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Leslie Harris
President

9 July 1997

Office of the Secretary
Federal Communications Commission
1919M Street, N.W., Room 222
Washington
D.C. 20554
U.S.A.

Dear Sirs

In the Matter of Rules	)	
and Policies on Foreign	)	**IB Docket No. 97-142**
Participation in the U.S.	)	
Telecommunications Market	)	

Enclosed are five (5) copies of the comments of New T&T Hong Kong Limited in response to the Order and Proposed Rulemaking dated 4 June 1997 in relation to the above matter.

Yours faithfully,

Leslie Harris

cc:

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New T&T Hong Kong Limited ("New T&T")
Before the Federal Communications Commission
Washington, D.C. 20554

JUL 21 1997

In the matter of	)	
Rules and Policies on Foreign Participation	)	**IB Docket No. 97-142**
in the U.S. Telecommunications Market	)	

Comments in Response to the Order and
Notice of Proposed Rulemaking, June 4 1997 ("NPR")

1. Introduction

1.1 New T&T welcomes the NPR, as amongst other things, it proposes the presumption in favour of approving and streamlining S. 214 applications by foreign and foreign-affiliated companies. However, New T&T considers that the basic regulatory safeguards proposed in Part III.D of the NPR are not sufficient to prevent distortions in international telecommunications services through the use of affiliations by major telecommunications operators which are resident in, or affiliated to companies operating in, the United States of America.

1.2 This submission will examine the conclusions and proposed rules set out in the NPR and comment in relation thereto.

2. The Effective Competitive Opportunity ("ECO") Test and WTO Member Countries

2.1 We welcome the conclusion that ECO analysis will not be required for Section 214 applications to enter the U.S. International market of carriers from WTO Member countries. We also welcome the conclusion that granting streamlined processing of such applications by such carriers would serve the public interest.[1] We also welcome the proposed establishment of a rebuttable presumption in favour of granting a S. 214 application filed by a carrier from a WTO Member country.[2]

2.2 We would however suggest that a market power analysis as well as some form of equivalency analysis similar to the current analysis is required in circumstances where the applicant carrier is a dominant carrier in its own jurisdiction, notwithstanding that that jurisdiction is a WTO Member country which is a signatory to the Basic Telecommunications Agreement dated 15 February 1997. We also support post-licence-award supplemental dominant

carrier safeguards that would apply to U.S. carriers that are affiliated with foreign carriers that have market power in jurisdictions that have not issued licences for competitive provisioning of facilities - based international services.[3]

2.3 Some of the supplemental post-licence-award dominant carrier safeguards which we suggest (if not already raised in the NPR) are as follows:

(a) tariffing requirements;
(b) separations accounting;
(c) separation of functions reporting;
(d) quarterly reporting on matters relating to (a) and (b);
(e) shareholding restrictions[4];
(f) market power evaluations based on U.S. anti-trust law[5].

2.4 In our opinion, regulatory safeguards such as those proposed above help towards guarding against and redressing the possibility of anti-competitive behavior, but are not completely foolproof. However, we agree that engaging in ECO analysis does not increase the effectiveness of guarding the public interest of ensuring competitive, innovative and least cost alternatives in international telecommunications services, although, it such analysis is conducted prior to licence award, it would reduce the administrative burden of ensuring that the regulatory safeguards have been complied with.

2.5 We believe that the primary or sole criterion as to whether an ECO analysis should be applied in relation to any particular application for a S. 214 licence should be the ability of the U.S. affiliate to obtain an unfair advantage as a result of the market power of its foreign affiliate(s). Effectively, where such market power of the U.S. carrier's foreign affiliate(s) allows the U.S. carrier to engage in 'one-way bypass' of the accounting rate system, then a form of equivalency test similar to the current test should be applied to the U.S. carrier with such affiliation. Put simply, whether a WTO Member has made satisfactory or fulfilled its commitments under the Basic Telecommunications Agreement does not mean that individual telephone companies or consortiums cannot continue to exercise market power which would restrict or impede competition in international telecommunications services.[6]

2.6 In a global industry with increasingly little or no national boundaries capable of defining the activities of individual corporations or consortiums, it would be increasingly irrelevant to refer to political entities or national jurisdictions to

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[3] See Para. 32, NPR

[4] It is suggested that such restrictions be based on some form of 'control' test, which restricts the foreign affiliate(s) having market power capable of being abused, from having effective control of the U.S. affiliate's board, and hence its activities.

