DOCKET FILE COPY ORIGINAL ORIGINAL

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

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

**To The Commission:**

RECEIVED
JUL 6 2001
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

# PETITION FOR WAIVER OF THE BENCHMARK SETTLEMENT RATE FOR GUYANA

No. of Copies rec'd 0+4
List A B C D E

Robert J. Aamoth
Todd D. Daubert
Randall W. Sifers
KELLEY DRYE & WARREN LLP
1200 19th Street, N.W.
Suite 500
Washington, D.C. 20036
(202) 955-9600

Attorneys for Atlantic Tele-Network, Inc.

Dated: July 06, 2001

**SUMMARY**

Network expansion and universal service will effectively end in Guyana as of January 1, 2002 unless the benchmark settlement rate for the U.S.-Guyana route is waived for five years or until the teledensity in Guyana reaches 23, whichever occurs sooner. Guyana Telephone & Telegraph Ltd. ("GT&T"), the incumbent telecommunications service provider, is willing to accept annual proportionate settlement rate reductions during the waiver period. The requested waiver is unique in that few, if any, low-income countries other that Guyana can demonstrate a consistent pattern over nearly ten years of using settlement revenues to fund a major network expansion and significant infrastructure upgrades. Over the past ten years, GT&T has relied heavily upon settlement revenues to effect dramatic changes in telecommunications in Guyana. GT&T converted a system on the verge of collapse into a completely digital network with wireless local loop and remote satellite services, digital mobile services, and a fiber optic cable network that interconnects most of GT&T's switches, as well as connecting Guyana to the United States. With an average annual increase in telephone lines of 26.5 percent, Guyana is now a leader among Caribbean countries and has recorded the highest annual average growth in teledensity in the region for much of the last decade.

Although GT&T has accomplished much over the past ten years, much more remains to be completed. Continued progress is endangered by the low-income benchmark settlement rate, because network expansion in Guyana is funded heavily from international settlement revenues. As one of the poorest countries in the Americas with a population of only about 750,000, Guyana has no other choice than to fund network expansion and universal service using international settlement revenues. GT&T believes that its reliance on such revenues as a major funding point will not subside until Guyana reaches a teledensity of at least 23, which

represents the average teledensity for member countries of the Caribbean Community and Common Market ("CARICOM") as well as a level of teledensity that is regarded as being self-sustaining. The teledensity in Guyana has risen from under two in 1991 to slightly over 10 today. However, the teledensity in Guyana will not reach 23, and the progress that has been achieved to date may be reversed, if the benchmark rate takes effect on the U.S.-Guyana route on January 1, 2002 as currently scheduled.

Grant of the requested waiver will serve the public interest by, among other things, enabling GT&T to move forward with its universal service and network expansion plan to reach a teledensity of 23, which will create opportunities for the U.S. communications and IT industries, as well as U.S. citizens who call Guyana. The United States has consistently recognized the benefits to the public of network expansion and universal service, and has a long history of providing subsidies for network expansion and infrastructure investment in order to ensure that affordable telecommunications service is available to all citizens. Without subsidies from long distance services and favorable government financing terms, the penetration rate in the United States probably would not have reached over 94 percent today. For similar reasons, the Commission should waive application of the low-income benchmark rate to the U.S.-Guyana route for five years or until the teledensity rate reaches 23, whichever occurs sooner. This will benefit U.S. citizens by opening new markets for American goods and services, as well as by creating good will for U.S. foreign policy objectives in Guyana.

Grant of the requested waiver will not undermine the policies served by *Benchmarks Order*, because it will have no effect on the current downward trend in the settlement rates paid by U.S. carriers – or the calling rates paid by U.S. consumers – for the 99.8 percent of international calls going to other destinations. Further, by maintaining the current

settlement rates on the U.S.-Guyana route, the requested waiver will not result in any increases in calling rates to Guyana. Although outbound traffic to Guyana constitutes only 0.2 percent of total U.S. outbound traffic, the impact of the requested waiver on Guyana is enormous.

This petition is based on record evidence that a waiver will allow GT&T to continue *existing* network expansion and universal service programs in Guyana rather than on unverifiable promises to implement new programs in the future. The Commission can be confident that grant of the requested waiver will serve the public interest because past uses of settlement revenues provide the most reliable indicator of future uses. GT&T has shown by its consistent actions throughout the 1990s that it will use settlement revenues to the maximum extent possible for infrastructure development and universal service. By granting the waiver sought by GT&T in these circumstances, the Commission will not be opening the door to waiver requests by countries which cannot show the same multi-year dedication of settlement revenues to capital development that GT&T has shown in Guyana.

## TABLE OF CONTENTS


PAGE

SUMMARY ..... i

I. THE BENCHMARK RATE FOR THE U.S.-GUYANA ROUTE SHOULD BE WAIVED UNTIL THE SOONER OF FIVE YEARS OR GUYANA'S TELEDENSITY REACHES 23 ..... 7

A. Waiver Of The Benchmark Settlement Rate For The U.S.-Guyana Route Would Serve The Public Interest. ..... 9

1. Grant of the requested waiver would increase call completion rates and quality of service levels for calls between the United States and Guyana. ..... 12

2. Grant of the requested waiver would create opportunities for the U.S. communications and IT industries and promote significant U.S. objectives. ..... 16

3. Grant of the requested waiver would further U.S. policies designed to increase the public's access to a diversity of viewpoints and bridge the digital divide. ..... 17

4. Grant of the requested waiver would be consistent with commitments that the United States has made to Guyana. ..... 18

5. Grant of the requested waiver could relieve pressure on the United States to adopt new charging arrangements for international Internet Traffic. ..... 22

6. Grant of the requested waiver would benefit the substantial Guyanese immigrant population residing in the United States ..... 23

B. Waiver of the Benchmark Settlement Rate for Guyana Would Not Undermine the Policy Goals of the *Benchmarks Order*. ..... 23

1. The Rates That U.S. Carriers Pay Foreign Carriers To Terminate Traffic Have Decreased Significantly Since the FCC Adopted the *Benchmarks Order*. ..... 24

2. Net Settlement Payments By U.S. Carriers to Foreign Carriers Have Decreased and the Amount of International Traffic Has Increased Since the FCC Adopted the *Benchmarks Order* ..... 26

3. The Prices of International Calls Have Decreased Since the FCC Adopted the *Benchmarks Order*. ..... 27

4. Grant of the Requested Waiver Will Not Undermine the Goals of the *Benchmarks Order*. ..... 28

C. Waiver of the Benchmark Rate for the U.S.-Guyana Route Would Serve the Public Interest in Promoting Universal Service and Would Be Consistent with Prior Commission Decisions. ..... 29

**BEFORE THE**
**FEDERAL COMMUNICATION COMMISSION**
**WASHINGTON, D.C. 20554**

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

**To The Commission:**

**PETITION FOR WAIVER**
**OF THE BENCHMARK SETTLEMENT RATE FOR GUYANA**

Atlantic Tele-Network, Inc. ("ATN"),[1] pursuant to 47 C.F.R. § 1.3, hereby petitions the Federal Communications Commission ("FCC") for a waiver of the benchmark settlement rate for Guyana, which will cap the price that U.S. carriers can pay to carriers from low-income developing countries, including GT&T, to $0.23 beginning on January 1, 2002, for five years or until Guyana's teledensity reaches 23, whichever is sooner.[2] Grant of the requested waiver is necessary to ensure that network expansion and universal service in Guyana are not unduly disrupted by the implementation of the benchmark settlement rates. The Commission has already recognized that the public interest requires it to permit additional flexibility in the application of its benchmarks beyond the transition period where, as is the case with Guyana, a country faces undue disruptions in its network stemming from a significant decline in its telecommunications revenues.[3] Therefore, grant of the requested waiver will serve the public interest. Because the low-income benchmark settlement

---

1 ATN is a Delaware corporation with a majority ownership interest in several entities providing telecommunications services in the Caribbean. Among those entities is Guyana Telephone & Telegraph Ltd. ("GT&T"), which terminates international telephone calls from the United States to Guyana. The history of GT&T is explained in detail in the brochure entitled "A Decade in the Development of an Industry: The Story of GT&T," which is attached at Appendix A. Therefore, ATN has standing to file this waiver request.

