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

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| In the matter of | ) | |
| | ) | |
| Amendment of Parts 1 and 63 of the Commission's Rules | ) | IB Docket No. 04-47 |
| | ) | |

# NOTICE OF PROPOSED RULEMAKING

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By the Commission:

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## I. INTRODUCTION

1. In this Notice of Proposed Rulemaking, we seek comment on several potential changes to our international section 214 authorization process[1] and the rules relating to the provision of United States (U.S.)-international telecommunications services. Specifically, we seek comment on whether to amend the procedures for discontinuing an international service to be more consistent with the procedures for discontinuing a domestic service. We also seek comment on ways to lessen the burdens placed on Commercial Mobile Radio Service (CMRS) carriers by the international section 214 application process. In particular, we seek comment on whether to establish international section 214 authority for CMRS carriers to provide international resale service subject to their notifying the Commission within 30 days of when they begin to provide international service. We propose to amend our rules to clarify that U.S.-authorized resale carriers can resell the U.S.-inbound international services of either U.S. carriers or foreign carriers. We seek comment on whether to amend our rules to allow commonly-controlled subsidiaries to use their parent's section 214 authorization to provide international service. Additionally, we seek comment on whether to amend section 1.767 of the Commission's rules[2] regarding procedures for Commission consideration of applications for cable landing licenses in order to assure compliance with the Coastal Zone Management Act of 1972 (CZMA).[3] Finally, we propose to amend other rules to clarify their intent.

## II. BACKGROUND

2. The Commission has continually reviewed its rules regarding the authorization of international services under section 214 of the Act.[4] Through this review, the Commission has sought to facilitate the introduction of new services, and to provide customers with more choices, more innovative services, and competitive prices. Where the Commission has found that a rule is no longer necessary or could be streamlined, it has acted to amend the rule so that it can improve its processing of authorization applications and regulation of international telecommunications services.

3. In 1996, the Commission created an expedited process for global, facilities-based, and resale section 214 applications.[5] The Commission permitted applicants to apply for section 214 authorizations on a global or limited basis, reduced paperwork obligations, streamlined tariff requirements for non-dominant international carriers, and ensured that essential information is readily available to all carriers and users. The Commission also adopted streamlined processing for international section 214 authorizations, which allowed for grant of such applications 35 days after the date of the public notice listing the application as accepted for filing. This expedited

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1 47 U.S.C. § 214 (2002).

2 47 C F.R. § 1.767 (2002).

3 Coastal Zone Management Act of 1972, 16 U.S.C. § 1456 (1972).

4 47 U.S C. § 214.

5 *Streamlining the International Section 214 Authorization Process and Tariff Requirements*, IB Docket No. 95-118, Report and Order, 11 FCC Rcd 12884 (1996) (*1996 Streamlining Order*). The Commission had begun the international Section 214 streamlining process in 1985. *See International Competitive Carrier Policies*, CC Docket No. 85-107, Report and Order, 102 FCC 2d 812 (1985); *recon denied*, 60 RR2d 1435 (1986); *modified, Regulation of International Common Carrier Services*, CC Docket No. 91-360, Report and Order, 7 FCC Rcd 7331 (1992).

process has facilitated entry into the U.S.-international telecommunications market and the expansion of international services to the benefit of U.S. consumers and competition.

4. Starting in 1998, the Commission made numerous changes to its regulations as part of the biennial regulatory review process.[6] In the *1998 International Biennial Review Order*, the Commission took additional steps to reduce certain regulatory burdens placed on providers of international telecommunications services in light of market changes. The Commission further streamlined its procedures for granting international section 214 authorizations to provide international services, and expanded the categories of applications eligible for streamlined processing.[7] The processing time was further reduced so that an applicant qualifying for streamlined processing is authorized to provide international services 14 days after public notice of an application. The vast majority of international section 214 applicants now qualify for streamlined processing, and carriers can then provide service starting on the fifteenth day after public notice.

5. As part of the 2000 biennial regulatory review, the Commission amended several rules to clarify their intent and eliminated rules that no longer had any application. In the *2000 International Biennial Review Order*, the Commission revised the rules for *pro forma* transfers and assignments of international section 214 authorizations to give carriers greater flexibility in structuring transactions.[8] These changes also assist carriers by making the rules more consistent with those procedures used for other service authorizations, particularly for the CMRS.[9] The Commission also clarified the international discontinuance rules and, consistent with domestic service rules, exempted CMRS carriers from the discontinuance requirements. The Commission further narrowed one of the section 214 benchmark conditions, so that it only applies to the provision of the U.S.-international facilities-based switched services for facilities-based U.S. carriers affiliated with dominant foreign carriers.[10]

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[6] The Telecommunications Act of 1996 (1996 Act), Pub. L. No. 104-104, 110 Stat. 56 (1996), 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), 47 U.S.C. §§ 151 *et seq.* (2002), 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." 47 U.S.C. § 161 (2002). 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." 47 U.S.C. § 161(a)(2)

[7] *1998 Biennial Regulatory Review-Review of International Common Carrier Regulations*, IB Docket 98-118, Report and Order, 14 FCC Rcd 4909 (1999) (*1998 International Biennial Review Order*).

[8] *2000 Biennial Regulatory Review: Amendment of Parts 43 and 63 of the Commission's Rules*, IB Docket 00-231, Report and Order, 17 FCC Rcd 11416 (2002) (*2000 International Biennial Review Order*), *aff'd sub nom Cellco Partnership d/b/a Verizon Wireless v. FCC & USA*, No. 02-1262 (D.C. Circuit Feb 13, 2004).

[9] *2000 International Biennial Review Order*, 17 FCC Rcd at 11418, ¶ 4.

[10] 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. *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*) 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. In the *2000 IB Biennial Review Order*, the Commission found that application of the benchmarks condition to facilities-based private line service was no longer necessary to prevent

6. As part of the 2002 biennial regulatory review,[11] the International Bureau ("Bureau") released a staff report that set forth various recommendations for reviewing our rules regarding the provision of international telecommunications.[12] The Bureau reviewed rules that fall within and outside the scope of section 11 of the Communications Act,[13] and made recommendations based both on changes in the competitive level of the marketplace and on other public interest reasons.[14] The Bureau recommended in the *2002 IB Biennial Review Staff Report* that we undertake a proceeding to review certain rules within Part 63 of the Commission's rules.[15]

7. As part of the 2002 biennial regulatory review proceeding, the Commission received comments on proposed changes to the rules contained in Part 63.[16] In its comments, Cingular argued that the section 214 authorization process and regulation unduly burden CMRS carriers and requested that the Commission take action to lessen the burdens placed on CMRS carriers.[17] Cingular stated that even if the Commission continues to require CMRS carriers to obtain section 214 authorization to provide international service, it should modify section 63.21(h) to allow commonly-controlled subsidiaries to use their parent corporation's authorization rather than having to obtain their own authorizations.[18] Verizon requested that we modify section 63.19 to conform the notice period for discontinuance of international services to that for domestic services.[19]

8. Based on its review of the rules and various comments, the Bureau recommended that the Commission undertake a proceeding to review several rules in Part 63 for reasons other than developments in the level of competition.[20] The Bureau recommended that the Commission institute a proceeding to explore whether there are less burdensome means of applying the public interest goals of Part 63 to CMRS carriers.[21] The Bureau, however, disagreed with Cingular that the Commission should modify section 63.21(h) to allow commonly-controlled subsidiaries to

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carriers from evading the condition as it applies to facilities-based switched service. *2000 International Biennial Review Order*, 17 FCC Rcd at 11417-19, ¶¶ 11-16.

