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FCC 90-378

*1 In the Matter of
AMERICAN TELEPHONE AND TELEGRAPH COMPANY GTE HAWAIIAN TELEPHONE COMPANY, INC.
MCI INTERNATIONAL, INC.
TRT/FTC COMMUNICATIONS CORPORATION
US SPRINT
COMMUNICATIONS COMPANY LIMITED PARTNERSHIP
WORLD COMMUNICATIONS, INC.

Joint Application for Authorization Under Section 214 of the Communications Act of 1934, as Amended, to Construct, Acquire Capacity in and Operate a High Capacity Digital Submarine Cable System Between Hawaii and New Zealand

File No. **I-T-C-90-072**

Adopted: November 8, 1990; Released: December 10, 1990

MEMORANDUM OPINION, ORDER AND AUTHORIZATION

****7331** By the Commission:

1. The Commission has under consideration the above-captioned Joint Application filed on March 15, 1990, by American Telephone and Telegraph Company (AT & T), GTE Hawaiian Telephone Company Incorporated (HTC), MCI International, Inc. (MCII), TRT/FTC Communications, Inc. (TRT/FTC), [FN1] US Sprint Communications Company Limited Partnership (US Sprint) and World Communications, Inc. (Worldcom) (hereinafter the Joint Applicants). The Joint Applicants seek authority, pursuant to Section 214 of the Communications Act of 1934, as amended, [47 U.S.C. § 214](#), to construct and operate a high capacity digital optical fiber submarine cable system, known as the PacRimEast cable system (PacRimEast), extending between Keawaula, Hawaii in the United States on the north and Takapuna, New Zealand on the south. PacRimEast will be jointly owned by twenty-three telecommunications administrations and carriers, including the Joint Applicants. The Joint Applicants propose that PacRimEast will be in service in the first quarter of 1993.

2. The Joint Applicants also seek authority to (1) acquire capacity in PacRimEast; (2) acquire by lease such extension facilities as may be required to extend the capacity in PacRimEast; (3) activate and operate capacity in PacRimEast and the aforementioned extension facilities for the provision of their respectively authorized telecommunications services; and (4) convey to their correspondents or to non-owners, on an indefeasible right of user (IRU) basis, half-interests in certain capacity currently assigned to a Joint Applicant to permit said IRU recipients to provide their authorized services over PacRimEast.

1990 WL 602936 (F.C.C.), 68 Rad. Reg. 2d (P & F) 915, 5 F.C.C.R. 7331, 5 FCC Rcd. 7331
 (Cite as: 1990 WL 602936 (F.C.C.), 5 FCC Rcd. 7331)

3. The Joint Application was placed on public notice on March 21, 1990. A petition to deny was filed by Pan American Satellite (PAS) and comments were filed by the State of Hawaii. AT & T and HTC, individually, filed reply comments in response to State of Hawaii, and TRT/FTC filed a letter opposing PAS' petition. The State of Hawaii filed responsive comments to AT & T's reply. [FN2]

I. THE APPLICATION

4. The Joint Applicants will use PacRimEast to supplement their existing facilities in the provision of service that each applicant presently is furnishing or subsequently may furnish between the United States and New Zealand and Australia. PacRimEast will interconnect with the respective domestic networks in the United States and New Zealand and will be extended by suitable facilities to the borders of other countries participating in PacRimEast or to the terminals of other international communications systems, including other cable terminals and satellite earth stations. [FN3]

*2 5. The Construction and Maintenance Agreement (C & MA) for PacRimEast was initiated on September 29, 1989. The cable system consists of three segments: Segments A and C are, respectively, the cable stations at Takapuna, New Zealand and Keawaula, Hawaii. Segment B consists of the whole of the submarine cable system provided between and including the System Interfaces at Segments A and C. The System Interface is defined as the nominal 140 Megabits per second (Mbits/s) digital input/output ports on the digital distribution frame (excluding the digital distribution frame itself) where the 139,264,000 bits per second digital line section connects with other transmission facilities or equipment.

6. The portions of the PacRimEast cable to be supplied by AT & T will use AT & T's latest 1.55 micron laser technology operating at 565 Mbits/s on each working pair. [FN4] The capacity of each fiber pair is provided in four 140 Mbit/s streams. Each 140 Mbit/s stream contains 1890 minimum assignable units of ownership (MAUOs). [FN5] The capacity of PacRimEast (Segment B) will be 7560 MAUOs. For voice services, digital circuit multiplication equipment can be employed to derive 150 virtual voice paths from a 30 MAUOs. To ensure the highest possible reliability, a standby transmission path, that is capable of being switched between repeaters, will also be provided. [FN6]

7. The estimated total cost of the PacRimEast cable system and the estimated Joint Applicants' combined share of the capital cost associated with each segment of the cable are as follows:

**7332 PacRimEast Cable System Estimated

Costs Segment	Total Cost	Combined Joint Applicants' Share
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	(Millions)	(Millions)
Segment B (Total Transmission Portion)	\$275.0	\$66.8
Segments A and C (Cable Stations)	4.6	1.1
TOTAL	\$279.6	\$67.9

The estimated cost does not include interest during construction, which the Joint Applicants estimate to be approximately \$9.3 million. [FN7] The cost of circuit multiplication equipment is not included since the equipment is not considered a part of the cable system and will be added as needed to serve future demand. About 85 percent of the cost of Segment B of the PacRimEast cable system will be on a fixed price basis, and the remaining 15 percent of the cost will be on a cost-incurred basis. Items such as the submarine cable, the repeaters, the terminal transmission equipment and the high voltage power plant will be furnished on a fixed price basis. Items such as the cable laying, system integration route survey, plowing and burial of the cable, project management, owners' inspection and amounts payable for customs duties and value added taxes will be handled on a cost-incurred basis.

*3 8. As indicated in Appendix 1, the Joint Applicants' collective voting interest in PacRimEast is 24.28%. Appendix 2 shows ownership interests and proportions of capital, operating and maintenance costs of Segment B, and the allocation of capital, operating and maintenance costs for use of Segments A and C. Appendix 3 (Schedule D of the C & MA) lists capacity assignments to the parties. PacRimEast capacity assignments are based on the forecasted demand of each of the Joint Applicants. The assignments contemplate each Joint Applicant's proposed use of circuit multiplication equipment. Both prior and subsequent to the System Ready for Service (RFS) date (first quarter 1993), carriers, including non-owners of PacRimEast, may acquire PacRimEast capacity on an IRU, lease or other mutually agreed upon basis.

