Proceeding: In the Matter of 1998 Biennial Regulatory Review -- Reform of the International Record 1 of 1
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In the Matter of	)	
	)	
1998 Biennial Regulatory Review --	)	
Reform of the International Settlements	)	IB Docket No. 98-148
Policy and Associated Filing Requirements	)	
	)	CC Docket No. 90-337
Regulation of International	)	
Accounting Rates	)	

COMMENTS OF FRANCE TELECOM

Pursuant to the Commission's Notice of Proposed Rulemaking ("NPRM"), released August 6, 1998 in the above-captioned dockets, France Telecom ("FT") hereby respectfully submits its comments.

I. FT Supports Deregulation and a Level Playing Field Approach to Elimination of the ISP and Filing Requirements

The following is France Telecom's general reaction to the Commission's NPRM. In summary, FT would approve globally of eliminating the ISP and filing requirements such as those under Sections 43.51 and 64.1001[1], provided FT is not, in fact, treated less favorably under the Commission's rules and policies than any other carrier in France nor vis-à-vis its other competitors in the global market place. As a general principle, FT is willing to compete on a level playing field and on a commercial basis, without filing

[1] 47 C.F.R. §43.51, §64.1001.

requirements or ISP type lock-step bilateral arrangements. And we share the following comments with specific reference to the U.S. - France market in order to encourage a deregulatory approach for such market.

As a matter of good policy sense and practical fairness, FT encourages the Commission not to adopt any rules or policies which could result in treating FT differently than other carriers, with respect to the elimination of ISP and filing requirements, whether such treatment is based on FT's market position or some other grounds. Given the openness of the French market and the new international competitive and technical environment, potential abuses of market power, if any, on the liberalized U.S.-France route, can be prevented, among other ways, by the market itself. The Commission has already noted that where foreign markets are liberalized, such as France, U.S. carriers are likely to have alternatives to terminate traffic. (NPRM at ¶26 & note 34).

There are indeed many alternative ways for carriers to exchange traffic between France and the U.S. with a multiple choice of :

- carriers and providers of services [2] (with some having end to end capacity),
- geographical paths: in particular through hubbing via the UK (several carriers have their own cables between France and the UK), and more generally, through new routing opportunities (least cost routing) becoming available as a result of the

[2] For example, AT&T (and perhaps other U.S. carriers) has in place an agreement with Cegetel for bilateral US-France traffic. Cegetel is a significant competitor of FT in the French market.

development of paneuropean networks and the liberalization of European markets, and

- methods and technical solutions (e.g. settlement rates, ISR, PSTN, developing IP telephony...).

Consequently, the manner in which traffic is exchanged is determined by competitive forces as opposed to regulatory intervention. By way of example, FT's accounting rate has continued to drop as a result of competitive pressure, and not in response to accounting rate specific regulatory measures.[3] In today's market, a carrier like FT, which may or may not fall within the NPRM's concept of market power[4], cannot prevent traffic from being routed through alternatives ways, other than by providing offers which are as attractive as its competitors' offers. Any attempt by a carrier to use its supposed market power would make traffic migrate to its competitors. In the event that the U.S. carrier does not like the arrangement that the foreign carrier proposes, the U.S. carrier would

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[3] In fact, FT's settlement rate for U.S.-France traffic dropped dramatically from about 85.5 cents per minute in 1990 to 13.7 cents per minute effective January 1, 1997. Therefore, FT's accounting rate was below the Commission's benchmarks at the time the Benchmarks Order was adopted, International Settlement Rates, IB Docket No. 96-261, Report and Order, 12 FCC Rcd 19806 (1997), and continued to fall thereafter. Currently, FT's settlement rate is 10 cents per minute.

