

SMITCOMS, INC.
ATTACHMENTS AND CERTIFICATIONS
AND APPLICANT'S REQUEST FOR STREAMLINE PROCESSING

(Attachment 1)

Preliminary Statement

SMITCOMS, INC. is a wholly-owned subsidiary of SMITCOMS, Inc. or SMITCOMS, NV, a foreign carrier, non-dominant carrier established May 20, 2000 under the laws of the Island Territory of Sint Maarten, Netherlands Antilles (hereinafter St. Maarten).

The Island Territory of St. Maarten is part of the central (federal) government of the Netherlands Antilles, a country approved for the provision of switched services over private lines as indicated in the List of Approved Countries for International Simple Resale (ISR) issued by the Federal Communications Commission (alternatively FCC or Commission).¹

The Dutch Kingdom (of which the Netherlands Antilles is an equal partner),² through its Member State participation, has accepted and formally agreed to the Basic Telecommunications Services Accord (Addendum on Telecommunications) of the World Trade Organization (WTO)³ consistent with WTO Protocol and Procedure.⁴

¹ See *International Authorizations Granted*, DA 00-32, January 13, 2000 at ¶ 8, pp 3-4.

² The Netherlands Antilles is a group of five Island Territories located in the Caribbean, viz: Bonaire, Curacao, St. Maarten, St. Eustatius and Saba. The Netherlands Antilles enjoys autonomous status under the *Statute of the Kingdom of the Netherlands* of 1954, as amended. See *Statute by Act of the Kingdom*, Stb 617, PbNA 233 (1975)(Dutch Kingdom). Pursuant to that autonomy, the five Islands operate through a central (federal) government that is based in Willemstad, Curacao, which operates on a parliamentary system. As a constitutional unit and under international accords, the Netherlands Antilles is described as a "country", a part of the Dutch Kingdom, and an equal partner in same along with the Netherlands and Aruba.

³ The Fourth Protocol to the General Agreement on Trade and Services was open for acceptance in 1997, and became effective in 1998, under which Member States (excluding exceptors and exempt States) agreed, among others, to promote non-discriminatory access to public telecommunications transport networks and transparency in rules and regulations relevant to access and use of PSTNs.

⁴ The Schedule of Specific Commitments (and Lists of Exemptions) regarding Article II of the GATS Accord on Basic Telecommunications makes clear that the Membership of Netherlands in the WTO is both on behalf of the Kingdom in Europe and the Netherlands Antilles. (See *Fourth Protocol to the General Agreement on Trade in Services*, S/L/20, April 30, 1996 (WTO 96-1750); see also Member State List of Signatories to Fourth Protocol)

In 1996, shortly after the Fourth Protocol was presented to WTO Member States, the central government of the Netherlands Antilles adopted its Telecom Law of 1996, which governs licensing and telecom regulation in the Island Territories of Aruba, Bonaire, St. Maarten, St. Eustatius and Saba.⁵ This law makes clear the central government's commitment to the principles of the WTO Addendum on Telecommunications (Basic Telecommunications Services Accord) and, further, exhibits a resolve to actively promote equal access and competition in the telecommunications sector throughout the Netherlands Antilles. Indeed, SMITCOMS, NV (the parent of the applicant) is an outgrowth of the competitive environment that now obtains in the destination country of the Netherlands Antilles.

In addition to the foregoing, the parent of the applicant filed its application for and was accepted into Sector Membership of the International Telecommunication Union (ITU) in 2000. It actively participates in the Radiocommunication and Standardization sectors of that international organization, and endorses the liberalization, competition and transparency initiatives promoted by that global body.⁶

Since its establishment, SMITCOMS, Inc. (parent of the wholly-owned applicant) has entered into various International Telecommunications agreements involving foreign traffic routed to the Island Territory of St. Maarten. In doing so, it not only terminates traffic for foreign carriers, but also provides private line lease services for various sectors of the consuming public, including foreign entities and U.S. carriers.⁷

⁵ See e.g., the Bureau of Telecommunication and Post, the regulatory agent and licensing authority for telecommunications and postal matters in the Netherlands Antilles. Its core mission is to "...optimally develop telecommunication within a liberalized Netherlands Antilles' market, in which virtually no barriers are laid upon new entrants to the market, thus promoting free competition and resulting in realistic choices for consumers." In furtherance of this objective, the central government of the Netherlands Antilles has promoted the establishment of one of the most advanced telecommunication networks in the Caribbean, and its telecom policies (starting with its 1996 Telecom Law) are among the most progressive in the Region. E.g., *Lansverodening Telecommunicatie, Staten van de Nederlandse Antillen, 2000-2001*; see also Bureau of Telecommunication and Post, www.BTnP.com.

⁶ See e.g., *Competition Policy in Telecommunications (Background Paper)*, Document CPT/04, November 18, 2002.

⁷ Among the International Telecommunications Services (Carrier) Agreements signed by SMITCOMS, NV (parent of wholly-owned subsidiary applicant), it has agreed to and does provision private lease line

It is pursuant to these facts that the central government of the Netherlands Antilles is and should be regarded as a WTO country, thus permitting the applicant to rely upon such status as part of its 214 application, and granted its request for streamline processing consistent with FCC rules and precedent.

