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

In the Matter of

Petition for Protection from	)	IB Docket No. 12-324
Anticompetitive behavior and Stop	)	
Settlement Payment Order	)	
on the U.S.-Pakistan Route	)	

REPLY COMMENTS OF AT&T INC.

AT&T Inc., on behalf of its affiliates ("AT&T") hereby submits these reply comments on the petition filed by Vonage Holdings Corp. ("Vonage") requesting the Commission to issue an order stopping U.S. settlements payments to certain Pakistani long distance international carriers that have acted in concert to increase international termination rates by more than 400 percent.[1] The Pakistani carriers' actions violate the Commission's longstanding policies protecting U.S. consumers against coercive conduct by foreign carriers to force acceptance of above-cost settlement rate increases and require immediate intervention.

Rather than the full stop payment order requested by Vonage, however, the appropriate remedy in these circumstances, where there has been no disruption of U.S. carrier circuits, is an order stopping *increased* U.S. settlements payments above the rates that existed before the Pakistani carriers engaged in the challenged conduct. The Commission would thereby protect

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[1] *See* Public Notice, Petition for Protection from Anticompetitive Behavior and Stop Settlement Payment Order on the U.S.-Pakistan Route, DA 12-1738, rel. Oct. 31, 2012. *See also*, Petition of Vonage Holdings Corp., IB Docket No. 12-324, filed Oct. 3, 2012 ("Petition"). KDDI Global has filed comments in support of the Vonage petition. *See* KDI Global, IB Docket No. 12-324, filed Nov. 13, 2012.

U.S. consumers against this anticompetitive rate increase while also encouraging the continuation of service on this route.

1. The Commission's Precedents Require Intervention to Protect U.S. Consumers

As Vonage describes, on October 1, 2012, fourteen Pakistani carriers raised U.S. termination rates to Pakistan to US$ 0.088 per minute from approximately US$ 0.02 per minute pursuant to a so-called "International Clearing House" ("ICH") agreement under which the Pakistan Telecommunications Company Limited ("PTCL"), the incumbent carrier, was assigned the exclusive right to terminate inbound international calls in Pakistan at the "approved settlement rate" of the Pakistani Telecommunications Authority ("PTA").[2] To our knowledge, rates on all other international routes to Pakistan were also increased to the same level. The Pakistan Ministry of Information Technology ("MIT") issued a directive supporting the establishment of the ICH plan on August 13, 2012.

This more than four-fold increase in settlement rates results in significantly increased prices for international calls to Pakistan from the U.S. and elsewhere. The adversely affected consumers include Pakistanis travelling or working in the United States, U.S. citizens of Pakistani descent who rely on these services to keep in touch with family and friends in Pakistan, and the millions of consumers in other countries who call Pakistan for the same reasons.

The Competition Commission of Pakistan sent a policy note to the PTA and the MIT on August 28, 2012 warning that the ICH plan is an illegal price fixing and market allocation agreement and therefore contrary to Pakistan's Competition Act. More recently, a domestic operator in Pakistan has brought suit against the ICH plan in the Lahore High Court under

[2] Petition at 3-4.

Pakistan's Competition Act.[3] A petitioner acting on behalf of Pakistani expatriates burdened by higher calling prices as the result of the increased termination rate has also joined the case, which is currently ongoing with the next hearing set for November 30.[4]

According to press reports, the Lahore High Court imposed a stay on the increased rate in early November and has extended the stay until the November 30 hearing. However, PTCL has told AT&T that the increased rate remains in effect. AT&T also sees no evidence that any lower rates to Pakistan are currently available in the international wholesale market. Thus, while it is to be hoped that Pakistan will take action against the ICH plan and make it unnecessary for the Commission also to act, the Commission should also verify that any action by the Pakistani courts or government does in fact result in lower rates to U.S. carriers before withholding its own action on this basis.

The Commission is certainly authorized to intervene to protect U.S. consumers against this significant increase in settlement rates on the U.S.-Pakistan route. The Pakistani carriers' concerted action constitutes anticompetitive conduct undertaken "to force U.S. carriers to accept above-cost settlement rate increases that would be passed on to U.S. consumers," and

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[3] *See* Express Tribune, *Competition Commission Commission Not Relevant to Call Rates Says Govt*, November 6, 2012, available at:
C:\Users\jt8232\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.Outlook\FVFCFBT9\The Express Tribune Comments Feed.htm

[4] The International News, *LHC Extends Stay on Tax in International Calls*, November 15, 2012, http://www.thenews.com.pk/Todays-News-13-18856-LHC-extends-stay-on-tax-on-international-calls

accordingly requires the Commission to take action under its safeguards policies to prevent that result.[5]

