

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

In the Matter of)
)
2000 Biennial Regulatory Review)
)
Amendment of Parts 43 and 63) IB Docket No. 00-231
of the Commission's Rules)

NOTICE OF PROPOSED RULE MAKING

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I. INTRODUCTION AND SUMMARY

1. The Telecommunications Act of 1996 (1996 Act)¹ directs the Commission to undertake, in every even-numbered year beginning in 1998, a review of all regulations issued under the Communications Act of 1934, as amended (Communications Act),² that apply to operations or activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be “no longer necessary in the public interest.”³ In particular, the 1996 Act directs the Commission to determine whether any such regulation is no longer necessary “as the result of meaningful economic competition between providers of such service.”⁴

2. In 1998, the Commission made numerous changes to its regulations as part of the biennial regulatory review. In the context of international telecommunications services, the Commission undertook two proceedings to streamline and simplify its rules. In the *1998 International Biennial Review Order*, the Commission streamlined its procedures for granting Section 214 authorizations to provide international services, and increased the categories of applications eligible for streamlined processing.⁵ In the *ISP Reform Order*, the Commission adopted sweeping changes to its International Settlements Policy (ISP), in large part deregulating international settlement arrangements between U.S. carriers and foreign non-dominant carriers and between U.S. carriers and all foreign carriers on competitive routes.⁶

3. As part of the 2000 biennial regulatory review, the Commission reviewed all of its rules relating to international telecommunications services to identify those rules that could be revised or eliminated.⁷ In conjunction with this review, Commission staff also met with interested parties, including the International Practice groups of the District of Columbia Bar and the Federal Communications Bar Association, and the Competitive Telecommunications Association (Comptel), to discuss which rules could be modified or eliminated in light of competition in

¹ Pub. L. No. 104-104, 110 Stat. 56 (1996).

² 47 U.S.C. §§ 151 *et seq.*

³ 47 U.S.C. § 161.

⁴ 47 U.S.C. § 161(a)(2).

⁵ *See 1998 Biennial Regulatory Review-Review of International Common Carrier Regulations*, IB Docket No. 98-118, Report and Order, 14 FCC Rcd 4909 (1999) (*1998 International Biennial Review Order*), recon. pending.

⁶ *See 1998 Biennial Regulatory Review: Reform of the International Settlements Policy and Associated Filing Requirements*, IB Docket Nos. 98-148 and 95-22, CC Docket No. 90-337 (Phase II), Report and Order and Order on Reconsideration, 14 FCC Rcd 7963 (1999) (*ISP Reform Order*).

⁷ *See* Federal Communications Commission, Biennial Regulatory Review 2000, Staff Report, September 19, 2000, CC Docket 00-175; Biennial Review 2000 Staff Report Released, Public Notice, FCC 00-346 (rel. Sep. 19, 2000).

international telecommunications services, and which rules should be clarified to make it easier for practitioners and other members of the public to understand and follow those rules. Based on this review, we have identified a number of rules that we propose to amend.

4. We have already begun this process in two areas that complement this proceeding. First, we have recently released a Notice of Proposed Rule Making regarding cable landing licenses.⁸ In that proceeding, we propose pro-competitive streamlining that incorporates competitive safeguards to allow for and encourage: (1) more certainty and flexibility for participants in the application process; (2) increased investment and infrastructure development by multiple providers; (3) expansion of available submarine cable capacity; and (4) significantly shorter application processing time. This streamlining effort will benefit U.S. consumers by eliminating regulatory delay and enhancing the competitiveness of U.S. service providers in the world market.⁹ Second, we recently clarified and revised certain aspects of our foreign carrier affiliation notification rule to respond to carrier concerns about the purpose and application of our rule.¹⁰ In that proceeding, we reduced the prior notification period from 60 to 45 days, and exempted certain classes of foreign carriers from the requirement to submit prior notification.¹¹

5. We have also recently initiated another 2000 biennial regulatory review proceeding related to international telecommunications services. In the *International Detariffing NPRM* we found that in recent years there have been dramatic changes in the market for international interexchange services, including a substantial increase in the level of competition which has benefited consumers.¹² Consequently in that proceeding we proposed, pursuant to the forbearance authority provided in Section 10 of the Act,¹³ to extend the complete detariffing regime that we adopted for domestic, interexchange services to the international services of non-dominant, interexchange carriers, including U.S. carriers classified as dominant solely due to foreign affiliations.¹⁴ We proposed complete detariffing of international Commercial Mobile Radios Services (CMRS). In addition, we proposed to amend the contract filing requirements to clarify that the rule only applies to U.S. carrier contracts for common carrier service between U.S.

⁸ *Review of Commission Consideration of Applications under the Cable Landing License Act*, IB Docket No. 00-106, Notice of Proposed Rule Making, 15 FCC Rcd 20789 (2000).

⁹ *Id.*

¹⁰ *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket 97-142, Order on Reconsideration, 15 FCC Rcd 18158 (2000).

¹¹ *Id.*

¹² *2000 Biennial Regulatory Review; Policy and Rules Concerning the International Interexchange Marketplace*, IB Docket No. 00-202, Notice of Proposed Rule Making, 15 FCC Rcd 20008 (2000) (*International Detariffing NPRM*).

¹³ 47 U.S.C. § 160.

¹⁴ *International Detariffing NPRM* at ¶¶ 29-31.

and foreign points involving: (1) a U.S. carrier that has been classified as dominant for reasons on any route included in the contract, except for carriers classified as dominant on that route solely due to a foreign carrier affiliation,¹⁵ and (2) a foreign carriers that posses market power in its market.¹⁶

6. In this proceeding, we propose changes to several of our rules relating to international telecommunications services. Specifically, we propose to amend our rule concerning *pro forma* assignments and transfers of control of international Section 214 authorizations to more closely match those used for the assignment and transfer of control of Commercial Mobile Radio Service (CMRS) licenses. We also tentatively conclude that it is no longer necessary to apply the settlement rate benchmarks condition to Section 214 authorizations to provide facilities-based international private line services. We also propose to modify our rules to relieve dominant international carriers of the requirement to seek prior approval to discontinue service, except where such carriers possess market power in the provision of international service on the U.S. end of the route. Finally, we also propose to amend several rules to clarify the intent of those rules and to eliminate certain rules that no longer have any application. We believe that these proposed changes are in the public interest and will remove unnecessary burdens on the public and the Commission. We seek comment on the proposals and tentative conclusions discussed below.

II. DISCUSSION

A. *Pro Forma* Assignments and Transfers of Control

7. Section 63.24 of the rules sets out the Commission's procedures for review of *pro forma* assignments and transfers of control of authorizations to provide international telecommunications service.¹⁷ Since its adoption in the *1998 International Biennial Review Order*,¹⁸ we have found that Section 63.24 does not explicitly address many of the types of transactions that should be treated as *pro forma*. Consequently, we propose to amend Section 63.24 to provide greater flexibility and clarity regarding assignments and transfers of control. We also find that many of the transactions that carriers are entering into involve multiple services, and that having different standards for review for the various services can add unnecessary complexity and delay in the review of those transactions. We therefore propose to amend the procedures for review of assignments and transfers of control of international service authorizations to match more closely those procedures used for other service authorizations, particularly CMRS. We seek

¹⁵ See 47 C.F.R. § 63.10.

¹⁶ *International Detariffing NPRM* at ¶¶ 32-40.

¹⁷ 47 C.F.R. § 63.24.

¹⁸ See *1998 International Biennial Regulatory Review*, 14 FCC Rcd at 4927-29 ¶¶ 41-45, 4965-66 Appendix B.

comment on these proposed changes.

8. Pursuant to Section 214 of the Communications Act, the Commission requires authorized international common carriers to obtain approval of substantial assignments and transfers of control of Title II authority.¹⁹ Currently, we have two rules addressing assignments and transfers of control of international Section 214 authorizations. The general rule providing applicants a procedure by which to seek prior Commission approval of a substantial assignment or transfer of control of an international Section 214 authorization is contained in Section 63.18(e)(3) of the Commission's rules.²⁰ On the other hand, an assignment or transfer of control not resulting in a change in the carrier's ultimate control is addressed in Section 63.24, which refers to such transactions as "*pro forma*."²¹ The rule sets forth six types of transactions that are considered *pro forma* and therefore do not require prior Commission approval.²²

9. We believe that the current regulatory structure may not be sufficiently flexible for authorized international carriers in that it does not explicitly apply the procedures of Section 63.24 to corporate transactions that do not fall into one of the six enumerated categories, but that nevertheless should be treated as *pro forma*.²³ We propose to amend our rules on transfers of control and assignments to allow more flexibility to applicants in structuring transactions and provide greater clarity to authorized international carriers regarding assignments and transfers of control.

