

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

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

REPLY COMMENTS OF AT&T INC.

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REPLY COMMENTS OF AT&T INC.

AT&T Inc., on behalf of its affiliates, (“AT&T”) submits the following reply comments in response to the comments filed in the above-referenced proceeding.¹

SUMMARY

U.S. international carriers strongly support the Commission’s proposal to remove the International Settlements Policy (ISP) from most routes where it still applies. AT&T, Sprint and Verizon emphasize that this antiquated policy is no longer necessary to guard against anticompetitive conduct by foreign carriers and that its removal will benefit U.S. consumers by allowing the negotiation of more flexible, market-based arrangements that are likely to result in lower termination rates on those routes. On the U.S.-Cuba route, where the Commission proposes to retain the ISP, AT&T recommends a modified form to the continuation of this policy

to avoid potential obstacles to the resumption of direct service on this route.

Although the initiation of this proceeding is therefore welcome, the elimination of the ISP from the relatively small number of international routes on which it still applies does not require the creation of new requirements to file above-benchmark agreements on *all* international routes – most of which have now been exempt from such regulation for over six years. AT&T, Sprint and Verizon all oppose this proposal. As AT&T has described, rather than impose filing or notification requirements for such agreements, the Commission instead should continue its highly successful market-based enforcement policy of relying on U.S. carriers to identify specific instances of high termination rates that may require Commission intervention. This current, highly targeted approach also is consistent with President Obama’s January 2011 direction that U.S. Government agencies should “use the least burdensome” regulatory tools and avoid needless paperwork requirements.

To ensure that U.S. carriers are protected against potential anticompetitive actions by foreign carriers, AT&T and Sprint support the Commission’s proposal to improve its competitive safeguards, by extending the existing rebuttable presumption that circuit blockages constitute anticompetitive behavior harmful to the public interest. Under the proposal, this safeguard would apply not only to circuit blockages, but also to partial and threatened circuit blockages. Such actions clearly harm the public interest where they are threatened or undertaken in connection with rate negotiations, or in an effort to force acceptance of unreasonable terms and conditions that would support foreign carrier efforts to increase rates. AT&T and Sprint also

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¹ Notice of Proposed Rulemaking, FCC-11-75 (rel. May 13, 2011) (“Notice”).

support the use of additional remedies to address such conduct, including the application of benchmarks to indirect routing arrangements in certain limited circumstances after prior notice and comment.

I. U.S. CARRIERS SUPPORT THE REMOVAL OF THE ISP ON ALL INTERNATIONAL ROUTES OTHER THAN CUBA

There is strong support for the Commission's proposal to eliminate the International Settlements Policy ("ISP") on the 38 routes where this policy still applies, except for the U.S.-Cuba route. AT&T (pp. 3-7), Sprint (p. 2) and Verizon (pp. 2-5) emphasize that this antiquated policy is no longer necessary to guard against anticompetitive conduct by foreign carriers and that its removal will benefit U.S. consumers by allowing the negotiation of more flexible, market-based arrangements that are likely to result in lower termination rates on those routes.

As these carriers further explain, the requirements of this regulation that all U.S. carriers must be offered the same accounting rate, receive a proportionate share of U.S.-inbound traffic and maintain symmetrical settlement rates at each end of the international route are now major obstacles to the negotiation of lower rates. In today's international market, foreign carriers readily may avoid restrictions on their U.S.-destined traffic by using alternative routing arrangements, and therefore have little incentive to agree to symmetrical rates. The ability to negotiate lower rates on the routes still subject to the ISP therefore requires eliminating, rather than continuing, this outdated regulation.²

As AT&T describes (p. 8), to avoid these outdated requirements' raising similar unnecessary obstacles to the resumption of direct services on the U.S.-Cuba route, the Commission should continue the ISP on this route only in modified form, by removing the

requirements for proportionate return and symmetrical rates. The Commission also should plan to remove the ISP completely on the U.S.-Cuba route once multiple U.S. carriers have entered into termination rate arrangements and it is clear that the nondiscrimination safeguard is no longer necessary.

