

Before the
Federal Communications Commission
Washington, D.C. 20554

MEMORANDUM OPINION, ORDER AND
CERTIFICATION

Adopted: January 11, 1996; Released: January 16, 1996

In re Applications of

Cable & Wireless Inc. File No. I-T-C-93-328

Application for Authority pursuant to Section 214 of the Communications Act of 1934, as amended, to operate as an international private line carrier

Communication TeleSystems International File No. I-T-C-95-116

Application for Authority pursuant to Section 214 of the Communications Act of 1934, as amended, to operate as an international private line carrier

Cyberlink, Inc. File No. I-T-C-94-505

Application for Authority pursuant to Section 214 of the Communications Act of 1934, as amended, to operate as an international private line carrier

Global Telecommunications, Inc. File No. I-T-C-94-451

Application for Authority pursuant to Section 214 of the Communications Act of 1934, as amended, to operate as an international private line carrier

MFS International, Inc. File No. I-T-C-94-355

Application for Authority pursuant to Section 214 of the Communications Act of 1934, as amended, to operate as an international private line carrier

By the Chief, International Bureau:

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INTRODUCTION

1. With this Order, we increase competition in international telecommunication markets by granting applications allowing private line resale between the United States and Sweden. In so doing, we conclude that Sweden offers U.S. carriers opportunities to resell private lines to provide switched services which are equivalent to those we offer to Swedish carriers in the United States.

2. The applicants seek authorization, pursuant to Section 214 of the Communications Act of 1934,¹ to resell international private lines to provide switched services between the United States and Sweden. The Commission grants Section 214 authorizations for international private line resale when applicants demonstrate that equivalent resale opportunities exist in the foreign country for U.S.-based carriers. We find that the record demonstrates that equivalent international private line resale opportunities exist in Sweden for U.S.-based carriers. Therefore, we grant Section 214 authorizations to Cable & Wireless, Inc. (CWI), Communication TeleSystems International (CTS), Cyberlink, Inc. (Cyberlink), Global Telecommunications, Inc. (GTI), and MFS International, Inc. (MFSI) to provide the services requested subject to the conditions set forth below. We will, however, monitor resale conditions in Sweden to ensure that equivalent opportunities continue to exist.

BACKGROUND

3. In the *International Resale Order*,² we found that the resale of international telecommunications services encourages cost-based prices for international telecommunications services and more efficient use of international facilities.

¹ 47 U.S.C. § 214 (1995).

² *In the Matter of the Regulation of International Accounting Rates Proceeding, Phase II, First Report and Order*, 7 FCC Rcd 559 (1992) (*International Resale Order*); see also *In the Matter of*

the Regulation of International Accounting Rates Proceeding, Phase II, Order on Reconsideration and Third Further Notice of Proposed Rulemaking, 7 FCC Rcd 7927 (1992) (*Order on Reconsideration*), petition for reconsideration/clarification pending.

Specifically, we found that the resale of international private lines to provide switched services fosters new entry into the international telecommunications market and exerts downward pressure on above-cost international accounting rates and foreign collection rates through the diversion of switched traffic to resold private lines.³

4. But we also concluded that permitting "one-way" resale (*i.e.*, resale only from the overseas point inbound to the United States) would undermine the benefits of international private line resale. Such "one-way" resale could enable foreign carriers or administrations to divert to private lines U.S. inbound switched traffic for which U.S. carriers normally receive settlements payments under the International Settlements Policy (ISP).⁴ Without a similar ability, U.S. carriers would have to continue to route all outbound traffic over switched lines, aggravating the settlement deficit.

5. Permitting a one-way evasion of the settlements process would not only exacerbate the U.S. net settlements deficit, it also would fail to put downward pressure on foreign accounting rates, thereby frustrating one of the goals of the *International Resale Order*. Accordingly, we concluded that we will authorize the resale of international private lines interconnected to the public switched network ("PSN") only to countries that allow resale of interconnected international private lines in their country.⁵ We, thus, required that each applicant seeking to resell U.S.-international private lines demonstrate that the destination foreign country affords resale opportunities equivalent to those available under U.S. law.

6. Pursuant to Section 63.01(k)(5) of our rules,⁶ five applicants submitted information and documentation to demonstrate that equivalent resale opportunities exist in Sweden and that such services will serve the public interest.⁷ Applicants seek to resell U.S. international private lines interconnected to the PSN at both the foreign and U.S. end to provide switched telecommunications services

between the United States and Sweden.⁸ MFSI and Cyberlink also propose to resell U.S. international private lines interconnected to the PSN at only one end to provide switched services between the United States and Sweden.

7. We placed the applications on public notice.⁹ Telia AB filed comments in the CWI and MFSI proceedings. FGC, Inc. (FGC), a reseller, also filed comments in the CWI proceeding.¹⁰ AT&T filed a petition to deny against all five applicants. Sprint filed a petition to deny, in part, against CWI. All five applicants filed oppositions to AT&T's petition and CWI filed an opposition to Sprint's petition. FGC filed reply comments to both the AT&T and Sprint petitions. AT&T replied to all five applicants' oppositions.

DISCUSSION

8. Applicants request the Commission to determine that there are equivalent private line resale opportunities for U.S.-based carriers in Sweden. Our standard for equivalent resale opportunities requires, at a minimum, that the foreign country in which the international private line will either originate or terminate: 1) permit open entry for U.S.-based carriers into the international resale market; 2) mandate non-discriminatory treatment of U.S.-based carriers, and 3) permit international private lines to be interconnected to the PSN at both ends.¹¹ The prices, terms, and conditions afforded U.S.-based carriers should be equivalent to those available to foreign-based carriers providing service in the foreign country. In addition, licensing, tariffing, and other terms and conditions that may be associated with the provision of services to, and by, U.S.-based carriers may be relevant in evaluating equivalency. But we do not require that every foreign regulatory, legal, technical and market condition affecting resellers mirror those in the United States. It is sufficient that these conditions, as a whole, afford resellers opportunities that are substantially similar to those available in the United States.¹²

³ See *International Resale Order*, 7 FCC Rcd at 560-61. The accounting rate refers to a rate negotiated between two correspondent carriers on a particular international route that is intended to allow each carrier to recover the costs of the facilities it has provided for terminating an international telephone call. Most operating agreements provide for the two correspondent carriers to split the accounting rate fifty/fifty. At settlement, each correspondent carrier nets the number of minutes that it originated against the number of minutes its correspondent carrier originated. The carrier that originated the greater number of minutes makes a "settlement payment" to the other correspondent carrier. The payment is calculated by multiplying the net difference in minutes by one-half the accounting rate. Collection rates are those tariffed rates charged to customers.

