

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

- 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:

Agree to be dominant

FR2

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

In the Matter of

CABLE & WIRELESS USA, INC.

File No. I-T-C-98-____

Application for Streamlined Authority Pursuant to
Section 214 of the Communications Act of 1934,
as Amended, to Provide Facilities-Based Switched
and Private Line Service Between the United States
and Hong Kong.

APPLICATION FOR AUTHORITY

I. INTRODUCTION

Cable & Wireless USA, Inc. ("C&W USA") hereby requests authority, pursuant to 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, as amended by the Commission's Rules and Policies on Foreign Participation in the U.S. Telecommunications Market¹ to provide facilities-based switched and private line service between the United States and Hong Kong.² Further, C&W USA requests this §214 application be subject to the streamlined processing procedures set forth in Section 63.12(c)(1)(iii) of the Commission's rules, 47 C.F.R. §63.12(c)(1)(iii).

¹ Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, IB Dockets No. 97-142 and 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23,891 (1997), recon. pending ("Foreign Participation Order" or "FPO").

² This application does not seek authorization to provide switched services over resold lines interconnected to the public switched telephone network pursuant to Sections 63.18 and 63.21 of the Commission's rules.

C&W USA is a domestic common carrier which is authorized to provide international switched and private line services between the United States and numerous countries throughout the world, including Hong Kong, by the resale of the facilities of underlying carriers. C&W USA also is authorized to provide switched and private line services, on a facilities basis, to numerous countries throughout the world.

In this application, C&W USA is applying for authority to provide facilities-based switched and non-interconnected private line service to Hong Kong. Presently, C&W USA's capacity on the Hong Kong route is limited to resold switched voice and resold non-interconnected international private line service. See ITC-86-108, ITC-87-157, ITC-90-190. In Hong Kong, C&W USA is affiliated with a service provider which possesses market power as defined by the Commission's rules, and C&W USA will be subject to the Commission's dominant carrier safeguards. FPO ¶230, §63.10.

II. HONG KONG IS A MEMBER OF THE WORLD TRADE ORGANIZATION.

In the Foreign Participation Order, the Commission held that it would no longer require applicants from WTO Member countries to demonstrate that their markets offer effective competitive opportunities in order to obtain Section 214 authority. FPO ¶29. Instead, the Commission adopted, as a factor in its public interest analysis, a rebuttable presumption that applications for Section 214 authority from carriers from WTO Members do not pose concerns that would justify denial of an application on competition grounds. FPO ¶50. By adopting this rebuttable presumption in favor of entry this will allow the Commission to grant the vast majority of applications swiftly and without undue delay. Id.

Hong Kong is a member of the World Trade Organization (“WTO”). Therefore, the Commission’s rules do not require C&W USA demonstrate that this market offers effective competitive opportunities. This application is subject to a rebuttable presumption in favor of entry and should be granted swiftly.

III. C&W USA WILL NOT POSSESS THE ABILITY TO POSE A VERY HIGH RISK TO COMPETITION.

In the FPO, the Commission held that when reviewing applications to serve WTO member countries, it would presume that an application does not pose a risk of competitive harm that would justify denial unless it is shown that granting the application would pose a very high risk to competition. FPO ¶ 51. The “very high risk of competitive harm” which would justify the denial of an authorization would be in those cases where a carrier would have the ability upon entry, or shortly thereafter, to raise prices by restricting output. FPO ¶ 52.

C&W USA is affiliated with foreign carriers, as defined by Section 63.18(h)(1)(i)(A) of the Commission’s rules, operating in Hong Kong. C&W USA’s ultimate corporate parent, C&W plc (“PLC”), a corporation organized under the laws of England and Wales, currently holds approximately 54 percent of Hong Kong Telecommunications Limited (“Hong Kong Telecom”).³ Hong Kong Telecom wholly owns Hong Kong Telecom CAS Limited (“HKTCAS”), a holding company which wholly owns Hong Kong Telephone Company Limited (“Hong Kong Telephone”) and Hong Kong Telecom International Limited (“HKTI”). Hong Kong Telephone is one of four companies that provides local telephone facilities and basic telephone service, including international call access, in Hong Kong pursuant to a Fixed Telecommunications Network

Services license. At present, HKTI is the exclusive provider of international voice message telephone service and facilities in Hong Kong. On January 1, 1999, HKTI will be subject to competition in the provision of all international services that employ resold facilities, including voice services provided via International Simple Resale. Competition in the provision of facilities-based international service will commence on January 1, 2000.

