



PUBLIC NOTICE

Federal Communications Commission
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DA 06-491

Released: February 28, 2006

DOMESTIC SECTION 214 APPLICATION FILED FOR TRANSFER OF CONTROL FROM EPICUS, INC. TO EPICUS COMMUNICATIONS GROUP, INC.

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 05-359

Comments Due: March 14, 2006

Reply Comments Due: March 21, 2006

On December 12, 2005 Epicus, Inc. (“Epicus”) and Epicus Communications Group, Inc. (“ECG”) (collectively, “Applicants”) filed an application pursuant to sections 63.03 and 63.04 of the Commission’s rules¹ seeking authority to consummate transactions in connection with a Chapter 11 bankruptcy reorganization plan.² As discussed in detail below, the transfer of control at issue in this application closed on December 7, 2005, in accordance with the terms of an order entered by the U.S. Bankruptcy Court for the Southern District of Florida.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 Applicants initially requested that the Commission grant approval of this Application *nunc pro tunc* to December 7, 2005. *See* Application of EPICUS, Inc. and Epicus Communications Group, Inc. for Grant of Authority Pursuant to Section 214 of the Communications Act of 1934 and Sections 63.04 and 63.18 of the Commission’s Rules to Complete a Transfer of Control of Authorized International and Domestic Interstate Carriers, WC Docket No. 05-359, at 1-2 (filed Dec. 12, 2005). After discussions with Commission staff, Applicants subsequently amended their application to remove the *nunc pro tunc* designation, and also applied for and received Special Temporary Authority to continue providing services to ECG’s customers while the application is pending. *See* Application of Epicus Communications Group Inc. for Special Temporary Authority to Provide Resold Interstate and International Telecommunications Services, WC Docket No. 05-359 (filed Feb. 3, 2006) (“Epicus STA Request”); Amendment to Application for Grant of Authority Pursuant to Section 214 of the Communications Act of 1934 and Sections 63.04 and 63.18 of the Commission’s Rules to Complete a Transfer of Control of Authorized International and Domestic Interstate Carriers, WC Docket No. 05-359 (filed February 10, 2006); Amendment to Application for Special Temporary Authority to Provide Resold Interstate and International Telecommunications Services, WC Docket No. 05-359 (filed Feb. 10, 2006).

Applicants assert that this transaction is entitled to presumptive streamlined treatment under sections 63.03(b)(1) and 63.03(b)(2)(iii) of the Commission's rules because: (1) neither applicant is a facilities-based carrier; (2) the reorganization resulted in the Applicants and their affiliates holding less than a 10% share of the interstate interexchange market; (3) ECG only provides competitive local exchange service in geographic areas served by a dominant local exchange carrier that is not a party to this transaction; and (4) neither the Applicants nor any of their affiliates are dominant with respect to any U.S. domestic telecommunications service.⁴

On October 25, 2004, ECG and Epicus filed for relief under Chapter 11 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court for the Southern District of Florida. The court's Findings of Fact, Conclusions of Law, and Order Confirming Debtors First Amended Joint Plan of Reorganization (the "Confirmation Order") required the transfer of substantially all of the assets and business operations of Epicus through a reorganization of ECG. The Confirmation Order also provided for a transfer of control of ECG through a reorganized capital structure. On December 7, 2005, ECG and Epicus consummated the transfer of assets and reorganized capital structure pursuant to the Confirmation Order (the "Closing"). Although the Applicants obtained the approvals of the applicable state regulatory agencies prior to the Closing, the Applicants did not obtain the approval of the Commission pursuant to Section 214. Applicants assert that, as part of the Closing, new funding was provided to ECG to provide working capital for ongoing operations. According to Applicants, delaying consummation of the Closing (and its concomitant infusion of capital) likely would have exhausted their then-existing operating funds, and Applicants would likely have had to cease operations.⁵

Epicus was a privately-held Florida corporation and wholly-owned subsidiary of ECG. At the time the transaction at issue was consummated, Epicus was a non-facilities based reseller of local and long distance service in Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, and South Carolina. Epicus offered small businesses and residential consumers an integrated set of telecommunications products and services, including local exchange, local access, domestic and international long distance telephone, data and dial up access to the Internet.

ECG is a publicly-held Florida corporation which currently provides the non-facilities based competitive telecommunications services formerly provided by Epicus in Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, and South Carolina, pursuant to the Confirmation Order. The transactions contemplated by the Confirmation Order were accomplished through, among other things, a debenture sale to the NIR Group, LLC. Additionally, the Confirmation Order provided for the change of ECG's capital structure so that Ocean Avenue Advisors, LLC, a U.S. entity, owns 52.5% of the reorganized ECG, and Gerard Haryman, a U.S. citizen, owns 26.4% of the reorganized ECG.

⁴ 47 C.F.R. §§ 63.03(b)(1) and 63.03(b)(2)(iii).

⁵ *See* Epicus STA Request at 2-3.

Applicants state that the transaction at issue serves the public interest, convenience and necessity, claiming that the reorganization created a heightened level of operating efficiency, which generally served to enhance the overall capacity of ECG to compete in the marketplace and to provide telecommunications services to consumers at competitive rates. Applicants further assert that the transfer of customers from Epicus to ECG had no adverse impact on customers, that customers experienced a seamless transition of service providers, and that customers were sufficiently notified of the reorganization and their rights. They state that ECG provides the same local and long distance telecommunication services to former customers of Epicus, and those customers continue to receive their existing services at the same rates, terms, and conditions. Finally, Applicants claim this transaction furthered competition in the telecommunications markets in which Applicants operate, as a result of the strengthened competitive position of ECG.

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. 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 March 14, 2006** and **reply comments on or before March 21, 2006**.⁶ 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.⁷ 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,

⁶ See 47 C.F.R. § 63.03(a).

⁷ Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

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, 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, Express, and Priority mail should be addressed to 445 12th Street, S.W., Washington D.C. 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, S.W., Room CY-B402, Washington, D.C. 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) 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) 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, S.W., Room CY-A257, Washington, D.C. 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, telephone: (202) 488-5300, fax: (202) 488-5563, or via e-mail www.bcpiweb.com.

For further information, please contact Tracey Wilson-Parker at (202) 418-1394, or Alex Johns at (202) 418-1167.

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