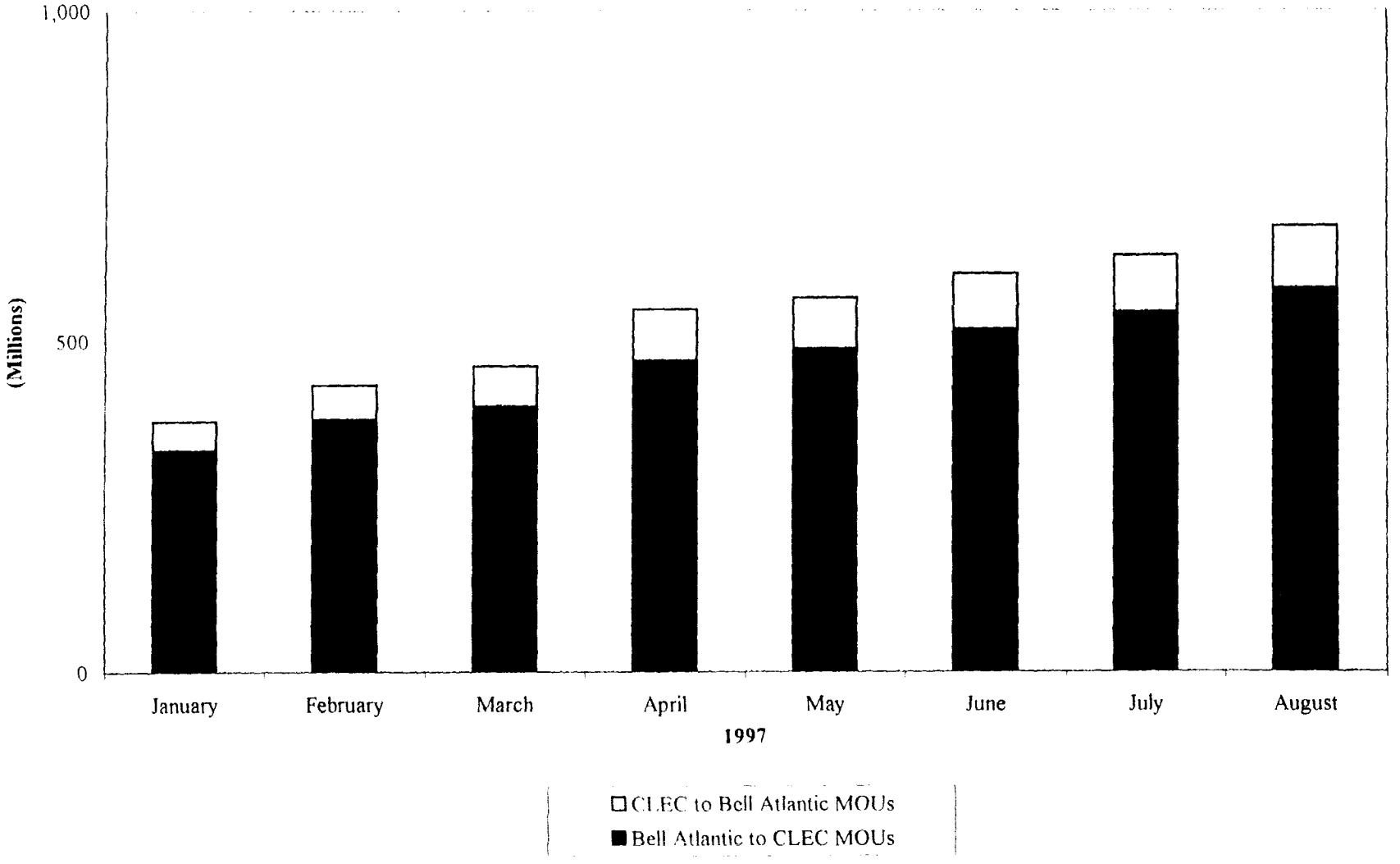
Goldberg Exhibit 6
CLEC Minutes of Use (MOUs)
New York State*



*Analysis of underlying September data has not yet been completed.

IN THE MATTER OF THE SUPPLEMENTAL PETITION OF BELL ATLANTIC-NEW YORK FOR AUTHORITY TO PROVIDE IN-REGION INTERLATA SERVICES IN NEW YORK.

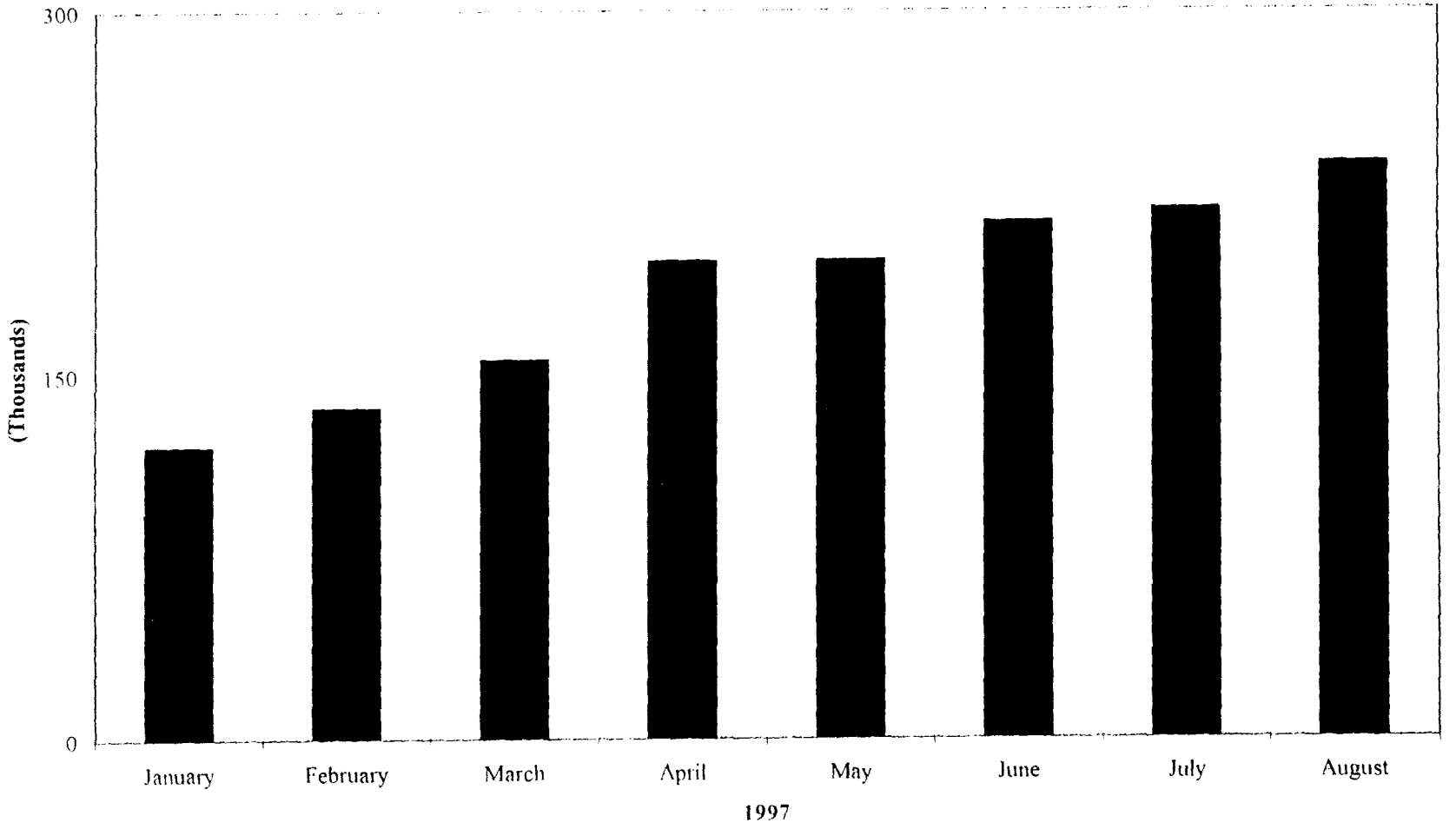
GOLDBERG

EXHIBIT

7

Estimate of CLEC provided Access Lines: NY State

Goldberg Exhibit 7
Estimate of CLEC Provided Access Lines
New York State
(based on MOUs)*



*Analysis of underlying September data has not yet been completed

IN THE MATTER OF THE SUPPLEMENTAL PETITION OF BELL ATLANTIC-NEW YORK FOR AUTHORITY TO PROVIDE IN-REGION INTERLATA SERVICES IN NEW YORK.

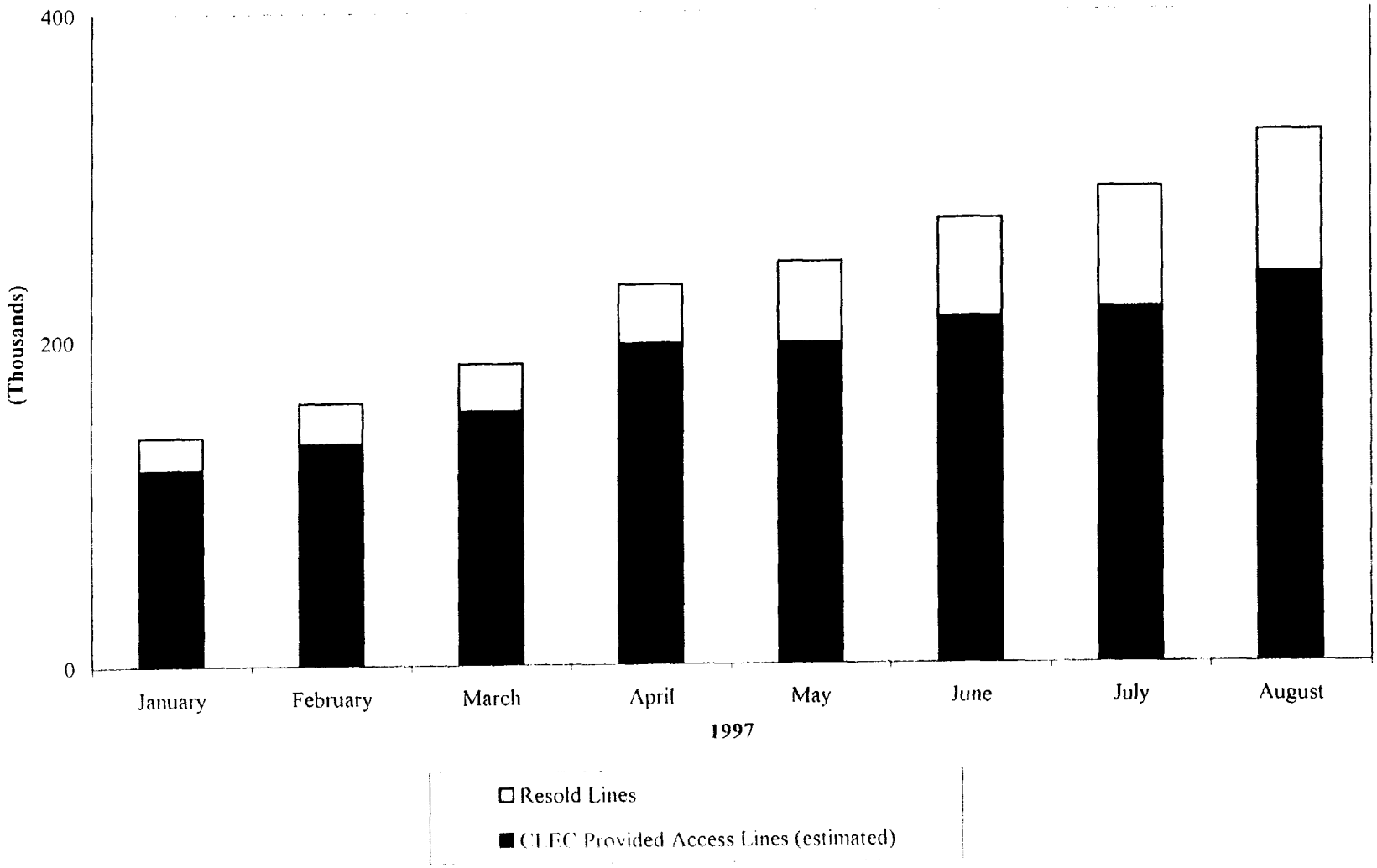
GOLDBERG

EXHIBIT

8

Resold and CLEC provided Access Lines: NY State

Goldberg Exhibit 8
Resold and CLEC Provided Access Lines
New York State*



* Analysis of underlying September data has not yet been completed

IN THE MATTER OF THE SUPPLEMENTAL PETITION OF BELL ATLANTIC-NEW YORK FOR AUTHORITY TO PROVIDE IN-REGION INTERLATA SERVICES IN NEW YORK.

