ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CA–189–0078(b); FRL–6127–2]

Proposed Approval and Promulgation of State Implementation Plans and Redesignation of the South Coast Air Basin in California to Attainment for Nitrogen Dioxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve an attainment and maintenance plan and grant a request submitted by the California Air Resources Board (CARB) to redesignate the South Coast Air Basin (South Coast) from nonattainment to attainment for the National Ambient Air Quality Standards (NAAQS) for Nitrogen Dioxide (NO₂). Under the Clean Air Act (CAA), designations can be revised if sufficient data are available to warrant such revisions. In this action, EPA is proposing to approve the attainment and maintenance plans as revisions to the California State Implementation Plan (SIP), and EPA is also proposing to grant the State's request to redesignate the South Coast to attainment because the plans and request meet the requirements set forth in the CAA.

DATES: Written comments must be received by August 24, 1998.

ADDRESSES: Comments should be addressed to the EPA contact below.
The Commission initiated this proceeding in response to the Telecommunications Act of 1996, which requires the Commission to review all regulations that apply to operations or activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be no longer necessary in the public interest. This NPRM contains proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), It has been submitted to the Office of Management and Budget (OMB) for review under the PRA, OMB, the general public, and other Federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding.

Summary of Notice

1. The Commission adopted a Notice of Proposed Rulemaking (FCC 98±149) to further streamline the international Section 214 authorization process and tariff requirements. This proceeding was initiated pursuant to the Telecommunications Act of 1996, which directs the FCC to undertake, on every even-numbered year, a review of all regulations that apply to operations or activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be no longer necessary in the public interest. Accordingly, the Commission has begun a comprehensive 1998 biennial review of telecommunications and other regulations that are overly burdensome or no longer serve the public interest. We seek comment on the proposals contained in this Notice.

2. In this proceeding, the Commission proposes to streamline and, where appropriate, eliminate many of the rules contained in this Notice. We seek comment on the proposals contained in this Notice.

3. We seek comment on the scope of the proposed blanket Section 214 authorization. In particular, we seek comment on whether there is a smaller or larger class of carriers or services for which a blanket authorization would be appropriate. For example, should the blanket authorization be limited to the resale of other carriers' services instead of also authorizing the provision of facilities-based services? Comments should address whether there remain any public interest considerations that might warrant denying an authorization to provide facilities-based service to a foreign market where the applicant has no affiliate. Furthermore, we seek comment on ways to identify affiliations that are equally unlikely to raise public interest concerns that therefore should not require prior Commission review. Commenters should address whether there is a way to include within the blanket authorization a carrier's provision of facilities-based or resold service on routes where it has an affiliation with a carrier that, for example: we have previously found (in some other context) to lack market power in the foreign destination market; has no telecommunications facilities in that market; and/or has only mobile wireless service in that market. We tentatively conclude that we must maintain a requirement that carriers notify the Commission that they are providing international service pursuant to the blanket authorization, and that we must be able to condition or revoke an authorization if necessary to prevent anticompetitive effects. We seek comment on the applicability of our tentative conclusions to commercial mobile radio services (CMRS) licenses.

4. We propose to add a new rule section to define pro forma and to allow carriers to undertake pro forma assignments and transfers of control of international Section 214 authorizations without Commission approval. We tentatively conclude that given the mechanisms in place, many pro forma transfers and assignments meet the forbearance standard as defined by Section 10 of the Communications Act. So that the Commission can maintain accurate records of the entities holding Section 214 authorization, we propose to require that carriers that undertake a pro forma assignment notify the Commission by letter within 30 days after consummation of the transaction. We tentatively conclude that we need not require that carriers notify us of pro forma transfers of control. The proposed rule would apply to all authorized international carriers.

5. We seek comment on a proposal to amend § 63.21 of the rules to provide that an international Section 214 authorization effectively authorizes the carrier to provide services through its wholly owned subsidiaries. Although this proposal promotes flexibility, it must not be used by carriers to circumvent any structural-separation provision in the Commission's rules. We seek comment on whether the proposed rule would defeat any of the Commission's structural-separation requirements.

