KELLEY DRYE & WARREN LLP
A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL ASSOCIATIONS
1200 19TH STREET, N.W.
SUITE 500
WASHINGTON, D. C. 20036
(202) 955-9600
FACSIMILE
(202) 955-9792

NEW YORK, N.Y.
LOS ANGELES, CA.
MIAMI, FL.
CHICAGO, IL.
STAMFORD, CT.
PARSIPPANY, N.J.

BRUSSELS, BELGIUM
HONG KONG

AFFILIATED OFFICES
NEW DELHI, INDIA
TOKYO, JAPAN

EX PARTE OR LATE FILED

DOCKET FILE COPY ORIGINAL

RECEIVED
JUN 18 1997
Federal Communications Commission
Office of Secretary

ROBERT J. AAMOTH
DIRECT LINE (202) 955-9676
E-MAIL: raamoth@kelleydrye.com

June 18, 1997

Mr. William Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222 Mail Stop 1170
Washington, D.C. 20554

Re: Ex Parte Presentation in IB Docket No. 96-261

Dear Mr. Caton:

On behalf of Guyana Telephone & Telegraph Co. Ltd. ("GT&T"), we are submitting this letter to ensure a more complete record in the above-referenced proceeding, especially in light of the FCC's recent decisions in the Universal Service and Access Charge Reform proceedings.[1] GT&T submitted reply comments on March 31, 1997 in this proceeding on its own behalf, and GT&T is a member of the Caribbean Association of National Telecommunication Organizations ("CANTO"), which submitted comments on February 7, 1997.

GT&T submits that the FCC's recent decisions in the Universal Service and Access Charge Reform proceedings confirm positions taken by GT&T in its reply comments and by CANTO in its comments. In particular, it is now clear that the FCC lacks any methodological or empirical basis to estimate reliably the economic costs of providing telecommunications services in rural or insular environments. Indeed, the FCC has not even made a final decision whether it is appropriate to impose an economic cost requirement upon

[1] See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, FCC 97-157, rel. May 8, 1997 [hereinafter "Universal Service Decision"]; Access Charge Reform, CC Docket Nos. 96-262 et al., FCC 97-158, rel. May 16, 1997 [hereinafter "Access Reform Decision"].

No. of Copies rec'd 0+5
List ABCDE

such carriers. Further, the FCC has adopted policies which fund universal service in the United States disproportionately from interstate services, including international direct dial ("IDD") services. Therefore, it would be inherently unreasonable for the FCC to prescribe settlement rate benchmarks for foreign carriers serving rural or insular countries, or to deny that foreign Governments have the sovereign authority to impose a heavier universal service burden upon international than upon domestic traffic streams. Adopting the current settlement rate benchmark proposals on the existing record also would constitute a violation of the National Treatment obligation under the World Trade Organization ("WTO") agreement, which will become effective on January 1, 1998 for the United States. Lastly, GT&T submits that the current average weighted per-minute settlement rate paid by U.S. carriers, which GT&T calculates at approximately $.198/minute, falls into the middle of the FCC's proposed benchmark range, thereby demonstrating that there is no need to adopt the benchmark rates.

A. Methodology.

The FCC's Access Charge Reform and Universal Service decisions confirm that the FCC lacks a reliable methodology for estimating forward-looking economic costs incurred by telecommunications carriers in the United States. In the Access Charge Reform proceeding, the FCC stated that "as a practical matter, accurate forward-looking cost models are not available at the present time to determine the economic cost of providing access service."[2] Similarly, the FCC stated in the Universal Service decision that "[w]e agree with the Joint Board that the cost methodologies presented to us thus far are not sufficiently reliable to be used to determine universal service support at this time."[3] The FCC affirmed that "we cannot use any of the models at this time as a means to calculate the forward-looking economic cost of the network on which to base support for universal service in high cost areas."[4] Because the FCC does not know and cannot reliably estimate the economic costs of providing telecommunications services, the FCC has no basis for adopting benchmarks from its Tariff Components Pricing ("TCP") approach as a conservative estimate of the economic costs incurred by foreign carriers to terminate U.S.-billed traffic.

