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**BEFORE THE**

**Federal Communications Commission**
**Washington, D.C. 20554**

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| In the matter of | ) | |
| | ) | |
| AT&T Corporation | ) | |
| WorldCom, Inc. | ) | IB Docket No. 96-261 |
| | ) | |
| Petition for Enforcement of International | ) | |
| Settlements Benchmark Rates for Service with | ) | |
| Qatar | ) | |
| | ) | |

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**ORDER**

**Adopted: September 5, 2001** **Released: September 5, 2001**

By the Chief, International Bureau

## I. INTRODUCTION

1. In this Order, we approve the petition of AT&T Corp. ("AT&T") and WorldCom (hereinafter referred to as ("Petitioners")[1] requesting enforcement of the benchmark settlement rate of 15¢ for service with Qatar that the Commission adopted in its *Benchmarks Order.*[2] The Petitioners request this action to enable them to comply with the rules adopted by the Commission in the *Benchmarks Order*.

2. The Commission's *Benchmarks Order*[3] adopted benchmark settlement rates and a timetable for U.S. carriers to adhere to in their settlements with foreign carriers. The settlement rates and their implementation schedule are based primarily on country income levels. For countries in the upper income category, which includes Qatar, the benchmark rate is 15¢ per minute. The effective date of this benchmark rate is January 1, 1999. Thus, the Commission's *Benchmarks Order* requires U.S. international facilities-based carriers to negotiate a settlement rate that does not exceed 15¢ per minute with the carrier in Qatar, Qatar Telecom ("Q-Tel"). The rate must apply to all traffic between the United States and Qatar that is exchanged on and after January 1, 1999. We find that the Petitioners have been unsuccessful in their efforts to negotiate a settlement rate with Q-Tel that complies with the *Benchmarks*

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[1] Petition of AT&T, Concert, and WorldCom for Enforcement of International Settlements Benchmark Rates for Services with Qatar, IB Docket No. 96-261, January 5, 2000.

[2] *Report and Order on Regulation of International Settlement Rates*, IB Docket 96-261, Report and Order, 12 FCC Rcd 19806 (1997) (*Benchmarks Order*) *aff'd. sub nom., Cable and Wireless P.L.C. v. FCC et al.*, 166 F. 3d 1224, 334 U.S. App. D.C. 261.

[3] International settlement procedures were developed as a means for international carriers to compensate each other for the costs they incur on behalf of each other to provide international switched service. The procedures are based on an accounting rate, which is a charge for handling a minute of international service that is negotiated by international carriers. Each carrier's portion of the accounting rate is referred to as the settlement rate. In almost all cases, the settlement rate is equal to one-half of the accounting rate. Thus, a U.S. carrier owes foreign carriers a settlement rate for each minute of service transmitted to the country and vice versa.

unsuccessful in their efforts to negotiate a settlement rate with Q-Tel that complies with the *Benchmarks Order*. Therefore, to enforce the *Benchmarks Order* and to ensure compliance by U.S. international facilities-based carriers with that order, we grant the Petitioners' request. We direct all U.S. international facilities-based carriers that provide service with Q-Tel in Qatar to conduct settlements with Q-Tel for international message telephone service ("IMTS") at a rate that does not exceed 15¢ per minute for service provided on and after January 1, 1999. We also direct all U.S. international facilities-based carriers to use their best efforts to negotiate a settlement rate with Q-Tel that complies with the Commission's *Benchmarks Order*.

