

**Before the  
Federal Communications Commission**

In the Matter of	)	
	)	
Bell Atlantic Communications, Inc., and	)	
NYNEX Long Distance Company	)	
	)	
Applications for Global Authority Pursuant to	)	
Section 214 of the Communications Act of 1934,	)	
as Amended, to Provide all Authorized Facilities-	)	ITC-214-19971223-00813
Based Services Between the United States and	)	(Previous File No. ITC-98-002)
all International Points Except Gibraltar	)	
	)	
Bell Atlantic Communications, Inc., and	)	
NYNEX Long Distance Company	)	
	)	
Applications for Authority Pursuant to Section 214	)	
of the Communications Act of 1934, as Amended,	)	ITC-214-19971223-00811
to Resell International Services of U.S. Carriers	)	(Previous File No. ITC-98-003)
to Provide all Authorized Services Between the	)	
United States and all International Points	)	
Except Gibraltar	)	

**ORDER, AUTHORIZATION AND CERTIFICATE**

**Adopted: December 22, 1999**

**Released: December 22, 1999**

**By the Chief, Telecommunications Division:**

**I. Introduction**

1. Bell Atlantic Communications, Inc. (BACI) and NYNEX Long Distance Company (NYNEX-LD) (collectively, Applicants) have filed applications seeking authority pursuant to Section 214 of the Communications Act of 1934, as amended (Act),<sup>1</sup> to provide international facilities-based and resale services between the United States and various international points, except Gibraltar.<sup>2</sup> The applications before us include requests to provide services both that originate from "in-region states," as defined in Section 271(i) of the Act,<sup>3</sup> and that originate from states outside the in-region states of Bell

---

<sup>1</sup> 47 U.S.C. § 214.

<sup>2</sup> See BACI/NYNEX-LD Application File No. ITC-214-19971223-00813 (previous File No. ITC-98-002) (filed Dec. 23, 1997) at 2; BACI NYNEX-LD Application File No. ITC-214-19971223-00811 (previous File No. ITC-98-003) (filed Dec. 23, 1997) at 2. Hereinafter, for purposes of efficiency, we will refer to the older file numbers when citing the applications and related documents.

<sup>3</sup> 47 U.S.C. § 271(i)(1). We note that when Bell Atlantic Corporation (Bell Atlantic) and NYNEX Corporation (NYNEX) merged, NYNEX's in-region states became part of Bell Atlantic's in-region states because NYNEX became an affiliate of Bell Atlantic and NYNEX's service area was served by a BOC at the time the

Atlantic Corporations' local operating companies (collectively, the Bell Atlantic BOCs). The requested authority with respect to services originating from states outside the Bell Atlantic BOCs' in-region states is intended to supplement the authority for such services previously granted to BACI and NYNEX-LD.

2. We find that a grant of BACI's and NYNEX-LD's applications, to the extent they cover services originating from the State of New York and from outside the Bell Atlantic BOCs' in-region states, will serve the public interest under Section 214 of the Act. Because Bell Atlantic New York has been granted Section 271 authority for in-region interLATA services in the State of New York, we grant the applications for international service originating in New York and terminating at all international points except Gibraltar.<sup>4</sup> We also grant the applications to the extent they request authority for international service originating outside the in-region states of the Bell Atlantic BOCs and terminating at all international points except Gibraltar. To the extent the applications request authority to provide international service originating in the Bell Atlantic BOCs' other in-region states, we defer consideration and do not decide issues in the applications or petitions to deny.<sup>5</sup>

## II. Background

3. BACI is a wholly-owned subsidiary of Bell Atlantic Corporation and is a corporation organized under the laws of the State of Delaware. NYNEX-LD is an indirect, wholly-owned subsidiary of Bell Atlantic Corporation, and is a corporation organized under the laws of the State of Delaware.<sup>6</sup>

---

Telecommunications Act of 1996 (1996 Act) was enacted. *See* 47 U.S.C. § 271(i) (1) (stating that "[t]he term 'in-region State' means a State in which a Bell Operating Company or any of its affiliates was authorized to provide wireline telephone exchange service pursuant to the reorganization plan approved under the AT&T Consent Decree, as in effect on the day before the date of enactment of the Telecommunications Act of 1996."); *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Southern New England Telecommunications Corporation, Transferor, to SBC Communications, Inc., Transferee*, CC Docket No. 98-25, Memorandum Opinion and Order, 13 FCC Rcd 21292, para. 36 (1998).

<sup>4</sup> BACI and NYNEX-LD are indirectly affiliated with Gibraltar NYNEX Communications, Ltd. (Gibraltar NYNEX), which raises certain complex issues applicable exclusively to the U.S.-Gibraltar route. Applicants accordingly have filed a separate application for service on that route, which remains pending.

