

international telecommunications services. In addition, the Commission will aggregate investments of two or more foreign carriers where they are likely to act in concert and the combined interests either exceed 25 percent or constitute a controlling interest.

This definition of affiliation will apply both for purposes of determining when to apply the effective competitive opportunities analysis and of determining the regulatory status of all affiliated carriers, including U.S.-based carriers that have a greater than 25 percent investment, or a controlling interest, in a foreign carrier. The Commission also is adopting a prior notification and approval requirement to determine whether a particular investment in a U.S. carrier by a foreign carrier constitutes an affiliation with that foreign carrier, and to determine whether the investment serves the public interest, convenience and necessity. A U.S. international carrier is required to notify the Commission 60 days prior to acquisition by a foreign carrier of a 10 percent or greater interest in that U.S. carrier.

Amendment of Pending Applications

The Report and Order adopts a requirement that section 214 applicants amend their pending applications to the extent they are inconsistent with the new rules. The Report and Order requires that applications pending as of the effective date of the new rules be amended within thirty days of the effective date of the new rules.

Dominant Carrier and Other Operating Safeguards

This Report and Order also modifies the safeguards that apply to foreign-affiliated carriers regulated as dominant under § 63.10 of the Commission's rules, 47 CFR 63.10, as amended in the Report and Order. The modified dominant carrier safeguards also will apply to U.S. carriers on particular routes where they are engaged in a co-marketing or other arrangement with a dominant foreign carrier, and such arrangement presents a substantial risk of anticompetitive effects in the U.S. market for international telecommunications services.

The Commission has modified these safeguards to reduce regulatory burdens while maintaining effective oversight over foreign-affiliated or allied carriers. It allows dominant, foreign-affiliated or allied carriers to file tariffs on 14 days notice instead of the previous 45 days and relieves those carriers of the burden of filing cost support information. It also requires that a dominant, foreign-

affiliated or allied carrier maintain complete records of the provisioning and maintenance of service and facilities it procures from its foreign carrier affiliate or ally. The Order maintains the existing requirement that a dominant foreign-affiliated carrier (and, under the new rules, a dominant, allied carrier) receive specific section 214 authorization before adding or removing circuits on routes where it is regulated as dominant, and file quarterly traffic and revenue reports.

The Order also conforms the Commission's "no special concessions" prohibition and "no exclusive arrangements" condition that have regularly been placed in section 214 authorizations and applies a "no special concessions" prohibition to all U.S. international carriers. This means that no U.S. carrier is allowed to accept a special concession directly or indirectly from any foreign carrier with respect to traffic or revenue flows between the United States and any foreign country for which the U.S. carrier is authorized to provide service.

Additional Matters

The Order additionally adopts new rules relating to the provision of international switched basic service via facilities-based and resold private lines. These rules apply to all U.S. carriers, both those that are affiliated and unaffiliated with a foreign carrier. And, it adopts a modified definition of a U.S. international facilities-based carrier.

Final Regulatory Flexibility Act Analysis

Pursuant to section 603 of Title 5, United States Code, 5 U.S.C. 603, an initial Regulatory Flexibility Analysis was incorporated in the Notice of Proposed Rulemaking in CC Docket No. 95-22. Written comments on the proposals in the Notice, including the Regulatory Flexibility Analysis, were requested.

A. Need and Purpose of this Action

This rulemaking proceeding establishes an effective competitive opportunities analysis as an important public interest factor in the Commission's overall public interest analysis of applications filed by foreign carriers to enter the U.S. international telecommunications market pursuant to section 214 of the Communications Act. It also adopts a similar analysis for determining whether the public interest would be disserved by permitting indirect foreign investment in common carrier licensees in excess of the benchmarks contained in section 310(b)(4) of the Act. In addition, this proceeding modifies existing rules and

policies relating to the definition of a U.S. international facilities-based carrier, the regulation of certain dominant carriers in the provision of international service, and other rules governing the provision of switched services over international private lines.

B. Issues Raised by the Public Comments in Response to the Regulatory Flexibility Analysis

There were no comments submitted in response to the Regulatory Flexibility Analysis. The Notice of Proposed Rulemaking offered a number of alternatives for each issue raised. The Commission responded to commenters' concerns and significantly altered the proposed market entry standard. The new approach under section 214 is designed to focus on foreign carrier entry that poses a substantial risk of anticompetitive effects in the provision of international services. In addition, the Commission is adopting a standard that is clear and administratively feasible.

C. Significant Alternatives Considered

The Commission has attempted to balance all the commenters' concerns with our public interest mandate under the Act in order to adopt a clear and administratively feasible approach to market entry by foreign carriers. Instead of examining whether effective competitive opportunities exist for U.S. carriers in every primary market where a foreign carrier operates, regardless of whether the foreign carrier seeks to serve such market, the Commission will focus its analysis under section 214 only on destination countries where the foreign carrier holds market power. Our route-by-route approach reduces the regulatory burden on all U.S. carriers seeking an affiliation with a foreign carrier. The Commission has not adopted the suggestion of some parties to exempt small U.S. carriers from the market entry rules. Whether a dominant foreign carrier makes a significant investment in a small U.S. carrier or a large one, there is a substantial risk of anticompetitive effects. Therefore, the Commission declines to exempt small U.S. carriers from these rules.

The Commission proposed to modify its standard for determining when a U.S. carrier is affiliated with a foreign carrier for purposes of both the market entry analysis and post-entry regulation. The Commission considered investment levels ranging from greater than ten percent to controlling interests at any level. It also considered adopting an affiliation standard based on: The dollar amount of the investment; the percentage of the investment; or the