



PUBLIC NOTICE

Federal Communications Commission
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DA 05-2347
Released: August 23, 2005

**DOMESTIC SECTION 214 APPLICATION FILED FOR TRANSFER OF CONTROL
OF BUSINESS PRODUCTIVITY SOLUTIONS, INC., TO MANHATTAN
TELECOMMUNICATION CORPORATION D/B/A METROPOLITAN
TELECOMMUNICATIONS**

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 05-262

Comments Due: September 6, 2005

Reply Comments Due: September 13, 2005

On August 11, 2005, Manhattan Telecommunications Corporation d/b/a Metropolitan Telecommunications (“MetTel”) and Business Productivity Solutions, Inc. (“BPS”), (collectively “Applicants”), filed an application, pursuant to sections 63.03 and 63.04 of the Commission’s rules,¹ requesting approval to transfer control of BPS to MetTel. MetTel and BPS are non-dominant carriers authorized by the Commission to provide international and domestic telecommunications services.²

Applicants assert that this transaction is entitled to presumptive streamlined treatment under section 63.03(b)(2)(i) of the Commission’s rules because (a) after the proposed transaction, MetTel and its affiliates will have less than 10 percent market share in the interstate, interexchange marketplace and will provide competitive services exclusively in areas served by dominant local carriers that are not parties to the proposed transaction, and (b) the Applicants are not currently dominant with respect to any domestic service, and will not become dominant with respect to any domestic service after consummation of the proposed transaction.³

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

² Applicants are also filing applications for transfer of control associated with authorization for international services. Any action on this domestic 214 application is without prejudice to Commission action on other related, pending applications.

³ 47 C.F.R. § 63.03(b)(2)(i).

MetTel is a privately-held corporation organized under the laws of the state of Delaware. Either directly or through its wholly owned operating subsidiaries,⁴ MetTel presently provides local exchange, domestic interexchange (both interLATA and intraLATA), international and advanced data and Internet services to customers residing in: California, Connecticut, District of Columbia, Delaware, Florida, Georgia, Illinois, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Texas, Vermont, Virginia, and West Virginia. MetTel is a direct, wholly owned subsidiary of Metropolitan Telecommunications Holding Company (“MTHC”), also a Delaware corporation. The following individuals or entities hold a 10% or greater direct ownership interest in MTHC: Marshall Aronow, a U.S. citizen, 28%; David Aronow, a U.S. citizen, 27%; Joseph Aronow Trust U/A 4/13/99, a U.S. Trust, 13.5%; Deborah Aronow Trust U/A 4/13/99, a U.S. Trust, 13.5%. No other person or entity holds a 10% or greater direct or indirect ownership interest in MTHC.

BPS is a privately-held corporation organized under the laws of the state of Minnesota. BPS provides resold intrastate and interstate telecommunications throughout the contiguous United States and the District of Columbia. Additionally, BPS is authorized to provide local exchange services in Connecticut, Delaware, Hawaii, Kansas, Missouri, Massachusetts, North Dakota, Oregon, Tennessee and Wisconsin. BPS is a direct, wholly owned subsidiary of Eschelon Operating Company (“OPCO”), a Minnesota corporation that functions as a holding company, which in turn is a direct, wholly owned subsidiary of Eschelon Telecom, Inc. (“ETI”), a Delaware corporation, and the ultimate parent corporation. ETI is authorized to provide telecommunications services in California, Idaho, New Mexico and New York; however, ETI only provides service, specifically long distance resale service, to 1 business customer in New York. OPCO has several direct, wholly owned subsidiaries that offer telecommunications services in various states.⁵ In these states, the subsidiaries provide resold and facilities-based local, resold long distance, Internet and data services to small and medium sized businesses. ETI’s BPS subsidiary also provides long distance services to residential customers. ETI and its

⁴ In New York, MetTel provides services directly through Manhattan Telecommunications Corporation. In other states, MetTel provides services through its wholly owned subsidiaries, Metropolitan Telecommunications of California, Inc., Metropolitan Telecommunications of CT, Inc., Metropolitan Telecommunications of D.C., Inc., Metropolitan Telecommunications of DE, Inc., Metropolitan Telecommunications of Florida, Inc., Metropolitan Telecommunications of Georgia, Inc., Metropolitan Telecommunications of Illinois, Inc., Metropolitan Telecommunications of Maine, Inc., Metropolitan Telecommunications of Maryland, Inc., Metropolitan Telecommunications of Mass., Inc., Metropolitan Telecommunications of Michigan, Inc., Metropolitan Telecommunications of New Hampshire, Inc., Manhattan Telecommunications Corporation of New Jersey, Inc., Metropolitan Telecommunications of North Carolina, Inc., Metropolitan Telecommunications of Ohio, Inc., Metropolitan Telecommunications of PA, Inc., Metropolitan Telecommunications of Rhode Island, Inc., Metropolitan Telecommunications of South Carolina, Inc., Metropolitan Telecommunications of Texas, Inc., Metropolitan Telecommunications of Vermont, Inc., MetTel of VA, Inc. and Metropolitan Telecommunications of West Virginia, Inc.