<sup>5</sup> We note that, while Applicants do not specifically request authority to terminate international traffic in the United States, the authorizations we grant in this Order include such authority for calls terminating not only outside the Bell Atlantic BOCs' in-region states but also for calls terminating within any such state, as permitted by Section 271(b)(4) of the Act, and as limited by Section 271(j) of the Act. *See* 47 U.S.C. § 271(b)(4) and (j). *See also In the Matter of Bell Operating Company Provision of Out-of-Region Interstate, Interexchange Services*, CC Docket No. 96-21, 14 FCC Rcd 1105 (1998) (finding that, where a Bell Operating Company provides out-of-region international facilities-based service and generates international "return" traffic in exchange, the BOC may terminate such return traffic within its region, prior to obtaining in-region authority, subject to the Commission's rules and policies governing international telecommunications services). Hereinafter, when we refer to authority to provide services originating in the State of New York, or outside the Bell Atlantic BOCs' other in-region states, and terminating at international points except Gibraltar, we are referring also to the traffic which may terminate either in, or outside of, the Bell Atlantic BOCs' in-region states.

<sup>6</sup> *See* BACI/NYNEX-LD Application File No. ITC-98-002 at 2; BACI NYNEX-LD Application File No. ITC -98-003 at 2.

Applicants assert that BACI and NYNEX-LD are currently authorized to provide, as nondominant carriers, resold and facilities-based international telecommunications services originating outside of the in-region states served by the Bell Atlantic BOCs.<sup>7</sup>

4. In this Order we consider two applications:<sup>8</sup> (1) application File No. ITC-98-002, which requests global authority for all authorized facilities-based services between the United States and all international points, except Gibraltar (and includes, but is not limited to, the ability to provide international services originating in an in-region state once a Bell Atlantic BOC has received authority under Section 271 of the Act to provide in-region interLATA services in that state);<sup>9</sup> and (2) application File No. ITC-98-003, which requests global authority to resell international services of all authorized U.S. carriers (except affiliated facilities-based carriers that are regulated as dominant on routes to be served by BACI and NYNEX-LD), in order to provide all authorized services between the United States and all international points except Gibraltar (and includes, but is not limited to, the ability to provide international services originating in an in-region state once a Bell Atlantic BOC has received authority under Section 271 of the Act to provide in-region interLATA services in that state).<sup>10</sup>

5. Applicants assert that a grant of their applications is in the public interest because it will create additional competition in the market, which will benefit consumers by, for example, lowering

---

<sup>7</sup> See BACI/NYNEX-LD Application File No. ITC-98-002 at 2; BACI NYNEX-LD Application File No. ITC-98-003 at 2. For Orders granting authority to BACI and NYNEX-LD, see e.g., *Bell Atlantic Communications, Inc., Application for Global Authority pursuant to Section 214 of the Communications Act of 1934, as Amended, to Provide Facilities-based Switched, Private Line, and Data Services between the United States and International Points*, NYNEX-LD, *Application for Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, to Provide Facilities-based International Switched, Private Line, and Data Services between the United States and International Points*, ITC-96-451, 96-250, 12 FCC Rcd 1880 (Int. Bur.1997) (*BACI/NYNEX-LD Out-of-Region Facilities Order*); *NYNEX Long Distance Co., Ameritech Communications, Inc., and Bell Atlantic Communications, Inc., Applications for Authority pursuant to Section 214 of the Communications Act of 1934, as Amended, to Provide International Services from the United States to International Points through Resale of International Switched Services*, Order, Authorization and Certificate, ITC-96-125, 96- 272, and 96-181, 11 FCC Rcd 8685 (Int. Bur. 1996) (*BACI/NYNEX-LD Out-of-Region Resale Order*); *Nynex Long Distance Company, Application for Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, to Provide International Services from Certain Points Within the United States to Gibraltar Through the Resale of International Switched Services*, ITC-96-447, 12 FCC Rcd 24219 (Tel. Div.1997) (*NYNEX-LD Gibraltar Resale Order*). We note, however, that we have concluded that BACI is subject to the Commission's international dominant carrier regulations on the U.S.-Gibraltar route due its affiliation with Gibraltar NYNEX. See *Bell Atlantic Communications, Inc., Notification Pursuant to Section 63.11 of Foreign Carrier Affiliations*, FCN-97-001, Order, 14 FCC Rcd 1934 (Tel. Div. 1998) (*BACI Gibraltar Dominance Order*), Order on Reconsideration, DA 99-1633 (Int. Bur. rel. Aug. 17, 1999) (*BACI Gibraltar Dominance Recon Order*).

<sup>8</sup> As discussed below, NYNEX-LD had filed two applications prior to the merger of Bell Atlantic and NYNEX which BACI and NYNEX-LD have withdrawn because they were subsumed by the three remaining applications. In addition, as noted above, BACI and NYNEX-LD have filed a separate application for service on the U.S.-Gibraltar route, which remains pending.

