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Citation	Search Result	Rank 1 of 2	Database
9 F.C.C.R. 2275			FCOM-FCC
1994 WL 192999 (F.C.C.), 9 F.C.C.R. 2275, 9 FCC Rcd. 2275			
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Federal Communications Commission (F.C.C.)
Memorandum Opinion, Order and Certificate
***1 IN THE MATTER OF MFS INTERNATIONAL, INC.**

File No. **I-T-C-94-050**

Application for authority pursuant to Section 214 of the Communications Act of 1934, as amended, to acquire and operate capacity in transatlantic cable systems for the provision of authorized direct, facilities-based international common carrier services between the United States and the United Kingdom, Ireland, France, Germany and the Netherlands, and for use of the authorized capacity in transit arrangements for indirect service between the United States and the United Kingdom, Ireland, France, Germany, the Netherlands, Austria, Belgium, Denmark, Finland, Italy, Norway, Portugal, Spain, Sweden, and Switzerland.

DA 94-475

Adopted: May 6, 1994
Released: May 18, 1994

****2275** By the Chief, International Facilities Division:

1. The above-captioned uncontested application filed by MFS International, Inc. (MFSI) [FN1] requests authority, pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. Section 214 (1982), and Section 63.01 of the Commission's Rules, 47 C.F.R. Section 63.01 (1992), to acquire and operate capacity on an Indefeasible Right of User (IRU) basis in the Private Transatlantic Telecommunications cable system (PTAT-1) [FN2] and the Transatlantic telecommunications cable systems (TAT-8, TAT-9, TAT-10, and TAT-11) for the provision of switched services, private line services, and television relay services. [FN3] Specifically, MFSI seeks authority to (1) acquire and operate the requested facilities for direct service between the United States and each of the following international points: United Kingdom, Ireland, France, Germany, and the Netherlands; [FN4] (2) use the requested facilities for service to the international points specified in Appendix B through transiting arrangements with its correspondents; and (3) acquire by lease and operate such facilities as may be necessary to extend capacity in the cable systems and to link the U.S. cable landing stations with MFSI's technical operations enter in Jersey City, New Jersey. [FN5] The application was placed on public notice on November 24, 1993. No comments were received.

2. MFSI seeks authority to obtain the requisite capacity for the common carrier services it proposes herein from the PTAT and TAT-8, TAT-9, TAT-10, and TAT-11 cable systems to compete with multiple established service providers that already provide authorized international common carrier services between the U.S. and the countries identified in Appendices A and B utilizing these cable ****2276** systems. This objective is consistent with the Commission's established findings that increased competition in international markets is beneficial.

[FN6]

3. MFSI is affiliated with MFS Communications Limited (MFSL), a wholly-owned

U.K. subsidiary of MFSCC, which has been recently granted a Public Telecommunications Operator (PTO) license. [FN7] Pursuant to this PTO license, MFSL may construct and operate a domestic digital fiber network for the provision of, inter alia, private and dedicated circuits, and engage in international resale of switched services. [FN8] MFSL argues that, although its affiliate, MFSL, meets the definition of a "foreign carrier" in Section 63.01(r)(1)(ii) of the Commission's Rules, MFSL should be regulated as nondominant in its provision of U.S. international services. In light of the U.K.'s continuing duopoly policy for international facilities-based services and BT's control of 97% of the local access lines, [FN9] we agree that MFSL does not have sufficient market power or control of bottleneck services or facilities in the United Kingdom to warrant regulation of MFSL as a dominant international carrier on any U.S.-international route for which MFSL has requested authorization as a facilities-based carrier. [FN10]

***2** 4. Upon consideration of MFSL's uncontested application, pursuant to Section 214 of the Communications Act of 1934, as amended, we certify that the present and future public convenience and necessity require the acquisition, on an IRU basis, and operation of capacity in the PTAT-1 cable and the TAT-8, TAT-9, TAT-10, and TAT-11 cables for the provision of the herein authorized services between the United States and each of the following international points: the United Kingdom, Ireland, France, Germany, and the Netherlands and for use of the authorized capacity in transit arrangements for indirect service between the United States and § each of the United Kingdom, Ireland, France, Germany, the Netherlands, Austria, Belgium, Denmark, Finland, Italy, Norway, Portugal, Spain, Sweden and Switzerland.

