



# PUBLIC NOTICE

Federal Communications Commission  
445 12th St., S.W.  
Washington, D.C. 20554

News Media Information 202 / 418-0500  
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Internet: <http://www.fcc.gov>  
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## **COMMON CARRIER BUREAU ANNOUNCES PROCEDURES FOR APPLICANTS REQUIRING SECTION 214 AUTHORIZATION FOR ACQUISITIONS OF CORPORATE CONTROL**

This public notice announces procedures for common carriers requiring authorization under section 214 of the Communications Act of 1934, as amended (Act), 47 U.S.C. § 214, to acquire domestic interstate transmission lines through an acquisition of corporate control. Under section 214, carriers must obtain Commission approval before constructing, acquiring, or operating an interstate transmission line. Section 63.01 of the Commission's rules, 47 C.F.R. § 63.01, confers blanket authority under section 214 for common carriers to construct, acquire, and operate domestic transmission lines without prior Commission approval. This blanket authority, however, expressly does not apply when there is a transfer of interstate lines resulting from an acquisition of corporate control. In that circumstance, the parties to the transaction must file an application with the Commission and obtain the Commission's prior consent before transferring the lines. Thus, applications involving acquisitions of corporate control require affirmative action by the Commission before the acquisition can occur.<sup>1</sup>

There has been some uncertainty concerning the appropriate content of a section 214 application seeking consent to the acquisition of corporate control of domestic interstate lines.<sup>2</sup> Numerous applicants have followed the general contours of the Commission's published rule for

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<sup>1</sup> By contrast, with acquisitions of assets, the new operator is not required to submit a section 214 application for Commission approval. The discontinuing operator, however, must file an application to discontinue service under Rule 63.71. Because of this requirement, the Commission determined that it was unlikely that a transaction would be structured as an asset acquisition rather than an acquisition of corporate control for the purpose of avoiding Commission review of the transaction. *See In the Matters of Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996, Petition for Forbearance of the Independent Telephone & Telecommunications Alliance*, Second Memorandum Opinion and Order in AAD File No. 98-43, 14 FCC Rcd 11364, 11374, ¶ 17, n.55 (1999) (*1999 Streamlining Order*).

<sup>2</sup> *See, e.g., Application of Alascom, Inc., AT&T Corporation and Pacific Telecom, Inc. for Transfer of Control of ALASCOM, Inc. from Pacific Telecom, Inc. to AT&T Corporation*, Order and Authorization, 11 FCC Rcd 732, 740 (1995) ("We have not adopted special rules for Section 214 applications for mergers and other transfers. Carriers have sometimes obtained such certification by filing applications designed to meet the general requirements of Section 214, without specific reference to any of our implementing rules.").

international common carriers filing section 214 applications, 47 C.F.R. § 63.18, which we have found to be acceptable in most cases. Nevertheless, because section 63.18 is tailored for international common carriers, and because of the wide variety in the forms of section 214 applications we have received, we are issuing this public notice to provide guidance to applicants on the information that they should provide in applications involving acquisitions of corporate control.<sup>3</sup>

Domestic section 214 applications involving acquisitions of corporate control, at a minimum, should include: (1) a description of the transaction and the parties involved; (2) a description of the type of services the parties provide and the locations where those services are provided; (3) a list of any applications pending or to be filed with the Commission that relate to the same transaction; (4) a copy of the relevant merger agreement, if any; and (5) a statement based on which the Commission could determine, in conjunction with other record evidence, that granting the application will serve the public interest, convenience, and necessity.<sup>4</sup> In all instances, applications for domestic section 214 authority involving acquisitions of corporate control should identify the application as one for “domestic” service in the cover letter or first page of the application. Parties are permitted to file a single domestic section 214 application for all carriers involved in a transaction, rather than separate applications for each carrier. Applications for international section 214 authority must be filed separately from domestic 214 applications.

