

Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of )
Saskatchewan Telecommunications )
Application for Authority Pursuant to Section 214 ) File No. ITC-214-20041115-00451
of the Communications Act of 1934, as Amended, )
to Provide International Facilities-Based and )
Resold Services between the United States and All )
Permissible International Points )

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: January 4, 2007

Released: January 5, 2007

By the Acting Chief, International Bureau:

I. INTRODUCTION

1. In this Order, we grant the application of Saskatchewan Telecommunications ("SaskTel") for authority to provide facilities-based and resale services between the United States and all permissible international points pursuant to section 214 of the Communications Act of 1934, as amended. We further grant the applicant's request to be classified as a non-dominant carrier on all U.S.-international routes.

II. BACKGROUND

A. Legal Framework

2. In the Foreign Participation Order, the Commission established a framework to encourage competitive entry by foreign carriers into the U.S. telecommunications market, in fulfillment of the United States' commitments under the WTO Basic Telecom Agreement. The Commission expressed

1 See Navigata Communications Ltd., Application File No. ITC-214-20041115-00451 (filed November 15, 2004) (Application); Letter from B.W. (Brent) Munro, SaskTel Corporate Counsel and Counsel for Navigata Communications Ltd. to Federal Communications Commission, International Bureau, Policy Division, ITC-214-20041115-00451 (dated May 26, 2006) (requesting that the Application be amended to substitute SaskTel as the applicant in the place of Navigata Communications Ltd.). See also 47 U.S.C. § 214(a); 47 C.F.R. § 63.18 (listing the requirements for obtaining international section 214 authority) (2005).

2 Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, IB Docket 97-142, 95-22, Report and Order and Order on Reconsideration, FCC 97-398, 12 FCC Rcd 23891 (1997) ("Foreign Participation Order"); Order on Reconsideration, FCC 00-339, 15 FCC Rcd 18158 (2000).

3 The results of the World Trade Organization's ("WTO") basic telecommunications services negotiations are incorporated into the General Agreement on Trade in Services ("GATS") by the Fourth Protocol to the GATS, April 30, 1996, 36 I.L.M. 366 (1997). These results, as well as the basic obligations contained in the GATS, are referred to herein as the "WTO Basic Telecom Agreement."

concern, however, that a foreign carrier with market power<sup>4</sup> in an input market<sup>5</sup> on the foreign end of a U.S.-international route has the ability to “leverage” that market power into the U.S. market for international telecommunications services (*i.e.*, use market power in its home market to affect adversely competition in the U.S. market, thereby harming U.S. consumers).<sup>6</sup> Firms with market power in an “upstream” input market can engage in discrimination in a “downstream” market by favoring one downstream entity at the expense of its competitors.<sup>7</sup> Where the upstream firm possesses market power, downstream competitors have few, if any, alternatives for the inputs that the upstream firm provides.<sup>8</sup> To complete a U.S.-international call, a U.S. carrier must obtain as inputs various call termination services from foreign carriers in the destination country of the U.S. call, including international transport services, inter-city services within the destination country, and terminating access services within the local exchange of the called party.<sup>9</sup> A foreign carrier with market power in these input markets could favor one U.S.-international carrier at the expense of its rivals by denying rivals access to these crucial termination services, or by providing the services at non-competitive prices or inferior service quality levels.<sup>10</sup> The ultimate effect of such discrimination would be to harm competition in the U.S.-international services market and U.S. consumers.<sup>11</sup>

3. The Commission found that an ownership affiliation between a U.S. carrier and a foreign carrier creates a heightened ability and incentive to engage in anti-competitive behavior.<sup>12</sup> Accordingly, the Commission adopted certain safeguards to ensure that U.S. affiliates of foreign carriers with market power on the foreign end of a route do not harm competition in the United States. Under the Commission’s rules, a U.S. carrier that is affiliated with a foreign carrier that has market power on the foreign end of a route is presumptively classified as dominant for the provision of international telecommunications services on that route (with limited exceptions).<sup>13</sup> U.S.-international carriers classified as dominant on a particular route are subject to certain requirements to safeguard competition.<sup>14</sup> The “dominant carrier safeguards” include separation requirements,<sup>15</sup> reporting requirements,<sup>16</sup> and certain conditions related to benchmark settlement rates.<sup>17</sup>

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<sup>4</sup> The Commission has defined market power as “a carrier’s ability to raise price by restricting its output of services.” *Foreign Participation Order*, 12 FCC Rcd at 23951-52, ¶ 144.

