

ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20054

Streamlined ITC-ASG-19990413-00213  
FLAT RATE COMMUNICATIONS INC.

In the Matter of  
  
VIATEL SALES U.S.A., INC. and  
FLAT RATE COMMUNICATIONS,  
INC.

Application for *Pro Forma* Assignment  
of Section 214 Authorization  
From Flat Rate Communications, Inc.  
to Viatel Sales, U.S.A., Inc.

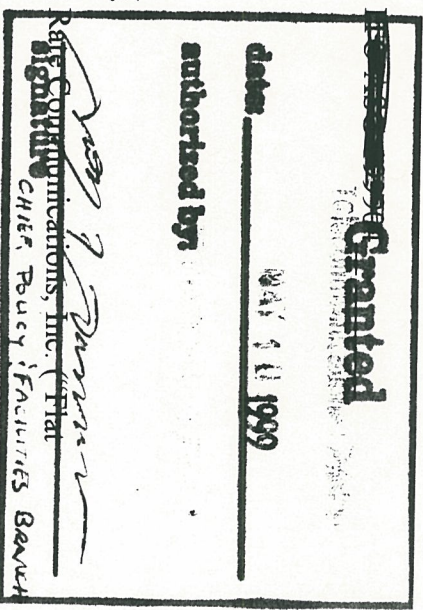
File No.

APPLICATION

Viatel Sales U.S.A., Inc. ("Viatel Sales") and Flat Rate Communications, Inc. ("Flat Rate") (together, the "Applicants") hereby request authority, pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. §214, and Section 63.18 of the Commission's rules, 47 C.F.R. §63.18, for a *pro forma* assignment of Section 214 authority from Flat Rate to Viatel Sales. The Applicants request that this application be granted expeditiously.

The Applicants seek the assignment of Section 214 authority for the merger of Flat Rate into and with Viatel Sales, the surviving corporate entity. Both Flat Rate and Viatel Sales are wholly owned U.S. subsidiaries of Viatel, Inc. Because this application seeks approval for an assignment of Section 214 authority from one wholly owned subsidiary to another wholly owned subsidiary of the same corporate parent, this application should be treated as a *pro forma* assignment.

The merger will more fully integrate Flat Rate into the Viatel corporate family and will permit Viatel Sales and Flat Rate to realize significant economic, marketing, and technical service efficiencies which will enhance their ability to continue providing high quality, low cost



**READ INSTRUCTIONS CAREFULLY  
BEFORE PROCEEDING**

FEDERAL COMMUNICATIONS COMMISSION

**REMITTANCE A**

PAGE NO. 1 OF 1

Streamlined  
FLAT RATE COMMUNICATIONS INC.

ITC-CASG-19990413-00213

**COPY**

FCC/MELTON

APR 13 1999

APPROVED BY OMB 3060-0589

(1) LOCKBOX # 358115

**SECTION A - PAYER INFO**

(2) PAYER NAME (if paying by credit card, enter name exactly as it appears on your card)  
**Morrison & Foerster LLP**  
(4) STREET ADDRESS LINE NO. 1  
**2000 Pennsylvania Avenue, N.W., Suite 5500**  
(5) STREET ADDRESS LINE NO. 2

(6) CITY  
**Washington**  
(9) DAYTIME TELEPHONE NUMBER (include area code)  
**(202) 887-1500**

(7) STATE  
**DC**  
(8) ZIP CODE  
**20006**  
(10) COUNTRY CODE (if not in U.S.A.)