All domestic section 214 applications involving acquisitions of corporate control must be accompanied by the relevant filing fee, and a certification pursuant to Rules 1.2001 through 1.2003 that no party to the application is subject to a denial of Federal benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. § 853(a)). See 47 C.F.R. § 1.1105 (fee schedule); § 1.2001-2003 (Anti-Drug Abuse certification). In addition to filing the original application and five copies with Mellon Bank in accordance with Rules 1.1111 and 63.52(a), 47 C.F.R. §§ 1.1111, 63.52(a), applicants are requested to forward a copy of the filed application, date-stamped by Mellon Bank, with a copy of the FCC Form 159, and a copy of the check for fee payment, to Tracey Wilson in the Policy and Program Planning Division, Common Carrier Bureau, Rm. 5-C207, 445 12<sup>th</sup> Street, S.W., Washington, DC 20554.

The normal public notice cycle for section 214 applications concerning acquisitions of corporate control is 30 days, plus 15 days for responsive pleadings, although the Bureau has adopted expedited comment cycles in exigent circumstances. See 47 C.F.R. § 63.52(b)-(c). Applicants requesting abbreviated comment cycles must provide the specific reasons for their requests. Parties seeking streamlined treatment for certain classes of applications are encouraged to file comments in

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<sup>3</sup> The Commission has released today a Notice of Proposed Rule Making (NPRM) seeking comment on changes it should make to its rules to streamline the section 214 application process for acquisitions of corporate control involving domestic interstate carriers. See *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, CC Docket No. 01-150, Declaratory Ruling and Notice of Proposed Rulemaking, FCC 01-205 (rel. July 20, 2001) (*Streamlining Declaratory Ruling and NPRM*).

<sup>4</sup> Applicants may also be required to submit additional information relevant to the transaction in response to a request by Commission staff. See 47 C.F.R. § 63.51 (requiring applicants to furnish any additional information that the Commission may require after a preliminary examination of an application filed pursuant to section 214).

response to the *Streamlining NPRM* that we are releasing today.<sup>5</sup>

Applications pursuant to section 214 to discontinue domestic interstate service to customers (including discontinuances associated with asset acquisitions), which do not involve an acquisition of corporate control, must be filed in accordance with Rule 63.71, 47 C.F.R. § 63.71, and are not covered by this Public Notice.

#### **A. Notice to Individuals Required by the Privacy Act and the Paperwork Reduction Act**

When an acquisition of corporate control is involved, carriers must file a section 214 application with the Commission and obtain Commission approval prior to consummating a proposed transaction. As noted above, we are issuing this public notice to provide guidance to applicants on the information that they should provide in applications involving acquisitions of corporate control. All of the information submitted by the various parties would be used to ensure that the applicants have complied with their obligations under the Act prior to receiving authorization to acquire domestic interstate transmission lines through an acquisition of corporate control. Your response is mandatory.

The Commission has estimated that each response to this collection of information will take, on average, 65 hours. This estimate includes the time to read the instructions, look through existing records, gather and maintain required data, and actually complete and review the form or response. If you have any comments on this estimate, or on how the Commission can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, AMD-PERM, Washington, D.C. 20554, Paperwork Reduction Project (3060-0989). PLEASE DO NOT SEND COMPLETED APPLICATION FORMS TO THIS ADDRESS.

Remember - You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection unless it displays a currently valid Office of Management and Budget (OMB) control number or if it fails to provide you with this notice. This collection has been assigned an OMB control number of 3060-0989.

This notice is required by the Privacy Act of 1974, Public Law 93-579, December 31, 1974, 5 U.S.C. § 552(a)(3) and the Paperwork Reduction Act of 1995, Public Law 104-13, October 1, 1995, 44 U.S.C. § 3507.

By the Chief, Common Carrier Bureau

FCC Common Carrier Bureau Contact: Aaron Goldberger, Policy and Program Planning Division, 202-418-1580

News Media Contact: Michael Balmoris – 202-418-1500

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<sup>5</sup> See *supra* note 3.