

Verscom, LLC
International Section 214 Authorization
Application for Transfer of Control

Attachment 1

Answer to Question 10

Question 10 requests the provision of the information listed in 47 C.F.R. § 63.18(c) and (d) for the transferor and transferee.

Information requested by 47 C.F.R. § 63.18(c):

Contact information for the transferor Eren Nil:

Eren Nil
Investor
Verscom, LLC
501 Silverside Road
Suite 105
Wilmington, DE 19809
866-238-9189 (telephone)

Contact information for the transferee Gokce Bilyay:

Gokce Bilyay
Chief Executive Officer
Verscom, LLC
501 Silverside Road
Suite 105
Wilmington, DE 19809
866-238-9189 (telephone)

Contact information for legal counsel for both the transferor and transferee:

Kemal Hawa
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
701 Pennsylvania Avenue N.W.
Suite 900
Washington, D.C. 20004
202-434-7300

Information requested by 47 C.F.R. § 63.18(d):

While neither Eren Nil (transferor) nor Gokce Bilyay (transferee) has previously directly received authority under Section 214 of the Act, the transferor and transferee are investors in

Verscom, LLC, which possesses a Section 214 authorization to provide global facilities-based and global resale services between the U.S. and international points (ITC-214-20050223-00074).

Answer to Question 11

Question 11 requests disclosure of the name, address, citizenship, principal businesses, and percentage ownership of each person or entity that directly or indirectly owns at least ten (10) percent of the equity of the transferee, if any entity owns at least ten (10) percent of the equity of the transferee.

While Gokce Bilyay, an individual, is the transferee, and therefore no entity owns equity in the transferee, Verscom as the applicant hereby discloses ownership information in order to update the information on file with the Commission even though disclosure of this information may not be required.

<u>Verscom, LLC Ownership Information</u>	<u>% Held</u>
Gokce Bilyay, Investor 501 Silverside Road Suite 105 Wilmington, DE 19809 Citizenship: Turkey Principal Business: Chief Executive Officer of Verscom, LLC	70%
Emir Nil, Investor 501 Silverside Road Suite 105 Wilmington, DE 19809 Citizenship: Turkey Principal Business: Regulatory Contact for Verscom, LLC	20%
Eren Nil, Investor 501 Silverside Road Suite 105 Wilmington, DE 19809 Citizenship: Turkey Principal Business: Investor in Verscom, LLC	10%

Answer to Question 13

Question 13 requests a narrative of the means by which the proposed transfer of control will take place.

Overview. Pursuant to Section 63.24 of the FCC's rules,^{1/} Verscom, LLC seeks the FCC's consent to the transfer of control of Verscom's International Section 214 authority to

^{1/} 47 C.F.R. § 63.24.

provide global facilities-based and resale services between the U.S. and international points.^{2/} As described below, Verscom believes that this transfer of control constitutes a *pro forma* transfer of control for which notification to the Commission would ordinarily be provided under Section 63.24(f).^{3/} Nevertheless, because the FCC's records do not currently reflect the agreement granting Gokce Bilyay *de facto* control, Verscom understands, on advice of International Bureau staff, that it should seek FCC approval of the transfer of control under Section 63.24(e) of the Commission's rules and does so with this application.^{4/} Because the transfer of control has already occurred, Verscom is simultaneously submitting a request for special temporary operating authority concurrently with this application in order to allow it to continue its current operations during the pendency of this application.

Discussion. The Commission's records reflect that prior to the transfer of control on April 13, 2011, Eren Nil held a majority 70% ownership interest in Verscom, and Gokce Bilyay was one of four minority interest holders, each of whom held a 7.5% ownership interest in Verscom.^{5/} Even though Eren Nil held the majority ownership interest in Verscom as its angel investor, an agreement among the interest holders provides that Gokce Bilyay as Chief Executive Officer will run the company and manage all of its affairs, including performing such duties as overseeing day-to-day operations, making all management and personnel decisions, dictating the company's strategy, and controlling the operation and use of all facilities and equipment. Consequently, from the time it obtained its first International Section 214 Authorization, to the present time, Gokce Bilyay has exercised *de facto* control of Verscom.^{6/}

Part of the *de facto* control agreement provided that once Gokce Bilyay carried Verscom to profitability, the interest holders would realign their ownership interests to also make Gokce Bilyay the majority interest holder. Verscom became profitable in 2011, and as a result, on April 13, 2011, Verscom filed an amended charter with the Delaware Secretary of State, which

^{2/} See International Section 214 Application, IBFS No. ITC-214-20050223-00074 at Attachment 2 (filed Feb. 23, 2005).

^{3/} 47 C.F.R. § 63.24(f).

^{4/} 47 C.F.R. § 63.24(e).

