Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
1998 Biennial Regulatory Review —	)	IB Docket No. 98-118
Review of International Common Carrier	)	
Regulations	)	

REPORT AND ORDER

Adopted: March 18, 1999 Released: March 23, 1999

By the Commission: Commissioner Furchtgott-Roth issuing a statement.

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I. Introduction and Summary

1. In this Report and Order we continue our biennial review of common carrier regulations by relieving providers of international telecommunications services of regulatory burdens that are no longer necessary. The steps we take in this order will allow new carriers to enter the market more easily and will allow carriers already providing service more flexibility to conduct their businesses. We also remove or clarify unnecessary or confusing rules and simplify existing procedures.

2. Following adoption of these rules, most new carriers will be authorized to provide international services on most international routes 14 days after public notice of an application. Carriers already providing service will be able to complete *pro forma* transactions and assignments of their authorizations without prior Commission approval and will be able to provide service through their wholly-owned subsidiaries without separate Commission approval. Carriers that are under common ownership with an already-authorized carrier will be able to provide the same authorized services after only a minimal waiting period. Authorized carriers will be able to use any authorized U.S.-licensed or non-U.S.-licensed undersea cable systems in their provision of their authorized services. And the Commission's limited resources will no longer be consumed by ministerial tasks that no longer serve any useful purpose.

3. The initiatives we adopt here result from a thorough review of the rules that apply to international carriers and applicants seeking to become authorized international carriers. The Telecommunications Act of 1996 directs the Commission to undertake, in every even-numbered year beginning in 1998, a review of all regulations issued under the Communications Act that apply to operations or activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be "no longer necessary in the public interest."[1] In particular, the Act directs the Commission to determine whether any such regulation is no longer necessary "as the result of meaningful economic competition between providers of such service."[2] Accordingly, the Commission initiated a comprehensive 1998 biennial review to identify regulations that are overly burdensome or no longer serve the public interest.

4. The International Bureau conducted a public forum and many informal meetings with interested members of the community to seek ideas for ways to simplify, streamline, and eliminate burdens on the industry and the Commission. The Commission then issued a *Notice of Proposed Rulemaking* in which we proposed several deregulatory initiatives.[3] We proposed to streamline and simplify the international Section 214 application rules and to eliminate several categories of

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[1] 47 U.S.C. § 161 (Supp. II 1996).

[2] 47 U.S.C. § 161(a)(2).

[3] *See* In the Matter of 1998 Biennial Regulatory Review — Review of International Common Carrier Regulations, IB Docket No. 98-118, *Notice of Proposed Rulemaking*, FCC 98-149, 13 FCC Rcd 13,713 (1998) [hereinafter *Notice*].

international Section 214 applications.[4] Twenty-three parties filed comments, and those comments have helped us refine our proposals to ensure that we provide all the relief possible while retaining sufficient mechanisms to protect the public interest.[5]

5. The great majority of commenters supported our proposals. Comments filed by the Federal Bureau of Investigation (FBI) and the Department of Defense (DoD), however, raised objections to some of our proposals to forego review of certain Section 214 applications and to disregard changes in carriers' corporate form. The FBI and DoD made both legal and policy arguments and contended that, despite the progression of meaningful economic competition between carriers, it remains important to continue to review some applications and transactions due to national security, law enforcement, and other considerations. We have worked with representatives of the Executive Branch to reconcile the need to protect their public interest concerns with the need to remove unnecessary barriers to an effectively functioning market. We conclude that the measures we adopt in this order successfully reconcile these interests while granting the industry nearly as much regulatory relief as our original proposals.

6. We now adopt initiatives that enable us to —

(1) Eliminate the requirement that opposed applications be granted by formal written order and reduce the waiting period for granting new streamlined applications from 35 days to 14 days.

(2) Expand the class of applications eligible for streamlined processing.

(3) Eliminate the requirement for prior approval of *pro forma* assignments and transfers of control of Section 214 authorizations.

(4) Allow authorized carriers to provide service through wholly-owned subsidiaries without prior approval, and allow applicants to use the streamlined authorization process to obtain the same authorizations that any affiliates with the identical ownership have already obtained.

(5) Allow any authorized facilities-based carrier to use any non-U.S.-licensed undersea cable system without specific approval.

(6) Authorize the use of private lines to provide switched services by declaratory ruling instead of requiring a Section 214 application.

(7) Reorganize, clarify, and simplify the rules applicable to international Section 214 authorizations.

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[4] *See id.* ¶ 2.

[5] Parties filing comments and reply comments are listed in Appendix A.

7. The global telecommunications market is changing rapidly in response to technological innovation, market liberalization, deregulation, privatization, and accelerating competition. The Commission continues to look for opportunities to remove regulatory obstacles to a fully competitive marketplace while retaining the appropriate ability to detect and deter anticompetitive conduct. This order is but one in a series of deregulatory and streamlining steps the Commission has taken in this area since the founding of the International Bureau in 1994.[6] We look forward to continued public participation in this process, and we intend to again review these rules as part of our next biennial review in 2000.

II. Discussion of Rule Changes

A. International Section 214 Authorizations

1. Streamlined authorization procedure

8. In the *Notice*, we proposed to grant a blanket Section 214 authorization for the provision of international telecommunications services on routes where a carrier providing service to or from the United States is not affiliated with a carrier that operates in the destination market.[7] Our proposal would have allowed new entrants to provide service on those "unaffiliated routes" without prior approval, provided that they notify the Commission within 30 days after beginning to provide such service. We proposed to issue a certification (pursuant to Section 214 of the Communications Act of 1934, as amended[8]) that it would serve the public interest, convenience, and necessity to authorize carriers pursuant to such a procedure.[9]

9. We affirm our tentative conclusion that the great majority of international Section 214 applications do not raise public interest issues that warrant Commission scrutiny. For the reasons described below, however, we conclude that we should not adopt a blanket authorization as proposed in the *Notice*, but should instead adopt a further streamlined authorization procedure that is narrowly tailored to allow us to review applications in advance without causing needless delay or uncertainty. In sum, we modify our streamlined process by eliminating the current requirement that streamlined

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[6] *See, e.g.*, International Bureau Launches New Procedures, Public Notice (Nov. 21, 1994); International Bureau Announces an Industry Briefing Series, Public Notice (Feb. 27, 1995); International Bureau Speeds Processing through the Expanded Use of Grant Stamp and Status Conferences, Public Notice Report No. IN 95-12 (June 6, 1995); Streamlining the International Section 214 Authorization Process and Tariff Requirements, *Report and Order*, 11 FCC Rcd 12,884 (1996) (*1996 Streamlining Order*); Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, *Report and Order and Order on Reconsideration*, 12 FCC Rcd 23,891 (1997), *recon. pending* (*Foreign Participation Order*).

[7] *Notice* ¶¶ 7–11.

[8] 47 U.S.C. § 214 (1994 & Supp. II 1996).

[9] *Notice* ¶ 8; *see id.* Appendix A, § 63.25.

applications be removed from streamlining in the event that an opposition is filed. Our initial public notice listing streamlined applications that have been accepted for filing will not solicit comments from the public but will only provide notice of the date on which the applications will be granted unless an applicant is notified to the contrary. We also shorten from 35 days to 14 days from the initial public notice the period after which applications are automatically granted. Finally, we expand the class of applications eligible for streamlined processing by including applications filed by carriers seeking to provide service on a route where an affiliated foreign carrier has no facilities, or only mobile wireless facilities, in the destination market.

10. Henceforth, for those applications eligible for streamlined processing, we will follow a simpler and faster procedure. Upon receipt of the application, we will send copies of applications, as appropriate, to the relevant Executive Branch departments.[10] The staff of the International Bureau will also review the application to determine whether it is complete and eligible for streamlined processing. If an application is deemed incomplete and not acceptable for filing, the staff will notify the applicant and give the applicant an opportunity to provide the missing information. Once an application is deemed complete and eligible for streamlined processing, the Commission will issue a public notice noting that the application has been accepted for filing and will be subject to streamlined processing pursuant to Section 63.12.

11. The public notice listing streamlined applications as acceptable for filing will indicate that the listed applications will be deemed granted 14 days after the date of the public notice unless the applicant is notified to the contrary. If, during that 14-day waiting period, the Commission staff determines that an application should not be granted through the streamlined process, it will notify the applicant in writing that the application has been removed from streamlined processing. Otherwise, an application will be deemed granted 14 days after the initial public notice, and the applicant may begin operating on the 15th day. As is the current practice with respect to streamlined applications, the International Bureau will issue a weekly public notice of carriers newly authorized pursuant to this procedure.[11] We also amend Section 63.12(d) to ensure that an application that is *not* subject to streamlined processing may be granted without a formal written order if it is unnecessary to address any significant issues in writing or to impose any conditions that require written explanation.

12. We have, in the past, stated that applications that qualify for streamlined processing do not generally raise public interest issues because, in those cases, our generally applicable safeguards, the benchmark settlement rate condition, and dominant carrier regulations (where applicable) — rather than denial of applications — will be sufficient to prevent anticompetitive effects in the U.S. market.[12]

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[10] Applications to be sent to Executive Branch departments will be selected according to criteria submitted by the relevant departments.

[11] We agree with MCI and WorldCom, which state that the Commission should publish or make available the names of carriers taking advantage of our new authorization procedure. *See* MCI Comments at 3; WorldCom Comments at 2.

[12] *See Foreign Participation Order*, 12 FCC Rcd at 24,032 ¶ 322.

Based on the record in this proceeding, we reaffirm this finding and further conclude that there is no reason to routinely seek comment on competitive or other issues that parties may seek to raise in the context of streamlined applications. The likelihood that the Commission would deem a competitive or other issue raised by a commenter sufficiently serious to warrant denying a streamlined application is so remote that the potential benefits of seeking such comment are outweighed by the real benefits of eliminating the possibility that such comments would render an application ineligible for streamlining. These real benefits include a shorter period of time from filing an application to grant of the application and, significantly, the added certainty that an applicant would have as a result of knowing that its application cannot be held up by a vaguely drafted petition to deny filed by its competitors.

13. Furthermore, commenters have stated in the record of this proceeding,[13] and have told us in other contexts, that having to wait 35 days before being permitted to provide service is a substantial burden and, combined with the uncertainty about whether an application will be opposed and therefore removed from the streamlined process, substantially interferes with new carriers' ability to provide new services and respond quickly to market developments.[14] Although the current streamlined process is itself a product of earlier deregulatory, streamlining initiatives, it is nevertheless our continuing obligation to remove unnecessary barriers to competitive market conditions. We therefore conclude pursuant to Section 11(a)(2) of the Communications Act that, as a result of meaningful economic competition in international telecommunications, it is no longer necessary in the public interest to deny streamlined processing to an application that has been opposed.[15]

14. After reviewing the record, however, we are unable to conclude that prior review of international Section 214 applications is no longer necessary. Instead, we find that a 14-day period of review is necessary before we can grant an application. Such a period of prior review will enable Commission staff to identify exceptional applications that raise public interest concerns within the scope of current Commission policies. For example, the FBI has raised concerns that U.S. national security and law enforcement interests could be jeopardized by the provision of telecommunications services by entities whose interests may be contrary to those of the United States. According to the FBI, a particular carrier could jeopardize a national security or law enforcement investigation if the

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[13] *See, e.g.*, PCIA Comments at 14–15 (arguing that, if neither forbearance nor a blanket Section 214 authorization is adopted, the Commission should shorten the period for placing an application on public notice to five days and reduce the comment period to five days).

[14] *See, e.g.*, Ameritech Comments at 3–4 (requiring Section 214 applications impedes vigorous competition); Iridium Reply Comments at 3 (the proposal would help international carriers respond to market developments quickly).

[15] *See* 47 U.S.C. § 161(a)(2) (Supp. II 1996) (directing the Commission to determine whether any regulation subject to the biennial regulatory review "is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service"); § 161(b) (directing the Commission to "repeal or modify any regulation it determines to be no longer necessary in the public interest").

carrier has a relationship with the subject of the investigation.[16] The FBI argues that the regulatory safeguards that we relied upon in the *Notice* to justify foregoing prior review of applications concern only economic and competition matters and do not address national security and law enforcement concerns.[17]

15. In the *Foreign Participation Order*, we concluded that national security, law enforcement, foreign policy, and trade policy considerations remained relevant to our public interest analysis of whether to grant or deny an international Section 214 authorization.[18] We recognized that other government agencies have specific expertise in matters that may be relevant in particular cases and that our public interest analysis would benefit from input by those agencies. We therefore stated that we would continue to "consider any such legitimate concerns as we undertake our own independent analyses of whether grant of a particular application is in the public interest."[19] We emphasized that we expected such concerns to be raised only in very rare circumstances, and that we would always undertake our own independent evaluation of each application.[20] Consistent with that policy, we conclude that these important interests should continue to be addressed, to the extent possible, by our procedures for authorizing providers of international telecommunications services. Therefore, the procedure we now adopt will afford Executive Branch agencies an appropriate opportunity to raise these considerations in the context of individual applications.[21]

16. Reviewing applications before authorization also will allow Commission staff to identify applications that are not complete,[22] that do not qualify for streamlined processing, or that may raise

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[16] *See* Letter from Larry R. Parkinson, General Counsel, Federal Bureau of Investigation, to Magalie Roman Salas, Secretary, FCC (Oct. 27, 1998); *see also* Letter from Louis J. Freeh, Director, Federal Bureau of Investigation, to William E. Kennard, Chairman, FCC (Nov. 20, 1998).

[17] FBI Comments at 8.

[18] *See Foreign Participation Order*, 12 FCC Rcd at 23,919 ¶ 61.

[19] *Id.* at 23,919 ¶ 62.

[20] *See id.* at 23,919–21 ¶¶ 61–66.

[21] *See* Letter from Larry R. Parkinson, General Counsel, Federal Bureau of Investigation, to Ms. Magalie Roman Salas, Secretary, FCC (Mar. 8, 1999) (agreeing that a procedure that includes a 14-day waiting period after public notice would provide sufficient opportunity for review). We accept the FBI's assertion that the 14-day review period remains necessary and therefore cannot adopt the five-day period that PCIA requested.

[22] For example, an application that does not include a certification that no party to the application is subject to a denial of federal benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, *see* 47 C.F.R. § 63.18(j) (1997), or that lacks sufficient ownership information will not be accepted for filing.

extraordinary issues suggesting a need for public comment.[23] AT&T argues, for example, that even some small investments by foreign carriers with market power may require Commission scrutiny.[24] Our decision to continue to require submission of applications in advance also addresses concerns raised by some commenters that a post-commencement notification requirement might be taken less seriously by new carriers than a pre-certification application.[25] This procedure will help ensure that carriers are aware that they are subject to the Commission's rules regarding the provision of international telecommunications services. For all of these reasons, we conclude, pursuant to Section 11(a)(2) of the Communications Act, that the existing procedure is no longer "necessary in the public interest as the result of meaningful economic competition between providers of such service,"[26] and, pursuant to Section 11(b), we modify the procedure accordingly.

17. In the *Notice*, we tentatively concluded that, in light of our proposal for a blanket international Section 214 authorization, forbearance from requiring international Section 214 authorizations for any class of applicants pursuant to Section 10 of the Communications Act[27] was not the preferred approach.[28] Section 10 requires the Commission to forbear from applying any regulation or provision of the Act to a telecommunications carrier or service, or class of telecommunications carriers or services, if the Commission determines that all three of the following criteria are met:

(1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;

(2) enforcement of such regulation or provision is not necessary for the protection of consumers; and

(3) forbearance from applying such provision or regulation is consistent with the public interest.[29]

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[23] *See infra* para. 25.

[24] *See* AT&T Comments at 8–9.

[25] *See* FBI Comments at 6 n.12; AT&T Reply Comments at 5.

[26] 47 U.S.C. § 161(a)(2) (Supp. II 1996).

[27] 47 U.S.C. § 160 (Supp. II 1996).

[28] *Notice* ¶ 10 ("We tentatively conclude that granting a blanket Section 214 authorization would be a better approach than forbearing from requiring international Section 214 authorizations for any class of applicants.").

[29] 47 U.S.C. § 160(a)(1)–(3).

