

C

DA 93-910

***1** IN THE MATTER OF
AMERICAN TELEPHONE AND TELEGRAPH COMPANY GTE HAWAIIAN TELEPHONE COMPANY
INCORPORATED MCI INTERNATIONAL, INC. SPRINT COMMUNICATIONS COMPANY LIMITED
PARTNERSHIP TELEFONICA LARGA DISTANCIA DE PUERTO RICO THE ST. THOMAS AND SAN
JUAN TELEPHONE COMPANY, INC. TRT/FTC COMMUNICATIONS, INC. 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 AND AMONG THE UNITED STATES
MAINLAND, MEXICO, U.S. VIRGIN ISLANDS, SPAIN, ITALY AND PORTUGAL

File No. **ITC-93-029**

Adopted: July 13, 1993; Released: July 28, 1993

****5263** MEMORANDUM OPINION, ORDER AND AUTHORIZATION

By the Acting Chief, Common Carrier Bureau:

1. On November 10, 1992, eight United States international service carriers (hereinafter referred to as Joint Applicants) [FN1] filed the above captioned Joint Application requesting authority pursuant to Section 214 of the Communications Act of 1934, as amended, [47 U.S.C. § 214 \(1982\)](#), to construct and operate a high capacity digital submarine cable system known as the COLUMBUS II Cable System, extending from Mexico, to the U.S. mainland, then to the U.S. Virgin Islands (U.S.V.I.), then across the Atlantic Ocean to a branching unit which extends to both Spain and to another branching unit which extends to both Italy and to Portugal. Segments of the COLUMBUS II Cable System operating between the U.S. mainland and the U.S.V.I. will be used in tandem with corresponding segments on the AMERICAS-1 Cable System (FCC File Nos. SCL-93-002, ITC-93-030), permitting the balancing of traffic and sharing of restoration capabilities between the two cable systems. These combined segments will be known as the "Common Segment." [FN2]

2. The Joint Application was placed on public notice on November 18, 1992. STC Submarine Systems, Inc. (STC) filed comments requesting the Commission to condition the requested [Section 214](#) authorization and accompanying cable landing license on the Joint Applicants' competitive procurement of equipment and services for COLUMBUS II. AT & T and STSJ filed a joint reply. On March 12, 1993, AT & T filed a letter requesting the Commission to bifurcate the proceeding, and consider TLD's ownership interest apart from the other Joint Applicants. [FN3] TLD opposed AT & T's request, and AT & T responded. On May 7, 1993, the Commission, in a public notice, requested additional comments on AT & T's request. MCII and

TLD filed comments, and AT & T and TLD filed reply comments. For the reasons discussed below, we partially grant the Joint Application. [FN4]

3. The proposed COLUMBUS II Cable System consists of nine segments. [FN5] The Common Segments B and N will be comprised of 2 fiber pairs, each employing AT & T's latest **5264 SL2000 technology, operating at 2.4 Gigabits per second (Gbps). One fiber pair in each segment will be used for service while the other will be used for restoration. Segments A and C of the COLUMBUS II Cable System will employ technology operating at 560 Megabits per second (Mbps). Unless otherwise noted, the fiber pairs in these segments will be active, with none reserved for restoration. Segment A will consist of two fiber pairs. Subsegment C1, between St. Thomas and the First Branching Unit (BU1), will consist of three fiber pairs. Subsegment C2, between BU1 and Sardina, Spain, will consist of four fiber pairs, with one fiber pair reserved for restoration. Subsegment C3, between BU1 and the Second Branching Unit (BU2), will consist of two fiber pairs. Subsegments C4 and C5, between BU1 and Palermo, Italy, and between BU2 and Funchal, Portugal, respectively, will consist of one fiber pair each.

