

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of)	
)	
AT&T Corp.)	File Nos. ISP—WAV—20020419—00014
Southwestern Bell Communications Services,)	ISP—WAV—20020522—00018
Sprint Communications Company L.P.)	ISP—WAV—20020528—00019
Verizon Global Solutions Inc.)	ISP—WAV—20020729—00026
Williams Communications LLC)	ISP—WAV—20020705—00022
WorldCom, Inc.)	ISP—WAV—20020322—00012
)	
Petitions for Waiver of the International)	
Settlements Policy to Change the Accounting)	
Rate for Switched Voice Service with Mexico)	

ORDER

Adopted: February 19, 2004

Released: February 20, 2004

By the Chief, Policy Division, International Bureau:

I. INTRODUCTION

1. In this Order, we deny the petitions of AT&T Corp. (“AT&T”), Southwestern Bell Communications Services, (“SBC”), Sprint Communications Company L.P. (“Sprint”), Verizon Global Solutions Inc. (“Verizon”), Williams Communications LLC (“Williams”), and WorldCom, Inc. (“WorldCom”) (collectively, “Petitioners”) to waive the Commission’s International Settlements Policy (ISP)¹ to permit modifications to the accounting rate for the

¹ The ISP is the regulatory framework that governs U.S. carrier agreements with foreign carriers for the provision of U.S.-international message telephone services. The ISP requires uniform accounting rates for U.S. carriers providing the same service to the same foreign point. The ISP also requires that accounting rates be equally divided and that U.S. carriers accept only their proportionate share of return traffic. *See Implementation of Uniform Settlements Policy for Parallel International Communications Routes*, 51 Fed Reg. 4736 (1986) (ISP Order); *Reconsideration*, 2 FCC Rcd 1118 (1987); *Further Reconsideration*, 3 FCC Rcd 1614 (1988). *See also* 47 C.F.R. §§ 43.51(e), 64.1001. In 1991, the Commission reformed the ISP to encourage and facilitate accounting rate reductions by U.S. carriers. *See Regulation of International Accounting Rates*, 7 FCC Rcd 3553 (1991) (*Phase I Report and Order*); *Reconsideration* 7 FCC Rcd 8049 (1992). *See Regulation of International Accounting Rates*, 7 FCC Rcd 8040 (1992) (Phase II Second Report & Order and Second Further Notice of Proposed Rulemaking). In 1996, the Commission codified the proportionate return policy. *See Fourth Report and Order on Regulation of International Accounting Rates*, 11 FCC Rcd 20063 (1997) (*Flexibility Order*). The Commission’s rules require a U.S. carrier to file with the Commission a modification request if it seeks to change that accounting rate with a foreign carrier. (47 C.F.R. Ch. 1 § 43.51(d)(2)). In 1999, the Commission subsequently amended its ISP so that it does not apply on routes where at least fifty percent of the U.S. billed minutes are being settled at least twenty-five percent below the relevant benchmark on a route where the foreign carrier possesses market power or to agreements with foreign carriers that lack market power. *See 1998 Biennial Regulatory Reform of the International Settlements Policy and Associated Filing Requirements, Report and Order and Order on Reconsideration*, 14 FCC Rcd 7963 (eff. July 29, 1999) (*ISP Reform Order*).

settlement of U.S.-Mexico International Message Telephone Services for the time period March 1, 2002 through December 31, 2003.²

2. We find that the agreements between Telefonos de Mexico S.A. de C.V. (“Telmex”) and Petitioners with respect to the time period beginning March 1, 2002 and ending December 31, 2003 violate the ISP because they would result in both discrimination³ in the accounting rates among U.S. carriers and asymmetric rates between Petitioners and Telmex.⁴ We do not find good cause presented in the waiver requests to grant a waiver of the ISP for the rates applicable to the time period March 1, 2002 through December 31, 2003. Therefore, to enforce the Commission’s ISP, to ensure equitable treatment of U.S. carriers and to protect U.S. consumers, we deny Petitioners’ waiver requests with respect to the time period of March 1, 2002 through December 31, 2003. We expect Petitioners to continue to negotiate actively with Telmex to reduce further the accounting rate to more cost-based levels.