6. The Commission's rules currently provide that a carrier with a global facilities-based authorization may not use non-U.S.-licensed facilities unless and until it has received specific prior approval by the Commission generally approves their use and so indicates on an exclusion list maintained by the International Bureau. We propose to amend the rules and the exclusion list to allow any carrier with a global facilities-based authorization to use any non-U.S.-licensed submarine cable system without prior Commission approval of each cable system. The exclusion list would then provide that carriers with global Section 214 authorizations to provide facilities-based service would be authorized to serve any unaffiliated market except Cuba. We would be permitted to use any facilities except non-U.S.-licensed satellite systems that are not specifically identified. This proposed rule change would not affect the rules for use of non-U.S.-licensed submarine cable systems, which continue to be governed by the policies adopted in the Commission's DISCO II Order (62 FR 64167, December 4, 1997).

7. We also seek comment on our proposal to eliminate the need to apply for separate Section 214 authority to build a new common carrier cable system by including the authorization to construct new lines in the global facilities-based Section 214 authorization. We tentatively conclude that we must limit this provision by stating that it does not authorize the construction or extension of lines that may have a significant effect on the environment as defined in our rules. We propose to eliminate the requirement currently in the rules that requires the applicant to include a statement whether an unauthorized carrier or the facilities is categorically excluded from environmental processing. We
tentatively conclude that the construction of new submarine cable systems will not have a significant effect on the human environment and therefore should be categorically excluded from our environmental processing requirements. This proposal is subject to a change in the application fees for cable landing licenses and Section 214 authorizations, which are set by statute.

8. We also propose to reorganize and simplify some of our existing rules. We tentatively conclude that we should reorganize § 63.18, which describes the contents of international Section 214 applications, and list the obligations of each category of carrier in a separate rule section. We propose to include in the rules a provision codifying the benchmark settlement rate condition that we adopted in the Benchmarks Order (62 FR 45758, August 29, 1997). We also propose to create new sections for definitions and for our policy on the provision of switched services over international private lines.

9. We also propose to modify our rules so that applicants will be required to list only the direct and indirect shareholders with interests greater than 25 percent.

Currently, applicants must report every 10-percent-or-greater direct and indirect shareholder. We seek comment on whether it remains necessary to scrutinize direct and indirect investments in applicants at a greater level of detail than we require after the carrier is authorized.

10. In the Foreign Participation Order, 62 FR 64741. December 9, 1997, we removed the prior-approval requirement for dominant carriers but neglected to amend the rules to provide that dominant resellers of international private lines are nevertheless subject to the annual reporting requirement. We propose to strike the word non-dominant from that provision and move that provision to the new rule section containing obligations generally applicable to resellers.

11. We propose to require that carriers authorized to undertake an assignment notify the Commission by letter within 30 days after either consummation of the assignment or a decision not to go forward with the assignment. We also propose to clarify that a carrier that changes its name need only notify the Commission by letter within 30 days after the name change.

12. We propose to create a new Section 63.16 containing the Commission’s policy on the provision of switched services over international private lines interconnected to the public switched network. This section would provide that carriers could seek a Commission finding authorizing such service by filing a petition for declaratory ruling, rather than a Section 214 application. This change would not modify the requirement that carriers have the necessary underlying Section 214 authority to provide facilities-based or resold service between the United States and the country at the foreign end of the private line.

13. No substantive changes are intended other than those discussed in the NPRM. We seek comment on whether any inadvertent substantive changes would result from the proposed reorganization of our rules.

**Initial Regulatory Flexibility Analysis**

14. The Regulatory Flexibility Act of 1990, 5 U.S.C. 601–612, (RFA) as amended by the Contract with America Advancement Act of 1996, Pub. L. 104–121, 110 Stat. 847, requires an initial regulatory flexibility analysis in notice-and-comment rulemaking proceedings, unless we certify that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” The purposes of this proceeding are to eliminate some regulatory requirements and to simplify and clarify other existing rules. The proposals do not impose any additional compliance burden on small entities dealing with the Commission. In fact, we anticipate that the rule changes we propose will reduce regulatory and procedural burdens on small entities. Accordingly, we certify, pursuant to Section 605(b) of the RFA, that the rules, if promulgated, would not have a significant economic impact on a substantial number of small business entities, as defined by the RFA. The Office of Public Affairs, Reference Operations Division, will send a copy of this NPRM to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act. We will analyze the information submitted during the comment period, and if it is determined at the final rule stage that the rule changes will have a significant economic impact on a substantial number of small entities, a final regulatory flexibility analysis will be prepared.

