

**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 Nextel Corporation and Verizon)	RM-11322
)	
IConnect Wholesale, Inc. d/b/a TeleCuba; Petition for Waiver of the International Settlements Policy and Benchmark Rate for Facilities-Based Telecommunications Services with Cuba)	IB Docket No. 10-95
)	
)	IB Docket No. 05-254
Modifying the Commission’s Process to Avert Harm to U.S. Competition and U.S. Customers Caused by Anticompetitive Conduct)	

VERIZON COMMENTS

While recent activity provides positive signs and optimism for the introduction of more robust competition on the U.S.-Cuba route, the Commission should maintain the nondiscrimination condition it set out in the *TeleCuba Waiver Order*¹ so long as termination rates continue to significantly exceed the Commission’s established benchmarks. Verizon and a few other U.S. carriers have recently established commercial agreements for direct traffic exchange between the U.S. and Cuba, opening up long-dormant possibilities. However, these commercial relationships and the commercial environment for telecommunications in Cuba are still developing. The Commission can best achieve its policy objectives for telecommunications

¹ *IConnect Wholesale, Inc. d/b/a TeleCuba; Petition for Waiver of the International Settlements Policy and Benchmark Rate for Facilities-Based Telecommunications Services with Cuba*, Memorandum Opinion and Order, 26 FCC Rcd 5217 (IB 2011) (“*TeleCuba Waiver Order*”).

services between the U.S. and Cuba by removing the nondiscrimination requirement in Section 63.22 of the Commission’s rules, but promoting the benchmark settlement rate through the continued application of the *TeleCuba Waiver Order* framework, including its nondiscrimination condition. The Commission should therefore wait for these commercial relations to become more firmly established before it removes all nondiscrimination requirements on this route.

I. BACKGROUND

The Commission has noted that “historically unique circumstances” have governed the market for telecommunications between the U.S. and Cuba.² For many years, U.S. carriers could not directly connect with Cuba, and thus telephone traffic between the U.S. and Cuba was routed through other countries. During that time, foreign carriers that interconnected directly with Cuba did so at settlement rates above the benchmark rates the Commission established as appropriate for U.S. carriers to pay.³

In 2011, the Commission took initial steps to promote direct interconnection between the U.S. and Cuba. In its *TeleCuba Waiver Order*, the Commission established a limited waiver of the benchmark settlement rate to allow flexibility for U.S. carriers to develop direct connections to serve Cuba.⁴ While the Commission granted the waiver to encourage initial agreements, the Commission required agreements between carriers that relied on the waiver to comply with

² *International Settlements Policy Reform, et al.*, Further Notice of Proposed Rulemaking, 31 FCC Rcd 1390, ¶ 4 (2016) (“*FNPRM*”); *International Settlement Policy Reform, et al.*, Report and Order, 27 FCC Rcd 15,521, ¶ 17 (“*2012 ISP Reform Order*”).

³ *FNPRM*, ¶ 4 & n.13.

⁴ *TeleCuba Waiver Order*, ¶ 24. Verizon supported this limited waiver at the time and has since, along with a few other companies, relied on this waiver to reach a service agreement for the direct exchange of international traffic between the U.S. and Cuba. See Verizon Reply, IB Docket No. 10-95 (June 10, 2010).

several conditions.⁵ In particular, the Commission insisted on maintaining nondiscrimination by mandating that any “agreement may not be exclusive” and other providers seeking to serve Cuba “must be able to do so on the same terms and conditions.”⁶ The Commission explained that “[t]he objective of the conditions is to achieve, over time, a reduction of the requested settlement rate to or below the current benchmark level.”⁷

The Commission again reviewed its telecommunications policies regarding Cuba in 2012, deciding that, like its decisions to remove the International Settlements Policy (ISP) rules from all other routes around the globe,⁸ it should exempt Cuba from most of the old ISP requirements because they might “frustrate[]” efforts to connect directly.⁹ However, the Commission decided to maintain the ISP’s nondiscrimination requirement in its rules.¹⁰ This nondiscrimination requirement, the Commission reasoned, “is essential to assuring that one U.S. carrier is not favored over another once direct service on the U.S.-Cuba route resumes,” noting that it “would place all U.S. carriers in a better position to negotiate direct links to Cuba.”¹¹

⁵ *TeleCuba Waiver Order* ¶¶ 15, 24, 31.

⁶ *Id.* ¶ 31.

⁷ *Id.* ¶ 30.

⁸ *2012 ISP Reform Order* ¶¶ 2, 17-20.

⁹ *Id.* ¶¶ 17-19. The Commission’s ISP was established “to prevent foreign carriers with market power from discriminating against or using threats of discrimination or other anticompetitive actions against competing U.S. carriers as a strategy to obtain pricing concessions regarding the exchange of international traffic.” *FNPRM* at n.4.

¹⁰ *2012 ISP Reform Order* ¶¶ 17-19, *codified in* 47 C.F.R. § 63.22(f).

¹¹ *2012 ISP Reform Order* ¶¶ 17-18. The Commission defined nondiscrimination as “all U.S. carriers must be offered the same effective accounting rate and same effective date for the rate.” *Id.* ¶¶ 2, 15.

Accordingly, the Commission has two separately developed bases for non-discrimination on the U.S.-Cuba route: (1) the *TeleCuba Waiver Order* condition and (2) the remnants of the ISP nondiscrimination policy codified into the rules.¹² The Commission now seeks comment on the elimination of these nondiscrimination requirements.¹³

II. THE NONDISCRIMINATION PROVISION OF THE *TELECUBA WAIVER ORDER* IS STILL RELEVANT GIVEN THE EARLY STAGES OF DIRECT CONNECTION ON THIS ROUTE.