**IF PAYER NAME AND THE APPLICANT NAME ARE DIFFERENT, COMPLETE SECTION B  
IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C)**

**SECTION B - APPLICANT INFORMATION**

(11) APPLICANT NAME (if paying by credit card, enter name exactly as it appears on your card)  
**Flat Rate Communications, Inc.**  
(12) STREET ADDRESS LINE NO. 1  
**1155 Kelly Johnson Blvd.**  
(13) STREET ADDRESS LINE NO. 2  
**Suite 111**  
(14) CITY  
**Colorado Springs**  
(17) DAYTIME TELEPHONE NUMBER (include area code)  
**(719) 520-3528**

(15) STATE  
**CO**  
(16) COUNTRY CODE (if not in U.S.A.)  
(18) ZIP CODE  
**80920**

**COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEETS (FORM 159-C)**

**SECTION C - PAYMENT INFORMATION**

(19A) FCC CALL SIGN/OTHER ID  
**C U T**  
(20A) PAYMENT TYPE CODE (PTC)  
(21A) QUANTITY  
**1**  
(22A) FEE DUE FOR (PTC) IN BLOCK 20A  
**780.00**  
(23A) FCC CODE 1  
(24A) FCC CODE 2

(19B) FCC CALL SIGN/OTHER ID  
(20B) PAYMENT TYPE CODE (PTC)  
(21B) QUANTITY  
**\$**  
(22B) FEE DUE FOR (PTC) IN BLOCK 20B  
**FCC USE ONLY**  
(23B) FCC CODE 1  
(24B) FCC CODE 2

(19C) FCC CALL SIGN/OTHER ID  
(20C) PAYMENT TYPE CODE (PTC)  
(21C) QUANTITY  
**\$**  
(22C) FEE DUE FOR (PTC) IN BLOCK 20C  
**FCC USE ONLY**  
(23C) FCC CODE 1  
(24C) FCC CODE 2

(19D) FCC CALL SIGN/OTHER ID  
(20D) PAYMENT TYPE CODE (PTC)  
(21D) QUANTITY  
**\$**  
(22D) FEE DUE FOR (PTC) IN BLOCK 20D  
**FCC USE ONLY**  
(23D) FCC CODE 1  
(24D) FCC CODE 2

**SECTION D - TAXPAYER INFORMATION (REQUIRED)**

(25) PAYER TIN  
**0940697210**  
(26) COMPLETE THIS BLOCK ONLY IF APPLICANT NAME IN B-11 IS DIFFERENT FROM PAYER NAME IN A-2  
APPLICANT TIN  
**0841318027**

**SECTION E - CERTIFICATION**

I, \_\_\_\_\_, (PRINT NAME)  
Certify under penalty of perjury that the foregoing and supporting information

are true and correct to the best of my knowledge, information and belief. SIGNATURE \_\_\_\_\_

**SECTION F - CREDIT CARD PAYMENT INFORMATION**

(28) MASTERCARD/VISA ACCOUNT NUMBER: \_\_\_\_\_  
EXPIRATION DATE: \_\_\_\_\_  
MASTERCARD  
VISA  
I hereby authorize the FCC to charge my VISA or MASTERCARD for the service(s)/authorization(s) herein described.  
AUTHORIZED SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_  
MONTH \_\_\_\_\_ YEAR \_\_\_\_\_

SEE PUBLIC BURDEN ESTIMATE ON REVERSE

FCC FORM 159 JULY 1997 (REVISED)

MORRISON & FOERSTER LLP

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.

108480

INVOICE	DATE	AMOUNT
RQ277070	04/08/99	780.00

Ref #

FEDERAL COMMUNICATIONS COMMISSION

INVOICE

Check Number	Check Date	AMOUNT
108480	04/08/99	

Pro Forma transfer of control from  
flat rate to Viatel sales, 23082/12

\$ 780.00

HOLD AT AN ANGLE TO VERIFY BACKGROUND WORDS "SAFE" ON FRONT AND A WATERMARK ON BACK

**MORRISON & FOERSTER LLP**  
WASHINGTON, D.C. OFFICE  
2000 PENNSYLVANIA AVE., N.W., SUITE 5500  
WASHINGTON, D.C. 20006-1888

