

**KELLEY DRYE & WARREN LLP**

A LIMITED LIABILITY PARTNERSHIP

1200 19TH STREET, N.W.

SUITE 500

WASHINGTON, D.C. 20036

FACSIMILE  
(202) 955-9792

(202) 955-9600

**Streamlined**  
PACIFIC CARRIAGE LIMITED

ITC-214-20010517-00314

DIRECT LINE (202) 897-4340

E-MAIL: [info@kdw.com](mailto:info@kdw.com)

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Telecom Division  
International Bureau

May 17, 2001

**BY HAND DELIVERY**

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

Re: Pacific Carriage Limited  
Application for Authorization Under Section 214 of the Communications  
Act of 1934, as amended, to Operate as a Facilities-Based Carrier and to  
Operate as a Resale Carrier for the Provision of International Switched  
and Private Line Services to all International Points \_\_\_\_\_

Dear Sir/Madam:

Pursuant to Section 214 of the Communications Act of 1934, as amended,  
enclosed for filing please find an original and five (5) copies of the above-referenced application.

Also enclosed, please find a duplicate of this application. Kindly date-stamp the  
duplicate and return in the envelope provided. Please note that this application was originally  
accepted for filing on May 4, 2001, but due to an error with the enclosed check, the entire  
application was returned. Because this application was substantially complete and accepted for  
filing on May 4, 2001, Ms. Claudia Fox of the Commission's International Bureau,  
Telecommunications Division, has assured us that this application will be considered filed within  
the time period set forth in the Commission's Public Notice DA 01-188, released January 30,  
2001. Enclosed, please find copies of the original application and envelope with the stamped  
date of May 4, 2001.

KELLEY DRYE & WARREN LLP

Magalie R. Salas, Secretary

May 17, 2001

Page Two

Please contact me at (202) 887-1240 if you have any questions.

Sincerely,

A handwritten signature in dark ink, appearing to read "H. M. Wilson", written in a cursive style.

Heather M. Wilson

Enclosure



Approved by OMB  
2020-0580

3060-0589  
Page No \_\_ of \_\_

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FCC USE ONLY**

## FCC USE ONLY

(3) TOTAL AMOUNT PAID (U.S. Dollars and cents)  
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## PLETE SECTION B

(FORM 159-C)

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## EXPIRATION


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**KELLEY DRYE & WARREN LLP**1200 19TH STREET, N.W.  
WASHINGTON, DC 20036

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BRANCH 00480DATE 5/16/01PAY  
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DETACH AND RETAIN THIS STATEMENT  
THE ATTACHED CHECK IS IN PAYMENT OF ITEMS DESCRIBED BELOW. IF NOT CORRECT PLEASE NOTIFY US PROMPTLY. NO RECEIPT DESIRED.

KELLEY DRYE &amp; WARREN LLP

DATE	DESCRIPTION	AMOUNT
5/16/01	Charge 010980.0003 for filing fee for Section 214 Application.	\$815.00





authorized to land in the United States.<sup>4</sup> PCL files the instant application to obtain authority to operate as a U.S. international carrier.

PCL is a wholly-owned subsidiary of Pacific Carriage Holdings Limited ("PCHL"), also a Bermuda company. PCHL is jointly-owned by TCNZ Bermuda Limited ("TCNZ Bermuda"),<sup>5</sup> a limited liability company organized under the laws of Bermuda; Optus Networks Pty Limited ("Optus Networks"),<sup>6</sup> a company organized under the laws of Australia; and MFS Cable Co. U.S. ("MFS Cable Co."), a company organized under the laws of the State of Delaware.<sup>7</sup>

One of TCNZ Bermuda's affiliates, Telecom New Zealand Limited ("TNZL"),<sup>8</sup> a New Zealand corporation, is a "foreign carrier" under the Commission's rules.<sup>9</sup> TNZL also has been

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<sup>4</sup> *In re MFS International, Inc., Applications for a License to Land and Operate in the United States a Common Carrier Fiber Optic Submarine Cable Extending Between the United States and Australia and New Zealand*, Cable Landing License, File No. SCL-97-005 (rel. Feb. 13, 1998).

