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

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In the Matter of	)	Docket #
	)	~~File No.~~ IB 96-261
International Settlement Rates	)	

SUPPLEMENTAL REPLY COMMENTS

AT&T Corp. ("AT&T") hereby submits its Supplemental Reply Comments in response to the Public Notice[1] inviting comment on the proposal to apply to U.S. facilities-based private line carriers the same benchmark settlement rate conditions that the Commission proposes to apply to private line resellers.

As described in AT&T's Supplemental Comments, AT&T supports both the NPRM's initiative (¶ 81) to use settlement rates to address one-way by-pass, and the proposal here to apply settlement rate conditions to the provision of switched services over all international private lines, whether those facilities are owned or leased. MCI (pp. 1-2) also supports a requirement for similar conditions for both types of private line facilities. However, as AT&T has emphasized, settlement rates will prevent one-way by-pass only if the ability to provide switched services over both types on international private lines is conditioned on the availability to all U.S. carriers of settlement rates at the lower end of the benchmark ranges. As MCI has previously noted in this proceeding, "even if the foreign operator were to agree to rate-based benchmark settlement rates, . . .the

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[1] Public Notice, IB Docket No. 96-261 (June 4, 1997).

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foreign carrier would have both the motivation and the ability to distort the U.S. termination market on the route and reap excessive profits on the foreign termination, to the competitive disadvantage of U.S. carriers and, ultimately, the detriment of U.S. customers."[2]

Predictably, two U.S. foreign carrier affiliates disagree. GTE, the owner of the incumbent carrier in the Dominican Republic and the holder of a 26 percent interest in the incumbent carrier in Venezuela, characterizes (p. 6) one-way by-pass harm as "speculative" -- ignoring the repeated findings by the Commission that foreign carriers have a strong incentive to avoid paying settlement rates on U.S.-bound traffic, and that the by-pass of inbound settlement rates would cause harm both to U.S. carriers and to U.S. consumers.[3] GTE also ignores the finding of the U.S. Department of Justice that by sending by-pass traffic to an affiliate, a foreign carrier "could raise prices to United States consumers or otherwise harm competition in the United States."[4]

GTE's further suggestion (pp. 5-6) that implementation of the WTO agreement will remedy matters by providing U.S. carrier access to private lines for switched services in foreign markets is also misplaced. As GTE acknowledges (p. 7),

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2 MCI Reply Comments (filed Mar. 30, 1997), at 11.

3 *See, e.g.*, *Regulation of International Accounting Rates*, 7 FCC Rcd. 559, 561 (1990) ("'one-way' resale would be detrimental to the U.S. public interest"); *ACC Global Corp.*, 9 FCC Rcd. 6240, 6242-43 (1994); *Market Entry and Regulation of Foreign-affiliated Entities*, 11 FCC Rcd. 3873, 3924 (1995) ("permitting unilateral evasion of the settlements process would exacerbate the U.S. settlements deficit and ultimately increase the burden on U.S. ratepayers"); *Cable & Wireless, Inc*, 11 FCC Rcd. 1766, 1767 (1996).

4 *U.S. v. MCI Communications Corp. & BT Forty-Eight Co.*, 59 Fed. Reg. 33015, 33020 (1994) (Competitive Impact Statement).

WTO members that have made no WTO market opening commitments "essentially get to 'free-ride' on the benefits of the agreement." Indeed, by AT&T's estimate, approximately four-fifths of the 130 member countries of the WTO would not meet the requirements of the equivalency test on January 1, 1998 on the basis of their WTO commitments - - even assuming that all countries implement their commitments in full. For this reason, a cost-based settlement rate condition is required to prevent one-way by-pass, particularly if the equivalency test is no longer applied to these services, as the Commission has proposed.[5] As AT&T has shown (Comments pp. 37-39 & Reply Comments pp. 49-50), traffic reporting requirements of the type suggested by GTE would be unduly burdensome and would not be effective.

The settlement rate condition would apply uniformly to carriers from all countries and would be consistent with WTO requirements. *See* AT&T Reply Comments at 54. Moreover, by limiting (or, if a cost-based settlement rate is required, by preventing) one-way by-pass by carriers from all countries, the settlement rate condition would not be "unnecessarily broad" (GTE, p. 9). It would simply be more effective than existing safeguards.

ABS-CBN's attempt (pp. 2-5) to derive support from the domestic Universal Service reform proceeding for its claim that interested parties have insufficient information concerning national extension costs is unconvincing. Here, as AT&T has described (Reply Comments, p. 34, n.68) every U.S. international carrier has full details of the in-country distribution of its U.S.-originated traffic, and every foreign carrier receiving

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[5] *See Rules and Policies on Foreign Participation in the U.S. Telecommunications*

(footnote continued on following page)

settlement payments, including ABS-CBN's Philippines affiliate, has that information for the U.S.-originated traffic that it terminates. Interested parties can therefore determine from their data, and from the tariffs listed in the NPRM, whether the Bureau's calculations are "accurate" or whether the proposed national extension costs "understate actual termination costs" (ABS-CBN at 3, n.5). Significantly, ABS-CBN makes no showing of any such deficiency in the International Bureau Study, or that its (or that its foreign affiliate's) data is inadequate to allow it to make such a determination. This is entirely different from the situation in the domestic Universal Service reform proceeding, where the Commission found that neither it nor interested parties had access to certain information.[6] Moreover, in that proceeding, the major reason cited by the Commission for not applying the cost models was "the wide divergence and frequent changes in data provided to us."[7] The Commission also referenced, among other things, "significant unresolved problems with each of these cost models, such as the input values for switching costs, digital loop carrier equipment, depreciation rates, cost of capital, and structure sharing."[8] No such concerns exist with respect to the NPRM benchmark settlement rate proposal.

(footnote continued from previous page)

Market, IB Docket No. 97-142, (released June 4, 1997), ¶ 50.

6 *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, (released May 8, 1997), FCC 97-157, ¶ 242.

7 *Id.*, ¶ 241.

8 *Id.* ¶ 244.

CONCLUSION

For the reasons explained in AT&T's Supplemental Comments and above, AT&T requests the Commission to require that cost-based settlement rates be available to all U.S carriers before authorizing the provision of switched services over owned or leased international private lines on any international route.

Respectfully submitted,

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Dated: July 2, 1997

CERTIFICATE OF SERVICE

I, Helen Elia, do hereby certify that on this 2nd day of July, 1997 a copy of the foregoing "Supplemental Reply Comments" was mailed by U.S. first class mail, postage prepaid, upon the parties on the attached service list:

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