In determining whether the third prong of the forbearance standard is met, the Commission must consider whether forbearance from enforcing the provision will promote competitive market conditions, including the extent to which forbearance would enhance competition among providers of telecommunications services.[30]

18. With regard to the first two prongs of the forbearance test, based on our drastic streamlining of the Section 214 process it is apparent that strict review of international Section 214 applications is not necessary to ensure reasonable and nondiscriminatory rates, terms, and conditions or to protect consumers. We also find that, except in limited circumstances of affiliations with dominant foreign carriers, enforcement of Section 214 is not necessary under the first two prongs. In evaluating the third prong — the public interest prong — there is considerable merit to arguments that forbearance from requiring international Section 214 authorizations would promote competitive market conditions and would enhance competition between carriers in the international services market. The absence of any waiting period, and the absence of any need for carriers to signal to competitors that they intend to provide international services, would allow carriers more easily to enter the market and challenge existing carriers' prices and service offerings. Nevertheless, we find that the extent to which forbearance, instead of the 14-day process we adopt here, would promote competition is substantially outweighed by the other public interest considerations discussed earlier.[31] That is, an opportunity for prior streamlined review will enable Commission staff and applicable Executive Branch agencies to identify individual applications that, despite the existence of meaningful economic competition in the marketplace, may raise other public interest concerns. Those concerns include the national security and law enforcement considerations discussed above. In addition, as we stated in the *Notice*, it is important to continue to require that service be provided only pursuant to an authorization that can be conditioned or revoked for enforcement purposes.[32] Given these other public interest considerations as well as the fact that we will be able to grant applications 14 days after public notice regardless of whether any comments are filed,[33] we conclude that forbearance would not be consistent with the public interest. Therefore, the third prong of the Section 10 forbearance standard is not satisfied.

2. Applications eligible for streamlined processing

19. We initially proposed that the blanket authorization procedure would apply only to a non-dominant carrier's provision of any international service on unaffiliated routes. This proposal was based on the tentative conclusion that our regulatory safeguards are sufficient so that in no case would

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30 47 U.S.C. § 160(b).

31 *See supra* paras. 14–16.

32 A number of commenters supported this reasoning. *See, e.g.*, Ameritech Comments at 4; MCI Comments at 3; Primus Comments at 2; WorldCom Comments at 1.

33 We also note that, because most carriers will easily be able to obtain a global authorization pursuant to Section 63.18(e)(1) or (2), the filing of an application does not provide specific signals to competitors about the services to be offered or when service will be initiated. *See infra* Appendix B, § 63.18(e)(1), (2).

we need to deny, in the first instance, an application to provide services on unaffiliated routes. We sought comment on whether there was a smaller or larger class of carriers or services for which the blanket authorization would be appropriate, and we asked whether it would be possible to identify a class of affiliations that are equally unlikely to raise public interest concerns and, therefore, should not require prior Commission review.

20. Because we are not granting a blanket authorization, some of the reasons for limiting our proposal to unaffiliated routes are no longer of concern.[34] We now conclude that we will apply our revised streamlined procedure to all international Section 214 applications that currently qualify for streamlining, as well as to applications to serve affiliated routes where the affiliate has no facilities, or only mobile wireless facilities, at the foreign end of the route. It is, therefore, unnecessary for us to maintain three different authorization procedures depending on the type of international Section 214 authorization — one for non-streamlined applications, one for streamlined applications, and one for authorizations granted under a new blanket authorization procedure. This will substantially reduce administrative burdens and promote certainty and clarity.

21. We have often held that our primary concern in the context of international telecommunications is that a foreign carrier with market power on the foreign end of an international route may have the ability to leverage that market power into the U.S. market to the detriment of competition and consumers.[35] A carrier with market power on the foreign end of a route that owns a substantial equity interest in a U.S. carrier (or that is owned in substantial part by a U.S. carrier) may have the ability and incentive to discriminate in favor of that U.S. carrier and against other U.S. carriers. However, where the possibility of leveraging foreign market power to harm competition in the United States is very unlikely (e.g., because the applicant does not have an affiliation with a foreign carrier or because the affiliated foreign carrier clearly lacks market power), there generally is no need to review the competitive implications of the application.

22. In the past few years, we have developed a streamlined process for granting international Section 214 applications that generally are not expected to raise public interest concerns. The class of applications eligible for streamlined processing has consistently grown over those years, particularly with the implementation of the World Trade Organization (WTO) Basic Telecommunications Services Agreement and our revised competitive safeguards.[36] In determining the categories of applications to

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[34] For example, although some assignments and transfers of control of international Section 214 authorizations are eligible for our current streamlined process, there is some question whether it would have been appropriate to include them within a blanket authorization procedure. Assignments and transfers of control may raise market-power issues that are not raised by new authorizations. Also, an assignment or transfer of control of an existing carrier should not be subject to the uncertainty that may be caused by relying solely on post-grant revocation and conditioning of authorizations.

[35] *See, e.g., Foreign Participation Order* ¶¶ 143–149.

[36] In the 1992 *International Services Order*, the Commission adopted rules that permitted streamlining for applications to resell the international switched or private line services of unaffiliated U.S. facilities-based carriers, except where the applicant proposed to resell private lines to a market in which an

which our newly revised streamlined authorization process should apply, we first conclude that any application that is *currently* eligible for streamlined processing[37] should be subject to our revised streamlined procedure in which public comment will not be sought, and petitions to deny will not be entertained, on competitive or other issues. Streamlined applications currently include:

- applications to serve unaffiliated routes;
- applications to serve affiliated routes where the affiliated foreign carrier has already been found to lack market power;
- applications to serve affiliated routes where the affiliated foreign carrier has less than a 50 percent market share in the international transport and local access markets in the destination country;
- applications to serve affiliated routes where the foreign affiliate is from a WTO country if the applicant seeks to serve that country solely by reselling the switched services of unaffiliated U.S. international carriers;
- applications not otherwise eligible for streamlining if the affiliate is a foreign carrier in a WTO country and the applicant certifies that it will comply with our dominant carrier regulations for the affiliated route; and
- applications to assign or transfer control of an international Section 214 authorization where an initial Section 214 application filed by the assignee or transferee would be eligible for streamlined processing.

23. We have concluded in other proceedings that these classes of applications do not generally raise public interest concerns and, therefore, need not generally be subject to individual scrutiny and formal written orders. Our experience with our streamlined procedure has shown that

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affiliated foreign carrier owned or controlled telecommunications facilities. *See* Regulation of International Common Carrier Services, *Report and Order*, 7 FCC Rcd 7331 (1992) (*International Services Order*). In the *1996 Streamlining Order*, we expanded the class of carriers afforded streamlined processing to include carriers seeking to provide facilities-based service on unaffiliated routes, on routes where an affiliated foreign carrier operated solely as a reseller, and on routes where the Commission had already found the applicant's foreign affiliate to lack market power. *See 1996 Streamlining Order*, 11 FCC Rcd at 12,889 ¶ 12. In the 1997 *Foreign Participation Order*, we further expanded the class of applicants eligible to use the streamlined process to include (1) applications that demonstrate clearly that the foreign affiliate has less than a 50 percent market share in the international transport and local access markets in the destination country, (2) applications where the foreign affiliate is from a WTO country if the applicant requests authority to serve that country solely by reselling the switched services of unaffiliated U.S. international carriers, (3) applications not otherwise eligible for streamlining if the affiliate is a foreign carrier in a WTO country and the applicant certifies that it will comply with our dominant carrier regulations for the affiliated route, and (4) applications to assign or transfer control of an international Section 214 authorization where an initial Section 214 application filed by the assignee or transferee would be eligible for streamlined processing. *See Foreign Participation Order*, 12 FCC Rcd at 24,032 ¶ 322.

[37] See Section 63.12 of the Commission's rules for a description of the types of international Section 214 applications currently eligible for streamlined processing. *See also infra* Appendix B, § 63.12.

applications eligible for streamlined processing are very rarely opposed, and those that are opposed are very rarely denied or conditioned.[38] Based on the record of this proceeding, we now find that the benefits of public comment on the competitive or other implications of these applications are substantially outweighed by the benefits of eliminating the possibility that such comment may render an application ineligible for streamlining.[39] Furthermore, including all streamlined applications within this new streamlined procedure will eliminate the need to maintain two or more different "streamlined" processes. We therefore conclude that the applications that would qualify for streamlined processing under our current rules do not generally pose such a risk to competition or raise such other public interest concerns that we should routinely seek public comment or entertain petitions to deny.

24. Included within this class of streamlined applications are some assignments and transfers of control of international Section 214 authorizations. An assignment or transfer of control may raise competitive or other issues that warrant Commission review, but the vast majority do not. In fact, our experience since the *Foreign Participation Order* has been that no assignment or transfer application that the staff has initially designated for streamlined processing has ever been opposed on the grounds that it would tend to create or reinforce market power or to facilitate its exercise. Furthermore, it is highly likely that any application that does raise competitive issues would also involve assignments or transfers of control of submarine cable landing licenses or Title III radio licenses. Any application that includes an assignment or transfer of a cable landing license or a Title III license will continue to be subject to public notice-and-comment procedures.

25. Although we conclude that these categories of applications generally should be subject to our revised streamlined procedure, we delegate to the International Bureau the authority to identify those particular applications that do warrant public comment and additional Commission scrutiny under current stated Commission policies. For example, additional scrutiny may be required where an application may present a significant potential adverse impact on competition,[40] or where an assignment or transfer of control could eliminate a significant current or future competitor.[41] In fact, because this process gives the staff an opportunity to identify any extraordinary applications that may warrant public comment, we are able to include within this procedure a broader class of applications than if we were to adopt an approach, such as the proposed blanket authorization, that would have relied upon applicants to determine whether they qualify for the authorization. Absent such concerns,

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[38] In fact, no application originally designated for streamlined processing has been denied, and very few have been conditioned in response to issues raised by commenters.

[39] For example, several commenters supported applying the proposed blanket authorization to routes where an affiliated foreign carrier has already been found to lack sufficient market power to affect competition adversely in the U.S. market. *See* Bell Atlantic Comments at 2–3; Cable & Wireless Comments at 4; GTE Comments at 2; Primus Comments at 2; Qwest Comments at 3; SBC Reply Comments at 5; Cable & Wireless Reply Comments at 6; *see also Notice* ¶ 9.

[40] *See Foreign Carrier Entry Order* ¶ 89.

[41] *See generally* Application of WorldCom, Inc. and MCI Communications Corp. for Transfer of Control, *Memorandum Opinion and Order*, 13 FCC Rcd 18,025 (1998).

we find that grant of Section 214 authority under these circumstances will serve the public interest, convenience, and necessity.

26. We note that the Commission's ex parte rules will continue to apply to any informal communications concerning streamlined applications between outside parties and Commission staff — that is, any such informal communications must be served on the applicant or filed with the Secretary of the Commission.[42] Any such informal communications will not, however, result in an application being deemed ineligible for streamlined processing. An application can be removed from streamlined processing only in the sound discretion of Commission staff.

27. MCI opposed expanding the proposed blanket authorization to include any affiliated routes on the grounds that foreign affiliations raise unique concerns and the Commission should take an incremental approach.[43] Because we are not adopting the blanket authorization, MCI's concerns are not as relevant. The streamlined procedure we adopt will give us the opportunity to review all applications to serve affiliated routes prior to authorization. Part of the review process will include determining whether an applicant with foreign affiliations is eligible for streamlined processing either because the affiliate lacks market power or because the affiliate is in a WTO member country and the applicant agrees to be regulated as dominant.

28. We believe that it would be helpful to applicants if we can identify additional clearly defined classes of affiliations to which we will apply our streamlined procedure. It is important to draw bright lines so that it will be clear to potential applicants which routes are eligible for this streamlined process. We cannot, as some have suggested,[44] allow the applicants themselves to determine which affiliated foreign carriers lack market power. Market power is often a complex, fact-driven determination about which applicants, in good faith, and the Commission may draw different conclusions. Qwest suggests that the Commission consider establishing a procedure whereby carriers may file a petition for declaratory ruling that a foreign carrier lacks market power.[45] Accordingly, we will accept petitions for declaratory ruling that a foreign carrier lacks sufficient market power to affect competition adversely in the U.S. market. A declaratory ruling issued by the Commission may be cited in an applicant's Section 214 application for the purpose of establishing its eligibility for streamlined authorization on the affiliated route.

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[42] *See* 47 C.F.R. § 1.1206 (1997).

[43] *See* MCI Comments at 4; *see also* WorldCom Reply Comments at 1 (limiting the blanket authorization to unaffiliated routes "would create a clear, simple, bright-line standard"). *Contra* BellSouth Reply Comments at 4; SBC Reply Comments at 11–12.

[44] *See, e.g.*, SBC Comments at 4–5; SBC Reply Comments at 5–6; *see also* Cable & Wireless Comments at 4 (asserting that the procedure should apply where an affiliated foreign carrier has "a demonstrable, insignificant market share but has yet to be held nondominant").

[45] Qwest Comments at 3.

29. We find that it is unlikely that a carrier that does not own or control telecommunications facilities in a proposed destination foreign market would have sufficient market power to affect competition adversely in the U.S. market.[46] As we recognized in the *International Services Order*, there appears to be no substantial risk of discrimination against unaffiliated U.S. carriers by a foreign carrier that does not own or control any telecommunications facilities in the affiliated market.[47] We have been presented with no case where we have found that a foreign carrier operating solely on a resale basis has sufficient market power to affect competition adversely in the U.S. market. We also clarify here our position that, as a general rule, the ownership or control of switching facilities does not by itself present a substantial risk of discrimination. We believe that market power will generally exist only if a carrier also owns or controls transport capacity. Thus, for example, an application from a carrier whose affiliate owns only switching facilities in a foreign market would be eligible for streamlined processing. We also have been presented with no case where we have found that a foreign carrier with only mobile wireless facilities (and no wireline facilities) has sufficient market power to affect competition adversely in the U.S. market. Our conclusion that both types of service providers are unlikely to raise market power concerns is supported by several commenters.[48] We reserve the right to revisit these conclusions if necessary, particularly if the use of mobile wireless units in foreign markets expands so rapidly that mobile wireless carriers may be able to exercise bottleneck control over terminating international telecommunications. The rule we now adopt will codify our findings and allow applicants to take advantage of our streamlined authorization procedure to become authorized to provide service between the United States and foreign points on a non-dominant basis where affiliated carriers have no facilities (other than switching facilities) or only mobile wireless facilities.[49]

30. CompTel suggests that we include in our modified authorization procedures applications to serve affiliated routes where the affiliated foreign carrier does not provide international services to or from the United States.[50] As WorldCom and MCI point out, however, such a carrier may

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[46] For this purpose, a carrier is said to own facilities in a foreign market if it holds an ownership, indefeasible-right-of-user, or leasehold interest in bare capacity in international or domestic telecommunications facilities (excluding switches). *See infra* Appendix B, § 63.12(c)(1)(iii).

[47] *See International Services Order*, 7 FCC Rcd at 7343 ¶ 20 n.41 (1992) (finding that "there appears to be no substantial risk of discrimination against unaffiliated U.S. carriers where the foreign carrier-affiliate does not own any telecommunications facilities in the foreign market").

[48] *See, e.g.*, BellSouth Comments at 2; Cable & Wireless Comments at 4; CompTel Comments at 3; GTE Comments at 2; Primus Comments at 2 (stating that an affiliate with no facilities or only mobile wireless facilities poses little threat of foreign bottleneck control); AT&T Reply Comments at 4.

[49] *See infra* Appendix B, § 63.12(c)(1)(iii). Under our current rules, these applicants would likely be eligible for streamlined processing upon demonstrating that their affiliated foreign carriers lack 50 percent market share in the relevant affiliated markets. *See* 47 C.F.R. § 63.12(c)(1)(i); § 63.10(a)(3). This rule relieves applicants of the obligation to certify their affiliates' lack of 50 percent market share.

[50] CompTel Comments at 3.

nevertheless control bottleneck facilities in the foreign market (such as intercity or local exchange access facilities) that can be leveraged to harm competition in the U.S. market.[51] GTE suggests that we include all affiliates that operate in WTO member countries that have liberalized in accordance with their market opening commitments.[52] Adopting GTE's proposal either would require a lengthy and difficult fact-finding procedure to determine compliance with WTO commitments or would require leaving the determination to applicants' own subjective judgment.[53] Therefore, applicants falling into either the situation described by CompTel or that described by GTE will not be eligible for streamlined processing unless they meet one of the other criteria listed in Section 63.12.