^{5/} See International Section 214 Application, IBFS No. ITC-214-20050223-00074 at Attachment 2 (filed Feb. 23, 2005). Verscom recognizes that despite the fact that actual control of the company did not change as a result of the change in ownership interest – *i.e.*, only a change from *de facto* control to *de jure* control by the same party, who also retains *de facto* control – the change is nonetheless considered a transfer of control under FCC rules because “a change from less than 50 percent ownership to 50 percent or more ownership shall always be considered a transfer of control.” 47 C.F.R. § 63.24(c).

^{6/} See, *e.g.*, *McCaw Cellular Communications Inc., et al.*, Memorandum Opinion and Order, 4 FCC Rcd 3784, ¶ 33 (1989) (“*McCaw Cellular*”) (stating that control “is not limited to . . . *de jure* control (ownership of over 50% of the corporation's stock), but can include situations of control “in fact” (*de facto* control), regardless of the amount of stock owned”); *id.* ¶ 34 (“The question of whether a minority investor may be in actual control of the company is governed chiefly by the demonstration of the power of the minority investor to dominate the management of corporate affairs.”); *News International, PLC Petitions for Relief*, Memorandum Opinion and Order, 97 FCC 2d 349, ¶ 16 (1984) (stating that a minority shareholder would control the licensee if it determines the licensee's policies and operations and dominates its corporate affairs).

effectuated the redistribution of Verscom's ownership interests in accordance with the internal agreement among the interest holders. In particular, Gokce Bilyay was provided with a 70% ownership interest, Emir Nil with a 20% ownership interest, and Eren Nil with a 10% ownership interest. There was, however, no change in the management or operations (and thus *de facto* control) of Verscom in connection with this redistribution. Gokce Bilyay remains the controlling party and continues to exercise control over the company's affairs, including performance of the duties listed above.^{7/} As a result, Verscom believes that the transfer of Verscom's ownership interests would be considered *pro forma* under the Commission's rules.^{8/} As the Commission has held, a transfer of control that results in a *de facto* controlling party gaining *de jure* control is considered *pro forma* under the Commission's rules.^{9/}

Nevertheless, following discussion of the current transaction and its history with FCC staff, Verscom understands that because the arrangement that provided Gokce Bilyay with *de facto* control of Verscom is not in the record associated with Verscom's current International Section 214 Authorization, Verscom must seek approval for a substantial transfer of control, rather than simply notifying the Commission of a *pro forma* transaction, resulting in the instant application for FCC approval of the change in ownership interest brought about by the April 13, 2011 charter amendment.

Due to the fact that the transfer of control did not effectuate any change in the organization's management or operations, Verscom did not seek prior approval of the transfer of control as required by Section 63.24(a),^{10/} but instead filed a notice of *de facto* transfer of control,^{11/} which was subsequently withdrawn to clear the record for submission of this application. Consequently, concurrently with this request, Verscom is filing an application for special temporary authority, so that it may continue its current operations during the pendency of this application.

Because approval of this transfer of control will allow Verscom to continue to serve its customers by providing global facilities-based services and reselling international services between the United States and international points, grant of this request will serve the public interest, convenience, and necessity.

^{7/} See, e.g., *McCaw Cellular* ¶ 34 (finding that control means "the right to determine the manner or means of operating the licensee and determining the policy that the licensee will pursue").

^{8/} See 47 C.F.R. § 63.24(d) (stating that transfers of control "that do not result in a change in the actual controlling party are considered non-substantial or *pro forma*").

^{9/} See *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)*, Memorandum Opinion and Order, 98 FCC 2d 300 (1984) (holding that there is no substantial change in ownership or control when an individual who already has *de facto* control gains *de jure* control, and therefore such transaction constitutes a non-substantial or *pro forma* transfer of control).

^{10/} See 47 C.F.R. § 63.24(a).

^{11/} See International Section 214 Application, IBFS No. ITC-T/C-20120103-00001 (filed Jan. 3, 2012).

Answer to Question 20

Verscom, LLC requests streamlined processing for this application as provided in Section 63.12 of the Commission's rules.^{12/} The application qualifies for streamlined treatment pursuant to Section 63.12(c) because Verscom as the applicant is not affiliated with a foreign carrier in a destination market and does not have an affiliation with a dominant U.S. carrier whose international services Verscom seeks to resell.^{13/}

Answer to Question 22

This response is marked "no" because the transaction has already occurred, as described above in response to Question 13, due to Verscom believing that the transaction constituted a *pro forma* transfer of control, which would merely require notification of the *pro forma* transaction rather than formal FCC consent. However, at the advice of International Bureau staff, Verscom has withdrawn the *pro forma* notification in favor of this request for transfer of control of its International Section 214 authorization, and is concurrently submitting a request for special temporary authority to continue operations during the pendency of this transfer of control application.

Answer to Question 23

As explained above, Verscom believes the change in organizational structure is a *pro forma* transfer of control. Nevertheless, as explained above, on advice of International Bureau staff, Verscom is submitting this transfer of control application covering its International Section 214 authorization.

^{12/} See 47 C.F.R. § 63.12.

^{13/} See 47 C.F.R. § 63.12(c).