⁴ *Id.* at 561. The ISP requires uniform settlement rates, accounting rates and division of tolls for U.S. international carriers on parallel routes. This requirement is aimed at preventing foreign telecommunications administrations from being able to "whipsaw" U.S. carriers or play U.S. carriers off against each other to the disadvantage of other U.S. carriers and U.S. ratepayers.

⁵ See *ACC Global Corporation/Alanna Inc., Memorandum Opinion and Order*, 9 FCC Rcd 6240 (1994) (*ACC/Alanna Order*); *FONOROLA/EMI Order, Memorandum Opinion and Order*, 7 FCC Rcd 7312 (1992); *FONOROLA/EMI Order on Reconsideration*, 9 FCC Rcd 4066 (1994) (*FONOROLA Reconsideration Order*).

⁶ See 47 C.F.R. § 63.01(k)(5) (1994).

⁷ CTS, a California corporation, is privately-owned by three U.S. citizens. CWI, a D.C. corporation, is an authorized U.S. carrier that is a wholly-owned subsidiary of Cable & Wireless North America, Inc., that is, in turn, a wholly-owned subsidiary of Cable & Wireless plc (C&W plc), a publicly-traded U.K. corporation. Cyberlink, a California corporation, is wholly-owned by Mr. Les Lydiate, a U.K. citizen. GTI is a newly-formed, privately-held Delaware corporation, 95 percent owned by K. Paul Singh, a U.S. citizen. MFSI, a Delaware corporation, is a wholly-owned subsidiary of MFS Communications Company, Inc.

⁸ CWI seeks a finding of equivalency and Section 214 resale authority to resell private lines to Sweden subject to the establishment of non-discriminatory interconnection charges and terms by Telia AB. See CWI Application at 3.

⁹ CWI Application, Public Notice Report No. I-6864 (Sept. 22, 1993); MFSI Application, Public Notice Report No. I-6992 (Jun. 22, 1994); GTI Application, Public Notice Report No. I-7025 (Aug. 24, 1994); Cyberlink Application, Public Notice Report No. I-7044 (Oct. 5, 1994), and the CTS Application, Public Notice Report No. I-7092 (Jan. 6, 1995).

¹⁰ On July 21, 1995, FGC canceled its Section 214 authorization, ITC 93-300, to provide international common carrier service. See Letter to Mr. William F. Caton, Acting Secretary, FCC from Stephen D. Baruch, Attorney for FGC, Inc. (Jul. 21, 1995).

¹¹ See *International Resale Order*, 7 FCC Rcd 559 (1992).

¹² See *International Resale Order*, 7 FCC Rcd at 562; see also *ACC Global Corporation/Alanna Inc., Memorandum Opinion and Order*, 9 FCC Rcd 6240 (1994); *FONOROLA/EMI Order*,

9. The record indicates that Sweden's telecommunications market has undergone significant change in the last few years moving towards a more competitive market. Until 1993, Televerket, a state-owned telecommunications authority with combined operational and regulatory functions, provided almost ubiquitous national service in Sweden.¹³ In 1993, Sweden enacted a new telecommunications law that separated the regulatory and operational functions of Televerket.¹⁴ The Post & Telestyrelsen ("National Post and Telecom Agency" or "NPTA"), an independent regulatory agency, assumed the regulatory functions. Telia AB, a limited liability company, was formed by the Swedish government to assume Televerket's operational functions. The new regulatory regime was designed to foster competition and encourage new entrants.¹⁵

A. Open Entry

10. There are no restrictions on entry into the Swedish market for U.S. resellers providing switched services over international private lines. Indeed, there are no restrictions on foreign ownership or participation in any Swedish telecommunications services. Therefore, U.S.-based carriers have the same opportunity to enter the Swedish resale market as Swedish carriers.

11. Moreover, licensing requirements are not barriers to entry for U.S.-based resellers of both private lines and switched services, as resellers generally need not obtain licenses or register with the NPTA. Section 5 of the Act mandates licenses for operators providing telephony service, mobile service and leased lines if such services are offered within a public telecommunications network and if such activity is of a "considerable extent." A network becomes "public" when it is available to a wide range of users or when an operator actively tries to attract customers in a certain market segment.¹⁶ "Considerable extent" is further defined in Section 5 as relating to the area covered, the number of users or other comparable circumstances.¹⁷ NPTA reviews an entity's business plans and growth projections for five and ten year intervals to deter-

mine whether the service will be "considerable" and accessible to the public.¹⁸ NPTA's review will decide whether the applicant has reasonable funding and the technical expertise to carry out its proposed business plan. After a license is granted, NPTA will monitor the progress of the applicant to assess whether the entity has achieved the business plan objectives. If not, NPTA may revoke the license. It appears that, once a license is procured, it will be retained so long as the carrier meets or exceeds its market share objectives.

