

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

In the Matter of)
)
List of Foreign Telecommunications Carriers that)
Are Presumed to Possess Market Power in Foreign) File No. ISP-PDR-20030709-00020
Telecommunications Markets)
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)

DECLARATORY RULING

Adopted: April 7, 2004

Released: April 8, 2004

By the Chief, Policy Division, International Bureau

1. AT&T Wireless Services, Inc. (AWS) filed a Petition for Declaratory Ruling requesting that the Commission amend and correct its "List of foreign Telecommunications Carriers that Are Presumed to Have Market Power in Foreign Telecommunications Markets"² to reflect accurately the presence of Cable & Wireless plc (C&W) and its affiliates in various foreign telecommunications markets.³ The International Bureau placed the AWS Petition on public notice on November 19, 2003.⁴ Cable & Wireless USA, Inc. (C&W USA) filed comments that did not oppose AWS's request to amend the Foreign Carriers List and noted that C&W USA has accepted dominant carrier classification on several routes, including the routes AWS listed in its petition. AWS did not reply. As discussed herein, we amend the Foreign Carriers List to include the C&W affiliates cited by AWS.

2. Pursuant to the Commission's 1999 *ISP Reform Order*, the Commission issues a list of carriers

² See Public Notice, *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*, 18 FCC Rcd 11073 (Int'l. Bureau 2003), (Foreign Carrier List).

³ AT&T Wireless Services, Inc., Petition for Declaratory Ruling, filed July 9, 2003 (AWS Petition).

⁴ Federal Communications Commission, Public Notice, 18 FCC Rcd 24240 (DA 03-3721, November 19, 2003), (Public Notice).

affiliated with foreign carriers that are presumed to possess market power on a particular overseas route.⁵ Carriers such as AWS that seek inclusion of a particular foreign carrier in the list must demonstrate that such carrier has 50 percent or more market share in the international transport or local access markets on the foreign end of the route or that it nevertheless has sufficient market power to affect competition adversely in the U.S. market.⁶

3. AWS notes that the Commission's current Foreign Carriers List includes some but not all C&W affiliates that have market power in their respective markets.⁷ AWS asserts that there are C&W affiliates in 13 countries or non-sovereign overseas points that should be added to the list: Based on a presentation made by C&W, AWS asserts that these affiliates control more than 50 percent of market share in one or more of the relevant product markets (*viz.*, international transport facilities, intercity facilities and services, or local access facilities and services on the foreign end) and, thus have market power in those countries.⁸ These 13 countries (and the C&W affiliate in each country) are Anguilla (Cable & Wireless (West Indies) Limited); Ascension Island (Cable & Wireless (West Indies) Limited); British Virgin Islands (Cable & Wireless (West Indies) Limited); Cayman Islands (Cable & Wireless (Cayman Islands) Limited); Diego Garcia (C&W); Falkland Islands (Cable & Wireless Falkland islands); Fiji (Fiji International Telecommunications Ltd); Guernsey (Cable & Wireless, Guernsey [formerly known as Guernsey Telecoms Limited]); Macau (Companhia de Telecomunicações de Macau S.A.R.L.); Monserrat (Cable & Wireless (West Indies) Limited); St. Helena (C&W); Sakhalin (C&W); and Turks and Caicos Islands (Cable & Wireless (West Indies) Limited). AWS notes that, while the Commission has asserted that it will determine listing on a country-by-country basis,⁹ it has already listed separate geographic markets that are not sovereign countries.¹⁰ For this reason, AWS argues that the

⁵ 1998 Biennial Regulatory Review—Reform of the International Settlements Policy and Associated Filing Requirements, IB Docket No. 98-148 and CC Docket No. 90-337, Report and Order and Order on Reconsideration, 14 FCC Rcd 7963 (1998) (*ISP Reform Order*). The most recent revision of the Foreign Carriers List was adopted in 2003. See Public Notice: 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, DA 03-1812 (Int'l Bur., rel. June 5, 2003). The list may be found on the commission's website, www.fcc.gov/ib.

