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

In the Matter of	)	
	)	
The Effect of Mobile Termination Rates	)	IB Docket No. 04-398
On U.S. Customers	)	

REPLY COMMENTS OF MCI, INC.

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MCI, Inc. ("MCI") submits these reply comments in response to the Commission's Notice of Inquiry ("NOI") in the above-referenced proceeding.[1] As MCI explained in its initial comments, foreign mobile network operators ("MNOs") in many countries are charging unreasonably high termination rates and these rates are harming U.S. customers and U.S. carriers. Although many commenters attempt to shift the Commission's focus away from the core issue raised by the NOI, no party has – or could have – succeeded in rebutting the fact that the current system results in U.S. customers paying excessive rates for calls terminating on foreign mobile networks. MCI therefore renews its request that the Commission address this important problem before the situation deteriorates any further.[2]

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1 *The Effect of Foreign Mobile Termination Rates On U.S. Customers*, Notice of Inquiry, 19 FCC Rcd 21395 (2004) ("NOI").

2 Mexico's impending switch to a calling-party pays regime, for example, threatens to escalate the harm to U.S. customers significantly in the near future. *See* MCI Comments at 9 (noting that Mexico is the second largest U.S.-international route.) (Unless otherwise indicated, all comments cited herein were filed in IB Docket No. 04-398 on January 14, 2005.)

I. INTRODUCTION AND SUMMARY

The fundamental question raised by the NOI is whether foreign mobile termination rates are harming U.S. customers and competition in the U.S.-international services market.[3] Indeed, one of the FCC's core missions is to ensure that rates paid by customers in the United States are just and reasonable.[4] As MCI has explained, and as the record in this proceeding clearly demonstrates, current foreign mobile termination practices are harming U.S customers and competition on international routes.[5] This harm is caused by a combination of high foreign mobile termination rates, high call volumes between the United States and foreign mobile networks, the asymmetry between the "calling-party pays" ("CPP") regime that governs mobile termination in most countries and the "receiving-party pays" ("RPP") convention that applies in the United States, and the lack of sufficient regulatory involvement by regulators in many countries.[6] While CPP regimes have certain advantages, they also require involvement by the regulator that is different from the involvement required in an RPP regime.[7]

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3 *See* NOI, ¶ 7.

4 47 U.S.C. § 201(b); *International Settlements Policy Reform, International Settlement Rates*, First Report and Order, 19 FCC Rcd 5709, ¶ 41 (2004) ("ISP R&O"). *See also,* ISP R&O at ¶ 91 (discussing the Commission's "broad authority to protect U.S. consumers from harms resulting from anti-competitive behavior.")

5 *See, e.g.,* MCI Comments at 5-10; Sprint Comments at 4-6; AT&T Comments at 2.

6 *See* Sprint Comments at 4-5; *see also* AT&T Comments at 14, 19 (citing studies concluding that an RPP regime is much more likely to produce lower mobile termination rates than a CPP regime); *id.* at 11 (citing ITU report finding that average fixed to mobile interconnection rates are approximately 20 times higher under CPP regimes than under RPP regimes); INTUG Comments at 4-5, 10 (Jan. 6, 2005) (discussing the pressure on foreign regulators to refrain from intervening with mobile termination rates); NOI at ¶ 14 (noting AT&T's suggestion that as more countries impose mobile charges, a majority of those countries are not taking any regulatory action concerning foreign mobile termination rates).

7 In the United States, for example, where wireline carriers operate under a CPP regime, the FCC has been compelled to step in and regulate the terminating access charges of competitive local exchange carriers. *See Access Charge Reform; Reform of Access Charges*

Some parties have tried to divert the Commission's attention from the core problem of harm to U.S. customers by focusing on tangential issues such as the presence or absence of discrimination[8] and the manner in which U.S. carriers recover their costs for foreign mobile termination from their subscribers.[9] As explained below, however, these arguments lack merit, and should not distract the Commission from fulfilling its mission of protecting U.S. customers from unreasonable rates and U.S. carriers from anti-competitive harms.

II. DISCUSSION

A. The Commission Need Not Find Overt Discrimination To Conclude That High Foreign Mobile Termination Rates Are Harming U.S. Customers

Several commenters argue that there is no evidence that foreign MNOs discriminate against U.S. carriers and, therefore, no need for the Commission to take action.[10] The question for the Commission, however, is whether there is a disproportionate impact on U.S. customers resulting in those customers paying unjust and unreasonable rates.

