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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
International Settlement Rates) IB Docket No. 96-261

**PETITION OF AT&T, MCI WORLDCOM AND SPRINT FOR ENFORCEMENT
OF INTERNATIONAL SETTLEMENTS BENCHMARK RATES
FOR SERVICES WITH THE NETHERLANDS ANTILLES**

AT&T Corp. ("AT&T"), MCI WorldCom, Inc. ("MCI WorldCom") and Sprint Communications Company L.P. ("Sprint") (collectively, "Petitioners") hereby submit this Petition requesting enforcement of the benchmark settlement rate of \$0.15 as required by the Commission's *Benchmarks Order* with respect to U.S. international services with the Netherlands Antilles.¹ Petitioners request this enforcement action in order that they may be in compliance with the rules adopted in the *Benchmarks Order*.

The Commission found in the *Benchmarks Order* that existing settlement rates are substantially above the costs incurred by foreign carriers to terminate U.S.-originated calls, thus harming competition in the U.S. market and causing U.S. consumers to pay a subsidy to foreign carriers.² The Commission also found that "the above-cost

¹ *In the Matter of International Settlement Rates*, 12 FCC Rcd 19806 (1997) (Report and Order) ("*Benchmarks Order*"), recon. pending; *aff'd sub nom. Cable and Wireless P.L.C. v. FCC et al.*, C.A.D.C. No. 97-1612, Jan. 12, 1999.

² *Id.* at ¶ 2.

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margins in settlement rates can be used to finance strategies that create competitive distortions in the market for U.S. international services.”³

To ensure that U.S. consumers pay reasonable rates for international services, and to guard against competitive distortions in the U.S. market, the Commission adopted benchmark settlement rates using the Tariff Component Pricing methodology based on foreign carriers’ publicly available tariff rates and information published by the International Telecommunications Union (“ITU”).⁴ The Commission also established five transition periods during which U.S. carriers must negotiate settlement rates at or below the benchmarks.⁵

With respect to foreign carriers from upper-income countries, the Commission requires U.S. carriers to negotiate settlement rates not exceeding \$0.15 for all traffic exchanged after January 1, 1999.⁶ Under the *Benchmarks Order*, the Netherlands Antilles is classified as an upper-income country.⁷ Thus, the *Benchmarks Order* requires U.S. carriers to negotiate a benchmark settlement rate with the foreign correspondent in

³ *Id.*

⁴ *Id.* at ¶¶ 19, 111. While on most routes the benchmark rates adopted by the Commission are significantly lower than existing settlement rates, in all instances they "continue to exceed, usually substantially, any reasonable estimate of the level of foreign carriers' relevant costs of providing international terminating services."

⁵ *Id.* at ¶ 165.

⁶ *Id.* at ¶¶ 165, 111.

⁷ *Id.* at Appendix C, "Classification of Economies."

the Netherlands Antilles of \$0.15 from January 1, 1999.⁸

As demonstrated by the attached affidavit of Thomas R. Luciano of AT&T, good faith efforts have been made to negotiate this benchmark rate effective January 1, 1999 with Antelcom N.V. (“Antelcom”), the foreign correspondent in the Netherlands Antilles. However, as the attached affidavit further demonstrates, U.S. carriers have been unable to negotiate the benchmark settlement rate with Antelcom. In accordance with the procedures established by the *Benchmarks Order*, the undersigned U.S. carriers now bring this Petition to obtain “enforcement measures . . . to ensure that no U.S. carrier pays that foreign correspondent an amount exceeding the lawful settlement rate benchmark.”⁹

As recently affirmed by the U.S. Court of Appeals for the D.C. Circuit, the Commission has full authority to prescribe the maximum settlement rates that U.S. carriers may pay their foreign correspondents.¹⁰ In upholding the *Benchmarks Order* “in its entirety,” the D.C. Circuit made clear that the establishment and enforcement of benchmark settlement rates is well within the Commission’s authority under the Communications Act, does not regulate foreign carriers or foreign telecommunications services, and is consistent with ITU obligations.¹¹

As required by the *Benchmarks Order*, this Petition and the accompanying

⁸ *Id.* at ¶¶ 111, 165.

⁹ *Id.* at ¶ 186.

¹⁰ *Cable and Wireless P.L.C. v. FCC et al.*, slip op. at 6.

¹¹ *Id.* at 3, 10-11.

affidavit demonstrates that the undersigned U.S. carriers have been unable to negotiate benchmark settlement rates with the foreign correspondent in the Netherlands Antilles. In order to ensure that U.S. consumers pay reasonable rates for international services, and to guard against competitive distortions in the U.S. market, the Petitioners respectfully request that the Commission enforce the *Benchmarks Order* expeditiously by requiring all U.S. carriers to pay settlement rates no higher than the applicable benchmark rate of \$0.15 for all traffic exchanged with the Netherlands Antilles from January 1, 1999.¹²

Respectfully submitted,

AT&T CORP.

