by its undersigned counsel, hereby requests authority, pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and Section 63.18 of the Commission’s Rules, 47 C.F.R. § 63.18, to authorize *nunc pro tunc* the assignment of Section 214 authority to TCC from telx (sub of Connectech), also known as “Connectech, LLC d/b/a telx,” (hereafter “Connectech”). As described below, this assignment was *pro forma* in nature because the same individuals that were in control of Connectech also are in control of TCC. In order to clarify the Commission’s records, however, the Applicant is also taking this opportunity to provide the Commission with updates and corrections of certain information in the initial application and authorization of Connectech.

For clarification of the Commission’s records, the Applicant first provides the following information. On January 2, 1998, the Commission granted Section 214 authority to provide global

facilities-based and resale services to an entity named telx (sub of Connectech).^{1/} The authorization should have been applied for and granted in the name of Connectech, LLC d/b/a telx, since at the time of the application, Connectech had no subsidiary named “telx,” nor did a separate entity named “telx” exist. Connectech merely was doing business under the name of “telx.” In addition, the original application, accepted for filing on November 28, 1997, provided all of the information concerning the controlling shareholders of Connectech but omitted the information on the passive investors. Control of Connectech and now TCC, the succeeding entity, has always remained with Rory Cutara and Peter Feldman, as provided in the original application. The information concerning the additional passive investors, however, is provided below.

Subsequent to the grant of Section 214 authority, Connectech, for exigent business reasons, consummated a transaction whereby it merged into TCC. Connectech ceased to exist and TCC continued to provide all services provided by Connectech. TCC and Connectech, however, failed to timely notify the Commission of this transaction. Therefore, the Applicant is seeking *nunc pro tunc* approval of this merger, and assures the Commission that it will, in the future, seek all necessary prior approvals in compliance with Commission rules.

The Applicant respectfully requests streamlined, expedited treatment of this application pursuant to Section 63.12 of the Commission’s Rules, 47 C.F.R. § 63.12. As fully described herein, approval of the assignment will permit TCC to realize significant economic and marketing efficiencies that will enhance its ability to continue providing high quality, low cost telecommunications services and to compete more effectively in the international

¹ See ITC-214-19971110-006~~4~~ and related application.

telecommunications marketplace. Accordingly, grant of this application will benefit the public interest.

The Applicant submits the following information in support of this application:

I. Connectech and TCC

A. Connectech, LLC d/b/a telx

As described above, the correct name of the entity holding Section 214 authority was Connectech, LLC d/b/a telx. Prior to the transaction described herein, Connectech was a New York corporation, whose principal offices were located at 17 State Street, 33rd Floor, New York, New York 10004. Under ITC-214-19971110-00694, released on January 9, 1998, Connectech holds Section 214 authority to provide global facilities-based and resale services. Additional information concerning Connectech's technical, managerial and financial qualifications to provide service was correctly submitted with its application for initial Section 214 authorization and is, therefore, already a matter of record at the Commission. This information is being updated by this application.

B. telx Communications Corporation

telx Communications Corporation is a privately held corporation organized under the laws of the State of Delaware whose principal offices are located at 17 State Street, 33rd Floor, New York, New York 10004. TCC is controlled by the same two owners that controlled Connectech, Rory Cutaita and Peter Feldman, and has the same operating and management team. TCC is not a Section 214 authorized carrier. TCC is a non-dominant, domestic carrier under the Commission's rules and provides interstate telecommunications services in the United States. By the transaction described herein, TCC acquired a Section 214 authorized telecommunications carrier and, following the transaction, continued to maintain the necessary technical, managerial and financial

qualifications to provide international service. The Applicant files this application to obtain approval of the transaction *nunc pro tunc* and to update the information, including the individuals owning ten percent (10%) or greater ownership of TCC.

II. The Transaction

The owners of Connectech determined that they would realize significant economic and marketing efficiencies by reorganizing the company and merging Connectech into telx Communications Corporation. Accordingly, Connectech and TCC consummated a Stock Purchase Agreement in which telx Communications Corporation purchased 100% of the stock of Connectech. As a result of the transaction, Connectech dissolved and TCC assumed all of its operations. Approval is requested *nunc pro tunc* for this transaction.

A grant of the relief requested herein will enable telx Communications Corporation to provide international services more effectively and efficiently. TCC has the same management and operations team as that of Connectech. The proposed transaction has simply resulted in a reorganization of Connectech into TCC. As such, the transaction has not and will not cause inconvenience or confusion to Connectech's customers. Indeed, the transaction has been and will continue to be virtually transparent to Connectech customers in terms of the services that they receive.

III. Public Interest Considerations

Approval of the transaction will serve the public interest in promoting competition among operating international carriers by providing the Applicant with the opportunity to strengthen its competitive position with greater financial resources. Because the transfer of Connectech to TCC involves a reorganization of two small, non-dominant telecommunications carriers operating in a

competitive international marketplace, the transfer of control will not lessen competition or raise antitrust issues.^{2/} The transaction will invigorate competition in the international services market by enabling TCC to pursue its marketing and business plans effectively. Moreover, TCC maintains the same management and operations staff as that of Connectech. The merger, therefore, benefits the public interest by enhancing the Applicant's flexibility and efficiency as well as its financial viability.