*2 4. The design capacity of the COLUMBUS II Cable System Segments A, B, and C is as follows:

SEGMENT OR SUBSEGMENT	NUMBER OF BASIC SYSTEM [FN6] MODULES	NUMBER OF MIUs [FN7](DESIGN)	NUMBER OF 64 kbps VOICE PATHS
A	8	504	15,120
B	32	2016	60,480
C1	12	756	22,680
C2	16	1008	30,240
C3	8	504	15,120
C4	4	252	7,560
C5	4	252	7,560

5. Public Interest Determination. [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 by determining "whether the specific facility chosen and the use to be made of that facility are required by the public convenience and necessity." [FN8] In making this determination, the Commission traditionally has considered such factors as demand, cost, media and route diversity, restoration, intramodal and intermodal competition, technological innovations and international comity. [FN9] After reviewing these factors in relation to this cable system, we conclude that projected circuit demand as supplied by the Joint Applicants, along with other factors, supports the construction and operation of COLUMBUS II to meet the telecommunications needs of the Joint Applicants and their correspondents in the Atlantic Ocean Re-

gion during the 1994-2010 time frame. We conclude that the introduction of COLUMBUS II as proposed will enhance media and route diversity by adding another independent cable route. A comparison of the costs for previously authorized digital cable facilities in the Caribbean and Atlantic Ocean Regions demonstrates that COLUMBUS II will continue the trend of providing increased capacity while reducing per circuit costs. The proposed COLUMBUS II Cable System will introduce significant technological developments into the submarine cable field which in turn will provide substantial benefits to users. In addition, the introduction of COLUMBUS II will enhance intramodal competition in the Atlantic Ocean Region 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 the introduction of COLUMBUS II will increase intermodal competition with INTELSAT and separate satellite system providers, spurring existing providers of both cable and satellite capacity to respond competitively. Finally, with over fifty telecommunications administrations and entities from forty-three foreign locations participating in COLUMBUS II, we conclude that COLUMBUS II will promote international comity.

*3 6. TLD's Ownership Interest. AT & T argues that the circumstances associated with TLD's participation in the AMERICAS-1 and COLUMBUS II Cable Systems have materially changed since the Joint Applications were filed. Since that time, TLD has been acquired by Telefonica de Espana, the monopoly provider of telecommunications services in Spain. [FN10] AT & T states these circumstances present complex and novel issues [FN11] requiring careful analysis, yet do not affect the issues or the public interest insofar as participation in these cable projects by the remaining Joint Applicants is concerned. Moreover, AT & T states that granting the applications of the Joint Applicants other than TLD while the Commission evaluates the issues attendant to TLD's ownership will avoid the risk of increases in the cable systems' costs that would likely accompany a delay in the Commission authorization. AT & T states that capacity assigned to TLD could be held in reserve for such time as necessary until the Commission renders a decision as to TLD's participation. The cable system ownership schedules would be appropriately modified to reflect such treatment. If TLD were later permitted to participate, the capacity set aside would be available to TLD at the same cost and terms as available to the other original owners of the systems. Conversely, if TLD is not permitted to participate, any payments it made would be refunded to it at no financial penalty. AT & T believes that **5265 the impact of bifurcation upon the cable projects would be minimal, and no different from the impact of the addition or withdrawal of owners that typically occurs during the time period when Construction and Maintenance Agreements (C & MA) are being executed or amended.

7. MCII states that, if the Commission determines it must review either the regulatory conditions imposed by the TLD Order and/or reciprocity issues, such matters should be addressed in a separate proceeding so as to avoid delay in the authorization of these cable systems. MCII suggests the Commission condition TLD's cable

authorization subject to the outcome of such a proceeding. However, MCII opposes actions by the Commission, such as not granting authorization for all applicants, that would prevent one or more U.S. applicants from competing with other U.S. applicants on a level playing field. MCII states that delaying a carrier's authorization could harm customers of the carrier and the carrier's business if customers perceive a delay to be a business risk and take business elsewhere. In addition, MCII argues a delay could signal foreign correspondents that cable systems with heavy U.S. participation are investment risks due to possible delays in the U.S. regulatory approval process. MCII is concerned that if potential investors are wary, they could be deterred from investing upfront in common carrier cables.

8. In response, TLD states that not only is bifurcation unnecessary, it will harm TLD in relation to its competitors, especially AT & T, in dealing with foreign correspondents, implementing its strategic plans and concluding new plans with correspondents through the life of the cable systems. TLD argues AT & T has failed to demonstrate why the safeguards of the TLD Order are not fully adequate to protect U.S. competitors in this situation. In addition, TLD argues AT & T has failed to establish factually how TLD's minimal ownership of facilities connecting with Spain might result in anticompetitive actions which will benefit TLD to the detriment of other U.S. carriers. TLD argues AT & T's goal is only to enlarge its competitive edge over TLD by subjecting it to delay. TLD states the Commission has already determined that it can resolve facilities-based applications by the U.S. affiliate of a foreign carrier without further lengthy policy or rulemaking proceedings.

