

**Federal Communications Commission**  
**2004 Biennial Regulatory Review**  
**IB Docket No. 04-177**

**International Bureau**  
**Staff Report**  
**January 5, 2005**

1. The International Bureau administers policy for the authorization and regulation of international telecommunications facilities and services, as well as policy for licensing and regulating satellite facilities and services. The Bureau represents the Commission in international fora, as well as in bilateral and multilateral meetings.<sup>1</sup> The Bureau directs and coordinates negotiations with Mexico, Canada and other countries regarding spectrum use and interference protection. The Bureau also provides assistance in telecommunications trade negotiations, and provides regulatory assistance and training programs to foreign governments.

2. The International Bureau seeks to facilitate the introduction of new services, and to provide customers with more choices, more innovative services, and competitive prices. The Commission's biennial regulatory review complements the Bureau's streamlining efforts. The Bureau has taken a proactive approach in its rulemakings to remove unnecessary regulatory constraints, wherever possible and practicable. It continually reviews its rules and policies to respond to changing conditions and developments in the industry.

## I. Scope of Review

3. The International Bureau staff reviewed all of the rules applicable to telecommunications service that the Bureau administers, including rules that fall outside of the scope of section 11 of the Communications Act, as amended (Communications Act).<sup>2</sup> Specifically, the staff reviewed:

Part 23 – International Fixed Public Radio Communication Services – Contains rules applicable to international terrestrial fixed communications systems, including general licensing and application filing requirements, technical standards, and operations.

Part 25 – Satellite Communications – Contains rules applicable to satellite communications, including general licensing and application filing requirements, technical standards, and operations.<sup>3</sup>

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<sup>1</sup> The Bureau represents the Commission in matters such as spectrum planning, terrestrial and satellite issues, standards, and broadcasting. Major fora include the International Telecommunication Union (ITU), the World Radio Communication Conference, and various regional organizations, such as the Asia-Pacific Economic Cooperation (APEC), the Inter-American Telecommunications Conference (CITEL), and the Organization for Economic Cooperation and Development (OECD).

<sup>2</sup> 47 U.S.C. § 161. The scope of review under section 11 is discussed in the Commission's *2002 Biennial Regulatory Review*, GC Docket No. 02-390, Report, 18 FCC Rcd 4726 (2002) *aff'd sub nom. Cellco Partnership d/b/a Verizon Wireless v. FCC & USA*, 357 F.3d 88 (D.C. Cir. 2004).

<sup>3</sup> A satellite licensee may operate on either a common carrier or non-common carrier basis. See 47 C.F.R. § 25.114(c)(11).

Part 43 – Reports of Communication Common Carriers and Certain Affiliates – Contains rules requiring certain reports by common carriers, including reports regarding different facets of international telecommunications.

Part 63 – Extension of Lines, New Lines, and Discontinuance, Reduction, Outage and Impairment of Service by Common Carriers; and Grants of Recognized Private Operating Agency Status – Contains rules applicable to common carriers, including application filing requirements for international section 214 authorizations.

Part 64 – Miscellaneous Rules Relating to Common Carriers – Subpart J contains rules regarding international settlements and accounting rates.

4. In addition, the Commission issued a Public Notice requesting comment on which rules within the purview of the International Bureau should be modified or repealed as part of the 2004 biennial review process.<sup>4</sup> No comments were filed in response to the Public Notice.

5. A review of the rules applicable to telecommunications service within the purview of the International Bureau, and the staff recommendations regarding whether the rules should be retained, modified or eliminated pursuant to section 11 of the Communications Act,<sup>5</sup> is contained in the appendices to this report.

## II. Recent and Ongoing Activities

### A. Satellite

#### 1. Introduction

6. Part 25 of the Commission's rules forms the basis for the Commission's "Open Skies" policy under which a wide range of systems have been licensed to provide satellite services.<sup>6</sup> Through this policy, the Bureau attempts to accommodate the maximum number of systems possible to provide a particular service in order to maximize entry and competition in the satellite service market.

#### 2. Space Station Licensing

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<sup>4</sup> *The Commission Seeks Public Comment in 2004 Biennial Review of Telecommunications Regulations*, Public Notice, 19 FCC Rcd 9090 (2004) (2004 Biennial Review Public Notice).

<sup>5</sup> 47 U.S.C. § 161.

<sup>6</sup> *See Establishment of Domestic Communication-Satellite Facilities by Non-Government Entities*, Report and Order, 22 FCC 2d 86 (1970), Second Report and Order, 35 FCC 2d 844 (1972), recon. in part, Memorandum Opinion and Order, 38 FCC 2d 665 (1972); *see also* 47 C.F.R. Part 25.

7. The Commission has streamlined the space station licensing process whenever possible. For example, in 1996, the Commission revised its rules to provide that construction permits are not required for U.S.-licensed space stations. This rule change eliminated the need for satellite applicants to request waivers of section 319(d) of the Communications Act,<sup>7</sup> thereby allowing companies to begin satellite construction, at their own risk, prior to being licensed.<sup>8</sup> At the same time, the Commission relaxed the rules governing space station licensee reports.<sup>9</sup> In 1996, the Commission also adopted *DISCO I*, which eliminated the distinction between U.S.-licensed domestic satellites and international “separate” satellite systems and changed the rules to allow satellites to provide both domestic and international services.<sup>10</sup> In 1997, *DISCO II* adopted a framework to evaluate requests by foreign satellite operators to provide service in the United States.<sup>11</sup> In 1999, the Commission further streamlined its *DISCO II* framework by establishing the “Permitted Space Station List,” which provides another option to non-U.S. satellite operators seeking access to the U.S. market for fixed-satellite service.<sup>12</sup> Non-U.S.-licensed satellite operators have since placed over 20 satellites on the Permitted List, thus affording fixed-satellite service customers additional service options and improving competition for fixed-satellite service.<sup>13</sup>

8. In recent years, the Commission has initiated an extensive review of its satellite licensing procedures, seeking ways to streamline those procedures or replace them with procedures that would make it possible to issue satellite licenses more quickly.<sup>14</sup> The first reform adopted pursuant to this initiative in the *Space Station Reform*

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<sup>7</sup> 47 U.S.C. § 319(d) (indicating when a construction permit is required and under what circumstances the requirement may be waived).

<sup>8</sup> *Streamlining the Commission’s Rules and Regulations for Satellite Application and Licensing Procedures*, Report and Order, 11 FCC Rcd 21581, 21583-85 ¶¶ 6-9 (1996) (*1996 Streamlining Order*); 47 C.F.R. §25.113 (b).

<sup>9</sup> *Id.*, 11 FCC Rcd at 21587-88 ¶¶ 14-15.

<sup>10</sup> *Amendment to the Commission’s Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, and DBS Petition for Declaratory Rulemaking Regarding the Use of Transponders to provide International DBS Service*, Report and Order, 11 FCC Rcd 2429, 2430 (1996) (*DISCO I*).

<sup>11</sup> *Amendment of the Commission’s Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States*, IB Docket No. 96-111, Report and Order, 12 FCC Rcd 24094 (1997) (*DISCO II*), recon., 15 FCC Rcd 7207 (1999) (*DISCO II First Reconsideration Order*).

<sup>12</sup> *DISCO II First Reconsideration Order*, 15 FCC Rcd 7207.

<sup>13</sup> For a list of orders adding satellites to the Commission’s Permitted Space Station List go to <http://www.fcc.gov/ib/sd/se/permitted.html>.

<sup>14</sup> *Amendment of the Commission’s Space Station Licensing Rules and Policies*, IB Docket Nos. 02-34 and 00-248, First Report and Order and Notice of Proposed Rulemaking, 17 FCC Rcd 3847 (2002) (*Space Station Reform NPRM*).

*NPRM* reduced application-filing and processing burdens by extending satellite license terms from 10 years to 15 years.<sup>15</sup> In 2003, the Commission adopted the *First Space Station Reform Report and Order*, in which the Commission established two different streamlined procedures for licensing satellites. The Commission adopted a modified processing round approach for satellites that communicate with earth stations with omnidirectional antennas and adopted a novel first-come-first-served procedure for most other satellite systems.<sup>16</sup> The Commission anticipated that implementation of these procedures would result in a reduction of the time required for license processing from two to three years to less than one year.<sup>17</sup>

9. In the *First Space Station Reform Report and Order*, the Commission also eliminated rules that prohibited sale of space-station licenses for profit prior to commencement of service with the authorized satellites.<sup>18</sup> Further, the Commission eliminated financial-qualification requirements for satellite applicants and instead adopted a bond requirement and numerical limits on pending applications from one party.<sup>19</sup>

10. In the *Second Space Station Reform Report and Order*, the Commission established a streamlined “fleet management” licensing procedure that allows licensees to move geostationary-orbit FSS satellites to any orbital location assigned to them in the same frequency band without prior FCC approval, after giving notice 30 days in advance.<sup>20</sup> In the *Third Space Station Reform Report and Order*, the Commission

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<sup>15</sup> *Id.*, 17 FCC Rcd at 3894-96 ¶¶ 139-43.

<sup>16</sup> *Amendment of the Commission's Space Station Licensing Rules and Policies*, IB Docket Nos. 02-34 and 02-54, First Report and Order and Further Notice of Proposed Rulemaking and First Report and Order, 18 FCC Rcd 10760 (2003) (*First Space Station Reform Report and Order*). The first-come-first-served procedure does not apply to authorization of Direct Broadcast Satellite (DBS), Digital Audio Radio Service (DARS), or replacement satellites. *Id.* at 10764 n.4 (DBS and DARS); *Id.* at 10856 ¶ 253 (replacement satellites).

<sup>17</sup> *First Space Station Reform Report and Order*, at ¶ 1; see also *Optimizing Opportunities, A Satellite Report*, Presented by Donald Abelson, Chief, International Bureau, Federal Communications Commission, September 9, 2004, at slide 19 (average speed of disposal after implementation of the Space Station Reform for GSO-like applications subject to the new procedures is ninety-two days as of June 2004).

<sup>18</sup> *First Space Station Reform Report and Order*, at ¶ 215.

