



March 3, 2004

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: ***International Settlements Policy Reform/International Settlement Rates,
IB Docket Nos. 02-324, 96-261***

Dear Ms. Dortch:

The CompTel/ASCENT Alliance was formed in November 2003 by the merger of the two leading trade associations in the competitive telecommunications industry, the Competitive Telecommunications Association ("CompTel"), founded in 1981, and the Association of Communications Enterprises ("ASCENT") (combined as "CompTel/ASCENT Alliance"). With 400 Members, the CompTel/ASCENT Alliance is the largest and oldest association in the U.S. representing competitive facilities-based carriers, providers using unbundled network elements, global integrated communications companies, and their supplier partners. The Alliance, which is based in Washington, D.C., includes companies of all sizes and profiles that provide voice, data and video services in the U.S. and around the world. CompTel/ASCENT Members share a common objective: to create and sustain true competition in the telecommunications industry, both domestically and internationally. With the development of liberalized regulatory regimes and competitive market conditions in a growing number of countries, many of CompTel/ASCENT Alliance Members have made significant investments in telecommunications facilities and services outside the United States.

CompTel/ASCENT submits the attached *ex parte* filing in order to address two questions posed by Commissioners' Legal Advisers and Commission staff in the above-mentioned proceeding regarding the Commission's course of action on the International Settlements Policy (ISP) as applied to mobile termination rates.

Please contact the undersigned should you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, reading "Carol Ann Bischoff". The signature is written in a cursive style and is enclosed within a thin black rectangular border.

Carol Ann Bischoff
Chief Legal Officer

Attachment (1)

cc: Sheryl Wilkerson, Legal Advisor, FCC Chairman Michael K. Powell
Jennifer Manner, Legal Advisor, FCC Commissioner Kathleen Q. Abernathy
Paul Margie, Legal Advisor, FCC Commissioner Michael J. Copps
Sam Feder, Legal Advisor, FCC Commissioner Kevin J. Martin
Barry Ohlson, Legal Advisor, FCC Commission Jonathan S. Adelstein
Anna Gomez, Deputy Bureau Chief, FCC International Bureau
Alexandra Fields, Assistant Division Chief, FCC International Bureau

CompTel/ASCENT Alliance *Ex Parte*
IB Docket No. 02-324, 96-261

This *ex parte* filing is intended to address two questions posed by Commissioners' Legal Advisers and Commission staff about the Commission's course of action on the International Settlements Policy as applied to mobile termination rates.

- 1. *If the Commission opened a further Notice on the International Settlements Policy and mobile termination rates, how should it state the Commission's objectives?***
- 2. *What specific questions would the Commission want answered in regard to mobile termination rates and the Commission's policy options?***

I. What Would Be the Objectives of a Further Notice?

We urge the Commission to conclude, based on its analysis of the record, that there are three objectives for a further notice:

1. The Notice should invite a record that would enable the Commission to reach a conclusion about the degree, and sustainability, of significant market power by foreign mobile carriers in regard to mobile termination rates, especially in Calling Party Pay (CPP) systems. The United Kingdom, the European Commission, New Zealand, and the Republic of Korea, among others, have concluded in recent decisions that there is significant market power in regard to mobile termination in their jurisdictions and, as a result, mobile termination rates may not be cost justified even though there is competition in the mobile retail market. Just as the FCC concluded in 2003 (Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services; WT Docket No. 02-379; July 14, 2003), these authorities have concluded that a calling party pays system makes it unlikely that competition in the retail market will correct the problem.
2. A Further Public Notice should refine the Commission's understanding of the cost structure of mobile termination rates. The current record has not resolved conflicting claims about how to best calculate costs tied to mobile termination rates, especially under the calling party pays system. Absent a better understanding of this cost structure it may be difficult for the Commission to undertake any sustained action on mobile termination rates.
3. Without presupposing a policy conclusion the Notice should examine the Commission's options for addressing market power. In particular, is there reason to believe that any problem is self-correcting in light of market forces, likely to be corrected by actions of regulatory authorities of other governments, capable of being addressed by enforcement actions of the Commission in response to specific complaints by carriers, or requiring the creation of new regulatory tools (such as Commission benchmarks specifically tailored to mobile termination rates that are used as guidelines by U.S. carriers)?

