

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: _____

OK to streamline

FCC/MELLON

MAY 19 2000

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

In the Matter of)
)
MGC COMMUNICATIONS, INC.)

File No. ITC 2000- _____)

Application for Authority Pursuant to)
Section 214 of the Communications Act)
of 1934, as Amended, to Transfer)
Control of Authorization to Provide)
Global Facilities-Based and Resale)
Telecommunications Services)
Holdings, Inc.)

To: The Commission

APPLICATION

MGC Communications, Inc. ("MGC" or "Applicant"), by its undersigned attorneys, hereby respectfully requests authority from the Federal Communications Commission ("Commission"), pursuant to Section 214 of the Communications Act of 1934, as amended (the "Act"), and Section 63.18 (e)(3) of the Commission's Rules, 47 C.F.R. §63.18 (e)(3), to permit streamlined processing of the transfer of the ownership and control of BroadSpan Communications, Inc. ("BroadSpan"), the recipient of the Section 214 authorization granted on October 2, 1998 under File No. ITC-214-19980925-00659 (the "214 Authorization") to MGC. In accordance with the Commission's fee schedule, Fee Code CUT, MGC attaches a check in the amount of \$780.00 to this Application.

I. THE PARTIES

A. MGC Communications, Inc.

MGC is a publicly-held Nevada corporation headquartered in Pittsford, New York. MGC is authorized to provide to provide global resale services under Section 214. Further information concerning MGC was submitted in ITC-214-19970731-00440 and is, therefore, already a matter of public record at the Commission, and MGC requests that it be incorporated by reference herein.

B. BroadSpan Communications, Inc.

BroadSpan is a privately-held Missouri corporation headquartered in St. Louis, Missouri. BroadSpan is authorized to provide facilities-based and global resale services under Section 214 in File No. ITC-214-19980925-00659. BroadSpan has, and will continue to have, sufficient technical, financial, and managerial resources to operate as a global carrier of international telecommunications service pursuant to the terms and conditions of Section 63.18(e)(2) of the Commission's rules, 47 C.F.R. § 63.18(e)(2). Upon approval by the Commission of this Application and the completion of the transfer of ownership and control, BroadSpan will still provide the telecommunications services authorized under the Section 214 Authorization.

II. THE TRANSACTION

MGC and BroadSpan's parent, Primary Network Holdings, Inc. ("Primary"), have agreed, pursuant to an Agreement and Plan of Merger dated April 17, 2000 ("Merger Plan"), to allow MGC to acquire Primary. The proposed transaction will effect a transfer of control in the ownership of Primary, which will continue to operate as a wholly-owned subsidiary of MGC.

MGC will acquire Primary by assuming Primary's existing indebtedness and issuing a portion of its authorized but unissued common stock to Primary's shareholders. Specifically, pursuant to the proposed Merger Plan, on or before June 15, 2000 or as soon thereafter as may be practicable (the "Effective Date"), MGC's wholly-owned subsidiary, Mpower Merger Sub, Inc., a Delaware corporation ("Mpower Sub"), will merge into Primary. As a result of this merger, Primary will be the surviving corporation. Each outstanding share of Mpower Sub's common stock (par value of \$.01 per share) will be converted into one share of the surviving corporation's common stock (par value of \$.01 per share).

As of the Effective Date, each then current shareholder of Primary common stock and preferred stock (each stock with a par value of \$.001 per share) will receive the right to obtain 0.02022 shares of the common stock of MGC (par value \$.001 per share) for each share of the shareholder's Primary common stock or preferred stock, as the case may be.

