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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 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)	

REPLY COMMENTS OF STAR TELECOMMUNICATIONS, INC.

STAR Telecommunications, Inc. ("STAR"),¹ by its attorneys and pursuant to the Commission's *Notice of Proposed Rulemaking*, FCC 98-190 ("NPRM"), in the above-captioned proceeding, hereby submits these Reply Comments.

Along with the vast majority of commenters, STAR commends the FCC and supports the agency's proposal to reform its international settlements policy ("ISP") in light of the changing competitive landscape for international telecom. STAR also favors relaxing the reporting requirements for international carriers and allowing international simple resale ("ISR") on all routes to World Trade Organization ("WTO") member countries. These measures will help U.S. international carriers, like STAR, to enter into more market-driven arrangements with foreign carriers and to compete more vigorously for customers in the United States and abroad.

¹ STAR is a second-tier U.S. facilities-based and resale international carrier. It provides international termination services to other U.S. and foreign carriers as well as long distance services to domestic end users.

I. The ISP Should Be Lifted Where Appropriate.

A. The ISP Should Be Lifted for All Arrangements Between U.S. Carriers and Non-Dominant Foreign Carriers.

The NPRM proposes to lift the ISP for all settlement arrangements between U.S. carriers and non-dominant foreign correspondents in WTO member countries. STAR agrees with the Commission's conclusion — and the conclusion of most commenters — that whipsawing of U.S. carriers is not a concern where the foreign correspondent lacks market power.² For the same reason, however, there is no need to limit ISP reform to non-dominant carriers that are only from WTO countries.

As Teleglobe pointed out in its comments, there are important differences between the ISP and the Commission's market entry policies.³ The *Foreign Participation Order* established an open market entry policy for carriers from WTO member countries due to reciprocal commitments by other WTO members.⁴ Differing treatment for WTO and non-WTO carriers for market entry purposes is warranted because, otherwise, there is no incentive for non-WTO countries to liberalize their markets.

By contrast, as the comments of MCI WorldCom and Sprint make clear, whether a carrier is from a WTO or non-WTO country is not relevant for purposes of the ISP, which is designed to deter the abuse of market power. If a foreign carrier lacks market power,

² See NPRM ¶ 20.

³ See Teleglobe Comments at 3-5.

⁴ See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket No. 97-142, *Report and Order and Order on Reconsideration*, 12 FCC Rcd 23891 (1997).

application of the ISP to its U.S. correspondent would serve little purpose.⁵ Moreover, encouraging creative arrangements between U.S. carriers and their non-dominant correspondents in non-WTO countries will strengthen competition in countries that need it the most.

B. Market Power Determination

The NPRM proposes to establish a presumption in favor of lifting the ISP for arrangements with foreign carriers with less than 50 percent market share.⁶ STAR supports this proposal.

In order to determine which foreign carries are still considered dominant, the FCC should maintain and regularly publish on its Web site a list of dominant carriers country-by-country — as is the agency's practice regarding submarine cables that U.S. carriers may use — based on information published by foreign regulators and trade publications. Arrangements with foreign carriers not present on this list would not be subject to the ISP. Carriers wishing to have their names removed from the list of dominant carriers should be required to demonstrate their non-dominance through a declaratory ruling or similar process.

C. Application of the ISP to Arrangements With Dominant Foreign Carriers

STAR disagrees with the comments of ntt.com, inc. and GTE, which claim that application of the ISP to dominant carriers from WTO countries would violate the General

⁵ See MCI WorldCom Comments at 3; Sprint Comments at 10.

⁶ NPRM ¶¶ 22-24.

Agreement on Trade in Services ("GATS").⁷ Differing ISP treatment for dominant and non-dominant WTO carriers may be necessary to ensure fair competition among U.S. international carriers. As such, application of the ISP to dominant WTO carriers comports with the GATS; however, STAR expresses no position on whether differing treatment for dominant WTO carriers is necessary.

II. Filing Requirements Should Be Eliminated Where the ISP Is Lifted and Should Be Modified for Flexible Arrangements.

STAR agrees with the Commission's proposal to eliminate the Section 43.51 and 64.1001 filing requirements for accounting rate arrangements that are not subject to the ISP.⁸ These filing requirements are burdensome and, because they alert carriers to the settlement rate arrangements of their competitors, can hinder competition.

For settlement arrangements that continue to be subject to the ISP, the Commission has proposed to allow carriers to seek approval of alternative arrangements without filing their terms and conditions, provided the arrangement affects less than 25 percent of traffic on the route and is not between affiliated or joint venture carriers.⁹ STAR supports this proposal and urges the Commission not to require the filing of alternative arrangements under Section 43.51.

AT&T argues that removal of the filing requirement for flexible arrangements affecting

⁷ See GTE Comments at 10; ntt.com, inc. comments at 8-11.

⁸ See NPRM ¶ 21; see also, e.g., SBC Comments at 9-11; Qwest Comments at 5-6.

