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

In the Matter of	)	
	)	
Petition of AT&T for Settlements Stop	)	IB Docket No. 09-10
Payment Order on the U.S.-Tonga Route	)	

COMMENTS OF AT&T INC.

AT&T Inc., on behalf of its affiliates ("AT&T") submits these comments in response to the Bureau's request for further comment on whether the Bureau's order requiring all U.S. carriers to suspend payments for termination services to the Tonga Communications Corporation ("TCC") should be extended to include U.S. carrier payments to Digicel Tonga Limited ("Digicel").[1] AT&T supports this proposal and also requests the Commission to take further steps to reduce termination rates on the U.S.-Tonga route to more reasonable levels by enforcing the benchmark rate of $0.19 for all U.S.-Tonga traffic sent on both direct and indirect routes to this destination. These additional measures by the Commission would further counteract the anticompetitive actions by the Tongan carriers and government as well as assist U.S. carriers to negotiate lower rates on this route.

I. THE COMMISSION SHOULD EXTEND THE STOP PAYMENT ORDER TO U.S. CARRIER ARRANGEMENTS WITH DIGICEL

The Bureau has found that TCC has engaged in anticompetitive behavior harmful to U.S. consumers by blocking AT&T's and Verizon's circuits on the U.S.-Tonga route in efforts to

[1] *Petition of AT&T Inc. for Settlements Stop Payment Order on the U.S.-Tonga Route*, IB Docket No. 09-10, Order and Request for Further Comment, DA 09-1325, rel. Jun. 15, 2009, ¶ 1 ("*Order*").

force both carriers to agree to raise previously negotiated termination rates to US$ 0.30.[2] In accordance with longstanding Commission precedent, the Bureau has ordered all U.S. carriers to suspend immediately all U.S. carrier payments for termination services to TCC pending the full restoration of AT&T's and Verizon's circuits. The Bureau found that "the effect of acquiescing to TCC's actions would be to agree to a nearly three-fold increase in termination rates with no negotiation or cost justification, which could harm U.S. consumers and have negative precedential effect for other U.S. international routes."[3] The stop payment order "removes the opportunity for TCC to establish direct operating arrangements with other U.S. carriers in order to play one off against the other in an effort to get the demanded higher rate."[4] AT&T welcomes the Bureau's order, which again makes clear that the Commission will not allow foreign carriers to attempt to force compliance with unreasonable rate demands by disrupting U.S. carrier circuits.

The Bureau has asked for comment on whether the stop payment order should be extended to include U.S. carrier direct arrangements with Digicel, the second operator in Tonga, which has raised its termination rates to $0.30 in compliance with the order of the Tongan government.[5] The Bureau "understand[s] that some U.S. carriers have direct operating arrangements with Digicel and apparently are paying the $0.30 rate to Digicel."[6]

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[2] *Id.*

[3] *Id.*, ¶ 22.

[4] *Id.*, ¶ 30. The Bureau rejected claims by TCC that because the rate increase was ordered by the Tongan government, the Commission cannot find TCC's actions to be anticompetitive and is prevented by international law from ordering U.S. carriers to suspend payments. *Id.*, ¶ 11.

[5] *Id.*, ¶ 45.

[6] *Id.*, ¶ 46.

AT&T supports this proposal. The Commission has previously affirmed that its "policies regarding foreign market power abuses apply" where "multiple carriers in a foreign market . . . act pursuant to anticompetitive government mandates," even though those carriers may otherwise lack market power.[7] As the Office of the U.S. Trade Representative has found in the 2009 Section 1377 Review, the Tongan government order has eliminated price competition between TCC and Digicel to terminate inbound international calls by mandating that both carriers must charge a minimum rate of $0.30.[8] As a result, Digicel no longer sets inbound termination rates independently and instead reinforces TCC's control of the foreign end of the U.S.-Tonga route by preventing any bypass of the unreasonably high rate required by TCC's parent, the Tongan government. The extension of the stop payment order would require a unified U.S. carrier bargaining position with both Tongan carriers, thus preventing any dilution of U.S. carrier bargaining power to resist their unreasonable rate demands.

II. THE COMMISSION ALSO SHOULD ENFORCE THE BENCHMARK RATE ON THE U.S.-TONGA ROUTE

AT&T also requests the Commission to take additional measures to require the reduction of rates to more reasonable levels on this route by issuing an order, effective immediately, requiring U.S. carriers to pay no more than the $0.19 benchmark rate for all U.S.-Tonga traffic. The benchmark requirement should apply to all U.S.-Tonga traffic, regardless of whether it is

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[7] *International Settlements Policy Reform*, First Report and Order, 19 FCC Rcd. 5709, ¶ 35, n.92 (2004) ("*ISP Reform Order*"). *See also*, *1998 Biennial Regulatory Review*, *Reform of the International Settlements Policy and Associated Filing Requirements*, 14 FCC Rcd. 7963, ¶ 30 (1999) (affirming that "the Commission may be required to take appropriate remedial action" where "a foreign carrier that otherwise would appear to lack market power might possess some ability unilaterally to set rates for terminating U.S. traffic due to government policies").