II. THE COMMISSION SHOULD NOT REQUIRE THE FILING OR NOTIFICATION OF ABOVE-BENCHMARK AGREEMENTS

Both AT&T (pp. 8-13) and Verizon (pp. 7-8) emphasize that any adoption of the proposal to require U.S. carriers to file all agreements with dominant or non-dominant foreign correspondents where agreed-upon rates are above benchmark, or where any contractual provision would have the effect of raising the settlement rate above benchmark, would be unnecessary, unduly burdensome, and inconsistent with the Commission's longstanding support for market-based, *non-filed* arrangements on non-ISP routes. The adoption of this proposed new burdensome filing requirement also would be contrary to the executive documents issued by President Obama directing government agencies – including independent regulatory agencies such as the FCC – to reduce regulatory burdens and costs on U.S. businesses by removing needless paperwork requirements.³ Sprint (p. 3) also opposes the filing of such agreements.

As noted by AT&T (pp. 9, 11), U.S. carrier arrangements with all foreign non-dominant carriers have been exempt from contract filing and notification requirements since 1999, and

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² AT&T at 5; Sprint at 2; Verizon at 5.

³ *Improving Regulation and Regulatory Review*, Executive Order 13563, Sect. 1 (Jan. 18, 2011), 76 Fed. Reg. 3821 (2011); *Presidential Memorandum – Regulatory Flexibility, Small Business, and Job Creation*, Jan.18, 2011; *Regulation and Independent Regulatory Agencies*, Executive Order 13579 (July 11, 2011), 76 Fed. Reg. 41587 (2011). *See also, Genachowski Endorses Obama Stance on Regulation*, Communications Daily (Feb. 7, 2011) (quoting email from

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U.S. carrier arrangements with dominant carriers on all but 38 international routes have been exempt from such requirements since 2004.⁴ When the Commission made those deregulatory decisions, average settlement rates were almost five times higher than current levels (in 1999), and 40 percent higher than current levels (in 2004).⁵ As AT&T further describes (pp. 11-12), there is no reason to depart from this successful deregulatory policy now that settlement rates have fallen to historically low levels.

Nor is there any reason for the Commission now to depart from its equally successful fourteen year old policy of relying upon U.S. carriers to request enforcement measures when they are unable to negotiate benchmark-compliant rates.⁶ In establishing this market-based policy, the Commission determined that it could rely on the self-interest of U.S. carriers to ensure that the benchmarks were properly enforced.⁷ Subsequent events have vindicated the Commission's judgment, with the average U.S. termination rate now having fallen to one third of the level of the lowest benchmark rate established in 1997. This proposed re-regulation would not only be arbitrary and capricious, but would also "thwart [the Commission's] ultimate goal of

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Chairman Genachowski to Commission staff).

⁴ See *International Settlements Policy Reform*, First Report and Order, 19 FCC Rcd. 5709, ¶¶ 28-29 (2004) ("*ISP Reform Order*"); *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, ¶ 29 (1999) ("*1999 Settlements Reform Order*").

⁵ See FCC 2009, 2004 & 1999 Section 43.61 reports, Table A1 (showing average settlements rates of 5 cents for 2009, 7 cents for 2004, and 23 cents for 1999).

⁶ See *International Settlement Rates*, 12 FCC Rcd. 19806, ¶ 186 (1997) ("*Benchmarks Order*").

⁷ *Id.*

promoting competition through market-based solutions.”⁸

Moreover, AT&T does not agree with Sprint (pp. 3-4) and Verizon (pp. 8-9) that the Commission instead should require the filing of notice of above-benchmark rates. A broad notification requirement would also be contrary to the longstanding deregulatory, market-based Commission policies and goals described above, and equally unjustified. Further, a broad notification requirement would fail to provide any meaningful relief from the significant burdens that this proposed re-regulation would impose on both U.S. carriers and Commission staff.

As AT&T explains (pp. 9-11), the complex nature of many correspondent arrangements, which may include multiple rates for traffic terminated in different geographic areas, on fixed and mobile networks, and with different carriers in the foreign country, would make it difficult in a number of instances to identify whether rates are above-benchmark and may require highly burdensome review of every agreement that contains an above-benchmark rate element. These concerns apply regardless of whether the result of this review is communicated to the Commission by filing an agreement or a notification.

To avoid imposing those unnecessary burdens, and to further its goal of promoting competition through market-based solutions, the Commission should avoid any contract filing or notification requirement. At most, as AT&T describes (p. 12), any new obligation should only apply to arrangements with dominant foreign carriers on the 38 routes currently subject to the ISP, and should require the notification of above-benchmark rates, rather than the filing of agreements.

⁸ *ISP Reform Order*, ¶ 28.

