

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

In the Matter of	)	
	)	
International Settlements Policy Reform	)	IB Docket No. 02-324
International Settlement Rates	)	IB Docket No. 96-261
	)	

**REPLY COMMENTS OF WORLDCOM, INC.**

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## SUMMARY

The Commission is close to achieving its goal of a highly competitive and cost-based U.S. international services market. Many commenters in this proceeding agree that competition in the international telecommunications market has reached a level where the Commission should eliminate the ISP on most international routes.

Some commenters, however, propose that the Commission should disregard those areas where foreign carriers are able to leverage their market power to distort competition in the U.S. international services market. WorldCom urges the Commission to stand firm and reject the self-serving allegations of foreign carriers and mobile operators. Any Commission action or regulatory efforts should be narrowly focused on those areas in the international telecommunications market, such as unilateral termination rate increases and excessive mobile termination settlements, where market power or government mandate have obscured or obstructed effective competition.

Specifically, the Commission should remove the ISP on benchmark-compliant routes. On ISR-authorized routes, the ISP should be eliminated. For those routes where ISR has not been authorized, but where more than 50 percent of the traffic is settled at or below the benchmark, the Commission should identify such routes and remove the ISP on its own motion.

WorldCom urges the Commission to establish an enforcement mechanism by which it can address problem routes through carrier petitions. In addition, the Commission should adopt a rule that forbids a petitioning carrier to pay increased rates unless otherwise agreed through commercial negotiation. Any showing that demonstrates potential or real harm to U.S. consumers would warrant reinstatement of the ISP on a U.S.-international route.

Despite numerous attempts by mobile operators to justify their excessive costs, mobile termination rates in many countries – and the international settlement rates that incorporate them – far exceed costs. WorldCom and several commenters urge the Commission to consider, either in this proceeding or by initiating another proceeding, taking further action to move excessive mobile termination rates paid by U.S. carriers closer to cost.

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WorldCom, Inc. (“WorldCom”) hereby submits Reply Comments in response to the Commission’s Notice of Proposed Rulemaking (“NPRM”) in the above-referenced proceeding.<sup>1</sup> WorldCom and other commenters in this proceeding agree that the Commission’s International Settlements Policy (“ISP”) should be modified to reflect the current, liberalized telecommunications environment. Despite market liberalization worldwide, however, both foreign governments and foreign carriers maintain the ability to inhibit competition in certain instances. Recently, several foreign governments have proposed to increase significantly the international termination rates that U.S. carriers pay to their foreign carrier correspondents. In addition, various dominant foreign carriers, acting collectively with other foreign carriers, have attempted to unilaterally raise international termination rates in their home markets to the detriment of U.S. carriers and consumers.

Similarly, mobile operators in many foreign markets have used their monopoly market power over call termination on their mobile networks in order to maintain international mobile

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<sup>1</sup> *International Settlements Policy Reform; International Settlement Rates*, Docket Nos. 02-324 and 96-261, Notice of Proposed Rulemaking, FCC 02-285 (rel. October 11, 2002) (hereinafter “NPRM”).

termination rates at levels far above cost. WorldCom urges the Commission to focus its regulatory efforts on these specific areas.

**I. THE RECORD DEMONSTRATES THAT THERE ARE SOUND REASONS TO REMOVE THE ISP ON BENCHMARK-COMPLIANT ROUTES.**

In its Comments, WorldCom supports the Commission's option to remove the ISP on routes where settlement rates are at or below the relevant benchmark rates.<sup>2</sup> AT&T and Cable & Wireless ("C&W") agree. C&W emphasizes that removal of the ISP on benchmark-compliant routes would provide an opportunity for the Commission to maximize downward pressure on foreign termination rates.<sup>3</sup> Both WorldCom and AT&T, however, specifically recommend that the Commission maintain the ISP on routes that are not yet benchmark-compliant.<sup>4</sup> The protections afforded by the ISP are still necessary on routes that are not benchmark-compliant.<sup>5</sup>

In addition to removing the ISP from benchmark-compliant routes, AT&T further proposes that the Commission "make clear that it expects rates to be further reduced below benchmark levels toward the public interest goal of cost-based rates as a result of commercial arrangements on these routes."<sup>6</sup> WorldCom concurs. In many cases, settlement rates are below the relevant benchmark, but remain well above cost. Further reductions can and should be made.

In its Comments, Sprint recommends another approach. Sprint proposes that the Commission forbear from applying the ISP on routes where "low" wholesale prices for voice

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<sup>2</sup> Comments of WorldCom, Inc., at 5 (filed January 14, 2003) ("WorldCom Comments").

<sup>3</sup> Comments of Cable & Wireless USA, Inc., at 6 (filed January 14, 2003) ("C&W Comments").

<sup>4</sup> WorldCom Comments, at 6; Comments of AT&T Corp., at 24 (filed January 14, 2003) ("AT&T Comments").

<sup>5</sup> In addition, as discussed below, continued safeguards are necessary even on benchmark-compliant routes, after the ISP is removed, to address anticompetitive harm. Recent events in the Philippines and the Dominican Republic, described further below, highlight this need for protection from anticompetitive conduct.

<sup>6</sup> AT&T Comments, at 13.

termination are available in U.S. spot markets.<sup>7</sup> The ISP would be retained on routes on which there were no “low” termination prices, while the elimination of “low” rates on a route where they were previously available would result in Commission scrutiny of the route.<sup>8</sup> Sprint believes that its proposal is similar to the Commission’s existing rules for lifting the ISP on a particular route. In theory, WorldCom supports Sprint’s proposal because it effectively removes the ISP from benchmark-compliant routes. While well-intentioned, WorldCom believes that Sprint’s proposal would be cumbersome and difficult for the Commission staff to implement in practice.<sup>9</sup>

With respect to International Simple Resale (“ISR”), C&W proposes that the Commission clarify its policies.<sup>10</sup> Clarification, however, would not be necessary if the Commission adopts the proposed streamlining. As the Commission explained in the NPRM, and WorldCom agreed in its Comments, removing the ISP from benchmark-compliant routes would eliminate the need for ISR.<sup>11</sup> At the same time, the Commission would remove unnecessary complexity in its rules.

Regarding the treatment of current ISR routes, WorldCom recommends that the Commission eliminate the ISP on all international routes that are currently ISR-authorized. For those routes where ISR has not been authorized, but where more than 50 percent of the traffic is

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<sup>7</sup> Comments of Sprint Communications Company, L.P., at 12 (filed January 14, 2003) (“Sprint Comments”).

<sup>8</sup> *Id.*

<sup>9</sup> For example, the Commission would be required to secure access to confidential data produced by wholesale providers, as well as constantly monitor websites and trade resources in order to gather reliable data. Moreover, the frequent fluctuation of rates in spot markets would render the data obsolete almost immediately. And, as Sprint acknowledges, significant surcharges imposed for terminating on mobile networks would not be available from wholesale providers. Sprint Comments, at n.12. WorldCom believes that the absence of this data alone would produce a flawed result.

<sup>10</sup> C&W Comments, at 6.

