



PUBLIC NOTICE

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**DOMESTIC AND INTERNATIONAL SECTION 214 APPLICATIONS GRANTED
FOR THE TRANSFER OF CONTROL OF YMAX COMMUNICATIONS CORP.
TO B. RILEY FINANCIAL, INC.**

WC Docket No. 17-356

By this Public Notice, the Wireline Competition Bureau (WCB) and the International Bureau (IB, together, Bureaus) grant the Applications listed in the Appendix to this Public Notice filed by magicJack VocalTec Ltd. (Transferor) and B. Riley Financial, Inc. (Transferee) (together, Applicants), pursuant to section 214 of the Act, and sections 63.03-04, 63.18, and 63.24 of the Commission's rules,¹ seeking approval to transfer control of Transferor's subsidiaries, YMax Communications Corp. (YMax), magicJack SMB, Inc. (MJSMB), and Broadsmart Global, Inc. (Broadsmart, with YMax and MJSMB, Licensees) to Transferee.

Transferor, a publicly traded company incorporated under the laws of Israel, provides Voice over Internet Protocol (VoIP) services and wholly owns YMax Corporation (YMax Corp.), a Delaware corporation that in turn wholly owns YMax.² YMax is a Delaware corporation that is authorized to operate as a competitive local exchange carrier and long distance carrier in 49 states and the District of Columbia.³ MJSMB and Broadsmart, both Florida corporations, provide VoIP services and are wholly owned subsidiaries of YMax Corp.⁴

Transferee is a publicly traded California financial services company and operates through several wholly owned subsidiaries, including B. Riley Principal Investments, LLC (BRPI), a Delaware company.⁵ Mr. Bryant Riley, a U.S. citizen, owns approximately 16 percent of Transferee.⁶

¹ 47 U.S.C. §214; 47 CFR §§ 63.04, 63.18, 63.24; *see also* Joint Application of magicJack VocalTec Ltd. And B. Riley Financial, Inc. to Transfer Control of Domestic and International Section 214 Authorizations. WC Docket No. 17-356 (filed Dec. 13, 2017) (Lead Application). On December 29, 2017, IB accepted for filing the international section 214 applications of YMax (ITC-T/C-20171213-00221), MJSMB (ITC-T/C-20171213-00022), and Broadsmart (ITC-T/C-20171213-00223). *Streamlined International Applications Accepted for Filing; Section 214 Applications; Section 310(b) Petitions*, Public Notice, Report No. TEL-01882S (IB rel. Dec. 29, 2017). We refer to the domestic section 214 application and the international section 214 applications as "Applications."

² Lead Application at 2-3.

³ *Id.* New Hampshire is the only state where YMax does not have authority to operate as a CLEC. *Id.*

⁴ Applicants state that Broadsmart and MJSMB do not provide domestic telecommunications services. *Id.* at 3, 8, n.6.

⁵ *Id.* at 3.

⁶ *Id.* at 7.

To effectuate the proposed transaction, B. Riley formed BRPI Acquisition Co LLC (BRPI Acquisition), a new U.S. holding company and wholly owned direct subsidiary of BRPI.⁷ Upon closing of the transaction and as an intermediate step, Transferor will become a wholly owned direct subsidiary of BRPI, and YMax, MJSMB, and Broadsmart will become wholly owned, indirect subsidiaries of Transferee through YMax Corp.⁸ Applicants state that no later than one day after closing the transaction, Transferee will undertake an internal reorganization pursuant to which YMax Corp. will become a wholly owned direct subsidiary of BRPI Acquisition (instead of remaining a wholly owned direct subsidiary of Transferor).⁹ YMax, MJSMB, and Broadsmart will continue to be wholly owned indirect subsidiaries of Transferee through YMax Corp, BRPI Acquisition, and BRPI, without any intervening ownership of Transferor.¹⁰ Transferor will become a separate, wholly owned subsidiary of BRPI Acquisition and will eventually be dissolved.¹¹ Applicants attest that, after the reorganization, all entities and individuals that hold a 10 percent or greater ownership interest in YMax, MJSMB, and Broadsmart will be U.S. companies or U.S. citizens.¹²