12. Due to the recent passage of the Act, there is little published commentary on the term "considerable extent." In an excerpt from the Government Bill introducing the Telecommunications Act to Parliament, however, the Commission on Telecommunications Legislation stated that a license should be required only if an activity is of such a scope that it is "significant."¹⁹ In the excerpt, the Minister states that figures for market shares and turnover could be relevant for judging whether or not the activity is significant, but does not specifically define the relevant markets. The Vinge Report observes that the market could be defined in service terms as, for example, the market for domestic long-distance telephony, or in geographical terms.²⁰ According to the excerpt, in general, an operator's activity with market shares of 10-15 percent could be considered significant, thus requiring a license. The excerpt further states that the total turnover figure for an operator could indicate that even smaller market shares in various service or geographical markets could mean that the activity is significant.²¹ But, the excerpt indicates that all relevant circumstances will be considered in determining if a license is required.²²

13. Consequently, resellers would need licenses only if they provide service within the "public telecommunications network" and if their activities are of a "considerable extent." Resellers generally meet the criteria of having a public telecommunications network because resellers offer switched service, interconnected to the Swedish PSN. It is unlikely, however, that a reseller's activity would be of such a considerable extent so as to possess a 10 to 15

Memorandum Opinion and Order, 7 FCC Rcd 7312 (1992); *JONOROLA/EMI Order on Reconsideration*, 9 FCC Rcd 4066 (1994). The formulation of this test was modified recently in the Commission's *Market Entry and Regulation of Foreign-affiliated Entities*, IB Docket No. 95-22, *Report and Order*, FCC 95-475, released November 30, 1995 (*Foreign Carrier Entry Order*). Since those rules are not yet effective, we apply the older formulation. Moreover, these modifications are essentially in terminology and not in substance. The outcome would be the same under either formulation.

¹³ CWI Application at 25.

¹⁴ *The Telecommunications Act*, SFS 1993:35 7 (*the Act*). The Act is Sweden's first telecommunications legislation. It sets out the legal principles for a competitive telecommunications market and covers such areas as licensing, service provision, tariffs, interconnection and numbering.

¹⁵ See GTI Application at 9.

¹⁶ "Private networks not being used by third parties and not connected to a publicly available network, such as various intragroup and other corporate networks, will not be subject to the licensing requirement notwithstanding their size or traffic involved." See Lennart Tengroth & Johan Gothberg, *Telecommunications in Sweden: The Legal and Regulatory Framework*, Vinge, § 2.2.3 (1994) (Vinge Report).

¹⁷ *The Act*, Section 5. Unlike the United States and the United Kingdom, Sweden does not have an equivalency policy that must be satisfied prior to allowing a carrier to use private lines

to provide switched services. Operators providing certain services require licenses only if the operator's activities are of a considerable extent. See Vinge Report, at § 2.2.3. Additionally, Mr. Par-Erik Westin states that relevant markets are measured in terms of: (1) service; (2) customer category (business or residential), and (3) geographical market. Telephone conversation between Helene T. Schrier, Attorney with the International Bureau, FCC, and Par-Erik Westin, Economic Advisor, NPTA (Nov. 29, 1995).

¹⁸ Telephone conversation between Helene T. Schrier, Attorney with the International Bureau, FCC, and Par-Erik Westin, Economic Advisor, NPTA (Nov. 29, 1995).

¹⁹ See Government Bill (1992/93:200). See also Supplemental information submitted by Telia AB (Oct. 6, 1995).

²⁰ The relevant categories of users, geographical aspects, content of service, alternative services, etc., have to be taken into consideration. Vinge Report at § 2.2.3.

²¹ It is doubtful that a license would be required if an operator's market share is below five percent. Supplemental information submitted by Telia AB (Oct. 6, 1995). There are no further guidelines or precedents issued by NPTA. Vinge Report at § 2.2.3.

²² According to Par-Erik Westin, having smaller market shares in several markets also may qualify as "considerable extent." Telephone conversation between Helene T. Schrier, Attorney with the International Bureau, FCC, and Par-Erik Westin, Economic Advisor, NPTA (Nov. 29, 1995).

percent market share.²³ Moreover, even if a carrier meets the two criteria and must obtain a license, there is a strong presumption to grant the license under Swedish law.²⁴

14. Another indicator of open entry is the presence of foreign-based carriers, including U.S.-based carriers, in the Swedish telecommunications market. Telia AB still may hold *de facto* monopoly power over domestic basic services and networks in the local and long distance markets, and may be dominant for international services. But, U.S.-based carriers and other foreign-based carriers operate in Sweden and some hold licenses for telephony,²⁵ leased lines,²⁶ and mobile services²⁷ as required under the Act. Tele2 AB holds a telephony license and has achieved between 15 to 20 percent of the international market.²⁸ Furthermore, AT&T, MCI Telecommunications Corporation (MCI) and Sprint Communications Company L.P. (Sprint) operate telecommunications services in Sweden without being required to hold licenses.²⁹ The precise number of resellers operating in Sweden is unknown because, as noted in paragraph ten, not all resellers need register or obtain licenses to resell services.

15. We conclude that Sweden affords open entry for U.S.-based resale carriers due to the absence of restrictions on foreign ownership and entry into the Swedish telecommunications resale market, the absence of licensing barriers and the presence of carriers from the United States and other countries operating in Sweden.

B. Non-discrimination

16. Several applicants assert that, based on their experiences, U.S.-based carriers receive non-discriminatory treatment in the Swedish market.³⁰ CWI and Sprint, however, do not believe that Telia AB provides interconnection to resellers on a non-discriminatory basis. CWI thus requests a finding of equivalency conditioned on the establishment of published interconnection rates and terms acceptable to

competitors of Telia AB.³¹ Sprint asserts that the issue is not whether a foreign regulatory regime allows resale on a non-discriminatory basis, but whether conditions allow a potential entrant a reasonable opportunity to succeed commercially.³² AT&T argues that the Commission cannot make a determination on non-discriminatory treatment in the absence of published, non-discriminatory and standard interconnection arrangements.³³

17. We find that the Swedish regulatory structure affords non-discriminatory treatment to U.S.-based carriers. Although the Act does not provide specifically that foreign carriers will receive non-discriminatory treatment, there is no indication that U.S. carriers have been, or will be, treated unfairly under Sweden's newly created regulatory regime.³⁴ While NPTA does not publish interconnection agreements because such agreements are regarded as private commercial transactions, it allows the parties involved to publish the agreements. We find that Telia AB's publication of standard interconnection terms and conditions provides an adequate benchmark for resellers to determine whether they are being treated in a non-discriminatory manner.³⁵

18. To all interested parties, Telia AB makes available a standard price list for basic switched interconnection services, a ten page information brochure "Interconnect with Telia AB" and a model interconnect agreement.³⁶ Interconnection services are priced according to the standard price list.³⁷ Telia AB asserts that its price lists and conditions for interconnect are fully available to all. Telia AB explains that it uses the standard price lists or interconnect services prevailing at the time as the basis for negotiating individual interconnect agreements. According to Telia AB, deviation from such price lists will occur only in special cases, such as when there is an objective cost-oriented basis for agreeing to a different price.³⁸ Negotiations in this context mean the procedure of agreeing on interconnect service elements, geographical locations and an acceptable contract. Telia AB

²³ Vinge Report at § 2.2.3.