<sup>19</sup> *Id.* at ¶¶ 167 and 233. The Commission initially required a \$5 million bond to be posted with an application subject to the first-come-first-served procedure and a \$7.5 million bond to be posted with an application subject to the modified processing-round procedure – to be forfeited, in whole or in part, if the license were subsequently cancelled for failure to meet a deadline specified in the implementation schedule in the license. On reconsideration, the Commission reduced the bond amounts to \$3 million and \$5 million. *Amendment of the Commission's Space Station Licensing Rules and Policies*, IB Docket No. 02-34, First Order on Reconsideration and Fifth Report and Order, 19 FCC Rcd 12637 (2004) (*Fifth Space Station Reform Order*).

<sup>20</sup> *Amendment of the Commission's Space Station Licensing Rules and Policies*, IB Docket Nos. 02-34 and 00-248, Second Report and Order, 18 FCC Rcd 12507 (2003) (*Second Space Station Reform Report and Order*).

adopted a standardized form for space station license applications to expedite review and facilitate electronic filing.<sup>21</sup> In that order, the Commission also removed subpart H of part 25,<sup>22</sup> which became obsolete as a result of the ORBIT Act.<sup>23</sup> Additionally, the Commission eliminated section 25.141,<sup>24</sup> governing radio-determination satellite service (RDSS). Section 25.141 no longer served any purpose, given that the spectrum for that service was reallocated to the Mobile Satellite Service (MSS).<sup>25</sup>

11. In the *Fourth Space Station Reform Report and Order* released this year, the Commission mandated electronic filing of space station and earth station applications and adopted additional “fleet-management” streamlining rules that allow licensees to relocate Direct Broadcast Satellites or Digital Audio Radio Service satellites, or activate in-orbit spares for Non-Geostationary Satellite Orbit (NGSO) systems, without prior approval.<sup>26</sup> In other recent orders, the Commission revised and consolidated its rule provisions pertaining to orbital debris mitigation.<sup>27</sup>

12. In other proceedings, the Commission has also made further progress in streamlining its space station rules. In 2002, the Commission consolidated and harmonized its satellite rules, eliminating separate Part 100 rules for Direct Broadcast Satellite (DBS) service and incorporating DBS requirements into Part 25.<sup>28</sup> In addition, because many Digital Audio Radio Service (DARS) auction rules in Part 25, subpart F were duplicative of the general license auction rules in Part 1, subpart Q, the

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<sup>21</sup> *Amendment of the Commission's Space Station Licensing Rules and Policies*, Third Report and Order and Second Further Notice of Proposed Rulemaking in IB Docket Nos. 02-34 and 00-248, 18 FCC Rcd 13,486 (2003) (*Third Space Station Reform Report and Order*), 18 FCC Rcd 15306 (2003), erratum.

<sup>22</sup> 47 C.F.R. Part 25, Subpart H.

<sup>23</sup> Section 645(1) of the Satellite Act of 1962, as amended by the ORBIT Act, 47 U.S.C. § 765d(1); *Third Space Station Reform Report and Order*, 18 FCC Rcd at 13503-04.

<sup>24</sup> 47 C.F.R. § 25.141.

<sup>25</sup> *2000 Biennial Regulatory Review -- Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations*, IB Docket No. 00-248, Notice of Proposed Rulemaking, 15 FCC Rcd 25128, 25156-57 ¶ 88 (2000) (*Part 25 Earth Station Streamlining NPRM*); *Third Space Station Reform Report and Order*, 18 FCC Rcd at 13503-04.

<sup>26</sup> *Amendment of the Commission's Space Station Licensing Rules and Policies*, IB Docket No. 02-34, Fourth Report and Order, 19 FCC Rcd 7419 (2004) (*Fourth Space Station Reform Report and Order*).

<sup>27</sup> *Mitigation of Orbital Debris*, IB Docket No. 02-54, Second Report and Order, 19 FCC Rcd 11567 (2004).

<sup>28</sup> *Policies and Rules for the Direct Broadcast Satellite Service*, IB Docket No. 98-24, Report and Order, 17 FCC Rcd 11331 (2002) (*Part 100 Order*).

Commission eliminated the unnecessary subpart F rules in an Order addressing agency-wide competitive bidding rules.<sup>29</sup>

### 3. International Satellite Coordination

13. The International Telecommunication Union (ITU) has established a satellite coordination process to facilitate the harmonious use of satellite orbits and spectrum among Administrations.<sup>30</sup> Satellite coordination occurs by negotiating mutually satisfactory solutions among the affected parties. All space segment licenses that the Commission issues must comply with ITU coordination requirements and international agreements. To eliminate delay of pending international coordination, however, the Commission moves forward with space segment applications and typically approves them before coordination is complete. All authorizations are subject to possible changes that may be necessary to conform to final coordination agreements. This approach saves satellite applicants substantial time. In addition, the Commission has developed processes that allow U.S. satellite operators to negotiate directly with satellite operators of other countries. The Commission reviews and finalizes any operator arrangements before agreeing to them. This process saves staff resources and permits the satellite operators to have some decisional role in the authorization process.

14. The staff and the industry, along with the National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, and the U.S. Department of State also are working together to propose solutions to the backlog of coordination filings at the ITU. These meetings help the staff when participating in the occasional international meetings scheduled by the ITU to address this backlog issue. There is a need to reduce the time it takes for the ITU to process a coordination request because it has a direct effect on the international coordination process and on our licensing process. While work on this issue continues, there is no final resolution at this time.

### 4. Earth Station Licensing

15. The Commission “routinely” licenses earth station facilities that meet technical standards in Part 25, which are designed to enable those earth stations to communicate with a Geostationary Orbit (GSO) satellite without causing harmful interference to another GSO satellite as close as 2° away. In other words, routine earth station applications are granted once the Commission determines that they meet the Part 25 technical standards, without a detailed, case-by-case technical review. It is possible in some cases for an earth station that does not meet all of the technical standards of Part 25 to operate without causing unacceptable interference in a 2° space station GSO orbital

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<sup>29</sup> *Amendment of Parts 1, 21, 22, 24, 25, 26, 27, 73, 74, 80, 90, 95, 100, and 101 of the Commission’s Rules – Competitive Bidding*, Order, 17 FCC Red 6534 (Wireless Bur., 2002).

<sup>30</sup> Within the ITU, Member States (Administrations/Governments) and Sector Members (private entities) cooperate to maintain and extend telecommunications globally.

spacing environment. The Commission conducts a case-by-case review of each of these “non-routine” earth stations to determine whether the application can be granted.

16. As part of efforts to streamline its procedures for routine earth station applications, the Bureau instituted a process that automatically grants routine earth station applications proposing to use the Ku-band fixed-satellite service frequencies (14.0-14.5 GHz / 11.7-12.2 GHz) to communicate with all satellites authorized to provide service to the United States.<sup>31</sup> Such routine earth station applications are considered granted 35 days from the date on which the application appears on public notice, provided that no objections are filed during the public comment period. The Bureau has also reduced the number of emission designators required to be identified in applications for digital systems.<sup>32</sup> This modification significantly reduces the time necessary to enter earth station information into the Commission’s database, and largely eliminates the need for earth station operators to file modification applications when they wish to add a new emission. The Bureau has also extended its auto-grant program to routine earth station applications proposing to use the C-band fixed-satellite service frequencies (3700-4200 MHz / 5925-6425 MHz) to communicate with all satellites authorized to provide service to the United States.<sup>33</sup>

17. As part of the 2000 biennial review process, in the *Part 25 Earth Station Streamlining NPRM*, the Commission instituted a rulemaking proceeding to consider whether to increase power limits in Part 25 for certain earth stations, and whether to increase the proportion of earth station applications that can be considered on a routine basis.<sup>34</sup> In addition, the Commission invited comment on two proposals for streamlining the procedures for non-routine earth station applications considered on a case-by-case basis. One procedure would allow the Commission to require the applicant proposing a small antenna to operate at a lower power level, in order to compensate for the use of the smaller antenna diameter.<sup>35</sup> The second procedure would allow applicants to submit affidavits from operators of satellites potentially affected by the proposed non-routine earth station, showing that the operation of the non-routine earth station has been coordinated with other affected satellite systems.<sup>36</sup> The Commission is also considering a number of other streamlining measures, such as allowing routine Ku-band temporary fixed earth stations to begin operations immediately upon placement of the application on

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<sup>31</sup> See *Commission Launches Earth Station Streamlining Initiative*, Public Notice, DA 99-1259 (rel. June 25, 1999).

<sup>32</sup> Emission designators are a shorthand method used to define the frequency bandwidth and the modulation technique and type of service or combination of services.

<sup>33</sup> See *Commission Launches C-Band Earth Station Streamlining Initiative*, Public Notice, DA 00-2761 (rel. Dec. 7, 2000).

<sup>34</sup> *Part 25 Earth Station Streamlining NPRM*, 15 FCC Rcd 25128.

<sup>35</sup> *Id.*, 15 FCC Rcd at 25135-36 ¶¶ 15-19.

<sup>36</sup> *Id.*, 15 FCC Rcd at 25136-37 ¶¶ 20-24.



public notice, rather than waiting for license grant.<sup>37</sup> Finally, in the *Part 25 Earth Station Streamlining NPRM*, the Commission has also invited comment on revising or eliminating Part 23.<sup>38</sup>

18. In September 2002, the Commission adopted a Further Notice of Proposed Rulemaking to consider additional proposals advanced by industry members.<sup>39</sup> Those industry proposals include revisions to the Commission's Part 25 technical requirements that would enable us to consider more earth station applications routinely.<sup>40</sup>

## **B. Telecommunications**

### **1. Section 214 Applications**

19. The Commission has streamlined its international 214 application processes. In 1996, the Commission created an expedited process for global, facilities-based section 214 applications.<sup>41</sup> 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 new regulations facilitate entry into the U.S.-international telecommunications market and the expansion of international services to the benefit of U.S. consumers and competition.

20. As part of its 1998 biennial regulatory review process, the Commission took additional steps to reduce certain regulatory burdens placed on providers of international telecommunications services in light of market changes.<sup>42</sup> The Commission streamlined its procedures for granting international section 214 authorizations to provide international services, and increased the categories of applications eligible for

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<sup>37</sup> *Id.*, 15 FCC Rcd at 25143 ¶ 42.

