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

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Federal Communications Commission
Office of Secretary

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| **In the Matter of** | ) | |
| | ) | **IB Docket No. 96-261** |
| **International Settlement Rates** | ) | |

**To: The Commission**

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# REPLY COMMENTS OF CABLE & WIRELESS, PLC

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March 31, 1997

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## SUMMARY

Cable & Wireless, plc ("C&W") and many other commenters have demonstrated that the Commission does not have the authority to establish mandatory benchmarks. International law, as embodied in the Constitution and Regulations of the ITU, mandates that accounting rates be established on a bilateral basis. C&W respectfully submits that the unilateral approach of the *NPRM* is clearly inconsistent with this established principle of international law. In addition, the *NPRM's* proposals exceed the scope of the Commission's jurisdictional authority under the Communications Act of 1934. The Commission does not have the authority to prescribe the rates a foreign carrier charges consumers within its territorial markets. Further, the record shows that the Commission lacks the data regarding foreign carriers' costs upon which it justifiably could base a rate prescription, regardless of whether the prescription is characterized as "permanent" or "interim." Absent the necessary cost information to support a prescription, the FCC cannot lawfully order U.S. carriers to abrogate or vitiate their contracts with foreign carriers.

The essence of reasoned decision-making is a proper understanding of the problem being addressed. The *NPRM* misapprehends both the causes and effects of the settlements deficit. The record demonstrates that the U.S. net settlements deficit is a direct result of traffic imbalances, which are caused primarily by services promoted by U.S. carriers such as callback, refile, and home country direct. Any reasoned examination of the settlements deficit must include a consideration of these various causative factors. Further, these services -- billed to foreign rather than U.S. callers -- generate substantial revenues for U.S. carriers, which more than offset the settlements deficit. Neither do net settlement outpayments made by U.S. to foreign carriers constitute a subsidy: the record shows that

traffic resulting from callback, refile, and home country direct services embodies a net revenue loss for foreign carriers. Accordingly, the settlements imbalance cannot be characterized as either positive or negative without a complete understanding of the settlements outpayments.

As the *NPRM* fails to understand the nature of the settlements deficit, the remedies it proposes for addressing the flaws of the accounting rate system will be ineffective, and in fact may exacerbate the traffic imbalance. The record shows that there is no necessary connection between a forced reduction in accounting rates and a reduction in IMTS collection rates. Indeed, as many commenters have noted, U.S. carriers have continued to increase collection rates as accounting rates have declined. Only if the Commission focuses directly on the rates U.S. carriers charge U.S. consumers will U.S. consumers receive any benefit from accounting rate reform.

C&W respectfully submits that in order to achieve truly comprehensive, effective reform of the current accounting rate system, the Commission should continue its reform efforts, but in conjunction with the efforts already underway within the ITU. Multilateral accounting rate reform sponsored by the ITU is far more likely to produce a result that is more acceptable on a global basis than the unilateral approach of the *NPRM*.

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## REPLY COMMENTS OF CABLE & WIRELESS, PLC

Cable & Wireless, plc ("C&W"), by its attorneys, hereby submits the following reply to the comments filed in response to the *Notice of Proposed Rulemaking* ("*NPRM*") issued in the above-captioned proceeding.[1/]

The Commission's *NPRM*, as the initial comments make plain, has generated much interest and controversy throughout the world.[2/] While it is obviously necessary to focus on the various points of disagreement, it is also important to recognize that the commenters agree on much. There is a clear consensus that the international telecommunications market is being buffeted by significant change, and that if international regulatory policies are to be effective, they must take these inevitable changes into consideration.

Despite this consensus, the disagreements among participants in this debate are both significant and sincere. While the debate over how to fashion new regulatory policies can easily turn into participants' questioning each others' good faith, C&W submits that the public interest will be best served if the focus remains on the question of whether the

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1/ *International Settlement Rates*, IB Docket No. 96-261, Notice of Proposed Rulemaking, FCC 96-484 (rel. Dec. 19, 1996).

