



# PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION  
445 TWELFTH STREET, S.W.  
WASHINGTON, D.C. 20554

**DA 10-2171**

News media information 202/418-0500 Fax-On-Demand 202/418-2830 Internet: <http://www.fcc.gov> <ftp.fcc.gov>

**Released: November 10, 2010**

## **TA RESOURCES N.V. SEEKS FCC DETERMINATION THAT ARUBA PROVIDES EFFECTIVE COMPETITIVE OPPORTUNITIES TO U.S CARRIERS AND INTERNATIONAL SECTION 214 AUTHORIZATION**

**IB Docket No. 10-228**

### **PLEADING CYCLE ESTABLISHED**

**Petition/Comments Due: November 24, 2010**  
**Opposition/Reply Comments Due: December 6, 2010**

TA Resources N.V. (“TAR”) has filed an application for authority to provide international facilities-based and resale services pursuant to section 63.18 of the Commission’s rules and section 214 of the Communications Act of 1934, as amended.<sup>1</sup> TAR is a wholly-owned subsidiary of SETAR N.V., the incumbent telecommunications provider in Aruba.<sup>2</sup> SETAR N.V. is wholly-owned by the Government of Aruba and is overseen by the Ministry of Telecommunications of Aruba.<sup>3</sup>

Aruba is not currently a full member of the World Trade Organization (WTO).<sup>4</sup> TAR therefore requests a determination that Aruba provides effective competitive opportunities to U.S. carriers.<sup>5</sup>

### **ECO TEST**

The Commission’s rules require that for applications where the applicant is affiliated with a foreign carrier with market power in the destination market, and the foreign country is not a WTO Member country, the applicant must show that there are effective competitive opportunities for U.S. carriers in the foreign country (the “ECO Test”).<sup>6</sup> The ECO Test was originally adopted by the

<sup>1</sup> 47 C.F.R. § 63.18(e)(1), (2); 47 U.S.C. § 214. The application, File No. ITC-214-20100107-00010, was placed on non-streamlined public notice on February 5, 2010. Public Notice, Report No. TEL-01410NS (rel. Feb. 5, 2010).

<sup>2</sup> Application, Attachment 2.

<sup>3</sup> *Id.*

<sup>4</sup> Supplement to Application for International Section 214 Authority, ITC-214-20100107-00010, filed May 12, 2010 at 1-3 (“Supplement”).

<sup>5</sup> *Id.* at 4-8 *citing* 47 C.F.R. § 63.18(k)(3).

<sup>6</sup> The applicant shall make the following showing:

The named foreign country provides effective competitive opportunities to U.S. carriers to compete in that country’s market for the service that the applicant seeks to provide (facilities-based, resold switched, or

Commission in the *Foreign Carrier Entry Order*.<sup>7</sup> In the *Foreign Participation Order* the Commission found that it was no longer necessary to apply the ECO Test to WTO Member countries, but retained the test for entry by carriers that possess market power in non-WTO member countries.<sup>8</sup>

Aruba is not a WTO Member country. TAR is affiliated with SETAR N.V., which is the incumbent local exchange carrier in Aruba and has market power in that market. Commission rules, and the ECO Test, define a carrier as affiliated with another carrier if an entity that controls one of them directly or indirectly owns more than 25% of the other one.<sup>9</sup> TAR is a wholly-owned subsidiary of SETAR N.V.

TAR states that Aruba meets each of the ECO test criteria, and thus the application should be granted.

First, TAR maintains that since January, 2005, U.S. carriers have had the legal ability to obtain international telecommunications services licenses and the ability to enter the Aruban market, provided they do so through a subsidiary organized under the laws of Aruba.<sup>10</sup> TAR cites three foreign companies that have obtained a license to provide international service in Aruba, including one that its majority owned by a U.S. firm.<sup>11</sup>

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resold non-interconnected private line services). An effective competitive opportunities demonstration should address the following factors:

(i) If the applicant seeks to provide facilities-based international services, the legal ability of U.S. carriers to enter the foreign market and provide facilities-based international services, in particular international message telephone service (IMTS);

