

11 F.C.C.R. 2529, 11 FCC Rcd. 2529, 1995 WL 707794 (F.C.C.)

Federal Communications Commission (F.C.C.)

Memorandum Opinion, Order and Authorization
IN THE MATTER OF IDB WORLDCOM SERVICES, INC.

File No.

I

-

T

-

C

-

95

-

197

Application for Authority pursuant to Section 214 of the Communications Act of 1934, as amended, to Provide Switched Services via International Private Lines Interconnected to the Public Switched Networks in the United States and the United Kingdom

DA 95-2393

Adopted: November 27, 1995

Released: December 1, 1995

*2529 By the Chief, Telecommunications Division:

I. INTRODUCTION

1. In this order, we grant IDB WorldCom Services, Inc. (IDB) Section 214 authority to provide switched services via its U.S. international private line facilities between the United States and the United Kingdom.

II. BACKGROUND

2. On February 21, 1995, IDB filed the captioned application pursuant to Section 214 of the Communications Act of 1934, as amended,^[FN1] and Section 63.01 of the Commission's Rules.^[FN2] IDB requests authority to provide switched services via international private lines between the United States and the United Kingdom that are interconnected either to the U.S. public switched network ("PSN") or to the U.K. PSN or to both. On March 7, 1995, we placed IDB's application on public notice.^[FN3] AT&T Corp. (AT&T) filed comments, and IDB filed reply comments.

3. IDB proposes to use its authorized U.S. private line half-circuits in transatlantic cable systems in which it or its commonly-owned companies own capacity. Such circuits include capacity in TAT-8, TAT-9, TAT-10, and PTAT-1. Also, IDB proposes to use satellite circuits, including circuits between U.S. earth stations and INTELSAT Atlantic Ocean Region ("AOR") satellites, which IDB will obtain under tariff from COMSAT. IDB will connect its international half-circuits with half-circuits provided by entities that are authorized in the United Kingdom. The circuits will be interconnected to the PSN in either the United States or the United Kingdom or in both.

4. IDB states that it has filed the instant application as a precaution if the Commission determines that the proposed service constitutes private line resale as defined in the Commission's *International Resale Order*.^[FN4] If the Commission concludes that IDB's proposed service is not within the ambit of the *International Resale Order*, IDB proposes to withdraw its application as an unnecessary filing.

5. In support of its application, IDB states that, in the *International Resale Order*, the Commission found that the public interest is served by authorizing the provision of international switched services over private line facilities to those countries that provide resale opportunities equivalent to those afforded by the United States.^[FN5] IDB notes that

the Commission has found the United Kingdom equivalent to the United States in international private line resale opportunities for U.S.-based carriers. IDB also notes that the Commission recently granted applications requesting authority to provide international resale between the United States and the United Kingdom.^[FN6] IDB states that the Commission granted those applications subject to the condition that the United Kingdom designate the United States as an equivalent country. IDB states that the United Kingdom has designated the United States as an equivalent country and that granting its application will allow it to continue to participate and compete on the U.S.-U.K. route, which it is currently serving.

6. AT&T does not oppose IDB's application. AT&T requests, however, that the Commission impose three requirements on IDB. First, AT&T requests the Commission to impose a retroactive reporting requirement of switched minutes that IDB has transported between the United Kingdom or other foreign markets and the United States via international private lines connected to the U.S. PSN since December 23, 1991, to the present. To the extent that traffic from markets other than the United Kingdom has been transported over the private lines, the volumes by market should be reported separately. Second, AT&T requests that we impose a certification requirement on IDB as a precondition to its Section 214 authorization. The certification would require IDB to state that it will no longer participate in the provision of switched services into the United States over international private lines from any country for which it has not received the Section 214 authority required by the *International Resale Order*. Third, AT&T requests that the Commission impose a quarterly certification process to ensure IDB's compliance with conditions placed in its Section 214 authorization, including the U.S.-U.K. traffic limitation on the use of the private line arrangements.^[FN7]

7. AT&T asserts that, from 1991 to the present, IDB and its affiliates have been offering

“WorldCall” service in the United Kingdom (and in Germany) via international private lines interconnected to the U.S. PSN in violation of *2530 the *International Resale Order*.^[FN8] According to AT&T, WorldCall calls are routed via dedicated facilities to IDB nodes in the United Kingdom (and in Germany and possibly other countries) and then to the United States via international private lines which are interconnected to the U.S. PSN. AT&T contends that the Commission, in January 1993, found that IDB had violated the *International Resale Order*.^[FN9] and instructed IDB to bring its actions into compliance with that order. AT&T alleges that IDB does not seek Section 214 authority for Germany because IDB knows that the Commission could not find that Germany offers equivalent resale opportunities. AT&T contends that IDB's unauthorized provision of U.K.-U.S. (as well as Germany-U.S.) switched services via international private lines connected to the U.S. PSN has injured U.S. carriers and their customers. That is, to the extent IDB provided one-way completion of switched minutes from the United Kingdom to the United States outside the settlements process, U.S. net settlements paid by U.S. carriers and their customers to U.K. carriers increased and harmed U.S. carriers and their customers.^[FN10]

