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

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**FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
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 )  
Streamlining the International )  
Section 214 Authorization )  
Process and Tariff Requirements )

**DOCKET FILE COPY ORIGINAL**

IB Docket No. 95-118

REPLY COMMENTS OF AT&T CORP.

AT&T CORP.

Judith A. Maynes  
Claire L. Calandra  
David T. Matsushima

Its Attorneys

295 N. Maple Avenue  
Basking Ridge, NJ 07920

Dated: September 7, 1995

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## SUMMARY

The comments filed in this proceeding generally support the Commission's noteworthy efforts to streamline the Section 214 process. Relaxation of regulation of the international services and facilities market is clearly warranted by the broad and vigorous competition that exists in the market. However, some parties continue to seek to use the regulatory process as a means to hamper effective competition. AT&T opposes the positions advanced by certain parties in this regard as summarized below.

Under the NPRM proposal, the instances in which Section 214 applications would be required would be reduced substantially, and where an application process remains, the NPRM provides for a streamlining of the information in support of those filings. Yet, without providing any persuasive reason as to the need for review of facility capacity transfers, MCI seeks to require AT&T to file a Section 214 application every time AT&T sells capacity to a U.S. carrier. Not only does this requirement appear to have no foundation in the language of Section 214, it ignores the abundance of capacity that exists in the facilities market and the vigorous state of competition among capacity suppliers. For this reason, AT&T objects to MCI's attempts to maintain unnecessary and burdensome regulatory

constraints on AT&T that will widen the gap in the regulatory treatment between AT&T and its competitors.

Other commentators inappropriately attempt to expand the scope of this proceeding to change major policy determinations and substantive obligations established by the Commission to address specific public interest issues. For example, MFSI and Shaw Pittman ask the Commission to remove the equivalency determination for international private lines interconnected to the U.S. PSN. Without regard to the fact that these parties do not provide any persuasive reason as to why certain carriers should be permitted to engage in harmful one-way international private line resale, this proceeding is not the forum to address this significant policy change. Similarly, ACC's and MFSI's challenges to growth-based accounting rates are misplaced in this proceeding.

While AT&T supports a streamlining of the process for previously authorized international private line resellers to expand their operations to additional countries found to be "equivalent" by the Commission, the Commission should require such resellers to submit prior notice of their intent to serve a new country to identify those resellers who are subject to the reporting requirements. Today, a number of international private line resellers are flagrantly ignoring the Commission's order regarding traffic

and circuit reports. Diligent and vigorous enforcement of the reporting requirements imposed on international private line resellers is necessary to monitor the effect of that resale on the U.S. net settlements outpayment.

Further, the Commission should eliminate the Section 214 requirements for international switched resellers where the applicant is a U.S. carrier with no foreign carrier ownership. These applications present no public interest issue and unfettered entry by these applicants will promote competition in the U.S. Conversely, switched resale applications by U.S. carriers with foreign carrier ownership provide market access issues that present unique public interest factors that should be assessed by the Commission on a case-by-case basis in accordance with the criteria proposed for effective market access in the pending Market Access NPRM.

Finally, the Commission should distinguish between U.S. carriers who have ownership interests in new entrants abroad from U.S. carriers who are owned in whole or in part by foreign carriers with bottleneck control in foreign markets. As the Commission recognized in the Market Access NPRM, in the former situation, the U.S. carriers' inability to control bottleneck facilities in foreign markets do not provide the means for the leveraging of foreign monopoly power in the U.S. That leveraging can occur, however, where

the foreign monopoly carrier has an ownership interest in a U.S. carrier. While Sprint supports this distinction, there is no logical basis for Sprint's further attempt to impose additional filing requirements on U.S. carriers that have contractual arrangements with foreign carriers but no affiliation with such carriers.

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REPLY COMMENTS OF AT&T CORP.

AT&T Corp. ("AT&T") submits this reply to those parties that submitted comments regarding the proposed amendments to the Commission's policies governing international Section 214 authorizations and tariff requirements.

