Telecommunications Services
of Trinidad and Tobago Limited

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March 31, 1997

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street N.W.
Room 222
Washington DC 20554
U.S.A.

Dear Sir

NOTICE OF PROPOSED RULE MAKING (IB DOCKET NO. 96-261)

I refer to my fax to you of even date regarding the subject matter and hereby submit one (1) original and nine (9) copies of our reply comments. In accordance with paragraph 105 of the NPRM, we want each Commissioner to receive a personal copy of our comments.

Once again, we strongly urge the FCC to consider carefully the issues raised by TSTT in our comments.

Sincerely

Samuel A. Martin
Chief Executive Officer

c.c. Kathryn O'Brien, International Bureau

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IB Docket No. 90-337

Before the
Federal Communications Commission
Washington, DC 20554

In the matter of International Settlement Rates: IB Docket No. 96-261

Reply Comments of
Telecommunications Services of Trinidad and Tobago Limited with respect to
Notice of Proposed Rule Making (IB Docket No. 96-261)

Date: 31st March 1997

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SECTION 1

INTRODUCTION

Telecommunications Services of Trinidad and Tobago Limited (TSTT) is the main telecommunications carrier in the Republic of Trinidad and Tobago. It provides both domestic and international telecommunications services. The Republic of Trinidad and Tobago is a member of the International Telecommunications Union

Following our earlier submission, dated 31 January, 1997, in response to the FCC's proposal in its Notice of Proposed Rulemaking (IB Docket No. 96-261) with respect to mandatory settlement rates benchmark and related policy, TSTT has conducted further research as well as reviewed the initial submissions of other administrations, and wish to submit reply comments as specified in Section 2 hereof.

TSTT supports those administration, carriers and organisations which have by their comments on the FCC's NPRM (IB Docket No. 96-261), concurred with the issues noted and elaborated on in our initial submission and rejected the costing methodology, jurisdiction, power and authority of the FCC to impose a settlement rates benchmark as proposed in the NPRM.

TSTT is committed to the international settlement rate reform process. Our primary concerns with regard to the FCC's approach to this particular initiative pertain to the following which forms the basis of our Reply Comments:

- What is the measure/benchmark to be used to guide settlement rate reform?
- How should the measure/benchmark be used to determine any particular level of cost- related settlement rate?
- How should the settlement rate be calculated?
- FCC's legal jurisdiction and dispute resolution
- What would constitute a demonstration of commitment to the process of settlement rates reform?

SECTION 2:

REPLY COMMENTS

1. SUBSIDY - THE CORNERSTONE OF THE TELECOMMUNICATIONS INDUSTRY

It is well accepted that cross-subsidy within the telecommunications industry is an integral aspect of the rate structure because of the cost of developing networks and customers ability and willingness to pay. This has been the case for over a century, even in the USA, where it is a matter of record that cross- subsidisation has been and continues to be an integral part of the strategy to develop that country's telecommunications infrastructure. As a matter of fact, it is our understanding that there are areas within the USA today where competition is not being allowed to enable the incumbent service provider to remain viable whilst developing the infrastructure. These areas demonstrate the same characteristics as many developing countries throughout the world and the justifications used within the US are equally valid for developing countries.

The FCC argues that the disparity between the cost and the existing settlement rates are too high and as a result US consumers are subsiding telecommunications services in most countries. Thus, there is a need to significantly reduce/remove the subsidy element in the settlement rate .

Naturally, administrations which rely on the net legitimate inpayments to fund their development programmes will be adversely affected if settlement rates are reduced. This is particularly true of most developing countries and is indeed the case in Trinidad and Tobago. The current FCC proposal will have the long term impact of the stagnation in the growth in main lines, advanced services, traffic flows and ultimately the telecommunications industry, thus negatively affecting international commerce and trade. This is clearly seen in that significant reductions in settlement rates for developing countries, as the FCC is proposing, will precipitate the imposition of an increase in the foreign administration's domestic access charge/rentals and usage charges. These increases will have to be quite significant to compensate for the loss in settlement revenues. This would place telephone prices outside the reach of many of the foreign administration's subscribers.

