

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

In the Matter of	)	
International Settlements Policy Reform	)	IB Docket No. 11-80
	)	
Joint Petition for Rulemaking of AT&T Inc., Sprint	)	RM-11322
Nextel Corporation and Verizon	)	
	)	
IConnect Wholesale, Inc. d/b/a TeleCuba; Petition	)	IB Docket No. 10-95
for Waiver of the International Settlements Policy	)	
and Benchmark Rate for Facilities-Based	)	
Telecommunications Services with Cuba	)	
	)	
Modifying the Commission’s Process to Avert	)	IB Docket No. 05-254
Harm to U.S. Competition and U.S. Customers	)	
Caused by Anticompetitive Conduct	)	

**COMMENTS OF AT&T SERVICES INC.**

AT&T Services Inc., on behalf of its affiliates (“AT&T”), submits the following comments in response to the Further Notice of Proposed Rulemaking on removing the nondiscrimination requirements that apply to facilities-based IMTS traffic arrangements on the U.S.-Cuba route.<sup>1</sup> This policy change has been recommended by the State Department following recent changes in U.S. policy toward Cuba. AT&T supports this proposal to apply to the U.S.-Cuba route the same regulatory framework for U.S. carrier traffic arrangements that applies on all other U.S. international routes. Its adoption would facilitate the use of more competitive, market-based arrangements on the U.S.-Cuba route that would encourage lower consumer rates and increased international calling, benefiting consumers and enhancing the free-flow of

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<sup>1</sup> Further Notice of Proposed Rulemaking, IB Docket Nos. 11-80, 10-95, 05-254, & RM-11322, FCC 16-13, rel. Feb. 12, 2016 (“*Further Notice*”).

information between the countries.

**1. The Commission Should Now Apply the Same Regulatory Framework to the U.S.-Cuba Route That Governs All Other U.S.-International Routes**

Since 1993, pursuant to guidance from the State Department, the Commission has imposed non-discrimination requirements on U.S. carrier agreements for the provision of facilities-based services on the U.S.-Cuba route.<sup>2</sup> Thus, in 2012, when the Commission removed the International Settlements Policy (“ISP”) from all remaining international routes on which that policy still applied to encourage greater competition and lower rates, the Commission nonetheless retained the nondiscrimination requirement of the ISP for the U.S.-Cuba route alone, consistent with guidance from the State Department supporting retention of this restriction.<sup>3</sup>

However, in 2015 the State Department issued further policy guidance to the Commission, noting the President’s December 2014 announcement that the United States would chart a new course in relations with Cuba, which included measures to enhance the free flow of information to, from, and among the Cuban people.<sup>4</sup> In support of this policy, the State Department has recommended changes in Commission policy, including the removal of all nondiscrimination requirements that apply to the provision of facilities based services on the

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<sup>2</sup> *Id.*, ¶ 2.

<sup>3</sup> *Id.* See also, *International Settlements Policy Reform*, 27 FCC Rcd. 15521, ¶¶ 11-17 (2012) (“2012 ISP Reform Order”). Under the nondiscrimination requirement, U.S. carrier operating agreements with a Cuban carrier with market power in Cuba are required to have “identical” terms and conditions relating to “rates, accounting rates, division of tolls, the allocation of return traffic, or the bases of settlement of traffic balances.” See 47 C.F.R. § 63.22(f).

<sup>4</sup> See *Further Notice*, n.1 & Public Notice, 30 FCC Rcd. 12458 (2015), attaching Letter dated October 26, 2015 to Tom Wheeler, Chairman, Federal Communications Commission, from Ambassador Daniel A. Sepulveda, U.S. Coordinator for International Communications & Information Policy, U.S. Department of State (“State Department Letter”).

U.S.-Cuba route.<sup>5</sup>

Other relevant circumstances have also changed. At the time of the Commission's decision to retain the nondiscrimination requirement of the ISP on the U.S.-Cuba route in 2012, no U.S. carrier yet provided direct service to Cuba. Since then, following the President's announcement of the changes in U.S. policy on Cuba in December 2014, several U.S. international carriers have entered into operating agreements for direct service on the U.S.-Cuba route.<sup>6</sup>

Now that multiple U.S. carriers are able to provide direct service to Cuba, and the former State Department and other restrictions addressed above are being relaxed, the Commission should adopt the regulatory policies that are necessary to promote competition and lower rates on this route. Such policies would benefit users in both the United States and Cuba and stimulate the increased communication that is the goal of U.S. policy toward Cuba.<sup>7</sup>

Specifically, to encourage U.S. carriers to seek to negotiate more flexible and cost-based arrangements, the Commission should remove the non-discrimination requirements from U.S. carrier arrangements on the U.S-Cuba route and apply the market-based regulatory framework

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<sup>5</sup> *Id.*

<sup>6</sup> *See Further Notice*, ¶ 5 (noting agreements negotiated by IDT and Sprint). *See also*, Letter dated March 3, 2016 from Ian Dillner, Verizon, to Marlene H. Dortch, Secretary, FCC, IB Docket No. 10-95 (submitting service agreement with Empresa de Telecomunicaciones de Cuba, S.A. ("ETECSA")).

<sup>7</sup> *See State Department Letter* at 2 (noting that its new policy guidance "shall serve to increase a free and open flow of information between the people of Cuba and the United States").

that has governed U.S. carrier traffic arrangements on all other international routes since 2012 (and in many instances long before).<sup>8</sup>

**2. The Commission Has Previously Found That ISP Impedes Achievement of Greater Competition and Lower Rates**

The Commission has already determined that achieving more competition and lower rates on U.S. international routes requires the removal of nondiscrimination requirements such as those at issue here. In removing the ISP from all other remaining international routes, but retaining a partial version for Cuba in the form of the nondiscrimination requirement, the Commission found in 2012 that such regulation in general no longer served the public interest because it impeded U.S. carriers in their efforts to negotiate the more flexible and cost-based arrangements proven to stimulate increased international calling in today's international market. Indeed, the Commission has long recognized that the ISP "is not structured to provide an incentive to foreign carriers to lower rates to cost-based levels" and "may in reality hinder the ability of U.S. carriers to negotiate more cost-based settlement rates and efficient terms in their agreements with foreign carriers."<sup>9</sup>

Those concerns apply today with particular force to the remaining non-discrimination requirement of the ISP that remains in place for Cuba. As the Commission has explained, under the requirement that negotiated rates must be available to all other U.S. carriers, "the negotiating carrier has a reduced incentive to negotiate aggressively," because "[n]o matter how aggressively

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<sup>8</sup> The ISP was removed from the large majority of U.S. international routes prior to 2012. *See 2012 ISP Reform Order* ¶ 5 (noting that the Commission exempted benchmark-compliant routes from the ISP in 2004 and that 165 routes were exempt by 2012).

<sup>9</sup> *See International Settlements Policy Reform*, 19 FCC Rcd. 5709, ¶¶ 13, 34 (2004) ("2004 ISP Reform Order").

a carrier negotiates, it will be unable to achieve a cost-advantage vis-à-vis its competitors under the ISP.”<sup>10</sup>

The Commission accordingly found in 2012 that the ISP had become “unnecessarily burdensome on U.S. carriers attempting to negotiate agreements to achieve lower rates,” and that the elimination of this policy would promote market-based traffic arrangements providing more competitive pricing for U.S. consumers.<sup>11</sup> Based on these findings, the Commission removed the ISP from all remaining international routes where it still applied at that time, except for the U.S.-Cuba route.<sup>12</sup> However, recent changes in U.S. policy towards Cuba, including commercial opportunities there as well as loosening restrictions on the ability of citizens of both countries to interact, have increased the importance of encouraging the development of market-based arrangements. Accordingly, the Commission should now find, as it has done previously for all other routes, that the remaining requirement of the ISP on the U.S.-Cuba route no longer serves the public interest and should be removed.

### **3. The Commission’s Competitive Safeguards Would Prevent Anticompetitive Harm**

Any potential concerns that the removal of the non-discrimination requirements on the U.S.-Cuba route may lead to discrimination or other anticompetitive actions against U.S. carriers would not justify the retention of this burdensome regulation. The prevention of anticompetitive

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<sup>10</sup> *1998 Biennial Regulatory Review, Reform of the International Settlements Policy and Associated Filing Requirements*, 14 FCC Rcd. 7963, ¶ 24 (1999) (“1999 ISP Reform Order”).

<sup>11</sup> *See 2012 ISP Reform Order*, ¶ 1.

<sup>12</sup> *Id.* Prior to 2012, the ISP was removed from routes certified to be benchmark-compliant. *See id.*, ¶ 5. The Commission’s 2012 order removed the remaining routes from application of the ISP, except for Cuba, even though those routes had not been certified to be benchmark-compliant. Thus, the fact that Cuba has not become benchmark-compliant should not impede removal of the non-discrimination requirement.

conduct is adequately addressed by the competitive safeguards that the Commission established in 2004 with the specific purpose of protecting the U.S. market after removal of the ISP.<sup>13</sup> These safeguards allow action by petition, or on the Commission's own motion, and provide an expedited comment cycle for carrier petitions "in order to address or avert potential harm to U.S. competition and U.S. consumers."<sup>14</sup> As the Commission found in 2004, the safeguards "effectively achieve the same purposes of the ISP to prevent anticompetitive harm without also broadly prohibiting the benefits of more flexible agreements to U.S. competition and U.S. consumers."<sup>15</sup> Those safeguards would perform the same function here.

#### **4. The Commission Also Should Remove Other Restrictions That Would Impede Market-Based Arrangements**

The Commission also should remove other regulations that may impede the negotiation of more flexible, cost-based agreements on the U.S.-Cuba route. In particular, if the Commission adopts the proposal to remove the non-discrimination requirements that apply under Rule 63.22(f) and the *TeleCuba Waiver Order*, the Commission also should remove the further requirement under that order that any agreement with ETECSA should routinely be filed with the Commission and made available for public inspection.<sup>16</sup> As the Commission has long recognized, requirements for the public disclosure of termination rate agreements exert a significant "chilling" effect on competitive rate negotiations and thereby remove many of the

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<sup>13</sup> *2004 ISP Reform Order*, ¶ 40.

<sup>14</sup> *Id.*, ¶ 51.

<sup>15</sup> *Id.*, ¶ 33.

<sup>16</sup> See *ICConnect Wholesale d/b/a TeleCuba Petition for Waiver of the International Settlements Policy and BenchmarkRate for Facilities-Based Telecommunications Services with Cuba*, 26 FCC Rcd. 5217 (2011) ("*TeleCuba Waiver Order*").

potential public interest benefits of competitive, market-based arrangements.<sup>17</sup> The Commission therefore removed similar public filing requirements from the international routes on which the ISP was removed in 2012, and should remove this filing requirement from the U.S.-Cuba route as well, if the proposal to remove non-discrimination requirements is adopted here.

Similarly, the Commission should remove the *TeleCuba Waiver Order* conditions that require agreements not only to comply with the ISP but also to be nonexclusive.<sup>18</sup> The retention of the latter condition would significantly impede the ability of U.S. carriers to negotiate flexible, market-based arrangements. Indeed, it was to avoid impeding the negotiation of such arrangements that the Commission chose not to apply the “no special concessions” prohibition to the rates, terms and conditions of U.S. carrier agreements with foreign carriers for the settlement of international traffic.<sup>19</sup> The Commission found, in adopting this limitation in the *1999 ISP Reform Order* that “it makes no sense for the No Special Concessions Rule to impose a nondiscrimination requirement for settlement arrangements on routes where we remove the ISP. The point of removing the ISP is to allow market forces to determine the types of arrangements into which carriers enter.”<sup>20</sup> The same conclusion applies here.

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<sup>17</sup> See *2004 ISP Reform Order*, ¶ 58 (“[W]e find that the filing and maintenance of current contracts at the Commission for routes where the ISP no longer applies unnecessarily restricts the flexibility of U.S. carriers in their negotiations and may provide disincentives for U.S. carriers to negotiate aggressively toward more cost-based rates to the benefit of U.S. customers.”)

<sup>18</sup> *TeleCuba Waiver Order*, ¶ 30.

<sup>19</sup> See 47 C.F.R. § 63.14(c).

<sup>20</sup> *1999 ISP Reform Order*, ¶ 85.

**CONCLUSION**

As described above, to promote the benefits of market-based arrangements in encouraging increased communications on the U.S.-Cuba route, the Commission should remove all non-discrimination requirements and other restrictions that currently apply to facilities-based international services and thus provide the same regulatory treatment for U.S. carrier traffic arrangements on this route that applies on all other U.S. international routes.

Respectfully submitted,

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Dated: April 4, 2016