James J.R. Talbot
General Attorney

1120 20th Street NW
Suite 1000
Washington, DC 20036
202-457-3048 (phone)
202-457-3073 (fax)
jjtalbot@att.com (email)

FILED/ACCEPTED

DEC - 3 2008

Federal Communications Commission
Office of the Secretary

December 3, 2008

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

Re: Petition of AT&T Inc. For Settlements Stop Payment Order on the U.S.-Tonga Route

Dear Ms. Dortch:

Attached is a redacted public version of the above filing. A confidential version is being filed separately. Also attached is the request for confidential treatment to the Chief of the International Bureau.

Please call me on 202-457-3048 if you have any questions on this matter.

Sincerely,

/s/ James Talbot
James Talbot

at&t

James J.R. Talbot
General Attorney

1120 20th Street NW
Suite 1000
Washington, DC 20036
202-457-3048 (phone)
202-457-3073 (fax)
jjtalbot@att.com (email)

FILED/ACCEPTED
DEC - 3 2008
Federal Communications Commission
Office of the Secretary

December 3, 2008

Ms. Helen Domenici
Chief, International Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

*Re: **Request for Confidental Treatment**- Petition of AT&T Inc. For Settlements Stop Payment Order on the U.S.-Tonga Route*

Dear Ms. Domenici:

Pursuant to the Commission's decision in *International Settlements Policy Reform*, First Report and Order, 19 FCC Rcd. 5709, n.125 (2004) ("*ISP Reform Order*") and in accordance with the Freedom of Information Act ("FOIA") and the Commission's Rules related to public information and inspection of records, *e.g.* 47 C.F.R. §§ 0.457 and 0.459, AT&T Inc. ("AT&T"), on behalf of its affiliates, hereby submits this request for confidential treatment of the redacted portions of the International Telecommunications Services Agreement Between AT&T Corp. ("ATTC") and Tonga Communications Corp. ("TCC") that is submitted as Attachment 1 to the Affidavit of William H. McCracken filed with the above-referenced petition on December 2, 2008 ("Agreement").

The Commission stated in the *ISP Reform Order* that "[Rule 64.1002(d)] petitioners should be permitted to file the relevant commercial agreements on a confidential basis." *Id.*, n.125. Such petitioners "may file their agreements accompanied with a request for confidential treatment." *Id.* The redacted portions of the Agreement contain confidential commercial information under Exemption 4 of the FOIA, 47 U.S.C. Sect. 552(b)(4). Accordingly, pursuant to Commission Rule 0.459(a), AT&T requests that this information not be made available for public inspection.

The confidential commercial information comprises details of termination rates and other terms and conditions agreed between AT&T's affiliate, ATTC, and TCC that are maintained on a confidential basis and are not ordinarily released to parties outside the company or otherwise made available publicly in the normal course of business. Competitors could use such confidential information to develop negotiating strategies to enhance their competitive positions, to the detriment of AT&T's position in the highly competitive U.S. international market. *See, e.g., GC Micro Corp. v. Defense Logistics Agency*, 33 F.3d 1109 (9th Cir. 1994).

For the foregoing reasons, AT&T requests that the Commission withhold from public disclosure pursuant to Section 0.459 of the Commission's Rules the proprietary information contained in the Agreement.

I would be pleased to answer any questions on this matter.

Sincerely,

/s/ James Talbot
James Talbot

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

In the Matter of

Petition Pursuant to Rule 64.1002(d) Requesting	)	IB Docket No. 08-____
Issuance of Settlements Stop Payment Order	)	
on the U.S.-Tonga Route	)	

PETITION OF AT&T INC. FOR SETTLEMENTS STOP PAYMENT ORDER ON THE U.S.-TONGA ROUTE

AT&T Inc., on behalf of its affiliates ("AT&T") hereby submits this Petition pursuant to Rule 64.1002(d) to request the Commission to issue an order stopping U.S. settlements payments to the Tonga Communications Corporation ("TCC"), which has blocked AT&T's circuits to Tonga since November 24, 2008 in support of its demand to increase termination rates on this route to *more than three times* the previous level – from approximately 9 cents to 30 cents.

TCC's action is a clear violation of the Commission's longstanding prohibition against engaging in "whipsaw" and other coercive conduct to increase rates and requires immediate Commission intervention. The Commission reaffirmed in the *ISP Reform Order* that disrupting circuits to force U.S. carriers to accept higher termination rates "directly harms the public interest" by raising rates to U.S. consumers, impeding call completion and reducing call quality.[1] The Commission should respond to this conduct as it has responded to similar situations in the

[1] *International Settlements Policy Reform*, First Report and Order, 19 FCC Rcd. 5709, ¶ 45 (2004) ("*ISP Reform Order*").

past by ordering U.S. carriers to suspend settlement payments to TCC until all circuits are fully restored.

I. TCC BLOCKS CIRCUITS TO ENFORCE AN UNREASONABLE RATE INCREASE THAT HARMS U.S. CONSUMERS AND VIOLATES COMMISSION BENCHMARKS

TCC is the 90 percent government-owned incumbent international carrier in Tonga.[2] According to a recent article, a majority of TCC's directors currently are Cabinet ministers in the Tongan government.[3] AT&T has had international settlement arrangements with TCC since 2000 and previously had those arrangements with TCC's predecessor, C&W Tonga. Through these arrangements, TCC terminates all U.S.-Tonga calls sent by AT&T over circuits directly linking these two countries, including calls to both fixed and mobile numbers in Tonga.[4]

Under AT&T's most recent agreement with TCC, U.S.-Tonga traffic for the period July 1, 2008 through August 31, 2008 was terminated at the rate of approximately 9 cents per minute.[5] Previously, AT&T's U.S.-Tonga traffic for the period January 1, 2006 through June 30, 2008 was terminated by TCC at the bilaterally agreed rate of approximately 13 cents per minute.[6] The trend toward lower termination rates on this route is consistent with broader trends in the

---

[2] *See* Tonga Communications Corporation Act 2000, Sects. 10-14; Siopa V. Ofa, The Telecommunications Sector in the Pacific: A Regulatory Policy Survey, 23 Pacific Economic Bulletin (No. 3) 69, 73 (2008). TCC was established in 2000 to continue the services previously provided by C&W Tonga under a joint venture arrangement with the Tongan government.