**CENTURY NATIONAL BANK**  
WASHINGTON, D.C. 20006

15-159  
540

108480

108480

**PAY**  
SEVEN HUNDRED EIGHTY AND NO/100 DOLLARS

04/08/99

\*\*\*\*\*780.00

TO THE  
ORDER OF  
FEDERAL COMMUNICATIONS COMMISSION

By: *John P. Brady*  
AUTHORIZED SIGNATURE

AUTHORIZED SIGNATURE

VERIFY FIRST:  
DO NOT CASH UNLESS YOU CAN SEE  
THIS NUMBER SHOWING THROUGH  
THE BACK OF THE CHECK

⑈ 108480 ⑈ ⑆ 054001534 ⑆ 001 001053 5⑈

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20054**

In the Matter of

VIATEL SALES U.S.A, INC. and  
FLAT RATE COMMUNICATIONS,  
INC.

Application for *Pro Forma* Assignment  
of Section 214 Authorization  
From Flat Rate Communications, Inc.  
to Viatel Sales, U.S.A, Inc.

File No. ITC-ASG-199904 - \_\_\_\_\_

**APPLICATION**

Viatel Sales U.S.A, Inc. (“Viatel Sales”) and Flat Rate Communications, Inc. (“Flat Rate”) (together, the “Applicants”) hereby request authority, pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. §214, and Section 63.18 of the Commission’s rules, 47 C.F.R. §63.18, for a *pro forma* assignment of Section 214 authority from Flat Rate to Viatel Sales. The Applicants request that this application be granted expeditiously.

The Applicants seek the assignment of Section 214 authority for the merger of Flat Rate into and with Viatel Sales, the surviving corporate entity. Both Flat Rate and Viatel Sales are wholly owned U.S. subsidiaries of Viatel, Inc. Because this application seeks approval for an assignment of Section 214 authority from one wholly owned subsidiary to another wholly owned subsidiary of the same corporate parent, this application should be treated as a *pro forma* assignment.

The merger will more fully integrate Flat Rate into the Viatel corporate family and will permit Viatel Sales and Flat Rate to realize significant economic, marketing, and technical service efficiencies which will enhance their ability to continue providing high quality, low cost

telecommunications services and to compete more effectively in the international marketplace. The assignment of Section 214 authority will increase choice to consumers for competitively priced international services in the telecommunications marketplace. Thus, the merger will benefit the public interest.

In support of this application, the Applicants submit the following information pursuant to Section 63.18 of the Commission's rules:

- (a) Name, address and telephone number of the Applicants:

Viatel Sales U.S.A., Inc.  
685 Third Ave., 24<sup>th</sup> Floor  
New York, NY 10017  
(212) 350-9200

Flat Rate Communications, Inc.  
1155 Kelly Johnson Blvd.  
Suite 111  
Colorado Springs, CO 80920  
(719) 520-3528

- (b) Viatel Sales is a corporation organized under the laws of the State of Delaware. Flat Rate is a corporation organized under the laws of Colorado.

- (c) Correspondence concerning this Application should be sent to:

For Viatel Sales:

Sheldon Goldman  
Vice President, Business & Legal Affairs  
Viatel, Inc.  
685 Third Ave., 24<sup>th</sup> Floor  
New York, NY 10017  
(212) 350-9200

with a copy to:

Cheryl A. Tritt & Joan E. Neal  
Morrison & Foerster LLP  
2000 Pennsylvania Ave., N.W., Suite 5500  
Washington, DC 20006  
(202) 887-1500

For Flat Rate Communications, Inc.:

John Scanlon  
Flat Rate Communications, Inc.  
541 Sycamore Valley Road West  
Danville, CA 94526  
(925) 855-3803

- (d) Viatel Sales does not hold any authorizations under Section 214. Viatel, Inc., the parent company of Viatel Sales, is authorized to: (1) resell switched service,<sup>1</sup> (2) resell international private lines for the provision of switched services between the U.S. and equivalent countries,<sup>2</sup> (3) provide on a global basis facilities-based and resale services to all permissible points,<sup>3</sup> and (4) provide facilities-based service between the U.S. and the United Kingdom using CANUS-1.<sup>4</sup>
- Flat Rate holds a global Section 214 authorization to provide facilities-based and resale services to all permissible international points, granted effective September 20, 1996 in File No. I-T-C-96-446.

