

## **SINGAPORE TELECOMMUNICATIONS LIMITED**

### **The Rationale for Adopting Benchmarks**

- The existence of U.S. net settlement outpayments on the U.S.-Singapore route is the direct result of home country direct, call back, and refile services promoted by U.S. carriers. (3-5)
- The FCC's proposed benchmarks would further aggravate traffic imbalances by encouraging carriers to route traffic destined to third countries through the United States. (7)

### **Commission's Authority Under Existing International Law**

- The Commission's unilateral implementation of benchmarks would violate the ITU Convention which requires that such rates be set by "mutual agreement." (2)
- The FCC's claim that it is not seeking to regulate foreign carriers cannot be supported. The NPRM acknowledges the possibility of enforcement action against non-complying foreign carriers by directing U.S. carriers to pay settlements at or beneath agreed upon levels. (3)

### **Benchmark Methodology**

- The FCC cannot adopt total service long run incremental cost since most countries do not recognize this methodology. (8)
- The use of tariffed component pricing to estimate benchmarks is inappropriate since it seriously understates the actual cost of terminating international calls. (9)

### **Basing Benchmark Ranges on Economic Development Categories**

- The use of World Bank GNP classifications is inappropriate since no correlation has been demonstrated between GNP and the cost of terminating international calls in a country. (9)
- If the Commission does adopt benchmarks, it should require U.S. carriers to pass through all settlement rate reductions to U.S. consumers. Additionally, it would be more appropriate for the FCC to regulate U.S. collection rates rather than foreign settlement rates. (10)

## SOLOMON ISLANDS GOVERNMENT

### **The Rationale for Adopting Benchmarks**

- The growth in U.S. net settlement outpayments is largely the result of the marketing efforts of U.S. carriers through the use of call reversing techniques. (2)

### **Commission's Authority Under Existing International Law**

- The Commission's proposed benchmarks are contrary to the ITU Constitution which requires cooperation between nations in setting accounting rates. (1)

### **Benchmark Methodology**

- The Commission's proposal fails to take into account varying levels of teledensity. In countries with low teledensity a portion of telecommunications revenues must be allocated to infrastructure development. (2)
- Solomon Islands relies heavily on a policy of cross-subsidization in order to develop national networks and universal service. It is the legitimate prerogative of this government to maintain such a policy. (2)
  - The U.S., U.K., and other industrialized countries have long utilized cross-subsidies to promote public policy goals. Solomon Islands has the same right. (2)
  - It took many years for the telecommunications sectors of industrialized countries to mature. The telecommunications sector of Solomon Island must be provided the same amount of time. (2)

## GOVERNMENT OF THE REPUBLIC OF SURINAME

### The Use of Unilateral Action

- The Commission should work within the ITU to encourage lower settlement rates. (1)
- Suriname supports the objections posed by the Caribbean Association of National Telecommunications Organizations. (1)

**DIRECTORATE GENERAL OF  
TELECOMMUNICATIONS, TAIWAN, REPUBLIC OF CHINA**

**The Rationale For Adopting Benchmarks**

- Growth in U.S. net settlement outpayments is caused by numerous factors not fully reflected in the NPRM such as social and cultural factors (longer telephone calls, and an immigrant society), economic factors and reverse billing techniques such as calling cards, call-back, home country direct service, and refile arrangements. (2)

**The Use of Unilateral Action**

- Problems with the international accounting rates system need to be resolved on a multilateral basis. (2)

**Commission's Authority Under Existing International Law**

- The Commission's imposition of benchmarks on foreign carriers will exceed the national sovereignty of the U.S. (1-2)

**Benchmark Methodology**

- The Commission's use of tariffed prices is inappropriate since these prices reflect cross-subsidies that are common in retail pricing. (2)

**The Use of Transition Periods**

- The Commission's proposed transition periods may conflict with those agreed upon in the WTO. Suggesting alternative transition periods would disrupt the WTO process. (2-3)

## TELECOM ITALIA

### **The Rationale For Adopting Benchmarks**

- The Commission's benchmark proposal is unnecessary since by the end of 1997 a majority of the world's telecommunications networks will be privatized (measured in revenues and access lines). These privatized carriers will be adequately controlled by the free market. (3)
  - The settlement rates charged by many carriers, such as Telecom Italia, are already cost-based. The calculation of these rates takes into account such important factors as traffic-related costs, opportunity costs, and the value of the service. (4)
- The benchmark proposal is unnecessary since accounting rates have been declining in recent years. For example, Telecom Italia's rates have reduced 80% over the past four years. (4)
- The growth in U.S. net settlement outpayments is primarily caused by such factors as alternative billing arrangements that reverse traffic, and structural differences between countries in terms of their economies, trade patterns and social reliance on telecommunications. (5-6)

