

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

DA 96-1567

In the Matter of	)	
	)	
FaxSav Incorporated	)	
	)	
Application for authority to	)	File No. I-T-C-95-441
resell private lines for the	)	
provision of private line	)	
and switched services between	)	
the United States and the	)	
United Kingdom.	)	

**ORDER, AUTHORIZATION AND CERTIFICATE**

Adopted: September 17, 1996

Released: September 20, 1996

By the Chief, Telecommunications Division:

**INTRODUCTION**

1. FaxSav Incorporated (FaxSav) seeks authority pursuant to Section 214 of the Communications Act of 1934, as amended,<sup>1</sup> to resell international private lines for the provision of switched and private line services between the United States and the United Kingdom. We find the public interest would be served by granting FaxSav's application.

**APPLICATION AND PLEADINGS**

2. FaxSav filed its application on July 17, 1995 under its former name, Digitran Corporation.<sup>2</sup> The application as initially filed disclosed that Telstra Incorporated ("Telstra Inc."), a Delaware corporation, owned 28.05 percent of the issued and outstanding shares of the applicant. Telstra Inc. is an indirect, wholly owned subsidiary of Telstra Corporation Limited ("Telstra"), which is 100 percent owned by the Commonwealth of Australia and provides local and long distance service in Australia. The applicant also reported an affiliation with Telstra (UK) Limited, a company authorized by the United Kingdom to provide international service on a resale basis. AT&T filed a petition to deny, FaxSav opposed that petition, and AT&T replied.

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<sup>1</sup> 47 U.S.C. § 214.

<sup>2</sup> See Application File No. I-T-C-95-441; Letter from John A. Ligon, Counsel for FaxSav, to William F. Caton, Acting Secretary, FCC, dated June 1, 1996 (amending application to change applicant's name from Digitran Corporation to FaxSav Incorporated and to reflect reduction in applicant's ownership by Telstra Incorporated). We placed the amendment on Public Notice on June 7, 1996, Report No. TEL-19-A. No comments were received.

3. Subsequently, the Commission adopted rules that govern the entry of foreign carriers into the U.S. market for international telecommunications services.<sup>3</sup> The applicant made a supplemental filing after issuance of the *Foreign Carrier Entry Order* to provide further information about its foreign carrier affiliations, as that term is defined under the new rules.<sup>4</sup> Then, on June 1, 1996, the applicant amended its application.<sup>5</sup> It reported that, on March 18, 1996, Digitran (now known as FaxSav) repurchased 50 percent of the Telstra share holdings in the company. According to FaxSav, with this repurchase of Telstra shares and other contemporaneous investment changes, Telstra's investment in the applicant now represents 11.85 percent of the issued and outstanding shares of the company. Telstra, through its investment in the applicant, is entitled to designate one of the six members of FaxSav's Board of Directors. FaxSav states that "Telstra is now unquestionably not a foreign affiliat[e] of [FaxSav] under the Commission's rules." The applicant also certifies that it now has no affiliation with any foreign carrier because all affiliations it previously reported derived from Telstra's affiliation with the company.

4. AT&T did not file comments in response to the amendment. In its petition to deny, however, AT&T argued that we should deny the application because Telstra controls bottleneck facilities in Australia and that country does not offer U.S. carriers effective access to the Australian international services market. AT&T also argued that we should deny the application because grant would vitiate the Commission's ongoing review of whether Australia offers U.S.-based carriers equivalent opportunities to resell international private lines for the provision of switched service.<sup>6</sup> AT&T expressed concern that, because the United Kingdom has approved "international simple resale"<sup>7</sup> between the United Kingdom and Australia, the applicant would carry U.S.-inbound traffic from Australia entirely over international private lines through the United Kingdom, effectively circumventing our equivalency policy. AT&T therefore argued that we should withhold issuing the requested authorization until equivalent resale opportunities exist in Australia.

5. FaxSav argued in its opposition that the Australian market is not relevant, because its application requests authority to provide switched service between the United States and the United Kingdom via resold international private lines extending between these countries.<sup>8</sup> The relevant public interest consideration, according to FaxSav, is whether the United Kingdom affords equivalent resale opportunities, a finding that AT&T did not

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<sup>3</sup> *Market Entry and Regulation of Foreign-affiliated Entities*, Report and Order, IB Docket 95-22, 11 FCC Rcd 3873 (1995) (*Foreign Carrier Entry Order*).

<sup>4</sup> See Letter from John A. Ligon, Counsel for FaxSav, to William F. Caton, Acting Secretary, FCC, dated March 1, 1996 (reporting that affiliations also include Telstra (New Zealand) Ltd., an international service provider in New Zealand).

<sup>5</sup> See *supra* note 2.

<sup>6</sup> Carriers seeking to provide switched services over resold international private lines must demonstrate that the country at the foreign end of the private line offers "equivalent" resale opportunities. See *Foreign Carrier Entry Order* at ¶¶ 133-38.

