

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

_____)	
In the Matter of)	
Telecom Argentina USA, Inc.)	
Application for Transfer of Control over)	File No. _____
Its Authority pursuant to Section 214 of the)	
Communications Act of 1934, as amended)	
_____)	

APPLICATION

Telecom Argentina USA, Inc. ("Telecom Argentina USA"), hereby requests authority, pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. Section 214 (1982), and Section 63.24 of the Commission's Rules, 47 C.F.R. Section 63.24, to transfer control over its authority to provide global international facilities-based and resale services between the United States and international points as described below and in its original application (File No. ITC-214-20010129-00034). Prior to this transaction, control over Telecom Argentina USA was shared between Telecom Italia S.p.A. ("TI") and its controlled company Telecom Italia International NV ("TII") (TI and TII the "Telecom Italia Group") and W de Argentina - Inversiones, S.L. ("W de Argentina"), with each the Telecom Italia Group and W de Argentina indirectly holding 50% of the equity of Telecom Argentina

USA.¹ After this transaction, Telecom Italia holds indirectly 58% of the equity of Telecom Argentina USA, with the remaining 42% held by W de Argentina.²

It is not clear whether the transfer of control here is a substantive or *pro forma* change of control. Section 63.24 of the Commission's Rules establishes some "bright line" rules for distinguishing between substantive and *pro forma* transfers, none of which apply here. Thus, "[w]hether there has been a change in the actual controlling party must be determined on a case-by-case basis."³ Telecom Italia's ownership facially goes from shared control (50%) to sole control (58%) -- suggesting there has been a *de jure* change in control -- but that factor alone may not be conclusive.⁴ Furthermore this transaction is not a transfer of control as defined in section 63.24 (c) ("A change from LESS than 50% ownership to 50% or more" (emphasis added)).

It should also be noted that under the *2010 Amended and Restated Shareholders' Agreement* (the "New Shareholders' Agreement") that amended the provisions and terms of the *Amended and Restated Shareholders' Agreement* dated December 17, 2003, W de Argentina retains certain veto powers and the right to appoint all the members of the Regulatory Compliance Committee as described in the New Shareholders' Agreement.⁵

¹ Telecom Argentina USA is a wholly-owned subsidiary of Telecom Argentina S.A., which in turn is controlled by Nortel Inversora S.A., which is controlled by Sofora Telecomunicaciones S.A. ("Sofora"). Prior to the transaction, the Telecom Italia Group and the W de Argentina each owned 50% of the equity of Sofora.

² This is accomplished by Telecom Italia and the W de Argentina holding 58% and 42% of Sofora, respectively.

³ 47 C.F.R. § 63.24 (d).

⁴ See, e.g., *SkyPort Global Communications, Inc.*, DA 08-2457, released November 5, 2008 (*pro forma* transfers of *de jure* control).

⁵ For example, under the New Shareholders' Agreement, the W de Argentina maintains certain veto rights:

In light of the ambiguity as to whether this transaction will be deemed a substantive or *pro forma* transfer of control, out of an abundance of caution Telecom Argentina USA is filing this application under the provisions of Section 63.24(c), rather than simply as a notification under Section 63.24(d).⁶ In addition, because the transaction has already closed, Telecom Argentina USA is requesting *nunc pro tunc* approval. In this regard, Telecom Argentina USA notes that any failure to obtain prior approval is harmless, particularly

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- (i) the approval of any amendment to the By-laws, other than the amendments expressly set forth in the New Shareholders' Agreement;
 - (ii) dividend policy;
 - (iii) any capital increase or decrease, except for any capital increase or decrease connected to any possible debt restructuring;
 - (iv) changing the location of the headquarter offices;
 - (v) any acquisition of subsidiaries and/or creation of subsidiaries;
 - (vi) the sale, transfer, assignment or any other disposition of all or substantially all of the assets or any of its subsidiaries;
 - (vii) decisions relating to the establishment of joint ventures;
 - (viii) constitution of any charges, liens, encumbrance, pledge or mortgage over assets, exceeding in the aggregate the amount of US\$20,000,000 (twenty million U.S. dollars);
 - (ix) any change of external auditors, to be chosen among auditors of international reputation;
 - (x) any related party transaction which is not carried out according to usual market conditions, exceeding the amount of US\$5,000,000 (five million U.S. dollars), with the exception of (i) any correspondent relationships, traffic agreement and/or roaming agreements with any national and/or international telecommunications carriers/operators, including the establishment, expansion or amendment of such correspondent relationships with any new telecommunications carriers; and (ii) any transaction connected with the debt restructuring;
 - (xi) any extraordinary transaction involving the Telecom Argentina Group, exceeding the amount of US\$30,000,000 (thirty million U.S. dollars), except for any operation not connected with the debt restructuring of the Telecom Argentina Group; and
 - (xii) any change to the rules of the Steering Committee, the Regulatory Compliance Committee or the *Comité de Auditoría*; and the creation, changes or dissolution of any committee of the Telecom Argentina Group with similar functions.

