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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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RM-8355 FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Market Entry and Regulation)
of International Common)
Carriers with Foreign)
Carrier Affiliations)

REPLY COMMENTS

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REPLY COMMENTS

American Telephone and Telegraph Company ("AT&T"), pursuant to the Public Notice issued October 1, 1993 (Report No. 1975), hereby submits its Reply Comments in response to the comments filed in connection with the above-captioned Petition for Rulemaking.¹

INTRODUCTION

In its Petition for Rulemaking, AT&T asked the Commission to establish a rulemaking proceeding to review, in a comprehensive way, the issues and policies related to foreign carrier participation in the U.S. telecommunications market, and to promulgate rules to address the current dichotomy between the U.S. market -- where regulatory rules

¹ Ten parties filed comments in response to the Petition for Rulemaking: ACC Global Corp. ("ACC"); British Embassy; British Telecommunications place ("BT"); Cable & Wireless, IC, . ("CWI"); DOMTEL Communications, Inc. ("DOMTEL"); EMI Communications Corporation ("EMI"); ENTEL International B.V.I. Corporation ("ENTEL"); MCI Telecommunications Corporation "MCI"); Sprint Communications Company L.P. ("Sprint"); and Telefonica Larga Distancia de Puerto Rico ("TLD").

and market conditions allow full and fair competition among service providers -- and foreign markets -- where legal and market barriers continue to prevent U.S.-based carriers from participating in the provision of basic long distance telecommunications services. AT&T demonstrated that the development of effective competition in the provision of international and global services to U.S. consumers would be jeopardized by the asymmetry in market access here and abroad, and proposed that the Commission require, as a condition of entry, that the home market of a foreign carrier applicant offer U.S. carriers opportunities comparable to those available in the U.S. within a reasonable period not to exceed two years. In addition, AT&T asked the Commission to require foreign carriers and their U.S. affiliates to comply with rules to minimize the opportunity for a foreign carrier possessing monopoly power to leverage that power in the provision of basic or enhanced services to U.S. consumers. These rules would, among other things, require the affiliates of the foreign carrier to implement nondiscriminatory, cost-based accounting rates with U.S. carriers, as a condition of entry or expansion in the U.S.

Although Sprint and MCI supported the initiation of a rulemaking proceeding to address the issues of market access, CWI, TLD, and DOMTEL -- all foreign-owned carriers that operate today in closed markets abroad and now operate or seek to operate in the U.S. -- argue unconvincingly that

no evaluation of market access asymmetry is necessary or appropriate. Even those such as TLD who objected to AT&T's raising market access concerns in the context of its Section 214 applications, now argue that these concerns should not be addressed within the context of a broader rulemaking proceeding either.² In Section I below, AT&T demonstrates that none of the reasons advanced by these carriers provide a basis to postpone the requested rulemaking proceeding.

Further, in Section II, AT&T demonstrates that the objections to the proposed rules are based on misinterpretations of the Petition or otherwise are ill-founded. The rules proposed will provide the necessary incentives to foreign jurisdictions to offer comparable opportunities to U.S. carriers as those foreign carriers enjoy in the U.S., while at the same time preserving the flexibility for other jurisdictions to regulate their markets as they deem appropriate. Further, the rules will implement safeguards that are fundamental to the development of a competitive global services market, and the preservation of competition in the provision of U.S. long distance and international services.

² TLD Reply Comments, File Nos. ITC-92-116, ITC-92-121, pp. 6-7, filed April 23, 1992.

I. THE COMMISSION SHOULD PROMPTLY INITIATE A
RULEMAKING PROCEEDING TO EVALUATE U.S.
MARKET ACCESS POLICIES

AT&T's Petition demonstrated that the international services market is undergoing a fundamental change from a structure of interconnected, bilateral arrangements, to a truly global competitive market, and that current Commission policies are insufficient to address the issues caused by this change. Foreign carriers increasingly are taking advantage of the absence of a coherent U.S. policy to enter the U.S. services business, while Commission expectations that an open door to the U.S. services market would encourage other countries to follow suit have not been fulfilled.