²⁴ Section 11 of the Act provides that a license shall be granted unless the applicant is obviously not capable to pursue the activity on a permanent basis and with adequate capacity and quality.

²⁵ Telephony licenses are held by: Cyberlink Sweden AB; DotcomData & Tele Communication AB; France Telecom Network Services; Nordic AB; MFS Communications AB (U.S.-owned); Singapore Telecom International Svenska AB; Telenordia AB; Nordiska Tele8 AB, and Tele 1 Europe AB. Applications for telephony licenses have been submitted by: Diator Netcom Lokalslingan AB; FT Nordphone AB; Telecom Finland AB, and TELiT AB. See *ex parte* Fax from Pr-Erik Westin, Economic Advisor, NPTA (Nov. 29, 1995).

²⁶ *Id.* Licenses for leased lines are held by: Banverket; Dotcom Data & Tele Communication AB; France Telecom Network Service Nordic AB; MFS Communications AB (U.S.-owned); Telenordia AB; Tele2 AB, and Telia AB. Applications for leased lines licenses have been submitted by FT Nordphone AB; AB Stokab, Telecom Finland AB, and Cyberlink. See *ex parte* Fax from Connie van der Capellen, Assistant Under-Secretary, Swedish Ministry of Transport and Communications (Aug. 17, 1995). Cyberlink and MFSI were required to obtain licenses because their telephony services, which constituted other services beyond resale, met the two licensing criteria.

²⁷ *Id.* Licenses for mobile services are held by: Telia AB (NMT 450/900 MHz); Comvik Systems (450 MHz); ComViq GSM AB (GSM); Europolitan AB (GSM); and Telia AB (GSM, TFTS).

Applications for mobile services licenses have been submitted by: Cable & Wireless Flightnet Ltd. (TFTS); Telia AB (ERMES), and Tele Danmark Int. (ERMES).

²⁸ See *supra* note 18.

²⁹ See Comments of Telia AB on MFSI Application at 6. Telia AB states that the precise number of resellers is unknown because there is no requirement for smaller resellers to obtain licenses or register their operations. Telia AB further states that AT&T, MCI, and Sprint probably are operating as resellers in the Swedish market. *Id.* This is an uncontested assertion.

³⁰ MFSI Application at 12; GTI Application at 8, and Cyberlink Application at 9. GTI states that carriers currently have non-discriminatory access to Telia AB's interconnection tariff upon request for interconnection and that all carriers are subject to the same terms and conditions for interconnection. GTI Opposition to Petition to Deny its Application at 4.

³¹ CWI Application at 26. CWI believes that the reason why Telia AB has not afforded non-discriminatory treatment is because NPTA is not an independent regulator with a statutory mandate.

³² Sprint Petition to Deny in Part CWI Application at 5.

³³ AT&T Petition to Deny MFSI Application at 3-5.

³⁴ MFSI Application at 12. Section 202(a) of the Act bars only unreasonable discrimination in rates. Comments of Telia AB on CWI Application at 3.

³⁵ See *infra* ¶¶ 24-27.

³⁶ Telia AB *ex parte* correspondence at 2-3 (Sept. 13, 1995).

³⁷ *Id.*

³⁸ See *supra* note 36.

further explains that parties that dislike the rates, terms or conditions offered may request NPTA to mediate the dispute or request the Competition Authority to intervene.

19. We agree with Sprint that it is important to determine whether the prevailing factors allow U.S.-based carriers to succeed commercially, *i.e.*, have effective competitive opportunities. But Sprint has not provided evidence that U.S.-based carriers cannot succeed in the resale market in Sweden.³⁹ Furthermore, Telia AB has submitted in this record a price list for basic switched interconnection services⁴⁰ and no party has asserted that such prices are unreasonable. Based on the record, we find that the interconnection prices and conditions appear to enable a new U.S. entrant a reasonable opportunity to succeed commercially.

20. We conclude that the Swedish regulatory structure affords non-discriminatory treatment to U.S.-based carriers. Nevertheless, given that Swedish law does not mandate that NPTA publish interconnection terms, we may need to reexamine our equivalency finding if Telia AB stops publishing such terms.

C. Interconnection

21. Applicants assert that Sweden affords equivalent resale opportunities because the Swedish Telecommunication Act requires telephony service licensees within a public telecommunications network, such as Telia AB's, to interconnect with all licensed or registered parties. No commenter disputes that Sweden allows the interconnection of private lines to the PSN by U.S.-based carriers at the U.S. and/or Swedish end.

22. There are only a few circumstances under which a licensed telephony operator, such as Telia AB, could deny interconnection or access to the PSN. First, a licensee is not required to provide interconnection if this would limit its ability to utilize its own capacity.⁴¹ Second, access to the PSN can be limited for network security or integrity purposes.⁴² The record indicates that these exceptions would not be significant barriers to the ability of U.S.-based carriers to interconnect to the Swedish PSN nor would they be used to hinder fair competition.

23. The Act, however, provides that licensed telephony operators (e.g., Telia AB) are required to offer interconnection only to other licensed or registered parties. Considering a reseller need not apply for a license if it does not meet both criteria set forth in Section 5 of the Act,⁴³ the potential exists for Telia AB to deny an unlicensed reseller the right to interconnect to the PSN.

