



Federal Communications Commission  
Washington, D.C. 20554

International Bureau

February 23, 2006

Marian Gordon, Director, Telecommunications  
and Information Standards  
Office of International Communications  
and Information Policy  
U.S. Department of State  
Washington, D.C. 20520

Re: Application File No. ROA-NEW-20060110-00001

Dear Ms. Gordon:

On January 20, 2006, Aicent, Inc. (Aicent), filed an application, File No. ROA-NEW-20060110-00001, requesting designation under the Commission's Rules, 47 C.F.R. § 63.701 (2002), as a recognized operating agency (ROA). The application was placed on public notice on February 1, 2006. The Commission received no comments regarding the application. Based on the information before us, we recommend that the United States Department of State grant the subject request.

Our review of the subject application indicates that Aicent has provided all the information required by Section 63.701 of the Commission's Rules and Regulations, 47 C.F.R. § 63.701 (2002), to be contained in applications requesting designation as an ROA. Aicent's application states that it is a corporation organized under the laws of the State of Delaware, with its principal offices at 2540 N. 1<sup>st</sup> Street, Suite 307, San Jose, California 95130.

Aicent further states that less than 25 percent of its stock is owned by non-U.S. citizens.

The regulation under which Aicent filed its application uses the term "recognized private operating agency," because that was the term used in the International Telecommunication Convention, Edition Nairobi, 1982, that was in effect at the time the Commission adopted the regulation.

Subsequently, however, an ITU Plenipotentiary Conference, held in Nice, France, adopted a new Convention for the ITU and created a new document called the ITU Constitution. The Conference moved some of the provisions that had formerly appeared in the Convention to the Constitution, including the provisions to which the term RPOA applied. *See* International Telecommunication Union, Final Acts of the Plenipotentiary Conference (Edition Nice, 1989). More recently still, an Additional Plenipotentiary Conference, held in Geneva, Switzerland, revised the Constitution and Convention. That Additional Conference changed the term "recognized private operating agency" to "recognized operating

agency" (ROA), with essentially the same definition. *See* ITU, Final Acts of the Additional Plenipotentiary Conference, ITU Constitution, Annex, p. 66 (Edition Geneva, 1992).

The amended Geneva Constitution defines ROA as "[a]ny operating agency . . . which operates a public correspondence or broadcasting service . . . ." *Id.* The Geneva Constitution further defines an "operating agency" as "[a]ny individual, company, corporation or governmental agency which operates a telecommunication installation intended for an international telecommunication service or capable of causing harmful interference with such a service." *Id.* To conform to current ITU usage, this letter will use the term ROA to refer to what the applicant and the Commission's rules meant by RPOA.

On February 17, 2006, the commission granted Aicent's application, File No. ITC-214-200060120-0030, Public Notice, DA 06-401 (Feb. 23, 2006), for a Global authorization, as a facilities-based common carrier under Section 214 of the Communications Act, 47 U.S.C. § 214.

The information provided indicates that Aicent has been properly authorized as a U.S. international carrier and that the services it provides constitute "public correspondence" as that term is defined in the International Telecommunication Convention, Edition Nice, 1989, (ITU Convention). As a result, Aicent is an ROA, and it is appropriate formally to recognize that status.

Aicent states that it is aware of its obligations under Article 44 of the ITU Convention and that it will obey the mandatory provisions of the Convention and the International Telecommunication Regulations promulgated thereunder in all respects. Aicent also states that it is aware that a failure to comply with the mandatory provisions of the Convention and International Telecommunication Regulations could result in an order by the Commission for it to cease and desist from future violations and could result in revocation of its formal ROA status by the Department of State.

In 1989 the Nice Plenipotentiary Conference moved the obligations formerly appearing in Article 44 of the ITU Convention to Article Six of the ITU Constitution that Conference adopted. The Geneva Additional Plenipotentiary Conference made minor changes to the language of Article Six so that it now provides that "[ITU] Members are bound to abide by the provisions of this Constitution, the Convention and the Administrative Regulations in all telecommunications offices . . . operated by them which engage in international services or which are capable of causing harmful interference to radio services of other countries" and to impose such obligations upon all "operating agencies authorized by them . . . ." ITU, Final Acts of the Additional Plenipotentiary Conference, Constitution, Article 6, p. 7 (Edition Geneva, 1992). In view of these changes, we read Aicent's statements regarding its intention to comply with Article 44 to encompass an intention to comply with its obligations under Article Six as well.

In any event, Aicent's obligation to comply with the binding ITU documents does not depend upon its formal recognition as an ROA, or its statement that it will obey them. Rather, as a company operating within the United States or under the jurisdiction of the U.S. government, Aicent is bound by all U.S. laws and regulations, including all treaties and international agreements, such as the ITU Constitution, Convention, and Administrative Regulations, to which the United States is a signatory. Accordingly, a failure by Aicent to comply with the mandatory ITU documents could result in an enforcement order by the Commission, including a cease-and-desist order, civil forfeiture or revocation of its authority to operate. Continued or flagrant violation of such mandatory provisions could result in the revocation of its ROA status.

Based on the information before us, we see nothing that would disqualify Aicent from being designated as an ROA. Because Nations Broadband offers services that could be considered "public

correspondence," it would appear to constitute an "operating agency" as that term is defined in the ITU Convention. Further, Aicent has stated its intention to honor its obligations under the mandatory provisions of the Convention and any rules promulgated there under. Accordingly, we recommend to the Department of State that it designate Aicent as a recognized operating agency as requested in its application.

It appears from the application that Aicent is a U.S.-owned corporation and that Section 310 of the Act does not apply to it. Because Aicent is a U.S.-owned company, it is not required to submit copies of its operating agreements with foreign telecommunications operators (TOs) or refusals by such TOs to grant it such an agreement.

In conclusion, we request the Department of State to furnish the Commission for its files a copy of the Department's action on this application.

Sincerely,

George S Li  
Deputy Chief, Policy Division  
International Bureau

cc: Aicent, Inc.  
Andrew Isar.