International Bureau
Federal Communications Commission
Biennial Regulatory Review 2002
IB Docket No. 02-309
GC Docket No. 02-390

Staff Report
December 31, 2002

1. The International Bureau administers policy for the authorization and regulation of international telecommunications facilities and services, as well as policy for licensing and regulating satellite facilities and services. The Bureau represents the Commission in international fora, as well as in bilateral and multilateral meetings.[1] The Bureau directs and coordinates negotiations with Mexico, Canada and other countries regarding spectrum use and interference protection. The Bureau also provides assistance in telecommunications trade negotiations, and provides regulatory assistance and training programs to foreign governments.

2. The International Bureau seeks to facilitate the introduction of new services, and to provide customers with more choices, more innovative services, and competitive prices. The 2002 biennial regulatory review complements the Bureau's streamlining efforts. The Bureau has taken a proactive approach in its rulemakings to remove unnecessary regulatory constraints, wherever possible and practicable. It continually reviews its rules and policies to respond to changing conditions and developments in the industry.

I. Scope of Review

3. The International Bureau staff reviewed all of the rules applicable to telecommunications service that the Bureau administers, including rules that fall outside of the scope of section 11 of the Communications Act, as amended (Communications Act).[2] Specifically, the staff reviewed:

Part 1 – Practice and Procedure – In addition to procedural rules of general applicability to all Commission licensees, Part 1 contains the rules pertaining to submarine cable landing licenses.[3]

Part 23 – International Fixed Public Radio Communication Services – Contains rules applicable to international terrestrial fixed communications systems, including general licensing and application filing requirements, technical standards, and operations.

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[1] The Bureau represents the Commission in matters such as spectrum planning, terrestrial and satellite issues, standards, and broadcasting. Major fora include the International Telecommunication Union (ITU), the World Radio Communication Conference, and various regional organizations, such as the Asia-Pacific Economic Cooperation (APEC), the Inter-American Telecommunications Conference (CITEL), and the Organization for Economic Cooperation and Development (OECD).

[2] 47 U.S.C. § 161. The scope of review under section 11 is discussed in the Commission's *2002 Biennial Regulatory Review*, GC Docket No. 02-390, Report, FCC 02-342.

[3] The Commission's authority to grant, withhold or condition cable landing licenses derives from the Cable Landing License Act of 1921, Pub. Law No. 8, 67th Congress, 42 Stat. 8 (1921); 47 U.S.C. §§ 34-39, and Executive Order No. 10530, Exec. Ord. No. 10530 § 5(a) (May 10, 1954), reprinted as amended in 3 U.S.C. § 301. In addition, a cable landing licensee may choose to provide service on either a common carrier or non-common carrier basis. *See* 47 C.F.R. § 1.767(a)(6).

Part 25 – Satellite Communications – Contains rules applicable to satellite communications, including general licensing and application filing requirements, technical standards, and operations.[4]

Part 43 – Reports of Communication Common Carriers and Certain Affiliates – Contains rules requiring certain reports by common carriers, including reports regarding different facets of international telecommunications.

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 – Contains rules applicable to common carriers, including application filing requirements for international section 214 authorizations.

Part 64 – Miscellaneous Rules Relating to Common Carriers – Subpart J contains rules regarding the Commission's International Settlements Policy.

4. In addition, the Commission issued a Public Notice requesting comment on which rules within the purview of the International Bureau should be modified or repealed as part of the 2002 biennial review process.[5] Four parties filed comments and four parties filed reply comments in response to the Public Notice.[6] In addition, the Commission placed into the record of this proceeding a petition for rulemaking filed by the Cellular Telecommunications & Internet Association, which requests that the Commission review certain rules in Parts 43 and 63 as part of the biennial regulatory review.[7]

5. A review of the rules applicable to telecommunications service within the purview of the International Bureau, including the comments received on the rules, and the staff recommendations regarding whether the rules should be retained, modified or eliminated pursuant to section 11,[8] is contained in the appendices to this report.

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[4] A satellite licensee may operate on either a common carrier or non-common carrier basis. *See* 47 C.F.R. § 25.114(c)(14).

[5] *Commission Seeks Public Comment in 2002 Biennial Review of Telecommunications Regulations Within the Purview of the International Bureau*, IB Docket No. 02-309, Public Notice, FCC 02-263 (rel. Sept. 26, 2002) (*International Bureau Public Notice*).

[6] Comments were filed by: (1) Cingular Wireless LLC (Cingular), (2) Intelsat LLC (Intelsat), (3) New Skies Satellites N.V. (New Skies), and (4) the Verizon 214 Licensees (Verizon). Reply comments were filed by: (1) AT&T Corp. (AT&T), (2) Home Box Office (HBO), (3) Loral Space & Communications Ltd. (Loral), and (4) PanAmSat Corporation (PanAmSat). In addition, in its reply comments in WTB Docket 02-310, the Rural Cellular Association (RCA) included a discussion of Parts 43 and 63, which are within the purview of the International Bureau.

[7] *See International Bureau Public Notice* at note 2, citing Petition for Rulemaking of the Cellular Telecommunications & Internet Association (CTIA), filed July 25, 2002.

[8] 47 U.S.C. § 161.

II. Recent and Ongoing Activities

A. Satellite

1. Introduction

6. Part 25 of the Commission's rules forms the basis for the Commission's "Open Skies" policy under which a wide range of systems has been licensed to provide satellite services.[9] Through this policy, the Bureau attempts to accommodate the maximum number of systems possible to provide a particular service in order to maximize entry and competition in the satellite service market.

2. Space Segment Authorization

7. The Commission has streamlined the space segment portion of the satellite licensing process whenever possible. For example, in the 1990s, the Commission eliminated waiver procedures under section 319(d) of the Communications Act,[10] to permit companies to begin construction, at their own risk, prior to being licensed.[11] Second, the Commission relaxed the rules governing space station licensee reports.[12] Third, *DISCO I* eliminated the distinction between U.S.-licensed domestic satellites and international "separate" satellite systems, and the new rules allow satellites to provide both domestic and international services.[13] Fourth, *DISCO II* adopted a framework to evaluate requests by foreign satellite operators to provide service in the United States.[14] In late 1999, the Commission further streamlined its *DISCO II* framework by establishing the "Permitted Space Station List," which provides another option to non-U.S. satellite operators seeking access to the U.S. market for fixed-satellite service.[15]

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[9] *See Establishment of Domestic Communication-Satellite Facilities by Non-Government Entities*, Report and Order, 22 FCC 2d 86 (1970), Second Report and Order, 35 FCC 2d 844 (1972), recon. in part, Memorandum Opinion and Order, 38 FCC 2d 665 (1972); *see also* 47 C.F.R. Part 25.

[10] 47 U.S.C. § 319(d).

[11] *See Streamlining the Commission's Rules and Regulations for Satellite Application and Licensing Procedures*, Report and Order, 11 FCC Rcd 21581, 21583-85 ¶¶ 6-9 (1996) (*1996 Streamlining Order*).

[12] *Id.*, 11 FCC Rcd at 21587-88 ¶¶ 14-15.

[13] *Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, and DBS Petition for Declaratory Rulemaking Regarding the Use of Transponders to provide International DBS Service*, Report and Order, 11 FCC Rcd 2429, 2430 (1996) (*DISCO I*).

[14] *Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States*, Report and Order, 12 FCC Rcd 24094 (1997) (*DISCO II*), recon., 15 FCC Rcd 7207 (1999) (*DISCO II First Reconsideration Order*).

[15] *DISCO II First Reconsideration Order*, 15 FCC Rcd 7207.

8. The Commission has made further progress in streamlining its space station rules in recent years. For example, non-U.S.-licensed satellite operators have taken advantage of this streamlined *DISCO II* process by placing 15 satellites on the Permitted List, thus affording fixed-satellite service customers additional service options, and improving competition for fixed-satellite service. In 2002, the Commission consolidated and harmonized the Commission's satellite rules, eliminating the Commission's separate Part 100 rules for DBS, and incorporating DBS requirements into Part 25.[16] In addition, since many DARS auction rules in Part 25, subpart F were duplicative of the general license auction rules in Part 1, subpart Q, the Commission eliminated the unnecessary subpart F rules.[17]

9. Finally, the Commission recently initiated an extensive review of its satellite licensing procedures, seeking ways either to streamline those procedures, or to replace them with procedures intended to enable the Commission to issue satellite licenses more quickly than is now possible.[18] Currently it takes the Commission a minimum of just over two years to grant a space station application. The satellite network licensing process takes several years longer when there is no spectrum allocation (International or Domestic), when no service rules exist for the proposed system, or when there are other countries ahead of the United States in the ITU coordination process.

10. The current "processing round" procedure for satellite licenses has contributed to the success of the U.S. satellite industry.[19] Processing rounds, however, also require substantial staff time and resources to resolve all of the issues associated with a particular pool of applications. Delays in licensing satellites lead to delays in provision of service to the public, which can impose costs on both satellite service providers and their customers.[20] Accordingly, the Commission invited comment on proposals to reduce the time needed to complete negotiations in processing rounds, or to eliminate the need for such negotiations. Specifically, the Commission invited comment on two alternatives for revising the satellite processing procedure. The first option is a first-come, first-served approach, in which the Commission would process satellite applications one at a time in the order that they are filed rather than grouping them together into processing rounds.[21] The second option is to reform and streamline our current processing round procedure.[22] The Commission sought comment on streamlining the processing round

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16 *Policies and Rules for the Direct Broadcast Satellite Service,* IB Docket No. 98-24, Report and Order*,* 17 FCC Rcd 11331 (2002) (*Part 100 Order*).

17 *Amendment of Parts 1, 21, 22, 24, 25, 26, 27, 73, 74, 80, 90, 95, 100, and 101 of the Commission's Rules – Competitive Bidding,* Order, 17 FCC Rcd 6534 (Wireless Bur., 2002).

18 *Amendment of the Commission's Space Station Licensing Rules and Policies*, IB Docket No. 02-34, Notice of Proposed Rulemaking, 17 FCC Rcd 3847 (2002) (*Space Station Reform NPRM*).

19 *Space Station Reform NPRM*, 17 FCC Rcd at 3849 ¶ 3.

20 *Id.,* 17 FCC Rcd at 3852-53 ¶¶ 12-14.

21 *Id.*, 17 FCC Rcd at 3857-71 ¶¶ 28-66.

22 *Id.*, 17 FCC Rcd at 3871-75 ¶¶ 67-83.

procedure by either facilitating processing round negotiations,[23] or adopting a mandatory sharing mechanism that would obviate the need for those negotiations.[24] Under either of these proposals, licensees should be able to provide service to the public much sooner than is often possible under our current satellite licensing procedures.

11. The Commission also invited comment on other satellite licensing streamlining proposals. In particular, the Commission proposed removing unnecessary barriers to license transfers. This proposal is intended to result in satellite licensees' operating authority reflecting the influence of market mechanisms more than is now possible, rather than basing operating authority exclusively on the results of the regulatory process. The Commission also extended satellite license terms from 10 years to 15 years.[25] The comment period in the *Space Station Reform* proceeding closed in July 2002, and the Commission is continuing to consider the pleadings.

3. International Satellite Coordination

12. The International Telecommunication Union (ITU) has established a satellite coordination process to facilitate the harmonious use of satellite orbits and spectrum among Administrations.[26] Satellite coordination occurs by negotiating mutually satisfactory solutions among the affected parties. All space segment licenses that the Commission issues must comply with ITU coordination requirements and international agreements. To eliminate delay of pending international coordination, however, the Commission moves forward with space segment applications and typically approves them before coordination is complete. All authorizations are subject to possible changes that may be necessary to conform to final coordination agreements. This approach saves satellite applicants substantial time. In addition, the Commission has developed processes that allow U.S. satellite operators to negotiate directly with satellite operators of other countries. The Commission reviews and finalizes any operator arrangements before agreeing to them. This process saves staff resources and permits the satellite operators to have some decisional role in the authorization process.

