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

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

OPPOSITION
TO AT&T's PETITION FOR RECONSIDERATION

GTE Service Corporation on behalf of its
affiliated telecommunications companies

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Dated: October 24, 1997

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**OPPOSITION
TO AT&T's PETITION FOR RECONSIDERATION**

GTE Service Corporation, on behalf of its affiliated telecommunications companies (collectively "GTE"), and through its attorneys, herein opposes AT&T's Petition for Reconsideration¹ in the above-captioned proceeding. Specifically, GTE Opposes AT&T's suggestion that U.S. market entry should be conditioned on compliance with the "best practice" rate.

I. THE "BEST PRACTICE" RATE IS AN INAPPROPRIATE STANDARD UPON WHICH TO CONDITION U.S. MARKET ENTRY.

The Commission should deny AT&T's petition for reconsideration. Contrary to AT&T's assertion, the provision of facilities-based services to affiliated markets and switched services over international private lines should not be conditioned on application of the "best practice" rate that marks the low end of the benchmark ranges. The Commission has already thoroughly considered and rejected use of the "best practice" rate as a condition on market entry. Moreover, adopting a more onerous best practices standard would only extend the discriminatory harm done to U.S. carriers affiliated with foreign carriers in the *Benchmark Order*.² Some foreign-affiliated

¹ AT&T Corp., Petition for Partial Reconsideration, International Settlement Rates, IB Docket No. 96-261 (filed Sept. 29, 1997) ("*AT&T Petition*").

² International Settlement Rates, IB Docket No. 96-261, *Report and Order*, FCC 97-280 (Aug. 18, 1997) ("*Benchmark Order*").

carriers may already face the prospect of losing existing Section 214 applications on or about April 1, 1998 if they are unable to reduce settlement rates to benchmark levels. Non-affiliated U.S. carriers have up to five years to meet those same benchmark levels, depending on the route in question. Requiring foreign-affiliated U.S. carriers to meet the even more stringent "best practices" rate suggested by AT&T would only decrease the likelihood of obtaining the result the Commission seeks. On many routes, it is highly unlikely that accounting rates can be lowered so precipitously.

A. AT&T Has Offered No Argument That Would Warrant Reevaluation Of The Commission's Previous Rejection Of Conditioning Market Entry On A "Best Practice" Rate.

In the *Benchmark Order*, the Commission addresses what it believes to be the potential market distortions that could result from above-cost settlement rates by conditioning various types of authorizations to provide international services from the United States on compliance with benchmark settlement rates. Specifically, the Commission conditions authorizations to provide facilities-based service from the U.S. to an affiliated market on the U.S. carrier's foreign affiliate offering a settlement rate at or below the relevant benchmark rate. Applications to provide switched services over facilities-based or resold international private lines are conditioned on at least half of the traffic on the route being subject to a settlement rate at or below the relevant benchmark rate. AT&T, however, arguing that these conditions do not go far enough, asks the Commission to condition market entry on compliance with the "best practice" rate that marks the low end of all three benchmark ranges. The Commission previously considered and rejected in the *Benchmark Order* the arguments reiterated now by AT&T in its petition for reconsideration.

As explained below, GTE believes that the Commission erred in denying affiliates of foreign carriers any transition to the benchmark rates. As the Commission has already acknowledged, conditioning market entry on the "best practice" rate is likely to deter new entrants, and, moreover, is unnecessary due to the effectiveness of available enforcement action to thwart harmful conduct. Application of the "best practice" rate as a post-entry punitive enforcement tool is sufficient to limit any conceivable harm to the U.S. market. AT&T's critique of the Commission's reliance on *ex post* enforcement is unsustainable. As AT&T has raised no new issue, nor provided any reasoning to support its desired application of the "best practice" rate that has not already been rejected by the Commission, AT&T's request for reconsideration must fail.

B. Application Of The "Best Practice" Rate Would Exacerbate The Difficulties Faced By Carriers Already Authorized To Provide Facilities-Based Services To An Affiliated Market.

