

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Applications for Consent <i>Nunc pro Tunc</i>	)	File No. ITC-T/C-_____
to the Transfer of Control of Spectrotel,	)	
Inc. Pursuant to Section 214 of the	)	
Communications Act of 1934, as	)	WC Docket No. 18-_____
Amended	)	
	)	
	)	
	)	

**JOINT DOMESTIC AND INTERNATIONAL SECTION 214 APPLICATION  
AND REQUEST FOR WAIVERS**

Spectrotel, Inc. (“Spectrotel”) requests authority pursuant to Section 214 of the Communications Act of 1934, as amended (the “Act”), and Sections 63.03, 63.04, and 63.24 of the Commission’s rules, for the transfer of control of Spectrotel (which prior to the transfer of control was known as Plan B Communications, Inc. (“Plan B”)) in bankruptcy. Spectrotel recently became aware of the need to provide notice of a voluntary petition for bankruptcy relief filed on March 16, 2001, and to seek consent for a transfer of control that occurred in connection with the reorganization upon emergence from bankruptcy that became effective on November 25, 2002. As a result of inappropriate guidance from counsel at the time of the 2001-02 reorganization, Spectrotel management was only recently made aware of the required notice and application in connection with its common carrier authorizations.<sup>1</sup> Thus, Spectrotel also requests

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<sup>1</sup> The Application requests consent for a transfer of control because Spectrotel currently is the same entity that existed prior to the bankruptcy, but with a different ownership structure. As a technical matter, notice filings for a transfer of control into bankruptcy typically are styled as a *pro forma* assignment of authorizations to the company as

waivers in connection with this Application and requests that the Commission grant consent to the reorganization transaction *nunc pro tunc*. Pursuant to Section 63.04(b) of the Commission's rules, Spectrotel is filing a combined domestic and international application.<sup>2</sup> The information required by Sections 63.24(e)(2) and 63.04(a)(6) through (a)(12) of the Commission's rules is provided below.<sup>3</sup>

## **I. DESCRIPTION OF THE APPLICANT**

Spectrotel, a Delaware corporation, is a non-facilities-based competitive local exchange carrier ("CLEC") that provides resold voice and data services to small and mid-sized businesses and enterprise customers. Spectrotel provides communications services in all fifty states.<sup>4</sup> Pursuant to Section 63.01 of the Commission's rules, Spectrotel holds blanket domestic Section 214 authority that it uses to provide interstate toll resale services. As a competitive carrier, Spectrotel is not a dominant provider of any telecommunications service in any geographic area.

Spectrotel also holds international Section 214 authority granted in FCC File No. ITC-214-20000818-00489 to provide global resale service in accordance with Section 63.18(e)(2) of the Commission's rules. Spectrotel resells the international services of authorized U.S. common carriers for the provision of international basic switched, private line, data, video and business services to all international points.

Prior to entering into bankruptcy, Spectrotel operated under the name Plan B.

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debtor-in-possession, and applications for consent for transactions to emerge from bankruptcy are an assignment of the authorizations back to the reorganized company. However, the net effect of the bankruptcy process is a transfer of control.

<sup>2</sup> 47 C.F.R. § 63.04(b).

<sup>3</sup> *Id.* §§ 63.24(e)(2), 63.04(a)(6)-(a)(12).

<sup>4</sup> Spectrotel provides regulated services in all states but Alaska and Hawaii, but provides VoIP and other unregulated services in all fifty states.

## II. DESCRIPTION OF THE TRANSACTION

On March 16, 2001, Spectrotel (then known as Plan B) filed a voluntary petition with the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) to reorganize under Chapter 11 of the United States Bankruptcy Code. Upon entry into bankruptcy, Plan B was operated by the debtor-in-possession subject to the supervision of the Bankruptcy Court, which resulted in a *pro forma* transfer of control of Plan B.

The company emerged from bankruptcy on November 25, 2002 pursuant to the plan of reorganization approved by the Bankruptcy Court. Prior to the reorganization, Plan B was controlled by its board of directors. The name of the company was changed to Spectrotel in connection with the reorganization transaction. Upon emerging from bankruptcy, Spectrotel was and remains wholly owned and controlled by Jacob Dayan, who serves as Chief Executive Officer.

At the time of the bankruptcy proceeding, Spectrotel’s management was unaware of the need to file the required notices and applications for consent in the context of a bankruptcy where the corporate form of the Spectrotel entity was not changing. Spectrotel relied on counsel with expertise regarding the Commission’s requirements, but such counsel did not advise the company of the need to file notices with the Commission for the *pro forma* transfer of control of the company to the debtor-in-possession within 30 days of the filing of the bankruptcy petition, or of the need to obtain Commission consent for the transfer of control of Spectrotel upon its emergence from bankruptcy. Spectrotel recently was made aware of the oversight, and now submits this application to correct the record and to bring its Section 214 authorizations into compliance. Spectrotel seeks waivers of the timeframes in which these filings were required to be made, as discussed in further detail below.

