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Before the
Federal Communications Commission
Washington D.C. 20554

In the matter of	)	
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AT&T Supplemental Petition for Waiver of Section 43.51 (e) (3) of the Commission's Rules 47 C.F.R § 43. 51 (e)(3), to remove the International Settlements Policy on the specific route between the United States and India	)	DA 03-1904

Comments of INTS GmbH and INTS Americas, Inc.

INTS GmbH, headquartered in Frankfurt a.M./Germany, and its wholly-owned subsidiary INTS Americas, Inc., registered in Miami, Florida (jointly "INTS"), are pleased to submit their comments in the above-mentioned proceeding. INTS plans is providing international voice telephony services and value-added services particularly between Germany (Frankfurt), the United Kingdom (London) the United States (New York, Miami and Los Angeles) India, Vietnam, Thailand and the Philippines. INTS Americas, Inc. is in the process of obtaining an international Section 214 license from the Commission.

INTS respectfully submits that the Commission should deny the above-mentioned petition of AT&T. Only by denying AT&T's petition will the Commission be able to guarantee low prices to India for US consumers in the long run and at the same time ensure reliable services on this route. INTS urges the Commission to maintain the International Settlement Policy, on the route between the United States and India, and to take an active stance vis-à-vis the Indian regulator TRAI and the Indian government to implement effective measures to dry out the so-called "Gray Market." Only if India's Gray Market is put back into the bottle will there be an equal playing field between the international carriers on the route between India and the United States that will give a boost to US investments and more reliable and innovative services.

Gray Market providers are illegal providers terminating inbound traffic to India through their proprietary networks and bypassing the Indian Government's cross connection charges. With this disruptive market influence these providers are able to undercut the legal "white" connections by up to 50%. By comparing the current price schedules of the large international carriers, it is very clear that the Gray Market must be playing a substantial role in making it possible to offer termination in India at rates substantially below current interconnect costs.

As stated below, INTS submits that (1) Terminating traffic on India's Gray Market has negative consequences for U.S. consumers, (2) Lifting the ISP Requirements on the India route will set a negative precedent for other routes, and (3) Lifting the ISP will send the wrong signal to the Indian Government.

1. Terminating Traffic on India's Gray Market has Negative Consequences for US Consumers

The primary guideline of the Commission for granting the AT&T request for a waiver of Section 43.51 (e) (3) of the Commission's Rules 47, C.F.R. 43.51(e)(3), is whether the removal of the International Settlement Policy ("ISP") is in the interest of U.S. consumers. INTS is convinced that lifting the requirements is *not* in the interest of U.S. consumers. Currently, the Commission allows U.S. carriers to enter into ISR arrangements or any other type of termination arrangement with all non-dominant carriers in India, whereas U.S. carriers are not allowed to send or receive switched voice traffic over private lines to or from VSNL (i.e. ISR). U.S. carriers are supposed to settle traffic with VSNL in accordance with the ISP at the approved accounting rate. As AT&T notes, VSNL is the dominant carrier in India, terminating more than 50% of the U.S.-India traffic. Yet AT&T argues that it terminates its traffic at rates 25% below benchmark; while the official accounting rate with VSNL is at benchmark. Therefore, AT&T must already be terminating traffic with VSNL in a manner contrary to the ISP, and taking advantage of Gray Market prices. By circumventing the ISP now, AT&T is removing the pressure on VSNL to enter into formal accounting rate agreements with all U.S. carriers at the same low rates given to AT&T now. If the Commission lifts the ISP, this just condones AT&T's behavior and removes any pressure on VSNL to lower its rates for other U.S. carriers. Therefore in order to compete with AT&T, other U.S. carriers are forced to send their traffic to the Gray Market, perpetuating the Gray Market, but at a cost of quality.

2. Lifting the ISP Requirements on the India Route will set a Negative Precedent for Other Routes

First of all, INTS doubts that the regulatory prerequisites for lifting the requirements have been met. This lifting can only be considered if AT&T is able to terminate at least 50% of the US-billed traffic in the Indian market at rates lower than 25% below the benchmark. AT&T has not provided any evidence for this assertion, and due to the market shares of other large carriers on that route to India, such as MCI, INTS doubts that AT&T will be able to produce this evidence.

