

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Atlantic Tele-Network, Inc.)
Request for Waiver of the)
Benchmark Settlement Rate)
on the U.S.-Guyana Route)

IB Docket No. 96-261

**OPPOSITION OF AT&T CORP. AND ITS CONCERT
AFFILIATES TO APPLICATION FOR REVIEW**

Pursuant to Section 1.115(d) of the Commission's rules, AT&T Corp. ("AT&T") and its Concert affiliates respectfully submit this Opposition to the Application for Review filed on December 17, 2001 by Atlantic Tele-Network, Inc. ("ATN"), the majority owner of Guyana Telephone & Telegraph Ltd. ("GT&T"). ATN seeks the review of the Order issued on November 16, 2001¹ denying ATN's petition for waiver of the benchmark settlement rate on the U.S.-Guyana route, and a stay of that Order pending completion of the requested review. As the Bureau properly found, ATN's petition does not meet the requirements for the limited exemptions from benchmark rates and transition requirements recognized by the *Benchmarks Order*,² and also fails to satisfy the Commission's general waiver standard. ATN's application for review shows no grounds for Commission review of this Bureau finding, and accordingly should be denied.

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List A B C D E

¹ *Atlantic Tele-Network, Inc. Request for a Waiver of the Benchmark Settlement Rate on the U.S.-Guyana Route*, IB Docket No. 96-261, Order (rel. Nov. 16, 2001), DA 01-2659 ("Order").

² *International Settlement Rates*, 12 FCC Rcd. 19806, 19877 (1997) ("*Benchmarks Order*").

AT&T and Concert also wish to bring to the Commission's attention a statement by the Canadian carrier, Teleglobe, in a Canadian court proceeding revealing that, since 1990, U.S. carriers have paid Guyana a settlement rate for calls between the U.S. and Guyana that is *66 percent higher* than the settlement rate paid by Teleglobe for calls between Canada and Guyana. This longstanding discrimination against U.S. consumers further demonstrates why the U.S. public interest requires the immediate adoption of the \$0.23 benchmark rate on this route as mandated by the *Benchmarks Order*.

II. THE BUREAU PROPERLY FOUND THAT ATN HAS FAILED TO DEMONSTRATE GOOD CAUSE FOR A WAIVER UNDER SECTION 1.3.

ATN wrongly contends (pp. 2, 4-5) that the Bureau used a "too narrowly defined" standard by failing to evaluate its petition under the Commission's Section 1.3 general waiver authority. In fact, the Bureau evaluated the petition under the same general waiver authority criteria that ATN acknowledges here (pp. 3-4) -- that a waiver must not only be supported by "special circumstances warrant[ing] a deviation from the general rule," but must also "serve the public interest and be consistent with the policies underlying the rule."³

The Bureau went on to make clear that ATN's waiver request meets none of these criteria.⁴ Contrary to the claims by ATN (p. 2) that the Bureau failed to consider relevant factors in explaining its denial, the Bureau found that the requested waiver would not be consistent with the policies underlying the general rule (*i.e.*, those established by the *Benchmarks Order*) because "timely enforcement of the benchmark rates continues to be necessary to achieve the

³ Order, ¶ 5. *See also, Telefonica Large Distancia de Puerto Rico, Inc.*, 14 FCC Rcd. 19380, 19381 (1999), *citing WAIT Radio v. F.C.C.*, 418 F. 2d 1153 (D.C. Cir. 1969); *Dominion Video Satellite, Inc.*, 14 FCC Rcd. 8182, 8184 (1999) (waiver relief must not undermine the policy objective of the rule in question and must otherwise serve the public interest).

⁴ *Id.*, ¶¶ 7-10.

Commission's goal of ensuring lower international calling prices."⁵ This is because above-cost accounting rates on routes "including the U.S.-Guyana route" raise "U.S. carriers' costs and, as a result, put upward pressure on the prices charged to U.S. consumers."⁶

The Bureau similarly demonstrated the falsity of ATN's claim (p. 7) that a waiver would promote the public interest by encouraging the continued funding in Guyana of "network expansion using international settlements revenues."⁷ As the Bureau emphasized, the Commission has previously rejected ATN's arguments that "hidden subsidies in settlement rates are comparable to domestic universal service policies in the United States" in the *Benchmarks Order* and the *Benchmarks Reconsideration Order*.⁸

The D.C. Circuit has similarly rejected this claim, repeated here yet again by ATN (p. 7), that the U.S. public interest requires the payment of huge above-cost U.S. consumer subsidies to a foreign monopoly carrier.⁹ In fact, the Commission has no universal service mandate to ensure that consumers in foreign countries have access to telecommunications and

⁵ *Id.*, ¶ 7.

