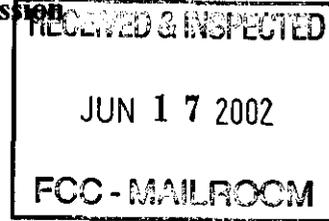


Before the  
Federal Communications Commission  
Washington, D.C. 20554



In the Matter of )  
2000 Biennial Regulatory Review )  
Amendment of Parts 43 and 63 )  
of the Commission's Rules )

IB Docket No. 00-231

**REPORT AND ORDER**

**Adopted: May 22, 2002**

**Released: June 10, 2002**

By the Commission: Commissioner Abernathy issuing a statement; Commissioner Copps approving in part, dissenting in part, and issuing a statement.

Table of Contents:		paragraph
I.	Introduction and Summary	1
II.	Discussion	
	A. <i>Pro Forma</i> Assignments and Transfers of Control	4
	B. Settlement Rate Benchmark Conditions	11
	C. Discontinuance of Service by Dominant Carriers	17
	D. Other Rule Changes Proposed in the NPRM	20
	E. Rule Changes Requested by the Commenters	28
III.	Conclusion	46
IV.	Procedural Matters	
	A. Final Regulatory Flexibility Act Certification	47
	B. Paperwork Reduction Act of 1995 Analysis	56
V.	Ordering Clauses	58
Appendix: Final Rules		

## I. INTRODUCTION AND SUMMARY

1. The Telecommunications Act of 1996 (1996 Act)<sup>1</sup> directs the Commission to undertake, in every even-numbered year beginning in 1998, a review of all regulations issued under the Communications Act of 1934, as amended (Communications Act),<sup>2</sup> that apply to operations or activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be "no longer necessary in the public interest."<sup>3</sup> In particular, the 1996 Act directs the Commission to determine whether any such regulation is no longer necessary "as the result of meaningful economic competition between providers of such service."<sup>4</sup>

2. As part of the 2000 biennial regulatory review, the Commission reviewed all of its rules relating to international telecommunications services to identify those rules that could be revised or eliminated.<sup>5</sup> In the Notice of Proposed Rule Making (NPRM) in this proceeding,<sup>6</sup> the Commission proposed changes to several of the rules relating to the provision of international telecommunications services. Specifically, the Commission proposed to amend the rule concerning *pro forma* assignments and transfers of control of international section 214 authorizations to more closely match those used for the assignment and transfer of control of Commercial Mobile Radio Service (CMRS) licenses. The Commission also tentatively concluded that it is no longer necessary to apply the settlement rate benchmarks condition to section 214 authorizations to provide facilities-based international private line services. The Commission also proposed to modify the rules to clarify that dominant U.S. international carriers need only seek prior approval to discontinue service where such carriers possess market power in the provision of international service on the U.S.-end of the international route. Finally, the Commission proposed to amend several rules to clarify the intent of those rules and to eliminate certain rules that are no longer necessary.

3. Four parties filed comments on the NPRM.<sup>7</sup> The commenters, in general, expressed support for the Commission's proposals. Commenters also requested changes

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<sup>1</sup> Pub. L. No. 104-104, 110 Stat. 56 (1996).

<sup>2</sup> 47 U.S.C. §§ 151 *et seq.*

<sup>3</sup> 47 U.S.C. § 161.

<sup>4</sup> 47 U.S.C. § 161(a)(2).

<sup>5</sup> *See 2000 Biennial Regulatory Review*, CC Docket No. 00-175, Report, 16 FCC Rcd 00-175. *See also Biennial Regulatory Review 2000 Updated Staff Report*, rel. January 17, 2001.

<sup>6</sup> *2000 Biennial Regulatory Review: Amendment of Parts 43 and 63 of the Commission's Rules*, IB Docket No. 00-231, Notice of Proposed Rule Making, 15 FCC Rcd 24264 (2000) (NPRM).

<sup>7</sup> Comments were filed by: Cingular Wireless LLC (Cingular); Verizon Global Solutions, Inc., Verizon Slect Services, Inc., and Verizon Long Distance (collectively Verizon); Verizon Wireless; and, Worldcom, Inc. No reply comments were filed.

to several other Commission rules and policies rules not specifically addressed in the NPRM. For the reasons discussed below, we adopt the proposals and tentative conclusions set forth in the NPRM. We also adopt the requests made by the commenters to (1) exempt CMRS carriers from the section 63.19 discontinuance requirements,<sup>8</sup> (2) exempt CMRS carriers providing resale of international switched services from filing quarterly traffic and revenue reports for their service to foreign markets where they are affiliated with a foreign carrier with market power in that market and that collects settlement payments from U.S. carriers,<sup>9</sup> and (3) amend our policy regarding the filing of applications for international section 214 authorization associated with Bell Operating Company (BOC) requests for authority to provide interLATA service in an in-region state pursuant to section 271 of the Communications Act.<sup>10</sup> We find, however, that other requests made by the commenters are not appropriate at this time.

## II. DISCUSSION

### A. *Pro Forma* Assignments and Transfers of Control

4. We adopt the changes to our rules regarding assignments and transfers of control of international section 214 authorizations proposed in the NPRM.<sup>11</sup> First, we consolidate the rules, now in sections 63.18(e)(3) and 63.24,<sup>12</sup> into section 63.24. Second, we revise the rules for *pro forma* transfers and assignments to be more consistent with those procedures used for other service authorizations, particularly CMRS. We find that these amendments to the rules on transfers of control and assignments will allow greater flexibility to applicants in structuring transactions and will provide greater clarity to authorized international carriers regarding assignments and transfers of control.

