example, international Section 214 applicants seeking authority to construct and operate submarine cable facilities will no longer submit information on demand, cost, service quality, media and route diversity, restoration, intramodal and intermodal competition, and technological innovations. By clarifying and reducing the information carriers must submit in an international Section 214 authorization, we will serve the public interest by significantly lessening the burden on existing carriers and new entrants.

60. Finally, our new rule clarifies the definition of a foreign carrier for purposes of Section 214 applications to include specifically entities authorized within a foreign country 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 of their country. This definition is consistent with the International Telecommunication Regulations,[80] as well as our recent *Foreign Carrier Entry Order*. In that Order, we focused on the ability of a non-U.S. entity seeking U.S. carrier status to discriminate against other U.S. carriers in the origination and termination of traffic in a destination market.[81] A foreign domestic carrier that terminates international traffic could have such an ability if it was the dominant carrier in that market.

9. Conditions of international Section 214 authorizations

(a) The *Notice*

61. In the *Notice*, we proposed to create a new section of the rules that would list the conditions we routinely include as part of an international Section 214 authorization.[82] We believed that having these conditions listed in one section of the rules would make it easier for carriers to determine the terms of their authorizations and for us to facilitate implementation of our proposed streamlined procedures.

(b) Position of the Parties

62. No party opposes this proposal. MCI suggests, however, that the Commission include a requirement that dominant carriers file cable capacity conveyances that contain the information described in Paragraphs 40-45 of this *Order*.[83]

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[80] *Final Acts of the World Administrative Telegraph and Telephone Conference*, Melbourne, 1988 (WATTC-88), Art.1.

[81] *Foreign Carrier Entry Order* at ¶ 44.

[82] *Notice* at ¶¶ 43, 44.

[83] Supporting comments were filed by: WorldCom Comments at 2, ACTA Comments at 4, AT&T Comments at 12, MCI Comments at 8-9, and AmericaTel Comments at 8.

(c) Discussion

63. We find that the public interest will be served by adopting our proposal and listing the standard conditions applicable to international Section 214 authorizations in a new Section 63.21. We also will include the notification requirement requested by MCI.[84] Our new rule will identify and clarify standard conditions placed in international Section 214 authorizations to facilitate implementation of our proposed streamlined procedures. The new rule will consist of: (1) the prohibition on the resale of private lines for the provision of international switched services unless the country has been designated as providing equivalent resale opportunities for U.S.-based carriers; (2) the requirement to file copies of operating agreements entered into with foreign correspondents and all other agreements specified under Section 43.51;[85] (3) the requirement to file applicable tariffs;[86] (4) the requirement to file annual reports of overseas telecommunications traffic;[87] (5) the requirement to file annual circuit status and addition reports,[88] and (6) the requirement for dominant carriers to file a notification of conveyances of submarine cable circuits to other carriers.[89] We will reference this rule in the public notice or order that serves as an applicant's international Section 214 authorization.

III. PETITIONS TO DENY

(a) The *Notice*

64. In the *Notice*, we proposed to shorten the comment period for Section 214 applications. We stated that our proposal would both accelerate the application process and make it easier for both applicants and the Commission to calculate due dates, which we proposed to be in multiples of seven.

(b) Positions of the Parties

65. WorldCom was the only commenter to oppose our proposed changes to the comment periods. WorldCom argues that the Commission should not change the filing

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[84] *See supra* at ¶¶ 40-45.

[85] 47 C.F.R. § 43.51 (1994).

[86] 47 U.S.C. § 203 (1995); 47 C.F.R. Part 61 (1994).

[87] 47 C.F.R. § 43.61 (1994).

[88] *See supra* note 6.

[89] *See supra* at ¶¶ 43-45.

period for petitions to deny non-dominant carrier applications.[90] WorldCom states that the standard thirty day public comment period has served the public and the Commission well and there is no compelling reason to reduce it.[91] WorldCom believes that public comment periods of 21, 28, and 30 days for different applications will be confusing and it does not believe that a 28-day comment period is substantially easier to calculate than a 30-day.[92] Furthermore, WorldCom states that, in the rare case that a petition to deny is warranted, 21 days does not provide adequate time to prepare the appropriate pleading and the additional nine days would not delay unduly the application process. If a petition to deny is meritless, WorldCom states that the International Bureau should grant the application expeditiously. If the petition raises material questions, it believes nine days will have little or no impact on the timing of the International Bureau's ultimate decision.

66. In addition, AT&T and SPPT proposed some modifications. AT&T 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. 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. AT&T states that all intervals should be based on calendar days for ease in calculating due dates.[93]

67. SPPT believes that the streamlined processing procedures could be frustrated by frivolous petitions as a formal petition to deny would remove an application from streamlined processing.[94] SPPT notes that petitioners would be rewarded for their non-meritorious filings by causing delay in the commencement of an applicant's services. SPPT states that the adjudication of petitions to deny is burdensome and time-consuming for the International Bureau's staff. SPPT recommends that the Commission consider the assessment of filing fees on petitions to deny. SPPT also recommends that the Commission amend Section 63.52(c) to require petitioners to verify by affidavit all of their interests, including economic interests, in having the application denied.[95]

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[90] ACTA supports the proposed reductions in the pleading schedules affecting 214 applications (*Notice* at ¶ 46). ACTA Comments at 4.

[91] WorldCom Comments at 4.

[92] *Id.* at 4-5.

[93] AT&T Comments at 12.

[94] SPPT Comments at 4.

[95] For example, SPPT states that a petitioner could be required to show: (1) precisely how it would be harmed by a grant of a target application and how it would benefit from a denial or delay; (2) specifically how petitioner would serve the area covered by the target application, including a representation as to whether petitioner's transmission system can physically reach or serve the entire area; (3) a reference to, and description of, the arrangements petitioner has to serve the area, and (4) a detailed description and itemization of services being provided, and of pending customer requests for

(c) Discussion

68. We adopt the proposals as set forth in the *Notice* with a few modifications. We will add a new Section 63.20 to address streamlined Section 214 filing requirements and pleading periods.[96] In this rule, we will reduce the comment period on applications that are subject to streamlined processing for facilities-based and resale applicants to 21 days. For non-streamlined applications, the comment period will be 28 days. We find this distinction necessary because non-streamlined applications are often not routine, and can raise difficult issues. Although we reject AT&T's request for a uniform 21-day comment period, we adopt AT&T's suggestion that the period for filing oppositions to petitions to deny for all applications be 14 days and the reply period 7 days.

69. We acknowledge WorldCom's concern that the change from 30 to 21 days for streamlined processing may impose a slight hardship on entities with limited resources. If an entity believes it needs additional time to file comments, it may request an extension of time. We believe that, on balance, it is less burdensome to consider requests for appropriate extensions of time on an *ad hoc* basis,[97] than to hold up the vast majority of routine applications. Reducing the time parties have to submit comments will accelerate the application process and enable carriers to enter the market faster. This annual cumulative affect will be substantial to the industry as a whole. Similarly, we find, contrary to WorldCom's assertion, that reducing the comment period from 30 to 28 days for non-streamlined applications will make due dates easier to calculate for both applicants and the Commission. With rare exceptions to accommodate federal holidays, the due dates will be the same day of the week that the application appeared on public notice, only four weeks later.

70. We do not adopt SPPT's recommendation that we require full disclosure by petitioners or assess a filing fee on Commission licensees' petitions to deny. We do not believe the record discloses the need to deter the filing of petitions to deny by imposing fees, nor does it demonstrate that imposing such fees would have the intended effect.

IV. FORM FOR FILING OF INTERNATIONAL SECTION 214 APPLICATIONS

(a) The *Notice*

71. In the *Notice*, we proposed that applicants have the option of filing their Section 214 applications on computer diskettes. Also, we proposed that information or documents in foreign languages that are submitted to the Commission in Section 214

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such services, by the petitioner to the area covered. SPPT Comments at 4-6.

[96] 47 C.F.R. § 63.20 (1994).

[97] Section 1.4(b) states, however, that motions for extension of time will not be routinely granted.

proceedings be accompanied by a certified translation in English. As a result of meetings with industry, we further proposed to apply the procedures applicable to carriers' electronic filing of their circuit status and addition reports to the Section 214 applications. Finally, we asked for comment on whether we should create a standard form for international Section 214 applications.

(b) Positions of the Parties

72. Most commenters support the proposal of giving parties the option of filing their international Section 214 applications on computer diskettes.[98] WorldCom and SPPT, however, support it only as long as parties also are required to file paper copies of their applications that are made available to the public. SPPT questions whether diskettes would be convenient to members of the public who wish to monitor the filing of Section 214 applications or to government agencies who are entitled to be served with Section 214 applications. SPPT suggests that it might be advisable for the Commission to rethink its diskette proposal or to delegate to the International Bureau the authority to modify the diskette proposal when it compiles the "filing manual" called for under proposed Section 63.53(b).

73. WorldCom believes there is no need to create a standard form for filing Section 214 applications.[99] WorldCom states that the requirements in the proposed successor to Section 63.01 provide more than enough guidance for applicants to file a complete Section 214 application. Also, WorldCom states that given the variety in applicants, a form would be more burdensome than convenient.[100]

(c) Discussion

74. We adopt our proposal to give applicants the option of filing their Section 214 applications on computer diskettes. We will, however, continue to require that applicants file paper copies of their applications until such time as we determine that paper copies are no longer needed to facilitate public access. To the extent that they apply, we will apply the same procedures adopted in the *Circuit Status Order* proceeding to determine how these applications should be filed. Namely, we direct the International Bureau to prepare a filing manual specifying the type and format of computer diskettes to be used and to hold meetings

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[98] Supporting commenters were filed by: TTH Comments at 4, ACC Comments at 2, and MFSI Comments at 4. AT&T supports the Commission's efforts regarding the option of filing Section 214 applications on computer diskettes or via electronic mail. AT&T Comments at 13.

[99] WorldCom Comments at 5.

[100] WorldCom contends that the forms would be inadequate because (1) applicants would not have enough space to answer the questions and would have to provide supplements to the form and (2) the questions asked would be inapplicable to each form of international Section 214 authority sought. WorldCom Comments at 5.

with the public and industry to solicit suggestions on the methods and procedures to implement this new rule and to keep the manual current. This approach will enable us to facilitate public access to these applications via the Internet and eventually other means of electronic communications. Having applications on computer diskettes also will save the International Bureau time inputting information to be included in non-streamlined Section 214 authorizations, thus speeding up Section 214 application processing.

75. Also, we adopt our proposal that information or documents in foreign languages that are submitted to us in Section 214 proceedings be accompanied by a certified translation in English. Currently, we receive documents in foreign languages, which effectively precludes a large portion of the public from reading the materials. Having English translations of relevant documents that are now submitted in foreign languages would save us and others the time and resources needed to translate the documents. We believe that these changes will help us process Section 214 applications faster.

76. Finally, although WorldCom has raised concerns about creating a new form for filing Section 214 applications, we believe there may be benefits to a uniform Section 214 application form. For instance, creating a form would enable direct placement on the Internet which would provide easy access to businesses and others seeking information about applying for Section 214 authorizations. Therefore, we instruct the International Bureau to determine the practicality of a standardized form. In addition, we will make available to the public through the Internet and other sources filing aids such as checklists, instruction sheets or sample applications.