11 *2002 Biennial Regulatory Review*, GC Docket No. 02-390, Report, 18 FCC Rcd 4726 (2003).

12 *International Bureau, Federal Communications Commission, Biennial Regulatory Review 2002*, IB Docket No. 03-309, GC Docket 02-390, 18 FCC Rcd 4196 (2003) (*2002 IB Biennial Review Staff Report*).

13 47 U S.C § 161.

14 *2002 IB Biennial Review Staff Report*, 18 FCC Rcd at 4197, ¶ 3 and *in passim*.

15 *2002 IB Biennial Review Staff Report*, 18 FCC Rcd at 4211, ¶¶ 35-36, 4236-39, ¶¶ 12-19. We will consider the other recommendations in the staff report relating to the reporting requirements of carriers providing U.S.-international services in a separate proceeding. *See id* at 4210-11, ¶ 34, 4232, ¶¶ 13-14.

16 *Commission Seeks Public Comments in 2002 Biennial Regulatory Review of Telecommunications Regulations within the Purview of the International Bureau*, Public Notice, IB Docket No. 09-309, 17 FCC Rcd 18929 (2002) Parties also commented on the continued need for other regulations within the purview of the International Bureau in response to the Public Notice. *See 2002 IB Biennial Review Staff Report*, 18 FCC Rcd 4196.

17 Cingular comments, IB Docket No. 02-309, at 7.

18 Cingular comments, IB Docket No. 02-309, at 8-12.

19 Verizon comments, IB Docket No. 02-309, at 11-12.

20 *2002 IB Biennial Review Staff Report*, 18 FCC Rcd at 4236, ¶ 12

21 *Id.* at 4211, ¶ 36, 4238, ¶ 16

use their parent's international section 214 authorization.[22] The Bureau also recommended that the Commission modify the rules specifically to permit all U.S.-authorized resale carriers to resell the international services of foreign-authorized carriers.[23] The Bureau also recommended that the Commission initiate a proceeding to modify the requirements for discontinuance of an international service, and consider whether those requirements should conform with the requirements for discontinuance of a domestic service.[24]

## III. DISCUSSION

### A. Discontinuance of International Service

9. We seek comment on whether to amend the procedures for discontinuance, reduction, or impairment of an international service by a U.S. carrier to be more consistent with our procedures for discontinuance of a domestic service. At present there are several differences between the discontinuance procedures for international and domestic services, including the length of notice required. These differences can be confusing to a carrier and its customers if the carrier is discontinuing both domestic and international services.

10 The procedures for discontinuing an international service are contained in section 63.19 of the Commission's rules.[25] The rule distinguishes among three categories of U.S. international carriers in setting out the discontinuance procedures. A non-dominant international carrier[26] must notify its affected customers at least 60 days prior to a planned discontinuance, reduction, or impairment of service.[27] The carrier must also file a copy of the notification with the Commission on or after the date on which notice has been given to all affected customers.[28] A carrier that has been classified as dominant due to its having market power in the provision of an international service on the U.S. end of the route[29] must obtain prior approval before a planned discontinuance, reduction, or impairment of service on that route.[30] A CMRS carrier is

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22 *Id* at 4211, ¶ 36, 4237-38, ¶ 15.

23 *Id* at 4211, ¶ 36, 4238, ¶ 17.

24 *Id.* at 4211, ¶ 35, 4239, ¶ 19.

25 47 C.F.R. § 63.19 (2002).

26 For the purpose of this discussion, a "non-dominant" international carrier is a carrier that does not have market power on the U.S.-end of the international route. *Compare with* 47 C.F.R. § 63.10 (non-dominant carrier is one that is not affiliated with a foreign carrier with market power on the foreign-end of the U.S.-international route) (2002)

27 47 C.F.R. § 63.19(a)(1).

28 47 C F.R. § 63.19(a)(2)

29 In the *2000 International Biennial Review Order,* the Commission clarified that the requirement for prior approval before discontinuance, impairment, or reduction of an international service applies only to a carrier classified as dominant due to its having market power in the provision of that international service on the U.S.-end of the route and not due to classification as a dominant carrier pursuant to section 63.10. *2000 International Biennial Review Order*, 17 FCC Rcd at 11423-24, ¶ 18.

30 47 C.F.R. § 63.19(b). If such a carrier only seeks to retire international facilities, or dismantle or remove international trunk lines, but does not discontinue, reduce, or impair the dominant services being provided through these facilities, it does not need prior approval but must provide customers at least 60 days written notice, and file a copy of the notice with the Commission. *Id*

exempt from the discontinuance procedures.[31]

11. The procedures for a planned discontinuance of a domestic service are contained in section 63.71.[32] Under that rule, a domestic carrier must notify all affected customers of the planned discontinuance, reduction, or impairment of services in writing.[33] The rule sets out specific information that the carrier must use in its notice to customers as well as specific language regarding the processing of the discontinuance application at the Commission and how customers can file comments with the Commission.[34] The carrier must file an application with the Commission,[35] and must submit a copy of the application to the public utility commission and Governor of each state in which the discontinuance, reduction, or impairment is proposed, as well as to the Department of Defense.[36] The Commission places the application on public notice, and the date of the public notice is the date the application is deemed filed for purpose of determining the automatic grant period.[37] A non-dominant carrier's application will be granted automatically 31 days after the public notice and a dominant carrier's application will be granted automatically 60 days after the public notice, unless the Commission notifies the carrier that the application will not be automatically granted.[38]

12. In its comments in the 2002 biennial review proceeding, Verizon stated that the Commission should conform the notice period for discontinuance of international services by a non-dominant U.S.-international carrier to that for discontinuance of a domestic service by a non-dominant carrier.[39] Verizon argued that this change would eliminate the potential for

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31 47 C.F.R. § 63.19(c).

32 47 C.F.R § 63.71 (2002). Section 63.63 describes the procedures to be followed in exceptional cases involving an emergency discontinuance. 47 C.F.R. § 63.63 (2002).

33 The Commission has forborne from exercising its section 214 authority on CMRS carriers for domestic services. *See Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services*, GN Docket 93-252, Second Report and Order, 9 FCC Rcd 1411, 1481, ¶ 182 (1994). Thus, section 63.71, unlike section 63.19, does not specifically address the applicability of the discontinuance procedures to CMRS carriers.

