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	)	

REPORT AND ORDER

Adopted: May 22, 2002 **Released: June 10, 2002**

By the Commission: Commissioner Abernathy issuing a statement; Commissioner Copps approving in part, dissenting in part, and issuing a statement.

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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. 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.[5] In the Notice of Proposed Rule Making (NPRM) in this proceeding,[6] the Commission proposed changes to several of the rules relating to the provision of international telecommunications services. Specifically, the Commission proposed to amend the 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. The Commission also tentatively concluded 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. The Commission also proposed to modify the rules to clarify that dominant U.S. international carriers need only seek prior approval to discontinue service where such carriers possess market power in the provision of international service on the U.S.-end of the international route. Finally, the Commission proposed to amend several rules to clarify the intent of those rules and to eliminate certain rules that are no longer necessary.

3. Four parties filed comments on the NPRM.[7] The commenters, in general, expressed support for the Commission's proposals. Commenters also requested changes

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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 2000 Biennial Regulatory Review,* CC Docket No. 00-175, Report, 16 FCC Rcd 00-175. *See also* Biennial Regulatory Review 2000 Updated Staff Report, rel. January 17, 2001.

6 *2000 Biennial Regulatory Review: Amendment of Parts 43 and 63 of the Commission's Rules*, IB Docket No. 00-231, Notice of Proposed Rule Making, 15 FCC Rcd 24264 (2000) (NPRM).

7 Comments were filed by: Cinglar Wireless LLC (Cingular); Verizon Global Solutions, Inc., Verizon Slect Services, Inc., and Verizon Long Distance (collectively Verizon); Verizon Wireless; and, Worldcom, Inc. No reply comments were filed.

to several other Commission rules and policies rules not specifically addressed in the NPRM. For the reasons discussed below, we adopt the proposals and tentative conclusions set forth in the NPRM. We also adopt the requests made by the commenters to (1) exempt CMRS carriers from the section 63.19 discontinuance requirements,[8] (2) exempt CMRS carriers providing resale of international switched services from filing quarterly traffic and revenue reports for their service to foreign markets where they are affiliated with a foreign carrier with market power in that market and that collects settlement payments from U.S. carriers,[9] and (3) amend our policy regarding the filing of applications for international section 214 authorization associated with Bell Operating Company (BOC) requests for authority to provide interLATA service in an in-region state pursuant to section 271 of the Communications Act.[10] We find, however, that other requests made by the commenters are not appropriate at this time.

II. DISCUSSION

A. *Pro Forma* Assignments and Transfers of Control

4. We adopt the changes to our rules regarding assignments and transfers of control of international section 214 authorizations proposed in the NPRM.[11] First, we consolidate the rules, now in sections 63.18(e)(3) and 63.24,[12] into section 63.24. Second, we revise the rules for *pro forma* transfers and assignments to be more consistent with those procedures used for other service authorizations, particularly CMRS. We find that these amendments to the rules on transfers of control and assignments will allow greater flexibility to applicants in structuring transactions and will provide greater clarity to authorized international carriers regarding assignments and transfers of control.

5. The current rules regarding *pro forma* assignments and transfers of control of international section 214 authorizations do not explicitly address many of the types of transactions that should be treated as *pro forma*.[13] Specifically, at present section 63.24 sets forth only six types of transactions that are considered *pro forma* and therefore do not require prior Commission approval.[14] If a transaction does not fall into one of those categories, under the current rule it cannot be treated as *pro forma.* We find this to be overly restrictive, and therefore amend the procedures to provide greater flexibility to

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8 47 C.F.R. § 63.19.

9 47 C.F.R. § 43.61(c).

10 47 U.S.C. § 271.

11 *See* NPRM, 15 FCC Rcd at 24267-73 ¶¶ 7-20.

12 47 C.F.R. §§ 63.18(e)(3), 63.24.

13 *See* NPRM, 15 FCC Rcd at 24267 ¶ 7.

14 *See* 47 C.F.R. § 63.24(a)(1)-(6). *See also* Appendix A, Note 2 to section 63.24(d).

applicants. Because an increasing number of transactions involve authorizations for several different services and therefore require review by multiple Bureaus and Offices within the Commission, it will ease the burden on applicants if we better harmonize our rules for assignments and transfers of control applicable to international services with similar rules for other telecommunications services. As proposed in the NPRM, we modify and consolidate the 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, as many of the transactions involving transfers of international section 214 authorizations also include wireless authorizations.[15] The commenters support this change to the rules.[16]

6. First, we amend our rules governing assignments and transfers of control of international section 214 authorizations to allow a case-by-case determination of whether a transfer of control or assignment is substantial or *pro forma* in nature based on the guidance set forth in previous Commission precedent on the issue.[17] In defining when a transfer of control has occurred and whether it is substantial or *pro forma*, the Commission 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,[18] the

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15 *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, 15 FCC Rcd 11909 (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, 15 FCC 14032 (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, 15 FCC Rcd 10089 (WTB/IB 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, 15 FCC Rcd 16507 (WTB/IB 2000).

16 *See* Cingular comments at 2; Verizon comments at 1-2; Verizon Wireless comments at 1; Worldcom comments at 2.

17 *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).

18 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

transfer may be considered *pro forma*, and if so prior approval is not required. The inquiry is fact specific and done on a case-by-case basis.

7. We also adopt the proposal to treat a change from less than 50 percent controlling ownership – *de facto* control -- to 50 percent or more ownership – *de jure* control -- as a transfer of control.[19] While we understand Verizon's view that an increase of an already controlling ownership interest to an ownership interest of over 50 percent is not always a transfer of control,[20] we find that such an increase in ownership level constitutes a change in the type of control, from *de facto* control to *de jure* control, and the Commission should be notified of this change. As we noted, we seek to make our procedures more consistent with those that govern CMRS licenses. Under the rules, a change from less than 50 percent ownership to 50 percent or more ownership of a CMRS license is always considered a transfer of control.[21] Further, we do not find that this requirement will be unduly burdensome on carriers because, as a *pro forma* transfer, the carrier need only notify the Commission of the new ownership structure within 30 days after the change.

8. We adopt the proposals set forth in the NPRM to require the authorized carrier to notify the Commission within 30 days after consummation of a *pro forma* assignment or transfer of control. The notification may be in the form of a letter. The section 214 authorization holder will be required to certify in the letter that the assignment or transfer of control was *pro forma*, and, together with all other previous *pro forma* transactions, this assignment or transfer of control does not result in a change in the actual controlling party. The letter also must contain the name, address of the assignee/transferee, contact points, and updated ownership information. If the Commission determines that the notification is acceptable for filing, it will issue a public notice granting the *pro forma* assignment or transfer of control. Any interested party who objects to the assignment or transfer of control 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 subsequently determines involves a substantial change of control.

9. We also make a number of other amendments to section 63.24. First, we amend section 63.24 to clearly state that both *pro forma* assignees and carriers that are subject to a *pro forma* transfer of control are required to notify the Commission of either

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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. *See FCBA Forbearance Order*, 13 FCC Rcd at 6298-99 ¶ 7.

19 NPRM, 15 FCC Rcd at 24269 ¶ 11.

20 Verizon comments at 2-3.

21 *See* 47 C.F.R. § 1.948(b)(1).

a *pro forma* assignment or transfer of control. As discussed above, such notification must be made no later 30 days after the transaction and may be done by letter. Second, we add definitions and explanatory language regarding assignments and transfers of control to enhance clarity. Third, we add a section to the rule addressing the procedure to be followed in the event of an involuntary assignment or transfer of control.