*4 9. After reviewing the record, we conclude that TLD's proposed ownership interest does raise complex and novel issues that require Commission consideration. These issues involve international market access, self-correspondency, and the reciprocity requirements of the Cable Landing License Act. We do not believe that it would be in the interest of any party to delay authorization of the cable pending resolution of these issues. Therefore, we defer granting TLD [Section 214](#) authority to participate in the construction and operation of the COLUMBUS II Cable System until the Commission has determined in a separate proceeding that it is in the public interest to allow TLD to participate. The capacity assigned to TLD shall be held in reserve, and any payments it has made held in an interest bearing account, for such time as necessary until the Commission renders a decision as to TLD's participation. The cable system ownership schedules shall be appropriately modified to reflect such treatment. If TLD is later permitted to participate, the capacity set aside shall be made available to TLD at the same cost and terms as are available to the other original owners of the systems. Conversely, if TLD is not permitted to participate, any payments it has made shall be refunded to it with interest, and without financial penalties.

10. Competitive Procurement. While expressly supporting the construction of COLUMBUS II, STC requests the Commission to condition approval of the [Section 214](#) authorization and accompanying cable landing license, as it did in Pacific Telecom

Cable, Inc., [FN12] by requiring the Joint Applicants to use a fair and open procurement process in awarding the construction contracts for COLUMBUS II. STC claims that such a procurement process has not been used by the Joint Applicants since the procurement of the cable system has been apparently predetermined, with construction to be supplied by a consortium consisting of Alcatel (of France), AT & T Submarine Systems, and Maristel (of Italy). STC asserts that the proposed new technology is not uniquely available from the consortium, and that STC, along with other suppliers of systems and component parts, could offer compatible technology. STC also argues that a fair and open procurement process would ensure that consumers will gain the full benefits of competition, such as the lowest cost, most advanced features and the highest quality and reliability, in the supply of communications services and in the construction of the underlying facilities. STC also notes that open procurement reinforces the U.S. government's efforts to open telecommunications markets world wide.

11. Although STC cites Pacific Telecom Cable, Inc. as precedent for its request that we condition this [Section 214](#) authorization and the accompanying cable landing license, we note that that order involved only a cable landing license for the North Pacific Cable, a non-common carrier submarine cable. The Commission has never imposed conditions on procurement practices in a [Section 214](#) authorization for a common carrier cable. In Pacific Telecom Cable, Inc., the Commission did authorize only a conditional grant of the cable landing license to address specific concerns that foreign interests would be favored over U.S. interests due to the actual foreign ownership of the U.S. end, as well as the potential common foreign ownership of both the U.S. and foreign end, of the cable. Due to those particular concerns, the Commission found it necessary to condition the cable landing license upon a demonstration that "U.S. entities will be provided a reasonable opportunity to participate in the planning, manufacture, installation, operation and maintenance of the proposed cable."

*5 12. We believe that the Joint Applicants demonstrate that qualified suppliers have been afforded a reasonable opportunity to participate in the procurement of COLUMBUS II. In this instance, although AT & T technology will be used for portions of COLUMBUS II, the consortium will not acquire the cable on a sole source, non-competitive basis. As AT & T has shown, the U.S.-supplied segments of COLUMBUS II will employ approximately 118 subcontractors located in more than 16 states to provide components or materials for the construction of COLUMBUS II. Moreover, each of these subcontractors will also engage suppliers for components or materials, so that the number of companies affected by the construction of COLUMBUS II will be considerably greater than the number of immediate **5266 subcontractors. [FN13] Furthermore, under price caps regulation, AT & T has the incentive to subcontract with those suppliers that offer a competitive price. Also, the presence of competing cable facilities in the Atlantic Ocean Region will continue to serve as a strong incentive for efficient procurement. As we decided in TPC-4 and TPC-5, given these competitive market circumstances, we can find no

public interest benefit for involving the Commission in the management of COLUMBUS II procurement decisions, and we do not believe that it is necessary to condition the grant of COLUMBUS II on assurances of competitive procurement practices.