2/ Carriers from over 60 countries all over the world filed comments in this proceeding.

*NPRM's* proposals will establish a proper regulatory mechanism for the new international telecommunications arena. C&W respectfully submits that they will not.

As an initial matter, commenters correctly pointed out that the Commission does not have the legal jurisdiction, either under the Communications Act or international law, to decide what rate a foreign carrier can charge for a service provided in its country of license. Even assuming such jurisdiction, however, the proposals of the *NPRM* are not logically related to its objectives. The relationship between accounting rates, the rates charged U.S. consumers by U.S. carriers, and the U.S. settlements deficit is tenuous at best. The problems that the Commission seeks to solve with its rulemaking are much more multi-dimensional than the *NPRM* seems to recognize.

Even if one were to ignore the above two "impediments" -- which cannot be done -- the FCC, as almost every commenter pointed out, does not have the requisite data to establish the rates that each carrier should charge. Given the above, the *NPRM's* unilateral approach ultimately will retard, not promote, the efforts of the international community to achieve lasting, effective accounting rate reform.

## I. THE COMMISSION DOES NOT HAVE THE JURISDICTIONAL AUTHORITY OR THE NECESSARY DATA TO PRESCRIBE ACCOUNTING RATES

An overwhelming majority of the commenters has demonstrated that the *NPRM* is inconsistent with international law and exceeds the scope of the Commission's jurisdictional authority under the Communications Act.[3] International law, as articulated in the

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[3] *See, e.g.*, Hispanic-American Association of Research Centers & Telecommunications Companies ("AHCIET") Comments at 2-3; Caribbean Association of National Telecommunication Organizations ("CANTO") Comments at 1; C&W Comments at 2-15; Chunghwa Telecom Comments at 2; COMTELCA Comments at 13-15; Cooperation Council for the Arab States of the Gulf Comments at 1-2; DGT, Taiwan Comments at 1-
(continued...)

Constitution and Regulations of the International Telecommunications Union ("ITU"), requires that accounting and settlement rates be established through bilateral agreement.[4/] The *NPRM's* proposal to establish accounting rates unilaterally, and to take enforcement measures against carriers that do not comply with those rates, violates those well-settled principles of international law.

These same actions lie outside of the Commission's statutory authority under the Communications Act as well. The record shows that the Commission itself has acknowledged, and always acted consistently with, the fact that its jurisdictional authority under the Communications Act is limited to the U.S. half-circuit.[5/] Consistent with this, the FCC has never claimed plenary sovereign or territorial jurisdiction over the rates charged by foreign carriers to terminate U.S.-billed international switched traffic in their own countries.[6/] The

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[3/](...continued)
2; Deutsche Telecom Comments at 5-9; GTE Comments at 10-15; Government of Japan Comments at 1-2; HKTI Comments at 21-26; Indosat Comments at 1; International Digital Communications at 2; International Telecom Japan Comments at 3-12; KDD Comments at 2-7; P&T, China Comments at 1-2; Panama Comments at 17-21; RPOAs of the Republic of Korea Comments at 2, 4; Singapore Telecom Comments at 2-3; Solomon Islands Comments at 1; Telecom Vanuatu Comments at 1; Telefónica del Perú Comments at 6-9; Telintar Comments at 11-30; Telmex Comments at 18-20.

[4/] For example, the Regulations of the ITU provide that "administrations shall by mutual agreement establish and revise accounting rates to be applied between them. . . ." *International Telecommunications Regulations*, Article 6.2.1 (Melbourne, 1988).

[5/] *Uniform Settlement Rates on Parallel International Communications Routes*, 84 F.C.C.2d 121, 122 (1980)("our jurisdiction over international service applies only to one end of the service.")

[6/] As the FCC itself has stated:

> In the case of domestic facilities, since we have jurisdiction over the entire facility, the situation is relatively clear. In the case of overseas facilities, however, the facilities are jointly owned by United States interests and their

(continued...)