IV. Eligibility for Streamlined Processing

Pursuant to Section 63.12 of the Commission's Rules, 47 C.F.R. § 63.12, this application is eligible for streamlined processing. The Applicant submits the following information in support of their request for streamlined processing of this assignment of the Section 214 authorization *nunc pro tunc*.

- (a) Applicant is a nondominant carrier;
- (b) Applicant does not have an affiliation with U.S. facilities-based carriers whose services it is authorized to resell;
- (c) As defined in Section 63.18(h) of the FCC rules, §63.18(h) C.F.R., the Applicant is not affiliated with a foreign carrier.

V. Information Required by Section 63.18

TCC submits the following information, as required by Section 63.18 of the Commission's Rules, in support of its request for Section 214 authorization:

^{2/}See *In re Applications of NYNEX Corp., Transferor and Bell Atlantic Corp. Transferee, for Consent to Transfer Control of NYNEX Corp. and Its Subsidiaries*, File No. NSD-L-96-10 (adopted August 14, 1997) (applying the Department of Justice and Federal Trade Commission 1992 Merger Guidelines for evaluating the likely competitive effects of the merger).

- (a) Name, address and telephone number of the Applicant:
- telx Communications Corporation
17 State Street, 33rd Floor
New York, NY 10004
Tel: (212) 285-4700
Fax: (212) 285-2255

(b) telx Communications Corporation is organized under the laws of the State of Delaware. Connectech, LLC d/b/a telx was organized under the laws of the State of New York.

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

Troy F. Tanner
Rachel D. Flam
Jennifer A. Schneider
SWIDLER BERLIN SHEREFF FRIEDMAN, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
Tel: (202) 424-7500
Fax: (202) 424-7645

with a copy to:

Steven Turner
General Counsel
telx Communications Corporation
17 State Street, 33rd Floor
New York, NY 10004
Tel: (212) 285-4700
Fax: (212) 285-2255

(d) Connectech was operating as a nondominant international carrier pursuant to the Section 214 authority effective January 2, 1998. See FCC File No. ITC-214-19971110-00994.

telx Communications Corporation does not have Section 214 authority.

(e)-(g) Not Applicable

(h) In support of this certification, the name, address, citizenship, and principal business of the shareholders that control 10 percent or more of TCC are as follows:

Active Investors

Name: The Cutaia Group, LLC
Address: 179 Candlewood Path
Dix Hills, New York 11746
Percentage Held: 16.1%
Citizenship: U.S.A.
Principal Business: Telecommunications

The Cutaia Group, LLC is a single member LLC with Rory Cutaia as single member.

Name: Peter Feldman
Address: 254 West 103rd Street
New York, New York 10025
Percentage Held: 16.1%
Citizenship: U.S.A.
Principal Business: Telecommunications

Passive Investors

Name: Angela Giguere
Address: 38 Nicholson Crescent
Middletown, Rhode Island
Percentage Held: 16.1%
Citizenship: U.S.A.
Principal Business: Telecommunications

Name: Leonard V. Sessa
Address: 555 Northern Blvd.
Great Neck, New York 10027
Percentage Held: 16.1%
Citizenship: U.S.A.
Principal Business: Telecommunications

Name: Barone Family Partnership, Ltd.
Address: c/o Barone Properties, Inc.
Bar-One Ranch
34500 Cedar Creek Road
Huson, Montana 59846
Percentage Held: 12.5%
Citizenship: U.S.A.
Principal Business: Telecommunications

There are no individuals or entities with large enough ownership interest in the Barone Family Partnership, Ltd. to require reporting under Section 63.18(h).

TCC currently has no interlocking officers or directors with foreign carriers.

(i) TCC certifies that it is not a foreign carrier and that it is not currently affiliated with any foreign carriers.

(j) TCC seeks to provide international telecommunications services to all global points, except those points on the Commission's Exclusion List. TCC is not a foreign carrier or affiliated with a foreign carrier.

(k) Not applicable

(l) Not applicable

(m) As described above, TCC presumptively qualifies for nondominant treatment for the provision of all international telecommunications services on all routes pursuant to Section 63.10 of the Commission's Rules.

(n) TCC certifies that it has not agreed, and will not agree in the future, to accept special concessions directly or indirectly from any foreign carrier where the foreign carrier possesses market power on the foreign end of the route, and it will not enter into such agreements in the future.

(o) TCC certifies, pursuant to Sections 1.2001 through 1.2003 of the Commission's Rules (implementing the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 3301), that no party to its application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.

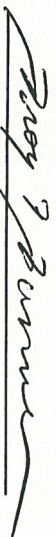
(p) TCC qualifies for streamlined processing pursuant to Section 63.12(a-b) of the Commission's Rules because, as set forth above in Section (1), TCC qualifies for a presumption of nondominance under Section 63.10(a)(1) of the Commission's Rules.

IV. CONCLUSION

For the reasons stated above, the Applicant respectfully submits that the public interest, convenience, and necessity would be furthered by a grant of this Section 214 Application for Assignment of Section 214 authority.

Respectfully submitted,

By:



Troy F. Tanner

Rachel D. Flam

Jennifer A. Schneider

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

3000 K Street, N.W., Suite 300

Washington, DC 20007

(202) 424-7500 (tel)

(202) 424-7645 (fax)

Counsel for

telx Communications Corporation

Dated: May 16, 2000