[FN14]

13. Upon review of the application, we find that the grant of [Section 214](#) authority to the Joint Applicants, except TLD, to construct and operate the COLUMBUS II Cable System will serve the public interest. The cable system will provide much needed connectivity with other digital cable systems in the region, thereby increasing service reliability. Because of the increased connectivity provided by the COLUMBUS II Cable System, both route and path diversity will be increased and the Joint Applicants will be able to utilize restoration alternatives that are not presently available.

14. Accordingly, IT IS ORDERED that pursuant to [Section 214](#) of the Communications Act, as amended, Joint Application File No. I-T-C-93-029 IS PARTIALLY GRANTED, subject to the following terms, conditions, and limitations, and the Joint Applicants, except for TLD, are authorized to:

(a) participate in the construction and operation of the COLUMBUS II Cable System as described in the Joint Application;

(b) acquire and activate capacity in the COLUMBUS II Cable System, on an ownership basis, in accordance with the interests indicated in Appendix A;

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

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

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

***6** 15. IT IS FURTHER ORDERED, that Joint Applicants are authorized to acquire, by lease, appropriate connecting facilities between the West Palm Beach, Florida, and Magens Bay, St. Thomas cable stations and their respective operating offices in the United States, Puerto Rico, and the U.S. Virgin Islands.

16. IT IS FURTHER ORDERED that the capacity assigned to TLD shall be held in reserve until such time that a determination is made in a separate proceeding as to TLD's authorized level of participation. The cable system ownership schedules shall be appropriately modified to reflect such treatment. If TLD is later permitted to participate, the capacity set aside shall be made available to TLD at the same cost and terms as available to the other original owners of the sys-

tems. Conversely, if TLD is not permitted to participate, any payments it has made shall be refunded to it with interest, and without financial penalties.

17. IT IS FURTHER ORDERED that the Joint Applicants' tariffs must state that their customers may not resell international private lines or connect them to the public switched network for the provision of international basic telecommunications services, unless authorized to do so by the Commission upon a country-specific finding of resale opportunities equivalent to those available under U.S. law, in accordance with [Regulation of International Accounting Rates, Phase II, First Report and Order, 7 FCCRcd 559 \(1991\)](#), and Order on Reconsideration and Third Further Notice of Proposed Rulemaking, [7 FCCRcd 7927 \(1992\)](#), petition for reconsideration pending.

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

19. IT IS FURTHER ORDERED that the Commission retains jurisdiction to reallocate U.S. carriers' interest in capacity herein authorized, as the public interest may require and with any requisite concurrence of the foreign administration or carriers concerned, in order to accommodate additional carriers or for other reasons.

20. IT IS FURTHER ORDERED that the Commission retains jurisdiction over all matters relating to the Joint Applicants' ownership, management, maintenance and operation of the cable system as authorized herein to ensure the most efficient use not only of this cable system but of all means of communications between the United States and the Atlantic Ocean Region.

21. IT IS FURTHER ORDERED that the Commission retains jurisdiction to review the DCME, 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.

22. IT IS FURTHER ORDERED that no Joint Applicant that is a dominant carrier pursuant to the Commission's decision in CC Docket No. 85-107 or CC Docket No. 91-360 [FN15] shall either dispose of any interest in COLUMBUS II capacity it is authorized to acquire to any entity on an ownership basis or dispose of any interest in any such ****5267** capacity in any way to a non-U.S. telecommunications service provider without prior authorization by the Commission.

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

24. IT IS FURTHER ORDERED that STC's request to condition the [Section 214](#) authorization of COLUMBUS II is hereby denied.

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(Cite as: 1993 WL 756913 (F.C.C.), 8 FCC Rcd. 5263)

25. 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

Kathleen B. Levitz

Acting Chief, Common Carrier Bureau

FN1. The Joint Applicants include American Telephone and Telegraph Company (AT & T), GTE Hawaiian Telephone Company Incorporated (HTC), MCI International, Inc. (MCII), Sprint Communications Company Limited Partnership (Sprint), Telefonica Larga Distancia de Puerto Rico (TLD), The St. Thomas and San Juan Telephone Company, Inc. (STSJ), TRT/FTC Communications, Inc. (TRT/FTC), and World Communications, Inc. (Worldcom).

FN2. See *infra* n. 5.