Procedurally, the Further Notice should emphasize:

1. The Commission invites and welcomes the participation of other National Regulatory Authorities in this proceeding so that the record represents the judgment and analysis of regulators from throughout the world. Their participation will advance transparency in the market and this will in itself contribute to market efficiency.
2. The Commission seeks a timely decision schedule but one consistent with developments in other governments that could influence its analysis. Completion of Commission action by the end of the first quarter of 2005 would allow other key regulators, especially in Europe, to complete scheduled policy reviews.
3. In the interim the Commission will carefully monitor market developments in case enforcement action is necessary in regard to increased mobile termination rates in a particular market.

II. Specific Questions for Further Examination in a Further Proceeding

The Commission should clearly state that the Notice does not presuppose a particular policy response to a problem involving mobile termination rates. The appropriate policy depends on a more precise definition of the problem in order to compare the costs and benefits of different policies. The Notice should, at minimum, seek comment on the following questions:

1. In light of the economics of calling party pays, the overwhelmingly predominant system outside of the US, is there any reason to disagree with the conclusion of many foreign authorities that individual mobile network operators (MNOs) exercise significant market power in regard to termination to their customers? (If so, should the FCC add these MNOs to its list of foreign carriers with market power?)
2. In a calling party pays system, is there any credible countervailing market power to that of the MNOs? For example, Ofcom has ruled that consumers do not have an incentive to switch carriers because of high termination rates under calling party pays.
3. How should the FCC calculate costs under the calling party pays system for mobile termination rates? The Commission has at least two economic models in the current record. AT&T has proposed a tariffed component pricing rule that is similar in its analytic composition to current benchmarks (i.e., including international transmission, gateway switching, and mobile termination tariffs in a country). BellSouth and others have argued that calling party pays entails a fundamentally different cost model. They suggest that mobile termination rates are inherently part of a bundled price for cost components such as spectrum, network access, call origination and handsets. (While the Republic of Korea has used a version of LRIC to set mobile termination rates, the members of CompTel recognize the difficulties of undertaking such exercises for international services, just as they recognized them in the case of the 1997 Benchmarks. The Notice may urge the outline of models that are practical within the limits of information when dealing with many national markets.)

4. A number of filings claim that a calling party pays system plus pre-paid services advances the goal of universal service and network build-out in developing countries. The logic is that high mobile termination rates make it profitable to serve consumers using inexpensive pre-paid plans (including subsidizing the consumer handsets). Even if the Commission accepts the view that U.S. consumers should contribute to such a universal service subsidy, how much subsidy is being devoted to this goal? (Under the Basic Telecommunications Agreement of the WTO such subsidies should be cost-oriented and transparent.) If the universal service subsidy exists, does it justify the level of mobile termination rates in a country?
5. If a refined method for analyzing cost justification for mobile termination rates leads to the conclusion that mobile termination rates in many countries are significantly above cost and reflect SMP, what actions should the FCC pursue? Specific alternatives include:
 - a. Is there significant evidence of action by foreign regulators that will effectively address any problem? What program of international consultation and advocacy by the Commission and the USG would advance this remedy?
 - b. Could FCC enforcement actions on the basis of specific complaints by U.S. carriers provide timely correction for specific market problems? Would this suffice if mobile termination rates that are not cost justified prove to be a common international problem?
 - c. Could the FCC effectively employ new benchmarks specifically tailored to mobile termination rates either as a policy guideline (as was the case with Commission benchmarks for international settlements before 1997) or as a mandatory cap on mobile termination rates (phased in over time)?