## II. BACKGROUND

3. The Commission created an enforcement policy as an integral part of the *Benchmarks Order* to ensure compliance with the benchmark settlement rates and adherence to the timetable for these rates.[4] As part of the enforcement effort, the Commission stated that it would take appropriate steps to ensure that U.S. carriers satisfy the requirements of the *Benchmarks Order*.[5] The Commission's first step in the enforcement effort is to identify foreign carriers that are "reluctant" to take part in meaningful progress to reduce their settlement rates to benchmark levels.[6] Once the Commission identifies such carriers, it notifies responsible foreign government authorities about its concern with continued high settlement rates and the lack of meaningful progress in achieving lower rates, and seeks their support in effectuating lower settlement rates.[7] The enforcement policy provides procedures for U.S. carriers to follow in cases where foreign carriers resist a U.S. carrier's attempt to negotiate settlement rates that comply with the requirements of the *Benchmarks Order*. As described in the *Benchmarks Order*, a U.S. international facilities-based carrier seeking relief may file a petition with the Commission requesting enforcement measures to ensure compliance with benchmark settlement rates. The U.S. carrier's petition must demonstrate that the carrier has been unable to negotiate a settlement rate that complies with the rules and policies adopted in the *Benchmarks Order*.[8] The U.S. carrier may request that the Commission institute enforcement measures to ensure that no U.S. carrier uses a rate exceeding the lawful benchmark rate in its settlements with the foreign carrier.

4. In the case involving Qatar, the International Bureau wrote a letter to the Ministry of Communications and Transport in which the Bureau reiterated its support of reform of the international accounting rate system through multilateral discussions. The Bureau requested the Ministry's urgent assistance in reducing the settlement rate for service between the United States and Qatar.[9]

5. Subsequently, the Petitioners jointly filed their petition requesting enforcement of the rules and requirements in the Commission's *Benchmarks Order* for service on the U.S.-Qatar route. The Bureau issued a public notice on the petition but neither the State of Qatar nor Q-Tel filed comments in the proceeding.[10] The Petitioners state in their petition that they made good faith efforts to negotiate agreements with Q-Tel that comply with the *Benchmarks Order*, but their attempts have failed to produce

[4] *See Benchmarks Order* at ¶¶185-190.

[5] *See id.* at ¶185.

[6] *See id.* at ¶185.

[7] *See id.* at ¶185.

[8] *See id.* at ¶186.

[9] *See* letter from Regina M. Keeney, FCC, to Mr. Ahmed B. Al-Thani, Ministry of Communications and Transport, December 10, 1998.

[10] *See* Public Notice, Petition for Enforcement of International Settlements Benchmarks Rates, DA 01-455, February 20, 2001.

an agreement with a benchmark settlement rate. The petition includes affidavits of Concert and WorldCom employees responsible for their company's settlement arrangements with Q-Tel. According to Concert's affidavit, it notified Q-Tel about the requirements the Commission's *Benchmarks Order* imposes on U.S. carriers. Concert states that it informed Q-Tel of its benchmark obligations during a meeting that took place in October 1998.[11] Q-Tel responded that "in 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."[12] Concert met again with Q-Tel in January 2000 but was unable to negotiate an agreement on a benchmark rate. Concert and Q-Tel exchanged letters in the interval between the two meetings but failed to make progress in negotiating a benchmark rate. In September 2000, Q-Tel disconnected two-thirds of the Concert's circuits for service on the U.S.-Qatar route. This action reduced Concert's usable circuits from 59 to 20.[13] In November 2000, Concert again met with Q-Tel to discuss benchmark rate issues and circuit restoration. Q-Tel refused to restore the circuits or to negotiate a settlement rate at the benchmark level. Finally, in December 2000, Q-Tel disconnected Concert's remaining usable circuits.

6. WorldCom encountered similar resistance from Q-Tel in its attempt to negotiate a benchmark rate. According to WorldCom's affidavit, WorldCom pursued several contacts with Q-Tel, including meetings and an exchange of letters and faxes, to discuss the benchmark rate, its effective date, and the requirements the *Benchmarks Order* imposes on U.S. carriers. Q-Tel steadfastly refused to negotiate a benchmark rate with an effective date of January 1, 1999, noting that the "application of FCC imposed benchmark rate for traffic between Qatar and the United States is not acceptable to us."[14] At that time, Q-Tel offered to disconnect WorldCom's circuits to Qatar or to settle at a rate of $1.00 per minute until a new agreement could be reached. Thereafter, Q-Tel proposed a benchmark rate that would take effect in the second half of 2000 but all service exchanged before that date would be settled using a rate of $1.00 per minute.[15] WorldCom states in its affidavit that it proposed a benchmark settlement rate to Q-Tel on three separate occasions: November 1999, October 31, 2000, and December 12, 2000. According to WorldCom's affidavit, Q-Tel declined WorldCom's offers on each occasion. Thus, WorldCom's efforts also failed to produce an agreement with Q-Tel.

