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<b>(Cite as: 1991 WL 640316 (F.C.C.), 6 FCC Rcd. 2870)</b>			

Federal Communications Commission (F.C.C.)  
 Memorandum Opinion, Order and Authorization  
**\*1 IN THE MATTER OF AMERICAN TELEPHONE AND TELEGRAPH COMPANY**

File No. I-T-C-91-038  
 GTE HAWAIIAN TELEPHONE COMPANY INCORPORATED  
 File No. I-T-C-91-036  
 MCI INTERNATIONAL INC.  
 File No. **I-T-C-91-045**  
 TRT/FTC COMMUNICATIONS, INC.  
 File No. I-T-C-91-051  
 US SPRINT COMMUNICATIONS COMPANY LIMITED PARTNERSHIP  
 File No. I-T-C-91-026  
 WORLD COMMUNICATIONS, INC.  
 File No. I-T-C-91-007

Applications for Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, to Acquire and Operate Capacity in the North Pacific Cable System.

DA 91-588  
 Adopted: May 13, 1991  
 Released: May 20, 1991

**\*\*2870** By the Chief, Common Carrier Bureau:

1. We have under consideration the above-captioned applications requesting authority to acquire capacity from Pacific Telecom Cable, Inc. (PTC) and to operate that capacity in the North Pacific Cable (NPC) system for the provision of authorized common carrier services between the United States and points in the Pacific Ocean region (POR). The NPC system is a private, non-common carrier, digital optical fiber cable system which extends between landing points at Pacific City, Oregon; Seward, Alaska and Miura, Japan. [FN1] Applications File Nos. I-T-C-91-007, I-T-C-91-026, I-T-C-91-036, I-T-C-91-038, **I-T-C-91-045** and I-T-C-91-051 were placed on public notice on October 18, 1990. November 15, 1990. December 5, 1990, December 12, 1990, January 9, 1991 and January 25, 1991, respectively. No comments pertaining to these applications were received.

I. THE APPLICATIONS

2. In application File No. I-T-C-91-038, the American Telephone and Telegraph Company (AT & T) requests authority to acquire on an ownership basis and operate one-half interests in 810 64 kilobits per second (Kb/s) circuits in the NPC system between the Oregon and Japan cable terminals. [FN2] AT & T further requests authority to acquire by lease such connecting facilities as may be necessary to extend said NPC circuits and to activate the requested NPC circuits and connecting facilities to provide its authorized telecommunications services. AT & T states that it will pay a sum of not more than \$15,000 per one-half 64 Kb/s circuit in the NPC system. AT & T further states that grant of the authority it requests will serve the public interest by permitting it to respond to increasing demand for transpacific digital services. AT & T asserts that

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grant of its application will not adversely impact other common carrier facilities for which AT & T has received authorization.

**\*2** 3. By application File No. I-T-C-91-036. GTE Hawaiian Telephone Company Incorporated (GTE Hawaiian Telephone) requests authority to acquire on an IRU basis one-half interests in 90 64 Kb/s circuits in the NPC system between the Oregon and Japan cable terminals. [FN3] GTE Hawaiian Telephone states that it will pay \$15,410 per one-half 64 Kb/s circuit in the NPC system. GTE Hawaiian Telephone further states that grant of its application will serve the public interest as the requested facilities will be used to fulfill the need for additional direct circuits to Japan. GTE Hawaiian Telephone notes that it will not be able to use the requested NPC circuits until completion of the Haw-5 cable between the United States Mainland and Hawaii in 1993 but states that it is more economical and efficient to purchase the requested NPC circuits at this time.

4. By application File No. **I-T-C-91-045**. MCI International, Inc. (MCII) requests authority to acquire on an ownership basis one-half interests in 1260 64 Kb/s circuits in the NPC cable system. [FN4] MCII also requests authority to acquire and operate domestic connecting facilities. MCII states that the requested facilities will be used to provide services that it is now or may in the future be authorized to provide between the United States, Japan and Alaska.

