

INTERNATIONAL TELECOMMUNICATION UNION ("ITU")

The Use of Unilateral Action

- The Secretary General of the ITU, Dr. Pekka Tarjanne, notes the desire of a great number of countries to move forward in a multilateral way towards the shared objective of achieving cost-oriented accounting rates and expresses his personal commitment to achieving reform of accounting rates. (1)
- Because the ITU is taking the necessary action, the Secretary General hopes the FCC's final outcome with respect to the benchmark proceeding will not threaten the viability of the efforts carried out in the ITU. (1-2)

INTERNATIONAL COMMUNICATIONS ASSOCIATION ("ICA")

Rationale for Adopting Benchmarks

- ICA favors the Commission's attempt to reduce artificially high accounting rates in an effort to decrease the international cost of doing business, increase global competitiveness, promote telecommunications competition in foreign markets, and stimulate telecommunications development worldwide. (1-3)
- ICA believes that the Commission has made good faith efforts over a number of years to lower accounting rates but little meaningful progress has been achieved. Thus, the Commission should not heed the comments of foreign monopoly telecommunications providers who suggest the Commission should continue to rely on market competition or bilateral consultation to achieve its goals. (3-4)

Benchmarks and the U.S. Net Settlement Outpayment

- The ICA disagrees that callback services are the major cause of the U.S. net settlement out payment problem. (5)
- Cost-based rates for international long distance services would remove the need to administer such alternative services as callback. (5)

Benchmark Methodology

- Because foreign service providers are reluctant to disclose their true costs for terminating calls from the U.S., the Commission should reasonably estimate these costs on the basis of known U.S. and international cost and tariffs. (2)

The Use of Transition Periods

- ICA favors the Commission's proposed time frames of one, two and four years. (5)

INTERNATIONAL TELECOM JAPAN INC. ("ITJ")

Rationale for Adopting Benchmarks

- The ITJ agrees with the comments filed by "Telstra" and notes in particular that the Commission should consider the issue of international circuit charges for Internet Access Services and the extent to which the current arrangement for Internet traffic unjustifiably favor U.S. Carriers. (1)

KOKUSAI DENSHIN DENWA ("KDD")

Benchmarks and the U.S. Net Settlement Outpayment

- AT&T's argument that a decline in its average revenue per minute shows that reduced settlement rates will result in lower U.S. consumer prices is incorrect. The average revenue per minute reflects among other things wholesale rates for callback providers and other lower margin services. (5-7)
- AT&T has imposed nearly across the board increases in its collection rates for U.S. consumers during a period when settlement rates have been declining steadily. (5-8)
- KDD also proposes that the FCC require carriers to offer IDD rates on a route no higher than the applicable rates they would charge for their callback customers in the foreign country to prevent U.S. carriers from accepting supra normal profit margins on U.S. traffic while accepting far lower profit margins on their callback operations as they are doing today. (10)

Commission's Jurisdiction to Adopt Benchmarks

- Contrary to the assertion of AT&T that the FCC has jurisdiction to adopt settlement rate benchmarks because they would "directly bind only U.S. carriers" the intent and the effect of the FCC proposed policies is to impose requirements directly upon foreign carriers. (18-19)
- AT&T's reliance upon RCA is incorrect because the court did not state or imply that the FCC has authority to force foreign administrations to accept a lesser amount of compensation. (19)
- The FCC proposals may lead to irreconcilable conflicts with government authorities and other countries. (21)
- There is virtual consensus that the FCC's proposal contravenes the letter and spirit of applicable international telecommunications regulations which require mutual consent and agreement in the establishment of settlement rates. (21-22)

The Global Basic Telecommunications Agreement

- Market forces are fully capable of imposing significant downward pressure upon settlement rates. In fact, the recent WTO Agreement removes any basis for the FCC to intervene unilaterally in the settlement process because it has unleashed the market forces necessary to reform the accounting rate system and lead to lower rate for U.S. and foreign subscribers. (iii, 2-4)

Validity of the Benchmarks under the WTO and MFN

- Numerous parties agree that the FCC's proposals will violate the MFN and National Treatment principles under the WTO agreement. At a minimum, National Treatment prohibits the FCC from adopting more lenient market entry policies for incumbent local exchange carriers. (14)

