

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Parts 43 and 63**

[IB Docket No. 00-231, FCC 00-407]

2000 Biennial Regulatory Review, Amendment of Parts 43 and 63 of the Commission's Rules**AGENCY:** Federal Communications Commission.**ACTION:** Notice of proposed rule making.

SUMMARY: This document solicits comments on proposed changes to several of the rules relating to international telecommunications services. The Commission initiated this proceeding to determine what rules could be modified or eliminated in light of competition in international telecommunications services. This proceeding is part of the Commission's year 2000 biennial regulatory review. The Commission believes that these proposals will remove unnecessary burdens on the public and the agency.

DATES: Comments are due on or before January 24, 2001, and reply comments are due on or before February 27, 2001.

ADDRESSES: Federal Communications Commission, Secretary, 445 12th Street, SW., Room TW-B204F, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: David Krech, International Bureau, (202) 418-1460.

SUPPLEMENTARY INFORMATION:

1. This is a summary of the Commission's Notice of Proposed Rule Making (NPRM), FCC 00-407, adopted on November 13, 2000, and released on November 30, 2000. The full text of this document is available for inspection and copying during normal business hours in the Office of Media Relations, Reference Operations Division, (Room CY-A257) of the Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. The document is also available for download over the Internet at <http://www.fcc.gov/Bureaus/International/Notices/2000/fcc100407.doc>. The complete text of this document also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857-3800.

2. This NPRM contains proposed information collections subject to the Paperwork Reduction Act of 1995 (PRA). It will be submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies will be invited to comment on

the proposed information collections contained in this proceeding.

Summary of Notice of Proposed Rulemaking

3. On November 13, 2000, the Commission adopted a Notice of Proposed Rulemaking (NPRM) to determine whether it should amend and clarify several of its rules relating to international telecommunications services. The Commission initiated this proceeding in response to the Telecommunications Act of 1996, which requires the Commission to review all regulations that apply to operations or activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be no longer necessary in the public interest. The Commission solicits comments on all of the proposals and tentative conclusions contained in the NPRM.

4. Section 63.24 sets out the procedures for review of *pro forma* assignments and transfers of control of authorizations to provide international telecommunications service. The Commission has found that § 63.24 does not explicitly address many of the types of transactions that should be treated as *pro forma*. Thus, the Commission proposes to amend the procedures for review of assignments and transfers of control of international service authorizations to match more closely those procedures used for other service authorizations, particularly Commercial Mobile Radio Services (CMRS).

5. Currently there are two rules addressing assignments and transfers of control of international Section 214 authorizations. The Commission believes that the current regulatory structure may not be sufficiently flexible for corporate transactions that do not fall into one of the existing categories but should be treated as *pro forma*. The NPRM solicits comment on the proposals to amend the rules to allow more flexibility to applicants in structuring transactions and provide greater clarity to authorized international carriers regarding assignments and transfers of control.

6. There has been a steady increase in the number of transactions involving authorizations for different services and requiring intra-agency approval, many of which involve both international Section 214 authorizations and wireless authorizations. Thus, the Commission proposes to modify and consolidate its current rules on assignments and transfers of control of international Section 214 authorizations so that the new rule more closely tracks the

procedures applicable to CMRS. The NPRM seeks comment on this proposal.

7. Currently, § 1.948 governs CMRS's assignments and transfers of control of authorization and provides that a change from less than 50 percent ownership to 50 percent or more ownership shall always be considered a transfer of control. In other situations, whether a controlling interest in transferring is determined on a case-by-case basis considering the distribution of ownership, and the relationships of the owners, including family relationships. The Commission proposes to adopt both of these provisions as part of a consolidated rule that would govern all international Section 214 assignments and transfers, whether substantial or *pro forma*. The Commission proposes to move the provisions of § 63.18(e)(3), which specify the procedures for seeking prior approval of an assignment or substantial transfer of control, to § 63.24. The NPRM seeks comment on these proposals.

8. The NPRM seeks comment on the proposal to allow a case-by-case determination of whether an assignment or transfer of control is substantial or *pro forma*. The Commission tentatively concludes that it should adopt the same case-by-case approach in the *FCBA Forbearance Order* (63 FR 10338, March 3, 1998) for determining whether transfers of control of international § 214 authorizations are substantial or *pro forma*. The Commission proposes that the transaction types currently listed in the rules as *pro forma* should be considered illustrative, not comprehensive. The NPRM seeks comment on these proposals.