5. Accordingly, IT IS HEREBY ORDERED that application File No. **I-T-C-94- 050** is GRANTED and MFSL is authorized to:

a. acquire, on an Indefeasible Right of User (IRU) basis, and operate a one-half interests in up two DS-3s in the PTAT-1 cable system and one DS-3 in each of the TAT-8, TAT-9, TAT-10, and TAT-11 cable systems to provide direct service between the United States and each of the countries listed in Appendix A.

b. activate capacity in the PTAT-1, TAT-8, TAT-9, TAT-10 and TAT-11 cable systems [FN11] and in the appropriate and necessary extension facilities for the provision of switched services, private line services, and television relay services between the United States and the international points specified in Appendices A and B, [FN12] and c. acquire by lease or other comparable means appropriate and necessary extension facilities to link the U.S. cable landing stations with MFSL's technical operations center in Jersey City, New Jersey.

****2277** 6. IT IS FURTHER ORDERED that MFSL shall file tariff provisions pursuant to Section 203 of the Communications Act, 47 U.S.C. § 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

7. IT IS FURTHER ORDERED that our authorization of MFSL to provide private lines is limited to the provision of such private lines only between the United States and each of those points listed in the appendices--that is, private lines which originate in the United States and terminate in one of the points listed in the appendices, or which originate in one of the points listed in the appendices and terminate in the United States. In addition, MFSL may not--and

MFSI's tariff must state that its customers may not--connect private lines provided over these facilities to the public switched network at either the U.S. or foreign end, or both, for the provision of international switched or interconnected private line services, unless authorized to do so by the Commission upon a country specific finding that the foreign administration affords resale opportunities equivalent to those available under U.S. law, in accordance with Regulation of International Accounting Rates, Phase II First Report and Order, 7 FCCRcd 559 (1991), Order on reconsideration and Third Further Notice of Proposed Rulemaking, 7 FCCRcd. 7927 (1992), petition for reconsideration pending.

*3 8. IT IS FURTHER ORDERED that MFSI shall file semi-annual reports of circuits additions for TAT-8, TAT-9, TAT-10 and TAT-11 pursuant to Section 63.15(b) of the Commission's Rules, 47 C.F.R. § 63.15(b).

9. IT IS FURTHER ORDERED that MFSI shall obtain prior authority pursuant to Section 214 of the Communications Act, 47 U.S.C. § 214, before adding any circuits or channels of communication for the provision of service over any private cable.

10. IT IS FURTHER ORDERED that this authorization is issued subject to the terms and conditions of any license for the PTAT-1 issued herein under the Act entitled "An Act relating to the landing and operation of submarine cables in the United States," 47 U.S.C. §§ 34-39.

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

12. IT IS FURTHER ORDERED that MFSI shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. § 43.61.

13. IT IS FURTHER ORDERED that MFSI shall file with the Commission a copy of any operating agreement it enters into with its foreign correspondents within thirty (30) days of its execution, and shall otherwise comply with the filing requirements contained in Section 43.51(a) of our Rules, 47 C.F.R. § 43.51.

14. This Order is issued under Section 0.291 of the Commission's Rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules 47 C.F.R. § 1.106 and 1.115 may be filed within 30 days of the public notice of this Order. (See Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li

Chief, International Facilities Division

Common Carrier Bureau

FN1. MFSI is a newly-formed corporation organized under the laws of Delaware, it is a wholly-owned subsidiary of MFS Communications Company, Inc. (MFSCC).
FN2. PTAT is a noncommon carrier submarine cable facility extending between the

9 F.C.C.R. 2275

(Cite as: 1994 WL 192999, *3 (F.C.C.), 9 FCC Rcd. 2275, **2277)

United States, the United Kingdom, and the Republic of Ireland.

