

(d) Pro Forma Transactions. (1) Any party that would be a domestic common carrier under section 214 of the Communications Act of 1934, as amended, is authorized to undertake any corporate restructuring, reorganization or liquidation of internal business operations that does not result in a change in ultimate ownership or control of the carrier's lines or authorization to operate, including transfers in bankruptcy proceedings to a trustee or to the carrier itself as a debtor-in-possession.¹ Under this rule, a transfer of control of a domestic line or authorization to operate is considered pro forma when, together with all previous internal corporate restructurings, the transaction does not result in a change in the carrier's ultimate ownership or control, or otherwise falls into one of the illustrative categories found in § 63.24 of this part governing transfers of control of international carriers under section 214 of the Communications Act of 1934, as amended.

(2) Any party that would be a domestic common carrier under section 214 of the Communications Act of 1934, as amended, must notify the Commission no later than 30 days after control of the carrier is transferred to a trustee under Chapter 7 of the Bankruptcy Code, a debtor-in-possession under Chapter 11 of the Bankruptcy Code, or any other party pursuant to any applicable chapter of the Bankruptcy Code when that transfer does not result in a change in ultimate ownership or control of the carrier's lines or authorization to operate. The notification can be in the form of a letter (in duplicate to the Secretary). The letter or other form of notification must also contain the information listed in paragraphs (a)(1) through (a)(4) in § 63.04. A single letter may be filed for more than one such transfer of control. If a carrier files a discontinuance request within 30 days of the transfer in bankruptcy, the Commission will treat the discontinuance request as sufficient to fulfill the

¹“Control” includes actual working control in whatever manner exercised and is not limited to majority stock ownership. “Control” also includes direct or indirect ownership or control, such as through intervening subsidiaries. See 47 CFR 63.09.

pro forma post-transaction notice requirement.

(3) Notwithstanding any other provision in this part, any party that would be a domestic common carrier under section 214 of the Communications Act of 1934, as amended, including a carrier that begins providing service through a differently named subsidiary after an 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