U.S. Department of Justice
Washington, DC 20530

Supplemental Statement
Pursuant to Section 2 of the Foreign Agents Registration Act of 1938, as amended.

OMB No. 1105-0002

For Six Month Period Ending 30 SEP 1995
(Insert date)

Name of Registrant BT North America Inc. Washington Office

Registration No. 4566

Business Address of Registrant North Building, Suite 725
601 Pennsylvania Avenue, N.W.
Washington, DC 20004

I—REGISTRANT

1. Has there been a change in the information previously furnished in connection with the following:

(a) If an individual:

(1) Residence address	Yes ☐	No ☐
(2) Citizenship	Yes ☐	No ☐
(3) Occupation	Yes ☐	No ☐

(b) If an organization:

(1) Name	Yes ☐	No ☒
(2) Ownership or control	Yes ☐	No ☒
(3) Branch offices	Yes ☐	No ☒

2. Explain fully all changes, if any, indicated in item 1. Not Applicable

INTERNAL SECURITY SECTION REGISTRATION UNIT
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IF THE REGISTRANT IS AN INDIVIDUAL, OMIT RESPONSE TO ITEMS 3, 4, and 5.

3. Have any persons ceased acting as partners, officers, directors or similar officials of the registrant during this 6 month reporting period? Yes ☐ No ☒

If yes, furnish the following information:

Name	*Position*	*Date Connection Ended*

4. Have any persons become partners, officers, directors or similar officials during this 6 month reporting period? Yes ☐ No ☒

If yes, furnish the following information:

Name	*Residence Address*	*Citizenship*	*Position*	*Date Assumed*

5. Has any person named in Item 4 rendered services directly in furtherance of the interests of any foreign principal? Yes ☐ No ☐ Not Applicable

If yes, identify each such person and describe his services.

6. Have any employees or individuals other than officials, who have filed a short form registration statement, terminated their employment or connection with the registrant during this 6 month reporting period? Yes ☐ No ☒

If yes, furnish the following information:

Name	*Position or connection*	*Date terminated*

7. During this 6 month reporting period, have any persons been hired as employees or in any other capacity by the registrant who rendered services to the registrant directly in furtherance of the interests of any foreign principal in other than a clerical or secretarial, or in a related or similar capacity? Yes ☐ No ☒

If yes, furnish the following information:

Name	*Residence Address*	*Position or connection*	*Date connection began*

II—FOREIGN PRINCIPAL

8. Has your connection with any foreign prinicpal ended during this 6 month reporting period? Yes ☐ No ☒

If yes, furnish the following information:

Name of foreign principal *Date of Termination*

---

9. Have you acquired any new foreign principal[1] during this 6 month reporting period? Yes ☐ No ☒

If yes, furnish following information:

Name and address of foreign principal *Date acquired*

---

10. In addition to those named in Items 8 and 9, if any, list the foreign principals[1] whom you continued to represent during the 6 month reporting period.

British Telecommunications plc (BT plc)

III—ACTIVITIES

11. During this 6 month reporting period, have you engaged in any activities for or rendered any services to any foreign principal named in Items 8, 9, and 10 of this statement? Yes ☒ No ☐

If yes, identify each such foreign principal and describe in full detail your activities and services:

See Attachment III - 11.

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[1]The term "foreign principal" includes, in addition to those defined in section 1(b) of the Act, an individual or organization any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign government, foreign political party, foreign organization or foreign individual. (See Rule 100(a)(9)).

A registrant who represents more than one foreign principal is required to list in the statements he files under the Act only those foreign principals for whom he is not entitled to claim exemption under Section 3 of the Act. (See Rule 208.)

12. During this 6 month reporting period, have you on behalf of any foreign principal engaged in political activity[2] as defined below?
Yes ☒ No ☐

If yes, identify each such foreign principal and describe in full detail all such political activity, indicating, among other things, the relations, interests and policies sought to be influenced and the means employed to achieve this purpose. If the registrant arranged, sponsored or delivered speeches, lectures or radio and TV broadcasts, give details as to dates, places of delivery, names of speakers and subject matter.

See Attachment III - 12.

13. In addition to the above described activities, if any, have you engaged in activity on your own behalf which benefits any or all of your foreign principals? Yes ☐ No ☒

If yes, describe fully.

[2]The term "political activities" means the dissemination of political propaganda and any other activity which the person engaging therein believes will, or which he intends to, prevail upon, indoctrinate, convert, induce, persuade, or in any other way influence any agency or official of the Government of the United States or any section of the public within the United States with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party.

IV—FINANCIAL INFORMATION

14. (a) **RECEIPTS—MONIES**

During this 6 month reporting period, have you received from any foreign principal named in Items 8, 9 and 10 of this statement, or from any other source, for or in the interests of any such foreign principal, any contributions, income or money either as compensation or otherwise? Yes ☒ No ☐

If yes, set forth below in the required detail and separately for each foreign principal an account of such monies.[3]

Date	*From Whom*	*Purpose*	*Amount*
04/01/95 - 09/30/95	BT plc	Costs of operating BT North America Inc., Washington Office plus associated administrative expense	

NOTE: A substantial majority of monies received during this period was for services and activities that do not require registration under the Act.

$ 416,206.58
Total

(b) **RECEIPTS—THINGS OF VALUE**

During this 6 month reporting period, have you received any thing of value[4] other than money from any foreign principal named in Items 8, 9 and 10 of this statement, or from any other source, for or in the interests of any such foreign principal? Yes ☐ No ☒

If yes, furnish the following information:

Name of foreign principal	*Date received*	*Description of thing of value*	*Purpose*

[3]A registrant is required to file an Exhibit D if he collects or receives contributions, loans, money, or other things of value for a foreign principal, as part of a fund raising campaign. See Rule 201(e).
[4]Things of value include but are not limited to gifts, interest free loans, expense free travel, favored stock purchases, exclusive rights, favored treatment over competitors, "kickbacks," and the like.

15. (a) **DISBURSEMENTS–MONIES**

During this 6 month reporting period, have you

(1) disbursed or expended monies in connection with activity on behalf of any foreign principal named in Items 8, 9 and 10 of this statement? Yes ☒ No ☐

(2) transmitted monies to any such foreign principal? Yes ☐ No ☒

If yes, set forth below in the required detail and separately for each foreign principal an account of such monies, including monies transmitted, if any, to each foreign principal.

Date	*To Whom*	*Purpose*	*Amount*

See Attachment IV - 15(a).

Total

15. (b) **DISBURSEMENTS—THINGS OF VALUE**

During this 6 month reporting period, have you disposed of anything of value[5] other than money in furtherance of or in connection with activities on behalf of any foreign principal named in items 8, 9 and 10 of this statement?
Yes ☐ No ☒

If yes, furnish the following information:

Date disposed	*Name of person to whom given*	*On behalf of what foreign principal*	*Description of thing of value*	*Purpose*

(c) **DISBURSEMENTS—POLITICAL CONTRIBUTIONS**

During this 6 month reporting period, have you from your own funds and on your own behalf either directly or through any other person, made any contributions of money or other things of value[5] in connection with an election to any political office, or in connection with any primary election, convention, or caucus held to select candidates for political office?
Yes ☒ No ☐

If yes, furnish the following information:

Date	*Amount or thing of value*	*Name of political organization*	*Name of candidate*
06/07/95	$100.00	Democratic National Committee	
05/14/95	$100.00	Emily's List - Political Network for Pro-Choice Democratic Women	

V—POLITICAL PROPAGANDA

(Section 1(j) of the Act defines "political propaganda" as including any oral, visual, graphic, written, pictorial, or other communication or expression by any person (1) which is reasonably adapted to, or which the person disseminating the same believes will, or which he intends to, prevail upon, indoctrinate, convert, induce, or in any other way influence a recipient or any section of the public within the United States with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party or with reference to the foreign policies of the United States or promote in the United States racial, religious, or social dissensions, or (2) which advocates, advises, instigates, or promotes any racial, social, political, or religious disorder, civil riot, or other conflict involving the use of force or violence in any other American republic or the overthrow of any government or political subdivision of any other American republic by any means involving the use of force or violence.)

16. During this 6 month reporting period, did you prepare, disseminate or cause to be disseminated any political propaganda as defined above? Yes ☐ No ☒

IF YES, RESPOND TO THE REMAINING ITEMS IN THIS SECTION V.

17. Identify each such foreign principal.

[5]Things of value include but are not limited to gifts, interest free loans, expense free travel, favored stock purchases, exclusive rights, favored treatment over competitors, "kickbacks," and the like.

18. During this 6 month reporting period, has any foreign principal established a budget or allocated a specified sum of money to finance your activities in preparing or disseminating political propaganda? Yes ☐ No ☐

If yes, identify each such foreign principal, specify amount, and indicate for what period of time.

19. During this 6 month reporting period, did your activities in preparing, disseminating or causing the dissemination of political propaganda include the use of any of the following:

☐ Radio or TV broadcasts ☐ Magazine or newspaper articles ☐ Motion picture films ☐ Letters or telegrams

☐ Advertising campaigns ☐ Press releases ☐ Pamphlets or other publications ☐ Lectures or speeches

☐ Other *(specify)* _____

20. During this 6 month reporting period, did you disseminate or cause to be disseminated political propaganda among any of the following groups:

☐ Public Officials ☐ Newspapers ☐ Libraries
☐ Legislators ☐ Editors ☐ Educational institutions
☐ Government agencies ☐ Civic groups or associations ☐ Nationality groups
☐ Other *(specify)* _____

21. What language was used in this political propaganda:

☐ English ☐ Other *(specify)* _____

22. Did you file with the Registration Section, U.S. Department of Justice, two copies of each item of political propaganda material disseminated or caused to be disseminated during this 6 month reporting period? Yes ☐ No ☐

23. Did you label each item of such political propaganda material with the statement required by Section 4(b) of the Act? Yes ☐ No ☐

24. Did you file with the Registration Section, U.S. Department of Justice, a Dissemination Report for each item of such political propaganda material as required by Rule 401 under the Act? Yes ☐ No ☐

VI—EXHIBITS AND ATTACHMENTS

25. **EXHIBITS A AND B**

(a) Have you filed for each of the newly acquired foreign principals in Item 9 the following:

Exhibit A[6] Yes ☐ No ☐ Not Applicable
Exhibit B[7] Yes ☐ No ☐

If no, please attach the required exhibit.

(b) Have there been any changes in the Exhibits A and B previously filed for any foreign principal whom you represented during this six month period? Yes ☐ No ☒

If yes, have you filed an amendment to these exhibits? Yes ☐ No ☐

If no, please attach the required amendment.

[6]The Exhibit A, which is filed on Form CRM-157 (Formerly OBD-67) sets forth the information required to be disclosed concerning each foreign principal.
[7]The Exhibit B, which is filed on Form CRM-155 (Formerly OBD-65) sets forth the information concerning the agreement or understanding between the registrant and the foreign principal.

26. **EXHIBIT C**

If you have previously filed an Exhibit C[8], state whether any changes therein have occurred during this 6 month reporting period. Yes ☐ No ☒

If yes, have you filed an amendment to the Exhibit C? Yes ☐ No ☐

If no, please attach the required amendment.

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27. **SHORT FORM REGISTRATION STATEMENT**

Have short form registration statements been filed by all of the persons named in Items 5 and / of the supplemental statement? Yes ☐ No ☐

Not Applicable

If no, list names of persons who have not filed the required statement.

The undersigned swear(s) or affirm(s) that he has (they have) read the information set forth in this registration statement and the attached exhibits and that he is (they are) familiar with the contents thereof and that such contents are in their entirety true and accurate to the best of his (their) knowledge and belief, except that the undersigned make(s) no representation as to the truth or accuracy of the information contained in attached Short Form Registration Statement, if any, insofar as such information is not within his (their) personal knowledge.

(Type or print name under each signature)

(Both copies of this statement shall be signed and sworn to before a notary public or other person authorized to administer oaths by the agent, if the registrant is an individual, or by a majority of those partners, officers, directors or persons performing similar functions who are in the United States, if the registrant is an organization.)

James E. Graf II

Subscribed and sworn to before me at District of Columbia

this 30 day of October, 19 95

(Signature of notary or other officer)

My Commission Expires July 31, 1998

[8]The Exhibit C, for which no printed form is provided, consists of a true copy of the charter, articles of incorporation, association, constitution, and bylaws of a registrant that is an organization. (A waiver of the requirement to file an Exhibit C may be obtained for good cause upon written application to the Assistant Attorney General, Criminal Division, Internal Security Section, U.S. Department of Justice, Washington, D.C. 20530.)

UNITED STATES DEPARTMENT OF JUSTICE
REGISTRATION UNIT
CRIMINAL DIVISION
WASHINGTON, D.C. 20530

NOTICE

Please answer the following questions and return this sheet in triplicate with your supplemental statement:

1. Is your answer to Item 16 of Section V (Political Propaganda - page 7 of Form CRM-154, formerly Form OBD-64 - Supplemental Statement):

Yes _____ or No X

(If your answer to question 1 is "yes" do not answer question 2 of this form.)

2. Do you disseminate any material in connection with your registration:

Yes X or No _____

(If your answer to question 2 is "yes" please forward for our review copies of all such material including: films, film catalogs, posters, brochures, press releases, etc. which you have disseminated during the past six months.)

James E. Graf II
Signature

10/30/95
Date

James E. Graf II
Please type or print name of signatory on the line above

President
Title

ATTACHMENT III - ll.

11. Activities for and services rendered to British Telecommunications plc (BT plc):

(1) Provided advice and information to BT plc and its subsidiaries with respect to U.S. telecommunications regulation and legislation.

(2) Transmitted 14 April 1995 copies of "A Framework for Effective Competition - BT's response to Oftel's consultative document of December 1994," "Choice through competition - European Commission's Green Paper on the liberalisation of telecommunications infrastructure and cable television networks - comments from BT," and notice of UK area code changes effective 16 April 1995, copies of which are included in the response to the attached printed matter questionnaire, were transmitted to the following people:

FCC International Bureau - Office of the Bureau Chief:
Scott Blake Harris, Chief
Roderick K. Porter, Deputy Chief
Wendell R. Harris, Associate Bureau Chief - Negotiations/Planning
James L. Ball, Associate Bureau Chief, Policy
Thomas Sullivan, Assistant Bureau Chief, Management
Jennifer Warren, Senior Legal Advisor

FCC International Bureau - Telecommunications Division:
Diane J. Cornell, Chief
Mindel De La Torre, Deputy Chief, Policy
George S. Li, Deputy Chief, Facilities
Susan O'Connell, Acting Chief, Policy & Facilities Branch,
Peter Cowhey, Chief, Multilateral & Development Branch
Kathleen J. Collins, Assistant Director
Mark Grannis, Special Assistant to the Director
Thomas M. Walsh, Assistant to Director

Department of Commerce, Office of International Affairs, National Telecommunications & Information Admin.:
Barbara Wellbury, Chief Counsel
Carol Darr, Associate Administrator
Suzanne Radell Settle, Senior Policy Advisor

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Department of Justice:
Diane P. Wood, Deputy Assistant Attorney General
Steven C. Sunshine, Deputy Assistant Attorney General
Constance K. Robinson, Chief of Operations
Carl Willner, Antitrust Division

Department of State:
Richard C. Beaird, Senior Deputy U. S. Coordinator, International Communications & Information Policy, Economic & Business Bureau

Executive Office of the President, Office of the United States Trade Representative:
Don Abelson, Assistant U.S. Trade Rep./Services, Investment, & Intellectual Property
Patricia Paoletta, Director, Telecommunications Trade Policy

(3) Attended luncheon hosted by the Center for Strategic & International Studies featuring Wolfgang Botsch, The Federal Minister of Posts & Telecoms of Germany, 20 June 1995.

(4) Attended Federal Communications Bar Association International Practice Group meeting featuring FCC International Bureau Chief Scott Harris, 25 April 1995.

(5) Attended The European Institute Conference of the Transatlantic Joint Action Initiative Concluding Conference entitled "The Transatlantic Relationship and the 1996 European Union Intergovernmental Conference," 9 May 1995.

(6) Attended British American Business Association Board of Directors meeting, 11 May 1995.

(7) Attended G-7 Industrialists Conference to develop paper on Global Information Society, 17-18 May 1995.

(8) Attended Telecommunications Industries Analysis Project Meeting, 22-23 May, Atlanta, Georgia (Jeanne Schaaf).

(9) Meeting/interview on 19 June 1995 among Mike Mills/The Washington Post; Jonathan B. K. Rickford, Director, Corporate Strategy/BT plc; and James E. Graf II, President/BT North America Inc. to discuss BT-UK network/educational developments.

(10) Attended The European Institute luncheon meeting featuring FCC Commissioner Susan Ness re FCC international policy and issues, 6 June 1995.

(11) Attended The European Institute's breakfast meeting featuring European Commission President Jacques Santer, 15 June 1995.

(12) Participated in discussion of international telecoms paper "It Takes Two to Tango: The International Marketplace for Telecommunications, Why Bilateral Relationships Dominate, and What to Do About It" by Dr. Leonard Waverman at American Enterprise Institute, 22 June 1995.

(13) Attended Bellcore's INC 17 (Industry Numbering Committee) Conference participating in number portability workshop, 28-29 June 1995, Newport Beach, California (Jeanne Schaaf).

(14) Attended luncheon meeting hosted by Center for Strategic & International Studies featuring Dr. Ron Sommer, Chairman of the Management Board, Deutsche Telekom AG, 13 July 1995.

(15) Participated on National Association of Regulatory Utility Commissioners Communications Committee International Communications Panel re U.S. Foreign Ownership/Entry Rules and BT/U.K. Views Thereon, 26 July 1995, San Francisco, California (Jeanne Schaaf).

(16) Attended Aspen Institute Roundtable on International Telecommunications, "Issues of Competition in Global Telecommunications," 26-30 July 1995, Aspen, Colorado.

(17) Attended Bellcore's INC 18 (Indusry Numbering Committee) Conference participating in number portability workshop, 2-3 August 1995, Ottawa, Canada.

(18) Attended British American Business Association Board of Directors meeting, 7 September 1995.

(19) Attended The European Institute's luncheon meeting featuring Bruno Lasserre, Director-General for Post and Telecommunications, National Regulatory Authority for Telecommunications of France, 11 September 1995, Washington, DC.

(20) Attended Bellcore's INC 19 (Industry Numbering Committee) Conference, participating in number portability workshop, 12 September 1995, San Francisco, California (Jeanne Schaaf).

(21) Attended Federal Communications Bar Association monthly luncheon featuring Anne Bingaman, Assistant Attorney General, Antitrust Division, Department of Justice, as guest speaker, 13 September 1995.

(22) Meeting on 14 September 1995 among Michael Reagan and Catherine Reid, Majority Counsel/House Subcommittee on Telecommunications and Finance; Members of the British Parliament organized in the Parliamentary Information Technology Committee visiting the U.S. from London; and James E. Graf II, President/BT North America Inc. to discuss the House view of current telecommunications legislation.

(23) Meeting on 14 September 1995 among Donald McClellan, Majority Communications Counsel/ Senate Subcommittee on Communications; Members of the British Parliament organized in the Parliamentary Information Technology Committee visiting the U.S. from London; and James E. Graf II, President/BT North America Inc. to discuss the Senate view of current telecommunications legislation.

(24) Hosted dinner and evening at The Kennedy Center for Members of the British Parliament organized in the Parliamentary Information Technology Committee ("PITCOM") who were visiting the U.S. from London to obtain current information on U.S. telecommunications issues; i.e., regulation, legislation, etc., 16 September 1995.

(25) BT/MCI Alliance Anniversary Reception and Dinner at Folger Shakespeare Library, 19 September 1995, Washington, DC. U.S. Government officials/media representatives attending as BT invited guests: George Brandon/Telecommunications Reports, Art Brodsky/Communications Daily, and Diane Cornell, Chief, Telecommunications Division, International Bureau, Federal Communications Commission.

(26) Attended British American Business Association luncheon featuring Sir Colin Marshall, 26 September 1995 (Jeanne Schaaf)

(27) Attended Telecommunications Policy Research Conference, 30 September 1995, Solomons, Maryland (Jeanne Schaaf).

ATTACHMENT III-12.

12. Political activities engaged in on behalf of British Telecommunications plc (BT plc):

(1) Assisted in preparation and filing at FCC of BT North America Inc. Comments of BT North America Inc. in IB Docket No. 95-22 "Market Entry and Regulation of Foreign-affiliated Entities." A copy of the Comments, filed 11 April 1995, is included in the response to the attached printed matter questionnaire.

(2) Luncheon meeting on 24 April 1995 between Jennifer Warren, Senior Legal Advisor, FCC International Bureau and James E. Graf II, President, BT North America Inc. to discuss various international telecommunications matters.

(3) Transmitted 8 May 1995 copy of BT's "Telecommunications Liberalisation: The Status in Germany" to the individuals listed below this entry. A copy of the paper is included in the response to the attached printed matter questionnaire.

Don Abelson, Assistant U.S. Trade Representative/Services, Investment, & Intellectual Property, Office of the U.S. Trade Representative
Diane J. Cornell, Chief, Telecommunications Division, International Bureau, FCC
Peter Cowhey, Chief, Multilateral & Development Branch, Telecommunications Division, International Bureau, FCC
Michael R. Nelson, Special Assistant, Information Technology, Office of Science & Technology Policy, Executive Office of the President
Patricia Paoletta, Director, Telecommunications Trade Policy, Office of the U.S. Trade Representative
Suzanne Radell Settle, Senior Policy Advisor, Office of International Affairs, NTIA, Department of Commerce
Jennifer Warren, Senior Legal Advisor, International Bureau - Office of the Bureau Chief, FCC
Carl Willner, Esquire, Antitrust Division, Department of Justice
Carol Darr, Associate Administrator, Office of International Affairs, NTIA, Department of Commerce

(4) Assisted in preparation and filing at FCC of BT North America Inc. Reply Comments in IB Docket No. 95-22. A copy of the Reply Comments and attached service list, filed 12 May 1995, is included in the response to the attached printed matter questionnaire.

(5) Assisted in preparation and filing at FCC of letter re BT North America Inc.'s Memorandum Order, Opinion and Authorization in File No. ITC-93-126. A copy of the letter, filed 30 June 1995, is included in the response to the attached printed matter questionnaire.

(6) Assisted in preparation and filing at FCC of BT North America Inc. Motion for Leave to File Supplemental Comments and Supplemental Comments in DA 94-1411 in connection with continued enhanced/unregulated status for frame relay service. A copy of the Motion and Supplemental Comments and attached service list, filed 12 July 1995, is included in the response to the attached printed matter questionnaire.

(7) Meeting on 21 July 1995 between Linda Blake and Jim Lande, FCC Industry Analysis Division, and Jeanne M. Schaaf, Assistant Vice President, BT North America Inc., to discuss BTNA quarterly and annual traffic and revenue reports.

(8) Meeting on 24 July 1995 between Jennifer Warren, Senior Legal Advisor, FCC International Bureau, and James E. Graf II, President and Jeanne M. Schaaf, Assistant Vice President, BT North America Inc., to discuss U.S.-U.K. ISR traffic to be carried "beyond" to other countries via switched services.