FN3. The Commission authorizes utilization of facilities between the U.S. and terminal countries in conjunction with transiting arrangements between correspondent countries providing for service to third countries, See, e.g., MCI Telecommunications Corp., DA 93-1184 (Int'l.Fac.Div., Oct. 5, 1993), File Nos. I-T-C-93-249, I-T-C-93-282 (authorizing establishment of service on a switched transit basis); Micronesian Telecommunications Corp., File No. I-T-C-92-15 (Int'l.Fac.Div., Sept. 20, 1993) (DA 93-1118); US Sprint Communications Company Limited Partnership, 4 FCCRcd. 6279 (Chief, Com.Car.Bur.1989) (authorizing utilization of the authorized facilities to both the cable terminal countries and to points beyond through extension of facilities to the borders of other countries or to the terminals of other international communications systems). MFSI is required to file its correspondent agreements with the Commission pursuant to Section 43.51 of the Commission's Rules. Should MFSI want to provide direct service to any country listed in Appendix B that is not also listed in Appendix A, it must obtain prior authority under Section 214 to acquire and operate such facilities.

FN4. MFSI intends to enter into agreements with foreign correspondent carriers in the countries to which it provides international telecommunications services pursuant to authority granted in the above-referenced application proceeding. At this time, MFSI expects that correspondent negotiations will first be initiated with the two authorized international facilities-based carriers in the United Kingdom (British Telecommunications plc and Mercury Communications Limited).

MFSI also intends to commence correspondent negotiations with the monopoly carriers in Ireland (Telecom Eirann), France (France Telecom), Germany (Deutsche Bundespost Telekom), and the Netherlands (PTT Telecom Netherlands). See Letter of Helen Disenhaus, Counsel for MFSI to Jennifer Warren, Esq., Common Carrier Bureau (dated May 6, 1994). We note that a complaint now pending before the Commission, AT & T v. WorldCom, File No. E-93-103, filed September 24, 1993, raises the issue of whether a U.S. facilities-based carrier, not authorized to provide international private line resale, operating in correspondence with a carrier operating at the U.K. end as an international reseller should be categorized as a reseller at the U.S. end.

FN5. On March 31, 1994, MFSI, by letter, confirmed that its request to provide "television relay service" would allow broadcasters and others to transmit full-motion, broadcast-quality television signals between the United States and authorized foreign countries. MFSI further clarified that its request for one DS-3 circuit on each common carrier cable and two DS-3 circuits on PTAT will be sufficient for all of its proposed services, including television relay service. See Letter of Helen E. Disenhaus, Esq., Counsel to MFSI to Jennifer Warren, Esq., (dated March 31, 1994.)

FN6. The Commission has found that the international communications market will support additional service providers and that the added competition will be in the public interest. See Permissible Services of U.S. Licensed International Communications Satellite Systems Separate from the International Telecommunications Satellite Organization (INTELSAT), FCC 92-95 (released April 13, 1992). Accordingly, the Commission has authorized new entrants that propose to provide international services, including authorized common carrier

9 F.C.C.R. 2275

(Cite as: 1994 WL 192999, *3 (F.C.C.), 9 FCC Rcd. 2275, **2277)

services via capacity acquired from submarine cable systems. See, e.g., *id.*; TDx Systems, Inc., Mimeo 6609 (released September 2, 1986)'; MCI International, Inc., DA 89-1525 (Int'l.Fac.Div., released Dec. 5, 1989); Sprint Communications Company, LP, 8 FCCRcd. 926 (Int'l.Fac.Div.1993); US Sprint Communications Company Limited Partnership, 4 FCCRcd. 6279 (Int'l.Fac.Div.1989).

FN7. On September 24, 1993, the U.K. Department of Trade and Industry (DTI) granted MFSL its PTO license.

FN8. See Application at 12.

FN9. We note that British Telecommunications plc (BT) and Mercury Communications Ltd (MCL) are the only two carriers authorized to provide international facilities-based services, in addition to their provision of domestic services. We further note that the United Kingdom has no similar duopoly policy for domestic facilities-based services. For example, in addition to MFSL, DTI granted several other U.S.-owned carriers, such as Sprint, Worldcom and COLT, PTO licenses in the United Kingdom.

