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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

_____)
In the Matter of _____)
_____)
Market Entry and Regulation of _____)
Foreign-affiliated Entities _____)
_____)
_____)

IB Docket No. 95-22
RM-8355
RM-8392

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REPLY COMMENTS OF ACC GLOBAL CORP.

ACC Global Corp. ("ACC"), by its undersigned counsel, submits these reply comments in response to comments filed by Swidler & Berlin, Chartered ("Swidler"),^{1/} Communication Telesystems International ("CTS"),^{2/} and IDB Communications, Inc. ("IDB")^{3/} in the above-captioned proceeding.^{4/} As a preliminary matter, however, ACC affirms its view that the Commission should ensure that its international policies broaden rather than restrict traffic routing options and foreign market opportunities for emerging small U.S.-based international carriers. Indeed, ACC believes strongly the Commission should move with deliberate speed to adopt policies that will: (1) encourage effective global market competition for communications

^{1/} See Comments of Swidler & Berlin, Chartered, IB Docket No. 95-22, RM-8355, RM-8392 (filed April 11, 1995).

^{2/} See Comments of Communications Telesystems International, IB Docket No. 95-22, RM-8355, RM-8392 (filed April 11, 1995).

^{3/} See Comments of IDB Communications, Inc., IB Docket No. 95-22, RM-8355, RM-8392 (filed April 11, 1995).

^{4/} Notice of Proposed Rulemaking, FCC 95-53 (released February 17, 1995) ("Notice"). In response to the Commission's solicitation for comments, over 50 parties commented on the Commission's proposal to establish a market access test for foreign carriers seeking to enter the U.S. market as well as other issues affecting U.S. carriers' ability to enter and compete effectively in the international marketplace.

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services; (2) prevent anticompetitive conduct in the provision of international services and facilities; and (3) encourage foreign governments to open their communications markets. Further, the Commission should reject summarily proposals that unnecessarily restrict emerging small U.S. carriers from participating in niche markets in foreign countries.

Consistent with this view, ACC urges the Commission to adopt certain proposals advanced by some commenters that will provide carriers with the flexibility to establish cost-efficient international networks and participate in new foreign niche markets created by liberalizing foreign markets. In ACC's view, incorporating Swidler's "points beyond" proposal, IDB's proposal for a uniform definition of facilities-based carriers, and CTS' "small carrier exemption" proposal (with some modification) in the Commission's international services policies will advance the Commission's express goals by permitting U.S. carriers to maximize niche market opportunities in foreign markets. Further, as discussed in ACC's comments and proposed by numerous commenters in this proceeding, the Commission should exercise its oversight authority on U.S. carrier off-shore alliances and affiliations with foreign carriers, such as AT&T's WorldPartners and Uniworld arrangements, that effectively provide many foreign carriers access to the U.S. market while enjoying the luxury of protected home markets.

I. THE COMMISSION SHOULD ADOPT INTERNATIONAL POLICIES THAT PROVIDE U.S. CARRIERS WITH THE FLEXIBILITY TO DEVISE THE MOST COST-EFFICIENT ROUTING OPTIONS AND PARTICIPATE IN NEW FOREIGN MARKET OPPORTUNITIES.

A. Swidler's "Points Beyond" Proposal Will Advance the Commission's Articulated Goals.

As an emerging competitive international telecommunications service provider, ACC concurs wholly with Swidler that the Commission's current international private line resale

policy prohibition on providing service to "points beyond" the equivalent country when the Commission grants a carrier Section 214 authority to serve a specified country is contrary to the public interest and should be abolished. As detailed in Swidler's comments, the current policy "frustrates rather than promotes the goals of the Commission's private line resale policy"^{5/} as well as the goals of this proceeding with little, if any, corresponding positive impact on the settlements imbalance.

Contrary to the previous self-serving claims of AT&T^{6/} that allowing U.S. carriers to route traffic to "points beyond" will increase the settlements deficit by supporting above-cost accounting and collection rates, ACC submits that the "points beyond" restriction on the use of private lines limits severely the routing options available to emerging entrepreneurial carriers, thereby impeding their ability to compete effectively.^{7/} Indeed, as Swidler indicates, rather than undermining the equivalency policy, allowing carriers to route traffic to "points beyond" the designated equivalent country would preserve and enhance the competitive nature of the U.S. international services market, promote competition among U.S.-based international carriers, increase the pressure on closed foreign markets to adopt open policies, and place additional pressure on above-cost accounting rates. Under the current policy restricting the transmission of traffic to "points beyond," international resellers like ACC are foreclosed from using existing cost-efficient routing options that would immediately result in lower costs and consequently lower consumer rates.

^{5/} Swidler Comments at 1.

^{6/} *See, e.g.*, AT&T Petition to Deny, File I-T-C-95-026 (filed November 23, 1994) at 18-24.

^{7/} *See* Swidler Comments at 11-13.

