

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

2010 Biennial Regulatory Review            )  
of Regulations Administered                )  
by the International Bureau                 )     IB Docket No. 10-268

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**COMMENTS OF AT&T INC.**

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**COMMENTS OF AT&T INC.**

AT&T Inc., on behalf of its affiliates (“AT&T”) submits the following comments in response to the Public Notice requesting comments on telecommunications regulations administered by the International Bureau for consideration in the Commission’s 2010 Biennial Review.<sup>1</sup>

**SUMMARY**

Pursuant to Section 11 of the Telecommunications Act of 1996, 47 U.S.C. Sect. 161, the Commission is required to undertake a comprehensive review of its regulations and is required to take action to eliminate any outdated regulations that are no longer necessary in the public interest due to increased competition.<sup>2</sup> With respect to the regulations administered by the International Bureau, AT&T asks the Commission to use this biennial review proceeding further to align these rules with the highly competitive U.S. international marketplace by: (1) streamlining Rule 43.61 and Rule 43.82 international reporting requirements, including removing the quarterly traffic reports required by Rule 43.61(b), and (2) removing the

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<sup>1</sup> Public Notice, *The Commission Seeks Public Comment in 2010 Biennial Review of Telecommunications Regulations; Announces Particular Focus on Data Collection Requirements*, FCC 10-204, rel. Dec. 30, 2010.

International Settlements Policy (“ISP”) and its associated filing requirements from the remaining U.S. international routes on which this policy still applies.

The U.S. and global international telecommunications markets have seen major changes in recent years as the result of rapid technological change, market liberalization, the privatization of many former government-owned incumbent carriers, widespread new entry, greatly reduced retail and wholesale prices and massive increases in international traffic volumes. These pro-competitive market changes require the streamlining or removal of the monopoly-era data collection requirements and other international rules that are highlighted here.

In the 2008 Biennial Review, the International Bureau staff “concluded that the reporting requirements for international services in Part 43 may no longer be necessary in the public interest, and recommended that the Commission should consider whether to repeal or modify those requirements in IB Docket 04-112.”<sup>3</sup> The International Bureau staff also “concluded that the International Settlements Policy (ISP) in Part 64, Subpart J, may no longer be necessary in the public interest as the result of meaningful competition between telecommunications service providers, and recommended that the Commission should initiate a proceeding to consider repealing or modifying the ISP.”<sup>4</sup>

Additionally, since the 2008 Biennial Review, the Commission has introduced changes in the regulatory fee methodology for submarine cables that have removed the need for the filing of

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<sup>2</sup> 47 U.S.C.A. § 161.

<sup>3</sup> Public Notice, *Commission Releases 2008 Biennial Review of Telecommunications Regulations*, DA 10-1269, rel. Jul. 8, 2010 (“2008 Biennial Review Results”), at 2.

<sup>4</sup> *Id.*

Section 43.82 circuit status reports for international circuits on submarine cables.

AT&T respectfully requests the Commission to take action to remove or streamline these outdated international regulations in accordance with these staff recommendations and the changed regulatory fee methodology in order to avoid further continuing these unnecessary burdens on U.S. international carriers.<sup>5</sup>

**I. SECTION 43 INTERNATIONAL TRAFFIC AND CIRCUIT STATUS REPORTS SHOULD BE REMOVED OR SIGNIFICANTLY STREAMLINED**

The global telecommunications services industry now bears little resemblance to the monopoly-dominated global industry that existed in 1992, when the Section 43.61 annual traffic and revenue reporting requirements last underwent substantial revision. These greatly changed market circumstances require the Commission further to align its international rules with the highly competitive U.S. international marketplace by streamlining the international reporting requirements. The extensive international traffic and circuit reports that U.S. carriers continue to file today are a remnant of that former monopoly era and impose substantial burdens that could be significantly reduced by such reform.

AT&T estimates that the annual international traffic report required by Section 43.61(a) requires over 350 hours to complete. Similarly, AT&T estimates that compilation of the annual international circuit status report required by Section 43.82 requires over 200 hours to complete. These compliance burdens substantially exceed the response times of “2 hours” and “9 hours”

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<sup>5</sup> See also, Barack Obama, *Toward a 21<sup>st</sup>-Century Regulatory System*, Wall Street Journal, Jan. 18, 2011 (supporting the removal of “rules [that] have gotten out of balance, placing unreasonable burdens on business” and “unnecessary paperwork requirements that waste time and money”).

for these respective reports initially estimated pursuant to the Paperwork Reduction Act.<sup>6</sup>

In 2004, the Commission put forward proposals to simplify and streamline the international reporting requirements.<sup>7</sup> AT&T and other U.S. carriers supported these proposals but also expressed concern that the Commission should not adopt proposed new reporting requirements, such as reporting non-route-specific revenues, which would increase reporting burdens without serving any clear public interest purpose in today's highly competitive international marketplace.

Significant burdens would be removed from U.S. carriers just from the elimination of Rule 43.61(b), which requires the filing of quarterly traffic reports that serve no discernable purpose now that virtually all international traffic is terminated under commercial arrangements. The Rule 43.61(b) requirement to report route-specific traffic, revenue and settlements information on a quarterly basis was established in 1997 to allow detection of "one-way by-pass" by foreign carriers. Under this practice, foreign carriers could exploit ISR arrangements to raise U.S. outpayments, by terminating their U.S.-inbound traffic at market rates under those arrangements while requiring U.S. carriers to pay high settlement rates for U.S.-outbound traffic.<sup>8</sup> This by-pass safeguard has been both unnecessary and unworkable since 2004 when the

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<sup>6</sup> See *Notice of Public Information Requirements Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority*, 74 Fed. Reg. 53235, 53236 (2009). See also, AT&T Comments, *Notice of Public Information Requirements Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority*, filed Dec. 15, 2009, at 3.

<sup>7</sup> *Reporting Requirements for U.S. Providers of International Telecommunications Services*, IB Docket No. 04-112, Notice of Proposed Rulemaking, FCC 04-70, rel. Apr. 12, 2004 ("*Reporting NPRM*").

<sup>8</sup> See *International Settlement Rates*, 12 FCC Rcd. 19806, ¶¶ 249-253 (1997) (establishing reporting requirement).

*ISP Reform Order* removed the ISP on virtually all routes and allowed all traffic on those routes to be terminated under commercial arrangements.<sup>9</sup> The Commission, therefore, should now remove this highly burdensome and unneeded quarterly reporting requirement by eliminating Rule 43.61(b).

As noted above, the International Bureau concluded in the 2008 Biennial Review that the Part 43 reporting requirements for international services may no longer serve the public interest and has recommended their repeal or modification.<sup>10</sup> Such action is urgently needed to remove the unnecessary burdens imposed by these reports.

The Commission's 2009 reform of its regulatory fee methodology for international submarine cable circuits has also made possible additional streamlining of the Section 43.82 circuit status reporting requirements. The Commission stated in 2004 that a primary purpose of this report is "to implement the requirement in section 9 of the Communications Act that carriers pay regulatory fees for each of the bearer circuits they own."<sup>11</sup> Following the 2009 regulatory fee changes, however, carriers no longer pay these fees on each of their submarine cable bearer circuits, now that fees for submarine cable capacity are levied on a "per-system" basis.<sup>12</sup> Thus, Section 43.82 submarine cable circuit information is no longer required to implement the regulatory fee requirement.

Section 43.82 submarine cable circuit information also has little if any value for other

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<sup>9</sup> See *International Settlements Policy Reform*, First Report and Order, 19 FCC Rcd. 5709, ¶ 31 (2004) ("*ISP Reform Order*") (eliminating the ISR policy).

<sup>10</sup> *2008 Biennial Review Results*, at 2.

<sup>11</sup> *Reporting NPRM*, ¶ 58.

<sup>12</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Second Report and Order, 24 FCC Rcd. 4208 (2009).

purposes because of the limited scope of this data. The private non-common carrier submarine cable operators that account for the very large majority of U.S. submarine cable capacity are “not required by section 43.82 to report their circuits.”<sup>13</sup> As a result, for the past nine years, the total number of submarine cable circuits reported annually under Section 43.82 has not exceeded 10.1% of total available U.S submarine cable capacity.<sup>14</sup> As the collection of this limited data provides no basis for competitive analysis and serves no other clear regulatory purpose, the Commission should no longer require U.S. facilities-based carriers to undertake the burden of reporting this superfluous information.

## **II. THE ISP AND ITS ASSOCIATED FILING REQUIREMENTS SHOULD BE REMOVED ON ALL INTERNATIONAL ROUTES**

In response to the rapid growth of competition in the international market, the Commission has drastically reduced its regulation of international traffic termination arrangements with foreign carriers under the International Settlements Policy (“ISP”) in order to encourage more flexible arrangements and lower rates.<sup>15</sup> Under these deregulatory policies, 165 U.S. international routes, accounting for more than 98 percent of U.S.-outbound traffic, are now ISP-exempt. U.S. carriers have negotiated market-based commercial traffic termination arrangements on these routes that have reduced U.S. termination rates far below the Commission’s settlement rate benchmarks. Indeed, since 2006, U.S. carriers’ average world-

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<sup>13</sup> *FCC 2009 Section 43.82 Circuit Status Data Report*, Dec. 2010, at 1.

<sup>14</sup> *See, id.* at 33, Table 7.

<sup>15</sup> *See ISP Reform Order. See also, 1998 Biennial Regulatory Review, Reform of the International Settlements Policy and Associated Filing Requirements*, Report and Order and Order on Reconsideration, 14 FCC Rcd. 7963, ¶ 24 (1999) (“1999 Settlements Reform Order”).

wide termination rates have been less than 6 cents.<sup>16</sup> As the result of this greatly increased competition, the continued application of the ISP to the small number of routes remaining subject to the ISP – accounting for less than 2 percent of total U.S.-outbound international traffic – is no longer necessary to protect the U.S. market against competitive harm. Retention of the ISP also now hinders efforts to negotiate lower rates on the routes that are still subject to this regulation. Accordingly, as AT&T, Sprint and Verizon requested in a Petition for Rulemaking filed in March 2006<sup>17</sup> – without opposition by any party – the Commission should now remove its remaining ISP regulation and its associated filing requirements and allow market-based termination arrangements on all U.S. international routes.

**1. The ISP Now Imposes Greater Burdens on U.S. Carriers Seeking to Negotiate Lower Rates**

The retention of the ISP on a small number of routes imposes significant difficulties on the negotiation of lower rates on those routes in compliance with the requirements of this regulation. While it has long been recognized that the ISP frequently impedes the negotiation of lower rates,<sup>18</sup> the requirements of the ISP obstruct U.S. carrier rate negotiations to an even

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<sup>16</sup> See FCC 2008, 2007 & 2006 Section 43.61 Reports, Table A1.

<sup>17</sup> See *Joint Petition for Rulemaking to Further Reform the International Settlements Policy*, RM-11322 (filed by AT&T Inc., Sprint Nextel Corporation and Verizon on March 13, 2006). See Consumer & Governmental Affairs Bureau Reference Information Center Petition for Rulemakings filed, Public Notice, Report No. 2764 (rel. Mar. 20, 2006).

<sup>18</sup> The requirements of the ISP that U.S. carriers must be offered the same accounting rate, receive a proportionate share of return (*i.e.*, U.S.-inbound) traffic, and maintain symmetrical rates for outbound and inbound traffic on each route often impede the negotiation of lower termination rates. The Commission noted in 2004 that the ISP “is not structured to provide an incentive to foreign carriers to lower rates to cost-based levels,” and “may in reality hinder the ability of U.S. carriers to negotiate more cost-based settlement rates and efficient terms in their agreements with foreign carriers.” *ISP Reform Order*, ¶¶ 13, 34. Similarly, the Commission has explained that, under the ISP requirement that negotiated rates are available to all other carriers,

greater extent when most U.S. international routes are ISP-exempt. In the largely deregulated world in which U.S. carriers now compete, rate reductions are now much more likely to result from the removal of the ISP on a route than from the continuation of this regulation on the relatively few routes where it still applies. That is because foreign carriers on ISP routes have little or no incentive to agree to pay symmetrical rates to U.S. carriers for their U.S.-bound traffic in compliance with the ISP when they readily may send that traffic to the U.S. at much lower market rates through traffic re-origination arrangements offered by third country foreign carriers on ISP-exempt routes between the U.S. and third countries.

While the Commission retained the ISP on non-benchmark compliant routes in 2004 because of the higher rates and more limited development of market forces on these routes, the burdens resulting from the retention of the ISP now far outweigh the benefits of this policy. Because of the greater difficulty of negotiating lower rates on ISP routes, compliance with benchmark rates should no longer be required before removing the ISP.

## **2. Competitive Concerns Are Fully Addressed By the Commission's Competitive Safeguards**

The protection of the U.S. market against competitive harm, which was the original purpose of the ISP, does not require the retention of this regulation. The prevention of anticompetitive conduct by foreign carriers is addressed in a more targeted manner on ISP-exempt routes by the Commission's competitive safeguards procedures that were established

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“the negotiating carrier has a reduced incentive to negotiate aggressively,” because “[n]o matter how aggressively a carrier negotiates, it will be unable to achieve a cost advantage vis-à-vis its competitors under the ISP.” *1999 Settlements Reform Order*, ¶ 24.

specifically to protect the U.S. market after the removal of the ISP. As the Commission has found, the safeguard procedures “effectively achieve the same purposes of the ISP to prevent anticompetitive harm without also broadly prohibiting the benefits of more flexible agreements to U.S. competition and U.S. customers.”<sup>19</sup> Further protection is provided by the Commission’s longstanding prohibition on anticompetitive conduct by foreign carriers<sup>20</sup> and the “No Special Concessions” rule, which continues to apply to all U.S. carrier arrangements with foreign dominant carriers. These well-established rules and policies would continue to prevent the abuse of foreign market power following the further exemption of international routes from the ISP requested here.

The U.S. industry’s additional experience with commercial international traffic arrangements since the Commission greatly expanded the number of international routes exempted from the ISP in 2004 confirms the benefits of these arrangements in allowing the negotiation of lower rates and more efficient arrangements on both liberalized and non-liberalized routes. U.S. carriers’ average world-wide termination rates fell by more than 20 percent from 7.3 cents in 2004 to under 6 cents in 2006, and have remained at that level since then, which is more than 60 per cent below the lowest benchmark rate of 15 cents.<sup>21</sup> Continued pro-competitive developments in the global telecommunications market also support this further deregulatory step. The Commission deregulated benchmark compliant routes in 2004 in light of

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<sup>19</sup> *ISP Reform Order*, ¶ 36.

<sup>20</sup> *AT&T Corp. Emergency Petition for Settlements Stop Payment Order and Request for Immediate Interim Relief*, 19 FCC Rcd. 9993, ¶ 18, n.64 (2004) (“*Philippines Order On Review*”) (“The Commission’s policy of protecting the public interest from anticompetitive behavior goes back over sixty years.”). *See also, id.*, ¶¶ 22, 31; *ISP Reform Order*, ¶ 45.

<sup>21</sup> *See* FCC 2004 & 2006 43.61 Reports, Table A1.

data showing, among other things, thirty-eight countries had some competition in their international telecommunications services markets in 2002.<sup>22</sup> In today's global market, according to *TeleGeography*, "competition has spread to all but a handful of countries, and the vast majority of the world's international traffic originates and terminates in countries with competitive telecom markets."<sup>23</sup> These pro-competitive pressures are being felt at least to some extent on virtually all U.S. international routes. This continued growth of global competition helps to address concerns that the further removal of the ISP would lead to the abuse of foreign market power and further demonstrates that more flexible traffic termination arrangements should now be extended to all international routes.

For these reasons, the burdens resulting from the continuation of the ISP now far outweigh the benefits of this regulation. The International Bureau staff accordingly concluded in the 2008 Biennial Review that the ISP may no longer be necessary in the public interest as the result of meaningful competition between telecommunications service providers, and recommended that the Commission should consider the repeal or modification of this policy.<sup>24</sup> The Commission should now act on this staff recommendation and initiate a rulemaking to remove this unnecessary policy from all international routes.

Respectfully submitted,

By: /s/ James J. R. Talbot

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<sup>22</sup> *ISP Reform Order*, ¶ 21 (citing data from *TeleGeography 2004*).

<sup>23</sup> *TeleGeography Report, Carriers* (2010), at 1.

<sup>24</sup> *2008 Biennial Review Results*, at 2.

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