10. In addition, because an increasing number of transactions involve authorizations for several different services and therefore require review by multiple Bureaus, we believe it would ease the burden on carriers if we better harmonize our rules for assignments and transfers of control applicable to international services with similar rules for other telecommunications services. Therefore, we propose to modify and consolidate our current rules on assignments and transfers of control of international Section 214 authorizations so that the new rule more closely tracks the procedures applicable to CMRS,²⁴ because many of the transactions involving transfers

¹⁹ See 47 U.S.C. § 214, providing in relevant part: "No carrier shall ... acquire or operate any line or extension thereof ... unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require ... the operation ... of such additional line." This is the statutory authority for requiring that applicants seek Commission approval before assigning or transferring control of a Title II authorization.

²⁰ See 47 C.F.R. § 63.18(e)(3).

²¹ See 47 C.F.R. § 63.24(a); see also Black's Law Dictionary 1091 (5th ed. 1979) (defining *pro forma* "As a matter of form or for the sake of form.").

²² See 47 C.F.R. § 63.24(a)(1)-(6).

²³ Applicants seeking *pro forma* treatment of transactions not identified within Section 63.24 have, on occasion, requested and been granted such treatment on a case-by-case basis.

²⁴ We do not propose in this proceeding to modify our current procedures for notifying the Commission of

of international Section 214 authorizations also include wireless authorizations.²⁵

11. The rule governing assignments and transfers of control of authorizations for CMRS, found in Section 1.948 of the Commission's rules, provides that a change from less than 50 percent ownership to 50 percent or more ownership shall always be considered a transfer of control.²⁶ In other situations, whether a controlling interest is transferring is "determined on a case-by-case basis considering the distribution of ownership, and the relationships of the owners, including family relationships."²⁷ We propose to adopt both of these provisions as part of a consolidated rule that would govern all international Section 214 assignments and transfers, whether substantial or *pro forma* in nature. Under this approach, we would move the provisions of Section 63.18(e)(3), which specify the procedures for seeking prior approval of an assignment or substantial transfer of control, to Section 63.24.

12. In the case of a non-substantial or *pro forma* transfer or assignment under Section 1.948, advance filing of the application is not required under most circumstances.²⁸ Rather than list the specific types of transactions that are considered *pro forma*, as our rules currently do, we

the consummation of substantial assignments or transfers of control of international section 214 authorizations. *See* 47 C.F.R. Sec. 63.18(e)(3). This provision is the subject of a petition for reconsideration of the *1998 International Biennial Review Order* and will be addressed in a separate order on reconsideration.

²⁵ *See, e.g., Qwest Communications International Inc. And U S WEST, Inc. Applications for Transfer of Control of Domestic and International Sections 214 and 310 Authorizations and Applications to Transfer Control of a Submarine Cable Landing License*, CC Docket No. 99-272, Memorandum Opinion and Order, FCC 00-231 (rel. June 26, 2000); *GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee; For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, CC Docket No. 98-184, Memorandum Opinion and Order, FCC 00-221 (rel. June 16, 2000); *Aerial Communications Inc, Transferor, and VoiceStream Wireless Holding Corporation, Transferee, For Consent to Transfer of Control of Licenses and Authorizations*, WT Docket No. 00-3; *Voicestream PCS III License L.L.C., Waiver of Section 20.6 of the Commission's Rules and VoiceStream Wireless Corporation, VoiceStream Wireless Holding Corporation, Telephone and Data Systems Inc., and Aerial Communications, Inc., Request for Declaratory Ruling – Compliance with Section 20.6 of the Commission's Rules*, File No. CWD 98-89, Memorandum opinion and Order, DA 00-730 (WTB/IB rel. Mar. 31, 2000); *Vodafone AirTouch, Plc, and Bell Atlantic Corporation, For Consent to Transfer of Control or Assignment of Licenses and Authorizations*, File Nos. 0000032969, *et al.*, DA 99-2451, File Nos. 0000046624, 0000046639, WTB Rpt No. 371, Memorandum Opinion and Order, DA 00-721 (WTB/IB rel. Mar. 30, 2000).

²⁶ 47 C.F.R. § 1.948(b)(1) (providing that "[a] change from less than 50% ownership to 50% or more ownership shall always be considered a transfer of control.>").

²⁷ 47 C.F.R. § 1.948(b)(2).

²⁸ *See* 47 C.F.R. § 1.948(c)(1) ("In the case of a non-substantial (*pro forma*) transfer or assignment involving a telecommunications carrier as defined in § 153(44) of the Communications Act, filing of the Form 603 and Commission approval in advance of the proposed transaction is not required . . .").

believe it is preferable to adopt the approach used for CMRS, which allows for a case-by-case determination of whether an assignment or transfer of control is substantial or *pro forma*. We propose to amend our rules governing assignments and transfers of control of international Section 214 authorizations to allow a case-by-case determination based on the guidance set forth in previous Commission precedent on the issue.²⁹

13. The Commission adopted its guidelines for determining when an assignment or transfer of control of a license for CMRS may be considered *pro forma* in an order ruling on a forbearance petition filed by the Federal Communications Bar Association (FCBA).³⁰ In defining when a transfer of control has occurred and whether it is substantial or *pro forma*, the *FCBA Forbearance Order* distinguishes between the presence of *de facto* and *de jure* control. If there is a change in *de facto* control, the transfer is considered substantial, and prior Commission approval is required. A change in *de jure* control is generally considered substantial, but if there is an indication that *de facto* control has not changed, the transfer may be considered *pro forma*, and prior approval is not required. The inquiry is fact specific and done on a case-by-case basis.

14. *De jure* control is control as a matter of law and is based on who holds the equity shares of an entity.³¹ *De jure* control is present where equity-holders voting together own or control fifty percent or more of the licensee's voting shares. *De jure* control of a partnership is similarly based on holding a fifty percent or greater voting interest in the partnership. The presence of *de facto* control is a separate, independent determination from that of *de jure* control. As the Commission found in the *FCBA Forbearance Order*, *de facto* control is defined as actual

²⁹ See, e.g., *Federal Communications Bar Association's Petition for Forbearance from Section 310(d) of the Communications Act Regarding Non-Substantial Assignments of Wireless Licenses and Transfers of Control Involving Telecommunications Carriers*, Memorandum Opinion and Order, 13 FCC Rcd 6293, 6297-99, ¶¶ 7-9 (1998) (*FCBA Forbearance Order*); see also Stephen F. Sewell, *Assignments and Transfers of Control of FCC Authorizations Under Section 310(d) of the Communications Act of 1934*, 43 Fed. Comm. L.J. 277 (1991).

³⁰ See *FCBA Forbearance Order*. The assignment and transfer of control rules for the various wireless services were later consolidated into a single rule, Section 1.948, in the Commission proceeding to facilitate the development and use of the Universal Licensing System (ULS). See *Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services*, 13 FCC Rcd 21027 at ¶ 109 (1998). In the *FCBA Forbearance Order*, the Commission granted the FCBA petition seeking forbearance from the application of the prior notification and approval requirements for *pro forma* assignments and transfers of control of licenses for all wireless telecommunications carriers: carriers licensed under Part 21 (domestic public fixed radio services), Part 22 (public mobile radio service), Part 24 (personal communications services), Part 27 (wireless communications services), Part 90 (private land mobile radio service), and Part 101 (fixed microwave services) of the Commission's rules. *FCBA Forbearance Order*, 13 FCC Rcd at 6306 ¶¶ 23-24.

³¹ See *FCBA Forbearance Order*, 13 FCC Rcd at 6297-98 ¶ 7; see also Black's Law Dictionary 382 (5th ed. 1979) (defining *de jure* as “[d]escriptive of a condition in which there has been total compliance with all requirements of law; of right; legitimate; lawful.”).

control of the licensee, and rests with the party or entity in question that has the power to control or dominate management of the licensee.³²

15. Because it inherently involves issues of fact, *de facto* control must be determined on a case-by-case basis and may vary with the circumstances presented by each licensee.³³ In the *FCBA Forbearance Order*, the Commission identified certain factors that may be relevant to a finding of *de facto* control. These factors include, but are not limited to: (1) power to constitute or appoint more than fifty percent of the board of directors or partnership management committee; (2) authority to appoint, promote, demote and fire senior executives that control the day-to-day activities of the licensee; (3) ability to play an integral role in major management decisions of the licensee; (4) authority to pay financial obligations, including expenses arising out of operations; (5) ability to receive monies and profits from the facility's operations; and (6) unfettered use of all facilities and equipment.³⁴ We seek comment on whether we should use these, or other, factors to determine whether there has been a transfer of control of an international Section 214 authorization and whether that transfer is substantial or *pro forma*.

