

FILED

22 F.C.C.R. 11849, 22 FCC Rcd. 11849 (F.C.C.), 2007 WL 1928664 (F.C.C.)

JUL 6 2012

Federal Communications Commission (F.C.C.)
Public Notice

Missouri Public
Service Commission

DOMESTIC SECTION 214 APPLICATION FILED FOR THE TRANSFER
OF CONTROL OF MASKINA COMMUNICATIONS FROM TRANSCOM
HOLDINGS, LLC TO VYKE AS AND VYKE COMMUNICATIONS, PLC
NON-STREAMLINED PLEADING CYCLE ESTABLISHED

HALO
Exhibit No. 26
Date 6-27-12 Reporter pt
File No. TC-2012-0331

WC 05-299
DA 07-2948

Released: July 2, 2007

Comments Due: July 16, 2007

Reply Comments Due: July 23, 2007

****1 *11849** On October 19, 2005, Maskina Communications, Inc. ("Maskina Communications") filed an application, pursuant to sections 63.03 and 63.04 of the Commission's rules,¹ seeking approval of a transfer of control of Maskina Communications from Transcom Holdings, Inc. to an entity then-known as Maskina AS (now known as Vyke AS).² Applicants state that this transfer of control was consummated on December 2, 2004.³ Applicants also state that, on June 27, 2005, an entity then-known as Tower PLC (now Vyke Communications, PLC) acquired 100% of the shares of Maskina AS and therefore, a 100% indirect interest in Maskina Communications (Maskina Communications, Vyke AS, and Vyke Communications, PLC will be referred to collectively as "Applicants"). Applicants assert that the latter transfer of control consummated on June 27, 2005 was *pro forma* under the Commission's rules, because the ultimate ownership or control with respect to Maskina Communications was held, both before and ***11850** after that transfer, by the same group of shareholders.⁴ Applicants did not seek Commission consent prior to these transfers of control.⁵ On January 3, 2006, Applicants submitted a supplement to the original application, clarifying certain issues in response to queries from Commission staff.⁶

Applicants assert that these transactions are entitled to presumptive streamlined treatment under section 63.03(b)(2)(i) of the Commission's rules because, post-consummation, Vyke Communications, PLC and its affiliates have less than a 10 percent market share in the interstate, interexchange marketplace, provide competitive telephone exchange services or exchange access services (if at all) exclusively in areas served by dominant local exchange carriers that are not parties to the proposed ***11851** transaction, and the Applicants are not dominant with respect to any domestic service.⁷ However, as discussed below, the application for approval was filed after the transactions at issue had been consummated, and involves foreign ownership interests that are subject to review and approval by the Department of Homeland Security, with the concurrence of the Department of Justice and the Federal Bureau of Investigation (collectively, the Executive Branch Agencies).⁸ Given these additional factors, the Commission finds, pursuant to section 63.03(c)(v), that the application requires further analysis to determine if the proposed transfer of control would serve the public interest, and it is therefore not subject to streamlined processing.⁹

Maskina Communications is a Texas corporation, which currently offers wholesale interexchange service throughout the U.S. on both a facilities and resale basis. Prior to December 2, 2004, Maskina Communications was wholly-owned by Transcom Holdings, Inc., a Texas corporation. The following entities held a 10% or greater direct or indirect interest in Transcom Holdings, Inc., prior to December 2, 2004: Scott Bridwell, a U.S. citizen (35.52%). Applicants state that no other individual or entity held more than a 10% interest in Transcom Holdings, Inc. prior to December 2, 2004. Currently, Vyke AS holds a 100% ownership interest in Maskina Communications.

****2** Vyke AS is an entity organized under the laws of Norway. It does not offer telecommunications service. Prior to and upon consummation of the December 2, 2004 transfer of control of Maskina Communications to Vyke AS, the following

entities held a 10% or greater direct ownership and/or voting interest in Maskina Communications, by virtue of their ownership interests in Vyke AS: Jan Christian Berger, a citizen of Norway (13.54%); Kjetil Bohn, a citizen of Norway (12.93%); and Transcom Holdings, Inc (16.97%). Currently, Vyke Communications, PLC, a publicly-traded U.K. entity that does not offer telecommunications service, owns 100% of Vyke AS, and therefore holds a 100% indirect interest in Maskina Communications.