(9) Meeting on 3 August 1995 among Brian O'Connor, Maureen McLaughlin, and Ken Stanley/FCC International Bureau; Joel Winnik/Hogan & Hartson; and James E. Graf II, President, and Les Hankinson/BT North America Inc. to discuss BT North America Inc.'s compliance with the 31 January 1995 214 authorization that ordered BT North America to submit a "plan setting forth significant reductions by BT towards cost-based accounting rates with U.S. carriers over the next two years." A copy of materials provided is included in the response to the attached printed matter questionnaire.

(10) Meeting on 21 August 1995 between Stuart Kupinsky, FCC Policy and Program Planning Division, and Jeanne M. Schaaf, Assistant Vice President, BT North America Inc. to discuss BT North America Inc.'s Supplemental Comments filed in DA 94-1411.

(11) Assisted in preparation and filing at FCC of BT North America Inc. Comments in IB Docket No. 95-118 re streaamlined regulation of foreign carriers. A copy of the Comments, filed 22 August 1995, is included in the response to the attached printed matter questionnaire.

(12) Meeting on 25 August 1995 between Diane Cornell, Kelly Cameron, and Kerry Murray/FCC International Bureau and Jeanne M. Schaaf, Assistant Vice President, BT North America Inc. to discuss BT North America Inc.'s Supplemental Comments filed in DA 94-1411.

(13) Assisted in preparation and filing at FCC of BT North America Inc. Supplemental Comments in File No. ISP-95-002. A copy of the Supplemental Comments and attached service list, filed 1 September 1995, is included in the response to the attached printed matter questionnaire.

(14) Meeting on 18 September among Reed Hundt/FCC Chairman; Colin Green, Chief Legal Advisor/British Telecommunications plc; and James E. Graf II, President/BT North America Inc. to discuss the Sprint/FT/DBPT Alliance.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
SPRINT CORPORATION	)	File No. ISP-95-002
	)	
Petition for Declaratory Ruling	)	
Concerning Sections 310(b)(4)	)	
and (d) and the Public Interest	)	
Requirements of the Communications	)	
Act of 1934, as amended	)	

TO: The Commission

SUPPLEMENTAL COMMENTS OF BT NORTH AMERICA INC.

BT NORTH AMERICA INC.

Joel S. Winnik
David J. Saylor
Julie T. Barton

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601 Pennsylvania Avenue, N.W.
Suite 725
Washington, D.C. 20004

Its Attorneys

Dated: September 1, 1995

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DEPT. OF JUSTICE
CRIMINAL DIVISION

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SUMMARY

The agreements filed by Sprint reveal a plan whereby DT and FT, the two largest telecommunications monopolies in the world, would obtain significant investment in a U.S. facilities-based carrier. Sprint, in turn, would gain a preferential relationship with these government-owned PTTs that dominate the two largest telecommunications markets in continental Europe.

Nowhere do the proposed agreements set forth any obligation on the part of DT and FT to avoid discriminating in favor of Sprint and their joint venture. On the contrary, the documents demonstrate that the complex transaction would deeply intertwine the overall business interests of these entities and encourage each to favor the other. Neither DT nor FT faces competition today in the critical public voice telephony and facilities-based telecommunications markets in their home countries. Both possess market power even in the few, narrow areas where their governments have allowed limited competition. Moreover, there is now no effective government regulation of DT or FT. Consequently, the opportunities for DT and FT to favor Sprint and the joint venture with Sprint will go unchecked.

Much has been made of the possibility of privatization, liberalization and regulation someday in France and Germany. But there is no factual and legal record today upon which the Commission might base a determination that DT or FT will face competition and effective regulation in a near-term time frame sufficient to limit their ability to discriminate against, and substantially disadvantage,

competitors of Sprint and the proposed joint venture. Nor is the Department of Justice's proposed antitrust consent decree in U.S. v. Sprint Corp. and Joint Venture Co. directed at the serious concerns of international communications policy that the Commission is mandated to address. To prevent DT and FT from leveraging their market power to harm U.S. competitors and consumers, and to preserve the integrity and achieve the market-opening objectives of the Commission's international competition policymaking initiatives, the Commission should disapprove the proposed investment by DT and FT in Sprint and their joint venture unless and until the standards announced in the Market Entry docket are fulfilled.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
SPRINT CORPORATION	)	File No. ISP-95-002
	)	
Petition for Declaratory Ruling Concerning Sections 310(b)(4) and (d) and the Public Interest Requirements of the Communications Act of 1934, as amended	)	

To: The Commission

SUPPLEMENTAL COMMENTS OF BT NORTH AMERICA INC.

BT North America Inc. ("BTNA"), by its attorneys, hereby submits these Supplemental Comments pursuant to the Federal Communications Commission ("Commission") Public Notice of August 4, 1995 in this proceeding, which addresses the proposed combination of Sprint Corporation ("Sprint"), Deutsche Telekom AG ("DT") and France Telecom ("FT").

I. INTRODUCTION

In the Public Notice, the Commission called for comments regarding: 1) the agreements related to the proposed investment by DT and FT in Sprint and their three-party joint venture; and (2) "developments since the original pleading cycle" ended in December 1994. Examination of the more than 500 pages of agreements filed by Sprint reveals a plan whereby DT and FT, the two largest

telecommunications monopolies in the world, would obtain significant investment in a U.S. facilities-based carrier. Sprint, in turn, would gain a preferential relationship with these government-owned PTTs that dominate the two largest telecommunications markets in continental Europe.

Nowhere do the proposed agreements set forth any obligation on the part of DT and FT to avoid discriminating in favor of Sprint and their joint venture. On the contrary, the documents demonstrate that the complex transaction would deeply intertwine the overall business interests of these entities and encourage each to favor the other. Neither DT nor FT faces competition today in the critical public voice telephony and facilities-based wire telecommunications markets in their home countries. Both possess market power even in the few, narrow areas where their governments have allowed limited competition. Moreover, there is now no effective government regulation of DT or FT. Consequently, the opportunities for DT and FT to favor Sprint and the joint venture with Sprint will go unchecked.

After Sprint, DT and FT announced this proposed business combination, and sought Commission approval through a petition seeking a waiver of the 25% foreign ownership benchmark in Section 310 of the Communications Act and a ruling that the investment in Sprint would not constitute a transfer of control under Sections 310 or 214 of the Act, the Commission issued its Notice of Proposed Rulemaking in IB Docket No. 95-22 ("Market Entry NPRM") announcing a policy

that would permit significant investment by foreign telecommunication entities only if their home countries offer effective market access to U.S. competitors. 1/ In that proceeding, the Commission sent the clear message to Sprint that the proposed alliance would be judged on the basis of the public interest factors cited in the Notice, not simply on the narrow technical matters discussed in the petition. Sprint, DT and FT each submitted extensive comments in IB Docket No. 95-22 and had the opportunity to address and evaluate the application of the proposed effective market access test to their own proposed business venture. 2/ Having considered the comments filed in this proceeding on the original Sprint petition (and now on the proposed agreements), and in the Market Entry docket on the proposed factors to govern such affiliations, the Commission should now adopt an effective market access test and apply it to the proposed combination of Sprint, DT and FT. As shown below, the planned investment in Sprint by DT and FT cannot

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1/ Market Entry and Regulation of Foreign-Affiliated Entities, Notice of Proposed Rulemaking, 10 FCC Rcd 4844 (1995).

2/ Comments of Sprint at viii (filed April 11, 1995) ("it would be unfair to other U.S. carriers to now impose a different and more stringent standard that could impair those carriers' ability to compete with the BT/MCI alliance"); Comments of Deutsche Telekom AG at iv (filed April 11, 1995) ("the effective market access test is seriously flawed and should be rejected"); Comments of France Télécom at 4 (filed April 11, 1995) ("an effective market access test should not be applied to a non-controlling minority investment [and] should not aggregate two or more non-U.S. carrier investments"); Reply Comments of Sprint at 21 (filed May 12, 1995) ("the Commission should abandon the proposed test").

meet the Commission's proposed effective market access standard or any reasonable variation of it.

Much has been made of the possibility of privatization, liberalization and regulation someday in France and Germany. But there is no factual and legal record today upon which the Commission might base a determination that DT or FT will face competition and effective regulation in a near-term time frame sufficient to limit their ability to discriminate against, and substantially disadvantage, competitors of Sprint and the proposed joint venture. Nor is the Department of Justice's proposed antitrust consent decree in U.S. v. Sprint Corp. and Joint Venture Co. directed at the serious concerns of international communications policy that the Commission is mandated to address. To prevent DT and FT from leveraging their market power to harm U.S. competitors and consumers, and to preserve the integrity and achieve the market-opening objectives of the Commission's international competition policymaking initiative, the Commission should disapprove the proposed investment by DT and FT in Sprint and their joint venture unless and until the standards announced in the Market Entry docket are fulfilled.

The Commission should not yield to pressure to approve the transaction hastily, putting off the application of a strong, consistent international competition policy until another day and another venture. If the effective market access standard does not apply to the proposed combination of Sprint with the two largest telecommunications monopolies in the world, then when should it apply?

II. APPROVAL OF THE DECLARATORY RULING NOW WILL UNDERMINE THE FUNDAMENTAL GOALS OF THE COMMISSION'S INTERNATIONAL COMPETITION POLICY INITIATIVE

In the Market Entry docket the Commission announced three fundamental goals of its international competition policy: (1) to promote effective competition in the global market for communications services; (2) to prevent anticompetitive conduct in the provision of international services or facilities; and (3) to encourage foreign governments to open their communications markets. 3/ Commission disapproval of the proposed business combination under the current conditions of closed markets, ineffective regulation and lack of privatization in France and Germany -- and without prejudice to revisiting the matter when circumstances change -- will help achieve those goals. Approval now would severely undermine everything the Commission has been striving to accomplish.

A. Approval Now Would Undermine Competition in the Global Telecommunications Market

Without the creation of open and competitive markets in France and Germany, grant of the declaratory ruling will undermine effective competition in the global telecommunications market. The proposed transaction creates a vertical affiliation between a major U.S. local exchange, wireless and long distance carrier and the world's two largest telecommunications monopolies. This affiliation is of startling proportions. As the Department of Justice pointed out in its Competitive

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3/ Id. at p. 4855, ¶ 26.

Impact Statement, Sprint, DT and FT had combined revenues of approximately $85 billion in 1994, which is far greater than the revenues of AT&T, and twice the revenues of BT and MCI combined 4/. But more significant than size is the fact that DT and FT dominate the telecommunications markets in the two largest and most important economies in continental Europe. DT and FT are government-owned entities with monopolies over public switched voice telephony services and virtually all transmission facilities. They also dominate the few areas in which competition is permitted, such as public data services. DT and FT can unfairly leverage this market power into a privileged position in global communications generally.

The competition that flourishes on the important U.S.-U.K. route reflects the open markets and effective regulation in each country and the fact that the carriers in each country are privately owned, not government controlled. There will be no similar opportunity for fair and open competition on the French and German routes until there are substantial changes in market structure and regulation. Authorizing Sprint to ally itself with monopoly PTTs, without holding those carriers to the highest standards of competitive behavior, will do nothing to promote effective cooperation in global communications.

4/ Competitive Impact Statement, United States v. Sprint Corp. et al., No. 95 CV 1304 (D.D.C., complaint and proposed consent decree filed July 13, 1995), 60 Fed. Reg. 44049, 44059 (August 24, 1995) ("Competitive Impact Statement").

B. Approval Now Would Encourage Anticompetitive Conduct in the Provision of International Services and Facilities

Approval of the proposed transactions now would create the incentive and ability for Sprint, DT and FT to engage in anticompetitive conduct in the provision of international services and facilities. More multinational companies -- the emerging market for global seamless telecommunications -- have their headquarters in France and Germany than in any other single country except the U.S. and the United Kingdom. Through their affiliation, Sprint, DT and FT would have a distinct and unfair advantage in addressing this market. DT and FT will inevitably favor Sprint's interests in ways that are important in the marketplace, but difficult for the Commission to discern. For example, DT and FT may market the joint venture's virtual network services more aggressively than similar services provided by other DT and FT correspondents. No "special concessions" restrictions can adequately prevent such discrimination. Because their other correspondents have no alternative to DT's and FT's services and facilities, they would be significantly disadvantaged. In the absence of competitive alternatives to DT and FT, and without nondiscriminatory interconnection to their services and facilities under an umbrella of effective government regulation, the proposed affiliation poses a grave threat of anticompetitive behavior.

C. Approval Now Would Create A Disincentive For Other Governments To Liberalize Telecommunications Markets

Authorizing the combination of Sprint, DT and FT at this time will create a disincentive for France, Germany and other foreign governments to open,

and effectively regulate, their markets. The Commission would unilaterally open the U.S. market to the two largest telecommunications monopolies in the world, without any credible basis to assure that U.S. companies will be afforded effective access to the markets in the countries they dominate. DT and FT and their governments, having achieved easy access to the U.S. market, would be disinclined to adopt and implement the necessary restructuring of their markets. The policymaking processes within the European Union ("E.U.") and its Member States are long and complex and the final result of those initiatives in France and Germany is uncertain. (See Section IV, infra.) Without the powerful incentive of prospective U.S. market access, they would be less likely to adopt expeditiously effective regulations and regulatory procedures that will assure that DT and FT do not abuse their continuing market power.

Furthermore, opening the American market to DT and FT without upholding the entry standards embraced by the Commission would discourage other PTTs and their governments from easing their restrictive telecommunications policies. If this Commission is to have a credible international competition policy, the proposed transaction cannot be approved in the absence of a definitive showing that France and Germany provide effective market access to U.S. competitors.

III. THE PROPOSED BUSINESS COMBINATION DOES NOT MEET THE EFFECTIVE MARKET ACCESS TEST

The Commission should apply an effective market access test, reflecting principles articulated in the Market Entry docket, to the proposed investment in Sprint by DT and FT. In the Market Entry docket, the Commission

recognized that "because global competition remains highly asymmetric, unrestricted entry by foreign carriers from closed markets into the open U.S. market has the potential to inhibit competition." 5/ The Commission found that "the potential for exploitation of a foreign carrier's market power is decreased by: (1) access to facilities at both ends of the international connection for all U.S. carriers; and (2) effective competitive safeguards (including interconnection rules) enforced by an appropriate regulatory authority at both ends." 6/ The Commission therefore concluded that U.S. carrier affiliations with foreign carriers will be found to be in the public interest when they satisfy an effective market access test. The test would generally require "effective market access for U.S. carriers in the primary international telecommunications markets served by the carrier" proposing to affiliate with a U.S. carrier. 7/ The Commission emphasized that such access "must exist at the time of entry, or in the near future." 8/

The Commission stated that the following factors should be determinative of whether effective market access exists:

> (1) Whether U.S. carriers can offer in the foreign country international facilities-based services

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5/ Market Entry NPRM at p. 4855, ¶ 28.

6/ Id. at p. 4856, ¶ 30.

7/ Id. at p. 4858, ¶ 38.

8/ Id. The fact that France and Germany will not promote effective market access "soon" (Market Entry NPRM at p. 4846, ¶ 3) or "in the near future" is discussed in Section IV, infra.

substantially similar to those the foreign carrier seeks to offer in the United States; 9/

(2) Whether competitive safeguards exist in the foreign country to protect against anticompetitive and discriminatory practices, including cost allocation rules to prevent cross-subsidization;

(3) The availability of published, nondiscriminatory charges, terms and conditions for interconnection to foreign domestic carriers' facilities for termination and origination of international services;

(4) Timely and nondiscriminatory disclosure of technical information needed to use or interconnect with carrier's facilities;

(5) The protection of carrier and customer proprietary information; and

(6) Whether an independent regulatory body with fair and transparent procedures is established to enforce competitive safeguards. 10/

The application of the effective market access test to the affiliation of Sprint with DT and FT demonstrates that grant of the declaratory ruling would not be in the public interest. First, U.S. carriers are not permitted to provide basic, international telecommunications facilities-based service in either France or

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9/ In its comments in the Market Entry NPRM, BTNA suggested a variation on this approach: whether competition exists in the provision of basic as well as enhanced communications services, including both international domestic simple resale and facilities-based competition; and whether U.S. and other foreign nationals are permitted to take significant investment stakes in, or control of, facilities-based and resale carriers.

10/ Market Entry NPRM at p. 4859, ¶ 40.

Germany. DT and FT each hold international telecommunications facilities monopolies. 11/ France and Germany do not provide effective competitive safeguards to protect against anticompetitive and discriminatory practices. DT and FT are owned by the governments that regulate them. In neither country is there an independent regulator, free from incentives to favor affiliates, that has fair and transparent procedures to adopt and enforce such safeguards. In both countries, no regulations have been adopted or enforced to protect against anticompetitive and discriminatory practices.

Neither DT nor FT is subject to any regulatory requirement to provide interconnection at published nondiscriminatory rates. DT and FT have blatantly misused their monopoly status to deny potential competitors prompt, reasonable, cost-oriented interconnection. 12/ Moreover, France and Germany do not require timely and nondiscriminatory disclosure of technical information or protection of carrier and customer information.

No other factors cited by the Commission support DT's or FT's entry into the U.S. market. The Commission stated that such factors as the state of liberalization of the foreign carriers' domestic market and the availability of other

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11/ Nor do the regulatory environments in France and Germany satisfy BTNA's suggested approach. There is no basic international service competition and it is unlikely that an American company would be permitted to take a significant investment stake in, or control, DT or FT.

12/ See WIK/EAC, Network Interconnection in the Domain of ONP -- Study for DG XIII of the European Commission - Final Report (Nov. 1994) at 153-70.

market access opportunities, the status of the foreign carrier as a government or non-government entity and the general significance of the proposed entry to promotion of competition in global markets "might weigh in favor of, or against, allowing entry into the U.S. market." 13/ There has been no significant liberalization of domestic markets in either France or Germany. Both DT and FT remain government-owned entities and maintain their monopolies on wire infrastructure ownership and public voice services. In addition, both maintain considerable market power in the narrow areas open to limited competition such as data transmission. All competitors and potential competitors of DT and FT are dependent on the facilities owned and controlled by DT and FT to support their networks and complete calls. Not only do DT and FT fail the effective market access test, but no other circumstances cited by the Commission warrant approval of the proposed affiliation.

The Commission should formally adopt an effective market access test reflecting the principles outlined in the Market Entry docket. Application of the effective market access test tentatively adopted by the Commission, or any reasonable variation of it, will demonstrate that the proposed affiliation of Sprint with DT and FT threatens the emerging competitive marketplace for seamless communications services and is not in the public interest.

13/ Id. at p. 4861, ¶ 45.

IV. THERE IS NO ASSURANCE THAT FRANCE AND GERMANY WILL PROVIDE EFFECTIVE MARKET ACCESS "IN THE NEAR FUTURE"

The European Commission ("E.C.") is considering several initiatives that could contribute to the eventual development of competitive telecommunications markets in France, Germany, and other E.U. Member States. But these initiatives are far from achieving anything like "effective market access" for U.S. international carriers in FT's and DT's home countries now or "in the near future." The E.C. initiatives are still at a preliminary stage 14/ and have not been agreed and published as final E.C. or Council directives -- a process that is both uncertain and lengthy. Publication of final directives will be only the first step. Implementation will require comprehensive new legislation and regulation and vigorous enforcement by French and German authorities -- once again a process of considerable length and political uncertainty. As this Commission knows, Member States frequently fail (or fail in a timely fashion) to implement fully E.C. directives. 15/ Moreover, the E.C.'s power to require genuine services and infrastructure competition within the E.U. among nationals of E.U. Member States may not extend to competition in telecommunications transmitted between a Member State such as France or Germany and the United States. 16/ In any event,

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14/ See infra pp. 14-17.

15/ See infra p. 19.

16/ See infra pp. 17-18.

the preliminary E.C. directives do not directly address Member State-third country telecommunications, apparently leaving that subject to the individual Member States and the slowly moving multilateral negotiations of the World Trade Organization's Negotiating Group on Basic Telecommunications.

A. The European Commission Has Not Ensured Such Access

The record before this Commission affords no present basis for determining that effective French/German market access for U.S. carriers exists today or will exist someday as a matter of reasonable probability, much less that it will exist "in the near future." Critical E.C. liberalization initiatives are still in process and can be revised at the E.C. level or challenged, stayed, and even overturned at some other E.U. level, with considerable time elapsing in the interim. Even assuming the achievability of the E.C.'s supposed January 1, 1998 target date for public voice telephony and infrastructure liberalization, such a date -- almost two and a half years into the future -- is hardly "soon" or "near." The absence of effective competitive access in France and Germany for over two years while the Sprint/DT/FT alliance goes forward would seriously damage U.S. competitors and consumers in the interim and bequeath anticompetitive effects that will continue well beyond January 1, 1998.

1. The E.C. Process Is Ongoing and Its Results Still Uncertain

As part of its slow but continuing telecommunications reform effort, 17/ the E.C. proposed in July 1995 a "draft directive" 18/ setting selecting January 1, 1998 for public voice and infrastructure liberalization in Member States such as France and Germany, and selecting January 1, 1996 for allowing alternative infrastructure in such States to be used for all then-liberalized services

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17/ In 1990 the EC issued a long-considered directive ("the 1990 Services Directive") requiring Member States to permit competition within and between those states for certain services such as basic data telecommunications, but that directive expressly excluded DT's, FT's, and other PTTs' lawfully monopolized public switched voice telephony services and public voice and data infrastructure from the liberalization initiative. See Commission Directive of 28 June 1990 on competition in the markets for telecommunications services (90/388/EEC), O.J. No. L 192/10 (July 24, 1990) ("1990 Services Directive"). Since then, there have been numerous studies and proceedings to consider allowing liberalized services (but not public voice) to be offered over already authorized alternative infrastructure (e.g., utility-owned corporate user group facilities or cable TV infrastructure).

Over two years ago, a Council resolution proposed public voice liberalization by January 1, 1998 for States such as France and Germany, but no formal directive was issued. See Council Resolution of 22 July 1993 on the review of the situation in the telecommunications sector and the need for further development in that market (93/C 213/01), O.J. C213/1 (August 6, 1993). Toward the end of last year, the E.U. Council resolved to add public infrastructure to the list of matters that should be opened to competitive entry in states such as France and Germany; but once again, no formal directive was published. See Council Resolution of 22 December 1994 on the principles and timetable for the liberalisation of telecommunications infrastructures (94/C 379/03), O.J. C379/4 (December 31, 1994).

18/ Draft Commission Directive of ____, 1996 amending Commission Directive 90/388/EEC, regarding the implementation of full competition in telecommunications markets (96/____/EC) (July 19, 1995) (unofficial draft) ("Draft Voice and Infrastructure Directive").

(i.e., excluding public voice until 1998). This preliminary document ("Draft Voice and Infrastructure Directive") by itself hardly ensures effective market access in France and Germany now or in the near future, nor does its issuance guarantee a swift and certain resolution to an already long and arduous E.C. political process. Although the draft directive has been circulating unofficially, the date of publication in the Official Journal is still uncertain. 19/ Moreover, the directive is only a "draft" that will be circulated for comments, potentially consuming months of time. E.C. drafts are sometimes not adopted at all and often not in their original form. Substantial delays to consider alternatives are the rule, not the exception. Moreover, the January 1, 1996 date for early liberalization of alternative infrastructure is especially controversial 20/ and could cause substantial delay in adoption of any part of the draft. 21/ The draft's reliance upon Article 90 of the Treaty of Rome to avoid referral to the European Parliament is another controversial aspect that could complicate the political process and slow the whole

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19/ See "E.U. Urged to Speed Up Plans for Telecoms," Financial Times, July 21, 1995. (FCC Chairman "was informed there would be no plan before the autumn.")