⁹ See *id.* ¶ 32-33.

less than 25 percent of traffic on a route would encourage whipsawing by dominant carriers on the foreign end. This argument is misplaced. Where there is evidence of anti-competitive conduct, the Commission is free to require the filing of any relevant terms and conditions, and carriers are always free to make use of the Commission's complaint procedures.¹⁰

Where the ISP remains in place and where an arrangement affects more than 25 percent of traffic along a given route, the Commission should continue to require the filing of contracts and rates, for alternative and conforming arrangements alike. The Commission should also ensure that the public has access to information about all such arrangements by posting the relevant filings on the Commission's Web site.

III. Where the ISP Does Not Apply, Carriers Should Be Able to Enter Into Arrangements for Termination of Region-Specific Traffic.

In its NPRM the Commission points out that lifting the ISP may allow carriers to enter into arrangements for the termination of region-specific traffic, i.e., "grooming."¹¹ STAR generally agrees with SBC's arguments that grooming would help to create additional downward pressure on settlements and thus would benefit U.S. consumers.¹²

However, STAR also agrees with the concerns expressed by AT&T and MCI WorldCom regarding the acceptance of groomed traffic by the Regional Bell Operating Companies and other incumbent local exchange carriers (collectively "ILECs").¹³ It is likely

¹⁰ See CompTel Comments at 9.

¹¹ See NPRM ¶ 43.

¹² See SBC Comments at 21.

¹³ See AT&T Comments at 33-34; MCI WorldCom Comments at 10-11.

that, due to their current bottleneck control over local access services, ILECs would be able to accept groomed traffic and to subsidize their international operations to the detriment of competing U.S. carriers. It is therefore essential that the Commission prohibit ILECs from accepting groomed international traffic until their markets are open to facilities-based competition and they no longer exercise bottleneck control over local access services.

IV. The Commission Should Allow International Simple Resale on All WTO Routes.

STAR agrees with Cable & Wireless that the adoption of a less restrictive approach to ISR would provide significant downward pressure on accounting rates.¹⁴ Expansion of ISR opportunities would also make the United States a more attractive hubbing point for international traffic. The Commission should therefore create a rebuttable presumption in favor of allowing ISR along all WTO routes.¹⁵

V. Conclusion

STAR supports ISP liberalization for arrangements with non-dominant carriers in WTO and non-WTO countries alike. Eliminating filing requirements for arrangements not subject to the ISP and allowing ISR on a greater number of international routes will also serve to enhance competition. In so doing, the Commission will put additional downward pressure on settlement rates to the ultimate benefit of U.S. consumers and carriers.

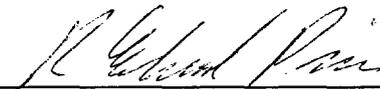
¹⁴ See Cable & Wireless Comments at 2-4.

¹⁵ Although the NPRM is silent about the use of international private lines for enhanced services, such as the Internet, STAR believes it would be useful for the Commission to confirm that its ISR policy does not apply to such services. In other words, the Commission should use this docket to confirm that any modified ISR policy does not affect the current status of international Internet services.

For these and other reasons, as explained above, STAR supports a modified form of the rule changes proposed in this docket.

Respectfully submitted,

STAR TELECOMMUNICATIONS, INC.

By: 

Gregory C. Staple
R. Edward Price

KOTEEN & NAFTALIN, L.L.P.
1150 Connecticut Avenue, N.W.
Suite 1000
Washington, D.C. 20554
(202) 467-5700

Its Attorneys

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CERTIFICATE OF SERVICE

I, Donna K. Rhudy, a legal secretary in the firm of Koteen & Naftalin, L.L.P., hereby certify that on the 16th day of October 1998 copies of the foregoing "Reply Comments of STAR Telecommunications, Inc." were deposited in the U.S. mail, postage prepaid, or hand delivered* addressed to:

*Kathryn O'Brien, Esq.
Federal Communications Commission
International Bureau
2000 M Street, N.W., Room 822
Washington, D.C. 20554

Charles C. Hunter, Esq.
Catherine M. Hannan, Esq.
Hunter Communications Law Group
1620 I Street, N.W., Suite 701
Washington, D.C. 20006

Leslie A. Vial, Esq.
Stephen E. Bozzo, Esq.
Bell Atlantic Communications, Inc. &
NYNEX Long Distance Company
1320 North Courthouse Road, 8th Floor
Arlington, VA 22201

Theodore Krauss, Esq.
Danielle K. Aguto, Esq.
Damien Regnault, Esq.
France Telecom, Inc.
1717 K Street, N.W., Suite 507
Washington, D.C. 20006

Christopher M. Heimann, Esq.
Ameritech
1401 H Street, N.W., Suite 1020
Washington, D.C. 20005

Robert J. Aamoth, Esq.
Todd D. Daubert, Esq.
Aileen A. Pisciotta, Esq.
Kelley, Drye & Warren, LLP
1200 19th Street, N.W., Suite 500
Washington, D.C. 20036