Benchmark Methodology

- There is no data on the record for the FCC to conclude that termination cost of foreign carriers are 9 cents per minute or lower as suggested by AT&T. (11)
- The FCC itself has recognized that the national extension TCP often does not reflect the underlying component costs. (12)

The Use of Transition Periods

- For the same reasons that the FCC cannot adopt permanent benchmark, it cannot apply a glide-path approach to benchmarks. (25)

Applying Benchmarks to Prevent Anticompetitive Behavior

- The FCC's concerns about cross subsidy and below cost pricing are speculative and contrary to economic theory. Foreign carriers will be incapable of such actions because their home markets will be open to competitive entry from U.S. carriers. (16)
- Any laws against anticompetitive conduct must be implemented on a post-entry basis not a pre entry basis. (17)

KOREA TELECOM

Rationale for Adopting Benchmarks

- Korea Telecom disagrees with AT&T's assertion that lowering settlement rates will lead to lower collection rates. As many Commenters correctly noted, settlement rates have declined over the last few years but collection rates have increased. (3)

Benchmarks and the U.S. Net Settlements Outpayment

- Alternative calling procedures such as call-back, reverse charge, and refiling services have contributed greatly to the significant traffic imbalance. (1)

The Use of Unilateral Action

- Accounting rates should be revised through mutual agreement between interested parties as is required under ITU Regulations. (2)

Benchmark Methodology

- The Commission should have used an universally acceptable methodology to calculate costs. TSLRIC and TCP methods are not accepted by all countries. (2)

Commission's Jurisdiction to Adopt Benchmarks

- The Commission exceeded its jurisdiction under the Communications Act. (2)

MCI TELECOMMUNICATIONS CORPORATION

Rationale for Adopting Benchmarks

- Previous reductions in settlement rates have resulted in substantial benefits to U.S. consumers by lowering international calling rates. (7)

Benchmark Methodology

- Settlement rate benchmarks based on foreign tariff component prices are a reasonable interim way to achieve cost-based settlement rates. (1-2)
- It would be a waste of resources for the Commission to develop a more complicated methodology based on multiple factors when it is not clear that these factors will improve the analysis. (5)
- As MCI suggested in its initial comments, the benchmark rate should be set at either the lower of the country-specific TCP-based rate, or a targeted rate that is twenty percent above the mean for a country's economic development category. (5)
- Placing a cap on cost recovery for high-cost carriers will limit the impact of inefficiencies and the ability of carriers to manipulate their rates. (6)

The Use of Transition Periods

- No party has convincingly argued that the Commission should extend its proposed transition periods for achieving lower benchmark rates. (6)
- Contrary to assertions that longer transition periods are needed to encourage foreign infrastructure development, improved technology at reduced costs should permit foreign infrastructure development to proceed more cheaply and rapidly than it has historically. (7)

Applying Benchmarks to Prevent Anticompetitive Behavior

- The Commission should condition authority to originate and terminate U.S. international services on achievement of settlement rates that fall within the low end of the benchmark range. Such a condition will help constrain the impact of competitive distortion in the U.S. international services market. (8-9)

**NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION
("NTIA")**

Rationale for Adopting Benchmarks

- Increased international competition is the best way to lower accounting rates. (6)
- NTIA strongly supports ITU Recommendation D.140 which represents international consensus on the key principles that apply to the establishment and revision of accounting rates for international service. These principles include transparency, non-discrimination, and cost-orientation. (7)
- NTIA strongly supports the findings outlined in the OECD report which state that international prices are high because effective competition does not exist in the international market to lower prices to cost. (7-8)
- The Commission's proposals for accounting rate reductions represent a constructive means of implementing the primary goals of ITU Recommendation D.140. (8)
- It is time to adopt new benchmark rates that will move accounting and settlement rates closer to the actual costs of providing international services. (9)
- NTIA intends to redouble its efforts to promote greater transparency in accounting rates among OECD members. (14)
- U.S. carriers should pass cost savings to consumers in the form of lower collection charges. (15-16)

