

AUG 1 2000

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

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

DOCKET FILE COPY ORIGINAL

International Settlement Rates

) IB Docket No. 96-261  
)

**PETITION OF AT&T, CONCERT, SPRINT AND WORLDCOM FOR  
ENFORCEMENT OF INTERNATIONAL SETTLEMENTS BENCHMARK  
RATES FOR SERVICES WITH TRINIDAD AND TOBAGO**

AT&T Corp. ("AT&T") and its affiliates Concert Global Networks USA L.L.C. and Concert Global Network Services Ltd. ("Concert"); Sprint Communications Company L.P. ("Sprint"); and WorldCom, Inc. ("WorldCom") (collectively, "Petitioners") hereby submit this Petition requesting enforcement of the benchmark settlement rate of \$0.19 as required by the Commission's *Benchmarks Order* with respect to U.S. international services with Trinidad and Tobago.<sup>1</sup> Petitioners request this enforcement action in order that they may comply 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.<sup>2</sup> The Commission also found that "the above-cost margins in

<sup>1</sup> *In the Matter of International Settlement Rates*, 12 FCC Rcd 19806 (1997) (Report and Order) ("*Benchmarks Order*"), *aff'd sub nom. Cable and Wireless P.L.C. v. FCC et al.*, 166 F.3d 1224 (C.A.D.C. 1999), 1999 U.S. App. LEXIS 271.

<sup>2</sup> *Id.* at ¶ 2.

No. of Copies rec'd 014  
List A B C D E

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

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”).<sup>4</sup> The Commission also established five transition periods during which U.S. carriers must negotiate settlement rates at or below the benchmarks.<sup>5</sup>

With respect to foreign carriers from upper-middle income countries, the Commission requires U.S. carriers to negotiate settlement rates not exceeding \$0.19 for all traffic exchanged after January 1, 2000.<sup>6</sup> Under the *Benchmarks Order*, Trinidad and Tobago is classified as an upper-middle income country.<sup>7</sup> Thus, the *Benchmarks Order* requires U.S. carriers to negotiate a benchmark settlement rate with the foreign correspondent in Trinidad and Tobago of \$0.19 from January 1, 2000.<sup>8</sup>

---

<sup>3</sup> *Id.*

<sup>4</sup> *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."

<sup>5</sup> *Id.* at ¶ 165.

<sup>6</sup> *Id.* at ¶ 165, 111.

<sup>7</sup> *Id.* at Appendix C, "Classification of Economies."

<sup>8</sup> *Id.* at ¶¶ 111, 165.

As demonstrated by the attached affidavits of Thomas R. Luciano of Concert, John Echeverri of Sprint, and Thomas J. Jeanettes of WorldCom, the undersigned U.S. carriers have made good faith efforts to negotiate this benchmark rate effective January 1, 2000 with Telecommunications Services of Trinidad and Tobago Limited (“TSTT”), the foreign correspondent in Trinidad and Tobago. However, as the attached affidavits further demonstrate, the U.S. carriers have been unable to negotiate the benchmark settlement rate with TSTT. 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.”<sup>9</sup>

As 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.<sup>10</sup> 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.<sup>11</sup>

As required by the *Benchmarks Order*, this Petition and the accompanying affidavits demonstrate that the undersigned U.S. carriers have been unable to negotiate

---

<sup>9</sup> *Id.* at ¶ 186.

<sup>10</sup> *Cable and Wireless P.L.C. v. FCC et al.*, 1999 U.S. App. LEXIS 271, at 10.

<sup>11</sup> *Id.* at 3, 6-8.

benchmark settlement rates with the foreign correspondent in Trinidad and Tobago. 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, 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 \$0.19 for all traffic exchanged with Trinidad and Tobago from January 1, 2000.<sup>12</sup>

Respectfully submitted,

AT&T CORP., CONCERT  
GLOBAL NETWORKS USA  
L.L.C. and CONCERT  
GLOBAL NETWORK  
SERVICES LTD.

SPRINT COMMUNICATIONS  
COMPANY L.P.

WORLDCOM, INC.

By: James Talbot

By: Ray. Nor

By: Andrew

Mark C. Rosenblum  
Lawrence J. Lafaro  
James J. R. Talbot  
Room 1122M1  
295 N. Maple Avenue  
Basking Ridge, NJ 07920  
(908) 221-8023

Leon M. Kestenbaum  
Kent Y. Nakamura  
James W. Hedlund  
1850 M St., NW, Suite 1100  
Washington, DC 20036  
(202) 828-7413

Kerry E. Murray  
Scott Shefferman  
1133 19<sup>th</sup> Street, NW  
Washington, DC 20036  
(202) 736-6064

August 1, 2000.

