

CTIA

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Cellular Telecommunications & Internet Association

March 4, 2004

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

**RE: International Settlements Policy Reform (IB Docket No. 02-324);
International Settlement Rates (IB Docket No. 96-261)**

Dear Secretary Dortch:

Pursuant to Section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206(b), The Cellular Telecommunications & Internet Association ("CTIA") submits the following *Ex Parte* Comments for inclusion in the record of the above-captioned proceedings. These *Ex Parte* Comments respond to the claims set forth in an electronic mail message from AT&T to Paul Margie of Commissioner Copps's office concerning the Commission's international settlement rate benchmarks ("benchmarks") that was filed with the Commission on February 23, 2004. See Letter from Douglas W. Schoenberger to Marlene H. Dortch (Feb. 24, 2004) ("*AT&T Letter*"). In that electronic mail message, AT&T asserted that the Commission's benchmarks "apply to the settlement rates that U.S. carriers pay to terminate U.S. international switched traffic on both fixed and mobile networks in foreign countries." (*AT&T Letter* at 2.) AT&T's claims are without merit.

In support of its assertions, AT&T quotes three general statements in the Commission's benchmarks orders. See *In the Matter of International Settlement Rates*, IB Docket No. 96-261, Report and Order, 12 FCC Rcd 19806 (1997) ("*Benchmarks Order*");¹ *In the Matter of International Settlement Rates*, IB Docket No. 96-261, Report and Order on Reconsideration and Order Lifting Stay 14 FCC Rcd 9256 (1999) ("*Benchmarks Order on Reconsideration*").² The language quoted by AT&T, however,

¹ AT&T quotes the following language: "benchmarks . . . govern the international settlement rates that U.S. carriers may pay foreign carriers to terminate *international traffic originating in the United States*." (at 19807, ¶ 1) (emphasis added by AT&T); "the rules we adopt here apply [only] to the settlement rates that carriers subject to our jurisdiction must pay for *termination of U.S.-originated traffic*." (at 19951, ¶ 312) (emphasis added by AT&T).

² AT&T quotes the following language: "we affirm the Commission's previous finding that it possesses authority to regulate international settlement payments by U.S. carriers *for the termination of traffic originating in the United States*." (at 9256a, ¶ 2) (emphasis added by AT&T).



appears in the opening or closing paragraphs of the Commission's benchmarks orders.³ Viewed in the context of where these statements are located in the Commission's two orders, they can hardly be deemed a definitive statement of the scope or applicability of the Commission's international settlement benchmarks. Rather, they are introductory and conclusory statements about the detailed discussion and analysis that follows and precedes these statements. The broad and general nature of these three statements is therefore not surprising.

Also unsurprising is AT&T's inability to identify any other language or reference in more than 350 paragraphs of discussion and analysis in the Commission's two orders that even suggests, much less confirms, that the Commission's benchmarks were intended to apply – or were developed with reference to – mobile termination rates. As AT&T is well aware, the benchmarks developed by the Commission were intended to apply to the foreign carriers with which U.S. carriers had traditional fixed line correspondent relationships. As the record of these proceedings makes clear, U.S. carriers did not then, and rarely have now, such relationships with mobile operators in other countries.

More to the point, the Commission's benchmarks were developed using foreign tariffs for, *inter alia*, national and local transport for *fixed* line calls. The "Tariffed Components Price" Methodology ("TCP methodology") adopted by the Commission "uses the sum for each country of these tariffed prices for the international transmission and national network components and the price for the international gateway switching component [taken from ITU-T Recommendation D.140] ... to calculate settlement rate benchmarks." *Benchmarks Order* at 19828, ¶ 46. Not once in the Commission's review of the TCP methodology, or anywhere else in the two benchmarks orders, did the Commission discuss – or even mention – tariffs for mobile services, either as a cost basis for determining the benchmarks or as being subject to the benchmarks being developed. Indeed, a computer word search of the two benchmarks orders indicates that the words "mobile," "wireless" and "cellular" nowhere appear as part of the Commission's analysis.

Accordingly, the Commission would have no legal or factual basis for subjecting foreign mobile termination rates to benchmarks that were developed solely on the basis of tariffs applicable to fixed line calls. Indeed, in adopting the benchmarks, the Commission concluded that foreign tariffs for fixed line calls provided the best evidence

³ AT&T also quotes language from the 1999 opinion of the U.S. Court of Appeals affirming the Commission's benchmarks policies. *See Cable & Wireless P.L.C. v. FCC*, 166 F.3d 1224, 1226 (D.C. Cir. 1999) ("In order to strengthen the bargaining position of domestic telephone companies in negotiations with their foreign counterparts over *the price of completing international long-distance calls*, the Federal Communications Commission issued an Order prohibiting U.S. companies from paying more than certain benchmark rates for *such 'termination' services.*") (emphasis added by AT&T). Again, this statement appears in the opening paragraph of the Court's opinion – indeed, it is the first sentence – and is nothing more than an introduction of the case at hand.



of cost-oriented rates for terminating such U.S.-originated traffic.⁴ Applying that same conceptual framework to mobile termination rates, as AT&T suggests, would have required the Commission to look to foreign tariffs for mobile termination (that do not discriminate against international calls) as the best evidence of cost-oriented charges.