V. TARIFFING REQUIREMENTS

(a) The *Notice*

77. In the *Notice*, we proposed to streamline further the tariff requirements on international non-dominant international resale and facilities-based carriers by permitting them to file their international rates on one-day notice, instead of the current 14-day notice. We believed this action would accelerate the entry of carriers into the international telecommunications market and allow for rapid reaction to market conditions by existing international carriers. We further invited commenters to address whether non-dominant international tariff filings should be subject to relaxed form and content requirements, similar to those that govern the filing of non-dominant, domestic interstate tariffs.[101]

(b) Positions of the Parties

78. Virtually all commenters, except AT&T, agree that non-dominant carriers

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[101] *Tariff Filing Requirements for Nondominant Common Carriers*, CC Docket No. 93-36, *Memorandum Opinion and Order,* 8 FCC Rcd 6752 (1993) *(Non-dominant Tariff Order)*; *vacated in part Southwestern Bell Corp. v. FCC*, 43 F.3d 1515 (D.C. Cir. 1995); *Order*, 10 FCC Rcd 13653 (1995).

should be permitted to file rates based on one-day notice.[102] MCI states that the earlier availability of new services and rate adjustments in the competitive arena clearly would serve the public interest. MCI is not aware of any non-dominant carrier's international service tariff revision that has been challenged successfully. MCI states that, if such an instance were to arise, the Commission and consumers would have ample opportunity to take remedial action after the tariff became effective. MCI asserts that the current rules place an enormous administrative burden upon carriers, such as MCI, which maintain single tariffs containing provisions pertaining to both domestic and international service.[103] Several commenters assert that there is no reason to impose more burdensome tariffing requirements on a carrier's international as opposed to its domestic services.[104]

79. Although AT&T opposes our proposal, AT&T states that it would support a one-day notice period for international tariff filings if it applied to all unaffiliated U.S. carriers, and not just to non-dominant carriers. AT&T opposes widening the gap between the filing requirements imposed on dominant carriers and those imposed on non-dominant carriers. AT&T states that, by permitting one day's notice for only non-dominant carriers, the Commission impedes AT&T's ability to compete and respond rapidly to its customers' needs.[105]

(c) Discussion

80. We adopt our proposal to streamline the tariff requirements on international non-dominant international resale and facilities-based carriers. As detailed in the

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[102] Supporting comments were filed by: WorldCom Comments at 5-6, SPPT Comments at 6, ACC Comments at 4, TTH Comments at 4, CompTel Comments at 2, MCI Comments at 9, BTNA Comments at 2, Sprint Comments at 1-2, and MFSI Comments at 4. SPPT supports the one-day notice, relaxing the form and content requirements of tariffs and transmittal letters, and eliminating the need for any economic tariff support material. ACC supports the one-day notice proposal, if Congress does not grant forbearance authority to the Commission, and states that the proposal serves the public interest by reducing the time and cost associated with regulatory compliance for both government and carriers. ACC Comments at 4-5. TTH states that the current requirements reduce the flexibility of non-dominant carriers to adjust their rates based on competitive conditions. TTH Comments at 4.

[103] MCI Comments at 10-12. According to MCI, given the dissimilar tariff notice requirements for domestic and international service, complexities arise when a carrier wishes to introduce a new service containing both domestic and international components. In such instances, the carrier must choose among: (1) issuing tariffs for domestic and international service simultaneously, while "staggering" the effective dates, thus altering the ubiquitous nature of the service in between the different effective dates; (2) issuing tariffs for domestic and international service simultaneously with concurrent effective dates thereby losing the benefit of the streamlined rules for the domestic tariff, or (3) staggering the issue dates for the domestic and international tariff provisions, thereby presenting to the marketplace an incomplete picture of the composite offering. Additionally, MCI states that the administrative burden translates into confusion for consumers.

[104] Worldcom Comments at 6, MCI Comments at 10-12, TTH Comments at 4.

[105] AT&T Comments at 13.

accompanying rules, we apply to international non-dominant carriers the relaxed form and content requirements used for non-dominant domestic carriers,[106] including the filing of the tariffs on computer diskettes and a brief cover letter. In addition to streamlining our tariff content requirements, we adopt our proposed rule to allow non-dominant international carriers to file their tariffs on one-day notice.

81. We believe that streamlining the content requirements and the notice period for non-dominant international carriers serves the public interest. Simplifying non-dominant international carriers' tariff requirements provides uniform tariffing procedures for all non-dominant carriers' services, both international and domestic. Shorter filing periods will help accelerate the introduction of new international services by permitting non-dominant carriers to respond more rapidly to competitive forces. We recognize that competition exists in the international services market for non-dominant carriers and find that competition combined with filing tariffs on one-day notice is a sufficient constraint on unreasonable prices.[107] Under our new streamlining rules, non-dominant carriers will not be subject to burdensome, unnecessary regulatory oversight.

82. We still need to ensure that carriers do not file international tariffs prior to obtaining Section 214 authority for the tariffed service. Therefore, we require carriers to certify in their cover letter that they have international Section 214 authority, and list the file number of the Section 214 authorization. This will ensure that carriers are authorized under the Communications Act to provide the proposed international service.

83. We do not adopt AT&T's suggestion to reduce the filing period to one-day notice for unaffiliated carriers that are regulated as dominant. We do not see justification in this record to change these carriers' tariff content or filing requirements.[108] Carriers including those unaffiliated with foreign carriers, are classified as dominant if they possess market power, which gives them the ability to discriminate unreasonably or invoke unjust or unreasonable rates, terms, or conditions. Eliminating the notice period requirement for such carriers would unduly limit our ability to review their tariffs. Although a longer tariff filing requirement may be an impediment to a dominant carrier's ability to compete against non-dominant carriers, we are not persuaded at this time that a reduction in the filing requirements would be appropriate because of our traditional concerns about dominant carriers.

84. AT&T, GTE Hawaii and COMSAT, all of whom are regulated as dominant

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[106] 47 C.F.R. §§ 61.20 - 61.23 (1994).

[107] We note that the Commission based its decision to streamline the tariff filing requirements for domestic non-dominant carriers on similar findings. *Non-dominant Tariff Order*, 8 FCC Rcd at 6756-59, 6761.

