

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

In the Matter of	)	
	)	
TELSTRA, INC.	)	File No. I-T-C-96-321
	)	
Application for Authority pursuant to	)	
Section 214 of the Communications Act	)	
of 1934, as amended, to Provide on a	)	
Resale Basis International Message	)	
Telephone Service and Non-	)	
Interconnected Private Line Services	)	
Between the United States and various	)	
International Points. Excluding Australia	)	

**ORDER AND AUTHORIZATION**

**Adopted: November 19, 1996**

**Released: November 19, 1996**

By the Chief, International Bureau:

**I. INTRODUCTION**

1. Telstra, Inc. seeks authority pursuant to Section 214 of the Communications Act of 1934, as amended,<sup>1</sup> to resell International Message Telephone Service (IMTS) and non-interconnected private line services between the United States and all international points, excluding Australia. We find the public interest would be served by granting Telstra, Inc.'s application.

**II. BACKGROUND**

2. Telstra, Inc., a Delaware corporation, is affiliated with several foreign carriers, as defined in Section 63.18(h) of the Commission's rules.<sup>2</sup> It 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.

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<sup>1</sup> 47. U.S.C. § 214.

<sup>2</sup> See *Streamlining the International Section 214 Authorization Process and Tariff Requirements, Report and Order*, IB Docket No. 95-118 (rel. March 13, 1996) (to be codified at 47 C.F.R. § 63.18).

3. Telstra, Inc. filed its application on June 10, 1996. The application was placed on public notice on June 26, 1996. No comments were received. Telstra, Inc. does not currently hold any Commission authorizations and does not currently offer domestic telecommunication service within the United States.<sup>3</sup>

### III. DISCUSSION

4. In 1995, the Commission adopted rules that govern the entry of foreign carriers into the U.S. market for international telecommunications services.<sup>4</sup> In the *Foreign Carrier Entry Order*, the Commission determined that an important element of a foreign carrier's entry into the U.S. international services market is whether U.S. carriers have "effective competitive opportunities" (ECO) to compete in destination countries where the foreign carrier has market power. The *Foreign Carrier Entry Order* defines market power as "the ability of the carrier to act anticompetitively against unaffiliated U.S. carriers through the control of bottleneck services or facilities on the foreign end."<sup>5</sup> Bottleneck services or facilities are "those that are necessary for the provision of international services, including inter-city or local access facilities on the foreign end."<sup>6</sup>

5. In the *Foreign Carrier Entry Order*, the Commission stated that it would apply its ECO analysis only to applications from foreign carriers, or certain affiliates of such carriers, in circumstances where the foreign carrier has market power in the destination country the applicant seeks to serve. If an applicant does not seek to serve a particular country where it is affiliated with a foreign carrier with market power, we do not apply an ECO analysis to that application.<sup>7</sup> The Commission also stated in the *Foreign Carrier Entry Order* that it would continue to consider other public interest factors that may weigh in favor of, or against, granting the application. These factors include the general significance of the proposed entry to the promotion of competition in the U.S. communications market, any national security, law enforcement, foreign policy, or trade concerns raised by the Executive Branch, and the presence of cost-based accounting rates. Thus, even if an affiliated market does not pass the ECO analysis, other countervailing reasons may exist for the Commission to grant an application.

6. In this application, Telstra, Inc. does not seek authority to provide telecommunications services between the United States and Australia, where its parent

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<sup>3</sup> Telstra Application at 2.

<sup>4</sup> Market Entry and Regulation of Foreign-affiliated Entities, Report and Order, 11 FCC Rcd 3873 (1995) (*Foreign Carrier Entry Order*), recon. pending.

