

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of: )  
)  
INVESTIGATION OF THE FAILURE OF )  
TRACFONE WIRELESS, INC. TO FILE )  
REQUIRED REPORTS )

PUBLIC SERVICE  
COMMISSION

CASE NO. 2011-00322

RESPONSE TO COMMISSION STAFF'S  
FIRST REQUEST FOR INFORMATION

TracFone Wireless, Inc. ("TracFone"), in response to the First Request for Information filed by the Staff of the Kentucky Public Service Commission, provides the following responses.

**1. Explain, in detail, how TracFone provides Commercial Mobile Radio Service ('CMRS') to Kentucky consumers. Include all identifiable processes and/or operations utilized from the acquisition of airtime to the billing and/or usage tracking mechanisms relied on to manage end-user accounts.**

**ANSWER:** TracFone Wireless, Inc. is a wireless reseller. Such wireless resellers are often called mobile virtual network operators (MVNOs). TracFone provides CMRS to its customers in Kentucky by purchasing CMRS at negotiated wholesale prices from licensed CMRS network operators and reselling that service to consumers. Those CMRS network operators from whom TracFone purchases finished service at wholesale rates are themselves operators of licensed wireless telecommunications networks and are "utilities" as defined by K.R.S. 278.010(3)(e). TracFone has long term agreements with several major CMRS network operators, including AT&T Mobility, T-Mobile, and Verizon Wireless, that enable TracFone to resell those network operators' services. When TracFone initiates resale service to a consumer it determines which underlying carrier's network to use to provide its resold service to the customer. However, the network operator is solely responsible for operation and management of the network and for transmission of calls.

TracFone's customers are only able to use TracFone's service with a TracFone-provided handset purchased by the customer. The service is available only when there are airtime minutes remaining in the customer's account balance which is stored in the handset. Those handsets which are produced by major telecommunications equipment manufacturers contain software which enables customers to verify their account balances on a real time basis. Usage balances are stored in the handsets and are displayed on the handset screen. Usage balance information is not retained in any switch or other facility owned, controlled, operated or managed by TracFone. As a result, TracFone does not know how much available airtime remains for any customer.

TracFone's customers purchase prepaid wireless airtime cards at retail vendors (such as, for example, Wal-Mart, Best Buy, CVS, and others) or through TracFone's website (www.tracfone.com). Once purchased, customers activate the purchased usage and then add

those minutes to their account balances stored in the handset by entering a personal identification number (PIN). Each TracFone prepaid airtime card comes with a specified quantity of minutes of use and a service period that begins to run from the day the minutes are activated by the customer and added to the handset. Therefore, a customer must continue to purchase airtime in order to keep the CMRS service active, based on the airtime plan or card selected.

TracFone only offers prepaid service. TracFone does not provide post-paid service and does not issue bills to its customers. TracFone receives monthly invoices from its underlying network operator vendors for the wholesale services it purchases based on the volume of service which those network operators provide to TracFone which is then used by TracFone to provide resold CMRS service to its consumers.

The following are the core business processes currently in place to facilitate providing service to customers in Kentucky and other states:

- Sales of handsets
- Sales of wireless airtime
- Activation of purchased airtime
- Porting in and out of assigned telephone numbers
- Redemption of airtime
- Phone Upgrades and Exchanges
- Deactivations and Reactivations

None of these listed core business processes involve ownership, control, operation or management of any telecommunications network facility.

**2. Identify the entity responsible for managing each of the processes/operations identified in Item I above.**

**ANSWER:** TracFone is the entity responsible for managing each of the processes identified above, either by itself, or through outside vendors. All of the functions described above are either performed by TracFone personnel or under the supervision of TracFone personnel.

**3. Identify each of the underlying facilities-based carriers relied on to provide wireless services to consumers in Kentucky.**

**ANSWER:** AT&T Wireless, Bluegrass Cellular, Sprint, T-Mobile, Verizon Wireless.

**4. Provide any and all documents that describe and govern the terms and conditions for each arrangement in place between TracFone and the underlying facilities-based carriers relied on to provide wireless services to consumers in Kentucky.**

**ANSWER:** TracFone has entered into contractual agreements with each of the underlying carriers identified in the response to question 3 above. Those agreements are the result of arm's length negotiations between TracFone and each vendor. They are commercial agreements and are not subject to any federal or state regulatory requirements or to any federal or state regulatory

approval processes. They contain highly confidential and proprietary information. Such information (which includes highly proprietary pricing information) would cause irreparable harm to TracFone if the information were to become publicly available, specifically, if the terms of those proprietary agreements were to become available to any of TracFone's competitors. Accordingly, TracFone is unable to provide copies of those agreements unless it is compelled to do so, and then only upon prior notification to the other parties to those agreements and to issuance of an appropriate protective order which would contain suitable assurances against disclosure.