**Initial Paperwork Reduction Act of 1995 Analysis**

15. This Notice of Proposed Rulemaking contains both proposed and modified information collections. As part of our effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. Public and agency comments are due September 22, 1998. Comments should address the following: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission’s burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0686.
Title: Streamlining the International 214 Process and Tariff Requirements.
Form No.: N/A.
Type of Review: Revision of existing collection.
Respondents: Business or other For-Profit.
Number of Respondents: 105.
Estimated Time Per Response: 1 hour.
Total Annual Burden: 105.
Estimated costs per respondent: $150.00.
Frequency of Response: Annually; Semi-Annually; Quarterly; and On occasion.

**Needs and Uses: The information collections are necessary largely to determine the qualifications of applicants to provide common carrier international telecommunications services, or to construct and operate submarine cables, including applicants that are affiliated with foreign carriers, and to determine whether and under what conditions the authorizations are in the public interest, convenience, and necessity. The information collections are necessary for the Commission to maintain effective oversight of U.S. carriers that are affiliated with, or involved in certain co-marketing or similar arrangements with, foreign carriers that have sufficient market power to affect competition adversely in the U.S. market. The information collected is necessary for the Commission to ensure that rates, terms and conditions for international service are just and reasonable, as required by the Communications Act of 1934.**

**Comment Filing Procedures**

16. Comments and reply comments should be captioned in IB Docket No. 98–118. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission’s rules, 47 CFR...
47 U.S.C. 151, 154(i), 154(j), 155, 225, and 303(r).

Section 1.1306 Actions which are categorically excluded from environmental processing.

Note 1: * * * The provisions of § 1.1307(a) and (b) of this part do not encompass the construction of new submarine cable systems.

Part 43—Reports of Communication Common Carriers and Certain Affiliates

4. The authority citation for part 43 continues to read as follows:


5. Section 43.61 is amended by revising the last sentence of paragraph (c) to read as follows:

§ 43.61 Reports of international telecommunications traffic.

* * * * *

(c) * * * * For purposes of this paragraph, affiliation and foreign carrier are defined in § 63.09 of this chapter

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

6. The authority citation for part 63 is revised to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 201–205, 218, 403, 533 unless otherwise noted.

7. New § 63.09 is added to read as follows:

§ 63.09 Definitions applicable to international Section 214 authorizations.

The following definitions shall apply to §§ 63.09–63.24 of this part, unless the context indicates otherwise:

(a) Facilities-based carrier means a carrier that holds an ownership, indefeasible-right-of-user, or leasehold interest in bare capacity in the U.S. end of an international facility, regardless of whether the underlying facility is a common carrier or non-common carrier submarine cable or an INTELSAT or separate satellite system.

(b) Control includes actual working control in whatever manner exercised and is not limited to majority stock ownership.

(c) Special concession is defined as in § 63.14(b).

(d) Foreign carrier is defined as any entity that is authorized within a foreign country to engage in the provision of international telecommunications services offered to the public in that country within the meaning of the International Telecommunication Regulations, see Final Acts of the World
Administrative Telegraph and
Telephone Conference, Melbourne, 1988
(WATTCC‘88), Art. 1, which includes
entities authorized to engage in the
provision of international telecommunications services if such
carriers have the ability to originate or
terminate telecommunications services
to or from points outside their country.

(e) An affiliation with a foreign carrier
includes the following:

(1) A greater than 25 percent
ownership of capital stock, or
controlling interest at any level, by the
carrier, or by any entity that directly or
indirectly controls or is controlled by it,
or that is under direct or indirect
common control with it, in a foreign
carrier or in any entity that directly or
indirectly controls a foreign carrier; or

(2) A greater than 25 percent
ownership of capital stock, or
controlling interest at any level, in the
carrier by a foreign carrier, or by any
tility that directly or indirectly controls or is controlled by a foreign carrier,
or that is under direct or indirect common
control with a foreign carrier; or by two
or more foreign carriers investing in the
carrier in the same manner in
circumstances where the foreign carriers are
departies to, or the beneficiaries of, a
contractual relation (e.g., a joint venture or
market alliance) affecting the
provision or marketing of basic
international telecommunications services in the United States. A U.S.
carrier also will be considered to be
affiliated with a foreign carrier where the
foreign carrier controls, is controlled by,
or is under common control with a second foreign carrier that is affiliated
with that U.S. carrier under this section.