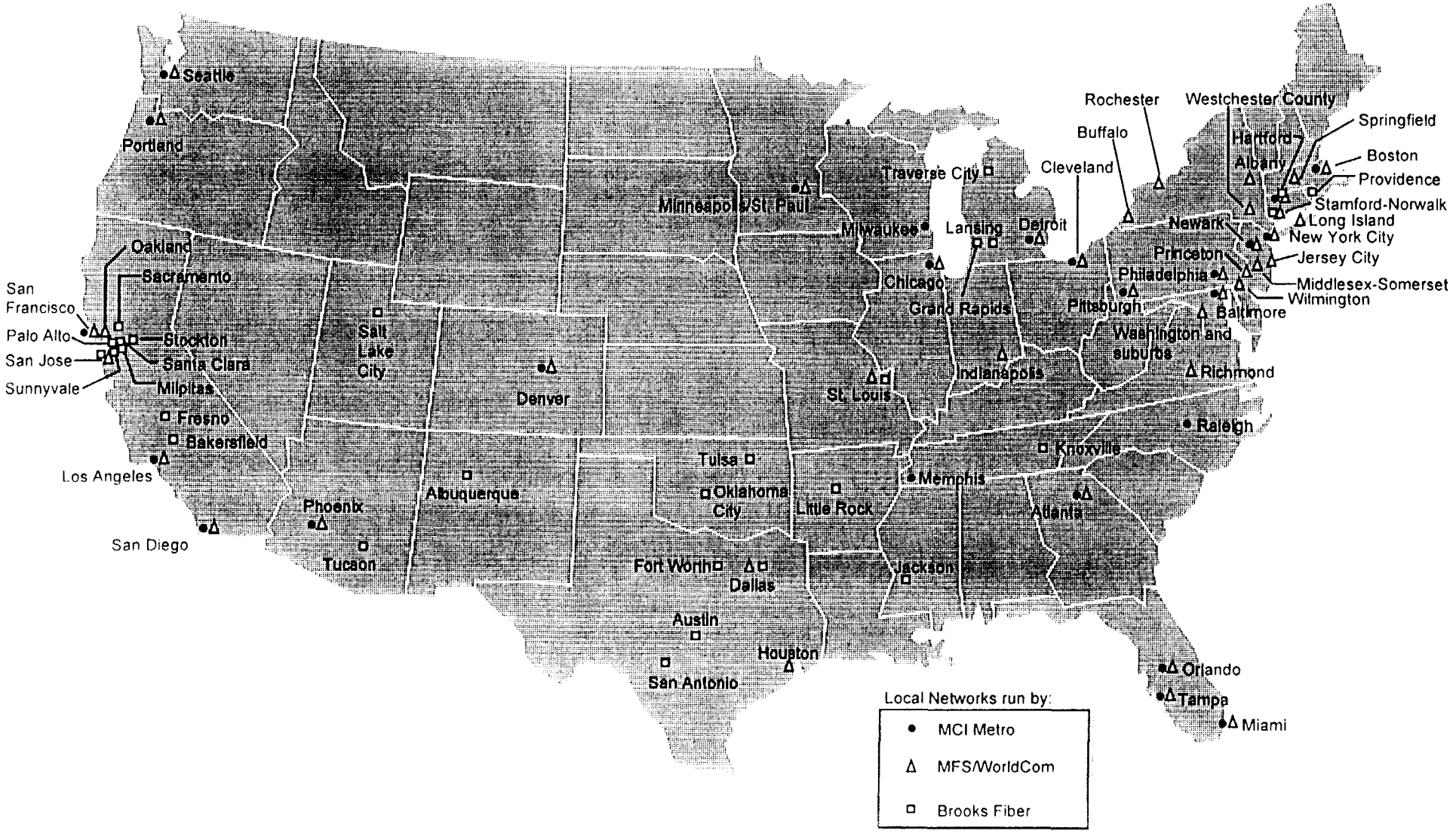
GOLDBERG

EXHIBIT

9

MFS/Worldcom, Brooks Fiber, & MCI Local Networks

Goldberg Exhibit 9.
MFS/WorldCom, Brooks Fiber, and MCI Local Networks



Source: Seth Schiesel, *WorldCom Fancies Itself Muffler of the Local Bells*, N. Y. Times, Oct. 13, 1997, at D5 ("Think Globally, Act Locally" graphic)

authorized under a Declaration of Conformity pursuant to Section 15.101(c)(4) of this part and a compliance information statement, as described in Section 2.1077(b) of this chapter, is supplied with the system. Marketed systems shall also comply with the labelling requirements in Section 15.19 of this part and must be supplied with the information required under Sections 15.21, 15.27 and 15.105 of this part.

(5) The assembler of a personal computer system may be required to test the system and/or make necessary modifications if a system is found to cause harmful interference or to be noncompliant with the appropriate standards in the configuration in which it is marketed (see Sections 2.909, 15.1, 15.27(d) and 15.101(e) of this Chapter).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)
Motion of AT&T Corp. to be	)
Declared Non-Dominant for	)
International Service	)

ORDER

Adopted: May 9, 1996 **Released:** May 14, 1996

By the Commission: Commissioners Quello and Chong issuing separate statements.

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I. Introduction

1. We find that AT&T no longer is a dominant carrier in the market for international services. Although the dominant carrier safeguards remain valuable when dealing with carriers that have the individual power to control prices or exclude competition, whether in the U.S. or foreign markets, we conclude that AT&T no longer possesses individual market power in the U.S. international services market. Accordingly, we find that AT&T satisfies our test for non-dominant status in this market, and we therefore relieve AT&T of the regulatory burdens imposed by our dominance standard. This action will significantly advance international competition, a primary goal of Commission policy.

2. In addition, AT&T is the only facilities-based carrier on four small, international routes. These routes individually and collectively constitute a *de minimis* share of total U.S. billed minutes.[1] We do not here determine whether AT&T is non-dominant on these four routes, because we conclude below that we should forbear from applying dominant carrier regulation as to these four *de minimis* routes.[2] This decision reflects, among other things, our conclusion that the economic costs of imposing dominant carrier regulation on these *de minimis* routes exceed the public interest benefits. Accordingly, we shall forbear from imposing dominant carrier regulation on these routes under our new authority in the Telecommunications Act of 1996.[3]

3. In 1985, AT&T controlled the overwhelming share of the IMTS market, had exclusive operating agreements with the carriers in most major foreign markets, and had few rivals in the provision of essential U.S. international submarine cable facilities. At the time, the Commission had ample reason to conclude that AT&T exercised market power and should be regulated as dominant for its provision of IMTS.

4. Over the past decade, competitive conditions have changed significantly. AT&T's competitors now hold operating agreements and international facilities for all major markets. They share ownership of all major international facilities with AT&T, and the new, state-of-the-art submarine cable facilities have reserve capacity available to all owners that

[1] Federal Communications Commission 1994 Section 43.61 International Telecommunications Data, Table E.1, at 2-5 (rel. Jan. 19, 1996) (*"1994 Section 43.61 International Data"*) (AT&T holds a 100 percent market share in the provision of international message telephone service (IMTS) in four locations: Madagascar, Western Sahara, Chagos Archipelago, and Wallis and Futuna).

[2] *See infra* Section III. C.

[3] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (*"1996 Act"*).

exceeds AT&T's own capacity on the facilities. Moreover, there are three facilities-based networks for domestic long distance services which compete with AT&T's network to link international facilities to U.S. customers.[4] This domestic competition prevents AT&T from leveraging control over its domestic network to shut out competition on the international segment. In short, it is no longer plausible to view AT&T as controlling bottleneck facilities.

5. Changes in market share and consumer behavior also reflect significant shifts in the market structure. AT&T's share of the overall IMTS market has declined to less than 60 percent, and is now below 70 percent in all the top 50 international markets. Demand elasticity is substantial, as demonstrated by great volatility in household choice of international carriers in response to specialized pricing and marketing plans. These developments collectively reveal a market in which we believe AT&T cannot unilaterally exercise market power.

6. In addition, the *1996 Act* promises to introduce a new wave of large, well-financed competitors with significant customer bases to the U.S. international market.[5] Similarly, the *Foreign Carrier Entry Order*[6] has reduced barriers to foreign entry by firms eager to compete in the U.S. market for IMTS, as the recent investment by France Telecom and Deutsche Telekom in Sprint demonstrates.[7] The rise in number of resellers and callback operators has also created new pricing and entry options that have had a marked impact on the market. Fax services over the Internet may also result in new pricing and entry options, especially for the Asia Pacific market where fax traffic rivals voice telephony in volume.

7. Applying international dominant carrier regulatory safeguards to AT&T was necessary in 1985. These safeguards allowed the Commission to monitor possible anticompetitive pricing behavior stemming from AT&T's market power in the provision of international services. They also enabled the Commission to monitor changes in AT&T's circuit capacity which could indicate anticompetitive activity.

8. Today, however, applying the dominant carrier paradigm to AT&T does little to bolster international service competition because AT&T does not control bottleneck facilities (including operating agreements), and faces substantial rivalry by well-established

[4] The three facilities-based carriers are MCI, Sprint, and WorldCom.

[5] We expect that when the Regional Bell Operating Companies enter the international service market, they will be well-positioned to obtain substantial shares in that market.

[6] *See* Market Entry and Regulation of Foreign-affiliated Entities, *Report and Order*, IB Docket No. 95-22, 11 FCC Rcd 3873 (1995) (*"Foreign Carrier Entry Order"*), *recon. pending* (*"Foreign Carrier Entry Pending Reconsideration"*).

[7] *See* Sprint Corporation Petition for Declaratory Ruling Concerning Section 310(b)(4) and (d) and the Public Interest Requirements of the Communications Act of 1934, as amended, Declaratory Ruling and Order, 11 FCC Rcd 1850 (1996) (*"Sprint Decision"*).

competitors. In fact, aspects of dominant carrier regulation may hinder competition under current market conditions if applied to a carrier that no longer has market power. In particular, the longer tariff-filing notice periods applicable to AT&T as a dominant carrier subject to price cap regulation may have potential anticompetitive consequences once AT&T is no longer dominant.[8] The longer notice periods for AT&T, still by far the largest carrier in this relatively concentrated market, can serve as a price signaling device that facilitates other carriers' ability to price just on par or slightly below the AT&T levels. It also means that AT&T cannot react as quickly and certainly as its competitors in making bids to business customers. In essence, the disparity in notice periods slows rivalry in the market because the bidding for significant business customers is a major competitive stimulus in the market. Once AT&T's competitors have the facilities, operating agreements, and market credibility necessary to compete for large business customers, as they now do, then restricting the competitiveness of the largest carrier only reduces competitive performance in the market.

9. With the exception of the four *de minimis* routes for which we will forbear from imposing dominant carrier regulation, we find that AT&T satisfies our test for non-dominant status for all international routes and, therefore, relieve AT&T of the regulatory burdens imposed by the dominance standard. We nevertheless remain concerned that the market for international services continues to be marred by generic structural problems unrelated to AT&T's market power. For example, in our *Foreign Carrier Entry Order* and our *Accounting Rate Policy Statement*, we stated that the biggest obstacle to competition in IMTS is monopoly or limited competition in foreign countries.[9] Freedom to enter foreign markets to provide international services to the United States, and deliver and price them according to competitive conditions, would decisively improve the performance of the IMTS market.

10. While our regulatory initiatives, U.S. Government international trade policy, and technological innovation work concurrently to open foreign markets, three structural problems in the world market require attention during the transition to more robust competition. First, despite the progress achieved since 1985, we remain concerned about the unavailability of operating agreements for international services to a large number of U.S. carriers. The reluctance of foreign carriers to grant operating agreements is especially problematic because it means that new entrants in the U.S. market for IMTS cannot claim the benefits of profitable proportionate return traffic. Foreign market liberalization is critical to expanding the availability of operating agreements to a broader spectrum of U.S. carriers.

11. In addition, a long history of relationships among monopoly carriers created arrangements for the supply and maintenance of international cables that bundled access to cables and support services (such as repair and restoration) in ways not fully compatible with

[8] *See infra* Sections II. B. and C (outlining tariff-filing requirements).

[9] Policy Statement on International Accounting Rate Reform, 11 FCC Rcd 3146 (1996) ("*Accounting Rate Policy Statement*").

competition. The entry of more U.S. carriers has not fully reversed this legacy. The U.S. carriers' partners in international facilities are largely monopolists, and these monopolists are most comfortable with traditional practices which tend to favor incumbent carriers, including AT&T.

12. Second, global alliances for supplying and marketing international services, including both equity and non-equity alliances, may exacerbate market structure problems in some cases. We announced a framework for addressing concerns about alliances in the *Foreign Carrier Entry Order*.

13. Third, IMTS exhibits poor price performance compared to the domestic long distance market. Again, this is a consequence of the international market's structure. The international accounting rate system is particularly a problem in this respect, as high accounting rates contribute to higher IMTS prices. Moreover, the factors described above which limit facilities-based entry provide U.S. carriers with the ability to charge IMTS prices which are far more profitable than domestic rates.

