

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

In the Matter

SPRINT CORPORATION

Petition for Declaratory Ruling
Concerning Section 310(b)(4) and (d) and
the Public Interest Requirements of the
Communications Act of 1934, as amended

I-S-P-95-002

DECLARATORY RULING AND ORDER

Adopted: December 15, 1995; Released: January 11, 1996

By the Commission: Commissioner Chong approving in part and concurring in part; Commissioners Quello, Barrett, Ness and Chong issuing separate statements.

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I. INTRODUCTION

1. In this declaratory ruling and order, we grant, subject to certain conditions, Sprint's requests for rulings that the proposed alien ownership in Sprint of up to 28 percent is not on balance inconsistent with Section 310(b)(4) of the Communications Act (Act), and that the proposed transaction is not otherwise inconsistent with the public interest. We also find that 10 percent equity investments each by France Telecom (FT) and Deutsche Telekom (DT) in Sprint do not result in a transfer of control of Sprint to FT and DT and thus do not require prior Commission approval under Section 310(d) of the Act.

2. In our recently adopted *Foreign Carrier Entry Order*, we stated that we would evaluate, as an important part of our overall public interest analysis under Sections 214 and 310(b)(4), whether effective competitive opportunities exist for U.S. entities in relevant foreign markets.¹ France and Germany do not now offer effective competitive opportunities to U.S. carriers. FT and DT are monopoly providers of basic international telecommunications facilities in these countries. Nonetheless, two other important public interest factors weigh in favor of granting the petition: (1) the current and planned liberalization of the French and German telecommunications markets; and (2) the competitive benefits for the U.S. telecommunications markets of the FT and DT investment in Sprint.

3. A critical component of our decision is our conclusion that the French and German Governments are committed to full competition in their telecommunications markets, in which U.S. companies will be allowed to participate. Since our notice of proposed rulemaking (NPRM) on foreign carrier entry was adopted in February 1995, and following discussions with Commission representatives, both the French and German Governments have announced and begun to implement wide-ranging liberalization plans. Moreover, they have committed, in letters from senior government representatives filed with the Commission, to open their telecommunications services and infrastructure markets to limited competition by July 1996 and full competition by January 1, 1998. While we do not doubt the good faith of these commitments, to protect U.S. interests, we find that this transaction is in the public interest only if Sprint and the parties' Joint Venture comply with certain strict conditions. These conditions address (1) the potential for FT and DT to use their current *de jure* and *de facto* monopoly market power to engage in anticompetitive conduct because of their financial interests in Sprint and the carriers' joint venture and (2) the possibility that the telecommunications liberalization to which France and Germany have committed may not occur on the anticipated schedule.

4. First, Sprint is regulated as a dominant carrier on the U.S.-France and U.S.-Germany routes and will continue to be so regulated until we find that there is no substantial risk of anticompetitive effects in the U.S. international services market from Sprint's affiliation with FT and DT. Second, we will not allow Sprint to operate newly acquired circuits on the U.S.-France and U.S.-Germany routes until France and Germany have liberalized two important markets: alternative infrastructure for already liberalized services (which include most non-public voice services) and

¹ See *Market Entry and Regulation of Foreign-affiliated Entities, Report and Order*, FCC 95-475 (Nov. 28, 1995) (*Foreign Carrier Entry Order*).

basic switched voice resale. Third, Sprint must comply with nondiscrimination and reporting requirements. Fourth, Sprint must obtain a commitment from FT to lower its accounting rate with U.S. carriers to the same range as the U.S.-U.K. and U.S.-Germany accounting rates in the near future and in no event later than two years from the effective date of this Order. Finally, Sprint must report by March 31, 1998 whether the anticipated liberalization has occurred. If we find it has not, we will take further action, including designating for hearing the issue of whether the public interest would no longer be served by Sprint's holding of Section 214 facilities authorizations on the U.S.-France and U.S.-Germany routes.

5. We note that the Department of Justice (Justice Department) has conducted its own review of this transaction under its antitrust enforcement responsibilities. The conditions and requirements we impose here reflect our broader mandate to protect the public interest and welfare of U.S. consumers. So long as the parties comply with these conditions and requirements in conjunction with this transaction, we find that this transaction is in the public interest.

II. BACKGROUND

6. On October 14, 1994, Sprint Corporation (Sprint) filed a petition for declaratory ruling regarding the proposed equity investments by FT and DT in Sprint and the proposed joint venture among the three carriers.² First, Sprint seeks a ruling that the investments by FT and DT do not result in a transfer of control of Sprint and that prior Commission approval thus is not required under Section 310(d) of the Act of 1934.³ Second, Sprint requests a ruling that alien ownership in Sprint of up to 28 percent, as part of the proposed transaction, is not inconsistent with Section 310(b)(4) of the Act. Finally, Sprint seeks a ruling that the proposed transaction is otherwise consistent with the public interest.

7. Sprint is a publicly-traded U.S. corporation that owns or controls subsidiaries that hold domestic common carrier microwave licenses, international facility authorizations, cable landing licenses, and other Commission licenses and authorizations.⁴ Sprint conducts its business through subsidiaries. Sprint's long distance subsidiary is the third largest U.S. carrier of long distance services, providing voice, data and video services over a nationwide digital, fiber optic network. Its international services are provided primarily via submarine cable systems and satellite facilities. In addition,

Sprint's subsidiaries provide local telephone and cellular services. Through an affiliate, Sprint Telecommunications Venture (STV), Sprint also is a significant partner in WirelessCo, a major licensee of broadband personal communications services (PCS).

8. FT is the *de jure* monopoly service provider in France of local, long distance and international public switched services, and of terrestrial infrastructure for the provision of telecommunications services to the public. It also offers a range of other telecommunications products and services, including private line circuits and cellular services. FT is 100 percent owned by the French government, and is subject to regulation by the French Directorate General of Posts and Telecommunications (DGPT).

9. Similarly, DT is the *de jure* monopoly service provider in Germany of local, long distance and international public switched services. DT also offers, among other telecommunications products and services, private line circuits and cellular services. It is the monopoly provider of terrestrial infrastructure for the provision of telecommunications services to the public. DT is 100 percent owned by the German government, and is subject to regulation by the German Federal Ministry for Posts and Telecommunications (BMPT).

10. On June 14, 1995, Sprint, FT and DT announced a global alliance, which involves FT and DT each acquiring up to 10 percent of the voting equity in Sprint. The cost of these investments would be based on a complex formula designed to anticipate the possible divestment of Sprint's U.S. cellular operations, and fluctuations in Sprint's public stock price. Under this formula, the investment price could vary from approximately \$3.5 to \$4.2 billion.⁵ The global partnership among Sprint, FT and DT also involves the creation of "Joint Venture Company" (Joint Venture), an alliance to provide enhanced and certain basic telecommunications services to multinational corporate and business customers on a global basis. These services include: (1) international data, voice and video; (2) international card-based services for travellers; and (3) international transport services for other carriers.

11. On July 28, 1995, Sprint filed the final agreements of the parties with the Commission.⁶ Pursuant to these agreements, the Joint Venture will be run by a Global Partnership Board. Each party will have three equal votes on the Board, which will oversee two operating groups, each focused on specific geographic territories or activities. In addition, the parties will create a Global Backbone Network to carry the Joint Venture's services. The Global

² Sprint Petition for Declaratory Ruling Concerning Sections 310(b)(4) and (d) and the Public Interest Requirements of the Communications Act of 1934, as Amended, I-S-P-95-002 (filed Oct. 14, 1994) (Sprint Petition).

³ Sprint does not seek prior Commission approval of the transaction under Section 214 of the Communications Act or the Submarine Cable Act, 47 U.S.C. § 34. Sprint states that such approval is not required because there is no change in ownership of Section 214 certificates and cable landing licenses held by Sprint's subsidiaries. See Sprint Petition at 2, n.1.

⁴ All references to Sprint, the Joint Venture, FT, and DT in this Order include their respective officers, directors, and employees, as well as any affiliated companies and their officers, directors and employees.

⁵ The parties agreed that the amount of the proposed investment will be reduced to reflect Sprint's loss of assets should it divest its U.S. cellular operations.

⁶ Sprint filed its Memorandum of Understanding (MOU) with FT and DT with its petition for declaratory ruling. See Sprint Petition, Exhibit I. The MOU is superseded by the final agreements of the parties, which include: (i) the Investment Agreement; (ii) the Stockholders' Agreement; (iii) the Joint Venture Agreement; (iv) the Standstill Agreement; (v) the Proposed Amendments to Sprint's Bylaws; and (vi) the Certificate of Amendment to Sprint's Articles of Incorporation. The final agreements differ from the MOU in several ways. Most notably, the Investment Agreement creates a series of contingencies for the pricing and timing of the investment, which will be completed in one transaction instead of two equal tranches, as originally planned. In addition, the final agreements reflect the possibility that Sprint will divest its cellular assets.

Backbone Network will be owned 50 percent by Sprint and 50 percent by FT and DT through a joint venture between FT and DT alone, known as Atlas. In the near term, Global Backbone Network functions will be performed by two Regional Operating Groups. The operating group serving Europe (excluding France and Germany), the Rest of Europe Group (ROE Group), will be owned one-third by Sprint and two-thirds by FT and DT. The unit for worldwide activities outside the United States and Europe, the Rest of the World Group (ROW Group), will be 50 percent owned by Sprint and 50 percent owned by FT and DT through Atlas. Each carrier will be the sole service provider of the Joint Venture's services within its home territory. The interests of FT and DT in the Joint Venture are expected to be managed by Atlas.

12. The Atlas joint venture, together with FT's and DT's global alliance with Sprint (known as "Phoenix"), are currently under review by the Directorate General IV (DG IV) of the European Commission. DG IV has jurisdiction in the European Union to enforce E.U. competition laws. On October 18, 1995, DG IV issued a press release stating that the French and German Governments had made certain liberalization commitments which adequately address DG IV's competitive concerns about the transaction.⁷ In addition, FT and DT have agreed that their public switched data networks, Transpac and Datex-P, respectively, will remain separate from Atlas until 1998. The parties anticipate that, given this agreement, the European Commission will issue a public notice in the near future stating its intention to approve formally the transaction in mid-1996.⁸ Based on these developments, the parties intend to close their transaction in early 1996.

13. On July 13, 1995, the Justice Department filed a civil antitrust complaint under Section 15 of the Clayton Act, alleging that the proposed total of 20 percent investment by FT and DT in Sprint and the formation of the Joint Venture would violate Section 7 of the Clayton Act.⁹ The Justice Department and the defendants (Sprint and the

Joint Venture), however, have stipulated to the entry of a proposed Final Judgment which the Justice Department believes provides an adequate remedy to the antitrust concerns posed by the transaction. The Justice Department has concluded that a series of conditions and safeguards, imposed in two phases, are sufficient. Section II, which imposes many of the same disclosure and confidentiality requirements set forth in the MCI/BT Final Judgment,¹⁰ would become effective upon the entry of the Final Judgment and remain in effect for five years after the conditions for the expiration of Section III have been satisfied.¹¹ Section III establishes certain operating and disclosure requirements and would remain in effect from the entry of the Final Judgment until all prohibitions on competition have been removed and one or more new competitors have been licensed in France and Germany.¹² The proposed Final Judgment is subject to approval by the U.S. District Court for the District of Columbia.

14. As in the MCI/BT proceeding,¹³ we note that the Final Judgment and the accompanying explanatory text of the Competitive Impact Statement (CIS) address many of our concerns about the potential for discrimination and anticompetitive abuse of foreign market power by monopoly foreign carriers.¹⁴ Indeed, much of the Final Judgment's underlying rationale, as set forth in the CIS, echoes this Commission's policy goals, current competitive safeguards, and new conditions being imposed in this Order. As the Commission recognized nearly thirty years ago, however, "the standards governing [the Justice Department] and the action of the Commission are significantly different. The Antitrust Division is charged with the enforcement of the antitrust laws . . . , while the Commission is charged with effectuating the policies of the Communications Act."¹⁵ Our responsibilities under the Communications Act are broader than those of the antitrust enforce-

⁷ See "Atlas-Phoenix: Clearance Possible by Mid-1996," Press Release By the European Commission (Oct. 18, 1995).

⁸ Letter from John R. Hoffman, Sprint, to Scott Blake Harris, Chief, International Bureau (filed Oct. 27, 1995). This notice has since been published by the European Commission. See Notice pursuant to Article (19)(3) of Council Regulation No. 17 and Article 3 of Protocol 21 of the European Economic Area Agreement concerning a request for negative clearance or an exemption pursuant to Article 85 (3) of the EC Treaty and Article 53(3) of the EEA Treaty, Case IV/35.617-Phoenix, 95/C 337/03 (Dec. 15, 1995).

⁹ *U.S. v. Sprint Corporation and Joint Venture Company*, Civil Action No. 95-1304 (D.D.C. filed July 13, 1995); *U.S. v. Sprint Corporation and Joint Venture Co.; Proposed Final Judgment and Competitive Impact Statement*, 60 Fed. Reg. 44049 (1995) (Proposed Final Judgment and Competitive Impact Statement). For further discussion, see *infra* ¶ 101.

¹⁰ See *U.S. v. MCI Communications Corp. and BT Forty-Eight Co. (NEWCO)*, Case No. 1:94 CV01317 (D.D.C. filed June 15, 1994).

¹¹ Phase II provides, among other things, that Sprint and the Joint Venture shall not: (1) provide service in the United States that requires use of FT or DT services or facilities unless certain information (e.g., prices and terms of interconnection) is reported; (2) receive from FT or DT any non-public proprietary information about other carriers; and (3) offer services between the United States and France and Germany unless at least one other U.S. carrier is authorized or licensed to provide such services. See Proposed Final Judgment, 60 Fed. Reg. at 44051-53.

¹² For example, Sprint and the Joint Venture may not: (1) own an interest in any FT or DT monopoly facilities or public data networks; (2) sell FT or DT monopoly services unless other U.S. carriers can obtain them directly from FT or DT; (3) accept FT or DT services on a discriminatory basis; (4) benefit from discounts offered by FT or DT conditioned upon selection of Sprint as the U.S. carrier; (5) accept correspondent traffic from FT or DT except consistent with this Commission's proportionate return policies; (6) receive subsidies from FT or DT monopoly services; or (7) provide FT or DT data services in the United States unless FT and DT continue to offer a standardized interface to other carriers. See Proposed Final Judgment, 60 Fed. Reg. at 44053-55.

¹³ *MCI Communications, Inc./British Telecommunications, Plc.*, 9 FCC Red 3960 (1994) (MCI/BT).

¹⁴ In the *Foreign Carrier Entry* proceeding, we defined the term "foreign market power" as the ability to act anticompetitively against unaffiliated U.S. carriers through the control of bottleneck services or facilities on the foreign end. See *Foreign Carrier Entry Order* at ¶ 116.

¹⁵ *ABC Cos. Inc.*, 7 F.C.C.2d 245, 249 (1966); *U.S. v. FCC*, 652 F.2d 72, 88 (citations omitted); accord, *Town of Concord v. Boston Edison Co.*, 915 F.2d 17, 22 (1st Cir. 1990), cert. denied, 499 U.S. 391 (1991); *U.S. v. AT&T*, 498 F. Supp. 353, 364 (D.D.C. 1980); see also *Northeast Utilities Service Co. v. FERC*, 933 F.2d 937, 947-48 (1st Cir. 1993).

ment agencies, for we are "entrusted with the responsibility to determine when and to what extent the public interest would be served by competition in the industry."¹⁶

III. COMMENTS

15. We placed Sprint's petition on public notice.¹⁷ AT&T Corp. (AT&T), ACC Global Corp. (ACC), and MFS International, Inc. (MFSI) filed oppositions. BT North America Inc. (BTNA) and MCI Telecommunications (MCI) filed comments which generally oppose the petition. AirTouch Communications (AirTouch) filed comments in support of Sprint's petition. ACC, AT&T, BTNA and Sprint filed reply comments. C. Fred Bergsten, the German Association of Private Telecommunications Operators (APTO), International Brotherhood of Electrical Workers (IBEW), and the Information Technology Industry Council (ITI) filed *ex parte* letters.

16. We also placed the final agreements and related documents on public notice.¹⁸ AT&T, Esprit U.K. (Esprit) and MCI filed oppositions. BTNA, Communications Workers of America/IBEW (CWA/IBEW) and MFSI filed comments. ACC, AT&T, DT, Esprit, FT, and Sprint filed reply comments. In addition, the French and German Governments filed *ex parte* letters. ACC, AT&T, BTNA, the U.K.'s Office of Telecommunications (OFTEL), U.S. Senator Bob Dole, and WorldCom, Inc. (WorldCom) also filed *ex parte* submissions.

