

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

In the Matter of)	
)	
AMERICATEL CORP.)	File No. ITC-97-221
)	
AT&T CORP.)	
)	
COMMUNICATIONS TELESYSTEMS)	
INTERNATIONAL DBA WORLD X CHANGE)	
)	
DOMTEL COMMUNICATIONS, INC.)	
)	
MCI INTERNATIONAL, INC.)	
)	
PACIFIC GATEWAY EXCHANGE)	
)	
SPRINT COMMUNICATIONS COMPANY,)	
LIMITED PARTNERSHIP)	
)	
THE ST. THOMAS AND SAN JUAN)	
TELEPHONE COMPANY, INC.)	
)	
WORLDCOM, INC.)	
)	
Joint application for Authorization)	
Pursuant to Section 214 of the)	
Communications Act of 1934, as Amended,)	
to Construct, Acquire, and Operate)	
Capacity in a Digital Submarine Cable)	
System, the PAN AMERICAN Cable System)	

MEMORANDUM OPINION, ORDER AND AUTHORIZATION

Adopted: January 15, 1998

Released: January 20, 1998

By the Chief, Telecommunications Division:

I. Introduction

1. In this Order, we grant the joint application of Americatel Corp. (Americatel), AT&T Corp. (AT&T), Communications Telesystems International DBA World X Change (CTS), DOMTEL Communications, Inc. (DOMTEL), MCI International Inc. (MCII), Pacific Gateway Exchange (PGE), Sprint Communications Company, Limited Partnership (Sprint), the St. Thomas and San Juan

Telephone Company, Inc. (STSJ), and WorldCom, Inc. (WorldCom) authority pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214,¹ to (1) construct, acquire, and operate capacity in a digital submarine cable system, the PAN AMERICAN Cable System (PAN AMERICAN), between the U.S. Virgin Islands, Aruba, Venezuela, Colombia, Panama, Ecuador, Peru and Chile;² (2) acquire ownership in two fiber pairs, to be included in PAN AMERICAN, from the owner of the St. Thomas - St. Croix Cable System, currently AT&T Submarine Systems, Inc.; (3) acquire by lease or other comparable means extension facilities as may be required to extend the capacity of PAN AMERICAN; and (4) activate capacity in PAN AMERICAN and in its facilities for the provision of the Joint Applicants' authorized services. On April 21, 1997, the Joint Applicants filed an application for Section 214 Authorization. Their application was placed on public notice on April 25, 1997. No comments were received. We find that the Joint Applicants have provided sufficient information to comply with Section 214 of the Communications Act and therefore grant the authority to construct, acquire, and operate capacity in PAN AMERICAN, subject to the conditions below.

II. Application

2. Americatel, DOMTEL, MCII, PGE and WorldCom are corporations organized under the laws of Delaware. AT&T is a corporation organized under the laws of New York. CTS is a corporation organized under the laws of California. STSJ is a corporation organized under the laws of the U.S. Virgin Islands. Sprint is a limited partnership organized under the laws of Delaware. Each of the Joint Applicants is a common carrier subject to the Communications Act of 1934, as amended.

3. The Joint Applicants propose to land and operate PAN AMERICAN as a common carrier system owned by the Joint Applicants and by entities authorized to land and operate an international submarine fiber optic cable system in Aruba, Venezuela, Colombia, Panama, Ecuador, Peru and Chile. The proposed PAN AMERICAN system will extend between landing points at cable stations in St. Thomas, U.S. Virgin Islands; St. Croix, U.S. Virgin Islands; Baby Beach, Aruba; Punto Fijo, Venezuela; Barranquilla, Colombia; Colon, Panama; Panama City, Panama; Punta Carnero, Ecuador; Lurin, Peru; and Arica, Chile and will be connected with the domestic networks in those countries or territories.³ Shareholder voting interest in PAN AMERICAN will be divided among the Joint Applicants.⁴ The Joint Applicants expect to activate PAN AMERICAN by August 31, 1998.

¹ In a companion order, we grant the Joint Applicants' application for a cable landing license (File No. SCL-97-001, DA 98-81).

² PAN AMERICAN will consist of two working optical fiber pairs operating at 2.5 Gbps per pair. Each fiber pair will have a capacity of 1008 Minimum Investment Units (MIUs). See *id.* ¶ 4.

³ For a complete description of the system, see the cable landing license, DA 98-81, File No. SCL 97-001.

⁴ See Attachments for a table outlining the percentage of voting interests for each applicant.

4. The Joint Applicants plan to use PAN AMERICAN in providing their already-existing authorized services. Applicants state that other carriers, including non-owners, may acquire capacity in PAN AMERICAN by lease, IRU, or other arrangements. The minimum investment unit (MIU) assignments for each segment and subsegment of PAN AMERICAN are included in the attachments to this Order.

5. The Joint Applicants state that the facilities covered by this application will be used to supplement their existing cable and satellite facilities in providing the services that they are presently furnishing or may subsequently furnish. These include satellite circuits between United States earth stations and the INTELSAT Atlantic Ocean Region satellites acquired by the Joint Applicants from the COMSAT Corporation pursuant to COMSAT's applicable tariffs and existing cable facilities used to provide service between the United States and those locations proposed to be served by PAN AMERICAN consisting of circuits in AMERICAS-1 and TCS-1. In addition, the Joint Applicants state that not all of them may be certified to directly serve all territories that PAN AMERICAN facilities are capable of serving. The Joint Applicants state, however, that individual applicants proposing future extensions into such territories by means of PAN AMERICAN facilities will seek the required authorization as necessary.

