

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

In the Matter of	)	
	)	
AMERICATEL CORPORATION	)	
	)	SCL-T/C-20010817-00017
Application for Authority for the Potential	)	
Transfer Control of Americatel Corporation,	)	
Holder of a Cable Landing License from Bell S.A.	)	
to Pirelli S.p.A.	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted:** October 9, 2001

**Released:** October 10, 2001

By the Associate Chief, Telecommunications Division, International Bureau:

**I. Introduction**

1. In this Order, we grant the application of Bell S.A. (“Bell”) and Pirelli S.p.A. (“Pirelli”) (together, “Applicants”) seeking authority to transfer control of the cable landing license interests held by Americatel Corporation (“Americatel”) in the PAN AMERICAN Cable System (“PAN AMERICAN”) from Bell to Pirelli.<sup>1</sup>

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<sup>1</sup> See Application for Authority for the Potential Transfer of Control of Americatel Corporation, Holder of a Cable Landing License from Bell S.A. and Pirelli S.p.A., File No. SCL-T/C-20010817-00017, filed August 17, 2001 (“Application”). Applicants concurrently filed applications to transfer control of Americatel’s international Section 214 authorization and domestic Section 214 authorization, which have been granted. See *Americatel Corporation*, File No. ITC-T/C-20010817-00446, Transfer of Control Grant of Authority, Public Notice No. TEL-00444 (TD/IB rel. Sept. 14, 2001); *Common Carrier Bureau Grants Consent for Transfer of Control of Domestic 214 Authorization of Americatel Corporation*, Public Notice, CC Docket No. 01-195, DA 01-2309 (rel. Oct. 4, 2001). Applicants also filed applications to transfer control of the international Section 214 authorization and earth station licenses held by Americatel’s affiliate AmericaSky Corporation. *AmericaSky Corporation*, File No. ITC-T/C-20010817-00447, Transfer of Control Grant of Authority, Public Notice No. TEL-00444 (TD/IB rel. Sept. 20, 2001); *AmericaSky Corporation*, File No. SES-T/C-20010817-01597, Application for Consent to Transfer of Control, Report No. SES-00520 (SRD/IB rel. Sept. 5, 2001). In addition, Applicants filed applications to transfer control of the international Section 214 authorizations held by Americatel’s affiliates Telemedia International, USA, Inc., Telecom Italia of North America, Inc., and Latin America Nautilus USA. *Telemedia International, USA, Inc.*, File No. ITC-T/C-20010817-00448, Transfer of Control Grant of Authority, Public Notice No. TEL-00444 (TD/IB rel. Sept. 20, 2001); *Telecom Italia of North America, Inc.*, File No. ITC-T/C-20010817-00449, Transfer of Control Grant of Authority, Public Notice No. TEL-00444 (TD/IB rel. Sept. 20, 2001); and *Latin America Nautilus USA*, File No. ITC-T/C-20010817-00450, Transfer of Control Grant of Authority, Public Notice No. TEL-00444 (TD/IB rel. Sept. 20, 2001). The grant of (continued....)

## II. Background

2. On January 20, 1998, we granted a joint application by Americatel and numerous other parties, pursuant to the Cable Landing License Act,<sup>2</sup> and Executive Order No. 10530,<sup>3</sup> to land and operate a common carrier submarine fiber optic cable system, called PAN AMERICAN, extending between the U.S. Virgin Islands, Aruba, Venezuela, Colombia, Panama, Ecuador, Peru and Chile.<sup>4</sup>

3. Americatel, a corporation organized under the laws of the State of Delaware, is authorized to provide U.S. international service pursuant to its Section 214 authorization. It provides domestic interexchange service pursuant to blanket Section 214 authority and domestic intrastate service pursuant to various state authorizations. Americatel's ownership and voting interests in the PAN AMERICAN cable are each 0.41633 percent.<sup>5</sup>

4. Bell, a corporation organized under the laws of Luxembourg, is not a telecommunications carrier.<sup>6</sup> Bell currently holds a *de facto* controlling 21.32 percent ownership interest in Olivetti S.p.A. ("Olivetti"), which, in turn owns a 54.94 percent ownership interest in Telecom Italia S.p.A. ("Telecom Italia"). Telecom Italia holds a 100 percent ownership interest in STET International Netherlands N.V. ("STET"), which in turn holds a 54.76 percent ownership interest in Empresa Nacional de Telecomunicaciones S.A. ("ENTEL-Chile"). ENTEL-Chile owns a 100 percent ownership interest in ENTEL International B.V.I. Corporation ("ENTEL BVI"), which in turn holds an 80 percent ownership interest in Americatel.<sup>7</sup>

5. Pirelli, a corporation organized under the laws of the Republic of Italy, is principally engaged in the manufacture and distribution of tires and of cables and systems for the telecommunications and energy sectors. Pirelli, through its subsidiaries and affiliates, is a leading manufacturer of fiber optic cables. Applicants assert that Pirelli does not provide telecommunications services and does not own or control any providers of telecommunications services. Applicants state that the purpose of Pirelli's

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this application, File No. SCL-T/C-20010817-00017, is without prejudice to Commission action on related applications that may remain pending as of the date of this action.