Benchmark Methodology

- NTIA commends the Commission for relying on the cost guidelines contained in ITU Recommendation D.140. (10)
- The Commission's methodology of applying foreign carrier tariffed prices as surrogates for the three network components cited in the ITU Recommendation D.140 offers the best available approach to establishing new benchmark rates. (11)
- NTIA agrees with the Commission's proposition that U.S. carriers should not pay foreign carriers more than the foreign carrier's domestic customers are charged for the same service. (11)

- NTIA applauds the Commission's willingness to consider alternative methodologies. Further, NTIA concurs with the Commission's requirement that any challenges to its proposed methodology demonstrate that a carrier's costs to receive, transmit, and terminate international service are actually higher than the established benchmarks. (12)
- International organizations should play a constructive role in encouraging the provision of cost data. (13)

The Use of Transition Periods

- NTIA supports a timely transition to the proposed benchmarks as an effective means of moving accounting rates closer to the actual costs of providing international service. (14)

PACIFIC BELL COMMUNICATIONS

Rationale for Adopting Benchmarks

- The Commission is correct in noting that U.S. international calling rates are too high. (2)
- Efforts to lower international calling prices will encourage the growth of competition and the efficient use of telecommunications systems. (2)
- The Commission may achieve the best results for U.S. consumers by increasing competition in the U.S. IMTS market. Increased competition can easily be achieved by granting the RBOCs authority to provide international services. (8-10)

Commission's Jurisdiction to Adopt Benchmarks

- Numerous Commenters questioned the Commission's jurisdictional authority to set benchmarks. (6)

Validity of the Benchmarks Under the WTO and MFN

- Commenters also questioned whether the Commission's proposed benchmarks would satisfy the MFN requirement of the WTO Telecom Agreement. (6)
- The Commission should articulate the regulatory mechanisms it will rely on should the benchmarks ultimately fail to survive review by U.S. courts or international bodies. (6)

Benchmark Methodology

- The vast majority of Commenters in the proceeding noted inadequacies in the methodology used to establish the proposed benchmarks. (3)
- Some Commenters pointed out that it may be inappropriate to calculate benchmarks using U.S. dollars. (3)
- 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)
- The use of tariffed component prices was subject to considerable attack because they do not reflect the need to rebalance domestic tariffs of foreign countries. (3)

- The Commission's use of privately leased line charges to calculate the cost of the international facility component was also criticized. (4)
- Many Commenters have noted that it is inappropriate to use AT&T's estimates of its average network costs. (5)
- Due to the problems noted by Commenters, the Commission should carefully reexamine its methodology. Alternatively, the Commission could support multilateral, or bilateral talks on lower accounting rates by agreeing to forebear in applying its benchmarks to any country that agrees to enter into negotiations. (6)

PAUL W. MACAVOY

Rationale for Adopting Benchmarks

- The Commission should not implement its proposed plan for settlement rates until U.S. outbound international tariff rates become competitive. When foreign carriers are able to directly compete with incumbent carriers, U.S. consumers will see price reductions. (2-3, 5-6)
- The NPRM failed to consider empirical evidence demonstrating that margins of prices for international calls have risen over time. Further, the NPRM is not grounded in economic principles because some of the proposed benchmarks will result in prices above relevant marginal costs. (4-7)
- Given the coordinated pricing of the major U.S. long-distance carriers, reductions in settlement rates will not reduce prices appreciably for consumers. (4, 9-10)

Applying Benchmarks to Prevent Anticompetitive Behavior

- The Commission's proposal to condition foreign carrier entry to provide outbound United States services on the Commission's determination that effective competition exists in the foreign carrier's home market would erect a reciprocity barrier to the establishment of effective competition in the U.S. outbound market. (12)

THE REGIONAL TECHNICAL COMMISSION ON TELECOMMUNICATION IN CENTRAL AMERICA

Benchmarks and the U.S. Net Settlements Outpayment

- Most Commenters correctly point out that the Commission's policies, which allow call-back and call re-origination services, are the cause of the U.S. settlements deficit. Further, these new services have caused significant harm to non-U.S. carriers while creating substantial benefits for U.S. carriers. Call-back services shift collection revenues to U.S. carriers and thus deprive non-U.S. carriers of payments to which they are entitled. Call re-origination services deprive terminating country carriers of settlement revenues because the calls are settled at the lower accounting rate in effect between the United States and the terminating country. (2-4)