9. The Joint Applicants state that PacRimEast is the first digital fiber optic submarine cable directly linking the Hawaii and New Zealand. It is part of an integrated common carrier network designed to meet specific service requirements for additional digital cable facilities in the POR and will provide additional digital connectivity to the HAW-4/TPC-3, G-P-T, TPC-4, H-J-K, Tasman-2 and PacRimWest cable systems. [FN8] PacRimEast will improve digital cable restoration capabilities via interconnection with Tasman-2 and PacRimWest. It would also provide the capability to utilize digital common carrier cable facilities for restoration of HAW-4/TPC-3 or TPC-4. The Joint Application also states that PacRimEast will enhance service reliability by providing multiple digital transmission paths to minimize the number of circuits affected by a service interruption. The Joint Applicants note that many customers, especially those involved with data transmission, are becoming increasingly sophisticated and insisting upon digital submarine cable back-up for their private networks and other custom services.

10. The Joint Applicants also claim that PacRimEast will satisfy the operational requirements of the Department of Defense (DoD) in the POR by providing additional necessary submarine cable capacity, media and path diversity, and redundancy. The Joint Applicants assert that PacRimEast will benefit the U.S. economy generally and the U.S. submarine cable industry specifically by promoting a leadership role for U.S. industry in lightwave submarine cable system technology, and will promote international comity.

II. DISCUSSION

11. The Joint Applicants seek authority to construct and operate the digital PacRimEast cable system to begin service in 1993 and meet their telecommunications capacity needs and those of their correspondents in the POR during the 1993-2005 time frame. We have reviewed the Joint Application under the public convenience and necessity standard of [Section 214](#) of the Communications Act of 1934, as amended, as well as PAS' petition to deny and the comments and reply comments filed by the State of Hawaii, the Joint Applicants and TRT/FTC. We conclude that implementation of the PacRimEast cable system in 1993 will serve the public interest, and certify that the public convenience and necessity require the construction and operation of PacRimEast as described herein. We grant the Joint Application subject to certain conditions. [FN9]

*4 A. The Need for the PacRimEast Cable System

12. [Section 214](#) of the Communications Act requires that the Commission make a finding that the public convenience and necessity will be served by authorization of the facilities requested in the Joint Application. The standard we employ is "whether the specific facility chosen and the use to be made of that facility are required by the public convenience and necessity." [FN10] In making this determination, we traditionally have considered such factors as demand, cost, media and route diversity, restoration, intramodal and intermodal competition, technological innovations and international comity. [FN11] We will consider these factors here, as well as those issues raised in response to the Joint Application.

1. Demand and Capacity

13. Under the traditional form of demand analysis that we have applied in authorizing the construction and operation of submarine cable systems, we conclude that projected circuit demand, along with other factors, supports the introduction of PacRimEast in 1993 to meet the telecommunications needs of the Joint Applicants and their correspondents in the POR during the 1993-2005 time frame.

14. The State of Hawaii asserts that the Commission should not authorize new facilities for the POR absent a convincing showing on the record that existing facilities are or will be fully, effectively and efficiently utilized and that any proposed new facilities are genuinely needed to meet realistically projected user

demand and cost/rate effectiveness. According to the State of Hawaii, the Joint Applicants failed to address entirely the subject of user demand and related cost/rate effectiveness. Should the Commission authorize the proposed PacRimEast cable facilities without such evidence, the State of Hawaii asks that the Commission determine that costs allocated to Hawaiian points will be pooled for ratemaking purposes with costs allocated to other U.S. points, particularly the Mainland. The State of Hawaii also notes that the public interest criteria addressed by the Joint Applicants are ****7333** mostly unrelated to consumer effects and there is no demonstration that the proposed facilities can provide services not currently available. Although the Joint Applicants describe capacity as "fully subscribed," the State of Hawaii states that there is no data showing current utilization and traffic on existing submarine cable or satellite facilities, projected utilization by type of facility or the basis for such projections.

15. The Joint Applicants assert that PacRimEast is justified on the basis of user demand and documented by the proprietary demand forecast and Circuit Activation Plan data submitted separately by AT & T and the other Joint Applicants under confidential cover as part of the application. They state that these data, based on current information, support the necessity of having PacRimEast operational in 1993. The Joint Applicants note that data describing usage is already available for all existing Pacific cable and satellite facilities through monthly Circuit Status Reports filed with the Commission. [FN12] Moreover, they state that user demand is determined not only by the need for raw transmission capacity, but also by such user requirements as digital technology, route and media diversity, digital cable restoration capability, security and cost-effectiveness. However, the State of Hawaii believes that where unique requirements exist, such as demanding service by a specific mode of transmission, the user with special requirements (technological, diversity or security related) should bear the differential in cost for such custom facilities and services.

*5 16. We disagree with the State of Hawaii that there is insufficient information on capacity and demand to evaluate the PacRimEast application. Currently, the U.S. ownership interests in ANZCAN analog cable facilities have been fully utilized and there is no digital cable facility available for service to either Australia or New Zealand. Attachment A to the Joint Application indicates that as of December 31, 1989, the Joint Applicants had activated a total of 2,139 circuits for service between the United States and Australia and New Zealand. Of this total, approximately 65% (1384) were routed via satellite facilities. Since there is no available capacity in existing cable facilities for service between the U.S. and these locations, all growth traffic will have to be routed via satellite facilities.