Commission consistently has recognized that the foreign carrier operates under the jurisdiction of the relevant foreign government.[7]

Even Sprint, a beneficiary of the *NPRM's* proposals, does not attempt to argue that the Commission has jurisdiction over foreign carriers or is in a position to prescribe rates. Rather, Sprint suggests that the Commission could accomplish the *NPRM's* objectives by exercising its undoubted jurisdiction over U.S. carriers. Specifically, Sprint urges the Commission to consider ordering U.S. carriers to: (1) pay no more to a foreign carrier than an FCC-prescribed settlement rate; (2) pay an "interim" rate set by the Commission without exercising its prescription power; (3) withhold settlement payments from a foreign carrier; and (4) cease exchanging traffic with the foreign carrier when the relevant settlement rate is too high.[8] None of these proposals will withstand even the slightest scrutiny.

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[6](...continued)

foreign correspondents who are beyond our jurisdiction.

*AT&T et al.*, 88 F.C.C.2d 1630, 1649 (1982). *See also RCA Communications v. U.S.*, 43 F.Supp. 851, 854 (S.D.N.Y. 1942); *TRT Telecommunications Corp.*, 46 F.C.C.2d 1042, 1046-47 (1974).

[7] *See, e.g.*, *Regulation of International Accounting Rates*, 7 FCC Rcd 559, 561 (1991)("Because the international communications market involves a cooperative effort of service providers in two different countries, the provider at the foreign end, or the government under whose jurisdiction the foreign provider operates, has the power to facilitate or impede U.S. policy."). In an implicit acceptance of the fact that the FCC cannot regulate a foreign carrier, both Sprint and AT&T argue that the *NPRM* is not actually directed at foreign carriers. This contention is belied, however, by the fact that the measures proposed to enforce the *NPRM* -- such as requiring foreign carriers to appear at a hearing to challenge the accuracy of the Commission's rate prescription -- are clearly targeted at foreign carrier rates. It simply strains credibility to interpret the FCC's *NPRM* as being aimed at any carriers except foreign carriers.

[8] Sprint Comments at 6-7.

There are two major problems with Sprint's initial proposal. First, Section 205 of the Communications Act requires that the Commission determine a carrier's costs before it can prescribe a rate. To do this, the Commission must collect the data upon which it lawfully can prescribe a new rate.[9] As virtually every party that offered comments in this proceeding has noted, including Sprint, the Commission does not have accurate and sufficient cost data regarding the operations of foreign carriers upon which to base the benchmarks.[10] Indeed, the Commission itself has admitted as much.[11] Moreover, Sprint states that it cannot assist the Commission in this regard, because Sprint "has no knowledge of foreign carriers' total or average costs for terminating an international call from the U.S., much less the foreign carrier's incremental costs for such termination."[12] Sprint also notes that many foreign carriers do not keep their accounts so as to enable them to calculate their average or incremental costs of service.[13] Without a valid prescription, the Commission cannot lawfully order U.S. carriers to vitiate their contracts with foreign carriers.[14]

Recognizing the difficulties involved with a rate prescription, Sprint urges the Commission "to use its benchmarks as presumptively reasonable settlement rates and to

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9/ *AT&T v. FCC*, 449 F.2d 439, 450 (2d Cir. 1971).

10/ *See, e.g.*, Deutsche Telekom Comments at 10-11; DGT, Taiwan Comments at 2; France Telecom Comments at 10-12; GTE Comments at 23; HKTI Comments at 26-28; KDD Comments at 13-14; MCI Comments at 2-4; Pacific Bell Comments at 5; Singapore Telecom Comments at 8-9; Sprint Comments at 13-15, 19.

11/ *NPRM*, ¶ 33.

12/ Sprint Comments at 14.

13/ *See id.*

14/ *See* 47 U.S.C. § 201(b); *Federal Power Comm'n v. Sierra Pacific Power Co.*, 350 U.S. 348, 355 (1956).

afford the public, including any foreign carriers. . . affected by such a prescription, an opportunity to rebut this presumption of reasonableness by responding to an Order to Show Cause."[15] Sprint does not state clearly whether the rates or range of rates would be established by using the costs of the U.S. or of the foreign carrier. Regardless, the legal infirmities of this approach are obvious: it ignores the legal prerequisites to a lawful prescription -- valid data -- as well as the FCC's lack of jurisdiction over foreign carriers.

