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

Re: Notice of Ex Parte Communication  
Application of Equant U.S., Inc., File No. ITC-214-20010312-00160

Dear Ms. Salas:

On April 9, 2001, Joel Winnik, Ari Fitzgerald, and Douglas Klein of Hogan & Hartson L.L.P., representing British Telecommunications plc, and James Talbot of AT&T Corp., representing AT&T and its affiliates, Concert Global Networks USA L.L.C., and Concert Global Network Services Ltd., spoke by telephone with Jackie Ruff, Claudia Fox, Susan O'Connell, and Nandan Joshi of the Federal Communications Commission to discuss the above-referenced application. This letter, which summarizes the presentation to those FCC staff members, is filed pursuant to Section 1.1206(b)(2) of the Commission's rules.

The application seeks Commission approval on an automatic, streamlined basis, of the merger of two of the largest and most powerful telecommunications operators in the world: France Telecom, the dominant telecommunications service provider in France and, through its vast holdings, the dominant provider in many other countries throughout the world; and Equant, the global telecommunications services firm now operating in more than 220 countries. France Telecom has dominant affiliates in France, Poland, Central African Republic, Chad, Côte d'Ivoire, Djibouti, Equatorial Guinea, Jordan, Madagascar, Mauritius, Reunion Island, Senegal, French Polynesia, Vanuatu, Wallis and Futuna, Argentina, El Salvador, French Guiana, Guadeloupe, Martinique, Mayotte, and St. Pierre and Miquelon. France Telecom already controls Global One, one of Equant's prime competitors. Equant is believed to be a unique beneficiary of nodal

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access in many small, but commercially important countries, as an outgrowth of its historic relationship with SITA, Société Internationale de Télécommunications Aéronautiques, and the flag-carriers that own SITA. This merger will make it possible for France Telecom and Equant to reinforce their market position in the many countries in which they hold unique or exclusive franchises. Equant's business, which includes both voice and data networks, is discussed in detail in its March 2000 filing with the Securities and Exchange Commission (available at [http://www.equant.com/relations/reports/pdfs/Equant20F\\_1999.pdf](http://www.equant.com/relations/reports/pdfs/Equant20F_1999.pdf)). That filing also indicates that Equant operates in the United States as a "private carrier," thereby escaping FCC regulation.

The application appears to be crafted in an attempt to invoke the Commission's streamlined processing procedures and evade careful review of the merger itself, under circumstances where streamlined processing is not appropriate. Similarly, the application invokes the Commission's non-dominant classification on routes where the merged companies will clearly dominate the foreign ends, under circumstances in which the nondominant classification is not permitted. The application fails to meet the requirements of the Commission's rules and should be withdrawn from the streamlined agenda and returned as not acceptable for filing.

The application is ineligible for streamlined processing. In order to be eligible for streamlined processing under Section 63.12(c)(1)(iv), an applicant must "clearly demonstrate[] in its application ... [that] [t]he affiliated destination market is a WTO Member country and the applicant qualifies for a presumption of non-dominance under § 63.10(a)(4)." The application does not satisfy section 63.12(c)(1)(iv) both because it fails to demonstrate that Equant qualifies for nondominant classification under section 63.10(a)(4) on all such routes and because it fails to demonstrate that the administration at each destination on every route on which Equant will have a dominant affiliate is a WTO Member.

**Nondominance.** Section 63.10(a)(4) states that "[a] carrier that is authorized . . . to provide to a particular destination an international switched service, and that provides such service solely through the resale of an unaffiliated U.S. facilities-based carrier's international switched services . . ., shall presumptively be classified as non-dominant for the provision of the authorized service." Equant does not qualify for a presumption of nondominance under Section



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63.10(a)(4), because the application leaves open the possibility that Equant may provide ISR or private-line service (or any facilities-based services) on those routes. On pages 8 and 9, the applicants state only that they “agree to provide international switched service solely through the resale of unaffiliated U.S. facilities-based carriers’ services” on those routes. Equant does not say that it will not provide switched services by reselling *private-line* services, and Equant does not say that it will not provide non-switched services (either through resale or by using its own facilities). Equant currently has authority to provide those services, and because Equant is believed to have nodes located in many of these destination countries, it is also believed that Equant actually provides private-line services on those routes.

Moreover, in view of Equant’s unregulated private carrier operations, the presumption of nondominance accorded common carriers on routes where they specifically agree to limit services to pure resale should not apply. That presumption is not appropriate where Equant can simply bypass FCC dominant carrier regulation by providing, on a private carrier basis, services for which Equant would be classified as dominant if provided on a common carrier basis.<sup>1</sup> Thus, Equant (and Global One) are in a position to prevent the FCC from receiving the reports required under its dominant carrier rules, which are intended to reveal the existence of discriminatory practices of Equant’s many would-be affiliates that have market power. In addition, the presumption is not appropriate where Equant (and Global One) are in a position to route services to points for which they would be classified as dominant through facilities in third countries.