## III. DISCUSSION

7. The Commission remains committed to achieving more cost-based accounting rates because high rates inflate U.S. carriers' costs, which, in turn, put upward pressure on U.S. calling prices. To further this objective, the Commission adopted the benchmark policy that requires U.S. carriers to negotiate settlement rates with foreign carriers that satisfy specific benchmark levels on specified dates.[16] The Commission adopted the benchmark rates policy because accounting rates continue to exceed foreign

[11] *See* Affidavit of Thomas R. Luciano, Concert Global Network Services Ltd., December 6, 2000.

[12] *See id.* at 2.

[13] *See id.* at 3.

[14] *See* Affidavit of Henri Kassab, WorldCom, January 2, 2001.

[15] *See id.* at 2.

[16] The benchmark settlement rates and their effective dates areas follows:

| Country Category | Benchmark Rate | Effective Date |
|---|---|---|
| Upper Income | 15¢ | January 1, 1999 |
| Upper Middle Income | 19¢ | January 1, 2000 |
| Lower Middle Income | 19¢ | January 1, 2001 |
| Low Income | 23¢ | January 1, 2002 |
| Teledensity<1 | 23¢ | January 1, 2003 |

*See Benchmarks Order* at ¶111 and ¶165.

carriers' costs to terminate calls from the United States despite the Commission's actions and repeated expressions of concern regarding high accounting rates and their effect on U.S. consumers.[17] The U.S. Court of Appeals for the D.C. Circuit upheld the *Benchmarks Order* and affirmed the Commission's authority to prescribe maximum settlement rates that U.S. international facilities-based may pay to foreign carriers.[18] The International Telecommunication Union also supports lower accounting rates.

8. Foreign carriers, like Q-Tel, have had adequate time to adjust their settlement rates with U.S. carriers. The ITU adopted a recommendation in 1992 calling for cost orientated rates.[19] At that time, the settlement rate for service between the United States and Qatar was $1.00. Four years later, in 1996, the Commission proposed its benchmark settlement rates.[20] The rate with Qatar was still $1.00. Many parties representing a wide range of interests filed comments in the proceeding[21] and the Commission adopted the *Benchmarks Order* on August 7, 1997. The decision took effect on January 1, 1998 but the initial benchmark rate, which applies to upper income countries, was not scheduled to go into effect until January 1, 1999. Qatar is an upper income country so Q-Tel had more than two years from the time the Commission originally proposed its benchmark rates to make the transition from its settlement rate with U.S. carriers to the relevant benchmark rate of 15¢. Virtually all foreign carriers serving upper income countries made the transition from their settlements rates to the benchmark rate during the period by negotiating benchmark rates with U.S. carriers that took effect on schedule. In contrast, Q-Tel's rate is still $1.00. Moreover, U.S. carriers have negotiated many agreements with other foreign carriers that have settlement rates below the benchmark level.[22] In addition, many international carriers providing service in the other country categories also have negotiated settlement agreements with U.S. international carriers that will bring them into compliance with the *Benchmarks Order*. Overall international carriers in 125 countries terminate traffic at rates that comply with the Commission's benchmark requirements at this time.

