

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

In the Matter of )  
)  
Streamlining the International ) IB Docket No. 95-118  
Section 214 Authorization Process )  
and Tariff Requirements -- )  
Exclusion List )

ORDER ON RECONSIDERATION

Adopted: October 22, 1996

Released: October 24, 1996

By the Chief, Telecommunications Division:

I. INTRODUCTION

1. Pursuant to Section 1.113 of the Commission's rules,<sup>1</sup> we hereby modify the Order adopting the exclusion list identifying restrictions on providing service using particular facilities or to particular countries for those carriers receiving a global international Section 214 authorization. Specifically, we omit the CANUS-1 Cable System (CANUS-1) from the exclusion list. The modified exclusion list is attached to this order as Appendix A.

II. BACKGROUND

2. The International Bureau (Bureau) adopted the exclusion list as required by the Commission's *Streamlining Order*<sup>2</sup> on July 26, 1996.<sup>3</sup> The *Streamlining Order* adopted, *inter alia*, procedures for issuing global, rather than country- and facility-specific, Section 214 authorizations to qualified applicants. As part of the new procedures, the Commission required the Bureau to establish and maintain an exclusion list identifying restrictions on

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<sup>1</sup> 47 C.F.R. § 1.113.

<sup>2</sup> *Streamlining the International Section 214 Authorization Process and Tariff Requirements, Report and Order*, IB Docket No. 95-118, FCC 96-79 (rel. March 13, 1996) (*Streamlining Order*).

<sup>3</sup> *Streamlining the International Section 214 Authorization Process and Tariff Requirements -- Exclusion List, Order*, IB Docket No. 95-118, DA 96-1205 (rel. July 29, 1996), 61 FR 50023 (Sept. 24, 1996) (*Exclusion List Order*).

providing service using particular facilities or to particular countries for those carriers receiving a global Section 214 authorization. On June 20, 1996, the Bureau released a *Public Notice* seeking comment on a draft exclusion list for global Section 214 authorizations.<sup>4</sup>

3. Two parties, OPTEL Communications, Inc. (OPTEL) and Teleglobe USA Inc. (TGUSA), opposed the placement of the CANUS-1 cable on the exclusion list.<sup>5</sup> OPTEL is the U.S. licensee for CANUS-1.<sup>6</sup> TGUSA's parent company, Teleglobe Inc., owns a 20 percent share of OPTEL. Both OPTEL and TGUSA argued that there are no "imperative circumstances," as that term is used in the *Streamlining Order*,<sup>7</sup> warranting the placement of CANUS-1 on the exclusion list. More specifically, OPTEL argued that conditions in OPTEL's landing license already give the Commission sufficient control over the use of CANUS-1. For example, OPTEL observed that the Commission had previously reserved the right to take corrective measures against harmful diversion of U.S.-Europe traffic through Canada through the Section 214 authorization process.<sup>8</sup> It stated, however, that it was premature to place CANUS-1 on the exclusion list before there was any evidence of traffic diversion that is harmful to U.S. carriers or ratepayers. OPTEL stated that the Commission can always amend the exclusion list at such time as it feels it is warranted. OPTEL also argued that the Commission is able to exercise control over Teleglobe's use of CANUS-1 without placing the facility on the exclusion list. Condition No. 6 of OPTEL's license requires Teleglobe to obtain authorization from the Commission before it can acquire capacity on CANUS-1.<sup>9</sup> OPTEL was concerned that placing CANUS-1 on the exclusion list would be detrimental to the success of CANUS-1 and would burden U.S. carriers desiring to use the cable.

4. TGUSA argued that inclusion of CANUS-1 in the exclusion list could result in the filing of frivolous oppositions, administrative delay and litigation costs for applicants. TGUSA, like OPTEL, contended that there were already adequate procedural mechanisms in place to regulate the use of CANUS-1, including the conditions of the cable landing license and the collection of annual circuit reports.<sup>10</sup> TGUSA further argued that, by removing

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<sup>4</sup> Commission Seeks Comment on the Attached Exclusion List for Global Section 214 Authorizations, *Public Notice*, Rep. No. I-8183, DA 96-988 (rel. June 20, 1996) (*Public Notice*).