5. By application File No. I-T-C-91-051. TRT/FTC Communications, Inc. (TRT/FTC) requests authority to acquire on an ownership basis one-half interests in 750 64 Kb/s circuits in the NPC system between the Oregon and Japan terminals. [FN5] TRT/FTC also requests authority to acquire facilities on an ownership. IRU or lease basis in cable systems beyond Japan and between cable terminals in Japan for extension of the NPC circuits as well as to lease connecting facilities in the United States. TRT/FTC states that it will pay a cost not to exceed \$15,410 per one-half 64 Kb/s circuit in the NPC system. TRT/FTC further states that the requested facilities are required to meet anticipated growth in its services.

6. By application File No. I-T-C-91-026. US Sprint Communications Company Limited Partnership (Sprint) requests authority to acquire on an ownership basis one-half interests in 1530 64 Kb/s circuits in the NPC system between the Oregon and Japan cable terminals. [FN6] Sprint **\*\*2871** also requests authority to acquire on an ownership, IRU or lease basis connecting facilities between existing and planned cable terminals in Japan required to extend the requested NPC circuits in cable systems beyond Japan. Sprint states that it will pay a cost not to exceed \$15,410 per one-half 64 Kb/s circuit in the NPC system. Sprint further states that it has insufficient capacity in existing transpacific digital, optical fiber cable systems to satisfy its present and reasonably foreseeable requirements between the United State and POR points. Sprint asserts that the only means for satisfying these demands in this timeframe is acquisition of additional cable facilities in the NPC system.

**\*3** 7. By application File No. I-T-C-91-007. World Communications, Inc. (Worldcom) requests authority to acquire, on an ownership basis, one-half interests in 150 64 Kb/s circuits in the NPC system between the Oregon and Japan cable terminals. [FN7] Worldcom also requests authority to acquire on an ownership, IRU or lease basis capacity in facilities between existing and

planned cable terminals in Japan required to extend the requested NPC circuits in cable systems beyond Japan. Worldcom further requests authority to acquire on an IRU or lease basis necessary domestic entrance channel facilities. Worldcom states that it will pay a cost not to exceed \$15,410 per one-half 64 Kb/s circuit in the NPC system. Worldcom further states that it has insufficient capacity in existing transpacific digital, optical fiber cable systems to satisfy its present and reasonably foreseeable requirements between the United States and Japan, Korea and Hong Kong. It asserts that the only means for satisfying these requirements is through acquisition of additional cable capacity on the NPC system.

#### 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 did not preclude the possibility that common carriers would be permitted to acquire capacity in private submarine cables for the provision of the carriers' services. It stated that it would require carriers interested in acquiring capacity in private cable systems to seek authority under Section 214 of the Communications Act. [FN9] 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 private cable system. The Commission reiterated these policies in its Conditional License for the NPC cable system. [FN10]

9. We find that grant of the instant applications will promote the policy aims of the Commission's Private Submarine Cable decision. In decisions granting applications of common carriers seeking to acquire capacity in the PTAT-1 private submarine cable system, we found that use of a portion of that cable system for the provision of common carrier services would enhance the viability and credibility of PTAT-1 as an alternative to common carrier facilities. [FN11] Here, as with PTAT-1, such use will facilitate the introduction of competition in the provision of international transmission facilities. 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, 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 the capacity of the NPC system to common carrier use, will result in these types of public benefits being extended to the POR.

\*4 10. 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 instant applications do not raise an economic impact issue. [FN14] Indeed all of the applicants indicate that the NPC system capacity they seek to acquire will be used to supplement their authorized common carrier facilities, not to divert traffic from those facilities. All of the

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applicants will continue to use their current cable and satellite facilities for the provision of common carrier services. Moreover, no party has filed comments arguing that an adverse economic impact would result from the applicants' use of the requested NPC capacity for common carrier services. 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. The applicants herein are seeking authority to acquire one-half interests in circuits in the United States portion of the NPC system on an ownership basis. We require United States carriers acquiring ownership interests in a submarine cable to become parties to the cable landing license for that cable. [FN15] Therefore, we shall condition our authorizations herein upon the applicants each filing appropriate applications seeking modification of the Final License for the NPC system to add themselves as licensees of that cable system.