17. The Joint Applicants have provided their forecasted circuit demand for PacRimEast under requests for confidentiality. We have reviewed the data provided by the Joint Applicants and conclude that PacRimEast is also justified on the basis of demand. The data submitted projects that there will be a significant

increase in traffic as well as demand for both satellite and digital cable facilities. In order to accommodate the demand for digital cable facilities between the U.S. and New Zealand and Australia, the Joint Applicants propose to acquire a total of 1717 half-MAUOs in PacRimEast. The Joint Applicants project that by 1993, PacRimEast's first year of service, there will be a need for 581 half-MAUOs or approximately 34% of their total investment in PacRimEast. They project that the demand for digital cable facilities will increase to 969 half-MAUOs by 1997, approximately 56% of their total investment in PacRimEast. Based on these projections, we conclude that the proposed investment by the Joint Applicants in PacRimEast is reasonable. Investment in PacRimEast will: 1) allow growth traffic to be placed on cable facilities; 2) allow the Joint Applicants to satisfy the demand for digital cable facilities; and 3) enhance service reliability through increasing digital connectivity with an integrated common carrier network. [FN13]

18. Presence of Other Facilities. In considering the demand for the PacRimEast cable system, the State of Hawaii believes that the Commission should take into account the presence of other facilities, both private and common carrier. In particular, the State of Hawaii cites pending applications for US Sprint's "Hawaii Fiber Optic-1 Cable" and Transnational Telecom, Ltd.'s "Aloha Cable", the recently authorized TPC-4 and PPAC POR cables and the proposed HAW-5 Cable System. The Joint Applicants note that the Commission has held that private cables are not substitutes for other common carrier facilities. With respect to common carrier facilities, the Joint Applicants state that each of the proposed facilities will be considered in an appropriate [Section 214](#) proceeding. The State of Hawaii believes that acceptance of the Joint Applicants' position would encourage "piece-meal" consideration of new facilities without an overview. According to the State of Hawaii, such an approach would lead to excessive investments and duplication of user demand.

*6 19. We disagree with the State of Hawaii's suggestion that other private cable facilities should be taken into consideration in determining whether the PacRimEast cable system is justified. We have previously addressed and rejected this argument in considering applications for new common carrier cable facilities. In those instances, we determined that private cables would compete with, and not supplant, common carrier facilities. [FN14] Moreover, we do not see the relevance of the State of Hawaii's argument in the context of this application. Even if our policy allowed private cable facilities to be considered in addressing the need for additional common carrier facilities, the facilities cited by the State of Hawaii are incapable of providing service between Hawaii and either New Zealand or Australia. The Aloha Cable connects Hawaii to the U.S. Mainland. The PPAC Cable, also known as NPC, provides a direct connection between the U.S. Mainland and Japan.

20. With respect to other common carrier cables, we note that the need for additional facilities is considered in the context of a [Section 214](#) application proceeding. In this proceeding we have considered other common carrier facilities

in determining that there is a need for the PacRimEast cable system. Moreover, none of the common carrier cable referenced by the State of Hawaii has the capability to provide service between Hawaii and Australia and New Zealand. The Fiber Optic-1 cable connects the U.S. Mainland and Hawaii, while the TPC-4 cable system provides direct service between the U.S. Mainland and Japan.

21. The Effect of Price Caps Regulation. In addition to the showing of demand, current competitive conditions and regulatory approaches provide the Joint Applicants with the incentive to make rational economic decisions and not engage in unnecessary construction of facilities. [FN15] In light of these factors, we noted in authorizing the construction of the TPC-4 cable system that we are now able to give the Joint Applicants wider latitude in determining what facilities to construct and when to place such facilities in service. [FN16]

22. The State of Hawaii questions the effectiveness of price caps regulation in preventing unnecessary investment since it is only applicable to AT & T [FN17] and because it believes that the Joint Applicants have every incentive to ****7334** invest in new submarine cable facilities before the next review of price-capped rates or rate-of-return regulated rates. By investing now, the State of Hawaii asserts that AT & T can have these costs and investments added to its investment and cost base to justify the next generation of price caps. Thus, it views price caps regulation as having the same characteristics as rate-of-return regulation. Further, the State of Hawaii alleges that AT & T's recently capped international rates were never appropriately justified or examined on the basis of a Commission prescribed rate of return.

23. In their Reply Comments, the Joint Applicants view the State of Hawaii's suggestion that a carrier would purchase facilities for which it has no need and pass the burden on to ratepayers as ignoring the present economic reality of investment in a cable system. They note that if a carrier purchases an unneeded facility in today's competitive market, it makes an investment upon which it can earn no return. Moreover, they state that the "price caps" system of regulating AT & T provides an overwhelming disincentive to invest in unneeded facilities for under the price cap system, the risk of an investment, such as PacRimEast, is upon the investing carrier's shareholders and not upon its ratepayers

***7** 24. We disagree with the State of Hawaii's view of price caps regulation. In our TPC-4 Decision we stated that the price caps system of regulation is a disincentive for carriers to engage in the construction of unnecessary facilities since the burden of such investment would fall on stockholders and not ratepayers. [FN18] The same rationale is equally applicable here. AT & T is effectively restrained under price caps regulation from imprudent, unnecessary investment. The State of Hawaii's contention that price caps regulation provides AT & T with incentive to invest in new submarine cable facilities before the next price cap review is based on the faulty premise that such investment would be "rubber stamped" without appropriate review.

25. There is also no basis for questioning the efficacy of price caps regulation because it is not applicable to all of the Joint Applicants. We note that, with the exception of HTC, the remaining co-owners of the PacRimEast cable system are classified as non-dominant, which means that they do not possess market power. Therefore, any investment in unnecessary facilities would require them to be able to raise rates to recoup such investment. As a result, any non-dominant carrier that raises rates above those set by the marketplace to recover imprudent investments risks the loss of potential customers. [FN19] Finally, we note that this proceeding is not the proper vehicle for considering the State of Hawaii's suggestion that AT & T's recently capped international rates were never properly justified on the basis of a Commission prescribed rate of return.

26. The State of Hawaii also asserts that international rates are not yet wholly integrated with those of the rest of the United States and, since it has not had access to the Joint Applicants' demand forecasts, it fears that Hawaii may suffer the effect of disproportionate cost distribution from these facilities. The Joint Applicants assert that the State of Hawaii's comments on ratemaking are inappropriate in a [Section 214](#) authorization. They suggest that if the State of Hawaii feels special regulatory mechanisms are appropriate for Hawaii, it should pursue this through a rate proceeding. We agree. The State of Hawaii has not demonstrated that either current international rates are biased against Hawaii or that future rates may be biased because of unnecessary investment. The State of Hawaii's concern in this regard is based on its belief that the PacRimEast cable system is not justified based on demand. As noted above, we believe that the State of Hawaii's concerns regarding unnecessary investment in the PacRimEast cable system are unfounded in light of the demonstrated demand for the cable system, the existence of a competitive marketplace and current regulatory approaches. Any further concerns regarding rate integration are best addressed in the context of a rate proceeding. [FN20]

