



PUBLIC NOTICE

Federal Communications Commission
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DA 09-828
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DOMESTIC SECTION 214 APPLICATION FILED FOR THE ACQUISITION OF CERTAIN ASSETS OF USD CLEC, INC. BY YAK AMERICA INC.

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 09-37

Comments Due: April 29, 2009
Reply Comments Due: May 6, 2009

On March 16, 2009, Yak America Inc. (Yak) and USD CLEC, Inc. (USD CLEC) (together, Applicants) filed an application pursuant to section 63.03 of the Commission's rules¹ seeking approval of an acquisition by Yak of substantially all of the assets related to USD CLEC's casual calling/dial-around telecommunications business operations. Applicants state that the transaction closed on July 24, 2008.² Prior to the transaction, USD CLEC, a New York corporation, provided casual calling/dial around services in the contiguous 48 states and the District of Columbia. It is wholly owned by US Datanet Corporation, a Delaware corporation that does not provide telecommunications services. Applicants state that no entity owns at least 10 percent of the equity of US Datanet Corporation. Yak, a Florida corporation, is authorized to provide and does provide resold interexchange telecommunications services, casual calling, and calling card services in the contiguous 48 states and the District of Columbia. Blackbird Corporation, a U.S. investment entity, owns 100 percent of Yak. Jose Cadi, a U.S. citizen, owns 100 percent of Blackbird Corporation.

Applicants state that Yak purchased USD CLEC's casual calling/dial around assets on July 24, 2008 without Commission approval and that the customer migration to Yak's service was completed on

¹ 47 C.F.R § 63.03; *see* 47 U.S.C. § 214. Applicants filed an amended domestic section 214 application on April 8, 2009. On October 3, 2008, USD CLEC and its parent company, US Datanet Corporation, filed voluntary petitions with the U.S. Bankruptcy Court for the Northern District of New York (Bankruptcy Court), pursuant to Chapter 11 of the U.S. Bankruptcy Code (*See* Case Nos. 08-32560 to 32562).

² Applicants filed a request for Special Temporary Authority (STA) to allow Yak to provide uninterrupted service to customers during the pendency of the application. Applicants state that the delay in requesting consent for the transfers of assets occurred because they were unaware of their domestic section 214 application and approval obligations at the time the transaction was consummated. Applicants filed the STA and application to correct the deficiency. On April 14, 2009, the Wireline Competition Bureau granted the STA for a period of 60 days. Letter from Brett P. Ferencak, Counsel for Yak, and Todd D. Daubert, Counsel for USD CLEC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-27 (filed Feb. 24, 2009). A grant of this STA and application will be without prejudice to any enforcement action by the Commission for non-compliance with the Communications Act of 1934, as amended, or the Commission's rules.

November 1, 2008.³ They state that the migration entailed the transfer of outstanding customer accounts and did not involve the transfer of presubscribed local or long distance customers. Applicants assert that the proposed transaction is entitled to presumptive streamlined treatment under section 63.03(b)(2)(i) of the Commission's rules and that a grant of the application will serve the public interest, convenience, and necessity.⁴

Domestic Section 214 Application Filed for the Acquisition of Certain Assets of USD CLEC, Inc. by Yak America Inc., WC Docket No. 09-37 (filed Mar. 16, 2009).

GENERAL INFORMATION

The transfer of assets 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 application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Pursuant to section 63.03(a) of the Commission's rules, 47 CFR § 63.03(a), interested parties may file comments **on or before April 29, 2009**, and reply comments **on or before May 6, 2009**. Unless otherwise notified by the Commission, the Applicants may transfer control on the 31st day after the date of this notice.⁵ Comments must be filed electronically using (1) the Commission's Electronic Comment Filing System (ECFS) or (2) the Federal Government's e-Rulemaking Portal. *See* 47 C.F.R. § 63.03(a) ("All comments on streamlined applications shall be filed electronically . . ."); *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Comments may be filed electronically using the Internet by accessing the ECFS, <http://www.fcc.gov/cgb/ecfs/>, or the Federal e-Rulemaking 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 and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

In addition, e-mail one copy of each pleading to each of the following:

- 1) The Commission's duplicating contractor, Best Copy and Printing, Inc., fcc@bcpiweb.com; phone: (202) 488-5300; fax: (202) 488-5563;
- 2) Tracey Wilson-Parker, Competition Policy Division, Wireline Competition Bureau, tracey.wilson-parker@fcc.gov;

³ In a separate transaction, USD CLEC and Warwick Valley Mobile Telephone Company (Warwick Valley) filed a domestic section 214 application and STA to transfer USD CLEC's telecommunications assets to Warwick Valley, pursuant to Bankruptcy Court approval. Applicants state that the partial sale transaction of the casual calling/dial-around assets is unrelated to the USD CLEC/Warwick Valley transaction. *Domestic Section 214 Application Filed for the Acquisition of Assets of USD CLEC, Inc., Debtor-in-Possession, by Warwick Valley Mobile Telephone Company*, WC Docket No. 09-39, Public Notice, DA 09-758 (rel. Apr. 2, 2009).

⁴ 47 C.F.R. § 63.03(b)(2)(i).

⁵ Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

- 3) Jodie May, Competition Policy Division, Wireline Competition Bureau, jodie.may@fcc.gov;
- 4) Jim Bird, Office of General Counsel, jim.bird@fcc.gov.

Filings and comments are 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; e-mail: fcc@bcpiweb.com; url: www.bcpiweb.com.

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For further information, please contact Tracey Wilson-Parker at (202) 418-1394 or Jodie May at (202) 418-0913.

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