24. This anomaly in Sweden's regulatory structure creates a potential opportunity for a Swedish-licensed carrier to interfere with an unlicensed reseller. Resellers, however, have several ways to challenge anticompetitive or otherwise discriminatory treatment received from Telia AB. If Telia AB denies interconnection to an unlicensed reseller, the reseller could file a complaint with Sweden's Competition Authority. Although the Competition Authority cannot enforce the cost-based stipulations of the Act, it has the authority to issue injunctions and require a party to immediately discontinue practices which are held to be illicit.⁴⁴ It may compel Telia AB to interconnect with the reseller if it finds that Telia AB has abused its dominant position. An example of such abuse may be the denial of interconnection to an unlicensed party.⁴⁵ Additionally, a reseller could request intervention from NPTA, which is charged with regulatory oversight of interconnection and equitable treatment of interconnecting carriers.⁴⁶ Specifically, NPTA requires Telia AB to offer interconnection at charges that are "fair and reasonable in relation to the performance cost."⁴⁷ Parties that dislike the rates, terms or conditions offered may request NPTA to mediate the dispute and make recommendations to the parties.⁴⁸ And, in fact, NPTA has successfully mediated an interim interconnection agreement between Tele2 AB, Sweden's second carrier, and Telia AB.⁴⁹ And, MFSI Communications AB has reached an interconnection agreement with Telia AB, although certain annexes currently are under negotiation.⁵⁰

25. We acknowledge that NPTA's role in overseeing interconnection and ensuring non-discriminatory treatment is limited and that this is a weakness in Sweden's regulatory structure. Under Sweden's regulatory structure, conditions for interconnection are considered a matter of private commercial law. Operators negotiate with one another and seek agreements on compensation for interconnected traffic and technical conditions. While NPTA may act as a mediator, it may do so only at the request of a party and it may only make recommendations.⁵¹

26. We believe competition would be better assured if NPTA had greater authority over interconnection issues. This would be consistent with Sweden's splitting the roles previously held by Televerket between Telia AB as operator and NPTA as regulator. The additional step of bolstering NPTA's ability to regulate telecommunications issues such as interconnection would further strengthen the independence and effectiveness of the regulator.

27. Nevertheless, we find that there are sufficient safeguards to ensure that Telia AB cannot deny interconnection to resellers and that interconnection is available for U.S.-based carriers in Sweden. We base this

³⁹ Interconnection for networks unaffiliated with Telia AB is available pursuant to a 1991 directive of the Minister of Transport and Communications. CWI Application at 26. Interconnection rates are set equal to the rate charged other Nordic operators to transfer traffic to the Swedish network. *Id.*

⁴⁰ Telia AB, *ex parte* correspondence (Sept 13, 1995).

⁴¹ *The Act*, Section 20.

⁴² Cyberlink Application at 11.

⁴³ See *supra* ¶¶ 10 - 13.

⁴⁴ Vinge Report at § 3.3.2.

⁴⁵ See *supra* note 18.

⁴⁶ GTI Application at 10; see *infra* ¶¶ 25-26 discussing NPTA's limited authority in overseeing interconnection.

⁴⁷ *The Act*, Section 20. These charges may include, to a reasonable extent, the operator's costs for special obligations under its

license, such as providing universal service. Parliament, however, has determined that Telia AB will not be entitled to include such costs in its calculations for the period of 1993-96. Ministry of Transport and Communications, *Telecommunications in Sweden*, at 7 (Mar. 1994). See Comments of Telia AB in CWI Application at 3.

⁴⁸ Vinge Report at § 3.3.3.

⁴⁹ See *id.*; see also MFSI Application at 14.

⁵⁰ MFSI *ex parte* correspondence filed in MFSI Application (Aug. 4, 1995).

⁵¹ Ministry of Transport and Communications, *Telecommunications in Sweden*, at 8 (Mar. 1994).

conclusion on the existence of the Competition Authority, the Act's two requirements that licensed telephony operators (e.g., Telia AB) interconnect with licensed or registered parties and charge fair and reasonable prices in relation to the performance cost, and the demonstrated success of negotiated interconnection agreements between Telia AB and others.

28. In sum, we conclude that the Swedish regulatory policies provide open entry, non-discriminatory treatment and the ability to interconnect an international private line to the Swedish PSN, and thus satisfy the minimum requirements established by our *International Resale Order*. Therefore, we find that equivalent resale opportunities exist for U.S.-based carriers in Sweden.⁵²

D. Other Issues

1. Rerouting of Switched Traffic Via Third Countries.

29. AT&T argues against finding Sweden equivalent because resellers will seek to circumvent the Commission's equivalency policy by routing traffic from non-equivalent countries through Sweden to the United States via international private line service.⁵³ AT&T explains that any authorized reseller in Sweden may establish private lines between third countries and Sweden and then between Sweden and the United States because Sweden permits international resale without any equivalency requirement. This rerouting, AT&T asserts, would have a significant adverse impact on settlements payments. AT&T further asserts that the Commission's routing conditions are ineffective in preventing rerouting from third countries, as the Commission cannot monitor compliance with the routing conditions and cannot prevent the adverse settlement consequences that inevitably flow from rerouting.⁵⁴ Therefore, AT&T asks the Commission to include in its equivalency determination an evaluation of conditions in third countries, primarily those in Europe from which a reseller may seek to reroute traffic through Sweden via end-to-end private lines.

30. Telia AB states that the Commission already addressed this issue in the *fONOROLAEMI Order*.⁵⁵ There, Telia AB states that the Commission acknowledged the possibility that U.S.-originated traffic destined for either overseas or the United States could be routed through Canada. Telia AB further states that the Commission found that rerouting traffic through Canada permits service with countries not yet found to be equivalent, which essentially

circumvents the *International Resale Order*. Telia AB contends that, despite this finding, the Commission designated Canada as equivalent albeit conditioned the authorization for U.S.-Canada private line resale to U.S.-Canada traffic only.⁵⁶

31. MFSI and GTI state that the Commission should not penalize Sweden for its liberal regulatory regime.⁵⁷ MFSI and GTI assert that AT&T's proposal to hold Sweden hostage to the competition schedules of other countries is not only contrary to the Commission's express policy of examining resale equivalency on a case-by-case basis, it would effectively close the European market to U.S.-based resellers and deny both U.S. and foreign consumers the benefits of international private line resale. They argue that introducing resale of international private lines as an alternative to current high cost international telecommunications services would exert downward pressure on above-cost European international accounting rates because foreign facilities-based carriers would respond through price competition with international private line resellers to recapture lost international message telephone service (IMTS) traffic.

