



# PUBLIC NOTICE

Federal Communications Commission  
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DA 08-928  
April 22, 2008

## DOMESTIC SECTION 214 AUTHORIZATION GRANTED

### Application Filed for the Transfer of Control of USCarrier Telecom Holdings, LLC and USCarrier Telecom, LLC to American Fiber Systems, Inc.

WC Docket No. 08-1

#### By the Chief, Wireline Competition Bureau:

On December 26, 2007, USCarrier Telecom Holdings, LLC (USCTH), USCarrier Telecom, LLC (USC), and American Fiber Systems, Inc. (AFN) (collectively, Applicants) filed an application pursuant to sections 63.03 and 63.04 of the Commission's rules,<sup>1</sup> requesting authority to transfer control of USCTH and USC to AFS.

The Commission released a public notice accepting the application for streamlined processing on March 11, 2008.<sup>2</sup> On March 24, 2008, the Department of Justice, together with the Federal Bureau of Investigation and the Department of Homeland Security (collectively, the Executive Branch Agencies), filed a letter requesting that the Commission defer grant of this application while the Executive Branch Agencies address potential national security, law enforcement, and public safety concerns.<sup>3</sup> In response to the request, the Wireline Competition Bureau removed the application from streamlined review.<sup>4</sup> On April 16, 2008, the Executive Branch Agencies withdrew their March 24, 2008 request to defer action, stating that they have no objection to this transaction.<sup>5</sup>

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

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

<sup>2</sup> *Domestic Section 214 Application Filed for the Transfer of Control of USCarrier Telecom Holdings, LLC and USCarrier Telecom, LLC to American Fiber Systems, Inc.*, WC Docket No. 08-1, Public Notice, DA 08-549 (rel. Mar. 11, 2008).

<sup>3</sup> *See* Letter from John Connors, United States Department of Justice, to Marlene H. Dortch, FCC, WC Docket No. 08-1 (filed Mar. 24, 2008).

<sup>4</sup> *Notice of Removal of Domestic Section 214 Application From Streamlined Treatment*, WC Docket No. 08-1, Public Notice, DA 08-697 (rel. Mar. 25, 2008).

<sup>5</sup> *See* Letter from John Connors, United States Department of Justice, to Marlene H. Dortch, FCC, WC Docket No. 08-1 (filed Apr. 16, 2008).

transaction, the resulting entity will have a market share in the U.S. interstate interexchange market of less than 10 percent, and the entity will provide competitive telephone exchange services or exchange access services (if at all) 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, none of the Applicants will be dominant with respect to any domestic service.

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.<sup>6</sup> 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 Matt Warner, Competition Policy Division, Wireline Competition Bureau, at 202 / 418-2419.

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<sup>6</sup> 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.