9. We find that the Petitioners have made a good faith effort to negotiate settlement agreements with Q-Tel that would comply with the Commission's *Benchmarks Order* but Q-Tel consistently has frustrated this effort. The Petitioners' affidavits establish that they: (1) explained to Q-Tel the requirements imposed on U.S. carriers by the *Benchmarks Order* concerning the benchmark rate and its effective date; (2) exchanged letters and faxes with Q-Tel concerning the issues related to negotiating a settlement rate agreement that would comply with the *Benchmarks Order*; (3) convened meetings with Q-Tel for the express purpose of negotiating a settlement rate that would comply with the

[17] *See, e.g. Regulation of International Accounting Rates*, CC Docket No. 90-337 (Phase II), Second Further Notice if Proposed Rulemaking, 7 FCC Rcd 8040 (1992); Public Notice DA 96-105, 11 FCC Rcd 3152 (1996); *Policy Statement on International Accounting Rate Reform*, 11 FCC 3146 (1996); *Regulation of International Accounting Rates*, (Phase II), Fourth Report and Order, 11 FCC Rcd 20063 (1996); and *International Settlement Rates*, IB Docket No. 92-261, Notice of Proposed Rulemaking, FCC No. 96-484 (rel. December 19, 1996) (*Benchmarks Notice*).

[18] *Cable and Wireless P.L.C. v. FCC et al.*, 166F.3d 1224, 334 U.S. App. D.C. 261.

[19] *See, e.g. ITU-T Recommendation D.140*, Accounting Rate Principles for International Telephone Services," Geneva (2000). The recommendation calls for "cost-orientated" accounting rates, generally within five years.

[20] *Benchmarks Notice*. We note that the Commission's benchmark policy is consistent with the ITU's recommendation for cost-orientated, nondiscriminatory, transparent accounting rates. We also note that the Commission previously adopted benchmark ranges for countries in Europe and Asia. *See Regulation of International Accounting Rates*, CC Docket 90-337, Report and Order, 6 FCC Rcd (1991), *on recon.*, 7 FCC Rcd 8049 (1992).

[21] Neither the State of Qatar nor Q-Tel filed comments in the proceeding.

[22] Examples of upper income countries with settlement rates below the benchmark level on January 1, 1999 include: Canada (10¢), Denmark (10.8¢), France (10.1¢), Germany (10.1¢), Hong Kong (7¢), Ireland (9.7¢), Italy (10.8¢), the Netherlands (9.5¢), Norway (8.5¢), Sweden (5.4¢) and the United Kingdom (6.8¢).

requirements of the *Benchmarks Order*; and (4) discussed with Q-tel the possibility of enforcement if a benchmark rate is not negotiated. Q-Tel does not dispute the facts presented in the petition but informed the Petitioners that a benchmark rate of 15¢ is not acceptable to it.

10. To enforce the Commission's *Benchmarks Order* and to ensure that U.S. international facilities-based carriers provide service with Qatar on terms that comply with the Commission's policy, we direct all U.S. international facilities-based carriers to conduct settlements with Q-Tel for international message telephone service at a rate that does not exceed 15¢ per minute for service provided on and after January 1, 1999. We also direct all U.S. international facilities-based carriers to continue their efforts to negotiate settlement agreements with Q-Tel that comply with the Commission's *Benchmarks Order*.

## IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED that the petition of AT&T and WorldCom for enforcement of the Commission's *Benchmarks Order* for service with Q-Tel in Qatar is GRANTED.

12. IT IS FURTHER ORDERED that all U.S. international facilities-based carriers providing service with Q-Tel in Qatar shall conduct settlements for IMTS provided on and after January 1, 1999 at a rate that does not exceed the Commission's benchmark settlement rate of 15¢ per minute for Qatar.

13. IT IS FURTHER ORDERED that all U.S. international facilities-based carriers continue their efforts to negotiate a settlement rate with Q-Tel for service with Qatar that complies with the rules and requirements of the Commission's *Benchmarks Order*.

14. This order is issued under Section 0.261 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or application for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*see* 47 C.F.R. Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Donald Abelson
Chief, International Bureau