

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
UCN, Inc.,
Transferee,
Transtel Communications, Inc.
Tel America of Salt Lake City, Inc.
Extelcom, Inc.
Transferors,
Joint International and Domestic Application for
Authority Pursuant to Section 214 of the
Communications Act of 1934, as amended, to
Transfer Certain Assets of Authorized
International and Domestic Carriers
WC Docket No. 05-198

ORDER ON RECONSIDERATION

Adopted: October 25, 2005

Released: October 25, 2005

By the Chief, Wireline Competition Bureau:

1. In this Order on Reconsideration, we address the petition for reconsideration filed by APCC Services, Inc. (APCC) in response to our June 27, 2005 Public Notice granting the application of UCN, Inc. (UCN) and Transtel Communications, Inc. (Transtel) for authority to transfer control pursuant to section 214 of the Communications Act of 1934, as amended (the "Act"). For the reasons set forth below, we deny the petition for reconsideration.

I. BACKGROUND

2. On May 25, 2005, the Wireline Competition Bureau (Bureau) issued a Public Notice seeking comment on the acquisition of assets of Transtel by UCN. We received one opposing comment

1 See Petition for Reconsideration of APCC Services, Inc., WC Docket No. 05-198 (filed Jul. 27, 2005) (Petition).

2 See 47 U.S.C. § 214; see also Streamlined Domestic Section 214 Application Granted, DA 05-1795, WC Docket No. 05-198 (rel. Jun. 27, 2005) (Grant Notice); see also Application of UCN, Inc., Transferee, Transtel Communications, Inc., Tel America of Salt Lake City, Inc., Extelcom, Inc., Transferors, Joint International and Domestic Application for Authority Pursuant to Section 214 of the Communications Act of 1934, as amended, to Transfer Certain Assets of Authorized International and Domestic Carriers (filed May 19, 2005) (Transfer of Control Application or Application). On May 19, 2005, UCN and Transtel (the "Applicants"), on behalf of Transtel's wholly-owned subsidiaries, Tel America of Salt Lake City, Inc. ("Tel America"), and Extelcom, Inc., d/b/a Express Tel ("Express Tel") (collectively, "the Transtel Companies"), filed an application pursuant to section 63.03 and 63.24 of the Commission's rules, requesting authority to enable UCN to acquire certain assets of the Transtel Companies. See Transfer of Control Application at 1-2.

3 Domestic Section 214 Application Filed for Acquisition of Assets of Transtel Communications, Inc., Tel America of Salt Lake City, Inc., Extelcom, Inc., to UCN, Inc., WC Docket No. 05-198 (rel. May 25, 2005) (Streamlining Notice).

from APCC in response to the *Streamlining Notice*, requesting that the Bureau either deny the transfer, or condition the grant of the transfer upon payment of unpaid compensation allegedly owed by Tel America to several pay phone service providers represented by APCC.⁴ At a minimum, APCC requested that the Commission remove the Application from streamlining.⁵ APCC argued that grant of the Transfer of Control Application has the potential to impair the public interest because Tel America is currently in violation of the Commission's rules and orders because of its failure to pay the compensation it owes to various payphone service providers.⁶ APCC also argued that there is a significant likelihood that Tel America will use the approved asset transfer to evade payment of its compensation obligations due in accordance with the *Payphone Compensation True-Up Order* and payphone compensation rules.⁷ Specifically, APCC stated that, after divesting itself of its communications assets, Tel America is likely to argue that it is no longer a common carrier subject to FCC jurisdiction, and, as a result, once such divestment takes place, there will also be no effective means of compelling payment.⁸

3. In response to APCC's allegations, Tel America filed reply comments arguing that the issue in the Transfer of Control Application is whether the transfer of assets to UCN is in the public interest, not whether the interests of APCC and its members would be served by a delay of the transaction.⁹ Tel America further stated that the D.C. Circuit has in the past rejected the imposition of conditions on a transaction that serves only the private interests of service providers.¹⁰ Therefore, Tel America argued that such a delay is not in the public interest.¹¹ UCN also filed reply comments in response to APCC's allegations.¹² UCN stated that APCC's comments are improper and should not be considered in the context of a section 214 application.¹³ UCN stated that APCC's objections are an attempt to use the section 214 application proceeding to resolve a dispute with Tel America that arose over two years ago, and is not related to the proposed transfer of Tel America's assets to UCN.¹⁴

4. After careful consideration of the record in the proceeding, on June 27, 2005, the Bureau concluded that the concerns raised by APCC were not sufficient to persuade the Bureau to remove the Application from streamlined treatment; nor did the Bureau find it necessary to impose any conditions on

⁴ See Comments of APCC Services, Inc., WC Docket No. 15-198 (filed June 8, 2005) (APCC Comments) (arguing that on May 16, 2003, APCC billed Tel America on behalf of more than 1,000 pay phone service providers, for more than \$500,000 in compensation owed by Tel America to those pay phone service providers for the period from November 1996 through March 1998).

⁵ *Id.* at 2; see also 47 C.F.R. 63.03(c)(1).

⁶ APCC Comments at 4-5.