2. Cost Analysis

27. The Joint Application estimates the total costs of PacRimEast to be \$279.6 million, with the Joint Applicants' share to be \$67.9 million. In addition, it estimates that interest during construction will be \$9.3 million. The State of Hawaii asserts that the Joint Applicants' support for projected costs is conclusory and notes that the projections are not sufficiently detailed to permit acceptance by the Commission. According to the State of Hawaii, there is neither a showing with respect to the basis for the overall cost, nor a showing of fees, profits or reserves for contingencies. The Joint Applicants state that their cost support information is consistent with their best knowledge and that there is no reason for them to go beyond the customary level of detail, particularly in light of the Commission's recent statement that detailed analysis of facility costs previously conducted is no longer necessary in the present price caps environment. [FN21]

*8 28. We find the cost data provided by the Joint Applicants sufficient to support their application to construct PacRimEast. The Joint Application provides the total cost of PacRimEast, the Joint Applicants' share, the subsegment costs, the Joint Applicants' share of the subsegment costs, the percentages of fixed and cost-incurred costs, and the cost of a 64 Kbit/s half-circuit. The cost data submitted is similar in type to cost data previously submitted and accepted in other cable construction applications. In those cases, the cost data was found to be sufficient, and nothing has changed in the interim to warrant the submission of more detailed cost information.

29. We also note that the Joint Applicants' investment in PacRimEast will provide customers with the advantages of digital technology and increased capacity at significantly lower costs compared to existing analog cable facilities. For example, a 4 kHz half-circuit in the analog ANZCAN cable between Hawaii and New Zealand cost \$112,971, and \$90,857 between Hawaii and Australia. [FN22] In contrast, the cost for a 64 Kbit/s half-circuit in PacRimEast between Hawaii and New Zealand is \$39,500, approximately 35% of the cost of an ANZCAN analog 4 kHz half-circuit. Similarly, the combined cost for a 64 Kbit/s half-circuit in PacRimEast and the Tasman-2 cable between Hawaii and Australia is \$47,862, approximately 53% of the cost of an analog 4 kHz half-circuit in ANZCAN. [FN23]

3. Quality of Service

30. Media and Route Diversity. We previously have found that increasing media and route diversity to strengthen service reliability is of decisional significance in our public interest determination to authorize the construction of transoceanic facilities. [FN24] Media diversity enhances service reliability through the use of more than one transmission medium, satellite or cable, to carry a ****7335** correspondent's traffic. As a result, an increase in media diversity protects against the systemic failure of one medium. Route, or path, diversity enhances service reliability by increasing the number of independent routes that carry traffic to a given location. It is closely related to the ability to restore circuits in case of a facility failure. As a rule, the more independent routes serving a given location, the greater the ability to restore one that fails. Thus, an increase in route or path diversity is the natural consequence of the introduction of another facility into a region.

31. We conclude that the introduction of PacRimEast as proposed will enhance both media and route diversity. PacRimEast will enhance route diversity by adding another independent route between Hawaii and New Zealand and Hawaii and Australia via interconnection with Tasman-2. Through interconnection with HAW-5, an independent route is provided between the U.S. Mainland and New Zealand and Australia. Moreover, route or path diversity will be enhanced between the United States and Japan and Southeast Asia, in that PacRimEast through interconnection with Tasman-2, PacRimWest, HAW-5 and connecting cable systems will provide a separate transpacific route south of the HAW-4/TPC-3 and TPC-4 cable systems. Ser-

vice reliability would be improved since the number of circuits affected by a service interruption on a particular route or routes would be minimized and the ability to restore the failed facility via another digital cable facility would be enhanced.

*9 32. With respect to media diversity, as of December 31, 1989 the Joint Applicants were providing a total of 2139 circuits, consisting of 755 submarine cable and 1384 satellite circuits between the U.S. and Australia and New Zealand. Thus, a failure of satellite facilities could significantly disrupt services in the region. While the Commission has never specified what a preferable cable/satellite ratio would be, the addition of PacRimEast capacity would minimize the impact of a failure of satellite facilities in the region.

33. Restoration. Restoration pertains to the ability to maintain service in the event of a facility outage. The Joint Applicants state that PacRimEast will improve digital cable restoration capabilities via interconnection with the Tasman-2 and PacRimWest cable systems, which would provide the capability to utilize digital common carrier cable facilities for restoration of HAW-4/TPC-3 or TPC-4. In addition, the Joint Applicants note that many customers, especially those requiring data communications, are becoming increasingly sophisticated and are insisting on digital cable backup for their private networks and other custom services.

34. We find that PacRimEast will provide restoration capabilities that currently are unavailable by allowing for digital cable restoration via a self-healing (self-restoration) design. Restoration of HAW-4/TPC-3 currently is occurring through the use of INTELSAT capacity. Although the Commission has previously recognized that satellite capacity provides a satisfactory restoration alternative for cable, we also have recognized that absolute reliance on satellite facilities to meet restoration needs and increased demand may not be in the best interests of users that may have specific communications requirements that may best be accommodated by fiber optic cable facilities. [FN25] In light of these factors, we conclude that it is reasonable for the Joint Applicants to seek an alternative cable route that would allow for increased digital connectivity in the POR to increase restoration options for digital cable facilities.

4. Technological Innovations

35. PacRimEast will be the first digital fiber optic submarine cable directly linking Hawaii and New Zealand. In addition, PacRimEast, through interconnection with the Tasman-2 cable, will provide the first digital fiber optic capability between the U.S. and Australia. With the increasing demand for digital cable facilities, we find that introduction of digital fiber optic technology between the U.S. and New Zealand and Australia justifies the Joint Applicants' participation in PacRimEast. [FN26] The introduction of new technology is compelling since there are no cable systems serving these locations with available capacity.

5. Competition Considerations

36. Intermodal and Intramodal Competition. We previously have recognized that enhancing both intermodal and intramodal competition can be expected to spur providers of both international satellite and cable services to keep their services innovative and their prices low. [FN27] We find that introduction of PacRimEast will enhance intramodal competition in the POR and encourage both private and common carrier cable operators to innovate and price their offerings in a manner that is calculated to attract and retain customers. We also find that introduction of PacRimEast will increase intermodal competition with INTELSAT and potential separate satellite system providers and thereby spur existing providers of both cable and satellite capacity to respond competitively. Such competition will give service providers and other users greater choice in selecting facilities and thus will enable them to maintain, or improve and enhance, the economy and efficiency of their operations. The opportunity to choose among facilities further allows service providers to be more responsive to customer needs in terms of price, service quality, and service availability.