**5. Describe and provide documentation for all of TracFone's licensing and/or registration status with the Federal Communications Commission ("FCC") (e.g., FCC International Authorization - Section 214 and FCC Registration Form 499-A).**

**ANSWER:** TracFone holds no FCC licenses to operate wireless facilities. Attached to these responses is a copy of the Section 214 authorization (File No. ITC-214-2003040-00162) issued to TracFone by the FCC on May 1, 2003. Also, TracFone is registered with the Universal Service Administrative Company and files FCC Forms 499-Q and 499-A as required by the FCC's rules. Those forms contain highly proprietary and confidential financial information and will not be provided. However, TracFone's USAC Service Provider Identification Number is 143030103.

**6. Thoroughly compare and contrast TracFone's FCC regulatory classification (i.e., mobile virtual network operator ("MVNO")) with that of a facilities-based FCC licensed CMRS provider. Make sure to specifically identify any requirements for a CMRS provider that are not applicable to an MVNO.**

**ANSWER:** MVNO is a commonly-used term for resellers of CMRS service (*i.e.*, wireless resellers). It is not a regulatory status or licensing classification. For example, the FCC does not license or otherwise authorize entities as MVNOs. However, in order to utilize portions of the electromagnetic spectrum to provide CMRS service, entities must hold licenses to use such spectrum. Those licenses are issued by the FCC. Pursuant to the Communications Act of 1934, as amended, only the FCC has the authority to license private use of spectrum. Operators of wireless networks, including each of TracFone's underlying vendors identified in the response to no. 3 above, hold such licenses. MVNOs are not subject to licensing requirements.

Any entity which wishes to acquire rights to telecommunications facilities or services to provide telecommunications services must obtain consent from the FCC pursuant to Section 214 of the Communications Act (47 U.S.C. § 214). The requirement to obtain Section 214 authorization is applicable to resale of telecommunications services. Importantly, Section 214 is not a licensing requirement. Section 214 authorization confers no right to utilize any portion of the spectrum. Since the early 1980s, the FCC has not required most telecommunications carriers, including all resellers (wireline and wireless), to obtain Section 214 authorization for domestic telecommunications services. As a result, telecommunications carriers must only obtain Section 214 authorization to utilize facilities, including resold facilities, to provide international telecommunications service.

**7. According to TracFone’s website, the coverage for a subscriber encompasses the combined service areas of multiple CMRS providers. Explain how TracFone is able to combine the service areas of underlying facilities-based carriers to offer its services “everywhere that cellular service is offered.”**

**ANSWER:** TracFone is a MVNO that provides CMRS to its customers in Kentucky by purchasing CMRS at negotiated wholesale rates from licensed CMRS providers and reselling those providers’ finished services to consumers. The wireless telecommunications networks used to transmit calls for TracFone’s customers are owned, controlled, operated and managed by licensed CMRS providers, not by TracFone. TracFone has long term agreements with several major CMRS network operators whose coverage areas in the aggregate encompass most of the State of Kentucky and most of the United States, where any CMRS coverage is available. As a result of those network operators’ broad coverage areas, both within and outside Kentucky, TracFone is able to provide resold CMRS service to consumers virtually wherever there is any CMRS coverage.

**8. Explain how TracFone’s Eligible Telecommunications Carrier status compares with that of the underlying facilities-based CMRS providers. In particular, discuss the ETC obligations that TracFone has for subscribers and whether or not those same obligations are also being met by the underlying CMRS provider.**

**ANSWER:** Section 214(e)(1)(A) of the Communications Act (47 U.S.C. § 214(e)(1)(A)) requires that Eligible Telecommunications Carriers (“ETCs”) provide service supported by the Universal Service Fund using their own facilities or a combination of their own facilities and resale of other carriers’ services. Section 54.201(i) of the FCC’s rules (47 C.F.R. § 54.201(i)) contains a virtually identical facilities-based requirement. Those provisions preclude resellers, including MVNOs such as TracFone, from being designated as ETCs. However, in 2005, the FCC granted TracFone’s request that the FCC exercise its authority under Section 10 of the Communications Act (47 U.S.C. § 160) to forbear from application or enforcement of that facilities-based requirement. Petition of TracFone Wireless for Forbearance From 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. §54.201(i), 20 FCC Rd 15095 (2005). The FCC’s order granting forbearance was subject to a series of conditions which imposed certain requirements and limitations on TracFone which were not imposed on other ETCs who were not subject to forbearance. These include eligibility verification requirements, access to emergency calling service requirements, and certain enrollment requirements. In a report and order issued on February 6, 2012, the FCC promulgated rules to revise and modernize the Lifeline program. In the Matter of Lifeline Reform and Modernization, et al, FCC 12-11, released February 6, 2012. The Lifeline rules adopted in that report and order are applicable to all Lifeline providers and largely eliminate the special conditions imposed on TracFone and other resellers who became ETCs pursuant to FCC forbearance.