17. Only AT&T argues that the terms and conditions of the Memorandum of Understanding (subsequently incorporated in the final agreements of the parties, including the Joint Venture and Investment Agreements) results in a transfer of control of Sprint to FT and DT under Section 310(d) of the Act.¹⁹ Generally, the commenters maintain that the proposed transaction raises concerns about potential discrimination (e.g., leveraging of foreign market power) and asymmetrical market access in France and Germany, and the potential for exclusive dealing in enhanced and basic services through the Joint Venture.

18. AT&T, BTNA and CWA/IBEW maintain that the transaction is not in the public interest under Section 310(b)(4) until France and Germany offer effective market access to U.S. carriers.²⁰ ACC states that the Commission should not grant Sprint's petition until, among other things, France and Germany permit the resale of international private lines for the provision of public switched services. Esprit opposes approval of Sprint's petition before

switched voice telephony competition is introduced in France and Germany, and independent regulatory bodies are established that can and will effectively enforce regulations to protect against anticompetitive conduct.²¹ MFSI states that it does not oppose ultimate approval of the transaction if adequate safeguards are in place and competition is sufficiently developed in France and Germany.²²

19. OFTEL expresses concern about the lack of independent regulatory authorities in France and Germany to ensure that the alliance among Sprint, FT and DT does not result in discriminatory behavior against other market participants.²³ WorldCom states that developments in France and Germany require the imposition of certain conditions to safeguard against discrimination and unreasonable practices by FT and DT.²⁴ AT&T adds that, unlike the equity investment by FT and DT in Sprint, the Joint Venture should be approved by the Commission with appropriate conditions. These conditions include certain operating and disclosure requirements, in addition to those imposed in the MCI/BT proceeding, together with the requirement that FT and DT set cost-based accounting rates with U.S. carriers.²⁵

IV. DISCUSSION

A. Section 310(d) Transfer of Control

20. Sprint seeks a declaratory ruling that the proposed investments will not result in a transfer of control of Sprint's licenses to FT and DT under Section 310(d) of the Act.²⁶ According to Commission precedent, whether an entity holding a minority stock interest controls a corporation primarily depends on whether the minority shareholder has the power to "dominate" the management of corporate affairs.²⁷ A minority shareholder does not control a corporation unless it exercises influence to a degree that "determines" the company's policies and operations, or "dominates" the company's corporate affairs. Thus, the facts of a particular situation (e.g., who has the power to direct the company's operations, who determines the make-up of the Board of Directors), are relevant to determining who controls the company.²⁸

21. Pursuant to the final agreements, FT and DT will each acquire up to a 10 percent equity interest in Sprint by purchasing a new class of Sprint common stock (Class A). The total purchase will yield approximately 86.2 million

¹⁶ *U.S. v. FCC*, 652 F.2d at 88.

¹⁷ Report No. I-7054 (Oct. 19, 1994).

¹⁸ The August 4, 1995 public notice requested comment on "developments since the original pleading cycle . . . and/or issues which arise from differences between the parties' memorandum of understanding and the final agreements and documents." Report No. I-8084 (Aug. 4, 1995).

¹⁹ AT&T Opposition at 18-23 (filed Nov. 18, 1994).

²⁰ AT&T Supplemental Opposition at 17-30 (filed Sep. 1, 1995); BTNA Supplemental Comments at 8-12 (filed Sep. 1, 1995); CWA/IBEW Comments at 6-8 (filed August 30, 1995).

²¹ Esprit Opposition at 4-7 (filed Sep. 1, 1995).

²² MFSI Comments at 6-7 (filed Sep. 1, 1995).

²³ Letter from Don Cruickshank, Director General, OFTEL, to Reed E. Hundt, Chairman, Federal Communications Commission (filed Dec. 2, 1995).

²⁴ Letter from Robert S. Koppel, Vice President, International

Regulatory Affairs, WorldCom, to William F. Caton, Acting Secretary, Federal Communications Commission (filed Nov. 28, 1995).

²⁵ AT&T Supplemental Opposition at 31-38.

²⁶ Section 310(d) provides, in pertinent part, that "[n]o . . . station license, or any rights thereunder, shall be transferred, assigned or disposed of in any manner, . . . or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby." 47 U.S.C. § 310(d).

²⁷ *Benjamin L. Dubb*, 16 F.C.C. 274, 289 (1951).

²⁸ *Metromedia, Inc.*, 98 F.C.C.2d 299, 306 (1984).

shares of Sprint Class A common stock. FT and DT each will own approximately 10 percent of the resulting total of Sprint common stock.

22. Sprint is now controlled by its public shareholders through a 15-member Board of Directors. Under the proposed transaction, FT and DT would be able to designate up to three Board members.²⁹ Thus, a 20 percent equity interest would translate into 20 percent representation on the Board.³⁰ A majority of the 15 directors must satisfy certain specified criteria as independent directors.³¹ Because Sprint's public shareholders will maintain the majority voting interest in Sprint and will elect 80 percent of the Board (the Sprint and Independent Directors), FT's and DT's directors will remain a minority. Sprint will continue to conduct business by a simple majority vote on all matters considered by the Board.

23. In our *MCI/BT Order*, we found that the acquisition of a 20 percent minority interest, and the accompanying proportionate representation on the Board of Directors, did not itself constitute a transfer of control.³² We similarly find that FT's and DT's acquisition of a 20 percent aggregate interest in Sprint and up to 20 percent representation on the Sprint Board does not itself constitute a transfer of control.

24. We also must determine whether the voting and consent rights in the parties' agreements would give FT and DT the right to control Sprint. In addition to its voting rights, FT's and DT's Class A stock incorporates certain consent rights, including the right to prohibit certain corporate actions by Sprint without their consent. These actions include any transaction that would result in the issuance of 30 percent or more shares in Sprint.³³ Other transactions over which FT and DT have consent rights include those that would: (1) adversely affect the rights afforded DT and FT by their ownership of Class A stock; (2) result in mergers or other business combinations in which Sprint would not be the surviving corporation; (3) result in the sale of Sprint's long distance assets, the fair market value of which is in excess of certain threshold percentages; or (4) result in the acquisition of a 10 percent or larger holding in Sprint by a major competitor of DT or FT.³⁴

25. In the *MCI/BT Order*, we found similar consent rights to be typical protections against extraordinary corporate actions that could disadvantage a minority stockholder's interest in the corporation.³⁵ We concluded that such restrictions simply constituted a minority shareholder's protection and did not rise to the level of transfer of control. In addition, the Investment Agreement safeguards Sprint's control over the use of the proceeds from the investment by giving its Board the ultimate au-

thority to determine how Sprint will use the proceeds.³⁶ In the absence of any contrary evidence, we similarly find the negative rights accorded FT and DT are mere protections of FT's and DT's investments as minority shareholders.

26. AT&T also argues that Sprint will transfer operational control of its domestic operations since Sprint must conform these operations to the strategies and operations of the Global Venture Board,³⁷ in which FT and DT will have two representatives to Sprint's one.³⁸ We disagree that such conformance indicates a transfer of operational control. AT&T incorrectly bases its argument on the premise that Sprint may always be outvoted by FT and DT on the Global Venture Board.³⁹ To the contrary, no action may be taken by the Global Venture Board without the affirmative vote of all of the parties.⁴⁰ Thus, Sprint, FT and DT each have veto power and will not be controlled by the other parties on the Board, whether in the conduct of their respective domestic operations or otherwise.

27. Moreover, all of the parties, including FT and DT, have made the same commitment to conform their domestic operations to the Global Venture Board's policies. Given that each party is obligated to provide Joint Venture services in its home country, it is not surprising that the parties would deem a conformance commitment from each party necessary to ensure the delivery of these services according to uniform standards. Again, notwithstanding these commitments, Sprint retains negative control to defeat any Global Venture Board proposition that is contrary to Sprint's interest.

28. Similarly, AT&T states that Sprint is transferring operational control to FT and DT because it must submit its business plans (for partnership services to the Global Venture Board.)⁴¹ We do not believe that this requirement constitutes a transfer of control. Sprint and FT and DT are required to prepare and submit to the Global Venture Board only business plans relating to Joint Venture activities. The business plans for Sprint's many other activities will not be submitted.⁴² We find no reason to disagree with Sprint's argument that this provision is commercially necessary to ensure that each party meets uniform service standards and does not take action inconsistent with the parties' agreements.⁴³ We thus conclude that this requirement, which extends to each party and permits monitoring of the performance of a contractual partner, does not amount to a transfer of control, particularly given Sprint's negative consent rights on the Global Venture Board.

29. AT&T also asserts that Sprint has given up operational control of its international facilities. AT&T argues that, because FT and DT own 50 percent of the Global Backbone Network, and Sprint is granting the Global Backbone Network use of its international facilities for the

²⁹ Certificate of Amendment of Sprint's Articles of Incorporation at 3-5.

³⁰ Sprint Petition at 12-13.

³¹ Generally, a director is considered "independent" if unaffiliated with either Sprint's management or with FT or DT. See Certificate of Amendment of Sprint's Articles of Incorporation at 89-90.

³² *MCI/BT*, 9 FCC Rcd at 3962-63.

³³ Certificate of Amendment of Sprint Articles of Incorporation at 43.

³⁴ *Id.* at 38-44.

³⁵ See *MCI/BT*, 9 FCC Rcd at 3962-63.

³⁶ See Investment Agreement at 91; MOU at Annex A.

³⁷ The Global Venture Board will control all services specified in the Joint Venture Agreement. Joint Venture Agreement at 33-39.

³⁸ Sprint Petition at 19.

³⁹ See Sprint Reply at 15 (filed Dec. 5, 1994).

⁴⁰ Joint Venture Agreement at 54.

⁴¹ AT&T Opposition at 18-19.

⁴² See Sprint Reply at 17-18.

⁴³ See *id.* at 17 (noting that each party has the sole responsibility to provide partnership services in its home country).

provision of Sprint's international Joint Venture services, Sprint has conveyed 50 percent of the control of its facilities to FT and DT.⁴⁴ We disagree. The use of facilities does not necessarily equate to control of those facilities. Sprint can maintain control of its international facilities while allowing the Global Backbone Network or the Regional Operating Groups to use those facilities. Allowing joint control over the provision of Joint Venture services does not grant FT and DT the power to "determine the company's operations" or "dominate its corporate affairs." Sprint only has permitted FT and DT a measure of influence in providing specific services. Based on these facts, Sprint's grant of influence to FT and DT does not rise to the level of a transfer of control.

30. We conclude that the agreements between Sprint and FT and DT do not grant FT and DT the right to determine the corporate policy that Sprint will pursue, or indicate that FT and DT will dominate the management of Sprint's corporate affairs. Consequently, we find that the transaction before us does not constitute a transfer of control and, therefore, does not require Commission approval under Section 310(d) prior to consummation of the transaction.⁴⁵ Commission approval pursuant to the Cable Landing License Act also is not required by the specific terms of Sprint's cable landing licenses.⁴⁶ In addition, prior authorization under Section 214 of the Act is not required to the extent Sprint alone -- and not the Joint Venture -- will be providing basic Joint Venture services in the United States.⁴⁷ If the Joint Venture seeks to provide basic services to U.S. customers, the Joint Venture must then seek prior Section 214 authorization.

B. Public Interest Analysis

1. Applicability of the Foreign Carrier Entry Decision

a. Comments

31. In their supplemental opposition and comments, AT&T and BTNA urge us to apply the effective market access standard proposed in the Notice of Proposed Rulemaking (NPRM) in the *Foreign Carrier Entry* proceeding to Sprint's petition for purposes of determining whether the proposed transaction is in the public interest.⁴⁸ Sprint opposes this approach. First, Sprint states that the NPRM is a tentative proposal that has been widely criticized as the improper means to achieve the Commission's policy goals. Second, Sprint asserts that it would be unfair to apply an effective market access approach because Sprint's petition was pending before the Commission initiated the *Foreign Carrier Entry* proceeding.⁴⁹

b. Discussion

32. On November 28, 1995, after the parties filed their supplemental pleadings, we adopted final rules in the *Foreign Carrier Entry* proceeding affecting our public interest analyses under Sections 214 and 310(b)(4).⁵⁰ We concluded in that proceeding that the public interest in an effectively competitive market for U.S. telecommunications services requires us to evaluate, as an important part of our overall public interest analysis under Section 214, whether effective competitive opportunities exist for U.S. carriers in the destination markets of foreign carriers seeking to enter the U.S. international services market through an affiliation with a U.S. carrier.⁵¹ We similarly must examine, in considering whether to permit foreign investment in a U.S. radio licensee in excess of the benchmarks contained in Section 310(b)(4), whether relevant foreign home markets offer effective competitive opportunities to U.S. entities.⁵² Consistent with our broad authority to determine the public interest under that section, the goals of these new rules are (1) to promote competition in the U.S. telecommunications market; (2) to prevent anticompetitive conduct in the provision of international services; and (3) to encourage foreign governments to open their communications markets to competition.

33. Sprint has requested a declaratory ruling from this Commission that the investments by FT and DT and the Joint Venture are consistent with the public interest. Because Sprint is a carrier authorized to provide telecommunications services and facilities under Sections 214 and 309 of the Act, we are required to assess the public interest merits of the investments and the Joint Venture under Sections 214 and 310(b)(4). If we were to find that the investments and the Joint Venture were inconsistent with the public interest, and Sprint were to proceed with the transaction, we could designate for hearing the issue whether the public interest would continue to be served by Sprint's holding of Title II authorizations and Title III licenses.

34. It is well established that the Commission may apply new rules and policies to pending matters.⁵³ We disagree with Sprint that it would be unfair to apply our new analysis to Sprint's petition. It was not until late July 1995 that Sprint filed the definitive agreements of the parties with the Commission. At that time, our *Foreign Carrier Entry* rulemaking proceeding had been underway for five months and extensive comments and reply comments had been filed. We see no reason why our newly adopted rules and policies should not apply here.⁵⁴ Accordingly, we will apply our Foreign Carrier Entry decision to the Sprint

⁴⁴ AT&T Opposition at 20. As noted above, Global Backbone Network functions will be performed by the two Regional Operating Groups, ROE Group and ROW Group. See Joint Venture Agreement at 39-53.

⁴⁵ See *MCI/BT*, 9 FCC Rcd at 3963 n.34.

⁴⁶ See An Act Relating to the Landing and Operation of Submarine Cables in the United States, 47 U.S.C. §§ 34-39 (1994) (Cable Landing License Act); see e.g., *Private Transatlantic Telecommunications System, Inc.*, 4 FCC Rcd 5077 (1989) (approving transfer of control of submarine cable licensee to US Sprint Communications Co., Inc.); see also *Tel-Optik, Limited*, Mimeo 4618, at ¶ 6 (prohibiting the transfer of control of a

submarine cable licensee unless prior Commission approval is obtained) (1989).

⁴⁷ 47 U.S.C. § 214 (1994).

⁴⁸ AT&T Supplemental Opposition at 8-16; BTNA Supplemental Opposition at 8-12.

⁴⁹ Sprint Supplemental Reply at 15-20 (filed Sep. 15, 1995).

⁵⁰ See footnote 1, supra.

⁵¹ See *Foreign Carrier Entry Order* at ¶¶ 27-39.

⁵² See id. at ¶¶ 179-96.

⁵³ See, e.g., *Storer Broadcasting v. United States*, 351 U.S. 192 (1956); *Hispanic Information and Telecommunications Network v. FCC*, 865 F.2d 1289, 1294-95 (D.C. Cir. 1989).

⁵⁴ In its Opposition, which was filed before the *Foreign Carrier Entry NPRM* was adopted, AT&T urged us to adopt a "com-

petition and adopt this Order effective the day after all rules, regulations and policies adopted in the Foreign Carrier Entry Order become effective.⁵⁵

2. Effective Competitive Opportunities Analysis Under Section 214

a. Comments

35. AT&T, BTNA, CWA/IBEW, Esprit, MCI, and MFSI argue that France and Germany do not afford market access to U.S. carriers because the provision of domestic and international public switched voice telephony services and telecommunications facilities is reserved exclusively for FT in France and DT in Germany.⁵⁶ AT&T and BTNA also state that the French and German telecommunications regulatory regimes lack other important characteristics, including competitive safeguards and independent regulatory authorities.⁵⁷

b. Discussion

36. Sprint, through its subsidiaries, holds many Section 214 authorizations for the provision of U.S. international facilities-based services between the United States and France and the United States and Germany. In analyzing whether the proposed transaction is in the public interest, the *Foreign Carrier Entry Order* requires us to determine whether effective competitive opportunities exist for U.S. carriers to provide international services in France and Germany.