14. We believe that the best long-term solution for these structural problems is to open competition on both ends of international routes on a facilities and resale basis. This would provide competing carriers with operating agreements and the option of claiming proportionate return traffic (or even self-correspondence[10] in some cases). It would also create a more favorable environment for carriers to experiment with more efficient and competitive supply of international cable facilities.

15. But vigorous competition is not yet here, and we will likely see an imperfectly competitive IMTS market for at least the short-term future. AT&T has made voluntary commitments which recognize these market structure problems.[11] While AT&T's commitments cannot alone resolve the market's imperfections, we welcome these efforts as a first step.

16. AT&T's voluntary commitments will help improve the maintenance, restoration, provisioning and access to cable facilities, assist the Commission's efforts to monitor the competitive impact of AT&T's global alliances, and help ensure nondiscriminatory accounting rate arrangements. Further, AT&T has agreed to certain pricing

[10] "Self-correspondence" refers to the transfer of traffic by a carrier from its facilities in one country to its facilities in another country.

[11] AT&T May 2, 1996 *ex parte* from R. Gerard Salemme, Vice President – Government Affairs, to Scott B. Harris, Chief, International Services Bureau, FCC (AT&T Commitment Letter); *see infra* Section III; *see also infra* Attachment A.

commitments which will protect consumers against increases in residential IMTS rates for a three-year transition period.[12]

17. Our determination that AT&T is no longer dominant in the provision of IMTS and multi-purpose earth station services is not based on the voluntary commitments offered by AT&T in its May 2, 1996 *ex parte* letter. Rather, it is based on the economic information in this record regarding AT&T's position in the relevant markets. Many of the concerns raised by the parties to this proceeding relate to the market structure problems we discussed above and not to AT&T's market power. We welcome AT&T's voluntary commitments as its effort to help correct these market imperfections. We therefore accept AT&T's voluntary commitments and order AT&T to comply with such commitments.

18. Our declaration here that AT&T is non-dominant in the provision of IMTS and multi-purpose earth station services will not remove AT&T from regulation. Like other international non-dominant carriers, AT&T will still be subject to regulation under Title II of the Communications Act ("Act"). Specifically, non-dominant carriers are required to offer foreign communications services under rates, terms and conditions that are just, reasonable and not unduly discriminatory,[13] and non-dominant international carriers are subject to the Commission's complaint process.[14]

II. Background

A. Competitive Carrier Proceeding

19. In 1980, in its *First Report & Order* in *Competitive Carrier*, the Commission devised the dominant/non-dominant regulatory scheme for Title II rate and entry regulation.[15] The Commission defined a dominant carrier as one that "possesses market power" and noted that control of bottleneck facilities was "*prima facia* evidence of market power requiring detailed regulatory scrutiny."[16] The Commission also determined that, if a common carrier

[12] AT&T Commitment Letter; *see also infra* Attachment A (describing in detail these and other voluntary commitments made by AT&T).

[13] Sections 201 and 202 of the Act, 47 U.S.C. §§ 201 and 202.

[14] Sections 206-209 of the Act, 47 U.S.C. §§ 206-209.

[15] *See* Policy & Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, CC Docket No. 79-252 ("*Competitive Carrier*"), *First Report & Order*, 85 FCC 2d 1 (1980); *Second Report & Order*, 91 FCC 2d 59 (1982); *recon.* 93 FCC 2d 54 (1983); *Third Report & Order*, 48 Fed. Reg. 46,791 (1983); *Fourth Report & Order*, 95 FCC 2d 554 (1983), *vacated*, AT&T v. FCC, 978 F.2d 727 (1992), *cert. denied*, MCI Telecommunications Corp. v. AT&T, 113 S.Ct. 3020 (1993); *Fifth Report & Order*, 98 FCC 2d 1191 (1984); *Sixth Report & Order*, 99 FCC 2d 1020 (1985), *rev'd*, MCI Telecommunications Corp. v. FCC, 765 F.2d 1186 (D.C. Cir. 1985).

[16] *Competitive Carrier, First Report and Order* at ¶¶ 57-58.

was determined to be "non-dominant," Title II regulatory requirements would be "streamlined." Specifically, tariffs filed by non-dominant carriers would be presumed lawful and would be subject to reduced notice periods.[17]

20. In 1995, the Commission determined that AT&T lacked market power in the domestic, interstate, interexchange market, and accordingly granted AT&T's motion for reclassification as a non-dominant carrier.[18] In the *AT&T Reclassification Order*, the Commission deferred AT&T's request to be reclassified as non-dominant in its provision of all international services, including IMTS, recognizing that the international market warranted a separate examination.[19]

21. The Commission first applied its dominant/non-dominant regulatory scheme to U.S. international carriers in 1985. In *International Competitive Carrier*,[20] the Commission determined that, for international service, demand and supply elasticity revealed distinct product markets, IMTS and non-IMTS, and that every destination country constituted a separate geographic market.[21] The Commission also treated space segment and multi-purpose earth station services as separate products.[22] The Commission concluded that (a) AT&T was dominant in the provision of IMTS and (b) all other IMTS providers (*e.g.*, Sprint and MCI), except the non-contiguous domestic carriers, were not dominant.[23] In addition, the

[17] *Id.* at ¶¶ 92 and 102.

[18] *See* Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, Docket No. 95-427, 11 FCC Rcd 3271, ¶¶ 163-168 (1995) ("*AT&T Reclassification Order*"). The Commission found that, while AT&T retained residual market power for some *de minimis* services, AT&T lacked market power in the overall market for domestic, interstate, interexchange services and should no longer be subject to dominant carrier regulation for those services in that market. It found that continuing such regulation harmed market performance by stifling innovation and imposing compliance costs on AT&T. *Id.* at ¶ 27.

[19] *Id.* at ¶ 2. AT&T's original September 22, 1993, motion asked that it be reclassified as non-dominant for the provision of interexchange services, including international services. On April 24, 1995, AT&T filed an *ex parte* presentation that argued, *inter alia*, that it should be declared non-dominant for IMTS. AT&T's motion and *ex parte* were put on public notice for public comment. While the focus of parties opposing AT&T's motion or *ex parte* presentation was primarily on domestic issues, the following parties addressed international issues: Bell Atlantic, BellSouth Corporation, Pacific Telesis Group, Competitive Telecommunications Association, Eastern Telecom Corporation, Sprint, the Telecommunications Resellers Association, and Wiltel.

[20] *See* International Competitive Carrier Policies, *Report & Order*, 102 FCC 2d 812 (1985) ("*International Competitive Carrier*"), *recon. denied*, 60 RR 2d 1435 (1986).

[21] *International Competitive Carrier* at ¶ 37.

[22] *Id.* at ¶ 22, n.20.

[23] *Id.* at ¶ 47 (identifying "Hawaiian Telephone for Hawaii; Alascom for Alaska; All American Cable & Radio for Puerto Rico; ITT-CIVI for the U.S. Virgin Islands and RCA Globcom for Guam" as the carriers providing international service for non-contiguous domestic points).

Commission concluded that no carrier -- including AT&T -- was dominant in the provision of non-IMTS service for any geographic market.[24] In addition, the Commission found all foreign-owned carriers to be dominant for all services to all countries.[25]

22. The Commission also concluded that COMSAT was dominant in the provision of multi-purpose earth station service.[26] COMSAT subsequently sold its interest in multi-purpose earth stations to AT&T. In 1987, the Commission found AT&T to be dominant in the provision of multi-purpose earth station services.[27]

B. *International Services and Foreign Carrier Entry Orders*

23. In 1992, the Commission modified its 1985 policy that treated U.S. foreign-owned common carriers as dominant in their provision of all international services to all foreign markets. Specifically, the Commission adopted a framework for regulating U.S. international carriers as dominant on routes where an affiliated foreign carrier has the ability to discriminate in favor of its U.S. affiliate through control of bottleneck services or facilities in the destination market.[28] The Commission stated that this change in policy regarding the regulatory classification of U.S. carriers with foreign carrier affiliations would apply to all U.S. international carriers, whether U.S. or foreign-owned.[29] The Commission did not exempt any carriers (including AT&T) from this policy to the extent they have foreign affiliations.

[24] *Id.* at ¶¶ 51-56; *see also id.* at n.6 ("Examples of non-IMTS services are telex, telegram . . . private line, high and low speed data, [and] videoconferencing").

[25] *Id.* at ¶¶ 72-73, and 84.

[26] *Id.* at ¶ 66.

[27] American Telephone and Telegraph Company, Comsat International Communications, Inc., Western Union International, Inc., Global Communications, Inc., 2 FCC Rcd 6635, 6639 (Com. Car. Bur. 1987) (*"ESOC Order"*), *on recon.*, 4 FCC Rcd 2327 (1989).

[28] Regulation of International Common Carrier Services, 7 FCC Rcd 7331, 7334 (1992) (*"International Services"*). Section 63.10(a) of the Commission's rules provides that: (1) carriers having no affiliation with a foreign carrier in the destination market are presumptively non-dominant for that route; (2) carriers affiliated with a foreign carrier that is a monopoly in the destination market are presumptively dominant for that route; (3) carriers affiliated with a foreign carrier that is not a monopoly on that route receive closer scrutiny by the Commission; and (4) carriers that serve an affiliated destination market solely through the resale of an unaffiliated U.S. facilities-based carrier's switched services are presumptively nondominant for that route.

[29] *International Services* at ¶ 4; *see also Foreign Carrier Market Entry* at ¶ 245 (stating that, "[w]hether any U.S. carrier is to be regulated as dominant or non-dominant is in part based on whether that carrier is 'affiliated' with a foreign carrier. . . .").

At the same time, this policy did not change AT&T's dominant carrier status for the provision of certain international services under *International Competitive Carrier*.[30]

24. In 1995, the Commission reaffirmed the basic framework for classifying and regulating a carrier as dominant based upon its foreign carrier affiliations as set forth in *International Services*.[31] The Commission also concluded in the *Foreign Carrier Entry Order* that dominant carrier regulation should apply to U.S. carriers in their provision of international basic service on particular routes where a co-marketing or other arrangement with a foreign carrier with market power presents a substantial risk of anticompetitive effects in the U.S. international services market.[32] In addition, the Commission modified its dominant carrier regulations for foreign-affiliated carriers. These changes included reducing the period for filing tariffs from 45 to 14 days and removing the requirement to file cost support.[33]

25. On February 28, 1996, AT&T filed an affiliation statement in accordance with Section 63.11 of the Commission's rules and our recent *Foreign Carrier Entry Order*.[34] AT&T stated that it had previously notified the Commission of its controlling interest in its U.K. affiliate, AT&T Communications (U.K.) Ltd. AT&T certified that it also has affiliations with Unitel Communications Holdings, Inc. in Canada and Subic Telecommunications Company, Inc. in the Philippines. On March 22, 1996, the AT&T notification was placed on public notice.[35] No comments were received. We address AT&T's regulatory status on routes where it has foreign carrier affiliates in Section III. B. 6., *infra*.

[30] *International Services* at n.2 (stating that "[t]his change in policy does not modify the dominant carrier status, for the provision of certain international services, of AT&T, Comsat, or U.S. carriers that provide international service for non-contiguous domestic points").

[31] *Foreign Carrier Entry Order* at ¶ 246.

[32] *Id.* at ¶¶ 245-55.

[33] *Id.* at ¶ 260. We note that the Commission recently streamlined the tariff requirements for non-dominant international resale and facilities-based carriers by permitting them to file their international rates on one-days' notice. *See* Streamlining the International Section 214 Authorization Process and Tariff Requirements, IB Docket No. 95-118, FCC 96-79, ¶ 77, 80-81 (rel. Mar. 13, 1996) (*"Streamlining Order"*); *see also International Competitive Carrier* at ¶¶ 76-77 (international tariffs filed by carriers regulated as non-dominant do not require economic or cost support and are presumed lawful).

[34] 47 C.F.R. § 63.11; *see also Foreign Carrier Entry Order* at ¶¶ 4, 98. The *Foreign Carrier Entry Order* established February 28, 1996 as the date by which U.S. international carriers were required to notify the Commission of their "affiliations" with foreign carriers under the new definition of that term adopted in the order.

[35] Foreign Carrier Affiliation Notification, Public Notice Report No. I-8162, Mimeo No. 62099 (Mar. 22, 1996).

