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1995 WL 121559 (F.C.C.), 10 F.C.C.R. 3193, 10 FCC Rcd. 3193

Federal Communications Commission (F.C.C.)

Memorandum Opinion, Order and Authorization

***1** IN THE MATTER OF LDDS COMMUNICATIONS, INC.

File Nos. **I-T-C-93-320**

MFS INTERNATIONAL, INC.

I-T-C-94-049, I-T-C-94-051, I-T-C-94-381

FRONTIER COMMUNICATIONS INTERNATIONAL, INC.

GLOBAL TELECOMMUNICATIONS, INC.

I-T-C-94-436

Applications for Authority Pursuant to Section 214 of the Communications Act of 1934, As Amended: to Resell International Private Lines between the United States and the United Kingdom for the Provision of Switched and Private Line Services

DA 95-511

Adopted: March 10, 1995

Released: March 22, 1995

****3193** By the Chief, Telecommunications Division:

I. INTRODUCTION

1. The Commission has under consideration the five above-captioned applications, filed pursuant to Section 214 of the Communications Act, as amended (the Act), for authority to resell international private lines between the United States and the United Kingdom for the provision of switched and private line services. For the reasons stated below, we grant these applications.

II. BACKGROUND

2. LDDS Communications, Inc. (LDDS) and MFS International, Inc. (MFSI) seek authority to resell international private lines of other carriers between the United States and the United Kingdom that are either interconnected at both ends to the public switched network, or at one end only, for the purpose of providing switched telecommunications services, including operator assisted services. [FN1] Global Telecommunications, Inc. (Global) seeks authority to resell private lines between the United States and the United Kingdom interconnected at both ends to provide switched services, [FN2] and Frontier Communications International, Inc. (Frontier) [FN3] seeks similar authority to resell both interconnected private lines to provide switched services and noninterconnected private lines to provide private line services. [FN4]

3. These applications were placed on public notice, and AT & T filed a petition to deny against each of them. LDDS, Global, and MFSI filed oppositions, and AT & T responded.

III. DISCUSSION

4. The Commission has already concluded that international private line resale serves the public interest in encouraging cost-based international telecommunications services. This finding is conditioned, however, on there being steps taken to ensure that such resale does not result in the

unilateral diversion of U.S. inbound switched traffic to private lines, thus exacerbating the U.S. settlements deficit. The Commission therefore requires that U.S. carriers permit the resale of their international private lines to only those countries which provide equivalent resale opportunities. [FN5] The Commission most recently addressed the issue of equivalency in ACC/Alanna, [FN6] where it found opportunities to resell international private lines for the provision of switched services are substantially equivalent in the United Kingdom to those available in the United States, and thus granted the applications of ACC and Alanna to provide switched service via resold private lines. [FN7] As a result of this decision, the resale of interconnected international private lines between the United States and the United Kingdom is permitted subject to appropriate Section 214 authorization.

*2 5. AT & T filed a petition to deny against each of the subject applications. In each case, AT & T opposes grant of the application because it maintains the United Kingdom ****3194** does not offer private line resale opportunities equivalent to those available under U.S. law. [FN8] In the case of LDDS and MFSI. AT & T asks that its Petition to Deny in BT North America, Inc. (BTNA), [FN9] and its subsequent Reply be incorporated by reference in this proceeding. [FN10] In its Petitions to Deny Frontier's and Global's applications, AT & T ?? that its pleadings and the pleadings of Telstra (UK) Ltd. in ACC/Alanna [FN11] be incorporated by reference. [FN12]

6. In each of its Petitions to Deny, however, and in the associated pleadings. AT & T relies on its assertion that the United Kingdom does not afford resale opportunities equivalent to those available under U.S. law. We examined these arguments fully in ACC/Alanna, and determined that the United Kingdom affords equivalent resale opportunities. Subsequently, we reiterated these conclusions in BTNA. [FN13] Therefore, we find to be moot AT & T's arguments in this proceeding that the United Kingdom does not afford equivalent resale opportunities.

