

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

DA 96-1971

In the Matter of)
)
CABLE & WIRELESS, INC.)
)
Application for authority to) File No. I-T-C-96-267
provide facilities-based)
services between the United)
States and Sweden.)
)
Petition for a Determination) File No. I-S-P-93-007-ND
of Non-dominant Status on)
International Private Line)
Routes.)

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: November 25, 1996

Released: November 26, 1996

By the Chief, Telecommunications Division:

1. On May 6, 1996, Cable & Wireless, Inc. (CWI) filed the above-captioned application requesting authority, pursuant to Section 214 of the Communications Act of 1934, as amended,¹ to provide facilities-based switched and private line services between the United States and Sweden. The application was placed on public notice on May 10, 1996. No comments were received.

2. On April 15, 1993, CWI filed the above-captioned petition, requesting non-dominant status on a variety of resold, non-interconnected, international private line routes, including Sweden. The petition was placed on public notice on April 21, 1993. AT&T Corp. (AT&T) filed an opposition to CWI's petition, requesting that CWI's petition for non-dominant status be denied. AT&T, however, did not specifically oppose grant of non-dominant status for CWI on the U.S.-Sweden route.

3. CWI is an indirect, wholly-owned subsidiary of Cable & Wireless plc (C&W), a company organized under the laws of the United Kingdom. CWI is a domestic common carrier which is authorized to provide international switched and private line services between the United States and numerous countries, including Sweden, through the resale of the switched and private line services provided by other U.S. carriers. CWI also is authorized to provide switched and private lines services, on a facilities basis, between the United States and various

47 U.S.C. § 214.

international points.²

4. At the time it filed the captioned application and petition, CWI was affiliated with Tele2 AB, a domestic and international carrier in Sweden. CWI states, however, that on September 30, 1996, C&W exchanged its 39.9 percent interest in Tele2 AB for a 9.5 percent shareholding in NetCom, a company that provides fixed and mobile telephone service in Sweden.³ CWI initially requested that it be declared non-dominant for the U.S.-Sweden route based on the fact that Tele2 AB had no market power in Sweden. It now reiterates its request for non-dominant status on the basis that it no longer has any affiliation with a foreign carrier in Sweden within the meaning of Section 63.18(h)(1)(i) of the Commission's rules.⁴

5. We turn first to CWI's request for non-dominant status for the provision of non-interconnected private lines on the U.S.-Sweden route. C&W's interest in NetCom falls well below the affiliation threshold established under the Commission's rules.⁵ In the Foreign Carrier Entry Order, the Commission stated it would normally only scrutinize the market power of a foreign carrier in a destination market when the applicant's attributable investment in or by the foreign carrier exceeds 25 percent, or when the applicant directly or indirectly

² See, e.g., Public Notice, Report No. I-8197, DA 96-1410 (dated Aug. 22, 1996) (granting CWI authority, effective August 19, 1996) to provide facilities-based switched and private line services and resold non-interconnected private line services between the United States and various international points where CWI does not have an affiliation with a foreign carrier); Cable & Wireless, Inc., 6 FCC Rcd 236 (1991) (facilities-based private line authority to Canada); Cable & Wireless, Inc., 5 FCC Rcd 7583 (1990) (facilities-based switched service authority to Canada).

³ See Letters from Paul W. Kenefick, Senior Regulatory Analyst, Cable & Wireless, Inc., to Susan O'Connell, International Bureau, dated October 2, 1996 and September 18, 1996.

⁴ 47 C.F.R. § 63.18(h)(1)(i). In general, a U.S. carrier is affiliated with a foreign carrier when a foreign carrier owns a greater than 25 percent interest in, or controls, the U.S. carrier, or when the U.S. carrier owns a greater than 25 percent interest in, or controls, a foreign carrier. See Market Entry and Regulation of Foreign-affiliated Entities, Report and Order, 11 FCC Rcd 3873, §§ 78-87 and 245-51 (1995) (Foreign Carrier Entry Order), recon. pending; see also id. at §§ 88-92 (scrutiny of foreign carrier investments of 25 percent or less; aggregation of multiple carrier interests).