**WTO Status.** For provision of service between the United States and Central African Republic, Chad, Côte d’Ivoire, Djibouti, El Salvador, French Guiana, French Polynesia, Guadeloupe, Madagascar, Martinique, Mayotte, Reunion Island, New Caledonia, Saint Pierre and Miquelon, Senegal, and Wallis and Futuna—all countries in which Equant would acquire dominant affiliates—the application does not state (much less “clearly demonstrate”) which of the destination points are in WTO Member countries. The WTO Web site does not list

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<sup>1</sup> The Bureau should also note the statement at p. 2 of the application that “[u]pon consummation of this transaction, Global One will cease to operate as a common carrier.”



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the following countries as WTO Members: French Guiana, French Polynesia, Guadeloupe, Martinique, Mayotte, Reunion Island, New Caledonia, Saint Pierre and Miquelon, and Wallis and Futuna. If the applicants believe that the FCC should consider all of these points to be WTO Member countries because of their relationship with France, they must make a *clear demonstration* of that in the application to qualify for streamlined processing. The application thus violates section 63.12(c)(1)(iv) by claiming a right to streamlined processing while failing to comply with the requirement that it identify and demonstrate that the administration at the foreign end of each route on which it will have a dominant affiliate is a Member of the WTO. Moreover, the determination as to whether or not a specific point in question should be treated as a WTO Member must be made in a written order after formal consultation with the Department of State. See *Cable & Wireless U.S.A.*, 15 FCC Rcd 3050 (2000), where the Division issued a written decision noting its reliance on an opinion issued by the Department of State concerning the status of Bermuda. Where key facts such as this are in question, the use of the streamlined process is not appropriate.

Even if the applicants could demonstrate that the countries in question are part of France, the application inexplicably requests nondominant treatment for routes to those “parts of France” and dominant treatment for the route to mainland France itself. This extraordinary treatment surely requires a request for special relief and cannot be granted using a streamlined procedure.

Because Equant has not “clearly demonstrated” that each of the administrations at every destination point proposed to be served in which it will have a dominant affiliate is a WTO Member, Equant is not entitled to streamlined processing of this application. Further, Equant is not entitled to streamlined processing because a presumption of nondominance may not be accorded Equant on these routes. Equant maintains authority to provide services other than pure resale on these routes. Moreover, Equant has positioned itself to bypass Part 63

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<sup>2</sup> The Bureau should also note the statement at p. 2 of the application that “[u]pon consummation of this transaction, Global One will cease to operate as a common carrier.”

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regulations by providing restricted services to these points indirectly via third countries or directly or indirectly on a private carrier basis.

The Bureau should address these matters as follows:

- 1) The application should be removed from streamlined processing pursuant to Section 63.12(d) and returned as incomplete and not acceptable for filing.
- 2) The following actions should be taken with respect to any new application determined to be acceptable for filing:
  - a) An opportunity for public comment should be provided. Where relevant facts are in question, streamlining is not appropriate. Because of Equant's unique position in the provision of global telecommunications services to multinational corporate customers by virtue of its SITA origin, the elimination of Global One as a competitor of Equant, and Equant's ability to avoid Commission regulation through indirect routings and private carriage of restricted services, authority requested under any new application is likely to present a "significant potential adverse impact on competition" that warrants public comment and additional Commission scrutiny. See *Review of International Common Carrier Regulations*, FCC 99-51, 14 FCC Rcd 4909, 4920 para. 25 (1999).
  - b) Equant should be required to submit to dominant-carrier regulation on all authorized routes where it is affiliated with a foreign carrier that has market power.
  - c) The Commission should deny Equant's application with respect to affiliated routes that do not qualify for WTO treatment unless a sufficient showing is made that the foreign markets provide effective competitive opportunities (ECO) to U.S. carriers to compete in that foreign market. See Section 63.18(k)(3).
  - d) The Commission should adopt a condition on any grant of the application prohibiting Equant from avoiding dominant-carrier regulation or other



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restrictions on its authorization by providing services on a "private carrier" or indirect basis.

We appreciate the staff's attention to this important matter.

Respectfully submitted,



Joel S. Winnik

Ari Q. Fitzgerald

Douglas A. Klein

Enclosures

cc: Jackie Ruff, Claudia Fox, Susan O'Connell, Nandan Joshi  
James Talbot, AT&T