32. Contrary to AT&T's view that an equivalency finding for Sweden would result in the net settlements deficit with European countries increasing exponentially in the short term, MFSI and GTI submit that granting their applications would have a domino effect across Europe, accelerating the adoption of pro-competitive policies.⁵⁸ MFSI and GTI believe that the defection of customers from the IMTS facilities-based provider to private line resellers would increase demand for new services, reduce prices for most telecommunications services and reduce the opportunity for price discrimination. Thus, according to MFSI and GTI, the long-term benefits of private line resale between the United States and Sweden likely would compensate for any short term increase in the U.S. net settlements deficit.⁵⁹

33. We share AT&T's concern that re-routing U.S. inbound traffic from a non-equivalent third country via private lines between Sweden and such a country could enable some carriers in the non-equivalent country to divert U.S. inbound traffic from the settlement process. We do not agree, however, with AT&T's assertion that routing restrictions placed on Section 214 authorizations are ineffective in preventing or deterring this unauthorized use

⁵² We further note that Sweden's settlements with the United States are almost in balance, as U.S. carriers owe Sweden only a small settlements payment. Additionally, Sweden's accounting rate with the United States has for some time been one of the lowest in Europe at 0.25 SDR.

⁵³ AT&T Petition to Deny MFSI Application at 6-8.

⁵⁴ AT&T Petition to Deny CWI Application at 15.

⁵⁵ Comments of Telia AB in MFSI Application at 8. FGC further states that the Commission may modify or revoke an authorization if there is evidence of a routing violation. Reply Comments of FGC in CWI Application at 3-6.

⁵⁶ Comments of Telia AB in MFSI Application at 8 n.30.

⁵⁷ MFSI Opposition to Petition to Deny at 6; GTI Opposition to Petition to Deny at 6-8. Telia AB states that it would be ironic if the Commission denies Sweden an equivalency finding when Sweden is more open than Canada or the United Kingdom as there are no barriers to entry and no restrictions on foreign entrants in the provision of services or infrastructure

for local, long-distance and other services. See Comments of Telia AB in MFSI Application at 5 n.16. CWI adds that AT&T essentially argues that reselling international private lines to any country with open resale policies is contrary to U.S. international settlements policies, which is contrary to Commission policy that seeks to promote private line resale to lower collection and accounting rates. CWI Reply Comments and Opposition to AT&T Petition to Deny at 18.

⁵⁸ MFSI Opposition to Petition to Deny at 6; GTI Opposition to Petition to Deny at 6-8.

⁵⁹ Moreover, they note that, to the extent foreign IMTS accounting rates are lowered, the market for country direct services that generally increases the net settlements outpayments will diminish, further reducing the U.S. net settlements deficit with Sweden. MFSI also stated that Sweden's current settlements with the United States are virtually in balance. See MFSI Application at 14. We note, however, that U.S. carriers owe Sweden a small settlements payment.

of international private lines.⁶⁰ U.S.-based carriers that violate conditions of their Section 214 authorizations risk substantial forfeitures and revocation of their Section 214 authorizations. We will monitor the traffic reports for any detectable shift in traffic patterns that may be attributable to unauthorized bypass.

34. For the first three years following an equivalency finding, the Commission has required non-dominant international private line resellers providing switched or interconnected international private line services between the United States and a destination country to file with the Commission semi-annual traffic reports that contain the same information in the annual traffic reports.⁶¹ The Commission has imposed this requirement to provide a timely means of ensuring that its international resale policy is having its intended effect.⁶² For the same reason, we shall impose a similar requirement on each Section 214 authorization granted to a non-dominant private line reseller to provide switched or interconnected private line services between the United States and Sweden. Each such reseller shall file a semi-annual traffic report with the Commission not later than September 30, for the prior January through June period and not later than March 31 for the second six-month calendar period. After three years, the carriers will file annual traffic reports pursuant to Section 43.61 of the Commission's Rules.⁶³ The current traffic manual specifically requires that carriers engaged in "facilities resale," i.e., private line resellers, report U.S. outbound and inbound traffic originating or terminating over resold U.S. private lines. Private line resellers are required to report their outbound and inbound traffic according to the ultimate point of termination or origination.

35. We recognize that these additional traffic reports may not detect subtle shifts in either traffic patterns or unauthorized bypass of the settlements process. On balance, however, we believe that the public interest benefits expected from the introduction of private line resale to Sweden outweigh the potential adverse impact on the international settlements process from the unauthorized routing of switched traffic from non-equivalent third countries via end-to-end private lines.

36. We reiterate here the Commission's general view that the international resale policy is not undermined by the routing of U.S. switched traffic via end-to-end private lines

extending from the United States through one equivalent country to a third equivalent country.⁶⁴ By adding Sweden to the list of equivalent countries, U.S. private line resellers now may carry U.S. inbound or outbound switched traffic via private lines extending between the United States, the United Kingdom, and Sweden.⁶⁵ U.S. resellers, however, must be authorized to provide switched service via resold private lines both to the United Kingdom and Sweden. This and other authorizations granted to U.S. carriers to resell international private lines to Sweden will permit the routing of U.S. switched traffic in this manner. We also will issue these authorizations to permit "switched hubbing" through Sweden, as recently described by the Commission in the *Foreign Carrier Entry Order*,⁶⁶ subject to the effective date of the rules adopted in that proceeding.

