

Telecom North America, Inc.
Pro Forma Transfer of Control of
International 214 Authorization
ITC-214-20031031-00499
January, 2014

ATTACHMENT 1

ANSWER TO QUESTION 10.

For Section 63.18(c):

Please direct all questions or correspondence relating to this application to:

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Mr. Kaufman is legal counsel to the applicant.

For Section 63.18(d):

Telecom North America, Inc. ("Applicant") holds international 214 authorization pursuant to ITC-214-20031031-00499. This is an authorization for "global or limited global resale authority" to all international points.

ANSWER TO QUESTION 11.

As previously authorized by the FCC, the ownership of Applicant was 50% Johannes Gottschalk (a German citizen and permanent US resident) and 50% Herve Andrieu (a French citizen and permanent US resident). Thus, the FCC and DOJ have already passed upon the qualifications of Messrs. Gottschalk and Andrieu, and found them fully qualified.

This *pro forma* transfer-of-control application seeks FCC consent to a third shareholder, Mr. Michael Choupak, a United States citizen. The new ownership of applicant is Gottschalk, 44.5%; Andrieu, 44.5%; and Choupak, 11%. Each of Messrs. Gottschalk, Andrieu and Choupak is a resident of Nevada. The principal business of each is the operation of Applicant. They each have the following mailing address, which is the same as Applicant's mailing address:

c/o Telecom North America, Inc.
2654 W. Horizon Ridge Parkway
Suite B5-143
Henderson, NV 89052

ANSWER TO QUESTION 13.

In September, 2012, Messrs. Gottschalk and Andrieu, then each a 50% shareholder in Applicant pursuant to FCC approval, brought in another equity owner of Applicant, Mr. Choupak. Specifically, Mr. Choupak acquired an 11% interest in Applicant, with each of Messrs. Gottschalk and Andrieu providing 5.5% to Mr. Choupak, such that post-consummation, the ownership of Applicant was, and remains: Gottschalk, 44.5%; Andrieu, 44.5%; and Choupak, 11%.

In summary: (1) collectively, Messrs. Gottschalk and Andrieu, upon whose qualifications this Commission has already passed, continue to hold 89% ownership of Applicant; (2) the foreign ownership in Applicant has dropped from 100% to 89%; (3) no new person has acquired control of Applicant; and (4) although neither Mr. Gottschalk nor Mr. Andrieu personally holds a 50% negative control interest, they remain by far the largest shareholders and continue their domination of management. Because of these facts, Messrs. Gottschalk and Andrieu believed that no transfer-of-control had occurred and that no transfer-of-control filing was required under Commission rules.

Recently, Applicant's counsel learned of the transaction and advised that, out of an abundance of caution, applicant should file this application for *pro forma* transfer of control, because each of Messrs. Gottschalk and Andrieu has now dropped below the 50% ownership threshold, even though no new person has obtained control.

Where, as here, one or more persons that previously held at least 50% ownership drops below that level, but no new person acquires control, the transaction qualifies as *pro forma*. See, e.g., *Grace Missionary Baptist Church*, 80 FCC 2d 330, 336 (1980). See also *Metromedia, Inc.*, 98 FCC 2d 300, 305 (1984), *reh. denied* 56 RR 2d 1198 (1984), *aff'd. sub nom. California Ass'n of Physically Handicapped v. FCC*, 778 F.2d 823 (DC Cir., 1985), where this Commission explained:

The test for whether the interest to be transferred is a "controlling one" or "substantial" has generally been (a) whether 50 percent or more of the stock is being transferred, and (b) whether as a result of the transaction 50 percent or more of the outstanding stock will be held by persons whose qualifications to be Commission licensees have not previously been approved of or "passed upon."

(Internal citations omitted.)

Although the foregoing cases are broadcast, the Commission uses the same standard for both broadcast and common carrier transfers of control. See *Federal Communications Bar Association's Petition for Forbearance from Section 310(d) of the Communications Act Regarding Non-Substantial Assignments of Wireless Licenses and Transfers of Control Involving Telecommunications Carriers and Personal Communications Industry Association's Broadband Personal Communications Services Alliance's Petition for Forbearance For Broadband Personal Communications Services*, 13 FCC Rcd 6293, 6298-99 (1998). Therefore, the 11% ownership shift that occurred here is a *pro forma* and not a substantive transfer.

REQUEST FOR WAIVER OF REQUIREMENT TO NOTIFY THE COMMISSION WITHIN 30 DAYS OF CONSUMMATION.

Under Section 1.3 of the Commission's Rules, a waiver may be granted where "if good cause therefor is shown." Good cause is generally deemed to have been shown where strict enforcement of the rule is not needed in order to serve the underlying purpose of the rule and where waiver is in the public interest. Applicant meets this standard.

The purpose of the requirement to notify the Commission within thirty days of consummation of a *pro forma* transaction is to ensure that the Commission can confirm for itself that the transaction involved is indeed *pro forma* and that no new person is acquiring control over any holder of a Section 214 authorization without prior Commission approval. Here, that purpose is being served because Applicant is voluntarily providing the necessary information, and because under the specific factual circumstances here, the transaction is indeed *pro forma*.

The situation here is highly unusual in that it is rare to have a licensee owned exactly 50% each by two individuals, each with negative control and neither with positive control. It is even rarer for both of those individuals to be aliens, and for those aliens to be reducing their ownership in favor of a new U.S.-citizen-investor. Intuitively, non-lawyers (such as Messrs. Gottschalk and Andrieu) would assume that bringing in more domestic ownership is not something the Commission would be concerned with especially where, as here, the new ownership interest is an 11% minority position. Moreover, where, as here, there has never been any voting impasse between Messrs. Gottschalk and Andrieu, and all management decisions have in fact been unanimous, neither of them would focus on some theoretical but never deployed "veto power" as constituting some sort of legal threshold.

Accordingly, no public purpose would be served in refusing to consent to the *pro forma* transaction which occurred in this case. The public interest is best served by granting the requested waiver and allowing Applicant to move forward and continue its existing service, which has not been adversely affected in its day-to-day operations by the admission of the additional owner. (To repeat, the only "effect" has been the positive effect on Applicant's capitalization.) Under the circumstances, grant of the requested waiver is appropriate.