5. The current rules regarding *pro forma* assignments and transfers of control of international section 214 authorizations do not explicitly address many of the types of transactions that should be treated as *pro forma*.<sup>13</sup> Specifically, at present section 63.24 sets forth only six types of transactions that are considered *pro forma* and therefore do not require prior Commission approval.<sup>14</sup> If a transaction does not fall into one of those categories, under the current rule it cannot be treated as *pro forma*. We find this to be overly restrictive, and therefore amend the procedures to provide greater flexibility to

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<sup>8</sup> 47 C.F.R. § 63.19.

<sup>9</sup> 47 C.F.R. § 43.61(c).

<sup>10</sup> 47 U.S.C. § 271.

<sup>11</sup> See NPRM, 15 FCC Rcd at 24267-73 ¶¶ 7-20.

<sup>12</sup> 47 C.F.R. §§ 63.18(e)(3), 63.24.

<sup>13</sup> See NPRM, 15 FCC Rcd at 24267 ¶ 7.

<sup>14</sup> See 47 C.F.R. § 63.24(a)(1)-(6). See also Appendix A, Note 2 to section 63.24(d).

applicants. Because an increasing number of transactions involve authorizations for several different services and therefore require review by multiple Bureaus and Offices within the Commission, it will ease the burden on applicants if we better harmonize our rules for assignments and transfers of control applicable to international services with similar rules for other telecommunications services. As proposed in the NPRM, we modify and consolidate the current rules on assignments and transfers of control of international section 214 authorizations so that the new rule more closely tracks the procedures applicable to CMRS, as many of the transactions involving transfers of international section 214 authorizations also include wireless authorizations.<sup>15</sup> The commenters support this change to the rules.<sup>16</sup>

6. First, we amend our rules governing assignments and transfers of control of international section 214 authorizations to allow a case-by-case determination of whether a transfer of control or assignment is substantial or *pro forma* in nature based on the guidance set forth in previous Commission precedent on the issue.<sup>17</sup> In defining when a transfer of control has occurred and whether it is substantial or *pro forma*, the Commission distinguishes between the presence of *de facto* and *de jure* control. If there is a change in *de facto* control, the transfer is considered substantial, and prior Commission approval is required. A change in *de jure* control is generally considered substantial, but if there is an indication that *de facto* control has not changed,<sup>18</sup> the

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<sup>15</sup> See, e.g., *Qwest Communications International Inc. And U S WEST, Inc. Applications for Transfer of Control of Domestic and International Sections 214 and 310 Authorizations and Applications to Transfer Control of a Submarine Cable Landing License*, CC Docket No. 99-272, Memorandum Opinion and Order, 15 FCC Rcd 11909 (2000); *GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee; For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, CC Docket No. 98-184, Memorandum Opinion and Order, 15 FCC 14032 (2000); *Aerial Communications Inc, Transferor, and VoiceStream Wireless Holding Corporation, Transferee, For Consent to Transfer of Control of Licenses and Authorizations*, WT Docket No. 00-3; *Voicestream PCS III License L.L.C., Waiver of Section 20.6 of the Commission's Rules and VoiceStream Wireless Corporation, VoiceStream Wireless Holding Corporation, Telephone and Data Systems Inc., and Aerial Communications, Inc., Request for Declaratory Ruling – Compliance with Section 20.6 of the Commission's Rules*, File No. CWD 98-89, Memorandum opinion and Order, 15 FCC Rcd 10089 (WTB/IB 2000); *Vodafone AirTouch, Plc, and Bell Atlantic Corporation, For Consent to Transfer of Control or Assignment of Licenses and Authorizations*, File Nos. 0000032969, et al., DA 99-2451, File Nos. 0000046624, 0000046639, WTB Rpt No. 371, Memorandum Opinion and Order, 15 FCC Rcd 16507 (WTB/IB 2000).

<sup>16</sup> See Cingular comments at 2; Verizon comments at 1-2; Verizon Wireless comments at 1; Worldcom comments at 2.

<sup>17</sup> See, e.g., *Federal Communications Bar Association's Petition for Forbearance from Section 310(d) of the Communications Act Regarding Non-Substantial Assignments of Wireless Licenses and Transfers of Control Involving Telecommunications Carriers*, Memorandum Opinion and Order, 13 FCC Rcd 6293, 6297-99 ¶¶ 7-9 (1998) (*FCBA Forbearance Order*); see also Stephen F. Sewell, *Assignments and Transfers of Control of FCC Authorizations Under Section 310(d) of the Communications Act of 1934*, 43 Fed. Comm. L.J. 277 (1991).

<sup>18</sup> In the *FCBA Forbearance Order*, the Commission identified certain factors that may be relevant to a finding of *de facto* control. These factors include, but are not limited to: (1) power to

transfer may be considered *pro forma*, and if so prior approval is not required. The inquiry is fact specific and done on a case-by-case basis.