III. Discussion

6. As required by the Commission's rules, the Joint Applicants have all certified that they have not agreed and will not agree to accept special concessions from any foreign carrier.⁵ The Joint Applicants further certify that any affiliated foreign carriers do not have market power or the ability to discriminate against unaffiliated carriers through control of bottleneck services and facilities.⁶ MCII notes that British Telecom, a corporation organized under the laws of England and Wales, owns twenty percent of its issued and outstanding Class A common stock.⁷ DOMTEL and Americatel are affiliated with carriers in the Dominican Republic and Chile, respectively. The only applicant with an affiliated carrier served by this cable is Americatel, which is affiliated with Entel-Chile. We have previously found that Entel-Chile has no control over bottleneck services or facilities that can be used to discriminate against unaffiliated U.S. carriers terminating traffic in Chile.⁸ The other applicants' affiliations are not on routes served by this cable system. Therefore, they do not have the ability to discriminate against unaffiliated U.S. carriers. Because the Joint Applicants do not, by this application, seek to serve any routes that they do not already have authority to serve on a facilities

⁵ 47 C.F.R. § 63.18(i) (1996).

⁶ 47 C.F.R. § 63.18(h)(6)(ii) (1996); *see* Application Attachment B for certifications.

⁷ Application Attachment B; *see* 47 C.F.R. § 1.767(a)(6) (1996) (requiring listing of ten percent stockholders under 47 C.F.R. § 63.18(h)(2)).

⁸ *See In the Matter of Americatel Corp. Petition for Expedited Modification of Regulatory Status from Dominant to Non-dominant for International Communications Services with Chile*, DA 96-1412, File Nos. ISP 96-002, ITC-96-263, ¶ 9 (rel. Aug. 21, 1996).

basis, their affiliations do not raise any concerns that might require application of an effective competitive opportunities (ECO) test.

7. Section 214 of the Communications Act requires the Commission to determine that the authorization of the PAN AMERICAN facilities will serve the public interest, convenience and necessity.⁹ The proposed Section 214 authorizations will improve the telecommunications infrastructure and enhance services on the routes served by PAN AMERICAN. The Commission has previously stressed the importance of making advanced telecommunications available to further economic development of the Caribbean region.¹⁰ The improvement in telecommunications systems would also improve services to areas in South and Central America. The Joint Applicants have also stated that other carriers, including non-owners, may acquire capacity in PAN AMERICAN, so the pro-competitive goals of the Commission are met by granting the Section 214 authorization.

8. Accordingly, we conclude that the public interest will be served by granting the Joint Applicants authority to construct, acquire and operate capacity in PAN AMERICAN. Therefore, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require a grant of the application, as conditioned below.

IV. Ordering Clauses

9. IT IS ORDERED that application File No. ITC-97-221 IS GRANTED and the Joint Applicants, Americatel, AT&T, CTS, Domtel, MCII, PGE, Sprint, STSJ, and WorldCom are authorized, pursuant to Section 214 of the Communications Act, as amended, to (1) construct, acquire, and operate capacity in a digital submarine cable system known as the PAN AMERICAN Cable System between the U.S. Virgin Islands, Aruba, Venezuela, Colombia, Panama, Ecuador, Peru and Chile in accordance with the interests indicated in the Attachments; (2) acquire ownership in two fiber pairs, to be included in PAN AMERICAN, from the owner of the St. Thomas - St. Croix Cable System; (3) acquire by lease or other comparable means such extension facilities as may be required to extend the capacity of PAN AMERICAN; and (4) activate capacity in PAN AMERICAN and in its facilities for the provision of their authorized services.

10. IT IS FURTHER ORDERED that Joint Applicants' tariffs must state that their customers may not resell international private lines or connect them to the public switched network for the provision of international basic telecommunications services, unless authorized to do so by the Commission upon a country-specific finding that the Commission will permit the provision of switched services over private lines between the United States and that country. See *Market Entry and Regulation of Foreign-Affiliated Entities, Report and Order*, 11 FCC Rcd 3873 (1995); *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket Nos. 97-142, 95-22, *Report and Order and Order on Reconsideration*, FCC 97-398 (rel. Nov. 26, 1997). The limitations in this paragraph are subject to the exceptions contained in Section 63.18(e)(4)(ii) of the

⁹ See 47 C.F.R. § 63.18 (1996).

¹⁰ *Caribbean Planning Order*, 3 FCC Rcd 97, 105 (1988).

Commission's rules, 47 C.F.R. 63.18(e)(4)(ii) (1996).

11. IT IS FURTHER ORDERED that the Joint Applicants shall make available half-interests in PAN AMERICAN capacity to such present and future U.S. carriers as may be authorized by the Commission to acquire such capacity.

12. IT IS FURTHER ORDERED that the Commission retains jurisdiction to reallocate U.S. carriers' interests in capacity herein authorized, as the public interest may require and with any requisite concurrence of the foreign administration or carriers concerned, in order to accommodate additional carriers or for other reasons.

13. IT IS FURTHER ORDERED that the Commission retains jurisdiction over all matters relating to the Joint Applicants' ownership, management, maintenance, and operation of the cable system as authorized herein to ensure the most efficient use not only of this cable system but of all means of communications between the United States and the Caribbean Region.

14. IT IS FURTHER ORDERED that the Joint Applicants shall include PAN AMERICAN facility use in all circuit reports that may be required by current and future Commission rules.

15. This Order is issued under Section 0.261 of the Commission's rules, 47 C.F.R. § 0.261, and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.115, may be filed within 30 days of the date of 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