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NEWS

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Report No. IN 97-36

INTERNATIONAL ACTION

**COMMISSION LIBERALIZES FOREIGN PARTICIPATION IN THE U.
TELECOMMUNICATIONS MARKET
(IB Docket Nos. 97-142 and 95-22)**

The Commission today adopted an *Order* that will significantly increase competition in the U.S. t
market by facilitating entry by foreign service providers and investors. This action will yield subs
U.S. consumers by reducing prices, providing greater service options, and spurring technological

The Commission's action underscores the U.S. leadership position in opening the global telecomm
to competition. On February 15, 1997, the United States and 68 other countries reached a market-
will fundamentally change the structure of the global telecommunications market. The World Tra
(WTO) Basic Telecom Agreement is guided by a worldwide commitment to opening markets, pro
competition, and preventing anticompetitive conduct -- principles that are also at the heart of the
Telecommunications Act of 1996. Under the terms of the Agreement, scheduled to take effect Jan
of the world's major trading nations made binding commitments to open their telecommunications
markets. In fact, the 69 nations that made commitments account for more than 90 percent of globa
telecommunications service revenues. Most of these countries will replace traditional regimes of
providers with procompetitive and deregulatory policies. As a result, U.S. companies will be able
closed foreign markets and develop competing networks for local, long distance, and internationa

This *Order*, along with a companion *Order* governing access to non-U.S. licensed satellite system
necessary to open the U.S. market to increased competition. In light of the WTO Basic Telecom A
market-opening commitments of other WTO Members, and the Commission's improved competit
governing U.S. international services, the Commission determined that it could replace its previou
foreign entry with an open entry policy for carriers from WTO Members. With these *Orders*, the
taken important steps to carry out the letter and spirit of the market-opening commitments made b
States. As a result, more foreign carriers will soon begin to enter and compete in the U.S. market.
likewise be able to enter and compete in previously closed foreign markets. In this context, the Co
emphasized that the United States will carefully review the market-opening steps taken by the res

Open Entry Policies

In 1995, the Commission adopted the effective competitive opportunities (ECO) test to govern fo
U.S. telecommunications market. The ECO test allowed foreign applicants to enter the U.S. mark
markets offered effective competitive opportunities for U.S. companies.

Today's *Order* replaces the ECO test with an open entry standard for applicants from WTO Meml
applicants will no longer be required to demonstrate that their markets offer effective competitive
order to: (1) obtain Section 214 authority to provide international facilities-based, resold switched
interconnected private line services; (2) receive authorization to exceed the 25 percent indirect fo
benchmark in Section 310(b)(4) of the Communications Act for wireless licenses; or (3) receive s
landing licenses. The Commission also removed the equivalency test, a standard similar to the EC
seeking to provide switched services over private lines between the United States and WTO Mem
ECO test, the *Order* presumes that entry is procompetitive and therefore adopts streamlined proce
most applications. The Commission recognized, however, that in some cases safeguards may not
constrain the potential for anticompetitive harm. In such instances, the Commission reserved the r
additional conditions to an authorization and, in the exceptional case in which an application pose
to competition that cannot be addressed by safeguards, it reserved the right to deny the authorizati

With regard to carriers from non-WTO Members, the Commission found that circumstances have
sufficiently in these countries to allow the Commission to remove the ECO and equivalency tests
applicants.

Regulatory Safeguards

The Commission also revised the competitive safeguards that apply to the provision of internation
telecommunications services in the U.S. market. The *Order* adopts more narrowly tailored safegu
the Commission's ability to monitor and detect anticompetitive behavior in the U.S. market and m
eliminates some existing rules that could hamper competition.

The Commission narrowed the existing "No Special Concessions" rule so that it only prohibits U.
entering into exclusive arrangements with foreign carriers that have sufficient market power to af
adversely in the U.S. market. To provide more certainty in the market as U.S. carriers negotiate de
foreign counterparts, the *Order* adopts a rebuttable presumption that carriers with less than 50 per
in the foreign market lack such market power. U.S. carriers, therefore, may enter into exclusive de
carriers involving, for example, operating agreements and interconnection arrangements. Parties r
the Commission that a carrier with more than 50 percent market share on the foreign end of a rout
market power to harm competition and consumers in the U.S. market, and therefore may engage i
dealings.

The *Order* also protects the confidentiality of U.S. carriers and consumers by prohibiting carriers
confidential carrier or U.S. customer information from a foreign carrier without appropriate U.S. c
customer approval.

In the August 1997 *Benchmarks Order*, the Commission conditioned foreign-affiliated carrier aut

provide facilities-based switched or private line services to an affiliated market on compliance wi
settlement rates adopted in that order. In this *Order*, the Commission declined to apply a similar c
affiliated carriers providing resold switched services to affiliated markets because the potential fo
harm is less in the switched resale context than for facilities-based service. In order to facilitate de
anticompetitive conduct, however, the Commission required carriers providing switched resale se
which they have an affiliate with market power to file quarterly traffic and revenue reports.

The Commission also revised the competitive safeguards that apply to U.S. carriers classified as d
affiliation with a foreign carrier that has market power on the foreign end of an international route
a single-tier dominant carrier regulatory approach and relies in large part on reporting requiremen
restrictions on carriers' provision of service, to prevent affiliated carriers from causing harm to co
consumers in the U.S. market. In particular, the *Order* replaces the fourteen-day advance notice ta
requirement with a one-day advance notice requirement and accords these tariff filings a presump
It also removes the prior approval requirement for circuit additions or discontinuances on the dom
monitor and detect anticompetitive behavior, the *Order* requires quarterly reports on traffic and re
provisioning and maintenance, and circuit status for the dominant route. The *Order* also requires a
structural separation between U.S. carriers and their foreign affiliates. As with its No Special Con
Commission adopted a rebuttable presumption that a foreign carrier with less than 50 percent mar
foreign market lacks market power and, therefore, its U.S. affiliate should be presumptively treate
The Commission emphasized that, in the event of anticompetitive conduct, it may issue fines, req
conditions on a grant of authority, and, if necessary, revoke an authorization.

Finally, the Commission adopted a presumption in favor of alternative settlement arrangements or
Members. This presumption may be rebutted with a showing that there are not multiple internatio
competitors operating in the foreign market. Action by the Commission November 25, 1997, Rep
Order on Reconsideration, (FCC 97-398). Chairman Kennard, Commissioners Ness, Furchtgott-R
Tristani with Chairman Kennard issuing a separate statement.

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