⁶ To the extent this transaction is deemed *pro forma*, then this notification is timely under Section 63.24(f)(2), since the transaction closed on October 13th.

because the Commission has already had an opportunity to pass upon the qualifications of the Telecom Italia Group and the affiliations with foreign carriers both in connection with Telecom Argentina USA's original 214 Application and other applications filed by Telecom Italia (e.g., Telecom Italia Sparkle of North America, Inc., File No. ITC-214-20030716-00357).⁷

Pursuant to Section 63.24(e)(2) of the Commission's Rules, Telecom Argentina USA provides the information required in paragraphs (a) through (d) and (h) through (p) of § 63.18.

- (a) *The name, address, and telephone number of each applicant;*

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80 SW 8th Street, Suite 2590
Miami, FL 33130
Telephone: 305-416-4300

- (b) *The Government, State, or Territory under the laws of which each corporate or partnership applicant is organized;*

Telecom Argentina USA is a Delaware corporation.

⁷ *Cf., In re Applications of Metromedia, Inc. For Consent to the Transfer of Corporate Control from John W. Kluge (De Facto Control) to John W. Kluge (De Jure Control)*, 98 F.C.C.2d 300 (1984) at ¶ 9: "Therefore, since there is not a substantial change in the identity of the owners (in that, *inter alia*, there are no new owners with substantial interests to be passed upon by the Commission) and there is not a substantial change in control, in light of Mr. Kluge's present *de facto* control, we find that there is not an ownership change which is material to the policies underlying the "substantial change in ownership" clause in Section 309(c)(2)(B). Under these circumstances, Metromedia properly applied for Commis

- (c) *The name, title, post office address, and telephone number of the officer and any other contact point, such as legal counsel, to whom correspondence concerning the application is to be addressed;*

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- (d) *A statement as to whether the applicant has previously received authority under Section 214 of the Act and, if so, a general description of the categories of facilities and services authorized (i.e., authorized to provide international switched services on a facilities basis);*

Telecom Argentina USA, Inc. is authorized under Section 214 of the Act to provide Global or Limited Global Facilities-Based Service and Global or Limited Global Resale Service, File No. ITC-214-20010129-00034.

- (h) *The name, address, citizenship and principal businesses of any person or entity that directly or indirectly owns at least ten percent of the equity of the applicant, and the percentage of equity owned by each of those entities (to the nearest one percent). The applicant shall also identify any interlocking directorates with a foreign carrier.*

**Telecom Italia S.p.A.
Piazza degli Affari 2
20123 Milano
Italy**

Telecom Italia S.p.A. is an Italian corporation that provides telecommunications services.

As a result of this transaction, the Telecom Italia Group indirectly owns 58% of the equity of Telecom Argentina USA.

**W de Argentina Inversiones, S.L. (referred to as the Wde Argentina)
Juan de Garay 2855
–Santa Fe, Argentina**

W de Argentina Inversiones S.L. is a Spanish limited liability holding company.

As a result of this transaction, W de Argentina indirectly owns 42% of the equity of Telecom Argentina USA.

Telecom Italia and W de Argentina own respectively 58% and 42% of the capital of Sofora Telecomunicaciones S.A. ("Sofora" – an Argentine corporation), which owns 67.79% of the capital of Nortel Inversora S.A. ("Nortel Inversora" -- an Argentine corporation), which owns 54.74% of the capital Telecom Argentina S.A. (an Argentina corporation), which in turn holds 100% of the shares of Telecom Argentina USA, Inc.