[3] *Id.*

[4] Affidavit of William H. McCracken ("McCracken Aff."), ¶ 3. AT&T does not have a correspondent relationship with Digicel, the only other carrier in Tonga, which entered this market by acquiring Tonga's second mobile operator in 2007. However, AT&T understands that Digicel is also now charging termination rates of 30 cents per minute. *Id.*, ¶ 7.

[5] *Id.*, ¶ 4 & Att. 1 (International Telecommunications Services Agreement between AT&T and TCC). AT&T is requesting confidential treatment for portions of the agreement. *See ISP Reform Order*, n. 125. Accordingly, the public version of this filing contains a redacted version of the agreement.

[6] *Id.*

U.S. international market toward more cost-based termination rates. FCC data show that average U.S. termination rates on all international routes were reduced from 35 cents in 1997 to 14 cents in 2001 and 6 cents in 2006.[7]

Termination rate reductions on the U.S.-Tonga route have provided significant benefits to consumers in both countries. Reductions in average U.S.-Tonga termination rates from $1.02 per minute in 1997 to 13 cents in 2006 led to reductions in average U.S-Tonga calling prices in this period from $2.31 to 16 cents per minute and stimulated increases in annual U.S.-Tonga calling volumes from 2.7 million to 18 million minutes.[8] Similarly, in the same time period, as average termination rates for Tonga-U.S. traffic have fallen from 99 cents per minute to 9 cents per minute, annual Tonga-U.S. calling volumes have increased from 313,000 to 3.7 million minutes.[9]

AT&T originally sought TCC's agreement to terminate U.S.-Tonga traffic at the rate of approximately 9 cents through the end of 2008. On August 12, 2008, however, AT&T was notified by TCC that termination rates for U.S.-Tonga traffic would be raised to 30 cents per minute on September 1, 2008 as the result of a ruling by the Tongan government establishing this rate as the minimum termination rate for all international traffic terminated in Tonga.[10] The ruling, which was issued in the Tongan Government Gazette on August 11, 2008, provides no explanation or justification for the rate increase, which would raise AT&T's rates on this route

---

[7] *See* FCC, *Section 43.61 International Telecommunications Data* for 1997, 2001 & 2006.

[8] *Id.*

[9] *Id.*

[10] McCracken Aff., ¶ 5.

by more than 230 percent.[11] On October 22 and November 10, 2008, TCC sent messages to AT&T suggesting that the two carriers should temporarily "close down" the international circuit link between them pending agreement on a new rate.[12] By letter dated November 18, 2008, AT&T informed TCC that it was unable to agree to the requested rate increase, which would likely result in significantly increased calling prices and reduced calling volumes.[13] AT&T stated that it was "unaware of any possible cost justification for such an increase, since international calling costs continue to decline with improvements in technology and expansions in international transmission capacity." AT&T also noted that the requested rate would exceed the FCC benchmark rate required on this route effective from January 1, 2002 and that it was "unclear how this rate is consistent with Tonga's ITU and WTO obligations to provide cost-oriented termination rates." AT&T further stated:

> "We do not agree that the circuits linking AT&T and TCC should be affected in any manner because of our inability to agree to your requested rate increase and we hope that TCC will not take any measure unilaterally to affect those circuits. We would consider any such unilateral action to be a material breach of the agreement between TCC and AT&T, which expressly states that service shall continue pending negotiation of expired rates."

AT&T also drew TCC's attention to the Commission's statement in paragraph 44 of the *ISP Reform Order* listing actions "that may require Commission action to protect U.S. consumers" including "threatening or carrying out circuit disruptions in order to achieve rate increases."[14]

---

[11] *Id.* Tonga has thus provided no evidence that this increased rate complies with its international trade agreement obligations to ensure that interconnection rates for the termination of international traffic with TCC, its major supplier carrier, are both "cost-oriented," as required by the WTO Reference Paper, and "reasonable," as required by the WTO Annex on Telecommunications. *See* World Trade Organization, *Report of the Working Party on the Accession of Tonga*, WT/ACC/TON/17/Add.2, Dec. 13-18 2005.

[12] McCracken Aff., ¶ 6.

[13] *Id.*, ¶ 8.

[14] *Id.*

TCC responded to AT&T by letter dated November 19, 2008 reiterating that the ruling by the Tonga government required an inbound settlement rate of "no less than US$0.30/minute."[15] TCC went on to state that "we will temporary block the link on 24 November at 0000GMT until such time we can find a mutual solution for this issue."

TCC began blocking AT&T's circuits to Tonga shortly after midnight on November 23, 2008 and has prevented any traffic from being terminated over these circuits in either direction since then.[16]

II. TCC'S CIRCUIT DISRUPTION VIOLATES LONGSTANDING FCC POLICIES PROTECTING U.S. CONSUMERS FROM COERCIVE ACTIONS BY FOREIGN CARRIERS TO INCREASE RATES

The Commission has long prohibited foreign carriers from abusing their control of bottleneck facilities at the foreign end of U.S. international routes to 'whipsaw' competitive U.S. carriers or otherwise coerce agreements to increase settlement rates.[17] The Courts have consistently upheld Commission action to prevent such abuse of foreign market power.[18]

The Commission issued stop payments orders in 2003 against six carriers in the Philippines that blocked the circuits of AT&T and WorldCom, Inc. "for the purpose of forcing

---

[15] *Id.*, ¶ 9.

[16] *Id.*, ¶ 10.

[17] *See AT&T Corp. Emergency Petition for Settlements Stop Payment Order and Request for Immediate Interim Relief*, 19 FCC Rcd. 9993, ¶ 18, n.64 (2004) ("The Commission's policy of protecting the public interest from anticompetitive behavior goes back over sixty years.").

