

— Annex C of the 1995 Recommendation expressly provides that accounting rates are to be set through bilateral negotiations. (4)

- The FCC's use of recommendation D.300R (Fixing Of Accounting Shares In Telephone Relations Between Europe And Mediterranean Basin Countries) is inappropriate since conditions in that region have little relationship to other areas of the globe. (4)
- The FCC should not adopt benchmarks based on long term incremental cost (TSLRIC) because the methodology is not accepted universally. (4)
- The Commission's use of tariffed component prices to estimate cost is flawed because the NPRM fails to recognize the use of cross-subsidization to achieve infrastructure development and other public policy goals. (5)
- The use of private line charges to estimate the cost of the international transmission component is inappropriate since carriers may make private lines available at below cost for various policy reasons. (5)

Basing Benchmark Ranges On Economic Development Categories

- The Commission's stated goal of considering the needs of developing countries is not achieved in the NPRM. This is because the vast majority of countries are inappropriately grouped together in a single middle income category. (6)

Enforcement of Benchmarks By The Commission

- The FCC's suggestion that it may force carriers to make settlement payments below contractually agreed upon levels amounts to "extortion." (6)

HONGKONG TELECOM INTERNATIONAL

The Rationale For Adopting Benchmarks

- The present accounting rate system is in need of significant reform. Thus, the Commission is correct in taking steps to estimate the actual cost of terminating international traffic. The Commission should not, however, implement its proposed benchmarks. (1-2)
- Net settlement outpayments by U.S. carriers is not the result of above-cost accounting rates, at least with respect to Hong Kong. (7)
 - The U.S. to Hong Kong accounting rate has dropped by 57% from 1991 and 1996. (8)
 - During the same period, the growth of U.S. resale, the adoption of “subsale” rates, and the use of international calling cards by U.S. carriers has distorted the traffic balance from a previous level of one to one to an imbalanced level of six to one. If the Commission wants to correct the net settlement payments imbalance, it should take steps to discourage call back, refile and country direct services. (9, 13)
 - The Commission has failed to adequately justify its assertion that high settlement are the cause of the U.S. settlement outpayments. Data must be collected to justify this point before the Commission utilizes this argument to impose benchmarks. (14-15)
- International calling prices in Hong Kong are competitively priced and are often lower than those on the Hong Kong to U.S. route. (10-11)
- Increased collection rates due to AT&T price hikes are the primary reasons why U.S. consumers are paying high rates. The problem is not the result of settlement rates, which have substantially declined in recent years. The FCC’s own data attached to the NPRM demonstrate that lower settlement rates adopted 34 countries have not been passed on to consumers. (11-12, 19-21)
- The Commission has provided no evidence supporting its assertion that calling patterns are highly elastic and, thus, lower settlement rates will increase traffic amounts. (16-17)
- The Commission is incorrect in asserting that high settlement revenues discourage countries from liberalizing telecommunications systems. (18)
 - Numerous factors go into a decision to liberalize a regulatory system. For example, in Hong Kong, public policy issues involving universal service must be considered. (18-19)

The Use of Unilateral Action

- Adoption of the Commission's benchmark proposal will frustrate multilateral efforts to reach agreement on lower settlement rates. (28-29)
 - The Commission's efforts would be better focused on participating in the ITU study group working on international accounting rates. (29)

Commission's Statutory Jurisdiction To Adopt Benchmarks

- The Commission lacks the statutory authority to regulate foreign carriers. The Commission acknowledges in the NPRM that it is attempting to regulate foreign carriers when it states that its proposal "will require substantial adjustments from many countries." (22-23)
- The Commission does not have authority to regulate foreign settlement rates under § 152(a), 154(i), or §§ 201-205 of the Communications Act. (23-24)

Commission's Authority Under Existing International Law

- The Commission's benchmark proposal violates the ITU treaty, which indicates that accounting rates must be determined by "mutual agreement." (21)