In response, foreign carriers, not surprisingly, argue that the status quo is acceptable, and that the Commission should not even consider whether the current approach should be changed. AT&T demonstrates below that: (1) the issues raised in the Petition require resolution, and have not yet been comprehensively addressed; (2) continuation of a case-by-case approach is less desirable than the rulemaking proposed by AT&T; and (3) the public interest requires that the issues raised by AT&T be addressed now.

A. The Issue Raised by AT&T Require Resolution and Have Not Yet Been Comprehensively Addressed

None of the parties refute the fact that the international telecommunications industry is fundamentally changing from a traditional bilateral services model to a truly global market, where carriers are expanding their operations from their home markets in order to meet customer demands for cross-border services. As Sprint (pp. 3-4) explains, the "requirement to provide customers with 'seamless' international networks has placed considerable pressure on both U.S. and foreign companies to form global investment and alliance strategies." U.S. customers that value the ability of a carrier to provide long distance, international and global services with uniform features and pricing plans are prompting U.S. carriers to expand their service offerings globally.³ U.S. carriers that fail to respond to this customer demand will lose their competitive position not only in the global and international services sector, but in the U.S. interexchange services sector as well (Sprint, pp. 3-4). Moreover, because the seamless global services desired by customers encompass both basic

³ As MCI (pp. 8-9) points out, U.S. carriers may choose to enter strategic alliances with foreign carriers to meet customer demands for global services. MCI (pp. 3-4, 8-9) incorrectly implies that AT&T's Petition is predicated on a view that these arrangements are inherently anticompetitive or suspect.

and enhanced offerings, U.S. carriers also must obtain comparable market access abroad to compete effectively in the provision of basic interexchange and international services. At the same time, foreign carriers that wish to compete in the global services market are seeking to expand their operations beyond their home markets. The size and scope of the U.S. telecommunications market compel many foreign carriers to gain entry to the U.S. market in some manner if they are to fulfill their global aspirations.

Yet, as entry into the U.S. by foreign carriers has become increasingly more significant, legal and market barriers abroad continue to foreclose facilities-based entry by U.S. carriers in foreign markets.⁴ Current Commission policies, which could not anticipate the rapid pace of globalization and the potential impact on U.S. customers from asymmetric market access, now must be re-evaluated in this context. As Sprint explains, the "focus of the Commission's traditional regulatory concern in the international arena to protect against "whipsawing" while still important, is now "overshadowed by the possibility that a foreign monopoly carrier now may be in a position to provide service originating or terminating in the

⁴ Ironically, while foreign-owned carriers operating in the U.S., like CWI (p. 5), complain that they should not be "halted at the U.S. shore", it has been U.S. carriers that have been prevented from reaching beyond the U.S. shore, as a result of asymmetric market access abroad.

U.S...and...in its home country..., whereas U.S. competing carriers...would not."

Moreover, recent events demand an immediate, de novo review of the Commission's policies with respect to international services. Telefonica de Espana's investment in a small carrier in Puerto Rico in 1992, and the effect that that transaction is likely to have on U.S. customers given Telefonica's closed market in Spain, is dwarfed by the current plans of Telefonica and others to expand their operations in the U.S. and the potential effect on U.S. competition that could follow BT's acquisition of a 20% interest in, and a special relationship with, the second largest U.S. carrier.⁵ In light of this "watershed event of

⁵ Through its purchase of TLD, Telefonica obtained not only a marketing advantage, but a cost and pricing advantage vis-à-vis its competitors on the U.S.-Spain route, because it continues to charge above-cost accounting rates for the completion of U.S.-billed calls provided by unaffiliated carriers. (See Petition, pp. 28-29). These benefits of self-correspondency will now be enjoyed by BT/MCI. In addition, however, BT's control of over 97% of the access lines in the U.K. will give BT/MCI an unfair competitive edge in the provision of global services, particularly with respect to the large number of multinational companies with locations in the U.K. and the U.S. Indeed, of the worldwide target group of multinationals that would be the primary candidates for seamless global services, 50% are headquartered in the U.S. and U.K. Unless the Commission imposes specific obligations on BT to ensure that it does not leverage its market position in favor of BT and to the detriment of other U.S. carriers, the BT/MCI alliance could significantly and adversely limit the level of competition in the provision of international and global services. See also Section I.C. infra.