Alternative sources of finance to subsidise basic telephone services to some of the citizens in small developing countries are not available because of the paucity of resources and the need to prioritize spending on basic health, education, water and other social services. Even where the standard of development of the country (indicated somewhat by their GNP) is moderate, one also has to consider high debt servicing arrangements and other political concessions toward foreign investments.

1. SUBSIDY - THE CORNERSTONE OF THE TELECOMMUNICATIONS INDUSTRY (cont'd)

We suggest that the timing of reductions in settlement rates should be informed by the teledensity (main lines per 100 population) of a country since international commerce and trade are affected by both the density and the distribution of telephone lines in that country. It is a truism that the value of a telephone, and by extension the volume of economic activity, is enhanced by the number of other telephones that it can contact. Therefore any measure that reduces the growth and number of main lines (which will ultimately result from the FCC's proposal) will not benefit the industry nor world trade and commerce, and will stifle economic growth and development

One can conclude from the above argument that it is imperative that domestic networks be allowed to attain that critical standard of development where further (on going) development becomes self sustaining, before the removal of cross subsidization can be considered.

2. ALTERNATIVE PROPOSAL TO GNP AS A BENCHMARK

As stated in our initial submission, the FCC has suggested the use of GNP as the criterion to determine the settlement rate to be established between the USA and other countries. One of our concerns with this criterion is that GNP is a fickle indicator which could nullify any Accounting Rate structure established on this basis.

While it is recognized that telecommunications facilitate economic development, it must also be noted that GNP is by no means a reliable measurement of the level/extent of development of a country's telecommunications infrastructure.

Using GNP by itself, distorts the application of benchmark rates, given that it does not take into consideration national policies on social and economic factors such as unemployment, income distribution and poverty. There is no self-evident or even any proven significant statistical correlation between a country's cost components for terminating an international call and it's GNP.

While TSTT supports ITU's D.140 recommendations regarding settlement rate reform, the FCC's proposal to use GNP as a surrogate for cost estimation is certainly not appropriate nor acceptable.

Given that teledensity is a fair, reasonable and telecommunications-specific indicator of a country's level of telecommunications development, TSTT contends that it should be the benchmark which informs the timing for accounting rates reform and, the level of the settlement rate.

3. PROPOSED TRANSITION PERIOD

The use of teledensity, as an equitable benchmark, should inform the timing of the transition to the adoption of settlement rate reform. The question therefore becomes, what is the targeted teledensity or other measure value that should be used for any particular country?

It would seem appropriate for the FCC to review the historical circumstances and the environment of the US telecommunications market as the basis for determining the level of the teledensity that is appropriate for each administration. This will help inform the timing for the adoption of settlement rate reform. It will also enable the administrations to work towards the achievement of certain targets.

To ensure that an impartial approach is adopted, our proposal is to use the USA as the yardstick for two reasons. Firstly, the US infrastructure is one of the most developed and, secondly, they are the most vociferous in the vanguard for settlement rate reform for all the reasons noted in their proposed rulemaking.

In applying this criterion, two points are noteworthy. Firstly, the first concerted attempt by the administrators in the USA to address reform came with the break up of the AT&T monopoly and the introduction of competition for domestic toll calling in 1984. Secondly, by that year the USA had already achieved a significant level of telephone penetration per 100 head of population - 48. Today, 13 years later, the USA's teledensity is 60 which is an average increase of one unit of teledensity per year.

In the attempt to establish an appropriate target teledensity level for any country, it must be recognized that a country's teledensity would be affected by local and regional factors such as type of terrain, cost of the infrastructure, rates, income distribution, type of economy, etc. Naturally, it is a case by case situation as to what is an appropriate teledensity level, recognizing that for some countries, based on the cost of their telecommunications network infrastructure, size and socio-economic development, the demand for telecommunication may well be saturated long before a teledensity level of 48 is attained.

Accordingly, 48 is not being proposed as the target teledensity for all countries. However, to ensure equity and impartiality in applying this benchmark, the challenge is to identify what is a reasonable target number for each country before an agreed upon system of cost-based pricing is introduced.

Additionally, TSTT would support supervisory measures to ensure that each administration is making a concerted effort to attain the agreed upon targets.