In any event, even if this "formal" requirement for a waiver has been met, the Commission should not grant the requested AT&T waiver and walk away from its regulatory oversight on the route between the United States and India as long as the Gray Market problem subsists. Terminating calls from the United States on India's Gray Market costs only a fraction of the Commission's ISP benchmark, namely approximately 40 Indian Paise – approximately US$ 0.08 per minute. INTS estimates that currently AT&T is terminating more than 60% of their Indian traffic via Gray Market routes. In the White Market, VSNL, the Indian incumbent, charges approximately US$ 0.12 to 0.14 per minute for terminating a call, depending on the distance between the POP and the end user. This is almost 50% below the official International Settlement Rate of US$ 0.23. The fact that AT&T, and possibly other US carriers, are apparently not playing by the rules and terminate their traffic at much lower rates through VSNL does not mean that the Commission should abolish the rules. On the contrary, the Commission should enforce its rules. By granting the waiver the Commission will undermine the ISP concept as a whole and set a bad precedent for other routes where the ISP exists. It will encourage carriers to disregard the ISP and international settlement rates fixed by the Commission.

The rate discrepancy between the Gray Market and the White Market is clearly not in the interest of the U.S. consumers. The Gray Market access providers are unreliable; their QoS (Quality of Service) is far below of what licensed carriers such as VSNL are able to provide. Under the Commission's current International Settlements Rates Policy U.S. carriers are not allowed to enter into termination agreements with VSNL below the settlement rate and/or send traffic via ISR. This rule should be maintained because Gray Market access providers do not offer reliable services. On the contrary, they are and should be concerned that the Indian Government will interfere and terminate their business and shut them down since the Gray Market providers are not licensed as telecommunications carriers in India and, pursuant to INTS's information and belief, do not pay at all or at least not fully Indian taxes and other levies. Consequently, U.S. telecommunications equipment makers are reluctant to invest in the Indian telecommunications market and deliver equipment since they fear, for instance, that equipment provided to a Gray Market provider will be confiscated and their business shut down.

This problem has a direct and negative impact on the U.S. consumers: the traffic flow from the Unites States to India is much higher than in the opposite direction from India to the United States, which means that the U.S. consumers are directly affected by the Gray Market. The main driver that leads to the current imbalance in traffic flow on the route between the United States and India is the large community of Indian nationals in the United States: A large number of these nationals are well-paid, and are working, for instance, as engineers or doctors in the United States. Understandably, the members of this group want to stay in touch and communicate with their relatives in their home country and, consequently, generate a large amount of traffic, whereas many of their relatives in India do not have the financial means to call them from India. In addition, the growing ties between businesses in India and the United States create an additional amount of traffic and a higher demand for termination services in India that acerbates the problem of the Gray Market in India.

3. Lifting the ISP will Send the Wrong Signal to the Indian Government to Cease its Efforts Against the Gray Market.

The U.S. Competitive Carriers Association ("CompTel") has stated in its comments filed in the U.S. Trade Representative's Section 1377 Review Process[1] that US carriers have frequently complained about the reluctance of the Indian regulator TRAI, for instance, to provide for non-discriminatory interconnection rules and to level the playing field. The current ISP regime provides the Commission and the U.S. Government with leverage vis-à-vis the Indian government to take an active stance against Gray Market providers so that U.S. and Indian carriers will provide better services at reliable prices to their consumers. Rather than abolishing this system now, the burden of proof should be on the Indian government to demonstrate that it

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[1] CompTel Comments pf 01/09/03 at http://www.ustr.gov/sectors/industry/Telecom1377/2003/comptel.pdf (at p. 19.)

has taken effective measures against the Gray Market issue before the Commission should lift the ISP requirements that impose restrictions on the incumbent VSNL.

INTS firmly believes that its suggestions and the relentless efforts of the Commission and the U.S. Trade Representative on the level of the World Trade Organization and bilateral meetings with the Indian government to advocate in favor of weeding out the Indian Gray Market are a win-win solution for the U.S. and Indian consumers. Lifting the ISP requirements would thwart these efforts. INTS stands ready to provide the Commission with more detailed information and to answer questions.

Respectfully submitted,
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