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

In the Matter of	)	
	)	
Cable & Wireless, Inc.	)	File Nos. ITC-93-328
GTI Network, Inc.	)	ITC-94-435
MFS International, Inc.	)	ITC-95-015
Communications Telesystems International	)	ITC-95-116
INTEX Telecommunications, Inc.	)	ITC-95-185
Cherry Communications, Inc.	)	ITC-96-182
	)	
Applications for authority pursuant to Section 214 of the Communications Act of 1934, as amended, to resell international private line services interconnected to the public switched network ("PSN") for the provision of service between the United States and Australia	)	
	)	
Telstra, Inc.	)	ITC-96-319
	)	
Application for authority pursuant to Section 214 of the Communications Act of 1934, as amended to resell international message telephone service, international private line services interconnected to the PSN, and international private lines not interconnected to the PSN for the provision of service between the United States and Australia	)	

MEMORANDUM OPINION, ORDER AND CERTIFICATE

Adopted: December 16, 1997 Released: December 17, 1997

By the Chief, International Bureau:

I. INTRODUCTION

1. In this decision we grant Cable & Wireless, Inc. ("CWI"), GTI Network, Inc. ("GNI"), MFS International, Inc. ("MFSI"), Communication Telesystems International

("CTS"), INTEX Telecommunications Inc. ("INTEX"), Cherry Communications, Inc. ("CCI"), and Telstra, Inc. ("TI") authority pursuant to Section 214 of the Communications Act, as amended ("Act"), and Section 63.18(e)(3) of the Commission's rules, to resell international private lines ("IPLs") interconnected to the public switched network ("PSN") for the provision of switched services between the United States and Australia. We also grant TI authority to resell switched services and to resell IPLs not interconnected to the PSN for the provision of switched services between the United States and Australia.

II. BACKGROUND AND PLEADINGS

A. The Applicants

2. CWI, a U.S. corporation, is authorized to provide international switched and private line services between the United States and various international points. CWI's sole shareholder and ultimate corporate parent is Cable & Wireless, plc. ("C&W"), a U.K. corporation. C&W holds an equity interest of 49 percent in Optus Communications Pty Limited ("Optus"), a carrier that provides domestic and international common carrier services, including service between Australia and the United States.

3. GNI is authorized to offer resold international switched telecommunications services between the United States and various international points. GNI is a wholly-owned subsidiary of Primus Holding Corporation ("PHC"), which is a wholly-owned subsidiary of Primus Telecommunications Group, Inc. ("PTGI"). PTGI holds a 100 percent indirect interest in Axicorp, an Australian carrier providing resale services.

4. MFSI, a Delaware corporation, is a wholly-owned subsidiary of MFS Network Technologies, Inc., ("MFSNT"), a Delaware corporation. MFSNT is a wholly-owned subsidiary of MFS Communications Company, Inc. ("MFSCC"), a Delaware corporation. MFSCC is a wholly-owned subsidiary of WorldCom, Inc., a Georgia corporation. MFSI and WorldCom, Inc. both hold multiple Section 214 authorizations, including authority to offer both resold and facilities-based international services on a global basis as a non-dominant common carrier.

5. CTS, a California corporation, is an authorized U.S. international facilities-based and resale carrier. CTS indirectly owns and controls WorldxChange Pty Ltd, an Australian corporation.

6. INTEX and CCI are both U.S. corporations. INTEX is authorized to resell the international switched services of other authorized carriers, and to use this authority to provide international switched voice and data services from the United States to various international points. CCI is authorized to resell the services of other carriers for the provision of international switched telecommunications services between the United States and various international points.

7. TI, a Delaware corporation, is affiliated with several foreign carriers. TI is an indirect wholly-owned subsidiary of Telstra Corporation Limited ("Telstra"), which is 100 percent owned by the Commonwealth of Australia and provides local and long-distance service in Australia. TI is authorized to resell certain international telecommunications services to various international points, excluding Australia.

B. The Pleadings

8. MFSI, CCI, and INTEX seek authority to resell IPLs interconnected to the PSN at one or both ends to provide switched services between the United States and Australia. CWI, GNI, and CTS seek authority to resell IPLs interconnected to the PSN at both ends to provide switched services between the United States and Australia.

9. TI seeks authority to resell: (1) IPLs of unaffiliated carriers interconnected to the PSN at one or both ends to provide switched services; (2) switched services of unaffiliated carriers ("switched resale"); and (3) IPLs of unaffiliated carriers not interconnected to the PSN to provide switched services ("non-interconnected private line resale") all between the United States and Australia.