If the FCC sets rates or ranges of rates for foreign carriers based on U.S. carriers' costs, the issuance of a show cause order is not logical. The FCC has authority under Section 220 of the Act to obtain all necessary information from the U.S. carrier to set a rate. Certainly, no foreign carrier will have relevant information regarding U.S. carriers' rates. Regardless, setting such a rate using U.S. carriers' costs is useless, if it has nothing to do with the proper rate that the foreign carrier can charge.

If what Sprint is suggesting is that the FCC set a rate or range of rates based on foreign carriers' costs, it still faces the problem of not having the data. Issuing a show cause order to a carrier not under its jurisdiction is a legal nullity and, in any event, cannot serve as a legal basis for a lawful prescription.

Sprint implies that if the FCC acts within the scope of the *Permian Basin Area Rate Cases* decision, it can establish settlement rates.[16] In *Permian Basin*, the Supreme Court rejected the argument that area natural gas rates had to be computed from prevailing field prices, finding instead that rates derived from composite cost data -- which was obtained from published sources and from producers through a series of cost questionnaires -- were

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[15] *Id.* at 19.

[16] 390 U.S. 747 (1968).

"just and reasonable."[17] The Supreme Court affirmed the authority of the FPC to prescribe area rates derived from composite cost data; the Court did not hold that the FPC could set rates without the appropriate data. Equally significant is that in *Permian Basin* there was no question as to whether the FPC had the requisite jurisdictional authority to support its actions; the FPC was regulating the rates charged by domestic carriers to U.S. consumers.

Sprint also suggests that the FCC consider "order[ing] a U.S. carrier to pay for termination of its traffic at an interim rate without engaging in a Section 205 prescription."[18] Although Sprint attempts to characterize this suggestion as the establishment of an "interim" rate, it is clear that the ultimate effect of Sprint's proposed procedure would be the prescription of a benchmark rate.[19] While it is true, as Sprint notes, that under some circumstances the Commission can order a U.S. carrier to make payment arrangements at an interim rate, those conditions do not exist here. In *Lincoln Tel. & Tel. v. FCC*,[20] the court upheld the FCC's decision to require MCI and LT&T to enter into an interim billing and collection arrangement for local interconnection services, <u>pending their ultimate agreement</u> on a rate acceptable to both.[21] The court held that Section 4(i) of the Act gave the FCC the authority to establish these interim charges without activating the procedural requirements of Section 205, because these charges did "not <u>necessarily</u> represent the compensation LT&T

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[17] *Id.* at 795.

[18] Sprint Comments at 7.

[19] *Nader v. FCC*, 520 F.2d 182, 202 (D.C. Cir. 1975)("the Commission need not explicitly announce its action as a prescription to have that effect"); *Moss v. CAB*, 430 F.2d 891, 897-98 (D.C. Cir. 1970)(same).

[20] 659 F.2d 1092 (D.C. Cir. 1981).

[21] *Id.* at 1107-08.

[would] receive for the interconnections provided prior to agreement between MCI and LT&T on acceptable rates and terms."[22] Once a final agreement was reached and a "just and reasonable" rate established, the compensation LT&T received during the interim period would be adjusted to reflect the final rate -- that is, there would be a "true-up."[23]

*Lincoln Telephone*, however, is simply not relevant to the *NPRM's* proposals. As noted above, the *NPRM* makes clear that carriers ultimately will be obliged to agree to rates that comply with the benchmarks if they wish to compete in the U.S. market. Thus, even if negotiations between carriers remain ongoing after the FCC has prescribed an "interim" rate, the rate finally agreed upon will "necessarily" remain within the benchmark, and will therefore effectively be prescribed by the Commission. In essence, what would be called the "interim" rate actually is intended to be permanent.

