

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
International Settlements Rates) IB Docket No. 96-261
)

COMMENTS OF ACC CORP.

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COMMENTS OF ACC CORP.

ACC Corp. ("ACC"), by its counsel, hereby comments on the Commission's Notice of Proposed Rulemaking (released December 19, 1996), in the above-captioned proceeding.¹ In these comments, ACC supports the initiatives of the Federal Communications Commission ("FCC" or "Commission") to enhance competition in the international telecommunications marketplace, especially through the liberalization of its regulatory treatment of International Simple Resale ("ISR").

I. Introduction and Summary

ACC, through its subsidiaries, provides domestic and international resale and international facilities-based telecommunications services in the United States, and is a reseller of telecommunications services in the United Kingdom ("U.K.") and Canada. ACC's U.K. subsidiary recently received an International Facilities License ("IFL") in the United Kingdom. ACC also has

¹*In the Matter of International Settlement Rates, IB Docket No. 96-261, FCC 96-484, (rel. Dec. 19, 1996) ("Notice" or "NPRM").*

established a subsidiary in Germany to pursue resale activities.

ACC supports the Commission in its attempt to facilitate entry by U.S.-based carriers into the international telecommunications market. Through the proposals contained in its NPRM, the Commission seeks to heighten competition by (1) encouraging the successful conclusion of the World Trade Organization (“WTO”) negotiations on basic telecommunications, due to be completed on February 15, 1997, (2) liberalizing its regulation of ISR, and (3) acting to potentially reduce international accounting rates and thereby reducing the cost of entering the international marketplace on a facilities basis.

II. DISCUSSION

A. Implementation of the Commission’s Benchmark Proposal will Encourage Successful Conclusion of a WTO Agreement.

As a U.S. carrier with affiliates in Canada and overseas markets, ACC believes that it is vital for the FCC to maximize the ability of U.S. carriers to compete abroad. Absent this ability, U.S. companies are forced to rely on incumbent service providers to complete international calls. This reliance imposes a prohibitive cost on independent U.S. carriers, who must compete with the larger carriers whose facilities they use and global alliances that can serve customers on an end-to-end basis.

A successful WTO agreement would provide U.S. carriers such as ACC with substantial new and enhanced opportunities to compete abroad currently lacking in most countries. Currently, the Negotiating Group on Basic Telecommunications (“NGBT”) is meeting to negotiate the liberalization of basic telecommunications services throughout the world. The NGBT is scheduled

to conclude negotiations by February 15, 1997, and a successful agreement will bind WTO members to offer access to their basic telecommunications markets and to do so on a nondiscriminatory basis. To date, markets representing over 75% of the global telecommunications revenue have made commitments to liberalize their regulation of basic telecommunications. A WTO agreement would thus result in wide-ranging liberalization of markets throughout the world, a result which is not possible under the FCC's current mechanisms for encouraging overseas market liberalization.² Accordingly, ACC supports the FCC's benchmark proposals to the extent that they will encourage the successful conclusion of the WTO talks on February 15, 1997.

B. The FCC's Benchmark Proposal Will Promote The Pro-competitive Benefits of ISR.

The FCC's benchmark proposal also enhances competition by allowing carriers to engage in ISR without having to demonstrate that the foreign destination market affords U.S. carriers equivalent resale opportunities. Currently, the FCC permits ISR only to those countries which afford U.S. carriers equivalent resale opportunities. According to the FCC, "there is a great potential for distortion flowing from above-cost settlement rates when a foreign carrier collecting these rates is able to send its switched service over resold international private lines into the United States, but U.S. carriers are unable to send their traffic over private lines in the reverse direction... ."³ In its NPRM, the FCC proposes to condition grant of authority to engage in ISR to a market on the market offering U.S. carriers accounting rates that are within the proposed

² See, e.g., *Sprint Corporation*, 11 FCC Rcd 1850 (1996)

³ NPRM, at ¶75

benchmark settlement range. According to the agency, this conditioning of ISR could address the concern that one-way bypass of accounting rate arrangements could distort competition. ACC generally supports the FCC's conclusions and urges the Commission to adopt a policy which permits carriers to engage in ISR on any route where market distortion can be prevented absent the equivalency policy. The FCC's policy should replace, not supplement, the FCC's equivalency policy, and should be implemented in a manner consistent with the WTO principles of Most Favored Nation and National Treatment.