<sup>11</sup> NPRM, at ¶¶ 26-35; WorldCom Comments, at 6.

settled at or below the benchmark, the Commission should identify such routes and remove the ISP on its own motion. WorldCom believes that this approach would be the least procedurally burdensome for the Commission to apply.

Accordingly, the Commission should remove the ISP on benchmark-compliant routes. Such action would eliminate the need for the Commission's ISR policies. The Commission should also eliminate the ISP on all international routes that are currently ISR-authorized. For those routes where ISR has not been authorized, but where more than 50 percent of the traffic is settled at or below the benchmark, the Commission should identify such routes and remove the ISP on its own motion.

## **II. THE RECORD SUPPORTS THE RETENTION OF PRO-COMPETITIVE SAFEGUARDS AFTER THE ISP IS REMOVED.**

As AT&T, Sprint, and WorldCom point out in their Comments, recent attempts by foreign governments and/or carriers with market power to raise settlement rates above cost-based levels in the Dominican Republic, China, Jamaica, Philippines, Venezuela, Ecuador, and Spain demonstrate that the threat of anticompetitive harm exists even on ISR-authorized routes.<sup>12</sup> WorldCom agrees with AT&T that, on non-competitive ISR routes, U.S. carriers have little leverage and cannot refuse these demands for higher rates because there are few, if any, alternative means by which to send traffic.

On the other hand, WorldCom strongly disagrees with Verizon's assertion that "the ISP is unnecessary on [ISR-authorized] routes since foreign carriers, regardless of market share, cannot 'whipsaw' U.S. carriers because a carrier can bypass onerous settlement rates through ISR and

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<sup>12</sup> With the exception of China, all of the countries listed here are ISR-authorized.

alternative traffic methods.”<sup>13</sup> Verizon concludes that the Commission’s concern about “whipsawing” of U.S. carriers on routes where the ISP is eliminated (i.e., on ISR routes) is unrealistic due to the level of competition in these markets, as well as the presence of independent regulators that can address anticompetitive practices.<sup>14</sup>

To the contrary, even on otherwise competitive routes, carriers on the foreign end can create a unified bargaining position to demand higher rates. As a result, U.S. carriers have little or no alternative choice for terminating traffic. The presence of an independent regulator is irrelevant as well when that regulator seeks to impose higher termination rates for inbound traffic. Indeed, the need for continued safeguards is magnified by several recent actions in the Philippines and the Dominican Republic.

In the Philippines, PLDT and the other Filipino carriers have joined forces to create a unified bargaining position in order to impose increases of up to 50 percent on fixed and mobile termination rates. Because a number of U.S. and overseas carriers, including WorldCom, have not agreed to such exorbitant increases, a number of the Filipino carriers have refused to accept their Philippines-inbound traffic. This whipsawing situation is deeply troubling, and is the subject of several petitions before the Commission.<sup>15</sup>

Likewise, in the Dominican Republic, the regulator INDOTEL recently issued a resolution that establishes at US\$0.08 the minimum per minute rate for terminating international

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<sup>13</sup> See Comments of Verizon, at 2 (filed January 14, 2003) (“Verizon Comments”).

<sup>14</sup> *Id.* at 5.

<sup>15</sup> On February 7, 2003, WorldCom and AT&T filed petitions with the FCC requesting that the Commission take action to protect U.S. carriers and U.S. consumers from “whipsawing” behavior taking place on the U.S.-Philippines route. See *Petitions of WorldCom and AT&T*, IB Docket No. 03-38 (filed February 7, 2003); Public Notice, *Petitions for Protection from Whipsawing on the U.S.-Philippines Route*, DA 03-390 (rel. February 10, 2003).

traffic in the Dominican Republic.<sup>16</sup> In most cases, this proposed rate floor would represent a significant (approximately 50 percent) increase over the current, commercially negotiated rates.

WorldCom takes issue with Verizon's comments about the situation in the Dominican Republic. Verizon asserts that INDOTEL's actions are consistent with its WTO and ITU obligations.<sup>17</sup> To the contrary, there are serious potential ramifications with respect to the Dominican Republic's multilateral obligations. In fact, the U.S. Government recently wrote a letter to the President of INDOTEL specifically urging him to consider the WTO implications of INDOTEL's Resolution to raise rates.<sup>18</sup> While commending INDOTEL for its success in achieving a competitive market for telecommunications, the letter stressed that INDOTEL's Resolution could undercut the Dominican Republic's WTO commitments. Further, the letter noted that it was unclear that the Resolution met the requirements for such actions as established in the WTO's General Agreement on Trade in Services (GATS). Finally, the FCC expressed its concern regarding potential whipsawing in a letter to INDOTEL dated February 12, 2003.<sup>19</sup>

Verizon also erroneously asserts that the Commission should focus only on the procedures that a regulator – in this case, INDOTEL – uses in reaching a decision rather than the adverse impact of that action on U.S. carriers and consumers. WorldCom submits that Verizon's

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<sup>16</sup> WorldCom Comments, at 8; AT&T Comments, at 19; Sprint Comments, at 5.

<sup>17</sup> Verizon Comments, at 8.

<sup>18</sup> Letter to the Honorable Lic. Orlando Jorge Mera, Secretario de Estado, Presidente del Consejo Directivo del INDOTEL (dated September 20, 2002), from the U.S. Department of State. This letter was signed by: David A. Gross, U.S. Coordinator for International Communications and Information Policy, U.S. Department of State; Nancy J. Victory, Assistant Secretary for Communications and Information, National Telecommunications Information Administration, U.S. Department of Commerce; Grant D. Aldonas, Under Secretary for International Trade, International Trade Administration, U.S. Department of Commerce; and Regina Vargo, Assistant USTR for the Americas, Office of the United States Trade Representative.

<sup>19</sup> Letter to President Orlando Jorge Mera, INDOTEL (dated February 12, 2003), from Donald Abelson, Chief, International Bureau, Federal Communications Commission. WorldCom remains hopeful that the situation will be resolved.

arguments are misguided and self-serving.<sup>20</sup> Indeed, the Commission has an obligation to ensure that the public interest is served. Real harm to U.S. carriers and consumers cannot and should not be overlooked based on whether the overseas process was “transparent.”

To address this potential harm, WorldCom has recommended that the Commission adopt a new rule prohibiting U.S. carriers from agreeing to unilateral increases in existing settlement rates.<sup>21</sup> This new rule would help to ensure that there is no backsliding on routes that the Commission has deemed to be competitive, as discussed in further detail below.

WorldCom submits that the Commission should establish an effective enforcement mechanism to ensure against anticompetitive practices on specific routes. WorldCom believes that the Commission should retain its ability to review “problem” routes on a case-by-case basis at the request of a petitioning carrier. Several of the commenters generally agree that the Commission should ensure that it retains the ability to deal with anticompetitive conduct as it arises.<sup>22</sup>

In addition to carrier petitions, WorldCom proposes that the Commission reach one step further and adopt a rule prohibiting U.S. carriers from agreeing to unilateral increases in existing settlement rates upon voluntary petition by a U.S. carrier on the relevant route. If U.S. carriers

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<sup>20</sup> Because Verizon holds a 100% interest in Codetel, the dominant carrier in the Dominican Republic, Verizon stands to reap tremendous benefits from INDOTEL’s ill-advised actions. Codetel’s financial results are consolidated with Verizon’s results, and any above-cost payments by U.S. carriers would go directly to Verizon’s bottom line. The regulation in question would undoubtedly benefit Codetel, while harming U.S. carriers and U.S. and Dominican consumers.

