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1989 WL 512754 (F.C.C.), 4 F.C.C.R. 6622
(Cite as: 1989 WL 512754 (F.C.C.))

DA 89-1020

*1 In the Matter of
CICI, INC.
FTC COMMUNICATIONS, INC.
OVERSEAS TELECOMMUNICATIONS, INC.
MCI INTERNATIONAL, INC.
WORLD COMMUNICATIONS, INC.
FEDEX INTERNATIONAL TRANSMISSION CORPORATION

Applications for Authority to Operate Facilities in the Private Transatlantic Telecommunications Cable System for the Provision of Authorized Common Carrier Services to the United Kingdom, the Republic of Ireland and Bermuda and Points Beyond.

File No. I-T-C-89-103
File No. I-T-C-89-104
File No. I-T-C-89-110
File No. I-T-C-89-121
File No. I-T-C-89-134
File No. I-T-C-89-135

MEMORANDUM OPINION, ORDER AND AUTHORIZATION

Adopted: August 22, 1989; Released: August 30, 1989

By the Chief, International Facilities Division:

1. The Commission has under consideration the above-captioned applications requesting authority under Section 214 of the Communications Act, as amended, and Section 63.01 of the Commission's Rules, to acquire and operate capacity in the Private Transatlantic Cable System (PTAT cable system) [FN1] for the provision of authorized common carrier services between the United States and the United Kingdom, the Republic of Ireland, Bermuda, and points beyond and to acquire and operate facilities as may be necessary to extend capacity in the PTAT cable system. File Nos. I-T-C-89-103 and I-T-C-89-104 were placed on public notice on May 10, 1989; File No. I-T-C-89-110 was placed on public notice on May 24, 1989; File No. I-T-C-89-121 was placed on public notice on June 28, 1989; and File Nos. I-T-C-89-134 and I-T-C-89-135 were placed on public notice on July 12, 1989. No comments were filed in response to these applications.

I. THE APPLICATIONS

2. CICI, Inc. (CICI) is a corporation organized and existing under the laws of the state of Delaware, doing business as Contel ASC International Division. CICI is engaged in the business of furnishing international telecommunications services and is a non-dominant international common carrier. Pursuant to an agreement between CICI and Mercury Communications Ltd. (Mercury), to jointly hold up to 120 Minimum Assignable Units of Ownership (MAUOs) [FN2] in PTAT-1 for the joint provision of authorized services between the United States and the United Kingdom, CICI herein requests authority to acquire (by lease or an Indefeasible Right of Use (IRU) basis) and operate such capacity, and the

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appropriate connecting facilities, for the provision of its authorized common carrier services. CICI maintains that the proposed acquisition will not result in any significant economic harm to carriers owning and using existing common carrier transmission facilities nor will it impair services to the public. It states that the facilities covered by this application will be used to supplement its existing facilities.

3. FTC Communications, Inc. (FTCC) is a corporation organized and existing under the laws of the state of Delaware, with its principal place of business in New York, New York. FTCC is a non-dominant international common carrier in its provision of all international services to all points, except that it remains dominant in its provision of all common carrier services with France. It presently provides authorized services to the points reached via the PTAT cable system. FTCC's application requests authority to: acquire by IRU and operate a one-half interest in two DS-2 circuits [6 megabits per second (Mb/s) circuits] [FN3] in PTAT-1 for its provision of authorized common carrier services. Mercury has agreed to provide the matching portion of the facilities between the United States and the United Kingdom. FTCC will pay PSI the sum of not more than \$2,150,000.00 per one-half interest in one DS-2 circuit, plus annual upkeep, and will pay the tariffed rate of a domestic carrier for the domestic facilities. [FN4] It maintains that the operation of the facilities requested is not expected to require any additional operating, technical or maintenance personnel. It states that because capacity in other common carrier systems is limited, both cable and satellite, PTAT-1 is the best available source for FTCC's current transatlantic fiber-optic capacity requirements.

*2 4. Overseas Telecommunications, Inc. (OTI) is a corporation organized and existing under the laws of the state of Delaware, with its principal place of business in Alexandria, Virginia. OTI is a non-dominant international common carrier currently providing authorized common carrier services to the points reached via the PTAT cable system. OTI requests authorization to acquire initially a one-half interest one DS-3 circuit [45 Mb/s circuit] [FN5] in PTAT-1 for the provision of its authorized common carrier services. Specifically, it plans to utilize two T1 circuits [1.544 Mb/s circuits] of the capacity for the provision of service to the Republic of Ireland, one T1 for the provision of service to Bermuda, and the balance of the capacity for services to the United Kingdom. The purchase price for the capacity had not yet been established at the time of OTI's application. OTI states that the capacity it seeks herein will be used to supplement its existing facilities. It further states that the acquisition of a one-half interest in one DS-3 facility will have an insignificant impact on existing and planned North Atlantic facility operators.

