



amended, 47 U.S.C. § 214, and the Commission's Rules, 47 C.F.R. § 63.18, for authority to transfer control over Capsule to Startec. Capsule holds Title II authority under Section 214 of the Communications Act.<sup>1</sup> In Applicants' view, this transfer of control qualifies for streamlined processing pursuant to 47 C.F.R. §§ 63.12(c)(1)(i) & (ii).

Part II of this Application describes the proposed transfer of control and shows that the transaction furthers the public interest. Part III of this Application provides the additional information required by 47 C.F.R. § 63.18.

## **II. THE PROPOSED TRANSFER OF CONTROL IS IN THE PUBLIC INTEREST**

Startec has reached an agreement with Transferors whereby Startec will acquire all of Capsule's outstanding stock, subject to all necessary regulatory approvals. Capsule holds Section 214 authority for the provision of switched resale services. Transferors currently own 74 percent of Capsule.

Specifically, the proposed transfer of control will occur pursuant to the Agreement and Plan of Reorganization By and Among Startec Global Communications Corporation, Stars Acquisition Corp., Capsule Communications, Inc., Gold & Appel Transfer, S.A., and Foundation for the International Non-Governmental Development of Space ("Agreement") dated November 2, 2000. Under this Agreement, Stars Acquisition Corp. ("Stars"), a wholly owned subsidiary of Startec, will merge with Capsule, and Capsule will be the surviving corporation existing as a wholly owned subsidiary of Startec. All issued and outstanding shares of Stars will be converted into shares of the combined Capsule. In exchange,

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<sup>1</sup> File No. ITC-91-186, DA 91-1237. Capsule is an international switched reseller that also provides limited domestic long distance and local resale services. Transferor Startec is a well-established facilities-based carrier that already possesses its own Section 214 authority.

Capsule's shareholders will receive a minority equity interest in Startec in accordance with a predetermined stock exchange ratio.

The proposed transfer will serve the public interest. Capsule is now a switched reseller of telecommunications services, while Startec is a well-established facilities-based carrier. The companies are therefore largely complementary, and Capsule's customer base will benefit from access to Startec's facilities-based services and access to Startec's larger capital base. Particularly in light of Capsule's acute and continuing financial difficulties, the merger will ensure that there is no disruption of service for Capsule's customers. For Startec too, the acquisition of Capsule by Startec will enhance Startec's customer base and bolster Startec's ability to compete with the three large long-distance carriers. It will also reduce the operating costs and increase the efficiency of operating both companies. Accordingly, Startec will be better able to expand its service offerings and increase service quality while maintaining competitive rates.

### III. INFORMATION REQUESTED BY SECTION 63.18

The following information is provided in compliance with 47 C.F.R. § 63.18.

- a. The names, addresses, and telephone numbers of the Licensee is:

Capsule Communications, Inc.  
3331 Street Road, Suite 275  
2 Greenwood Square  
Bensalem, PA 19020  
(215) 633-9400

The name, address, and telephone number of the proposed Transferors are:

Gold & Appel Transfer, S.A. ("G&A"),  
Omar Hodge Building  
Wickams Cay, Road Town  
Tortula, British Virgin Islands  
c/o Walt Anderson  
Attorney-in-Fact



Gold & Appel Transfer, S.A.  
1023 31<sup>st</sup> Street, NW  
4<sup>th</sup> Floor  
Washington, D.C. 20007  
(202) 467-1189

Foundation for the International Non-Governmental  
Development of Space  
1023 31<sup>st</sup> Street, NW  
4<sup>th</sup> Floor  
Washington, D.C. 20007  
(202) 467-1189

The name, address, and telephone number of the proposed Transferee is:

Startec Global Communications Corporation  
10411 Motor City Drive  
Bethesda, MD 20817  
(301) 365-8959

b. Startec, Stars Acquisition Corp., Capsule, and Foundation are all Delaware corporations. G&A is a British Virgin Islands corporation.

c. Correspondence concerning this Application should be directed to:

Yolanda Stefanou Faerber  
General Counsel  
Startec Global Communications Corporation  
10411 Motor City Drive  
Bethesda, MD 20817  
(301) 365-8959

With copies to:

Pantelis Michalopoulos  
Rhonda Rivens Bolton  
Omer C. Eyal  
Stephoe & Johnson, LLP  
1330 Connecticut Avenue, N.W.  
Washington, D.C. 20036-1795  
(202) 429-3000