IV. ORDERING CLAUSES

7. Upon consideration of the applications and in view of the foregoing, IT IS HEREBY CERTIFIED that the present and future convenience and necessity require the grant of authorization to Global, LDDS, Frontier and MFSI to resell international private lines between the United States and the United Kingdom that are interconnected to the public switched network for the provision of switched services, and in the case of Frontier, also to resell noninterconnected private lines for the provision of private line services.

8. Accordingly, IT IS ORDERED that applications File Nos. **I-T-C-93-320**, I-T-C-94-049, I-T-C-94-051, I-T-C-94-381, and I-T-C-94-436 ARE GRANTED, and LDDS, MFSI, Global and Frontier are authorized to resell international private lines for the provision of switched services, and in the case of Frontier, private line services, between the United States and the United Kingdom pursuant to the applicable tariffs of the authorized U.S. common carriers specified, supra, in notes 1, 2, and 4.

9. IT IS FURTHER ORDERED that LDDS' Motion for Leave to File Late-Filed Opposition and AT & T's Motion for Leave to File Late-Filed Reply ARE GRANTED.

10. IT IS FURTHER ORDERED that LDDS is authorized to lease and operate a one-half interest in up to 29 E-1 circuits, pursuant to the tariffs of the appropriately authorized U.S. carriers, for the provision of its authorized resale of international private lines for switched services between the United States and the United Kingdom.

11. IT IS FURTHER ORDERED that MFSI is authorized to lease and operate a one-half interest in up to 30 E-1 circuits, pursuant to the tariffs of the appropriately authorized U.S. carriers, for the provision of its authorized resale of international private lines for switched services between the United States and the United Kingdom.

*3 12. IT IS FURTHER ORDERED that Global is authorized to lease and operate a one-half interest in up to 96 voice grade circuits, pursuant to the tariffs of the appropriately authorized U.S. carriers, for the provision of its authorized resale of international private lines for switched services between the United States and the United Kingdom.

13. IT IS FURTHER ORDERED that Frontier is authorized to lease and operate a one-half interest in up to 2 T-1 and 5 digital voice/data circuits, pursuant to the tariffs of the appropriately authorized U.S. carriers, for the provision of its authorized resale of international private lines for switched and private line services between the United States and the United Kingdom.

14. IT IS FURTHER ORDERED that the authority granted herein to resell international private lines for the provision of switched services between the United States and the United Kingdom is limited to the provision of such services between the United States and the United Kingdom only--that is private lines which carry traffic that originates in the United States and terminates in the United Kingdom, or

traffic which originates in the United Kingdom and terminates in the United States.

15. IT IS FURTHER ORDERED that neither LDDS, MFSI, Global, Frontier, nor any person or companies directly or indirectly controlling them or controlled by them, or under direct or indirect common control with them, shall acquire or enjoy any right for the purposes of handling or interchanging traffic to or from the United States, its territories or possession which is denied to any other United States carrier by reason of any concession contract, understanding, or working arrangement to which these applicants or any such persons or companies controlling or controlled by the applicants are parties.

16. IT IS FURTHER ORDERED that each applicant shall file with the Commission a copy of any operating agreement it enters into with its foreign correspondents within thirty (30) days of execution, and shall otherwise comply with the filing requirements contained in Section 43.51 of the Commission's Rules, 47 C.F.R. Section 43.51.

17. IT IS FURTHER ORDERED that each applicant shall file tariff provisions 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.

18. IT IS FURTHER ORDERED that the applicants, as nondominant international private line resellers, shall file on a semi-annual basis with the Commission the information contained in the annual reports of overseas-telecommunications traffic filed pursuant to Section 43.61 of the Commission's Rules, 47 C.F.R. § 43.61.

****3195** 19. IT IS FURTHER ORDERED that the applicants shall file semi-annual, circuit additions to certificated points, pursuant to Section 63.15(b) of the Commission's rules, 47 C.F.R. Section 63.15 (b).