enormous policy and practical consequence to the future of U.S. competition" (Sprint, p. 6),⁶ one is hard-pressed to imagine that there could be any reasonable basis to forego or postpone initiation of a rulemaking proceeding to assess the Commission's role in the global services market and to shape its regulatory policies to bring to U.S. customers the benefits of competition in that market.

Like AT&T, Sprint (p. 2) strongly endorses the immediate initiation of a rulemaking proceeding to "examine the general issue of reciprocal rights for provision of domestic and international telecommunications services." Similarly, MCI (p. iii, iv) states that "[i]t would be appropriate for the Commission to review its international service policies and ascertain whether the existing regulatory regime is consistent with customer requirements" for the "seamless, sophisticated international services [that require] reducing and eliminating historical impediments to interconnectivity, ubiquity and uniformity in communications services."

CWI (p. ii), on the other hand, erroneously contends that a rulemaking is unnecessary because "the

⁶ The Chairman of BT, Iain Vallance, in BT's September 1993 Report to Shareholders (p. 8), described the BT/MCI alliance as "the most significant event in [BT's] worldwide strategy" and "probably the most important development in world telecommunications over the last few years."

question of whether to allow foreign-owned countries to enter the U.S. market has squarely been addressed by the Commission." CWI (pp. 6-7) notes that, as far back as 1960, foreign-owned companies have been permitted to enter the U.S. international services market, and that "participation by foreign controlled companies in international services by resale is as old as international resale itself." CWI misses the point.

The provision of sophisticated, seamless voice services on a global basis by a single provider (or alliance of carriers) was unforeseen at the time the Commission decisions cited by CWI were made, and changed circumstances warrant modifications to existing policies. Indeed, as recently as 1985, when the Commission examined the state of competition in the U.S. international services market, it defined the relevant market as the provision of bilateral international services -- where U.S. carriers, on the one end, and a foreign carrier, on the other end of an international circuit, provided outbound calling capabilities to two distinct customer bases located in each carrier's respective country. It was also in that context that the Commission permitted foreign carriers, including CWI, to enter the resale market in the U.S. These decisions did not attempt to address the extent to which foreign carriers should be permitted to enter the U.S. market to provide global services here and abroad, while foreign markets prohibit U.S. carriers from the same opportunities.

In fact, recent Commission decisions confirm that the Commission has yet to examine market access asymmetry in the context of the new global market. TLD and CWI incorrectly allege that the Commission has already evaluated and decided the public interest implications of foreign carrier entry in the U.S. in the context of the TLD Acquisition Order⁷ and/or the International Services Order.⁸ In the International Services Order, the Commission "note[d] that our dominant/non dominant regulatory analysis occurs only after we have concluded a particular carrier should be authorized to provide international service in the U.S. market."⁹ The concurring Joint Statement of Commissioners Marshall and Duggan further clarified the scope of the International Services Order as follows:

We are voting for this item for only one reason: its scope is so narrow that it should not hamstring U.S. negotiations on larger international telecommunications issues. Today's decision simply implements an improved regulatory scheme for determining whether an international common carrier operating within the U.S. should be regulated as dominant or non dominant. It does not address the question of under what circumstances foreign-owned carriers may be granted entry into the U.S. market. In short, this decision simply takes care of the

⁷ 8 FCC Rcd 106 (1992).

⁸ 7 FCC Rcd 7331 (1992).

⁹ Id. at 7332.

regulatory details that will follow the larger, and much more significant, market entry question.

...Therefore, we emphasize that today's decision does not implicate market entry standards for foreign carriers.

