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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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
Opposition to Petition for Reconsideration
SBC Communications Inc.
Pacific Bell Communications

Dear Mr. Caton:

Enclosed for filing, on behalf of SBC Communications Inc. and Pacific Bell Communications (hereinafter jointly referred to as "SBC"), is an original and eleven copies of SBC's Opposition to the Petition for Reconsideration of AT&T Corp. 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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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

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

In the Matter of)

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Regulation of International)
Accounting Rates)

)

)

)

Docket No. CC 90-337
Phase II

**OPPOSITION TO
PETITION FOR RECONSIDERATION**

**SBC COMMUNICATIONS INC.,
PACIFIC BELL COMMUNICATIONS**

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April 10, 1997

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

In the Matter of)	
)	
Regulation of International)	Docket No. CC 90-337
Accounting Rates)	Phase II

**OPPOSITION TO
PETITION FOR RECONSIDERATION**

SBC Communications Inc. (“SBC”) and its subsidiary, Pacific Bell Communications (“PBCom”), herein oppose the petition for reconsideration filed by AT&T Corp. (“AT&T”) in response to the Commission’s International Accounting Rates Order (“Flexibility Order”), released December 3, 1996. SBC is a Regional Bell Operating Company that is established in the international market as one of the world’s leading diversified telecommunications companies.¹ PBCom is a wholly-owned subsidiary of SBC that was previously established to provide interLATA services, including international services on a global basis.² Thus, both SBC and PBCom (hereinafter jointly referred to as “SBC”) have a substantial interest in ensuring that pro-competitive conditions continue to flourish in the market for international telecommunications services.

¹ Along with substantial domestic interests, SBC, through its subsidiaries, is involved in the provision of a wide range of international telecommunications services including the provision of wireless services in Europe, Latin America, South America and Asia. SBC is helping to develop competitive long distances services in countries such as Israel and is finalizing plans for its participation in developing competitive services in France. SBC also holds an interest in Telefonos de Mexico, along with interests in both domestic and foreign cable television systems.

² PBCom became a subsidiary of SBC as a result of the April 1, 1997 merger of SBC and Pacific Telesis Group (“PacTel”).

I. INTRODUCTION

SBC supports the Commission in its decision to permit flexibility in negotiating alternative settlement arrangements with foreign carriers. Encouraging flexibility will permit new entrants in the international interexchange market to offer U.S. consumers lower prices and better services in competition with established interexchange carriers. SBC also supports the Commission in its decision to establish safeguards as a "safety net" to prevent the misuse of alternative settlement arrangements for anticompetitive purposes.³ In this regard, SBC urges the Commission to disregard AT&T's petition for reconsideration as a transparent attempt to forestall competition and entrench AT&T's market share in interexchange markets. AT&T strives to prevent U.S. carriers from gaining flexibility in the use of innovative settlement arrangements. If granted, AT&T's petition would undermine the well-balanced deregulatory framework that the Commission adopted in its flexibility proceeding.

II. THE COMMISSION ACCURATELY ANTICIPATED THE NEEDS OF THE INCREASINGLY COMPETITIVE INTERNATIONAL TELECOMMUNICATIONS MARKET WHEN IT AUTHORIZED FLEXIBILITY IN ITS INTERNATIONAL SETTLEMENTS POLICY

In adopting flexibility in the negotiation of alternative settlement arrangements, the Commission brought its international regulatory framework into alignment with the competitive changes that are occurring in the market for international interexchange services. The Flexibility

³ PBCom filed a petition for clarification in this proceeding seeking to assist the Commission in its procompetitive efforts. The petition urged the Commission to clarify that its regulatory safeguard prohibiting unreasonably discriminatory terms in certain alternative settlement agreements means that such agreements cannot contain exclusive terms that are unavailable to other carriers. Such an interpretation of unreasonably discriminatory will promote competition by prohibiting the largest carriers from locking competitors out of the market.

Order will permit U.S. carriers to utilize innovative and highly efficient alternative settlement arrangements to increase competition and improve international telecommunications services for U.S. consumers. Under the Commission's flexible approach, all U.S. carriers are permitted to negotiate alternative arrangements that deviate from the ISP with carriers in foreign countries that satisfy the ECO test or are otherwise found to be competitive.

