

**Categories of Services for 214 Applications
(Streamline/Non-streamline)**

ITC-214-19980714-00666

- ASSIGNMENT OF LICENSE
- GLOBAL FACILITIES-BASED SERVICE
- GLOBAL FACILITIES-BASED/GLOBAL RESALE SERVICE
- GLOBAL RESALE SERVICE
- INDIVIDUAL FACILITIES-BASED SERVICE
- INTERCONNECTED PRIVATE LINE RESALE SERVICE
- LIMITED GLOBAL FACILITIES-BASED SERVICE/LIMITED GLOBAL RESALE SERVICE
- LIMITED GLOBAL FACILITIES-BASED SERVICE
- LIMITED GLOBAL RESALE SERVICE
- INMARSAT AND MOBILE SATELLITE SERVICE
- SWITCHED RESALE SERVICE
- TRANSFER OF CONTROL
- SUBMARINE CABLE LANDING LICENSE
- INTERNATIONAL SPECIAL PROJECT

Description of Application: _____

FRZ

S
WIDLER
BERLIN

CHARTERED

July 14, 1998

BY COURIER

Federal Communications Commission
International Bureau Telecommunications Division
P. O. Box 358115
Pittsburgh, PA 15251-5115

EGG/MELLON

JUL 14 1998

Attention: Diane Cornell, Division Chief

Re: *Application of Highpoint Capital (USA) Inc., for Global Authority Pursuant to Section 214 of the Communications Act of 1934, As Amended, to Operate as an International Facilities-based Carrier and as an International Resale Carrier*

Dear Sir or Madam:

Enclosed for filing with the Commission are an original and six (6) copies of the application of Highpoint Capital (USA) Inc. requesting global authority, pursuant to Section 214 of the Communications Act of 1934, as amended, to operate as an international facilities-based carrier and as an international resale carrier between the United States and various international points.

As required by the Commission's Rules, a check in the amount of \$745.00 is enclosed. Please date-stamp the extra copy of this application and return it in the enclosed self-addressed, stamped envelope. Any questions regarding the enclosed application should be addressed to the undersigned.

Respectfully submitted,


Priscilla A. Whitehead
Maria L. Cattafesta

Counsel for Highpoint Capital (USA) Inc.

Enclosures

cc: Betty Kayton

244561.1

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

HIGHPOINT CAPITAL (USA) INC.

Application for Global Authority Pursuant to
Section 214 of the Communications Act
of 1934, as amended, to Operate as an
International Facilities-Based and Resale Carrier
Between the United States and Various
International Points

File No. ITC-98-
ITC-214-19980714-00666

APPLICATION

Highpoint Capital (USA) Inc. ("Highpoint" or "Applicant"), by its undersigned counsel, hereby requests "global" authority, under Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and Section 63.18 of the Commission's Rules, 47 C.F.R. § 63.18 (1997), to provide international telecommunications services between the United States and international points.

I. The Proposed International Services

Highpoint requests four types of authority in this Application, all of which are eligible for streamlined processing.^{1/} Highpoint specifically requests: (1) global facilities-based authority

^{1/} See *Streamlining the International 214 Authorization Process and Tariff Requirements*, 11 FCC Rcd 12884 (1996) (adopting streamlined 35-day processing procedures for certain international resale applications) ("*Streamlining Order*"); 47 C.F.R. § 63.12 (1998).

pursuant to Section 63.18(e)(1) of the FCC's Rules, 47 C.F.R. § 63.18(e)(1), to acquire interests in half-circuits in U.S.-authorized facilities as well as necessary connecting facilities to provide international telecommunications services between the United States and all international points except those countries excluded by the Exclusion List;^{2/} (2) global authority pursuant to Section 63.18(e)(2) of the FCC's Rules, 47 C.F.R. § 63.18(e)(2), to resell the international switched services of all U.S.-authorized carriers to provide international switched services between the United States and all international points served by those carriers; (3) global authority pursuant to Section 63.18(e)(2) of the FCC's rules, 47 C.F.R. §63.18(e)(2), to resell international private lines to provide international non-interconnected private line services between the United States and all international points; and (4) authority pursuant to Section 63.18(e)(2) of the FCC's Rules, 47 C.F.R. § 63.18(e)(2), to resell international private lines interconnected to the public switched network ("PSN") at one or both ends to provide international switched services on all international routes on which the Commission permits such services to be provided.^{3/} As Highpoint does not seek authority to serve countries or use facilities excluded by the Exclusion List, and does not

^{2/} Highpoint only seeks authority to own circuits on facilities not excluded by the Exclusion List.