Having regard to the above, the proposed implementation period for effecting the transition from prevailing rates to the FCC's proposed rates of two to four years is too short for the majority of administrations to achieve their target teledensities.

3. PROPOSED TRANSITION PERIOD (cont'd)

TSTT's unique circumstances are such that our current teledensity is 17. Based on our infrastructural development plans for the next 5 years, it is anticipated that our teledensity will grow to 22.

At a teledensity of approximately 35, we believe that Trinidad and Tobago's network would have attained a level which would allow settlement rates related to its cost to generate adequate revenue to fund additional infrastructure development and the deployment of new services.

After the determination of an appropriate teledensity level and the achievement of the target, it is proposed that there be a gradual transition toward cost-based settlement rates. The rate of adjustment in settlement rates, however, should not be such as to significantly affect the financial operations of the carrier. It is therefore further proposed that the maximum reductions in any one year should not exceed 12.4%, using movement in the US carriers' interstate toll calling rates over the 19-year period 1977-1996 as a basis. (Source: FCC's Statistics of Common Carriers, Table 8.3, 1995/1996 edition). Of the rate reductions experienced in the 11-year period of the 19-year study, 9 of the reductions were less than 5% per year, while the largest single reduction in any one year was 12.4% in 1987.

In the interim period as carriers seek to achieve their target teledensity level, it is proposed that carriers honour existing agreements and continue to engage in bilateral negotiations. It is further proposed that the ITU's recommendations for dispute resolution be adopted if both parties are unable to agree on what the revised settlement rates should be.

The ITU should also address the issue of target teledensity values for all countries as well as the formula for revising settlement rates based on achieved teledensities.

4. PROPOSED COSTING METHODOLOGY

The FCC's proposed costing methodology to determine a cost-based settlement rate is both incomplete and inconsistent for the following reasons:

4.1 Use of Domestic Rates

In the absence of costing information for terminating international traffic for individual carriers, the FCC used the Foreign Carrier's domestic tariffed prices to establish benchmarks.

It is well understood that most telephone services do not reflect their true costs in domestic markets because of the cross subsidy element from local business customers and inpayments (national policies and ITU recommendations that one should have access to a telephone at the least possible price). In some cases, Hong

4. PROPOSED COSTING METHODOLOGY (cont'd)

4.1 Use of Domestic Rates (cont'd)

Kong and Barbados are examples, national extension costs were not rated. This confirms that the use of domestic rates is not a reliable method for cost measurement. In the example given, the illogical conclusion would be that the settlement rate should be zero if only the national extension element was being considered.

4.2 Comparative Costs

The cost of a call, as developed by the FCC, is based largely on the cost of infrastructural development in the USA. This is not a true reflection of developing countries' cost structures, who are faced with certain unique costs which are not reflected to the same degree as that for USA carriers, e.g., imported equipment prices, customs tariffs and other taxes on goods and services, international transportation, insurance, local duties and taxes, and foreign exchange adjustments. This provides further justification for seeking a revision of the existing policy of a 50/50 sharing of the Accounting Rate.

4.3 Economies of Scale

Developing countries are unable to enjoy vast economies of scale which influences the average cost of a call as does the USA which has a significantly larger market size, a more extensive telecommunication network and capacity fill, and a vastly more developed social infrastructure and social support system. Thus, charges for call termination would be higher for developing countries than for that of developed countries such as the USA if each customer were to be asked to bear the full cost of the use of basic calling services.

4.4 Access

There is a need to at least incorporate an element of the subscriber's monthly access charges in developing per minute cost to ensure consistency in costing and to avoid the use of misleading comparisons that can exaggerate apparent size of rate discrepancies.

4.5 TSLRIC

The FCC's costing methodology which proposes TSLRIC versus other costing methodologies such as FDC is questionable and needs to be revised.

i The FCC acknowledges the need to recover legitimate embedded costs but is now seeking an alternative mechanism through TSLRIC.

