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March 26, 2003

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

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Policy Division  
International Bureau

Re: Petition for Waiver of Section 63.16 of the Commission's Rules, 47 U.S.C. § 63.16, to Provide Switched Services via International Private Lines Interconnected to the Public Switched Network at One or Both Ends between the United States and, Angola, Benin, Bulgaria, Cameroon, China, Estonia, Gabon, Georgia, Lithuania, Malawi, Malta, Moldova, Mozambique, Namibia, Senegal, and Sri Lanka.

On September 16, 2002, AT&T Corp., on behalf of itself, AT&T Alascom, Inc., AT&T of Puerto Rico, Inc., and AT&T of the U.S. Virgin Islands, Inc. (hereinafter collectively referred to as "AT&T") filed a Petition for Waiver of Section 63.16 of the Commission's Rules, 47 U.S.C. § 63.16, to provide switched services via international private lines interconnected to the public switched network at one end or both ends between the United States, and several foreign points. Pursuant to Section 1.3 of the Commission's Rules, 47 C.F.R. ¶1.3, AT&T hereby respectfully requests that its Petition be supplemented to include the following foreign points: Angola, Benin, Bulgaria, Cameroon, China, Estonia, Gabon, Georgia, Lithuania, Malawi, Malta, Moldova, Mozambique, Namibia, Senegal, and Sri Lanka (hereinafter referred to as "Countries") via international private lines interconnected with the public switched network at one or both ends ("ISR").

The Commission Rules permit authorized carriers to request ISR authorization on a particular route by filing a petition for declaratory ruling rather than an application for Section 214 authority.<sup>1</sup> The Commission has stated it would apply streamlined or expedited procedures for petitions demonstrating that the destination country is a WTO member country and that settlement rates for more than fifty percent of U.S.-billed traffic on the route is settled at or below the relevant benchmark.<sup>2</sup> As more particularly described below, AT&T believes these criteria have been met for the Countries associated with this waiver request. However, because of the difficulty in demonstrating that these criteria have been met, AT&T seeks a waiver of the rule and seeks ISR designation for the subject Countries.

Section 1.3 of the Commission's rules permits a waiver of any rule for "good cause shown."<sup>3</sup> As shown herein, AT&T demonstrates that good cause exists for the Commission to grant a waiver. In addition, the Commission may grant a waiver where special circumstances warrant a deviation from the general rule where such deviation serves the public interest, and the waiver is consistent with the principles underlying the rule.<sup>4</sup> AT&T shows below that such special circumstances are present in the instant waiver petition.

The Commission's *Foreign Participation Order*, which became effective February 9, 1998, sets forth the current requirements under which the Commission will review applications for authority to engage in ISR with a carrier from a WTO country. Specifically, the Commission's order states:

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<sup>1</sup> 47 U.S.C. § 63.16(d)

<sup>2</sup> 1998 Biennial Regulatory Review - Review of International Common Carrier Regulations, IB Docket No. 98-118, Report and Order, FCC 99-51 (Released March 23, 1999) ("Section 214 Streamlining Order") at ¶ 73.

<sup>3</sup> 47 C.F.R. § 1.3

<sup>4</sup> See *Northeast Cellular Tel. Co. v FCC*, 897 F. 2d 1164 (D.C. Cir. 1990)

Pursuant to the Section 214 authorization condition adopted in the *Benchmark Order*, we will authorize carriers to provide switched services over international facilities-based or resold private lines on the condition that settlement rates for at least 50 percent of the settled US Billed traffic on the route or routes in question are at or below the relevant benchmark adopted in that *Order*<sup>5</sup>.