Russell M. Blau  
Rogena Harris  
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Washington, D.C. 20007-5116  
(202) 424-7500

*Counsel to Startec Global  
Communications Corporation*

*Counsel to Capsule Communications, Inc.*

d. Capsule is currently authorized under Title II to resell switched voice service.<sup>2</sup> Startec is currently authorized under Title II to provide facilities-based and resale services.<sup>3</sup>

e. Transferors, Startec and Capsule are seeking authority pursuant to 47 C.F.R. § 63.18(e)(3) to transfer control over Capsule's existing Title II authority from Transferors to Startec. Upon FCC approval and consummation of the proposed transaction, Capsule will become affiliated with Startec's non-dominant foreign carrier affiliates listed in Section (i) *infra*.<sup>4</sup> Accordingly, Startec will file a foreign carrier affiliation notification no later than 30 days after the consummation of the proposed transaction.<sup>5</sup>

f. See paragraph (e) above.

g. Transferors, Startec and Capsule are seeking authority pursuant to 47 C.F.R. § 63.18(e)(3) to transfer control of Licensee's existing Title II authority from Transferors to Startec. The grant of this Application will not constitute a major action as defined in 47 C.F.R. § 1.1305. Accordingly, no environmental information is required to be submitted with this Application under 47 C.F.R. § 1.1311.

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<sup>2</sup> See File No. ITC-91-186, DA 91-1237, released October 8, 1991. Initial authority was granted to US Wats, Inc. and later assigned to US Wats's successor company, Capsule, on a *pro forma* basis. US Wats duly filed notice of the *pro forma* assignment with the Commission on May 11, 2000. See Letter from Patrick J. Whittle and Jeanne W. Stockman to Magalie Roman Salas dated May 11, 2000. Capsule also provides limited domestic long distance and local resale services.

<sup>3</sup> See *In the Matter of Startec Incorporated, Application for Authority to Acquire and Operate Facilities and to Resell Services for Provision of Various International Services*, 4 FCC Rcd. 6953 (1989), File No. ITC-89-099; *Overseas Common Carrier Section 214 Applications Actions Taken*, Public Notice, 12 FCC Rcd. 13325 (1997), File No. ITC-97-379. Startec, Inc. changed its name to Startec Global Communications Corporation in 1997. See *Overseas Common Carrier Section 214 Applications Actions Taken*, DA 97-2016, Public Notice, 13 FCC Rcd. 5944 (1997).

<sup>4</sup> Startec has duly given the Commission notice of all of these foreign carrier affiliations.

<sup>5</sup> See *In the Matter of Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket No. 97-142, Order on Reconsideration, FCC 00-339 (rel. Sept. 19, 2000) (to be codified in 47 C.F.R. § 63.11).

h. The principal business of Startec, a publicly traded corporation, is the provision of telecommunications services. Mr. Ram Mukunda, a U.S. citizen, owns approximately 25 percent of the outstanding shares of Startec; Mr. Mukunda is the President, Chief Executive Officer, Treasurer and Director of Startec, and resides at 8906 Durham Road, Potomac, Maryland 20854. No other person or entity currently owns, directly or indirectly, ten percent or more of Startec's equity. As a result of this transaction, Applicants estimate that G&A and the Foundation together would acquire approximately 12% of Startec's equity, subject to fluctuating stock prices.<sup>6</sup>

Startec has two interlocking directorates with foreign carriers. In addition to holding the aforementioned positions with Startec, Mr. Mukunda is also a Director of Startec Global Communications (H.K.) Ltd; Startec Global Communications U.K. Ltd.; Startec Global Communications GmbH (Germany); Startec Global Communications (Holland) B.V.; Startec Global Communications Company (Canada) and Phone Systems & Network, S.A. (France). Mr. Prabhav V. Maniyar, Corporate Vice President, Chief Financial Officer and Director of Startec, is also a Director of Startec Global Communications (H.K.) Ltd.; Startec Global Communications (Chile) S.A.; Startec Global Communications U.K. Ltd.; Startec Global Communications (Holland) B.V.; Startec Global Communications Company (Canada); and Vancouver Telephone Company.

i. Startec certifies, by its signature to this Application, that it is not a foreign carrier, but is affiliated with the non-dominant foreign carriers listed immediately below, each of which lacks 50 percent market share in the international transport and the local access markets on the

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<sup>6</sup> Thus, no alien entity would acquire more than 20% of the equity of Startec as a result of this transaction.



