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October 17, 2017

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Section 43.62 Reporting Requirements for U.S. Providers of International Services, IB Docket No. 17-55
2016 Biennial Review of Telecommunications Regulations, IB Docket No. 16-131

Dear Ms. Dortch:

On October 16, 2017, Eric Loeb and the undersigned of AT&T met with Tom Sullivan, Jim Schlichting, Troy Tanner, Kathleen Collins, Denise Coca, David Krech and Veronica Garcia-Ulloa of the International Bureau, and with Deborah Broderson and Joel Rabinovitz of the Office of General Counsel, to discuss the above-referenced proceeding. Kimberly Cook of the International Bureau participated via conference call.

During the meeting, we expressed AT&T's support for the removal of the annual Traffic and Revenue Report as provided by the draft Report and Order released on October 3, 2017 ("Draft Order"). We noted agreement that these burdensome rules are no longer relevant in today's highly competitive international market, and that more targeted methods would still allow the Commission to obtain information to address competitive issues on an as-needed basis.

We also expressed AT&T's concern regarding one element of the Draft Order. This concerns the proposal to not treat as presumptively confidential the list of international routes with which a carrier has an arrangement with a foreign carrier for direct termination in the foreign destination, which would be filed under draft rule 63.22(h).¹ We noted that AT&T treats information concerning the U.S. international routes that are served through direct and indirect termination arrangements as confidential information that is not customarily disclosed to the public. Further, the terms and conditions of agreements with foreign carriers that establish these arrangements are usually confidential.

We noted that the public disclosure of this information, as proposed by the Draft Rule, would allow the identification of the specific routes served by each U.S. carrier via indirect termination arrangements, which would not support longstanding Commission policy fostering the least cost routing of U.S. international traffic to reduce high foreign termination rates. In 1997, the Commission recognized the least cost-routing of traffic through third countries as an

¹ See, Draft Order, ¶ 22 & App. B.

“economically rational response to inflated settlement rates [that] will continue as long as carriers maintain excessive settlement rates,” and declined to “arbitrarily restrict a carrier’s ability to route traffic in the most economically efficient manner or to restrict the development of new technologies or routing methods.”² In the twenty years since then, increasing amounts of U.S. international traffic have “migrate[d] from the traditional account rate system to least cost routes through the use of practices such as hubbing, refile and reorigination,” entirely consistent with the Commission’s prescient expectation at that time.³ Also in this period, average settlement rates paid by U.S. carriers decreased from \$0.35 per minute in 1997 to \$0.03 per minute in 2014.⁴ We reiterated support for the Commission policy to reduce settlement rates, and asserted that the nondisclosure of U.S. carriers’ form of termination arrangements has been relevant in obtaining these lower rates to the benefit of U.S. consumers. We urged that it would be in the public interest for the Commission to continue this practice.

The public disclosure of this commercially sensitive information also would disadvantage carriers in the highly competitive U.S. international market. The Commission has previously found that the disclosure of information relating to carrier-specific termination arrangements may “inhibit competition” at both the retail and wholesale level, and we noted that the same concerns require confidential treatment of this information here.⁵

We also noted that the Draft Order appears to misinterpret prior Commission Orders in stating that the Commission has “in the past consistently treated such information as public information.”⁶ The three cited Orders identify U.S. carriers serving the relevant routes based on filed international traffic data, which does not differentiate whether U.S.-outbound traffic is sent directly or indirectly to foreign points.⁷ Indeed, the cited Order relating to the U.S.-Fiji route expressly states that this “data does not show which carriers conduct settlements directly with Fintel.”⁸

We further noted that this information should be treated as presumptively confidential under Rule 0.457(d)(5), which applies to: “The rates, terms and conditions in any agreement between a U.S. carrier and a foreign carrier that govern the settlement of U.S. international traffic, including the method for allocating return traffic, except as otherwise specified by the

² See, *International Settlement Rates*, 12 FCC Rcd. 19806, ¶ 11 (1997).

³ *Id.* See also, e.g., *International Settlements Policy Reform*, 19 FCC Rcd. 5709, ¶ 23 (2004).

⁴ See, *International Settlements Policy Reform*, 27 FCC Rcd. 15221, ¶ 4 (2012); Draft Order, ¶ 15.

⁵ See, *Reporting Requirements for U.S. Providers of International Telecommunications Services*, 28 FCC Rcd. 575, ¶¶ 112 & 115 (2013); *1998 Biennial Review, Reform of the International Settlements Policy*, 14 FCC Rcd. 7963, ¶¶ 24-29 (1999).

⁶ Draft Order, ¶ 22.

⁷ See, *Petition for Protection from Anticompetitive Behavior and Stop Settlement Payment Order on the U.S.-Pakistan Route*, 28 FCC Rcd. 2127 n.5 (2013) (citing “unpublished 2011 International Telecommunications Data”); *Petition of AT&T for Settlements Stop Payment Order on the U.S.-Tonga Route*, 24 FCC Rcd. 8006, 8009, n.29 ((2009) (citing “the most recent information filed with the Commission”); *Petition for Enforcement of International Settlements Benchmark Rates on the U.S.-Fiji Route*, 29 FCC Rcd. 2210, 2213, n.21 (2014) (citing “preliminary Commission traffic and revenue data collected for 2012”). See also, *Section 43.82 Manual*, Oct. 2014, ¶ 97 (traffic is reported “by the foreign point to which [the carrier agreed to provide service] to the U.S.-billed party, rather than by an intermediate foreign point through which it arranges reorigination or transit”); *Manual for Filing Section 43.61 Data*, June 1995, at 15 (U.S. billed. and foreign billed traffic is reported “by the foreign point in which the call originates or terminates, irrespective of the foreign points through which the call may transit”).

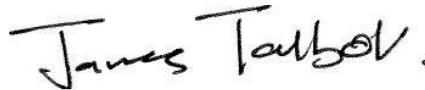
⁸ *Id.*

Commission by order or by the International Bureau under delegated authority.”⁹ Such agreements may include arrangements for the direct termination of traffic in the foreign destination as well as arrangements for traffic to be sent indirectly via the foreign destination to third countries. Alternatively, the direct termination arrangement and any indirect termination arrangement may be addressed in separate agreements. In both circumstances, the direct termination arrangement is part of the “terms and conditions” of such agreements.

Lastly, we noted that the confidential treatment of this information would not impede the investigation of potential anticompetitive issues on particular U.S. routes. The Commission itself would have the information, and would not be prevented from using this information to identify or communicate with U.S. carriers serving any route, provided such carriers were not identified publicly.

One electronic copy of this Notice is being submitted in the above-referenced proceedings in accordance with Section 1.1206 of the Commission’s rules.

Sincerely,

A handwritten signature in black ink that reads "James Talbot." The signature is written in a cursive, slightly slanted style.

James J.R. Talbot
Assistant Vice President – Senior Legal Counsel

⁹ 47 C.F.R. Sect. 0.457(d)(5).

Marlene Dortch
October 17, 2017
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cc:

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Jim Schlichting, International Bureau
Troy Tanner, International Bureau
Kathleen Collins, International Bureau
Denise Coca, International Bureau
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