10. Finally, we reiterate that under these rule changes the international section 214 authorization holder is responsible in each instance 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. International section 214 authorization holders 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* constitutes instead 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.

B. Settlement Rate Benchmark Conditions

11. We adopt the tentative conclusion in the NPRM that it is no longer necessary to apply the settlement rate benchmarks condition to section 214 authorizations to provide facilities-based international private line service.[22] We find that this change will relieve an unnecessary burden on carriers, without undermining the effectiveness of our competitive safeguards.

12. In the *Benchmarks Order*, the Commission established benchmarks that govern the international settlement rates at or below which U.S. carriers may pay foreign carriers to terminate international traffic originating in the United States.[23] In that Order, the Commission also adopted a condition requiring 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.[24] 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.

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22 *See* NPRM, 15 FCC Rcd at 24273-74 ¶¶ 21-25.

23 *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*).

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

facilities-based switched service between the United States and a foreign market where the carrier has an affiliate with market power.[25]

13. Application of the benchmark condition to facilities-based private line service serves to limit the ability of carriers to circumvent the condition by routing facilities-based switched traffic over private lines. As currently applied, the condition prevents carriers, including those that 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 foreign carrier with market power whose settlement rates are above the benchmark rates.

14. In the NPRM, the Commission tentatively concluded that the burdens placed on some carriers by applying the benchmarks condition to authorizations to provide services over facilities-based private lines outweigh the benefits of the policy, and thus proposed to discontinue the application of the benchmarks conditions to services provided over facilities-based private lines.[26] Worldcom disagrees that the burdens placed on carriers outweigh the benefits of the policy.[27] Worldcom is concerned that if the condition is not applied to facilities-based private lines, the Commission will not have the ability to detect evasion and commence an enforcement proceeding.[28] Consequently, Worldcom urges that the Commission continue to apply the benchmark conditions on facilities-based private lines until the settlement rate benchmarks are fully implemented in January 2003.[29] Verizon, on the other hand, supports elimination of the benchmarks condition on authorizations to provide services over facilities-based private lines.[30] It agrees with the statement in the NPRM that the Commission can rely on the existing reporting mechanisms under section 43.61 to assure that carriers do not circumvent the restrictions on carrying switched traffic on private lines.[31]

15. At this time we conclude that the application of this condition to facilities-based private line service is not necessary to prevent carriers from evading the condition as it applies to facilities-based switched services. We find, contrary to Worldcom's assertions,[32] that it is unlikely that a carrier could evade the condition by sending a substantial portion of its facilities-based switched traffic over facilities-based private lines

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25 *Benchmarks Order*, 12 FCC Rcd at 19916-24 ¶¶ 242-59.

26 NPRM, 15 FCC Rcd at 24274 ¶¶ 24-25.

27 Worldcom comments at 3.

28 Worldcom comments at 4.

29 Worldcom comments at 5.

30 Verizon comments at 3.

31 Verizon comments at 3.

32 Worldcom comments at 4.

without detection by the Commission and other carriers on the route. While it is correct that carriers need only report their private-line traffic in the annual reports required under section 43.61,[33] the largest carriers, accounting for approximately 90 percent of annual U.S. billed minutes, also must report their switched telephone traffic on a quarterly basis.[34] This information will provide us notice of substantial declines in a carrier's switched service traffic and we will be able to investigate the cause for such a change. Moreover, it is likely that other carriers would notice such a change and would bring it to our attention for investigation. Consequently, we are confident that the Commission could detect the evasion of the benchmarks condition and commence enforcement proceedings if warranted.

16. As the Commission explained in the NPRM, the application of the benchmarks condition is burdensome to carriers and could prevent the development of innovative services.[35] Since we find that application of the benchmarks condition to facilities-based private line service is no longer necessary to prevent carriers from evading the condition as it applies to facilities-based switched service, we find it in the public interest to no longer apply the benchmark condition to section 214 authorizations to provide facilities-based international private line services.

C. Discontinuance of Service by Dominant Carriers

17. We amend section 63.19 to clarify that dominant U.S. international carriers need only seek prior approval for discontinuance of service where such carriers possess market power on the U.S. end of the international route. At the suggestion of Cingular, we also exempt CMRS carriers from the section 63.19 discontinuance requirements.

18. Under section 63.19, dominant U.S. international carriers must seek Commission approval prior to any discontinuance of service. The purpose of the rule is to ensure that customers will have adequate alternatives available if a dominant carrier discontinues service. Thus, the issue in determining whether a carrier should be required to seek prior approval to discontinue service is the carrier's market power *on the U.S. end* of the international route. The current rule, however, uses the definition of "dominant" carrier contained in section 63.10,[36] which is 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. As the Commission explained in the NPRM, this is an incongruous result.[37] Consequently, we

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33 47 C.F.R.§ 43.61(a).

34 *See* 47 C.F.R. § 43.61(b).

35 NPRM, 15 FCC Rcd at 24274 ¶ 24.

36 47 C.F.R. § 63.10.

37 NPRM, 15 FCC Rcd at 24275 ¶ 27.

amend section 63.19 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.

19. Cingular requests that the Commission conform the discontinuance provisions for CMRS carriers' international service to those for their domestic service.[38] Cingular notes that the Commission has determined that section 214 discontinuance requirements are unnecessary for CMRS carriers' provision of interstate services.[39] It argues that subjecting CMRS carriers to discontinuance requirements for international service effectively renders meaningless the decision to not impose discontinuance requirements for interstate service.[40] We agree with Cingular that applying discontinuance requirements to the provision of international service by CMRS carriers is inconsistent with the Commission's determination that discontinuance requirements are unnecessary for CMRS carriers' provision of interstate service. We therefore exempt CMRS carriers from the section 63.19 discontinuance requirements.

D. Other Rule Changes Proposed in the NPRM

1. Control and Application of the Multiplier

20. We adopt the tentative conclusion in the NPRM,[41] and amend the notes in sections 63.09 and 63.18 regarding attribution of indirect ownership interests in U.S. and foreign carriers.[42] These notes explain that attribution of such interests is determined through the use of a multiplier. In the NPRM, the Commission proposed to amend these notes so that they are clear on their face that whenever an ownership percentage exceeds 50 percent or represents actual control of the international section 214 authorization holder, it shall be treated as a 100 percent interest for purposes of applying the multiplier.[43] Cingular supports this proposal.[44] We find that the public interest is served by clarifying this rule, and amend the notes accordingly.

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38 Cingular comments at 3-4.

39 Cingular comments at 3 (citing *Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services*, Second Report and Order, 9 FCC Rcd 1411, 1481 ¶ 182 (1994)).

40 Cingular comments at 3.

41 *See NPRM*, 15 FCC Rcd at 24277 ¶ 30.

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

43 *See NPRM*, 15 FCC Rcd at 24276-77 ¶ 30.

44 Cingular comments at 2.

2. Conveying Transmission Capacity in Submarine Cables

21. We adopt the proposal to eliminate section 63.21(h) which requires dominant carriers to notify the Commission if they convey transmission capacity on submarine cables to another U.S. carrier.[45] No commenters addressed this proposal. In the NPRM, the Commission found there are no U.S. carriers to which section 63.21(h) currently applies.[46] We do not believe that it is in the public interest to maintain a rule that was adopted when there was a dominant carrier in the submarine cable market and does not now apply to any carrier because of subsequent changes in the market. As the Commission determined in the NPRM, 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, it would be preferable to take a fresh look at that time at the safeguards that should apply to such carriers.[47] Consequently, we find it in the public interest to eliminate section 63.21(h) at this time.

