Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
International Settlements Policy Reform	)	IB Docket No. 11-80
	)	
Joint Petition for Rulemaking of AT&T Inc., Sprint Nextel Corporation and Verizon	)	RM-11322
	)	
Modifying the Commission's Process to Avert Harm to U.S. Competition and U.S. Customers Caused by Anticompetitive Conduct	)	IB Docket No. 05-254
	)	
Petition of AT&T for Settlements Stop Payment Order on the U.S.-Tonga Route	)	IB Docket No. 09-10

COMMENTS OF VERIZON

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COMMENTS OF VERIZON[1]

Given the increasingly competitive international telecommunications market, the Commission should eliminate its International Settlements Policy (ISP) for the limited international routes to which it continues to apply. The ISP harms consumers by removing incentives for foreign carriers to negotiate lower rates and by hampering the ability of U.S. carriers to enter into more efficient and economical termination arrangements. Consistent with its approach in the *2004 ISP Reform Order*,[2] the Commission should extend the same commercial flexibility to the remaining international routes.[3]

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1 The Verizon companies participating in this filing ("Verizon") are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

2 *International Settlements Policy Reform; International Settlement Rates,* First Report and Order, 19 FCC Rcd 5709 (2004) ("*2004 ISP Reform Order*").

3 *See International Settlements Policy Reform*, Notice of Proposed Rulemaking, 26 FCC Rcd 7233, ¶ 13 (2011) ("*NPRM*"). The Commission proposes to continue to apply the ISP to the international route to Cuba because Cuba is on the Commission's "Exclusion List," and thus

By the same token, the Commission should refrain from implementing new regulations that would harm consumers by stifling competition and imposing unnecessary burdens on U.S. carriers. Specifically, the Commission should not adopt additional filing requirements for U.S. carriers or apply benchmark rates to indirect routing arrangements. Nor should the Commission adopt other proposals in the *NPRM*, such as expanding presumptions of anticompetitive behavior, adding additional remedies in the event of a finding of anticompetitive conduct, or modifying the Commission's complaint procedures. These proposals are unnecessary to protect consumers. Moreover, the proposed additional measures are ill-suited to address the problems currently being encountered in the international market, which typically involve foreign governments mandating increases in termination rates or imposing taxes or other fees on incoming international traffic. The Commission's existing safeguards and a government-to-government approach are the best means of resolving such issues.

I. THE INTERNATIONAL SETTLEMENTS POLICY SHOULD BE REMOVED FROM THE REMAINING ROUTES TO WHICH IT APPLIES

The Commission's international settlements policy originated in the 1930s to address "whipsawing," which occurs when a foreign carrier or foreign government engages in anticompetitive conduct in an attempt to extract increases in settlement rates from U.S. carriers.[4] Although the policy evolved through Commission decisions and practices, it was never intended to be a permanent fixture. Indeed, the Commission recognized that as competition for

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carriers seeking to serve Cuba must submit a separate application pursuant to procedures recently adopted by the Commission based on guidance from the State Department. *Id*.; *see also* Public Notice, "Modification of Process to Accept Applications for Service to Cuba and Related Matters," 25 FCC Rcd 436 (2010).

[4] *See, e.g., Implementation and Scope of the Uniform Settlements Policy for Parallel International Communications Routes*, Report and Order, 51 Fed. Reg. 4736, ¶ 4 (1986). Originally applied to telex and telegraph traffic, the ISP (or Uniform Settlements Policy as it was called at the time) was extended to voice traffic in 1986. *Id.* ¶¶ 32-36; *see also 2004 ISP Reform Order* ¶ 12.

international traffic increased, the ISP's restrictions were no longer appropriate and might hinder the public interest.[5]

Following the *2004 ISP Reform Order*, based on the growth of international competition and a corresponding decrease in settlement rates, the Commission lifted the requirements of the ISP from 165 international routes.[6] Currently, only 38 U.S. international routes – constituting less than 2 percent of international traffic – remain subject to the ISP.[7]

Five years ago, Verizon, AT&T, and Sprint filed a joint petition requesting that the Commission eliminate the ISP from the remaining international routes in order to encourage lower rates and more flexible arrangements on all routes.[8] No party filed comments opposing the *Joint Petition*.[9] As explained in the *Joint Petition,* the Commission's ISP regime impedes the negotiation of lower termination rates on the remaining routes by requiring 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

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5 *Id*. ¶ 13 (noting that "[a]s the U.S.-international market and foreign markets have become more competitive, the Commission has become progressively more deregulatory in its application of the ISP" because "the restrictions of the ISP that are intended to protect the public interest 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").