<sup>21</sup> WorldCom Comments, at 11.

<sup>22</sup> For example, WorldCom and AT&T are in agreement that the Commission should retain the ability to address unilateral rate increases, but propose different mechanisms to reach the same result. While WorldCom proposes that the Commission establish a mechanism for reviewing problem routes by carrier petition, AT&T proposes that the Commission should *maintain* the current ISP prohibitions on rate increases and refusals to deal by foreign carriers. C&W agrees, noting that the Commission should reserve the right to use its enforcement powers to take action when it has evidence of anticompetitive conduct, but does not specify a mechanism for how such evidence would be presented. WorldCom Comments, at 7; AT&T Comments, at 21; C&W Comments, at 12.

and their foreign correspondents bilaterally agree to raise rates for commercial reasons (including an increase in costs), such increases may be justified.

More often than not, however, rate increases are unilaterally imposed on U.S. carriers by their foreign correspondents, which simply see an attractive potential source of additional revenue.<sup>23</sup> Indeed, in the vast majority of such cases, the rate increase is a direct result of abuse of market power by a dominant foreign carrier or group of carriers, or action by the foreign government, rather than a consequence of unfettered commercial negotiations. Such a rule would advance the Commission's existing policy that it will deny any "non-cost-based increases in, or surcharges to, the accounting rate," unless such increases are in the public interest.<sup>24</sup>

Finally, the Commission should adopt mechanisms that will allow it to act expeditiously in cases in which blocking of circuits is threatened or carried out in retaliation for refusing to agree to higher rates. WorldCom thus supports AT&T's proposal that U.S. carriers should be able to request immediate Commission action to address anticompetitive conduct by dominant foreign carriers cutting off access to circuits or services at the foreign end.<sup>25</sup> In addition, the Commission should make clear that it will not hesitate to act on its own motion, at least in granting interim relief pending notice and comment, if such problems occur. Unfortunately, in many cases, if the Commission waits for notice and comment cycles to complete before acting – particularly when service has been disrupted – tremendous harm will already have occurred by the time the Commission takes action. By adopting such rules, the Commission will send a clear

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<sup>23</sup> WorldCom Comments, at 11.

<sup>24</sup> *Regulation of International Accounting Rates*, 6 FCC Rcd 3552, at ¶ 16, n.30 (1991).

<sup>25</sup> AT&T Comments, at 23.

signal that it will act quickly and formally when benchmark-compliant carriers raise international termination rates through abuse of market power or unilateral government action.

In summary, WorldCom urges the Commission to establish an enforcement mechanism by which it can address problem routes through carrier petitions. In addition, the Commission should adopt a rule that forbids a petitioning carrier to pay increased rates unless otherwise agreed through commercial negotiation. Finally, WorldCom recommends that any showing that demonstrates potential or real harm to U.S. consumers would warrant reinstatement of the ISP on a U.S.-international route.<sup>26</sup>

**III. THE COMMISSION SHOULD REQUIRE THE FILING OF INTERNATIONAL RATE AGREEMENTS AND MODIFICATIONS ONLY IN CASES WHERE THE ISP REMAINS IN PLACE.**

WorldCom proposes in its Comments that the Commission should maintain public filing requirements on routes where foreign carriers possess market power, but only where the ISP remains in place.<sup>27</sup> C&W proposes that the Commission maintain the current filing requirement on agreements with foreign carriers with market power. WorldCom, however, believes that C&W's proposal is counter to the Commission's goals of removing unnecessary regulation. Due to the constant fluctuation in commercial arrangements, it is increasingly difficult for U.S. carriers to keep up with filing requirements. As WorldCom proposed in its Comments, the Commission should address cases of anticompetitive harm on a case-by-case basis, through carrier petitions or on its own motion, rather than imposing routine filing requirements.<sup>28</sup>

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<sup>26</sup> WorldCom Comments, at 7; *see also* C&W Comments, at 12.

<sup>27</sup> WorldCom Comments, at 13; *see also* Verizon Comments, at 6.

<sup>28</sup> WorldCom Comments, at 13.

**IV. THE RECORD DEMONSTRATES THAT THE COMMISSION SHOULD MAINTAIN THE “NO SPECIAL CONCESSIONS” REQUIREMENT.**

In its Comments, WorldCom urges the Commission to maintain the “No Special Concessions” requirement in its current form. WorldCom believes that elimination of the “No Special Concessions” rule would enable foreign carriers with market power to discriminate unfairly in favor of certain U.S. carriers, including their own U.S. affiliates, in granting access to, and use of, their bottleneck facilities in foreign markets. In their Comments, C&W and AT&T agree that the “No Special Concessions” requirement should be retained to protect against anticompetitive harm.<sup>29</sup> Accordingly, the Commission should maintain the “No Special Concessions” requirement as it currently exists.

**V. THE COMMISSION’S SETTLEMENT RATE BENCHMARKS SHOULD BE RETAINED AND REVISED TO REFLECT COST-BASED RATES.**

As WorldCom recommended in its Comments, the Commission should retain its settlement rate benchmarks. As long as many international routes remain non-compliant, the need for the benchmarks remains. In addition, because certain foreign governments and carriers have recently attempted to unilaterally raise rates above cost-based levels, WorldCom believes that it would be premature for the Commission to eliminate or narrow the policies and rules adopted in the *Benchmarks Order*. WorldCom and other parties concur with the Commission that the current benchmarks are intended to represent a ceiling for settlement rates, and not an indication of the actual cost of terminating international traffic.<sup>30</sup>

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<sup>29</sup> C&W Comments, at 13; AT&T Comments, at 23.

<sup>30</sup> WorldCom Comments, at 15; *see also* C&W Comments, at 12; AT&T Comments, at 29.

Moreover, WorldCom agrees with AT&T, Sprint, Telecom Italia, and Verizon that the current benchmark rates are outdated. As several of these parties recommend, the benchmarks should be revised to reflect cost-based rates, as well as the rate reductions that have already occurred in marketplace since the *Benchmarks Order* was adopted.<sup>31</sup> Should the Commission choose to revise the current benchmark rates to reflect current market realities, WorldCom agrees with AT&T that any revisions should be undertaken in a new, separate proceeding in order to avoid delaying the outcome of the present proceeding.<sup>32</sup>

Finally, WorldCom agrees with AT&T's proposal that the Commission should assist benchmark compliance by allowing U.S. carriers to demonstrate compliance by filing a benchmark agreement or a notarized statement confirming that they have entered into an arrangement for benchmark rates.<sup>33</sup>

## **VI. SECTION 43.61 DATA.**

In its Comments, WorldCom notes that Section 43.61 annual and quarterly international traffic data should not be considered an adequate substitute for the current, effective regulations.<sup>34</sup> WorldCom does not agree, however, with AT&T's proposal that the Commission release data on routes with the lowest overall U.S. carrier outbound rates, as reported in carriers' quarterly reports.<sup>35</sup> WorldCom believes that an individual carrier's commercially negotiated, non-filed rates could be deduced from this data based on historic filings and percentages. This

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<sup>31</sup> AT&T Comments, at 27; Comments of Telecom Italia of North America, at 5 (filed January 14, 2003) ("Telecom Italia Comments").