III. ENHANCED COMPETITIVE SAFEGUARDS ARE NECESSARY TO ADDRESS ANTICOMPETITIVE CONDUCT BY FOREIGN CARRIERS

As Sprint observes (p. 4), anticompetitive actions by foreign carriers, although infrequent, require a strong and clear response by the Commission. In ordering U.S. carriers to suspend payments to the Tonga Communications Corporation (“TCC”) after this foreign carrier disrupted U.S. carrier circuits in an effort to force agreement to higher termination rates, the Commission properly warned that “acquiescing to TCC’s actions . . . could harm U.S. consumers and have negative precedential effect for other U.S.-international routes.”⁹

If U.S. carriers were subject to coercion or retaliation in their negotiations with foreign carriers without remedial action by the Commission, there would be no further progress toward the Commission’s longstanding goal of cost-based termination rates, and those rates instead would increase from present levels, and drive up retail rates for U.S. consumers.¹⁰ To ensure that U.S. carriers are fully protected against such conduct, AT&T supports the continued use of the Commission’s competitive safeguards in response to complete, partial and threatened circuit disruptions in connection with foreign carrier efforts to increase rates.¹¹ Sprint (p. 4) also supports this approach.

AT&T does not share the concerns expressed by Verizon (pp. 11-12) regarding the proposed extension of the existing rebuttable presumption that circuit blockages constitute

⁹ *Petition of AT&T Inc. for Settlements Stop Payment Order on the U.S.-Tonga Route*, 24 FCC Rcd. 8006, ¶ 22 (2009) (“*First U.S.-Tonga Stop Payment Order*”).

¹⁰ *See, e.g., Benchmarks Order*, ¶ 101, n.176 (“We reiterate that our goal is ultimately to achieve settlement rates that are cost-based.”).

¹¹ *See* AT&T at 13-15.

anticompetitive behavior harming the public interest, so that it would also apply to partial and threatened circuit blockages. Such actions clearly harm the public interest where they are threatened or undertaken in connection with rate negotiations, or in an effort to force acceptance of unreasonable terms and conditions that would support foreign carrier efforts to increase rates, such as a restriction on the use of third country routing arrangements. As a presumption based on those circumstances would not reach actions by the foreign carrier that were “completely divorced from the negotiation process,” Verizon’s objections to the use of expanded safeguards on those grounds (p. 12) are misplaced.

AT&T also disagrees with Verizon’s view (pp. 12-13) that there is no need for additional remedies and procedures to address anticompetitive conduct by foreign carriers. AT&T believes that the Commission should allow disputes to be resolved commercially wherever possible, and that the Commission should strive for a government-to-government resolution as its first response after being notified of a dispute by a U.S. carrier.¹² But there is no basis for confidence that all disputes will be resolved through such action, as Verizon contends (pp. 10-11). Indeed, in the ongoing Tonga dispute cited by Verizon (pp. 11 & 13), the Tonga government has now removed its mandated rate increase following the issuance of two stop payment orders by the Commission in 2009 and additional action by the Office of the United States Trade Representative, but TCC nonetheless continues to disrupt U.S. carrier circuits in a further effort to force agreement to unreasonably high rates.¹³

¹² See AT&T at 17-18.

¹³ See Letter dated Aug. 15, 2011 to Ms. Marlene Dortch, Secretary, FCC, from James Talbot, AT&T, IB Dkt. 09-10.

Additional remedies are also necessary to ensure that the Commission has a full range of enforcement tools available for potential use in response to different circumstances. AT&T (pp. 18-19) and Sprint (pp. 4-5) support the use of a prohibition on increased payments to provide a targeted response where a foreign carrier threatens to disrupt circuits unless a demanded rate increase is agreed to. Under these circumstances, a prohibition on the payment of increased rates that would allow continued payments at existing rate levels may encourage the foreign carrier not to engage in the threatened circuit disruption.¹⁴

AT&T (p. 19) and Sprint (pp. 5-6) also note that more extensive stop payment orders are necessary where a foreign carrier engages in actual circuit disruption. The Commission, therefore, should not make a prohibition on increased payments its “remedy of choice under most circumstances,” as proposed by the Notice (¶ 40), but rather should treat this remedy as one of several potential enforcement tools that may be applied based on the facts of each situation.

