



# PUBLIC NOTICE

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**DA 04-1624**

**Released: June 3, 2004**

## **DOMESTIC SECTION 214 APPLICATION FILED FOR *NUNC PRO TUNC* APPROVAL TO TRANSFER CONTROL OF MOTION TELECOM, INC. TO WIRELESS CHANNELS, INC.**

### **STREAMLINED PLEADING CYCLE ESTABLISHED**

**WC Docket No. 04-147**

**Comments Due: June 17, 2004**

**Reply Comments Due: June 24, 2004**

On March 31, 2004, Motion Telecom, Inc. (MTI), the Victor and Anamarie Mitchell Family Partnership (Mitchell Family LP) and Wireless Channels, Inc. (WCI) (collectively, Applicants) filed an application, pursuant to sections 63.03 and 63.04 of the Commission's rules,<sup>1</sup> requesting *nunc pro tunc*<sup>2</sup> approval of a transfer of control of MTI to WCI.<sup>3</sup>

Applicants assert that this transaction is entitled to presumptive streamlined treatment under rule 63.03(b)(1)(ii) because the transferee is not a telecommunications provider.<sup>4</sup>

<sup>1</sup> 47 C.F.R. §§ 63.03, 63.04; *see* 47 U.S.C. § 214.

<sup>2</sup> The term *nunc pro tunc*, meaning "now for then" refers to acts allow to be done after the time when they should be done, with a retroactive effect. *See* BLACK'S LAW DICTIONARY 1069 (6<sup>th</sup> ed. 1990).

<sup>3</sup> Applicants are also filing an application for consent to transfer control of authorization for international services. Any action on this domestic 214 application is without prejudice to Commission action on other related pending applications.

<sup>4</sup> 47 C.F.R. § 63.03(b)(1)(ii); *see* Amendment to Application for Authorization of Transfer of Control Relating to Section 214 Authorization for Resale of Domestic Telecommunications Services, WC Docket No. 04-147 at 4 (filed May 14, 2004) (MTI Amendment); Correction to Application for Authorization of Transfer of Control, Letter from Elizabeth R. Sachs and Marilyn S. Mense, Counsel to Motion Telecom, Inc. et al., to William Maher, Chief, Wireline Competition Bureau, Federal Communications Commission, WC Docket No. 04-147 (filed May 28, 2004).

MTI is a Colorado corporation that is a wholly-owned subsidiary of Advantage Advisory Service, Inc. (AAS), a wireless distributor. MTI is authorized under section 214 of the Communications Act to provide resold telecommunications services to domestic points on a non-dominant basis. MTI resells intrastate and interstate long distance service, including private line, frame relay switched and data services within the continental 48 states. Before the transaction, the Mitchell Family LP held 69.6 percent of AAS stock. Victor S. Mitchell and Anamaria F. Mitchell, both American citizens, each held a 49.5 percent limited partnership interest in the Mitchell Family LP. Mr. Mitchell is also the 1 percent general partner in the Mitchell Family LP. Another 26.1 percent of AAS was held by the Advantage Advisory Inc. Employee Stock Ownership Plan and Trust (AAS ESOP).

Applicants state that WCI is not a common carrier and does not hold section 214 authorizations. Enhanced Colorado Issuer, LLC has a 15.09 percent interest in WCI. Enhanced Colorado Issuer, LLC is a wholly-owned subsidiary of Enhanced Capital Partners, LLC. The ten percent or greater interest holders of Enhanced Colorado Partners, LLC are Andrew Paul (20 percent), Reservoir Capital Partners (19.33 percent) and KHC, LLC (11.99 percent). Coral Technology Partners VI, LP and Andrew M. Paul each hold a 27.16 percent interest in WCI. The general partner and one percent interest holder in Coral Technology Partners VI, LP is Coral Management Partners VI, LLC, now known as Coral's Momentum Fund Management Partners, LLC. The ten percent interest holders of Coral's Momentum Fund Management Partners, LLC are Yuval Almog (72.5 percent) and Todd Orberg (12.5 percent). North Dakota State Investment Board-Pension Trust (86 percent) is the only ten percent or greater interest holder in Coral Technology Partners, VI, LP. Ben Joseph, Chairman and CEO of AAS and MTI, has a 7.24 percent interest in WCI. Mr. Joseph also holds 100 percent interest in ABJ, LLC, a Delaware limited liability company with an 11.26 percent interest in WCI. Applicants state that no post-transfer affiliate of MTI has a ten percent or greater interest in any other domestic telecommunications provider.<sup>5</sup>

