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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: International Settlement Rates
IB Docket No. 96-261
Reply Comments of Pacific Bell Communications

Dear Mr. Caton:

Enclosed for filing, on behalf of Pacific Bell Communications ("PBCom"), is an original and four copies of PBCom's reply comments in the above captioned proceeding. Please date-stamp and return the enclosed duplicate copy.

Should there be any questions about this matter, please contact the undersigned.

Sincerely,



Gina Harrison

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Before the
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Washington, D.C. 20554

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In the Matter of)
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**REPLY COMMENTS OF
PACIFIC BELL COMMUNICATIONS**

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March 31, 1997

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**REPLY COMMENTS OF
PACIFIC BELL COMMUNICATIONS**

I. INTRODUCTION AND SUMMARY

Pacific Bell Communications (“PBCom”)¹ herein replies to the comments submitted in response to the Commission's Notice of Proposed Rulemaking (“NPRM”) in the above-captioned proceeding concerning international settlement rates. As PBCom stated in its comments, PBCom welcomes the emergence of competition in the markets for international and domestic telecommunications services. The growth in global competition promises to accelerate due to the recent adoption of the World Trade Organization (“WTO”), Group on Basic Telecommunications (“GBT”) agreement.

PBCom strongly supports the Commission’s goals in this proceeding of increasing competition and, as a result, placing downward pressure on international calling prices for U.S. consumers. In its initial comments, PBCom attempted to assist the Commission by

¹ PBCom is a wholly-owned subsidiary of Pacific Telesis Group.

suggesting improvements to the proposal in order to ensure its lawfulness and safeguard the U.S. market from anticompetitive activities. The adoption of the GBT agreement increases the need for the Commission to make certain that any rules adopted in this proceeding are capable of surviving review before U.S. courts and a WTO dispute resolution panel in Geneva.

The adoption of the GBT agreement also increases the need for the Commission to act expeditiously in granting RBOC entry into the domestic long distance and international services markets. PBCom intends to utilize its considerable expertise in the provision of telecommunications services to become a vibrant participant in global markets. In this regard, PBCom looks forward promptly to obtaining all necessary authorizations from the Commission in order to provide both domestic long distance and international exchange services. Rapid entry by RBOCs into the U.S. domestic long distance and international markets is necessary in order to place RBOCs on an equal footing with non-U.S. carriers that may already be intending to utilize market share in their home countries to give them a competitive edge in the U.S. market. Prompt entry by U.S. RBOCs would also serve the Commission's twin goals of increasing competition and, as a result, encouraging lower prices.

II. THE FCC SHOULD ENSURE THAT ANY CHANGE IN U.S. POLICY REGARDING THE ACCOUNTING AND SETTLEMENT PROCESS IS BASED ON SOUND METHODOLOGY AND LEGAL ANALYSIS

While the Commission's decision to address international accounting rates provides a constructive forum for encouraging increased competition in international markets, PBCom notes that numerous commentors identified possible methodological problems with the Commission's benchmark proposal. These issues could undermine both the effectiveness of any benchmark policy as well as leaving any such policy exposed to legal challenge.

For example, some commentors have pointed out that it may be inappropriate to calculate benchmarks using U.S. dollars, since currency fluctuations will cause such benchmarks to inaccurately reflect the true cost over time of terminating services.² At the same time, the Commission should consider modifying its benchmark methodology in order to account for the substantial variations that exist in the cost of living in different countries.³

Numerous commentors have also voiced serious concerns about the use of tariffed component prices ("TCPs") to estimate the actual cost of providing the national extension component of a foreign telecommunications system. Many have argued that such an approach has been applied inaccurately because the Commission failed to take into account the need for tariff rebalancing.⁴ It also may be unfair to average total TCPs between different countries

² See France Telecom at 13; Telecommunications Services of Trinidad And Tobago, Ltd. ("Trinidad Telecom") at 5.

³ See, e.g., International Digital Communications ("IDC") at 5 (citing the example of Japan).