37. We first must determine whether the proposed foreign carrier investments rise to the level of an "affiliation" with a U.S. carrier for purposes of determining whether the effective competitive opportunities analysis under Section 214 applies in this case. The affiliation threshold adopted in the *Foreign Carrier Entry Order* is an equity interest greater than 25 percent or a controlling interest at any level. In addition, we will aggregate multiple foreign carrier interests when a contractual relation, such as a joint venture or marketing alliance, between two or more foreign carrier investors is involved, which affects the provision or marketing of basic international telecommunications services in the United States.⁵⁸ Foreign carrier investment that does not exceed the 25 percent threshold may nonetheless be subject to the effective com-

petitive opportunities analysis when the investment presents a significant potential impact on competition in the U.S. basic international telecommunications services market.⁵⁹

38. The proposed interests of FT and DT (10 percent each) in Sprint must be aggregated because the carriers also have joined forces through the Joint Venture. The investments represent an important part of a global alliance strategy among Sprint, FT, and DT, affecting the provision of basic telecommunications services. The proposed investments by FT and DT in Sprint, even when aggregated to equal 20 percent, do not exceed the 25 percent affiliation threshold for application of the effective competitive opportunities analysis.

39. Review of this transaction under our effective competitive opportunities analysis is warranted and necessary, however, because of the size of the carriers involved and the potential impact on competition in the U.S. basic international services market. FT and DT are two of the largest telecommunications carriers in Europe; traffic volume between the United States and France and Germany together accounts for more volume than to any single country other than Canada and Mexico.⁶⁰ International Message Telephone Service (IMTS) minutes between the United States and Germany are fourth highest among U.S. correspondent countries; IMTS minutes between the United States and France are the thirteenth highest.⁶¹ Few countries originate and terminate more calls to and from the United States than France and Germany, which are key locations for multinational corporations.⁶² In addition, FT and DT propose to invest in the third largest U.S. domestic interexchange and international services carrier, with approximately 10 percent domestic and international services market share, not a fledgling start-up.⁶³ Given the size of the parties involved and the strategic investment and joint venture alliance they have planned, we find that the transaction, although falling below the threshold for automatic application, necessitates an effective competitive opportunities analysis under the newly adopted rules and policies.

40. We turn next to the question of which foreign markets we must analyze. Under Section 214, we apply our analysis only to those destination markets where the foreign carrier can exercise market power. As we mentioned previously, "market power" is defined in the *Foreign Car-*

parable market" approach in this proceeding. AT&T Opposition at 24-46. We declined to adopt this approach in the Foreign Carrier Entry proceeding; for the same reasons, we will not apply this approach in this proceeding. See Foreign Carrier Entry NPRM, 10 FCC Rcd 4844, 4849 (1995).

⁵⁵ DT argues that the Commission's public interest calculus "cannot include consideration of effective market access because Sections 214 and 310 do not mention this factor. . . ." DT Reply Comments at 5-6 (filed Sep. 15, 1995). DT raised the same argument in the *Foreign Carrier Entry* proceeding. We concluded in our Order in that proceeding, after full consideration of the issues raised by DT and other parties, that market access considerations fall within our mandate under Sections 214 and 310. See *Foreign Carrier Entry Order* at ¶¶ 223-38; see also AT&T *Ex Parte* Submission (filed Nov. 21, 1995). We thus do not reexamine these issues here.

⁵⁶ AT&T Supplemental Opposition, Appendix; BTNA Supplemental Comments at 8-29; CWA/IBEW Comments at 11-15; Esprit Opposition at 4-6; MCI Opposition at 8-15 (filed Sep. 1,

1995); MFSI Comments at 5-7.

⁵⁷ AT&T Supplemental Opposition, Appendix; BTNA Supplemental Comments at 20-24.

⁵⁸ See *Foreign Carrier Entry Order* at ¶ 92.

⁵⁹ See *id.* at ¶ 89.

⁶⁰ In 1994, France and Germany combined accounted for approximately 14 percent of total international billed revenues of all U.S. carriers for IMTS. See Federal Communications Commission, "Preliminary 1994 Section 43.61 International Telecommunications Data," (Com. Car. Bur., Oct. 1995) (Preliminary 1994 International Telecommunications Data).

⁶¹ See *id.*

⁶² The United States, Japan, the United Kingdom, Germany, and France are the top five countries in terms of locations for Fortune 500 companies. The United States accounts for 30 percent of the world total; Germany, 8 percent; and France, 6 percent. In addition, the United States, Germany and France account for 41 percent of international voice traffic: the United States, 25 percent; Germany, 10 percent; and France, 6 percent.

⁶³ See generally *infra* at ¶¶ 78-83.

rier Entry Order as the ability to act anticompetitively against unaffiliated U.S. carriers through the control of bottleneck services or facilities on the foreign end.⁶⁴ FT and DT are the incumbent, monopoly telecommunications facilities providers in France and Germany, respectively. Thus, they control bottleneck facilities in those markets and have market power. There is no record evidence in this proceeding regarding whether FT or DT has market power in other foreign markets. Accordingly, the relevant destination markets for our analysis in this decision are France and Germany. We also require Sprint, within 30 days of the effective date of this Order, to notify the Commission of any foreign carrier that controls, is controlled by, or is under common control with FT or DT. We will apply the effective competitive opportunities analysis to these markets unless Sprint demonstrates that these foreign carriers do not have market power on these routes.⁶⁵

41. In applying our effective competitive opportunities analysis under Section 214, we first examine the legal, or *de jure*, ability of U.S. carriers to enter the foreign destination markets and provide international facilities-based services. If U.S. carriers are prohibited *de jure* from competing in the provision of any international facilities-based IMTS service, then there are not effective competitive opportunities on that route. If the foreign carrier's destination market has no explicit legal restrictions on entry, we then will examine the other factors of the effective competitive opportunities analysis to determine whether there are *de facto* effective competitive opportunities. This analysis focuses on the actual conditions of entry, *i.e.*, terms and conditions of interconnection, competitive safeguards, and the regulatory framework.⁶⁶

42. An effective competitive opportunities finding can be made if such opportunities are present now or if it is reasonably certain that they will be available in the near future. Where effective competitive opportunities do not now exist, there will need to be clear and concrete commitments that effective competitive opportunities will be available in the near future in order for us to reach a favorable determination. Finally, we note that effective competitive opportunities are only a part of a larger public interest analysis; we must also consider whether other public interest factors mandate grant or denial of an application.

43. To meet the standard of *de jure* market entry, France and Germany would be required to permit a U.S. carrier to obtain a controlling interest in a French- or German-based facilities carrier able to originate and terminate IMTS traffic to and from the United States. In France, the provi-

sion of IMTS facilities-based service is a legal monopoly of France Telecom. The same is true in Germany, where DT holds the legal monopoly over the provision of international facilities-based service. U.S. carriers currently are prohibited as a matter of law from entering this market in both France and Germany.

44. We note that both countries have publicly committed to implementing international facilities and services competition by January 1, 1998.⁶⁷ The French and German Governments both have proposed plans for enacting national legislation in this regard. We are very encouraged by these developments, as we discuss more fully below. We view their public statements to be important indications of these countries' intent to liberalize their markets. Nonetheless, we believe that implementation of international facilities competition in 1998, over two years away, is too distant in time to be considered competition in the *near future* under our effective competitive opportunities analysis. Moreover, the specific legal and regulatory framework for the competitive markets is not yet fully determined, leaving us unable to evaluate whether *de facto* competitive opportunities will exist after the legal barriers are removed.

45. Given that *de jure* international facilities competition for IMTS is absent in France and Germany, we find that effective competitive opportunities for U.S. carriers to operate as international facilities-based carriers currently do not exist in those countries.

46. Although Sprint holds resale authorizations to serve France and Germany which may be subject to an effective competitive opportunities analysis, we see no need to conduct that analysis here given our finding that France and Germany do not offer effective competitive opportunities to provide international facilities-based services, and our ultimate conclusion in Section V below that the public interest weighs in favor of granting Sprint's petition, subject to certain conditions.

3. Effective Competitive Opportunities Analysis Under Section 310(b)(4)

47. The presence of aggregated alien ownership in excess of 25 percent in Sprint, the parent corporation of Title III common carrier radio licensees, triggers the applicability of Section 310(b)(4)'s statutory benchmark, which requires that we determine whether the "public interest will be served by the refusal or revocation of such license."⁶⁸ FT and DT will each acquire a 10 percent ownership interest in Sprint, a U.S. corporation that controls Title III licensees.⁶⁹ Based upon a Sprint ownership survey, Sprint main-

⁶⁴ See *supra* footnote 14; *Foreign Carrier Entry Order* at ¶ 116; see also *Eastman Kodak Co. v. Image Technical Services, Inc.*, 504 U.S. 451, 464 (1992) ("Market power is the power to force a purchaser to do something that he would not do in a competitive market It has been defined as the ability of a single seller to raise price and restrict output.") (quotation marks and citations omitted).

⁶⁵ We reserve the right to impose any conditions enumerated in this decision, or other conditions, on Sprint's provision of service on those routes.

⁶⁶ See *Foreign Carrier Entry Order* at ¶¶ 42-55.

⁶⁷ See *infra* ¶¶ -76.

⁶⁸ Section 310(b)(4) states, in pertinent part, that no "common carrier . . . license shall be granted to or held by . . . any corporation directly or indirectly controlled by any other corporation of which any officer or more than one-fourth of the

directors are aliens, or of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license." 47 U.S.C. § 310(b)(4) (emphasis added).

⁶⁹ This investment percentage may not increase for 15 years from the date of FT's and DT's initial investment in Sprint. These restrictions cease to apply, however, in the event that another party or parties acquires more than a 20 percent interest in Sprint. In that case, FT and DT, subject to Section 310(b)(4), may acquire sufficient shares to maintain their interests equal to the interest of the other party or parties. See *Standstill Agreement* at 9-10.

tains that FT's and DT's proposed acquisition of 10 percent of the shares each in Sprint will result in 25.17 percent alien ownership of Sprint's capital stock (plus or minus 1.74 percent at the 97.5 percent confidence level).⁷⁰ Due to likely fluctuations in alien ownership from the publicly-traded nature of the company, Sprint believes the alien ownership may exceed the 25 percent statutory benchmark at any one time by up to three percent. Therefore, Sprint requests the Commission to find that up to 28 percent alien ownership in Sprint is not inconsistent with the public interest.

48. Through a public interest analysis, the Commission decides whether to authorize or revoke alien ownership or participation in excess of the Section 310(b)(4) statutory benchmark on a case-by-case basis.⁷¹ We will first consider the impact of our newly adopted effective competitive opportunities analysis.⁷² We will then consider the extent of alien participation in Sprint's parent corporation in assessing the additional public interest factors relevant to Section 310(b)(4) determinations.

49. In Section IV.B.2, we determined that effective competitive opportunities do not exist in France or Germany under our Section 214 analysis. Because we reach the ultimate conclusion (described in Section V below) that, on balance, the public interest weighs in favor of granting Sprint's petition subject to certain conditions, we see no reason to conduct an effective competitive opportunities analysis under Section 310(b)(4).⁷³

50. We note, however, that France and Germany have introduced a degree of competition in their wireless markets, unlike in their wireline facilities markets we examined above. This is true with respect to the types of Title III licenses in which FT and DT seek to invest through Sprint. Through subsidiaries and affiliates, Sprint holds cellular,⁷⁴ paging, satellite, and common carrier microwave radio licenses. In addition, Sprint owns interests in PCS

licensees through its affiliate, STV. STV owns 40 percent of WirelessCo, a major PCS licensee, and is the largest shareholder. It would appear that the French and German paging⁷⁵ and satellite⁷⁶ markets generally are open at least to the level of ownership collectively sought by FT and DT in Sprint: 20 percent. By contrast, there appears to be less competition in the French and German cellular⁷⁷ and PCS⁷⁸ markets: the number of licenses is limited to one or two in each market. Finally, we note that the provision of common carrier microwave radio links is not open to U.S. investment.⁷⁹ We address in Section IV.B.5.c, *infra*, whether the proposed alien ownership poses concerns under the other public interest factors we consider in our Section 310(b)(4) public interest analysis.

4. Competitive Concerns

51. We concluded that effective competitive opportunities are not currently available to U.S. carriers under Section 214 for the provision of international telecommunications facilities or services in France and Germany because of *de jure* monopolies in both countries. Before our effective competitive opportunities analysis was adopted, the majority of commenters in this proceeding expressed concerns about the market power conferred by these monopolies in France and Germany. These parties are troubled by the effect that the Sprint/FT/DT alliance may have on competition in several telecommunications markets as a result of the potential for discrimination or other anticompetitive conduct. The same kinds of concerns also were raised in the *MCI/BT* proceeding, and we agree that these concerns are important public interest considerations under Sections 4(i), 214, 310(b)(4) and 316⁸⁰ of the

⁷⁰ Sprint Petition at 24-25.

⁷¹ See *PrimeMedia Broadcasting, Inc.*, 3 FCC Rcd 4293, 4295 (1988).

⁷² See *Foreign Carrier Entry Order* at ¶¶ 179-219.

⁷³ The commenters in this proceeding do not specifically address whether competitive opportunities exist in the French and German wireless markets. One commenter, AirTouch, mentions its experiences in these markets, and these comments are included below.

⁷⁴ As we noted earlier, Sprint currently owns cellular assets, but has announced its intention to divest these holdings. See *supra* footnote 5.

⁷⁵ There is limited competition in the French paging market. In September 1993, Infomobile, a consortium in which AirTouch holds an 18.5 percent interest, won one of three nationwide paging network licenses in France. In Germany, there are three providers of nationwide paging services. The BMPT, however, has issued several dozen licenses for trunked radio networks.

⁷⁶ The French satellite services market generally is open to competition, with the notable exception of the transmission of public switched voice telephony. More than 50 satellite communications networks have been authorized. U.S. entities, including Scientific Atlanta, MCI and IBM, are among the licensees. Like France, Germany permits the provision of satellite services except for the transmission of public switched voice services. According to DT, nearly 50 satellite communications licenses have been awarded, 12 to U.S. entities. See DT Reply Comments at 8 n.3.

⁷⁷ In France, two entities are licensed to provide cellular services: a France Telecom affiliate, France Telecom Mobiles

Radiotelephone (FTMR), and Societe Francaise de Radiotelephone (SFR). As a subsidiary of FT, FTMR is 100 percent government-owned. Investment by non-E.U. entities in holders of French wireless telecommunications radio services licenses, including cellular licenses, is limited to 20 percent. This limit may be waived, particularly when the foreign entities' home market offers reciprocal treatment of French entities. AirTouch asserts that it has experienced discriminatory ownership policies in France. AirTouch Comments at 6. In Germany, cellular services are subject to limited competition. Two cellular providers are licensed by the BMPT to provide cellular services. These providers are a DT affiliate, DeTeMobil, and Mannesmann Mobilfunk GmbH (Mannesmann Mobilfunk). DeTeMobil is 100 percent government-owned; Mannesmann Mobilfunk is 34.5 percent owned by AirTouch, a U.S. entity. AirTouch states its belief that the German mobile services market is open to U.S. opportunity and ownership. *Id.* There are no restrictions on foreign ownership of wireless licenses in Germany.

⁷⁸ The French government has licensed one provider, a consortium led by Bouygues Telecom and including U S West, to provide PCS-type services. Similarly, the German Government has licensed the E-plus consortium, which is 21 percent owned by BellSouth, to provide similar services. E-Plus is considered a direct competitor of the German cellular service providers.

⁷⁹ In France, the provision of common carrier microwave radio links is reserved to FT. Similarly, in Germany, the provision of common carrier microwave radio links is reserved to DT.

⁸⁰ See 47 U.S.C. § 316 (1994) (Commission authority to modify construction permits or licenses).

Act, and other relevant statutory provisions,⁸¹ and possibly implicate our enforcement responsibilities under the Clayton Act.⁸² We thus address these concerns in this proceeding, independent of our effective competitive opportunities analysis.

a. Comments

52. A number of parties raise specific competitive concerns about FT's and DT's proposed investment in Sprint and the formation of the Joint Venture. They argue that FT's and DT's substantial equity investment in Sprint, and their interests in the Joint Venture, create financial incentives for FT and DT to use their monopoly positions in the French and German telecommunications markets to discriminate in favor of Sprint over competing U.S. international carriers on the U.S.-France and U.S.-Germany routes, and in providing transiting services to Eastern and Central Europe.⁸³ ACC, AT&T, BTNA, and MCI argue that FT, DT, and Sprint will be able to use FT's and DT's absolute bottleneck of access facilities in their home countries to the unfair advantage of Sprint and the Joint Venture. Furthermore, they argue, FT, DT and Sprint have the incentive and ability to enter into exclusive arrangements directing all international switched and private line traffic to each other. AT&T states that Sprint will have 50 percent control over FT's and DT's correspondent relationships with U.S. carriers (through its ownership in Joint Venture operations), and thus will have the opportunity to discriminate against other U.S. carriers.⁸⁴ OFTEL expresses concern that France and Germany do not have independent regulatory authorities that can ensure that effective competition is in fact implemented.⁸⁵

53. In response to the assertions that FT, DT and Sprint will engage in unlawful discrimination and enter into exclusive arrangements for the provision of international basic telecommunications services, Sprint reaffirms its intent -- and states that FT and DT have reaffirmed their intent -- to continue their correspondent relations with other international carriers.⁸⁶ Moreover, Sprint, FT and DT state they will not impermissibly exclude competitors from the market for regulated basic services or unlawfully discriminate in favor of the other in accounting rates and settlements. In addition, Sprint emphasizes that it will not be involved in carrying the bilateral correspondent traffic of other U.S. carriers.⁸⁷ They also assert that FT and DT are legally required, by national and E.U. regulation, to offer nondiscriminatory access to their networks.⁸⁸ FT and DT

state that the DGPT and the BMPT have demonstrated their independence from FT and DT in the past and will continue to do so.⁸⁹ In addition, Sprint claims that the potential for discrimination is less in this case than in the MCI/BT proceeding because Sprint carries approximately a third as much international traffic as MCI, and the equity investments by FT and DT are only 10 percent each, thus proportionately reducing their incentives to discriminate in favor of Sprint.

