



# PUBLIC NOTICE

Federal Communications Commission  
445 12<sup>th</sup> St., S.W.  
Washington, D.C. 20554

News Media Information 202 / 418-0500  
Internet: <https://www.fcc.gov>  
TTY: 1-888-835-5322

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## DOMESTIC SECTION 214 APPLICATION GRANTED FOR THE TRANSFER OF CONTROL OF HIBERNIA ATLANTIC U.S. LLC TO GTT COMMUNICATIONS, INC.

### WC Docket No. 16-388

Murosa Development S.a.r.l. (Murosa), Hibernia Atlantic U.S. LLC (HB Atlantic), and GTT Communications, Inc. (GTT) (collectively Applicants), filed an application pursuant to section 214 of the Communications Act of 1934, as amended, and section 63.03 of the Commission's rules requesting approval for the transfer of control of HB Atlantic to GTT.<sup>1</sup>

On November 22, 2016, the Wireline Competition Bureau (Bureau) released a Public Notice requesting comment on the Application.<sup>2</sup> On December 6, 2016, the U.S. Department of Homeland Security, with the concurrence of the U.S. Department of Justice and the U.S. Department of Defense (collectively, the Executive Branch Agencies), filed a letter requesting that the Commission defer action on this proceeding while they completed their review of any national security, law enforcement, and public safety issues.<sup>3</sup> We deferred action on the Application in response to the Executive Branch Agencies' request.<sup>4</sup>

On January 5, 2017, the Executive Branch Agencies submitted a Petition to Adopt Conditions to Authorizations and Licenses (Petition).<sup>5</sup> In the Petition, the Executive Branch Agencies advise the Commission that they have no objection to the Commission approving the authority sought in this proceeding, provided the Commission conditions its approval on the commitment of GTT "to acknowledge and assume the commitments set forth in the Letter of Assurance dated September 30, 2010,

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<sup>1</sup> See 47 U.S.C. § 214; 47 CFR § 63.03. Applicants also filed applications for the transfer of authorizations associated with international services. Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications. Applicants filed supplements to their domestic Section 214 application on November 22, 2016 and November 25, 2016. See Letter from Denise N. Smith, Counsel for Murosa Development S.a.r.l., Hibernia Atlantic U.S. LLC, and GTT Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-388 (filed Nov. 22, 2016); Letter from James P. Prenetta, Jr., General Counsel Hibernia NGS Limited and Anthony Hansel, VP, Deputy General Counsel, GTT Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-388 (filed Nov. 25, 2016).

<sup>2</sup> *Domestic Section 214 Application Filed for the Transfer of Control of Hibernia Atlantic U.S. LLC to GTT Communications, Inc.*, WC Docket No. 16-388, Public Notice, DA 16-1310 (WCB Nov. 22, 2016).

<sup>3</sup> Letter from Shawn Cooley, U.S. Department of Homeland Security, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-388 (filed Dec. 6, 2016).

<sup>4</sup> *Notice of Removal of Domestic Section 214 Application from Streamlined Treatment*, Public Notice, WC Docket No. 16-388, Public Notice, DA 16-1380 (WCB Dec. 14, 2016).

<sup>5</sup> Petition to Adopt Conditions to Authorizations and Licenses, WC Docket No. 16-388 and File Nos. ITC-T/C-201611-00295 and SCL-T/C-20161111-00021 (filed Jan. 5, 2017).

from Hibernia Group ehf, for itself and its subsidiaries, including Hibernia Atlantic U.S. LLC (HB Atlantic), to the USG Agencies with respect to the Hibernia Atlantic cable system (SCL-LIC-19990804-00012, modified by SCL-MOD-20020412-00022) (2010 LOA) and a subsequent Letter of Assurance dated December 15, 2014, from KCK Limited, HB Atlantic and certain other affiliated entities, which amended the 2010 LOA, and undertook certain additional commitments to the USG Agencies with respect to the Project Express system (2014 LOA).”<sup>6</sup> The Department of Homeland Security filed the Petition, the 2010 LOA, and 2014 LOA in WC Docket No. 16-388 on January 5, 2017.

The Bureau finds, upon consideration of the record, that grant of the Application, subject to compliance with the 2010 LOA and 2014 LOA, will serve the public interest, convenience, and necessity. 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>7</sup> Therefore, pursuant to section 214 of the Act, 47 U.S.C. § 214, and sections 0.91 and 0.291 of the Commission's rules, 47 CFR §§ 0.91, 0.291, the Bureau hereby grants the Application discussed in this Public Notice subject to compliance with the 2010 LOA and 2014 LOA described above. A failure to comply with and/or remain in compliance with any of the provisions of the 2010 LOA and 2014 LOA shall constitute a failure to meet a condition of this authorization and thus grounds for declaring the underlying authorizations terminated without further action on the part of the Commission. Failure to meet a condition of this authorization may also result in monetary sanctions or other enforcement action by the Commission.

The Bureau further finds, upon consideration of the record, that grant of the Application will serve the public interest, convenience, and necessity.<sup>8</sup> 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 (if at all) exclusively in geographic areas served by a dominant local exchange carrier that is not a party to the transaction. In addition, the Applicants are not dominant with respect to any domestic service.<sup>9</sup>

Pursuant to section 1.103 of the Commission's rules, 47 CFR § 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 CFR §§ 1.106, 1.115, may be filed within 30 days of the date of this Public Notice.

For further information, please contact Gregory Kwan, Wireline Competition Bureau, Competition Policy Division, (202) 418-1191.

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<sup>6</sup> *Id.* at 1. The Petition refers collectively to the U.S. Department of Homeland Security, U.S. Department of Justice, and U.S. Department of Defense as the “USG Agencies.” *Id.*

<sup>7</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*, IB Docket No. 97-142, Market Entry and Regulation of Foreign Affiliated Entities, IB Docket No. 95-22, 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>8</sup> 47 CFR § 63.03(b).

<sup>9</sup> 47 CFR 63.03(b)(2)(i).