

Categories of Services for 214 Applications
(Streamlined/Non-streamlined)

- 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: _____

COPY

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September 25, 1998

VIA COURIER

Magalie Roman Salas, Secretary
Federal Communications Commission
International Bureau - Telecommunications Division
P.O. Box 358115
Pittsburgh, PA 15251-5115
Attention: Diane Corell, Division Chief

Re: Application of BroadSpan Communications, Inc. for Section 214
International Global Facilities-Based Authority and Global Resale
Authority _____

Dear Ms. Salas:

Enclosed for filing with the Federal Communications Commission ("Commission") are an original and six (6) copies of the application of BroadSpan Communications, Inc. pursuant to Section 214 of the Communications Act. As required by the Commission's Rules, enclosed is a check in the amount of \$780.00, payable to the Commission.

Please date-stamp the extra copy of this application and return it in the enclosed self-addressed, stamped envelope. If you have any questions concerning this application, please do not hesitate to contact Kevin Minsky at (202) 945-6290.

Respectfully submitted,



William B. Wilhelm, Jr.

Counsel for BroadSpan Communications, Inc.

Enclosures

cc: Troy Tanner (FCC)
Blake Ashby
Kevin D. Minsky

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

In the Matter of)
)
)
BroadSpan Communications Inc.) File No. 1-T-C-98-____
)
)
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)
)

APPLICATION

BroadSpan Communications, Inc. ("BSC" 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 (1982), 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 other than those excluded by the Exclusion List. Pursuant to Section 63.12, of the Commission's Rules, 47 C.F.R. § 63.12 (1997), this Application is eligible for streamlined processing.

I. The Proposed International Services

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

^{1/} See *Streamlining the International 214 Authorization Process and Tariff Requirements*, IB Docket No. 95-118, FCC 96-79 (released March 13, 1996) (adopting streamlined 35-day processing (continued...))

to Section 63.18(e)(1) of the FCC's Rules, 47 C.F.R. § 63.18(e)(1), to acquire ownership interests 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 Commission's Rules, 47 C.F.R. § 63.18(e)(2), to resell international switched services of all unaffiliated 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)(A) of the FCC's rules, 47 C.F.R. § 63.18(e)(2)(A), to resell international private lines to provide international non-interconnected private line services between the United States and all international points except those countries excluded by the Exclusion List; and (4) authority pursuant to Section 63.18(e)(2)(B) of the FCC's Rules, 47 C.F.R. § 63.18(e)(2)(B), 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 BSC does not seek authority to serve any country or use facilities excluded by the Exclusion List, and does not seek to serve any country in which it has a facilities-

^{1/}(...continued)
procedures for certain international resale applications) ("*Streamlining Order*"); 47 C.F.R. § 63.12 (1997); *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*").

^{2/} Pursuant to the *Streamlining Order*, the FCC permits applicants who obtain global facilities-based authority to thereafter acquire additional capacity in any U.S.-owned facilities without requesting further authority under Section 214. *Streamlining Order* ¶ 16.

^{3/} See *Streamlining Order* ¶ 34. See also *International Settlement Rates*, IB Docket 96-261, *Report and Order*, FCC 97-280 (rel. Aug. 18, 1997) ("*Benchmarks Order*"); *Foreign Market Participation Order*.

based affiliate with market power, BSC's application for authority pursuant to Section 214 is eligible for streamlined processing.^{4/}

BSC 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

BSC is a Missouri corporation with its headquarters located at 11756 Borman Drive, Suite 101, St. Louis, Missouri 63146. BSC can be reached by telephone at (314) 214-0000 or by facsimile at (314) 569-7110.

BSC plans to operate as an international telecommunications service provider but does not currently hold any authorization pursuant to Section 214 of the Communications Act, as amended, to provide such services. BSC 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 BSC will resell. BSC is not 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 any foreign carriers. Therefore, BSC should be classified as a nondominant carrier for the provision of the services for which authority is requested in this Application, and BSC's Application is eligible for streamlined processing.

^{4/} See *Streamlining Order*, 47 C.F.R. § 63.12 (1997).

^{5/} 47 C.F.R. §63.18(h) (1997); *Market Entry and Regulation of Foreign-Affiliated Entities, Report (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.⁶⁷ The Commission also stated that “establishing an effectively competitive global communications market could result in reduced rates, increased quality, and new innovative services.”⁷¹ 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.”⁸¹

Grant of BSC’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.

⁶⁷ See *Market Entry Order* at ¶ 6.

⁷¹ *Id.*

⁸¹ *Id.* at ¶ 10.