The address for these companies in the ownership chain of Telecom Argentina USA is:

Sofora Telecomunicaciones S.A.
Av. Madero 900, 26th Floor
C1107AAB Buenos Aires, Argentina

Nortel Inversora S.A.
Alicia Moreau de Justo 50, 11th Floor
C1107AAB Buenos Aires, Argentina

Telecom Argentina S.A.
Alicia Moreau de Justo 50
C1107AAB Buenos Aires, Argentina

- (i) *A certification as to whether or not the applicant is, or is affiliated with, a foreign carrier. The certification shall state with specificity each foreign country in which the applicant is, or is affiliated with, a foreign carrier.*

Telecom Argentina USA certifies that it is not a foreign carrier. However, Telecom Argentina USA certifies that it is affiliated with Telecom Argentina, a foreign carrier in Argentina, with a subsidiary providing wireless services in Paraguay. In addition, as a result of the greater than 25% ownership of Telecom Argentina by the Telecom Italia Group, Telecom Argentina USA is affiliated with foreign carriers in Italy and the other countries in which Telecom Italia has affiliates. Attachment A identifies all of the countries in which Telecom Argentina USA is deemed to have affiliations with foreign carriers under the Commission's Rules.

- (j) *A certification as to whether or not the applicant seeks to provide international telecommunications services to any destination country for which any of the following is true. The certification shall state with specificity the foreign carriers and destination countries:*

- (1) The applicant is a foreign carrier in that country; or*
- (2) The applicant controls a foreign carrier in that country; or*
- (3) Any entity that owns more than 25 percent of the applicant, or that controls the applicant, controls a foreign carrier in that country.*
- (4) Two or more foreign carriers (or parties that control foreign carriers) own, in the aggregate, more than 25 percent of the applicant and are parties to, or the beneficiaries of, a contractual relation (e.g., a joint venture or market alliance) affecting the provision or marketing of international basic telecommunications services in the United States.*

Telecom Argentina USA certifies that it seeks to provide international telecommunications service to Argentina, a country where it is affiliated with a foreign carrier in that country by reason of that carrier's 100% ownership of Telecom Argentina USA. In addition, Telecom Argentina USA certifies that it seeks to provide service to the countries set forth in Attachment A, where it is affiliated with those foreign carriers by reason of the ownership interest in Telecom Argentina by Telecom Italia Group, with the exception of San Marino.

(k) For any destination country listed by the applicant in response to paragraph (j), the applicant shall make one of the following showings:

- (1) The named foreign country (i.e., the destination foreign country) is a Member of the World Trade Organization; or*
- (2) The applicant's affiliated foreign carrier lacks market power in the named foreign country; or*
- (3) The named foreign country provides effective competitive opportunities to U.S. carriers to compete in that country's market for the service that the applicant seeks to provide (facilities-based, resold switched, or resold non-interconnected private line services). An effective competitive opportunities demonstration should address the following factors:*
 - (i) If the applicant seeks to provide facilities-based international services, the legal ability of U.S. carriers to enter the foreign market and provide facilities-based international services, in particular international message telephone service (IMTS);*
 - (ii) If the applicant seeks to provide resold services, the legal ability of U.S. carriers to enter the foreign market and provide resold international switched services (for switched resale applications) or non-interconnected private line services (for non-interconnected private line resale applications);*

(iii) Whether there exist reasonable and nondiscriminatory charges, terms and conditions for interconnection to a foreign carrier's domestic facilities for termination and origination of international services or the provision of the relevant resale service;

(iv) Whether competitive safeguards exist in the foreign country to protect against anticompetitive practices, including safeguards such as:

(A) Existence of cost-allocation rules in the foreign country to prevent cross-subsidization;

(B) Timely and nondiscriminatory disclosure of technical information needed to use, or interconnect with, carriers' facilities; and

(C) Protection of carrier and customer proprietary information;

(v) Whether there is an effective regulatory framework in the foreign country to develop, implement and enforce legal requirements, interconnection arrangements and other safeguards; and

(vi) Any other factors the applicant deems relevant to its demonstration.

The destination markets identified in Attachment A and Section (i) above are all WTO member countries, or the foreign carrier is non-dominant, with the exception of San Marino.