<sup>9</sup> See BACI/NYNEX-LD Application File No. ITC-98-002 at 1

<sup>10</sup> See BACI/NYNEX-LD Application File No. ITC-98-003 at 1-2.

prices, increasing the availability and variety of service options and packages, and making more efficient use of existing international facilities.<sup>11</sup> MCI and AT&T filed consolidated petitions to deny or defer the applications until Applicants receive authority under Section 271. Applicants responded to the petitions.<sup>12</sup>

6. Pursuant to Section 63.12 of the Commission's rules, the Bureau deemed these applications ineligible for streamlined processing and provided public notice that, because the applications raise questions of extraordinary complexity, an additional 90-day period for review was needed.<sup>13</sup> The Bureau extended each successive 90-day period, as provided by Section 63.12.<sup>14</sup> On December 17, 1999, Applicants filed a letter factually updating the BACI/NYNEX-LD Application File Nos. ITC- 98-002, 98-003, and 98-004; and withdrawing the NYNEX-LD Application File Nos. ITC-97-107 and 97-260, because they were filed before the closure of the merger between Bell Atlantic Corporation and NYNEX Corporation, and are subsumed by the remaining applications.<sup>15</sup> In addition to withdrawing these earlier applications, the letter: (1) certifies that Applicants have no additional foreign carrier affiliates;<sup>16</sup> (2) states that the directors set forth in the applications have changed and provides updated lists of directors, noting that the lists show that Applicants' directors are different from the directors of Bell Atlantic Corporation and any foreign carrier affiliates;<sup>17</sup> and (3) reaffirms that the Applicants are seeking not only in-region authority but also out-of region authority because the previous applications for out-of region authority were filed and granted before adoption of the current Sections 63.18, 63.22(d), and 63.23(c) of the Commission's rules.<sup>18</sup> Finally, Applicants request that the

---

<sup>11</sup> See *id.* at 5-6; BACI/NYNEX-LD Application File No. ITC-98-003 at 6.

<sup>12</sup> See MCI Telecommunications Corporation Consolidated Petition to Deny or Defer, ITC-98-002, 98-003, 98-004 (filed Feb. 6, 1998) (MCI Consolidated Petition); AT&T Corp. Consolidated Petition to Deny or Defer, ITC-98-002, 98-003, 98-004 (filed Feb. 6, 1998) (AT&T Consolidated Petition); BACI/NYNEX-LD Opposition to Petitions to Deny or Defer, ITC-98-002, 98-003, 98-004 (filed Feb. 20, 1998) (BACI/NYNEX Opposition); MCI Telecommunications Corporation Reply to Oppositions to Deny or Defer, ITC-98-002, 98-003, 98-004 (filed Mar. 4, 1998) (MCI Reply).

<sup>13</sup> See 47 C.F.R. § 63.12 (d); *See Overseas Common Carrier Section 214 Applications Actions Taken*, Public Notice, Report No. I-8327, 13 FCC Rcd 15513 (Int. Bur. 1998).

<sup>14</sup> See 47 C.F.R. § 63.12 (d).

<sup>15</sup> See Letter from Stephen E. Bozzo, Attorney for NYNEX Long Distance Company and Bell Atlantic Communications, Inc., to Magalie Roman Salas, Secretary, Federal Communications Commission, File Nos. ITC-97-107, 97-260, 98-002, 98-003, 98-004 at 2 (filed Dec. 16, 1999) (BACI/NYNEX-LD December 17, 1999 Letter).

<sup>16</sup> See *id.* at 3. In addition, as described more fully below, the letter states that Applicants' interest in an existing foreign carrier affiliate is less than it was at the time the applications were filed. See *id.* at 2-3.

<sup>17</sup> See *id.* at 3 and Appendix A.

<sup>18</sup> See *id.* at 3; 47 C.F.R. §§ 63.18, 63.22(d), 63.23(c). Applicants assert, therefore, that the original applications (and, therefore, authorizations) did not cover authority to provide all services authorized under the

Commission grant the remaining Section 214 applications upon Commission grant of Section 271 authority to the Bell Atlantic BOCs, including the application filed by Bell Atlantic New York for authority to provide in-region interLATA services in the State of New York, and that grant of the Section 214 applications be deemed effective no later than the date that the Section 271 authority is effective.<sup>19</sup>

7. Since the applications were initially filed, the Commission has acted to further reduce regulatory burdens on providers of international telecommunications services and increase competition in the U.S. telecommunications market by facilitating entry by foreign service providers and investors. In addition, the Commission has adopted several Orders directly affecting Applicants.

