

(3) Whether competitive safeguards exist in the foreign country to protect against anticompetitive practices, including safeguards such as:

(i) Existence of cost-allocation rules in the foreign country to prevent cross-subsidization;

(ii) Timely and nondiscriminatory disclosure of technical information needed to use, or interconnect with, carriers' facilities;

(iii) Protection of carrier and customer proprietary information; and

(4) Whether there is an effective regulatory framework in the foreign country to develop, implement and enforce legal requirements, interconnection arrangements and other safeguards; and

(5) Any other factors the applicant deems relevant to its demonstration.

(B) The demonstration specified in paragraph (r)(7)(ii) of this section should include the same information requested by paragraph (r)(8) of this section.

(8) Each applicant that certifies that it has an affiliation with a foreign carrier in a named foreign country and that desires to be regulated as non-dominant for the provision of international communications service to that country may provide information in its application filed under this part to demonstrate that its affiliated foreign carrier does not have the ability to discriminate against unaffiliated U.S. international carriers through control of bottleneck services or facilities in the named foreign country. See § 63.10, Regulatory Classification of U.S. International Carriers.

(i) Such a demonstration should address the factors that relate to the scope or degree of the foreign affiliate's bottleneck control, such as:

(A) The monopoly, oligopoly or duopoly status of the destination country; and

(B) Whether the foreign affiliate has the potential to discriminate against unaffiliated U.S. international carriers through such means as preferential operating agreements, preferential routing of traffic, exclusive or more favorable transiting agreements, or preferential domestic access and interconnection arrangements.

(ii) Such a demonstration may also address other factors the applicant deems relevant to its demonstration, such as the effectiveness of public regulation in the destination country.

(s) Each applicant shall certify that the applicant has not agreed to accept special concessions directly or indirectly from any foreign carrier or administration with respect to traffic or revenue flows between the U.S. and any foreign country which the applicant

may serve under the authority granted under this part and will not enter into such agreements in the future.

(1) For purposes of this paragraph, and of §§ 63.11(c)(2)(iii), 63.13(a)(4), and 63.14, special concession is defined as any arrangement that affects traffic or revenue flows to or from the U.S. that is offered exclusively by a foreign carrier or administration to a particular U.S. international carrier and not also to similarly situated U.S. international carriers authorized to serve a particular route.

(2) The special concessions certification required by this paragraph and by §§ 63.11(c)(2)(iii) and 63.13(a)(4) shall be viewed as an ongoing representation to the Commission, and applicants/carriers shall immediately inform the Commission if at any time the representations in their certifications are no longer true. Failure to so inform the Commission will be deemed a material misrepresentation to the Commission.

Note 1 to paragraph (r): The word "control" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

Note 2 to paragraph (r): The term "U.S. facilities-based international carrier" means one that holds an ownership, indefeasible-right-of-user, or leasehold interest in bare capacity in an international facility, regardless of whether the underlying facility is a common or noncommon carrier submarine cable, or an INTELSAT or separate satellite system.

Note 3 to paragraph (r): The assessment of "capital stock" ownership will be made under the standards developed in Commission case law for determining such ownership. See, e.g., Fox Television Stations, Inc., 10 FCC Rcd 8452 (1995). "Capital stock" includes all forms of equity ownership, including partnership interests.

Note 4 to paragraph (r): In applying the provisions of this section, ownership and other interests in U.S. and foreign carriers will be attributed to their holders and deemed cognizable pursuant to the following criteria: Attribution of ownership interests in a carrier that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that wherever the ownership percentage for any link in the chain exceeds 50%, it shall not be included for purposes of this multiplication. (For example, if A owns 30% of company X, which owns 60% of company Y, which owns 26% of "carrier," then X's interest in "carrier" would be 26% (the same as Y's interest because X's interest in Y exceeds 50%), and A's interest in "carrier" would be 7.8% (0.30x0.26). Under the 25% attribution benchmark, X's interest in

"carrier" would be cognizable, while A's interest would not be cognizable.)

3. Section 63.10 is amended by revising paragraphs (a)(1) through (a)(3), and adding paragraph (c) to read as follows:

§ 63.10 Regulatory classification of U.S. international carriers.

(a) * * *

(1) A U.S. carrier that has no affiliation with, and that itself is not, a foreign carrier in a particular country to which it provides service (i.e., a destination country) will presumptively be considered non-dominant for the provision of international communications services on that route;

(2) A U.S. carrier that is, or that has or acquires an affiliation with a foreign carrier that is a monopoly in a destination country will presumptively be classified as dominant for the provision of international communications services on that route; and

(3) A U.S. carrier that is, or that has or acquires an affiliation with a foreign carrier that is not a monopoly in a destination country and that seeks to be regulated as non-dominant on that route bears the burden of submitting information to the Commission sufficient to demonstrate that its foreign affiliate lacks the ability to discriminate against unaffiliated U.S. carriers through control of bottleneck services or facilities in the destination country. Such a demonstration should address the factors that relate to the scope or degree of the foreign affiliate's bottleneck control, including those listed in § 63.01(r)(8).

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(c) Any carrier classified as dominant for the provision of particular services on particular routes under this section shall comply with the following requirements in its provision of such services on each such route:

(1) File international service tariffs on 14-days notice without cost support;

(2) Maintain complete records of the provisioning and maintenance of basic network facilities and services procured from its foreign carrier affiliate or from an allied foreign carrier, including, but not limited to, those it procures on behalf of customers of any joint venture for the provision of U.S. basic or enhanced services in which the U.S. and foreign carrier participate, which information shall be made available to the Commission upon request;

(3) Obtain Commission approval pursuant to § 63.01 before adding or discontinuing circuits; and

(4) File quarterly reports of revenue, number of messages, and number of