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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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AUG 23 1995

In the Matter of)
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Streamlining the International)
Section 214 Authorization)
Process and Tariff Requirements)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

IB Docket No. 95-118

COMMENTS OF AT&T CORP.

AT&T CORP.

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SUMMARY

AT&T objects to the Commission's imposition of additional regulatory burdens on it based solely on the unwarranted classification as a dominant carrier. AT&T would support the Commission's efforts to streamline the Section 214 process if the proposed streamlining applied to all non-affiliated U.S. carriers and not only those that are considered non-dominant.

Even under the dominant/non-dominant scheme, there is no basis for treating carriers differently as to Section 214 filing requirements. First, the policy rationale for dominant/non-dominant classification is not furthered by imposing more burdensome Section 214 filing requirements on dominant carriers. There are other more precise regulatory "tools" (e.g., review of tariffs, examination of accounting rate and service agreements, and the complaint process) that help prevent and detect the anticompetitive behavior dominant/non-dominant classification was meant to prevent or deter. Second, because of the existence of excess capacity in satellite and cable facilities, AT&T is unable to control the availability of international facilities to the detriment of its competitors.

As to the proposal regarding one-day tariff filing by non-dominant carriers, AT&T opposes this. All non-affiliated U.S. carriers should be treated the same as to

international tariff filings. Both dominant and non-dominant carriers should be able to file their tariffs for international services with one-day's notice.

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Pursuant to the Commission's Notice of Proposed Rulemaking ("NPRM"), FCC 95-286, released July 17, 1995, and Section 1.415 of the Commission's Rules, 47 C.F.R. §1.415, AT&T Corp. ("AT&T") submits these comments on the proposed amendments to the Commission's policies governing international Section 214 authorizations and tariff requirements.

GENERAL COMMENTS

AT&T objects to the Commission's continuing dissimilar treatment of U.S. carriers not affiliated with foreign carriers ("non-affiliated U.S. carriers"),¹ based solely on whether they are classified as "dominant" or "non-dominant." Despite overwhelming evidence submitted in prior

¹ AT&T is not affiliated for purposes of Section 63.01(r) with any foreign carrier that provides facilities-based international services.

proceedings that the international services market is fully competitive,² the Commission continues to classify AT&T as dominant. This incorrect classification hinders AT&T's ability to compete and to respond quickly to the needs of its customers. The NPRM's proposed rule changes only serve to widen the gap in regulatory burdens imposed on different non-affiliated U.S. carriers. AT&T supports, however, the proposed streamlining of the international Section 214 process and the international tariff filing process if it applies to all non-affiliated U.S. carriers.

The Section 214 process is designed to provide the Commission information adequate for it to ensure that the U.S. public interest would be served by the proposed construction, acquisition or operation of facilities. There is ample reason, based on experience, for the Commission to conclude that the entry or expansion of service to international points by any non-affiliated U.S. carrier on the subject route presumptively serves the U.S. public interest.³ Reducing the number and scope of required

² See, e.g., April 24, 1995 letter from Gerard Salemmé, Vice President, AT&T to Kathleen Wallman, Chief, Common Carrier Bureau, CC Docket No. 79-252.

³ The Commission has found that entry and/or expansion by foreign carriers, directly or indirectly in the U.S., present unique public interest factors that must be evaluated on a case-by-case basis. Telefonica Larga Distancia de Puerto Rico, 9 FCC Rcd. 4041, 4045 (1994) ("TLDR"). See also, AmericaTel Corp., 9 FCC Rcd. 3993, 3996, 3997-4001 (1994); MCI Communications Corp., 9 FCC

(footnote continued on following page)

Section 214 filings for those carriers will help reduce costs and, more importantly, allow them to act more quickly to satisfy the needs of U.S. customers.

Even if the Commission were to retain the unwarranted distinction between dominant and non-dominant non-affiliated U.S. carriers, there is no basis to treat such carriers differently under Section 214. In the context of international facilities authorization, the conduct that dominant classification was meant to deter is more effectively handled through processes other than maintaining more burdensome Section 214 filing requirements for dominant non-affiliated U.S. carriers. Moreover, as explained below, the NPRM's rationale for certain streamlining proposals is equally applicable to dominant, non-affiliated U.S. carriers as to non-dominant U.S. carriers.