8. First, in November 1997, just before BACI and NYNEX-LD filed their applications, the Commission adopted the *Foreign Participation Order*,<sup>20</sup> which was designed to increase competition in the U.S. telecommunications market by facilitating entry by foreign service providers and investors. In the *Foreign Participation Order*, the Commission adopted an open entry policy for carriers from WTO member countries in light of the World Trade Organization Agreement on Basic Telecommunications Services (WTO Basic Telecom Agreement), the market-opening commitments of other WTO members, and the Commission's improved competitive safeguards governing U.S. international services. Second, in March 1999, as part of its biennial regulatory review process, the Commission further streamlined its procedures for granting international Section 214 authorizations and increased the categories of applications eligible for streamlined processing.<sup>21</sup> Third, and most significantly for purposes of this Order, the Commission has granted Bell Atlantic New York authority pursuant to Section 271 of the Act to provide in-region interLATA services in the State of New York.<sup>22</sup>

9. Because the grant of Section 271 authority was for in-region interLATA services in the State of New York only, in this Order we address those portions of the applications that cover services originating in New York only (in addition to services originating outside the Bell Atlantic BOCs' in-region states), and not services originating in any of the Bell Atlantic BOCs' other in-region states.

---

Commission's rules, such as switched, private line, business, data, and television services. See BA-NYNEX-LD December 17, 1999 Letter at 3.

<sup>19</sup> BA-NYNEX-LD December 17, 1999 Letter at 3-4.

<sup>20</sup> *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Market Entry and Regulation of Foreign Affiliated Entities*, IB Docket Nos. 97-14, 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891 (1997) (*Foreign Participation Order*), recon. pending.

<sup>21</sup> See 1998 Biennial Regulatory Review-Review of International Common Carrier Regulations, IB Docket No. 98-118, Report and Order, 14 FCC Rcd 4909 (1999) (*1998 Biennial Regulatory Review Order*), recon. pending.

<sup>22</sup> See Application by Bell Atlantic New York for Authority Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York, CC Docket No. 99-295, Memorandum Opinion and Order, FCC 99-404 (rel. Dec. 22, 1999).

### III. Discussion

#### A. Entry Standard

##### 1. In-Region Entry Standard--Section 271 Authority

10. As an initial matter, based on the grant to Bell Atlantic New York of authority under Section 271 to provide in-region interLATA services in the State of New York, we conclude that BACI and NYNEX-LD are eligible to provide international services originating in New York. MCI and AT&T argued that it is premature for the Commission to consider these applications before Section 271 approval.<sup>23</sup> Applicants responded that a delay in a decision from the Commission would delay introduction of competing long distance services.<sup>24</sup> Because the Commission has granted Bell Atlantic New York Section 271 authority for in-region interLATA services in the State of New York, MCI's and AT&T's objections to a grant of international Section 214 authority are moot with respect to services originating in New York. However, before making a decision on the Section 214 applications, we must consider Applicants' foreign affiliations, which are pertinent not only to a grant of in-region authority for New York, but also to a grant of authority to provide services originating out-of region.<sup>25</sup>

##### 2. Foreign Affiliations

11. Foreign Participation Order. The rules and standards adopted in the Commission's *Foreign Participation Order* govern our decision whether, and on what terms, to authorize BACI and NYNEX-LD to provide service on routes where Applicants have affiliations with foreign carriers. In that decision, the Commission adopted an open entry standard for applicants that request authority to serve a WTO member country in which the applicants have a foreign carrier affiliate. Previously, the Commission applied the "effective competitive opportunities (ECO)" test to applicants that sought to provide certain categories of service on routes where an affiliated foreign carrier possessed market power.<sup>26</sup> In the *Foreign Participation Order*, the Commission eliminated the ECO test in favor of a rebuttable presumption that applications for international section 214 authority from applicants affiliated with foreign carriers in WTO member countries do not pose concerns that would justify denial of the application on competition grounds.<sup>27</sup> The Commission retained the ECO test for certain applicants that

---

<sup>23</sup> See MCI Consolidated Petition; AT&T Consolidated Petition; MCI Reply.

<sup>24</sup> See e.g. BACI/NYNEX-LD Opposition at 2.

<sup>25</sup> We note that under Sections 1.65 and 63.11 of the Commission's rules, Applicants have a continuing responsibility to ensure that the information in their applications remain current, and to inform us of any new foreign carrier affiliations. See 47 C.F.R. §§ 1.65, 63.11. In addition, as noted above, Applicants recently certified that they have no additional foreign affiliations.

<sup>26</sup> The ECO analysis was developed and discussed in the *Foreign Carrier Entry Order*. See *Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket No. 95-22, Report and Order, 11 FCC Rcd 3873 (1995).