16. Under the analysis adopted in the *FCBA Forbearance Order*, if a new individual or entity acquires *de jure* control over a licensee, then a transfer of control has occurred, but the transfer can be substantial or *pro forma*, depending on an analysis of the relevant factors. The Commission stated that, in the absence of some other indication that *de facto* control has not changed, a change in the *de jure* control of a licensee is generally considered a substantial change in control. However, the Commission also noted that there can be no "bright line" test to determine whether a change in *de jure* control constitutes a substantial change in control and concluded that this inquiry must be made on a case-by-case basis.³⁵ We tentatively conclude that we should adopt the same case-by-case approach for determining whether transfers of control of international Section 214 authorizations are substantial or *pro forma*. We also propose that the six types of transactions that are currently listed in our rules as *pro forma* be considered illustrative, not comprehensive. For the sake of consistency, our intent is to adopt and apply the analysis used for determining when assignments and transfers of control for CMRS are *pro forma*.

17. We propose to make a number of changes to Section 63.24 so that it more closely

³² See *FCBA Forbearance Order*, 13 FCC Rcd at 6297-98 ¶ 7; see also Black's Law Dictionary 374 (5th ed. 1979) (defining *de facto* as "in fact, in deed, actual.")

³³ See *FCBA Forbearance Order*, 13 FCC Rcd at 6297-98 ¶ 7; see, e.g., *Wireless Telecommunications Bureau and International Bureau Complete Review of Proposed Investment by Telefonos de Mexico, S.A. de C.V. in Parent of Cellular Communications of Puerto Rico*, Public Notice, DA 99-2286 (rel. Oct. 29, 1999) (finding that the transfer of control was *pro forma* because specific facts showed there was no change in *de facto* control, despite the change in *de jure* control when Telmex acquired a 50% interest in Cellular Communications of Puerto Rico).

³⁴ See *FCBA Forbearance Order*, 13 FCC Rcd at 6298-99 ¶ 8.

³⁵ See *FCBA Forbearance Order*, 13 FCC Rcd at 6298-99 ¶ 8.

tracks the procedures used for CMRS. Specifically, we propose that within 30 days after consummation of a *pro forma* transaction, the licensee must file an application with the Secretary, with a copy to the Chief of the Telecommunications Division of the International Bureau. The application may be in the form of a letter. We propose that the Section 214 authorization holder be required to certify in the letter that the transfer of control or assignment was *pro forma*, and, together with all other previous *pro forma* transactions, this transfer of control or assignment does not result in a change in the actual controlling party. The letter must also contain the name, address of the transferee/assignee, contact points, and updated ownership information. If the Commission determines that the application is acceptable for filing, it will issue a public notice of the *pro forma* assignment or transfer of control as granted. Any interested party who objects to the assignment or transaction may, within 30 days from release of the public notice, file a petition seeking reconsideration. The Commission will retain the authority to rescind its approval of any purported *pro forma* transaction that it determines involves a substantial change of control.

18. We also propose to make a number of other amendments to Section 63.24. First, currently under Section 63.24, a carrier may notify the Commission of a *pro forma* assignment by filing a written letter to the Commission within 30 days after the transaction is consummated. Notification is not required for a *pro forma* transfer of control under the present rule. We propose that the rule clearly state that both *pro forma* transferees and *pro forma* assignees are required to notify the Commission of either a *pro forma* transfer of control or assignment, which may be done by letter 30 days after the transaction. Second, we propose to add definitions and explanatory language regarding assignments and transfers of control to enhance clarity. Finally, we propose to add a section to the rule addressing the procedure to be followed in the event of an involuntary assignment or transfer of control.

19. We note that under our proposed rule changes applicants continue to be responsible in each instance, as they are currently, for determining whether a proposed transaction is *pro forma* or substantial and for complying with the relevant rules and procedures that govern Commission approval of such transactions. Applications must continue to include the information currently required under Section 63.18(e)(3) for a substantial transfer of control or assignment. We also retain the authority to determine that a particular transaction characterized by the applicants as *pro forma* is, in fact, a substantial change of control and therefore should be subject to the appropriate review. In that case we will rescind the grant of the purported *pro forma* assignment or transfer of control.

20. We tentatively conclude that revising our rules on assignments and transfers of control of international Section 214 authorizations to more closely track the rule used for CMRS will reduce the regulatory burden on Section 214 authorization holders.³⁶ We seek comment on this tentative conclusion and whether the proposed rule will fulfill our stated objectives of

³⁶ We note that the proposed rule amends our process only with respect to assignments and transfers of control of international Section 214 authorizations and does not affect the process with respect to assignments and transfers of control of cable landing licenses, which continue to be governed by Section 1.767.

providing greater flexibility to Section 214 authorization holders and expanding the possible range of transactions that qualify for filing on a *pro forma* basis.

B. Settlement Rate Benchmark Conditions

21. In the *Benchmarks Order*, the Commission established benchmarks that govern the international settlement rates that U.S. carriers may pay foreign carriers to terminate international traffic originating in the United States.³⁷ Above-cost settlement rates raise two concerns that the Commission sought to address in its *Benchmarks Order*.³⁸ First, above-cost settlement rates contribute to the inflated prices paid by U.S. consumers for international services. Second, the above-cost margins in settlement rates can be used to finance strategies that create competitive distortions in the market for U.S. international services. To address the Commission's concern about potential distortions in the U.S. market created by above-cost settlement rates, the Commission adopted benchmark conditions for certain types of Section 214 authorizations.

22. One of the benchmarks conditions applies to authorizations to provide international facilities-based switched or private line service between the United States and an affiliated market. The condition requires that before a U.S. carrier may provide facilities-based switched or private line service on a route where it is affiliated with a carrier with market power on the foreign end of the route, the foreign affiliate must offer all U.S. carriers on the route a rate for settling traffic that is at or below the relevant benchmark rate.³⁹ The Commission adopted the condition for facilities-based switched service to affiliated markets to address the potential for a carrier to engage in a predatory price squeeze, *i.e.*, to price below the level of its imputed costs when providing U.S. facilities-based switched service between the United States and a foreign market where it has an affiliate. Because we now believe that the burdens placed on some carriers by the policy outweigh the benefits of the policy, we propose to discontinue the application of the benchmark rates to services provided over facilities-based private lines.

23. As applied to authorizations to provide facilities-based private line service, the benchmark condition serves to limit the ability of carriers to circumvent the condition by sending facilities-based switched traffic over private lines. The Commission's concern about the ability of U.S. carriers to engage in a price squeeze on routes where they are affiliated with a foreign carrier with market power is not relevant for facilities-based private line service because private line service is not subject to the accounting rate system. Rather, we applied the benchmarks condition to services over private lines to prevent cheating to avoid the condition as it applies to services

³⁷ See *International Settlement Rates*, IB Docket No. 96-261, Report and Order, 12 FCC Rcd 19806 (1997) (*Benchmarks Order*), *aff'd sub nom. Cable and Wireless Plc v. FCC*, 166 F.3d 1224 (D.C. Cir. 1999), Report and Order on Reconsideration and Order Lifting Stay, 14 FCC Rcd 9256 (1999) (*Benchmarks Reconsideration Order*).

³⁸ See *Benchmarks Order*, 12 FCC Rcd at 19806 ¶ 2.

³⁹ The condition is codified at 47 C.F.R. § 63.10(e).

subject to the accounting rate system.

24. Since the adoption of the benchmarks condition for facilities-based service in the *Benchmarks Order*, we have become concerned that application of the condition to facilities-based private line service is unnecessarily burdensome and could prevent the development of innovative services. As currently applied, the condition prevents carriers, including those who do not provide facilities-based switched services on a route, from providing facilities-based private line service on that route if they are affiliated with a dominant foreign carrier whose settlement rates are above the benchmark rates. At the same time, we question whether application of the condition to facilities-based private line service is necessary to prevent carriers from evading the condition as it applies to facilities-based switched services. We consider it unlikely that a carrier could evade the condition by sending a substantial portion of its facilities-based switched traffic over facilities-based private lines without detection by the Commission and other carriers on the route. Carriers are required under Section 43.61 of the Commission's rules to file traffic reports detailing traffic and revenue data for all services they provide.⁴⁰ Any substantial shift of traffic from facilities-based switched services to facilities-based private lines would be evident based on the data filed in the reports. Thus, the Commission could detect the evasion of the benchmarks condition and commence enforcement proceedings if warranted.