However, there remain certain ETC requirements which can only be met by the underlying carriers. For example, under 47 CFR 54.422 all ETCs are required to meet certain annual reporting requirements, including outage reporting and functionality in emergencies. MVNOs are not responsible for outages, and so must report information from their underlying carriers, or rely on the underlying carriers to report network outage information directly to the

FCC. In addition, MVNOs must rely on the records and capabilities of their underlying carriers when certifying their functionality in emergencies.

**9. TracFone states in its response to the Commission’s October 12, 2011 Order that it is a wireless reseller. Besides the ownership of towers, switches, and spectrum, distinguish the differences in a wireless reseller and a facilities-based wireless provider as related to providing service to a customer.**

**ANSWER:** It is impossible to set aside the issue of “ownership of towers, switches, and spectrum” because those are the things which render a carrier “facilities-based.” As stated previously, a wireless reseller must rely on the facilities of the underlying network operator to ensure dependable service, including functionality in emergencies. From a consumer perception perspective, there are not significant differences between service provided by wireless resellers and service provided by facilities-based wireless providers. Consumers access both types of providers’ services in the same manner. The critical difference is that resellers have no control over the networks used for providing the services. Moreover, KRS 278.013(3)(e) explicitly defines “utility” as “any person who owns, controls, operates, or manages any facility used or to be used in connection with . . . the transmission or conveyance over wire, in air, or otherwise, of any message, by telephone or telegraph for the public, for compensation.” In short, the Kentucky Legislature has chosen to define “utility,” based on ownership, control, operation, or management of telecommunications facilities; not based on the services provided.

**10. Distinguish the differences between a wireless reseller and a wireline reseller as related to providing service to a customer.**

**ANSWER:** Wireless resellers such as TracFone, purchase finished service from underlying facilities-based network operators (*i.e.*, utilities) at negotiated wholesale rates, and resell those finished services to consumers. Some wireline resellers similarly purchase finished services from underlying carriers at wholesale rates. Other wireless carriers lease facilities from underlying network providers. Such leases afford the lessee/reseller exclusive access to the leased facilities which they use to provide service to consumers. Wireless resellers such as TracFone do not have leasehold interests in any network operator’s facilities and do not have exclusive access or rights to use any facilities of such providers. Also, resale of wireline services and leasing of wireline facilities (specifically from local exchange carriers) is subject to specific statutory obligations and requirements codified at Sections 251 and 252 of the Communications Act (47 U.S.C. §§ 251, 252) and to prices approved by state commissions in accordance with the requirements of Sections 251 and 252 and with FCC rules promulgated to implement those sections. There are no such regulatory requirements applicable to resale of wireless services.

**11. Does TracFone provide customer service to its customers or contract with other companies to provide customer service?**

**ANSWER:** TracFone, like many other resellers, provides customer service using a combination of its own personnel and third party vendors.

**12. Does TracFone provide telecommunications service to the public for compensation?**

**ANSWER:** TracFone resells telecommunications services to the public for compensation. However, the statutory definition of “utility” as codified at KRS 278.010(3) is, as noted above, based on ownership, control, operation or management of facilities used in connection with the transmission or conveyance of telephone messages, for compensation. Transmitting or conveying such messages for compensation, absent ownership, control, operation or management of the facilities used for such transmission or conveyance, does not render an entity a “utility” under Kentucky law.

**13. Does TracFone have “means” as used in the KRS 278.010(11) definition of “Facility”?**

**ANSWER:** KRS 278.010(11) states as follows:

(11) “Facility” includes all property, means, and instrumentalities owned, operated, leased, licensed, used, furnished, or supplied for, by, or in connection with the business of any utility;

Therefore the definition of “means” is limited to those items connected in the enumerated ways to “the business of a utility.” KRS 278.010(3) defines a “utility” (in relevant part):

“Utility” means any person...who owns, controls, operates, or manages any facility used or to be used for or in connection with...the transmission or conveyance over wire, in air, or otherwise, of any message by telephone or telegraph for the public, for compensation.”