The FCC has constantly recognized the benefits of ISR and of resale in general. ACC believes that ISR is in the public interest and should be permitted to all markets immediately. As the Commission has recognized, allowing international resale lowers the accounting and settlement rates by compelling "carriers at both ends of the circuit to bring their prices to cost and avoid losing their customers."⁴ Allowing carriers to engage in ISR creates downward pressure on telecommunications prices. Lower rates will encourage an increase in the volume of traffic initiated at the foreign end of a route, further reducing the balance of payments deficit attributable to international telecommunications. Over time, this pressure results in lower international accounting rates which are much closer to cost. Carriers engaging in ISR can underprice existing carriers who are able to price their services above cost given the lack of competition on a route. Moreover, by leasing an entire circuit between the markets, ISR providers can avoid the high, above-cost accounting rates that facilities-based carriers must pay. Ultimately, existing carriers are forced to reduce IMTS rates to reflect the actual cost of

⁴ *Id.*

providing service in a competitive market. Moreover, as traffic is diverted to private lines, facilities-based carriers are forced to reduce their accounting rates to continue attracting traffic.⁵

Rather than continuing to apply its equivalency policy, the FCC should allow a company to engage in ISR to a market when the ISR activity would result in market-based pricing and enhanced competition, and where it would not result in a carrier abusing its dominant market position. The Commission has created this “flexibility test” for carriers to obtain approval for alternative payment arrangements with carriers in market that have not implemented effective competition.⁶ ACC believes that the Commission can establish this as the only test for allowing ISR on a route consistent with the public interest. One benefit of this test is that it would allow ISR on many routes while permitting the FCC to continue to place pressure, where necessary, on foreign dominant carriers to enter into reasonable and nondiscriminatory interconnection agreements. In 1994, ACC negotiated an interconnection agreement with British Telecommunications plc (“BT”) in the United Kingdom, and the existence of parallel regulatory proceedings in the U.S. and the U.K. was an essential element behind ACC’s success. The U.S.

⁵ The Commission has found the public benefits of unlimited resale and sharing of private line service to include: (a) the provision of communications service at rates more closely related to costs; (b) better management of communications networks, and the provision of management expertise by users and intermediaries to the carriers; (c) the avoidance of waste of communications capacity; and (d) the creation of additional incentives for research and development of ancillary devices to be used with transmission lines. *Regulatory Policies Concerning Resale and Shared Use Common Carrier Services and Facilities*, 60 FCC 2d 261 (1976), *reconsider.*, 62 FCC 2d 588 (1977), *aff’d sub nom. American Telephone and Telegraph Company v. FCC*, 572 F.2d 17 (2d Cir.), *cert. denied*, 439 U.S. 875 (1978), at 265. These benefits apply equally to domestic and international private line resale.

⁶ *Regulation of International Accounting Rates, CC Docket No. 90-337, Phase II, Fourth Report and Order*, FCC 96-459 (rel. Dec. 3, 1996), at ¶ 40.

should retain the ability to exert such leverage.

These benefits of ISR substantially outweigh the risks of one-way bypass. In addition to the benefits of ISR, allowing carriers to engage in ISR as described above will provide smaller carriers with greater options for entering the international market. Smaller carriers may be unable to negotiate beneficial or satisfactory agreements with foreign governments, or may not wish to construct their own facilities to enter the global market. ISR allows emerging competitive carriers to effectively compete in the global telecommunications market. The entry of smaller carriers into the marketplace would increase the level of global competition.⁷ In particular, U.S. companies choosing to engage in ISR would be able to compete, even on a limited basis, in foreign countries, earn revenues, and provide competition to incumbent providers.⁸ Such ISR would thus help to achieve the Commission's stated goal of "promot[ing] lower, more cost-based, international accounting and collection rates" between the U.S. and other countries.⁹

Notwithstanding the clear benefits of eliminating the equivalency policy outright and replacing it with the flexibility test, ACC understands the Commission's concern that dominant foreign carriers with closed markets might distort competition by routing traffic via ISR mechanisms. Although ACC believes that a better solution to the issue of one-way bypass by

⁷ Larger carriers, too, would have the option of engaging in ISR, so long as they do not abuse a dominant position.