<sup>27</sup> See *Foreign Participation Order*, 12 FCC Rcd at 23906-10, paras. 33-43; see also *id.* at 23913-17, paras. 50-58.

seek to serve non-WTO countries in which the applicant has an affiliation with a foreign carrier possessing market power.<sup>28</sup> The Commission also considers other public interest factors that may weigh in favor of, or against, granting an international Section 214 application, including national security, law enforcement, foreign policy and trade concerns.<sup>29</sup>

12. We set out below the information Applicants provide regarding their ownership interests in foreign carriers. Based on the information in the applications, we conclude that the only foreign carriers with which Applicants are "affiliated" within the meaning of Section 63.09(e) are Iusacell, operating in Mexico, and Gibraltar NYNEX, operating in Gibraltar. We agree with Applicants that they are not "affiliated" with Telecom Corporation of New Zealand Limited (TCNZ) or Cable and Wireless Communications PLC (CWC) within the meaning of Section 63.09(e) of the Commission's rules.<sup>30</sup> Mexico is a member of the WTO. Accordingly, we find that Applicants are entitled to a presumption that their foreign carrier affiliations do not raise competition concerns that would warrant denial of their request to provide service between the United States and Mexico. Applicants' foreign affiliation in Gibraltar is not at issue here, because the applications we address in this Order do not request authority to provide service on the U.S.-Gibraltar route. We note that no party has filed comments that address specifically Applicants' foreign affiliations, and we find no public interest factors that would warrant denying the applications based on Applicants' foreign affiliations.

13. The applications contain the following information with respect to Applicants' foreign-carrier affiliations in Mexico.<sup>31</sup> The applications assert that Bell Atlantic Corporation indirectly owns approximately 42 percent of Grupo Iusacell, S.A. de C.V. (Iusacell), which, through its subsidiaries, provides domestic cellular telecommunications and international telecommunications services in Mexico.<sup>32</sup> In their letter of December 17, 1999, Applicants update this information, stating that Bell Atlantic Corporation's interest in Iusacell, now Nuevo Grupo Iusacell, S.A. de C.V., is 40.4 percent rather

---

<sup>28</sup> See *id.* at 23944-46, paras. 124-129; see also *id.* at 23949-50, paras. 139-142. Section 63.18(j)-(k) of the Commission's rules applies the ECO test in situations in which an applicant is a foreign carrier in a non-WTO country; or controls a foreign carrier in that country; or where any entity that owns more than 25 percent of the applicant, or controls the applicant, controls a foreign carrier in that country; or, in specified circumstances, where two or more foreign carriers own, in the aggregate, more than 25 percent of the applicant. See 47 C.F.R. § 63.18(j)-(k).

<sup>29</sup> See *Foreign Participation Order*, 12 FCC Rcd at 23919-21, paras. 61-66.

<sup>30</sup> See 47 C.F.R. § 63.09(e) (formerly Section 63.18(h)(1)(i)).

<sup>31</sup> At the time the applications were filed, Applicants stated that Iusacell owned an approximate 99.9 percent interest in Iusatel Chile, S.A. de C.V. (Iusatel), a foreign carrier that provides domestic and international telecommunications service in Chile. See BACI/NYNEX-LD Application File No. ITC-98-002 at 3-4; BACI/NYNEX-LD Application File No. ITC-98-003 at 4. We note, however, that in their letter of December 17, 1999, Applicants update this information, stating that Iusacell disposed of its interest in Iusatel. See BA-NYNEX-LD December 17, 1999 Letter at 3. Applicants, therefore, are no longer affiliated with any carrier in Chile.

<sup>32</sup> See BACI/NYNEX-LD Application File No. ITC-98-002 at 3; BACI/NYNEX-LD Application File No. ITC-98-003 at 3.

than the 42 percent interest set forth in the applications.<sup>33</sup> The applications also certify that Iusacell itself owns no international facilities and holds a small share of the international switched services resale market in Mexico, and that its domestic cellular facilities and international services are offered in addition to the existing facilities and services of other providers.<sup>34</sup> As Applicants point out, we have previously found that Iusacell does not control bottleneck services or facilities in Mexico, and therefore lacks the ability to discriminate against unaffiliated U.S. international carriers terminating traffic in Mexico.<sup>35</sup> We therefore found BACI to be nondominant on the U.S.-Mexico route in the provision of international facilities-based services under Section 63.10(a)(3) of the Commission's rules.<sup>36</sup>

14. In addition, Applicants assert that Bell Atlantic Corporation indirectly owns a 24.95 percent interest in TCNZ, a foreign carrier registered to provide international and domestic telecommunications services in New Zealand. Applicants assert that this ownership stake does not constitute an affiliation with a foreign carrier within the meaning of Sections 63.09(e) of the Commission's rules, because affiliation with a foreign carrier requires greater than 25 percent ownership of capital stock or a controlling interest.<sup>37</sup>

15. In addition, Applicants assert that, as a result of the closure of the merger between Bell Atlantic Corporation and NYNEX Corporation, Bell Atlantic Corporation indirectly owns 18.5 percent of CWC, which, through subsidiaries, provides domestic and international facilities-based telecommunications services, resold wireless telecommunications services, and cable television services in the United Kingdom.<sup>38</sup> Applicants assert that this ownership stake does not constitute an affiliation with a foreign carrier within the meaning of Section 63.09(e) of the Commission's rules, which requires a greater than 25 percent ownership of capital stock or a controlling interest.<sup>39</sup>

---

<sup>33</sup> See BA-NYNEX-LD December 17, 1999 Letter at 2-3.