3. Reports of Carriers Owned by Foreign Telecommunications Entities

22. We adopt the Commission's tentative conclusion in the NPRM to delete section 43.81.[48] This rule required certain foreign-owned carriers to file with the Commission annual revenue and traffic reports with respect to all common carrier telecommunication services they offered in the United States in 1988, 1989, and 1990.[49] Although the time period for filing the reports has expired, the rule still remains in the Code of Federal Regulations. No commenters addressed this proposal. We find it is in the public interest to remove this obsolete rule.

4. Permitted Facilities

23. We amend section 63.22(b) to clarify that a facilities-based carrier may provide service over U.S. facilities that are not subject to authorization by the Commission, as long as those facilities are not on the Exclusion List. No commenters addressed these proposals. As was discussed in the NPRM, the existing rule does not specifically address the use of U.S. cross-border facilities that are not licensed under Title III or the Submarine Cable Landing License Act,[50] such as non-common carrier land-line

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45 *See NPRM*, 15 FCC Rcd at 24277 ¶ 31.

46 *Id.*

47 *See id.*

48 *See NPRM*, 15 FCC Rcd at 24278 ¶ 32.

49 47 C.F.R. § 43.81.

50 47 U.S.C. §§ 34-39.

fiber optic cable.[51] This change should eliminate confusion as to whether carriers are allowed to use such facilities.

24. We also amend section 63.22(b) by removing the general reference to a list of countries in the "Exclusion List for International Section 214 Authorizations" (Exclusion List).[52] As was explained in the NRPM, 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.[53] 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 List[54] to be approved satellite systems for purposes of the Exclusion List,[55] 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 between the Permitted Space Station List and the language of section 63.22(b) can be confusing. Thus, we amend section 63.22(b) to remove the general reference to a list of countries in the Exclusion list for which the Commission has approved the use of non-U.S.-licensed satellite systems. To the extent that a non-U.S.-licensed 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 on the Permitted Space Station List. Such limitations on the use of an approved non-U.S.-licensed satellite system will be listed in the Permitted Space Station List.

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51 *See* NPRM, 15 FCC Rcd at 24278-79 ¶ 33-34.

52 *See 1998 Biennial Regulatory Review-Review of International Common Carrier Regulations*, IB Docket No. 98-118, Report and Order, 14 FCC Rcd 4909, 4933 ¶ 58 (1999) (*1998 International Biennial Review Order*.

53 NPRM, 15 FCC Rcd at 24279 ¶ 34.

54 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).

55 Specifically, the International Bureau treats the Exclusion List as excluding 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, 15 FCC Rcd 3689 (IB 1999).

5. Duplicative Notes

25. We adopt the proposal to amend section 63.18 to remove three notes that are duplicative of notes in section 63.09.[56] No commenters addressed this proposal. We find that this change will make the part 63 rules simpler and easier to follow. Specifically, we remove existing notes 1, 2, and 3 from section 63.18 because they duplicate language in section 63.09, and are unnecessary in section 63.18.[57] We maintain the existing note 4 in section 63.18, and renumber it as note 1.[58] Although the text of this note is the same as the text of note 2 in section 63.09, it is important 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 will maintain this note in both sections.

6. Applications for Supplementary Facilities

26. We delete the language in section 63.20(a) 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 . . ."[59] As the Commission noted in the NPRM, U.S. international carriers are no longer required to file applications to supplement already-authorized facilities.[60] No commenters addressed this proposal. Therefore, we delete this provision as unnecessary.

7. Filings on Diskettes

27. We adopt the proposals to eliminate the provisions in section 63.10(d) and 63.53(b) that require or permit certain documents to be submitted on computer diskettes.[61] Since February 10, 1999, applicants have been able to use the International Bureau Filing System (IBFS) to file electronically numerous applications, including international section 214 applications.[62] Given the ability of applicants to use the IBFS to file

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56 NPRM, 15 FCC Rcd at 24280 ¶ 35-36.

57 *See* NPRM, 15 FCC Rcd at 24280 ¶ 35-36. The first note to Section 63.18(h) defines the term "control." The second note defines the term "facilities-based carrier." The third note explains the meaning of "capital stock." 47 C.F.R. § 63.18.

58 We are amending the note, however, to clarify 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 . *See supra* at ¶ 20.

59 47 C.F.R. § 63.20(a).

60 *See NPRM*, 15 FCC Rcd at 24281 ¶ 37.

61 *See NPRM*, 15 FCC Rcd at 24281-82 ¶¶ 38-39.

62 *Id.* at 24281 ¶ 38.

international Section 214 applications, we no longer find it in the public interest to have applicants file international Section 214 applications on computer diskettes. Worldcom supports this conclusion.[63] We therefore delete section 63.53(b). We also do not find any reason to continue to require dominant carriers to file reports pursuant to paragraphs 63.10(c)(3), (c)(4), and (c)(5) on diskettes, and amend section 63.10(d) to remove this requirement.[64]

E. Rule Changes Requested by the Commenters

1. Reporting of International Telecommunications Traffic

28. Section 43.61 requires all common carriers providing telecommunications service between the continental United States, Alaska, and Hawaii and points outside of that area, including off-shore U.S. points, to file annual reports regarding traffic and revenue data collected from the provision of such services.[65] In addition, section 43.61(b) requires carriers that meet certain traffic thresholds to file quarterly reports.[66] Section 43.61(c) requires that carriers that resell switched services on routes where they are affiliated with foreign carriers possessing market power that collect settlement payments from U.S. carriers file quarterly reports of their switched resale service on the affiliated route.[67] The Commission, as well as industry, uses the information collected in the reports to monitor the development and competitiveness of international telecommunications markets and compliance with the Commission's rules and policies. In addition, the data assists the Commission in identifying trends in communications services, monitoring the balance of settlement payments, and developing Commission policies and positions on international telecommunications issues.

29. Cingular, Verizon and Verizon Wireless request that the Commission make changes to the quarterly reporting requirements in section 43.61. Cingular requests that reporting requirements under section 43.61 be eliminated for CMRS carriers.[68] Verizon Wireless urges the Commission to eliminate the filing requirements under section 43.61(c) for CMRS carriers engaged in the resale of international switched services that are affiliated with a foreign carrier that has market power on the foreign end

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63 Worldcom comments at 6.

64 These reports are filed by U.S. international carriers regulated as dominant on particular routes due to an affiliation with a carrier that has market power on the foreign end of a U.S. international route. *See* 47 C.F.R. § 43.10.

65 47 C.F.R. § 43.61.

66 *See* 47 C.F.R. § 43.61(b).

67 *See* 47 C.F.R. § 43.61(c).

