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

In the Matter of	)	
	)	
Amendment of Parts 1 and 63 of the Commission's Rules	)	IB Docket No. 04-47
	)	

REPORT AND ORDER

Adopted: June 20, 2007 Released: June 22, 2007

By the Commission:

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I. INTRODUCTION AND BACKGROUND

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 (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 *2002 Biennial Regulatory Review*,[5] the International Bureau (Bureau) released a staff report that set forth various recommendations for reviewing the Commission's rules governing the provision of international telecommunications.[6] The Bureau recommended in the *2002 IB Biennial Review Staff Report* that the Commission undertake a proceeding to review certain provisions of Part 63 of its rules.[7]

3. Based upon the Bureau's recommendations, the Commission released a Notice of Proposed Rulemaking (NPRM)[8] on March 4, 2004, seeking comment on several potential changes to its international section 214 authorization process[9] and to rules relating to the provision of U.S.-international telecommunications services.[10] The Commission sought comment on whether: (1) to amend the procedures for discontinuance of an international service;[11] (2) to amend the rules to clarify that U.S.-authorized resale carriers can resell the U.S.-inbound international services of either U.S. carriers or foreign carriers;[12] (3) to amend the rules to allow commonly controlled subsidiaries to provide international service under their parent's section 214 authorization;[13] (4) to revise the international section 214 requirements placed on Commercial Mobile Radio Service (CMRS) carriers;[14] (5) to permit a 30 day

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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 *2002 Biennial Regulatory Review*, GC Docket No. 02-390, Report, 18 FCC Rcd 4726 (2003).

6 The Bureau reviewed rules that fall both within and outside the scope of section 11 of the Communications Act, and made recommendations based on changes in the competitive level of the international telecommunications market and on other public interest considerations. *2002 IB Biennial Review Staff Report,* 18 FCC Rcd at 4197, ¶ 3 and *in passim*.

7 *2002 IB Biennial Review Staff Report*, 18 FCC Rcd at 4211, ¶¶ 35-36, 4236-39, ¶¶ 12-19. We will consider the other recommendations in the staff report relating to the reporting requirements of carriers providing U.S.-international services in a separate proceeding. *See id.* at 4210-11, ¶ 34, 4232, ¶¶ 13-14. *See also Reporting Requirements for U.S. Providers of International Telecommunications Services,* IB Docket No. 04-112, Notice of Proposed Rulemaking, 19 FCC Rcd 6460 (2004).

8 *See Amendment of Parts 1 and 63 of the Commission's Rules*, IB Docket No. 04-47, Notice of Proposed Rulemaking, FCC 04-40, 19 FCC Rcd 4231 (2004) (NPRM).

9 47 U.S.C. § 214.

10 NPRM*,* 19 FCC Rcd at 4232, ¶ 1.

11 NPRM*,* 19 FCC Rcd at 4235, ¶ 9.

12 NPRM*,* 19 FCC Rcd at 4241, ¶ 22.

13 NPRM*,* 19 FCC Rcd at 4243, ¶ 27.

14 NPRM*,* 19 FCC Rcd at 4238, ¶ 15.

notification period for CMRS carriers to provide international resale service;[15] (6) to amend the ownership and other rules to clarify their intent; [16] and (7) to amend section 1.767 of the Commission's rules[17] governing procedures for consideration of applications for cable landing licenses in order to assure compliance with the Coastal Zone Management Act of 1972 (CZMA).[18]

4. Ten parties filed comments in response to the NPRM: Cingular Wireless LLC (Cingular); the Cellular Telecommunications and Internet Association (CTIA); Nextel Communications, Inc. (Nextel); the Department of Defense (DOD); Verizon; the International Cable Protection Committee (ICPC); the North American Submarine Cable Association (NASCA); and the "Executive Branch Agencies" – the Department of Justice, jointly on behalf of the Federal Bureau of Investigation, and the Department of Homeland Security. CTIA, Verizon Wireless, and the National Oceanic and Atmospheric Administration (NOAA) filed reply comments.

5. Based upon our review of the record and for the reasons we discuss below, we modify the rules and procedures governing the provision of international telecommunications service. We revise the procedures for the discontinuance of international services to reflect the changes in the international telecommunications services market by reducing the notice period to 30 days. We also clarify our rules governing the provision of international roaming service by U.S.-CMRS carriers, changes in *de jure* control of an international section 214 authorization holder, and the treatment of asset acquisitions. We decline, however, to modify at this time our rule governing the provision of services by a subsidiary of an international section 214 authorization holder. We also decline at this time to adopt changes to our rules governing a CMRS carrier's 214 authorization process. Finally, we amend our cable landing license application rules and application procedures to require applicants to certify their compliance with the CZMA.

II. DISCUSSION

A. Discontinuance of International Service

1. Background

6. The procedures for discontinuing an international service are contained in section 63.19 of the Commission's rules.[19] This rule sets forth different procedures for discontinuing international service, depending on whether a carrier is classified as a non-dominant, dominant, or a CMRS carrier.

7. Under the current rules, a non-dominant international carrier must notify its affected customers at least 60 days prior to a planned discontinuance, reduction, or impairment of service. [20] The carrier must file a copy of the notification with the Commission on or after the date on which notice has been given to all affected customers.[21] A carrier that has been classified as dominant because it possesses market power in the provision of an international service on the U.S. end of the route must obtain prior

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15 *Id.*

16 NPRM, 19 FCC Rcd at 4246, ¶ 36.

17 47 C.F.R. § 1.767.

18 Coastal Zone Management Act of 1972, 16 U.S.C. § 1456 (1972); *see* NPRM ,19 FCC Rcd at 4244-4245, ¶ 33.

19 47 C.F.R. § 63.19.

20 47 C.F.R. § 63.19(a). For the purpose of this discussion, a "non-dominant" international carrier is a carrier that does not have market power on the U.S.-end of the international route. *Compare with* 47 C.F.R. § 63.10 (non-dominant carrier is one that is not affiliated with a foreign carrier with market power on the foreign-end of the U.S.-international route).

21 47 C.F.R. § 63.19(a)(2).

approval before a planned discontinuance, reduction, or impairment of service on that route.[22] Finally, a CMRS carrier is exempt from the discontinuance procedures.[23]

8. The rules governing the discontinuance of international service by non-dominant carriers differ from those governing the discontinuance of a domestic service provided by such carriers. Among other things, non-dominant domestic carriers seeking to discontinue a domestic service must seek prior approval from the Commission.[24] The domestic rules also require a carrier to use specific language to notify its customers of discontinuance in service.[25] In addition, the domestic carrier must file an application with the Commission,[26] which the Commission places on public notice for public comment.[27] Unless the Commission notifies the carrier otherwise, a non-dominant carrier's application for discontinuance of domestic service is granted automatically 31 days after the public notice.[28]

9. In the *2002 Biennial Regulatory Review* proceeding, Verizon argued that the Commission should conform the notice period for discontinuance of international services by a non-dominant U.S.-international carrier to the relevant rules regarding discontinuance of a domestic service by a non-dominant domestic carrier.[29] Verizon stated that conforming the notice requirement would eliminate the potential for disjointed notices to affected customers when a non-dominant carrier discontinues both

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[22] 47 C.F.R. § 63.19(b). If a dominant carrier only seeks to retire international facilities, or dismantle or remove international trunk lines, but does not discontinue, reduce, or impair the dominant services being provided through these facilities, it does not need prior approval. Rather, it must provide customers at least 60 days written notice, and file a copy of the notice with the Commission. The Commission noted in the *2000 International Biennial Review Order,* that the requirement for prior approval before discontinuance, impairment, or reduction of an international service applies only to a carrier classified as dominant due to its having market power in the provision of that international service on the U.S.-end of the route and not due to classification as a dominant carrier pursuant to section 63.10. *See 2000 International Biennial Review Order*, 17 FCC Rcd at 11423-24, ¶ 18.

[23] 47 C.F.R. § 63.19(c); *see also Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services*, GN Docket 93-252, Second Report and Order, 9 FCC Rcd at 1411, 1480-1481, ¶ 182 (1994).

[24] *See* 47 C.F.R. § 63.71.

[25] There are two similar statements that are to be used depending on whether the carrier is dominant or non-dominant for the service being discontinued, reduced, or impaired. The statement for a non-dominant carrier is:

> The FCC will normally authorize this proposed discontinuance of service (or reduction or impairment) unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier or that the public convenience and necessity is otherwise adversely affected. If you wish to object, you should file your comments as soon as possible, but no later than 15 days after the Commission releases public notice of the proposed discontinuance. Address them to the Federal Communications Commission, Wireline Competition Bureau, Competition Policy Division, Washington, DC 20054, and include in your comments a reference to the Section 63.71 Application of (carrier's name).

47 C.F.R. § 63.71(a)(5)(i). The language for a dominant carrier is similar, except that it states that a customer has 30 days to file comments. 47 C.F.R. § 63.71(a)(5)(ii).