<sup>32</sup> AT&T Comments, at 30.

<sup>33</sup> *Id.*

<sup>34</sup> WorldCom Comments, at 8.

<sup>35</sup> AT&T Comments, at 29.

could provide a competitive advantage for some carriers over others. In addition, the task of aggregating traffic data would strain scarce Commission resources.

## VII. CLAIMS BY AHCIET AND TELEFONICA ARE WITHOUT MERIT.

In their Comments, both AHCIET and Telefonica assert that the revenue retained by large U.S. carriers from international traffic from 1997 to 2000 has remained “practically constant” despite decreases in settlement rates.<sup>36</sup> They also allege that U.S. carriers have not passed on this “improvement in cost to their customers” because the average retained revenue per minute during this period only decreased by one cent (US).<sup>37</sup> These assertions are completely without merit. The relevant data in fact prove that U.S. consumers have been the direct beneficiaries of settlement rate reductions.

The allegations made by AHCIET and Telefonica reflect a fundamental misunderstanding of the data upon which they are based, taken from the publication *Telegeography*. Their assertions focus on *billed revenue*, without taking into account the associated traffic volumes. In fact, the *Telegeography* data confirm that although revenues remained “practically constant” during this period, U.S. carriers were, in fact, handling significantly greater volumes of traffic.<sup>38</sup> As traffic has been settled at rates increasingly closer to cost, the savings have been passed on to consumers in the form of lower rates. Indeed, comparing the absolute dollar for dollar decrease based on the *Telegeography* data, as illustrated in the table below, *the average*

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<sup>36</sup> Comments of Asociacion Hispanoamericana de Centros de Investigacion y Empresas de Telecomunicaciones, or AHCIET, at 5 (filed January 14, 2003) (“AHCIET Comments”); *see also* Comments of Telefonica, at 5 (filed January 14, 2003) (“Telefonica Comments”).

<sup>37</sup> AHCIET Comments, at 6; Telefonica Comments, at 6.

<sup>38</sup> This cost savings allowed consumers to place more calls at cheaper prices. *Telegeography 2002* addresses this trend, noting that the total volume of international telephone traffic grew over 21 percent in 2000, following on the heels of a 17 percent increase in 1999. *See Telegeography 2002*, at 59.

retail rate charged by U.S. carriers has declined by US\$0.13 more than the average accounting rate.

**Table 1**

**1997-2001 Retail and Accounting Rates**

<b><u>ALL CARRIERS</u></b>	<b><u>1997</u></b>	<b><u>2001</u></b>	<b><u>Change</u></b>	<b><u>% Change</u></b>
Average Retail Rate	\$0.67	\$0.33	(\$0.34)	(51%)
Accounting Rate	(\$0.35)	(\$0.14)	(\$0.21)	(60%)
Margin	\$0.32	\$0.19	(\$0.13)	(59%)

Indeed, the data contained in *Telegeography*, like the Commission's own data as set forth in the *NPRM*, show that both U.S.-international average settlement rates and end-user calling prices have dropped dramatically since the adoption of the *Benchmarks Order*.<sup>39</sup> The average U.S.-international settlement rate has fallen from US\$0.35 in 1997 to US\$0.14 in 2001, and correspondingly, U.S. calling prices have dropped from US\$0.67 in 1997 to US\$0.33 in 2001.<sup>40</sup> It is clear that the robust competitiveness of the U.S. international long distance market ensured this result. *Telegeography 2003* further supports this trend, noting that "falling settlement rates have spurred significant price cuts from carriers in the U.S. and in the rest of the world."<sup>41</sup> The misleading claims of AHCJET and Telefonica should therefore be disregarded.

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<sup>39</sup> *NPRM*, at ¶ 12.

<sup>40</sup> *Id.* at ¶ 18.

<sup>41</sup> *Telegeography 2003*, at 39.

**VIII. THE RECORD DEMONSTRATES THAT INTERNATIONAL SETTLEMENT RATES FOR MOBILE TERMINATION ARE EXCESSIVE AND THUS WARRANT COMMISSION REVIEW.**

**A. The Record Demonstrates That Mobile Termination Rates in Many Countries – and the International Settlement Rates That Incorporate Them –Far Exceed Costs.**

A number of commenters agree with WorldCom that mobile termination rates are excessive in many countries outside the United States, thus giving rise to inflated international settlement rates for calls to mobiles. For example, PCCW accurately notes that “mobile termination rates at levels far in excess of underlying costs is a serious global problem that substantially harms users of IDD services, including those in both the U.S. and Hong Kong.”<sup>42</sup>

Not surprisingly, it is only the mobile operators, and their affiliated associations, who insist that foreign mobile termination rates are set at reasonable levels. Interestingly, none of the operators comes forward with any details to justify their claims. Indeed, Vodafone goes so far as to assert that it believes mobile termination rates that are *10 times* the relevant fixed line termination rates *significantly understate* the relevant costs (at least in the United Kingdom).<sup>43</sup> Such claims strain credulity and are contrary to all of the available evidence, which indicates that the cost differences between fixed and mobile termination are in fact very small. The truth is that the mobile termination rates currently in effect in many foreign countries far exceed any reasonable differential.<sup>44</sup>

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<sup>42</sup> Comments of PCCW Limited, at 2 (filed January 14, 2003) (“PCCW Comments”).

<sup>43</sup> Comments of Vodafone Americas, Inc. , Vodafone Americas-DC, Vodafone Group, Plc (collectively, “Vodafone”), at 7 (filed January 14, 2003) (“Vodafone Comments”) (citing OFTEL study, *Review of the Charge Control on Calls to Mobiles*, 26 September 2001).

<sup>44</sup> For example, mobile termination rates in the United Kingdom are approximately 28 times the comparable fixed cost; in Sweden, Denmark, Italy, and France, the mobile termination rates range from 13 to 18 times the relevant fixed termination rate. In the United States, by comparison, a reciprocal compensation system prevails, whereby wireless networks generally terminate U.S. domestic landline calls for US\$0.02 to US\$0.04 cents a minute. See 47 C.F.R. Sections 20.11, 51.701 et seq.

Several operators argue, in a sweeping fashion, that the “mobile sector” is vigorously competitive.<sup>45</sup> They fail to distinguish, however, between the *retail* market for mobile services, for which there may be several competitors, and the *wholesale* market for mobile termination, for which each mobile operator holds a monopoly.

Mobile termination is not, as some of the mobile operators have implied, an amorphous part of the retail market for mobile services. What the mobile network operators offer in the bundle of *retail* services that they sell to subscribers is not “mobile termination” but, rather, the ability for subscribers to receive calls on their mobile handsets (*i.e.*, access to the mobile network).