...Today's decision establishes the rules as to how the carrier [that has been granted entry] would be regulated...in our market. Of course this decision does not address, nor should it, the question of appropriate market entry standards for foreign facilities-based carriers. (Id. at 7345-46 (emphasis in original)).

Nor did the Commission in the TLD Acquisition Order consider and determine the public interest implications and market rules applicable to foreign carrier participation in the U.S. market. In that case, the Commission evaluated the public interest issues associated with the entry of one carrier, Telefonica de Espana, under unique circumstances and expressly stated that the Commission would not be constrained in its evaluation of subsequent applications for facilities-based entry by foreign carriers on a case-by-case basis. The Commission, therefore, did not purport to assess the public interest and market factors associated with foreign carrier participation generally.

Finally, TLD's and EMI's arguments that AT&T's Petition for Rulemaking should not be entertained because it is an untimely appeal of prior Commission decisions is without legal merit. The Commission has the authority, at any time, to proceed through rulemaking to establish new policies or make modifications to existing policies, as it

deems appropriate.¹⁰ As demonstrated in the Petition, the public interest implications of asymmetric market access are broader than those traditionally considered by the Commission in evaluating applications for entry or expansion. It is entirely appropriate for the Commission to consider these implications outside the context of an individual application, provided interested parties are granted the opportunity to be heard.¹¹

B. Comprehensive Rulemaking is Preferable to A Continued Ad Hoc Approach

While ACC (p. 3) "urge[s] the Commission to be prepared to take a more active role in addressing situations in which asymmetrical market regulation can harm U.S. interests", ACC and others mistakenly contend that a case-by-case analysis of individual foreign carrier applications is sufficient to address the public interest issues of

¹⁰ See In the Matter of Ortho-Vision Petition for Declaratory Ruling, 82 F.C.C.2d 178 (1980); Telerent Leasing Corp., 45 F.C.C.2d 204 (1974).

¹¹ Contrary to TLD's claim, there would be no due process violation if the outcome of that proceeding were a modification of the Commission's policy to undertake a case-by-case analysis of foreign carrier facilities applications. See Ortho-Vision, supra note 10. The TLD Acquisition Order did not, as TLD (p. 9) implies, guarantee TLD approval of subsequent applications to expand its service operations, and TLD consummated its transaction with full knowledge that the Commission could deny or condition those authorizations as it deemed appropriate. Further, TLD will have full opportunity to be heard in the rulemaking proceeding.

market asymmetry. As described in the Petition for Rulemaking (pp. 13-26), a case-by-case analysis of foreign carrier Section 214 applications, cable landing license requests, and other regulatory requests would continue to permit non-uniform standards of market entry and public interest determinations. Moreover, the current problem is that even with a case-by-case approach there is a need for standards to apply to the individual situations, and -- as the Commission has recognized -- it has never comprehensively reviewed the interrelated market access issues that are necessary to implement a coherent policy.

MCI and TLD argue that different standards may be appropriate depending on the type of application. Perhaps. But applying different standards to analogous facts should nevertheless be based on a coherent view of the Commission's overall policy objectives -- which to date has not been the case. Moreover, the infirmity of applying different standards without understanding or articulating a basic policy is illustrated by the fact that foreign carriers are attempting to utilize the absence of consistent policy and standards to avoid scrutiny of market entry plans -- as dramatized by BT's apparent decision to abandon reliance on its Section 214 application and to acquire instead an interest in MCI, which under current rules, requires no new

Section 214 authorization.¹² Moreover, there simply is no logical basis for BT's U.S. entry through 20% acquisition and special shareholder's rights in the second largest U.S. carrier to be given lesser regulatory consideration than BT's earlier application to enter the U.S. market as a reseller, or for BT's investment in MCI to be reviewed only under Section 310,¹³ while Telefonica de Espana's

¹² BT and MCI's argument that the Commission could investigate the public interest aspects of their alliance in the context of subsequent Section 214 applications is disingenuous at best, given the parties' intentions to consummate their transaction prior to the submission of any such Section 214 application. The agreements make clear that BTNA's existing 214 application to enter the U.S. market through private line resale will become mooted, given the sale of BTNA's U.S. business to MCI, and BT's agreement to serve U.S. customers through its investment in MCI, rather than by seeking its own 214 authority. MCI would presumably be equally opposed to reviewing the public interest questions raised in AT&T's Petition in a comprehensive review of MCI's existing 214 authorizations, in advance of its consummation of its arrangement with BT.