68 Cingular comments at 8.

of the international route.[69] Cingular agrees that at a minimum the Commission should exempt CMRS carriers from the reporting requirements under section 43.61(c).[70] Verizon argues that the threshold requirements for filing quarterly reports under section 43.61(b) are difficult to assess and apply.[71] It suggests that quarterly reports should not be required on routes where International Simple Resale (ISR) has been approved.[72] These commenters argue that the quarterly reports are burdensome and that the data collected does not provide any significant regulatory benefits.[73] Cingular and Verizon Wireless also argue that they already report international revenues on the Telecommunications Reporting Worksheet, FCC Form 499A.[74]

30. We amend section 43.61(c) to exempt CMRS carriers providing resale of international switched services from filing quarterly traffic and revenue reports for their service to foreign markets where they are affiliated with a foreign carrier with market power in that market and that collects settlement payments from U.S. carriers. These quarterly reports were adopted in order to detect whether switched resellers are engaging in traffic distortion schemes on affiliated routes.[75] We find that CMRS carriers have a *de minimis* amount of the switched resale international traffic and thus are unlikely to be able to distort traffic on affiliated routes. We also note that no complaints have been filed with the Commission alleging the CMRS carriers have engaged in traffic distortion schemes. Indeed it is not obvious that these switched resellers of unaffiliated services have the ability or the incentive to engage in such anti-competitive conduct on these routes where they are affliliated with foreign carriers possessing market power. We, of course, maintain the ability, on our own motion or based on a complaint, to investigate any potential traffic distortion schemes and commence enforcement proceedings if warranted.

31. We do not find it in the public interest to make other changes to the section 43.61 reporting requirements at this time, however. As noted above, the Commission and industry use the information provided in the reports to monitor compliance with the Commission's rules and policies. The filing of quarterly reports under section 43.61(b) provides the Commission with information to detect deviations of

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69 Verizon Wireless comments at 3-4.

70 Cingular comments at 10.

71 Verizon comments at 6.

72 Verizon comments at 7.

73 Cingular comments at 10; Verizon comments at 10; Verizon Wireless comments at 3.

74 Cingular comments at 9; Verizon Wireless comments at 4.

75 *Rules and Policies on Foreign Participation in the U.S. Teleommunications Market*, IB Docket No. 97-142, Report and Order and Order On Reconsideration, 12 FCC Rcd 23891, 23985 ¶ 211 (1997) (*Foreign Participation Order*) *recon.* 15 FCC Rcd 18158 (2000).

traffic flows on a timely basis.[76] For example, as discussed in Section II.B. above,[77] because large carriers must report their switched telephone traffic on a quarterly basis we find that we will be able to detect substantial declines in U.S. carriers' international switched service traffic and thus can remove the benchmarks condition that prohibits a carrier's provision of facilities-based international private line service on a route where an affiliate has market power on the foreign end and maintains settlement rates with U.S. carriers that exceed the applicable benchmark.[78] We also do not find that it would be in the public interest to exempt CMRS carriers from filing annual traffic and revenue reports. While CMRS carriers do file some information regarding international services as part of their Form 499A filing, this information is limited to revenues and does not provide information on minutes of use, which is important for monitoring trends in the industry. Therefore, we find that these less burdensome reporting requirements continue to be in the public interest.

2. Notification of Foreign Affiliations

32. Section 63.11 requires U.S. carriers to notify the Commission of their new affiliations with foreign carriers.[79] Specifically, U.S. carriers must notify the Commission in advance of any new controlling investment by a U.S carrier in a foreign carrier and of new controlling investments or greater than twenty-five percent capital stock investment by a foreign carrier in a U.S. carrier.[80] For other types of affiliation, such as affiliations with carriers that lack market power or are with resale carriers, carriers need not notify the Commission in advance, but may provide such notification after the consummation of the acquisition which leads to the affiliation.[81]

33. Verizon requests that the Commission not require prior notification for affiliations with foreign carriers not already identified by the Commission as possessing market power.[82] Verizon claims the 60-day prior notification requirement in section 63.11 is burdensome, particularly if the foreign carrier involved does not have market power.[83] Verizon argues that, unless the foreign carrier is on the Commission's list of

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76 *See Foreign Participation Order*, 12 FCC Rcd at 24013 ¶ 271.

77 *See supra* ¶ 15.

78 *See Benchmarks* Order, 12 FCC Rcd at 19916-19924 ¶¶ 242-259 (adopting the section 43.61(b) reports specifically to monitor for competitive distortion on routes where the Commission has approved ISR).

79 47 C.F.R. § 63.11.

80 47 C.F.R. § 63.11(a).

81 47 C.F.R. § 63.11(b), (c).

82 Verizon comments at 4.

83 Verizon comments at 4.

foreign carriers presumed to possess market power, non-dominance should be presumed and prior notification should not be required.[84]

34. We find that, for the most part, the Commission already has granted Verizon's request through the changes to the affiliation notification procedures adopted last year in the *Foreign Participation Reconsideration Order*.[85] In that Order, the Commission revised section 63.11, including certain aspects of the prior notification requirement, to respond to carriers' concerns about the purpose and effect of the rule. With respect to Verizon's request here, in the *Foreign Participation Recon Order*, the Commission amended section 63.11 to require only post-investment notification of U.S. carrier affiliations with foreign carriers that lack market power.[86] In addition, the Commission found the existing 60-day prior notification period to be burdensome to carriers, as Verizon has suggested in this proceeding.[87] Specifically, in the *Foreign Participation Recon Order,* the Commission carefully considered the concerns of the carriers and the Commission's need for a reasonable amount of time to process the notification (including reviewing the notification, issuing a public notice, receiving comments on the notification, and advising the Executive Branch of the new affiliation), and reduced the prior notification period to 45 days.[88] Consequently, we need not act on Verizon's request in this proceeding.

3. Interlocking Directorates

35. An "interlocking directorate" occurs when persons or entities who perform the duties of “officer or director” in an authorized U.S. international carrier or an applicant for international section 214 authorization also perform such duties for a foreign carrier.[89] Section 63.11 requires a carrier to provide the Commission with the

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84 Verizon comments at 4 (citing *List of Foreign Telecommunications Carriers that are Presumed to Possess Market Power in Foreign Telecommunications Markets*, Public Notice, 14 FCC Rcd 7038 (rel. May 6, 1999 *erratum* rel. June 18, 1999).

85 *Rules and Policies on Foreign Participation in the U.S. Teleommunications Market*, IB Docket No. 97-142, Order on Reconsideration, 15 FCC Rcd 18158 (2000) (*Foreign Participation Reconsideration Order*).

86 *Foreign Participation Reconsideration Order*, 15 FCC Rcd at 18168-76 ¶¶19-37. Specifically, the Commission exempted from prior notification affiliations with foreign carriers that: (1) we have determined in prior adjudications lack market power; (2) are only resale carriers; or (3) are from World Trade Organization (WTO) members and the U.S. authorized carrier either demonstrates that in the foreign market it is entitled to retain non-dominant classification on the route pursuant to section 63.10 or agrees to comply with our international dominant carrier safeguards effective upon the acquisition of the affiliation. *Id.* at 18169 ¶19. *See also* 47 C.F.R. § 63.11(b).

87 Verizon comments at 4.

88 *Foreign Participation Reconsideration Order*, 15 FCC Rcd at 18173 ¶ 30. *See also* 47 C.F.R. § 63.11(a).