Mobile termination is something inherently different: it is a wholesale service offered to telecommunications operators as an input into their own retail products. A bundled product market can only exist when buyers purchase the products together and when there is a close functional correlation among these products. This is not the case for mobile termination because the buyers are at a different level of trade than those purchasing retail mobile services.<sup>46</sup>

Notably, a number of regulators in Europe – including, for example, the United Kingdom, Sweden, and the Netherlands – have concluded that the relevant market definition for analyzing mobile termination charges should be the market for terminating to mobiles on individual networks. Moreover, the European Commission recently issued a Recommendation

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<sup>45</sup> Verizon Comments, at 8; Comments of Asociación Nacional de Industrias Electrónicas y de Telecomunicaciones, or “ANIEL”, at 6 (filed January 14, 2003) (“ANIEL Comments”).

<sup>46</sup> There is little doubt that the only logical market definition is the one identifying a separate wholesale market for the provision of termination on individual mobile networks. First, there is no direct demand or supply substitutability at the wholesale level because calls to a given mobile user cannot be terminated on any other network but the one to which the mobile user has subscribed. Second, because of the calling party pays principle, there is no competitive pressure arising from the retail level. Rather, mobile users are completely insensitive to the rates for incoming calls as they do not bear that cost.

in which it identified a separate market for mobile termination on single networks for purposes of *ex ante* regulation.<sup>47</sup>

**B. The Mobile Operators' Focus on the Calling Party Pays Regime is Misplaced.**

Several of the commenters assert that high mobile termination rates can somehow be justified by the fact that a “calling party pays” regime is used in many overseas markets.<sup>48</sup> This argument, however, is a red herring. Although it is true that the incentives are different in a calling party pays regime (for example, the called party does not bear any of the cost of the call, and thus has no incentive to shop for lower termination rates), *there is no evidence that the underlying costs of mobile network infrastructure should be significantly different than in a “receiving party pays” regime.*

These same commenters also go to great lengths to extol the virtues of the calling party pays regime. They cite the importance of the calling party pays system in promoting, among other things, mobile penetration. These arguments are interesting and educational, but ultimately irrelevant. The Commission has not proposed in this proceeding to review the benefits and drawbacks of calling party pays versus receiving party pays. Rather, the Commission is reasonably concerned about a recognized side effect of the calling party pays regime: excessive mobile

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<sup>47</sup> COMMISSION RECOMMENDATION of 11/02/2003 on Relevant Product and Service Markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services; Annex I, paragraph 16 - Explanatory Memorandum, pages 32-34 ([http://europa.eu.int/information\\_society/topics/telecoms/regulatory/maindocs/documents/recomen.pdf](http://europa.eu.int/information_society/topics/telecoms/regulatory/maindocs/documents/recomen.pdf); [http://europa.eu.int/information\\_society/topics/telecoms/regulatory/maindocs/documents/explanmemoen.pdf](http://europa.eu.int/information_society/topics/telecoms/regulatory/maindocs/documents/explanmemoen.pdf)).

<sup>48</sup> Vodafone Comments, at 1; Comments of Orange SA, at 3 (filed January 14, 2003) (“Orange Comments”); Telecom Italia Comments, at 7; AHCIET Comments, at 9-10; Telefonica Comments, at 8; ANIEL Comments, at 4.

termination rates and the concomitantly excessive international settlement rates to which they give rise.

**C. Although Regulators are Beginning to Address the Problems in Their Home Markets, Additional Measures Are Necessary to Protect U.S. Carriers and Consumers.**

Some commenting mobile operators assert that regulators overseas are addressing the issue of excessive mobile termination rates, and the Commission therefore need not be concerned with it.<sup>49</sup> It is heartening to see that these operators are, for the first time, publicly acknowledging (and citing as a positive development), the fact that certain overseas authorities are moving to regulate mobile termination rates. Indeed, it is true that a number of overseas regulators are beginning to focus on this issue because they see the harmful distortions that result from excessive domestic mobile termination rates in their own markets. Unfortunately, in many cases the same operators who have filed laudatory comments in this proceeding are fighting tooth and nail abroad to ensure that regulatory decisions which would reduce mobile termination rates in their home markets are blocked or interminably delayed.<sup>50</sup>

Thus, it is crystal clear that the Commission cannot generally rely on effective regulation abroad in the near term to protect the interests of U.S. carriers and consumers.<sup>51</sup> Moreover, the adverse effects of this problem – left unchecked – will only worsen over time as mobile penetration overseas continues to grow.

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<sup>49</sup> Vodafone Comments, at 8; Verizon Comments, at 10.

<sup>50</sup> Mobile operators have blocked or delayed regulatory decisions to decrease mobile termination rates in the UK, the Netherlands, and Sweden, among others. *See infra* note 83.

<sup>51</sup> Of course, to the extent that foreign regulators do take effective measures to regulate mobile termination rates in their home markets, the Commission should be able to relax its supervision over international settlement rates for calls to mobile phones in those markets.

**D. The Commission Should Reject the Mobile Operators' Claims That Their Excessive Rates Are "Nondiscriminatory" And Therefore Acceptable.**

A number of mobile operators assert that, because they do not "discriminate" among carriers, domestic or foreign, the Commission has no business examining their high termination rates.<sup>52</sup> These operators claim that "non-discrimination" separates this situation from the settlement rate benchmarks scenario addressed in the *Benchmarks Order*, where the concern was with international settlement rates, and not domestic termination rates.<sup>53</sup>

First, these operators misinterpret the Commission's concern with respect to international settlement rates in the *Benchmarks Order*. The Commission there was concerned with the above-cost international settlement rates paid by U.S. carriers, whether these rates were ultimately the result of above-cost local termination, domestic transport, international switching and/or international transport rates. The end result was the same: above-cost international settlement rates paid by U.S. carriers.<sup>54</sup>

The same logic applies in this case. Foreign domestic mobile termination rates are the root cause of excessive international settlement rates for mobile traffic, which in turn are the basis for above-cost rates paid by U.S. carriers and consumers.

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<sup>52</sup> Vodafone Comments, at 9; Telecom Italia Comments, at 6-7.

<sup>53</sup> *Id.*

<sup>54</sup> Vodafone also argues that, unlike "the approach adopted in benchmark settlement rates - in which US carriers could exert reciprocal bargaining power in bi-lateral relationships. . . U.S. international carriers and overseas mobile carriers do not exchange settlements on this basis. Rates are set by domestic regulators for those jurisdictions - beyond the reach of any recognized zone of permissible territorial activity by the Commission. The Commission does not have available to it the same measures as were utilized in the *Benchmarking Order*." Vodafone Comments, at 14. Again, Vodafone misunderstands the nature of the Commission's jurisdiction. The Commission exercises jurisdiction over U.S. carriers, and its concern is with the negative impact in the United States of excessive settlement rates for fixed or mobile traffic termination. Whether U.S. carriers correspond directly with mobile operators or with foreign correspondents affiliated with mobile operators or is not relevant in determining the Commission's jurisdiction. Nor is the fact of foreign regulation of mobile termination rates relevant to the Commission's jurisdiction over payments made by U.S. carriers.

