

5. The Advisers will not enter into a sub-advisory agreement with any sub-adviser that is an affiliated person, as defined in section 2(a)(3) of the Act, the advisers, or the Trusts other than by reason of serving as sub-adviser to one or more Series ("Affiliated Sub-Adviser") without such agreement, including compensation to be paid thereunder, being approved by the shareholders of the applicable Series.

6. At all times, a majority of the trustees of the Trusts will be persons each of whom is not an "interested person" of each of the Trusts (as defined in section 2(a)(19) of the Act) (the "Independent Trustees"), and the nomination of new or additional Independent Trustees will be committed to the discretion of then existing Independent Trustees.

7. When a sub-adviser change is proposed for a Series having an Affiliated Sub-Adviser, the trustees of the Trusts, including a majority of the Independent Trustees, will make a separate finding, reflected in such Trust's board minutes, that the change is in the best interests of the Series and its shareholders and does not involve a conflict of interest from which the Advisers or the Affiliated Sub-Adviser derives an inappropriate advantage.

8. No trustee or officer of the Trusts, or the Advisers will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by any such trustee or officer) any interest in a sub-adviser except for: (a) Ownership of interests in the Advisers or any entity that controls the Advisers; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a sub-adviser or an entity that controls, is controlled by, or is under common control with a sub-adviser.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97-23007 Filed 8-28-97; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-22797; International Series Release No. 1098; File No. 812-10376]

### Tele-Communications International, Inc.; Notice of Application

August 22, 1997.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

**SUMMARY OF APPLICATION:** Applicant Tele-Communications International, Inc. requests an order under section 6(c) of the Act that would permit applicant and its controlled companies to participate in certain foreign tele-media ventures without being subject to the provisions of the Act.

**FILING DATES:** The application was filed on October 2, 1996, and amended on June 30, 1997 and August 18, 1997.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 16, 1997 by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. General Counsel, Applicant, 5619 DTC Parkway, Englewood, CO 80111.

**FOR FURTHER INFORMATION CONTACT:** David W. Grim, Staff Attorney, at (202) 942-0571, or Mary Kay Frech, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch [450 Fifth Street, N.W., Washington, D.C. 20549; (202) 942-8090].

### Applicant's Representations

1. Applicant, a Delaware corporation, was incorporated in 1994 as a wholly-owned subsidiary of Tele-Communications, Inc. ("TCI"), a Delaware corporation. TCI, through its subsidiaries and affiliates (other than applicant), is principally engaged in the construction, acquisition, ownership, and operation of cable television systems in the United States and the provision of cable and satellite-delivered video entertainment, information, and home shopping programming services to various distribution media.

2. Applicant was formed by TCI as a holding company for the purpose of consolidating TCI's international cable and telecommunications and certain of its international programming businesses under one corporation, pending an initial public offering of stock by applicant in mid-1995. Applicant was formed with its own management team, which largely consisted of those executive officers of TCI who had been responsible for the operations of TCI's international divisions. During the fourth quarter of 1994 and the first quarter of 1995, TCI contributed its ownership interests in substantially all of its international cable and telephony assets and certain of its international programming assets to applicant (the "TCI Contributions"). TCI currently owns approximately 85% of the outstanding shares of all series of common stock of applicant and approximately 92% of the combined voting power of all series of outstanding shares of common stock of applicant.

3. Applicant has expanded and built upon the assets it received through the TCI Contributions and has established ventures in new markets. Today applicant, directly and through joint ventures and controlled companies, is engaged in the business of acquiring, developing, operating, and managing broadband distribution, telecommunications, and programming businesses in selected markets outside the United States.

4. Applicant's assets are not held as passive or portfolio investments and are not traded for short-term profit. Applicant has never been a registered investment company (or subject to any analogous regulatory scheme in another jurisdiction) and has never been engaged in the business of investing, reinvesting, or trading in securities.

5. Applicant requests relief to permit applicant and each entity that is now or in the future controlled by, or under common control with, applicant (each, including applicant, a "Covered Entity") to engage, either directly or indirectly through subsidiaries, in certain foreign tele-media ventures without being subject to the provisions of the Act. For purposes of the application, applicant represents that "foreign tele-media venture" means any and all activities outside the United States involving: communications; media; the creation, storage and transmission of voice, video, or data; programming, including entertainment, news, information, and home shopping services; print media; broadband and satellite distribution; over the air broadcast; telecommunications; wireline or wireless distribution and telephony;

network construction; design, operation, and ownership of related transport construction; and any and all related or similar activities, services, and assets.

6. Applicant is a holding company and, directly and through other Covered Entities, is engaged in the business of acquiring proprietary interests in, and developing, operating, and managing, foreign tele-media ventures. Applicant's management team has significant experience and expertise in pioneering the development of, acquiring interests in, and managing distribution, telecommunications, and programming companies both domestically and in markets outside the United States. The officers and employees of applicant spend the vast majority of their time on the business and affairs of applicant's foreign tele-media ventures.