Benchmark Methodology

- It is inappropriate for the Commission to base its proposed benchmarks on tariff component prices. (12)
 - The tariff rates charged in Hong Kong are, in part, set by the legislative counsel as a matter of public policy. These rates cannot be rebalanced without Government approval. Hong Kong has made public policy decisions in setting local tariffs, and it is inappropriate for the FCC to attempt to interfere. (12-13)
- The use of TSLRIC is inappropriate because it is not universally accepted even within the U.S., much less globally. (26-27)
 - The ITU is the most appropriate forum for deliberating on the best cost calculation methodology. (27)
- It is inappropriate for the Commission to rely even partially on AT&T estimates of "average network costs" since AT&T is the party with the greatest vested interest in this proceeding and has every incentive to underestimate these costs. (28)

Applying Benchmarks to Prevent Anticompetitive Behavior

- The Commission cannot legitimately justify the use of benchmarks to prevent anticompetitive harms on the theory that settlement rate revenues could be used to finance anticompetitive behavior. An entity seeking to engage in anticompetitive activities can use any profits or revenues to finance such activities. Thus, the use of benchmarks to lower settlement revenues does nothing to prevent anticompetitive behavior. (18)

Appendix A: Comparison of Hongkong Telecom International and AT&T Collection Rates

Appendix B: Comparison of Changes in Collection Rates and Accounting Rates For Various Countries

INTERNATIONAL DIGITAL COMMUNICATIONS (IDC)¹

The Rationale for Adopting Benchmarks

- The principal cause of the imbalance in settlement payments is distorted calling ratios, not settlement rates. The distortion in calling ratios is the result of a number of factors such as the marketing by U.S. carriers of reverse billing programs. (3)
- The Commission's benchmark proposal seems in conflict with the recently issued Flexibility Order, since that order allows carriers to freely negotiate settlement rates in markets that are competitive. (4)
- The high rates U.S. consumers pay for international calls is largely the result of high collection rates, rather than above-cost settlement rates. (6)

Commission's Authority Under Existing International Law

- The Commission's proposed benchmarks violate the ITU Constitution which indicates that accounting rates are to be determined by "mutual agreement." (2)

Benchmark Methodology

- It is inappropriate for the Commission to exclude overhead expenses from the calculation of the cost of providing international services. (4)
- The benchmark calculations are flawed because they do not reflect the substantially higher cost of living that exists in Japan as compared with the United States. (5)

¹ A facilities based international carrier in Japan.

INTERNATIONAL TELECOM JAPAN INC.

The Rationale for Adopting Benchmarks

- The Commission is correct in concluding that the current international settlements system is showing signs of strain and should be replaced. The Commission is incorrect, however, in proposing to adopt benchmarks. (1-2)
- Accounting rates should be set pursuant to commercial negotiations between telecommunications providers. The Commission enhanced this ability by adopting its Flexibility Order in recognition of the increasingly competitive nature of international telecommunications. (3)
- Net settlement payment imbalances result from numerous factors unrelated to above-cost accounting rates. Additionally, many developing countries, such as Japan, are net outpayers of settlement revenues. (9)
- The accounting rates for traffic between developed countries have been steadily declining. Thus, there seems little urgency for the Commission's proposed rules. (13)
- A significant factor in the growth in U.S. net settlement outpayments is alternative billing arrangements promoted by U.S. carriers such as call back, the routing of traffic through third countries, and Internet telephony. The NPRM does not adequately address these factors and their role in increasing the imbalance in settlement payments. (14-15)
- It is inappropriate to seek cost-based accounting rates for international calls to developing countries. Above-cost settlement rates are necessary in order for developing countries to finance infrastructure development, a process that helps both the residents of a developing country and individuals making calls to developing countries. (16-17)

The Use of Unilateral Action

- The use of unilateral action by the Commission is in conflict with ITU regulations which state that accounting rates should be set by "mutual agreement." The U.S. strongly supported the adoption of the ITU regulations. (4)
 - ITU-T Recommendation D.140, which the FCC repeatedly cites in the NPRM, instructs that accounting rate revisions should be established pursuant to "mutual agreement." (5)
- The FCC has taken a leading role in arguing that government agencies should not be actively involved in commercial activities involving telecommunications. The benchmark proposal, however, moves the FCC beyond a regulatory role, and makes it a negotiator in the commercial marketplace. (5-6)