3. We note that the rates proposed for the earlier time periods encompassing January 1, 2000 through February 28, 2002 between Telefonos de Mexico S.A. de C.V. (“Telmex”) and Petitioners are compliant with the ISP and do not require waiver of the policy. As a result, no further action is necessary for these rates to become effective.⁵

II. BACKGROUND

4. AT&T, SBC, Sprint, Verizon, Williams, and WorldCom filed petitions for waiver of the ISP to implement proposed settlement agreements with Telmex for traffic terminating in Mexico.⁶ The agreements for which Petitioners seek waiver encompass four separate time

² See *Petition for Waiver of the International Settlements Policy for a Change in Accounting Rate for International Message Telephone Services (“IMTS”) with Telefonos de Mexico S.A. de C.V.*, File No. ISP-WAV-20020322-00012 (Filed March 21, 2002) (*WorldCom Petition*); *Petition for Waiver of the International Settlements Policy for a Change in Accounting Rate for International Message Telephone Services (“IMTS”) with Telefonos de Mexico S.A. de C.V.*, File No. ISP-WAV-20020419-00014 (Filed April 19, 2002) (*AT&T Petition*); *Petition for Waiver of the International Settlements Policy for a Change in Accounting Rate for International Message Telephone Services (“IMTS”) with Telefonos de Mexico S.A. de C.V.*, File No. ISP-WAV-20020522-00018 (Filed May 22, 2002) (*SBC Petition*); *Petition for Waiver of the International Settlements Policy for a Change in Accounting Rate for International Message Telephone Services (“IMTS”) with Telefonos de Mexico S.A. de C.V.*, File No. ISP-WAV-20020528-00019 (Filed May 28, 2002) (*Sprint Petition*); *Petition for Waiver of the International Settlements Policy for a Change in Accounting Rate for International Message Telephone Services (“IMTS”) with Telefonos de Mexico S.A. de C.V.*, File No. ISP-WAV-20020705-00022 (Filed June 24, 2002) (*Williams Petition*); *Petition for Waiver of the International Settlements Policy for a Change in Accounting Rate for International Message Telephone Services (“IMTS”) with Telefonos de Mexico S.A. de C.V.*, File No. ISP-WAV-20020729-00026 (Filed July 29, 2002) (*Verizon Petition*) (collectively, *Waiver Requests*).

³ See *In the Matter of AT&T Corp., MCI Telecommunications Corp., Petition of the International Settlements Policy to Change the Accounting Rate for Switched Service with Bolivia*, 11 FCC Rcd 13799 (1996) and *In the Matter of AT&T Corp., MCI Telecommunications Corp., Sprint, LDDS WorldCom Petition of the International Settlements Policy to Change the Accounting Rate for Switched Service with Peru*, 11 FCC Rcd 12107 (1996).

⁴ See, e.g., *International Authorizations Granted*, 15 FCC Rcd 13962 (2000) (*WorldCom/Sprint Brazil Public Notice*); *In the Matter of Petition of AT&T Corp. for Approval of a Waiver to the ISP Regarding Arrangements for Service between the United States and Venezuela*, 15 FCC Rcd 9684 (2000).

⁵ We note that the twenty-one day time period for rates to become effective per rule 64.1001 has passed. Moreover, no parties specifically objected to the rates for this time period.

⁶ See *Waiver Requests supra* n.2.

periods: (1) January 1, 2000 through December 31, 2000; (2) January 1, 2001 through December 31, 2001; (3) January 1, 2002 through February 28, 2002; and (4) March 1, 2002 through December 31, 2003. The proposed rates for Home Country Direct, Inbound 800, and Received Collect traffic differ among the proposed settlement agreements with respect to the last time period.⁷

5. The petitions each were placed on Public Notice providing opportunity for public comment on the waiver requests.⁸ Parties filed comments in response to the WorldCom and AT&T Public Notice⁹ and the SBC and Sprint Public Notice.¹⁰ Commenters generally argue that there was no good cause shown in the waiver request and that waiver of the ISP would not serve the public interest.¹¹ However, some petitioners and commenters argue that waivers should be approved because the proposed agreements bring rates further below benchmark that are generally closer to cost-based levels and that granting the waiver would be in the public interest.¹²

⁷ AT&T proposes a rate of \$0.095 for Home Country Direct (“HCD”), Inbound 800, and Received Collect traffic, while SBC, Sprint, Williams, Verizon and WorldCom propose a rate of \$0.11 for the same traffic. *See* Waiver Requests *supra* n.2; Letter from Jennifer D. Hinden, Counsel for SBC, to Marlene H. Dortch, Secretary, Federal Communications Commission, File No. ISP-WAV-20020522-00018 (filed December 23, 2003) (SBC December 23 *Ex Parte* Letter).