20/ Germany's Minister Bötsch was quoted as saying that liberalizing alternative infrastructure by 1996 "would not be a good idea" and would be opposed. See "Bonn Opposes Rushing Telecom Competition," Wall Street Journal Europe, August 9, 1995, at 4.

21/ See "European Commission Adopts Accelerated Telecom Liberalization Timetable," Communications Daily, July 20, 1995, at 2; "Brussels Sets Deadline for Opening Telecoms Markets," Financial Times, July 20, 1995.

reform effort. 22/ The draft's crucial regulatory milestones, which themselves are already two or so years into the future, are hardly assured and conceivably could be moved further away in time. 23/ This Commission cannot simply presume that the potentially beneficial features of the draft directive will survive in a final version or that anti-competitive or ambiguous features will not be inserted into a compromise document.

The E.C. also recently proposed a directive on interconnection that would be issued not by the E.C. itself under Article 90 but by the European Council and Parliament under Article 100a of the Treaty of Rome. 24/ The topics covered in this Draft Interconnection Directive, include many matters that are crucial to "effective market access," e.g., interconnection rights, negotiations, standards, charges, costing methodologies, publication obligation; universal service; discrimination; transparency; accounting separation; number allocation and

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22/ See "Brussels Sets Deadline for Opening Telecoms Markets," Financial Times, July 20, 1995; "E.U. Is Pushed to Ease Limits on Cable TV," Wall Street Journal, September 2, 1994, at A5A.

23/ See Draft Voice and Infrastructure Directive, amendment to 1990 Services Directive Art. 3 (July 1, 1997 for Member States to publish voice and infrastructure licensing/declaration procedures); Art. 4A (July 1, 1997 for Member States to publish terms and conditions, interfaces, and interconnection points for interconnection with telecommunications organisations), Art. 2 (January 1, 1998 for abolition of reserved voice and infrastructure monopolies).

24/ See Proposal for a European Parliament and Council Directive on Interconnection in Telecommunications Ensuring Universal Service and Interoperability through Application of the Principles of Open Network Provision (ONP), COM (95) 379 (July 19, 1995) ("Draft Interconnection Directive").

portability; etc. Like any mere draft directive, this proposal could be changed radically before it is adopted, or may even be rejected. Because of the politically complex process chosen, a Council and Parliamentary decision is unlikely to occur before 1997 at the earliest. 25/ The proposal envisions that Member State regulators will thereafter develop extensive regulations to enforce the directive -- a process that is bound to be time-consuming. Even if all goes smoothly, "effective market access" pursuant to this directive would be many years in the future. Moreover, topical overlaps between this document and the Draft Voice and Infrastructure Directive are likely to confuse and complicate the process for developing both directives. 26/

2. E.C. Authority May Not Reach E.U.-Third Country Telecommunications Services and Facilities

A key element of effective market access, as stated by this Commission, is whether and when France and Germany will allow U.S. carriers access to their facilities. It is also important that U.S. carriers be able to lease capacity and resell services over such infrastructure and provide international public voice, all on the U.S.-France/Germany routes. 27/ Currently there is a

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25/ See EC, Communication to the European Parliament and the Council: The Consultation on the Green Paper on the Liberalisation of Telecommunications Infrastructure and Cable Television Networks, COM (95) 158 (May 3, 1995) at 47-48 (calling for adoption of this interconnection directive by January 1, 1997).

26/ The Draft Voice and Infrastructure Directive is "without prejudice to the harmonization" process. Whereas clause 25.

27/ See supra n. 9.

substantial question whether E.C. authority even reaches communications over third country routes (e.g., U.S.-E.U.) as distinguished from intra-E.U. routes. Nothing in the July 19 Draft Voice and Infrastructure Directive answers that question. The 1990 Services Directive, which it would amend, also does not answer the question, although the 1990 Directive's focus clearly is on the Community's common market and on telecommunications across two Member States' common frontier. 28/ The Treaty of Rome provisions invoked in the draft and in the 1990 Services Directive do not clearly encompass Germany to U.S. and France to U.S. telecommunications: Articles 59 ("restrictions on freedom to provide services within the Community") , 86 ("Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market insofar as it may affect trade between Member States"; and 90(2) ("the development of trade must not be affected to such an extent as would be contrary to the interests of the Community") 29/.

The U.S. Department of Justice ("DOJ") recently raised a similar concern regarding limitations upon the E.C.'s jurisdictional reach:

> It is not yet clear whether the E.U.'s liberalization measures will confer any rights on providers from the

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28/ The Draft Interconnection Directive applies to "third country telecommunications organisations" but appears to envision a reciprocity requirement. See Whereas ¶ 20 and Directive Arts. 20-21.

29/ Treaty Establishing the European Economic Community ("Treaty of Rome"), reprinted in S. Zamora & R. Brand (eds.), 2 Basic Documents of International Economic Law (CCH) (1990) at 77, 85, 86-87 (emphasis added).

United States and other countries outside the E.U., or only on firms operating within the E.U. The national governments at present are free to limit entry by such non-E.U. competitors, subject to the results of ongoing multilateral telecommunications trade negotiations. 30/

B. Developments in France and Germany Are Far From Assuring Effective Market Access in the Near Future

No E.C. or E.U. directive is self-enforcing. Member States must promulgate implementing legislation and regulation and develop model licenses. This Commission cannot simply presume that France and Germany will comply in a timely fashion with any final directive. As Chairman Hundt recently pointed out, there has been "slow progress" in Member States complying with directives. As recently as April 1995, the E.C. found that "many Members had not yet effectively implemented the [1990 Services] Directive." 31/ France and Germany were among the offenders. 32/

1. France

France has done virtually nothing so far to bring about effective market access in the near term, particularly in public voice and infrastructure

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30/ United States v. Sprint Corp. and Joint Venture Co., Competitive Impact Statement, 60 Fed. Reg. 44049, 44058, 44063 (August 24, 1995).

31/ Remarks of Reed C. Hundt, Chairman, FCC, Promethee, Paris, France, July 19, 1995 ("Hundt July 19, 1995 Speech").

32/ EC, DG IV, Communication by the Commission to the European Parliament and the Council on the Status and Implementation of Directive 90/388/EEC on Competition in the Markets for Telecommunications Services, COM (95) 113 final (April 4, 1995) ("1990 Services Directive Implementation Report") at 11, 20, 22, 34.

which remain monopolized by FT. The election of the Chirac government this May has resulted in major cabinet changes 33/, including the telecommunications ministry, and uncertainty regarding the role and leadership of the regulatory body, DGPT. A recent ministry communiqué promised to circulate sometime in September 1995 a solicitation for public comments on the future telecommunications regulatory and competitive framework. 34/ The same brief press release promised to submit a draft law to the French Parliament in the spring of 1996. Because no further details were offered, this Commission has no basis for assuming that French legal changes will occur at all, or in a particular form, or in compliance with E.C. directives that are only drafts themselves today, or that effective market access will emerge "in the near future," if ever.

2. Germany

In terms of preliminary proposals and documentation, German telecommunications reform is further along than in France. But it is hardly at a stage where the Commission can determine that effective market access exists or will exist in the "near future" in Germany. The controversy and directional changes

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33/ For the latest resignation, see "Paris Moves to Reassure Markets after Resignation," Financial Times, August 28, 1995, at 1 (forced resignation of Finance Minister Madelin for angering trade unions with his criticism of public sector pension packages and social welfare benefits).

34/ Communiqué du Ministre des Technologies de l'information et de la Poste, July 12, 1995.

generated over the past five months well illustrate the procedural and substantive uncertainty of German telecommunications reform.

In March 1995, the Federal Ministry of Posts and Telecommunications (BMPT) published for comment its paper entitled Key Elements of a Future Regulatory Framework for the Telecommunications Sector. 35/ Despite providing only limited insights into the German regulator's thinking, the Key Elements paper provoked substantial opposition from DT, 36/ harsh criticism from the influential telephone workers trade union, 37/ and substantial resistance from the political party (SPD) that controls the federal legislature's upper house (Bundesrat). 38/ The Key Elements paper acknowledged that, even under the very optimistic schedule set forth therein, a new telecommunications law could not be adopted before the summer of 1996, licensing procedures, ordinances, and standard forms could not be drafted until autumn of 1996, licenses could not be granted before

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35/ BMPT, Eckpunkte eines künftigen Regulkierungsrahmens im Telekommunikationsbereich ("Key Elements") (March 27, 1995).

36/ See, e.g., DT, Commentary (April 1995); Address, Dietmar Schulz, DT Managing Director, "Deutsche Telekom: The German Process," Brussels Telecommunications Forum: Privatisation of the Telecommunications Sector, May 5, 1995; "Deutsche Telekom Attacks Market Reform Plan," Financial Times, April 25, 1995, at 3.

37/ See "Deregulation Plans in Germany Face Union Resistance," Wall Street Journal, April 25, 1995, at A17.

38/ See "SPD Joins Opposition to Telecoms Law," Financial Times, May 17, 1995, at 3.

spring of 1997, and customer service by new licensees could not commence until January 1, 1998. 39/ Whether that best case scenario can actually be met is problematic.

A first draft of the telecommunications reform legislation 40/ received extensive criticism and has only recently been revised rather substantially. 41/ Although the new draft improves upon the first one in important respects (e.g., by providing for a more independent regulator), there is no assurance that the more positive features in the latest bill will survive the legislative process. The next hurdle is consideration by the other ministries and the cabinet as a whole. In whatever form it emerges, the bill would then be presented to the Bundesrat and the lower house (Bundestag). Whatever law is ultimately passed and signed by the President may be challenged in the Constitutional Court (Bundesverfassungsgericht) and could be stayed during the one- or two-year court proceeding. At the current juncture in the legislative process, there can be no assurance that a particular reform will become law, much less that all the required implementing ordinances will be promulgated and licenses to compete against DT

39/ Key Elements at 15-16.

40/ Diskussionsentwurf für ein Telekommunikationsgesetz, May 31, 1995 ("May 31 discussion draft").

41/ Referenententwurf für ein Telekommunikationsgesetz, July 27, 1995 ("July 27 parliamentary draft").

in infrastructure and public voice will be issued in a particular form and substance and on a specified schedule.

There are numerous aspects of the most recent legislative draft that raise problems or require clarification. Briefly, some of the more important ones are:

- inadequacies in preventing and remedying cross-subsidization and discrimination;
- vagueness in the tariffing process applied to the dominant carrier (i.e., DT);
- insufficient detail regarding interconnection standards, pricing, and enforcement process;
- uncertainty regarding the licensing process and universal service obligations/payments. 42/

The German telecommunications reform process is at much too early a stage and is encumbered with too many uncertainties for this Commission to decide that effective market access is a "near future" probability.

42/ The legislation (July 27 parliamentary draft § 49) provides access to public rights-of-way free of charge, thus placing facilities-based competitors on a par with DT which heretofore has had an exemption from municipal fees. German municipalities, which see extracting substantial right-of-way fees from emerging telecommunications businesses as an attractive way to reduce growing local government deficits, strongly oppose this provision and are threatening a constitutional court challenge if the provision passes. See "Curbs Enrage German Towns and Cities," Financial Times, June 28, 1995, at 3; "Städte Drohen Postminister mit Verfassungsklage," (Municipalities Threaten Postminister with Constitutional Complaint), Handelsblatt, July 25, 1995. Effective market access by DT's competitors could be severely undercut if the legislature or the court resolves this controversy in a way that prevents those competitors from using public rights-of-way on the same economic basis as DT.

C. Neither France Nor Germany Plans to Relinquish Majority Ownership and Control Over Its PTT in the Near Future.

In its Market Entry Notice, the Commission said that, "the status of the foreign carrier as a government or non-government entity" is a relevant public interest consideration in determining whether to permit foreign carrier entry into the U.S. 43/ Indeed, the matter of private versus government ownership of dominant carriers such as FT and DT is closely tied to the sixth explicit factor in the Commission's effective market access test, i.e., "whether an independent regulatory body with fair and transparent procedures is established to enforce competitive safeguards." 44/

As Chairman Hundt recently explained, regulators of dominant government-owned carriers naturally might hesitate to impose "regulatory measures" that would "cost the [Government] Treasury a lot of money" or "embarrass the CEO appointed by the Prime Minister." 45/ Similarly, the Chairman also noted, government ownership may lead to government involvement in the operational decisions of the dominant carrier, including how the carrier should confront competition and what strategic alliances it should form. 46/ Quite

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43/ Market Entry NPRM at p. 4861, ¶45.

44/ Id. at p. 4859, ¶ 40 (emphasis added).

45/ Hundt July 19, 1995 Speech.

46/ Id.

clearly, regulatory independence will suffer if the regulator defers or avoids otherwise necessary and appropriate pro-competitive measures because they may impact adversely on government-owned assets, embarrass government-chosen managers, or conflict with carrier operational decisions encouraged or endorsed by other government officials.

In order to ensure this crucial regulatory independence as well as to avoid unfair government subsidies of dominant carriers' competitive activities, BTNA reiterates its plea that the Sprint/DT/FT transactions not be approved until FT and DT "are privatized at least to the extent that they derive a substantial portion of their capital from the private markets and not principally from public treasuries." 47/ Indeed, the U.S. public interest would be best protected if the Commission were to wait until control of DT and FT passes out of government hands.

The possible privatization of FT has been a highly controversial topic in France for many years, particularly because of job security concerns of civil servants staffing FT. On May 30, 1995, FT workers conducted a one-day strike warning the government against converting FT into a joint stock company whose shares would be sold to the public. Then, in early July, the French government announced its intention to delay indefinitely any privatization of FT. 48/ Chairman

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47/ BTNA Comments at iii, 2, 9.

48/ See Communiqué du Ministre des Technologies de l'information et de la Poste, July 12, 1995; "France Puts Off Telecom Privatization: Delay Could Pose

[Footnote continued]

Hundt, speaking in Paris a week later, summarized the U.S. significance of this set back:

> I understand that the French Government has placed privatization on indefinite hold. Naturally, from an outside perspective, this decision leads the observer to question the Government's willingness to truly liberalize the telecom market in France. This reluctance to privatize puts France out of step with the rest of the European Union, and is counter to the spirit of the [European] Commission's vision of liberalization. * * * We will be considering the consequences of the French Government's decision to retain control of the dominant service provider of France back in Washington, D.C. 49/

Chairman Hundt's comments apparently had little effect. At the end of August, the French government fired the head of FT, in part because he favored rapid privatization. 50/ France's telecommunications minister expressed his "wish" that FT might still be partially privatized by 1998; but he said there was no timetable, cautioned that any eventual sell-off might be to government-selected industrial partners and not to the public, and emphasized that the government would retain majority control of FT in any event. 51/

[Footnote continued]

Problems for Linkup with Sprint and Deutsche Telekom," Wall Street Journal, July 12, 1995, at A10.

49/ Hundt July 19, 1995 Speech (emphasis added).

50/ See "France Telecom Names Chairman, Delays Sell-Off," Wall Street Journal, August 31, 1995, at A6.

51/ See id. Apparently, any reorganization of FT preparatory to even limited privatization will not occur unless and until FT's trade unions are persuaded to

[Footnote continued]

DT also continues to be 100%-owned by its government. DT has been reorganized as a joint stock company and the government apparently intends to sell a minority percentage of its stock to the public beginning in 1996 with a DM15 billion (approximately U.S. $10.61 billion) tranche in the summer of 1996 52/ and a similar amount by the year 2000. 53/ Given the enormous financial impact such a sale would have and given the government qua owner's interest in maximizing the value of the shares retained (DT being valued overall at DM70-100 billion), the German Finance Ministry not surprisingly prefers to postpone real competition to DT as long as possible. 54/ The pendency of a partial privatization of DT may actually diminish the government's willingness to liberalize the more lucrative parts of the German telecommunications business and to impose regulations that restrict DT's use of market power against nascent competitors. In any event,

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[Footnote continued]

drop their adamant opposition and until passage of a complete rewrite of the telecommunications code. See "New France Télécom Chief Named to Bring About Reform," Financial Times, August 31, 1995, at 1.

52/ See "Deutsche Telekom Reports Profit for 1994, Nears U.S. Listing Pact," Wall Street Journal, June 9, 1995, at A6.

53/ See "Deutsche Telekom Official Is Concerned Privatization Will Overwhelm Markets," Wall Street Journal, February 3, 1995, at A7J.

54/ See "Deutsche Telekom's Monopoly Status Weighs Heavily on Privatization Plan," Wall Street Journal., November 17, 1994, at A20.

Germany's telecommunications minister, has confirmed that the government intends to retain majority control of DT. 55/

Given the absence of any progress toward privatization of FT, and given that partial privatization of DT beginning next summer may actually engender incentives to slow the introduction of competition, the current government ownership of both carriers strongly warrants this Commission delaying any approval of the Sprint transactions until conditions are more promising for fair competition under truly independent regulatory regimes.

* * *

Because the status of competitive telecommunications policy development within the E.C. is uncertain and implementation by France and Germany of whatever final directives emerge from the E.C. or Council is even more indefinite, the Commission has no basis for concluding that France and Germany will provide effective market access to U.S. carriers "soon" or "in the near future."

55/ See Speech and response to questions of Minister Bötsch, National Press Club, Washington, D.C., April 3, 1995 (on Dow Jones Investor Network videotape).

V. THE JUSTICE DEPARTMENT CONSENT DECREE DOES NOT ALTER THE COMMISSION'S INDEPENDENT "PUBLIC INTEREST" RESPONSIBILITY TO ADDRESS ALL THE COMMUNICATIONS POLICY ISSUES RAISED BY THE PROPOSED TRANSACTIONS

On July 13, 1995, the US Department of Justice filed a Clayton Antitrust Act complaint and a proposed consent decree regarding these Sprint transactions. 56/ The complaint confirms several things that BTNA and others have argued to this Commission all along. As a result of the Sprint investment and joint venture and DT's and FT's protected monopoly positions, those carriers will have increased incentives and the ability "substantially to lessen competition in the markets for US-France and US-Germany international telecommunications services and for seamless international services" by, inter alia,

- "us[ing] their market power in the provision of local and domestic and international long distance telecommunications services, transmission infrastructure, and public data networks to discriminate in favor of Joint Venture Co. and Sprint and against other US telecommunications and enhanced telecommunications providers";

- "denying operating agreements to th[ose] competitors, or by offering such agreements only on discriminatory terms";

- "direct[ing] their switched telecommunications traffic from France and Germany disproportionately to Sprint . . . , either directly as part of the correspondent system, or outside that system through the Joint Venture Co. backbone network";

- "cross-subsidiz[ing] Joint Venture Co. and Sprint by providing revenues from the monopoly services or by shifting costs of Joint

---

56/ See proposed final judgment, United States v. Sprint Corp. & Joint Venture Co., No. 95 CV 1304 (D.D.C., filed July 13, 1995), 60 Fed. Reg. 44049, 44051 (August 24, 1995).

> Venture Co. and Sprint to the monopoly services" and thereby "facilitat[ing] a strategy of placing competitors of Joint Venture Co. and Sprint in a 'price squeeze,'" and
>
> - "provid[ing] Sprint or Joint Venture Co. with confidential information that they obtain from Sprint's and Joint Venture Co.'s competitors." 57/

The proposed decree addresses these issues from a pure Clayton Act perspective, recognizing the Department's limited role as a law enforcement agency and the Court's specialized function as a judicial rather than a regulatory body. In the instant proceeding and the companion Market Entry docket, however, the Commission must exercise its own broad independent regulatory responsibility under the Communications Act to address all the communications policy issues raised by the proposed Sprint transactions. The Commission must, of course, "seriously consider[] the antitrust consequences of a proposal and weigh[] those consequences with other public interest factors." 58/ But, as the Justice Department's own Competitive Impact Statement acknowledged, the Commission has far broader responsibilities:

> The FCC's review of this transaction, under the "public interest" mandate of the Communications Act of 1934, may involve broader issues of foreign market access and the appropriateness of permitting substantial investments in United States telecommunications carriers by foreign monopolists whose conduct already causes harm to United

---

57/ Id., Complaint ¶ ¶ 40 (a) - (e).

58/ United States v. FCC, 652 F.2d 72, 88 (D.C. Cir. 1980) (en banc), quoted in McCaw & AT&T, 9 FCC Rcd 5836, 5844 (1995).

States consumers, subjects on which the FCC also has a general rulemaking procedure in progress. 59/

Even with respect to the specific antitrust/competition issues, the Justice Department decree focuses solely upon the narrow question of what relief is necessary to remedy violations of Section 7 of the Clayton Act. Furthermore, that decree is not final and will be subject to public comment under the Tunney Act. 60/ Commenters may point out deficiencies in that decree which could cause the Justice Department to withdraw and redraft it, either on the Department's own initiative or at the urging of the Court. BTNA expects to file comments during the 60-day comment period which expires October 23, 1995. There is no assurance that the decree, as currently drafted, will become final.

In sum, the Commission has the independent responsibility not only to consider the very serious antitrust issues raised by the proposed Sprint transactions (and to do so without deferring to the proposed consent decree as if it were the final word on the subject 61/) but also to consider the broader

---

59/ Competitive Impact Statement at 31 (citing the Market Entry NPRM and the Justice Department's own reply comments therein), 60 Fed. Reg. at 44065.

60/ The Antitrust Procedures and Penalties Act or Tunney Act, amending Section 5 of the Clayton Act, is codified at 15 U.S.C. § 16(b)-(h).

61/ Neither DT nor FT is a party to the decree, and the Joint Venture Co. (defined as a variety of entities) has not yet stipulated to be bound by it. Inexplicably, the decree (§§ II.C. and V.Q.(2)) allows the Joint Venture Co. to participate in the U.S. international market when only a single U.S. provider (perhaps an inconsequential one) is licensed by France and Germany. This Commission would not deem a market competitive and open when only a single U.S. company has been allowed to enter.

communications policy issues, including the fundamental question of whether foreign carrier entry into the US market by acquisition and joint venture, in the absence of effective market access in the foreign carriers' markets, is contrary to the public interest. 62/

62/ The proposed antitrust decree is rather passive or reactive, whereas Commission policymaking should be pro-active. The proposed decree's structure, in effect, lets Sprint and its partners control the pace of competition and innovation in US-France/Germany telecommunications. Until Sprint and or the Joint Venture Co. receive the benefit of some technical or competitive development in France or Germany, there is no obligation to make that development or possibility available to their competitors, thus stifling those competitors' own innovation and entrepreneurial energy. See, e.g., § § II.C., III.D., & III.G. of the proposed final judgment, 60 Fed. Reg. at 44052-054. By contrast, the Commission has an affirmative obligation under the Communications Act actively to promote competition and innovation and to accelerate the pace at which improvements in national and international telecommunications can benefit the American consumer. See, e.g., Communications Act § 1, 47 U.S.C. § 151.