The current rate structure for foreign mobile termination rates subjects U.S. customers that communicate with mobile telephone subscribers in many foreign countries to disadvantages not experienced by customers in those foreign countries.[11] Thus, even if the mobile termination rates are not discriminatory on their face, they clearly have a disproportionate impact on U.S. customers. As Sprint explained in its comments, "the dissonance between CPP and RPP regimes . . . creates problems for U.S. carriers and for U.S. consumers who rely on those carriers to make

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Imposed by Competitive Local Exchange Carriers, CC Docket 92-262, Seventh Report and Order and FNPRM, 16 FCC Rcd 9923 (2001).

8 *See, e.g.,* Vodafone Comments at 9-11; CTIA Comments at 2-3.

9 *See, e.g.*, Vodafone Comments at 31-35; CTIA Comments at 7.

10 *See, e.g.*, CTIA Comments at 9; Verizon Comments at 5-6.

11 *See* NII Holdings Comments at 9 (explaining that dominant operators use excessive mobile termination rates to subsidize "on-net costs with off-net revenues.")

telephone calls overseas."[12] Specifically, due to the asymmetry between the RPP regime that exists in the United States and the CPP regime that applies in most other countries, U.S. wireless subscribers are always the parties that pay, regardless of where the call originates or terminates.[13] The result is a "substantial net outflow of payments from the United States to countries with CPP regimes for mobile termination."[14] These "outflows" are payments made by U.S. customers to foreign mobile carriers, to the benefit of foreign mobile subscribers and the detriment of U.S. subscribers and carriers.[15]

More fundamentally, regardless of whether discrimination exists, U.S. customers are paying unreasonably high rates for calls to mobile subscribers in many foreign countries, without

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[12] Sprint Comments at 2. MCI does not object to countries employing a CPP regime, nor does it expect CPP countries to switch to an RPP system. *See* INTUG Comments at 4 (recognizing that it is "extremely unlikely" that countries are going to switch from CPP to RPP). In fact, the United States has adopted the CPP model for wireline calls. If a country has a CPP system, however, it must also exercise sufficient regulatory oversight to ensure that carriers do not charge unreasonable rates. *See* NOI, ¶ 36.

[13] Sprint Comments at 4 (noting that the current system effectively subjects U.S. wireless subscribers to an "APP" or "always the party that pays" regime).

[14] *Id.*

[15] *See* MCI Comments at 6 (noting that if current trends continue, U.S. customers may soon be paying close to one billion dollars to foreign mobile operators); *see also* AT&T Comments at 3, 12; Sprint Comments at 6. For this reason, it makes little difference whether BellSouth is correct in claiming that "there often is little difference between the [mobile] termination rates applied to domestically-originated calls as compared to foreign-originated calls" in many countries. *See* BellSouth Comments at 4. High mobile termination rates may be used to subsidize hand-sets or otherwise benefit foreign users of mobile phones. *See* NII Holdings Comments at 3 (explaining that high termination rates allow mobile operators to subsidize the retail products and services they offer). Moreover, the high wireless penetration rates in many countries suggest that there is a significant overlap between mobile users and wireline users. In those cases, many customers may be indifferent to high mobile termination rates on domestic calls, as their higher wireline rates simply result in less expensive wireless offerings. *See* AT&T Comments at 8. Similarly, affiliations between wireline and wireless providers may prevent wireline carriers from complaining about excessive mobile termination rates. *See* NOI ¶ 16; NII Holdings Comments at 11 (a wireline carrier may be indifferent to high mobile termination rates that yield "substantial monetary rewards" for its "sister company.").

receiving any offsetting benefit, such as lower prices for wireless calls.[16] These inflated rates harm both U.S. customers and U.S. carriers. As rates increase for an expanding number of calls, U.S. customers pay more for international calls and, most importantly, pay rates that are unreasonably high, in contravention of the Commission's obligation to assure just and reasonable rates, pursuant to section 201 of the Communications Act.[17]

These unreasonably high rates also depress call volumes for calls from U.S. customers to mobile subscribers in foreign countries and limit the size of the business opportunity for U.S. carriers.[18] This reduction in demand, in turn, harms U.S. carriers by lowering their revenues and potential profits.[19] Ultimately, unreasonably high foreign mobile termination rates may cause U.S. carriers to drop service on certain routes, thereby reducing competition on those routes. This curtailment of the use of telecommunications services driven by high mobile termination rates is exactly the opposite of the result that supporters of CPP wireless regimes claim are the benefits of CPP – namely, that CPP increases penetration and stimulates the use of telecommunications services.[20] In this way, the lack of regulatory oversight of mobile termination rates undermines the potential benefits of CPP touted by its proponents. These are

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16 *See, e.g.*, NII Holdings Comments at ii (noting that Telefonica's mobile termination rates are "significantly above-cost"); Sprint Comments at 14 (mobile termination rates currently are "well above the levels of costs that could be calculated using a generous attribution of costs and allocation of overhead.")

