

Enforcement of Benchmarks by the Commission

- Sprint acknowledges that any attempt to require U.S. carriers to settle at a particular benchmark rate on more than an interim basis is likely to be viewed as prescription by a reviewing court. (18)
- In order to make a valid Section 205 prescription, the Commission must find that a particular rate is just and reasonable. (18)
- Sprint believes that, given the shortcomings of some of the data underlying the proposed benchmarks, it could in some cases be difficult to sustain a Commission decision prescribing rates. (18)
- Sprint analogizes to Permian Basin Area Rate Cases which approved the former Federal Power Commission (FPC) decision to prescribe maximum rates for the sale of interstate gas within a particular producing area. (20)
- Like the NPRM, the FPC derived its maximum rate for new gas - well gas not from prevailing prices but from composite cost data. (20)
- In the first instance, Sprint believes the FCC should see whether private negotiations between U.S. and foreign carriers result in settlement rates that are within any benchmarks the Commission establishes. (21)
- In the event negotiations prove unsuccessful, Permian Basin should be used as a useful outline for crafting an enforcement mechanism that will withstand appellate review. (21)
- Sprint opposes the Commission's proposal to condition its authorizations to provide international services for carriers seeking to serve an affiliated foreign market from the U.S. upon the affiliates offering U.S. international carriers a settlement rate within its proposed benchmarks, as contrary to sound public policy and unnecessary. (22-24)

TELECOMMUNICATIONS RESELLERS ASSOCIATION

The Rationale for Adopting Benchmarks

- TRA urges the Commission to move cautiously so as not to inadvertently harm competition, especially through adverse impact on small to mid-sized carriers that currently provide IMTS service. (1-3)

Enforcement of Benchmarks by the Commission

- TRA urges the Commission not to compel small to mid-sized carriers to abrogate existing, or to enter into new short term, settlement rate agreements because retaliation is much more likely against small to mid-sized providers than against AT&T. (3-5)
- The Commission should permit mandatory flow-through of reductions in carrier to carrier charges so that customers benefit from FCC action.

OFFICE OF THE U.S. TRADE REPRESENTATIVE

The Rationale for Adopting Benchmarks

- USTR generally supports the Commission's efforts to reduce settlement rates and shares its concern about the need for cost-based benchmark rates. (1)

WORLDCOM, INC.

The Rationale for Adopting Benchmarks

- Worldcom favors the FCC's establishment of benchmarks to reduce above cost settlement rates. Benchmarks will serve as an important safeguard with respect to WTO basic telecommunications negotiations (1-3)

Benchmark Methodology

- Worldcom favors clear, simple, certain and equitable rules for any benchmarks. (5)
- While Worldcom would prefer benchmarks reflecting TSLRIC, it recognizes that such an approach may cause some countries serious problems in the short term and therefore supports the Commission's proposed use of foreign carriers' tariffed components to determine appropriate benchmarks. (6-7)
- If a foreign carrier believes that the benchmark rate, based on TCP, does not appropriately reflect its economic cost of providing service, it is entitled to an administrative review by the FCC. In seeking review, however, the foreign carrier has the burden of demonstrating its costs are higher. (9)
- In general Worldcom favors a country-by-country approach to ensure differing cost factors are taken into account in establishing benchmarks. (9)

The Use of Transition Periods

- Worldcom views a black line transition schedule as crucial. (10)
- Worldcom supports as reasonable and sufficient transition period of 18 months for high income countries, 2 years for upper middle income-countries, 30 months for lower middle income countries, and 3 years for lower income countries. (10-11)
- Worldcom opposes any proposal which would extend the black line transition period. (12-13)

Applying Benchmarks to Prevent Anticompetitive Behavior

- Worldcom supports the benchmarks approach as a way of alleviating potential competitive distortions, in particular the incentive for carriers to engage in one-way settlement rate by-pass. (15)
- Worldcom supports the conditioning of authorizations to provide international facilities-based switched voice or private line service on the foreign affiliate offering U.S. licensed international carriers a non-discriminatory settlement rate within the benchmark range. (15)