*10 37. Competitive Procurement. Although the State of Hawaii acknowledges that there may not be a reason to impose a particular procurement scheme on the Joint Applicants, it states that the Joint Applicants have failed to disclose the procurement practices they intend to use. In particular, the State of Hawaii asserts that the Joint Application does not account for the range of competitive costs suggested or proposed by alternate suppliers not among the Joint Applicants and makes no provision for the costs associated with awarding prime and subcontracts. AT & T and HTC note that PacRimEast procurement decisions are not matters on which the Joint Applicants can, by themselves, change because 17 of the 23 PacRimEast owners are carriers from outside the United States. They assert that contracts for procurement of the system will be awarded to those firms in the market best able to meet the requirements of PacRimEast in a cost-effective matter and the PacRimEast owners must have the flexibility in their day-to-day installation operations to secure quality products and services on a timely basis. In this regard, the Joint Applicants reference the procurement of the TPC-4 cable system in which the Commission did not specify a particular method for the selection of subcontractors.

38. We find no basis to question the procurement practices of the Joint Applicants. The Joint Applicants state that qualified suppliers will be afforded a reasonable opportunity **7336 to participate in the procurement of PacRimEast. The procurement of PacRimEast is therefore consistent with our goal to assure U.S. opportunity to participate in procurement and supply processes. [FN28] As the Joint Applicants note, the U.S.-supplied portions of HAW-4/TPC-3 used more than 65 subcontractors from 22 states. The Joint Applicants also anticipate that a multitude of subcontractors will participate in the construction or provision of materials for any portion of PacRimEast that will be supplied by AT & T. [FN29] Moreover, under price caps regulation, AT & T has the incentive to subcon-

tract with those suppliers that offer a competitive price. Given the existing incentives to subcontract in a cost-effective manner, we do not believe it is necessary to condition the grant of PacRimEast on further assurances of competitive procurement practices.

6. International Comity

39. Our decisions authorizing the construction and operation of transoceanic submarine cable systems historically have recognized that correspondent acceptance is an important public interest factor. [FN30] Twenty-three telecommunications entities and carriers, including those from 14 foreign countries, have agreed that the PacRimEast system design and 1993 service date will meet the service needs of their customers. Thus, we conclude that PacRimEast will promote international comity.

B. Other Issues

40. The Need for A Planning Proceeding. The State of Hawaii is concerned that the Joint Applicants fail to address or acknowledge previous Commission planning or authorization dockets for the POR. [FN31] Although the State of Hawaii concedes that the Commission can act without undertaking planning proceedings, it believes that the Commission has to continue to view applications in a broader planning perspective to ensure that ratepayers are not burdened with unnecessary facility investments. Of particular concern to the State of Hawaii is the fact that the POR Planning proceeding, which covered the 1995 time frame, did not contemplate the proposed cable or additional cable facilities.

*11 41. The Joint Applicants state that there is no need for them to address the POR Planning proceeding because the Commission has specifically determined that separate facilities planning dockets are not required as a matter of law and are not necessary as a matter of policy in the current competitive environment. [FN32] Further, they note that all of the facilities considered in the POR Planning proceeding have either been placed into operation or are in the final stages of construction, and the specific facility configuration considered in the POR Planning proceeding in 1985 is no longer at issue.

42. In authorizing the construction and operation of the TPC-4 Cable System, we addressed the issue of whether a planning process is required before authorization of new POR facilities. In the TPC-4 Decision we found that there is no requirement in the Communications Act that this Commission must undertake a facilities planning process before it considers a [Section 214](#) application to construct and operate a submarine cable system. Further, we stated that [Section 214](#) of the Act provides ample authority for Commission consideration of those factors that bear on a public interest, convenience and necessity determination. [FN33] Citing several recent developments, we concluded that we could now move away from a comprehensive planning process prior to authorizing the introduction of new facilities

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in the POR. First, we noted that the introduction of price caps regulation of AT & T significantly protects AT & T ratepayers from the results of potentially imprudent facilities investments. Second, we noted that the elimination of circuit distribution guidelines in favor of agreements between Comsat and AT & T and other carriers on the distribution of traffic between cable and satellite facilities and the introduction of competing private cable and satellite systems provide incentives for efficient investments in transmission facilities. In light of these developments, we found it unnecessary to engage in a facilities planning process before acting on the [Section 214](#) application to construct and operate the TPC-4 cable system. Nothing has changed in the interim, and the State of Hawaii has not pointed to any compelling reasons which would justify reinstating the planning process. Accordingly, we hereby reaffirm our previous findings on this subject.

43. PAS Petition to Deny. PAS does not oppose a grant of the PacRimEast cable system. Rather, PAS' petition to deny is directed solely to TRT/FTC's ownership interest in the cable and the relationship of TRT/FTC to France Telecom which has refused to engage in two-way service via PAS' separate satellite system. Although PAS has secured INTELSAT Article XIV(d) consultations for all of its services with many countries, it notes that France has been a prominent exception. According to PAS, despite clear customer interest in both data and video transmissions to and from France, France Telecom has consistently refused to consider any INTELSAT Article XIV(d) consultations for services beyond one-way video (U.S. to France). Thus, PAS argues, the French telecommunications market remains effectively closed to U.S. separate satellite systems. Since France Telecom holds a 14.9 percent interest in TRT/FTC through various subsidiaries and holding companies, PAS asserts that TRT/FTC should not be authorized to expand its operations in the United States during the pendency of its petition for reconsideration of the Common Carrier Bureau's FTCC Ruling. [FN34] It states that the Commission has authority to evaluate market access issues in acting on [Section 214](#) applications such as the instant application involving TRT/FTC.