IV. Information Required under Section 63.18

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

(a) Name and address of applicant:

BroadSpan Communications, Inc.
11756 Borman Drive, Suite 101
St. Louis, MO 63146
(314) 214-0000 (Tel.)
(314) 569-7110 (Fax)

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

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

William B. Wilhelm, Jr.
SWIDLER BERLIN SHEREFF FRIEDMAN, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
(202) 424-7500 (Tel.)
(202) 424-7645 (Fax)

with a copy to:

Blake Ashby, Planning and Regulatory Affairs
BroadSpan Communications, Inc.
11756 Borman Drive, Suite 101
St. Louis, MO 63146
(314) 214-0067 (Tel.)
(314) 569-7110 (Fax)

(d) BSC has not previously received authority under Section 214 of the Act. Upon grant of this application, BSC will become a nondominant carrier with authority pursuant to Section 214 of the Communications Act of 1934, as amended, and the Commission's Rules, to operate as an international facilities-based and resale carrier. BSC lacks the market power that would allow it to control prices to the detriment of market competition.

- (e) BSC 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, BSC 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 ownership interests 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) global authority pursuant to Section 63.18(e)(2) of the Commission's Rules, 47 C.F.R. § 63.18(e)(2), to resell international switched services of all unaffiliated U.S.-authorized carriers to provide international switched services between the United States and all international points served by those carriers other than those countries listed on the Exclusion List; (3) global authority pursuant to Section 63.18(e)(2)(A) of the FCC's rules, 47 C.F.R. §63.18(e)(2)(A), to resell international private lines to provide international non-interconnected private line services between the United States and all international points except those countries excluded by the Exclusion List; and (4) authority pursuant Section 63.18(e)(2)(B) of the FCC's Rules, 47 C.F.R. § 63.18(e)(2)(B), 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.⁹⁷
- (f) BSC 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 1.306 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.

⁹⁷ See *Streamlining Order* ¶ 17. The *Foreign Participation Order* recently released by the Commission eliminates the equivalent resale opportunities test for World Trade Organization ("WTO") member country routes. *Foreign Participation in the U.S. Telecommunications Market*, IB Docket No. 96-111, Report and Order, FCC 97-298 (rel. Nov. 26, 1997) ("*Foreign Participation Order*"). Pursuant to the *Streamlining Order*, the FCC has stated it will automatically amend all Section 214 authorizations to resell international private lines and to provide international switched services between the United States and countries that afford U.S. carriers equivalent resale opportunities to add all countries found to meet the equivalent resale opportunities standard. *Streamlining Order* ¶ 34. BSC presumes that such international private line resale authority will be extended to all routes between the U.S. and a WTO member country upon the effective date of the Commission's *Foreign Participation Order*.

(h) BSC is not "affiliated", either directly or indirectly, with any foreign carrier as that term is defined in the Commission's Rules.^{10/} No director or officer of BSC is a director or officer of another telecommunications carrier.

The following entities hold, or will hold at the time authority requested herein may be granted, a ten percent (10%) or greater, direct or indirect, ownership interest in BSC:

Name: Borman Holdings, LLC
Address: 11756 Borman Drive, Suite, 220
St. Louis, MO 63146
Telephone Number: (314) 995-5755, ext. 217
Citizenship: U.S. formed limited liability company
Principal Business: Holding Company
Ownership Percentage: 66 %

The following entities hold, or will hold at the time authority requested herein may be granted, a ten percent (10%) or greater, direct or indirect, ownership interest in Borman Holdings, LLC:

Name: Mr. Brian Matthews
Address: 11756 Borman Drive, Suite, 220
St. Louis, MO 63146
Telephone Number: (314) 995-5755, ext. 217
Citizenship: U.S.
Principal Business: Shareholder
Ownership Percentage: 50%

Name: Ms. Carol Matthews
Address: 11756 Borman Drive, Suite, 220
St. Louis, MO 63146
Telephone Number: (314) 995-5755, ext. 217
Citizenship: U.S.
Principal Business: Shareholder
Ownership Percentage: 50%

- (i) As required by Section 63.18 (i) of the Commission's Rules, 47 C.F.R. § 63.18(i), BSC 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 on 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.
- (j) BSC is not subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988. BSC' 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.
- (k) BSC requests streamlined processing of this application. BSC is not affiliated with any foreign carriers and therefore qualifies for streamlined processing under 47 C.F.R. § 63.12(a).

CONCLUSION

For the reasons stated above, BroadSpan Communications, Inc. respectfully submits that the public interest, convenience, and necessity would be furthered by a grant of this Section 214 Application.

Respectfully submitted,

BROADSPAN COMMUNICATIONS, INC.

By:



William B. Wilhelm, Jr.
SWIDLER BERLIN SHEREFF FRIEDMAN, LLP
3000 K Street, N.W., Suite 300
Washington, DC 20007
(202) 424-7500 (Tel.)
(202) 424-7645 (Fax)

Counsel for BroadSpan Communications, Inc.

Dated: September 25, 1998

CERTIFICATION OF APPLICANT

On behalf of BroadSpan Communications, Inc. ("BSC" or "Applicant"), 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.

BSC 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 on 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.

BroadSpan Communications, Inc.

By:



Name: Richard S. Phillips

Title: President

Date: Sept. 21, 1998