34 There are two similar statements that are to be used depending on whether the carrier is dominant or non-dominant for the service being discontinued, reduced, or impaired. The statement for a non-dominant carrier is:

> The FCC will normally authorize this proposed discontinuance of service (or reduction or impairment) unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier or that the public convenience and necessity is otherwise adversely affected. If you wish to object, you should file your comments within 15 days after receipt of this notification. Address them to the Federal Communications Commission, Washington, DC 20554, referencing the Sec. 63.71 Application of (carrier's name). Comments should include specific information about the impact of this proposed discontinuance (or reduction or impairment) upon you or your company, including any inability to acquire reasonable substitute service

47 C.F.R. § 63 71(a)(5)(i). The language for a dominant carrier is similar, except that it states that a customer has 30 days to file comments. 47 C.F.R. § 63.71(a)(5)(ii).

35 47 C.F.R. § 63.71(b).

36 47 C.F.R. § 63.71(a).

37 47 C.F R. § 63.71(c).

38 *Id*

39 Verizon comments, IB Docket No. 02-309, at 11.

disjointed notices to affected customers when a non-dominant carrier discontinues both domestic and international services, and would make the rules more consistent and rational.[40] In the *2002 IB Biennial Review Staff Report,* the Bureau agreed with Verizon, finding that, when a carrier that provides both domestic and international service seeks to discontinue service, the different requirements for the two services place unnecessary burdens on the carrier and the Commission, which can lead to confusion for the carrier's customers.[41] The Bureau thus recommended that the Commission consider modifying the rule to conform more closely with the discontinuance requirements for domestic service.[42]

13. We seek comment on whether we should modify the international 214 discontinuance procedures so that they are more consistent for international and domestic services. Verizon requested that we reduce the notification period for a non-dominant carrier's discontinuance of international services from 60 days to 30 days to be consistent with the domestic procedures.[43] We seek comment on this proposal. Specifically we seek comment on the appropriate notice period so that a carrier's customers will have sufficient time to secure an alternative provider for their U.S.-international services before their existing service is discontinued. In 1996, the Commission found that the increase in the number of international carriers and competition in the international service market allowed us to decrease the notice period from 120 days to 60 days.[44] We seek comment on whether the market changed sufficiently in the intervening time to allow us to further decrease the notice period. We also seek comment on whether there are differences between the domestic and international services markets that justify having a different notification period. Do different classes of customers (e.g., residential end-users, business users, resale carriers, government agencies) have different needs regarding the time necessary to secure an alternative carrier for U.S.-international service?

14. We note that, under the current rules, the notification periods are triggered by different events. Under the procedures for a non-dominant international carrier to discontinue international service, the 60-day period begins with the notification to the affected customers.[45] In contrast, under the procedures for a non-dominant carrier to discontinue a domestic service, the 30-day period does not start until the Commission places the application for discontinuance on public notice.[46] Should we modify the international procedures so that the notification period commences upon public notice of the discontinuance request? Similarly, should we set forth language that a U.S.-international carrier should use in the discontinuance notification to its customers advising the customers of the Commission's procedures regarding grant of a discontinuance request and how they can file comments with the Commission, as we require for carriers seeking to discontinue domestic services?[47] Generally, we seek comment on which, if any, of the procedures for discontinuance of a domestic service should also be used for the

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40 *Id.* at 12.

41 *2002 IB Biennial Review Staff Report,* 18 FCC Rcd at 4239, ¶ 19.

42 *Id.* (finding that modification of the rule may be in the public interest for reasons other than the development of competition, and thus outside the scope of 47 U.S.C. § 161).

43 Verizon comments, IB Docket No. 02-309, at 11.

44 *1996 Streamlining Order,* 11 FCC Rcd 12905, ¶ 49.

45 47 C.F.R § 63.19(a)(1).

46 47 C.F.R § 63.71(c).

47 *See* 47 C F.R. § 63.71(a)(5)(i), (ii).

discontinuance of an international service by a U.S.-carrier and which procedures should be different. Commenters should explain why the procedures should be the same or should be different.

### B. International 214 Authorizations for CMRS Carriers

15. Currently, CMRS carriers only provide international service on a resale basis. Their primary service is domestic wireless service, and they generally provide international service as a convenience to their customers.[48] We request comment on a post-notification process for granting international section 214 authority to CMRS carriers seeking to provide international service to their customers through the pure resale of the switched services of other U.S. carriers.[49] In particular, we seek comment on whether we should exempt from the requirement to file an application for international section 214 authority prior to providing service a CMRS carrier that provides international service on a purely switched resale basis, and is either (1) unaffiliated with a foreign carrier with market power at the foreign end of the route,[50] or (2) where the CMRS provider has an affiliation with such a foreign carrier and seeks to provide international service by reselling directly or indirectly the international switched services of U.S. carriers with which it is not affiliated.[51]

16. The Commission previously has considered proposals to forbear from regulating, or to grant blanket authority to, CMRS carriers and other entities seeking to provide international services. In the *PCIA Forbearance Order*, the Commission denied a request to forbear, under section 10 of the 1996 Act, from applying international Title II regulation, including section 214 regulation, to providers of broadband personal communications services (PCS).[52] The Commission noted that, among other things, the review of international section 214 applications includes consultation with the Executive Branch on national security, law enforcement, foreign policy, and trade concerns.[53] The Commission found that there was a continued need to impose certain conditions on all international section 214 authorizations, and, in particular cases, to impose dominant carrier regulation.[54] The Commission stated its concern that a broadband PCS provider, like any other carrier of international traffic, could acquire an affiliation with a foreign

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48 *See* Cingular comments, IB Docket No. 02-309, at 5.

49 Carriers providing "pure resale" of international service switch traffic to (and resell the switched services of) underlying facilities-based U.S. carriers. The underlying carriers control the circuit that carries the traffic to the international point, arrange for termination of the traffic, and report the traffic to the Commission on a country-by-country basis. *See, e.g.*, 2001 International Telecommunications Data, Industry Analysis & Technology Division, Wireline Competition Bureau, Federal Communications Commission (Jan. 2003), available at www.fcc gov/wcb/iatd/stats (2001 International Telecommunications Data), at 4.

50 Section 63.09 defines when a carrier is affiliated with another carrier. 47 C.F.R. § 63.09(e) (2002).

51 A CMRS carrier intending to provide international service through other means, e.g., as a facilities-based carrier, or that has an affiliation with a foreign carrier with market power at the foreign end of the route and would resell the switched services of a U.S. carrier with which it has an affiliation, would continue to seek authority through our current procedures. *See* 47 C.F.R. §§ 63 12, 63 18.

52 *Personal Communications Industry Association's Broadband Personal Communications Services Alliance's Petition for Forbearance for Broadband Personal Communications Services,* WT Docket 98-100, 13 FCC Rcd 16857, 16881-84, ¶¶ 45-54 (1998) (*PCIA Forbearance Order*).

53 *Id* at 16882, ¶ 50.