(ii) If the applicant seeks to provide resold services, the legal ability of U.S. carriers to enter the foreign market and provide resold international switched services (for switched resale applications) or non-interconnected private line services (for non-interconnected private line resale applications);

(iii) Whether there exist reasonable and nondiscriminatory charges, terms and conditions for interconnection to a foreign carrier's domestic facilities for termination and origination of international services or the provision of the relevant resale service;

(iv) Whether competitive safeguards exist in the foreign country to protect against anticompetitive practices, including safeguards such as:

(A) Existence of cost-allocation rules in the foreign country to prevent cross-subsidization;

(B) Timely and nondiscriminatory disclosure of technical information needed to use, or interconnect with, carriers' facilities; and

(C) Protection of carrier and customer proprietary information;

(v) Whether there is an effective regulatory framework in the foreign country to develop, implement and enforce legal requirements, interconnection arrangements and other safeguards; and

(vi) Any other factors the applicant deems relevant to its demonstration.

47 C.F.R. § 63.18(k)(3). *See also* 47 C.F.R. § 1.767(a)(8).

<sup>7</sup> *Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket No. 95-22, Report and Order, 11 FCC Rcd 3873, 3881-3099, ¶¶ 19-72 (1995) (*Foreign Carrier Entry Order*).

<sup>8</sup> *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket No. 97-142, Report and Order and Order on Reconsideration, 12 FCC 23891, 23094-50, ¶¶ 138-142 (1997) (*Foreign Participation Order*), *Order on Reconsideration*, 15 FCC Rcd 1858 (2000).

<sup>9</sup> 47 C.F.R. § 63.09(e). *See also* 47 C.F.R. § 63.18(j)(3).

<sup>10</sup> Supplement at 4-5.

<sup>11</sup> According to TAR, MIO Group, a pan-Caribbean telecommunications operator, holds an international license and is 80% owned by Cartesian Capital Group, LLC, a U.S. private equity firm. Supplement at 4-5, 8.

Second, according to TAR, under a June 5, 2003 State Decree, interconnection is mandatory for all telecommunications service providers in Aruba, interconnection rates shall be equal for equal services, rates shall be set in proportion to costs, parties are free to reach interconnection agreements, and the Aruba government will intervene to resolve interconnection disputes.<sup>12</sup>

Third, TAR states that Aruba provides competitive safeguards against anti-competitive behavior. Specifically, TAR states that under the Aruba telecommunications policy and interconnection decree, interconnection rates must be cost-based, international traffic must be routed through at least two independent routes, and licensees must ensure that end users have the ability to freely select their international telecommunications carrier.<sup>13</sup>

Fourth, TAR asserts that Aruba has an effective regulatory framework. TAR notes that Aruba has policies and regulations of open licensing, interconnection requirements, safeguards against anti-competitive conduct and consumer protection, and that the Aruban telecommunications Regulator, Directie Telecommunicatie Zaken, has been actively involved in regulating the market.<sup>14</sup>

In addition, TAR submits Aruba has taken formal steps to finalize accession to the WTO.<sup>15</sup> Aruba is a member country of the Kingdom of the Netherlands which has been a member of the WTO since 1994. In 1994, the Kingdom of the Netherlands signed the WTO treaty on behalf of Aruba,<sup>16</sup> and since, then, both the Netherlands Antilles and Aruba have taken steps to finalize the terms of accession to the WTO.<sup>17</sup> TAR also submits that, since 1996, Aruba became a member of the Government Procurement Act, a multilateral treaty under the WTO designed to eliminate discrimination against foreign products and suppliers in government procurement.<sup>18</sup>

#### **EX PARTE STATUS OF THIS PROCEEDING**

Pursuant to Section 1.1200(a) of the Commission's rules,<sup>19</sup> the Commission may adopt modified or more stringent *ex parte* procedures in particular proceedings if the public interest so requires. We announce that this proceeding will be governed by permit-but-disclose *ex parte* procedures that are applicable to non-restricted proceedings under Section 1.1206 of the Commission's rules.<sup>20</sup>

We direct parties making oral *ex parte* presentations to the Commission's statement re-emphasizing the public's responsibility in permit-but-disclose proceedings. Parties are reminded that memoranda summarizing the presentation must contain the presentation's substance and not merely list the subjects discussed.<sup>21</sup> More than a one- or two-sentence description of the views and arguments

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<sup>12</sup> *Id.* at 5. The "Interconnection Decree" is Exhibit D to the Supplement.