7. We also adopt the proposal to treat a change from less than 50 percent controlling ownership – *de facto* control -- to 50 percent or more ownership – *de jure* control -- as a transfer of control.<sup>19</sup> While we understand Verizon's view that an increase of an already controlling ownership interest to an ownership interest of over 50 percent is not always a transfer of control,<sup>20</sup> we find that such an increase in ownership level constitutes a change in the type of control, from *de facto* control to *de jure* control, and the Commission should be notified of this change. As we noted, we seek to make our procedures more consistent with those that govern CMRS licenses. Under the rules, a change from less than 50 percent ownership to 50 percent or more ownership of a CMRS license is always considered a transfer of control.<sup>21</sup> Further, we do not find that this requirement will be unduly burdensome on carriers because, as a *pro forma* transfer, the carrier need only notify the Commission of the new ownership structure within 30 days after the change.

8. We adopt the proposals set forth in the NPRM to require the authorized carrier to notify the Commission within 30 days after consummation of a *pro forma* assignment or transfer of control. The notification may be in the form of a letter. The section 214 authorization holder will be required to certify in the letter that the assignment or transfer of control was *pro forma*, and, together with all other previous *pro forma* transactions, this assignment or transfer of control does not result in a change in the actual controlling party. The letter also must contain the name, address of the assignee/transferee, contact points, and updated ownership information. If the Commission determines that the notification is acceptable for filing, it will issue a public notice granting the *pro forma* assignment or transfer of control. Any interested party who objects to the assignment or transfer of control may, within 30 days from release of the public notice, file a petition seeking reconsideration. The Commission will retain the authority to rescind its approval of any purported *pro forma* transaction that it subsequently determines involves a substantial change of control.

9. We also make a number of other amendments to section 63.24. First, we amend section 63.24 to clearly state that both *pro forma* assignees and carriers that are subject to a *pro forma* transfer of control are required to notify the Commission of either

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constitute or appoint more than fifty percent of the board of directors or partnership management committee; (2) authority to appoint, promote, demote and fire senior executives that control the day-to-day activities of the licensee; (3) ability to play an integral role in major management decisions of the licensee; (4) authority to pay financial obligations, including expenses arising out of operations; (5) ability to receive monies and profits from the facility's operations; and (6) unfettered use of all facilities and equipment. See *FCBA Forbearance Order*, 13 FCC Rcd at 6298-99 ¶ 7.

<sup>19</sup> NPRM, 15 FCC Rcd at 24269 ¶ 11.

<sup>20</sup> Verizon comments at 2-3.

<sup>21</sup> See 47 C.F.R. § 1.948(b)(1).

a *pro forma* assignment or transfer of control. As discussed above, such notification must be made no later 30 days after the transaction and may be done by letter. Second, we add definitions and explanatory language regarding assignments and transfers of control to enhance clarity. Third, we add a section to the rule addressing the procedure to be followed in the event of an involuntary assignment or transfer of control.

10. Finally, we reiterate that under these rule changes the international section 214 authorization holder is responsible in each instance for determining whether a proposed transaction is *pro forma* or substantial and for complying with the relevant rules and procedures that govern Commission approval of such transactions. International section 214 authorization holders must continue to include the information currently required under section 63.18(e)(3) for a substantial transfer of control or assignment. We also retain the authority to determine that a particular transaction characterized by the applicants as *pro forma* constitutes instead a substantial change of control and therefore should be subject to the appropriate review. In that case we will rescind the grant of the purported *pro forma* assignment or transfer of control.

#### **B. Settlement Rate Benchmark Conditions**

11. We adopt the tentative conclusion in the NPRM that it is no longer necessary to apply the settlement rate benchmarks condition to section 214 authorizations to provide facilities-based international private line service.<sup>22</sup> We find that this change will relieve an unnecessary burden on carriers, without undermining the effectiveness of our competitive safeguards.

12. In the *Benchmarks Order*, the Commission established benchmarks that govern the international settlement rates at or below which U.S. carriers may pay foreign carriers to terminate international traffic originating in the United States.<sup>23</sup> In that Order, the Commission also adopted a condition requiring that, before a U.S. carrier may provide facilities-based switched or private line service on a route where it is affiliated with a carrier with market power on the foreign end of the route, the foreign affiliate must offer all U.S. carriers on the route a rate for settling traffic that is at or below the relevant benchmark rate.<sup>24</sup> The Commission adopted the condition for facilities-based switched service to affiliated markets to address the potential for a carrier to engage in a predatory price squeeze, *i.e.*, to price below the level of its imputed costs when providing U.S.

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<sup>22</sup> See NPRM, 15 FCC Rcd at 24273-74 ¶¶ 21-25.

<sup>23</sup> See *International Settlement Rates*, IB Docket No. 96-261, Report and Order, 12 FCC Rcd 19806 (1997) (*Benchmarks Order*), *aff'd sub nom. Cable and Wireless Plc v. FCC*, 166 F.3d 1224 (D.C. Cir. 1999), Report and Order on Reconsideration and Order Lifting Stay, 14 FCC Rcd 9256 (1999) (*Benchmarks Reconsideration Order*).

<sup>24</sup> The condition is codified at 47 C.F.R. § 63.10(e).

facilities-based switched service between the United States and a foreign market where the carrier has an affiliate with market power.<sup>25</sup>

13. Application of the benchmark condition to facilities-based private line service serves to limit the ability of carriers to circumvent the condition by routing facilities-based switched traffic over private lines. As currently applied, the condition prevents carriers, including those that do not provide facilities-based switched services on a route, from providing facilities-based private line service on that route if they are affiliated with a foreign carrier with market power whose settlement rates are above the benchmark rates.