<sup>2</sup> An Act Relating to the Landing and Operation of Submarine Cables in the United States, 47 U.S.C. §§ 34-39 (Cable Landing License Act).

<sup>3</sup> Exec. Ord. No. 10530 *reprinted as amended* in 3 U.S.C. § 301.

<sup>4</sup> *See Americatel Corp. et al., Joint Application for a License to Land and Operate a Submarine Cable Network, the PAN AMERICAN Cable System*, File No. SCL-LIC-19970421-00002, formerly File No. SCL-97-001, Cable Landing License, 13 FCC Rcd 850 (TD/IB 1998) ("*Cable Landing Order*"). *See also Americatel Corp. et al., Joint Application for Authorization Pursuant to Section 214 of the Communications Act of 1934, as amended, to Construct, Acquire, and Operate Capacity in a Digital Submarine Cable System, the PAN AMERICAN Cable System*, File No. ITC-97-221, Memorandum Opinion, Order and Authorization, 13 FCC Rcd 857 (TD/IB 1998).

<sup>5</sup> *See* Application at 2.

<sup>6</sup> *Id.*

<sup>7</sup> *See* Application at 3.

proposed acquisition is to refocus Pirelli's strategy on telecommunications.<sup>8</sup>

6. On July 30, 2001, Pirelli and Edizione Holding S.p.A. ("Edizione Holding") entered into an agreement with Bell in which they agreed to purchase from Bell, Olivetti's shares and warrants either directly or indirectly through a company jointly owned by Pirelli and Edizione Holding. To accomplish this transaction, on August 3, Olimpia S.r.l. ("Olimpia") was formed under the laws of the Republic of Italy for the purpose of acquiring the Olivetti shares and warrants. Pirelli has an 80 percent ownership interest in Olimpia, with Edizione Holding owning the remaining 20 percent.

7. Pirelli and Edizione Holding agreed to acquire from Bell, through Olimpia, a combination of Olivetti shares and warrants representing approximately 21.32 percent of the total number of ordinary shares of Olivetti ("Olivetti Shares") reported outstanding as of August 9, 2001. Pirelli and Edizione Holding also intend to transfer to Olimpia, Olivetti Shares presently owned by them representing 3.82 percent and 1.84 percent, respectively, of the total number Olivetti Shares reported outstanding as of August 9, 2001.

8. Applicants state that although Pirelli's proposed indirect ownership interest in Olivetti is approximately 27 percent and will not result in a *de jure* transfer of control, Olimpia may be able to exercise *de facto* control of Olivetti, of Telecom Italia and thus, of Americatel.<sup>9</sup> According to applicants, Olimpia could exercise *de facto* control pursuant to a reshuffling of the Board of Directors of Olivetti, at which time, Olimpia would place its nominees on Olivetti's Board of Directors. Applicants explain that once Olimpia's nominees are elected to the Olivetti Board of Directors, it is anticipated that Olivetti will take the necessary action to elect its nominees to the Telecom Italia Board of Directors. As a result of the transaction, assuming the election of Olimpia's nominees to the Board of Directors of each of Olivetti and Telecom Italia as described above and subject to the provisions of a shareholders agreement, Pirelli could potentially be considered as *de facto* controlling Olivetti, Telecom Italia, and thus Americatel. Thus, this application is being treated as an application for transfer of control.

### III. Comments

9. We placed the Application on public notice on August 26, 2001.<sup>10</sup> We received no comments. Pursuant to Section 1.767(b) of the Commission's rules,<sup>11</sup> the Cable Landing License Act, and Executive Order No. 10530, we informed the Department of State of the potential transfer of control request.<sup>12</sup> The Department of State, after coordinating with the National Telecommunications and Information Administration and the Department of Defense, stated that it has no objection to approving the

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<sup>8</sup> *Id.*

<sup>9</sup> *See* Application at 6.

<sup>10</sup> *See Non Streamlined International Applications Accepted for Filing*, Report No. TEL-00436NS (rel. Aug. 29, 2001).

<sup>11</sup> 47 C.F.R. § 1.767(b).

<sup>12</sup> Letter from George S. Li, Deputy Chief, Telecommunications Division, International Bureau, Federal Communications Commission, to Steven Lett, Deputy U.S. Coordinator, Office of International Communications and Information Policy, U.S. Department of State (Aug. 29, 2001).

