

discriminate against unaffiliated U.S. carriers through control of "bottleneck services or facilities" on the foreign end of a U.S. international route. "Bottleneck services or facilities" are those that are necessary to terminate U.S. international traffic.

Second, the information collections contained in amendments to § 63.10 of the Commission's rules are necessary for the Commission to maintain effective oversight of U.S. carriers that are affiliated with, or involved in certain co-marketing or similar arrangements with, foreign carriers that have market power.

Third, the information collections contained in amendments to § 63.01(k) of the Commission's rules are necessary to protect the U.S. public interest in cost-based international telecommunications services.

Fourth, the information collections under section 310(b)(4) of the Act are necessary to determine, under that section, whether a greater than 25 percent indirect foreign ownership interest in a U.S. common carrier radio licensee would be inconsistent with the public interest.

The Order adopts a requirement that section 214 applicants amend their pending applications to the extent they are inconsistent with the new rules. Applications pending as of the effective date of the new rules must be amended within thirty days of the effective date of the new rules. This information will be used to process pending applications under the Commission's public interest standard enunciated in the Order.

The information will be used by the Commission staff in carrying out its duties under the Communications Act. Common carrier applicants providing or seeking to provide international service under part 63 of the Commission's rules must comply with our rules.

Summary of Report and Order

In response to the Notice of Proposed Rulemaking (60 FR 11644 (March 2, 1995)), the Commission adopted a decision to further the goal of promoting effective competition in the U.S. telecommunications market, particularly the market for international services. In order to promote effective competition in this market, the Commission's new rules are designed to prevent anticompetitive conduct in the provision of international services or facilities, and to encourage foreign governments to open their communications markets.

With this Report and Order, the Commission adopts standards for regulating the entry of foreign carriers into the United States market for international telecommunications

services. This Report and Order explicitly sets forth the entry criteria necessary to promote effective competition in the U.S. market for these services, including global, seamless network services. As an important part of the Commission's overall public interest analysis under Section 214 of the Communications Act, it will examine whether effective competitive opportunities exist for U.S. carriers in the destination markets of foreign carriers seeking to enter the U.S. international services market either directly or through an affiliation with a new or existing U.S. carrier.

Similarly, in deciding whether it is in the public interest to permit indirect foreign investment in licensees of common carrier wireless facilities in excess of the benchmarks contained in section 310(b)(4) of the Act, the Commission will examine whether foreign markets offer effective competitive opportunities to U.S. entities. This approach is fully consistent not only with the Commission's existing jurisdiction under section 310, but also with telecommunications bills currently pending in Congress which would specifically incorporate an effective competitive opportunities analysis as part of a section 310(b)(4) determination.

The New Entry Standard

The Commission's effective competitive opportunities analysis under section 214 of the Act will focus first on whether U.S. carriers have the legal right to provide international basic services in the destination markets where the foreign applicant has market power. If there are no legal barriers to entry, the Commission also will consider the practical ability for U.S. carriers to compete in those markets. The Commission considers several factors essential to viable competition. These factors include: First, whether there are reasonable and nondiscriminatory terms and conditions for interconnection to a foreign carrier's facilities; second, whether there are competitive safeguards to protect against anticompetitive conduct; and third, whether there is an effective regulatory framework to implement and enforce these conditions and safeguards. The Commission will apply the effective competitive opportunities analysis to foreign carriers seeking to provide facilities-based or resale service in the United States. The public interest analysis under section 214 also will continue to consider additional public interest factors, including the general significance of the proposed entry to the

promotion of competition in the U.S. communications services market, the presence of cost-based accounting rates, as well as national security, law enforcement issues, foreign policy, or trade concerns raised by the Executive Branch.

The analysis under section 310 is similar to that under section 214, but with some important distinctions. Most notably, the Commission's determination will focus on the foreign investor's "home market", and will be applied to the specific service in which the foreign entity seeks to invest in the United States, e.g., cellular service. If the services in the U.S. and home markets are not precisely matched, the Commission will use the most closely substitutable wireless service in the home market, as determined from the consumer's perspective. The Commission also will examine additional public interest factors that might weigh in favor of, or against, allowing a foreign investor to exceed the 25 percent benchmark contained in section 310(b)(4). In determining a foreign investor's "home market", the Commission will identify (1) the country of its incorporation, organization, or charter; (2) the nationality of all investment principals, officers, and directors; (3) the country in which its world headquarters is located; (4) the country in which the majority of its tangible property, including production, transmission, billing, information, and control facilities, is located; and (5) the country from which it derives the greatest sales and revenues from its operations. If all five of these factors indicate that the same country should be considered to be the entity's home market, it will be presumed to be so, subject only to rebuttal based on clear and convincing evidence to the contrary. If these five factors yield inconsistent results, however, the Commission will balance them, as well as any other information that is particularly relevant to the case, to determine the appropriate home market under the totality of the circumstances.

Affiliation

For purposes of implementing this entry standard, the Commission adopts a new definition of "affiliation". It now defines affiliation as an ownership interest of greater than 25 percent, or a controlling interest at any level, in a U.S. carrier by a foreign carrier. The Commission also will apply its effective competitive opportunities analysis to foreign carrier investments of 25 percent or less if the investment presents a significant potential impact on competition in the U.S. market for