### **The Use of Unilateral Action**

- In light of the ongoing WTO negotiations on telecommunications, it is inappropriate for the FCC to propose unilateral regulatory action. (7)

### **Commission's Statutory Jurisdiction To Adopt Benchmarks**

- In the Commission's previous accounting rates proceeding, the National Telecommunications and Information Administration (NTIA) concluded that the FCC lacks jurisdiction to "compel foreign entities to accept accounting rates prescribed by the Commission for U.S. carriers." (6)

### **Commission's Authority Under Existing International Law**

- The Commission acknowledged in the Market Entry Order that it does not have jurisdiction over foreign carriers. Therefore, the Commission also lacks jurisdiction over the rates charged by foreign carriers (6)

### **Commission's Authority Under Anticipated WTO Agreement**

- Significant disagreement exists regarding the FCC's ability to impose accounting rates without violating MFN and other international trade obligations. (7-8)

## TELECOM NEW ZEALAND LIMITED

### The Rationale For Adopting Benchmarks

- The Commission should not apply its proposed benchmarks to countries where competitive forces are adequate to lower accounting rates. (4-5)
  - The Commission appears to acknowledge in the NPRM that its benchmark order is aimed at those countries that resist adopting competitive markets. (2)
  - The Commission recently adopted its Flexibility Order in the recognition that competition is the best way to lower costs in international telecommunications markets. (3)

### Benchmark Methodology

- The Commission should clearly state that it will forebear from applying benchmarks to countries that satisfy the ECO-Test. Alternatively, the Commission should state that it will not apply the benchmarks to New Zealand, where competition currently exists. (5-6).
- If the Commission does adopt benchmarks, it should calculate a specific benchmark for each country. (6)
  - Countries should not be categorized based on GNP because the cost of terminating a U.S. call to New Zealand differs significantly from the cost of terminating a call to Belgium or Bermuda. (6)
  - Factors such as geography, distance from the U.S., and population density all have a significant impact on the cost of terminating international traffic. (7)

### Applying Benchmarks to Prevent Anti-Competitive Behavior

- Conditioning authorizations to serve the U.S. market on compliance with the proposed benchmarks will block new entrants and thus deter competition. (8-9)
  - Conditioning the resale of international private lines would be particularly harmful to competition since resale service creates strong market forces that compel reductions in settlement rates. (9)
  - Conditioning resale opportunities may encourage foreign dominant carriers to keep settlement rates high in order to prevent a resale market from developing. (10)

## TELECOM VANUATU LIMITED<sup>4</sup>

### **The Rationale for Adopting Benchmarks**

- U.S. net settlement outpayments are largely the result of traffic imbalances which are generated by the marketing practices of U.S. carriers. Additionally the practice of third country calling increases the imbalance. (3)

### **The Use of Unilateral Action**

- The unilateral implementation of benchmarks undermines the ongoing work of the CCITT. Unilateral action is also presumptuous in light of the ongoing work of the ITU.

### **Benchmark Methodology**

- Many Pacific Island countries utilize international settlement rates to subsidize universal service and infrastructure development. It is the sovereign right of these countries to do so. (2)

### **The Use of Transition Periods**

- The U.S., UK and other industrialized countries cross-subsidized the development of their national infrastructures from international revenue for many years until their markets reached maturity. The markets of Pacific Island countries are many years from maturity and it is therefore unrealistic to cease cross-subsidization at this time.

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<sup>4</sup> Service provider for the Republic of Vanuatu.

### **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 principle 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)

**TELECOMUNICACIONES INTERNACIONALES DE ARGENTINA TELINTAR S.A.  
(TELINTAR)**

**The Rationale for Adopting Benchmarks**

- The Commission should not adopt the proposals in the *Notice* because the proposals would make it more difficult to lower the existing accounting rates. U.S. carriers would not have any flexibility to negotiate rates. (Telintar 34-35)

**The Use of Unilateral Actions**

- A reduction in accounting rates can only be accomplished with bilateral agreements between U.S. carriers and their foreign correspondents. The Commission cannot prescribe the rates foreign carriers can charge for their services because it lacks authority over foreign carriers. (Telintar 4, 7-9)