14. In the NPRM, the Commission tentatively concluded that the burdens placed on some carriers by applying the benchmarks condition to authorizations to provide services over facilities-based private lines outweigh the benefits of the policy, and thus proposed to discontinue the application of the benchmarks conditions to services provided over facilities-based private lines.<sup>26</sup> Worldcom disagrees that the burdens placed on carriers outweigh the benefits of the policy.<sup>27</sup> Worldcom is concerned that if the condition is not applied to facilities-based private lines, the Commission will not have the ability to detect evasion and commence an enforcement proceeding.<sup>28</sup> Consequently, Worldcom urges that the Commission continue to apply the benchmark conditions on facilities-based private lines until the settlement rate benchmarks are fully implemented in January 2003.<sup>29</sup> Verizon, on the other hand, supports elimination of the benchmarks condition on authorizations to provide services over facilities-based private lines.<sup>30</sup> It agrees with the statement in the NPRM that the Commission can rely on the existing reporting mechanisms under section 43.61 to assure that carriers do not circumvent the restrictions on carrying switched traffic on private lines.<sup>31</sup>

15. At this time we conclude that the application of this condition to facilities-based private line service is not necessary to prevent carriers from evading the condition as it applies to facilities-based switched services. We find, contrary to Worldcom's assertions,<sup>32</sup> that it is unlikely that a carrier could evade the condition by sending a substantial portion of its facilities-based switched traffic over facilities-based private lines

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<sup>25</sup> *Benchmarks Order*, 12 FCC Rcd at 19916-24 ¶¶ 242-59.

<sup>26</sup> NPRM, 15 FCC Rcd at 24274 ¶¶ 24-25.

<sup>27</sup> Worldcom comments at 3.

<sup>28</sup> Worldcom comments at 4.

<sup>29</sup> Worldcom comments at 5.

<sup>30</sup> Verizon comments at 3.

<sup>31</sup> Verizon comments at 3.

<sup>32</sup> Worldcom comments at 4.

without detection by the Commission and other carriers on the route. While it is correct that carriers need only report their private-line traffic in the annual reports required under section 43.61,<sup>33</sup> the largest carriers, accounting for approximately 90 percent of annual U.S. billed minutes, also must report their switched telephone traffic on a quarterly basis.<sup>34</sup> This information will provide us notice of substantial declines in a carrier's switched service traffic and we will be able to investigate the cause for such a change. Moreover, it is likely that other carriers would notice such a change and would bring it to our attention for investigation. Consequently, we are confident that the Commission could detect the evasion of the benchmarks condition and commence enforcement proceedings if warranted.

16. As the Commission explained in the NPRM, the application of the benchmarks condition is burdensome to carriers and could prevent the development of innovative services.<sup>35</sup> Since we find that application of the benchmarks condition to facilities-based private line service is no longer necessary to prevent carriers from evading the condition as it applies to facilities-based switched service, we find it in the public interest to no longer apply the benchmark condition to section 214 authorizations to provide facilities-based international private line services.

### C. Discontinuance of Service by Dominant Carriers

17. We amend section 63.19 to clarify that dominant U.S. international carriers need only seek prior approval for discontinuance of service where such carriers possess market power on the U.S. end of the international route. At the suggestion of Cingular, we also exempt CMRS carriers from the section 63.19 discontinuance requirements.

18. Under section 63.19, dominant U.S. international carriers must seek Commission approval prior to any discontinuance of service. The purpose of the rule is to ensure that customers will have adequate alternatives available if a dominant carrier discontinues service. Thus, the issue in determining whether a carrier should be required to seek prior approval to discontinue service is the carrier's market power *on the U.S. end* of the international route. The current rule, however, uses the definition of "dominant" carrier contained in section 63.10,<sup>36</sup> which is based on whether the U.S. carrier is affiliated with a carrier that has sufficient market power *on the foreign end* of a U.S. international route to affect competition adversely in the U.S. market. As the Commission explained in the NPRM, this is an incongruous result.<sup>37</sup> Consequently, we

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<sup>33</sup> 47 C.F.R. § 43.61(a).

<sup>34</sup> See 47 C.F.R. § 43.61(b).

<sup>35</sup> NPRM, 15 FCC Rcd at 24274 ¶ 24.

<sup>36</sup> 47 C.F.R. § 63.10.

<sup>37</sup> NPRM, 15 FCC Rcd at 24275 ¶ 27.

amend section 63.19 to require prior approval for discontinuances by a U.S. international carrier only for those routes and services for which the carrier is classified as dominant due to its having market power in the provision of that international service on the U.S. end of the route.

19. Cingular requests that the Commission conform the discontinuance provisions for CMRS carriers' international service to those for their domestic service.<sup>38</sup> Cingular notes that the Commission has determined that section 214 discontinuance requirements are unnecessary for CMRS carriers' provision of interstate services.<sup>39</sup> It argues that subjecting CMRS carriers to discontinuance requirements for international service effectively renders meaningless the decision to not impose discontinuance requirements for interstate service.<sup>40</sup> We agree with Cingular that applying discontinuance requirements to the provision of international service by CMRS carriers is inconsistent with the Commission's determination that discontinuance requirements are unnecessary for CMRS carriers' provision of interstate service. We therefore exempt CMRS carriers from the section 63.19 discontinuance requirements.