Mr. Christopher Wright who represented the FCC before the 8th. U.S. Circuit Court in Iowa Public Utilities Board et al vs. the Federal Communications

4.5 TSLRIC (cont'd)

Commission, Nos. 96-3321 et al from oral arguments on Petitions for review of a Final Order of the Federal Communications Commission at 55 (January 17, 1997) support our view in his statement as follows...

"It's really a fact by fact situation as to whether there will be embedded costs that aren't recovered if forward looking pricing is used... but the key point I want to take here is that those issues are being considered in access charge proceeding and the universal services proceeding, and the Commission does not think, it has never been the Commission's position that the legitimate embedded costs get stranded; that TSLRIC should never be able to recover them..."

ii TSLRIC based rates are insufficient to recover these embedded costs.

iii The FCC suggested the use of an explicit fund recovery mechanism from implicit subsidies to recovery stranded and embedded costs that exist for U.S. carriers. They are now proposing a rate benchmarking approach for non-US carriers that are now being tested within the U.S. and which fails to meet their own legitimate embedded cost recovery obligations.

iv In the Economic Report of the President, February 1997, page 204 and 205, the U.S. President supported the recovery of all (embedded) justifiable regulatory investment costs re **"... recovery of costs legitimately incurred pursuant to regulatory obligations would be warranted..."**

v Prices based on TSLRIC should provide for or include a reasonable profit over and above TSLRIC and, as such include recovery all of the following costs categories:

(a) Ongoing costs to be borne because of the USO, particularly, basic services to customers in rural areas

(b) Ongoing fixed and common costs, including overheads which must be recovered in charges above incremental costs if a company is to remain in business and,

(c) Sunk costs, taking the form of a return on assets whose costs have not yet been fully recovered.

4. PROPOSED COSTING METHODOLOGY (cont'd)

4.6 Other

The FCC's proposed mandate for the abrupt movement of settlement rates to incremental costs per minute represents a double standard. There are vast differences of opinion on the use of incremental cost as a basis for rate determination in the telecommunications industry worldwide. Throughout these many decades the FCC has approved domestic calling rates on a fully distributed cost basis, not incremental, and permitted implicit subsidies to boost rates even more to support universal service goals.

The developing countries are striving to extend the benefits of universal service, but the FCC is now extolling the virtue of incremental cost-based rates. Despite it's own historical track record, the FCC's mandate and policy objective to be imposed on others is the single criterion of rates aligned with the FCC's view of incremental cost over an extremely short time frame and without the benefit of having a reasonably well developed telecommunications infrastructure and measured by teledensity.

Yet again the FCC would impose a timetable on others it never imposed on the U.S. domestic long distance carriers.

The changes the FCC proposes for developing countries, over 3 to 4 year timeframes, can represent annual 20-30% and more reductions (e.g., .99 to .30 over 4 years is over 30% per year). Yet for its own U.S. carrier interstate toll calling rates over the 19 year period 1977 - 1996 as stated earlier in this submission.

4.7. Alternative Costing Proposal

TSTT does not support the methodology used by the FCC in establishing the benchmark rates nor do we subscribe to TSLRIC without due consideration to the above. We note also that the financial results from audited reports for any financial year should be used as a basis for establishing cost.

The cost to be included or excluded from the FCC approach in the establishment of cost-based settlement rate reform should be considered in light of the ITU recommendation D.140 (as agreed to in paragraph 35 of the FCC's proposal).

In addition to network elements proposed by the FCC to be used to provide IMTS and the cost components for those elements to be included in cost-oriented settlement rates, ITU - D.140 proposed that related costs, i.e., direct, indirect or common costs plus other related costs elements should be included when establishing or revising cost-oriented accounting rates. TSTT supports this initial approach. However, we recognize that further amendments are required in the long term.