<sup>5</sup> TCNZ Bermuda is a wholly-owned subsidiary of Telecom Southern Cross Limited, a New Zealand Corporation, which in turn is wholly-owned by Telecom Corporation of New Zealand Limited ("TNZ"), a New Zealand corporation. TNZ is the parent company of Telecom New Zealand Limited ("TNZL"). 24.95% of TNZ is owned by Bell Atlantic NZ and the rest of TNZ is widely held. On June 30, 2000, Bell Atlantic merged with GTE to form Verizon Communications, which now holds Bell Atlantic NZ's share of TNZ. Verizon is a widely held company.

<sup>6</sup> Optus Networks is wholly-owned by Cable & Wireless Optus Limited ("C&W Optus"), an Australian corporation that is 52.5% owned by Cable & Wireless plc, a United Kingdom company that is widely held. The remainder of C&W Optus is widely held. On March 26, 2001, Cable and Wireless plc and Singapore Telecommunications Ltd (SingTel) entered into an Implementation Agreement whereby Cable and Wireless will sell 19.9% of its shares to SingTel and facilitate SingTel's proposal being made to Optus shareholders. The proposed offer, when complete, is expected to see the exit of Cable and Wireless plc from Optus. SingTel's offer to purchase Optus from Cable & Wireless is dependent upon acceptance by more than 50% of Optus shareholders and is subject to approval by the Australian Foreign Investment Review Board and other regulatory officials.

<sup>7</sup> MFS CableCo U.S., Inc.'s parent company, MFS Globenet is a wholly owned subsidiary of MFS International, Inc., which in turn is a wholly owned subsidiary of MFS Communications Company Inc., which in turn is a wholly owned subsidiary of MCI Worldcom, Inc. All MFS companies and MCI Worldcom are U.S. companies.

<sup>8</sup> TNZL is a New Zealand corporation that acts as the principal operating subsidiary for TNZ and provides local, long-distance, wireless and international facilities-based services in New Zealand. TNZL originally held Section 214 authority to acquire and operate (continued...)



deemed a “dominant carrier” under the Commission’s rules for the U.S.-New Zealand route.<sup>10</sup> One of Optus Network’s affiliates, Optus Communications PTY Limited (“Optus”), an Australian corporation, also is a “foreign carrier” under the Commission’s rules.<sup>11</sup> In accordance with Section 63.12(c)(1)(ii)<sup>12</sup> of the Commission’s rules, the Applicant provides evidence below that sufficiently demonstrates that Optus is a non-dominant carrier on the U.S.-Australia route,

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(...continued)

international facilities between the U.S. and New Zealand, to resell international private lines between the U.S. and New Zealand, and to provide resold and facilities-based services between the U.S. and eligible international points other than New Zealand. *See In re Telecom New Zealand Limited, Application for Authority Pursuant to Section 214 of the Communications Act of 1934, as amended to Acquire and Operate Facilities to Provide International Services Between the United States and New Zealand*, 13 FCC Rcd 363 (1998) (“*Telecom New Zealand Order Upholding TNZL Section 214 Authority*”); *In re Telecom New Zealand Limited, Application for Authority Pursuant to Section 214 of the Communications Act of 1934, as amended to Resell International Private Lines Interconnected to the Public Switched Network, for the Provision of Switched Service Between the United States and New Zealand*, 13 FCC Rcd 7858 (1997); *In re Telecom New Zealand Limited, Limited Global Facilities-Based/Limited Global Resale Services*, Public Notice, File No. ITC-97-186 (rel. May 15, 1997). In 1998, however, all three Section 214 authorizations were transferred from TNZL to its U.S. affiliate, Telecom New Zealand USA Limited (“TNZUSA”), pursuant to Section 63.10(c)(2) of the Commission’s rules. *See In re Telecom New Zealand USA Limited, Request for Pro Forma Transfer of Control of Authorizations Granted Pursuant to Section 214 of the Communications Act, as Amended*, File No. ITC-98-279(TC) (granted Apr. 15, 1998).