#### **D. Other Rule Changes Proposed in the NPRM**

##### **1. Control and Application of the Multiplier**

20. We adopt the tentative conclusion in the NPRM,<sup>41</sup> and amend the notes in sections 63.09 and 63.18 regarding attribution of indirect ownership interests in U.S. and foreign carriers.<sup>42</sup> These notes explain that attribution of such interests is determined through the use of a multiplier. In the NPRM, the Commission proposed to amend these notes so that they are clear on their face that whenever an ownership percentage exceeds 50 percent or represents actual control of the international section 214 authorization holder, it shall be treated as a 100 percent interest for purposes of applying the multiplier.<sup>43</sup> Cingular supports this proposal.<sup>44</sup> We find that the public interest is served by clarifying this rule, and amend the notes accordingly.

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<sup>38</sup> Cingular comments at 3-4.

<sup>39</sup> Cingular comments at 3 (citing *Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services*, Second Report and Order, 9 FCC Rcd 1411, 1481 ¶ 182 (1994)).

<sup>40</sup> Cingular comments at 3.

<sup>41</sup> See *NPRM*, 15 FCC Rcd at 24277 ¶ 30.

<sup>42</sup> See 47 C.F.R. §§ 63.09 note 2, 63.18 note 4.

<sup>43</sup> See *NPRM*, 15 FCC Rcd at 24276-77 ¶ 30.

<sup>44</sup> Cingular comments at 2.

## 2. Conveying Transmission Capacity in Submarine Cables

21. We adopt the proposal to eliminate section 63.21(h) which requires dominant carriers to notify the Commission if they convey transmission capacity on submarine cables to another U.S. carrier.<sup>45</sup> No commenters addressed this proposal. In the NPRM, the Commission found there are no U.S. carriers to which section 63.21(h) currently applies.<sup>46</sup> We do not believe that it is in the public interest to maintain a rule that was adopted when there was a dominant carrier in the submarine cable market and does not now apply to any carrier because of subsequent changes in the market. As the Commission determined in the NPRM, if we find it necessary at some future date to regulate a U.S. carrier as dominant due to its ability to exercise market power in the provision of U.S. international service, it would be preferable to take a fresh look at that time at the safeguards that should apply to such carriers.<sup>47</sup> Consequently, we find it in the public interest to eliminate section 63.21(h) at this time.

## 3. Reports of Carriers Owned by Foreign Telecommunications Entities

22. We adopt the Commission's tentative conclusion in the NPRM to delete section 43.81.<sup>48</sup> This rule required certain foreign-owned carriers to file with the Commission annual revenue and traffic reports with respect to all common carrier telecommunication services they offered in the United States in 1988, 1989, and 1990.<sup>49</sup> Although the time period for filing the reports has expired, the rule still remains in the Code of Federal Regulations. No commenters addressed this proposal. We find it is in the public interest to remove this obsolete rule.

## 4. Permitted Facilities

23. We amend section 63.22(b) to clarify that a facilities-based carrier may provide service over U.S. facilities that are not subject to authorization by the Commission, as long as those facilities are not on the Exclusion List. No commenters addressed these proposals. As was discussed in the NPRM, the existing rule does not specifically address the use of U.S. cross-border facilities that are not licensed under Title III or the Submarine Cable Landing License Act,<sup>50</sup> such as non-common carrier land-line

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<sup>45</sup> See NPRM, 15 FCC Rcd at 24277 ¶ 31.

<sup>46</sup> *Id.*

<sup>47</sup> See *id.*

<sup>48</sup> See NPRM, 15 FCC Rcd at 24278 ¶ 32.

<sup>49</sup> 47 C.F.R. § 43.81.

<sup>50</sup> 47 U.S.C. §§ 34-39.

fiber optic cable.<sup>51</sup> This change should eliminate confusion as to whether carriers are allowed to use such facilities.

24. We also amend section 63.22(b) by removing the general reference to a list of countries in the "Exclusion List for International Section 214 Authorizations" (Exclusion List).<sup>52</sup> As was explained in the NRPM, in general, a carrier may not use U.S. earth stations to access non-U.S.-licensed satellite systems unless the Commission has specifically approved the use of those satellites and indicates such on the Exclusion List.<sup>53</sup> In addition, section 63.22(b) allows carriers to use those approved satellite systems to provide service only to specific countries identified on the Exclusion List. The International Bureau, however, considers non-U.S.-licensed satellites on the Permitted Space Station List<sup>54</sup> to be approved satellite systems for purposes of the Exclusion List,<sup>55</sup> and the Permitted Space Station List does not list specific countries for which the approved satellites may be used to provide U.S. international services. This inconsistency between the Permitted Space Station List and the language of section 63.22(b) can be confusing. Thus, we amend section 63.22(b) to remove the general reference to a list of countries in the Exclusion list for which the Commission has approved the use of non-U.S.-licensed satellite systems. To the extent that a non-U.S.-licensed satellite system is permitted for use by U.S. earth stations, those satellites may be used to provide service to any countries accessible by the satellites unless specifically excluded on the Permitted Space Station List. Such limitations on the use of an approved non-U.S.-licensed satellite system will be listed in the Permitted Space Station List.

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<sup>51</sup> See NPRM, 15 FCC Rcd at 24278-79 ¶ 33-34.

<sup>52</sup> See 1998 Biennial Regulatory Review-Review of International Common Carrier Regulations, IB Docket No. 98-118, Report and Order, 14 FCC Rcd 4909, 4933 ¶ 58 (1999) (1998 International Biennial Review Order).