FN3. Letter from Elaine R. McHale, Senior Attorney for AT & T, to Donna Searcy, Secretary of the FCC, dated March 12, 1993. AT & T's letter referenced a previously filed request by Sprint on January 19, 1993 that the Commission consider in future proceedings involving TLD both the general issue of reciprocal entry rights, and the issue of how Spain's treatment of U.S. carriers may affect grant of additional [Section 214](#) authority to Spanish-owned carriers.

FN4. In a companion order, we grant the Joint Applicants' request for a cable landing license (File No. S-C-L-93-001, DA 93-908, adopted July 13, 1993).

FN5. The Joint Application identifies these as: Segments T1, T2, T3, T4, T5 and T6, which are, respectively, the cable station at Cancun, Mexico; the cable station in West Palm Beach, Florida; the cable station at Magens Bay, St. Thomas, U.S.V.I.; the cable station at Sardina, Spain; the cable station at Palermo, Italy; and the cable station at Funchal, Portugal; Segment A--the submarine cable linking Segments T1 and T2; Segment B--the submarine cable linking Segments T2 and T3; and Segment C--the submarine cables linking Segments T3, T4, T5 and T6.

FN6. The portions of COLUMBUS II and AMERICAS-1 identified as the Common Segment are: (a) COLUMBUS II--Segment B, and parts of Segments T2 and T3 of that system (b) AMERICAS-1--Segments N, T1 and part of T2 of that system (see AMERICAS-1 Section 214 authorization, DA 93-911, adopted July 13, 1993, for description of AMERICAS-1 segments); and (c) Segment L, a terrestrial fiber optic cable linking the Vero Beach (AMERICAS-1) and West Palm Beach (COLUMBUS II) cable stations. Because Segment L consists of a domestic facility, the Joint Applicants do not include it for purposes of this authorization as belonging to either the AMERICAS-1 or COLUMBUS II Cable Systems.

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FN6. The Basic System Modules (BSM) operate at 140 Mbps with each BSM consisting of 63 Minimum Investment Units (MIUs).

FN7. A MIU is the minimum unit of investment for ownership in the AMERICAS-1 Cable network, allowing the use of 2.048 Mbps and the additional approximately 421 kilobits per second (kbps) required for multiplexing in each direction. Each MIU includes thirty 64 kbps voice paths. For voice services, digital circuit multiplication equipment (DCME) can be employed to derive about 150 virtual voice paths from a MIU.

FN8. See [AT & T et al., \(TAT-7 Order\), 73 FCC2d 248, 256 \(1979\)](#).

FN9. See, e.g., [AT & T et al. 4 FCCRcd 1129, 1131 \(Com.Car.Bur.1988\) \(TAT-9 Order\)](#). 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 \(1985\)](#) and [North Atlantic Facilities Planning, 3 FCCRcd 3979, 3986 \(1988\)](#); [All America Cable and Radio Inc., et al., 67 FCC2d 451, 469 \(1978\)](#).

FN10. See [Telefonica Larga Distancia de Puerto Rico et al., 8 FCCRcd 106 \(1992\) \(TLD Order\)](#).

FN11. AT & T states TLD's ownership raises issues of unfair and unequal international market access, potential market abuse by a foreign monopoly carrier, self-correspondency, above-cost accounting rates, and violation of reciprocity requirements of the Cable Landing License Act.

FN12. [Pacific Telecom Cable, Inc., 2 FCCRcd 2686 \(1987\) \(Conditional license\), 4 FCCRcd 8061 \(1989\) \(Final license\)](#).

FN13. See Letter from Michael Donnella, Senior Attorney, AT & T to Troy Tanner, Attorney, Federal Communications Commission, dated May 5, 1993. In addition, in its reply comments AT & T and STSJ assert that COLUMBUS II 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 technology, ensuring that the U.S. submarine cable industry is a viable competitor in the global market.

FN14. See [AT & T et. al., 7 FCCRcd 7758, 7762 \(Com.Car.Bur.1992\) \(TPC-5 Decision\)](#); [AT & T et. al., 4 FCCRcd 8046 \(1989\) \(TPC-4 Decision\)](#). The Commission came to the same conclusion in response to similar comments filed by STC following the public notice of TPC-4 and TPC-5.

FN15. See [International Competitive Carrier, 102 FCC2d 812, 822 \(1985\)](#); [International Services Order, 7 FCCRcd 7331 \(1992\)](#).

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