---

<sup>12</sup> This Petition does not preclude Petitioners from filing similar petitions with respect to foreign correspondents in other upper-middle income countries that have not agreed to implement benchmark rates as of January 1, 2000.

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

In the Matter of )  
 )  
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 Concert Global Network Services Limited (“Concert”). In this position, I am responsible for Concert’s settlement arrangements with its four hundred foreign correspondents for the provision of Concert’s international services, including all settlement rate agreements between Concert and its foreign correspondents for switched services, and all negotiations concerning those agreements. Concert assumed responsibility for these arrangements from its parent, AT&T Corp. (“AT&T”), upon the formation of the Concert enterprise with British Telecom plc in January 2000.

2. I have direct responsibility for Concert’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.*, 166 F.3d 1224 (C.A.D.C.

1999), 1999 U.S. App. LEXIS 271 ("*Benchmarks Order*"). Those responsibilities include Concert's efforts to negotiate the applicable benchmark settlement rate with its foreign correspondent in Trinidad and Tobago, Telecommunications Services of Trinidad and Tobago Limited ("TSTT").

3. The *Benchmarks Order* requires U.S. carriers to negotiate a settlement rate no higher than \$0.19 with Trinidad and Tobago effective January 1, 2000. Despite its best efforts, Concert has been unable to negotiate this benchmark rate with TSTT. I am therefore submitting this affidavit in support of the request that the Commission now enforce the *Benchmarks Order* by directing all U.S. carriers to pay settlement rates no higher than this benchmark for all traffic exchanged with Trinidad and Tobago from January 1, 2000.

4. TSTT had notice of the Commission's proposed benchmark rates in January 1997, when it submitted comments to the Commission in response to the Notice of Proposed Rulemaking. Subsequently, at a meeting in March 1999, AT&T discussed with TSTT the requirement of the *Benchmarks Order* that U.S. carriers must negotiate a settlement rate no higher than \$0.19 with Trinidad and Tobago effective January 1, 2000. AT&T reminded TSTT of this benchmark requirement in a letter dated September 29, 1999.

5. By letter to AT&T of October 4, 1999, TSTT acknowledged that "you informed us that the benchmark rate was your mandate . . . . Nothing else was considered appropriate above the benchmark because of the FCC's directive." However, TSTT objected to "[t]he rates you proposed and the timeframe of January 1, 2000." AT&T then wrote to TSTT, by letter dated November 18, 1999, again explaining the requirements of the *Benchmarks Order* for U.S. carriers' settlement rates with TSTT, noting that the

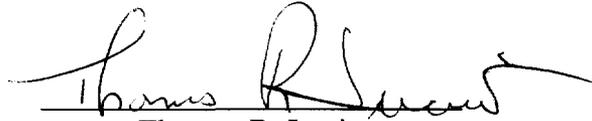
*Benchmarks Order* emphasizes that the FCC will take appropriate enforcement measures if U.S. carriers fail to negotiate settlement rates at or below the benchmark by the end of the relevant transition period, and expressing the “hope that you will be willing to enter into a benchmark settlement rate agreement of \$0.19 with AT&T to become effective on or before January 1, 2000.”

6. By letter of December 28, 1999, TSTT informed AT&T that “our current settlement rate of US\$0.415/min will continue to apply into the year 2000 until further notice.” In response, by letter dated December 30, 1999, AT&T again reminded TSTT that all U.S. carriers are required to negotiate a settlement rate no higher than \$0.19 with Trinidad and Tobago effective January 1, 2000. TSTT then once again acknowledged by letter to AT&T of January 10, 2000 that “[w]e recognize the directive that you have received from the FCC regarding the benchmark level,” but stated that the rate of \$0.415 would nonetheless continue to apply to international calls terminated on its network.

7. The International Bureau supported the efforts of Concert and other U.S. carriers by letter of February 3, 2000 to the Minister in the Office of the Prime Minister of Trinidad and Tobago requesting urgent assistance in encouraging the negotiation of a benchmark rate as soon as possible “[t]o avoid the need for enforcement measures against U.S. carriers by the FCC.” A copy of this letter was sent to the Chief Executive Officer of TSTT. Concert then made further good faith efforts to negotiate benchmark rates with TSTT at meetings held in March, 2000 and May 2000, yet TSTT continued its refusal to enter into any such agreement. Thus, Concert has been unable to negotiate the benchmark rate with TSTT effective January 1, 2000 for traffic between the U.S. and Trinidad and Tobago in conformity with the *Benchmarks Order*.