foreign end of the respective routes.<sup>7</sup> Accordingly, upon approval of this transaction, Licensee will become affiliated with these same foreign affiliates:

- Startec Global Communications U.K. Ltd. (“Startec UK”) is a wholly-owned direct subsidiary of Startec. Startec UK is authorized to offer services in and through the United Kingdom, Ireland, Austria, Australia, Sweden, and New Zealand.
- Startec Global Communications (Switzerland) GmbH (“Startec Switzerland”), a wholly owned direct subsidiary of Startec, is registered to supply telecommunications services in and through Switzerland.
- Startec owns 85 percent of Phone Systems & Network, S.A. (“PSN”), which holds a Voice Telephony License in France. PSN also holds a special network access registration in the Netherlands that allows PSN to provide retail and wholesale services and interconnection with Royal KPN Netherlands, N.V.
- Global Communications (GmbH), a wholly-owned indirect subsidiary of Startec, owns 100 percent of Startec Global Communications (Germany) GmbH, which is licensed to provide international wholesale and prepaid telecommunications services in Germany.
- Startec Global Communications Company (Canada) is a wholly-owned indirect subsidiary of Startec that holds a Class A License to provide retail and wholesale telecommunications services in Canada.
- Vancouver Telephone Company (“VTC”), an indirect wholly-owned subsidiary of Startec, is a competitive carrier registered to resell long distance service in Canada.

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<sup>7</sup> Indeed, the Commission recently confirmed that none of Startec’s foreign affiliates possesses market power in its relevant markets. *In the Matter of PCI Communications, Inc. Transferor, and Startec Global Communications Corporation, Transferree; Application for Approval of Transfer of Control of an Entity Holding International Authorizations to Provide Telecommunications Services Between the United States and International Points*, DA 99-1976, Memorandum Opinion and Order, 14 FCC Rcd. 16082 (Sept. 4, 1999) (“MO&O”). Furthermore, Startec has subsequently filed an additional notification of two other affiliations with non-dominant carriers, which duly went through the Commission’s public notice and Comment period procedure without objection. *Foreign Carrier Affiliation Notification*, DA 00-1457, Public Notice, Report No. FCN-00030 (rel. June 29, 2000) (“FCAN”), File No. FCN-NEW-20000623-00038.

- Startec Global Communications (H.K.) Ltd. (“Startec H.K.”), a direct wholly owned subsidiary of Startec, is licensed in Hong-Kong to provide public telecommunications services.

j. Startec and Licensee certify that they are seeking authority to transfer control of Licensee, which is not currently affiliated with any foreign carriers. Upon FCC approval and consummation of the proposed transaction, Licensee will become affiliated with the foreign carriers listed in paragraph (i) above. Accordingly, Startec and Licensee certify that Licensee will continue to provide service to those countries. Startec and Licensee also certify that they do not seek, through this application, to provide international services to any other country (other than those listed above, which Startec is already authorized to serve) in which (1) Startec is a foreign carrier; (2) Startec controls a foreign carrier; (3) an entity that controls or otherwise owns more than 25% of Startec also controls a foreign carrier in that country; or (4) two or more foreign carriers (or parties that control foreign carriers) together own more than 25% of Startec and are parties to, or beneficiaries of, a contractual relationship affecting the provision or marketing of international basic telecommunications services in the United States.

k. Under the proposed transaction, Licensee will, through its control by Startec, become affiliated with the foreign carriers in foreign countries as listed in Section (i) *supra*. The named foreign countries are all members of the World Trade Organization (“WTO”), and the MO&O and the FCAN reflect the Commission’s view that the affiliated foreign carriers lack market power in the corresponding foreign countries.<sup>8</sup>

l. As demonstrated in paragraph (m) below, Licensee will continue to be entitled to non-dominant status on all international routes, including affiliated routes, once the proposed transaction is approved.

m. Pursuant to 47 C.F.R. § 63.10(a)(3), Startec and Licensee will continue to be entitled to non-dominant status on all routes once the proposed transaction is approved. The

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<sup>8</sup> See note 7 *supra*.