37. Further, AT&T requests that we condition CWI's Section 214 authorization on the implementation of non-discriminatory, cost-based accounting rates by its foreign carrier affiliates.⁶⁷ AT&T asserts that CWI's affiliates in Sweden have negotiating power *vis-a-vis* U.S. carriers to refuse to implement non-discriminatory, cost-based accounting rates. According to AT&T, the Commission should not give CWI the ability to evade high accounting rates through private line resale when CWI's affiliates maintain above-cost accounting rates with unaffiliated U.S. carriers. AT&T contends that allowing this to occur would frustrate the primary objective of the *International Resale Order*, which is to benefit U.S. consumers by putting downward pressure on above-cost accounting rates. CWI disagrees with AT&T. CWI states that the Commission has not linked accounting rate issues to Section 214 authorizations before. CWI also notes that the Commission is considering accounting rate issues in a separate proceeding.⁶⁸

38. Generally, we do not find it necessary to impose accounting rate conditions in Section 214 authorizations for the provision of international switched services via resold private lines.⁶⁹ The Commission did not contemplate requiring cost-based accounting rates as a precondition to an equivalency finding. In the *International Resale Order*, the Commission expressly stated that one benefit expected from permitting international private line resale between equivalent countries would be the exertion of a downward pressure on above-cost accounting rates. Sweden's settlements with the United States, moreover, are virtually in

⁶⁰ Consistent with Commission policy, this authorization prohibits the routing of both U.S. inbound and outbound traffic via private lines between Sweden and a non-equivalent third country. See, e.g., *ACC/Alanna Order*, 9 FCC Rcd at ¶¶ 47, 62. See also, *Foreign Carrier Entry Order* at ¶¶ 168-69.

⁶¹ See *supra* note 5. See also 47 C.F.R. § 43.61 (1994) (annual traffic report).

⁶² See *ACC/Alanna Order*, 9 FCC Rcd at ¶ 51; *FORNOLA Reconsideration Order*, 9 FCC Rcd at ¶ 20.

⁶³ 47 C.F.R. § 43.61 (1994).

⁶⁴ See *ACC/Alanna Order*, 9 FCC Rcd at ¶ 47 (citing *FORNOLA Reconsideration Order*, 9 FCC Rcd at 4070). The Commission has made an exception to this general approach in the case of Canada because of Canada's unique routing restrictions. Thus, the Commission limited the use of resold international private lines between the United States and Canada to the carriage of U.S.-Canada traffic only, regardless of whether the third country has been determined equivalent.

⁶⁵ We asked for comment on whether to allow private line resale carriers to resell switched services via interconnected private lines to all equivalent countries. Under the proposal, carriers would need only to obtain an initial Section 214 au-

thorization to resell interconnected private lines to provide switched service. This authorization would cover all countries that are designated equivalent at the time the application is granted and would expand automatically to include countries later found to be equivalent. See *In the Matter of Streamlining the International Section 214 Authorization Process and Tariff Requirements*, FCC 95-286, IB Docket No. 95-118 (released July 17, 1995).

⁶⁶ See *Foreign Carrier Entry Order* at ¶¶ 169-70.

⁶⁷ AT&T Reply to CWI Application at 5-6.

⁶⁸ CWI Reply Comments and Opposition to Petitions to Deny in CWI Application at 6 n.9, 10 & 11.

⁶⁹ See *ACC/Alanna Order*, 9 FCC Rcd at ¶ 45. See also *Foreign Carrier Entry* at ¶ 152. But see *BT North America, Inc. (BTNA), Memorandum Opinion Order and Authorization*, 10 FCC Rcd 3204 (Int. Bur. 1995) (conditioning BTNA's authorization on its submitting a BT plan to reduce cost-based accounting rates with U.S. carriers over two years from the release of the authorization order).

balance, and its accounting rate with the United States has for some time been one of the lowest in Europe at 0.25 SDR.⁷⁰

2. Conditional One-Way Authorization

39. AT&T requests that the Commission authorize service via international private lines only from the United States to Sweden, and not in the reverse direction.⁷¹ AT&T asserts that granting one-way authority will bring price competition benefits to U.S. customers immediately and would protect U.S. customers from an improper equivalency determination.⁷² Furthermore, by granting one way authorization to applicants, the Commission could then obtain the empirical data necessary to judge whether equivalent opportunities are actually available to U.S.-based carriers.

40. Cyberlink contends that AT&T's request is a retreat from Commission policy allowing international private line resale to designated equivalent countries. Cyberlink asserts that imposing this restriction would serve only to delay and constrict competition in the international switched services market.⁷³ AT&T believes that this statement confirms its view that providing switched services over international private lines from the United States to Sweden is not a viable option.⁷⁴

41. We find that applying any such condition would dramatically alter the *International Resale Order*. As discussed above, the *International Resale Order* is based on an evaluation of three primary elements plus other appropriate terms and conditions. Using these criteria, we have designated the United Kingdom and Canada as equivalent⁷⁵ and, by this Order, we find Sweden to be equivalent. We see no need to apply a special restriction in the case of Sweden that would merely delay the introduction of new competition into the international telecommunications market and the pressure to reduce above-cost international accounting and foreign collection rates.

3. CWI's Regulatory Status

42. Finally, CWI requests that the Commission determine CWI to be a non-dominant international carrier for the purpose of providing the services requested and incorporates, by reference, its comments in *Petition of Cable & Wireless Communications, Inc., for a determination of Non-dominant Status on International Private Line Routes*.⁷⁶ AT&T opposes this classification but provides no support for their position.⁷⁷

43. CWI is associated through C&W plc with Tele2 AB, a Swedish facilities-based carrier that seeks to challenge the established carrier, Telia AB. CWI asserts that Telia AB's

presence in the market ensures that its competitors, like Tele2 AB, do not control bottleneck facilities and have no incentive to discriminate against non-affiliated U.S. carriers.⁷⁸ CWI explains that Tele2 AB's share of overall U.S.-Sweden cable capacity is less than ten percent.⁷⁹ AT&T contends that the Commission should reject CWI's request for non-dominant status.⁸⁰

44. We find no evidence in the record to suggest that Tele2 AB, a relatively new carrier competing with the near monopoly carrier, Telia AB, has the ability to discriminate in favor of its affiliate CWI. There is nothing in the record to suggest that Tele2 AB controls bottleneck services or facilities. As we stated previously, Sweden has no barriers to entry in any segment of the telecommunications service market. And, AT&T does not controvert CWI's statement that its share of overall U.S.-Sweden cable capacity is less than 10%.⁸¹ We therefore conclude that CWI merits regulation as a non-dominant carrier on the U.S.-Sweden route for the services authorized in this order.

