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In the Matter of)
)
) TELEF NICA LARGA DISTANCIA DE
)
) TUERTO RICO, INC.) File No. JTC-98-105

MEMORANDUM OPINION, ORDER AND AUTHORIZATION

Released: May 15, 1998

I. Introduction

1. In this Order, we grant Telefónica Larga Distancia de Puerto Rico, Inc. ("TLD") authority, pursuant to Section 214 of the Communications Act, to acquire and operate capacity on a common carrier high capacity digital submarine cable system, the COLUMBUS II Cable System ("COLUMBUS II"), for the provision of international telecommunications services between the United States and Spain. We find that TLD has provided sufficient information to comply with Section 214 of the Communications Act and therefore grant the authority to acquire and operate capacity in COLUMBUS II, subject to the conditions described below. We also find that TLD should be regulated as dominant on the U.S.-Spain route. Finally, we condition TLD's authorization to use this cable system for service to Spain upon TLD's affiliates offering U.S. carriers settlement rates at or below the relevant benchmark.

II. Application

2. TLD is a corporation organized under the laws of the Commonwealth of Puerto Rico. The Puerto Rico Telephone Authority ("PRTA") owns 1% of TLD's stock. Another 2% of TLD is held by an employee stock ownership plan. The remaining 79% of TLD is owned by Telefonía Internacional Holding, B.V. ("TI Holding"). TI Holding is a Netherlands corporation which is a wholly-owned subsidiary of Telefonía de España, S.A. ("TI"), a corporation organized under the laws of Spain. TI is 100% owned by Telefonía de España, S.A. ("Telefónica de España"), which is the incumbent provider of domestic and international communications services in Spain. TLD has authorization under Section 214 of the Communications Act to provide global facilities-based and resale services.

III. Background

3. On November 10, 1992, eight U.S. carriers, including TLD's predecessor, LD, filed joint Section 214 and submarine cable landing license applications for authority to construct and operate the COLUMBUS II cable system. On July 26 and 28, 1993, the Common Carrier Bureau approved the joint Section 214 and cable landing license applications for seven U.S. carriers but deferred action on TLD's application pending a determination by the full Commission. On August 8, 1994, the Commission granted TLD's request for authority to participate in the construction, acquisition of capacity in, and operation of COLUMBUS II, but deferred ruling on TLD's request for Section 214 authority to provide service to Spain on COLUMBUS II.

4. On May 2, 1997, the Commission denied TLD's application for Section 214 authority to provide service to Spain on COLUMBUS II. The Commission found that U.S. carriers were barred from providing IMTS service to Spanish customers. The Spanish market, therefore, did not pass the first prong of the effective competitive opportunities ("ECO") analysis that looked at the legal, or de jure, ability of U.S. carriers to enter the foreign market. The Commission also found that the inability of U.S. carriers to enter the communications market in Spain outweighed any potential public interest benefits from granting TLD's application.

5. On January 30, 1998, TLD filed the instant application to obtain Section 214 authority to acquire and operate facilities to provide international facilities-based services between the United States and Spain. This authority would allow TLD to provide service to a country, Spain, where it is affiliated with a foreign carrier, Telefónica de España. TLD certifies that it is affiliated within the meaning of Section 63.18(h)(1)(i) of the Commission's Rules with Telefónica de España.

6. We placed TLD's application on public notice. Sprint Communications Company, L.P. ("Sprint") filed comments requesting that the Commission condition any grant of TLD's application upon compliance with the Commission's accounting rate benchmarks and other competitive safeguards. No other comments were filed.

IV.

Discussion

7. On November 26, 1997 the Commission adopted final rules in the Foreign Participation proceeding to create a new regulatory framework in light of the United States' World Trade Organization ("WTO") market access commitments and the market-opening commitments of U.S. trading partners. Pursuant to the Foreign Participation Order, the Commission removed the ECO standard as a factor of its existing public interest analysis and replaced the standard with a rebuttable presumption in favor of entry for applicants from WTO Member countries. Thus, under the new rules, the Commission applies a rebuttable presumption that applications for Section 214 authority from carriers from WTO Member Countries do not pose concerns that would justify denial of an application on competition grounds. Absent serious concerns raised by the Executive Branch regarding national security, law enforcement, foreign policy, or trade issues or, in the exceptional case where a carrier's entry presents a very high risk to competition in the U.S. market, we will expeditiously grant Section 214 applications of carriers from WTO Member countries.

8. The Executive Branch did not raise any concerns with this application. Also, we find that none of the arguments raised by Sprint in this proceeding demonstrate that TLD's entry into the U.S. market presents a very high risk to competition in the U.S. market. Sprint, which does not oppose a grant of TLD's application, requests that we apply the competitive safeguards to ensure that TLD and its affiliates do not leverage their market power to harm competition in the United States.