¹³ BT (p. 3) again complains that Section 310(b) imposes "significant and substantial barriers to full and effective participation by foreign carriers" in the U.S. -- which is belied by the increasing and significant participation of foreign carriers like Telefonica de Espana and BT in the U.S. Section 310 limits investment by foreign firms only in companies holding broadcast and common carrier radio licenses. It does not, however, place any restriction on the lease and operation of licensed broadcast and radio facilities by foreign firms, and carriers (like Telefonica) who have acquired U.S. carriers holding such licenses have overcome the restriction by transferring the licenses to a U.S. corporation and leasing back the necessary rights to use those licensed facilities. Moreover, Section 310 does not prohibit foreign ownership of cable or fiber facilities, and foreign carriers (like CWI) operate

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acquisition of a small carrier in Puerto Rico, or CWI's expansion of facilities-based service with its affiliates in foreign markets are reviewed under a different set of standards (or under no standards at all).

Finally, a case-by-case approach does not lend itself to the type of "holistic" review of the broader ramifications of the complex and interrelated issues presented by foreign carrier participation in the U.S. (Sprint, p. 5). A general rulemaking will provide an opportunity to undertake a overall review of the Commission's policies and to articulate a policy framework and general rules that would govern foreign carrier participation in the U.S., without unduly delaying or disadvantaging any individual applicant. Thereafter, initial applications for entry and incremental Section 214 applications for expansion, such as those submitted by TLD, could proceed more expeditiously,¹⁴ as foreign and U.S.

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facilities throughout the U.S. that do not come within the ambit of the provision.

Nevertheless, AT&T does not object to CWI's (p. 18) request that the Commission, in the context of the proposed rulemaking, "clarify the full permissible scope of Section 310(b)."

¹⁴ General rules for market entry and foreign carrier alliances would not supplant case-by-case review of Section 214 or cable landing license applications. However, contrary to ACC's claims, that does not mean that a rulemaking proceeding would be an inefficient expenditure of the Commission's resources. In fact, the

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carriers would be on notice as to the standards by which their applications will be governed.

C. The Public Interest Requires the Issues Raised by AT&T to Be Addressed

Those seeking to avoid Commission review of its international services policies argue that there is no evidence that the current ad hoc approach is not working. (TLD, pp. 11, 13; ENTEL, pp. 7-10). The fact that foreign carriers are seeking to enter the U.S. services market through a variety of means while foreign countries liberalize their own markets slowly or not at all is evidence that the Commission's policy of leading by example has not worked. Similarly, BT/MCI's proposed agreements, notwithstanding their protestations, reveal that current Commission policy pronouncements have not closed the door effectively on those who would seek to leverage foreign carrier monopoly power to distort or foreclose U.S. services competition.

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adoption of general rules would provide a framework within which Commission review of individual applications could be undertaken expeditiously; would streamline the analysis of individual applications in that additional review would be necessary only as to factors that are unique to the specific application; and, under AT&T's proposed rules, nevertheless would preserve the Commission's flexibility to weigh individual factors and to tailor its orders, as it may deem appropriate.

BT and MCI, without formally providing the Commission a copy of their agreements, continue to maintain that "the agreements do not present any problem of unlawful exclusivities or discrimination", nor do BT and MCI intend to provide services only in conjunction with one another. (BT, p. 14 (emphasis added)). The clear language of their agreements demonstrate otherwise.¹⁵ The Joint Venture Agreement states that neither BT nor MCI may provide what are defined as "Enhanced or Value Added Services" either by themselves or with any other entity, except in accordance with the Distribution Agreements.¹⁶ As AT&T explained in its Petition (pp. 33-34), "Enhanced and Value Added" is defined to mean all services, including basic services, which regulators permit to be offered between two or more countries by members of the same group, excluding only international simple resale¹⁷, international direct dial provided on a correspondent basis, international private

¹⁵ A copy of the Agreements' provisions referred to herein are attached as Attachment I.