<sup>5</sup> See Comments of OPTEL and Teleglobe.

<sup>6</sup> See *Optel Communications, Inc.*, S-C-L-92-004, 8 FCC Rcd 2267 (1993); 9 FCC Rcd 6153 (1994); *recon. denied*, FCC 95-485 (rel. Jan. 11, 1996) (*Order on Reconsideration*).

<sup>7</sup> See *Streamlining Order* at ¶ 18.

<sup>8</sup> OPTEL Comments at 3-5 (citing *Order on Reconsideration* at ¶ 21).

<sup>9</sup> *Id.* at 5-6.

<sup>10</sup> TGUSA Comments at 5-6.

regulatory impediments to using CANUS-1 (in conjunction with Canada's CANTAT-3 cable), U.S. carriers would be in a stronger position to negotiate improved access to U.S. common carrier cables.<sup>11</sup>

### III. DISCUSSION

5. In the *Exclusion List Order*, the Bureau recognized the concerns of OPTEL and TGUSA that including CANUS-1 on the exclusion list could place the cable system at a competitive disadvantage and impose undue costs on carriers and the Commission.<sup>12</sup> The Bureau was concerned, however, that removal of the cable from the exclusion list would be inconsistent with certain conditions of the U.S. Department of State's support for grant of the CANUS-1 cable landing license. Specifically, the State Department requested the Commission to notify it of all Section 214 applications filed by common carriers, including Teleglobe, seeking to acquire or use capacity on CANUS-1.<sup>13</sup> The Bureau noted that, due to the general nature of our global Section 214 authorizations, it would be impossible to know which applicants were planning to use the CANUS-1 cable. We therefore decided to include the CANUS-1 cable on the exclusion list until such time as we could complete consultations with the State Department on this issue.

6. On October 22, 1996, the State Department notified the Bureau that it would support the removal of CANUS-1 from the exclusion list, provided that the conditions of the cable landing license granted to OPTEL are not modified.<sup>14</sup> In particular, the State Department requests the Commission to continue to require that the licensee shall not sell or lease any capacity on CANUS-1, including capacity for non-common carrier services, to Teleglobe, its affiliates or any partnerships or joint ventures in which Teleglobe is a participant, unless and until Teleglobe, its affiliates or partnerships or joint ventures in which Teleglobe is a participant has requested and received prior Commission approval for the sale or lease of any such capacity. Further, the State Department requests the Commission to continue to require Teleglobe to obtain specific Section 214 authorization in order to acquire or use capacity on CANUS-1 for common carrier services.<sup>15</sup>

7. Now that the State Department supports the removal of CANUS-1 from the exclusion list, we find that there are no "imperative circumstances," as that term is used in the

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<sup>11</sup> *Id.* at 3-6.

<sup>12</sup> *Exclusion List Order* at ¶ 6.

<sup>13</sup> *Id.*

<sup>14</sup> See Letter from Steven W. Lett, Deputy United States Coordinator and Director, International Communications and Information Policy, U.S. Department of State, dated October 22, 1996, to George Li, Deputy Chief - Operations, Telecommunications Division, International Bureau, FCC.

<sup>15</sup> *Id.*

*Streamlining Order*, warranting the placement of the facility on the exclusion list. We note that the removal of CANUS-1 from the exclusion list does not in any way modify the conditions placed on OPTEL in the cable landing license. In particular, OPTEL may not sell or lease any capacity on CANUS-1, including capacity for non-common carrier services, to Teleglobe, its affiliates or any partnerships or joint ventures in which Teleglobe is a participant, unless and until Teleglobe, its affiliates or partnerships or joint ventures in which Teleglobe is a participant has requested and received prior Commission approval for the sale or lease of any such capacity.<sup>16</sup> This condition of the cable landing license requires Teleglobe to obtain specific Section 214 authorization in order to acquire or use capacity on CANUS-1 for common carrier services. In addition, the removal of CANUS-1 from the exclusion list will reduce the regulatory burden on U.S. carriers wishing to obtain capacity on this facility. This decision should make the market for cable access more competitive, leading to lower prices for U.S. carriers' end users.