<sup>34</sup> See BACI/NYNEX-LD Application File No. ITC-98-002 at 3; BACI/NYNEX-LD Application File No. ITC-98-003 at 3.

<sup>35</sup> See *BACI/NYNEX-LD Out-of-Region Facilities Order*, 12 FCC Rcd at 1889, para. 20.

<sup>36</sup> See *id.* at 1889, para. 20; 47 C.F.R. § 63.10(a)(3); BACI/NYNEX-LD Application File No. ITC-98-002 at 3; BACI/NYNEX-LD Application File No. ITC-98-003 at 3-4 (*citing same*).

<sup>37</sup> See BACI/NYNEX-LD Application File No. ITC-98-002 at 2-3; BACI/NYNEX-LD Application File No. ITC-98-003 at 3; 47 C.F.R. § 63.09(e).

<sup>38</sup> See BACI/NYNEX-LD Application File No. ITC-98-002 at 4; BACI/NYNEX-LD Application File No. ITC-98-003 at 4.

<sup>39</sup> See BACI/NYNEX-LD Application File No. ITC-98-002 at 4; BACI/NYNEX-LD Application File No. ITC-98-003 at 4; 47 C.F.R. § 63.09(e).



## B. Regulatory Treatment

### 1. BOC In-Region Nondominance

16. In the *LEC Classification Order*,<sup>40</sup> the Commission decided to classify BOCs' Section 272 interLATA affiliates as nondominant in their provision of in-region, interstate, domestic, interLATA services.<sup>41</sup> The Commission also concluded that it should apply the same regulatory classification to the BOC interLATA affiliates' provision of in-region, international services as it adopted for their provision of in-region, interstate, domestic, interLATA services.<sup>42</sup> Therefore, the Commission decided to classify each BOC interLATA affiliate as nondominant in the provision of in-region, international services, unless it is affiliated, within the meaning of Section 63.09(e) of the Commission's rules,<sup>43</sup> with a foreign carrier that has the ability to discriminate against the rivals of the BOC or its affiliate through control of bottleneck services or facilities in a foreign destination market.<sup>44</sup> The Commission stated that the safeguards the Commission applies to carriers it classifies as dominant based on a foreign carrier affiliation are contained in Section 63.10(c) of the Commission's rules, and are designed to address the incentive and ability of the foreign carrier to discriminate against the rivals of its U.S. affiliate in the provision of services or facilities necessary to terminate U.S. international traffic.<sup>45</sup>

17. We note that the Commission, in determining that BOC Section 272 interLATA affiliates

---

<sup>40</sup> See *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket Nos. 96-149, 96-61, Second Report in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, 12 FCC Rcd 15756, 15850 and 15858, paras. 163 and 179 (*LEC Classification Order*), Order on Reconsideration, 12 FCC Rcd 8730 (1997) (*LEC Classification Order on Reconsideration*), Order, 13 FCC Rcd 6427 (Comm. Car. Bur. 1998) (*LEC Classification Partial Stay Order*); Second Order on Reconsideration and Memorandum Opinion and Order, FCC 99-103 (rel. June 30, 1999) (*LEC Classification Second Reconsideration Order*).

<sup>41</sup> See *LEC Classification Order*, 12 FCC Rcd at 15802,-835, paras. 82-134. The Commission affirmed this finding on reconsideration. See *LEC Classification Second Reconsideration Order* at paras. 35-38.

<sup>42</sup> See *LEC Classification Order*, 12 FCC Rcd at 15802, 15838-840, paras. 82, 139-142. The Commission's regulations governing the U.S. international services market traditionally have distinguished between "dominant" and "nondominant" carriers. The Commission has classified carriers operating in the U.S. market, whether U.S.- or foreign-owned, as dominant in their provision of U.S. international services on particular routes in two circumstances: (1) where the Commission has determined that a U.S. carrier can exercise market power on the U.S. end of a particular route; and (2) where the Commission has determined that a foreign carrier has market power on the foreign end of a particular route that can adversely affect competition in the U.S. international services market. Carriers regulated as dominant on a particular route due to an affiliation with a carrier possessing market power on the foreign end of that route are subject to specific safeguards set forth in the Commission's rules. See *Foreign Participation Order*, 12 FC Rcd at 23987, para. 215.

<sup>43</sup> See 47 C.F.R. § 63.09(e).