In establishing a flexible approach, however, the Commission recognized that permitting carriers with a significant share of the market to negotiate alternative arrangements may result in anticompetitive effects in the U.S. market.⁴ Therefore, the Commission appropriately incorporated minimally burdensome competitive safeguards into the Flexibility Order.⁵ For example, the Commission will require U.S. carriers that have entered into alternative settlement arrangements affecting more than 25% of either the outbound or inbound traffic on a particular route to: (1) file a copy of the arrangements with the Commission, and (2) "demonstrate" that such alternative arrangements "not contain unreasonably discriminatory terms and conditions."⁶ These safeguards permit all U.S. carriers, regardless of their size or affiliation, to adopt alternative settlement arrangements, while limiting the ability of carriers with substantial market share from misusing flexible arrangements to impair the continued growth in competition. Considered together, the rules adopted in the Commission's Flexibility Order stand as a balanced and well reasoned framework for promoting competition and benefiting consumers.

⁴ See International Accounting Rates, CC Docket No. 90-337 Phase II, at ¶ 45 (Dec. 3, 1996) ("*Flexibility Order*").

⁵ *Id.*

⁶ *Id.*

III. AT&T's PETITION WOULD DERAIL THE PROCOMPETITIVE ACHIEVEMENTS OF THE FLEXIBILITY ORDER BY RESTRAINING U.S. CARRIERS FROM NEGOTIATING ALTERNATIVE ARRANGEMENTS THAT WOULD BENEFIT U.S. CONSUMERS

In seeking reconsideration of the Commission's Flexibility Order, AT&T is seeking to forestall competitive growth and preserve its market share in international interexchange services. Specifically, AT&T asks the Commission to rewrite the Flexibility Order either by: (1) eliminating the additional regulatory burdens placed on carriers handling more than 25% of the traffic on an outbound route, or (2) imposing the additional regulatory burdens on all interexchange carriers, regardless of the amount of traffic that they carry. AT&T stands to benefit significantly if the Commission adopts either of these approaches, because both of them will inevitably restrain growth in interexchange competition.

For example, if the Commission eliminates the additional regulatory burdens placed on carriers handling more than 25% of the traffic on an outbound route, then those carriers may be able to force foreign carriers to enter into settlement agreements that contain significantly more favorable terms than are available to competing U.S. interexchange carriers. Additionally, the largest U.S. carriers may be capable of locking up certain international interexchange routes by compelling foreign carriers to enter into settlement agreements that implicitly tie the inbound and outbound markets together under the same arrangement.⁷ As the Commission recognized in the

⁷ This could happen if a large carrier offered a foreign carrier a favorable termination rate for carrying a large share of traffic inbound into the U.S. implicitly tied to an understanding that the foreign carrier would exclusively provide the carrier with a favorable settlement rate for terminating a large share of calls outbound from the U.S. Since, under AT&T's first proposal, the Commission's prohibition on unreasonably discriminatory agreements would apply only to the inbound agreement, the large carrier would be permitted to enjoy the benefits of the unreasonably discriminatory terms contained in the outbound agreement without violating the Commission's rules. Additionally, since the large carrier could, on an internal basis, link the two

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Flexibility Order, an important step in permitting unfettered growth in competition is the separation of the inward and outward bound markets for international calls so that carriers can handle a disproportionate amount of traffic in which ever direction is deemed cost effective for that particular company.

Alternatively, if the Commission adopts AT&T's second recommendation and imposes the additional regulatory safeguards on all interexchange carriers, the result will be the effective elimination of the Commission's flexibility policy. If all carriers are prohibited from entering into alternative arrangements that are unreasonably discriminatory (most appropriately meaning that they are not available to every other carrier) then no incentive would exist for international carriers to negotiate alternative arrangements and the current freeze on competition would continue. Such a result would benefit AT&T by alleviating the threat of competition from new entrants in the interexchange marketplace.

