**DA 14-749**

**Released: May 30, 2014**

**Domestic Section 214 Application Granted for the Transfer of Control of NTS, Inc. to**

**T3 North Intermediate Holdings, LLC**

**WC Docket No. 13-269**

NTS, Inc. (NTS) and T3 North Intermediate Holdings, LLC (T3 Intermediate) (together, Applicants) filed an application pursuant to section 214 of the Communications Act of 1934, as amended (Act), to transfer control of NTS to T3 Intermediate.[[1]](#footnote-1) The Wireline Competition Bureau (Bureau) has determined that a grant of this Application, as conditioned, serves the public interest, and accordingly the Application is granted with the condition stated herein.

NTS provides fiber-based, competitive telecommunications services through its U.S.-based subsidiary licensees in Texas, Louisiana, Mississippi, Arizona, Colorado, Kansas, New Mexico, and Oklahoma. Its subsidiaries are NTS Communications, Inc. (NTSC), PRIDE Network, Inc. (PRIDE) (wholly owned by NTSC), NTS Telephone Company, LLC (wholly owned by NTSC), and Xfone USA, Inc.[[2]](#footnote-2) T3 Intermediate is a direct wholly owned subsidiary of T3 North Holdings, LLC (T3 Holdings). Applicants state that both T3 Holdings and T3 Intermediate were created for the purpose of this proposed transaction and have no affiliates that provide telecommunications services.[[3]](#footnote-3) Pursuant to the terms of the proposed transaction, NTS will be a direct, wholly owned subsidiary of T3 Intermediate, and the NTS licensees will remain wholly owned direct or indirect subsidiaries of NTS.[[4]](#footnote-4)

On December 18, 2013, 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 action on this Application while they reviewed potential national security, law enforcement, and public safety issues.[[5]](#footnote-5) In response to the request, the Bureau removed the Application from streamlined review.[[6]](#footnote-6) On May 28, 2014, the Executive Branch Agencies withdrew their request to defer action, stating that they have no objection to the Application.[[7]](#footnote-7)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.[[8]](#footnote-8)

On December 16, 2013, NTSC entered into a Consent Decree with the Enforcement Bureau addressing its compliance with Universal Service Fund requirements under the Act and section 54.706(a) of the Commission’s rules.[[9]](#footnote-9) The Consent Decree requires NTSC to develop and implement a plan and file reports with the Commission to ensure future compliance with the Act and Commission rules and with the terms of the Consent Decree.[[10]](#footnote-10)  Applicants have filed supplemental information in this section 214 docket stating that, for purposes of the Consent Decree, T3 Intermediate will be deemed a successor, assignee, or transferee of NTSC upon consummation of the proposed transaction and that it will be “bound by NTSC’s obligations as set forth in the Consent Decree for the remaining term of the Consent Decree.”[[11]](#footnote-11) T3 Intermediate also agrees to accelerate payment of the remaining voluntary contribution contained in the Consent Decree to be paid in full within 30 days following consummation of the transaction. [[12]](#footnote-12) T3 Intermediate states that it accepts these commitments as a condition to the grant of the Application.[[13]](#footnote-13)

We accept T3 Intermediate’s commitment for purposes of the Consent Decree and make the terms of the commitment a binding and enforceable condition of our approval.[[14]](#footnote-14)  Our public interest authority enables us, where appropriate, to impose and enforce narrowly tailored, transaction-specific conditions to ensure that the public interest is served. [[15]](#footnote-15) Commission precedent requires that a licensee must operate in a manner consistent with the Act and the Commission’s rules.[[16]](#footnote-16) We conclude that T3 Intermediate’s commitment will further the public interest, and we are satisfied that T3 Intermediate is qualified to hold an authorization to acquire and serve NTS’s customers under the terms of the proposed transaction.[[17]](#footnote-17)

We find that the transaction is likely to result in certain public interest benefits, including allowing the existing customers of NTS to benefit from what Applicants assert will be access to additional financial and other resources that will enhance their ability to compete more effectively in markets for local exchange, long distance, broadband, and video services.[[18]](#footnote-18) In addition, Applicants affirm that, after completion of the customer transfer, T3 Intermediate will provide NTS’s customers with existing services without any change to the rates, terms, and conditions of service.[[19]](#footnote-19) Accordingly, and subject to the condition stated above, we find that grant of the Application will serve the public interest, convenience, and necessity.

