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Marlene H. Dortch, Secretary
Federal Communications Commission
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Petition for Waiver of Section 43.51(e)(3), of the Commission's Rules, 47 C.F.R. 43.51, and seeking approval to Remove the International Settlement Policy on the specific route between the United States and India

On April 14, 2003, 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 43.51(e)(3) of the Commission's Rules, 47 C.F.R. Section 43.51, for authority to add the Bahamas, Cayman Islands, Kazakhstan, Russia, Ukraine, Uzbekistan, and Yemen to the list of countries exempt from the International Settlement Policy ("ISP"). Pursuant to Section 1.3 of the Commission's Rules, 47 C.F.R. Section 1.3, AT&T hereby respectfully requests that its Petition be supplemented to include India.

The Commission's ISP *Report & Order*[1] sets forth the current procedures and requirements under which the Commission will review petitions for declaratory rulings filed by U.S carriers seeking to add specific countries to the list of countries exempt from the

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[1] *See*, In the Matter of 1998 Biennial Regulatory Review Reform of the International Settlements Policy and Associated Filing Requirements, Regulation of International Accounting Rates, and Market Entry and Regulation of Foreign-Affiliated Entities, IB Dockets No. 98-148 and 95-22, CC Docket No. 0-337 (Phase II), *Report & Order and Order on Reconsideration*, ("ISP Order"), FCC 99-73, Released May 6, 1999.

requirements of the ISP. The *ISP Order* authorizes U.S. carriers to request the removal of the ISP on a specific route by filing a petition for declaratory ruling. The Commission has stated it would remove the ISP from all settlement arrangements on routes where U.S carriers are able to terminate at least 50 percent of the U.S.-billed traffic in the foreign market at the rates that are 25% below the benchmark rate, or less.

As more particularly described below, AT&T believes these criteria have been met for India. However, because of the difficulty in demonstrating that these criteria have been met, AT&T seeks a waiver of the rule and seeks exemption of the country of India from the ISP on routes between the United States and India.

Section 1.3 of the Commission's rules permits a waiver of any rule for "good cause shown."[2] 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.[3] AT&T shows below that such special circumstances are present in the instant request for waiver.

Specifically, the Commission's ISP *Report Order* states:

> U.S. carriers must file petitions for declaratory ruling demonstrating that at least 50 percent of the U.S.-billed traffic on the route is terminated in the foreign market at rates that are 25 percent below the benchmark settlement rate, or less. [4]

AT&T hereby submits the following information to demonstrate that the requirements for exemption from the ISP have been met pursuant to Section 43.51(e)(3) of the Commission's Rules:

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2 47 C.F.R. § 1.3

3 *See Northeast Cellular Tel. Co. v FCC*, 897 F. 2d 1164 (D.C. Cir. 1990); See also, *ISP Order* ¶80.

4 *See*, ISP Order at ¶65.

1. On January 7, 2002, Concert Global Network Services (now AT&T) filed for an International Settlements Policy Modification of the Accounting Rate for International Message Telephone Services (IMTS) with India[5]. In that filing Concert was seeking to reduce its accounting rate from $0.65 per minute to $0.68 cents per minute for services with Videsh Sanchar Nigam Ltd. (Hereinafter known as "VSNL"). The new rate was scheduled to take effect for traffic on April 1, 2001 and would be in effect until March 31, 2002. WorldCom filed a similar modification request seeking to reduce its accounting rate with VSNL[6].
2. On March 11, 2002 the Commission released an *Order*[7] approving in part the accounting rate modifications requested by Concert and WorldCom, but limited its approval of the modifications to December 31, 2001 in order to prevent non-compliant rates to be in effect on and after January 1, 2002. Therefore, the Commission approved the $0.68 cent change requested by Concert and WorldCom for its services with VSNL provided from April 1, 2001 through December 31, 2001.
3. Concert and WorldCom were directed by the Commission to negotiate a benchmark settlement rate of $0.23 cents or less that would be applied to service between the US and India effective for traffic beginning on January 1, 2002.[8] The International Bureau

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5 Concert's Petition for International Settlements Policy Modification for a change in the Accounting Rate for International Switched Voice Service with India, ARC-MOD 20020107-00001 (filed January 7, 2002).

6 WorldCom's Petition for International Settlements Policy Modification for a change in the Accounting Rate for International Switched Voice Service with India, ARC-MOD 20020130-00003 (filed January 30, 2002).

7 Concert Global Network Services and WorldCom's Petition for International Settlements Policy Modification for a change in the Accounting Rate for International Switched Voice Service with India, DA02-575 (rel. March 11, 2002, Telecommunications Division) (*India Order*).

8 See Letter from George Li, Deputy Chief, Telecommunications Division, International Bureau, to James Talbot, AT&T Corp. (Jan, 28, 2002).

suspended both modification requests in order to prevent a violation of the Commission's *Benchmark Order*.

4. On February 26, 2002, AT&T notified VSNL of the Commission's decision to suspend the request to change the accounting rate and advised VSNL of its obligation to pay only at the benchmark accounting rate of \$0.46 (\$0.23 settlement rate) as of January 1, 2002, pursuant to the *Benchmark Order*[5]. Notwithstanding the fact that VSNL has not formally *signed* a benchmark rate as of January 1, 2002, AT&T has paid and VSNL has accepted a benchmark compliant settlement rate, consistent with the *Benchmarks Order* as of January 1, 2002.
5. VSNL is the dominant foreign carriers in India, terminating over 50 percent of the U.S.-India traffic.[10]
6. The benchmark settlement rate to India is \$0.23, effective January 1, 2002.[11]
7. As prescribed by the *ISP Order*, for lower income routes, such as India, twenty-five percent of the benchmark settlement rate is 17.25 cents.[12] AT&T hereby certifies and asserts that it terminates its traffic to India at rates that are lower than 25% of the benchmark settlement rate requirement.
8. AT&T submitted an affidavit in this filing stating that VSNL was 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.

