

(1) The applicant is affiliated with a foreign carrier in a destination market, unless the applicant clearly demonstrates in its application at least one of the following:

(i) The Commission has previously determined that the affiliated foreign carrier lacks market power in that destination market;

(ii) The applicant qualifies for a presumption of non-dominance under § 63.10(a)(3);

(iii) The affiliated foreign carrier owns no facilities, or only mobile wireless facilities, in that destination market. For this purpose, a carrier is said to own facilities if it holds an ownership, infeasible-right-of-user, or leasehold interest in bare capacity in international or domestic telecommunications facilities (excluding switches);

(iv) The affiliated destination market is a WTO Member country and the applicant qualifies for a presumption of non-dominance under § 63.10(a)(4) of this part;

(v) The affiliated destination market is a WTO Member country and the applicant agrees to be classified as a dominant carrier to the affiliated destination country under § 63.10, without prejudice to its right to petition for reclassification at a later date; or

(vi) An entity with exactly the same ultimate ownership as the applicant has been authorized to provide the applied-for services on the affiliated destination route, and the applicant agrees to be subject to all of the conditions to which the authorized carrier is subject for its provision of service on that route; or

(2) The applicant has an affiliation with a dominant U.S. carrier whose international switched or private line services the applicant seeks authority to resell (either directly or indirectly through the resale of another reseller's services), unless the applicant agrees to be classified as a dominant carrier to the affiliated destination country under § 63.10 (without prejudice to its right to petition for reclassification at a later date); or

(3) The Commission has informed the applicant in writing, within 14 days after the date of public notice listing the application as accepted for filing,

that the application is not eligible for streamlined processing.

(d) If an application is deemed complete but, pursuant to paragraph (c) of this section, is deemed ineligible for the streamlined processing procedures provided by paragraphs (a) and (b) of this section, the Commission will issue public notice indicating that the application is ineligible for streamlined processing. Within 90 days of the public notice, the Commission will take action upon the application or provide public notice that, because the application raises questions of extraordinary complexity, an additional 90-day period for review is needed. Each successive 90-day period may be so extended. The application shall not be deemed granted until the Commission affirmatively acts upon the application. Operation for which such authorization is sought may not commence except in accordance with any terms or conditions imposed by the Commission.

[62 FR 64753, Dec. 9, 1997, as amended at 64 FR 19063, Apr. 19, 1999; 64 FR 22903, Apr. 28, 1999; 64 FR 43095, Aug. 9, 1999; 69 FR 23154, Apr. 28, 2004]

§ 63.13 Procedures for modifying regulatory classification of U.S. international carriers from dominant to non-dominant.

Any party that desires to modify its regulatory status from dominant to non-dominant for the provision of particular international communications services on a particular route should provide information in its application to demonstrate that it qualifies for non-dominant classification pursuant to § 63.10.

[62 FR 64754, Dec. 9, 1997]

§ 63.14 Prohibition on agreeing to accept special concessions.

(a) Any carrier authorized to provide international communications service under this part shall be prohibited, except as provided in paragraph (c) of this section, from agreeing to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market and from

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agreeing to accept special concessions in the future.

NOTE TO PARAGRAPH (a): Carriers may rely on the Commission's list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points for purposes of determining which foreign carriers are the subject of the prohibitions contained in this section. The Commission's list of foreign carriers that do not qualify for the presumption that they lack market power is available from the International Bureau's World Wide Web site at <http://www.fcc.gov/ib>.

(b) A special concession is defined as an exclusive arrangement involving services, facilities, or functions on the foreign end of a U.S. international route that are necessary for the provision of basic telecommunications services where the arrangement is not offered to similarly situated U.S.-licensed carriers and involves:

(1) Operating agreements for the provision of basic services;

(2) Distribution arrangements or interconnection arrangements, including pricing, technical specifications, functional capabilities, or other quality and operational characteristics, such as provisioning and maintenance times; or

(3) Any information, prior to public disclosure, about a foreign carrier's basic network services that affects either the provision of basic or enhanced services or interconnection to the foreign country's domestic network by U.S. carriers or their U.S. customers.

(c) This section shall not apply to the rates, terms and conditions in an agreement between a U.S. carrier and a foreign carrier that govern the settlement of U.S. international traffic, including the method for allocating return traffic.

[62 FR 64754, Dec. 9, 1997, as amended at 64 FR 19063, Apr. 19, 1999; 64 FR 34741, June 29, 1999; 66 FR 16881, Mar. 28, 2001; 69 FR 23154, Apr. 28, 2004; 78 FR 11112, Feb. 15, 2013]

§ 63.17 Special provisions for U.S. international common carriers.

(a) Unless otherwise prohibited by the terms of its Section 214 certificate, a U.S. common carrier authorized under this part to provide international private line service, whether as a reseller or facilities-based carrier,

may interconnect its authorized private lines to the public switched network on behalf of an end user customer for the end user customer's own use.

(b) Except as provided in paragraph (b)(4) of this section, a U.S. common carrier, whether a reseller or facilities-based carrier, may engage in "switched hubbing" to countries provided the carrier complies with the following conditions:

(1) U.S.-outbound switched traffic shall be routed over the carrier's authorized U.S. international circuits extending between the United States and a country that is exempt from the international settlements policy (*i.e.*, the "hub" country), and then forwarded to the third country only by taking at published rates and reselling the international message telephone service (IMTS) of a carrier in the hub country;

(2) U.S.-inbound switched traffic shall be carried to a country that is exempt from the international settlements policy (*i.e.*, the "hub" country) as part of the IMTS traffic flow from a third country and then terminated in the United States over the carrier's authorized U.S. international circuits extending between the United States and the hub country.

NOTE TO PARAGRAPH (b): The Commission's list of international routes exempted from the international settlements policy is available on the International Bureau's World Wide Web site at <http://www.fcc.gov/ib>.

(3) Authorized carriers filing tariffs pursuant to §§ 61.19 or 61.28 of this chapter that route U.S.-billed traffic via switched hubbing shall tariff their service on a "through" basis between the United States and the ultimate point of origination or termination;

(4) No U.S. common carrier may engage in switched hubbing to or from a third country where it has an affiliation with a foreign carrier unless and until it has received authority to serve that country under § 63.18(e)(1), (e)(2), or (e)(3).

[60 FR 67339, Dec. 29, 1995, as amended at 61 FR 15728, Apr. 9, 1996; 63 FR 64754, Dec. 9, 1997; 64 FR 19064, Apr. 19, 1999; 66 FR 16881, Mar. 28, 2001; 67 FR 45390, July 9, 2002; 69 FR 23154, Apr. 28, 2004; 78 FR 11112, Feb. 15, 2013]