(f) An affiliation with a U.S. facilities-
based international carrier is defined as
in paragraph (e), except that the phrase
"U.S. facilities-based international
carrier" shall be substituted for the
phrase "foreign carrier."

1. The assessment of "capital stock" ownership will be made under the standards
developed in Commission case law for
determining such ownership. See, e.g., Fox
Television Stations, Inc., 10 FCC Rcd 8452
(1995). "Capital stock" includes all forms of
ownership equity, including partnership
interests.

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

8. Section 63.10 is amended by
removing the third sentence of
paragraph (a) introductory text, the last
sentence of paragraph (a)(4), and the last
sentence of paragraph (c)(5).

9. Section 63.11 is amended by
revising paragraphs (a)(1) and (a)(2) and
by removing the last sentence of
paragraph (c)(1) to read as follows:

§ 63.11 Notification by and prior approval
for U.S. international carriers that have or
propose to acquire an affiliation with a
foreign carrier.

(a) * * *

(1) acquisition of a direct or indirect
controlling interest in a foreign carrier
by the authorized carrier, or by any
entity that directly or indirectly controls the
authorized carrier, or that directly or
indirectly owns more than 25 percent of
the capital stock of the authorized
carrier; or

(2) acquisition of a direct or indirect
interest in the capital stock of the
authorized carrier by a foreign carrier or
by an entity that directly or indirectly controls a foreign carrier where the
interest would create an affiliation
within the meaning of § 63.09(e)(2).

* * * * *

10. Section 63.14 is amended by
removing the last sentence of paragraph
(a).

11. Section 63.15 is removed.

§ 63.15 [Removed]

12. New § 63.16 is added to read as
follows:

§ 63.16 Switched services over private
lines.

(a) Except as provided in § 63.22(g)(2), a
carrier may provide switched basic
services over its authorized private lines
if and only if the country at the foreign
end of the private line appears on a
Commission list of countries to which the
Commission has authorized the
provision of switched services over
private lines.

(b) An authorized carrier seeking to
add a foreign market to the list of
markets to which carriers may provide
switched services over private lines
must make the following showing in a
Section 214 application filed pursuant
to § 63.18 or in a petition for declaratory
ruling:

(i) If seeking a Commission ruling to
permit the provision of international
switched services to or from a
foreign carrier or any link in the
resulting product, except that wherever the
ownership percentages for each link in
the chain exceeds 50 percent, it shall not be
included for purposes of this multiplication.
For example, if A owns 30 percent of
company X, which owns 60 percent of
company Y, which owns 26 percent of
"carrier," then X's interest in "carrier" would
be 26 percent (the same as Y's interest
because X's interest in Y exceeds 50 percent),
and A's interest in "carrier" would be 7.8
percent (0.30 × 0.26). Under the 25 percent
benchmark, X's interest in "carrier" would be cognizable, while A's
interest would not be cognizable.

8. Section 63.10 is amended by
removing the third sentence of
paragraph (a) introductory text, the last
sentence of paragraph (a)(4), and the last
sentence of paragraph (c)(5).

9. Section 63.11 is amended by
revising paragraphs (a)(1) and (a)(2) and
by removing the last sentence of
paragraph (c)(1) to read as follows:

§ 63.11 Notification by and prior approval
for U.S. international carriers that have or
propose to acquire an affiliation with a
foreign carrier.

(a) * * *

(1) acquisition of a direct or indirect
controlling interest in a foreign carrier
by the authorized carrier, or by any
entity that directly or indirectly controls the
authorized carrier, or that directly or
indirectly owns more than 25 percent of
the capital stock of the authorized
carrier; or

(2) acquisition of a direct or indirect
interest in the capital stock of the
authorized carrier by a foreign carrier or
by an entity that directly or indirectly controls a foreign carrier where the
interest would create an affiliation
within the meaning of § 63.09(e)(2).

* * * * *

10. Section 63.14 is amended by
removing the last sentence of paragraph
(a).

11. Section 63.15 is removed.

§ 63.15 [Removed]

12. New § 63.16 is added to read as
follows:

§ 63.16 Switched services over private
lines.

(a) Except as provided in § 63.22(g)(2), a
carrier may provide switched basic
services over its authorized private lines
if and only if the country at the foreign
end of the private line appears on a
Commission list of countries to which the
Commission has authorized the
provision of switched services over
private lines.

