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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

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 the Bahamas, Cayman Islands, Kazakhstan, Russia, Ukraine, Uzbekistan, and Yemen

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 of Section 43.51(e)(3) of the Commission's Rules, 47 C.F.R. 43.51, and approval to add the countries of the Bahamas, Cayman Islands, Kazakhstan, Russia, Ukraine, Uzbekistan, and Yemen (Hereinafter referred to as the "Countries") to the list of countries exempt from the International Settlement Policy ("ISP").

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 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 the Countries. However, because of the difficulty in demonstrating that these criteria have been met, AT&T

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. 90-337 (Phase II), *Report & Order and Order on Reconsideration*, ("ISP Order"), FCC 99-73, Released May 6, 1999.

seeks a waiver of the rule and seeks exemption of the Countries from the ISP on routes between the United States and the Bahamas, Cayman Islands, Kazakhstan, Russia, Ukraine, Uzbekistan, and Yemen.

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*⁴ 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.⁵

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:

1. 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 settlement rates that are 25% below the benchmark settlement rate, or less, for the Countries on the following dates:

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, *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. 90-337 (Phase II), *Report & Order and Order on Reconsideration*, ("ISP Order"), FCC 99-73, Released May 6, 1999.

⁵ See, *ISP Order* at ¶65.

Benchmark Year	Settlement Rate	Country	Settlement Rates 25% below the Benchmark - Filed by AT&T
1999	\$0.15	The Bahamas Cayman Islands	09/19/2002 10/08/2002
2001	\$0.19	Kazakhstan Russia Uzbekistan Ukraine	03/21/2002 05/10/2002 12/11/2001 10/09/2002
2002	\$0.23	Yemen	10/21/2002

2. Bahamas Telecommunications Corp., Cable & Wireless; Kazakhtelecom, Rostelecom, Ukrtelecom, Halqaro Telecom, and Yemen International Telecommunications Company are the dominant foreign carriers in the respective countries, terminating over 50 percent of the U.S.-Country traffic.⁶

3. The benchmark settlement rate for the Countries in the above table are \$0.15, \$0.19, or \$0.46, as applicable, effective January 1 of the effective benchmark year.⁷

4. As prescribed by the *ISP Order*, for the upper income routes, twenty-five percent below the benchmark settlement rate is 11.25 cents; for upper middle-income routes, twenty-five percent of the benchmark settlement rate is 14.25 cents, and for lower income routes, twenty-five percent of the benchmark settlement rate is 17.25 cents.⁸ AT&T has filed settlement rates that are lower than or equal to the 25 percent of the benchmark settlement required.

5. 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 settlement rate negotiated on a non-discriminatory basis.

6. 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.

⁶ See www.fcc.gov/ib/, which list the above, referenced telecommunications company as dominant carriers. Public Notice Released February 19, 2003, DA 03-456.

⁷ 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.

⁸ See, *ISP Order* at ¶65.

7. 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.⁹

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

Based on the foregoing, AT&T respectfully submits that pursuant to the requirements of the *ISP Order* and the FCC Rules¹⁰, the Countries satisfy 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 the Countries.

Discussion

Over the past five years, 71 petitions seeking ISR designation or removal of specific routes from the ISP have been filed with the Commission. Notably, AT&T filed 54 of those petitions.¹¹ 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 that a benchmark settlement rates or 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

⁹ 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).

¹⁰ 47 U.S.C. §43.51(e)(3).

¹¹ In 2002 alone, AT&T filed 15 of the 19 petitions seeking Declaratory Ruling.

their benchmark rates such that fifty percent of the U.S. outbound traffic was associated with filed benchmark rates.

Similar to petitions seeking ISR designation, 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.¹²

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.¹³ 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 or 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.

Waiting for U.S. carriers to file settlement rates that are 25 percent below the benchmark rate will continue to thwart the FCC's intentions upon achieving the required conditions. The Commission has clearly expressed its expectations that removing the ISP will have beneficial effects.

Specifically, the Commission stated:

We further find that 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.¹⁴

¹² See, ISP Order at ¶65.

¹³ See above.

¹⁴ 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.)

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.

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. 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 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 respect to any of the Countries, 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.¹⁵ 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 that are 25 percent or lower than 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 for any of the Countries. Lacking such a claim, the Commission can conclude, without question, that the criteria for adding the Countries to the list of countries exempt from the ISP does, in fact, exist and AT&T has made such a demonstration under the rules.

¹⁵ See FN. 6, *Supra*

Therefore, AT&T respectfully requests the Commission to grant a waiver of rule 43.51 and add the above-captioned Countries to the list of countries exempt from the requirements of the ISP.

Respectfully submitted,

AT&T Corp.

By: /s/ Beatriz E. Moreno

Beatriz E. Moreno

Dated: April 14, 2003

CERTIFICATE OF SERVICE

I, Maria Zuraulevic, do hereby certify that on this 14th day of April, 2003 a copy of the foregoing "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 the Bahamas, Cayman Islands, Kazakhstan, Russia, Ukraine, Uzbekistan, and Yemen" was served by hand delivery (indicated by *) or U.S. First Class Mail, upon the parties on the attached service list:

/s/ Maria Zuraulevic
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