VI. CONCLUSION

The Commission should adopt an effective market access test in the Market Entry docket and evaluate the proposed business combination pursuant to that standard. Because the proposed transaction will not meet the Commission's effective market test or any reasonable variation of it, Sprint's petition for declaratory ruling should be denied.

Respectfully submitted,

BT NORTH AMERICA INC.

By: Joel S. Winnik

Joel S. Winnik
David J. Saylor
Julie T. Barton

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Its Attorneys

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BT NORTH AMERICA INC.
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Washington, D.C. 20004

Dated: September 1, 1995

CERTIFICATE OF SERVICE

I, Kathy Bates, a legal secretary with the law firm of Hogan & Hartson L.L.P., hereby certify that on this 1st day of September, 1995, a copy of the foregoing Supplemental Comments of BT North America Inc. was hand delivered, except where noted, to the parties listed on the attached service list.

Kathy Bates

Dated: Sepember 1, 1995

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August 29, 1995

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street Northwest, Room 222
Washington, D.C. 20554

Re: **Ex Parte Presentation**
DA 94-1411 -- Petition for a Declaratory Ruling that AT&T's InterSpan Frame Relay Service Is a Basic Service that Must Be Offered Under Tariff

Dear Mr. Caton:

On August 25, 1995, I met with Diane Cornell, Kelly Cameron, and Kerry Murray of the International Bureau to discuss BT North America Inc.'s Supplemental Comments, filed in accord with the above referenced proceeding.

Two copies of this notice are being submitted to the Secretary pursuant to the Commission's rules.

Sincerely,

Jeanne M. Schaaf

cc: Diane Cornell
Kelly Cameron
Kerry Murray

BT North America Inc.
North Building, Suite 725
601 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Telephone (202) 639 8222
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AUG 22 1995
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OFFICE OF SECRETARY

August 23, 1995

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street NW
Room 222
Washington, DC 20554

INTERNAL SECURITY SECTION REGISTRATION UNIT '95 OCT 30 P4:18 RECEIVED DEPT. OF JUSTICE CRIMINAL DIVISION

Re: Streamlining the International Section 214 Authorization Process and Tariff Requirements
IB Docket No. 95-118

Dear Mr. Caton:

BT North America Inc. ("BTNA"), by its attorney, submits the following comments in response to the Commission's Notice of Proposed Rulemaking ("Notice") in the proceeding captioned above. In this proceeding, the Commission is proposing to eliminate unnecessary regulatory burdens on international common carriers. BTNA is an international common carrier authorized by the Commission to resell international private line and switched services.[1] Accordingly, BTNA has a direct interest in this proceeding.

BTNA supports the rule modifications that are set forth in the Notice. As the Commission has recognized in this and other proceedings, compliance with regulatory requirements imposes costs on the Commission, the carriers, and the public.[2] As such, eliminating those requirements that are unnecessary or irrelevant and streamlining those that remain serves the public interest.

The proposals made by the Commission in this proceeding will go far in reducing the burdens of regulatory compliance. The Commission's proposals regarding Section 214 application requirements for resellers are particularly

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[1] See BT North America Inc., File No. ITC-93-126, DA 95-120 (released January 30, 1995); BT North America Inc., 9 FCC Rcd 6851 (1994).

[2] See Tariff Filing Requirements for Nondominant Common Carriers, CC Docket No. 93-36 (Memorandum Opinion and Order), FCC 93-401, released August 18, 1993, at ¶¶22, 42 [hereinafter Domestic Tariff Order]; Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor (Second Report and Order), 91 F.C.C. 2d 59, 15 (1982).

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Washington, D.C. 20004

worthy of note. The new rule that sets forth the application requirements for international carriers is a substantial improvement over Section 63.01, which contains many requirements that are repetitious or superfluous as applied to resellers. The new rule eliminates these irrelevant requirements and thus should make it much easier for carriers to develop and the Commission to process Section 214 applications.

The Commission's proposal to allow carriers already authorized to engage in International Simple Resale ("ISR") to serve any country later found equivalent is a welcome proposal as well. The value of having a carrier already found qualified to engage in ISR file an application to resell interconnected private lines to a country already found equivalent is questionable at best. Adoption of this rule will enable carriers to implement ISR to new locations more rapidly and thus to serve their customers more efficiently.[3]

BTNA also supports the Commission's proposal to permit resellers to resell the services of any authorized unaffiliated common carrier. An entity that is qualified to resell the services of one unaffiliated facilities-based carrier should be equally qualified to resell the services of another. Allowing resale carriers to resell the services of any unaffiliated carrier will reduce administrative burdens by eliminating the need to file and process additional Section 214 applications.

In the Notice, the Commission solicits comment on possible modifications to its tariff requirements for nondominant international carriers. BTNA urges the Commission to streamline further its tariffing requirements for resale carriers by reducing the notice period and relaxing form and content requirements as discussed in the Notice. Streamlining tariff requirements for international resellers will promote price competition and accelerate the introduction of new services. As the Commission recognized in adopting similar requirements for nondominant interstate carriers, streamlined tariff requirements will result in more diverse and lower cost service offerings for the public.[4]

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[3] BTNA notes that there is precedent for these proposals in the Commission's grant of "blanket" Section 214 authorizations to carriers providing transborder satellite services. In a single grant of authority, carriers can obtain permission to provide any and all transborder satellite telecommunications services that have already been or will in the future be consulted under Article XIV(d) of the INTELSAT Agreement, serving any country that has already been or in the future will be consulted for transborder service under Article XIV(d), and using any satellite that has already been or will in the future be consulted for transborder service under Article XIV(d). See, e.g., Hughes Communications Galaxy Corp., 6 FCC Rcd 297 (1991). Similarly, blanket authorizations granted for Intelsat Business Service allow the carrier to serve any country that is or may be listed in Comsat's tariff. See Common Carrier Bureau's International Facilities Division Releases General Guidelines for International Section 214 Applications, Report No. I-6837, released August 4, 1995, at 3.

[4] See Domestic Tariff Order, supra note 2, at ¶42.

As discussed herein, implementation of the rule modifications proposed in the Notice will reduce the cost of regulatory compliance and thus will serve the public interest. Accordingly, the Commission should proceed promptly to adopt the rule modifications it has proposed.

Respectfully Submitted,

BT NORTH AMERICA INC.

By: _____
Joan M. Griffin
Its Attorney

Telephone (202) 639 8222
Facsimile (202) 434 8867

August 29, 1995

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street Northwest, Room 222
Washington, D.C. 20554

Re: **Ex Parte Presentation**
DA 94-1411 -- Petition for a Declaratory Ruling that AT&T's InterSpan Frame Relay Service Is a Basic Service that Must Be Offered Under Tariff

Dear Mr. Caton:

On August 21, 1995, I met with Stuart Kupinsky of the Policy and Program Planning Division to discuss BT North America Inc.'s Supplemental Comments, filed in accordance with the above referenced proceeding.

Two copies of this notice are being submitted to the Secretary pursuant to the Commission's rules.

Sincerely,

Jeanne M. Schaaf

cc: Stuart Kupinsky

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'95 OCT 30 P4:18
INTERNAL SECURITY
SECTION
REGISTRATION UNIT

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James E. Graf II
President

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August 3, 1995

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Washington, DC 20554

Reference: Ex Parte Presentation
BTNA Memorandum, Opinion, and Authorization - File No. ITC-93-126

Dear Mr. Caton:

On Thursday, August 3, Les Hankinson, Joel Winnik, and I met with Brian O'Connor, Maureen McLaughlin and Ken Stanley of the International Bureau to discuss BTNA's compliance with the provision of the above-referenced authorization that ordered BT North America Inc. (BTNA) to submit "a plan setting forth significant reductions by BT [British Telecommunications plc, BTNA's parent company] towards cost-based accounting rates with U.S. carriers over the next two years." A copy of the paper discussed at the meeting is attached.

Two copies of this notice are being submitted to the Secretary of the FCC in accordance with Section 1.206 (a) of the Commission's rules.

Sincerely,

James E. Graf II

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CRIMINAL DIVISION
OCT 30 P4:18

cc: (without attachments)
Brian O'Connor
Maureen McLaughlin
Ken Stanley

BT North America Inc.
North Building, Suite 725
601 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

FCC MOO&A, Released 30 January 1995

BTNA directed to "file with the Commission a plan setting forth significant reductions by BT towards cost-based accounting rates with U.S. carriers over the next two years"

(para. 22)

BTNA Letter, 14 March 1995

Background

- BT U.K.-U.S. A/R
  - .75 SDR / March 1991

    down to

    .33 SDR / May 94 (55%)

  - At bottom of FCC benchmark for Europe

  - Second lowest A/R after Canada-U.S.

BTNA Letter, 14 March 1995, cont'd

- Non-discounted Collection Rates (40% of U.S.-U.K. Traffic) 1991 to present
  - AT&T rates unchanged to 1993 and subsequently increased 2%
  - BT rates down 50% ($0.34/min. to $0.18/min.)
  - Now
    - U.S.-U.K./AT&T 36¢/min. (derived as a 3-minute call)
    - U.K.-U.S./BT 18¢/min. (flat rate)

BTNA Letter, 14 March 1995, cont'd

Offers

- BT prepared in November 1993 to negotiate further reduction to 0.25 SDR/eff. 1 April 1995 as part of 2-year package, including traffic stimulation by USCs
- Not accepted by AT&T

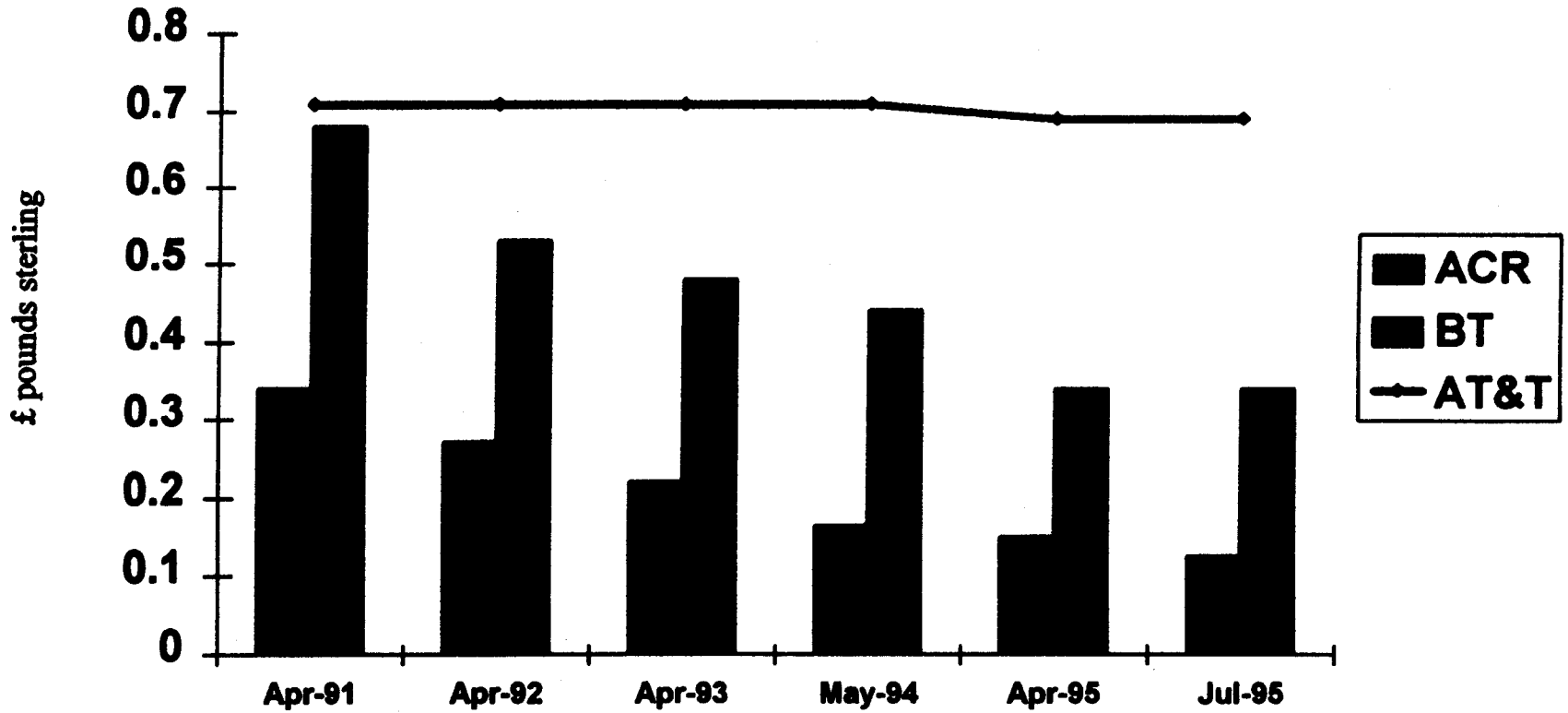
BTNA Letter, 14 March 1995, cont'd

- Because of USC inaction re collection rate reductions or other traffic stimulation activities, BT proposed
  - .30 SDR/eff. 1 April 1995
  - Further reductions to be negotiated based on commercial/financial conditions, including traffic stimulation moves by USCs

BTNA Letter, 30 June 1995

- After 5 months of negotiations, BT-AT&T agreement
  - .30 SDR/eff. 1 April 1995) 24% reduction in
    .25 SDR/eff. 1 July 1995) less than 12 months
  - Further discussions to begin August 1995 for next 2-5 year period
    - Appropriate cost assumptions, market conditions, etc.
    - Future A/R reductions linked to traffic stimulation activities

BT & AT&T Peak rate call prices set against the average ACR (£ per min for 3 min call)



SUMMARY

- BTNA/BT has complied with the Commission's directive that it file its 2-year plan for significant negotiated U.S.-U.K. A/R reductions.
- FCC ISR policy is working on U.S.-U.K. route--U.S.-U.K. A/R is reducing to cost.
- BT will continue to press for USC market stimulation activities which will result in customers benefitting from reduced A/Rs.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	Stamp And Return
	)	
Petition for Declaratory Ruling	)	
That AT&T's InterSpan Frame Relay	)	DA 94-1411
Service Is a Basic Service That	)	
Must Be Offered Under Tariff	)	

MOTION OF BT NORTH AMERICA INC. FOR LEAVE TO FILE SUPPLEMENTAL COMMENTS

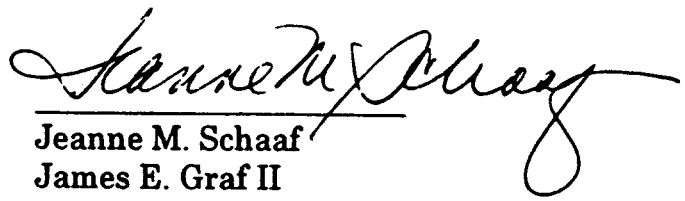
BT North America Inc. ("BTNA") hereby moves pursuant to Section 1.45 (c) of the Commission's Rules, 47 C.F.R. § 1.45 (c), for leave to file the attached Supplemental Comments. BTNA's Supplemental Comments respond to issues raised by the Independent Data Communications Manufacturers Association ("IDCMA") in its Supplemental Comments filed June 13, 1995, some four months after the close of the comment period in this proceeding. The attached Supplemental Comments are required to correct certain misapprehensions in the IDCMA Supplemental Comments and to ensure that the Commission may base its decision on a full and complete record in this proceeding.

As BTNA has previously suggested to the Commission and the parties in a letter dated June 22, 1995, BTNA has moved expeditiously to prepare these Supplemental Comments, but other commitments of responsible BTNA personnel prevented filing at an earlier date. In view of the already

extensive supplemental pleading cycle triggered by the IDCMA filing, no party will be prejudiced by acceptance of these Supplemental Comments at this time.

Respectfully Submitted,

BT North America Inc.

By: 

Jeanne M. Schaaf
James E. Graf II
Jan L. Vinokour

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Washington, D.C. 20004
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July 12, 1995

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BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

Stamp And Return

In the Matter of	)	
	)	
Petition for Declaratory Ruling	)	
That AT&T's InterSpan Frame Relay	)	DA 94-1411
Service Is a Basic Service That	)	
Must Be Offered Under Tariff	)	

SUPPLEMENTAL COMMENTS OF BT NORTH AMERICA INC.

Jeanne M. Schaaf
James E. Graf II
Jan L. Vinokour

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July 12, 1995

SUMMARY

BTNA supports the view that frame relay service is an enhanced offering because the frame relay discard feature results in the delivery of different or restructured information. But, regardless of how the Commission rules on AT&T's frame relay offering, BTNA's version of frame relay service is clearly not a basic offering. Rather, BTNA's frame relay service incorporates protocol conversion and asynchronous/X.25/frame relay data transmission capabilities to provide an end-to-end data communications solution to its subscribers.

Moreover, BTNA has no underlying facilities to unbundle as IDCMA proposes in its Supplemental Comments because BTNA leases its underlying telecommunications infrastructure. Nor has BTNA argued for any change to the CPE unbundling rules. Further, although IDCMA claims that BTNA's proposal "could result in a serious erosion of competition," the Commission must be mindful of the competitive impact on international markets and services and the commercial impact on customers of any determination to treat all interexchange carrier frame relay services the same, as AT&T has requested. The Commission's international resale policy governing basic services offered over international private line circuits would result in a severe curtailment of any dial-up, asynchronous protocol, switched access to international frame relay offerings like BTNA's, since the Commission has

recognized only the UK and Canada to date for public switched network ("PSN") interconnection using resold IPLCs.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition for Declaratory Ruling	)	
That AT&T's InterSpan Frame Relay	)	DA 94-1411
Service Is a Basic Service That	)	
Must Be Offered Under Tariff	)	

SUPPLEMENTAL COMMENTS OF BT NORTH AMERICA INC.

INTRODUCTION

At issue in this proceeding are two petitions for declaratory ruling, one filed by the Independent Data Communications Manufacturers Association ("IDCMA") and the second filed by AT&T Corp. ("AT&T"),[1] regarding the regulatory status of frame relay services. IDCMA's petition sought to have AT&T's InterSpan® Frame Relay Service declared a basic telecommunications offering subject to regulation under Title II of the Communications Act and, thus, required to be offered pursuant to tariff and subject to the Commission's rules regarding equipment unbundling. AT&T's petition sought to have any Commission determination regarding frame relay

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[1] Petition for a Declaratory Ruling of the Independent Data Communications Manufacturers Association, Inc. ("IDCMA Petition"), filed November 28, 1994 and Petition of AT&T Corp. for Declaratory Ruling ("AT&T Petition"), filed December 5, 1994.

services apply equally to the frame relay offerings of all interexchange carriers.

Comments on these petitions were due January 23, 1995 with reply comments due February 13, 1995.[2] BT North America Inc. ("BTNA") joined this proceeding by filing Reply Comments. On June 13, 1995 -- a full four months after the filing deadlines -- IDCMA submitted a motion for leave to file supplemental comments[3] in the proceeding, arguing that BTNA and others raised issues in their reply comments that were not addressed in the initial round, thus depriving IDCMA of an opportunity to respond to those arguments. IDCMA also requested leave to file comments to address "several developments that have occurred while its petition has been pending," or in the alternative, accept its pleading as an ex parte filing in support of its earlier petition.[4]

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[2] AT&T ("AT&T Opposition"), CompuServe, EMI Communications Corporation, NYNEX Telephone Companies, Southwestern Bell Telephone Company, and US WEST Communications, Inc. submitted comments or oppositions. The Ad Hoc Telecommunications Users Committee, the Bankers Clearing House, and the New York Clearing House Association (collectively, the "Users' Groups") filed joint reply comments. AT&T, BT North America Inc., CompuServe, EMI, IDCMA ("IDCMA Reply"), Motorola Information Systems Group, Textron Inc., US WEST, and United Technologies filed reply comments.

[3] Motion of the Independent Data Communications Manufacturers Association for Leave to File Supplemental Comments ("IDCMA Motion"), filed June 13, 1995.

[4] Id. at 2-3.

For the most part, IDCMA's Supplemental Comments[5] simply reargue its initial position that AT&T's Interspan Frame Relay Service is a basic offering and, thus, are largely unhelpful to the Commission in this matter. No more helpful is IDCMA's inaccurate characterization of BTNA's filing as advocating a "serious erosion of the Commission's Unbundling Rule."[6] While such a claim is imaginative, like the remainder of IDCMA's efforts to respond to BTNA's showings, it is largely irrelevant to the central questions at issue here.

As BTNA explained, BTNA supports AT&T's argument that AT&T's frame relay service is an enhanced offering, but regardless of how the Commission rules on IDCMA's Petition, BTNA's frame relay service -- which is quite distinguishable from AT&T's -- is not a basic offering. Moreover, BTNA has no underlying facilities to unbundle as IDCMA proposes in its Supplemental Comments because BTNA leases its underlying telecommunications infrastructure, T-1s for example, from facilities-based carriers at tariffed rates. Finally, the Commission must be mindful of the competitive and public interest impact on international services should it accept AT&T's invitation to treat all frame relay offerings the same,

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[5] Supplemental Comments of the Independent Data Communications Manufacturers Association ("IDCMA Supplemental Comments"), filed June 13, 1995.

[6] Id. at 2.

notwithstanding substantial differences in their content, capabilities, and functions.

BTNA has filed a motion with the Commission similar to that submitted by IDCMA so that it may also supplement its earlier Reply Comments and provide the Commission a more complete record on which to base its determination. BTNA also seeks to correct IDCMA's misinterpretation of BTNA's Reply Comments with respect to equipment bundling and the offerings of its parent company, British Telecommunications plc ("BT"), in foreign markets.[7]

DISCUSSION

I. CONTRARY TO BOTH IDCMA'S ASSERTION THAT FRAME RELAY IS A BASIC COMMUNICATIONS OFFERING AND AT&T'S PETITION TO TREAT ALL INTEREXCHANGE SERVICES ALIKE, BTNA'S FRAME RELAY SERVICE IS ENHANCED.

A. Frame Relay Service Is Enhanced Because the Frame Relay Switch Functionality of Discarding Frames in the Event of Corruption or Congestion Results in Different Information Delivered From That Sent.

In its Opposition, AT&T contended that frame relay service contained features and functionality -- in particular the functions of discarding frames and marking frames as discard eligible in the event of congestion-- that render its service enhanced.[8] BTNA argued these points as well, and while

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[7] Id. at 8-10.

[8] AT&T Opposition at 12.

IDCMA denies that the service is enhanced, IDCMA's argument itself demonstrates that the information delivered differs from the information sent. Thus, by its own admission, IDCMA supports the conclusion shared by AT&T and BTNA.

IDCMA is correct in drawing a distinction between X.25 and frame relay services with respect to error correction.[9] An X.25 network performs error detection and correction within the X.25 network, ensuring that the data received are identical to the data sent. Frame relay operates differently. The frame relay network only "detects" errors and discards any frame that has been corrupted in the course of transmission.

Although IDCMA minimizes frame relay's discard function, frame relay service differs from packet switching and leased lines technology precisely because it intentionally does not deliver to the customer premise the message that it receives. During network congestion, the frame relay network deliberately drops part of the transmission.[10] It is the protocol running on a customer's desktop PC that recognizes that the data are incomplete. The terminating-end PC generates the request for

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[9] BTNA had stated in its Reply Comments that both technologies correct the error; it is more accurate to say that while the user ultimately receives a complete message in a frame relay application, the frame network per se does not correct the error, it merely detects it.