<sup>38</sup> *Part 25 Earth Station Streamlining NPRM*, 15 FCC Rcd at 25145 ¶¶ 48.

<sup>39</sup> *2000 Biennial Regulatory Review -- Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations*, IB Docket No. 00-248, Further Notice of Proposed Rulemaking, 17 FCC Rcd 18585 (2002) (*Part 25 Earth Station Streamlining Further NPRM*).

<sup>40</sup> *Id.*, 17 FCC Rcd at 18587-88 ¶¶ 25-28.

<sup>41</sup> *See Streamlining the International Section 214 Authorization Process and Tariff Requirements*, Report and Order, 11 FCC Rcd 12884 (1996). The Commission initiated the international Section 214 streamlining process in 1985. *See International Competitive Carrier Policies*, Report and Order, 102 FCC 2d 812 (1985); *recon. denied*, 60 RR2d 1435 (1986); *modified, Regulation of International Common Carrier Services*, Report and Order, 7 FCC Rcd 7331 (1992).

<sup>42</sup> *See 1998 Biennial Regulatory Review-Review of International Common Carrier Regulations*, IB Docket No. 98-118, Report and Order, 14 FCC Rcd 4909 (1999) (*1998 International Biennial Review Order*).

streamlined processing. The vast majority of international section 214 applicants now qualify for streamlined processing, and can provide service starting on the 15<sup>th</sup> day after public notice. Carriers already providing service can complete *pro forma* transfers of control and assignments of their authorizations without prior Commission approval. Carriers also can provide service through their wholly-owned subsidiaries without separate Commission approval. Authorized carriers are able to use any authorized U.S.-licensed or non-U.S.-licensed undersea cable systems to provide their authorized services.

21. As part of the 2000 biennial regulatory review process, the Commission took further steps to remove unnecessary burdens on international carriers.<sup>43</sup> The Commission revised the rules for *pro forma* transfers and assignments of international section 214 authorizations to give carriers greater flexibility in structuring transactions. These changes also assist carriers by making the rules more consistent with the procedures used for other service authorizations, particularly for the Commercial Mobile Radio Service (CMRS). 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 U.S.-international facilities-based switched services for facilities-based U.S. carriers affiliated with dominant foreign carriers.

22. In the *Parts 1 and 63 NPRM* the Commission sought comment on a number of potential changes to the international section 214 authorization process and rules relating to the provision of international service.<sup>44</sup> Specifically, the Commission sought comment on whether to amend the procedures for discontinuing an international service to be more consistent with the procedures for discontinuing a domestic service. The Commission also sought comment on ways to lessen the burdens placed on CMRS carriers by the international section 214 application process. In particular, the Commission sought 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. Finally, the Commission sought comment on whether to amend the rules to allow commonly-controlled subsidiaries to use their parent's section 214 authorization to provide international service.

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<sup>43</sup> *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*, 357 F.3d 88 (D.C. Cir 2004).

<sup>44</sup> *Amendment of Parts 1 and 63 of the Commission's Rules*, IB Docket 04-47, Notice of Proposed Rulemaking, 19 FCC Rcd 13276 (2004) (*Parts 1 and 63 NPRM*).

## 2. Foreign Participation

23. The Commission has sought to foster an increasingly competitive international telecommunications market by adopting policies that promote foreign participation in the U.S.-international market. To make the provision of U.S.-international services more competitive, the Commission has liberalized and streamlined its market access policies in response to the U.S. commitments made pursuant to the WTO Basic Telecommunications Agreement, the commitments of trading partners, and the Commission's improved regulatory framework. For example, the Commission has simplified its own licensing and authorization rules in ways that have facilitated entry into the U.S. market by foreign competitors. In the *Foreign Participation Order*, the Commission adopted a rebuttable presumption ("open entry standard") in favor of entry by foreign applicants from WTO Members applying for section 214 authorization, submarine cable landing licenses, and foreign indirect investment in excess of 25 percent in Title III common carrier, aeronautical fixed and route radio licenses pursuant to section 310(b)(4).<sup>45</sup> In addition, the Commission defers to Executive Branch agencies on national security, law enforcement, foreign policy, and trade policy concerns raised in an application. With respect to non-WTO Members, the Commission continues to apply the Effective Competitive Opportunities (ECO) test for applications. In the *Foreign Participation Reconsideration Order*, the Commission affirmed these policies and clarified and revised certain aspects of the foreign carrier affiliation notification requirement in section 63.11 of the Commission's rules to respond to carrier concerns about the purpose and application of the rule.<sup>46</sup> In that proceeding, the Commission reduced the prior notification period from 60 to 45 days, and permitted certain classes of foreign carriers to submit post-notifications of foreign affiliations in lieu of prior notifications.

## 3. International Settlements Policy

24. The Commission has taken action to remove regulatory impediments and to increase competition in the international telecommunications marketplace through reform of the longstanding international settlements policy (ISP).<sup>47</sup> The Commission's

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<sup>45</sup> See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket 97-142, Report and Order and Order on Reconsideration, 12 FCC Rcd 23 891 (1997) (*Foreign Participation Order*), recon. 15 FCC Rcd 18158 (2000) (*Foreign Participation Reconsideration Order*).

<sup>46</sup> *Foreign Participation Reconsideration Order*, 15 FCC Rcd 18158.

<sup>47</sup> The International Settlements Policy provides a regulatory framework within which U.S. carriers negotiate with foreign carriers to provide bilateral U.S.-international services. There are three elements of the ISP that serve as conditions on U.S. carriers entering into agreements with foreign carriers: (1) all U.S. carriers must be offered the same effective accounting rate and same effective date for the rate ("nondiscrimination"); (2) U.S. carriers are entitled to a proportionate share of U.S.-inbound, or return, traffic based upon their proportion of U.S.-outbound traffic ("proportionate return"); and (3) the accounting

primary goal underlying this policy has been and continues to be the protection of U.S. consumers from potential harm caused by instances of insufficient competition in the global telecommunications market. As a result of increasing competition internationally and the Commission's Benchmarks Policy, the average U.S. settlement rate has fallen substantially over the last several years, as have U.S. calling prices.<sup>48</sup>

25. As part of the 1998 biennial regulatory review process, the Commission adopted sweeping deregulatory inter-carrier settlement arrangements between U.S. carriers and foreign non-dominant carriers on competitive routes.<sup>49</sup> Specifically, the Commission: (1) eliminated the international settlements policy and contract filing requirements for arrangements with foreign carriers that lack market power; (2) eliminated the international settlements policy for arrangements with all carriers on routes where rates to terminate U.S. calls are at least 25 percent lower than the relevant settlement rate benchmark previously adopted by in its *Benchmark Order*;<sup>50</sup> (3) adopted changes to contract filing requirements to permit U.S. carriers to file, on a confidential basis, arrangements with foreign carriers with market power on routes where the international settlements policy is removed; (4) adopted procedural changes to simplify accounting rate filing requirements; and (5) eliminated the flexibility policy in recognition that the reforms to the international settlements policy render the flexibility policy largely superfluous.

26. In the *2004 International Settlements Policy Reform Order*, the Commission concluded that the public interest is served by reforming the Commission's longstanding ISP policy.<sup>51</sup> The Commission found increasing competition on many U.S.-international routes, accompanied by lower settlement rates and calling prices for U.S. customers, thereby permitting it to adopt a more limited application of the ISP. It removed the ISP from all routes on which the carriers had negotiated benchmark-compliant rates. Lifting the ISP on those routes allows U.S. carriers greater flexibility to negotiate arrangements with foreign carriers. The Commission determined that this approach would encourage market-based arrangements between U.S. and foreign carriers

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rate is divided evenly 50-50 between U.S. and foreign carriers for U.S. inbound and outbound traffic ("symmetrical settlement rates").

<sup>48</sup> See *International Settlements Policy Reform; International Settlement Rates*, IB Docket 02-324, Notice of Proposed Rulemaking, 17 FCC Rcd 19954, 19964-66 (2002) (*ISP Reform NPRM*).

<sup>49</sup> See *1998 Biennial Regulatory Review: Reform of the International Settlements Policy and Associated Filing Requirements* (Phase II), IB Docket No. 98-148, Report and Order and Order on Reconsideration, 14 FCC Rcd 7963 (1999).

<sup>50</sup> See *International Settlement Rates*, IB Docket No. 96-261, Report and Order, 12 FCC Rcd 19806 (1997) (*Benchmarks Order*), *aff'd sub nom. Cable and Wireless P.L.C. v. FCC*, 166 F.3d 1224 (D.C. Cir. 1999), Report and Order on Reconsideration and Order Lifting Stay, 14 FCC Rcd 9256 (1999) (*Benchmarks Reconsideration Order*).

<sup>51</sup> *International Settlements Policy Reform, International Settlement Rates Order*, IB Docket 02-324, First Report and Order, 19 FCC Rcd 5709, ¶ 43 (2004) (*2004 ISP Reform Order*).

that would further long-standing policy goals of greater competition in the U.S.-international market and more cost-based rates for U.S. consumers. The Commission also modified current contract filing requirements with respect to non-ISP routes. Furthermore, in view of the removal of the ISP from benchmark-compliant routes, the Commission eliminated its ISR policy<sup>52</sup> and associated filing requirements. The Commission also adopted certain regulatory safeguards to protect U.S. customers from anticompetitive conduct should it occur in the future. The Commission retained the current benchmarks policy subject to further evaluation as to whether future modifications are warranted. Finally, the Commission amended its rules to reflect and implement the actions taken in this proceeding.

#### 4. Reporting Requirements

27. The Commission is continually reviewing its reporting requirements to determine if they can be revised to lessen the burdens placed on carriers while maintaining their important purpose. The information provides the Commission, other government agencies, state regulators, international organizations, industry, and the public with valuable information on market and other industry trends and developments. This information is helpful to the Commission in identifying developments in regulatory issues, monitoring compliance with existing rules and policies, and evaluating the effects of policy choices.