- (e) (5) The Applicants hereby request authority for a *pro forma* assignment of Section 214 authority from Flat Rate to Viatel Sales.
- (f) No response is necessary.
- (g) Not applicable.
- (h) (1) By the attached certification, Viatel Sales certifies that it is affiliated with the following foreign carriers as defined in 47 C.F.R. § 63.18(h)(1)(ii): (a) Viatel U.K. Ltd. in the United Kingdom; (b) Viaphone GmbH in Germany; (c) Viatel Operations SA in France; (d) Viafooperations Communications BV in the Netherlands; (e) Viatel Belgium nv in Belgium; (f) Viaphone A.G. in

<sup>1</sup> See *VIA USA, Ltd., et al.*, 9 FCC Rcd 2288 (1994), *recon.*, 10 FCC Rcd 9540 (1995).

<sup>2</sup> This authorization was granted to Viatel Inc.'s subsidiary YYC Communications, Inc., see FCC Public Notice, Overseas Common Carrier Section 214 Applications Actions Taken (Formal Section 63.01), Rep. No. I-8118 (rel. Oct. 20, 1995), then later assigned to Viatel, see File No. I-T-C-96-534-AL (Oct. 7, 1996).

<sup>3</sup> See Overseas Common Carrier Section 214 Application Actions Taken, 11 FCC Rcd 10639 (1996).

<sup>4</sup> See *Viatel, Inc., Application for Authority to Acquire and Operate Facilities for Service to the United Kingdom*, 11 FCC Rcd 11607 (1996).

Switzerland; and (g) Viatel (I) Limited in Ireland. None of these entities has market power.

- (2) As noted above, Viatel Sales is wholly owned by its parent, Viatel, Inc. In turn, two shareholders currently hold indirectly, ten percent or more of the capital stock of Viatel Sales through Viatel, Inc.: (a) Martin Varsavsky, Parque Empresarial Edificio 2, c/o Beatriz de Bobadilla, 14, 5 Ofic. B, Madrid, Spain; and (b) the Capital Guardian Trust Company, 11100 Santa Monica Boulevard, Los Angeles, CA 90025-3384, which serves as the investment manager of various institutional accounts. Mr. Varsavsky is a U.S. citizen and is currently the president of a Spanish telecommunications company. Capital Guardian Trust Company is a U.S. company and its principal business is capital investments.

The officers and directors of Viatel Sales have the following interlocking directorates: (a) Michael J. Mahoney, President and a director of Viatel Sales, is also Chairman, President, and Chief Executive Officer of Viatel, Inc.; (b) Allan L. Shaw, Treasurer and a director of Viatel Sales, is also Senior Vice President, Finance, and Chief Financial Officer of Viatel, Inc.; (c) Lawrence G. Malone, Vice President and a director of Viatel Sales, is also Senior Vice President, Global Sales and Marketing, of Viatel, Inc.; (d) Sheldon Goldman, Secretary and a director of Viatel Sales, is also Senior Vice President, Business Affairs, General Counsel, and Secretary of Viatel, Inc.; (e) Francis J. Mount, Vice President and a director of Viatel Sales, is also Senior Vice President, Engineering and Network Operations, of Viatel, Inc.; and (f) Ellen S. Rudin, Assistant Secretary of Viatel Sales, is also Vice President and Assistant Secretary of Viatel, Inc. In addition, as

previously reported to the Commission, Michael J. Mahoney is a director of Cignal Global Communications, Inc.

(8) Viatel Sales U.S.A., Inc. should be presumptively regulated as a non-dominant carrier on all routes because none of its foreign carrier affiliates has market power. These affiliates are all small companies that are new market entrants, each holding substantially less than a 50 percent market share in the international transport and local access markets in their respective countries. None of these carriers has the ability to discriminate against unaffiliated U.S. international carriers through the control of bottleneck facilities to exercise market power in any destination country.

