

§ 63.03

47 CFR Ch. I (10–1–08 Edition)

(b) A common carrier shall not be required to obtain a certificate under section 214 of the Communications Act of 1934 with respect to the establishment or operation of a system for the delivery of video programming.

[64 FR 39939, July 23, 1999]

§ 63.03 Streamlining procedures for domestic transfer of control applications.

Any domestic carrier that seeks to transfer control of lines or authorization to operate pursuant to section 214 of the Communications Act of 1934, as amended, shall be subject to the following procedures:

(a) *Public Notice and Review Period.* Upon determination by the Common Carrier Bureau that the applicants have filed a complete application and that the application is appropriate for streamlined treatment, the Common Carrier Bureau will issue a public notice stating that the application has been accepted for filing as a streamlined application. Unless otherwise notified by the Commission, an applicant is permitted to transfer control of the domestic lines or authorization to operate on the 31st day after the date of public notice listing a domestic section 214 transfer of control application as accepted for filing as a streamlined application, but only in accordance with the operations proposed in its application. Comments on streamlined applications may be filed during the first 14 days following public notice, and reply comments may be filed during the first 21 days following public notice, unless the public notice specifies a different pleading cycle. All comments on streamlined applications shall be filed electronically, and shall satisfy such other filing requirements as may be specified in the public notice.

(b) *Presumptive Streamlined Categories.* (1) The streamlined procedures provided in this rule shall be presumed to apply to all transfer of control applications in which:

(i) Both applicants are non-facilities-based carriers;

(ii) The transferee is not a telecommunications provider; or

(iii) The proposed transaction involves only the transfer of the local exchange assets of an incumbent LEC by

means other than an acquisition of corporate control.

(2) Where a proposed transaction would result in a transferee having a market share in the interstate, inter-exchange market of less than 10 percent, and the transferee would 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, the streamlined procedures provided in this rule shall be presumed to apply to transfer of control applications in which:

(i) Neither of the applicants is dominant with respect to any service;

(ii) The applicants are a dominant carrier and a non-dominant carrier that provides services exclusively outside the geographic area where the dominant carrier is dominant; or

(iii) The applicants are incumbent independent local exchange carriers (as defined in § 64.1902 of this chapter) that have, in combination, fewer than two (2) percent of the nation's subscriber lines installed in the aggregate nationwide, and no overlapping or adjacent service areas.

(3) For purposes of (b)(1) and (2) of this paragraph, the terms "applicant," "carrier," "party," and "transferee" (and their plural forms) include any affiliates of such entities within the meaning of section 3(1) of the Communications Act of 1934, as amended.

(c) *Removal of Application from Streamlined Processing.* (1) At any time after an application is filed, the Commission, acting through the Chief of the Wireline Competition Bureau, may notify an applicant that its application is being removed from streamlined processing, or will not be subject to streamlined processing. Examples of appropriate circumstances for such action are:

(i) An application is associated with a non-routine request for waiver of the Commission's rules;

(ii) An application would, on its face, violate a Commission rule or the Communications Act;

(iii) An applicant fails to respond promptly to Commission inquiries;

(iv) Timely-filed comments on the application raise public interest concerns that require further Commission review; or

(v) The Commission, acting through the Chief of the Wireline Competition Bureau, otherwise determines that the application requires further analysis to determine whether a proposed transfer of control would serve the public interest.

(2) Notification will be by public notice that states the reason for removal or non-streamlined treatment, and indicates the expected timeframe for Commission action on the application. Except in extraordinary circumstances, final action on the application should be expected no later than 180 days from public notice that the application has been accepted for filing.

(d) Pro Forma Transactions. (1) Any party that would be a domestic common carrier under section 214 of the Communications Act of 1934, as amended, is authorized to undertake any corporate restructuring, reorganization or liquidation of internal business operations that does not result in a change in ultimate ownership or control of the carrier's lines or authorization to operate, including transfers in bankruptcy proceedings to a trustee or to the carrier itself as a debtor-in-possession.¹ Under this rule, a transfer of control of a domestic line or authorization to operate is considered pro forma when, together with all previous internal corporate restructurings, the transaction does not result in a change in the carrier's ultimate ownership or control, or otherwise falls into one of the illustrative categories found in §63.24 of this part governing transfers of control of international carriers under section 214 of the Communications Act of 1934, as amended.

(2) Any party that would be a domestic common carrier under section 214 of the Communications Act of 1934, as amended, must notify the Commission no later than 30 days after control of the carrier is transferred to a trustee

¹"Control" includes actual working control in whatever manner exercised and is not limited to majority stock ownership. "Control" also includes direct or indirect ownership or control, such as through intervening subsidiaries. See 47 CFR 63.09.

under Chapter 7 of the Bankruptcy Code, a debtor-in-possession under Chapter 11 of the Bankruptcy Code, or any other party pursuant to any applicable chapter of the Bankruptcy Code when that transfer does not result in a change in ultimate ownership or control of the carrier's lines or authorization to operate. The notification can be in the form of a letter (in duplicate to the Secretary). The letter or other form of notification must also contain the information listed in paragraphs (a)(1) through (a)(4) in §63.04. A single letter may be filed for more than one such transfer of control. If a carrier files a discontinuance request within 30 days of the transfer in bankruptcy, the Commission will treat the discontinuance request as sufficient to fulfill the pro forma post-transaction notice requirement.

(3) Notwithstanding any other provision in this part, any party that would be a domestic common carrier under section 214 of the Communications Act of 1934, as amended, including a carrier that begins providing service through a differently named subsidiary after an internal corporate restructuring, remains subject to all applicable conditions of service after an internal restructuring, such as rules governing slamming and tariffing.

[67 FR 18831, Apr. 17, 2002; 67 FR 21803, May 1, 2002]

§ 63.04 Filing procedures for domestic transfer of control applications

(a) *Domestic services only.* A carrier seeking domestic section 214 authorization for transfer of control should file an application containing:

(1) The name, address and telephone number of each applicant;

(2) The government, state, or territory under the laws of which each corporate or partnership applicant is organized;

(3) The name, title, post office address, and telephone number of the officer or contact point, such as legal counsel, to whom correspondence concerning the application is to be addressed;

(4) The name, address, citizenship and principal business of any person or entity that directly or indirectly owns at least ten (10) percent of the equity of