^{3/} The FCC will automatically amend all Section 214 authorizations to permit carriers to resell international private lines to provide international switched services between the United States and other countries as provision of such services becomes permitted by the Commission. *Streamlining Order* at ¶ 34. See also, *International Settlement Rates*, IB Docket 96-261, *Report and Order*, FCC 97-280 (rel. Aug. 18, 1997)(*Benchmarks Order*); *Rules and Policies of Foreign Market Participation in the U.S. Telecommunications Market*, IB Docket 97-142, *Report and Order on Reconsideration*, FCC 97-398 (rel. Nov. 26, 1997) (*Foreign Market Participation Order*).

seek to serve countries in which it has a facilities-based affiliate, Highpoint's Application for authority pursuant to Section 214 is eligible for streamlined processing.^{4/}

Highpoint believes that the added competition its entry will bring to the market will benefit the consumers of United States-overseas services. These benefits include competitive pricing and increased availability of a variety of service options. A grant of this Application will therefore further the public interest.

II. The Applicant

Highpoint is a corporation organized under the laws of the State of Nevada. Highpoint is not affiliated, as that term is defined by Part 63 of the Commission's Rules^{5/} with any dominant U.S. carriers whose international services Highpoint will resell. As described in further detail below, Highpoint is affiliated, within the meaning of Section 63.18(h)(1)(i), 47 C.F.R. § 63.18(h)(1)(i), of the Commission's Rules, with foreign carriers in destination markets that are WTO Member countries. Therefore, Highpoint should be classified as a nondominant carrier for the provision of the services for which authority is requested in this Application, and Highpoint's Application is eligible for streamlined processing.

^{4/} See *Streamlining Order*; 47 C.F.R. § 63.12 (1998).

^{5/} 47 C.F.R. §63.18(h); *Market Entry and Regulation of Foreign-Affiliated Entities, Report and Order*, 11 FCC Rcd 3875 (1995) (*Market Entry Order*).

III. Public Interest Considerations

In the *Market Entry Order*, the Commission set forth the following policy goals for its regulation of the U.S. international telecommunications market: to promote effective competition in the U.S. telecommunications market, particularly the market for international telecommunications services; to prevent anticompetitive conduct in the provision of international services or facilities; and to encourage foreign governments to open their communications markets.^{6/} The Commission also stated that "establishing an effectively competitive global communications market could result in reduced rates, increased quality, and new innovative services."^{7/} In addition, the Commission found that "effective competition directly advances the public interest and the Commission's paramount goal of making available a rapid, efficient, worldwide wire and radio communication service with adequate facilities at reasonable charges."^{8/}

Grant of Highpoint's request for facilities-based and resale authority to provide international services as requested in this Application will directly further the Commission's policies of bringing increased competition to the U.S. international telecommunications services market and is therefore in the public interest.

IV. Information Required under Section 63.18

As required by Section 63.18 of the Commission's Rules, Highpoint submits the following information:

^{6/} *Id.* at ¶ 6.

^{7/} *Id.*

^{8/} *Id.* at ¶ 10.

- (a) Name, address and telephone number of Applicant:
- Highpoint Capital (USA) Inc.
1890 North Shoreline Boulevard
Mountain View, CA 94043-1320
Tel: (650) 943-4400
Fax: (650) 943-4480

(b) Applicant is incorporated under the laws of the State of Nevada.