C. Current Regulation of AT&T's International Services

26. As a dominant carrier, AT&T is subject to a 45-day notice period in its provision of multi-purpose earth station services and price cap regulation (with constraints on pricing flexibility and long notice periods for tariff changes) in its provision of residential IMTS. AT&T's international services that have been found subject to substantial competition and removed from price caps (including commercial IMTS) are subject to 14-day streamlined tariff notice requirements. Moreover, AT&T has been required to obtain prior Commission approval to add capacity on authorized routes and to convey submarine cable capacity,[36] and must obtain our prior approval before discontinuing, reducing or impairing service on a particular route.[37]

27. In 1989, the Commission adopted price cap regulation for most of AT&T's telecommunications services, including most international services.[38] AT&T services subject to price caps were divided into three separate baskets, with a price cap index (PCI) imposing a price ceiling for the services in each basket subject to an actual price index (API) that represents a weighted average of the actual prices of the services within the basket.[39] Under price caps, AT&T files tariffs proposing: (1) rate changes that do not cause the API to exceed the PCI on 14 days' notice; (2) changes in tariff regulations on 35 days' notice; (3) introduction of a new service, a change in rate structure, annual adjustments to its PCI and API values on 45 days' notice; and (4) rates that would cause the API to exceed the PCI on 120 days' notice.[40]

28. Since 1989, the Commission has sequentially excluded most of AT&T's services from price cap regulation as individual product market segments became more

[36] *Streamlining Order* at ¶¶ 44-45. In our recent *Streamlining Order*, we replaced the prior approval requirement for conveyance of cable capacity with a notification requirement. We also eliminated prior approval requirements to add, modify, or delete circuits on authorized routes as they apply to carriers such as AT&T that are regulated as dominant for reasons other than having foreign affiliations. *Id.* at ¶ 13.

[37] *Id.* at ¶ 50.

[38] Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, *Report and Order and Second Further Notice of Proposed Rulemaking*, 4 FCC Rcd 2873 (1989) ("*AT&T Price Cap Order*"), Erratum, 4 FCC Rcd 3379 (1989), *Memorandum Opinion and Order on Reconsideration*, 6 FCC Rcd 665 (1991) ("*AT&T Price Cap Reconsideration Order*"), *remanded sub nom.*, American Telephone and Telegraph Co. v. FCC, 974 F.2d 1351, 1353 (D.C. Cir. 1992).

[39] *AT&T Price Cap Order* at 3051-65; *AT&T Price Cap Reconsideration Order* at 665.

[40] *AT&T Price Cap Reconsideration Order* at 666-681; *see also AT&T Price Cap Order* at 3095-3111; Sections 61.43, 61.49, and 61.58 of the Commission's rules, 47 C.F.R. §§ 61.43, 61.49, and 61.58.

competitive.[41] Today, only AT&T's residential IMTS remains subject to price cap regulation and its attendant tariffing requirements, including the possibility of 14, 35, 45, and 120-day notice periods.[42] In addition, AT&T is classified as dominant and is subject to dominant carrier tariffing requirements and 45 days' notice for its provision of multi-purpose earth station services.[43]

D. Pleadings

29. On November 8, 1995, AT&T filed an *ex parte* letter seeking to be declared non-dominant for international markets based on record evidence showing that AT&T lacks market power under the dominance standard established by the Commission.[44] On November 21, 1995, AT&T's *ex parte* letter was put on public notice.[45] Twelve commenters oppose AT&T's motion.[46] Parties opposing AT&T's motion assert that AT&T uses its size and historical position to obtain preferential international arrangements, retains a large international market share, has failed to submit meaningful data on a country-by-country

[41] Initially, the Commission excluded a number of AT&T's services from price cap regulation, including services provided by AT&T under Tariff 12, and made these excluded services subject to 14 days' notice under streamlined tariff regulation. *AT&T Price Cap Order* at 3034. Subsequently, the Commission found that all of AT&T business services in Basket 3 (except for analog private line), 800 services in Basket 2 (except for 800 directory assistance) and commercial services in Basket 1 were subject to substantial competition, removed these services from price cap regulation, and permitted AT&T to file tariffs for these services on a 14-day streamlined basis. Competition in the Interstate Interexchange Marketplace, CC Docket No. 90-132 ("*Interexchange Competition*"), *Report and Order*, 6 FCC Rcd 5880, 5881, 5894 (1991) ("*First Interexchange Competition Order*"), *recon.*, 6 FCC Rcd 7569 (1991), *further recon.*, 7 FCC Rcd 2677 (1992), *Second Report and Order*, 8 FCC Rcd 3668, 3671 (1993) ("*Second Interexchange Competition Order*"), *recon.*, 8 FCC Rcd 5046 (1993); Revisions to Price Cap Rules for AT&T Corp., 10 FCC Rcd 3009, 3011, 3014, 3018-19 (1995) ("*Commercial Services Order*"). Finally, as a result of *AT&T Reclassification Order*. AT&T's domestic service offerings are not subject to price cap regulation, may be filed on one day's notice without cost support, and are presumed lawful. *AT&T Reclassification Order* at ¶ 12.

[42] *See AT&T Reclassification Order* at ¶ 164.

[43] *ESOC Order* at 6639 and 6641, n.48.

[44] AT&T November 8, 1995 *ex parte* letter from R. Gerard Salemme, Vice President-Government Affairs, to Scott B. Harris, Chief, International Bureau, FCC ("AT&T November 8, 1995 *Ex Parte* Letter").

[45] Public Notice, 11 FCC Rcd 1163 (1996). On November 30, 1995, the Commission granted a request for an extension of time for filing comments (DA 95-2412). On January 18, 1996, the Commission extended the period of time for filing reply comments. Public Notice, 11 FCC Rcd 1820 (1996).

[46] The twelve include BT North America, Communication Telesystems International, Competitive Telecommunications Association, Esprit Telecom, Graphnet, Inc., MCI, MFS International, Inc., Pacific Gateway Exchange, Sprint, Telecommunications Resellers Association, Transworld Communications, and WorldCom, Inc. On January 29, 1996, Graphnet filed a motion to accept an additional pleading to update the record concerning a formal complaint against AT&T in File No. E-94-41. On February 8, 1996, Pacific Gateway Exchange filed *ex parte* comments.

basis, and has provided no information to counter data that international collection rates are rising. The SDN Users Association, Inc., Pershing,[47] and the Kentucky Public Service Commission support AT&T's motion. Parties supporting AT&T's motion assert that reclassifying AT&T as non-dominant in the international market would place consumers in a strong position to maximize their benefit from competitive providers.

III. Discussion

A. Definition of Dominant Carrier

30. Under the Commission's rules, a "dominant carrier" is defined as "any carrier found by the Commission to have market power (*i.e.*, the power to control prices)."[48] A non-dominant carrier is defined as a carrier not found to be dominant.[49] Under *International Competitive Carrier*, the Commission concluded that AT&T was dominant in the provision of IMTS on all U.S. international routes.[50] Moreover, after AT&T's acquisition of COMSAT's multi-purpose earth stations, the Commission found AT&T dominant in the provision of those services on all U.S. international routes, as well.[51] Accordingly, in order to determine whether AT&T should now be classified as a non-dominant carrier for these international services, we must assess whether AT&T has market power: (1) within either the IMTS or the multi-purpose earth station markets; and (2) within any geographic market -- that is, between the United States and any international location.

31. The Commission's 1985 *International Competitive Carrier* decision held that each country is a separate geographic market based "primarily on the need for a carrier to obtain an operating agreement prior to providing service to a given country."[52] Rather than analyze separately the competitiveness of each U.S. international route, however, the Commission considered AT&T's market position in the most competitive international market at that time -- the United Kingdom.[53] The Commission found that, at the time, AT&T's second largest IMTS competitor on the U.S.-U.K. route (MCI International) had about five

[47] Pershing is a division of Donaldson, Lufkin & Jenrette Securities Corporation.

[48] 47 C.F.R. § 61.3(o).

[49] 47 C.F.R. § 61.3(t).

[50] In *International Competitive Carrier*, the Commission followed the standard set forth in the domestic *Competitive Carrier* proceedings to define dominance -- that is, it would consider a firm to be dominant if that firm had the "power to control prices or exclude competition." *International Competitive Carrier* at ¶ 22.

[51] *ESOC Order* at 6639.

[52] *International Competitive Carrier* at ¶ 37.

[53] *Id.* at ¶¶ 44-46.

percent of the originating traffic and a negligible share of the terminating traffic. The Commission also estimated "that in three markets served by several IMTS suppliers, the U.K., Belgium and Australia, AT&T had IMTS market shares of approximately 91 percent, 95 percent, and 93 percent, respectively."[54] Although noting that market share alone is not determinative of market power, the Commission stated that "it appears to be a clear indication of dominance for AT&T's provision of IMTS."[55] Taking a more global view, the Commission also found that AT&T was still the only provider of IMTS between the U.S. mainland and the majority of foreign countries, and that this suggested AT&T did not face effective competition and was dominant worldwide.[56]

32. With the possible exception of routes where AT&T is the sole facilities-based provider or where it corresponds with affiliated or allied carriers and could potentially derive market power from those relationships,[57] the record in this proceeding indicates that today AT&T's market position does not vary substantially from one geographic market to the next. No party has submitted persuasive evidence that the market attributes of each U.S. international route are so different that we are precluded from using AT&T's market position on a worldwide basis as a surrogate for a route-by-route analysis of market share, demand elasticity, supply elasticity, AT&T size and resources, and pricing for each one of the more than two hundred international locations.

33. Except for the four routes where AT&T is the exclusive facilities-based provider,[58] we do not believe that differences in AT&T's market shares among countries require us to conduct a route-specific market analysis. In 1994, AT&T's overall market share for all U.S.- and foreign-billed traffic was 59 percent.[59] AT&T has less than 70 percent market share to the top fifty countries, which account for over 90 percent of U.S. billed

[54] *Id.* at n 43.

[55] *Id.* at ¶ 44.

[56] *Id.* at ¶ 45 (noting that "there is clearly some competitive marketing advantage to be gained if a carrier has the ability to serve all or most foreign points because a subscriber is more likely to take service from a carrier with the more comprehensive coverage").

[57] Regulatory issues relating to AT&T's World Partners and proposed Uniworld alliances are discussed at Section III. B. 4 *infra*. Issues relating to AT&T's foreign carrier affiliations are discussed at Section III. B. 6. *infra*. *See also supra* ¶ 25.

[58] *See infra* Section III. B. 1.

[59] *1994 Section 43.61 International Data*, Table E.1, at 6.

minutes.[60] AT&T has a market share above 70 percent for only 45 of the 170 international locations, and these account for less than 10 percent of U.S. billed minutes.[61]

34. Moreover, while market shares are a useful starting point for any competitive analysis, market shares are not the only factors used in determining a firm's market power. Indeed, as the Commission and antitrust courts have explicitly and continually recognized, market shares, by themselves, are not the sole determining factor of whether a firm possesses market power.[62] Other factors, such as demand and supply elasticities, conditions of entry and other market conditions must be examined to define a relevant market, and determine whether a particular firm can exercise market power in the relevant market.[63]

35. There is nothing in the record for international locations for which AT&T has more than 70 percent market share that suggests there are any critical distinctions for such markets on the basis of other factors, such as demand and supply elasticities, conditions of entry, or AT&T's size and resources. In general, U.S. facilities-based suppliers may enter all markets much more easily than a decade ago, whether through direct operating agreements, indirect transit arrangements, or "switched hubbing" via U.S. international private lines.[64] In fact, nothing in the record suggests that entry barriers vary substantially among geographic markets. Moreover, as mentioned above, the recent enactment of the *1996 Act* promises to bring significant new competition for IMTS service.[65] Thus, we conclude we can analyze

[60] *See infra* Section III. B. 1.

[61] For 18 of these locations, AT&T uses switched transit as its primary means of routing traffic. AT&T Reply, Attachment E.

[62] *See AT&T Reclassification Order* at ¶ 68 and n.185 and citations therein; *International Competitive Carrier* at ¶ 44; *First Interexchange Competition Order* at 5890 (market share alone is not necessarily a reliable measure of competition, particularly in markets with high supply and demand elasticities).

[63] *Id.*

[64] *See infra* Section III. B. 3. a. *(citing* Streamlining the International Section 214 Authorization Process and Tariff Requirements, Notice of Proposed Rulemaking, 10 FCC Rcd 13477, ¶ 7 (1995) *("Streamlining NPRM")* and *Foreign Carrier Entry Order* at ¶¶ 169-70). "Indirect transit" refers to the practice of switching traffic to an intermediate country, for which a U.S. carrier has an operating agreement, to a third country, for which the carrier may have no direct operating agreement. *Streamlining NPRM*, 10 FCC Rcd at ¶ 17. Under such an arrangement, the carrier in the intermediate country delivers the U.S. carrier's traffic to the terminal country under its own operating agreement with the terminal country. Because multiple U.S. carriers now have operating agreements with all but the smallest IMTS markets, U.S. carriers have available to them many more transit options than in 1985.

[65] *See* Connecticut Department of Public Utility Control v. FCC, 78 F.3d 842 (2d Cir. 1996) (*Connecticut PUC v. FCC)* (Commission may consider the effect of imminent future competition on current market conditions to determine whether further regulation is necessary); Petition of the People of the State of California and Public Utilities Commission of the State of California to Retain Regulatory Authority Over Wholesale Cellular Service (continued...)

AT&T's market power on a worldwide basis, and need not generally make specific route-by-route findings. Indeed, the parties to this proceeding largely discuss AT&T's market position in global terms. We reiterate, however, that we will scrutinize individually AT&T's market position on particular routes that have not supported entry by competing U.S. carriers. We will also apply a route-by-route approach to analyze the potential competitive impact of AT&T's affiliations or alliances with foreign carriers on particular U.S. international routes.[66]

36. Accordingly, we apply standard principles of antitrust analysis to determine AT&T's market power on a worldwide basis and analyze whether AT&T is non-dominant in the provision of IMTS and multi-purpose earth station services. As in the *AT&T Reclassification Order*, this includes a focus on (1) AT&T's market share, (2) the demand elasticity of AT&T's customers, (3) the supply elasticity of the market, and (4) AT&T's cost structure, size and resources. We refer to issues raised in the record with regard to specific locations as appropriate.

B. Regulatory Classification of AT&T International Services

1. Market Share

37. In *International Competitive Carrier*, the Commission concluded that, while market share is not determinative of market power, it was a "clear indication" of dominance for AT&T's provision of IMTS.[67] At the time, AT&T was still the only provider of IMTS between the U.S. mainland and a majority of foreign countries and, in those countries where there were other IMTS providers, AT&T had an overwhelming market share.[68] AT&T's overall share in IMTS has declined even more rapidly than its market share in the domestic market – that is, from 98.5 percent in 1985, 72.7 percent in 1991, 68.6 percent in 1992, 63.2 percent in 1993, to 59 percent in 1994.[69] AT&T states that its 1994 share is in the 40-69 percent range for all but three (Haiti, Jamaica and Poland) of the 50 largest international markets that generate over 90 percent of total traffic, and that even these three markets appear to have fallen to below 70 percent in 1995.[70]

[65](...continued)
Providers in the State of California, 10 FCC Rcd 7486, at ¶¶ 22 and n.60 (1995) *(California Cellular Petition), recon. denied*, 11 FCC Rcd 796 (1995).

[66] *See supra* Section II. B; *see also infra* Sections III. B. 4 and 6.

[67] *International Competitive Carrier* at ¶ 44.

[68] *Id.*

[69] *1985-1994 Section 43.61 International Data.*

[70] AT&T notes that, based on its best estimates of international traffic, its share of traffic to each of these three countries fell to below 70 percent in 1995. *See* AT&T Reply at 22 and Attachment D.

38. Opposing parties assert that an overall market share of 60 percent is too high to warrant reclassification. TRA asserts that the slower development of alternative providers for international services suggests that AT&T's hold on the international market is significantly stronger than its hold on the domestic market. TRA observes, for example, that AT&T's market share based on revenues for U.S. facilities-based carriers is more than twice that of MCI and more than six times that of Sprint, with these three carriers together generating 98 percent of IMTS revenues billed by all U.S. facilities-based carriers.

39. In the *AT&T Reclassification Order*, the Commission concluded that AT&T's steadily declining market share for long distance service revenues (which fell from approximately 90 percent in 1984 to 55.2 percent in 1994) suggested intense rivalry for market share among AT&T, MCI and Sprint, and supported the conclusion that AT&T lacked market power.[71] While AT&T generally has had a higher market share for international than domestic services, AT&T has lost market share faster in the international than in the domestic market.[72] As a result, AT&T's IMTS market of 59 percent in 1994 was only a few percentage points higher than its domestic market share and we see no reason based on market share data to regulate them differently.

40. We also do not believe our conclusion should be different for those countries in which AT&T has a market share significantly greater than the average. We believe that such high market shares will not persist. Indeed, Appendix B shows that in 1991 there were 76 countries for which AT&T had 90 percent or greater market share, and 18 where AT&T had a 100 percent market share. AT&T's average market share for those countries (weighted by revenues) was 95 percent in 1991. By 1994, AT&T's average market share had fallen to 74 percent. This trend suggests that AT&T's market share can be expected to decline for countries where its market share is relatively high today, and that AT&T's competitors' market shares will increase to a level closer to the worldwide average.[73] In sum, while AT&T's market shares in certain countries are certainly high, on the whole we find that such high market shares are not an obstacle to granting AT&T's motion in the absence of barriers to entry which might prevent AT&T's competitors from continuing to gain market share.

41. Based on the most recent data available to the Commission, we have identified four markets in which AT&T is the sole facilities-based provider of IMTS.[74] AT&T's share of U.S. billed minutes on each of these routes constituted 0.002 percent or less of total U.S. billed minutes in 1994. Collectively, the minutes on these routes accounted for 0.0025

[71] *AT&T Reclassification Order* at ¶¶ 67-72.

[72] AT&T has lost five percentage points on average per year since 1991. *See supra* Section III. B. 1.

[73] *See Connecticut PUC v. FCC*; *see also California Cellular Petition* at ¶¶ 31-33.

[74] *See infra* Section III. C.

percent.[75] As explained below, we believe that it is appropriate to forbear from imposing dominant carrier regulation for the provision of IMTS to those countries.

2. Demand Elasticity

42. Demand elasticity or responsiveness is the propensity of AT&T's customers to switch carriers or otherwise change the amount of services they purchase from AT&T in response to relative changes in price and quality.[76] High demand elasticities indicate customers' willingness and ability to switch to or from a carrier in order to obtain price reductions and desired features.[77]

43. In 1994, according to AT&T, approximately 5 million of the 14 million residential customers who made at least four international calls during the year changed pre-subscribed carriers. AT&T adds that demand for U.S. outbound calling is frequently concentrated in specific areas (California and New York, *e.g.*, have high concentrations of calls to the Far East; Florida and Texas to Central and South America) making it conducive not only for foreign carriers and their affiliates, but also for small independent firms, to enter the market and compete by offering services to very targeted groups of customers, regardless of whether such firms have their own facilities.

44. WorldCom and CompTel argue that it is highly unlikely that AT&T subscribers migrated to new carriers based upon differences or changes in international switched rates, but that the most sensible explanation is that those subscribers changed carriers based upon differences or changes in rates for domestic services. WorldCom adds that many AT&T subscribers make comparatively few international calls per year, resulting in a high level of demand inelasticity for AT&T's international services. Comptel asserts that, by bundling "1+" domestic long distance and direct-dial international traffic, the U.S. presubscription system substantially increases the inelasticity of demand for AT&T's international switched services.

45. In the *AT&T Reclassification Order*, the Commission concluded that residential customers are highly demand-elastic and will switch to or from AT&T in order to obtain price reductions and desired services. The Commission noted that the high churn rate among residential consumers -- approximately 30 million expected changes in 1995 -- demonstrated that these customers find the services provided by AT&T and its competitors to be very close

[75] *1994 Section 43.61 International Data*, Table A. 1.

[76] *See Commercial Services Order* at 3016.

[77] *See also International Competitive Carrier* at ¶¶ 26-29 (stating that demand substitutability for international services refers to a subscriber's ability and willingness to switch among and between various services, and that IMTS was not a good substitute for other international telecommunications services).

substitutes.[78] The Commission also found that business customers are highly demand-elastic.[79] The record evidence in this proceeding is that consumers are even more price sensitive for international services than they are for domestic services.

46. For example, those consumers who make over $15 per month in international calls switch carriers over 25 percent more often than average, and that even the remainder of international consumers (those averaging under $15 per month) switch carriers at a higher rate than customers that make no international calls.[80] Moreover, for IMTS service, many consumers do not look for generic international prices; rather, they are often very demand-sensitive for a price to a single country.[81] In addition, an increasing percentage of AT&T's international "dial 1+" service customers are selecting discount plans rather than paying AT&T's basic rates. In 1989, the percentage of AT&T's international "dial 1+" service traffic on discount plans was zero. By 1994, this percentage had increased to 60 percent.[82] In comparison, traffic calls under AT&T's True Promotions plans accounted for only 53 percent for Domestic basket 1 traffic in 1994.[83] These data indicate that IMTS customers are responsive to market signals, including price, and are consistent with the conclusion that AT&T's own price elasticity is high, and that customers are likely to switch carriers to take advantage of price promotions.

47. In sum, the record provides substantial evidence which indicates that AT&T's customers are highly demand-elastic[84] and supports our conclusion that AT&T alone cannot raise and sustain prices above a competitive level for international services.[85]

3. Supply elasticity

a. Operating Agreements

48. The Commission explained in the *First Interexchange Competition Order* that there are two factors that determine supply elasticities in the market. The first is the supply

[78] *AT&T Reclassification Order* at ¶ 63.

[79] *Id.* at ¶ 65.

[80] AT&T Reply at 19-20.

[81] *See, e.g.*, AT&T Reply at 20.

[82] *Foreign Carrier Market Entry* at ¶¶ 1, 6-13.

[83] *Id.* at ¶ 79.

[84] *See supra* Section III. B.

[85] *See First Interexchange Competition Order* at 5887.

capacity of existing competitors: supply elasticities tend to be high if existing competitors have or can easily acquire significant additional capacity in a relatively short time period. The second factor is low entry barriers: supply elasticities tend to be high even if existing suppliers lack excess capacity if new suppliers can enter the market relatively easily and add to existing capacity.[86] In *International Competitive Carrier*, the Commission concluded that the most significant entry barrier in international telecommunications was the need to obtain an operating agreement before providing a particular service to a particular country.[87]

49. AT&T observes that "other carriers have negotiated direct operating agreements with all but a handful of tiny international locations."[88] AT&T states that there are three facilities-based carriers serving every international location that accounts for more than 0.1 percent of international revenues and that the total traffic represented by such tiny international locations represents only about one hundredth of one percent of U.S.-billed international minutes.[89] WorldCom argues that foreign operating agreements continue to be a major barrier to entry.[90] WorldCom alleges that it experiences far more difficulty than AT&T in persuading its foreign correspondents to amend its operating agreements "to authorize a fuller menu of U.S.-billed services[.]"[91]

50. Although barriers to entry exist, they are not so great as to bar effective competition, nor are they particular to AT&T. Today, the record evidence indicates that multiple U.S. carriers have operating agreements to all but the smallest IMTS markets that account for less than one-tenth of one percent (0.1 percent) of international revenue. Indeed, while there are international locations that are served only by AT&T,[92] there is no evidence in the record to demonstrate that AT&T has the ability to exclude alternative suppliers.[93] To the contrary, while we recognize that some entry barriers will remain until other countries remove barriers to competitive entry in their international telecommunications services markets, new

[86] *First Interexchange Competition Order* at 5888.

[87] *International Competitive Carrier* at ¶ 33.

[88] AT&T November 8, 1995 *Ex Parte* Letter at 2.

[89] *Id.*; AT&T Reply at 4-5.

[90] WorldCom Opposition at 15-16.

[91] *Id.* at 16.

[92] *See supra* n.1.

[93] *See, e.g.*, Morgan Stanley, U.S. Investment Research, Edward M. Greenberg, Myles C. Davis, "TresCom International: Fat Minutes, Muscular Growth" (Apr. 4, 1996) (recommending investment in third-tier IMTS carrier because of "company's ability to gain market share in the fast-growing international long-distance market") (*Morgan Stanley*).

U.S. facilities-based suppliers may obtain operating agreements and enter the market much more easily than a decade ago.

51. We also note that we recently removed U.S. regulatory impediments to the provision of service on an indirect, switched transit basis to facilitate the ability of U.S. facilities-based carriers to serve thin routes, or routes for which they cannot obtain a direct service agreement.[94] In addition, we recently approved the practice of "switched hubbing" IMTS via U.S. international private lines through countries we have deemed "equivalent" (to date, Canada, the United Kingdom, and Sweden).[95] We find that the increasing availability of both multiple operating agreements and of alternative means for U.S. facilities-based carriers to route their traffic supports a finding to reclassify AT&T as non-dominant on all but the four U.S. international routes on which, as explained below, we will forbear from imposing dominant carrier regulation.[96]

b. Submarine Cable and Satellite Capacity

52. In *International Competitive Carrier*, the Commission found that AT&T's use and ownership of facilities did not provide the basis for a finding of dominance.[97] The Commission noted that submarine cables are a "joint undertaking" of U.S. carriers and their foreign correspondents. Carriers can purchase additional indefeasible right of use (IRU) capacity in submarine cables, and carriers are also able to use satellite facilities, which are available in large quantities world-wide, to provide service.

53. AT&T asserts that it does not control the supply of international facilities as its "ownership share of total international submarine cable capacity is 21.6 percent."[98] AT&T adds that it does not own any purely international satellite facilities, but instead leases satellite capacity to meet its international needs.[99] AT&T also adds that its multi-purpose earth station

[94] *See Streamlining NPRM* at ¶ 17 ("clarify[ing] that Commission rules and policy permit carriers to provide service on an indirect, switched transit (or 'and beyond') basis through intermediate countries which they are authorized to serve on a direct, facilities basis, regardless of whether they have Section 214 authority to serve the ultimate destination country").

[95] *See Foreign Carrier Entry Order* at ¶¶ 169-70.

[96] *See also Streamlining Order* at ¶ 49. There, the Commission streamlined its procedures for discontinuing international service because it found that the "increase in the number of international carriers and competition in international services means that customers can switch to another international carrier if service is discontinued by their current carrier."

[97] *International Competitive Carrier* at ¶ 57.

[98] AT&T November 8, 1995 *Ex Parte* Letter at 2; *see also id.* at n.3 (stating that its "ownership share of the U.S. end [of these international submarine cables] is 43.2 percent") and Attachment A at 1.

[99] AT&T November 8, 1995 *Ex Parte* Letter at 2.

service offerings are not only subject to substantial competition, but involve modest revenues for a declining service, and include 58 percent fewer active circuits than last year.[100]

54. Parties opposing AT&T's motion argue that other carriers are not always able to purchase needed IRUs, are unable to obtain submarine cable capacity in a timely fashion, are not permitted direct access to submarine cable facilities, and do not have any control over maintenance and restoration of submarine cable facilities.[101] MFS, for example, notes several technical and administrative implementation problems associated with activating submarine cable capacity.[102] It argues that U.S. owners of common carrier cables should be required to make capacity available to new entrants on an "as needed" basis. MCI asserts that AT&T's cable activation procedures for the TAT-12/TAT-13 cable system demonstrate that significant bottlenecks still exist. MCI describes delays it has encountered throughout the cable capacity activation process.[103] MCI and Sprint assert that AT&T controls several strategic functions of submarine cable system operations, including control over the cable head and the restoration process, cable station access terms, and choice of siting locations. They argue that AT&T prioritizes its own traffic and negotiates preferential deals with foreign correspondents. Sprint similarly asserts that AT&T continues to have a bottleneck as all Sprint transatlantic cable traffic must pass through AT&T's digital cross-connect or demultiplexer.[104]

55. In the *AT&T Reclassification Order*, the Commission concluded that domestic supply was sufficiently elastic to constrain AT&T's unilateral pricing decisions and that in making this determination "AT&T's competitors have enough readily available excess capacity to constrain AT&T's pricing behavior."[105] The Commission noted, for example, that within 12 months AT&T's largest competitors could absorb almost two thirds of AT&T's total switched traffic for a combined investment of $660 million.[106]

56. In the international market, transmission capacity available to all U.S. carriers has dramatically increased over the last decade as competition in satellite and cable capacity has increased greatly on most routes. In 1985, AT&T owned approximately 85 percent of

[100] AT&T March 12, 1996 *ex parte* letter from Charles L. Ward, Government Affairs Director to William F. Caton, Acting Secretary, FCC, at 1 ("AT&T March 12, 1996 *Ex Parte* Letter).

[101] MFS Comments at 2-5; MCI Comments at 3-8; Sprint Comments at 35-38.

[102] MFS Comments at 3-4.

[103] *See* MCI March 20, 1996 *ex parte* letter from Paula V. Brillson, International Attorney Regulatory Law, to William F. Caton, Acting Secretary, FCC.

[104] *See* Sprint March 20, 1996 *ex parte* letter from Kent Y. Nakamura, General Attorney, to William F. Caton, Acting Secretary, FCC.

[105] *AT&T Reclassification Order* at ¶ 58.

[106] *Id.* at ¶ 59.

the U.S. end of the TAT-6 and TAT-7 cables. Today, AT&T owns 43 percent of the U.S. end of submarine cable facilities currently in use.[107] By comparison, AT&T's competitors' collective ownership interest in international transmission capacity exceeds AT&T's ownership interest.[108] Thus, there are sufficient competitive alternatives for capacity if AT&T attempts to engage in strategic behavior.

57. In addition, there are now submarine cables in which AT&T did not take a lead role, including PTAT, CANUS-1/CANTAT-3, and the North Pacific Cable, that comprise an important proportion of total cable capacity in the transatlantic and transpacific regions respectively.[109] Moreover, virtually all of AT&T's international satellite capacity is leased from COMSAT, or from the three private (non-INTELSAT) satellite systems -- Orion, PanAmSat and Columbia.[110] The 1995 Monthly Circuit Status Reports filed with the Commission show that 80 countries are reached by U.S. carriers only by satellite, compared to 97 countries by cable and satellite or only by cable. In this context, we note that AT&T's service to the countries for which it has more than 70 percent market share is most often done on the basis either of satellite circuits or switched transit.[111]

58. The concerns raised by opposing parties focus on international submarine cable capacity and fall into four categories. First, AT&T's competitors allege that they are having difficulties obtaining needed cable capacity on an IRU basis. AT&T asserts that it "cannot and does not prevent other U.S. carriers from obtaining capacity in a submarine cable system, as either an owner or an IRU holder."[112] AT&T states that, "during 1993 – 1995, AT&T

[107] AT&T Reply at 8.

[108] *See* AT&T November 8, 1996 *Ex Parte* Letter at 2 and Attachment A at 1 (AT&T and AT&T's competitors' own 43.2 and 43.5 percent ownership interest in the U.S. end of the cable systems, respectively); *see also* AT&T Reply at 8 ("[a]fter subtracting the IRUs AT&T has sold to third parties, AT&T actually controls the use of only about 34.6 percent of the U.S. end of cable facilities"); AT&T Reply at 9.

[109] Reevaluation of the Depreciated-Original-Cost Standard in Setting Prices for Conveyances of Capital Interests in Overseas Communications Facilities Between or Among U.S. Carriers, Order on Reconsideration, 8 FCC Rcd. 4173 (1993).

[110] AT&T is also one of three domestic satellite (domsat) providers and, as such, is now permitted to offer both domestic and international services using its domsat facilities. *See* Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, IB Docket No. 95-41 (rel. Jan. 22, 1996). In approving the provision of international service by domsats, however, the Commission noted that it did "not expect a significant amount of public switched services to be provided" over these systems. *Id.* at ¶¶ 30-2.

[111] *See* AT&T February 15, 1996 *ex parte* letter from Charles L. Ward, Government Affairs Director, to William F. Caton, Acting Secretary, FCC.

[112] *See* AT&T April 8, 1996 *ex parte* letter from R. Gerard Salemme, Vice President – Government Affairs, to William F. Caton, Acting Secretary, FCC, at 7 (AT&T April 8, 1996 *Ex Parte* Letter).

executed 45 such IRU Agreements (for 1,142 MAOUs[113]) with U.S. carriers, including MCI, Sprint, MFS, [and other carriers.]"[114] We find that AT&T has submitted sufficient evidence to support its assertion that it has made cable capacity available to its competitors on an IRU basis.

59. Second, AT&T's competitors contend that they have experienced significant delays in obtaining cable capacity from AT&T (including delays in accessing capacity in TAT-12/13) and, therefore, that they are unable to provide service to their customers in a timely and competitive manner. AT&T explains that these delays "have been caused by the unanticipated spike in demand for TAT-12/13 capacity and the manual data base entry system required by the introduction of new cable system technology in TAT-12/13."[115] AT&T states that it has taken steps to resolve the matter, including meeting with the affected parties to discuss specific means to improve the provisioning process.[116] We believe that the record does not support a finding that the delays some of the carriers have experienced in obtaining cable capacity from AT&T stem from strategic anticompetitive behavior.

60. Third, AT&T's competitors allege that AT&T does not permit them to have direct access to their cable facilities, but instead requires them to access their cable circuits through AT&T's facilities. This arrangement, they argue, results in their having to accede to cable station access terms and conditions imposed on them by AT&T, as well as their having to pay additional fees for such access. Fourth, AT&T's competitors complain that AT&T has exclusive control over the maintenance and restoration of cable facilities which allows AT&T to re-route its competitors' traffic on inferior routes or on satellites. In response, AT&T asserts that "every major decision, including the selection of landing points, routing, network interface, responsibilities of cable station owners (including interconnection) . . . is decided by arms-length negotiations and vote of the cable consortium."[117] AT&T states that "[e]very ownership agreement . . . requires, at a minimum, a 50 percent or greater vote to agree on any decision."[118] AT&T states that it does not hold a majority vote in any such ownership

[113] A "MAOU" is a minimum assignable unit of ownership.

[114] *See* AT&T April 8, 1996 *Ex Parte* Letter at 7 (footnote added); *see also id.* at Attachment B (tabulating AT&T's IRU sales from 1993 through 1995).

[115] *Id.* at 2.

[116] *Id.*

[117] *Id.* at 1.

[118] *Id.* at 4 (emphasis deleted).

agreement and, therefore, asserts that it does not have control over the planning, construction, operation or restoration of any common carrier cable system.[119]

61. We note first that many of the commenters' concerns regarding direct access to submarine cable facilities and the maintenance and restoration of cable facilities are the subject of contractual arrangements with regard to specific submarine cable facilities. We encourage carriers to raise these issues in the context of our oversight of construction and maintenance agreements for the introduction of future submarine cable facilities.

62. We conclude that the concerns raised in this proceeding regarding access to international facilities are not sufficient to warrant continued classification of AT&T as dominant for IMTS and multi-purpose earth station services. Supply is sufficiently elastic in the international context to mitigate any potential exercise of unilateral market power by AT&T. Indeed, as this Commission recently stated in its *International 214 Streamlining Order*, because of the large growth and variety of available facilities for international service, "the opportunity to monopolize facilities on a route has nearly vanished."[120]

63. Although we find supply capacity sufficiently elastic to constrain AT&T's market behavior, we welcome AT&T's voluntary commitments to address the concerns raised in this proceeding regarding submarine cable capacity. Although not the basis for our decision, we believe AT&T's commitments will do much to alleviate the parties' concerns regarding submarine cable capacity.

64. In an effort to improve the circuit activation process, AT&T has agreed to reduce the current provisioning intervals to 15 days for intra-office circuit activation and 25 days for inter-office circuit activation, effective July 1, 1996. AT&T also promised to act in good faith to further reduce the provisioning intervals to 7 days for intra-office circuit activation and to 20 days for inter-office circuit activation beginning October 1, 1996. AT&T also committed to act as a broker for U.S. carriers seeking to obtain cable capacity on an IRU basis from the common reserve of consortium cable systems that land in the U.S. in which AT&T is an owner. In addition, AT&T agreed to provide the dry-side portion of the digital access cross-connect switches (DACs) on an IRU basis retroactive to the start of service for TAT-12/113 and TPC-5. Further, AT&T committed to seek competitive bids for the provision of backhaul facilities used for submarine cable restoration, and to use its best efforts to achieve a TAT-12 restoration arrangement for existing capacity.[121] AT&T will also form and manage a "Western Owners" group to foster discussions concerning the quality and

[119] *Id.* at 3-5; *see also id.* at 5 ("decisions . . . [are] not made unilaterally by AT&T, but rather after negotiations among all owners, and ultimately by vote of the majority."

[120] *Streamlining Order* at ¶ 13.

[121] AT&T Commitment Letter at items 3-5, and 7; *see also infra* Attachment A at ¶ 3-5 and 7 (describing these commitments in detail).

performance of AT&T's operations at the cable landing stations and involvement in wet plant maintenance and repair.[122] AT&T also agreed to establish a committee with the Eastern and Western cable owners to discuss the long-term consortium cable planning configurations for the Pacific Ocean, Americas, and Atlantic Ocean regions.[123] Finally, for a period ending May 9, 1997, AT&T will provide the Commission with the name of the purchaser, facility, capacity, and price for IRU conveyances to other U.S. carriers not affiliated with AT&T within thirty days after the conveyance.[124]

65. The Commission's finding in 1987 that AT&T was dominant in the provision of multi-purpose earth station services was based on the facts that AT&T owned five multi-purpose earth station facilities and the Commission had only recently authorized multi-purpose earth stations to entities other than AT&T.[125] AT&T currently provides analog multi-purpose earth station service to five interexchange carrier customers; three of these customers have less than ten circuits total, and the other two customers (Sprint and IDB WorldCom) have only 325 circuits.[126] Today, elasticities of supply for multi-purpose earth station services are high in that competitors can enter the market relatively easily and add to existing capacity.[127] Further, elasticities of demand are high in that customers are able to switch among carriers and services.[128] Indeed, demand for multi-purpose earth station service is on the decline as customers opt for services that are more technologically sophisticated.[129] We therefore find that AT&T lacks market power in the provision of multi-purpose earth station services and, accordingly, should be reclassified as non-dominant for these services.

4. <u>AT&T's Cost Structure, Size and Resources</u>

[122] AT&T Commitment Letter at item 6; *see also infra* Attachment A at ¶ 6 (defining "wet plant" as submerged cable and associated equipment and describing this commitment in detail).

[123] AT&T Commitment Letter at item 8; *see also infra* Attachment A at ¶ 8.

[124] AT&T Commitment Letter at item 13; *see also infra* Attachment A at ¶ 13.

[125] *ESOC Order* at 6641, n.48.

[126] AT&T March 12, 1996 *Ex Parte* Letter at 1.

[127] *See id.* at 1 and Attachment (showing the satellite capacity in use by AT&T and its numerous competitors for multi-purpose earth station service).

[128] *Id.*

[129] *See id.* at 1 (multi-purpose earth station service "is a declining analog service, now at a level of active circuits 58 percent less than last year . . . . the total billing for the service is approximately $2.5 . . . [million] annually").

66. At the time of *International Competitive Carrier*, AT&T had gross service revenues approximately ten times that of all its interexchange competitors combined.[130] In addition, the annual increase in AT&T's toll service revenues was greater than the combined revenues of AT&T's largest competitors, including MCI and Southern Pacific Communications.[131] Today, AT&T faces large, well-financed competitors that involve multi-billion dollar investments from the predominant carriers in three of the four largest European Union countries,[132] with MCI and Sprint having total toll service revenues of $11.7 billion and $6.8 billion compared to AT&T's $36.9 billion.[133]

67. In light of these changes, in the *AT&T Reclassification Order* the Commission declined to find that AT&T retained market power by virtue of its lower costs, sheer size, superior resources, financial strength, or technical capabilities.[134] Rather, the Commission concluded that, while one carrier might enjoy certain advantages, including resource advantages, scale economies, long-term relationships with suppliers and ready access to capital, such advantages alone do not constitute persuasive evidence of market power.[135] In the *AT&T Reclassification Order*, we restated the conclusion we reached in the *First Interexchange Competition Order* that "the competitive process itself is largely about trying to develop one's own advantages and all firms need not be equal in all respects for this process to work."[136]

68. Parties opposing AT&T's motion, including CTI, Graphnet, MCI, Sprint, Transworld and WorldCom, argue that AT&T retains market power by virtue of its size. They argue that AT&T's size and superior resources enable it to negotiate favorable contractual arrangements with its foreign correspondents including, for example, international rate agreements which rivals cannot obtain. They include in this category growth-based accounting rates based on AT&T traffic volume. BT argues that AT&T's resources also give dominant foreign carriers reason to discriminate in favor of AT&T through arrangements such

[130] Consolidated Application of AT&T and Specified Bell System Companies, 96 FCC 2d 18 (1984) ("*Consolidated Application*").

[131] *Id.* at 62.

[132] France Telecom and Deutsche Telekom, for example, have made a commitment to invest $3.5 - 4.2 billion in the Sprint Corporation. *See* Petition for Declaratory Ruling Concerning Section 310(b)(4) and (d) and the Public Interest Requirements of the Communications Act of 1934, as amended, FCC 95-498 (released Jan. 11, 1996). In addition, British Telecom has made a $4.3 billion investment in MCI. *See* MCI Communications Corporation, 9 FCC Rcd 3960 (1994).

[133] Statistics of Common Carriers, FCC, at 7 (1994/1995 Edition).

[134] *AT&T Reclassification Order* at ¶ 73.

[135] *Id.*

[136] *Id.* at ¶ 73 (citing *First Interexchange Competition Order* at 5891-92).

as the WorldPartners and Uniworld joint ventures.[137] BT, MFS, MCI, and Esprit argue that these joint ventures pose a substantial risk of anticompetitive effects and warrant regulating AT&T as dominant on routes covered by these agreements.[138] BT, MFS, MCI, and Sprint argue that the Commission should require AT&T to file copies of its joint venture agreements.[139] Sprint, for example, claims that the Commission will not be able to assess the competitive impact of these joint ventures without copies of the underlying agreements.[140]

69. We now conclude, as we have for the domestic, interstate, interexchange and non-IMTS international markets,[141] that AT&T's cost structure, size and superior resources are not alone persuasive evidence of market power. We recognize that AT&T's size and market share may give it the ability to negotiate more favorable settlement rate arrangements with its foreign correspondents, and that international settlements payments constitute a significant cost element for U.S. international carriers. We reiterate, however, that our international settlement policy requires nondiscriminatory accounting rates, division of tolls and proportionate return traffic.[142] We believe our policy can effectively prevent foreign carriers with market power from discriminating in favor of AT&T or any other carrier in the settlement process.[143] AT&T, moreover, has committed to use its best efforts to establish one-minute accounting rate arrangements and, where only growth-based arrangements can be achieved, to use its best efforts to establish growth-based thresholds on aggregate industry

[137] BT Comments at 3; *see also* Esprit Comments at 8-9.

[138] BT Comments at 3-4; MFS Comments at 13-15; MCI Comments at 26; Esprit Comments at 3-9; *see also* MCI April 10, 1996 *ex parte* letter from Donald J. Elardo, Director – Regulatory Law, to William F. Caton, Acting Secretary, FCC ("MCI April 10, 1996 *Ex Parte* Letter").

[139] BT Comments at 5; MFS Comments at 13-14; MCI April 10, 1996 *Ex Parte* Letter; Sprint Comments at 26-30.

[140] Sprint Comments at 26-30.

[141] In 1985, the Commission concluded that AT&T's cost structure, size and resources alone did not require that AT&T, which had less than ten percent of the total non-IMTS market, be considered dominant for the provision of non-IMTS service. Specifically, we noted that it would not appear to be rational for AT&T "to sacrifice IMTS revenues or returns in a highly speculative bid to gain control of the non-IMTS market." *International Competitive Carrier* at ¶ 55.

[142] *See Accounting Rate Policy Statement* at ¶ 11.

[143] *See, e.g.*, AT&T Corp. Proposed Extension of Accounting Rate Agreement for Switched Voice Service with Argentina, ISP-96-W-062, Order, DA 96-378 (International Bur., rel. Mar. 18, 1996); *see also Streamlining Order* at ¶ 90; *Accounting Rate Policy Statement* at ¶¶ 30-35 (recognizing that additional flexibility in the accounting rates process may be warranted in effectively competitive markets).

traffic volumes.[144] It also has committed to follow certain disclosure procedures, under Section 64.1001 of the Commission's rules,[145] to promote transparency in the negotiation of accounting rates by U.S. carriers.[146]

70. We share commenters' concern that foreign carriers with market power have both the incentive and ability to discriminate in favor of AT&T through arrangements such as WorldPartners and the proposed Uniworld alliance. We do not, however, believe these concerns are unique to AT&T or derive from AT&T's market position. Rather, they are the consequence of foreign carriers' market power.

71. We recognize that global alliances are a source of potential efficiencies in the world market that could benefit consumers by improving the speed and coordination of global services.[147] Alliances are also a source of anticompetitive concern when they have the capability and incentive to discriminate against competitors.[148] Cross-equity holdings among the partners create an especially powerful incentive. Market power, particularly through control over bottleneck facilities, can provide the capability for discrimination. This was the risk posed by the BT investment in MCI and the investment by DT and FT in Sprint.

72. WorldPartners and Uniworld are nevertheless different from equity alliances such as Sprint's Global One alliance and MCI's Concert alliance. AT&T explains that its WorldPartner alliance involves primarily marketing arrangements that provide common service standards (and in some cases cross-licensing of software to support services) for all members in offering their respective customers the global-business-oriented service that is branded as WorldSource. Individual members control customer contacts and pricing. Some members of WorldPartners are also general partners in WorldPartners Company that provides "non-common carrier services (*i.e.*, billing and collection services)"[149] for all WorldSource services. Uniworld is a proposed joint venture between Unisource (comprised of Swiss Telecom PTT, Telia, Koninklijke PTT Nederland, and Telefonica de Espana) and AT&T that will "act as the sole provider of intra-European data and closed user group . . . voice services

[144] AT&T Commitment Letter at item 10 (also committing to provide upon Commission request information sufficient to determine AT&T's average accounting rate under any future or pending growth-based arrangements that are based on AT&T's traffic volumes); *see also infra* Attachment A at ¶ 10 (describing these commitments in detail).

[145] 47 C.F.R. § 64.1001.

[146] AT&T Commitment Letter at item 9; *see also infra* Attachment A at ¶ 9 (describing this commitment in detail).

[147] *Foreign Carrier Entry Order* at ¶ 95.

[148] *See id.*

[149] AT&T March 21, 1996 *ex parte* letter from R. Gerard Salemme, Vice President - Government Affairs, to William F. Caton, Acting Secretary, FCC, at 3 ("AT&T March 21, 1996 *Ex Parte* Letter").

marketed in Europe by national distributors."[150] In addition, Uniworld will be the distributor of WorldSource services in Europe. Neither WorldPartners nor the proposed Uniworld alliance have cross-equity holdings among the member companies. Neither alliance has an operating vehicle that owns transmission capacity. And the marketing agreements are not exclusive. Members can belong to more than one alliance. The only restriction in the proposed Uniworld arrangement would be a commitment to "refrain from marketing their own parallel intra-European offers in competition with Uniworld's services."[151] Members could still offer services of third parties, such as other alliances, even for intra-European markets.

73. In the *Foreign Carrier Entry Order*, the Commission determined that dominant carrier regulation should apply to U.S. carriers in their provision of international basic service on particular routes where a co-marketing or other arrangement with a foreign carrier with market power presents a substantial risk of anticompetitive effects in the U.S. international services market.[152] The evidence on the record in this proceeding does not support a finding that either WorldPartners or the proposed Uniworld alliance presents a substantial risk of anticompetitive effects on any U.S. international route where these alliances provide or propose to provide service. The record consists largely of allegations that these alliances in and of themselves pose a substantial risk of anticompetitive harm. Such unsupported allegations are insufficient to warrant a finding at this time that AT&T should be regulated as dominant on routes where it is allied with a foreign carrier with market power. We note that the alliances lack the strong financial incentives flowing from equity investments, as well as any legal power of exclusivity.

74. We are, however, mindful of the potential for anticompetitive behavior arising from AT&T's alliances.[153] Certainly, one reason for AT&T to pursue these alliances is to persuade its foreign partners to build a special relationship in the marketplace with AT&T. We may revisit our conclusion if further information presented to us by members of the industry, including AT&T, indicates that either of AT&T's alliances presents a substantial risk of anticompetitive effects on the relevant routes. As we continue to monitor the activities of

[150] AT&T March 21, 1996 *Ex Parte* Letter at 5, n.6.

[151] *Id.* at 5.

[152] *Foreign Carrier Entry Order* at ¶¶ 245-55. The regulatory safeguards that apply to U.S. carriers regulated as dominant because of an alliance or affiliation with a foreign carrier with market power are set forth in Section 63.10(c) of the Commission's rules. These safeguards differ from those that have applied to AT&T in its regulation as a dominant carrier. *See supra* Section II. C.

[153] *See, e.g.*, MCI April 9, 1996 *ex parte* letter from Paula V. Brillson, International Regulatory Attorney, to William F. Caton, Acting Secretary, FCC ("MCI April 9, 1996 *Ex Parte* Letter") (*citing* attached April 4, 1996 letter from A. Sundberg, Director of Telia Network Services International ("Telia"), to James A. Sorg, Director Europe, MCI International, Inc. ("I am . . . aware . . . that you are informed about our agreement with AT&T which is based on another level of accounting rate than our proposal to you. I would like to point out to you that it is justified by our special business relationship and mutual business opportunities").

these alliances the pertinent questions are: (1) is there any evidence that AT&T's partners use control over bottleneck facilities to discriminate against rivals in the markets contested by WorldPartners and Uniworld, and (2) is there any evidence that in practice AT&T's foreign partners are consistently choosing WorldPartners and Uniworld as the preferred supplier for these services?

75. We have little reason to believe that requiring AT&T to file its WorldPartners Association Membership Agreements (AMAs), as several parties request, will assist us in answering these questions. AT&T has certified to the Commission that there is good ground to support its conclusion that the AMAs do not contain information required to be submitted under Section 43.51 of the rules. As a discretionary matter, we also decline to require AT&T to file the agreements for review and comment by the parties that have requested to review these agreements. Disclosure of the AMAs could be competitively damaging to AT&T and could discourage foreign carriers from participating in the WorldPartners alliances if they fear that detailed financial and operational aspects of their business agreements will be disclosed.[154]

76. AT&T has submitted explanations of the purpose and method of operation of WorldPartners for the record.[155] Moreover, parties have filed numerous comments in response to AT&T's submissions.[156] We also note that, although it is not a basis of our decision, Commission staff had the opportunity to informally review a representative sample of the AMAs and concluded that the AMAs do not provide information that would assist us further in determining whether the WorldPartners alliances pose a substantial risk of anticompetitive effects in the U.S. international services market. Accordingly, given the large amount of publicly available evidence filed in this proceeding regarding the WorldPartners alliance, coupled with the arguably confidential and proprietary nature of the contracts, we deny the parties' requests that we require AT&T to file its WorldPartners agreements at this time.[157]

77. We invite other carriers to come forward at any time if they believe that there is any pattern of discrimination in access to foreign bottleneck facilities that favors the AT&T alliances. We reemphasize that we will not permit either AT&T or any other carrier to enter

[154] *See* AT&T April 30, 1996 *ex parte* letter from Elaine R. McHale, General Attorney, to William F. Caton, Acting Secretary, FCC, at 6, n.5.

[155] *See* AT&T March 21, 1996 *Ex Parte* Letter; AT&T March 7, 1996 *ex parte* letter from Judy Arenstein, Vice President - Government Affairs, to William F. Caton, Acting Secretary, FCC; AT&T Reply at 30-33.

[156] *See, e.g.*, MFS Comments at 2, 13-15; Sprint Comments at 26-30; Esprit Comments at 1-2, 5-6; TRA Comments at 1-2; BT Comments at 1-6; Graphnet Opposition at 1-6; AT&T Reply at 30-33; MCI April 9, 1996 *ex parte* letter from Paula V. Brillson, International Attorney -- Regulatory Law, to William F. Caton, Acting Secretary, FCC; MCI April 10, 1996 *Ex Parte* Letter.

[157] However, we reserve the right to order AT&T to file the agreements upon clear evidence of a compelling public interest reason to require submission of these agreements. No such interest has been presented to us at this time.

into any exclusive arrangement or special concession that would pose a substantial risk of anticompetitive harm in the U.S. international services market.[158]

78. AT&T's commitments with respect to its WorldPartners alliances will assist us as we continue to monitor the impact of these relationships. AT&T has committed to file a circuit status report for calendar year 1997 with respect to AT&T circuits between the United States and its WorldPartners' members on their home country route.[159] AT&T will also file a confidential report, covering the twelve-month period after the issuance of this order, of the number of AT&T-led WorldSource services bids with respect to services provided with equity members of WorldPartners.[160]

79. In summary, we believe that opposing parties have failed to demonstrate that there is a significant difference between AT&T's cost structure, size and resources in the international versus the domestic market that would necessitate a finding of market power in the international services market. To the contrary, a determination that AT&T does not have market power and is non-dominant for all international services, as SDN Users Association observes, will put consumers, particularly commercial users, in a strong position to maximize their benefit from competitive providers. Therefore, as to AT&T's cost structure, size and resources, the record evidence suggests that we should regulate AT&T's international services on the same basis that we regulate its domestic long distance services -- as being non-dominant.

5. Pricing

80. In *International Competitive Carrier*, the Commission found that the IMTS market was not sufficiently competitive to ensure that AT&T would be unable to manipulate rates in a way that discourages competition. It concluded that, "until such time as competition in the provision of IMTS more fully develops so as to negate AT&T's ability to control prices or exclude competition," it would be necessary to continue full scale regulation of AT&T for its IMTS offerings to all countries.[161]

81. AT&T asserts that its international prices have continued to decline as its settlements costs -- the largest cost component of international calls -- have been reduced. Opposing parties, such as WorldCom, argue that AT&T should remain under price caps due to the fact that AT&T's average revenue per minute has declined less than the decline in the

[158] *Foreign Carrier Entry Order* at ¶ 257.

[159] AT&T Commitment Letter at item 11; *see also infra* Attachment A at ¶ 11.

[160] AT&T Commitment Letter at item 12; *see also infra* Attachment A at ¶ 12 (describing this commitment in detail).

[161] *International Competitive Carrier* at ¶ 46.

effective settlement rate and that Commission data document a recent upward trend in AT&T's international collection rates.[162]

82. We agree that U.S. international calling prices are at the very high end of the "zone of reasonableness."[163] Indeed, residential IMTS pricing is significantly higher and more profitable than U.S. domestic long distance calling prices, and some IMTS prices have risen over the past several years.[164] AT&T's average revenue per minute (ARPM) for international services is $0.98, which is six times the ARPM for domestic services.[165] This provides some evidence to suggest that either AT&T has the ability to set price, or that there are other significant problems with the structure, conduct and performance of the international market that result in prices higher than they would be in a more competitive market.

83. The record in our *Foreign Carrier Market Entry* suggests that high international calling prices result more from problems with the structure, conduct and performance of the international market than from market power unique to AT&T.[166] Similarly, there is evidence in the record here to support our conclusion that residential IMTS customers are very price sensitive, and can be expected to switch international carriers in response to price promotions.[167] We therefore find that AT&T alone cannot raise and sustain prices above a competitive level for residential services without risking loss of its customers to its competitors.[168]

84. We recognize that there may be some merit to the argument that lower calling prices may result from U.S. industry and government efforts to achieve lower accounting rates. The Commission has a well-established policy of achieving this goal, and this policy seems to be working.[169] To encourage AT&T to negotiate lower accounting rates, however, the Commission has previously concluded that AT&T should not be required to pass through

[162] WorldCom Opposition at 14-15.

[163] *See AT&T Price Cap Order*, 4 FCC Rcd at 2877; *California Cellular Petition* at ¶ 7 and n.22.

[164] *See* Statistics of Communications Common Carriers, Federal Communications Commission, annual editions (reflecting, *inter alia*, prices for residential IMTS pricing and U.S. domestic long distance calling).

[165] *See* AT&T November 8, 1995 *Ex Parte* Letter at Attachment C, Table 2; *AT&T Reclassification Order* at ¶ 3018.

[166] *Foreign Carrier Market Entry* at ¶ 6.

[167] *See supra* Section III. B. 2.; *see also AT&T Reclassification Order* at ¶¶ 78-79.

[168] *See First Interexchange Competition Order* at 5887.

[169] *See* Morgan Stanley at 7 ("[T]he FCC has actually taken the lead in trying to force down accounting rates with tactics that are bold for a government agency.").

savings from lower accounting rates as an exogenous factor lowering prices under price caps.[170] We continue to believe the high prices in the IMTS market are not the result of AT&T's failure to flow through accounting rate reductions or from its market position, but rather from structural problems in the international services market.

85. Indeed, we continue to be concerned that, until there is more robust competition in the international telecommunications services market, the U.S. may be "exporting" the benefits of competition through high, above-cost accounting rates that increase the profitability of foreign monopolists. In 1985, at the time of *International Competitive Carrier*, the U.S. net settlements deficit was $1.1 billion. In 1994, it was $4.3 billion. As a result, we must continue to work with U.S. industry to promote international accounting rate reductions in order to lower charges for U.S. international callers.[171]

86. We remain especially concerned about the apparently large profits that U.S. international carriers make as a result of imperfections in the U.S. international market. It appears that AT&T's competitors, including WorldCom, could choose to sacrifice some of their profitability to increase their market share, but have not done so.[172] As a result, we believe that it will be necessary to expedite the entry of additional U.S. competitors to the U.S. international services market as provided for under the *1996 Act*. Additional competition is the best way to reduce high U.S. international calling prices.

87. In the interim, we believe we can help encourage price competition by removing regulatory requirements that might discourage innovative price reductions, such as the longer notice period applicable only to AT&T among U.S. international carriers.[173] We also welcome AT&T's voluntary commitments to maintain its existing rates for residential IMTS for a three-year period ending May 9, 1999, and to maintain the rates in effect on April 1, 1996 for customers enrolled in AT&T's True Country offer (excluding China) for a period ending December 31, 1996.[174] After December 31, 1996, AT&T may raise rates for True Country; however, AT&T commits that, if the rates for this offer increase by more than five percent (excluding China), AT&T will have an offer in place with rates for a customer's selected country (excluding China) discounted 15 percent compared to the same basic international long distance price schedule as in the True Country offer. AT&T has agreed to make this 15 percent discounted offer available until May 9, 1999.[175]

[170] *See AT&T Price Cap Order*.

[171] *Accounting Rate Policy Statement*.

[172] WorldCom and its predecessor companies, for example, provided a total return to investors of 57.3 percent per year during the past decade. Wall St. J., D.2 (Feb. 19, 1996).

[173] *AT&T Reclassification Order* at ¶ 83; *see also Streamlining Order* at ¶ 81.

[174] AT&T Commitment Letter at items 1-2.

[175] *Id.*; *see also infra* Attachment A at ¶¶ 1-2.

88. Acceptance of AT&T's voluntary pricing commitments will contribute to the improvement of the performance of the international market -- performance, as explained above, which is currently very poor. These voluntary commitments achieve this goal by exploiting the fact that, while AT&T does not have the unilateral ability to set prices and should therefore no longer be regulated as dominant, AT&T still has sufficient market share to have some effect on overall market performance. Therefore, by proposing these pricing commitments, AT&T has effectively deterred its competitors from seeking to raise their prices above the committed levels, because AT&T's competitors, to retain market share, will have no other choice than to compete with AT&T at essentially the same price. In this way, AT&T's voluntary commitments ensure that IMTS prices of all carriers will not increase dramatically during this transition period to more robust competition.[176]

6. Foreign Carrier Affiliations

89. AT&T has reported to the Commission affiliations with foreign carriers in the United Kingdom (AT&T Communications (UK) Ltd.), Canada (Unitel Communications Holdings Inc.) and the Philippines (Subic Telecommunications Company, Inc.).[177] We find that AT&T's affiliates do not control bottleneck services or facilities in these countries and therefore lack the ability to discriminate against unaffiliated U.S. international carriers terminating traffic in these countries. Accordingly, we find AT&T nondominant in its provision of U.S. international service on these routes under the framework adopted in *International Services*.[178] We nevertheless reserve the right to revisit AT&T's status on its affiliated routes at a later date in the event AT&T's affiliates in the future obtain market power in some area which could enable them to discriminate against unaffiliated U.S. carriers.

90. AT&T explains that its U.K. affiliate provides domestic service on a facilities basis and international service on a resale basis.[179] It notes that its U.K. affiliate is prevented by regulation from owning any international facilities in the United Kingdom, which has a duopoly for the provision of international facilities-based service.[180] A February 1996 report issued by the U.K's Office of Telecommunications (OFTEL) states that, in the United

[176] We note, however, that our belief that AT&T's voluntary commitment to maintain lower prices will serve to deter price increases by other carriers should not be read to suggest that AT&T has market power.

[177] *See* AT&T Affiliation Statement, File No. FCN-96-004 (filed Feb. 28, 1996); AT&T April 30, 1996 Letter from Michael Behrens, to Joanne Wall, International Bureau, FCC (AT&T Affiliation Letter); *see also supra* ¶ 25.

[178] *See supra* ¶¶ 23-24.

[179] AT&T Affiliation Letter at 2.

[180] *See* AT&T Affiliation Statement at 4, n.5; *see also* BT/MCI Order, 9 FCC Rcd 3960, ¶ 3 and n.2 (1994).

Kingdom, BT's network is the most comprehensive, with an unparalleled degree of coverage.[181] OFTEL states that BT has 94 percent of all residential exchange lines (by number). The OFTEL report also states that BT remains dominant in basic retail services. In 1994/5, BT's market share (by revenue) for simple voice telephony ranged from 94 percent for local calls to 70 percent for outgoing international calls. Given BT's market position, the U.K.'s duopoly for facilities-based international service, and the low legal barriers to entry in the provision of U.K. domestic service, we agree with AT&T that it warrants regulation under *International Services* as a nondominant carrier on the U.S.-U.K. route.

91. Unitel, AT&T's affiliate in Canada, is a facilities-based carrier that provides domestic long distance and international service. Unitel is a new market entrant in Canada. Only as recently as June 1992 did the Canadian Radio-television and Telecommunications Commission (CRTC) permit carriers other than the regulated monopoly Stentor[182] to offer long distance public telephone service to the United States and within the Canadian provinces. Stentor carried 85 percent of Canada-U.S. switched traffic in 1994; Unitel carried 8 percent with the remaining market share held by other facilities-based carriers and private line resellers.[183] There is no evidence in the record, and we have no reason to believe, that Unitel controls bottleneck services or facilities in Canada.

92. In the Philippines, AT&T's affiliate operates on a facilities basis but only in a small geographic segment of the total market -- the Subic Bay Freeport area. It provides domestic long distance and international service (as well as value-added services). Again, we find no evidence that suggests AT&T's affiliate controls bottleneck services or facilities in the Philippines.

93. In addition to these affiliations, AT&T has previously reported an affiliation with Jamaica Digiport International Ltd.,[184] an entity that AT&T believes may not meet the definition of a "foreign carrier" under Section 63.01(r)(1)(ii) of the rules.[185] We need not resolve this issue because it does not appear, in any event, that this entity controls bottleneck services or facilities. Jamaica Digiport is a joint venture among AT&T, C&W, and Telecommunications of Jamaica Ltd. Jamaica Digiport has a business license to provide

[181] Promoting Competition in Services over Telecommunications Networks, issued by the Office of Telecommunications, United Kingdom, February 1996 at 3.4.

[182] Stentor is an association of the major telephone companies in each of the Canadian provinces, plus Telesat Canada.

[183] TeleGeography, Inc. 1995 at 90, Table 2b.

[184] *See, e.g.*, AT&T Application for Authorization to Convey Interests in Capacity in the G-P-T Cable System, File No. ITC-96-084 (filed Jan. 26, 1996).

[185] 47 C.F.R. § 63.01(r)(1)(ii).