Applicants state that no single entity or individual owns more than a 10% interest in Vyke Communications, PLC.¹⁰

On December 2, 2004, Vyke AS purchased a 100% ownership interest in Maskina Communications from Transcom Holdings, Inc. On January 11, 2005, Transcom Holdings Inc. changed *11852 its name to Maskina Communications, Inc. Vyke AS and Maskina Communications notified the Commission of this name change on April 5, 2005. Subsequently, on June 27, 2005, Vyke Communications, PLC acquired 100% of the shares of Vyke AS. However, the parties to these transactions did not seek the Commission's consent prior to consummating either of these transfers of control, and thus filed the STA Request in an effort to correct any deficiency arising from that omission. Applicants now seek Commission approval of these transactions.¹¹

Applicants assert that approval of the transactions at issue will serve the public interest because Maskina Communications' service provides options to lower income consumers, which increases competition and reduces prices. They state that many of the companies that rely on Maskina Communications for wholesale telecommunications services provide service to end users on a prepaid basis. Applicants contend that such consumers often have lower incomes and fewer options available for the purchase of telecommunications service, and that it is in the public interest for Maskina Communications to continue providing service to these customers.

GENERAL INFORMATION

The transfers of control identified herein have been found, upon initial review, to be acceptable for filing as a non-streamlined application. The Commission reserves the right to return any transfer of control application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Pursuant to section 63.03 of the Commission's rules, 47 C.F.R. § 63.03, interested parties may file comments on or before July 16, 2007 and reply comments on or before July 23, 2007. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

****3 # Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.

For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

***11853 # Paper Filers:** Parties who choose to file by paper must file an original and four copies 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 hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must

be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, S.W., Washington D.C. 20554.

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 & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

You may submit comments, identified by the above noted docket number, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Federal Communications Commission's Web Site: <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.

People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 202-418-0432.

****4 In addition, one copy of each pleading must be sent to each of the following:**

(1) The Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY-B402, Washington, DC 20554, www.bcpweb.com; phone: (202) 488-5300 fax: (202) 488-5563;

(2) Tracey Wilson-Parker, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C212, Washington, D.C. 20554; email: tracey.wilson-parker@fcc.gov;

(3) Alex Johns, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C317, Washington, D.C. 20554; e-mail: alexis.johns@fcc.gov;

(4) Susan O'Connell, Policy Division, International Bureau, 445 12th Street, S.W., Room 7-B544, Washington, D.C. 20554; email: susan.o'connell@fcc.gov; and

(5) Jim Bird, Office of General Counsel, 445 12th Street, S.W., Room 8-C824, Washington, D.C. 20554; e-mail: jim.bird@fcc.gov.

***11854** Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CYB402, Washington, D.C. 20554, telephone: (202) 488-5300, fax: (202) 488-5563, or via e-mail www.bcpweb.com.

For further information, please contact Tracey Wilson-Parker at (202) 418-1394, or Alex Johns at (202) 418-1167.

Footnotes

- 1 47 C.F.R §§ 63.03, 63.04; *see* 47 U.S.C. § 214. Applicants have also filed applications for transfer of control associated with authorization for international services. Any action on this domestic 214 transaction is without prejudice to Commission action on other related, pending applications.
- 2 *See* Maskina AS, Transferee, Transcom Holdings, LLC, Transferor, Domestic Application For Consent to Transfer Control of a Domestic Carrier, WC Docket No. 05-299 (filed Oct. 19, 2005) ("Application"). A number of the entities involved in the transfers of control at issue currently have names that are different from those identified in the original filing, either due to corporate name changes that have occurred since October 19, 2005 or corrections made by counsel to errors in the original application. For example, Transcom Holdings, Inc. was incorrectly identified in the original application as Transcom Holdings, LLC; counsel for the Applicants