- Worldcom strongly supports the imposition of settlement rate conditions on authorizations to resell international private line services to provide switched services. (17)
- Worldcom support a variation of the basic concept of allowing ISR or any route where the settlement rate on that route is within the benchmarks such that ISR will be allowed on some routes even where the prevailing settlement rates are not within the benchmark. (18)
 - ISR should be allowed if (1) ISR is already authorized; or (2) the settlement rate for more than 50% of outbound traffic is within the benchmark; or (3) equivalent market opportunities exist in the foreign market. (18)

Enforcement of Benchmarks by the Commission

- The Commission must ensure timely and effective enforcement, regardless of the final form of its benchmark rules. (13)

AMERICATEL CORPORATION

Benchmark Methodology

- The Commission should forebear from applying its benchmarks to competitive markets such as Chile. Chile fully satisfies the effective competitive opportunities test. (1-2)
- The Commission should confirm that alternative payment arrangements outlined in the flexibility order will not be subject to the Commission's benchmark levels.

**MINISTRY OF PUBLIC WORKS, UTILITIES
AND TRANSPORTATION, ANTIGUA**

Commission Authority Under Existing International Law

- It is inappropriate for the Commission to unilaterally impose benchmarks. Settlement rates should be agreed upon bilaterally under the auspices of the ITU.

BRITISH EMBASSY

The Rationale For Adopting Benchmarks

- The Commission is correct that accounting rates need reform. The growth in competition is bound to address this problem, however. (2)
- Developing countries may question the FCC's focus on high settlement rates when growing collection rates seem to be the primary cause of high international calling prices. (3)
- A significant cause of U.S. net settlement outpayments is call-back services which reverse billing traffic. (3-4)

Benchmark Methodology

- The Commission should forebear from applying benchmarks on routes where competition already exist. (2)
- An alternative approach would be to allow foreign carriers to maintain settlement rates at existing levels while requiring incremental traffic to be charged at a lower level to ensure that the outpayment deficit does not grow as traffic increases. This could be combined with the transitional phasing-in of overall lower rates. (3)

Applying Benchmarks to Prevent Anticompetitive Behavior

- The Commission's concerns about cross subsidization are not entirely warranted since cross subsidization is not in itself inherently anticompetitive. Safeguards are needed, however, to prevent a foreign carrier from bypassing settlement rates in favor of an affiliated carrier on the U.S. outbound route. (4)

CABLE & WIRELESS, PLC

The Rationale for Adopting Benchmarks

- The NPRM does not adequately explain the relationship between settlement rates and the high prices U.S. residents pay for international calls. (18)
 - As the NPRM concedes, settlement rates have gone down while U.S. international calling rates have failed to decline. (18-19)
 - The FCC implicitly acknowledges that it does not have the power to force U.S. carriers to lower collection rates. Thus, it is inappropriate for the FCC to take steps to lower settlement rates since no guarantee exists that the savings will be passed on to consumers. (19-20)
- The NPRM incorrectly presumes that above-cost accounting rates are a significant cause of U.S. outpayments. A number of other factors contribute to net settlement outpayments such as social and economic factors, national characteristics, and alternative calling procedures that reverse the direction of traffic for billing purposes. (20-22)

Commission's Statutory Authority to Adopt Benchmarks

- The Communications Act does not grant the FCC authority to prescribe international accounting rates. (5-6)
 - There is no evidence in the text of the Act or in the legislative history that provides support for the proposed action. (6)
 - The FCC has never previously claimed jurisdiction over rates charged by other countries. (6)
- The Commission does not have authority to regulate foreign settlement rates under § 152(a), 154(i), or §§ 201-205 of the Communications Act.