⁵ See supra note 4.

controls, is controlled by, or is under common control with, the foreign carrier. However, the Commission reserved the right to scrutinize an investment of less than 25 percent where such an investment "presents a significant potential impact on competition in the U.S. market for international telecommunications services."⁶ We find no evidence here of any such potential impact. Consequently, we conclude that CWI is not affiliated with any carrier in Sweden and that it merits regulation as a non-dominant carrier on the U.S.-Sweden route for the provision of resold, non-interconnected international private line service.⁷

6. We turn next to CWI's request for authority to provide facilities-based services between the United States and Sweden. The Commission determined in the Foreign Carrier Entry Order that carriers seeking to provide international services to countries in which they have an affiliate with market power must demonstrate that the destination country offers effective competitive opportunities ("ECO") for U.S. carriers to offer like services. If an applicant's foreign affiliate does not have market power, or if the applicant is not affiliated with a foreign carrier in the destination country, we do not conduct an ECO analysis. The Commission also stated that it would continue to consider other public interest factors that may weigh in favor of, or against, granting the application.⁸

7. Because we find that CWI is not affiliated with a foreign carrier in the destination country, Sweden, it is not necessary to determine whether Sweden offers U.S. carriers effective competitive opportunities to provide facilities-based services. The Executive Branch, moreover, has not raised any concerns with grant of this application. We therefore grant CWI's facilities application subject, however, to certain limitations on its use of the authorized facilities to route U.S. traffic to or from countries where CWI is affiliated with a foreign carrier.⁹ We will treat CWI as non-dominant in its

⁶ Foreign Carrier Entry Order at ¶ 89.

⁷ See 47 C.F.R. § 63.10(a)(1) ("A U.S. carrier that has no affiliation with, and that itself is not, a foreign carrier in a particular country to which it provides service (i.e., a destination country) will presumptively be considered non-dominant for the provision of international communications services on that route").

⁸ Foreign Carrier Entry Order at ¶¶ 19-21.

⁹ See infra ¶ 10.

provision of facilities-based services on the U.S.-Sweden route.¹⁰

8. Upon consideration of the application and in view of the foregoing, we conclude that grant of CWI's application will increase competition in the United States and Sweden and thus benefit U.S. consumers. Therefore, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require a grant of the application.

9. Accordingly, IT IS ORDERED that:

a. Application File No. I-T-C-96-267 IS GRANTED, and CWI is authorized to establish channels of communication between the United States and Sweden and use said facilities to provide switched and private line services, including switched voice and data services, between the United States and Sweden;

b. CWI will be regulated as non-dominant for facilities-based services on the U.S.-Sweden route; and

c. Petition File No. I-S-P-93-007-ND IS GRANTED IN PART, and CWI is reclassified as non-dominant for resale of non-interconnected international private lines on the U.S.-Sweden route.

10. IT IS FURTHER ORDERED that the facilities for which authority is granted in this order shall be used to provide service between the United States and Sweden only, except that: (1) CWI may use the facilities in conjunction with previously authorized facilities or services to route through the United States traffic that originates and terminates in third countries; and (2) CWI may use the facilities to route U.S. traffic on an indirect, switched transit or switched hubbing basis to countries where CWI does not have an affiliation with a foreign carrier, and to countries where it does have an affiliation with a foreign carrier provided it has received a grant of specific authorization under the Communications Act of 1934, as amended, 47 U.S.C. § 214.


11. IT IS FURTHER ORDERED that CWI, as a non-dominant carrier in the provision of facilities-based services and resold non-interconnected private line services between the United States and Sweden, shall comply with the requirements specified in Sections 43.82, 63.15(b) and 63.21 of the Commission's rules, 47 C.F.R. §§ 43.82, 63.15(b) & 63.21.

12. This order is issued under Section 0.261 of the Commission's Rules and is effective upon adoption. Petitions for

¹⁰ See 47 C.F.R. § 63.10(a)(1) and note 7, supra.

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 Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

for 
Diane J. Cornell
Chief, Telecommunications Division
International Bureau