28. As part of the 2000 biennial regulatory review process, the Commission took actions to reduce reporting requirements on CMRS carriers and to eliminate an outdated rule.<sup>53</sup> At the request of CMRS carriers, the Commission reviewed the reporting requirements for carriers providing international service and found that it was no longer necessary for CMRS carriers providing resale of international switched services to file quarterly traffic and revenue reports pursuant to section 43.61 of the Commission's rules. The Commission also eliminated an outdated rule that required certain foreign-owned carriers to file with the Commission annual revenue and traffic reports with respect to all common carrier telecommunication services they offered in the United States.

29. In the *International Reporting Requirements NPRM*, the Commission initiated a rulemaking proceeding to examine the reporting requirements to which carriers providing U.S. international services are subject under Part 43 of the Commission's

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<sup>52</sup> International Simple Resale (ISR) involves the provision of switched services over resold or facilities-based private lines that connect to the public switched network at either end-point. ISR policy seeks to prevent potential harm to U.S. consumers and competition by promoting more cost-based settlement rates on U.S.-international routes. Instead of U.S. carriers paying for the use of half of a shared circuit to a foreign point through traditional settlement payments, U.S. carriers under ISR arrangements may connect or lease a complete or whole circuit end-to-end to the corresponding foreign carrier's network and pay a negotiated rate for termination of services on the foreign network that does not comply with the strict requirements of the ISP.

<sup>53</sup> 2000 *International Biennial Review Order*, 17 FCC Rcd 11416.

rules.<sup>54</sup> The Commission sought comment on several changes to simplify the reporting requirements and to ensure the usefulness of the data collected by the Commission. The proposals seek to further the Commission's goal of protecting U.S. consumers and U.S. carriers from anti-competitive conduct, ensuring that consumers enjoy more choice in telecommunications services and decreasing prices for international calls, without imposing unnecessary burdens on carriers. Specifically, the Commission sought comment on whether to: retain the annual traffic status reporting requirements; eliminate the requirement that carriers report the number of messages they carry during the year; eliminate the requirement to file traffic and revenue reports and circuit-status reports for traffic between the continental United States and U.S. off-shore points or between off-shore U.S. points; establish a revenue threshold for a carrier to file annual traffic and revenue reports for pure resale services; establish a revenue threshold for which miscellaneous services a carrier must report; change the filing dates for the circuit-status, traffic and revenue reports; and, simplify and improve the reporting requirements as recommended by the staff of the International Bureau and the Wireline Competition Bureau. The Commission also sought comment on whether to retain the quarterly traffic and revenue reporting requirements placed on large carriers<sup>55</sup> and on foreign-affiliated carriers.<sup>56</sup> The Commission also proposed to repeal the requirement for U.S. carriers to report their contracts with foreign carrier correspondents governing the division of international tolls for telegraph communications.<sup>57</sup>

## 5. Detariffing International Services

30. As part of the 2000 biennial regulatory review process, the Commission reduced a significant regulatory burden placed on carriers by eliminating the requirement that non-dominant carriers file tariffs for international interexchange services.<sup>58</sup> The tariffing requirements, however, continue to apply to a small category of carriers (e.g., those that are classified as dominant for reasons other than an affiliation with a foreign carrier that possesses market power).

31. In the *International Detariffing Order*, the Commission noted that detariffing would allow consumers to avail themselves of all remedies provided by state consumer protection and contract laws against abusive carrier practices. To ensure that consumers have access to rate information in an easy-to-understand format, the

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<sup>54</sup> See *Reporting Requirements for U.S. Providers of International Telecommunications Services*, IB Docket 04-112, Notice of Proposed Rulemaking, 19 FCC Rcd. 4231 (2004) (*International Reporting Requirements NPRM*).

<sup>55</sup> 47 C.F.R. § 43.61(b).

<sup>56</sup> 47 C.F.R. § 43.61(c).

<sup>57</sup> 47 C.F.R. § 43.51.

<sup>58</sup> *2000 Biennial Regulatory Review: Policy and Rules Concerning the International, Interexchange Marketplace*, IB Docket 00-202, Report and Order, 16 FCC Rcd 10647 (2001) (*International Detariffing Order*).

Commission adopted a public disclosure requirement that carriers subject to detariffing make rate and service information for all of their international interexchange services available to the public in at least one location during regular business hours and that those carriers that maintain Internet websites post this information on-line. In addition, the Commission adopted permissive, as opposed to mandatory, detariffing for four types of international services. The Commission determined that carriers may be unable to establish contracts for services with customers in certain circumstances; therefore, tariffs for these services may be warranted.<sup>59</sup>

32. In addition, in the *International Detariffing Order* the Commission further reduced the regulatory burden on non-dominant carriers by clarifying that the contract filing requirements in section 43.51 of the Commission's rules apply solely to: (1) carriers classified as dominant for reasons other than foreign affiliation; and (2) carriers, whether classified as dominant or non-dominant, contracting directly for services<sup>60</sup> with foreign carriers that possess market power.

### III. Summary of Recommendations

33. The Commission has a number of pending proceedings in which it is considering repeal or modification of rules within the purview of the International Bureau. In the *Part 25 Earth Station Streamlining Further NPRM*, the Commission is considering industry proposals to revise technical requirements in Part 25 that would enable the Commission to consider more earth station applications on a routine basis.<sup>61</sup> In the *International Reporting Requirements NPRM*, the Commission invited comment on several changes to simplify the reporting requirements and to ensure the usefulness of the data collected by the Commission.<sup>62</sup> In the *Parts 1 and 63 NPRM*, the Commission invited comment on several potential changes to our international section 214 authorization process and the rules relating to the provision of United States international telecommunications services.<sup>63</sup>

34. In addition, we recommend the Commission initiate a proceeding to reorganize, clarify and simplify Part 63. The Commission has addressed specific sections and subsections of Part 63 in recent years, but has not undertaken a comprehensive review of Part 63. We recommend that the Commission undertake such comprehensive

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<sup>59</sup> The four types of service are: international dial-around services; inbound international collect calls; "on-demand" Mobile Satellite Services; and, services to new customers that choose their long distance provider through their local service provider (for the first 45 days of service or until there is contract between the customer and the long distance provider, whichever occurs first).

<sup>60</sup> 47 C.F.R. § 43.51(a), (b).

<sup>61</sup> *Part 25 Earth Station Streamlining Further NPRM*, 17 FCC Rcd 18585.

<sup>62</sup> *International Reporting Requirements NPRM*, 19 FCC Rcd 4231.

<sup>63</sup> *Parts 1 and 63 NPRM*, 19 FCC Rcd 13276.

review that will take into consideration interplay between the various sections of Part 63. Such a review would also provide an opportunity to rewrite the rules to simplify them and make them more readable.

35. Based on its review of the rules applicable to telecommunications service within the purview of the International Bureau, the staff concludes that the other rules remain in the public interest and do not need to be modified or repealed. As discussed above, the Commission has conducted a number of proceedings in recent years reviewing the rules applicable to international telecommunications services and satellite services, and has made numerous revisions to the rules to keep them current with the state of competition in the international services and satellite markets, and to reduce the burdens placed on carriers and the public. We find that with the exception of the rules cited above, the rules do not need to be modified or repealed.



**APPENDICES**

- I. Part 23 – International Fixed Public Radio Communication
- II. Part 25 – Satellite Communications
- III. Part 43, Section 43.51 – Contracts and concessions
- IV. Part 43, Sections 43.53, 43.61, 43.82 – Reports of Communications Common Carriers and Certain Affiliates
- V. Part 63 – Extension of Lines, New Lines, and Discontinuance, Reduction, Outage and Impairment of Service by Common Carriers; and Grants of Recognized Private Operating Agency Status
- VI. Part 64, Subpart J – International Settlements Policy and Modification Requests

## APPENDIX I

**Part 23 – International Fixed Public Radiocommunication Services****Description**

1. Part 23 implements and interprets sections 4, 301, and 303 of the Communications Act of 1934, as amended (Communications Act).<sup>1</sup> Part 23 sets forth rules applicable to high frequency (HF) radio systems used for international communications, including general licensing and service rules, application filing requirements, and technical specifications. The rules classify these systems as either “fixed public service” (a radiocommunication service carried between fixed stations open to public correspondence) or “fixed public press service” (a radiocommunication service carried between point-to-point telegraph stations, open to limited public correspondence of news items or other material related to or intended for publication by press agencies, newspapers, or for public dissemination).

2. Although Part 23 does not contain lettered sub-parts, the rules are organized as follows:

Section 23.1	Definitions
Sections 23.11-23.12	Use of frequencies
Sections 23.13-23.19	Technical specifications
Sections 23.20-23.27	Use of frequencies
Sections 23.28-23.55	Licensing and service rules

**Purpose**

3. The Commission has stated that the original purpose of the Part 23 rules is “obscure.”<sup>2</sup> Neither the Federal Communications Commission nor the Federal Radio Commission has issued any opinion explaining the rationale for the rules.<sup>3</sup> Except for its proposal to modify or repeal Part 23 in 2000,<sup>4</sup> the Commission has not opined on these rules since the *Western Union MO&O* in 1980.

4. In the *Western Union MO&O*, the Commission stated that the rules contained in Part 23 derive from those promulgated by the Federal Radio Commission in

<sup>1</sup> 47 U.S.C. §§ 154, 301, 303.

<sup>2</sup> *Western Union Telegraph Co.*, Memorandum Opinion and Order, 75 FCC 2d 461, 472 ¶ 39 (1980) (*Western Union MO&O*).

<sup>3</sup> *See id.*

<sup>4</sup> 2000 Biennial Regulatory Review -- Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations, IB Docket No. 00-248, Notice of Proposed Rulemaking, 15 FCC Red 25128, 25145 ¶¶ 48-49 (2000) (*Part 25 Earth Station Streamlining NPRM*).

1932. At that time, fixed wireless links presumably provided an important method of communications between: (1) the contiguous 48 States (including D.C.) and Alaska, Hawaii, any U.S. possession, or any foreign point; (2) Alaska and any other point; (3) Hawaii and any other point; and (4) any U.S. possession and any other point. Part 23 provides the regulatory framework for these services. In addition, Part 23 governs radiocommunication within the contiguous 48 States (including D.C.) in connection with relaying the above-referenced international traffic.

