

**UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.**

In the Matter of

**CERTAIN NETWORK SWITCHING
AND ROUTING EQUIPMENT
SUPPORTING BIT INDEXED EXPLICIT
REPLICATION (BIER)**

Investigation No. 337-TA-3783

**NOTICE OF A COMMISSION DETERMINATION TO DENY COMPLAINANT'S
PETITION FOR RECONSIDERATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“Commission”) has determined to deny the petition for reconsideration filed by Optimum Communications Services, Inc.

FOR FURTHER INFORMATION CONTACT: Benjamin S. Richards, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone (202) 708-5453. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: Optimum Communications Services, Inc. (“Optimum”) filed a complaint alleging violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain network switching and routing equipment supporting bit indexed explicit replication (BIER) by reason of infringement of certain claims of U.S. Patent No. 8,619,769 on November 13, 2024. 89 Fed. Reg. 91783 (Nov. 20, 2024); *see also* Compl., ¶ 1 (EDIS Doc. ID 837072). The complaint further alleged that a domestic industry exists. Compl., ¶¶ 40–50; Compl., Ex. X.

On November 26, 2024, the Commission’s Office of Unfair Import Investigations (“OUII”) notified Optimum’s President, Mr. Sandstrom, that Optimum’s complaint suffered critical deficiencies, including with respect to its domestic industry allegations. OUII Letter at 1–4 (Nov. 26, 2024) (EDIS Doc. ID 838166). OUII’s letter asked Optimum to provide additional details about its domestic industry allegations, including its own alleged investments

in domestic research and development and its allegations related to domestic industry activities by authorized third parties. OUII Letter at 2–3. OUII’s letter indicated that the information sought is required by Commission Rule 210.12(a)(6)(i) and reproduced the relevant portion of the rule. OUII Letter at 3; *see also* 19 CFR 210.12(a)(6)(i).

On November 27, 2024, Optimum filed a supplement to its complaint responding to OUII’s Letter. *See generally* Optimum Resp. (Nov. 27, 2024) (EDIS Doc. ID 838268). In that supplement Optimum stated, among other things, that it “does not have to, and is not ‘relying on its own research and development investments in the United States’ to any degree as a basis for satisfying the DI requirement.” Optimum Resp., ¶ 1(a). It also re-filed attachments included with its original complaint and indicated that they were responsive to the questions concerning authorized third-party domestic industry activity. Optimum Resp., ¶ 1(b). Optimum’s supplement also indicates that Optimum disagrees that the allegations in its original complaint were deficient. *See* Optimum Resp., p. 3.

On November 20, 2024, the Commission solicited comments on any public interest issues raised by Optimum’s complaint. 89 Fed. Reg. 91783. In response to the Commission’s solicitation, Nokia of America (“Nokia”) and Xenogenic Development LLC (“Xenogenic”) submitted comments opposing institution of an investigation based on Optimum’s complaint. EDIS Doc. ID 838170 (Nokia’s comments); EDIS Doc. ID 838273 (Xenogenic’s comments). Optimum filed replies to Nokia’s and Xenogenic’s submissions on November 29, 2024, and December 2, 2024, respectively. EDIS Doc. ID 838264 (Reply to Nokia); EDIS Doc. ID 838344 (Reply to Xenogenic).

On January 10, 2025, the Commission informed Optimum that it had determined not to institute an investigation based on its complaint. The Commission cited Commission Rules 210.9, 210.10, and 210.12(a)(6)(i), as the basis for its decision. The Commission explained that Optimum’s complaint “does not include a sufficiently detailed description of the relevant domestic industry as defined in section 337(a)(3) that allegedly exists,” and that Optimum “failed to supplement its complaint to provide sufficient detail in its allegations of the relevant domestic industry when specifically asked to do so” in OUII’s letter. Non-institution Letter, 1–2 (EDIS Doc. ID 840845). The Commission’s letter informed Optimum that it could “re-fil[e] a complaint with sufficient allegations.” Non-institution Letter, 1, n.1.

Thereafter, on January 10, 2025, Optimum petitioned the Commission under Commission Rule 210.47 to reconsider its decision not to institute an investigation. Optimum Pet., 1 (EDIS Doc. ID 840861). Optimum’s petition contends that the allegations in its original complaint are sufficient to support institution, denies that it failed to supplement its complaint in response to OUII’s letter, and contends that the Commission’s decision violates the Administrative Procedure Act (5 U.S.C. 706). Optimum Pet., 1–3.

Upon review of Optimum’s petition, the Commission has determined to deny the petition in its entirety based on Complainant’s failure to identify a “new question” that would warrant reconsideration under Commission Rule 210.47.

The Commission vote for this determination took place on March 11, 2025.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR Part 210).

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', enclosed within a large, loopy oval flourish.

Lisa R. Barton
Secretary to the Commission

Issued: March 11, 2025