I. THE COMMISSION SHOULD REQUIRE PRIVATE LINE RESELLERS PROVIDE NOTICE OF THEIR INTENT TO INITIATE SERVICE TO AN EQUIVALENT COUNTRY.

In its Comments, AT&T supported the establishment of a streamlined process for the commencement of services by international private line resellers on routes already found "equivalent" under the International Resale Order. In lieu of a Section 214 application, AT&T suggested that resellers authorized to engage in international private line resale on any route be permitted to offer international private line resale services on other routes thereafter declared equivalent subject to reporting requirements. These reporting requirements have been routinely included in all

international private line resale licenses granted to date. A significant number of international private line resellers, however, are not complying with the specific requirements imposed in the Commission's fONOROLA/EMI Order on Reconsideration<sup>1</sup> and the ACC/Alanna<sup>2</sup> decisions that resellers providing switched services via resold private lines between the U.S. and Canada and the U.S. and the U.K. file semi-annual traffic reports of their resale minutes.<sup>3</sup>

This non-compliance problem could well be exacerbated unless carriers seeking to provide international private line service to another equivalent point notify the Commission that they are initiating service to that country. Without a notification requirement, each blanket authority would mask the identity of carriers serving those countries and hinder efforts to ensure compliance with the FCC's reporting requirements. In view of the recent data concerning non-compliance with FCC reporting requirements, the Commission should require, at a minimum, that such notification should be placed on Public Notice so that carriers serving countries via resold private lines are

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<sup>1</sup> 9 FCC Rcd. 4066 (1994).

<sup>2</sup> 9 FCC Rcd. 7312 (1992).

<sup>3</sup> Of the eighteen carriers authorized to provide international private line resale service to Canada, only two carriers filed reports for the second half of 1994 by the required date, March 31, 1995; of the seven carriers authorized to provide service to the U.K. for the same period, only two carriers filed by that date.

identified. The Commission could then expect to uncover failures by any carriers to file required reports on their resale traffic. In that event, the Commission should also vigorously enforce and compel the production of traffic reports by international private line resellers that are in violation of FCC rules governing the filing of these reports.

II. THE COMMISSION SHOULD REJECT ATTEMPTS TO RELAX REGULATIONS ON ONE-WAY RESALE ARRANGEMENTS BETWEEN AFFILIATES.

One international private line reseller, MFSI, has suggested that the FCC exempt "emerging carriers" and their non-dominant foreign affiliates from the basic requirements of the International Resale Order. Under MFSI's proposal, the Commission would exempt international private line resellers from the requirement that they apply for Section 214 authority and demonstrate that the foreign market provides "opportunities for resale equivalent to those available under U.S. law"<sup>4</sup> in order to engage in international private line resale.

Shaw, Pittman's suggested changes to proposed Section 63.12(c)(2) could also be interpreted to support one-way resale arrangements between affiliates without an equivalency determination that the foreign market represents

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<sup>4</sup> International Resale Order, 7 FCC Rcd. 559 (1992).

an equivalent market for purposes of international private line resale. These proposed changes are contrary to the public interest findings in the Commission's International Resale Order and should be rejected.

In the International Resale Order, and in its recent Market Entry NPRM<sup>5</sup>, the Commission concluded that an equivalency demonstration is necessary to guard against one-way resale arrangements because they would inevitably aggravate the already growing U.S. settlements deficit. Contrary to MFSI's suggestion, whether these arrangements are made by "emerging carriers" or others, the negative effect on the U.S. interest is the same. In any event, however, this rulemaking to streamline procedural rules is not the forum for consideration of the significant policy change MFSI and Shaw, Pittman suggest.

III. COMPTEL'S SUGGESTION TO ELIMINATE ALL SECTION 214 FILING REQUIREMENTS FOR "PURE" INTERNATIONAL SWITCHED RESALE SHOULD NOT BE ADOPTED FOR FOREIGN-OWNED U.S. CARRIERS.

CompTel suggests that the Section 214 filing requirement be eliminated for all carriers seeking to engage in "pure international switched resale."<sup>6</sup> AT&T agrees with CompTel that these applications raise no policy issues when

<sup>5</sup> Market Entry and Regulation of Foreign-Affiliated Entities, Notice of Proposed Rulemaking, 10 FCC Rcd. 4844 (1995) ("Market Entry NPRM"), at ¶79.

