Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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

REPLY COMMENTS OF AT&T WIRELESS SERVICES, INC.

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SUMMARY

AT&T Wireless Services, Inc. ("AWS"), urges the Commission to reconsider its proposed unilateral regulation of foreign mobile termination rates ("FMTRs") and to ensure that the competitive benefits of any new rules or regulations that it might adopt clearly outweigh the administrative and regulatory burdens imposed on carriers.

Even if the Commission has the legal right to assert regulatory jurisdiction over FMTRs, it must first determine whether and how it should exercise that jurisdiction. As a matter of comity, AWS believes that the Commission should consider forbearance from, or at least more limited, regulation of FMTRs. FMTRs are but a small component of overall mobile termination charges—an issue that primarily concerns foreign regulators as a matter of municipal law and regulation. In this respect, FMTRs differ significantly from international settlement rates and the Commission's efforts to regulate the latter. With FMTRs, the Commission should consult with the office of the United States Trade Representative—where the issue first arose—to determine whether a multilateral forum such as the World Trade Organization might provide a more effective and less controversial resolution of its concerns.

Should the Commission decide to regulate FMTRs unilaterally, it must ensure that the competitive benefits of any such regulation—including continued incentives to enter foreign markets—clearly outweigh the associated burdens on foreign mobile carriers and their U.S. affiliates. In this regard, the Commission should reject as excessively broad and burdensome AT&T Corp.'s proposed regulatory presumption that *all* foreign mobile carriers possess market power.

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AT&T Wireless Services, Inc. ("AWS"), urges the Commission to reconsider its proposed unilateral regulation of foreign mobile termination rates ("FMTRs") and to ensure that the competitive benefits of any new rules or regulations that it might adopt outweigh the associated administrative and regulatory burdens. As a matter of comity, the Commission should consider whether and how unilateral regulation of FMTRs might unduly interfere with foreign regulators' efforts to address the broader issue of mobile termination charges—most of which pertain to domestic, rather than international, traffic. AWS urges Commission forbearance from, or more limited, regulation of FMTRs, and urges the Commission to consider whether a multilateral forum such as the World Trade Organization ("WTO") might address its concerns more effectively and with less controversy. Should the Commission choose to regulate FMTRs, it must ensure that the competitive benefits of any such regulation—including continued incentives to enter foreign markets—clearly outweigh the associated administrative and regulatory burdens on foreign mobile carriers and their U.S. affiliates. To date, the record in this proceeding does not adequately address these matters.

AWS is the largest independently traded wireless carrier in the United States. AWS also has foreign affiliates in Canada, India, the Czech Republic, Slovakia, and Taiwan, and continues to expand in the Caribbean.[1] These reply comments stem from AWS's concern that unilateral Commission action with respect to FMTRs, whether or not otherwise justified, could deter U.S. carriers such as AWS from entering foreign markets.[2]

AWS will continue to review with interest the developing record in this proceeding with regard to the economic and competitive issues related to FMTRs, and reserves the right to comment further on these issues. Regardless of the Commission's disposition of those issues, however, AWS believes that the Commission should act with restraint and prudence concerning FMTRs.

AWS's reply comments consist of two parts. *First*, as a matter of international comity, the Commission should consider whether and how unilateral regulation of FMTRs would unduly intrude into foreign municipal regulation,[3] and whether an alternative multilateral forum such as the WTO could provide better resolution of its concerns. *Second*, should the Commission decide to regulate FMTRs unilaterally, it must ensure that the competitive benefits of any such regulation—including continued incentives to enter foreign markets—clearly outweigh the associated burdens on foreign mobile carriers and their U.S. affiliates. In this regard, the

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[1] AWS has foreign affiliates in Antigua, Bermuda, Canada, the Czech Republic, Dominica, India, St. Lucia, St. Vincent & the Grenadines, Slovakia, and Taiwan. AWS's foreign affiliates all compete with the more established foreign mobile carriers and incumbent wireline carriers in their respective markets.