25. We therefore tentatively conclude that we should no longer apply the benchmarks condition to authorizations to provide services over facilities-based private lines. We believe that this proposed change will relieve an unnecessary burden without adversely affecting competitive safeguards. We seek comment on this tentative conclusion. Comments should address the likelihood that a carrier could successfully evade application of the condition by sending facilities-based switched traffic over facilities-based private lines.

C. Discontinuance of Service by Dominant Carriers

26. Section 63.19 of the rules specifies the procedures for discontinuances of service by U.S. international common carriers.⁴¹ This rule requires that non-dominant international carriers provide affected customers with 60 days notice of a planned discontinuance, reduction or impairment of service and file with the Commission a copy of the notification on or after the date on which notice has been given to all affected customers. Dominant international carriers, by contrast, must seek prior Commission approval for any such discontinuance of service by filing an application under Section 63.500.⁴² For the reasons discussed below, we propose to modify Section 63.19 to relieve dominant international carriers of the requirement to seek such prior

⁴⁰ 47 C.F.R. § 43.61.

⁴¹ 47 C.F.R. § 63.19.

⁴² 47 C.F.R. § 63.500. See *Streamlining the International Section 214 Authorization Process and Tariff Requirements*, IB Docket No. 95-118, Report and Order, 11 FCC Rcd 12,884, 12,905 ¶ 50 (1996) (*1996 Streamlining Order*).

approval, except where such carriers possess market power on the U.S. end of the route.

27. Section 63.19 defines the terms "non-dominant" and "dominant" as these terms are defined in Section 63.10 of the rules.⁴³ Section 63.10 sets forth our framework for classifying and regulating U.S. international carriers as dominant or non-dominant on particular U.S. international routes based on whether the U.S. carrier is affiliated with a carrier that has sufficient market power on *the foreign end* of a U.S. international route to affect competition adversely in the U.S. market.⁴⁴ Section 63.10 does not address the classification or regulation of a U.S. international carrier as dominant based on its possessing market power on *the U.S. end* of a particular route.⁴⁵ Thus, Section 63.19 on its face requires prior Commission approval before a discontinuance of service by a U.S. international carrier that is classified as dominant on a particular route due to an affiliation with a carrier possessing market power on the foreign end of that route. It does not, by its terms, require prior approval by a U.S. international carrier that may be classified as dominant due to the existence of market power in the provision of international service on the U.S. end of a route.⁴⁶ This is an incongruous result. We propose to amend the rule to require prior approval for discontinuances by a U.S. international carrier only for those routes and services for which the carrier is classified as dominant due to its having market power in the provision of that international service on the U.S. end of the route.

28. Requiring prior approval for a discontinuance of service is a means to protect against the "unreasonable termination or reduction of service to customers."⁴⁷ This requirement is one of several regulations that have been "associated with dominant carrier classification due to

⁴³ 47 C.F.R. § 63.10.

⁴⁴ See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket No. 97-142, *Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket No. 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23987, ¶ 215 (1997) (*Foreign Participation Order*) recon. FCC 00-339 (rel. Sep. 19, 2000). Section 63.09(e) of the rules provides, inter alia, that "[t]wo entities are affiliated with each other if one of them, or an entity that controls one of them, directly or indirectly owns more than 25 percent of the capital stock of, or controls, the other one." 47 C.F.R. § 63.09(e).

⁴⁵ See *Foreign Participation Order*, 12 FCC Rcd at 23987 n. 434.

⁴⁶ Comsat is the only U.S. international carrier that continues to be regulated as dominant on particular routes in its provision of particular services due to the existence of market power on the U.S. end of those routes. See *Petition Pursuant to Section 10(c) of the Communications Act of 1934, as amended, for Forbearance from Dominant Carrier Regulation and for Reclassification as a Non-Dominant Carrier*, File No. 60-SAT-ISP-97, *Policies and Rules for Alternative Incentive Based Regulation of Comsat Corporation*, IB Docket No. 98-60, Order and Notice of Proposed Rule Making, 13 FCC Rcd 14083 (1998) (*Comsat Reclassification Order*).

⁴⁷ See *1996 Streamlining Order*, 11 FCC Rcd at 12890 ¶ 13.

the market power of a U.S. carrier on the U.S. end of a route."⁴⁸ The concern the discontinuance rule addresses is that consumers will not have adequate alternatives available if a dominant carrier discontinues service. The safeguards that apply to carriers regulated as dominant due to an affiliation with foreign carriers possessing market power in foreign markets, on the other hand, address a different concern. These safeguards are designed to prevent a foreign carrier with market power from leveraging that market power into the U.S. market.⁴⁹ We find no clear intention in the portion of the *1996 Streamlining Order* which adopted Section 63.19 to apply the requirement for prior approval of discontinuances of U.S. international service by carriers regulated as dominant on particular routes due only to an affiliation with a foreign carrier with market power. Therefore, we tentatively conclude that the requirement should apply only to U.S. carriers regulated as dominant due to market power in the U.S.

29. We find no reason to require prior Commission approval of discontinuances of service by U.S. carriers regulated as dominant merely by operation of Section 63.10 of the rules. We therefore propose to amend Section 63.19 to clarify that the less burdensome prior notification procedure of that rule applies to these carriers. We seek comment on this proposal. Commenters should address under what circumstances, if any, prior Commission approval should be required before a U.S. carrier regulated as dominant under Section 63.10 can discontinue service.

D. Other Rules

1. Control and Application of the Multiplier

30. We propose to clarify the explanatory notes in Sections 63.09 and 63.18 regarding attribution of indirect ownership interests in U.S. and foreign carriers.⁵⁰ These notes explain that attribution of such interests is determined through the use of a multiplier. The notes, however, are unclear about how to apply the multiplier to an ownership interest of less than 50 percent but nonetheless represents actual control. The International Bureau has recently interpreted these notes to mean that any ownership

⁴⁸ *Foreign Participation Order*, 12 FCC Rcd at 23987 n.434 (citing *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace*, Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, 12 FCC Rcd 15756, 15804-5 ¶¶ 85-86 (*LEC Regulatory Treatment Order*)); *Motion of AT&T Corp. to be Declared Non-Dominant for International Service*, Order, 11 FCC Rcd 17963, 17972-73 ¶¶ 26-28 (1996) (*AT&T International Non-Dominance Order*), *recon. denied*, 13 FCC Rcd 21501; *Petition of GTE Hawaiian Telephone Company, Inc. for Reclassification as a Non-dominant IMTS Carrier*, Order, 11 FCC Rcd 20354, 20357 ¶ 8 (IB 1996) (*GTE Hawaii Non-Dominance Order*).

⁴⁹ *Foreign Participation Order*, 12 FCC Rcd at 23987 n.434 (quoting *LEC Regulatory Treatment Order*, 12 FCC Rcd at 15804 ¶ 85).

⁵⁰ See 47 C.F.R. §§ 63.09 note 2, 63.18 note 4.

interest greater than 50 percent or that constitutes a controlling interest will be treated as if it were a 100 percent ownership interest for purposes of applying the multiplier.⁵¹ We tentatively conclude that it would be in the public interest to amend the notes in Sections 63.09 and 63.18 so that they are clear on their face that whenever an ownership percentage exceeds 50 percent or represents actual control it shall be treated as a 100 percent interest for purposes of applying the multiplier.⁵² We seek comment on this tentative conclusion.

2. Conveying Transmission Capacity in Submarine Cables

31. In the *1996 Streamlining Order*, the Commission eliminated the requirement that U.S. carriers regulated as dominant because of the existence of market power in the provision of U.S. international service obtain Section 214 authority prior to conveying transmission capacity in submarine cables. As a result, we adopted the notification requirement, codified in Section 63.21(h) of the rules.⁵³ Since adoption of Section 63.21(h), we have found, with one limited exception, that the U.S. international carriers that were classified as dominant at the time of the order no longer possess market power in the provision of U.S. international services.⁵⁴ Comsat is the only U.S. international carrier that continues to be regulated as dominant on particular routes in its provision of particular services because of the existence of market power on the U.S. end of those routes.⁵⁵ Because these services are limited to those provided by Comsat over INTELSAT satellites and do not include submarine cable facilities,⁵⁶ there are no U.S. carriers to which Section 63.21(h) currently applies. Even if we find it necessary at some future date to regulate a U.S. carrier as dominant due to its ability to exercise market power in the provision of U.S. international service, we tentatively conclude that it would be preferable to take a fresh look at that time at the safeguards that should apply to that carrier. We can undertake such a review in the context of a rulemaking or adjudicatory proceeding at a future date. We therefore propose to eliminate Section 63.21(h).