## **Analysis**

### **Status of Competition**

5. Use of HF radio facilities in providing carriers' international communications services in the age of submarine cable and satellites is virtually dormant. There are now three active Part 23 licensees. Competition among services under this rule Part is therefore not relevant.

### **Advantages**

6. Part 23 provides the requisite framework within which licensees can perform useful functions in the provision of international communications services. HF radio stations can be a functionally useful supplement to submarine cable and satellite systems in the provision of service to overseas points not easily or economically reached by these facilities, in the provision of a limited restoration capability during submarine cable or satellite outages, and in the provision of certain specialized services such as press and weather map broadcast services.

### **Disadvantages**

7. Because the type of international traffic addressed in these rules now is carried primarily by undersea cable and satellite, there is considerably less need for regulation in this area.

## **Recent Efforts**

8. As part of the 2000 biennial review process, the Commission initiated an in-depth review of Part 23, together with its review of Part 25.<sup>5</sup> The Commission's review of Part 23 is still pending while the Commission considers industry comments in response to its Part 25 initiatives.<sup>6</sup>

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<sup>5</sup> *Id.*, 15 FCC Rcd at 25145 ¶ 48.

<sup>6</sup> *2000 Biennial Regulatory Review -- Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations*, IB Docket No. 00-248, Further Notice of Proposed Rulemaking, 17 FCC Rcd 18585 (2002) (*Part 25 Earth Station Streamlining Further NPRM*).

**Comments**

9. There were no comments were filed on the Part 23 rules.

**Recommendation**

10. The Commission has concluded that in its current form Part 23 may no longer be necessary in the public interest and accordingly is considering modification or repeal of the rules as part of the *Part 25 Earth Station Streamlining NPRM*.<sup>7</sup>

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<sup>7</sup> *Part 25 Earth Station Streamlining NPRM*, 15 FCC Rcd at 25145 ¶ 48.

## APPENDIX II

### Part 25 – Satellite Communications

#### Description

1. Part 25 was adopted pursuant to the authority contained in section 201(c)(11) of the Communications Satellite Act of 1962, as amended, section 501(c)(6) of the International Maritime Satellite Telecommunications Act, and Titles I through III of the Communications Act of 1934, as amended. Part 25 sets out the rules applicable to satellite communications, including general licensing and application filing requirements, technical standards, and technical operations.

2. Part 25 is organized into eight lettered sub-parts, with one sub-part containing a number of subsections:

A – General

B – Applications and Licenses –

    General Application Filing Requirements;

    Earth Stations;

    Space Stations; and

    Forfeiture, Termination, and Reinstatement of Station Authorization

C – Technical Standards

D – Technical Operations

E – Reserved

F – Competitive Bidding Procedures for DARS

G – Reserved

H – Reserved

I – Equal Employment Opportunities

J – Public Interest Obligations

#### Purpose

3. Part 25 provides rules under which the International Bureau licenses systems to provide various satellite services. The rules are designed to accommodate efficiently the maximum number of systems possible for each type of service, to enhance competition for satellite services and the terrestrial services with which they compete, and to minimize delay in license-application processing. Sections of Part 25 also have provisions: (1) to protect against impermissible levels of interference; (2) to assure compliance with international agreements and treaties; (3) to assure the timely construction and operation of authorized earth stations and the timely construction, launch and operation of authorized space stations; (4) to assure the timely provision of sufficient information to allow for processing of applications; and (5) to assure compliance with license specifications and conditions as well as with Commission rules and regulations. Part 25 also provides for preemption of local zoning regulation of earth stations, unless the reasonableness of the regulation can be demonstrated.

## Analysis

### Status of Competition

4. The satellite services regulated by Part 25 are competitive on most routes. Several major satellite service providers and a number of smaller providers are licensed to provide state-of-the-art satellite telephony and data services to U.S. consumers and consumers worldwide. On many routes, satellite telephony and data services are offered by multiple satellite providers. In addition, these satellite service providers face competition from terrestrial service providers for some services on some routes. The Commission's rules and policies have fostered the competitive industry that we see today by encouraging satellite companies to "pack" the satellite orbits and maximize the use of frequencies available at those orbital locations. Part 25 rules provide licensing mechanisms for future entry and further competition in these services. The rules also allow service to be provided in the United States via foreign-owned and/or foreign-licensed satellites.

### Advantages

5. Subpart B – Applications and Licenses - General Application Filing Requirements: Part 25 provides clear procedures for filing applications and predictable procedures for evaluating whether applications are complete. Part 25 also provides clear and predictable procedures for amendments, modifications, assignments and transfers. In addition, section 25.120 provides effective procedures for handling applications for special temporary authorization when delay would seriously prejudice the public interest. This allows for a more efficient use of resources.

6. Subpart B – Applications and Licenses - Earth Stations: Sections 25.130 through 25.139 include procedures that allow for frequency coordination analysis to reduce interference and the verification of earth station antenna performance standards. These clear procedures minimize the cost associated with reducing interference. Provisions in Part 25 also assure compliance with international agreements and treaties. Section 25.133 includes requirements for the timely construction and operation of earth stations. By reducing the likelihood that resources will be allocated to "phantom" ventures, section 25.133 assures that unnecessary costs were not imposed on other services that would have been limited by the need for coordination to reduce interference with systems that are, in fact, not implemented.

7. Subpart B – Applications and Licenses - Space Stations: Section 25.140 provides for the general qualifications required of fixed-satellite space station licensees including procedures to facilitate coordination to avoid harmful interference. Sections 25.142 through 25.149 provide licensing procedures for particular services or classes of satellites.

8. Subpart B -- Applications and Licenses - Processing of Applications and Forfeiture, Termination, and Reinstatement of Station Authorizations: Sections 25.150 through 25.163 include well-defined procedures for processing applications to determine

whether the applications are mutually exclusive. Sections 25.157 and 25.158 prescribe space station licensing procedures that minimize processing delay and obviate comparative evaluation of mutually exclusive applications. Section 25.159 provides a limit on pending applications and unbuilt satellite systems. Sections 25.160, 25.161, and 25.163 specify the circumstances in which licenses may be automatically cancelled or reinstated and in which pecuniary forfeitures may be assessed. Section 25.165 requires most space-station applicants to post bonds that are subject to forfeiture in the event the license fails to meet implementation milestones. This increases the likelihood that authorized systems will be promptly constructed, launched, and operated. This requirement deters frivolous application-filing and reduces the likelihood that unnecessary coordination costs will be imposed on existing licensees.

9. Subpart C—Technical Standards and Subpart D—Technical Operations: These subparts provide clear and predictable technical standards and operating rules to minimize interference.

10. Subpart F—Competitive Bidding Procedures for DARS: This subpart states that licenses for satellite DARS service shall be awarded pursuant to a competitive bidding mechanism. Competitive bidding promotes competition and awards DARS licenses to those firms that will most efficiently use those resources to compete in providing service.

11. Subpart I—Equal Employment Opportunities: This section promotes diversity in employment and creates opportunities.

12. Subpart J—Public Interest Obligations: This subpart imposes public interest obligations on DBS providers, as required by the Cable Act of 1992, 47 U.S.C. § 335, and sections 312 and 315 of the Communications Act.<sup>8</sup>

### **Disadvantages**

13. Earth Stations: Some limitations included in these rules might hamper the introduction of new services. For example, it may be possible to relax the threshold technical rules that trigger inter-system coordination among satellite service providers and reduce the burden on coordinating new and innovative satellite technologies.

14. Processing of Applications and Forfeiture, Termination, and Reinstatement of Station Authorizations: The preparation of applications and the delay associated with public comment periods and the examination of applications can be costly to applicants.

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<sup>8</sup> *Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992, Direct Broadcast Satellite Public Interest Obligations*, Report and Order, 13 FCC Rcd 23254 (1998); *Policies and Rules for the Direct Broadcast Satellite Service*, IB Docket No. 98-21, Report and Order, 17 FCC Rcd 11331, 11344-45 ¶¶ 22-24 (2002) (*Part 100 Order*).

15. Subpart C—Technical Standards and Subpart D—Technical Operations: These standards and operating rules, while preserving the operating environment today, could hamper the introduction of new services and restrict alternative uses of resources in the future.

16. Subpart F—Competitive Bidding Procedures for DARS: Satellite services in unplanned frequency bands require international coordination prior to the commencement of operations. The value of the orbital location resource is uncertain if the international coordination process has not yet been completed.

17. Subpart I—Equal Employment Opportunities: Rules in this section might increase operating costs.

18. Subpart J—Public Interest Obligations: Rules in this section might increase operating costs.

### Recent Efforts

19. Space Station Licensing. In recent years, the Commission has taken steps to streamline our procedures or to replace them with procedures that would make it possible to issue satellite licenses more quickly.<sup>9</sup> In the *Space Station Reform NPRM*, the Commission reduced application-filing and processing burdens by extending satellite license terms from 10 years to 15 years.<sup>10</sup> In the *First Space Station Reform Report and Order* the Commission established two different streamlined procedures for licensing satellites. The Commission adopted a modified processing round approach for satellites that communicate with earth stations with omni-directional antennas and adopted a novel first-come-first-served procedure for most other satellite systems.<sup>11</sup> The Commission also eliminated rules that prohibited sale of space-station licenses for profit prior to commencement of service with the authorized satellites.<sup>12</sup> Further, the Commission eliminated financial-qualification requirements for satellite applicants and instead

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<sup>9</sup> *Amendment of the Commission's Space Station Licensing Rules and Policies*, IB Docket Nos. 02-34 and 00-248, Notice of Proposed Rulemaking and First Report and Order, 17 FCC Rcd 3847 (2002) (*Space Station Reform NPRM*).

<sup>10</sup> *Id.*, 17 FCC Rcd at 3894-96 ¶¶ 139-43.

<sup>11</sup> *Amendment of the Commission's Space Station Licensing Rules and Policies*, IB Docket Nos. 02-34 and -02-54, First Report and Order and Further Notice of Proposed Rulemaking and First Report and Order, 18 FCC Rcd 10760 (2003) (*First Space Station Reform Report and Order*). The first-come-first-served procedure does not apply to authorization of DBS, DARS, or replacement satellites. *Id.* at 10764 n.4 (DBS and DARS); *Id.* at 10856 ¶ 253 (replacement satellites).