10. As required by the Commission's rules, the applicants submitted information and documentation to demonstrate that Australia offers U.S.-based carriers equivalent resale opportunities in Australia. TI also submitted information that, on balance, Australia provides U.S. carriers effective competitive opportunities to provide switched resale and non-interconnected private line resale. We placed each of the applications on public notice.

11. AT&T Corp. ("AT&T") filed petitions to deny for all the applications, to which each applicant replied. AT&T filed replies to all the applicants' replies. In addition, Sprint Communications Company L.P. ("Sprint") filed a petition to deny in part against CWI, to which CWI replied. Sprint also filed a reply to CWI's opposition.

12. FGC, Inc. ("FGC") filed comments supporting CWI's application as well as reply comments in response to AT&T's petition to deny and Sprint's petition to deny in part. IDB, Inc. ("IDB") also filed comments in response to CWI's application. MCI filed comments in the TI proceeding to which TI replied. In addition, numerous ex parte filings were made.

13. On July 8, 1997, pursuant to Section 1.65 of the Commission's rules we sent a letter to each of the parties requesting that they provide us with any additional or corrected information in light of recent changes in the Australian regulatory regime. AT&T, TI, INTEX, CCI, CTS, and CWI provided additional information.

C. General Changes in the Australian Telecommunications Regime

14. Australia's telecommunications market has undergone significant change in the past several years. Before 1988, telecommunications services in Australia were provided by carriers with monopolies in their respective areas of operation. The Australian Telecommunications Corporation ("ATC") provided most telecommunications services within Australia. The Overseas Telecommunications Corporation ("OTC") provided overseas services and facilities. A third publicly-owned carrier, AUSSAT Proprietary Ltd. ("AUSSAT") established and operated the domestic satellite system.

15. In 1989, the Australian Government established the Australian Telecommunications Authority ("AUSTEL") as an independent regulator of the telecommunications industry. AUSTEL's functions included issuing class licenses to service providers and promoting competition and fair market conduct. In 1990, the Australian Government enacted the AUSSAT Amendment Act which authorized AUSSAT to compete directly with ATC and OTC. Subsequently, ATC and OTC merged into a single corporation now operating as Telstra.

16. In 1991, AUSSAT was sold to a consortium (which included Cable & Wireless, plc) and now provides domestic and international telecommunications services as Optus. Pursuant to the Telecommunications Act 1991 ("1991 Act"), Optus was authorized to compete as a facilities-based carrier with Telstra in the Australian domestic and international sectors. The 1991 Act also affirmed the role of AUSTEL as Australia's telecommunications regulator, with policy set by the Ministry of Communications and the Arts.

17. On July 1, 1997, Australia implemented new telecommunications laws (11 bills in all) that restructured the Australian telecommunications market and the administrative agencies that regulate the industry. According to the Australian Government, the main objective of the new regime is to provide a regulatory framework that promotes the long-term interests of consumers, and promotes the efficiency and international competitiveness of Australia's telecommunications industry. The core of the new regime is the Telecommunications Act 1997 ("1997 Act"), which deals with licensing, carrier and service provider rules, consumer measures, and technical regulation.

III. DISCUSSION

18. In Part A of this Section, we analyze the applications for authority to provide switched service over resold private lines interconnected to the public switched network. In Part B we analyze TI's application to provide international service via switched resale and resale of non-interconnected private lines. In Part C we look at additional public interest factors for all types of resale and in Part D we look at other matters addressed by the parties.

A. Equivalency Analysis

19. The Commission's rules require that applicants seeking to provide switched service over resold private lines demonstrate that the foreign country at the other end of the private line provides U.S. carriers with: (1) the legal right to resell IPLs interconnected to the PSN at both ends, for the provision of switched services; (2) reasonable and nondiscriminatory charges, terms, and conditions for interconnection to foreign carrier domestic facilities for termination and origination of international services, with adequate means of enforcement; (3) competitive safeguards to protect against anticompetitive and discriminatory practices affecting private line resale; and (4) fair and transparent regulatory procedures, including separation between the regulator and the operator of international facilities-based services. These four principles must be satisfied at the time we make an equivalency determination. Additionally, we examine other public interest factors that may warrant grant or denial of the application.

1. Resale Entry

20. The first factor in our equivalency analysis is whether there are any legal restrictions on U.S. carriers' ability to resell international private lines, interconnected to the PSN at both ends, for the provision of switched services.