The Use of Unilateral Action

- GTE correctly argued in its comments that unilateral action by the Commission would disrupt the emerging trend toward competition and undermine the bilateral nature of international telecommunications relationships. (9)
- Unilateral action by the Commission could provoke retaliation against U.S. carriers. (9)
- The Commission should seek reform of accounting rates through international fora such as the ITU. (10)

Commission's Jurisdiction to Adopt Benchmarks

- AT&T incorrectly asserts that Section 201(b) of the Communications Act authorizes the Commission to regulate international accounting rates. Section 201(b), however, authorizes the Commission to require common carriers subject to its jurisdiction to provide international communication services to their domestic customers at just and reasonable rates. It does not authorize the Commission to regulate settlement agreements between U.S. carriers and their foreign correspondents. (11)
- Likewise, the Commission does not have jurisdiction under Section 205 to regulate accounting rates. Section 205 authorizes the Commission to regulate rates that domestic carriers subject to its jurisdictions may charge their U.S. customers. (12)
- The Commission does not rely on Section 211 for authority to regulate accounting rates. In any event, Section 211 does not empower the Commission to alter the terms of an agreement between a U.S. carrier and its foreign correspondent. (12-13)

- The Sierra-Mobile doctrine is inapplicable because the Federal Power Act and Communications Act do not contain relevant analogous provisions. The former expressly authorizes the relevant federal agency to regulate privately negotiated contracts whereas the latter does not. (13)
- At most, Section 201(b) authorizes the Commission to direct a U.S. carrier not to enter into, or to cease continuing to operate under an agreement with a non-U.S. carrier. Section 201(b), however, does not empower the Commission to direct U.S. carriers to breach existing agreements with foreign correspondents. (14-15)
- AT&T's reliance on the RCA case is misplaced. RCA held that where the Commission determines that a U.S. carrier has agreed to pay its foreign correspondent an excessive rate to terminate international traffic, the agency may order the U.S. carrier to lower its collection rates for international service. The U.S. carrier must then renegotiate its agreement with its foreign correspondent, or absorb any shortfall. Further, the court in RCA expressly recognized that the Commission lacks authority to regulate the rates paid by U.S. carriers to their foreign correspondents. (15)

Authority Under Existing International Regulations

- AT&T's assertions that ITU Regulations do not interfere with the Commission's authority to regulate international accounting rates is incorrect. ITU Regulations govern reform of accounting rates. Further, the Commission does not have authority to speak for the national interests of the United States. (17-18)

Benchmark Methodology

- The Commission's proposal to use income as the sole criterion for classifying countries for purposes of applying its benchmarks could produce arbitrary results. As the Republic of Panama correctly noted, this pricing methodology fails to distinguish between fully competitive markets and developing markets. (6-7)
- The benchmark ranges should not be based on the lower of the country-specific tariff component price or the benchmark category. Tariffs in many countries do not reflect the actual cost structure of the underlying service. (18-19)

The Use of Transition Periods

- Any transition period must be tied to each country's timetable for rate rebalancing. Accordingly, there is no support in the record for shortening the periods. (19)

REPUBLIC OF PANAMA

Rationale for Adopting Benchmarks

- The Commission incorrectly concludes that lowering settlement rates will reduce collection rates. As many Commenters point out, accounting rates have declined over the last few years while collection rates have increased. The Commission's proposals will not ensure that U.S. carriers pass their savings to consumers. (8-9)
- The Commission's proposal does not contemplate an indexing mechanism to ensure that reductions in accounting rates will be passed on to consumers in the form of lower international calling prices. (9)

Benchmarks and the U.S. Net Settlements Outpayment

- Most of the traffic imbalance is caused by call-back and other services originated abroad, but billed in the United States. Thus, reducing settlement rates will not reduce the U.S. net settlements payments deficit. (10-11)
- U.S. carriers benefit from these services because they generate significant revenue for U.S. carriers. (10)
- The principal cause of high rates for international calls are the record profits currently enjoyed by U.S. international carriers, not international settlements payments. (7)
- The Commission should focus its efforts on measures that will lead to a reduction of the collection rate. (12)