[26] 47 C.F.R. § 63.71(b). "A carrier must also submit a copy of the application to the public utility commission and Governor of each state in which the discontinuance, reduction, or impairment is proposed, as well as to the Secretary of Defense, Attn. Special Assistant for Telecommunications." *See* 47 C.F.R. § 63.71(a).

[27] 47 C.F.R. § 63.71(c).

[28] *Id.*

[29] Verizon Comments, IB Docket No. 02-309, at 11.

domestic and international services, and would make the rules more consistent and rational.[30] In the NPRM, the Commission sought comment on Verizon's proposal to reduce the notification period for non-dominant international carriers from 60 days to 30 days.[31] The Commission also sought comment on whether to amend any other procedures for discontinuance of an international service to be more consistent with the procedures for discontinuance of a domestic service.

2. Discussion

10. We amend our rules to reduce the notification period for a non-dominant carrier's discontinuance of international service from 60 days to 30 days, to be more consistent with the minimum period generally allowed before a non-dominant carrier can receive authority to discontinue domestic service.[32] In addition, we modify our rules to require international carriers to file a copy of the notification with the Commission at the same time they provide notification to their affected customers.

11. The Commission last modified its notification period for discontinuing international service in 1996 when it reduced the notification period for the discontinuance of international service from 120 days to 60 days.[33] The Commission based its decision to reduce the notification period for discontinuance of international service on the large number of available international carriers and increased competition in international services, which allowed customers to switch to another international carrier if service is discontinued by their current carrier.[34] The Commission decided that a 60 day notification requirement would provide customers sufficient time to secure an alternative service provider before their service is discontinued.[35]

12. We now find that the further increase in the number of carriers and competition in the U.S. international telecommunications market since 1996 justifies a further reduction in our discontinuance notice period for international services. According to Commission reports, 857 carriers reported that they provided international service in 2005,[36] whereas in 1996, 315 carriers reported that they provided international service.[37] Given the greater number of carriers, we do not believe a customer needs 60 days to replace its international carrier if its international service is discontinued. No party opposes a reduction in the notice period and there is nothing in the record that demonstrates that customers need 60 days to find a replacement service. We are persuaded that conforming the notification period for international and domestic non-dominant carriers will, as Verizon asserts, reduce confusion and promote consistency.[38] Thus, we find that reducing the notice period from 60 days to 30 days is warranted.

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30 *Id.* at 12.

31 NPRM, 19 FCC Rcd at 4237, ¶ 13.

32 *See* 47 C.F.R. § 63.71. Section 63.63 describes the procedures for emergency discontinuance. 47 C.F.R. § 63.63.

33 *1996 Streamlining Order,* 11 FCC Rcd at 12905, ¶ 49; *see also In the Matter of International Competitive Carrier Policies*, CC Docket No. 85-107, Report and Order, 102 FCC 2nd 812, 846, ¶ 83 (1985). The Commission had previously adopted the 120 day notification period in 1985 based upon concerns about the length of time it took to obtain substitute international service. The Commission then concluded that it would require non-dominant carriers to give 120 days notice prior to discontinuing service, insuring that customers would not encounter service interruptions.

34 *1996 Streamlining Order,* 11 FCC Rcd at 12905, ¶ 49.

35 *Id.*

36 *See* 2005 International Telecommunications Data (released April 2007), Table 5 at 13.

37 *See* 1996 Section 43.61 International Telecommunications Data (released January 1998), Figure 6 at 13.

38 Verizon comments at 1.

13. Additionally, we amend our rules to require carriers to notify the Commission at the same time they notify their affected customers.[39] A carrier that is discontinuing service should file a discontinuance notice with the Commission's Secretary, with a copy to the Chief of the International Bureau, must identify the file number(s) of the international section 214 authorization(s) pursuant to which the carrier provides service, and include a copy of the notice provided to the affected customers.

14. With regard to whether to amend other aspects of the procedures for discontinuance, reduction, or impairment of an international service by a U.S. carrier to be more consistent with the procedures for discontinuance of a domestic service,[40] we decline to modify our discontinuance procedures at this time. We also find that it is not appropriate to completely align our international discontinuance rules with the domestic discontinuance rules which would increase the requirements placed on carriers seeking to discontinue service without an offsetting benefit to the public. No parties suggested additional discontinuance procedure modifications. Unlike our domestic rules of discontinuance, we conclude that it is not necessary for international carriers to use specific discontinuance language in their notification.[41] Similarly, we also find that it is not necessary to issue a public notice that would notify customers and carriers that an international carrier will no longer provide international service.[42] Consequently, we make no other changes to the discontinuance notification requirement in this Order.

B. International Roaming

1. Background

15. International roaming allows the customers of U.S.-licensed CMRS carriers to use the networks of foreign-licensed wireless carriers to make calls while traveling in foreign countries. Roaming agreements between U.S and foreign carriers may permit U.S. carriers' customers that are roaming in other countries to call the United States or other countries. U.S.-CMRS carriers bill their customers for international roaming service, and their international roaming rates and plans are available on the carriers' websites.[43]

16. In the NPRM*,* the Commission noted that the rules do not specifically address whether a U.S-CMRS carrier's international section 214 authority permits it to resell the U.S.-inbound service of foreign carriers to allow U.S.-CMRS customers roaming abroad to call back to the United States.[44] The Commission therefore proposed to amend sections 63.18(e)(2) and 63.23 of its rules to permit explicitly all U.S.-authorized resale carriers to resell U.S.-inbound international services of any common carrier, whether that carrier is a U.S. carrier or a foreign carrier.[45]

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39 Under the current rules, carriers are allowed to file the notification with the Commission either at the time of or subsequent to notification of the affected customers. 47 C.F.R. § 63.19 (2002).

40 *See* NPRM*,* 19 FCC Rcd at 4237, ¶ 13.

41 *Compare* 47 C.F.R. § 63.71(a)(5)(i).

42 *Compare* 47 C.F.R. § 63.71(c).

43 *See* Cingular comments at 8 n.22.

44 NPRM, 19 FCC Rcd at 4242, ¶ 25. Section 63.18(e)(2) allows carriers to request authority to resell the international services of "authorized U.S. common carriers" but does not expressly authorize resale of service provided by foreign carriers. *See* NPRM, at ¶ 25. Likewise, Section 63.23 of the rules, which sets forth conditions applicable to authorized resale carriers, does not specifically address the ability of authorized resale carriers to resell the service of a foreign carrier for the provision of U.S.-inbound service.

45 In the *2002 IB Biennial Review Staff Report*, the Bureau recommended that the Commission modify the rules specifically to permit all U.S.-authorized resale carriers to resell the U.S.-inbound services of foreign carriers. The Commission's proposal included carriers providing service through a global resale authorization as well as those providing service through a limited-global or individual service authorization. *See* NPRM, 19 FCC Rcd at 4241, ¶ 23 (citing *2002 IB Biennial Review Staff Report*, 18 FCC Rcd at 4211, ¶ 36, 4238, ¶ 17).

17. Several commenters argue that U.S-CMRS carrier provision of international roaming service that allows customers roaming abroad to call back to the United States does not involve the "resale" of the U.S.-inbound service of foreign carriers.[46] The commenters further argue that the provision of such international roaming service falls outside the Commission's jurisdiction.[47] CTIA specifically argues that under an international roaming agreement, even an agreement that includes call termination in the United States, international service is provided exclusively by the foreign mobile carrier and does not become a U.S.-international service merely because the call is terminated in the United States.[48] Similarly, Cingular asserts that the service a foreign mobile carrier provides via its own network, whether it be to its own subscribers or to U.S. subscribers roaming onto its network, does not become a U.S.-international service because the call is terminated in the United States.[49]

2. Discussion

18. Upon consideration of the comments submitted in this proceeding, we amend sections 63.18(e)(2) and 63.23(c) of our rules to permit explicitly all U.S.-authorized resale carriers to provide international service by reselling the international services of any other authorized U.S. common carrier or foreign carrier, or by entering into a roaming or other arrangement with a foreign carrier.[50] We thereby clarify that a U.S. carrier's resale authority includes authority to provide U.S.- inbound or -outbound service via resale or other arrangement between the carrier and any other authorized U.S. carrier or foreign carrier. This rule change eliminates uncertainty about the ability of U.S.-authorized resale carriers to provide U.S.-inbound service to customers under a roaming or other arrangement that a U.S. carrier has with a foreign carrier, including arrangements that allow for customer use of a calling card issued by a U.S. carrier.

19. As an initial matter, we disagree with those commenters that argue that international roaming that involves call termination in the United States falls outside the Commission's jurisdiction.[51] For purposes of establishing jurisdiction under the Act, we find determinative that a U.S.-licensed CMRS carrier offers its customers a telecommunications service from a point outside the United States to a point within the United States. Section 2 of the Act establishes that the provisions of the Act apply to, *inter alia*, "all interstate and *foreign* communication by wire or radio … which originates *and/or is received within the United States* and to all persons engaged within the United States in such communication…."[52] Accordingly, the fact that the U.S.-CMRS carrier's customer originates a U.S.-inbound call on the

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46 Commenters generally argue that roaming involves reciprocal arrangements among facilities-based wireless carriers whereby one carrier agrees to carry on its wireless network the traffic of another carrier's customers, typically when their customers travel outside their respective service areas. S*ee* Cingular comments at 8; CTIA comments at 9; Verizon Wireless reply comments at 5. Cingular notes that a number of carriers with section 63.18(e)(2) authority already provide international roaming to U.S. customers. Cingular further argues that the Commission's rules currently distinguish between roaming and resale by CMRS carriers, and it is unnecessary for the Commission to blur that distinction. Cingular comments at 8.

