

Explanatory Statement and Request for Waiver

Transtelco, Inc. (“Transtelco”) hereby seeks approval pursuant to Section 63.24 of the Commission’s Rules for transactions that have resulted in two transfers of control of its existing Section 214 authorization, originally granted on March 16, 2007.¹ The two transactions resulting in previously unapproved transfers of control were: (1) a *pro forma* transfer of control on May 1, 2010 through which Transtelco Holding, Inc. (“THI”) became the parent company of Transtelco, and (2) a transfer of control on December 26, 2012 through which the original controlling shareholders of Transtelco were divested of positive control of THI, leaving the company with no single controlling shareholder or control group. No FCC legal counsel was involved in these transactions.

Transtelco regrets that these transactions occurred without notification to or prior approval of the Commission. Failure to submit the required notice and transfer of control application in connection with these ownership changes was an oversight that occurred due to insufficient licensee familiarity with the Commission’s Rules governing changes in the ownership of a Section 214 licensee. However, at all times, Transtelco has remained under the day-to-day operational control of the original controlling shareholders of the company, brothers Miguel and Rodrigo Fernandez. The company is reporting these transactions to the Commission at this time, and seeking approval of its current ownership structure, following a detailed internal review occasioned by the retention of FCC regulatory counsel.

I. STATEMENT OF FACTS

a. Transtelco’s Founding and Business

Transtelco was formed in 2001 as a Texas corporation (originally named Ezero, Inc.) by Miguel Fernandez and Rodrigo Fernandez, both of whom are U.S. citizens. Miguel Fernandez is the Chief Executive Officer of the company, and Rodrigo Fernandez is the Chief Financial Officer, responsible for overseeing Transtelco’s financial management, reporting and controls and administration. Both are graduates of the University of Texas at El Paso and received degrees in business administration. Transtelco is their first telecommunications business venture, which they formed shortly after completing college, and has been operating for more than a dozen years.

¹ Separately, Transtelco is seeking authority from the FCC’s Wireless Telecommunication Bureau to transfer control of two fixed microwave licenses as a result of these same transactions. See ULS File Nos. 0006516914 and 0006527455.

Transtelco is one of a very few providers of telecommunications capacity that operate on both sides of the U.S.-Mexico border. While its affiliated businesses in Mexico include providers of traditional local voice and long distance services, its U.S. operations are focused on providing wholesale capacity and contract-based enterprise services to carriers and individual businesses with the need to transmit voice and data throughout the Southwestern United States and across the U.S. border with Mexico.

Although Transtelco does not operate as a common carrier within U.S. borders, its affiliated companies in Mexico (see subsection (e) below) provide a range of interconnected local and long distance voice services. For this reason, Transtelco obtained in early 2007 a Section 214 authorization for both facilities-based and resale service to termination points within Mexico.

b. Transtelco's Ownership Structure When the Section 214 Authorization Was Granted

On February 28, 2007, Transtelco filed a Section 214 application with the Commission seeking authority to operate as a facilities-based and a resale carrier (FCC File No. ITC-214-20070228-00088). As noted above, as of that date and at all times thereafter, Miguel Fernandez was CEO and Rodrigo Fernandez was CFO of the company. The two brothers together held the majority of the stock in the Company, with each owning about 32.2% of the shares issued, giving them voting control of Transtelco. As disclosed in the application, Arturo Iglesias, also an officer and director of the Company, held just under 10% of the shares with the remaining interests scattered among multiple smaller stakeholders. The ownership of Transtelco as of that time is depicted in Figure 1, attached.

c. The Formation of THI

Subsequent to the grant of the Section 214 authorization in 2007, the Fernandez brothers consolidated their control of Transtelco by buying out the smaller investors other than Mr. Iglesias. A little more than a year after grant of the Section 214 authorization, the Fernandez brothers combined share of the company had grown to more than 90%.

