



PUBLIC NOTICE

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DOMESTIC SECTION 214 APPLICATION GRANTED FOR THE TRANSFER OF CONTROL OF iBASIS, INC. TO TOFANE GLOBAL SAS WITH CONDITION

WC Docket No. 18-136

By this Public Notice, the Wireline Competition Bureau (Bureau) conditions the grant of the application filed by iBasis, Inc. (iBasis), KPN B.V. (KPN), and Tofane Global SAS (Tofane) (collectively, Applicants), pursuant to section 214 of the Communications Act of 1934, as amended, and sections 63.03-04 of the Commission's rules, requesting consent to transfer control of iBasis to Tofane.¹

On May 11, 2018, the Bureau released a Public Notice accepting the Application for streamlined filing pursuant to sections 63.03-04 of the Commission's rules and requested comment on the proposed transaction.² The Bureau received no comments in opposition to the proposed transaction, and on June 11, 2018, we released a Public Notice granting the Application.³ On June 13, 2018, the Department of Justice (DOJ), the Federal Bureau of Investigation (FBI), Department of Homeland Security, and the Department of Defense (collectively, the Executive Branch Agencies) filed a letter, after the closing of the Bureau's comment cycle, requesting that the Commission defer action on this proceeding while they completed their review of any national security, law enforcement, and public safety concerns.⁴

On December 14, 2018, DOJ, to include its components, the National Security Division, and the FBI, with the concurrence of the U.S. Department of Homeland Security, submitted a Petition to Adopt Conditions to Authorizations and Licenses (Petition).⁵ In the Petition, DOJ advises the

¹ See 47 U.S.C. § 214; 47 CFR §§ 63.03-04. Joint Application for Grant of Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, and Sections 63.04 and 63.24 of the Commission's Rules to Transfer Control, WC Docket No. 18-136 (filed May 4, 2018) (Application). Applicants also filed applications for the transfer of authorizations associated with international services. Any action on the domestic section 214 applications is without prejudice to Commission action on other related, pending applications.

² *Domestic Section 214 Application Filed for the Transfer of Control of iBasis, Inc. to Tofane Global SAS*, WC Docket No. 18-136, Public Notice, DA 18-480 (WCB 2018) (*Accepted-for-Filing Public Notice*); 47 CFR §§ 63.03-04. Comments were due May 25, 2018, and reply comments were due June 1, 2018. *Accepted-for-Filing Public Notice* at 1-2.

³ Notice of Domestic Section 214 Authorization Granted, WC Docket No. 18-136, Public Notice, DA 18-602 (WCB 2018).

⁴ Letter from Debbie Wheeler, U.S. Department of Justice, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-136, ITC-T/C-20180504-00082 (filed June 13, 2018). While this letter is dated May 16, 2018, DOJ did not file it in WC Docket No. 18-136 until June 13, 2018.

⁵ Petition to Adopt Conditions to Authorizations and Licenses, WC Docket No. 18-136 and File No. ITC-T/C-20180504-00082 (filed Dec. 14, 2018).

Commission that DOJ has no objection to the Commission approving the authority sought in this proceeding, provided the Commission conditions its approval on the assurance of Tofane and iBasis to abide by the commitments and undertakings set forth in the December 14, 2018 Letter of Agreement (Agreement) between Tofane, iBasis, and DOJ.⁶

The Bureau finds, upon consideration of the record, that grant of the Application, subject to compliance with the Agreement, will serve the public interest, convenience, and necessity.⁷ Further, 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 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 revises its grant of the Application discussed in this Public Notice to indicate that the grant is subject to compliance with the Agreement described above. A failure to comply with and/or remain in compliance with any of the provisions of the Agreement shall constitute a failure to meet a condition of the grant of this Application and thus grounds for declaring the underlying domestic section 214 authority 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.

Pursuant to section 1.103 of the Commission's rules, 47 CFR § 1.103, the revised 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 Dennis Johnson, Wireline Competition Bureau, Competition Policy Division, (202) 418-0809.

⁶ *Id.* at 1 and Attach.

⁷ 47 CFR § 63.03(b).

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*, 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.