



PUBLIC NOTICE

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DA 03-87
Released: January 13, 2003

DOMESTIC SECTION 214 APPLICATION FILED FOR TRANSFER OF CONTROL OF ICG TELECOM GROUP, INC.

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 03-04

On December 23, 2002, ICG Communications, Inc. (Debtor-in-Possession) (“ICG Communications”), filed an application pursuant to section 63.04 of the Commission’s rules,¹ for consent to transfer control of its wholly-owned subsidiary, ICG Telecom Group, Inc. (Debtor-in-Possession) (“ICG Telecom”) (ICG Communications and ICG Telecom, collectively, “Applicants”).² The indirect transfer of control of ICG Telecom will result from a substantial change in ownership arising from consummation of a Modified Plan of Reorganization (“Plan”) under Chapter 11 of the U.S. Bankruptcy Code.³ On October 10, 2002, the U.S. Bankruptcy Court for the District of Delaware approved the Plan to recapitalize ICG Communications and restructure its debt.

Applicants assert that this transaction is entitled to presumptive streamlined treatment pursuant to section 63.03(b)(2)(ii) of the Commission’s rules because the proposed transaction would result in the Applicants having a market share in the interstate, interexchange market of less than 10 percent; the Applicants will provide local exchange service only in areas served by dominant local exchange carriers (none of which are parties to the transaction); and none of the Applicants or their affiliates are dominant with respect to any service.

ICG Communications is a Delaware corporation with principal offices at 161 Inverness Drive West, Englewood, Colorado. ICG Communications is a facilities-based alternative communications company with a nationwide data and voice network, operating switches in 27

¹ 47 C.F.R. § 63.04; *see* 47 U.S.C. § 214.

² Applicants have also filed an application to transfer ICG’s international section 214 authority. Any action on this domestic 214 application is without prejudice to Commission action on other related pending applications.

³ *See ICG Communications, Inc. et al.*, Case No. 00-42-38(PJW) (Bankr. D. Del., Nov. 14, 2000) (petition filed).

major metropolitan areas and providing voice, data, and Internet communications services nationwide. As an integrated metropolitan and nationwide fiber optic infrastructure company, ICG provides access and bandwidth to thousands of customers nationwide, including interexchange carriers, Internet service providers, businesses and other end users.

ICG Telecom is a wholly owned subsidiary of ICG Communications. ICG Telecom is a Colorado corporation with principal offices also located at 161 Inverness Drive West, Englewood, Colorado. ICG Telecom holds authority to provide competitive local exchange and intrastate interexchange telecommunications services in over 40 states.

ICG Communications' restructuring will be accomplished by converting general unsecured claims into 100% of newly issued voting common stock of the reorganized ICG Communications. The Plan calls for cancellation of ICG Communications' common and preferred stock and the issuance of 8,000,000 shares of new voting common stock ("New Common Shares").⁴ Thus, this replacement of ICG Communications' shareholders will cause a substantial change in ownership to ICG Communications in a single transaction. Upon consummation, it is expected that ICG Communications' stock will continue to be widely-held and that only one entity, W.R. Huff Asset Management Co., LLC, will hold a ten percent (10%) or greater equity interest in ICG Communications.⁵ It is also expected that shortly after their issuance, the New Common Shares will be able to be traded publicly.

The Plan also specifies composition of ICG Communications' board of directors ("Board"). Under the Plan, the Board will comprised of five directors. Two of the five Board members are to be appointed by Cerberus Capital Management, L.P. or any of its affiliates ("Cerberus"), and two of the five Board members are to be appointed by W.R. Huff Asset Management, L.P. ("Huff"). ICG Communications' chief executive officer, who is also a current Board member, will continue in that position and hold the remaining directorship in the reorganized company, serving as Chairman of the Board. Neither Cerberus nor Huff is affiliated with the other. Further, neither Cerberus nor Huff will exercise control over the day-to-day operations of ICG Communications, and the Applicants will retain the same experienced telecommunications management team immediately following consummation of the Plan.

Applicants state that approval of the indirect transfer of control will serve the public interest in promoting competition among telecommunications carriers. Specifically, the indirect transfer of control of ICG Telecom that will result from the recapitalization of its parent

⁴ Under the Plan, there is no recovery for holders of the cancelled common and preferred stock.

⁵ In addition to issuance and allocation of the New Common Shares, the Plan also specifies that certain other creditors will be issued a *pro rata* share of five-year convertible warrants for the purchase of approximately 10% of the New Common Shares. ICG Communications also received \$25 million in exit financing upon the Plan's approval. The Plan calls for the lenders of the exit financing to receive five-year convertible warrants for the purchase of approximately 5% of the New Common Shares.

company, ICG Communications, will provide ICG Telecom with the opportunity to strengthen its competitive position through access to the improved capital structure of ICG Communications. In addition, Applicants state that the improved financial position of ICG Communications that will result from this financial restructuring will enable it to implement its long-term growth plans and to significantly enhance the operational flexibility and efficiency, as well as the long-term financial viability, of ICG Telecom. Applicants assert that these enhancements will inure directly to the benefit of ICG Telecom's customers, and that the proposed indirect transfer of control will therefore ensure the provision of innovative, high quality telecommunications services to the public and should promote competition in the U.S. domestic and international telecommunications services market.

Applicants emphasize that the indirect transfer of control consists only of a change in the shareholding of ICG Communications and in the composition of its Board, and will not involve a change in the name under which ICG Telecom operates nor any change in the manner in which ICG Telecom provides telecommunications service. Immediately following consummation of the Plan, ICG Telecom will continue to offer the services it currently offers with no change in rates, terms or conditions of service.

GENERAL INFORMATION

The transfer of control application identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer of control application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Interested parties may file **comments within 14 days** and **reply comments within 21 days** of this notice.⁶ Unless otherwise notified by the Commission, an applicant is permitted to transfer control of the domestic lines or authorization to operate on the 31st day after the date of this notice.⁷ Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-

⁶ See 47 C.F.R. § 63.03(a).

⁷ Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

In addition, one copy of each pleading must be sent to each of the following:

- (1) the Commission's duplicating contractor, Qualex International, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554; e-mail: qualexint@aol.com; facsimile: (202) 863-2898; phone: (202) 863-2893.
- (2) Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C437, Washington, D.C. 20554; e-mail: twilson@fcc.gov, and
- (3) Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 6-A461, Washington, D.C. 20554; e-mail: dcjohnso@fcc.gov, and
- (4) William Dever, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room , 5-C266, Washington, D.C. 20554; e-mail: wdever@fcc.gov; and
- (5) Imani Ellis-Cheek, Telecommunications Division, International Bureau, 445 12th Street, S.W., Room 6-A739, Washington, D.C. 20554; email: iellis@fcc.gov; and
- (6) Nandan Joshi, Office of General Counsel, 445 12th Street, S.W., Room 8-A820, Washington, D.C. 20554; e-mail: njoshi@fcc.gov.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. They may also be purchased from the Commission's

duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

For further information, please contact Tracey Wilson, at (202) 418-1394, Dennis Johnson (202) 418-0809, or William Dever, Competition Policy, Wireline Competition Bureau at (202) 418-1578.

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