The business of a “utility” hinges on the actual “transmission or conveyance” of messages for the public. “Means,” within the definition of facility is limited to that which can be used for the transmission or conveyance of messages. TracFone has no such “means.” It is wholly dependent on underlying carriers, *i.e.*, the licensed wireless network operators who are themselves utilities as defined at KRS 278.010(3)(e), to provide its resale service. Further, the statutory phrase “owns, controls, operates or manages” indicates the utility must have a legal interest (by ownership or lease, for example) in the “facility” at issue and the ability to operate, control, or manage said facility.

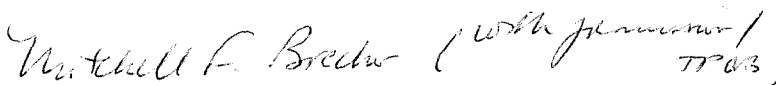
Respectfully submitted,

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# PUBLIC NOTICE

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DA No. 03-1478

Report No. TEL-00663

Thursday May 1, 2003

## INTERNATIONAL AUTHORIZATIONS GRANTED

### Section 214 Applications (47 C.F.R. § 63.18); Cable Landing License Applications (47 C.F.R. § 1.767); Requests to Authorize Switched Services over Private Lines (47 C.F.R. § 63.16); Section 310(b)(4) Requests

The following applications have been granted pursuant to the Commission's streamlined processing procedures set forth in Section 63.12 of the Commission's rules, 47 C.F.R. § 63.12, other provisions of the Commission's rules, or procedures set forth in an earlier public notice listing applications accepted for filing.

Unless otherwise noted, these grants authorize the applicants (1) to become a facilities-based international common carrier subject to 47 C.F.R. § 63.22; and/or (2) to become a resale-based international common carrier subject to 47 C.F.R. § 63.23; or (3) to exceed the 25 percent foreign ownership benchmark applicable to common carrier radio licensees under 47 U.S.C. § 310(b)(4). Grants under Section 63.16 and certain grants under Section 63.18 also authorize carriers generally to use their authorized private lines to provide switched services (ISR) between the United States and particular international points pursuant to 47 C.F.R. § 63.16. See also 47 C.F.R. §§ 63.22(e), 63.23(d).

This public notice serves as each newly authorized carrier's Section 214 certificate. It contains general and specific conditions, which are set forth below. Newly authorized carriers should carefully review the terms and conditions of their authorizations. These are set forth in detail below and in Sections 63.21, 63.22, and 63.23 of the Commission's rules, 47 C.F.R. §§ 63.21-23. Failure to comply with general or specific conditions of an authorization, or with other relevant Commission rules and policies, could result in fines and forfeitures.

The Commission most recently amended its rules applicable to international telecommunications common carriers in 2000 Biennial Regulatory Review, Policy and Rules Concerning the International, Interexchange Marketplace, FCC 01-93, released, March 20, 2001, 66 Fed. Reg. 16874 (Mar. 28, 2001). See also IB Docket No. 97-142, Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Order on Reconsideration, 15 FCC Rcd 18158 (2000); IB Docket No. 98-118, Review of International Common Carrier Regulations, FCC 99-51, released March 23, 1999, 64 Fed. Reg. 19,057 (Apr. 19, 1999) and in IB Docket Nos. 98-148, 95-22, CC Docket No. 90-337 (Phase II), 1998 Biennial Regulatory Review - Reform of the International Settlements Policy and Associated Filing Requirements, FCC 99-73, released May 6, 1999, 64 Fed. Reg. 34, 734 (June 29, 1999). An updated version of Sections 63.09-24 of the rules, and other related sections, is available at <http://www.fcc.gov/ib/td/pf/telecomrules.html>.

ITC-214-20030314-00148 P

EMS Technologies Canada, LTD

International Telecommunications Certificate

Service(s): Global or Limited Global Resale Service

Grant of Authority

Date of Action: 04/25/2003

Application for authority to provide service in accordance with Section 63.18(e)(2) of the rules.



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ITC-214-20030325-00173 E Colorado Communications Network, Inc. d/b/a Hospitality Communications  
International Telecommunications Certificate  
Service(s): Global or Limited Global Resale Service  
Grant of Authority Date of Action: 04/25/2003

Application to provide service in accordance with Section 63.18(e)(2) of the rules.

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ITC-214-20030327-00176 P Independent Telecommunications Systems, Inc. ( d/b/a ITS Communications, d/b/a  
IXC Direct, Inc. )  
International Telecommunications Certificate  
Service(s): Global or Limited Global Facilities-Based AND Resale Service  
Grant of Authority Date of Action: 04/25/2003

Application for authority to provide facilities-based service in accordance with Section 63.18(e)(1) of the rules, and also to provide service in accordance with Section 63.18(e)(2) of the rules.

