

Before the
Federal Communications Commission

In the Matter of)
)
Southwestern Bell Communications Services, Inc.)
)
Application for Authority Pursuant to Section) File No. ITC-214-20000127-00027
214 of the Communications Act of 1934, as)
Amended for Authority to Operate as an)
International Facilities-Based and Resale Carrier)
)

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: June 30, 2000

Released: June 30, 2000

By the Chief, Telecommunications Division:

I. Introduction

1. Southwestern Bell Communications Services, Inc. d/b/a/ Southwestern Bell Long Distance (“SBCS”) has filed an application pursuant to Section 214 of the Communications Act of 1934, as amended,¹ (“the Act”) for authority to provide international facilities-based and resale services between all points in Texas and all international points.² The International 214 Application is a companion to the application of SBC Communications, Inc. (“SBC”), Southwestern Bell Telephone Company (“SWBT”) and SBCS for authority to provide in-region, interLATA services in the State of Texas pursuant to Section 271 of the Act.³ SBCS seeks authority to provide facilities-based and resale services between all points in Texas and all international points, subject to the Commission’s international dominant carrier regulations, on the U.S.-Denmark, U.S.-South Africa and U.S.-Hungary routes.

¹ 47 U.S.C. § 214.

² See *In the Matter of Southwestern Bell Communications Services, Inc.*, File No. ITC-214-20000127-0002, Application for Authority Pursuant to Section 214 of the Communications Act of 1934, as amended, for Authority to Operate as an International Facilities-Based and Resale Carrier (filed January 25, 2000) (“International 214 Application”). SBCS previously filed applications for in-region, international Section 214 authority. See *In the Matter of Southwestern Bell Communications Services, Inc.*, Application File No. ITC-214-19971205-00762 (previous File No. ITC-97-777) (filed Dec. 5, 1997); *In the Matter of Southwestern Bell Communications Services, Inc.*, Application File No. ITC-214-19971205-00763 (previous File No. ITC-97-776) (filed Dec. 5, 1997), which were both dismissed without prejudice as prematurely filed. See *In the Matter of Pacific Bell Communications*, 15 FCC Rcd 157 (Tel. Div. Jan. 5, 2000); see also Section 271(i) of the Act defines “in-region State” as “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.”

³ See *In the Matter of Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a/ Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, Application, (filed April 6, 2000) (“SBC Texas 271 Application”).

2. We find that a grant of the International 214 Application serves the public interest under Section 214 of the Act. Because SWBT has received Section 271 authority to provide in-region, inter-LATA services in the State of Texas, we grant SBCS authority to provide international facilities-based services between all points in Texas and all international points.⁴ We grant SBCS such authority, subject to its compliance with the Commission's international dominant carrier regulations on the U.S.-Denmark, U.S.-South Africa, U.S.-Belgium and U.S.-Hungary routes as specified below.

II. Background

3. SBCS is a corporation organized under the laws of the State of Delaware and Virginia, and is a wholly-owned subsidiary of SBC Communications, Inc. ("SBC"). SBCS currently has authority to provide: (1) global resale services originating out-of-region and terminating at all international points;⁵ and (2) global facilities-based and resale services originating out-of-region and terminating at all international points.⁶ Certain wholly-owned subsidiaries of SBCS also have international Section 214 authority to provide limited global resale switched services originating out-of-region and terminating at all international points.⁷

4. SBCS asserts that grant of the Application will serve the public interest and benefit consumers because it will increase competition in the international services market, lower prices and

⁴ See *In the Matter of Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a/ Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, Memorandum Opinion and Order, FCC 00-238 (rel. June 30, 2000) ("SWBT Texas 271 Order").

⁵ See *Overseas Common Carrier Section 214 Applications Actions Taken*, File No. ITC-96-497, Public Notice, 11 FCC Rcd 13980 (Oct. 31, 1996).