As of the date of this Application, MGC currently has 35,498,456 shares of its common stock that is issued and outstanding and 24,492,404 shares of common stock that have been authorized but have not yet been issued. As of the date of this Application, Primary currently has 63,600,815 shares of common stock and 3,156,765 shares of preferred stock that are issued and outstanding and 16,399,185 shares of its common stock that is authorized but have not yet been issued. MGC estimates that in acquiring Primary it will, on the Effective Date, issue approximately 1,350,000 shares of its authorized and unissued common stock to Primary's shareholders. As a result of MGC's acquisition of Primary, Primary will become a wholly-owned subsidiary of MGC, and BroadSpan will continue operations, but as an indirect subsidiary of MGC. Accordingly, the Section 214 Authority should continue to be designated in the corporate name of BroadSpan.

In addition to the issuance of its authorized but unissued common stock, MGC will also assume the existing indebtedness of Primary. As of the date of the Merger Plan, Primary's existing indebtedness consists of 12% senior subordinate notes with an aggregate balance of approximately \$60,000,000 and other various indebtedness in an aggregate amount of approximately \$6,000,000. In addition, Primary has also issued a 15% senior note in the original principal amount of \$10,000,000 that is payable to MGC (the "MGC Note"). Interest on the MGC Note accrues and must be repaid, along with the principal amount of the MGC Note, on the earlier to occur of (a) the one year anniversary of the MGC Note, (b) an acceleration of the MGC Note due to an event of default under the MGC Note, or (c) a transfer of control of Primary.

III. PUBLIC INTEREST CONSIDERATIONS

Consummation of the proposed transaction will serve the public interest in promoting competition among providers of local and interexchange telecommunications services by combining the financial resources and complementary managerial skills and experience of MGC and BroadSpan in providing telecommunications services to the public. MGC and BroadSpan anticipate that the contemplated transfer of ownership and control will result in a company better equipped to accelerate its growth as a competitive telecommunications service provider. The transfer or ownership and control will permit MGC and BroadSpan to manage their telecommunications operations more efficiently, thereby enhancing their operational flexibility and efficiency. These enhancements will benefit customers of each carrier nationwide by offering better services at competitive prices. Accordingly, the proposed transaction will benefit the public interest by enabling MGC and BroadSpan to offer competitively priced services in the U.S. interstate and international marketplace.

IV. INFORMATION REQUIRED BY SECTION 63.18

In support of MGC's request for authorization, the following information is submitted pursuant to Section 63.18 (e)(3) of the Commission's rules and regulations, 47 C.F.R. § 63.18(e)(3).

(a) The name, address and telephone number of MGC and BroadSpan are:

MGC Communications, Inc.
171 Sully's Trail, Suite 202
Pittsford, New York 14534
Telephone: (716) 218-6550
Facsimile: (716) 218-0165

BroadSpan Communications, Inc.
11756 Borman Drive, Suite 101
St. Louis, Missouri 63146-4133
Telephone: (314) 214-0000
Facsimile: (314) 995-5718

(b) MGC is a corporation organized and existing under the laws of the state of Nevada.

BroadSpan is a corporation organized and existing under the laws of the state of Missouri.

(c) The name, title, address and telephone number of the officer to whom correspondence concerning this application should be directed to:

MGC:

Francis D.R. Coleman, Esq.
Vice President, Regulatory Affairs and General Counsel
MGC Communications, Inc.
171 Sully's Trail, Suite 202
Pittsford, New York 14534
(716) 218-6568

BroadSpan:

Richard S. Phillips
President

BroadSpan Communications, Inc.
11756 Borman Drive, Suite 101
St. Louis, Missouri 63146-4133
(314) 214-0000

with a copy to:

Douglas G. Bonner, Esq.
Sana D. Coleman, Esq.
Arent Fox Kintner Plotkin & Kahn PLLC
1050 Connecticut Avenue, NW
Washington, D.C. 20036-5339
Tel: (202) 857-6000
Fax: (202) 857-6395

The Commission is requested to direct any inquiries concerning this application to Douglas G. Bonner, Esq. and Sana D. Coleman, Esq.

(d) MGC has authority to provide global resale service under Section 214 (See TTC-214-19970731-00440). BroadSpan has authority to provide global facilities-based and global resale services under Section 214 (See TTC-214-19980925-00659).