**Commission's Statutory Jurisdiction to Adopt Benchmarks**

- Commission failed to give any support for its claim of jurisdiction under § 1, 4, 201-205 and 303 of the Act. Upon analysis of these sections, it is clear that nothing in the Communications Act authorize the Commission to prescribe international accounting rates or to require U.S. carriers to breach the terms of their accounting rate agreements. (Telintar 24-29)
- *RCA* does not support the Commission's claim that it may order U.S. carriers to breach their accounting rate agreements. *RCA* requires that any change in accounting rates occur through bilateral agreements. (Telintar 29-30)

**Commission's Authority Under Existing International**

- The Commission's approach would violate Articles 1.5 and 6.21 of the ITU Regulations. (Telintar 12-14)
- Neither Article 31 of the ITU Convention, Article 9 of the ITU Regulations, nor Recommendation D.140 gives the Commission authority to unilaterally establish accounting rates. (Telintar 14-17)
- The Commission's proposals would violate the "standstill" provision of the GBT decision. (Telintar 18)
- The Commission's proposal to establish three different country categories violates the MFN principle. (Telintar 19-20)
- The Commission's proposals would violate U.S. bilateral treaty obligations with countries such as Argentina. (23-24)

**Benchmark Methodology**

- U.S. telephone rates have never been based on incremental costs, but rather have been well above cost to allow carriers to recover costs and subsidize universal service. Foreign

carriers should have the same right to use revenue from international calls to subsidize their efforts. (Telintar 9)

- Reliance on foreign country tariffs for the price of the components of international service is inappropriate because these tariffs do not reflect the actual cost structure of the underlying service. (Telintar 10)
- AT&T's estimate of its domestic cost structure has no relevance to the costs incurred by carriers in other countries.

#### **Applying Benchmarks to Prevent Anticompetitive Behavior**

- Anti-competitive conduct has not caused the settlements payment deficit. The fact that the U.S. is a highly developed nation with citizens making far more calls to other countries than they receive from those countries is the cause of the deficit. (Telintar 4)
- The Commission's policies promoting call-back, third-party calling, and call re-origination services have contributed to the settlements deficit. (Telintar 5, 33)
- The Commission's refusal to approve accounting rate agreements has contributed to the settlements deficit. (Telintar 6, 34)

#### **Enforcement of Benchmarks by the Commission**

- The Commission provides no standards for determining when it will take retaliatory action, but instead, gives itself unbridled discretion to retaliate against one country but not another in violation of the MFN. (Telintar 20-21)

## TELEFONICA DEL PERU (PERU)

### **The Rational for Adopting Benchmarks**

- The Commission should not adopt mandatory benchmarks because Peru is working to develop its telecommunications infrastructure, is committed to fostering competition in Peru and has significantly lowered its accounting rates since 1991. (Peru 1-6)
- The lack of full competition in the U.S. outbound international telecommunications market is the primary cause of the high collection rates in the United States, not high accounting rates. (Peru 9-10)
- Other services have contributed to the current settlements deficit, including call-back, third-country calling, and re-origination services. (Peru 10-11)

### **The Use of Unilateral Actions**

- The Commission should engage in multilateral negotiations and the ITU is the appropriate forum. (Peru 13-15)

### **Commission's Statutory Jurisdiction to Adopt Benchmarks**

- The Commission does not have statutory authority to regulate accounting rate agreements. The Commission can only exercise jurisdiction over the U.S. carrier, not the foreign carrier. Thus, it is powerless to abrogate international settlement agreements. (Peru 6-8)
- U.S. jurisprudence requires that U.S. carriers negotiate accounting rates with their foreign correspondent. (Peru 9)

### **Commission's Authority under Existing International Law**

- The Commission's unilateral efforts will violate ITU Regulations which are binding on the United States. (Peru 8)

### **Benchmark Methodology**

- The Commission's reliance on a country's specific tariffed components price is inappropriate because these tariffs do not reflect the actual cost structure of the underlying service. (Peru 12)

### **The Use of Transition Periods**

- In determining the appropriate transition period, the Commission should consider the country's level of economic development, the regulatory regime, the commitment to an open and competitive market, and the progress being made in rate rebalancing. (Peru 15)