<sup>6</sup> CompTel Comments at 2-3.

the applicant is a U.S. carrier without foreign carrier ownership. Market entry or expansion by foreign-owned U.S. carriers -- whether as a reseller or facilities-based operator -- present unique public interest factors requiring Commission resolution. Thus, AT&T submits that the Section 214 application process for international switched resale should be eliminated except with respect to U.S. carriers with foreign ownership.<sup>7</sup>

IV. THERE IS NO BASIS FOR MCI'S REQUEST TO REQUIRE AT&T TO FILE A SECTION 214 APPLICATION WHENEVER IT CONVEYS CAPACITY TO OTHER U.S. CARRIERS.

The Commission should reject MCI's request that AT&T should file a Section 214 application every time it conveys capacity in a submarine cable system to other U.S. carriers. MCI's proposal would only serve to prolong the time it takes to convey capacity to U.S. carriers.<sup>8</sup>

There is no legal or factual basis for MCI's request. In fact, MCI concedes as much.<sup>9</sup> In its comments,

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<sup>7</sup> See, e.g., TLD Resale Application, ITC-95-248; Teleglobe Resale Application, ITC-95-467.

<sup>8</sup> MCI itself actively supported an AT&T request to waive the required FCC authorization when AT&T sought to convey capacity in the TCS-1 Cable System to MCI. TCS-1 Cable System, File No. ITC-88-071, April 9, 1991 letter of Jodi L. Cooper, MCI, to Donna R. Searcy, Secretary, FCC.

<sup>9</sup> As to the TCS-1 Cable System, MCI stated that it ". . . believes that the Commission, in its TCS-1 Order, did not intend to require prior authorization for the transfer of capacity on other than an ownership basis between U.S. carriers." Id.

MCI states that (i) the Communications Act does not require such Section 214 authority; (ii) there is an abundance of available capacity; (iii) the terms and conditions of the conveyance are mutually agreed to by the parties; and (iv) during the past several years, no one, including MCI, has objected to AT&T's conveyance of capacity.<sup>10</sup> Furthermore, MCI overlooks the fact that (i) 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%; (ii) there is a large number of potential sellers of capacity;<sup>11</sup> and (iii) AT&T is not an owner in the two major transoceanic private cable systems, NPC and PTAT. If a potential buyer of capacity is not satisfied with AT&T's price, it may seek to buy from another potential seller.

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<sup>10</sup> MCI's Comments at 4-5.

<sup>11</sup> For example, the Americas-1 and COLUMBUS II cable systems have over 50 owners; TPC-5 and TAT-12/13, over 40 owners; TPC-4 and TAT-10, over 30 owners; and TAT-11, over 20 owners. In addition to the owners of each system there are a number of IRU holders who have purchased capacity from owners or other IRU holders and may sell their IRU interests to potential buyers.

V. THE COMMISSION SHOULD REJECT SPRINT'S ATTEMPT TO CHANGE THE PROPOSED RULES ON FOREIGN AFFILIATION.

Sprint suggests that the Commission should drop its proposed exclusion of U.S. carriers with foreign affiliations from the automatic granting of global Section 214 authority. AT&T agrees with Sprint that the real question is not whether a U.S. carrier has an ownership interest in a foreign carrier, but whether their U.S. carrier controls a foreign carrier with bottleneck facilities essential to the termination or delivery of U.S. outbound calls to that country.<sup>12</sup> AT&T, for example, has no controlling interest in a foreign carrier that controls such essential facilities, and there is no public interest reason to limit its expansion of service to additional countries. Because the leveraging of foreign monopoly power can occur where it has an ownership interest in a U.S. carrier, Sprint's recommendation that global 214 authority be extended to these carriers should be rejected.