13. The staff and the industry, along with the National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce and the U.S. Department of State also are working together to propose solutions to the backlog of coordination filings at the ITU. These meetings help the staff when participating in the occasional international meetings scheduled by the ITU to address this backlog issue. There is a need to reduce the time it takes for the ITU to process a coordination request because it has a direct effect on the international coordination process and on our licensing process. While work on this issue continues, there is no final resolution at this

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[23] *Id.*, 17 FCC Rcd at 3872-73 ¶¶ 70-77.

[24] *Id.*, 17 FCC Rcd at 3873-74 ¶ 78.

[25] *Id.*, 17 FCC Rcd at 3894-96 ¶¶ 139-43.

[26] Within the ITU, Member States (Administrations/Governments) and Sector Members (private entities) cooperate to maintain and extend telecommunications globally.

time. One possible proposal is to revise some of the ITU's technical requirements in a way that would reduce the number of necessary coordinations between countries.

4. Earth Station Licensing

14. The Commission "routinely" licenses earth station facilities that meet technical standards in Part 25, designed to enable those earth stations to communicate with a Geostationary Orbit (GSO) satellite without causing harmful interference to another GSO satellite as close as 2° away. In other words, routine earth station applications are granted once it has been determined that they meet the Part 25 technical standards, without a detailed, case-by-case technical review. It is possible in some cases for an earth station that does not meet all of the technical standards of Part 25 to operate without causing unacceptable interference in a 2° space station GSO orbital spacing environment. The Commission conducts a case-by-case review of each of these "non-routine" earth stations to determine whether the application can be granted.

15. As part of the efforts to streamline its procedures for routine earth station applications, the Bureau instituted an "auto-grant" process that automatically grants routine earth station applications proposing to use the Ku-band fixed-satellite service frequencies (14.0-14.5 GHz / 11.7-12.2 GHz) to communicate with all satellites authorized to provide service to the United States.[27] Such routine earth station applications are considered granted 35 days from the date on which the application appears on public notice as "accepted for filing," provided that no objections are filed during the public comment period. The Bureau has also reduced the number of emission designators required to be identified in applications for digital systems.[28] This modification significantly reduces the time necessary to enter earth station information into the Commission's database, and largely eliminates the need for earth station operators to file modification applications when they wish to add a new emission. The Bureau has also extended its auto-grant program to routine earth station applications proposing to use the C-band fixed-satellite service frequencies (3700-4200 MHz / 5925-6425 MHz) to communicate with all satellites authorized to provide service to the United States.[29]

16. As part of the 2000 biennial review process, the Commission instituted a rulemaking proceeding to consider whether to increase power limits in Part 25 for certain earth stations, and whether to increase the proportion of earth station applications that can be considered on a routine basis.[30] In addition, the Commission invited comment on two

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[27] *See Commission Launches Earth Station Streamlining Initiative*, Public Notice, DA 99-1259 (rel. June 25, 1999).

[28] Emission designators are a shorthand method used to define the frequency bandwidth and the modulation technique and type of service or combination of services.

[29] *See Commission Launches C-Band Earth Station Streamlining Initiative,* Public Notice, DA 00-2761 (rel. Dec. 7, 2000).

[30] *2000 Biennial Regulatory Review -- Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space*

proposals for streamlining the procedures for non-routine earth station applications considered on a case-by-case basis. One procedure would allow the Commission to require the applicant proposing a small antenna to operate at a lower power level, to compensate for the use of the smaller antenna diameter.[31] The second procedure would allow applicants to submit affidavits from operators of satellites potentially affected by the proposed non-routine earth station, showing that the operation of the non-routine earth station has been coordinated with other affected satellite systems.[32] The Commission is also considering a number of other streamlining measures, such as allowing routine Ku-band temporary fixed earth stations to begin operations immediately upon placement of the application on public notice, rather than waiting for license grant.[33] In September 2002, the Commission adopted a Further Notice of Proposed Rulemaking to consider additional proposals advanced by industry members.[34] Those industry proposals include revisions to the Commission's Part 25 technical requirements that would enable us to consider more earth station applications routinely.[35]

17. Furthermore, the *Part 25 Earth Station Streamlining NPRM* took steps designed to implement many of the proposed rule changes in the 2000 Biennial Review Report. First, the Commission invited comment on revising or eliminating Part 23.[36] The Commission also invited comment on repealing subpart H of part 25, which became obsolete as a result of the ORBIT Act.[37] Furthermore, the Commission proposed eliminating section 25.141,[38] governing radio-determination satellite service (RDSS). Section 25.141 no longer appears to serve any purpose, given that the spectrum for that service was reallocated to the Mobile Satellite Service (MSS).[39] In addition, the Commission proposed repealing the part of section 25.144 that lists parties eligible to

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Stations, Notice of Proposed Rulemaking, 15 FCC Rcd 25128 (2000) (*Part 25 Earth Station Streamlining NPRM*).

[31] *Id.*, 15 FCC Rcd at 25135-36 ¶¶ 15-19.

[32] *Id.*, 15 FCC Rcd at 25136-37 ¶¶ 20-24.

[33] *Id.*, 15 FCC Rcd at 25143 ¶ 42.

[34] *2000 Biennial Regulatory Review -- Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations*, Further Notice of Proposed Rulemaking, 17 FCC Rcd 18585 (2002) (*Part 25 Earth Station Streamlining Further NPRM*).

[35] *Id.,* 17 FCC Rcd at 18587-88 ¶¶ 25-28.

[36] *Part 25 Earth Station Streamlining NPRM*, 15 FCC Rcd at 25145 ¶¶ 48.

[37] *Part 25 Earth Station Streamlining NPRM*, 15 FCC Rcd at 25157 ¶ 89, *citing* 47 C.F.R. Part 25, Subpart H; Section 645(1) of the Satellite Act of 1962, as amended by the ORBIT Act, 47 U.S.C. § 765d(1).

[38] 47 C.F.R. § 25.141.

[39] *Part 25 Earth Station Streamlining NPRM*, 15 FCC Rcd at 25156-57 ¶ 88.

participate in a completed auction for licenses in the 2.3 GHz satellite digital audio radio service (DARS).[40]

18. Finally, the staff recommended that the Commission consider repealing the financial showing required of applicants for satellite licenses. The Commission is considering this proposal as part of its proposals for reforming the satellite licensing procedure.[41]

B. Telecommunications

1. Section 214 Applications

19. The Commission has taken great strides to streamline its international 214 application processes. In 1996, the Commission created an expedited process for global, facilities-based section 214 applications.[42] The Commission permitted applicants to apply for section 214 authorizations on a global or limited basis, reduced paperwork obligations, streamlined tariff requirements for non-dominant international carriers, and ensured that essential information is readily available to all carriers and users. The new regulations facilitate entry into the U.S.-international telecommunications market and the expansion of international services to the benefit of U.S. consumers and competition.

20. As part of its 1998 biennial regulatory review process, the Commission took additional steps to reduce certain regulatory burdens placed on providers of international telecommunications services in light of market changes. The Commission streamlined its procedures for granting international section 214 authorizations to provide international services, and increased the categories of applications eligible for streamlined processing.[43] An applicant qualifying for streamlined processing is authorized to provide international services 14 days after public notice of an application. After adoption of the rules, the vast majority of international section 214 applicants qualify for streamlined processing, and carriers can then provide service starting on the 15th day after public notice. Carriers already providing service can complete *pro forma* transfers of control and assignments of their authorizations without prior Commission approval. Carriers also can provide service through their wholly-owned subsidiaries without separate Commission approval. Carriers under common control with an already-authorized carrier are generally eligible for streamlined processing and can get an authorization 14 days after public notice. Authorized carriers are able to use any

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40 *Id.*, 15 FCC Rcd at 25156 ¶ 87, *citing* 47 C.F.R. § 25.144(a).

41 *Space Station Reform NPRM*, 17 FCC Rcd at 3881 ¶ 102.

42 *See Streamlining the International Section 214 Authorization Process and Tariff Requirements*, Report and Order, 11 FCC Rcd 12884 (1996). The Commission had begun the international Section 214 streamlining process in 1985. *See International Competitive Carrier Policies*, Report and Order, 102 FCC 2d 812 (1985); *recon. denied*, 60 RR2d 1435 (1986); *modified*, *Regulation of International Common Carrier Services*, Report and Order, 7 FCC Rcd 7331 (1992).

43 *See 1998 Biennial Regulatory Review-Review of International Common Carrier Regulations*, Report and Order, 14 FCC Rcd 4909 (1999) (*International 1998 Biennial Review Order*).

authorized U.S.-licensed or non-U.S.-licensed undersea cable systems to provide their authorized services.

21. As part of the 2000 biennial regulatory review process, the Commission took steps further to remove unnecessary burdens on international carriers. In the *International 2000 Biennial Review Order,* the Commission revised the rules for *pro forma* transfers and assignments of international section 214 authorizations to give carriers greater flexibility in structuring transactions.[44] These changes also assist carriers by making the rules more consistent with those procedures used for other service authorizations, particularly for the Commercial Mobile Radio Service (CMRS).[45] The Commission also clarified the international discontinuance rules and, consistent with domestic service rules, exempted CMRS carriers from the discontinuance requirements. The Commission further narrowed one of the section 214 benchmark conditions, so that it only applies to the provision of U.S.-international facilities-based switched services for facilities-based U.S. carriers affiliated with dominant foreign carriers. In addition, the Commission reduced the burdens placed on the Bell Operating Carriers (BOCs) by allowing them to file for a conditional international section 214 authorization for in-region states. The BOCs are no longer required to file a separate international section 214 application for each in-region state for which they obtain authority to provide interLATA service. BOCs can now file one application, and after that is granted notify the Commission when they will begin to provide service in others states, after receiving the appropriate authority under section 271 of the Communications Act.[46]

2. Foreign Participation

22. The Commission has sought to foster an increasingly competitive international telecommunications market by adopting policies that promote foreign participation in the U.S.-international market. To make the provision of U.S.-international services more competitive, the Commission has liberalized and streamlined its market access policies in response to the U.S. commitments made pursuant to the WTO Basic Telecommunications Agreement, the commitments of trading partners, and the Commission's improved regulatory framework. For example, the Commission has simplified its own licensing and authorization rules in ways that have facilitated entry into the U.S. market by foreign competitors. In the *Foreign Participation Order,* the Commission adopted a rebuttable presumption ("open entry standard") in favor of entry by foreign applicants from WTO Members regarding applications for section 214 authorization, submarine cable landing licenses, and foreign indirect investment in excess of 25 percent in Title III common carrier, aeronautical fixed and route radio licenses

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[44] *2000 Biennial Regulatory Review: Amendment of Parts 43 and 63 of the Commission's Rules*, IB Docket 00-231, Report and Order, 17 FCC Rcd 11416 (2002) (*International 2000 Biennial Review Order*) *review pending sub nom. Cellco Partnership et al. v. FCC*, case nos. 02-1262, 02-1268 (D.C. Cir).

[45] *International 2000 Biennial Review Order,* 17 FCC Rcd at 11418 ¶ 4.

