

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

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

Description of Application: _____

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February 29, 2000

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

Re: Application of Optus Networks Pty Limited for Authority
Pursuant to Section 214 of the Communications Act of 1934,
as amended, to Provide Facilities-Based and Resale Services
Between the U.S. and Certain International Points

Dear Sir or Madam:

Optus Networks Pty Limited, by its attorneys, hereby submits for filing an original and five (5) copies of its above-captioned application. Enclosed is a duplicate of this filing and a return envelope. Please date-stamp the duplicate upon receipt and return it in the envelope provided. Also enclosed is a check in the amount of \$780.00 for the filing fee.

Please do not hesitate to call me at the above referenced number if you should have any questions regarding this matter.

Sincerely,



Margaret E. Lancaster, Esq.

Enclosures

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SUBJECT TO STREAMLINE PROCESSING

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

Optus Networks Pty Limited)
Application for Authorization)
Pursuant to Section 214 of the)
Communications Act for) File No. ITC-_____
Global Facilities Service)
and Global Resale Service)
Subject to Section 63.18(e))
of the Commission's Rules)

Optus Networks Pty Limited ("Optus" or the "Applicant") hereby requests authorization, pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, for the provision of international telecommunications service, as both a resale and facilities-based carrier, between the United States and various international points except those countries listed on Attachment A and those countries on the exclusion list.

This application is filed under Sections 63.18(e)(1), (e)(2) of the Commission's rules, and is subject to streamlined processing pursuant to Section 63.12. Streamlined processing is appropriate under Section 63.12(a) for service to countries in which Optus has no affiliate. For service to those countries in which

Optus has an affiliate, streamlined processing is appropriate under 63.12(c), because in each instance:

- (1) the Commission has already found that the foreign affiliate lacks market power; or
- (2) Optus qualifies for a presumption of non-dominance pursuant to Section 63.10(a)(3); or
- (3) The proposed destination country is a member of the World Trade Organization ("WTO") and Optus agrees to dominant carrier treatment; or
- (4) An entity with the same ultimate ownership as Optus has been authorized to provide the applied-for services on the affiliated destination route, and Optus agrees to be regulated under the same conditions as the authorized carrier for its provision of service on that route.

Optus provides the following information, as required by Section

63.18, in support of its application.

- (a) The Applicant's name, address, and telephone number:

Optus Networks Pty Limited
101 Miller Street
North Sydney NSW 2060
Australia
Telephone: 011-61-2-9342-7800
Facsimile: 011-61-2-9342-7100

(b) Optus is an Australian corporation.

(c) Correspondence to the Applicant regarding this application should be addressed to:

Matthew Watson, Esq.
Optus Networks Pty Limited
101 Miller Street
North Sydney NSW 2060
Australia
Telephone: 011-61-2-9342-7506
Facsimile: 011-61-2-9342-7667

with a copy to:

Richard A. Hindman, Esq.
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Ave., N.W.
Washington, D.C. 20005
Telephone: 202-371-7205
Facsimile: 202-371-7012

(d) Optus has not previously received authority to provide international telecommunications services pursuant to Section 214.

(e) Optus requests (1) global facilities-based authority pursuant to Section 63.18(e)(1) of the Commission's rules, to provide international telecommunications services between the United States and international points, except those countries listed on Attachment A and countries on the exclusion list, and (2) global authority

pursuant to Section 63.18(e)(2) of the Commission's rules 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, except those countries listed on Attachment A and countries on the exclusion list.

Optus certifies that it will comply with the terms and conditions contained in Sections 63.21, 61.22, and/or 61.23 as appropriate.

(f) No response required.

(g) The Applicant plans to use existing facilities with this authority. Therefore, the authorizations that Optus seeks are categorically excluded from environmental processing pursuant to Section 1.1306 of the Commission's rules.

(h) Optus is incorporated under the laws of Australia, which is a member of the World Trade Organization. Optus is a wholly owned subsidiary of Cable & Wireless Optus Limited ("C&W Optus") which is also incorporated under the laws of Australia. Its principle business address is 101 Miller Street, North Sydney, NSW 2060, Australia. Cable & Wireless Optus' ultimate parent is Cable & Wireless plc, which hold a 53% (rounded to the nearest whole number) equity interest through its wholly-owned subsidiary Cable & Wireless (Investments) Limited.

