



PUBLIC NOTICE

Federal Communications Commission
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DA 05-256
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DOMESTIC SECTION 214 APPLICATION FILED FOR ACQUISITION OF ASSETS OF PAC-WEST TELECOMM, INC., TO U.S. TELEPACIFIC CORP.

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 05-21

Comments Due: February 11, 2005

Reply Comments Due: February 18, 2005

On December 30, 2004, Pac-West TeleComm, Inc. ("Pac-West") and U.S. Telepacific Corp. ("Telepacific") (collectively "Joint Applicants"), filed an application pursuant to sections 63.03 and 63.04 of the Commission's rules¹ requesting authority for the transfer of certain Pac-West customer accounts and related assets to TelePacific.²

Applicants assert that this transaction is entitled to presumptive streamlined treatment pursuant to section 63.03(b)(2)(i) of the Commission's rules³ because immediately following the transactions: (1) the Joint Applicants and their affiliates combined will hold less than a ten percent (10%) share of the interstate interexchange market; (2) to the extent that the Joint Applicants or their affiliates provide U.S. local exchange services or exchange access services, those services will be provided only in geographic areas served by a dominant local exchange carrier that is not a party to the proposed transaction; and (3) none of the Joint Applicants or their affiliates is dominant with respect to any U.S. domestic telecommunications service.

Pac-West, a publicly-traded California corporation, is one of the largest competitive local exchange carriers in California, and also has operations in Nevada, Washington, Arizona, and Oregon. Pac-West holds both domestic and international section 214 authority and

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

² Applicants have also filed for transfer of control related to international section 214 authority held by Pac-West, as well as TelePacific. Any action on this domestic section 214 application is without prejudice to Commission action on other related pending applications.

³ 47 CFR § 63.03(b)(2)(i).

provides a variety of local exchange, exchange access, and interexchange competitive telecommunications services, with a primary focus on the provision of alternative network options for other communications service providers, including wide-area call completion capability for dial-up Internet service providers. All of Pac-West's services are competitive, and neither Pac-West nor any of its affiliates holds a dominant position in any market.

TelePacific, a California corporation, also holds both domestic and international section 214 authority, under which it provides business communications services, including local, long distance, data, and Internet services, to small-to-medium sized businesses in Nevada and California. All of TelePacific's services are competitive and neither TelePacific nor any of its affiliates holds a dominant position in any market. TelePacific is wholly owned by U.S. TelePacific Holdings, Inc. ("TelePacific Holdings"), a company organized under the laws of Delaware. Investcorp S.A. ("Investcorp"), organized under the laws of Luxembourg, owns or controls 40% of TelePacific Holdings.⁴ Investcorp is, in turn, wholly-owned by Investcorp Holdings Limited, a Cayman Islands company. The following entities own or control 10% or more of Investcorp Holdings Limited: Investcorp Bank B.S.C., an investment bank organized under the laws of Bahrain (100% of equity, 20% of voting control); and CP Holdings Limited, a Cayman Islands company (80% of voting control). Ownership Holdings Limited, a Cayman Islands company, owns or controls 10% or more of Investcorp Bank B.S.C. (49%) and CP Holdings Limited (67%). Investors Holdings Limited, a Cayman Islands company, owns an additional 33% of CP Holdings Limited.⁵ SIPCO Limited, a Cayman Islands company, owns or controls 62% of Ownership Holdings Limited.⁶ No other entity owns or controls more than 10% directly or indirectly of TelePacific.

Pursuant to a purchase agreement entered into on December 17, 2004, Pac-West has agreed to sell its small and medium sized enterprise customer base and certain other related assets to TelePacific, and TelePacific has agreed to assume certain liabilities related to the acquired assets and pay cash consideration of \$27,000,000, subject to certain potential adjustments, plus certain other consideration. The customer base that is the subject of the proposed transfer includes a substantial portion of Pac-West's small and medium-size enterprise customer base, with over 70,000 equivalent lines of service in California and Nevada. Under the terms of the agreement, TelePacific will begin providing services to these customers upon closing, which will take place once all necessary regulatory approvals are obtained. In

⁴ Investcorp's interest in TelePacific Holdings is held indirectly through control of various corporations, none of which individually own or control more than 10% of TelePacific Holdings. Those intermediate corporations and the approximate magnitudes of their interests are as follows: Aguanga Limited (6%); Cahuilla Limited (6%); Fallbrook Limited (6%); Palmas Limited (6%); TelePacific Holdings Limited (6%) and TelePacific Equity Limited (8%). In addition, Investcorp S.A. owns 100% of TelePacific Investments Limited, the general partner of Investcorp TPC Limited Partnership. Investcorp TPC Limited Partnership owns approximately 8% of TelePacific Holdings. All of these corporations are Cayman Island Corporations.

⁵ No entity owns or controls a majority interest in Investors Holdings Limited.

⁶ No entity owns or controls a majority interest in SIPCO Limited.

exchange for the transferred assets, Pac-West will receive cash consideration that will enhance its ability to carry out its core business strategy of providing alternative network capabilities to other communications service providers. The Joint Applicants state that all affected customers will be informed of the proposed transaction, and that the transaction will not result in any change to rates, terms, or conditions of service. The proposed transaction will enable these customers to receive continued service from a well-funded carrier that specializes in providing high-quality, facilities-based local exchange and interexchange service to business subscribers.

The Joint Applicants assert that the proposed transaction will serve the public interest by enhancing both companies' competitive and financial positions. The transaction will increase Pac-West's cash flow by reducing its expenses, which will enable it to expand and enhance its network, forge new customer relationships, and assist all of its customers in delivering high-quality services to their own end-user customers on a more affordable, more efficient basis, and at a higher level of quality than is available from the incumbent. In addition, the transaction will enable TelePacific to enjoy increased efficiencies and economies of scale, enhancing its competitive and financial positions, which ultimately should inure to the benefit of all customers in the form of lower prices, increased service options, and enhanced service capabilities.

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 February 11, 2005, and reply comments on or before February 18, 2005.**⁷ Unless otherwise notified by the Commission, Applicants are permitted to transfer control on the 31st day after the date of this notice.⁸ 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

⁷ See 47 C.F.R. § 63.03(a).

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

to 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 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, S.W., Room CY-B402, Washington, D.C. 20554; e-mail: 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-C437, Washington, D.C. 20554; e-mail: tracey.wilson-parker@fcc.gov;
- (3) Alex Johns, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C317, Washington, D.C. 20554; e-mail: alexis.johns@fcc.gov;
- (4) Terri Natoli, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C234, Washington, D.C. 20554; e-mail: terri.natoli@fcc.gov;
- (5) 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
- (6) 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 Alex Johns at (202) 418-1167.

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