2 This rule was adopted in the *Report and Order* in the above-captioned proceeding. International Settlement Rates, *Report and Order*, 12 FCC Rcd. 19806 (1997) ("*Benchmarks Order*").

3 *See Benchmarks Order* at ¶ 21 ("reduction of settlement rates to the benchmark levels could result in undue disruption of foreign carriers' operations . . . .").

rate will become effective on January 1, 2002, ATN requests that the Commission grant this waiver request before that date.

Over the past decade, GT&T has invested over US$140 million to expand and improve the Guyanese telecommunications network, which in 1991 was one of poorest in the Caribbean and Latin America. Today Guyana is a leader among Caribbean and Latin American countries in terms of annual average growth in teledensity. Although GT&T has accomplished much in ten years, much more remains to be completed. Continued progress is endangered by the benchmark settlement rates, because network expansion in Guyana is funded heavily from international settlement revenues. As one of the poorest countries in the Americas with a population of only about 750,000, Guyana has no other choice than to fund network expansion using international settlement revenues.

Grant of the requested waiver will serve the public interest by, among other things, enabling GT&T to complete its universal service and network expansion plan to reach a teledensity of 23 (an average teledensity figure for the Caribbean region), which will create opportunities for the U.S. communications and IT industries, as well as U.S. citizens who call Guyana.[4] The United States has consistently recognized the benefits to the public of network expansion and universal service, and has a long history of providing subsidies for network expansion and infrastructure investment in order to ensure that affordable telecommunications service is available to all citizens. Without

[4] The benefits to the public interest that will result from infrastructure development and universal service expansion in developing countries are described in more detail in the white paper entitled "Promoting U.S. Interests Through Strategic Application of Benchmark Rates to Low-Income Developing Countries," which is attached at Appendix B ("White Paper").

subsidies from long distance services and favorable government financing terms,[5] the penetration rate in the United States probably would not have reached over 94 percent today. For similar reasons, the Commission should waive application of the low-income benchmark rate to the U.S.-Guyana route until the sooner of five years or the teledensity in Guyana reaches 23. This teledensity level represents the average teledensity for member countries of the Caribbean Community and Common Market ("CARICOM") and serves as a proxy for the level of infrastructure development where further expansion becomes self-sustaining.[6] This will benefit U.S. citizens by opening new markets for American goods and services, as well as by creating good will for U.S. foreign policy objectives in Guyana.

Grant of the requested waiver will not undermine the policies served by the *Benchmarks Order*, because it will have no effect on the current downward trend in the settlement rates paid by U.S. carriers – or the calling rates paid by U.S. consumers – for the 99.8 percent of international calls going to other destinations.[7] Further, by maintaining the current settlement rates on the U.S.-Guyana route, the requested waiver will not result in any increases in calling rates to Guyana. GT&T is also willing to accept annual proportionate settlement rate reductions during the waiver period. Although outbound traffic to Guyana constitutes only 0.2 percent of total U.S. outbound traffic, the impact of the requested waiver on Guyana is enormous.

---

5 In some rural areas, telephone service did not appear until affirmative government action, in the form of the Rural Electrification Administration, subsidized it starting in the 1930s. Antitrust & Communications Reform Act of 1994, House of Representatives Committee on the Judiciary, REPORT 103-559, Part 2 at 32 & .43 at 32-33.

6 *See* United Nations Commission on Sustainable Development, "Progress in the Implementation of the Programme of Action for the Sustainable Development of Small Island Developing States," at 2 (1999).

7 1999 International Telecommunications Data (filed as of Oct. 31, 2000), December 2000, Industry Analysis Division, Common Carrier Bureau, FCC, Table A1.

The requested waiver is unique in that very few, if any, countries other than Guyana can demonstrate a pre-existing commitment to network expansion and universal service as verified by a consistent pattern over many years of using settlement revenues to fund infrastructure investment and network upgrades. This petition is based on record evidence that a waiver will allow GT&T to continue *existing* network expansion and universal service programs in Guyana rather than on unverifiable promises to implement new programs in the future. Because past uses of settlement revenues provide the most reliable indicator of future uses, the Commission can be confident that grant of the requested waiver will serve the public interest. Therefore, ATN urges the Commission to waive application of the benchmark rate to the U.S.-Guyana route until the sooner of five years or Guyana's teledensity reaches 23.

## BACKGROUND AND INTRODUCTION

To understand the factual context of this waiver request, it is necessary to review GT&T's activities in Guyana over the past decade. When GT&T commenced operations on January 28, 1991, the Guyanese telecommunications system was barely functioning. In fact, Guyana had one of the worst telecommunications infrastructures in the Caribbean and Latin America at that time. There were only 21,000 telephone lines throughout the country, and only 13,000 of these were functional. The lines that did function were noisy, and connection speeds were very slow (even for local calls). The entire telecommunications system was electro-mechanical and analog. It did not support facsimile services or custom-calling features like call waiting, three-way calling and call forwarding. Making international calls was particularly difficult because international direct dialing was severely restricted and international operators were frequently unavailable. It could take as long as 24 hours to get a connection for an international call, which caused many customers to wait several

hours by the phone. The list of potential subscribers, some of whom had been waiting over a decade for service, numbered over 40,000.

The Government of Guyana recognized that something needed to be done to salvage the telephone industry, so it decided to privatize the wholly government owned telecommunications service provider, the Guyana Telecommunication Corporation ("GTC"), and advertised for investors who could bring the capital, the technology and the skills needed to revive the industry. The Government privatized GTC by converting it from a public corporation into a private limited company called the Guyana Telephone and Telegraph Company Limited ("GT&T"). The Government then sold 80 percent of the shares of GT&T to ATN, retaining the remaining 20 percent.[8]

In less than ten years of operations, GT&T has used ATN's capital infusions and settlement revenues to effect dramatic changes in telecommunications in Guyana. GT&T converted a system on the verge of collapse into a completely digital network with wireless local loop and remote satellite services, digital mobile services, and a fiber optic cable network that interconnects most of

[8] The agreement between the Government of Guyana and ATN, and the license granted to GT&T, provided GT&T with exclusive rights to provide local, domestic long distance and international telephone service in Guyana, except for cellular telephone service, for a period of twenty years. In return for these rights, ATN agreed to formulate an Expansion and Service Improvement Plan, the objective of which would be to expand GT&T's facilities and operations, in a significant manner.