6 *See id*. ¶ 29; *see also NPRM* ¶ 6. The Commission maintains a list of ISP-exempt routes on its website: http://transition.fcc.gov/ib/pd/pf/isp_exempt.html.

7 *NPRM* ¶ 6.

8 Joint Petition of AT&T Inc., Sprint Nextel Corporation and Verizon, *Joint Petition for Rulemaking to Further Reform the International Settlements Policy*, RM-11322 (Mar. 13, 2006) ("*Joint Petition*").

9 Eight days after submission of the *Joint Petition*, the Commission released the Public Notice that launched the 30 day comment period. See *Joint Petition* Public Notice, Report No. 2764 (Mar. 21, 2006).

route.[10] The ISP burdens U.S. carriers seeking to negotiate lower termination rates because foreign carriers have no incentive to negotiate symmetrical rates, since, with U.S. bound traffic on non-ISP routes terminated at market rates, foreign carriers on ISP routes can obtain lower refile rates for their U.S. bound traffic.[11]

Since the filing of the *Joint Petition,* the case for eliminating the ISP on the remaining routes has become even more compelling. As the Commission correctly recognizes, over the last several years the international market has continued to experience "significant competitive growth." *NPRM* ¶ 14. As a result of such competition, international circuit capacity has increased, even as costs have continued to decrease.[12]

In 2004, the Commission predicted that "the use of non-traditional arrangements" such as VoIP increasingly would "become a factor in a rapidly changing global telecommunications market." *2004 ISP Reform Order* ¶ 23. The Commission also predicted that lifting the ISP on routes would "provide incentive to U.S. carriers to negotiate aggressively with foreign incumbents because U.S. competitors will no longer be required to share the gains of such negotiation with competitors in the form of identical contracts." *Id*. ¶ 28. Both of these predictions have come to fruition. Alternative technologies, in combination with the increased flexibility afforded to U.S. carriers by the Commission's prior reform efforts, have helped

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10 *Joint Petition* at 2-8; *see also 2004 ISP Reform Order* ¶¶ 13, 34 (noting 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").

11 *Joint Petition* at 2-8.

12 *See, e.g.,* Federal Communications Commission, *2009 International Telecommunications Data*, http://transition.fcc.gov/ib/sand/mniab/traffic/files09/CREPOR09.pdf, at Table 8 (April 2011) (noting that U.S. billed international minutes more than doubled from 30.1 billion to 72.9 billion minutes between 2000 and 2009, while average revenue per international minute decreased from $0.23 to $0.02 during this same time period).

increase the prevalence of market driven rates overall. According to *TeleGeography*, international phone traffic grew an estimated 4 percent in 2010 to 413 billion minutes, with international VoIP traffic increasing significantly.[13] For example, the share of international traffic routed via Skype is projected to exceed 102 billion minutes in 2010, a projected increase of "an astonishing 45 billion minutes in 2010 – more than twice the volume added by all of the world's phone companies, combined."[14]

These market forces warrant the elimination of the ISP on the remaining routes to which it currently applies. Removing the ISP would expedite U.S. carriers' ability to respond to market conditions and facilitate their ability to negotiate commercial arrangements that would benefit U.S. carriers and consumers alike. As the Commission recognized in 2004, the ISP harms consumers by denying "U.S. carriers the ability to respond quickly to changing conditions in the global telecommunications marketplace by preventing carriers from negotiating responsive and flexible agreements with individualized rates and terms." *2004 ISP Reform Order* ¶ 13. This harm is even more pronounced in today's competitive and largely deregulated marketplace. As a result, eliminating the ISP on the remaining routes is more likely to result in lower rates than maintaining this antiquated regime.