[2] *See International Settlements Policy Reform, Notice of Proposed Rulemaking*, 17 FCC Rcd. 19,954, 19,979-81 (2002) ("*Notice*").

[3] For clarity, AWS uses the term "municipal" rather than "domestic" when referring to a foreign country's laws or regulations. *See* Ian Brownlie, *Principles of International Law* 31 (5th ed. 1998) ("Brownlie") (distinguishing between "municipal" and "international" law).

Commission should reject as excessively broad and burdensome AT&T Corp.'s proposed regulatory presumption that *all* foreign mobile carriers possess market power.

I. AS A MATTER OF COMITY, THE FCC MUST CONSIDER WHETHER U.S. REGULATION OF FMTRS WOULD UNDULY INTRUDE INTO FOREIGN MUNICIPAL REGULATION

Even if the Commission has the legal right to assert regulatory jurisdiction over FMTRs, it must first determine whether and how it should exercise that jurisdiction. As a matter of comity, AWS believes that the Commission should consider forbearance from, or at least more limited, regulation of FMTRs. FMTRs are but a small component of overall mobile termination charges—an issue that primarily concerns foreign regulators as matter of municipal law and regulation. In this respect, FMTRs differ significantly from international settlement rates, and the Commission's efforts to regulate the latter. With FMTRs, the Commission should consult with the office of the United States Trade Representative ("USTR")—where the issue first arose—to determine whether a multilateral forum such as the WTO might provide a more effective and less controversial resolution of its concerns.

A. THE COMMISSION SHOULD CONSIDER COMITY IN ITS JURISDICTIONAL ANALYSIS

The Commission cannot, of course, regulate beyond its jurisdiction.[4] Where rules have extraterritorial consequences, questions of jurisdiction are often difficult and contested.[5] This was so in the 1997 *Benchmarks* proceeding, and will likely be so with respect to FMTRs.[6]

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[4] *See* 47 U.S.C. § 152(a) (authorizing the Commission to regulate "foreign communication by wire or radio"); *id* § 153(17) (defining "foreign communication" as "communication . . . from or to any place in the United States to or from a foreign country").

[5] *See*, *e.g.*, *International Settlement Rates, Report and Order*, 12 FCC Rcd. 19,806, 19,951 (1997) ("*Benchmarks Order*"), *aff'd Cable & Wireless, P.L.C. v. FCC*, 166 F.3d 1224, 1229-31 (D.C. Cir. 1999) (discussing jurisdiction).

[6] *See* Comments of Vodafone Americas, Inc. at 14 ("Vodafone Comments").

It is not enough, however, for the Commission to determine that it *has* jurisdiction to issue rules. It must also determine whether it *should* exercise that jurisdiction. When, as here, a proposed regulation would have extraterritorial effects, international comity should inform any such determination.

Generally speaking, comity is a reflection of "neighborliness [and] mutual respect" between countries.[7] It is "neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other . . . [but a] recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation . . . ."[8] The *Restatement (Third) of Foreign Relations Law* explains how comity intersects with jurisdiction: "Even when one of the bases for jurisdiction . . . is present, a state may not exercise jurisdiction . . . with respect to a person or activity having connections with another state when the exercise of such jurisdiction is unreasonable."[9] Comity is thus not the same thing as jurisdiction.[10] It is, instead,

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[7] Brownlie at 29.

[8] *Hilton v. Guyot*, 159 U.S. 113, 163-64 (1895).

[9] *Restatement (Third) of Foreign Relations Law of the United States* § 403(1) (1987). The reasonableness of exercising jurisdiction is determined by "evaluating all relevant factors," including: "the importance of regulation to the regulating state, the extent to which other states regulate such activities, and the degree to which the desirability of such regulation is generally accepted"; "the extent to which another state may have an interest in regulating the activity"; and "the likelihood of conflict with regulation by another state." *Id.* § 403(2). The U.S. Supreme Court, in upholding extraterritorial application of the Sherman Act, stated that the proper focus of a comity analysis is whether "there is in fact a true conflict between domestic and foreign law." *Hartford Fire Ins. Co. v. California*, 509 U.S. 764, 798 (1993). While this may be true with respect to antitrust enforcement, agencies engaged in rulemaking must conduct broader analyses before issuing new rules. *See*, *e.g.*, *Motor Vehicle Manufacturers Ass'n. v. State Farm Mutual Automobile Ins. Co.*, 463 U.S. 29, 43 (1983) (discussing requirement that agencies engage in reasoned decisionmaking).

[10] *See Hartford Fire*, 509 U.S. at 797 n.24 (noting that, in Sherman Act cases, considerations of comity "come into play, if at all, only after a court has determined that the acts complained of are subject to . . . jurisdiction"). *But see id.* at 817-18 (Scalia, J., dissenting) (arguing that comity concerns are part of the analysis of whether jurisdiction exists in the first place).

a "jurisdictional rule of reason" to help entities decide when to exercise otherwise allowable extraterritorial jurisdiction.[11]

Although it does not always explicitly say so, the Commission has routinely considered comity in conjunction with jurisdiction. It did so, for example, in the *Call-Back* proceeding, where the question was whether the Commission should enforce other countries' laws.[12] It also did so in the *Benchmarks Order*, where the issue was proposed regulation with extraterritorial effects.[13]

Comity considerations are not always determinative in the "balancing of interests" associated with assertions of extraterritorial jurisdiction.[14] They are, however, a necessary component of reasoned decisionmaking where an exercise of regulatory jurisdiction would have extraterritorial effects. Indeed, it is for this reason that the Department of Justice and the Federal Trade Commission *must* consider comity in cases of international antitrust enforcement.[15] The FCC should do so here.

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[11] *See Timberlane Lumber Co. v. Bank of America, N.T. & S.A.*, 549 F.2d 597, 613 n.29 (9th Cir. 1976) (citing Kingman Brewster Jr., *Antitrust and American Business Abroad* 446 (1958)).

[12] *See VIA USA, Ltd., Telegroup, Inc., Order, Authorization and Certificate*, 9 FCC Rcd. 2288 (1994)*, aff'd on reconsideration*, 10 FCC Rcd. 9540 (1995) (collectively, *Call-Back* proceeding). The Commission is currently considering whether "the balancing of interests" in the *Call-Back* proceeding has shifted. *See Enforcement of Other Nations' Prohibitions Against the Uncompleted Call Signaling Configuration of International Call-Back Service, Notice of Proposed Rulemaking*, IB Docket No. 02-18, RM-9249, FCC 02-28 (rel. Feb. 13, 2002) ("*Call-Back Notice*").

[13] *See Benchmarks Order*, 12 FCC Rcd. at 19,949 (citing foreign carrier comity objections).

[14] *See Call-Back Notice* at ¶ 1.

[15] *See* U.S. Department of Justice and Federal Trade Commission, *Antitrust Enforcement Guidelines for International Operations* § 3.2 (1995), *available at* <http://www.usdoj.gov/atr/public/guidelines/internat.htm>.

B. FMTRs Are Part of the Broader Issue of Mobile Termination Charges

FMTRs do not exist in isolation. They are but a subset of a much larger system of mobile termination charges, which generally does not distinguish between foreign and domestic traffic.[16] Mobile termination charges themselves, for example, are almost always the same for foreign and domestic traffic,[17] because mobile carriers' costs for terminating international calls are essentially identical to those costs for terminating domestic calls.[18] Similarly, those regulators that have sought to regulate mobile termination charges generally have not distinguished between domestic and foreign traffic[19] for fear of: (1) increasing opportunities for manipulation

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[16] FMTRs are an issue only in countries with a "calling party pays" ("CPP") regulatory regime, where mobile carriers recover the costs of terminating traffic on their networks through charges to the originating carriers. *See Notice*, 17 FCC Rcd. at 19,979. Originating carriers, in turn, often recover the costs of such mobile termination charges by imposing surcharges on their own customers, *i.e.*, the calling parties. In many cases, the originating carriers profit from FMTRs by marking up such charges. *See, e.g.*, Comments of NTT DoCoMo, Inc., at 2-6 (arguing that the Commission should distinguish between the surcharges paid by U.S. consumers and FMTRs assessed by foreign mobile carriers). In a receiving party pays ("RPP") regime such as the United States, by contrast, mobile carriers recover the costs of terminating traffic on their networks from their own customers, *i.e.*, the receiving parties. *See Notice*, 17 FCC Rcd. at 19,979.

[17] *See* GSM Europe Comments on Notice of Proposed Rulemaking at 5-6 ("GSM Europe Comments"). To the extent there has been a difference between FMTRs and domestic mobile termination charges, FMTRs have actually been *lower* than domestic charges because mobile carriers have "blended" the rates for international traffic terminating on mobile and fixed networks for the sake of administrative convenience. *See* Vodafone Comments at 7. This led to "tromboning," whereby "fixed operators would export traffic to [mobile operators] and re-import it to benefit from artificially low termination charges." GSM Europe Comments at 6. Blending of mobile and fixed international termination charges has largely, though not entirely, disappeared.

[18] *See* Vodafone Comments at 7 n.5 (stating that "Vodafone is aware of no claims that the costs of terminating traffic originating overseas are in any sense lower than those of terminating traffic which originates domestically").

[19] *See, e.g., Reports on references under section 13 of the Telecommunications Act 1984 on the charges made by Vodafone, O2, Orange and T-Mobile for terminating calls from fixed and mobile networks* (Jan. 22, 2003) ("Competition Commission Report"), *available at* <http://www.oftel.gov.uk/publications/mobile/ctm_2003/index.htm>. The Competition

and regulatory arbitrage by carriers advantaged by lower (or higher) termination charges,[20] and (2) increasing the administrative and technical burdens on carriers and regulators alike.[21]

The indivisible nature of FMTRs and domestic mobile termination charges has important implications for regulators. The vast majority of traffic terminating on mobile networks originates domestically.[22] And because domestic callers originate most traffic terminating on mobile networks, excessive mobile termination charges would harm primarily domestic callers and carriers in the form of higher retail prices for telecommunications services. In other words, the effects of high mobile termination charges in any one country are felt primarily *within that country*. This is why many foreign regulators—particularly those in countries with CPP regulatory regimes, where termination rates are less constrained by a competitive retail market—are already addressing mobile termination charges through municipal regulation.[23]

Indeed, unilateral U.S. regulation of FMTRs would likely interfere with these ongoing efforts. It would, for example, force a foreign regulator to choose between two unattractive alternatives. A regulator seeking to regulate foreign and domestic mobile termination charges in the same manner would have to adopt the FCC's approach, which might not reflect that

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Commission has made no distinction between international and domestic traffic in its recommendations.

[20] *See* GSM Europe Comments at 6 (discussing "tromboning").

[21] *See* Vodafone Comments at 8 n.6 (discussing commercial operators' inability to distinguish between foreign and domestic traffic in certain cases).

[22] *See* Vodafone Comments at 8 (stating that "calls originating internationally typically account for less than 5% by volume of all calls terminated on mobile networks") *see also* Comments of Verizon at 9 ("Verizon Comments") (stating that the "large majority" of calls terminating on mobile networks in CPP countries originates domestically).

[23] *See Notice*, 17 FCC Rcd. at 19,980 n.111; Vodafone Comments at Annex B (describing regulatory interventions concerning mobile termination charges in Australia, Austria, Belgium, Finland, France, Germany, Greece, Ireland, Italy, Japan, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, and the United Kingdom).

regulator's own policy choices. For example, FCC regulation of FMTRs might not account for the same cost elements identified by the foreign regulator (if the FCC were to impose cost-based regulation) or the effect of such regulation on mobile subscription charges in countries with CPP regulatory regimes.[24] On the other hand, a regulator seeking to regulate domestic mobile termination charges—the vast majority of charges—in a specific manner would have to adopt differential regulations for foreign and domestic traffic, creating opportunities for regulatory arbitrage and inefficiency.[25] Either way, the end result would likely be more delay, and, ultimately, less effective and efficient regulation.

FMTRs therefore differ greatly from international settlement rates, which govern correspondent relationships for the exchange of International Message Telephone Service.[26] In the Commission's view, the Commission took action on settlement rates not merely because settlement rates were too high everywhere, but because they caused *disproportionate* harm to the American public.[27] "Given the rapidly increasing imbalance between U.S-outbound and inbound

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[24] For example, Oftel and the Competition Commission in the United Kingdom have spent a great deal of effort developing the appropriate cost model for mobile termination charges. *See* Competition Commission Report, note 19 at 104-133.

[25] Moreover, U.S. regulation of FMTRs would likely reflect the United States' choice of an RPP regulatory regime. *See* Vodafone Comments at 12. Foreign regulators had their justifications for choosing a CPP regulatory regime, just as the Commission did for choosing an RPP regulatory regime. In regulating FMTRs unilaterally, the Commission would effectively second-guess the policy choices of foreign regulators.

[26] *See International Telecommunication Regulations* § 6.2 (Melbourne 1988) (stating that, "[f]or each applicable service in a given relation, administrations shall by mutual agreement establish and revise accounting rates to be applied between them" (footnote omitted)).

[27] *See Benchmarks Order*, 12 FCC Rcd. at 19,812 (arguing that settlement rates "pose *particular* problems for the United States as the largest and most competitive market in the world") (emphasis added). *See also International Settlement Rates, Notice of Proposed Rulemaking*, 12 FCC Rcd. 6184, 6187 (1996) ("*Benchmarks Notice*") (stating that "[t]he U.S. outpayment [in settlement rates] results in part from the fact that U.S. consumers make more telephone calls to foreign countries than foreign consumers make to the United States"); *id.* at 6188-89 (discussing "one way bypass," in which a foreign carrier would receive an above-

traffic and the slow pace of change internationally," the Commission thought it necessary to act domestically.[28] By contrast, there is no evidence in the *Notice* or the record that FMTRs disproportionately harm Americans.

Using the *Restatement's* terminology, it is hard to argue that Commission exercise of regulatory jurisdiction over FMTRs would be "reasonable." The connection between the United States and FMTRs is relatively weak. Unlike international settlement rates, FMTRs cause no disproportionate harm to the U.S. public.[29] Regulation of mobile termination charges is far more important to foreign regulators than regulation of FMTRs is to the United States because the impact of high termination charges in any one country is felt primarily within that country.[30] And any Commission action in this area is likely to impede foreign regulatory action that could benefit both foreign and U.S. consumers.[31] As a matter of comity, therefore, the Commission should consider forbearance from, or more limited, regulation of FMTRs.

C. THE COMMISSION SHOULD CONSIDER WHETHER THE WTO COULD ADDRESS ITS CONCERNS MORE EFFECTIVELY AND WITH LESS CONTROVERSY

Rather than addressing FMTRs through unilateral regulation, the Commission should instead consider whether a multilateral forum such as the WTO could provide a more effective,

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cost settlement to terminate U.S. outbound traffic in its market, while unilaterally cutting its own costs by bypassing the accounting rates system to terminate its switched traffic inbound to the U.S. market over resold private lines).

[28] *Benchmarks Notice*, 12 FCC Rcd. at 6191. Indeed, the Commission is considering in this very proceeding whether the International Settlements Policy now has "the unintended effect of impeding further progress toward competitive markets . . . ." *Notice*, 17 FCC Rcd. at 19,970.

[29] *See Restatement* at § 403(2)(b). To the contrary, excessive mobile termination charges would disproportionately harm non-Americans, given the fact that most traffic terminating on mobile networks originates domestically.

[30] *See id.* at § 403(2)(c), (g).

[31] *See id.* at § 403(2)(h).

more comprehensive, and less controversial resolution of its concerns. Indeed, the issue of FMTRs was first raised with USTR as a trade issue.[32] CompTel has raised the issue again this year, suggesting that countries with excessive FMTRs may be violating their WTO commitments.[33]

Certainly, a multilateral approach would cause less "collateral damage" to U.S. trade interests. If the reaction to the Commission's *Benchmarks Order* is any guide, unilateral Commission action would risk international retaliation.[34] This is even more the case where, as with FMTRs, the United States' interest in regulation is minimal compared to foreign regulators' interest in regulation of the broader issue of mobile termination charges. Taking into account the likely reactions of U.S. trading partners, the Commission may well achieve better overall results for U.S. consumers by addressing FMTRs in a multilateral setting rather than through unilateral action.[35]

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[32] FMTR issues originally arose in USTR's 2002 Review of Telecom Trade Agreements, in part at the request of CompTel. *See* United States Trade Representative, Results of the 2002 "Section 1337" Review of Telecommunications Trade Agreements, at 1 (2002), *available at* <http://www.ustr.gov/sectors/industry/telecom1377/index.htm>; Letter from Carol Ann Bischoff, Executive Vice President & General Counsel, CompTel, to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, USTR, at 3 (Feb. 1, 2002) (identifying FMTRs as a telecom-trade issue), *available at* <http://www.ustr.gov/sectors/industry/telecom1377/index.htm>.

[33] *See* Letter from Carol Ann Bischoff, Executive Vice President & General Counsel, CompTel, to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, USTR, at 3 (Jan. 9, 2003), *available at* <http://www.ustr.gov/sectors/industry/telecom1377/index.htm>.

[34] *See*, *e.g.*, Remarks of Ambassador Vonya McCann, United States Coordinator, International Communications and Information Policy, United States Department of State, before the European-American Business Council Conference on Telecommunications Liberalization in the United States and Europe, April 8, 1998 (describing backlash at World Telecommunication Policy Forum against Commission benchmark policies), *available at* <http://www.ncs.gov/N5_HP/Customer_Service/XAffairs/SpeechService/SS98-008.htm>.

[35] *Compare Benchmarks Order*, 12 FCC Rcd. at 19,552 (refusing to address settlement rates in multilateral bodies because "the movement toward fundamental reform has been very slow").

II. THE COMPETITIVE BENEFITS OF ANY REGULATION OF FMTRS MUST CLEARLY OUTWEIGH THE ASSOCIATED REGULATORY BURDENS

If the Commission nonetheless decides to regulate FMTRs, it must ensure that the competitive benefits to U.S. carriers and consumers of any remedy clearly outweigh the associated regulatory burdens on foreign mobile carriers and their U.S. affiliates.[36] In this regard, the Commission should not adopt AT&T Corp.'s proposal to "add foreign mobile carriers to its list of foreign carriers with market power and apply existing benchmark rates to all mobile terminating traffic . . . ."[37] Such a proposal, if implemented, would have effects far beyond those described in AT&T Corp.'s comments, and would make it more expensive for U.S. carriers to enter foreign markets.

AT&T Corp.'s proposal, if taken to its logical conclusion, would add *all* foreign mobile carriers—regardless of whether they operate in countries with CPP regulatory regimes, and regardless of their retail market share—to the list of foreign carriers presumed to have market power.[38] This would subject *all* foreign mobile carriers, and U.S. affiliates of all foreign mobile carriers, to dominant carrier regulation on routes between the U.S. and the foreign market in question, even though the Commission and AT&T Corp. itself have alleged competitive problems only with those foreign mobile carriers in countries with CPP regulatory regimes.[39]

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[36] *See* 47 U.S.C. § 161(a)(2) (directing the Commission to review all regulations every two years, and repeal or modify regulations that are "no longer necessary in the public interest").

[37] Comments of AT&T Corp. at 34-35 ("AT&T Corp. Comments").

[38] *See List of Foreign Telecommunications Carriers that are Presumed to Possess Market Power in Foreign Telecommunications Markets*, DA 99-809 (rel. June 16, 1999) ("*Market Power List*"), *available at* <http://www.fcc.gov/Bureaus/International/Public_Notices/1999/da990809.txt>.

[39] 47 C.F.R. § 63.10(a); *Notice* at ¶ 45; AT&T Corp. Comments at 34 (claiming that "[m]obile network operators in CPP countries, therefore, have market power in the market for call termination on their own networks.").

With respect to such routes, if the Commission extended existing dominant carrier regulations, the U.S. affiliate of a foreign mobile carrier might be required to:

- Provide services separately from its foreign affiliate and maintain separate books of account;[40]
- File quarterly traffic and revenue reports within 90 days of the end of each quarter;[41]
- File quarterly reports of provisioning and maintenance services provided between the U.S. carrier and the foreign affiliate;[42]
- File quarterly circuit status reports;[43] and
- Comply with benchmark rates.[44]

Under AT&T Corp's proposal, therefore, investment in a foreign mobile carrier—no matter how small—would subject a U.S. carrier to the entire panoply of dominant carrier regulations on that route. This result is anomalous, as it would treat affiliation with *any* foreign mobile carrier the same as affiliation with an incumbent having a *de jure* or *de facto* monopoly in a particular market. AWS, for example, would be subject to dominant carrier regulation on the U.S.-St. Lucia route once its affiliate, St. Lucia Wireless Ventures, launches service this year.

Such a rule could discourage U.S. carriers from making new investments in foreign mobile markets by making foreign market entry more expensive due to burdensome and costly regulation—surely not the result the Commission seeks. It would conflict with proposals made in the Commission's 2002 Biennial Regulatory Review of Part 43 and 63 rules, which would

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[40] 47 C.F.R. § 63.10(c)(1).

[41] 47 C.F.R. §§ 63.10(c)(2), 43.61(c).

[42] 47 C.F.R. § 63.10(c)(3).

[43] 47 C.F.R. § 63.10(c)(4).

[44] *See* 47 C.F.R. § 63.10(e).

exempt U.S. mobile carriers from many of the burdens of international carrier regulation.[45] Finally, it would be inconsistent with the way the Commission's existing list of carriers with market power works. That list identifies carriers presumed to possess market power by virtue of having a more-than-50 percent market share in at least one of three markets.[46] Foreign carriers are allowed to rebut that presumption.[47] AT&T Corp.'s proposal, by contrast, would create an irrebuttable presumption that *all* foreign mobile carriers have market power, regardless of market share. AT&T Corp. has failed to demonstrate that the competitive benefits to U.S. carriers and consumers would outweigh the burdens posed by such overly broad regulation.

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[45] *See Commission Seeks Public Comment in 2002 Biennial Review of Telecommunications Regulations Within the Purview of the International Bureau, Public Notice*, 17 FCC Rcd. 18,929 (2002); Comments of Cingular Wireless, IB Docket No. 02-309, at 5 (filed Oct. 18, 2002) (arguing that, as entities that primarily resell international services, CMRS providers should not be subject to Section 214 and Part 63 rules because they have a *de minimis* share of the international services market); Comments of Verizon, IB Docket No. 02-309, at 9 (filed Oct. 18, 2002) (arguing that the Commission should eliminate reporting requirements because the burden associated with such requirements outweigh the benefits derived from producing them).

[46] *Market Power List.*

[47] 47 C.F.R. § 63.10(b).

CONCLUSION

For the reasons stated above, the Commission should consider whether and how unilateral regulation of FMTRs would unduly intrude into foreign municipal regulation, and whether an alternative multilateral forum such as the WTO could provide better resolution of its concerns. If the Commission should decide to regulate FMTRs unilaterally, it must ensure that the competitive benefits of any such regulation clearly outweigh the associated burdens on foreign mobile carriers and their affiliates.

Respectfully submitted,

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