AT&T hereby submits the following information to demonstrate that the requirements for providing ISR to these Countries have been met pursuant to Section 63.16(b)(1) of the

Commission's Rules:

- 1) All of the Countries are WTO member countries.
- 2) AT&T (or its predecessor-in-interest Concert Global Network Services) (hereinafter AT&T and Concert are collectively referred to as "AT&T") has filed benchmark settlement rates for the Countries on the following dates:

Benchmark Year	Settlement Rate	Country	Benchmark Settlement Rate Filed by AT&T
2000	\$0.19	Malta	02/19/1999
2001	\$0.19	Bulgaria	03/20/2001
		Estonia	01/30/2001
		Gabon	07/27/2000
		Lithuania	07/17/2001
		Moldova	03/10/2003
		Namibia	01/30/2001
		2002	\$0.23
2003	\$0.23	China	11/02/2001
		Sri Lanka	03/03/2003
		Angola	08/14/2002
		Benin	08/13/2002
		Cameroon	03/11/2002
		Malawi	02/15/2001
		Mozambique	09/18/2002
		Senegal	08/09/2002

- 3) AT&T has submitted affidavits in all of the benchmark filings specified above stating that the affected foreign carriers have been notified of the Federal Communication Commission's Policy requiring that competing U.S. carriers have access to the benchmark settlement rate negotiated on a non-discriminatory basis.

<sup>5</sup> Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, IB Docket No. 97-142, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891 (1997) ("*Foreign Participation Order*") at ¶ 79.

- 4) As the AT&T benchmark filings were placed on Public Notice, all U.S. carriers were afforded an opportunity to file objections to AT&T's benchmark filings for the Countries specified in the table above. No objections were filed.
- 5) The FCC's rules prohibit U.S. carriers from paying settlement rates higher than the benchmark rate after the effective date of the benchmark rate.<sup>6</sup>
- 6) No U.S. carrier has requested the FCC to order enforcement of the benchmark rates with respect to the Countries.
- 7) Therefore, retroactive to January 1 of the effective benchmark year in the table above, the settlement rate paid by all U.S. carriers to the Countries was \$0.19 or \$0.23, as applicable, which equals the benchmark settlement rate prescribed for the US-Countries routes in the Commission's 1997 *Benchmark Order*.<sup>7</sup>

Based on the foregoing, AT&T respectfully submits that pursuant to the requirements of the *Foreign Participation Order* and FCC rules<sup>8</sup>, the Countries satisfy the Commission's criteria for approving ISR to the Countries, although AT&T is unable to provide filed benchmark rates with respect to fifty percent of the U.S. billed traffic for the reasons described below. Accordingly, AT&T respectfully requests the Commission's waiver of Section 63.16 of the

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<sup>6</sup> In the *Matter of International Settlement Rates*, 12 FCC Rcd. 19806 (1997) ("*Benchmark Order*"), *aff'd sub nom. .; Cable & Wireless P.L.C. v. FCC et al*, C.A.D.C. No. 97-1612, January 12, 1999 at ¶187. See also, *Sprint Communications Co. L.P.*, ARC-MOD-20020722-00052, Order (rel. Aug. 21, 2002), DA 02-2041, para. 6, n. 6 ("U.S. carriers are to pay no more than the relevant benchmark rate to foreign carriers for U.S.-international traffic settled as of Jan.1, 1999 to upper income countries, Jan.1, 2000 to upper middle income countries, Jan.1, 2001 to lower middle income countries, Jan.1, 2002 to low income countries, and Jan.1, 2003 to low income countries with teledensities less than 1.") See also FCC Orders preventing U.S. carriers from paying above benchmark rates after effective benchmark date: DA 99-431, released March 3, 1999 (Singapore, Taiwan, Brunei); DA 00-157, released July 20, 2000 (Oman); DA 01-2946, released December 20, 2001 (Suriname).

<sup>7</sup> *Benchmark Order*, Appendix C.

<sup>8</sup> 47 U.S.C. §63.16 (b) (1).

Commission's rules and requests approval to provide switched services over international private lines between the U.S. and the Countries interconnected to the public switched network at one or both ends.