[10] For example, the frame relay network can deliver the message "Hello, Mr. Smith" after having received the message "Hello, how is Mr. Smith" at the network ingress point.

retransmission -- in which case a portion of the data are resent. The user's PC displays a full message when the higher layer protocol (e.g., TCP/IP) acknowledges a complete message, although, in fact, the data were sent in two partial transmissions through the frame relay network. In short, the frame discard feature of frame relay is unlike packet switching precisely because the network delivers different information from that which was sent, i.e., packet switching technology does not intentionally discard user data.

Moreover, the data received are not "transparent" as IDCMA suggests.[11] It is the user's CPE -- the desktop PC -- that detects the missing frames and requests retransmission. IDCMA recognizes this point, noting that "[i]f any of these frames are dropped, the CPE at the recipient's end sends a message to the CPE at the sender's end and directs that the frames be resent."[12] As IDCMA shows, the frame relay network delivers incomplete user information to the terminating CPE, different from the information sent by the originating CPE.

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[11] IDCMA Supplemental Comments at 7, footnote 14, where IDCMA says "if any...frames are dropped, the CPE at the recipient's end sends a message to the CPE at the sender's end and directs that the frames be resent....Because it results in 'transparent' transmission of user data, IDCMA concluded, frame relay plainly falls within the Commission's well-established definition of a basic service."

[12] IDCMA Reply at 8-9.

B. BTNA's International Offering of Frame Relay Service Integrated with Its Enhanced X.25 Packet Offering Allows Users to Enter the Network Asynchronous or X.25 and Exit Frame Relay.

Notwithstanding any Commission determination with respect to IDCMA's Petition regarding AT&T's InterSpan product, BTNA's frame relay offering is an enhanced service. BTNA offers virtually no U.S. domestic frame relay service. Rather, BTNA provides opportunities for multinational customers with U.S. locations to communicate among and between global corporate locations, some of which may be LAN-based and utilizing a frame relay service. While IDCMA would ignore BTNA's description of its enhanced network capability, the fact is that BTNA's international frame relay network integrates X.25 and frame relay technology, providing end-to-end net protocol conversion and connection of disparate LANs with the result that the communications service is plainly enhanced.[13] The Commission has never deviated from the conclusion that a service is enhanced whenever such end-to-end protocol conversion is provided by a single company's offering.[14]

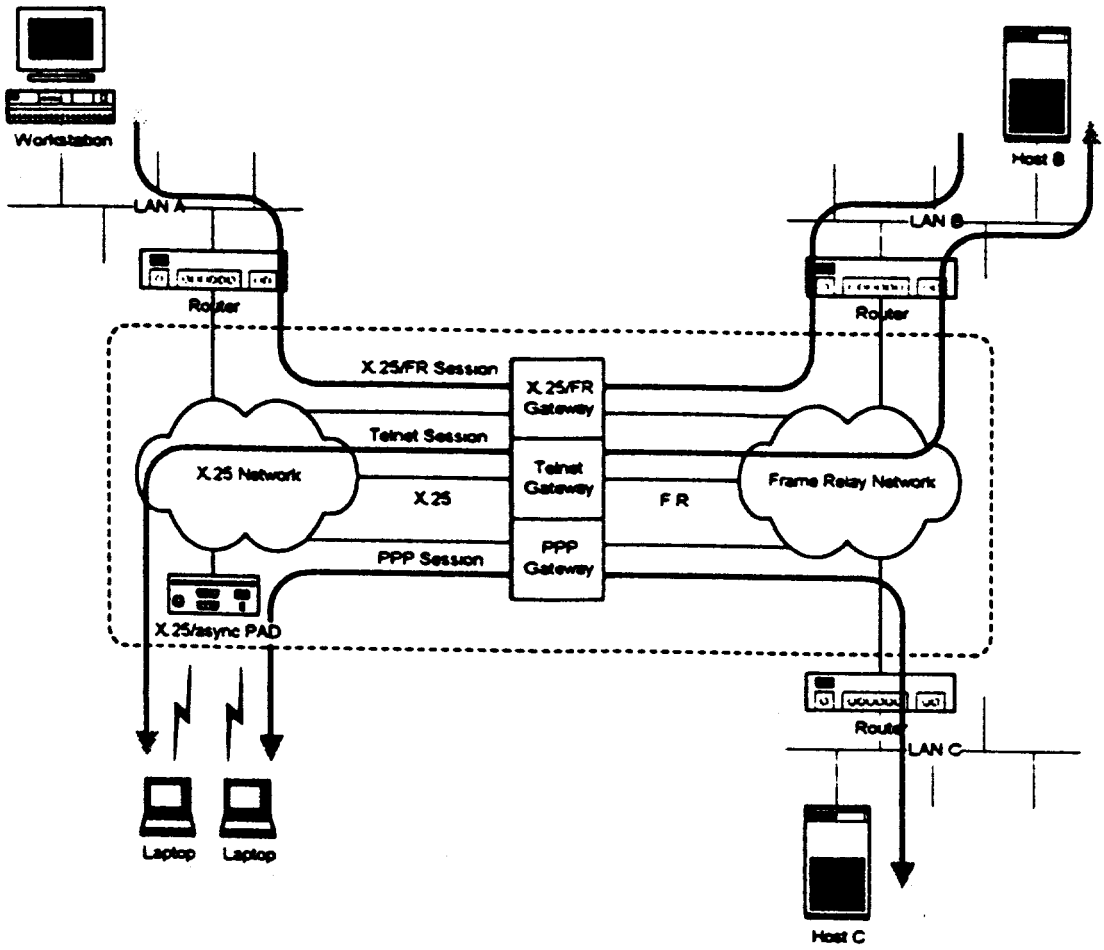
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[13] Indeed, BTNA's offering appears to be largely identical to the description of CompuServe's FRAME-Net offering in its filing. See Comments of CompuServe at 6.

[14] See, e.g., In the Matter of Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), 84 FCC 2d 50, 60, 48 RR 2d 1107, 1114 (1980) (Memorandum Opinion and Order on Reconsideration); In the Matter of International Business Machines Corp. Petition for Declaratory Ruling that the Southern Bell Telephone and Telegraph Company Offer Its Local Area Data Transport Service on an Unbundled and Detariffed Basis Pursuant to §64.702 of the Commission's

The following diagram of BTNA's frame relay offering depicts BTNA's frame relay service within the dotted box and shows user's data entering the network from LAN A as an X.25 protocol and exiting BTNA's network in the frame relay protocol to LAN B. (In actuality, the user's TCP/IP protocol leaves the router and enters the network as an X.25 encapsulated message which is unwrapped at the gateway and re-encapsulated as a frame relay packet, exiting the network in the frame relay protocol.) The lower left paths show similar capabilities but with dial-up, asynchronous protocol, switched access through a network PAD using either a Point-to-Point Protocol ("PPP") or a Telnet gateway. The gateways provide users at remote sites or with mobile requirements world-wide dial-up capability to their "home" LAN as well as opportunities to reach hosts on disparate, distant LANs.

Rules, 58 RR 2d 374, 378 (1985); In the Matter of Amendment to Section 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), 62 RR 2d 1662, 1685 (1987).



BTNA's network integrates X.25 and frame relay functionality in an international service offering targeted to multinational corporations with widely varied location requirements. This integrated design is a necessity for customers with communications requirements to/from Asia Pacific or Eastern European countries where the telecommunications infrastructure is not sufficiently robust to support a frame relay transmission service in-country. Thus, communications between Indonesia or Taiwan and the U.S., for

example, enter X.25 or asynchronous at the foreign location and exit frame relay in the U.S. and vice versa. The product allows customers to interconnect at speeds from 56/64 kbps to 2.048 Mbps depending on individual location requirements or limitations. Thus, a multinational customer can maximize its communications "reach" to encompass most locations (whether asynchronous, X.25, or disparate LAN-based frame relay locations), permitting it to connect offices and personnel located throughout the world via a single product offering, in a one-stop-shopping mode. The X.25 to frame relay interoperability aspect of the offering also allows users to take advantage of equipment and technology already deployed at individual sites. Of the over two dozen countries where BTNA has deployed its international frame relay service, nearly half require an incorporated X.25/FR gateway functionality to communicate outside the country's boundaries. Moreover, in response to customer demands for increased frame relay network accessibility via dial-up switched access, BTNA plans to launch a Point-to-Point Protocol ("PPP") network gateway shortly.

It is exactly this type of network design that international carriers execute on a global basis to serve multinational customers and that domestic providers develop to serve U.S. domestic customers with multiple requirements. The service is an enhanced one by virtue of the net protocol conversion that takes place between the originating and terminating points of the offering. For purposes of regulatory classification, no "communication"

takes place mid-network. Rather the "communication" occurs among and between customer premises, utilizing a variety of access means, multiple gateways, and network technology platforms. "Piece-parting" this end-to-end communication to satisfy IDCMA's and AT&T's objectives would have absurd and counterproductive results.

C. IDCMA's Proposal to Unbundle the "Basic" Frame Relay Transport Differs From the Users' Groups' Suggestion and Assumes a Facilities-Based Infrastructure Rather than a Leased Infrastructure as is the Case with BTNA'S Offering.

IDCMA misinterprets the Users' Groups' proposal regarding network unbundling. The Users' Groups suggested that the Commission may want to "require carriers with market power to unbundle and tariff the basic elements of their frame relay services (in a manner reminiscent of the ill-fated BSEs and BSAs spawned by ONA), while permitting them to purchase those basic elements themselves for use as part of an integrated, untariffed frame relay offering."[15] IDCMA twists the proposal by deleting defining elements of it,[16] thus erroneously attributing to the Users' Groups its proposal that "dominant carriers" should unbundle the "underlying basic

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[15] The Users' Groups at 11.

[16] IDCMA Supplemental Comments at 4 inserts ellipses in its quote of the Users' Groups' text where the original says "(in a manner reminiscent of the ill-fated BSEs and BSAs spawned by ONA)" and by so doing misrepresents its proposal. Unbundling frame relay services to the BSE and BSA level would result in tariffed prices for private lines that comprise the virtual circuits of the frame network, i.e., DS1s and higher, plus tariffed prices for frame relay switch functionality.

frame relay transport 'component" and offer it on a tariffed basis.[17] While BTNA takes no position on IDCMA's proposal, it notes for the record that its frame relay service is indeed comprised of underlying carrier services -- i.e., T-1 international half circuits and domestic private lines -- that are already offered under tariff and taken by BTNA at tariffed rates. As a non-facilities-based frame relay service provider, BTNA has nothing to unbundle.[18]

II. IDCMA'S AND AT&T'S PETITIONS, IF ADOPTED, COULD SEVERELY LIMIT, IF NOT TOTALLY PRECLUDE, FRAME RELAY SERVICE TO U.S. MULTINATIONALS OPERATING IN MULTIPLE FOREIGN LOCATIONS.

As BTNA discussed above, its frame relay offering currently incorporates an X.25 service interconnected with a frame relay technology platform that permits dial-up, asynchronous protocol, switched access via a Telnet gateway. BTNA plans to launch a PPP gateway shortly to meet increasing customer demand for additional dial-up, asynchronous, switched access service. If the Commission were to decide that BTNA's international frame relay offering is basic, the limitations of the FCC's international simple resale policy could dramatically curtail dial-up access to frame relay transmission networks for existing and prospective customers. Such a

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[17] IDCMA Supplemental Comments at i and 5-6.

[18] Cf. Competition in the Interstate Interexchange Marketplace, FCC 95-2 (CC Docket No. 90-132) (released February 17, 1995), para. 40 (unbundling requirements apply to carriers "that own their own common carrier transmission facilities").

determination would not only have disastrous consequences for BTNA's customers but also severely limit the development and offering of competitive international services to foreign countries.

US WEST, in its Reply Comments, suggests that the "alarms posited by the commenting parties...are not entirely accurate" in part because any "enhanced classification of protocol conversion and basic classifications of frame relay service is more a matter of unbundling and accounting rather than massive network disruption."[19] In the international marketplace, this is not so. While BTNA believes frame relay services are enhanced offerings (and it has shown that its service is indeed enhanced), AT&T's Petition, if adopted, could have a devastating impact on BTNA's service and customers because of the potential application of the Commission's international simple resale policy to a "basic" frame relay service.

In its International Resale Order,[20] the Commission determined that the public interest would be served by U.S. regulatory policies that would encourage the resale of international telecommunications services because resale would result in increased demand for services, lowered prices for end users, and increased pressure on carriers to reduce above-cost accounting rates for switched services. To protect U.S.-based carriers, however, the FCC

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[19] US WEST Reply at 5-6.

[20] In the Matter of Regulation of International Accounting Rates (CC Docket 90-337), Phase II First Report and Order (International Resale Order), 7 FCC Rcd 559 (1992).

decided to permit resale of international private line services interconnected to public switched networks only to those countries that permit equivalent opportunities in the return direction.[21] That is, the Commission required that "an applicant seeking Section 214 authorization to resell an international private line for the purpose of providing a basic telecommunications service to a particular country shall be required to demonstrate that the subject foreign country affords international private line resale opportunities equivalent to those available under U.S. law."[22] The Commission noted specifically that its International Resale Order did not address the resale of international private lines for the provision of enhanced services,[23] although the Order did state that enhanced service providers are not required to obtain Section 214 authority to provide enhanced services over international private lines.[24]

Thus, were the Commission to determine the frame relay is a basic communications offering, carriers would be required to obtain Section 214 authorizations and to file appropriate tariffs. In addition, because the

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[21] Id. at 560. In its Order on Reconsideration and Third Further Notice of Proposed Rulemaking (CC Docket 890-337), Phase II 77 FCC Rcd 7927 (1992), the FCC clarified that the resale of international private lines for the provision of private line service is not subject to the equivalency requirement.

[22] Id. at 7927-28.

[23] Id. at 7927-28.

[24] International Resale Order at footnote 17 and 38.

Commission has determined that only the UK and Canada provide equivalent opportunities for international private line resale to date, almost all dial-up access to BTNA's X.25/frame relay product could be at risk as would all asynchronous access to remote LANs. Even on equivalent routes, the FCC's "no and beyond" rule could diminish the usefulness of remote access applications. In short, application of the Commission's current requirement for an equivalent showing in destination countries could eliminate service in whole or in part for a large portion of BTNA's customers, could diminish the universality benefits of the product in any event, and could quash the development of new communications opportunities by shutting down nearly all mobile and remote access to the network. BTNA submits that any such result would be clearly contrary to the public interest.

III. BECAUSE FCC RULES DO NOT PROHIBIT THE PACKAGING OF ENHANCED SERVICES WITH CPE, IDCMA'S CONCERNS WITH RESPECT TO BUNDLING FRAME RELAY SERVICE AND CPE ARE MISPLACED.

In its Supplemental Comments, IDCMA claims that "BTNA's comments...advocates [sic] serious erosion of the Commission's Unbundling Rule, and would expressly allow carriers to tie the purchase of frame relay transport service and the purchase of customer premises equipment such as Frame Relay Assemblers/Disassemblers"("FRAD").[25] IDCMA also contends

[25] IDCMA Supplemental Comments at 2.

that BTNA is "threatening market opportunities for U.S. companies,"[26] and it suggests that BTNA's parent, BT, bundles customer premise-based equipment with its frame relay service in the UK.

IDCMA has misinterpreted BTNA's comments. There is no FCC prohibition against packaging customer premises equipment and enhanced service offerings. As BTNA demonstrated in its Reply Comments -- and as it has shown graphically here -- BTNA's frame relay network service is an enhanced offering and not a basic service.[27] Thus, the sale of equipment such as routers and FRADs together with enhanced frame relay service is not prohibited by the Commission and is, in fact, offered for the convenience of customers who want BTNA to provide an end-to-end service offering.

In its commercial practice, BTNA offers its frame relay service with either company-supplied customer premise-based equipment or customer-supplied CPE to suit the customer's communications and service requirements. Like BTNA, BT in the UK offers its frame relay service with either company-supplied or customer-supplied equipment to suit the

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[26] Id. at 9.

[27] Moreover, the basic services underlying BTNA's enhanced offering, T-1s for example, remain available to others on the same tariffed terms as they are acquired by BTNA, just as is the case with CompuServe.

customer's needs. There is no tying arrangement in either case, and no threat to market opportunities for U.S. companies from either BTNA or BT.[28]

CONCLUSION

For the foregoing reasons, BTNA submits that the IDCMA Petition should be denied. In addition, notwithstanding any Commission decision on that petition with respect to the regulatory classification of AT&T's frame

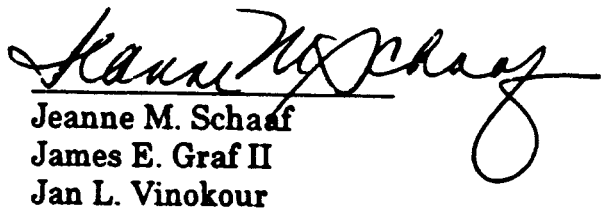
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[28] In any event, the frame relay network and switches must act in conjunction with the equipment at the customer's premise. Unlike packet networks, a customer premise-based router or FRAD cannot communicate with a second customer premise-based router without an intervening frame relay network service because there is no DTE-to-DTE (data terminal end-point) standard to do so, nor could a meaningful one be developed because certain features inherent in the frame relay switch technology, e.g., committed information rates, and forward and backward congestion notification identifiers, could not be encapsulated in any standard. Packet network assemblers/disassemblers, PADs, in contrast, can communicate directly via a leased line because DTE-to-DTE standards are in place and operable.

relay service, BTNA's frame relay offering is enhanced under long-standing Commission rules. Accordingly, the FCC should deny AT&T's request to expand the scope of this proceeding and should make clear that its decision does not undermine these well-settled principles.

Respectfully Submitted,

BT North America Inc.

By: 

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July 12, 1995

CERTIFICATE OF SERVICE

I, Beth J. Davidson, do hereby certify that on this 12th day of July, 1995, I have caused a copy of the foregoing **SUPPLEMENTAL COMMENTS OF BT NORTH AMERICA INC.** and **MOTION OF BT NORTH AMERICA INC. FOR LEAVE TO FILE SUPPLEMENTAL COMMENTS** to be served via first-class U.S. Mail, postage-prepaid, upon the persons listed on the attached service list.

Beth J. Davidson

***Via Hand-Delivery**

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June 30, 1995

Stamp And Return

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Washington, DC 20554

JUN 30 '95
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY
OCT 30 P4:
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY
REGISTRATION SECTION
RECEIVED
DEPT. OF JUSTICE
CRIMINAL DIVISION

Reference: BTNA Memorandum Opinion, Order and Authorization
File No. ITC-93-126

Dear Mr. Caton:

This is to update the Commission on BTNA's compliance with the provision of the above-referenced authorization that ordered BT North America Inc. (BTNA) to submit "a plan setting forth significant reductions by BT [British Telecommunications plc, BTNA's parent company] towards cost-based accounting rates with U.S. carriers over the next two years." Memorandum Opinion, Order and Authorization at para. 22.

BTNA previously complied with this provision by way of our letter to the Commission, dated and filed March 14, 1995. Our letter noted that, while BT has substantially reduced both its U.K./U.S. accounting rate and its U.K. to U.S. customer collection rates over the last three years,[1] AT&T Corp. (AT&T) and other U.S. carriers have made few or no reductions in their non-discounted collection rates which account for upwards of 40% of total outbound IDD traffic.[2] Despite this inaction of U.S. carriers in reducing their customer collection rates, our letter stated that BT "remains committed to further accounting rate reductions with U.S. carriers" and was proposing a further reduction from the current accounting rate of 0.33 SDR to 0.30 SDR to be effective April 1, 1995. Our letter also stated that BT would propose that

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1 The BT U.K./U.S. accounting rate has been reduced from 0.75 SDR in March 1991 to 0.33 SDR in May 1994, a 55% reduction over this three-year period. Over this same period, BT has reduced its outbound IDD customer collection rate from £ 0.68/minute to £ 0.37/minute, a net decrease of 50%.

2 In contrast to BT's substantial collection rate decreases, AT&T's standard rates remained unchanged from March 1991 until August 1993 when they were subsequently increased by approximately 2%. Even today, after AT&T's January 1995 rebalancing, the cost of a 6-minute standard call from the U.S. to the U.K. is higher than at any time in the last four years, while a 3-minute standard rate call has decreased by only 4%.

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"further accounting rate reductions be negotiated with U.S. carriers in late calendar year 1995, at which time BT would evaluate the commercial and financial conditions then obtaining, including the stimulation of outbound U.S. to U.K. call volumes by reduced collection rates and/or other actions by U.S. carriers".

After over five months of negotiations with each of the U.S. carriers, BT recently reached agreement with AT&T on significant additional reductions in U.K./U.S. accounting rates for all services. As the Commission has been advised by AT&T's letter filing, dated June 23, 1995, this BT-AT&T agreement will reduce the U.K./U.S. accounting rate for Switched Voice Service, including IMTS, International 800, USA Direct Service and Country Direct Service from the current accounting rate of 0.33 SDR to 0.30 SDR effective April 1, 1995, with a further reduction to 0.25 SDR to be effective July 1, 1995, a total reduction of 24% in two steps over a period of less than 12 months. The same accounting rate reductions have been proposed to the other U.S. carriers with whom BT has been negotiating.

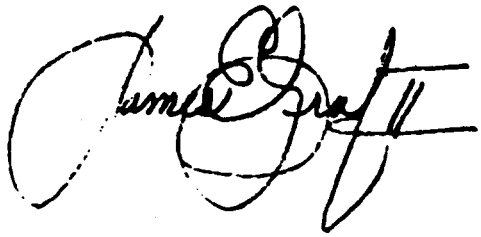
BT has also agreed with AT&T that further commercial discussions should begin no later than August 1995 with a view to formulating a position on U.K./U.S. accounting rates for the next two to five year period. These discussions will focus on, inter alia, appropriate cost assumptions, market conditions, and other relevant commercial, financial, and economic factors. In this regard, BT has suggested that a number of options be considered, including that future U.K./ U.S. accounting rate reductions be linked to call volume commitments by the U.S. carriers which might be met through a combination of collection rate reductions and/or special promotions so that customers will benefit from reduced accounting rates.

In providing this update to the Commission, BTNA notes the letter of AT&T, dated April 24, 1995, petitioning the Commission "to require BTNA to comply" with the subject provision of the above referenced authorization, as well as AT&T's Ex Parte contact with the staff of the International Bureau on May 18, 1995, in respect of this same submission. As our letter of March 14, 1995, plainly set forth and as this letter further details, BTNA has complied and continues to comply with the provision of its authorization that it submit to the Commission a plan for further U.K./U.S. accounting rate reductions by BT over the next two years.[3]

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[3] AT&T's April 24, 1995 letter (at 1 n. 2) invoked U.S. antitrust laws to justify its apparent reluctance to flow through accounting rate reductions to stimulate outbound U.S. to U.K. traffic. If, in the course of accounting rate discussions, AT&T were to provide its correspondent BT with reliable assurances that U.S. to U.K. traffic is expected to expand by particular projected amounts as a result of traffic-stimulating measures that AT&T in its own discretion has decided to undertake, that would hardly create a "risk of antitrust liability." To be certain, in raising its concern with regard to traffic stimulation, BT is not soliciting "a pricing agreement" between AT&T and any AT&T "competitor."