8. These events demonstrate that Concert has made good faith efforts to negotiate the applicable benchmark settlement rate with its correspondent in Trinidad and Tobago in accordance with the *Benchmarks Order* and that its efforts have not been successful. The Commission should accordingly enforce that Order by requiring all U.S. carriers to pay no higher than the benchmark settlement rate of \$0.19 for all traffic exchanged with Trinidad and Tobago from January 1, 2000.

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

20<sup>th</sup> day of July, 2000

  
Notary Public

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



agreement and instead has insisted on rates that exceed \$0.19 per minute for traffic exchanged beginning January 2000.

FURTHER AFFIANT SAYETH NAUGHT.

  
\_\_\_\_\_  
John Echeverri

Sworn to me this  
31 day of July, 2000.

  
\_\_\_\_\_  
Notary Public

**My Commission Expires February 28, 2001**



meetings and the exchange of letters, and involved a variety of levels of management from both companies.

4) In July 1999, WorldCom met with high level executives of TSTT including a member of the Board of Directors and the General Manager of Finance for TSTT. The meeting involved several hours of negotiations regarding the accounting rate between WorldCom and TSTT. At the meeting, WorldCom specifically requested that TSTT agree to a settlement rate of \$US 0.19 cents effective January 1, 2000. TSTT declined.

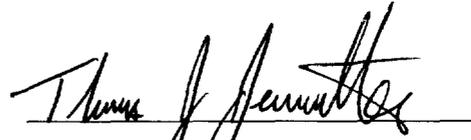
5) On December 28, 1999, TSTT responded in a letter to WorldCom's proposal that TSTT agree to a rate no higher than \$US 0.19 cents. In its response, TSTT wrote that it could not agree to the benchmark rate, stating that the government of Trinidad & Tobago had directed TSTT not to accept any settlement rate below US\$0.415 per minute for the period after December 31, 1999.

6) In a further attempt to reach an agreement with TSTT, WorldCom employees traveled to Trinidad in February 2000. Despite lengthy discussions, TSTT remained adamant that it would not agree to a settlement rate of US \$0.19 or below.

7) In May 2000, WorldCom met one more time with TSTT at the GTM Conference in Washington, DC. TSTT once again refused to agree to reduce its settlement rate with WorldCom to US\$0.19.

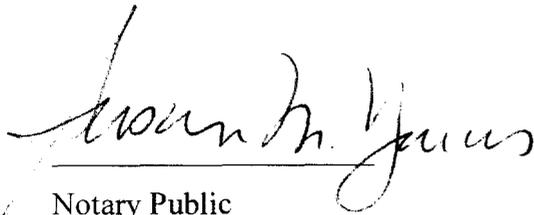
8) Additionally, throughout the period covered in this affidavit WorldCom's representative in Trinidad maintained frequent informal contact with TSTT regarding settlement rate negotiations.

9) As the foregoing paragraphs demonstrate, despite repeated good faith efforts, we were unsuccessful in obtaining the agreement of TSTT to implement a settlement rate equivalent to US\$0.19, effective January 1, 1999.



Thomas J. Jeannettes  
Vice President, International Services  
WorldCom, Inc.

Sworn to me this  
26<sup>th</sup> day of July, 2000.



Notary Public

**SUSAN M. YURUS**  
Notary Public, State of New York  
No. 4895252  
Qualified in Westchester County  
Commission Expires August 3, 2001

**CERTIFICATE OF SERVICE**

I, Margaret Brue, do hereby certify that a copy of the foregoing "Petition of AT&T, Concert, Sprint and WorldCom for Enforcement of International Settlements Benchmark Rates for Services with Trinidad and Tobago" was sent this 1<sup>st</sup> day of August, 2000, by facsimile, first-class U.S. mail, and/or first-class U.S. airmail, postage prepaid to the following:

Mr. Samuel A. Martin\*  
Chief Executive Officer  
Telecommunications Services of  
Trinidad and Tobago Limited  
P.O. Box 917 - 54 Frederick Street  
Port of Spain, Trinidad, West Indies

Donald Abelson\*\*  
Bureau Chief  
International Bureau  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, DC 20554

Rebecca Arbogast\*\*  
International Bureau  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, DC 20554

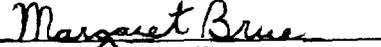
Ari Fitzgerald\*\*  
International Bureau  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, DC 20554

Kenneth Stanley\*\*  
International Bureau  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, DC 20554

Kathy O'Brien\*\*  
International Bureau  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, DC 20554

Breck Blalock\*\*  
International Bureau  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, DC 20554

Lisa Choi\*\*  
International Bureau  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, DC 20554

  
Margaret Brue

\*First 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 199806 (1997) (Report and Order)

\*\*Hand Delivery