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ITC-214-20030401-00162 E TracFone Wireless, Inc.  
International Telecommunications Certificate  
Service(s): Global or Limited Global Resale Service  
Grant of Authority Date of Action: 04/25/2003

Application for authority to resell the international switched services of unaffiliated U.S. international facilities-based carriers, either directly or indirectly through the resale of another U.S. resale carrier's international switched services, pursuant to Section 63.18(e)(2) of the rules.

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ITC-214-20030402-00166 E TOTAL ROUTE COMMUNICATIONS, INC  
International Telecommunications Certificate  
Service(s): Global or Limited Global Facilities-Based Service, Global or Limited Global Resale Service  
Grant of Authority Date of Action: 04/25/2003

Application for authority to provide facilities-based service in accordance with Section 63.18(e)(1) of the rules, and also to provide service in accordance with Section 63.18(e)(2) of the rules.

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ITC-214-20030404-00169 E Guam Cable Group, Inc.  
International Telecommunications Certificate  
Service(s): Global or Limited Global Facilities-Based Service, Global or Limited Global Resale Service  
Grant of Authority Date of Action: 04/25/2003

Application for authority to provide facilities-based service in accordance with Section 63.18(e)(1) of the rules, and also to provide service in accordance with Section 63.18(e)(2) of the rules.

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ITC-214-20030404-00170 E Mitex International Inc.  
International Telecommunications Certificate  
Service(s): Global or Limited Global Facilities-Based Service, Global or Limited Global Resale Service  
Grant of Authority Date of Action: 04/25/2003

Application for authority to provide facilities-based service in accordance with Section 63.18(e)(1) of the rules, and also to provide service in accordance with Section 63.18(e)(2) of the rules.

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ITC-214-20030407-00177 E Gen Tel Inc  
International Telecommunications Certificate  
Service(s): Global or Limited Global Facilities-Based Service, Global or Limited Global Resale Service  
Grant of Authority Date of Action: 04/25/2003

Application for authority to provide facilities-based service in accordance with Section 63.18(e)(1) of the rules, and also to provide service in accordance with Section 63.18(e)(2) of the rules.

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ITC-214-20030408-00178 E VOCITEL CORP  
International Telecommunications Certificate  
Service(s): Global or Limited Global Facilities-Based Service  
Grant of Authority Date of Action: 04/25/2003

Application for authority to provide facilities-based service in accordance with Section 63.18(e)(1) of the rules, and also to provide service in accordance with Section 63.18(e)(2) of the rules

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ITC-214-20030409-00179 E Open Access Communications, Inc.  
International Telecommunications Certificate  
Service(s): Global or Limited Global Resale Service  
Grant of Authority Date of Action: 04/25/2003

Application for authority to provide service in accordance with Section 63.18(e)(2) of the rules.

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ITC-214-20030409-00181 E GSI Communications, Inc.  
International Telecommunications Certificate  
Service(s): Global or Limited Global Facilities-Based Service, Global or Limited Global Resale Service  
Grant of Authority Date of Action: 04/25/2003

Application for authority to provide facilities-based service in accordance with Section 63.18(e)(1) of the rules, and also to provide service in accordance with Section 63.18(e)(2) of the rules.

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ITC-ASG-20021105-00613 P Adelphia Telecommunications, Inc., Debtor-in-Possession  
Assignment  
Grant of Authority Date of Action: 04/30/2003

**Current Licensee:** Adelphia Telecommunications, Inc.

**FROM:** Adelphia Telecommunications, Inc.

**TO:** Adelphia Telecommunications, Inc., Debtor-in-Possession

Notification of the pro forma assignment of international section 214 authorization (ITC-214-19970206-00065 global resale) held by Adelphia Telecommunications, Inc., from Adelphia Telecommunications, Inc. to Adelphia Telecommunications, Inc., Debtor-in-Possession (DIP)

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ITC-ASG-20021105-00614 P Adelphia Telecommunications of Florida, Inc., Debtor-in-Possession  
Assignment  
Grant of Authority Date of Action: 04/30/2003

**Current Licensee:** Adelphia Telecommunications of Florida, Inc.

**FROM:** Adelphia Telecommunications of Florida, Inc.

**TO:** Adelphia Telecommunications, Inc., Debtor-in-Possession

Notification of the pro forma assignment of international section 214 authorization (ITC-214-19970206-00066 global resale) held by Adelphia Telecommunications of Florida, Inc., from Adelphia Telecommunications of Florida, Inc. to Adelphia Telecommunications of Florida, Inc., Debtor-in-Possession (DIP).

