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February 26, 2003

BY ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: *Ex Parte Presentation*
International Settlements Policy Reform, IB Docket No. 02-234; International Settlement Rates, IB Docket No. 96-261

Dear Ms. Dortch:

On February 26, 2004, Donna Sorgi and Scott Shefferman of MCI, and Ruth Milkman, Lawler, Metzger & Milkman, counsel to MCI, met with Sheryl Wilkerson to discuss the above-captioned proceedings. In that meeting, MCI provided Ms. Wilkerson with the attached talking points. MCI's oral presentation was consistent with the attached talking points, and its previously-filed written submissions in these dockets.

Pursuant to the Commission's rules, this letter is being provided to you for inclusion in the public record of the above-referenced proceeding.

Sincerely,

/s/ Ruth Milkman
Ruth Milkman

Enclosure

cc: Sheryl Wilkerson

MCI TALKING POINTS
INTERNATIONAL SETTLEMENTS POLICY REFORM
IB DOCKET NOS. 02-324; 96-21

- **The Commission should generally encourage use of commercial settlement rate arrangements, while carefully protecting against whipsawing and abuse of market power by foreign carriers**

  - Commission should remove the equal division, uniformity and proportionate return requirements of the ISP on routes where settlement rates in effect are at or below current Benchmark rates.
  - Eliminate international simple resale (ISR) authorization mechanism and remove ISP automatically on existing ISR-authorized routes.
  - Eliminate section 43.51 and 64.1001 filing requirements on all routes where ISP has been removed.

- **Foreign carriers continue to abuse their market power to maintain or increase subsidies from U.S. consumers via settlement rate increases**

  - The majority of telecommunications markets globally remain monopolistic or minimally competitive.
  - Even in highly liberalized markets, mobile operators maintain market power for termination of calls on their networks.
  - While fixed line settlement rates have decreased significantly since 1997, the trend has reversed and settlement rates are now *increasing* on a growing number of international routes.
  - In the past year, attempts to increase settlement rates have been made by carriers or governments in: the Philippines, Dominican Republic, Jamaica, Peru, Nicaragua, India, Switzerland, Greece and several countries in the West Indies, to name just a few.

- **The Commission should reaffirm and enforce its longstanding policies and rules designed to address whipsawing and abuse of market power by foreign carriers, even on routes where the rate negotiation and filing requirements of the ISP has been removed**

  - The Commission must maintain or adopt safeguards to prevent unilateral rate increases and whipsawing that leads to higher rates for U.S. consumers.
  - The Commission should maintain the following existing safeguards:
    - Prohibition on non-cost based settlement rates
    - Prohibition on whipsawing of U.S. carriers
    - "No special concessions" rule
    - Traffic and revenue (Section 43.61) and dominant carrier reporting requirements

- **The Commission should adopt specific enforcement procedures to address unilateral non-cost-based rate increases and blocking by foreign carriers with market power**

  - The Commission should adopt a carrier-initiated enforcement process, similar to the mechanism established in the *Benchmarks Order*, when a foreign carrier is demanding a unilateral rate increase.
  - NTIA urges "automatic examination" by the Commission when a foreign government mandates a price floor that increases rates above competitively negotiated levels, even where the increase is below benchmark levels (NTIA comments, pp. 1-2).
  - Foreign carrier can submit cost data demonstrating that the increase is cost-justified and therefore consistent with the Commission's policy requiring cost-based settlement rates.
  - The Commission should adopt a procedure allowing it to respond to blocking by foreign carriers immediately and forcefully. For example, continue policy of issuing non-payment orders, or where appropriate impose section 214 conditions on its U.S. affiliate.

- **International settlement rates for mobile termination are far above cost and warrant Commission review**

  - Above cost mobile termination rates are undermining the Commission's successful settlement rate policies.
  - Now nearly 100 countries charge above-cost mobile settlement rates.
  - Broad recognition in the record in this proceeding that mobile termination rates are a problem (AT&T, Cable & Wireless, CompTel, International Users Group, MCI, PCCW, NTIA, Sprint).
  - Ovum (January 2004) study concludes that profit margins of over 100% for mobile operators' on mobile termination rates are common.
  - CERNA/Univ. of Warwick/WIK study (July 2003) estimates that above-cost transfers from fixed line customers to mobile operators in UK, Germany and France *alone* amounted to 19 Billion Euros (US$15Billion) between 1998-2000.

- **The Commission should reaffirm that the *Benchmarks Order* applies to all international settlement rates, including mobile**

  - In the *Benchmarks Order*, the Commission concluded that, "*any* settlement rate that exceeds the relevant benchmark constitutes an unjust and unreasonable 'charge' or 'practice' under Section 201" (emphasis added) (12 FCC Rcd. 19806, ¶11).
  - A contrary finding would be inconsistent with existing policy; such a modification to existing *Benchmarks* policy is not supported in record.

- **The Commission should adopt international mobile settlement rate benchmarks or best practices in a further proceeding**

  - The Commission should adopt revised benchmark rates for both mobile and fixed traffic in a further proceeding, based on AT&T's tariffed component pricing (TCP) data filed in this proceeding.
  - *Benchmarks Order* recognized that "periodic revisions are necessary" of the benchmarks to keep pace with cost reductions and "to encourage further movement toward cost-based rates" (12 FCC Rcd. 19806, ¶ 112)
  - NTIA urges the Commission in its comments to explicitly adopt a principle of cost-orientation for international mobile services.
  - At a minimum, the Commission should adopt non-binding benchmark ranges for settlement rates, including mobile, as it did in 1992 prior to the binding benchmarks implemented in 1997. Such rates should be based on a TCP analysis.

- **Mobile operators' self-serving arguments are red herrings**

  - Foreign regulators will not protect U.S. consumers.
    - Only a handful of regulators have addressed or are addressing excessive mobile termination, and even those regulators have not required cost-based mobile termination rates.
    - Other regulators explicitly refuse to address mobile termination rates (*e.g.*, RegTP in Germany).
    - The vast majority of regulators have taken no action at all.
    - Some regulators have even *increased* mobile termination rates recently (Jamaica, Dominican Republic, India).
  - Mobile termination rates are often discriminatory:
    - Mobile operators in many cases charge lower rates for terminating calls from other mobile operators' customers than they do for terminating calls originated either internationally or domestically from fixed line customers.
    - Mobile operators routinely offer business customers lower "Mobile VPN" rates for terminating calls on their networks than they offer wholesale fixed-line customers.
  - The Calling Party Pays system does not justify above-cost termination:
    - CTIA admits in an *ex parte* that termination rates in CPP markets are "not limited to recovering the costs of terminating a call, but instead [are] designed to recover a broader range of carrier costs."
    - The decision by operators in CPP markets to cross-subsidize at the retail level does not alter the fact that the cost of termination on a mobile network is in fact no different in CPP markets.