9. We find that Telefónica de España has sufficient market power to affect competition adversely in the U.S. market under the Commission's Rules. Accordingly, we will regulate TLD as dominant on the U.S.-Spain route. As a dominant carrier on the U.S.-Spain route, TLD must comply with the dominant carrier safeguards set forth in Section 63.10(c)(3) of the Commission's rules as well as the Commission's generally applicable safeguards for U.S. international carriers.

10. Sprint also asks that TLD be subject to the rules set forth in the Commission's Benchmarks Order. Pursuant to the Benchmarks Order and the Foreign Participation Order, we will condition any Section 214 authorization for facilities-based service to an affiliated market on the affiliated carrier offering U.S. international carriers a settlement rate for the affiliated market that is at or below the relevant benchmark (15%) adopted in the Benchmarks Order. In this instance, we note that Telefónica de España's settlement rate with U.S. carriers is .125 SDR (17%) and will go to .1 SDR (13.5%) on July 1, 1998. Therefore, on July 1, 1998, this condition will be satisfied.

11. Accordingly, we conclude that the public interest will be served by granting TLD's application. Therefore, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require a grant of the application as conditioned below.

V. Ordering Clauses

12. IT IS ORDERED that application File No. ITC-98-105 is GRANTED and Telefónica Larga Distancia de Puerto Rico, Inc. ("TLD") is authorized, pursuant to Section 214 of the Communications Act, as amended, to: (1) operate a digital submarine cable system known as the COLUMBUS II Cable System between the United States and Spain; (2) acquire capacity in COLUMBUS II for the provision of service between the United States and Spain; (3) acquire, by lease, such extension facilities as may be required to extend capacity in COLUMBUS II; (4) activate and operate capacity in COLUMBUS II and in the extension facilities for the provision of authorized services to Spain; (5) convey to its correspondents or to non-owners, half-interests, on an indefeasible right of user ("IRU") basis, as necessary for said IRU recipients to provide their authorized services over the COLUMBUS II Cable System; and (6) multiply, through the use of Digital Circuit Multiplication Equipment ("DCME"), the bearer channels acquired therein, thereby deriving up to the maximum attainable channels.

13. IT IS FURTHER ORDERED that TLD's tariffs must state that its customers may not re-sell international private lines or connect them to the public switched network for the provision of international basic telecommunications services unless authorized to do so by the Commission upon a country-specific finding that the Commission will permit the

provision of switched services over private lines between the United States and that country. See Market Entry and Regulation of Foreign-Affiliated Entities, Report and Order, 11 FCC Rcd 3873 (1995); Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Report and Order on Reconsideration, 12 FCC Rcd 23,891 (1997). The limitations in this paragraph are subject to the exceptions contained in Section 63.18(e)(4)(ii) of the Commission's rules, 47 C.F.R. 63.18(e)(4)(ii) (1997).

14. IT IS FURTHER ORDERED that the licensees of COLUMBUS II shall make available half-interests in COLUMBUS II capacity to such present and future U.S. carriers as may be authorized by the Commission to acquire such capacity.

15. IT IS FURTHER ORDERED that the Commission retains jurisdiction to reallocate U.S. carriers' interests in capacity herein authorized, as the public interest may require and with any requisite concurrence of the foreign administration or carriers concerned, in order to accommodate additional carriers or for other reasons.

16. IT IS FURTHER ORDERED that TLD shall comply with Sections 43.82, 63.19, and 63.21 and with all other relevant Commission rules and policies.

17. IT IS FURTHER ORDERED that TLD's authorization to provide facilities-based service to Spain is subject to the conditions specified in International Settlement Rates, Report and Order, 12 FCC Rcd 19,806 (1997), that is, TLD may provide facilities-based service to a region served by an affiliate that terminates U.S. international switched traffic only if that affiliate has in effect a settlement rate with U.S. international carriers that is at or below the Commission's relevant benchmark. See *id.* 231.

18. IT IS FURTHER ORDERED that TLD shall be regulated as a dominant carrier under Section 63.10 of the rules and shall comply with the requirements of paragraph (c) of that section for services between the United States and Spain.

19. This Order is issued under Section 0.261 of the Commission's Rules, 47 C.F.R. 0.261 (1996), and is effective upon adoption. Petitions for reconsideration under Section 1.106 of the Commission's Rules, 47 C.F.R. 1.106, or applications for review under Section 1.115 of the Commission's Rules, 47 C.F.R. 1.115, may be filed within 30 days of the public notice of this Memorandum Opinion, Order and Certificate (see 47 C.F.R. 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Diane J. Cornelli
Chief, Telecommunications Division
International Bureau

