

## REQUEST FOR EXTENSION/RENEWAL OF STA

By this application, Telecom North America, Inc., formerly 3U Telecom, Inc., respectfully requests the extension or renewal of the STA granted in File No. ITC-STA-20090908-00410. Appended to this statement is a copy of Exhibit No. 1 to that application. The same reasons stated therein continue to apply and therefore justify the extension of the STA as herein requested.

The STA authorized continued operation under existing Section 214 authority (ITC-214-20031031-00499) pending final action on a pending application for consent to a transfer of control (File No. ITC-TC-20090908-00409). Action on the transfer of control application has been held in abeyance pending review and comment by Team Telecom in connection with a request by Applicant's subsidiary for a declaratory ruling under Section 310(b)(4) of the Communications Act (File No. ISP-PDR-20090820-00007). Accordingly, continuation of the STA is required to authorize continued operation pending final action on the underlying transfer of control application.

Team Telecom did not seek deferral of the original request for STA, and by email dated April 1, 2010, has advised counsel for Applicant and Commission staff that it has no objection to the extension/renewal requested herein.

Accordingly, it is respectfully submitted that the public interest, convenience, and necessity would be served by prompt and favorable action on this request.

Application for Special Temporary Authority to  
Continue Operations Under ITC-214-20031031-00499  
Pending Final Action on Transfer of Control Application

### JUSTIFICATION OF REUQUEST FOR SPECIAL TEMORARY AUTHORITY

1. Introduction. 3U Telecom, Inc. (“3UTel”), by its attorney and pursuant to Section 63.25 of the Commission’s Rules and Regulations, 47 C.F.R. § 63.25, hereby respectfully requests Special Temporary Authority (“STA”) to continue providing service to customers pursuant to its existing Section 214 Authorization (File No. ), pending consideration of and final Commission action on a concurrently filed transfer of control application. That application was filed to remedy a recently-discovered regulatory lapse, namely, the failure to notify the Commission of or seek prior approval for a December 15, 2008, stock transaction. Accordingly, the STA is sought to authorize continued operation pursuant to the authorization while the application is being processed and considered.

2. In response to Subsections (d), (e)(3), and (g) of Section 63.18 of the FCC Regulations: On November 28, 2003, 3UTel was granted Section 214 Authority to “Global or Limited Global Facilities-Based Service, Global or Limited Global Resale Service.” File No. ITC-214-20031031-00499, Public Notice – International Authorizations Granted, Report No. TEL-00738 (DA No. 03-3878; rel. Dec. 4, 2003). No party to this application has previously received any other Section 214 authority.<sup>1</sup> No additional or other authority is sought pursuant to this STA request or the accompanying transfer of control application. This STA is sought for the sole purpose of continuing the operations already authorized under the existing Section 214 Authorizations.

3. Background. 3UTel was founded in 2002 by Johannes Gottschalk (a German citizen) and Herve R. Andrieu (a French citizen). Having just sold a prior telecommunications venture in France, they decided to launch a long distance company in the United States. They partnered with 3U Holdings AG (“3UAG”), a publicly traded German telecommunications carrier.<sup>2</sup> To facilitate startup, 3UAG provided its brand name, technical support, and some of the start-up capital.<sup>3</sup>

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<sup>1</sup> It is noted, however, that Telecom North America Mobile, Inc. (“TelNA-Mobile”), a wholly-owned subsidiary of Telecom North America, Inc. (aka 3UTel, see n.1, above), is the proposed assignee of a Broadband PCS authorization in FCC File No. 0003932106, pending before the Wireless Telecommunications Bureau. In connection with that acquisition, TelNA-Mobile has a Section 310(b)(4) Petition for Declaratory Ruling pending before the International Bureau in FCC File No. ISP-PDR-20090820-00007.

<sup>2</sup> 3UAG is a widely held, publicly traded company, and it appears that no single person or entity owns a majority of the 3UAG stock, or even a percentage that would in itself confer control of the company. A review of annual reports for the past several years indicates that, as of December 2003, the only stockholders with a 10% or greater interest in the company were Udo Graul, who held 16.5%, and Michael Schmidt, who held 19.3%. (Mr. Graul was 3UAG president until 2005, when he was succeeded by Mr. Schmidt.) From 2004 through at least December 2008, the only person with a 10% or greater interest was Mr. Schmidt, his holdings over that period ranging from 17.72% to 19.41%.

<sup>3</sup> 3UAG loaned funds to 3UTel for needed initial capital. Within its first few years of operation, 3UTel was profitable and paid off its debt to 3UAG.

4. Messrs. Gottschalk and Andrieu (hereinafter, “Transferees”), who would be responsible for the actual establishment, management, and operation of the venture, relocated to and have since become permanent residents of the United States. 3UTel was incorporated in Nevada, with Messrs. Gottschalk and Andrieu each owning 15% percent and 3UAG owning 70% of the stock.<sup>4</sup> 3UTel obtained a Section 214 authorization in 2003, and has since then operated as a reseller of both domestic and international long distance telephone services.