⁸ This benefit is enhanced by the successful conclusion of a WTO agreement.

⁹ *International Accounting Rates, Notice of Proposed Rulemaking*, 5 FCC Rcd 4948 (1990).

foreign carriers is to apply its flexibility policy, ACC supports the FCC's tentative solution of conditioning a carrier's provision of ISR on accounting rates on the route falling within the benchmarks as a step in the direction of more liberal regulation of ISR. By eliminating the equivalency policy and replacing it with the NPRM proposal, the FCC would free entities to bring forth the benefits of ISR while substantially reducing the possibility of significant harm from one-way bypass. The FCC should, therefore, allow U.S. carriers to compete in any market where the settlement rate is within the applicable benchmark range as a method of fostering open and robust competition and placing additional downward pressure on foreign markets to reduce rates.

In this NPRM, the Commission also seeks comment on whether the FCC's equivalency test should apply in conjunction with the NPRM proposal. ACC believes that imposing the equivalency test on the foreign market, once the new accounting rate benchmarks have been adopted, will create an unnecessarily stringent regulatory environment and would impede competition by creating expensive and time-consuming obstacles for new competitors to negotiate before entering a market.

ACC believes that imposition of the proposed benchmark rates will serve to achieve the Commission's goals without the additional regulatory layer represented by the equivalency test. The Commission's foreign entry policy goals are "(1) to promote effective competition in the global market for communications services; (2) to prevent anticompetitive conduct in the provision of international services or facilities; and (3) to encourage foreign governments to open

their communications markets.”¹⁰ The Commission’s goals in this proceeding are identical.¹¹ Moreover, the purpose of the equivalency test is to prevent foreign carriers from engaging in one-way bypass of accounting rate arrangements where such bypass would result in U.S. carriers paying high above-cost accounting rates but losing return traffic to resellers. The equivalency policy purported to ensure that any bypass was available to U.S. carriers also. However, if U.S. facilities-based carriers would not have to pay high, above-cost accounting rates if resellers engage in one-way bypass, as proposed by the FCC, the Commission’s policy objectives would be met.¹² Thus, imposition of the equivalency test in addition to the benchmark proposal would be duplicative and would not be narrowly-tailored to achieve the FCC’s legitimate goals of preventing distortion of competition.

C. FCC Action to Lower International Accounting Rates Should Benefit All U.S. Carriers, Not Just Larger Carriers

Finally, ACC believes that the FCC’s benchmark proposal could lower entry barriers for smaller carriers by reducing the start-up costs for providing facilities-based service on a route. ACC thus supports, in principal, the FCC’s proposal to reduce above-cost international accounting rates. However, ACC notes that the benchmarks should be implemented in a fair and

¹⁰ *Foreign Carrier Entry Order*, at 3877, ¶6.

¹¹ Notice at ¶2.

¹² The FCC need not impose cost-based accounting rate conditions on ISR, however, unless it sees evidence that substantial market distortion is occurring. Only a demonstration that traffic on a particular route is being distorted would indicate that foreign dominant carrier is engaging in one-way bypass of accounting rate arrangements.

judicious manner, providing sufficient opportunity for carriers to contest FCC determinations. In implementing its proposal, the FCC should keep in mind that imposing the benchmarks in what could be perceived as a heavy-handed or an injudicious manner could cause new facilities-based entrants such as ACC to lose opportunities to enter into correspondent relationships. If the FCC decides to impose its proposed benchmarks on a foreign carrier, the FCC must be willing to protect smaller carriers from foreign carriers reprisals so that larger U.S. carriers are not the only beneficiaries of FCC action.

CONCLUSION

ACC supports the Commissions efforts to open international markets to competition, by (1) facilitating completion of a WTO agreement, (2) allowing U.S. carriers to engage in ISR, and (3) acting to reduce international accounting rates. ACC therefore urges the Commission to act expeditiously to revise the benchmark rates and permit greater flexibility in the international marketplace.

Respectfully Submitted,

ACC CORP.

By: _____



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Date: February 7, 1997

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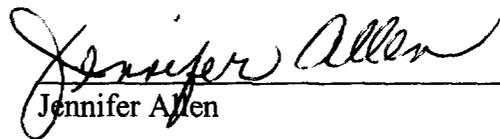
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