(c) Correspondence concerning this application should be sent to:

Priscilla A. Whitehead, Esq.
Maria L. Cattafesta, Esq.
SWIDLER & BERLIN, CHARTERED
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
Tel: (202) 424-7870
Fax: (202) 424-7645

with a copy to:

David Warnes
Chief Executive Officer
Highpoint Capital (USA) Inc.
1890 North Shoreline Boulevard
Mountain View, CA 94043-1320
Tel: (650) 943-4400
Fax: (650) 943-4480

(d) Upon grant of this Application, Highpoint will become an authorized non-dominant facilities-based carrier and reseller with global authority, subject to Section 214 of the Communications Act of 1934, as amended, and the Commission's Rules. Highpoint lacks the market power that would allow it to control prices to the detriment of market competition.

(e) Highpoint requests Section 214 authority to operate as a facilities-based carrier pursuant to the terms and conditions of Section 63.18(e)(1) and to operate as a resale carrier pursuant to the terms and conditions of Section 63.18(e)(2). Specifically, Highpoint requests: (1) global facilities-based authority pursuant to Section 63.18(e)(1) of the FCC's Rules, 47 C.F.R. § 63.18(e)(1), to acquire interests in half-circuits in U.S.-authorized facilities as well as necessary

connecting facilities to provide international telecommunications services between the United States and all international points except those countries excluded by the Exclusion List;^{9/} (2) global authority pursuant to Section 63.18(e)(2) of the FCC's Rules, 47 C.F.R. § 63.18(e)(2), to resell the international switched services of all U.S.-authorized carriers to provide international switched services between the United States and all international points served by those carriers; (3) global authority pursuant to Section 63.18(e)(2) of the FCC's rules, 47 C.F.R. §63.18(e)(2), to resell international private lines to provide international non-interconnected private line services between the United States and all international points; and (4) authority pursuant Section 63.18(e)(2) of the FCC's Rules, 47 C.F.R. § 63.18(e)(2), to resell international private lines interconnected to the public switched network ("PSN") at one or both ends to provide international switched services on all international routes on which the Commission permits such services to be provided.

- (f) Highpoint seeks authority in this Application to provide only services referenced under paragraph (e) of Section 63.18 of the Commission's Rules.
- (g) The authority requested in this Application is categorically excluded from environmental processing as defined by Section 1.1306 of the Commission's Rules, 47 C.F.R. § 1.1306. As such, an environmental assessment is not required for purposes of this Application and is therefore not attached.

- (h) Exhibit A provides Highpoint's foreign affiliations, pursuant to Section 63.18(h)(1)(i) of the Commission's Rules.

Highpoint's 10% or greater direct or indirect shareholder is as follows:

Name: Highpoint Capital Corporation
Address: 999 West Hastings #1030
Vancouver, BC V6C 2W2
Percentage Held: 100%
Citizenship: Canada
Principal Business: Holding company

^{9/} Highpoint only seeks authority to own circuits on facilities not excluded by the Exclusion List.

Highpoint Capital Corporation's 10% or greater direct or indirect shareholder is as follows:

Name: Eclipse Ltd.
Address: c/o Codan Services Ltd.
Clarendon House
2 Church Street
P. O. Box HM 1022
Hamilton HM DX
Bermuda
Percentage Held: approximately 66%
Citizenship: Bermuda
Principal Business: Holding company

Eclipse Ltd.'s 10% or greater direct or indirect shareholder is as follows:

Name: Un Ltd.
Address: c/o Codan Services Ltd.
Clarendon House
2 Church Street
P. O. Box HM 1022
Hamilton HM DX
Bermuda
Percentage Held: 100%
Citizenship: Bermuda
Principal Business: Holding company

Un Ltd.'s 10% or greater direct or indirect shareholder is as follows:

Name: GST Global Telecommunications Inc.
Address: 1890 North Shoreline Boulevard
Mountain View, CA 94043-1320
Percentage Held: 100%
Citizenship: Canada
Principal Business: Holding company

GST Global Telecommunications, Inc.'s 10% or greater direct or indirect shareholder is as follows:

Name: GST Telecommunications Inc.
Address: 4317 North East Thurston Way
Vancouver, WA 98662

Percentage Held: approximately 20%
Citizenship: Canada
Principal Business: Holding company

Highpoint submits its interlocking directorate report as Exhibit B.