<sup>12</sup> *First Space Station Reform Report and Order*, 18 FCC Rcd at 10832 ¶ 215.



adopted a bond requirement and numerical limits on pending applications from one party.<sup>13</sup>

20. In the *Second Space Station Reform Report and Order*, the Commission established a streamlined “fleet management” licensing procedure that allows licensees to move geostationary-orbit FSS satellites to any orbital location assigned to them in the same frequency band without prior FCC approval, after giving notice 30 days in advance.<sup>14</sup> In the *Third Space Station Reform Report and Order*, the Commission adopted a standardized form for space station license applications to expedite review and facilitate electronic filing.<sup>15</sup> In that order, the Commission also removed subpart H of Part 25,<sup>16</sup> which became obsolete as a result of the ORBIT Act.<sup>17</sup> Additionally, the Commission eliminated section 25.141,<sup>18</sup> governing radio-determination satellite service (RDSS).<sup>19</sup>

21. In the *Fourth Space Station Reform Report and Order* released this year, the Commission mandated electronic filing of space station and earth station applications and adopted additional “fleet-management” streamlining rules that allow licensees to relocate Direct Broadcast Satellites or Digital Audio Radio Service satellites, or to activate in-orbit spares for Non-Geostationary Satellite Orbit (NGSO)

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<sup>13</sup> *Id.* at ¶¶ 167 and 233. The Commission initially required a \$5 million bond to be posted with an application subject to the first-come-first-served procedure and a \$7.5 million bond to be posted with an application subject to the modified processing-round procedure – to be forfeit, in whole or in part, if the license were subsequently cancelled for failure to meet a deadline specified in the implementation schedule in the license. On reconsideration, the Commission reduced the bond amounts to \$3 million and \$5 million. *Amendment of the Commission's Space Station Licensing Rules and Policies*, IB Docket No. 02-34, First Order on Reconsideration and Fifth Report and Order, 19 FCC Rcd 12637 (2004) (*Fifth Space Station Reform Order*).

<sup>14</sup> *Amendment of the Commission's Space Station Licensing Rules and Policies*, IB Docket Nos. 02-34 and 00-248, Second Report and Order, 18 FCC Rcd 12507 (2003) (*Second Space Station Reform Report and Order*).

<sup>15</sup> *Amendment of the Commission's Space Station Licensing Rules and Policies*, IB Docket Nos. 02-34 and 00-248, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 13,486 (2003) (*Third Space Station Reform Report and Order*), 18 FCC Rcd 15306 (2003), erratum.

<sup>16</sup> 47 C.F.R. Part 25, Subpart H.

<sup>17</sup> Section 645(1) of the Satellite Act of 1962, as amended by the ORBIT Act, 47 U.S.C. § 765d(1); *Third Space Station Reform Report and Order*, 18 FCC Rcd at 13503-04.

<sup>18</sup> 47 C.F.R. § 25.141.

<sup>19</sup> *2000 Biennial Regulatory Review -- Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations*, IB Docket No. 00-248, Notice of Proposed Rulemaking, 15 FCC Rcd 25128, 25156-57 ¶ 88 (2000) (*Part 25 Earth Station Streamlining NPRM*); *Third Space Station Reform Report and Order*, 18 FCC Rcd at 13503-04.

systems, without prior approval.<sup>20</sup> In other recent orders, the Commission revised and consolidated its rule provisions pertaining to orbital debris mitigation.<sup>21</sup>

22. In other proceedings, the Commission has also made further progress in streamlining its space station rules. In 2002, the Commission consolidated and harmonized its satellite rules, eliminating separate Part 100 rules for Direct Broadcast Satellite (DBS) service and incorporating DBS requirements into Part 25.<sup>22</sup> In addition, because many Digital Audio Radio Service (DARS) auction rules in Part 25, subpart F were duplicative of the general license auction rules in Part 1, subpart Q, the Commission eliminated the unnecessary subpart F rules in an item addressing agency-wide competitive bidding rules.<sup>23</sup>

23. Earth Station Licensing. In the *Part 25 Earth Station Streamlining NPRM* the Commission instituted a rulemaking proceeding to consider whether to increase power limits in Part 25 for certain earth stations, and whether to increase the proportion of earth station applications that can be considered on a routine basis.<sup>24</sup> In addition, the Commission invited comment on proposals for streamlining the procedures for non-routine earth station applications considered on a case-by-case basis.<sup>25</sup> The Commission is also considering a number of other streamlining measures, such as allowing routine Ku-band temporary fixed earth stations to begin operations immediately upon placement of the application on public notice, rather than waiting for license grant.<sup>26</sup> Finally, in the *Part 25 Earth Station Streamlining NPRM*, the Commission has also invited comment on revising or eliminating Part 23.<sup>27</sup>

24. In September 2002, the Commission adopted a Further Notice of Proposed Rulemaking to consider additional proposals advanced by industry members.<sup>28</sup> Those

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<sup>20</sup> *Amendment of the Commission's Space Station Licensing Rules and Policies*, IB Docket No. 02-34, Fourth Report and Order, 19 FCC Rcd 7419 (2004).

<sup>21</sup> *Mitigation of Orbital Debris*, IB Docket No. 02-54, Second Report and Order, 19 FCC Rcd 11567 (2004).

<sup>22</sup> *Policies and Rules for the Direct Broadcast Satellite Service*, IB Docket No. 98-24, Report and Order, 17 FCC Rcd 11331 (2002) (*Part 100 Order*).

<sup>23</sup> *Amendment of Parts 1, 21, 22, 24, 25, 26, 27, 73, 74, 80, 90, 95, 100, and 101 of the Commission's Rules – Competitive Bidding*, Order, 17 FCC Rcd 6534 (Wireless Bur. 2002).

<sup>24</sup> *Part 25 Earth Station Streamlining NPRM*, 15 FCC Rcd 25128.

<sup>25</sup> *Id.*, 15 FCC Rcd at 25136-37 ¶¶ 15-24.

<sup>26</sup> *Id.*, 15 FCC Rcd at 25143 ¶ 42.

<sup>27</sup> *Part 25 Earth Station Streamlining NPRM*, 15 FCC Rcd at 25145 ¶¶ 48.

<sup>28</sup> *2000 Biennial Regulatory Review -- Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations*, IB Docket No. 00-248, Further Notice of Proposed Rulemaking, 17 FCC Rcd 18585 (2002) (*Part 25 Earth Station Streamlining Further NPRM*).

industry proposals include revisions to the Commission's Part 25 technical requirements that would enable us to consider more earth station applications routinely.<sup>29</sup>

### Comments

25. No comments were filed on the Part 25 rules.

### Recommendation

26. The Commission recently reviewed and amended the space station licensing rules, and for the reasons set forth in the *Space Station Reform Report and Orders*,<sup>30</sup> they are appropriate for the current state of competition. Accordingly, the staff concludes that the space station licensing rules remain in the public interest and recommends that repeal or modification is not warranted.

27. The Commission has concluded that, in its current form, the earth station licensing rules in Part 25 may no longer be necessary in the public interest and accordingly is considering modification or repeal of the rules as part of the *Part 25 Earth Station Streamlining NPRM*.<sup>31</sup>

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<sup>29</sup> *Id.*, 17 FCC Rcd at 18587-88 ¶¶ 25-28.

<sup>30</sup> See *First Space Station Reform Report and Order*, 18 FCC Rcd 10760; *Second Space Station Reform Report and Order*, 18 FCC Rcd 12507; *Third Space Station Reform Report and Order*, 18 FCC Rcd 13486; and, *Fourth Space Station Reform Report and Order*, 19 FCC Rcd 7419.

<sup>31</sup> 15 FCC Rcd at 25145 ¶ 48.

## APPENDIX III

### Part 43, Section 43.51 – Contracts and concessions

#### Description

1. Section 211 of the Communications Act requires carriers to file with the Commission copies of all contracts, agreements, or arrangements with other carriers that relate to any traffic affected by the Communications Act.<sup>32</sup> Section 220 allows the Commission to prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers.<sup>33</sup>

2. Section 43.51 of the Commission's rules implements these sections by establishing rules regarding contracts and concessions entered into by carriers. First, section 43.51 requires that certain carriers file with the Commission copies of specified contracts, agreements and arrangements with other carriers. Second, section 43.51 sets forth the filing requirements associated with the Commission's International Settlements Policy (ISP), which is designed to ensure that U.S. telecommunications carriers pay nondiscriminatory rates for termination of international traffic in foreign countries that are not compliant with the Commission's Benchmarks Policy.

#### Purpose

3. The contract-filing requirement helps the Commission to identify potential instances of anti-competitive conduct, and to enforce its International Settlements Policy.

#### Analysis

##### Status of Competition

4. Competition in U.S.-international telecommunications services is generally increasing, and as a result, the average price of a U.S. international call is falling, and getting closer to the cost of providing service. On the destination side of a U.S. international call, many markets are becoming liberalized, with new entrants vying with incumbents to terminate U.S. traffic. The former national monopoly providers, however, continue to be substantial players in the market. In some instances carriers or regulators have sought to raise international telecommunications prices or prevent prices from declining, in order to support a variety of social goals other than encouraging competition or bringing prices more in line with costs.

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<sup>32</sup> 47 U.S.C. § 211. Section 211 also permits the Commission to require the filing of any other contracts.

<sup>33</sup> 47 U.S.C. § 220.

### Advantages

5. The contract filing requirement assists the Commission to identify and remedy potential instances of anti-competitive conduct.

### Disadvantages

6. The contract filing requirement may necessitate the filing of competitively sensitive information, although it may be filed confidentially.