<sup>53</sup> NPRM, 15 FCC Rcd at 24279 ¶ 34.

<sup>54</sup> For more information on the Permitted List, see *Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States*, First Order on Reconsideration, IB Docket No. 96-111, 15 FCC Rcd 7207 (1999).

<sup>55</sup> Specifically, the International Bureau treats the Exclusion List as excluding any non-U.S.-licensed satellite that has been added to the Permitted Station List. Thus, a facilities-based common carrier with a global international Section 214 authorization is authorized to use non-U.S.-licensed satellites on the Permitted Station List. See *International Bureau Announces Process for Providing Service Under Global International Section 214 Authorizations Using Approved Non-U.S.-Licensed Satellite Systems Listed on the Permitted Space Station List*, Public Notice, 15 FCC Rcd 3689 (IB 1999).

## 5. Duplicative Notes

25. We adopt the proposal to amend section 63.18 to remove three notes that are duplicative of notes in section 63.09.<sup>56</sup> No commenters addressed this proposal. We find that this change will make the part 63 rules simpler and easier to follow. Specifically, we remove existing notes 1, 2, and 3 from section 63.18 because they duplicate language in section 63.09, and are unnecessary in section 63.18.<sup>57</sup> We maintain the existing note 4 in section 63.18, and renumber it as note 1.<sup>58</sup> Although the text of this note is the same as the text of note 2 in section 63.09, it is important both for determining whether a section 214 applicant is "affiliated" with a U.S. or foreign carrier (within the meaning of section 63.09(e)) and for determining the applicant's 10 percent or greater shareholders (pursuant to section 63.18(h)). We therefore will maintain this note in both sections.

## 6. Applications for Supplementary Facilities

26. We delete the language in section 63.20(a) that specifies the number of copies required to be filed where an application involves "only the supplementation of existing international facilities, and the issuance of a certificate is not required . . ."<sup>59</sup> As the Commission noted in the NPRM, U.S. international carriers are no longer required to file applications to supplement already-authorized facilities.<sup>60</sup> No commenters addressed this proposal. Therefore, we delete this provision as unnecessary.

## 7. Filings on Diskettes

27. We adopt the proposals to eliminate the provisions in section 63.10(d) and 63.53(b) that require or permit certain documents to be submitted on computer diskettes.<sup>61</sup> Since February 10, 1999, applicants have been able to use the International Bureau Filing System (IBFS) to file electronically numerous applications, including international section 214 applications.<sup>62</sup> Given the ability of applicants to use the IBFS to file

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<sup>56</sup> NPRM, 15 FCC Rcd at 24280 ¶ 35-36.

<sup>57</sup> See NPRM, 15 FCC Rcd at 24280 ¶ 35-36. The first note to Section 63.18(h) defines the term "control." The second note defines the term "facilities-based carrier." The third note explains the meaning of "capital stock." 47 C.F.R. § 63.18.

<sup>58</sup> We are amending the note, however, to clarify that whenever an ownership percentage exceeds 50 percent or represents actual control it shall be treated as a 100 percent interest for purposes of applying the multiplier. See *supra* at ¶ 20.

<sup>59</sup> 47 C.F.R. § 63.20(a).

<sup>60</sup> See NPRM, 15 FCC Rcd at 24281 ¶ 37.

<sup>61</sup> See NPRM, 15 FCC Rcd at 24281-82 ¶¶ 38-39.

<sup>62</sup> *Id.* at 24281 ¶ 38.

international Section 214 applications, we no longer find it in the public interest to have applicants file international Section 214 applications on computer diskettes. Worldcom supports this conclusion.<sup>63</sup> We therefore delete section 63.53(b). We also do not find any reason to continue to require dominant carriers to file reports pursuant to paragraphs 63.10(c)(3), (c)(4), and (c)(5) on diskettes, and amend section 63.10(d) to remove this requirement.<sup>64</sup>

## **E. Rule Changes Requested by the Commenters**

### **1. Reporting of International Telecommunications Traffic**

28. Section 43.61 requires all common carriers providing telecommunications service between the continental United States, Alaska, and Hawaii and points outside of that area, including off-shore U.S. points, to file annual reports regarding traffic and revenue data collected from the provision of such services.<sup>65</sup> In addition, section 43.61(b) requires carriers that meet certain traffic thresholds to file quarterly reports.<sup>66</sup> Section 43.61(c) requires that carriers that resell switched services on routes where they are affiliated with foreign carriers possessing market power that collect settlement payments from U.S. carriers file quarterly reports of their switched resale service on the affiliated route.<sup>67</sup> The Commission, as well as industry, uses the information collected in the reports to monitor the development and competitiveness of international telecommunications markets and compliance with the Commission's rules and policies. In addition, the data assists the Commission in identifying trends in communications services, monitoring the balance of settlement payments, and developing Commission policies and positions on international telecommunications issues.

29. Cingular, Verizon and Verizon Wireless request that the Commission make changes to the quarterly reporting requirements in section 43.61. Cingular requests that reporting requirements under section 43.61 be eliminated for CMRS carriers.<sup>68</sup> Verizon Wireless urges the Commission to eliminate the filing requirements under section 43.61(c) for CMRS carriers engaged in the resale of international switched services that are affiliated with a foreign carrier that has market power on the foreign end

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<sup>63</sup> Worldcom comments at 6.