<sup>7</sup> "International simple resale" is the United Kingdom's term for the resale of international private lines interconnected to the public switched network at both ends, as opposed to one end only. See *ACC Global Corporation and Alanna Inc.*, 9 FCC Rcd 6240, 6248-49 at ¶ 14 (1994).

<sup>8</sup> FaxSav Opposition at 6-7.

challenge.<sup>9</sup>

## DISCUSSION

6. The *Foreign Carrier Entry Order* sets out an express standard for evaluating applications of foreign carriers seeking to provide telecommunications services in the United States. It establishes an "effective competitive opportunities" ("ECO") test as an important element in the Commission's public interest analysis of Section 214 applications filed by foreign carriers or their U.S. affiliates (collectively referred to here as "foreign carriers") to provide international common carrier services to a destination country in which the foreign carrier has market power. The Commission considers to be "foreign-affiliated" those U.S. carriers with a greater than 25 percent ownership interest, or a controlling interest at any level, held directly or indirectly by a foreign carrier, as well as those U.S. carriers with direct or indirect interests of more than 25 percent in, or control of, a foreign carrier.<sup>10</sup> The Commission stated in the *Foreign Carrier Entry Order* that it would also subject a foreign carrier investment to the effective competitive opportunities test where it presents a "significant potential impact on competition in the U.S. market for international telecommunications services -- even if this investment does not rise to a level greater than 25 percent."<sup>11</sup>

7. We do not find any basis in this record for considering FaxSav an affiliate of Telstra. Telstra has reduced its interest in the applicant to just over 10 percent. Telstra also recently requested wide-ranging authority to operate in its own right as a resale carrier in the United States.<sup>12</sup> The instant application, moreover, requests authority to serve the United Kingdom, not the destination country where Telstra operates as a local and long distance carrier. The Commission's effective competitive opportunities test applies only to foreign carrier applications that seek authority to serve the particular destination country where the foreign carrier operates (and where it has market power). We therefore deny AT&T's petition to deny the FaxSav application. AT&T's argument that Australia does not offer U.S. carriers effective access to that country's international services market is not relevant to the FaxSav application under the framework set forth in the *Foreign Carrier Entry Order*.

8. Under the *Foreign Carrier Entry Order*, all applicants seeking to resell international private lines for the provision of switched services are required to demonstrate

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<sup>9</sup> Id. at 3.

<sup>10</sup> See *Foreign Carrier Entry Order* at ¶¶ 73-92; see also 47 C.F.R. § 63.18(h)(1)(i).

<sup>11</sup> Id. at ¶ 89. See also ¶ 92 (aggregation of multiple foreign carrier interests).

<sup>12</sup> See Telstra Inc., FCC File Nos. ITC-96-319 (application to resell IMTS and private line service for the provision of switched and private line service between the United States and Australia); ITC-96-320 (application to resell private line service for the provision of switched service between the United States and the United Kingdom, Canada, Sweden and certain other international points); ITC-96-321 (application to resell IMTS and non-interconnected private line service between the United States and various international points).

that the destination country (i.e., the country at the foreign end of the private line) affords U.S. carriers resale opportunities equivalent to those available under U.S. law.<sup>13</sup> Similar to the ECO test, the equivalency test considers whether U.S. carriers have effective opportunities to resell international private lines, interconnected to the public switched network at both ends, for the provision of switched services in the destination country.<sup>14</sup> In contrast to the ECO test, the equivalency test applies to all applications for resale of interconnected private lines, regardless of whether the applicant is a foreign carrier with market power in the destination country.

9. FaxSav seeks in the instant application authority to resell private lines between the United States and the United Kingdom for the provision of switched and private line services. The Commission has already found that the United Kingdom offers equivalent resale opportunities.<sup>15</sup> Therefore, no further showing is required regarding the state of the U.K. market for the purpose of FaxSav's request to provide switched services via resold private lines. FaxSav also is not required to demonstrate the existence of ECO for the resale of non-interconnected private lines. FaxSav is not affiliated with any carrier in the United Kingdom. We also note that the Executive Branch raised no public interest concerns with respect to grant of the FaxSav application. We find that grant of this authorization will promote the public interest by increasing competition on the U.S.-U.K. route, putting pressure on collection rates and accounting rates.

10. We reject AT&T's argument that we should not authorize FaxSav to resell interconnected private lines because the danger exists that Telstra will bypass its own accounting rates with U.S. carriers by routing U.S.-inbound switched traffic originating in Australia over private lines extending through the United Kingdom. AT&T made this argument in the context of this application as initially filed, when Telstra held a greater than 25 percent ownership interest in the applicant. Given Telstra's reduced interest in the FaxSav application, we find no substantial risk of the unlawful behavior feared by AT&T. This order, moreover, expressly prohibits FaxSav from using its authorized resold private line circuits to carry switched traffic to or from any country other than the United Kingdom with the two exceptions described in paragraph 12 *infra*.