⁴ See Sprint at 12; GTE at 23; France Telecom at 10; Hongkong Telecom International at 12-13; Solomon Islands Government at 2; Telecom Vanuatu Ltd. at 3; Telecomunicaciones

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because a particular country's geography, teledensity, climate, and distance for the U.S. are relevant to the cost of terminating international calls.⁵ Thus, it is possible that country-by-country benchmarks would better reflect unique conditions inherent in each country and result in more accurate benchmarks.⁶

The Commission's use of private leased line charges to calculate the cost of the international facility component has also been criticized,⁷ in part because the Commission's

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Internacionales De Argentina Telintar S.A. ("Telintar") at 9; Cable & Wireless at 11-13; Directorate General of Telecommunications, Taiwan, Republic Of China ("Taiwan") at 2; Hispanic-American Association Of Research Centers And Telecommunications Companies ("Hispanic-American Telecoms") at 5; Caribbean Association Of National Telecommunication Organizations (CANTO) at 5-6; Trinidad Telecom at 5; RPOAs of the Republic of Korea at 3; Lattelekom SIA at 3; Chunghwa Telecom at 2; Telefonica del Peru at 12.

Many commentors also argued that the Commission should not urge developing countries to stop subsidizing local services, a practice to which the United States also is committed by statute. *See* CANTO at 5-6 (noting the need to promote universal access); Hongkong Telecom at 12-13 (noting that the Hong Kong government has made public policy decisions in subsidizing local tariffs, and it is inappropriate for the FCC to attempt to interfere); Solomon Islands at 2 (asserting that every government has the sovereign authority to cross subsidize local rates in order to promote public interest policies); Telecom Vanuatu Ltd. at 3 (same); Telintar at 9 (noting that carriers in the U.S. have historically cross subsidized tariffs); Cable & Wireless at 11-13 (noting that subsidies for infrastructure development help both the citizens of a foreign country and the citizens of other countries who make calls into the developing country); Tricom, S.A. at 5 (additionally arguing that the Commission should take into account the high cost of financing infrastructure development in countries that lack strong capital markets).

⁵ *See* Sprint at 15-16; Telecom New Zealand, Ltd. at 6; Telefonos de Mexico, S.A. at 20-21; Cable & Wireless at 11; Solomon Islands at 2; CANTO at 6; *see also* Embassy of Japan at 4 (noting that averaging TCPs is inconsistent with the FCC assertion that settlement rates should be cost based).

⁶ *See* Sprint at 16; MCI at 6; Worldcom at 9.

⁷ *See* Hispanic-American Telecoms at 5; Telefonos de Mexico at 23 (noting that estimates for Mexico are in error because they are based on data collected during a period of 50 percent

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estimate of the effective capacity of an international private line may be excessive.⁸

Additionally, many commentators have noted that it is inappropriate to use AT&T estimates of its “average network costs” – the origin for which have not been placed in the public record – as a basis for calculating the lower end of the benchmark range.⁹ The use of AT&T data may also produce inaccurate results due to that carrier’s substantial economies of scale.¹⁰

It is probable that opponents of the Benchmarks will focus on the above mentioned methodological problems in challenges to the rules before U.S. courts and international dispute resolution panels. Thus, the Commission should carefully reexamine its methodology before attempting to implement its proposed rules. Alternatively, the Commission could support multilateral, or bilateral talks on lower accounting rates by agreeing to forebear in apply its benchmarks to any country that agrees to enter into negotiations.¹¹ Agreements achieved

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annual inflation that drove the value of telecommunication services in Mexico to record low levels); France Telecom at 10; Trinidad Telecom at 5.

⁸ See France Telecom at 10 (noting that the Commission’s conclusion that a carrier can derive four voice grade circuits from each 64 Kbps half circuit is too high, and ignores multiple routing); Trinidad Telecom at 5 (noting that less developed countries do not operate private lines at the capacity levels indicated in the NPRM); Chunghwa Telecom at 2.

⁹ See Cable & Wireless at 15; Hongkong Telecom at 28 (noting that since AT&T is the party with the greatest vested interest in this proceeding and has every incentive to underestimate its costs); Deutsche Telekom AG at 10; ABS-CBN Telecom, North America, Inc. at 5.

¹⁰ See France Telecom at 12; Telintar at 10.

¹¹ The Commission apparently believes that it has the authority under the MFN requirements of the GBT agreement to forebear from applying its benchmarks to certain countries, since the NPRM discussed the possibility of adopting a policy of forbearance in certain situations.

through bilateral negotiations could be implemented expeditiously because it is unlikely that they would be challenged before U.S. courts and international dispute resolution panels.