Commission's Jurisdiction to Adopt Benchmarks

- Most Commenters addressing this issue agreed that the U.S. does not have jurisdiction under the Communications Act to prescribe accounting rates. (4)
- AT&T ignored Section 303(r) of the Communications Act which manifests Congress' intent that the Commission abide by international treaties and regulations. (5)
- The Commission has expressly acknowledged in prior rulings that its jurisdiction over international services applies only to the U.S. end. (5)

Authority Under Existing International Law

- As most Commenters concluded, under ITU Regulations, no country may change unilaterally the settlement rates foreign carriers charge carriers to terminate international calls in their foreign countries. (2-3)
- As the Commission has expressly acknowledged, ITU treaties are binding on the U.S. Government. (3)

Validity of the Benchmarks Under the WTO and MFN

- In light of the WTO Telecom Agreement, now is not the time for the Commission to adopt rules that would contravene international law and undermine the very international cooperation and consensus that lead to this historic agreement. (4)

Benchmark Methodology

- As most foreign Commenters noted, the Commission's proposed classification of countries fails to consider crucial factors such as economic realities, competitive status and political factors. Further, the NPRM makes no allowances for the efforts undertaken by many countries, such as Panama, to modernize their networks, privatize their telecommunications operators, and open their markets to competition. (13-14)

SDN USERS ASSOCIATION, INC.

Rationale for Adopting Benchmarks

- SDN Users Association fully supports the goal of lowering settlement rates and would like to see the benchmarks implemented as soon as possible. (1)

The Use of Transition Periods

- The Commission's transition proposals are the best method of implementing the benchmarks. (1)

Applying Benchmarks to Prevent Anticompetitive Behavior

- The Commission should adopt a clear and effective enforcement mechanism to achieve the target settlement rates. (1)

SINGAPORE TELECOMMUNICATIONS LIMITED

Benchmarks and the U.S. Net Settlement Outpayment

- Home-country direct, callback, and refile services are a significant cause of the U.S. settlements deficit. (6)
- The Commission should require U.S. carriers to lower collection rates in response to reductions in settlement rates. (10-11)

The Use of Unilateral Action

- The Commission does not have authority to unilaterally prescribe accounting rates. The Commission should allow the international community to reform the accounting rate system. (3)
- The record in this proceeding aptly demonstrates that continuing unilateral efforts by the Commission are likely to create friction and increased resistance to accounting rate reform. (4)

Authority Under Existing International Law

- The Constitution and Regulations of the ITU prohibit the Commission from unilaterally prescribing accounting rates. (2)

The Global Basic Telecommunications Agreement

- The WTO Telecom Agreement opens virtually all of the world's major telecommunication markets to competition. As most Commenters noted, increased competition in the global IMTS market is the most effective mechanism for reducing international settlement rates. (4)

Validity of the Benchmarks under the WTO and MFN

- The NPRM is contrary to both the Most Favored Nation and National Treatment principles as embodied in the WTO Telecom Agreement. (3)
- The Commission's failure to show a cost justification for adopting the World Bank country classifications and prescribing disparate benchmarks for each classification is contrary to the MFN. (3)

- The Commission's proposal to permit U.S. carriers to charge settlement rates for terminating foreign-billed traffic in the United States that are admittedly higher than the Commission's estimate of the underlying costs is contrary to National Treatment provisions. (3)

Benchmark Methodology

- As most Commenters correctly noted, the Commission lacks accurate and sufficient cost data regarding the operations of foreign carriers upon which to base its benchmark proposals. Only foreign carriers have this requisite information and the Commission does not have the authority to require foreign carriers to submit this information. (5)
- The NPRM represents a fundamental misunderstanding of the difference between notional settlement rates and unit settlement rates. The settlement payments of U.S. carriers are less, often significantly less, than the notional settlement rate on a per-minute or unit basis. Thus, if the notional settlement rate on a route reflects the foreign carrier's termination costs, then the actual settlement payments of U.S. carriers will undercompensate foreign carriers by a significant amount on a per-minute basis. (7)
- The Commission has no data demonstrating that reducing the notional settlement rate to the proposed benchmark levels will entail any reduction in the unit settlement payments of U.S. carriers. (8)
- The Commission has no data supporting its assertion that 75% of U.S. net settlement outpayments represents a subsidy to foreign carriers. (9)
- The Commission should focus its attention to the establishment of non-discriminatory, cost-based IPL rates for Internet access. (11-12)