*12 44. PAS' argument on this point is not new. In its FTCC Ruling, the Bureau concluded that FTCC (now TRT/FTC) should be classified as non-dominant in its provision of all international services to all points, [FN35] except that it would continue to be classified as dominant in its provision of all common carrier services with France. The FTCC Ruling conditioned the grant of non-dominant status to all points except France on the amendment of FTCC's existing [Section 214](#) authorization for switched voice services to France to include certain standards applicable to the access filings of dominant carriers. The FTCC Ruling also concluded that TRT should not be treated as a dominant carrier either generally or for the French market. PAS sought reconsideration of the FTCC ruling. During the pendency of its petition for reconsideration, PAS has filed several petitions to deny applications filed by TRT/FTC for the acquisition of facilities to provide its authorized services to various countries. In each instance, the Bureau found that PAS failed to explain why TRT/FTC should be considered to possess market

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power with countries other than France. In the context of this proceeding, PAS requests that the subject application be ****7337** denied with regard to participation by TRT/FTC or, at a minimum, held in abeyance pending final resolution of its petition for reconsideration of the FTCC Ruling.

45. On June 1, 1990, the Bureau released its FTCC Reconsideration Order, which affirmed the FTCC Ruling in all respects. [FN36] Specifically, the Bureau affirmed its earlier determination that FTCC does not fall strictly within the definition of a foreign-owned carrier. The Bureau also affirmed its finding that PAS has not provided any evidence to demonstrate that FTCC should be classified as a foreign-owned and, consequently, dominant carrier in its provision of international common carrier services solely because of the presence of an French Cables et Radio (FCR) representative director on the board of the holding company, ICH. PAS did not file an application for review of the FTCC Reconsideration Order; accordingly, its request for deferral pending resolution of that proceeding is moot. Even if TRT/FTC had been found to be dominant for services to countries other than France, PAS has not explained why, in this case, TRT/FTC's participation in PacRimEast should be denied. As the Bureau noted in the FTCC Reconsideration Order, while PAS may be correct that there has been little or no progress with France on issues of concern to PAS, there has been progress with France on other issues, such as lower accounting rates with U.S. carriers, which has continued. Accordingly, we deny PAS' request that we deny or hold in abeyance that portion of the application which relates to TRT/FTC's participation in PacRimEast.

III. CONCLUSION AND ORDERING CLAUSES

46. The instant application to construct and operate the PacRimEast optical fiber cable system will serve the public convenience and necessity. The proposed system is required to satisfy the service preferences and needs of users. Currently, the Joint Applicants have exhausted all available capacity in analog cable facilities serving Australia and New Zealand. Because of technological innovation and PacRimEast's direct route to New Zealand, the half-circuit cost for a 64 Kbit/s half-circuit in PacRimEast is approximately one-third of the cost for a 4 kHz half-circuit in the ANZCAN analog cable between Hawaii and New Zealand. The PacRimEast cable system will provide service quality benefits in terms of increased route and media diversity and restoration capability, and will enhance intermodal and intramodal competition. The proposed system also meets international comity concerns.

***13** 47. Based on the information provided by the Joint Applicants, we conclude that the grant of the requested authorizations will not have a significant effect on the environment as defined in Section 1.1307 of the Commission's Rules and Regulations implementing the National Environmental Policy Act of 1969, [42 U.S.C. §§ 4321-4335 \(1976\)](#). [FN37] Consequently, no environmental assessment is required to be submitted with this Joint Application by Section 1.1311 of the Commission's Rules.

48. Upon consideration of the Joint Application, we find that the present and future public interest, convenience and necessity require the construction and operation of the PacRimEast cable system as described herein.

49. Accordingly, IT IS ORDERED that the Joint Application, File No. **I-T-C-90-072**, of the Joint Applicants (AT & T, HTC, MCII, TRT/FTC, US Sprint and Worldcom) [FN38] is GRANTED, subject to the following terms, conditions and limitations, and the Joint Applicants are authorized to:

(a) construct and operate the PacRimEast Cable System as proposed herein;

(b) acquire and activate capacity in the PacRimEast Cable System, on an ownership basis, in accordance with the interests indicated in the MAUOs specified in Appendix 3;

(c) acquire capacity, by lease, in such connecting facilities as may be required to extend capacity in the PacRimEast Cable System;

(d) utilize digital circuit multiplication systems (DCMS) equipment to derive additional voice paths from the circuits (MAUOs) authorized herein in accordance with the appropriate Commission authorizations; and

(e) activate and operate capacity in the PacRimEast Cable System and aforementioned extension facilities for the provision of the Joint Applicants' authorized telecommunications services.

50. IT IS FURTHER ORDERED that when a given Joint Applicant seeks to acquire or transfer an ownership or IRU interest in the PacRimEast capacity, the reimbursement it receives shall be on the basis of depreciated original cost (or the pro-rated accumulated cost of such circuit if the systems are not then operational) or in conformance with such policy as the Commission shall develop in the future regarding the price at which IRUs will be made available.

51. IT IS FURTHER ORDERED that the Joint Applicants shall make available half-interests in the PacRimEast capacity to such present and future U.S. carriers as may be authorized by the Commission to acquire such capacity.

52. IT IS FURTHER ORDERED that the Commission retains jurisdiction to reallocate U.S. carriers' interests in capacity herein authorized, as the public interest may require to accommodate additional carriers or otherwise, with, where required, the concurrence of the foreign administration or carriers concerned, and, further, jurisdiction is retained by the Commission over all matters relating to the Joint Applicants' ownership, management, maintenance, and operation of the cable system as authorized herein, to assure the most efficient use not only of this cable system, but of all means of communications between the U.S. and Pacific Ocean Region.

*14 53. IT IS FURTHER ORDERED that the Commission retains jurisdiction to review

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the DCMS, multiplexing, and interworking arrangements and attribution of the costs thereof and to require such changes in the provision of these services and equipment as may be necessary.

54. IT IS FURTHER ORDERED that no Joint Applicant that is deemed a dominant carrier pursuant to the Commission's decision in CC Docket No. 85-107 [FN39] shall dispose of any interest in any PacRimEast capacity it is authorized to acquire in any way without prior authorization by the Commission.

55. IT IS FURTHER ORDERED that the Joint Applicants shall include PacRimEast facility use in the monthly Circuit Status Reports filed pursuant to the ****7338** Commission's Orders. These reports shall be filed no later than the 20th day of each month providing the information for the preceding month.