In order to commence operations in additional areas along the U.S.-Mexico border, Transtelco needed to raise additional capital to expand service and build a long haul network, Transtelco solicited additional investment in the company from Axiscom, SA. de CV

(“Axiscom”)², an investment company formed in Mexico by relatives of Miguel and Rodrigo Fernandez, most of whom are citizens of Mexico. These efforts ultimately led to the formation of THI, a Delaware corporation, as a holding company for Transtelco. Upon the establishment of THI on May 1, 2010, Axiscom, which had previously been a smaller direct investor in Transtelco, took a 40% stake in the new holding company, which in turn maintained a 100% ownership interest in Transtelco. The combined share of the Fernandez brothers fell to approximately 52.3%, but remained controlling, making this transfer *pro forma* in nature. Combined with Mr. Iglesias’ smaller share, the original management group continued to hold 60% of the Company. The ownership of Transtelco as of the formation of THI is depicted in Figure 2, attached. THI does not hold any other Section 214 authorizations, nor does it hold interests in other companies that hold Section 214 authorizations.

d. Additional Investment in THI

As Transtelco continued to seek additional capital to fund business expansion in late 2012, the Company sold additional shares in THI to a second holding company based in Mexico, Finestra, SA de CV³, on December 26, 2012. Finestra was issued stock equivalent to 15% of Transtelco, reducing the combined share of Fernandez, Fernandez and Iglesias to a little less than 46%.⁴ The resulting ownership structure is depicted in Figure 3, attached. Although the original management group continues to operate the company, they no longer have positive control of the company as they did at the time that the Section 214 authorization was obtained.

Figure 3 represents the current ownership of Transtelco. Two additional individuals other than the original control group now have non-controlling shares in the company through their indirect investments in THI. Through his investment in Finestra, Fernando de Jesus Canales Clariond has an attributable interest of approximately 15% in the licensee entity. Sr. Canales is a citizen of Mexico and is a prominent investor and businessman. He has been CEO of Grupo IMSA, SA de CV, a diversified manufacturer of building materials, and has served on the boards of directors of Grupo Aeromexico SAB de CV, Compania Minera Autlan, SAB de CV, and U.S. corporation, Global Seawater, Inc. Aida Floridet del Carmen Destarac Saenz, a

² The address of Axiscom is Campos Eliseos 9050 4T0 Piso, Ciudad Juarez, Chihuahua 32452, Mexico.

³ The address of Finestra is Rio Lerma 120, Col. Miravalle, Monterrey, Nuevo Leon 64660, Mexico.

⁴ There are multiple classes of Transtelco stock, but the class designations relate only to date of issue; each class has the same ownership participation and voting rights.

private investor who also a citizen of Mexico, has an attributable interest in Transtelco of approximately 11.4% through Axiscom.

e. Response to Specific Questions 12, 14, 15 and 16

Transtelco is under common control with two small carriers operating in Mexico: IP Matrix, SA de CV, which provides local voice and data service, and Olatu Networks, SA de CV, which provides long distance service. Each company is a wholly-owned subsidiary of THI. Neither company serves a significant share of the market for international or local access service in Mexico, individually or together, let alone wields sufficient market power in Mexico to affect competition adversely in the U.S. market. As is well established, the only dominant carrier in the Mexican telecommunications market is Telefonos de Mexico (“TelMex”), which controls roughly 80 percent of Mexico's fixed-line services market.⁵ TelMex’s huge market share precludes a finding that any other carrier is dominant in that market.⁶ Miguel and Rodrigo Fernandez, the CEO and COO of Transtelco, are also officers and directors of IP Matrix and Olatu Networks, such that there are interlocking directorates with Transtelco as defined under Section 63.09(g) of the Commission’s Rules.

II. GRANT OF THIS TRANSFER OF CONTROL APPLICATION WILL SERVE THE PUBLIC INTEREST

Section 63.24(f)(2) of the Commission’s Rules provides that “a *pro forma* assignee or a carrier that is subject to a *pro forma* transfer of control must file a notification with the Commission no later than thirty (30) days after the assignment or transfer is completed.” 47 C.F.R. § 63.24(f)(2). In addition, Section 63.24(a) of the Commission’s Rules requires that “an international section 214 authorization may be assigned, or control of such authorization may be transferred by the transfer of control of any entity holding such authorization, to another party, whether voluntarily or involuntarily, directly or indirectly, only upon application to and

⁵ See “Mexico Regulator Fines Telmex for Monopolistic Practices,” Fox News Latino (posted Oct. 1, 2014), available at <http://latino.foxnews.com/latino/news/2014/10/01/mexico-regulator-fines-telmex-for-monopolistic-practices/>; FCC Public Notice, “List of Foreign Telecommunications Carriers that are Presumed to Possess Market Power in Foreign Telecommunications Markets,” 22 FCC Rcd 945, 950 (2007)(listing TelMex as the sole dominant carrier serving Mexico).

