

1992 WL 691496 (F.C.C.), 7 F.C.C.R. 63, 7 FCC Rcd. 63

DA 91-1636

***1** IN THE MATTER OF
PCI COMMUNICATIONS, INC.
APPLICATION FOR AUTHORITY TO OPERATE AS AN INTERNATIONAL RESALE CARRIER.
MICRO BUSINESS SYSTEMS, INC.
APPLICATION FOR AUTHORITY TO OPERATE AS AN INTERNATIONAL RESALE CARRIER.
ASIAN AMERICAN TELECOM
APPLICATION FOR AUTHORITY TO OPERATE AS AN INTERNATIONAL RESALE CARRIER.

File No. I-T-C-91-171

File No. I-T-C-91-174

File No. I-T-C-91-189

Adopted: December 24, 1991; Released: January 7, 1992

****63** MEMORANDUM OPINION, ORDER AND CERTIFICATE

By the Chief, International Facilities Division:

1. The above captioned applications request authority, pursuant to Section 214 of the Communications Act of 1934, as amended, to resell the switched message telephone services of existing common carriers to provide international switched services between the U.S. mainland, Guam and various overseas points. We placed File Nos. **ITC-91-171** and ITC-91-174 on public notice on July 24, 1991. File No. ITC-91-189 was placed on public notice on August 14, 1991. Comments on the applications of PCI Communications, Inc. ("PCI") and Asian American Telecom ("AAT") were filed by US Sprint Communications Company, Ltd. ("Sprint"). [FN1] IT & E Overseas, Inc. ("IT & E") filed a petition to Deny [FN2] PCI's application.
2. Micro Business Systems, Inc. ("MBS") and AAT are non-dominant start-up companies which propose to provide international switched voice, data and facsimile services in competition with other common carriers already providing such services. In its application, MBS states that it intends to lease lines between Guam and the contiguous U.S. ("CONUS") from MCI or IT & E and resell switched voice services of MCI, AT & T and/or Sprint from CONUS to international points covered by the international carriers' tariffs. AAT states that it wishes to lease capacity between Guam and Hawaii from Comsat, or use fiber optic bearer facilities leased from PCI and/or World Communications, Inc. ("Worldcom") to link Guam and Hawaii, and resell Sprint's WATS and "800" service from Hawaii to international points covered by that tariff. [FN3]
3. PCI is a non-dominant carrier currently offering domestic packet-switched data services between Guam, the Northern Marianas, Hawaii and CONUS. PCI now proposes to provide international switched voice, data and facsimile services in competition with other common carriers already providing such services. It intends to offer international services by leasing capacity from Worldcom between Guam and CONUS, and reselling the international switched voice service of Sprint and Execuline of Sacramento. [FN4]
4. In authorizations of new entrants over the past decade, the Commission has recognized that increased competition in international markets is beneficial. [FN5] Accordingly, we have consistently authorized applicants to provide international resale of switched services in competition with established carriers and other resellers. [FN6] We find here that the market will support additional carriers and that the added competition will be in the public interest. [FN7]
- *2 5. Sprint argues in File Nos. **ITC-91-171** and ITC-91-189 that we should delay granting resale authority until the Commission issues an order in DA-90-1198. In DA-90-1198 IT & E has alleged that division of revenue contracts allegedly forced on it by Guam Telephone Authority ("GTA"), a public corporation created and owned by the Government of Guam, discriminate against IT & E in favor of RCA Globcom (the dominant international carrier on Guam), contravene FCC access charge rules and conflict with FCC equal access policies. IT & E has also challenged a law promulgated by the Guam legislature requiring the Guam Public Utilities Commission ("PUC") to regulate interstate access

services on Guam and requiring the GTA to file interstate access tariffs with the PUC. IT & E has requested a declaratory ruling that the law is unlawful, that the FCC has exclusive jurisdiction over interstate access and rates, and that the agreement between GTA and IT & E is unlawful and unenforceable.