Further, the FCC recognized in the Universal Service proceeding that it is particularly difficult, and perhaps even impossible, to develop an accurate methodology for

---

2 See Access Reform Decision at ¶ 45.

3 See Universal Service Decision at ¶ 26.

4 Id. at ¶ 245.

estimating the economic costs of carriers serving rural and/or insular environments.[5] The FCC recognized that such carriers have "unique" cost structures because they serve fewer subscribers in more sparsely populated areas, do not benefit from the same economies of scale and scope as larger carriers, and cannot respond to changing operating circumstances as quickly as larger carriers.[6] The FCC also recognized that inaccurate economic cost calculations pose a significant risk of serious harm to carriers serving rural and/or insular environments, including the risk that underestimating economic costs could provide such carriers with insufficient funds to continue existing operations.[7] As a result, the FCC held that it would not require U.S. incumbent local exchange carriers serving rural and/or insular environments to calculate their costs based upon forward-looking economic costs for a period of at least three years.[8]

Further, the FCC has not made a final decision whether to impose an economic cost requirement upon high-cost carriers in rural and insular environments. The Federal-State Joint Board recommended against an economic cost standard for carriers serving Alaska and other insular areas at this time due to the "unique" nature of providing service in those regions.[9] Further, Congress itself expressed doubt whether an economic cost standard was appropriate for rural incumbent local exchange carriers. Congress wrote Section 251(f) to grant such carriers an exemption from the statutory requirements to furnish cost-based interconnection and network elements pending a state-by-state inquiry on the issue.[10] The FCC did not adopt a final resolution of the issue of whether carriers serving Alaska and other insular areas should be governed by an ecnomomic cost standard. Although the FCC expressed its intention to impose an economic cost standard upon such carriers if possible, the FCC did not have to resolve the issue since it had already decided not to impose such a standard for at least three years due to the lack of an accurate methodology.[11]

---

5 E.g., id. at ¶ 293 ("[a]t present, we recognize that these [models] cannot presently predict the cost of serving rural areas with sufficient accuracy").

6 Id. at ¶¶ 255, 291, 294.

7 Id. at ¶¶ 291, 294.

8 Id. at ¶ 294.

9 Id. at ¶¶ 216 & 314.

10 See 47 U.S.C. § 251(f).

11 Id. at ¶ 314.

It should be emphasized that the FCC did not decide to require high-cost carriers to begin using economic cost estimates immediately at the end of the three-year period. Rather, the FCC established the three-year period to see if a reliable economic cost model could be developed for rural and/or insular carriers. Even if such a cost model were to be developed after three years, the FCC stated that it would then "shift gradually" to a forward-looking economic cost methodology in subsequent years.[12] In short, the FCC is likely to establish a transition period for high-cost rural and insular U.S. carriers in addition to the initial three-year period in the event it decides to impose an economic cost standard upon U.S. incumbent local exchange carriers serving rural and/or insular areas.[13]

The FCC's decision in the Universal Service proceeding repudiates its proposal to require foreign carriers serving rural and/or insular countries to comply with FCC-prescribed settlement rates subject to a one- to four-year transition period.[14] Guyana and many other developing countries are at least as rural and/or insular as Alaska and other high-cost areas in the United States. As CANTO correctly noted in its comments:

> "Many Caribbean countries are geographically small and isolated with a relatively high percentage of rural inhabitants and only nascent urban developments, and other CANTO members operate in large countries with an extremely low population density. Further, climatic conditions in the Caribbean (e.g., hurricanes; salt water corrosion; flooding) serve only to exacerbate the high-cost environment in which CANTO members provide telecommunications services to the public. In these countries, universal service costs both on an absolute and percentage basis are high. If included within the U.S. system, many of these countries plainly would qualify for the highest levels of universal service assistance."[15]

---

[12] Id. at ¶ 294.

[13] Id. at ¶ 216 (noting Joint Board recommendation that rural carriers should shift to an economic cost model over a period of six years).