⁵¹ See *Southwestern Bell Communications Services, Inc., Application for Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, for Authority to Operate as an International Facilities-Based and Resale Carrier*, File No. ITC-214-20000127-00027, 15 FCC Rcd 11718 at ¶ 21(TD/IB 2000) (citing *Amendment of the Commission's Rules to Establish New Narrowband Personal Communications Services*, Gen Docket No. 90-314, ET Docket No. 92-100, Second Memorandum Opinion and Order, 9 FCC Rcd 4519, 4522 ¶ 16 (1994)).

⁵² We note this interpretation is consistent with the rules for CMRS licensees. See 47 C.F.R. §§ 20.6(d)(8), 24.101(b).

⁵³ 47 C.F.R. § 63.21(h). See *1996 Streamlining Order*, 11 FCC Rcd at 12905 ¶¶ 49-50.

⁵⁴ See *AT&T International Non-Dominance Order*, 11 FCC Rcd 17963; *GTE Hawaii Non-Dominance Order*, 11 FCC Rcd 20354.

⁵⁵ See *Comsat Reclassification Order*, 13 FCC Rcd 14083.

⁵⁶ *Id.*

3. Reports of Carriers Owned by Foreign Telecommunications Entities

32. Section 43.81 of our rules requires certain foreign-owned carriers to file with the Commission annual revenue and traffic reports with respect to all common carrier telecommunication services they offer in the United States.⁵⁷ The purpose of the reporting requirement is to allow the Commission to monitor whether carriers owned by foreign telecommunications entities are using their market power to influence the price of U.S. international telecommunications services or the development of competition in the U.S. international services market.⁵⁸ As originally adopted in 1988, the rule required quarterly reports from all foreign-owned carriers.⁵⁹ The rule was subsequently amended to require annual reports from a limited number of carriers.⁶⁰ In addition, the rule requires the filings for only three years – 1988, 1989 and 1990 – and contained a “sunset” provision, meaning that the requirement would automatically expire after three years absent a specific determination that an extension of the requirement was appropriate.⁶¹ Although no such determination was made and the time period for filing the reports has expired, the rule still remains in the Code of Federal Regulations. We tentatively conclude that we should remove this obsolete rule.

4. Permitted Facilities

33. Section 63.22 of our rules sets out the conditions which apply to facilities-based international carriers.⁶² In adopting this section in the *1998 International Biennial Review Order*, the Commission sought to provide that facilities-based carriers with a global Section 214 authorization may use any facilities in their provision of authorized services except as provided on the "Exclusion List for International Section 214 Authorizations" (Exclusion List).⁶³ The rule, however, does not specifically address the use of U.S. cross-border facilities which are not licensed under Title III or the Submarine Cable Landing License Act, such a land-line fiber optic cable. This has led to some confusion as to whether carriers are allowed to use such facilities. We want to clarify that carriers are authorized to use such facilities, as long as they are not

⁵⁷ 47 C.F.R. § 43.81.

⁵⁸ *See Regulatory Policies and International Telecommunications*, CC Docket No. 86-494, Order on Reconsideration, 4 FCC Rcd 323, 337 ¶¶ 75 (1989).

⁵⁹ *See Regulatory Policies and International Telecommunications*, CC Docket No. 86-494, Report and Order and Supplemental Notice of Inquiry, 4 FCC Rcd 7387, 7430, ¶ 80, 7446, Appendix B (1988).

⁶⁰ *See Regulatory Policies and International Telecommunications*, CC Docket No. 86-494, Order on Reconsideration, 4 FCC Rcd 323, 337 ¶¶ 72-73 (1989).

⁶¹ *Id.* at ¶ 73.

⁶² 47 C.F.R. § 63.22.

⁶³ *1998 International Biennial Review Order*, 14 FCC Rcd at 4933 ¶ 58.

included on the Exclusion List. We propose to amend Section 63.22(b) to clarify that a facilities-based carrier may provide service over U.S. facilities which are not subject to authorization by the Commission, as long as those facilities are not on the Exclusion List. We seek comment on this proposal.

34. Section 63.22(b) also addresses the ability of carriers to use U.S. earth stations to access non-U.S.-licensed satellite systems.⁶⁴ In general, a carrier may not use U.S. earth stations to access non-U.S.-licensed satellite systems unless the Commission has specifically approved the use of those satellites and indicates such on the Exclusion List. In addition, Section 63.22(b) allows carriers to use those approved satellite systems to provide service only to specific countries identified on the Exclusion List. The International Bureau, however, considers non-U.S.-licensed satellites on the Permitted Space Station List⁶⁵ to be approved satellite systems for purposes of the Exclusion List,⁶⁶ and the Permitted Space Station List does not list specific countries for which the approved satellites may be used to provide U.S. international services. This inconsistency can be confusing. We propose to amend Section 63.22(b) by removing the general reference to a list of countries in the Exclusion List. To the extent that a non-U.S.-based satellite system is permitted for use by U.S. earth stations, those satellites may be used to provide service to any countries accessible by the satellites unless specifically excluded. Such limitations on the use of an approved non-U.S.-licensed satellite system will be listed in the Permitted Space Station List. We seek comment on this proposal.

⁶⁴ 47 C.F.R. § 63.22(b).

⁶⁵ As discussed above, a global international Section 214 authorization enables a facilities-based common carrier to use any facilities except those listed on the Exclusion List. Originally, all non-U.S.-licensed satellites were included in the Exclusion List. Subsequently, the Commission developed the Permitted Space Station List to streamline Title III earth station licensing procedures. Originally, an ALSAT Title III earth station license authorized the earth station operator to communicate with all U.S.-licensed satellites, but was required to apply for a modification to its license to communicate with a non-U.S.-licensed satellite. Now, an ALSAT earth station operator may communicate with all U.S. satellites, and all non-U.S.-licensed satellites on the "Permitted Space Station List." For more information on the Permitted List, see *Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States*, First Order on Reconsideration, IB Docket No. 96-111, 15 FCC Rcd 7207 (1999).

⁶⁶ Specifically, the International Bureau interprets the Exclusion List to exclude any non-U.S.-licensed satellite that has been added to the Permitted Station List. Thus, a facilities-based common carrier with a global international Section 214 authorization is authorized to use non-U.S.-licensed satellites on the Permitted Station List. See *International Bureau Announces Process for Providing Service Under Global International Section 214 Authorizations Using Approved Non-U.S.-Licensed Satellite Systems Listed on the Permitted Space Station List*, Public Notice, DA 99-2844 (rel. Dec. 17, 1999).

5. Duplicative Notes

35. Section 63.09 contains the definitions that apply to the Part 63 rules for international common carriers.⁶⁷ The Commission created this definitional section in the *1998 International Biennial Review Order* in order to simplify its part 63 rules for international common carriers and make those rules easier to follow.⁶⁸ We propose in this proceeding to eliminate unnecessary duplication in Section 63.09 and Section 63.18,⁶⁹ which specifies the contents required for international Section 214 applications. Specifically, we propose to eliminate the first three explanatory notes to Section 63.18(h).

36. The first note to Section 63.18(h) defines the term "control."⁷⁰ We propose to delete this note as unnecessarily duplicative because "control" is defined in Section 63.09(b).⁷¹ Similarly, we propose to delete the second note to Section 63.18(h).⁷² This note defines the term "facilities-based carrier" and is now codified in Section 63.09(a).⁷³ The third note we propose to delete from Section 63.18 explains the meaning of "capital stock"⁷⁴ which is also defined in Section 63.09.⁷⁵ We find it unnecessary for the definition to appear both sections. We propose to maintain note 4 to Section 63.18(h).⁷⁶ This note, which also appears in Section 63.09, explains the method for attributing indirect ownership interests in U.S. and foreign carriers.⁷⁷ It is used both for determining whether a Section 214 applicant is "affiliated" with a U.S. or foreign carrier (within the meaning of Section 63.09(e)) and for determining the applicant's 10 percent or greater shareholders (pursuant to Section 63.18(h)). We therefore propose to maintain this note in both sections. As discussed above, we also propose in this proceeding to clarify the substance of this

⁶⁷ 47 C.F.R. § 63.09.