As detailed in Swidler's comments, allowing carriers to route traffic to "points beyond" the equivalent country would facilitate "bypass of the high-cost non-equivalent direct routes to the third country in favor of routings through the competitive hub country market, with commensurate savings, and no adverse impact on the settlements deficit."^{8/} As highlighted in Swidler's comments, "if Commission policies are revised to permit equivalent countries like the U.K. (that permit carriers to route switched traffic over private lines to "points beyond" the U.K.) to serve as "hubs" for traffic to non-equivalent locations, pressure upon foreign administrations with above-cost accounting rates will increase, and consumers will benefit through lower prices."^{9/} The current restriction on routing traffic to "points beyond" needlessly impairs the ability of U.S.-owned carriers to establish overseas operations that would be permitted under foreign law. Accordingly, ACC submits that the public interest mandates that the Commission lift its prohibition on allowing carriers to route traffic to "points beyond" the equivalent country when the Commission grants private line resale authority to a particular country.

B. The Commission Should Adopt a Uniform Definition of Facilities-Based Carriers for Both U.S. and Foreign Carriers.

As the facilities-based corollary to the leased line "points beyond" proposal, ACC supports IDB's proposal that the Commission adopt a uniform definition of facilities-based carriers for both U.S. and foreign carriers based on their purchase of the maximum interest in an international facility permitted by law.^{10/} ACC concurs with IDB that a uniform definition

^{8/} See Swidler Comments at 13.

^{9/} *Id.* at 17.

^{10/} See, generally, IDB Comments at 5, 20-37.

based on a maximum interest approach that applies to both U.S. and foreign carriers would eliminate the need to continually adapt the definition to new laws and policies.^{11/}

As a practical matter, ACC submits that IDB's proposed uniform approach to foreign and U.S.-based carriers will advance all of the Commission's express goals in this proceeding. As in the case of "points beyond" routing, like treatment of leased foreign half-circuits and leased U.S. half-circuits will allow U.S. carriers to enter foreign markets and provide end-to-end service to consumers at lower costs. For example, under the current policy, which regards foreign leased [half] circuits as resale, assuming that the country has not been designated as offering "equivalent" opportunities, a U.S. carrier that leases capacity from INTELSAT and is treated as a facilities-based carrier for the U.S. half-circuit could only provide end-to-end international private line service to its end-user customer by corresponding with a foreign carrier, even if the U.S. carrier has an affiliate in the foreign country.^{12/} In essence, this policy would foreclose U.S. carriers from participating in the private line market in those liberalized foreign countries.^{13/} As detailed in IDB's comments, the rationale for this asymmetric treatment of U.S. and foreign carriers engaged in the same activity undermines the Commission's goal of opening foreign markets, promoting competition in the international services market, and reducing above-cost accounting rates.^{14/} ACC concurs wholly with IDB that:

the principal effect of adopting a narrower definition of facilities-based carrier for foreign half-circuit providers would be to preclude U.S.

^{11/} *Id.* at 23.

^{12/} Notice at ¶ 71. This example would not, of course, apply to the few countries such as Germany or the United Kingdom that permit direct access to INTELSAT.

^{13/} IDB Comments at 25.

^{14/} IDB Comments at 24, 26.

carriers from entering newly-opened foreign telecommunications markets, thereby suppressing competition and propping up above-cost accounting and collection rates.^{15/}

With respect to the Commission's concerns that treating foreign leased half-circuits as facilities-based circuits will increase the settlements deficit, ACC also concurs with IDB that, given the significant impact of country direct and country beyond services in increasing the "net settlements" deficit, it is disingenuous for the Commission to treat foreign leased circuits as resale as a means of reducing the settlements imbalance without adopting specific measures to limit country direct and country beyond services.^{16/} Because the benefits of treating foreign leased lines as facilities-based are the same as those associated with country direct and country beyond services,^{17/} to the extent the Commission permits country direct and country beyond services despite their undisputed adverse impact on the existing settlements imbalance, the Commission should likewise treat foreign leased half-circuits as facilities-based carriers.^{18/} Alternatively, as proposed by IDB, the Commission should at a minimum "adopt a definition under which affiliates of facilities-based U.S. companies are regarded as facilities-based carriers, when they provide international private line services in foreign countries."^{19/} ACC submits that this middle ground would allow U.S. carriers to maximize the niche market opportunities created in open foreign markets.

^{15/} *Id.* at 26.

^{16/} *Id.* at 31-33.

^{17/} *Id.* at 33-35.

^{18/} *Id.*

^{19/} *Id.* at 37-38.

C. *A Small Carrier Exemption to the Market Access Test Is in the Public Interest.*

Although ACC endorses the Commission's overall strategy of leveraging foreign carrier interest in U.S. markets to open up foreign markets, ACC concurs with CTS that "the broad sweep of the Notice could be counterproductive if it were to retard competition in the U.S. market."^{20/} Indeed, eliminating or restricting severely the availability of foreign capital to small carriers in a capital-intensive industry could result in an overall reduction in the number of service providers.^{21/} For the many reasons detailed in CTS' comments, a foreign investor's non-controlling interest in a small nondominant international carrier simply does not present the same issues as the multimillion dollar investments that large U.S. carriers attract.^{22/} To ensure the continued viability of small carriers, ACC submits that the Commission should adopt a small carrier exemption.

