
NOTICE

This document was converted from WordPerfect to ASCII Text format.

Content from the original version of the document such as headers, footers, footnotes, endnotes, graphics, and page numbers will not show up in this text version.

All text attributes such as bold, italic, underlining, etc. from the original document will not show up in this text version.

Features of the original document layout such as columns, tables, line and letter spacing, pagination, and margins will not be preserved in the text version.

If you need the complete document, download the WordPerfect version or Adobe Acrobat version, if available.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
MFS Communications Company, Inc.)
)
and)
)
WorldCom, Inc.)
)

Application for authority pursuant to Section)
214 of the Communications Act of 1934, as)File No. ITC-96-518-TC
amended, to transfer control of international)
authorizations)

)
Eagle Uplink Corporation)
)

Application for authority pursuant to Section)File No. 2018-DSE-TC-96-(19)
25.118 of the Commission's rules to transfer)File No. 2014-DSE-TC-96-(9)
control of earth station licenses)

MEMORANDUM OPINION, ORDER, AND AUTHORIZATION

Adopted: December 5, 1996Released: December 6, 1996

By the Chief, International Bureau:

1.On September 13, 1996, WorldCom, Inc., (WorldCom) and MFS Communications Company, Inc., (MFSCC) filed the above-captioned applications pursuant to Sections 214 and 310 of the Communications Act of 1934, as amended, the Cable Landing License Act, and Sections 25.118 and 63.18 of the Commission's Rules, requesting consent to the transfer of control of MFSCC's international authorizations and satellite earth station licenses to WorldCom. We grant the applications in this order.

Parties

2.MFSCC is a publicly traded Delaware corporation. MFSCC wholly owns MFS Network Technologies, Inc., a Delaware corporation, which, in turn, wholly owns MFS International, Inc. (MFS International), MFS Intelenet, Inc. (MFS Intelenet), and MFS Telecom,

Inc. (MFS Telecom). MFS Telecom wholly owns Fibernet, Inc. d/b/a MFS Telecom of Albany and MFS Telecom of Buffalo (Fibernet). MFS International, MFS Intelenet, and Fibernet hold various Section 214 authorizations. Eagle Uplink Corporation (Eagle Uplink), another wholly owned subsidiary of MFSCC, holds licenses for various satellite earth stations, and MFS Globenet, Inc. (MFS Globenet), a wholly owned subsidiary of MFS International, holds a cable landing license.

3. WorldCom, formerly known as LDDS Communications, Inc., is a publicly traded Georgia corporation of which no shareholder currently owns greater than 10 percent of the voting shares. WorldCom and its subsidiaries hold various Section 214 authorizations and cable landing licenses.

4. HIJ Corp. is a wholly owned subsidiary of WorldCom created specifically for the purposes of consummating this merger.

5. There is no significant foreign ownership of any of the companies involved in the proposed transaction.

The Transaction

6. According to the Agreement and Plan of Merger negotiated by MFSCC and WorldCom (and subject to approval by shareholders of both companies), HIJ Corp. would merge into MFSCC. The shareholders of MFSCC would exchange each issued and outstanding share of common stock of MFSCC for 2.1 shares of WorldCom common stock. MFSCC would thus become a wholly owned subsidiary of WorldCom. Following the transaction, WorldCom's board of directors would comprise an odd number of directors, with WorldCom designating one more director than MFSCC.

7. The applicants expect that after consummation of the merger, MFSCC would continue operating its subsidiaries under their current names. No license-holder name would change, and there are no plans to change the manner in which the licensees provide international telecommunications services. Both WorldCom's management personnel and the current MFSCC management personnel would continue to be involved in the management of MFSCC after the merger.

8. In order to complete the transaction, WorldCom would issue additional shares of its common and preferred stock. The applicants state that no transfer of control of WorldCom would take place because, although approximately 54 percent of WorldCom common stock would be issued to MFSCC shareholders, the shares are widely and publicly held, and at least 11 percent of the current MFSCC shareholders already own WorldCom shares. Therefore, fewer than 50 percent of the newly issued shares would be held by new shareholders. No single shareholder would own 10 percent or more of the shares of WorldCom following the merger.

Comments

9. The applications were placed on public notice on September 27, 1996. Because the application includes a request to transfer control of the cable landing license recently granted to MFS Globenet, we informed the Department of State. The Department of State, after coordinating with the National Telecommunications and Information Agency and the Department of Defense, stated that it approves of the proposed transfer of control of the cable landing license. Petitions to deny were timely filed by Westside Associates, Ltd., (Westside) and Time Warner Cable of New York City and Paragon Communications (TWCNYC). TWCNYC requested voluntary dismissal of its petition on November 8; that request is unopposed and therefore granted. Thus, only Westside's petition to deny is outstanding.