### Discussion

As noted in AT&T's initial waiver petition, the Countries listed in this supplement are foreign routes where AT&T had planned to file for ISR status, but the rates expired, while waiting for other U.S. Carriers to file their benchmark rates. The initial benchmark settlement rate for most of these counties was filed well over two years ago. Incredibly, the initial benchmark settlement rate for Malta was filed over three and a half years ago, and still Malta has not been approved for ISR.

Waiting for U.S. carriers to file their benchmark rate has thwarted the FCC's intention to designate countries as ISR upon achieving the required conditions. The Commission has clearly expressed its expectations that achieving ISR status will have beneficial effects.

Specifically, the Commission stated:

We find that there continue to be great benefits resulting from international private line resale and the carriage of switched services over facilities-based private lines. Because these services carry traffic outside of the traditional settlement rate system, carriers are able to offer service at reduced costs. The result is strong pressure to lower settlement rates and reduce consumer prices.<sup>9</sup>

Clearly, delaying approval of ISR for such a significant length of time runs counter to the Commission's desire to put pressure to lower settlement rates and unduly delays the public interest benefits expected by the Commission.

The Commission's rules do not require the use of any particular method to meet its ISR-approval requirements. Specifically as cited above, the Commission has simply stated:

(W)e will authorize carriers to provide switched services over international facilities-based or resold private lines on the condition that settlement rates for at least 50 percent

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<sup>9</sup> *Foreign Participation Order* at ¶ 77.

of the settled U.S.-billed traffic on the route or routes in question are at or below the relevant benchmark adopted in the *Benchmark Order*.<sup>10</sup>

Further, the Commission's rules require that a carrier seeking to add a WTO-member country to the ISR authorized destinations merely to "demonstrate" that the settlement rates for at least 50 percent of the settled U.S.-billed traffic between the U.S. and the foreign country are at or below the benchmark settlement rate adopted for that country in the *Benchmark Order*.<sup>11</sup> Nowhere does the Commission expressly specify the method this demonstration must take.

In the instant case, as stated above, all of the Countries are WTO members and AT&T has filed a benchmark settlement rate, effective on or before the relevant benchmark date. All of these filings were put on Public Notice. No U.S. carrier filed an opposition to any of the filings. If any U.S. carrier were unable to negotiate a benchmark rate with a particular foreign carrier, that U.S. carrier would have filed an objection to AT&T's filing. In addition, no carrier has filed a request with the Commission to seek enforcement of the *Benchmark Order* with respect to any of the Countries, implying that no U.S. carrier has been unable to achieve a benchmark settlement rate.

Lastly, the Commission's rules prohibit U.S. carriers from settling above the benchmark rate after the effective benchmark date.<sup>12</sup> Because the Commission's rules do not allow U.S. carriers to settle at above-benchmark rates after the benchmark date, and as previously discussed, the Commission has expressly ordered carriers who filed above-benchmark rates to cease settling at those excessive rates, all U.S. carriers are *de jure* settling at benchmark rates after the relevant benchmark date.

All of these facts support the un-rebutted presumption that all U.S. carriers (hence over fifty percent of the U.S.-billed traffic) have available to them settlement rates at or below the

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<sup>10</sup> *Foreign Participation Order* at ¶79.

<sup>11</sup> 47 U.S.C. § 63.16 (b) (1).

<sup>12</sup> See FN. 6, *Supra*

benchmark rate for all of the Countries. Indeed, the instant Petition, when placed on Public Notice, will present yet another opportunity for any U.S. carrier to make a claim that it is unable to achieve a benchmark settlement rate for any of the Countries. Lacking such a claim, the Commission can conclude, without question, that the criteria for adding the Countries to the ISR-approved list does, in fact, exist and AT&T has made such a demonstration under the rules.

Therefore, AT&T respectfully requests the Commission to grant a waiver of rule 63.16 and grant ISR status to the above-captioned Countries.

Respectfully submitted,

AT&T Corp.

By: 

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Dated: March 26, 2003