47 *See generally* Cingular comments at 8; CTIA comments at 9; Verizon Wireless reply comments at 5.

48 CTIA comments at 9.

49 Cingular comments at 8.

50 This amendment applies to carriers providing service through a global resale authorization as well as those providing service through a limited-global or individual service authorization. Revised section 63.23(c) will be subject to the conditions that apply to carriers engaged in "switched hubbing" of U.S.-inbound or -outbound international traffic through intermediate foreign points under the provisions of section 63.17(b) of the rules. 47 C.F.R. § 63.17(b).

51 *See* Cingular comments at 8; CTIA comments at 9; Verizon Wireless reply comments at 5.

52 47 U.S.C. § 152(a) (emphasis added). Section 3(17) of the Act defines the term "foreign communications" to mean communication "from or to any place in the United States to or from a foreign country." 47 U.S.C. § 153(17).

facilities of a foreign carrier does not affect our jurisdiction. The use of a foreign-authorized facility by a U.S.-licensed telecommunications carrier to provide its customers a telecommunications service that originates in a foreign point and terminates within the United States does not divest the Commission of its Title II jurisdiction over the offer of that service.[53]

20. We agree with commenters that Commission rules governing the provision of CMRS distinguish between roaming and resale by CMRS carriers.[54] Roaming occurs when the subscriber of one CMRS carrier utilizes the facilities of another CMRS provider with which the subscriber has no direct pre-existing service or financial relationship to place an outgoing call, to receive an incoming call, or to continue an in-progress call.[55] Typically, but not always, roaming occurs when a subscriber places or receives a call while physically located outside the service area of the "home" CMRS provider.[56] Resale has been described by the Commission as "an activity wherein one entity subscribes to the communications services and facilities of another entity and then reoffers communications services and facilities to the public (with or without adding value) for profit."[57] CMRS resale entails a reseller's purchase of CMRS service provided by a facilities-based CMRS carrier for the provision of resold service within the same geographic market as the facilities-based provider.[58]

21. We disagree, however, with certain commenters who argue that U.S-CMRS carriers' offering of international roaming service which allows customers roaming abroad to call back to the United States does not involve the "resale" of the U.S.-inbound service of a foreign carrier.[59] For the purposes of our international service authorization rules, unless a U.S.- international carrier provides U.S.-inbound service to its customers on a facilities basis pursuant to section 63.18(e)(1) of the rules, the carrier effectively resells the U.S.-inbound service of another carrier, regardless of whether the underlying carrier-to-carrier arrangement is a resale, roaming, or other type of arrangement. In any case, our rules require that all providers of U.S.-international telecommunications services obtain a section 214 authorization. Accordingly, the relevant question is not whether a U.S.-CMRS carrier is operating as a

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[53] The Commission has previously concluded, in the *Philippine Long Distance Order*, that the offer of international telephone service inbound to the United States may properly be classified as a common carrier activity for which a certificate of public convenience and necessity is required under Section 214 of the Act. *See In the Matter of Philippine Long Distance Telephone, Order and Notice of Apparent Liability for Forfeitures,* 8 FCC Rcd at 755, ¶¶ 12-13. The arrangement presented in the *Philippine Long Distance Order* involved the carriage of telephone calls into the United States by a foreign-based entity that routed the U.S.-inbound traffic over an international private line that it leased from a U.S.-authorized facilities-based carrier. *Id*. at 757, ¶¶ 11-13.

[54] Prior to the November 24, 2002 sunset date, section 20.12(b) of the rules required that each carrier subject to the rule "shall not restrict the resale of its services, unless the carrier demonstrates that the restriction is reasonable." 47 C.F.R. § 20.12(b). A separate rule, section 20.12(c), governs CMRS roaming service. Section 20.12(c) requires that each carrier subject to the rule "provide mobile radio service upon request to all subscribers in good standing to the services of any carrier subject to this section, including roamers, while such subscribers are located within any portion of the licensee's licensed service area where facilities have been constructed and service to subscribers has commenced, if such subscribers are using mobile equipment that is technically compatible with the licensee's base stations." *Id*. § 20.12(c).

[55] *In the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Services*, WT Docket Nos. 05-265 and 00-193, Memorandum Opinion & Order and Notice of Proposed Rulemaking, FCC 05-160, 20 FCC Rcd at 15047, 15048, ¶ 2 (2005) (*Reexamination of Roaming Obligations*).

[56] *Reexamination of Roaming Obligations*, 20 FCC Rcd at 15047, ¶ 2.

[57] *Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities*, 60 FCC 2d 261, 271 ¶ 17 (1976), *aff'd on reconsideration*, 62 FCC 2d 588 (1977), *aff'd sub nom. AT&T v. FCC*, 572 F.2d 17 (2d Cir.), *cert. denied*, 439 U.S. 875 (1978).

[58] Cingular comments at 8.

[59] *See supra* note 46.

reseller, within the meaning of existing Commission precedent regarding domestic resale,[60] but whether the CMRS carrier provides its customers with the ability to place a US -inbound call by entering into an arrangement with a foreign carrier to provide that international service.

22. Under section 332(c) of the Act,[61] a CMRS provider is treated as a common carrier except for such provisions in Title II of the Act as the Commission may specify by regulation are inapplicable to these service providers. CMRS carriers are required to obtain section 214 authorization to provide international service to their customers.[62] Thus, a CMRS carrier requires authorization under our rules when it offers to its subscribers traveling abroad the ability to call back to the United States, regardless of whether the underlying CMRS carrier's arrangement with a foreign carrier is in fact a resale, roaming, or other type of arrangement.

23. We will not require U.S.-authorized carriers to obtain additional, separate authority for the provision of roaming service, or any other U.S.-international service provided by resale or any other arrangement with a foreign carrier. As the Commission stated in the NPRM, the review the Commission conducts in issuing resale authorizations is sufficient to protect against possible anticompetitive conduct by foreign carriers.[63] We find that our initial review of carrier applications for international section 214 resale authority provides the Commission with the opportunity to review an applicant's foreign ownership and foreign carrier affiliations, if any. The initial authorization process also allows opportunity for Executive Branch input on any national security, law enforcement, foreign policy and trade policy concerns.[64] Therefore, we amend sections 63.18(e)(2) and 63.23(c) of our rules to allow for the provision of U.S.-international service by the use of resale, roaming and other arrangements that U.S. carriers enter into with foreign carriers under a U.S. carrier's resale authority.

C. Commonly-controlled Subsidiaries

1. Background

24. Under the Commission's rules, a commonly-controlled subsidiary must obtain its own international section 214 authorization, while a wholly-owned subsidiary may provide service pursuant to its parent company's authorization.[65] Applications for section 214 authority for a commonly-controlled subsidiary will usually be eligible for streamlined processing, subject to Executive Branch review in instances where there is foreign ownership.[66]

25. In the *2000 International Biennial Review Order,* the Commission considered a request from Cingular to amend section 63.21(h) to allow commonly-controlled subsidiaries to use their parent's

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60 *See supra* note 57.

61 47 U.S.C. § 332(c).

62 *See 1998 Biennial Regulatory Review – Review of International Common Carrier Regulations*, IB Docket No. 98-118, Report and Order, 14 FCC Rcd at 4909, 4926-4927 ¶¶ 38-40 (1999).

63 NPRM*,* 19 FCC Rcd at 4242-4243, ¶ 26.

64 Although we received no comment on this issue from the Executive Branch, we find that the initial review of an application affords the Commission and the Executive Branch with the opportunity to consider any national security, law enforcement, foreign policy, or trade policy concerns.

65 Section 63.21(h) provides that any carrier authorized under section 214 to provide international services may provide service through any wholly-owned subsidiaries. Under this rule, a carrier must notify the Commission within 30 days after the subsidiary begins providing service. *See* 47 C.F.R. § 63.21(h).