54. Finally, in response to AT&T's claims that FT and DT have agreed to impermissibly "steer" customers to the Joint Venture, Sprint claims that it is commercially reasonable and expected that parties to a joint venture will attempt to sell the joint venture's services to unsolicited customers. Sprint also emphasizes that customers are not steered by the Joint Venture to Sprint, but only to the Joint Venture itself.⁹⁰

b. Discussion

55. We share the parties' fundamental concerns about the potential for anticompetitive behavior by FT and DT on the U.S.-France and U.S.-Germany routes. FT and DT are monopoly providers of French and German international facilities-based services, control the local termination points in those countries, and control the national long distance networks to which interconnection is essential for the distribution of international traffic.

56. Before the proposed transaction, FT and DT had no incentive to discriminate in favor of Sprint, the Joint Venture or any of their competitors over others. The proposed transaction, however, will give FT and DT each a substantial financial stake in the success of Sprint and the Joint Venture and will, therefore, give each an incentive to engage in anticompetitive strategies to maximize the return on their investment. This discrimination could take a number of forms, such as: (1) routing calls to Sprint and the Joint Venture in proportions greater than those justified under our proportionate return policy; (2) otherwise manipulating the calculations and settlements payments to wrongfully favor Sprint and the Joint Venture; (3) routing high-profit calls to Sprint and the Joint Venture, and leaving the rest to their competitors; (4) undercharging Sprint and the Joint Venture and/or overcharging their competitors for use of the same essential facilities in France or Germany; (5) leaking to Sprint and the Joint Venture the confidential information that FT or DT receives from Sprint's and the Joint Venture's competitors; (6) giving

⁸¹ See, e.g., *FCC v. RCA Communications, Inc.*, 346 U.S. 86 (1953) (there can be no doubt that competition is a relevant factor in weighing the public interest); *United States v. FCC*, 652 F.2d at 81-82 (competitive considerations are an important element of the public interest standard).

⁸² Under Section 11 of the Clayton Act, we are charged with enforcing, *inter alia*, Section 7 of the Clayton Act. See 15 U.S.C. §§ 18, 21. These provisions empower this Commission to disapprove anticompetitive acquisitions of stock "of common carriers engaged in wire or radio communications or radio transmissions of energy." Section 7 also proscribes the acquisition of the stock of a company by another company "where in any line of commerce in any section of the country" the effect of such acquisition may be "substantially to lessen competition, or to tend to create a monopoly." We have discretion whether to enforce Section 7 of the Clayton Act. *United States v. FCC*, 652 F.2d at 83. Because we find our jurisdiction under the Communications Act to be sufficient to address all the competi-

tive effects of the proposed transaction, we exercise our discretion not to invoke our Clayton Act jurisdiction in this proceeding.

⁸³ See, e.g., AT&T Opposition at 24-42; Letter from C. Fred Bergsten to Reed E. Hundt, Chairman, Federal Communications Commission (filed Jan. 18, 1995); CWA/IBEW Comments at 2; MCI Comments at 7-13.

⁸⁴ AT&T Opposition at 21.

⁸⁵ OFTEL Letter at 2-3.

⁸⁶ Sprint Petition at 30.

⁸⁷ Sprint Reply at 46-49.

⁸⁸ Sprint Petition at 31-35; FT Reply Comments at 28-29; DT Reply Comments at 18-23.

⁸⁹ FT Reply Comments at 22-25; DT Reply Comments at 9-13.

⁹⁰ Sprint Supplemental Reply at 12-13.

Sprint and the Joint Venture advance notice of network changes and other information that Sprint, the Joint Venture and their competitors will need to know; or (7) either as an agent or through an affiliated third party,⁹¹ selling the services of Sprint or the Joint Venture in ways that use FT's and DT's home market power.

57. Absent effective conditions, such strategic behavior could yield Sprint more customers, calls and revenues, and ultimately higher returns, than would otherwise be the case. Sprint would receive these returns simply because of its affiliation with FT and DT and not because of the superior quality, lower prices, or innovativeness of its services. At the same time, the costs of Sprint's rivals would be raised above competitive levels, which would tend to reduce competition in the market as a whole. Less competition would ultimately result in impaired market performance: higher prices, lower quality, and slower innovation compared to what would exist in the absence of such conduct.

58. We reject Sprint's claims that FT and DT have no more leveraging power than BT did in our *MCI/BT* proceeding. Sprint argues that BT retains substantial market power in the United Kingdom and the ability to use this power to favor MCI at the expense of other carriers. Sprint overlooks the fact that, in the United Kingdom, there is *de jure* competition in nearly every market segment. BT faces competition to some extent at all levels. The effect is that, unlike in France and Germany, in the United Kingdom U.S. carriers have a choice of carriers to haul their traffic. There also is an effective regulatory authority that is independent of BT, which employs fair and transparent procedures. U.S. carriers may resort to this authority in the event of anticompetitive conduct by BT. There currently are no such independent regulatory authorities with fair and transparent procedures in France or Germany. Notwithstanding FT's and DT's statements that the DGPT and the BMPT do not favor FT or DT, we share OFTEL's concerns about the current lack of legally independent regulatory authorities in France and Germany to ensure that fair, effective competition emerges in both countries.

59. We also are not persuaded by Sprint's claim that the individual incentives on the part of FT and DT to discriminate in favor of Sprint or the Joint Venture are less than in the *MCI/BT* case because FT and DT are each purchasing only 10 percent of Sprint's equity. The Joint Venture arrangement provides for FT and DT to act in concert, and creates additional incentives beyond their investments in Sprint for FT and DT to favor unfairly Sprint and the Joint Venture. Thus, FT and DT generally have complementary interests regarding their involvement with Sprint.

60. We also do not agree with the arguments of Sprint, FT and DT that national and E.U. regulatory prohibitions on discriminatory conduct by FT and DT are sufficient to protect competition. Such provisions are likely to be inadequate when, as in this case, there is *de jure* 100 percent monopoly market power and an incentive to discriminate, and the carriers remain completely government-owned. Such provisions also cannot address the unfair competitive

advantage that may accrue to Sprint, particularly in the U.S. market for global, seamless services, by virtue of its strategic alliance with FT and DT.⁹²

5. Countervailing Factors

61. While France and Germany do not currently offer effective competitive opportunities to U.S. carriers under Section 214, and FT and DT have both the incentive and ability to favor Sprint over competing carriers, there are strong countervailing reasons to grant the Sprint petition. First, the recent liberalization efforts in France and Germany have resulted in commitments to open various segments of their national monopolies to competition before 1998. Second, the FT and DT investment of \$3.5-4.2 billion in Sprint will have a procompetitive impact on the U.S. telecommunications market, subject to conditions. Given these factors, we find, as the Justice Department has, that the competitive concerns arising from this transaction can be addressed through conditions and safeguards, in anticipation of the French and German markets opening to U.S. carriers in 1998.

a. Liberalization Developments in France and Germany

i. Comments

62. AT&T and BTNA state that numerous liberalization proposals before the E.U. Commission and French and German Governments are still pending and the final results are uncertain. They state that there are no assurances that the proposed reforms will become law, or that implementing regulations and licenses will be issued. They also assert that there is no certainty that the current liberalization proposals will extend to facilities or services provided between E.U. member states and third countries. Finally, BTNA states that neither the French nor German Governments plan to relinquish majority ownership and control over FT or DT in the near future.⁹³

ii. Discussion

63. A critical factor in our approval of the proposed transaction is the policy shift in France and Germany towards competitive telecommunications markets. We recognize that this trend likely will be opposed. We also realize that, as AT&T and BTNA point out, timely, effective implementation of planned liberalization steps remains to be accomplished. Current developments, however, cannot be ignored in considering the proposed transaction.

64. As we mentioned above, Sprint filed its petition in October 1994. In February 1995, we adopted the NPRM in our foreign carrier entry proceeding which proposed that, when foreign carriers seek to enter the U.S. telecommunications market or become affiliated with a U.S. carrier, the Commission examine whether the relevant foreign telecommunications markets afford effective market access to U.S. carriers. Since the NPRM was released, the French and German Governments each have made specific commitments for further telecommunications liberalization.

⁹¹ This third party could be Atlas, the entity created by FT and DT to provide Joint Venture services in Europe (except for in France and Germany) or Transpac and Datex-P, the public

data networks owned by FT and DT, respectively.

⁹² See *Foreign Carrier Entry Order* at ¶¶ 15 & 33.

⁹³ BTNA Supplemental Comments at 25-29.

65. We have already noted the specific liberalization commitments made by the French and German Governments.⁹⁴ On October 20, 1995, in a letter to Commission Chairman Hundt, the French Government stated that it soon will allow entities other than FT to build and operate facilities (known as "alternative infrastructure") to offer already liberalized services.⁹⁵ These services include data communications and closed user groups,⁹⁶ but exclude public switched voice telephony. The French Government states that legislation to enact this measure will be introduced in the French Parliament in the Spring of 1996, and will take effect by July 1, 1996.⁹⁷ The French Government has made the same commitment regarding the liberalization of alternative infrastructure to the European Commission in the context of DG IV's review of the Atlas and Phoenix transactions.⁹⁸

66. Earlier this year, the DGPT issued an experimental license to MFSI, a U.S.-owned company, to construct and operate a metropolitan network designed to serve the needs of closed user groups for data and voice communications. According to the French Government, other experimental alternative infrastructure licenses that will permit provision of public voice telephony services will be issued in early 1996.⁹⁹

67. Similarly, on October 17, 1995, the German Government submitted a letter to Commission Chairman Hundt in which it stated its commitment to allowing alternative facilities providers to commence operations as of July 1, 1996.¹⁰⁰ Like the French Government, the German Government also has made this commitment to the European Commission.¹⁰¹ In addition, the German Government states that further liberalization steps are possible before 1998 provided that they do not infringe on the exclusive rights held by DT. We note that ACC indicates that it received approval in June 1995 from the German Ministry to operate as a switchless reseller of DT's monopoly public switched voice services.¹⁰²

68. The liberalization of alternative infrastructure in the French and German telecommunications markets is an important first step towards the introduction of full and effective facilities and services competition. Alternative infrastructure providers will be permitted to compete with FT and DT to carry most non-public switched voice services, including data communications and intracorporate network services. Thus, potential competitors of FT, DT

and the Joint Venture will have the legal ability to choose between underlying carriers for liberalized services, a useful hedge against certain types of anticompetitive conduct by FT or DT.

69. In their letters submitted in this proceeding, the French and German Governments also have firmly committed to implementing full facilities and services competition by January 1, 1998. The French Government filed with the Commission a copy of its recently announced proposal for wide-ranging liberalization of the French telecommunications regulatory regime. The French Ministry of Information Technology and Postal Services issued this document in October 1995. A "public consultation document" entitled "New Ground Rules for Telecommunications in France," the document outlines the key features of the French Government's planned regulatory regime. It states that licenses of general applicability will be issued for most telecommunications services. Individual licenses will be issued for three categories: (1) operators of networks providing service to the general public; (2) providers of telephone services to the public; and (3) operators of radio-based networks.¹⁰³ In addition, the French Government states that there will be no limitations on the number of licenses unless justified by frequency scarcity.¹⁰⁴

70. Regarding interconnection, the public consultation document states that any authorized service provider will have the right to access networks open to the public. FT will have more extensive obligations, including publishing an interconnection "reference offer," which will contain basic terms and conditions, rates, and interconnection points, by July 1997. This offer must be approved by a national regulatory authority. In addition, the "Select Committee," a group of independent experts, will review possible cost accounting methods. Mandatory and independent audited cost-accounting measures will be developed, according to the public consultation document, to ensure cost-oriented pricing and to prevent anticompetitive cross-subsidization.¹⁰⁵ The public consultation document further provides that operators will be able to appeal to the national regulatory authority for interconnection dispute resolution.¹⁰⁶

71. The responsibility for supporting universal service will be shared among public operators; costs will be assessed and independently audited through transparent procedures by the Select Committee. Finally, the French

⁹⁴ See *supra* ¶ 44.

⁹⁵ Letter from Bruno Lasserre, Director General, DGPT, to Reed E. Hundt, Chairman, Federal Communications Commission, at 2 (Oct. 20, 1995) (Lasserre Letter).

⁹⁶ The precise definition of "closed user group" differs from country to country within the European Union. The term typically is used to mean a stable and identifiable groups of users, and not the general public. The European Union has defined closed user group to include members of an integrated business community encompassing a corporation, partially-owned subsidiaries, employees working outside company premises, major suppliers and customers or dealers.

⁹⁷ Lasserre Letter at 2.

⁹⁸ See *supra* ¶ 12.

⁹⁹ Lasserre Letter at 2.

¹⁰⁰ Letter from Dr. Wolfgang Boetsch, Federal Minister for Posts and Telecommunications, to Reed E. Hundt, Chairman, Federal Communications Commission (Oct. 17, 1995) (Boetsch Letter).

¹⁰¹ See *supra* ¶ 12.

¹⁰² Under this arrangement, ACC would provide service under contract with DT. ACC would buy switched capacity from DT at wholesale rates, and would provide services to ACC's German customers under contract at retail rates. See Letter from Helen E. Disenhaus, Counsel for ACC, to William F. Caton, Acting Secretary, Federal Communications Commission (citing attached Letter from Francis D.R. Coleman, Secretary and Corporate Counsel, ACC, to Dr. Wolfgang Boetsch, Federal Minister for Posts and Telecommunications (October 27, 1995)) (filed Nov. 20, 1995). See also *infra* ¶ 112.

¹⁰³ French Ministry of Information Technology and Postal Services, "New Ground Rules for Telecommunications in France," at 8-10 (Oct. 1995) (Public Consultation Document).

¹⁰⁴ Lasserre Letter at 2.

¹⁰⁵ Public Consultation Document at 22-23; Lasserre Letter at 2.

¹⁰⁶ Public Consultation Document at 23-26.G

Government states that a national regulatory authority will be established to ensure effective regulation. The public consultation document proposes two possible approaches to this authority. Under the first approach, the authority would handle arbitration and enforcement; regulation would be handled within the Ministry. Under the second approach, the national regulatory authority would handle regulatory functions as well, and would be independent of the Ministry.¹⁰⁷

72. The German Government also has taken steps to achieve full facilities and services liberalization by January 1, 1998. A Ministry draft Telecommunications Act, which the German Government expects to introduce in the German Parliament in early 1996, details the regulatory principles for the new regime.¹⁰⁸ The German Government's letter further explains these provisions. Licenses will be required for all service providers seeking to provide facilities or services currently within DT's monopoly, including public voice telephony. The number of licenses will not be restricted, except for radio licenses when warranted because of scarce resources. In addition, there will be no foreign investment restrictions on licensing.¹⁰⁹

73. Many of the details of the German interconnection regime have yet to be established. The Ministry states that dominant carriers (such as DT) will have the obligation to interconnect other carriers to their networks, and interconnection will be subject to regulatory review.¹¹⁰ In addition, universal service will include public voice telephony and certain types of leased lines. The Ministry states that only in exceptional cases will universal service obligations be imposed, and then only the dominant carrier or a service provider chosen through bidding procedures will be subject to such obligations. Should this provider incur deficits because of this obligation, service providers with more than five percent market share will be required to contribute in proportion to their market share.¹¹¹ Finally, the Ministry states that an independent federal regulatory authority, equipped with enforcement powers, will be established to implement the regulatory objectives of the new federal legislation.

74. We also note that European Union has established January 1, 1998, as the date by which most Member States, including France and Germany, must fully open their telecommunications markets by liberalizing existing monopolies for public voice telephony services and transmission facilities. The European Council of Ministers agreed in June 1995 that such liberalization should occur. Carrying out this agreement, the European Commission adopted, on July 19, 1995, a draft directive mandating full facilities and services liberalization as of January 1, 1998.¹¹² The same draft directive would require E.U. Member States, including France and Germany, to permit the use of alternative infrastructure for the provision of already liber-

alized services in 1996. When this directive is made final, which is expected to occur in early 1996, the European Commission will have the authority to initiate enforcement action should liberalization not occur in France and Germany as required.