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ITC-ASG-20030327-00163 E

Econocall, LLC

Assignment

Grant of Authority

Date of Action: 04/25/2003

**Current Licensee:** Econ-o-Call, Inc.

**FROM:** Econ-o-Call, Inc.

**TO:** Econocall, LLC

Application for consent to assign Section 214 authorization (ITC-98-227, DA 98-824, rel. April 30, 1998), from Econ-o-Call, Inc. to Econocall, LLC. This authorization is without prejudice to the Commission's action on other related pending application(s).

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## CONDITIONS APPLICABLE TO INTERNATIONAL SECTION 214 AUTHORIZATIONS

(1) These authorizations are subject to the Exclusion List for International Section 214 Authorizations, which identifies restrictions on providing service to particular countries or using particular facilities. The most recent Exclusion List is attached to this Public Notice. The list applies to all U.S. international carriers, including those that have previously received global or limited global Section 214 authority, whether by streamlined grant or specific written order. Carriers are advised that the attached Exclusion List is subject to amendment at any time pursuant to the procedures set forth in Streamlining the International Section 214 Authorization Process and Tariff Requirements, IB Docket No. 95-118, 11 FCC Rcd 12884 (1996), para. 18. A copy of the current Exclusion List will be maintained in the FCC Reference and Information Center and will be available at <http://www.fcc.gov/ib/td/pf/exclusionlist.html>. It also will be attached to each Public Notice that grants international Section 214 authority.

(2) The export of telecommunications services and related payments to countries that are subject to economic sanctions may be restricted. For information concerning current restrictions, call the Office of Foreign Assets Control, U.S. Department of the Treasury, (202) 622-2520.

(3) Carriers shall comply with the requirements of Section 63.11 of the Commission's rules, which requires notification by, and in certain circumstances prior notification by, U.S. carriers acquiring an affiliation with foreign carriers. A carrier that acquires an affiliation with a foreign carrier will be subject to possible reclassification as a dominant carrier on an affiliated route pursuant to the provisions of Section 63.10 of the rules. The Commission recently amended Section 63.11 of the rules in its Order on Reconsideration in IB Docket No. 97-142, 15 FCC Rcd 18158 (2000).

(4) Carriers shall comply with the Commission's International Settlements Policy and associated filing requirements contained in Sections 43.51 and 64.1001 of the Commission's Rules, 47 C.F.R. §§ 43.51, 64.1001. The Commission modified these requirements most recently in 2000 Biennial Regulatory Review, Policy and Rules Concerning the International, Interexchange Marketplace, FCC 01-93, released, March 20, 2001, 66 Fed. Reg. 16874 (Mar. 28, 2001). See also 1998 Biennial Regulatory Review - Reform of the International Settlements Policy and Associated Filing Requirements, IB Docket Nos. 98-148, 95-22, CC Docket No. 90-337 (Phase II), FCC 99-73 (rel. May 6, 1999). In addition, any carrier interconnecting private lines to the U.S. public switched network at its switch, including any switch in which the carrier obtains capacity either through lease or otherwise, shall file annually with the Chief, International Bureau, a certified statement containing, on a country-specific basis, the number and type (e.g., 64 kbps circuits) of private lines interconnected in such manner. The Commission will treat the country of origin information as confidential. Carriers need not file their contracts for interconnection unless the Commission specifically requests. Carriers shall file their annual report on February 1 (covering international private lines interconnected during the preceding January 1 to December 31 period) of each year. International private lines to countries for which the Commission has authorized the provision of switched basic services over private lines at any time during a particular reporting period are exempt from this requirement. See 47 C.F.R. § 43.51(d).

(5) Carriers authorized to provide private line service either on a facilities or resale basis are limited to the provision of such private line service only between the United States and those foreign points covered by their referenced applications for Section 214 authority. In addition, the carriers may not -- and their tariffs must state that their customers may not -- connect their private lines to the public switched network at either the U.S. or foreign end, or both, for the provision of international switched basic services, unless the Commission has authorized the provision of switched services over private lines to the particular country at the foreign end of the private line or the carrier is exchanging switched traffic with a foreign carrier that the Commission has determined lacks market power in the country at the foreign end of the private line. See 47 C.F.R. §§ 63.16, 63.22(e), 63.23(d). A foreign carrier lacks market power for purposes of this rule if it does not appear on the Commission list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points. This list is available at [http://www.fcc.gov/Bureaus/International/Public\\_Notices/1999/da990809.txt](http://www.fcc.gov/Bureaus/International/Public_Notices/1999/da990809.txt). See generally 1998 Biennial Regulatory Review - Reform of the International Settlements Policy and Associated Filing Requirements, IB Docket Nos. 98-148, 95-22, CC Docket No. 90-337 (Phase II), FCC 99-73 (rel. May 6, 1999), paras. 12-15, 102-109.