31. We reject suggestions by AT&T and MCI to limit the applicability of our new procedures. AT&T argues that applications involving dominant foreign carrier interests of 10 percent and above should remain subject to our existing notice-and-comment procedures. Any noncontrolling interest of 25 percent or below falls outside the definition of *affiliation* that we have used since the 1995 *Foreign Carrier Entry Order*. AT&T is thus arguing that some interests that do not rise to the level of an affiliation should nevertheless remain subject to our current notice-and-comment procedures.

32. We have set our affiliation standard to the level of equity interest in a U.S. carrier below which, we have previously concluded, there is rarely a sufficient incentive to discriminate in favor of the affiliated carrier.[54] We have thus defined *affiliation* as a greater than 25 percent interest, or a controlling interest at any level, by a foreign carrier in a U.S. carrier or by a U.S. carrier in a foreign carrier.[55] In the *Foreign Participation Order*, we reaffirmed the 25-percent affiliation standard and further liberalized our policies by eliminating the requirement that authorized carriers submit prior notification to the Commission of new 10-percent ownership interests by foreign carriers. Now, authorized carriers must report an investment in or by a foreign carrier only if it results in an

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[51] *See* MCI Reply Comments at 3; WorldCom Reply Comments at 2.

[52] GTE Comments at 3; *see also* SBC Reply Comments at 16.

[53] *See* AT&T Reply Comments at 5 n.3; MCI Reply Comments at 2; WorldCom Reply Comments at 1–2.

[54] *See* Market Entry and Regulation of Foreign-Affiliated Entities, *Report and Order*, 11 FCC Rcd 3873, 3903–07 ¶¶ 78–87 (1995) (*Foreign Carrier Entry Order*); *see also id.* at 3905 ¶ 85 (finding that the potential for anticompetitive conduct addressed by a 10 percent affiliation standard would not justify the detrimental impact such scrutiny would have on investment in U.S. carriers and the administrative burdens associated with its application).

[55] *See* 47 C.F.R. § 63.18(h)(1)(i) (1997); *infra* Appendix B, § 63.09(e). The definition also includes investments over 25 percent in a foreign carrier by any party that controls a U.S. carrier, and investments over 25 percent in a U.S. carrier by any party that controls a foreign carrier. There can also be an affiliation if two or more foreign carriers that are parties to, or beneficiaries of, a contractual relation affecting the provision or marketing of basic international telecommunications services in the United States invest in a U.S. carrier.

"affiliation," which generally means a controlling investment or an investment over 25 percent.[56] In that order, we found that "a foreign carrier's investment in an authorized carrier will very rarely raise any public interest issues unless it creates an affiliation."[57] AT&T points out that we found, in the *Foreign Carrier Entry Order* and the *Foreign Participation Order*, that we would continue to scrutinize investments lower than 25 percent that might nevertheless pose a significant potential impact on competition.[58] Based on our experience with the affiliation standard, however, we believe that these situations would be sufficiently rare[59] that they do not outweigh the public interest benefits of including all unaffiliated carriers within our revised streamlined authorization procedure.

33. We note, also, that we will continue to require applicants to identify all ten-percent-or-greater direct and indirect equity owners in their initial applications.[60] Furthermore, our definition of *affiliation* continues to include any controlling interest, even if that interest is below 25 percent.[61] Finally, because Commission staff will have discretion to seek public comment on an extraordinary application that would otherwise qualify for streamlined processing,[62] we are confident that the streamlined procedures we adopt here strike the appropriate balance between preventing anticompetitive effects and promoting swift and certain market entry.

34. MCI argues that the Commission should continue to require prior notice-and-comment procedures when an applicant seeks authority to provide international services from any region in the United States in which it has bottleneck control over local facilities. Such carriers, MCI argues, may have the ability to leverage their control over local facilities to harm competition in the U.S. international services market.[63]

35. We are not persuaded that there is any public interest reason to adopt a general rule maintaining prior public notice-and-comment procedures for international Section 214 applications filed by local exchange carriers (LECs) that otherwise qualify for streamlined processing. We reach

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[56] *See Foreign Participation Order*, 12 FCC Rcd at 24,035–36 ¶¶ 332–333.

[57] *Id.* at 24,035–36 ¶ 332.

[58] AT&T Comments at 2–6; *see Foreign Participation Order*, 12 FCC Rcd at 24,036 ¶ 332 n.679; *Foreign Carrier Entry Order*, 11 FCC Rcd at 3906 ¶ 89.

[59] To date the Commission has only found one instance where a less than 25 percent ownership interest posed a significant potential impact on competition. *See* Sprint Corporation, *Declaratory Ruling and Order*, 11 FCC Rcd 1850 (1996) (*Sprint Order*).

[60] *See infra* para. 76.

[61] *See infra* para. 80.

[62] *See supra* para. 25.

[63] *See* MCI Comments at 4.

this conclusion with respect to both the Bell Operating Companies (BOCs) and the non-BOC independent local exchange carriers (ILECs) for services originating in their local exchange service areas.

36. With respect to international Section 214 applications filed by the BOCs, we note that Section 271 of the Communications Act, as amended by the Telecommunications Act of 1996,[64] prohibits the BOCs from providing interLATA services that originate in their respective in-region states until the Commission finds that they have satisfied the requirements of that section. As we have previously recognized, international service is interLATA service subject to the requirements of Section 271.[65] A BOC will not, therefore, be permitted to take advantage of the streamlined procedure to obtain authorization to provide international services from any of its in-region states until the Commission approves its Section 271 application to provide interLATA services from that state. MCI has not presented any basis for us to conclude that, once we have made the requisite findings to support a grant of in-region interLATA authority, there will be any additional public interest issues of relevance for us to consider other than those raised by a BOC's affiliation with a foreign carrier in a proposed destination market or issues that may be raised by the Executive Branch. The sole public interest issue that MCI has raised to date with respect to BOC provision of international service (other than issues directly relevant to the Section 271 inquiry) is BOC "grooming" of international return traffic. MCI has expressed concern that, under such an arrangement, a BOC could negotiate to receive from its foreign carrier correspondents U.S.-inbound return traffic that terminates specifically in the BOC's in-region states. MCI claims that the BOC would thus keep any settlement payment and not have to pay terminating access charges to another local carrier.[66] As we recently noted in the *BOC Out-of-Region Interexchange Services Order*, the grooming described by MCI would be subject to prior Commission approval under our International Settlements Policy (ISP). As we also noted there, we have requested comment in another rulemaking proceeding whether grooming arrangements present a potential for anticompetitive effects, "particularly with respect to arrangements between foreign carriers with market power and incumbent local exchange carriers."[67] In the event MCI, or any other interested party, discerns a need for particular conditions to govern the BOCs' provision of international service (other than those already applied to them by the Communications Act and our

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[64] 47 U.S.C. § 271 (Supp. II 1996).

[65] *See* Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace, *Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61*, 12 FCC Rcd 15,756 (1997), *recon.*, 12 FCC Rcd 8730 (1997), *recon. pending*.

[66] *See* Bell Operating Company Provision of Out-of-Region Interstate, Interexchange Services, CC Docket No. 96-21, *Order on Reconsideration*, FCC 98-272, ¶¶ 11–13 (rel. Oct. 20, 1998) (*BOC Out-of-Region Interexchange Services Order*).

[67] *See id.* ¶ 13 (citing 1998 Biennial Regulatory Review — Reform of the International Settlements Policy and Associated Filing Requirements, Regulation of International Accounting Rates, IB Docket No. 98-148, *Notice of Proposed Rulemaking*, 13 FCC Rcd 15,320, ¶ 43 (1998)).

rules), we believe that other proceedings provide a better opportunity for developing a full record on the merits of imposing additional regulations.

37. With respect to the non-BOC ILECs, we have issued numerous grants of international Section 214 authority to these carriers, and their applications have rarely been opposed for reasons related to an ILEC's control of local exchange and exchange access facilities.[68] In the highly unusual circumstance of a contested application, petitioners' allegations have focused primarily on carrier practices that are addressed by statutory obligations under Title II of the Communications Act and existing rules and regulations implementing those provisions of the Act.[69] We see no reason to maintain notice-and-comment procedures for all ILEC applications that would otherwise be streamlined when we have ample enforcement authority over these carriers' provision of interstate access services and facilities. We also find that our enforcement procedures are the more appropriate forum for addressing allegations of ILEC misconduct because any such misconduct is likely to affect interexchange carrier provision of international *and* interstate, domestic interexchange service.

38. We sought comment on whether our conclusions should apply equally to commercial mobile radio service (CMRS) licensees. PCIA and others argue that the Commission should forbear altogether from imposing Section 214 requirements for CMRS operators' provision of international service on unaffiliated routes and for CMRS operators' resale of unaffiliated U.S. carriers' services on all routes.[70] However, the public interest concerns discussed above as reasons for maintaining prior review of all international Section 214 applications[71] apply equally to CMRS licensees. Therefore, for the same reasons and in the same manner as for other classes of carriers, and pursuant to Section 11(a)(2), we find that our existing Section 214 authorization procedures as applied to CMRS providers are no longer necessary in the public interest as a result of meaningful economic cooperation between providers. Also, we find that the modified procedure that we adopt pursuant to Section 11(b) should apply equally to CMRS providers.

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[68] *But see* Telefonica de Puerto Rico, Inc., File Nos. ITC-96-214 and EID-735, *Order, Authorization and Certificate*, 13 FCC Rcd 12,344 (Int'l Bur. 1998) (*TPRI* proceeding).

[69] *See generally id*. In the *TPRI* proceeding, one petitioner also raised issues relevant to the Cable Landing License Act, 47 U.S.C. §§ 34–39. The International Bureau considered these issues in both the *TPRI* proceeding and in the context of the same petitioner's request that we require the Puerto Rico Telephone Company to divest its interests in the corporation that operates the Isla Verde cable landing station in Puerto Rico. *See* Telefonica Larga Distancia de Puerto Rico et al., File Nos. SCL-92-002, SCL-95-008, SCL-95-012, *Order*, 13 FCC Rcd 13,175 (Int'l Bur. 1998).

[70] *See* PCIA Comments at 3–13; *see also* GTE Comments at 4; Iridium Comments at 3; SBC Comments at 7–8; Bell Atlantic Reply Comments at 5.

[71] *See supra* paras. 14–16.

39. We also find that our decision not to forbear pursuant to Section 10 from requiring international Section 214 authorizations for any class of applicants[72] applies equally to CMRS providers. We note that competition among CMRS providers has increased significantly,[73] and forbearance from requiring Section 214 authorizations for the provision of international services by CMRS licensees might further enhance competition in this market by allowing CMRS licensees to begin providing international services without obtaining any further authorizations. Nevertheless, the extent to which forbearance would enhance competition is substantially outweighed by the public interest considerations discussed earlier.[74] In particular, prior review is needed to address the national security and law enforcement concerns raised by the Executive Branch. We note that the streamlined authorization procedure and other deregulatory initiatives that we adopt in this order will relieve CMRS carriers of substantial regulatory burdens. Almost any CMRS carrier that plans to provide international services will be able to obtain a global authorization 14 days after public notice regardless of whether public comment has been filed. A global authorization, moreover, does not provide specific signals to competitors about the services to be offered or when service will be initiated.[75]

40. Accordingly, we find that the public interest, convenience, and necessity would be served by authorizing telecommunications carriers to provide international service pursuant to the procedures and standards described in this section and codified in Sections 63.12 and 63.20 of the Commission's rules.

B. Forbearance from *Pro Forma* Assignments and Transfers of Control

41. In the *Notice*, we proposed to allow carriers to undertake *pro forma* assignments and transfers of control of international Section 214 authorizations without Commission approval. We proposed to create a new rule to define *pro forma* for this purpose as a transaction that fits within certain defined categories and results in no substantial change in ownership or control of the carrier or

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[72] *See supra* paras. 17–18.

[73] Cellular Telecommunications Industry Association's Petition for Forbearance from Commercial Mobile Radio Services Number Portability Obligations, WT Docket No. 98-229, *Memorandum Opinion and Order*, FCC 99-19, ¶ 19 & Section III.B.3 (rel. Feb. 9, 1999).

[74] *See supra* paras. 14–16.

[75] *See infra* Appendix B, § 63.18(e)(1)–(2) (applications for global facilities-based and global resale authority); §§ 63.22–.23 (rules applicable to facilities-based and resale carriers).

its authorization.[76] We proposed to require Commission notification within 30 days of *pro forma* assignments but not to require any notification of *pro forma* transfers of control.[77]

42. We tentatively concluded in the *Notice* that forbearance from reviewing *pro forma* assignments and transfers of control would meet the forbearance standard in Section 10 of the Communications Act.[78] No commenter disputes this tentative conclusion,[79] and several parties express support.[80] Regulatory review of these transactions yields no significant public interest benefits, but may delay or hinder transactions that could provide substantial financial, operational, or administrative benefits to carriers. We therefore adopt our proposal to forbear from reviewing *pro forma* assignments and transfers of control of international Section 214 authorizations for the reasons expressed in the *Notice*.[81]

43. We also adopt our tentative conclusions that post-consummation notification should be required for *pro forma* assignments but not for transfers of control. Ameritech agrees with our tentative conclusion that post-consummation notification is necessary for assignments and is not unduly burdensome.[82] Primus argues that there is no value in requiring notification of *pro forma*

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[76] *See Notice* Appendix A, § 63.24; *see also infra* para. 45.

[77] An assignment is a transaction in which a Commission authorization is assigned from one entity to another entity. Following an assignment, the authorization is held by an entity other than the one to which it was originally granted. A transfer of control is a transaction in which the Commission authorization remains held by the same entity, but there is a change in the entities that control the authorized carrier.

[78] 47 U.S.C. § 160 (Supp. II 1996).

[79] The FBI initially objected to this proposal, *see* FBI Comments ¶¶ 16–22, but withdrew its opposition by letter after discussions with Commission staff. The letter stated that the FBI "does not object to this change where the assignments or transfers involve applications where there will be no ultimate ownership change of the entities involved." Letter from Larry R. Parkinson, General Counsel, Federal Bureau of Investigation, to Magalie Roman Salas, Secretary, Federal Communications Commission, at 4 (Oct. 27, 1998); *see also* DoD Comments at 5 ("DoD does not object to this streamlining effort so long as these Section 214 authorizations could in a convenient fashion be subject to post-grant conditions or revocations under appropriate circumstances."). Although some insubstantial change in ownership can result from a *pro forma* transaction, the degree of change that can result is no greater than other transactions that are not, and have never been, subject to Commission review. For example, small, noncontrolling ownership interests can change hands without triggering any FCC reporting requirements.

[80] *See, e.g.*, Bell Atlantic Comments at 4; DT Comments at 4; FaciliCom Comments at 2; GTE Comments at 5; Iridium Comments at 4; MCI Comments at 5; PCIA Comments at 2 n.3; Primus Comments at 2; WorldCom Comments at 2.

[81] *See Notice* ¶¶ 15–17.

[82] *See* Ameritech Comments at 7.

assignments and that such a requirement would impose an unnecessary burden.[83] As we stated in the *Notice*, we believe that it is important to maintain complete and current records of the identities of authorized international carriers.[84] As we reduce barriers to market entry, we must ensure that we are able to enforce our post-entry rules, and the ability to identify carriers providing service in the market is important to those enforcement efforts. No such identity change results from a *pro forma* transfer of control, but it does result from an assignment. The carriers' notifications will be used only to ensure that there is an accurate public record of the identity of every authorized carrier. These records may be necessary, for example, to verify whether carriers are submitting the reports that are required by Commission rules. We will periodically issue public notice of these assignments.

44. Primus suggests, in the alternative, that we require notification of assignments to be included in other reports routinely filed with the Commission, such as the annual traffic-and-revenue report required by Section 43.61 of the Commission's rules. Requiring notification of assignments in other routine reports would allow as much as a year to pass before the information is available to the Commission and to the public. In order to verify compliance with reporting requirements, and in order to maintain more current records, we believe that it would better serve the public interest to require notification within 30 days of consummation of the assignment. We therefore adopt our tentative conclusion.