⁶ See Section 43.51 of the Commission's rules, 47 C.F.R. § 43.51, Note 3 to Section 43.51 (2003).

⁷ AT&T notes that the Commission's Foreign Carriers List includes the C&W affiliates in Antigua & Barbuda, Barbados, Bermuda, Dominica, Grenada, Jamaica, Maldives, Panama, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Seychelles, Solomon Islands, Trinidad & Tobago, Vanuatu, and Yemen.

⁸ AWS Petition at 3, note 7, citing Chart: C&W Regional—Principal Businesses, included in Cable & Wireless Regional Overview Presentation by James Cheesewright, COO of Cable & Wireless Regional, dated January 24, 2003. See <http://cw.com/servlet/docHandler?flD=E8/E8CB0AC59A9744F498EE353608CBCECB.ppt>.

⁹ See *International Competitive Carrier Policies*, Report and Order, 102 FCC 2d 812, 828 (1985), where the Commission noted that, in evaluating market power in the provision of communications services, "each country constitutes a separate geographic market." *Recon. Denied*, 60 Rad. Reg. 2d 1435 (1986).

¹⁰ AWS notes that the Commission has already included on the Foreign Carriers List Bermuda, an overseas territory of the United Kingdom; Réunion, a French *department d'outre mer*; Mayotte, a French *collective territoriale*; the Netherlands Antilles, a Dutch territory; and Hong Kong, a Special Administrative Region of the People's Republic of China. AWS Petition at 2.

Commission is free to include the twelve geographic markets it cites, even though one or more of them is not a sovereign country.

4. AWS cites a number of factors on which it bases its argument that the C&W and/or its affiliates have market power in the 13 subject markets. First, AWS notes that C&W itself provides communications in two of the 13 cited markets, Diego Garcia and St. Helena. AWS asserts that C&W is the *de jure* monopoly provider of international, domestic and mobile telecommunications and Internet services in St. Helena, a U.K. overseas territory. Additionally, AWS argues that C&W is the monopoly provider of international telecommunications services in Diego Garcia, part of the British Indian Ocean Territory and therefore a U.K. overseas territory. Next, AWS argues that Cable and Wireless (West Indies) Limited (C&W West Indies), an indirect wholly-owned subsidiary of C&W, has a *de jure* monopoly for the provision of international, domestic and mobile telecommunications and Internet services in three of the cited markets, Anguilla,¹¹ Ascension Island¹² and Montserrat,¹³ and a *de facto* monopoly over such services in the Turks and Caicos Island,¹⁴ all U.K. overseas territories. Additionally, AWS asserts that C&W West Indies has a *de jure* monopoly over international and domestic wireline telecommunications and Internet services in the British Virgin Islands,¹⁵ also an U.K. overseas territory. AWS asserts that other C&W affiliates have market power in an additional three U.K. overseas territories. AWS asserts that Cable & Wireless (Cayman islands), an indirect wholly-owned subsidiary of C&W is the *de jure* monopoly provider of international, domestic and mobile telecommunications and Internet services in the Cayman Islands;¹⁶ that Cable & Wireless Falkland Islands, a branch office of C&W, is the monopoly provider of international, domestic and mobile telecommunications and Internet services in the Falklands;¹⁷ that Cable & Wireless Guernsey¹⁸ is the dominant provider of international, domestic and mobile telecommunications and Internet services in the Bailiwick of Guernsey.¹⁹

5. In addition to the overseas U.K. points, AWS argues that C&W has market power in a number of other points. AWS asserts that C&W indirectly owns 49 percent of Fiji International Telecommunications Ltd (FINTEL), the *de jure* monopoly provider of international telecommunications

¹¹ AWS Petition at 3.

¹² *Id.* at 4.

¹³ *Id.* at 8.

¹⁴ *Id.* at 10.

¹⁵ *Id.* at 4.

¹⁶ *Id.* at 5.

¹⁷ *Id.* at 6.

