

20 August 2003

Federal Communications Commission  
International Bureau  
445 12<sup>th</sup> Street, S.W.  
Washington D.C. 20554  
United States of America

Attention: James Ball, Bureau Chief

Dear Sir,

FCC Benchmark Order. 1997.  
Request for Benchmark Waiver

## I. BACKGROUND

Link Africa B.V., a fully owned subsidiary of the MSI Group (“Mobile Systems International Cellular Investments Holdings B.V.”) is an international carrier dedicated to providing international telecommunications to and from more than 15 African destinations.

Among these destination is the Democratic Republic of Congo (‘DRC’), where Link Africa BV is a correspondent of AT&T (since 1994) and MCI (since 1995), for terminating traffic into the country.

From July 1996 onwards, after the collapse of the “ONPTZ”, the national public operator, and up to the introduction of further operators in the country, Link Africa was the exclusive Carrier and Operator Representative for AT&T and MCI (then Worldcom) to D.R. Congo under the regime of Traditional Transit operating with Total Accounting Rates. AT&T and MCI, in turn, operated this relationship under FCC’s ISP.

As of August 2000, as one of the very first organisations to do so and in close cooperation with carriers , we ceased operating pursuant to traditional transit rules and moved to refile arrangements only.

This change came broadly in parallel with the opening of the DRC's telecoms market to real competition in 2001.

These developments caused a steady reduction of the refile rate into DRC to about 20% below the Benchmark Rate by early 2003, despite higher than average cost to this destination, due to most of the traffic being carried by satellite and terminating on mobile networks.

Link Africa has, until then, pursued and achieved the objectives of the FCC 's various related initiatives, including the Benchmark ruling.

Link Africa has further successfully and very widely contributed to:

- the rapid and broad extension of telecommunications infrastructure in DRC,
- the growth of voice traffic exchange between that country and the USA as well as the rest of the world.
- making these communications much more affordable.

Today, Link Africa is sharing its activities of terminating international traffic to various operators in DRC, with other carriers such as M-Link, an Orascom Telecom subsidiary, and Telkom of South Africa and therefore does not longer hold a monopoly or quasi monopoly position for terminating international traffic to and from that country.

## **II. NEW EXCEPTIONAL SITUATION**

### 1. General Situation

Per 1<sup>st</sup> March 2003, the Government of DRC implemented the January 25, 2003, Decree on International Inbound Voice Traffic, imposing a US\$ 0.20/minute minimum rate for all international inbound calls. The \$ 0.20 are collected by the national fixed and mobile operators.

The Decree aims at providing the local economy with an appropriate return for what the Government sees as a service provided in-country to foreign buyers. Above all, these revenues are to fund the rapid establishment of a truly national network (so far, only some 30 main cities have phone services in what is the 3<sup>rd</sup> largest country of Africa). This extension is open to free competition between the licensed mobile operators and the small state-owned operator "OCPT" (formerly "ONPTZ").

## 2. Situation for Link Africa. Cost vs. Benchmark Rate

The \$ 0.03/minute margin between the Benchmark Rate of \$ 0.23/minute and the minimal decreed termination rate of \$ 0.20 does not allow Link Africa to cover its costs.

As a facility (and satellite) based niche-carrier focusing on Africa, Link Africa is bearing a burden of upfront investments (namely satellite equipment) as well as above average Opex needed to run and extend our engineering- and labour-intensive work for and to Africa.

The current price structure for this service, rendered notably to a large extent to AT&T and MCI, is known to the Worldbank and our reputable US and other investors and commands a revenue of \$ 0.26. It can be simplified as follows:

Required Revenue	\$ 0.26
Termination cost	(\$ 0.200) as per Decree
OPEX	(\$ 0.046)
EBITDA ab. 5%	\$ 0.014

## 3. Justification for seeking a waiver of the Benchmark for DRC:

As explained in section 2 above, the 3 cents margin Link Africa BV would make on US originating calls terminating in DRC is not enough to cover its costs. Link Africa BV loses therefore money every time it terminate such a call.

The logical development, in the absence of a waiver, would be that Link Africa BV would have to stop carrying calls originating in the U.S. and terminating in D.R.C. Any official and legally established carrier carrying calls from the U.S. into DRC would be in a similar situation.

American carriers would then be prevented from terminating calls in DRC through the “legal” or “official” route. These carriers could eventually find alternative routes through ISP by using voice over IP, or worse, by using “grey market” operators which are terminating international calls in DRC in an illegal way (they usually have no legal existence or no proper rights under a licence to operate in the country) and escape therefore the 0.20 cts termination fee applicable to the “legal” carriers. These grey market operators are also very unreliable and do not provide good quality of service.

A temporary waiver of the benchmark would therefore be in the interest of all.

4. Request for seeking a waiver of the current Benchmark Rate of 0.23/minute for US originating calls into DRC:

Pursuant to paragraph 74 of the Benchmark Order, 1997, any carrier can ask the Commission to reconsider the benchmark on the grounds that they do not permit the carrier to recover its incremental costs of providing international termination services.

For the reasons stated above, we hereby request the Commission to consider such a waiver, based on the information provided above, as long as the DRC Government maintains a national termination fee of US\$ 0.20, for any international calls terminating on its territory.

We thank you in advance for your cooperation and assistance in this matter.

On behalf of Link Africa B.V.

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Terry Rhodes  
Director

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Frederic Pichon  
Director & Legal Counsel