⁸ *Petition for Waiver of the International Settlements Policy for a Change in Accounting Rate for International Message Telephone Services with Telefonos de Mexico S.A. de C.V.*, DA 02-2200 (rel. October 4, 2002) (*Verizon Public Notice*); *Petition for Waiver of the International Settlement Policy for a Change in Accounting Rate for International Message Telephone Services with Telefonos de Mexico S.A. de C.V.*, DA 02-1251 (rel. May 24, 2002) (*WorldCom and AT&T Public Notice*); *Petition for Waiver of the International Settlement Policy for a Change in Accounting Rate for International Message Telephone Services with Telefonos de Mexico S.A. de C.V.*, DA 02-1488 (rel. July 2, 2002) (*Sprint and SBC Public Notice*); *Petition for Waiver of the International Settlement Policy for a Change in Accounting Rate for International Message Services with Telefonos de Mexico S.A. de C.V.*, DA 02-1736 (rel. July 29, 20-02) (*Williams Public Notice*).

⁹ *See, e.g.*, USTR Comments regarding the WorldCom and AT&T Petitions (USTR Comments), City of Laredo Comments regarding the WorldCom and AT&T Petitions (City of Laredo Comments), Sprint Comments regarding the WorldCom and AT&T Petitions, AT&T Comments regarding the WorldCom and AT&T Petitions, AT&T Reply regarding the WorldCom and AT&T Petitions, City of Laredo Reply regarding the WorldCom and AT&T Petitions (City of Laredo Reply).

¹⁰ *See, e.g.*, AT&T Comments regarding the SBC and WorldCom Petitions (incorporating its Comment and Reply regarding the WorldCom and AT&T Petitions), City of Laredo Reply regarding the SBC and WorldCom Petitions, SBC Reply regarding the WorldCom and AT&T Petitions (SBC Reply).

¹¹ *See, e.g.*, City of Laredo Comments at 2 (arguing that the “petitions do not meet the ‘good cause shown’ standard”), City of Laredo Reply. *See also* USTR Comments at 3 (requesting that “the Commission, as part of its public interest assessment of the petitions for Waiver, . . . to defer approving rates for 2003 until it becomes clear whether and when the Mexican Government intends [to] reform its long distance rules.”); AT&T Comments at 5 (stating that “AT&T believes that Mexico’s anticompetitive international rules that prohibit negotiations with Mexican carriers other than Telmex are the major barrier to lower rates on the U.S.-Mexico route, and AT&T accordingly has no objection to USTR’s request.”).

¹² *See, e.g.*, Sprint Comments regarding the WorldCom and AT&T Petitions at 3, SBC Reply; Sprint Petition at 1-2 (arguing that waiver is in the public interest because it moves settlement rates closer to cost-based levels on the route and produces significant cost savings for the carriers which can be passed along to consumers and rates are below the benchmark); SBC Petition at 1-3 (arguing that waiver is in public interest because it reduces settlement rates below the benchmark level and would significantly reduce settlement rates on the route and the arrangement is tailored to reflect varying levels of competition for terminating international traffic at different locations in Mexico).

6. We note that the Commission revised the ISP in 1999 so that it does not apply to agreements between U.S. carriers and foreign carriers that lack market power.¹³ However, because Telmex has market power in Mexico, the ISP, in its prior form and as revised, applies to agreements between Telmex and U.S. carriers. We also note that there has never been a public proceeding as to whether rates are competitive to allow flexibility.¹⁴

III. DISCUSSION

7. The settlement rates relating to the requests for the time periods encompassing January 1, 2000 through February 28, 2002 are compliant with the ISP and do not require waiver of the policy. We have been presented with no evidence suggesting that the agreements relating to these time periods are otherwise not in the public interest. Therefore, they require no further Commission action to become effective.

8. For the time period of March 1, 2002 through December 31, 2003, however, we find the agreements between Telmex and Petitioners would violate the ISP. The agreements between Telmex and Petitioners with respect to the time period beginning March 1, 2002 and ending December 31, 2003 would result in discrimination in the accounting rates among U.S. carriers.¹⁵ In addition, for the same time period, the proposed settlement rates for certain traffic terminating in Mexico and the United States are asymmetric, meaning that the termination rate for U.S.-inbound traffic differs from the rate for U.S.-outbound traffic.¹⁶ Consequently, as there would be violations of the nondiscrimination and symmetry requirements of the ISP, Petitioners have submitted requests for waiver of the ISP.

¹³ See *1998 Biennial Regulatory Reform of the International Settlements Policy and Associated Filing Requirements, Report and Order and Order on Reconsideration*, 14 FCC Rcd 7963 (eff. July 29, 1999) (*ISP Reform Order*). The Commission currently has pending a proceeding to consider further reform of the ISP. See *International Settlements Policy Reform; International Settlement Rates*, IB Docket Nos. 02-324, 96-261, Notice of Proposed Rulemaking, FCC 02-285, 17 FCC Rcd 19954 (2002).

