

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[IB Docket No. 97-142, FCC 97-195]

Rules and Policies on Foreign Participation in the U.S. Telecommunications Market

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On June 4, 1997, the Federal Communications Commission ("Commission") adopted a decision making technical corrections to the rules governing the entry of foreign-affiliated carriers into the U.S. market for basic telecommunications services. The rules it corrected were adopted in the *Foreign Carrier Entry* proceeding (60 FR 67332, December 29, 1996). The Commission took this action at the same time that it adopted a Notice of Proposed Rulemaking that proposes changes to the effective competitive opportunities test and related rules adopted in the *Foreign Carrier Entry* proceeding (See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market* (FCC 97-195, IB Docket No. 97-142), published elsewhere in this issue).

EFFECTIVE DATE: July 17, 1997.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Susan O'Connell, Attorney-Advisor, Policy and Facilities Branch, Telecommunications Division, International Bureau, (202) 418-1470.

SUPPLEMENTARY INFORMATION:

1. On February 15, 1997, the United States and 68 other countries concluded an agreement to open markets for basic telecommunications services. This agreement, negotiated under the auspices of the World Trade Organization (WTO), covers 95 percent of the global market for basic telecommunications services. In light of the WTO Agreement, on June 4, 1997, the Federal Communications Commission initiated a proceeding to review its rules governing the entry of foreign affiliated entities into the U.S. market for basic telecommunications services. The Commission also amended Part 63 of its rules to reflect several technical corrections. (*Review of Market Entry and Regulation of Foreign-Affiliated Entities*, FCC 97-195, Order and Notice of Proposed Rulemaking, IB Docket No. 97-142.)

2. The Commission revised § 63.18(e)(3) of the rules that sets forth the equivalency test currently applied in authorizing the use of private lines between the U.S. and all countries for the provision of switched services. The equivalency test, as set forth in § 63.18(e)(3), was adopted in the *Foreign Carrier Entry* proceeding (60 FR 67332, December 29, 1995). In drafting the rule, the word "reasonable" was inadvertently omitted. As corrected, this paragraph will provide in relevant part that the "charges, terms and conditions for interconnection to foreign domestic carrier facilities" be both "reasonable and nondiscriminatory."

3. Section 63.11(b) was amended to clarify the Commission's notification requirement for U.S. international carriers. In the *Foreign Carrier Entry Order*, the Commission required that any U.S. international carrier that knows of a planned investment by a foreign carrier of a ten percent or greater interest, whether direct or indirect, in the capital stock of the authorized carrier shall notify the Commission within sixty days prior to the acquisition of such interest. The Commission has found that carriers have interpreted this rule to include only investments by foreign carriers and not investments by their parent holding companies. The Commission intended that the prior notification requirement provide it with an opportunity to determine whether a particular planned investment in a U.S. carrier raises concerns that a foreign carrier with market power may, as a result of the investment, obtain a financial incentive to discriminate in favor of the U.S. carrier. Such an incentive can exist whether the foreign carrier itself makes the investment in the U.S. carrier or whether the investment is made by an entity that directly or indirectly controls the foreign carrier, is controlled by the foreign carrier, or is under direct or indirect common control with the foreign carrier. The Commission amended § 63.11 to cover all such ownership interests. The Commission also deleted the word "within" from the first sentence of § 63.11(b) to make clear that carriers must notify the Commission of these planned investments at least 60 days before they are consummated.

4. The Commission also amended § 63.11(b) to make clear the current obligation of U.S. carriers that have notified the Commission of a 10 percent or greater planned investment by a foreign carrier or affiliated company to maintain the accuracy of the initial report by notifying the Commission of

additional investment interests by the foreign carrier or an affiliated company.

5. The Commission's decision also included an NPRM that solicits comments on a number of proposals governing foreign participation in the U.S. market for basic telecommunications services. (See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market* and the public notice soliciting supplemental comments in the *International Settlement Rates* proceeding, IB Docket No. 96-261 [61 FR 68702, December 30, 1996] published elsewhere in this issue.)

Ordering Clause

It is further ordered that the minor changes to part 63 of the Commission's rules, as set forth in the attachment, are hereby adopted effective July 17, 1997.

List of Subjects in 47 CFR Part 63

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,
Acting Secretary.

Rule Changes

Part 63 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 63—EXTENSION OF LINES AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

1. The authority citation for Part 63 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 201-205, 218, 403 and 533, unless otherwise noted.

2. Section 63.11 is amended by revising paragraph (b) to read as follows:

§ 63.11 Notification by and prior approval for U.S. international carriers that have or propose to acquire ten percent investments by, and/or an affiliation with, a foreign carrier.

* * * * *

(b) Any carrier authorized to provide international communications service under this part that knows of a planned investment by a foreign carrier of a ten percent or greater interest, whether direct or indirect, in the capital stock of the authorized carrier shall notify the Commission sixty days prior to the acquisition of such interest. Any such authorized carrier shall report a ten percent or greater planned investment

in the capital stock of the carrier by a foreign carrier, or by any entity that directly or indirectly controls or is controlled by a foreign carrier, or that is under direct or indirect common control with a foreign carrier. The notification shall certify to the information specified in paragraph (c) of this section. Carriers that have filed a notification pursuant to this paragraph are required to maintain the accuracy of the initial filing by

notifying the Commission of additional investment interests by the foreign carrier or an affiliated company.

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3. Section 63.18 is amended by revising paragraph (e)(3)(i)(B) to read as follows:

§ 63.18 Contents of applications for international common carriers.

* * * * *

(e) * * *

(3) * * *

(i) * * *

(B) Reasonable and nondiscriminatory charges, terms and conditions for interconnection to foreign domestic carrier facilities for termination and origination of international services, with adequate means of enforcement;

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[FR Doc. 97-15700 Filed 6-16-97; 8:45 am]

BILLING CODE 6712-01-P