5. MCI International, Inc. (MCII) is a corporation organized and existing under the laws of the state of Delaware. MCII is a non-dominant international common carrier currently providing authorized common carrier services to the points reached via the PTAT cable system. MCII requests authority to acquire on an IRU and/or lease basis, as appropriate, a one-half interest in one E-1 circuit [2.048 Mb/s circuit] [FN6] in PTAT-1 to supplement its existing facilities for the provision of services that MCII is now or may hereafter be authorized to provide to the points reached via the PTAT cable system. Mercury will provide the matching portion of the facilities between the United States and the United Kingdom.

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6. World Communications, Inc. (Worldcom) is a corporation organized and existing under the laws of the state of New York, with its principal place of business in New York, New York. Worldcom is a dominant international common carrier and currently provides authorized common carrier services to the points reached via the PTAT cable system. Worldcom seeks authority to: acquire by IRU and operate a one-half interest in two DS-2 circuits in PTAT-1 between the United States and the United Kingdom; acquire by IRU and operate a one-half interest in one E-1 circuit in PTAT-1 between the United States and Ireland; and acquire by IRU and operate a one-half interest in one E-1 circuit in PTAT-1 between the United States and Bermuda. Worldcom will utilize such facilities for its provision of authorized common carrier services. Mercury has agreed to provide the matching PTAT-1 capacity between the United States and the United Kingdom. Cable & Wireless (C & W), Bermuda, and Telecom Eireann, Worldcom's correspondent in Bermuda and Ireland, respectively, have agreed to provide matching PTAT-1 capacity and appropriate connecting facilities, within Bermuda and Ireland, respectively. Worldcom will pay PSI the sums of not more than \$2,150,000.00 per one-half interest in one DS-2 circuit to the United Kingdom, \$720,000.00 for a one-half interest in one E-1 circuit to Ireland, and \$350,000.00 for a one-half interest in one E-1 circuit to Bermuda, plus annual maintenance, and will pay the tariff or contract rate of a domestic supplier for the domestic facilities. [FN7]

*3 7. Fedex International Transmission Corporation (Fedex) is a corporation organized and existing under the laws of the state of Delaware, with its principal place of business located in Memphis, Tennessee. Fedex is a non-dominant international common carrier currently providing authorized services to the points reached via the PTAT cable system. Fedex requests authority to acquire by IRU and operate a one-half interest in two DS-1 circuits in PTAT-1 between the United States and the United Kingdom.

II. DISCUSSION

8. In 1985, the Commission adopted its private submarine cable policy to promote competition in the provision of international facilities. [FN8] It determined that an increase in competition in the provision of facilities would stimulate technology and service development to the benefit of international telecommunications users. The Commission granted PSI, formerly Tel-Optik Ltd., a cable landing license to land and operate the PTAT cable system between the United States and the United Kingdom and to sell or lease capacity in the PTAT cable system on a non-common carrier basis. [FN9] The Commission did not preclude the possibility that common carriers would be permitted to acquire capacity in the PTAT cable system for the provision of their services. It stated that it would require carriers interested in acquiring capacity in PTAT to seek authority under Section 214 of the Communications Act. [FN10] However, the Commission emphasized that private cable systems shall succeed or fail on their own merits and not through Commission action that would guarantee common carrier use of any system.

9. As a general matter, we find that the grant of the applications herein will promote the policy aims of the Commission's Private Submarine Cable Decision and, therefore, will be in the public interest. In a recent grant of US Sprint's application to provide common carrier services over PTAT-1, the Common Carrier Bureau found that the use of a portion of the PTAT-1 cable system for

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the provision of common carrier services will enhance the viability and credibility of PTAT-1 as an alternative to common carrier facilities. [FN11] Such use will facilitate the introduction of competition in the provision of international transmission facilities. Indeed, the Commission has made it clear that the introduction of facilities-based competition into a market is a significant and positive step that is beneficial to the public. [FN12] Such competition will give service providers greater choice in selecting facilities and thus enable them to maintain, or improve and enhance, the economical and efficient provision of their services to the public. The opportunity to choose between facilities will further enable service providers to be more responsive to customer needs in terms of price, service quality, and service availability. The proposals contained in the applications before us, to convert a portion of PTAT-1 capacity to common carriage, will result in these types of public benefits.