Verizon and a small number of other providers recently have reached direct interconnection agreements with the Cuban carrier Empresa de Telecomunicaciones de Cuba S.A. (ETECSA).¹⁴ These agreements demonstrate significant progress in opening this route, but the environment in Cuba for commercial telecommunications arrangements still remains at the very early stages. Providers are only very recently beginning to serve Cuba directly and others are in the process of implementing and negotiating agreements. Cuba is still served by a single domestic monopoly operator. The Cuban operator – ETECSA – has to date not negotiated rates at or near the Commission’s established \$0.19 per minute benchmark, instead currently charging

¹² *FNPRM* ¶¶ 2, 6; 47 C.F.R. § 63.22(f).

¹³ *FNPRM* ¶¶ 6-9. See also *Modification of Process Regarding the Licensing of Telecommunications Services Between the United States and Cuba*, Public Notice, 30 FCC Rcd 12458 (2015) (“*2015 Public Notice*”) (outlining recommendations from the United States Department of State); *attaching* Letter from Ambassador Daniel A. Sepulveda, U.S. Coordinator for International Communications and Information Policy, U.S. Department of State, to Chairman Thomas Wheeler, FCC (Oct. 26, 2015) (“*State Department 2015 Letter*”).

¹⁴ *FNPRM* ¶ 5; see also Verizon Letter, *Notification of Acceptance of Terms and Conditions for Waiver of the Benchmark Rates for Cuba*, IB Docket No. 10-95 (March 1, 2016); Verizon Letter, *Request for Review of Service Agreement*, IB Docket No. 10-95 (March 3, 2016).

U.S. carriers a rate of \$0.60 per minute.¹⁵ Further, as an island nation, Cuba has limited ingress points for communications that may create barriers to additional competitive forces.

Thus, while we share in the optimism based on promising early indicia, there are not yet sufficient facts to support removing all nondiscrimination requirements. As discussed below, additional time is warranted before the Commission can accurately assess whether it should relax as the nondiscrimination requirement of the *TeleCuba Waiver Order*. As consumer services proliferate and as consumer demand for these newly available communications services develops, so too may some additional pressure to reduce the high termination rates.

The Commission should, therefore, maintain at least one of the tools that it and U.S. carriers can use to maintain downward pressure on rates between the U.S. and Cuba. While the Commission has recognized generally that removing the nondiscrimination terms may provide a greater degree of freedom to negotiate lower settlement rates, such flexibility may be premature until such time as additional providers begin serving the market and there is substantial progress toward or below the benchmark rate.¹⁶

As the environment for telecommunications is changing in Cuba, the Commission may be best able to achieve this flexibility on a case-by-case basis, rather than by relying on a vestige of the otherwise eliminated ISP rules. Thus, the Commission could eliminate the rule-based requirement,¹⁷ but it should not relax the nondiscrimination requirement found in the *TeleCuba*

¹⁵ This rate may decrease over time. The *TeleCuba Waiver Order* requires agreements relying on the waiver to contain a stated intention “to reduce the termination rates toward or below the benchmark rate over time,” including “at least one significant, commercially negotiated reduction in rates during the three-year period” and a downward glide path for rates. *TeleCuba Waiver Order* ¶ 31.

¹⁶ See *FNPRM* ¶ 7; *2012 ISP Order* ¶ 16.

¹⁷ 47 C.F.R. § 62.22(f).

Waiver Order until the prevailing rate drops to, or there is substantial progress toward, the benchmark, providing evidence that carriers can reach more reasonable termination rates.¹⁸

The Commission stated in its *TeleCuba Waiver Order* that it seeks “to ensure that progress in re-establishment of business relations and direct links will lower rates for consumers.”¹⁹ Accordingly, it would be appropriate for the Commission to revisit this question of progress again as the marketplace further develops and U.S. carriers gain additional experience directly serving traffic to Cuba.

If the Commission does relax the existing nondiscrimination requirement in both its rules and its application of the *TeleCuba Waiver Order*, the continued public inspection requirement is warranted while rates remain significantly above benchmark.²⁰ This requirement provides an important informative role allowing competitors to see the rates and major terms of service to know in a timely manner how agreements have resulted in lower rates so that competitors may, in turn, seek lower rates. Without the public inspection requirement, the benefits of reduced rates could be limited and could slow the Commission’s goal of getting rates below benchmark.

¹⁸ This is not inconsistent with the proposals advanced by the U.S. State Department that call for the elimination of the discontinuance requirements in Section 63.22(f) of the Commission’s rules and the continued use of limited waivers of the benchmark settlement rate. *See State Department 2015 Letter*, at 2; *2015 Public Notice*, at 1-2.

¹⁹ *TeleCuba Waiver Order* ¶ 24.

²⁰ *See FNPRM* ¶ 9. While we believe such requirements are generally unduly burdensome and unnecessary, our experience on the U.S.-Cuba route remains limited at this early stage. *See, e.g., 2012 ISP Reform Order* ¶ 26.

III. CONCLUSION

The Commission should maintain the nondiscrimination requirements in its *TeleCuba Waiver Order* to ensure that settlement rates on the U.S.-Cuba route move downward toward the benchmark.

Respectfully submitted,

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