<sup>64</sup> These reports are filed by U.S. international carriers regulated as dominant on particular routes due to an affiliation with a carrier that has market power on the foreign end of a U.S. international route. See 47 C.F.R. § 43.10.

<sup>65</sup> 47 C.F.R. § 43.61.

<sup>66</sup> See 47 C.F.R. § 43.61(b).

<sup>67</sup> See 47 C.F.R. § 43.61(c).

<sup>68</sup> Cingular comments at 8.

of the international route.<sup>69</sup> Cingular agrees that at a minimum the Commission should exempt CMRS carriers from the reporting requirements under section 43.61(c).<sup>70</sup> Verizon argues that the threshold requirements for filing quarterly reports under section 43.61(b) are difficult to assess and apply.<sup>71</sup> It suggests that quarterly reports should not be required on routes where International Simple Resale (ISR) has been approved.<sup>72</sup> These commenters argue that the quarterly reports are burdensome and that the data collected does not provide any significant regulatory benefits.<sup>73</sup> Cingular and Verizon Wireless also argue that they already report international revenues on the Telecommunications Reporting Worksheet, FCC Form 499A.<sup>74</sup>

30. We amend section 43.61(c) to exempt CMRS carriers providing resale of international switched services from filing quarterly traffic and revenue reports for their service to foreign markets where they are affiliated with a foreign carrier with market power in that market and that collects settlement payments from U.S. carriers. These quarterly reports were adopted in order to detect whether switched resellers are engaging in traffic distortion schemes on affiliated routes.<sup>75</sup> We find that CMRS carriers have a *de minimis* amount of the switched resale international traffic and thus are unlikely to be able to distort traffic on affiliated routes. We also note that no complaints have been filed with the Commission alleging the CMRS carriers have engaged in traffic distortion schemes. Indeed it is not obvious that these switched resellers of unaffiliated services have the ability or the incentive to engage in such anti-competitive conduct on these routes where they are affiliated with foreign carriers possessing market power. We, of course, maintain the ability, on our own motion or based on a complaint, to investigate any potential traffic distortion schemes and commence enforcement proceedings if warranted.

31. We do not find it in the public interest to make other changes to the section 43.61 reporting requirements at this time, however. As noted above, the Commission and industry use the information provided in the reports to monitor compliance with the Commission's rules and policies. The filing of quarterly reports under section 43.61(b) provides the Commission with information to detect deviations of

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<sup>69</sup> Verizon Wireless comments at 3-4.

<sup>70</sup> Cingular comments at 10.

<sup>71</sup> Verizon comments at 6.

<sup>72</sup> Verizon comments at 7.

<sup>73</sup> Cingular comments at 10; Verizon comments at 10; Verizon Wireless comments at 3.

<sup>74</sup> Cingular comments at 9; Verizon Wireless comments at 4.

<sup>75</sup> *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket No. 97-142, Report and Order and Order On Reconsideration, 12 FCC Rcd 23891, 23985 ¶ 211 (1997) (*Foreign Participation Order*) recon. 15 FCC Rcd 18158 (2000).

traffic flows on a timely basis.<sup>76</sup> For example, as discussed in Section II.B. above,<sup>77</sup> because large carriers must report their switched telephone traffic on a quarterly basis we find that we will be able to detect substantial declines in U.S. carriers' international switched service traffic and thus can remove the benchmarks condition that prohibits a carrier's provision of facilities-based international private line service on a route where an affiliate has market power on the foreign end and maintains settlement rates with U.S. carriers that exceed the applicable benchmark.<sup>78</sup> We also do not find that it would be in the public interest to exempt CMRS carriers from filing annual traffic and revenue reports. While CMRS carriers do file some information regarding international services as part of their Form 499A filing, this information is limited to revenues and does not provide information on minutes of use, which is important for monitoring trends in the industry. Therefore, we find that these less burdensome reporting requirements continue to be in the public interest.

## 2. Notification of Foreign Affiliations

32. Section 63.11 requires U.S. carriers to notify the Commission of their new affiliations with foreign carriers.<sup>79</sup> Specifically, U.S. carriers must notify the Commission in advance of any new controlling investment by a U.S. carrier in a foreign carrier and of new controlling investments or greater than twenty-five percent capital stock investment by a foreign carrier in a U.S. carrier.<sup>80</sup> For other types of affiliation, such as affiliations with carriers that lack market power or are with resale carriers, carriers need not notify the Commission in advance, but may provide such notification after the consummation of the acquisition which leads to the affiliation.<sup>81</sup>

33. Verizon requests that the Commission not require prior notification for affiliations with foreign carriers not already identified by the Commission as possessing market power.<sup>82</sup> Verizon claims the 60-day prior notification requirement in section 63.11 is burdensome, particularly if the foreign carrier involved does not have market power.<sup>83</sup> Verizon argues that, unless the foreign carrier is on the Commission's list of

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<sup>76</sup> See *Foreign Participation Order*, 12 FCC Rcd at 24013 ¶ 271.

<sup>77</sup> See *supra* ¶ 15.

<sup>78</sup> See *Benchmarks Order*, 12 FCC Rcd at 19916-19924 ¶¶ 242-259 (adopting the section 43.61(b) reports specifically to monitor for competitive distortion on routes where the Commission has approved ISR).

<sup>79</sup> 47 C.F.R. § 63.11.