- A unilateral approach would be inappropriate because it would disrupt multilateral negotiations that are working towards agreements that all countries can support. (6)
- Commission action is unnecessary since the ITU is already actively involved in encouraging reductions in settlement rates. (7-8)
- While the Commission's benchmark proposal can be implemented much faster than a multilateral agreement, many countries are likely to resist the Commission's proposal and thus the end result will be counter-productive. (10)

EMBASSY OF JAPAN

The Use of Unilateral Action

- Accounting rates should be set through commercial negotiations between carriers, or, in the alternative, through multilateral agreement. It is inappropriate for the FCC to unilaterally suggest a standard. (1)
- The FCC's proposal will hamper the promotion of competition by making entry by carriers into the market for international services difficult. Since competition is the best way to achieve lower settlement rates, the FCC's proposal is counter production. (2)

Commission's Authority Under Anticipated WTO Agreement

- The division of countries into categories for purposes of setting benchmarks would violate the MFN principle of GATS Article 2. (4)
- Conditioning the provision of facilities-based international services from the U.S. to an affiliated foreign entity on compliance with the benchmark ranges violates the National Treatment principle of GATS Article 17. (4)

Benchmark Methodology

- The Commission's proposal to average its estimates of actual cost within each economic group is inconsistent with the principle that settlement rates should be cost based. (4)
- The Commission implies that it will forbear from applying benchmarks to countries with competitive markets. This should be clearly stated. (5-6)

Applying Benchmarks To Prevent Anticompetitive Behavior

- Any safeguards proposed by the U.S. should apply ex-post and be consistent with GATS principles. (2)
 - The use of benchmarks as a competitive safeguard will act as a barrier to entry to the U.S. market. (2)
 - The use of benchmarks to address competition is also unfair because it may prevent non-dominant carriers (that have no control over the settlement rates charged in their home countries) from entering the U.S. market. (2-3)

- The Commission's competitive concerns are unwarranted since distortion of trade through one-way bypass are not likely to occur in an increasingly competitive environment. (3)

Enforcement of Benchmarks By the Commission

- If the Commission detects anticompetitive behavior, enforcement procedures should be adopted solely against the carrier responsible, and not against an entire country by forcing settlement rates down to the lower end of the range. (3)

KOKUSAI DENSHIN DENWA CO. LTD. ("KDD")

The Rationale For Adopting Benchmarks

- The FCC is incorrect in estimating that approximately 75% of U.S. settlement rate outpayments represents a subsidy to foreign carriers. (7-8)
 - The increasing imbalance is the direct result of the growth in U.S. billed traffic on many routes. (8)
 - The chief cause of the widening gap between U.S. billed and foreign billed traffic is the numerous reverse-billing services supported by U.S. carriers. (8)
- Net settlement outpayments do not harm U.S. carriers since they presumably collect greater revenues from their customers than they pay in settlement outpayments. (9)
 - In fact, collection rates appears to be increasing for U.S. consumers while settlement rates have been declining. (10)
- The FCC ignores the extent to which exchange rate fluctuations can have a negative impact on the value of the net settlement payments received by foreign carriers. Thus, growth in U.S. settlement outpayments does not necessarily mean that foreign carriers are receiving a comparable increase in actual revenues. (11)
- If the FCC favors cost oriented settlement rates, it should first correct the non-cost based margins U.S. carriers receive pursuant to the non-cost based 50/50 policy for terminating international traffic. (18)

The Use of Unilateral Action

- While KDD supports the establishment of cost oriented settlement rates, it opposes the use of unilateral action by the FCC. (1)
 - KDD is a net recipient of settlement revenues on the U.S.-Japan route, but it is, in the aggregate, a net outpayer of settlement revenues. (1)