(b) An authorized carrier seeking to
add a foreign market to the list of
markets to which carriers may provide
switched services over private lines
must make the following showing in a
Section 214 application filed pursuant

13. Section 63.17 is amended by changing "(e)(6)" to "(e)(4)" at the end of paragraph (b)(4).

14. Section 63.18 is amended by revising paragraphs (e), (g), (h), and (i) to read as follows:

§ 63.18 Contents of applications for international common carriers.

* * * * *

(e) One or more of the following statements, as pertinent:

(1) Global Facilities-Based Authority. If applying for authority to become a facilities-based international common carrier subject to § 63.22, the applicant shall:

(i) State that it is requesting Section 214 authority to operate as a facilities-based carrier pursuant to § 63.18(e)(1) of the Commission's rules.

(ii) List any countries for which the applicant does not request authorization under this paragraph (see § 63.22(a)); and

(iii) Certify that it will comply with the terms and conditions contained in §§ 63.21 and 63.22.

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

(i) State that it is requesting Section 214 authority to operate as a resale carrier pursuant to § 63.18(e)(2) of the Commission's rules;

(ii) List any countries for which the applicant does not request authorization under this paragraph (see § 63.22(a)); and

(iii) Certify that it will comply with the terms and conditions contained in §§ 63.21 and 63.23.

(3) Transfer of Control or Assignment. If applying for authority to acquire facilities through the transfer of control of a common carrier holding international Section 214 authorization, or through the assignment of another carrier's existing authorization, the applicant shall complete paragraphs (a) through (d) of this section for both the transferor/assignor and the transferee/assignee. Only the transferee/assignee needs to complete paragraphs (h) through (k) of this section. At the beginning of the application, the applicant should also include a narrative of the means by which the transfer or assignment will take place. The Commission reserves the right to request additional information as to the particulars of the transaction to aid it in making its public interest determination. An assignee shall notify the Commission no later than 30 days after either consummation of the assignment or a decision not to consummate the assignment. The notification may be by letter and shall identify the file numbers under which the initial authorization and the authorization of the assignment were granted. See also § 63.24 (pro forma assignments and transfers of control).

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

* * * * *

(g) Where the applicant is seeking facilities-based authority under paragraph (e)(4) of this section, a statement whether an authorization of the facilities is categorically excluded as defined by § 1.1306 of this chapter. If answered affirmatively, an environmental assessment as described in § 1.311 of this chapter need not be filed with the application.

(h) A certification as to whether or not the applicant is, or has an affiliation with, a foreign carrier, supported by the following information:

(1) In support of the required certification, each applicant shall also provide the name, address, citizenship and principal businesses of its greater-than-25-percent direct and indirect shareholders or other equity holders and identify any interlocking directorates.

(2) The certification shall state with specificity each foreign country in which the applicant is, or has an affiliation with, a foreign carrier.

(3) Any applicant that seeks to provide international telecommunications services to a particular country and that is a foreign carrier in that country, or has an affiliation with, a foreign carrier.

(4) The certification shall state with specificity each foreign country in which the applicant is, or has an affiliation with, a foreign carrier.

(5) Any applicant that seeks to provide international telecommunications services to a particular country and that is a foreign carrier in that country, or has an affiliation with, a foreign carrier.

(A) If the applicant seeks to provide facilities-based international services, in the legal ability of U.S. carriers to enter the foreign market and provide facilities-based international services, in particular international message telephone service (IMTS);

(B) If the applicant seeks to provide facilities-based international services, in the legal ability of U.S. carriers to enter the foreign market and provide international switched services (for switched resale applications) or non-interconnected private line services (for non-interconnected private line resale applications);

(C) Whether there exist reasonable and nondiscriminatory charges, terms and conditions for interconnection to a foreign carrier's facilities; and

(D) Whether there exist reasonable and nondiscriminatory charges, terms and conditions for interconnection to a foreign carrier's facilities; and

(3) Protection of carrier and customer proprietary information;

(E) Whether there is an effective regulatory framework in the foreign country to develop, implement and enforce legal requirements, interconnection arrangements and other safeguards; and

(F) Any other factors the applicant deems relevant to its demonstration.

(4) Any applicant that proposes to resell the international switched services of an unaffiliated U.S. carrier for the purpose of providing international telecommunications services to the named foreign country and that is a foreign carrier in that country or has an affiliation with a foreign carrier in that country shall file a showing that would satisfy § 63.10(a)(3) or state that it will file the quarterly
traffic reports required by § 43.61(c) of this chapter. 