[108] We note that we reduced the notice period for tariff filings for carriers regulated on certain routes due to foreign affiliations from 45 to 14 days in the *Foreign Carrier Entry Order* proceeding. *See Foreign Carrier Entry Order* at ¶ 262.

for certain international services, each have requests pending with us seeking modifications in the regulatory requirements applicable to them on the ground that they are subject to increasing competition in the international services market.[109] We believe their individual regulatory treatment is more appropriately addressed in those pending proceedings addressing each carrier's regulatory classification.[110]

VI. FORBEARANCE

85. In the *Notice*, we requested comment on what, if any, Section 214 authorization requirements we should forbear from applying if given forbearance authority by Congress. Anticipating that Congress would pass a telecommunications reform law, ACC states that the Commission should forbear from requiring non-dominant carriers to file specific rate tariffs.[111] ACC states that this will serve the public interest by reducing the time and cost associated with regulatory compliance on both government and carriers.[112] CompTel recommends that the Commission eliminate the requirement that pure international switched resale carriers file applications for, and receive, Section 214 authority before providing international service.[113] CompTel notes that the Commission has removed Section 214 requirements for non-dominant, domestic carriers, and that the Commission has, as the *Notice* recognized, "considerable discretion" in implementing Section 214. MCI recommends that the Commission conduct a further proceeding in the event it obtains forbearance authority. MCI states that the Commission's legal ability to reduce regulation is *not* the equivalent of removing regulation altogether.[114] MCI contends that, if an act of Congress occurred making the above option available and the pending legislation cited by the Commission becomes law, the Commission would need to make certain determinations about carriers, consumers, and the public interest before exercising its forbearance authority.

86. Since the filing of comments in this proceeding, Congress passed the Telecommunications Act of 1996.[115] With its passage comes many new opportunities for the Commission to promote further competition through additional deregulatory actions. In light

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[109] *See e.g., Motion of AT&T Corp. to be declared Non-dominant for IMTS*, CC Docket No. 79-252 (Public Notice DA 95-2366 (released Nov. 21 1995), Public Notice DA 96-33 (released Jan. 18, 1996) (extending comment period); *Petition for Reclassification of GTE Hawaiian Telephone Company Incorporated as a NonDominant IMTS Carrier,* CC Docket No. 85-107 (filed on May 22, 1995), *COMSAT Corporation Petition for Partial Relief,* RM-7913, filed on July 1, 1994 (*COMSAT Petition*).

[110] *See supra* note 109.

[111] *See* MFSI Comments at 4, n.4.

[112] ACC Comments at 4-5.

[113] CompTel Comments at 3.

[114] MCI Comments at 12.

[115] Pub. L. 104-104, 1105 Stat. 56.

of this legislation, we anticipate review of our international Section 214 authorization and tariffing procedures to identify new areas where additional streamlining may be appropriate. We agree with MCI, however, that such steps should be taken in the context of a new proceeding where we can make additional determinations about the state of competition in the international market and receive more public input. We will study the feasibility of the forbearance suggestions made in this proceeding and invite the public to make additional suggestions.

VII. MISCELLANEOUS ISSUES

1. Growth-based accounting rates

(a) Notice and Position of Parties

87. In response to the Commission's request in the *Notice* for suggestions for additional streamlined procedures, ACC and MFSI suggested that we change our international settlements policy concerning growth-based accounting rates. The Commission's international settlements policy (ISP) provides that an accounting rate reduction offered to one U.S. carrier by a foreign correspondent must be made available to all competing U.S. carriers in a non-discriminatory fashion.[116] This policy is designed to avoid discrimination among U.S. carriers, but many disputes have arisen over compliance with the policy. One area of particular dispute raised by both ACC and MFSI is "growth-based" accounting rates.[117] These types of accounting rate agreements call for reductions of the accounting rate as traffic grows. ACC and MFSI argue that, if "growth" is only calculated based on sheer volume of the largest carriers, such rates can have an anticompetitive, discriminatory effect.[118] ACC states that the Commission should approve growth-based accounting rates only when the lower accounting rates are made available simultaneously to all corresponding U.S. carriers based on the aggregate volume of U.S. traffic to the same foreign point. They state that accounting rates should be based on the growth of the overall U.S. traffic volume to a particular foreign point, not simply the additional volume of a large carrier that already has captured substantial volume.

88. In response, AT&T argues that the issue of growth-based accounting rates is outside the scope of the current proceeding. AT&T states that this issue is properly before the Commission in four pending ISP waiver requests involving the Philippines and Malaysia, Spain, Bolivia and Uruguay, and should be determined there or in a separate rulemaking dedicated to accounting rate matters, not in a proceeding to streamline the international

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[116] *See Regulation of International Accounting Rates, Report and Order*, 6 FCC Rcd 3552, 3554 (1991).

[117] ACC Comments at 8-9, MFSI Comments at 9-12.

[118] ACC Comments at 8-9, MFSI Comments at 9-12.

Section 214 process.[119] BTNA states that action on ACC's request raises legal issues about the sufficiency of notice under the Administrative Procedure Act (APA), and states that, if the Commission believes that these matters warrant further consideration, a separate proceeding is both necessary and appropriate.[120]

(b) Discussion

89. We agree with AT&T and BTNA that the issue of growth-based accounting rates was not addressed directly in the *Notice*. This does not, however, preclude us from responding to ACC's and MFSI's comments to the extent that we clarify our existing policy. The issue of growth-based accounting rates under our ISP was recently addressed by the International Bureau in a letter to a foreign carrier, after the pleading cycle ended in this proceeding.[121] In that letter, the Bureau recognized that a growth-based rate structure could be beneficial and consistent with our ISP when implemented in a non-discriminatory fashion.

90. There are, however, many complex issues with implementing non-discriminatory growth-based accounting rate structures. Although this proceeding is not the proper forum to resolve all these issues, we do, however, wish to take this opportunity to elaborate on one aspect of the growth-based accounting rate issue. The average unit costs of providing international telecommunications service tend to fall as service volume increases because fixed costs are spread over more and more units of output. We believe that growth-based accounting rate structures that are designed and implemented correctly will reflect this cost characteristic, offer significant potential benefits, and promote the Commission's objective of lower, more cost-based accounting rates. In order to ensure non-discrimination among U.S. carriers and to promote economic efficiency, however, implementation of such rate structures must recognize differences in the volume of service provided by different U.S. carriers and not be based on a service volumes attainable only by the largest suppliers.

