



PUBLIC NOTICE

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DA 08-2480
November 12, 2008

DOMESTIC SECTION 214 AUTHORIZATION GRANTED

Application Filed for the Transfer of Control of Smart City Telecommunications LLC and Smart City Solutions, LLC from Smart City Finance LLC to Hargray-Smart City Acquisition Co. LLC.

WC Docket No. 08-170

By the Chief, Wireline Competition Bureau:

On August 11, 2008, Smart City Finance LLC (Smart City) and Hargray-Smart City Acquisition Co. LLC (Hargray-Smart City) (collectively, Applicants) filed an application pursuant to section 63.03 of the Commission's rules to transfer control of Smart City Telecommunications LLC and Smart City Solutions, LLC from Smart City to Hargray-Smart City.¹

The Commission released a public notice accepting the application for streamlined processing on September 9, 2008.² On September 29, 2008, the Wireline Competition Bureau removed the application from streamlined treatment for further consideration of the transaction.³ On October 14, 2008, the Department of Justice, including the Federal Bureau of Investigation, with the concurrence of the Department of Homeland Security (collectively, the Executive Branch Agencies), filed a letter requesting that the Commission defer grant of the application while the Executive Branch Agencies address potential national security, law enforcement, and public safety concerns.⁴ On November 3, 2008, the Executive Branch Agencies withdrew their October 14, 2008 request to defer action stating that they have no objection to the application.⁵

The Wireline Competition Bureau finds, upon consideration of the record, that grant of the application will serve the public interest, convenience, and necessity. Upon consummation of the

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

² *Domestic Section 214 Application Filed for the Transfer of Control of Smart City Telecommunications LLC and Smart City Solutions, LLC from Smart City Finance LLC to Hargray-Smart City Acquisition Co. LLC*, WC Docket No. 08-170, Public Notice, DA 08-2063 (rel. Sept. 9, 2008).

³ *Notice of Removal of Domestic Section 214 Application From Streamlined Treatment*, WC Docket No. 08-170, Public Notice, DA 08-2166 (rel. Sept. 29, 2008).

⁴ *See* Letter from Joanne P. Ongman, U. S. Department of Justice, to Marlene H. Dortch, FCC, WC Docket No. 08-170 (filed Oct. 14, 2008).

⁵ *See* Letter from Joanne P. Ongman, U. S. Department of Justice, to Marlene H. Dortch, FCC, WC Docket No. 08-170 (filed Nov. 3, 2008).

transaction, the resulting entity 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, the applicants are a dominant carrier and a non-dominant carrier that provides services exclusively outside the geographic area where the dominant carrier is dominant.⁶

Consistent with Commission precedent, the Wireline Competition Bureau accords the appropriate level of deference to the Executive Branch Agencies' expertise on national security and law enforcement issues.⁷ Therefore, 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, 47 C.F.R. § 0.291, the Wireline Competition Bureau hereby grants the application discussed in this Public Notice.

Pursuant to section 1.103 of the Commission's rules, 47 C.F.R. § 1.103, the grant is effective upon release of this Public Notice. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.115, may be filed within 30 days of the date of this Public Notice.

For further information, please contact Michelle Sclater at (202) 418-0388, Competition Policy Division, Wireline Competition Bureau.

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⁶ 47 C.F.R. § 63.03(b)(2)(ii).

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, paras. 178-82 (1997); *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23919-21, paras. 61-66 (1997) ("*Foreign Participation Order*"), Order on Reconsideration, 15 FCC Rcd 18158 (2000). 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 23919-21, paras. 61-66.