9 47 C.F.R. § 63.18(d).

10 TNZL has been found by the Commission to possess market power in the local access market in New Zealand. *In re Telecom New Zealand Limited, Application for Authority under Section 214 of the Communications Act of 1934, as amended, to Acquire and Operate Facilities to Provide International Services Between the United States and New Zealand*, Order, Authorization and Certificate, 12 FCC Rcd 19379, 19383 (1996) (*Telecom New Zealand Order*) (upheld by the Commission in 13 FCC Rcd 363). As a result, TNZL currently is regulated by the Commission as a dominant carrier on the U.S.-New Zealand route. On all other international routes, TNZL is regulated by the Commission as a non-dominant carrier. *Telecom New Zealand Limited, Limited Global Facilities-Based/Limited Global Resale Services*, File No. ITC-97-186, Public Notice (eff. May 9, 1997) (granting TNZL streamlined Section 214 authority to offer facilities-based and resold services to all points between the U.S. and countries other than New Zealand).

11 Optus Networks PTY Limited holds a Section 214 authorization to provide Global or Limited Global Facilities-Based and Resale Service. *See* File No. ITC-214-2000022900118 (granted 3/31/2000).

12 47 C.F.R. § 63.12(c)(1)(ii).



and that the Applicant therefore qualifies for a presumption of non-dominance under Section 63.10(a)(3). As a result of PCL's indirect affiliation with TNZL, a carrier from a WTO Member Country that has been classified as dominant in the destination country of New Zealand, PCL will accept limited classification as a dominant carrier on the U.S.-New Zealand route, pursuant to Section 63.12(c)(1)(v), in the event that the Commission grants this Application.<sup>13</sup> For all other international points, PCL requests classification as a non-dominant carrier. Streamlined processing of this Application is appropriate under Section 63.12(c)(1)(v) of the Commission's rules, and PCL requests that this Application be accorded streamlined treatment.

### SECTION 63.18 INFORMATION

In support of this Application and pursuant to Section 63.18 of the Commission's Rules, PCL submits the following information:

- (a) The name, address, and telephone number of the Applicant is:  
  
Pacific Carriage Limited  
41 Cedar Avenue  
Hamilton, HM12, Bermuda  
+1 441 296-5659
- (b) PCL is a company organized under the laws of Bermuda.
- (c) Correspondence concerning this Application should be sent to:  
  
Craig Hardiman  
Pacific Carriage Limited  
Forsyth Barr House  
Johnston Street  
P.O. Box 5340  
Wellington 6015  
New Zealand  
011-64-4-496-3241

---

<sup>13</sup> 47 C.F.R. § 63.18(12).

with copies to:

Aileen A. Pisciotta, Esq.  
Heather M. Wilson, Esq.  
Kelley Drye & Warren LLP  
1200 19th Street, N.W.  
Suite 500  
Washington, D.C. 20036  
(202) 955-9600

- (d) PCL has not previously received Section 214 authority from the Commission for any services prior to the present Application.
- (e) PCL is applying for authority to operate as a global facilities-based carrier pursuant to the terms and conditions of Section 63.18(e)(1) of the Commission's Rules, and as a global resale carrier pursuant to the terms and conditions of Section 63.18(e)(2) of the Commission's Rules.
- (f) No response required.
- (g) PCL will use previously authorized facilities to provide facilities-based services and thus this Application is categorically excluded from environmental assessment pursuant to Section 1.1306 of the Commission's Rules.
- (h) PCL is a wholly-owned subsidiary of Pacific Carriage Holdings Limited ("PCHL"), a Bermuda corporation. PCHL is jointly-owned by TCNZ Bermuda, which holds a 50% ownership share in PCHL and thus, indirectly, in the Applicant; Optus Networks, which holds a 39.99% ownership share in PCHL, and thus, indirectly, in the Applicant; and MFS Cable Co., which holds a 10.01% ownership share in PCHL and thus, indirectly, in the Applicant.