- (i) As required by Section 63.18 (i) of the Commission's Rules, 47 C.F.R. § 63.18(i), Highpoint certifies that it has not agreed to accept nor shall it accept in the future any special concessions, as defined by the Commission's Rules, directly or indirectly from any foreign carrier or administration with respect to traffic or revenue flows between the U.S. and any foreign country for which Highpoint may be authorized to serve.
- (j) Highpoint is not subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988. Highpoint's certification pursuant to Section 1.2002 of the Commission's Rules (implementing the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 3301) is attached.

CONCLUSION

For the reasons stated above, Highpoint Capital (USA) Inc. respectfully submits that the public interest, convenience, and necessity would be furthered by a grant of this Section 214 Application.

Respectfully submitted,

By: 

Priscilla A. Whitehead
Maria L. Cattafesta
SWIDLER & BERLIN, CHARTERED
3000 K Street, N.W., Suite 300
Washington, DC 20007
(202) 424-7870 (tel)
(202) 424-7645 (fax)

Counsel for Highpoint Capital (USA) Inc.

Dated: July 14, 1998

Exhibit A

**Foreign Affiliations
of
Highpoint Capital (USA) Inc.**

**HIGHPOINT CAPITAL (USA), INC.
SCHEDULE OF FOREIGN AFFILIATES**

SCHEDULE A

The following entities are foreign affiliates of Highpoint Capital (USA) Inc.:

Axxon Telecom BV	Netherlands corporation
Axxon Telecom Gmbh	German corporation
Axxon Telecom Ltd	UK corporation
Axxon Telecom NV SA	Belgian corporation
Bestel S.A. de C.V.	Mexican corporation
Cyberlight Canada	Canadian corporation
Cyberlight Europe Ltd.	UK corporation
Datamax de Mexico, S.A. de C.V.	Mexican corporation
Unitel S.A.	Guatemalan corporation
Viacom de Mexico, S.A. de C.V.	Mexican corporation

Exhibit B

**Interlocking Directorate Report
of
Highpoint Capital (USA) Inc.**

**HIGHPOINT CAPITAL (USA), INC.
SCHEDULE OF INTERLOCKING DIRECTORATES**

SCHEDULE B

The interlocking directorates of Highpoint are as set forth below:

<u>Individual's Name</u>	<u>Organization's Name</u>	<u>Title</u>
W. Gordon Blankstein	Highpoint Capital (USA) Inc.	Director
	Global Thyme Inc.	Director
	Bestel (USA) Inc. Viacom Corporation	Director Director
Ian Watson	Highpoint Capital (USA) Inc.	Director
	Global Thyme Inc.	Director
	Bestel (USA) Inc. Viacom Corporation	Director Director
James T. Geddis	Highpoint Capital (USA) Inc.	Director, Vice President
	Global Thyme Inc.	Director, Vice President
	Bestel (USA) Inc. Viacom Corporation	Director, Vice President Director, Vice President
David Warnes	Highpoint Capital (USA) Inc.	Director, President
	Viacom Corporation	President
Donald MacFayden	Highpoint Capital (USA) Inc.	Vice President

CERTIFICATION OF APPLICANT

On behalf of Highpoint Capital (USA) Inc., and in accordance with Section 1.2001-1.2003 of the Commission's Rules, 47 C.F.R. §§ 1.2001-1.2003, I hereby certify that no party to this Application is subject to a denial of Federal benefits that includes FCC benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988. See 21 U.S.C. § 853a. I also hereby certify that the statements in the foregoing Application for Section 214 authority are true, complete, and correct to the best of my knowledge and are made in good faith.

To the extent required by the Commission's rules, Highpoint Capital (USA) Inc. has not agreed to accept any special concessions directly or indirectly from any foreign carrier or administration with respect to traffic or revenue flow between the United States and various international points under the authority granted under Section 214 of the Communications Act of 1934, as amended, and the Commission's Rules, and has not agreed to enter into such agreements in the future.

HIGHPOINT CAPITAL (USA) INC.