8. In reply, IDB emphasizes that AT&T does not oppose IDB's application but merely requests the Commission to impose reporting requirements on IDB.^[FN11] IDB states that the Commission should dismiss such requests. IDB claims that AT&T is re-litigating its pending formal complaint against IDB and two IDB affiliates for alleged violations of the Commission's international private line resale policy. IDB suggests that AT&T admits that the purpose of the reporting requirement is not to serve the public interest but to assist AT&T in prosecuting its complaint. IDB disagrees with AT&T's statement that the international private line resale policy is settled law. In support, IDB notes that the Commission has asked for comment on issues involving international private line resale in its Notice of Proposed Rulemaking in *Market Entry and*

Regulation of Foreign-affiliated Entities.^[FN12]

IDB states that the requested Section 214 authority is for additional service authority. IDB further states that numerous U.S. carriers, including AT&T, have received the exact same authority that IDB seeks. Once the application is granted, IDB claims that it will have the authority to introduce new service offerings that AT&T and other U.S. carriers are now authorized to provide.

III. DISCUSSION

9. Resale is “an activity wherein one entity subscribes to the communications services and facilities of another entity and then reoffers communications services and facilities to the public (with or without ‘adding value’) for profit.”^[FN13] Because IDB will use its own U.S. international private lines to provide switched services between the United States and the United Kingdom, by definition, IDB will not be reselling private line service.

10. IDB's application, however, still falls within the scope of the *International Resale Order*. We interpret this Order to require that, whenever a carrier seeks to reroute switched traffic over private lines interconnected to the PSN at either end, that carrier must seek separate Section 214 authorization.^[FN14] To obtain Commission authorization, an applicant must demonstrate that the destination country affords resale opportunities equivalent to those available under U.S. law. This equivalency requirement is designed to protect the U.S. public interest against the detrimental effects of one-way diversion of switched traffic on U.S. net settlement payments.^[FN15] Here, IDB proposes to reroute switched traffic over an international private line connected at one or both ends to the PSN in the United States and/or the United Kingdom. Therefore, IDB must obtain a separate Section 214 authorization to provide the proposed service.

11. The Commission has concluded previously that the United Kingdom provides equivalent resale opportunities.^[FN16] And, the Commission has granted the authority IDB requests to similarly situated

applicants.^[FN17] Moreover, AT&T neither requests us to deny IDB's application nor asserts that grant of IDB's application would be contrary to the public interest.

12. We find that grant of the application will allow IDB to become a more effective competitor in the provision of switched services. Use of its U.S. international private lines to provide switched services should foster lower prices, innovative services and increased responsiveness to consumer needs on the U.S.-U.K. route. Therefore, the remaining issue to decide is whether to impose AT&T's proposed reporting and certification conditions on IDB's Section 214 authorization.

13. We see no reason in the record before us to impose AT&T's special conditions on IDB's Section 214 authorization. These proposed conditions are based on AT&T's assumption that IDB has violated the Commission's *International Resale Order* by providing switched services over international private lines without proper Section 214 authorization. The issue whether IDB has violated our *International Resale Order* is properly resolved as an enforcement matter in the pending formal complaint^[FN18] rather than in a Section 214 proceeding. Moreover, the Commission is considering in the *Foreign Carrier Entry* proceeding whether to codify the requirement that carriers seeking to connect a U.S. private line half-circuit with a leased foreign private line half-circuit to provide a switched, basic service, must obtain specific Section 214 authority to do so.^[FN19] We expect that the Commission's order in that proceeding will resolve the issue AT&T raises here on a prospective basis. At the conclusion of that proceeding or the enforcement proceeding initiated by the filing of AT&T's formal complaint against IDB, we will have ample opportunity to determine whether further oversight of IDB's activities is warranted. Additionally, as a result of the Commission's findings in either the enforcement or the rulemaking proceeding, it may be appropriate to require IDB to submit the information that AT&T requests pursu-

ant to our general authority under Section 218. [FN20] For these reasons, we deny AT&T's request to impose the special reporting and certification requirements on IDB.

14. Thus, we grant IDB's Section 214 application authorizing IDB to provide switched services between the United States and United Kingdom via its international private lines that are interconnected either to the U.S. PSN or the U.K. PSN or to both.