[18] *See Atlantic Tele-Network, Inc.* v. FCC, 59 F. 3d 1384 (D.C. Cir. 1995) (affirming the Commission's broad authority to regulate the U.S. international telecommunications market to promote the public interest); *Mackay Radio & Telegraph Co.*, 2 FCC 592 (1936), *aff'd by the Commission en banc,* 4 FCC 150 (1937), *aff'd sub nom Mackay Radio & Telegraph Co. v. FCC*, 97 F. 2d 641 (D.C. Cir. 1938) (denying Section 214 application with settlement term that would have allowed foreign carrier to "whipsaw" U.S. carriers). The D.C. Circuit also has upheld Commission regulation of rates paid to foreign carriers as necessary, among other reasons, to prevent whipsawing. *Cable & Wireless P.L.C. v. FCC*, 166 F. 3d 1224, 1230 (D.C. Cir. 1999).

AT&T and WorldCom to agree to higher termination rates."[19] The Bureau found that these foreign carrier actions "constitute anticompetitive 'whipsawing' and a violation of the Commission's International Settlements Policy ("ISP")."[20] The Bureau stated: "These actions harm U.S. consumers and competition and require an expeditious Federal Communications Commission consideration of the petitions of AT&T and WorldCom seeking protection and remedies to address the blockage of circuits and abuse of market power on the U.S.-Philippines route."[21] The Bureau ordered all U.S. carriers to suspend immediately all payments to the six Philippines carriers until circuits were fully restored. In affirming the Bureau order, the Commission noted that circuits were fully restored by the Philippines carriers following the issuance of that order and the Bureau accordingly lifted the suspension of payments.[22]

Similarly, when Telintar of Argentina blocked AT&T's circuits in 1996 in an effort to maintain high rates, the International Bureau responded that the "unilateral [] block[ing]" of U.S. carrier circuits in retaliation for U.S. carrier efforts to reduce rates "constitutes classic whipsawing and violates our International Settlements Policy (ISP)."[23] The Bureau accordingly ordered U.S. carriers "to suspend settlements payments to Telintar" until all international circuits were "fully restored."[24] The Bureau stated that "This Commission will not allow foreign

---

[19] *AT&T Corp. Emergency Petition for Settlements Stop Payment Order and Request for Immediate Interim Relief*, 18 FCC Rcd. 3519, ¶ 1 (2003), *aff'd*, 19 FCC Rcd. 993 (2004) (Order on Review), *aff'd*, 20 FCC. Rcd. 14106 (2005) (Order on Reconsideration and Order).

[20] *Id.*

[21] *Id.*

[22] *Id*, 19 FCC Rcd. 993, ¶ 22 (2004) (Order on Review).

[23] *AT&T Corp., Proposed Extension of Accounting Rate Agreement for Switched Voice Service with Argentina*, 11 FCC Rcd. 18,014, ¶ 2 (1996).

[24] *Id.*

monopolists to undermine U.S. law, injure U.S. carriers or disadvantage U.S. consumers."[25] In upholding this Bureau order, the Commission emphasized that "retaliatory actions in response to AT&T's efforts to negotiate a more cost-based settlement rate constitutes classic whipsawing, which the Bureau is fully authorized to remedy under the ISP."[26]

The Commission highlighted its continuing concern with foreign carrier anticompetitive conduct in the 2004 *ISP Reform Order* by setting forth "standards and procedures that will support the ability of parties to initiate complaints of anticompetitive harms as they arise."[27] The Commission also reaffirmed that its safeguards against anticompetitive conduct continue to apply on routes like Tonga that are no longer subject to the requirements of the International Settlements Policy.[28] The Commission found that "blockage or disruption of U.S. carrier networks by foreign carriers harms the public interest, leads to decreases in call quality or completion and to potential increases in calling prices."[29] Such conduct was "unlikely ever appropriate or justified in the public interest." The Commission therefore found that "there is a rebuttable presumption of harm to the public interest if U.S. carriers demonstrate in their petitions that they have suffered network disruptions by foreign carriers with market power in conjunction with their allegations of anticompetitive behavior, or 'whipsawing.'"[30]

The Commission also provided further guidance on the "indicia of potential

---

[25] *Id.*, ¶ 1.

[26] *AT&T Corp., Proposed Extension of Accounting Rate Agreement for Switched Voice Service with Argentina*, 14 FCC Rcd. 8306, ¶ 13 (1996).

[27] *ISP Reform Order*, ¶ 40.

[28] *Id.*, ¶¶ 41, 47.

[29] *Id.*, ¶ 45.

[30] *Id. See also, id.*, ¶ 47 (listing stop payment orders as potential remedy on non-ISP routes).

anticompetitive conduct by foreign carriers" that "may require Commission action to protect U.S. consumers."[31] Such conduct included "(1) increasing settlement rates above benchmarks; (2) establishing rate floors, even if below benchmarks, that are above previously negotiated rates; or (3) threatening or carrying out circuit disruptions in order to achieve rate increases or changes to the terms and conditions of termination agreements."[32]

Both the Commission and the executive branch have noted that foreign government efforts to increase competitively-negotiated rates may require Commission action pursuant to the procedures established by the *ISP Reform Order*. NTIA drew attention in that proceeding to "recent attempts by foreign governments to intervene in previously competitive markets and establish artificial price floors."[33] NTIA requested "the automatic examination of a route when a foreign government mandates a price floor that increases rates above competitively negotiated levels, regardless of whether the increase is below current benchmarks."[34] The Commission noted that "[c]onsistent with NTIA's concerns," U.S. carrier complaints would "address anticompetitive harm against U.S. competition and U.S. customers, and the rebuttable presumption of harm in the event of retaliation against U.S. carriers will expedite such findings."[35]

---

[31] *Id.*, ¶ 44.

[32] *Id.*

[33] Letter dated Aug. 5, 2003 to The Honorable Michael K. Powell, Chairman, FCC, from Nancy J. Victory, Assistant Secretary for Communications and Information, U.S. Department of Commerce, IB Docket No. 02-234, at 2.