9. The NPRM seeks comment on other proposals to amend § 63.24 so that it more closely tracks the procedures used for CMRS. The NPRM proposes that within 30 days after consummation of a *pro forma* transaction, the licensee must file an application with the Commission. The NPRM seeks comment on this proposal and the specific filing requirements for such an application. The NPRM seeks comment on the proposal that the rules clearly state that both *pro forma* and transferees and *pro forma* assignees are required to notify the Commission of either a *pro forma* transfer of control or assignment, which may be done by letter 30 days after the transaction. The NPRM also seeks comment on proposals to add definitions and explanatory language on assignments and transfers of control as well as procedures to be followed in the event of an involuntary assignment or transfer of control.

10. The NPRM seeks comment on the Commission's tentative conclusion that the proposed rules, as revised to more closely track the rule used for CMRS, will reduce the regulatory burden on Section 214 authorization holders. The NPRM also seeks comment on whether the proposals will provide greater flexibility to Section 214 authorization holders and expanding the possible range of transactions that qualify for filing on a *pro forma* basis.

11. The Commission proposes to discontinue the application of the benchmark rates to services provided over facilities-based private lines. The Commission believes that this proposal will relieve an unnecessary burden without adversely affecting competitive safeguards. The NPRM seeks comment on the proposal and conclusion. Comments should address the likelihood that a carrier could successfully evade application of the condition by sending facilities-based switched traffic over facilities-based private lines.

12. The Commission proposes to modify its rules for discontinuances of service by U.S. international common carriers. The Commission proposes to require prior approval for discontinuances by a U.S. international carrier only for those routes and services for which the carrier is classified as dominant due to its having market power in the provision of that international service on the U.S. end of the route. The NPRM seeks comment on this proposal and the tentative conclusion that the discontinuance requirement should apply only to U.S. carriers regulated as dominant due to market power in the U.S. Comments should address under what circumstances, if any, prior Commission approval should be required before a U.S. carrier regulated as dominant under § 63.10 can discontinue service.

13. The NPRM seeks comment on the proposals to amend the explanatory notes regarding attribution of indirect ownership interests in U.S. and foreign carriers to clarify that whenever an ownership percentage exceeds 50 percent or represents actual control it shall be treated as a 100 percent interest for purposes of applying the multiplier.

14. The NPRM seeks comment on a number of proposals to amend or eliminate rules that are no longer applicable. The NPRM proposes to eliminate § 63.21(h) because there are no U.S. carriers to which the rule applies. The NPRM proposes to eliminate § 43.81 because the requirement that foreign-owned carriers file certain reports has expired. The NPRM proposes to amend § 63.22 to

clarify that a facilities-based carrier may provide service over U.S. facilities, which are not subject to authorization by the Commission, as long as those facilities are not on the Exclusion List. The NPRM also proposes to eliminate confusion over the inconsistency of § 63.22 by removing the general reference to a list of countries in the Exclusion List. The NPRM proposes to eliminate unnecessary duplication of the contents required for international Section 214 applications contained in § 63.09 and § 63.18. The NPRM addresses the duplicative notes that are unnecessary and the proposal to eliminate the first three explanatory notes to § 62.18(h) while retaining the forth note. The NPRM proposes to delete the provision in § 63.20 that specifies the number of copies required to be filed for applications to supplement already authorized facilities.

15. In addition, the NPRM proposes to eliminate the requirement that a Section 214 application be submitted on computer diskette. The Commission believes that the International Bureau Filing System (IBFS) supercedes the computer diskette method for filing applications. Similarly, the NPRM proposes to amend § 63.10(d) to remove the requirement that reports filed by dominant carriers be filed on diskettes. Comments are sought on these tentative conclusions and whether there is any reason to continue to require international Section 214 applications and dominant carrier reports to be filed on computer diskettes.

Procedural Matters

16. *Ex Parte Presentations.* This proceeding is a "permit-but-disclose" proceeding. *Ex Parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules.

17. *Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603 the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies proposed in this Notice of Proposed Rulemaking (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the NPRM and IRFA (or

summaries thereof) will be published in the **Federal Register**.

