15500 Wayzata Blvd. Suite 606
Wayzata, MN 55391
952 475 0227 Phone
952 404 9842 Fax

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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) DA 03-

1904

§ 43. 51 (e)(3), to remove the International Settle-)

ments Policy on the specific route betwe‑n the)

United States and India)

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JUL 3 1 2003

Federal Communications Commission
Office of the Secretary

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)
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DA 03-1904

Voltair Network, LLC

Voltair Network, LLC, ("Voltair") based in Minneapolis, Minnesota would like to submit the following comments related to the above-mentioned proceeding. Voltair is a provider of international voice telephony services, holding a international Section "214" license, focused on delivering telecommunications traffic to and terminating traffic originated in India.

Voltair respectfully requests that the Commission dismiss the above-mentioned petition of AT&T. Such decision will guarantee low prices for US consumers in the long run and at the same time ensure reliable services. Voltair urges the Commission to maintain the International Settlement Policy, at least 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 eliminate the so-called "Gray Market." If India's Gray Market is eliminated or significantly reduced, there will be a level playing field between the international carriers on the route between India and the United States, resulting in improved US investments, greater reliable and innovation in services.

These Gray Market providers are illegal providers terminating inbound traffic to India through their proprietary networks and bypassing the Indian government's cross connection fees. These providers are able to undercut the legal "white" connections by up to 50%, which is highly disruptive to the marketplace as a whole. In comparing the current price schedules of numerous large international carriers, it is clear that the Gray Market plays a substantial role in their price schedule.

Voltair submits that (1) Terminating traffic on India's Gray Market has negative financial and qualitative consequences for US Consumer, (2) Lifting the ISP will Send the Wrong Signal to the Indian Government and (3) Lifting the ISP Requirements on the India Route will set a negative precedent for other routes

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

The primary guideline of the Commission for granting the Waiver of Section 43.51 (e) (3) of the Commission's Rules 47 C.F.R. that AT&T has asked for is whether the removal of the International Settlement Policy ("ISP") is in the interest o the U.S. consumers. Voltair is convinced that lifting the requirements is *not* in the interest of the US 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 either (i.e: ISR). Carriers apparently try to bypass these restrictions by using the Gray Market for termination services in India, in contrast to the "White Market." The Gray Market consists of providers that are not officially licensed in India, but in spite of that terminate traffic illegally, for instance via ISP gateways.

This problem has a direct and negative impact on the settlement rates since 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 US 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 Untied States and India is the large community of Indian nationals in the United States: A large number of these nationals is well-paid, and are working, for instance, as engineers or doctors in the US. 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.

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

First of all, Voltair doubts that the regulatory prerequisites for lifting the requirements are given. 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, Voltair doubts that AT&T will be able to produce this evidence.

In any event, even if this "formal" requirement for a waiver is given, 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. Voltair estimates that currently AT&T is terminating over one half 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. Granting the waiver the Commission will undermine the ISP concept as a whole and set a bad precedent for other routes where 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 US carriers are nor 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 shuts them down since the Gray Market providers are not licensed as telecommunications carriers in India and, pursuant Voltair'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.

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

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 US Government with leverage vis-à-vis the Indian government to take an active stance against Gray Market providers so that US and Indian carriers will provide better services at reliable prices to their consumers. Rather than abolishing this

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

system now, the burden of proof should be on the Indian government to demonstrate that it has taken effective measures against the Gray Market issue before the Commission should lift the ISP requirements that impose restrictions on the incumbent VSNL.

Voltair 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 US and Indian consumers. Lifting the ISP requirements would be highly detrimental these efforts. Voltair stands ready to provide the Commission with more detailed information and to answer questions.

Respectfully Submitted,

Voltair Network, LLC

By: David F. Wilke
Chief Executive Officer

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