C&W USA will be unable to act anticompetitively by raising prices through a restriction in output on the Hong Kong route. As stated in Section IV of this application, C&W USA will subject itself to and comply with the Commission's dominant carrier regulations. This regulatory status will prohibit C&W USA from accepting Special Concessions, require C&W USA file numerous reports with the Commission, and will mandate C&W USA and its affiliates maintain structural separation. Further, C&W USA recognizes that its authorization to provide facilities-based service will be subject to the benchmark settlement rate condition adopted in the Benchmark Settlement Rates Order and thus will be unable to provide facilities-based service on the route until HKTI's settlement rates comply with the applicable benchmark.⁴

IV. THIS APPLICATION SHOULD BE SUBJECT TO STREAMLINED REVIEW

In the FPO, the Commission ordered that it would streamline all applications for authority under Section 214 of the Communications Act if the applicant clearly demonstrates that the affiliated destination markets are WTO member countries and the applicant agrees to be classified as a dominant carrier to the affiliated destination countries. FPO ¶322; §63.12(c)(1)(iii). This

³ Of the remaining shares, the only party controlling more than a ten percent interest in Hong Kong Telecom is China Telecom (Hong Kong) Group Limited ("CTHKG") which holds approximately 13 percent of the shares of Hong Kong Telecom.

⁴ See International Settlement Rates, Report and Order, 12 FCC Rcd 19,806 (1997) recon. and appeal pending ("Benchmark Settlement Rates Order").

dominant classification shall not prejudice the applicant's right to petition for reclassification at a later date. Id. As previously stated, C&W USA has affiliates in Hong Kong, and Hong Kong is a member of the WTO. C&W USA, therefore, agrees to be classified as a dominant carrier for the provision of facilities based service on the Hong Kong route, and C&W USA expects this application will be granted streamlined review in return.

V. SECTION 63.18 INFORMATION

In support of the request for authorization, the following information is set forth pursuant to Section 63.18:

(a) The name and address of the applicant are:

Cable and Wireless USA, Inc.
8219 Leesburg Pike
Vienna, VA 22182

(b) Applicant is incorporated under the laws of the District of Columbia.

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

Paul W. Kenefick
Regulatory Counsel
Cable & Wireless USA, Inc.
8219 Leesburg Pike
Vienna, Virginia 22182
703-905-5785 (phone)
703-442-8891 (fax)
E-Mail: paul.kenefick@cwusa.com

(d) C&W USA is a carrier subject to Section 214 of the Communications Act of 1934, as amended. C&W USA has previously received numerous authorizations under

Section 214 of the Act, including but not limited to, authorizations to provide resale service to Hong Kong. See ITC-86-108, ITC-87-157, ITC-90-190. C&W

USA maintains a list of and a copy of each authorization under Section 214 of the Act it has received at the previously listed address. Upon request, C&W USA will present any and all authorizations to the Commission without undue delay.

(e) Applicant seeks authority to expand its telecommunications services to provide facilities-based services, both switched and private line, on the routes listed in this application pursuant to Section 63.18(e)(5)(i). Currently, applicant possesses the authority to provide international basic switched services and the authority to provide non-interconnected international private line service through the resale of authorized U.S. common carriers. See ITC-86-108, ITC-87-157, ITC-90-190. Applicant seeks to be classified as a dominant carrier on this route in return for streamlined review status. See FPO ¶322; §63.12(c)(1)(iii).

(h)(1) C&W USA has an affiliation, pursuant to Section 63.18(h)(1)(i)(A) and (B), through its parent corporation, C&W plc, with foreign carriers in the destination market. As previously described in Section III of this application, C&W USA is affiliated with Hong Kong Telephone Company Limited and Hong Kong Telecom International Limited. See Attachment One for further information concerning C&W USA's worldwide affiliations.