Sincerely,



cc: Scott Harris, FCC International Bureau
Diane Cornell, FCC International Bureau
Ken Stanley, FCC International Bureau
AT&T

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	**IB Docket No. 95-22**
Market Entry and Regulation of	)	**RM-8355**
Foreign-affiliated Entities	)	**RM-8392**

REPLY COMMENTS OF BT NORTH AMERICA INC.

BT NORTH AMERICA INC.

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Dated: May 12, 1995

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	IB Docket No. 95-22
Market Entry and Regulation of	)	RM-8355
Foreign-affiliated Entities	)	RM-8392

To: The Commission

REPLY COMMENTS OF BT NORTH AMERICA INC.

BT North America Inc. ("BTNA"), by its attorneys, submits the following Reply Comments in response to the Federal Communications Commission's ("Commission") Notice of Proposed Rulemaking ("Notice") in the above-captioned proceeding. 1/

I. INTRODUCTION AND SUMMARY

In this proceeding the Commission proposes to adopt a policy governing foreign entry into the U.S. international telecommunications market. In its initial Comments in this proceeding, BTNA expressed its support for this initiative. BTNA urged that the Commission's proposed effective market access standard be clear, specific -- and pragmatic. "Effective market access" should mean

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1/ Market Entry and Regulation of Foreign-affiliated Entities, IB Docket No. 95-22, RM-8355, RM 8392 (released February 17, 1995).

that the foreign administration in a market in which the foreign carrier is dominant has a fully implemented policy that requires the following elements:

- Competition should exist in the provision of basic as well as enhanced communications services, including both international and domestic simple resale and facilities-based competition.
- U.S. and other foreign nationals should be permitted to take significant investment stakes in, or control of, facilities-based and resale carriers.
- Cost allocation rules should be established to prevent cross-subsidization between regulated and unregulated services.
- Published, nondiscriminatory charges, terms and conditions for resale of and interconnection with the facilities of the dominant carriers should be established.
- Timely and nondiscriminatory disclosure by the dominant carriers of technical information necessary for such resale or interconnection should be required.
- Carrier and customer proprietary information should be protected.
- These safeguards should be enforced by an independent regulatory body with fair and transparent procedures. 2/

BTNA demonstrated that this standard should apply to foreign carriers dominant in their home markets that seek an investment of 10% or more in, or control of, facilities-based U.S. international carriers and that all such transactions should be subject to prior approval, not notification after the fact.

In these Reply Comments, BTNA focuses on three crucial aspects of the Commission's proposal. First, BTNA shows that prohibiting U.S. market entry

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2/ Notice at ¶ 40.

by a foreign carrier unless American companies can control foreign international facilities would undermine the objectives of the proposed policy. Second, BTNA demonstrates that arrangements between AT&T, the dominant U.S. carrier and dominant and monopoly foreign service providers pose such a strong threat to nascent international competition that all such AT&T arrangements, whether or not exclusive, should be subject to the effective market access standard. Finally, BTNA shows that Swidler and Berlin's proposal to permit private line simple resellers to transit traffic via an ISR approved country, at least with respect to U.S. outbound traffic, will increase both retail competition and downward pressure on accounting rates, without harm to the U.S. settlements position.

II. PROHIBITING U.S. MARKET ENTRY BY A FOREIGN CARRIER UNLESS U.S. CARRIERS CAN CONTROL INTERNATIONAL FACILITIES IN THE FOREIGN COUNTRY WOULD UNDERMINE THE COMMISSION'S OBJECTIVES IN THIS PROCEEDING

A. Requiring Control Of Foreign International Facilities Would Not Be Pragmatic

In its Comments in this proceeding, BTNA emphasized the need for the Commission to employ a market entry standard that is pragmatic. If the Commission adopts a standard that will not be met, then the goal of opening foreign markets will not be achieved, and the U.S. market will itself be effectively closed to foreign participation. A questionable element of the Commission's proposed effective market access standard is the proposal that U.S. carriers "can offer in the

foreign country facilities-based services substantially similar to those the foreign carrier seeks to offer in the United States." 3/ AT&T suggested this approach in its petition for rulemaking, and it is the only party supporting it in this proceeding. The goal is commendable: ending restrictions in the U.S. and foreign countries on foreign ownership and control of international facilities, combined with other competitive safeguards, would surely enhance competition. But in many countries there is little likelihood of immediately achieving that goal even if reciprocity would keep those foreign carriers out of the U.S. international marketplace.

In this proceeding the Commission is addressing only now, more than 25 years into the process of developing a competitive U.S. marketplace, its policies and practices that have severely restricted opportunities for foreign entities to control U.S. international facilities. In many foreign countries, the opportunity to control international facilities will also be a later step in competitive policy development. A U.S. market entry standard that fails to recognize and accommodate these realities will effectively close U.S. markets to participation by foreign companies, without opening other, useful competitive avenues to American firms in foreign countries.

3/ Notice at ¶ 40.

B. Control Of International Facilities Is Not Essential For U.S. Carriers To Compete Effectively In Foreign Countries

AT&T argues in its Comments that unless U.S. carriers can build, own and operate international facilities in a foreign country, they will be: (1) "unable to offer all of the service features and functionalities desired by customers, i.e., the software defined network capabilities, that lie at the core of global seamless services" and (2) "unable to protect themselves from the anticompetitive conduct that may otherwise result." 4/ The ability to engage in simple resale of private line facilities provided on a competitive basis provides a viable and attractive alternative to facilities ownership, assuming effective competition among facilities-based carriers and an effective regulator. For this reason, BTNA has proposed, as an essential element of an effective market access standard, competition in the provision of basic and enhanced communication services including international and domestic simple resale and facilities-based services. So long as the Commission also institutes the competitive safeguards it has proposed, and those safeguards are enforced in the foreign country by an independent regulatory body with fair and transparent procedures, resellers would not "be at the mercy of the foreign carrier with respect to the price of underlying transport, the quality and type of interconnection, transmission performance, provisioning intervals and maintenance," as feared by AT&T. 5/

4/ AT&T Comments at 29-30.

5/ Id. at 30.

C. Basing The Industry Standard On Control Of Foreign International Facilities Ignores The Potential For Progress In Matters That Are Essential To A Competitive Environment

The emphasis on the ability of American companies to control foreign international facilities ignores the potential for progress on other matters that are essential to a competitive environment. The ability of U.S. companies to own foreign international facilities is only one small part of comprehensive competitive policy development. In most countries, including most of the major trading partners of the U.S., the changes required in telecommunications policies are more fundamental and of more immediate concern. Competition in basic and enhanced services and in both international and domestic facilities-based services and the availability of international and domestic simple resale, as well as other factors enumerated by the Commission -- competitive safeguards, the availability of published nondiscriminatory charges and terms for interconnection, protection of carriers and customer proprietary information, and an independent regulator to enforce the safeguards -- are essential to ensure that new entrants have a fair opportunity to compete in foreign markets. The Commission should focus the U.S. international market entry standard on these fundamental, attainable elements of competition. Emphasizing control of foreign international facilities risks sacrificing good in a feckless quest for perfection. 6/

6/ It would also be wasteful for the Commission to review prior Commission determinations under Section 214 and 310 clearing participation in U.S. international markets by foreign entities under competitive analyses similar to the proposal now under consideration. See e.g., BT North America Inc., File No. ITC-

[Footnote continued]

III. THE COMMISSION SHOULD PUBLICLY SCRUTINIZE ALL U.S.-FOREIGN CARRIER ALLIANCES, WHETHER THEY INVOLVE DIRECT EQUITY INVESTMENTS IN THE U.S. CARRIER OR A JOINT VENTURE COMPANY OR MARKETING AND OTHER ARRANGEMENTS THAT CREATE EXCLUSIONARY OR DISCRIMINATORY INCENTIVES

In its initial Comments BTNA urged the Commission not to exempt AT&T's WorldPartners Alliance (and similar so-called "co-marketing" agreements or other arrangements) from the same thorough public scrutiny that the Commission has imposed upon or proposed for the foreign carrier alliances of AT&T's principal US international competitors, MCI (with BT) and Sprint (with Deutsche Telekom and France Télécom) 7/. As the respective alliance participants' Comments make clear, 8/ all three partnerships were conceived for the same ostensible purpose -- to compete head-to-head worldwide with each other in offering seamless, end-to-end services to major multinational corporations and other large international telecommunications users. It would disserve the public interest and

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[Footnote continued]

93-126, DA 95-120 (1995); BT North America Inc., 9 FCC Rcd 6851 (1994); MCI Telecommunications Corporation/BT Telecommunications plc, 9 FCC Rcd 3560 (1994). Moreover, retroactive application of a different standard, or application of a different standard with the effect of preventing growth in services previously authorized would raise substantial issues of fundamental fairness and due process. See Salzer v. FCC, 778 F.2d 869, 871-872 (D.C. Cir. 1985).

7/ BTNA Comments at 13-15.

8/ AT&T Comments at 8-9; MCI Comments at 2-3; Sprint Comments at 2; Deutsche Telekom Comments at 2; and France Télécom Comments at 3.

skew the marketplace if the alliance formed by the dominant U.S. international carrier (AT&T) should be subject to far less effective regulation than the alliances of its smaller rivals. Indeed, because of AT&T's unique status as dominant U.S. carrier and equipment manufacturer/supplier for many foreign carriers, foreign alliances formed by it will often deserve greater regulatory scrutiny.

As BTNA explained, U.S. / foreign carrier alliances which do not involve foreign investments directly in the U.S. carrier -- such as mutual investments of money or property in joint ventures, or cooperative marketing arrangements -- may nonetheless present the same serious public policy concerns (e.g., potential discrimination and anticompetitive leveraging) that dominant foreign carriers' equity investments in U.S. carriers present. Moreover, when AT&T is the U.S. ally of a foreign carrier -- such as in its WorldPartners and Uniworld ventures -- these policy concerns are heightened. AT&T's tremendous market power as the largest supplier of U.S.-originated calls to foreign destinations and as one of the leading telecommunications equipment and software suppliers to foreign carriers gives those foreign carriers strong reasons to curry AT&T's favor and avoid incurring its wrath. As a consequence, BTNA urges the Commission to make any AT&T alliance, joint venture, or marketing arrangement with dominant foreign carriers subject to the effective market access test.

A. Dominant Foreign Carrier Investments Of Equity Or Intellectual Property In A Joint Venture With A U.S. Carrier May Create Anticompetitive Incentives Warranting Commission Scrutiny Under The Effective Market Access Standard

If a U.S. carrier and a dominant foreign carrier were to invest together in a third party joint venture that does business with each of the parents, each would have the incentive to favor that venture over the venture's competitors in those business dealings so as to enhance the value of their respective investments. That is precisely what has occurred in the formation of Uniworld by AT&T and Unisource 9/ and in the equity investments by AT&T, KDD, Singapore Telecom, and Unisource in the WorldPartners Company. 10/ As a result of these

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9/ On December 13, 1994, AT&T announced the formation of a new company (Uniworld) to be owned 60% by Unisource and 40% by AT&T, with initial assets of $200 million and over 2000 employees in 17 countries. AT&T will contribute its AT&T Business Communications Services Europe and AT&T EasyLink Services groups and Unisource will contribute its business networks, satellite, and voice divisions to Uniworld. Uniworld will become the distributor for WorldSource services in Europe and will offer customers in Europe improved access to North America and Asia. See "Unisource and AT&T Announce New Communications Company for Europe," AT&T/Unisource joint press release, Amsterdam, the Netherlands, December 13, 1994. The European Commission recently launched an in-depth investigation of the proposed Unisource alliance with AT&T and the proposed inclusion of Telefonica de Espana in Unisource. See "Commission Begins Inquiry Into Proposed Telecom Deals," Wall Street Journal Europe, March 23, 1995.

10/ AT&T's December 1994 Form S-3 for the secondary offering of BT's shares of AT&T received as a result of the McCaw transaction stated that WorldPartners Company is "an equity partnership" formed in 1993 by AT&T, KDD, and Singapore Telecom. AT&T's Form 8-K dated December 13, 1994 said that "[i]n September 1994 Unisource joined the WorldPartners Company as an equity owner." It further stated that "[a] company formed by AT&T and Unisource [Uniworld] will become in place of Unisource, a WorldPartners equity owner." This equity partnership is distinct from a larger membership group, WorldPartners Association, with nine

[Footnote continued]

transactions, the Unisource companies, KDD, Singapore Telecom, and AT&T have strong financial reasons to promote the common enterprise and to discriminate, where possible, against the competitors of such an enterprise.

The incentive to favor one's affiliates exists as well where a foreign carrier has conveyed intellectual property in return for royalty payments or where the carrier has gained (directly or through an affiliate) access to other valuable intellectual property. There is ample reason to believe the Uniworld and WorldPartners arrangements have benefited from just such a pooling of resources and consequent exchange of incentives for mutual support. 11/

[Footnote continued]

members. Id. The additional members of the Association are Telecom New Zealand International, Telstra of Australia, Hong Kong Telecom, Unitel of Canada, and Korea Telecom. AT&T/Unisource press release, December 1994. Reportedly, WorldPartners Company startup capital of $100 million was committed by the founding partners who received these shares in the Company: AT&T (50%), KDD (30%), and Singapore Telecom (20%). See "Moving to Extend WorldPartners' Reach to Europe, AT&T Unveils Services Pact with Unisource Group," Telecommunications Reports, June 27, 1994, at 20.

11/ AT&T and Unisource intend to merge a number of European business units and unknown amounts of intellectual property and cash into Uniworld. See the preceding footnote. A paper entitled "Briefing Memorandum on Negotiations between AT&T and Unisource," supplied by AT&T and/or Unisource to European officials in December 1994, described WorldPartners Company then as a U.S. partnership with these functions: "The WorldPartners Company licenses to the partners and members a package of intellectual property rights, including know-how, marks, and software systems and processes enabling them to provide WorldSource services. * * * It also acts as a clearinghouse for traffic/usage and billing information, invoicing and collection among the members, and for account inquiries to allow and facilitate application of one-stop-shopping and one-stop-billing principles." See Attachment A to this Reply.

In sum, participation by foreign carriers with AT&T in WorldPartners, Uniworld, and comparable ventures, inevitably gives those foreign carriers strong incentives to prefer their own AT&T venture over rival ventures of other U.S. carriers. Discriminatory and anticompetitive treatment, whether involving basic or enhanced services, can appear in numerous contexts, viz.: (i) pricing and conditions for interconnection and access; (ii) provisioning, maintenance, and restoration of leased private lines and interconnection; (iii) cross-subsidization and predatory pricing; (iv) access to network change information; (v) use of information about monopoly service subscribers; (vi) misuse of interconnecting or leasing carrier/customer's proprietary information; (vii) bundling of monopoly and competitive services; (viii) and all the other types of behavior which AT&T has cited in opposing the BT-MCI and Sprint-DT-FT alliances. 12/

B. Co-Marketing Arrangements May Foster Exclusionary Or Discriminatory Conduct By The Dominant Foreign Carrier

The Notice proposed that "co-marketing agreements," whether exclusive or not, should be filed with the Commission under Section 43.51 of the Rules. 13/ BTNA and other commenters 14/ agreed with that minimal step, and AT&T grudgingly offered to "support" such a requirement "if applied uniformly to

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12/ See AT&T Comments at 10-18.

13/ Notice at ¶ 63.

14/ BTNA Comments at 13; Swidler & Berlin Comments at 18, n.30; Telefonica Larga Distancia Comments at 54, n.123.

all U.S. carriers." 15/ But, as BTNA pointed out, just requiring the agreements to be filed is not enough. 16/ The Commission should publish the filings, entertain comments from interested parties, and conduct more detailed scrutiny where warranted.

Such public proceedings regarding purported co-marketing agreements are essential for several reasons. First, the Notice implicitly proposed to treat any co-marketing agreement that is exclusive "in theory" or "in practice" as warranting application of the effective market access test 17/. For those agreements that are oral in whole or in part or where the written terms are potentially ambiguous, public comment will help the Commission determine whether the agreements are "in theory" exclusive. More important, commenters will be able to offer evidence from their own experiences as to whether a facially non-exclusive agreement has operated de facto to exclude them 18/, either through explicit refusals to deal

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15/ AT&T Comments at 20.

16/ BTNA Comments at 13-14.

17/ See Notice at ¶ 63.

18/ AT&T apparently claims that the WorldPartners arrangement does not create incentives to deal exclusively because WorldPartners co-founder Singapore Telecom has also agreed to deliver services of Concert (the BT-MCI joint venture) in Singapore (AT&T Comments at 20). The fact that such an arrangement was eventually reached, does not prove that contrary incentives were completely absent from Singapore Telecom's WorldPartners arrangement or that such incentives will not influence ongoing operations. Moreover, would AT&T concede that the absence of such a Concert distribution agreement in other WorldPartners affiliates' countries is proof that the overall arrangement does create exclusionary or discriminatory incentives?

because of the agreement or through a declared unwillingness to deal except pursuant to discriminatory conditions. Second, public comment may be helpful in determining whether the arrangement is limited to co-marketing or whether it has some additional features that create further incentives for the foreign carrier to treat the overall arrangement as exclusive or to discriminate against other U.S. carriers. Third, if the agreement is exclusive on its face, or contains penalties or incentives that promote exclusionary or discriminatory behavior, or in practice is exclusive, the Commission would benefit from comments as to whether the problem is significant or de minimis (in the way that an under-the-threshold equity investment would be considered insignificant).

In any event, public filing and opportunity for comment regarding these co-marketing and other alliance arrangements will not be sufficient to protect the public interest without further Commission action. The Commission rightly recognizes that an equity investment above a specified threshold in a U.S. carrier will give the foreign carrier an incentive to favor the U.S. carrier over its competitors in the exchange of basic telecommunications services and will, absent counterbalancing public interest factors, justify prohibiting the investment or imposing stringent safeguards. 19/ The Commission's logic is unassailable, but it does not go far enough. Incentives for discriminatorily preferential treatment are not solely a function of equity investment in the U.S. carrier (or in a joint venture

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19/ See Notice at ¶¶ 45, 56.

company). Where those incentives exist -- as with co-marketing agreements between US and dominant foreign carriers -- the Commission should analyze the agreements, including particularly any features bearing on exclusivity or discrimination, and impose appropriate safeguards or disapprove the arrangements.

The Notice presumes that AT&T WorldPartners Company is a "co-marketing arrangement," and ostensibly a non-exclusive one. 20/ But as BTNA pointed out previously, 21/ the Commission has never formally reviewed the relevant agreements pertaining to WorldPartners. Certainly there has been no opportunity for the public to examine and comment upon those agreements. The Notice did not define what it meant by "co-marketing arrangement" or why it thought WorldPartners was such an arrangement. As indicated elsewhere in these Reply Comments, 22/ however, WorldPartners Company is an equity partnership that licenses intellectual property rights to partners and other members. Presumably one or more of the partners has licensed or otherwise authorized the Company to engage in such practices. Nothing is known about the terms of such licensing, e.g., price, conditions, etc. The Company also performs usage measuring, billing, collecting, and other tasks. Nothing has been revealed about the

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20/ Notice at ¶ 63.

21/ BTNA Comments at 14.

22/ See supra footnotes 10 and 11 and Attachment A.

contractual terms for such functions, e.g., price, conditions, etc. We do not know what economic considerations tie the partners and members to the WorldPartners Association either. It sounds like much more than a simple "co-marketing arrangement." In any event, there is ample reason for the Commission to invoke a public process to determine the nature and effect of AT&T's participation in these arrangements, whatever they are.

C. The Commission Should Recognize That AT&T's Role As Equipment Manufacturer/Supplier And Its Dominance Of The U.S. International Service Market Will Increase Its Foreign Partners' Exclusionary And Discriminatory Incentives

AT&T says that "WorldPartners merely provides a set of service standards by which the individual members can meet the needs of their customers." 23/ But there is far more to the arrangement than that. AT&T is supplying much of the equipment and software not just to meet some ideal "service standards," but so that the foreign carrier members will be locked into AT&T's "standards" and technology. The foreign carrier's dependence on AT&T for technology, upgrading, prompt provisioning of technical help and supplemental equipment, discounts, etc. will naturally give birth to an incentive to keep AT&T happy, i.e., to prefer AT&T and their common enterprise and to disfavor AT&T's and WorldPartners' rivals.

In analyzing whether the WorldPartners arrangements between AT&T

23/ AT&T Comments at 20.

and foreign carriers are likely to promote discrimination and other anticompetitive actions, the Commission necessarily must require disclosure about the software and equipment/supply relationship between AT&T, WorldPartners Company, and the other carriers. A crucial consideration would be whether the reliance on particular equipment and technology will tend to "lock out" in a technical (if not a business) sense any other service distribution alliance that is based on other manufacturers' equipment or software.

If a WorldPartners affiliate obtains AT&T equipment, software, technical help, etc., at discounted prices or on a priority basis simply because of the WorldPartners arrangement, the foreign carrier is going to be reluctant to do anything that might upset the close relationship with AT&T. Consequently, the Commission needs to know whether the foreign carrier has such beneficial relationships with AT&T as equipment and software supplier and whether those relationships are to any extent attributable to, or otherwise linked with, the carrier's participation in WorldPartners or some other AT&T alliance.

The Commission also should keep at the forefront of its analysis of AT&T's foreign carrier alliances that AT&T is the dominant U.S. international carrier. 24/ As Sprint notes, foreign carriers have had far longer working relationships with AT&T than with other U.S. carriers and are much more likely to

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24/ See 1993 Section 43.61 Telecommunications Data, Table E1 (Nov. 1994).

allow those relationships to affect how AT&T is treated. 25/ Moreover, the foreign carriers know full well that AT&T, with the lion's share of U.S. outbound traffic, has the ability to reward or punish foreign carriers in myriad subtle and not so subtle ways for how they treat their WorldPartners, Uniworld, and other alliances with AT&T.

For example, AT&T could expressly or impliedly threaten to, inter alia: (i) enter any non-reserved telecommunications niches or push for facilities-based or international resale rights in the foreign carrier's home territory; (ii) exclude that carrier's country as a destination from any popular AT&T international promotional offering; (iii) redirect transiting traffic to another hub rather than that country; (iv) slow down or relocate siting of submarine cable landing facilities in that country; (v) slow provisioning of matching international half-circuits; and (vi) interfere with that carrier's efforts to participate in, or change its participation in, submarine cable facilities.

To curry AT&T's favor, the foreign carrier might, inter alia: (i) deny, discriminate in the terms of, or move more slowly in negotiating, correspondence agreements with new U.S. carriers; (ii) provide AT&T subtle advantages over its U.S. competitors in proportionate returns; (iii) skew the accounting rate regime by creating special services for which only AT&T has an operating agreement; or (iv) refile AT&T's traffic at special rates not available to AT&T's competitors.

25/ Sprint Comments at 30-31.