54 *Id* at 16883, ¶ 52.

carrier that has market power at the foreign end of a U.S. route, and that the foreign affiliate could leverage that power to discriminate against U.S. competitors on that affiliated route.[55] The Commission therefore concluded that international service must continue to be provided only pursuant to an authorization that can be conditioned or revoked, if necessary.[56] The Commission stated that the 1998 biennial review proceeding would consider steps to minimize burdens on international carriers, including PCS providers.[57]

17. Shortly thereafter, in the *1998 International Biennial Review NPRM*, the Commission proposed a blanket authorization that would have permitted any entity that would be a non-dominant international communications common carrier to provide, without prior approval from the Commission, resale and facilities-based service on any route where it had no affiliation with a foreign carrier with market power operating on the foreign end of the route.[58] The proposed rule would have required the entity to notify the Commission within 30 days that it had commenced service under blanket authorization, and would have reserved the right to condition or revoke the blanket authorization of any entity for a violation of the Commission's rules or policies.[59] The Commission sought particular comment on whether international section 214 blanket authorizations would be more appropriate for CMRS carriers than for other entities seeking to provide international service.[60] Various Executive Branch agencies opposed the proposal on national security and law enforcement grounds.[61] Therefore, in the *1998 International Biennial Review Order*, the Commission declined to adopt an international section 214 blanket authorization for CMRS and other providers, but rather adopted further streamlining procedures for international section 214 applications.[62]

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55 *Id.* at 16883, ¶ 51.

56 *Id* at 16883-84, ¶ 52.

57 *Id* at 16881, ¶ 48.

58 *1998 International Biennial Review-Review of International Common Carrier Regulations*, IB Docket 98-118, Notice of Proposed Rule Making, 13 FCC Rcd 13713, 13745 (1998) (*1998 International Biennial Review NPRM)*, Section 63.25 (a proposed rule entitled Special Procedures for Non-dominant International Common Carriers).

59 *Id.* In tentatively concluding that grant of blanket section 214 authority would be a better approach than forbearance from regulating international section 214 authorizations for any class of applicants, the Commission noted the importance of continuing to require that service be provided only pursuant to an authorization that can be conditioned or revoked. *See id* at 13718, ¶ 10

60 *Id.* at 13719, ¶ 11.

61 Reply Comments of the Secretary of Defense, IB Docket No. 98-118 (filed Aug. 28, 1998), at 3 (disagreeing with proposal); Comments of the Federal Bureau of Investigation, IB Docket No. 98-118 (filed Aug. 13, 1998), at 3 ("strongly opposing" the proposal). *See also 1998 International Biennial Review Order*, 14 FCC Rcd at 4914-15, ¶ 14 (noting that Federal Bureau of Investigation had raised concerns that national security and law enforcement could be jeopardized by provision of service by entities whose interests may be contrary to those of the United States, such as where carrier has relationship with subject of investigation).

62 *1998 International Biennial Review Order*, 14 FCC Rcd at 4911, ¶ 5 (noting that the Commission had worked with representatives of the Executive Branch to reconcile public interest concerns while granting industry regulatory relief) and 4915, ¶ 15 (stating that new streamlined procedures would allow the Executive Branch appropriate opportunity to raise national security, law enforcement, foreign policy, and trade policy considerations in context of individual applications). The Commission found that the public interest reasons for maintaining prior review of all international section 214 applications applied equally to CMRS carriers, and concluded that applications from CMRS carriers would be eligible for the new streamlined procedures. *See id.* at 4926, ¶ 38. The Commission also found that the decision not to forbear from requiring section 214 authorizations for any class of

18. In the *2002 IB Biennial Review Staff Report*, the Bureau recommended that the Commission explore the possibility of using blanket section 214 resale authorizations for CMRS carriers with a *de minimis* share of the U.S. international services market.[63] Under such an approach, a CMRS licensee would not be required to obtain section 214 authorization prior to providing resale of international services, but would be subject to the requirements of Part 63, including its foreign carrier affiliation notice requirements, competitive safeguards, and reporting requirements.[64] The Bureau recognized that this approach may raise concerns for the Executive Branch since it would no longer have the opportunity to review applications for national security, law enforcement, foreign policy, and trade issues prior to the CMRS carrier initiating international service.[65] The Bureau therefore recommended that the Commission seek comment on means to address any Executive Branch concerns while lessening the burdens on CMRS carriers.[66]

19. We seek comment on what would be a narrow exemption from the Commission's rules for authorizing the provision of international services. Today, an entity that has been licensed by the Commission under Title III of the Communications Act to provide CMRS in the United States and also seeks to provide its U.S. customers with international calling capability from or to the United States must file an application for Title II international section 214 authority. We seek comment on whether we should exempt from the requirement to file a prior application for international section 214 authority those CMRS carriers that are: (1) unaffiliated with a foreign carrier with market power operating at the foreign end of a route;[67] or (2) where the CMRS provider has an affiliation with such a foreign carrier, seeks to provide international service by reselling directly or indirectly the international switched services of U.S. carriers with which it is not affiliated.

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applications applied equally to CMRS providers. The Commission stated that although forbearance might further enhance competition in the CMRS market, the extent to which forbearance would enhance competition was substantially outweighed by public interest considerations, particularly that prior review is needed to address national security and law enforcement concerns raised by the Executive Branch. *See id.* at 4927, ¶ 39.

63 *Id.* at 4238, ¶ 16.

64 *E.g.*, 47 C.F.R. §§ 63.10 (regulatory classification of U.S. international carriers), 63.11 (foreign carrier affiliation notifications), 63.21 (conditions applicable to all international section 214 authorizations), 63.23 (resale-based international common carriers), 63.24 (assignments and transfers of control) (2002).

65 *2002 IB Biennial Review Staff Report*, 18 FCC Rcd at 4238, ¶ 16. *See also Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23919-21, ¶¶ 61-66 (1997) (*Foreign Participation Order*) (Commission accords deference to the expertise of the Executive Branch regarding issues of national security, law enforcement, foreign policy, and trade policy related to an international section 214 application), Order on Reconsideration, 15 FCC Rcd 18158 (2000).

66 *2002 IB Biennial Review Staff Report*, 18 FCC Rcd at 4238, ¶ 16.

67 *See* 47 C.F.R. § 63.09(e) (defining affiliation with a foreign carrier) (2002). *See also* 47 C.F.R. § 63.10(a)(4) (reseller that resells affiliated U.S. facilities-based carrier's international switched services presumptively is deemed dominant carrier). The carrier may rely on the Commission's "List of Foreign Telecommunications Carriers that Are Presumed to Possess Market Power in Foreign Telecommunications Markets." *See The International Bureau Revises and Reissues the Commission's List of Foreign Telecommunications Carriers that Are Presumed to Possess Market Power in Foreign Telecommunications Markets*, Public Notice, DA-03-1812 (rel June 5, 2003) (available on the FCC website at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-03-1812A1.pdf).

20. In particular, we seek comment on whether there may be national security, law enforcement, foreign policy, or trade issues when a CMRS carrier does not provide international service over its own facilities or the facilities of an affiliated carrier, but rather merely resells the switched services of unaffiliated U.S. carriers in order to provide international calling capabilities to its customers. We seek comment on whether any such issues could be addressed by requiring a CMRS carrier to notify the Commission within 30 days of when it begins to provide international service through the resale of an unaffiliated U.S. carrier. Under such a requirement, after the Commission received the notification from the CMRS carrier, the Commission would issue a public notice that the CMRS carrier had begun providing international resale service. This approach is similar to the 30-day notification requirement the Commission proposed in the *1998 International Biennial Review NPRM* to ensure that the Commission could condition or revoke a blanket authorization, if necessary.[68]

21. We also seek comment on whether the *de minimis* nature of CMRS resale of switched voice services and the fact that CMRS carriers also hold Title III licenses from the Commission are factors that would distinguish CMRS carriers from other pure resellers on unaffiliated routes that would remain subject to prior Commission approval of international section 214 authority.[69] We also seek comment on whether we should re-evaluate any blanket authorization approach if CMRS carriers' international traffic and revenue grow to the extent that they are no longer *de minimis*.

### C. International Roaming

22. We propose to modify sections 63.18(e)(2) and 63.23 of the rules[70] to permit explicitly all U.S.-authorized resale carriers to resell U.S.-inbound international services of both U.S. or foreign carriers. This would apply to carriers providing service through a global resale authorization as well as those providing service through a limited-global or individual service authorization. We seek comment on this proposal.

23. In the *2002 IB Biennial Review Staff Report*, the Bureau recommended that the Commission modify the rules specifically to permit all U.S.-authorized resale carriers to resell the U.S.-inbound services of foreign carriers. According to the Bureau, this rule change would clarify that any U.S. carrier that is authorized to provide resale service may resell foreign carrier services in order to provide international calling capability to U.S. customers that are roaming in foreign markets and want to call back to the United States.[71]

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[68] *1998 International Biennial Review NPRM*, 13 FCC Rcd at 13718-19, ¶ 10 (notification necessary to review foreign affiliations, enforce requirements, and review any national security concerns). *See also PCIA Forbearance Order*, 13 FCC Rcd at 16883-84, ¶ 52 (authorization that can be conditioned or revoked is needed to ensure that rates and conditions of service are just, reasonable, and nondiscriminatory and to protect consumers).

[69] We also observe that the Communications Act specifically provides the Commission with authority to refrain from applying certain Title II provisions to CMRS carriers. *See* 47 U.S.C. § 332(c)(1) (treating CMRS licensees as common carriers but providing Commission, under three prongs of section 332(c)(1) test, the authority to specify by regulation that any Title II provision, except any provision of sections 201, 202, and 208, is inapplicable to CMRS carriers) (2002)

[70] 47 C F.R. §§ 63.18(e)(2), 63.23 (2002).

[71] *2002 IB Biennial Review Staff Report*, 18 FCC Rcd at 4211, ¶ 36, 4238, ¶ 17

24. Under section 214 of the Act and section 63.18 of our rules, a carrier must obtain authority to provide U.S.-international service, including service from a foreign point to the United States (inbound traffic).[72] To the extent that a CMRS carrier's customer is roaming in a foreign country and calls back to the United States, the service provided to that customer includes termination of the call in the United States, which includes the inbound delivery that must be provided by a carrier with an international section 214 authorization. The U.S.-CMRS carrier, by providing to a U.S. customer foreign-to-U.S. calling (which would include roaming service in the foreign country), is reselling the in-bound delivery of an authorized carrier.[73] Under the language of section 63.18, the U.S.-CMRS carrier would be "engag[ing] in transmission over or by means of [a] line for the provision of common carrier communications services between the United States and a foreign point" and thus would need to obtain international section 214 authorization.

25. Section 63.18(e)(2) allows a carrier to request global resale authority and under section 63.18(e)(3) a carrier may seek authority to resell services between the United States and particular international points.[74] Section 63.23 sets forth the conditions that apply to a U.S. carrier that is authorized to provide U.S.-international service through resale.[75] Currently, section 63.18(e)(2) only allows a carrier to request authority to resell the international services of authorized U.S. common carriers, and does not authorize the resale of service from foreign carriers. Section 63.23 does not specifically address the ability of a carrier with an international resale authorization to resell the service of a foreign carrier for inbound U.S.-international service. This lack of clarity may cause some confusion as to whether a CMRS carrier can resell U.S. inbound service of a foreign carrier for the U.S.-CMRS carrier's customers that are roaming in a foreign country. The rule would also appear to require the CMRS carrier to obtain resale authority under section 63.18(e)(3) rather than global resale authority under section 63.81(e)(2) in order to resell the service of a foreign carrier.

26. We believe that a U.S.-CMRS carrier should be able to provide international roaming service to its customers through its global resale authority. We do not believe that it should be necessary for the carrier to seek specific authority to resell the U.S.-inbound service of a foreign carrier. We believe that the review conducted to obtain resale authorization is sufficient to protect against possible anticompetitive conduct by foreign carriers. The initial review also provides the Commission with the opportunity to review foreign ownership and allows opportunity for Executive Branch input on national security, law enforcement, foreign policy, and trade matters. We seek comment on this analysis and whether there is a need to conduct a separate review for a carrier's provision of international roaming for national security or other reasons. We propose to amend section 63.18(e)(2) to allow all carriers, including CMRS carriers, with global resale authority to resell the international services of any common carrier, whether a U.S. or a foreign carrier, and to amend section 63.23 to allow all authorized resale

[72] 47 U.S.C. § 214, 47 C.F.R. § 63.18.

[73] The CMRS carrier is reselling the service of the foreign carrier. That foreign carrier may provide the termination of the in-bound U.S. call if it has its own international section 214 authority or it may hand the call off to its U.S.-correspondent carrier to terminate the call in the United States.

[74] 47 C.F.R. § 63.18(e)(2), (3). Under section 63.18(e)(3), a carrier may apply for authority to provide services not covered in paragraphs (e)(1) – global facilities-based authority – and (e)(2) – global resale authority. 47 C.F.R. § 63.18(e)(3).

[75] 47 C.F.R § 63.23.

carriers to resell services between the United States and all international points. We seek comment on these proposed changes to sections 63.18(e)(2) and 63.23.

### D. Commonly-controlled Subsidiaries

27. We seek comment on whether to amend our rules to allow a commonly-controlled subsidiary to provide service pursuant to its parent's international section 214 authorization. Currently only a wholly-owned subsidiary may provide international service pursuant to its parent corporation's authorization. A commonly-controlled subsidiary must obtain its own international section 214 authorization.