On December 20, 2017, WCB released a Public Notice requesting comment on the Lead Application.¹³ On December 21, 2017, the Department of Justice (DOJ), the Federal Bureau of Investigation (FBI), the Department of Homeland Security (DHS), and the Department of Defense (DOD) (collectively, the Executive Branch Agencies) filed a letter requesting that the Commission defer action on this proceeding while they completed their review of any national security, law enforcement, and public safety concerns.¹⁴ We deferred action in response to the Executive Branch Agencies' request.¹⁵

On August 15, 2018, DOJ, to include its components, the National Security Division, and the FBI, submitted a Petition to Adopt Conditions to Authorizations and Licenses (Petition).¹⁶ In the Petition, DOJ advises the Commission that DOJ has no objection to the Commission approving the authority sought in this proceeding, provided the Commission conditions its approval on the assurance of

⁷ Applicants submitted pre- and post-closing ownership charts of the entities in the proposed transaction. Letter from William F. Maher and Jennifer L. Kostyu, Counsel to B. Riley, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-356, File Nos. ITC-T/C-20171213-00221, ITC-T/C-20171213-00222, ITC-T/C-20171213-00223, at 1-2 (filed Apr. 30, 2018) (Applicants' April 30 *Ex Parte* Letter). Applicants have confirmed that the ownership charts remain accurate. Letter from William F. Maher and Jennifer L. Kostyu, Counsel to Transferee, and Bennett Ross, Counsel to Transferor, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-356, IB Docket Nos. ITC-T/C-20171213-00221, ITC-T/C-20171213-00222, ITC-T/C-20171213-00223, at 1-2 (filed Oct. 23, 2018).

⁸ Applicants' April 30 *Ex Parte* Letter at 1-2.

⁹ *Id.* at 2.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Domestic Section 214 Application Filed for the Transfer of Control of YMax Communications Corp. to B. Riley Financial, Inc.*, WC Docket No. 17-356, Public Notice, 32 FCC Rcd 10414 (WCB 2017).

¹⁴ Letter from Debbie Wheeler, U.S. Department of Justice, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-356, File Nos. ITC-T/C-20171213-00221, ITC-T/C-20171213-00222, ITC-T/C-20171213-00223 (filed Dec. 21, 2017).

¹⁵ *Notice of Removal of Domestic Section 214 Application from Streamlined Treatment*, Public Notice, 33 FCC Rcd 213 (WCB 2018). On January 12, 2018, IB removed the international section 214 applications from streamlined processing. *Streamlined International Applications Accepted for Filing; Section 214 Applications; Section 310(b) Petitions*, Public Notice, Report No. TEL-01886S (IB rel. Jan. 12, 2018).

¹⁶ Petition to Adopt Conditions to Authorizations and Licenses, WC Docket No. 17-356 and File Nos. ITC-T/C-20171213-00221, ITC-T/C-20171213-00222, ITC-T/C-20171213-00223 (filed Aug. 15, 2018).

Transferee to abide by the commitments and undertakings set forth in the August 13, 2018 Declaration of Transferee (Declaration) and Letter of Agreement (LOA) between Transferee and DOJ.¹⁷

The Bureaus find, upon consideration of the record, that grant of the Applications, subject to compliance with the Declaration and LOA, will serve the public interest, convenience, and necessity.¹⁸ Further, consistent with Commission precedent, the Bureau accords the appropriate level of deference to the Executive Branch Agencies' expertise on national security and law enforcement issues.¹⁹ A failure to comply with and/or remain in compliance with any of the provisions of the Declaration and LOA shall constitute a failure to meet a condition of this authorization and thus grounds for declaring the underlying authorizations terminated without further action on the part of the Commission. Failure to meet a condition of this authorization may also result in monetary sanctions or other enforcement action by the Commission.

The Bureaus find that approval of the Applications will serve the public interest, convenience, and necessity, and hereby grants the Applications subject to the following condition to which the parties to the transaction agree:²⁰ with respect to magicJack and its successors and assigns, B. Riley shall comply with and cause magicJack and its successors and assigns to comply with any and all final orders or consent decrees associated with any Commission investigation into magicJack's compliance with the Act, and the Commission's rules, including any requirements in such orders or consent decrees to (i) file, report, or otherwise provide any information to the Universal Service Administrative Company (USAC), the Telecommunications Relay Services (TRS) Fund administrator, the Local Number Portability Administrator (LNPA), or the North American Numbering Plan Administrator (NANPA);²¹ (ii) make payments to USAC as the administrator of the Universal Service Fund, to the TRS Fund administrator, to the LNPA, and to the NANPA; and (iii) pay any forfeiture, voluntary contribution, or civil penalty required by any such order or consent decree; with B. Riley having responsibility for any monetary obligations to the same extent as if it was the named party in such orders or consent decrees; provided, however, that B. Riley and magicJack do not waive any rights they have under the Act, the Commission's rules, or any other law, to oppose or otherwise respond to any enforcement action, resulting determination