2. Correspondent agreements

(a) Position of Parties

91. ACC suggests that the Commission adopt new rules and policies to establish new guidelines for correspondent agreements. ACC notes that currently the Commission requires carriers to certify in their correspondent agreements that they have not "bargained

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[119] AT&T Reply Comments at 8-9.

[120] BTNA Reply Comments at 4-5.

[121] *See* Letter from Scott Blake Harris, Chief, International Bureau to Eng. German Medrano Kreidler, Executive President of Empressa Nacional de Telecomunicaciones in Bolivia, dated October 20, 1995.

for preferential treatment."[122] ACC proposes that the Commission change the certification to state that a carrier "has not knowingly received and is aware of no preferential treatment afforded it." It argues this language change would make clear to carriers that they cannot obtain preferential treatment even if it is not "bargained for." ACC states that the Commission should require carriers to make such a certification for all markets in which they already hold agreements. ACC further proposes that the Commission prohibit discriminatory buy-in provisions, such as those requiring more than one percent traffic levels, high capacity or switch modification fees as a condition of obtaining an operating agreement.[123] Again, BTNA objects to the Commission considering these issues in this proceeding, arguing insufficient notice was given under the APA.[124]

(b) Discussion

92. In our *Foreign Carrier Entry Order*, we amended Section 63.14 to prohibit all U.S. international carriers from agreeing to accept special concessions directly or indirectly from any foreign carrier or administration with respect to traffic or revenue flows between the United States and a foreign country.[125] We believe ACC's concerns are effectively addressed by our "no special concessions" clause. U.S. carriers have an affirmative obligation to reject any preferential treatment from a foreign administration or carrier once the U.S. carrier is made aware of that treatment. Amending Section 64.1001 to add a certification requirement of compliance with this obligation would only be an additional paperwork burden on applicants without any additional benefit. Therefore, we decline to adopt ACC's proposed changes.

3. "Fresh-look" for long-term service arrangements

(a) Position of Parties

93. Pacwest suggests that the Commission permit customers with long-term service arrangements to terminate such arrangements upon the introduction of new service offerings by competitive service providers. Pacwest contends that long-term service arrangements with incumbent, monopoly service providers inhibit the development of competition and effectively prevent customers from using the facilities of competitive service providers such as Pacwest. Pacwest asserts that the Commission should require local exchange carriers ("LECs") to include a "fresh look" period which would be triggered upon the introduction of competition. Pacwest argues that this provision should be included in all interstate/international access tariffing because it would allow customers with long-term

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[122] This certification is filed pursuant to Section 64.1001 of our rules. 47 C.F.R. § 64.1001 (1994).

[123] ACC Comments at 9.

[124] BTNA Reply Comments at 4-5.

[125] *Foreign Carrier Entry Order* at ¶¶ 257-58.

service arrangements with the LECs to consider new competitive providers for their telecommunications needs upon their introduction in the market.[126]

94. BTNA and GTE state that Pacwest's proposal is outside the scope of this proceeding. BTNA contends that Pacwest's proposal, if adopted, would be a federal abrogation of private contracts, which is a step not lightly taken or often used.[127] In addition, BTNA states that the Communications Act requires a Section 205 hearing before taking such action, and that the instant notice and rulemaking is not an adequate substitute.[128] GTE adds that Pacwest made the same argument to the Commission over a year ago in a separate filing concerning GTE Hawaii's cable landing license.[129]

(b) Discussion

95. We agree with BTNA and GTE that Pacwest's proposal goes far beyond the scope of this proceeding to streamline the Section 214 authorization process and tariff requirements. Pacwest is seeking to change requirements for local exchange carriers. These rule changes would be addressed better in a proceeding that was targeted towards competitive access providers (CAPs) and their relationships with LECs. To make such a change here would deny many interested parties the opportunity to comment because these issues were not raised in the *Notice*, and these affected entities are not participating or likely to review the comments in this proceeding. Therefore, we deny Pacwest's proposal.

VIII. CONCLUSION

96. In this *Order*, we modify our Section 214 application process and tariff requirements to eliminate unnecessary and burdensome regulations. We adopt rules that will streamline our regulations on international carriers, reduce the processing time of Section 214 applications, and clarify our rules relating to international carriers. We anticipate that our new rules will make entry to and exit from the international services market easier and faster for international carriers. This will lead to greater competition and, in turn, greater responsiveness to consumer needs. Ultimately, consumers will receive lower prices, better quality and greater choices in their international services.

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[126] Pacwest Comments at 2-5.

[127] *See United Gas Co. v. Mobile Gas Corp.*, 350 U.S. 332 (1956).

[128] BTNA Reply Comments at 5, n.14.

[129] GTE Reply Comments at 4-5.

IX. PROCEDURAL MATTERS; ORDERING CLAUSES

97. The analysis pursuant to the Regulatory Flexibility Act of 1980[130] is contained in Appendix B.

98. Accordingly, **IT IS ORDERED** that the policies, rules, and requirements adopted herein, except those needing OMB approval, **WILL BECOME EFFECTIVE** thirty days after publication in the Federal Register.

99. Matters subject to OMB approval, pursuant to the Paperwork Reduction Act of 1995, Pub. L. No. 104-13, **WILL BECOME EFFECTIVE** upon such approval.

100. This action is taken pursuant to Sections 4, 214, 219, 303(r) and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§154, 214, 219, 303(r) and 403.

101. **IT IS FURTHER ORDERED** that this proceeding **IS HEREBY TERMINATED**.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

[130] 5 U.S.C. § 608 (1995).

APPENDIX A

FINAL RULES

Part 1, 61 and 63 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 1 -- PRACTICE AND PROCEDURE

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

AUTHORITY: --- 47 U.S.C. 151, 154, 303, and 309(j) unless otherwise noted.