GT&T's switches, as well as connecting Guyana to the United States. The following table illustrates the dramatic improvements that GT&T has introduced to Guyana:

| **Table One: Description of Service** | **1991** | **December 2000** |
|---|---|---|
| Operating Lines (including cellular) | 13,000 | 79,812 |
| International Circuits | 99 | 831 |
| International Direct Dialing | 400 | 77,201 |
| Public Call Boxes | 0 | 560 |
| Call Completion Rate (incoming international calls) | 20% | 65% |

So rapid has been the development of the country's telephone infrastructure that a 1996 report of the Telecommunication Department Bureau of the International Telecommunication Union observed that Guyana had recorded the highest annual average growth in teledensity in Latin America and the Caribbean for the first half of the last decade. With an average annual increase in telephone lines of 26.5 percent, Guyana is now a leader among Caribbean countries. The penetration rate has grown from under two percent in 1991 to slightly over 10 percent today.[9]

GT&T's achievements are particularly impressive when one considers the many formidable challenges that immediately confronted GT&T. GT&T had to build infrastructure where there was none. It had to contend with 83,000 square miles of different kinds of terrain (almost the size of Great Britain), much of which is covered by forests, with communities scattered into the country's vast hinterland, with its large rivers, mountains and rolling savannas. GT&T had to replace old equipment, including switches, create a repair vehicle fleet, lay more cables, buy new instruments, build new offices, digitalize exchanges and computerize the entire system. To date, GT&T has invested more than US$140 million behind its efforts to establish a viable Guyanese telecommunications network. This investment, and the improvements it facilitated, would not have

[9] See Appendix A, "A Decade in the Development of an Industry: The Story of GT&T" (including digital mobile phones).

been possible without revenue from international settlement rates, because Guyana is one of the poorest countries in the Americas with a per capita GNP of only $824.[10]

Although GT&T has accomplished much in ten years, much more remains to be completed. GT&T is committed to the Government of Guyana's vision of improving universal service, achieving a teledensity of 23, and increasing Internet penetration rates. However, GT&T will be able to continue expanding and upgrading the telecommunications network in Guyana only if it continues to receive its current revenue stream from international settlement rates. The simple truth is that Guyana's population is not wealthy enough to fund the necessary network expansion and enhancement without reliance on international settlement rates. Because approximately 60 percent of all traffic that terminates in Guyana originates in the United States, the benchmark settlement rates that are scheduled to take effect on the U.S.-Guyana route in 2002 would terminate the Company's network expansion and universal service initiatives, and could even have the unfortunate effect of rolling back the progress achieved to date. Therefore, GT&T urges the FCC to grant the requested waiver because it will serve the public interest without undermining the FCC's general rules, as explained in more detail below.

## I. THE BENCHMARK RATE FOR THE U.S.-GUYANA ROUTE SHOULD BE WAIVED UNTIL THE SOONER OF FIVE YEARS OR GUYANA'S TELEDENSITY REACHES 23

The FCC has the discretion to waive application of any of its rules for good cause shown pursuant to Section 1.3 of its rules.[11] The Commission "may exercise its discretion to waive a

---

10 *Source:* U.S. Dept. of State, Bureau of Western Hemisphere Affairs, Background Notes: Guyana (Aug. 2000), *available at:* http://www.state.gov/www/background_notes/guyana_0800_bgn.html.

11 47 C.F.R. § 1.3.

rule where particular facts would make strict compliance inconsistent with the public interest."[12] As the courts have observed, an "agency's discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety valve procedure for consideration of an application for exemption based on special circumstances."[13]

A safety valve procedure is necessary because application of a general rule may not be in the public interest if extended to a party where the exception "will not undermine the policy, served by the rule, that has been adjudged in the public interest."[14] The courts have recognized that a general "rule is more likely to be undercut if it does not in some way take into account considerations of hardship, equity, or more effective implementation of overall policy."[15] For this reason, the Commission has an "obligation to seek out the 'public interest' in particular, individualized cases."[16] Accordingly, the FCC "must take a 'hard look' at applications for waiver and must consider all relevant factors."[17]

The requested waiver of the benchmark settlement rate for the U.S.-Guyana route will serve the public interest without undermining the FCC's general benchmark policies. Indeed, strict application of the benchmark rate to the U.S.-Guyana route will end network expansion in Guyana, which will harm U.S. interests by foreclosing the Guyanese market to U.S. businesses and preventing

---

12 *Northeast Cellular Tel. Co v. FCC*, 897 F.2d 1164, 1166 (1990) ("*Northeast Cellular*"), *citing WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. Denied* 409 U.S. 1027 (1972) ("*WAIT Radio*").

13 *WAIT Radio* at 1157.

14 *Id.*

15 *Id.* at 1159.

16 *Id.* at 1157.

17 *Part 68 Waiver Requests of Telephone Equipment Supply, Inc., Casio Communications, Inc., Tandy Corporation, Atlinks USA, Inc., Matsushita Electric Corporation of America, Vtech Communications Limited, Cidco Incorporated, Atlinks USA, Inc., Atlinks USA, Inc.*, 15 FCC Rcd 9015 (2000).

U.S. businesses and citizens from completing international calls to many parts of Guyana that currently are underserved or unserved. Therefore, GT&T respectfully urges the FCC to waive application of the benchmark settlement rate to the U.S.-Guyana route until the sooner of five years or teledensity in Guyana reaches 23. This particular teledensity represents the regional average teledensity for CARICOM member countries.[18] Teledensity, which is the measurement of telecommunications accessibility, is considered to be an effective indicator of socio-economic development.[19] Having achieved a regional average teledensity of 23, the small developing CARICOM countries have reached the critical mass threshold in telecommunications infrastructure expansion where further development is self-sustaining, which makes reliance on settlement payments less urgent.[20] Therefore, ATN believes the regional average teledensity for these countries is an appropriate proxy for the Commission to use to determine when the benchmarks rate should be applied to the U.S.-Guyana route.

### A. Waiver Of The Benchmark Settlement Rate For The U.S.-Guyana Route Would Serve The Public Interest.

The first sentence of the Communications Act of 1934 instructs the Commission to regulate "interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide, and world-wide wire and

---

18 These countries include Antigua and Barbuda, Barbados, Belize, Dominica, Grenada, Jamaica, St. Kitts & Nevis, St. Lucia, St. Vincent & the Grenadines, and Trinidad & Tobago.

19 *See* United Nations Commission on Sustainable Development, "Progress in the Implementation of the Programme of Action for the Sustainable Development of Small Island Developing States," at 2 (1999).

20 *See id.*

radio communication service with adequate facilities at reasonable charges . . . ."[21] In order to accomplish this mandate, the FCC must ensure that people throughout the United States are able (1) to originate calls from the location of their choice within the United States and (2) to terminate calls to the location of their choice throughout the world. Only when both components are possible can people throughout the United States enjoy the type of services that the Act envisions, with high call completion rates and quality of service levels.

People can only originate and terminate calls between the locations of their choice if adequate facilities exist at the origination and termination points, and the service quality is sufficient to support the intended purpose of the call. The United States has a long history of relying on universal service programs to subsidize network expansion and infrastructure investment so that all people have access to the telecommunications network, and can originate calls on this network, no matter where they live within the United States. Pursuant to these universal service programs, the revenues from long distance services – including international services – have long subsidized network expansion and infrastructure investment.

The philosophy of universal service – dialtone anywhere, at any time, for as many subscribers as possible – is the cornerstone upon which the original telephone network in the U.S. was designed and is still managed. This philosophy enabled the extension of basic telephone service to most people in the United States and gave us one of the finest communications systems in the

---

[21] 47 U.S.C. § 151. This mandate, which dates from 1934, is quite remarkable, particularly considering that it requires the FCC to make available a world-wide wire and radio communication service to all people – not just U.S. citizens – throughout the United States without discrimination of any imaginable type, including national origin.

world. Universal service funding mechanisms helped increase telephone penetration in U.S. households from 35 percent in 1920 to over 94 percent in 2000.[22]

Although achieving a penetration level in excess of 94 percent in the United States is a crucial step towards meeting the Act's mandate, a truly world-wide communications network will not be possible until foreign countries achieve adequate penetration levels, because people in the U.S. cannot reach foreign destinations of their choice if those destinations have inferior networks. Like the United States, Guyana relies on universal service mechanisms to fund network expansion. As a low-income developing country, Guyana is particularly dependent on revenues from settlement rates, which represents the only realistic source of funding for universal service in Guyana.