IV. ORDERING CLAUSES

15. Upon consideration of the above-captioned application, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision by IDB of switched services between the United States and the United Kingdom via international private lines interconnected to the public switched networks at either or both ends.

16. Accordingly, IT IS ORDERED that application File No. **I-T-C-95-197** IS GRANTED.

17. IT IS FURTHER ORDERED that the authority granted herein for the provision of switched services via international private lines 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, traffic that originates in the United States and terminates in the United Kingdom or traffic that originates in the United Kingdom and terminates in the United States.

18. IT IS FURTHER ORDERED that neither IDB nor any persons or companies directly or indirectly controlling it or controlled by it, or under direct or indirect common control with it, shall acquire or enjoy any right, for the purposes of handling or interchanging traffic to or from the United States, its territories or possessions which is denied to any other U.S. carrier by reason of any concession, contract, understanding, or working arrangement to which IDB or any such persons or companies controlling or controlled by IDB are parties.

19. IT IS FURTHER ORDERED that IDB shall comply with Section 203 of the Communications Act, 47 U.S.C. § 203, Part 61, and Sections 43.51 and 43.61 of the Commission's Rules, 47 C.F.R. Part 61, and §§ 43.51 and 43.61.

20. IT IS FURTHER ORDERED that IDB shall comply with any current and future Commission policies and requirements concerning international accounting and settlement rates and shall file copies with the Commission of any operating agreements which it enters into with its foreign correspondents within thirty days of their execution.

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

22. This Order is issued under Section 0.261 of the Commission's Rules, 47 C.F.R. § 0.261 (1994) and is effective upon adoption. Petitions for reconsideration under Section 1.106, 47 C.F.R. § 1.106 (1994), or applications for review under Section 1.115, 47 C.F.R. § 1.115 (1994), may be filed within thirty days of the public notice of this Order (*see* Section 1.4(b)(2), 47 C.F.R. § 1.4(b)(2) (1994)).

FEDERAL COMMUNICATIONS COMMISSION

Diane J. Cornell
Chief
Telecommunications Division
International Bureau

FN1. 47 U.S.C. § 214 (1995).

FN2. 47 C.F.R. § 63.01 (1994).

FN3. *See* Report No. I-8020.

FN4. *Regulation of International Accounting Rates*, CC Docket No. 90-337, Phase II, First Report and Order, 7 FCC Rcd 559 (1991) (*International Resale Order*), modified in part on recon., 7 FCC Rcd 7927 (1992), petition for reconsideration/clarification pending.

FN5. Application at 1.

FN6. *Id.* at 1-2 (citing [ACC Global and Alanna, Inc.](#), 9 FCC Rcd 6240 (1994)).

FN7. AT&T Comments at 1-2.

FN8. *Id.* at 2 (referencing *AT&T v. World Communications, Inc., et al.*, File No. E-93-103, filed Sept. 24, 1993). IDB, a Delaware corporation, is affiliated with WorldCom International, Inc. in the United Kingdom and WorldCom GmbH in Germany. See Application of IDB at 4 (Application).

FN9. *Id.* at 4 (citing *World Communications, Inc., Order and Notice of Apparent Liability for Forfeitures*, 8 FCC Rcd 755 (1993)).

FN10. *Id.* at 3.

FN11. Response of IDB at 1.

FN12. See *Market Entry and Regulation of Foreign-affiliated Entities, Notice of Proposed Rule-making*, IB Docket No. 95-22, 10 FCC Rcd 4844 (1995) (*Foreign Carrier Entry Notice*).

FN13. *International Resale Order*, 7 FCC Rcd at 565 n.7 (citing *Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities*, 60 FCC 2d 261, 271 (1976), *recon.*, 62 FCC 2d 588 (1977), *aff'd sub nom. American Telephone and Telegraph Company v. FCC*, 572 F.2d 17 (2d Cir.), *cert. denied*, 439 U.S. 875 (1978)).

FN14. See *American Telephone and Telegraph Company, Memorandum Opinion, Order and Authorization*, 10 FCC Rcd 3201 (1995), *app. for review pending (AT&T Resale Order)*. See also *MCI Telecommunications Corporation, Memorandum Opinion, Order and Authorization*, 10 FCC Rcd 3187 (1995) (*MCI Resale Order*).

FN15. *International Resale Order*, 7 FCC Rcd at 560-61.

FN16. See *ACC Global Corp. and Alanna Inc.*, 9

FCC Rcd 6240 (1994).

FN17. See *AT&T Resale Order and MCI Resale Order*, *supra* note 14.

FN18. See *supra* note 8.

FN19. See *supra* note 12.

FN20. 47 U.S.C. § 218 (1995).

11 F.C.C.R. 2529, 11 FCC Rcd. 2529, 1995 WL 707794 (F.C.C.)

END OF DOCUMENT