21. No party disputes that foreign carriers have the legal right to provide resale services in Australia. The record indicates there are no restrictions on foreign ownership of telecommunications resellers in the Australian resale market. Also, although facilities-based carriers are required to obtain licenses, "carriage service" (or resale) providers are not. Moreover, no restrictions exist on the number of licenses that may be issued.

22. The only law on foreign investment is the Foreign Acquisition and Takeovers Act, which imposes a national interest test on certain foreign investments. Consistent with precedent, we find that the national interest test is not a significant bar to U.S. carriers' entry into the resale market in Australia.

23. In addition, the legal openness of the Australian market is illustrated by the fact that a number of U.S. carriers, or their Australian affiliates, have entered the Australian market to resell international private lines interconnected to the PSN at both ends for the provision of switched services. WorldxChange, a majority-owned affiliate of the U.S. carrier CTS, has domestic and international resale operations with multiple switches and points of presence in Sydney, Melbourne, Brisbane, Gold Coast, and Perth. In addition to WorldxChange other resellers, most with significant foreign (including U.S.) ownership include: AAPT Limited, AT&T Communications Services Australia Pty Ltd., Global One Communications Pty Ltd., Axicorp, RSL COM Australia Pty Ltd., Spectrum Global Telecommunications Pty Ltd., and Telegroup Network Services Pty. Ltd.

24. Based on the presence of U.S. carriers in the Australian market and the absence of meaningful restrictions on foreign ownership, we conclude that Australia affords open entry for U.S.-based carriers.

2. Interconnection

25. The second factor we examine is whether U.S. carriers are able to obtain interconnection to a foreign carrier's domestic facilities in Australia for termination and origination of international services at reasonable and nondiscriminatory charges, terms, and conditions. In addition, there must be adequate means to monitor and enforce these conditions.

26. Under the 1997 Act, both carriers and carriage service providers must provide their competitors access to, and interconnection with "declared services" as defined by the Australian Competition and Consumer Commission ("ACCC"). The ACCC's list of "declared services" include local origination and termination services. The 1997 Act also requires that "declared services" be provided subject to certain "standard access obligations" in relation to that service. No party disputes that the "standard access obligations" are sufficient for interconnection.

27. Interconnection Prices. AT&T argues, however, that under the new regime U.S. carriers cannot obtain reasonable, nondiscriminatory prices, terms, and conditions for interconnection to Telstra's network. AT&T asserts that, while Telstra currently is required to provide standard interconnection prices to its domestic network, this requirement is temporary and applies only to six cities (Sydney, Melbourne, Perth, Canberra, and other state capitals). Thus, AT&T argues that Telstra, with its "high degree of market power," has the ability to maintain above-cost interconnection rates to all other sections of Australia. AT&T states that TI should not be allowed entry into the U.S. market until Telstra provides cost-based interconnection at all of its bottleneck facilities (i.e., other sections of Australia, the international gateway point, and the mid-ocean settlement point).

28. We do not agree that Australia condones unreasonable interconnection prices. Telstra's current prices appear reasonable for interconnection for originating or terminating switched access in the six Australian cities. We find that the rate of approximately A $.0284 (U.S. $0.02) per minute during peak periods and approximately A $.0134 (U.S. $0.01) off-peak compare favorably with rates in New Zealand and the United States.

29. Moreover, we are not persuaded that these rates are limited either in scope or duration for several reasons. First, although the current interconnection prices are only guaranteed until January 1998, the ACCC has the power to continue to require Telstra to provide interconnection at these prices beyond January 1998. Moreover, the ACCC has adopted access pricing principles that use total service long-run incremental cost ("TSLRIC") to measure the appropriateness of an interconnection price. The ACCC will use this guide

to review service providers' access undertakings and in the arbitration of interconnection disputes (both discussed below). Second, even though the ACCC's interim prices apply only to six cities, TI estimates that at least 80 percent of international calls originate in these six cities, and AT&T does not dispute TI's estimation.

30. We also find that AT&T has not provided sufficient information to support its claim that interconnection at the international gateway point is not available on a reasonable and nondiscriminatory basis. As discussed more fully below, Optus has built switching facilities in major Australian markets, assembled fiber optic cable links between these facilities, built inter-city "fiber rings" in central business districts of several cities, and constructed a fiber optic network in several major cities. We find that this build-out by Optus combined with Telstra's current prices for originating or terminating switched access provide sufficient ability for U.S. carriers to obtain access to existing facilities to originate or terminate international traffic at reasonable and nondiscriminatory rates between the United States and Australia. Accordingly, we do not find sufficient basis to conclude that U.S. carriers are unable to obtain reasonable and nondiscriminatory interconnection rates for the origination and termination of international traffic in Australia.