The low-income benchmark rate of $0.23/minute represents a decrease of $0.62 – a 73 percent reduction – from the current rate. In the *Benchmarks Order*, the Commission noted that it would extend the transition period in appropriate circumstances, explaining that "additional transition time for countries that meet this standard will prevent countries facing significant declines in their telecommunications revenues as a result of our benchmarks from experiencing undue disruptions in their networks."[23] The Commission gave as an example the situation where annual glidepath reductions resulted in a loss of more than 20% of the country's annual telecommunications revenue."[24] GT&T has presented data showing that the requested waiver is necessary to prevent undue disruption of the Guyanese telecommunications network, and the magnitude of the revenue impact is on a par with that posited by the Commission four years ago as being sufficient to justify an extension of the transition period. By granting the requested waiver, the Commission can ensure that

---

22 See Federal Communications Commission, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, 17-5, 17-6, December 2000.

23 *Benchmarks Order* at ¶ 174.

24 *Id.*.

the *Benchmarks Order* does not halt infrastructure and universal service expansion in Guyana, to say nothing of rolling back the progress that has been achieved over the past ten years.

### 1. Grant of the requested waiver would increase call completion rates and quality of service levels for calls between the United States and Guyana.

The FCC has recognized that application of the benchmark settlement rates to carriers from low-income developing countries could have a significantly negative impact, including the disruption of the operations of both U.S. and foreign carriers.[25] As the Commission explained, the record in the benchmarks proceeding demonstrates that:

> A rapid shift to more cost-based rates could create adjustment problems for carriers in countries with significantly distorted rate schedules. A rapid shift to more cost-based rates could also have a short-term impact on telecommunications network development in those limited cases where settlement revenues are a major source of funding for network development. We note that it is in the best interest of U.S. carriers and consumers to avoid undue disruption of foreign carriers' operations. A well developed global telecommunications network provides the telecommunications infrastructure necessary to support international commerce and trade.[26]

Thus, the FCC concluded, the implementation of benchmark rates must take into account the impact on lower income countries of moving to the benchmark rates.[27] For this reason, the FCC adopted an extended transition period for countries with a significant reliance on net settlement payments like low-income developing countries. The Commission also created a category for carriers in low-teledensity countries. As the Commission explained, "in most of the poorest countries, telecommunications infrastructure is severely underdeveloped. . . . [T]he transition to a more cost-

---

25 *Id.* at ¶ 161.

26 *Id.* at ¶ 166.

27 *Id.* at ¶105.

based system could be most severe for countries with very low levels of telecommunications network development."[28]

Under the transition schedule, carriers from lower income countries have more time to transition to benchmark rates than carriers from higher income countries.[29] Table Two shows the maximum settlement rates established for each category, as well as the effective date for each.

**Table Two: Benchmark rates**

| *Category* | *Benchmark Rate* | *Implementation Date* |
|---|---|---|
| Upper Income | $ 0.15 | January 1, 1999 |
| Upper-Middle Income | $ 0.19 | January 1, 2000 |
| Lower-Middle Income | $ 0.19 | January 1, 2001 |
| Low Income | $ 0.23 | January 1, 2002 |
| Teledensity < 1 | $ 0.23 | January 1, 2003 |

As Table Two indicates, the target deadlines for the benchmark rates for upper income, upper-middle income, and lower-middle income countries have already passed. Only the benchmark rates for low-income countries and low-teledensity countries remain in transition.

The Commission recognized that, in addition to the transition schedule, it was necessary under certain circumstances to "permit additional flexibility in the application of our

28 *Id.* at ¶ 163.

29 For similar reasons, the *Benchmarks Order* established lower benchmark settlement rates for economically developed countries than for less developed countries. The FCC established four categories of countries based on their level of economic development: high-income, upper-middle income, lower-middle income and low-income. The FCC determined economic development by GNP per capita as defined by a World Bank and ITU classification scheme. At the time the FCC adopted the *Benchmarks Order*, high-income countries had a per capita income of greater than $8,956, upper-middle income countries had a per capita income of between $2,896 and $8,955, lower-middle income countries had a per capita income of between $726 and $2,895, and low-income countries had per capita income less than $726. There is a separate category for countries with a teledensity of less than one telephone per hundred inhabitants. "Teledensity" is defined as the number of telephone main lines per 100 inhabitants in a particular country. See Appendix A of the attached White Paper for a table showing specific country classifications.

benchmarks beyond the transition periods for U.S. carriers serving developing countries . . ."[30] in order to "prevent countries facing significant declines in their telecommunications revenues from experiencing undue disruptions in their networks."[31] As the FCC recognized in the *Benchmarks Order*,

> [a]ll players in the global telecommunications market must work together to ensure a smooth transition from the current accounting rate system to a system in which prices are more closely related to costs. Carriers and countries that currently rely on above-cost settlement rates do not deny that reform of the accounting rate system is necessary. At the same time, *we cannot deny that reform will require difficult adjustments in many countries, especially lower countries. . . . [I]t is in the public interest to take measures to ensure that the networks of U.S. carriers' foreign correspondents are not unduly disrupted by the implementation of our benchmark settlement rates."*[32]

As such, general application of the benchmark rates does not serve the public interest where it will lead to undue disruptions of foreign carriers' operations or interfere with funding for network development, because a well-developed global telecommunications network is crucial for the FCC to accomplish its statutory mandate.

Despite nearly worldwide reliance on universal service mechanisms of one form of another, Guyana will no longer be able to rely on revenues from international settlement rates on the U.S. route to fund network expansion and infrastructure investment should the benchmark rate become effective on January 1, 2002. This move away from the existing settlement rate will significantly harm the telecommunications market in Guyana, which will cause an undue disruption in the Guyanese network. Specifically, the effect of implementing benchmark rates on the U.S.-Guyana route may include, among other things, the following:

---

30 *Benchmarks Order* at ¶ 176.

31 *Id.* at ¶ 174.

32 *Id.* at ¶ 150 (emphasis added).

- lower quality of service levels, including reduced call completion ratios, which directly affect calls originated by citizens of the United States to Guyana;
- extension of telephone lines to fewer new subscribers, which limits the number of potential recipients in Guyana of calls from the United States;
- loss of existing subscribers due to increases in the calling rates in Guyana necessitated by reduced settlement revenues, which again affects the ability of U.S. citizens to contact businesses or individuals in Guyana;
- lower traffic volumes from Guyana into the U.S. as Guyanese subscribers drop off the network and those who remain on the network call less often, and for shorter periods, due to higher calling rates;
- less investment in telecommunications infrastructure, which reduces the potential calling options for end users in both U.S. Guyana; and
- less capital available for the purchase of plant, equipment and other materials needed by GT&T, which will negatively impact U.S. vendors and manufacturers.

A rapid shift to benchmark rates will also drastically reduce the hard currency that Guyana will receive from international settlement payments, which Guyana needs to purchase equipment for network infrastructure expansion. Revenues from domestic services are insufficient to fund equipment purchases and network infrastructure expansion, both because domestic call volume is too low and payments for these calls are not made in convertible currency.