56. IT IS FURTHER ORDERED that PAS' Petition to Deny IS DENIED.

57. IT IS FURTHER ORDERED that this authorization is issued subject to the terms and conditions of any license issued to the Joint Applicants 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), covering the subject submarine cable, and shall become effective upon the acceptance of the aforementioned license by all such parties.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy

Secretary

FN1 By letter dated June 20, 1990 the Commission approved the pro forma transfer of control and assignment of licenses from FTCC to TRT/FTC. The transaction was consummated on June 29, 1990, which resulted in TRT/FTC as the sole surviving carrier. See File Nos. CSG-90-027-(5)AL and I-T-C-90- 067-TC.

FN2 Although AT & T did not indicate that its reply was filed on behalf of the Joint Applicants, the pleading clearly represents their position. Thus, all references herein to the Joint Applicants' position should be construed as including the views expressed in the Joint Application and AT & T's reply.

FN3 All applicants initially may not be certified to serve directly all territories that the facilities covered by the Joint Application are capable of serving. Each individual applicant proposing extensions of its services into such territories by means of PacRimEast will seek such appropriate authorization as may be required when it proposes to activate the facilities.

FN4 Although the supply contracts for PacRimEast have not been awarded by the PacRimEast Procurement Group, it is expected that AT & T will be awarded a contract to supply a portion of Segment B of the cable system. To the extent that AT & T

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participates in the construction of PacRimEast, it is expected that a multitude of U.S. subcontractors will participate in the construction or provision of materials for the AT & T portion of the project.

FN5 A MAUO is the Minimum Assignable Unit of Ownership and provides an equivalent digital channel operating at 64,000 bits per second and an additional 9,684,656 bits per second required for multiplexing.

FN6 The PacRimEast cable system will be buried on the continental shelves off the coasts of Hawaii and New Zealand, to protect the cable from damage due to fishing and trawler activities. The cable also will be armored and fish bite protected where required.

FN7 The Joint Applicants estimate the original capital cost of 64 kbits/s half-circuit (half-MAUO) in PacRimEast will be \$39,500. The cost per half-MAUO will further decrease as the Reserve Capacity is utilized by increasing the National Capacity. The National Capacity is the amount of the cable's capacity which is currently subscribed to. When the National Capacity reaches design capacity, the cost per half-MAUO will be approximately \$18,500.

FN8 See Appendix 4. Today, we also grant the Joint Applicants separate requests to construct and operate the HAW-5 and PacRimWest cable systems. The Tasman-2 cable will be considered at a later date.

FN9 In a separate decision, we also grant the Joint Applicants' request for a cable landing license in File No. S-C-L-90-003 pursuant to the Cable Landing License Act.

FN10 [AT & T et al., \(TAT-7 Order\), 73 FCC2d 248, 256 \(1979\).](#)

FN11 See, e.g., [AT & T et al. \(TAT-9 Order\), 4 FCCRcd 1129, 1131 \(Com.Car.Bur.1988\).](#) See also [Policies to be Followed in the Authorization of Common Carrier Facilities to Meet Pacific Telecommunications Needs during the Period 1981-1985 \(POR Planning\), 102 FCC2d 353, 355 \(1985\).](#)

FN12 The State of Hawaii disputes this point, noting that the Circuit Status Reports do not show usage or traffic carried over the subject facilities, but instead the quantity of circuits held and/or owned by each of the carriers without regard to use.

FN13 PacRimEast is designed as a part of an integrated common carrier network to meet specific service requirements for additional digital cable facilities in the POR, to provide additional digital connectivity with the HAW-4/TPC-3, G-P-T, TPC-4, H-J-K, Tasman-2 and PacRimWest cable systems. See Appendix 4.

FN14 See [Tel-Optik Limited \(Private Submarine Cable\), 100 FCC2d 1033, 1049 \(1985\); Pacific Telecom Cable, Inc., 2 FCCRcd 2686, 2690, n. 15 \(Com.Car.Bur](#)

1987); clarified, 4 FCCRcd 4454, 4455 (Comm.Car.Bur.1989); *Inquiry into Policies to be Followed in the Authorization of Common Carrier Facilities to Meet North Atlantic Needs During the 1991-2000 Period*, 3 FCCRcd 3979, 3989-90 (1988) (North Atlantic Facilities Planning).

FN15 See *Policy and Rules Concerning Rates for Dominant Carriers (Price Caps Order)*, CC Docket No. 87-313, 4 FCCRcd 2873 (1989).

FN16 See *American Telephone & Telegraph, et. al.*, 4 FCCRcd 8042, 8046 (1989) (TPC-4 Decision).

FN17 Price caps regulation also applies to HTC. See *Policy and Rules for Dominant Carriers*, CC Docket No. 87-313, para. 255 (FCC 90-314, released Oct. 4, 1990).

FN18 Id. at 8045.

FN19 See *International Competitive Carrier Policies*, 102 FCC2d 812, 829 (1985), recon. denied, 60 Rad.Reg.2d (P & F) 1435 (1986); *US Sprint Communications Company Limited Partnership*, 4 FCCRcd 6279, 6284 (Com.Car.Bur.1989).

FN20 In 1985, the Commission issued a Notice of Proposed Rule Making that terminated the inquiry into the compatibility of rate integration and competition for interstate communications between the contiguous states and Hawaii. At that time, the State of Hawaii also asserted that the Hawaii should not be disadvantaged by being singled out for a special rate structure. The State of Hawaii added that the rate integration policy, which it supported, had substantially achieved its objective of lowering rates between the noncontiguous points and the contiguous states. See *Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers*, 50 Fed.Reg 41714 (October 15, 1985).

FN21 See *TPC-4 Decision*, 4 FCCRcd at 8046.

FN22 These costs are in 1984 dollars.

FN23 The estimated cost for a 64 Kbit/s half-circuit in Tasman-2 is \$8,362. As the National Capacity of PacRimEast approaches the design capacity, the cost for a 64 Kbit/s half-circuit between Hawaii and New Zealand would decrease to \$18,500, approximately 16% of the cost of an ANZCAN analog 4 kHz half-circuit. Similarly, the combined cost for a 64 Kbit/s half-circuit in PacRimEast and the Tasman-2 cable between Hawaii and Australia would decrease to \$26,862, approximately 30% of the cost of an analog 4 kHz half-circuit in ANZCAN.