89 47 C.F.R. § 63.09(g)(1).

name of any interlocking directorates with each foreign carrier named in a foreign carrier notification.[90] Section 63.18 requires as part of the section 214 application process that an applicant identify any interlocking directorates with a foreign carrier.[91]

36. Verizon requests that the Commission eliminate the requirement in section 63.18 to identify any interlocking directorates with a foreign carrier.[92] Verizon argues that a similar requirement has been eliminated for domestic services.[93] Verizon also states that it is burdensome to update this information as directors change in the normal course of business.[94]

37. We decline to adopt Verizon's request. The disclosure of interlocking directorates between a U.S. carrier and foreign carriers serves an important purpose in our regulatory scheme for international services that is a different purpose than the former rules regarding interlocking directorates of domestic carriers. Part 62, which dealt with interlocking directorates of domestic carriers and has been repealed,[95] did not address concerns with respect to vertical integration or ownership affiliations between U.S. and foreign carriers. As the Commission explained in the *Foreign Participation Recon Order*, the identification of "interlocking directorates between the U.S. carrier and any foreign carrier is intended to help verify the U.S. carrier's certification as to its foreign affiliations."[96] We therefore decline to eliminate the requirement that carriers inform the Commission of their interlocking directorates with foreign carriers.

38. We take this opportunity, however, to clarify the requirements of section 63.11 and 63.18. Under these rules carriers only need identify their interlocking directorates when they file a Foreign Carrier Notification under section 63.11 or a section 214 application under section 63.18. The rules do not require the carrier to notify the Commission of changes in interlocking directorates, as directors change in the normal course of business.

4. Provision of Service by Subsidiaries

39. Section 63.21 provides that any carrier authorized under section 214 to provide international services may provide service through any wholly-owned

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90 47 C.F.R. § 63.11(e)(7).

91 47 C.F.R. § 63.18(h).

92 Verizon comments at 5 (citing 47 C.F.R. § 63.18(h)).

93 Verizon comments at 5.

94 Verizon comments at 6.

95 *1998 Biennial Regulatory Review -- Repeal of Part 62 of the Commission's Rules*, CC Docket No. 98-195, Report and Order, 14 FCC Rcd 43937 (1999).

96 *Foreign Participation Reconsideration Order*, 15 FCC Rcd at 18175 ¶ 33.

subsidiaries.[97] Under this rule, a carrier must notify the Commission within 30 days after the subsidiary begins providing service.[98]

40. Cingular requests that the Commission amend section 63.21 to allow an international section 214 authorization holder and all of the subsidiaries in which it holds a sole controlling interest to operate pursuant to the same authorization and simply require that any subsidiary's foreign carrier affiliations be disclosed.[99] Cingular argues that the current rule, which only allows wholly-owned subsidiaries to provide service pursuant to their parent's international section 214 authorization, is particularly burdensome to CMRS carriers, which often operate through a number of commonly-controlled and operationally integrated, but not wholly-owned, partnerships and subsidiaries.[100] Cingular also requests that a carrier be allowed to transfer or assign existing commonly-controlled authorizations in a single application.[101]

41. We decline to amend the provisions of section 63.21 which deal with the provision of international service by a subsidiary. When the Commission adopted the rule allowing a wholly-owned subsidiary to provide service under its parent's section 214 authorization, it considered a request to allow partnerships in which the carrier has a controlling interest to be able to operate pursuant to that carrier's authorization.[102] The Commission declined to adopt that request, finding that "a controlling interest that does not amount to 100-percent ownership may raise additional issues, such as additional foreign affiliations or minority ownership or beneficial interest by persons or entities who are barred from holding a Commission authorization."[103] By definition, a wholly-owned subsidiary does not have different affiliations than its parent. Thus, any review of the application would provide no new information for the purpose of national security, law enforcement, trade, or foreign policy evaluation. Cingular acknowledges the Commission's rationale for limiting the authority for subsidiaries to provide service under a parent's international section 214 authorization to wholly-owned subsidiaries.[104] It does not dispute the validity of this rationale, but merely argues that this requirement is particularly burdensome to CMRS carriers. We find the Commission's stated rationale for limiting the authority to use a carrier's international section 214 authority to wholly-

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97 47 C.F.R. § 63.21(i).

98 *Id.*

99 Cingular comments at 5.

100 Cingular comments at 5-6 (citing 47 C.F.R. § 63.21(i)).

101 Cingular comments at 7.

102 *1998 International Biennial Order,* 14 FCC Rcd at 4932-33 ¶ 56.

103 *1998 International Biennial Review Order*, 14 FCC Rcd at 4932-33 ¶ 56 (footnote omitted).

104 Cingular comments at 4-5.

owned subsidiaries is still valid, and we therefore decline to expand the reach of section 63.21(i) to commonly controlled subsidiaries.

5. Section 214 Authority for Bell Operating Company In-Region Service

42. Current Commission policy requires a Bell Operating Company (BOC) to file a separate section 214 application for each state in which it seeks authority to provide international service originating in a particular in-region state.[105] These applications must be filed concurrently with, or after, the BOC files an application for authority under section 271 of the Communications Act[106] to provide interLATA service in that state or after it has received such authority for that state.[107]

43. Verizon requests that the Commission change its policy so that once a BOC receives section 271 authority to provide interLATA service in one state in its region it does not need to modify its section 214 international authorization when it gains section 271 authority for additional states.[108] Verizon asserts that filing an application to modify the international authorization is burdensome and unnecessary.[109] It contends that the Commission already will have addressed all the issues relating to the BOC's international services in the original application for in-region international authority, and all foreign affiliations will have been disclosed. It concludes that once a section 271 application is granted to that BOC, there are no additional issues to consider for the international authorization.[110]

44. We agree with Verizon, and we change our policy accordingly. We agree that the Commission addresses the issues relating to a BOC's provision of in-region international service in the initial application for section 214 authority for in-region service. In that process the Commission considers the BOC's foreign affiliations and makes a determination of the BOC's regulatory classification on international routes – whether it should be classified as a dominant or non-dominant carrier. Under our rules the BOC is required to notify the Commission of any change in its foreign carrier affiliations after it receives its initial section 214 authorization.[111] We conclude that the addition of another in-region state to the BOC's international section 214 authority, by

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105 *Pacific Bell Communications*, *et al.*, ITC-214-19970303-00131, et al., Order, 15 FCC Rcd 157 (TD/IB 2000).

106 47 U.S.C. § 271.

107 *Id.* at 159 ¶ 2.

108 Verizon comments at 7-8.

109 Verizon comments at 7.

110 Verizon comments at 7-8.

111 47 C.F.R. § 63.11.

itself, does not raise additional issues that are not already addressed in the BOC's initial application for in-region international service. Thus, we find it is not necessary to require a BOC to file a new section 214 application to provide international service for each in-region state for which it receives authority under section 271 to provide in-region interLATA service.

45. Commission policy going forward will require a BOC to file an application for authority to provide international service originating in an in-region state concurrently with, or after, it files an application for section 271 authority to provide interLATA service in that state or after it has received such authority.[112] The application may request authority to provide international service from in-region states as the BOC receives section 271 authority for each state. In that case any grant of the international section 214 authority will be conditioned such that it shall be effective for each in-region state only at such time as the BOC receives section 271 authority to provide in-region interLATA service in that state. After a BOC has received section 214 authority to provide international service and section 271 authority to provide interLATA service from an in-region state, it need not file a new application for section 214 authority to provide service for in-region states for which it subsequently receives authority under section 271 to provide interLATA service. The BOC may begin to provide international service from that state as soon as it has section 271 authority to provide interLATA service from that state. The BOC, however, must notify the Commission that it has begun to provide international service from an in-region state. The BOC must provide such notice by sending a letter to the Secretary, with a copy to the Chief of the Policy Division, International Bureau, stating that it has received section 271 authority to provide interLATA service from the particular state, with a cite to the order granting such authority, and that pursuant to its existing international section 214 authority it began providing international service from that state. The letter must indicate when the BOC initiated international service from that state and must be filed within 7 days after the initiation of international service from that state. We remind the BOCs that under the Commission's rules they are under a continuing obligation to maintain and update their foreign carrier affiliation notifications.[113]

III. CONCLUSION

46. In this proceeding we amend several of the Commission's rules regarding the provision of international telecommunications service. We amend our rule concerning *pro forma* assignments and transfers of control of international section 214 authorizations. We also 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 modify our rules to relieve "dominant" international carriers of the requirement to seek prior approval to discontinue service, except where

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[112] This policy will also apply to affiliates of the BOC. *See* 47 U.S.C. § 271.