2. Section 1.767 is amended by revising paragraph (a) and adding new paragraphs (e) and (f) to read as follows:

§ 1.767 Cable landing licenses.

(a) Applications for cable landing licenses under 47 U.S.C. 34-39 and Executive Order No. 10530, dated May 10, 1954, should be filed in duplicate and in accordance with the provisions of that Executive Order. These applications should contain:

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

(2) The Government, State, or Territory under the laws of which each corporate or partnership applicant is organized;

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

(4) A description of the submarine cable, including the type and number of channels and the capacity thereof;

(5) A specific description of the cable landing location on the shore of the United States and in foreign countries where the cable will land (including a map). Applicants 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 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.

(6) A statement as to whether the cable will be operated on a common carrier or non-common carrier basis, and if operation will be on a non-common carrier basis, include the ownership information required in Section 63.18(e)(6) and (h)(1) through (2) of this chapter; and

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

*****

(e) A separate application shall be filed with respect to each individual cable system for which a license is requested, or for which modification or amendment of a previous license is requested.

(f) Applicants shall disclose to any interested member of the public, upon written request, accurate information concerning the location and timing for the construction of a submarine cable system authorized under this section. This disclosure shall be made within 30 days of receipt of the request.

PART 61 -- TARIFFS

1. The authority citation for Part 61 continues to read as follows:

AUTHORITY: Secs. 1, 4(i), 4(j), 201-205, and 403 of the Communications Act of 1934, as amended; 47 U.S.C. 151, 154(i), 154(j), 201-205, and 403, unless otherwise noted.

2. Section 61.20 is amended by revising its preceding centered headings and paragraph (b) to read as follows:

GENERAL RULES

GENERAL RULES FOR DOMESTIC AND INTERNATIONAL NONDOMINANT CARRIERS

§ 61.20 Method of filing publications.

*****

(b)(1) In addition, for all tariff publications requiring fees as set forth in part 1, subpart G of this chapter, issuing carriers must submit the original of the cover letter (without attachments), FCC Form 159, and the appropriate fee to the Mellon Bank, Pittsburgh, PA at the address set forth in Section 1.1105 of this chapter. Issuing carriers should submit these fee materials on the same date as the submission in paragraph (a) of this section.

(2) International carriers must certify in their original cover letter that they are authorized under Section 214 of the Communications Act of 1934, as amended, to provide service, and reference the FCC file number of that authorization.

*****

3. Section 61.21 is amended by revising paragraph (a) to read as follows:

§ 61.21 Cover letters.

(a)(1) Except as specified in Section 61.32(b), all publications filed with the Commission must be accompanied by a cover letter, 8.5 by 11 inches (21.6 cm x 27.9 cm) in size. All cover letters should briefly explain the nature of the filing and indicate the date and method of filing of the original cover letter, as required by Section 61.20(b)(1).

(2) International carriers must certify that they are authorized under Section 214 of the Communications Act of 1934, as amended, to provide service, and reference the FCC file number of that authorization.

*****

4. Section 61.22 is amended by revising its preceding centered headings and paragraphs (b) and (d) to read as follows:

SPECIFIC RULES FOR DOMESTIC AND INTERNATIONAL NONDOMINANT CARRIERS

§ 61.22 Composition of tariffs.

*****

(b) The tariff must contain the carrier's name, the international Section 214 authorization FCC file number (when applicable), and the information required by Section 203 of the Act.

*****

(d) Domestic and international nondominant carriers subject to the provisions of this Section are not subject to the tariff filing requirements of Section 61.54.

5. Section 61.23(c) is revised to read as follows:

§ 61.23 Notice requirements.

*****

(c) Tariff filings of domestic and international non-dominant carriers must be made on at least one-day notice.

PART 63 -- EXTENSION OF LINES AND DISCONTINUANCE OF SERVICE BY CARRIERS AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

1. The authority citation for Part 63 continues to read as follows:

AUTHORITY: --- Sections 1, 4(i), 4(j), 201-205, 218, and 403 of the Communications Act of 1934, as amended, and Section 613 of the Cable Communications Policy Act of 1984, 47 U.S.C. secs. 151, 154(i), 15(j), 201-205, 218, 403, and 533 unless otherwise noted.

2. Section 63.01 is amended by removing paragraphs (k)(5) through (7), (r), (s) and Notes 1 through 4, and revising the section heading and introductory paragraph, to read as follows:

§ 63.01 Contents of applications for domestic common carriers.

Except as otherwise provided in this part, any party proposing to undertake any construction of a new line, extension of any line, acquisition, lease, or operation of any line or extension thereof or engage in transmission over or by means of such line, and such line originates and terminates in the United States, for which authority is required under the provisions of Section 214 of the Communications Act of 1934, as amended, shall request such authority by formal application which shall be accompanied by a statement showing how the proposed construction, etc., will serve the public interest, convenience, and necessity. Such statement must include the following information as applicable:

*****

3. Section 63.05 is amended by revising the section heading to read as follows:

Section 63.05 Commencement and completion of construction for domestic common carriers.

*****

4. Section 63.10 is amended by revising the last sentence of paragraphs (a), (a)(3), and (a)(4), and all of (c)(3) to read as follows:

Section 63.10 Regulatory classification of U.S. international carriers.

(a) *** For purposes of paragraph (a)(1) through (3) of this section, "affiliation" and "foreign carrier" are defined as set forth in Section 63.18(h)(1)(i) and (ii), respectively.

*****

(3) *** Such a demonstration should address the factors that relate to the scope or

degree of the foreign affiliate's bottleneck control, including those listed in Section 63.18(h)(8).

(4) *** The existence of an affiliation with a U.S. facilities-based international carrier shall be assessed in accordance with the definition of affiliation contained in Section 63.18(h)(i), except that the phrase "U.S. facilities-based international carrier" shall be substituted for the phrase "foreign carrier."