Responses to Question 9

Applicant has requested that its application be processed under streamline procedures consistent with Section 63.12 of the Commission's rules. In support hereof, SMITCOMS, INC. notes as follows:

§63.12(1)(i) While the applicant is affiliated with (a wholly-owned subsidiary of) a foreign carrier (SMITCOMS, NV) that is licensed in *one* of the Island Territories in the destination market of the Netherlands Antilles, it is not a dominant carrier and, in this regard, the Commission has previously and recently determined that another – wholly unaffiliated – company is the dominant carrier for the Netherlands Antilles.⁸

§63.12(1)(v) In addition to the Commission's determinations in DA 03-456, applicant also submits that the affiliated destination market is a WTO Member country as explained *supra*, and the applicant agrees to be classified as a dominant carrier to the Island Territory of St. Maarten (*only*), without prejudice to its right to petition for reclassification at a later date, particularly with respect to Section 63.10(4) of the Commission's rules. More specifically, the applicant may ultimately elect to provide international switched services to the Island Territory of St. Maarten solely through the resale (either directly or indirectly) of an unaffiliated U.S. facilities-based carrier's international switched services.

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services to a U.S. carrier (MCI). This International Telecommunications Agreement was executed shortly after the Commission issued its January, 2000 *Order* in the above-referenced DA 00-32.

⁸ See *The International Bureau Revises and Reissues the Commission's List of Foreign Telecommunications Carriers that Are Presumed to Possess Market Power in Foreign Telecommunications Markets*, DA 03-456, February 19, 2003 at 6 (noting that the dominant carrier for the Netherlands Antilles market is Antelecom, N.V.)

Response to Question 10

§63.16(a) The destination country appears on the list of authorized destinations as published by the Bureau under Designated Authority.⁹ Moreover, applicant lacks market power for the destination market of the Netherlands Antilles, and the Commission has appropriately determined another unaffiliated carrier to be the dominant carrier in this regard.¹⁰

Responses to Question 11
Certifications Required Pursuant to Section 63.18(i) through 63.18(m)

§63.18(i) Although applicant is a wholly-owned U.S. subsidiary of SMITCOMS, NV or SMITCOMS, Inc, a foreign carrier in the designated market, it provides telecommunications services *only* in the Island Territory of St. Maarten.

§63.18(j)(1) The applicant does seek authority to provide services to the country of Netherlands Antilles, however, as noted, it (through affiliation with its parent) provides services as of the date of this filing *only* in the Island Territory of St. Maarten, Netherlands Antilles.

§63.18(j)(2)-(4) The applicant is wholly-owned by SMITCOMS, NV or SMITCOMS, Inc. Accordingly, additional ownership matters (including 25% benchmarks) are not applicable.

§63.18(k)(1) The destination country of the Netherlands Antilles is a member of the World Trade Organization.¹¹

⁹ DC 00-32, *supra* at fn 1.

¹⁰ *E.g.*, 47 C.F.R. §63.22(e)

¹¹ *See supra* at pp 1-2.

§63.18(k)(2) The applicant's affiliated (parent) foreign carrier is presumed by the Commission's prior determination to be a non-dominant carrier,¹² and does not possess market power in the Netherlands Antilles market.

§63.18(k)(3) Applicant proposes to resell international switched services of an unaffiliated U.S. carrier in the destination market of the Netherlands Antilles, and is not a dominant carrier in that destination market. Notwithstanding, the applicant does certify that it will file any an all tariffs required under Section 63.18(k)(3), or any other such documents or showings the Commission may deem necessary as part of its processing, or otherwise subsequently require.

§63.18(m) Applicant qualifies for non-dominant classification for the Netherlands Antilles market in view of the following: (a) the Commission has determined, as recently as February 19, 2003, that the dominant carrier in the subject destination market is Antelecom, NV, a wholly unaffiliated carrier; (b) applicant (via its parent) currently provides telecommunications services *only* in the Island Territory of St. Maarten (one of five Island Territories comprising the destination market of the Netherlands Antilles, and the traffic for St. Maarten represents less than 50% of the aggregate traffic attributable to the five Island Territories of the destination market,¹³ and (c) applicant's affiliated parent is not the only licensed carrier in St. Maarten since Antelecom, NV (the dominant carrier in the destination market) is also a licensed provider of telecom services in said Island Territory of St. Maarten.

¹² The Commission's List of Dominant Carriers shows Antelecom, N.V. as the dominant carrier in the Netherlands Antilles market. *E.g., fn 4, supra.*

¹³ This is based on data derived from the most recent Industry Analysis Report (2001), which shows 44,281,027 of billed traffic minutes in the U.S., and roughly 12 million originating or terminating messages or minutes billed in the Netherlands Antilles. *See 2001 International Telecommunications Data (Annual Report on Section 46.61 International Traffic Data for All U.S. Points)* at 132. (2001)

Response to Question 12

§63.18(j) The applicant seeks authority for global services and provisioning, which encompasses the market of the Netherlands Antilles. Through its parent (SMITCOMS, NV or SMITCOMS Inc.), it currently provides services in St. Maarten, one of the five Island Territories that comprise Netherlands Antilles.

Response to Question 15

§63.18(d) The applicant has not previously received authority to operate under section 214 of the Act.

§63.18(e)(i) The applicant requests authority to operate as a facilities-based carrier pursuant to §63.18(e)(1) of the Commission's rules.

§63.18(e)(iii) The applicant certifies it will comply with the terms and conditions contained in §§ 63.21 and 63.22 of this part of the Commission's rules.

§63.18(3) The applicant is not applying for authority to acquire facilities not covered by paragraphs (e)(1) and (e)(2) of §63.18 of the Commission's rules.

§63.18(g) This application does not seek facilities-based authority for a site that requires an environmental assessment as described in Section 1.1311 of the Commission's rules or otherwise governed by §63.18(e)(3). Accordingly, no environmental assessment is required under this request for 214 authority.

[END ATTACHMENT 1]

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