[14] While Guyana and virtually all other countries in the Low Income category easily qualify as rural and/or insular in nature, it should be noted that numerous carriers in the other two categories have the same qualification. The U.S. Virgin Islands is a good example. Although the FCC lists this U.S. territory in the High Income category, the incumbent local exchange carrier in the U.S. Virgin Islands qualifies as a small, rural carrier under Telecommunications Act of 1996 and the FCC's universal service policies.

[15] See Letter from I. Struiken-Wijdenbosch, CANTO, to W. Caton, FCC (Feb. 6, 1997) at p. 5.

If the FCC believes that it may be three years or more before it can determine whether an economic cost standard can be imposed upon U.S. carriers serving rural and/or insular environments, or what such a cost model would look like, then the FCC has no legal or empirical basis upon which to prescribe a settlement rate or a transition period at this time for foreign carriers serving predominantly rural or insular countries.

Lastly, it is no answer for the FCC to suggest that the current cost models, while not yet sufficiently reliable to use for universal service in the United States, are nevertheless sufficiently accurate to determine that the proposed benchmarks are above economic costs. There is no empirical basis in the record for such a conclusion, and the FCC still has not made a final determination that an economic cost standard should even be imposed upon carriers serving rural and/or insular environments. Moreover, if the FCC truly believes that the current cost models can reliably estimate some kind of economic cost ceiling, then it owes the industry an explanation for why it did not impose that ceiling upon U.S. incumbent local exchange carriers serving rural and/or insular areas. Given that FCC will permit U.S. carriers to continue using embedded costs for universal service purposes without inquiring whether those costs are higher than any economic cost ceiling that might be calculated from the current cost models, the FCC cannot reasonably prescribe benchmark settlement rates for foreign carriers based upon the inchoate theory that the current cost models can reliably estimate an economic cost ceiling above which all rates should presumptively be regarded as fully compensatory.

B. Universal Service.

In its Notice of Proposed Rulemaking in IB Docket No. 96-261 (at ¶ 40), the FCC stated that it "see[s] no justifiable economic basis for requiring a U.S. carrier to pay a foreign carrier more than that carrier charges its domestic customers for the same service." In effect, the FCC's apparent position is that a foreign country may not impose a greater universal service burden upon international traffic than it imposes upon domestic traffic. As GT&T demonstrated in its reply comments (at 12-16), the universal service programs in the United States do not comply with that standard. Historically, the FCC has overweighted the recovery of universal service subsidies from the interstate jurisdiction, which has the effect of increasing the IDD rates of U.S. carriers, suppressing U.S.-outbound traffic, and reducing settlement payments to foreign carriers. In a very real sense, foreign carriers historically have disproportionately subsidized universal service in the United States through foregone settlement revenues.

The FCC's decision in the Universal Service proceeding has not changed, and indeed has continued, overweighting the recovery of universal service subsidies from the interstate jurisdiction. Historically, the FCC has recovered disproportionate universal service revenues from interstate services by allocating 25% of those revenues to the interstate jurisdiction. The FCC decided to continue using the 25% allocation factor,[16] thereby perpetuating the overrecovery of universal service subsidies from interstate revenues. The FCC also continued other recovery mechanisms, such as the High Cost Fund and DEM weighting, which deliberately over-recover costs from the interstate jurisdiction as a universal service support mechanism.[17] Further, the FCC established a new universal service program for schools and libraries that is funded solely by interstate carriers; purely intrastate carriers do not have to make contributions to support that program.[18] Lastly, the FCC declined to transform all implicit subsidies in the access charge system into explicit subsidies, in part because it lacked the methodology to identify the subsidies accurately.[19] As a result, the interstate access charge system continues to be a source of implicit universal service subsidies.

In light of the FCC's decision in the Universal Service proceeding, the FCC cannot reasonably prohibit foreign countries from imposing a heavier universal service burden upon international traffic than upon domestic traffic streams. As GT&T noted in its reply comments (at 13), "[i]t is for each country to adopt the pricing and other policies which it feels will best promote universal service and other social policies in its own unique circumstances." GT&T would note that the FCC declined to raise the Subscriber Line Charge for U.S. residential and single-line business subscribers by even one penny due to an overriding concern to ensure the "affordability of local service."[20] Yet GT&T presented evidence on the record that the FCC's proposed settlement rate benchmarks would effectively force GT&T to raise its domestic rates by at least 1000% to recoup the lost revenues.[21] As GT&T stated in its reply comments (at 13 n.28), "[i]t is ironic that the FCC would be considering measures that would have such a massive impact upon foreign carriers in developing countries, when even a slight increase in the single-line residential subscriber line charge is considered a politically unachievable result in the FCC's access reform proceeding."