66 The International Bureau provides the Executive Branch with notification of all international 214 applications that identify a foreign entity or entities as 10 percent or greater owners of the applicant. The Bureau may remove an application from streamlining should the Executive Branch require additional time to review it beyond the streamlined processing date and the Bureau will reinstate streamlined processing when that review is complete.

international section 214 authorization.[67] In that proceeding, the Commission found, however, that a controlling interest that does not amount to 100-percent ownership may raise issues that require separate review, such as additional foreign affiliations or minority ownership or beneficial interest by persons or entities that are barred from holding a Commission authorization.[68] The Commission stated that a wholly-owned subsidiary by definition does not have different affiliations than its parent, and that review of a wholly-owned subsidiary's application would provide no new information for the purpose of national security, law enforcement, foreign policy, or trade evaluation. Accordingly, the Commission declined to adopt Cingular's request.[69] The Commission's decision was subsequently affirmed.[70]

26. In the NPRM in this proceeding, the Commission sought to develop a fuller record on the issue of commonly-controlled subsidiaries, and therefore requested comment on whether to reconsider section 63.21(h) to allow commonly-controlled subsidiaries to provide international service pursuant to their parent's international section 214 authorization.[71] Specifically, the Commission sought comment on whether there is a maximum percent of differing ownership that should be allowed, (e.g., 10 percent, 20 percent), before requiring a subsidiary to obtain its own 214 authorization, should it allow commonly-controlled subsidiaries to provide service under their parent's authorization.[72] The Commission also sought comment on any potential national security, law enforcement, foreign policy, or trade issues that may be raised by allowing commonly-controlled subsidiaries to provide international service under their parent's authorization.[73] In addition, the Commission asked whether a requirement that the subsidiary notify the Commission within 30 days after beginning to provide service under their parent's authorization, as is currently required for wholly-owned subsidiaries,[74] would alleviate or diminish any potential national security or law enforcement concerns.[75]

27. Cingular, Nextel, CTIA, and Verizon Wireless request that the Commission amend its rules to allow commonly-controlled subsidiaries to use their parent's 214 authorization to provide international service.[76] They argue that CMRS carriers normally operate with several subsidiaries that are commonly controlled, which makes the requirement to seek prior separate 214 approvals for each

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67 *2000 International Biennial Review Order*, 17 FCC Rcd at 11433, ¶ 41.

68 *Id.*

69 *See id.* (citing *1998 International Biennial Review Order*, 14 FCC Rcd at 4932-33, ¶ 56). The provisions of section 63.21(h) were contained in section 63.21(i) when the Commission reviewed the requirement in the *2000 International Biennial Review Order*.

70 *See Cellco Partnership d/b/a Verizon Wireless v. FCC & USA*, 357 F.3d 88 (D.C. Cir. 2004) (upholding the Commission's decision in the *2000 International Biennial Review Order* that declined to modify section 63.21(h) of the Commissions rules to allow commonly-controlled subsidiaries to provide service pursuant to their parent's international section 214 authorization).

71 *See* NPRM, 19 FCC Rcd at 4243, ¶ 27. In the 2002 Biennial Regulatory Review proceeding, Cingular renewed its request that the Commission modify section 63.21(h) to allow commonly-controlled subsidiaries to use their parent's authorization rather than having to obtain their own authorizations. In the *2002 IB Biennial Review Staff Report*, the Bureau found that Cingular did not present any new arguments that warrant change of the rule. The Bureau concluded that the rule remains necessary in the public interest. *2002 IB Biennial Regulatory Review Staff Report*, 18 FCC Rcd at 4237-38, ¶ 15.

72 *See* NPRM, 19 FCC Rcd at 4244, ¶ 32.

73 *Id*.

74 *See* 47 C.F.R. § 63.21(h).

75 *See* NPRM, 19 FCC Rcd at 4244, ¶ 32.

76 *See* Cingular comments at 6-7; Nextel comments at 4; CTIA reply comments at 2, 8; Verizon Wireless reply comments at 4-5.

subsidiary a duplicative and unnecessary burden.[77] CTIA proposes that the Commission revise its current restrictions only with respect to CMRS licenses.[78] The Executive Branch, however, opposes amending the rule as proposed by the CMRS carriers and requests the Commission to retain its current rule because of national security and law enforcement concerns.[79] The Executive Branch also does not support an approach that would permit a maximum percent of ownership before a commonly-controlled subsidiary would be required to file an application.[80] With regard to this issue, CTIA counters that Form 602 filings and section 310 petitions for declaratory rulings afford the Executive Branch with the opportunity to address national security concerns related to CMRS foreign ownership.[81] CTIA believes that a 30 day post notification requirement is sufficient to give the Executive Branch an opportunity to review the ownership of a commonly-controlled subsidiary.[82]

2. Discussion

28. We find that it would not be in the public interest to amend our rules to allow commonly-controlled subsidiaries to provide international service pursuant to their parent's international section 214 authorization. We reiterate that the differences in ownership between a parent and a subsidiary that it controls but does not wholly own may raise issues that require separate review.[83] Consequently, we will retain our current rule that allows only wholly-owned subsidiaries to provide service pursuant to their parent's international section 214 authorization.

29. As the Commission noted in the *2000 Biennial Review Order,* a subsidiary often has different ownership than its controlling parent.[84] The record in this proceeding demonstrates that different ownership may raise issues that are not present with the parent or with wholly-owned subsidiaries. An ownership interest that constitutes a controlling interest but that does not amount to 100-percent ownership may require additional review because of different foreign affiliations or minority ownership or beneficial interest by persons or entities that are barred from holding a Commission authorization.[85] In addition, such a structure may include entities that require scrutiny on those matters for which the Commission defers to the Executive Branch. In this respect, the Executive Branch agencies and DOD maintain that it is important to their national security and law enforcement review of telecommunications services that they be allowed to review the applications for commonly-controlled subsidiaries before those carriers begin to provide international services.[86] They state that they review on a case-by-case

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77 *Id.*

78 CTIA reply comments at 2-3.

79 Executive Branch comments at 3-4.

80 In its comments, the Executive Branch stated, "[W]hile such a bright-line rule may be appealing for administrative reasons, national security and law enforcement interests cannot be adequately protected if all risks other than those created by a particular percentage ownership are excluded." The Executive Branch notes that percentage ownership is only one factor among many that must be considered. The Executive Branch comments, at 3.

81 CTIA reply comments at 2-3.

82 *Id.* at 4.

83 *2000 International Biennial Review Order*, 17 FCC Rcd at 11433-11434, ¶ 41.

84 *Id.*

85 The record does not change the Commission's conclusion in the *2000 Biennial Review Order* that a wholly-owned subsidiary by definition does not have different affiliations than its parent and thus, any review of an application would provide no new information for the purpose of national security, law enforcement, foreign policy, or trade evaluation concerns. *2000 International Biennial Review Order*, 17 FCC Rcd at 11433, ¶ 41.

86 Executive Branch comments at 3-4, DOD comments at 4-5.

basis international 214 applications for possible threats to national security or law enforcement interests.[87]

30. In considering applications under section 214, the Commission's public interest review includes consideration of national security, law enforcement, foreign policy, and trade issues. The Commission accords the Executive Branch deference on these matters. However, it "will make an independent decision on applications to be considered and will evaluate concerns raised by the Executive Branch agencies in light of all the issues raised (and comments in response) in the context of a particular application." [88]

31. In view of its concerns that the ownership of commonly-controlled subsidiaries may raise national security and law enforcement issues, we find that the Executive Branch should be given a reasonable opportunity to review that ownership prior to the subsidiaries initiating U.S.-international service. We further find that the current requirements of section 63.21 provide that opportunity. We do not agree with the CMRS carriers that reliance upon Form 602 and section 310 declaratory rulings (which a subsidiary may not have to file if its foreign ownership does not exceed the 25 percent benchmark in section 310(b)(4)) provides a reasonable opportunity for Executive Branch review. Nor would a 30 day post-notification provide that opportunity. The current rule preserves the Commission's ability to consider Executive Branch concerns, and if necessary, prevent parties who should not obtain international section 214 authorizations from obtaining them indirectly.

32. We recognize the concerns of CMRS carriers that the rule imposes a filing requirement upon their commonly-controlled subsidiaries. On balance, however, we find that Executive Branch national security and law enforcement concerns should be given more weight. Because the Executive Branch relies on the Commission's 214 application process for notice of and information about applicants that may pose potential national security and law enforcement risks, we will retain and not modify the current rule 63.21(h), at this time.[89]

D. International 214 Authorizations for CMRS Carriers

1. Background

33. In the NPRM*,* the Commission requested comment on a post-notification process for granting international section 214 authority to CMRS carriers seeking to provide international service to their customers through the pure resale of the switched services of other U.S. carriers.[90] Specifically, the Commission sought comment on whether it should exempt CMRS carriers from the requirement to file an application for international section 214 authority prior to providing service.[91] The CMRS carriers

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87 *Id*.

88 *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd at 23891, 23919-921, ¶ 66 (1997), Order on Reconsideration, 15 FCC Rcd 18158 (2000) (*Foreign Participation Order*). The Commission further stated, "We expect that the Executive Branch will advise us of concerns related to national security, law enforcement, foreign policy, and trade concerns only in very rare circumstances. Any such advice must occur only after appropriate coordination among Executive Branch agencies, must be communicated in writing, and will be part of the public file in the relevant proceeding." *Id.* at 66.

89 Executive Branch comments at 3-4.

90 NPRM, 19 FCC RCd at 4238, ¶ 15. Carriers providing "pure resale" of international service switch traffic to (and resell the switched services of) underlying facilities-based U.S. carriers. The underlying carriers control the circuit that carries the traffic to the international point, arrange for termination of the traffic, and report the traffic to the Commission on a country-by-country basis. *See* 2005 International Telecommunications Data.