Applicants' request to transfer control of the cable-landing license of Americatel from Bell to Pirelli.<sup>13</sup>

#### IV. Discussion

10. Under Section 1.767(a)(8) of the Commission's rules, applicants are required to disclose their affiliations with foreign carriers.<sup>14</sup> Pirelli has certified that it is not a foreign carrier within the meaning of Section 63.09(d) of the Commission's rules,<sup>15</sup> and that it is not affiliated within the meaning of Section 63.09(e) with any foreign carriers.<sup>16</sup> According to the Application, Americatel is affiliated with the following foreign carriers in Peru and Chile, landing points for PAN AMERICAN: TIM Peru, S.A.C. and ENTEL-Chile.<sup>17</sup> Applicants assert that all destination markets, including Peru and Chile, are WTO member countries.<sup>18</sup> Applicants further assert that the market share in the international transport and local access markets of each of its affiliated foreign carriers in Peru and Chile is significantly less than 50 percent.<sup>19</sup> We conclude, therefore, that Americatel's affiliated foreign carriers do not possess market power that would allow them to discriminate against unaffiliated U.S. carriers through control of bottleneck facilities in Peru or Chile, and we see no reason to deny Applicants' request to transfer control of the cable landing license of Americatel to Pirelli.

11. We also conclude that the transfer of control of Bell's interest to Pirelli raises no competitive concerns. Specifically, we conclude that Pirelli's ownership of a 0.41633 percent interest in PAN AMERICAN will not cause competitive concerns. Additional cables serve the route, and more are coming on line.<sup>20</sup> Moreover, the amount of ownership interest that Pirelli will acquire in PAN

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<sup>13</sup> Letter from David A. Gross, United States Coordinator, International Communications and Information Policy, U.S. Department of State, to Donald Abelson, Chief, International Bureau, Federal Communications Commission (Oct. 5, 2001).

<sup>14</sup> See 47 C.F.R. § 1.767(a)(8).

<sup>15</sup> See 47 C.F.R. § 63.09(d).

<sup>16</sup> See Application at 14.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Existing cables, in addition to PAN AMERICAN, include: 360Americas (authorized on a non-common carrier basis to serve, among other destinations, the United States and Venezuela); Americas-I (authorized on a common carrier basis to serve, among other destinations, the U.S. Mainland, U.S. Virgin Islands, and Venezuela); Americas-II (authorized on a common carrier basis to serve, among other destinations, Florida, Puerto Rico, the U.S. Virgin Islands, and Venezuela); Maya-1 (authorized on a common carrier basis to serve, among other destinations, the United States, Colombia, and Panama); PAC (authorized on a non-common carrier basis to serve, among other destinations, the United States, Panama, and Venezuela); SAC (authorized on a non-common carrier basis to serve, among other destinations, the United States, Chile, Colombia, Panama, and Peru); SAM-1 (authorized on a non-common carrier basis to serve, among other destinations, the United States, Chile, and Peru); and TCS-1 (authorized on a common carrier basis to serve, among other destinations, the U.S. Mainland, Puerto Rico, and Colombia). Planned cables include: ARCOS-1 (authorized on a non-common carrier basis to serve, among other destinations, the U.S. Mainland, Puerto Rico, Colombia, Panama, and Venezuela).

AMERICAN as a result of this transfer of control is insubstantial.

12. Applicants assert that the proposed transfer of control will serve the public interest because Americatel will be affiliated with an entity (Pirelli) that has the management experience, workforce and means that will strengthen Americatel's ability to bring competitive integrated telecommunications services to consumers in the United States.<sup>21</sup> Applicants maintain that the proposed transfer will allow Americatel to manage its telecommunications operations more efficiently, thereby permitting greater investment in facilities, customer service and technological innovation.<sup>22</sup>

13. Upon consideration of the record in this proceeding, and in view of the foregoing, we conclude that grant of the transfer of control sought in the Application will serve the public interest and is consistent with the Cable Landing License Act.

14. We modify the initial authorization to reflect these transactions. We do not modify the initial authorization in any other respect.

## V. Ordering Clauses

1. Consistent with the foregoing and pursuant to the Cable Landing License Act and Executive Order 10530, IT IS ORDERED that the Application, File No. SCL-T/C-20010817-00017, IS GRANTED, the transactions listed herein are authorized, and the PAN AMERICAN Cable Landing License (File. No. SCL-LIC-19970421-00002, formerly File. No. SCL-97-001) IS HEREBY MODIFIED to reflect those transactions.

2. This Order is issued under Section 0.261 of the Commission's rules, 47 C.F.R. § 0.261, and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.115, may be filed within 30 days of the date of public notice of this Order.<sup>23</sup>

FEDERAL COMMUNICATIONS COMMISSION

Jacquelynn Ruff  
Associate Chief, Telecommunications Division  
International Bureau

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<sup>21</sup> See Application at 7-8.

<sup>22</sup> *Id.*

<sup>23</sup> See 47 C.F.R. § 1.4(b)(2).