---

16 See Universal Service Decision at ¶¶ 201, 223, 268-69.

17 E.g., id. at ¶¶ 210-12; see generally id. at ¶ 208 n.519 (citing Common Carrier Bureau, Preparation for Addressing Universal Service Issues: A Review of Current Interstate Support Mechanisms (Feb. 23, 1996)).

18 See 47 U.S.C. § 254(d).

19 E.g., Universal Service Decision at ¶¶ 13, 17.

20 Id. at ¶ 16.

21 See GT&T Reply Comments at 13 & attached Declaration at ¶ 8.

C. Per-Minute Settlement Costs.

Lastly, GT&T would like to support the view of several commenting parties that the FCC's proposal to prescribe settlement rate benchmarks for foreign carriers is fundamentally misguided because the effective per-minute rates that U.S. carriers pay to terminate U.S.-billed traffic in foreign countries are almost always lower than the notional settlement rate.[22] In calculating the per-minute rate that U.S. carriers pay to their foreign correspondents for terminating U.S.-billed traffic, the FCC has focused solely upon the notional settlement rate. However, the FCC has neglected to take into account that U.S. carriers receive above-cost revenues when they terminate the foreign carrier's traffic in the United States at the same settlement rate. Were the FCC to take the amount that U.S. carriers owe to foreign carriers by applying the notional settlement rate to all U.S.-billed traffic, and then subtract the revenues that U.S. carriers receive from those same foreign carriers for terminating foreign billed traffic, the FCC would derive the actual per-minute settlement costs of U.S. carriers. By confusing the notional settlement rate with the actual settlement costs of U.S. carriers, the FCC's settlement rate benchmarks could, in many cases, ensure that U.S. carriers pay per-minute termination costs that are substantially lower than the benchmarks and any reasonable estimate of economic termination costs.

Based upon data in the record, GT&T estimates that the average per-minute settlement cost of U.S. carriers today, weighted for minutes per country, is approximately $.198/minute.[23] GT&T would note that this figure falls squarely in the middle of the FCC's proposed settlement rate benchmark range of $.15/minute to $.23/minute. If the FCC's goal is to ensure that U.S. carriers pay per-minute settlement rates within the proposed range, then the FCC need not adopt its settlement rate benchmark proposals because U.S. carriers already are paying settlement rates within that range on a per-minute basis today.

---

[22] E.g., Reply Comments of Singapore Telecommunications at 7.

[23] AT&T asserts that the average notional settlement rate is $.59/minute (see AT&T Comments at Chart A), and the FCC has estimated that the average weighted notional settlement rate is approximately $.365/minute. See Notice of Proposed Rulemaking in IB Docket No. 96-261 at ¶ 26 & n.34. Given AT&T's estimate that its average effective per-unit settlement cost is $.32/minute (see AT&T Comments at 10), GT&T calculates that the average weighted unit settlement cost should be in the range of $.198/minute. GT&T's calculation assumes that the ratio of the average notional settlement rate to the average weighted notional settlement rate is roughly the same as the ratio of the average effective unit settlement rate to the average weighted effective unit settlement rate.

For the foregoing reasons, GT&T submits that the FCC should not adopt its settlement rate benchmark proposals for the reasons specified herein, as well as in the comments submitted by CANTO and the reply comments submitted by GT&T.

Respectfully submitted,

Robert J. Aamoth

cc: Hon. Reed E. Hundt
Hon. James H. Quello
Hon. Susan Ness
Hon. Rachelle B. Chong
Mr. Peter F. Cowhey
Diane J. Cornell, Esq.
Kathryn O'Brien, Esq.
John Giusti, Esq.