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Ex Parte

May 28, 1998

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Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
Mail Stop Code 1170
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: CC Docket no. 97-142 – Foreign Market Participation

Dear Ms. Salas:

Please associate the attached letter with the above-referenced docket. I am submitting two copies of this notice in accordance with the Commission's rules. Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions.

Sincerely,

Attachment

Chairman Kennard
Commissioner Furchtogott-roth
Commissioner Ness
Commissioner Powell
Commissioner Tristani
G. Keeney
M. Ginsburg
D. Klein
A. Krinsky
S. O'Connell
R. Porter
P. Pappas
D. Cornell
L. Sherman
T. Tanner

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May 28, 1998

The Honorable William Kennard, Chairman
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: CC Docket No. 97-142, Foreign Market Participation

Dear Chairman Kennard:

Following, for your consideration, are some points that SBC would like to formally place "on the record" in the Foreign Participation proceeding (IB Docket No. 97-142) relative to prior approval of foreign acquisitions. In general, the Commission's prior review requirement would create severe competitive disadvantages for potential U.S. carrier investors, and would adversely effect the development of competition in foreign telecommunications markets. Further, Commission workload would ultimately be increased as a result of the prior approval conditions required.

1. The implementation of a requirement that U.S. carriers seek FCC review before acquiring controlling interests in a foreign carrier would result in the inability of U.S. carriers to realize the benefits of the WTO GBT agreement. This, in and of itself, would severely disadvantage U.S. investors by placing undue restrictions on them relative to the pursuit of opportunities in foreign countries and would drastically limit their ability to bid in a majority of cases. It is not uncommon for a bid to be made with fewer than 60 days available prior to closing. A U.S. company would be unable to secure the necessary approval in that time frame and would be disadvantaged when compared to non-U.S. companies that did not require prior approval. For example, Guatemala recently attempted to privatize its telephone company. The final procedure called for the winning bidder to close the deal six days after the winning bid was announced.

2. The requirement would, in effect, chill U.S. carrier investment in any foreign carrier bids due to the inability to gain prior approval in time to be assured that the bid will be "allowed". As U.S. carriers determine whether or not a bid would be in their best interests, the doubt would always exist as to whether or not the prior approval would come through in time. In many cases, this could result in the U.S. carrier making the determination that it will not take the chance which will hinder U.S. carrier investment in foreign countries.

3. Any bid placed by a U.S. company would be considered "conditional" under the FCC's new rule and would not be considered by a foreign country insisting on unconditional bids. In most cases, a bid would be required to be "unconditional" and would be binding if approved. Since a U.S. company bid would need to be "conditional" on FCC approval, foreign carriers may not consider the bid since the bid could be immediately rejected without consideration strictly on the fact that the bid was "conditional" in nature. The foreign carrier would be much more likely to accept an "unconditional" bid, even if it were less lucrative than that offered by the U.S. company. For examples of bid requirements, see the attached El Salvador Sale Process Memorandum (2nd and 3rd paragraph discuss the fact that bids must be binding and must be available for closing within 30 days) and the South Africa Bid Proposal excerpt (Section 5.1, last paragraph discusses the fact that bid proposals are binding).

4. The Commission already has 214 authority over carriers. A more appropriate rule would address the conditions under which the U.S. carrier offers services. The FCC should continue to require the filing of a Notice of Affiliation only after the deal is closed. Any competitive concerns should be addressed via Section 214 conditions sufficient to protect U.S. consumers and competing carriers

5. The "National Treatment" rules proposed by AT&T do not apply here. National treatment does not mandate FCC review of foreign acquisitions by U.S. carriers. Since concerns regarding U.S. investments in foreign carriers are already adequately addressed by Section 214, the U.S. competition policy does not warrant prior review. U.S. carrier investment abroad does not create competitive concerns, in and of itself, and affiliations are already sanctioned and conditioned via the 214 process. The Commission only needs to have the affiliation information to monitor whether competitive concerns are raised, and then, only after the affiliation has occurred.

6. Rather than streamlining and deregulating unduly burdensome rules, the Commission would actually be creating more work for themselves. On April 9, 1998, BellSouth filed a Section 63.11 application in which they requested prior Commission approval for a PROPOSED acquisition. Apparently, to ensure approval in time to make an unconditional bid, BellSouth has chosen to obtain approval before they even make the bid. If every U.S. carrier opts to take this approach, the Commission will be swamped with these applications any time a U.S. carrier THINKS they may want to bid on a foreign interest. In many cases, the commission will be forced to rule on a bid that will never be made because the U.S. company decided between the time they filed for approval and the time that the bid was due that it would not be a good business decision for them to do so.

7. Similar agreement existed under Judge Greene's MFJ. The requirement which existed under the MFJ resulted in a procedure for "pre-approval" of foreign investments above a certain percentage ownership. If the FCC retained its current prior approval rule, this would result in the same cumbersome procedure in effect under the MFJ regime, a regime which the 1996 Act intended to dismantle and streamline. The rule proposed as a result of the Foreign Participation Order would place all companies, not just the BOCs, under MFJ-like restrictions – directly opposite the goals of the 1996 Act to further streamline and to deregulate.

8. The rule would not promote foreign investment. This is ironic in light of the recently enacted World Trade Organization's Fourth Protocol To The General Agreement On Trade In Services concerning basic telecommunications. The U.S. fought long and hard for pro-foreign investment rules, which the FCC will severely weaken in one action with this rule. The rule will only serve carriers which do not make foreign investments and will limit the ability of competitors to become a strong global player.