31. Publication of Interconnection Agreements. AT&T also argues that Telstra, through private negotiations, is able to engage in "secret interconnection rate deals." Specifically, AT&T argues that Australia's regime permits carriers to reach voluntary interconnection agreements that do not have to be published. Such lack of publication, AT&T argues, places a new entrant at a competitive disadvantage because new entrants will not know what interconnection arrangements have been brokered by Telstra with other carriers. AT&T also argues that in every previous equivalency order the incumbent carrier in the foreign market either provided a standard interconnection agreement that included the prices, terms, and conditions or the incumbent carrier published its interconnection agreements.

32. As a general policy, publication of all interconnection agreements reached voluntarily by the parties is necessary to ensure that competitors are able to obtain interconnection at nondiscriminatory rates. Thus, we are concerned about the lack of publication of commercially negotiated interconnection agreements. Despite the lack of publication of voluntary agreements, however, we find that other aspects of Australia's interconnection regime discussed above (i.e., the current interconnection prices, the ACCC's ability to require continuation of those prices, and the ACCC's pricing principles), help protect against discriminatory conduct and weigh in favor of finding that Australia satisfies this factor of our equivalency standard.

33. In addition, the ACCC has a role in overseeing interconnection and ensuring nondiscriminatory treatment of competitors. The ACCC has broad powers to require any information that is relevant to the performance of its functions. If, for example, an interconnection negotiation breaks down or a dispute arises during the course of an

interconnection negotiation, either side may notify the ACCC that a dispute exists. The ACCC has the power to determine the terms and conditions of access. The ACCC's determination may deal with any matter relating to access. The ACCC will use its pricing principles (i.e., TSLRIC) as a guide in the arbitration of interconnection disputes.

34. Also, the ACCC approves all access undertakings, which include model terms and conditions for access to a declared service, that are submitted by the parties. The ACCC's pricing principles (i.e., TSLRIC) apply to all access undertakings approved by the ACCC. If accepted by the ACCC, an access undertaking conclusively determines the terms and conditions of access to which that undertaking relates.

35. Given these aspects of Australia's interconnection regime, at present, we conclude that Australia satisfies the interconnection factor of our equivalency test. If the parties submit information that the lack of publication is resulting in discriminatory practices or if we otherwise determine that market conditions develop in Australia such that interconnected IPL resale is not commercially viable, we will revisit our findings in this proceeding.

3. Competitive Safeguards

36. The third factor we examine is whether safeguards exist in the foreign country to protect against anticompetitive practices. The safeguards we consider important include: (1) existence of cost-allocation rules to prevent cross-subsidization; (2) timely and nondiscriminatory disclosure of technical information needed to use, or interconnect with, carriers' facilities; and (3) protection of carrier and customer proprietary information.

a. Cost Allocation Rules

37. We first examine whether Australia has cost allocation rules in place to protect against cross-subsidization. No party disputes the adequacy of the competitive safeguards that exist in Australia. Under the 1991 Act, Chart of Accounts/Cost Allocation rules apply to all carriers. These rules establish how carriers allocate costs to the various parts of their businesses; require regular reporting of cost information to the ACCC; and provide the ACCC with an oversight of costs of the carriers' different business activities. These rules will continue in force until new recordkeeping rules are developed by the ACCC. In addition, as discussed below, the ACCC has the power to take action against carriers or carriage service providers who engage in anticompetitive conduct. Given the rules that are in place and the lack of evidence to the contrary in the record, we find that cost allocation rules exist in Australia to protect against cross-subsidization.

b. Disclosure of Network Information

38. We next address whether competitive safeguards exist in Australia to ensure disclosure of network information required for interconnection. There is no evidence in the record that carriers are not receiving the technical network information necessary to interconnect with Telstra or Optus. A standard condition in carrier licenses, including Telstra's, requires a carrier to provide all other carriers with information about the operation of their network in a timely manner. The obligations apply to traffic patterns, call routing arrangements, network planning information, notification of likely changes to facilities, and quality of service information. Given the standard condition and lack of specific evidence to the contrary, we find that there are adequate requirements in Australia to ensure that carriers receive the technical information required for interconnection.

c. Safeguards for Carrier and Customer Proprietary Information

39. The final competitive safeguard we examine is whether carrier and customer proprietary information is protected in Australia. Section 88 of the 1991 Act bars carriers from disclosing proprietary customer information that may be furnished to a carrier in the course of providing service. Violation of this section could subject a person to civil and criminal penalties. The protections that existed under the 1991 Act were continued and reinforced in the 1997 Act. Specifically, Section 276 of the 1997 Act prohibits carriers, carriage service providers (i.e., resellers) and their employees and contractors from disclosing or using information relating to carriage services supplied to another person or the affairs or "personal particulars" of another person.