[34] *Id.*

[35] *ISP Reform Order*, n.115.

III. THE COMMISSION SHOULD REQUIRE U.S. CARRIERS TO STOP SETTLEMENTS PAYMENTS UNTIL ALL CIRCUITS ARE RESTORED

The present situation on the U.S.-Tonga route requires Commission intervention to protect U.S. consumers in accordance with the long-established precedents and principles described above. Just as with the Philippines carriers in 2003 and Telintar of Argentina in 1996, TCC is abusing its control of the foreign end of a U.S. international route to disrupt circuits in response to AT&T's refusal to pay unreasonably high settlement rates.

The size of the rate increase demanded by TCC is many times greater than the demanded increase that led to the circuit disruption in the Philippines where foreign carriers sought to raise rates from the previously negotiated level of 8 cents to 12 cents, or by 50 percent.[36] In contrast, TCC is seeking to raise rates from the previously negotiated level of approximately 9 cents to 30 cents, or by more than 230 percent. To AT&T's knowledge, such a large settlement rate increase would be unprecedented on any international route.[37] TCC not only violates FCC policies prohibiting the use of circuit disruptions to coerce agreement to higher rates but also seeks to establish a rate that would be more than 50 percent higher than the 19-cent benchmark settlement rate required for this route effective from January 1, 2002.[38]

The situation on the U.S.-Tonga route, as demonstrated above and in the attached affidavit of William H. McCracken, provides all three of the indicia of anticompetitive conduct

---

[36] *See AT&T Corp. Emergency Petition for Settlements Stop Payment Order and Request for Immediate Interim Relief*, 19 FCC Rcd. 9993, ¶ 3.

[37] McCracken Aff., ¶ 8.

[38] *International Settlement Rates*, 12 FCC Rcd. 19806, ¶ 111 & App. C (1997) (Classification of Economies listing Tonga as a "Lower Middle Income" economy subject to a benchmark rate of 19 cents). TCC is also acting in violation of the International Telecommunications Services Agreement between TCC and AT&T, which states that "the parties shall continue to provide service hereunder" if new rates are not agreed prior to the expiration of previously-agreed rates. McCracken Aff., ¶ 5.

listed in the *ISP Reform Order* as potentially requiring Commission intervention.[39] Termination rates have been increased above benchmarks, a rate floor has been established far above previously negotiated levels, and circuit disruptions have been both threatened and carried out in an effort to achieve those rate increases. TCC's action therefore creates "a rebuttable presumption of harm to the public interest."[40] The Commission should respond as it has responded to similar prior instances of anticompetitive conduct and require U.S. carriers to stop settlement payments to TCC until all circuits are restored. Such action would make clear that the Commission will not allow U.S. consumers and carriers to be harmed in this way.

CONCLUSION

This Rule 64.1002(d) petition and the attached affidavit demonstrate that TCC is engaging in anticompetitive behavior on the U.S.-Tonga route harming U.S. consumers. AT&T requests the Commission to intervene on this route to require U.S. carriers to stop settlements payments to TCC until all circuits are restored.

Respectfully submitted,

By: /s/ James J. R. Talbot

James J. R. Talbot
Gary L. Phillips
Paul K. Mancini

Attorneys for
AT&T Inc.
1120 20th Street, NW
Washington, D.C. 20036
(202) 457-3048 (phone)
(202) 457-3073 (fax)

December 3, 2008

[39] *See ISP Reform Order*, ¶ 44.

[40] *Id.*, ¶ 45 & n.122.

CERTIFICATE OF SERVICE

I, Lacretia Hill, certify that copies of "AT&T's Petition-Public Version" were delivered via e-mail on this day, Wednesday, December 3, 2008, to the following:

Charles Mathias
Legal Advisor
Office of Chairman Martin
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Bruce Liang Gottlieb
Legal Advisor
Office of Commissioner Copps
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Renee Roland Crittendon
Legal Advisor
Office of Commissioner Adelstein
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Wayne Leighton
Legal Advisor
Office of Commissioner Taylor Tate
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Angela E. Giancarlo
Legal Advisor
Office of Commissioner McDowell
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Helen Domenici
Chief
International Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

James Ball
Chief-Policy Division
International Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

George Li
Policy Division
International Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Kimberly Cook
Policy Division
International Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

David Krech
Policy Division
International Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Kathryn O'Brien
Chief, Strategic Analysis &
Negotiations Division
International Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Emily Talaga
Strategic Analysis &
Negotiations Division
International Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

/s/ Lacretia Hill
Lacretia Hill

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

In the Matter of

Petition Pursuant to Rule 64.1002(d) Requesting	)	IB Docket No. 08-____
Issuance of Settlements Stop Payment Order	)	
on the U.S.-Tonga Route	)	

AFFIDAVIT OF WILLIAM H. MCCRACKEN

1. My name is William H. McCracken. I am Director-Interconnection Agreements, Global Service Provider Management in the Wholesale division of AT&T Operations, Inc. In this position, I am responsible for AT&T's traffic termination arrangements with foreign carriers in the Asia/Pacific region, including Tonga, for the provision of AT&T's international switched services, including all traffic termination agreements between AT&T and its foreign correspondents in the Pacific Islands, including Tonga, and all negotiations concerning those agreements.

2. I have direct responsibility for AT&T's efforts to negotiate more cost-based termination rates with its foreign correspondents in the Asia Pacific region, including Tonga. AT&T seeks lower, more cost-based termination rates on all international routes, including the Tonga route, in accordance with the Commission's longstanding direction to "U.S. carriers to negotiate accounting rates with their foreign correspondents accounting rates that are consistent with relevant cost trends." (*Regulation of International Accounting Rates*, 6 FCC Rcd. 3552, ¶ 3 (1991).)

3. AT&T has a longstanding correspondent relationship with Tonga Communications Corporation ("TCC") and its predecessor, C&W Tonga, which is the former monopoly provider in Tonga and remains the dominant international carrier in that country. TCC is the only carrier with which AT&T has a correspondent relationship in Tonga and thus terminates all U.S.-Tonga calls sent by AT&T over the circuits directly linking these two countries, including calls to both fixed and mobile numbers in Tonga.

