



# PUBLIC NOTICE

**Federal Communications Commission**  
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**DA 11-1747**  
**October 20, 2011**

## **DOMESTIC SECTION 214 AUTHORIZATION GRANTED**

### **Application for the Transfer of Control of Tel West Network Services Corporation to U.S. TelePacific Corp.**

#### **WC Docket No. 11-112**

Pursuant to section 214 of the Communications Act of 1934, as amended (Act), 47 U.S.C. § 214, and sections 0.91, 0.291, and 63.03 of the Federal Communication Commission's (Commission) rules, 47 C.F.R. §§ 0.91, 0.291, 63.03, the Wireline Competition Bureau (Bureau) approves the application of Tel West Network Services Corporation (Tel West) and U.S. TelePacific Corp. (TelePacific) (together, Applicants) to transfer control of Tel West to TelePacific.<sup>1</sup> The Bureau has determined that grant of this application serves the public interest,<sup>2</sup> and, accordingly, the application is granted pursuant to the Commission's procedures for domestic section 214 transfer of control applications.<sup>3</sup>

On July 7, 2011, the Bureau released a public notice accepting this application for streamlined processing.<sup>4</sup> On July 25, 2011, the Department of Justice (DOJ), including the Federal Bureau of Investigation, with the concurrence of the Department of Homeland Security (DHS) (collectively, the Executive Branch Agencies), filed a letter requesting that the Commission defer grant of this application while the Executive Branch Agencies reviewed potential national security, law enforcement, and public safety concerns.<sup>5</sup> In response to the request filed by the Executive Branch Agencies, the Bureau removed the application from streamlined review.<sup>6</sup>

On October 19, 2011, the Executive Branch Agencies submitted a Petition to Adopt Conditions to Authorizations and Licenses (Petition).<sup>7</sup> In the Petition, the Executive Branch Agencies advise the

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<sup>1</sup> Joint Application of Tel West Network Services Corporation and U.S. TelePacific Corp., WC Docket No. 11-112 (filed June 29, 2011) (Application).

<sup>2</sup> *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, CC Docket No. 01-150, Report and Order, 17 FCC Rcd 5517, 5540, para. 45 (2002).

<sup>3</sup> 47 C.F.R. § 63.03.

<sup>4</sup> *Domestic Section 214 Application Filed For the Transfer of Control of Tel West Network Services Corporation to U.S. TelePacific Corp.*, WC Docket No. 11-112, Public Notice, DA 11-1173 (rel. July 7, 2011).

<sup>5</sup> Letter from Joanne P. Ongman, U.S. Department of Justice, to Marlene H. Dortch, FCC, WC Docket No. 11-112 (filed July 25, 2011).

<sup>6</sup> *Notice of Removal of Domestic Section 214 Application from Streamlined Treatment*, WC Docket No. 11-112, Public Notice, DA 11-1289 (rel. July 29, 2011).

<sup>7</sup> Petition to Adopt Conditions to Authorizations and Licenses, WC Docket No. 11-112 and IB File No. ITC-T/C-20110628-00182 (filed Oct. 19, 2011).

Commission that they have no objection to the Commission granting its consent in this proceeding, provided the Commission conditions the grant on the agreement of U.S. TelePacific Holdings Corp to abide by the commitments and undertakings set forth in the October 18, 2011 Letter of Assurances (Letter of Assurances). The Executive Branch Agencies filed the Letter of Assurances in WC Docket No. 11-112 on October 19, 2011.<sup>8</sup>

The Bureau finds, upon consideration of the record, that grant of the application, subject to compliance with the Letter of Assurances, will serve the public interest, convenience, and necessity. Upon consummation of the 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, no party to the transaction is dominant with respect to any domestic service.

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.<sup>9</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,<sup>10</sup> the Bureau hereby grants the application discussed in this Public Notice.

Pursuant to section 1.103 of the Commission's rules, the grant is effective upon release of this Public Notice.<sup>11</sup> 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.<sup>12</sup>

For further information, please contact Jodie May at (202) 418-0913.

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<sup>8</sup> Petition Attach., Letter to Lisa O. Monaco, U.S. Department of Justice, and David Heyman, U.S. Department of Homeland Security, from Richard A. Jalkut, U.S. TelePacific Holdings Corp., WC Docket No. 11-112 and IB File No. ITC-T/C-20110628-00182 (filed Oct. 19, 2011).

<sup>9</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.

<sup>10</sup> 47 C.F.R. § 0.291.

<sup>11</sup> *See* 47 C.F.R. § 1.103.

<sup>12</sup> *See* 47 C.F.R. §§ 1.106, 1.115.