45. Primus seeks clarification that the new rule would apply to "(1) assignments between a parent and subsidiary even if intervening subsidiaries exist, (2) assignments and transfers arising out of the reincorporation in a new state, (3) mere name changes, and (4) changes in the form of the business entity (such as change from a partnership, an LLC or LLP to a corporation) as long as the underlying controlling ownership does not change." We agree that such transactions are "nonsubstantial" and should not require prior Commission approval. To address the first situation, we will insert "direct or indirect" in paragraph (a)(5) of Section 63.24. We will insert a parenthetical in paragraph (a)(4) to address the second and fourth situations. The third situation, a name change, is not an assignment or transfer of control, and it will be addressed by Section 63.21(j), which will provide that an authorized carrier may change its name without prior approval but shall notify the Commission within 30 days.

C. Provision of Service by Wholly-Owned Subsidiaries

46. In the *Notice*, we proposed to allow any authorized international carrier to provide its authorized services through any wholly-owned subsidiaries.[85] Our proposed rule would state that an international Section 214 authorization applies to the entity holding the authorization, as well as any wholly-owned subsidiaries. We emphasized that this provision should not be used to circumvent any structural-separation provision of the Commission's rules and sought comment on whether it would do so.

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[83] *See* Primus Comments at 3.

[84] *See Notice* ¶ 19.

[85] *See id.* ¶ 22.

47. Commenters expressed widespread support for this proposal.[86] As Iridium stated, "[f]or a variety of commercial reasons, it is customary for a provider of international telecommunications services to operate through subsidiaries in individual markets."[87] No commenter suggested that such a provision would defeat any of the Commission's structural-separation requirements,[88] and we believe that the rule as proposed would not do so. We reiterate that commercial reasons such as those cited by Iridium would not raise any new issues suggesting a need for Commission review if the subsidiaries are subject to exactly the same ownership. A wholly-owned subsidiary could have no affiliations[89] that its parent does not have, and review of its application would provide no new information for the purpose of a national security, law enforcement, or foreign policy evaluation. We therefore adopt our proposal, with the modifications discussed below, as a new paragraph (i) of Section 63.21.

48. The rule we adopt will, however, require any subsidiary operating pursuant to its parent's authorization to notify the Commission by letter within 30 days after beginning to provide service. As we discuss elsewhere in this Report and Order,[90] it is important to our enforcement efforts to be able to identify every company that is authorized to provide international telecommunications services. This notification requirement does not add a significant burden and will not significantly delay the provision of new services. In response to Primus's request, we confirm that the provision that we now adopt applies even when the subsidiary uses a different operating name.[91]

49. Primus also seeks confirmation that a subsidiary may be held indirectly through intervening 100-percent-owned entities and still operate pursuant to the authority of its parent.[92] We confirm that this would be our policy and clarify Section 63.21(i) by referring to "direct or indirect" subsidiaries.

50. We emphasize that allowing authorized international carriers to provide international services through wholly-owned subsidiaries must not be used to circumvent any structural separation that may be required by any current or future Commission rules, such as the requirement in Section

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86 *See, e.g.*, Bell Atlantic Comments at 5; Cable & Wireless Comments at 5; GTE Comments at 5; Iridium Comments at 5; MCI Comments at 6; Primus Comments at 4; WorldCom Comments at 3.

87 Iridium Comments at 5.

88 *See* BellSouth Comments at 3; MCI Comments at 6.

89 *See* 47 C.F.R. § 63.18(h)(1)(i) (1997) (defining affiliation for this purpose); *infra* Appendix B, § 63.09(e) (same).

90 *See supra* para. 43 (notification of *pro forma* assignments); *infra* para. 83 (notification of name changes).

91 Primus Comments at 4.

92 *Id.*

63.10 that carriers regulated as dominant for the provision of service on an international route must provide service through an entity that is separate from its affiliated foreign carrier. Carriers should also be advised that Section 63.21(i) authorizes only 100-percent-owned subsidiaries, and that if, at any time, such a subsidiary is no longer 100-percent owned by the authorized carrier, it may not operate without first obtaining its own authorization pursuant to Section 63.18.

51. Primus also asks that we clarify whether separate subsidiaries will continue to be required to maintain separate tariffs or to file concurrences in their parent's tariffs. Primus "recommends that carriers be given the choice to maintain separate tariffs, concur in an affiliate's tariff, or share in an affiliate's tariff by including sections in the tariff setting forth rates and other terms specific to each operating subsidiary's offerings."[93] Part 61 of the Commission's rules includes two rules permitting common carriers (which would include affiliates) to concur in another common carrier's tariff: (1) Concurrences are permitted for "through" services that are jointly provided by two or more carriers. In this case, the issuing carrier's[94] tariff can either specify the concurring carrier's *rates and regulations* or specify where those *rates and regulations* can be found.[95] (2) Concurrences for other purposes are permitted when an issuing carrier's tariff specifies the concurring carrier's *rates and points of service* if they are different from the issuing carrier's *rates and points of service*.[96] We believe that these rules provide sufficient flexibility for wholly-owned subsidiaries operating pursuant to their parents' authorizations. Primus does not explain its "sharing" proposal in detail sufficient to enable us to discern the difference, if any, between its proposal and the concurrences permitted under Part 61 of our rules.

52. GTE asks that the Commission clarify that any reporting could be consolidated into a single filing.[97] GTE's proposal may have merit with respect to certain reporting requirements, but the proposal is not specific enough, nor is the record sufficiently developed, to address GTE's proposal here. We direct the Common Carrier Bureau and International Bureau to consider whether revisions to the filing manuals for Sections 43.61 and 43.82 are necessary to clarify the circumstances in which carriers may consolidate their international traffic and revenue reports and circuit status reports. GTE is also free to raise this issue in other relevant proceedings.

53. Other commenters urge us to expand the proposal so that any *commonly-owned* affiliates and subsidiaries — including "parent" companies and "sister" subsidiaries — could share a single

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93 *Id*.

94 The "issuing carrier" is the carrier filing the tariff. 47 C.F.R. § 61.3(r).

95 *Id*. § 61.134.

96 *Id*. § 61.135.

97 GTE Comments at 5; *see also* SBC Reply Comments at 17.

Section 214 authorization.[98] Cable & Wireless's proposal would allow a sister subsidiary to obtain a *separate* authorization by filing a notification letter listing the Commission orders upon which it is relying. Cable & Wireless states that the notification letter would raise no new issues and could be granted by Commission staff simply by stamping the letter granted and not issuing a formal written order.[99] In opposition, AT&T argues that these proposals would potentially extend Section 214 authorizations to large numbers of foreign carriers in different countries without any review of the separate issues that may be raised by their authorization.[100]

54. We conclude that no new issues are raised when a company with exactly the same ownership as an authorized carrier seeks Commission authorization to provide the same international services. We do, however, find that a separate authorization should be required when the company seeking authority to provide service is not controlled by the carrier whose authorization it seeks to use. We therefore decline to include so-called "sisters" and "parents" within the scope of Section 63.21(i). However, we will grant some regulatory relief by allowing any entity that seeks authority to provide the same international services, subject to the same conditions, that have already been authorized for a company with the same ownership to utilize the streamlined authorization procedure; it would therefore not be subject to public comment.[101]

55. Carriers should also be aware that they may take advantage of the *pro forma* assignment procedure to assign an authorization to a parent company. Following the assignment, the originally authorized carrier and any other wholly-owned subsidiaries of the parent can operate pursuant to Section 63.21(i).

56. GTE asks us to permit partnerships in which the carrier has a controlling interest to be able to operate pursuant to the carrier's authorization.[102] We agree with MCI that a controlling interest that does not amount to 100-percent ownership may raise additional issues,[103] such as additional

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98 *See, e.g.*, GTE Comments at 5; Iridium Comments at 5; MCI Comments at 6; SBC Reply Comments at 16–17; WorldCom Comments at 3.

99 Cable & Wireless Comments at 5.

100 AT&T Reply Comments at 7.

101 We note that this rule will allow subsidiaries and "sister" corporations of Cable & Wireless, Inc., to become authorized to provide services pursuant to authorizations that were granted before our 1995 *Foreign Carrier Entry Order*. *See* TDX Systems, Inc., File No. ITC-86-108, *Order, Authorization and Certificate*, Mimeo No. 6609, 1986 WL 290969 (rel. Sept. 2, 1986). We see no reason as a general matter to restrict Cable & Wireless's existing authorizations to any particular corporate entity so long as any entity providing service pursuant to those authorizations has the same ultimate ownership.

102 GTE Comments at 5.

103 MCI Reply Comments at 5.

foreign affiliations or minority ownership or beneficial interest by persons or entities who are barred from holding a Commission authorization.

D. Use of Non-U.S.-Licensed Facilities

57. In the *Notice*, we proposed to allow any carrier authorized to provide facilities-based services to use any undersea cable system to provide its authorized services.[104] Several commenters expressed support for this proposal,[105] and no commenter opposed it.

58. Under our current rules, a carrier authorized to provide "global" facilities-based services may use any facilities in its provision of its authorized services except as provided on the "Exclusion List for International Section 214 Authorizations," a list maintained by the International Bureau. A current version of the exclusion list is included as part of each public notice that lists granted streamlined Section 214 applications and is available in the International Bureau's Reference Center and on the Commission's Web site.[106] A carrier with a global facilities-based authorization may not use non-U.S.-licensed facilities unless and until it has received specific prior approval or the Commission generally approves the use of those facilities and so indicates on the exclusion list. In the *Notice*, we tentatively concluded that there is no longer any reason for a blanket prohibition on the use of non-U.S.-licensed undersea cable systems.

59. Since we adopted this exclusion-list policy in the *1996 Streamlining Order*,[107] no one has brought to our attention any public interest reason to prohibit the use of any particular cable systems for the provision of U.S. international traffic. Indeed, as the International Bureau stated in its *Exclusion List Order*,[108] the Commission adopted the exclusion list as a procedural mechanism to enable carriers with global authority to use non-U.S.-licensed facilities. The Bureau encouraged carriers negotiating agreements to acquire capacity on non-U.S.-licensed facilities that did not appear on the exclusion list to promptly request that the facility be added, and it anticipated that the procedure would be expeditious.[109] Parties supporting our tentative conclusion state that permitting the use of non-U.S. licensed cable systems as part of a carrier's global facilities-based authorization would increase the number of facilities options available to carriers. Tyco states that the current rule is

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[104] *Notice* ¶¶ 23–28.

[105] *See, e.g.*, Ameritech Comments at 7–8; DT Comments at 4; FaciliCom Comments at 2–3; MCI Comments at 7; Primus Comments at 5; Tyco Comments at 2; WorldCom Comments at 4; AT&T Reply Comments at 6.

[106] *See* <http://www.fcc.gov/ib/td/pf/exclusionlist.html>.

[107] *See 1996 Streamlining Order*, 11 FCC Rcd at 12,892–93 ¶¶ 16–19.

[108] Streamlining the International Section 214 Authorization Process and Tariff Requirements — Exclusion List, IB Docket No. 95-118, *Order*, DA 96-1205 (Int'l Bur., rel. July 29, 1996).

[109] *Id.* ¶ 7.

harmful to carriers and cable owners because it limits choices and discourages undersea cable competition. Tyco also argues that the current rule is inconsistent with the current international regulatory environment and commercial reality. Tyco argues that the current rule distorts carriers' incentives in obtaining cable capacity and achieves no clear public interest benefit.[110]

60. For these reasons and those discussed in the *Notice*,[111] we now amend Sections 63.18(e)(1) and 63.15(a) of our rules and remove all non-U.S.-licensed undersea cable systems from the exclusion list.[112] Any facilities-based carrier will be allowed to use any foreign cable system to provide its authorized international services.[113] If it becomes necessary to prohibit the use of any specific cable system (whether or not it lands on U.S. shores), we may amend the exclusion list. We will amend the exclusion list only after providing public notice and an opportunity for affected parties to comment on the amendment.[114]

61. The FBI objected to our use of the word "presumption" in describing this proposal and argued that "no presumption issue should be considered or decided in this docket."[115] We did not intend to propose that any new substantive presumption would apply in determining whether the use of any particular cable system would be prohibited, and we do not adopt any such presumption.

62. In the *Notice*, we tentatively concluded that we should *not* modify our current practice of requiring specific Section 214 authority for the use of non-U.S.-licensed satellite systems unless otherwise indicated on the exclusion list.[116] We tentatively concluded that a decision whether to permit a particular facilities-based carrier to use a non-U.S.-licensed satellite system or whether

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110 Tyco Comments at 2.

111 *See Notice* ¶¶ 23–28.

112 *See infra* Appendix C (Exclusion List for International Section 214 Authorizations, as amended).

113 Notwithstanding this change, no carrier may use any undersea cable system that lands on the shores of the United States unless the cable system has a valid cable landing license pursuant to the Submarine Cable Landing License Act, 47 U.S.C. §§ 34–39, and 47 C.F.R. § 1.767.

114 *See 1996 Streamlining Order*, 11 FCC Rcd at 12,893 ¶ 18. If the President issues an Executive Order to prohibit or restrict service to a particular country or to prohibit or restrict use of particular facilities, however, we will amend the exclusion list and issue a public notice to that effect *without* opportunity for comment or hearing. *See, e.g.*, International Emergency Economic Powers Act, 50 U.S.C. §§ 1701–1706 (1994) (providing that, where a foreign country poses a threat to national security, the President has authority to investigate, regulate, or prohibit commercial and financial activities with that country).

115 *See* FBI Reply Comments at 9; *Notice* ¶ 25 ("We believe that the presumption should now favor permitting the use of non-U.S.-licensed cable systems.").

116 *Notice* ¶ 28.

generally to permit use of a non-U.S.-licensed satellite system by all facilities-based carriers should be made pursuant to the policies adopted in our *DISCO II Order*.[117] PanAmSat agrees that applications to use non-U.S.-licensed satellites should continue to be evaluated pursuant to the policies adopted in the *DISCO II Order*.[118] WorldCom and MCI disagree.[119] They suggest that, once the Commission authorizes the use of a particular satellite system by authorized carriers for service to specified points, the Commission should place that satellite system on a list and allow any authorized carrier to use that system in providing its authorized services to those same points without further Section 214 authorization and without amending its Title III licenses, as long as the satellite system is within the orbital arc and frequency bands of the carrier's authorized earth stations. PanAmSat objects to this proposal, arguing that applications to use non-U.S.-licensed satellite systems raise numerous policy issues that should be evaluated under the procedures adopted in *DISCO II*.[120] The FBI also states that "non-U.S.-licensed satellite systems remain a matter of sensitivity requiring ongoing Section 214 *prior* review and authorization."[121]

63. We conclude that we should not at this time change our policy regarding the use by authorized carriers of non-U.S.-licensed satellite systems on this record. Although, on a more developed record, we might be able to conclude that the Section 214 inquiry is redundant with the Title III analysis that is applied to applications to obtain an earth station license to communicate with a non-U.S.-licensed satellite, we believe it would be inappropriate to draw that conclusion at this time, particularly in light of the possible national security or law enforcement issues that may be raised by the use of non-U.S.-licensed satellites. Therefore, we will continue to require specific Section 214 approval for the use of a non-U.S.-licensed satellite system.

E. Procedures for Authorizing Submarine Cable Systems

64. Under our current rules, applicants for common carrier cable landing licenses are required to file two applications: a cable landing license application under Section 1.767 of the Commission's rules[122] and a Section 214 application for the construction of new lines under Section 63.18(e)(6) of

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[117] *See* Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, *Report and Order*, 12 FCC Rcd 24,094 (1997) (*DISCO II Order*).

[118] PanAmSat Comments at 2.

[119] WorldCom Comments at 7; MCI Reply Comments at 6.

[120] PanAmSat Reply Comments at 1–2.

[121] FBI Comments at 14.