The increased scrutiny brought by dominant status was designed to help deter or prevent acts of market exclusion, predatory pricing, price gouging, unreasonable

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Rcd 3960 (1994). Further, the Commission has proposed correctly to apply an effective market access test for foreign carrier facilities-based entry in the U.S. Notice of Proposed Rulemaking, Market Entry and Regulation of Foreign Affiliated Entities, 10 FCC Rcd. 4844 (1995). To accomplish this objective, the Section 214 process should be maintained under current rules for foreign carriers and their affiliates or subsidiaries that seek to enter or expand their presence in the U.S. international services market.

discrimination, exploitation of bottleneck facilities, and the unreasonable termination or reduction of service to customers.⁴ The additional Section 214 filing requirements imposed on dominant carriers are poor tools to prevent or detect such anticompetitive behavior. Review of tariff filings is a significantly better method to detect wrongful pricing practices of a dominant carrier than the Section 214 application process. Examination of accounting rate and service agreements between a carrier and its correspondent is a much better tool for preventing market exclusion than the review of a Section 214 application. FCC proceedings regarding a carrier's complaint against an owner of a domestic bottleneck facility is a better method of detecting possible unlawful exploitation of domestic bottleneck facilities than the Section 214 application process. And when compared to the Section 214 application process, the FCC's complaint process is a more precise process for resolving customer accusations of carrier discrimination.

In addition to the limited nexus between the Section 214 filing requirements for dominant carriers and the policy reasons underlying such classification, AT&T does not control the availability of international facilities.

⁴ International Competitive Carrier Policies, 102 FCC2d 812, 829 (1985); Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, 85 FCC2d 1, 21 (1980).

The NPRM recognizes that there is abundant satellite and submarine cable capacity throughout the world.⁵ This excess of capacity prevents any carrier, including AT&T, from controlling international facilities to the detriment of its competitors. Thus, continuation of asymmetric Section 214 burdens on AT&T is unwarranted.⁶

I. AT&T AGREES THAT THE SECTION 214 AUTHORIZATION PROCESS SHOULD BE STREAMLINED.

A. Global Section 214 Authority

AT&T supports the NPRM proposal to establish a "global" Section 214 authorization, but such global authorization should not be limited only to non-dominant carriers. Expansion of service to a new country by dominant, U.S. carriers without any foreign affiliation in that country, with virtual certainty, promotes the U.S. public interest in support of effective competition by multiple providers. Indeed, there is no apparent basis to conclude that expansion of service by one non-affiliated U.S. carrier is any more desirable than expansion of service

⁵ NPRM, ¶25.

⁶ For example, AT&T's ownership share in the most recent major common carrier cable systems, Americas-1, COLUMBUS II, TAT-10, TAT-11, TAT-12/13, TPC-4 and TPC-5 are significantly less than 50%. Furthermore, AT&T is not an owner in the two major transoceanic private cable systems, NPC and PTAT.

by another non-affiliated U.S. carrier -- irrespective of the carriers' dominant or non-dominant classification. Thus, the Commission should extend the global Section 214 process to all non-affiliated U.S. carriers' establishment of direct service to international points.⁷

As to U.S. international carriers with foreign affiliates that control foreign bottleneck facilities, the Commission should continue to require individual Section 214 applications to establish or expand service. This process is necessary to evaluate the unique public interest factors associated with foreign carrier entry.⁸ In particular, through the Section 214 authorization process, the Commission should apply its proposed effective market access test to all foreign carrier entry or expansion in the U.S. international services market.⁹

⁷ The Commission would continue to maintain regulatory oversight of carriers on all routes through other means. For example, information found in operating and accounting rate agreements between a carrier and its foreign correspondent that are filed with the FCC pursuant to 47 CFR §43.51 and the FCC's proposed monitoring of countries on a quarterly basis would enable the Commission to monitor any potential anticompetitive conduct by a dominant international carrier. These operating arrangements are better tools for such monitoring than the information that such carrier must include in its Section 214 application.