## TELEFONOS DE MEXICO, S.A. DE C.V.

### The Rationale For Adopting Benchmarks

- The Commission should continue to adopt regulations and policies that help increase competition and thereby encourage carriers to negotiate lower settlement rates. (1-4)
  - In this regard, the Commission is correct in adopting its Flexibility Order which permits carriers to negotiate alternative contractual arrangements for the carriage of international traffic. (5-8)
- Permitting carriers to negotiate lower settlement rates is particularly important when competitive markets, such as Mexico, are involved.
  - Mexico has adopted a schedule for the implementation of competition which acknowledges that existing accounting rates must be replaced by market driven forces. The schedule takes into account the fact that a drastic reduction in settlement rates could undermine the pro-competitive results already achieved. (11-12)
  - Settlement rates for calls from the U.S. to Mexico have been decreasing, while rates for calls from Mexico to the U.S. have increased. (12)
- The increase in net settlement payments from the U.S. to Mexico is the result of increased traffic from the U.S. and not above-cost settlement rates. (14-15)

### The Use of Unilateral Action

- The United States and Mexico have made significant achievements in opening telecommunications markets through bilateral negotiations. The FCC should continue these efforts rather than unilaterally adopt benchmarks.
- The unilateral adoption of benchmarks could infringe on the domestic policies of other countries and invite retaliation against U.S. competitors abroad. (18)
  - The Commission's proposed benchmarks may violate the policies of the Clinton Administration, which supports bilateral trade negotiations.(19)

### Commission's Statutory Jurisdiction to Adopt Benchmarks

- No basis exist under the Communications Act for the Commission to impose benchmarks. Thus, it will have a difficult time enforcing its proposal. (19-20)

### **Commission's Authority Under Existing International Law**

- Foreign carriers may view the benchmark proposal as an extraterritorial action by the FCC. These countries may respond by imposing burdensome obligations on U.S. carriers seeking entry into foreign markets. (20)

### **Benchmark Methodology**

- The FCC does not have the resources necessary to adequately estimate the actual cost of terminating international traffic. Additionally, the NPRM ignores the substantial variation that exists from country to country in actual costs. (20-21)
- The Commission's estimates of actual costs for foreign carriers ignore public policy obligations such as government mandated expenditures for universal service and infrastructure development. (21)
- The Commission's use of tariff components prices is inappropriate because it ignores currency fluctuations.
  - For example, the Commission included data from Mexico in its study during a period in which Mexico was facing a 50% annual inflation rate that drove the value of telecommunications services in Mexico to record low levels. (23)
  - As a result, the FCC's reliance on the private line rates charged in Mexico proves nothing about the actual cost for providing international transmission facilities. (23)

### **Applying Benchmarks To Prevent Anticompetitive Behavior**

- The Commission should not condition access to the U.S. market on compliance with the proposed benchmarks. This would prevent new competition in the international telecommunications marketplace, rather than encourage it. (24-25)
- The Commission's proposal to tie market entry to its proposed benchmarks also contradicts the Commission's recent conclusion in the Foreign Carrier Entry Order that tying U.S. entry to cost based accounting rates would be anticompetitive. (25-26)

**Attachment 1: Statement Evaluating the FCC's Methodology for Setting International Settlement Rates Benchmarks, December 19, 1996, By Bruce Egan, Rob Frieden, and Steve Parsons**

## TELIA AB<sup>3</sup>

### **The Rationale For Adopting Benchmarks**

- The existing accounting rates system is in significant need of reform. High accounting rates harm the growth of competition. (1-2)
  - Sweden is a leader in lower accounting rates. It costs U.S. carriers just nine cents per minute to terminate international calls in Sweden. (1-2)

### **The Use of Unilateral Action**

- While the Commission's goals are laudable, the Commission should work towards a multilateral solution through the ITU or WTO. (4-5)
- The Commission should also pursue market-based approaches to lower accounting rates such as supporting further negotiations between carriers. (6)

### **Benchmark Methodology**

- The Commission is correct in proposing benchmarks based on tariffed component prices since such prices accurately reflect costs, but only after they have been rebalanced. (4)

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<sup>3</sup> Telia provides local, domestic long distance, and international services in Sweden.

## TELSTRA CORPORATION LIMITED<sup>5</sup>

### The Rationale for Adopting Benchmarks

- The Commission's benchmark proposal is inadequate since competitive forces are bringing accounting rates into line. For example, Telstra anticipates that the FCC's proposed benchmark for Australia will be reached through market forces and normal commercial negotiations within the next 12 to 18 months. (1)
- The growth in U.S. settlement outpayments is largely the result of Internet traffic and reverse calling systems promoted by U.S. carriers. (2-4)
- The high prices U.S. residents pay for international calls are largely the result of high U.S. collection rates. (5)
- Telstra supports the Commission's suggestion in the NPRM that the current 50/50 division of accounting rates be reconsidered. (6)

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<sup>5</sup> Australia's leading domestic and overseas carrier.