¹⁷ *Id.* at 1-2 and Attach. (Declaration and LOA). Pursuant to the Declaration and LOA, the terms of the LOA will automatically take effect if Transferee does not undertake a reorganization to remove the foreign ownership from the Licensees' ownership structure within three (3) business days from the closing of the transaction. *See* Declaration and LOA (para. 15). Stated another way, the LOA will not take effect if Transferor is removed from the ownership structure within three business days of closing.

¹⁸ 47 CFR § 63.03(b).

¹⁹ The Commission considers national security, law enforcement, foreign policy, and trade policy concerns when analyzing a transfer of control or assignment application in which foreign ownership is an issue. *See Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Satellites Providing Domestic and International Service in the United States*, Report and Order, 12 FCC Rcd 24094, 24170-72, paras. 178-82 (1997); *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket No. 97-142, Market Entry and Regulation of Foreign Affiliated Entities, IB Docket No. 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23919-21, paras. 61-66 (1997) (*Foreign Participation Order*), Order on Reconsideration, 15 FCC Rcd 18158 (2000). In assessing the public interest, the Commission considers the record and accords the appropriate level of deference to Executive Branch expertise on national security and law enforcement issues. *See Foreign Participation Order*, 12 FCC Rcd at 23919-21, paras. 61-66.

²⁰ Letter from William F. Maher, Counsel to B. Riley Financial, Inc., and Bennett Ross, Counsel to magicJack VocalTec Ltd., to Marlene H. Dortch, WC Docket No. 17-356, File Nos. ITC-T/C-20171213-00221, ITC-T/C-20171213-00222, ITC-T/C-20171213-00223 (filed Nov. 6, 2018). For purposes of this condition, "magicJack" refers to Transferor, Licensees, and all subsidiaries thereof; and "B. Riley" refers to Transferee and its successors and assigns.

²¹ *See, e.g.*, 47 U.S.C. §§ 159, 225(d)(3), 251(e), 254(d); 47 CFR §§ 1.1157, 52.17, 52.32, 54.706(a)-(b), 64.604(c)(5)(iii)(A); *Assessment and Collection of Regulatory Fees for Fiscal Year 2018*, MD Docket No. 18-175, Report and Order and Order (2018).

of liability, if any, or billing and collection claims by authorized entities.

Accordingly, having reviewed the Applications and the record in this matter, pursuant to section 214 of the Act, 47 U.S.C. § 214, and sections 0.51, 0.91, 0.261, 0.291, 63.03, 63.04, 63.18, and 63.24 of the Commission's rules, 47 CFR §§ 0.51, 0.91, 0.261, 0.291, 63.03, 63.04, 63.18, and 63.24, the Bureaus hereby grant the Applications discussed in this Public Notice subject to compliance with the Declaration and LOA and with the additional condition described above.

Pursuant to section 1.103 of the Commission's rules, 47 CFR § 1.103, the grant is effective upon release of this Public Notice. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 CFR §§ 1.106, 1.115, may be filed within 30 days of the date of this Public Notice.

For further information, please contact Jodie May, Wireline Competition Bureau, (202) 418-0913, or David Krech, International Bureau, (202) 418-7443.

APPENDIX

SECTION 214 AUTHORIZATIONS

A. International

The following applications for consent to the transfer of control of the international section 214 authorizations from Transferor to Transferee are granted.

<u>File Number</u>	<u>Authorization Holder</u>	<u>Authorization Number</u>
ITC-T/C-20171213-00221	YMax Communications Corp.	ITC-214-20050614-00222
ITC-T/C-20171213-00222	magicJack SMB, Inc.	ITC-214-20160901-00265
ITC-T/C-20171213-00223	Broadsmart Global, Inc.	ITC-214-20160901-00264

B. Domestic

The Wireline Competition Bureau grants the application to transfer control of domestic section 214 authority in connection with the proposed transaction.