However, rather than the \$125 million gross annual threshold for exemption eligibility proposed by CTS, ACC believes that a market share threshold of 5% and no control of U.S. bottleneck facilities should be established as the exemption eligibility threshold.^{23/} ACC submits that this market share approach to determining eligibility for the exemption is a better gauge for defining "small" in a multibillion dollar industry, where it is conceivable that a company with \$125 million in gross revenues could control less than 5% of the market.

^{20/} CTS Comments at 3.

^{21/} *Id.* at 3-5.

^{22/} *Id.*

^{23/} Because regional Bell Operating Companies may be permitted to enter the international services market in the future, the Commission should make clear that this exemption would not apply to former controllers of bottleneck facilities that may initially have less than 5% of the international market.

II. THE COMMISSION MUST EXERCISE ITS OVERSIGHT AUTHORITY TO OFFSHORE ALLIANCES THAT COMPROMISE COMPETITION IN THE INTERNATIONAL SERVICES MARKET.

Given the fragile nascent state of competition in the international marketplace, the Commission must actively exercise all of its authority to ensure an international marketplace environment that provides emerging small carriers a fair opportunity to compete abroad. Consistent with ACC's view,^{24/} numerous other commenters argue that the recent outbreak of offshore global alliances and co-marketing arrangements between large U.S. and foreign carriers threaten the competitive integrity of the U.S. international services marketplace.^{25/} As detailed in ACC's comments, many emerging carriers are concerned that offshore alliances such as AT&T's WorldPartners will diminish foreign carrier incentives to do business with carriers unaffiliated with them.^{26/} Indeed, MFSI used its comments to share its recent experience in negotiating correspondent agreements with allied foreign carriers with the Commission.^{27/} Without proper Commission oversight, this type of blatant discrimination against small carriers can only worsen as various foreign carriers become involved in off-shore partnership arrangements with large U.S. carriers such as AT&T's WorldPartners. It is axiomatic that the "carrot" before the foreign carriers entering into these alliance and marketing relationships with AT&T is access to the U.S. market, however indirectly. The Commission should use that

^{24/} See ACC Comments at 5.

^{25/} See, e.g., MFS International Inc. ("MFSI") Comments at 4-7; LDDS Communications, Inc. Comments at 7; BT North America Inc. Comments at 14; Deutsche Telekom AG Comments at 58-59; France Telecom Comments at 13; Sprint Communications Company L.P. Comments at 5-6.

^{26/} See, e.g., MFSI Comments at 6-7.

^{27/} *Id.*

"carrot" along with its undisputed jurisdiction over AT&T (and any large U.S. carrier that enters into such arrangements) to extract certain non-discriminatory commitments from these carriers. As suggested by numerous commenters, any U.S. carrier involved in any arrangements like WorldPartners and Uniworld should, at a minimum, be required to comply with the BT-MCI requirements. Namely, the U.S. carrier should (1) commit not to accept "special concessions," as evidenced by written agreements with the foreign carrier,^{28/} (2) commit to maintain and make available to the Commission records on the provisioning and maintenance of facilities and services by the foreign carrier including, but not limited to, services or facilities procured on behalf of customers of the venture offerings, (3) make its monthly circuit status reports of circuits for each route publicly available on a quarterly basis,^{29/} (4) file with the Commission notification of each additional circuit on the specified routes, specifying the joint owner, and (5) file with the Commission quarterly reports of revenue, number of messages and number of minutes of both originating and terminating traffic on each specified route within 30 days from the end of the quarter. At a minimum, with these and other appropriate safeguards in place, ACC believes that emerging U.S. carriers will have at least a fair chance to enter and compete in the international marketplace.

III. CONCLUSION

WHEREFORE, ACC respectfully requests that the Commission use this proceeding to expand its international policies so that they can adequately address the rapidly changing

^{28/} *Request of MCI Communications Corporation British Telecommunications PLC, Joint Petition for Declaratory Ruling Concerning Section 310(b)(4) and (d) of the Communications Act of 1934, as amended, Declaratory Ruling and Order, 9 FCC Rcd. 3960 (1994) ("BT/MCI").*

^{29/} BT/MCI at ¶ 39.

international telecommunications market. Specifically, ACC urges the Commission to adopt policies that incorporate Swidler's "points beyond" proposal, IDB's proposal for a uniform definition of facilities-based carriers, and CTS' "small carrier exemption" proposal (with a 5% market share threshold) in its international services policies. ACC believes that adoption of these proposals in conjunction with the Commission's exercise of its oversight authority over off-shore alliances will advance the Commission's express goals in this proceeding.

Respectfully Submitted,

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