¹⁸ *Id.* at 7. AWS notes that Cable & Wireless Guernsey was formerly known as Guernsey Telecom Limited, until May 2002, when C&W bought 100 percent of the shares from the State of Guernsey (the name of the government of the Bailiwick of Guernsey, a British Crown dependency), and renamed it in September 2002. *Id.*

¹⁹ AWS notes that the State of Guernsey opened Guernsey telecommunications services market to competition in July 2002, and the network market in December 2002, but the Guernsey regulator, the Guernsey Office of Utility Regulation, continues to regulate Cable and Wireless Guernsey as dominant in fixed and mobile telecommunications due to its "commanding market share in Guernsey." AWS Petition at 7.

services in Fiji.²⁰ AWS also asserts that C&W indirectly owns 51 percent of Companhia de Telecomunicações de Macau S.A.R.L.(CTM), the *de jure* monopoly provider of international and domestic wireline telecommunications services in Macau, a Special Administrative Region of the People's Republic of China. In fact, AWS asserts that CTM holds a monopoly on all fixed-line services in Macau until 2011. Finally, AWS asserts that C&W holds "substantial interests" in two carriers in Sakhalin, a unit of the Far Eastern Federal District of the Russian Republic,²¹ which AWS notes that the Commission has already treated as a "distinct geographic market for purposes of [its] market [power] analysis."²² First, AWS asserts that C&W indirectly owns 60 percent of the shares of Sakhalin Telecom, the principal provider of international telecommunications services and a provider of domestic telecommunications services in Sakhalin.²³ Additionally, AWS asserts that C&W indirectly owns 38 percent of Sakhalin Svyaz, the incumbent domestic telecommunications carrier in Sakhalin, that controls the Sakhalin public switched telephone network and also provides international telecommunications services.²⁴ AWS argues that the C&W interests shown above give it control of more than 50 percent of the telecommunications in all 13 of the cited markets and that C&W thus qualifies for inclusion on the Commission's Foreign Carriers List.

6. In addition to these amendments, AWS asks the Commission to correct its Foreign Carrier List to update the name of the C&W affiliates in seven geographical markets already included in that List. First, AWS notes that the name of the C&W affiliate in Antigua and Barbuda, of which C&W indirectly owns 100 percent of the stock, has been changed to Cable and Wireless (West Indies) Limited.²⁵ Second, AWS notes that the C&W affiliate in Dominica, previously known as Telecommunications of Dominica, of which C&W owns 80 percent of the stock, was renamed Cable & Wireless Dominica Limited in 1997.²⁶ Third, AWS notes that the C&W affiliate in Grenada, previously known as Grenada Telecommunications, was renamed Cable & Wireless Dominica, a company of which C&W owns 70 percent of the stock.²⁷ Fourth, AWS notes that, on June 5, 1997, C&W acquired a 49-percent interest in Instituto Nacional de Telecomunicaciones, S.A., the carrier in Panama, and renamed it Cable & Wireless Panamá S.A. Fifth, AWS notes that C&W indirectly owns 65 percent of the shares of the carrier in St. Kitts and Nevis, which is now named Cable & Wireless St. Kitts and Nevis Limited. Sixth, AWS noted that C&W indirectly owns 100 percent of the shares of the carrier in St. Lucia and that

²⁰ AWS Petition at 6.

²¹ *Id.* at 9.

²² *Id.*, quoting *Cable & Wireless, Inc.*, Order, Authorization & Certificate, DA-98-628, 13 FCC Rcd 6671, 6673, para. 9 (Int'l Bur, 1998) (*C&W Sakhalin Order*).

²³ AWS Petition at 9.

²⁴ *Id.* AWS further asserts that the Commission has already determined that C&W's affiliates in Sakhalin collectively control approximately 70 percent of Sakhalin's international telecommunications, citing *C&W Sakhalin Order*, 13 FCC Rcd at 6673, paras. 8-9. AWS states that "to AWS's knowledge, Sakhalin Telecom and Sakhalin Svyaz have retained comparable market shares . . ." AWS Petition at 9.