18. *Need for, and Objectives of, the Proposed Rules:* The Telecommunications Act of 1996 (1996 Act), Public Law 104-104, 110 Stat. 56, directs the Commission to undertake, in every even-numbered year beginning in 1998, a review of all regulations issued under the Communications Act of 1934, as amended (Communications Act), 47 U.S.C. 151 *et seq.*, that apply to operations or activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be "no longer necessary in the public interest." In particular, the 1996 Act directs the Commission to determine whether any such regulation is no longer necessary "as the result of meaningful economic competition between providers of such service."

19. As part of the year 2000 biennial regulatory review, the Commission reviewed all of its rules relating to international telecommunications services to identify those rules that could be revised or eliminated. In this proceeding, we propose changes to several of our rules relating to international telecommunications services. Specifically, we propose to amend our rule concerning *pro forma* assignments and transfers of control of international Section 214 authorizations to more closely match those used for the assignment and transfer of control of Commercial Mobile Radio Service (CMRS) licenses. We also tentatively conclude that it is no longer necessary to apply the settlement rate benchmarks condition to Section 214 authorizations to provide facilities-based international private line services. We also propose to modify our rules to relieve dominant international carriers of the requirement to seek prior approval to discontinue service, except where such carriers possess market power in the provision of international service on the U.S. end of the route. Finally, we also propose to amend several rules to clarify the intent of those rules and to eliminate certain rules that no longer have any application. We believe that these proposed changes are in the public interest and will remove unnecessary burdens on the public and the Commission.

20. *Legal basis:* The NPRM is adopted pursuant to §§ 1, 4, 11, 214, 218, 219, 220, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 161, 214, 218, 219, 220, 403.

21. *Description and estimate of the number of small entities to which the proposals will apply:* RFA directs agencies to provide a description of, and, where feasible, estimate of the

number of small entities that may be affected by the proposals, if adopted. The Regulatory Flexibility Act defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under Section 3 of the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

22. The SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such companies that had been operating for at least one year at the end of 1992. According to the SBA's definition, a wireline telephone company is a small business if it employs no more than 1,500 persons, 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4812. All but 26 of the 2,321 wireline companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 wireline companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 2,295 of these wireline companies are small entities that might be affected by these proposals.

23. Specifically, we propose to amend our rule concerning *pro forma* assignments and transfers of control of international Section 214 authorizations to more closely match those used for the assignment and transfer of control of Commercial Mobile Radio Service (CMRS) licenses. We also tentatively conclude that it is no longer necessary to apply the settlement rate benchmarks condition to Section 214 authorizations to provide facilities-based international private line services. We also propose to modify our rules to relieve dominant international carriers of the requirement to seek prior approval to discontinue service, except where such carriers possess market power in the provision of international service on the U.S. end of the route. We also propose to amend several rules to clarify the intent of those rules and to eliminate certain rules that no longer have any

application. At this time, we are not certain as to the number of small entities that will be affected by the proposals. We seek comment on the number of small entities that will be affected by the proposals set forth in the NPRM.

24. *Description of projected reporting, recordkeeping, and other compliance requirements:* The proposals made in the NPRM will reduce the recordkeeping and compliance requirements of all companies providing international telecommunications services, including small entities.

25. In the NPRM, the Commission proposes to provide greater flexibility and clarity regarding assignments and transfers of control. Many of the transactions that carriers are entering into involve multiple services. In the NPRM the Commission proposes procedures regarding *pro forma* assignments and transfers of control of international Section 214 authorizations that more closely follow those used for the assignment and transfer of control of Commercial Mobile Radio Service (CMRS) licenses. This should reduce the burdens placed on carriers filing transfers of control or assignments by having similar requirements for both Section 214 authorizations and CMRS licenses. Under the proposed rule carriers will continue to be required to file an application, which can be in the form of a letter, with the Commission no later than thirty days after the assignment or transfer is completed. The application must contain a certification that the transfer of control or assignment was *pro forma*, and, together with all other previous *pro forma* transactions, this transfer of control or assignment does not result in a change in the actual controlling party. The letter must also contain the name, address of the transferee/assignee, contact points, and updated ownership information.