11. Our rules also provide for Commission oversight of the routing of U.S. traffic via resold international private lines. Non-dominant private line resellers such as FaxSav are required to file annual reports of their circuit additions.<sup>16</sup> They also must report semi-

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<sup>13</sup> See *Foreign Carrier Entry Order* at ¶ 133 (citing *International Resale Order*, 7 FCC Rcd at 562).

<sup>14</sup> Because the equivalency test is so similar to the ECO test, the *Foreign Carrier Entry Order* restated the equivalency test in the same manner as the ECO test. This restatement, however, does not represent a substantive change in the equivalency standard. The Commission restated the equivalency test in the same manner as the ECO test to reduce uncertainty and confusion over the two standards. See *Foreign Carrier Entry Order* at ¶¶ 136-38.

<sup>15</sup> See *ACC Global Corp. and Alanna Inc.*, *supra* note 7.

<sup>16</sup> See *Rules for Filing International Circuit Status Reports*, CC Docket No. 93-157, Report and Order, 10 FCC Rcd 8605 (1995); 47 C.F.R. § 63.15(b).

annually the switched traffic they carry over private lines for the first three years following an equivalency determination.<sup>17</sup> This report must contain the same information required in the annual Section 43.61 traffic report. The current traffic manual specifically requires that carriers engaged in "facilities resale," *i.e.*, private line resellers, report U.S. outbound and inbound traffic originating or terminating over resold U.S. private lines. Private line resellers are required to report their outbound and inbound traffic according to the ultimate point of termination or origination. While these circuit addition and traffic reports may not detect subtle shifts in either traffic patterns or unauthorized bypass of the settlements process, we reiterate that carriers which violate conditions of their Section 214 authorizations risk substantial forfeitures and revocation of their Section 214 authorizations.

12. There are two exceptions to the general prohibition against FaxSav using its authorized resold U.S.-U.K. private line half-circuits to carry switched traffic to or from any country other than the United Kingdom. FaxSav is permitted to: (1) engage in "switched hubbing" consistent with the rules adopted in the *Foreign Carrier Entry Order*;<sup>18</sup> and (2) provide U.S. inbound or outbound switched service via authorized private lines extending between the United States, the United Kingdom and Sweden.<sup>19</sup>

13. 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 switched and private line services via resale of private lines between the United States and the United Kingdom by FaxSav Incorporated.

14. Accordingly, IT IS ORDERED that application File No. I-T-C-95-441 IS GRANTED, and FaxSav Incorporated is authorized to resell private lines between the United States and the United Kingdom for the provision of switched and private line services.

15. IT IS FURTHER ORDERED that our authorization of FaxSav to resell private lines between the United States and the United Kingdom for the provision of switched and private line service is limited to the provision of service between the United States and the United Kingdom -- that is, private lines that carry switched or private line traffic which originates in the United States and terminates in the United Kingdom or vice-versa. This restriction is subject to the following exceptions: (a) FaxSav may engage in "switched hubbing" through the United Kingdom consistent with the rules adopted in the *Foreign*

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<sup>17</sup> See, e.g., *ACC Global Corp. and Alanna Inc.*, 9 FCC Rcd at ¶ 51 (requiring semi-annual traffic reports on the U.S.-U.K. route through December 1997). After that date, the carriers need only file traffic reports on an annual basis pursuant to 47 C.F.R. § 43.61. *Id.*

<sup>18</sup> See *Foreign Carrier Entry Order* at ¶¶ 169-70. See also 47 C.F.R. § 63.17(b).

<sup>19</sup> *Cable & Wireless, Inc. et al.*, 11 FCC Rcd 1766, 1772 at ¶ 36 (1996). Digitran has not requested specific authority to resell interconnected private lines to Sweden. We recently amended our rules, however, to automatically expand the Section 214 authority of carriers authorized to resell interconnected private lines to include all countries at the time they are designated equivalent. This rule is subject to one exception: if the carrier is affiliated with a facilities-based foreign carrier in the equivalent country, we must have already made a determination that the affiliated foreign carrier does not possess market power in that country before the carrier can resell interconnected private lines to its affiliated, equivalent country. See *Streamlining the International Section 214 Authorization Process and Tariff Requirements*, IB Docket No. 95-118, Report and Order, FCC 96-79 (March 13, 1996), at ¶¶ 31-35. Because FaxSav has no affiliation with a foreign carrier in Sweden or Canada, it qualifies for an automatic expansion of its Section 214 authority to resell interconnected private lines to include private lines between the United States and these equivalent countries.


*Carrier Entry Order*, 11 FCC Rcd at 3938-39; and (b) FaxSav may provide U.S.-inbound or -outbound switched basic service by connecting authorized private lines between the United States, the United Kingdom and Sweden.

16. IT IS FURTHER ORDERED that FaxSav shall comply with Sections 63.21 and 63.15(b) of the Commission's Rules, 47 C.F.R. §§ 63.21 & 63.15(b).

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

18. 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