⁶ See *International Authorizations Granted*, File No. ITC-97-770 (renumbered ITC-214-19971108-00689, Public Notice, 14 FCC Rcd 13344 (1999) (granting SBCS authority to provide global facilities-based and resale services originating out-of-region and terminating at all international points, except Chile, Switzerland and South Africa); see also *International Authorizations Granted*, File No. ITC-214-20000301-00125, DA 00-768, Report No. TEL-00212 (rel. April 6, 2000) (granting SBCS authority to provide global facilities-based and resale services originating out-of-region and Chile, South Africa and Switzerland, subject to SBCS' compliance with the Commission's international dominant carrier regulations on the U.S.-South Africa route); see also *In the Matter of Bell Operating Company Provision of Out-of-Region Interstate, Interexchange Services*, Order on Reconsideration, 14 FCC Rcd 1105 (1998) (finding that, where a Bell Operating Company ("BOC") 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).

⁷ See *Overseas Common Carrier Section 214 Applications Actions Taken*, File Nos. ITC-96-496, ITC-96-497, ITC-96-498, ITC-96-499, ITC-96-500, Public Notice, 11 FCC Rcd 13980 (Int'l. Bur. 1996) (authorizing subsidiaries of SBCS in Massachusetts, Maryland, New York and Illinois to provide international services originating out-of-region and terminating at all international points).

increase the service options available to the public.⁸ The Commission has granted SWBT authority pursuant to Section 271 of the Act to provide in-region interLATA services in the State of Texas.⁹ Because the grant of Section 271 authority is only for in-region, interLATA services in the State of Texas, this Order authorizes the provision of international services originating only in the State of Texas and not services originating in any of SBC's other in-region states.

5. Pursuant to Section 63.12(d) of the Commission's rules,¹⁰ the Bureau deemed the Application ineligible for streamlined processing and issued a public notice accepting the application for filing on a non-streamlined basis.¹¹ As discussed further below, the International 214 Application indicates that SBCS is affiliated, within the meaning of Section 63.09(e) of the Commission's rules,¹² with certain foreign carriers.

III. Discussion

A. Entry Standard

6. The rules and standards adopted in the Commission's *Foreign Participation Order* govern our decision whether, and on what terms, to authorize SBCS to provide service on routes where SBCS has affiliations with foreign carriers.¹³ In that order, the Commission adopted a presumption in favor of granting applications that request authority to serve a destination in which the applicant is either a foreign carrier in or has a foreign carrier affiliate in a destination that is a Member of the World Trade Organization ("WTO").¹⁴ Previously, the Commission applied the "effective competitive opportunities" (ECO) test to applicants that sought to provide service on routes where an affiliated foreign carrier

⁸ See International 214 Application at 4-5.

⁹ See *SWBT Texas 271 Order* at 2.

¹⁰ See 47 C.F.R. § 63.12(d).

¹¹ See *Non-Streamlined International Application Accepted for Filing*, DA 00-190, Public Notice (rel. Feb. 3, 2000).

¹² See 47 C.F.R. § 63.09(e) (providing that, "two entities are *affiliated* with each other if one of them, or an entity that controls one of them, directly or indirectly owns more than 25 percent of the capital stock of, or controls, the other one. Also, a U.S. carrier is *affiliated* with two or more foreign carriers if the foreign carriers, or entities that control them, together directly or indirectly own more than 25 percent of the capital stock of, or control, the U.S. carrier and those foreign carriers are parties to, or the beneficiaries of, a contractual relation (e.g., a joint venture or market alliance) affecting the provision or marketing of international basic telecommunications services in the United States.") (emphasis in original).

¹³ See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket No. 97-142, *Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket No. 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23951-52, ¶ 144 (1997) ("*Foreign Participation Order*"), *recon. pending*.

¹⁴ See *id.*, 12 FCC Rcd at 23897-98, ¶¶ 13-14.

possessed market power.¹⁵ 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 Members do not pose concerns that would justify denial of the application on competition grounds.¹⁶ The Commission retained the ECO test for certain categories of applicants that seek to serve non-WTO Member destinations in which the applicant is or has an affiliation with a foreign carrier possessing market power.¹⁷ 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.¹⁸