Pursuant to sections 4(i) and 214 of the Act and section 0.291 of the Commission’s rules, the Bureau, under delegated authority, approves the Application subject to the condition stated above. [[20]](#footnote-20)

For further information, please contact Jodie May, (202) 418-0913, Competition Policy Division, Wireline Competition Bureau.

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1. 47 U.S.C. § 214; *NTS, Inc., Transferor, and T3 North Intermediate Holdings, LLC, Transferee, Consolidated Application for Consent to Transfer of Control*, WC Docket No. 13-269, Public Notice, 28 FCC Rcd 16611 (Wireline Comp. Bur. 2013) (Application). Applicants also filed applications for transfer of control associated with authorizations for international service and Cable Television Relay Service. Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications. [↑](#footnote-ref-1)
2. Application at 4-5 and Exh. B. [↑](#footnote-ref-2)
3. *Id*. at 5-6 and Exh. B. [↑](#footnote-ref-3)
4. *Id*. at 2-4. [↑](#footnote-ref-4)
5. *See* Letter from Caroline Brown, U.S. Department of Justice, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 13-269 (filed Dec. 18, 2013). [↑](#footnote-ref-5)
6. *Notice of Removal of Domestic Section 214 Application from Streamlined Treatment*, WC Docket No. 13-269, Public Notice, 29 FCC Rcd 46 (Wireline Comp. Bur. 2014). [↑](#footnote-ref-6)
7. Letter from Caroline Brown, U.S. Department of Justice, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 13-269 (filed May 28, 2014). [↑](#footnote-ref-7)
8. 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. [↑](#footnote-ref-8)
9. *NTS Communications, Inc. Apparent Liability for Forfeiture*, File No. EB-09-IH-1219, Order, 28 FCC Rcd 16515 (Enf. Bur. 2013) (*NTSC Order*) (citing 47 U.S.C. § 254(d); 47 C.F.R. § 54.706(a) and adopting a Consent Decree resolving and terminating an investigation against NTSC for apparent violations of Universal Service Fund requirements). [↑](#footnote-ref-9)
10. *NTSC Order* at Attach. [↑](#footnote-ref-10)
11. Letter from Mace Rosenstein and Michael Beder, Counsel to T3 Intermediate, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 13-269, File Nos. ITC-T/C-20131105-00293, ITC-T/C-20131105-00295, at 2 (filed May 29, 2014). [↑](#footnote-ref-11)
12. *Id*. at 2. [↑](#footnote-ref-12)
13. *Id*. T3 Intermediate has stated that it accepts the commitments as a condition to the Commission’s grant of all of its pending applications. [↑](#footnote-ref-13)
14. *See, e.g., Application of AT&T Inc. and BellSouth Corporation to Transfer Control,* WC Docket No. 06-*74,* Memorandum Opinion and Order, 22 FCC Rcd 5662, 5674, para. 22 (2007). [↑](#footnote-ref-14)
15. *See id*. [↑](#footnote-ref-15)
16. *See Policy Regarding Character Qualifications in Broadcast Licensing Proceedings*, Gen. Docket No. 81-500, Docket No. 78-108, 102 F.C.C.2d 1179, 1189, 1209, paras. 21, 55-56 (1986).  [↑](#footnote-ref-16)
17. *See NTSC Order*, 28 FCC Rcd at 16515, para. 4 (concluding that the investigation raises no substantial or material questions of fact as to whether NTSC possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization). [↑](#footnote-ref-17)
18. Application at 4. [↑](#footnote-ref-18)
19. *Id*. [↑](#footnote-ref-19)
20. 47 U.S.C. §§ 154(i), 214; 47 C.F.R. §0.291. [↑](#footnote-ref-20)