- filed notice with the Commission on December 18, 2006 of the correct name. In addition, we will hereinafter refer to each of these entities by their current names.
- 3 See Application at n.1 and pp. 4-5.
- 4 According to Applicants, prior to June 27, 2005, Maskina Communications was wholly-owned by Vyke AS, which was in turn controlled by a group of approximately 66 shareholders. As a result of the transaction consummated on June 27, 2005, a 100% ownership interest in Vyke AS was conveyed to Vyke Communications PLC, a publicly-traded U.K. entity. As part of that transaction, the group of shareholders which previously owned 100% of Vyke AS was issued shares in Vyke Communications PLC such that the former Vyke AS shareholders held 67.08% of the ownership in Vyke Communications PLC. Applicants further claim that, although a new company (Vyke Communications PLC) assumed indirect control over Maskina Communications on June 27, 2005, the single group of shareholders which indirectly controlled Maskina Communications prior to that transaction continued to own an indirect, controlling interest in Maskina Communications after the transaction, through ownership of Vyke Communications PLC. See Application at n.3. For the purposes of making our public interest determination on this application, we will consider the Applicants' asserted "*pro forma*" transfer as part of the transfer of control actions resulting in the current proposed ownership structure, but will not make a determination here as to whether the transaction qualifies as *pro forma* under the domestic section 214 rules. However, we note that, in defining domestic *pro forma* transactions and making such transactions eligible for streamlining under the domestic rules, the Commission stated, "Because these transactions will not affect actual control of the licensee but *merely allow licensees to modify their corporate organization or ownership structure in a non-substantial way from the structure the Commission previously authorized*, these transactions should be permitted without Commission oversight or unnecessary scrutiny." See *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, CC Docket No. 01-150, Report and Order, 17 FCC Rcd. 5517, 5542-43, at para. 50 (2002) (emphasis added). Although Applicants are correct that the June, 2005 transfer effected no change in Maskina Communications' ultimate ownership as established in December 2004, due to the *initial* unauthorized change in ownership (*i.e.*, the transfer consummated on December 2, 2004), we do not believe that Maskina could, in June 2005, "merely ... modify [its] corporate organization ... in a non-substantial way from the structure ... previously authorized," as the existing structure was *unauthorized*, and is hence the subject of this current domestic application for approval.
- 5 On November 14, 2005, Applicants filed a request for Special Temporary Authority ("STA") to allow Maskina Communications to continue to provide service to its customers under the ownership of Vyke AS f/k/a Maskina AS and Vyke Communications, PLC. See Letter from Thomas K. Crowe and Greg E. Kunkle, Counsel for Maskina Communications, Inc., to Marlene Dortch, Secretary, Federal Communications Commission, WC 05-299 (filed Nov. 14, 2005) ("STA Request"). The Wireline Competition Bureau ("Bureau") granted the STA request on February 13, 2006 for a period of six months. The Bureau extended the STA for two consecutive six month periods. The current STA for domestic service is set to expire on August 5, 2007. Any action on this domestic section 214 application does not preclude or prejudice any enforcement action related to an unauthorized transfer of control.
- 6 See Letter from Thomas K. Crowe and Greg E. Kunkle, Counsel for Maskina Communications, Inc., to Marlene Dortch, Secretary, Federal Communications Commission, Re: WC 05-299, Supplement to Application for Consent to Transfer Control of Domestic 214 (filed January 3, 2006).
- 7 47 C.F.R. § 63.03(b)(2)(i).
- 8 Applicants and the Executive Branch Agencies negotiated an agreement resolving any potential national security, law enforcement, and public safety issues raised by the application, and filed notice to that effect in this docket on June 28, 2007. See Maskina Communications, Inc. f/k/a Transcom Communications, Inc., Transferor, and Vyke AS f/k/a Maskina AS, Transferee, Application for Consent to Transfer of Control, Petition to Adopt Conditions to Authorizations and Licenses, WC Docket No. 05-299 ("Petition to Adopt Conditions") (filed June 28, 2007). The Petition to Adopt Conditions advises the Commission that the Executive Branch Agencies have no objection to the Commission granting the transfer of control applications at issue in this docket, provided that the Commission conditions its consent on compliance by Vyke AS with the commitments set forth in the June 14, 2007 Commitment Letter ("Commitment Letter") attached to the Petition to Adopt Conditions.
- 9 See 47 C.F.R. § 63.03(c)(v).
- 10 Applicants note that, at the time of the transfer of control of Vyke AS to Vyke Communications PLC, 10.59% of the shares of Vyke Communications PLC were held by Griffin Group PLC, a publicly-traded U.K. financial services company. Griffin Group PLC has since divested itself of a sufficient interest in Vyke Communications PLC so as to fall below a 10% attributable indirect interest in Maskina Communications.
- 11 Applicants contend that, while the purchasers of Maskina Communications did perform due diligence on the company prior to purchasing it and entering the U.S. telecommunications market, they did not have a complete understanding of the Commission's transfer of control requirements until after the purchase of Maskina Communications was consummated. They assert that the mistake was inadvertent, and have since obtained counsel in an effort to ensure that this matter, and other legal and regulatory matters involving the company, receive necessary attention.

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