

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DA 96-1561

In the matter of)
)
VIATEL, INC.)
)
Application for authority to) File No. I-T-C-96-423
acquire and operate facilities)
for service to the United Kingdom.)

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: September 13, 1996

Released: September 20, 1996

By the Chief, Telecommunications Division:

1. On July 26, 1996, Viatel, Inc. (Viatel) filed the above-captioned application requesting authority, pursuant to Section 214 of the Communications Act of 1934, as amended, to provide facilities-based switched and private line services between the United States and the United Kingdom. The application was placed on public notice on August 2, 1996. No comments were received.

2. Viatel, a Delaware corporation, is authorized to provide resale services between the United States and the United Kingdom. It now seeks authority to provide facilities-based services. Viatel states that it is affiliated with Viatel U.K. Ltd., a foreign carrier as defined in Section 63.18(h)(1)(ii) of the Commission's Rules. Viatel further states that Viatel U.K. Ltd. is a non-dominant resale carrier and thus has no market power in the United Kingdom.

3. Since Viatel is affiliated with a foreign carrier under the Commission's rules, the Commission must determine whether or not to conduct an effective competitive opportunities analysis of the United Kingdom international services market.¹ The Commission stated in the Foreign Carrier Entry Order that it would apply this analysis only to applications from foreign carriers that have market power, or to U.S. carriers that are affiliated with such carriers, in the destination markets they seek to serve. If the affiliation is with a non-dominant foreign carrier, the Commission would not apply an effective competitive opportunities analysis to the application. Because Viatel U.K. Ltd. is a resale carrier with no control of bottleneck facilities, we find that it is a non-dominant carrier and therefore we do not need to conduct an analysis of the United

¹ Market Entry and Regulation of Foreign-affiliated Entities Report and Order (Foreign Carrier Entry Order, 11 FCC Rcd 3873 (1995)).

Kingdom market.

4. Upon consideration of the application and in view of the foregoing, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of facilities-based services between the United States and the United Kingdom by Viatel.

5. Accordingly, it is ordered that application File No. I-T-C-96-423 IS GRANTED, and Viatel is authorized to:

- a. acquire on an Indefeasible Right of User basis a one-half interest in and operate one circuit in the CANUS-1 and CANTAT-III Cable Systems, between the United States and Canada, and between Canada and the United Kingdom;
- b. lease and operate any necessary connecting facilities in the United States;
- c. lease a one-half interest in and operate any necessary overseas connecting facilities; and
- d. use said facilities to provide regularly authorized services, including switched voice and data and private line services, between the United States and the United Kingdom.

5. IT IS FURTHER ORDERED that our authorization of Viatel to provide private line service between the United States and the United Kingdom as part of its authorized services is limited to the provision of service between the United States and the United Kingdom -- that is, non-interconnected private lines or private lines which carry switched traffic that originates in the United States and that terminates in the United Kingdom or that originates in the United Kingdom and that terminates in the United States. However, the applicant may engage in "switched hubbing" consistent with the rules adopted in the Foreign Carrier Entry Order, 11 FCC Rcd 3873, paras. 169-170. See also Cable & Wireless, et al., 11 FCC Rcd 1766 (1996), para. 36.

6. IT IS FURTHER ORDERED that grant of this application is conditioned upon the United Kingdom continuing to afford resale opportunities equivalent to those available under U.S. law.

7. IT IS FURTHER ORDERED that the applicant shall file copies of any operating agreements it enters into with its foreign correspondents with the Commission within 30 days of their execution, and shall otherwise comply with the filing requirements contained in Section 43.51 of the Commission's Rules, 47 C.F.R. §43.51.

8. IT IS FURTHER ORDERED that the applicant shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. §203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the service authorized in this Order.

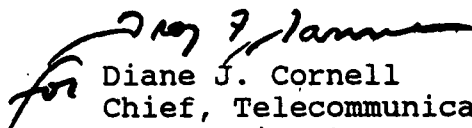
9. IT IS FURTHER ORDERED that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61.

10. IT IS FURTHER ORDERED that the applicant shall file annual circuit status reports in accordance with the requirements set forth in Rules for Filing of International Circuit Status Reports, CC Docket No. 93-157, Report and Order, 10 FCC Rcd 8605 (1995).

11. IT IS FURTHER ORDERED that this authorization is issued subject to the terms and conditions of any license for the CANUS-1 cable system issued herein under the Act entitled "An Act relating to the landing and operation of submarine cables in the United States," 47 U.S.C. §§ 34-39.

12. This order is issued under Section 0.261 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION


for Diane J. Cornell

Chief, Telecommunications Division
International Bureau