7. The Application states that SBCS has affiliations with the following foreign carriers:
- a.) diAx (“diAx”), a full service telecommunications carrier in Switzerland;
 - b.) Telkom South Africa Ltd. (“Telkom”), the incumbent telecommunications carrier in South Africa;
 - c.) MATÁV Hungarian Telecommunications Ltd. (“MATÁV”), the incumbent telecommunications carrier in Hungary;
 - d.) Tele Danmark A/S (“Tele Danmark”), the incumbent telecommunications carrier in Denmark;
 - e.) Talkline GmbH (“Talkline”), a mobile telecommunications carrier in Germany and the Netherlands;
 - f.) BEN Netherlands B.V. (“BEN Netherland”), a mobile telecommunications carrier in the Netherlands;
 - g.) UAB Mobilios Telekomunikacijos (“Bitė”), a mobile telecommunications carrier in Lithuania;
 - h.) Ameritech Communications International, Inc. (“Ameritech International”), a wholly-owned subsidiary of Ameritech that is authorized to provide international telecommunications services to the public in Canada;
 - i.) EITele Ost, (“ETO”), a competitive access and backbone operator providing fixed network, broadband and internet services in Norway;
 - j.) NetCom ASA, (“NetCom”), a mobile telecommunications carrier in Norway.¹⁹

¹⁵ The ECO analysis was developed and discussed in *Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket No. 95-22, Report and Order, 11 FCC Rcd 3873 (1995) (“*Foreign Carrier Entry Order*”).

¹⁶ See *Foreign Participation Order*, 12 FCC Rcd at 23906-10, ¶¶ 33-43; see also *id.* at 23913-17, ¶¶ 50-58.

¹⁷ See *id.*, 12 FCC Rcd at 23944-46, ¶¶ 124-129; see also *id.*, 12 FCC Rcd at 23949-50, ¶¶ 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).

¹⁸ See *Foreign Participation Order*, 12 FCC Rcd at 23919-21, ¶¶ 61-66.

¹⁹ SBCS inadvertently failed to include its affiliation with ASA Netcom in its initial International 214 Application but later amended the application to include this affiliation. See *In the Matter of Southwestern Bell Communications Services, Inc.*, File No. ITC-AMD-20000510-00307, Amendment to Application for

Of the destination markets in which SBCS has an affiliation with a foreign carrier, South Africa, Switzerland, Norway, Hungary, Canada, Germany, Denmark and the Netherlands are all Members of the WTO. Although Lithuania is not a WTO Member, as discussed further below, SBCS' affiliate in Lithuania, Bité, has previously been found to lack sufficient market power in Lithuania to affect competition adversely in the United States. Section 63.18(k) of the Commission's rules requires an applicant seeking to serve a destination where the applicant is affiliated with a foreign carrier to demonstrate that (1) the destination is a WTO Member, (2) that the affiliate lacks market power or (3) that the destination offers effective competitive opportunities to U.S. carriers.²⁰ Each of the destination markets in which SBCS has an affiliation with a foreign carrier is a WTO Member except Lithuania, where SBCS' foreign carrier affiliate lacks market power. Therefore, we find that SBCS is entitled to a presumption that its foreign carrier affiliations do not raise competition concerns that would warrant denial of its request to serve these routes; we address below the appropriate regulatory treatment of service on those routes. We note that no party has filed comments specifically addressing competition concerns on these routes and we find no public interest factors that warrant denial of SBCS' application for international Section 214 authority.

B. Regulatory Treatment

1. BOC In-Region Nondominance

8. In the *LEC Classification Order*,²¹ the Commission classified BOCs' Section 272 interLATA affiliates as nondominant in their provision of in-region, interstate, domestic, interLATA services.²² 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.²³ Therefore, the Commission decided to classify each

Authority Under Section 214 of the Communications Act of 1934, as Amended (filed May 10, 2000); Public Notice, Report No. TEL-00239NS (rel. June 2, 2000); Public Notice, Erratum (rel. June 8, 2000).

²⁰ See 47 C.F.R. § 63.18(k)(1)-(3).

²¹ 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, ¶¶ 163, 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, 14 FCC Rcd 10771 (1999) ("*LEC Classification Second Reconsideration Order*").