Genevieve Morelli, Executive V.P. &
General Counsel
Carol and Bischoff, V.P., Legislative &
Regulatory Affairs
Competitive Telecommunications Assoc.
1900 M Street, N.W., Suite 800
Washington, D.C. 20036

John F. Raposa, Esq.
GTE Service Corporation
600 Hidden Ridge, HQE03J27
P.O. Box 152092
Irving, TX 75015-2092

Gail L. Polivy, Esq.
GTE Service Corporation
1850 M Street, N.W., Suite 1200
Washington, D.C. 20036

Cheryl A. Tritt, Esq.
Charles H. Kennedy, Esq.
Morrison & Foerster, LLP
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006-1888

James E. Graf, II, Esq.
Cheryl Lynn Schneider, Esq.
Eric H. Loeb, Esq.
BT North America Inc.
601 Pennsylvania Avenue, N.W.
North Building, Suite 725
Washington, D.C. 20004

Gary M. Epstein, Esq.
Teresa D. Baer, Esq.
Kimberly S. Reindl, Esq.
Latham & Watkins
1001 Pennsylvania Ave., N.W.
Washington, D.C. 20004

William B. Barfield, Esq.
M. Robert Sutherland, Esq.
David G. Richards, Esq.
BellSouth Corporation
1155 Peachtree St., N.E., Suite 1800
Atlanta, GA 30309-3610

Mitchell F. Brecher, Esq.
Alexander T. McClain, Esq.
Fleischman and Walsh, LLP
1400 16th Street, N.W., Suite 600
Washington, D.C. 20036

Terrence J. Ferguson, Snr. V.P. & Special
Counsel
Level 3 Communications, LLC
3555 Farnam Street
Omaha, NE 68131

Jami deLorimier
Level 3 Communications, LLC
1755 Old Meadow Road
McLean, VA 22102

Joel S. Winnik, Esq.
David L. Sieradzki, Esq.
Jeremy B. Miller, Esq.
Treg Tremont, Esq.
Hogan & Hartson LLP
Columbia Square, 555 13th Street, N.W.
Washington, D.C. 20004

Eric Fishman, Esq.
Fletcher, Heald & Hildreth, PLC
1300 N. 17th St., 11th Floor
Arlington, VA 22209

Rachel J. Rothstein, V.P. for Regulatory &
Government Affairs
Paul W. Kenefick, Regulatory Counsel
Cable & Wireless USA, Inc.
8219 Leesburg Pike
Vienna, VA 22182

Alfred M. Mamlet, Esq.
Matthew S. Yeo, Esq.
Steptoe & Johnson LLP
1330 Connecticut Ave., N.W.
Washington, D.C. 20036

Emily C. Hewitt, Esq.
George N. Barclay, Esq.
Michael J. Ettner, Esq.
General Services Administration
1800 F Street, N.W., Room 4002
Washington, D.C. 20405

Leon M. Kestenbaum, Esq.
James W. Hedlund, Esq.
Sprint Corporation
1850 M Street, N.W.
Washington, D.C. 20036

Brian J. McHugh, Esq.
Squire, Sanders & Dempsey LLP
1201 Pennsylvania Ave., N.W.
P.O. Box 407
Washington, D.C. 20044

Charles A. Tievsky, Esq.
Teleglobe USA Inc.
1751 Pinnacle Drive, Suite 1600
McLean, VA 22102

Joseph T. Garrity, Senior Director
Qwest Communications Corporation
555 17th Street
Denver, CO 80202

Tiki Gaugler, Esq.
Qwest Communications Corporation
4250 North Fairfax Drive
Arlington, VA 22203

Robert S. Koppel, Esq.
Kerry E. Murray, Esq.
MCI WorldCom, Inc.
15245 Shady Grove Rd., Suite 460
Rockville, MD 20850

Sanford C. Reback
Kenneth A. Schagrin
Larry Blosser
MCI WorldCom, Inc.
1717 Pennsylvania Ave., N.W.
Washington, D.C. 20006

Mark C. Rosenblum, Esq.
Lawrence J. Lafar, Esq.
James J.R. Talbot, Esq.
AT&T Corp.
295 N. Maple Avenue, Room 3252H3
Basking Ridge, NJ 07920

Robert M. Lynch, Esq.
Patricia Diaz Dennis, Esq.
Steven D. Strickland, Esq.
SBC Communications Inc.
175 E. Houston St., Room 4-D-10
San Antonio, TX 78205

Stanley J. Moore
SBC Communications Inc.
5850 W. Las Positas Blvd.
Pleasanton, CA 94588

Thomas J. Sugrue, Esq.
Halprin, Temple, Goodman & Sugrue
1100 New York Avenue, N.W.
Washington, D.C. 20005

Carl R. Frank, Esq.
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

Alejandro Vargas, V.P., Corporate & Legal
Affairs
Americatel Corporation
4045 NW 97th Avenue
Miami, FL 33178



Donna K. Rhudy