[8] *Id.*, ¶ 33; Office of the U.S. Trade Representative, *Results of the 2009 Section 1377 Review of Telecommunications Trade Agreements*, at 7, n.4.

terminated through direct arrangements with TCC and Digicel or though arrangements with carriers in third countries. Such a requirement would directly address the unreasonably high rates required by TCC and Digicel at the behest of the Tongan government and assist U.S. carriers to obtain more reasonable rates by mandating a unified U.S. carrier bargaining position on this issue and making clear to TCC, Digicel and the Tongan government that no U.S. carrier can agree to rates above the benchmark.[9]

The Commission undoubtedly has authority to require compliance with the $0.19 benchmark rate. Under the policies established by the 1997 *Benchmarks Order*, U.S. carriers are required to negotiate rates no higher than $0.19 on the U.S.-Tonga route effective as of January 1, 2002.[10] Where a U.S. carrier demonstrates that it has been unable to negotiate rates in compliance with this requirement and requests enforcement measures, the Commission may take enforcement measures to ensure that no U.S. carrier pays rates above benchmarks.[11] The record in this proceeding demonstrates that U.S. carriers are unable to negotiate a benchmark-compliant rate with any Tongan carrier as the result of the Tongan government order mandating an international termination rate of $0.30. Commission action to enforce the benchmark, therefore, is fully warranted here.

The Commission also has emphasized that it may impose a variety of remedies in response to U.S. carrier petitions alleging anticompetitive conduct on routes like the Tonga route that are no longer subject to the International Settlements Policy, including in particular

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[9] The Bureau states that such a remedy may be considered if U.S.-Tonga circuits "remain disrupted for an extended period of time." *Id*., ¶ 37. Circuits on this route have now been disrupted for almost eight months with no indication that TCC is willing to restore service.

[10] *International Settlement Rates*, 12 FCC Rcd. 19806, ¶ 165 (1997) ("*Benchmarks Order*").

[11] *Id*., ¶ 185-86.

"imposing a 'best practice' rate."[12] Since any current "best practice" rate is far below benchmark levels, a requirement that U.S. carriers must comply with the benchmark rate is well within the scope of the remedies the Commission may apply where foreign carriers engage in the types of conduct the Bureau has found to have occurred.[13]

Importantly, however, the enforcement of the benchmark rate will have little or no effect in reducing settlement rates on this route unless such enforcement applies to all U.S.-Tonga traffic – including all such traffic terminated through arrangements with third country carriers as well all traffic terminated through direct routing arrangements. The Commission is fully authorized to enforce a benchmark rate regardless of whether U.S. carriers send traffic through direct or indirect routing arrangements to the destination market.[14] Unless the Commission applies the benchmark requirement to all U.S.-Tonga traffic, U.S. carriers will be able to bypass any benchmark enforcement order simply by sending Tonga-bound traffic via third countries, some of which already function as major hubs for this traffic.

The record in this proceeding also demonstrates that benchmark rate of $0.19 provides more than adequate compensation for termination costs in Tonga. As described in AT&T's petition and reply comments, TCC previously agreed to terminate AT&T's traffic for

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[12] *ISP Reform Order*, ¶ 47.

[13] The "best practice" rate was established at $0.08 in the *Benchmarks Order* as being "the lowest settlement rate that U.S. carriers pay on average for traffic to any country." *Benchmarks Order*, ¶ 134. The average termination rate that U.S. carriers pay to all countries is now below $0.06, as shown by the Section 43.61 International Traffic Data for 2007 (Table A1), and the lowest rates presently paid by U.S. carriers are under $0.03. *See, e.g., id.* (showing average termination rates below $0.03 for U.S. traffic to Australia, Hong Kong & India).

[14] The *Benchmarks Order* makes clear that the benchmarks operate only as "a direct constraint on U.S. carriers," and do not regulate foreign carriers. 12 FCC Rcd. 19806, ¶ 279. They have no more than "an indirect effect" on any foreign carrier. *Id.*, ¶ 281. And nothing in the *Benchmarks Order* suggests that it does not apply when a foreign carrier in an intermediate country must enter into an arrangement with the

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approximately $0.09, while AT&T's cost study filed in this proceeding shows that the total cost of terminating U.S. traffic in Tonga is in the range of $0.085 to $0.17 and is likely at the lower end of this range.[15]

The enforcement of the benchmark rate is thus amply justified by the record in this proceeding and would further protect U.S. consumers against the anticompetitive actions by the Tongan carriers and government by directly assisting U.S. carriers to negotiate lower rates on this route. AT&T requests the Commission to undertake such enforcement in addition to extending the stop payment order to include arrangements with Digicel.

Respectfully submitted,

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foreign carrier in the destination country to terminate the call.

[15] AT&T Petition at 2; AT&T Reply at Att. 1. *See also*, *Order*, ¶ 36 ("After evaluating AT&T's method of estimation and checking the source data that AT&T used to estimate the domestic termination component of Tonga's international settlement costs, it appears that AT&T's method of estimation is reasonable and that AT&T identified and used the correct source data.")

CERTIFICATE OF SERVICE

I, Lacretia Hill, certify that copies of the foregoing "Comments of AT&T Inc." were delivered via e-mail on this day, Wednesday July 8, 2009, to the following individuals.

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