



PUBLIC NOTICE

Federal Communications Commission
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Washington, D.C. 20554

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DA 20-1470
December 9, 2020

DOMESTIC SECTION 214 APPLICATION FILED FOR THE TRANSFER OF CONTROL OF APPSMART TGN, INC. (F/K/A TELEGRATION, INC.) TO APPDIRECT, INC.

NON-STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 20-229

Comments Due: December 23, 2020
Reply Comments Due: December 30, 2020

By this Public Notice, the Wireline Competition Bureau (WCB) seeks comment from interested parties on an application filed by AppSmart TGN, Inc. (f/k/a Telegration, Inc.) (Telegration), Denis V. Raue, and AppDirect, Inc. (AppDirect) (collectively, Applicants), pursuant to section 214 of the Communications Act of 1934, as amended (Act), and sections 63.03-04 of the Commission's rules, seeking approval for the transfer of control of Telegration from Mr. Raue to AppDirect that occurred on or around August 30, 2019.¹ Applicants consummated this transaction without prior authorization from the Commission.²

Telegration, a Delaware corporation and direct subsidiary of AppSmart Agent, provides competitive interstate and intrastate long-distance services in Michigan, Ohio, Illinois, Wisconsin, Florida, and New York. AppDirect, a Delaware corporation, provides cloud management services

¹ See 47 U.S.C. § 214; 47 CFR §§ 63.03-04. Application of Dennis V. Raue, AppDirect, Inc., and AppSmart TGN, Inc. f/k/a Telegration, Inc. for Consent to Transfer Control of Domestic Section 214 Holder, WC Docket No. 20-229 (filed July 10, 2020). Applicants also filed an application for the transfer of authorizations associated with international authorizations, ITC-T/C-20200710-00115. On August 13, 2020, October 16, 2020, and December 1, 2020, Applicants filed supplements to their domestic section 214 application. Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

² An unauthorized transfer of control of Telegration occurred when Mr. Raue, a U.S. citizen who previously wholly owned Telegration, sold all of his shares to AppSmart Agent Services, Inc. (AppSmart Agent), an indirect wholly owned subsidiary of AppDirect. On August 26, 2020, WCB granted Applicants' request for special temporary authority (STA) for a period of 60 days to allow Telegration to provide uninterrupted service to customers during the pendency of this application. Letter from Stephanie Weiner, Counsel to AppDirect, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 20-229 (filed July 10, 2020) (on file in WCB Docket No. 20-229). On October 26, 2020, WCB granted Applicants' request for an extension of the STA for another 60 days. Letter from Stephanie Weiner, Counsel to AppDirect, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 20-229 (filed Oct. 22, 2020) (on file in WCB Docket No. 20-229). A grant of the domestic section 214 application would be without prejudice to any enforcement action by the Commission for non-compliance with the Act or the Commission's rules.

in the United States. AppDirect wholly owns AppSmart Inc. (AppSmart), which, in turn, wholly owns AppSmart Agent, both Delaware corporations that do not provide telecommunications services. Applicants state that the following Delaware entities and Canadian citizens hold a 10% or greater interest in AppDirect: PEG Digital Growth Fund II L.P. (PEG Digital) (13% equity and 5% voting);³ Mithril LP (11.5% equity and 4% voting);⁴ Nicolas Desmarais (15% equity and 42% voting); Paul Desmarais Jr. (17% economic and 6% voting);⁵ and Danial Saks (9% economic and 31% voting).⁶

According to the Applicants, on or around August 30, 2019, Mr. Raue sold all of the issued and outstanding shares of Telegration to AppSmart Agent, resulting in AppDirect acquiring an indirect 100% economic and voting interest in Telegration. Applicants assert that a grant of the application would serve the public interest, convenience, and necessity. Because the transaction is more complex than usual, in order to analyze whether the proposed transaction would serve the public interest, this application will not be streamlined.⁷

Domestic Section 214 Application Filed for the Transfer of Control of AppSmart TGN, Inc. (f/k/a Telegration, Inc.) to AppDirect, Inc., WC Docket No. 20-229 (filed July 10, 2020).