The Use of Transition Periods

- The Commission's proposed time frames are unrealistic because they do not take into account the difficulties many countries will encounter in response to an overly rapid transition towards the proposed benchmarks. (5-6)

SPRINT

Rationale for Adopting Benchmarks

- Settlement rates that are based closer to costs will prepare for competition and establish a sounder basis for international telecommunications in the future. (8-9)

Benchmarks and the U.S. Net Settlement Outpayment

- The arguments of many Commenters that the increasing U.S. settlement outpayment is due to callback and refile are beside the point. The benefits of cost-based accounting rates, such as competitive pricing of international telecommunications, are important in and of themselves. (6-7)
- The FCC has a legitimate interest in seeking rates closer to cost in order to minimize the U.S. settlement outpayments. (7)

The Use of Unilateral Action

- The Process of moving accounting rates towards cost should occur in a multilateral forum such as the ITU, which is committed to improving the compatibility of the accounting rate system with a competitive market environment. (1-2)
- The ITU regulations requiring the establishment of accounting rates by mutual agreement does not mean the U.S. has given up its right to regulate agreements that the Commission finds contrary to the U.S. public interest. (6)

Commission's Jurisdiction to Adopt Benchmarks

- The FCC is not exceeding its jurisdiction because it has plenary jurisdiction to declare that a U.S. carrier's contract with another carrier is not in the public interest and does not need jurisdiction over foreign carriers to ensure the justness and reasonableness of U.S. carriers' accounting rates. (3-5)
- Although the FCC's exercise of jurisdiction over U.S. carrier's contracts may affect foreign carriers, that does not mean it is exercising jurisdiction over that foreign carrier. (4)

STATE OF ISRAEL

The Use of Transition Periods

- The transition periods proposed in the NPRM are unrealistic because they do not take into account each country's specific economic circumstances. (1)
- The rapid decrease in accounting rates contemplated by the NPRM would impede competition in Israel in the field of international services. Any decrease in accounting rates, therefore, must be gradual. (2)
- Israel generally supports the Commission's proposals regarding the reduction of accounting rates, however, Israel requests additional time for new operators in Israel to move their rates to cost. (2)

TELECOMMUNICATIONS SERVICES OF TRINIDAD AND TOBAGO ("TSTT")

Rationale for Adopting Benchmarks

- A critical standard of development for domestic networks is necessary before the removal of cross-subsidization can be considered. (3)

Benchmark Methodology

- GNP is not an acceptable criteria for establishing settlement rates, instead, teledensity should be the benchmark which informs the timing for accounting rate reform and the level of the settlement rate. (3)
- The FCC's proposed cost methodology is incomplete and inconsistent because the FCC lacks the individual country data for terminating international traffic, has not considered access charges, and bases the cost of a call on infrastructure development in the US which is not a true reflection of developing countries' cost structure. (5-6)
- The FCC's cost methodology which proposes TSLRIC is questionable and needs to be revised because TSLRIC is insufficient to recover embedded costs. (6-7)

The Use of Transition Periods

- The FCC's proposed rates of two to four years is too short for the majority of administrations to achieve their target teledensities. (4)
- In order to achieve an appropriate teledensity level, longer transition periods are necessary. (5)

Commission's Jurisdiction to Adopt Benchmarks

- TSTT supports those administrations, carriers, and organizations which have rejected the jurisdiction, power and authority of the FCC to impose accounting rate benchmarks because the FCC's statute does not give it power over foreign carriers with respect to fixing accounting rate benchmarks and the FCC will be in breach of the ITU Constitution and Regulations which preclude the FCC from imposing settlement rates on foreign jurisdictions. (9)

TELEFONICA INTERNACIONAL DE ESPANA, S.A.