## **THE COMMUNICATIONS AUTHORITY OF THAILAND**

### **The Rational for Adopting Benchmarks**

- Aggressive reductions in accounting rates will only exacerbate the problem. Attention needs to be given to the other causes of the traffic imbalance, including call-back, country direct, third country calling, and international 800 services. (1-2)

### **The Use of Unilateral Actions**

- The Commission should engage in bilateral negotiations to lower accounting rates. It does not have authority to infringe upon the right of sovereign nations to determine how their telecommunications systems are to be developed. (2)

### **Benchmark Methodology**

- The Commission should not base its benchmarks on the tariff components because this pricing method fails to consider all the costs incurred. (2)

**POST AND TELEGRAPH DEPARTMENT**  
**Bangkok, Thailand**

**The Rational for Adopting Benchmarks**

- Commission's proposals will infringe upon procedures and methods adopted by the ITU. (2)
- A special group within the ITU should be formed to address specifically accounting rates and settlement practices. (2)

## TRICOM, S.A.<sup>4</sup>

### The Rationale for Adopting Benchmarks

- As the Commission acknowledges, competition in foreign markets directly benefits U.S. consumers by forcing down international calling rates. (2-3)
- In working to encourage lower settlement rates, however, the Commission should not interfere with the growth of competition. (3)
- The Commission's proposed benchmarks are too low and will discourage development of new competition in foreign markets. (6)

### Benchmark Methodology

- The Commission's use of tariffed component prices to calculate the national extension component cost is flawed.
  - For example, the access charges competitive carriers must pay the dominant carrier in the Dominican Republic are nearly three times as high as the Commission's estimate of the national extension cost. (4)
  - The Commission's cost estimates fail to take into account such necessary expenses as litigation, infrastructure development, and the high cost of financing in countries that lack strong capital markets. (5)

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<sup>4</sup> TRICOM is a full-service carrier providing international and domestic long distance to the Dominican Republic. TRICOM is 40% owned by Motorola.

## **VIDESH SANCHAR NIGAM LIMITED (VSNL)<sup>1</sup>**

### **The Rationale for Adopting Benchmarks**

- The growth in U.S. net settlement outpayments is the direct cause of the aggressive policies pursued by U.S. carriers in promoting alternative billing arrangements that tend to reverse traffic. (3)
- In light of the substantial profit margins that U.S. interexchange carriers are enjoying, the FCC would do more for consumers by concerning itself with the per minute margin of U.S. carriers rather than international settlement rates. (5)

### **The Use of Unilateral Action**

- The Commission's proposal to unilaterally impose benchmarks would aggravate the existing international settlement rates mechanism. (3)
- Many countries, such as India, are net outpayers of settlement payments to other countries. This does not mean that India can engage in such unilateral action. (5)

### **Commission's Authority Under Existing International Law**

- The benchmark proposal violates the ITU treaty which indicates that accounting rates should be set by "mutual agreement." (2)
- The Commission cannot unilaterally impose benchmarks without violating international law since such issues are a matter of comity of nations. (3)

### **Benchmark Methodology**

- The use of total service long run incremental cost for calculating benchmarks is inappropriate. Many other factors must be taken into account in pricing international services such as social, political and economic needs. (6)

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<sup>1</sup> VSNL is an international carrier which interconnects the Indian domestic telephone network with international carriers.

## ZEPHYR CAPITAL GROUP, INC.<sup>2</sup>

### The Use of Unilateral Action

- The Commission should establish working groups that include representatives of countries agreeable to cost-based pricing and/or those that will have a significant influence on telecommunications policy. These working groups should consider the Commission's proposals. (15)

### Benchmarks Methodology

- The Commission's proposed use of tariffed component prices fails to reflect the actual network infrastructure of modern telecommunications systems. (1-7)
  - In calculating the international cost-based elements, the Commission should take into account such factors as capital equipment costs, transport costs, direct operations costs, overhead operations costs, sales and marketing costs, and the costs of plant and the transport elements. (9-12)

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<sup>2</sup> Zephyr is an international record carrier with facilities in New York and London. Zephyr is waiting for operational authority from the Polish PTT for operational facilities in Warsaw, Poland.