### Recent Efforts

7. As part of the *International Detariffing Order*, the Commission amended section 43.51 to clarify that the contract filing requirements apply solely to: (1) carriers classified as dominant for reasons other than foreign affiliation; and (2) carriers, whether classified as dominant or non-dominant, contracting directly for services with foreign carriers that possess market power.<sup>34</sup> In the *2004 International Settlements Policy Reform Order*, the Commission modified the contract filing requirements with respect to non-ISP routes.<sup>35</sup>

### Comments

8. There were no comments filed on section 43.51.

### Recommendation

9. The Commission recently reviewed and amended the general contract filing requirements, and for the reasons set forth in the *International Detariffing Order*,<sup>36</sup> they are appropriate for the current state of competition in international services. The Commission recently reviewed and amended the contract filing requirements associated with the ISP, and for the reasons set forth in the *2004 International Settlements Policy Reform Order*,<sup>37</sup> they are appropriate for the current state of competition in international services. Accordingly, the staff concludes that the contract filing requirements in section 43.51 remain necessary in the public interest and recommends that repeal or modification is not warranted.

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<sup>34</sup> *2000 Biennial Regulatory Review: Policy and Rules Concerning the International, Interexchange Marketplace*, IB Docket No. 00-202, Report and Order, 16 FCC Rcd 10647 (2001) (*International Detariffing Order*).

<sup>35</sup> *2004 International Settlements Policy Reform, International Settlement Rates Order*, IB Docket 02-324, First Report and Order, 19 FCC Rcd 5709, ¶ 43 (2004) (*2004 ISP Reform Order*).

<sup>36</sup> *International Detariffing Order*, 16 FCC Rcd 10647.

<sup>37</sup> *2004 International Settlements Policy Reform Order*, 19 FCC Rcd 5709.

## APPENDIX IV

### Part 43, Sections 43.53, 43.61, 43.82 – Reports of Communications Common Carriers and Certain Affiliates

#### Description

1. Section 219 of the Communications Act authorizes the Commission to require all carriers that are subject to the Act to file annual reports with the Commission.<sup>38</sup> Section 220 allows the Commission to prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers.<sup>39</sup>

2. Part 43 prescribes general requirements and filing procedures for several reports that various carriers are required to file. These include reports on the division of international telegraph toll communication charges,<sup>40</sup> international telecommunications traffic,<sup>41</sup> and international circuit status reports.<sup>42</sup>

#### Purpose

3. The reports required by Part 43 assist the Commission in monitoring the industry to ensure that carriers comply with the Commission's rules, and in tracking market and other industry developments, which improves the Commission's ability to identify developing regulatory issues and analyze the effects of alternative policy choices. The reports also assist the public in monitoring trends in the international services market.

#### Analysis

##### Status of Competition

4. Competition in U.S.-international telecommunications services is generally increasing, and as a result, the average price of a U.S. international call is falling, and getting closer to the cost of providing service. On the destination side of a U.S. international call, many markets are becoming liberalized, with new entrants vying with incumbents to terminate U.S. traffic. The former national monopoly providers, however, continue to be substantial players in the market. In some instances carriers or regulators have sought to raise international telecommunications prices or prevent prices

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<sup>38</sup> 47 U.S.C. § 219.

<sup>39</sup> 47 U.S.C. § 220.

<sup>40</sup> 47 C.F.R. § 43.53.

<sup>41</sup> 47 C.F.R. § 43.61.

<sup>42</sup> 47 C.F.R. § 43.82.

from declining, in order to support a variety of social goals other than encouraging competition or bringing prices more in line with costs.

### **Advantages**

5. The reports required by Part 43 increase the Commission's ability to ensure compliance with its rules. They also provide the Commission, other government agencies, state regulators, industry, and the public with valuable information on market and other industry trends and developments. This information is helpful to the Commission in identifying developing regulatory issues, monitoring compliance with existing rules and policies, and evaluating the effects of policy choices.

### **Disadvantages**

6. Part 43 may require the filing of some information that is unnecessarily detailed or unnecessary in light of competitive developments. At the same time, the rules may not include the collection of information necessary to monitor effectively and safeguard the provision of international telecommunications facilities and services in the current market.

### **Recent Efforts**

7. In the *International 2000 Biennial Review Order*, the Commission found that it was no longer in the public interest to require Commercial Mobile Radio Service (CMRS) carriers providing resale of international switched services to file quarterly traffic and revenue reports for their service to markets where they are affiliated with a foreign carrier with market power that collects settlement payments from U.S. carriers.<sup>43</sup> The Commission consequently amended section 43.61 to exempt CMRS carriers from quarterly filing requirements in section 43.61(c).

8. In addition, the Commission eliminated an outdated regulation in section 43.81 that had required certain foreign-owned carriers to file with the Commission annual revenue and traffic reports for all common carrier telecommunication services they offer in the United States.<sup>44</sup>

9. In the *International Reporting Requirements NPRM*, the Commission initiated a comprehensive review of the reporting requirements to which carriers providing U.S. international services are subject under Part 43 of the Commission's rules.<sup>45</sup> Specifically, the Commission sought comment on whether to: retain the annual traffic status reporting requirements; eliminate the requirement that carriers report the

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<sup>43</sup> *International 2000 Biennial Review Order*, 17 FCC Rcd 11416.

<sup>44</sup> *Id.*

<sup>45</sup> 47 C.F.R. Part 43 (2003).

number of messages they carry during the year; eliminate the requirement to file traffic and revenue reports, and circuit-status reports for traffic between the continental United States and U.S. off-shore points or between off-shore U.S. points; establish a revenue threshold for a carrier to file annual traffic and revenue reports for pure resale services; establish a revenue threshold for which miscellaneous services a carrier must report; change the filing dates for the circuit-status, traffic and revenue reports; and, simplify and improve the reporting requirements as recommended by the staff of the International Bureau and the Wireline Competition Bureau. The Commission also sought comment on whether to retain the quarterly traffic and revenue reporting requirements placed on large carriers (section 43.61(b))<sup>46</sup> and on foreign-affiliated carriers (section 43.61(c)).<sup>47</sup> The Commission proposed to repeal section 43.53, which requires U.S. carriers to report their contracts with foreign carrier correspondents governing the division of international tolls for telegraph communications.

### Comments

10. There were no comments filed on sections 43.53, 43.61, and 43.82.

### Recommendation

11. The Commission concluded that in their current form the reporting requirements for international services contained in Part 43 may no longer be necessary in the public interest and accordingly has initiated a proceeding to modify those requirements.

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<sup>46</sup> 47 C.F.R. § 43.61(b).

<sup>47</sup> 47 C.F.R. § 43.61(c).



## APPENDIX V

### **Part 63 – Extension of Lines, New Lines, and Discontinuance, Reduction, Outage and Impairment of Service by Common Carriers; and Grants of Recognized Private Operating Agency Status**

#### **Description**

1. Section 214 of the Communications Act provides that no carrier shall undertake the construction of a new line or extension of any line, or shall acquire or operate any line, or extension thereof, without first having obtained a certificate from the Commission that the present or future public convenience and necessity requires the construction and/or operation of such extended line. Section 214 also provides that no carrier shall discontinue, reduce or impair service to a community without first having obtained a certificate from the Commission that neither the present nor future public convenience and necessity will be adversely affected by such action.<sup>48</sup> Part 63 of the Commission's rules sets forth standards and specific information that must be included in a section 214 application for market entry or exit by a common carrier.<sup>49</sup>

#### **Purpose**

2. A section 214 application is a request for authority to provide or to discontinue services pursuant to section 214 of the Communications Act. Part 63 sets out the requirements for a section 214 authorization to provide or discontinue service. A carrier must receive a section 214 authorization prior to initiating or discontinuing U.S.-international service.

3. The primary purpose in adopting entry criteria under section 214 is to provide Commission oversight of U.S.-international communications and permit the Commission to develop policies and enforce its rules in order to protect U.S. consumers and competition. The requirement that all carriers obtain authorization pursuant to section 214 to provide international services enables the Commission to assure satisfaction of basic qualifications of applicants and compliance with rules and policies designed to preserve competition on U.S.-international routes. Importantly, the application process includes consultation with Executive Branch agencies regarding national security, law enforcement, foreign policy and trade concerns unique to the provision of international services to and from the United States. The process allows the Commission to place conditions on the authorizations, impose reporting requirements, monitor foreign affiliations and competition conditions, and otherwise assure compliance with Commission rules and policies and Executive Branch requirements. Finally, the section 214 authorization process itself serves to inform carriers of obligations imposed upon all providers of international service.

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<sup>48</sup> 47 U.S.C. § 214(a).

<sup>49</sup> 47 C.F.R. Part 63.

4. Part 63 also contains procedures for a party to be designated as a Recognized Private Operating Agency.<sup>50</sup>

## Analysis

### Status of Competition

5. Competition in U.S.-international telecommunications services is generally increasing, and as a result, the average price of a U.S. international call is falling, and getting closer to the cost of providing service. On the destination side of a U.S. international call, many markets are becoming liberalized, with new entrants vying with incumbents to terminate U.S. traffic. The former national monopoly providers, however, continue to be substantial players in the market. In some instances carriers or regulators have sought to raise international telecommunications prices or prevent prices from declining, in order to support a variety of social goals other than encouraging competition or bringing prices more in line with costs.

### Advantages

6. The Commission's rules are designed to preserve competition on U.S.-international routes. Part 63 provides carriers and the public with procedures to be followed to obtain authorization to construct facilities, provide service, and discontinue service. The rules clarify what information must be filed with the Commission, how long action on the application typically will take, the types of services that can be provided over the facilities, and in what circumstances a carrier may discontinue service.

### Disadvantages

7. The rules place administrative burdens on the carriers and the Commission. Some of the rules are duplicative or unclear.

## Recent Efforts

8. The Commission has taken several steps to streamline its international 214 application process. In 1996, the Commission created an expedited process for global, facilities-based section 214 applications.<sup>51</sup> The Commission permitted applicants to apply for section 214 authorizations on a global or limited basis, reduced paperwork

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<sup>50</sup> 47 C.F.R. §§ 63.701, 63.702.

<sup>51</sup> See *Streamlining the International Section 214 Authorization Process and Tariff Requirements*, Report and Order, 11 FCC Rcd 12884 (1996). The Commission initiated the international Section 214 streamlining process in 1985. See *International Competitive Carrier Policies*, Report and Order, 102 FCC 2d 812 (1985); *recon. denied*, 60 RR2d 1435 (1986); *modified*, *Regulation of International Common Carrier Services*, Report and Order, 7 FCC Rcd 7331 (1992).

obligations, streamlined tariff requirements for non-dominant international carriers, and ensured that essential information is readily available to all carriers and users. The new regulations facilitate entry into the U.S.-international telecommunications market and the expansion of international services to the benefit of U.S. consumers and competition.