4. AT&T's U.S.-Tonga traffic for the period February 1, 2007 through June 30, 2008 was terminated by TCC at the bilaterally agreed rate of approximately 13 cents per minute. Under AT&T's most recent agreement with TCC, U.S.-Tonga traffic for the period July 1, 2008 through August 31, 2008 was terminated at the rate of approximately 9 cents per minute. A copy of this agreement, which was signed by TCC on August 18, 2008 and by AT&T on September 4, 2008, is Attachment 1 hereto. Paragraph 5 of this agreement states: "If a new Rate Sheet is not executed prior to the expiration of the last Rate Sheet term, *the parties shall continue to provide Service hereunder* (unless the Agreement is terminated in accordance with its terms), but the exchange of monthly accounts and the processing of settlements shall be deferred until a new Rate Sheet is executed." (Emphasis added.)

5. AT&T originally sought TCC's agreement to terminate U.S.-Tonga traffic at the rate of approximately 9 cents through the end of 2008. On August 12, 2008, however, AT&T was notified by TCC that termination rates for U.S.-Tonga traffic would be raised to 30 cents per minute on September 1, 2008 as the result of a ruling by the Tongan government establishing this rate as the minimum termination rate for all international traffic terminated in Tonga. A copy of the ruling, which was issued in the Tongan Government Gazette on August 11, 2008, is

Attachment 2 hereto. The ruling provides no explanation or justification for the rate increase, which would raise AT&T's termination rates on this route by more than 230 percent.

6. On October 22 and November 10, 2008, TCC sent messages to AT&T suggesting that the two carriers should temporarily "close down" the international circuit link between them pending agreement on a new rate.

7. AT&T does not have a correspondent relationship with Digicel, the only other carrier in Tonga, which entered this market by acquiring Tonga's second mobile operator in 2007. However, AT&T understands that Digicel is also now charging termination rates of 30 cents per minute.

8. By letter dated November 18, 2008, AT&T informed TCC that it was unable to agree to the requested rate increase, which would likely result in significantly increased calling prices and reduced calling volumes. A copy of this letter from Jorge P. Matar, Executive Director, AT&T Wholesale, to Timote Katoanga, Managing Director, TCC, is Attachment 3 hereto. AT&T stated that it was "unaware of any possible cost justification for such an increase, since international calling costs continue to decline with improvements in technology and expansions in international transmission capacity." As AT&T also stated, such a large settlement increase would to AT&T's knowledge be unprecedented on any international route. AT&T also noted that the requested rate would exceed the FCC benchmark rate required on this route effective from January 1, 2002 and that it was "unclear how this rate is consistent with Tonga's ITU and WTO obligations to provide cost-oriented termination rates." AT&T also stated:

> "We do not agree that the circuits linking AT&T and TCC should be affected in any manner because of our inability to agree to your requested rate increase and we hope that TCC will not take any measure unilaterally to affect those circuits. We would consider any such unilateral action to be a material breach of the agreement between TCC and AT&T, which expressly states that service shall continue pending negotiation of expired

rates."

AT&T's letter also drew TCC's attention to the Commission's statement in paragraph 44 of the Commission's First Report and Order *in International Settlements Policy Reform*, IB Docket No. 02-324, FCC 04-53, listing actions "that may require Commission action to protect U.S. consumers" including "threatening or carrying out circuit disruptions in order to achieve rate increases."

9. TCC responded to AT&T by letter dated November 19, 2008 reiterating that the ruling by the Tonga government required an inbound settlement rate of "no less than US$0.30/minute." A copy of this letter Timote Katoanga, Managing Director, TCC to Jorge P. Matar, Executive Director, AT&T Wholesale, is Attachment 4 hereto. TCC went on to state that "we will temporary block the link on 24 November at 0000GMT until such time we can find a mutual solution for this issue."

10. TCC began blocking AT&T's circuits to Tonga shortly after midnight on November 23, 2008 and has prevented any traffic from being terminated over these circuits in either direction since then.

The foregoing is true and correct to the best of my knowledge and belief.

William H. McCracken

William H. McCracken

Dated: December 2, 2008

CALIFORNIA JURAT WITH AFFIANT STATEMENT

State of California

County of Alameda } ss.

☑ See Attached Document (Notary to cross out lines 1–6 below)

☐ See Statement Below (Lines 1–5 to be completed only by document signer[s], *not* Notary)

Signature of Document Signer No. 1

Signature of Document Signer No. 2 (if any)

Subscribed and sworn to (or affirmed) before me on this 2nd day of December, 2008, by
Date Month Year

(1) William H. McCracken,
Name of Signer

☐ Personally known to me

☑ Proved to me on the basis of satisfactory evidence to be the person who appeared before me (.) (,)

(and

(2) ________,
Name of Signer

☐ Personally known to me

☐ Proved to me on the basis of satisfactory evidence to be the person who appeared before me.)

AMY ANDREA BERL
Commission # 1728292
Notary Public - California
Alameda County
MyComm. Expires Mar 11, 2011

Place Notary Seal Above

Amy Andrea Berl
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Further Description of Any Attached Document

Title or Type of Document: Affidavit

Document Date: 12/2/08 Number of Pages: 5

Signer(s) Other Than Named Above: ________

RIGHT THUMBPRINT OF SIGNER #1	RIGHT THUMBPRINT OF SIGNER #2
Top of thumb here	Top of thumb here

ATTACHMENT 1

ANNEX A

to International Telecommunications Services Agreement

Between AT&T Corp. and TONGA COMMUNICATIONS CORP

SWITCHED VOICE SERVICES
BETWEEN THE UNITED STATES AND TONGA
TERMINATION RATES

1. This Annex A (the "Agreement") by and among Tonga Communications Corp (hereinafter referred to as "TCC") and AT&T Corp. (hereinafter referred to as "AT&T") sets forth the understandings of TCC and AT&T (the "Parties") regarding settlements and other terms and conditions pertaining to the exchange of Switched Voice Services (as defined below) between the Parties.