[46] 47 U.S.C. § 271.

pursuant to section 310(b)(4).[47] In addition, the Commission defers to Executive Branch agencies on national security, law enforcement, foreign policy, and trade policy concerns raised in an application. With respect to non-WTO Members, the Commission continues to apply the Effective Competitive Opportunities (ECO) test for applications. In the *Foreign Participation Reconsideration Order*, the Commission affirmed these policies and clarified and revised certain aspects of our foreign carrier affiliation notification rule in section 63.11 of the Commission's rules to respond to carrier concerns about the purpose and application of our rule.[48] In that proceeding, the Commission reduced the prior notification period from 60 to 45 days, and permitted certain classes of foreign carriers to submit post-notifications of foreign affiliations in lieu of prior notifications.[49]

3. International Settlements Policy

23. The Commission has taken action to remove regulatory impediments and to increase competition in the international telecommunications marketplace through reform of the longstanding international settlements policy (ISP).[50] In 1999, in the *ISP Reform Order*, the Commission adopted sweeping deregulatory inter-carrier settlement arrangements between U.S. carriers and foreign non-dominant carriers on competitive routes.[51] Specifically, the Commission: (1) eliminated the international settlements policy and contract filing requirements for arrangements with foreign carriers that lack market power; (2) eliminated the international settlements policy for arrangements with all carriers on routes where rates to terminate U.S. calls are at least 25 percent lower than the relevant settlement rate benchmark previously adopted by the Commission in its *Benchmark Order*;[52] (3) adopted changes to contract filing requirements to permit U.S. carriers to file, on a confidential basis, arrangements with foreign carriers with market power on routes where the international settlements policy is removed; (4) adopted

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47 *See Rules and Policies on Foreign Participation in the U.S. Telecommunications Market,* IB Docket 97-142, Report and Order and Order on Reconsideration, 12 FCC Rcd 23 891 (1997) (*Foreign Participation Order*), *recon.* 15 FCC Rcd 18158 (2000) (*Foreign Participation Reconsideration Order*).

48 *Foreign Participation Reconsideration Order*, 15 FCC Rcd 18158.

49 *Id.*

50 The International Settlements Policy provides a regulatory framework within which U.S. carriers negotiate with foreign carriers to provide bilateral U.S.-international services. There are three elements of the ISP that serve as conditions on U.S. carriers entering into agreements with foreign carriers: (1) all U.S. carriers must be offered the same effective accounting rate and same effective date for the rate ("nondiscrimination"); (2) U.S. carriers are entitled to a proportionate share of U.S.-inbound, or return, traffic based upon their proportion of U.S.-outbound traffic ("proportionate return"); and (3) the accounting rate is divided evenly 50-50 between U.S. and foreign carriers for U.S. inbound and outbound traffic ("symmetrical settlement rates"). *See* 47 C.F.R. § 43.51(e).

51 *See 1998 Biennial Regulatory Review: Reform of the International Settlements Policy and Associated Filing Requirements* (Phase II), Report and Order and Order on Reconsideration, 14 FCC Rcd 7963 (1999) (*ISP Reform Order*).

52 *See International Settlement Rates,* Report and Order, 12 FCC Rcd 19806 (1997) (*Benchmarks Order*), *aff'd sub nom. Cable and Wireless P.L.C. v. FCC*, 166 F.3d 1224 (D.C. Cir. 1999), Report and Order on Reconsideration and Order Lifting Stay, 14 FCC Rcd 9256 (1999) (*Benchmarks Reconsideration Order*).

procedural changes to simplify accounting rate filing requirements; and (5) eliminated the flexibility policy in recognition that the reforms to the international settlements policy render the flexibility policy largely superfluous.

24. The Commission's primary goal underlying this policy has been and continues to be the protection of U.S. consumers from potential harm caused by instances of insufficient competition in the global telecommunications market. As a result of U.S. policies and increasing competition internationally, the average U.S. settlement rate has fallen substantially over the last several years as have U.S. calling prices.[53]

25. In October 2002, the Commission initiated a rulemaking proceeding to examine possible further reform of the ISP, the Commission's benchmarks and International Simple Resale (ISR) policies in light of greater participation in the U.S.-international market, lower international settlement rates, and greater competition in foreign markets.[54] Specifically, the Commission sought comment on the competitive status of the U.S.-international market and whether removing the ISP from certain U.S.-international routes would benefit consumers by promoting greater competition, while still preventing any anticompetitive harm from foreign carriers and otherwise protecting the public interest. Moreover, the Commission requested comment on the success of its policies to lower international accounting and termination rates and whether the Commission should consider further revisions to these policies. The Commission also inquired whether foreign mobile termination rates may be eroding the benefits of the Commission's accounting rate policies to the detriment of U.S. consumers and competition, and if so, how the Commission may effectively address the issue and better inform U.S. consumers.

4. Submarine Cable Landing Licenses

26. In December 2001, the Commission adopted new streamlining procedures for processing applications for submarine cable landing licenses, including transfers of control of such licenses.[55] These measures facilitate the expansion of capacity and facilities-based competition in the submarine cable market and enable submarine cable applicants and licensees to timely respond to the demands of the market. They are intended to save time and resources for both industry and government, while preserving the Commission's ability to guard against anti-competitive behavior. These

[53] *See International Settlements Policy Reform; International Settlement Rates*, IB Docket 02-324, Notice of Proposed Rulemaking, 17 FCC 19954, 19964-66 (2002) (*ISP Reform Notice*).

[54] *ISP Reform Notice,* 17 FCC 19954 (2002).

[55] *Review of Commission Consideration of Applications under the Cable Landing License Act*, IB Docket No. 00-106, Report and Order*,* 16 FCC Rcd 22167 (2001) (*Submarine Cable Report and Order*). *See also* Letter from Alan Larson, Under Secretary of State for Economic, Business, and Agricultural Affairs, U.S. Department of State, to Chairman Michael Powell, Federal Communications Commission (dated Dec. 3, 2001) (facilitating Commission adoption of new 45-day streamlining process through 30-day notification to State Department under Exec. Order No. 10530).

improvements are significant because over two-thirds of U.S. international traffic is carried on submarine cables.

27. The approach adopted in the *Submarine Cable Report and Order* tracks the streamlining procedures and competitive safeguards the Commission has adopted for section 214 authorizations of international telecommunications services.[56] Many applications qualify for streamlining and can be acted upon in the 45-day period following public notice, a significant improvement over prior processing times. Further, licensees that seek and receive approval to amend their existing licenses to add a new *pro forma* condition can complete future *pro forma* transfers of control and assignments without prior Commission approval. The new rules also ease burdens on small carriers and investors by providing that entities that do not own or control a landing station in the United States or have a less than five percent interest in a proposed cable system generally do not have to be licensees on the cable system. Through codification of the routine cable landing license conditions, the Commission also has provided clarity and certainty to licensees and the public. The new procedures also have provided for grant of many applications by public notice instead of by written order, simplifying the process for applicants and the Commission.

5. Reporting Requirements

28. The Commission is continually reviewing its reporting requirements to determine if they can be revised to lessen the burdens placed on carriers while maintaining their important purpose. The information provides the Commission, other government agencies, state regulators, international organizations, industry, and the public with valuable information on market and other industry trends and developments. This information is helpful to the Commission in identifying developments in regulatory issues, monitoring compliance with existing rules and policies, and evaluating the effects of policy choices.

29. In the *International 2000 Biennial Review Order*, the Commission took actions to reduce reporting requirements on CMRS carriers and to eliminate an outdated rule.[57] At the request of CMRS carriers, the Commission reviewed the reporting requirements for carriers providing international service and found that it was no longer necessary for CMRS carriers providing resale of international switched services to file quarterly traffic and revenue reports pursuant to section 43.61 of the Commission's rules. The Commission also eliminated an outdated rule that required certain foreign-owned carriers to file with the Commission annual revenue and traffic reports with respect to all common carrier telecommunication services they offered in the United States.

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[56] *See Streamlining the International Section 214 Authorization Process and Tariff Requirements,* IB Docket No. 95-118, Report and Order, 11 FCC Rcd 12884 (1996) (*International 214 Streamlining Order*); *1998 Biennial Regulatory Review – Review of International Common Carrier Regulations,* IB Docket No. 98-118, Report and Order, 14 FCC Rcd 4909 (1999) (*1998 International Biennial Review Order*); *In the Matter of 2000 Biennial Regulatory Review,* IB Docket No. 00-231, Report and Order, 17 FCC Rcd 11416 (2002).

[57] *International 2000 Biennial Review Order,* 17 FCC Rcd 11416.

6. Detariffing International Services

30. As part of the 2000 biennial regulatory review process, the Commission reduced a significant regulatory burden placed on carriers by eliminating the requirement that non-dominant carriers file tariffs for international interexchange services.[58] In the *International Detariffing Order*, the Commission concluded that there have been significant changes in the international services market that have benefited consumers and competition in the past several years that support the detariffing of international interexchange services. In particular, the international interexchange marketplace has experienced increased privatization and liberalization, rapidly declining international settlement rates, and a greater number of providers of international interexchange services. Therefore the Commission forbore from the tariffing requirements in section 203 of the Communications Act[59] as they apply to non-dominant carriers providing international interexchange services. The tariffing requirements continue to apply to a small category of carriers (e.g., those that are classified as dominant for reasons other than an affiliation with a foreign carrier that possesses market power).

31. Though tariffs have traditionally been used to prevent discrimination among consumers, the Commission concluded in the *International Detariffing Order*, as it did in the domestic proceeding,[60] that the decision to forbear from requiring tariffs does not depart from the Commission's historic commitment to protect consumers against anticompetitive practices.[61] Indeed, the Commission found that tariffs impede carriers' flexibility to react to competition and may actually harm consumers because of the effect of the "filed-rate" doctrine.[62] Moreover, the Commission noted that detariffing would allow consumers to avail themselves of all remedies provided by state consumer protection and contract laws against abusive carrier practices. To ensure that consumers have access to rate information in an easy-to-understand format, the Commission adopted a public disclosure requirement that carriers subject to detariffing make rate and service information for all of their international interexchange services available to the public in at least one location during regular business hours and that those carriers that maintain

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58 *2000 Biennial Regulatory Review: Policy and Rules Concerning the International, Interexchange Marketplace*, IB Docket 00-202, Report and Order, 16 FCC Rcd 10647 (2001) (*International Detariffing Order*).

59 47 U.S.C. § 203.

60 *Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended,* CC Docket No. 96-61, Second Report and Order, 11 FCC Rcd 20730 (1996) (*Domestic Detariffing Order*); *stay granted MCI Telecommunications Corp. v. FCC,* No. 96-1459 (D.C. Cir. Feb 13, 1997); Order on Reconsideration, 12 FCC Rcd 15014 (1997); Second Order on Reconsideration and Erratum, 14 FCC Rcd 6004 (1999); *stay lifted and aff'd MCI Worldcom, Inc, et al. v. FCC,* 209 F.3d 760 (D.C. Cir. 2000).

61 *Domestic Detariffing Order*, 11 FCC Rcd at 20733 ¶ 5.

62 The practical effect of the "filed rate doctrine" is to permit carriers to alter unilaterally the rates, terms, and conditions for services by relying on tariffs filed with the Commission.

Internet websites post this information on-line. In addition, the Commission adopted permissive, as opposed to mandatory, detariffing for four types of international services. The Commission determined that carriers may be unable to establish contracts for services with customers in certain circumstances; therefore, tariffs for these services may be warranted.[63]

32. In addition, in the *International Detariffing Order* the Commission further reduced the regulatory burden on non-dominant carriers by clarifying that the contract filing requirements in section 43.51 of the Commission's rules apply solely to: (1) carriers classified as dominant for reasons other than foreign affiliation; and (2) carriers, whether classified as dominant or non-dominant, contracting directly for services[64] with foreign carriers that possess market power.

III. Summary of Recommendations

33. Based on the staff review of the rules applicable to telecommunications service within the purview of the International Bureau, and the comments filed in this proceeding, the staff concludes that certain rules may no longer be in the public interest in their current form due to changes in competition and recommends that the Commission institute proceedings to modify or repeal these rules. The staff also recommends the modification of other rules for public interest reasons other than the development of competition. We also note that the Commission has a number of pending proceedings in which the Commission is currently considering repeal or modification of rules within the purview of the International Bureau.