No other shareholder directly or indirectly owns or votes more than 10% of the outstanding stock of Optus and Optus has no interlocking directors.

(i) Optus certifies that it is a foreign carrier in Australia and New Zealand and that it is affiliated, as defined by Section 63.09, with foreign carriers in the countries listed on Attachment B to this application.

(j) Optus is a foreign carrier in the countries noted above in paragraph (i). Optus further certifies that its ultimate parent, Cable & Wireless plc, owns more than 25% of Optus, and Cable & Wireless plc controls foreign carriers in the countries listed in Attachment C.

(k) The list of countries (*i.e.* the destination foreign countries) in which Optus is or is affiliated with a foreign carrier and for which authority is requested is provided in Attachment C. With the exception of Bermuda and Russia, every country for which authority is requested in this Application and in which Optus is a foreign carrier or has a foreign affiliate is a member of the WTO.

(l) Attachment C lists the destination countries in which Optus has a foreign affiliate and seeks consent to resell the international switched services of an

unaffiliated U.S. carrier. Optus will file quarterly traffic reports to the extent required by the Commission for the following countries:

Antigua	Macao
Barbados	Maldives
Bermuda	Panama
Dominica	Solomon Islands
Fiji	St. Kitts and Nevis
Grenada	St. Lucia
Hong Kong	St. Vincent and the Grenadines
Jamaica	Trinidad and Tobago

As demonstrated by (m) below and Attachment C, Optus is not required to file traffic reports for the remainder of the countries listed on Attachment C.

(m) Optus agrees to be regulated as a dominant carrier on all of the routes identified in paragraph (l) above. Optus requests to be regulated as a non-dominant carrier to all other destination foreign countries listed on Attachment C because

Optus' affiliates in these destination markets lack sufficient market power to affect competition adversely in the United States market (*i.e.* the foreign affiliates lack 50% market share in the international transport and local access markets).¹

¹ For each of the destination countries listed in Attachment C where Optus requests non-dominant status, the Commission has either (1) already made a determination that the affiliate lacks market power in the destination country with respect to a similarly situated Optus affiliate, or (2) Optus has provided information sufficient to demonstrate that its affiliate lacks sufficient market power in the international transport and local access markets of the destination country.

(n) Optus certifies that it has not agreed to accept, and will not accept in the future, any special concessions 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 Optus may be authorized to serve, except such concessions as may be permitted by the Commission's rules.

(o) Neither Optus nor any other party to this application is subject to a denial of federal benefits, including FCC benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862.

(p) This application is subject to streamlined processing pursuant to Section 63.12 because in each instance:

- (1) the Commission has already found that the foreign affiliate lacks market power; or
- (2) Optus qualifies for a presumption of non-dominance pursuant to Section 63.10(a)(3); or
- (3) The proposed destination country is a member of the World Trade Organization ("WTO") and Optus agrees to dominant carrier treatment; or
- (4) An entity with the same ultimate ownership as Optus has been authorized to provide the applied-for services on the affiliated destination

route, and Optus agrees to be regulated under the same conditions as the authorized carrier for its provision of service on that route.

CONCLUSION

The provision of international telecommunications services by Optus would increase competition in the international marketplace and benefit U.S. ratepayers. Accordingly, the grant of this application would serve the public interest, convenience, and necessity.

Respectfully submitted,



Mr Barbar Mennah
Manager, International Relations

Date: FEBRUARY 25th, 2000 .

ATTACHMENT A

Countries for which NO AUTHORITY is requested:

Anguilla
Ascension Island
British Virgin Islands
Cayman Islands
Diego Garcia
Falkland Islands
Montserrat
Seychelles
St. Helena
Tonga
Turks & Caicos
Vanuatu
Yemen

Countries on the Exclusion List, as may be amended an updated by the Commission from time to time.

ATTACHMENT B

Countries in which Optus is or is affiliated with a foreign carrier.