91 The Commission sought comment on whether to exempt a CMRS carrier that provides international service on a purely switched resale basis, and is either (1) unaffiliated with a foreign carrier with market power at the foreign end of the route, or (2) where the CMRS provider has an affiliation with such a foreign carrier and seeks to provide international service by reselling directly or indirectly the international switched services of U.S. carriers with which it is not affiliated. NPRM, 19 FCC Rcd at 4238-41, ¶¶ 15-21.

support exempting CMRS carriers providing international service on a purely switched resale basis, from the requirement to file an application for international section 214 authority prior to providing service.[92]

2. Discussion

34. We will not make any changes to the procedures for granting international section 214 authorizations at this time. Instead we intend to develop a fuller record on possible changes further streamlining the application process that would apply to all carriers providing international service, including, but not limited to, CMRS carriers. In the *2006 Biennial Review Staff Report*, the International Bureau recommended that that Commission undertake a comprehensive review of the Part 63 rules and the procedures for reviewing applications to provide international service.[93] In the context of this larger review, we will consider how to treat the provision of international service by CMRS carriers. We intend to minimize any potential national security, law enforcement, foreign policy and trade concerns when further streamlining the international 214 authorization process. We also intend to address CMRS carrier issues as a part of that proceeding, and we will keep this docket open until that time.

E. Transfer of Ownership

1. Background

35. In the NPRM*,* the Commission asked whether it should amend its rules to clarify that a diminution of an entity's ownership interest in a carrier from more than 50 percent to 50 percent or less constitutes a transfer of control that must be reported to the Commission.[94] Currently, section 63.24 states that a change from less than 50 percent ownership to 50 percent or more ownership shall always be considered a transfer of control.[95] The Commission tentatively concluded in the NPRM that when an owner's interest drops below 50 percent, it loses *de jure* control of the carrier but may retain *de facto* control (based on a case-by-case determination pursuant to section 63.24).[96] The Commission also tentatively concluded that, in these instances, it is important for the Commission to be notified of such transactions to ensure that the owner has maintained *de facto* control.

2. Discussion

36. We conclude that a diminution of an entity's ownership interest in a carrier to 50 percent or less constitutes a transfer of control that must be reported to the Commission.[97] In its comments, DOD asserted that the Commission's proposed rule requiring telecommunications service providers to report changes to foreign controlling interests would assist the DOD in assessing any potential impact on national security.[98] Similarly, we believe that a service provider must notify the Commission of such transactions to ensure that we have accurate information as to who controls the carrier and the nature of that control, and to ensure that there has not been an unauthorized substantial change in ownership or control. Under section 63.24(f), carriers may submit post-transaction notifications for non-substantial, or

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92 *See generally* Cingular comments at 2-5; CTIA comments at 9; CTIA reply comments at 2-3; Nextel Communications comments at 2-4; Verizon Wireless reply comments at 2.

93 *See 2006 Biennial Regulatory Review,* IB Docket No. 06-154, International Bureau Staff Report, 22 FCC Rcd 3138 (2007).

94 NPRM, 19 FCC Rcd at 4246, ¶ 36.

95 47 C.F.R. § 63.24(c).

96 NPRM, 19 FCC Rcd at 4246, ¶ 36.

97 Section 63.24(c), as amended, will continue to provide that: "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 the Note to this paragraph (c)."

98 DOD comments at 5-6.

pro forma, transfers and assignments.[99] Thus, for example, where the owner maintains *de facto* control of the carrier, less than 50 percent of the carrier's voting interests changes hands, and no new party gains negative or *de jure* control as a result of the transaction or series of transactions, the transaction would constitute a *pro forma* transfer of control. Under section 63.24(f), the carrier can notify the Commission of the transaction after the transfer is completed.

F. Asset Acquisition

1. Background

37. In the NPRM, the Commission proposed to clarify that an asset acquisition that will not result in a loss of service for its customers should be treated as an assignment rather than a discontinuance of service.[100] In response to the Commission's proposal, Cingular argues that any requirement regarding asset acquisition should not apply to CMRS carriers.[101] Cingular comments that Title III of the Act does not require CMRS providers to obtain prior approval to sell their customers or portions thereof to another carrier unless a spectrum license is involved.[102] It notes that that the Commission has previously declined to apply international section 214 obligations on CMRS providers, which are without parallel in the Title III context, citing specifically to the CMRS carrier exemption from the discontinuance requirements in section 63.19.[103]

2. Discussion

38. We adopt our proposal in the NPRM and clarify that an asset acquisition that will not result in a loss of service for its customers should be treated as an assignment rather than a discontinuance of service. Specifically, we add a note to section 63.24 to clarify that when a carrier sells its customer base, or a portion of its customer base, to another carrier, the sale of assets will be treated as an assignment, which requires prior Commission approval under section 63.24 of the rules.

39. We disagree with Cingular that CMRS carriers should be considered exempt from asset acquisition obligations.[104] The Commission's decision to exempt CMRS carriers from the international discontinuance requirements does not, by itself, support an exemption from the section 214 requirement that carriers obtain prior Commission approval before engaging in a stock acquisition or an asset acquisition that does not result in a discontinuance of service to customers. The Commission determined in the *2002 Domestic Streamlining Order* that section 214 makes a distinction between the treatment of asset acquisitions and discontinuances, and that there are legal and policy reasons, which Cingular does not address, for treating these transactions differently.[105] In addition, the mere fact that there is no companion requirement to obtain prior approval for the sale of a customer base under Title III does not lead automatically to the conclusion that there is no public interest reason under section 214 to require prior Commission review of such transactions. Without further record support, we find no basis here to

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99 47 C.F.R. § 63.24(f).

100 NPRM, 19 FCC Rcd at 4246-47, ¶ 37.

101 Cingular comments at 9-10.

102 *Id.*

103 Cingular argues that, similar to discontinuance requirements, CMRS carriers are exempt from Part 64 carrier change requirements. Cingular comments at 9-10. We note, however, that the Commission has forborne from regulating CMRS carriers in their provision of domestic service under Section 214 Act. *See Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services*, GN Docket 93-252, Second Report and Order, 9 FCC Rcd at 1411, 1480-1481, ¶ 182 (1994).

104 Cingular comments at 9.

105 *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, CC Docket No. 01-150, Report and Order, FCC 02-78, 17 FCC Rcd at 5547-5549, ¶¶ 59-64 (2002) (*2002 Domestic Streamlining Order*).

exempt CMRS carriers from the obligation to obtain Commission approval before a CMRS carrier sells all or a portion of its customer base in circumstances where it is not also assigning its spectrum license. However, because our concern is with the provision of service to customers, we will not require an international section 214 filing for pure spectrum swaps between carriers where no customers are being affected by the transaction.[106]

G. Modification of Cable Landing License Rules

1. Background

40. Section 1.767 of the Commission's rules provides procedures for Commission consideration of applications for cable landing licenses.[107] Among other requirements, an applicant for a cable landing license is subject to environmental obligations and requirements under the Commission's rules. The rules specifically require an applicant to comply with National Environmental Policy Act of 1969 (NEPA).[108] In the NPRM, the Commission sought comment on whether to amend its rules to require applicants for a cable landing license to comply with the Coastal Zone Management Act of 1972 (CZMA),[109] which is a separate statute from NEPA and contains a different set of obligations.[110]

41. The CZMA was enacted to encourage the participation of and cooperation among state, local, regional, and federal government agencies that have programs that affect the coastlines.[111] The statute authorizes states to develop coastal management programs, subject to federal approval by NOAA.[112] A coastal management program defines permissible land and water use within the state coastal zone. States with federally-approved management programs are entitled to review such uses for consistency with those programs any "required federal license or permit to conduct an activity, in or outside of the coastal zone, affecting any land or water use or natural resource of the coastal zone of that state."[113] NOAA has regulatory responsibility over the state certification process and requirements for all applicants for federal licenses for activities in or outside of coastal zones under CZMA section 1456(c)(3)(A).[114] Its regulations, 15 C.F.R. part 930, subpart D, provide a process to determine when

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106 The Commission will review pure swap of the spectrum under the Title III.

107 47 C.F.R. § 1.767.

108 National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321-4335.

109 Coastal Zone Management Act of 1972, as amended, 16 U.S.C. § 1456. The goal of the CZMA is to preserve, protect, develop and, where possible, restore and enhance the nation's coastal resources.

110 NPRM, 19 FCC Rcd at 4244-46, ¶¶ 33-35. We note that consideration of whether to amend the Commission's rules to assure compliance with the CZMA does not fall within the scope of the *2002 Biennial Regulatory Review* proceeding. Cable landing licenses are issued pursuant to the Cable Landing License Act, and not under the Communications Act; thus, they do not fall under the biennial review directive of the 1996 Act. Our review of section 1.767 is not prompted by "the result of meaningful economic competition between providers of such service," but, rather by our desire to be in compliance with all applicable statutes. *See* Pub. Law No. 8, 67th Congress, 42 Stat. 8 (1921); 47 U.S.C. §§ 34-39; *see also Review of Commission Consideration of Applications under the Cable Landing License Act*, IB Docket No. 00-106, Report and Order, 16 FCC Rcd at 22168, ¶ 2 (2001) (*Submarine Cable Report and Order*).