The additional orders and enforcement actions referenced by AT&T are similarly unavailing.⁵ (*AT&T Letter* at 2-3.) Three of the referenced orders are Bureau-level decisions enforcing the Commission's benchmarks with respect to Qatar, Kuwait and Cyprus, none of which addresses mobile termination rates.⁶ The two petitions filed by WorldCom and Sprint seeking waivers of the Commission's international settlements policy ("ISP") to enter into proposed settlement agreements with Embratel in Brazil similarly provide no support for AT&T's assertions. *Waiver of the International Settlements Policy*, DA 00-1471, 15 FCC Rcd 11447 (2000). A review of the carriers' petitions, the public notice cited by AT&T, and the order ultimately granting the petitions indicates that neither the Commission's benchmarks nor their applicability to the termination of calls on mobile networks was an issue raised by the carriers.⁷ This is not

⁴ See *Benchmarks Order* at 19839-40, ¶ 67 ("A primary benefit of the TCP methodology is that it relies on data that is publicly available: carriers' tariffed rates and information published by the ITU. Moreover, it is based on a framework that received consensus approval from the Members of the ITU. Importantly, the TCP methodology is equitable because it relies primarily on the tariffed prices carriers charge to their own domestic customers.").

⁵ AT&T also references a letter dated August 3, 1998, from the then-Chief of the Commission's International Bureau to British Telecom, which does not appear to be publicly available. According to the language quoted by AT&T (*AT&T Letter* at 2-3), the Bureau Chief questioned British Telecom's proposal to use a rate of 0.09 SDR for terminating a mobile call in the United Kingdom because the company had not demonstrated that this amount was cost-justified. The quoted language, however, provides no support for AT&T's assertion that the Commission's benchmarks apply to the termination of calls on mobile networks and, in any event, is a statement at the Bureau, rather than the Commission, level.

⁶ *In the Matter of AT&T Corporation, WorldCom, Inc., Petition for Enforcement of International Settlements Benchmark Rates for Service with Qatar*, IB Docket No. 96-261, Order, 16 FCC Rcd 16203 (2001); *In the Matter of AT&T Corp., MCI WorldCom, Inc., Sprint Communications Co., L.P., Petition for Enforcement of International Settlements Benchmark Rates for Service with Kuwait*, IB 96-261, Order, 14 FCC Rcd 8868 (1999); *In the Matter of AT&T Corp., MCI WorldCom, Inc., Sprint Communications Co., L.P., Petition for Enforcement of International Settlements Benchmark Rates for Service with Cyprus*, IB 96-261, Order, 14 FCC Rcd 8874 (1999).

⁷ See *International Authorizations Granted*, DA 00-1743, Public Notice, 15 FCC Rcd 13962 (2000); *Sprint Communications Company L.P.'s International Settlements Policy Waiver Request for Changes in the Accounting Rate for International Message Telephone Service with Brazil*, File No. ISP-WAV-20000606-00013 (filed May 23, 2000); *MCI WorldCom, Inc.'s Petition for Waiver of the International Settlements Policy for a*



surprising as the proposed settlement rates were below the benchmark rates for fixed line calls.

Finally, AT&T references a 2003 order in which the International Bureau required U.S. carriers to suspend payments for terminating U.S.-originated calls in the Philippines because six Filipino carriers were found to have engaged in anticompetitive “whipsawing” to force U.S. carriers to pay higher termination rates. *In the Matter of AT&T Corp. Emergency Petition for Settlements Stop Payment Order and Request for Immediate Interim Relief and Petition of WorldCom, Inc. for Prevention of “Whipsawing” on the U.S. – Philippines Route*, IB Docket No. 03-38, Order, 18 FCC Rcd 3519 (2003). AT&T notes that one of the six Filipino carriers is a mobile operator. As is true of AT&T’s other references, however, the Bureau’s order, which addressed a unique set of circumstances demonstrating “whipsawing,” nowhere finds that the Commission’s benchmarks apply to the termination of calls on mobile networks. Indeed, the Commission’s benchmarks were not relevant to the Bureau’s decision as the rates in question were below the relevant benchmark for fixed line calls. *Id.* at 3528 n.47.

In sum, there is no merit to, and AT&T has failed to identify any support for, its assertion that the Commission’s benchmarks apply to the termination of U.S.-originated calls on foreign mobile networks.

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Change in Accounting Rate for International Message Telephone Service in Brazil, File No. ISP-WAV-20000601-00012 (filed June 1, 2000).