⁶ “If the U.S. carrier demonstrates that the foreign affiliate lacks 50 percent market share in the international transport and the local access markets on the foreign end of the route, the U.S. carrier shall presumptively be classified as non-dominant.” 47 C.F.R. § 63.24(f)(2).

prior approval by the Commission.” 47 C.F.R. § 63.24(a). Transtelco acknowledges that it failed to comply with each of these regulations with respect to the two successive transactions described above.

Approval of the current ownership structure outlined in this application is nonetheless squarely in the public interest for several reasons. First, despite changes in passive ownership, Transtelco’s top management team remains unchanged since the original grant of its Section 214 authorization. The company continues to provide telecommunications capacity to a relatively small number of companies with operations on both sides of the U.S.-Mexico border. Other than growth in the number of customers served, there has been no significant change in operations as a result of the changes in ownership.

Second, and closely related to the stable management of the company, no harm to customers has resulted from the ownership changes outlined above. Transtelco has continued to provide the same types of quality services on the same or similar contract-based terms and conditions as it has from its inception. Indeed, any action that would inhibit or interrupt the availability of Transtelco’s services to its customers would itself be harmful to companies that rely on vital communications links that the company provides.

Third, favorable action on the application is consistent with precedent. The Commission has not previously viewed inadvertent deficiencies in obtaining approval for Section 214 transfers or assignments as disqualifying, particularly where valuable service to the public continues to be provided. Instead, the International Bureau has approved such requests, including cases where previously undisclosed foreign ownership amounted to control of the licensee.⁷ In this case, no non-U.S. entity controls Transtelco, but a transfer of control has nonetheless occurred because more than fifty percent of the equity and voting interests in the licensee is now held by new persons whose qualifications have not been passed upon previously by the FCC. Transtelco understands, of course, that as in these prior cases, grant of this

⁷ See *Public Notice*, Report No. TEL-01554, DA 12-543, at 3 (IB, released Apr. 5, 2012) (granting application for assignment to One World Telecom, LLC under FCC File No. ITC-ASG-20110812-00261). See also *Public Notice*, Report No. TEL-01588, DA 12-1842, at 3 (IB, released Nov. 15, 2012) (approving increased foreign investment transferring control of Verscom LLC under FCC File No. ITC-T/C-20120203-00040). See also FCC Public Notice, Authorizations Granted, 22 FCC Rcd 13894 (IB 2007) (granting applications of Satamatics, Inc., Satamatics Worldwide Limited, and Satamatics Global Limited for consent to transfer control of licenses and authorizations, including a Section 214 authorization). In this case, neither foreign investor controls the licensee, but their combined interests total more than fifty percent.

application would be without prejudice to any enforcement action that the Commission might take for non-compliance with the Communications Act or the Commission's Rules.

III. WAIVER OF THE COMMISSION'S RULES TO PERMIT GRANT OF THIS APPLICATION IS APPROPRIATE

Given the public interest balance favoring grant of this application, Transtelco respectfully requests, pursuant to Section 1.3 of the Commission's Rules, that the Commission grant it a waiver of Sections 63.24(a) and 63.24(f)(2) of its rules, which require, respectively, prior approval of material transfers of control and notification within 30 days following a *pro forma* transfer of control. Requests for waiver of the Commission's Rules may be granted in circumstances where strict adherence to the rule would not be in the public interest, and where grant would not undermine the underlying policy objectives of the rule in question.⁸ Both elements are met in this case.

As demonstrated above, Transtelco provides valuable service to the public, and the addition of new passive investors in the company has neither altered the benefits provided by this service nor changed the day-to-day management of the company. Moreover, grant of the requested relief will encourage self-disclosure by licensees that find that their compliance with FCC Rules has fallen short. In this case, upon discovery of the fact that had been ownership changes which should have been disclosed to or approved by the Commission, Transtelco has worked diligently with outside counsel to gather the information necessary to prepare the required transfer of control applications and provide complete detail to the Commission concerning its current ownership. The company is also putting in place internal monitoring controls to ensure full compliance with all FCC licensing requirements in the future.

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Accordingly, for all of the reasons set forth above, Transtelco respectfully requests grant of post-consummation approval for the transfers of control outlined above, including waivers of the Commission's Rules necessary to permit this approval.

⁸ See, e.g., *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).