5. LEGAL JURISDICTION AND DISPUTE RESOLUTION

5.1 Legal Jurisdiction

TSTT supports those administrations, carriers and organisations which have by their comments on the NPRM(IB Docket No.96-261), rejected the jurisdiction, power and authority of the FCC to impose accounting rate benchmarks in the manner proposed in the NPRM, and endorses the comments of those administrations, carriers and organisations, which may be summarised thus-

i The FCC's empowering statute, the Communications Act 1934 does not give the FCC power over foreign carriers with respect to the fixing of accounting rate benchmarks for the termination of U.S.-originated traffic in a foreign country. The FCC can only regulate those carriers within the jurisdiction of the U.S.A.: See RCA Communications-vs-United States,43 F.Supp. 851(SDNY 1942).

ii The FCC will be in breach of the ITU Constitution and Regulations which preclude the FCC from imposing settlement rates on foreign jurisdictions. The preamble of the ITU Constitution recognises the sovereign right of each country to regulate its telecommunications. The ITU Constitution also recognises that the establishment of accounting rates should be accomplished by mutual consensus.

The U.S.A. is a party to the ITU Treaties and the treaties are part of U.S.A. law and are binding on the FCC. As a member of the ITU, the U.S.A. has implicitly agreed that Study Group 3 of the ITU will address Settlement Rate reform and their present action in their proposed rulemaking is contrary to this agreement. Accordingly, rules and regulations made by the FCC should not conflict with or seem to repudiate the provisions of the ITU Treaties or the constitution of the ITU.

Thus, a U.S.A. carrier will be in breach of its agreement with a foreign carrier, if in the absence of a new agreement with the foreign carrier, it unilaterally imposes a rate which is below the rate agreed to through bilateral negotiations, in order to comply with the mandate of the FCC as proposed in the NPRM. The U.S.A. carrier will be liable to be sued for damages for breach of contract in the terminating country by the foreign carrier. In such a case the law of the terminating country will be the proper law to determine the rights of the parties. This is so because the foreign carrier, in terminating U.S.A. originated traffic, is performing a service in the terminating country. Accordingly, the U.S. carrier cannot rely on the NPRM as a defense in such a suit.

5. LEGAL JURISDICTION AND DISPUTE RESOLUTION (cont'd)

5.2 Dispute Resolution

The FCC is signaling that any carrier can challenge the treatment it receives from the FCC benchmarking process it adopts.

This is insufficient recourse and remedy especially for smaller, less developed countries who may not have the resources to adequately challenge a final decision by the FCC.

U.S. carriers are afforded legal appeal rights to overturn inappropriate FCC regulations. It is similarly recommended that foreign carriers be afforded legal appeal rights in an independent international court.

During the period of the appeal, it is proposed that settlement rates agreed upon prior to the proposal to revise the rate, be maintained.

On the expiration of a settlement rate agreement between two parties Approach 2 (C.3.2.) of the Annex C of ITU - D.140 is proposed. Alternatively, the recommendations of an independent review committee should be solicited and implemented.

6. COMMITMENTS

6.1 Competition

Historically, the introduction of competition has had mixed results in terms of the goals to enhance consumer welfare and realize significant improvement in the standard and expansion of the telecommunications infrastructure. This is especially so in the poorer countries.

In a number of cases, whilst international rates have been reduced, domestic rates have increased much to the detriment of the lower income consumers. Also, the much anticipated network expansions are not being realized as the new market entrants focus their resources on the high revenue areas and services and pay scant concern for the lesser developed areas.

6. COMMITMENTS (cont'd)

6.1 Competition (cont'd)

Notwithstanding the foregoing, it must be recognized that the issue of realizing a competitive operating environment is outside the purview of the domestic Administration and rest solely with the policy makers and regulators in any country. The extent to which any country may be committed to the introduction of competition in their domestic market place can be gauged by:

- their participation and level of offers made toward liberalization of their markets in the WTO agreements,
- legislative or regulatory amendments,
- level of privatization of state owned operations

all of which are currently in various stages of progress in Trinidad and Tobago.

6.2 Target Teledensity

Over the last 15 years TSTT has moved from a teledensity of 9 to 17 at present. Our commitment to achieving any set teledensity target as established by the appropriate forum can be deduced from both our aggressive development plans to date as well as plans which are currently being executed.

As mentioned earlier, our position is that operators should be given the opportunity to effectively develop their infrastructure through the application of cross subsidies and when the agreed upon level of development has been attained, the introduction of competition and cost-based pricing should then be entertained.

It is our view that all administrations should demonstrate their commitment to the achievement of set targets and that this issue should be addressed at an appropriate international forum.