FN10. In International Services Order, 7 FCCRcd 7331 (1992), errata, 8 FCCRcd 452 (1993), the Commission established a three-part framework for classifying U.S. international carriers with foreign carrier affiliations based on an assessment of the market power of their foreign carrier-affiliates. Carriers that have no affiliation with a foreign carrier in the destination market are presumptively considered nondominant for that route. Carriers affiliated with a foreign carrier that is a monopoly in the destination market are presumptively considered dominant for that route. Carriers affiliated with a foreign carrier that is not a monopoly in the destination market receive closer scrutiny on that route. *Id.* at 7334.

FN11. The PTAT cable system extends between landing points at cable stations located at Manasquan, NJ (with interface at Pennsauken, NJ); Brean, UK (with interface point at Bracknelle, UK); Courtmacsherry Bay. See Private

Transatlantic Telecommunications System, Inc. 4 FCCRcd. 5077 (Com.Car.Bur.1989). The TAT-8 cable system extends between landing points at cable stations located at Tuckerton, NJ; Widemouth, UK; Penmarch, France. See American Telephone and Telegraph Company, 98 FCC2d 440 (1984). The TAT-9 cable system extends between landing points at cable stations located at Manahawkin, NJ; Goonhilly, UK, and St. Hilaire, France. See American Telephone and Telegraph Company, 4 FCCRcd. 1129 (Com.Car.Bur.1988). The TAT-10 cable system extends between landing

points at cable stations located at Green Hill, Rhode Island; Norden, Germany; and Alkmaar, the Netherlands. See American Telephone and Telegraph Company, 7 FCCRcd. 445 (1992). The TAT-11 cable system extends between landing points at cable stations located at Manahawkin, NJ, Swansea, UK, St. Hilaire, France.

See American Telephone and Telegraph Company, 7 FCCRcd. 136 (1992).

FN12. We note that should MFSI obtain any interest in facilities beyond the points authorized in the appendices for the provision of common carrier services, including private line services, between the United States and other foreign points, such action would constitute an extension of line under Section 214 of the Act. Therefore, under the provisions of the Commission's

International Competitive Carrier decision, International competitive Carrier Policies, 102 FCC2d 812 (1985), recon. denied 50 R.R.2d 1435 (1986), it would be necessary for MFSI to file additional applications for a certificate of public

9 F.C.C.R. 2275

(Cite as: 1994 WL 192999, *3 (F.C.C.), 9 FCC Rcd. 2275, **2277)

convenience and necessity under Section 214 to begin service to each additional country and for authority to acquire any facilities needed to provide service to such additional points.

APPENDIX A [FN13]

CABLE SYSTEM	CAPACITY REQUESTED	COUNTRIES TO BE SERVED
PTAT-1	2 DS-3	U.K., Ireland
TAT-8	1 DS-3	U.K., France
TAT-9	1 DS-3	U.K., France
TAT-10	1 DS-3	Germany, Netherlands
TAT-11	1 DS-3	U.K., France

FN13. MFSI has stated that the initial utilization of the herein authorized circuits will be 3 E-1 circuits each to the United Kingdom and Ireland on PTAT-1, and 2 E-1 circuits to Germany and one E-1 circuit to the Netherlands over the TAT-10 cable. With respect to the capacity requested in the TAT-8, the TAT-9, TAT-11 cables, MFSI anticipates initially utilizing 6 E-1 circuits to the United Kingdom and 3 E-1 circuits to France, but is uncertain as to which cables will be utilized for which circuits. See Letter from Helen Disenhaus, Esq., Counsel for MFS International, Inc. to Jennifer A. Warren, Esq., Common Carrier Bureau (dated May 6, 1994).

APPENDIX B

COUNTRIES FOR WHICH TRANSITING AUTHORITY IS REQUESTED

*4 Austria

Belgium
Denmark
Finland
Ireland
France
Germany
Italy
Netherlands
Norway
Portugal
Spain
Sweden
Switzerland
United Kingdom

1994 WL 192999 (F.C.C.), 9 F.C.C.R. 2275, 9 FCC Rcd. 2275

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