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January 6, 2010

BY ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445-12th Street S.W..
Washington, D.C. 20554

Re: Petition of AT&T for Settlements Stop Payment Order
On the U.S.-Tonga Route
IB Docket No. 09-10, DA 09-2422

Dear Ms. Dortch:

Tonga Communications Corporation ("TCC"), by its attorneys, hereby submits these Comments in response to the Second Order and Request for Further Comment ("Order") of the International Bureau ("Bureau") in the proceeding captioned above.[1] In its Second Order, the Bureau asks for comment on the proposal of AT&T Inc. ("AT&T") that U.S. carriers be ordered to pay no more than the FCC benchmark settlement rate of US$0.19/minute to terminate calls in Tonga that are routed through third countries.[2]

On July 23, 2009, TCC submitted Reply Comments ("Reply Comments") in response to the Order and Request for Further Comment ("Order") of the Bureau in this proceeding[3] and the Comments of AT&T as filed in response to the Order on July 8, 2009. A

1 *Petition of AT&T Inc. for Settlements Stop Payment Order on the U.S.-Tonga Route, Second Order and Request for Further Comment*, IB Docket No. 09-10, DA 09-2422, rel. Nov. 16, 2009 ("Second Order").

2 Order at ¶ 1.

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

copy of these Reply Comments is attached to this filing. As TCC demonstrates therein, the FCC does not have authority under the Communications Act of 1934, as amended (the "Act"), to impose the FCC's benchmark settlement rate for Tonga on traffic terminating through alternative settlement arrangements, and there is no precedent for such action. Furthermore, adoption of AT&T's proposal would not serve the public interest. It would harm U.S. consumers, as it would effectively prohibit them from making standard international circuit-switched telephone calls to Tonga. And it could threaten national security, since imposing the benchmark settlement rate on all traffic to Tonga would effectively sever communications links between the U.S. and Tonga.

Nothing has changed in recent months to alter these facts and conclusions. Since AT&T's proposal has no legal basis and serves no interests other than those of AT&T, the Bureau should reject AT&T's proposal that U.S. carriers be ordered to pay no more than the FCC benchmark settlement rate to terminate calls routed to Tonga through alternative settlement arrangements.

Respectfully submitted,

Tonga Communications Corporation

By: ______________________
Robert J. Aamoth
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Its Attorneys

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July 23, 2009

BY ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445-12th Street S.W..
Washington, D.C. 20554

Re: Petition of AT&T for Settlements Stop Payment Order
On the U.S.-Tonga Route
IB Docket No. 09-10

Dear Ms. Dortch:

Tonga Communications Corporation ("TCC"), by its attorneys, hereby submits these Reply Comments in response to the Order and Request for Further Comment ("Order") of the International Bureau ("Bureau") in the proceeding captioned above[1] and the Comments of AT&T Inc. ("AT&T") as filed in response to the Order on July 8, 2009 ("Comments"). In its Order, the Bureau asks for comment on AT&T's proposal that U.S. carriers be ordered to pay no more than the FCC benchmark settlement rate of US$0.19/minute to terminate calls in Tonga, including calls routed through third countries.[2] AT&T in Comments reiterates its support for its proposal, stating that such action is "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."[3]

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

2 Order at ¶ 47.

3 Comments at 6.

As TCC established in its Application for Review of the Order,[4] the Bureau erred in granting AT&T's Petition and ordering that all U.S. settlement payments to TCC be stopped until all circuits have been restored on the U.S.-Tonga route. The Bureau should not compound this error by adopting AT&T's proposal to impose the benchmark settlement rate on traffic terminating through indirect arrangements. TCC has repeatedly demonstrated in this proceeding that its actions do not constitute "whipsawing" and are not otherwise anticompetitive.[5] No one, including AT&T,[6] disputes that TCC was required by the laws of Tonga to increase its termination rates to AT&T and Verizon. TCC temporarily closed its direct links with AT&T and Verizon to enable both TCC and the U.S. carriers to comply with their respective government's rulings on the applicable settlement rate until a solution acceptable to both governments is found. TCC has accepted and terminated, and continues to accept and terminate, U.S.-originating traffic indirectly routed to Tonga in the interim. Under these circumstances, TCC's actions cannot be found to be anticompetitive.

Despite AT&T's assertions to the contrary, the FCC does not have authority under the Communications Act of 1934, as amended (the "Act"), to impose the FCC's benchmark settlement rate for Tonga on traffic terminating through alternative settlement arrangements. As TCC has repeatedly shown, the Commission cannot lawfully issue an order regarding the rates charged by a foreign telecommunications carrier for providing termination services in a foreign country when such order creates a direct conflict with the duly enacted laws and regulations of the foreign country.[7] Ordering U.S. carriers to pay no more than US$0.19/minute to terminate traffic in Tonga when Tonga law requires TCC to charge US$0.30/minute to terminate traffic in Tonga creates just such a conflict.