40. In addition, Telstra is subject to Australia's Privacy Act 1988 which limits the extent to which Telstra may disclose customer information that it has obtained. Telstra also has a corporate policy regarding confidentiality that is broader than the 1997 Act. Telstra has confidentiality agreements with current large end-user customers as well as provisions in

its existing interconnection agreements with Optus and Vodafone. Telstra states it expects to incorporate such confidentiality undertakings into agreements with new interconnecting service providers.

41. In sum, we find that the competitive safeguards implemented in Australia are sufficient to protect U.S. carriers against anticompetitive practices, and to ensure proper cost allocation, timely and nondiscriminatory disclosure of network technical information, and protection of carrier and customer proprietary information against unauthorized disclosure.

4. Regulatory Framework

42. The fourth factor we review is whether there is an effective regulatory framework in Australia to develop, implement, and enforce legal requirements, interconnection arrangements, and other competitive safeguards. The focus of this factor is on whether there is separation between the foreign regulator and the operator of international facilities-based services, and whether there are fair and transparent regulatory procedures in the destination market.

43. No party disputes that an effective regulatory framework exists in Australia. We find that the Department of Communications and the Arts ("DCA"), the Australian Communications Authority ("ACA"), and the ACCC, the Australian governmental agencies responsible for developing telecommunications policy, regulating the telecommunications industry, and administering telecommunications competition policy are sufficiently separate from the carriers they regulate.

44. The DCA sets overall telecommunications policy. The two Australian regulators are the ACA and the ACCC. The ACA is an independent agency "not subject to direction by or on behalf of the Commonwealth Government," except for certain written directions from the Minister of Communications which "must be published in the [official] Gazette." The ACA's main functions are regulating telecommunications in accordance with the 1997 Act (including granting facilities-based licenses) and managing radiofrequency spectrum in accordance with the Radiocommunications Act 1992.

45. The ACCC's main function is administering the industry-specific telecommunications competition-related laws, including those pertaining to access/interconnection and the regulation of anticompetitive conduct. Certain decisions of the ACCC are reviewable by the Federal Court and others are reviewable by the Tribunal.

46. We also find Australian regulatory policies to be fair and transparent. The ACCC has the power to issue a competition notice stating that a carrier or carriage service provider has engaged in anticompetitive behavior. Once a competition notice has been issued, the ACCC is able to seek pecuniary penalties and a third party is able to seek damages if the carrier or carriage service provider continues to engage in the specified

conduct.

47. In sum, we find that Australia offers U.S.-based carriers equivalent resale opportunities in Australia. There is an effective regulatory framework in Australia that develops, implements, and enforces legal requirements, interconnection, and other competitive safeguards. Accordingly, we find that no actual or de facto conditions exist that warrant a denial under the Commission's equivalency analysis.

B. Effective Competitive Opportunities ("ECO") Analysis

48. TI also applies for authority to provide switched resale and resale of non-interconnected private lines. Under the Foreign Carrier Entry Order, if TI possesses market power, we must apply our ECO analysis.

49. The Foreign Carrier Entry Order defines "market power" as "the ability of the carrier to act anticompetitively against unaffiliated U.S. carriers through the control of bottleneck services or facilities on the foreign end." Bottleneck services or facilities are "those that are necessary for the provision of international services, including inter-city or local access facilities on the foreign end."

50. TI argues that Telstra is no longer treated as dominant in Australia. TI also claims that neither it nor Telstra has market power in the domestic long distance and local access markets. In response, AT&T asserts that the Australian regulator has not concluded that Telstra lacks market power. AT&T argues that Telstra is the government-owned, dominant provider of telephone access, local, domestic, long distance, and international services in Australia. AT&T asserts that Telstra controls approximately 80 percent of the U.S.-Australia route and has the only ubiquitous facilities-based local exchange network.

51. TI did not submit market share information for the domestic local services market. Telstra in its Public Offer Document containing information about the sale by the Commonwealth of Australia of up to one-third of the shares in Telstra, however, made a number of statements about the extent of Telstra's network infrastructure. For example, Telstra states that its fixed telecommunications network "extends across Australia, carrying over 90% of all calls and serving virtually all Australian homes and a substantial majority of Australian businesses." Telstra also states that it provides basic access and local call services to virtually all homes and most businesses in Australia.