Moreover, while Sprint proposes automatic global Section 214 authority for its operations despite its proposed affiliation with France Telecom and Deutsche

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<sup>12</sup> AT&T agrees with Shaw, Pittman's suggested change to the proposed Section 63.12(c)(1). However, as set forth in its Comments, AT&T does not believe, as implied by Shaw, Pittman, that the rules regarding foreign affiliation should only apply to facilities-based carriers and not to resellers. AT&T's Comments, at 6-7, fn. 9.

Telekom, Sprint illogically argues that U.S. carriers with no foreign carrier ownership should be subject to stricter regulation than Sprint if they have "business arrangements . . . short of affiliation." Sprint Comments at 5. As the Commission found in its Market Entry NPRM,<sup>13</sup> and as the Department of Justice has stated,<sup>14</sup> such business arrangements do not raise the same competitive concerns that are raised by affiliation and should not be subject to similar regulation. Sprint's proposal to impose greater regulation on U.S. carriers with no foreign ownership therefore should be rejected.

VI. ACC'S AND MFS'S COMMENTS REGARDING GROWTH-BASED ACCOUNTING RATES ARE INAPPLICABLE TO THE CURRENT PROCEEDINGS.

ACC and MFSI suggest that the Commission prohibit any growth-based accounting rate arrangements unless they are simultaneously made available to all U.S. carriers based on the aggregate volume of U.S. traffic to the foreign point.<sup>15</sup> The proper scope of growth-based accounting rates is presently before the Commission in four ISP waiver requests involving the Philippines and Malaysia, Spain, Bolivia and Uruguay, and should be determined there or in a

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<sup>13</sup> 10 FCC Rcd. at 4868.

<sup>14</sup> Market Entry NPRM, Reply Comments of Department of Justice (filed May 12, 1995) at 16.

<sup>15</sup> ACC Comments at 8; MFSI Comments at 12.

separate rulemaking dedicated to accounting rate matters,  
not in a proceeding to streamline the Section 214 process.

CONCLUSION

AT&T supports the Commission's efforts to streamline the international Section 214 application processes. The Commission should impose more burdensome section 214 filing requirements only when such requirements would substantially assist in the detection or deterrence of violations of the Communications Act or Commission orders and regulations.

Respectfully submitted,

AT&T CORP.

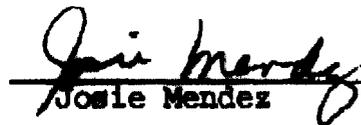
By: David T. Matsushima  
Judith A. Maynes  
Claire L. Calandra  
David T. Matsushima

Its Attorneys  
295 North Maple Avenue  
Basking Ridge, NJ 07920

Date: September 7, 1995

## CERTIFICATE OF SERVICE

I, Josie Mendez, do hereby certify that a copy of Reply 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 September 7, 1995, has been sent by United States mail, postage prepaid, to the following:

  
Josie Mendez

Dated: September 7, 1995

Dr. T. P. Quinn, Deputy Asst.  
Secretary of Defense  
Strategic & Tactical C3  
OASD (C3I)  
Pentagon, Room 3E160  
Washington, DC 20301-3040

John Grimes, Deputy Asst.  
Secretary of Defense  
(Defense YC3)  
Pentagon, Room 3E194  
Washington, DC 20301-3040

Carl Wayne Smith, Esq.  
Code AR Defense Information  
Systems Agency  
701 South Courthouse Road  
Arlington, VA 22204

Office of General Counsel  
National Security Agency  
9800 Savage Road  
Fort Meade, MD 20755-6000

Ambassador Vonya B. McCann  
United States Coordinator  
International Communication  
and Information Policy  
Department of State  
Room 4826  
2201 C Street, N.W.  
Washington, D. C. 20520

Joann Kumekawa  
Department of Commerce  
Room 4898  
14th St. & Constitution Ave,  
NW  
Washington, D.C. 20230

Joanna Lowry  
Attorney Advisor, Office of  
Chief Counsel  
Department of Commerce  
Room 4713  
14 St. & Constitution Ave, NW  
Washington, D.C. 20230

Richard Beaird  
Bureau of International  
Communications and  
Information Policy  
Department of State  
Room 4836  
2201 C Street, N.W.  
Washington, DC 20520-1428