34. The staff recommends that the Commission undertake a proceeding to review the rules in Part 43 relating to reporting requirements of carriers providing international telecommunications services.[65] The Commission has stated that the purpose of the section 43.61 reporting requirements has been to help the Commission fulfill its regulatory responsibilities.[66] In particular, the Commission may use the data to monitor the development and competitiveness of international telecommunications markets and compliance with the Commission's rules and policies. Additionally, the data assists the Commission in monitoring emerging trends in communications services, the balance of settlement payments, and helps the Commission develop positions on issues in international organizations. The staff recommends that the Commission consider

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[63] The four types of service are: international dial-around services; inbound international collect calls; "on-demand" Mobile Satellite Services; and, services to new customers that choose their long distance provider through their local service provider (for the first 45 days of service or until there is contract between the customer and the long distance provider, whichever occurs first).

[64] 47 C.F.R. § 43.51(a), (b).

[65] 47 C.F.R. §§ 43.61, 43.82.

[66] *See Manual for Filing Section 43.61 Data*, published by the Industry Analysis Division of the Common Carrier Bureau (1995), available on-line at www.fcc.gov/ccb/stats.

modifying these reporting requirements to reflect these purposes and acknowledge changes that have occurred in the telecommunications industry. While these reports aid the Commission, industry, and domestic and international agencies in monitoring and evaluating international telecommunications markets, the staff believes that the reporting requirements can be modified to decrease the burdens placed on carriers and the Commission, and to increase the value of the data reported. We also recommend that, in light of market changes and the decreasing use of telegraph services, the Commission eliminate the rule regarding the reporting of the division of international telegraph toll communication charges.[67]

35. The staff also recommends that the Commission initiate a proceeding to modify the requirements for discontinuance of international service, and consider whether those requirements should conform with the requirements for discontinuing domestic service.[68] Many carriers provide both domestic and international service, and when they seek to discontinue service, the different requirements for the two services place unnecessary burdens on the carriers and the Commission and can lead to confusion for the customers of the carrier.

36. The staff does not recommend that the Commission forbear from applying section 214 of the Communications Act to CMRS carriers or exempt them from all of the rules in Part 63 as requested by certain commenters. We also disagree with the commenters that the Commission should modify section 63.21(h) to allow commonly-controlled subsidiaries to use their parent corporation's international section 214 authorization. The staff recommends, however, that the Commission institute a proceeding to explore whether there are less burdensome means to applying the public interest goals of Part 63 to CMRS carriers. The staff also recommends that the Commission modify the rules specifically to permit all U.S.-authorized resale carriers to resell the international services of foreign-authorized carriers.[69] This rule change will make clear that any U.S. carrier that is authorized to provide resale service may resell foreign carrier services in order to provide international calling capability to U.S. customers that are roaming in foreign markets and want to call back to the United States or through the United States to a third country.

37. We also note that the Commission has a number of pending proceedings considering changes to its rules. In the *Part 25 Earth Station Streamlining NPRM*,[70] the Commission invited comment on several proposals to streamline the earth station license application procedures in Part 25, based on recommendations in the 2000 biennial review. In the *Space Station Reform NPRM*,[71] the Commission proposed substantial

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67 47 C.F.R. § 43.53.

68 *See* 47 C.F.R. § 63.19.

69 *See* 47 C.F.R. § 63.23.

70 *Part 25 Earth Station Streamlining NPRM,* 15 FCC Rcd 25128.

71 *Space Station Reform NPRM*, 17 FCC Rcd 3847.

revisions to the space station license application procedures in Part 25. In the *ISP Reform NPRM* the Commission is considering changes to a number of rules related to the ISP, ISR and benchmark policies.[72] The Commission has concluded that Part 25, and the Commission's ISP, ISR, or benchmark policies in their current forms may no longer be necessary in the public interest and accordingly has instituted rulemaking proceedings to modify these rules.[73]

38. The staff concludes that the other rules remain in the public interest and do not need to be modified or repealed. As discussed above, the Commission has conducted a number of proceedings in recent years reviewing the rules applicable to international telecommunications services and satellite services, and has made numerous revisions to the rules to keep them current with the state of competition in the international services and satellite markets, and to reduce the burdens placed on carriers and the public. We find that with the exception of the rules cited above, the rules do not need to be modified or repealed.

39. In addition, the staff recommends that the Commission consider initiating a rulemaking to clarify procedures for petitioners seeking rulings pursuant to section 310(b)(4) of the Communications Act.[74] As noted above, the Commission has previously adopted policies regarding indirect foreign ownership in excess of 25 percent in the *Foreign Participation Order*. As part of the new proceeding, the Commission would seek comment on questions concerning implementation of those policies, including clarifying through rules the standards by which the Commission carries out its responsibilities under section 310(b) of the Communications Act, and the information necessary to do so.

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[72] *See, e.g.,* 47 C.F.R. §§ 43.51, 43.61, 63.14 , 63.16, 63.18, 63.22, 63.23, 64.1001.

[73] The staff recommends that the comments filed in response to the *International Bureau Public Notice* be considered in the appropriate rulemaking proceedings, to the extent that they are relevant.

[74] 47 U.S.C. § 310(b)(4).

APPENDICES

I. Part 1, Sections 1.767, 1.768 – Cable Landing Licenses

II. Part 23 – International Fixed Public Radio Communication

III. Part 25 – Satellite Communications

IV. Part 43, Section 43.51 – Contracts and concessions

V. Part 43, Sections 43.53, 43.61, 43.82 – Reports of Communications Common Carriers and Certain Affiliates

VI. 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

VII. Part 64, Subpart J – International Settlements Policy and Modification Requests

APPENDIX I

Part 1, Sections 1.767, 1.768 – Cable Landing Licenses

Description

1. The Commission's authority to grant, withhold, or condition cable landing licenses derives from the Cable Landing License Act of 1921[75] and Executive Order No. 10530.[76] Section 34 of the Cable Landing License Act states that no person shall land or operate in the United States "any submarine cable directly or indirectly connecting the United States with any foreign country, or connecting one portion of the United States with any other portion thereof, unless a written license to land or operate such cable has been issued by the President of the United States."[77] Executive Order No. 10530 delegates to the Commission the President's authority under the Cable Landing License Act, with the proviso that "no such license shall be granted or revoked by the Commission except after obtaining approval of the Secretary of State and such advice from any executive department or establishment of the Government as the Commission may deem necessary."[78] Sections 1.767 and 1.768 of the Commission's rules set out the procedures for obtaining a cable landing license.[79]

Purpose

2. Sections 1.767 and 1.768 set forth the information needed to obtain a cable landing license, the procedures to obtain or transfer the license, and the regulatory safeguards associated with cable landing licenses.

Analysis

Status of Competition

3. The submarine cable market has become increasingly competitive in the past few years, with a number of new cables being constructed. More recently, however, a number of the licensees have filed for voluntary Chapter 11 bankruptcy protection as they restructure their operations.

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75 Pub. Law No. 8, 67th Congress, 42 Stat. 8 (1921); 47 U.S.C. §§ 34-39.

76 Exec. Ord. No. 10530 § 5(a) (May 10, 1954), reprinted as amended in 3 U.S.C. § 301.

77 47 U.S.C. § 34. Section 34 states further that "[t]he conditions of sections 34 to 39 of this title shall not apply to cables, all of which, including both terminals, lie wholly within the continental United States." *Id.*

78 Exec. Ord. No. 10530 § 5(a).

79 47 C.F.R. §§ 1.767 and 1.768. The Cable Landing License Act is not part of the Communications Act and, accordingly, these rules are outside of the scope of section 11, 47 U.S.C. § 161.

Advantages

4. The rules provide certainty to applicants, the Commission and the public regarding the procedures for obtaining a cable landing license and the conditions that will be attached to the license.

Disadvantages

5. Under the requirements of Executive Order No. 10530,[80] the approval process requires review by both the Commission and the U.S. Department of State prior to the Commission's grant or revocation of a submarine cable landing license, which adds time and complexity to the review process.

Recent Efforts

6. The Commission recently concluded a thorough review of its cable landing license procedures and adopted new rules, which went into effect on March 15, 2002.[81] In that proceeding, the Commission adopted new streamlining procedures to promote competition in the submarine cable market. The new process tracks the streamlining procedures the Commission uses for section 214 authorizations of international telecommunications services. Applicants having no affiliation with a carrier with market power in any of the cable's destination markets are eligible for streamlining. Additionally, applicants having an affiliation with a market power carrier in a World Trade Organization (WTO) destination market are eligible for streamlining if the affiliated applicants agree to accept a limited set of competitive safeguards. A cable landing license application eligible for streamlining will be acted upon in a 45-day period following the public notice announcing the application as acceptable for filing. An application acceptable for filing but ineligible for streamlining will be acted upon within 90 days unless the Commission notifies the applicant that the application presents issues that require additional scrutiny, in which case the Commission will extend the review for another 90 days.

7. To protect against possible anti-competitive conduct, the new streamlining process requires applicants with affiliations with foreign carriers that have market power in WTO destination markets to comply with certain competitive safeguards. These safeguards include a requirement to file quarterly provisioning and maintenance reports and quarterly circuit status reports, and are designed to detect and deter harm to

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[80] Exec. Ord. No. 10530 (May 10, 1954), reprinted as amended in 3 U.S.C. § 301.

[81] *Review of Commission Consideration of Applications under the Cable Landing License Act*, IB Docket No. 00-106, Report and Order, 16 FCC Rcd 22167 (2001) (*Submarine Cable Report and Order*). *See also* Letter from Alan Larson, Under Secretary of State for Economic, Business, and Agricultural Affairs, U.S. Department of State, to Chairman Michael Powell, Federal Communications Commission (dated Dec. 3, 2001) (facilitating Commission adoption of new 45-day streamlining process through 30-day notification to State Department under Exec. Order No. 10530).

competition in the United States that may result from a foreign carrier's market power. In addition, all licensees are prohibited from entering into discriminatory arrangements with foreign carriers that have market power regarding certain matters such as collocation at cable landing stations and access to backhaul.

Comments

8. There were no comments filed on sections 1.767 and 1.768.

Recommendation

9. The Commission's authority to grant, withhold, or condition cable landing licenses derives from the Cable Landing License Act of 1921[82] and Executive Order No. 10530,[83] thus sections 1.767 and 1.768 are outside the scope of section 11 of the Communications Act.[84] We note that these rules were recently reviewed and revised, and are appropriate for the current state of competition in submarine cables. Accordingly, the staff concludes that repeal or modification is not warranted.

[82] Pub. Law No. 8, 67th Congress, 42 Stat. 8 (1921); 47 U.S.C. §§ 34-39.

[83] Exec. Ord. No. 10530 § 5(a) (May 10, 1954), reprinted as amended in 3 U.S.C. § 301.

[84] 47 U.S.C. § 161.

APPENDIX II

Part 23 – International Fixed Public Radiocommunication Services

Description

1. Part 23 implements and interprets sections 4, 301, and 303 of the Communications Act of 1934, as amended (Communications Act).[85] Part 23 sets forth rules applicable to high frequency (HF) radio systems used for international communications, including general licensing and service rules, application filing requirements, and technical specifications. The rules classify these systems as either "fixed public service" (a radiocommunication service carried between fixed stations open to public correspondence) or "fixed public press service" (a radiocommunication service carried between point-to-point telegraph stations, open to limited public correspondence of news items or other material related to or intended for publication by press agencies, newspapers, or for public dissemination).