<sup>5</sup> In producing goods or services, firms must obtain labor, capital, raw materials, and intermediate goods and services as “inputs” to the production process. The markets in which these inputs are obtained are termed “input markets.” *Id.* at 23952, ¶ 145.

<sup>6</sup> *Id.*, 12 FCC Rcd at 23952, ¶ 145, and 23958, ¶ 157.

<sup>7</sup> *Id.*, 12 FCC Rcd at 23952, ¶ 145. Markets in which a firm buys inputs to its production process are termed “upstream” relative to the market in which the firm sells its product, and a market in which a firm sells its product is termed “downstream” relative to the input markets.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*, 12 FCC Rcd at 23592, ¶ 145, and 23958, ¶ 157.

<sup>11</sup> *Id.*, 12 FCC Rcd at 23958, ¶ 157.

<sup>12</sup> *Id.*, 12 FCC Rcd at 23954, ¶ 147 and 23992, ¶ 223.

<sup>13</sup> 47 C.F.R. § 63.10(a)(3) - (a)(4).

<sup>14</sup> 47 C.F.R. § 63.10(c), (e). *See also Foreign Participation Order*, 12 FCC Rcd at 23987-24022, ¶¶ 215-92.

<sup>15</sup> The U.S.-authorized carrier must provide service as an entity that is separate from its foreign affiliate. 47 C.F.R. § 63.10(c)(1). The U.S. carrier must have separate books of account and not jointly own transmission or switching facilities with its affiliate. 47 C.F.R. § 63.10(c)(1)(i)-(ii).

4. The Commission also found that a foreign carrier with market power can act anti-competitively with respect to the U.S. market even in the absence of a U.S. affiliate (*e.g.*, through a contractual agreement with a U.S. carrier).<sup>18</sup> Accordingly, the Commission has established several competitive safeguards with which all U.S.-international carriers must comply when providing international telecommunications services that terminate on the network of a foreign carrier with market power on the foreign end of a U.S.-international route. These generally-applicable safeguards include the “No Special Concessions” rule,<sup>19</sup> contract filing requirements,<sup>20</sup> and the international settlements policy (“ISP”).<sup>21</sup> The Commission’s *Foreign Carriers List* identifies those foreign carriers with which the exchange of traffic is subject to these generally-applicable requirements.<sup>22</sup> The *Foreign Carriers List*

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<sup>16</sup> The U.S.-authorized carrier must file quarterly traffic and revenue reports as well as quarterly provisioning and maintenance reports. 47 C.F.R. § 63.10(c)(2)-(3). The U.S.-authorized carrier also must file quarterly circuit status reports. 47 C.F.R. § 63.10(c)(4).

<sup>17</sup> The U.S.-authorized carrier may not provide facilities-based switched services on a route on which it is classified as dominant, unless its foreign affiliate on that route charges U.S.-international carriers termination rates at or below benchmark settlement rates. 47 C.F.R. § 63.10(e). *See also International Settlement Rates*, IB Docket No. 96-261, Report and Order, FCC 97-280, 12 FCC 19806 (1997) (“*Benchmarks Order*”); Report and Order on Reconsideration and Order Lifting Stay, FCC 99-124, 14 FCC Rcd 9256 (1999) (“*Benchmarks Reconsideration Order*”), *aff’d sub nom. Cable & Wireless P.L.C. v. F.C.C.*, 166 F.3d 1224 (D.C. Cir. 1999).

<sup>18</sup> *See Foreign Participation Order*, 12 FCC Rcd at 23954, ¶ 147, 23958, ¶ 157.