75. We believe these commitments indicate that the French and German Governments are serious about telecommunications liberalization. We note that when the Sprint petition was filed last year, there were few, if any, liberalization plans in either country. Since that time, both Governments have announced concrete plans for increased competition leading to full facilities and services competition in 1998. Liberalization of alternative infrastructure will require FT and DT to relinquish their monopoly over the provision of telecommunications facilities to all customers, including their own competitors. Thus, they will no longer necessarily control significant cost components of their competitors' service offerings.

76. Of course, timely implementation and the development of effective regulatory rules remain to be accomplished. For example, in each country, not only must final legislation be enacted to formally remove the legal monopoly status, but an interconnection regime must be established, competitive safeguards must be implemented, and an independent regulatory body must be put in place to ensure effective competition. Nonetheless, we realize that the implementation of effective competition takes time, and the French and German Governments have committed themselves to this process and have established firm timetables for introducing full competition. We believe these commitments weigh in favor of granting Sprint's petition.

b. Effects on Competition in U.S. Markets

i. Comments

77. Sprint states in its petition that FT's and DT's \$3.5-4.2 billion investment would be used for a number of procompetitive purposes, both domestically and globally. Domestically, Sprint asserts, these funds will enable it to "expand and upgrade its existing network, to undertake additional research and to develop new applications and services."¹¹³ In addition, Sprint states that the capital invested by FT and DT will enable it to participate fully in its broadband PCS venture, Wireless Co.¹¹⁴ Finally, Sprint asserts that the investment will enable Sprint to participate fully in its global seamless services joint venture with FT and DT. Sprint states that the investment also would enable it to retire debt and thus improve its credit rating. Only AT&T responds to Sprint's assertions, stating that Sprint has not demonstrated that it could not raise the capital in the worldwide financial markets.¹¹⁵ AT&T also argues that

¹⁰⁷ Public Consultation Document at 26-28; Lasserre Letter at 5.

¹⁰⁸ German Ministry of Posts and Telecommunications, "Draft Telecommunications Act," (Jul. 27, 1995) (Ministry Draft Act); Boetsch Letter at 2.

¹⁰⁹ *Id.* at 3.

¹¹⁰ *Id.*; Ministry Draft Act at 22-23.

¹¹¹ *Id.*

¹¹² See European Council Resolution of July 22, 1993 on the review of the situation in the telecommunications sector and the need for further development in the market, 93/C 213/01, OJ C213; Draft Commission Directive amending Commission

Directive 90/388/EEC, regarding the implementation of full competition in telecommunications markets (July 19, 1995). In addition, both the French and German Governments have undertaken to fully liberalize their telecommunications facilities and services by January 1, 1998 in order to obtain E.U. approval of the Atlas and Phoenix transactions.

¹¹³ Sprint Petition at iv; Sprint Reply at 7, 35-38.

¹¹⁴ Sprint Petition at iv, 20.

¹¹⁵ AT&T Opposition at 45-46.

in any event the public interest benefits of the proposed transaction do not outweigh the potential for competitive harm.

ii. Discussion

78. A second critical factor in our approval of the proposed transaction is the procompetitive effects in U.S. markets of the FT and DT investment in Sprint. In addition to the effective competitive opportunities analysis, our Foreign Carrier Entry Order cites other factors that will be considered important in our overall public interest analysis for foreign carrier entry, including the general significance of the proposed entry to the promotion of competition in the U.S. communications market.¹¹⁶ We are persuaded by Sprint's arguments regarding the value of the transaction to Sprint as a competitor in the U.S. telecommunications market and find that the procompetitive benefits of the proposed transaction to U.S. telecommunications markets are significant and justify approving the transaction. Moreover, we do not agree with AT&T that Sprint should demonstrate it cannot raise the capital elsewhere in order for the investments by FT and DT to be considered a positive public interest factor. There likely are many reasons behind Sprint's choice to raise capital through equity partners rather than through the world's financial markets. Taking on more debt, for example, could involve greater transaction costs than would otherwise be the case. In any event, we find no reason to question Sprint's representations that it needs these investments to participate fully in various sectors of the U.S. communications market, as discussed below.¹¹⁷

79. To begin our analysis of these claims, we examine the markets in which the proposed transaction will have competitive effects. These relevant markets include: domestic interexchange services; terrestrial commercial mobile radio services (CMRS); U.S. international services; and global seamless services.¹¹⁸

(a) Domestic Interexchange Services

80. In the domestic interexchange services market, the major competitors and market shares in 1994 were AT&T, 55 percent; MCI, 17 percent; Sprint, 10 percent; LDDS (now WorldCom), 3 percent; and the remaining 15 percent shared by more than 400 other carriers.¹¹⁹ FT and DT currently are not involved in this market. Although capital investment is not, by itself, necessarily procompetitive or efficient,¹²⁰ the competitive forces in the

domestic interexchange market will likely drive Sprint to devote the investment to making itself a stronger competitor in the ways it describes.¹²¹ Sprint's strengthening of itself as a competitor against its larger rivals, AT&T and MCI, should yield procompetitive benefits for consumers.¹²² In addition, by permitting Sprint to expand and upgrade its existing network, undertake additional research and develop new applications and services, the capital should ultimately benefit consumers through lower prices and more service choices. Moreover, we find there are no apparent anticompetitive effects occurring in this market as a result of FT's and DT's investment. Accordingly, we find that the proposed transaction will have a procompetitive effect in the domestic interexchange services market.

(b) Terrestrial CMRS

81. CMRS consists of certain mobile radio telecommunications services that are interconnected to the public switched telecommunications network and are offered to the general public (or a substantial portion of it) for profit.¹²³ Terrestrial CMRS includes cellular, paging, specialized mobile radio, interconnected business radio, and broadband and narrowband PCS.¹²⁴ There are numerous existing competitors in this market, including AT&T, the Regional Bell Holding Companies and GTE. Sprint owns a 40 percent partnership interest, through its affiliate STV, in WirelessCo, which holds more broadband PCS licenses than any other entity.¹²⁵ The other partners in WirelessCo are three cable television multiple system operators.¹²⁶ WirelessCo is expected to provide broadband PCS in competition with other CMRS providers and, perhaps, with providers of wireline local exchange services.

82. We agree with Sprint that this capital infusion to its wireless activities is an important procompetitive effect of the proposed transaction. To the extent Sprint plans to use the proposed investment to fund its PCS ventures to compete with current CMRS and wireline local exchange providers, the proposed transaction will be procompetitive. In the local exchange wireline market in particular, competition is nascent. There do not appear to be, and no party alleges, any anticompetitive effects in this market resulting from FT's and DT's proposed investment. Accordingly, we find that the proposed transaction will have important procompetitive effects in the terrestrial CMRS market.

¹¹⁶ Foreign Carrier Entry Order at ¶¶ 61-72.

¹¹⁷ See Sprint Reply Comments at iii.

¹¹⁸ We note that Sprint affiliates control local exchange facilities, and thus are involved in the local exchange market. Because these local exchange affiliates presently are subject to little, if any, competition in most cases, we believe the transaction will have minimal competitive effects in the local exchange market. Thus, we do not include this market.

¹¹⁹ Federal Communications Commission, Common Carrier Bureau, Industry Analysis Division, *Long Distance Market Share First Quarter 1995*, Table 5 (Total Toll Service Revenues) (July 1995). These records consist of reports filed by carriers operating in the interexchange market.

¹²⁰ See AT&T Opposition at 45-46.

¹²¹ See MCI/BT, 9 FCC Rcd at 3972.

¹²² Cf. IDB, *Memorandum Opinion & Order*, 10 FCC Rcd at

1116 ("the proposed transaction will create procompetitive benefits by producing . . . improved capability of serving customers in several markets").

¹²³ See *Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Act of 1993, First Report*, 10 FCC Rcd 8844 (1995) (*First Annual CMRS Report*).

¹²⁴ This group of services has been called "terrestrial CMRS" and has been used in competitive analysis of acquisitions and joint ventures by the Commission's Wireless Telecommunications Bureau. Motorola, Inc., 10 FCC Rcd 7783, 7785-86 (1995), *petition for reconsideration pending, cited with approval in Nextel Communications, Inc.*, DA95-1677, ¶ 32 & n.101 (released July 28, 1995).

¹²⁵ *First Annual CMRS Report*, 10 FCC Rcd at 8875-78 (Table 2). At present, Sprint is a provider of cellular service on a significant scale, but it is divesting its cellular licenses and other assets.

¹²⁶ *Id.* at 8879 (Table 2).

(c) U.S. International Services

83. In 1993, AT&T's IMTS market share in terms of U.S. originated and terminated minutes was approximately 63 percent; MCI's share was approximately 24 percent; Sprint's share was approximately 10 percent; and the remaining 3 percent were scattered.¹²⁷ As in the domestic interexchange market, the FT/DT capital contribution would enable Sprint to upgrade its international facilities and provide new applications beneficial to U.S. customers. Neither FT nor DT has a market share of its own. Thus the proposed transaction would not increase Sprint's market share in the sense that FT's nor DT's market shares would be combined with Sprint's market share. More vigorous competition by Sprint, the third largest international services carrier, would result in tangible benefits to customers, and is procompetitive. Specifically, Sprint's investment in its infrastructure and in the development of new applications should lead to a broadened range of customer choices, more price competition, and better quality service offerings in this market. These procompetitive effects are essentially the same type as we expect in the domestic interexchange market and noted as attendant benefits in the *MCI/BT* decision. In summary, we conclude that, on balance, the proposed transaction will have procompetitive effects in the U.S. international services market, assuming the Sprint complies with the conditions described below.

(d) Global Seamless Services

84. In addition, we expect the transaction to have a procompetitive effect in the global seamless services market. Global seamless services is an emerging product market of worldwide geographic scope, which we discussed briefly in the *MCI/BT* decision.¹²⁸ At present, the product dimension of this market consists of a combination of voice, data, video and other telecommunications services that are offered by a single source over an integrated international network of owned or leased facilities, and that have the same quality, characteristics, features and capabilities wherever they are provided. This end-to-end service offers the advantage to customers of "one-stop shopping" and single-source billing. The principal customers are high-end users such as multinational corporations, but individuals and carriers may also be customers.¹²⁹

85. The Joint Venture plans to offer mid-size and large multinational business customers a variety of seamless voice, data, private line and videoconferencing options. These include global virtual private networks, international private lines and private networks, high-speed data

offerings, packet-switched networks, bandwidth management products, store-and forward fax, and electronic mail. The services may employ advanced technologies such as frame relay, asynchronous transfer mode (ATM) and synchronous digital hierarchy (SDH) technologies, and may be basic or enhanced, depending on the needs of users. Lower volume users and travelers will be offered a number of global card and travel products. According to Sprint, these products will permit easy and cost-efficient access by individual users to international calling services worldwide on a pre-paid and post-paid card basis. For users outside of their home markets, Sprint states, third-country calling will provide an easy and efficient way to reach other international points worldwide. These customers will be traditional facilities-based carriers, as well as emerging carriers, resellers and niche service providers. In addition, the Joint Venture will offer transit and global termination services. Computer-based platforms for advanced carrier services also will be marketed to other carriers.¹³⁰

86. At the time of our decision in *MCI/BT*, there were no established global seamless service providers. Today, there are several such providers in this market. As the Justice Department noted in its Competitive Impact Statement, global seamless service providers consist mainly of various carrier alliances, including AT&T's partnerships (through Worldpartners¹³¹ and Uniworld),¹³² and the *MCI/BT* alliance (Concert).¹³³ The Joint Venture between Sprint, FT and DT would add another significant competitor to this market. Each of these alliances is targeting essentially the same potential global market for the world's large business customers.

87. We believe Sprint's entry, through the Joint Venture, into the global seamless services market will yield significant competitive benefits for U.S. customers. The establishment of a new, viable competitor in this area should result in more competitive options for U.S. customers, particularly in terms of pricing and variety of services available for large scale, high-end customers such as multinational corporations. In addition, the Joint Venture should offer a number of efficiencies for Sprint, such as greater economies of scale, easier entry into new markets and the sharing of risks. Given that several strong competitors already exist in this market, the procompetitive effects of the Sprint/FT/DT transaction outweigh any possible anticompetitive results in this market.

¹²⁷ Federal Communications Commission, Common Carrier Bureau, 1993 International Telecommunications Data (International Message Telephone Service, U.S. and Foreign Billed Traffic Originating or Terminating in the United States) (Nov. 1994).

¹²⁸ *MCI/BT*, 9 FCC Rcd at 3971.

¹²⁹ See Competitive Impact Statement, 60 Fed. Reg. at 44060-61 (describing "seamless international telecommunications services").

¹³⁰ See Sprint Petition at 17-19.

¹³¹ Worldpartners is a non-exclusive, co-marketing alliance of major telecommunication providers. See *MCI/BT*, 9 FCC Rcd at 3971 n.98. It also has been described as being made up of equity and non-equity members. Equity members are AT&T, KDD of Japan and the national or principal telecommunications providers of Singapore, Sweden, Switzerland, Spain, and the Netherlands. Non-equity members are the national or principal

telecommunications providers of Australia, Korea, New Zealand, Hong Kong, and Canada. Members do not hold equity in one another, and the alliance has not been subject to prior U.S. or E.U. regulatory approval. See Competitive Impact Statement, 60 Fed. Reg. at 44061. Several parties raise concerns in this proceeding related to AT&T's Worldpartners alliance. See BTNA Reply Comments at 5; ACC Reply Comments at 3. General issues regarding such marketing alliances were addressed in our *Foreign Carrier Entry Order*. See *Foreign Carrier Entry Order* at ¶¶ 93-95.

¹³² In July 1995, AT&T and the European-based consortium Unisource, comprised of dominant or monopoly carriers from Sweden, Switzerland, Spain, and the Netherlands, finalized the terms of their joint venture Uniworld. Unisource holds a 20 percent equity stake in Worldpartners, but the alliances remain separate entities.

¹³³ See Competitive Impact Statement, 60 Fed. Reg. at 44061.

iii. Summary

88. We thus find that the transaction offers the additional public interest benefits of significant procompetitive effects in the U.S. market and, in particular, in the domestic interexchange, terrestrial CMRS, international, and global seamless services markets. The infusion of capital by FT and DT will assist Sprint's further development in markets in which it is already competing, and will facilitate Sprint's entry into new, undeveloped markets, to the ultimate benefit of U.S. customers. We disagree with AT&T that the public interest benefits of the proposed transaction discussed above do not outweigh the potential competitive harm, particularly given the conditions we impose. Thus, we find that these public interest factors weigh strongly in favor of granting Sprint's petition, subject to the conditions discussed below.

c. Other Public Interest Factors

89. Other factors cited in our *Foreign Carrier Entry Order* that may be considered as part of the overall public interest analysis for foreign carrier entry include cost-based accounting rates, and any national security or law enforcement issues, foreign policy or trade concerns raised by the Executive Branch. In addition, the extent of alien participation in Sprint's parent corporation is a public interest factor under Section 310(b)(4).

90. AT&T argues that the implementation of cost-based accounting rates by FT and DT should be a precondition of approval of the petition.¹³⁴ We decline to adopt the specific approach advocated by AT&T. We decided in the *Foreign Carrier Entry Order* that we would not take AT&T's approach, but instead would consider cost-based accounting rates as an additional public interest factor. The accounting rates between the United States and Germany have significantly decreased in the last 10 years, following a general global trend. In 1985, the accounting rate between the United States and Germany was 1.2 Special Drawing Rights (SDR) (approximately \$1.32); in 1995, the rate was 0.26 SDR (approximately \$0.39).¹³⁵ Although there remains room for further progress, Germany has taken significant strides towards a cost-based accounting rate.

91. The accounting rates between the United States and France also have decreased in the last 10 years, but much less than the U.S.-Germany rates. They remain significantly above cost. In 1985, the accounting rate between the United States and France was 1.6 (SDR) (approximately \$1.76); in 1995, the rate was 0.36 SDR (approximately \$0.54).¹³⁶ Today, the U.S.-France accounting rate is nearly 28 percent above the U.S.-Germany and U.S.-U.K. accounting rates.¹³⁷ There is no possible justification for this difference. Given

the similar levels of infrastructure and economic development in France, Germany and the United Kingdom, the high volume of calls originated and terminated in each country, and the geographic proximity of the these countries, the costs of originating and terminating U.S. traffic in France should be similar to the costs for Germany and the United Kingdom.¹³⁸ But while the U.S.-Germany and U.S.-U.K. rates are in the same range, the U.S.-France accounting rate is significantly higher.