In addition to providing hard currency, settlement revenues provide collateral that Guyana can use to obtain access to capital. This is particularly critical in today's markets where capital is more difficult to obtain on reasonable terms than anytime in the past ten years. Any immediate reduction in settlement revenues will negatively affect the ability of GT&T to obtain the funds necessary to complete infrastructure projects underway or to initiate new projects. Consequently, the loss in settlement revenues that will result from blanket application of the benchmark rates will make it increasingly difficult for GT&T to expand and upgrade its telecommunications network.

In sum, settlement revenues are a critical and irreplaceable source of funding for network development in Guyana. Application of the benchmark rate to the U.S.-Guyana route in

2002 would cause severe disruption of GT&T's operations and interfere with network expansion. It is in the public interest to take measures to ensure that the networks of U.S. carriers' foreign correspondents are not unduly disrupted by the implementation of the benchmark settlement rates, as the Commission found in the *Benchmarks Order*. Therefore, grant of the requested waiver would serve the public interest because a well developed global telecommunications network, which provides the telecommunications infrastructure necessary to support international commerce and trade, is crucial for the FCC to accomplish its statutory mandate.

2. **Grant of the requested waiver would create opportunities for the U.S. communications and IT industries and promote significant U.S. objectives.**

The continued success of the communications and IT industries, and thus the U.S. economy, depends in part upon the ability of these industries to expand into new markets. Some of the most promising opportunities for economic expansion in the communications and IT industries can be found in developing countries like Guyana, which has a huge unmet demand for communications and IT services. The United States – as the world's largest producer of communications and IT equipment and provider of Internet-related services[33] – is uniquely positioned to benefit from the expansion of telecommunications networks and the introduction of advanced services in Guyana.

In addition to creating opportunities for the U.S. communications and IT industries, the requested waiver would further significant U.S. objectives. For example, in adopting the 1996 Act, Congress established a clear national policy to "promote the continued development of the Internet" and "to preserve the vibrant and competitive free market that presently exists for the

---

[33] *See Telecommunications Equipment: U.S. Performance in Selected Major Markets* at v (Staff Research Study 24, USITC publication 3150, December 1998) ("*USITC Study*").

Internet and other interactive computer services unfettered by Federal or State regulation."[34] The FCC would promote the continued development of the Internet by lifting Federal price regulation that interferes with further network expansion and infrastructure investment in Guyana. Moreover, lifting Federal price regulation on the U.S.-Guyana route would preserve the vibrant and competitive free market by allowing the current settlement rates, which are the product of commercial negotiations, to remain in place unfettered by Federal regulation.

### 3. Grant of the requested waiver would further U.S. policies designed to increase the public's access to a diversity of viewpoints and bridge the digital divide.

Grant of the requested waiver would increase the diversity of information available to people living in the United States, because it would allow them to communicate with a higher percentage of people living in Guyana, as well as enable them to access more Internet content from Guyana. "[I]t has long been a basic tenet of national communications policy that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public."[35] This national policy to promote the public's access to a diversity of viewpoints from a multiplicity of sources finds expression in statutory law as well as in previous decisions of the FCC.[36]

Grant of the requested waiver will also help to narrow the international digital divide, which benefits both the citizens of the United States and Guyana. The U.S. Government has adopted

---

34 47 U.S.C. § 230(b)(1)-(2).

35 *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 663 (1994) (internal quotation marks omitted).

36 *See, e.g.*, 47 U.S.C. § 257(b) (noting that one of the "policies and purposes" of the Communications Act is to "favor[] diversity of media voices"); *id.* § 521 nt. (codifying findings and policy underlying Cable Television Consumer Protection and Competition Act of 1992) ("There is a substantial governmental and First Amendment interest in promoting a diversity of views provided through multiple technology media."); *AT&T-MediaOne Order*, 15 FCC Rcd at 9818-20 ¶¶ 3-5 (considering proposed merger's effects on "diversity and competition" in video programming and its effects on "openness and diversity of broadband Internet content").

a policy of bridging the gap not only between individuals and groups within the U.S., but also across individual economies, so that all countries, advanced and developing alike, can reap the benefits of globalization. This policy is based on the belief that digital inclusion not only advances the good of society, but also the bottom line interest of business.

The Internet allows businesses from Guyana to leap into the developed world because conducting electronic commerce activities over the Internet enables businesses to sell goods and services directly to their customers. Electronic commerce revolutionizes trade in services by lowering transaction costs dramatically and facilitating new types of commercial transactions. Using the Internet allows even the smallest companies to achieve a global presence and to conduct business worldwide. For example, two indigenous women living in a remote village of Guyana revived the ancient art of hand-weaving large hammocks from locally grown cotton, formed the Rupununi Weavers Society and established a web site to sell their products around the world.[37] In their first year, they sold 17 hammocks around the world for as much as $1,000 a piece. This profit is remarkable considering that the per capita income in Guyana is less than $824, and that their village had no phones two years before this undertaking. Therefore, grant of the requested waiver will advance the good of society – both in the United States and in Guyana – and protect the business interests of individual companies in the United States and Guyana.

4. **Grant of the requested waiver would be consistent with commitments that the United States has made to Guyana.**

Grant of the requested waiver is in the public interest because it is consistent with commitments that the United States has made to Guyana and the Caribbean Communities

[37] Simon Romero, *Weavers Go Dot-Com, and Elders Move In*, N.Y. TIMES, Mar. 28, 2000, *available at*: http://www.nytimes.com/library/tech/00/03/biztech/articles/28weavers.html.

("CARICOM"), as well as the continuing bilateral efforts between the United States and the Caribbean. Since its founding in 1973, CARICOM has enjoyed a strong relationship with the United States, and numerous bilateral discussions and initiatives between CARICOM and the United States on many issues, including telecommunications, continue today. The strong relationship between CARICOM and the United States is reflected in the Bridgetown Declaration of May 10, 1997, which recognizes the large volume of incoming calls emanating from citizens of Caribbean countries who live abroad, mainly in the United States.[38] In the Bridgetown Declaration, the United States reaffirmed its commitment to deepened regional integration, and agreed to adopt policies that "foster a competitive market environment, which encourages private investment in telecommunications infrastructure and accelerates transition to the Global Information Infrastructure."[39]

The Bridgetown Declaration notes that "access to modern telecommunications services is indispensable to the development of international trade as well as to national and regional, social and economic development and security."[40] For this reason, the United States pledged, among other things, to:

> "3.1 encourage the development of efficient, cost effective and competition enhancing telecommunications systems in the region;
>
> 3.2 assist the Caribbean countries in examining their telecommunications systems with a view to encouraging competition and exploiting investment opportunities for value-added services as well as for basic telecommunications services; [and]
>
> 3.3 give priority consideration to exploiting the new technologies in telecommunications, including the increased use of electronic networks

---

38 July, 1997 Antigua and Barbuda-Bahamas-Barbados-Belize-Dominica-Dominican Republic-Grenada-Guyana-Haiti-Jamaica-St. Christopher and Nevis-Saint Lucia- St. Vincent and the Grenadines-Suriname-Trinidad and Tobago-United States: Partnership for Prosperity and Security in the Caribbean 36 I.L.M. 792 (1997) ("Bridgetown Declaration").

39 *Id.*

40 *Id.*

> such as the Internet, to expand access to information, facilitate easy access by educational and health institutions to the Global Information Infrastructure and increase the exchange of views on telecommunications issues."

Grant of the requested waiver would be consistent with these pledges because it would encourage the development of efficient and cost effective telecommunications systems in Guyana, help Guyana to exploit investment opportunities for basic telecommunications and value added services, and aid Guyana to exploit new telecommunications technologies, including the use of the Internet.