The addresses, citizenship and principal business of these shareholders are as follows:

Pacific Carriage Holdings Limited  
41 Cedar Avenue  
Hamilton, HM12, Bermuda  
+1 441 296-5659

Citizenship: Bermuda  
Principal business: Holding company; provides intercompany financing to PCL

Telecom New Zealand Bermuda Limited  
41 Cedar Avenue

Hamilton, HM12, Bermuda  
+1 441 295-2244

Citizenship: Bermuda  
Principal business: Holding company

Optus Networks Pty Limited  
101 Miller Street  
North Sydney  
New South Wales 2000  
Australia  
011-61-2-9342-0000  
Citizenship: Australia  
Principal business: Holding company

MFS Cable Co., U.S.  
c/o WorldCom International  
Fox Court  
14 Grey's Inn Road  
London WC1X 8HN  
United Kingdom  
011-44-207-675-5766  
Citizenship: U.S.  
Principal business: Holding company

**Interlocking directorates:**

John Tibbles  
Vice President – International Development  
WorldCom International  
Fox Court  
14 Grey's Inn Road  
London WC1X 8HN  
United Kingdom  
011-44-207-675-5766

Mark Verbeist  
General Counsel  
Telecom New Zealand Limited  
Telecom Networks House  
68-86 Jervois Quay  
P.O. Box 570  
Wellington  
New Zealand  
011-64-4-498-9344



(i) As evidenced by the certification provided in Attachment 1, PCL indirectly is affiliated with two foreign carriers, Telecom New Zealand Limited (“TNZL”) in New Zealand, and Optus Communications PTY Limited (“Optus”) in Australia.

(j) Applicant certifies that it seeks to provide international telecommunications services to New Zealand where TCNZ Bermuda Ltd., a 50% shareholder in Applicant’s holding company, PCHL, is an affiliate of Telecom New Zealand Ltd, a foreign carrier. Applicant also certifies that it seeks to provide international telecommunications services to Australia where Optus Networks, a 40% shareholder in the Applicant’s holding company, PCHL, is an affiliate of Optus Communications PTY Limited, a foreign carrier.

(k) New Zealand is a member of the WTO.  
Australia is a member of the WTO.

(l) PCL will accept dominant carrier treatment for the U.S.-New Zealand route, and will comply with all reporting requirements associated with dominant carrier status.<sup>14</sup> PCL certifies that it has an affiliation with Optus, a foreign carrier in the destination country of Australia,<sup>15</sup> and that Optus lacks market power in Australia.<sup>16</sup> Therefore, PCL desires to be regulated as non-dominant on the U.S.-Australia route (as well as on all international routes other than the U.S.-New Zealand route).

(m) See answer to Section 63.18 (l) above.

(n) As evidenced by the certification provided in Attachment 1, PCL 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, and PCL will not enter into such agreements in the future.

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<sup>14</sup> Such reports shall include quarterly traffic reports required by 47 C.F.R. § 43.61(c).

<sup>15</sup> Optus is an Australian telecommunications carrier that provides local, long-distance and international facilities-based services in Australia.

<sup>16</sup> The Commission has found that only one Australian telecommunications carrier, Telstra, Inc., possesses market power in Australia. See *In re Telstra, Inc., Application for authority pursuant to Section 214 of the Communications Act of 1934, as amended, to acquire capacity in international facilities for the provision of switched and private line services between the United States and Australia*, 13 FCC Rcd 205, 209 (1998) (“*Telstra Facilities-Based 214 Order*”).

(o) As evidenced by the certification provided in Attachment 1, 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, as set forth in 21 U.S.C. § 862.