Commission's Statutory Jurisdiction to Adopt Benchmarks

- While the Commission states that its proposed measure is directed at U.S. carriers, it will be felt just as directly by foreign carriers, and thus exceeds the Commission's jurisdiction. (2-3)

- The fact that settlement rates affect the rates paid by U.S. consumers is irrelevant. Other factors, such as the level of liberalization adopted by foreign countries, have an impact on the prices charged to U.S. consumers. This does not mean, however, that the FCC has jurisdiction over the regulations adopted by foreign countries. (3)
- The FCC acknowledges that it does not have data on the actual cost for foreign carriers for terminating traffic. This implicitly acknowledges that the FCC does not have authority to compel foreign carriers to provide this information. Thus the Commission clearly does not have the authority to regulate the rates charged by foreign carriers. (4)
- The FCC's proposed benchmarks create an impossible conflict with the regulatory authorities of foreign countries. Since only one country can regulate the price on each route, it must be the foreign country that has this authority. (4)
- The Commission has endorsed the half circuit theory of jurisdictional authority in numerous cases and regulations, and cannot disavow it at this time in order to extend its jurisdiction to foreign countries. (5-6)
- To the extent that the FCC has jurisdiction over "interstate and foreign communications" under section 2(a) of the Communications Act, such jurisdiction is plenary and exclusive unless the statute provides otherwise. Since the Communications Act does not recognize shared jurisdiction with foreign governments over foreign communications, the FCC does not have jurisdiction over the rates foreign carriers charge to terminate traffic. (6)
- A presumption exists that Congress intends for legislation to apply solely within the territory of the United States in order to avoid collision with foreign law. Thus, absent legislative intent showing otherwise, the FCC does not have jurisdiction over the rates charged by foreign carriers. (7)

Commission's Authority Under Existing International Law

- The Commission's proposed unilateral implementation of benchmarks directly violates the ITU constitution and convention, which indicates that the provision of international telecommunication service must be set pursuant to "mutual agreement" between administrations. (21)
- The Commission's decision to ignore international comity by unilaterally imposing benchmarks will harm multilateral negotiations. (21-22)
- Rather than unilaterally impose benchmarks, the FCC should work within Study Group 3 of ITU-T. (22-23)

Commission's Authority Under Anticipated WTO Agreement

- The Commission's use of benchmarks to address anticompetitive behavior would amount to a condition on entry, and would thus violate the anticipated WTO agreement. (24-26)
- The Commission's proposal to prescribe settlement rates that foreign carriers may charge while not prescribing settlement rates that U.S. carriers may charge to terminate foreign originated traffic in the U.S. would violate the National Treatment principal of the WTO agreement. (26)

Benchmark Methodology

- The Commission should not attempt to use TLSRIC, or tariffed component prices to calculate benchmarks unless a global consensus is reached that these are proper methodologies. (12-13)
 - For example, the regional group of Asian and Oceania (TAS) has used the average cost methodology in its cost model. As a result, this approach has far more global support than the FCC's TCP approach. (13)
 - Prior to implementing a TCP based approach on a global basis, the United States should first conduct a TCP analysis for the U.S. Telecommunications market. (14)
- It is inappropriate for the Commission to adopt rules that obligate foreign carriers to disclose data or appear before the FCC in order to demonstrate that their actual costs are higher than the benchmarks. (18)

Basing Benchmark Ranging On Economic Development Categories

- The Commission should not utilize the World Bank classification scheme because many high income countries such as Japan have higher costs than some low and middle income countries. This is mainly due to fluctuations in foreign currencies. (14-15)
 - The use of GNP is also irrelevant because it lacks correlation with the cost of living in each country. For example, the cost of living is much higher in Japan than in the U.S., even though both are high income countries. (15)
 - The Commission's TCP methodology ignores the importance of purchasing power parity. For example, U.S. carriers would have to pay more than actual cost as measured in U.S. dollars to compensate Japanese carriers for the cost they incur in Japanese yen to terminate U.S. originated traffic. (16)

- It is inappropriate for the Commission to calculate the incremental cost of terminating international traffic based solely on undisclosed AT&T data without conducting a detailed cost study. (17).