In the Bridgetown Declaration, the United States and Guyana also reaffirmed their commitment to the CITEL Declaration and Plan of Action from 1996.[41] In this 1996 Declaration and Plan of Action, CITEL commits to strengthening of relations with sub-regional organizations in the Americas, like CARICOM, and agrees to promote flexible regulatory frameworks. The Plan of Action recognizes that in the Americas there are different levels of economic development in the countries in the region and that these differences are substantial. These differences also manifest themselves in the telecommunications sector and should be progressively reduced so that the participation of all countries in the future Free Trade Area of the Americas will be beneficial. As a developing country, Guyana is in the expansion phase of its telecommunication network in order to become modern and to connect to new American and Caribbean end users. The ability to continue relying on international settlement revenues to fund network expansion would facilitate those efforts.

The Caribbean Basin Economic Recovery Act provides another example of the commitment of the United States to strengthening ties with the Caribbean.[42] Congress adopted The Caribbean Basin Economic Recovery Act in 1983 based on its findings that:

---

41 *Id.*

42 The Caribbean Basin Economic Recovery Act is codified at 19 U.S.C.A. § 2702 *et seq.*

> (1) Caribbean and Central American countries historically have had close economic, political and cultural ties to the United States;
>
> (2) promoting economic and political stability in the Caribbean and Central America is in the national security interests of the United States;
>
> (3) the economic and political stability of the nations of the Caribbean and Central American can be strengthened significantly by the attraction of foreign and domestic investment specifically devoted to employment generation; and
>
> (4) the diversification of the economies and the expansion of exports, particularly those of a non-traditional nature, of the nations of the Caribbean and Central America is linked directly to fair access to the markets of the United States.[43]

When it amended the Caribbean Basin Economic Recovery Act in 1990, Congress found further that:

> (1) a stable political and economic climate in the Caribbean region is necessary for the development of the countries in that region and for the security and economic interests of the United States;
>
> (2) the Caribbean Basin Economic Recovery Act was enacted in 1983 to assist in the achievement of such a climate by stimulating the development of export potential of the region; and
>
> (3) the commitment of the United States to the successful development of the region, as evidenced by the enactment of the Caribbean Basin Economic Recovery Act, should be reaffirmed and further strengthened by amending that Act to improve its operation.[44]

Under the Caribbean Basin Economic Recovery Act, the President must designate countries as "beneficiary countries." Guyana has been designated as a "beneficiary country" under the Caribbean Basin Economic Recovery Act.[45] Grant of the requested waiver would assist the efforts of the United States to promote the economic and political stability of the Caribbean.

---

43 Pub.L. 98-67, Title II, § 201, Aug. 5, 1983.

44 Pub.L. 106-200, Title II, § 211(e)(1)(A), May 18, 2000.

45 To Implement the United States-Caribbean Basin Trade Partnership Act October 2, 2000 Pres. Proc. No. 7351, 65 FR 59329, 2000 WL 1466126 (Pres.) (2000).

Grant of the requested waiver would also promote the efforts of the United States to improve relations with Guyana. For a number of years, the United States has been taking steps to help Guyana make the transition from totalitarian rule with an economy that was in a permanent recession from 1970 to 1990 to a democracy with modern capitalism and a healthy economy. Granting a waiver from the benchmark settlements rate on the U.S.-Guyana route would provide a boost to Guyana's economy, and thus would further the policy objectives of the United States. The cost to Guyana of enforcing the order as presently written would have a negative impact of about $25 million per year, which is equal to the total annual economic contribution of 35,000 Guyanese citizens. GT&T would have to require at least a 1,000 percent increase in domestic rates in order to replace the lost $25 million per year.[46]

5. **Grant of the requested waiver could relieve pressure on the United States to adopt new charging arrangements for international Internet Traffic.**

The United States has been under increasing pressure from the Asia Pacific Economic Cooperative ("APEC") forum and the International Telecommunication Union ("ITU") to consider adopting a new approach to intercarrier compensation for Internet traffic known as International Charging Arrangements for Internet Services ("ICAIS"). The United States has strongly opposed ICAIS by arguing that "there is no need for government intervention into relationships between Internet Service Providers," and that "cost efficient arrangements for Internet traffic will continue to be worked out most quickly if the market is not hampered by government regulation." However, these arguments have been undermined by the *Benchmarks Order*, which intervened in commercial relationships between U.S. and foreign telephone companies and, in the case of low-income

[46] *See, e.g.*, Reply Comments of Guyana Telephone & Telegraph Limited, IB Docket No. 96, 261, 3 (filed March 31, 1997).

developing countries, could deprive countries of the revenues they need to build out their Internet infrastructure. Therefore, granting the requested waiver could generate additional support for the U.S. position, which is opposed by every ITU member except the United States and Greece.

#### 6. Grant of the requested waiver would benefit the substantial Guyanese immigrant population residing in the United States

Substantial numbers of immigrants from Guyana reside in the United States. According to INS statistics, the top ten states with immigrant populations from Guyana are: California, New York, Texas, Florida, New Jersey, Illinois, Massachusetts, Virginia, Maryland and Washington.[47] These populations have the money and willingness to call friends and relatives in Guyana, but are limited by the lack of infrastructure in Guyana. These people can be expected to generate significant volumes of calling traffic once the network in Guyana is expanded to that most of the population has access to the telecommunications network. Grant of the requested waiver would allow these Guyanese callers, many of whom are now U.S. citizens, to keep in touch with their home country.

### B. Waiver of the Benchmark Settlement Rate for Guyana Would Not Undermine the Policy Goals of the *Benchmarks Order.*

The FCC adopted the *Benchmarks Order* in order to (i) reduce over time the settlement rates that U.S. carriers pay foreign carriers to terminate traffic, thereby reducing U.S. payments to foreign carriers; (ii) increase the volume of international traffic; and (iii) lower the price that U.S. consumers pay for international long distance services. These goals have largely been achieved, despite the fact that the *Benchmarks Order* will not apply to low-income countries – including Guyana – until January 1, 2002 and low-teledensity countries until January 1, 2003. For

---

[47] *See* Immigration and Naturalization website at: http://www.ins.usdoj.gov/graphics/aboutins/statistics/310.htm.

example, the average settlement rate, weighted by actual traffic, has dropped from 32 cents per minute in 1997 to 19 cents per minute in 2000 – a decline of 43.4 percent. Likewise, net settlement payments by U.S. carriers to foreign carriers have decreased by 17.4 percent, which is particularly remarkable because the total amount of international traffic increased by 47 percent during that same period. Finally, the average price of an international long distance call fell 31 percent from 1997 to 1999. Therefore, waiving application of the benchmarks settlement rate for Guyana until the sooner of five years or the country achieves a teledensity level of 23 will not undermine the goals of the *Benchmarks Order*.

### 1. The Rates That U.S. Carriers Pay Foreign Carriers To Terminate Traffic Have Decreased Significantly Since the FCC Adopted the *Benchmarks Order*.

The rates that U.S. carriers pay foreign carriers to terminate traffic are significantly lower today than they were when the FCC adopted the *Benchmarks Order* in 1997. Table Three shows that settlement rates in all economic categories have steadily declined since 1997.