2. [redacted].

3. The term "United States" or "U.S." is defined to mean the Continental 48 States, the District of Columbia, Alaska, American Samoa, Guam, Northern Mariana Islands, Puerto Rico, the U.S. Virgin Islands and Hawaii.

4. This Agreement amends and supersedes any and all previous agreements made in regard to accounting rates, termination charges and arrangements (or agreements) for proportionate return between the Parties. However, all other provisions of the international telecommunications service agreement between AT&T and TCC, which are not in conflict with or specifically superseded or amended by this Agreement (and which are by reference incorporated hereto), shall remain in full force and effect.

5. The parties shall settle with one another on the basis of termination rates. The rates for each Service shall be as set forth in an executed Annex A Rate Sheet Attachment hereto (each, a "Rate Sheet") for the period agreed therein (the "Rate Sheet Term"). If a new Rate Sheet is not executed prior to the expiration of the last Rate Sheet Term, the parties shall continue to provide Service hereunder (unless the Agreement is terminated in accordance with its terms), but the exchange of monthly accounts and the processing

TCC initialed: TD
AT&T initialed: MC

of settlements shall be deferred until a new Rate Sheet is executed. Once executed, the rates in the new Rate Sheet shall be applied retroactively to the date the last Rate Sheet Term expired.

[redacted]

6. [redacted]

TCC initialed: [handwritten initials]
AT&T initialed: [handwritten initials]

10. This Agreement shall become binding only upon execution by the duly authorized representative of AT&T and TCC and, where applicable, upon submission and/or acceptance of the Agreement by regulatory authorities. This Agreement shall be subject to all regulatory reviews and approvals as may be required by the laws, regulations and rules of the United States and Tonga.

11. This Agreement may be amended only by an instrument in writing, executed by the duly authorized representatives of both Parties. No modification hereto shall be effected by the acknowledgment or acceptance by either Party of any purchase order, sales acknowledgment or other similar form from the other Party.

[redacted]

[redacted]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date indicated below. The concurrence below evidences the intent to present this Agreement for approval by AT&T's duly authorized representative.

Concurred on behalf of AT&T Corp.

Name: MARTIN G. CHIN
Title: CARRIER SERVICES DIRECTOR
Date: 4-9-08.

Approved on behalf of Tonga Communications Corp.

Name: TIMOTE F. KATOANGA
Title: MANAGING DIRECTOR
Date: 18/08/2008

Approved on behalf of AT&T Corp.

Name: Joseph R. Ettore, Jr.
Title: Executive Director
AT&T Operations, Inc.
Approved Agent for AT&T Corp.
Date:

Rate Sheet Attachment

TCC initialed: TK
AT&T initialed: MC

To
Annex A of the International Telecommunications Services Agreement

Tonga Communications Corp. ("TCC")
and
AT&T Corp. ("AT&T")

1. **Term.** The term of this interim Rate Sheet shall be from **July 1, 2008 to August31, 2008** (the "Term").

2. **Termination Rates.** [redacted]

[redacted]

3. **Dial Codes.** [redacted]:

[redacted]

[redacted]

TCC initialed:
AT&T initialed:

IN WITNESS WHEREOF, the Parties have executed this Rate Sheet as of the date indicated below. The concurrence below evidences the intent to present this Rate Sheet for approval by AT&T's duly authorized representative.

Concurred on behalf of AT&T Corp.

Sign Above
Printed Name: MARTIN G. CHIN
Title: ~~Account Manager~~ MC. CARRIER SERVICES DIRECTOR.
Date: 4-9-08.

Tonga Communications Corp.

Sign Above
Printed Name: TIMOTE [illegible]ANGA
Title: MANAGING DIRECTOR
Date: 18/08/2008

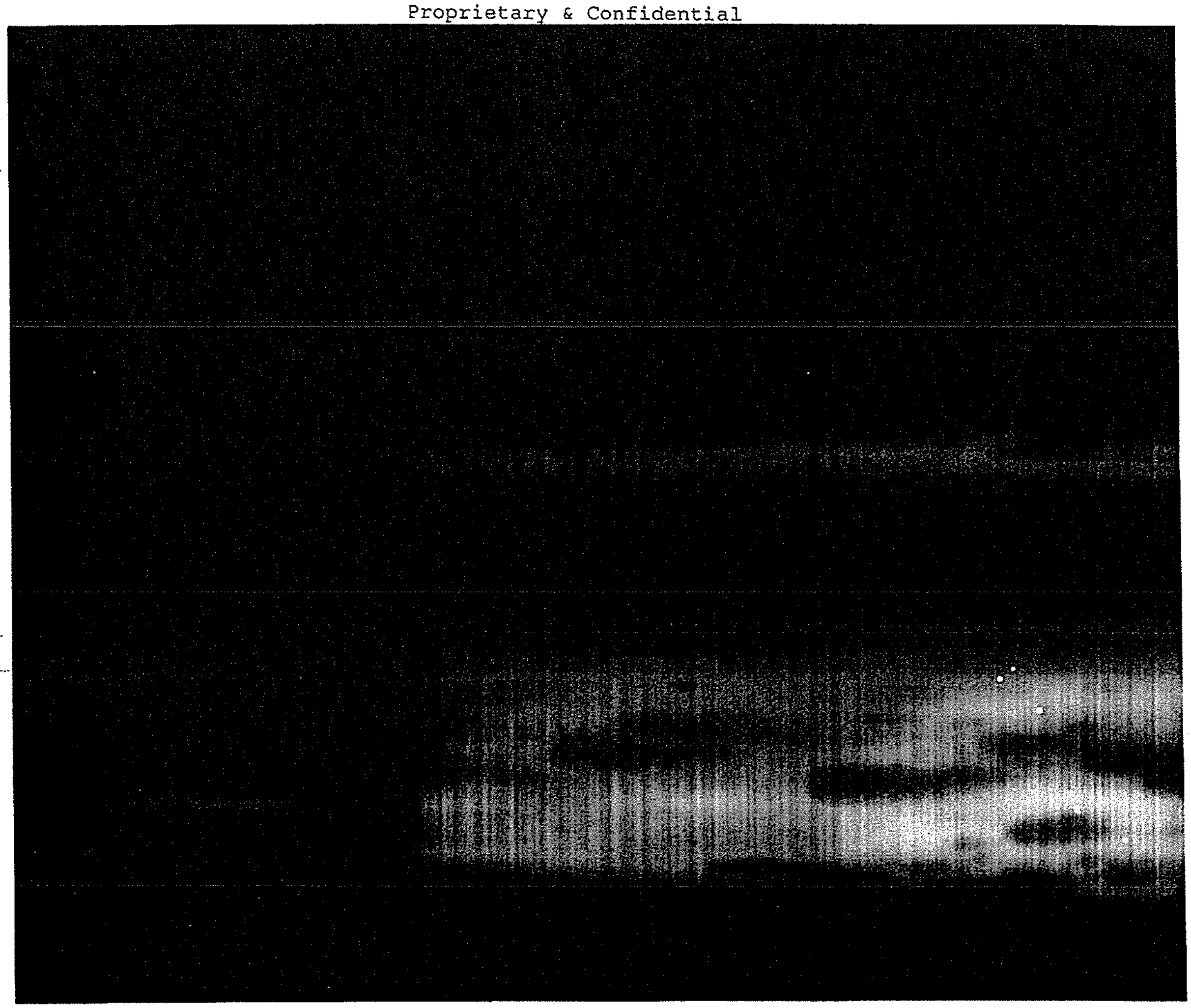
Approved on behalf of AT&T Corp.