10. On November 12, MFSCC and WorldCom each filed a timely opposition to Westside's petition to deny. On November 19, Westside filed a response to those oppositions; that response was within the seven-day period provided by Section 63.20(d) for such responses and is therefore admitted to the record of this proceeding. The subsequent requests by MFSCC and WorldCom to strike Westside's November 19 filing are denied.

11. Westside, the owner of an office building in Los Angeles, claims to have had a contractual dispute and problems obtaining adequate service from MFS Intelenet and its predecessor, RealCom. These claims are the basis of a civil action filed by Westside against MFS Intelenet in California Superior Court. Westside states that it is raising these issues "not for the purpose of enlisting the Commission in resolving the particular dispute," Westside Petition to Deny at 3, but as an example of problems that it and other small businesses could have with the combined company following a merger. Westside believes that the merger "would compound the problems that it has encountered in obtaining adequate service" from MFSCC and its subsidiary. *Id.* at 2. "The transfer to WorldCom would provide a company that is, to our knowledge, solely experienced in the long distance carriage business, with no experience in local dial tone and value-added services, with the authorization to proceed to conduct that local, value-added business. Given the history of its dealings with MFS and RealCom, Westside is convinced that this would be a disservice to it and similarly situated small business customers" *Id.*

Discussion

12. Under Section 214(a) of the Communications Act, no carrier shall acquire or operate any line unless and until the carrier first obtains a certificate from the Commission that the present or future public convenience and necessity requires it. Similarly, under Section 310(d) of the Communications Act, no earth station license shall be transferred to any person except upon a finding by the Commission that the transfer would serve the public interest, convenience, and necessity. Courts have consistently held that the Commission must take competitiveness issues into account as part of this public-interest analysis. Finally, Sections 7 and 11 of the Clayton Act empower the Commission to disapprove anticompetitive acquisitions of "common carriers

engaged in wire or radio communication or radio transmission of energy." The courts have construed these statutory authorizations to mean that the Commission has discharged its statutory responsibilities "when the Commission seriously considers the antitrust consequences of a proposal and weighs those consequences with other public interest factors."

13. The applicants request authorization for the transfer of control of the international Section 214 authorizations, satellite earth station licenses, and cable landing license that would result from consummation of the proposed merger. After review, we find that under current International Message Telephone Service (IMTS) market conditions, the combined entity would have no ability, post-merger, to restrict output or profitably raise prices above a competitive level for IMTS service.

14. Specifically, based on preliminary 1995 data, MFSCC's and WorldCom's combined share of the IMTS market is only 2.1 percent. Moreover, the merged company apparently would control no bottleneck facilities that could impede market performance. Finally, the proposed merger would not disrupt any existing service or cause inconvenience or confusion to any of MFSCC's current customers, because MFSCC and its subsidiaries would continue to operate its services and no name changes would be involved. Accordingly, viewing these factors in light of the structural characteristics of the IMTS market i.e., overall supply is elastic and continues to grow while individual suppliers face elastic demand for their services we find it unlikely that the merged entity could exercise market power for a sustained period of time to the detriment of consumers.

15. Moreover, we believe that the proposed merger would create certain efficiencies that benefit consumers. For example, we find that the proposed merger would promote competition among international carriers by providing WorldCom and MFSCC greater financial resources with which to strengthen their competitive positions. Similarly, approval of the transaction would permit MFSCC and WorldCom to realize significant economic and marketing efficiencies that would enhance their ability to provide high-quality, low-cost telecommunications services and to compete more effectively in the international telecommunications marketplace. Indeed, the financial and managerial resources of WorldCom could improve MFSCC's ability to provide service and meet the expanding needs of its customers and would enable Eagle Uplink to better market its service and acquire greater technical expertise.

16. Finally, MFSCC and WorldCom state that Westside's breach-of-contract claims should be, and are being, raised in a different forum, namely the California Superior Court, and Westside's complaints do not entitle it to the status of a party in interest in this proceeding. MFSCC and WorldCom also argue that Westside has not established that a grant of this application would be inconsistent with the public interest. Whether or not Westside is properly a party in interest in this proceeding, its assertions do not persuade us that allowing the proposed merger would be contrary to the public interest, convenience, or necessity. We have no reason to believe that its experience is representative of problems that others have with MFSCC and its subsidiaries now or, more importantly, that the problems would be aggravated were we to

consent to this merger. The applicants state that current management of MFSCC would continue to be involved in the management of MFSCC after the merger. Moreover, this merger would not affect the outcome of the pending civil litigation in the California court, and we accept WorldCom's assertion that it is prepared to deal with Westside's specific claims once the merger is complete.