26. The Commission also proposes to remove the settlement rate benchmarks condition to Section 214 authorizations to provide facilities-based international private line services. The Commission also proposes to modify its rules to relieve dominant international carriers of the requirement to seek prior approval to discontinue service, except where such carriers possess market power in the provision of international service on the U.S. end of the route. Only one carrier—Comsat—is currently regulated as dominant on particular routes in its provision of particular services due to the existence of market power on the U.S. end of those routes. Other carriers that are classified dominant solely due to affiliations with foreign carriers will no longer be

required to seek prior approval before discontinuing service.

27. The other proposals in the NPRM will clarify the intent of certain rules and to eliminate other rules that no longer have any application. We believe that these proposed changes are in the public interest and will remove unnecessary burdens on the public and the Commission.

28. *Steps taken to minimize significant economic impact on small entities, and significant alternatives considered:* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

29. The Telecommunications Act of 1996 (1996 Act) directs the Commission to undertake, in every even-numbered year beginning in 1998, a review of all regulations issued under the Communications Act of 1934, as amended (Communications Act), that apply to operations or activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be "no longer necessary in the public interest." In particular, the 1996 Act directs the Commission to determine whether any such regulation is no longer necessary "as the result of meaningful economic competition between providers of such service." As part of the 2000 biennial regulatory review, the Commission reviewed all of its rules relating to international telecommunications services to identify those rules that could be revised or eliminated. In this proceeding the Commission proposes changes to several of its rules relating to international telecommunications services. The Commission believes that the proposals in the NPRM will reduce the economic burdens placed on all companies providing international telecommunications services, including small entities.

30. Federal rules that may duplicate, overlap, or conflict with the proposed rules: None.

31. *Paperwork Reduction Act.* The NPRM contains either new or modified information collections subject to the Paperwork Reduction Act of 1995

(PRA). The Commission will submit the proposed information collections to the Office of Management and Budget (OMB) for review under the PRA. Upon submission to OMB, comments from OMB, the general public, and other federal agencies will be invited on the proposed information collections contained in the proceeding.

Ordering Clauses

32. Pursuant to Sections 1, 4, 11, 214, 218, 219, 220 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 161, 214, 218, 219, 220, 403, the Notice of Proposed Rulemaking is hereby adopted and comments are requested.

33. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Notice of Proposed Rulemaking, including the regulatory flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Public Law 96-354, 94 Stat. 1164, 5 U.S.C. 601, *et seq.*

List of Subjects in 47 CFR Parts 43 and 63

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 43 and 63 as follows:

PART 43—REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES

1. The authority citation for part 43 continues to read as follows:

Authority: 47 U.S.C. 154; Telecommunications Act of 1996, Public Law 104-104, sec. 402(b)(2)(B), (c), 110 Stat. 56 (1996) as amended unless otherwise noted. 47 U.S.C. 211, 219, 220 as amended.

§ 43.81 [Removed]

2. Remove § 43.81.

PART 63—EXTENSION OF LINES, NEW LINES AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

3. The authority citation for part 63 continues to read as follows:

Authority: section 1, 4(i), 4(j), 10, 11, 201-205, 214, 218, 403 and 651 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 160, 201-205, 214, 218, 403, and 571, unless otherwise noted.

4. Section 63.09 is amended by revising Note 2 to § 63.09 to read as follows:

§ 63.09 Definitions applicable to international Section 214 authorizations.

* * * * *

Note 2 to § 63.09: Ownership and other interests in U.S. and foreign carriers will be attributed to their holders and deemed cognizable pursuant to the following criteria: Attribution of ownership interests in a carrier that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that wherever the ownership percentage for any link in the chain exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest. For example, if A owns 30 percent of company X, which owns 60 percent of company Y, which owns 26 percent of "carrier," then X's interest in "carrier" would be 26 percent (the same as Y's interest because X's interest in Y exceeds 50 percent), and A's interest in "carrier" would be 7.8 percent (0.30×0.26). Under the 25 percent attribution benchmark, X's interest in "carrier" would be cognizable, while A's interest would not be cognizable.

5. Section 63.10 is amended by revising paragraph (d) to read as follows:

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

* * * * *

(d) A carrier classified as dominant under this section shall file an original and two copies of each report required by paragraphs (c)(3), (c)(4), and (c)(5) of this section with the Chief, International Bureau. The carrier shall also file one copy of these reports with the Commission's copy contractor. The transmittal letter accompanying each report shall clearly identify the report as responsive to the appropriate paragraph of § 63.10(c).