(l) Any applicant that proposes to resell the international switched services of an unaffiliated U.S. carrier for the purpose of providing international telecommunications services to a country where it is a foreign carrier or is affiliated with a foreign carrier shall either provide a showing that would satisfy § 63.10(a)(3) or state that it will file the quarterly traffic reports required by § 43.61(c) of this chapter.

Telecom Argentina USA certifies that with respect to those countries where it is affiliated with a dominant foreign carrier and it intends to continue to provide service via the resale of services of an unaffiliated U.S. carrier, it will file the quarterly traffic reports required by Section 43.61(c) of the Commission's Rules.

(m) With respect to regulatory classification under § 63.10, any applicant that is or is affiliated with a foreign carrier in a country listed in response to paragraph (i) and that desires to be regulated as non-dominant for the provision of particular international telecommunications services to that country should provide information in its application to demonstrate that it qualifies for non-dominant classification pursuant to § 63.10.

Telecom Argentina USA agrees to continue to be regulated as a dominant carrier on the U.S.-Argentina route, without prejudice to its right to seek reclassification at a later date. Telecom Argentina USA is entitled to non-dominant treatment with regard to the

services it seeks to provide to all other countries. With respect to the routes between the United States and Italy and the other countries identified in Attachment A where it is affiliated with a dominant foreign carrier as a result of its affiliation with the Telecom Italia Group, Telecom Argentina USA submits that it is entitled to non-dominant treatment under Section 63.10(a)(4), because it will provide service solely via the resale of international switched services of an unaffiliated U.S. carrier. With respect to all other countries, Telecom Argentina USA has no affiliation with a foreign carrier with market power.

(n) A certification that the applicant has not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses market power on the foreign end of the route and will not enter into such agreements in the future.

Telecom Argentina USA certifies that it has not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses market power on the foreign end of the route and will not enter into such agreements in the future.

(o) A certification pursuant to §§ 1.2001 through 1.2003 of this chapter that no party to the application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988. See 21 U.S.C. 853a.

Telecom Argentina USA 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. § 853a), that 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.

(p) If the applicant desires streamlined processing pursuant to § 63.12, a statement of how the application qualifies for streamlined processing.

Telecom Argentina USA is entitled to streamlined processing of this application pursuant to Sections 63.12(c)(2) and 63.12(c)(1)(iv) of the Commission's Rules. Telecom Argentina USA agrees to continue to be regulated as a dominant carrier on the U.S.-Argentina route, without prejudice to its right to petition to be reclassified at a later date. In addition, with respect to the routes between the United States and Italy and the other countries identified in Attachment A where Telecom Argentina USA is affiliated with a dominant foreign carrier as a result of its affiliation with the Telecom Italia Group, Telecom Argentina USA will provide service solely through the resale of the switched services of an unaffiliated U.S. carrier, and those countries are WTO member countries. The only exception is San Marino, and Telecom Argentina USA is not requesting authority herein to serve that market.

Because Telecom Argentina USA also provides (limited) domestic services, pursuant to Section 63.04(b) of the Commission's Rules Telecom Argentina USA provides the information required in paragraphs (6) through (12) of § 63.04(a):

(6) A description of the transaction;

As described in greater detail above, Telecom Italia Goup's indirect ownership in Telecom Argentina USA is increasing to 58%, while W de Argentina's ownership is decreasing to 42% (although it retains some measure of influence pursuant to the New Shareholders' Agreement).

(7) A description of the geographic areas in which the transferor and transferee (and their affiliates) offer domestic telecommunications services, and what services are provided in each area;

Telecom Argentina USA offers pre-paid calling card services, which can be used throughout the United States.

(8) A statement as to how the application fits into one or more of the presumptive streamlined categories in this section or why it is otherwise appropriate for streamlined treatment;

The transfer is entitled to presumptive streamlined treatment under Section 63.03(b)(2) of the Commission's Rules, because Telecom Argentina USA's market share of the interstate, interexchange market is significantly less than 10 percent, and none of the parties are dominant with respect to any services offered in the United States.

(9) Identification of all other Commission applications related to the same transaction;

Telecom Argentina USA is simultaneously seeking authorization for this change of control with respect to its International 214 authority (original File No. ITC-214-20010129-00034).

(10) A statement of whether the applicants are requesting special consideration because either party to the transaction is facing imminent business failure;

Applicantis not requesting special consideration because it is not facing imminent business failure.