### III. GRANTING CONSENT FOR THE TRANSACTION AND THE REQUESTED WAIVERS WILL PROMOTE THE PUBLIC INTEREST

Pursuant to Section 214 of the Act, the Commission will approve a proposed transfer of control of an authorization if it concludes that, after balancing the potential benefits and harms, approval would serve the public interest, convenience, and necessity.<sup>5</sup> This Application satisfies that legal standard.

The transfer of control that occurred as a result of the reorganization of Spectrotel serves the public interest because it allowed Spectrotel to emerge from bankruptcy, consistent with the broad aims of the Communications Act, the Commission’s rules and policies, and the U.S. Bankruptcy Code. The Commission has found that “allowing a company to consummate its court-approved bankruptcy reorganization plan ‘will serve the public interest by furthering the equitable purposes of the Federal Bankruptcy Act.’”<sup>6</sup> The Commission also has recognized that enabling licensees to exit bankruptcy—with restructured debt and access to new capital—provides the opportunity for significant public interest benefits.<sup>7</sup>

That is true in this case. Spectrotel’s bankruptcy plan resolved outstanding claims and settled previously existing debt obligations. In addition, Spectrotel gained access to new financing sources, which facilitated Spectrotel’s ability to maintain its operations and continue

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<sup>5</sup> 47 U.S.C. § 214.

<sup>6</sup> *New DBSD Satellite Services, G.P. Debtor-in-Possession, Transferor, New DBSD Satellite Services, G.P., Transferee, Transfer of Control of Earth Station and Ancillary Terrestrial Component Licenses and Conforming Modifications to Commission Records*, Order, DA 10-1881 ¶ 10 (2010), quoting *Space Station System Licensee, Inc., Assignor, and Iridium Constellation LLC, Assignee*, Memorandum Opinion and Order, 17 FCC Rcd 2271 (2002).

<sup>7</sup> *See, e.g., DBSD North America, Inc. and DISH Network Corp.*, Order, 27 FCC Rcd 2250 ¶ 26 (2012) (agreeing with applicants that allowing two bankrupt enterprises to emerge from bankruptcy would facilitate the retirement of debt and improve access to capital, and would result in significant public interest benefits).

providing service to customers. As a result, the reorganization transaction was beneficial for consumers, including by avoiding service disruption. These aspects of the bankruptcy plan together provided the company with a sustainable capital structure capable of supporting the provision of new and innovative services to customers going forward. Thus, Spectrotel emerged from Chapter 11 better able to serve its customers, thereby making Spectrotel a stronger competitor.

Spectrotel respectfully requests a partial waiver of the requirements to file a notice within 30 days after the *pro forma* transfer of control that occurred upon entry into bankruptcy and operation as debtor in possession, and the attendant assignment of the domestic and international Section 214 authorizations from Spectrotel as it existed before entry into bankruptcy, to Spectrotel as debtor-in-possession.<sup>8</sup> Spectrotel also requests a partial waiver of the requirement to seek prior consent for the assignment of the authorizations from the DIP entity back to Spectrotel, which resulted in a substantive transfer of control.<sup>9</sup> By this application, Spectrotel provides the requisite notice and seeks consent for the substantive transfer of control, but requires a waiver of the rules to allow this submission to be made outside of the required timeframe for such filings.

Under Section 1.3 of the rules, the Commission may waive any of its rules for good cause shown.<sup>10</sup> As noted above, counsel for Spectrotel did not advise the company of the notice and approval requirements arising from the transfer of control of its common carrier authorizations occasioned by the bankruptcy process. And, as the foregoing demonstrates, the reorganization

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<sup>8</sup> See 47 C.F.R. §§ 63.03(d)(2), 63.24(f)(2).

<sup>9</sup> See *id.* at §§ 63.03, 63.24(a).

<sup>10</sup> 47 C.F.R. § 1.3; see, e.g., *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

transaction had significant public interest benefits, and carried out the intent of the Bankruptcy Court to allow Spectrotel to continue its business operations. Grant of the requested waivers will allow Spectrotel to bring its authorizations into compliance and to continue providing its regulated services to customers, thereby enhancing competition in the marketplace.

#### **IV. INFORMATION REQUIRED BY SECTION 63.24 OF THE COMMISSION'S RULES**

In accordance with 47 C.F.R. § 63.24(e)(2), the Applicant submits the following information requested in 47 C.F.R. §§ 63.18(a) through (d), and (h) through (p).

**(a) Name, address, and telephone number of Applicant:**

Transferee and Transferor:

Spectrotel, Inc.  
3535 State Hwy 66, Suite 7  
Neptune, NJ 07753  
Tel: 732-345-7000

**(b) Jurisdiction of organization:**

Spectrotel, both before and after the reorganization, was and is a corporation formed under the laws of the state of Delaware.