<sup>44</sup> See *LEC Classification Order*, 12 FCC Rcd at 15838, para. 139.

<sup>45</sup> See *id.* at 15838-39, para. 139.

would be nondominant in their provision of in-region, interstate, domestic, interLATA services, and international services, relied on, among other things, the requirements established by Sections 271 and 272. The Commission concluded that the requirements established by, and the rules implemented pursuant to, Sections 271 and 272, together with other existing rules, sufficiently limit a BOC's ability to use its market power in the local exchange or exchange access markets to enable its interLATA affiliate profitably to raise and sustain prices of in-region, interLATA services significantly above competitive levels by restricting the affiliate's own output.<sup>46</sup> We note that BACI and NYNEX-LD are both Section 272 affiliates of the Bell Atlantic BOCs, and that, as such, they are subject to the requirements of Section 272 and the Commission's regulations implementing that section.<sup>47</sup>

## 2. BOC Out-of-Region Nondominance

18. The International Bureau concluded that BOCs should be treated as nondominant in their provision of out-of-region international services as well.<sup>48</sup> In making this determination, the Bureau stated that it was reaching the same conclusion regarding the regulatory treatment of BOCs' provision of out-of-region international services as the Commission reached regarding the regulatory treatment of BOCs' provision of out-of-region, interstate, domestic interexchange services in the *LEC Classification Order*.<sup>49</sup> The Bureau stated that the critical issue is whether a BOC can use its market power in local exchange and exchange access services to act anticompetitively in its provision of out-of-region international services.<sup>50</sup> The Bureau found no practical distinctions between a BOC's ability and incentive to use its market power in the provision of local exchange and access services to improperly allocate costs, discriminate against, or otherwise disadvantage unaffiliated domestic interexchange competitors as opposed to international service competitors.<sup>51</sup> As a result, the Bureau found that the BOCs do not have, upon entry or soon thereafter, the ability to raise the price of out-of-region international services by restricting their output of such services, even if they were to offer such services on an integrated basis with their local exchange and exchange access services.<sup>52</sup> The Bureau found,

---

<sup>46</sup> See *id.* at 15802, para. 82.

<sup>47</sup> In addition, Bell Atlantic New York, BACI's and NYNEX-LD's affiliate BOC to whom the Commission has granted authority under Section 271 to provide in-region interLATA services in the State of New York, is subject to the requirements of Section 272 in its dealings with BACI and NYNEX-LD.

<sup>48</sup> See *Nynex Long Distance Co., et al., Application for Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, to Provide International Service from Certain Parts of the United States to International Points Through Resale of International Switched Services*, *GTE Telecom Incorporated, Application for Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, and Section 63.01 of the Commission's Rules and Regulations for International Resale Switched Service and Facilities-Based Service to Various Countries*, File Nos. ITC-96-125, 96-272, 96-181, 95-443, Memorandum Opinion and Order, 12 FCC Rcd 11654, 11660, paras. 11-12 (Int'l. Bur. 1997) (*International Out-of-Region Nondominance Order*).

<sup>49</sup> See *id.*

<sup>50</sup> See *id.*

<sup>51</sup> See *id.*

<sup>52</sup> See *id.*

therefore, that the BOCs should be treated as nondominant in the provision of out-of-region international services.<sup>53</sup>

### 3. Foreign-Affiliated Route

19. Foreign Participation Order. Notwithstanding the findings of nondominance described above, for each international Section 214 application we must examine whether it is necessary to impose the Commission's international dominant carrier safeguards on an applicant in its provision of service on the route, or routes, for which the applicant seeks authorization.<sup>54</sup> Under rules adopted in the *Foreign Participation Order*, the Commission regulates U.S. international carriers as dominant on routes where an affiliated foreign carrier has sufficient market power on the foreign end to affect competition adversely in the U.S. market.<sup>55</sup> A U.S. carrier presumptively is classified as nondominant on an affiliated route if the carrier demonstrates that the foreign affiliate lacks 50 percent market share in the international transport and local access markets on the foreign end of the route.<sup>56</sup> Section 63.18 of the rules requires BACI and NYNEX-LD to demonstrate that they qualify for nondominant classification on any affiliated route for which they seek to be regulated as a nondominant international carriers.

20. Specific Affiliations. As noted above, Iusacell, the foreign carrier in Mexico in which BACI has an ownership interest, is the only carrier "affiliated" with Applicants within the meaning of Section 63.09(e)<sup>57</sup> on the routes that this Order encompasses. We have previously found Iusacell to be nondominant on the U.S.-Mexico route in the provision of international facilities-based services.<sup>58</sup> Moreover, this previous conclusion that BACI is nondominant on the U.S.-Mexico route is consistent with the standards for dominance since set forth in the *Foreign Participation Order*. We also note that no party has argued here, nor do we have any evidence in the record, that Iusacell currently possesses market power in any foreign market.