111 Coastal Zone Management Act of 1972, as amended, 16 U.S.C. § 1456.

112 *Id.*

113 16 U.S.C. § 1456(c)(3)(A).

114 This provision is applicable to "*any* applicant for a required Federal license or permit to conduct activity, in or outside of the coastal zone, affecting any land or water use or natural resource of the coastal zone of that state." 16 U.S.C § 1456(c)(3)(A) (emphasis added); *see also* National Oceanic and Atmospheric Administration reply comments at 7. Subject to a determination by NOAA that a federal license activity has a reasonably foreseeable coastal effect, it may be reviewed either as a listed activity in a state's federally-approved management program, or

federal license or permit activities are subject to consistency review. If review is required, the applicant must certify that the proposed activity complies with the enforceable policies of a state management program, and all relevant states must concur in the applicant's certification before the Federal agency grants the license. [115]

42. The Commission noted in the NPRM that the CZMA is separate from the NEPA, with a different set of obligations triggered by a different threshold test.[116] The Commission asked whether Commission rules adequately addressed the responsibilities of an applicant applying for a cable landing license under the CZMA.[117] The Commission sought comment on: (1) whether the CZMA applies to the Commission's cable landing licenses; and (2) whether the Commission should amend its current rules to assure compliance with the CZMA.[118] In particular, the Commission sought comment on two specific alternative proposals that would have required an applicant seeking a Commission license to certify to the Commission prior to construction that the proposed cable complied with the CZMA as well as NOAA approved programs of any relevant states.[119] In addition, the Commission requested comment on alternative approaches to assure compliance with the CZMA.[120]

43. NASCA, ICPC, and NOAA filed comments. NASCA and ICPC argue that the CZMA is not applicable to the Commission's cable licensing rules and oppose the Commission's proposals in the NPRM for amending its rules.[121] They also expressed concern that subjecting cable landing licenses to

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as an unlisted activity in the context of a particular license application. *See* 15 C.F.R. §§ 930.53 (Listed federal license or permit activities); 930.54 (Unlisted federal license or permit activities).

115 16 U.S.C. § 1456(c)(3)(A). The state is conclusively presumed to have concurred if it does not notify the Federal agency within six months after receipt of the applicant's consistency certification that it concurs with or objects to the applicant's certification.

116 *See* NPRM, 19 FCC Rcd at 4244-4245, ¶ 33.

117 *See* NPRM, 19 FCC Rcd at 4244-4246, ¶ 33-35.

118 In the NPRM the Commission tentatively concluded that any modification to its rules should be narrowly targeted to incorporate relevant CZMA obligations with minimal effect on Commission and applicant resources and the timing of Commission action. *See* NPRM, 19 FCC Rcd at 4244-4246, ¶ 33-35; 16 U.S.C. § 1456 (1972).

119 Under the first alternative, the Commission suggested that it would amend its cable landing application processing rules to specify that the Commission cannot take action on such applications until all relevant states have notified the Commission that they concur with or object to the applicant's certification (or, alternatively, until the six-month default period expires). *See* NPRM, 19 FCC Rcd at 4245-4246, ¶ 35; 16 U.S.C. § 1456(c)(3)(A). As a second alternative, the Commission sought comment on whether applicants should be required under our rules to file both the certifications required by the CZMA and a certification that the relevant states have concurred with the certification (or, alternatively, proof that all relevant states have failed to act on any appropriate certifications). The Commission tentatively concluded that prior consultation with the affected state to satisfy coastal management plan concerns would be critical to enable Commission processing of eligible applications under either the Commission's streamlined procedures (45 days of public notice) or non-streamlined procedures (90 days from public notice). In both cases, the Commission expected that applicants would have been working in consultation with the states as to such issues well in advance of presenting an application to the Commission. *See* NPRM, 19 FCC Rcd at 4245-4246, ¶ 35; *see also* 47 C.F.R. § 1.767(i).

120 *See* NPRM, 19 FCC Rcd at 4245-4246, ¶ 34 and 35.

121 ICPC argues that there is no legal requirement that a license issued pursuant to the Cable Landing Act of 1921 comply with the CZMA. NASCA also argues that the CZMA and NOAA's regulations clearly state that a cable landing license does not fall within the category of a required federal license or permit to conduct activity that would affect land or water use or natural resource of a coastal zone. *See* International Cable Protection Committee reply comments at 2; NASCA comments at 3-4.

the CZMA would disrupt the Commission's streamlined authorization process.[122] NOAA filed reply comments stating that the CZMA is applicable to cable landing licenses.[123] However, NOAA objects to the amendments proposed in the NPRM as duplicative of NOAA regulations and processes that already provide a basis for the Commission and applicants for FCC licenses to determine when consistency review is required.[124] It notes that to date no state has listed submarine cable landing licenses in its coastal management program or sought NOAA approval to review a particular license application on a case-by-case basis as an unlisted activity.[125] NOAA cautions the Commission not to adopt regulations mandating state consistency reviews of cable landing license applications that are inconsistent with its own regulations and processes.[126]

2. Discussion

44. We amend our cable landing license rules and application procedures to ensure that our processing of such applications comports fully with the consistency review procedures specified in the CZMA. The CZMA provides that absent a special determination by the Secretary of Commerce, "[n]o Federal license…may be granted by the Federal agency" until a state entitled to review the proposed activity for consistency with its approved management program under section 1456(c)(3)(A) concurs or is presumed to have concurred with the applicant's certification that "the proposed activity complies with the enforceable policies of the state's approved program and such activity will be conducted in a manner consistent with the program."[127] The CZMA mandates that an applicant for a required federal license "shall provide [this certification] in the application to the licensing or permitting agency [and] shall furnish to the state or its designated agency a copy of the certification. . . . [a]t the same time."[128] The state must notify the federal agency that it concurs with or objects to the applicant's certification "[a]t the earliest practicable time," and its concurrence is conclusively presumed if it does not do so within six months after receiving the applicant's certification.

45. As a threshold matter, we agree with NOAA, the federal agency statutorily charged with implementing CZMA, that cable landing licenses issued by the Commission may be subject to consistency review under section 1456(c)(3)(A). The statutory language is unambiguous that such review applies to any activity requiring a federal license or permit that will have coastal effects. The obligation to provide a consistency certification expressly applies to "*any* applicant for a required federal license or permit to conduct an activity, in or outside of the coastal zone, affecting any land or water use or natural resource of the coastal zone" shall certify that the proposed activity complies with the state's approved program."[129] The legislative history confirms that Congress intended for section 1456(c)'s consistency requirements to apply broadly to *any* federal agency activities regardless of their location, and that no

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122 ICPC and NASCA assert that the Commission's proposed modification is irreconcilable with earlier Commission rulemakings. They argue that the Commission's proposed modifications would undermine the Commission's objectives in adopting streamlined rules. *See* NASCA comments at 13; ICPC reply comments at 3-4.

123 NOAA reply comments at 7.

124 In its reply comments as well as in an *ex parte* conversation, NOAA outlined the CZMA process and NOAA's role in that process. NOAA orally explained its regulatory authority over the consistency review process of federal license or permit activities. NOAA reply comments at 2. NOAA's rules regarding the CZMA are located in 15 C.F.R. Part 939, Subpart D.

125 NOAA reply comments at 6. NOAA approval is based on whether the activity in question will have reasonably foreseeable effects on the uses or resources of the state's coastal zone. 15 C.F.R. §§ 930.53 (Listed federal license or permit activities); 930.54 (Unlisted federal license or permit activities).

126 NOAA reply comments at 8-9.

127 16 U.S.C. § 1456(c)(3)(A).

128 *Id.*

129 16 U.S.C. § 1456(c)(3)(A).

activities having coastal effects will be categorically exempt.[130] The threshold test for determining whether consistency review is required involves a question of fact as to the effect of the proposed Federal activity on coastal uses or resources of a state coastal zone.

46. Nothing in the CZMA, nor in the nature of the activities conducted by cable landing licensees, provides a basis to conclude that licenses issued by the Commission under the Cable Landing License Act to construct or operate a cable landing station are categorically exempt from section 1456(c)(3)(A)'s consistency requirement. In this regard, we reject NASCA's characterization of cable landing licenses as not possibly "affecting any land or water use or natural resources of the coastal zone" within the meaning of section 1456(c)(3). A cable landing license issued by the Commission is necessary to land or operate a submarine cable within the United States.[131] There is no merit to the suggestion that, because additional approvals are required to construct and locate the cable, the landing and operation of a cable, which require a Commission license, cannot have a coastal effect. We recognize that the construction and location of the cable requires approval from the Army Corps of Engineers, whose permitting process may also be subject to consistency review under many state management programs. Such review, however, does not satisfy the Commission's CZMA responsibility as the Federal licensing agency insofar as any state requires that cable landing license applications undergo consistency review and NOAA has approved such review. We therefore reject the views of various commenters that cable landing licenses are beyond the scope of section 1456(c)(3)(A).[132]

47. In modifying our cable landing licensing rules, as discussed below, we will consider the CZMA requirements to apply to applications for a license to construct and operate a submarine cable system or to modify the construction of a previously approved submarine cable system. We will not, however, consider the requirements of the CZMA to apply to applications for changes of ownership of the submarine cable system or landing stations (transfers or control or assignments) or other modifications of the cable landing license that do not effect the construction of the submarine cable system (such as the adding or removing of licensees). While applications that involve the construction of the submarine cable system may affect the coastal zone of a state, changes of ownership will not have the same affect. Indeed, any new owner will be required to follow any existing construction requirements for the submarine cable system or landing station.