Commission's Authority Under Existing International Law

- The Commission's benchmark proposal violates the FCC's long-standing history of carefully avoiding actions that infringe on the sovereignty of other countries. (4-5)
- The benchmark proposal violates the ITU constitution which requires that accounting rates be set by "mutual agreement." (5)

Benchmark Methodology

- The division of countries into three categories inadequately takes into account numerous factors that must be considered in pricing telecommunications services in each country. (10-11)
 - For many foreign countries, cross-subsidizing local service is a necessity in order to encourage universal access. Infrastructure development in foreign countries helps both the residents of that country and those that make calls into that country. (11-13)
- It is inappropriate for the Commission to rely on information supplied by AT&T to estimate average network cost. AT&T has supplied the Commission with so little information about its calculations that they are impossible to analyze. (15-16)

The Use of Transition Periods

- The transition periods suggested in the NPRM are unrealistic. For example, in the U.S. the transition to full competition has been in excess of 15 years. The UK and the European Union have experienced similar transition periods. (14)

Enforcement of Benchmarks by The Commission

- The record in this proceeding is insufficient for the Commission to order U.S. carriers to break negotiated contracts with foreign carriers. Courts place a high burden of proof on agency action that infringes contractual rights. (25-26)

CARIBBEAN ASSOCIATION OF NATIONAL TELECOMMUNICATION ORGANIZATIONS (CANTO)²

The Rationale For Adopting Benchmarks

- The high rates U.S. consumers pay for international telephone calls are the result of the collection rates charged by U.S. carriers, not above-cost accounting rates. This is particularly true with respect to calls to the Caribbean. (2, 6)
- The Commission's estimate of the net settlements imbalance neglects to consider reverse billing services that have a significant impact on U.S. settlements outpayment. (5)
- The FCC inappropriately treats U.S. settlement outpayments as undesirable. In fact, they are the cost associated with providing U.S. residents with beneficial services, and are adequately covered by revenues obtained by U.S. carriers. (5)

The Use of Unilateral Action

- The U.S. should seek lower accounting rates through multilateral forums such as the ITU-T Study Group 3. (2)

Commission's Authority Under Existing International Law

- The Commission's proposed benchmarks violate the ITU Convention which requires that rates for international switch be adopted through "mutual agreement." (2)
- The proposed benchmarks exceed the sovereign authority of the U.S. by seeking to regulate the rates charged by foreign carriers in their own countries. (3)

Benchmark Methodology

- The proposed benchmarks would undermine the Commission's statutory objectives of promoting a world wide communications system because the benchmarks would eliminate much of the funding for infrastructure development in countries such as those in the Caribbean. (2)
- The maintenance of a 50/50 division of accounting rates has systematically deprived foreign carriers of their legitimate share of accounting rate revenues since developing countries have higher costs than industrialized countries. (3)

² CANTO is an industry association that represents 36 Caribbean telecommunications operating companies.

- The Commission's use of tariffed component prices ignores the high cost of providing universal service in rural countries with low population densities and poor climate conditions (hurricanes, salt water corrosion, and flooding). (6)
- The FCC's statement that there is no justifiable basis for imposing higher cost on incoming international traffic is unsupportable. For many countries, it is a logical and sound public policy to subsidize local services through higher rates for international services. Such policies promote universal access. (5)

Basing Benchmark Ranges On Economic Development Categories

- The use of World Bank GNP classifications is flawed. An ITU study demonstrates that the cost of doing business varies enormously between developing countries. This variation is too great for the FCC to adopt a single settlement rate for most developing countries. (6)

The Use of Transition Periods

- The proposed transition periods are insufficient for developing countries. The FCC should adopt transition periods that are tailored on a country by country basis in light of schedules for local tariff rebalancing and special considerations. (6)

THE REGIONAL TECHNICAL COMMISSION ON TELECOMMUNICATIONS OF CENTRAL AMERICA (COMTELCA)

The Rational for Adopting Benchmarks

- There is no need for benchmarks as COMTELCA countries have made significant progress in developing their telecommunications infrastructure, paving the way for competition and reducing their accounting rates. (COMTELCA 2-9)
- The Commission should focus its attention on the large, industrialized countries, which are the primary cause of the traffic imbalance. (COMTELCA 9)
- The Commission's policies promoting re-origination, third-country calling, and call-back services have contributed significantly to the settlements deficit. (COMTELCA 10)

