

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

ITC-214-1999020-00029

- 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:

*To Hong Kong
argued to the regulatory and administrative*

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JAN 20 1999

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

In the Matter of

CABLE & WIRELESS USA, INC.

File No. ITC-214-1999-_____

ITC-214-19990130-00029

Application for Streamlined Authority Pursuant to
Section 214 of the Communications Act of 1934,
as Amended, to Provide Switched Services Using
International Private Lines Interconnected with
the Public Switched Network at One or Both
Ends 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 switched

services using international private lines interconnected with the public switched network at one

or both ends between the United States and Hong Kong (also known as international simple resale

or "ISR"). Further, C&W USA requests this §214 application be subject to the streamlined

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").

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).

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, through facilities owned by C&W USA as well as through the resale of the facilities of underlying carriers. C&W USA is a wholly-owned subsidiary of Cable & Wireless, plc, a company based in the United Kingdom which owns interests in carriers throughout the world.

Pursuant to Sections 63.18(e)(4) and 63.18(e)(3) of the Commission's rules,² C&W USA is applying for authority to provide switched, basic telecommunications services using authorized international facilities-based or resold private lines interconnected to the public switched network at one or both ends between the United States and Hong Kong. Presently, C&W USA has authority to provide both switched and international private line services to Hong Kong through facilities owned by C&W USA or through resold facilities of underlying facilities-based carriers.

See ITC-86-108, ITC-87-157, ITC-90-190, ITC-214-19980921-00661. In Hong Kong, C&W USA is affiliated with service providers which possess market power as defined by the Commission's rules, Hong Kong Telephone Company Limited and Hong Kong Telecom International Limited. C&W USA's requested authorization will be subject to the Commission's dominant carrier safeguards. FPO ¶230, §63.10.

On January 4, 1999, the Commission released an Order which added Hong Kong, a member of the World Trade Organization ("WTO"), to the list of countries for which U.S. carriers may provide switched basic telecommunications services over international private lines.

² 47 CFR §§63.18(e)(4)&(3).

See ITC-214-19981118-00820 and ITC-214-19980930-00689 (“HK ISR Order”). C&W USA hereby requests authority to provide ISR on this route.

II. C&W USA SEEKS SPECIFIC SECTION 214 AUTHORITY TO PROVIDE ISR SERVICES ON THE HONG KONG ROUTE.

The Commission’s rules automatically expand the Section 214 authority of carriers authorized to resell or own interconnected private lines to include an additional country at the time the Commission determines that the country satisfies the Commission’s requirements for providing switched services over private lines, except when the Commission has not determined that the U.S. carrier’s foreign carrier affiliate lacks sufficient market power to affect competition adversely in the U.S. market. See HK ISR Order at fn. 6. See Also 47 CFR § 63.18(e)(2)(ii)(A)(2) and (e)(4). In such a case, the U.S. carrier must seek specific Section 214 authority to provide ISR services to that country pursuant to Section 63.18(e)(6) of the Commission’s rules. Section 63.18(e)(6) requires the applicant provide a description of the facilities and services for which it seeks authorization as well as any additional information the Commission shall have specified previously in an order, public notice or other official action as necessary for the authorization. 47 CFR §63.18(e)(6).

C&W USA seeks authority to provide ISR services on the Hong Kong route in order to remain competitive with other U.S. carriers who now possess such authorization due to the Commission’s recent Order and their lack of affiliation with a foreign carrier in Hong Kong. This authorization will permit C&W USA to route traffic between the United States and Hong Kong outside the traditional settlements system, enabling C&W USA to offer international services at

reduced rates. Moreover, this activity will exert increased pressure to lower settlement rates further and reduce prices to U.S. consumers.

C&W USA should be provided ISR authority on the Hong Kong route without undue delay since its affiliations and market power in Hong Kong do not present any new issues for the Commission to determine. In the HK ISR Order, one party to the application was Hong Kong Telecommunications (Pacific) Ltd. (“HKTP”), a carrier which has identical affiliations in Hong Kong as C&W USA. The Commission held that since the Hong Kong route met the Commission’s benchmark settlement rate condition for ISR authority to WTO Member countries³ and HKTP had agreed to be subject to the Commission’s dominant carrier regulations on this route, no issues were raised which would bar granting HKTP’s authorization to provide ISR services on the Hong Kong route. See HK ISR Order at ¶¶ 3, 8. An identical finding should be made for C&W USA.

III. 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 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

³ Under the Commission’s rules, the provision of service via ISR to Hong Kong is subject to the condition that the settlement rate for at least 50 percent of the settled U.S.-billed traffic between the United States and Hong Kong is at or below the benchmark settlement rate adopted in the Benchmarks Order or that Hong Kong affords U.S. carriers equivalent opportunities for ISR. HK ISR Order at ¶ 5. The settlement rate option on this route has been met. Id. at 8.

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.

IV. 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 authorizations to provide resold and facilities-based services to Hong Kong. See ITC-86-108, ITC-87-157, ITC-90-190, ITC-214-19980921-00661. 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)(6) Applicant seeks authority to expand its telecommunications services to provide switched services using international private lines interconnected with the public switched network at one or both ends between the United States and Hong Kong (also known as international simple resale or "ISR"). Currently, applicant possesses the authority to provide international basic switched services and the authority to provide non-interconnected international private line service through facilities owned by the applicant or through the resold facilities of U.S. facilities-based carriers. See ITC-86-108, ITC-87-157, ITC-90-190, ITC-214-19980921-00661. 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, Hong Kong. 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
Benningensplatz 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) Hong Kong is a member of the World Trade Organization.
- (h)(7) As stated in Section III of this application, applicant will be subject to dominant carrier regulations on the destination country routes. Applicant will file the quarterly traffic reports required by Section 43.61(c).
- (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 III 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 provide ISR services on the Hong Kong route. This authorization will permit C&W USA to route traffic between the United States and Hong Kong outside the traditional settlements system, enabling C&W USA to offer international services at reduced rates. Moreover, this activity will exert increased pressure to lower settlement rates further and reduce prices to U.S. consumers.

Respectfully submitted,

CABLE & WIRELESS USA, INC.

BY:



Rachel J. Rothstein
Vice President, Regulatory and
Government Affairs

Paul W. Kenefick
Regulatory Counsel
8219 Leesburg Pike
Vienna, Virginia 22182
(703) 905-5785

January 19, 1999

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, 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**

Anguilla
Antigua
Ascension Island
Australia
Barbados
Bermuda
British Virgin Islands
Cayman Islands
Canada
China
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, Regulatory and
Government Affairs
Cable and Wireless USA, Inc.

CERTIFICATE OF SERVICE

I, Paul W. Kenefick, hereby certify that I have caused copies of the foregoing "Application for Authority" to be served this 19th day of January 1999, by first class mail, postage prepaid to the following:


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