[113] *See* 47 C.F.R. § 63.11.

such carriers possess market power on the U.S. end of the route. We also exempt CMRS carriers from the section 63.19 discontinuance requirements. In addition, we exempt CMRS carriers providing resale of international switched services from filing quarterly traffic and revenue reports for their service to foreign markets where they are affiliated with a foreign carrier with market power in that market and that collects settlement payments from U.S. carriers. We also amend our policy regarding the filing of applications for international section 214 authorization associated with Bell Operating Company requests for authority to provide interLATA service in an in-region state pursuant to section 271. Finally, we 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.

IV. ADMINISTRATIVE MATTERS

A. Final Regulatory Flexibility Act Certification

47. The Regulatory Flexibility Act of 1980, as amended (RFA),[114] requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities."[115] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[116] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[117] 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 Small Business Administration (SBA). An Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the NPRM. [118] The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. No comments were received on the IRFA.

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114 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 (1966) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

115 5 U.S.C. § 605(b).

116 5 U.S.C. § 601(6).

117 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

118 *See 2000 Biennial Regulatory Review*, IB Docket 00-231,15 FCC Rcd 24264.

48. The Commission initiated this proceeding in response to the Telecommunications Act of 1996, which requires the Commission to review all regulations 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. The Commission identified a number of rules that could be modified or eliminated in light of competition in international telecommunications services. The Commission also identified a number of rules that could be clarified to make it easier for practitioners and other members of the public to understand and follow those rules. Commenters not only supported the proposals contained in the NPRM, but they requested changes to several other rules.

49. We believe that these changes are in the public interest and will remove unnecessary burdens on the public and the Commission. The rules and policies contained in the Order will benefit all carriers providing international common carrier service pursuant to Section 214 of the Act, including those that are small entities.

50. The Order adopts changes to the rules regarding assignments and transfers of control of international section 214 authorizations. In particular the Order consolidates the rules into one rule section, and it revises the rules for *pro forma* transfers and assignments to be more consistent with those procedures currently used for other service authorizations, particularly commercial mobile radio services (CMRS). The changes will eliminate confusion over our rules regarding assignments and transfers of control. Also, the rules will provide greater flexibility for all applicants, including small entities, in structuring transactions. The modifications to the rules eliminate filing requirements on small entities and, therefore, do not pose a significant economic impact on such entities.

51. The Order also removes the benchmark condition applicable to section 214 authorizations that provide facilities-based international private line service. The Commission adopted this condition for facilities-based switched service to affiliated markets to address the potential for a carrier to engage in a predatory price squeeze. We believe the condition is no longer necessary to prevent carriers from evading the condition as it applies to facilities-based switched service. We find that this condition is burdensome to carriers and could prevent the development of innovative services. We believe that removal of this specific condition will be in the public interest, and it will not impose a significant economic impact on small entities.

52. The Order also relieves international carriers of the requirement to seek prior approval for discontinuance of service, except where such carriers possess market power on the U.S. end of the route. The Order retains a notification requirement to provide customers with sufficient time to obtain an alternative service provider before service is discontinued. Currently the rules require prior notification of discontinuances of service by U.S. carriers regulated as dominant. We do not believe that the dominant and nondominant classification should be used in determining criteria for requiring prior approval. Rather, the Commission believes that prior approval should be required only for carriers possessing market power on the U.S. end of the route. This modification clarifies the carriers subject to the rule, and it removes the burdensome prior notification

procedure for certain carriers while protecting customers from abrupt discontinuances of service. The Order also exempts CMRS carriers from the requirements for notification of discontinuance of their international service. We do not believe that these changes will impose any significant economic impact on small entities.

53. The Order clarifies other rules and eliminates rules that are no longer necessary, duplicative, or obsolete. In addition, the Order eliminates many procedural burdens placed on all entities. The measures contained in the Order are administrative and procedural changes designed to further streamline and simplify the rules for international telecommunications carriers, and there will be no significant impact imposed on small entities.

54. Therefore, we certify that none of the requirements of the Order will have a significant economic impact on a substantial number of small entities.

55. **Report to Congress**: The Commission will send a copy of the Order, including a copy of the Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A). In addition, the Order and this Certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration and will be published in the Federal Register, 5 U.S.C. § 605(b).

B. Paperwork Reduction Act of 1995 Analysis

56. The Order contains new or modified information collections. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this Order, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public comments are due 60 days from the date of publication of this Order in the Federal Register. 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.

57. Written comments by the public must be submitted on the modified information collections on or before 60 days after date of publication in the Federal Register. Written comments must be submitted by the Office of Management and Budget (OMB) on the modified information collections on or before 60 days after date of publication in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov; and to Jeanette Thornton, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW, Washington, DC 20503 or via the Internet to Jeanette_I._Thornton@omb.eop.gov.

V. ORDERING CLAUSES

58. 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 Report and Order in IB Docket No. 00-231 IS HEREBY ADOPTED.

59. IT IS FURTHER ORDERED that Parts 43 and 63 of the Commission's rules ARE AMENDED as set forth in Appendix A. These amendments and policy changes set forth in this Report and Order shall be effective 30 days after publication in the Federal Register or in accordance with the requirements of 5 U.S.C. § 801(a)(3) and 44 U.S.C. § 3507.

60. IT IS FURTHER ORDERED that the Commission's Consumer and Government Affairs Bureau, Reference Information Center, SHALL SEND a copy of this ORDER, including the Final Regulatory Flexibility Act Certification, 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

Marlene H. Dortch
Sectretary

APPENDIX

FINAL RULES

Parts 43 and 63 of the Commission's rules are amended as follows:

PART 43 – REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES

1. The authority citation for part 43 continues to read as follows:
Authority: 47 U.S.C. 154; Telecommunications Act of 1996, Public Law 104-104, sec. 402(b)(2)(B), (c), 110 Stat. 56 (1996) as amended unless otherwise noted. 47 U.S.C. 211, 219, 220 as amended.

2. Section 43.61 is amended by revising paragraph (c) to read as follows:

§ 43.61 Reports of international telecommunications traffic.
* * * * *

(c) Each common carrier engaged in the resale of international switched services that is affiliated with a foreign carrier that has sufficient market power on the foreign end of an international route to affect competition adversely in the U.S. market and that collects settlement payments from U.S. carriers shall file a quarterly version of the report required in paragraph (a) of this section for its switched resale services on the dominant route within 90 days from the end of each calendar quarter. Commercial Mobile Radio Service (CMRS) carriers, as defined in § 20.9, are not required to file reports pursuant to this paragraph. For purposes of this paragraph, *affiliated* and *foreign carrier* are defined in § 63.09 of this chapter.

3. Remove § 43.81.

PART 63 – EXTENSION OF LINES, NEW LINES AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

4. The authority citation for part 63 continues to read as follows:
Authority: section 1, 4(i), 4(j), 10, 11, 201-205, 214, 218, 403 and 651 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 160, 201-205, 214, 218, 403, and 571, unless otherwise noted.