AT&T (pp. 20-21) and Sprint (p. 6) also support the application of benchmarks to indirect routing arrangements as a further potential enforcement tool to support full stop payment orders, as proposed by the Notice (¶¶ 49-58). The use of this additional measure would prevent U.S. carriers from paying above-benchmark rates for traffic sent via indirect routes to the foreign carrier subject to a stop payment order and thus limiting the effectiveness of that order. A requirement for the payment of benchmark rates, which include substantial above-cost margins, will also ensure that the destination carrier is fairly compensated. By imposing this remedy only after prior notice and comment, as proposed by the Notice (¶ 55), the Commission would be able

¹⁴ AT&T (pp. 19-20) and Sprint (p. 5) also express similar concerns that the remedies proposed by the Notice involving re-imposition of the ISP or affecting inbound traffic would not be effective, and that revoking or limiting Section 214 authorizations held by the foreign carrier or its affiliate

to evaluate the specific circumstances, as noted by Sprint (p. 6), as well as assess any potential adverse effects, such as those asserted by Verizon (pp. 9-10).

As AT&T describes (p. 20), the Commission is authorized to adopt such a remedy, and there is no basis to the arguments to the contrary by Digicel (pp. 4-8).¹⁵ In particular, the Commission would not seek to regulate “the settlement practices conducted by two or more foreign carriers” (Digicel, p. 10) by requiring U.S. carriers to pay benchmark rates to carriers in the intermediate country, because the benchmarks apply only to U.S. carriers, have no more than “an indirect effect” on any foreign carrier, and therefore “do not constitute the exercise of jurisdiction over foreign carriers.”¹⁶

Nor is there any basis to Digicel’s further arguments (pp. 8-13) that the application of benchmarks to indirect routing arrangements should be subject to a “de minimis” exception to exclude small countries like Tonga, and should also exclude mobile-terminated traffic.¹⁷ The

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would be appropriate only in very limited contexts.

¹⁵ Digicel fails to show that Commission’s longstanding “end to end” analysis used to determine the jurisdictional nature of a service is in any way “inapposite” to the analysis here, as it contends (p. 7). Thus, calls between the U.S. and destination countries are “[f]oreign communication” under Section 153(17) of the Act, 47 U.S.C. Sect. 153(17), and subject to Commission authority, no matter how many intermediate foreign countries through which they may be routed. Digicel similarly fails (p. 7) to distinguish the Commission’s prior exercises of its authority over indirect routing arrangements. See Notice, ¶ 53, n.117.

¹⁶ *Benchmarks Order*, ¶¶ 279-80. See also, *Cable & Wireless P.L.C. v. FCC*, 166 F. 3d 1224, 1230 (D.C. Cir. 1999) (upholding this Commission determination).

¹⁷ The Commission also should reject Digicel’s request (pp. 12-13) for a prior showing by any U.S. carrier requesting the application of benchmarks to indirectly routed traffic that prior reductions in settlement rates for direct traffic termination on the route have been fully reflected in retail prices. As AT&T describes (pp. 22-23), and has repeatedly shown with respect to the U.S.-Tonga route, any such regulation is unnecessary because competitive U.S. market pressures

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Commission long ago made clear that the benchmarks apply to all countries at all levels of economic development, and has twice recently found that anticompetitive actions by Tonga's carriers "harm the U.S. public interest."¹⁸ The Commission has also affirmed that its "broad authority to protect U.S. consumers from harms resulting from anti-competitive behavior" includes addressing "rates not based on costs, with regard to mobile termination rates on particular routes."¹⁹

Lastly, as AT&T describes (pp. 16-17), the Commission should provide for more expedited relief to address actual and threatened circuit disruption, by implementing a shorter pleading cycle for comments and replies in complaint proceedings, and by imposing immediate

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ensure that U.S. international carriers' prices closely follow costs. *See, e.g.,* Reply Comments of AT&T Inc., IB Docket No. 09-10, filed Jan. 20, 2010, at 6-7.

¹⁸ *Benchmarks Order*, ¶¶ 142-151; *First U.S.-Tonga Stop Payment Order*, ¶ 19; *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, ¶ 2 (2009).

¹⁹ *ISP Reform Order*, ¶ 91.

relief on an *ex parte* basis where a U.S. carrier demonstrates the existence of a credible threat of imminent circuit disruption or other circumstances requiring such action.

Respectfully submitted,

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Dated: September 2, 2011

CERTIFICATE OF SERVICE

I, Toyin Harris, certify that copies of the foregoing "Reply Comments of AT&T Inc." were delivered via e-mail on this day, Friday September 2, 2011, to the following individuals.

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