In closing, prior approval of interests in foreign carriers does nothing to further the idea of foreign participation. The rule as written today can only hinder U.S. investment, establish duplicative regulations, and send regulation in exactly the opposite direction than that mandated by the 1996 Act. For all of the forgoing reasons, prior approval should not be required.

Sincerely,

Gina Harrison

Attachment

cc: Commissioner Harold Furchtgott-Roth
Commissioner Susan Ness
Commissioner Michael Powell
Commissioner Gloria Tristani
Ms. Gina Keeney
Ms. Mindy Ginsburg
Mr. Douglas A. Klein
Mr. Adam Krinsky
Ms. Susan O'Connell
Mr. Roderick K. Porter
Mr. Peter Pappas
Ms. Diane Cornell
Ms. Laurie Sherman
Mr. Troy Tanner

Sale Process

The Government does not expect to hold a face-to-face discussion session with bidders on the transaction documents for INTELSA. These documents will be issued in their final form by the end of April.

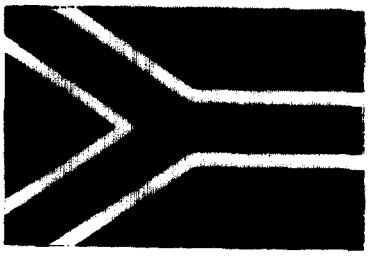
Potential investors will submit their economic offers for CTE in early May 1998, along with the executed transaction documents. Price must be paid in cash, available for closing within thirty days of the date of bid submission. Along with their economic offers, bidders will be required to post a bond in the amount of US$15.0 million for maintenance of their economic offer during the time period between the submission of offers and the closing.

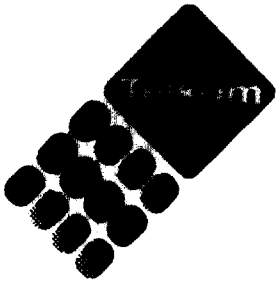
Potential investors will submit their economic offers for INTELSA in late May 1998, along with the executed transaction documents. Price must be paid in cash, available for closing within thirty days of the date of bid submission. Along with their economic offers, bidders will be required to post a bond in the amount of US$5.0 million for maintenance of their economic offer during the time period between the submission of offers and the closing.

6.12.3. Receipt of Bids and Closing

The economic offers for CTE will be submitted in sealed envelopes and opened the same day as received during a public proceeding which may be attended by the bidders or their designated representatives. All bids for CTE will be opened simultaneously. The bidder submitting the highest bid will be declared the winning bidder. The Government of El Salvador will then make a formal announcement of the outcome of the auction process for CTE. In the case that only one bidder submits a bid for CTE, the sale process for CTE will be declared void and the bid will be returned to the bidder unopened.

The economic offers for INTELSA will be opened in the same day as received, following a similar process. In the case that only one bidder submits a bid for INTELSA, the sale process for INTELSA will be declared void and the bid will be returned to the bidder unopened. Although the bidding for INTELSA is scheduled to follow the bidding for CTE by at least three weeks, completion of the INTELSA bidding and awarding process is not conditioned upon the outcome of the sale of CTE.





Republic of South Africa

Ministry for Posts, Telecommunications and Broadcasting

Request for Proposal

December 1996

5.1 The Bid Proposal

Each Bidder shall submit a bid proposal (the "Bid Proposal") separated into 4 separate volumes, as follows;

- Volume 1: Financial Offer (Section 4.2 of this RFP)
- Volume 2: Response to Sections 4.3, 4.4, 4.5, 4.6, 4.7, 4.8 and 4.9 of this RFP. Responses must be cross-referenced to correspond with the numbering of Section 4.
- Volume 3: Proposed changes to the draft Licences and Transaction Documents (Section 4.10 of this RFP).
- Volume 4: Information about the Bidder (Section 4.11 of this RFP)

The Bid Proposal shall be in English. One copy of Volume 1 and 15 copies of Volumes 2, 3 and 4, each consecutively page-numbered, shall be delivered before 5 pm, London time, on 21 February 1997 (the "Bid Submission Deadline") to the 4th floor reception at the offices of SBC Warburg in London at 2 Finsbury Avenue, London EC2M 2PP for the attention of Mark Joseph. Any Bid Proposal received after the deadline shall be considered late and may not be accepted.

The Bid Proposal, if submitted by an individual, shall be signed by that individual or, in the case of a partnership, by such member or members of the partnership as have authority to bind the partnership. Any person or person signing on behalf of a partnership shall provide acceptable evidence of their authority to bind such partnership. If submitted by a corporation, the Bid Proposal shall be signed by (a) a duly authorised officer, and (b) the corporate secretary, who shall attest to the signature and authority of such officer to bind the corporation. If a Bid Proposal is signed under a Power of Attorney, the same must be accompanied by a duly authorised copy of the appointing document.

All Bid Proposals shall be signed in ink by a person authorised to sign on behalf of the Bidder. All erasures or alterations shall be initialled by the signatory in ink.

A representative of the Bidder will be required to certify that he or she has delivered on behalf of the Bidder true and complete copies of the Bid Proposal.

Bid Proposals must be binding on the Bidder and constitute an irrevocable offer by the Bidder for a period of 90 days following the Bid Submission Deadline and shall so state.

5.2 Draft Licences and Transaction Documents

Drafts of the Licences are included in Appendix 2. The Transaction Documents will govern the relationships between the SEP, the Ministry and the Company. Drafts of the Transaction Documents