<sup>5</sup> *Foreign Carrier Entry Order* at ¶ 116.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at ¶ 102.

company provides local and long distance service, including international service. Thus, we need not consider whether to conduct an ECO analysis of the international services market in Australia. We must determine, however, whether or not to conduct an ECO analysis of the international services markets in the United Kingdom, New Zealand, Hong Kong, and the Republic of Kiribati (Kiribati)<sup>8</sup> because the pending application discloses that Telstra, Inc. also is affiliated with the following foreign carriers: (1) Telstra (U.K.) Limited, a United Kingdom carrier; (2) Telstra (New Zealand) Limited, a New Zealand carrier; (3) Chevalier Telepoint Limited, a Hong Kong carrier providing domestic telepoint (CT2) services; and (4) Telecom Services Kiribati Limited, a Kiribati carrier.<sup>9</sup>

7. With respect to the United Kingdom, New Zealand, and Hong Kong, we find that each of Telstra, Inc.'s affiliates controls less than one percent of the market for international services in the foreign country. In addition, each carrier competes with a carrier that controls a majority of the international telecommunications market. We find no evidence to suggest that Telstra, Inc.'s affiliates own or control any bottleneck telecommunications facilities, including local access facilities. Given the lack of market power by Telstra, Inc.'s affiliates in these markets, we find under the *Foreign Carrier Entry Order* that Telstra (U.K.) Limited, Telstra (New Zealand) Limited, and Chevalier Telepoint Limited are non-dominant carriers and therefore we do not need to conduct an ECO analysis of the United Kingdom, New Zealand, or Hong Kong markets.

8. With regard to the market in the Republic of Kiribati, Telstra, Inc. submits that good cause exists for waiver of the ECO test because: (1) switched telephone traffic on the United States to Kiribati route is de minimus (less than 75,000 minutes in 1994 or less than .005% of total U.S. outbound minutes); (2) no U.S. carrier has sought to enter the Kiribati telecommunications market; and (3) as a U.S. resale carrier, it would be impossible for Telstra, Inc. to block or reroute U.S.-Kiribati traffic, without significant additional switching and software costs.<sup>10</sup> Telstra, Inc. also states that it is willing to accept dominant carrier treatment on the United States to Kiribati route.<sup>11</sup>

9. Although we did not establish a formal procedure to waive ECO in the *Foreign Carrier Entry Order*, we recognize that for some routes an ECO analysis may not be

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<sup>8</sup> Kiribati is a group of islands located in the Pacific Ocean about one-half of the way from Hawaii to Australia.

<sup>9</sup> Telstra Application at 4; Attachment 1.

<sup>10</sup> Telstra, Inc. application at 6.

<sup>11</sup> *Id.*

necessary and a waiver may better serve the public interest.<sup>12</sup> We find the United States to Kiribati is such a route.

10. The Commission adopted the rules in the *Foreign Carrier Entry Order* to further three goals: (1) to promote effective competition in the U.S. telecommunications services market; (2) to prevent anticompetitive conduct in the provision of international services or facilities; and (3) to encourage foreign governments to open their communications markets. We find that waiving the application of ECO on this route will not undermine the goals of the *Foreign Carrier Entry Order* and, given the circumstances presented by this application, will better serve the public interest.

11. First, the amount of traffic on the United States to Kiribati route is de minimus. Although theoretically Telstra, Inc. might have the ability to price squeeze other carriers on this route (i.e., pricing U.S. resold switched services at or even below cost in order to generate significant settlement payments to its foreign carrier affiliate), historically traffic volumes are extremely low, and we find no substantial community of interest exists for making calls to Kiribati for which Telstra, Inc.'s affiliate would receive settlement payments. Moreover, no U.S. carriers filed comments opposing this application, and no U.S. carrier has sought to enter the Kiribati telecommunications market.

12. In addition to the general goals of the *Foreign Carrier Entry Order*, the Commission also had a specific concern with regard to the use of switched or non-interconnected private line resale. In the *Foreign Carrier Entry Order*, the Commission found that allowing a carrier to provide international service via switched or non-interconnected private line resale, even though it may be barred from serving a given market on a facilities basis, could give it a significant competitive advantage in marketing global network services to multinational customers that seek a single provider of such services.<sup>13</sup> Such a concern is not applicable to this route, however. As discussed above, the traffic volumes and community of interest are too small. We see no risk of providing Telstra, Inc. with an unfair competitive advantage on this route or as a whole.

13. Moreover, applying ECO in this case would impose an unnecessary burden on the applicant by increasing its costs to handoff traffic bound for Kiribati to another carrier. It would also have the undesirable effect of limiting the number of U.S. carriers serving this route. For the reasons stated above, we find no potential harm at this time from waiving the ECO analysis on the United States to Kiribati route in this application.