[122] 47 C.F.R. § 1.767 (1997) (adopted pursuant to the Submarine Cable Landing License Act and Executive Order No. 10,530).

the Commission's rules. The Submarine Cable Landing License Act,[123] which the Commission is charged with executing,[124] requires that a cable landing license be obtained for any undersea cable directly or indirectly connecting the United States with any foreign country. To streamline this process, we proposed to eliminate the need to apply for separate Section 214 authority to build a new common carrier system by including the authorization to construct new lines among the rights granted to all authorized facilities-based carriers.[125] We noted that this proposal may necessarily be subject to a change in application fees, which are set by statute and cannot be changed by the Commission.[126]

65. This streamlining measure was supported by a number of parties.[127] MCI and Tyco agree that a combined authorization process would better serve the public interest. For instance, MCI argues that the cable landing license application itself provides all the information needed by the Commission to determine whether construction and operation of a new submarine cable will be in the public interest. Likewise, Tyco finds the current process "onerous and lengthy" and claims that it deters investors in the systems until they are licensed because carriers must compile extensive information in order to obtain an international facilities-based authorization and then must regenerate that information to obtain Section 214 authority for new lines.[128] WorldCom agrees that there is no reason that the filing requirements should be different for common carrier applications than for non–common carrier applications.[129] In addition, DoD believes that the cable landing license application is sufficient for conducting a pre-grant review.[130]

66. Currently, the application fee for a non-common carrier cable landing license is $12,975, while the fee for a common carrier cable landing license is only $1,310.[131] The application fee for a Section 214 authorization for "overseas cable construction" is $11,665, bringing the total of the

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123 47 U.S.C. §§ 34–39 (1994).

124 *See* Exec. Order No. 10,530, *reprinted as amended in* 3 U.S.C. § 301 app. at 459-60 (1994) (delegating to the Commission the President's authority to issue cable landing licenses).

125 *See Notice* ¶¶ 29–33.

126 *See id.* ¶ 33; *see also* 47 U.S.C. § 158 (setting application fees and directing the Commission to adjust those fees to reflect changes in the Consumer Price Index).

127 DT Comments at 4; GTE Comments at 5; MCI Comments at 7; Primus Comments at 5; Tyco Comments at 5; AT&T Reply Comments at 6.

128 Tyco Comments at 5–6.

129 WorldCom Comments at 4.

130 DoD Comments at 7.

131 *See* Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1107 of the Commission's Rules, GEN Docket No. 86-285, *Order*, FCC 98-87 (rel. May 15, 1998).

application fees for a common carrier submarine cable to $12,975. We believe that the fact that the total fees are the same is not happenstance, but is a good indication of congressional intent that the application fees be the same whether the applicant intends to construct a common carrier or non–common carrier cable system. There has been no change in the application fees since we issued the *Notice*, and no commenter suggested a way to reconcile the fee disparity with elimination of the Section 214 application. Therefore, in order to fulfill the intent of Congress to collect comparable application fees for comparable applications, we do not adopt our proposal. We direct our Office of Legislative and Intergovernmental Affairs to submit a legislative request to Congress recommending that there be only one application fee for cable landing licenses and that the separate application fee for "overseas cable construction" be eliminated.[132] In the meantime, we encourage applicants for common carrier cable landing licenses to file a single application seeking authority under both the Cable Landing License Act and Section 214 of the Communications Act. Information required in each application need not be repeated. The applicant should submit both of the applicable fees with its consolidated application.

67. We also sought comment on amending our environmental rules to reflect a new categorical exclusion for the construction of new submarine cable systems.[133] As we stated in the *Notice*, the Commission concluded in 1974 that any action on an application for a submarine cable landing license would be categorically excluded from environmental processing.[134] When we changed the format of our environmental rules in 1984, we did not include an exemption for submarine cable facilities.[135] In our 1974 decision, we noted that, "[a]lthough laying transoceanic cable obviously involves considerable activity over vast distances, the environmental consequences for the ocean, the ocean floor, and the land are negligible." We went on to describe how, "[i]n shallow water, the cable

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[132] *See* 47 U.S.C. § 154(k)(4) (directing the Commission to make "specific recommendations to Congress as to additional legislation which the Commission deems necessary or desirable").

[133] *See* 47 C.F.R. § 1.1307 (1997) (facilities that may significantly affect the environment for purposes of the environmental processing requirements include, e.g., facilities that are to be located in an officially designated wilderness area, facilities that are to be located in an officially designated wildlife preserve, and facilities that may affect properties that are listed or are eligible for listing in the National Register of Historic Places). In the *Notice*, we tentatively concluded that, in order to ensure compliance with environmental statutes, we must limit the proposed authorization to construct new lines by stating that it would not have authorized the construction or extension of lines that may have a significant effect on the environment as defined in our environmental rules. We then would have found that, as a rule, construction of submarine cable systems does not have a significant effect on the environment. Although we are not adopting our proposal to authorize the construction of new lines, adopting this categorical exemption to our environmental rules will nevertheless relieve applicants of an unnecessary burden.

[134] *See* Implementation of the National Environmental Policy Act of 1969, *Report and Order*, 49 F.C.C.2d 1313, 1321 ¶ 17 (1974) (*NEPA Implementation*).

[135] *See* Amendment of Environmental Rules in Response to New Regulations Issued by the Council on Environmental Quality, *Report and Order*, 60 R.R.2d 13 (1986).

is trenched and immediately covered; in deep water, it is simply laid on the ocean floor"; and "[i]n the landing area, it is trenched for a short distance between the water's edge and a modest building housing facilities."[136]

68. In the *Notice*, we tentatively concluded that, as we originally decided in 1974, the construction of new submarine cable systems, individually and cumulatively, will not have a significant effect on the environment and therefore should be expressly excluded from our environmental processing requirements. We also specifically requested comment on the proposed addition to Note 1 of Section 1.1306 to reflect categorical exclusion of the construction of new submarine cable systems. We sent a copy of the *Notice* to the Council on Environmental Quality. No party commented on these proposals.

69. Seeing no opposition to our proposal, we adopt it as outlined in our *Notice*. We will add a note to Section 1.1306 to reflect a categorical exclusion for the construction of new submarine cable systems.[137] An applicant for a cable landing license may cite this note for the proposition that action on its application is categorically excluded from environmental processing.

70. In its comments, DoD identifies another way to expedite the process of granting cable landing licenses. DoD states that its review of these applications would be expedited if each applicant were required to identify the owners of the cable landing station to be utilized and each owner's citizenship.[138] We find that, because it would expedite Executive Branch review, it would serve the public interest to amend our rules to require an applicant for a cable landing license to provide ownership information with respect to the cable landing station when it provides the specific information about the proposed cable system's U.S. landing points. We therefore amend Section 1.767(a)(5) accordingly.

F. Authorization Procedure for Switched Services over Private Lines

71. In the *Notice*, we proposed to create a new Section 63.16 to contain the Commission's rules on the provision of switched basic telecommunications services using international private lines interconnected to the public switched network (sometimes called "international simple resale" or "ISR").[139] We also proposed to simplify the procedure for adding to the list of foreign destinations to

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136 *NEPA Implementation*, 49 F.C.C.2d at 1321 ¶ 17.

137 *See infra* Appendix B, § 1.1306 Note 1 (to be codified at 47 C.F.R. § 1.1306 Note 1).

138 DoD Comments at 7.

139 *See Notice* ¶ 41; *id.* Appendix A, § 63.16. *See generally Foreign Participation Order*, 12 FCC Rcd at 23,924–31 ¶¶ 72–86; 1998 Biennial Regulatory Review — Reform of the International Settlements Policy and Associated Filing Requirements, *Notice of Proposed Rulemaking*, 13 FCC Rcd 15,320 (1998). Although the provision of switched services over international private lines interconnected to the public switched network at both ends is sometimes called "international simple resale," when we authorize carriers to provide ISR, we allow carriers to use both facilities-based and resold private lines

which any authorized carrier may carry switched services over its authorized facilities-based or resold private lines. Currently, the Commission adds a country to this list only in response to a showing made in a Section 214 application in which an applicant seeks to provide ISR to a particular foreign country. We proposed to allow carriers to request these determinations by petition for declaratory ruling rather than by Section 214 application. By allowing applicants to file a petition for declaratory ruling, we would relieve applicants of the burden of providing the detailed carrier-specific information that is required when a carrier receives authorization to provide service under Section 63.18. This would also help to shorten and simplify Section 63.18.

72. Commenters expressed support for simplifying the procedure for obtaining Commission approval of ISR to particular destinations.[140] A few commenters proposed modifications that they said would further streamline the procedure. We disagree with suggestions that we allow carriers to use private lines to provide switched services to particular destinations without a specific, explicit Commission finding that the criteria for authorizing ISR to that destination have been met.[141] It is important for all carriers to be on notice that private lines may be used to provide switched services on a given route before any carrier is allowed to do so. Without a public Commission ruling, different carriers could have different information or reach different good-faith conclusions about the permissibility of ISR.[142] We recognize the value to carriers and consumers of authorizing ISR as quickly as possible, and we intend to act expeditiously in response to any request to authorize ISR to a particular destination.

73. Our analysis of the record leads us to decide that we will accept petitions filed pursuant to Section 63.16 asking us to authorize the use of private lines for switched services to particular destinations. We will place each petition on public notice and seek comment, but we may specify a shorter notice period or issue very brief orders depending on the complexity of the showing required. For example, if a petition demonstrates clearly that the destination is a WTO member country and that settlement rates for more than 50 percent of the settled U.S.-billed traffic on that route are at or below the Commission's benchmark settlement rates, then we may specify a short comment period and/or use

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to carry switched traffic. In general, this is international traffic that would otherwise be subject to the accounting rates process, but instead goes over private lines with the carrier paying an interconnection fee instead of a settlement rate.

[140] *See, e.g.*, DT Comments at 5; FaciliCom Comments at 3; MCI Comments at 9; AT&T Reply Comments at 6. WorldCom objected to creating a "more formal" process, stating that it would be burdensome and would add uncertainty about how long it would take for such a petition to be granted. WorldCom Comments at 6. We intend the declaratory-ruling process to be less burdensome and for petitions to be processed at least as quickly as the similar Section 214 applications are processed under our current rules. We note that our rule, as proposed and as adopted, will allow a carrier to make such a request in a Section 214 application instead of in a petition for declaratory ruling if it so chooses. *See infra* Appendix B, § 63.16.

[141] *See* MCI Comments at 9; Primus Comments at 6; WorldCom Reply Comments at 3.

[142] *See* Ameritech Reply Comments at 6; *see also* AT&T Reply Comments at 7.

a procedure similar to the streamlined Section 214 authorization procedure[143] because there are few if any issues in dispute. If, on the other hand, a petition seeks to make a showing that the foreign destination country offers equivalent resale opportunities, we are more likely to specify a 28-day comment period with an opportunity for replies and issue a formal written order.

74. Therefore, we will modify our proposed rule to make clear that Commission staff will have the discretion to set an appropriate period for public comment and to issue a ruling by public notice on any petition for a declaratory ruling to allow ISR to a particular destination. In any event, we will act on these applications as quickly as possible.

G. Applicants' Ownership Information

75. In the *Notice*, we proposed no longer to require applicants to list every entity that directly or indirectly owns at least 10 percent of the applicant.[144] Instead, we proposed to require a listing only of entities that own *more than 25 percent* of the applicant. We noted that we recently raised the level of investment by foreign carriers that must be reported to the Commission *after* the carrier is authorized, and we sought comment on whether we should continue to scrutinize investments in applicants at a greater level of detail than we require after the carrier is authorized.[145]

76. We conclude that we should continue to require applicants for Section 214 authorizations to list every 10-percent-or-greater direct and indirect equity owner. We are persuaded by the comments of MCI and WorldCom, who oppose this proposal,[146] that this requirement has not become unnecessary in the public interest as a result of meaningful economic competition.[147] Whether the threshold is 10 percent or 25 percent, applicants will be required to provide a list of owners; although a 10-percent threshold is somewhat more burdensome,[148] that increased burden does not outweigh the potential value to the Commission of being able to review the additional information about the applicant's ownership. Leaving the threshold at 10 percent or greater will help us determine whether a particular application raises issues of national security, foreign policy, or law enforcement risks. The additional information will also help the Commission determine when an investment below the 25 percent level could have a significant impact on competition. Retaining the requirement that applicants list all 10-percent-or-greater equity holders is not inconsistent with our recent action raising the level

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143 *See* 47 C.F.R. § 63.12.

144 *Notice* ¶ 39.

145 *Id.*; *see Foreign Participation Order*, 12 FCC Rcd at 24,035–36 ¶¶ 330–334.

146 *See* MCI Comments at 10–11; WorldCom Comments at 5; *see also* AT&T Comments *passim*.

147 *See* 47 U.S.C. § 161(a)(2) (Supp. II 1996) (directing the Commission to determine whether any regulation subject to the biennial regulatory review "is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service").

148 *See* Cable & Wireless Reply Comments at 8–9.

of ownership by a foreign carrier that must be reported after a carrier is authorized; there, we significantly reduced a burden imposed on carriers by eliminating the requirement that carriers file any notification at all in a significant number of situations — where the carrier acquires a new equity relationship of between 10 and 25 percent.[149] Lifting that substantial burden justified our earlier action, but we would not have the same justification here.

77. Qwest asserts that no shareholder should have to be identified in a Section 214 application unless it is a foreign carrier or is affiliated with a foreign carrier.[150] Although Qwest is correct that, under the Commission's current policies, investments by foreign carriers or their affiliates are most relevant to our competitiveness analysis in the international context, initial ownership information is useful for an initial determination of issues related to national security, law enforcement, foreign policy, and trade policy. We therefore will continue to require applicants to list every owner of 10 percent or more of the applicant.

H. Reorganization of Part 63 Rules

78. Commenters support our approach to reorganizing the rules in Part 63 that are applicable to international telecommunications authorization and service.[151] Our proposals included creation of a separate section for definitions and two new sections to list the obligations of facilities-based and resale carriers. This reorganization would make the section on contents of applications, Section 63.18, easier to follow. It would also reduce the amount of boilerplate information to be contained in applications, allowing applicants merely to certify that they will comply with the requirements of the new sections rather than repeating the text of those requirements. In proposing these changes to our rules, we endeavored to keep rule numbers consistent to the extent that doing so did not limit our ability to simplify the rules and reduce the burdens they impose. We sought comment on whether any inadvertent substantive changes would result from our proposed rules, and no commenter noted any. We therefore adopt the changes proposed in the *Notice* except as noted below. We reiterate that no substantive changes are intended other than those discussed in the text of this *Report and Order* or the *Notice*.

79. We proposed to codify the already-existing obligation that an authorized facilities-based carrier may provide service to a market served by an affiliate that terminates U.S. international traffic only if that affiliate has in effect a settlement rate with U.S. international carriers that is at or below

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[149] It is important to note that all applicants (pursuant to Section 63.18) *and* authorized carriers (pursuant to Section 63.11) continue to be required to notify the Commission of any new relationship with a foreign carrier that may amount to an affiliation. An affiliation includes not only ownership by a single carrier of more than 25 percent but, for example, any controlling interest, or any investment (of more than 25 percent, or any controlling interest) by two or more carriers where the two carriers are parties to certain types of contractual relations. *See infra* Appendix B, § 63.09(e).

[150] Qwest Comments at 4.

[151] *See, e.g.*, DT Comments at 4; GTE Comments at 6; MCI Comments at 8; AT&T Reply Comments at 6.

the Commission's relevant benchmark for that market.[152] We adopted this condition in our 1997 *Benchmarks Order*, and it now applies to all facilities-based international carriers.[153] Although we believe that the benchmarks condition for facilities-based carriers should be codified, we intend to act in the very near future on the petitions for reconsideration that have been filed in the *Benchmarks* proceeding, and it would be more appropriate to address this issue in that reconsideration order.[154] We therefore transfer the record on this issue to the *Benchmarks* reconsideration proceeding.

80. We also clarify the definition of *affiliation* that we now codify in Section 63.09(e), and we eliminate the reference to that definition in Section 63.18.[155] In the *Foreign Carrier Entry Order*, we created two affiliation standards — one for application of our entry standard and one for application of dominant carrier regulation.[156] Those two standards are currently codified in paragraphs (B) and (A), respectively, of Section 63.18(h)(1)(i). Although the two standards have been applied consistently, the common use of the term *affiliation* and the placement of that term's definition have been a source of confusion about the applicability of the "effective competitive opportunities" entry test and dominant carrier regulation.[157] Under the rules that we now adopt, the term *affiliation* will be used only in its broader sense, that is, when there is an interest greater than 25 percent, or a controlling interest at any level, by the U.S. carrier in a foreign carrier or by a foreign carrier in the U.S. carrier.[158] This is the standard used to determine whether there exists an affiliation for purposes of classifying a carrier as dominant under Section 63.10. Our entry standard will no longer be tied to a definition of *affiliation*. Instead, the new rule is clearer that our entry standard applies only when the applicant controls a foreign carrier or when more than 25 percent of the applicant (or a controlling interest) is owned by an entity that controls a foreign carrier.