(5) With respect to regulatory classification under § 63.10, any applicant that certifies that it is or has an affiliation with a foreign carrier in a named foreign country and that desires to be regulated as non-dominant for the provision of particular international telecommunications services to that country should provide information in its application to demonstrate that it qualifies for non-dominant classification pursuant to § 63.10.

(i) Each applicant shall certify that the applicant has not agreed 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 adversely in the U.S. market and will not enter into such agreements in the future.

* * * * *

15. Section 63.21 is amended by revising the section heading and paragraph (a), and adding new paragraphs (i) and (j) to read as follows:

§ 63.21 Conditions applicable to all international Section 214 authorizations. * * * * *

(a) Each carrier is responsible for the continuing accuracy of the certifications made in its application. Whenever the substance of any such certification is no longer accurate, the carrier shall as promptly as possible and in any event within thirty days file with the Secretary in duplicate a corrected certification referencing the FCC File No. under which the original certification was provided. The information may be used by the Commission to determine whether a change in regulatory status may be warranted under § 63.10. See also § 63.11.

* * * * *

(i) Subject to the requirement of § 63.10 that a carrier regulated as dominant along a route must provide service as an entity that is separate from its foreign carrier affiliate, and subject to any other structural-separation requirement in Commission regulations, an authorized carrier may provide service through any wholly owned subsidiaries without seeking additional Commission authorization, provided that this provision shall not be construed to authorize the provision of service by any entity barred by statute or regulation from itself holding an authorization or providing service.

(j) An authorized carrier that changes its name shall notify the Commission by letter filed with the Secretary in duplicate within 30 days of the name change. Such letter shall reference the FCC File No. under which the carrier’s authorizations were granted.

* * * * *

16. Sections 63.22 through 63.25 are added to read as follows:

§ 63.22 Facilities-based international common carriers.

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

(a) A carrier authorized under § 63.18(e)(1) may provide international facilities-based services to international points for which it qualifies for non-dominant regulation as set forth in § 63.10, except in the following circumstance: If the carrier is or is affiliated with a foreign carrier in a destination market and the Commission has not determined that the foreign carrier lacks sufficient market power in the destination market to affect competition adversely in the U.S. market (see § 63.10(a)), the carrier shall not provide service on that route unless it has received specific authority to do so under § 63.18(e)(4).

(b) The carrier may provide service using half-circuits on any appropriately licensed U.S. common carrier and non-common carrier facilities (under either Title III of the Communications Act of 1934, as amended, or the Submarine Cable Landing License Act, 47 U.S.C. §§ 34–39) that do not appear on an exclusion list published by the Commission. Carriers may also use any necessary non-U.S.-licensed facilities, including any submarine cable systems, that do not appear on the exclusion list. Carriers may not use U.S. earth stations to access non-U.S.-licensed satellite systems unless the Commission has specifically approved the use of those satellites and so indicates on the exclusion list. Carriers may not operate U.S. switched services over its authorized facilities-based private lines if and only if the country at the foreign end of the private line appears on a Commission list of countries to which the Commission has authorized the provision of switched services over private lines. See § 63.16. If at any time the Commission finds that the country no longer provides equivalent resale opportunities or that market distortion has occurred in the routing of traffic between the United States and that country, the carrier shall comply with enforcement actions taken by the Commission.

(2) The carrier may use its authorized private line facilities to provide switched basic services in circumstances where the private line facility is interconnected to the public switched network on only one end—either the U.S. end or the foreign end—and where the carrier is not operating the facility in correspondence with a carrier that directly or indirectly owns the private line facility in the foreign country at the other end of the private line.

(h) The carrier shall file annual international circuit status reports as required by § 43.82 of this chapter.

(i) The authority granted under this part is subject to all Commission rules and regulations and any conditions or limitations stated in the Commission’s notice or order that serves as the carrier’s Section 214 certificate. See § 63.12.
§ 63.23 Resale-based international common carriers.

The following conditions apply to carriers authorized to resell the international services of other authorized carriers:

(a) A carrier authorized under § 63.18(e)(2) may provide resold international services to international points for which the applicant qualifies for non-dominant regulation as set forth in § 63.10, except that the carrier may not provide any of the following services unless it has received specific authority to do so under § 63.18(e)(4):

(i) Switched resold services to a non-WTO Member country where the applicant is or is affiliated with a foreign carrier; and

(ii) Switched or private line services over resold private lines to a destination market where the applicant is or is affiliated with a foreign carrier and the Commission has not determined that the foreign carrier or the country to which the services are offered has sufficient market power in the destination market to affect competition adversely in the U.S. market (see § 63.10(a)).