17 47 U.S.C. § 201(b).

18 MCI Comments at 9-10.

19 *See id.* at 5-10.

20 *See, e.g.*, Telefonica Comments at 7-8; Vodafone Comments at 6 (arguing that the CPP rate structure drives growth of foreign MNOs).

the crucial issues that the Commission must address in order to fulfill its mandate of protecting U.S. customers.[21]

B. High Foreign Mobile Termination Rates Are a Significant Problem For Customers

Both large business users and individual consumers have filed comments in this proceeding indicating that high mobile termination rates are problematic. For example, the International Telecommunications Users Group ("INTUG"), an association of national telecommunications users associations, filed comments expressing concern regarding the "high cost of terminating international calls on mobile networks."[22] Indeed, INTUG accuses many MNOs of engaging in "a '3D' strategy in respect of regulation of termination rates: deny, delay and degrade," and claims that these network operators have "benefited enormously" from their high mobile termination rates.[23] In addition, an unusual number of individual consumers also weighed in on the issue of foreign mobile termination by filing comments in this proceeding.[24]

Some parties have argued that because there are few consumer complaints, the FCC should not take problems with foreign mobile termination rates seriously.[25] The importance of foreign mobile termination rates should not be measured by the number of complaints that the FCC or individual carriers receive from consumers, however. The combined effect of high

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21 *See* AT&T Comments at 5 (high foreign mobile termination rates are undermining the Commission's longstanding goal of reducing settlement rates to cost-based levels).

22 INTUG Comments at 2.

23 *Id.*

24 *See, e.g.*, Comments of Richard Bollinger (Dec. 8, 2004) ("We in America are subsidizing a major portion of the mobile phone traffic overseas"); Susan Nilsson (Dec. 27, 2004) ("It is quite a hardship to pay the tremendous costs associated with calling cell phones overseas"); *see also* Comments of Norman Lawson (Jan. 10, 2005) (expressing concern regarding the cost of international mobile phone surcharges).

25 *See, e.g.,* Telefonica Comments at 10.

foreign mobile termination rates and the disparity between RPP and CPP regimes is a complicated issue that is very difficult for the average consumer to appreciate fully.[26] Due to these complexities, issues related to foreign mobile termination rates lack the easy appeal of proceedings such as the "Do-Not-Call" proceeding[27] that tend to generate sizeable consumer response. Nonetheless, as mentioned above, a number of individual consumers filed comments on this issue in this proceeding.

C. Competition Prevents U.S. Carriers From Charging Unreasonably High Rates For International Calls

Despite some commenters' suggestions to the contrary, the problem with foreign mobile termination rates is not the result of "mark-ups" by U.S. interexchange carriers.[28] Parties asserting that U.S. carriers are imposing excessive mark-ups on the mobile termination rates they pay to foreign carriers ignore the intense competition among U.S. carriers seeking to originate international calls.[29] This competition drives prices to forward-looking costs[30] and prevents non-

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26 *See* Sprint Comments at 2-3 (noting that it is the imbalance in payments between carriers that ultimately results in harms to U.S. customers).

27 *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 18 FCC Rcd 14014 (2003).

28 *See, e.g.,* CTIA Comments at 7; Vodafone Comments at 31-35, Annex B.

29 *See* AT&T Comments at 22; *2000 Biennial Regulatory Review*; *Policy and Rules Concerning the International Interexchange Marketplace*, Report and Order, 16 FCC Rcd 10647, ¶ 16 (2001) ("*International Interexchange Marketplace Order*").