As a result of the transaction that occurred on March 10, 2004, stock interests amounting to a 75.72 percent interest in AAS were transferred to WCI, and the interest of the AAS ESOP was decreased to 24.28 percent.<sup>6</sup>

Applicants state that approval of the transaction is in the public interest. The Applicants maintain that, at the time the transaction was contemplated, the Applicants did not anticipate the need for filing a transfer of control application. The Applicants acknowledge that they should have filed an application for approval of the transfer of control of MTI's section 214

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<sup>5</sup> See MTI Amendment at 4 (noting that Applicants will further amend their application if it is subsequently determined that North Dakota State Investment Board-Pension has a ten percent or greater interest in another domestic telecommunications provider).

<sup>6</sup> See Request for Special Temporary Authority, Letter from Mark Gritz, Motion Telecom, Inc., et al., to Mr. William Maher, Chief, Wireline Competition Bureau, Federal Communications Commission, WC Docket No. 04-147 (filed May 13, 2004, granted June 3, 2004).

authorization before consummating the transaction. Applicants claim, however, that the transaction is seamless and transparent to customers. Applicants maintain that there will be no change in the name of any providing carrier, no change in the format or appearance of the customers' bills, no change in the terms, conditions and price of service, and no change in customer service.

## **GENERAL INFORMATION**

The transfer of control 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 on or before June 17, 2004** and **reply comments on or before June 24, 2004**.<sup>7</sup> Unless otherwise notified by the Commission, Applicants are permitted to transfer control on the 31<sup>st</sup> day after the date of this notice.<sup>8</sup> 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 e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the subject line "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 appears 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, Natek, 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

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<sup>7</sup> See 47 C.F.R. § 63.03(a).

<sup>8</sup> Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

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, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY-B402, Washington, DC 20554, telephone 1-800-378-3160, or via e-mail [www.bcpweb.com](http://www.bcpweb.com).
- (2) Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, 445 12<sup>th</sup> Street, S.W., Room 5-C437, Washington, D.C. 20554; e-mail: [tracey.wilson-parker@fcc.gov](mailto:tracey.wilson-parker@fcc.gov);
- (3) Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, 445 12<sup>th</sup> Street, S.W., Room 6-A461, Washington, D.C. 20554; e-mail: [dennis.johnson@fcc.gov](mailto:dennis.johnson@fcc.gov);
- (4) Julie Veach, Competition Policy Division, Wireline Competition Bureau, 445 12<sup>th</sup> Street, S.W., Room 5-C124, Washington, D.C. 20554; e-mail: [julie.veach@fcc.gov](mailto:julie.veach@fcc.gov);
- (5) Susan O'Connell, Policy Division, International Bureau, 445 12<sup>th</sup> Street, S.W., Room 7-B544, Washington, D.C. 20554; email: [susan.o'connell@fcc.gov](mailto:susan.o'connell@fcc.gov); and
- (6) Christopher Killion, Office of General Counsel, 445 12<sup>th</sup> Street, S.W., Room 8-C740, Washington, D.C. 20554; e-mail: [chris.killion@fcc.gov](mailto:chris.killion@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, the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, telephone 1-800-378-3160, or via e-mail [www.bcpweb.com](http://www.bcpweb.com).

For further information, please contact Tracey Wilson, at (202) 418-1394, or Dennis Johnson at (202) 418-0809.