48. As NOAA has requested, we will not adopt regulations that mandate consistency reviews of every cable landing license application or that supplant regulations or processes whereby NOAA, at the request of a state with an approved management program, determines that consistency review is warranted because a proposed activity requiring a federal license will have reasonably foreseeable coastal effects. We understand that no state currently includes cable landing licenses in its management program

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130 H.R. Conf. Rep. No. 964, 101st Cong., 2d Sess. 968-975 ("The amended provision establishes a generally applicable rule of law that *any* federal agency activity (regardless of its location) is subject to the CZMA requirement for consistency if it will affect any natural resources, land uses, or water uses in the coastal zone. No federal agency activities are categorically exempt from this requirement.") *See generally Coastal Zone Management Federal Consistency Regulations*, 65 F.R. 77124, 77124-25 (2000) ("These changes reflect an unambiguous Congressional intent that all Federal agency activities meeting the 'effects' test are subject to the CZMA consistency requirement; that there are no exceptions or exclusions from the requirement as a matter of law; and that the 'uniform threshold standard' requires a factual determination, based on the effects of such activities on the coastal zone, to be applied on a case-by-case basis."); *see also Proposed Rules*, 68 F.R. 34851, 34854 (June 11, 2003) (rejecting as not authorized by CZMA a suggestion that federal consistency regulations rely on agencies' categorical exclusion definitions under NEPA).

131 The Commission's power to issue cable landing licenses is derived from the Submarine Cable Act, 47 U.S.C. §§ 34-39, which provides that submarine cables may not land in the United States unless the President has issued a written license. By Executive Order the President has delegated authority to issue such licenses to the Commission. *See* Executive Order No. 10,530 § 5(a), *codified at* 3 C.F.R. § 189 (1954-58), *reprinted in* 3 U.S.C. § 301 app. (1988).

132 *See* NASCA comments at 3; ICPC comments at 2.

and that, thus far, no state has requested NOAA approval to review a particular cable landing license application on a case-by-case basis. We understand further that our applicants may be subject to Army Corps of Engineers requirements that incorporate CZMA review in certain instances and that this may ensure consistency review of submarine cable projects, even where cable landing licenses have not been identified as requiring review.

49. Nonetheless, we remain concerned that the Commission, as the Federal licensing agency, not inadvertently foreclose the consistency review rights of any coastal state with an approved management program or otherwise violate the express dictate of section 1456(c)(3)(A) that no federal license be granted until all required state concurrences, express or presumed, are received. Insofar as any state, in conjunction with NOAA, has identified cable landing licenses as requiring consistency review, we determine that we may not rely on the permitting procedures of another agency to fulfill our CZMA responsibility as the Federal licensing agency. We will therefore add a note to section 1.767(a) of our rules clarifying that, in accordance with the express requirement that a federal license applicant "shall provide [the certification] in the application to the licensing or permitting agency," all consistency certifications required by section 1456(c)(3)(A) must be included in the application filed with the Commission for a license to construct and operate a submarine cable system or to modify the construction of a previously approved submarine cable system.

50. To ascertain whether any such certification is required, the note directs applicants for a license to construct and operate a submarine cable system or to modify the construction of a previously approved submarine cable system to consult NOAA regulations and applicable state procedures to verify that this type of application has not been added to the list of activities in a state management program that routinely require consistency review. A cable landing license applicant would not be required to provide any such certification in its application or to any coastal state unless a potentially affected state or states had modified its NOAA-approved management program to include the construction or operation of a cable landing station as a listed activity that routinely requires consistency review, or had secured NOAA approval to review a particular cable landing application as an unlisted activity. In that event, the applicant would be required to furnish each such state "a certification that the proposed activity complies with the enforceable policies of the state's approved program and that such activity will be conducted in a manner consistent with the program" and include all such certifications in the application filed with the Commission or amend its application to reflect any subsequently required certification.

51. The applicant should consult the relevant state(s) (or any designated state agency) to determine the contents of any required certification. Given that the statute explicitly confers consistency review rights with respect to "activit[ies], *in or outside of the coastal zone,* affecting any land or water or natural resources of the coastal zone of that state," applicants should consult the approved management programs of any states with a coastal zone potentially affected by the applicant's proposed activities, as well as those states within a reasonable vicinity of the proposed cable landing station.

52. In accordance with the requirement that state concurrence is to precede the grant of the cable landing license and to prevent the construction of any submarine cable system or cable landing station while a coastal state is reviewing the applicant's consistency certification, the Commission will not streamline the application or take any action on a cable landing license application pending notification, or documentation from the applicant, that all required state concurrences have been received or may be presumed.[133] In this manner we ensure that no state consistency review right conferred by section 1456(c)(3)(A) is foreclosed. We expect that this requirement will result in only minimal delays in

[133] Applications for a license to construct and operate a submarine cable system or to modify the construction of a previously approved submarine cable system that will not be located in any states where the cable landing licenses may be subject to the consistency certification requirements of the Coastal Zone Management Act are still eligible for the streamlined grant procedures pursuant to 47 C.F.R. § 1.767(j), (k). Also, all applications for transfer of control or assignment of a cable landing station license or modification that does not affect the construction of a submarine cable system or cable landing station are eligible for the streamlined grant procedures pursuant to 47 C.F.R. § 1.767(j), (k).

the inauguration of new service. The statute directs the affected coastal state to notify the concerned federal agency at the earliest practicable time that it concurs with or rejects the applicant's certification and that state concurrence is presumed if the state has not provided such notification within six months after receipt of the applicant's certification. Accordingly, construction of the submarine cable system will be delayed no more than six months after the state's receipt of the applicant's certification. And in the usual case in which, as contemplated by section 1456(c)(3)(A), the certification is furnished to the state when the applicant submits the application to the Commission,[134] the construction actual delay attributable to the certification process, will be less than six months, whether the licensing action takes place pursuant to a streamlined applications or non-streamlined application.[135] Applicants can further reduce any potential delay by working with individual states to secure the required concurrence well in advance of the end of the six-month period when a non-responsive state is deemed to have concurred.

53. We also encourage applicants, contemporaneously with the filing of the application with the Commission, to send a notification of such filing to any potentially affected coastal state that does not list this activity within its approved management program. NOAA regulations, 15 C.F.R. § 930.54, afford states 30 days from notice of the submission of the application to the Federal licensing agency to advise the concerned federal agency of unlisted activities affecting any coastal use. A state that does not respond within 30 days waives any right to review the application as an unlisted Federal license activity.[136] Providing actual notice of such filing to all potentially affect coastal states will effectively create a date certain (i.e., 30 days after notification of the filing) when the Commission can unequivocally grant the application assured that any CZMA obligation has been satisfied. Given that no state to date has sought to review the landing/operation of a submarine cable as an unlisted activity, we expect that the streamlined processing of these applications will rarely be disrupted by a state seeking to review this as an unlisted activity. Finally, notifying potentially affected states when a cable landing application is filed with the Commission would impose minimal burdens on the applicant because the same notification can be sent to each potentially affected coastal state.

54. In sum, we find that, although no coastal state currently includes the landing and operation of a cable in its federally approved management program or has requested approval to review this as an unlisted activity, cable landing licenses issued by the Commission may be subject the consistency review requirements set forth in section 1456(c)(3)(A) of the CZMA. We do not adopt either of the proposals set forth in the NPRM. Instead, we revise section 1.767 to clarify that any consistency certifications required by section 1456(c)(3)(A) must be included in cable landing license applications filed with the Commission to construct and operate or modify construction of a previously approved

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134 Section 1456(c)(3)(A) specifies that "any applicant for a required Federal license . . . shall provide in the application to the licensing or permitting agency a certification that the proposed activity complies with the enforceable policies of the state's approved program and that such activity will be conducted in a manner consistent with the program. *At the same time*, the applicant shall furnish to the state or its designated agency a copy of the certification." (Emphasis added).

135 There might be additional delay in the effective date of action on the license application where the application is reviewed by the state as an unlisted activity rather than as a listed activity within its NOAA-approved management program. *See supra* note 135.