(p) This Application qualifies for streamlined treatment under Section 63.12 of the Commission's rules because: (1) New Zealand is a member of the WTO, and PCL will accept dominant carrier treatment on the U.S.-New Zealand route in satisfaction of the requirements of Section 63.12(c)(1)(v); and (2) Australia is a member of the WTO and PCL is entitled to non-dominant carrier, streamlined treatment on the U.S.-Australia route because it has satisfied the requirements of 63.12(c)(ii) and 63.10(a)(3).

### CONCLUSION

For all of the forgoing reasons, PCL respectfully requests that the Commission grant the request for international Section 214 authorization requested in this Application.

Respectfully submitted,

PACIFIC CARRIAGE LIMITED

By: *Craig Hardiman*

Aileen A. Pisciotta, Esq.  
Heather M. Wilson, Esq.  
KELLEY DRYE & WARREN LLP  
1200 19<sup>th</sup> Street, N.W.  
Suite 500  
Washington, D.C. 20036  
(202) 955-9600

Its Attorneys

Craig Hardiman  
PACIFIC CARRIAGE LIMITED  
Forsyth Barr House  
Johnston Street  
P.O. Box 5340  
Wellington 6015  
New Zealand  
011-64-4-496-3241

Counsel for Pacific Carriage Limited

Dated: April 28, 2001



## ATTACHMENT 1

### CERTIFICATE

The undersigned hereby certifies, on behalf of Pacific Carriage Limited ("PCL") with respect to the foregoing application for authority to provide international service, that:

1. PCL is affiliated with foreign carriers (as those terms are defined in Section 63.09(d) of the Commission's Rules) in WTO Member Countries Australia and New Zealand.
2. PCL 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 and will not enter into such agreements in the future.
3. 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 U.S.C. § 853(a).

By: \_\_\_\_\_



Craig Hardiman  
PACIFIC CARRIAGE LIMITED  
Forsyth Barr House  
Johnston Street  
Wellington  
PO Box 5340  
Wellington 6015 New Zealand  
011-64-4-496-3241

Counsel for Pacific Carriage Limited

Dated: April 28, 2001

**KELLEY DRYE & WARREN LLP**

A LIMITED LIABILITY PARTNERSHIP

1200 19<sup>TH</sup> STREET, N.W.

SUITE 500

WASHINGTON, D.C. 20036

(202) 955-9600

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June 1, 2001

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Telecom Division  
International Bureau

**VIA EXPRESS MAIL**

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12th Street, S. W.  
Washington, D.C. 20554

*rec 214-200 10517-00314*

Re: Pacific Carriage Limited

Request to Amend Application for Authorization Under Section 214 of the Communications Act of 1934, as amended, to Operate as a Facilities-Based Carrier and to Operate as a Resale Carrier for the Provision of International Switched and Private Line Services to all International Points

Dear Ms. Salas:

By this letter, Pacific Carriage Limited respectfully requests permission to amend the application dated May 4, 2001 seeking authority under Section 214 of the Communications Act, as amended, to provide international switched and private line services to all international points on a facilities-based and resale carrier basis.

Specifically, Pacific Carriage Limited seeks to amend its application for authority to provide international switched and private line service to all international points to clarify that such authority is requested only for communications originating either at points outside the Verizon Communications region or where Verizon Communications holds in-region, interLATA authority pursuant to Section 271 of the Communications Act.<sup>1</sup> Upon the grant to Verizon

<sup>1</sup> Currently, Verizon is authorized to provide in-region, interLATA service in New York and Massachusetts. Verizon has also applied for such authority in Connecticut.

KELLEY DRYE & WARREN LLP

Magalie Roman Salas

June 1, 2001

Page Two

Communications of in-region, interLATA authority in other states, Pacific Carriage Limited will request supplemental authority to provide international services that originate in those states.

Sincerely,

A handwritten signature in dark ink, appearing to read "A. Pisciotta". The signature is fluid and cursive, with a large initial "A" and a long, sweeping underline.

Aileen A. Pisciotta  
Heather M. Wilson  
Attorneys for Pacific Carriage Limited

cc: George Li, International Bureau  
Susan O'Connell, International Bureau