Finally, Sprint states that the Commission can find that a foreign carrier's refusal to exchange traffic at a particular settlement rate "renders the service provided by the U.S. carrier contrary to the public interest; and it can thus refuse to grant or can revoke the U.S. carrier's authority to exchange traffic with the foreign carrier for that reason." The reasonableness and legality of this position is far from obvious, and its potential effect highlights the problems inherent with unilateral actions. Certainly, even if the FCC had a "record" to do this -- which it does not -- the public interest is not served by interrupting service to a foreign country.[24]

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[22] *Id.* at 1107 (emphasis added).

[23] *See id.*

[24] Sprint's reliance on *TRT Telecommunications Corp.*, 46 F.C.C.2d 1042 (1974), as support for this proposition is misguided. The Commission's decision in *TRT* related (continued...)

## II. THE *NPRM* IS BASED ON A MISAPPREHENSION OF THE SETTLEMENTS DEFICIT

As C&W noted in its Comments, reasoned decision-making demands a comprehensive and accurate understanding of the specific problem being addressed.[25] The record shows, however, that the *NPRM* is based on a fundamental misapprehension of both the causes of the net U.S. settlements deficit and its effects.

### A. The Settlements Deficit Has Multiple Causes

The *NPRM* attributes the U.S. net settlements deficit solely to above-cost accounting rates, and, correspondingly, asserts that a reduction in accounting rate levels will balance the inbound/outbound ratio of international traffic and alleviate the settlements deficit.[26] As numerous parties have demonstrated, however, the settlements deficit is caused directly by the imbalance between U.S-billed and foreign-billed traffic, which, in turn, results primarily from services promoted by U.S. carriers such as callback, refile, and home country direct.[27] Indeed, in the *NPRM* the FCC acknowledges that these services -- which it has

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[24](...continued)
only to the question of the rate at which traffic could be exchanged, which the FCC stated had to be consistent with its policy favoring equal divisions of tolls on parallel routes. *See id.* at 1055-56. That decision had nothing to do with the exchange of traffic.

[25] C&W Comments at 18.

[26] *NPRM*, ¶¶ 1, 18.

[27] *See, e.g.*, Chunghwa Telecom Comments at 2; CANTO Comments at 5; COMTELCA Comments at 9-10; France Telecom Comments at 6-7; GTE Comments at 5-6; HKTI Comments at 13-14; International Digital Communications Comments at 2-3; International Telecom Japan Comments at 14-16; Jabatan Telekom Malaysia Comments at 3; KDD Comments at 7-8; Nepal Telecommunications Corp. Comments at 2; P&T, China Comments at 2; DGT, Taiwan Comments at 2; Panama Comments at 29; RPOAs, Republic of Korea Comments at 4; Singapore Telecom Comments at 3-6; Solomon
(continued...)

encouraged -- contribute significantly to the traffic imbalance.[28] In addition, the record shows that the traffic imbalance is exacerbated by various socioeconomic factors, including calling patterns, demographics, income levels, and ethnic composition.[29] Any examination of the causes and effects of traffic imbalances must include a consideration of all of these various factors in order to result in a comprehensive and effective solution to any perceived problems.

Further, commenters have noted that the settlements imbalance cannot be characterized as either positive or negative absent a complete understanding of the nature of the settlement outpayments.[30] For example, the alternative calling services referenced above are promoted aggressively by U.S. carriers; the record demonstrates that the substantial net revenues generated by these services for U.S. carriers significantly offset the settlements deficit.[31] Moreover, that it is overseas callers who are paying for these services rather than U.S. consumers and shareholders further ameliorates any detrimental effect the settlements imbalance has on the U.S. economy.

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[27](...continued)
Islands Comments at 2; Telecom Vanuatu Comments at 2; Telefónica del Perú Comments at 10; Telintar Comments at 5; Telmex Comments at 15.

[28] *See NPRM*, ¶ 12.

[29] *See, e.g.*, France Telecom Comments at 7; GTE Comments at 5-6; HKTI Comments at 17; International Digital Communications Comments at 2-3; DGT, Taiwan Comments at 2; Portugal Telecom International Comments at 4; Telintar Comments at 4; Telmex Comments at 15.