92. Thus, although the accounting rates with France and Germany are moving downward, they remain well above cost, particularly in the case of France. Accordingly, we find this to be a negative factor in our public interest analysis, especially for France. We thus find that this transaction is in the public interest only if Sprint obtains a written commitment from FT to lower the accounting rate between the United States and France to the same range as the U.S.-U.K. and U.S.-Germany accounting rates, as described more fully below in paragraph 131.

93. With respect to the other public interest factors laid out in the *Foreign Carrier Entry Order*, we note that the Executive Branch has not advised us of any national security, law enforcement, foreign policy, or trade concerns that support grant or denial of the petition.

94. We next analyze the extent of alien participation in Sprint's parent corporation as a public interest factor identified in the *Foreign Carrier Entry Order* as relevant to our analysis under Section 310(b)(4).¹³⁹ Upon consummation of the transaction, Sprint could at any time have up to 28 percent alien ownership (10 percent FT, 10 percent DT and approximately 6.2 percent non-FT or -DT, with a 3 percent margin for fluctuation), with 80 percent U.S. directors and 100 percent U.S. officers. Both prior to and after consummation of the transaction, however, 100 percent of the officers and directors of Sprint's wholly-owned Title III common carrier licensee subsidiaries will be U.S. citizens.¹⁴⁰ Sprint maintains that the aggregated 28 percent alien ownership is consistent with the public interest and the Commission's decision in *MCI/BT* and falls within Commission precedent permitting alien ownership in excess of the statutory benchmark.

95. In the common carrier context,¹⁴¹ the Commission's decision whether to permit a level of alien ownership or participation that exceeds the statutory benchmark traditionally has taken into account the overall level of alien involvement in the ownership and management of the parent company.¹⁴² Recently, the Commission approved 92 percent alien ownership in the alien parent of a U.S. subsidiary which would control a licensee where more than 50 percent of the directors and 85 percent of the

¹³⁴ AT&T Supplemental Opposition at 33-34.

¹³⁵ Federal Communications Commission, International Bureau, "Accounting Rates for International Message Telephone Service of the United States," at 3 (Nov. 1, 1995).

¹³⁶ See *id.* at 2.

¹³⁷ See *id.* at 6 (listing the U.S.-U.K. accounting rate as 0.25 SDR (\$0.37)).

¹³⁸ AT&T has estimated that a cost-based accounting rate for the United Kingdom is 0.08 SDR. See AT&T Comments, BTNA Application for Authority Under Section 214 of the Communications Act to Provide International Resale Services as a Nondominant Common Carrier, File No. I-T-C-93-126 (filed

Mar. 22, 1995).

¹³⁹ See *Foreign Carrier Entry Order* at ¶ 216.

¹⁴⁰ See Sprint Petition at 25.

¹⁴¹ Common carrier licensees traditionally have been treated differently from broadcast licensees because common carriers do not control the content of their transmissions. See *Fox Television Stations, Inc.*, FCC 95-313, at ¶ 21 (released Jul. 28, 1995).

¹⁴² See *MCI/BT*, 9 FCC Rcd at 3973 (citing *GRC Cablevision, Inc.*, 47 F.C.C.2d 467 (1974); *LCI Communications, Inc.*, Mimeo No. 3491 (Mar. 31, 1986); *Millicom*, 4 FCC Rcd 4846 (Com. Car. Bur. 1989); *IDB Communications Group, Inc.*, 6 FCC Rcd 4652 (Com. Car. Bur. 1991); and *Teleport Transmission Holdings*, 8 FCC Rcd 3063 (Com. Car. Bur. 1993)).

officers of the subsidiary would be U.S. citizens.¹⁴³ As in the MCI/BT proceeding, it is only the potential for a three percent fluctuation in alien ownership beyond the 25 percent statutory benchmark that causes the petitioners to seek a favorable Section 310(b)(4) declaratory ruling. In addition, this transaction involves a dominant U.S. presence among Sprint's officers, directors and shareholders. Approval of the percentage of alien ownership in Sprint resulting from the transaction with FT and DT is consistent with the previous cases in which we have determined it would not be in the public interest to prohibit levels of indirect alien ownership of common carrier licensees in excess of that proposed by Sprint.¹⁴⁴ Thus, our analysis of the extent of alien participation in Sprint's parent corporation under Section 310(b)(4) weighs in favor of approval.

6. Conditions and Safeguards

a. Comments

96. As noted above, a number of parties urge us to deny Sprint's petition until France and Germany open their telecommunications markets and offer effective market access.¹⁴⁵ In addition to FT's and DT's monopoly status, these parties cite the lack of competitive safeguards and independent regulators as major deficiencies of the current French and German regulatory regimes. In addition to the competitive concerns mentioned in Section IV.B.4, AT&T, BTNA, CWA/IBEW, and ITI state that approval of Sprint's petition will remove incentives for faster liberalization in France and Germany.¹⁴⁶ These parties also assert that approval of the transaction would undercut the U.S. Government's bargaining position in the Negotiating Group on Basic Telecommunications (NGBT). Several parties also propose that, in the event we approve the transaction, we should impose certain conditions. For example, AT&T states that the Commission should withhold approval of the equity investment and permit the parties' Joint Venture to proceed with conditions.¹⁴⁷

97. ACC and MFSI urge the Commission to treat Sprint as a dominant carrier on the U.S.-France and U.S.-Germany routes. They also believe that the conditions imposed by the Justice Department on MCI/BT, including

transparency, confidentiality and international simple resale requirements, should be imposed in this proceeding.¹⁴⁸ Worldcom requests that the Commission condition any approval of Sprint's petition upon requirements that FT and DT implement cost-based local switched rates, and not discriminate in their provisioning and maintenance of facilities.¹⁴⁹ Finally, Senator Dole urges the Commission not to artificially "freeze" Sprint's communications capacity because an arbitrary limit on communications capacity will not alleviate concerns about foreign market leveraging.¹⁵⁰

b. Discussion

98. We have concluded that, in the overall public interest under Sections 214 and 310(b)(4), we should not withhold a positive public interest finding regarding the transaction until France and Germany offer effective competitive opportunities or the market access requirements suggested by a number of the parties.¹⁵¹ We are not discounting the importance of these factors; indeed, we expect these factors, including a fair and transparent interconnection regime, competitive safeguards, and an independent regulator, to be implemented in France and Germany by 1998. But we believe the significant public interest benefits of the transaction weigh in favor of a finding that this transaction is in the public interest, subject to conditions, notwithstanding the current lack of effective competitive opportunities in France and Germany.

99. We also believe that delay or denial of Sprint's petition until effective competitive opportunities exist in France and Germany would undermine the parties' proposed transaction and, accordingly, possibly result in the loss of the important public interest benefits of the transaction. Moreover, in view of these public interest benefits arising from the capital investment, we decline to permit only the parties' Joint Venture to proceed and withhold a finding that this transaction is in the public interest until effective competitive opportunities exist, as proposed by AT&T. Given our public interest findings, we also decline to require Sprint to divest its operations on the France and Germany routes.¹⁵²

¹⁴³ See *Cable & Wireless*, File No. 60-SAT-MISC-95 (released Oct. 17, 1995).

¹⁴⁴ See *GRC Cablevision, Inc.*, 47 F.C.C.2d at 467; *GCI Liquidating Trust*, 7 FCC Rcd 7641 (1992); *Teleport Transmission Holdings*, 8 FCC Rcd at 3063.

¹⁴⁵ See, e.g., Letter from Gerd Eickers, ADPO, to Reed Hundt, Chairman, Federal Communications Commission (filed Dec. 20, 1994); BTNA Supplemental Comments at 5-8; Esprit Opposition at 7-8; and MCI Opposition at 16-20.

¹⁴⁶ See AT&T Supplemental Opposition at iv; BTNA Supplemental Comments at 6-7; CWA/IBEW Comments at 2-3; ITI Letter at 2.

¹⁴⁷ These conditions include: (1) prohibit Sprint from offering a new correspondent service with FT or DT unless FT and DT offer to provide the service on the same terms and conditions with any U.S. carrier with whom it has an operating agreement; (2) require that FT and DT implement cost-based accounting rates with all U.S. carriers; (3) prohibit the "steering" of customers by DT and FT to Sprint or the Joint Venture; and (4) impose the conditions required in the *MCI/BT Order*, including the prohibition against accepting any "special concession." See AT&T Supplemental Opposition at 31-37. AT&T also recommended specific conditions in a recently filed ex parte submission. These conditions reflect concerns raised by AT&T

previously in this proceeding, and we respond to those concerns below. See Letter from R. Gerald Salemme, AT&T, to Jane Mago, Federal Communications Commission (filed Dec. 8, 1995).

¹⁴⁸ See ACC Opposition at 6-16; MFSI Opposition at 7-15.

¹⁴⁹ WorldCom Letter at 3-7.

¹⁵⁰ Letter from Senator Bob Dole to Reed E. Hundt, Chairman, Federal Communications Commission, (filed Dec. 12, 1995).

¹⁵¹ See e.g., ACC Opposition at 16-17; AT&T Supplemental Opposition at 17-30; BTNA Supplemental Opposition at 8-12; MCI Opposition at 16-20. We also decline to agree with Esprit that, if we grant Sprint's request, we should permit U.S. carriers to (1) engage in "one-way" resale and (2) route traffic over private lines between the United States and third countries through private lines between the United States and countries designated as equivalent. See Esprit Reply Comments at 4-6 (filed Sep. 15, 1995). Esprit's recommended changes to our international private line policies were raised by other parties in the *Foreign Carrier Entry* proceeding and addressed extensively in our final Order in that proceeding. See *Foreign Carrier Entry Order* at ¶¶ 165-70. We see no need to revisit these conclusions here.

¹⁵² See *id.* at ¶¶ 117-18.

100. We do believe, however, that Sprint must agree to adhere to the strict conditions described below until full facilities and services competition emerge in both countries in order to ensure that the parties do not engage in anticompetitive activities. We continue to believe, as we stated in the *Foreign Carrier Entry Order*, that full facilities-based competition, rather than regulatory conditions, are the most potent safeguard against the abuse of market power.¹⁵³ Nonetheless, because of the public interest benefits of the proposed transaction and the commitments to foreign liberalization, we are willing to rely on strict conditions in this proceeding to protect competition. Because of the conditions we are requiring Sprint to accept as part of our public interest finding, we disagree with the AT&T, BTNA and CWA/IBEW that approval of Sprint's petition will remove incentives for the French and German Governments to undertake further liberalization. These conditions provide important incentives for earlier liberalization than might otherwise be the case. We thus do not believe that approval of this transaction will adversely affect NGBT negotiations. In any event, we do not believe it would be appropriate to delay our decision until after April 1996, the deadline for an agreement in that forum, given Sprint's legitimate business needs for a timely decision.

101. In its proposed Final Judgment and Competitive Impact Statement, the Justice Department reaches many of the same conclusions that we do about the potential for anticompetitive conduct as a result of the proposed transaction.¹⁵⁴ It finds that, because of the absence of privatization and the continued existence of de jure monopolies in France and Germany, additional relief is needed beyond that imposed in the MCI/BT Final Judgment. The Justice Department concludes that a series of conditions and requirements, imposed in two phases, is sufficient to address its concerns over potential anticompetitive conduct, particularly given the progress made in France and Germany towards a competitive telecommunications environment and the plans for the implementation of full facilities and services competition in 1998. As we note below, a number of the conditions we require Sprint to accept address concerns similar to those addressed by the Justice Department. We have taken into account the provisions of the proposed Final Judgment in designing our conditions in this Order, and we rely on the effectiveness of those provisions. The conditions described below, together with the provisions of the proposed Final Judgment, fully address our public interest concerns.

102. Upon careful consideration of the record in this proceeding, we impose, in general, five conditions to prevent potential anticompetitive conduct and minimize the unfair competitive advantages accruing to Sprint from its affiliation with FT and DT. First, we find that Sprint is a dominant carrier for the provision of U.S. international services on the U.S.-France and U.S.-Germany routes. Second, we will not allow Sprint to operate additional circuits on the U.S.-France and U.S.-Germany routes until France and Germany have liberalized two important markets: alternative infrastructure for already liberalized services

(which include most non-public voice services) and basic switched voice resale. Third, we require Sprint to comply with nondiscrimination and reporting requirements. Fourth, we find this transaction serves the public interest only if Sprint obtains a written commitment from FT to lower the accounting rate between the United States and France to the same range as the U.S.-U.K. and U.S.-Germany accounting rates. Fifth, if the anticipated liberalization measures and implementation of effective competitive opportunities do not occur as planned, we will take further action no later than the Spring of 1998. Provided that Sprint complies with the conditions of this ruling, we conclude that we need not designate for hearing the issue whether the public interest would continue to be served by Sprint's holding of Title II authorizations and Title III licenses if these investments and the Joint Venture are consummated.

i. Regulating Sprint as a Dominant Carrier

103. The first condition includes the regulation of Sprint as a dominant carrier for the provision of U.S. international services on the U.S.-France and U.S.-Germany routes until Sprint can demonstrate that there is no substantial risk of anticompetitive effects in the U.S. international services market from its affiliation with FT and DT.¹⁵⁵ We recently modified our dominant carrier safeguards to require tariff filing on 14-days notice, prior Section 214 authorization for circuit additions or changes; the filing of quarterly traffic and revenue reports; and the maintaining of provisioning and maintenance records that cover the network facilities and services a dominant, foreign-affiliated carrier procures from its foreign carrier affiliate. This requirement includes services that a dominant carrier procures on behalf of joint ventures for the provision of U.S. basic or enhanced services.¹⁵⁶

104. The *Foreign Carrier Entry Order* adopts a change in our policy regarding when we will consider a foreign carrier investment in a U.S. carrier to constitute an "affiliation" for purposes of determining regulatory treatment of the U.S. carrier. First, we have lowered the affiliation threshold control to a greater than 25 percent interest or a controlling interest at any level. In addition, we have indicated we may regulate a carrier as dominant even if an investment is less than 25 percent if there are other contractual arrangements between the parties which could have a significant impact on competition.¹⁵⁷

105. In this case, although the combined equity interests of FT and DT are less than 25 percent, we nonetheless find an affiliation in this case for the same reasons we found an affiliation under our effective competitive opportunities analysis.¹⁵⁸ In particular, this transaction involves two of the largest foreign carriers in the world, which control bottleneck facilities in two of the biggest destination markets for U.S. traffic.¹⁵⁹ These carriers propose to invest in the third largest U.S. domestic interexchange and international telecommunications services carrier as part of their Joint Venture. The monopoly positions of FT and DT in their own countries, combined with their 10 percent each equity interest in, and Joint Venture with, Sprint, provide

¹⁵³ See *id.* at ¶¶ 15-16 & 29.

¹⁵⁴ See Competitive Impact Statement, 60 Fed. Reg. at 44063-65.

¹⁵⁵ See *Foreign Carrier Entry Order* at ¶ 253 & n.358.

¹⁵⁶ See *id.* at ¶¶ 262-73.

¹⁵⁷ See *id.* at ¶¶ 88-92.

¹⁵⁸ See *supra* at ¶ 39.

¹⁵⁹ See 47 C.F.R. § 63.01(r)(7).

the incentive and ability for FT and/or DT to engage in anticompetitive conduct favoring Sprint on these routes. For example, to the extent FT and DT can take actions to enhance Sprint's position and Sprint's stock value increases as a result, FT and DT would themselves profit by the rise in value of their equity investment in Sprint.

106. Moreover, the potential impact on competition in the U.S. basic international services market warrants dominant carrier treatment to enable us to closely monitor Sprint's circuits additions, traffic and tariffs for service to these countries, as well as the treatment afforded FT and DT in the provisioning and maintenance of their basic network services and facilities. Accordingly, we find under our new policy regarding affiliation that Sprint cannot be treated as non-dominant on the France and Germany routes because Sprint's affiliated carriers, FT and DT, control bottleneck facilities in those countries.¹⁶⁰ We also find that, under our current definition of affiliation, Sprint must be regulated as dominant on the France and Germany routes. We thus require Sprint to comply with the specific dominant carrier regulation requirements set forth in paragraph 140 of this Order.

107. The longer tariff filing period for dominant carriers will give us a better opportunity to detect potential predatory pricing before it occurs.¹⁶¹ Similarly, the requirement that Sprint file quarterly traffic reports and seek prior approval for circuit additions or changes on the France and Germany routes will better enable us to monitor traffic flows between Sprint and FT in France and DT in Germany and to remedy promptly any abuses of foreign market power. Prior approval for circuit additions or changes is required of all dominant carriers and, in this case, would enable competitors of Sprint and the Joint Venture to determine if discrimination is occurring. We thus agree with ACC and MFSI that these requirements are necessary to aid detection of, and help deter, anticompetitive conduct. By doing so, dominant carrier regulation will protect competition until France and Germany offer effective competitive opportunities.