¹⁴ Under our current rules, there are certain circumstances under which U.S. carriers can engage in flexible, commercial arrangements with foreign carriers with market power through either International Simple Resale (ISR) arrangements or non-ISP arrangements. For a carrier to offer ISR on a WTO-member route, carriers must demonstrate that at least 50 percent of the traffic is being settled at or below the relevant benchmark level. Alternatively a carrier can seek to have the ISP completely removed from a route by demonstrating that at least 50 percent of the traffic is being settled at least 25% below the relevant benchmark level. To make this demonstration, the carrier must file a petition for declaratory ruling that at least 50 percent of U.S.-billed traffic on the route is terminated in the foreign market at rates that are 25 percent below the benchmark rate, or less. See *ISP Reform Order*, 14 FCC Rcd at 7988, ¶ 65; 47 C.F.R. 43.51(e)(3) and referenced Note. Carriers must include appropriate supporting documentation demonstrating that the route qualifies for exemption from the ISP. The Commission issues a public notice upon the filing of such a petition, and may, in each case, determine an appropriate deadline for filing comments.

¹⁵ AT&T proposes a rate of \$0.095 for Home Country Direct (“HCD”), Inbound 800, and Received Collect traffic, while SBC, Sprint, Williams, Verizon and WorldCom propose a rate of \$0.11 for the same traffic. See Waiver Requests *supra* n.2; SBC December 23 *Ex Parte* Letter.

¹⁶ Petitioners propose asymmetric settlement rates for different types of IMTS traffic depending on whether the traffic terminates in Mexico or the U.S. See Waiver Requests *supra* n.2.

9. We do not find sufficient basis in the waiver requests or the record to grant a waiver for good cause shown.¹⁷ Pursuant to section 1.3 of the Commission's rules, a waiver of a rule may be granted where good cause is shown.¹⁸ Good cause is demonstrated where special circumstances warrant a deviation from the general rule, such deviation serves the public interest, and a waiver would be consistent with the principles underlying the rule.¹⁹ In reviewing the Commission's waiver rule, the United States Court of Appeals for the D.C. Circuit has stated that granting a waiver may be appropriate if: (1) special circumstances support a finding that strict adherence would not be in the public interest; and (2) a grant of waiver would not undermine the underlying policy objectives of the rule in question.²⁰

10. We find that there are no special circumstances associated with the proposed rates for March 1, 2002 through December 31, 2003 that warrant a deviation of the general rule that would serve the public interest and the Commission's underlying goals to achieve more cost-based rates to the benefit of U.S. consumers.²¹ The proposed rates for the time period of March 1, 2002 through December 31, 2003 are discriminatory and asymmetric. Further, we are concerned that the long-term nature of these settlement rate arrangements²² would appear to work against further progress,²³ particularly when coupled with the fact that the arrangements do not contemplate a reduction in rates for 2003.²⁴ Based on the record, it appears that U.S. carriers can achieve more cost based rates to the benefit of the public interest.²⁵

¹⁷ Section 1.3 of the Commission's rules permits waiver of a rule for good cause shown. See 47 C.F.R. § 1.3. See also *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio*, 418 F.2d at 1157.

¹⁸ 47 C.F.R. § 1.3 ("Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefore is shown."). *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969) ("*WAIT Radio*").

¹⁹ See *In the Matter of 1998 Biennial Regulatory Review – Review of Depreciation Requirements for Incumbent Local Exchange Carriers*, CC Docket No. 98-137, *Ameritech Corporation Telephone Operating Companies' Continuing Property Record Audit, et. al.*, CC Docket No. 99-117, *GTE Telephone Operating Companies Release of Information Obtained During a Joint Audit*, AAD File No. 98-26, *Further Notice of Proposed Rulemaking*, FCC 00-119, 2000 WL 339773 (F.C.C.) (rel. April 3, 2000) at n.8 (citing *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990)); *WAIT Radio*, 418 F.2d 1153; *Thomas Radio v. FCC*, 716 F.2d 921 (D.C. Cir. 1983).

²⁰ *WAIT Radio*, 418 F.2d at 1157.

²¹ Achieving cost-based rates would promote the public interest. See, e.g., *In the Matter of 1998 Biennial Regulatory Review Reform of the International Settlements Policy and Associated Filing Requirements*, IB Docket Nos. 98-147, 95-22, CC Docket No. 90-337 (Phase II), Report and Order on Reconsideration, 14 FCC Rcd. 7963, 7993, para. 80 (1999).

²² See *Waiver Requests*.

²³ See, e.g., Letter from Michael Behrens, AT&T International Law, Of Counsel to Marlene H. Dortch, Secretary, Federal Communications Commission (dated October 17, 2003).