Second, it remains to be seen whether or not these national mobile termination rates truly are “nondiscriminatory.” It is quite possible that U.S. international carriers with foreign mobile operator affiliates or partners are able to take advantage of lower mobile termination rates offered by their affiliates overseas. Such discounts, if offered, should be available to all U.S. international carriers because they are being offered by foreign operators with market power over mobile termination in their markets.<sup>55</sup>

Third, even if prices are ostensibly nondiscriminatory, the fact remains that U.S. carriers – including WorldCom – are unable to correspond directly with many overseas mobile operators in order to terminate U.S.-outbound traffic. As a result, U.S. carriers often have no other choice but to deal with a “middleman” foreign correspondent, which inevitably insist on marking up the already excessive mobile termination element of the settlement rate and often delay implementation of national reductions so as to benefit from the time lag.

**E. The Mobile Operators’ Concerns About Extraterritoriality Were Addressed and Dismissed by the U.S. Court of Appeals for the D.C. Circuit.**

Vodafone claims that “Commission regulatory action is necessarily restricted by limits on its jurisdiction.”<sup>56</sup> In fact, Vodafone misunderstands the nature of the Commission’s mandate. As affirmed by the U.S. Court of Appeals for the D.C. Circuit, the Commission does have jurisdiction over U.S. international carriers, and may prohibit them from paying above-cost

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<sup>55</sup> By way of illustration, Verizon’s U.S. rate schedule does not include any surcharge for any traffic terminating to mobile phones overseas on any route. On the U.S.-U.K. route, for example, where the mobile settlement rate is approximately US 21 cents, WorldCom, AT&T, Sprint, Bellsouth and SBC all charge a retail surcharge of between US 20 to 22 cents. Verizon charges no surcharge and the total price per minute is 8 cents. Absent any other explanation, one can only conclude that Verizon’s input costs for calls terminating to mobile phones – including the national mobile termination rate piece – must be a fraction of other U.S. carriers’ costs. In order to comply with the Commission’s “No Special Concessions” requirement, similar offers *must* be made to all U.S. carriers. 47 C.F.R. § 63.14.

<sup>56</sup> Vodafone Comments, at 14.

settlement rates.<sup>57</sup> The Commission's mandate requires it to ensure that the public interest is served. In this case, ensuring that U.S. carriers and consumers do not pay excessive above-cost mobile termination rates would serve the public interest.

**F. The Commission Should Take Action to Establish Cost-Oriented International Mobile Termination Rates.**

In its Comments, WorldCom urged the Commission to explicitly clarify that international termination rates negotiated by U.S. carriers for terminating on foreign mobile networks may not be higher than the rates set forth in the *Benchmarks Order*.<sup>58</sup> WorldCom also noted that, while clarifying that the benchmark rates apply to mobile termination is an important first step, the fact remains that the current benchmark rates are much higher than the actual cost of terminating international calls on mobile networks. WorldCom thus urged the Commission to adopt a "best practice" range of US 3.9 to 7.5 cents per minute and to explicitly encourage U.S. carriers to negotiate international mobile termination rates that are no higher than these best practice levels.<sup>59</sup> AT&T generally agrees with WorldCom, and asks the Commission to initiate a further proceeding to establish new, lower benchmark rates based on current data.

Finally, WorldCom urged the Commission to consider, either in this proceeding or by initiating another proceeding, taking further action to move excessive mobile termination rates paid by U.S. carriers closer to cost. For example, the Commission should consider adopting a

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<sup>57</sup> *C&W v. FCC*, 166 F.3d 1224, 1225 (1999).

<sup>58</sup> WorldCom Comments, at 24. See *Benchmarks Order*, at 19,860, ¶ 111 (setting maximum rates of 15, 19 and 23 cents per minute depending on level of economic development).

<sup>59</sup> LRIC-based cost studies demonstrate that the maximum level of actual cost for mobile termination is in the US 3.9 to 7.5 cent range. In fact, these are conservative estimates and the actual cost of the mobile termination component is likely lower. WorldCom recognizes that there are additional costs incurred for international termination, including international facilities and switching, and the national extension. Based on fixed line international termination rates currently available in the market, however, those additional costs represent 2-3 cents per minute or less.

rule that would prohibit U.S. carriers from paying any international mobile termination rate that is more than 5-10 percent higher than the rate paid to any foreign carrier for terminating calls to fixed lines, subject to the absolute cap of the relevant benchmark rate.<sup>60</sup> Although the rates may still be well above cost, such a rule would appropriately tie mobile termination rates, which are not subject to competitive pressure, to fixed line termination rates which are subject to effective regulation in many countries.<sup>61</sup> In addition, such a requirement would allow the Commission to quickly address the problem during the interim period while a cost study was being performed, as recommended below. If mobile operators persist in arguing that their termination rates are cost-based, they should be required to prove their case. In that circumstance, the FCC should, as it did in the *Benchmarks Order*, initiate a cost study to determine the appropriate level for cost-based international settlement rates for calls to mobiles. A bottom-up LRIC cost model to determine cost-based rates for terminating calls on mobile networks should be developed.

**G. WorldCom's Consumer Rates for International Calls to Mobile Networks Reflect its Input Costs for Mobile Termination.**

Vodafone and NTT DoCoMo claim in their Comments that U.S. carriers are charging their customers mobile surcharges which do not reflect the input costs for terminating calls on foreign mobile networks, and further, that U.S. carriers are not passing through reductions in

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<sup>60</sup> See discussion in Section II.

<sup>61</sup> WorldCom also proposed that any carrier could waive the rule by submitting a written request, bolstered by cost data, to the Commission demonstrating that the long run incremental cost of terminating on a particular mobile network is more than 5-10 percent higher than the relevant fixed line termination rate. This procedure would be consistent with the *Benchmarks Order*, which permits a petitioner to demonstrate that the relevant benchmark rate does not permit recovery of incremental cost. See *Benchmarks Order* at 19,849-850, ¶¶ 88-89.

domestic fixed-to-mobile termination rates to their customers.<sup>62</sup> These allegations are incorrect, if not misleading.

*1. Mobile operators' assertions that U.S. carriers' mobile surcharges do not reflect input costs are unfounded.*

Based on a study purporting to demonstrate that the mobile surcharges of U.S. carriers are significantly higher than their costs, Vodafone concludes that, "on average the surcharge is 80% greater than the additional costs incurred as a result of delivering to a mobile rather than a fixed terminal."<sup>63</sup> Upon review, it is obvious that Vodafone's claims are based on a combination of misinformation and flawed analysis.

First and foremost, perhaps due to a lack of experience in the international arena, Vodafone overlooks the fact that U.S. carriers' input costs for terminating international calls are a direct function of the international settlement rate paid to the foreign international fixed line carrier (the "foreign correspondent"). The foreign correspondent then passes traffic destined for any mobile operator in its country to the relevant mobile operator and pays the mobile operator the fixed-to-mobile termination rate. U.S. carriers do not generally interconnect directly with foreign mobile operators for U.S.-outbound traffic.<sup>64</sup>

A naked comparison between the domestic mobile termination rates charged by foreign mobile operators and the mobile surcharges of U.S. carriers is therefore not a fair basis for

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<sup>62</sup> Comments of NTT DoCoMo, Inc., at 2-7 ("NTT DoCoMo Comments"); Vodafone Comments, at 15 and Annex C.