²² See *LEC Classification Order*, 12 FCC Rcd at 15802,-835, ¶¶ 82-134. The Commission affirmed this finding on reconsideration. See *LEC Classification Second Reconsideration Order*, 14 FCC Rcd 10797-99 at ¶¶ 35-38.

²³ See *LEC Classification Order*, 12 FCC Rcd at 15802, 15838-840, ¶¶ 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

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,²⁴ with a foreign carrier that has the ability to discriminate against the competitors of the BOC or its affiliate through control of bottleneck services or facilities in a foreign destination market.²⁵ The Commission stated that the safeguards the Commission applies to carriers it classifies as dominant based on a foreign carrier affiliation, contained in Section 63.10(c) of the Commission's rules, are designed to address the incentive and ability of the foreign carrier to discriminate against the competitors of its U.S. affiliate in the provision of services or facilities necessary to terminate U.S. international traffic.²⁶

9. We note that the Commission, in determining that BOC Section 272 interLATA affiliates 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.²⁷ We note that SBCS is a Section 272 affiliate and, as such, is subject to the requirements of Section 272 and the Commission's regulations implementing that section.²⁸

2. BOC Out-of-Region Nondominance

10. The International Bureau concluded that BOCs should be treated as nondominant in their provision of out-of-region international services as well.²⁹ In making this determination, the Bureau stated

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 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 FCC Rcd at 23987, ¶ 215.

²⁴ See 47 C.F.R. § 63.09(e).

²⁵ See *LEC Classification Order*, 12 FCC Rcd at 15838, ¶ 139.

²⁶ See *id.*, 12 FCC Rcd at 15838-39, ¶ 139.

²⁷ See *id.*, 12 FCC Rcd at 15802, ¶ 82.

²⁸ In addition, for example, Southwestern Bell Telephone Company, SBC's affiliate BOC which has received authority under Section 271 to provide in-region interLATA services in the State of Texas, is subject to the requirements of Section 272 in its dealings with SBC's other Section 272 affiliates.

²⁹ 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*

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*.³⁰ 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.³¹ 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 improperly to allocate costs, discriminate against, or otherwise disadvantage unaffiliated domestic interexchange competitors as opposed to international service competitors.³² 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.³³ The Bureau found, therefore, that the BOCs should be treated as nondominant in the provision of out-of-region international services.³⁴

3. Foreign Carrier Affiliations

11. We next examine whether it is necessary to impose the Commission's international dominant carrier safeguards on SBCS in its provision of service on the routes where it has an affiliation with a foreign carrier.³⁵ 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.³⁶ A U.S. carrier is presumptively 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.³⁷ Section 63.18(m) of the Commission's rules requires SBCS to demonstrate that it qualifies for non-dominant classification on any affiliated route for which it seeks to be regulated as a non-

Service to Various Countries, File Nos. ITC-96-125, 96-272, 96-181, 95-443, Memorandum Opinion and Order, 12 FCC Rcd 11654, 11660, ¶¶ 11-12 (Int'l. Bur. 1997) ("*International Out-of-Region Nondominance Order*").

³⁰ *See id.*

³¹ *See id.*

³² *See id.*

³³ *See id.*

³⁴ *See id.*

³⁵ The Commission's international dominant carrier safeguards are set forth in Section 63.10(c) and (e) of the Commission's rules, 47 C.F.R. § 63.10(c), (e), (as amended in *International Settlement Rates*, IB Docket No. 96-261, Report and Order on Reconsideration and Order Lifting Stay, 14 FCC Rcd 9256 (1999)).

³⁶ *See Foreign Participation Order*, 12 FCC Rcd at 23951-52, ¶ 144; *see also* 47 C.F.R. § 63.10(a)(3).

³⁷ *See* 47 C.F.R. § 63.10(a)(3); *see also* 47 C.F.R. § 63.18.

dominant international carrier.³⁸

12. The Application recognizes that Telkom, MATÁV and Tele Danmark are the incumbent telecommunications carriers in South Africa, Hungary and Denmark respectively and SBCS does not assert that any of these carriers lack market power in the international transport or local access markets in their respective countries.³⁹ Pursuant to Section 63.10 of the Commission's rules,⁴⁰ we therefore apply our international dominant carrier safeguards to SBCS' provision of the U.S. international services authorized herein on the U.S.-South Africa, U.S.-Hungary, and U.S.-Denmark routes.