The Use of Unilateral Actions

- The Commission should participate in multilateral negotiations to achieve lower accounting rates. (COMTELCA 13)
- The Organization of American States' Inter-American Telecommunications Commission would be the appropriate forum for initial multilateral negotiations. Once consensus is reached within the Americas, the ITU would be the appropriate forum. (COMTELCA 13-14)

Benchmark Methodology

- The Commission's "incremental cost" approach is inappropriate because it is too difficult to measure accurately the unit costs of providing international services. Any approach taken to lower accounting rates should be based on Recommendation D.140 which requires the consideration of a country's development status. (COMTELCA 14-15)

Basing Benchmark Ranges on Economic Development Categories

- Any benchmark accounting rate for a Central American country should be at the level designated for the least developed countries. (COMTELCA 12-13)

The Use of Transition Periods

- A transition period of seven to ten years is needed to move accounting rates to cost. (COMTELCA 15)

**THE COOPERATION COUNCIL FOR THE ARAB STATES OF THE GULF
SECRETARIAT GENERAL**

Commission's Authority Under Existing International Law

- The U.S. does not have jurisdiction to unilaterally prescribe accounting rates. The ITU is the only body responsible for setting or revising the appropriate regulations for accounting rates.
(1)

DIRECTORATE GENERAL OF TELECOMMUNICATIONS, P&T, CHINA

The Rationale for Adopting Benchmarks

- The growth in U.S. settlement outpayments is the result of traffic imbalances that are largely caused by the marketing practices of U.S. carriers. Additionally, outpayments by U.S. carriers are more than compensated for through U.S. collection rates. (2)

The Use of Unilateral Action

- Unilateral imposition of benchmarks will be detrimental to Sino-US telecommunications cooperation and development. (2)
- “China Telecom will never accept any unilaterally stipulated benchmark settlement rates and transition periods. Also, China Telecom will reserve the right to take certain counter measures provided the FCC insists on doing so.” (2-3)

Commission’s Authority Under Existing International Law

- The benchmark proposal violates ITU principles which call for bilateral consultation in order to set accounting rates. (1)
- The benchmark proposal infringes on the sovereign rights of foreign countries. (2)

CHUNGHWA TELECOM³

The Rationale for Adopting Benchmarks

- The growth in net U.S. outpayments is caused by the use of call-back and refile activities.
- Due to the availability of alternative billing arrangements, many of the international calls that contribute to U.S. settlement outpayments are actually originated by, and thus billed to, foreign consumers. Therefore, much of the settlements imbalance should not be included in calculations of the U.S. trade deficit. (2)

The Use of Unilateral Action

- It is inappropriate for the FCC to engage in unilateral action to lower settlement rates. It would be more appropriate to work through bilateral or multilateral discussions. (2)
- The imposition of benchmarks by the Commission will adversely affect the quality of services to consumers worldwide. The U.S. approach also does nothing to resolve the accounting rates problem that exist between other countries. (3)

Commission's Authority Under Existing International Law

- The benchmark proposal exceeds the sovereignty of the U.S. and violates MFN obligations. The proposal also violates the ITU convention. (2)

Benchmark Methodology

- In it inappropriate to use tariff component prices because the NPRM ignores the use of cross-subsidization of local calls. In addition, the TCP adopted in the NPRM for the cost of international circuit and exchange is lower than actual cost. (2)

³ An carrier authorized by the government of the Republic of China on Taiwan, which interconnects with U.S. international service carriers.