2. Although Part 23 does not contain lettered sub-parts, the rules are organized as follows:

Section 23.1	Definitions
Sections 23.11-23.12	Use of frequencies
Sections 23.13-23.19	Technical specifications
Sections 23.20-23.27	Use of frequencies
Sections 23.28-23.55	Licensing and service rules

Purpose

3. The Commission has stated that the original purpose of the Part 23 rules is "obscure."[86] Neither the Federal Communications Commission nor the Federal Radio Commission has issued any opinion explaining the rationale for the rules.[87] Except for its proposal to modify or repeal Part 23 in 2000,[88] the Commission has not opined on these rules since the *Western Union MO&O* in 1980.

4. In the *Western Union MO&O*, the Commission stated that the rules contained in Part 23 derive from those promulgated by the Federal Radio Commission in 1932. At that time, fixed wireless links presumably provided an important method of

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[85] 47 U.S.C. §§ 154, 301, 303.

[86] *Western Union Telegraph Co.,* Memorandum Opinion and Order*,* 75 FCC 2d 461, 472 ¶ 39 (1980) (*Western Union MO&O*).

[87] *See id.*

[88] *2000 Biennial Regulatory Review -- Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations*, Notice of Proposed Rulemaking, 15 FCC Rcd 25128, 25145 ¶ 48-49 (2000) (*Part 25 Earth Station Streamlining NPRM*).

communications between: (1) the contiguous 48 States (including D.C.) and Alaska, Hawaii, any U.S. possession, or any foreign point; (2) Alaska and any other point; (3) Hawaii and any other point; and (4) any U.S. possession and any other point. Part 23 provides the regulatory framework for these services. In addition, Part 23 governs radiocommunication within the contiguous 48 States (including D.C.) in connection with relaying the above-referenced international traffic.

Analysis

Status of Competition

5. Use of HF radio facilities in providing carriers' international communications services in the age of submarine cable and satellites is virtually dormant. There are now three active Part 23 licensees. Competition among services under this rule Part is therefore not relevant.

Advantages

6. Part 23 provides the requisite framework within which licensees can perform useful functions in the provision of international communications services. HF radio stations can be a functionally useful supplement to submarine cable and satellite systems in the provision of service to overseas points not easily or economically reached by these facilities, in the provision of a limited restoration capability during submarine cable or satellite outages, and in the provision of certain specialized services such as press and weather map broadcast services.

Disadvantages

7. Because the type of international traffic addressed in these rules now is carried primarily by undersea cable and satellite, there is considerably less need for regulation in this area.

Recent Efforts

8. As part of the 2000 biennial review process, the Commission initiated an in-depth review of Part 23, together with its review of Part 25.[89] The Commission's review of Part 23 is still pending while the Commission considers industry comments in response to its Part 25 initiatives.[90]

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[89] *Id.*, 15 FCC Rcd at 25145 ¶¶ 48.

[90] *2000 Biennial Regulatory Review -- Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations*, Further Notice of Proposed Rulemaking, 17 FCC Rcd 18585 (2002) (Part 25 Earth Station Streamlining Further NPRM).

Comments

9. There were no comments filed on Part 23.

Recommendation

10. In 2000, the Bureau concluded that Part 23 in its current form may no longer be in the public interest, and accordingly recommended that a proceeding be instituted to modify or repeal Part 23. The Commission has instituted a rulemaking proceeding to modify or repeal Part 23.[91]

[91] *Part 25 Earth Station Streamlining NPRM*, 15 FCC Rcd at 25145 ¶ 48.

APPENDIX III

Part 25 – Satellite Communications

Description

1. Part 25 was issued pursuant to the authority contained in section 201(c)(11) of the Communications Satellite Act of 1962, as amended, section 501(c)(6) of the International Maritime Satellite Telecommunications Act, and titles I through III of the Communications Act of 1934, as amended. Part 25 sets out the rules applicable to satellite communications, including general licensing and application filing requirements, technical standards, and technical operations.

2. Part 25 is organized into eight lettered sub-parts:

A – General
B – Applications and Licenses
C – Technical Standards
D – Technical Operations
E – Reserved
F – Competitive Bidding Procedures for DARS
G – Reserved
H – Authorization to Own Stock in the Communications Satellite Corporation
I – Equal Employment Opportunities
J – Public Interest Obligations

Purpose

3. Part 25 provides rules under which the Bureau licenses systems to provide various satellite services. The rules are designed to accommodate efficiently the maximum number of systems possible for each type of service, to enhance competition for satellite services and the terrestrial services with which they compete. Sections of Part 25 also have provisions: (1) to protect against impermissible levels of interference; (2) to assure compliance with international agreements and treaties; (3) to assure the timely construction and operation of authorized earth stations and the timely construction, launch and operation of authorized space stations; (4) to assure the timely provision of sufficient information to allow for processing of applications; and (5) to assure compliance with license specifications and conditions as well as with Commission rules and regulations. In addition, Part 25 specifies the procedure by which the Commission authorizes the purchase of stock in COMSAT. Part 25 also provides for preemption of local zoning regulation of earth stations, unless the reasonableness of the regulation can be demonstrated.

Analysis

Status of Competition

4. The satellite services regulated by Part 25 are competitive on most routes. There are four major satellite service providers and several smaller providers that are licensed to provide state-of-the-art satellite telephony and data services to U.S. consumers and consumers worldwide. On many routes, satellite telephony and data services are offered by several satellite providers. In addition, these satellite service providers face competition from terrestrial service providers for some services on some routes. The Commission's rules and policies have led to the competitive industry that we see today by encouraging satellite companies to "pack" the satellite orbits and maximize the use of frequencies available at those orbital locations. Part 25 rules also provide licensing mechanisms for future entry and further competition in these services. The rules also contain criteria to permit foreign entry into the U.S. markets to further compete for U.S. consumers.

Advantages

5. General Application Filing Requirements: Part 25 provides clear procedures for filing applications, and predictable procedures for evaluating whether applications are complete. Part 25 also provides clear and predictable procedures for amendments, modifications, assignments and transfers. In addition, section 25.120 provides effective procedures for handling applications for special temporary authorization when delay would seriously prejudice the public interest. This allows for a more efficient use of resources.

6. Earth Stations: Sections 25.130 through 25.139 include procedures that allow for a frequency coordination analysis to reduce interference and the verification of earth station antenna performance standards. These clear procedures minimize the cost associated with reducing interference. Provisions in Part 25 also assure compliance with international agreements and treaties. Section 25.133 includes requirements for the timely construction and operation of earth stations. By reducing the likelihood that resources will be allocated to "phantom" ventures, section 25.133 assures that unnecessary costs were not imposed on other services that would have been limited by the need for coordination to reduce interference with systems that are, in fact, not implemented.

7. Space Stations: Sections 25.140 through 25.148 include conditions to facilitate coordination to avoid harmful interference to other systems. These sections also outline conditions for qualification as an applicant, which enhances the likelihood that the proposed systems will be constructed, launched and operated if licensed. These conditions reduce the likelihood that unnecessary costs will be imposed on other services through coordination to reduce interference. Section 25.140 also includes limitations on the number of orbital locations that can be assigned to each applicant, thereby fostering competition and reducing the likelihood of anti-competitive behavior.

8. Processing of Applications and Forfeiture, Termination, and Reinstatement of Station Authorizations: Sections 25.150 through 25.163 include well-defined procedures for processing applications to determine whether the applications are mutually exclusive. These sections also maximize compliance with Commission rules and minimize enforcement costs.

9. Subpart C—Technical Standards and Subpart D—Technical Operations: These subparts provide clear and predictable technical standards and operating rules to minimize interference.

10. Subpart F—Competitive Bidding Procedures for DARS: This subpart states that licenses for satellite DARS service shall be awarded pursuant to a competitive bidding mechanism. Competitive bidding promotes competition and awards DARS licenses to those firms that will most efficiently use those resources to compete in providing service.

11. Subpart H—Authorization to Own Stock in the Communications Satellite Corporation: These rules provide the procedure for the administration of section 304 of the Communications Satellite Act of 1962. Section 304 was repealed by the ORBIT Act.[92]

12. Subpart I—Equal Employment Opportunities: This section promotes diversity in employment and creates opportunities.

13. Subpart J—Public Interest Obligations: This subpart imposes public interest obligations on DBS providers, as required by the Cable Act of 1992, 47 U.S.C. § 335, and sections 312 and 315 of the Communications Act.[93]

Disadvantages

14. Earth Stations: Some limitations included in these rules might hamper the introduction of new services. For example, it may be possible to relax the threshold technical rules that trigger inter-system coordination among satellite service providers and reduce the burden on coordinating new and innovative satellite technologies.

15. Section 25.131(j) limits unlicensed receive-only earth stations to receiving transmissions from only U.S.-licensed satellites. It may be possible to permit these earth stations to receive transmissions from certain non-U.S.-licensed satellites.

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[92] Pub. Law No. 106-180, 114 Stat. 48 (2000). The Commission has proposed to eliminate subpart H in the *Part 25 Earth Station Streamlining NPRM*, 15 FCC Rcd 25128.

[93] *Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992, Direct Broadcast Satellite Public Interest Obligations*, Report and Order, 13 FCC Rcd 23254 (1998); *Policies and Rules for the Direct Broadcast Satellite Service,* Report and Order, 17 FCC Rcd 11331, 11344-45 ¶¶ 22-24 (2002) (*Part 100 Order*).

16. Space Stations: Section 25.155(b) states that space station applications are entitled to a comparative hearing together with other mutually exclusive applications if filed before a "cut-off" date. This refers to the Commission's current processing round procedure for satellite licenses, which can be burdensome and delay the introduction of new satellite services.

17. Processing of Applications and Forfeiture, Termination, and Reinstatement of Station Authorizations: The preparation of applications and the delay associated with public comment periods and the examination of applications can be costly to applicants.

18. Subpart C—Technical Standards and Subpart D—Technical Operations: These standards and operating rules, while preserving the operating environment today, could hamper the introduction of new services and restrict alternative uses of resources in the future.

19. Subpart F—Competitive Bidding Procedures for DARS: Satellite services in unplanned frequency bands require international coordination prior to the commencement of operations. The value of the orbital location resource is uncertain if the international coordination process has not yet been completed.

20. Subpart H—Authorization to Own Stock in the Communications Satellite Corporation: These rules were superceded by the ORBIT Act in 2000.

21. Subpart I—Equal Employment Opportunities: Rules in this section might increase operating costs.

22. Subpart J—Public Interest Obligations: Rules in this section might increase operating costs.

Recent Efforts

23. As described in the staff report, the Commission is continuing to look for ways to streamline both the earth station and space station portions of its satellite licensing process. The proceeding started with the *Part 25 Earth Station Streamlining NPRM* is ongoing. In that proceeding, the Commission has also taken steps to implement other recommendations in the 2000 Biennial Review Report, such as repealing section 25.141 and subpart H in Part 25 of the Commission's rules. The Commission has also adopted the *Space Station Reform NPRM*, which explores various methods for reforming the satellite licensing process.

Comments

24. Two comments and three replies were filed in response to the Part 25 rules. New Skies, Loral, and HBO recommend revising section 25.131(j) of the Commission's rules to allow unlicensed receive-only earth stations to receive certain non-

U.S.-licensed satellites.[94] Currently, section 25.131(j) limits unlicensed receive-only earth stations to receiving transmissions from only U.S.-licensed satellites. New Skies also recommends adopting new rules to allow non-U.S.-licensed satellite operators to submit an interference analysis of proposed operations with one or more similar non-routine earth stations, and to include a reference on the Permitted List to the types of non-routine earth stations allowed to communicate with the each Permitted List satellite.[95]

25. Intelsat incorporates by reference its comments and the Satellite Industry Association's (SIA's) comments in response to the *Space Station Reform NPRM*.[96] Included in Intelsat's comments is a proposal to eliminate the requirements in section 25.210(a) that C-band satellite operators employ orthogonal linear polarization, and have switchable polarization.[97] Intelsat maintains that these requirements are no longer necessary because they only protect analog television transmissions.[98] PanAmSat replies that these section 25.210(a) requirements are necessary in the public interest because coordination of C-band satellites carrying analog television transmissions would be nearly impossible without them.[99] PanAmSat also maintains that the switchable polarization requirement ensures that a satellite will not cause harmful interference in the event it is relocated.[100]

Recommendation

26. In 2000, the Bureau concluded that several provisions in Part 25 may no longer be in the public interest, and accordingly recommended that a proceeding be instituted to modify or repeal those provisions. The staff notes that the Commission's review of Part 25 initiated in the *Part 25 Earth Station Streamlining NPRM* and the *Space Station Reform NPRM* is well underway. In light of the competitive changes and for the reasons articulated in the forgoing NPRMs, the staff continues to believe that modification of the rules is necessary in the public interest.