II. THE COMMISSION SHOULD NOT IMPLEMENT NEW REGULATIONS THAT ARE UNNECESSARY TO RESOLVE PROBLEMS IN THE MARKETPLACE OR THAT WOULD HARM CONSUMERS

A. The Commission Already Has Tools To Address Competitive Concerns That Might Arise From Eliminating the ISP Regime

While endorsing elimination of the ISP regime, the Commission has proposed various changes to its rules to address possible anticompetitive conduct by foreign carriers. However,

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13 *TeleGeography*, "International Long-Distance Slumps, While Skype Soars," http://www.telegeography.com/index.html (follow "Press" to "Press Releases") (Jan. 6, 2011).

14 *Id.*

these changes are unnecessary and, in many cases, harmful to the consumers that they ostensibly are intended to protect.

Since the Commission's *2004 ISP Reform Order*, and with the resulting removal of the ISP from 165 international routes, the Commission's existing safeguards have proven adequate to address the types of concerns that motivated the ISP regime. The Commission has the statutory authority to prevent foreign carriers from harming U.S. competition on U.S. international routes – authority that it has not hesitated to exercise when appropriate.[15] The Commission also has emphasized that the prohibition on anticompetitive conduct continues to apply in the absence of the ISP.[16] Consequently, the elimination of the ISP from the remaining international routes to which it applies should not serve as a pretext for the adoption of new and unnecessary regulations.

In addition, certain new proposals – such as the proposed contract filing requirement for U.S. carriers and the application of benchmarks to indirect routing arrangements – would harm consumers by stifling competition and imposing burdensome requirements on U.S. carriers.

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[15] *2004 ISP Reform Order* ¶ 91 (noting the Commission's "broad authority to protect U.S. consumers from harms resulting form anti-competitive behavior …"); *AT&T Corp. Proposed Extension of Accounting Rate Agreement for Switched Voice Service with Argentina*, Order, 11 FCC Rcd 18014, ¶ 1 (1996) ("This Commission will not allow foreign monopolists to undermine U.S. law, injure U.S. carriers or disadvantage U.S. consumers."); *see also Cable & Wireless v. FCC*, 166 F.3d 1224, 1227 (D.C. Cir. 1999) ("The FCC has long sought to protect U.S. carriers and U.S. consumers from the monopoly power wielded by foreign telephone companies in the international telecommunications market").

[16] *See, e.g., 2004 ISP Reform Order* ¶ 47 (noting that "the Commission may pursue a variety of remedies" when "there is a real or potential harm to the U.S. public interest through U.S. carrier interaction with foreign carriers on non-ISP routes").

Such proposals are antithetical to the Obama Administration's directives to eliminate unnecessary and burdensome regulations.[17]

B. The Commission Should Not Impose New Contract Filing Requirements on U.S. Carriers

The *NPRM* proposes to require that U.S. carriers file agreements, amendments to agreements, and rates for the provision of services on all U.S. international routes "when the agreed-upon rates are above benchmark" or when "any provision in the contract has the effect of bringing the settlement rate above benchmark even though the stated contract rate is at or below benchmark." *NPRM* ¶ 17. The Commission should reject this proposal.

First, the Commission previously has recognized that the filing of agreements can harm the competitive process by creating disincentives for foreign carriers to agree to reduced termination rates.[18] This disincentive would be particularly pronounced if U.S. carriers were compelled to file agreements with benchmark-compliant settlement rates that contain additional provisions which could result in a settlement rate above benchmark.

Second, even if handled on a confidential basis, a contract filing requirement for U.S. carriers amounts to additional regulation in an area that should be governed by the free market. Any approach requiring U.S. carriers to file agreements, amendments, and rates would be

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17 *See* President Barack Obama, *Improving Regulation and Regulatory Review*, Executive Order 13563, 76 FR 3821 (2011) ("January 2011 Executive Order"); President Barack Obama, *Regulation and Independent Regulatory Agencies*, Executive Order 13579, 76 FR 41587 (2011) ("July 2011 Executive Order").

18 *See 1998 Biennial Regulatory Review Refonn of the International Settlements Policy and Associated Filing Requirements*, Report and Order and Order on Reconsideration, 14 FCC Rcd 7963, ¶ 28 (1996) (noting that "[f]oreign carriers may be reluctant to enter into arrangements with U.S. carriers to terminate traffic at reduced rates if the U.S. carrier is required to file such arrangements publicly"); *see also 2004 ISP Reform Order* ¶ 58 (finding "that the filing and maintenance of current contracts at the Commission for routes where the ISP no longer applies unnecessarily restricts the flexibility of U.S. carriers in their negotiations and may provide disincentives for U.S. carriers to negotiate aggressively toward more cost-based rates to the benefit of U.S. customers").

"impractical in a dynamic marketplace" and inconsistent with the Commission's "ultimate goal of promoting competition through market-based solutions." *2004 ISP Reform Order* ¶¶ 28, 58.

Third, a contract filing requirement would be unduly burdensome on U.S. carriers,[19] and would run afoul of the Obama Administration's goal of "getting rid of absurd and unnecessary paperwork requirements that waste time and money"[20] and "cutting down on the paperwork that saddles businesses with huge administrative costs."[21] If President Obama's recent Executive Orders directing agencies – including independent agencies such as the Commission – to reduce regulatory burdens and costs are to have meaning, the Commission should decline any invitation to adopt new contract filing requirements.[22]

To the extent the Commission is concerned about being able to examine the competitive effects of an agreement or amendment that includes international settlement rates which are

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19 *2004 ISP Reform Order* ¶ 58 (finding that the filing of contracts for routes where the ISP no longer applies would "place an unnecessary administrative burden on U.S. carriers and on the Commission").

20 President Barack Obama, "Toward a 21st Century Regulatory System," Wall Street Journal, http://online.wsj.com/article/SB10001424052748703396604576088272112103698.html (Jan. 18, 2011).

21 Remarks by the President to the Chamber of Commerce, U.S. Chamber of Commerce Headquarters, Washington, D.C., http://www.whitehouse.gov/briefing-room/speeches-and-remarks (under "Archives" follow "February 2011") (Feb. 7, 2011). Cass Sunstein, the Administrator for the Office of Information and Regulatory Affairs (the government body that implements the PRA) similarly emphasized in a memorandum to the Chief Information Officers of the federal agencies that "[p]aperwork and reporting requirements impose significant burdens on the American people, including those who run businesses, both large and small." "Minimizing Paperwork and Reporting Burdens; Data Call for the 2011 Information Collection Budget," Memorandum for Chief Information Officers, http://www.whitehouse.gov/sites/default/files/omb/inforeg/icb/2011_ICB_Data_Call.pdf, at 1 (Feb. 23, 2011).

22 In his January 2011 Executive Order, President Obama called on all agencies to reexamine their significant rules, and to streamline, reduce, improve, or eliminate them on the basis of that examination. In his July 2011 Executive Order, the President took this burden-reducing initiative a large step further by calling on independent regulatory agencies – including the Commission – to follow the same requirements that other agencies follow.

above benchmark, this concern could readily be addressed by requiring U.S. carriers to file notice of any such agreement or amendment, as the Commission correctly notes. *See NPRM* ¶ 19. This approach would allow the Commission to request a copy of that agreement or amendment if it determines that additional investigation is warranted, consistent with its existing rules.[23]

C. The Commission Should Not Apply Benchmarks to Indirect Routing Arrangements

In the Notice, the Commission "propose[s] to apply benchmark rates to indirect routing arrangements" under certain circumstances. *NPRM* ¶ 49. Specifically, under this proposal, the Commission could apply "benchmark rates to alternative routing arrangements involving the re-origination of U.S. traffic through intermediate countr[ies]" where the Commission has made findings of anticompetitive conduct and has ordered U.S. carriers to suspend payments for directly routed traffic. *Id*. ¶ 54. The Commission should reject this proposal, which would harm U.S. consumers and place U.S. carriers at a competitive disadvantage.

By applying benchmarks to alternative routing arrangements involving the reorigination of U.S. carrier traffic through an intermediate country, the Commission wants to have the ability to stop payments for all termination services to carriers in the destination country at least in certain circumstances where payments charged by intermediary carriers would exceed benchmarks. In those circumstances described as "specific" and "limited," *NPRM* ¶ 49, the effect would be that consumers could not make *any* calls to the destination country. Thus, this limitation on a U.S. carrier's ability to indirectly route traffic hurts U.S. consumers by hampering their ability to communicate with the destination country.

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[23] *See NPRM* ¶ 18; *2004 ISP Reform Order* ¶ 58 (reserving "the right to require the filing of particular contracts when presented with evidence of … anticompetitive behavior … on a particular route").

Furthermore, stopping U.S. carriers from delivering traffic to the destination country – directly through stop payment orders and indirectly through a benchmark ceiling that an intermediary carrier rejects – would simply shift traffic away from U.S. carriers to their global competitors, who would not be subject to such a prohibition. At the same time, it would eliminate the ability of U.S. carriers to serve as a constraint on global competitors' pricing for traffic to the destination country, which could result in higher prices.

As a practical matter, the application of the Commission's benchmark policy to indirect routing arrangements would require visibility into contractual arrangements between the intermediate carrier and the carrier in the destination country – visibility that is often lacking. When a U.S. carrier indirectly routes its traffic through an intermediate carrier, it has no control over, and usually has little insight into and no ability to dictate, the billing and rate arrangements between that carrier and the carrier in the destination country. By attempting to regulate such arrangements third-hand, the Commission would create many of the very same "inefficiencies … that thwart [its] ultimate goal of promoting competition through market-based solutions" and would "unnecessarily delay the benefits to U.S. customers of market-based arrangements." *2004 ISP Reform Order* ¶ 28.

The Commission's regulation of indirect routing arrangements is also unnecessary to address anticompetitive conduct by foreign carriers. Because demands for increased settlement rates generally are either encouraged or mandated by foreign governments, *see id*. ¶¶ 24-25, government-to-government interaction is the best and most efficient way to resolve competitive issues, as evidenced by the recent situation in Tonga.[24] This approach is more effective than imposing restrictions on U.S.-based carriers that could harm U.S. consumers.[25]

D. The Commission Should Not Add Additional Presumptions of Anticompetitive Conduct, but Instead Should Continue Viewing Competitive Concerns on a Case-by-Case Basis

The Commission should not extend the presumption of anticompetitive conduct to include circuit disruptions, partial circuit blockages, or threats of circuit blockage. *See NPRM* ¶¶ 25-28. Any concerns regarding alleged anticompetitive conduct by a foreign carrier are best addressed on a case-by-case basis without resorting to expanded evidentiary presumptions.

The existing indicia of anticompetitive conduct utilized by the Commission identify potential anticompetitive behavior while preserving the integrity of the negotiating process.[26] In contrast, complete or partial circuit blockages or even threats of circuit blockage in the exercise of a foreign carrier's contractual rights do not raise the same competitive concerns. For example, when a U.S. carrier fails to make a settlement payment or sends traffic that harms the foreign carrier's network, the foreign carrier may be within its contractual rights to block circuits or threaten to do so. Under such circumstances, the foreign carrier's conduct does not undermine the negotiation process. Because there may be a variety of reasons for circuit blockage or

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[24] *Petition of AT&T Inc. for Settlements Stop Payment Order on the U.S.-Tonga Route*, Order and Request for Further Comment, 24 FCC Rcd 8006 (2009) ("*Tonga Stop Payment Order*"); *Petition of AT&T Inc. for Settlements Stop Payment Order on the U.S.-Tonga Route*, Second Order and Request for Further Comment, 24 FCC Rcd 13769 (2009).

[25] In the event the Commission decides to regulate indirect routing arrangements by applying the benchmark to routes to an intermediary carrier, the U.S. carrier should be able to continue to make the business decision to cease utilizing those routes and thereby providing service to the particular country without obtaining additional Commission authorization to do so.

[26] *See 2004 ISP Reform Order* ¶ 44 (noting that the types of actions identified by the Commission as evidence of anticompetitive conduct have "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. customers, and may require Commission action to protect U.S. customers").

threatened circuit blockage that are completely divorced from the negotiation process, it is not appropriate for the Commission to create a rebuttable presumption regime with its associated complicated procedural issues.[27]

Furthermore, given the variety of possible actions and nuances to any perceived or actual threat of improper use of market power, any analysis by the Commission of an appropriate response must take "into consideration the differences in the state of competition and particular facts on each route." *2004 ISP Reform Order* ¶ 43.[28] The Commission's current case-by-case analysis and complaint procedure adequately allows the Commission to consider whether a foreign carrier has engaged in anticompetitive conduct, and increased presumptions will only hamper that review.

E. The Commission Should Be Cautious Before Increasing Penalties For Anticompetitive Conduct by a Foreign Carrier

The Commission proposes numerous new remedies including prohibiting increased payments, increasing inbound rates, reimposing the ISP, requiring additional Section 214 authorizations, prohibiting termination of traffic, issuing full stop payment orders, and issuing no payment orders. *NPRM* ¶¶ 39-47. However, these proposed remedies, which generally are directed at U.S. carriers, are ill-suited for resolving the problems likely to be encountered in the international market.

Verizon commends the Commission and other federal agencies for their vigilance in addressing various types of anticompetitive conduct in the international market. The trend in recent years has been conduct that has involved foreign government's mandating higher

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[27] *See NPRM* ¶¶ 27-28 (seeking comment on notice, evidentiary, and procedural issues if the presumption is extended to circuit blockages or threats of circuit blockage).

[28] Because of the fact-intensive nature of any inquiry into whether circuit blockage by a carrier is anticompetitive, the Commission should be very cautious about taking unilateral action when service is disrupted due to blockage. *See NPRM* ¶ 31.

termination rates or imposing taxes and fees on incoming international traffic.[29] This was the case in Tonga, where the rate increase imposed by the Tonga Communications Corporation was required by the Tonga Communications Minister.[30] Similarly, foreign governments have imposed taxes or fees on international inbound calls. Although the form of these arrangements varies, they typically involve a foreign government imposing additional charges for terminating inbound international traffic, and retaining all or a part of the difference between the previous charges and the new higher charges.

These types of arrangements that are instigated or endorsed by foreign governments cannot readily be solved by imposing penalties on U.S. carriers. Instead, government-to-government resolution is the most efficient way of resolving these competitive concerns.

F. The Commission's Current Complaint Process and Existing Pleading Cycle Are Generally Appropriate to Address Allegations of Anticompetitive Conduct by a Foreign Carrier

In the situations in which a foreign carrier has engaged in anticompetitive conduct, the Commission's existing complaint process and pleading cycle have proven adequate to resolve competitive concerns. Absent some evidence that these existing procedural requirements are lacking, no need exists for the Commission to adopt new requirements. *See NPRM* ¶¶ 30-35.

The Commission should be particularly reluctant to modify the existing comment cycle. As the Commission correctly notes, the existing pleading cycle "appropriately balance[s] the need for the Commission to act quickly when presented with evidence of anticompetitive

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29 *See* Office of the United States Trade Representative, *2011 Section 1377 Review On Compliance With Telecommunications Trade Agreements*, http://www.ustr.gov/webfm_send/2788, at 4-8 (Apr. 2011) (noting that Ghana mandated an increase in termination rates for incoming international calls in late 2009 and Jamaica has been levying a universal service surcharge on incoming international calls since 2005).

30 *Tonga Stop Payment Order* ¶ 20.

behavior given current market realities and the interest in receiving full information and allowing the foreign carrier to participate meaningfully in the proceeding." *Id.* ¶ 33.

Finally, the Commission should be careful about establishing new reporting requirements. *See id*. ¶ 35. Parties should be given some period of time to resolve disputes without resorting to the administrative process. In the event a dispute is not resolved by the parties, a U.S. carrier is able to bring a complaint to challenge a foreign carrier's anticompetitive conduct, which obviates the need for extensive and burdensome reporting obligations.

III. CONCLUSION

The Commission should eliminate the ISP for the limited international routes to which it continues to apply. However, the Commission should not adopt new regulations that are unnecessary in today's increasingly competitive international marketplace or that would harm consumers by stifling competition and unduly burdening U.S. carriers.

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