* * * * *

§ 63.18 [Amended]

6. Section 63.18 is amended by removing paragraph (e)(3) and Notes 1 through 4 to paragraph (h) and redesignating paragraph (e)(4) as (e)(3) and adding Note to paragraph (h) to read as follows.

* * * * *

Note to paragraph (h): Ownership and other interests in U.S. and foreign carriers will be attributed to their holders and

deemed cognizable pursuant to the following criteria: Attribution of ownership interests in a carrier that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that wherever the ownership percentage for any link in the chain exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest. For example, if A owns 30 percent of company X, which owns 60 percent of company Y, which owns 26 percent of "carrier," then X's interest in "carrier" would be 26 percent (the same as Y's interest because X's interest in Y exceeds 50 percent), and A's interest in "carrier" would be 7.8 percent (0.30×0.26). Under the 25 percent attribution benchmark, X's interest in "carrier" would be cognizable, while A's interest would not be cognizable.

* * * * *

7. Section 63.19 is revised to read as follows:

§ 63.19 Special procedures for discontinuances of international services.

(a) With the exception of those international carriers described in paragraph (b) of this section, any international carrier that seeks to discontinue, reduce or impair service, including the retiring of international facilities, dismantling or removing of international trunk lines, shall be subject to the following procedures in lieu of those specified in §§ 63.61 through 63.601:

(1) The carrier shall notify all affected customers of the planned discontinuance, reduction or impairment at least 60 days prior to its planned action. Notice shall be in writing to each affected customer unless the Commission authorizes in advance, for good cause shown, another form of notice.

(2) The carrier shall file with this Commission a copy of the notification on or after the date on which notice has been given to all affected customers.

(b) The following procedures shall apply to any international carrier that the Commission has classified as dominant in the provision of a particular international service because the carrier possesses market power in the provision of that service on the U.S. end of the route. Any such carrier that seeks to retire international facilities, dismantle or remove international trunk lines, and the dominant services being provided through these facilities is not being discontinued, reduced or impaired, shall only be subject to the notification requirements of paragraph (a) of this section. If such carrier discontinues, reduces or impairs the dominant service or retires facilities that

impair or reduce the service, the carrier shall file an application pursuant to §§ 63.62 and 63.500.

8. Section 63.20 is amended by revising paragraph (a) to read as follows:

§ 63.20 Copies required; fees; and filing periods for international service providers.

(a) Unless otherwise specified the Commission shall be furnished with an original and five copies of applications filed for international facilities and services under section 214 of the Communications Act of 1934, as amended. Upon request by the Commission, additional copies of the application shall be furnished. Each application shall be accompanied by the fee prescribed in subpart G of part 1 of this chapter.

* * * *

§ 63.21 [Amended]

9. Section 63.21 is amended by removing paragraph (h) and redesignating paragraphs (i) and (j) as paragraphs (h) and (i).

10. Section 63.22 is amended by revising paragraph (b) to read as follows:

§ 63.22 Facilities-based international common carriers.

* * * *

(b) The carrier may provide service using half-circuits on any U.S. common carrier and non-common carrier facilities that do not appear on an exclusion list published by the Commission. Carriers may also use any necessary non-U.S.-licensed facilities, including any submarine cable systems, that do not appear on the exclusion list. Carriers may not use U.S. earth stations to access non-U.S.-licensed satellite systems unless the Commission has specifically approved the use of those satellites and so indicates on the exclusion list. The exclusion list is available from the International Bureau's World Wide Web site at <http://www.fcc.gov/ib>.

* * * *

11. Section 63.24 is amended by revising the subject heading and paragraph (a) and paragraph (b) and by adding new paragraphs (c) through (g) to read as follows.

§ 63.24 Assignments and transfers of control.

(a) *General.* Except as otherwise provided in this section, an international Section 214 authorization may be assigned, or control of such authorization may be transferred by the transfer of control of any entity holding such authorization, to another party, whether voluntarily or involuntarily, directly or indirectly, only upon

application to and prior approval by the Commission.

(b) *Assignments.* For purposes of this section, an assignment of an authorization is a transaction in which the authorization is assigned from one entity to another entity. Following an assignment, the authorization is held by an entity other than the one to which it was originally granted.