(e) - (g) Not applicable.

(h) The entity that owns at least 10 percent of the equity of MGC is:

Providence Equity Partners III LLC
901 Fleet Center
50 Kennedy Plaza, 9th Floor
Providence, Rhode Island 02903

Providence Equity Partners III LLC is a U.S. entity owned by only U.S. citizens. Its principal business is private equity investments in telecommunications. As of April 30, 2000, it owned 13.2% of MGC's equity.

MGC has no interlocking directorates with a foreign carrier.

(i) See attached certification.

- (j) See attached certification.
- (k) - (m) Not applicable.
- (n) By the attached certification and as required by Section 63.18(n) of the Commission's rules, MGC certifies that, except as permitted by the Commission's Rules, directly or indirectly from any foreign carrier or administration with respect to traffic or revenue flows between the U.S. and any foreign country which MGC may be authorized to serve and it will not enter into such agreements in the future.
- (o) By the attached certification and as required by 63.18(o) of the Commission's rules, MGC certifies that no party to this Application, as defined in Sections 1.2001 through 1.2003 of the Commission's rules, 47 C.F.R. §§1.2001-1.2003, is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 853(a).
- (p) MGC submits that this Application is entitled to streamlined processing for the following reasons: (1) grant of this Application is in the public interest and will enhance competition in the international telecommunications market; (2) MGC is not affiliated with a foreign carrier; (3) MGC is not affiliated with a dominant U.S. carrier whose international switched or private lines services Applicant seeks authority to resell; and (4) MGC does not seek to provide switched basic services over private lines to a country for which the Commission has not previously authorize the provision of switched services over private lines. Accordingly, Applicant requests streamlined processing of this Application in accordance with 47 C.F.R. §63.12.

As demonstrated in this application, Applicant submits that the grant of this application will serve the public interest, convenience and necessity. For the reasons specified herein, MGC respectfully requests the Commission to grant the instant Application via streamlined processing.

Respectfully submitted,

By:



Douglas G. Bonner, Esq.

Sana D. Coleman, Esq.

Arent Fox Kintner Plotkin & Kahn, PLLC

1050 Connecticut Avenue, N.W.

Washington, D.C. 20036

Tel: (202) 857-6293 (Bonner)

(202) 775-5753 (Coleman)

Fax: (202) 857-6395


Counsel to MGC Communications, Inc.

CERTIFICATION

STATE OF NEW YORK


COUNTY OF MONROIE

I, Francis D. R. Coleman, under penalty of perjury declare that I am the Vice President of Regulatory Affairs for MGC Communications, Inc.; that I am authorized to make this certification on behalf of the Applicants in the subject proceeding; that I have read the foregoing statements attached hereto; and that the same are true, accurate and correct to the best of my knowledge, information and belief.

By: 
Name: Francis D. R. Coleman
Title: Vice President of Regulatory Affairs
MGC Communications, Inc.

Subscribed and Sworn to before me this 17th day of April, 2000.

MARY E. ROSSI
Notary Public, State of New York
No. 01RO6010426
Qualified in Monroe County
Commission Expires July 20, 2020


Notary Public
My Commission Expires: 07/20/2020

CERTIFICATION REQUIREMENTS OF 47 CFR 63.180(DND) AND (O)

1. 47 CFR 63.18(i). MGC Communications, Inc. ("MGC") is not affiliated with any foreign carrier.
2. 47 CFR 63.18(i). MGC does not seek to provide international communication services to any destination country meeting any of the conditions set forth in 47 CFR 63.18(f).
3. 47 CFR 63.18(m). Except as permitted by the Commission's Rules, as amended from time to time, MGC has not agreed to accept 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 between the U.S. and any foreign country which MGC may be authorized to serve and it will not enter into such agreements in the future.
4. 47 CFR 63.18(o). No party to this Application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 853(a).