

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554

In the Matter of	)	
	)	
1998 Biennial Regulatory Review –	)	IB Docket No. 98-148
Reform of the International Settlements	)	
Policy and Associated Filing Requirements	)	
	)	
Regulation of International	)	CC Docket No. 90-337
Accounting Rates	)	

**COMMENTS**

Qwest Communications Corporation (“Qwest”),<sup>1</sup> by its attorneys, hereby submits its Comments in response to the Notice of Proposed Rulemaking<sup>2</sup> concerning the Commission’s proposed revision of its International Settlements Policy (“ISP”) and associated filing requirements.

Qwest strongly supports the Commission’s conclusion that the ISP and related filing requirements should not apply to arrangements with foreign carriers that lack market power or to arrangements on routes where international simple resale (“ISR”) has been authorized. Non-dominant foreign carriers do not have the ability to whipsaw U.S. carriers. On competitive routes like those where ISR has been authorized, Qwest believes that even dominant foreign carriers cannot whipsaw, because U.S. carriers can instead enter into agreements with competing non-dominant foreign carriers. Under such circumstances, where whipsawing is not a realistic concern, the ISP and related filing

<sup>1</sup> Qwest is a wholly-owned indirect subsidiary of Qwest Communications International, Inc., a publicly held, rapidly growing international telecommunications company. Qwest holds several international Section 214 licenses permitting it to provide a full range of facilities-based and resold international services for voice and data communications. As such, Qwest has a vital interest in the issues addressed by the NPRM.

<sup>2</sup> *1998 Biennial Regulatory Review – Reform of the International Settlements Policy and Associated Filing Requirements and Regulation of International Accounting Rates*, IB Docket No. 98-148, CC Docket No. 90-337, Notice of Proposed Rulemaking, (released August 6, 1998), FCC 98-148 (“NPRM”).

requirements should not apply, because the requirements actually restrain competition.

**I. The ISP Should Not Be Applied To Arrangements Between U.S. Carriers And Foreign Carriers In WTO Member Countries That Lack Market Power.**

Qwest wholeheartedly supports the Commission's proposal to eliminate the ISP requirements for arrangements concluded with foreign carriers from WTO Member countries in cases where such carriers lack market power on the relevant route.<sup>3</sup> Without market power, a carrier cannot whipsaw or otherwise discriminate against U.S. carriers.<sup>4</sup> As the Commission has repeatedly explained, the ISP was implemented principally to prevent whipsawing.<sup>5</sup> Consequently, the ISP is unnecessary where whipsawing is not a realistic concern.

The Commission would actually prevent foreign carriers with market power from whipsawing U.S. carriers by eliminating the ISP requirements for arrangements between U.S. and foreign carriers that lack market power. Competition is the best way to prevent whipsawing because wherever U.S. carriers can choose between multiple foreign carriers, no single carrier has the leverage needed to whipsaw. By eliminating the ISP requirements for non-dominant foreign carriers, the Commission

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<sup>3</sup> NPRM at ¶20. Several important FCC policies and decisions have focused on whether a carrier possesses market power. See, e.g., *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; End User Common Line Charges*, 12 FCC Rcd 15982 (1997); *Motion of AT&T Corp to be Reclassified as a Non-Dominant Carrier*, Order, 11 FCC Rcd 3271 (1996); *Motion of AT&T Corp. to be Declared Non-Dominant for International Service*, Order, 11 FCC Rcd 17963 (1996); *Policy Statement on International Accounting Rate Reform*, 11 FCC Rcd 3146 (1996).

<sup>4</sup> The Commission has consistently recognized that whipsawing could only be accomplished by carriers that have market power. See, e.g., *Regulation of International Accounting Rates*, Fourth Report and Order, 11 FCC Rcd 20063, n.69 (1996) ("As we stated in the Foreign Carrier Entry Order, foreign entities without market power in a foreign market generally are not a source of regulatory concern."); *AT&T Corp. Proposed Extension of Accounting Rate Agreement for Switched Voice Service with Argentina*, Order, 11 FCC Rcd 18014, 18016 (1996); *Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order, 11 FCC Rcd 3873, 3879 (1995).

<sup>5</sup> NPRM at ¶18.

would encourage U.S. carriers to work with non-dominant carriers, which would strengthen those carriers and ensure that there are viable alternatives for U.S. carriers in foreign markets.

Qwest agrees with the Commission's conclusion that the ISP actually inhibits competition and deters further market entry in markets that are already competitive.<sup>6</sup> U.S. carriers, particularly smaller carriers like Qwest, stand to benefit tremendously wherever the ISP is lifted because they would have full flexibility to negotiate terms on a market basis. The ISP, including particularly the proportionate return requirement, impedes entry into free markets and prevents carriers from entering into innovative agreements and introducing new services.

Qwest's experience in the fast-changing and increasingly competitive international marketplace has shown that less regulation permits more flexible marketplace responses that benefit customers through increased choice and lower prices. Therefore, Qwest supports the Commission's tentative conclusion that the long-term benefits of removing the ISP for arrangements with foreign carriers that lack market power will outweigh any short-term risks involved.<sup>7</sup> In fact, Qwest urges the Commission to remove the ISP wherever there is no realistic possibility that whipsawing will occur.

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<sup>6</sup> See NPRM at ¶20.

<sup>7</sup> NPRM at ¶20.

**II. The ISP Should Not Be Applied to Arrangements Between U.S. Carriers And Foreign Carriers In WTO Member Countries to Which The FCC Has Authorized ISR.**

Qwest agrees that, for the same reasons that the ISP should not apply to arrangements between U.S. and non-dominant foreign carriers, the ISP should not apply to any settlement or termination arrangements on routes where ISR has been authorized.<sup>8</sup> Quite simply, the ISP is unnecessary on routes where ISR has been approved because U.S. carriers are already free under the ISR rules to bypass the ISP by carrying most, if not all, of their switched traffic over private lines.<sup>9</sup> Therefore, the ISP is essentially superfluous on routes where ISR has been approved, and there is no basis for its retention.