[30] *See, e.g.*, CANTO Comments at 7; HKTI Comments at 13-15; KDD Comments at 7-11; Singapore Telecom Comments at 4-5.

[31] *See, e.g.*, CANTO Comments at 5; HKTI Comments at 13-15; International Telecom Japan Comments at 15-16; Nepal Communications Corp. Comments at 1; Panama Comments at 29-30.

In addition, commenters do not agree that net settlement payments made by U.S. to foreign carriers constitute a "subsidy."[32] When a U.S. carrier increases the traffic imbalance on a particular foreign route through refile from third countries, the result is a net loss to the foreign carrier. While U.S. settlement outpayments increase only slightly, the foreign carrier will see an increase in its traffic imbalance on direct routes with the correspondent third countries. If the foreign country's settlement rates with third countries are higher than the U.S. rate, the increase in the settlement payments by the foreign carrier to third countries will exceed the increase in settlement payments received from U.S. carriers. The refile traffic therefore embodies a net revenue loss for the foreign carrier. Similarly, in the cases of callback and other reverse-billed services, settlements payments received by foreign carriers are more than offset by the collection revenues lost as a result of not billing the call. Given the revenues lost by foreign carriers because of alternative calling services, settlement outpayments cannot be characterized as subsidies to the foreign carriers receiving them.[33]

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[32] *See, e.g.*, HKTI Comments at 18; KDD Comments at 7-11.

[33] One commenter has expressed concern that under the current accounting rate system there is a potential for foreign carriers to engage in "price squeezes." *See* Economic Strategy Institute Comments at 1, referring to "Competition in International Message Telephone Service," by Dr. Robert B. Cowen, and "Reforming the Accounting Rate Regime (An Analysis of the Economic Benefits of Reform and Dangers of Delay)," by Eric R. Olbeter. The two papers make a novel claim that there is a serious risk that overseas monopoly operators will pursue a policy which will have the effect of imposing a price squeeze on U.S. firms active in the international telecommunications markets, thus eliminating them from, or weakening them in, the market for IMTS. This argument is expressed, for example, in page 36 of the Olbeter paper:

> For example assume that Telefonica de Espana (Telefonica) creates a separate affiliate to provide inter-LATA domestic and international services in the United States. This affiliate receives an infusion of cash from Telefonica and competes

(continued...)

### B. A Mandated Reduction In Accounting Rates Will Not Further The Goals Of The *NPRM*, And May Be Counterproductive

Because the *NPRM* misapprehends the causes of the settlements deficit and mischaracterizes its effects, as shown above, the *NPRM's* proposed measures for addressing the problems of the current accounting rate system not only will be unavailing, but may aggravate the traffic imbalance. Many parties have demonstrated that there is no correlation between settlement rates and the collection rates paid by U.S. consumers for IMTS.[34] Accordingly, it does not follow logically that a forced reduction in settlement rates will result in a reduction in U.S. IMTS rates. AT&T's argument that a slight recent decrease in its

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[33](...continued)

> with other long distance operators on the US-Spain route. Telefonica could use its monopoly power to protract or raise already above-costs accounting rates (i.e. include some of the costs of its US affiliate in the charge) and then underprice competitors along domestic and international service routes.

The argument proceeds from the assumption that a foreign operator has an effective monopoly on call termination charges. Accepting this for the sake of argument, we are then invited to believe that the foreign operator will seek to extend this monopoly position in domestic call termination to a major competitive position in calls to its home country outgoing from the United States. Unfortunately, the underlying model is not specified in sufficient detail for it to be possible to understand why such policy should be profit-enhancing. Moreover, it flies against the conventional assumption that the holder of a monopoly position in one segment of a vertically related industry which is otherwise competitive can best maximize its profits by exploiting that monopoly, rather than by seeking to extend its activities into upstream or downstream activities where its efficiency may fall short of that of its competitors in those segments. This proposition is often captured in the phrase that "a monopoly profit in a vertically integrated industry can only be made once"; moreover, it can be frittered away by attempts to enter other activities, where the monopolist may be less efficient than alternative suppliers. On the face of it, it is unlikely that an overseas telecommunications operator will have a cost advantage over U.S. firms in the origination of calls to its own country. There is thus a presumption that a price squeeze along the lines proposed is not particularly plausible on the basis of an objective of short run profit maximization.