(11) Identification of any separately filed waiver requests being sought in conjunction with the transaction; and

Applicant is not requesting any waivers, although it is requesting *nunc pro tunc* approval in light of the ambiguity as to whether this is a pro forma or a substantive change in control as explained above.

(12) A statement showing how grant of the application will serve the public interest, convenience and necessity, including any additional information that may be necessary to show the effect of the proposed transaction on competition in domestic markets.

The transaction will simplify management of Telecom Argentina USA, which will allow Telecom Argentina USA to become a more efficient and hence stronger competitor, which in turn will benefit consumers in the United States.

CONCLUSION

For the reasons set forth above, Telecom Argentina USA respectfully submits that the public interest, convenience and necessity would be furthered by a prompt grant of this Section 214 transfer of control application.

Respectfully submitted,

_____/s/_____
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Dated: November 15, 2010

ATTACHMENT A

Affiliations Through Telecom Argentina

COUNTRY	SUBSIDIARY	MARKET POWER
Argentina	Telecom Argentina S.A., Telecom Personal S.A.	Yes
Paraguay	Nucleo S.A.	No

Dominant Affiliations Through Telecom Italia

COUNTRY	SUBSIDIARY	MARKET POWER
Italy	Telecom Italia S.p.A.	Yes
Cuba	Empresa de Telecomunicaciones de Cuba S.A.	Yes
San Marino	Telecom Italia San Marino S.p.A.	Yes
Israel	Mediterranean Nautilus Israel Ltd.	Yes

Non-Dominant Foreign Affiliations Through Telecom Italia

COUNTRY	SUBSIDIARY	MARKET POWER
Austria	TI TELECOM ITALIA (AUSTRIA) TELEKOMMUNIKATIONSDIENSTE GMBH	No
Germany	TI Germany GmbH	No
The Netherlands	Telecom Italia (Netherlands) B.V.	No
Belgium	TI Belgium SPRL/BVBA	No
San Marino	Telefonia Mobile Sammarinese SPA	No

Czech Republic	Telecom Italia Sparkle Czech SRO	No
Romania	Telecom Italia Sparkle Est SRL	No
France	TIS France SAS	No
Hungary	Telecom Italia Sparkle Hungary Limited Liability Company	No
Singapore	Telecom Italia Sparkle Singapore PTE LTD	No
Spain	Telecom Italia Spain S.L. Unipersonal	No
Switzerland	TI Switzerland GmbH	No
Slovak Republic	Telecom Italia Sparkle Slovakia SRO	No
UK	TMI Telemedia International LTD	No
Brazil	TMI Telemedia International do Brasil LTDA	No
Argentina	LATIN AMERICAN NAUTILUS ARGENTINA S.A	No
Bolivia	Latin American Nautilus Bolivia SrL	No
Brazil	LATIN AMERICAN NAUTILUS BRASIL LIMITADA	No
Chile	LATIN AMERICAN NAUTILUS CHILE S.A.	No
Colombia	Latin American Nautilus Colombia Limitada	No
Ireland	LAN MED NAUTILUS LIMITED	No
Mexico	Latin American Nautilus Mexico S.A.	No
Panama	LATIN AMERICAN NAUTILUS PANAMA S.A.	No
Peru	LATIN AMERICAN NAUTILUS PERU' S.A.	No

St.Croix	LATIN AMERICAN NAUTILUS ST. CROIX LLC	No
Venezuela	LATIN AMERICAN NAUTILUS VENEZUELA C.A.	No
Israel	MED 1 Submarine cables LTD	No
Bulgaria	MEDITERRANEAN NAUTILUS BULGARIA EOOD	No
Greece	MEDITERRANEAN NAUTILUS GREECE S.A	No
Ireland	MEDITERRANEAN NAUTILUS LTD.	No
Turkey	MEDITERRANEAN NAUTILUS TELEKOMUNIKASYON HIZMETLERI TICARET ANONIM SIRKETI	No
Italy	Med 1 Italy Srl	No
Italy	Mediterranean Nautilus Italy S.p.A.	No
Italy	Telecom Italia Sparkle S.p.A.	No
Brasil	Intelig Telecomunicações Ltda	No
Brasil	TIM Celular S.A.	No