Enforcement of Benchmarks By the Commission

- The Commission should not adopt rules which compel U.S. carriers to violate their contractual duties with foreign carriers. (19)
 - Such a requirement would clearly violate international law and the ITU agreements. (19)
 - Carriers that are forced to lower their settlement payments would be liable under contract law to judicial action by foreign carriers in foreign courts. (20)

Attachment A: ITU Standardization Sector, Regional Tariff Group for Asia and Oceania Task Group - Report R4 (May 9, 1996)

THE RPOAs OF THE REPUBLIC OF KOREA

The Rationale for Adopting Benchmarks

- Korea's RPOAs support cost oriented accounting rates and have reduced accounting rates for U.S. carriers substantially in recent years. (1)
- The deficit in U.S. settlement payments is the result of the significant traffic imbalance created by U.S. carriers rather than the accounting rate regime. Alternative calling procedures have distorted traffic ratios. (4)

Commission's Authority Under Existing International Law

- The benchmark proposal is inconsistent with ITU guidelines that require mutual agreement and recognition of national sovereignty. (2)

Benchmark Methodology

- The use of tariffed component prices is flawed because it does not reflect domestic universal service policies. (3)
- The Commission should permit international organizations such as the ITU to select the best methodology for calculating actual costs. (3)
- It is inappropriate for the FCC to impose benchmarks on foreign carriers while declining to impose benchmarks on its own carriers. (3)
- If the Commission desires a cost-oriented approach, it should take steps to eliminate the 50/50 apportionment system. (3-4)

LATTELEKOM SIA²

The Rationale for Adopting Benchmarks

- U.S. net settlement outpayments are largely the result of alternative billing arrangements that tend to reverse the direction of traffic. (2)
- Above-cost accounting rates do not harm U.S. carriers since the carriers recoup far more revenues in U.S. collection rates. (2)
- The growth in U.S. net outpayments is largely the result of economic and social conditions, along with the use of reverse billing techniques. (3)

The Use of Unilateral Action

- The proposed unilateral action by the Commission violates ITU Recommendation D.140 which calls for bilaterally agreement on rates. (3)

Commission's Authority Under Existing International Law

- The benchmark proposal infringes on the sovereign rights of foreign nations to determine their own telecommunications policy. (3)
- The Commission should work to lower settlement rates through international organizations such as the ITU. (4)

Benchmark Methodology

- The use of tariff component prices is flawed since TCP's do not reflect actual cost. Other factors are important in setting tariff rates. (3)

Enforcement of benchmarks by the Commission

- Ordering U.S. carriers to break commercially negotiated agreements will undermine the credibility of those carriers and ultimately prove counter-productive. (2)

² The legal monopoly carrier for international telephone services in the Republic of Latvia.

**DEPARTMENT OF COMMUNICATIONS OF MINISTRY
OF TRANSPORT OF THE REPUBLIC OF LATVIA**

The Use of Unilateral Action

- Settlement rate negotiations should be conducted through the ITU. Different members of the ITU are at different stages of economic development and market liberalization. Unilateral implementation of settlement rates will slow infrastructure development in many countries.

NEPAL TELECOMMUNICATIONS CORPORATION

The Rational for Adopting Benchmarks

- U.S. carriers collect far more from U.S. consumers for providing international calls than is paid to foreign countries in settlement payments.
- The cause of U.S. net settlement outpayments is alternative billing practices such as home direct services, call back and refile techniques. (2)

Benchmark Methodology

- Nepal is currently paying AT&T a transiting rate of 57 cents per minute. Since the cost of terminating an international call is obviously higher than the cost of transiting such a call, the benchmark for Nepal should be higher than 57 cents. (1)

PACIFIC ISLANDS TELECOMMUNICATIONS ASSOCIATION

The Rational for Adopting Benchmarks

- Because these countries have teledensities far below the levels of the U.S. and Western Europe, they have a right to use revenue from international traffic to develop their national networks and progress towards achieving universal service. (2)
- Highly developed countries such as the U.S. and U.K. cross-subsidized the development of their national telecommunications infrastructure until their markets reached maturity. (2)
- The Commission's proposals would retard telecommunications developments, thus widening the telecommunications gap. (2)
- If the Commission adopts its proposals, the relationship between the U.S. and countries of the Pacific likely will sour. (3)