Name: Joseph Ettore
Title: Executive Director
AT&T Operations, Inc.
Approved Agent for AT&T Corp.
Date:

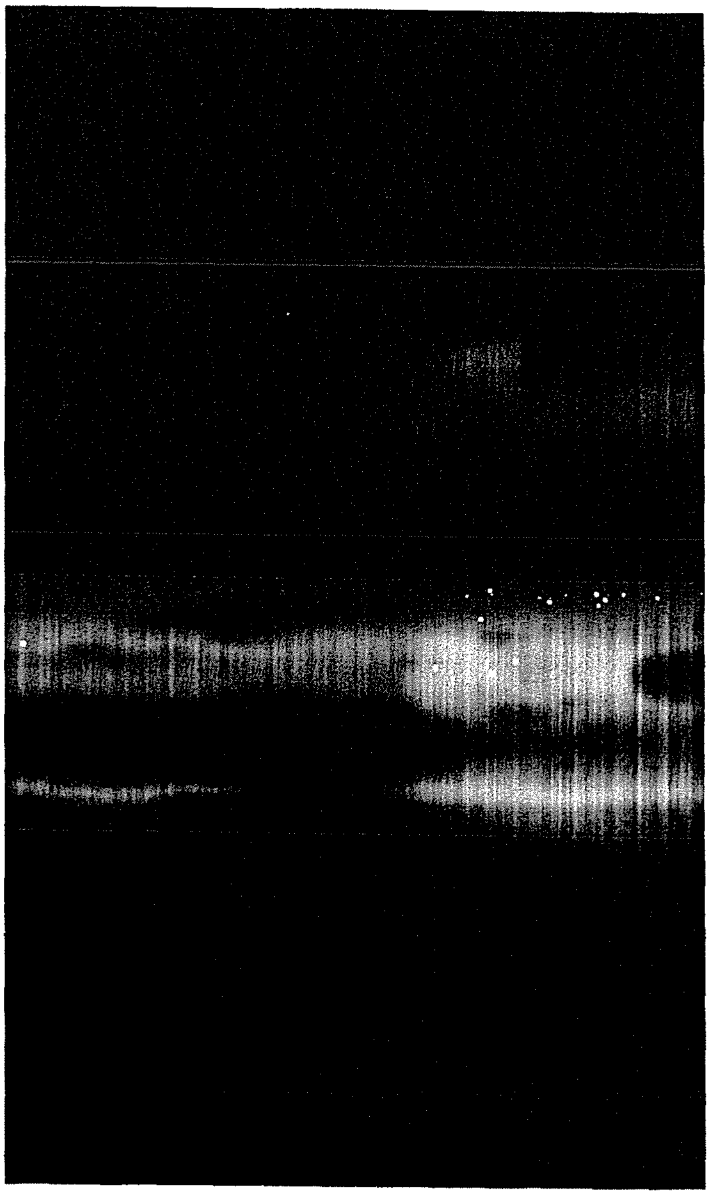
TCC initialed:
AT&T initialed: MC

[redacted]

TCC initialed: [handwritten initials]
AT&T initialed: [handwritten initials]



TCC initialed:
AT&T initialed:



TCC initialed:
AT&T initialed:

ATTACHMENT 2

TONGA GOVERNMENT GAZETTE SUPPLEMENT EXTRAORDINARY

No. 37 | Monday 11th August | 2008

GUIDELINES

COMMUNICATIONS ACT 2000
(Section 13)

In exercise of the power conferred by section 13 of the Communications Act 2000 the Minister responsible for communications, recognising he need to give full effect and for due administration of the provisions of the Act, hereby issues the following guidelines:

1. The minimum settlement rate for all inbound international telephone calls effective today and at the latest 1 September 2008 is USD 30 cents per minute.

2. The settlement rate will remain until further amended.

Made at Nuku'alofa on this 6th day of August, 2008.