*4 10. In reaching this determination, we find that the applicants have provided the information necessary for us to grant their applications. [FN13] In addition, we find that the circumstances surrounding the applications here do not raise an economic impact issue. [FN14] Indeed, CICI, OTI, and MCII explicitly state that the private cable capacity that they seek to convert for common carriage will be used to supplement, not divert, their existing traffic. All of the carriers will continue to use their current cable and satellite facilities for the provision of common carrier traffic. Moreover, no party has filed comments arguing that an adverse economic impact would result from their use of PTAT-1 capacity for common carriage. Therefore, we find that when the applications are viewed individually, or even when they are viewed jointly, the factors presented in this case do not warrant consideration of an economic impact issue.

11. Upon consideration of the applications before us, we find that the authorization of the facilities requested would serve the public interest.

III. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED, pursuant to Section 214 of the Communications Act of 1934, as amended, that the applications of CICI (File No. I-T-C-89- 103), FTCC (File No. I-T-C-89-104), OTI (File No. I-T-C-89-110), MCII (File No. ~~I-T-C-89-121~~), Worldcom (File No. I-T-C-89-134), and Fedex (File No. I-T-C-89-135), **ARE GRANTED**, subject to the following terms, conditions and limitations.

13. CICI is authorized to:

(a) acquire on an IRU and/or lease basis, as appropriate, and operate a one-half interest in up to 120 MAUOs in PTAT-1 for its provision of authorized common carrier services between the United States and the United Kingdom, the Republic of Ireland, Bermuda, and points beyond; and

(b) extend these facilities as may be necessary through appropriate domestic connecting facilities.

14. FTCC is authorized to:

(a) acquire by IRU and operate a one-half interest in two DS-2 circuits in the PTAT cable system for its provision of authorized common carrier services between the United States and the United Kingdom, the Republic of Ireland, Bermuda, and points beyond; and

(b) extend these facilities as may be necessary through appropriate domestic connecting facilities.

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15. OTI is authorized to:

(a) acquire on an IRU and/or lease basis, as appropriate, and operate a one-half interest in one DS-3 circuit in PTAT-1 for its provision of authorized common carrier services between the United States and the United Kingdom, the Republic of Ireland, Bermuda, and points beyond; and

(b) extend these facilities as may be necessary through appropriate domestic connecting facilities.

16. MCII is authorized to:

(a) acquire on an IRU and/or lease basis, as appropriate, a one-half interest in one E-1 circuit in PTAT-1 for its provision of authorized common carrier services between the United States and the United Kingdom, the Republic of Ireland, Bermuda, and points beyond; and

*5 (b) extend these facilities as may be necessary through appropriate domestic connecting facilities.

17. Worldcom is authorized to:

(a) acquire by IRU and operate a one-half interest in two DS-2 circuits in PTAT-1 for its provision of authorized common carrier services between the United States and the United Kingdom, and points beyond;

(b) acquire by IRU and operate a one-half interest in one E-1 circuit in PTAT-1 for its provision of authorized common carrier services between the United States and the Republic of Ireland, and points beyond;

(c) acquire by IRU and operate a one-half interest in one E-1 circuit in PTAT-1 for its provision of authorized common carrier services between the United States and Bermuda, and points beyond; and,

(d) extend these facilities as may be necessary through appropriate domestic connecting facilities.

18. Fedex is authorized to:

(a) acquire by IRU and operate a one-half interest in two DS-1 circuits in PTAT-1 for its provision of authorized common carrier services between the United States and the United Kingdom, the Republic of Ireland, Bermuda, and points beyond; and

(b) extend these facilities as may be necessary through appropriate domestic connecting facilities.

19. IT IS FURTHER ORDERED that the authorization issued to FTCC herein is subject to the terms and conditions set forth in FTC Communications, Inc., File No. I-S-P-89-003, DA 89-813 (released July 13, 1989).

20. IT IS FURTHER ORDERED that these authorizations are issued subject to the terms and conditions of any license issued to PSI herein under the act entitled "An Act relating to the landing and operation of submarine cables in the United States" (47 U.S.C. §§ 34-39).