27. Section 25.131(j) limits unlicensed receive-only earth stations to receiving transmissions from only U.S.-licensed satellites. It may be possible to permit these earth stations to receive transmissions from certain non-U.S.-licensed satellites. This issue was raised in the context of the *Part 25 Earth Station Streamlining NPRM*, however, and the Commission is considering the issue in that context. Therefore, we do not recommend that another proceeding be instituted to modify or repeal Section 25.131(j). Instead, we

94 New Skies comments at 2-4; Loral reply at 1-2; HBO reply at 1-2 and Att.

95 New Skies comments at 5.

96 Intelsat comments at Exh. A and Exh. B.

97 47 C.F.R. §§ 25.210(a)(1), (3).

98 Intelsat comments at 2 and Exh. A at 24-25.

99 PanAmSat reply at 2.

100 PanAmSat reply at 3.

recommend including New Skies's, Loral's, and HBO's pleadings in the record in the *Part 25 Earth Station Streamlining* proceeding which is already considering this issue.

28. We recommend against Intelsat's proposal to eliminate the polarization requirements in section 25.210(a). Competitive developments have not affected the need for this rule. We agree with PanAmSat that the switchable polarization requirement is necessary to ensure that C-band satellites will not cause harmful interference in the event that they are relocated. Moreover, although analog television has declined, there is still a significant amount of analog television traffic on C-band satellites.[101] We accordingly conclude that section 25.210(a) remains necessary in the public interest and recommend that repeal or modification is not warranted.

29. Finally, we do not recommend adoption of New Skies's proposal to modify the Permitted List to allow non-U.S.-licensed satellite operators to communicate with non-routine earth stations. In response to the *Part 25 Earth Station Streamlining NPRM*, some commenters proposed establishing a database of approved non-routine earth station antennas.[102] New Skies's proposal is similar to that database proposal which is already the subject of a rulemaking proceeding. Therefore, we do not recommend that another proceeding be instituted to modify or repeal the Permitted List. Instead, we recommend including New Skies's pleadings in the record in the *Part 25 Earth Station Streamlining* proceeding which is already considering this issue.

[101] Our review of our records show that the four major television networks are licensed to operate at least 17 C-band earth stations. All those earth stations are ALSAT earth stations, which means that they are authorized to communicate with any U.S.-licensed C-band satellite, and non-U.S.-licensed C-band satellites on the Permitted List. Thus, if the polarization requirements in section 25.210(a) were eliminated, every C-band would face an increased risk of harmful interference from any or all of these 17 earth stations. In addition, this understates the increased risk of harmful interference, because there may be other C-band earth stations that transmit analog television signals.

[102] Hughes reply in IB Docket No. 00-248, filed Mar. 26, 2001, at 10-11; Spacenet comments in IB Docket No. 00-248, filed Mar. 26, 2001, at 43-44, 46.

APPENDIX IV

Part 43, Section 43.51 – Contracts and concessions

Description

1. Section 211 of the Communications Act requires carriers to file with the Commission copies of all contracts, agreements, or arrangements with other carriers that relate to any traffic affected by the Communications Act.[103] Section 220 allows the Commission to prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers.[104]

2. Section 43.51 of the Commission's rules implements these sections by establishing rules regarding contracts and concessions entered into by carriers. First, section 43.51 requires that certain carriers file with the Commission copies of specified contracts, agreements and arrangements with other carriers. Second, section 43.51 sets forth the Commission's International Settlements Policy (ISP), which is designed to ensure that U.S. telecommunications carriers pay nondiscriminatory rates for termination of international traffic in foreign countries.

Purpose

3. The contract-filing requirement helps the Commission to identify potential instances of anti-competitive conduct, and to enforce its International Settlements Policy. The International Settlements Policy is designed to protect U.S. international carriers and the customers they serve from the potential exercise of market power by dominant foreign carriers, to set unilaterally the prices, terms and conditions under which U.S. carriers are able to exchange international traffic.[105]

Analysis

Status of Competition

4. Competition in U.S.-international telecommunications services is increasing. These markets are changing from one consisting of a small number of national telecommunications providers on the foreign-end of the U.S.-international services to one having a large number of competitors. The former national monopoly providers, however, continue to be substantial players in the market.

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[103] 47 U.S.C. § 211. Section 211 also permits the Commission to require the filing of any other contracts.

[104] 47 U.S.C. § 220.

[105] *See 1998 Biennial Regulatory Review: Reform of the International Settlements Policy and Associated Filing Requirements,* Report and Order and Order on Reconsideration, 14 FCC Rcd 7963, 7974, ¶ 31 (1999).

Advantages

5. The contract filing requirement assists the Commission to identify and remedy potential instances of anti-competitive conduct. The International Settlements Policy and related requirements protect U.S. carriers and their customers from the potential exercise of market power by dominant foreign carriers.

Disadvantages

6. The contract filing requirement may necessitate the filing of competitively sensitive information, although it may be filed confidentially. The ISP, in its current form, may not be sufficiently targeted to address concerns in the current market for international services.

Recent Efforts

7. As part of the *International Detariffing Order,* the Commission recently amended section 43.51 to clarify that the contract filing requirements apply solely to: (1) carriers classified as dominant for reasons other than foreign affiliation; and (2) carriers, whether classified as dominant or non-dominant, contracting directly for services with foreign carriers that possess market power.[106]

8. In 1999, the Commission adopted a sweeping reform of the longstanding international settlements policy, deregulating inter-carrier settlement arrangements between U.S. carriers and foreign non-dominant carriers on competitive routes.[107] The Commission, among other things, eliminated the international settlements policy and contract filing requirements for arrangements with foreign carriers that lack market power, and eliminated the international settlements policy for arrangements with all carriers on routes with rates for terminating U.S. calls that are at least 25 percent lower than the relevant settlement rate benchmark.

9. In October 2002, the Commission initiated a rule making proceeding to examine possible further reform of the ISP.[108] The *ISP Reform Notice* seeks to determine whether removing the regulatory restrictions of the ISP would benefit consumers by promoting greater competition, while still preventing any anticompetitive harm from foreign carriers and otherwise protecting the public interest.

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[106] *2000 Biennial Regulatory Review: Policy and Rules Concerning the International, Interexchange Marketplace*, IB Docket 00-202, Report and Order, 16 FCC Rcd 10647 (2001) (*International Detariffing Order*).

[107] *See 1998 Biennial Regulatory Review: Reform of the International Settlements Policy and Associated Filing Requirements,* Report and Order and Order on Reconsideration*,* 14 FCC Rcd 7963 (1999).

[108] *International Settlements Policy Reform; International Settlement Rates*, IB Docket 02-324, Notice of Proposed Rulemaking, 17 FCC 19954 (2002) (*ISP Reform Notice*).

Comments

10. There were no comments filed on section 43.51.

Recommendation

11. The contract filing requirement was recently reviewed and amended by the Commission,[109] and for the reasons set forth in the *International Detariffing Order* it is appropriate for the current state of competition in international services. Accordingly, the staff concludes that the contract filing requirement in section 43.51 remains necessary in the public interest and recommends that repeal or modification is not warranted.

12. There have been significant changes in the international service market since the Commission reviewed the International Settlements Policy in 1999. Accordingly, the staff concludes that in its current form the International Settlements policy, contained in section 43.51 of the Commissions rules, may no longer be necessary in the public interest and recommends its modification. We note that the Commission has recently initiated a proceeding to review the International Settlements Policy to determine whether the policy should be modified.[110]

[109] *International Detariffing Order*, 16 FCC Rcd 10647.

[110] *ISP Reform Notice,* 17 FCC 19954.

APPENDIX V

Part 43, Sections 43.53, 43.61, 43.82 – Reports of Communications Common Carriers and Certain Affiliates

Description

1. Section 219 of the Communications Act authorizes the Commission to require all carriers that are subject to the Act to file annual reports with the Commission.[111] Section 220 allows the Commission to prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers.[112]

2. Part 43 prescribes general requirements and filing procedures for several reports which various carriers are required to file. These include reports on the division of international telegraph toll communication charges,[113] international telecommunications traffic,[114] and international circuit status reports.[115]

Purpose

3. The reports required by Part 43 assist the Commission in monitoring the industry to ensure that carriers comply with the Commission's rules, and in tracking market and other industry developments, which improves the Commission's ability to identify developing regulatory issues and analyze the effects of alternative policy choices. The reports also assist the public in monitoring trends in the international services market.

Analysis

Status of Competition

4. Competition in U.S.-international telecommunications services is increasing. These markets are changing from one consisting of a small number of national telecommunications providers on the foreign-end of the U.S.-international services to one having a large number of competitors. The former national monopoly providers, however, continue to be substantial players in the market.

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[111] 47 U.S.C. § 219.

[112] 47 U.S.C. § 220.

[113] 47 C.F.R. § 43.53.

[114] 47 C.F.R. § 43.61.

[115] 47 C.F.R. § 43.82.

Advantages

5. The reports required by Part 43 increase the Commission's ability to ensure compliance with the Commission's rules. They also provide the Commission, other government agencies, state regulators, industry, and the public with valuable information on market and other industry trends and developments. This information is helpful to the Commission in identifying developing regulatory issues, monitoring compliance with existing rules and policies, and evaluating the effects of policy choices.

Disadvantages

6. Some carriers allege that some of the required filings are unduly burdensome. Part 43 may require the filing of some information that is unnecessarily detailed or unnecessary in light of competitive developments. At the same time, the rules may not include the collection of information necessary to effectively monitor and safeguard the provision of international telecommunications facilities and services in the current market.

Recent Efforts

7. In the *International 2000 Biennial Review Order*, the Commission reviewed the continued need for the section 43.61 international traffic and revenue reports.[116] In that proceeding the Commission found that it was no longer in the public interest to require CMRS carriers providing resale of international switched services to file quarterly traffic and revenue reports for their service to markets where they are affiliated with a foreign carrier with market power and that collects settlement payments from U.S. carriers. The Commission consequently amended section 43.61 to exempt CMRS carriers from quarterly filing requirements in section 43.61(c). The Commission did not find it in the public interest to make other changes to the section 43.61 reporting requirements at that time, however. The Commission found the filing of quarterly reports under section 43.61(b) provides the Commission with information to detect deviations of traffic flows on a timely basis. The Commission also found that it would not be in the public interest to exempt CMRS carriers from filing annual traffic and revenue reports, because information on minutes of use is important for monitoring trends in the industry.

8. In the *ISP Reform Notice* the Commission has sought comment on whether the annual and quarterly traffic and revenue reporting requirements in section 43.61, along with the other filing requirements, provide sufficient information to enable carriers to permit enforcement of the ISP.[117]

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[116] *2000 Biennial Regulatory Review: Amendment of Parts 43 and 63 of the Commission's Rules*, IB Docket 00-231, Report and Order, 17 FCC Rcd 11416, 11428-30 ¶¶ 28-31 (2002) (*International 2000 Biennial Review Order*) *review pending sub nom. Cellco Partnership et al. v. FCC*, case nos. 02-1262, 02-1268 (D.C. Cir).