DEUTSCHE TELEKOM AG

The Rationale for Adopting Benchmarks

- The Commission is correct in concluding that international settlement rates should be brought closer to actual cost. It would be inappropriate, however, for the Commission to adopt its benchmark proposal. (1-3)
- The Commission's NPRM fails to acknowledge that much of the outpayments imbalance is the result of hubbing, refiling, and reverse charging services such as home country direct and callback. (7)
- The Commission acknowledges that the ITU, OECD, and the WTO are engaged in efforts to achieve greater liberalization of the telecommunications markets of their member countries. Some of these efforts include the lowering of accounting rates. (8)
 - The Commission should support these efforts because, while they are slow, the results will be more durable and widely accepted than any results that may be achieved through unilateral action by the FCC. (9)

The Use of Unilateral Action

- The Commission should not unilaterally impose its benchmark proposal because such efforts may harm multilateral efforts to lower accounting rates. (5-6)
 - The Commission's NPRM has already engendered substantial negative public reaction from other countries. Efforts to impose the Commission's benchmark regime would likely produce even greater friction. (6)

Benchmark Methodology

- The Commission's proposal is grossly inadequate, because it would do nothing to lower settlement rates between other countries. The imbalance of rates would instead further distort traffic flows. This cannot be described as internationally beneficial reform. (6-7)
- If the Commission imposes benchmarks, it must make them flexible so that they can be revised frequently in response to changes in actual cost. (9-10)
- It is inappropriate for the Commission to rely on information supplied by AT&T to estimate the lower end of the benchmark range. The economies of scale for AT&T give it much lower costs than any other carrier. (10)

- The Commission's proposal to require foreign carriers to demonstrate the actual costs of their services inappropriately forces high-cost carriers to disclose proprietary information to a foreign agency. (11)

Enforcement of Benchmarks by The Commission

- The Commission should rely on multilateral organizations, such as the ITU, to enforce changes in settlement rates. (11)

ENTEL-CHILE

Benchmark Methodology

- The Commission should forebear from applying its benchmarks to competitive markets such as Chile. Chile fully satisfies the effective competitive opportunities test. (1-2)
- The Commission should confirm that alternative payment arrangements outlined in the flexibility order will not be subject to the Commission's benchmark levels.

DELEGATION OF THE EUROPEAN COMMISSION

Commission's Authority Under Anticipated WTO Agreement

- The European Community and its member states reserve the right to challenge under the WTO any rules proposed by the Commission that are not compatible with GATS obligations. (1)
- The European Community is committed to working towards a successful conclusion of GATS/WTO Negotiations on Basic Telecommunications. (1)

FRANCE TELECOM¹

The Rationale For Adopting Benchmarks

- France Telecom is in favor of the adoption of cost-oriented accounting rates. (3)
 - The settlement rate for U.S.-France traffic has dropped dramatically in recent years from about 85.5 cents per minute in 1990 to 13.7 cents per minute in 1997. (3)
 - The U.S. settlement rates in balance is not exclusively due to the existing accounting rate regime. Social and economic factors contribute to the settlement rate imbalance. (6-7)

The Use of Unilateral Action

- A multilateral effort should be used to encourage countries to move settlement rates towards cost. Work is already being done to achieve this goal by the ITU Study Group #3. (3)
- The Commission should not proceed unilaterally in adopting benchmarks. (5)
 - If the Commission attempts to act unilaterally, it may forestall, or cause a loss of momentum to international initiatives. (5)
 - For example, some countries may perceive the FCC's effort as an attempt to unfairly increase the profits of U.S. interexchange carriers. (5-6)
- Lowering settlement rates only on U.S. international routes would encourage non-U.S. carriers to route traffic through the U.S. before terminating it in a third country. This would increase the imbalance. (7)
- The Commission should avoid unilateral action because many other countries, and foreign carriers, are concerned about high settlement rates. (8)
- Unilateral action is unnecessary because of the multilateral efforts being conducted by the ITU through recommendation D.140, and the ITU Telecommunications Standardization Sector Study Group 3. (8)

¹ France Telecom owns 10% of Sprint.