(c) *Transfers of control.* For purposes of this section, a transfer of control is a transaction in which the authorization remains held by the same entity, but there is a change in the entity or entities that control the authorization holder. A change from less than 50% ownership to 50% or more ownership shall always be considered a transfer of control. In all other situations, whether the interest being transferred is controlling must be determined on a case-by-case basis.

(d) *Pro forma assignments and transfers of control.* Transfers of control or assignments that do not result in a change in the actual controlling party are considered non-substantial or *pro forma*. Whether there has been a change in the actual controlling party must be determined on a case-by-case basis with reference to the factors listed in Note 1 to paragraph (d). The types of transactions listed in Note 1 to paragraph (d) shall be considered presumptively *pro forma* and prior approval from the Commission need not be sought.

Note 1 to paragraph (d): If a transaction is one of the types listed below, the transaction is presumptively *pro forma* and prior approval need not be sought. In all other cases, the relevant determination shall be made on a case-by-case basis. (1) Assignment from an individual or individuals (including partnerships) to a corporation owned and controlled by such individuals or partnerships without any substantial change in their relative interests; (2) Assignment from a corporation to its individual stockholders without effecting any substantial change in the disposition of their interests; (3) Assignment or transfer by which certain stockholders retire and the interest transferred is not a controlling one; (4) Corporate reorganization that involves no substantial change in the beneficial ownership of the corporation (including reincorporation in a different jurisdiction or change in form of the business entity); (5) Assignment or transfer from a corporation to a wholly owned direct or indirect subsidiary thereof or vice versa, or where there is an assignment from a corporation to a corporation owned or controlled by the assignor stockholders without substantial change in their interests; or (6) Assignment of less than a controlling interest in a partnership.

(e) *Applications for substantial transactions.* (1) In the case of an assignment or transfer of control of an

international Section 214 authorization that is not *pro forma*, the proposed assignee or transferee must apply to the Commission for authority prior to consummation of the proposed assignment or transfer of control.

(2) The application shall include the information requested in paragraphs (a) through (d) of § 63.18 for both the transferor/assignor and the transferee/assignee. The information requested in paragraphs (h) through (p) of § 63.18 is required only for the transferee/assignee. At the beginning of the application, the applicant shall include a narrative of the means by which the proposed transfer or assignment will take place.

(3) The Commission reserves the right to request additional information as to the particulars of the transaction to aid it in making its public interest determination.

(4) An assignee or transferee shall notify the Commission no later than 30 days after either consummation of the proposed assignment or transfer of control, or a decision not to consummate the proposed assignment or transfer of control. The notification may be made by letter (sending one copy to the Office of the Secretary and one copy to the Telecommunications Division of the International Bureau) and shall identify the file numbers under which the initial authorization and the authorization of the assignment or transfer of control were granted.

(f) *Applications for non-substantial or pro forma transactions.* (1) In the case of a *pro forma* assignment or transfer of control, the applicant is not required to seek prior Commission approval.

(2) A *pro forma* assignee or transferee shall file an application with the Commission no later than 30 days after the assignment or transfer is completed. The application may be made by letter (sending one copy to the Office of the Secretary and one copy to the Chief of the Telecommunications Division of the International Bureau). A single letter may be filed for an assignment of more than one authorization if each authorization is identified by the file number under which it was granted. The applications must contain the following:

(i) The information requested in paragraphs (a) through (d) and (h) of § 63.18 for the transferee/assignee,

(ii) A certification that the transfer of control or assignment was *pro forma* and that, together with all previous *pro forma* transactions, does not result in a change in the actual controlling party.

(3) Upon release of a public notice granting a *pro forma* assignment or transfer of control, petitions for

reconsideration under § 1.106 of this chapter or applications for review under § 1.115 of this chapter of the Commission's rules may be filed within 30 days. Petitioner should address why the assignment or transfer of control in question should have been filed under paragraph (e) of this section rather than under paragraph (f) of this section.

(g) *Involuntary assignments or transfers of control.* An involuntary assignment or transfer of control is one that occurs by operation of law. In the case of an involuntary assignment or transfer of control, the applicant must make the appropriate filing no later than 30 days after the event causing the

involuntary assignment or transfer of control.

§ 63.53 [Amended]

12. Section 63.53 is amended by removing paragraph (b) and redesignating paragraph (c) as (b).

[FR Doc. 00-32202 Filed 12-19-00; 8:45 am]

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