***4** 20. IT IS FURTHER ORDERED that the applicants shall file all arrangements for the interconnection of private lines to the U.S. public switched network, pursuant to Section 43.51(a) of the Commission's Rules, 47 C.F.R. Section 43.51(a).

21. IT IS FURTHER ORDERED that grant of these authorizations is conditioned on the United Kingdom's continuing to afford resale opportunities equivalent to those afforded under U.S. law.

22. IT IS FURTHER ORDERED that this order may be subject to future modification or revocation pursuant to the outcome of the Phase II Third Further Notice, 7 FCC Rcd 8040 (1992), and other relevant proceedings.

23. This Order is issued under Section 0.261 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 the public notice of this Order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Diane J. Cornell

Chief

Telecommunications Division

FN1 LDDS and MFSI both propose to resell international private lines pursuant to the following carriers' appropriate tariffs: AT & T Tariff Nos. 2, 9, 11, and 12; C & W Tariff No. 3; MCI Tariff Nos. 1 and 2; MCI/OTI Tariff Nos. 1 and 2; MCI/WU Tariff Nos. 20 and 27; Sprint Tariff Nos. 1, 2, 5, and 7, LDDS proposes to lease and operate 29 E-1 links, MFSI proposes to lease and operate 30 E-1 links.

FN2 Global proposes to resell international private lines pursuant to the following carriers' appropriate tariffs: AT & T Tariff Nos. 2, 9, 11, and 12; C & W Tariff No. 3; MCI Tariff Nos. 1 and 2; MCI/OTI Tariff Nos. 1 and 2; MCI/WU Tariff Nos. 20 and 27; Sprint Tariff Nos. 1, 2, 5, and 7. Global proposes to lease and operate 96 voice grade circuits.

FN3 Frontier originally filed its application under the name RCI Long Distance, Inc. On November 9, 1994, Frontier notified the Commission of its name change. See Letter from Philip V. Permut and Carl R. Frank, Counsel for Frontier Communications International, Inc., to William Caton, Secretary, FCC, dated November 9, 1994.

FN4 Frontier proposes to resell international private lines pursuant to the following carriers' appropriate tariffs: AT & T Tariff Nos. 1, 2, 9, 11, and 12; Sprint Tariff Nos. 1, 2, 5, and 7; MCI/WU

tariff Nos. 20 and 27; MCI Tariff Nos. 1 and 2; C & W Tariff No. 3; LDDS Tariff No. 1; Litel Tariff No. 1; Wiltel Tariff No. 2. Frontier proposes to lease and operate two T-1 and five digital data/voice circuits.

FN5 See Regulation of International Accounting Rates, CC Docket 90-337, Phase II First Report and Order (International Resale Order), 7 FCC Rcd 559 (1992).

FN6 ACC Global Corporation and Alanna Inc., 9 FCC Rcd 6240 (1994) (ACC/Alanna).

FN7 Id.: The Commission conditioned the applicants' ability to initiate service upon the United Kingdom's finding that the United States is an equivalent country. On October 20, 1994, the United Kingdom found the United States equivalent. See FCC Public Notice, Reference No. 50350, (October 24, 1994).

FN8 AT & T Petition to Deny Applications of MFSI, at 2; AT & T Petition to Deny Application of RCI, at 2; AT & T Petition to Deny Application of LDDS, at 2; AT & T Petition to Deny Application of Global Telecommunications, at 2.

FN9 BT North America, Inc., DA 95-120, released January 30, 1995 (BTNA).

FN10 AT & T Petitions to Deny Applications of LDDS and MFSI each cited BT North America Application, File No. ITC-93-126. AT & T's Petition to Deny that application was filed on April 15, 1993, and AT & T's Reply was filed on May 11, 1993.

FN11 ACC/Alanna, 9 FCC Rcd 6240.

FN12 AT & T Petition to Deny Application of RCI, at 2; AT & T Petition to Deny Application of Global, at 2. We will grant AT & T's request to incorporate the specified pleadings.

FN13 See ACC/Alanna, 9 FCC Rcd at 6272; BTNA, DA 95-120, at 3.
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