²⁴ The proposed rates for all of 2003 are the same as those proposed for the majority of 2002. See *Waiver Requests*.

²⁵ See, e.g., AT&T Comments at 2 (arguing "these proposed rates still remain far above cost-based levels, which are under 4 cents, and far above the rates Mexican carriers pay Telmex today for the facilities and services required to terminate calls from the United States, which are under 4.5 cents."); USTR Comments at 2 ("These rates represent a positive step; however, the new average rate still appears to be at least double the actual cost of terminating these calls in Mexico and differs only marginally from the single 10 cent rate proposed for 2003 in the WorldCom-Telmex agreement that was filed with the Commission last year."); AT&T Reply at 2 (arguing "cost-based rates to all areas in Mexico, including Nuevo Laredo, should be no higher than the 3-4 cents that U.S. carriers now pay to Canada").

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11. We further find that waiver of the ISP in this instance would not be consistent with the principles underlying the ISP to protect U.S. carriers from anticompetitive behavior that may harm U.S. consumers. The principles underlying the ISP strive to prevent foreign carriers with market power, like Telmex, from taking advantage of their market positions vis-à-vis U.S. carriers in accounting rate negotiations by engaging in discriminatory behavior that favors some carriers at the expense of others.²⁶ In this instance, we note the concerns raised by the executive branch about the potential for discriminatory conduct as we are aware of the ongoing challenges U.S. carriers face on the U.S.-Mexico route to compete in the Mexican telecommunications market and the potential for anticompetitive behavior against U.S. carriers in their negotiations with Telmex.²⁷

12. In light of these concerns as a whole, we find that grant of the waiver requests with respect to the time period of March 1, 2002 through December 31, 2003 would be inconsistent with the principles underlying the ISP and the Commission's policy goal of achieving more cost-based accounting rates.²⁸ We therefore deny Petitioners' requests for waiver for the time period of March 1, 2002 through December 31, 2003. We expect Petitioners to renegotiate rates for this time period and achieve rates that are more cost-based to the benefit of U.S. consumers.

IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED that the settlement rates relating to the Petitions for Waiver of the International Settlements Policy for a Change in Accounting Rate for International Message Telephone Services ("IMTS") with Telefonos de Mexico S.A. de C.V., File Numbers ISP-WAV-20020322-00012, ISP-WAV-20020419-00014, ISP-WAV-20020522-00018, ISP-WAV-20020528-00019, ISP-WAV-20020705-00022, and ISP-WAV-20020729-00026 of AT&T, SBC, Sprint, Verizon, Williams, and WorldCom, respectively, for the time periods encompassing January 1, 2000 through February 28, 2002 are HEREBY EFFECTIVE upon release of this Order.

14. IT IS FURTHER ORDERED that Petitions for Waiver of the International Settlements Policy for a Change in Accounting Rate for International Message Telephone Services ("IMTS") with Telefonos de Mexico S.A. de C.V., File Numbers ISP-WAV-20020322-00012, ISP-WAV-20020419-00014, ISP-WAV-20020522-00018, ISP-WAV-20020528-00019, ISP-WAV-20020705-00022, and ISP-WAV-20020729-00026 of AT&T, SBC, Sprint, Verizon,

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High settlement rates artificially inflate U.S. carriers' costs which place upward pressure on U.S. calling prices and thereby harm U.S. consumers.

²⁶ See *supra* note 1.

²⁷ See USTR Comments at 1-2 and n.2-3 (stating that "[c]urrent Mexican rules on international telecommunications services . . . prevent competition by granting Telmex the exclusive authority to negotiate settlement rates and forbidding traffic arrangements that do not contain this monopoly rate."); USTR Comments at 2-3. See also AT&T Comments at 3-6; AT&T Reply. See WTO document WT/DS204/3, February 18, 2002.

²⁸ Because we are denying the waiver request with respect to the last time period, we do not address the City of Laredo's argument that the Commission should condition its grant of the waiver. See City of Laredo Comments at 10-12.

Williams, and WorldCom, respectively, are DENIED with respect to the time periods encompassing March 1, 2002 through December 31, 2003.

15. This Order is issued pursuant to Sections 1, 2, 4(i), 4(j), 5(c), 201-205, 214 and 303(r) 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 155(c), 201-205, 214 and 303(r), 309 and Sections 0.51, 0.261, 1.3 of the Commission's Rules, 47 C.F.R. §§ 0.51, 0.261, 1.3 and is effective upon release. Petitions for reconsideration under 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this Order (see C.F.R. Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

James L. Ball
Chief, Policy Division
International Bureau