136 15 C.F.R. § 930.54(a) (providing that the waiver applies only if the state agency receives notification of the Federal license application). In the event any state so notified, advises within 30 days that the application requires consistency review, the Commission as well as applicant would be entitled to participate in the Director's decision regarding the state's request to review the application as an unlisted activity. The certification described by section 1456(c)(3)(A) will be required only if the Director determines that the proposed activity will have reasonably foreseeable coastal effects. *Id.* at § 930.54(d). However, the applicant could reduce any resulting delay in the processing of its pending application by immediately providing the certification without waiting for the Director's decision and working with the state to secure its concurrence as soon as possible thereafter. *Id.* at § 930.54(f). Concurrence is presumed six months after state receives notice of the application, or three months after the state receives the applicant's certification, whichever is later. *Id.* at § 930.54(e).

submarine cable system, and that construction or modification may not commence until all coastal states have concurred or may be presumed to have concurred with any required certifications included in the cable landing application.

III. ADMINISTRATIVE MATTERS

A. Final Regulatory Flexibility Certification

55. The Regulatory Flexibility Act of 1980, as amended (RFA)[137] requires that a Regulatory Flexibility Act analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."[138] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[139] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[140] 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).[141]

56. As stated in the Order, this proceeding was initiated as part of the Commission's 2002 biennial regulatory review process. Through this review, the Commission has sought to: facilitate the introduction of new services; provide customers with more choices, innovative services, and competitive prices; improve the processing of authorization applications and regulation of international services; and lessen the regulatory burdens placed on carriers. In this proceeding, the Commission examined the rules regarding the authorization of international services under section 214 of the Act.[142]

57. In the NPRM, the Commission certified that the rules proposed in this proceeding would not have a significant economic impact on a substantial number of small entities.[143] The Commission stated that the proposals would be in the public interest and would lessen the burdens on all carriers, both small and large, providing international common carrier service pursuant to section 214 of the Act. In the Order, the Commission adopts many of the rule changes proposed in the NPRM. Thus, we certify that rule changes adopted in this Order will have no significant economic impact on a substantial number of small entities.

58. In the Order, the Commission amends its rules regarding the discontinuance of international service thereby aligning the international rules with those rules for domestic service. The Order will amend the submarine cable landing rules to require applicants to include information regarding an applicant's compliance with the Coastal Zone Management Act of l972. The Order clarifies the rules to eliminate confusion as to whether a CMRS carrier requires authority to resell U.S. inbound service of a foreign carrier for the U.S.-CMRS carrier's customers that are roaming in a foreign country. The Order requires a carrier to notify the Commission when there is a change in ownership to 50 percent or less.

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137 *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 – 602, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

138 5 U.S.C. § 605(b).

139 *Id.*

140 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 terms which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

141 15 U.S.C. § 632.

142 47 U.S.C. § 214.

143 *See* NPRM, 19 FCC Rcd at 4249, ¶ 43.

Also, an ownership change to less than 50 percent ownership, but with control, will be considered a transfer of control. The Order amends its rules to clarify that an asset acquisition that will not result in a loss of service for its customers should be treated as an assignment rather than a discontinuance of service. In addition, the Order amends the rules so that when a carrier sells its customers or a portion of its customers to another carrier, the sale of assets will be treated as an assignment.

59. The rule changes adopted in this Order will benefit all entities, both small and large. The rules for discontinuing international service will be consistent with the rules for discontinuing domestic service, thereby eliminating the disparities between domestic and international service rules. The Commission finds that it will be in the public interest to eliminate the requirement that CMRS carriers seek authority for the resale of inbound traffic. Rather, this authority will be included in the carrier's global resale authority. This rule change will reduce the filing requirements on CMRS carriers, many of which are small entities. Although the majority of submarine cable landing license applicants is not considered small entities, the rule changes affecting these applicants are nominal and will ensure that our rules are consistent with the Coastal Zone Management Act of 1972.

60. The rules adopted in the Order are administrative and will streamline and clarify our processes. Therefore, we find that the rules adopted in this Order will not have a significant economic impact on a substantial number of small entities.

61. **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.[144] In addition, the Commission will send a copy of the Order, including a copy of the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA. A copy of the Order and Final Regulatory Flexibility Certification will also be published in the Federal Register.[145]

B. Final Paperwork Reduction Act of 1995 Analysis

62. This Report and Order contains either new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office Of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law No. 107-198, (*see* 44 U.S.C. § 3506 (c)(4)), the Commission previously sought specific comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

63. All comments regarding the requests for approval of the information collection 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 Judith-B.Herman@fcc.gov; phone 202-418-0214.

IV. ORDERING CLAUSES

64. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 4(i), 4(j) 11, 201-205, 211, 214, 219, 220, 303(r), 309, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 161, 201-205, 211, 214, 219, 220, 303(r), 309 and 403, and sections 34-39 of the Cable Landing License Act, 47 U.S.C. §§ 34-39, this REPORT AND ORDER IS HEREBY ADOPTED.

65. IT IS ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this REPORT AND 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.*

144 *See* 5 U.S.C. § 801(a)(1)(A).

145 *See* 5 U.S.C. § 605(b).

66. IT IS FURTHER ORDERED that the Regulatory Flexibility Certification, as required by section 604 of the Regulatory Flexibility Act and as set forth above IS ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX

Final Rules

Parts 1 and 63 of the Commission's rules are amended as follows:

PART 1 — PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

2. Section 1.767 is amended by adding note to paragraph (a)(10); adding new paragraph (g)(9); and redesignating paragraphs (g)(9) through (g)(14) as paragraphs (g)(10) though (g)(15).

§ 1.767 Cable landing licenses.

(a) ****

Note to paragraph (a)(10) – Applicants for cable landing licenses may be subject to the consistency certification requirements of the Coastal Zone Management Act, 16 U.S.C. 1456, if they propose to conduct activities, in or outside of a coastal zone of a state with a federally-approved management plan, affecting any land or water use or natural resource of that state's coastal zone. Before filing their applications for a license to construct and operate a submarine cable system or to modify the construction of a previously approved submarine cable system, applicants must determine whether they are required to certify that that their proposed activities will comply with the enforceable policies of a coastal state's approved management program. In order to make this determination, applicants should consult National Oceanic Atmospheric Administration (NOAA) regulations, 15 C.F.R. part 930, subpart D, and review the approved management programs of coastal states in the vicinity of the proposed landing station to verify that this type of application is not a listed federal license activity requiring review and that no state has sought or received NOAA approval to review the application as an unlisted activity. If it is determined that any certification is required, applicants shall consult the affected coastal state(s) (or designated state agency(ies)) in determining the contents of any required consistency certification(s). Applicants may also consult the Office of Ocean and Coastal Management (OCRM) within NOAA for guidance. The cable landing license application filed with the Commission shall include any consistency certification required by section 1456(c)(3)(A) for any affected coastal state(s). Upon documentation from the applicant, or notification from each affected coastal state, that the state has either concurred, or by its inaction, is conclusively presumed to have concurred with the applicant's consistency certification, the Commission may take action on the application.

(k) ****

(4) Certifying that for applications for a license to construct and operate a submarine cable system or to modify the construction of a previously approved submarine cable system, the submarine cable system will not be located in any states where the cable landing licenses may be subject to the consistency certification requirements of the Coastal Zone Management Act, 16 U.S.C. 1456.

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

3. The authority citation for part 63 continues to read as follows:

Authority: Sections 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.

4. Section 63.18 is amended by revising paragraph (e)(2) to read as follows:

§ 63.18 Contents of applications for international common carriers.

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(e) ***

(2) Global Resale Authority. If applying for authority to resell the international services of authorized common carriers subject to § 63.23, the applicant shall:

5. Section 63.19 is amended by revising paragraphs (a)(1) and (a)(2) as follows:

§ 63.19 Special procedures for discontinuances of international services.

(a) ***

(1) The carrier shall notify all affected customers of the planned discontinuance, reduction or impairment at least 30 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 the date on which notice has been given to all affected customers. The filing may be made by letter (sending an original and five copies to the Office of the Secretary, and a copy to the Chief, International Bureau) and shall identify the geographic areas of the planned discontinuance, reduction or impairment and the authorization(s) pursuant to which the carrier provides service.

6. Section 63.23 is amended by revising paragraph (c) as follows:

§ 63.23 Resale-based international common carriers.

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(c) Subject to the limitations specified in paragraph (b) of this section and in section 63.17(b), the carrier may provide service by reselling the international services of any other authorized U.S. common carrier or foreign carrier, or by entering into a roaming or other arrangement with a foreign carrier, for the provision of international basic switched, private line, data, television and business services to all international points.

Note to section 63.23(c): For purposes of this paragraph, a roaming arrangement with a foreign carrier is defined as an arrangement under which the subscribers of a U.S. commercial mobile radio service provider use the facilities of a foreign carrier with which the subscriber has no direct pre-existing service or financial relationship to place a call from the foreign country to the United States.

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7. Section 63.24 is amended by adding a Note after paragraph (b) as follows:

§ 63.24 Assignments and transfers of control.

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(b) ***

NOTE TO PARAGRAPH (b): The sale of a customer base, or a portion of a customer base, by a carrier to another carrier, is a sale of assets and shall be treated as an assignment, which requires prior Commission approval under this section.

8. Section 63.24 is amended by revising paragraph (c) as follows:

§ 63.24 Assignments and transfers of control.

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(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. A change from 50 percent or more ownership to less than 50 percent 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).