The ISP is also superfluous on routes where ISR has been authorized because whipsawing is not a realistic concern on routes that satisfy the Commission's ISR test. U.S. carriers may serve routes via ISR where the destination country has been found by the Commission to offer equivalent resale opportunities, or where 50 percent of the traffic on the route is settled at or below benchmark rates.<sup>10</sup>

Where the Commission has found that the destination country offers equivalent resale opportunities, competition either already exists or will soon develop. The ISP is unnecessary where competition is or soon will be a reality, because U.S. carriers have alternative foreign carriers to turn to in the event that the dominant carrier attempts to whipsaw.<sup>11</sup> Moreover, encouraging competition is the best means for eliminating whipsawing, as explained above.

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<sup>8</sup> NPRM at ¶27.

<sup>9</sup> NPRM at ¶27

<sup>10</sup> See 47 C.F.R. § 63.18(e)(4).

Where the Commission has found that 50 percent of the traffic on the route is settled at or below benchmark rates, there is no realistic chance that a carrier with market power would whipsaw U.S. carriers. In countries that are at or below benchmark rates, either real competition exists or the settlement rate is hard evidence that the dominant carrier is not attempting to whipsaw U.S. carriers. In either event, removing the ISP would have a significant pro-competitive effect on the U.S. international service market,<sup>12</sup> and would benefit U.S. carriers, as explained above.

### **III. Filing Requirements Should Be Eliminated Where The ISP Is Eliminated.**

Qwest fully supports the Commission's proposal to amend the Section 43.51 contract filing requirement and the Section 64.1001 accounting rate filing requirements so that contracts and accounting rate information for arrangements that are not subject to the ISP would not need to be filed with the Commission.<sup>13</sup> To the extent that the general ISP restrictions are lifted, the Sections 43.51 and 64.1001 requirements should also be lifted, because the benefits to be gained from lifting the requirements overwhelmingly outnumber any benefits for their retention.

The pro-competitive benefits to be gained from lifting the Sections 43.51 and 64.1001 requirements are substantial. First, lifting the filing requirements would reduce transaction costs for carriers and reduce the administrative burden on service providers and the Commission itself.<sup>14</sup> The Commission has repeatedly recognized that affirmative filing requirements impose an administrative burden that should be avoided

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<sup>11</sup> NPRM at ¶ 26.

<sup>12</sup> NPRM at ¶27.

<sup>13</sup> NPRM at ¶¶21, 30.

where unnecessary.<sup>15</sup> Second, lifting the filing requirements would facilitate market entry by not requiring carriers to disclose the details of their arrangements with foreign carriers. These filing requirements are particularly burdensome for foreign carriers, which increases the chilling effect on their entry into the U.S. international services market.<sup>16</sup> Third, as the Commission correctly recognizes, such filing requirements inhibit U.S. carriers from entering into innovative arrangements that are pro-competitive and that could reduce rates for U.S. customers.<sup>17</sup>

By contrast, the benefits to be gained by retaining the filing requirements are insignificant, particularly because the Commission could always require the filing of specific agreements. Moreover, competitors will inform the Commission of any suspected anti-competitive behavior. Accordingly, Qwest supports this and all measures that remove unnecessary regulatory burdens which hinder the development of vigorous competition.

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<sup>14</sup> See, e.g., *Detariffing for Competitive Access Providers and Competitive Local Exchange Carriers*, 12 FCC Rcd 8596, 8610 (1997).

<sup>15</sup> See, e.g., *Closed Captioning and Video Description of Video Programming*, Report and Order, 13 FCC Rcd 3272, 3375 (1997); *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, 12 FCC Rcd 11266, 11275 (1997); *Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 8831-32 (1997); *Regulatory Reform for LECs Subject to Rate of Return Regulation*, Order on Reconsideration, 12 FCC 2259, 2275 (1997).

<sup>16</sup> Cf. *Detariffing for Competitive Access Providers and Competitive Local Exchange Carriers*, 12 FCC Rcd 8596, 8610 (1997).

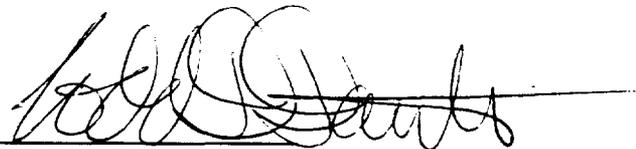
<sup>17</sup> NPRM at ¶21.

**IV. Conclusion**

For the reasons explained above, Qwest requests the Commission to amend its rules such that the ISP and related filing requirements do not apply to arrangements between U.S. carriers and foreign carriers in WTO Member countries that lack market power or to arrangements between U.S. carriers and foreign carriers in WTO Member countries to which the FCC has authorized ISR.

Respectfully submitted,

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September 16, 1998

## CERTIFICATE OF SERVICE

I, Lorretto J. Scott, hereby certify that on this 16th day of September, 1998, I caused true and correct copies of the COMMENTS OF QWEST COMMUNICATIONS CORPORATION to be served via hand delivery, upon those persons listed below.

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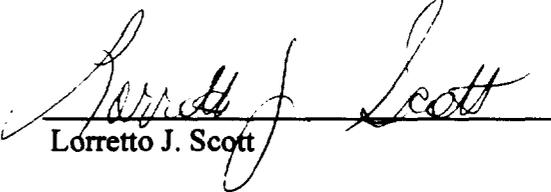
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