

## Communications Advisory

APRIL 24, 2014

### **FCC Eliminates Foreign Competition Test for Certain International Telecommunications Authorization Applications**

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In an order released on April 22, 2014,<sup>1</sup> the Federal Communications Commission eliminated its longstanding requirement that certain applications for authorization to provide international telecommunications services or for international cable landing licenses must pass an effective competitive opportunities test (“ECO Test”), saying the Commission can continue to promote competition in international telecommunications markets using a less burdensome process applied on a case-by-case basis.

#### **The ECO Test**

The ECO Test was a set of criteria applied by the FCC to applications for entry into U.S. international telecommunications services markets by foreign carriers that possess market power on the foreign end of a telecommunications route that terminates in a country that is not a member of the World Trade Organization (“WTO”). The test was developed in response to concerns that foreign carriers with market power could use that power to benefit themselves or affiliates to the disadvantage of U.S. carriers and consumers. As part of the test, applicants were required to demonstrate that U.S. carriers could legally enter the telecommunications market in the foreign country, that there was reasonable and nondiscriminatory access for U.S. carriers for interconnection, termination or origination of international traffic, or access to resources for resale services, and that competitive safeguards and an effective regulatory framework existed in the country. The ECO Test was used to process applications for International Section 214 telecommunications service authorizations, international cable landing license authorizations, and notifications by U.S. carriers of affiliation with foreign carriers.

#### **Reasons for Elimination**

The ECO Test has been rarely used; since 1998, when the test was limited to countries that are not WTO members, the FCC has had to make ECO Test determinations for only one International Section 214 application, one cable landing license application, and two foreign carrier affiliation notifications. The Commission attributes this lack of use to the fact that approximately 80 percent of all countries are WTO members and that non-member countries are very small, collectively representing only about 1 percent of the world’s economy. The FCC notes that many of these small non-WTO countries may lack resources to support a regulatory framework meeting all of the ECO Test requirements, despite having a relatively open market for telecommunications services that would otherwise allow them to pass the test.

#### **Replacement Review Process**

Finding that the ECO Test is no longer necessary to protect competition and that its elimination would reduce regulatory burdens to the benefit of consumers, the FCC order eliminated the test in favor of a case-by-case public interest analysis that will provide the opportunity, as needed, to review whether U.S. carriers have competitive

opportunities in the foreign country where the applicant has market power. The application process will continue to collect information to identify affiliations with carriers with market power in non-WTO countries, and such an affiliation will automatically remove the application from streamlined review. U.S. carriers will then have an opportunity to file comments about their ability to compete in the identified non-WTO country, which will be taken into account in the Commission's review. The FCC will continue to coordinate with Executive Branch agencies to address any concerns related to national security, law enforcement, trade policy, and foreign policy.

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#### Endnotes

<sup>1</sup> *Reform of Rules and Policies on Foreign Carrier Entry Into the U.S. Telecommunications Market*, Report and Order, IB Docket No. 12-299, FCC 14-48 (rel. Apr. 22, 2014).

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3926-0414-NAT-COMM