28. Section 63.21(h) provides that any carrier authorized under section 214 to provide international services may provide service through any wholly-owned subsidiaries.[76] Under this rule, a carrier must notify the Commission within 30 days after the subsidiary begins providing service.[77]

29. In the *2000 International Biennial Review Order,* the Commission considered a request from Cingular that section 63.21(h) be modified to allow commonly-controlled subsidiaries to use their parent's international section 214 authorization.[78] The Commission declined to adopt that request. It stated that a controlling interest that does not amount to 100-percent ownership may raise issues that require separate review, such as additional foreign affiliations or minority ownership or beneficial interest by persons or entities that are barred from holding a Commission authorization.[79] On the other hand, a wholly-owned subsidiary by definition does not have different affiliations than its parent and thus, any review of an application would provide no new information for the purpose of national security, law enforcement, foreign policy, or trade evaluation. The Commission found that the rationale for limiting the authority to use a carrier's international section 214 authority to wholly-owned subsidiaries is still valid, and declined to expand the reach of section 63.21(h) to commonly-controlled subsidiaries.[80]

30. In its comments in the 2002 biennial regulatory review proceeding, Cingular renewed its request that the Commission modify section 63.21(h) to allow commonly-controlled subsidiaries to use their parent's authorization rather than having to obtain their own authorizations.[81] Cingular argued that there is no competition-related basis for requiring a commonly-controlled CMRS subsidiary offering international service on a resale basis to obtain an international section 214 authorization when the parent already has such authorization.[82]

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76 47 C F.R. § 63.21(i).

77 *Id*

78 *2000 International Biennial Review Order*, 17 FCC Rcd at 11433, ¶ 41.

79 *2000 International Biennial Review Order*, 17 FCC Rcd at 11433 ¶ 41, citing *1998 International Biennial Review Order*, 14 FCC Rcd at 4932-33, ¶ 56. The provisions of section 63.21(h) were contained in section 63.21(i) when the Commission reviewed the requirement in the *2000 International Biennial Review Order*

80 The D.C. Circuit has upheld the Commission's decision in the *2000 International Biennial Review Order* to retain the rule. *Cellco Partnership d/b/a Verizon Wireless v FCC & USA*, No. 02-1262, slip op. at 23-24 (D.C Circuit Feb 13, 2004)

81 Cingular comments, IB Docket No. 02-309, at 8-12.

82 *Id* at 9.

Cingular also questioned the rationale for requiring a separate authorization because the international section 214 application process only requires applicants to disclose information regarding minority interests of ten percent or more.[83]

31. In the *2002 IB Biennial Review Staff Report,* the Bureau found that Cingular did not present any new arguments that warrant a change to section 63.21(h) at this time.[84] The Bureau also stated that the basis for the rule is not affected by changes in the level of competition in the market. Accordingly, the Bureau concluded that section 63.21(h) remains necessary in the public interest and recommended against repeal or modification.[85] The Bureau noted that applications for section 214 authority for a commonly-controlled subsidiary will usually be eligible for streamlined processing and thus will be approved within 14 days of public notice.[86]

32. We recognize the concerns raised by the Bureau about Cingular's request. Nevertheless, we believe that it would be beneficial to develop a fuller record on this issue, and therefore seek comment on whether to amend section 63.21(h) to allow commonly-controlled subsidiaries to provide international service pursuant to their parent's international section 214 authorization. We seek comment on whether there is a maximum percent of differing ownership that should be allowed, e.g., 10 percent, 20 percent, before a subsidiary would be required to obtain its own authorization, if we allow commonly-controlled subsidiaries to provide service under their parent's authorization. We also seek comment on the potential national security, law enforcement, foreign policy, or trade issues that may be raised by allowing a commonly-controlled subsidiary to provide international service under its parent's authorization. Would a requirement that the subsidiary notify the Commission within 30 days after beginning to provide service under its parent's authorization, as is currently required for wholly-owned subsidiaries,[87] alleviate or diminish those concerns?

### E. Modification of Cable Landing License Rules

33. Section 1.767 of the Commission's rules provides procedures for Commission consideration of applications for cable landing licenses.[88] We seek comment on whether to amend these rules to assure compliance with the Coastal Zone Management Act of 1972 (CZMA).[89] Under section 1.767(g)(9), the Commission reserves the right to require a licensee to file an environmental assessment under its rules implementing the National Environmental Policy Act of 1969.[90] The CZMA is separate from the National Environmental Policy Act, with

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83 *Id* at 10.

84 *2002 IB Biennial Regulatory Review Staff Report*, 18 FCC Rcd at 4237-38, ¶ 15.

85 *Id.* at 4238, ¶ 15.

86 *Id*

87 47 C F.R. § 63.21(h).

88 47 C.F.R. § 1 767. We note that consideration of whether to amend section 1.767 to assure compliance with the CZMA does not fall within the 2002 biennial regulatory review proceeding. Cable landing licenses are issued pursuant to the Cable Landing License Act, and not under the Communications Act, thus, they do not fall under the biennial review directive of the 1996 Act. Furthermore, our review of section 1.767 is not prompted by "the result of meaningful economic competition between providers of such service," but, rather by our desire to be in compliance with all applicable statutes.

89 16 U.S.C. § 1456 (1972).

90 National Environmental Policy Act of 1969, as amended, 42 U.S C. §§ 4321-4335 (1969).

a different set of obligations triggered by a different threshold test. The Commission's rules, however, may not address adequately the responsibilities under the CZMA of an applicant for a cable landing license.

34. The CZMA authorizes coastal states to develop coastal management plans, subject to federal approval through the National Oceanic and Atmospheric Administration (NOAA). Under the CZMA, states with federally-approved programs are entitled to review for consistency with those programs any "required federal license or permit to conduct an activity, in or outside of the coastal zone, "affecting any land or water use or natural resource of the coastal zone of that state."[91] It appears that, because a license is required to operate a cable landing station and because the landing of a cable potentially may affect coastal uses or resources, Commission issuance of a cable landing license could be subject to CZMA's federal consistency requirements. If submarine cable landing licenses are covered by the CZMA and a coastal state wishes to review such licenses, the CZMA would require an applicant to provide in its application to the Commission a certification that its proposed cable "complies with the enforceable policies of the state's approved program and such activity will be conducted in a manner consistent with its program" and with the approved program of any other states whose coastal zones will be affected.[92] In addition, it would seem that the applicant must provide a copy of this certification to the state with supporting documentation.[93] It appears further that the Commission would be required to provide the state an opportunity to concur or object to the certification and could not grant the license until the state has done so or has failed to do so within six months of receiving the certification from the cable landing license applicant.[94]

35. We request comment on whether the CZMA applies to cable landing license applications, and, if so, whether we should modify section 1.767 of the rules to ensure compliance with the CZMA. To the extent we modify our rules, any modification should be narrowly targeted to incorporate relevant CZMA obligations with minimal affect on Commission and applicant resources and timing of Commission action. Specifically, we request comments on two possible alternatives. First, we look to consider whether we should amend the rules so that we make explicit the obligation in the CZMA that applicants must provide with their application certification that the proposed cable will comply with the NOAA approved programs of any relevant states.[95] Under this alternative, we also would amend our cable landing application processing rules to specify that the Commission cannot take action on such applications until all relevant states have notified the Commission that they concur with or object to the applicant's certification (or, alternatively, until the six months default period expires). As a second option, we seek comment on whether applicants should be required under our rules to file both the certifications required by the CZMA and a certification that the relevant states have concurred with the certification (or, alternatively, proof that all relevant states have failed to act on any appropriate certifications). In both cases we would anticipate that applicants would have been

[91] 16 U.S.C. § 1456(c)(3)(A).