52. In addition, in this proceeding TI does not dispute that it has the only ubiquitous facilities-based local exchange network in Australia. Optus has built digital switching facilities in major Australian cities and has assembled fiber optic cable links between the facilities. Optus has also built inner-city "fiber rings" in the central business districts of Sydney, Melbourne, Canberra, Brisbane, Adelaide, and Perth. Optus also has constructed a hybrid fiber optical cable/coaxial cable ("HFC") network in Sydney,

Melbourne, Adelaide, and Brisbane. Optus currently provides telephony service over the HFC network to approximately 10,000 to 20,000 directly connected customers. Although Optus has built out to major cities in Australia, we do not find that these facilities offer a viable bypass alternative to Telstra's ubiquitous facilities-based local exchange network. Accordingly, consistent with our precedent, we find that TI's Australia affiliate, Telstra, possesses market power in the Australian market through its control of the only ubiquitous local exchange network in Australia. As a result, we will apply our "effective competitive opportunities" analysis to the Australian market.

53. AT&T argues that TI's application is "facially deficient" because it does not make the necessary showings that Australia meets the ECO test for switched resale and resale of non-interconnected private lines. In particular, AT&T argues that TI only addresses the legal ability to provide these resale services in Australia. AT&T does not dispute that carriers have the legal ability to provide switched resale and the resale of non-interconnected private lines.

54. We conclude that, because Australia satisfies our equivalency standard and the same factors are relevant for purposes of this ECO analysis, we do not need to conduct a full ECO analysis for TI's application. The only factor we need to examine is whether U.S. carriers have the legal right to provide switched resale and the resale of non-interconnected private lines. No party disputes the legal right to provide such resale. Accordingly, we find that Australia offers U.S.-based carriers effective competitive opportunities to provide switched resale and non-interconnected private line resale.

C. Additional Public Interest Factors

55. The additional public interest factors that we consider in assessing these applications include cost-based accounting rates, the general significance of the proposed entry to the promotion of competition in the U.S. communications market, and any national security, law enforcement, foreign policy, and trade concerns raised by the Executive Branch.

56. AT&T opposes TI's entrance in the U.S. service market through any arrangement unless TI and Telstra are made subject to the conditions and safeguards in the Commission's Benchmarks Order and any conditions and safeguards adopted in the Foreign Participation Order.

57. We agree with AT&T. Thus, TI and Telstra, like any other carrier, are subject to the rules and policies established in the Benchmarks and Foreign Participation orders. Recently, in its Benchmarks Order, the Commission established benchmarks that will govern the international settlement rates between U.S. carriers and foreign carriers. Pursuant to the Benchmarks Order, U.S. carriers must negotiate a settlement rate with Australian carriers that does not exceed $0.15 before January 1, 1999. In the Benchmarks

Order the Commission also adopted a condition that applies to authorizations to provide switched services over IPLs, effective as of January 1, 1998. The condition provides that carriers may not use their authorized international private lines for the provision of switched basic services "unless and until the Commission has determined that the country at the foreign end of the private line provides equivalent resale opportunities and that settlement rates for 50 percent of the settled U.S.-billed traffic between the United States and that country are at or below the benchmark . . . ." Subsequently, in the Foreign Participation Order, the Commission eliminated the equivalency requirement for WTO Members. As a result,once those rules take effect, carriers will no longer have to show that a WTO Member provides equivalent private line resale opportunities. In the Foreign Participation Order, however, the Commission also concluded that, as an alternative to satisfying the benchmark condition, a carrier seeking to provide switched services over IPLs between the United States and a WTO Member may satisfy the equivalency test. In this Order, we have made an equivalency determination for Australia, a WTO Member.

58. We anticipate that the rules adopted in the Foreign Participation Order will take effect in early February 1998. As of the January 1, 1998, effective date of the Benchmarks Order, however, all authorizations for the provision of switched basic services over IPLs will be subject to the benchmark condition. Thus, from January 1, 1998, until the effective date of the Foreign Participation Order, the authorizations for the provision of switched basic services over IPLs granted in this Order will be subject to both an equivalency requirement and a requirement that settlement rates for at least 50 percent of the settled U.S.-billed traffic between the United States and Australia are at or below the benchmark for Australia. No party has made a showing that the benchmarks requirement is satisfied at this time. Accordingly, U.S. carriers will be prohibited from providing switched services over IPLs between the United States and Australia until such a showing has been made or until the Foreign Participation Order takes effect. At that time, the equivalency finding of this Order will satisfy our rules for providing switched basic services over IPLs.