<sup>19</sup> Under the Commission’s “No Special Concessions” rule, a U.S.-authorized international carrier is prohibited from agreeing to accept special concessions from a foreign carrier with respect to a route on the foreign end of which the foreign carrier possesses sufficient market power to affect competition adversely in the U.S. market. 47 C.F.R. § 63.14(a). For U.S.-international carriers, special concessions are defined as exclusive arrangements involving services, facilities, or functions on the foreign end of a U.S.-international route that are necessary for the provision of basic telecommunications services where the arrangements are not offered to similarly situated U.S.-licensed carriers. 47 C.F.R. § 63.14(b). Such arrangements include operating agreements for the provision of basic services; distribution arrangements or interconnection arrangements, including pricing, technical specifications, functional capabilities, or other quality and operating characteristics such as provisioning and maintenance times; and any information, prior to public disclosure, about a foreign carrier’s basic network services that affects either the provision of basic or enhanced services or interconnection to the foreign country’s domestic network by U.S. carriers or their U.S. customers. 47 C.F.R. § 63.14(b)(1)-(3). If the international route is exempt from the international settlements policy, 47 C.F.R. § 64.1002(b), the “No Special Concessions” rule does not apply to the rates, terms, and conditions in an agreement between a U.S.-authorized carrier and a foreign carrier that govern the settlement of international traffic, including the method for allocating return traffic. 47 C.F.R. § 63.14(c).

<sup>20</sup> *See* 47 C.F.R. § 43.51(a), (b)(3), and Notes 3 and 4 to § 43.51.

<sup>21</sup> Under the ISP, if a U.S.-authorized carrier files an operating agreement with a foreign carrier regarding the exchange of switched traffic with respect to a non-exempt route on the foreign end of which the foreign carrier possesses market power, the operating agreement must comport with certain requirements; otherwise, the U.S. carrier must file a modification request with the International Bureau. 47 C.F.R. § 43.51(e). The restriction of the ISP to operating agreements between U.S. carriers and foreign carriers that possess market power on the foreign end of a non-exempt route is described in 47 C.F.R. § 64.1002 (a)-(b). For the list of exempt routes, *see* Resources, “Routes Exempt from the ISP,” available at <http://www.fcc.gov/ib>.

<sup>22</sup> *See Foreign Carriers List*, Public Notice, DA 04-1584, 19 FCC Rcd 20385 (2004). *See also* 47 C.F.R. § 43.51(b)(3) and Note 3 to § 43.51; 47 C.F.R. § 63.14(a) and Note to Paragraph (a); 47 C.F.R. § 63.23(d). In the *ISP Reform Order*, the Commission modified its rules to remove its requirement that agreements between U.S.-international carriers and foreign carriers that lack market power in foreign telecommunications markets conform to the ISP and stated that it would issue a list of foreign carriers that do not qualify for the presumption that they lack market power on the foreign end of U.S.-international routes. *See 1998 Biennial Regulatory Review Reform of the International Settlements Policy and Associated Filing Requirements, Regulation of International Accounting Rates*,

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includes all incumbent local exchange carriers that may operate in the foreign markets identified on the list. The list does not apply, however, for purposes of determining whether a section 214 applicant warrants classification as dominant for the provision of international telecommunications services between the United States and a foreign market where the applicant is, or is affiliated with, a foreign carrier.<sup>23</sup>

## B. The Application

5. The applicant, SaskTel, is the incumbent local exchange carrier in the Province of Saskatchewan, Canada. It is wholly-owned by Saskatchewan Telecommunications Holding Corporation, which, in turn, is wholly owned by the Government of the Province of Saskatchewan, Canada.<sup>24</sup> SaskTel's application was filed originally by its affiliate, Navigata Communications, Ltd. ("Navigata"). Navigata was a Canadian telecommunications company licensed by the Canadian Radio-Television and Telecommunications Commission as a reseller. Navigata provided international transport and local access services in the Provinces of British Columbia, Alberta, Ontario, and Quebec in Canada.