[92] *Id*

[93] *Id*

[94] *Id* The CZMA would require the state to inform the Commission of its concurrence or objection at the earliest practicable time, but also would provide that the state's concurrence can be conclusively presumed if the state fails to notify the Commission within six months of receipt of a copy of the applicant's certification.

[95] 16 U.S.C. § 1456(c)(3)(A).

working in consultation with the states as to such issues well in advance of presenting an application to the Commission.[96] We further request comment or proposals on any alternative approaches to assure compliance with the CZMA.

### F. Other Rules

#### 1. Change to Less than 50 Percent Ownership

36. We propose to amend section 63.24 to clarify that an international section 214 authorization holder must notify the Commission of a change from more than 50 percent ownership to 50 percent or less but still controlling ownership interest. Currently, the rule states that a change from less than 50 percent ownership to 50 percent or more ownership shall always be considered a transfer of control.[97] Consistent with that concept, we clarify that an ownership change in the other direction, to less than 50 percent ownership, but still with control, should also be considered a transfer of control. When an owner's interest drops below 50 percent, it loses *de jure* control of the carrier. Where an owner retains *de facto* control of the carrier (based on a case-by-case determination pursuant to section 63.24),[98] it is important for the Commission to be aware of such transactions to ensure that the owner has maintained *de facto* control. As long as the owner maintains control, this would constitute a *pro forma* transfer, and under the rule the applicant would notify the Commission after the transfer was completed. We seek comment on this proposed clarification of section 63.24.

#### 2. Asset Acquisitions

37. We propose to clarify our rules that an asset acquisition that will not result in a loss of service for customers should be treated as an assignment of assets rather than a discontinuance of service.[99] Consistent with the procedures used for the acquisition of domestic wireline assets,[100] the International Bureau advises carriers to file a transfer of control application with the Commission when carriers undertake to sell their customers, or portions thereof, to another carrier.[101] As we noted when we changed the rules for domestic carriers, requiring a carrier to send out notices of discontinuance to customers when there is an asset sale and

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96 Prior consultation with the affected state to satisfy coastal management plan concerns would be critical to enable Commission processing of eligible applications under either the Commission's streamlined procedures (45 days of public notice) or non-streamlined procedures ( 90 days from public notice ). *See* 47 C.F.R. § 1.767(i).

97 47 C.F.R. § 63.24(c).

98 An ownership change where the current owner goes from greater than 50 percent ownership to less than 50 percent ownership and relinquishes control is a transfer of control that requires prior authorization from the Commission. *See* 47 C.F.R. § 63.24(e).

99 Where an asset acquisition will result in the loss of service, the procedures under section 63.19 regarding discontinuance, reduction, or impairment of service continue to apply. 47 C.F.R. § 63.19.

100 *See Implementation of Further Streamlining for Domestic Section 214 Authorizations*, CC Docket 01-150, Report and Order, 17 FCC Rcd 5517, 5547-49, ¶¶ 59-64 (2002) (*Domestic Section 214 Streamlining Order*). We note that the rules governing the acquisition of domestic wireline assets refer to these transactions as transfers of control and require the filing of a transfer of control application. *See* 47 C.F.R. §§ 63.03, 63.04. The International Bureau, by contrast, has characterized such transactions as assignments because, historically, the international section 214 certificate under which the selling carrier provides international service is one of the assets being acquired by the buyer.

101 The transfer of control may be a substantive transfer or a *pro forma* transfer; carriers would be required to follow the guidelines set forth in section 63.24 to make that determination. *See* 47 C.F.R. § 63.24(d) Notes 1 and 2.

customers will not lose service is both misleading and confusing to customers.[102] In addition, having consistent rules for both domestic and international services should benefit both carriers and customers. We tentatively conclude that it would be in the public interest to amend section 63.24 to make it clear that whenever a carrier undertakes to sell its customers, or portions thereof, to another carrier, the sale of assets should be treated as an assignment.[103] We seek comment on this tentative conclusion.

## IV. CONCLUSION

38. In this proceeding, we seek comment on whether to amend several of the Commission's rules regarding the provision of international telecommunications service. We seek comment on whether to amend the procedures for discontinuing an international service to be more consistent with the procedures for discontinuance of a domestic service. We also seek comment on whether to establish blanket international section 214 authority for CMRS carriers to provide international resale service subject to their notifying the Commission within 30 days of when they begin to provide international service. We propose to amend our rules to clarify that carriers with global resale authority can resell the U.S.-inbound service of either a U.S. carrier or a foreign carrier. We seek comment on whether to amend our rules to allow commonly-controlled subsidiaries to use their parent's section 214 authorization to provide international service. We propose to require carriers to notify us when there is a change of ownership to a less than 50 percent but still controlling interest. Additionally, we seek comment on whether to amend section 1.767 of the Commission's rules[104] in order to assure compliance with the CZMA. We also propose to clarify that an asset acquisition that does not result in the loss of service for customers should be treated as a transfer of control. These proposals, if adopted, will permit the Commission to ensure that consumer's interests are protected, while reducing carriers' filing burdens.

## V. ADMINISTRATIVE MATTERS

### A. Ex Parte Presentations

39. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[105] Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.[106] Other rules pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules as well.

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102 *Domestic Section 214 Streamlining Order*, 17 FCC Rcd at 5548, ¶ 64.

103 The carrier must continue to comply with the streamlined procedures for verification of orders for telecommunications service 47 C.F.R. § 64.1120(e) (2002).

104 47 C.F.R. § 1.767.

105 47 C.F.R. §§ 1.1200, 1.1206 (2002); *Amendment of 47 C.F.R. § 1.1200 et seq. Concerning Ex Parte Presentations in Commission Proceedings*, GC Docket No 95-21, Report and Order, 12 FCC Rcd 7348 (1997).

106 47 C F.R. § 1.1206(b)(2).

### B. Initial Regulatory Flexibility Certification

40. The Regulatory Flexibility Act of 1980, as amended (RFA)[107] requires that a Regulatory Flexibility Act analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."[108] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[109] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[110] A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[111]

41. In this Notice, the Commission seeks comment on possible changes to its international section 214 authorization process, cable landing license process, and the rules relating to the provision of U.S.-international telecommunications services. As discussed above, the Commission has continually reviewed its rules regarding the authorization of international services under section 214 of the Act.[112] Through this review, we have sought to: facilitate the introduction of new services; provide customers with more choices, innovative services, and competitive prices; improve our processing of authorization applications and regulation of international services; and lessen regulatory burdens placed on carriers. As part of our 2002 biennial regulatory review proceeding, the Commission received comments on proposed changes to the rules contained in Part 63. This proceeding reviews several rules in Part 63.