⁶ *Id.*

⁷ *Id.*, ¶ 8. Also, AT&T and Concert demonstrated in their opposition to ATN's waiver request that the \$0.23 benchmark rate will cover GT&T's termination costs and still provide more than 80 percent of the average annual amount ATN claims to have invested in Guyana infrastructure since 1991. *See* Comments of AT&T Corp. and Its Affiliates Concert Global Networks USA L.L.C. and Concert Global Network Services Ltd., filed Sept. 7, 2001, at 21.

⁸ Order, ¶ 8.

⁹ *See Cable & Wireless PLC v. FCC*, 166 F. 3d 1224; Joint Petitioners' Brief at 35, *Cable & Wireless PLC v. F.C.C.*, 166 F.3d. 1224 (D.C. Cir. 1999); Order, *Cable & Wireless PLC v. F.C.C.*, No. 97-1612, Mar. 11, 1999 (per curiam); Petition for Rehearing and Suggestion for Hearing In Banc at 5, *Cable & Wireless PLC v. F.C.C.*, No. 97-1612, filed Feb. 25, 1999.

information services,¹⁰ and the *Benchmarks Order* made clear that disproportionate U.S. consumer subsidies for foreign universal service programs and infrastructure investment are *harmful* to the U.S. public interest.¹¹

The Bureau also made clear that ATN fails to justify any departure from the general rule here, which is the requirement that U.S. carriers must negotiate the \$0.23 benchmark rate on the U.S.-Guyana route to be effective by January 1, 2002. ATN contends that (p. 6) “the level of teledensity achieved [in Guyana] exceeds what would be expected based on the country’s per capita GNP and local telephone rates.” However, the Bureau emphasized that the Commission has “thoroughly addressed and dismissed” ATN’s “universal service policy arguments.”¹² The Bureau further noted that “the possible, unique difficulties of settlement rate

¹⁰ The Commission’s universal service mandate, as made clear by Section 254(b) of the Telecommunications Act, is “to ensure that consumers in all regions *of the nation* . . . have access to telecommunications and information services.” *See Mescalero Apache Telecom, Inc.*, 16 FCC Rcd. 1312 (2001), 2001 LEXIS 363, *19 (emphasis added); 47 U.S.C. Section 254(b).

¹¹ *Benchmarks Order*, 12 FCC Rcd. at 19877.

¹² Order, ¶ 8. ATN made clear there are no “particular facts” justifying special treatment for Guyana by filing a “white paper” with the Bureau requesting “exemptions” from benchmark rates for *all* low income countries using settlement rates for infrastructure investment. *See* Petition for Waiver of the benchmark Settlement Rates for Guyana, IB Docket No. 96-261, filed July 6, 2001 (“Petition”), at Appendix B (“Promoting U.S. Interests Through Strategic Application of Benchmark Rates to Low-Income Countries”), at i. Moreover, ATN’s chart further demonstrates that no exemption from benchmarks is warranted for Guyana, with a GNI per capita for 2000 of \$770, which is at the very high end of the range for low income countries, when forty percent of other carriers in low income countries (and twenty-five percent of low income countries with teledensity less than one) have already agreed to the \$0.23 benchmark rate with U.S. carriers. *See* Application, Att. A; Order, ¶ 9 & fn. 29. Additionally, ATN’s chart fails to compare Guyana with “all other low income countries,” contrary to ATN’s assertion (p. 6), since it omits no fewer than fifteen of the countries classified as “low income” under the *Benchmarks Order*. *Compare*, Application at Att. A, with *Benchmarks Order*, 12 FCC Rcd. 19806, App. C.

reduction on low income countries” have been already taken into account by the *Benchmarks Order* by establishing higher benchmark rates and longer transition periods for these countries.¹³

Further, ATN’s purported special circumstances also fail to show that a waiver would further the policies underlying benchmark rates, which require the expeditious adoption of benchmarks by *all* countries, including Guyana, in order to reduce U.S. consumer rates, or the U.S. public interest, which is harmed rather than helped by disproportionate U.S. consumer subsidies of foreign universal service programs.¹⁴ There is therefore no substance to ATN’s claim that the Bureau ignored facts showing that a waiver would serve the public interest.