Rationale for Adopting Benchmarks

- The Commission has not developed an adequate record to support imposing specific mandatory benchmarks on foreign carriers. The Commission relies on assumptions, not data, to approximate the costs of foreign carriers. (50-54)

The Global Basic Telecommunications Agreement

- The WTO Telecom Agreement requires that settlement rate reform be pursued on a multilateral basis. Further, the underlying philosophy of the WTO Telecom Agreement is competition. Thus, the Commission should allow competition to lower settlement rates. (5-8)
- The WTO Telecom Agreement contemplates that most international traffic will originate in competitive markets. Accordingly, this is the worst possible time for the Commission to attempt to dictate international accounting rates. (10)

Validity of the Benchmarks under the WTO and MFN

- The NPRM violates the MFN by imposing conditions on market access for IMTS providers on particular routes, and by requiring settlement payments that vary arbitrarily from the Commission's own estimates of individual country costs for terminating international calls on their domestic networks. (10-14)
- The NPRM would violate the U.S. GATS commitment of national treatment by imposing settlement rate benchmarks as a condition of entry only on foreign-affiliated carriers and by only regulating the price foreign carriers charge for provision of the half-circuit for U.S.-originated calls. (15-17)
- The NPRM would violate the U.S. GATS commitment of market access by conditioning service authorization for affiliated markets on settlement rates within the benchmark ranges and by adopting enforcement mechanisms that authorize services only based on settlement payments at benchmark rates. (17-18)
- Article VI of the GATS which relates to domestic regulation does not provide an exception to the obligations of MFN treatment, market access or national treatment. (19-20)
- The GATS does not contain a "competition exception" that would justify the NPRM's proposals. (21-22)

Commission's Jurisdiction to Adopt Benchmarks

- The statutory provisions cited by AT&T do not confer jurisdiction upon the Commission to invalidate or rewrite settlement rate agreements between U.S. and foreign carriers. (23)
- The general jurisdictional grant and connecting carrier exemption in Section 2 of the Communications Act do not confer authority upon the Commission to prescribe and enforce international settlement rates. (23-25)
- Foreign carriers that only provide the foreign half-circuit to terminate international calls via their own international and domestic network do not engage in foreign communications within the United States, and thus are not subject to the Commission's enforcement powers. (24)
- The legislative history of the Communications Act does not indicate that Congress intended for the Act to apply extraterritorially. (25)
- Because the Commission lacks jurisdiction under Section 2 of the Communications Act, the Commission cannot extend the enforcement provisions of Sections 201 and 205 to foreign carriers. (26)
- Section 201(b) expressly limits the Commission's ability to regulate intercarrier rates involving foreign carriers. At most, the Commission can reject settlement rate contracts. Where a settlement rate contract is rejected, the U.S. carrier must attempt to renegotiate the contract or else suffer the legal consequences resulting from breach of the agreement. (26-28)
- Section 205 does not empower the Commission to prescribe accounting rates because it applies only to rates within the Commission's jurisdiction that violate another provision of the Communications Act. (28-29)

Commission's Authority Under Existing International Law

- The Commission is prohibited from adopting its benchmark proposals by the treaty obligations of the U.S. Government. (30)
- Statement No. 69, made by the U.S. Government when it signed the ITU Regulations, is not a reservation to ITU Regulations, but rather is the right of the U.S. to make future reservations. (30)
- ITU Regulations require that carriers mutually agree to settlement rate agreements. Further, ITU Regulations grant only carriers the authority to conclude settlement rate agreements. (32)

Benchmark Methodology

- Any unilateral effort by the Commission to lower settlement rates should be tied to rate rebalancing. Most foreign carriers cannot make settlement rate reductions without corresponding collection rate reductions to avoid losing more market share to callback services. Further, settlement rate reductions cannot be made without corresponding local rate increases to make up for the revenues that have been typically used for subsidizing universal service. (40)
- By tying settlement rate reductions to rate rebalancing, foreign carriers' interests will coincide with those of the Commission and U.S. carriers which is to lower accounting rates. (40-44)

Applying Benchmarks to Prevent Anticompetitive Behavior

- The Commission should impose cost-based rates on U.S. carriers before imposing cost-based rates on foreign carriers. It is difficult to convince foreign countries to lower their settlement rates when U.S. carriers already enjoy a significant margin between settlement and collection rates. (32-39)
- Conditioning the authorization of foreign-affiliated carriers to enter the U.S. market on whether they lower their settlement rates to the relevant benchmarks will impede competition in the U.S. and global telecommunications markets by stifling the entry of carriers who would otherwise seek to stimulate business and enhance market share through price competition with AT&T. (44-50)