¹⁶ Joint Venture Agreement, Article 18.

¹⁷ Distribution Agreement, Part 1.1. International simple resale ("ISR") will fall into the exclusive "Enhanced and Value Added" category if MCI is unable, without obtaining U.S. regulatory approval, to offer distribution arrangements to BT competitive with those utilizing ISR arrangements. Joint Venture Agr. Art. 18.9(c). The Agreement contemplates, therefore, that Newco could skirt the Commission's Section 214 requirements and provide ISR arrangements without any showing of equivalency.

line services, or any services which must, for regulatory reasons, be offered on a correspondent basis.¹⁸ The Joint Venture Agreement makes clear that the joint venture ("Newco") will develop the parties' "Enhanced or Value Added services" for both BT and MCI on an exclusive basis.¹⁹

The Distribution Agreement further requires BT and MCI to distribute only those "Enhanced and Value Added Services" provided by Newco, and each to be the exclusive distributor for the other of those services in their respective territory.²⁰ To cement the relationship, the parties agree not to compete with Newco, and Newco agrees not to compete with the parties.²¹

The effect of these interlocking provisions is straightforward. Except for basic IDD and private line, BT is prohibited from entering into new arrangements for joint services with any carrier other than MCI, because to do so would mean that BT was offering a service outside of the Distribution Agreement, which Article 18.1 of the Joint Venture Agreement explicitly prohibits. Thus, for example, if AT&T wished to offer a new GSDN-like service between the

¹⁸ Id., Art. 1 ("Definitions").

¹⁹ Id., Art. 18.

²⁰ Distribution Agr., Arts. 4.1 and 5.1.

²¹ Joint Venture Agr., Art. 18.1; Distribution Agr., Art. 4.1.

U.S. and U.K., the Agreement would prohibit BT from participating as the U.K. correspondent for that offer, because this is not within the few basic services excluded from the "Enhanced or Value Added Service" definition, and the Agreement prohibits either party (except as permitted by the Distribution Agreement which limits BT to distributing only Newco services) from carrying on or being engaged in such services, either solely or jointly with another entity. Because of BT's near total control of essential distribution facilities in the U.K., this effectively could limit the ability of other U.S. carriers to offer competitive services to U.S. customers desiring GSDN-like service to the U.K.²²

These provisions clearly raise significant policy questions as to whether a foreign carrier having control over essential distribution facilities will be permitted to extend that power to select which U.S. carriers will be able to offer international services to U.S. customers. AT&T believes the fact that such efforts are being made require the Commission to clarify and implement clear rules for all

²² In fact, BT loses its special shareholder rights if it "provides sales and marketing support, technology or customer traffic in connection with any [carrier]" other than MCI, except for the narrow range of permitted correspondent functions. Investment Agr., Art. 9.12. That Article forces BT to deal exclusively with MCI or face the loss of its shareholder rights, even if the failure to comply violates the law, unless the penalty for BT's violation could be a loss of its license or would otherwise have a material adverse effect on BT's business! Art. 9.12(b)(iii).

carriers; if, in fact, such arrangements are consistent with the public interest, than a rulemaking could consider and clarify these issues. In any event, however, these issues need to be analyzed before competitive necessity forces other U.S. carriers to replicate these arrangements, and the market is fractionalized into a series of competing exclusive arrangements, each seeking to use foreign bottlenecks to compete for U.S. customers.

* * * *

Thus, none of the commenting parties provide any reasonable basis to delay the initiation of a rulemaking proceeding. The public interest demands that the Commission evaluate whether foreign carrier participation in the U.S. market, while U.S. carriers are denied access to foreign markets, will, as AT&T believes, limit U.S. customer choice in the interexchange, international and global services market. If so, the Commission should modify its regulatory policies and rules so as to ensure that U.S. customers will reap the benefits of effective competition, including the opportunity to choose among multiple global suppliers based on innovative offerings, service efficiencies and price competitiveness.