<sup>13</sup> Supplement at 5-6.

<sup>14</sup> *Id.* at 7.

<sup>15</sup> *Id.* at 2-3.

<sup>16</sup> See Letter of the Department of Economic Affairs, Commerce and Industry of Aruba to TA Resources (TAR), dated February 22, 2010.

<sup>17</sup> May 12, 2010 Supplement at 3.

<sup>18</sup> *Id.*

<sup>19</sup> 47 C.F.R. § 1.1200(a).

<sup>20</sup> *Id.* § 1.1206.

<sup>21</sup> See Commission Emphasizes the Public's Responsibilities in Permit-But-Disclose Proceedings, *Public Notice*, 15

presented is generally required.<sup>22</sup> Other rules pertaining to oral and written presentations are set forth in Section 1.1206(b) as well.<sup>23</sup> We urge parties to use the Electronic Comment Filing System (ECFS) to file *ex parte* submissions.

## GENERAL INFORMATION

Interested parties must file comments or petitions to deny no later than November **24, 2010**. Persons and entities that timely file comments or petitions to deny may participate fully in the proceeding, including seeking access to any confidential information that may be filed under a protective order (subject to the restrictions contained in the protective order) and seeking reconsideration of decisions. Replies or oppositions to comments and petitions must be filed no later than **December 6, 2010**. All filings concerning matters referenced in this Public Notice should refer to **DA 10-2171** and **IB Docket No. 10-228**, as well as the specific file numbers of the individual applications or other matters to which the filings pertain.

Under the Commission's current procedures for the submission of filings and other documents,<sup>24</sup> submissions in this matter may be filed electronically (*i.e.*, though ECFS) or by hand delivery to the Commission.

- **If filed by ECFS,**<sup>25</sup> comments shall be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail.
- **If filed by paper,** the original and four copies of each filing must be filed by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- One copy of each pleading must be delivered electronically, by e-mail or facsimile, or if delivered as paper copy, by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (according to the procedures set forth above for paper

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FCC Rcd 19945 (2000).

<sup>22</sup> See 47 C.F.R. § 1.1206(b)(2).

<sup>23</sup> *Id.* § 1.1206(b).

<sup>24</sup> See Implementation of Interim Electronic Filing Procedures for Certain Commission Filings, *Order*, 16 FCC Rcd 21483 (2001); FCC Announces Change in Filing Location for Paper Documents, *Public Notice*, 24 FCC Rcd 14312 (2009).

<sup>25</sup> See Electronic Filing of Documents in Rulemaking Proceedings, GC Docket No. 97-113, *Report and Order*, 13 FCC Rcd 11322 (1998).

filings), to the Commission's duplicating contractor, Best Copy and Printing, Inc., at [FCC@BCPIWEB.COM](mailto:FCC@BCPIWEB.COM) or (202) 488-5563 (facsimile).

Additionally, filers must deliver courtesy copies by email or facsimile to the following Commission staff:

- 1) David Krech, Policy Division, International Bureau, at [david.krech@fcc.gov](mailto:david.krech@fcc.gov) or (202) 418-2824 (facsimile); and
- 2) Jodi Cooper, Policy Division, International Bureau, at [jodi.cooper@fcc.gov](mailto:jodi.cooper@fcc.gov) or (202) 418-2064 (facsimile);

Copies of the Applications and any subsequently-filed documents in this matter may be obtained from Best Copy and Printing, Inc., in person at 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, via telephone at (202) 488-5300, via facsimile at (202) 488-5563, or via e-mail at [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com). The Application and any associated documents are also available for public inspection and copying during normal reference room hours at the following Commission office: FCC Reference Information Center, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. The Applications also are available electronically through the Commission's ECFS, which may be accessed on the Commission's Internet website at <http://www.fcc.gov>.

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For further information, contact David Krech or Jodi Cooper, Policy Division, International Bureau, at (202) 418-1460.

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