13. With respect to SBCS' other foreign affiliations, several of its foreign carrier affiliates have been found to lack market power in the international transport and local access markets in the countries in which they offer service. The Commission found that diAx, a new entrant, full-service telecommunications carrier in Switzerland lacks market power in Switzerland.⁴¹ Talkline, a provider of mobile communications service in Germany and resold cellular service in the Netherlands, has been found to lack market power in both Germany and the Netherlands.⁴² Bité, which provides solely mobile wireless service in Lithuania, has been found to lack sufficient market power in Lithuania to affect competition adversely in the United States.⁴³

14. As the Commission stated in the 1998 Biennial Regulatory Review of international common carrier regulations, foreign carriers that operate solely on a resale basis or that have only mobile wireless facilities are unlikely to raise market power concerns.⁴⁴ BEN Netherland provides GSM wireless services in the Netherlands and has less than 50 percent market share in the international transport and local access markets in the Netherlands.⁴⁵ Therefore, in the absence of any other evidence of market power,

³⁸ See Section 63.18(m) of the Commission's rules, providing "With respect to regulatory classification under § 63.10 of this part, any applicant that is or is affiliated with a foreign carrier in a [destination] country ... and that desires to be regulated as non-dominant for the provision of international telecommunications services to that country should provide information in its application to demonstrate that it qualifies for non-dominant classification pursuant to § 63.10 of this part." 47 C.F.R. § 63.18(m).

³⁹ International 214 Application at 2 (stating that "SBCS is affiliated with foreign carriers that have not yet been declared non-dominant in Denmark, Hungary and South Africa ...").

⁴⁰ See 47 C.F.R. § 63.10.

⁴¹ See *In re Applications of Ameritech Corp. and SBC Communications Inc.*, CC Docket No. 98-141, Memorandum Opinion and Order, 14 FCC Rcd 14712, 14932, ¶ 533 (1999) ("*SBC/Ameritech Order*").

⁴² *Id.*, 14 FCC Rcd at 14932, ¶ 537.

⁴³ See *SBC/Ameritech Order*, 14 FCC Rcd 14932, ¶ 538.

⁴⁴ See *In the Matter of 1998 Biennial Regulatory Review - Review of International Common Carrier Regulations*, IB Docket No. 98-118, Report and Order, 14 FCC Rcd 4909, 4922 ¶ 29 (1999), *recon. pending*.

⁴⁵ See International 214 Application at 8.

we find that BEN Netherland lacks sufficient market power in the Netherlands to affect competition adversely in the United States. Netcom, a competitive wireless carrier authorized to provide GSM mobile telecommunications services in Norway, has less than 50 percent market share in the international transport and local access markets in Norway.⁴⁶ Therefore, in the absence of any other evidence of market power, we find that Netcom lacks sufficient market power in Norway to affect competition adversely in the United States.

15. ETO is a competitive access and backbone operator with switching facilities providing fixed network, broadband and internet services in Norway. ETO currently serves less than 1,000 business and public organizing customers, and has less than 50 percent market share in the international transport and local access markets in Norway.⁴⁷ Therefore, in the absence of any other evidence of market power, we find that ETO lacks sufficient market power in Norway to adversely affect competition in the United States. Ameritech International is a wholly-owned subsidiary of Ameritech and is authorized to provide international telecommunications services in Canada. Ameritech International has less than a 50 percent market share in the international transport and local access market in Canada.⁴⁸ Therefore, in the absence of any other evidence of market power, we find that Ameritech International lacks sufficient market power in Canada to adversely affect competition in the United States.

a. Belgacom

16. The only comments filed in this proceeding were those of the Competitive Telecommunications Association (CompTel),⁴⁹ which argued that SBCS should be regulated as a dominant carrier on the U.S.-Belgium route due to what CompTel argues is SBC's affiliation with Belgacom S.A.⁵⁰ Belgacom is the incumbent telecommunications carrier in Belgium.⁵¹

17. CompTel's comments raise the issue of whether SBCS's attributable indirect ownership in Belgacom rises to the level of a 25% affiliation. Section 63.09(e) of the Commission's rules provides that: "two entities are affiliated with each other if one of them, or an entity that controls one of them, directly or

⁴⁶ See International 214 Application at 8.