[117] *ISP Reform Notice,* 17 FCC at 19975 ¶ 37.

9. As part of its 2000 biennial review process, the Commission eliminated an outdated regulation in section 43.81 that had required certain foreign-owned carriers to file with the Commission annual revenue and traffic reports for all common carrier telecommunication services they offer in the United States.[118]

Comments

10. Five parties addressed the reporting requirements in Part 43. CTIA, RCA, and Verizon argue that the Commission should eliminate the section 43.61 international traffic and revenue reports and the section 43.82 circuit status reports.[119] AT&T disagrees, arguing that the reporting requirements allow effective enforcement of Commission's policies promoting competition and protecting against competitive harm in the U.S.-international market.[120]

11. Verizon argues that the international traffic and revenue reports and circuit status reports do not appear to serve any useful purpose and should be eliminated. Verizon states that as result of the increasingly competitive market it must seek confidential treatment for more and more of the data it reports to the Commission.[121] AT&T, however, argues that the public interest benefits of the reports greatly outweigh the costs to the carriers to supply the information to the Commission.[122] It contends that the information provided by the reports serve several important purposes, including monitoring compliance with settlement rate benchmarks, and is necessary for effective enforcement of other pro-competitive Commission rules and policies.[123] Verizon requests that even if there is a useful purpose for the reports, the Commission should eliminate the quarterly reporting requirements and only retain the annual reporting requirements.[124]

12. Cingular requests that the Commission exclude CMRS carriers from the annual international traffic and revenue reporting requirements in section 43.61(a).[125] According to Cingular, filing these reports is burdensome on CMRS carriers and does not provide meaningful information because CMRS has such a small share of the international services market. CTIA and RCA contend that the Commission should also

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[118] *International 2000 Biennial Review Order*, 17 FCC Rcd at 11427.

[119] CTIA Petition at 23-24; RCA reply comments in WT Docket 02-310 at 6; Verizon comments at 9-10.

[120] AT&T reply comments at 24.

[121] Verizon comments at 9-10.

[122] AT&T reply comments at 24-25.

[123] AT&T reply comments at 24.

[124] Verizon comments at 11 n. 31.

[125] Cingular comments at 12-13.

eliminate section 43.53, which requires carriers to file reports on the division of international toll communications.[126]

Recommendation

13. The staff finds that the reporting requirements for international services contained in Part 43 should be modified to reflect changes that have occurred in the telecommunications industry. We disagree, however, with the commenters that request that the reporting requirements be eliminated. We agree with AT&T that these reports are instrumental in the enforcement of the Commission's rules and policies, and aid the Commission, industry, and international agencies in planning and understanding the international telecommunications market.[127] The staff believes, however, that the burdens placed on carriers by these reporting requirements can be addressed while maintaining or enhancing the benefits that the reports provide. Accordingly, we conclude that sections 43.61 and 43.82 in their current form may no longer be necessary in the public interest and recommend that a proceeding be instituted to modify sections 43.61 and 43.82.

14. The staff agrees with the commenters that reports regarding the division of international telegraph toll communications charges are no longer needed. The purpose of those reports is to monitor telegraph communications, which are no longer a major component of telecommunications. This reporting requirement also duplicates other rules. Accordingly, the staff concludes that section 43.53 may no longer be necessary in the public interest and recommends that a proceeding be instituted to repeal section 43.53.

[126] CTIA Petition at 23-24; RCA reply comments in WT Docket 02-310 at 6.

[127] For example, in the *International 2002 Biennial Review Order* the Commission found that because large carriers must report their switched telephone traffic on a quarterly basis pursuant to section 43.61(b), the Commission would be able to detect substantial declines in U.S. carriers' international switched serice traffic and thus could remove the benchmarks condition that prohibited a carrier's provision of facilities-based international private line service on a route where an affiliate has market power on the foreign end and maintains settlement rates with U.S. carriers that exceed the applicable benchmark. 17 FCC Rcd at 11429-30 ¶ 31.

APPENDIX VI

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

Description

1. Section 214 of the Communications Act provides that no carrier shall undertake the construction of a new line or extension of any line, or shall acquire or operate any line, or extension thereof, without first having obtained a certificate from the Commission that the present or future public convenience and necessity require the construction and/or operation of such extended line. Section 214 also provides that no carrier shall discontinue, reduce or impair service to a community without first having obtained a certificate from the Commission that neither the present nor future public convenience and necessity will be adversely affected by such action.[128] Part 63 of the Commission's rules sets forth standards and specific information that must be included in a section 214 application for market entry or exit by a common carrier.[129]

Purpose

2. Part 63 sets out the requirements for a section 214 authorization to provide or discontinue service. A section 214 application is a request for authority to provide or to discontinue services pursuant to section 214 of the Communications Act. A carrier must receive a section 214 authorization prior to initiating or discontinuing U.S.-international service.

3. The primary purpose in adopting entry criteria under section 214 is to provide the Commission oversight of U.S.-international communications and permit the Commission to develop policies and undertake enforcement in order to protect U.S. consumers and competition. The Commission's current section 214 policies promote effective competition in the U.S. telecommunications services market and ensure Executive Branch review associated with applications that may raise national security, law enforcement, foreign policy, and trade policy concerns. With regard to the construction of facilities, section 214 is intended to protect consumers from being charged by carriers for unneeded facilities. Commission oversight of discontinuance of service protects consumers from loss of service. The Commission has substantially deregulated the procedures for obtaining international section 214 authorizations.

4. The requirement that all carriers obtain authorization pursuant to section 214 to provide international services enables the Commission to assure satisfaction of basic qualifications of applicants and compliance with rules and policies designed to preserve competition on U.S.-international routes. Importantly, the application process

[128] 47 U.S.C. § 214(a).

[129] 47 C.F.R. Part 63.

includes consultation with Executive Branch agencies regarding national security, law enforcement, foreign policy and trade concerns unique to the provision of international services to and from the United States. The process allows the Commission to condition the authorizations, impose reporting requirements, monitor foreign affiliations and competitive conditions and otherwise assure compliance with Commission rules and policies and Executive Branch requirements. For example, there are section 214 rules governing carrier authorizations that promote the Commission's efforts to achieve more cost-based accounting rates, encourage the Commission's open entry standard for WTO Members, maintain the Effective Competitive Opportunities standard for non-WTO Members seeking access to the U.S.-international market, and permit the Commission to monitor and adjudicate under its public interest mandate transfers of control and assignments in the context of mergers and bankruptcies in the telecommunications industry. Finally, the section 214 authorization process itself serves to inform carriers of obligations imposed upon all providers of international service.

5. Part 63 contains rules to protect U.S. consumers and carriers from the exertion of market power by foreign telecommunications carriers in the U.S.-international telecommunications market. For example, the "No Special Concessions" rule prohibits U.S.-international carriers from agreeing to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses sufficient market power on the foreign end of the route to affect competition in the U.S. market.[130] We note that on a route where the ISP does not apply, the rule does not apply to the terms and conditions under which traffic is settled. Part 63 also contains procedures for a party to be designated as a Recognized Private Operating Agency.[131]

Analysis

Status of Competition

6. Competition in U.S.-international telecommunications services is increasing. These markets are changing from one consisting of a small number of national telecommunications providers on the foreign-end of the U.S.-international services to one having a large number of competitors. The former national monopoly providers, however, continue to be substantial players in the market.

Advantages

7. The Commission's rules are designed to preserve competition on U.S.-international routes. Part 63 provides carriers and the public with procedures to be followed to obtain authorization to construct facilities, provide service, and discontinue service. The rules clarify what information must be filed with the Commission, how long

[130] 47 C.F.R. § 63.14.

[131] 47 C.F.R. §§ 63.701, 63.702.

action on the application typically will take, the types of services that can be provided over the facilities, and in what circumstances a carrier may discontinue service.

Disadvantages

8. The rules place administrative burdens on the carriers and the Commission. Some of the rules are duplicative, or unclear.

Recent Efforts

9. As explained in the staff report, the Commission has taken several steps to streamline its international 214 application process. In 1996, the Commission created an expedited process for global, facilities-based section 214 applications.[132] The Commission further streamlined its procedures for granting international section 214 authorizations as part of the 1998 biennial review process.[133] In the *International 2000 Biennial Review Order*, the Commission modified several rules in Part 63 to simplify and clarify the application process.[134]

Comments

10. Four parties commented on rules contained in Part 63. Cingular argues that the CMRS carriers that resell international services should not be governed by section 214 of the Communications Act and thus should therefore be exempt from all of the rules of Part 63.[135] Cingular contends that even if the Commission continues to require CMRS carriers to obtain section 214 authorization to provide international service, it should modify section 63.21(h) to allow commonly-controlled subsidiaries to use their parent corporation's authorization rather than having to obtain their own authorization.[136]

11. CTIA and RCA urge the Commission to eliminate section 63.21(d), which requires carriers with international section 214 authorizations to file the annual reports of overseas traffic as required in section 43.61.[137] Verizon states that the Commission should eliminate the requirement in section 63.10(c) that carriers file quarterly reports on

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[132] *See Streamlining the International Section 214 Authorization Process and Tariff Requirements*, Report and Order, 11 FCC Rcd 12884 (1996).

[133] *See 1998 Biennial Regulatory Review-Review of International Common Carrier Regulations*, Report and Order, 14 FCC Rcd 4909 (1999) (*1998 International Common Carrier Biennial Regulatory Review Order*), *recon. pending*.

[134] *International 2000 Biennial Review Order,* 17 FCC Rcd 11416.

[135] Cingular comments at 7.

[136] Cingular comments at 8-12.

[137] CTIA Petition at 26; RCA reply comments in WT Docket No. 02-310 at 7.

traffic and revenue consistent with the requirements in section 43.61.[138] AT&T, however, argues that the reports provide valuable information and assist in enforcement of Commission policies and rules, and thus should be maintained.[139] Verizon also requests that the Commission modify section 63.19 to conform the notice period for discontinuance of international services to that for domestic services.[140]

Recommendation

12. The Commission is currently considering, in the *ISP Reform NPRM,* whether to modify sections 63.14, 63.16, 63.18, 63.22 and 63.23 as they apply to the ISP, ISR, and benchmark policies.[141] As explained below, the staff recommends that the Commission institute a proceeding to consider modifying several additional rules in Part 63 for reasons other than developments in the level of competition. The staff also recommends that the Commission modify sections 63.10(c)(2) and 63.21(d) to reflect any changes that the Commission may make to the Part 43 reporting requirements. The other Part 63 rules have been reviewed and are consistent with the current state of competition in international services. We accordingly conclude that the other Part 63 rules remain necessary in the public interest and recommend that repeal or modification is not warranted.

13. The staff does not recommend that the Commission forbear from applying section 214 of the Communications Act to CMRS carriers or exempt them from all of the rules in Part 63, as suggested by Cingular.[142] Although the Commission has exercised its authority under section 332(c) of the Communications Act[143] to forbear from applying section 214 requirements to CMRS carriers for their U.S.-domestic service,[144] in the *PCIA Forbearance Order,* the Commission found that it would not be in the public interest to forbear from applying section 214 requirements to CMRS carriers' U.S.-international services.[145] Requiring carriers to obtain a section 214 authorization to

[138] Verizon comments at 9-11. The requirement to file quarterly traffic and revenue reports is in 47 C.F.R. § 63.10(c)(2).

[139] AT&T reply comments at 23-25.

[140] Verizon comments at 11-12.

[141] *See ISP Reform NPRM,* 17 FCC Rcd 19954.