The Use of Unilateral Actions

- The ITU, not the FCC, is the appropriate body to address accounting rates issues. (3)

Commission's Authority Under Existing International Law

- Every country has the sovereign right to determine its policy matters concerning telecommunications service. The operators and carriers from the respective countries should determine the accounting rates. (2)

Benchmark Methodology

- In the absence of a complete record, the Commission should not establish benchmarks. (2)

Applying Benchmarks to Prevent Anticompetitive Behavior

- Actions of U.S. carriers, including providing home direct services, call back, and third-country calling, have generated the large traffic imbalances. (3)

REPUBLIC OF PANAMA (PANAMA)

The Rational for Adopting Benchmarks

- Commission should not adopt benchmarks because Panama is moving towards privatization and a truly competitive market. (Panama 3-14)
- Since 1992, settlement rates have decreased at a dramatic rate and many countries have taken steps to achieve reform in accounting rates. Thus, there is good reason to believe that this trend will continue and accelerate. (Panama 28)
- U.S. international carriers charge hefty settlements rates, the profits from which do not subsidize local residential service, but rather go directly to their private shareholders. Thus, the U.S. cannot criticize the subsidization of foreign governments and carriers when foreign governments and carriers subsidize U.S. carriers and consumers. (Panama 30-32).

Commission's Statutory Jurisdiction to Adopt Benchmarks

- The Commission does not have jurisdiction to regulate international accounting rates. Its jurisdiction under the Communications Act only extends to the U.S. end of the international call. (Panama 17-19)
- United States judicial precedent precludes the Commission from adopting mandatory benchmarks. In *RCA*, the Court specifically recognized that the Commission lacks jurisdiction to regulate the rates paid by U.S. carriers to the foreign correspondents to complete U.S.-originated traffic. (Panama 19-20).

Commission's Authority Under Existing International Law

- ITU Regulations require a bilateral approach to the reduction of accounting rates, and thus, the Commission cannot unilaterally change accounting rates. (Panama 20-21)

Basing Benchmark Ranges on Economic Development Categories

- Income per capita is not the proper basis to determine settlement rates for countries like Panama who are committed to pro-competitive reform. The Commission's classification of countries into four economic categories fails to take into account fundamental differences between countries. Further, the Commission's policy fails to recognize the effect it will have on the countries' economics and telecommunications network development. Moreover, rates based on GNP per capita will thwart privatization and competition. (Panama 21-22)
- The Commission should take into account 1) a country's commitment to fostering competition, 2) the impact an abrupt decrease in settlement rates would have on countries developing telecommunications networks, 3) the special relationship some countries have with the United States, and 4) the need for high settlement rates where the proceeds are used to subsidize network development. (Panama 23-24)
- In resolving accounting rates issues, the Commission should treat on a case-by-case basis Panama, and other developing countries who have demonstrated a commitment to fostering competition. (Panama 24)

Applying Benchmarks to Prevent Anticompetitive Behavior

- A reduction in accounting rates cannot occur overnight. A sudden downward shift in accounting rates will adversely affect the privatization process and thwart competition. Panama has reduced its settlement rates and will continue to do so when feasible. Thus, the Commission should forbear from imposing its benchmark ranges where a country has actively pursued a procompetitive course. (Panama 26)

**MINISTRY OF COMMUNICATIONS, DEPARTMENT OF INTERNATIONAL
COOPERATION, REPUBLIC OF POLAND**

Commission's Authority Under Anticipated WTO Agreement

- Pursuant to Poland's offer to the WTO, Poland will not implement the liberalization of its telecommunications system before January 1, 2003. Thus, any attempt by the FCC to alter Poland's liberalization schedule would violate the WTO agreement. (1)
- Delaying Poland's liberalization until 2003 is appropriate in order to compensate Poland's monopoly carrier for the substantial infrastructure development it has agreed to pursue. (1)