III. THE COMMISSION ALSO SHOULD ENSURE THAT ANY CHANGE IN U.S. POLICY REGARDING THE ACCOUNTING AND SETTLEMENT PROCESS IS COMPATIBLE WITH THE WTO GBT AGREEMENT

While PBCom supports the Commission in its efforts to devise competitive safeguards that will protect the U.S. market from anticompetitive behavior, PBCom is concerned about the comments of numerous participants in this proceeding that question the Commission's authority under the GBT agreement to unilaterally enforce benchmarks.¹² Additionally, many commentators have asserted that the Commission's benchmarks violate U.S. commitments under the ITU Convention.¹³

The merits of these arguments are difficult to assess since the WTO is a relatively new international body, and few disputes regarding WTO agreements have been considered by dispute resolution panels in Geneva. In light of this uncertainty, and the critical need for

¹² See Japan at 4; KDD at 24-26; Telintar at 19-20 (noting that dividing countries by GNP violates MFN); France Telecom at 15 (expressing uncertainty with the compatibility of benchmarks with the GBT); Telecom Italia at 7-8 (same); Ministry of Communications, Department of International Cooperation, Republic of Poland (noting that pursuant to the WTO agreement, Poland will not implement the liberalization of its telecommunications system before January 1, 2003, thus any attempt by the U.S. to impose benchmarks prior to that date would violate the GBT agreement).

¹³ See Panama at 20-21; Peru at 9; Telintar 12-17; Justice Technology Corp. at 2; GTE at 11; KDD at 21; Hongkong Telecom at 21; Portugal Telecom International at 8; International Telecom Japan, Inc. at 4; Cable & Wireless at 5; Videsh Sanchar Nigam Limited ("VSNL") at 2; Solomon Islands at 1; Hispanic-American Telecoms at 2; CANTO at 2; IDC at 6; RPOAs of Korea at 2; Telecommunications Authority of Singapore at 2; Singapore Telecommunications, Ltd. at 2; Chunghwa Telecom at 2; Directorate General Of Telecommunications, P&T, China at 1.

adequate U.S. safeguards, PBCom repeats its request for the Commission clearly to explain the steps that it will take to protect U.S. interests should enforcement of the benchmarks be effectively stayed pending international, or judicial review. The Commission should also articulate the regulatory mechanisms it will rely on should the benchmarks ultimately fail to survive international review.

IV. THE PASSAGE OF THE WTO GBT ALSO INCREASES THE NEED FOR THE FCC TO PROMPTLY PERMIT U.S. RBOCs TO BEGIN COMPETING FOR CUSTOMERS IN DOMESTIC LONG DISTANCE AND INTERNATIONAL MARKETS

U.S. officials have hailed the WTO GBT agreement as a means by which global competition in telecommunications will rapidly flourish. One widely quoted estimate is the agreement will lead to a growth in the world economy of \$1 trillion over the next decades.¹⁴ Additionally, international telephone rates could drop from a current average of about \$1 per minute to of about 10 cents a minute.¹⁵

In order to ensure that U.S. carriers play a sizable role in this competitive growth, the FCC should promptly authorize U.S. RBOCs to begin providing domestic long distance and international services. RBOC entry will accelerate the growth of competition in domestic long distance and international services. If RBOC entry is delayed, foreign carriers may be able to utilize a “first mover” advantage to gain market share and impair the ability of RBOCs to reach their full potential in global markets.

¹⁴ See *Hundt Says FCC Reviewing Policies in Light of WTO*, Telecommunications Reports (Feb. 19, 1997) (citing statement of Chairman Hundt).

¹⁵ *Id.* (quoting Chairman Hundt).

As PBCom noted in its comments, it currently has an application pending to offer out-of-region facilities-based service. The application has not been granted. Additionally, interexchange carriers are urging the Commission and the Department of Justice to utilize overly restrictive approaches to determining what satisfies the competitive checklist in Section 271. Such an approach would only delay the introduction of needed competition, in direct conflict to the clearly expressed goals of the Congress, and would hurt U.S. consumers.

V. CONCLUSION

The Commission's goal of increasing competition in international telecommunications clearly is in the public interest. PBCom is seeking to assist the Commission in its efforts by suggesting modifications that could improve the Commission's proposal. Due to the recent adoption of the GBT agreement, great care should be exercised in order to ensure that any rules resulting from this proceeding are able to survive review by the U.S. judiciary, and international dispute resolution bodies. Additionally, the Commission should heed the concerns that have been raised about potential methodological problems that could exist in the benchmark calculations.

Finally, as PBCom noted in its comments, the Commission should take immediate steps to ensure that U.S. RBOCs are given a fair opportunity to compete in the post-GBT marketplace by rapidly processing applications to provide domestic long distance and international services. It has been widely predicted that the U.S. telecommunications industry is likely to play a substantial role in the development of global telecommunications systems. That role will be severely impaired, however, if the nation's RBOCs are not promptly

permitted to begin competing for customers in domestic long distance and international markets.

Respectfully submitted,

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