<sup>80</sup> 47 C.F.R. § 63.11(a).

<sup>81</sup> 47 C.F.R. § 63.11(b), (c).

<sup>82</sup> Verizon comments at 4.

<sup>83</sup> Verizon comments at 4.

subsidiaries.<sup>97</sup> Under this rule, a carrier must notify the Commission within 30 days after the subsidiary begins providing service.<sup>98</sup>

40. Cingular requests that the Commission amend section 63.21 to allow an international section 214 authorization holder and all of the subsidiaries in which it holds a sole controlling interest to operate pursuant to the same authorization and simply require that any subsidiary's foreign carrier affiliations be disclosed.<sup>99</sup> Cingular argues that the current rule, which only allows wholly-owned subsidiaries to provide service pursuant to their parent's international section 214 authorization, is particularly burdensome to CMRS carriers, which often operate through a number of commonly-controlled and operationally integrated, but not wholly-owned, partnerships and subsidiaries.<sup>100</sup> Cingular also requests that a carrier be allowed to transfer or assign existing commonly-controlled authorizations in a single application.<sup>101</sup>

41. We decline to amend the provisions of section 63.21 which deal with the provision of international service by a subsidiary. When the Commission adopted the rule allowing a wholly-owned subsidiary to provide service under its parent's section 214 authorization, it considered a request to allow partnerships in which the carrier has a controlling interest to be able to operate pursuant to that carrier's authorization.<sup>102</sup> The Commission declined to adopt that request, finding that "a controlling interest that does not amount to 100-percent ownership may raise additional issues, such as additional foreign affiliations or minority ownership or beneficial interest by persons or entities who are barred from holding a Commission authorization."<sup>103</sup> By definition, a wholly-owned subsidiary does not have different affiliations than its parent. Thus, any review of the application would provide no new information for the purpose of national security, law enforcement, trade, or foreign policy evaluation. Cingular acknowledges the Commission's rationale for limiting the authority for subsidiaries to provide service under a parent's international section 214 authorization to wholly-owned subsidiaries.<sup>104</sup> It does not dispute the validity of this rationale, but merely argues that this requirement is particularly burdensome to CMRS carriers. We find the Commission's stated rationale for limiting the authority to use a carrier's international section 214 authority to wholly-

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<sup>97</sup> 47 C.F.R. § 63.21(i).

<sup>98</sup> *Id.*

<sup>99</sup> Cingular comments at 5.

<sup>100</sup> Cingular comments at 5-6 (citing 47 C.F.R. § 63.21(i)).

<sup>101</sup> Cingular comments at 7.

<sup>102</sup> *1998 International Biennial Order*, 14 FCC Rcd at 4932-33 ¶ 56.

<sup>103</sup> *1998 International Biennial Review Order*, 14 FCC Rcd at 4932-33 ¶ 56 (footnote omitted).

<sup>104</sup> Cingular comments at 4-5.

name of any interlocking directorates with each foreign carrier named in a foreign carrier notification.<sup>90</sup> Section 63.18 requires as part of the section 214 application process that an applicant identify any interlocking directorates with a foreign carrier.<sup>91</sup>

36. Verizon requests that the Commission eliminate the requirement in section 63.18 to identify any interlocking directorates with a foreign carrier.<sup>92</sup> Verizon argues that a similar requirement has been eliminated for domestic services.<sup>93</sup> Verizon also states that it is burdensome to update this information as directors change in the normal course of business.<sup>94</sup>

37. We decline to adopt Verizon's request. The disclosure of interlocking directorates between a U.S. carrier and foreign carriers serves an important purpose in our regulatory scheme for international services that is a different purpose than the former rules regarding interlocking directorates of domestic carriers. Part 62, which dealt with interlocking directorates of domestic carriers and has been repealed,<sup>95</sup> did not address concerns with respect to vertical integration or ownership affiliations between U.S. and foreign carriers. As the Commission explained in the *Foreign Participation Recon Order*, the identification of "interlocking directorates between the U.S. carrier and any foreign carrier is intended to help verify the U.S. carrier's certification as to its foreign affiliations."<sup>96</sup> We therefore decline to eliminate the requirement that carriers inform the Commission of their interlocking directorates with foreign carriers.

38. We take this opportunity, however, to clarify the requirements of section 63.11 and 63.18. Under these rules carriers only need identify their interlocking directorates when they file a Foreign Carrier Notification under section 63.11 or a section 214 application under section 63.18. The rules do not require the carrier to notify the Commission of changes in interlocking directorates, as directors change in the normal course of business.

#### 4. Provision of Service by Subsidiaries

39. Section 63.21 provides that any carrier authorized under section 214 to provide international services may provide service through any wholly-owned

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<sup>90</sup> 47 C.F.R. § 63.11(e)(7).

<sup>91</sup> 47 C.F.R. § 63.18(h).

<sup>92</sup> Verizon comments at 5 (citing 47 C.F.R. § 63.18(h)).

<sup>93</sup> Verizon comments at 5.

<sup>94</sup> Verizon comments at 6.

<sup>95</sup> *1998 Biennial Regulatory Review -- Repeal of Part 62 of the Commission's Rules*, CC Docket No. 98-195, Report and Order, 14 FCC Rcd 43937 (1999).

<sup>96</sup> *Foreign Participation Reconsideration Order*, 15 FCC Rcd at 18175 ¶ 33.