<sup>63</sup> Vodafone Comments, at 24, Annex C.

<sup>64</sup> Ovum, in its analysis on behalf of Vodafone, asserts that, "WorldCom operates extensive networks in Europe and uses them to interconnect directly with the mobile operators in terminating countries." This statement generally does not hold true for U.S.-originated traffic. Many European mobile operators, including Vodafone, refuse to interconnect directly with U.S. international carriers or decline to provide U.S. carriers' overseas affiliates with enough interconnection capacity to terminate U.S.-originated mobile terminating traffic. As a result, the only practical solution for U.S. international carriers is to rely on their foreign correspondents to provide connectivity for U.S.-originated mobile traffic in Europe and elsewhere.

comparison. The proper comparison is between the mobile settlement rate that a U.S. carrier pays to its foreign correspondent on the one hand, and the retail mobile surcharge that the U.S. carrier charges consumers on the other. Such a comparison shows, for the five countries specifically listed in Vodafone's analysis (Austria, Italy, Spain, Sweden, and the UK), a differential of less than one cent on average for those five countries, which is orders of magnitude lower than the 80 percent differential alleged by Vodafone.

This relatively small pass-through differential is explained by several cost elements that are incurred by U.S. operators in handling calls to foreign mobile phones. These additional cost factors include, among other things, increased costs to monitor and input rate, cost, and routing data associated with specifying different rates for foreign mobile area codes, as well as added customer service, billing and collection, and bad debt allowance costs associated with differentiating calls to foreign mobile phones from calls to fixed lines. These justifiable costs, incurred in the ordinary course of business, are relatively small.

Another factor that must be taken into account is the lag time inherent in negotiating reductions reflecting nationally-mandated rate decreases with the foreign international correspondent, which may or may not be affiliated with the mobile operator in question. Even if a foreign mobile interconnection rate is decreased, the U.S. international carrier must rely on its foreign correspondent to negotiate a commensurate decrease with the domestic mobile operator for terminating international calls, and for the correspondent to then agree to pass through that decrease in its mobile settlement rate arrangement with the U.S. international carrier. Negotiations between WorldCom and its foreign correspondents take time and significant resources, particularly given the need to initiate such negotiations on as many as 74 routes where separate settlement rates for mobile and fixed termination are in place.

Finally, Vodafone's analysis in Annex C of its Comments, completed with assistance from Ovum, contains a number of inaccuracies, incorrect assumptions, and mistakes. First, Vodafone's analysis pays little heed to the role of the foreign correspondent in determining the cost that U.S. carriers incur for terminating international mobile calls. For example, because the Vodafone analysis assumes incorrectly that U.S. carriers interconnect directly with foreign mobile operators for termination of international traffic, it also erroneously assumes that "US operators pay for mobile call termination charges by the second but charge their retail customers by the minute or part minute."<sup>65</sup> Vodafone therefore implies that U.S. carriers are overcharging their retail customers in their mobile surcharges by billing on a per-minute rather than per-second basis.<sup>66</sup> As a result, Vodafone concludes that, "[t]o take account of the minute billing unit for retail calls we need to increase the [mobile] surcharge by 20%" for purposes of making the comparison to U.S. carriers' purported mobile termination costs.<sup>67</sup>

In fact, U.S. carriers pay mobile settlement rates to their correspondents on a per-minute basis. Put simply, Vodafone's inclusion of a 20 percent mark-up factor in its methodology represents an erroneous attempt to inflate the level of U.S. carriers' mobile surcharges to suit the purposes of Vodafone's analysis.

Moreover, in calculating this purported mark-up figure, the study subtracts the "average fixed call termination charge avoided in the terminating country" from the "average mobile call termination charge," thereby inflating the alleged cost differential figure by as much as 30

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<sup>65</sup> Vodafone Comments, Annex C, section 2.3, at 29.

<sup>66</sup> Vodafone's assertion that foreign mobile termination rates are charged on a per-second basis is not even fully accurate. In some countries, including France and Spain, there is a minimum charge of 40 and 60 seconds, respectively. In other words, fixed line carriers pay on a per-minute basis for the first minute of mobile termination in those countries. Up to sixty percent of calls to mobile phones are one minute or less.

<sup>67</sup> *Id.*

percent.<sup>68</sup> This is because the “average mobile call termination charge” used in the study appears to be the domestic mobile interconnection rate in each country, and therefore would not include *any* of the fixed network costs of carrying an international call before it is passed to the mobile network. It is therefore inappropriate to subtract the fixed call termination charge from these figures. In so doing, the analysis artificially inflates the difference between the mobile surcharge and the average mobile call termination charge even further.<sup>69</sup>

Finally, the average domestic mobile termination charges utilized in the study are below the average mobile termination rates in the five countries listed in the study. Each one of these markets contains four or five mobile operators. The smaller mobile carriers in each of the countries listed in the study, however, typically charge mobile termination rates that are higher -- in some cases far higher -- than those charged by the largest mobile operator in each country. It appears that the Vodafone study may not have included in its averages the higher mobile termination rates of smaller mobile operators in each market.<sup>70</sup> Indeed, these varied rates have an effect on the mobile settlement rates paid by U.S. carriers. WorldCom’s foreign correspondents typically insist on basing the mobile settlement rates agreed with WorldCom on the *highest* mobile termination rate available in the foreign correspondent’s market to prevent arbitrage opportunities.

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<sup>68</sup> *Id.*, Annex C, section 2.2, at 29.

<sup>69</sup> For example, Vodafone’s analysis claims that the average mobile termination charge in Spain is 11.6 Eurocents per minute, and assumes that the average fixed termination charge in Spain is 1.6 Eurocents. The 1.6 Eurocents is inappropriately subtracted to get the so-called “additional costs for mobile termination” figure of 10.2 Eurocents per minute, inflating its differential figure by nearly 30 percent. See Vodafone Comments, Annex C, at 30.

<sup>70</sup> For example, in Spain, the average mobile termination rate stated in the Vodafone study is 6.2 Eurocents or 53 percent lower than the actual average mobile termination rate of more than 18 Eurocents offered to domestic carriers in Spain in July 2002, not including the effect of the first indivisible minute. WorldCom’s mobile settlement rate is consistent with these levels.

NTT DoCoMo makes similar erroneous allegations in its Comments. Specifically, NTT DoCoMo argues that the mobile surcharges paid by U.S. consumers are higher than the interconnection rates actually assessed by, and paid to, mobile operators in other countries.<sup>71</sup> NTT DoCoMo analyzes data for six countries – Austria, France, Germany, Japan, Sweden, and the UK – claiming to demonstrate that U.S. carriers' mobile surcharges are higher than the foreign mobile termination rate in each case.<sup>72</sup> In doing so, NTT DoCoMo makes many of the same errors as Vodafone.