*****

(c) ***

(3) Obtain Commission approval pursuant to Section 63.18 before adding or discontinuing circuits; and

*****

5. Section 63.11 is amended by revising paragraphs (a), (a)(2), (c)(1) through (3), (d), and the last sentence of (e)(2) to read as follows:

§ 63.11 Notification by and prior approval for U.S. international carriers that have or propose to acquire ten percent investments by, and/or an affiliation with, a foreign carrier.

(a) Any carrier authorized to provide international communications service under this part that, as of the effective date of this rule as amended in IB Docket No. 95-22, is, or has an affiliation with, a foreign carrier within the meaning of Section 63.18(h)(1)(i)(A) or (h)(1)(i)(B), or that as of such date knows of an existing ten percent or greater interest, whether direct or indirect, in the capital stock of the authorized carrier by a foreign carrier, or that after the effective date of this rule becomes affiliated with a foreign carrier within the meaning of Section 63.18(h)(1)(i)(A), shall notify the Commission within thirty days of the effective date of this rule or within thirty days of the acquisition of the affiliation, whichever occurs later. For purposes of this section, "foreign carrier" is defined as set forth in Section 63.18(h)(1)(ii).

*****

(2) Any carrier that has previously notified the Commission of an affiliation with a foreign carrier, as defined by Section 63.18(h)(1) immediately prior to the rule's amendment in IB Docket No. 95-22, need not notify the Commission again of the same affiliation.

*****

(c) ***

(1) The carrier also should specify, where applicable, those countries named in paragraph (c) for which it provides a specified international communications service solely through the resale of the international switched or private line services of U.S. facilities-based carriers with which the resale carrier does not have an affiliation. Such an affiliation is defined in Section 63.18(h)(1)(i), except that the phrase "U.S. facilities-based international carrier" shall be substituted for the phrase "foreign carrier."

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

(i) The ownership information as required to be submitted pursuant to Section 63.18(h)(2);

(ii) Where the carrier is authorized as a private line reseller on a particular route for which it has an affiliation with a foreign carrier, as defined in Section 63.18(h)(1)(i), a certification as required to be submitted pursuant to Section 63.18(h)(4); and

(iii) A "special concessions" certification as required to be submitted pursuant to Section 63.18(i).

(3) The carrier is responsible for the continuing accuracy of the certifications provided under this section. Whenever the substance of any certification provided under this section 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 No. under which the original certification was provided, <u>except that</u> the carrier shall immediately inform the Commission if at any time the representations in the "special concessions" certification provided under paragraph (c)(2)(iii) of this section are no longer true. <u>See</u> § 63.18(i))(2). This information may be used by the Commission to determine whether a change in regulatory status may be warranted under Section 63.10.

(d) Unless the carrier notifying the Commission of a foreign carrier affiliation under paragraph (a) of this section qualifies for the presumption of non-dominant regulation pursuant to Section 63.10(a)(4), it should submit the information specified in Section 63.18(h)(8) to retain its non-dominant status on any affiliated route.

(e) ***

(2) *** If notified that the acquisition raises a substantial and material question, then the carrier shall not consummate the planned investment until it has filed an application under Section 63.18 and submitted the information specified under paragraphs (h)(6) or (7), as applicable, and (8) of that section, and the Commission has approved the application by formal written order.

6. Section 63.12 is revised to read as follows:

§ 63.12 Streamlined processing of certain international facilities-based and resale applications.

(a) Except as provided by paragraph (c) of this section, a complete application seeking authorization under Section 63.18(e)(1) and (2) to acquire facilities to provide international services shall be granted by the Commission 35 days after the date of public notice listing the application as accepted for filing.

(b) Issuance of public notice of the grant shall be deemed the issuance of Section 214 certification to the applicant, which may commence operation on the 36th 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.

(c) The streamlined processing procedures provided by paragraphs (a) and (b) of this section shall not apply where:

(1) The applicant seeks authority under either Section 63.18(e)(1) for global

Section 214 authority to operate as a facilities-based carrier or Section 63.18(e)(2) to resell international services, and the applicant has an affiliation within the meaning of Section 63.18(h)(1)(i) with a facilities-based foreign carrier in a destination market, and the Commission has not yet made a determination as to whether that foreign carrier possesses market power in that market; or

(2) The applicant has an affiliation within the meaning of Section 63.18(h)(1)(i) with a dominant U.S. facilities-based carrier whose international switched or private line services the applicant seeks authority to resell (either directly or indirectly through the resale of another reseller's services); or

(3) The applicant seeks authority under Section 63.18(e)(2) to resell international private line services to a country for which the Commission has not determined as of the date of public notice of the application that equivalent resale opportunities exist between the United States and the destination country; or

(4) The application is formally opposed within the meaning of Section 1.1202(e) of this chapter; or

(5) The Commission has informed the applicant in writing, including by public notice, within 28 days after the date of public notice accepting the application for filing, that the application is not eligible for streamlined processing under this section.

(d) Any complete application that is subject to paragraph (c) of this section will be acted upon only by formal written order and operation for which such authorization is sought may not commence except in accordance with such order.

Note: The term "facilities-based carrier" as used in this section means one that holds an ownership, indefeasible-right-of-user, or leasehold interest in bare capacity in an international facility, regardless of whether the underlying facility is a common or non-common carrier submarine cable, or an INTELSAT or separate satellite system.

7. Section 63.13 is amended by revising the last sentence of paragraphs (a)(3) and (a)(5), and revising (a)(4) to read as follows:

§ 63.13 Streamlined procedures for modifying regulatory classification of U.S. international carriers from dominant to non-dominant.

*****

(a) ***

(3) *** For purposes of this paragraph, "telecommunications facilities" are defined as in Section 63.18(h)(4).

(4) Any carrier filing a certified list pursuant to paragraph (a)(2) of this section must also provide the "special concessions" certification as required to be submitted pursuant to Section 63.18(i).

(5) *** See § 63.18(i)(2).

*****

8. Section 63.14 is revised to read as follows:

§ 63.14 Prohibition on agreeing to accept special concessions.