Referral to Executive Branch Agencies. Through this Public Notice, pursuant to Commission practice, this application for transfer of domestic section 214 authority and the associated international section 214 applications, ITC-T/C-20200710-00115, are being referred to the relevant Executive Branch agencies for their views on any national security, law enforcement, foreign policy or trade policy concerns related to the foreign ownership of the Applicants.⁸

³ Applicants state that the general partner for PEG Digital is Digital Growth II GP LLC (Digital Growth). JPMorgan Investment Management, Inc. serves as Digital Growth's investment manager and is ultimately controlled by JPMorgan Chase & Co. (JPMorgan Chase). Each of these entities are incorporated in Delaware.

⁴ Applicants state that Mithril II LP, a Delaware limited partnership, holds a 5.1% equity and 2% voting in AppDirect. October 16, 2020 Supplement. Applicants further state that both Mithril LP and Mithril II LP are under the ultimate common control of Mr. Ajay Gopal Royan, a Canadian citizen.

⁵ Applicants state that Paul Desmarais Jr. holds his indirect ownership interest in AppDirect through the following three intermediate entities, each Canadian federal corporations for which Mr. Desmarais is the majority shareholder: Belvoir Investments Corporation (9%); Desfam Holdings Inc. (5%); and Belvoir Canada Inc. (3%).

⁶ Applicants state that neither AppDirect, AppSmart, nor AppSmart Agent hold any other interest in a domestic telecommunications service provider. Applicants further state that, based on publicly available information, Nicolas Desmarais, Paul Desmarais, Daniel Saks, PEG Digital, and Mithril Capital do not hold a 10% or greater interest in any other domestic telecommunications service provider. Applicants state that JPMorgan Chase indirectly controls 21.25% of the common units of Ligado Networks, LLC, a mobile-satellite provider.

⁷ 47 CFR § 63.03(c)(1)(v).

⁸ See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket Nos. 97-142 and 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23918-19, paras. 61-63 (1997) (*Foreign Participation Order*), recon. denied, 15 FCC Rcd 18158 (2000). See also *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket 16-155, Report and Order, 35 FCC Rcd 10927 (2020).

GENERAL INFORMATION

The application identified herein has been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies.

Interested parties may file comments and petitions **on or December 23, 2020** and reply comments or oppositions to petitions **on or before December 30, 2020**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by paper. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- **Electronic Filers:** Comments may be filed electronically by accessing ECFS at <http://apps.fcc.gov/ecfs/>.
- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
 - Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail.⁹ All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 1-888-835-5322 (tty).

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

- 1) Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, tracey.wilson@fcc.gov;
- 2) Gregory Kwan, Competition Policy Division, Wireline Competition Bureau, gregory.kwan@fcc.gov;
- 3) Sumita Mukhoty, Policy Division, International Bureau, sumita.mukhoty@fcc.gov; and

⁹ In response to the COVID-19 pandemic, the FCC has closed its current hand-delivery filing location at FCC Headquarters. We encourage outside parties to take full advantage of the Commission's electronic filing system. Any party that is unable to meet the filing deadline due to the building closure may request a waiver of the comment or reply comment deadline, to the extent permitted by law. *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, DA 20-304 (rel. Mar. 19, 2020). <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

- 4) Jim Bird, Office of General Counsel, jim.bird@fcc.gov.

The proceeding in this Notice shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b), 47 CFR § 1.1206(b). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

To allow the Commission to consider fully all substantive issues regarding the application in as timely and efficient a manner as possible, petitioners and commenters should raise all issues in their initial filings. New issues may not be raised in responses or replies.¹⁰ A party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously. Submissions after the pleading cycle has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission.

For further information, please contact Tracey Wilson at (202) 418-1394 or Gregory Kwan at (202) 418-1191.

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¹⁰ See 47 CFR § 1.45(c).