

1995 WL 472381 (F.C.C.), 10 F.C.C.R. 8640, 10 FCC Rcd. 8640

(Cite as: **1995 WL 472381 (F.C.C.), 10 FCC Rcd. 8640**)

Federal Communications Commission (F.C.C.)

Memorandum Opinion, Order, Authorization and Certificate

***1 IN THE MATTER OF AT & T CORP.**

Application for authority to resell international voice services between the United States and overseas points.

File No. **I-T-C-95-298**

Application for authority to acquire and operate facilities in the ARIANE 2 Cable System between Greece and France.

File No. **I-T-C-95-305**

Application for authority to acquire and operate facilities in the KATTEGAT-1 Cable System between Denmark and Sweden.

File No. **I-T-C-95-326**

DA 95-1722

Adopted: July 28, 1995

Released: August 11, 1995

****8640 By the Chief, Telecommunications Division:**

1. We have under consideration three applications filed by AT & T Corp. pursuant to Section 214 of the Communications Act of 1934, as amended, requesting authority, inter alia, to provide international switched services by the resale of the switched voice services of various carriers, and to acquire and operate facilities in the ARIANE 2 and KATTEGAT 1 Cable Systems. The applications were placed on public notice. Petitions to Deny the applications were filed by Telefonica Larga Distancia de Puerto Rico, Inc. (TLD). AT & T filed its oppositions to the petitions and TLD replied.

2. TLD argues that AT & T's applications should be denied or deferred pending final action on the Commission's Notice of Proposed Rulemaking on market entry and regulation of foreign-affiliated entities. [FN1] TLD states that AT & T has previously argued in a petition against a TLD application that the Commission should not grant any application of a foreign-affiliated carrier before it completes the foreign carrier rulemaking. [FN2] Although TLD disagrees with AT & T's position, TLD states that all applications filed by foreign-affiliated carriers should be processed in the same manner. Therefore, because AT & T has affiliations with foreign carriers, TLD argues that if the Commission defers action on TLD's applications, it should also defer action on AT & T's applications.

3. In response, AT & T states that TLD's petition is simply a retaliatory reaction to AT & T's opposition to TLD's proposal to expand significantly its existing authority by entering the mainland U.S. telecommunications market. AT & T further states that it already provides facilities-based services to all of the requested points. It now requests authority only to resell the switched services of other facilities-based carriers and to acquire facilities in new overseas submarine cables. In its reply, TLD again states that all foreign-affiliated carriers should be treated the same way by the Commission.

4. We will first address TLD's principal argument that we should delay acting on AT & T's applications pending completion of the foreign carrier rulemaking. We are not delaying action on any applications, TLD's or any other, pending a decision in the foreign carrier rulemaking. Instead, we are granting applications subject to any action the Commission takes in that rulemaking proceeding. TLD's applications are being considered in turn on their own merits, and any procedural delay is a result of the complexities of the issues raised in the applications, not the Commission's waiting for the completion of the rulemaking.

*2 5. We now address the underlying question of AT & T's status as a carrier with foreign affiliates and its entry into the U.S. market for resale services, as well as its acquisition of new facilities to previously authorized points. Although AT & T is a U.S. corporation owned by U.S. citizens, its participation in ownership of foreign carriers does make AT & T a carrier affiliated with a foreign carrier, as defined in Section 63.01(r) of the Commission's Rules. These affiliations, however, do not necessitate the denial of AT & T's applications nor the imposition of special conditions.

6. First, the Commission has had a long-standing open entry policy for applicants affiliated with foreign carriers, such as AT & T that seek authority for resale of international switched services. In International Services, the Commission found that open entry for switched service resale increases competition, without resulting in substantial potential for competitive harm. [FN3] Although the Commission recently issued a Notice of Proposed Rulemaking that comprehensively examines all of the Commission's policies regarding U.S. market entry by foreign-affiliated carriers, the Commission has not proposed to change its open entry policy for such carriers seeking to provide resale of switched services. Therefore, we find that grant of AT & T's resale application would be consistent with Commission policy. We note, however, that grant of AT & T's application will be subject to any modifications to the Commission's open entry policy that might be adopted in the pending rulemaking proceeding.