(b) The carrier may not resell the international services of an affiliated carrier regulated as dominant on the route to be served unless it has received specific authority to do so under § 63.18(e)(4).

(c) Except as provided in paragraph (b) of this section, the carrier may resell the international services of any authorized common carrier, pursuant to that carrier's tariff or contract duly filed with the Commission, for the provision of international basic switched, private line, data, television and business services to all international points.

(d) The carrier may provide switched basic services over its authorized resold private lines if and only if the country at the foreign end of the private line appears on a Commission list of countries to which the Commission has authorized the provision of switched services over private lines. See § 63.16. If at any time the Commission finds that the country no longer provides equivalent resale opportunities or that market distortion has occurred in the routing of traffic between the United States and that country, the carrier shall comply with enforcement actions taken by the Commission.

(e) Any party certified to provide international resold private lines to a particular geographic market shall report its circuit additions on an annual basis. Circuit additions should indicate the specific services provided (e.g., IMTS or private line) and the country served. This report shall be filed on a consolidated basis not later than March 31 for the preceding calendar year.

(f) The authority granted under this part is subject to all Commission rules and regulations and any conditions or limitations stated in the Commission's public notice or order that serves as the carrier's Section 214 certificate. See §§ 63.12, 63.21.

§ 63.24 Pro forma assignments and transfers of control.

(a) Definition. An assignment of an authorization granted under this part or a transfer of control of a carrier authorized under this part to provide an international telecommunications service is a pro forma assignment or transfer of control if it falls into one of the following categories and, together with all previous pro forma transactions, does not result in a change in the carrier's ultimate control:

(1) Assignment from an individual or individuals (including partnerships) to a corporation owned and controlled by such individuals or partnerships without any substantial change in their relative interests;

(2) Assignment from a corporation to its individual stockholders without effecting any substantial change in the disposition of their interests;

(3) Assignment or transfer by which certain stockholders retire and the interest transferred is not a controlling one;

(4) Corporate reorganization that involves no substantial change in the beneficial ownership of the corporation;

(5) Assignment or transfer from a corporation to a wholly owned subsidiary thereof or vice versa, or where there is an assignment from a corporation to a corporation owned or controlled by the assignor stockholders without substantial change in their interests; or

(6) Assignment of less than a controlling interest in a partnership.

(b) A pro forma assignment or transfer of control of an authorization to provide international telecommunications service is not subject to the requirements of § 63.18. A pro forma assignee or a carrier that is the subject of a pro forma transfer of control is not required to seek prior Commission approval for the transaction. A pro forma assignee must notify the Commission no later than 30 days after the assignment is consummated. The notification may be in the form of a letter, and it must contain a certification that the assignment was pro forma as defined in paragraph (a) of this section and, together with all previous pro forma transactions, does not result in a change of the carrier's ultimate control. A single letter may be filed for an assignment of more than one authorization if each authorization is identified by the file number under which it was granted.

§ 63.25 Special procedures for non-dominant international common carriers.

(a) Any party that would be a non-dominant international communications common carrier is authorized to provide facilities-based international services, subject to § 63.22, between the United States and all international points, except that this paragraph shall not authorize the party to provide service between the United States and any country where an affiliated foreign carrier operates.

(b) Any party that would be a non-dominant international communications common carrier is authorized to provide facilities-based international services, subject to § 63.23, between the United States and all international points, except that this paragraph shall not authorize the party to provide service between the United States and any country where an affiliated foreign carrier operates.

(c) Within 30 days of commencing service pursuant to paragraph (a) or (b), the party shall notify the Commission by letter addressed to the Chief, International Bureau, that it has commenced providing service pursuant to § 63.25 of the Commission's rules. Such letter shall include the applicable information and certifications described in § 63.18.

(d) Notwithstanding paragraphs (a) and (b), the Commission reserves the right to condition or revoke the authorization of any entity for a violation of the Commission's rules or policies, and such condition or revocation shall be effective against all successors, transferees, or assigns, as ordered by the Commission.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 3

[IB Docket No. 98-96, FCC 98-123]


AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communication Commission adopted a Notice of