In establishing these policies in 2004, the Commission determined that the "indicia of potential anticompetitive conduct by foreign carriers" that "may require Commission action to protect U.S. consumers" include "establishing rate floors, even if below benchmarks, that are above previously negotiated rates."[6] The challenged action here is clearly such conduct. The Commission has also made clear that where, as here, such anticompetitive actions are taken pursuant to a foreign government mandate, they are "no less coercive or anticompetitive than they would have been if [the foreign carriers] acted on [their] own."[7] The Commission's precedents thus plainly support the requested intervention to protect the interests of U.S. consumers.

2. The Commission Should Issue a Stop Payment Order Prohibiting the Payment of Any Higher Rates Than Those In Effect on September 30, 2012

While AT&T supports Commission intervention in this matter, AT&T believes that the full stop payment order requested by Vonage – i.e., requiring U.S. carriers to cease all settlements payments – until the Pakistani carriers abrogate the ICH plan and reduce settlement

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[5] *International Settlements Policy Reform*, First Report and Order, 19 FCC Rcd. 5709, ¶ 44 (2004) ("*ISP Reform Order*").

[6] *Id*.

[7] *Petition of AT&T Inc. for Settlements Stop Payment Order on the U.S.-Tonga Route*, 24 FCC Rcd. 8006, ¶ 22 (2009) ("*Tonga Order*"). *See also*, *ISP Reform Order*, ¶ 35, n.92 (FCC anti-whipsaw policies apply "where multiple carriers in a foreign market are under common control or act pursuant to anticompetitive government mandates"); *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) ("a foreign carrier that otherwise might lack market power might possess some ability unilaterally to set rates for terminating U.S. traffic due to government policies or collusive behavior in the foreign market").

rates to pre-existing levels, should not be adopted and that the Commission instead should adopt a more narrowly tailored order that would address the anticompetitive harm while also encouraging the continuation of services on this route.

The Commission has previously issued full stop payment orders only where foreign carriers have disrupted U.S. carrier circuits in support of their efforts to force acceptance of unreasonable settlement rate increases.[8] In the current situation, however, U.S. carrier circuits have not been disrupted. In addition, the Commission has proposed in the pending *International Settlements Policy Reform* rulemaking to apply a more limited stop payment order – "prohibiting any increase of payments to a foreign carrier engaging in anticompetitive conduct until such conduct ceases" – as its "remedy of choice under most circumstances when there is anticompetitive behavior on a U.S. international route."[9] The Commission noted that such an approach "could create an environment where the parties might be more likely to keep circuits open during ongoing negotiations."[10] Similar concerns are applicable here and require a more limited remedy than Vonage has proposed.

To address the current situation, the Commission should apply a more limited stop payment order that would prohibit the payment of higher rates than those in effect prior to the October 1, 2012 rate increase, but allow the continued payment of the rates that were effective immediately prior to that date. This more limited stop payment order would prevent harm to

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[8] *See Tonga Order*, ¶ 1; *AT&T Corp. Emergency Petition for Settlements Stop Payment Order and Request for Immediate Interim Relief*, 18 FCC Rcd. 3519, ¶ 1 (2003) ("*Philippines Order*"); *AT&T Corp., Proposed Extension of Accounting Rate Agreement for Switched Voice Service with Argentina*, 11 FCC Rcd. 18,014, ¶ 2 (1996) ("*Argentina Order*").

[9] *International Settlements Policy Reform*, 26 FCC Rcd. 7233, ¶ 40 (2011).

[10] *Id.*

U.S. consumers from the anticompetitive conduct, and would also encourage the Pakistani carriers to maintain service on this route by allowing the continued payment of the pre-existing rates agreed between the parties.[11]

Conclusion

The Vonage petition demonstrates that the Pakistani carriers are engaging in anticompetitive behavior on the U.S.-Pakistan route harming U.S. consumers. To prevent such harm while encouraging the continuation of services on this route, the Commission should issue an order prohibiting the payment of any rates higher than those in effect on September 30, 2012 until the Pakistani carriers abrogate the ICH agreement and withdraw the rate increase.

Respectfully submitted,

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[11] Vonage asks the Commission to impose this more limited stop payment order as a temporary requirement pending the Commission's findings on its petition requesting the issuance of an order suspending all settlements payments. Petition at 2. As described above, AT&T believes that a more limited stop payment order would fully protect U.S. consumers in these circumstances while also encouraging the continuation of service on this route.