FN24 See *North Atlantic Facilities Planning*, 3 FCCRcd at 3986; *All America Cable and Radio Inc., et. al.*, 67 FCC2d 451, 469 (1978).

FN25 *North Atlantic Facilities Planning*, 3 FCCRcd at 3987.

FN26 A portion of PacRimEast will employ AT & T's latest 1.55 micron laser and 565

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Mbit/s technology. The 1.55 micron technology reduces the number of repeaters that would have been required with 1.3 micron laser technology. The reduced number of repeaters, in turn, results in cost savings.

FN27 North Atlantic Facilities Planning, 3 FCCRcd at 3989.

FN28 See Pacific Telecom Cable, Inc., 4 FCCRcd 8061, 8066 (1989).

FN29 While we rely solely on the record set forth above, we note that AT & T was awarded contracts in the sum of \$191 million to construct one-half of TPC-4. See FCC Press Release, October 16, 1989.

FN30 See North Atlantic Facilities Planning, 3 FCCRcd at 3989.

FN31 See Policies to be Followed in the Authorization of Common Carrier Facilities to Meet Pacific Telecommunications Needs during the Period 1981- 1985 (POR Planning), 102 FCC2d 353 (1985).

FN32 See TPC-4 Decision, 4 FCCRcd at 8045.

FN33 Id.

FN34 FTC Communications, Inc., 4 FCCRcd 5633 (Com.Car.Bur.1989) (FTCC Ruling); recon. denied, 5 FCCRcd 3323 (Com.Car.Bur.1990) (FTCC Reconsideration Order).

FN35 See supra footnote 1.

FN36 FTC Communications, Inc., 5 FCCRcd 3323 (Com.Car.Bur.1990).

FN37 See Joint Application at p. 20.

FN38 See supra n. 1.

FN39 See International Competitive Carrier, 102 FCC2d at 822, 832.

****7340 APPENDIX 1**

SCHEDULE B

VOTING INTERESTS

IN THE CABLE SYSTEM

PacRimEast

PARTIES VOTING INTEREST

PERCENTAGE

1990 WL 602936 (F.C.C.), 68 Rad. Reg. 2d (P & F) 915, 5 F.C.C.R. 7331, 5 FCC Rcd. 7331
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AT & T	14.4231
BT PLC (UK)	5.0905
BTE (Ireland)	0.9191
CWHK (Hong Kong)	1.6968
DBP (Germany)	1.9514
FT (France)	0.5373
FTCC	0.4242
HTC	0.5232
IDC (Japan)	0.8484
ITALCABLE (Italy)	0.4242
ITDC (Taiwan)	0.4242
KDD (Japan)	3.3937
MCII	5.0905
MCL (UK)	3.8179
NPTT (Netherlands)	0.6363
OTC (Australia)	43.1844
PHILCOM (Philippines)	0.2121
PLDT (Philippines)	0.2121
TCNZ (New Zealand)	8.9508
TELEFONICA (Spain)	0.4525
TELEGLOBE (Canada)	2.9695
TRT	0.8484
US SPRINT	2.5452
WORLDCOM	0.4242
TOTAL:	100.0000

****7341** APPENDIX 2

SCHEDULE C

OWNERSHIP INTERESTS AND ALLOCATION OF CAPITAL

OPERATING AND MAINTENANCE COSTS OF SEGMENT B:

AND PROPORTIONS OF CAPITAL OPERATING AND

MAINTENANCE COSTS FOR USE OF SEGMENTS A AND C

PacRimEast

PARTIES VOTING INTEREST

PERCENTAGE

AT & T	14.4231
BT PLC	5.0905
BTE	0.9191
CWHK	1.6968
DBP	1.9514
FT	0.5373
FTCC	0.4242
HTC	0.5232
IDC	0.8484
ITALCABLE	0.4242
ITDC	0.4242
KDD	3.3937
MCII	5.0905
MCL	3.8179
NPTT	0.6363
OTC	43.1844
PHILCOM	0.2121
PLDT	0.2121
TCNZ	8.9508
TELEFONICA	0.4525
TELEGLOBE	2.9695
TRT	0.8484
US SPRINT	2.5452
WORLDCOM	0.4242
TOTAL:	----- 100.0000

****7342** APPENDIX 3

SCHEDULE D

ASSIGNMENT OF CAPACITY IN SEGMENT B

 IN HALF INTERESTS IN MAUOs

PacRimEast

1. Jointly Assigned Capacity

 (Half Interests in MAUOs)

PARTIES	OTC	TCNZ	SUBTOTAL
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AT & T	840	180	1020
BT PLC	300	60	360
BTE	60	5	65
CWHK	120	0	120
DBP	120	18	138
FT	30	8	38
FTCC	30	0	30
HTC	22	15	37
IDC	60	0	60
ITALCABLE	30	0	30
ITDC	30	0	30
KDD	210	30	240
MCII	270	90	360
MCL	240	30	270
NPTT	30	15	45
PHILCOM	15	0	15
PLDT	15	0	15
TELEFONICA	30	2	32
TELEGLOBE	150	60	210
TRT	60	0	60
US SPRINT	120	60	180
WORLDCOM	30	0	30

SUBTOTAL	2812	573	
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2. Wholly Assigned Capacity

(Half Interests in MAUOs)

PARTIES

OTC		242	
TCNZ		60	

SUBTOTAL		302	
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Summary

PARTIES	JOINTLY ASSIGNED	WHOLLY ASSIGNED	TOTAL ASSIGNED PER PARTY
AT & T	1020	0	1020
BT PLC	360	0	360
BTE	65	0	65
CWHK	120	0	120
DBP	138	0	138
FT	38	0	38

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FTCC	30	0	30
MTC	37	0	37
IDC	60	0	60
ITALCABLE	30	0	30
ITDC	30	0	30
KDD	240	0	240
MCII	360	0	360
MCL	270	0	270
NPTT	45	0	45
OTC	2812	242	3054
PHILCOM	15	0	15
PLDT	15	0	15
TCNZ	573	60	633
TELEFONICA	32	0	32
TELEGLOBE	210	0	210
TRT	60	0	60
US SPRINT	180	0	180
WORLDCOM	30	0	30

TOTAL	6770	302	7072

GRAND TOTAL			7072
(Half Interests in MAUOs)			

PACIFIC REGION

INTEGRATED COMMON CARRIER CABLE NETWORK

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