Commission has recently determined that “none of [Startec’s] affiliated foreign carriers has sufficient market power to affect competition adversely in the U.S. market.”<sup>9</sup> The MO&O specifically addressed all the Startec foreign affiliates except VTC and Startec H.K; these were the object of the FCAN Public Notice released on June 29, 2000, and went through the Commission’s notification process without objection.<sup>10</sup> Licensee presently has no foreign affiliations; therefore, Startec will maintain non-dominant status on all routes and Licensee is entitled to the same non-dominant treatment that applies to Startec.

n. Startec and Licensee certify that they have not agreed to accept special concessions directly or indirectly from any foreign carrier or administration with respect to 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 and will not enter into such agreements in the future.

o. Additionally, Applicants certify, pursuant to 47 C.F.R. § 1.2002, that neither they nor any other party to this Application are subject to a denial of any federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988. See 21 U.S.C. § 853a.

p. This Application qualifies for streamlined processing pursuant to 47 C.F.R. §§ 63.12(c)(1)(i) & (ii). As demonstrated is paragraph (m) above, Licensee will continue to qualify for non-dominant status on all international routes, including affiliated routes, once the proposed transaction is approved.

#### **IV. CONCLUSION**

For the reasons set forth above, Applicants request that the Commission promptly grant this Application for transfer of control over Licensee from Transferors to Startec.

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<sup>9</sup>

*Id.*

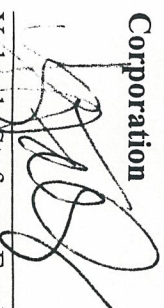
<sup>10</sup>

*Id.*

Respectfully submitted,

**Startec Global Communications  
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By:



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*Counsel for Startec Global  
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Dated: December 12, 2000.

Respectfully submitted,

**Capsule Communications, Inc.**

By:

  
\_\_\_\_\_

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Dated: December 12, 2000



Respectfully submitted,

**Gold & Appel Transfer, S.A.**

By: \_\_\_\_\_

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Attorney-in-Fact

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Dated: \_\_\_\_\_

12-11-08

Respectfully submitted,

**Foundation for the International  
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By:



Walt Anderson

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Dated: 12-11-00

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December 22, 2000

By HAND DELIVERY

Ms. Fran Eisenstein  
Policy and Facilities Branch  
International Bureau  
Federal Communications Commission  
The Portals – Room 6-C866  
445 Twelfth Street, SW  
Washington, D.C. 20554

**Re: In the Matter of Gold & Appel Transfer, S.A. and Foundation for the International Non-Governmental Development of Space, Transferors; Capsule Communications, Inc., Licensee; Startec Global Communications Corp. and Stars Acquisition Corp., Transferees; Application for Transfer of Control of Authority Over Section 214 Authority, File No. \_\_\_\_\_**

Dear Ms. Eisenstein:

On behalf of Gold & Appel Transfer, S.A. ("G&A"), the Foundation for the International Non-Governmental Development of Space (the "Foundation"), Capsule Communications, Inc. ("Capsule"), Startec Global Communications Corp. and Stars Acquisition Corp. (collectively, "Applicants"), we write to provide supplemental information regarding the above-captioned Application for Transfer of Authority over Capsule's Section 214 Authority in connection with the merger of Capsule and Stars Acquisition Corp.

In their Application, Applicants estimated that G&A and the Foundation together would acquire approximately 12% of Startec's equity, subject to fluctuating stock prices. See Application at 6. Because the stock exchange ratio is based on a moving average calculation, the precise percentage of Startec's equity that each of the two companies will own is uncertain. While it is possible that neither company will own 10% of Startec's equity, it is also possible that G&A would acquire more than 10% of Startec's equity. Specifically, Applicants estimate that G&A would acquire no more than 10.87% of Startec's equity and the Foundation would acquire no more than 1.73% of Startec's equity. In light of the possibility that G&A may own more than



Ms. Fran Eisenstein  
December 22, 2000  
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10% of Startec's equity, and out of an abundance of caution, Applicants hereby supply the following supplemental information about G&A. G&A is 100% owned by

Iceberg Transport, S.A. (a Panamanian company)  
53<sup>rd</sup> Street (Calle 53)  
Urbanizacion, Obarrio, Torre Swiss Bank  
Panama City, Republic of Panama

The principal businesses of Iceberg Transport are investment and sale of equity securities and venture capital investments.

If you have any questions regarding this matter, please give either of us a call.

Sincerely,



Pantelis Michalopoulos  
Steptoe & Johnson, LLP  
1330 Connecticut Avenue, NW  
Washington, D.C. 20036  
(202) 429-6494

*Counsel for Startec Global Communications  
Corporation and Stars Acquisition Corporation*



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