7. Second, the Commission believes that grant of the facilities-based applications is in the public interest despite AT & T's affiliations. AT & T has authority to serve all of the points requested to be served by the cables in which it **8641 seeks ownership. The purpose of the applications is to provide media diversity and better service between the United States and these points. This is a

very limited expansion of AT & T's authority that does not give rise to concerns about potential discrimination or anticompetitive conduct by AT & T.

8. In light of the above, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of international switched resale service to the general public by AT & T, and the addition of facilities.

9. Accordingly, IT IS ORDERED that applications File Nos. I-T-C-95-298, I-T-C-95-305 and I-T-C-95-326 ARE GRANTED, and AT & T is authorized to:

a. provide international switched services by the resale of the international switched voice services set forth in MCI's Tariff No. 1, Sprint's Tariff FCC No. 1, and LDDS' Tariff FCC No. 1 between the United States and the overseas points listed in those tariffs;

b. acquire on an ownership basis a one-half interest in and operate 9 MI-US [FN4] of capacity in the ARIANE 2 Cable System between Greece and France;

*3 c. acquire by lease or other comparable means a one-half interest in any necessary overseas connecting facilities;

d. use the facilities in b and c, above, to provide AT & T's regularly authorized services between the United States, on the one hand, and Cyprus, Lebanon and Greece, on the other hand;

e. acquire on an ownership basis a one-half interest in and operate 6 MI-US [FN5] of capacity in the KATTEGAT 1 Cable System between Denmark and Sweden;

f. acquire by lease or other comparable means a one-half interest in and operate any necessary overseas connecting facilities; and

g. use the facilities in e and f, above, to provide AT & T's regularly authorized services between the United States, on the one hand, and Finland, Latvia and Sweden, on the other hand.

10. IT IS FURTHER ORDERED that the applicant shall obtain any necessary operating arrangements in each of the countries to which it provides service and shall file with the Commission any operating agreements with its correspondents within 30 days of their execution.

11. IT IS FURTHER ORDERED that the applicant shall file a tariff pursuant to Section 203 of the Communications Act of 1934, as amended, [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.

12. IT IS FURTHER ORDERED that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, [47 C.F.R. Section 43.61](#).

13. IT IS FURTHER ORDERED that nothing in this authorization shall 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 shall

be construed as containing authority for the transmission of money.

14. IT IS FURTHER ORDERED that the Petitions to Deny filed by TLD are hereby DENIED.

15. IT IS FURTHER ORDERED that the authority granted herein is subject to any action the Commission may take in its Notice of Proposed Rulemaking, IB Docket No. 95-22, 10 FCCRcd 4844 (1995).

16. 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 date of the public notice of this order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Diane J. Cornell

Chief

Telecommunications Division

International Bureau

FN1 See [Market Entry and Regulation of Foreign-affiliated Entities, IB Docket No. 95-22, 10 FCCRcd 4844 \(1995\)](#) (Foreign Carrier Rulemaking).

FN2 See AT & T Petition to Deny (File No. I-T-C-95-248) (May 1, 1995).

FN3 [Regulation of International Common Carrier Services, 7 FCCRcd 7331, 7335 \(1992\)](#) (International Services).

FN4 A MIU is defined in the ARIANE 2 Cable System C & MA as the minimum unit of investment consisting of 2,176,000 fundamental units of ownership. The MIU is equivalent to 30 MAUOs consisting of 2,048,000 usable bits per second and an additional 128,000 bits per second for multiplexing each of the 64 MIUs in a basic system module.

FN5 A MIU is defined in the KATTEGAT 1 Cable System C & MA as the minimum unit of investment consisting of 2,048,000 bps digital stream which will be used for purposes of ownership allocation.

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