Accordingly, the Bureau properly evaluated and denied ATN’s waiver request, and the same disposition is required for ATN’s application for review.

II. THE BUREAU PROPERLY DENIED ATN’S REQUEST FOR ADDITIONAL TRANSITION TIME.

ATN’s assertion (p. 5) that it merits additional transition time under the criteria established by the *Benchmarks Order* is also entirely unfounded. The Bureau correctly found that ATN fails to qualify for this exemption, since ATN has put forward no facts -- either in its petition or in this application for review -- to show that it meets the requirement set forth in the

¹³ *Id.*, ¶ 2.

¹⁴ The *Benchmarks Order* thus made clear that the “substantial Guyanese immigrant population residing in the United States” (Application, p. 8) is best served by the low consumer prices that result from the adoption of benchmark rates. It also emphasized that countries like Guyana should rely on competition and private investment rather than continued high U.S. consumer subsidies to build out their networks. 12 FCC Rcd. at 19875. Therefore, as the Bureau stated, “alternative funding mechanisms, from both public and private sources, must be identified.” Order, ¶ 8. ATN’s argument (p. 8) that a waiver here would have “no material effect” on *overall* average settlement rates paid by U.S. carriers plainly does not merit consideration as a special circumstance since a similar argument against the application of benchmarks could be made by virtually every other individual foreign carrier.

Benchmarks Order for “a reduction of 25 percent of the difference between the current settlement rate and the applicable benchmark will entail a loss of greater than 20 percent of the country’s telecommunications revenue.”¹⁵

III. GT&T’s DISCRIMINATION AGAINST THE UNITED STATES HAS HARMED U.S. CONSUMERS BY MORE THAN \$160 MILLION SINCE 1990.

Lastly, newly revealed facts further demonstrate the harm to the U.S. public interest caused by the \$0.85 U.S. settlement rate with Guyana, which has been unchanged since 1987, and the consequent need for the expeditious adoption of the \$0.23 benchmark rate on this route. The Canadian carrier Teleglobe has acknowledged in a Canadian court proceeding that since 1990 its accounting rate for calls between Canada and Guyana has been 0.80 SDR, which is equivalent to a settlement rate of U.S. \$0.51.¹⁶

Thus, for more than eleven years, U.S. carriers have paid Guyana a settlement rate *66 percent higher* than the rate paid by Teleglobe for calls to Guyana from Canada -- which is an even greater distance from Guyana than the United States. Because of this discriminatory treatment alone, U.S. carriers paid GT&T *more than \$160 million* between 1991 and 1999 in excess of what they would have paid at the lower (but still far above-cost) settlement rate paid by

¹⁵ *Id.*, ¶ 6; *Benchmarks Order*, 12 FCC Rcd. at 19888. Equally unfounded is ATN’s claim (*id.*) that the Commission should now revise the twenty-percent requirement as being without sufficient “record support.” *See Cable & Wireless PLC v. FCC*, 166 F. 3d 1224, 1226 (D.C. Cir. 1999) (upholding the *Benchmarks Order* “in its entirety”). Indeed, ATN has put forward no facts to show that it would qualify for an extension even under its preferred standard (p. 5) of a “magnitude” of revenue impact in Guyana “consistent with” the Commission requirement.

¹⁶ *Guyana Telephone & Telegraph Company Ltd., v. Teleglobe Inc.*, No. 500-05-038102-974, Superior Court, Province of Quebec, District of Montreal, Defendant’s Amended Plea and Cross-Demand, Feb. 19, 2001, ¶ 53 (“The total accounting rate set for IDD traffic between Guytelco (GT&T’s predecessor) and Teleglobe, effective as of April 1, 1990, was SDR 0.80, to be divided equally between the two administrations. That rate remains in place today.”)

Teleglobe.¹⁷ This information demonstrates that, far from supporting the review and stay of the Bureau Order as requested by ATN, the U.S. public interest rather requires the immediate enforcement of the benchmark rate with Guyana that U.S. carriers are required to negotiate with GT&T by January 1, 2002.

CONCLUSION

For the above-stated reasons, ATN's application for review and request for stay should be denied.

Respectfully submitted,

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¹⁷ Significantly, ATN claims to have spent only \$140 million in infrastructure investment during this period. See Petition at 2.

CERTIFICATE OF SERVICE

I, Karen Kotula, do hereby certify that on this 2nd day of January, 2002, a copy of the foregoing "Opposition of AT&T Corp. and its Concert Affiliates to Application for Review" was served upon the parties on the attached service list:


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