6. Navigata submitted the application on November 15, 2004, requesting section 214 authority to provide facilities-based and resale services between the United States and all permissible international points. It requested that it be treated as a non-dominant carrier on all U.S.-international routes, including Canada.<sup>25</sup> The Bureau placed the application on public notice on March 25, 2005.<sup>26</sup> There were no oppositions to the application filed. On March 3, 2005, we granted Navigata special temporary authority ("STA") to provide the services described in its application. Navigata agreed in its STA application to comply with the dominant carrier safeguards specified in section 63.10 of the rules pending Commission action on its underlying section 214 application.<sup>27</sup> On August 30, 2005, we renewed the STA with an expiration date of February 25, 2006.<sup>28</sup> On February 24, 2006, we renewed the STA again with an expiration date of August 23, 2006.<sup>29</sup> On May 26, 2006, Navigata filed a letter explaining that, due to a restructuring, SaskTel was carrying on the business formerly carried on by Navigata, including its U.S. operations. As a result, Navigata requested that its section 214 application be amended to substitute SaskTel as the successor to Navigata. On June 5, 2006, we granted a new STA to SaskTel with an expiration date of December 2, 2006. SaskTel agreed in its STA application to comply with the reporting requirements and settlement rate benchmark condition required by the section 63.10

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*Market Entry and Regulation of Foreign-affiliated Entities*, IB Docket No. 98 -148, Report and Order and Order on Reconsideration, FCC 99-73, 14 FCC Rcd 7963, 7971, ¶ 20, 7978-79, ¶ 43, 7980-81, ¶¶ 47-49, and 7988, ¶ 65 (1999) ("*ISP Reform Order*"). Subsequently, the Commission issued the *Foreign Carriers List*, which it has updated on several occasions. The current list, 19 FCC Rcd 20385, was issued on May 28, 2004 and is publicly available at <http://www.fcc.gov/ib>.

<sup>23</sup> See *Foreign Carriers List*, 19 FCC Rcd at 20387.

<sup>24</sup> See Application at Attachment 1, pages 1-2.

<sup>25</sup> See Application.

<sup>26</sup> See *Non Streamlined International Applications Accepted for Filing*, Public Notice, Report No. TEL-00894NS, March 25, 2005.

<sup>27</sup> Application of Navigata Communications Ltd. for Special Temporary Authority of Section 214 International License, Special Temporary Authority, ITC-STA-20050218-00067 (granted March 3, 2005). See also *supra* ¶ 3 (discussing the section 63.10 dominant carrier safeguards).

<sup>28</sup> Application of Navigata Communications Ltd. for Extension of Special Temporary Authority of Section 214 International License, Special Temporary Authority, ITC-STA-20050713-00257 (granted August 30, 2005).

<sup>29</sup> Application of Navigata Communications Ltd. for Extension of Special Temporary Authority of Section 214 International License, Special Temporary Authority, ITC-STA-20060208-00089 (granted February 24, 2006).

dominant carrier safeguards pending Commission action on its underlying section 214 application.<sup>30</sup> On December 1, 2006, we renewed SaskTel's STA with an expiration date of May 30, 2007.<sup>31</sup>

7. SaskTel argues that it should be classified as non-dominant on the U.S.-Canada route despite its position as the incumbent local exchange carrier in the Province of Saskatchewan, Canada. SaskTel asserts that, in the Canadian industry as a whole, it is a small player. It states that the total Canadian telecommunications market revenues for 2004 are projected at \$32.6 billion (Cdn.), and SaskTel's total 2003 revenues of approximately \$899,000,000 (Cdn.) approximates a 2.8 percent share of the total Canadian telecommunications industry revenues.<sup>32</sup> SaskTel's share of local access lines as compared to total access lines in Canada is 3.1 percent.<sup>33</sup> In addition, SaskTel's share of Canada-billed traffic (as measured in minutes) for calls that originate in Canada and terminate in the United States is approximately one percent of total Canada-billed traffic that originates in Canada and terminates in the United States.<sup>34</sup> Traffic terminating with SaskTel (as measured in minutes) that originates in the United States also is approximately one percent of total traffic that originates in the United States and terminates in Canada.<sup>35</sup> SaskTel further estimates that the international transport business it acquired from its affiliate Navigata constitutes less than one-tenth of one percent of the entire Canadian market for international transport services.<sup>36</sup>

### III. DISCUSSION

8. We grant SaskTel's application for section 214 authority to provide facilities-based and resale services between the United States and all permissible international points and find that SaskTel warrants classification as a non-dominant U.S.-international carrier on all routes, including the U.S.-Canada route. Pursuant to section 63.10(a)(3) of the rules, a U.S. carrier that is affiliated with a carrier on the foreign end of a U.S.-international route, and that seeks to be regulated as non-dominant on that route, bears the burden of submitting information to the Commission sufficient to demonstrate that its foreign affiliate lacks sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market.<sup>37</sup> If the U.S. carrier demonstrates that the foreign affiliate lacks 50 percent market share in the international transport and the local access markets on the foreign end of the route, the U.S. carrier presumptively is classified as non-dominant.<sup>38</sup>

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<sup>30</sup> Application of SaskTel for Special Temporary Authority of Section 214 International License, Special Temporary Authority, ITC-STA-20060531-00295 (granted June 5, 2006). *See also supra* ¶ 3 (discussing the section 63.10 dominant carrier safeguards).

<sup>31</sup> Application of SaskTel for Special Temporary Authority of Section 214 International License, Special Temporary Authority, ITC-STA-20061118-00527 (granted December 1, 2006).

<sup>32</sup> *See* Application at Attachment 1, page 2.

<sup>33</sup> Letter from B.W. (Brent) Munro, Counsel for Navigata Communications Ltd. and SaskTel Corporate Counsel, to Secretary, FCC, ITC-214-20041115-00451 at 1 (dated April 28, 2006) (Navigata April 28 *Ex Parte* Letter).

<sup>34</sup> *See* 2004 International Telecommunications Data (Section 43.61 International Traffic Data), Table A1; Navigata April 28 *Ex Parte* Letter at 1.

<sup>35</sup> *See* 2004 International Telecommunications Data (Section 43.61 International Traffic data), Table A1; Navigata April 28 *Ex Parte* Letter at 1.

<sup>36</sup> According to the record, of the total Canadian market for international transport services estimated to be fifty billion minutes per month, Navigata was providing less than five million minutes per month. *See* Application at Attachment 1, page 1.

<sup>37</sup> *See* 47 U.S.C. § 63.10(a)(3).

<sup>38</sup> *Id.* For purposes of the presumption in section 63.10(a)(3), the Commission does not require a showing that the foreign carrier has less than 50% market share in the foreign country's inter-city market. The Commission found in  
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9. In the *Foreign Participation Order*, the Commission recognized that, for purposes of identifying the relevant geographic market for local access facilities, it may be appropriate in some instances to examine a discrete geographic region rather than the national market of a foreign country.<sup>39</sup> Although the *Foreign Participation Order* does not identify the circumstances in which examination of a discrete geographic region would be appropriate, the International Bureau has held that, if a local franchise area generates a significant share of international traffic, then the local franchise area is the relevant geographic market for purposes of determining whether a carrier possesses sufficient market power to affect competition adversely in the United States.<sup>40</sup>

10. In this case, SaskTel is the incumbent local exchange carrier in Saskatchewan, Canada. As an incumbent local exchange carrier, it has market power in its franchise area and may have the potential to exercise market power to the detriment of U.S. carriers. However, SaskTel is a relatively small company and is not a major carrier of U.S. international traffic. Indeed, only approximately one percent of U.S. inbound or outbound traffic on the U.S.-Canada route originates or terminates with SaskTel.<sup>41</sup> Given its small size, anticompetitive behavior by SaskTel against other U.S. carriers would not likely confer advantages upon it that would be so substantial that they could replace the loss of business from these same U.S. carriers that such behavior could entail. Because it is unlikely that SaskTel could profit from anticompetitive conduct against other U.S. carriers, we find that the risk of SaskTel's leveraging market power in its franchise area to affect competition adversely in the United States is low. Therefore, on balance, we find that the burdens of imposing dominant carrier status on SaskTel in its provision of service on the U.S.-Canada route outweigh the small risk to competition in the U.S. market. Thus, we find that SaskTel should not be classified as dominant. We note that the Commission has in place rules that allow a U.S. carrier to file a complaint should SaskTel engage in anticompetitive behavior, and the Commission has the authority to take corrective action if warranted.<sup>42</sup>