Hon. Dr. Feleti V. Sevele
Minister responsible for Communications

ATTACHMENT 3

at&t

Jorge P. Matar
Executive Director
AT&T Wholesale
2333 Ponce de León Blvd.
Coral Gables, FL 33134

T: 305-774-2275
F: 281-664-5605
jmatar@att.com

November 18, 2008

Timote Katoanga
Managing Director
Tonga Communications Corporation
Private Bag 4
Nuku'alofa
Tonga

Dear Mr. Katoanga,

This letter concerns the termination rates for AT&T's U.S.-Tonga traffic requested by TCC for traffic terminated from September 1, 2008. As you know, U.S.-Tonga traffic prior to that date was terminated at the rate of US $0.09 per minute in accordance with the July-August 2008 rate agreement entered into by AT&T and TCC. Prior to that agreement, U.S.-Tonga traffic for the period 2006-2008 was terminated at the rate of US $0.13 per minute. These lower rates are consistent with rate reductions on many other international routes. The most recent international traffic data published by the U.S. Federal Communications Commission (FCC) show that average U.S. termination rates on all international routes were under US $0.06 per minute in 2006, down from US $0.14 in 2001 and US $ 0.35 per minute in 1997.

Reductions in international termination rates result in significant benefits to consumers at both ends of international routes by lowering calling prices and increasing calling volumes. These trends are evident on the U.S.-Tonga route. FCC data show reductions in average U.S.-Tonga termination rates from US $1.02 per minute in 1997 to US $0.14 in 2006, in addition to reduced average U.S-Tonga calling prices in this period from US $2.31 to US $0.16 per minute and increased annual U.S.-Tonga calling volumes from 2.7 to 18 million minutes. Also in the same period, reductions in average per minute termination rates for Tonga-U.S. traffic from US $0.99 to US $0.09 resulted in increased annual Tonga-U.S. calling volumes from 313,000 to 3.7 million minutes.

In light of these clear benefits to consumers in both the U.S. and Tonga from lower international termination rates, we are very disturbed by TCC's request for an increased termination rate of US $0.30 per minute for traffic terminated from September 1, 2008, which would increase the prior agreed termination rate by more than 230 percent. To AT&T's knowledge, a termination rate increase of this magnitude is unprecedented on any international route. Such an increase would very likely result in significantly increased calling prices that would greatly repress demand and reduce calling volumes between our countries. We are also unaware of any possible cost justification for such an increase, since international calling costs continue to decline with improvements in technology and expansions in international transmission capacity. It is therefore unclear how this requested rate is consistent with Tonga's ITU and WTO obligations to provide cost-oriented termination rates.

at&t

The requested rate also fails to comply with the rules of the U.S. Federal Communications Commission, which require AT&T to negotiate benchmark settlement rates on this route effective from January 1, 2002. The FCC established this requirement more than eleven years ago in *International Settlement Rates*, 12 FCC Rcd. 19806 (1997) ("*Benchmarks Order*"). The FCC *Benchmarks Order* was upheld in its entirety by the U.S. Court of Appeals for the D.C. Circuit on January 12, 1999. (*See Cable & Wireless P.L.C. v. FCC et al.*, 166 F.3d 1224 (D.C. Cir. 1999.))

For these reasons, AT&T is unable to agree to the requested rate increase. In the interests of the consumers in both our counties, we hope that TCC will quickly reconsider this request and will once again negotiate with AT&T termination rates that are consistent with international trends. We are also troubled by the suggestion in recent messages from TCC that circuits may be closed pending the resolution of this issue. We do not agree that the circuits linking AT&T and TCC should be affected in any manner because of our inability to agree to your requested rate increase and we hope that TCC will not take any measure unilaterally to affect those circuits. We would consider any such unilateral action to be a material breach of the agreement between TCC and AT&T, which expressly states that service shall continue pending negotiation of expired rates. We also draw your attention to the following statement by the U.S. Federal Communications Commission:

> "[W]e would regard certain actions as indicia of potential anticompetitive conduct by foreign carriers, including, but not limited to: (1) increasing settlement rates above benchmarks; (2) establishing rate floors, even if below benchmarks, that are above previously negotiated rates; or (3) threatening or carrying out circuit disruptions in order to achieve rate increases or changes to the terms and conditions of termination agreements. Each of these types of actions has been demonstrated as a means to disrupt normal commercial negotiations in order to force U.S. carriers to accept above-cost settlement rate increases that would be passed on to U.S. consumers, and may require Commission action to protect U.S. consumers." FCC, *International Settlements Policy Reform*, IB Docket No. 02-324, FCC 04-53, Mar. 30, 2004, ¶ 44.

We therefore look forward to negotiating termination rates with TCC that will best serve the consumers in both our countries by moving further toward cost-based arrangements.

Best regards,

Jorge P. Matar
Executive Director
AT&T Wholesale

Cc: Martin Chin

ATTACHMENT 4

Tonga Communications Corporation

MD/C1.7

19th November, 2008

*Private Bag 4,
Nuku'alofa.
Tonga.
South Pacific
TEL : +676 20001
FAX : +676 26701
http://www.tcc.to*

Mr. Jorge P. Matar
Executive Director
AT&T Wholesale
2333 Ponce de Leon Blvd
Coral Gables, FL 33134
United States of America

Dear Mr. Matar,

re: Tonga Termination Rate Increase

With reference to your letter of 18 November 2008, we do understand the inconvenience that you have to face due to the ruling made by our Government as we did face the same situation when FCC set the benchmark rate for terminating calls into Tonga. Unfortunately, we do have to comply with the ruling of our Government for all the carriers in Tonga that the Inbound Settlement Rate to Tonga shall be no less than US$0.30/minute. I should make it clear that it was a ruling of the Government of the Kingdom of Tonga but not Tonga Communications Corporation (TCC). Therefore, TCC has to comply with this mandate.

As we both have to comply with the ruling of our Governments, we will temporary block the link on 24 November 2008 at 0000GMT until such time we can find a mutual solution for this issue. Please note that the latest Agreement that we signed was an interim one which was ended on 31st August, 2008.

We do not want to make any comment on the WTO issues as it will be better off to be addressed at the governmental level.

TCC does value our longstanding relationships and we are prepared to work closely with your staff to find a solution where we can mutually agree and at the same time still being able to comply with the ruling of our both Governments.

Yours sincerely,

Timote F. Katoanga
Managing Director