42. The rule changes discussed in the Notice, if adopted, would make the international discontinuance rules more consistent with domestic service rules. In addition, we seek comment on whether to eliminate the requirement for CMRS carriers to apply for section 214 authority to provide international service to their customers through the pure resale of the switched services of other U.S. carriers. The proposal in the Notice would remove confusion as to whether a CMRS carrier requires authority to resell U.S. inbound service of a foreign carrier for the U.S.-CMRS carrier's customers that are roaming in a foreign country. We also seek comment on whether to amend section 1.767 of its rules to assure compliance with the CZMA. Finally, the Notice seeks comment on whether to expand the authority of a carrier's international section 214 authority to commonly-controlled subsidiaries.

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107 *See* 5 U.S C. § 603. The RFA, *see* 5 U.S.C. § 601 – 602, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Publ. L. No. 104-121, Title II, 110 Stat. 857 (1996).

108 5 U.S.C. § 605(b).

109 5 U S C § 601(6).

110 5 U.S.C § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such terms which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

111 15 U.S C. § 632.

112 *See infra* at II.

43. We believe that the proposals are in the public interest and will lessen the burdens on all carriers providing international common carrier service pursuant to section 214 of the Act, including those carriers that are small entities. Therefore, we certify that the proposals in this Notice, if adopted, will not have a significant economic impact on a substantial number of entities. If commenters believe that the proposals discussed in the Notice require additional RFA analysis, they should include a discussion of the issues in their comment and label them as RFA comments. The Commission will send a copy of the Notice, including this initial certification, to the Chief Counsel for Advocacy of the Small Business Administration.[113] In addition, summaries of the Notice and initial certification will be published in the Federal Register.[114]

### C. Initial Paperwork Reduction Act of 1995 Analysis

44. This Notice contains either proposed and/or modified information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this Notice, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due 60 days from date of publication of the Notice in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

### D. Comment Filing Procedures

45. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before [45 days after Federal Register publication], and reply comments on or before [75 days after Federal Register publication]. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Parties are strongly encouraged to file electronically. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24,121 (1998).

46. Comments filed through the ECFS can be sent as an electronic file via the Internet to http://www.fcc/gov/cgb/ecfs.html. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this Notice, however, commenters must transmit one copy of their comments to each docket or rulemaking number referenced in the Notice. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov and should include the following words in the body of the message, "get form." A sample form and directions will be sent in reply.

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113 *See* 5 U.S.C. § 603(a)

114 *Id*

47. Parties who choose to file by paper must file an original and four copies of each filing. Each filing should also include an electronic version of the comments filed. If more than one docket or rulemaking number appears in the caption of this Notice, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's mail contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

48. Comments submitted on diskette should be on a 3.5 inch diskette formatted in an IBM-compatible format using Word for Windows or compatible software. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number in the caption of this Notice), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy – Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file.

49. All parties must file one copy of each pleading electronically or by paper to each of the following:

(1) The Commission's duplicating contractor, Qualex International, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554; e-mail: qualexint@aol.com; facsimile: (202) 863-2898; phone (202) 863-2893.

(2) James Ball, Chief, Policy Division, International Bureau, 445 12th Street, S.W., Washington, D.C. 20554; e-mail: James.Ball@fcc.gov.

(3) David Krech, Senior Legal Advisor, Policy Division, International Bureau, 445 12th Street, S.W., Washington, D.C. 20554; e-mail: David.Krech@fcc.gov.

(4) Belinda E. Nixon, Attorney, Policy Division, International Bureau, 445 12th Street, S.W., Washington, D.C. 20554; e-mail: Belinda.Nixon@fcc.gov.

50. Comments and reply comments and any other filed documents in this matter may be obtained from Qualex International, in person at 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, via telephone at (202) 863-2893, via facsimile at (202) 863-2898, or via e-mail at qualexint@aol.com. The pleadings will be also available for public inspection and copying during regular business hours in the FCC Reference Information Center, Room CY-A257, 445 Twelfth Street, S.W., Washington, D.C. 20554 and through the Commission's Electronic Filing System (ECFS) accessible on the Commission's World Wide Website, www.fcc.gov.

51. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.49 and all other applicable sections of the Commission's rules.[115] All parties are encouraged to utilize a table of contents, to include the name of the filing party and the date of the filing on each page of their comments' length of their submission. We also strongly encourage that parties track the organization set forth in this Notice in order to facilitate our internal review process.

52. Written comments by the public on the proposed and/or modified information collections are due 60 days from the date of publication of the Notice in the Federal Register. Written comments must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on the proposed and/or modified information collections on or before 60 days after the date of publication in the Federal Register of the Notice. In addition to filing comments with the Secretary, Marlene H. Dortch, a copy of any comments on the information collection(s) contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to Judith.BHerman@fcc.gov and to Kim A. Johnson, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, N.W., Washington, DC 20503 or via the Internet to Kim_A._Johnson@omb.eop.gov.

53. Commenters that file what they consider to be proprietary information may request confidential treatment pursuant to section 0.459 of the Commission's rules. Commenters should file both their original comments for which they request confidentiality and redacted comments, along with their request for confidential treatment. Commenters should not file proprietary information electronically. *See Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, Report and Order, 13 FCC Rcd 24816 (1998), Order on Reconsideration, 14 FCC Rcd 20128 (1999). Even if the Commission grants confidential treatment, information that does not fall within a specific exemption pursuant to the Freedom of Information Act (FOIA) must be publicly disclosed pursuant to an appropriate request. *See* 47 C.F.R.§ 0.461; 5 U.S.C. § 552. We note that the Commission may grant requests for confidential treatment either conditionally or unconditionally. As such, we note that the Commission has the discretion to release information on public interest grounds that does fall within the scope of a FOIA exemption.

### E. Further Information

54. For further information regarding this proceeding, contact James Ball, Chief, Policy Division, International Bureau, David Krech, Senior Legal Advisor, Policy Division, International Bureau, or Belinda Nixon, Attorney, Policy Division, International Bureau at (202) 418-1460. Information regarding this proceeding and others may also be found on the Commission's website at www.fcc.gov.

[115] 47 C.F R. § 1.49 (2002).

## VI. ORDERING CLAUSES

55. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 4(i), 4(j) 11, 201-205, 211, 214, 219, 220, 303(r), 309, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 161, 201-205, 21, 214, 219, 220303(r), 309 and 403, and sections 34-39 of the Cable Landing License Act, 47 U.S.C. §§ 34-39, this NOTICE OF PROPOSED RULEMAKING IS HEREBY ADOPTED and COMMENTS ARE REQUESTED as described above.

56. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this NOTICE OF PROPOSED RULEMAKING, including the Initial Regulatory Flexibility Act Certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. § 601 *et seq.*

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch

Marlene H. Dortch
Secretary