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[152] *See Notice* ¶ 37.

[153] *See* International Settlement Rates, *Report and Order*, 12 FCC Rcd 19,806, ¶¶ 195–231 (1997), *recon. pending* (*Benchmarks Order*); *see also id.* ¶ 228 (concluding that the condition should apply to all existing Section 214 certificate holders).

[154] Cable & Wireless opposes codification here and, in the alternative, requests clarification of the language of the proposed rule and asks us to consider codifying the requirement to exclude foreign affiliates that lack market power. Its alternative proposals are outside the scope of this proceeding and will be considered on reconsideration of the *Benchmarks Order*.

[155] *See* Cable & Wireless Comments at 11 (asking that we clarify the applicability of the affiliation standard for regulatory purposes and for application of the effective competitive opportunities test).

[156] *See Foreign Carrier Entry Order*, 11 FCC Rcd at 3901–06 ¶¶ 74–87 ("Affiliation Standard for Entry Purposes"); *id.* at 3967–69 ¶¶ 248–251 ("Definition of Affiliation for the Purpose of Post-Entry Regulation").

[157] *See* Cable & Wireless, Inc., *Order, Authorization, and Certificate*, File No. ITC-214-19980515-00326, DA 98-2498 (rel. Dec. 8, 1998).

[158] *See infra* Appendix B, § 63.09(e); *Foreign Carrier Entry Order*, 11 FCC Rcd at 3967 ¶ 249.

81. By no longer tying our entry standard to one portion of our definition of *affiliation*, we are able to greatly simplify the definition of *affiliation* in our new definitional section, Section 63.09. This definition is also consistent with our intent in adopting our affiliation standard in the *Foreign Carrier Entry Order*.[159] We hope that the revised provisions contained in Sections 63.09 and 63.18 serve to clarify our definition of *affiliation* and the applicability of our entry standard, and we invite members of the public to bring informal questions and comments to the attention of International Bureau staff.

82. In drafting our proposed rules and attempting to eliminate unnecessary certifications from Section 63.18, we removed the requirement of Section 63.18(h)(3) that an applicant certify whether it is affiliated with a U.S. carrier whose facilities-based services it plans to resell. This certification, together with the obligation of carriers to update the certifications in their applications,[160] ensured that a carrier planning to resell an affiliated facilities-based carrier's services on an affiliated route would not escape Commission scrutiny. Our proposed rules neglected to consider this situation. Rather than continue to impose the burden of the certification that is currently required, we now add a provision to Section 63.10(a)(4) to require a carrier that is regulated as non-dominant on an affiliated route under this provision to notify the Commission if at any time it begins to provide service by reselling an affiliated facilities-based carrier's services on the affiliated route. The carrier will be deemed a dominant carrier on the route unless and until the Commission finds that the carrier qualifies for non-dominant regulation under Section 63.10.

83. We also adopt our proposals to codify a requirement that carriers notify the Commission by letter within 30 days of a name change, an assignment, or a decision not to consummate an authorized assignment. As stated in the *Notice*, we continue to believe that it is necessary for the Commission's records to reflect the identities of all authorized international carriers.[161] We modify our proposed codification to require that carriers also notify the Commission within 30 days of the date of consummation of a transfer of control or a decision not to consummate an authorized transfer. Notification is necessary to ensure that Commission records accurately reflect the party or parties that control the carrier's operations, particularly for purposes of enforcing Commission rules and policies.

84. Cable & Wireless requests that the Commission consider releasing an updated compilation of these rules. In view of the numerous recent deregulatory and other rulemaking proceedings that have affected these rules, we believe that it would be helpful to applicants, carriers, and practitioners to release an updated compilation. We accordingly direct the International Bureau to release the updated text of Sections 63.09 through 63.24 by June 1, 1999, and to make that document available from the Bureau's Web site at http://www.fcc.gov/ib.

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[159] *See Foreign Carrier Entry Order*, 11 FCC Rcd at 3904 ¶ 83.

[160] *See* 47 C.F.R. § 63.18(h)(4) (as amended by the *Foreign Participation Order*); 47 C.F.R. § 63.18(h)(5) (1997); *infra* Appendix B, § 63.21(a).

[161] *See Notice* ¶ 43.

I. Miscellaneous Issues

85. WorldCom proposes that we apply our new rules with respect to *pro forma* assignments and transfers of control and service by wholly-owned subsidiaries to Title III earth station licenses and cable landing licenses.[162] WorldCom argues that the same public interest benefits would apply to providing this additional flexibility with respect to Title III licenses and cable landing licenses as to Section 214 authorizations. WorldCom believes that its proposal would reduce the administrative burden on carriers seeking several authorizations for the same service and reduce the processing burden on the Commission.[163]

86. We agree with WorldCom's concerns, but we conclude that we cannot adopt its proposal here. As we stated in the *Notice*,[164] the Submarine Cable Landing License Act requires that a cable landing license be obtained for any undersea cable directly or indirectly connecting the United States with any foreign country, and Executive Order No. 10,530 requires the Commission to obtain the approval of the State Department and advice from other Executive Branch agencies before granting any cable landing license.[165] Although Section 10 of the Communications Act gives us authority to forbear from requirements of the Communications Act, no party in this proceeding has argued that Section 10 gives the Commission the authority to forbear from the requirements of the Submarine Cable Landing License Act. We also would not make any changes in the authority granted in submarine cable landing licenses without the consent of the State Department.

87. Because most earth station licenses are not common carrier radio licenses, we might not be able to use our Section 10 forbearance authority to avoid the requirements of Section 310(d) with regard to assignments and transfers of control of earth station authorizations. Section 10 applies only to regulations or provisions of the Communications Act that apply to *telecommunications carriers* or *telecommunications services*, which we have held to refer only to common carrier licensees. Indeed, we recently forbore from requiring prior review of *pro forma* assignments and transfers of control of common carrier radio licenses licensed by the Wireless Telecommunications Bureau.[166] In that order, we specifically found that our forbearance could not apply to non–common carrier licenses because of

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[162] WorldCom Comments at 2–3.

[163] *Id.* at 4.

[164] *Notice* ¶ 30.

[165] Submarine Cable Landing License Act, 47 U.S.C. §§ 34–39 (1994); Executive Order No. 10,530, *reprinted as amended in* 3 U.S.C. § 301 app. at 459–60 (1994).

[166] *See* Federal Communications Bar Association's Petition for Forbearance from Section 310(d) of the Communications Act Regarding Non-Substantial Assignments of Wireless Licenses and Transfers of Control Involving Telecommunications Carriers, *Memorandum Opinion and Order*, 13 FCC Rcd 6293 (1998).

the language of Section 10.[167] Because the same issues would arise here, we find that we cannot adopt WorldCom's proposals in this proceeding.

88. Tyco states that the Commission should soon examine its practice of "imposing separate regulatory requirements on common carrier and non–common carrier submarine cable systems."[168] We agree that this and other policies related to cable landing licenses should be reviewed and will consider initiating a proceeding to address those issues in the near future.

89. SBC argues that the Commission should stop requiring tariffs for international services.[169] The issue of detariffing raises many complex policy and legal issues that are not appropriately addressed in this proceeding. We do intend to consider forbearing from requiring tariffs or prohibiting tariffs altogether in a future proceeding.

90. SBC and AT&T argue that we should revise our procedures for requiring advance notification of affiliations with foreign carriers. SBC argues that those prior-review requirements, contained in Section 63.11 of our rules, should be eliminated entirely.[170] AT&T, on the other hand, argues that we should require advance notification of acquisitions of dominant foreign carrier equity interests of 10 percent or greater in, or by, authorized U.S. carriers.[171] These proposals are outside the scope of this proceeding. SBC's request is pending on reconsideration of the *Foreign Participation Order* and will be considered there.

91. Cable & Wireless proposes that we change our policies permitting the provision of switched services over private lines (ISR) to recognize when foreign markets offer equivalent resale opportunities in subsets of services. Cable & Wireless's request is beyond the scope of this proceeding.[172]

92. Cable & Wireless also suggests that the Commission include in its rules applicable to international Section 214 authorizations a provision specifically addressing frivolous filings. It states

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[167] *See id.* at 6304–05 ¶ 24.

[168] Tyco Comments at 5 n.13.

[169] SBC Comments at 9–12.

[170] SBC Reply Comments at 15.

[171] AT&T Comments at 10–13.

[172] We note that the International Bureau recently issued an order permitting ISR between the United States and Hong Kong for data and fax services only. Hong Kong Telecommunications (Pacific) Limited, *Order and Authorization*, 13 FCC Rcd 20,050 (Int'l Bur. 1998), *applic. for review pending*. Since issuing that order, the Bureau issued an order permitting ISR between the United States and Hong Kong for all services. AT&T Corp. et al., File Nos. ITC-214-19981118-00820 and ITC-214-19980930-00689, *Order, Authorization and Certificate*, DA 98-2654 (rel. Jan. 4, 1999).

that petitions to deny applications for international Section 214 authorizations are often filed based on arguments that have been specifically rejected by the Commission with the apparent intent of removing the application from streamlined review. Cable & Wireless recognizes that Section 1.52 of the Commission's rules addresses frivolous pleadings filed in Commission proceedings and provides that the Commission can strike such pleadings, issue forfeitures, or seek disciplinary action against the attorneys involved. The Commission issued a public notice in February 1996 reminding parties of Section 1.52 and stating that the Commission intends to fully utilize its authority to discourage and deter frivolous filings and impose appropriate sanctions where such pleadings are filed.[173]

93. Our decision in this order no longer to seek public comment on the great majority of international Section 214 applications reduces the ability of parties to file frivolous petitions to deny. For any situations that remain, we believe that our existing rules, in particular Section 1.52, are sufficient to address Cable & Wireless's concerns.

94. Deutsche Telekom argues that the Commission should not impose dominant carrier safeguards on any carrier whose affiliated foreign carrier's settlement rates are at or below the Commission's benchmark settlement rates.[174] This issue is beyond the scope of this proceeding. In addition, as AT&T states, Deutsche Telekom's argument ignores the fact that, among other things, our dominant-carrier regulations address non-price discrimination as well as price discrimination.[175]

95. Cable & Wireless asks that we address our affiliation standard as it applies to our benchmark settlement rate rules. Cable & Wireless argues that our 25-percent affiliation standard should not apply to the benchmark settlement rate condition. This, too, would be a substantive change to our rules that is not within the scope of this proceeding.

III. Procedural Matters

A. Final Regulatory Flexibility Certification

96. The Regulatory Flexibility Act (RFA)[176] requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small

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[173] *See* Commission Taking Tough Measures Against Frivolous Pleadings, Public Notice, 11 FCC Rcd 3030 (1996).

[174] *See* DT Comments at 3.

[175] *See* AT&T Reply Comments at 5 n.3.

[176] 5 U.S.C. § 601 *et seq*. The RFA has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

entities."[177] In the *Notice*, we certified that the proposed rules would not have a significant economic impact on a substantial number of small entities because they would not impose any additional compliance burden on small entities dealing with the Commission.[178] No comments were received concerning this certification. We now reaffirm this certification with respect to the rules adopted in this order. We anticipate that the rule changes we adopt here will reduce regulatory and procedural burdens on small entities. The purposes of this proceeding are to eliminate some regulatory requirements and to simplify and clarify other existing rules. The modifications do not impose any additional compliance burden on persons dealing with the Commission, including small entities. Any prospective carrier will continue to submit an application for Section 214 authorization. In most cases, the authorization will be granted expeditiously. We anticipate that the revisions we adopt here will make it easier for small entities as well as others to provide international telecommunications service without unnecessary delay. Accordingly, we certify, pursuant to Section 605(b) of the RFA, that the rules adopted herein will not have a significant economic impact on a substantial number of small business entities, as defined by the RFA. The Office of Public Affairs, Reference Operations Division, shall send a copy of this Report and Order, including this certification, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this certification will also be published in the *Federal Register*.

B. Final Paperwork Reduction Act of 1995 Analysis

97. This Report and Order contains a modified information collection, which has been submitted to the Office of Management and Budget (OMB) for approval. As part of our continuing effort to reduce paperwork burdens, we invite the public and other government agencies to take this opportunity to comment on the information collection contained in this Report and Order, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public and agency comments are due 30 days from publication of this Report and Order in the *Federal Register*. Comments should address the following: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. A copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, room 1-C804, 445 12th Street S.W., Washington, D.C. 20554, or via the Internet to jboley@fcc.gov.

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[177] 5 U.S.C. § 605(b).

[178] *See Notice* ¶ 48. The Regulatory Flexibility Act of 1990, 5 U.S.C. §§ 601–612, (RFA) as amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847, requires a final regulatory flexibility analysis in notice-and-comment rulemaking proceedings, unless we certify that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."

IV. Ordering Clauses

98. Accordingly, IT IS ORDERED that, pursuant to Sections 1, 4(i), 4(k), 10, 11, 201(b), 214, 303(r), 307, 309(a), and 310 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(k), 160, 161, 201(b), 214, 303(r), 307, 309(a), 310, and the Submarine Cable Landing License Act, 47 U.S.C. §§ 34–39, this REPORT AND ORDER is hereby ADOPTED and Parts 1, 43, 63, and 64 of the Commission's rules, 47 C.F.R. pts. 1, 43, 63, 64, ARE AMENDED as set forth in Appendix B.

99. IT IS FURTHER ORDERED that the rule changes and information collections contained herein WILL BECOME EFFECTIVE 30 days after publication in the *Federal Register*, following OMB approval, unless a notice is published in the *Federal Register* stating otherwise.

100. IT IS FURTHER ORDERED that the record on codification of the benchmarks condition for facilities-based carriers developed in this proceeding be transferred to IB Docket 96-261 for future consideration.

101. IT IS FURTHER ORDERED that authority is delegated to the Chief, International Bureau, and the Chief, Common Carrier Bureau, as specified herein, to effect the decisions as set forth above.

102. IT IS FURTHER ORDERED that the Commission's Office of Legislative and Intergovernmental Affairs is directed to submit a legislative request to Congress as described in paragraph 66 of this order.

103. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Report and Order, including the Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. §§ 601 *et seq.*

104. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Report and Order to the Council on Environmental Quality.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

APPENDIX A

Parties Filing Comments or Reply Comments and Short-Form Names

Ameritech
AT&T Corp. (AT&T)
Bell Atlantic Communications, Inc. and NYNEX Long Distance Company (Bell Atlantic)
BellSouth Corporation (BellSouth)
Cable & Wireless plc and Cable & Wireless, Inc. (Cable & Wireless)
Competitive Telecommunications Association (CompTel)
COMSAT Corporation (COMSAT)
Deutsche Telekom AG (DT)
Excel Telecommunications, Inc. (Excel)
FaciliCom International, L.L.C. (FaciliCom)
Federal Bureau of Investigation (FBI)
GTE Service Corporation (GTE)
Iridium U.S., L.P. (Iridium)
MCI Telecommunications Corp. (MCI)
PanAmSat Corporation (PanAmSat)
Personal Communications Industry Association (PCIA)
Primus Telecommunications, Inc. (Primus)
Qwest Communications Corporation (Qwest)
Secretary of Defense (DoD)
Sprint Communications Company L.P. (Sprint)
SBC Communications Inc. (SBC)
Tyco Submarine Systems Ltd. (Tyco)
WorldCom, Inc. (WorldCom)

APPENDIX B

Final Rules

Parts 1, 43, 63, and 64 of the Commission's Rules and Regulations (Chapter I of Title 47 of the Code of Federal Regulations) are amended as follows:

PART 1 — PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 225, and 303(r).

2. Section 1.767 is amended by revising paragraphs (a)(5), (a)(6), and (a)(7), adding new paragraphs (a)(8) and (a)(9), and revising paragraph (e) to read as follows:

§ 1.767 Cable landing licenses.