In sum, AT&T's surpassing dominance in the U.S. international telecommunications service business and its unique status as the only vertically integrated U.S. equipment manufacturer and service supplier, make it essential that the Commission carefully and thoroughly scrutinize in a public setting, with full opportunity for participation by other affected parties, any alliance, joint venture, or co-marketing agreement between AT&T and a foreign carrier. The Commission should not only subject AT&T's arrangements to the same safeguards imposed on BT-MCI but should also require full compliance with the effective market access standard. 26/

26/ When the dominant foreign carrier's marketing arrangement is with another U.S. carrier besides AT&T, the relevant agreements should be submitted to the Commission. But it should not be necessary to satisfy the effective market access test as such. Full compliance with that test should be required only of AT&T/dominant foreign carrier arrangements, because of AT&T's ability as dominant U.S. carrier and equipment manufacturer/supplier to reward or retaliate against the foreign carrier. This reward/retaliation potential gives the foreign carrier a particular incentive that it otherwise might not have to discriminate against AT&T's competitors.

Exclusive agreements with nondominant foreign carriers including resellers not affiliated with dominant foreign carriers do not raise competitive issues and should not be subject to the effective market access test or the no special concessions prohibition. See BTNA Comments at 12, n.22.

IV. CARRIERS AUTHORIZED TO ENGAGE IN SIMPLE RESALE OF PRIVATE LINES BETWEEN THE U.S. AND A FOREIGN COUNTRY SHOULD BE PERMITTED TO FORWARD U.S. OUTBOUND TRAFFIC THROUGH THE FOREIGN COUNTRY TO OTHER POINTS BY RESELLING MESSAGE TELEPHONE SERVICE FROM THE FOREIGN COUNTRY

In the Notice, the Commission requested comments on AT&T's call for a prohibition on transiting of traffic without permission of originating and terminating carriers. 27/ Swidler and Berlin, on behalf of several international private line simple resellers, opposes this position and requests the Commission to permit such resellers to transit traffic via a country approved for international simple resale ("ISR") to and from other countries. While the Commission generally permits the type of transiting the AT&T proposal would foreclose, transiting of traffic carried on ISR circuits is now specifically prohibited. 28/ BTNA endorses Swidler & Berlin's request to the extent that it applies to traffic originating in the U.S. that would be forwarded via an authorized ISR country to other countries by reselling international message telephone service ("IMTS") from the authorized ISR country. Transiting of such U.S. outbound traffic would serve the public interest by increasing both retail competition and competitive pressure on accounting rates without harming the U.S. settlement position.

27/ Notice at ¶ 91.

28/ ACC Global Corp. and Alanna Inc., 9 FCC Rcd 6240 (1994).

A. Transiting Of U.S. Outbound Traffic By Private Line Simple Resellers Would Serve The Public Interest By Increasing Both Competition and Downward Pressure on Accounting Rates

The Commission has recognized the important role resale should play in increasing retail competition and placing downward pressure on accounting rates. 29/ Operating experience has shown that the prohibition of transiting by private line simple resellers reduces their efficiency, limiting their competitive impact. Because ISR circuits today may be used only for traffic between the U.S. and ISR-approved countries, U.S. outbound traffic destined for countries not approved for ISR must be separated from traffic permitted on ISR circuits and, instead, sent over IMTS networks operated by U.S. facilities-based carriers. This burdensome routing requirement restricts the amount of traffic carried on ISR circuits, limiting the extent to which ISR providers may capture economies of scale. Modifying the prohibition to permit transiting by private line simple resellers of U.S. outbound traffic would permit more efficient loading of circuits, thereby lowering the cost of serving customers. The ability of private line simple resellers to compete with facilities-based carriers in the retail market would be enhanced. It would also place private line resellers on a better competitive footing with their facilities-based competitors who are now permitted to transit traffic, maximizing

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29/ Regulation of International Accounting Rates, 7 FCC Rcd 559, 561, ¶ 16 (1991).

economies in circuit usage and allowing use of the most cost-effective routing. 30/ Transiting of U.S. outbound traffic by private line simple resellers to countries not approved for ISR thus benefits the public interest by increasing competition.

Transiting, like ISR, places downward pressure on accounting rates. The ability to transit offers carriers the opportunity to carry traffic to a country by an alternative routing, possibly paying a lower accounting rate. A private line simple reseller with the ability to transit U.S. outbound traffic can impact accounting rates in two ways -- through direct pressure on the accounting rate on the ISR route, and by offering an alternative routing via an approved ISR country to a third country destination. Transiting of U.S. outbound traffic by international simple resellers will serve the Commission's objective to lower accounting rates.

B. Transiting of U.S. Outbound Traffic Via Approved ISR Countries Will Not Harm The U.S. Settlements Position

The prohibition on transiting international private line simple resellers reflects primarily concern that U.S. inbound traffic from countries not approved for ISR will bypass accounting rate payments to facilities-based carriers. 31/ Transiting U.S. outbound traffic via an approved ISR country will not

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30/ Rather than see this same benefit extended to its ISR competitors, AT&T would give it up by having the Commission prohibit all transiting unless the originating and terminating carriers specifically authorize it. Transiting is also a competitive alternative for small U.S. carriers who could otherwise reach international points only by reselling IMTS offered by U.S. facilities-based carriers.

31/ MOTOROLA Corp., 7 FCC Rcd 7312, 7316, ¶ 15 (1992); recon., 9 FCC Rcd 4066, 4071, ¶¶ 21-22 (1994).

harm the U.S. settlements position. Nor would U.S. outbound ISR transiting permit any discrimination against other U.S. carriers on the part of the transiting or terminating entities. Under the BTNA proposal, the private line simple reseller would be required to forward the traffic from approved ISR country to the destination country by taking at published rates and reselling, the IMTS service of a facilities-based international carrier in the transiting country. There could be no realistic possibility or practical incentive for the terminating country to discriminate in favor of ISR transited traffic because such traffic would be included within the broad IMTS traffic stream.

Swidler and Berlin advocates transiting of U.S. inbound traffic on an ISR basis via an ISR-approved country. This aspect of their proposal theoretically implicates concerns about the U.S. settlement position. Because ISR transiting has been prohibited from the inception of ISR operations, there is no empirical data to support that theory. BTNA would support a Commission ruling in favor of ISR transiting of U.S. inbound traffic coupled with a requirement that ISR carriers file quarterly reports detailing number of minutes transited from each point of origination. Based on this data, the Commission could decide at a future date whether traffic flows warrant any change in policy.

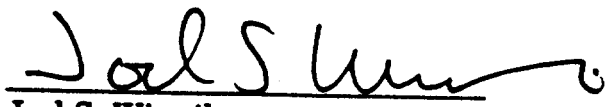
V. CONCLUSION

The Commission should adopt a policy permitting foreign participation in the U.S. market pursuant to an effective market access standard. The standard should emphasize the availability in the foreign country of competition in the

provision of international and domestic facilities-based and simple resale services, not control of international facilities. Because co-marketing arrangements between the dominant U.S. carrier and dominant and monopoly foreign carriers threaten the emerging international competitive marketplace, all such AT&T agreements should be scrutinized under the effective market access standard. Finally, international private line simple resellers should be permitted to transit U.S. outbound traffic via ISR-approved countries.

Respectfully submitted,

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Briefing Memorandum on Negotiations between AT&T and Unisource

AT&T and Unisource are at present involved in negotiations in view of establishing a structural cooperation with regard to the provision of telecommunications services to multinational corporations and other business users. These negotiations aim ultimately at the establishment of a joint venture company, provisionally named Uniworld, offering certain pan-European telecommunications services. An agreement in principle regarding the establishment of the joint venture will be announced in the week of December 12. The parties aim at signing the relevant agreements in the second quarter of 1995 and hope that the joint venture company will be operational as soon as possible thereafter.

The parties have already announced two other forms of cooperation which will become operational in the near future, and which will be passed on to the joint venture company upon its establishment. These other forms of cooperation are as follows:

(i) the accession of Unisource to WorldPartners in order to enable Unisource (and ultimately the joint venture company) to offer global telecom and related services to multinational corporations and other business users under the Service Mark WorldSource (sm); and

(ii) a teaming agreement in order to structure the joint offering of services when dealing with the members of the European Virtual Private Network Users Association (EVUA).

The agreements regarding WorldPartners have already been signed by the parties but are not expected to be implemented before the end of this year or the first quarter of next year (as certain aspects are still being discussed). The teaming agreement is still under negotiation.

The "Uniworld" Joint Venture

The joint venture will be established as a limited company. Unisource will hold 60% of the shares and AT&T will hold 40%. It is presently envisaged that unanimous voting will be required for certain key decisions, including approval or amendment of the annual budget, business plan and strategic plan.

The range of services to be offered by the joint venture will initially consist of data communications services such as X.25 and frame relay, managed bandwidth messaging, international voice VPN services to closed user groups and VSAT services. It will offer these services throughout the European Economic/Free Trade Areas. The parties intend to extend the range of services by including other liberalized services subject to agreement.

Unisource will effectively transfer to the joint venture its business units for the provision of the above services, i.e. Unisource Business Networks (UBN), Unisource Satellite Services (USS) and Unisource Voice Services (UVS). AT&T will effectively transfer to the joint venture its Business Communications Services Europe (BCS-E) data services, Easy Link messaging, and its VSAT services in Europe (including sales force and other relevant staff). As a result of the foregoing transfers, there will be no overlap in Europe between the parties and the joint venture for services offered by the latter. Moreover, the parties will expressly agree not to offer services in Europe in competition with the services of the joint venture. Unisource and AT&T will therefore not compete in the service areas assigned to the joint venture. The parties consider that the alliance between AT&T and Unisource will enhance the quality of the above mentioned range to be provided more rapidly in more European areas than would otherwise be achieved by either party acting separately.

ATTACHMENT A

WorldPartners

The joint venture is also intended to offer global connectivity to European customers who have a need not only for pan-European services but also for connectivity on a virtual private basis with operations outside Europe. It will be able to achieve global connectivity for certain service offerings through the WorldPartners agreements, as Unisource will assign its interests in these arrangements to the joint venture.

In acceding to WorldPartners, Unisource has become a Partner in the WorldPartners Company; its co-partners are wholly-owned subsidiaries of AT&T, Singapore Telecom and KDD in Japan. The WorldPartners Company does not offer services on the market. It is a central support organization to facilitate the delivery of seamless global telecommunications and related services to multinational customers by the above Partners and their correspondents (i.e. the other Members). It is set up as a US partnership. WorldPartners is not set up as a profit center but managed on a break-even economic model.

In its structure, a distinction is made between the Partners and the Members. All Partners are also Members of the WorldPartners Association,[1] but only Partners participate in the definition of services and standards. Members are only licensed to offer the WorldSource services. The Members are AT&T (North America and the UK[2]), KDD (Japan), Hong Kong Telecom, Singapore Telecom, Telecom Zealand, Telstra (Australia), Unisource (Continental Europe), and Unitel. Korea Telecom is expected to join before the end of the year.

The WorldPartners Company defines offer of services under the WorldSource (sm) Service Mark and engages in technology planning and design in support of these services. The services covered by WorldPartners technological back-up packages and provided under the WorldSource (sm) Service Mark are collectively referred to as the WorldSource Services. They consist of frame relay (data communication), managed bandwidth services (managed leased lines) and VPN (closed user group voice) services. The range of WorldSource services is not as extensive as the range of services offered by Unisource (and ultimately by the joint venture) under its own brands.

The WorldPartners Company licenses to the partners and members a package of intellectual property rights, including know-how, marks and software systems and processes enabling them to provide WorldSource services. It thus enables its licensees to service their international customers more effectively, especially by improving the interconnectivity between them.

It also acts as a clearing-house for traffic/usage and billing information, invoicing and collection among the members, and for account inquiries to allow and facilitate application of one-stop-shopping and one-stop-billing principles.

The Unisource partnership interest in WorldPartners company and the membership agreements of Unisource and AT&T Communications UK Ltd. will be transferred to Uniworld.

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1 Therefore, Unisource is also a Member of the WorldPartners Association. AT&T Communications UK Ltd. is a Member, but not a Partner. Their membership association is to be assigned to Uniworld upon its formation.

2 AT&T Communications UK Ltd. will become the WorldPartners Member for the UK.

The Teaming Agreement

Although AT&T and Unisource are not fully aware of the structure and operations of the EVUA, which is presented as a customers' association, it is (at present) not a joint venture company or organization. Its members deal separately with providers of telecom services.

The EVUA and its members organized a selection procedure for the service providers. Taking into account that AT&T and Unisource at the time expected their joint venture company to be operational shortly after the entry into force of any arrangement with the EVUA, AT&T and Unisource decided to file a joint bid in this procedure. As was indicated to the press and discussed with the Merger Task Force on July 15, 1994, they have been selected as one of the suppliers for the EVUA.

Under the Teaming Agreement between AT&T and Unisource which is yet to be concluded, they agree to act jointly to provide an international virtual private network for the provision of telecommunications services to individual members (closed user groups) of the EVUA. The Teaming Agreement is mainly intended as an interim arrangement pending the conclusion of the agreements for the establishment of the joint venture and will be superseded by the latter agreements.

The Teaming Agreement has been drafted as a purely transitional arrangement to cover the parties' provision of services to EVUA members until it is subsumed in Uniworld. The agreement will provide for termination if no agreement is reached by the end of the year.

Notifications

The parties intend to notify afore-mentioned agreements to the European Commission in due course.

CERTIFICATE OF SERVICE

I, Kathy Bates, a legal secretary with the law firm of Hogan & Hartson L.L.P., hereby certify that on this 12th day of May, 1995, a copy of the foregoing Reply Comments of BT North America Inc. was mailed by U.S. first class mail, postage prepaid, to the parties listed on the attached service list.

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Dated: May 12, 1995

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TELECOMMUNICATIONS LIBERALISATION: THE STATUS IN GERMANY

BT welcomes the clarification in German Posts & Telecommunications Minister Boetsch's statement of 27 March 1995 as to the timetable for German liberalisation of basic voice services and network infrastructure, and for licensing competitors to start service in line with the overall European Union target of January 1, 1998. It also welcomes the proposal to allow some minor liberalisation now, including very small experimental new technology applications, and some minor relaxation of restrictions on competitors to Deutsche Telekom before the 1998 target date.

In BT's view, however, the announcement does little to help market entry before 1998, nor does it provide anything more in this respect than the minimum which will be required by EU law now in place or to be adopted in the next 12-18 months:

i) Services to non-EU countries

There is no mention in the announcement of Germany's attitude to international common carriage services to markets outside the EU, e.g., the US. It is not yet clear how the EU legislation will be framed, but discussions within the European Council of Ministers hitherto have suggested that any liberalisation of voice services and network facilities will be within the boundaries of the EU. Some countries of the EU have also argued that such liberalisation should not be extended to US companies without the removal of barriers to market entry to EU companies in the US. It might be helpful if there were some clarification of the German position on services to non-EU countries.

ii) No licensing before mid-1997

Licences will be issued in mid-1997 to allow "competitors of Deutsche Telekom AG (to) become active and start offering their services. . . as soon as liberalisation takes effect on January 1, 1998." In reality, as any observer of telecommunications markets with network competition knows, it takes much longer for a network to be built and customers to be attracted to it than the 6-9 months the announcement provides for.

In particular the statement addresses Germany's attitude to last year's European Commission proposal that, before 1998, and maybe as early as 1996, so-called "alternative networks" be authorised to provide the services liberalised by the 1990 EU Directive 90/388 (essentially all services except third-party common carriage of voice). In the 27 March statement Minister Boetsch is quite clear that "from today's point of view, I would say that the core area of the network monopoly would be affected."

This is, in fact, a step backwards. Germany, along with France, Finland, Sweden and the UK, signed up to the proposition that the liberalisation which was agreed as recently as the European Council of Telecommunications Ministers on November 17, 1994, be extended, and urged the European Commission to bring forward legislation

immediately to liberalise the provision of services liberalised under EU Directive 90/388 over alternative networks. The German Government, despite some positive statement and despite having received applications from some 6 consortia and others to provide these services in Germany, appears in fact to favor retention of the monopoly of Deutsche Telekom for as long as possible. The current EU proposal to allow such services over cable TV networks will have no effect in Germany, as Deutsche Telekom has a monopoly on cable infrastructure.

The delay in licensing and the decision not to license alternative networks to provide services already liberalised give Deutsche Telekom a further 3 years to entrench its present monopoly position and to ensure that market entry is even slower after 1998 than might otherwise be the case. This entrenchment of its position will be further reinforced by the (already active) ATLAS joint venture with France Telecom (in whose market plans for partial liberalisation have also recently been suspended) and both companies' proposed PHOENIX alliance with Sprint. This could allow contractual market-closing measures by the two European entities before any competitors, EU or non-EU, can establish themselves. The French and German markets make up some 40% of total telecommunications revenue within the EU. German Government reluctance to do more than the minimum which EU law requires is also reflected in the positive step included in the statement--some relaxation of supply of infrastructure for mobile operators. This is the subject of a resolution likely to be adopted at the European Council of Telecommunications Ministers in June this year. The relaxation reflects steps already taken in the UK in 1986 and 1991. Minister Boetsch himself admits that another measure announced in the statement, on voice telephony over leased line capacity, is "in order to avoid being sued under Community laws for not implementing EC legislation properly" (Statement of 27 March, page 7, para 3).

BT hopes that current investigation by competition and telecommunications regulatory authorities in Washington and Brussels will pay close attention to the market-entry aspects of the proposed joint ventures.

iii) Regulatory safeguards

The document "Key Points for Future Regulation" issued at the same time as Minister Boetsch's statement makes a number of general statements on regulation of the dominant operator in respect of interconnection and universal service. The intention of these statements would seem to foster access to the Deutsche Telekom network and should be welcomed.

These statements of intent are, however, extremely vague, and they reveal little detail of how to deal with a number of the issues which in the UK have already been addressed in respect of interconnection and accounting transparency. BT considers it essential that these regulatory safeguards to ensure non-discriminatory access should be elaborated further before it can be judged how open the German market will be in fact after 1998.

Minister Boetsch's statement is also welcome in apparently giving new entrants access on the same financial terms as DT (free of charge) to rights of way to lay cables over public property. It is unclear, however, how new entrants will be treated by local and regional planning authorities whose permission is required to carry out public works. In the UK, the 150+ Public Telecommunications Operators have the right to require access to public and private land to build their systems.

Finally, even after privatisation of Deutsche Telekom, the Ministry of Posts and Telecommunications in Bonn will still hold 75-80% of Deutsche Telekom's stock. The German Government will thus continue to play the role of both major shareholder in and regulator of the largest telecommunications operator in Europe. The statement announces the establishment of an "independent" regulatory body, but adds that it will still be subordinate to one or other German Ministry, and thus under Ministerial and political control (whether in the Posts Ministry or elsewhere).

iv) Conclusion

The German Government statement makes some helpful but minor changes within the present regulatory framework in Germany, but makes no attempt to take any steps beyond that framework, except where European Union legislation requires it. As Minister Boetsch says "we have exhausted the possibilities available to us without having to eliminate the monopolies prematurely on the one hand, but defending the justified interests of Deutsche Telekom AG on the other." (sic)

BT considers this, at best, a lost opportunity to introduce competition into the largest market in Europe and to help shape a pro-competitive policy for the European Union by allowing for liberalisation before being obliged to do so by legislation which does not come into force until 1998.

While useful in minor aspects, and promising some regulatory relaxations after 1998, it makes little difference to the regulatory reality of the German telecommunications market today, which is, and will continue to be after 1998, dominated by a largely unregulated monopoly.

BT May 1995

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of	)	
	)	IB Docket No. 95-22
Market Entry and Regulation of	)	RM-8355
Foreign-affiliated Entities	)	RM-8392

COMMENTS OF BT NORTH AMERICA INC.

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SUMMARY

The Commission should issue a policy statement welcoming and encouraging participation in the U.S. international telecommunications market by foreign telecommunications service providers if markets in which they are dominant offer effective market access to competitors. "Effective market access" should mean that the foreign administration in a market in which the foreign carrier is dominant has a policy, fully implemented in practice and not just in pronouncement, with at least the following elements:

- Competition in the provision of basic as well as enhanced communications services, including both international and domestic simple resale and facilities-based competition.
- U.S. and other foreign nationals should be permitted to take significant investment stakes in, or control of, facilities-based and resale carriers.
- Cost allocation rules to prevent cross-subsidization between regulated and unregulated services.
- Published, nondiscriminatory charges, terms and conditions for resale of and interconnection with the facilities of the dominant carriers.
- Timely and nondiscriminatory disclosure by the dominant carriers of technical information necessary for such resale or interconnection.
- Protection of carrier and customer proprietary information.
- Enforcement of these safeguards by an independent regulatory body with fair and transparent procedures.

However, the level of accounting rates would not be an appropriate element in the effective market access standard.

The effective market access standard should apply to proposed investment of 10% or more in, or control of, a U.S. international carrier where it and its foreign affiliate would correspond, resell one another's facilities or interconnect. All such affiliations should be subject to prior approval, not simply notification as the Commission proposes. All applications for entry into the U.S. market should be granted as long as the effective market access test is met and the applicant is legally qualified and there is no issue of national security. Other factors may warrant U.S. entry, even if some of the elements in the effective market access standard are not met.

Conditions on Section 214 authorizations of carriers with foreign affiliations will adequately address potential discrimination; today's dominant carrier regulation should be eliminated. All agreements governing international basic service alliances should be filed pursuant to Section 43.51 of the Commission's rules and should be placed on public notice with opportunity for public comment before they become effective.

The effective market access stamdard has no place in decision-making under Section 310(b)(4). The legislative history of Section 310(b) makes clear that the sole criterion for a Section 310(b)(4) analysis should be protection of national security.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	IB Docket No. 95-22
Market Entry and Regulation of	)	RM-8355
Foreign-affiliated Entities	)	RM-8392

To: The Commission

COMMENTS OF BT NORTH AMERICA INC.

BT North America Inc. ("BTNA"), by its attorneys, submits the following comments in response to the Federal Communications Commission's ("Commission") Notice of Proposed Rulemaking ("Notice") in the above-captioned proceeding. 1/

I. INTRODUCTION

In this proceeding the Commission is considering the adoption of a policy and rules governing the participation of foreign telecommunications carriers in the U.S. telecommunications marketplace. The Commission proposes the adoption of an entry standard, a framework for establishing to whom the standard would apply and procedures for implementation and enforcement of the standard.

Although the participation of foreign carriers in the U.S. market is not new, there is an increasingly higher profile for global telecommunications driven by

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1/ Market Entry and Regulation of Foreign-affiliated Entities, IB Docket No. 95-22, RM-8355, RM-8392 (released February 17, 1995). The Notice was issued in response to Petitions for Rulemaking filed by AT&T ("AT&T Rulemaking Petition") and IDB Worldcom, Inc.

both international carriers and their multinational customers. This trend toward globalization is manifest not only in the demands of customers seeking seamless services around the world and in international carrier alliances like AT&T World Partners, the Sprint/DT/FT agreement, and the BT/MCI Concert venture but also in the declarations of governments, advocating open and competitive telecommunications markets and the establishment of national and global information infrastructures. Because the globalization of telecommunications markets is resource and capital intensive, it is both appropriate and timely that the Commission review its policies with respect to telecommunications market entry and investment opportunities for foreign firms in the U.S.