9. In the *1999 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.<sup>52</sup> The Commission streamlined its procedures for granting international section 214 authorizations to provide international services, and increased the categories of applications eligible for streamlined processing. After adoption of the rules, the vast majority of international section 214 applicants qualify for streamlined processing, and carriers can then provide service starting on the 15<sup>th</sup> day after public notice. Carriers already providing service can complete *pro forma* transfers of control and assignments of their authorizations without prior Commission approval. Carriers also can provide service through their wholly-owned subsidiaries without separate Commission approval. Carriers under common control with an already-authorized carrier are generally eligible for streamlined processing. Authorized carriers are able to use any authorized U.S.-licensed or non-U.S.-licensed undersea cable systems to provide their authorized services.

10. In the *2000 International Biennial Review Order*, the Commission took steps to remove further unnecessary burdens on international carriers.<sup>53</sup> The Commission revised the rules for *pro forma* transfers and assignments of international section 214 authorizations to give carriers greater flexibility in structuring transactions. These changes also assist carriers by making the rules more consistent with those procedures used for other service authorizations, particularly for the Commercial Mobile Radio Service (CMRS). 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 U.S.-international facilities-based switched services for facilities-based U.S. carriers affiliated with dominant foreign carriers.

11. In the *Parts 1 and 63 NPRM*, the Commission requested comment on several potential changes to the international section 214 authorization process<sup>54</sup> and the rules relating to the provision of U.S.-international telecommunications services.<sup>55</sup>

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

<sup>53</sup> *2000 Biennial Regulatory Review: Amendment of Parts 43 and 63 of 's Rules*, IB Docket No. 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*, 357 F.3d 88 (D.C. Cir. 2004).

<sup>54</sup> 47 U.S.C. § 214.

<sup>55</sup> 47 C.F.R. Part 63.

Specifically, the Commission sought comment on whether to amend the procedures for discontinuing an international service to be more consistent with the procedures for discontinuing a domestic service. The Commission also sought comment on ways to lessen the burdens placed on Commercial Mobile Radio Service (CMRS) carriers by the international section 214 application process. In particular, the Commission sought 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. Finally, the Commission sought comment on whether to amend the rules to allow commonly-controlled subsidiaries to use their parent's section 214 authorization to provide international service.

### **Comments**

12. There were no comments filed on the Part 63 rules.

### **Recommendation**

13. The Commission has concluded that, in their current form, certain sections within Part 63 may no longer be necessary in the public interest and accordingly adopted the *Parts 1 and 63* NPRM to consider modification of those rules.

14. In addition, we recommend that the Commission initiate a proceeding to reorganize, clarify and simplify Part 63. The Commission has addressed specific sections and subsections of Part 63 in recent years, but has not undertaken a comprehensive review of Part 63. We recommend that the Commission undertake such comprehensive review that will take into consideration interplay between the various sections of Part 63. Such a review would also provide an opportunity to rewrite the rules to simplify them and make them more readable.

## APPENDIX VII

### Part 64, Subpart J – International Settlements Policy and Modification Requests

#### Description

1. Subpart J sets forth the Commission's International Settlements Policy (ISP), which is designed to ensure that U.S. telecommunications carriers pay nondiscriminatory rates for termination of international traffic in foreign countries that are not benchmark-compliant. Subpart J also sets forth the information that must be contained in a request to modify an international settlement arrangement and the procedures that govern Commission consideration of such requests.<sup>56</sup> These requirements are based on the Commission's authority pursuant to sections 1, 201, 202, 203, and 309 of the Communications Act.<sup>57</sup>

#### Purpose

2. The International Settlements Policy is designed to protect U.S. international carriers and the customers they serve from the potential exercise of market power by dominant foreign carriers to set unilaterally the prices, terms and conditions under which U.S. carriers are able to exchange international traffic.<sup>58</sup> The requirement for filing accounting rate modification requests set out in Subpart J is intended to prevent harm to U.S. consumers resulting from the exercise of market power by foreign carriers. In particular, it assists the Commission in ensuring compliance with the ISP and the Commission's benchmarks and international simple resale policies.<sup>59</sup>

#### Analysis

##### Status of Competition

3. Competition in U.S.-international telecommunications services is generally increasing, and as a result, prices paid for international communications services are generally falling and getting somewhat closer to the costs of providing various services. Many markets are changing from one consisting of a small number of

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<sup>56</sup> 47 C.F.R. § 64.1001.

<sup>57</sup> 47 U.S.C. §§ 151, 201, 202, 203 and 309.

<sup>58</sup> See *1998 Biennial Regulatory Review: Reform of the International Settlements Policy and Associated Filing Requirements*, IB Docket No. 98-148, Report and Order and Order on Reconsideration, 14 FCC Rcd 7963, 7974 ¶ 31 (1999).

<sup>59</sup> The Commission has established benchmarks that govern the international settlement rates that 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), *aff'd sub nom. Cable and Wireless P.L.C. v. FCC*, 166 F.3d 1224 (D.C. Cir. 1999), Report and Order on Reconsideration and Order Lifting Stay, 14 FCC Rcd 9256 (1999).

national telecommunications providers on the foreign-end of the U.S.-international services to one having a larger number of competitors. The former national monopoly providers, however, continue to be substantial players in the market. In some instances, carriers or regulators have sought to raise international telecommunications prices or prevent prices from declining, in order to support a variety of social goals other than encouraging competition or bringing prices more in line with costs.

### Advantages

4. Subpart J is designed to prevent the exercise of market power by foreign carriers, and to facilitate the negotiation of lower accounting rates by U.S. international carriers to the benefit of American consumers.

### Disadvantages

5. The ISP and its accounting rate policies may not adequately protect U.S. carriers and their customers from increasingly high foreign mobile termination rates.

### Recent Efforts

6. In the *1999 ISP Reform Order*, the Commission made several changes to the ISP, deregulating inter-carrier settlement arrangements between U.S. carriers and foreign non-dominant carriers on competitive routes.<sup>60</sup> The Commission, among other things, eliminated the ISP and contract filing requirements for arrangements with foreign carriers that lack market power, and eliminated the ISP for arrangements with foreign carriers possessing market power on routes where at least 50 percent of the U.S.-billed traffic on the route is being settled at rates at least 25 percent lower than the relevant settlement rate benchmark. The Commission also adopted procedural changes to simplify the accounting rate filing requirements, including the elimination of the requirement that carriers making accounting rate filings with the Commission and serve every carrier that provides service on the U.S.-international route with a copy of the filing. Instead, the Commission encouraged carriers to make their accounting rate filings electronically over the International Bureau Electronic Filing System.<sup>61</sup>

7. In the *2004 International Settlements Policy Reform Order*, the Commission concluded that the public interest is served by reforming the Commission's longstanding ISP policy.<sup>62</sup> The Commission found that increasing competition on many

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<sup>60</sup> *1998 Biennial Regulatory Review: Reform of the International Settlements Policy and Associated Filing Requirements*, IB Docket No. 98-148, Report and Order and Order on Reconsideration, 14 FCC Rcd 7963 (1999) (*1999 ISP Reform Order*).

<sup>61</sup> See *FCC Announces Elimination of Existing Service Requirement in 64.1001(k)*, Public Notice, DA 99-1558 (rel. Aug. 6, 1999).

<sup>62</sup> *International Settlements Policy Reform, International Settlement Rates Order*, IB Docket 02-324, First Report and Order, 19 FCC Rcd at 5709 ¶ 43 (2004) (*2004 ISP Reform Order*).

U.S.-international routes, accompanied by lower settlement rates and calling prices for U.S. customers, permitted it to adopt a more limited application of the ISP. It removed the ISP from all routes on which the carriers had negotiated benchmark-compliant rates. Lifting the ISP on those routes allows U.S. carriers greater flexibility to negotiate arrangements with foreign carriers. The Commission determined that this approach would encourage market-based arrangements between U.S. and foreign carriers that would further long-standing policy goals of greater competition in the U.S.-international market and more cost-based rates for U.S. consumers. The Commission also modified current contract filing requirements with respect to non-ISP routes. Furthermore, in view of the removal of the ISP from benchmark-compliant routes, the Commission eliminated its ISR policy<sup>63</sup> and associated filing requirements. The Commission also adopted certain regulatory safeguards to protect U.S. customers from anticompetitive conduct should it occur in the future. The Commission retained current benchmarks policy subject to further evaluation as to whether future modifications are warranted. Finally, the Commission amended its rules to reflect and implement the actions taken in this proceeding.

### Comments

8. There were no comments filed on the Part 64 subpart J rules

### Recommendation

9. The Commission recently reviewed and mended the international settlements policy, and for the reasons set forth in the *2004 International Settlements Policy Reform Order*,<sup>64</sup> it is appropriate for the current state of competition in international services. The Commission has also initiated an inquiry to determine whether foreign mobile termination rates impact U.S. consumers and competition in the U.S. international telecommunications services market.<sup>65</sup> Accordingly, the staff concludes that the Part 64, Subpart J rules remain in the public interest and recommends that repeal or modification is not warranted.

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<sup>63</sup> International Simple Resale (ISR) involves the provision of switched services over resold or facilities-based private lines that connect to the public switched network at either end-point. ISR policy seeks to prevent potential harm to U.S. consumers and competition by promoting more cost-based settlement rates on U.S.-international routes. Instead of U.S. carriers paying for the use of half of a shared circuit to a foreign point through traditional settlement payments, U.S. carriers under ISR arrangements may connect or lease a complete or whole circuit end-to-end to the corresponding foreign carrier's network and pay a negotiated rate for termination of services on the foreign network that does not comply with the strict requirements of the ISP.

<sup>64</sup> *2004 International Settlements Policy Reform Order*, 19 FCC Rcd 5709.

<sup>65</sup> *Effect of Foreign Mobile Termination Rates on U.S. Customers*, IB Docket No. 04-398, Notice of Inquiry, 19 FCC Rcd 21395 (2004).