⁷ APCC Comments at 4-5 (alleging violations of 47 C.F.R. § 64.1301; 47 U.S.C § 201(b)); see also *Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Fifth Order on Reconsideration and Order on Remand, 17 FCC Rcd 21,274 (2002) (*Payphone Compensation True-Up Order*), *aff'd AT&T v. FCC*, 363 F.3d 504 (D.C. Cir. 2004).

⁸ APCC Comments at 5.

⁹ Reply Comments of Tel America, Inc. of Salt Lake City, WC Docket No. 05-198 (filed Jun. 15, 2005) (Tel America Reply Comments) at 3.

¹⁰ *Id.* at 4 (citing *SBC Communications Inc., v. FCC*, 56 F.3d 1484, 1492-93 (D.C. Cir. 1995) finding that the Commission acted reasonably in refusing to make the interests of telecommunications carriers dominant in its public interest analysis in determining whether to approve a transfer).

¹¹ *Id.*

¹² See Reply Comments of UCN, Inc., WC Docket No. 05-198 (filed Jun. 15, 2005) (UCN Reply Comments).

¹³ *Id.* at 2.

¹⁴ *Id.*

the terms of the transfer. The Bureau stated that it relied on the Applicants' assertions that it would be improper to delay the transaction based on an unadjudicated claim in a pending Commission complaint proceeding.¹⁵

5. On July 27, 2005, APCC filed its Petition requesting that the Bureau reconsider its decision to grant the Transfer of Control Application.¹⁶ In its Petition, APCC argued that the Bureau "failed to recognize the critical factors that distinguish this case from the typical situation where a transfer applicant is the subject of 'an unadjudicated claim in a pending Commission complaint proceeding.'"¹⁷ First, APCC argued that, unlike the typical defendant, Tel America does not deny that the *Payphone Compensation True-Up Order* requires Tel America to pay compensation that it has failed to pay, and that therefore, Tel America has violated a Commission order.¹⁸ APCC noted that the only challenge Tel America raised is whether the *Payphone Compensation True-Up Order* is legal, and whether Tel America is therefore bound to comply with it.¹⁹ APCC also argued that the grant of the Transfer of Control Application may have an adverse impact on whether the Commission will be able to adjudicate APCC's existing Formal Complaint against Tel America for the payphone compensation allegedly owed to APCC's members.²⁰

6. Tel America and UCN filed a Joint Opposition to the Petition, in which they argue that the Commission correctly decided to grant the Transfer of Control Application.²¹ UCN and Tel America contend that the D.C. Circuit has held that the imposition of restrictions on the grant of a transfer of control application is improper if it would serve the interests of a private claimant rather than those of the public.²² UCN and Transtel further contend that APCC's Petition does no more than speculate that a company would resell its assets simply to avoid payphone compensation.²³

¹⁵ *Grant Notice* at 2-3.

¹⁶ Petition at 1. We note that APCC also filed an informal complaint against Tel America with the Commission's Enforcement Bureau, relating to the unpaid compensation claim, on December 30, 2004. The Enforcement Bureau has since terminated the informal complaint proceeding in response to APCC's filing of a formal complaint on August 12, 2005. See *APCC Services, Inc., Data Net Systems, LLC, Davel Communications, Inc., Jaroth Inc. d/b/a Pacific Telemanagement Services, Intera Communications Corp., Complainants, v. Tel America of Salt Lake City, Inc., Defendant, Formal Complaint, File No. EB-05-MD-018* (filed August 12, 2005) (Formal Complaint).

¹⁷ Petition at 3 (citing the *Grant Notice* at 2).

¹⁸ *Id.* at 4.

¹⁹ *Id.*

²⁰ See Petition at 4. APCC reiterates its belief, as stated in its comments, that once the transaction is completed, the Commission may no longer be able to enforce Tel America's compensation obligations. *Id.* at 5-6 (stating that "after the transaction is consummated, Tel America will have exited the common carrier industry and is likely to claim that it is no longer subject to the Commission's jurisdiction. Second, once the transaction is consummated, Tel America will have divested its assets and is likely to become judgment-proof.").

²¹ See *Joint Opposition of Tel America of Salt Lake City, Inc. and UCN, Inc. to Petition for Reconsideration, WC Docket No. 05-198* (filed Aug. 8, 2005) (Joint Opposition) at 2-3.

²² Joint Opposition at 4 (citing *SBC v. FCC*, 56 F.3d at 1491-93).

²³ Joint Opposition at 5-6. We note that in its "Answer to Formal Complaint of APCC Services, Inc., et al.," Tel America now contends that it is not subject to the Commission's jurisdiction since it has sold all of its assets to UCN, and that it is not a common carrier or a telecommunications carrier within the meaning of the Act. See *Tel America of Salt Lake City, Inc. Answer to Formal Complaint of APCC Services, Inc., et al., FCC File No. EB-05-MD-018* (filed September 23, 2005).