[4] In its NPRM the Commission proposes the same presumption used in the Foreign Participation Order, 12 FCC Rcd at 23,959, ¶160, that "carriers with less than 50 percent market share in the relevant markets lack sufficient market power to affect competition adversely in the United States." NPRM at ¶22. For purposes of the issues at hand, and in view of rerouting and hubbing practices, it may make sense to adopt a regional approach to analyzing the market. Also, for a liberalized country like France which has an effective interconnection regime (cost-based, mandatory and non-discriminatory), the market share in the domestic relevant markets identified by the FCC for the determination of market power may not be relevant to the ability or incentive to discriminate in favor of or against correspondent operators for the termination of traffic.

have the option of walking away and delivering its traffic otherwise to France. Under these circumstances, a carrier such as FT cannot adversely affect competition and thus the ISP and regulatory oversight through filing requirements are no longer necessary.

Given the foregoing, a deregulatory approach is justified. Where, as in the case of the U.S.-France route, the market is open and competition appears to be working (e.g. ISR is authorized), FT encourages the Commission, in this context[5], to avoid burdening itself (and market participants) with the task of determining who has market power. In such circumstances, to do otherwise and engage in a detailed analysis of the conditions of the market -- such as in a proceeding for declaratory relief that a given market share, say 50%, is not cause for concern --

- would increase the regulatory burdens on the FCC and market participants,
- slow down development of the competitive market, and
- run contrary to the general purpose of this NPRM which is to eliminate unnecessary regulation.

II. Filing Requirements Are Unnecessary for the U.S.-France Route

FT believes that filing requirements are needed the least on international routes such as the U.S.-France route, where, as the Commission has noted (NPRM at ¶26 & note 34), the foreign market at the end of the route has been liberalized and where alternative ways of exchanging traffic have been developed. In the new competitive and technical

[5] Specific transactions such as the proposed AT&T-BT transaction may merit a different approach or at least closer inspection.

environment which characterizes the U.S.-France route, the filing requirements set forth in Sections 43.51 and 64.1001 of the Commission's rules are no longer necessary or appropriate. In such an environment, the benefits, if any, to be gained by public filing of contracts and accounting rate information are outweighed by the drawbacks which the Commission has already noted. In its NPRM, the Commission cites two important anti-competitive consequences of the ISP which are directly linked to the requirement of public filing of contracts. On one hand, the Commission expressed concern over the potential anticompetitive impact that public disclosure of accounting rate information and contractual terms could have in terms of price signalling. (NPRM at note 15). The Commission appears to have already noted price signalling as a negative consequence in the context of public tariffing of retail rates. (Id.). And, the Commission notes that the ISP may act to inhibit competition among U.S. international carriers by potentially reducing the incentive for U.S. carriers to negotiate low settlement rates because an accounting rate negotiated by one is available to all (Id. at ¶9).

A second well-founded concern of the Commission is that the ISP may inhibit competition at a retail level because public filing of settlement rates is a clear indicator to competing U.S. carriers of their competitors' cost of providing international switched services (Id. at ¶11.) This in turn creates a chilling effect on competition and the carriers' ability to negotiate aggressively because prices tend to stabilize in such an environment. (Id.)

III. Consistency Requires that the No Special Concessions Rule not Apply to Traffic Settlement Rates nor to the Allocation of Return Traffic

As for the No Special Concessions rule, FT agrees, as a matter of policy and of logic, with the Commission's tentative conclusion that the rule does not and should not apply to the terms and conditions of traffic settlement or allocation of return traffic, on a route authorized for ISR. To conclude otherwise would be inconsistent with the very existence of an ISR arrangement since ISR is an alternative, non-ISP, arrangement.[6] Such an application of the No Special Concessions rule to ISR would effectively recreate the ISP for such routes which would be illogical and contrary to the deregulatory thrust of the NPRM.

CONCLUSION

The Commission has launched a worthy initiative to deregulate the international services market and with respect to which FT respectfully requests the foregoing comments to be taken into account.

Respectfully submitted,

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[6] ISR and flexibility are the two acknowledged mechanisms which allow carriers to deviate from the ISP. NPRM at ¶¶12-13.

September 16, 1998