5. Section 63.09 is amended by revising Note 2 from § 63.09 to read as follows:

§ 63.09 Definitions applicable to international Section 214 authorizations.
* * * * *
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 that is equal to or exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest. 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 because A's interest in X is less than 50 percent). Under the 25 percent attribution benchmark, X's interest in "carrier'" would be cognizable, while A's interest would not be cognizable.

6. Section 63.10 is amended by revising paragraphs (d) and (e) to read as follows:

§ 63.10 Regulatory classification of U.S. international carriers.
* * * * *

(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 also file one copy of these reports with the Commission's copy contractor. The transmittal letter accompanying each report shall clearly identify the report as responsive to the appropriate paragraph of § 63.10(c).

(e) Except as otherwise ordered by the Commission, a carrier that is classified as dominant under this section for the provision of facilities-based services on a particular route and that is affiliated with a carrier that collects settlement payments for terminating U.S. international switched traffic at the foreign end of that route may not provide switched facilities-based service on that route unless the current rates the affiliate charges U.S. international carriers to terminate traffic are at or below the Commission's relevant benchmark adopted in IB Docket No. 96-261. See FCC 97-280 (rel. Aug. 18, 1997) (available at the FCC's Reference Operations Division, Washington, D.C. 20554, and on the FCC's World Wide Web Site at http://www.fcc.gov).

7. Section 63.17 is amended by revising paragraph (b)(4) to read as follows:

§ 63.17 Special provisions for U.S. international common carriers.
* * * * *

(4) No U.S. common carrier may engage in switched hubbing to or from a third country where it has an affiliation with a foreign carrier unless and until it has received authority to serve that country under § 63.18(e)(1), (e)(2), or (e)(3).

8. Section 63.18 is amended by removing paragraph (e)(3) and Notes 1 through 4 to paragraph (h) and amending paragraph (e)(4) and redesignating paragraph (e)(4) as (e)(3) and revising paragraph (g) and adding Note to paragraph (h) to read as follows.

§ 63.18 Contents of applications for international common carriers.

* * * * *

(3) Other Authorizations. If applying for authority to acquire facilities or to provide services not covered by paragraphs (e)(1) and (e)(2), the applicant shall provide a description of the facilities and services for which it seeks authorization. The applicant shall certify that it will comply with the terms and conditions contained in § 63.21 and §63.22 and/or § 63.23, as appropriate. Such description also shall include any additional information the Commission shall have specified previously in an order, public notice or other official action as necessary for authorization.

* * * * *

(g) Where the applicant is seeking facilities-based authority under paragraph (e)(3) of this section, a statement whether an authorization of the facilities is categorically excluded as defined by § 1.1306 of this chapter. If answered affirmatively, an environmental assessment as described in § 1.1311 of this chapter need not be filed with the application.

* * * * *

Note 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 that is equal to or exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest. 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 because A's interest in X is less than 50 percent). Under the 25 percent attribution benchmark, X's interest in "carrier" would be cognizable, while A's interest would not be cognizable.

* * * * *

9. Section 63.19 is amended to read as follows:

§ 63.19 Special procedures for discontinuances of international services.

(a) With the exception of those international carriers described in paragraphs (b) and (c) of this section, any international carrier 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 any international carrier 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, but does not discontinue, reduce or impair the dominant services being provided through these facilities, shall only be subject to the notification requirements of paragraph (a) of this section. If such carrier discontinues, reduces or impairs the dominant service, or retires facilities that impair or reduce the service, the carrier shall file an application pursuant to §§ 63.62 and 63.500.

(c) Commercial Mobile Radio Service (CMRS) carriers, as defined in § 20.9, are not subject to the provisions of this section.

10. Section 63.20 is amended by revising paragraph (a) to read as follows:

§ 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. 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.

* * * * *

11. Section 63.21 is amended by removing paragraph (h) and redesignating paragraphs (i) and (j) as paragraphs (h) and (i).

12. Section 63.22 is amended by revising paragraphs (a), (b) and (c) to read as follows:

§ 63.22 Facilities-based international common carriers.

* * * * *

(a) A carrier authorized under § 63.18(e)(1) may provide international facilities-based services to international points for which it qualifies for non-dominant regulation as set forth in § 63.10, except in the following circumstance: If the carrier is, or is affiliated with, a foreign carrier in a destination market and the Commission has not determined that the foreign carrier lacks market power in the destination market (see § 63.10(a)), the

carrier shall not provide service on that route unless it has received specific authority to do so § 63.18(e)(3).

(b) The carrier may provide service using half-circuits on any U.S. common carrier and non-common carrier facilities 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. The exclusion list is available from the International Bureau's World Wide Web site at http://www.fcc.gov/ib.

(c) Specific authority under § 63.18(e)(3) is required for the carrier to provide service using any facilities listed on the exclusion list, to provide service between the United States and any country on the exclusion list, or to construct, acquire, or operate lines in any new major common carrier facility project.

* * * * *

13. Section 63.23 is amended by revising paragraphs (a) and (b) to read as follows:

§63.23 Resale-based international common carriers.

* * * * *

(a) A carrier authorized under § 63.18(e)(2) may provide resold international services to international points for which the applicant qualifies for non-dominant regulation as set forth in § 63.10, except that the carrier may not provide either of the following services unless it has received specific authority to do so under § 63.18(e)(3):

(1) Resold switched services to a non-WTO Member country where the applicant is, or is affiliated with, a foreign carrier; and

(2) Switched or private line services over resold private lines to a destination market where the applicant is, or is affiliated with, a foreign carrier and the Commission has not determined that the foreign carrier lacks market power in the destination market (see § 63.10(a)).

(b) The carrier may not resell the international services of an affiliated carrier regulated as dominant on the route to be served unless it has received specific authority to do so under § 63.18(e)(3).

14. Section 63.24 is amended 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 percent ownership to 50 percent 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 to paragraph (c).

NOTE TO PARAGRAPH (c): Because the issue of control inherently involves issues of fact, it must be determined on a case-by-case basis and may vary with the circumstances presented by each case. The factors relevant to a determination of control in addition to equity ownership include, but are not limited to the following: (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.

(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 with reference to the factors listed in Note 1 to paragraph (d). The types of transactions listed in Note 2 to paragraph (d) shall be considered presumptively *pro forma* and prior approval from the Commission need not be sought.

NOTE 1 TO PARAGRAPH (d): Because the issue of control inherently involves issues of fact, it must be determined on a case-by-case basis and may vary with the circumstances presented by each case. The factors relevant to a determination of control in addition to equity ownership include, but are not limited to the following: (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.

NOTE 2 TO PARAGRAPH (d): If a transaction is one of the types described herein, 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; (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 § 63.18 for both the transferor/assignor and the transferee/assignee. The information requested in paragraphs (h) through (p) of § 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 an original and five copies to the Office of the Secretary) and shall identify the file numbers under which the initial authorization and the authorization of the assignment or transfer of control were granted.

(f) Notifications for non-substantial or *pro forma* transactions.
  (1) In the case of a *pro forma* assignment or transfer of control, the section 214 authorization holder is not required to seek prior Commission approval.
  (2) A *pro forma* assignee or a carrier that is subject to a *pro forma* transfer of control shall file a notification with the Commission no later than 30 days after the assignment or transfer is completed. The notification may be made by letter (sending an original and five copies to the Office of the Secretary). The notification must contain the following:
    (i) The information requested in paragraphs (a) through (d) and (h) of § 63.18 for the transferee/assignee, and

(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.