12. We also observe that the Final License for the NPC system contains a condition requiring PTC to maintain a fifty percent ownership and voting control of the NPC system, including one hundred percent ownership in the cable stations in Oregon and Alaska. [FN16] Sale of ownership interests in the NPC system raises questions regarding PTC's compliance with this condition. Therefore, we shall serve a copy of this decision on PTC and request that it either explain how it remains in compliance with the subject condition or seek such modification of the condition as it may deem appropriate. We shall also condition the authorizations granted herein upon the outcome of any future proceedings with PTC regarding this matter.

13. In view of the foregoing, we find that grant of authority for the applicants to acquire the NPC circuits they request will serve the public interest.

### III. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED, pursuant to Section 214 of the Communications Act of 1934, as amended, that the applications of AT & T (File No. I-T-C-91-038). GTE Hawaiian Telephone (File No. I-T-C-91-036). MCII (File No. **I-T-C-91-045**). TRT/FTC (File No. I-T-C-91-051), **\*\*2872** Sprint (File No. I-T-C-91-026) and Worldcom (File No. I-T-C-91-007) **ARE GRANTED**, subject to the following terms, [FN17] conditions and limitations.

**\*5** 15. AT & T is authorized to:

- (a) acquire one-half interests in 810 64 Kb/s circuits in the NPC system between the Oregon and Japan cable terminals;
  - (b) lease such connecting facilities as may be necessary to extend said NPC circuits; and
  - (c) use the facilities authorized herein to provide its authorized services.
16. GTE Hawaiian Telephone is authorized to:
- (a) acquire one-half interests in 90 64 Kb/s circuits in the NPC system between the Oregon and Japan cable terminals; and
  - (b) use the facilities authorized herein to provide its regularly authorized services.
17. MCII is authorized to:
- (a) acquire one-half interests in 1260 64 Kb/s circuits in the NPC system

between the Oregon and Japan cable terminals;

(b) acquire domestic connecting facilities; and

(c) use the facilities authorized herein to provide the services it is now or may in the future be authorized to provide between the United States mainland, Alaska and Japan.

18. TRT/FTC is authorized to:

(a) acquire one-half interests in 750 64 Kb/s circuits in the NPC system between the Oregon and Japan cable terminals;

(b) acquire facilities on an ownership, IRU or lease basis in cable systems beyond Japan and between cable terminals in Japan for extension of said NPC circuits to Korea, Hong Kong, Singapore and Taiwan;

(c) lease domestic connecting facilities; and

(d) use the facilities authorized herein to provide its authorized common carrier services between the United States and Japan and beyond except for France.

19. Sprint is authorized to:

(a) acquire one-half interests in 1530 64 Kb/s circuits in the NPC system between the Oregon and Japan cable terminals;

(b) acquire on an ownership, IRU or lease basis capacity in facilities between existing and planned cable terminals in Japan required to extend these NPC circuits in cable systems beyond Japan; and

(c) use the facilities authorized herein to provide its authorized services between the United States and Japan, Korea, Hong Kong, Malaysia, the Philippines, Singapore, Taiwan and Thailand.

20. Worldcom is authorized to:

(a) acquire one-half interests in 150 64 Kb/s circuits in the NPC system between the Oregon and Japan cable terminals;

(b) acquire on an ownership, IRU or lease basis capacity in facilities between existing and planned cable terminals in Japan required to extend the these NPC circuits in cable systems beyond Japan;

(c) acquire on an IRU or lease basis necessary domestic entrance channel facilities; and

(d) use the facilities authorized herein to provide its authorized services between the United States and Japan, Korea and Hong Kong.

21. IT IS FURTHER ORDERED that the authorization issued to TRT/FTC herein is subject to the terms and conditions set forth in FTC Communications, Inc., 4 FCCRcd 5633 (1989).

\*6 22. IT IS FURTHER ORDERED that the applicants each shall file an application to modify the Final License for the NPC system, see 4 FCCRcd 8061 (1989), to include themselves as licensees of the cable system.

23. IT IS FURTHER ORDERED that the authorizations granted herein are subject to the results of any further proceedings regarding PTC's compliance with the conditions of the Final License for the NPC system.

24. IT IS FURTHER ORDERED that these authorizations are issued subject to the terms and conditions of any license issued to PTC 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).