Contributions by these individuals include working to implement the construction of distribution networks, hiring staff, developing and implementing business plans and budgets, creating, acquiring, developing, and scheduling programming services, overseeing lobbying and other regulatory efforts, and providing technical, operational, marketing, and engineering direction. Management's time is also spent performing market analyses, developing new business opportunities for applicant, determining possible partner candidates, serving on boards of directors and management committees of foreign tele-media ventures, and maintaining relationships with strategic investors and partners. Applicant becomes involved in most of its foreign tele-media ventures in the start-up or development stage. In other cases, its involvement comes after the development stage, but applicant's participation enables the venture to advance more rapidly or effectively its business plan.

7. Applicant participates in foreign tele-media ventures in either of two ways. One way is for applicant, directly or through one or more other Covered Entities, to invest in a foreign tele-media company. A "foreign tele-media company," as used herein, is any corporation, partnership, joint venture, association, joint stock company, limited liability company, or other form of organization (i) substantially all of whose operations are conducted outside of the United States, (ii) that owns the assets of the foreign tele-media ventures (which may consist of capital assets or stock of operating subsidiaries), and (iii) whose business primarily relates to, or whose operations consist primarily of, the ownership, development, and operation of, or the provision of management or operational services

relating to, foreign tele-media ventures. Applicant, directly or through one or more other Covered Entities, acquires a substantial interest in the foreign tele-media company, and provides active developmental assistance to the company. For purposes of the application, applicant represents that "substantial interest" means any ownership interest that represents at least a 10% economic or voting interest. Applicant further represents that "active developmental assistance" means material involvement in the creation, development, or operation of, the provision of material managerial, advisory, or operational services relating to, or significant input on material decisions affecting the development or operations of, a foreign tele-media venture.

8. The second way applicant participates in foreign tele-media ventures is by investing, either directly or through one or more other Covered Entities, in a tele-media partnership. For purposes of the application, applicant represents that a "tele-media partnership" means any partnership, joint venture, limited liability company, or other unincorporated association (i) substantially all of whose operations are conducted outside of the United States, and (ii) whose purpose is to acquire interests in, and to develop, operate, or provide management services to, one or more foreign tele-media companies. Representatives of applicant or another Covered Entity participate on the management committee or similar governing body of the tele-media partnership. Applicant, directly or through one or more other Covered Entities, acquires a substantial interest in the tele-media partnership which, in turn, directly or through one or more subsidiaries, acquires a substantial interest in one or more foreign tele-media companies. Applicant or another Covered Entity, either directly or through the tele-media partnership, provides active developmental assistance to the foreign tele-media ventures of the tele-media partnership.

9. Applicant represents that providing "active developmental assistance" requires applicant or another Covered Entity to be or have been materially involved in providing such assistance. Thus, if applicant or another Covered Entity was materially involved in the development of a foreign tele-media venture, such entity may thereafter cease to provide active developmental assistance to such venture after the venture has moved past the development stage, provided it continues to have a substantial interest in the venture. Similarly, if applicant or

another Covered Entity acquires a substantial interest in a foreign tele-media venture after the development stage and provides active developmental assistance to that venture, then applicant or such Covered Entity may continue to rely on the requested exemptive order, notwithstanding that it ceases to provide such developmental assistance to the venture, if applicant or such Covered Entity maintains its substantial interest in the venture, and (i) the business of the foreign tele-media venture was significantly enhanced by the participation of applicant or such Covered Entity, or (ii) such foreign tele-media venture (a) is merged or combined with, or acquired by, a company in the same or a related business, or (b) effects an initial public offering of voting stock. Material involvement in a foreign tele-media venture will not be present, however, in arrangements that are immaterial to the overall development or successful operation of the foreign tele-media venture.

10. The degree of applicant's participation in foreign tele-media ventures with local and strategic partners is a result of both restrictions on foreign investment under the laws of many countries in which applicant does business, as well as benefits, both tangible and intangible, that applicant obtains from joining with strategic partners to create, develop, and operate such ventures. Applicant's structure was not established for the purpose of creating an investment company within the contemplation of the Act. While applicant believes that today it is not required to register under the Act, it is seeking the requested exemptive order as it and its foreign tele-media ventures are increasingly constrained by the requirements of the Act.

#### **Applicant's Legal Analysis**

1. Section 3(a)(1)(C) of the Act defines an "investment company" as including any issuer that is engaged in the business of investing, reinvesting, owning, holding, or trading in securities, and owns investment securities having a value exceeding 40% of the value of such issuer's total assets (exclusive of Government securities and cash items). Section 3(a)(2) defines "investment securities" to include all securities except, in pertinent part, securities issued by majority-owned subsidiaries of the owner which are not investment companies and which are not excepted from the definition of investment company by section 3(c)(1) or section 3(c)(7). Section 2(a)(24) defines a "majority-owned subsidiary" of a person as a company 50% or more

of the outstanding voting securities of which are owned by such person, or by a company which, within the meaning of section 2(a)(24), is a majority-owned subsidiary of such person.

