

**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	)	

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

AT&T Services Inc., on behalf of its affiliates (“AT&T”), submits the following reply 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> In accordance with the policy change requested by the State Department, and consistent with the Commission’s regulatory treatment of all other international routes since 2012, the Commission should now remove all non-discrimination requirements and other restrictions that currently apply to facilities-based international service arrangements on the U.S.-Cuba route. This proposed new policy approach will provide optimal benefits to consumers. As AT&T has described, consistent with the framework that the FCC applies to all other routes,

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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*”).

removing the last vestige of traditional regulation to allow development of market-based arrangements would best encourage lower rates that would benefit users in both the United States and Cuba.

Verizon, which is among those U.S. carriers that have established direct links to Cuba, fails to show otherwise.<sup>2</sup> Indeed, Verizon reports that those U.S. carriers are paying “a rate of \$0.60 per minute” to terminate calls in Cuba pursuant to the outdated and anticompetitive International Settlements Policy (ISP) regulation that it seeks to maintain by requesting “continued application of the *TeleCuba Waiver Order Framework*, including its nondiscrimination condition.”<sup>3</sup> As Verizon previously recognized in supporting the removal of the ISP from the other remaining routes in 2011, the elimination of such regulation “is more likely to result in lower rates than maintaining this antiquated regime.”<sup>4</sup> Similarly, Verizon acknowledged in 2011 that the public filing of agreements – which Verizon now seeks to require to be kept in place on the U.S.-Cuba route even if all nondiscrimination requirements are now removed – “can harm the competitive process by creating disincentives for foreign carriers to agree to reduced rates.”<sup>5</sup>

Moreover, there is certainly no basis to maintain the nondiscrimination condition in the *TeleCuba Waiver Order* after removal of the ISP on the U.S.-Cuba route. A major purpose of

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<sup>2</sup> In addition to the three U.S. carriers with arrangements for direct service to Cuba noted by AT&T (p.3 & n.6), T-Mobile USA has also entered into such arrangements. *See* Letter dated April 11, 2016 from Jennifer Kostyu, Counsel to T-Mobile USA, to Marlene H. Dortch, Secretary, FCC, IB Docket No. 10-95.

<sup>3</sup> Verizon at 2 & 5.

<sup>4</sup> Comments of Verizon, IB Docket No. 11-80, Aug. 18, 2011, at 5.

<sup>5</sup> *Id.* at 7.

that condition was to ensure consistency with the Commission rules that applied at that time to other international routes with high rates – but which no longer apply anywhere in the world, except to the U.S.-Cuba route. As stated by the Further Notice, the Commission sought in *TeleCuba Waiver Order* to “balance the policy goals of reestablishing direct telecommunications links with Cuba by U.S. carriers with promoting competition and lower calling rates for services to Cuba, as well as other international routes.”<sup>6</sup> Notably, the Commission went on to state in the *TeleCuba Waiver Order* that “[w]e believe that re-establishing direct links should be done in a way that benefits consumers and should not create a problematic precedent for settlement rates for other international routes.”<sup>7</sup>

Because the Commission’s rules in effect in 2011 required an international route to be benchmark-compliant before the ISP was removed, a grant of an ISP waiver prior to the reduction of rates to the benchmark level as requested by TeleCuba in that proceeding would have been inconsistent with this rule.<sup>8</sup> Accordingly, the Commission denied the requested ISP waiver and granted a benchmark waiver contingent on compliance with conditions requiring nondiscriminatory and nonexclusive arrangements.<sup>9</sup> These conditions required by the *TeleCuba Waiver Order* were consistent with the Commission’s rules then in effect that required all routes

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<sup>6</sup> Further Notice, ¶ 9. See also, *IConnect 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, ¶ 15 (2011) (“*TeleCuba Waiver Order*”)

<sup>7</sup> *Id.*

<sup>8</sup> See *International Settlements Policy Reform*, 19 FCC Rcd. 5709 App. B (2004) (“*2004 ISP Reform Order*”) (adopting Rule 64.1002(c) requiring a benchmark-compliant settlement agreement to add a U.S. international route to the list of routes exempt from the international settlements policy).

<sup>9</sup> See *TeleCuba Waiver Order*, ¶ 31.

that were not benchmark-compliant (like the U.S.-Cuba route) to comply with the ISP and “no special concessions” requirements for non-exclusive arrangements.<sup>10</sup>

Shortly thereafter, however, in 2012 the Commission removed its former rule requiring a route to be benchmark compliant prior to removal of the ISP, and eliminated the ISP from all remaining international routes on which that policy applied, except for Cuba, even though those remaining routes had not been found to be benchmark-compliant.<sup>11</sup> Additionally, with the removal of the ISP from these routes, the “no special concessions” rule automatically ceased to apply.<sup>12</sup> Therefore, continued application of the conditions required by the *TeleCuba Waiver Order* would fail to reflect the intervening change of regulation in 2012.

As a result of this change in rules in 2012, neither the removal by the Commission of the ISP nor the related *TeleCuba Waiver Order* conditions from the U.S.-Cuba route prior to the achievement of a benchmark-compliant rate would create any “problematic precedent for settlement rates for other international routes” as was the concern in 2011.<sup>13</sup> To the contrary, the Commission’s adoption of its proposed course of action in this proceeding would be consistent with the deregulatory policy that the Commission has applied to all other international routes since 2012 – which it has applied regardless of the level of rates on the route, the number of U.S. carriers with direct arrangements on the route, and the competitive circumstances in the

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<sup>10</sup> See *2004 ISP Reform Order*, App. B.

<sup>11</sup> See *International Settlements Policy Reform*, 27 FCC Rcd. 15521, ¶¶ 5, 74 & App. A (2012) (“*2012 ISP Reform Order*”).

<sup>12</sup> See 47 C.F.R. § 63.14(c)

<sup>13</sup> See *TeleCuba Waiver Order*, ¶ 15.

destination country.<sup>14</sup> AT&T thus supports the recommendation of the State Department that consumers seeking to place calls to Cuba should also now benefit from these Commission policies.

For the reasons set forth in AT&T's comments and above, the Commission should avoid maintaining on the U.S.-Cuba route the policies it has found on every other international route to obstruct rather than assist efforts to promote competitive, market-based arrangements and lower rates. Instead, the Commission should adopt the deregulatory policies it has found to be best-suited to stimulate the increased communication benefiting consumers at both ends of international routes that is the goal of U.S. policy toward Cuba.

Respectfully submitted,

By: /s/ James J. R. Talbot

James J. R. Talbot  
Gary L. Phillips  
David L. Lawson

Attorneys for  
AT&T Services Inc.  
1120 20<sup>th</sup> Street, NW  
Washington, D.C. 20036  
(202) 457-3048 (phone)  
(202) 457-3073 (fax)

Dated: April 18, 2016

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<sup>14</sup> As further noted in AT&T's comments (pp. 5-6), any competitive issues that may arise will be addressed by the competitive safeguards the FCC established specifically to protect the U.S. market after the ISP is removed on a route.