As the Commission recognized in the Flexibility Order, outdated regulatory structures such as the international settlements policy ("ISP") do not have a constructive role in a competitive environment and act as a serious impediment to competition. While the ISP once served an important function in protecting U.S. carriers from being "whipsawed" by foreign monopolists and in "maintaining parity among all U.S. competitors," the ISP now restrains competitive growth by prohibiting new entrants in the U.S. international interexchange market from engaging in price and services competition with existing U.S. carriers. In contrast, the deregulatory framework adopted in the Flexibility Order eliminates unnecessary restraints and, in doing so, enables new entrants in the international interexchange market to identify, negotiate,

agreements together, it could offer prohibitively low prices on both routes and lock competing carriers out of both the inbound and outbound markets.

and implement innovative methods to serve consumers through lower costs and better services. The Commission should not permit AT&T to forestall this competitive development in order to preserve its substantial market share in international services. Instead, AT&T's petition should be rejected as in conflict with the Commission's goals of aligning the ISP with the increasingly competitive international marketplace and encouraging new entrants to serve consumers with highly competitive international settlement arrangements.

IV. THE COMMISSION'S 25% THRESHOLD FOR ITS REGULATORY SAFEGUARDS IS A WELL REASONED BALANCED APPROACH TO COMPETITIVE CONCERNS EXPRESSED IN THE RECORD

The Commission should reject AT&T's petition not only because of its anticompetitive objectives, but also because AT&T is incorrect in claiming that the 25% threshold for competitive safeguards is arbitrary, under inclusive, and not supported by the record.⁸ During the lengthy proceeding in which the Commission considered the revisions to its ISP rules, a process which extended more than half a decade, numerous parties urged the Commission to adopt safeguards in order to ensure that competitive conditions would not be compromised. Some parties argued that the Commission should prohibit any carrier from entering into alternative arrangements,⁹ while others called for restrictions that would apply only to the largest interexchange carriers,¹⁰ defined by one carrier as those handling 5% or more of the traffic on a

⁸ *AT&T Petition* at 2.

⁹ *See, e.g.*, Supplemental Comments of MCI at 8 (indicating that it is premature to begin relaxing the ISP); Comments of WorldCom at 9 (same); Supplemental Comments of Sprint at 12-13 (indicating that it is premature for the Commission to permit "gross deviations" from the ISP).

¹⁰ *See, e.g.*, Comments of Com Tech International Corporation at 4; Comments of MFS International, Inc. at 5-6; *see also* Supplemental Reply Comments of Americatel Corp. at 6-7 (arguing that the totality of the circumstances should be taken into accounting in determining

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route.¹¹ These parties persuasively argued that substantial competitive risks could result from the misuse of alternative arrangements by large carriers to harm competitors.¹² Even AT&T argued that the ability to enter into alternative arrangements should not be available to all carriers, but should be limited to non-dominant carriers.¹³

During the Commission's deliberations in this proceeding, PBCom attempted to assist the Commission in identifying an appropriate balance between the twin goals of unfettered competition and adequate regulatory safeguards. PBCom proposed that the Commission adopt safeguards on any route in which the three largest carriers control an aggregate of more than 75% of the traffic on a route in order to prevent large carriers from "locking out" competition.¹⁴ The safeguard that the Commission ultimately adopted was substantially similar to this proposal, establishing a safeguard threshold for any carrier that controls 25% or more of the traffic on a route. Thus, the Commission's decision to place minimally burdensome safeguards on alternative agreements entered into by the largest carriers was a justifiable and well reasoned

which carriers should be permitted to deviate from the ISP).

¹¹ See Comments of MFS International at 3-4.

¹² MCI Supplemental Comments at 8 (arguing that AT&T would use flexibility to its competitive advantage to purchase in volume and obtain lower rates that would not be available to smaller U.S. carriers); Supplemental Reply Comments of AmericaTel Corporation at 7 (arguing that the Commission should consider an entity's ability to discriminate against others through the "exercise of some manner of leverage, whether it be a commanding market share or the ability to exploit continuing bottleneck control over key facilities.").

¹³ See AT&T Supp. Comments at 15; AT&T Supp. Reply Comments at 3-5.

