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FEB 27 2001

Telecom Division
International Bureau

Before the

Federal Communications Commission
Washington, D.C. 20554

Priscilla's file

In the Matter of

JOINT VENTURE (BERMUDA) NO. 1
LIMITED

) File No. ITC-214-20001228-00771
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Application for Authority Pursuant to
Section 214 of the Communications Act of 1934,
as amended, for Global Authority to Provide
Facilities-Based and Resold Services Between
the United States and All Authorized
International Points, Except Kiribati

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

JOINT PETITION TO DEFER

Joint Venture (Bermuda) No. 1 Limited ("JVb"), a corporation organized under the laws of Bermuda, Pacific Century Cyberworks Limited ("PCCW"), a corporation organized under the laws of Hong Kong, Telstra Corporation Limited ("Telstra"), a corporation organized under the laws of Australia, and the Federal Bureau of Investigation ("FBI"), collectively, the "Parties"), through their attorneys, respectfully request that the Federal Communications Commission ("Commission") (a) accept this Petition and (b) defer grant of the above-captioned application pending a resolution by the Parties and the Department of Justice ("DOJ") of those aspects of the application that the FBI and DOJ believe may raise potential national security, law enforcement, and public safety issues.

JVB is a joint venture that is indirectly owned 50% by Telstra, an Australian corporation and 50% by PCCW, a Hong Kong corporation. Because the FBI and the DOJ believe that the integrity of U.S. telecommunications services is critical to the ability of our

government to satisfy its obligations to preserve the national security, enforce the laws, and maintain the safety of the public, the FBI and the DOJ have previously availed themselves of the opportunity under Sections 214 and 310 of the Act, and implementing regulations, to comment regarding the public interest concerns raised by particular transactions. In the *Foreign Participation Order*, the Commission said that, in reviewing license applications from foreign carriers under Sections 214 and 310(b)(4) of the Communications Act, it would: (1) continue to apply the public interest test, and (2) “continue to find national security, law enforcement, foreign policy and trade policy concerns relevant to our decision to grant or deny Section 214 and 310(b)(4) applications from applicants from WTO Member[s].”¹ The Commission elaborated by saying that:

[W]e realize that foreign participation in the U.S. telecommunications market may implicate significant national security or law enforcement issues uniquely within the expertise of the Executive Branch. . . .

We thus will continue to accord deference to the expertise of Executive Branch agencies in identifying and interpreting issues of concern related to national security, law enforcement, and foreign policy that are relevant to an application pending before us.²

It is the opinion of the FBI and the DOJ that granting the authority requested by the parties in this transaction without sufficient conditions could present significant impediments to the ability of our government to meet its obligations to the citizens to preserve the national security, enforce the laws and protect the public safety. JVB, PCCW,

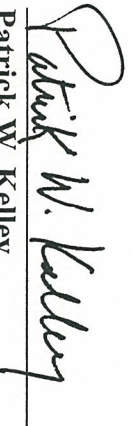
¹ *In the Matter of Rules and Policies of Foreign Participation in the U.S. Telecommunications Market*, 12 FCC Rcd 23,891, ¶ 61 (Nov. 1997). The presumption the Commission has adopted “in favor of entry for foreign participation applies only to competition concerns that may arise because of a foreign carrier’s market power in a foreign market.” *Id.* at ¶ 57. Concerns relating to national security, law enforcement, and public safety are to be given consideration independent of any competitive concerns presented by the transaction.

² *Id.* at ¶¶ 62-63.

and Telstra are currently and in good faith working diligently towards the execution of an agreement with the FBI and DOJ to address potential threats posed to national security, law enforcement and public safety that the FBI and the DOJ believe are presented by the above-captioned application. Accordingly, the Parties jointly urge the Commission to defer considering or approving JVB's application absent such an agreement and the imposition of appropriate conditions.

Wherefore, in view of the foregoing, the Parties respectfully request that the Commission accept for filing the instant Petition to Defer with regard to the captioned application and defer grant of the above-captioned application pending an agreement among the Parties to resolve the concerns addressed herein, and the imposition of the terms of such agreement as conditions to the authority granted.

Date: February 23, 2001



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