108. Because FT and DT continue to hold monopolies over key infrastructure, we believe there is a stronger potential for the anticompetitive use of foreign market power than in *MCI/BT*. Thus, regulation of Sprint as a dominant carrier is necessary on the routes where it is receiving traffic from FT and DT at least until full infrastructure and services liberalization and procompetitive regulation emerges in France and Germany.¹⁶² If effective competition and effective regulation actually emerge in each country, the potential anticompetitive effects would be diminished and the types of conditions we imposed on that transaction may then be adequate to protect competition. We reserve the right to extend dominant carrier regulation to additional U.S.-international routes in the event FT, DT and Sprint enter into a similar alliance with any other "foreign carrier." We also reserve the right to extend to additional U.S. international routes dominant carrier regulation and reporting requirements contained in this Order in the event Sprint has or acquires an "affiliation" with any "for-

eign carrier" as those terms are defined in our *Foreign Carrier Entry Order* and Section 63.01(r)(1)(i) and (ii) of the Commission's Rules.

ii. Circuit Restrictions

109. Under the second condition, we will not allow Sprint to operate additional circuits on the U.S.-France and U.S.-Germany routes until two milestones have been met. These milestones are described in detail below. This condition is necessary to mitigate Sprint's unfair competitive advantage over other U.S. carriers on the routes where FT and DT have monopoly market power on the foreign end for the interim period until further competition emerges in those markets. Thus, while we will permit Sprint to *acquire* additional circuit capacity, we will not allow Sprint to *operate* any newly-acquired circuits until Sprint demonstrates that these competitive milestones have been met. To implement this condition, we require Sprint to file with the Commission, within 15 days of the effective date of this Order, a circuit status report on the U.S.-France and U.S.-Germany routes, specifying the number of circuits in which Sprint has an ownership, indefeasible right of use or leasehold interest, and the number of circuits it is operating on these routes.

110. By virtue of its Joint Venture with FT and DT, we find that Sprint has an advantage over other U.S. carriers that have no possibility of forming a similar alliance with another French or German carrier. As we concluded in the *Foreign Carrier Entry Order*, if there is no opportunity for participation by other U.S. carriers, then the benefits of providing international service on an end-to-end basis will flow solely to the monopoly foreign carrier and its U.S. affiliate. Our approach to future Section 214 authorization requests by Sprint is designed to mitigate the unfair competitive advantage accruing to Sprint, FT and DT until further liberalization occurs. We also believe such action will provide further incentives for the French and German Governments and FT and DT to continue to liberalize their telecommunications markets before 1998.

111. The first milestone is implementation of alternative infrastructure competition in France and Germany. To meet this milestone, France and Germany must permit infrastructure to be offered by entities other than FT or DT, or their affiliates. Such alternative infrastructure must be permitted to carry all currently liberalized services in France and Germany, including data communications and closed user groups traffic (but not public switched voice services). This development opens the way for new facilities-based carriers for most telecommunications services. Thus, at least with respect to already liberalized services, U.S.-affiliated entities may begin to have competitive alternatives to FT and DT to carry their non-public switched voice traffic in France and Germany.

112. The second milestone is the existence of opportunities to provide basic switched voice resale, including for the provision of traffic originated or terminated in the United States. For purposes of this proceeding, we define liberalized basic switched voice resale to include public switched voice services which may be offered to the public using facilities provided by a separate underlying carrier,

¹⁶⁰ See 47 C.F.R. § 63.10(a)(2) & (3).

¹⁶¹ Currently, nondominant carriers are subject to the same 14-day tariff filing notice requirement. We have proposed in another proceeding, however, to reduce this waiting period to

one day. See *Streamlining the International Section 214 Authorization Process and Tariff Requirements*, FCC 95-286, at ¶ 52 (released Jul. 17, 1995).

¹⁶² 47 C.F.R. § 63.01(r)(1)(i) & (ii).

and may be provided to and from the United States. Such resale opportunities must be available to all similarly situated U.S.-affiliated entities on the same terms and conditions. To meet this milestone, it is sufficient that the reseller simply provide its own billing functions, and no switching or other functions for itself. In countries such as Chile, Canada, Sweden, and the United Kingdom, allowing such resale has served to aid the entry of competitors in the marketplace and to exert competitive pressure on rates, resulting in lower rates to the benefit of customers. The French and German Governments each have indicated that FT and DT may enter into switchless resale arrangements with third parties, as subcontractors, within the current French and German legislative frameworks.¹⁶³ Thus, it is entirely within the authority of FT and DT to determine this condition will be satisfied. Although there is no legal compulsion in either country for FT or DT to do so, FT and DT can voluntarily enter into such arrangements, and thus have it within their power to satisfy the basic switched voice resale milestone.

113. Although the opportunity to provide basic switched voice resale is not as desirable as full competitive provision of infrastructure, and would still require use of FT's or DT's underlying facilities, it is nonetheless an important interim step. The availability of basic switched voice resale in France and Germany will put U.S. competitors of FT, DT and the Joint Venture on more equal footing with these entities. In particular, basic switched voice resale competition essentially would allow competitors to compete for customers at every level with FT and DT, including for public switched voice customers. Competitors of FT, DT and the Joint Venture would then have the opportunity to market themselves, as only FT and DT now can, as "full service" providers. Until basic switched voice resale opportunities are available, such marketing and service offerings are not possible. The competitive availability of alternative infrastructure and basic switched resale also will limit FT's and DT's ability to leverage their monopoly power unfairly. These two forms of competition will start the process of adapting to competition, which should help ease the implementation of full facilities and services competition, to the benefit of potential competitors. This condition also will serve as an important incentive for the effective implementation of liberalization steps sooner than might otherwise be the case, thus minimizing the competitive harm to other U.S. carriers that wish, but are not currently permitted, to participate in the French and German markets.

114. This condition only affects Sprint's operation of additional capacity it is authorized to acquire subsequent to the consummation of the transaction on the France and Germany routes; it will not prevent Sprint from acquiring additional capacity as it becomes available or is needed to meet its expected long term capacity needs. Business realities may mean that Sprint will be required to invest

now in capacity on a submarine cable, for example, that is not yet operational. As a dominant carrier, Sprint will be required to obtain prior Section 214 authority to acquire and operate any additional circuits. Because of the particular circumstances of this transaction, however, we will consider granting Sprint Section 214 authority only to acquire, not operate, capacity on either the France or Germany routes until the two competitive milestones are reached. Thus, while we will permit Sprint to acquire capacity on these routes, we will not allow Sprint to operate any such capacity acquired after the consummation of the transaction until Sprint can demonstrate that the competitive milestones have been reached.

115. Based on our review of Sprint's confidential circuit status reports, published information on Sprint's capacity ownership on TAT-12/13 and other the transatlantic cables, and Sprint's average growth rate, we are confident that this remedy will not adversely impact Sprint's short term ability to respond to marketplace demands. Moreover, this restriction does not affect Sprint's ability to provide service on these routes on a resale basis. We emphasize that we expect this condition to be short-term. Both FT and DT have the ability to satisfy the resale milestone by introducing resale at any time. Moreover, the French and German Governments have committed both to the E.U. and U.S. authorities to permit alternative infrastructure competition by July 1996. There is no reason, then, that this circuit restriction should not be able to be lifted in six months time. Upon Sprint's demonstration to the Commission that these two milestones have been met, the Commission will promptly lift this restriction from all previously conditioned Section 214 authorizations.

iii. Nondiscrimination and Reporting Requirements

116. The third condition consists of nondiscrimination and reporting requirements based on longstanding procompetitive rules and policies of this Commission. These requirements, similar to those imposed in the *MCI/BT* proceeding, are designed to prevent Sprint from accepting the benefits of any anticompetitive use of market power by FT or DT. Moreover, Sprint has volunteered to accept these requirements.¹⁶⁴ These requirements will remain in place indefinitely unless expressly removed by Commission order. Sprint's failure to comply with these requirements may result in the imposition of fines or forfeitures or a revocation of one or more of its licenses.¹⁶⁵

117. We impose a number of nondiscrimination and reporting requirements. First, Sprint is prohibited from agreeing to accept, directly or indirectly, any special concessions from any foreign carrier or administration with respect to traffic or revenue flows between the United States and any foreign country.¹⁶⁶ This requirement reflects a nondiscrimination safeguard adopted in the *Foreign Carrier Entry Order*. We also note that numerous cable landing

¹⁶³ See Letter from Bruno Lasserre, Director General of DGPT, to Commissioner Susan Ness, Federal Communications Commission (filed Dec. 11, 1995); Letter from BMPT to Francis Coleman, ACC (filed June 30, 1995).

¹⁶⁴ Sprint Reply at 12.

¹⁶⁵ See Sections 312(a), 502 and 503 of the Act, 47 U.S.C. §§ 312(a), 502 and 503; *Pass Word*, 76 F.C.C.2d 465 (1980), *aff'd sub nom. Pass Word v. FCC*, 673 F.2d 1363 (D.C. Cir. 1982) (common carrier license revoked based on carrier's deliberate misrepresentation to the Commission).

¹⁶⁶ Section 63.14 of the Commission's Rules defines special concessions as "any arrangement that affects traffic or revenue flows to or from the United States that is offered exclusively by a foreign carrier or administration to a particular U.S. international carrier and not also to similarly situated U.S. international carriers authorized to serve a particular route." 47 C.F.R. § 63.14.

licenses and Section 214 authorizations held by Sprint contain similar prohibitions against accepting "exclusive arrangements" from any foreign carrier or administration.¹⁶⁷

118. Second, in keeping with the requirement not to accept "special concessions" directly or indirectly from FT or DT, Sprint shall obtain a written commitment from FT and DT not to offer or provide any special concessions to Sprint or the Joint Venture in FT's and DT's provision of basic telecommunications services or facilities.¹⁶⁸ A copy of this written commitment must be filed with the Commission 15 days prior to consummation of this transaction.

119. Third, Sprint shall file with the Commission quarterly reports summarizing its records on the provisioning and maintenance of facilities and services by FT and DT to Sprint, including, but not limited to, correspondent or other basic services or facilities procured on behalf of customers of Joint Venture offerings, in France and Germany.¹⁶⁹ These reports shall include information about any distribution or interconnection arrangements, including pricing, technical specifications, functional capabilities and other quality or operational characteristics, such as provisioning and maintenance times. Although we do not require such reports of other dominant carriers in our *Foreign Carrier Entry Order*,¹⁷⁰ we believe that such reports are necessary in this case to enable competitors and users to determine if discrimination is occurring because of the large traffic flows between the United States and France and Germany and the resulting potential significant impact of anticompetitive conduct on the U.S. telecommunications market. To provide additional monitoring, we also require Sprint to file with the Commission, within 15 days of the effective date of this Order, a circuit status report on the U.S.-France and U.S.-Germany routes, specifying the number of circuits.

120. These requirements are designed to ensure that Sprint, the Joint Venture, FT and DT do not use their new relationship, in combination with FT's and DT's foreign market power, to favor each other at the expense of competitors and competition generally.¹⁷¹ We have described in detail above how FT and DT will have both the ability, through their foreign monopolies, and the incentive, as a result of their investments in Sprint and the Joint Venture, to engage in such conduct. With respect to concerns that FT, DT and Sprint could use their relationship to manipulate traffic streams or accounting rates, we reiterate that existing Commission policy with respect to these matters effectively limits the parties' ability to engage in such anticompetitive conduct. As a U.S. carrier, Sprint must: (1) not agree to accept more than its proportionate share of return traffic from its foreign correspondent;¹⁷² (2) settle its accounts in accordance with the nondiscriminatory accounting rates it is required to file with this Commission;¹⁷³ (3) file copies of all contracts, agreements and arrangements that relate to the routing of traffic (including transiting traffic) and settlement of accounts;¹⁷⁴ and (4) not accept any changes in its accounting rates that are not made available to all other competing U.S. carriers on a nondiscriminatory basis. Moreover, pursuant to the "no special concessions" requirement, Sprint is precluded from bargaining for, or accepting, any preferential changes in the current method used by FT or DT to allocate return traffic among U.S. carriers.¹⁷⁵

121. Sprint's "no special concessions" obligation also would preclude Sprint from accepting from FT or DT, or from any other foreign carrier or administration, preferential or exclusive operating agreements or marketing arrangements for the provision of basic telecommunications services, including the introduction and provision of new basic services.¹⁷⁶ This obligation would preclude Sprint from offering a new correspondent or other basic service,

¹⁶⁷ See, e.g., *US Sprint Communications Company Limited Partnership*, FCC No. 91-416, at ¶ 20 (released Jan. 10, 1992) (TAT-10 cable landing license); *Sprint Communications Company L.P.*, DA 95-2394, at ¶ 18 (released Dec. 1, 1995) (Section 214 authorization to provide switched services via international private lines interconnected to the public switched networks in the United States and the United Kingdom); see also *US Sprint Communications Company Limited Partnership*, 4 FCC Rcd 6279, 6284 (1989) ("We will remind US Sprint that exclusive arrangements with correspondents have long been held to be contrary to Commission policy.")

¹⁶⁸ If we find in the future that FT and DT have violated these written commitments, we will take further action, which could include fines, additional conditions or, ultimately, revocation of Sprint's Section 214 authorizations on the France and Germany routes.

¹⁶⁹ We note our authority to require Sprint to provide us with this information pursuant to Section 218 of the Act. These reports will be made publicly available in the record of this proceeding.

¹⁷⁰ See *Foreign Carrier Entry Order* at ¶¶ 263-65.

¹⁷¹ We note that the Justice Department shares these concerns, and the proposed Final Judgment addresses these concerns by requiring Sprint and the Joint Venture to comply with certain nondiscrimination and disclosure requirements. See footnote 12 *supra*.

¹⁷² This merely restates our longstanding policy that U.S. international carriers should be afforded nondiscriminatory treatment in their traffic relations with a given country and therefore receive a proportionate share of return traffic. See

Regulation of International Accounting Rates, 6 FCC Rcd 3552, 3554-55 (1991), on recon., 7 FCC Rcd 8049 (1992); see also 47 C.F.R. § 64.1001(g) (carriers filing notifications of, or waivers for, changes in accounting rates shall certify that they have not bargained for, nor received any indication that they will be given, more than their proportionate share of return traffic).

¹⁷³ This requirement, for example, would preclude Sprint from taking advantage of any intra-E.U. accounting rate not made available to similarly situated U.S. carriers.

¹⁷⁴ This would include, for example, agreements for the proportionate return of traffic, even where the agreement is not written. See Section 43.51(b) of the Commission's Rules, 47 C.F.R. § 43.51(b). The disclosure of contracts, agreements and arrangements relating to the transiting traffic should allow better monitoring of Sprint's transiting arrangements with FT and DT, responding to CWA/IBEW's concerns about anticompetitive transiting arrangements between Sprint and FT and DT.

¹⁷⁵ If we find in the future that Sprint has violated its "no special concessions" obligation, we will take further action, including imposing fines, additional conditions or, ultimately, revoking Sprint's Section 214 authorizations on the France and Germany routes.

¹⁷⁶ We note the concern, also expressed in the MCI/BT proceeding, that FT or DT may offer, as part of an incentive to purchase their basic telecommunications services in their home countries, a discount or preference based on the French or German customer's selection of Sprint as its U.S. carrier. Under its "no special concessions" obligation, however, Sprint may not knowingly participate in the handling of any France-U.S. or Germany-U.S. basic telecommunications service for which FT

or concluding an operating agreement for such a new service, with either FT or DT unless FT or DT offer to provide the service or operating agreement on the same terms and conditions to similarly situated U.S. carriers, a concern raised by AT&T.¹⁷⁷ Similarly, Sprint would be precluded from accepting from FT or DT any distribution or interconnection arrangements, including pricing, technical specifications, functional capabilities, or other quality and operational characteristics, such as provisioning and maintenance times, at rates or on terms and conditions that are not available on a nondiscriminatory basis to all competing U.S. carriers. In these examples, the reports to be filed by Sprint will enhance the Commission's ability to monitor Sprint's compliance with its obligation to accept no special concessions from FT or DT.¹⁷⁸

122. Sprint also would be prohibited from agreeing to accept any arrangement with FT or DT for the joint handling of basic traffic originating or terminating in third countries on terms and conditions not available on a nondiscriminatory basis to all competing U.S. carriers.

123. Our "no special concessions" requirement would prohibit Sprint from accepting directly from FT or DT, or indirectly, through the Joint Venture, prior to public disclosure, any information about FT's or DT's basic network services that affects either the provision of basic or enhanced services or interconnection to the French or German public switched network by U.S. carriers or their U.S. customers.¹⁷⁹ In addition, Sprint would be precluded from accepting French or German telephone customer information (including names and addresses) from FT or DT unless such information also is available to other U.S. competitors.