### IV. Conclusion

21. In light of the above, we find that a grant of BACI's and NYNEX-LD's applications, to the extent they cover services originating from the State of New York and from outside the Bell Atlantic BOCs' in-region states, will serve the public interest under Section 214 of the Act, by increasing competition in international services, expanding the range of new and innovative services, and allowing

---

<sup>53</sup> See *id.*

<sup>54</sup> The Commission's international dominant carrier safeguards are set forth in Section 63.10(c) of the Commission's rules (as amended in *International Settlement Rates*, IB Docket No. 96-261, Report and Order on Reconsideration and Order Lifting Stay, FCC 99-124 (rel. June 11, 1999)).

<sup>55</sup> See *Foreign Participation Order*, 12 FCC Rcd at 23951-52, para. 144; 47 C.F.R. § 63.10(a)(3).

<sup>56</sup> See 47 C.F.R. § 63.10(a)(3).

<sup>57</sup> See 47 C.F.R. § 63.09(e).

<sup>58</sup> See *BACI/NYNEX-LD Out-of-Region Facilities Order*, 12 FCC Rcd at 1889, para. 20.

for more efficient use of existing international telecommunications facilities. Because Bell Atlantic New York has been granted Section 271 authority for in-region interLATA services in the State of New York, we grant the applications for international service originating in New York and terminating at all international points except Gibraltar. We also grant the applications to the extent they request authority for international service originating outside the in-region states of the Bell Atlantic BOCs and terminating at all international points except Gibraltar. To the extent the applications request authority to provide international service originating in the other in-region states of the Bell Atlantic BOCs, we defer consideration and do not decide issues in the applications or petitions to deny. Finally, we also find that BACI and NYNEX-LD qualify for nondominant carrier regulation on the routes for which we grant them authority to provide international service.

## V. Ordering Clauses

22. Accordingly, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require a grant of the above-captioned applications to the extent specified in this Order. Therefore, IT IS ORDERED that Application File Nos. ITC-214-19971223-00813 (previous File No. ITC-98-002) and ITC-214-19971223-00811 (previous File No. ITC-98-003) are GRANTED IN PART AND DEFERRED IN PART, and Bell Atlantic Communications, Inc. (BACI) and NYNEX Long Distance Company (NYNEX-LD) are authorized: (1) pursuant to Section 63.18(e)(1) of the Commission's rules, 47 C.F.R. § 63.18(e)(1), to provide facilities-based service between the United States and all international points, except Gibraltar, to the extent such services originate from the State of New York or states outside the "in-region States," as that term is defined in Section 271(i)(1) of the Communications Act of 1934, as amended (the Act), 47 U.S.C. § 271(i)(1), of Bell Atlantic Corporations' local operating companies (collectively, the Bell Atlantic BOCs); and (2) pursuant to Section 63.18(e)(2) of the Commission's rules, 47 C.F.R. § 63.18(e)(2), to resell the services of authorized U.S. carriers (except affiliated carriers regulated as dominant on routes to be served by BACI or NYNEX-LD) between the United States and all international points, except Gibraltar, to the extent such services originate from the State of New York or states outside the Bell Atlantic BOCs' in-region states, subject to all current and future Commission regulations, including those specifically listed below.

23. IT IS FURTHER ORDERED that to the extent Application File Nos. ITC-214-19971223-00813 (previous File No. ITC-98-002) and ITC-214-19971223-00811 (previous File No. ITC-98-003) request authority to provide international service originating in the Bell Atlantic BOCs' in-region states other than New York, they are DEFERRED.

24. IT IS FURTHER ORDERED that the petitions filed by MCI Telecommunications Corporation and AT&T Corp., to the extent they address BACI's and NYNEX-LD's authority to provide services originating in New York, are DISMISSED as moot, and are otherwise DEFERRED.

25. IT IS FURTHER ORDERED that BACI and NYNEX-LD shall comply with the requirements specified in Sections 43.51, 43.61, 63.11, 63.14, 63.17, 63.19, 63.21, 63.22, and 63.23, 47 C.F.R. §§ 43.51, 43.61, 63.11, 63.14, 63.17, 63.19, 63.21, 63.22, and 63.23.

26. IT IS FURTHER ORDERED that BACI and NYNEX-LD may not, and their tariffs must state that their customers may not, connect their private lines to the public switched network at either the U.S. or foreign end, or both, for the provision of international switched basic services on any route unless

the Commission has authorized the provision of such service on that route or the carrier is exchanging switched traffic with a foreign carrier that lacks market power in the country at the foreign end of the route.

27. IT IS FURTHER ORDERED that this Order will become effective upon the effective date of the Commission's Order granting authority to Bell Atlantic New York to provide in-region interLATA services in the State of New York.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca Arbogast  
Chief, Telecommunications Division  
International Bureau