⁵ Advanced TelCom, Inc., Eschelon Telecom of Minnesota, Inc., Eschelon Telecom of Washington, Inc., Eschelon Telecom of Colorado, Inc., Eschelon Telecom of Nevada, Inc., Eschelon Telecom of Arizona, Inc., Eschelon Telecom of Utah, Inc. and Eschelon Telecom of Oregon, Inc.

subsidiaries, collectively “Eschelon,” provide voice, data, Internet services and business telephone systems to over – 50,000 customers, and have over 387,000 access lines in service. Eschelon owns switches in all states where it offers local services. Eschelon provides local and long distance facilities-based service in 19 markets in 8 states.⁶ There are no other affiliates of BPS that offer domestic telecommunications services.

On October 7, 2004, BPS was created to facilitate ETI’s acquisition of certain assets purchased from GE Business Productivity Solutions, Inc. (“GEBPS”). The details of this transaction, which was approved by the Commission on December 20, 2004,⁷ are set forth in the Commission’s records pertaining to BPS’s Section 214 application for Commission approval of its acquisition of assets from GE Business Productivity Solutions, Inc.⁸ Pursuant to the terms of a Stock Purchase Agreement (“Agreement”), dated August 9, 2005, by and between MetTel, OPCO and BPS, MetTel will acquire 100% of the issued and outstanding capital stock of BPS, which is currently held by BPS’s immediate parent, OPCO (the “Transaction”). Following completion of the proposed Transaction, BPS will be a direct, wholly owned subsidiary of MetTel.

The Applicants submit that the proposed Transaction serves the public interest. In particular, Applicants indicate that the proposed Transaction will be entirely transparent to customers of BPS. Immediately after consummating the proposed Transaction, MetTel will continue to provide the identical end user telecommunications and other services to the affected customers and will continue to provide these services at the rates and pursuant to the terms and conditions of service these customers currently receive from BPS. Further, MetTel will continue to provide service under the BPS name.

The Applicants expect that the proposed Transaction will increase competition in the telecommunications market by strengthening MetTel’s position as an effective and multifaceted telecommunications carrier. The Applicants state the Transaction will allow MetTel to combine its financial, technical and market resources and expertise with that of BPS, thereby enhancing its ability to provide reliable, competitively priced services to customers.

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

⁶ ETI and its operating subsidiaries, not including BPS, are not involved in the instant transaction. They will continue to hold their telecommunications authorizations and serve their existing customers as they have in the past.

⁷ See Public Notice, DA 04-3998, Notice of Streamlined Domestic 214 Applications Granted, WC Docket No. 04-413 (rel. Dec. 21, 2004).

⁸ See Domestic Section 214 Application filed for Acquisition of Assets of GE Business Productivity Solutions, Inc., by Business Productivity Solutions, Inc., WC Docket No. 04-413.

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. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file **comments on or before September 6, 2005** and **reply comments on or before September 13, 2005**.⁹ Unless otherwise notified by the Commission, Applicants are permitted to transfer the assets and related control on the 31st day after the date of this notice.¹⁰ Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers 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, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
- Paper Filers: 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, filers 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). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 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

⁹ See 47 C.F.R. § 63.03(a).

¹⁰ Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

You may submit comments, identified by the above noted docket number, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Federal Communications Commission's Web Site: <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 202-418-0432.

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, www.bcpweb.com; phone: (202) 488-5300 fax: (202) 488-5563;
- (2) Tracey Wilson-Parker, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C212, Washington, D.C. 20554; email: tracey.wilson-parker@fcc.gov;
- (3) Renée R. Crittendon, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C311, Washington, D.C. 20554; e-mail: renee.crittendon@fcc.gov;
- (4) Susan O'Connell, Policy Division, International Bureau, 445 12th Street, S.W., Room 7-B544, Washington, D.C. 20554; email: susan.o'connell@fcc.gov; and
- (5) James Bird, Office of General Counsel, 445 12th Street, S.W., Room 8-C824, Washington, D.C. 20554; e-mail: james.bird@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, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, telephone: (202) 488-5300, fax: (202) 488-5563, or via e-mail www.bcpweb.com.

For further information, please contact Tracey Wilson-Parker, at (202) 418-1394, or Renée R. Crittendon at (202) 418-2352.

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