25. This order is issued under Section 0.291 of the Commission's Rules and is

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effective upon adoption. 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

Richard M. Firestone

Chief

Common Carrier Bureau

FN1 See Pacific Telecom Cable, Inc., 2 FCCRcd 2686 (Com.Car. Bureau (1987) (Conditional License) and Pacific Telecom Cable, Inc., 4 FCCRcd 8061 (1989) (Final License).

FN2 While the AT & T application indicates that AT & T will acquire the one-half interests in the NPC circuits on an ownership basis, the Supplemental Agreements to the North Pacific Cable Construction and Maintenance Agreement, filed on a confidential basis by PTC, indicate that AT & T will acquire those portions of the circuits between the Oregon cable landing point and the Oregon cable terminal (Segment B2) and in the Oregon cable terminal (Segment B3) on an indefeasible right of user (IRU) basis. According to the Supplemental

Agreements, only that portion of the circuits between the Oregon cable landing point and the midpoint of the NPC system (Segment B1) will be acquired by AT & T on an ownership basis. We shall therefore grant AT & T authority to acquire those portions of the subject NPC circuits in Segments B2 and B3 on an IRU basis and that portion of the circuits in Segment B1 on an ownership basis.

FN3 While its application indicates that it will acquire the NPC circuits it seeks on an IRU basis, the Supplemental Agreements filed by PTC indicate that GTE Hawaiian Telephone will acquire that portion of the NPC circuits in Segment B1 on an ownership basis and those portions of the circuits in Segments B2 and B3 on an IRU basis. Therefore, we shall grant GTE Hawaiian Telephone authority to acquire the portion of the subject NPC circuits in Segment B1 on an ownership basis.

FN4 The Supplemental Agreements filed by PTC indicate that MCII will acquire the portion of the NPC circuits in Segment B1 on an ownership basis and those portions of the circuits in Segments B2 and B3 on an IRU basis. Therefore, we shall grant MCII authority to acquire the NPC circuits it seeks in this manner.

FN5 TRT/FTC requests authority to acquire the portion of the NPC circuits in Segment B1 on an ownership basis and to acquire those portions of the NPC circuits in Segments B2 and B3 on an IRU basis.

FN6 Sprint seeks authority to acquire the portion of the circuits in Segment B1 of NPC on an ownership basis and the portion of the circuits in Segments B2 and B3 on an IRU basis.

FN7 Worldcom seeks authority to acquire the portion of the circuits in Segment B1 of NPC on an ownership basis and the portion of the NPC circuits in Segments B2 and B3 on an IRU basis.

FN8 Tel-Optik, Limited, 100 FCC2d 1033 (1985) (Private Submarine Cable).

FN9 The Commission restated this requirement in the International Competitive Carrier decision where it determined that it would require non-dominant carriers to file Section 214 applications to acquire capacity in future private cable systems. International Carrier Policies, 102 FCC2d 812, 845 (1985).

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FN10 See Pacific Telecom Cable, Inc., 2 FCCRcd 2686, 2688 (1987).

FN11 See US Sprint Telecommunications Company Limited Partnership, 4 FCCRcd 6279, 6282 (Com.Car.Bur.1989) and CICI, Inc., 4 FCCRcd 6622, 6623 (Com.Car.Bur.1989).

FN12 See also In the Matter of Establishment of Satellite Systems Providing International Communications, 101 FCC2d 1046 (1985).

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., 4 FCCRcd 4454 (1989) (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.

FN15 See Puerto Rico Telephone Company, 5 FCCRcd 100 (Com.Car.Bur.1990).

FN16 The relevant condition provides that:

The Licensee shall maintain no less than a fifty percent ownership and voting control share in the proposed cable, including one hundred percent ownership in the cable station in Oregon and in Alaska (and any additional U.S. landing points) and in the U.S. land portion of the cable from the station to the U.S. beach joint of the submersible portion of the proposed cable;

4 FCCRcd at 8069.

FN17 In all instances where an applicant is authorized to acquire NPC circuits, the portion of those circuits in Segment B1 of the NPC system is authorized to be acquired on an ownership basis and those portions of such circuits in Segments B2 and B3 are authorized to be acquired on an IRU basis.

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