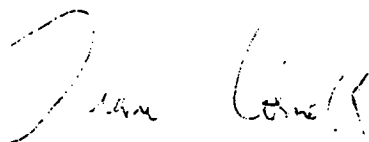
#### IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that pursuant to Section 1.113 of the Commission's Rules, 47 C.F.R. § 1.113, the *Exclusion List Order* adopted on July 26, 1996, 61 FR 50023 (Sept. 24, 1996) is modified to the extent detailed above.

9. IT IS FURTHER ORDERED that the Exclusion List attached as Appendix A to this order, which identifies restrictions on providing service using particular facilities or to particular countries for those carriers receiving a global Section 214 authorization, is hereby adopted.

10. This order is issued under 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 the public notice of this *Order* (see 47 C.F.R. § 1.4(b)(2)).

#### FEDERAL COMMUNICATIONS COMMISSION



Diane J. Cornell  
Chief, Telecommunications Division  
International Bureau

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<sup>16</sup> See *Optel Communications, Inc.*, S-C-L-92-004, 8 FCC Rcd 2267 (1993) at ¶ 28 (6).

## APPENDIX A

### International Section 214 Authorizations

-- Exclusion List as of October 22, 1996 --

The following is a list of countries and facilities not covered by grant of global Section 214 authority under Section 63.18(e)(1) of the Commission's Rules. 47 C.F.R. 63.18(e)(1). In addition, the facilities listed shall not be used by U.S. carriers authorized under Section 63.01 of the Commission's Rules, unless the carrier's Section 214 authorization specifically lists the facility. Carriers desiring to serve countries or use facilities listed as excluded hereon shall file a separate Section 214 application pursuant to Section 63.18(e)(6) of the Commission's Rules.

#### Countries

Cuba (applications for service to this country shall comply with the separate filing requirements of the Commission's Public Notice Report No. I-6831, dated July 27, 1993, "FCC to Accept Applications for Service to Cuba.")

#### Facilities

All non-U.S. licensed Cable and Satellite Systems Except:

#### Foreign Cable Systems

Aden-Djibouti	Germany-Sweden No. 5
APC	H-J-K
APCN	HONTAI-2
APHRODITE 2	ITUR
ARIANNE 2	KATTEGAT-1
ASEAN	Kuantan-Kota Kinabalu
B-M-P	LATVIA-SWEDEN
Brunei-Singapore	Malaysia-Thailand
CADMOS	Marseille/Palermo Link
CANTAT-3	MAT-2
CARAC	ODIN
CELTIC	PENCAN-5
China-Japan	R-J-K
CIOS	RIOJA
Denmark-Russia 1	SAT-2
ECFS	SEA-ME-WE 2
EMOS-1	SEA-ME-WE 3
EURAFRICA	T-V-H
Germany-Denmark 1	TAGIDE 2
Germany-Sweden No. 4	TASMAN 2

UGARIT  
UK-BEL 6  
UK-Denmark 4  
UK-Germany 5  
UK-Netherlands 12  
UK-Netherlands 14  
UK-Spain 4  
UNISUR

This list is subject to change by the Commission when the public interest requires. Before amending the list, the Commission will first issue a public notice giving affected parties the opportunity for comment and hearing on the proposed changes. The Commission will then release an order amending the exclusion list. This list also is subject to change upon issuance of an Executive Order. See Streamlining the Section 214 Authorization Process and Tariff Requirements, IB Docket No. 95-118 FCC 96-79, released March 13, 1996.

For additional information, contact the International Bureau's Telecommunications Division, Policy & Facilities Branch, (202) 418-1460.