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Commission Adopts Rules To Ease Burdens on International Telecommunications Services Providers

The Federal Communications Commission ("FCC" or "Commission") adopted rules, effective in May 1999, that reduce regulatory burdens on providers of international telecommunications services. These rules are intended to allow new carriers to enter the international market more easily and to allow existing carriers more flexibility to conduct business.

The rules adopted by the Commission affect the following areas:

- International Section 214 Authorizations -- The Commission concluded that the great majority of applications for authority to provide international service pursuant to Section 214 of the Communications Act of 1934, as amended (the "Act"), do not raise public interest issues that warrant Commission scrutiny. Accordingly, the new rules eliminate the requirement that Section 214 applications that have been formally opposed be granted by formal written order only and, instead, will permit such applications to be granted through the Commission's streamlined Section 214 authorization procedure. In addition, the new rules reduce the waiting period between the time an application is accepted for filing and the time it is granted under the streamlined Section 214 authorization procedure from 35 days to 14 days.

The Commission also expanded the class of applications eligible for its streamlined authorization procedure. Under the rules, approximately 99 percent of all international Section 214 applications will qualify for streamlined processing, including:

- applications to provide service between the United States and countries in which the applicant is not affiliated⁽¹⁾ with any carrier that operates in the country (*i.e.*, "unaffiliated routes");
- applications to serve affiliated routes where the affiliated foreign carrier has already been found to lack market

power;

- applications to serve affiliated routes where the affiliated foreign carrier has less than a 50 percent market share in the international transport and local access markets in the destination country;
- applications to serve affiliated routes where the affiliated foreign carrier has no telecommunications transmission facilities, or only mobile wireless facilities, in the destination country;
- applications to serve affiliated routes where the foreign affiliate is from a WTO country if the applicant seeks to serve that country solely by reselling the switched services of unaffiliated U.S. international carriers;
- applications not otherwise eligible for streamlining if the affiliate is a foreign carrier in a WTO country and the applicant certifies that it will comply with the Commission's dominant carrier regulations for the affiliated route; and
- applications to assign or transfer control of an international Section 214 authorization where an initial Section 214 application filed by the assignee or transferee would be eligible for streamlined processing.

Although the applications described above generally qualify for the streamlined authorization procedure, the Commission has delegated to the FCC's International Bureau the authority to identify those particular applications that do warrant public comment and additional Commission scrutiny with respect to the Commission's policies.

- Pro Forma Assignments and Transfers of Control -- Under the rules, carriers with international Section 214 authorizations (*i.e.*, "authorized carriers") are allowed to undertake *pro forma* (non-substantial) assignments and transfers of control of such authorizations without prior approval of the Commission. In lieu of prior Commission approval, authorized carriers instead must notify the Commission within 30 days following consummation of an assignment. Post-consummation notification is not required for *pro forma* transfers of control.
- Provision of Service by Wholly Owned Subsidiaries -- Under the rules, an authorized carrier is allowed to provide its authorized service through wholly owned subsidiaries without prior Commission approval. Any subsidiary operating pursuant to its parent's authorization, however, must notify the Commission by letter within 30 days after beginning to provide service. This rule does not mean that commonly owned affiliates and subsidiaries can share a single Section 214 authorization. However, the Commission will permit any entity that seeks authority to provide the same international services, subject to the same conditions, that have already been authorized for a company with the same ownership to use the newly streamlined authorization procedure.

- Use of Non-U.S.-Licensed Facilities -- Any carrier authorized to provide facilities-based services is permitted to use any non-U.S.-licensed undersea cable system without specific Commission approval. Thus, all foreign-licensed undersea cable systems have been removed from the Exclusion List for International Section 214 Authorizations maintained by the International Bureau. With respect to non-U.S.-licensed satellite systems, the Exclusion List is deemed to include any satellite system that has not been added to the FCC's Permitted Space Station List, which is also maintained by the International Bureau.
- Authorization Procedure for Switched Services Provided via Private Lines -- The Commission simplified the procedure for expanding the list of foreign destinations to which any authorized carrier may carry switched services over its authorized facilities-based or resold private lines (a practice known as "international simple resale," or "ISR"). Under the rules, carriers are permitted to request that a country be added to the list by petition for declaratory ruling rather than, as was the case in the past, through a showing made in a Section 214 application wherein an applicant sought to provide ISR to a particular foreign country. The Commission will generally place each such petition on public notice and seek public comment on it, but Commission staff has discretion to establish a reduced comment period or request no comments at all, as appropriate. A listing of countries where ISR has been approved to and from the United States can be found on the FCC's website.

Endnote

1. The Commission's rules state that two entities are affiliated with each other if one of them, or an entity that controls one of them, directly or indirectly owns more than 25 percent of the capital stock of, or controls, the other one. This definition of "affiliation" significantly simplifies the previous definition of the term in the FCC's rules.