(a) ***

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(5) A specific description of the cable landing stations on the shore of the United States and in foreign countries where the cable will land. The description shall include a map showing specific coordinates or street addresses of each landing station as well as the identity, citizenship, and specific ownership share of each owner of each U.S. landing station. The applicant initially may file a general geographic description of the landing points; however, grant of the application will be conditioned on the Commission's final approval of a more specific description of the landing points, including all information required by this paragraph, to be filed by the applicant no later than 90 days prior to construction. The Commission will give public notice of the filing of this description, and grant of the license will be considered final if the Commission does not notify the applicant otherwise in writing no later than 60 days after receipt of the specific description of the landing points, unless the Commission designates a different time period;

(6) A statement as to whether the cable will be operated on a common carrier or non-common carrier basis;

(7) A list of the proposed owners of the cable system, their voting interests, and their ownership interests by segment in the cable;

(8) For each proposed owner of the cable system, a certification as to whether the proposed owner is, or is affiliated with, a foreign carrier (as defined in § 63.09 of this chapter). Include the information and certifications required in § 63.18(h) through (k) of this chapter; and

(9) Any other information that may be necessary to enable the Commission to act on the application.

*****

(e) *** The application fee for a non-common carrier cable landing license is payment type code BJT. Applicants for common carrier cable landing licenses shall pay the fees for both a common carrier cable landing license (payment type code CXT) and overseas cable construction (payment type code BIT). There is no application fee for modification of a cable landing license, except that the fee for assignment or transfer of control of a cable landing license is payment type code CUT. See § 1.1107(2) of this chapter.

3. Section 1.1306 is amended by adding the following sentence to the end of Note 1:

§ 1.1306 Actions which are categorically excluded from environmental processing.

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NOTE 1: *** The provisions of § 1.1307(a) and (b) of this part do not encompass the construction of new submarine cable systems.

PART 43 — REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES

4. The authority citation for part 43 continues to read as follows:

Authority: 47 U.S.C. 154; Telecommunications Act of 1996, Pub. L. 104-104, secs. 402 (b)(2)(B), (c), 110 Stat. 56 (1996) as amended unless otherwise noted. 47 U.S.C. 211, 219, 220 as amended.

5. Section 43.61 is amended by revising paragraph (c) to read as follows:

§ 43.61 Reports of international telecommunications traffic.

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(c) Each common carrier engaged in the resale of international switched services that is affiliated with a foreign carrier that has sufficient market power on the foreign end of an international route to affect competition adversely in the U.S. market and that collects settlement payments from U.S. carriers shall file a quarterly version of the report required in paragraph (a) of this section for its switched resale services on the dominant route within 90 days from the end of each calendar quarter. For purposes of this paragraph, *affiliated* and *foreign carrier* are defined in § 63.09 of this chapter.

PART 63 — EXTENSION OF LINES AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

6. The authority citation for Part 63 is revised to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 160, 161, 201–205, 218, 403, 533 unless otherwise noted.

7. Section 63.09 is added to read as follows:

§ 63.09 Definitions applicable to international Section 214 authorizations.

The following definitions shall apply to §§ 63.09–63.24 of this part, unless the context indicates otherwise:

(a) *Facilities-based carrier* means a carrier that holds an ownership, indefeasible-right-of-user, or leasehold interest in bare capacity in the U.S. end of an international facility, regardless of whether the underlying facility is a common carrier or non-common carrier submarine cable or a satellite system.

(b) *Control* includes actual working control in whatever manner exercised and is not limited to majority stock ownership. *Control* also includes direct or indirect control, such as through intervening subsidiaries.

(c) *Special concession* is defined as in § 63.14(b).

(d) *Foreign carrier* is defined as any entity that is authorized within a foreign country to engage in the provision of international telecommunications services offered to the public in that country within the meaning of the International Telecommunication Regulations, see Final Acts of the World Administrative Telegraph and Telephone Conference, Melbourne, 1988 (WATTC-88), Art. 1, which includes entities authorized to engage in the provision of domestic telecommunications services if such carriers have the ability to originate or terminate telecommunications services to or from points outside their country.

(e) Two entities are *affiliated* with each other if one of them, or an entity that controls one of them, directly or indirectly owns more than 25 percent of the capital stock of, or controls, the other one.

Also, a U.S. carrier is *affiliated* with two or more foreign carriers if the foreign carriers, or entities that control them, together directly or indirectly own more than 25 percent of the capital stock of, or control, the U.S. carrier and those foreign carriers are parties to, or the beneficiaries of, a contractual relation (e.g., a joint venture or market alliance) affecting the provision or marketing of international basic telecommunications services in the United States.

(f) *Market power* means sufficient market power to affect competition adversely in the U.S. market.

NOTE 1: The assessment of "capital stock" ownership will be made under the standards developed in Commission case law for determining such ownership. See, e.g., Fox Television Stations, Inc., 10 FCC Rcd 8452 (1995). "Capital stock" includes all forms of equity ownership, including partnership interests.

NOTE 2: Ownership and other interests in U.S. and foreign carriers will be attributed to their holders and deemed cognizable pursuant to the following criteria: Attribution of ownership interests in a carrier that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that wherever the ownership percentage for any link in the chain exceeds 50 percent, it shall not be included for purposes of this multiplication. For example, if A owns 30 percent of company X, which owns 60 percent of company Y, which owns 26 percent of "carrier," then X's interest in "carrier" would be 26 percent (the same as Y's interest because X's interest in Y exceeds 50 percent), and A's interest in "carrier" would be 7.8 percent (0.30 x 0.26). Under the 25 percent attribution benchmark, X's interest in "carrier" would be cognizable, while A's interest would not be cognizable.

8. Section 63.10 is amended by removing the third sentence of paragraph (a) introductory text, revising paragraph (a)(4), and removing the last sentence of paragraph (c)(5) to read as follows:

§ 63.10 Regulatory classification of U.S. international carriers

(a) ***

*****

(4) A carrier that is authorized under this part to provide to a particular destination an international switched service, and that provides such service solely through the resale of an unaffiliated U.S. facilities-based carrier's international switched services (either directly or indirectly through the resale of another U.S. resale carrier's international switched services), shall presumptively be classified as non-dominant for the provision of the authorized service. A carrier regulated as non-dominant pursuant to this subparagraph shall notify the Commission at any time that it begins to provide such service through the resale of an affiliated U.S. facilities-based carrier's international switched services. The carrier will be deemed a dominant carrier on the route absent a Commission finding that the carrier otherwise qualifies for non-dominant regulation pursuant to this Section.

*****

9. Section 63.11 is amended by revising the section heading, by revising paragraph (a), by deleting "within the meaning of § 63.18(h)(1)" in paragraph (b), by revising paragraph (c)(1), by revising

paragraphs (e)(1) and (e)(2), by replacing "§ 63.18(i)" with "§ 63.18(n)" in paragraph (f), and by deleting the Note to § 63.11 to read as follows:

§ 63.11 Notification by and prior approval for U.S. international carriers that are or propose to become affiliated with a foreign carrier.

(a) Any carrier authorized to provide international communications service under this part shall notify the Commission sixty days prior to the consummation of either of the following acquisitions of direct or indirect interests in or by foreign carriers:

(1) acquisition of a controlling interest in a foreign carrier by the authorized carrier, or by any entity that controls the authorized carrier, or that directly or indirectly owns more than 25 percent of the capital stock of the authorized carrier; or

(2) acquisition of a direct or indirect interest greater than 25 percent, or a controlling interest, in the capital stock of the authorized carrier by a foreign carrier or by an entity that controls a foreign carrier.

(b) ***

(c) ***

(1) The carrier also should specify, where applicable, those countries named in response to paragraph (c) of this section for which it provides international switched services solely through the resale of the international switched services of unaffiliated U.S. facilities-based carriers.

(2) The carrier shall also submit with its notification:

(i) The name, address, citizenship and principal businesses of any person or entity that directly or indirectly owns at least ten percent of the equity of the applicant, and the percentage of equity owned by each of those entities (to the nearest one percent). The applicant shall also identify any interlocking directorates with a foreign carrier.

(ii) A certification that the applicant has not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses market power on the foreign end of the route and will not enter into such agreements in the future.

*****

(e) ***

(1) In the case of a notification filed under this section, the Commission, if it deems it necessary, will by written order at any time before or after the deadline for submission of public

comments impose dominant carrier regulation on the carrier for the affiliated routes based on the provisions of § 63.10.

(2) The Commission will presume the investment to be in the public interest unless the Commission notifies the carrier that the investment raises a substantial and material question of fact as to whether the investment serves the public interest, convenience and necessity. Such notification shall be in writing within 30 days of the issuance of the public notice. If notified that the investment raises a substantial and material question, then the carrier shall not consummate the planned investment until it has filed a complete application under § 63.18, including § 63.18(k), and the Commission has approved the application by formal written order.

(f) ***

10. Section 63.12 is amended by revising paragraphs (a), (b), and (c)(1), by deleting "within the meaning of § 63.18(h)(1)" in paragraph (c)(2), by deleting paragraph (c)(4), by redesignating paragraph (c)(5) as paragraph (c)(4), and by amending paragraph (c)(4) to read as follows:

§ 63.12 Processing of international Section 214 applications.

(a) Except as provided by paragraph (c) of this section, a complete application seeking authorization under § 63.18 shall be granted by the Commission 14 days after the date of public notice listing the application as accepted for filing.

(b) The applicant may commence operation on the 15th day after the date of public notice listing the application as accepted for filing, but only in accordance with the operations proposed in its application and the rules, regulations, and policies of the Commission. The Public Notice of the grant of the authorization shall represent the applicant's Section 214 certificate.

(c) ***

(1) The applicant is affiliated with a foreign carrier in a destination market, unless the applicant clearly demonstrates in its application at least one of the following:

(i) The Commission has previously determined that the affiliated foreign carrier lacks market power in that destination market;

(ii) The applicant qualifies for a presumption of non-dominance under § 63.10(a)(3);

(iii) The affiliated foreign carrier owns no facilities, or only mobile wireless facilities, in that destination market. For this purpose, a carrier is said to own facilities if it holds an ownership, indefeasible-right-of-user, or leasehold interest in bare capacity in international or domestic telecommunications facilities (excluding switches);

(iv) The affiliated destination market is a WTO Member country and the applicant qualifies for a presumption of non-dominance under § 63.10(a)(4);

(v) The affiliated destination market is a WTO Member country and the applicant agrees to be classified as a dominant carrier to the affiliated destination country under § 63.10, without prejudice to its right to petition for reclassification at a later date; or

(vi) An entity with exactly the same ultimate ownership as the applicant has been authorized to provide the applied-for services on the affiliated destination route, and the applicant agrees to be subject to all of the conditions to which the authorized carrier is subject for its provision of service on that route; or

(2) ***

(3) ***

(4) The Commission has informed the applicant in writing, within 14 days after the date of public notice listing the application as accepted for filing, that the application is not eligible for streamlined processing.

(d) If an application is deemed complete but, pursuant to paragraph (c) of this section, is deemed ineligible for the streamlined processing procedures provided by paragraphs (a) and (b), the Commission will issue public notice indicating that the application is ineligible for streamlined processing. Within 90 days of the public notice, the Commission will take action upon the application or provide public notice that, because the application raises questions of extraordinary complexity, an additional 90-day period for review is needed. Each successive 90-day period may be so extended. The application shall not be deemed granted until the Commission affirmatively acts upon the application. Operation for which such authorization is sought may not commence except in accordance with any terms or conditions imposed by the Commission.

11. Section 63.14 is amended by removing the last sentence of paragraph (a) and revising paragraph (b) introductory text to read as follows:

§ 63.14 Prohibition on agreeing to accept special concessions.

(a) ***

(b) A special concession is defined as an exclusive arrangement involving services, facilities, or functions on the foreign end of a U.S. international route that are necessary for the provision of basic telecommunications services where the arrangement is not offered to similarly situated U.S.-licensed carriers and involves:

(1) ***

(2) ***

(3) ***

*****

12. Section 63.15 is removed.

§ 63.15 [removed]

13. Section 63.16 is added to read as follows:

§ 63.16 Switched services over private lines.

(a) Except as provided in § 63.22(f)(2), a carrier may provide switched basic services over its authorized private lines if and only if the country at the foreign end of the private line appears on a Commission list of destinations to which the Commission has authorized the provision of switched services over private lines. The list of authorized destinations is available from the International Bureau's World Wide Web site at http://www.fcc.gov/ib.

(b) An authorized carrier seeking to add a foreign market to the list of markets for which carriers may provide switched services over private lines must make the following showing:

(i) If seeking a Commission ruling to permit the provision of international switched basic services over private lines between the United States and a WTO Member country, the applicant shall demonstrate either that settlement rates for at least 50 percent of the settled U.S.-billed traffic between the United States and the country at the foreign end of the private line are at or below the benchmark settlement rate adopted for that country in IB Docket No. 96-261 *or* that the country affords resale opportunities equivalent to those available under U.S. law (see paragraph (c) of this section).

(ii) If seeking a Commission ruling to permit the provision of international switched basic services over private lines between the United States and a non-WTO Member country, the applicant shall demonstrate that settlement rates for at least 50 percent of the settled U.S.-billed traffic between the United States and the country at the foreign end of the private line are at or below the benchmark settlement rate adopted for that country in IB Docket No. 96-261 *and* that the country affords resale opportunities equivalent to those available under U.S. law (see paragraph (c) of this section).

(c) With regard to showing under paragraph (b) of this section that a destination country affords resale opportunities equivalent to those available under U.S. law, an applicant shall include evidence demonstrating that equivalent resale opportunities exist between the United States and the subject country, including any relevant bilateral or multilateral agreements between the administrations

involved. The applicant must demonstrate that the foreign country at the other end of the private line provides U.S.-based carriers with:

(i) The legal right to resell international private lines, interconnected at both ends, for the provision of switched services;

(ii) Reasonable and nondiscriminatory charges, terms and conditions for interconnection to foreign domestic carrier facilities for termination and origination of international services, with adequate means of enforcement;

(iii) Competitive safeguards to protect against anticompetitive and discriminatory practices affecting private line resale; and

(iv) Fair and transparent regulatory procedures, including separation between the regulator and operator of international facilities-based services.

(d) The showing required by paragraph (b) of this section may be made in a Section 214 application filed pursuant to § 63.18 or in a petition for declaratory ruling addressed to the attention of the International Bureau and indicating clearly the name of the party seeking the declaration and the destination points for which the declaration is sought. The Commission will issue public notice of the filing of the request and may, in each case, determine an appropriate deadline for filing comments. Unopposed requests may be granted by public notice.

Note 1 to § 63.16: The Commission's benchmark settlement rates are available in International Settlement Rates, IB Docket No. 96-261, *Report and Order*, FCC 97-280, 12 FCC Rcd 19,806, 62 FR 45758 (August 29, 1997).

14. Section 63.17 is amended by changing "(e)(6)" to "(e)(4)" at the end of paragraph (b)(4).

15. Section 63.18 is amended by redesignating paragraphs (j) and (k) as paragraphs (*o*) and (p), by revising paragraphs (e) through (i), and adding new paragraphs (j) through (n) to read as follows:

§ 63.18 Contents of applications for international common carriers.

*****

(e) One or more of the following statements, as pertinent:

(1) Global Facilities-Based Authority. If applying for authority to become a facilities-based international common carrier subject to § 63.22, the applicant shall:

(i) State that it is requesting Section 214 authority to operate as a facilities-based carrier pursuant to § 63.18(e)(1) of the Commission's rules;

(ii) List any countries for which the applicant does not request authorization under this paragraph (see § 63.22(a)); and

(iii) Certify that it will comply with the terms and conditions contained in §§ 63.21 and 63.22.

(2) Global Resale Authority. If applying for authority to resell the international services of authorized U.S. common carriers subject to § 63.23, the applicant shall:

(i) State that it is requesting Section 214 authority to operate as a resale carrier pursuant to § 63.18(e)(2) of the Commission's rules;

(ii) List any countries for which the applicant does not request authorization under this paragraph (see § 63.23(a)); and

(iii) Certify that it will comply with the terms and conditions contained in §§ 63.21 and 63.23.