²⁵ AWS Petition at 11.

²⁶ *Id.*

²⁷ *Id.*

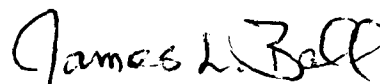
it is now named Cable & Wireless (West Indies) Limited. Finally, AWS notes that C&W indirectly owns 100 percent of the shares of the carrier in St. Vincent and the Grenadines and that it is now named Cable & Wireless (West Indies) Limited.

7. In its comments, C&W USA notes that it has already accepted dominant carrier classification on several routes, including all those listed in the AWS Petition.²⁸ C&W USA further notes that it will continue to abide by the Commission's regulations regarding foreign carrier affiliation and dominant carrier classification.²⁹ C&W USA, however, challenges what it construes as AWS's contention that C&W's characterization of some of the cited markets as "competitive" is misleading. C&W USA states that the purpose of C&W presentation cited by AWS was to show the degree of liberalization in markets where C&W has an affiliate. C&W USA argues that it is not misleading to label markets that have introduced some degree of liberalization as "competitive."³⁰ C&W USA also states that in a few cases AWS did not cite the correct name for the C&W affiliate. C&W USA states that the correct name for the C&W affiliate in Ascension Island is Cable & Wireless plc Branch, the name of the affiliate in Diego Garcia is Cable & Wireless plc Branch, the name of the affiliate in the Falkland Islands is Cable & Wireless plc Branch, the name of the affiliate in Fiji is Fiji International Telecommunications Limited, the name of the affiliate in Sakhalin is Sakhalin Telecom Limited, the name of the affiliate in St. Helena is Cable & Wireless plc Branch, and the name of the affiliate in St. Kitts and Nevis is Cable & Wireless St. Kitts & Nevis Limited.

8. Because C&W USA does not challenge AWS's assertion that the Cable & Wireless affiliates in the 13 cited markets have market power, we agree that we should amend the Commission's Foreign Carrier List to add those entities. Further, we agree with both AWS and C&W USA that we should amend the Foreign Carrier List to list the correct current name of the C&W affiliate in the markets cited by AWS. Accordingly, we shall amend the Foreign Carrier List, relying upon the list of C&W affiliates C&W USA included in its Comments as Attachment A and Set forth as an attachment to this Order.

9. Accordingly, IT IS ORDERED that the Commission's Foreign Carrier List is amended to include the names of the C&W affiliates listed in the Attachment to this Order.

Federal Communications Commission



James L. Ball,
Chief, Policy Division
International Bureau

²⁸ C&W USA Comments at 1.

²⁹ *Id.*

³⁰ *Id.* at 2.

ATTACHMENT

Destination Market	Name of Affiliated Carrier
Anguilla	Cable and Wireless (West Indies) Limited
Antigua and Barbuda	Cable and Wireless (West Indies) Limited
Ascension Island	Cable & Wireless plc Branch
British Virgin Islands	Cable and Wireless (West Indies) Limited
Cayman Islands	Cable & Wireless (Cayman Islands) Limited
Diego Garcia	Cable and Wireless plc Branch
Dominica	Cable & Wireless Dominica Limited
Falkland Islands	Cable and Wireless plc Branch
Fiji	Fiji International Telecommunications Limited
Grenada	Cable & Wireless Grenada Limited
Guernsey	Cable and Wireless Guernsey Ltd
Macau	Companhia de Telecomunicacoes de Macau S.A.R.L.
Montserrat	Cable and Wireless (West Indies) Limited
Panama	Cable & Wireless Panama S.A.
Sakhalin	Sakhalin Telecom Limited
St. Helena	Cable and Wireless plc Branch
St. Kitts and Nevis	Cable & Wireless St. Kitts & Nevis Limited
St. Lucia	Cable and Wireless (West Indies) Limited
St. Vincent and the Grenadines	Cable and Wireless (West Indies) Limited
Turks and Caicos	Cable and Wireless (West Indies) Limited