- The Commission should contribute its studies on benchmark methodology to ITU Study Group 3 in order to permit international comment and review. (9)

Commission's Authority Under Anticipated WTO Agreement

- It is unclear whether the Commission's proposed use of benchmarks as anticompetitive safeguards would be consistent with MFN obligations. (15)
- The Commission should express its support for GATS and clearly state that any challenge to the benchmarks as not permissible under MFN will be submitted to the exclusive jurisdiction of the WTO dispute resolution body. (15)

Benchmark Methodology

- The Commission's use of tariffs prices for private lines to calculate the cost of providing an international transmission facility may understate the actual cost. (10)
 - The Commission's conclusion that a carrier can derive four voice grade circuits from each 64 Kbps half circuit is too high, and ignores multiple routing. (10)
 - The use of public tariffs to calculate the cost of the national extension component understates the actual cost since many public tariffs are subsidized. For example, local calls in Hong Kong and Kuwait are free. (10)
- The use of public tariffs to calculate benchmarks is also inappropriate because it may encourage some countries to keep domestic tariffs high to justify high benchmarks. (11)
- The Commission should not use total service long-run, incremental cost to calculate benchmarks because this approach is not universally accepted. (11-12)
- It is inappropriate for the Commission to use AT&T estimates of its "average network costs" for termination of inbound international calls since AT&T's equipment and economies of scale are substantially better than those of any other carrier. (12)
- It is inappropriate to calculate benchmarks using U.S. dollars, since currency fluctuations will cause such benchmarks to inaccurately reflect the true cost over time of providing service. (13)

Basing Benchmark Ranges on Economic Development Categories

- The use of GNP to categorize countries is inadequate because it does not reflect other important considerations such as purchasing power parity or the level of a country's telecommunications development. (14)

The Use of Transition Periods

- The proposed transition periods are inadequate. Flexibility should be retained for longer transition periods when reasonably necessary. (13)

Enforcement of Benchmarks By the Commission

- The Commission's suggestion that it might suspend payments by U.S. carriers to foreign carriers will have a chilling effect on multilateral discussions of accounting rate reform. Thus, the Commission should refrain from adopting such unilateral "draconian" measures. (14)
- It would more appropriate to engage in a multilateral approach based on education and reasoned persuasion to lower settlement rates. (14)

**MINISTRY OF WORKS, COMMUNICATIONS
AND PUBLIC UTILITIES, GRANADA**

Commission Authority Under Existing International Law

- It is inappropriate for the Commission to unilaterally impose benchmarks. Settlement rates should be agreed upon bilaterally under the auspices of the ITU.

HISPANIC-AMERICAN ASSOCIATION OF RESEARCH CENTERS AND TELECOMMUNICATIONS COMPANIES¹

The Rationale For Adopting Benchmarks

- In calculating the size of the U.S. trade deficit in telecommunications, the FCC should consider the income obtained by U.S. companies from telecommunications equipment sales. (3)
- Much of net U.S. settlement outpayments can be linked to alternative billing arrangements such as call back and call reorigination. (6)

The Use of Unilateral Action

- The Commission's proposal to engage in unilateral action is inappropriate and will undermine multilateral negotiations. (5-6)
- The FCC must work within the international framework of the ITU and WTO when seeking to liberalize telecommunications, and must respect each country's internal legislation. (6)

Commission's Authority Under Existing International Law

- The Commission's proposed benchmarks violate the ITU Convention which requires that accounting rates be set by mutual agreement. (2)
- The Commission's proposal also violates the WTO Uruguay Round which includes a provision stating that no administration will take actions that improve their negotiating position. This is obviously what the FCC is attempting to do. (3)

Benchmark Methodology

- The NPRM inappropriately quotes the 1992 version of ITU Recommendation D.140, while ignoring the 1995 version of the same document. (4)
 - The revised 1995 Recommendation extends the transition periods to the year 2000. (4)
 - The revised Recommendation also allows parties to establish asymmetrical accounting rates. (4)

¹ AHCIET is a non-profit association that includes approximately 40 Hispanic-American telecommunications companies. AHCIET is headquartered in Madrid, Spain.