17. In sum, in the absence of any compelling evidence presented in this proceeding that demonstrates that the proposed merger would substantially lessen competition for IMTS service, we conclude that the proposed transfers of control would serve the public interest, convenience, and necessity. Accordingly, after due consideration of the facts and circumstances provided by this application and the comments filed, we consent to the proposed transfers.

Ordering Clauses

18. Accordingly, IT IS ORDERED, pursuant to Sections 214(a) and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. 214(a), 310(d); and Sections 63.18 and 25.118 of the Commission's Rules, 47 C.F.R. 63.18, 25.118, that the applications of MFS Communications Company, Inc., and WorldCom, Inc., File Nos. ITC-96-518-TC, 2018-DSE-TC-96-(19), and 2014-DSE-TC-96-(9), ARE GRANTED, and we consent to the transfer of control to WorldCom of MFSCC's Section 214 authorizations, earth station licenses, and cable landing license listed in Appendix A.

19. IT IS FURTHER ORDERED that all terms and conditions of all Commission orders granting authority to MFSCC and its subsidiaries remain in effect.

20. IT IS FURTHER ORDERED that Westside's petition to deny is dismissed.

21. This Order is issued pursuant to Section 0.261 of the Commission's Rules, 47 C.F.R. 0.261, 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, 47 C.F.R. 1.106, 1.115, may be filed within 30 days of public notice of this order (see Section 1.4(b)(2), 47 C.F.R. 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Donald H. Gips
Chief, International Bureau

APPENDIX A

Section 214 Authorizations

MFS International, Inc.

File No. Cite Purpose

ITC-94-04910 FCC Rcd 3193 (1995) International Interconnected Private Line Resale

ITC-94-05110 FCC Rcd 3193 (1995) International Interconnected Private Line Resale

ITC-95-010 P.N. No. I-7077, 12/7/94 International Interconnected Private Line Resale

ITC-94-35511 FCC Rcd 1766 (1996) International Interconnected Private Line Resale

ITC-94-2369 FCC Rcd 3673 (1994) International Private Line Resale

ITC-94-2469 FCC Rcd 6163 (1994) International Facilities-Based Service

ITC-95-39510 FCC Rcd 12,600 (1995) International Facilities-Based Service

ITC-94-0509 FCC Rcd 2275 (1994) PTAT-1, TAT-8, TAT-9, TAT-10, TAT-11

Cable Systems

ITC-94-2469 FCC Rcd 6163 (1994) PTAT-1, TAT-8, TAT-9, TAT-10, TAT-11

Cable Systems

ITC-95-39510 FCC Rcd 12,600 (1995) NPC, Aloha, CANUS-1 Cable Systems

ITC-96-1988 P.N. No. I-8218, 11/27/96 Global Facilities-Based/Global Resale Services

MFS Intelenet, Inc.

ITC-93-0658 FCC Rcd 2210 (1993) International Switched Resale

ITC-93-1548 FCC Rcd 5231 (1993) International Private Line Resale

Fibernet, Inc. d/b/a MFS Telecom of Albany and MFS Telecom of Buffalo

ITC-93-17410 FCC Rcd 5231 (1993) International Switched Service

Cable Landing License

MFS Globenet, Inc.

SCL-96-003 DA 96-1649, 10/3/96 MFS-1/MFS-2 Cable System

Satellite Earth Station Licenses

Eagle Uplink Corporation

Call Sign File No. Call Sign File No.

E870884231-DSE-MP/L-89

1431-DSE-P/L-87

E870885230-DSE-MP/L-89

1432-DSE-P/L-87

E2312900-DSE-P/L-87

E3690921-DSE-P/L-87

E4142898-DSE-P/L-87

E3353928-DSE-P/L-87

E3082916-DSE-P/L-87

E3625924-DSE-P/L-87

E3087914-DSE-P/L-87

E3335904-DSE-P/L-87

E3942930-DSE-P/L-87

E3014930-DSE-P/L-87

E4052927-DSE-P/L-87

E3624922-DSE-P/L-87

E3963915-DSE-P/L-87

E5006906-DSE-P/L-87

E3230902-DSE-P/L-87

E2863911-DSE-P/L-87

E3344905-DSE-P/L-87

E89001026-DSE-P/L-89

CSG-89-029-(4)-ML

E89001127-DSE-P/L-89

CSG-89-029-(4)-ML

E890131371-DSE-P/L-89

CSG-89-029-(4)-ML

E890132372-DSE-P/L-89

CSG-89-029-(4)-ML

E873412387-DSE-MP/L-89

CSG-89-022-ML

E861022389-DSE-MP/L-89

CSG-89-020-ML

E880915388-DSE-MP/L-89

CSG-89-021-ML

E890353641-DSE-P/L-89

E890352627-DSE-P/L-89