For example, NTT DoCoMo also overlooks the fact that U.S. carriers' input costs for terminating international calls are a direct function of the international settlement rates paid to the foreign international fixed line carriers, which often are higher than the applicable domestic mobile termination rates.<sup>73</sup> A proper comparison shows, for the six countries specifically listed by NTT DoCoMo, that the difference between WorldCom's surcharges and its input costs are significantly lower than those alleged by NTT DoCoMo -- less than US 1.7 cents on average.

NTT DoCoMo itself provides an illustrative example, complaining that the wholesale mobile interconnection charge in Japan is US\$0.106, whereas the U.S. retail mobile surcharge is US\$0.19 to Japan.<sup>74</sup> Like Vodafone, NTT DoCoMo disingenuously ignores the actual settlement rate that is the key factor in the analysis. The mobile settlement rate charged by WorldCom's

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<sup>71</sup> NTT DoCoMo Comments, at 4.

<sup>72</sup> *Id.* at 5.

<sup>73</sup> It is also worth noting that NTT DoCoMo admits it used only the termination rate of the largest mobile operator in each country it lists. NTT DoCoMo Comments, at 5, n.8. As explained above, were the rates of every mobile operator in each country taken into account, the actual average mobile termination rate would be higher.

<sup>74</sup> NTT DoCoMo Comments, at 5. We note that the US\$0.106 mobile interconnection charge cited by NTT DoCoMo only applies to carriers that interconnect directly with NTT DoCoMo in Japan. In fact, most Japanese operators are indirectly interconnected to NTT DoCoMo's network, and therefore, pay a higher mobile interconnection charge of US\$0.137 per minute. The mobile interconnection rates charged by other mobile operators in Japan are even higher.

four correspondents in Japan ranges from US\$0.15 to US\$0.20. Notably, NTT DoCoMo's affiliate, NTT Communications, charges the highest mobile settlement rate of US\$0.20.<sup>75</sup>

WorldCom will continue to negotiate with its foreign correspondents in Japan to ensure that the mobile settlement rates more closely reflect the mobile termination rates available in Japan. It is obvious, however, that NTT DoCoMo should look closer to home for the root of the problem that it purports to uncover.

In sum, the allegations of Vodafone and NTT DoCoMo that U.S. carriers are somehow unfairly benefiting from excessive mobile termination rates abroad are misleading and fundamentally flawed. In fact, U.S. carriers' retail mobile surcharges do fairly reflect the costs they incur.<sup>76</sup>

*2. U.S. carriers have reflected fixed-to-mobile cost reductions in their retail rates.*

Vodafone also claims that U.S. carriers are not reducing their mobile surcharges in response to reductions in foreign mobile termination rates.<sup>77</sup> Vodafone, for example, lists mobile termination rate reductions in Annex B of its Comments,<sup>78</sup> but it fails to acknowledge that many of the foreign mobile termination rate reductions it identifies occurred prior to October 2001.<sup>79</sup> That is the date on which WorldCom introduced surcharges to mobile phones. Before October

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<sup>75</sup> NTT (Holding) owns 64 percent of NTT DoCoMo and 100 percent of NTT Communications.

<sup>76</sup> To demonstrate that WorldCom's mobile settlement rates are on average very close to the levels of its retail mobile surcharges, WorldCom would be willing to file with the FCC the mobile settlement rates that it has negotiated with its foreign correspondents, subject to appropriate standard confidentiality protections.

<sup>77</sup> Vodafone Comments, at 15.

<sup>78</sup> *Id.* at Annex B.

<sup>79</sup> Notably, Vodafone includes in its list of purported reductions in Annex B the mobile termination rate reductions ordered by OFTEL in the UK, but does not indicate therein that Vodafone itself has prevented the reductions from taking effect in the UK by appealing OFTEL'S decisions.

2001, WorldCom charged the same retail consumer rates for international fixed calls as it did for mobile calls.

Subsequent to the initiation of mobile surcharges, WorldCom has made reductions in response to decreases in foreign mobile termination rates that have been implemented abroad as those reductions have been reflected in the corresponding settlement rates.<sup>80</sup> For example, WorldCom reduced its mobile surcharge to France by 11 percent in January 2003 partly in response to reductions in the foreign mobile termination rate. Certain other foreign mobile termination rate reductions that have been ordered by foreign regulators either have been blocked or delayed by the mobile operators themselves. For example, on September 26, 2001, the UK regulator OFTEL issued a decision ordering a 40 percent reduction in mobile termination rates to be phased-in over four years.<sup>81</sup> OFTEL's decision was appealed to the UK Competition Commission, which recently affirmed OFTEL's findings.<sup>82</sup> Vodafone immediately announced that it would appeal the Competition Commission's decision in an attempt to further delay mobile termination rate decreases in the United Kingdom.<sup>83</sup>

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<sup>80</sup> As noted above, a foreign correspondent might not agree to lower its mobile settlement rate if only one or two mobile operators decrease their mobile termination rate, because the opportunity for arbitrage would persist. For example, in August 2002, Belgium's regulator required the largest mobile carrier Proximus to decrease its mobile termination rate by 12 percent. Other mobile operators in Belgium continued to charge higher mobile termination rates, however, so the settlement rate paid by WorldCom to its Belgian correspondent did not significantly decrease.

<sup>81</sup> OFTEL, *Review of the Charge Control on Calls to Mobiles*, September 26, 2001 ("OFTEL Mobile Consultation").

<sup>82</sup> OFTEL, *Director General's Statement on the Competition Commission's Report on Mobile Termination Charges*, January 22, 2003.

<sup>83</sup> Vodafone Press Release, "Vodafone UK to Seek Judicial Review of Competition Commission Report," January 22, 2003, available at <http://www.vodafone.co.uk/vodafone.co.uk/pressreleases/20030122/22jan03.pdf>. Orange is also considering an appeal. See "Vodafone, Orange Seek Judicial Review Over Phone Charges," *The Register*, January 22, 2003 (<http://www.theregister.co.uk/content/59/28974.html>).

In sum, Vodafone and NTT DoCoMo have blown a lot of smoke, but once the smoke clears, it is obvious that their allegations are baseless and should be disregarded.

**IX. CONCLUSION.**

The Commission is closer than it has ever been to achieving its longstanding goal of a competitive and cost-based U.S. international services market. Indeed, many parties filing Comments agree that the international telecommunications market has become competitive enough generally that the Commission should eliminate the ISP on most international routes. However, some commenters incorrectly assert that the Commission should ignore those areas where foreign carriers are able to leverage their market power to distort competition in the U.S. international services market. The Commission should resist these self-serving allegations by foreign carriers and mobile operators, and should take action to narrowly focus its regulatory efforts on those areas in the international telecommunications market, such as unilateral termination rate increases and excessive mobile termination settlements, where market power or government fiat have prevented competition from taking hold.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

The undersigned, an employee of WorldCom, Inc., hereby certifies that the foregoing document was mailed this date by First Class U.S. mail, postage prepaid, or was hand-delivered,\* to the following:

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