59. In the Benchmarks Order the Commission also adopted a settlement rate benchmark condition for authorizations to provide facilities-based switched or private line service to destination markets where the authorized carrier is affiliated with a foreign carrier. Specifically, pursuant to the Benchmarks Order, the Commission will condition any such authorization to serve an affiliated market on the affiliated foreign carrier offering U.S. international carriers a settlement rate for the affiliated market at or below the relevant benchmark. In the Foreign Participation Order, however, the Commission declined to apply this benchmark condition to authorizations to provide switched resale services to affiliated routes. Thus, in providing switched resale to Australia, TI will not be subject to a benchmark condition.

60. Finally, the Executive Branch has not raised any national security, law enforcement, foreign policy, or trade concerns with these applications. We find that this

authorization will benefit U.S. consumers calling Australia by adding more authorized carriers, thus increasing competition on that route. Accordingly, we find no additional public interest factors that warrant a denial of these applications.

D. Other Matters

1. Regulatory Treatment of TI

61. There is some dispute in the record about whether or not Telstra, TI's parent company, is a dominant carrier on the U.S.-Australia route. Because TI has agreed to be regulated as dominant we do not need to reach this issue. Accordingly, we will regulate TI as dominant on the U.S.-Australia route.

2. Competitive Safeguards

62. MCI argues that Telstra has a "pivotal position" as a provider of origination and termination services in Australia and therefore the Commission should impose additional conditions. MCI argues that the FCC should condition all TI's resale authorizations with the requirements that TI: (1) file with the FCC all agreements between TI and Telstra (including all oral agreements relating to the routing of U.S. traffic through Telstra's facilities); (2) purchase any Telstra services at published rates; and (3) maintain complete records on the provisioning and maintenance of network facilities and services it procures from Telstra and make those records available to the FCC upon request. MCI argues that these proposed conditions are derived from conditions placed on Teleglobe USA, Inc. which is authorized to engage in switched resale between the United States and overseas points and in the initial authorization of British Telecommunications plc to acquire an ownership interest in MCI.

63. TI argues that TI proposes to act solely as a resale carrier and it would make little sense for Telstra to favor its U.S. affiliate because it would necessarily have to favor the underlying non-affiliated U.S. facilities-based carrier as well. Moreover, TI argues that the first condition regarding FCC filing of agreements between TI and Telstra is covered by Section 43.51 of the Commission's rules. Likewise, TI argues Section 43.51 covers the second requested condition because TI would be required to report the terms on which it acquires international capacity from Telstra. TI argues that whether or not Australia determines that Telstra must provide service in Australia under tariff is a domestic Australia matter. Finally, TI agrees to accept MCI's third condition regarding provisioning and maintenance.

64. As a dominant carrier on the U.S.-Australia route, TI will be required to comply with Section 63.10 of our rules. Section 63.10 of our rules requires carriers regulated as dominant on a particular route due to a foreign carrier affiliation to: (1) file tariffs on no less than 14-days notice; (2) maintain complete records of the provisioning and

maintenance of basic network facilities and services procured from the foreign carrier affiliate; (3) obtain Commission approval pursuant to 63.18 before adding or discontinuing circuits; and (4) file quarterly reports of revenue, number of messages, and number of minutes of both originating and terminating traffic. Accordingly, our current rules are sufficient to address the conditions requested by MCI.

3. No Special Concessions

65. Sprint argues that, as a result of CWI's affiliation with Optus, CWI may receive faster interconnection at preferential rates, quicker accounting rate reductions, or more favorable provisioning and maintenance arrangements. CWI responds by certifying that it has not agreed to accept any special concessions directly or indirectly from any foreign carrier, including Optus.

66. We currently prohibit all U.S. carriers, regardless of their regulatory status or whether they have a foreign affiliate, from agreeing to accept special concessions from any foreign carrier or administration. CWI is subject to our current "No Special Concessions" rule. We note that in the Foreign Participation Order, the Commission gives greater specificity to the "No Special Concessions" rule by delineating the types of conduct that the Commission considers to be prohibited. The Commission also modified its "No Special Concessions" rule so as only to prohibit U.S. carriers from agreeing to accept special concessions from a foreign carrier that possesses sufficient market power on the foreign end of the relevant route to affect competition adversely in the U.S. market. The Commission makes clear, however, that the "No Special Concessions" rule does not alter the International Settlements Policy or the Commission's policy governing alternative settlement arrangements. We note that on September 18, 1997, CWI notified us that it has increased its ownership interest in Optus to 49 percent, which constitutes an affiliation under Section 63.18(h)(1)(i) of the Commission's rules. We placed CWI's notification on public notice on November 20, 1997. No comments were received. We find no evidence either in this record or in CWI's affiliation notification to make a finding that CWI should be regulated as dominant on the U.S.-Australia route. We reserve the right to reconsider this decision, however, pursuant to our authority under Section 63.11 of the Commission's rules.