(6) The Commission has authorized the provision of switched basic services via facilities-based or resold private lines between the United States and the following foreign points: Sweden, Canada, New Zealand, the United Kingdom, Australia, The Netherlands, Luxembourg, Norway, Denmark, France, Germany, Belgium, Austria, Switzerland, Japan, Italy, Ireland, Hong Kong, Iceland, Spain, Finland, Israel, Singapore, Netherlands Antilles, Poland, Argentina, United Arab Emirates, Macau, Hungary, Philippines, Greece, Uruguay, Brunei, Trinidad & Tobago, Czech Republic, the Dominican Republic, Brazil, Botswana, Costa Rica, South Africa, Saint Lucia, Saint Kitts & Nevis, Saint Vincent, Antigua, Malaysia, Thailand, Belize, Panama, Guatemala, Venezuela, Bahrain, South Korea, Portugal, Cyprus, Slovak Republic, Slovenia, Dominica, Grenada, Jamaica, Kuwait, Jordan, Paraguay, Croatia, Egypt, Zambia, Ecuador, Barbados, Colombia, Chile, El

Salvador, Taiwan, Nicaragua, Turkey, Peru, Morocco, Ghana, Bolivia, Guyana, Mongolia, Zimbabwe, Gambia, Nigeria, Bangladesh, Indonesia, and Tunisia.

(7) Carriers may engage in "switched hubbing" to countries for which the Commission has not authorized the provision of switched basic services over private lines consistent with Section 63.17(b) of the rules.

(8) Carriers may provide U.S. inbound or outbound switched basic service via their authorized private lines extending between or among the United States, Sweden, New Zealand, the United Kingdom, Australia, The Netherlands, Luxembourg, Norway, Denmark, France, Germany, Belgium, Austria, Switzerland, Japan, Italy, Ireland, Hong Kong, Iceland, Spain, Finland, Israel, Singapore, Netherlands Antilles, Poland, Argentina, United Arab Emirates, Macau, Hungary, Philippines, Greece, Uruguay, Brunei, Trinidad & Tobago, Czech Republic, the Dominican Republic, Brazil, Botswana, Costa Rica, South Africa, Saint Lucia, Saint Kitts & Nevis, Saint Vincent, Antigua, Malaysia, Thailand, Belize, Panama, Guatemala, Venezuela, Bahrain, South Korea, Portugal, Cyprus, Slovak Republic, Slovenia, Dominica, Grenada, Jamaica, Kuwait, Jordan, Paraguay, Croatia, Egypt, Zambia, Ecuador, Barbados, Colombia, Chile, El Salvador, Taiwan, Nicaragua, Turkey, Peru, Morocco, Ghana, Bolivia, Guyana, Mongolia, Zimbabwe, Gambia, Nigeria, Bangladesh, Indonesia, and Tunisia.

(9) Carriers shall comply with the "No Special Concessions" rule, Section 63.14, 47 C.F.R. § 63.14.

(10) Carriers regulated as dominant for the provision of a particular communications service on a particular route for any reason other than a foreign carrier affiliation under Section 63.10 of the rules shall file tariffs pursuant to Section 203 of the Communications Act, as amended, 47 U.S.C. § 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61. Except as specified in Section 20.15 with respect to commercial mobile radio service providers, carriers regulated as non-dominant, as defined in Section 61.3, and providing detariffed international services pursuant to Section 61.19 must comply with all applicable public disclosure and maintenance of information requirements in Sections 42.10 and 42.11. These non-dominant carriers may continue filing new or revised international tariffs for mass market services until January 28, 2002, when all tariffs, with limited exceptions, must be cancelled. Carriers may not file any new or revised contract tariffs or tariffs for other long-term international service arrangements. See 2000 Biennial Regulatory Review, Policy and Rules Concerning the International, Interexchange Marketplace, FCC 01-93, released March 20, 2001, 66 Fed. Reg. 16874 (Mar. 28, 2001).

(11) Carriers shall file the annual reports of overseas telecommunications traffic required by Section 43.61(a). Carriers shall also file the quarterly reports required by Section 43.61 in the circumstances specified in paragraphs (b) and (c) of that Section.