PORTUGAL TELECOM INTERNATIONAL

The Rationale For Adopting Benchmarks

- Portugal Telecom finds it relevant that the Commission has issued this notice prior to the deadline in the WTO negotiations. Because of the importance of the WTO talks, Portugal Telecom declines to comment extensively until after those talks are concluded. (1-2)
- The Commission is incorrect in arguing that settlement rates are declining slowly. According to the FCC's own figures, a 29% reduction in the U.S. settlement rates has occurred in the last four years. Few goods or services have experienced such dramatic reductions in prices in such a short time. (3)
- The Commission's benchmark proposal is also unnecessary in light of the numerous competitive reforms occurring in countries around the globe. (3-4)
- The benchmark proposal is also unnecessary in light of the competitive pressures imposed by the marketplace itself through services such as call back, voice over the Internet, private line resale, and bypass technologies such as very small aperture terminals (VSATs) for satellite communications. (4)
- Settlement payment imbalances, which are hardly unique to the United States, are the result of social and economic factors rather than above-cost settlement rates. (4-5)

— It is evident that settlement rates are not the problem since large carriers in developed countries are experiencing continually increasing profits (5)

The Use of Unilateral Action

- The European Union has already developed a framework for liberalization and the lowering of accounting rates. The United States should not interfere with this process. (10-13)

Commission's Statutory Jurisdiction To Adopt Benchmarks

- In the Commission's previous accounting rates proceeding, the National Telecommunications and Information Administration concluded that the FCC lacks jurisdiction to "compel foreign entities to accept accounting rates prescribed by the Commission for U.S. carriers."
- The Commission's reliance on RCA Communications v. U.S. is misplaced. In that case, while the Court found that the FCC had jurisdiction to regulate the rates paid by consumers, the Court expressly recognized that the Commission lacks jurisdiction to regulate the rates paid by U.S. carriers to their foreign correspondents. (7)

Commission's Authority Under Existing International Law

- The Commission acknowledged in the Market Entry Order that “we do not have jurisdiction over the foreign carrier.” If the Commission does not have jurisdiction over foreign carriers, the Commission also lacks jurisdiction over the rates charged by foreign carriers (6)
- The proposed benchmark violates Article 1.5 of the ITU regulations which require that accounting rates be set pursuant to “neutral agreement.” (8)
 - Additionally, Section 3.3.1 of Appendix 1 of the ITU regulations states that payment of balances of accounts shall be paid as promptly as possible. The ITU regulations do not allow a delay in situations of dispute over the amounts owed, much less permit an administration to withhold payments as leverage to push rates down. (8)

Benchmark Methodology

- The Commission should not apply its proposed benchmarks to countries which, like Portugal, are committed to creating a competitive telecommunications marketplace. (9)
 - Drastic reductions in settlement rates would sabotage the efforts of countries attempting to establish competitive markets and would harm efforts at network development. (9)
 - Drastic reductions in settlement rates would harm the privatization process and thus jeopardize the goal of foreign governments to introduce competition. (9)

GOVERNMENT OF SAINT VINCENT AND THE GRENADINES

The Use of Unilateral Action

- Settlement rate negotiations should be conducted through the ITU. Different members of the ITU are at different stages of economic development and market liberalization. Unilateral implementation of settlement rates will slow infrastructure development in many countries.

TELECOMMUNICATION AUTHORITY OF SINGAPORE

The Use of Unilateral Action

- Unilateral imposition of benchmarks may further distort traffic and settlement rate discrepancies by creating new arbitrage possibilities and forcing foreign carriers to seek revenues from other sources. (2)
- It would be more appropriate for the FCC to reform the traditional accounting rate system by participating in multilateral efforts, such as through the ITU Study Group 3. (2)

Commission's Authority Under Existing International Law

- The Commission's proposed unilateral implementation of benchmarks violates U.S. commitments to the ITU and the ITU policy of achieving settlement rate reductions through international agreement. (2)