The action requested by AT&T would only exacerbate the conflict between U.S. and foreign law created by the Bureau's Order. It is one thing to prohibit the direct exchange of traffic on a foreign route at termination rates mandated by law in the foreign country. It is quite another to broaden that prohibition to include all indirect or transit routing, in effect prohibiting U.S. carriers from originating standard circuit-switched calls to Tonga until the dispute is resolved in favor of AT&T's position. Moreover, AT&T's proposal cannot be justified by the FCC's benchmark settlement rate policy. That policy was adopted to apply, and has applied, exclusively to traffic routed on a direct basis with foreign carriers; it has never applied to the indirect routing of traffic between the U.S. and foreign countries. The Commission has always

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4 TCC Application for Review, IB Docket No. 09-10, filed July 15, 2009 ("Application for Review").

5 *See* Application for Review at 3-5; Opposition of TCC in IB Docket No. 09-10, filed February 19, 2009, at 3-5 ("Opposition").

6 *See* Comments at 4.

7 See Application for Review at 6-8; Opposition at 7-9.

made clear that U.S. carriers remained free to route traffic indirectly to foreign countries whose termination rate exceeds the benchmark. There is no basis for departing from that well-established precedent in this case.

Furthermore, TCC's prior acquiescence in a termination rate of US$0.09/minute does not support the reasonableness of a US$0.19/minute termination rate as AT&T suggests.[8] As TCC has previously explained, TCC accepted US$0.09/minute from the U.S. carriers not because this amount appropriately compensates TCC for its costs but because the U.S. carriers whipsawed TCC into accepting this amount.[9] One of the reasons why the Government of Tonga mandated a minimum termination rate of US$0.30/minute was to counteract the perceived whipsawing behavior of the U.S. carriers.

Most importantly, imposing the benchmark settlement rate on traffic indirectly routed to Tonga would punish U.S. consumers, not protect them as AT&T contends,[10] as it would in all likelihood greatly limit the options available to U.S. consumers for placing phone calls to Tonga. AT&T's proposal is akin to suggesting that a village must be destroyed in order to be saved. It cannot possibly be in the interests of U.S. consumers to prohibit them from placing standard international circuit-switched telephone calls to Tonga until AT&T's objection to the Government-mandated termination rate in Tonga is resolved. While it may still be possible for some U.S. consumers to place calls to Tonga through Internet telephony, via "gray market" carriers, or through other means, not all U.S. consumers have knowledge of or access to these mechanisms. Further, the quality of these calls would be impaired, and in some cases the prices would rise significantly. And some consumers would simply be unable to make a voice telephone call to Tonga. This cannot be what Congress meant when it charged the Commission with "regulating . . . foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges."[11]

Further, AT&T's proposal would set a dangerous precedent that is contrary to the national security interests of the United States. Formally severing communications links between the United States and a foreign country -- which is effectively what AT&T is proposing, just so AT&T can bring more pressure to bear on a foreign country for purposes of increasing

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8 *See* Comments at 5-6.

9 Application for Review at 8, n.21.

10 Comments at 6.

11 47 U.S.C. § 151.

AT&T's margins on the route -- ignores the harm that can occur to U.S. national interests when seamless global communications are interrupted.[12]

If the Bureau is truly interested in protecting U.S. consumers, it should investigate the collection rates of U.S. carriers on the U.S.-Tonga route. As TCC has previously noted, AT&T and Verizon charge U.S. consumers rates as high as $7.09/minute (Verizon) and $3.22/minute (AT&T) for service to Tonga.[13] As such, AT&T and Verizon have failed to pass through to U.S. consumers the settlement rate reductions that TCC has agreed to over the years.

For these reasons, the Bureau should reject AT&T's proposal that U.S. carriers be ordered to pay no more than the FCC benchmark settlement rate to terminate calls routed to Tonga through alternative settlement arrangements.

Respectfully submitted,

Tonga Communications Corporation

By: ______________________
Robert J. Aamoth
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Its Attorneys

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12 *See* 47 U.S.C. § 151 (FCC's statutory charge to regulate "for the purpose of the national defense" and "for the purpose of promoting safety of life and property").

13 Application for Review at 2-3.

CERTIFICATE OF SERVICE

I, Joan Griffin, hereby certify that copies of the foregoing Comments of Tonga Communications Corporation in IB Docket No. 09-10, DA 09-2422, were delivered via e-mail on January 6, 2010 to the following:

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