(3) Transfer of Control or Assignment. If applying for authority to transfer control of a common carrier holding international Section 214 authorization or to acquire, by assignment, another carrier's existing international Section 214 authorization, the applicant shall complete paragraphs (a) through (d) of this section for both the transferor/assignor and the transferee/assignee. Only the transferee/assignee needs to complete paragraphs (h) through (p) of this section. At the beginning of the application, the applicant should also include a narrative of the means by which the transfer or assignment will take place. The Commission reserves the right to request additional information as to the particulars of the transaction to aid it in making its public interest determination. An assignee or transferee shall notify the Commission no later than 30 days after either consummation of the assignment or transfer or a decision not to consummate the assignment or transfer. The notification may be by letter and shall identify the file numbers under which the initial authorization and the authorization of the assignment or transfer were granted. See also § 63.24 (*pro forma* assignments and transfers of control).

(4) Other Authorizations. If applying for authority to acquire facilities or to provide services not covered by paragraphs (e)(1) through (e)(3), the applicant shall provide a description of the facilities and services for which it seeks authorization. The applicant shall certify that it will comply with the terms and conditions contained in § 63.21 and § 63.22 and/or § 63.23, as appropriate. Such description also shall include any additional information the Commission shall have specified previously in an order, public notice or other official action as necessary for authorization.

(f) ***

(g) Where the applicant is seeking facilities-based authority under paragraph (e)(4) of this section, a statement whether an authorization of the facilities is categorically excluded as defined by § 1.1306 of this chapter. If answered affirmatively, an environmental assessment as described in § 1.1311 of this chapter need not be filed with the application.

(h) The name, address, citizenship and principal businesses of any person or entity that directly or indirectly owns at least ten percent of the equity of the applicant, and the percentage of equity

owned by each of those entities (to the nearest one percent). The applicant shall also identify any interlocking directorates with a foreign carrier.

(i) A certification as to whether or not the applicant is, or is affiliated with, a foreign carrier. The certification shall state with specificity each foreign country in which the applicant is, or is affiliated with, a foreign carrier.

(j) A certification as to whether or not the applicant seeks to provide international telecommunications services to any destination country for which any of the following is true. The certification shall state with specificity the foreign carriers and destination countries:

(1) The applicant is a foreign carrier in that country; or

(2) The applicant controls a foreign carrier in that country; or

(3) Any entity that owns more than 25 percent of the applicant, or that controls the applicant, controls a foreign carrier in that country.

(4) Two or more foreign carriers (or parties that control foreign carriers) own, in the aggregate, more than 25 percent of the applicant and are parties to, or the beneficiaries of, a contractual relation (e.g., a joint venture or market alliance) affecting the provision or marketing of international basic telecommunications services in the United States.

(k) For any destination country listed by the applicant in response to paragraph (j), the applicant shall make one of the following showings:

(1) The named foreign country (i.e., the destination foreign country) is a Member of the World Trade Organization; or

(2) The applicant's affiliated foreign carrier lacks market power in the named foreign country; or

(3) The named foreign country provides effective competitive opportunities to U.S. carriers to compete in that country's market for the service that the applicant seeks to provide (facilities-based, resold switched, or resold non-interconnected private line services). An effective competitive opportunities demonstration should address the following factors:

(i) If the applicant seeks to provide facilities-based international services, the legal ability of U.S. carriers to enter the foreign market and provide facilities-based international services, in particular international message telephone service (IMTS);

(ii) If the applicant seeks to provide resold services, the legal ability of U.S. carriers to enter the foreign market and provide resold international switched services (for switched resale applications) or non-interconnected private line services (for non-interconnected private line resale applications);

(iii) Whether there exist reasonable and nondiscriminatory charges, terms and conditions for interconnection to a foreign carrier's domestic facilities for termination and origination of international services or the provision of the relevant resale service;

(iv) Whether competitive safeguards exist in the foreign country to protect against anticompetitive practices, including safeguards such as:

(A) Existence of cost-allocation rules in the foreign country to prevent cross-subsidization;

(B) Timely and nondiscriminatory disclosure of technical information needed to use, or interconnect with, carriers' facilities; and

(C) Protection of carrier and customer proprietary information;

(v) Whether there is an effective regulatory framework in the foreign country to develop, implement and enforce legal requirements, interconnection arrangements and other safeguards; and

(vi) Any other factors the applicant deems relevant to its demonstration.

(*l*) Any applicant that proposes to resell the international switched services of an unaffiliated U.S. carrier for the purpose of providing international telecommunications services to a country where it is a foreign carrier or is affiliated with a foreign carrier shall either provide a showing that would satisfy § 63.10(a)(3) or state that it will file the quarterly traffic reports required by § 43.61(c) of this chapter.

(m) With respect to regulatory classification under § 63.10, any applicant that is or is affiliated with a foreign carrier in a country listed in response to paragraph (i) and that desires to be regulated as non-dominant for the provision of particular international telecommunications services to that country should provide information in its application to demonstrate that it qualifies for non-dominant classification pursuant to § 63.10.

(n) A certification that the applicant has not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses market power on the foreign end of the route and will not enter into such agreements in the future.

*****

16. Section 63.20 is amended by deleting "63.02," in paragraph (b), by changing "21" to "14" in paragraph (c), and by revising the first sentence of paragraph (d) to read as follows:

§ 63.20 Copies required; fees; and filing periods for international service providers.

(a) ***

(b) ***

(c) ***

(d) Any interested party may file a petition to deny an application within the time period specified in the public notice listing an application as accepted for filing and ineligible for streamlined processing. ***

17. Section 63.21 is amended by revising the section heading, revising paragraph (a), and adding new paragraphs (i) and (j) to read as follows:

§ 63.21 Conditions applicable to all international Section 214 authorizations.

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(a) Each carrier is responsible for the continuing accuracy of the certifications made in its application. Whenever the substance of any such certification is no longer accurate, the carrier shall as promptly as possible and in any event within thirty days file with the Secretary in duplicate a corrected certification referencing the FCC file number under which the original certification was provided. The information may be used by the Commission to determine whether a change in regulatory status may be warranted under § 63.10. See also § 63.11.

*****

(i) Subject to the requirement of § 63.10 that a carrier regulated as dominant along a route must provide service as an entity that is separate from its foreign carrier affiliate, and subject to any other structural-separation requirement in Commission regulations, an authorized carrier may provide service through any wholly owned direct or indirect subsidiaries. The carrier shall, within 30 days after the subsidiary begins providing service, file a letter with the Secretary in duplicate referencing the authorized carrier's name and the FCC file numbers under which the carrier's authorizations were granted and identifying the subsidiary's name and place of legal organization. This provision shall not be construed to authorize the provision of service by any entity barred by statute or regulation from itself holding an authorization or providing service.

(j) An authorized carrier, or a subsidiary operating pursuant to paragraph (i) of this section, that changes its name (including the name under which it is doing business) shall notify the Commission by letter filed with the Secretary in duplicate within 30 days of the name change. Such letter shall reference the FCC file numbers under which the carrier's authorizations were granted.

18. Section 63.22 is added to read as follows:

§ 63.22 Facilities-based international common carriers.

The following conditions apply to authorized facilities-based international carriers:

(a) A carrier authorized under § 63.18(e)(1) may provide international facilities-based services to international points for which it qualifies for non-dominant regulation as set forth in § 63.10, except in the following circumstance: If the carrier is, or is affiliated with, a foreign carrier in a destination market and the Commission has not determined that the foreign carrier lacks market power in the destination market (see § 63.10(a)), the carrier shall not provide service on that route unless it has received specific authority to do so under § 63.18(e)(4).

(b) The carrier may provide service using half-circuits on any appropriately licensed U.S. common carrier and non-common carrier facilities (under either Title III of the Communications Act of 1934, as amended, or the Submarine Cable Landing License Act, 47 U.S.C. §§ 34-39) that do not appear on an exclusion list published by the Commission. Carriers may also use any necessary non-U.S.-licensed facilities, including any submarine cable systems, that do not appear on the exclusion list. Carriers may not use U.S. earth stations to access non-U.S.-licensed satellite systems unless the Commission has specifically approved the use of those satellites and so indicates on the exclusion list, and then only for service to the countries indicated thereon. The exclusion list is available from the International Bureau's World Wide Web site at http://www.fcc.gov/ib.

(c) Specific authority under § 63.18(e)(4) is required for the carrier to provide service using any facilities listed on the exclusion list, to provide service between the United States and any country on the exclusion list, or to construct, acquire, or operate lines in any new major common carrier facility project.

(d) The carrier may provide international basic switched, private line, data, television and business services.

(e)(1) Except as provided in paragraph (f)(2) of this section, the carrier may provide switched basic services over its authorized facilities-based private lines if and only if the country at the foreign end of the private line appears on a Commission list of countries to which the Commission has authorized the provision of switched services over private lines. See § 63.16. If at any time the Commission removes the country from that list or finds that market distortion has occurred in the routing of traffic between the United States and that country, the carrier shall comply with enforcement actions taken by the Commission.

(2) The carrier may use its authorized private line facilities to provide switched basic services in circumstances where the private line facility is interconnected to the public switched network on only one end — either the U.S. end or the foreign end — and where the carrier is not operating the facility in correspondence with a carrier that directly or indirectly owns the private line facility in the foreign country at the other end of the private line.

(f) The carrier shall file annual international circuit status reports as required by § 43.82 of this chapter.

(g) The authority granted under this part is subject to all Commission rules and regulations and any conditions or limitations stated in the Commission's public notice or order that serves as the carrier's Section 214 certificate. See §§ 63.12, 63.21.

19. Section 63.23 is added to read as follows:

§ 63.23 Resale-based international common carriers.

The following conditions apply to carriers authorized to resell the international services of other authorized carriers:

(a) A carrier authorized under § 63.18(e)(2) may provide resold international services to international points for which the applicant qualifies for non-dominant regulation as set forth in § 63.10, except that the carrier may not provide either of the following services unless it has received specific authority to do so under § 63.18(e)(4):

(i) Resold switched services to a non-WTO Member country where the applicant is, or is affiliated with, a foreign carrier; and

(ii) Switched or private line services over resold private lines to a destination market where the applicant is, or is affiliated with, a foreign carrier and the Commission has not determined that the foreign carrier lacks market power in the destination market (see § 63.10(a)).

(b) The carrier may not resell the international services of an affiliated carrier regulated as dominant on the route to be served unless it has received specific authority to do so under § 63.18(e)(4).

(c) Except as provided in paragraph (b) of this section, the carrier may resell the international services of any authorized common carrier, pursuant to that carrier's tariff or contract duly filed with the Commission, for the provision of international basic switched, private line, data, television and business services to all international points.

(d) The carrier may provide switched basic services over its authorized resold private lines if and only if the country at the foreign end of the private line appears on a Commission list of countries to which the Commission has authorized the provision of switched services over private lines. See § 63.16. If at any time the Commission removes the country from that list or finds that market distortion has occurred in the routing of traffic between the United States and that country, the carrier shall comply with enforcement actions taken by the Commission.

(e) Any party certified to provide international resold private lines to a particular geographic market shall report its circuit additions on an annual basis. Circuit additions should indicate the specific services provided (e.g., IMTS or private line) and the country served. This report shall be filed on a consolidated basis not later than March 31 for the preceding calendar year.

(f) The authority granted under this part is subject to all Commission rules and regulations and any conditions or limitations stated in the Commission's public notice or order that serves as the carrier's Section 214 certificate. See §§ 63.12, 63.21.

20. Section 63.24 is added to read as follows:

§ 63.24 *Pro forma* assignments and transfers of control.

(a) *Definition.* An assignment of an authorization granted under this part or a transfer of control of a carrier authorized under this part to provide an international telecommunications service is a *pro forma* assignment or transfer of control if it falls into one of the following categories and, together with all previous *pro forma* transactions, does not result in a change in the carrier's ultimate control:

(1) Assignment from an individual or individuals (including partnerships) to a corporation owned and controlled by such individuals or partnerships without any substantial change in their relative interests;

(2) Assignment from a corporation to its individual stockholders without effecting any substantial change in the disposition of their interests;

(3) Assignment or transfer by which certain stockholders retire and the interest transferred is not a controlling one;

(4) Corporate reorganization that involves no substantial change in the beneficial ownership of the corporation (including reincorporation in a different jurisdiction or change in form of the business entity);

(5) Assignment or transfer from a corporation to a wholly owned direct or indirect subsidiary thereof or vice versa, or where there is an assignment from a corporation to a corporation owned or controlled by the assignor stockholders without substantial change in their interests; or

(6) Assignment of less than a controlling interest in a partnership.

(b) Except as provided in paragraph (c) of this section, a *pro forma* assignment or transfer of control of an authorization to provide international telecommunications service is not subject to the requirements of § 63.18. A *pro forma* assignee or a carrier that is the subject of a *pro forma* transfer of control is not required to seek prior Commission approval for the transaction. A *pro forma* assignee must notify the Commission no later than 30 days after the assignment is consummated. The notification may be in the form of a letter (in duplicate to the Secretary), and it must contain a certification that the assignment was *pro forma* as defined in paragraph (a) of this section and, together with all previous *pro forma* transactions, does not result in a change of the carrier's ultimate

control. A single letter may be filed for an assignment of more than one authorization if each authorization is identified by the file number under which it was granted.

PART 64 — MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 160, 201, 218, 226, 228, 332 unless otherwise noted.

2. Section 64.1002 is amended by changing every occurrence of "63.18(h)(1)(i)" to "63.09(e)" and by changing every occurrence of "63.18(h)(6)(i)" to "63.18(k)(3)".

APPENDIX C

Exclusion List for International Section 214 Authorizations

-- Last Amended [insert effective date of rules] --

The following is a list of countries and facilities not covered by grant of global Section 214 authority under Section 63.18(e)(1) of the Commission's Rules, 47 C.F.R. § 63.18(e)(1). In addition, the facilities listed shall not be used by U.S. carriers authorized under Section 63.18 of the Commission's Rules unless the carrier's Section 214 authorization specifically lists the facility. Carriers desiring to serve countries or use facilities listed as excluded hereon shall file a separate Section 214 application pursuant to Section 63.18(e)(4) of the Commission's Rules. *See generally* 47 C.F.R. § 63.22.

Countries:

Cuba (Applications for service to Cuba shall comply with the separate filing requirements of the Commission's Public Notice Report No. I-6831, dated July 27, 1993, "FCC to Accept Applications for Service to Cuba.")

Facilities:

All non-U.S.-licensed satellite systems

This list is subject to change by the Commission when the public interest requires. Before amending the list, the Commission will first issue a public notice giving affected parties the opportunity for comment and hearing on the proposed changes. The Commission may then release an order amending the exclusion list. This list also is subject to change upon issuance of an Executive Order. See Streamlining the Section 214 Authorization Process and Tariff Requirements, IB Docket No. 95-118, FCC 96-79, 11 FCC Rcd 12,884, released March 13, 1996 (61 Fed. Reg. 15,724, April 9, 1996). A current version of this list is maintained at http://www.fcc.gov/ib/td/pf/exclusionlist.html.

For additional information, contact the International Bureau's Telecommunications Division, Policy & Facilities Branch, (202) 418-1460.

Statement of Commissioner Harold W. Furchtgott-Roth

Re: 1998 Biennial Regulatory Review -- Review of International Common Carrier Regulations

I support adoption of this Report and Order wherein, pursuant to the Commission's duty under Section 11(b) of the Communications Act of 1934, as amended, 47 U.S.C. Sect. 161(b), we have repealed or modified regulations that we have determined to be no longer necessary in the public interest. The regulations at issue here were chosen for repeal or modification as part of the Commission's 1998 Biennial Review, which was conducted pursuant to Section 11(a) of the Act, *Id*. at Sect. 161(a).

However, as thoroughly described in my *Report on Implementation of Section 11 by the Federal Communications Commission* (Dec. 21, 1998), which can be found on the FCC's WWW site at <http://www.fcc.gov/commissioners/furchtgott-roth/reports/sect11.html>, I believe that the 1998 Section 11(a) review was not as thorough as it should have been. I look forward to working with the chairman and other commissioners on the 2000 Biennial Review, planning for which should begin in mid-1999.

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