(i) By the attached certification, Viatel Sales certifies that it has not agreed to accept special concessions, as defined in 47 C.F.R. § 63.18(i)(1), 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.

(j) By the attached certification, Viatel Sales certifies that 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.

(k) Because this application seeks a *pro forma* assignment of Section 214 authority, the Applicants request that the application be granted on an expedited basis.



CONCLUSION

Accordingly, the Applicants respectfully request that the Commission grant this application for a *pro forma* assignment of Section 214 authority from Flat Rate Communications, Inc. to Viatel Sales U.S.A., Inc. on an expedited basis. Such a grant will serve the public interest, convenience and necessity.

Respectfully submitted,

*Cheryl A. Tritt* by *cep*

Cheryl A. Tritt  
Joan E. Neal  
Morrison & Foerster LLP  
2000 Pennsylvania Ave., N.W.  
Washington, D.C. 20006  
(202) 887-1500

Attorneys for Viatel Sales U.S.A., Inc. and  
Flat Rate Communications, Inc.

Dated: April 12, 1999

## CERTIFICATION

I, Sheldon Goldman, Secretary of Viatel Sales U.S.A., Inc. ("Viatel Sales") hereby certify that:

1. The statements in the foregoing application are true, complete and correct to the best of my knowledge and belief, and are made in good faith.
2. Viatel Sales is affiliated with the following foreign carriers as defined in 47 C.F.R. § 63.18(h)(1)(ii): (a) Viatel U.K. Ltd. in the United Kingdom; (b) Viaphone GmbH in Germany; (c) Viatel Operations SA in France; (d) Viafoperations Communications BV in the Netherlands; (e) Viatel Belgium nv in Belgium; (f) Viaphone A.G. in Switzerland; and (g) Viatel (I) Limited in Ireland.
3. As noted above, Viatel Sales is wholly owned by its parent, Viatel, Inc. In turn, indirectly, two shareholders currently hold ten percent or more of the capital stock of Viatel Sales through Viatel, Inc.: (a) Martin Varsavsky, Parque Empresarial Edificio 2, c/o Beatriz de Bobadilla, 14, 5 Offic. B, Madrid, Spain; and (b) the Capital Guardian Trust Company, 11100 Santa Monica Boulevard, Los Angeles, CA 90025-3384, which serves as the investment manager of various institutional accounts. Mr. Varsavsky is a U.S. citizen and is currently the president of a Spanish telecommunications company. Capital Guardian Trust Company is a U.S. company and its principal business is capital investments.

The officers and directors of Viatel Sales have the following interlocking directorates: (a) Michael J. Mahoney, President and a director of Viatel Sales, is also Chairman, President, and Chief Executive Officer of Viatel, Inc.; (b) Allan L. Shaw, Treasurer and a director of Viatel Sales, is also Senior Vice President, Finance, and Chief Financial Officer of Viatel, Inc.; (c) Lawrence G. Malone, Vice President and a director of Viatel Sales, is also Senior Vice President, Global Sales and Marketing, of Viatel, Inc.; (d) Sheldon Goldman, Secretary and a director of Viatel Sales, is also Senior Vice President, Business Affairs, General Counsel, and Secretary of Viatel, Inc.; (e) Francis J. Mount, Vice President and a director of Viatel Sales, is also Senior Vice President, Engineering and Network Operations, of Viatel, Inc.; and (f) Ellen S. Rudin, Assistant Secretary of Viatel Sales, is also Vice President and Assistant Secretary of Viatel, Inc. In addition, as has previously been reported to the Commission, Michael J. Mahoney is a director of Cignal Global Communications, Inc.

4. Viatel Sales certifies that it has not agreed to accept special concessions, as defined in 47 C.F.R. § 63.18(i)(1), 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.

5. Viatel Sales certifies that 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.



Sheldon Goldman  
Secretary  
Viatel Sales U.S.A., Inc.

Dated: April 2, 1999