**Table Three: Average Consolidated Settlement Rates of the United States (as of December 1, 2000)**

| *Category* | *1997* | *1998* | *1999* | *2000* |
|---|---|---|---|---|
| High Income | $0.35 | $0.28 | $0.16 | $0.15 |
| Upper-Middle | $0.51 | $0.44 | $0.37 | $0.29 |
| Lower-Middle | $0.68 | $0.61 | $0.51 | $0.45 |
| Low Income | $0.76 | $0.68 | $0.57 | $0.50 |
| Teledensity <1 | $0.95 | $0.89 | $0.80 | $0.76 |

*Source:* IMTS Accounting Rates of the United States. 1995-2000 *available at*: www.fcc.gov/ib/td/pf/account.html

Another useful indicator to gauge the success of the *Benchmarks Order* is the amount of minutes that are settled at benchmark rates. According to FCC statistics for 1999, over 77 percent of U.S.-

outbound switched traffic was terminated at benchmark rate levels, which is only two years after the order took effect. (*See* Table Four)

**Table Four: U.S. Traffic Terminated at Benchmark Rates (based on 1999 Traffic Information)**

| Category | Minutes Terminated at Benchmark Rates | % of All Minutes Terminated |
|---|---|---|
| High Income | 13,276,953,190 | 47.11% |
| Upper-Middle Income | 6,177,248,646 | 21.92% |
| Lower-Middle Income | 2,296,554,958 | 8.15% |
| Low Income | 51,921,384 | 0.18% |
| Teledensity < 1 | 0 | 0.00% |
| | | 77.35% |
| Total–Terminated Minutes for All Countries | 28,185,345,934 | |

*Source*: 1999 Section 43.61 International Telecommunications Data, December 2000, Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission

Moreover, 88 percent of all U.S.-outbound switched traffic terminates in countries that are in the top three income categories that must be at benchmark rates by January 1, 2001. (*See* Table Five)

**Table Five: U.S. Outbound Traffic To Be Terminated at Benchmark Rates as of January 1, 2001 (based on 1999 Traffic)**

| Category | Minutes | % |
|---|---|---|
| High Income | 13,284,131,991 | 47.13% |
| Upper-Middle Income | 6,337,764,313 | 22.49% |
| Lower-Middle Income | 5,275,975,393 | 18.72% |
| | | 88.34% |
| Total Terminated Minutes for All Countries | 28,185,345,934 | |

*Source*: 1999 Section 43.61 International Telecommunications Data, December 2000, Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission

As the data show, the vast majority of U.S. outbound traffic is already settled at the FCC's prescribed benchmark rates. By comparison, the total U.S. outbound traffic to low-income developing countries is relatively insignificant, accounting for less than 12 percent of the total U.S. outbound traffic. Similarly, U.S. outbound traffic to Guyana accounts for less than 0.2 percent of the total U.S. outbound traffic.

Perhaps the most significant indicator of the progress that U.S. carriers have made in negotiating lower settlement rates with foreign carriers is the average level of settlement rates weighted by actual traffic patterns. Table Six shows that the average settlement rate, weighted by actual traffic, dropped from 32 cents per minute in 1997 to 18 cents per minute in 2000, which represents a decline of 43.4 percent.

**Table Six: Weighted Average Settlement Rates (as of December 1, 2000)**

| | *1997* | *1998* | *1999* | *2000* |
|---|---|---|---|---|
| Average Settlement Rate | $0.32 | $0.27 | $0.21 | $0.18 |
| Change from 1997 | | -15.6% | -34.4% | -43.4% |

*Source:* IMTS Accounting Rates of the United States, 1995-2000 *available at:* www.fcc.gov/ib/td/pf/account.html

These indicators demonstrate that the FCC's goal of reducing the settlement rates that U.S. carriers pay foreign carriers to terminate traffic has been largely achieved.

### 2. Net Settlement Payments By U.S. Carriers to Foreign Carriers Have Decreased and the Amount of International Traffic Has Increased Since the FCC Adopted the *Benchmarks Order.*

The FCC adopted the *Benchmarks Order* in part because net settlement payments by U.S. carriers to foreign carriers grew during the first half of the 1990s. Since then, net settlement payments by U.S. carriers to foreign carriers have decreased by 17.4 percent. This decrease is particularly remarkable because the total amount of international traffic increased by 47 percent during that same time, as Table Seven illustrates.

**Table Seven: Shifts in Settlement Payments and Traffic**

| *Year* | *U.S. IMTS Settlement Payments* | *% change from prior year* | *U.S. Billed Minutes for IMTS* | *% change from prior year* |
|---|---|---|---|---|
| 1990 | $2,806,358,295 | | 8,029,740,000 | |
| 1991 | $3,399,886,361 | 21.15% | 8,985,797,000 | 11.91% |
| 1992 | $3,491,804,274 | 2.70% | 10,156,212,000 | 13.03% |
| 1993 | $3,800,320,218 | 8.84% | 11,392,816,000 | 12.18% |
| 1994 | $4,452,708,191 | 17.17% | 13,393,191,000 | 17.56% |
| 1995 | $5,081,176,918 | 14.11% | 15,837,132,000 | 18.25% |
| 1996 | $5,765,497,692 | 13.47% | 19,119,052,000 | 20.72% |
| 1997 | $5,552,083,803 | - 3.70% | 22,586,407,000 | 18.14% |
| 1998 | $4,922,824,624 | -11.33% | 24,081,616,242 | 6.62% |
| 1999 | $4,757,556,971 | - 3.36% | 28,185,345,934 | 17.04% |

Thus, the *Benchmarks Order* has achieved its objectives because net settlement payments by U.S. carriers to foreign carriers have decreased significantly while the total amount of international traffic has increased dramatically.

### 3. The Prices of International Calls Have Decreased Since the FCC Adopted the *Benchmarks Order.*

In the three years since the Commission's implementation of the August 1997 *Benchmarks Order*, the prices of international calls have decreased dramatically. In 1996, the year just prior to the *Benchmarks Order*, the average price of an international long distance call originating from the U.S. was 74 cents per minute. By 1998, the average price fell 26 percent to 55 cents per minute.[48] In 1999, carriers billed 51 cents per minute, on average, a decline of 50 percent since 1980.[49] For example, the average rate of an international long distance call to the United

[48] Federal Communications Commission, International Bureau, "Report on International Telecommunications Markets: 1999 Update," DA 00-87, p. 4, January, 2000.

[49] Federal Communications Commission, Industry Analysis Division, Common Carrier Bureau, "Trends in Telephone Service," p. 1-1, December 2000.

Kingdom fell from 89¢ per minute in 1996[50] to 10¢ per minute in 2001.[51] This further demonstrates that the FCC's goal of reducing the prices of international calls has been largely achieved.

### 4. Grant of the Requested Waiver Will Not Undermine the Goals of the *Benchmarks Order.*

The goals of the *Benchmarks Order* have largely been achieved, as explained above, despite the fact that the benchmark settlement rates will not apply to Guyana, or any other low-income countries, until January 1, 2002. Even after January 1, 2002, grant of the requested waiver would not undermine the goals of the *Benchmarks Order*, because U.S. outbound traffic to Guyana accounts for less than 0.2 percent of the total U.S. outbound traffic, and the requested waiver will have no effect on the remaining 99.8 percent of the total U.S. outbound traffic. Moreover, grant of the requested waiver will not increase the settlement rate on the Guyana route. Rather, a waiver would merely maintain the current settlement rate on the Guyana route. In fact, grant of the requested waiver would not shield the Guyana route from competitive pressures that will lead to voluntary decreases of the settlement rate on the Guyana route.

For these reasons, grant of the requested waiver will have no material effect on the weighted average settlement rates that U.S. carriers pay all foreign carriers, including Guyana, to terminate traffic, and will not lead to increased net settlement payments by U.S. carriers to Guyana. Likewise, grant of the requested waiver will not increase the rates that U.S. businesses and consumers pay for international telephone calls. The U.S. carriers would remain free to lower the U.S. calling

---

50 *See* Federal Communications Commission, "Trends in the International Telecommunications Industry" (Sept. 1999), Table 16, *available at*: http://www.fcc.gov/ccb/stats. Rate based on 7-minute direct-dialed call placed by residential customers under TrueWorld (sm) Savings plan. Customers of this plan must pay a fixed charge of $3.00 per month.

