



PUBLIC NOTICE

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DA 05-620
March 8, 2005

DOMESTIC AUTHORIZATION GRANTED

APPLICATION FOR ACQUISITION OF ASSETS OF PAC-WEST TELECOMM, INC., BY U.S. TELEPACIFIC CORP.

WC Docket No. 05-21

By the Chief, Wireline Competition Bureau:

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

The Commission released a public notice accepting this application for streamlined processing on January 28, 2005.³ Subsequently, on February 18, 2005, the United States Department of Justice ("DOJ"), including the Federal Bureau of Investigation ("FBI") and the United States Department of Homeland Security ("DHS") (collectively, the "Executive Branch Agencies"), filed with the Commission a petition to defer grant of this application while the Agencies and Applicants address potential national security, law enforcement, and public safety issues.⁴ On March 3, 2005, the Executive Branch Agencies submitted a filing to the Commission withdrawing the Petition to Defer.⁵ In the Withdrawal, the Executive Branch Agencies advised the Commission that they had completed their evaluation of potential

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 *Domestic Section 214 Application Filed for Acquisition of Assets of Pac-West Telecomm, Inc., to U.S. Telepacific Corp., WC Docket No. 05-21*, Public Notice, DA 05-256 (rel. Jan. 28, 2005).

⁴ *See* In the Matter of Pac-West Telecomm, Inc., Transferor, and U.S. TelePacific Corp., Transferee, Application for authority Pursuant to Section 214 of the Communications Act of 1934, as amended, for the transfer of assets of an authorized U.S. international and domestic common carrier, WC Docket No. 05-21, Petition to Defer (filed Feb. 18, 2005) (Petition to Defer).

⁵ Department of Justice, Federal Bureau of Investigation, and Department of Homeland Security, Withdrawal of Petition to Defer, WC Docket No. 04-421 (dated March 3, 2005) ("Withdrawal").

national security, law enforcement, and public safety issues, have entered into arrangements with TelePacific in order to address such concerns, and therefore have no comment on the instant application.⁶

Consistent with Commission precedent, the Bureau accords the appropriate level of deference to the Executive Branch Agencies' expertise on national security and law enforcement issues.⁷ The Executive Branch Agencies indicate that the information provided by the Applicants, the Executive Branch Agencies' assessment of existing technology, and the commitments made by TelePacific address their concerns regarding national security, law enforcement, and public safety.⁸

The Wireline Competition Bureau finds, upon consideration of the record, that grant of the Application will serve the public interest, convenience, and necessity.⁹ Thus, in accordance with the request of the Executive Branch Agencies, in the absence of any objection from the Applicants, and pursuant to section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and section 0.291 of the Commission's rules,¹⁰ the Wireline Competition Bureau hereby grants this Application.

Pursuant to section 1.103 of the Commission's rules, the grant is effective upon release of this Public Notice.¹¹ Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules may be filed within 30 days of the date of this Public Notice.¹²

For further information, please contact Alex Johns at (202) 418-1167, or Terri Natoli at (202) 418-1574, Competition Policy Division, Wireline Competition Bureau.

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⁶ Withdrawal at 1-2.

⁷ The Commission considers national security, law enforcement, foreign policy, and trade policy concerns when analyzing a transfer of control or assignment application in which foreign ownership is an issue. *See Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Satellites Providing Domestic and International Service in the United States*, Report and Order, 12 FCC Rcd 24094, 24170-72, ¶¶ 178-182 (1997) ("DISCO II Order"); *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23919-921, ¶¶ 61-66 (1997), Order on Reconsideration, 15 FCC Rcd 18158 (2000) ("Foreign Participation Order"). In assessing the public interest, the Commission considers the record and accords the appropriate level of deference to Executive Branch expertise on national security and law enforcement issues. *See Foreign Participation Order*, 12 FCC Rcd at 23919-921, ¶¶ 61-66; *see also Applications of XO Communications, Inc. for Consent to Transfer Control of Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act, and Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act*, IB Docket No. 02-50, Memorandum Opinion & Order, 17 FCC Rcd 19212, 19228-29, ¶¶ 36-40.

⁸ *See* Withdrawal at 2.

⁹ *See* 47 C.F.R. § 63.03(c)(v). Upon consummation of the transaction, TelePacific will have a market share in the U.S. interstate interexchange market of less than 10 percent, and will provide competitive telephone exchange services or exchange access services exclusively in geographic areas served by a dominant local exchange carrier in the U.S. that is not a party to the transaction. In addition, no party to this transaction is dominant with respect to any domestic service.

¹⁰ 47 C.F.R. § 0.291.

¹¹ *See* 47 C.F.R. § 1.103.

¹² *See* 47 C.F.R. §§ 1.106, 1.115.