

§ 63.04

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internal corporate restructuring, remains subject to all applicable conditions of service after an internal restructuring, such as rules governing slamming and tariffing.

[67 FR 18831, Apr. 17, 2002; 67 FR 21803, May 1, 2002]

§ 63.04 Filing procedures for domestic transfer of control applications

(a) *Domestic services only.* A carrier seeking domestic section 214 authorization for transfer of control should file an application containing:

(1) The name, address and telephone number of each applicant;

(2) The government, state, or territory under the laws of which each corporate or partnership applicant is organized;

(3) The name, title, post office address, and telephone number of the officer or contact point, such as legal counsel, to whom correspondence concerning the application is to be addressed;

(4) The name, address, citizenship and principal business of any person or entity that directly or indirectly owns at least ten (10) percent of the equity of the applicant, and the percentage of equity owned by each of those entities (to the nearest one (1) percent);

(5) Certification pursuant to §§1.2001 through 1.2003 of this chapter that no party to the application is subject to a denial of Federal benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988. *See* 21 U.S.C. 853.

(6) A description of the transaction;

(7) A description of the geographic areas in which the transferor and transferee (and their affiliates) offer domestic telecommunications services, and what services are provided in each area;

(8) A statement as to how the application fits into one or more of the presumptive streamlined categories in this section or why it is otherwise appropriate for streamlined treatment;

(9) Identification of all other Commission applications related to the same transaction;

(10) A statement of whether the applicants are requesting special consideration because either party to the transaction is facing imminent business failure;

(11) Identification of any separately filed waiver requests being sought in conjunction with the transaction; and

(12) A statement showing how grant of the application will serve the public interest, convenience and necessity, including any additional information that may be necessary to show the effect of the proposed transaction on competition in domestic markets.

(b) *Domestic/International applications for transfers of control.* Where an applicant wishes to file a joint international section 214 transfer of control application and domestic section 214 transfer of control application, the applicant should submit information that satisfies the requirements of §63.18, which specifies the contents of applications for international authorizations, together with filing fees that satisfy (and are in accordance with filing procedures applicable to) both §§1.1105 and 1.1107 of this chapter. In an attachment to the international application, the applicant should submit the information described in paragraphs (a)(6) through (a)(12) of this section.

[67 FR 18832, Apr. 17, 2002]

§ 63.09 Definitions applicable to international Section 214 authorizations.

The following definitions shall apply to §§63.09–63.24 of this part, unless the context indicates otherwise:

(a) *Facilities-based carrier* means a carrier that holds an ownership, infeasible-right-of-user, or leasehold interest in bare capacity in the U.S. end of an international facility, regardless of whether the underlying facility is a common carrier or non-common carrier submarine cable or a satellite system.

(b) *Control* includes actual working control in whatever manner exercised and is not limited to majority stock ownership. *Control* also includes direct or indirect control, such as through intervening subsidiaries.

(c) *Special concession* is defined as in §63.14(b) of this part.

(d) *Foreign carrier* is defined as any entity that is authorized within a foreign country to engage in the provision of international telecommunications services offered to the public in that country within the meaning of the

International Telecommunication Regulations, see Final Acts of the World Administrative Telegraph and Telephone Conference, Melbourne, 1988 (WATTC-88), Art. 1, which includes entities authorized to engage in the provision of domestic telecommunications services if such carriers have the ability to originate or terminate telecommunications services to or from points outside their country.

(e) Two entities are *affiliated* with each other if one of them, or an entity that controls one of them, directly or indirectly owns more than 25 percent of the capital stock of, or controls, the other one.

Also, a U.S. carrier is *affiliated* with two or more foreign carriers if the foreign carriers, or entities that control them, together directly or indirectly own more than 25 percent of the capital stock of, or control, the U.S. carrier and those foreign carriers are parties to, or the beneficiaries of, a contractual relation (e.g., a joint venture or market alliance) affecting the provision or marketing of international basic telecommunications services in the United States.

(f) *Market power* means sufficient market power to affect competition adversely in the U.S. market.

(g) As used in this part, the term:

(1) *Interlocking directorates* shall mean persons or entities who perform the duties of "officer or director" in an authorized U.S. international carrier or an applicant for international Section 214 authorization who also performs such duties for any foreign carrier.

(2) *Officer or director* shall include the duties, or any of the duties, ordinarily performed by a director, president, vice president, secretary, treasurer, or other officer of a carrier.

NOTE 1: The assessment of "capital stock" ownership will be made under the standards developed in Commission case law for determining such ownership. See, e.g., Fox Television Stations, Inc., 10 FCC Rcd 8452 (1995). "Capital stock" includes all forms of equity ownership, including partnership interests.

NOTE 2: Ownership and other interests in U.S. and foreign carriers will be attributed to their holders and deemed cognizable pursuant to the following criteria: Attribution of ownership interests in a carrier that are held indirectly by any party through one or more intervening corporations will be deter-

mined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that wherever the ownership percentage for any link in the chain that is equal to or exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest. For example, if A owns 30 percent of company X, which owns 60 percent of company Y, which owns 26 percent of "carrier," then X's interest in "carrier" would be 26 percent (the same as Y's interest because X's interest in Y exceeds 50 percent), and A's interest in "carrier" would be 7.8 percent (0.30×0.26) because A's interest in X is less than 50 percent. Under the 25 percent attribution benchmark, X's interest in "carrier" would be cognizable, while A's interest would not be cognizable.

[64 FR 19062, Apr. 19, 1999, as amended at 65 FR 60116, Oct. 10, 2000; 67 FR 45390, July 9, 2002]

§ 63.10 Regulatory classification of U.S. international carriers.

(a) Unless otherwise determined by the Commission, any party authorized to provide an international communications service under this part shall be classified as either dominant or non-dominant for the provision of particular international communications services on particular routes as set forth in this section. The rules set forth in this section shall also apply to determinations of regulatory status pursuant to §§ 63.11 and 63.13. For purposes of paragraphs (a)(2) and (a)(3) of this section, the relevant markets on the foreign end of a U.S. international route include: international transport facilities or services, including cable landing station access and backhaul facilities; inter-city facilities or services; and local access facilities or services on the foreign end of a particular route.

(1) A U.S. carrier that has no affiliation with, and that itself is not, a foreign carrier in a particular country to which it provides service (i.e., a destination country) shall presumptively be considered non-dominant for the provision of international communications services on that route;

(2) Except as provided in paragraph (a)(4) of this section, a U.S. carrier that is, or that has or acquires an affiliation