5. Due to changes in corporate management and policy, starting in 2005, 3UAG began divesting itself of most of its foreign long distance holdings outside of Germany and Austria. A stock purchase agreement was negotiated pursuant to which Messrs. Gottschalk and Andrieu acquired 3UAG’s 70% stock interest in 3UTel. The transaction closed on December 15, 2008, whereupon Messrs. Gottschalk and Andrieu became equal 50% shareholders of 3UTel. On January 5, 2009, the name of the 3UTel was changed to Telecom North America, Inc.

6. Messrs. Gottschalk and Andrieu had exercised *de facto* control of 3UTel since its inception. Despite its 70% equity interest, and thus *de jure* control, 3UAG never asserted *de facto* control over the company, instead acquiescing to Transferees’ handling of management, operations, financing, personnel, etc. While the 2008 stock transaction was significant to their personal financial interests, Transferee’s did not view it conferring on them any greater control of 3UTel than they had already continuously exercised for the preceding five years. It certainly never occurred to them that FCC approval might be required.

7. At the time of the stock transaction 3UTel was not, and had not been for some time, actively and regularly represented by FCC regulatory legal counsel. Recently 3UTel retained FCC regulatory counsel to assist it in pursuing the acquisition of a PCS wireless license. In the course of preparing required regulatory approvals in connection with a proposed PCS licenses assignment, undersigned counsel discovered some of the information set forth above. During the week of August 17, 2009, undersigned counsel advised 3UTel that the there may have been a failure to make required FCC filings in connection with the stock acquisition. 3UTel directed counsel to investigate the facts, research the applicable regulatory requirements, advise of his findings and conclusions, and make recommendations.

8. Counsel substantially completed his investigation and analysis on August 21, 2009, developing the facts set forth above, whereupon he advised 3UTel that stock transaction did constitute a transfer of control within the scope of Section 214 of the Communications Act, and that it may qualify for pro forma treatment based on the continual exercise of de facto control by Messrs. Gottschalk and Andrieu.

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<sup>4</sup> 3UAG’s interest was intended and consistently treated as a passive investment. 3UAG did not play any sort of management role in the U.S. company. Messrs. Gottschalk and Andrieu were the corporate President and Vice President, respectively. They made all business and policy decisions regarding company finances, personnel, operations, marketing, etc., with no interference whatsoever from 3UAG. 3UAG was not a signatory on and had no access to the financial accounts of 3UTel. Messrs. Gottschalk and Andrieu—from the outset, and with 3UG’s full knowledge and acquiescence—actively exercised de facto control over 3UTel. Any de jure control that 3UAG may have had by virtue of its 70% stock interest was never asserted.

9. On August 25, 2009, the parties filed an application for *pro forma* assignment of authorization with regard to this matter. File No. ITC-ASG-20090825-00395. That application included a showing of qualification for *pro forma* treatment, and a request for waiver of the 30 day notification deadline and acceptance *nunc pro tunc*. The filing was styled as an assignment in order to reflect the corporate name change. On September 2, 2009, staff of the International Bureau requested that the carrier: (a) withdraw the *pro forma* assignment application;<sup>5</sup> (b) submit in its stead a major application for transfer of control;<sup>6</sup> (c) submit a letter to the Office of the Secretary advising of the corporate name change,<sup>7</sup> and (d) request special temporary authority to authorize continued operation pending action on the transfer of control application.<sup>8</sup> Application has now complied with each of these requests.<sup>9</sup>

10. STA Request for Continued Service to Customers. An STA to authorize continued operations under the Section 214 Authorization would be in the public interest in that it will avoid disruption of service to the carrier's public subscribers. In these circumstances, moreover, the failure to seek and obtain the required approval at the time of the transaction, while not excused, is certainly understandable. This was not an intentional violation; rather, the principals simply did not perceive the transaction as a major change in control. Moreover, once the problem was discovered, 3UTel took prompt action to notify the Commission and correct matters.

11. Length of STA Request. The STA is requested for a period of 180 days, or until such time as the Commission has taken dispositive action on the underlying transfer of control application.

11. Remedial Measures. 3UTel is taking steps to avoid such regulatory compliance failures in the future. They have conferred with regulatory counsel and been briefed on the types of transactions that require FCC notification and/or approval. Counsel will be consulted in the future regarding any significant changes in company equity ownership and/or voting control.

12. Acknowledgements. The parties acknowledge that a grant of this STA will not prejudice any action the Commission may take on the underlying application seeking Commission consent to the transfer of control. 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>5</sup> The *pro forma* application was withdrawn on September 2, 2009. Withdrawal ID WTH20090902182223332.

<sup>6</sup> A major transfer of control application, Submission ID IB2009003896, has been filed and is incorporated herein by this reference.

<sup>7</sup> A copy of the requested letter is appended as Attachment 3 to the transfer of control application.

<sup>8</sup> This STA application is filed in response to this request.

<sup>9</sup> See footnotes 4-7, above.