II. THE PROPOSED RULES CONTAINED IN THE PETITION FOR
RULEMAKING ARE REASONABLE AND SHOULD BE PROPOSED
FOR PUBLIC COMMENT

The Petition for Rulemaking demonstrated that, unless comparable opportunities are available to U.S. carriers in foreign markets, U.S. competition will be harmed by permitting unconditional entry and expansion by foreign carriers in the U.S. market. In addition, the Petition demonstrated that competitive safeguards -- similar to those the Commission found to be necessary to facilitate the development of effective competition in the interexchange market -- must be imposed to minimize the ability of a foreign carrier to use its control over bottleneck facilities in its home market to favor its U.S. affiliate at the expense of non-affiliated U.S. competitors. To encourage the opening of foreign markets, AT&T proposed that the Commission grant foreign carrier applications to enter (or to expand in) the U.S. only upon a finding that the home market of the applicant offers to U.S. carriers opportunities today that are comparable to those available within the U.S., or is reasonably likely to do so within a two year period. Further, the proposed rules would require the foreign carrier and its U.S. affiliate to agree to conditions that would minimize the opportunity for the foreign carrier to leverage its markets power in the provision of services to U.S. customers.

The British Embassy and the foreign carriers mischaracterize the comparability analysis as a demand for

"mirror equivalency", and imply that any assessment by the Commission as to the state of competition in foreign markets is a violation of international comity. Remarkably, although the rules reflect many of the competitive safeguards that the Commission has found necessary in the U.S. market (at the earlier request of MCI, among others), MCI now argues that they will "stifle the development of innovative services", and the foreign carriers, in effect, complain that the standards are set too high for them to comply. Further, in attempts to narrow the Commission's inquiry, BT and DOMTEL argue that the Commission should place no restrictions on affiliations unless they result in the transfer of legal control, and ENTEL argues that the Commission should ignore the potential anti-competitive impact in the enhanced services market that would result from exclusive arrangements between foreign and U.S. carriers.

As demonstrated below, all of these arguments are without merit. The proposed rules appropriately provide a framework within which the Commission would advance the goal of encouraging market access for U.S. carriers and would ensure that U.S. customers enjoy the benefits of a competitive global services market. The assessment of competitive opportunities available to U.S. carriers in foreign markets, as proposed, does not violate international comity or imply that foreign markets must replicate the U.S. regulate model. Nor do the rules restrict the Commission's

ability to weigh the relevant factors and make such determinations on entry as it deems appropriate. Further, assessing the potential competitive impact from foreign and U.S. carrier affiliations -- whether or not there is a transfer of control, and whether or not the services they provide will include enhanced as well as basic services -- is necessary and appropriate to preserve competition in the services market.

A. The Commission's Assessment of Competitive Opportunities in Foreign Markets and its Imposition of Conditions on Those That Operate in the U.S. Does Not Infringe on a Foreign Regulator's Right to Regulate Its Market As It Deems Appropriate

The comparability standard proposed in the Petition is criticized by CWI, ENTEL, TLD and the British Embassy, on the grounds that it is "too rigid" and necessarily requires "mirror reciprocity" by the foreign market. These criticisms are unfounded. The proposed rules do not suggest that a foreign jurisdiction must adopt the U.S. regulatory model or mirror the U.S. approach to meet the comparability test.²³ The means by which a foreign

²³ CWI asserts that no country could meet the proposed standard. Then, it argues that the U.K. does. (CWI, p. 5). In its Petition to Deny BTNA's application for private line resale, MCI had a markedly different view. MCI stated: "Indeed, if the U.S. experience teaches anything it is that effective control over bottleneck facilities breeds abuse and must be tightly regulated....[In the U.S.]..., extensive regulation of [interconnection] tariffs abounds today and new entrants can be assured that they will be treated fairly and nondiscriminatorily. The U.K. regime does not even come

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