at&t

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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TWB-204
Washington, DC 20554

Re: *Petition Pursuant to Rule 64.1002(d) Requesting Issuance of Settlements Stop Payment Order on the US-Tonga Route*, IB Docket No. 09-10

Dear Ms. Dortch:

On March 30, 2009, James Talbot and I met with Paul Murray, Legal Advisor to Acting Chairman Copps, to discuss the above-captioned proceeding. The attached document was distributed during the meeting and served as the basis of our discussion. The discussion was consistent with the prior filings by AT&T in this docket.

One electronic copy of this Notice is being submitted in the above-referenced proceeding in accordance with Section 1.1206 of the Commission's rules.

Sincerely,

Amy L. Alvarez

cc: Paul Murray

AT&T Petition for Settlements Stop Payment Order on the U.S.-Tonga Route

- Tonga Communications Corporation ('TCC"), which is 100 per cent owned by the Tongan government, has blocked AT&T's circuits to Tonga since November 2008 after AT&T refused to increase termination rates from approximately 9 cents to 30 cents per minute. TCC has also blocked Verizon's circuits since November 2008 following Verizon's refusal to agree to the higher rate.

- TCC's termination rates were previously decreasing: TCC's rates were approximately 13 cents per minute from January 2006 through June 2008, and approximately 9 cents per minute in July and August 2008. In August 2008, TCC demanded an increased rate of 30 cents after the Tongan government, without explanation or justification, ordered a minimum termination rate of 30 cents effective on September 1, 2008.

- The total cost of terminating international calls in Tonga, shown by AT&T's study filed in this proceeding, based on highly conservative data sources and assumptions, is in the range of 8.5 to 17 cents per minute and is most likely at or below the lower end of this range – as further demonstrated by TCC's agreement to accept a rate of approximately 9 cents to terminate AT&T's traffic in July-August 2008.

- TCC's actions meet all three "indicia of potential anticompetitive conduct" identified by the Commission as potentially requiring intervention to prevent harm to U.S. consumers:

    - Increasing termination rates above FCC benchmark rates;

    - Establishing rate floors above previously negotiated rates;

    - Threatening or carrying out circuit disruptions to increase rates.

- TCC also violates longstanding Commission prohibitions against foreign carriers engaging in "whipsaw" or other coercive conduct to raise termination rates.

    - In Tonga, as in prior whipsaw cases, U.S. carriers are denied the ability to continue service unless they comply with unreasonable terms imposed by entities controlling the foreign end of the international route.

    - Without a stop payment order, TCC may enter into agreements with other U.S. carriers that would place pressure on AT&T and Verizon to comply with its demands.

- TCC wrongly claims that international law requires U.S. carriers to comply with the rate increase and prevents the Commission from prescribing any different rate.

    - The Commission has ample authority to protect the U.S. public interest from whipsaw conduct by ordering U.S. carriers to stop payments to TCC and to pay benchmark rates.

    - The Commission has emphasized that its "policies against foreign market power abuses apply" where foreign carriers "act pursuant to anticompetitive government mandates."

    - U.S. courts recognize that no nation is required to defer to, or enforce, foreign laws that are contrary to its own laws or public policies. The Commission took the same position in withdrawing its former comity-based call-back restrictions.

- TCC also fails to justify its high rate on the basis of AT&T's U.S. termination rates. AT&T's U.S. termination rates under its most recent agreement with TCC, outside very limited areas with high access charges that received little or no traffic from TCC, are less than 2 cents per minute.

- AT&T has asked the Commission to order U.S. carriers to stop settlements payments to TCC until all circuits are restored. Verizon supports AT&T's request. A further appropriate remedy, to reduce the adverse effects on the U.S. market from the circuit disruption and rate increase, would be to order US carriers to pay no more than the FCC benchmark rate of 19 cents to terminate calls to Tonga, including calls routed via third countries.