Michael Fitch  
Bureau of Int'l Communications  
and Information Policy  
Department of State  
Room 4826  
2201 C Street, N.W.  
Washington, D.C. 20520

Michele Farquhar  
Chief of Staff and Director  
Office of Policy Coordination  
and Management - NTIA  
Department of Commerce  
Room 4892  
14th St. & Constitution Ave.,  
NW  
Washington, D.C. 20230

Suzanne Settle  
Senior Policy Advisor  
NTIA  
Department of Commerce  
Room 4701  
14th St. & Constitution, N.W.  
Washington, D.C. 20230

Toni Cina  
Bureau of International  
Communications and Information  
Policy  
Department of State  
Room 4826  
2201 C Street, N.W.  
Washington, D.C. 20520

Carolyn Darr  
NTIA  
Department of Commerce  
Room 4720  
14th St. & Constitution, N.W.  
Washington, D.C. 20230

Robert S. Koppel  
Vice President, International  
Regulatory Affairs  
WorldCom, Inc.  
15245 Shady Grove Road  
Suite 460  
Rockville, MD 20850

Paula V. Brillson, Esq.  
Donald J. Elardo  
MCI Telecommunications  
Corporation  
1801 Pennsylvania Ave, N.W.  
Washington, DC 20006

Gail Polivy, Esq.  
GTE Hawaiian Telephone Company  
1850 M Street, N.W.  
Suite 1200  
Washington, DC 20036

Keith H. Fagan  
COMSAT Communications  
6560 Rockspring Drive  
Bethesda, MD 20817

Leon M. Kestenbaum  
Michael B. Fingerhut  
Sprint Communications  
Company L.P.  
1850 M Street, N.W.  
11th Floor  
Washington, DC 20036

John Dalton  
Secretary of the Navy  
Office of the Secretary  
Department of the Navy  
The Pentagon  
Washington, D.C. 20310

Barbara Wellberry  
Chief Counsel  
Department of Commerce - NTIA  
Room 4713  
14th St. & Constitution Ave,  
N.W.  
Washington, D.C. 20230

Helen E. Disenhaus  
Phyllis A. Whitten  
Gene DeJordy  
Margaret M. Charles  
Swidler & Berlin, Chartered  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007  
Counsel for ACC, Pacwest,  
MFSI

Charles H. Helein  
Helein & Associates, P.C.  
8180 Greensboro Dr., Suite 700  
McLean, VA 22102  
Counsel for ACTA

Raul R. Rodriguez  
Stephen D. Baruch  
Walter P. Jacob  
Leventhal, Senter & Lerman  
2000 K Street, N.W., Suite 600  
Washington, D.C. 20006  
Counsel for AmericaTel

Gary Phillips  
Ameritech Communications, Inc.  
1401 H Street, N.W.,  
Suite 1020  
Washington, D.C. 20005

Joan M. Griffin  
BT North America, Inc.  
North Building, Suite 725  
601 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

Robert J. Aamoath  
Reed Smith Shaw & McClay  
1301 K Street, N.W.  
Suite 1100 - East Tower  
Washington, D.C. 20005  
Counsel for CompTel

Genevieve Morelli  
Vice President and  
General Counsel  
Competitive Telecommunications  
Association  
1140 Connecticut Avenue, N.W.  
Suite 220  
Washington, D.C. 20036

Joseph A. Godles  
W. Kenneth Ferree  
Goldberg, Godles, Wiener &  
Wright  
1229 Nineteenth Street, N.W.  
Washington, D.C. 20036  
Counsel for PanAmSat

Gregg Daffner, Esq.  
Vice President, Government  
Affairs  
PanAmSat Corporation  
One Pickwick Plaza  
Greenwich, Connecticut 06830

Robert E. Conn  
Shaw, Pittman, Potts &  
Trowbridge  
2300 N Street, N.W.  
Washington, D.C. 20037

Michael L. Glaser  
K. Harsha Krishnan  
Hopper and Kanouff, P.C.  
1610 Wynkoop Street  
Suite 200  
Denver, CO 80202  
Counsel for Teleport  
Transmission Holdings, Inc.