124. As a further example, Sprint would be prohibited from accepting, either directly or indirectly, through the Joint Venture or from FT or DT, any proprietary or confidential information obtained by FT or DT from competing U.S. carriers in the course of regular business activities with such U.S. carriers, unless specific permission has been obtained in writing from the U.S. carrier involved. Such information might relate to the provision of interconnection or other necessary services, correspondent relationships, or negotiations of operating agreements, including accounting rates.¹⁸⁰

125. In addition, we agree with AT&T that the "steering" of customers by the Joint Venture partners to the Joint Venture violates the "no special concessions" requirement to the extent a basic service customer is being "steered" to a particular U.S. carrier.¹⁸¹ Under the terms of the Joint Venture Agreement, each partner is required to use commercially reasonable efforts to persuade its customers to

use the Joint Venture's services. Thus, for example, if an FT customer in France requests from FT a basic, private line service between France and the United States, FT is required to attempt to persuade the customer to use Sprint, the Joint Venture partner serving the United States, for the U.S. end. Although the customer may ultimately choose another U.S. carrier anyway, this arrangement affects traffic flows, and requires foreign carriers (FT and DT) to attempt to persuade customers to use one particular U.S. carrier (Sprint) for the provision of basic services. The same arrangement is not available to other U.S. carriers, and thus, by its terms, such "steering" would be an impermissible special concession under Section 63.14 of our Rules.¹⁸²

126. Our requirement that Sprint maintain complete records and provide quarterly reports on the provisioning and maintenance of facilities and services provided by FT and DT to Sprint specifically includes any services or facilities procured on behalf of customers of Joint Venture offerings in France and Germany. This requirement will enhance our ability to monitor Sprint's compliance with our "no special concessions" requirement. We may revisit the need for these reporting requirements when France and Germany are fully liberalized. But until effective competition exists in these countries, we believe that FT's and DT's market power merits this additional measure.

127. We recognize the concerns in the record raised by FT's and DT's participation in the Joint Venture, when combined with their 20 percent stake in Sprint. These factors may, for example, give FT and DT an incentive to provide Sprint preferential access to their basic services networks. This potential discrimination could take various direct or indirect forms, including preferential pricing or treatment in the provision and maintenance of both international half-circuits and of local exchange services or advance disclosure of technical specifications. We find that our concerns about the potential leveraging of foreign market power in basic service offerings to gain an advantage in the global seamless service market are satisfactorily addressed at this time by the "no special concessions" requirement and recordkeeping and reporting requirements we have imposed on Sprint.

128. We also require Sprint to file progress reports detailing the status of the telecommunications markets and regulatory regimes in France and Germany.¹⁸³ We believe these reports will assist us in determining whether progress is being made in liberalizing these markets. In the event appropriate progress is not being made, we may need to consider additional safeguards to protect against anticompetitive conduct.

or DT has offered a discount conditioned upon selection of Sprint as the U.S. carrier for such service. For example, Sprint may not accept traffic from FT or DT pursuant to a plan in which FT or DT customers are offered a discounted rate on either domestic or international private line service if the other half of the international private line is procured from Sprint.

¹⁷⁷ See *supra* at footnote 151.

¹⁷⁸ This reporting requirement should respond to WorldCom's concern that the terms and conditions of FT's and DT's provision of facilities to Sprint be transparent in order to identify discriminatory treatment. See WorldCom Letter at 5-7.

¹⁷⁹ We note that the proposed Final Judgment requires Sprint to disclose, within 30 days of receipt, FT or DT network changes. See Proposed Final Judgment, 60 Fed. Reg. at 44051-52.

¹⁸⁰ We again note that the proposed Final Judgment shares our concerns, and imposes confidentiality requirements on both Sprint and the Joint Venture.

¹⁸¹ See AT&T Supplemental Opposition at 23.

¹⁸² See *Foreign Carrier Entry Order* at ¶ 258. We note, in response to Sprint's concern that other U.S. carriers will be permitted to engage in such steering, that all U.S. carriers are subject to the same special concessions requirement. See *id.* Thus, it is unlawful for any other U.S. carrier to engage in such a steering arrangement.

¹⁸³ We impose this condition pursuant to the authority granted the Commission by Section 218 of the Communications Act, 47 U.S.C. § 218.

129. As we noted above, France and Germany have committed to taking certain steps to implement effective competitive opportunities in their telecommunications markets by January 1, 1998. We direct Sprint to provide the Commission with the following information regarding French and German regulatory developments: the text of any laws, resolutions, regulations and court decisions relevant to the implementation of telecommunications services and facilities competition, and any descriptive information regarding enforcement of and compliance with these provisions. This descriptive information should address how France and Germany are progressing in meeting the specific effective competitive opportunities criteria. We also require Sprint to report on the status of the ownership of FT and DT.¹⁸⁴ These reports should be filed no later than July 31 of each year (beginning in 1996) until this Commission determines that there are effective competitive opportunities in France and Germany. We will include these reports in the public record in this proceeding, which will remain open until we find effective competitive opportunities exist in both France and Germany. In 1998, this report must be filed by March 31, as described below.

130. Finally, to ensure if the alien ownership level in Sprint does not exceed 28 percent, we require Sprint to conduct periodic surveys of their public shareholders. We also require Sprint to obtain prior Commission approval before increasing FT's or DT's ownership or voting interest in Sprint. In addition, Sprint must file any substantive amendments or modifications to: (1) the Investment Agreement; (2) the Stockholders' Agreement; (3) the Joint Venture Agreement (4) the Certificate of Amendment to Sprint's Articles of Incorporation; (5) the Proposed Amendments to Sprint's Bylaws; and (6) the Standstill Agreement with the Commission within 30 days of execution. We also require Sprint to file with the Secretary of this Commission, within 30 days of the effective of this Order or prior to the consummation of this transaction, whichever is sooner, a letter accepting the terms and conditions of this Commission ruling.

iv. Accounting Rate Condition

131. For the reasons described in paragraph 92 above, we find that this transaction serves the public interest only if Sprint obtains a written commitment from FT to lower the accounting rate between the United States and France to the same range as the U.S.-U.K. and U.S.-Germany accounting rates. The written commitment should indicate that FT will implement these reductions in the near future and in no event later than two years from the adoption date of this Order. A copy of the written commitment shall be filed with the Commission 15 days prior to consummation of the transaction. The filing of this commitment is a precondition to our finding that this transaction serves the public interest.

v. Possible Additional Conditions or Sanctions

132. This grant is based in large part upon commitments made by the French and German Governments; if full liberalization is not implemented as planned, we will be

required to take further action. We thus require Sprint to report by March 31, 1998 on the progress France and Germany have made in meeting their liberalization commitments and, specifically, whether France and Germany afford effective competitive opportunities at that time. We will place Sprint's report on public notice and seek comment. If the record demonstrates there are serious questions about whether the anticipated measures have been taken, and effective competitive opportunities still are not available, we will designate for hearing the issue of whether the public interest continues to be served by Sprint's holding of Section 214 facilities authorizations on the U.S.-France and U.S.-Germany routes and, if necessary, Sprint's holding of Section 214 resale authorizations on these routes.

133. Finally, the terms of this decision are subject to any obligations that might arise as a result of the current negotiations in the NGBT under the auspices of the World Trade Organization. We will adjust the terms of this Order as necessary to comply with any such commitments.

V. CONCLUSION

134. After careful consideration of the arguments made by all parties, we conclude that, on balance, the public interest will be served by the grant of this declaratory ruling subject to our prescribed conditions. We find that France and Germany do not currently offer effective competitive opportunities to U.S. carriers and that FT and DT have the incentive and ability to favor Sprint over other U.S. carriers. Our analysis reveals significant competitive concerns arising from FT's and DT's monopoly positions in those countries. Our confidence that the conditions we have placed on this transaction are sufficient to control anticompetitive conduct and mitigate potential anticompetitive effects in the U.S. telecommunications market in the short term is due in large measure to the commitments the French and German Governments have made to implementing wide-ranging liberalization schemes.

135. The procompetitive impact of the equity investment on the U.S. telecommunications market is another strong public interest factor that weighs in favor of approving the transaction. FT's and DT's infusion of \$3.5-4.2 billion into Sprint will serve the public interest in a number of ways. In the United States, the transaction will make Sprint a stronger, more competitive participant in the domestic interexchange, terrestrial CMRS, and international services markets. It also will allow Sprint to expand and improve its network services and product offerings and to expand the range of communications services it offers to the American public. U.S. consumers should have increased access to new and existing telecommunications services and lower prices, which will help stimulate economic growth. In the global seamless services market, the transaction will create a significant new competitor.

136. We encourage further market-opening steps in France and Germany before 1998. We also urge the implementation of full facilities and services competition in such a way that affords effective competitive opportunities.

¹⁸⁴ As we indicated in the *Foreign Carrier Entry Order*, separation between the regulator and the dominant or monopoly carrier is most clearly achieved when the dominant or monopoly carrier is not government-owned. See *Foreign Carrier Entry Order* at ¶¶ 54-55.

In the interim, we believe the conditions we impose will safeguard against anticompetitive behavior and other potential anticompetitive effects from the strategic investment by FT and DT. They also will help mitigate Sprint's unfair competitive advantage over other U.S. carriers serving France and Germany.

137. We therefore grant Sprint's request for a ruling that 10 percent equity investments each, for a total of 20 percent, by FT and DT do not result in a transfer of control of Sprint to FT and DT. Although FT and DT each may acquire a certain degree of influence in Sprint's corporate decision-making process, we conclude this influence would not rise to a level that constitutes control under Section 310(d). We also grant Sprint's requests for a ruling that foreign ownership in Sprint of up to 28 percent, as set forth in its submissions, is not inconsistent with Section 310(b)(4) of the Act, and that the proposed transaction is not otherwise inconsistent with the public interest, so long as Sprint adheres to the conditions imposed above.

VI. ORDERING CLAUSES

138. Accordingly, IT IS ORDERED that the petitioners' request for a declaratory ruling, I-S-P-95-002, is GRANTED. Prior approval pursuant to Section 310(d) of the Act is not required before the FT and DT investments in Sprint can occur because the transaction does not involve a transfer of control. Furthermore, the level of up to 28 percent foreign ownership in Sprint, as described, is not inconsistent with the public interest under Section 310(b)(4) of the Act if Sprint complies with the conditions and requirements set forth in this Order.

139. IT IS FURTHER ORDERED that, pursuant to Section 218 of the Act, 47 U.S.C. § 218, Sprint shall report, within 30 days of the effective date of this Order, the destination markets other than France and Germany in which FT or DT controls, is controlled by, or is under common control of a foreign carrier. These reports shall also specify whether these foreign carriers have market power, as defined in paragraph 40 of this Order.

140. IT IS FURTHER ORDERED that Sprint shall be regulated as a dominant carrier, pursuant to Section 214 of the Act, 47 U.S.C. § 214, and Section 63.10 of the Commission's Rules, 47 C.F.R. § 63.10, on the U.S.-France and U.S.-Germany routes. Sprint must therefore comply with the following requirements until further Order by the Commission:

A. Sprint 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 provision of U.S. basic international services between the United States and France and the United States and Germany. Absent contrary Commission action, the tariffs will become effective 14 days after filing;

B. Sprint shall seek, pursuant to Section 63.01 of the Commission's rules, 47 C.F.R. § 63.01, additional authorization under Section 214 of the Communications Act, 47 U.S.C. § 214, before adding or discontinuing circuits between the United States and France and the United States and Germany;

C. Sprint shall file, pursuant to Section 218 of the Act, 47 U.S.C. § 218, quarterly reports of revenue, number of messages and number of minutes of both

originating and terminating traffic (each reported separately and not aggregated) for the U.S.-France and U.S.-Germany routes within 90 days from the end of each calendar quarter; and;

D. Sprint shall, pursuant to Section 218 of the Act, 47 U.S.C. § 218, maintain complete records on the provisioning and maintenance of network facilities and services it procures from FT or DT, including, but not limited to, those it procures on behalf of customers of Joint Venture offerings.

141. IT IS FURTHER ORDERED that, pursuant to Section 214 of the Act, 47 U.S.C. § 214, the Commission will not allow Sprint to operate additional circuits on the U.S.-France and U.S.-Germany routes to provide facilities-based services until the Commission finds that France and Germany:

A. Permit the provision of alternative infrastructure to be used to provide already liberalized services, in which U.S.-affiliated entities are permitted to participate; and

B. Permit the provision of basic switched voice resale, including U.S.-originated and -terminated international public switched voice services. Such resale opportunities must be available to all similarly situated U.S.-affiliated entities on the same terms and conditions. This condition may be removed on a route-by-route basis as Sprint demonstrates that a country has liberalized its telecommunications markets in the manner specified in (A) and (B) above.

142. IT IS FURTHER ORDERED that, pursuant to Section 218 of the Act, Sprint shall file with the Commission, within 15 days of the effective date of this Order, a circuit status report on the U.S.-France and U.S.-Germany routes, specifying the number of circuits in which Sprint has an ownership, indefeasible right of use, or leasehold interest, and the number of circuits it is operating on these routes.

143. IT IS FURTHER ORDERED that, pursuant to Section 63.14 of the Commission's Rules, 47 C.F.R. § 63.14, Sprint is prohibited from agreeing to accept special concession directly or indirectly from any foreign carrier or administration with respect to traffic or revenue flows between the United States and any foreign country, or agreeing to enter into such arrangements in the future.

144. IT IS FURTHER ORDERED that Sprint, pursuant to our requirement to accept no special concessions directly or indirectly from FT or DT, shall obtain a written commitment from FT and DT not to offer or provide any special concessions to Sprint or the Joint Venture, relating to the provision of basic services or facilities. A copy of such written agreement shall be filed with this Commission 15 days prior to the consummation of this transaction.

145. IT IS FURTHER ORDERED that, pursuant to Section 218 of the Act, Sprint shall file with the Commission quarterly reports summarizing its records on the provisioning and maintenance of facilities and services by FT and DT to Sprint, including, but not limited to, correspondent or other basic services or facilities procured on behalf of customers of Joint Venture offerings, in France and Germany. These reports shall include information about any distribution or interconnection arrangements, includ-

ing pricing, technical specifications, functional capabilities and other quality or operational characteristics, such as provisioning and maintenance times.

146. IT IS FURTHER ORDERED that, pursuant to Section 218 of the Act, Sprint shall file its circuit status reports for U.S.-France and U.S.-Germany circuits on a monthly basis and shall make such reports publicly available on a quarterly basis.

147. IT IS FURTHER ORDERED that, pursuant to Section 218 of the Act, and Section 43.51 of the Commission's Rules, 47 C.F.R. § 43.51, Sprint shall file with the Commission copies of all contracts, agreements, and arrangements with FT or DT that relate to the routing of traffic (including transiting traffic) and settlement of accounts on the U.S.-France and U.S.-Germany routes.

148. IT IS FURTHER ORDERED, pursuant to Section 218 of the Act, 47 U.S.C. § 218, Sprint shall obtain prior Commission approval before increasing FT's or DT's ownership or voting interest in Sprint.

149. IT IS FURTHER ORDERED that, pursuant to Section 310 of the Act, Sprint shall conduct periodic surveys of its public shareholders to ensure continuing compliance with the maximum level of foreign ownership in Sprint found not to be inconsistent with the public interest pursuant to Section 310(b)(4) of the Act.

150. IT IS FURTHER ORDERED that, pursuant to our authority under Section 218 of the Act, 47 U.S.C. § 218, Sprint shall file any and all substantive amendments or modifications to: (1) the Investment Agreement; (2) the Stockholders' Agreement; (3) the Joint Venture Agreement; (4) the Certificate of Amendment to Sprint's Articles of Incorporation; (5) the Proposed Amendments to Sprint's Bylaws; and (6) the Standstill Agreement with the Commission within 30 days of execution.

151. IT IS FURTHER ORDERED that Sprint shall obtain a written commitment from FT to lower the accounting rate between the United States and France to the same range as the U.S.-U.K. and U.S.-Germany accounting rates. The written commitment should indicate that FT will implement these reductions in the near future and in no event later than two years from the effective date of this Order. A copy of the written commitment shall be filed with the Commission 15 days prior to the consummation of the transaction.

152. IT IS FURTHER ORDERED that, pursuant to Section 218 of the Act, 47 U.S.C. § 218, Sprint shall file progress reports on liberalization developments in France and Germany no later than July 31 of each year, beginning in 1996. The report provided in 1998 shall be filed no later than March 31. These reports shall contain the information specified in paragraph 129 of this Order.

153. IT IS FURTHER ORDERED that all references to Sprint, FT, DT and the Joint Venture in this Order shall also refer to their respective officers, directors and employees, as well as to any affiliated companies and their officers, directors and employees.

154. IT IS FURTHER ORDERED that Sprint shall file with the Secretary of this Commission, within 30 days of the effective date of this Order or prior to the consummation of this transaction, whichever is sooner, a letter accepting the terms and conditions of this Commission ruling.

155. This Order is effective the day after all rules, regulations and policies adopted in the Foreign Carrier Entry Order become effective. Petitions for reconsideration under

Section 1.106 of the Commission's Rules may be filed within 30 days of the date of public notice of this Order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary