

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

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JAN - 5 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
International Settlement Rates)

IB Docket No. 96-261)

**PETITION OF AT&T, CONCERT, AND WORLDCOM
FOR ENFORCEMENT OF INTERNATIONAL SETTLEMENTS
BENCHMARK RATES FOR SERVICES WITH QATAR.**

AT&T Corp. ("AT&T") and its affiliates Concert Global Networks USA L.L.C. and Concert Global Network Services Ltd. ("Concert"); and WorldCom, Inc. ("WorldCom") (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 Qatar.¹ 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

¹ *In the Matter of International Settlement Rates*, 12 FCC Rcd 15806 (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), 1599 U.S. App. LEXIS 271.

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to pay a subsidy to foreign carriers.² The Commission also found that “the above-cost 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*, Qatar is

² *Id.* at ¶ 2.

³ *Id.*

⁴ *Id.* at ¶¶ 15, 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.

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 Qatar of \$0.15 from January 1, 1999.⁸

As demonstrated by the attached declaration of Thomas R. Luciano of Concert and the attached affidavit Henri Kassab of WorldCom, the undersigned U.S. carriers have made good faith efforts to negotiate this benchmark rate effective January 1, 1999 with Qatar Telecom (“Q-Tel”), the foreign correspondent in Qatar. However, as the attached declaration and affidavits further demonstrate, the U.S. carriers have been unable to negotiate the benchmark settlement rate with Q-Tel. 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 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

⁷ *Id.* at Appendix C, “Classification of Economies.”

⁸ *Id.* at ¶¶ 111, 165.

⁹ *Id.* at ¶ 186.

¹⁰ *Cable and Wireless P.L.C. v. FCC et al.*, 1599 U.S. App. LEXIS 271, at 10.

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 affidavits demonstrate that the undersigned U.S. carriers have been unable to negotiate benchmark settlement rates with the foreign correspondent in Qatar. 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

¹¹ *Id.* at 3, 6-8.

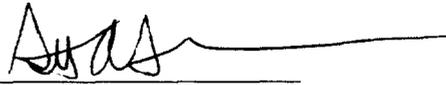
request that the Commission enforce the *Benchmarks Order* expeditiously by requiring all U.S. carriers to pay settlement rates no higher than the applicable benchmark rate of \$0.15 for all traffic exchanged with Qatar from January 1, 1999.

Respectfully submitted,

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

WORLDCOM, INC.

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January 5, 2001

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

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In the Matter of)
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International Settlement Rates)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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DECLARATION OF THOMAS R. LUCIANO

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. 15806 (1597), *aff’d sub nom. Cable & Wireless P.L.C. v. F.C.C.*, 166 F.3d 1224 (C.A.D.C. 1599), 1599 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 Qatar, Qatar Telecom (“Q-Tel”).

3. The *Benchmarks Order* requires U.S. carriers to negotiate a settlement rate no higher than \$0.15 with Qatar effective January 1, 1999. Despite its best efforts, Concert has been unable to negotiate this benchmark rate with Q-Tel. I am therefore submitting this declaration 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 Qatar from January 1, 1999.

4. AT&T described to Q-Tel at a meeting in October 1998 the requirement of the *Benchmarks Order* that U.S. carriers must negotiate a settlement rate no higher than \$0.15 with Qatar effective January 1, 1999. Similarly, the Chief of the International Bureau emphasized to the Minister of Communications and Transport of Qatar that “by January 1, 1999, U.S. carriers are required to reach a settlement rate of U.S. \$0.15 with carriers in your country” by letter dated December 10, 1998, which was copied to the Assistant General Manager of Q-Tel.

5. Q-Tel responded to AT&T in a fax message dated December 22, 1998 acknowledging that “AT&T might be forced to implement the FCC benchmark ruling with effect from January 1, 1999,” but objecting to “the unilateral imposition of the FCC benchmark tariff” and stating that “[i]n the event you are forced to implement the FCC benchmark tariff, please ensure that you do not terminate any traffic in Qatar until a new bilateral agreement is signed between us.” By letter dated January 11, 1999, AT&T stated that it would “continue to negotiate with you in good faith to secure [the benchmark] rate” but that AT&T also expected the Commission to take any necessary enforcement action to ensure that all U.S. carriers would pay the benchmark rate.

6. Q-Tel sent a further fax message to AT&T dated March 13, 1999 stating that “our bilateral agreement will continue as is” and that it would only “negotiate the future accounting rate that will be satisfactory for both of us based on the market condition.” Q-Tel also sent AT&T a copy of a letter dated March 7, 1999 to the Chief of the International Bureau from the Minister of Communications and Transport of Qatar rejecting the Commission’s benchmarks and stating that U.S. carriers should “continue to be bound by their existing agreements and contact our carriers to agree on appropriate settlement rates that are not going to affect their carriers adversely.” After Concert assumed responsibility for these matters from AT&T, Concert held a meeting with Q-Tel in Qatar in January 2000 at which it similarly failed to obtain Q-Tel’s agreement to benchmark rates.

8. In late September 2000, Q-Tel cut the number of circuits on the U.S.-Qatar route by approximately two-thirds, reducing the number of U.S. carrier circuits serving this route from 59 to 20. When Concert met with Q-Tel in Qatar in early November 2000, Q-Tel refused to restore these circuits or to accept a benchmark settlement rate and stated that they should be paid the \$1.00 settlement rate established in 1986.

9. Thus, notwithstanding their repeated good faith efforts to do so, neither Concert nor its predecessor AT&T have been unable to negotiate the \$0.15 benchmark rate with Q-Tel effective January 1, 1999 for traffic between the U.S. and Qatar in conformity with the *Benchmarks Order*. The Commission should accordingly 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 Qatar from January 1, 1999.

VERIFICATION

I, Thomas R. Luciano, declare under penalty of perjury that the foregoing is true and correct.

Executed on December 6, 2000.


Thomas R. Luciano

AFFIDAVIT OF HENRI KASSAB

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

City of Rye Brook)
County of Westchester)
State of New York)

I, HENRI KASSAB, being duly sworn, state under penalty of perjury as follows:

1) That my name is Henri Kassab. My business address is 2 International Drive, Rye Brook, New York 10573. I am a Director of International Services for WorldCom, Inc. ("WorldCom"). In this position, I am responsible for WorldCom's international carrier relationships in the Middle East and South Asia. Specifically, I am responsible for negotiations with the foreign correspondent in Qatar, Qatar Telecom ("Q-Tel"), and was so responsible during the periods of 1999 and 2000 attested to.

2) The Commission's *Benchmarks Order*, 12 FCC Rcd. 19806 (1997), *aff'd sub nom. Cable & Wireless v. FCC*, 166 F.3d 1224 (D.C. Cir. 1997), requires U.S. carriers to negotiate a settlement rate no higher than US\$0.15 effective no later than January 1, 1999 with Q-Tel. This affidavit demonstrates that, despite WorldCom's good faith efforts, Q-Tel has refused to agree to such a settlement rate. Therefore, I am submitting this affidavit to request that the Commission direct WorldCom to pay a settlement rate of no more than US\$0.15 per minute to Q-Tel effective January 1, 1999.

3) In 1999, and to date in 2000, WorldCom has had numerous contacts with Q-Tel requesting that Q-Tel reduce the settlement rate for traffic between WorldCom to the equivalent of the benchmark settlement rate of \$0.15, with an effective date no later than January 1, 2000. These contacts consisted of both meetings and the exchange of letters, and involved a variety of levels of management from both companies.

4) In November 1999, WorldCom met with Q-Tel's manager of Business Planning. Q-Tel indicated an interest in reaching an agreement with one or two U.S. carriers for direct traffic from Qatar to the United States. No agreement was reached on the issue of settlement rates.

5) On January 2, 2000, Q-TEL sent a fax to WorldCom indicating that "application of FCC imposed benchmark rate for traffic between Qatar and USA is not acceptable to us." Q-Tel offered as alternatives either termination of circuits or continuation of the \$1.00 settlement rate until a new agreement could be reached.

6) WorldCom responded to Q-Tel's January 2nd fax with a letter dated January 5, 2000. WorldCom informed Q-Tel that: the FCC's Benchmarks Order is an order of the United States Government, not an MCI WorldCom directive, the FCC Order applies equally to all U.S. carriers, no U.S. carrier is allowed to negotiate a rate higher than those specified in the Benchmarks Order, and that WorldCom is willing to continue with the current accounting rate until a new agreement is reached, provided that the new agreement is retroactive.

7) On May 31, 2000, Q-Tel offered to reduce settlement rates but not to the US\$0.15 benchmark rate during the second half of the year 2000. Q-Tel also informed WorldCom that all traffic for 1999 and the first half of 2000 would have to be settled at the existing settlement rate of US\$1.00.

8) WorldCom sent Q-Tel a fax on June 14, 2000 in response to the Q-Tel offer. WorldCom indicated again that it was unable to settle with any country, including Qatar, at a rate over the Benchmark or on a date after the FCC-mandated effective date. WorldCom asked that Q-Tel review and reconsider its earlier position so that both sides might come to a reasonable agreement.

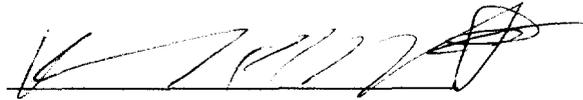
9) On October 31, 2000, WorldCom again requested that Q-Tel enter into an agreement accepting a US\$0.15 per minute settlement rate, effective January 1, 1999.

9) On November 12, 2000, Q-Tel responded to WorldCom's October 31st letter by stating that it could not accept the offer and that instead it is waiting for a response from WorldCom to Q-Tel's May 31st proposal, referenced above in paragraph 7.

10) On December 12, 2000, after further discussions with Q-Tel, WorldCom made one more proposal to Q-Tel that would decrease the settlement rate to US\$0.15 per minute, effective January 1, 1999. In a response by fax dated December 20, 2000, Q-Tel declined to agree to the benchmark rate and instead made a counter-proposal inconsistent with the benchmark requirements.

11) Additionally, throughout the period covered in this affidavit WorldCom's representative in Qatar maintained frequent informal contact with Q-Tel regarding settlement rate negotiations but was unable to obtain agreement from Q-Tel to reduce its settlement rate to US\$0.15, effective January 1, 1999.

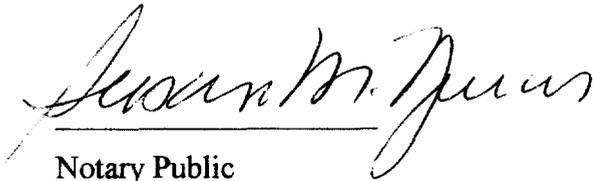
12) As the foregoing paragraphs demonstrate, despite repeated good faith efforts, WorldCom has been unsuccessful in obtaining the agreement of Q-Tel to implement a settlement rate equivalent to US\$0.15, effective January 1, 1999.



Henri Kassab
Director, Middle East and South Asia
WorldCom, Inc.

Sworn to me this

2nd day of JAN, 2000.



Notary Public

SUSAN M. YURUS
Notary Public, State of New York
No. 4895252
Qualified in Westchester County
Commission Expires August 3, ~~1999~~ 2001

CERTIFICATE OF SERVICE

I, Sophia Phillips-Davis, do hereby certify that a copy of the foregoing
“Petition of AT&T, Concert and WorldCom for Enforcement of International Settlements
Benchmark Rates for Services with Qatar” was sent this 5th day of January 2001, by
facsimile, first-class U.S. mail, and/or first-class U.S. airmail, postage prepaid to the
following:

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/s/ Sophia Phillips-Davis
Sophia Phillips-Davis

*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