⁴⁷ See International 214 Application at 9.

⁴⁸ See International 214 Application at 9.

⁴⁹ CompTel is a trade association of approximately 350 members representing U.S. and international competitive communications firms and their suppliers who offer local, long distance, international, internet and wireless services.

⁵⁰ See Comments of the Competitive Telecommunications Association, *In the Matter of Southwestern Bell Communications Services, Inc.*, File No. ITC-214-20000127-00027 (filed Feb. 17, 2000) ("CompTel comments").

⁵¹ See Reply Comments of SBCS, *In the Matter of Southwestern Bell Communications Services, Inc.*, File No. ITC-214-20000127-00027 (filed Feb. 24, 2000) at 2 ("SBCS reply comments") (identifying Belgacom as "the incumbent telecommunications carrier in Belgium").

indirectly owns more than 25 percent of the capital stock of, or controls, the other one.”⁵² Interpretative note 2 to the rule explains the Commission’s multiplier rule for attribution of indirect ownership interests held through one or more intervening corporations.⁵³ The note provides in relevant part:

Attribution of ownership interests in a carrier that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that wherever the ownership percentage for any link in the chain exceeds 50 percent, it shall not be included for purposes of this multiplication. For example, if A owns 30 percent of company X, which owns 60 percent of company Y, which owns 26% of “carrier,” then X’s interest in “carrier” would be 26 percent (the same as Y’s interest because X’s interest in Y exceeds 50 percent), and A’s interest in “carrier” would be 7.8 percent (0.30 x 0.26). Under the 25 percent attribution benchmark, X’s interest in “carrier” would be cognizable, while A’s interest would not be cognizable.

Alternatively stated, an interest of 50% or greater is treated as 100% for purposes of multiplication. CompTel and SBCS disagree over the proper interpretation of note 2 .

18. SBC, the parent corporation of SBCS, through its wholly-owned subsidiary Ameritech, holds two separate ownership interests in ADSB Telecommunications (“ADSB”), which in turn owns slightly less than 50% of Belgacom. Through Ameritech, SBC holds: (1) a 35% non-controlling interest in ADSB; and (2) a 41.6% controlling interest in Tele Danmark, which holds a 33% non-controlling interest in ADSB. In its International 214 Application, SBCS concedes that the 41.6% interest in Tele Danmark is a *de facto* controlling interest.⁵⁴

19. CompTel argues that under the multiplier provision of Section 63.09(e), SBC’s 41.6% controlling interest in Tele Danmark should be treated as a 100% interest. Under this analysis, Tele Danmark’s entire 33% interest would be attributed to SBC. When combined with SBC’s 35% interest in ADSB, SBC would be deemed to hold a 68% interest in ADSB.⁵⁵ Because ADSB holds approximately 50% of Belgacom, under CompTel’s analysis SBC should be deemed to hold a attributed 34% indirect interest in Belgacom (*i.e.*, $0.68 \times 0.50 = 0.34$). This 34% attributable interest exceeds the 25% attribution benchmark and would therefore constitute an affiliation with Belgacom.⁵⁶ Because Belgacom has market power in Belgium, CompTel argues that SBCS should be required to comply with the Commission’s

⁵² See 47 C.F.R. § 63.09(e) (emphasis added).

⁵³ See 47 C.F.R. § 63.09, note 2.

⁵⁴ See International 214 Application at 8 (stating that “Through an indirect subsidiary, Ameritech (and therefore SBC) indirectly holds a 41.6 percent, *de facto* controlling interest in Tele Danmark.”).

⁵⁵ See CompTel comments at 2.