6. Sprint believes that the issue of Guam's status as either a domestic or international entity, and whether or not the Commission has jurisdiction over it, is one that directly affects these applications. Implicit in Sprint's argument is the notion that Guam's status remains in doubt. If Guam is an international point, then "international" settlement arrangements between RCA Globcom and a U.S. overseas carrier, such as Sprint, would be undermined by entities which attempt to lease private lines between Guam and CONUS. Sprint argues against granting the authority because both PCI and AAT intend to lease lines between Guam and the U.S. mainland, whereas Sprint and RCA Globcom have a settlement agreement, similar to traditional international correspondent arrangements, to provide service between the two points. The lease of private lines by PCI and AAT, Sprint argues, would amount to international resale of private lines, if Guam is considered an international point, and would undermine the accounting rates arrangement between the two companies.

7. IT & E argues that Sprint mischaracterizes both the proceeding in DA-90- 1198 and the arrangement between RCA Globcom and Sprint. Asserting that the proceeding concerns only the question of equal access and discriminatory local exchange carrier rates, IT & E denies that the domestic or international character of Guam is in issue. IT & E also notes that the relationship between Sprint and RCA Globcom is a voluntary agreement, as opposed to an international correspondent arrangement. PCI contends that its proposed service is lawful under current FCC practice, that it can perceive no nexus between DA-90-1198 and its application, and that it would be willing ~~**64~~ to make any modifications to its service, along with similarly situated carriers, if the proceeding in DA-90-1198 were to affect PCI's service offering.

8. We agree with both IT & E and AAT that the domestic status of Guam for interexchange communications has been long-settled. [FN8] Further, we believe that Sprint misjudges the relevance of DA-90-1198 to these applications. The proceeding in DA-90-1198 concerns the issue of what jurisdiction over Guam entails, and not the broad issue, already settled, regarding whether Guam is a domestic or international point. Whether or not the Commission has jurisdiction over the GTA has no ascertainable relation to the "domestic" or "international" character of the revenue-sharing agreement between Sprint and RCA Globcom for service to and from Guam. And since international resale of private lines can only occur between international points, we find no occasion to be concerned over the possible effect of private line domestic resale on the Sprint-RCA Globcom arrangement. As stated above, we believe that the international resale of international switched service is in the public interest, and we find no reason to delay the grant of applications that would increase competition in the provision of international telecommunications service to and from Guam.

*~~3~~9. For the foregoing reasons, IT IS CERTIFIED that the present and future public convenience and necessity require the provision of international switched services to the general public by PCI, MBS and AAT by the resale of the switched voice services of other carriers.

10. Accordingly, IT IS ORDERED that applications File Nos. I-T-C-91-171, I-T-C-91-174 and I-T-C-91-189 ARE GRANTED; and

a. PCI is authorized to:

1. lease from Worldcom and operate private line facilities between Guam and the contiguous U.S. for provision of international switched voice, data and facsimile service through interconnection with the switched voice services of Worldcom, Sprint and Execuline of Sacramento; and
2. provide international switched voice, data and facsimile services by the resale of the international switched voice services set forth in Worldcom's Tariff F.C.C. No. 1, Sprint's Tariff F.C.C. Nos. 1 and 2 and Execuline of Sacramento's Tariff F.C.C. No. 1, between the contiguous U.S. and Guam, on the one hand, and international points listed in those tariffs, on the other hand.

b. MBS is authorized to:

1. lease from MCI or IT & E and operate one 56 kbps circuit in the TPC-3 cable between Guam and the U.S. mainland, for provision of international switched voice, data and facsimile service through interconnection with the switched voice services of MCI, Sprint and AT & T; and
 2. provide international switched voice, data and facsimile service by the resale of the international switched voice services set forth in MCI's Tariff F.C.C. No. 1, Sprint's Tariffs F.C.C. Nos. 1 and 2 and AT & T's Tariff F.C.C. Nos. 1 and 2, between the contiguous U.S. and Guam, on the one hand, and the international points listed in those tariffs, on the other hand.
- c. AAT is authorized to:

1. lease from Worldcom, PCI and/or Comsat and operate facilities between Guam and Hawaii for the provision of international switched voice and data service through interconnection with the switched voice services of Sprint; and
 2. provide international switched voice and data service by the resale of the international switched voice services set forth in Sprint's Tariff F.C.C. No. 2, between Guam and international points listed in those tariffs.
 11. IT IS FURTHER ORDERED that copies of any operating agreements entered into between the applicants and their correspondents shall be filed with the Commission within 30 days of their execution.
 12. IT IS FURTHER ORDERED that the applicants shall file tariffs pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.
 13. IT IS FURTHER ORDERED that applicants shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 74 C.F.R. section 43.61.
 14. IT IS FURTHER ORDERED that nothing in this authorization should be construed to include authorization for the transmission of money in connection with the services the applicants seek authority to provide. The transmission of money is not considered to be a common carrier service. Therefore, nothing in this Order should be construed as containing authority for the transmission of money.
- *4 15. This order is issued under Section 0.291 of the Commission's Rules and is 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 public notice of this order (see Section 1.4(b)(2)).
- FEDERAL COMMUNICATIONS COMMISSION
George S. Li
Chief, International Facilities Division
Common Carrier Bureau

FN1 IT & E Overseas, Inc. ("IT & E") also filed Comments on AAT's application, as well as a Response to Sprint's Comments thereon. Both AAT and PCI filed Oppositions to the Comments of Sprint on their respective applications.

FNCommenting on AAT's application, IT & E stated that AAT did not indicate whether it was foreign-owned or controlled and failed to file separate applications for IMTS and non-IMTS services. We note simply that we will accept AAT's statement, in its Opposition to IT & E's Comments, that it is not a foreign-owned or controlled carrier. Furthermore, AAT no longer proposes to offer non-IMTS service, thus obviating IT & E's second concern.

FN2 Filed on August 23, 1991, IT & E's Petition to Deny was withdrawn on November 18, 1991. The Petition alleged that PCI offered international service without Section 214 authorization for a time prior to and during the period of the PCI's application. IT & E also alleged that PCI violated the International Competitive Carrier decision by submitting requests for IMTS and non-IMTS service in the same application. See In re the Matter of International Competitive Carrier Policies ("International Competitive Carrier"), 102 FCC2d 812, 845 (1985). IT & E also filed a formal complaint against PCI, which was subsequently withdrawn. See Order released Dec. 5, 1991, DA-91-1492, File No. E-91-107 (Com.Car.Bur.1991).

FN3 AAT originally proposed to provide service between Guam and international points directly, pursuant to COMSAT's Tariff FCC No. 103, as well as service pursuant to COMSAT's Tariffs FCC Nos. 102 and 104. In addition, AAT had requested authority to provide international video conferencing services. In response to a staff inquiry, AAT filed a letter clarifying that it was no longer requesting such authority in its present application.

FN4 PCI originally sought authorization to resell international packet data service. In response to a staff inquiry, however, PCI withdrew its request. Additionally, PCI clarified in a separate letter that it intended to lease a fiber optic facility from World Communications, Inc., in order to provide the Guam-U.S. link for its proposed international service.

FN5 See, e.g., the cases cited in Teltec Saving Communications Co., File No. I-T-C-86-062, Mimeo No. 3548, (released April 4, 1986) at n. 2.

FN6 See, e.g., International Telecom, Inc., 6 FCCRcd 1964 (Int'l Fac.Div.1991); Argo Communications International, Inc., 1 FCCRcd 578 (Com.Car.Bur.1986).

FN7 FCC v. RCA Communications, Inc., 346 U.S. 86 (1953); Mackay Radio & Telegraph Co., 28 FCC 231 (1960).

FN8 See 47 U.S.C. section 153(e), (f), (g); Application of General Electric Co., GE Subsidiary, Inc. 21, and MCI Communications Corporation for Authority to Transfer Control of RCA Global Communications, Inc., 3 FCCRcd 2803 at 2806-07; Policy and Rules Concerning Rates for Competitive Carrier Services and Facilities Authorization Therefor, Third Report and Order, Mimeo No. 012, released Oct. 6, 1983, 48 Fed.Reg. 46,791 (Oct. 15, 1983), paras. 2-4. See also, International Common Carrier, 102 FCC2d at 832.

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