30 *See, e.g., Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Third Report and Order, and Order on Reconsideration of the Second Report and Order, 14 FCC Rcd 2545, ¶ 131 (1999) ("the marketplace sets prices on a forward-looking basis"); *GTE Telephone Operating Companies Revisions to Tariff F.C.C. No. 1,* Order Designating Issues for Investigation, 15 FCC Rcd 4506, ¶ 23 (2000) ("an efficient LEC operating in competitive markets would recover forward-looking costs").

dominant carriers from imposing excessive mark-ups.[31] As the Commission has found with respect to the situation where customers pay for their outbound calls, "consumers are highly sensitive to prices" and are likely to switch carriers to take advantage of the most favorable rates.[32] Thus, any excessive "mark-ups" that carriers tried to pass on to end users would be competed away in the marketplace.[33]

Moreover, an internal review of MCI's rating practices confirms that MCI is not charging an unreasonable mark-up on foreign mobile termination charges. MCI's practice for the significant business channels has been to limit any "mark-ups" that it passes through to its customers to amounts necessary to cover the costs MCI incurs as a result of foreign mobile termination. These costs are primarily those normally included in a business unit's sales, general, and accounting ("SG&A"). Yet it should be noted that the additional SG&A alone does not fully capture all the expenses associated with the business unit's cost of doing business.

Finally, Vodafone, in its comments, presents a chart purporting to show that MCI and AT&T charge customers mobile surcharges where the mark-ups are inconsistent and, often, excessively high.[34] While the business sensitivity of such information prevents MCI from publishing the relevant numbers to respond, it is notable that the differences between MCI's internal calculations and Vodafone's calculations are due chiefly to the fact that the rates MCI is

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31 No U.S. interexchange or international carrier currently is classified as dominant for reasons other than foreign carrier affiliation. U.S. carriers that are affiliated with foreign carriers with market power may have advantages over their non-dominant competitors on routes between the United States and the home market of the foreign carrier. Accordingly, the FCC has imposed specific regulatory safeguards on such carriers. *See, e.g., International Interexchange Marketplace Order*, ¶ 7, n.20.

32 *Id.*, ¶ 18.

33 *See id.* (noting that increased customer choice will cause non-dominant interexchange carriers to lose their ability to charge unreasonable or unjust rates for international services); *see also* AT&T Comments at 22.

34 Vodafone Comments at Annex B, Table B.5.

contractually bound to pay are, in many cases, higher than the rates on which Vodafone bases its assertions.[35]

D. The Commission Cannot Rely On Competition To Drive Down Mobile Termination Rates In CPP Countries

In contrast to the intense competition that exists among U.S. carriers seeking to originate international calls, there is virtually no competition for the termination of a given call on the network of a foreign MNO – the call must be terminated by the MNO to which the called party subscribes. Therefore, the Commission would be ill-served by the advice of those commenters that urge the FCC to rely solely on the market to reign in excessive foreign mobile termination rates.[36] As MCI has explained, the Commission should not confuse the retail market for mobile services, which may be competitive, with the wholesale market for mobile termination, in which each mobile operator effectively holds a monopoly.[37] The MNO controls the sole access to its subscribers' mobile phones and serves as a "gatekeeper," capable of blocking calls to its subscribers.[38] Thus, as several European regulators have recognized, the relevant market for analyzing mobile termination rates is the market for terminating calls on individual mobile

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[35] MCI will be glad to meet with Commission staff on a confidential basis to work through rate determination processes and current termination rates.

[36] *See, e.g.,* BellSouth Comments at 5-9; Telefonica Comments at 5-6 (noting that the average market share of leading mobile operators in Europe has dropped to 43.2%).

[37] *See* MCI Comments at 14-18; *see also* AT&T Comments at 11; Sprint Comments at 7-9.

[38] *See* NII Holdings Comments at 2. As explained in the OECD study cited by NII Holdings, in a CPP system "[t]he customer placing a call has no choice if they want to complete the call but to terminate the call on the network chosen by the mobile subscriber they are calling." NII Holdings Comments at 2, quoting *International Refile of Mobile Traffic (Tromboning)*, Organization for Economic Co-operation and Development at 3, DSTI/ICCP/TISP (2000) 11/Final (June 26, 2001); *see also* AT&T Comments at 11 ("the European Commission and a number of national regulators have found that CPP mobile operators have market power over call termination on their networks and are able to raise termination charges to unreasonably high levels without any competitive restraint."); *see id.* at 15, 20.

networks.[39] In other words, the "market" consists solely of the MNO serving the wireless subscriber. Once the market is properly defined, it becomes clear that there is no meaningful competition[40] and regulators therefore cannot rely on the market to moderate mobile termination rates.[41] To the contrary, the lack of competition in the market operates to create a strong incentive for mobile operators to charge excessive termination rates.[42]

E. The Commission Can And Should Act To Protect U.S. Customers

1. Status of relevant proceedings

Several parties contend that problems with foreign mobile termination rates are best left to the national regulators of those countries, and note that some national regulatory authorities ("NRAs") already are "monitoring" the situation.[43] To the extent that foreign regulators have initiated proceedings regarding mobile termination rates in their countries, MCI is actively participating in those proceedings. However, not all NRAs have taken up this important issue.

