

**§ 63.22 Facilities-based international common carriers.**

The following conditions apply to authorized facilities-based international carriers:

(a) A carrier authorized under § 63.18(e)(1) may provide international facilities-based services to international points for which it qualifies for non-dominant regulation as set forth in § 63.10, except in the following circumstance: If the carrier is, or is affiliated with, a foreign carrier in a destination market and the Commission has not determined that the foreign carrier lacks market power in the destination market (see § 63.10(a)), the carrier shall not provide service on that route unless it has received specific authority to do so under § 63.18(e)(3).

(b) The carrier may provide service using half-circuits on any U.S. common carrier and non-common carrier facilities that do not appear on an exclusion list published by the Commission. Carriers may also use any necessary non-U.S.-licensed facilities, including any submarine cable systems, that do not appear on the exclusion list. Carriers may not use U.S. earth stations to access non-U.S.-licensed satellite systems unless the Commission has specifically approved the use of those satellites and so indicates on the exclusion list. The exclusion list is available from the International Bureau's World Wide Web site at <http://www.fcc.gov/ib>.

(c) Specific authority under § 63.18(e)(3) is required for the carrier to provide service using any facilities listed on the exclusion list, to provide service between the United States and any country on the exclusion list, or to construct, acquire, or operate lines in any new major common carrier facility project.

(d) The carrier may provide international basic switched, private line, data, television and business services.

(e) The carrier shall file annual international circuit capacity reports as required by § 43.62 of this chapter.

(f) The terms and conditions of any operating or other agreement relating to the exchange of services, interchange or routing of traffic and matters concerning rates, accounting rates, division of tolls, the allocation of return traffic, or the basis of settle-

ment of traffic balances, entered into by U.S. common carriers authorized pursuant to this part to provide facilities-based switched voice service on the U.S.-Cuba route in correspondence with a Cuban carrier that does not qualify for the presumption that it lacks market power in Cuba, shall be identical to the equivalent terms and conditions in the operating agreement of another carrier providing the same or similar service between the United States and Cuba. Carriers may seek waiver of this requirement. *See International Settlements Policy Reform, Report and Order, IB Docket Nos. 11-80, 05-254, 09-10, RM 11322, FCC 12-145 (rel. November 29, 2012).*

(g) A carrier or other party may request Commission intervention on any U.S. international route for which competitive problems are alleged by filing with the International Bureau a petition, pursuant to this section, demonstrating anticompetitive behavior by foreign carriers that is harmful to U.S. customers. The Commission may also act on its own motion. Carriers and other parties filing complaints must support their petitions with evidence, including an affidavit and relevant commercial agreements. The International Bureau will review complaints on a case-by-case basis and take appropriate action on delegated authority pursuant to § 0.261 of this chapter. Interested parties will have 10 days from the date of issuance of a public notice of the petition to file comments or oppositions to such petitions and subsequently 7 days for replies. In the event significant, immediate harm to the public interest is likely to occur that cannot be addressed through *post facto* remedies, the International Bureau may impose temporary requirements on carriers authorized pursuant to § 63.18 of this chapter without prejudice to its findings on such petitions.

(h) The authority granted under this part is subject to all Commission rules and regulations and any conditions or limitations stated in the Commission's public notice or order that serves as the carrier's Section 214 certificate. See §§ 63.12, 63.21 of this part.

NOTE 1 TO § 63.22: For purposes of this section, *foreign carrier* is defined in § 63.09 of this chapter.

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NOTE 2 TO § 63.22: For purposes of this section, a *foreign carrier* shall be considered to possess market power if it appears on the Commission's list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points. This list is available on the International Bureau's World Wide Web site at <http://www.fcc.gov/ib>. The Commission will include on the list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points any foreign carrier that has 50 percent or more market share in the international transport or local access markets of a foreign point. A party that seeks to remove such a carrier from the Commission's list bears the burden of submitting information to the Commission sufficient to demonstrate that the foreign carrier lacks 50 percent market share in the international transport and local access markets on the foreign end of the route or that it nevertheless lacks sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market. A party that seeks to add a carrier to the Commission's list bears the burden of submitting information to the Commission sufficient to demonstrate that the foreign carrier has 50 percent or more market share in the international transport or local access markets on the foreign end of the route or that it nevertheless has sufficient market power to affect competition adversely in the U.S. market.

[64 FR 19065, Apr. 19, 1999, as amended at 64 FR 34741, June 29, 1999; 67 FR 45391, July 9, 2002; 69 FR 23154, Apr. 28, 2004; 78 FR 11112, Feb. 15, 2013; 78 FR 15624, Mar. 12, 2013]

### § 63.23 Resale-based international common carriers.

The following conditions apply to carriers authorized to resell the international services of other authorized carriers:

(a) A carrier authorized under § 63.18(e)(2) may provide resold international services to international points for which the applicant qualifies for non-dominant regulation as set forth in § 63.10, except that the carrier may not provide either of the following services unless it has received specific authority to do so under § 63.18(e)(3):

(1) Resold switched services to a non-WTO Member country where the applicant is, or is affiliated with, a foreign carrier; and

(2) Switched or private line services over resold private lines to a destination market where the applicant is, or is affiliated with, a foreign carrier and

the Commission has not determined that the foreign carrier lacks market power in the destination market (see § 63.10(a)).

(b) The carrier may not resell the international services of an affiliated carrier regulated as dominant on the route to be served unless it has received specific authority to do so under § 63.18(e)(3).

(c) Subject to the limitations specified in paragraph (b) of this section and in § 63.17(b), the carrier may provide service by reselling the international services of any other authorized U.S. common carrier or foreign carrier, or by entering into a roaming or other arrangement with a foreign carrier, for the provision of international basic switched, private line, data, television and business services to all international points.

NOTE TO PARAGRAPH (c): For purposes of this paragraph, a roaming arrangement with a foreign carrier is defined as an arrangement under which the subscribers of a U.S. commercial mobile radio service provider use the facilities of a foreign carrier with which the subscriber has no direct pre-existing service or financial relationship to place a call from the foreign country to the United States.

(d) The carrier may provide switched basic services over its authorized resold private lines in either of the following two circumstances:

(1) The country at the foreign end of the private line appears on the Commission's list of international routes exempted from the international settlements policy set forth in § 64.1002 of this chapter; or

(2) The carrier is exchanging switched traffic with a foreign carrier that lacks market power in the country at the foreign end of the private line. A foreign carrier lacks market power for purposes of this section if it does not appear on the Commission's list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points.

NOTE TO PARAGRAPH (d): The Commission's list of international routes exempted from the international settlements policy, and the Commission's list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign