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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

REPLY COMMENTS OF AT&T CORP.

Mark C. Rosenblum
Lawrence J. Lafaro
James J. R. Talbot

One AT&T Way
Bedminster, New Jersey 07921
(908) **532-1847**

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SUMMARY

U.S. carriers support further deregulation of the U.S. international services market to encourage the greater use of commercial traffic termination arrangements, but are greatly concerned that a number of foreign carriers and governments, even on supposedly "competitive" international routes, are now seeking to reverse recent trends by increasing termination rates. At this moment, U.S. carriers resisting demands for unjustified increases are facing actual or threatened circuit disruption by all carriers in the Philippines and the Dominican Republic, two countries with multiple international facilities-based suppliers. These developments show that foreign carriers and governments in many countries may seek to use their control of the foreign end of U.S. international routes to maintain and increase U.S. consumer subsidies, and that except on a relatively small number of fully competitive routes, U.S. carriers remain highly vulnerable to retaliatory action if they resist these demands.

To address these concerns, continued Commission safeguards against rate increases and whipsawing should accompany any further relaxation of the International Settlements Policy ("ISP). As recommended by AT&T and WorldCom, existing ISP safeguards against rate increases and whipsaws should remain after any removal of the formal requirements of the ISP (*i.e.*, for nondiscriminatory rates, proportionate return and equal rates at each end of the route), and should be enforced through a carrier-initiated complaint process. Expedited notice and comment procedures are also necessary so that these safeguards may be available to U.S. carriers on a timely basis.

Such an approach would combine the benefits of ISP deregulation with the ability to obtain rapid recourse against the abuse of foreign market power. Provided U.S. carriers are assured of such safeguards, the Commission should undertake further reform of the ISP by

allowing commercial arrangements on all benchmark-compliant routes immediately any U.S. carrier obtains a benchmark-compliant rate with the dominant carrier. However, there is no serious support for removal of the ISP where benchmarks have not been achieved, because there is wide recognition that monopoly and dominant carriers with above-benchmark rates threaten continued harm to U.S. competition and continued application of the ISP is necessary to limit such potential harm and to encourage the adoption of benchmark rates. Similarly, there is wide recognition of the major achievements of the benchmarks policy and support for its continuation, including from foreign carriers like C&W who formerly were leading opponents of this policy.

New benchmarks are also necessary. With termination rates on most routes at or below benchmark levels, benchmarks will no longer encourage more cost-based rates unless they are revised to reflect current data. The existing benchmarks are now so outdated that they are increasingly misused by foreign carriers and governments -- including in the Philippines and the Dominican Republic -- as purported support for their demands for *increased* rates.

Commission action is also necessary to address rates for termination on foreign mobile networks, where surcharges are now required in *almost eighty* countries. U.S. carriers show that, contrary to the predictable arguments by foreign mobile carriers, these rates are far above cost, are a clear example of the abuse of foreign market power, and are the subject of foreign regulatory action only in a small number of countries. The Commission should limit these surcharges by clarifying that existing benchmarks apply to all mobile terminating traffic. The Commission should also apply the continuing safeguard requested above, the prohibition on non-cost-based termination rate increases, to traffic terminating on mobile networks. Lastly, the Commission should adopt new benchmark rates for mobile termination as part of the new proceeding to update the benchmark rates.

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AT&T Corp. ("AT&T") hereby submits its Reply Comments on the Commission's proposals to reform the International Settlements Policy ("ISP) and settlement rate benchmark policies, and concerning the actions the Commission should take to address recent foreign actions to raise international termination rates.[1]

I. THE COMMISSION SHOULD REMOVE THE FORMAL REQUIREMENTS OF THE ISP AT BENCHMARKS AND ENCOURAGE A RAPID TRANSITION TO COMMERCIAL ARRANGEMENTS.

There **is** wide support in this proceeding **for** further reform of Commission rules to encourage the greater use of commercial arrangements for the termination of traffic on **U.S.** international routes, provided the Commission ensures that adequate safeguards continue to exist against rate increases and other foreign bottleneck abuse. The ISR arrangements now authorized on more than eighty **U.S.** international routes demonstrate that commercial traffic termination arrangements not subject to the specific requirements of the ISP for nondiscriminatory settlement rates, proportionate return and equal rates at each end of the route may benefit **U.S.** consumers by

[1] ***Notice of Proposed Rulemuking,*** IB Docket Nos. 02-324, 96-261 (rel. Oct. 11, 2002), FCC 02-285 ("Notice"); ***Commission Extends Pleading Cycle In Rulemuking Proceeding On***

encouraging low rates and other efficiencies. The Commission should encourage **U.S.** carriers to transition rapidly to commercial arrangements on benchmark-compliant routes by allowing those arrangements immediately once any **U.S.** carrier obtains a benchmark rate with the dominant carrier.

Recent and ongoing efforts by foreign carriers and governments to increase rates on a number of international routes make clear, however, that **ISP** reform cannot provide low rates for **U.S.** consumers -- even on supposedly "competitive" routes -- without the continued Commission safeguards against rate increases and whipsaws, with expedited periods for public comment, that are described in Section **11.**

1. Commenters Agree That the **ISP** Should be Removed at Benchmark Rates.

As urged by AT&T (p. 13), C&W (p. 5) and WorldCom (p. **5**), the Commission should remove the **ISP** requirements for nondiscriminatory settlement rates, proportionate return and equal rates at each end of the route when the dominant foreign carrier on the route agrees to accept benchmark rates, rather than allowing this step only where rates fall to **25** percent below benchmark levels, as required by present rules. Removal of the **ISP** when benchmarks are achieved would allow **U.S.** carriers to negotiate commercial traffic termination arrangements with all carriers on benchmark-compliant routes without seeking **ISR** authorization.' As noted by WorldCom (p. *6)*, this recommended approach would be "simpler and more deregulatory," and

(Footnote **continued from previous page)**

Possible Reform Of The International Settlements Policy** In **View Of Recent International Developments, DA **02-33 14,** (rel. Dec. **2,** 2002).

[2] **U.S.** carrier arrangements with all foreign nondominant carriers already are exempt from the **ISP.** ***See I998 Biennial Regulatory Review, Reform of the International Settlements Policy and Associated Filing Requirements,*** **14** FCC Rcd. **7963 (1999)** ***(ZSP Reform Order).***

less burdensome both for **U.S.** carriers and the Commission.

ISR arrangements have brought lower termination rates and greater efficiencies that have benefited **U.S.** consumers. ***See*** Notice, ¶¶ 8, 24. The Commission should now encourage wider use of these commercial arrangements by removing the specific requirements of the ISP for nondiscriminatory rates, proportionate return and equal rates at each end of the route immediately benchmark rates are achieved by any **U.S.** carrier. Concerns regarding potential anticompetitive conduct that may still occur at benchmark rates are certainly warranted,' as demonstrated by recent events on the Philippines route, but preferably should be addressed through the more targeted safeguards described in Section II below.

2. The Commission Should Encourage a Rapid Transition to Commercial <u>Arrangements When Benchmarks are Achieved.</u>

The Commission should ensure that U.S. carriers are not subject to unnecessary delay in adopting commercial arrangements on benchmark-compliant routes, thus postponing the consumer benefits of lower cost agreements and frequently causing other inefficiencies. AT&T at 14-15. Specifically, in removing the ISP, the Commission should avoid any requirement for a demonstration that 50 percent of traffic is settled at benchmark rates, which has needlessly delayed AT&T's ISR approvals, frequently for more than twelve months, when it has relied on benchmark filings by other **U.S.** carriers to make this demonstration. ***Zd.*** Instead, the Commission should remove the **ISP** requirements for nondiscriminatory settlement rates, proportionate return and equal rates at each end of the route immediately when any **U.S.** carrier files a benchmark-complaint rate with the dominant carrier, and all U.S. carriers should then be

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3 ***See,*** *e.g.*, Sprint at 11

allowed to adopt commercial arrangements on the route.[4]

Additionally, all Section 43.51 and 64.1001 filing requirements should be removed with the removal of ISP requirements, as requested by AT&T (p. 15), Verizon (p. 6) and WorldCom (p. 13). These comments make clear that these filing requirements are unreasonably burdensome because of the frequent changes in commercially-negotiated rates on many routes and are unnecessary because the Commission can monitor these routes through quarterly 43.61 traffic and revenue reports and may obtain rate information for enforcement purposes from the petitioning U.S. carrier.[5] Further, as the Commission has previously found, the public disclosure of commercial arrangements may "chill" market forces.'

3. <u>Alternative Thresholds **for** Removal **of** the **ISP** Should Not be Adopted.</u>

Removing the ISP only on ISR-approved routes, which is advocated by Verizon (pp. 2-5), would unnecessarily deny **U.S.** consumers the benefits of commercial arrangements on non-WTO routes, because non-WTO countries must satisfy the equivalency test to qualify for ISR. AT&T at16 & n.32. Thus, Verizon's approach would be more restrictive than present FCC rules, which allow commercial arrangements with non-WTO countries through removal of the ISP when rates are 25 percent below benchmarks. There is no reason for different treatment of non-WTO routes, as shown by AT&T (p. 16) and C&W (pp. 8-9), and none **is** identified by Verizon. A further disadvantage in removing the ISP only on ISR-authorized routes would be any continuation of the inefficient and burdensome ISR authorization process discussed above.

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[4] Because the nondiscrimination requirement of the ISP would continue to apply to the benchmark-compliant rate, it would remain available to all U.S. carriers.

[5] ***See*** WorldCom at 13; AT&T at 15

Sprint's proposal (pp. 12-14) to remove the ISP only on routes where "low" wholesale prices are available would place undue reliance upon the existence wholesale market arrangements that, as AT&T has noted (pp. 9-11), typically cannot handle a large percentage of **U.S.** calling to any country and are not available to all destinations. Sprint's approach also has the disadvantage of maintaining the different thresholds for ISR and the removal of the ISP that exist under present rules, rather than providing the more straightforward transition to commercial arrangements through the removal of the ISP once benchmarks are achieved that is recommended by most commenters. Sprint's concern to encourage low termination prices on all routes is better addressed by encouraging a more rapid transition to commercial arrangements on benchmark compliant routes, and by maintaining more targeted safeguards against rate increases **and** whipsaws enforced through carrier complaint.[7]

4. <u>There is No Basis for Removal of the ISP on All International Routes.</u>

There is no serious support for the further alternative set forth in the Notice (¶¶ 30-31) of removing the ISP from all **U.S.** international routes.[8] This reflects a broad recognition of the continued potential harm to **U.S.** competition from monopoly and dominant carriers in non-

(Footnote continued **from previous page)**

[6] *See* AT&T at 15; Verizon at 6.

[7] The suggestion by several foreign carriers for removal of the ISP only where competition is present would be contrary to the practice followed by the Commission ever **since** the WTO Basic Telecommunications Agreement of applying the same regulation to all WTO Member country routes. AT&T at n.42. *See also*, ETNO at 2; Telecom Italia at **5**.

[8] AHCIET's broad-brush claim (p. **4)** that all Commission measures are "outdated and anachronistic" is apparently based on the misguided assumption by this foreign carrier association that there has been an "effective implementation of sector liberalization and . . . consolidation of competition" in all countries. ***(Id.)*** Telefonica (pp. 3-4) makes similar claims.

liberalized countries and of the need to maintain the requirements of the ISP for nondiscriminatory rates, proportionate return and equal rates at each end of the route where benchmarks have not been achieved.

The International Bureau reported in 2000 that only thirty WTO Member countries had made full market access commitments effective at that time, and even in those countries, the international services markets remain dominated by the former incumbents.[9] **As** noted by Sprint (p. 3), "competition is not faring particularly well" in Mexico and other important WTO Member countries.

Therefore, the claim by C&W (p. 5) that foreign bottlenecks allowing whipsawing do not exist in the "vast majority of countries" is clearly wrong, because three out of four U.S. international routes are still under monopoly control at the foreign end. Additionally, non-liberalized countries continue to receive significant U.S. consumer subsidies. Indeed, the **173 U.S.** international routes that did not make full WTO market access commitments account for 57 percent of all U.S. settlements payments hut only 35 percent of U.S.-outbound traffic."

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[9] *See* AT&T at 7-9. The accelerated liberalization reported by C&W (p. 3) in some of the Caribbean nations where it has foreign dominant carrier affiliates is limited to those countries and is not supported by any changes in these countries' WTO commitments. Further, C&W's claim *(id.)* that lower barriers to entry in mobile communications will assist mobile entrants to gain share and "put downward pressure on international termination rates" is belied **by** the increased mobile termination charges recently introduced by C&W's affiliates in both Jamaica and Panama, which are listed by C&W as among these countries where competition is increasing, which may encourage any such new entrants to charge similarly high rates.

[10] *See* FCC 2001 43.61 International Traffic Data,

http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/Intl/4361-f01.pdf. Contrary to the claim by C&W (p. 6), such traffic is hardly "miniscule."

Further, as described by AT&T (pp. 9-11), alternative termination methods cannot protect the public interest in low rates because they are not available to all countries and frequently cannot handle large U.S. traffic volumes. No commenter shows otherwise. Indeed, Sprint states that it increasingly purchases minutes in wholesale markets, but expressly disavows (pp. **4-5)** its former opinion that the existence of alternative termination methods provides sufficient competition to allow Commission deregulation of the international market. Sprint states that recent foreign actions to raise international termination rates make clear that competitive market forces have ***not*** "developed sufficiently to render regulation unnecessary on either U.S.-WTO or U.S.-non-WTO member routes as the Commission proposes." ***(Id.)***

This record provides no basis to change the Commission's findings in the *ISP* ***Reform Order*** that the risk from lifting the ISP on all **U.S.** international routes is considerable, and is not outweighed by any potential pro-competitive effects." Compliance with the ISP on above benchmark-routes remains necessary to prevent competitive harm from the abuse of unreasonably high rates, and to assist **U.S.** carriers to reduce those rates to benchmark levels.

II. ISP REFORM REQUIRES CONTINUING SAFEGUARDS AGAINST FOREIGN RATE INCREASES AND OTHER MARKET POWER ABUSES.

The Commission should make no changes in existing rules without adequate safeguards to protect U.S. carriers against foreign carrier and foreign government action to maintain high rates. Recent efforts by foreign dominant carriers and foreign governments to raise rates in a number of benchmark-compliant countries, including in several countries with supposedly competitive facilities-based international markets, refute any claim that market forces

[11] *ISP* ***Reform Order,*** 14 FCC Rcd. 7963, ¶ 63

would protect the public interest in cost-based rates following the removal of the ISP from an international route.

Since the initial comments in this proceeding were filed, no fewer than six Philippine carriers have begun blocking AT&T circuits in retaliation for AT&T's refusal to pay an unjustified 50 percent rate increase -- and one of those Philippine carriers has admitted in a document filed with the SEC that this rate increase is the subject of signed agreements among those foreign carriers. Similar circuit disruptions are also threatened by three foreign carriers in response to AT&T's refusal to pay unjustified rate increases in the Dominican Republic.

U.S. carriers have obtained low rates through commercial arrangements in many non-competitive, ISR-approved markets and likely will continue to do so on many routes following removal of the ISP. But these recent actions demonstrate that foreign carriers and governments could also increase rates on many routes after the ISP is removed. They could do so because there is no effective competition at the foreign end, by means of a government-mandated rate floor, or through concerted action. The comments in this proceeding by U.S. international facilities-based carriers accordingly emphasize that Commission safeguards to prevent the abuse of foreign market power are an essential element of **ISP** reform. Even C&W, the **U.S.** affiliate of many dominant foreign carriers, concurs (p. **12)** that, after the removal of the ISP, "safeguards must be maintained."

The targeted safeguards recommended by AT&T (pp. **20-22)** and WorldCom (pp. **11-12)** would maintain existing safeguards against rate increases and whipsaws enforced through a carrier-initiated complaint process. They would maintain the benefits of ISP deregulation by allowing U.S. carriers to negotiate traffic termination arrangements on commercial terms on non-ISP routes, while still providing recourse against the abuse of foreign market power. To be effective, however, these safeguards should be available on an expedited basis, particularly where a U.S. carrier is subject to circuit disruption or other service-affecting conduct

1. Foreign **Efforts** to Increase Rates Require Continued Commission Safeguards After Removal **of** the ISP.

The need for such safeguards is abundantly clear. Recent and ongoing efforts by foreign dominant carriers and foreign governments to raise rates in a number of benchmark-compliant countries demonstrate the falsity of any argument that exclusive reliance on market forces will always protect the public interest in cost-based rates on non-ISP routes.

After years of decreasing termination rates, the result of increasing global competition and Commission policies encouraging cost-based rates, various foreign carriers or foreign governments are now seeking to recapture lost U.S. consumer subsidies by increasing rates or establishing rate floors. Very recently, the Philippines Long Distance Telephone Company ("PLDT"), the dominant carrier in the Philippines, and other Philippine carriers took new action in retaliation for AT&T's refusal to agree to a 50 percent rate increase and began blocking AT&T's circuits, while PLDT also began blocking WorldCom's circuits for the same reason.[12] Remarkably, a January 29, 2003 SEC filing by one of the Philippine carriers engaged in this whipsaw has revealed that the Philippines carriers have signed agreements among

12 ***See AT&T Emergency Petition For Settlements Stop Payment Order*** *and* ***Request For Immediate Interim Relief,*** filed February **7,** 2003 ("AT&T Petition"); ***Petition of WorldCom, Inc. For Prevention Of "Whipsawing"*** *On* ***The U.S.-Philippines Route,*** filed February **7,** 2003.

themselves to charge these higher rates.[13] Similar circuit disruptions are also now threatened by foreign carriers in the Dominican Republic, where the regulator has required a minimum charge of 8 cents for inbound international calls, an increase of approximately 50 percent over current rates.

Other similar developments are the recent attempt by China to raise rates by almost 900 percent (from 2 to **17** cents), the 7-cent "access deficit" surcharge proposed by the Jamaican regulator, and the rate floor sought by the government of Ecuador.[14] AT&T also has received demands for substantial increases in country-direct rates in Spain and Venezuela, and that higher rates may soon be required in the Netherlands Antilles.[15]

Commission safeguards remain essential to allow U.S. carriers to continue to seek lower rates in such circumstances. Contrary to Verizon's insistence (p. 7) that "competition is already vibrant" on all ISR-approved routes, both the eighty-two routes already authorized for **ISR,** and the additional seventy-five benchmark-compliant routes, include many routes where there is no effective competition at the foreign end. U.S. carriers cannot avoid rate increases in monopoly markets, because they cannot send their traffic to another carrier. U.S. carriers also cannot avoid rate 'increasesin supposedly competitive markets where a government-mandated rate

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[13] ***See*** AT&T Petition at 11; Globe Telecom, Inc., U.S. Securities and Exchange Commission Form **6-K,** SEC Number 1177, filed Jan. 29,2003, at 18. Sprint incorrectly states (p. ***6)*** that the increased rates requested by Philippine carriers are pursuant to a requirement issued by the Philippine regulator, the National Telecommunications Commission ("NTC"). AT&T understands that the document cited by Sprint, a memorandum circular dated April 3, **2002,** is a draft that has not been adopted and is not effective. The NTC also made clear that the increased rates are not the result of any regulatory requirement by stating, in a January **31** order addressed to three of the Philippine carriers, that the cause of the threatened circuit disruption was "your decision to increase rates."

[14] ***See*** AT&T at 18-19; WorldCom at 9-11; Sprint at ***5-6***

[15] AT&T at 19.

floor is applied to all inbound international calls, where foreign carriers engage in concerted action to charge higher rates, or where there are other restrictions on competition. Recent developments in the Philippines and elsewhere show that without Commission assistance in resisting rate increases, foreign carrier whipsaws, and other abuses of foreign market power, the removal of the ISP would likely encourage many foreign carriers and governments to raise termination rates to former high levels.

Continued safeguards are accordingly necessary after removal of the **ISP.** Specifically, as urged by AT&T (p. 21) and WorldCom (p. 11), the Commission should continue the existing ISP safeguard prohibiting non-cost-based increases in foreign termination rates after the ISP requirements for nondiscriminatory settlement rates, proportionate return and equal rates at each end of the route are removed.[16]

These continued safeguards should be applied through a carrier-initiated enforcement process, similar to procedures for the enforcement of benchmark settlement rates, with expeditious treatment by the Commission.[17] This targeted enforcement process would allow

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[16] Rather than just limiting the "permissible amounts of such surcharges" as requested by Sprint (p. 2), the ISP already prohibits the payment of ***any*** non-cost-based surcharge above an existing termination rate, and this safeguard should continue. Verizon, which owns Codetel, the dominant carrier in the Dominican Republic, contends (p. **8)** that the Commission should "concentrate its focus on the procedures the foreign government utilized in adjusting its rates," and claims that the Dominican Republic provided interested parties with "a reasonable opportunity to comment" on the proposed price increases. However, such procedural considerations can provide no justification for a non-cost-based rate increase. Commission action to prohibit such increases is both necessary to ensure continued low **U.S.** consumer rates and amply supported by the Commission's broad authority to regulate the **U.S.** international telecommunications market to promote the public interest. ***See Cable & Wireless*** *P.L.C.* ***v.*** *FCC*, 166 F. 3d 1224 (D.C. Cir. 1999); ***Atlantic Tele-Network, Inc. v.*** *FCC*, 59 F. 3d 1384 (D.C. Cir. 1995).

[17] ***See*** AT&T at 21-22; WorldCom at 11-12

maximum flexibility for commercial negotiations on benchmark-compliant routes, while ensuring the availability of Commission safeguards. Carriers should support their enforcement petitions with relevant rate information, which could be filed on a confidential basis, and interested parties should have the opportunity to comment and to demonstrate that a proposed rate increase is required to meet increased long-run incremental cost.[18] This would also be similar to current practice under the ISP requiring a **U.S.** carrier to show that a proposed rate increase is cost-based.[19]

Other dominant foreign carrier abuse of their control of bottleneck facilities would also leave **U.S.** carriers without recourse where there are no competitive alternatives at the foreign end. Therefore, as requested by AT&T (p. **22), U.S.** carriers should be able to petition for immediate Commission action in response to anticompetitive conduct by dominant foreign carriers cutting off access to circuits or services at the foreign end. Commission action in response to such conduct should include ordering all **U.S.** carriers to stop payments until circuits are restored, as the Bureau has responded to such misconduct in the past.[20] This continued safeguard against whipsawing, like the continued safeguard against price increases, is necessary to protect the public interest irrespective of whether this traffic is terminated under the **ISP** or under commercial

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[18] ***International Settlement Rates,* 12** FCC Rcd. **19,806, ¶ 88 (1997) ("*Benchmarks Order*")** (interested parties may show that a benchmark rate is insufficient to cover incremental costs).

[19] ***See AT&T Corp., Petition for Waiver of the International Settlements Policy to Change the Accounting Rate for Switched Voice Service with Haiti,*** 13 FCC Rcd. **18,739, ¶ 5 (1998). *See also, e.g., RSL Com U.S.A., Peiition for Waiver of the International Settlements Policy to Change the Accounting Rate for Switched Voice Service with the Dominican Republic,* 14** FCC Rcd. 1010, ¶ **4 (1999).**

[20] ***AT&T Corp., Proposed Extension of Accounting Rate Agreement for Switched Voice Service with Argentina,*** 11 FCC Rcd. **18,014 (1996). *See also, id.,* 14** FCC Rcd. **8306 (1999).**

arrangements and therefore should apply after any removal of the ISP requirements for nondiscriminatory settlement rates, proportionate return and equal rates at each end of the route.

Unlike the different remedy sought by Sprint (pp. 12-14) of removing the ISP only where low wholesale prices are available, and reimposing the ISP if low prices are withdrawn, the targeted enforcement process proposed by AT&T and WorldCom would allow maximum flexibility for commercial negotiations on benchmark-compliant routes, while ensuring the availability of Commission safeguards to address specific foreign end abuses. Unless such safeguards continue, there should be no change in present requirements for the removal of the ISP.

Expedited procedures are also essential to assist U.S. carriers that seek low rates and refuse to pay unjustified rate increases to resist circuit disruption or other service-affecting conduct at the foreign end. Because the **U.S.** carriers that are victims of such foreign carrier misconduct lose customers and revenue, while their competitors may continue to enjoy business as usual, the Commission should ensure that relief **is** not unduly delayed by notice and comment periods. Enforcement petitions filed by U.S. carriers subject to circuit disruption or other service-affecting conduct should receive expedited treatment, under which comment periods should be no longer than five days, and reply periods no longer than two days.

2. <u>Other Safeguards Should Also Continue.</u>

There is broad agreement that the No Special Concessions Rule should continue in its present form on all routes after removal of the ISP.[21] No commenter takes a different position. This important safeguard should continue in place, as the Commission found in the *ISP* ***Reform***

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[21] ***See*** AT&T at 22; C&W at 12; WorldCom at 14

Order, to prevent discrimination by dominant foreign carriers in the interconnection of international facilities, private line provisioning, maintenance and quality of service after the removal of the **ISP.**

As noted by AT&T (p. **22),** quarterly **43.61** traffic and revenue reporting also provide an important safeguard against competitive harm by allowing timelier monitoring of traffic volumes and associated revenues than annual **43.61** reports permit and therefore should also continue after removal of the ISP.[22] Thus, Commission monitoring of non-ISP routes should be based on these quarterly reports, rather than on Section **43.51** and **64.1001** filings. AT&T at **15.** To encourage the negotiation of low rates, the Commission also should publish each quarter a list of the routes with the lowest overall U.S.-outbound rates shown by these reports. *Id.*

III. <u>THE COMMISSION SHOULD UPDATE THE BENCHMARKS POLICY.</u>

All **U.S.** commenters, and even some former opponents of the benchmarks policy, ask for the continuation of settlement rate benchmarks. Recent foreign efforts to increase foreign termination rates, after years of consistent decreases, underscore that benchmarks remain necessary to assist in preventing these rates from returning to former high levels. ***As*** even one former leading foreign opponent of benchmarks now acknowledges, this FCC policy has brought huge reductions in termination costs and lower prices for **U.S.** consumers

New benchmarks also are urgently required. For the same reasons that FCC

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[22] There is no basis to Verizon's claim in the **2002** Biennial Review that the Commission should "eliminate" all Section **43.61, 43.82** and **63.10** reporting requirements. ***See*** Verizon at ***6,*** n.7. As AT&T has demonstrated, Verizon's broad-brush request is made on the erroneous ground that these reports "do not serve" their "stated purpose" of monitoring compliance with settlement rate benchmarks, when these reports not only serve that purpose but also are necessary for effective enforcement of other pro-competitive Commission rules and policies, such as preventing foreign carriers with market power from harming U.S. competition. ***See***

benchmarks were introduced in 1997, the updating of those benchmark rates -- which are based on even older data -- is now long-overdue. With termination rates on most routes at or below benchmark levels, benchmarks will no longer assist the negotiation of more cost-based rates unless they are revised to reflect current data. Foreign prices for the network elements used for the termination of international calls have fallen to a mere fraction of those originally used to calculate current benchmarks.

Indeed, the existing benchmarks are now so outdated that they are increasingly misused by foreign carriers and governments to support requests for ***increased*** rates. Therefore, to encourage further reductions in **U.S.** termination rates, and to address the need for specific benchmarks for international traffic terminating on foreign mobile networks, the Commission should immediately commence a further proceeding to establish revised benchmarks based on current data.

1. There Should be No "Sunset" of Commission Benchmarks.

Many parties make clear that the Commission's benchmarks policy continues to play an important role and should continue. Prominent among the new supporters of benchmarks are two former foreign critics, C&W and Telecom Italia. C&W's UK affiliate strongly opposed benchmarks in 1997, contending this policy was, among other things, "inconsistent with the practical realities faced by telecommunications operators in developing countries"[23] and would

(Footnote continued from previous page)

Reply Comments of AT&T Corp., WC Docket No. 02-313, filed Nov. 2, 2002, at 23-25.

[23] Comments of Cable & Wireless, PLC, IB Docket No. 96-261, filed Mar. 31, 1997, at 10.

"fail to achieve any benefits for U.S. consumers."[24] Now, C&W acknowledges (p. 2) that benchmarks have brought "a precipitous drop" in settlement rates and lower collection rates. Telecom Italia, which formerly saw benchmarks as a "pro-regulatory, unilateral" approach,"[25] now (p. 5) asks the Commission to adopt an "updated" benchmarks order. Another foreign carrier, PCCW (p. 3), similarly approves the Commission's achievement in reducing rates through benchmarks.

U.S. carriers also strongly support the benchmarks policy. All U.S. carriers filing comments in this proceeding request the continuation of benchmarks. WorldCom emphasizes (p. 15) that the benchmarks policy is still necessary because rates on almost fifty routes remain above benchmarks levels. Verizon (p. 7) requests that benchmarks "be kept as a safeguard." Any prospective removal of benchmarks, as noted by AT&T (p. 28), would likely lead to greater difficulties in obtaining benchmark compliance from all countries and new efforts to raise rates.

Benchmarks have certainly brought "dramatically" lower consumer rates.[26] This is underscored by the curious assertion by AHCIET (pp. 4-5) and Telefonica (p. 5) that settlement rate savings of 21 cents (*i.e.*, the difference between average settlements rates of 35 cents in 1997 and 14 cents in 2001) that resulted in ***even greater*** price reductions of 34 cents (*i.e.*, the difference between average prices in 1997 of 67 cents and average prices in 2001 of 33 cents) purportedly mean that savings have "***not*** been entirely passed on to **US** consumers."*' Contrary to these

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[24] *Id.* at 14

[25] Comments of Telecom Italia, IB Docket No. 96-261, filed Feb. 5, 1997, at 2, 9.

[26] ***Atlantic*** *Tele-network, Inc.*, IB Docket No. 96-261, Order, DA 01-2659 (rel. Nov. 16, 2001), ¶ 7.

[27] Emphasis added. AHIET and Telefonica ignore the fact that settlement costs are not the only

foreign carrier claims, this data makes clear that, as anticipated by the ***Benchmarks Order,*** the competitive U.S. market ensures that settlements cost reductions "are fully reflected in collection rates."[28] Because the proper measure of settlements cost is the "net" settlement rate, which fell by 15 cents between 1997 and 2001, **U.S.** carriers actually reduced prices in this period by ***more than twice*** the amount of their cost savings from lower settlements payments."

2. <u>Updated Benchmarks Are Required to Encourage Further Reductions Toward Cost-Based Rates.</u>

The ***Benchmarks Order*** emphasized that "periodic revisions are necessary to avoid the problem in the future of our benchmarks not keeping place with cost reductions, and to encourage further movement toward cost-based rates."[30] A New Zealand study cited by Sprint (p. **8,** n.14) further demonstrates that current benchmarks -- established in 1997 based on data collected in 1995 and 1996, and not revised since then -- have been far overtaken by reductions in foreign termination costs, and are now severely outdated.

That study found rates of about one U.S. cent or less for "double-tandem" interconnection in France, Australia, the Netherlands, Ireland, and the United Kingdom, although the national extension rates for several of these countries used in the Commission's benchmarks

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cost component of international calls. Just as a 10 percent reduction in the cost of steel would not yield a 10 percent reduction in the price of an automobile, lower settlement costs do not bring the same percentage reduction in the price of international calls.

28 ***Id.,*** ¶ 270

29 ***Benchmarks Order,*** 12 FCC Rcd. 19,806, ¶ 274 (the relevant measure of settlements savings for determining whether those savings are passed through to consumers is the saving in the ***net*** settlement rate). Average net settlement rates were **25** cents in 1997 and 10 cents in 2001. Notice, para. 18, n.57.

analysis was 12 cents or more.”[31] Similarly, AT&T has filed a 2001 study with the Commission showing termination costs in Mexico below 4 cents, although the tariff component price for Mexico used in the benchmarks analysis was over 16 cents.”[32] Sprint also shows (p. 9) that international transmission prices are now much lower than when the benchmarks analysis was conducted. This data, together with the low wholesale rates of 2-3 cents or even less now available on many routes, and the similarly low commercial rates now paid by U.S. carriers to many competitive countries and also some non-liberalized countries, show that the current benchmarks are very far in excess of any reasonable measure of cost.

Consequently, the current benchmarks no longer adequately fulfill the ***Benchmarks Order*** objectives of promoting cost-based interconnection **for** international calls and preventing

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[30] ***Id.,*** ¶ 112

[31] New Zealand Commerce Commission, ***International Benchmarking Report: A Comparative View of Interconnection Pricing,*** Sep. 2, 2002, at 21 (Figure 10). ***See also, Benchmarks Order,*** 12 FCC Rcd. 19,806, App. E (Tariffed Components Price Methodology), Table 5 (showing national extension prices of 12 cents for Australia, 12.7 cents for France, and 13.4 cents for Ireland).

[32] AT&T at 26; ***Benchmarks Order,*** 12 FCC Rcd. 19,806, App. E (Tariffed Components Price Methodology), Table 1 (showing country-specific tariffed component prices including international transmission, international switching, and national extension). ***See also, AT&T and Concert Objection to International Settlements Policy Modification Request for a Change in the Accounting Rate for International Message Telephone Service with Mexico,*** File No. ARC-MOD-20010530-00123 (filed Jun. 20, 2001), Att. A (Carrier-Tariff Component Pricing (CTCP) Study of Mexican Carrier Rates for U.S. Call Termination in Mexico, showing that Mexican carriers pay Telmex less than 4.5 cents per minute for the network elements and services required to terminate international calls from the United States) & Att. B (“Use of a more cost-based rate for off-net terminating interconnection in Mexico shows an adjusted CTCP for cross-border interconnection to be no more than 3.26 cents per minute.”).

competitive distortions in the **U.S. market**.[33] When benchmarks are this far above cost, as Sprint observes (pp. 10-11), benchmark rates still provide foreign carriers with huge **U.S.** consumer subsidies that can be used to distort **U.S. competition**.[34]

Indeed, the mere fact that foreign governments and carriers now cite the existing benchmarks as a purported justification for foreign termination rate ***increases*** demonstrates that outdated benchmarks have become an impediment to the Commission's public interest goal of cost-based rates. The Dominican Republic claims that its 8-cent **minimum** rate, which is a 50 per cent increase on existing rates, "conforms" with the 19-cent benchmark for that country? while the Philippine regulator notes that increased rates in the Philippines "are still well below" that benchmark rate.[36]

The Commission should not adopt the suggestion by Sprint (p. 15) that benchmarks should be updated only for "problem" countries on a case-by-case basis, such as where rates are increased. Benchmarks are now outdated for all countries and require complete revision. The Commission has previously has refused to "forbear from applying **our** settlement rate benchmarks on any route," because of the difficulty of establishing objective criteria to govern such an approach, and because of concerns that such an approach "may not be consistent

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[33] ***Benchmarks Order,*** 12 **FCC** Rcd. 19,806, ¶¶ 1-2.

[34] For this reason, Verizon (p. **7)** is incorrect in suggesting that current benchmarks are the only necessary safeguard against foreign rate increases.

[35] INDOTEL Resolution No. 043-02, Jun. 21, 2002, at ***5***

[36] Philippines National Telecommunications Commission, Memorandum Order, dated Feb. **7,** 2003

with our MFN obligations under the GATS."[37] The same considerations should apply here

Instead, as proposed by AT&T (p 27), the Commission should begin a further proceeding to establish new benchmarks that more closely reflect current cost data, including benchmarks for calls terminated on foreign mobile networks, as described below. By considering this issue further in a separate proceeding, the Commission would avoid any delay in the other rule changes being considered in this proceeding.

IV. THE COMMISSION SHOULD APPLY BENCHMARKS TO FOREIGN MOBILE TERMINATION RATES AND PROHIBIT INCREASES IN THOSE RATES.

U.S. international carriers provide compelling evidence that Commission action is urgently required to protect U.S. consumers against the abuse of market power by many foreign mobile operators. The surcharges now required to terminate international calls on mobile networks in almost eighty countries are frequently far above any reasonable measure of cost, including in some of the foreign countries with the most competitive fixed termination rates, and threaten to reverse much of the recent progress made in reducing foreign termination rates. Consequently, as described by PCCW, a Hong Kong carrier, (p. 4) these high rates also "discourage investment and deter growth in the international telephony market."

Predictably, foreign mobile carriers and their U.S. affiliates claim that these rates are cost-justified, that mobile markets are competitive, and that the Commission lacks jurisdiction to address this issue and instead should rely on the efforts of foreign regulators. These claims have no more validity in this proceeding than the similar arguments that were raised five years ago

[37] Benchmarks Order, 12 FCC Rcd. 19,806, ¶ 114

in opposition to benchmarks." As shown by AT&T, WorldCom, Sprint and Comptel, rates are far above cost, termination on mobile networks is not subject to market forces, the Commission indisputably has jurisdiction, and foreign regulators are taking action only in a small number of countries. Accordingly, immediate Commission action to limit mobile surcharges is necessary to ensure that U.S. consumers pay reasonable, more cost-based rates.

Specifically, the Commission should take the following actions: (1) add foreign mobile carriers to the list of carriers with foreign market power and apply existing benchmarks to all mobile terminating traffic; **(2)** apply existing ISP prohibitions on non-cost-based termination rate increases to traffic terminating on mobile networks; and **(3)** propose new benchmark rates for mobile termination as part of the new benchmarks proceeding requested above.

1. Foreign Mobile Operators Abuse Their Market Power by Charging Unreasonably High Termination Rates.

U.S. carriers confirm that rates for wholesale termination on mobile networks in many countries are far above cost. In the EU, where all wireline international markets are now competitive, average rates for interconnection on mobile networks are almost 20 cents per minute *-- **more** than **ten** times* greater than the average EU rate of less than **2** cents charged for "double transit" (nationwide) interconnection on fixed networks.[39] In **44** countries, including **23** upper income countries, mobile termination rates exceed benchmark levels.' These rates far exceed cost, which OFTEL in the UK has found to be in the ***6*** to **7.5** cent range. Likewise, Sprint **has**

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38 As noted above, two former foreign carrier opponents of benchmarks are now among the supporters of this Commission policy.

39 WorldCom at 18-19.

40 AT&T at **30.** The number of countries with mobile termination rates exceeding benchmark

submitted LRIC cost studies to **U.S.** State Public Service Commissions showing per minute termination costs of **3.9** cents in New York and ***6.6*** cents in Florida.[41] Other studies have reached similar conclusions.[42]

Not surprisingly, mobile carriers contend in response that these rates are justified by higher costs, but provide no support for these broad assertions." Indeed, Vodafone (p. **12)** goes so far as to claim that current rates in "many" European markets are actually "too low," and that call termination charges on CPP networks should be three to five times greater than on RPP networks. However, the regulatory model of CPP or RPP is irrelevant for determining the costs to terminate similar traffic on similar equipment, and Vodafone does not show otherwise. Instead, Vodafone's claims are premised on its view that mobile termination is not a discrete market but is a component of a "multi-product'' basket of retail mobile services, including subscription and handsets[44] -- a view that has been roundly rejected by OFTEL, the UK Competition Commission, and other regulators.[45]

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levels has increased to 44 from 40 at the time AT&T filed initial comments in this proceeding.

41 WorldCom at **19-20;** Sprint at **18**

42 AT&T at **30**

43 ***See*** Telecom Italia at **6;** Orange at **3** (contending that "it is clear and widely accepted" that costs are higher); Govt. of Japan at **1.**

44 ***See, e.g***. Vodafone at **12.** Vodafone also contends that that it is proper to charge higher termination prices to offset artificially low handset and subscription prices.

45 ***See The Competition Commission Report on the Charges Made by Mobile Operators for Terminating Calls,*** OFTEL, (rel. Feb **18, 2002);** ***Director General's Statement on the Competition Commission's Report on Mobile Termination Charges,*** OFTEL (Jan **22, 2003)** (Competition Commission endorses OFTEL analysis of call termination market). ***See also, e.g.***, ***Dominant Public Voice Curriers No. 2,*** Jamaica Office of Utilities Regulation (Nov.

Indeed, the European Commission made this finding just this month, concluding in its recommendation on product and service markets that "call termination on individual [mobile] networks is the appropriate relevant market."[46] Thus, as many **U.S.** carriers emphasize, proper market definition analysis demonstrates that there is a distinct market for call termination on each mobile network, and that mobile network operators in CPP countries therefore have market power.[47] The Commission has reached similar conclusions regarding call termination on CLEC networks in the United States.[48]

Equally beside the point are claims by other foreign mobile carriers and their **U.S.** affiliates that foreign mobile markets are competitive.[49] As AT&T described (p. 32 & n.65), the existence of retail competition in CPP countries does not prevent mobile operators from abusing their market power over wholesale call termination by charging unreasonably high termination rates, because the retail consumer who subscribes to the mobile operator is not the same consumer who indirectly pays the mobile operator for call termination.[50]

(Footnote continued **from** previous page)

2002) (concluding that all mobile public voice carriers are dominant in relation to mobile call termination on their respective networks).

46 Commission of the European Communities, ***Recommendation 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,*** Feb. 11, 2003, at 34.

47 AT&T at 33; C&W at 13; CompTel (pp. 2-3); Sprint at 17; WorldCom at 18.

48 ***Access Charge Reform,*** 16 FCC Rcd. 9923, 132 (2001). AT&T at 33; C&W at 13.

49 ***See*** ANIEL at *3;* ETNO at 2; Verizon at 8-9 (claiming that competition is increasing and "the potential for market abuse by a single carrier is unlikely").

50 The 75 percent mobile penetration achieved in Singapore through use of RPP refutes claims

2. Commission Action Is Necessary To Prevent Further Increases And To Establish New Benchmarks for Mobile Termination.

The Commission cannot rely on enforcement action by foreign regulators to prevent harm to U.S. consumers from this abuse of foreign market power, as foreign carriers and their U.S. affiliates request.[51] Although a few foreign regulators have initiated such action, as OFTEL and the UK Competition Commission have recently done in the UK, most have not.[52] Only in a handful of the seventy-six countries in which AT&T now pays additional mobile termination rates has the regulator even undertaken any review of these issues.[53] Regulatory intervention may also result in even higher mobile termination rates, as occurred in Uruguay, where the regulator established a minimum termination rate of 30 cents.[54] As Compte1 observes (p. 5), other foreign regulators may also seek to encourage subsidization through high mobile termination rates. Reliance on foreign regulation would therefore do little or nothing to advance the public interest in cost-oriented mobile termination rates in many foreign countries. An

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that CPP is necessary to increase mobile penetration. CompTel at 2. In any event, high CPP termination rates to subsidize low cost handsets or subscription rates cannot be justified as being necessary to increase penetration. The Commission stated in the *Benchmarks* Order that "[h]idden subsidies" of this type are not consistent with the WTO Reference Paper. 12 FCC Rcd. 19,806, ¶ 148.

51 See, *e.g.*, Telefonica at 7, Vodafone at 8; Verizon at 9-10

52 See *e.g.*, "Dutch Regulator Says Can't Prevent Tariffs Rising," *Total Telecom*, Jan. 23, 2003, http://www.totaltele.corn/view.asu?ArticleID=93841&Pub=tt; "German Watchdog Sees No Need for Mobile Regulation, Total *Telecom*, Feb. 12, 2003, http://www.totaltele.com/view.asp?ArticleID=94440&Pub=tt .

53 Sprint (p. 20) notes that the use of any lower domestic termination rates on mobile networks for arbitrage is "not dependable," and also entails "significant expense and inefficiency."

54 Reglamento de Interconexion, at Art. 28, www.ursecgub.uy (rel. Nov. 13, 2001).

immediate and comprehensive Commission response is rather required.[55]

First, the Commission should clarify that existing benchmarks apply to all mobile terminating traffic, whether this is terminated with foreign international carriers or directly with foreign mobile carriers. See AT&T at **33-34;** Comptel at **6;** WorldCom at **24-25.** Application of the benchmarks is necessary because foreign mobile carriers terminate mobile traffic on bottleneck facilities, and the Commission accordingly should add foreign mobile carriers to the list of carriers with foreign market power. AT&T at **33-34.** Second, the Commission should continue to apply existing ISP prohibitions on non-cost-based termination rate increases following the removal of other ISP requirements, and should apply this prohibition on rate increases to traffic terminating on mobile networks. AT&T at **34;** Comptel at **6.** Thus, the prohibition on rate increases should apply to mobile terminating traffic irrespective of whether this traffic is terminated under the ISP or under commercial arrangements. Lastly, as part of the further proceeding to establish new revised benchmark rates, the Commission should adopt rates for termination on mobile networks. AT&T at **34.**

Foreign mobile carriers cannot avoid inquiry into their **high** termination rates by

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[55] CompTel at **5.** Contrary to the claims by several foreign carriers, the availability of WTO dispute settlement does not avoid the necessity for Commission action here. The Commission has explained in dismissing similar prior claims by foreign carriers that the existence of WTO remedies does "not eliminate the need for and the appropriateness of [Commission] regulation," because any such relief may not be obtained on a timely basis and is dependent upon action by the Executive Branch. Rules ***and Policies on Foreign Participation in the U.S. Telecommunications Market*****, 12 FCC Rcd. 23,891, ¶ 359 (1997).** The Commission stated: "We have a separate statutory obligation to regulate and enforce our rules that cannot be stayed while the Executive Branch seeks relief in an international tribunal." Id.

questioning U.S. carrier consumer charges for calls terminating on mobile networks.[56] The relevant issue here is not the levels at which nondominant U.S. carriers set rates in the highly competitive U.S. market, where they are subject to competition from any U.S. carrier that wishes to charge the same or different rates, but the level at which foreign mobile carriers set termination rates on their own networks, where they are subject to no competition at all.

Additionally, these foreign carrier claims are based on major factual inaccuracies. AT&T does not pay any of the alleged mobile rates on which NTT (p. 5) and Vodafone (p. 30) base their allegations.[57] AT&T sets the level of its consumer mobile termination charge to recover the additional charges that AT&T is required to pay its foreign correspondents when calls are terminated on foreign mobile networks. These charges are incremental charges levied by the foreign international carriers with which AT&T has correspondent relationships in these countries, which hand-off this traffic to the relevant mobile carrier.[58] In many countries, AT&T is charged additional fees for this traffic by the foreign international facilities-based correspondent beyond the amounts charged by the relevant mobile carrier.[59]

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56 See NTT at 2-7; Vodafone at 25-31.

57 Despite using the same source (Ovum), NTT (p. 5) and Vodafone (p. 30) each cite different mobile rates in Austria, Sweden and the UK, all of which are different from the rates that AT&T pays. Similarly, the rates that NTT cites for three other countries and that Vodafone cites for two other countries are different from the rates that AT&T pays.

58 In monopoly countries, the mobile carrier may be the same entity, and in many countries mobile carriers are affiliated with wireline carriers, including the dominant wireline carrier. Because these are incremental charges to AT&T, Vodafone (p. 29) incorrectly subtracts a fixed termination charge from the mobile charge.

59 Although it has entered into direct termination arrangements with many foreign competitive wireline carriers, AT&T thus far has been unsuccessful in its efforts to reach direct agreements with foreign mobile carriers.

AT&T updates its consumer mobile termination charges at least quarterly to take account of fluctuations resulting from increases or decreases in these charges, changes in the conversion rate between the SDR (which is used for many termination rate agreements) and the U.S. dollar, and other reasons. Consistent with its normal billing practice, AT&T levies these charges on a per minute basis.

Respectfully submitted,

AT&T CORP

By James J. R. Talbot / mw
Mark C. Rosenblum
Lawrence J. Lafaro
James J. R. Talbot

One AT&T Way
Bedminster, New Jersey 07921
(908) 532-1847

Dated: February 19, 2003.

CERTIFICATE OF SERVICE

I, Theresa Donatiello Neidich, do hereby certify that on this 19'' day of February 2003, a copy of the foregoing "Reply Comments of AT&T Corp. was served by **U.S. first** class mail, postage prepaid, upon the parties listed below:

/s/ Theresa Donatiello-Neidich
Theresa Donatiello Neidich

James Ball*
Chief, Policy Division
International Bureau
445 12th Street, SW
Washington, DC 20554

Lisa Choi*
Senior Legal Adviser
Policy Division
International Bureau
445 12th Street, SW
Washington, DC 20554

Gardner Foster*
Attorney, Policy Division
International Bureau
445 12th Street, SW
Washington, DC 20554

Qualex International*
445 12th Street, SW
Washington, DC 20554

Erik Whitlock
Cable & Wireless USA, Inc.
1130 Connecticut Avenue, *NW*
Suite 1201
Washington, DC 20036

Ewan Sutherland, Executive Director
Bd Reyers 80, B-1030
Brussels, Belgium

Carol ***Ann*** Bischoff
Executive Vice President
and General Counsel
Competitive Telecommunications
Association
1900 M Street, NW-Suite 800
Washington, DC 20036

Joseph P. Markoski
Squire, Saunders & Dempsey L.L.P.
1201 Pennsylvania Avenue, NW
PO Box 407
Washington, DC 20044-0407
Counsel to NTT DoCoMo, Inc.

Paul Franklin
Group VP of Carrier Services
and Regulatory Affairs
Orange **SA**
50 George Street
London W1U 7DZ

Joseph A. Godles
Goldberg, Godles, Weiner & Wright
1229 Nineteenth Street, *NW*
Washington, DC 20036
Counsel to Panamsat Corp.

Kerry E. Murray
WorldCom, Inc.
1133 19th Street, *NW*
Washington, DC 20036

* hand-delivery

Stuart Chiron
Director of Regulatory Affairs
PCCW Limited
40th Floor-PCCW Tower
Taikoo Place-979 King's Road
Quarry Bay, Hong Kong

Tiziana Talevi
Telecom Italia of North America
745 5th Avenue
New York, NY 10151

Kent Nakamura
Sprint Communications Company, L.P.
401 9th Street, NW #400
Washington, DC 20004

Charles D. Cosson
Vice President, Public Policy
Vodafone Americas Inc.
2999 Oak Road, 10th Floor
Walnut Creek, CA 94597

Kathleen M. Grillo
Verizon
1515 No Courthouse Rd-Suite 500
Arlington, VA 22201

Isabelle Mauro, Director
GSM Europe
6-8 Old Bond Street
London W1S 4PH
United Kingdom

AT&T has been unable to locate addresses to serve the following parties:
AHCIET (Asociacion Hispanoamericana de Cetros)
ANIEL (Asociacion Nacional de Industrias Eleconicas)
ASETA (
Entel
ETNO (European Telecommunications Network Operators)
Japan (Government of)
Orbitel
Telefonica