[5] It is suggested that evaluations be made as to the relative ability of the U.S. affiliate to act without competitive restraint as a direct or indirect result of the market power of its foreign affiliate(s) in other jurisdictions, especially those jurisdictions which do not have competition in facilities-based international services.

[6] See paras. 49 to 52, NPR

form a basis for evaluation of equivalent competitive opportunities, or to enforce regulatory safeguards. A balance has to be made between ensuring adherence to commitments made by political entities, and curbing abuse of market power by specific global carriers and their affiliates.

3. The ECO Test and Non-WTO Member Countries

3.1 Subject to the foregoing, we agree with the tentative inclusion that it remains necessary to conduct an effective competitive opportunities analysis in relation to carriers applying for S. 214 licences from non-WTO Member countries.[7]

3.2 We also consider that such tests should apply to U.S. carriers who have effective control of a foreign carrier from a non-WTO Member country.

4. Foreign Ownership Under the Cable Landing Licensing Act

4.1 Subject to our comments in Section 2 above, we agree with the tentative conclusions that an ECO test should apply in relation to the securing of landing rights to land cables under Section 2 of the Cable Landing Licensing Act in relation to carriers from non-WTO Member countries, and vice versa.[8]

5. Section 310 Standard for Foreign Ownership of Radio Licences

5.1 Subject to the foregoing, we welcome the proposal to eliminate the ECO test as part of the FCC's analysis under S. 310(b)(4) of the Communications Act for common carrier radio licensees or applicants with foreign investment from WTO Member countries, subject to compelling reasons for denying a particular application on the basis of there being a very high risk to competition being posed by that application.[9]

6. Regulatory and Competitive Safeguard Issues

6.1 We agree with the tentative conclusion that rules aimed at detecting and deterring anti-competitive conduct should be strengthened, given that foreign carriers which wield market power in a destination country, especially those who are exclusive licensees, have the opportunity and ability to use their market power to discriminate in favour of their U.S. affiliate, thereby reducing competition in the provision of international telecommunications services.[10]

6.2 We share the Commission's concerns regarding the forms of anti-competitive conduct that are set out in paragraph 90 of the NPR.

6.3 However, to the extent that a foreign carrier that has market power is still capable of conferring an unfair advantage on its U.S. affiliate, notwithstanding

[7] Para. 55, NPR
[8] Part III.B, NPR
[9] Part III.C, NPR
[10] Para. 81, NPR

that it faces competition in the foreign destination country, we would disagree that such foreign carriers should only be subject to basic competitive safeguards. We would submit that supplemental competitive safeguards are equally applicable to such carriers.

6.4 Accordingly, we would submit that the supplemental dominant carrier safeguards discussed in Part III.D.c of the NPR be made applicable to all U.S. affiliates of foreign carriers who have, or are capable of exercising, market power in any foreign destination country.

6.5 We also agree with the proposal to interpret the "no special concessions" prohibition of Section 63.14 in the manner set out in paragraphs 117 of the NPR. We would submit that such special concessions should be prohibited in relation to foreign carriers with market power, notwithstanding that such carriers operate in a country which has eliminated barriers to international facilities-based entry and/or has licensed multiple international facilities-based competitors.

Streamlining Section 214 Applications

6.5 We welcome the proposed amendments to the S. 214 application procedure, as set out in Part III.D.3 of the NPR.

7. Conclusion

7.1 Whilst we welcome most of the tentative conclusions and proposals discussed in the NPR, we remain concerned that even supplemental competitive safeguards, including unilateral accounting rate reform by the Commission, will not be sufficient to curb the dominance of global operators who share among themselves the major proportion of the revenues generated by Multi-National Corporations (MNCs) through their ability to engage in the sorts of activities alluded to in paragraph 90 of the NPR. We commend the Commission for taking steps in the right direction to curb anti-competitive conduct by carriers who do not face competition in facilities-based international telecommunications services, especially those who are capable of conferring an unfair advantage on their U.S. affiliates.[11]

[11] See Replies from AT&T, WorldCom and New T&T in response to the Application for Authority pursuant to Section 214 of the Communications 1934, as Amended to Resell Private Lines for the Provision of Switched Services Between the United States and Hong Kong by Hong Kong Telecommunications (Pacific) Limited. File No. I-T-C 97-138