21. This order is issued under section 0.291 of the Commission's Rules and is **effective upon release.** Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (See Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li

Chief, International Facilities Division

FNI The PTAT cable system consists of two transatlantic fiber optic submarine

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cables and dedicated fiber optic terrestrial facilities operating between the United States and the United Kingdom. The first cable, PTAT-1, is scheduled to become operational in mid-1989. The PTAT-1 cable also consists of spurs to Bermuda and the Republic of Ireland. See Cable Landing License, File Nos. I-S-C-L-84-002 and I-S-C-L-84-003, Mimeo No. 4618 (released May 17, 1985); In the Matter of Tel-Optik, Limited, 100 FCC2d 1033 (1985) (hereinafter Private Submarine Cable Decision).

On March 9, 1989, United Telecommunications, Inc. (UTI), Private Transatlantic Telecommunications Systems, Inc. (PSI) and the Trustees of PSI entered into a Stock Purchase Agreement under which UTI would purchase the stock of PSI in its entirety. UTI, which holds an 80.1 percent interest in US Sprint has assigned its rights and obligations under the Stock Purchase Agreement to US Sprint. Under the terms of the transfer of control PSI continues to be the licensee and owner of the cable. Therefore, acquisitions of PTAT capacity are being made from PSI. See Private Transatlantic Telecommunications System, Inc., 4 FCCRcd 5077 (Com.Car.Bur.1989) (hereinafter Transfer of Control Decision). The applications discussed herein request authority for common carrier use of capacity in PTAT-1.

FN2 A MAUO is the unit of ownership designated as the minimum, practical unit of ownership, consisting of 73,684.656 bits per second. A MAUO consists of 64,000 usable bits per second, with the additional 9,684.656 bits per second required for multiplexing purposes. A MAUO is also designated as a DS-0 circuit [64 Kilobits per second (Kb/s) circuit].

FN3 This capacity is equivalent to 180 DS-0 circuits [64 Kb/s circuits], or about 1.1 percent of the total PTAT-1 capacity.

FN4 Cost information is a relevant factor in review of Section 214 applications filed by dominant carriers. Cf. US Sprint Communications Company Limited Partnership, File No. I-T-C-89-084, DA 89-940 (Com.Car.Bur., released August 14, 1989) ("... cost information serves no useful purpose where the applicant is a non-dominant carrier, not rate base regulated, has no market power, and is therefore incapable of burdening customers with the cost of underutilizing facilities.")

FN5 This capacity is equivalent to 630 DS-0 circuits [64 Kb/s circuits], or about 3.7 percent of the total PTAT-1 capacity.

FN6 One E-1, or DS-1, circuit is equivalent to 30 DS-0 circuits, or about .2 percent of the total PTAT-1 capacity.

FN7 See supra note 4.

FN8 Private Submarine Cable Decision, 100 FCC2d 1033.

FN9 Cable Landing License, File Nos. I-S-C-L-84-002 and I-S-C-L-84-003, Mimeo No. 4618 (released May 17, 1985).

FN10 This requirement was restated in the International Competitive Carrier decision, where the Commission determined that it would require non-dominant carriers to file applications to acquire capacity from any future private cable sources. International Competitive Carrier Policies, 102 FCC2d 812, 845 (1985)

FN11 In the Matter of US Sprint Communications Company Limited Partnership, Memorandum, Opinion, Order and Authorization, File No. I-T-C-89-084, DA 89- 940 (Com.Car.Bur., released August 14, 1989).

FN12 See also In the Matter of Establishment of Satellite Systems Providing

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International Communications, Report and Order, CC Docket No. 84-1299, 101 FCC2d 1046 (1985) (hereinafter Separate Satellite Systems Decision).

FN13 The Commission places no special burdens on any carrier making an application for private cable capacity. It requires carriers to provide the information required by the Commission's rules to be contained in a Section 214 application. See Pacific Telecom, Inc. Request for Clarification of Policies Concerning Use of Independent Cables, File No. ISP-89-002, 4 FCCRcd 4454 (1989) (hereinafter Clarification Order).

FN14 The Commission stated that it has authority under its public interest mandate under Section 214 to consider sua sponte any economic impact issues, including traffic diversion issues, that may be raised in an application by a common carrier to acquire private cable capacity or to consider such issues when raised by third parties filing comments in response to an application. However, the Commission has stated that it does not anticipate that common carrier acquisition of private cable capacity will normally give rise to such issues. Even if an applicant seeks to acquire a substantial amount of private cable capacity and to offload capacity on a common carrier cable or change a prior commitment for use of capacity in planned common carrier facilities, the Commission stated that the presence of these factors would not be conclusive evidence of economic harm. The Commission further stated that the "[r]esolution of any economic impact issues that may arise, and a determination of whether grant of the application would serve the public interest, would be dictated by the circumstances of the particular case before us." Clarification Order, 4 FCCRcd at 4456.

FCC

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