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<sup>12</sup> The Commission may waive rules only for "good cause shown." 47 C.F.R. § 1.3. Waivers are appropriate only if special circumstances warrant a deviation from the general rule and such deviation will not undermine the policy served by the rule. *See e.g.*, *WAT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>13</sup> *Foreign Carrier Entry Order* at ¶¶ 142-144.

14. We next examine whether there are any countervailing public interest reasons to deny a waiver for the United States to Kiribati route. The Executive Branch has not raised any national security, law enforcement, foreign policy, or trade concerns with this application. We are concerned, however, about Kiribati's relatively high accounting rate. Currently, the accounting rate for Kiribati is \$4.00. We declined in the *Foreign Carrier Entry Order* to make cost-based accounting rates a precondition to entry. Instead we determined that it would be part of our additional public interest factors that may weigh in favor of, or against, grant of an application.<sup>14</sup> Accordingly, we view the above-cost accounting rate in Kiribati as a negative factor in our overall public interest analysis. Despite this negative factor, we find that granting a waiver to Telstra, Inc. is in the public interest, given the de minimus amount of traffic on this route. We will, however, regulate Telstra, Inc. as dominant on the United States to Kiribati route, including for its resold IMTS. Although Telstra, Inc. enjoys a presumption of nondominance on its provision of resold IMTS,<sup>15</sup> we believe it is necessary to regulate it as dominant on this route in order to monitor for any unanticipated consequences of this authorization.

15. If there is any indication that competing U.S. carriers are being discriminated against on the United States to Kiribati route we will place this authorization on public notice and seek comment, which may include whether the public interest continues to be served by granting a waiver to Telstra, Inc. for the United States to Kiribati route.

#### IV. Ordering Clauses

16. Accordingly, it is CERTIFIED that the present and future public convenience and necessity require grant of the above captioned application, and it is hereby ORDERED that application File No. I-T-C-96-321 is GRANTED. Telstra, Inc. is authorized to resell the services of unaffiliated U.S. international carriers to provide: (1) private lines not interconnected into the public switched network to all international points except Australia; and (2) international switched services to destinations set forth in the tariffs of its underlying carriers.

17. It is FURTHER ORDERED that Telstra, Inc.'s authorization to resell non-interconnected international private line service is limited to the provision of private lines that

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<sup>14</sup> *Foreign Carrier Entry* at ¶ 71.

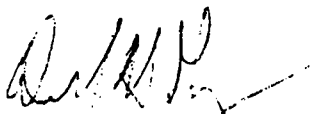
<sup>15</sup> Telstra, Inc. enjoys a presumption of nondominance as an IMTS reseller on this route pursuant to Section 63.10(a)(4) of our rules, 47 C.F.R. § 63.10(a)(4) (a carrier that "provides such [international communications] service solely through the resale of an unaffiliated U.S. facilities-based carrier's international switched services . . . shall presumptively be classified as nondominant for the provision of the authorized service.") There is no such presumption of nondominance in its provision of resold non-interconnected private lines. See Section 63.10(a)(2) of our rules, 47 C.F.R. § 63.10(a)(2) ("A U.S. carrier that has or acquires an affiliation with a foreign carrier that is a monopoly in a destination country will presumptively be classified as dominant for the provision of international communications services on that route.").

originate in the United States and terminate in any country other than Australia. In addition, Telstra, Inc. may not -- and Telstra, Inc.'s tariffs must state that its customers may not -- connect private lines provided over these facilities to the public switched network at either the U.S. or foreign end or both, for the provision of international switched basic services, unless authorized to do so by the Commission upon a finding that the foreign administration affords resale opportunities equivalent to those available under U.S. law, in accordance with the *Foreign Carrier Entry Order*, 11 FCC Rcd 3873, 3924-3925 (1995).

18. It is FURTHER ORDERED that Telstra, Inc. shall comply with Section 63.10 of the Commission's Rules in its provision of service to the Republic of Kiribati and shall comply with Sections 63.21 and 63.15(b) with respect to all other international points authorized in this order.

19. 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) of the Rules).

FEDERAL COMMUNICATIONS COMMISSION



Donald H. Gips  
Chief, International Bureau