CONCLUSION

45. We grant all five applications. We find that Sweden provides open entry for, and non-discriminatory treatment of, U.S.-based carriers and the ability to interconnect international private lines to the Swedish PSN. In addition, we conclude, on balance, that the terms and conditions associated with the provision of international private line services interconnected to the Swedish PSN are substantially equivalent to those available in the United States. Furthermore, we believe that the existence of international private line resale to provide switched service between the United States and Sweden will promote the introduction of new international telecommunications services at lower prices, including more cost-based accounting rates. It also will promote new entry into the international telecommunications market and advance the goal of achieving a competitive global information infrastructure.

ORDERING CLAUSES

46. Upon consideration of the applications and in view of the foregoing, IT IS HEREBY CERTIFIED that the present and public convenience and necessity require the provision of resale of international private lines for the provision of switched services between the United States and Sweden.

47. Accordingly, IT IS HEREBY ORDERED that applications File Nos. I-T-C-95-116; I-T-C-93-328; I-T-C-94-505; I-T-C-94-451; and I-T-C-94-355 ARE GRANTED, and applicants are authorized to: (i) resell international

⁷⁰ See *supra* note 52.

⁷¹ AT&T Petition to Deny in GTI Application at 7-8.

⁷² AT&T Petition to Deny in MFSI Application at 8-9.

⁷³ Cyberlink Opposition to Petition to Deny at 6-7.

⁷⁴ AT&T Reply to Cyberlink Application at 4-5.

⁷⁵ ACC Global Corporation/Alanna Inc., *Memorandum Opinion and Order*, 9 FCC Rcd 6240 (1994) (designating the United Kingdom as equivalent); see also *FORNOLA/EMI Order, Memorandum Opinion and Order*, 7 FCC Rcd 7312 (1992); *FORNOLA/EMI Order on Reconsideration*, 9 FCC Rcd 4066 (1994) (designating Canada as equivalent).

⁷⁶ CWI Application at 29 citing to *Petition of Cable & Wireless*

Communications, Inc. for a Determination of Nondominant Status on International Private Line Routes, File No. ISP-93-007-ND (Apr. 15, 1993) (CWI Petition for Non-dominance).

⁷⁷ AT&T Petition to Deny CWI Application at 16.

⁷⁸ CWI Petition for Non-dominance at 6 & 18.

⁷⁹ *Id.* at 18.

⁸⁰ AT&T Petition to Deny CWI Application at 2, n.1, n.2, 16; see also *AT&T Opposition to CWI Petition for Non-dominance* (May 21, 1993).

⁸¹ See *Domtel Communications, Inc. Application for Authority to Provide Direct Service Between the United States and the Dominican Republic*, FCC 95-377, ITC - 93-246, ¶ 22 (September 11, 1995).

private lines for the provision of switched services, including operator assisted services, between the United States and Sweden; (ii) resell international private lines interconnected to the PSN for the provision of switched services, including voice and data, between the United States and the Sweden, and (iii) lease capacity pursuant to the tariffs of appropriately authorized U.S. carriers, for the provision of authorized international private lines between the United States and Sweden.

48. IT IS FURTHER ORDERED that the authority granted herein to resell international private lines for the provision of switched services between the United States and Sweden is limited to the provision of such services between the United States and Sweden only - - that is, private lines which carry traffic that originates in the United States, and terminates in Sweden, or traffic that originates in Sweden and terminates in the United States. This restriction is subject to the following exceptions: (a) the applicants may engage in "switched hubbing" through Sweden consistent with the rules adopted in *Market Entry and Regulation of Foreign-affiliated Entities*, FCC 95-475, released November 30, 1995, paras. 169-70, upon the effective date of those rules and (b) applicants may provide U.S. inbound or outbound switched basic service over their authorized private lines between the United States and Sweden connecting private lines between Sweden and the United Kingdom, provided the applicants also are authorized to provide switched basic service using resold private lines between the United States and the United Kingdom.

49. IT IS FURTHER ORDERED that neither applicants nor any persons or companies directly or indirectly controlling them or controlled by them, or under direct or indirect common control with either of them, shall acquire or enjoy any right, for the purposes of handling or interchanging traffic to or from the United States, its territories or possessions that is denied to any other United States carrier by reason of any concession, contract, understanding, or working arrangement to which any applicant or any such persons or companies are parties.

50. IT IS FURTHER ORDERED that applicants shall file tariff provisions pursuant to Section 203 of the Communications Act, 47 U.S.C. § 203 (1995), and Part 61 of the Commission's Rules, 47 C.F.R. Part 61 (1994) for the services authorized in this Order.

51. IT IS FURTHER ORDERED that applicants shall file annual reports of overseas telecommunications traffic as required by Section 43.61 of the Commission's Rules, 47 C.F.R. § 43.61(1994). But, applicants shall file this information on a semi-annual basis, not later than September 30 for the prior January through June period and March 31 for the second six-month calendar period, for the first three calendar years after this equivalency finding.

52. IT IS FURTHER ORDERED that applicants shall file annual circuit reports in accordance with the requirements set forth in *Rules for Filing of International Circuit Status Reports*, CC Docket No. 93-157, Report and Order, FCC 95-280, 10 FCC Rcd 8605 (1995).

53. IT IS FURTHER ORDERED that applicants shall file with the Bureau all arrangements for private line interconnection to the U.S. public switched network, pursuant to Section 43.51(a) of the Commission's Rules, 47 C.F.R. § 43.51(a) (1994).

54. IT IS FURTHER ORDERED that grant of these authorizations are conditioned upon Sweden's continuing to afford resale opportunities to U.S.-based carriers equivalent to those afforded under U.S. law.

55. This Order is issued under Section 0.261 of the Commission's Rules, 47 C.F.R. § .261 (1994) and is effective upon adoption. Petitions for reconsideration under Section 1.106, 47 C.F.R. § 1.106 (1994), or applications for review under Section 1.115 of the Commission's Rules, 47 C.F.R. § 1.115 (1994) may be filed within thirty days of the Public Notice of this Memorandum Opinion, Order and Certificate (see 47 C.F.R. § 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Scott Blake Harris
Chief, International Bureau