⁵⁶ *Id.*

international dominant carrier regulations on the U.S.-Belgium route.⁵⁷

20. SBCS argues that CompTel misapplies the multiplier provision of Section 63.09(e), and that it only has a 24.36% attributable indirect interest in Belgacom and therefore should be regulated as non-dominant on the U.S.-Belgium route.⁵⁸ SBCS contends that the 41.6% controlling interest in Tele Danmark should not be treated as a 100% interest under the multiplier provision of Section 63.09(e). SBCS argues that Tele Danmark's 33% interest in ADSB should be multiplied by 41.6% before being attributed to SBC. Under SBCS' analysis, its indirect interest in ADSB is only 13.72% rather than a full 33% interest. SBC, therefore, would hold only a 48.72% indirect interest in ADSB rather than the 68% interest alleged by CompTel. SBCS argues, therefore, that its indirect interest in Belgacom is only 24.36% rather than 34%. (*i.e.*, $0.33 \times 0.416 = .1372 + .35 = .4872 \times .50 = .2436$ or 24.36%).

21. We agree with CompTel that SBCS' attributable indirect ownership interest in Belgacom is 34% and therefore constitutes an affiliation within the meaning of Section 63.09(e) of the Commission's rules. Long-standing Commission practice has been to treat a controlling interest, at whatever level, as 100% for purposes of applying the multiplier rule. In a decision interpreting a rule identical to the rule at issue here, the Commission stated "As in our broadcast and broadband PCS rules, where an entity's ownership interest in any link in the ownership chain is greater than 50 percent or is controlling, the interest will be treated as if it were 100 percent for the purposes of applying the multiplier."⁵⁹

22. SBCS does not argue that Belgacom lacks market power in the international transport and local access markets in Belgium, and therefore we find that SBCS should be subject to dominant carrier regulation on the U.S.-Belgium route.

IV. Conclusion

23. We find that a grant of SBCS' application 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 for more efficient use of existing international telecommunications facilities. Because SBCS has been granted Section 271 authority for in-region, interLATA services in the State of Texas, we grant its application to provide international service between all points in Texas and all international points. SBCS qualifies for regulation as a nondominant carrier on all routes, except between the United States and Hungary, South Africa, Denmark and Belgium, on which they will be regulated as dominant.

V. Ordering Clauses

24. Accordingly, IT IS HEREBY CERTIFIED that the present and future public convenience

⁵⁷ *Id.*

⁵⁸ *See* SBCS reply comments at 2.

⁵⁹ *See Amendment of the Commission's Rules to Establish New Narrowband Personal Communication Services*, 9 FCC Rcd 4519, ¶ 13 (1994) (referring to Note 2 to Section 73.3555 of the Commission's rules, 47 C.F.R. § 73.3555, which states "... except that wherever the ownership percentage for any link in the chain exceeds 50%, it shall not be included for purposes of this multiplication.").

and necessity require a grant of the above-captioned application, subject to the conditions specified below. Therefore, IT IS ORDERED that Application File No. ITC-214-20000127-00027 is GRANTED, and SBCS is authorized: (1) pursuant to Section 63.18(e)(1), (4) of the Commission's rules, 47 C.F.R. § 63.18(e)(1), (4), to provide facilities-based service between all points in Texas and all international points; and (2) pursuant to Section 63.18(e)(2), (4) of the Commission's rules, 47 C.F.R. § 63.18(e)(2), (4), to resell the services of authorized U.S. carriers (including affiliated carriers regulated as dominant between the United States and South Africa, Hungary, Denmark and Belgium) between all points in Texas and all international points, subject to all current and future Commission regulations, including those specifically listed below.

25. IT IS FURTHER ORDERED that SBCS 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 of the Commission's rules. 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 SBCS may not, and its tariffs must state that its 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 SBCS shall be regulated as a dominant carrier for the provision of all authorized services on the routes between the United States and Hungary, Belgium, South Africa and Denmark and shall comply with the Commission's international dominant carrier regulations on these routes as specified in Section 63.10(c)-(e) of the Commission's rules. 47 C.F.R. § 63.10(c)-(e).

28. IT IS FURTHER ORDERED that this Order will become effective upon the effective date of the Commission's Order granting authority to SBC to provide in-region, interLATA services in the State of Texas.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca Arbogast
Chief, Telecommunications Division
International Bureau