

Before the

**Federal Communications Commission
Washington, DC 20554**

In the Matter of

Application Pursuant to Section 214 of the
Communications Act of 1934 and
Section 63.24 of the Commission's Rules for
Consent to the Transfer of Control of Infonet
Broadband Services Corporation to BT Group
plc

and

Application Pursuant to Section 214 of the
Communications Act of 1934 and
Section 63.04 of the Commission's Rules for
Consent to the Transfer of Control of Infonet
Telecommunications Corporation to BT Group
plc

File No. ITC-T/C-20041119-00460

WC Docket No. 04-421

To: Office of the Secretary

Attention: International Bureau and Wireline Competition Bureau

**PETITION TO ADOPT CONDITIONS TO
AUTHORIZATIONS AND LICENSES**

The United States Department of Justice ("DOJ"), including the Federal Bureau of Investigation ("FBI"), together with the United States Department of Homeland Security ("DHS") (collectively, the "Agencies"), respectfully submit this Petition to Adopt Conditions to Authorizations and Licenses ("Petition"), pursuant to Section 1.41 of the Federal Communications Commission's ("FCC" or "Commission") rules.¹ Through this Petition, the Agencies advise the Commission that they have no objection to the Commission granting the

¹ 47 C.F.R. § 1.41.

above-referenced Application, provided that the Commission conditions the grant of the Application on British Telecommunications plc (“BT”),² and its subsidiaries operating in the United States, abiding by the commitments and undertakings contained in BT’s January 12, 2005 letter from Tim Cowen, General Counsel, BT Global Services, to Laura H. Parsky, Tina W. Gabbrielli, and Patrick W. Kelley (“Letter”), attached hereto as Exhibit 1.

In the above-captioned docket, Infonet Broadband Services Corporation (“IBSC”), Infonet Telecommunications Corporation (“ITC”), and BT Group plc (collectively the “Applicants”) filed an Application requesting approval to transfer control of IBSC and ITC from their ultimate corporate parent, Infonet Services Corporation (“Infonet”), to BT Group plc. Pursuant to the terms of an agreement and plan of merger (“Merger Agreement”) entered into by BT on behalf of its ultimate corporate parent, BT Group plc, and Infonet, Infonet would become a direct wholly-owned subsidiary of BT United States L.L.C., a Delaware limited liability company that is indirectly wholly-owned by BT Group plc. IBSC and ITC, in turn, would each remain a wholly-owned subsidiary of Infonet. On December 14, 2004, the Agencies and the Applicants jointly requested that the Commission defer grant of the Application until the Agencies and Applicants notify the Commission that they have addressed any aspects of the Application that the Agencies believe may raise potential national security, law enforcement, and public safety matters.

As the Commission is aware, the Agencies have taken the position that their ability to satisfy their obligations to protect the national security, enforce the laws, and preserve the safety of the public could be impaired by transactions in which foreign entities will own or operate a part of the U.S. telecommunications system, or in which foreign-located facilities will be used to

² British Telecommunications plc is an indirect subsidiary of applicant BT Group plc.

provide domestic telecommunications services to U.S. customers. In the *Foreign Participation Order*, the Commission stated that, in reviewing license applications from foreign carriers under Sections 214 and 310(b)(4) of the Communications Act, it would: (1) continue to apply the public interest test, and (2) “continue to find national security, law enforcement, foreign policy and trade policy concerns relevant to our decision to grant or deny Section 214 and 310(b)(4) applications from applicants from WTO Member[s].”³ The Commission further stated that it would “continue to accord deference to the expertise of Executive Branch agencies in identifying and interpreting issues of concern” relating to national security, law enforcement, and foreign policy relevant to a pending application.⁴ In recent cases the Commission has adopted, as conditions of the requested licenses and authorizations, commitments agreed upon between the Agencies and the applicants that address these issues.⁵

After discussions with the Applicants’ representatives in connection with the proposed acquisition and transfer of control, the Agencies have concluded that the commitments set forth in the Letter are sufficient to ensure that the Agencies and other entities with responsibility for enforcing the law, protecting the national security, and preserving public safety can proceed in a legal, secure, and confidential manner to satisfy these responsibilities. Accordingly, the

³ *In the Matter of Rules and Policies of Foreign Participation in the U.S. Telecommunications Market*, 12 FCC Rcd 23,891, para. 61 (Nov. 1997).

⁴ *Id.*, para. 63.

⁵ See, e.g., Memorandum Opinion, Order and Authorization, *Loral Satellite, Inc. and Intelsat North America, LLC*, 2004 WL 253309, 19 FCC Rcd 2404 (F.C.C.) (2004); Memorandum Opinion, Order and Authorization, *Bell Atlantic New Zealand Holdings, Inc. and Pacific Telecom Inc.*, 18 FCC Rcd 23,140, 2003 WL 22517694 (F.C.C.) (2003); Memorandum Opinion, Order and Authorization, *Global Crossing Ltd. and GC Acquisition Limited*, 18 FCC Rcd 20,301, 2003 WL 22309107 (F.C.C.) (2003); **Error! Main Document Only.** Memorandum Opinion, Order and Authorization, *XO Communications, Inc.*, 17 FCC Rcd 19,212, 2002 WL 31235646 (F.C.C.) (2002) (agreement adopted by the Commission, but the transaction was not consummated); Memorandum Opinion and Order, *VoiceStream Wireless Corporation, Powertel, Inc., and Deutsche Telekom AG*, 16 FCC Rcd 9779, 2001 WL 476559 (2001).

Agencies hereby advise the Commission that they have no objection to the Commission granting the above-referenced Application for consent to transfers of control, provided that the Commission conditions its consent on compliance by BT and its subsidiaries operating in the United States with the commitments set forth in the Letter.

The Agencies are authorized to state that the Applicants do not object to the grant of this Petition.

Respectfully submitted,

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January 31, 2005