[142] *See* Cingular comments at 6-7. To the extent that forbearance is sought by commenters, such requests are beyond the scope of this section 11 proceeding. The staff nonetheless addresses herein the forbearance comments again, consistent with the Commission's prior decision denying such a request. *See Personal Communications Industry Association's Broadband Personal Communications Services Alliance's Petition for Forbearance for Broadband Personal Communications Services*, WT Docket 98-100, 13 FCC Rcd 16857, 16881-84 ¶¶ 45-54 (1998) (*PCIA Forbearance Order*).

[143] 47 U.S.C. § 332(c).

[144] *See Implementation of sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, Second Report and Order, 9 FCC Rcd 1411, 1480-81 ¶ 182 (1994).

[145] *PCIA Forbearance Order*, 13 FCC Rcd at 16881-84 ¶¶ 45-54..

provide U.S.-international service enables the Commission to: (1) screen applications for risks to competition and deny or condition authorizations as appropriate; (2) consult with Executive Branch agencies on national security, law enforcement, foreign policy, and trade concerns that may be unique to the provision of international services; (3) monitor foreign carrier affiliations and enforce compliance with safeguards; and (4) inform carriers of their special obligations as providers of international service.[146] For these public interest reasons particular to the international services market, and to ensure that rates and conditions are just, reasonable and nondiscriminatory, the Commission concluded that all carriers, including CMRS carriers, should provide international service pursuant to an authorization that can be conditioned or revoked.[147]

14. Cingular has not presented any arguments or new information that the Commission did not consider in the *PCIA Forbearance Order*, and the staff does not recommend that the Commission depart from the rationale set forth by the Commission in that order. It should also be noted that since the *PCIA Forbearance Order,* the processing time for section 214 applications has been significantly reduced, with most applications qualifying for streamlined processing under which the application is approved within 14 days after public notice. The staff accordingly concludes that application of section 214 and Part 63 to CMRS carriers remains necessary in the public interest and recommends that forbearance from section 214 is not warranted.

15. Recently, in the *International 2000 Biennial Review Order,* the Commission considered and rejected Cingular's request that section 63.21(h) be modified to allow commonly-controlled subsidiaries to use their parent's international section 214 authorization. The Commission found that a controlling interest that does not amount to 100-percent ownership may raise issues, such as additional foreign affiliations or minority ownership or beneficial interest by persons or entities that are barred from holding a Commission authorization that require separate review.[148] These concerns are not affected by changes in the level of competition in the market. The Commission found that the rationale for limiting the authority to use a carrier's international section 214 authority to wholly-owned subsidiaries is still valid, and declined to expand the reach of section 63.21(h) to commonly-controlled subsidiaries. Cingular has not presented any new arguments in its comments which warrant a change to section 63.21(h) at this time.

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[146] *PCIA Forbearance Order*, 13 FCC Rcd at 16882-83 ¶ 50 (footnotes omitted). In making its determination the Commission took into account that CMRS carriers usually provide international service on a resale basis and have only a small share of the international services market. Nonetheless, the Commission concluded that CMRS carriers, "like any other carrier of international traffic that competes against other international carriers, could acquire an affiliation with a foreign carrier that has market power and that the foreign affiliate would then have the ability and incentive to discriminate against unaffiliated U.S. international carriers on the affiliated route." *Id.* at 16883 ¶ 51.

[147] *Id.* at 16883-84 ¶ 52.

[148] *International 2000 Biennial Review Order*, 17 FCC Rcd at 11433 ¶ 41 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 *International 2000 Biennial Review Order*.

In addition, the staff notes that applications for section 214 authority for a commonly-controlled subsidiary will usually be eligible for streamlined processing and thus will be approved within 14 days of public notice. Accordingly, the staff concludes that section 63.21(h) remains necessary in the public interest and recommends that repeal or modification is not warranted

16. The staff recognizes, however, that certain commenters claim that section 214 and Part 63 requirements are burdensome to CMRS carriers. We conclude that modification of the rule may be in the public interest for reasons other than the development of competition, and thus outside the scope of section 11. We recommend that the Commission explore the possibility of using of blanket section 214 resale authorizations for CMRS carriers with a de minimis share of the U.S-international services market. Under such an approach, a CMRS carrier would not be required to obtain authorization prior to providing resale of international services. For the reasons set out in the *PCIA Forbearance Order,* however, the carrier would be still subject to the requirements of the Part 63 rules, including the foreign carrier affiliation notice requirements, competitive safeguards, and reporting requirements. We recognize that this approach may raise concerns for the Executive Branch, which currently reviews an application for section 214 authority for national security, law enforcement, foreign policy and trade concerns prior to the carrier initiating service. As part of the proceeding we would seek comment on means to address these Executive Branch concerns while lessening the burdens on CMRS carriers. This proceeding could also include a request for comments on the relevance of the use of blanket authorizations to the issue of authorizations for commonly-controlled subsidiaries. Accordingly, the staff recommends that the Commission institute a proceeding to determine if there are other means to achieve the public interest goals of section 214 and Part 63 that are less burdensome to CMRS carriers.

17. The staff recommends that the Commission modify section 63.23 of the rules specifically to permit all U.S.-authorized resale carriers to resell the international services of foreign-authorized carriers. We conclude that modification of the rule may be in the public interest for reasons other than the development of competition, and thus outside the scope of section 11. This rule change would clarify that any U.S. carrier that is authorized to provide resale service under section 63.18(e)(2) may resell foreign carrier services in order to provide international calling capability to U.S. customers that are roaming in foreign markets and want to call back to the United States or through the United States to a third country. This would apply to both carriers providing service through a section 214 resale authorization as well as those providing service through a facilities-based and resale authorization. This rule change should reduce the perceived need for CMRS carriers to obtain international section 214 authority in addition to the international section 214 authority they already have received. Accordingly, the staff concludes that section 63.23 in its current form may no longer be necessary in the public interest and recommends that a proceeding be instituted to modify section 63.23.

18. The staff recommends that the Commission review sections 63.10(c)(2) and 63.21(d) as part of the recommended review of the section 43.61 reporting

requirements.[149] Consequently, if, after review, the Commission modifies or eliminates the reporting requirements as no longer necessary in the public interest, sections 63.10(c) and 63.21(d) should be modified to reflect those changes.

19. The staff agrees with Verizon that the rule for discontinuance of international service, section 63.19, should be modified to conform more closely with the discontinuance requirements for domestic service. Modification of the rule may be in the public interest for reasons other than the development of competition, and thus outside the scope of section 11. Many carriers provide both domestic and international service, and when they seek to discontinue service the different requirements for the two services place unnecessary burdens on the carriers and the Commission and can lead to confusion for the customers of the carrier. Accordingly, the staff concludes that section 63.19 in its current form may no longer be necessary in the public interest and recommends that a proceeding be instituted to modify section 63.19.

[149] *See* Appendix V (Part 43 -- Reports of Communications Common Carriers and Certain Affiliates), recommendations section, *supra*.

APPENDIX VII

Part 64, Subpart J – International Settlements Policy and Modification Requests

Description

1. Subpart J requires carriers to request Commission approval for changes in the accounting rates for international telecommunications services unless the route involved is exempt from the Commission's International Settlements Policy (ISP).[150] The ISP requires that U.S. telecommunications carriers comply with specific requirements in their dealings with foreign carriers for the provision of U.S.-international services.[151] Subpart J also sets forth the information that must be contained in a modification request and the procedures that govern Commission consideration of such requests.[152] These requirements are based on the Commission's authority pursuant to sections 1, 201, 202, 203, and 309 of the Communications Act.[153]

Purpose

2. The requirement for filing accounting rate modification requests set out in Subpart J is intended to prevent harm to U.S. consumers resulting from the exercise of market power by foreign carriers. In particular, it assists the Commission in ensuring compliance with the ISP and the Commission's benchmarks and international simple resale policies.[154] The ISP was adopted as a result of the Commission's concern that a foreign carrier with market power would have the ability to "whipsaw" competing U.S. international carriers by discriminating among them, and/or by unilaterally setting the prices, terms, and conditions under which U.S. carriers are able to exchange traffic.[155] Such actions by foreign carriers would prevent U.S. carriers from obtaining lower accounting rates and would result in potential harm to U.S. consumers.

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[150] An accounting rate is the price a U.S. facilities-based carrier negotiates with a foreign carrier for handling one minute of international traffic. Each carrier's portion of the accounting rate is referred to as the settlement rate.

[151] 47 C.F.R. § 43.51(e).

[152] 47 C.F.R. § 64.1001.

[153] 47 U.S.C. §§ 151, 201, 202, 203 and 309.

[154] The Commission has established benchmarks that govern the international settlement rates that U.S. carriers may pay foreign carriers to terminate international traffic originating in the United States. *See International Settlement Rates*, Report and Order, 12 FCC Rcd 19806 (1997), *aff'd sub nom. Cable and Wireless P.L.C. v. FCC*, 166 F.3d 1224 (D.C. Cir. 1999), Report and Order on Reconsideration and Order Lifting Stay, 14 FCC Rcd 9256 (1999).

[155] *See 1998 Biennial Regulatory Review: Reform of the International Settlements Policy and Associated Filing Requirements,* Report and Order and Order on Reconsideration, 14 FCC Rcd 7963, 7974 ¶ 31 (1999).

Analysis

Status of Competition

3. Competition in U.S.-international telecommunications services is increasing. These markets are changing from one consisting of a small number of national telecommunications providers on the foreign-end of the U.S.-international services to one having a large number of competitors. The former national monopoly providers, however, continue to be substantial players in the market.

Advantages

4. Subpart J is designed to prevent the exercise of market power by foreign carriers, and to facilitate the negotiation of lower accounting rates by U.S. international carriers to the benefit of American consumers.

Disadvantages

5. The subpart J requirements may be too restrictive or overly-broad.

Recent Efforts

6. In 1999, as part of its 1998 biennial review, the Commission made several changes to the ISP, deregulating inter-carrier settlement arrangements between U.S. carriers and foreign non-dominant carriers on competitive routes.[156] The Commission, among other things, eliminated the ISP and contract filing requirements for arrangements with foreign carriers that lack market power, and eliminated the ISP for arrangements with foreign carriers possessing market power on routes where at least 50 percent of the U.S.-billed traffic on the route is being settled at rates at least 25 percent lower than the relevant settlement rate benchmark. The Commission also adopted procedural changes to simplify the accounting rate filing requirements, including the elimination of the requirement that carriers making accounting rate filings with the Commission serve every carrier that provides service on the U.S.-international route with a copy of the filing. Instead, the Commission encouraged carriers to make their accounting rate filings electronically over the International Bureau Electronic Filing System.[157]

7. In October 2002, the Commission initiated a rulemaking proceeding to examine possible further reform of the ISP.[158] The *ISP Reform Notice* also seeks

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[156] *1998 Biennial Regulatory Review: Reform of the International Settlements Policy and Associated Filing Requirements,* Report and Order and Order on Reconsideration, 14 FCC Rcd 7963 (1999); *see also, FCC Announces Elimination of Existing Service Requirement in 64.1001(k),* Public Notice, DA 99-1558 (rel. Aug. 6, 1999).

[157] *See FCC Announces Elimination of Existing Service Requirement in 64.1001(k),* Public Notice, DA 99-1558 (rel. Aug. 6, 1999).

[158] *ISP Reform Notice,* 17 FCC Rcd 19954.

comment on what changes would be necessary to section 64.1001 if the Commission modifies the ISP or its accounting rate policies.

Comments

8. There were no comments filed on subpart J.

Recommendation

9. The Commission has recently initiated a proceeding to review the International Settlements Policy, including whether to reform section 64.1001 if the ISP is modified.[159] The staff recommends that if, after review, the Commission modifies or eliminates the International Settlements Policy, section 64.1001 should be modified to be consistent with those changes.

[159] *Id.*