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9 See Letter from Mark Miller, Concert, to R.S.P. Sinha, Videsh Sanchar Nigam Ltd., (Feb. 26, 2002).

10 *See* www.fcc.gov/ib, which list the above, referenced telecommunications company as dominant carriers. Public Notice Released February 19, 2003, DA 03-456.

11 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.

12 See, *ISP Order* at ¶65.

9. As the AT&T benchmark filing was placed on Public Notice, all U.S. carriers were afforded an opportunity to file objections to AT&T's benchmark filings for India. No objections were filed.

10. 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.[13]

11. No U.S. carrier has requested the FCC to order enforcement of the benchmark rates with respect to India.

Based on the foregoing, AT&T respectfully submits that pursuant to the requirements of the *ISP Order* and the FCC Rules[14], India satisfies the Commission's criteria for qualified exemption from the ISP, 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 waiver of Section 43.51 (e)(3) of the Commission's rules and requests approval to remove the ISP on the route between the United States and India.

Discussion

Ordinarily, with respect to petitions for declaratory rulings, for the countries for which AT&T has had over fifty percent of the U.S.-billed traffic, AT&T's petition included statements

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[13] 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).

[14] 47 U.S.C. §43.51(e)(3).

showing that settlements rates 25 percent below the benchmark rate had been filed, 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 rates such that fifty percent of the U.S. outbound traffic was associated with filed rates that are at least 25% below the benchmark rate.

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

> U.S. carriers must file petitions for declaratory ruling demonstrating that at least 50 percent of the U.S.-billed traffic on the route is terminated in the foreign market at rates that are 25 percent below the benchmark settlement rate, or less.[15]

The Commission's rules require that a carrier seeking to add a specific route to the list of countries exempt from the ISP merely to "demonstrate" that the route qualify for exemption of the ISP. Such documentation may include settlement rate or other data published by the Commission.[16] 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 ISP exemption for specific routes for numerous countries and frustrated the timely achievement for those countries that met the Commission criteria. In addition, in the current, highly competitive international telecommunications market, carrier agreements tend to be of short duration and require more frequent negotiations.

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15 *See*, ISP Order at ¶65.

16 See above.

Waiting for U.S. carriers to file settlement rates will continue to thwart the FCC's intentions upon achieving the required conditions. The Commission has clearly expressed that where U.S. carriers have the ability to settle U.S. traffic at rates that are 25% below the benchmark, the ISP is no longer necessary in the public interest as result of meaningful economic competition.[17]

Moreover, the Commission expressed its expectations that removing the ISP will have beneficial effects. Specifically, the Commission stated:

> (T)hat removing the ISP where U.S. carriers are able to terminate traffic at rates that are at least 25 percent below the benchmark will provide significant incentive for foreign carriers to lower their settlement rates below the benchmark levels. As competitive pressures develop in foreign markets, foreign carriers will have an incentive to lower rates to take advantage of increased opportunities to enter into innovative arrangements as a result of lifting the ISP.[18]

In addition, the Commission found that where at least 50% of the traffic is terminated at rates that are 25% lower than the benchmark, a foreign carrier "is unlikely to have the ability to exercise market power to harm U.S. consumers and that the ISP is thus unnecessary." [19]

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 more innovative settlement arrangements, any delay is not acceptable. It is for this reason that AT&T has chosen to use an alternative method to demonstrate the conditions for ISP removal exist.

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17 *See, ISP Order* at ¶52.

18 *See, ISP Order* at ¶57. *See also,* AT&T Corp., ISP-WAV-19991215-00012, Order (rel. June 8, 2000), DA 00-1215, para. 2 (Allowing departures from the ISP was intended to give U.S. carriers an incentive and an opportunity to negotiate market-based solutions to terminate international traffic rather than continue to rely on administered settlement arrangements.)

19 *See, ISP Order* at ¶61.

In the instant case, as stated above, AT&T has filed a settlement rate that is 25 percent or lower of the benchmark settlement rate. This filing was 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 the same settlement 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 India, implying that no U.S. carrier has been unable to achieve the settlement rate.

Lastly, the Commission's rules prohibit U.S. carriers from settling above the benchmark rate after the effective benchmark date.[20] 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 or lower on or 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 that are 25 percent or lower then the benchmark settlement 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 the same settlement rate to India. Lacking such a claim, the Commission can conclude, without question, that the criteria for adding India to the list of countries exempt from the ISP 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 43.51 and add India to the list of countries exempt from the requirements of the ISP.

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[20] See FN. 6, *Supra*

Respectfully submitted,

AT&T Corp.

By:________________________

Beatriz E. Moreno

Dated: May 29, 2003

Certificate of Service

I, Cecilia Asencio, do hereby certify that on this 29th day of May, 2003 a copy of the foregoing ``Petition for Waiver'' was served by hand delivery (indicated by *) or U.S. First Class, mail upon the parties on the attached service list:

<u>/s/Cecilia Asencio</u>
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