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the *Foreign Participation Order* that, "as a general matter, it is unlikely that a carrier would possess market power in the inter-city input market if it did not have market power in either the international transport or the local exchange or local access input markets." *Foreign Participation Order*, 12 FCC Rcd at 23961-62, ¶ 163 n.318. The presumption of non-dominance in section 63.10(a)(3), however, is rebuttable. *See id.*, 12 FCC Rcd at 23996, ¶ 233.

<sup>39</sup> *See Foreign Participation Order*, 12 FCC Rcd at 23952-53, ¶ 145.

<sup>40</sup> *See Americatel Corporation and Telecom Italia of North America, Inc., Application to Modify Regulatory Classification from Dominant to Non-Dominant on the U.S.-Brazil Route*, DA 04-1538, 19 FCC Rcd 9672, 9680-81 ¶ 16 (Int'l Bur. 2004); *Americatel Corporation and Telecom Italia of North America, Inc., Application to Modify Regulatory Classification from Dominant to Non-Dominant on the U.S.-Argentina Route*, DA 03-4115, 2003 WL 23095477 at ¶¶ 14-15 (Int'l Bur. 2003). *See also* 1998 Biennial Regulatory Review - Reform of the International Settlements Policy and Associated Filing Requirements; *Bell Canada Petition for Declaratory Ruling*, IB Docket No. 98-148, Order, DA 01-1421, 16 FCC Rcd 12465 (Int'l Bur. 2001) and *Cable and Wireless, Inc., Application for Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, to Provide Resold and Facilities-Based Switched and Private Line Service between the United States and China*, File No. ITC-214-19980515-00326 (previous File No. ITC-98-380), Order, Authorization, and Certificate, DA 98-2498, 14 FCC Rcd 1863 (Tel. Div. 1998).

<sup>41</sup> *See supra* ¶ 7. Moreover, SaskTel serves only 3.1 percent of total exchange access lines in Canada. *See* Navigata April 28 *Ex Parte* Letter at 1.

<sup>42</sup> *See* 47 U.S.C. §208; 47 C.F.R. 1.711 *et seq.* The Commission has broad authority to protect U.S. customers from harms resulting from anti-competitive behavior. In particular, the Commission has the authority to respond to carrier initiated petitions, and notifications when addressing anticompetitive harms on individual routes. The Commission can order a U.S. carrier to terminate an arrangement with a foreign carrier upon finding that the arrangement results in anti-competitive effects in the U.S. market. The Commission also has the authority to review a carrier's authorization and, if warranted, impose additional requirements in circumstances where it appears that harm to competition is occurring on one or more U.S.-international routes. In addition, the Commission has the

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**IV. ORDERING CLAUSES**

11. Accordingly, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require a grant of the instant application, and IT IS HEREBY ORDERED that the application in File No. ITC-214-20041115-00451 IS GRANTED and SaskTel is authorized, pursuant to section 214 of the Communications Act of 1934, as amended, to provide facilities-based and resale services between the United States and all permissible international points SUBJECT TO all current and future Commission regulations.

12. IT IS FURTHER ORDERED that the request of SaskTel to be classified as non-dominant on all U.S.-international routes, including the U.S.-Canada route, is GRANTED.

13. This Order is issued under Section 0.261 of the Commission's rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules may be filed within 30 days of the date of public notice of this Order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

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authority to impose forfeitures and, in extreme cases, revoke a carrier's authorization. *See Foreign Participation Order*, 12 FCC Rcd at 24022-23, ¶¶ 293-296. *See also International Settlements Policy Reform: International Settlement Rates*, IB Docket Nos. 02-324 and 96-21, First Report and Order, 19 FCC Rcd 5709, 5729-5734, ¶¶ 41-52 (2004).