(h)(2) The applicant further certifies that its sole shareholder and ultimate parent is Cable and Wireless, plc ("CW plc"), a company organized under the laws of England and Wales. The only 10 percent or greater shareholder in CW plc is Veba Telecommunications GmbH, a telecommunications holding company in Germany, which owns 10 percent of CW plc. The address of Veba Telecommunications is:

Veba Telecommunications GmbH
Benningssenplatz 1
D-40474 Dusseldorf
GERMANY

No director or officer of C&W USA holds a similar position in any other carrier subject to the Communications Act.

(h)(3) Not Applicable.

(h)(4) The applicant hereby certifies that it will maintain the continuing accuracy of the certifications made in paragraphs (h)(1)-(3).

(h)(5) Hong Kong is a member of the World Trade Organization.

(h)(6) Not Applicable.

(h)(7) Not Applicable.

(h)(8) As stated in Section III of this application, applicant will be subject to dominant carrier regulations on the destination country routes.

- (i) Applicant certifies that it has not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market in Attachment One.
- (j) A certification that no party to this application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 USC §853a, is attached as Attachment Three.

(k) Applicant desires streamlined processing pursuant to Section 63.12. Qualifications for streamlined processing are demonstrated in Section IV of this application.

VI. CONCLUSION

In light of the foregoing, C&W USA submits that the public interest, convenience, and necessity would be served by grant of this application to acquire lines of communications on a facilities-basis to provide switched and non-interconnected international private line services between the United States and Hong Kong as described herein.

Respectfully submitted,

CABLE & WIRELESS USA, INC.

BY:



Rachel J. Rothstein
Vice President for Regulatory and
Government Affairs
Paul W. Kenefick
Regulatory Counsel
8219 Leesburg Pike
Vienna, Virginia 22182
(703) 905-5785

September 18, 1998

ATTACHMENT 1

CERTIFICATION AS TO AFFILIATIONS

I hereby certify to the following:

- (1) Cable & Wireless USA, Inc. (C&W USA) is a wholly owned subsidiary of Cable and Wireless Holding, Inc., a Virginia corporation, which is, in turn, a wholly-owned subsidiary of Cable and Wireless plc, a publicly held United Kingdom corporation, with headquarters at 124 Theobalds Road, London, United Kingdom, WC1X 8RX. Cable and Wireless plc is a leading international provider of telecommunications services.
- (2) Cable and Wireless plc possesses direct and indirect ownership interests of greater than 25 percent in the foreign carriers, as defined in §63.18(h)(1)(ii) of the Commission's rules, in each country listed in Attachment 2 of this Application.
- (3) I further certify that C&W USA has agreed not to accept special concessions directly or indirectly from any foreign carrier which possesses sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market. See §63.18(i) of the Commission's rules.
- (4) I further certify that I am authorized to enter into this certification on behalf of C&W USA.

By:



Rachel J. Rothstein
Vice President for Regulatory and
Government Affairs
Cable and Wireless USA, Inc.

ATTACHMENT 2

**COUNTRIES IN WHICH CABLE & WIRELESS PLC POSSESSES 25% OR GREATER
COMMON DIRECT OR INDIRECT OWNERSHIP IN A FOREIGN CARRIER**

Arguilla
Antigua
Ascension Island
Australia
Barbados
Bermuda
British Virgin Islands
Cayman Islands
Canada
Diego Garcia
Dominica
Falkland Islands
Fiji
Grenada
Hong Kong
Jamaica
Japan
Latvia
Macau
Maldives
Montserrat
Panama
Philippines
Russia
Seychelles
Solomon Islands
St. Helena
St. Kitts & Nevis
St. Lucia
St. Vincent
Tonga
Trinidad & Tobago
Turks & Caicos
United Kingdom
Vanuatu
Yemen

CERTIFICATION

In accordance with the Anti-Drug Abuse Act of 1988, 21 U.S.C. §862 and §§ 1.2001 - 1.2003 of the Commission's rules, Cable & Wireless USA, Inc. (C&W USA) hereby certifies that neither C&W USA nor any officer, director, or person holding 5% or more of the outstanding shares of C&W USA is subject to a denial of federal benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988.

By:



Rachel J. Rothstein
Vice President for Regulatory and
Government Affairs
Cable and Wireless USA, Inc.

CERTIFICATE OF SERVICE

I, Theresa M. Caban, hereby certify that I have caused copies of the foregoing "Application for Authority" to be served this 18th day of September 1998, by first class mail, postage prepaid to the following:


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