¹⁴ See *Ex parte* presentation of Pacific Telesis, November 15, 1996.

compromise between the anticompetitive concerns raised in the record, and the goal of encouraging competition.¹⁵

AT&T is also incorrect in arguing that the competitive safeguards adopted in the Flexibility Order are under inclusive. AT&T claims that the safeguards are insufficient because they would not prevent two or more smaller carriers (each carrying less than 25% of the traffic on a route, but carrying more than 25% in the aggregate) from conspiring to distort prices. In making this argument, AT&T ignores the full range of regulatory safeguards that the Commission incorporated into the Flexibility Order. For example, the Commission adopted a requirement that carriers handling less than 25% of the traffic on a route file a summary of the terms and conditions of their arrangements¹⁶ and the Commission expressly reserved the right to request a full copy of such arrangements in order “to detect any potential circumvention” of the rules.¹⁷ Furthermore, large carriers such as AT&T have the ability to challenge any arrangements that they believe to be in violation of the Commission’s flexibility policy.¹⁸

The Commission is also requiring that the terms and conditions of alternative settlement arrangements between affiliated carriers, and those with significant non-equity joint ventures be publicly filed and not contain unreasonably discriminatory terms.¹⁹ Furthermore, the

¹⁵ See, e.g., *National Ass’n of Reg. Util. Com’rs v. F.C.C.*, 737 F.2d 1095 (1984) (discussing the Commission’s power to engage in reasoned decision making based on a substantial record).

¹⁶ *Flexibility Order* at 25.

¹⁷ *Id.* at 20. U.S. carriers must also include in their annual report of international telecommunications traffic, filed pursuant to § 43.61 of the rules, the number of minutes of outbound and inbound traffic settled pursuant to each alternative arrangement.

¹⁸ See 47 C.F.R. § 64.1002(c)-(e).

¹⁹ *Flexibility Order* at 25.

Commission indicated that if it determines that additional safeguards are needed, it will not hesitate to implement them.²⁰ Thus, the Commission has the authority, and has expressed an intention, to alter its flexibility policy in response to new market conditions or indications of anticompetitive behavior by U.S. and foreign carriers.

V. CONCLUSION

The Commission adopted the Flexibility Order in recognition that a new competitive era is beginning in which outdated regulatory restraints such as the ISP serve no useful purpose and have a negative effect on competition. The Commission employed an appropriate level of caution in seeking to conclude this decades-old regulatory regime. Rather than eliminate the rule entirely, the Commission appropriately decided to adopt a policy of deviations from the ISP, coupled with reasonable, minimally burdensome safeguards designed to ensure that competitive growth would not be hampered. In seeking reconsideration of the Flexibility Order, AT&T is attempting to preserve the regulatory regime of the past in order to restrain the growth of competition and, as a result, protect its sizable market share in the international interexchange marketplace. The Commission should promptly dismiss AT&T's petition as incompatible with the Commission's goals of increasing competition by permitting the use of innovative settlement arrangements to lower costs and improve services for consumers.

At the same time, the Commission should take this opportunity to clarify the scope of the obligations contained within its regulatory safeguards. As PBCom requested in its petition for clarification in this proceeding, the Commission should clearly articulate that its regulatory prohibition on the use of unreasonably discriminatory terms in certain alternative settlement

²⁰ *Id.* at 22.

agreements means that such agreements cannot contain exclusive provisions. In other words, the terms of alternative agreements entered into by carriers covering 25% or more of the traffic on a route must also be available to competitive carriers with lower market shares. Only through the use of this interpretation of "unreasonably discriminatory" can the Commission ensure that consumers will be able to fully enjoy the substantial growth in competition that is taking place in the international interexchange marketplace.

Respectfully submitted,
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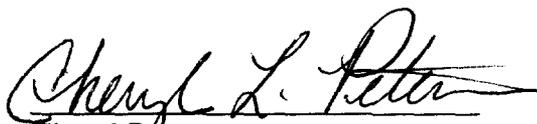
ATTORNEY FOR PACIFIC BELL
COMMUNICATIONS

April 10, 1997

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of April, 1997, I caused copies of the foregoing "Opposition to Petition for Reconsideration of AT&T Corp." to be mailed via first-class postage prepaid mail to the following:

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