(12) Carriers shall file annual reports of circuit status and/or circuit additions in accordance with the requirements set forth in Rules for Filing of International Circuit Status Reports, CC Docket No. 93-157, Report and Order, 10 FCC Rcd 8605 (1995). See 47 C.F.R. §§ 43.82, 63.23(e). These requirements apply to facilities-based carriers and private line resellers, respectively.

(13) Carriers should consult Section 63.19 of the rules when contemplating a discontinuance, reduction or impairment of service. Further, the grant of these applications shall not be construed to include authorization for the transmission of money in connection with the services the applicants have been given authority to provide. The transmission of money is not considered to be a common carrier service.

(14) If any carrier is reselling service obtained pursuant to a contract with another carrier, the services obtained by contract shall be made generally available by the underlying carrier to similarly situated customers at the same terms, conditions and rates. 47 U.S.C. § 203.

(15) To the extent that any of the above-listed applicants intends to provide international call-back services through the use of uncompleted call signaling, its authorization to resell international switched voice and/or data services to provide these services is expressly subject to the conditions listed in VIA USA Ltd., et al., 9 FCC Rcd 2288 (1994), on recon., 10 FCC Rcd 9540 (1995).

(16) To the extent the applicant is, or is affiliated with, an incumbent independent local exchange carrier, as those terms are defined in Section 64.1902 of the rules, it shall provide the authorized services in compliance with the requirements of Section 64.1903. See Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace, Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, 12 FCC Rcd 15756, recon., 12 FCC Rcd 8730 (1997), Order, 13 FCC Rcd 6427 (Com. Car. Bur. 1998), further recon., FCC 99-103 (rel. June 30, 1999).

(17) Except as otherwise ordered by the Commission, a carrier authorized here to provide facilities-based service that (i) is classified as dominant under Section 63.10 of the rules for the provision of such service on a particular route and (ii) is affiliated with a carrier that collects settlement payments for terminating U.S. international switched traffic at the foreign end of that route may not provide facilities-based service on that route unless the current rates the affiliate charges U.S. international carrier to terminate traffic are at or below the Commission's relevant benchmark adopted in International Settlement Rates, IB Docket No. 96-261, Report and Order, 12 FCC Rcd 19806 (1997). See also Report and Order on Reconsideration and Order Lifting Stay in IB Docket No. 96-261, FCC 99-124 (rel. June 11, 1999). For the purposes of this rule, "affiliation" and "foreign carrier" are defined in Section 63.09.

Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules in regard to the grant of any of these applications may be filed within thirty days of this public notice (see Section 1.4(b)(2)).

For additional information, please contact the FCC Reference and Information Center, Room CY-A257, 445 12th Street SW, Washington, D.C. 20554, (202) 418-0270.

#### Exclusion List for International Section 214 Authorizations

-- Last Modified December 22, 1999 --

The following is a list of countries and facilities not covered by grant of global Section 214 authority under Section 63.18(e)(1) of the Commission's Rules, 47 C.F.R. § 63.18(e)(1). In addition, the facilities listed shall not be used by U.S. carriers authorized under Section 63.18 of the Commission's Rules unless the carrier's Section 214 authorization specifically lists the facility. Carriers desiring to serve countries or use facilities listed as excluded hereon shall file a separate Section 214 application pursuant to Section 63.18(e)(4) of the Commission's Rules. See generally 47 C.F.R. § 63.22.

#### Countries:

Cuba (Applications for service to Cuba shall comply with the separate filing requirements of the Commission's Public Notice Report No. I-6831, dated July 27, 1993, "FCC to Accept Applications for Service to Cuba.")

#### Facilities:

All non-U.S.-licensed satellite systems that are not on the Permitted Space Station List, maintained at <http://www.fcc.gov/ib/sd/se/permitted.html>. See International Bureau Public Notice, DA 99-2844 (rel. Dec. 17, 1999).

This list is subject to change by the Commission when the public interest requires. Before amending the list, the Commission will first issue a public notice giving affected parties the opportunity for comment and hearing on the proposed changes. The Commission may then release an order amending the exclusion list. This list also is subject to change upon issuance of an

Executive Order. See Streamlining the Section 214 Authorization Process and Tariff Requirements, IB Docket No. 95-118, FCC 96-79, 11 FCC Rcd 12,884, released March 13, 1996 (61 Fed. Reg. 15,724, April 9, 1996). A current version of this list is maintained at <http://www.fcc.gov/ib/td/pf/telecomrules.html#exclusionlist>.

For additional information, contact the International Bureau's Policy Division, (202) 418-1460.