BTNA supports the Commission's initiative. As explained below, the Commission should issue a policy statement that explicitly recognizes that participation of foreign firms in the U.S. international marketplace is -- under appropriate conditions -- welcomed and encouraged. The policy should establish an entry standard that is clear, specific and pragmatic. The standard should apply to foreign carriers which are dominant in their home markets and seek investment of 10% or more in, or control of, facilities-based U.S. international carriers. Such investments should be subject to prior approval under Section 214.

II. FOREIGN CARRIERS SHOULD BE PERMITTED TO PARTICIPATE IN THE U.S. INTERNATIONAL MARKETPLACE IF MARKETS IN WHICH THEY ARE DOMINANT OFFER EFFECTIVE MARKET ACCESS

A. The Entry Standard Should Be Clear, Specific and Pragmatic

The Commission should issue a Policy Statement providing that participation in the U.S. international telecommunications market by foreign telecommunications service providers will be permitted if markets in which they are dominant offer effective market access to competitors. For the policy to achieve its

purpose, the standard must be clear, specific -- and pragmatic. "Effective market access" should mean that the foreign administration in a market in which the foreign carrier is dominant has a policy, fully implemented in practice and not just in pronouncement, with at least the following elements:

- Competition in the provision of basic as well as enhanced communications services, including both international and domestic simple resale and facilities-based competition.
- U.S. and other foreign nationals should be permitted to take significant investment stakes in, or control of, facilities-based and resale carriers.
- Cost allocation rules to prevent cross-subsidization between regulated and unregulated services.
- Published, nondiscriminatory charges, terms and conditions for resale of and interconnection with the facilities of the dominant carriers.
- Timely and nondiscriminatory disclosure by the dominant carriers of technical information necessary for such resale or interconnection.
- Protection of carrier and customer proprietary information.
- Enforcement of these safeguards by an independent regulatory body with fair and transparent procedures. 2/

The Commission's proposal to include as an element of effective market access "the ability . . . to provide basic, facilities-based services," requires clarification. 3/ Insisting on the ability of U.S. carriers to establish their own new, or to control existing, foreign facilities-based international carriers would be

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2/ Notice at ¶ 40.

3/ Id.

requiring more than any foreign carrier has asked of the U.S. In a few instances, foreign carriers have acquired noncontrolling shares of U.S. international facilities-based carriers, but no foreign carrier has been authorized to control a major U.S. international common carrier. 4/ On the other hand, it is reasonable to insist on the ability of American companies to take non-controlling investment stakes in foreign carriers, if foreign carriers expect to do the same in the U.S. Similarly, foreign control of a U.S. international facilities-based carrier should be permitted if U.S. companies have the same opportunity in the home country of the foreign carrier seeking control. 5/

The Commission is right to reject AT&T's call for adoption of mirror reciprocity with U.S. market structure and regulation as a condition of U.S. market participation by foreign carriers. 6/ To set a standard that effectively requires a foreign country to replicate U.S. policy is to set a standard that will not be met. Moreover, countries surely have something to learn from one another as they develop their competitive marketplaces. The Commission should allow the experience of other nations to inform its policymaking, while ensuring that fundamental principles of competition are maintained. In order to establish a

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4/ See Telefonica Larga Distancia de Puerto Rico, 8 FCC Rcd 106 (1992). Telefonica de Espana was permitted to acquire Telefonica Larga Distancia which owns some international circuits incidental to its domestic long distance operations. See also AmericaTel Corporation, 9 FCC Rcd 3993 (1994).

5/ There is an issue as to whether the bilateral approach proposed by the Commission is consistent with the multilateral focus of the GATS negotiations which is advocated and supported by other U.S. government agencies and other governments. The effective market access standard proposed here could also be implemented in the form of a multilateral agreement.

6/ Notice at ¶ 41.

credible market-opening policy and achieve the goals of strengthening competition at home and increasing it abroad, the standard of effective market access should focus on the fundamental structural elements and regulatory safeguards essential to a competitive environment, as proposed above.

This proposed policy will establish a standard with greater certainty than today's ad hoc approach, lending predictability to business planning by carriers in the U.S. and abroad. Carriers could more realistically assess investment opportunities, or plan competitive responses to such investments. Because U.S. market entry is surely a keystone of the strategic plans of many foreign carriers, a policy welcoming their participation subject to clear and pragmatic conditions of effective market access would encourage market liberalization in foreign countries. Whether foreign carriers become additional competitors in the U.S. market or strengthen American carriers through investment, the net effect of this Commission policy would be to increase competition in the U.S. and abroad to the significant benefit of U.S. consumers.

B. The Level of Accounting Rates is Not an Appropriate Element of the Effective Market Access Standard

AT&T argues that a foreign carrier should not be permitted to compete in the U.S. marketplace unless it can show that its U.S. accounting rate is set at cost. 7/ This contention confuses means with ends. Competition through effective market access should drive accounting rates to cost without involving the Commission in passing upon the costs of carriers that are subject to foreign jurisdictions. This principle is evident in AT&T's recent ex parte filing concerning

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7/ AT&T Rulemaking Petition at 6.

BTNA's international simple resale authorization. 8/ Commenting on the current AT&T-BT accounting rate, AT&T purports to show that, using facilities and services provided by BT and its competitors, AT&T could provide an end-to-end service on the U.S.-U.K. route at less cost than it incurs through its correspondent relationship with BT. The large number of operators entering the U.S.-U.K. ISR market appears to demonstrate that resale is a viable alternative to provision of U.S.-U.K. service on a correspondent basis. AT&T holds its own resale authorizations in both the U.S. and the U.K., and is free to provide U.S.-U.K. service by means of ISR, if it chooses to do so. 9/ It may be expected that the activities of resellers will put pressure on accounting rates, which is what the Commission's international resale policy is designed to achieve. 10/ Competition among facilities-based providers on both the U.S. and foreign ends should accomplish the same objective.

AT&T's insistence on accounting rate adjustments as a condition of market entry also ignores the fact that traffic levels are a relevant and important factor in the establishment of accounting rates. Unless an accounting rate reduction is passed along to consumers in the form of reduced collection rates, lower accounting rates will not stimulate more traffic. For example, despite substantial

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8/ AT&T Ex Parte Comments File No. ITC-93-126, March 22, 1995.

9/ AT&T and AT&T (U.K.) Limited, File No. ITC-93-162, DA 95-119 (released January 30, 1995). AT&T's U.K. license was granted by the Secretary of State for Trade and Industry to AT&T (U.K.) Limited under Section 7 of the Telecommunications Act 1984 (December 20, 1994). For the purposes of the license granted to AT&T (U.K.) Limited, the Secretary of State designated the U.S. and certain other countries as countries or territories to which AT&T (U.K.) Limited was permitted to provide international single resale ("ISR").

10/ Regulation of International Accounting Rates, 7 FCC Rcd 559, ¶ 16 (1991).

reductions in the U.S.-U.K. accounting rate, U.S. carrier tariff prices for U.K.-bound calls have not been reduced significantly. 11/ It is unrealistic to expect any correspondent to agree to continuing reductions in accounting rates if U.S. carriers do not reduce collection rates.

C. Applications Should Be Granted if the Effective Market Access Standard Is Met, But Other Factors May Warrant U.S. Entry, Even if the Standard Is Not Met

The effective market access standard should be applied consistently if it is to clarify U.S. entry policies and encourage liberalization abroad. American carriers and prospective foreign entrants should know that if the standard is met, then the affiliation will be approved. The Commission's suggestion that U.S. entry may be denied even if the effective market access standard is satisfied will exacerbate the uncertainty the Commission is trying to eliminate and undermine the credibility of the policy. 12/ There should be no regulatory factors that warrant denial of an application that meets the effective market access standard (unless an applicant is not legally qualified under applicable legal, technical and financial requirements) except where the Executive Branch determines that grant of the application would threaten national security. At the same time, failure to meet the

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11/ For example, AT&T's standard rates remained unchanged from March 1991 to August 1993 when they were subsequently increased by approximately 2%. Even today, following AT&T's January 1995 rebalancing, the cost of a 6-minute standard rate call from the U.S. to the U.K. is higher than at any time in the last four years, while a 3-minute standard rate call has decreased by only 4%. Over this same period, 1991 to the present, BT has reduced its outbound IDD collection rate from £0.68/minute to £0.37/minute, a net decrease of 50%. These reductions in U.K. to U.S. collection rates have been initiated despite losses in settlement revenues to BT.

12/ Notice at ¶ 41.

standard should not be an absolute bar to participation in the U.S. international telecommunications marketplace. In some cases, other factors, such as competition in other relevant markets, may warrant an affirmative public interest finding under Section 214.

III. THE STANDARD SHOULD APPLY TO AFFILIATIONS INVOLVING INVESTMENTS OF 10% OR MORE (OR CONTROL) WHERE AFFILIATES WOULD CORRESPOND, RESELL ONE ANOTHER'S FACILITIES OR INTERCONNECT

A. The Standard Should Apply to Affiliations Involving Investment of 10% or More (or Control)

The Commission should apply the effective market access standard to proposed investment of 10% or more in, or control of, a U.S. international carrier by a foreign carrier dominant in its home market. It is reasonable to presume an incentive to discriminate under those circumstances. 13/ As the Commission notes, there is significant precedent for the use of this threshold. For example, waivers issued under the AT&T Consent Decree permit Regional Bell Operating Company investment in foreign telephone companies providing international basic services in conjunction with U.S. correspondents. 14/ Similarly, the Securities and Exchange

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13/ For the purpose of determining whether a U.S. carrier should be regulated by the Commission as dominant for service to a country in which the carrier's affiliate is dominant, the Commission defines affiliation as a controlling interest (de jure or de facto). See § 63.01(r)(1)(i). The lower 10% investment threshold is appropriate for the more significant consideration of whether a foreign carrier that is dominant in its home market should be permitted to participate in the U.S. international marketplace.

14/ See United States v. Western Electric, et al., No. 82-0192 (D.D.C. Feb. 4, 1993) (Blanket waiver allowing RBOC investment in foreign carriers up to 10%.). See also United States v. Western Electric Company, Inc., 1989-1 Trade Cases P. 68, 444 (1989) (Waiver granted to Pacific Telesis Group to provide

[Footnote continued]

Act of 1934 requires any 10% or greater shareholder of a public company to file periodic reports with the SEC. 15/

Where dominant foreign carriers with an "identity of interests" would co-invest in a U.S. international carrier, their interests should be aggregated for the purpose of determining whether the 10% (or control) threshold is met, and the effective market access standard should be applied to each investor. The identity of interests approach has been employed by the Commission in determining affiliations under the Personal Communications Services rules. 16/ Parties that have been co-investors in other, relevant business ventures are generally considered to have an identity of interests when they invest together in a PCS licensee. Their interests are aggregated when assessing compliance with revenue, share ownership and other restrictions. By aggregating ownership where dominant foreign carriers have an identity of interests, the Commission will prevent an alliance of foreign operators that invests in a U.S. international carrier from escaping Commission scrutiny under the effective market standard because

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[Footnote continued]

international service between Japan and North America through acquisition of a 8.5% equity interest in IDC.).

15/ Section 16A of the Securities and Exchange Act of 1934. The SEC also employs a 5% threshold for certain other reporting requirements. Regulation 13d of the Securities and Exchange Act of 1934. For attribution purposes, the Commission itself uses both a 5% and a 10% threshold. See e.g., 47 C.F.R. §§ 20.6 and 24.813(a). BTNA would not oppose a 5% cut-off but believes that the use of 10% allows some flexibility.

16/ 47 C.F.R. § 24.720(l).

individual investment shares of the members of the alliance are each under 10%. 17/

B. The Effective Market Access Standard Should Apply Whenever Affiliates Would Correspond, Resell One Another's Private Lines Or Interconnect.

Because there is incentive and ability to discriminate when a U.S. international carrier and a foreign affiliate correspond, resell one another's private lines or interconnect, the effective market access standard should apply in those instances. There is no need to apply the standard to investment by a foreign carrier where such relationships do not exist. For example, no special scrutiny is necessary where a U.S. international carrier proposes to affiliate with a foreign carrier that provides only domestic service in its home country, so long as there is an unrelated international service provider interposed between the two. A similar principle has governed Regional Bell Operating Company waivers to provide international service under the AT&T Consent Decree 18/. Nor should the Commission apply the standard only when a new affiliation is proposed. The standard should apply to Section 214 applications in which previously affiliated carriers propose, for the first time, to correspond, resell one another's private lines or interconnect. There is also no reason to exempt from application of the standard

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17/ For example, A and B are dominant PTTs that have formed an alliance. A holds a 7% interest in C, a U.S. international carrier. B proposes to purchase a 7% interest in C. A and B have an identity of interest due to their alliance. Therefore, the proposed investment of B in C should trigger the application of the effective market standard because the combined investments of A and B would be equal to or greater than 10%.

18/ See United States v. Western Electric, et al., No. 82-0192 (D.D.C. Feb. 4, 1993).

affiliations with foreign operators that do not carry significant amounts of U.S. traffic. 19/ The potential for anti-competitive practices among affiliates on any route, regardless of size, should not be ignored.

IV. ALL AFFILIATIONS SHOULD BE SUBJECT TO PRIOR APPROVAL, NOT NOTIFICATION

The Commission proposes that carriers simply notify it of a new affiliations. 20/ In a procedure similar to determinations under Section 310(b)(4), the Commission invites petitions for declaratory ruling seeking Commission clearance under the effective market access standard. The problem with this approach is that notification could occur after the affiliation has taken place. The filing of petitions for declaratory rulings is discretionary, providing no assurance that the Commission will have sufficient opportunity to review the transaction before it takes place. The Commission suggests that a carrier's existing Section 214 certificates could be set for hearing if an affiliation the Commission did not review later raises material issues. Because setting a carrier's Section 214 certificates for hearing is a drastic step, the reality is that the Commission may be less inclined to take that action after an affiliation occurs, undermining the credibility of the proposed procedure. If the Commission has the authority to set a carrier's existing Section 214 certificates for hearing to review an affiliation, then the Commission also has the authority to require the filing of a Section 214 application to implement the affiliation. In order to assure adequate review under the effective market

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19/ Notice at ¶ 43.

20/ Notice at ¶ 51.

access standard, affiliations should be subject to prior approval under Section 214. 21/

V. CONDITIONS ON SECTION 214 AUTHORIZATIONS OF CARRIERS WITH FOREIGN AFFILIATIONS WILL ADEQUATELY ADDRESS POTENTIAL DISCRIMINATION; OTHER DOMINANT CARRIER REGULATION SHOULD BE ELIMINATED

Carriers meeting the effective market access standard should be subject to reporting and other conditions on their Section 214 authorization that would minimize the potential for discrimination. These conditions should include observance of the Commission's no special concessions requirement in § 63.14 of the

[redacted]

rules, availability for Commission review of records concerning maintenance and

[redacted]

Congruent with its proposal to employ conditions on Section 214 authorizations to guard against discrimination, the Commission proposes to end the 45 day tariff notice and cost support requirements now applied to carriers that are dominant by virtue of foreign affiliations. 23/ Those requirements diminish competition by forcing some competitors, but not others, to reveal their cost data and announce prices and service descriptions far in advance of implementation. The requirement for circuit-by-circuit authorizations for carriers affiliated with dominant foreign carriers, which the Commission proposes to continue, is also anti-competitive. 24/ The effective market access standard, combined with the proposed conditions on Section 214 authorizations, will provide fully adequate safeguards against discrimination. The current dominant carrier regulation based on foreign affiliation established in International Competitive Carrier Policies, 102 FCC 2d 812, 842-43 (1985) at ¶¶ 72-73 is itself discriminatory and should be terminated.

VI. AGREEMENTS GOVERNING INTERNATIONAL BASIC SERVICE ALLIANCES SHOULD BE REVIEWED BY THE COMMISSION

The Commission suggests that agreements concerning international service alliances should be filed under § 43.51 of the rules. 25/ BTNA agrees with this proposal, but urges that, in addition to requiring the filing of such agreements,

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[Footnote continued]

n.41. The Commission should rule that resale counterparts are nondominant, and are subject neither to the no special concession obligation nor the § 63.12(c)(2) exception.

23/ 47 C.F.R. §§ 61.38 and 61.58.

24/ See 47 C.F.R. § 63.07(b).

25/ Notice at ¶ 63.

they also should be placed on public notice with opportunity for public comment before they go into effect.

Alliances should receive careful scrutiny to ensure that there is no ability or incentive for discrimination. Equity interests in a jointly held company or the provision of equipment or software to alliance participants, among other matters, could lead to anticompetitive practices. For example, the Commission describes World Partners, AT&T's alliance with several monopoly or dominant PTTs, as nothing more than a "co-marketing" arrangement, although the Commission has never formally reviewed the relevant agreements. 26/ Press reports indicate that World Partners and its related Uniworld venture, will involve initially an investment of at least $100 million in the Asian/Pacific region and another $350 million in Western Europe 27/. While the agreements establishing Concert, the BT/MCI joint venture, were publicly filed and reviewed by the Commission, little is known about the arrangements which govern World Partners and Uniworld and the extent to which the shared owners and other members of

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26/ Id.

27 On June 23, 1994, AT&T announced a new alliance with Unisource, an alliance of Dutch, Swiss and Swedish telecommunications organizations. *See* "Phone Alliances May Raise Antitrust Worries in Europe," Wall Street Journal Europe, June 24, 1994, at 3. This new alliance is named "Uniworld," with its equity held 60% by Unisource and 40% by AT&T. AT&T press release (Brussels, December 12, 1994). Subsequently, the Spanish operator Telefonica has chosen to join Unisource. The combinations of World Partners and Unisource, and Unisource with Telefonica have caused concern among European Commission competition authorities. "Commission Begins Inquiry into Proposed Telecom Deals," Wall Street Journal Europe, March 23, 1995, at 2. *See also* "Commission Examines Strategic Alliance..." Agence Europe, March 23, 1995, at 9. The European Commission has begun an examination of Unisource and its connection to AT&T. European Commission Spokesman's Service Press Release, March 22, 1995.

these alliances have the incentive to discriminate against competitors with respect to marketing of alliance services, interconnection, return traffic and provisioning and maintenance of facilities. Whether or not World Partners or Uniworld are exclusive arrangements is beside the point; discriminatory incentives may be built into the ventures.

BTNA agrees with the Commission that exclusive co-marketing arrangements should be subject to entry regulation, including the effective market access standard. 28/

VII. THE SOLE CRITERION FOR A SECTION 310(B) ANALYSIS SHOULD BE PROTECTION OF NATIONAL SECURITY.

The legislative history of Section 310(b) and antecedent provisions reveals a consistent purpose -- protecting U.S. national security interests. As restrictions on foreign participation in communications evolved, Congressional intent remained constant. Successive bills and statutes proposed various means of detecting alien influence, but they all sought to ensure that national security was protected. This intent was recognized by the U.S. Court of Appeals for the D.C. Circuit as recently as 1991, when it emphasized that Section 310(b)(4) "was designed . . . to 'prevent[ ] alien activities against the Government during the time of war." Coalition for the Preservation of Hispanic Broadcasting v. FCC, 931 F.2d 73, 79 (D.C. Cir.) (quoting Noe v. FCC, 260 F.2d at 741 (quoting 68 Cong. Rec. 3037 (1927) (remarks of Sen. Wheeler))), cert. denied, 502 U.S. 907 (1991).

Because the sole criterion for analysis under Section 310(b) is protection of national security, the Commission should not evaluate competitive

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28/ Notice at ¶ 63.

market entry considerations under this provision. Should the Commission decide nonetheless to administer section 310(b) on a basis that recognizes competitive factors, then it should apply exactly the same effective market access standard as proposed for evaluation of foreign entry under Section 214.

VIII. CONCLUSION

The Commission should adopt a policy permitting foreign participation in the U.S. market pursuant to an effective market access standard. The standard should be clear, specific and pragmatic, and should apply to foreign carriers which are dominant in their home markets and propose investment of 10% or more in, or control of, facilities-based U.S. international carriers. All such investments should be subject to prior approval under Section 214.

Respectfully submitted,

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Dated: April 11, 1995

CERTIFICATE OF SERVICE

I, Kathy Bates, do hereby certify that on this 11th day of April, 1995, a copy of the Comments of BT North America Inc. was hand delivered to the parties listed below.

Kathy Bates

Kathy Bates

Dated: April 11, 1995

Scott Blake Harris, Chief
International Bureau
Federal Communications Commission
2000 M Street, N.W., Room 658
Washington, D.C. 20554

Troy Tanner
International Bureau
Federal Communications Commission
2000 M Street, N.W., Room 833
Washington, D.C. 20554

ATTACHMENT IV - 15.(a)

15.(a) If yes, set forth below in the required detail and separately for each foreign principal on account of such monies, including monies transmitted, if any, to each foreign principal.

Note: All monies disbursed or expended in connection with activity on behalf of British Telecommunications plc (BT plc) or its domestic U.S. companies. A substantial part of the monies disbursed or expended were in connection with non-registrable activities.

Date	To Whom	Purpose	Amount
04/01/95-09/30/95	Various Vendors	Office Expenses--including real property, equipment & vehicle leases; telephone; supplies; postage & overnight; documents, books & subscriptions; printing; registration fees; parking & taxis	$ 154,417.22
04/01/95-09/30/95	James E. Graf II, Vice President Jeanne M. Schaaf, Assistant Vice President Betty R. Austin, Office Manager Beth Davidson/Stacey Stump Secretary/Receptionist	Salaries, Fringe Benefits, Other Employee-related Expenses	333,567.05
04/01/95-09/30/95	Various vendors	Travel & Travel Meals **Note:** No U.S. Government officials or media representatives were guests.	45,314.86
04/01/95-09/30/95	Various vendors	Entertainment-Meals/Business Conferences **Note:** No U.S. Government officials or media representatives were guests.	6,006.22
09/01/95-09/30/95	Hogan & Hartson	Legal Services	818.45
04/01/95-09/30/95	British American Business Association	"Founding Sponsor" member annual corporate dues 6/1/95-5/31/96	1,500.00
04/01/95-09/30/95	British Olympic Association	Sponsorship of table at British Olympic Association Lunch honoring Her Royal Highness Princess Anne Hosted by British Embassy - June 8, 1995. **Note:** No U.S. Government officials or media representatives attended as invitees of BT plc.	2,500.00
04/01/95-09/30/95	Center for Strategic & International Studies	1995 corporate sponsorship of the CSIS International Communications Studies Program	10,000.00
04/01/95-09/30/95	European Institute	Corporate sponsorship of breakfast meeting w/President Jacques Santer of the European Commission. **Note:** While U.S. Government officials or media representatives may have been breakfast attendees, their attendance was not invited or solicited by BT plc.	1,500
04/01/95-09/30/95	Folger Shakespeare Theater	Use of the Folger Shakespeare Library Great Hall & old Reading Room for dinner on 9/19/95 for BT/MCI Alliance Anniversary Dinner. U.S. Government officials/media representatives who attended by invitation of BT plc were George Brandon/Telecommunications Reports, Art Brodsky/Communications Daily, and Diane Cornell, Chief, Telecommunications Division, International Bureau, Federal Communications Commission	15,000.00
		TOTAL	**$416,206.58**

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