IV. CONCLUSION

67. Because we find that Australia offers equivalent private line resale opportunities to U.S.-based carriers for the provision of switched services, we grant the applications before us in this proceeding. We also grant TI authority to provide switched resale and non-interconnected private line resale. We believe that resale between the United States and Australia will promote competition and the introduction of new international telecommunications services.

V. ORDERING CLAUSES

68. In view of the foregoing, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of resale of private lines for the provision of switched services between the United States and Australia.

69. Accordingly, IT IS HEREBY ORDERED that File Nos. ITC-93-328, ITC-94-435, ITC-95-015, ITC-95-116, ITC-95-185, and ITC-96-182 ARE GRANTED and Cable & Wireless, Inc., GTI Network, Inc., MFS International, Inc., Communication Telesystems International, INTEX Telecommunications Inc., and Cherry Communications, Inc. are authorized to resell international private lines interconnected to the public switched network for the provision of switched services between the United States and Australia including voice, data, and facsimile.

70. IT IS FURTHER ORDERED that File No. ITC-96-319 IS GRANTED and Telstra, Inc. is authorized to: (1) resell international private lines interconnected to the public switched network for the provision of switched services between the United States and Australia including voice, data, and facsimile; (2) resell international private lines not interconnected to the public switched network for the provision of international private line services between the United States and Australia; and (3) provide international switched resale between the United States and Australia.

71. IT IS FURTHER ORDERED that the authority granted herein to resell international private lines between the United States and Australia for the provision of switched services is limited to the provision of such services between the United States and Australia only -- that is, private lines which carry traffic that originates in the United States and terminates in Australia, or traffic that originates in Australia and terminates in the United States. This restriction is subject to the following exceptions: (a) applicants may engage in "switched hubbing" through Australia consistent with Section 63.17 of the Commissions rules, 47 C.F.R. 63.17; and (b) applicants may provide U.S. inbound or outbound switched basic service over their authorized private lines extending between the United States and the United Kingdom, Sweden, New Zealand, and Australia provided that the particular applicant also is authorized to provide switched basic service using resold private lines between the United States and those countries.

72. IT IS FURTHER ORDERED that Telstra, Inc. shall be regulated as a dominant carrier on the U.S.-Australia route, pursuant to Section 214 of the Act, 47 U.S.C. 214, and Section 63.10 of the Commission's rules, 47 C.F.R. 63.10, and shall comply with the requirements of paragraph (c) of that section. The quarterly traffic reports filed pursuant to Section 63.10(c) must include the information required by Section 43.61 of the Commission's rules, 47 C.F.R. 43.61, for "facilities resale" on the U.S.-Australia route.

73. IT IS FURTHER ORDERED that except as provided in paragraph 72, all applicants shall comply with Sections 63.15(b) and 63.21 of the Commission's rules, 47 C.F.R. 63.15(b) and 63.21. In addition, all applicants except Telstra, Inc. shall also file the information required by Section 43.61 for "facilities resale" on the U.S.-Australia route on a semi-annual basis not later than September 30 for the prior January through June period and March 31 for the second six-month calendar period, for the first three calendar years after this equivalency finding.

74. IT IS FURTHER ORDERED that all Motions for Extension of Time ARE GRANTED.

75. IT IS FURTHER ORDERED that AT&T's Petitions to Deny ARE DENIED.

76. IT IS FURTHER ORDERED that Sprint's Petition to Deny in Part IS DENIED.

77. IT IS FURTHER ORDERED that grant of these authorizations are conditioned upon Australia's continuing to afford resale opportunities to U.S.-based carriers equivalent to those afforded under U.S. law.

78. This Order is issued under Section 0.261 of the Commission's rules, 47 C.F.R. 0.261 (1996), and is effective upon adoption. Petitions for reconsideration under Section

1.106 of the Commission's rules, 47 C.F.R. 1.106 (1996), or applications for review under Section 1.115 of the Commission's rules, 47 C.F.R. 1.115 (1996), may be filed within 30 days of the date of public notice of this Memorandum Opinion, Order and Certificate (see 47 C.F.R. 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Regina M. Keeney
Chief, International Bureau