Any carrier authorized to provide international communications service under this part shall be prohibited from agreeing to accept special concessions directly or indirectly from any foreign carrier or administration with respect to traffic or revenue flows between the United States and any foreign country served under the authority of this part and from agreeing to enter into such agreements in the future. For purposes of this section, "foreign carrier" is defined as in Section 63.18(h)(1)(ii) and "special concession" is defined as in Section 63.18(i).

9. Section 63.15 is revised to read as follows:

§ 63.15 Special procedures for international service providers.

Any party seeking to construct, acquire or operate lines in any new major common carrier facility project or non-U.S. licensed satellite or cable system for the provision of international common carrier services shall file an application pursuant to Section 63.18(e)(6) of this chapter. If a carrier has global Section 214 authority pursuant to the provisions of Section 63.18(e)(1) of this chapter, and the carrier desires to use non-U.S. licensed facilities pursuant to the provisions of Section 63.18(e)(1)(ii)(B), this filing requirement does not apply.

10. Section 63.17 is amended by revising paragraphs (b) and (b)(4) to read as follows:

§ 63.17 Special provisions for U.S. international common carriers

*****

(b) Except as provided in paragraph (b)(5) of this section, a U.S. common carrier, whether a reseller or facilities-based, may engage in "switched hubbing" to countries not found to offer equivalent resale opportunities under Section 63.18(e)(3) and (4) under the following conditions:

*****

(4) No U.S. common carrier may engage in switched hubbing under this section to a country where it has an affiliation with a foreign carrier unless and until it receives specific authority to do so under Section 63.18. For purposes of this paragraph, "affiliation" and "foreign carrier" are defined in Section 63.18(h)(1)(i)(B) and (ii), respectively.

11. New Section 63.18 is added to read as follows:

§ 63.18 Contents of applications for international common carriers.

Except as otherwise provided in this part, any party seeking authority pursuant to Section 214 of the Communications Act of 1934, as amended, to construct a new line, or acquire or operate any line, or engage in transmission over or by means of such additional line for the provision of common carrier communications services between the United States, its territories or possessions, and a foreign point shall request such authority by formal application which shall be accompanied by a statement showing how the grant of the application will serve the public interest, convenience, and necessity. Such statement shall consist of the following information, as applicable:

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

(b) The Government, State, or Territory under the laws of which each corporate or partnership applicant is organized;

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

(d) A statement as to whether the applicant has previously received authority under Section 214 of the Act and, if so, a general description of the categories of facilities and services authorized (i.e., authorized to provide international switched services on a facilities basis);

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

(1) If applying for authority to acquire interests in facilities previously authorized by the Commission in order to provide international basic switched, private line, data, television and business services to all international points, the applicant shall:

(i) State that it is requesting Section 214 authority to operate as a facilities-based carrier pursuant to the terms and conditions of paragraph (e)(1) of this section.

(ii) Comply with the following terms and conditions:

(A) Authority to provide services to all international points under this part extends only to those countries for which the applicant qualifies for non-dominant regulation as set forth in Section 63.10. If an applicant is affiliated with a facilities-based foreign carrier in a destination market and the Commission has not determined that the foreign carrier does not possess market power in that market, the applicant shall not commence service on any such route unless and until it receives specific authority to do so under paragraph (e)(6) of this section. If an applicant becomes dominant on a particular route after receiving authority under this Section, the terms and conditions of Section 63.10(c) will apply to its provision of services on the dominant route. An applicant should file separately under Section 63.18(e)(6) to provide service on routes on which it may not qualify for regulation as a non-dominant carrier.

(B) The applicant may only provide service using half-circuits on appropriately licensed U.S. common and non-common carrier facilities (either under Title III of the Communications Act of 1934, as amended, or the Submarine Cable Landing License Act, 47 U.S.C. §§ 34 et. al.) provided that these facilities do not appear on an exclusion list published by the Commission and any necessary overseas connecting facilities. Applicants

may not use non-U.S. licensed facilities unless and until the Commission specifically approves their use and so indicates on the exclusion list, and only then for service to the countries indicated thereon.

(C) The applicant may provide service to any country not included on an exclusion list published by the Commission.

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

(E) The authority granted under this paragraph shall be subject to all Commission rules and regulations and any conditions stated in the Commission's public notice or order that serves as the applicant's Section 214 certificate. See § 63.12.

(2) If applying for authority to resell the international services of authorized U.S. common carriers for the provision of international basic switched, private line, data, television and business services to all international points, the applicant shall:

(i) State that it is requesting Section 214 authority to operate as a resale carrier pursuant to the terms and conditions of Section 63.18(e)(2).

(ii) Comply with the following the terms and conditions:

(A) The applicant may resell the international services of any authorized common carrier, except affiliated carriers regulated as dominant on the route to be served, 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;

(B) The applicant may resell private line services for the provision of international basic switched services only to countries found by the Commission to provide equivalent resale opportunities, except in circumstances where the applicant is affiliated with a facilities-based foreign carrier in a destination market and the Commission has not determined that the foreign carrier does not possess market power in that market. In such circumstances, the applicant shall not commence service on any such route unless and until it receives specific authority to do so under paragraph (e)(6) of this section. The Commission will provide public notice of its determinations.

(C) The authority granted under this paragraph shall be subject to all Commission rules and regulations and any conditions stated in the Commission's public notice or order that serves as the applicant's Section 214 certificate. See § 63.12.

(3) If applying for authority to resell private lines for the purpose of providing international basic switched services to countries not on the Commission's published list of equivalent countries, applicant shall demonstrate for each country to which it seeks to provide service that that country affords resale opportunities equivalent to those available under U.S. law. In this regard, applicant shall:

(i) Include evidence demonstrating that equivalent resale opportunities exist between the United States and the subject country, including any relevant bilateral agreements between the administrations involved. Parties must demonstrate that the foreign country at the other end of the private line provides U.S.-based carriers with:

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

(B) Nondiscriminatory charges, terms and conditions for interconnection to foreign domestic carrier facilities for termination and origination of international services, with