**(c) Correspondence concerning this Application should be addressed to:**

Transferee and Transferor:

David Zahka  
Spectrotel, Inc.  
3535 State Hwy 66, Suite 7  
Neptune, NJ 07753  
Tel: 732-345-7000

with a copy to:

Matthew A. Brill  
Elizabeth R. Park  
Latham & Watkins LLP  
555 Eleventh Street, NW  
Suite 1000  
Washington, DC 20004

Tel: (202) 637-2200

**(d) Section 214 authority:**

Spectrotel is authorized to provide global resold services pursuant to Section 63.18(e)(2) of the Commission's rules. *See* File No. ITC-214-20000818-00489.

(e)-(g) Not applicable.

**(h) Name, address, citizenship, and principal business of owners with 10% or greater direct or indirect ownership interest:**

Spectrotel currently is wholly owned and controlled by Jacob Dayan, who also serves as Spectrotel's Chief Executive Officer. Jacob Dayan is a citizen of the United States. Mr.

Dayan's address is c/o Spectrotel, Inc., 3535 State Hwy 66, Suite 7, Neptune, NJ 07753.

No other person or entity, directly or indirectly, controls or owns a ten percent or greater direct equity or voting interest in Spectrotel.

**(i) Foreign carrier certification:**

Spectrotel certifies that it is not a foreign carrier within the meaning of Section 63.09(d) of the Commission's rules. Spectrotel further certifies that it is not directly affiliated, within the meaning of Section 63.09 of the Commission's rules, with any foreign carriers.

**(j) Destination country certification:**

Spectrotel does not seek to provide international telecommunications services to any destination country in which: (i) Spectrotel is a foreign carrier in that country; (ii) Spectrotel controls a foreign carrier in that country; or (iii) any entity that owns more than 25 percent of Spectrotel, or that controls Spectrotel, controls a foreign carrier in that country. Spectrotel also hereby certifies that it does not seek to provide international telecommunications services to any destination country in which two or more foreign carriers (or parties that control foreign carriers) own, in the aggregate, more than 25 percent of Spectrotel and are parties to, or the beneficiaries

of, a contractual relation affecting the provision of marketing of international basic telecommunications services in the United States.

(k)-(m) Not applicable because Spectrotel is not a foreign carrier and is not affiliated with a foreign carrier.

**(n) Special concessions from foreign carriers:**

Spectrotel certifies that it has not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any United States 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) Certification regarding Section 5301 of Anti-Drug Abuse Act of 1988:**

Spectrotel certifies pursuant to Sections 1.2001 through 1.2003 of the Commission's rules that they are not subject to a denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.

**(p) Streamlined processing:**

Spectrotel does not request streamlined processing.

**V. INFORMATION REQUIRED BY 47 C.F.R. § 63.04**

Spectrotel submits the following information pursuant to Section 63.04(b) of the Commission's rules:

**(6) Description of the transaction:**

The reorganization transaction is described in Section II, above.

**(7) 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:**

Spectrotel's offers domestic telecommunications service offerings in all states but Alaska and Hawaii. Spectrotel provides VoIP and other unregulated communications in all fifty states.

(8) **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:**

Spectrotel does not request streamlined processing.

(9) **Other Commission applications related to the transaction:**

There are no other Commission applications related to this transaction.

(10) **Imminent business failure considerations:**

Spectrotel is not facing imminent business failure, and thus is not seeking any special considerations.

(11) **Waiver requests sought in connection with the transaction:**

Spectrotel seeks waivers of the prior consent and 30-day notice requirements in Sections 63.03 and 63.24 of the Commission's rules, as detailed in Section III above.

(12) **Public interest statement:**

The public interest considerations are detailed in Section III above.

**VI. CONCLUSION**

For the foregoing reasons, Commission approval of this Joint Domestic and International Section 214 Application and Request for Waivers will serve the public interest, convenience, and necessity. Accordingly, Spectrotel respectfully requests that the Commission grant consent to the reorganization transaction *nunc pro tunc* and the associated waiver requests.

Respectfully submitted,

**SPECTROTEL, INC.**

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*Counsel for Spectrotel, Inc.*

September 25, 2018

**DECLARATION OF JACOB DAYAN**

I, Jacob Dayan, Chief Executive Officer of Spectrotel, Inc., do hereby declare under penalty of perjury that (1) I am authorized to make this Declaration on behalf of Spectrotel, Inc. (“Spectrotel”); (2) the foregoing “JOINT DOMESTIC AND INTERNATIONAL SECTION 214 APPLICATION AND REQUEST FOR WAIVERS” was prepared under my direction and supervision; and (3) the information contained therein regarding Spectrotel is true and accurate to the best of my knowledge, information, and belief.

September 25, 2018  
Date

  
Jacob Dayan