[34] *See, e.g.*, KDD Comments at 10; Pacific Bell Comments at 3; Telefónica del Perú Comments at 9-11; United Kingdom Comments at 1.

average revenue per minute shows that settlement rate reductions have resulted in lower rates for U.S. consumers is disingenuous at best.[35] AT&T's average rate per minute includes not only rates paid by U.S. consumers, but also wholesale rates for callback providers and other lower-margin services that benefit foreign callers rather than U.S. consumers. AT&T has failed to present any data showing any reductions in the average rate per minute for the traffic it carries for U.S. end-users. In the absence of any such data, there is no evidence that a decline in AT&T's total average rate per minute indicates that settlement rate reductions have resulted in lower IMTS rates for U.S. consumers.

To the contrary, data provided by the Commission shows that AT&T has increased its collection rates for U.S. customers in the face of dramatic decreases in accounting rates. The FCC presented statistics in its most recent International Trends Report showing that since the initial benchmarks were issued in 1992 to the present, accounting rates have decreased for each of the 34 countries listed.[36] Despite this, AT&T increased its residential international direct dial rates for all of those countries.[37] Thus, U.S. carriers, including AT&T, have clearly benefited from reduced settlement rates by increasing their profit margins instead of passing the savings to their customers. By lowering settlement rates even further, the approach proposed in the *NPRM* would simply enable U.S. carriers to increase these profit margins and their net revenues. C&W respectfully suggests that in order to

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[35] AT&T Comments at 9-10.

[36] *See* "Trends in the International Telecommunications Industry." Industry Analysis Division, Common Carrier Bureau, FCC (Aug. 1996) at Table 11.

[37] *See id.* Interestingly, AT&T and others in many instances are now charging foreign ratepayers less for a call to the U.S. than they charge U.S. ratepayers for calls to the other country.

achieve its goal of ensuring that U.S. consumers have access to high quality international telecommunication service at reasonable rates, the Commission should focus directly on the collection rates charged by U.S. carriers to U.S. consumers.[38]

Moreover, not only will the *NPRM* fail to achieve any benefits for U.S. consumers, but it is likely to have seriously detrimental effects on liberalization. The record shows that the probable effect of the proposed benchmark rates will be to create a massive increase in callback and refile services through the U.S., possibly impeding the ability of foreign governments to achieve liberalization of their telecommunications markets and meet their universal service goals.

## III. CONCLUSION

C&W respectfully submits that given the above, the Commission should continue to rely on bilateral efforts and cooperation to achieve its goals. Certainly, the FCC's past efforts in this regard have been quite successful. As noted by one commenter, accounting rates between the U.S. and other continents recently have fallen dramatically. For example, the accounting rates between the U.S. and Europe declined 37% between 1991 and 1994,

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[38] Such an approach would also avoid the jurisdictional problems that plague the *NPRM*, which were discussed in detail in HKTI's Comments, and in the comments of many other parties, as noted below.

while the accounting rates between the U.S. and Asia-Pacific dropped 50%.[39] Only continuing multilateral reform efforts can result in a resolution to the accounting rate problem that is acceptable to all.

Respectfully submitted,

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March 31, 1997

[39] *See* Organization of Economic Cooperation and Development, *New Technologies and Their Impact on the Accounting Rate System* (Paris: OECD Jan. 1996) at 16.

**CERTIFICATE OF SERVICE**

I, Rebekah J. Kinnett, hereby certify that I have served a copy of the foregoing "Reply Comments of Cable & Wireless, plc" on this 31st day of March, 1997, upon the following parties by hand delivery:

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