By:



Name:

DAVID W. WARNES

Title:

CEO

Date:

2 JULY 93

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October 1, 1998

VIA FACSIMILE

Ms. Fran G. Eisenstein
International Bureau
Federal Communications Commission
2000 M Street, N.W., Room 843
Washington, D.C. 20554

Re: Supplemental Foreign Affiliate Information for Highpoint Capital (USA) Inc.'s
Section 214 Application

Dear Fran:

Pursuant to your request, Highpoint Capital (USA) Inc. ("Highpoint"), by its undersigned counsel and pursuant to Section 63.18(f) of the Commission's Rules,¹ as amended by the *Foreign Participation Order*,² provides the following foreign affiliation information to supplement its pending Section 214 application. Please note that in light of our additional consultation with you and other FCC staff, we understand that the following entities, originally listed as Highpoint's foreign affiliates in its Section 214 application, are not deemed to be foreign affiliates since they are not operational:

- Cyberlight Canada
- Cyberlight Europe Ltd.

Moreover, we understand that the following entities would not be deemed foreign affiliates since they are only value-added service providers:

¹ 47 C.F.R. § 63.11 (1997).

² *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Dockets 97-142 and 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23,891 (1997), recon. pending, (*Foreign Participation Order*).

Ms. Fran G. Eisenstein
 October 1, 1998
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- Datamax de Mexico, S.A. de C.V.
- Unitel S.A.

None of the foreign affiliations described below warrant the classification of Highpoint as a dominant international carrier on any route. These affiliates are small companies that are new market entrants offering services in competition with dominant foreign carriers and others. At this time, each foreign affiliate holds less than one percent (1%) of the market share in the international transport and local access markets in their respective countries. Moreover, none of these carriers has the ability to discriminate against unaffiliated U.S. international carriers through the control of bottleneck services or facilities to exercise market power in any destination country. Accordingly, Highpoint's foreign affiliates lack sufficient market power on the foreign end of their respective routes to affect competition adversely in the U.S. market, and therefore Highpoint should be classified as a nondominant carrier on all international routes.

Highpoint's foreign affiliations are as follows:

1. *Belgium (WTO Member): Axxon Telecom NVSA* is authorized to provide national and international telecommunications services, including prepaid and postpaid calling cards, internet services, videoconferencing and a number of other value-added services in Belgium.
2. *Germany (WTO Member): Axxon Telecom GmbH* provides national and international telecommunications services, including prepaid and postpaid calling cards, internet services, videoconferencing and a number of other value-added services in Germany pursuant to its Class 4 license.
3. *Mexico (WTO Member):* Highpoint has two foreign affiliates in Mexico.
 - *Bestel S.A. de C.V. ("Bestel"):* Bestel is authorized to provide national long distance and international telecommunications services and to build, own and operate a fiber optic network from Nuevo Laredo to Mexico City (including spurs to other cities) pursuant to a concession it received from the Mexican government. In addition, Bestel has received a concession to provide point-to-point and multi-point microwave links in several regions within Mexico.
 - *Vitacom de Mexico ("Vitacom"):* Vitacom provides value-added services, such as remote access and e-mail, pursuant to its registration as a value-added service provider with the Federal Telecommunications Commission ("COFETEL"). In addition, Vitacom has several earth stations that provide both domestic and international private line service pursuant to a permit it received from the Secretariat of Communications and Transportation ("SCT").

Ms. Fran G. Eisenstein
October 1, 1998
Page 3

4. *The Netherlands (WTO Member): Axxon Telecom BV* is authorized to provide national and international telecommunications services, including prepaid and postpaid calling cards, internet services, videoconferencing and a number of other value-added services in The Netherlands.
5. *United Kingdom (WTO Member): Axxon Telecom Ltd.* is authorized to provide national and international telecommunications services, including prepaid and postpaid calling cards, internet services, videoconferencing and a number of other value-added services in the United Kingdom.

Please do not hesitate to contact us if you have any questions or if you require additional information.

Very truly yours,



Priscilla A. Whitehead
Maria L. Carrafesta

Counsel for Highpoint Capital (USA) Inc.

cc: Betty Kayton
Catherine Wang
José A. Palma