51 *See* AT&T International Rate Finder, *available at*: http://www.shop.att.com. Rate based on direct-dialed international call placed by residential customer under One Rate© International Value Plan. Customers of this plan must pay a fixed charge of $3.00 per month.

rates for the Guyana route. In sum, waiving application of the benchmarks settlement rate for Guyana until the sooner of five years or the country achieves a teledensity level of 23 will not undermine the goals of the *Benchmarks Order*.

### C. Waiver of the Benchmark Rate for the U.S.-Guyana Route Would Serve the Public Interest in Promoting Universal Service and Would Be Consistent with Prior Commission Decisions.

Guyana relies heavily on revenues from international settlement payments to expand and upgrade its national telecommunications infrastructure and to keep local telephone service affordable. Similarly, the United States has a long history of relying on the revenues from long distance service – including international service – to subsidize network expansion and infrastructure investment through its universal service programs. For decades, the high rates paid by U.S. consumers to call foreign countries were used in part to fund infrastructure development and universal service.

The philosophy of universal service – dialtone anywhere, at any time, for as many subscribers as possible – is the cornerstone upon which the original telephone network in the U.S. was designed and is still managed. This philosophy enabled the extension of basic telephone service to most Americans and gave the U.S. one of the finest communications systems in the world. Universal service funding mechanisms helped increase telephone penetration in U.S. households from 35 percent in 1920 to over 94 percent in 2000.[52] Even today, people who call the U.S. from foreign locations, or vice versa, pay U.S. carriers rates for the U.S. portion of the call that are above cost.

---

[52] See Federal Communications Commission, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, 17-5, 17-6, December 2000.

The United States and Guyana are not alone in relying on universal service mechanisms to fund network expansion and infrastructure investment. Recognizing the need to provide basic telephone service to every household, especially to those living in high-cost rural and low-income areas, governments throughout the world have implemented the concept of universal service as a fundamental policy goal. Cross-subsidies, created by above-cost pricing of long distance, international, and business services have been used to compensate telephone companies that supplied telephone service to these targeted areas.

Despite nearly worldwide reliance on universal service mechanisms of one form of another, Guyana will no longer be able to rely on revenues from international settlement rates on the U.S. route to fund network expansion and infrastructure investment if the benchmark rate becomes effective on January 1, 2002. The requested waiver will enable GT&T to continue its efforts to expand service in underserved areas of Guyana, which will harm the interests of both the U.S. and Guyana, as explained above.

Under similar circumstances, the FCC has waived its rules in order to enable carriers to fulfill commitments to bring basic service to unserved areas. In *Mescalero Apache Telecom, Inc.*,[53] the FCC waived section 54.305 of its rules to enable the Mescalero Apache Telecom company ("Mescalero") to receive high-cost universal service support based on the average cost of the 950 access lines it acquired from Valor Telecommunications of New Mexico, LLC ("Valor"). Absent the waiver, Mescalero would have received the per-line level of high-cost universal support that Valor received for the lines prior to the transfer, which was significantly lower.

---

[53] *Mescalero Apache Telecom, Inc.; Waiver of Section 54.305 of the Commission's Rules*, 2001 FCC LEXIS 363 (January 18, 2001).

The FCC granted a waiver to Mescalero based on a finding that special circumstances warranted a deviation from its general rule. First, the percentage of residences on the Reservation that Mescalero serves is 52 percent, which is very low compared to the 94.6 percent national average penetration level for all households in the United States.[54] The Commission found that application of its general rule could have the unintended effect of preventing the expansion of service in unserved and remote areas of the Reservation, and the improvement of service in underserved areas.[55]

Second, the Commission found that by granting the waiver, Mescalero would gain control over the deployment and provision of telecommunications services on the Reservation.[56] Third, the Commission found that given the high costs associated with upgrading the existing facilities and extending service to unserved areas of the Reservation, Mescalero would have been unlikely to be able to upgrade the existing facilities sufficiently to support its planned build-out to underserved and unserved areas without waiver of the FCC's rules.[57]

Finally, the Commission found that grant of the waiver would serve the public interest by increasing access to telecommunications on the Reservation, which is consistent with its statutory goal of preserving and advancing universal service.[58] The Commission also explained that the waiver was consistent with its mandate to ensure that consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high-cost areas, have access to telecommunications and information services.[59] The Commission also noted that the waiver would have minimal effect

---

54 *Id.* at ¶ 10.

55 *Id.*

56 *Id.* at ¶ 11.

57 *Id.* at ¶ 12.

58 *Id.* at ¶ 13.

59 *Id.*

on the high-cost universal service mechanisms.[60] Specifically, the additional support received by Mescalero as a result of the waiver is an annual aggregate shift that is less than one percent of any of the high-cost universal support mechanisms.[61]

The special circumstances that warranted a deviation from the FCC's general rules in *Mescalero* are similar to the special circumstances in this waiver request. First, teledensity in Guyana is slightly above 10 at the present time, which is very low compared to the 68.18 teledensity in the United States. As in *Mescalero*, application of the FCC's general rule on benchmarks could have the unintended effect of preventing the expansion of service in unserved and remote areas of Guyana, and the improvement of service in underserved areas.

Second, the costs associated with upgrading the existing facilities and extending service to unserved areas of Guyana are very high. Furthermore, the hard currency that is received from settlement payments is needed to purchase telecommunications equipment. Indeed, Guyana's dollar has deteriorated significantly over the last ten years, going from a rate of exchange of 45 to 180. GT&T will not be able to upgrade existing facilities sufficiently to support its planned build-out to underserved and unserved areas without waiver of the FCC's rules.

Finally, grant of the requested waiver would serve the public interest by increasing access to telecommunications both in the U.S. and in Guyana, which is consistent with the FCC's statutory goal of preserving and advancing universal service. As in *Mescalero,* the requested waiver is consistent with the FCC's mandate to ensure that consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high-cost areas, have access to telecommunications and information services. Specifically, the requested waiver is consistent with

---

60 *Id.* at ¶ 15.

61 *Id.*

the FCC's statutory goal of "regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid efficient, Nation-wide and **world-wide** wire and radio communication . . . ."[62] By granting the waiver, the FCC will help ensure that those individuals and businesses who desire to place calls to Guyana and who rely on adequate access to telecommunications service in Guyana will be able to do so, which serves the public interest. Moreover, grant of the requested waiver will not have an adverse impact on the FCC's goals because the total amount of net settlement payments that Guyana will receive in any given year as a direct result of this waiver is less than 0.74 percent of the total net settlement payments by U.S. carriers to foreign carriers for the year 1999, and less than 1.57 percent of the high-cost universal support for the year 2000.

[62] 47 U.S.C. 151 (emphasis added).

## CONCLUSION

For the foregoing reasons, ATN urges the Commission to waive application of the benchmark rate to the U.S.-Guyana route for five years or until Guyana's teledensity reaches 23, whichever occurs sooner.

Respectfully submitted,

**ATLANTIC TELE-NETWORK, INC.**

By: _____

Robert J. Aamoth
Todd D. Daubert
Randall W. Sifers
**KELLEY DRYE & WARREN, LLP**
1200 19th Street, N.W.
Washington, DC 20036
(202) 955-9600

Its Attorneys

July 6, 2001