⁶⁸ *1998 International Biennial Review Order*, 14 FCC Rcd at 4941 ¶ 78.

⁶⁹ 47 C.F.R. § 63.18.

⁷⁰ 47 C.F.R. § 63.18 Note 1.

⁷¹ 47 C.F.R. § 63.09(b).

⁷² 47 C.F.R. § 63.18 Note 2.

⁷³ 47 C.F.R. § 63.09(a).

⁷⁴ 47 C.F.R. § 63.18 Note 3.

⁷⁵ 47 C.F.R. § 63.03 Note 1.

⁷⁶ 47 C.F.R. § 63.18 Note 4.

⁷⁷ See 47 C.F.R. § 63.09 Note 2.

note.⁷⁸

6. Applications for Supplementary Facilities

37. Section 63.20 of the rules contains procedures for filing international Section 214 applications and related pleadings, as well as the requirements for public notice and comment on these applications.⁷⁹ We tentatively conclude that we should delete from paragraph (a) of this section the provision that specifies the number of copies required to be filed where an application involves "only the supplementation of existing international facilities, and the issuance of a certificate is not required...."⁸⁰ Applications to supplement already-authorized facilities are no longer required to be filed by U.S. international carriers.⁸¹ Therefore, this provision can be deleted as unnecessary.

7. Filings on Diskettes

38. Section 63.53(b) sets forth procedures for the submission of Section 214 applications on computer diskettes.⁸² As part of the Commission's on-going efforts to process applications as quickly and efficiently as possible, the Commission established the International Bureau Filing System (IBFS).⁸³ Since February 10, 1999, applicants have been able to use the IBFS to file electronically numerous applications, including international Section 214 applications. Given the ability of applicants to use the IBFS to file international Section 214 applications, we no longer find it in the public interest to have applicants file international Section 214 applications on computer diskettes. We therefore tentatively conclude that Section 63.53(b) should be deleted. We seek comment on this tentative conclusion and whether there is any reason to continue to allow international Section 214 applications to be filed on computer diskettes.

39. Similarly, Section 63.10(d) sets forth requirements that reports filed by dominant carriers pursuant to paragraphs 63.10(c)(3), (c)(4), and (c)(5), must be filed on diskettes. We do

⁷⁸ See ¶ 30, *supra*.

⁷⁹ 47 C.F.R. § 63.20.

⁸⁰ 47 C.F.R. § 63.20(a).

⁸¹ The Commission eliminated this category of applications in the 1996 Streamlining Order, 11 FCC Rcd at 12891-92 ¶ 13. See also *Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996, Petition for Forbearance of the Independent Telephone and Telecommunications Alliance*, Report and Order in CC Docket No. 97-11 and Second Memorandum Opinion and Order in AAD File No. 98-43, 14 FCC Rcd 11364, 11369 ¶ 7, 11386, Appendix B (1999) (eliminating section 63.03 relating to small projects for supplementing of facilities by dominant, domestic interstate and international carriers).

⁸² 47 C.F.R. § 63.53(b).

⁸³ See *International Bureau On-Line Reports and Electronic Filing Pilot Program*, Report No. IBFS-99-0001, Public Notice (Feb. 10, 1999). Information about the IBFS may also be found on the Commission's web-site at www.fcc.gov/ib.

not find there to be any reason to continue to require these reports to be filed on diskettes, and tentatively conclude Section 63.10(d) should be amended to remove this requirement. We seek comment on this tentative conclusion and whether there is any reason to continue to require these reports be filed on computer diskettes.

III. CONCLUSION

40. In this proceeding we propose to amend several of the Commission's rules regarding the provision of international telecommunications service. We propose to amend our rule concerning *pro forma* assignments and transfers of control of international Section 214 authorizations. We also tentatively conclude that that is no longer necessary to apply the settlement rate benchmarks condition to Section 214 authorizations to provide services over international private lines. We also propose to modify our rules to relieve "dominant" international carriers of the requirement to seek prior approval to discontinue service, except where such carriers possess market power on the U.S. end of the route. Finally, we propose to amend several rules to clarify the intent of those rules and to eliminate certain rules that no longer have any application. We find that these proposed changes will remove unnecessary burdens from both the public and the Commission. We seek comment on those proposals and tentative conclusions.

IV. Procedural Matters

A. Ex Parte Procedures

41. This NPRM is a permit but disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules.⁸⁴

B. Comment Filing Procedures

42. Pursuant to Sections 1.415 and 1.419 of the Commission's rules,⁸⁵ interested parties may file comments on or before **January 24, 2001** and reply comments on or before **February 27, 2001**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS)⁸⁶ or by filing paper copies.

⁸⁴ See generally 47 C.F.R. §§ 1.1202, 1.1203, and 1.1206(a).

⁸⁵ 47 C.F.R. §§ 1.415 and 1.419.

⁸⁶ See *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998).

43. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic copy by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message: "get form <your e-mail address>." A sample form and directions will be sent in reply.

44. Parties who choose to file by paper must file an original and four copies of each filing. All paper filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street S.W., Room TW-A325, Washington, DC 20554.

45. Parties who choose to file by paper should also submit their comments on diskette to Peggy Reitzel, Telecommunications Division, International Bureau, Federal Communications Commission, 445 Twelfth Street S.W., Room 6-A822, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM-compatible format using Microsoft Word for Windows, or a compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read-only" mode. The diskette should be clearly labeled with the commenter's name, proceeding, including the lead docket number in the proceeding (IB Docket No. 00-231), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase: "Disk Copy – Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters should send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th St. N.W., Washington DC 20037.

C. Initial Regulatory Flexibility Act Analysis

46. The Regulatory Flexibility Act (RFA) requires a Regulatory Flexibility Act analysis whenever an agency publishes a notice of proposed rulemaking or promulgates a final rule, unless the agency certifies that the proposed or final rule will not have "a significant economic impact on a substantial number of small entities," and includes the factual basis for such certification.⁸⁷ Pursuant to Section 603 of the RFA, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and actions considered in this NPRM. The text of the IRFA is set forth in Appendix B. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided above in paragraph 41 – comments may be filed on or before **January 24, 2001**, and reply comments on or before **February 27, 2001**. The Commission will send a copy of the NPRM, including the IRFA,

⁸⁷ 5 U.S.C. § 601 *et. seq.*, amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

to the Chief Counsel for Advocacy of the Small Business Administration.⁸⁸ In addition, summaries of the NPRM and IRFA will be published in the Federal Register.⁸⁹

D. Paperwork Reduction Act of 1995 Analysis

47. This NPRM contains either a new or modified information collection. It will be submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act. As part of its continuing effort to reduce paperwork burdens, we will invite the general public and the OMB, and other federal agencies, to take the opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

V. Ordering Clauses

48. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Sections 1, 4, 11, 214, 218, 219, 220, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 161, 214, 218, 219, 220, 403, this NOTICE OF PROPOSED RULEMAKING IS HEREBY ADOPTED and COMMENTS ARE REQUESTED as described above.

⁸⁸ See 5 U.S.C. § 603(a).

⁸⁹ See 5 U.S.C. § 603(a).

49. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this NOTICE OF PROPOSED RULEMAKING, including the Initial Regulatory Flexibility Act Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. § 601 *et seq.*

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

APPENDIX A

Proposed Rules

1. We propose to remove Section 43.81.
2. We propose to amend Note 2 of Section 63.09 to read as follows (deletions are struck out, additions are in bold):

Note 2: Ownership and other interests in U.S. and foreign carriers will be attributed to their holders and deemed cognizable pursuant to the following criteria: Attribution of ownership interests in a carrier that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that wherever the ownership percentage for any link in the chain exceeds 50 percent **or represents actual control, it shall be treated as if it were a 100 percent interest.** ~~it shall not be included for purposes of this multiplication.~~ For example, if A owns 30 percent of company X, which owns 60 percent of company Y, which owns 26 percent of "carrier," then X's interest in "carrier" would be 26 percent (the same as Y's interest because X's interest in Y exceeds 50 percent), and A's interest in "carrier" would be 7.8 percent (0.30 x 0.26). Under the 25 percent attribution benchmark, X's interest in "carrier" would be cognizable, while A's interest would not be cognizable.