Anguilla	Macau
Antigua	Maldives
Ascension Island	Montserrat
Australia	Netherlands
Barbados	New Zealand
Belgium	Pakistan
Bermuda	Panama
British Virgin Islands	Philippines
Bulgaria	Russia
Cayman Islands	Seychelles
Canada	Solomon Islands
China	Spain
Diego Garcia	St. Helena
Dominica	St. Kitts & Nevis
Falkland Islands	St. Lucia
Fiji	St. Vincent
France	Switzerland
Germany	Thailand
Grenada	Tonga
Hong Kong	Trinidad & Tobago
Indonesia	Turks & Caicos
Ireland	United Kingdom
Italy	Vanuatu
Jamaica	Yemen
Japan	

ATTACHMENT C

The following are countries in which Cable & Wireless plc (Applicant's ultimate parent) controls a foreign carrier:

Antigua	Japan
Australia	Macao
Barbados	Maldives
Belgium	Netherlands
Bermuda	Pakistan
Bulgaria	Panama
Canada	Philippines
China	Russia
Dominica	Solomon Islands
Fiji	Spain
France	St. Kitts & Nevis
Germany	St. Lucia
Grenada	St. Vincent
Hong Kong	Switzerland
Indonesia	Thailand
Ireland	Trinidad & Tobago
Italy	United Kingdom
Jamaica	

With the exception of Bermuda and Russia, all of the countries listed above are members of the World Trade Organization.

I. Non-Dominant Classification Requested

With respect to the countries of Belgium, France, Germany, Ireland, Italy, the Netherlands, Spain, and Switzerland, Optus' affiliated carriers in these destination countries lack sufficient market power in the international transport and local access markets to adversely effect competition in the United States. In each case Optus' affiliate is competing with the incumbent operator in the destination market and has less than a 50% market share in the international transport and local access markets in the destination country (See Chart below). Accordingly, Optus qualifies for a presumption of non-dominance pursuant to Section 63.10(a)(3).

Country	Optus Affiliate	Dominant Carrier
Belgium	Cable & Wireless (Belgium) SA/N.V.	Belgacom
France	Cable & Wireless France	France Telecom
Germany	Cable & Wireless Germany	Deutsche Telekom
Ireland	Cable & Wireless (Ireland)	Eircom (<i>formally</i> Telecom Eireann)
Italy	Cable & Wireless (Italy)	Telecom Italia
Netherlands	Cable & Wireless Netherlands	Royal KPN
Spain	Cable & Wireless Spain S.A.	Telefonica
Switzerland	Cable & Wireless Switzerland AG	Swisscom

With respect to the countries of Australia, Bulgaria, Canada, China, Indonesia, Japan, Pakistan, Philippines, Thailand, Russia, and the United Kingdom, the Commission has previously granted Cable & Wireless, Inc. (C&W USA) (a similarly situated C&W affiliate) authority to provide service to these destination countries and, in each case, C&W USA was classified as a non-dominant carrier (i.e. the foreign affiliate lacks 50% market share in the international transport and local access markets on each of these destination routes).

The Commission found C&W USA and its foreign affiliates to lack market power in the following decisions which accorded non-dominant treatment to C&W USA:

- Australia: *Cable & Wireless, Inc.*, Memorandum Opinion, Order and Certificate, File No. ITC-93-328, DA 97-2554, released Dec. 17, 1997.
- Australia, Canada: *Cable & Wireless, Inc.*, 9 FCC Rcd 7283 (1994).
- United Kingdom: *Cable & Wireless, Inc.*, 11 FCC Rcd 16486 (1996).
- Japan: *Cable & Wireless, Inc.*, 11 FCC Rcd 21027 (1996).

With respect to Bermuda (a non-WTO country) C&W USA, has previously been granted authority to provide service to Bermuda.⁴ C&W USA has been classified as a dominant carrier in its provision of authorized services to Bermuda. Optus and C&W USA are similarly situated vis-a-vis its affiliation with the foreign carrier in this destination market and Optus agrees to be regulated under the same conditions as C&W USA for its provision of service on this route.

⁴ *Cable & Wireless, Inc.*, Non-Streamlined 214 Application Granted, File No. ITC-214-1999-0709-00412, released July 23, 1999.