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

(4) Upon release of a public notice granting a *pro forma* assignment or transfer of control, petitions for reconsideration under § 1.106 of this chapter or applications for review under § 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. In the case of an involuntary assignment or transfer of control to (1) a bankruptcy trustee appointed under involuntary bankruptcy; (2) an independent receiver appointed by a court of competent jurisdiction in a foreclosure action; or, (3) in the case of death or legal disability, to a person or entity legally qualified to succeed the deceased or disabled person under the laws of the place having jurisdiction over the estate involved; the applicant must make the appropriate filing no later than 30 days after the event causing the involuntary assignment or transfer of control.

15. Section 63.53 is amended by removing paragraph (b) and redesignating paragraph (c) as (b).

SEPARATE STATEMENT OF COMMISSIONER KATHLEEN Q. ABERNATHY

Re: 2000 Biennial Regulatory Review, Amendment of Parts 43 and 63 of the Commission's Rules, IB Docket No. 00-231

The Biennial Review process defined by Congress and emphasized by the court in *Fox* imposes an important burden on the Commission. We must root out regulations that have outlived their usefulness so that we can focus our limited resources on those rules that are necessary and create public interest benefits. The *Fox* court admonished the Commission for its failure under a similar biennial review provision "to address meaningfully the question that Congress required it to answer."[119] I fear that too often past commissions have failed to take this responsibility seriously or even to purport to give Congress a meaningful answer to the biennial review question.[120]

I was a vigorous advocate of eliminating many of the rules we strike from the CFR today. For example, the reporting requirements for affiliated CMRS carriers offering resale on international routes made no sense. It is not clear that CMRS carriers ever had a rational incentive to engage in the conduct. Nor was it obvious how the Commission could have detected bad acts through the data collected. Yet even this rule did not draw our attention in the biennial review process. Instead it was the diligent work of Cingular and Verizon Wireless that called our attention to the rule and its dubious utility. In coming reviews, the Commission staff will be taking an even closer look at our rules. But our experiences here emphasize the critical importance the private sector necessarily plays in the biennial review process.

I am still skeptical of some of the rules that survive our review today. Why, for example, should carriers have to file a letter with the International Bureau to tell them that the Wireline Competition Bureau has approved a Section 271 application? And surely there are more efficient ways to handle Section 214 applications from various subsidiaries. Since the statutory mandate requires us to eliminate rules "no longer necessary in the public interest," we must go beyond whether a rule has any benefits and ask whether the regulation is truly necessary. The Commission has made substantial progress in today's order towards this standard and I look forward to building on this foundation in the 2002 review.

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[119] Fox Television Stations v. FCC, 280 F.3d 1027, 1044 (D.C. Cir. 2002). The Commission has sought rehearing regarding certain aspects of that decision.

[120] See e.g. Separate Statement of Commissioner Harold Furchtgott-Roth, Comprehensive Report on FCC's Biennial Review Including Suggestions for Year 2000 Review (Dec. 21, 1998).

STATEMENT OF COMMISSIONER
MICHAEL J. COPPS
Approving in part, dissenting in part

Re: 2000 Biennial Review; Amendment of Parts 43 and 63 of the Commission's Rules

Today's Order, in furtherance of our statutory biennial review mandate, is the culmination of the Commission's inquiry into whether a large number of diverse Commission rules related to international communications are "no longer necessary in the public interest." Where our rules are truly "no longer in the public interest," I will not hesitate to eliminate them. Consequently, I agree with the majority's decision on many of the rules at issue in this Order. I will not, however, eliminate rules that continue to serve the public interest merely for the sake of eliminating rules. If a rule continues to play an important role in protecting American consumers, it should be maintained and enforced.

I therefore must dissent to the majority's decision to eliminate:

(1) Pro forma assignments and transfers of control rules that allow the Commission to balance the desire to streamline review with the need to enforce the law.

(2) The settlement rate benchmarks condition, which enables the Commission to guard against accounting rate violations; and

(3) The 60-day rule for wireless carriers, which requires all carriers to warn customers before discontinuing international service.

Pro Forma Assignments and Transfers of Control.

Current Commission rules list six types of transactions that are considered pro forma and that therefore do not require prior Commission approval. The Commission identified these six types of transactions as a way of reducing delay for transactions that clearly would not violate our rules, without reducing our ability to properly address other transactions with a higher chance of being problematic.

The Majority believes that these six categories are overly restrictive. Today's Order therefore amends our rules giving the International Bureau the power to determine whether or not a transaction is pro forma on a case-by-case basis, and, critically, giving transacting companies themselves the power to treat any transaction as pro forma, unless there is a change in de facto control. Transacting companies may now treat transfers as

pro forma without any preceding Commission determination on the matter, and merely are required to inform the International Bureau after the transaction is completed.

Today the majority eliminates our limitations on what type of transactions are pro forma. The majority then gives the job of deciding whether to treat transactions as pro forma to the very companies that have the most to gain from cursory Commission review. This will result in many more transactions going essentially unexamined by the Commission. I believe that the Commission has the responsibility to examine each transaction to determine whether it comports with the law. Where there are clear categories of transactions that do not violate the law we should, and we have, created streamlined procedures. Because, however, the majority's decision will greatly curtail our attention even to transactions that may violate our rules, and because our pro forma assignment and transfer of control rules continue to serve the public interest, I must dissent.

The Settlement Rate Benchmark Condition

The majority also finds that it is no longer necessary to apply the "settlement rate benchmarks condition" to section 214 authorizations. The Commission created benchmark rates so foreign carriers could not charge excessive rates where they have market power at home. As part of this process, the Commission also created the "settlement rate benchmark condition," which states that a US carrier cannot provide switched or private-line service on a foreign route where it is affiliated with a carrier with market power unless the foreign carrier offers all US carriers a rate below the benchmark. This prevents carriers from bypassing the benchmark rates order by routing specially arranged rates over private lines, as part of an effort to price squeeze other carriers.

The majority believes that this condition is no longer needed for private lines because it is unlikely that carriers will be able to route traffic over private lines without being discovered. They believe existing reporting requirements will allow us to catch offending carriers. I believe that reporting requirements alone are not adequate to police violations of our benchmark rates, given Commission resources and the complexities of traffic arrangements. There are considerable incentives to violate the benchmark rules and we will be hard pressed to detect violations through these reports alone. Because the settlement rate benchmark condition continues to serve the public interest, I must dissent from its elimination.

Discontinuance of Service by Dominant Carriers.

Elsewhere in today's Order the majority eliminates the requirement that wireless carriers must notify their customers 60 days before terminating service to a particular

international destination. Wireless consumers' reliance on their mobile phones for international calls is increasing rapidly. The availability of wireless standards that allow operation in many countries grows every day, so customers will increasingly be traveling with their mobile phones. The fact that a wireless carrier eliminates service to an international destination can render that carrier far less valuable to a consumer. Arranging for new service takes time. Customers – especially business customers – cannot afford to have gaps in service.

A requirement that a carrier merely warn their customers before shutting off service is eminently reasonable, and not overly burdensome. Wireline carriers live with this rule. It makes no sense to give wireless customers less protection than wireline customers. Because the 60-day warning rule continues to serve the public interest, I must dissent from its elimination.