⁸ TLD, 9 FCC Rcd at 4045.

⁹ The Commission's Market Access NPRM proposes to apply its effective market access test to facilities-based entry by foreign carriers. AT&T has demonstrated in its Comments in that proceeding that the effective market access test should apply to resale entry by foreign carriers as well

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B. Service Provided on an Indirect, Switched Transit Basis

In a recent decision, the Commission dismissed as unnecessary AT&T's Section 214 applications for service that is to be provided on an indirect transit basis.¹⁰ The NPRM proposes to eliminate the requirement of a Section 214 application by all carriers that seek to provide service on an indirect, switched transit (or "and beyond") basis. AT&T understands that this proposal would relieve dominant and non-dominant carriers of the requirement. In that event, AT&T supports adoption of the proposal.

C. Resale of Private Lines for Switched Services

Except with respect to affiliates or subsidiaries of foreign carriers that seek to enter the international private line resale sector,¹¹ AT&T supports an after-the-

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because resale is a viable entry strategy in the U.S. Until resolution of that issue in the Market Access NPRM proceeding, the Commission should not streamline the process for resale application under Section 214 by foreign carriers.

¹⁰ American Telephone and Telegraph Co., DA 95-1678, at 2 (1995).

¹¹ Continuation of a Section 214 process for foreign carriers and/or their affiliates or subsidiaries would provide the means for the Commission to evaluate the public interest implications of market entry by such foreign carriers.

fact reporting requirement for international private line resellers on routes already found "equivalent" under the International Resale Order in lieu of a Section 214 application. However, streamlining of the Section 214 process should not imply less than vigorous enforcement of the Commission's reporting requirements for international private line resellers.¹² These traffic and circuit reports are necessary to monitor the effect of private line resale on the U.S. net settlements outpayment and on the Commission's objective to place downward pressure on accounting rates through private line resale activity. There remains a significant number of international private line resellers that are not complying with these reporting requirements.

D. Private Satellite and Cable Systems

The NPRM proposes to eliminate the Section 214 process for the purchase of private satellite and cable system capacity by non-dominant carriers based on the NPRM's rationale that there is an abundance of capacity worldwide. This rationale is equally applicable to the purchase of private satellite and cable system capacity by AT&T and any other non-foreign affiliated dominant carriers. Further, to

¹² Regulation of International Accounting Rates Proceeding, Phase II, 7 FCC Rcd 559 (1992).

the extent the Commission seeks to monitor such purchases by AT&T, after-the-fact reporting of such capacity purchases by AT&T would provide an adequate means. Commission action could be taken thereafter if the Commission were to conclude that intervention were necessary. Thus, AT&T believes that it should not be required to file individual Section 214 applications whenever it seeks to acquire capacity on a private cable system or satellite.

E. Conveyance of Cable Capacity

AT&T agrees with the Commission's proposed rule allowing the conveyance of transmission capacity in submarine cables from dominant carriers to other carriers without prior Section 214 authorization. AT&T believes that this rule should also apply to conveyances of capacity from any carrier to non-affiliated U.S. carriers that are considered dominant. As the Commission has recognized, there is no shortage of satellite or submarine cable capacity (both private and common carrier) in the world.¹³ This abundance of capacity and, to a lesser extent, the Commission's requirement for the filing of circuit status and traffic reports, would prevent or deter any carrier from attempting or succeeding in monopolizing the international

¹³ NPRM, ¶25.

facilities market. Most importantly, if AT&T was allowed to acquire capacity from other carriers without the need to file a Section 214 application, AT&T would be able to act more quickly to upgrade its facilities which in turn would ensure high-quality service for AT&T's customers.

F. Discontinuances

AT&T supports the NPRM's proposal that prior Section 214 authorization should not be required when carriers retire international facilities where service is not being discontinued, reduced or impaired. AT&T believes that for such retirement, a letter of notification to the Commission 60 days in advance of such action is sufficient.