Under the *Benchmark Order*, carriers with existing Section 214 authorities to serve affiliated markets are required to comply with the relevant benchmark settlement rates within 90 days of January 1, 1998. If the U.S. carrier is to continue serving that market, the effect of this condition is to require the foreign carrier to implement an almost immediate reduction of settlement rates to the benchmark rate for all U.S. carriers. Under the ISP, any reduction to one U.S. carrier must be offered to all carriers. By requiring implementation of the benchmark rate on that date, the Commission has denied to those foreign carriers the transition period that the Commission found necessary "[t]o provide an opportunity for all carriers to make appropriate adjustments to enable them to move to more cost-based settlement rates . . ."³ Even though the Commission has recognized that lack of a transition period could result in "undue disruption of

³ *Benchmark Order* ¶ 22.

foreign carriers' operations and their correspondent relations with U.S. carriers,"⁴ and such disruption is "not in the public interest,"⁵ no transition is provided to carriers with foreign affiliates.

GTE believes that the Commission must revise the benchmark conditions applicable to existing holders of Section 214 authority to serve an affiliated market by expressly permitting transition periods comparable to those applicable to non-affiliated market entrants. Absent an explicit finding of a reasonable basis to warrant immediate reduction, such transition periods should be applied to level the playing field among carriers. For example, GTE's provision of facilities-based service from Hawaii to its affiliated markets in Venezuela and the Dominican Republic represents a *de minimus* amount of traffic. Any harm that could possibly result from permitting a three year transition period to reduce settlement rates to benchmarks on these routes would be minuscule compared to the public policy harm and the possible disruption of service that would result from insisting on an immediate reduction to benchmark rates, let alone, a reduction to the "best practice" rate. Moreover, failure to provide a transition ignores the fact that foreign carriers may have conditions within their own countries which restrict or prohibit the immediate reduction of accounting rates to the benchmark levels. Finally, the Commission fails to recognize that imposing such a condition on U.S. carriers with foreign affiliates could have significant anti-competitive effects. If the foreign carrier is unable to agree to an almost immediate reduction to the benchmark, the U.S. carrier may be forced to discontinue serving that market, thereby reducing the number of competitors.

⁴ *Benchmark Order* ¶ 21.

⁵ *Benchmark Order* ¶ 21.

At a minimum, the Commission must reject AT&T's request for application of the "best practice" rate to those carriers who may already face the difficult task of immediately reducing settlement rates to benchmark levels. If adopted, AT&T's proposal that settlement rates be reduced to a "best practice" rate would intensify the current difficulties faced by carriers with existing authority to serve affiliated markets while providing minimal, if any, benefit not achieved from use of the "best practice" rate as a remedy to anticompetitive conduct.

Thus, AT&T's reconsideration request should be denied, as the Commission has already rejected use of the "best practice" rate to condition U.S. market entry. Indeed, any reconsideration of the benchmark conditions by the Commission should instead include the imposition of transition periods for those existing Section 214 certificate holders now required to make immediate reductions to settlement rates to benchmark levels.

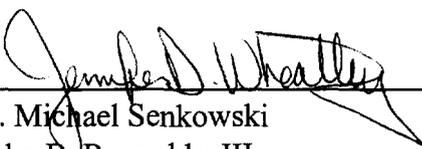
II. CONCLUSION

For the reasons stated herein, the Commission should deny AT&T's request that market entry be conditioned on compliance with the "best practice" rate. If the Commission chooses to reconsider its benchmark conditions, it should adopt transition periods for carriers that currently provide facilities-based service to affiliated markets to reduce their settlement rates to benchmark levels.

Respectfully submitted,

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Dated: October 24, 1997

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I hereby certify that on this 24th day of October, 1997, I caused copies of the foregoing
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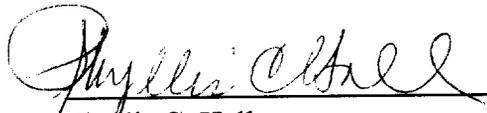
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