MCI WORLDCOM, INC.

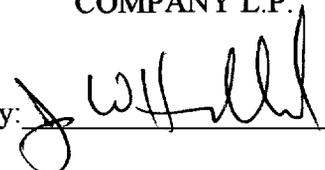
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¹² This Petition in no way precludes Petitioners from filing similar petitions with respect to foreign correspondents in other upper-income countries that have not agreed to implement benchmark rates as of January 1, 1999.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20544**

In the Matter of)
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International Settlement Rates) IB Docket No. 96-261

AFFIDAVIT OF THOMAS R. LUCIANO

STATE OF NEW JERSEY)
) ss:
COUNTY OF MORRIS)

THOMAS R. LUCIANO, being duly sworn, deposes and says:

1. My name is Thomas R. Luciano. I am Vice President for Settlement Operations in the International Traffic Management division of AT&T Corp. ("AT&T"). In this position, I am responsible for AT&T's settlement arrangements with its two hundred and forty foreign correspondents for the provision of AT&T's international switched services, including all settlement rate agreements between AT&T and its foreign correspondents, and all negotiations concerning those agreements.

2. I have direct responsibility for AT&T's efforts to negotiate settlement rates with its foreign correspondents in accordance with the benchmark rates established by the Commission's Report and Order in *International Settlement Rates*, 12 FCC Rcd. 19806 (1997), *aff'd sub nom. Cable & Wireless P.L.C. v. F.C.C.*, No. 97-1612, (D.C. Cir., Jan. 12, 1999) ("*Benchmark Order*"). Those responsibilities include AT&T's efforts to negotiate the applicable benchmark settlement rate with its foreign correspondent in Netherlands Antilles, Antelcom N.V.

3. The *Benchmark Order* requires U.S. carriers to negotiate a settlement rate no higher than \$0.15 with Netherlands Antilles effective January 1, 1999. Despite its best efforts, AT&T has not been successful in negotiating this benchmark rate with Antelcom N.V. I am therefore submitting this affidavit in support of AT&T's request that the Commission now enforce the *Benchmark Order* by directing all U.S. carriers to pay settlement rates no higher than this benchmark for all traffic exchanged with Netherlands Antilles from January 1, 1999.

4. AT&T informed Antelcom N.V. that the *Benchmark Order* requires U.S. carriers to negotiate a settlement rate no higher than \$0.15 with Netherlands Antilles effective January 1, 1999 at meetings held in March, May, July and November 1998. AT&T's present settlement rate of \$0.38 with Netherlands Antilles has been in effect since 1988. However, Antelcom N.V. has failed to offer any reductions in the present rate and has indicated to AT&T that it will not agree to the benchmark rate. Accordingly, AT&T has been unable to negotiate the benchmark rate with Antelcom N.V. effective January 1, 1999 for traffic between the U.S. and Netherlands Antilles in conformity with the *Benchmark Order*.

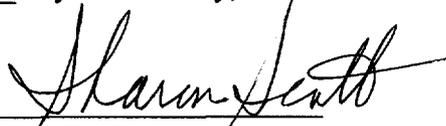
5. These events demonstrate that AT&T has made good faith efforts to negotiate the applicable benchmark settlement rate with its correspondent in Netherlands Antilles in accordance with the *Benchmark Order* and that its efforts have not been successful. AT&T therefore requests the Commission to enforce that Order by requiring all U.S. carriers to pay no higher than the benchmark settlement rate of \$0.15 for all traffic exchanged with Netherlands Antilles from January 1, 1999.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge and belief.


Thomas R. Luciano

Sworn to before me this

15th day of February, 1999


Notary Public

SHARON SCOTT
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Sept. 15, 2003

CERTIFICATE OF SERVICE

I, Deborah Fairley, do hereby certify that a copy of the foregoing "Petition of AT&T, MCI WorldCom and Sprint for Enforcement of International Settlements Benchmark Rates for Services with The Netherlands Antilles" was sent this 25th day of February, 1999, by facsimile, first-class U.S. mail, and/or first-class U. S. airmail, postage prepaid, to the following:

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Deborah Fairley

¹First class U.S. airmail and facsimile.
A copy of 47 C.F.R. Section 1.47 has also been included with this service, as required in Paragraph 186 of *In the Matter of International Settlement Rates*, 12 FCC Rcd 19806(1997) (Report and Order)