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September 16, 2002

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

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, Djibouti, Indonesia, Latvia, Uganda and Tanzania

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") hereby seeks a waiver to Section 63.16 of the Commission's Rules, 47 C.F.R. 63.16, to provide switched services between the United States and, Djibouti, Indonesia, Latvia, Uganda and Tanzania (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.¹ 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.² 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."³ 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.⁴ 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:

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

¹ 47 U.S.C. § 63.16(d)

² 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.

³ 47 C.F.R. § 1.3

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

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*⁵.

AT&T hereby submits the following information to demonstrate that the requirements for providing ISR to 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
2001/\$0.19	Djibouti	August 9, 2002
	Indonesia	October 8, 2001
	Latvia	January 30, 2001
2002/\$0.23	Tanzania	August 9, 2002
	Uganda	February 15, 2001

- 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

⁵ 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.

Policy requiring that competing U.S. carriers have access to the benchmark settlement rate negotiated on a non-discriminatory basis.

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.⁶

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*.⁷

⁶ 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).

⁷ *Benchmark Order*, Appendix C.

Based on the foregoing, AT&T respectfully submits that pursuant to the requirements of the *Foreign Participation Order* and FCC rules⁸, 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 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

Over the past four years, 59 petitions seeking ISR designation have been filed with the Commission. Notably, AT&T filed 46 of them. For the countries for which AT&T has had over fifty percent of the U.S.-billed traffic, AT&T's petition included statements showing a current benchmark rate had been filed, the WTO-status of the country, and a reference to the latest International traffic data demonstrating AT&T had at least fifty percent of the traffic.

For the countries for which AT&T did not have at least fifty percent of the U.S.-billed traffic, in order to meet the Commission's requirements, AT&T chose to wait until another carrier or carriers filed their benchmark rates such that fifty percent of the U.S. outbound traffic was associated with filed benchmark rates.

However, 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 of the

⁸ 47 U.S.C. §63.16 (b) (1).

settled U.S.-billed traffic on the route or routes in question are at or below the relevant benchmark adopted in the *Benchmark Order*.⁹

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*.¹⁰ Nowhere does the Commission expressly specify the method this demonstration must take.

The method AT&T has chosen to use in the past, as discussed above, has resulted in unnecessary delays in achieving ISR status for numerous countries and frustrated the timely achievement of ISR status for those countries that met the Commission criteria.

For example:

Cyprus: AT&T filed its benchmark rate with the Commission on August 21, 2000. It was determined AT&T did not have at least 50 percent of the U.S.-billed traffic. The filing was put on hold by the Commission, pending other U.S. carriers' filing their benchmark rates. WorldCom eventually filed a benchmark rate on June 21, 2001, almost a year after AT&T's initial benchmark filing, and the FCC granted ISR on August 24, 2001.

Grenada: AT&T filed a benchmark rate on September 27, 1999. WorldCom filed its benchmark rate more than a year later on September 30, 2000 and ISR approval was granted on November 14, 2001, over a year after AT&T's initial benchmark filing.

⁹ *Foreign Participation Order* at ¶79.

¹⁰ 47 U.S.C. § 63.16 (b) (1).

El Salvador: AT&T filed a benchmark rate on September 29, 2000. WorldCom filed its benchmark rate more than a year later on October 4, 2001 and ISR approval was granted on April 5, 2002, a year and a half after AT&T's initial benchmark filing.

Czech Republic: AT&T filed a benchmark rate on July 6, 1999. WorldCom filed its benchmark rate more than fifteen months later on October 27, 2000 and Sprint filed its benchmark rate on December 8, 2000; and ISR approval was granted on January 3, 2001, a year and a half after AT&T's initial benchmark filing.

Hungary: AT&T filed a benchmark rate on March 8, 1999. WorldCom filed its benchmark rate almost one year later on January 27, 2000 and ISR approval was granted on August 30, 2000.

Chile: AT&T filed a benchmark rate on February 24, 2000. WorldCom filed its benchmark rate on July 20, 2000, after AT&T's benchmark rate expired. AT&T had to renegotiate an extension of its benchmark rate. Considerable delay resulted because of the difficulties associated with AT&T's attempt to negotiate an extension to the expired benchmark agreement. ISR approval was finally granted on April 2, 2002, over two years after AT&T's initial benchmark filing.

Malaysia: AT&T filed a benchmark rate on October 14, 1999. WorldCom filed its benchmark rate on May 19, 2000. ISR approval was granted on May 2, 2001, over a year and a half after AT&T's initial benchmark filing

Although all of these countries were ultimately granted ISR status, the delay in doing so has unnecessarily prolonged moving countries to ISR status simply because of administrative difficulties AT&T has faced in waiting for other U.S. carriers to file their benchmark rates. In some cases, the delay has been so long that AT&T's benchmark agreements with foreign carriers have expired and necessitated AT&T to return to those carriers and execute extensions of those agreements.

In addition, in the current, highly competitive international telecommunications market, carrier agreements tend to be of short duration and require more frequent negotiations. Undue delay of ISR status prolongs the benefits of lower cost commercial agreements.

As noted above, AT&T filed its benchmark rate for Indonesia, one of the Countries, on October 8, 2001. Almost a full year has gone by and other U.S. carriers have not yet filed their benchmark rates.

There are at least eleven countries, listed below, where AT&T will need to renegotiate extensions of the benchmark settlement rates due to the expiration of the rate. AT&T had planned to file for ISR status for these countries, but as the rates expired, while waiting for other U.S. Carriers to file their benchmark rates, AT&T now has to renegotiate extensions to these agreements. AT&T's plans to file ISR Petitions have been delayed until it files the renegotiated current settlement rate.

	Country	Benchmark Settlement Rate Initially Filed by AT&T
2000 Countries	Malta	2/19/99
	Mauritius	2/15/01
	Gabon	7/27/00
2001 Countries	Bulgaria	3/20/01
	Estonia	1/30/01
	Lithuania	7/17/01
	Namibia	1/30/01

2002 Countries	Georgia	3/20/01
	Zimbabwe	4/15/02
2003 Countries	Malawi	2/15/01
	Uganda	2/15/01

The initial benchmark settlement rate for most of these countries was filed well over a year 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.¹¹

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.

In the current, competitive telecommunications environment, where settlement agreements are of short duration and foreign carriers and U.S. carriers desire to move quickly to ISR status, this delay is not acceptable. It is for this reason that AT&T has chosen to use an alternative method to demonstrate the conditions for ISR exist.

¹¹ Foreign Participation Order at ¶ 77.

In the instant case, as stated above, all of the Countries are WTO members and AT&T has filed a current 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.¹² 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 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.

¹² See FN. 6, *Supra*

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: 

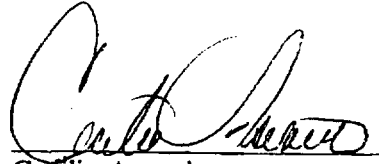
Elaine R. McHale

Eloisa Regalado

Beatriz E. Moreno

Dated: September 16, 2002

I, Cecilia Asencio, do hereby certify that on this 16th day of September , 2002
a copy of the foregoing "Petition for Declaratory Ruling" was served by hand
delivery (indicated by *) or U.S. First Class Mail, upon the parties on the attached
service list:



Cecilia Asencio

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