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[39] *See, e.g.,* NOI ¶ 30 (citing Ofcom, *Statement on Wholesale Mobile Voice Call Termination*, Ofcom Consultation, June 1, 2004 at ¶¶ 3.1-3.58, *available at*: <http://www.ofcom.org.uk/consultations/past/wmcvt.pdf>; AT&T Comments at 14.

[40] *See* AT&T Comments at 11; NII Holdings Comments at 2 (citing OECD study concluding that "mobile operators have market power in the termination of a call.").

[41] BellSouth argues that pressure from calling parties may cause mobile subscribers to consider termination rates for incoming calls in choosing a mobile network. BellSouth Comments at 6. Although it is possible that there are particular situations in which calling parties may be able to influence the called parties' choices of mobile carriers, the Commission cannot rely on pressure from calling parties to curb mobile termination rates. As explained above, the effect of mobile termination rates on international calls is a complex issue that most consumers are unlikely to understand fully. *See supra* at 6-7 & n.24. Moreover, even if callers were able to appreciate the full impact of foreign mobile termination rates, it is unlikely that they would be able to bring about a change in the receiving parties' choice of mobile providers. *See* AT&T Comments at 11-12 (citing regulators' findings that, under CPP regimes, mobile termination rates play virtually no role in the selection of a mobile operator).

[42] *See* NII Holdings Comments at 2-3. *See also* AT&T Comments at 11-12 (noting that mobile termination charges are absorbed by callers that have little choice but to terminate calls on the mobile networks chosen by the mobile subscribers they are trying to reach.)

[43] *See, e.g.,* BellSouth Comments at 11.

And even in those countries where regulators have initiated proceedings, there have been delays in achieving the necessary reductions in mobile termination rates.[44]

2. Remedies

The FCC has an obligation to protect US customers from harm – whether the harm originates within its jurisdictional boundaries or not. It is critical, therefore, that the Commission commit to exploring the various avenues available for ensuring that the rates paid by U.S. customers are just and reasonable.[45] Specifically, the FCC should proactively work with foreign governments to support solutions that alleviate the harm that high mobile termination rates are causing to U.S. customers.[46] For example, the FCC should engage in bilateral and multilateral discussions with foreign regulators and support U.S. government efforts to reduce mobile termination rates where they are unreasonably high.[47] In these discussions, the FCC should focus on concerns about the harms that high mobile termination rates present for U.S. customers. The FCC should also rely on economic analyses and "best practices" from other countries to suggest a range of rates that foreign regulators might use to determine the reasonableness of the mobile termination rates charged by carriers regulated by those NRAs. At the same time, the Commission should do its own analyses based on information gathered through the NOI process as well as on its own impetus. The Commission must recognize, however, that the issues related

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44 *See* NII Holdings Comments at 5-7 (noting that the Peruvian regulator has been examining excessive mobile termination rates since 2001, but has thus far failed to implement cost-based termination rates in that country); *see also* AT&T Comments at 24 ("[e]ven where regulators have addressed mobile termination, few countries have adopted adequate remedies.").

45 MCI Comments at 3-11.

46 *See, e.g.*, INTUG Comments at 4 (explaining the need for the FCC to "encourage foreign authorities to regulate the rates charged for termination on mobile networks"); *see id.* at 10 (concluding that support from the FCC may help foreign governments and regulatory authorities take the action needed to curb mobile termination rates in foreign countries).

47 Indeed, the Commission may wish to file comments in the proceedings initiated by foreign regulators.

to excessive mobile termination rates have been known and understood by NRAs for many years and, for the most part, consultations thus far have failed to produce meaningful changes. Therefore, the FCC should undertake a rulemaking proceeding to consider whether more concrete actions, including benchmarks, are needed to protect U.S. customers.

III. CONCLUSION

For the reasons set forth above, as well as in MCI's initial comments, the FCC should act promptly to protect U.S. customers and U.S. carriers from the harms caused by unjust and unreasonable foreign mobile termination rates.

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