2. Rule 3a-1 under the Act deems certain issuers that meet the statutory definition of investment company in section 3(a)(1)(C) of the Act not to be investment companies, provided such issuers meet certain criteria. An issuer can qualify for this exemption only if no more than 45% of its assets consist of, and no more than 45% of its net income is derived from, securities other than, among others, securities of certain companies controlled primarily by the issuer.<sup>1</sup>

3. Applicant represents that it seeks to acquire a majority voting interest in its foreign tele-media ventures or, where such an interest is not permitted under applicable foreign investment laws or is inadvisable for business reasons, seeks to acquire interests that grant it primary control. Applicant asserts that these ownership thresholds are prohibitively large, as applicant often seeks to join with two or three strategic partners in a foreign tele-media venture. Applicant represents that each partner typically desires an interest in, and rights over, the venture that is equal to that of the other partners. Hence, applicant states that its acquisition of a majority interest, or the largest interest, in a foreign tele-media venture is often impossible.

4. Applicant states that it also may participate in a foreign tele-media venture through a "joint venture," in which applicant's interest may not be a "security" for purposes of the Act. However, applicant states that whether an arrangement is a joint venture is sometimes difficult to determine.

5. Applicant asserts that the need to structure its participation in foreign tele-media ventures in a manner that complies with the Act has resulted in severe constraints on its ability to operate effectively and efficiently and grow its business. Applicant states that if it is unable to obtain either a majority interest or primary control for purposes of section 3(a)(1)(C) or rule 3a-1, or a degree of control that will allow it to obtain an opinion of counsel that it can classify its participation as a joint venture interest, then applicant most likely will abstain from participating in that foreign tele-media venture.

6. Applicant also states that as ventures grow out of the development stage, they will often seek to expand

their businesses through acquisitions, or will seek public financing. Applicant notes that these goals are often in direct conflict with the need of applicant to maintain its ownership interest at a level that permits such interest to be classified as a non-investment security. Applicant submits that this has resulted in serious delays in the development of certain of applicant's foreign tele-media ventures, as applicant seeks to structure transactions around the requirements of the Act. Applicant states that at times, especially when applicant's interest would fall below the level of presumptive control set forth in section 2(a)(9) of the Act, applicant has denied a foreign tele-media venture permission to undertake a transaction that would have been in the best interests of applicant and that venture.

7. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant requests an order under section 6(c) to permit applicant and the other Covered Entities to engage, directly or through subsidiaries, in foreign tele-media ventures without being subject to the provisions of the Act.

8. Applicant believes that the requested relief is necessary and appropriate in the public interest. Applicant states that its business does not entail the types of risk to public investors that the Act was designed to eliminate or mitigate. Applicant asserts that its assets cannot be characterized as liquid, mobile, and readily negotiable, or as large liquid pools of funds. Applicant represents that it does not acquire securities for the purpose of disposing of them from time to time at a profit. Applicant also states that it is not a so-called "special situation" investment company; that is, a company that takes a controlling position in other issuers primarily for the purpose of making a profit in the sale of the controlled company's securities. Applicant states that rather, it is a holding company that participates in foreign tele-media ventures as a strategic investor. Applicant states that in doing so, it acquires a substantial interest and participates in the development of its foreign tele-media ventures by providing active developmental assistance.

9. Applicant believes that the requested relief is consistent with the protection of investors and the purposes

fairly intended by the policy and provisions of the Act. Applicant believes that the requirements of its business, its strategy of directly or indirectly acquiring substantial interests in foreign tele-media companies and tele-media partnerships, and its representation that each Covered Entity will provide active developmental assistance to its foreign tele-media ventures demonstrate that applicant is not the type of entity and does not engage in the type of activities that the Act was designed to regulate.

#### **Applicant's Conditions**

Applicant agrees that the order granting the requested relief shall be subject to the following conditions:

1. No Covered Entity that seeks to rely on the exemptive order will hold itself out as being engaged in the business of investing, reinvesting, or trading in securities.

2. Each Covered Entity may rely on the exemptive order only if the manner in which it is involved in foreign tele-media ventures is, in all material respects, consistent with that described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 97-23004 Filed 8-28-97; 8:45 am]

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#### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-38962; File No. SR-CBOE-97-36]

#### **Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated, Related to the Procedures Regarding Opening Rotations**

August 22, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on July 25, 1997, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>1</sup> "Primary control" under rule 3a-1 means a degree of control that is greater than that of any other person. See *Health Communications Services, Inc.* (pub. avail. Apr. 26, 1985).

<sup>1</sup> 15 U.S.C. § 78s(b)(1) (1994).