3. We propose to amend Section 63.10 to read as follows (deletions are struck out, additions are in bold):

(d) A carrier classified as dominant under this section shall file an original and two copies of each report required by paragraphs (c)(3), (c)(4), and (c)(5) of this section with the Chief, International Bureau. ~~The carrier shall include with its filings separate computer diskettes for the reports required by paragraphs (c)(3) and (c)(5), in the format specified by the Sec. 43.61 and Sec. 43.82 filing manuals, respectively.~~ The carrier shall also file one ~~paper~~ copy of these reports, ~~accompanied by the appropriate computer diskettes,~~ with the Commission's copy contractor. The transmittal letter accompanying each report shall clearly identify the report as responsive to the appropriate paragraph of Sec. 63.10(c).

4. We propose to delete subsection (e)(3) of Section 63.18, and redesignate subsection (e)(4) as (e)(3).
5. We propose to amend Section 63.18 by deleting Notes 1, 2, and 3, redesignating

Note 4 as Note 1 and revising it to read as follows (deletions are struck out, additions are in bold):

Note 1 to paragraph (h): Ownership and other interests in U.S. and foreign carriers will be attributed to their holders and deemed cognizable pursuant to the following criteria: Attribution of ownership interests in a carrier that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that wherever the ownership percentage for any link in the chain exceeds 50 percent **or represents actual control, it shall be treated as if it were a 100 percent interest.** ~~it shall not be included for purposes of this multiplication.~~ For example, if A owns 30 percent of company X, which owns 60 percent of company Y, which owns 26 percent of “carrier,” then X's interest in “carrier” would be 26 percent (the same as Y's interest because X's interest in Y exceeds 50 percent), and A's interest in “carrier” would be 7.8 percent (0.30 x 0.26). Under the 25 percent attribution benchmark, X's interest in “carrier” would be cognizable, while A's interest would not be cognizable.

6. We propose to amend Section 63.19 to read as follows (deletions are struck out, additions are in bold):

§ 63.19 Special procedures for discontinuances of international services.

(a) **With the exception of those international carriers described in paragraph (b) of this section, a** ~~Any non-dominant international carrier as this term is defined in § 63.10~~ that seeks to discontinue, reduce or impair service, including the retiring of international facilities, dismantling or removing of international trunk lines, shall be subject to the following procedures in lieu of those specified in §§ 63.61 through 63.601:

(1) The carrier shall notify all affected customers of the planned discontinuance, reduction or impairment at least 60 days prior to its planned action. Notice shall be in writing to each affected customer unless the Commission authorizes in advance, for good cause shown, another form of notice.

(2) The carrier shall file with this Commission a copy of the notification on or after the date on which notice has been given to all affected customers.

(b) **The following procedures shall apply to a** ~~Any dominant international carrier as this term is defined in § 63.10~~ **that the Commission has classified as dominant in the provision of a particular international service because the carrier possesses market power in the provision of that service on the U.S. end of the route. Any such carrier** that seeks to retire international facilities, dismantle or remove international trunk lines, and the **dominant** services being provided through these facilities ~~is are~~ not being discontinued, reduced or impaired, shall only be subject to the notification requirements of paragraph (a) of this section. If such carrier discontinues, reduces or impairs **the dominant** service ~~to a community~~ or retires facilities that impair or reduce **the**

service to a community, the dominant carrier shall file an application pursuant to §§ 63.62 and 63.500.

7. We propose to amend Section 63.20 to read as follows (deletions are struck out):

§ 63.20 Copies required; fees; and filing periods for international service providers.

(a) Unless otherwise specified the Commission shall be furnished with an original and five copies of applications filed for international facilities and services under Section 214 of the Communications Act of 1934, as amended. ~~Provided, however, that where applications involve only the supplementation of existing international facilities, and the issuance of a certificate is not required, an original and two copies of the application shall be furnished.~~ Upon request by the Commission, additional copies of the application shall be furnished. Each application shall be accompanied by the fee prescribed in subpart G of part 1 of this chapter.

8. We propose to delete subsection (h) of Section 63.21 and redesignate subsections (i) and (j) of Section 63.21 as subsections (h) and (i) respectively.

9. We propose to amend Section 63.22 to read as follows (deletions are struck out):

§ 63.22 Facilities-based international common carriers.

The following conditions apply to authorized facilities-based international carriers:

(b) The carrier may provide service using half-circuits on any ~~appropriately licensed~~ U.S. common carrier and non-common carrier facilities ~~(under either Title III of the Communications Act of 1934, as amended, or the Submarine Cable Landing License Act, 47 U.S.C. 34-39)~~ that do not appear on an exclusion list published by the Commission. Carriers may also use any necessary non-U.S.-licensed facilities, including any submarine cable systems, that do not appear on the exclusion list. Carriers may not use U.S. earth stations to access non-U.S.-licensed satellite systems unless the Commission has specifically approved the use of those satellites and so indicates on the exclusion list, ~~and then only for service to the countries indicated thereon.~~ The exclusion list is available from the International Bureau's World Wide Web site at <http://www.fcc.gov/ib>.

10. We propose to amend Section 63.24 to read as follows:

§ 63.24 Assignments and transfers of control

(a) General.

Except as otherwise provided in this section, an international section 214 authorization may be assigned, or control of such authorization may be transferred by the transfer of control of any entity holding such authorization, to another party, whether voluntarily or involuntarily, directly or indirectly, only upon application to and prior approval by the Commission.

(b) Assignments.

For purposes of this section, an assignment of an authorization is a transaction in which the authorization is assigned from one entity to another entity. Following an assignment, the authorization is held by an entity other than the one to which it was originally granted.

(c) Transfers of control.

For purposes of this section, a transfer of control is a transaction in which the authorization remains held by the same entity, but there is a change in the entity or entities that control the authorization holder. A change from less than 50% ownership to 50% or more ownership shall always be considered a transfer of control. In all other situations, whether the interest being transferred is controlling must be determined on a case-by-case basis with reference to the factors listed in Note 1.

(d) *Pro forma* assignments and transfers of control.

Transfers of control or assignments that do not result in a change in the actual controlling party are considered non-substantial or *pro forma*. Whether there has been a change in the actual controlling party must be determined on a case-by-case basis. The types of transactions listed in Note 1 to paragraph (d) shall be considered presumptively *pro forma* and prior approval from the Commission need not be sought.

NOTE 1 TO PARAGRAPH (d): If a transaction is one of the types listed below, the transaction is presumptively *pro forma* and prior approval need not be sought. In all other cases, the relevant determination shall be made on a case-by-case basis.

- (1) Assignment from an individual or individuals (including partnerships) to a corporation owned and controlled by such individuals or partnerships without any substantial change in their relative interests;
- (2) Assignment from a corporation to its individual stockholders without effecting any substantial change in the disposition of their interests;

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- (3) Assignment or transfer by which certain stockholders retire and the interest transferred is not a controlling one;
 - (4) Corporate reorganization that involves no substantial change in the beneficial ownership of the corporation (including re-incorporation in a different jurisdiction or change in form of the business entity);
 - (5) Assignment or transfer from a corporation to a wholly owned direct or indirect subsidiary thereof or vice versa, or where there is an assignment from a corporation to a corporation owned or controlled by the assignor stockholders without substantial change in their interests; or
 - (6) Assignment of less than a controlling interest in a partnership.
- (e) Applications for substantial transactions.
- (1) In the case of an assignment or transfer of control of an international Section 214 authorization that is not *pro forma*, the proposed assignee or transferee must apply to the Commission for authority prior to consummation of the proposed assignment or transfer of control.
 - (2) The application shall include the information requested in paragraphs (a) through (d) of Rule 63.18 for both the transferor/assignor and the transferee/assignee. The information requested in paragraphs (h) through (p) of Rule 63.18 is required only for the transferee/assignee. At the beginning of the application, the applicant shall include a narrative of the means by which the proposed transfer or assignment will take place.
 - (3) The Commission reserves the right to request additional information as to the particulars of the transaction to aid it in making its public interest determination.
 - (4) An assignee or transferee shall notify the Commission no later than 30 days after either consummation of the proposed assignment or transfer of control, or a decision not to consummate the proposed assignment or transfer of control. The notification may be made by letter (sending one copy to the Office of the Secretary and one copy to the Telecommunications Division of the International Bureau) and shall identify the file numbers under which the initial authorization and the authorization of the assignment or transfer of control were granted.
- (f) Applications for non-substantial or *pro forma* transactions
- (1) In the case of a *pro forma* assignment or transfer of control, the applicant is not required to seek prior Commission approval.

- (2) A *pro forma* assignee or transferee shall file an application with the Commission no later than 30 days after the assignment or transfer is completed. The application may be made by letter (sending one copy to the Office of the Secretary and one copy to the Chief of the Telecommunications Division of the International Bureau). The applications must contain the following:
- (i) The information requested in paragraphs (a) through (d) and (h) of Rule 63.18 for the transferee/assignee,
 - (ii) A certification that the transfer of control or assignment was *pro forma* and that, together with all previous *pro forma* transactions, does not result in a change in the actual controlling party.

A single letter may be filed for an assignment of more than one authorization if each authorization is identified by the file number under which it was granted.

- (3) Upon release of a public notice granting a *pro forma* assignment or transfer of control, petitions for reconsideration under Section 1.106 of this chapter or applications for review under Section 1.115 of this chapter of the Commission's rules may be filed within 30 days. Petitioner should address why the assignment or transfer of control in question should have been filed under paragraph (e) of this section rather than under paragraph (f) of this section.

- (g) Involuntary assignments or transfers of control.

An involuntary assignment or transfer of control is one that occurs by operation of law. In the case of an involuntary assignment or transfer of control, the applicant must make the appropriate filing no later than 30 days after the event causing the involuntary assignment or transfer of control.

11. We propose to delete subsection (b) of Section 63.53 and redesignate subsection (c) of Section 63.53 as subsection (b).

APPENDIX B**Initial Regulatory Flexibility Analysis**

As required by the Regulatory Flexibility Act (RFA),¹ the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies proposed in this Notice of Proposed Rulemaking (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided above in Section IV, Subpart C. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.² In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.³

1. *Need for, and Objectives of, the Proposed Rules:* The Telecommunications Act of 1996 (1996 Act)⁴ directs the Commission to undertake, in every even-numbered year beginning in 1998, a review of all regulations issued under the Communications Act of 1934, as amended (Communications Act),⁵ that apply to operations or activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be "no longer necessary in the public interest."⁶ In particular, the 1996 Act directs the Commission to determine whether any such regulation is no longer necessary "as the result of meaningful economic competition between providers of such service."⁷

As part of the year 2000 biennial regulatory review, the Commission reviewed all of its rules relating to international telecommunications services to identify those rules that could be revised or eliminated. In this proceeding, we propose changes to several of our rules relating to international telecommunications services. Specifically, we propose to amend our rule concerning *pro forma* assignments and transfers of control of international Section 214 authorizations to more closely match those used for the assignment and transfer of control of Commercial Mobile

¹ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

² 5 U.S.C. § 603(a).

³ *Id.*

⁴ Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁵ 47 U.S.C. §§ 151 *et seq.*

⁶ 47 U.S.C. § 161.

⁷ 47 U.S.C. § 161(a)(2).

Radio Service (CMRS) licenses. We also tentatively conclude that it is no longer necessary to apply the settlement rate benchmarks condition to Section 214 authorizations to provide facilities-based international private line services. We also propose to modify our rules to relieve dominant international carriers of the requirement to seek prior approval to discontinue service, except where such carriers possess market power in the provision of international service on the U.S. end of the route. Finally, we also propose to amend several rules to clarify the intent of those rules and to eliminate certain rules that no longer have any application. We believe that these proposed changes are in the public interest and will remove unnecessary burdens on the public and the Commission.

2. *Legal basis:* The NPRM is adopted pursuant to Sections 1, 4, 11, 214, 218, 219, 220, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 161, 214, 218, 219, 220, 403.

3. *Description and estimate of the number of small entities to which the proposals will apply:* RFA directs agencies to provide a description of, and, where feasible, estimate of the number of small entities that may be affected by the proposals, if adopted.⁸ The Regulatory Flexibility Act defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small business concern” under Section 3 of the Small Business Act.⁹ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹⁰

The SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such companies that had been operating for at least one year at the end of 1992.¹¹ According to the SBA's definition, a wireline telephone company is a small business if it employs no more than 1,500 persons.¹² All but 26 of the 2,321 wireline companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 wireline companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than

⁸ 5 U.S.C. § 603(b)(3).

⁹ 5 U.S.C. § 601(3).

¹⁰ 5 U.S.C. § 632.

¹¹ U.S. Department of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size, at Firm Size 1-123 (1995).

¹² 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4812.

2,295 of these wireline companies are small entities that might be affected by these proposals.

Specifically, we propose to amend our rule concerning *pro forma* assignments and transfers of control of international Section 214 authorizations to more closely match those used for the assignment and transfer of control of Commercial Mobile Radio Service (CMRS) licenses. We also tentatively conclude that it is no longer necessary to apply the settlement rate benchmarks condition to Section 214 authorizations to provide facilities-based international private line services. We also propose to modify our rules to relieve dominant international carriers of the requirement to seek prior approval to discontinue service, except where such carriers possess market power in the provision of international service on the U.S. end of the route. We also propose to amend several rules to clarify the intent of those rules and to eliminate certain rules that no longer have any application. At this time, we are not certain as to the number of small entities that will be affected by the proposals. We seek comment on the number of small entities that will be affected by the proposals set forth in the NPRM.

4. *Description of projected reporting, recordkeeping, and other compliance requirements:* The proposals made in the NPRM will reduce the recordkeeping and compliance requirements of all companies providing international telecommunications services, including small entities.

In the NPRM, the Commission proposes to provide greater flexibility and clarity regarding assignments and transfers of control. Many of the transactions that carriers are entering into involve multiple services. In the NPRM the Commission proposes procedures regarding *pro forma* assignments and transfers of control of international Section 214 authorizations that more closely follow those used for the assignment and transfer of control of Commercial Mobile Radio Service (CMRS) licenses. This should reduce the burdens placed on carriers filing transfers of control or assignments by having similar requirements for both Section 214 authorizations and CMRS licenses. Under the proposed rule carriers will continue to be required to file an application, which can be in the form of a letter, with the Commission no later than thirty days after the assignment or transfer is completed. The application must contain a certification that the transfer of control or assignment was *pro forma*, and, together with all other previous *pro forma* transactions, this transfer of control or assignment does not result in a change in the actual controlling party. The letter must also contain the name, address of the transferee/assignee, contact points, and updated ownership information.

The Commission also proposes to remove the settlement rate benchmarks condition to Section 214 authorizations to provide facilities-based international private line services. The Commission also proposes to modify its rules to relieve dominant international carriers of the requirement to seek prior approval to discontinue service, except where such carriers possess market power in the provision of international service on the U.S. end of the route. Only one carrier -- Comsat -- is currently regulated as dominant on particular routes in its provision of particular services due to the existence of market power on the U.S. end of those routes. Other carriers that are classified dominant solely due to affiliations with foreign carriers will no longer be required to seek prior approval before discontinuing service.

The other proposals in the NPRM will clarify the intent of certain rules and to eliminate other rules that no longer have any application. We believe that these proposed changes are in the public interest and will remove unnecessary burdens on the public and the Commission.

5. *Steps taken to minimize significant economic impact on small entities, and significant alternatives considered:* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

The Telecommunications Act of 1996 (1996 Act)¹³ directs the Commission to undertake, in every even-numbered year beginning in 1998, a review of all regulations issued under the Communications Act of 1934, as amended (Communications Act),¹⁴ that apply to operations or activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be “no longer necessary in the public interest.”¹⁵ In particular, the 1996 Act directs the Commission to determine whether any such regulation is no longer necessary “as the result of meaningful economic competition between providers of such service.”¹⁶ As part of the 2000 biennial regulatory review, the Commission reviewed all of its rules relating to international telecommunications services to identify those rules that could be revised or eliminated.¹⁷ In this proceeding the Commission proposes changes to several of its rules relating to international telecommunications services. The Commission believes that the proposals in the NPRM will reduce the economic burdens placed on all companies providing international telecommunications services, including small entities.

6. *Federal rules that may duplicate, overlap, or conflict with the proposed rules:*
None.

¹³ Pub. L. No. 104-104, 110 Stat. 56 (1996).

¹⁴ 47 U.S.C. §§ 151 *et seq.*

¹⁵ 47 U.S.C. § 161.

¹⁶ 47 U.S.C. § 161(a)(2).

¹⁷ *See* Federal Communications Commission, Biennial Regulatory Review 2000, Staff Report, September 19, 2000, CC Docket 00-175; Biennial Review 2000 Staff Report Released, Public Notice, FCC 00-346 (rel. Sep. 19, 2000).