7. APCC responded to the Joint Opposition, stating that the grant of the Transfer of Control Application is inconsistent with the Commission's public interest responsibilities because granting it threatens the Commission's ability to enforce its rules.²⁴ APCC submits that the obligations imposed upon Tel America do not arise out of a private contractual agreement, but rather arise from the Commission's rules regarding pay phone compensation obligations and procedures.²⁵ APCC also argues that the Commission has previously adjudicated cases involving a carrier's failure to pay under the pay phone compensation rules, thus recognizing that collection matters arising under these rules are not private disputes.²⁶ APCC further claims that the Applicants' reliance on *SBC v. FCC* is inapposite here since, in that case, there was no allegation that a Commission rule had been violated, or that the Commission had failed to consider the public interest.²⁷ APCC also asserts that the Commission has authority to reverse its grant of approval of the Transfer of Control Application without disruption of services to customers.²⁸

II. DISCUSSION

8. We deny APCC's request to reverse our grant of the Transfer of Control Application, or to condition that approval upon the payment of the compensation allegedly owed by Tel America to APCC's members. First, we agree with the Applicants that APCC's arguments are largely repetitious of its comments in response to the *Streamlining Notice* and have thus already been addressed.²⁹ Reconsideration is appropriate only where the petitioner either shows a material error or omission in the original order or raises additional facts not known or existing until after the petitioner's last opportunity to present such matters.³⁰ APCC has not met this obligation here.

9. With regard to APCC's concerns regarding Tel America's common carrier status and the Commission's jurisdiction over any alleged violations, we note that the Act expressly grants the Commission jurisdiction to adjudicate complaints for alleged violations of the Act by common carriers.³¹

²⁴ Reply of APCC Services, Inc. to Joint Opposition to Petition for Reconsideration, WC Docket No. 05-198 (filed Aug. 22, 2005) (Reply to Joint Opposition) at 2.

²⁵ Reply to Joint Opposition at 3 (citing 47 C.F.R. §§ 64.1300-1320).

²⁶ *Id.* at 3 (citing *U.S. TelePacific Corp. v. Tel America of Salt Lake City, Inc.*, 19 FCC Rcd 24,552, 24,556, n.28 (2004)).

²⁷ Rather, APCC argues that the appellants in *SBC v. FCC* sought additional protections beyond enforcement of the Commission's rules, which the D.C. Circuit found unnecessary. Reply to Joint Opposition at 4. APCC concludes that the very adoption of payphone compensation rules indicates the Commission's determination that the public interest requires compliance with such rules. *Id.*

²⁸ Reply to Joint Opposition at 6.

²⁹ See Reply to Joint Opposition at 2-6.

³⁰ See *Northstar Technology, LLC Request for a Waiver and Extension of the Broadband PCS Construction Requirements Regarding BTA098 Block F Authorization*, Order on Reconsideration, 19 FCC Rcd 22,275, 22,280 at para. 11 (2004); *GTE Corp. Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorization and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, Order on Reconsideration, 18 FCC Rcd 24,871, 24,873 at para. 5 (2003); *Armstrong Communications, Inc. Petition for Relief Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996 and Request for Additional Relief*, Order on Reconsideration, 14 FCC Rcd 9521, 9521-22 at para. 2. (1999) (denying a petition for reconsideration because no new facts or arguments were raised).

³¹ See 47 U.S.C. §§ 206-208. Specifically, section 208 provides that

[a]ny person, any body politic or municipal organization, or State commission, complaining of anything done or omitted to be done by any common carrier subject to this Act, in contravention of the provisions thereof, may apply to said Commission by petition which shall briefly state the

(continued....)

As such, the Commission maintains jurisdiction over a common carrier for any alleged violations of the Act if that carrier is deemed a common carrier at the time of the alleged violations. Furthermore, the Act allows carriers to recover their lawful charges within two years from the time the cause of action accrues.³² We note that APCC filed its informal complaint in December of 2004, at a time when Tel America was indeed a common carrier.³³ In any event, we note that the Commission retains the authority to join non-common carriers for the enforcement of the provisions of the Act as necessary.³⁴ Additionally, as noted earlier, we rely on the fact that APCC's unadjudicated claims are now pending before the Commission in the Formal Complaint proceeding. This transfer has no bearing on that proceeding. Accordingly, we affirm, for the same reasons as we did in the *Grant Notice*, that the arguments raised by APCC in its Petition are not sufficient to persuade us to remove the application from streamlined treatment.³⁵ Nor are the arguments sufficient to persuade us to reverse our previous decision or condition the grant of the Transfer of Control Application. We, therefore, deny APCC's Petition.

10. Accordingly, IT IS ORDERED that, pursuant to the authority granted by sections 1, 4(i), 4(j), 214 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 214 and 405, and sections 0.291 and 1.106 of the Commission's rules, 47 C.F.R. §§ 0.291 and 1.106, APCC's Petition for Reconsideration IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin, Chief
Wireline Competition Bureau

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facts, whereupon a statement of the complaint thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time to be specified by the Commission.

Section 208(a).

³² 47 U.S.C. § 415.

³³ See 47 C.F.R. § 1.718 (a formal complaint will relate back to the filing date of the informal complaint).

³⁴ See 47 U.S.C. § 411(a).

³⁵ Indeed, since the Transfer of Control Application has already been granted pursuant to our streamlined procedures, it may no longer be simply removed from streamlining.