G. Cable Landing License Applications

AT&T agrees with the proposed reduction in information that must be provided by cable landing license applicants. However, the Commission should go further. The contents of a submarine cable landing license application for private submarine systems should be reduced in a fashion similar to the NPRM's proposed rules for international Section 214 applications for new common carrier cable systems. With respect to the streamlining of information required in an international Section 214 application for the

operation and construction of a common carrier submarine cable facility, the Commission stated:

On balance, we believe that we need not review factors such as demand, cost, service quality, media and route diversity, restoration, intramodal and intermodal competition, technical innovations and international comity. This information does not appear necessary if U.S. international carriers investment in submarine cable facilities is viewed as a business decision taken at their own risk in a competitive market.¹⁴

Except for international comity,¹⁵ the aforementioned factors should not be part of the Commission's review of a cable landing license application for a private cable system. Investors in private systems, like the owners of common carrier systems, assume great economic risk when deciding to construct such systems. The market, and not the Commission, should determine whether and where there are current or anticipated needs for submarine cable systems, regardless of whether they are built on private or common carrier basis. There is simply no longer any basis to apply more stringent requirements on private cable owners than common carrier owners.

¹⁴ Id. at ¶41.

¹⁵ Federal law requires that the Commission consider international comity in determining whether to grant a submarine cable landing license. 47 USC § 35.

H. Contents of International Section 214 Applications

AT&T supports the Commission's efforts to reduce the information needed for authorization to construct and operate common carrier submarine cable facilities. AT&T strongly endorses the Commission's view that U.S. international carriers' investment in submarine cable facilities is a business decision taken at their own risk and as such need not require extensive review.

I. Conditions of International Section 214 Authorizations

AT&T supports imposition of the proposed standard conditions to Section 214 authorizations.

J. Petitions to Deny

AT&T supports reductions in time to file petitions to deny a Section 214 application, but suggests that the Commission impose a uniform 21 day public notice period for filing all petitions to deny, for both streamlined and non-streamlined applications. In addition, AT&T believes that all oppositions to petitions to deny should be filed in 14 days and all replies to oppositions should be filed in seven days. All of these proposed intervals should be based on calendar days, for ease in calculating due dates.

K. Computer Disks for Filing Section 214 Applications

AT&T supports the Commission's efforts regarding the option of filing Section 214 applications on computer diskettes or via electronic mail.

II. AT&T OPPOSES ALLOWING ONLY NON-DOMINANT CARRIERS THE ABILITY TO FILE TARIFFS FOR INTERNATIONAL SERVICES ON ONE-DAY'S NOTICE.

AT&T does not support the proposed one-day notice period for international tariff filings by non-dominant carriers. AT&T would support one-day tariff filings if such relaxation of regulatory burdens would apply to all non-affiliated U.S. carriers, both dominant and non-dominant. AT&T opposes any further widening of the gap between the filing requirements imposed on dominant carriers and those imposed on non-dominant carriers. By permitting one-day notice for only non-dominant carriers, the Commission would impede AT&T's ability to compete and to respond rapidly to the needs of its customers. As with Section 214 application requirements, the Commission should treat all non-affiliated U.S. carriers alike.

CONCLUSION

AT&T supports the proposals to streamline the international Section 214 and tariff processes. However, as

shown herein, these proposals should be extended to relieve dominant non-affiliated U.S. carriers from the additional and more burdensome filing requirements now imposed on them. With the modifications suggested by AT&T, U.S. customers will benefit from the reduced costs and greater efficiencies realized by all non-affiliated U.S. carriers as a result of streamlining.

Respectfully submitted,

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Date: August 23, 1995

CERTIFICATE OF SERVICE

I, Chris Pereira, do hereby certify that a copy of Comments of AT&T Corp. (In the Matter of Streamlining the International Section 214 Authorization Process and Tariff Requirements, IB Docket No. 95-118), dated August 23, 1995, has been sent by United States mail, postage prepaid, to the following:


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