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

In Re Petition of	)	
	)	
AT&T Corp.	)	
	)	File No.: ISP-WAV-19991215-00012
For Approval of a Waiver to the ISP Regarding Arrangements for Service between the United States and Venezuela	)	
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REPORT AND ORDER

Adopted: June 7, 2000 **Released:** June 8, 2000

By the Chief, Telecommunications Division:

I. INTRODUCTION

1. On December 15, 1999, AT&T Corp. ("AT&T") filed a Petition for Approval of a Waiver to the ISP seeking a ruling that an alternative settlement agreement it negotiated with the carrier in Venezuela is consistent with the public interest and, therefore, should be approved by the Commission.[1] Specifically, AT&T seeks approval of an alternative settlement agreement for traffic exchanged between the United States and the carrier in Venezuela, Compania Anonima Nacional Telefonos de Venezuela ("CANTV") for the period June 1, 1999 through December 31, 1999.[2] For the reasons stated below, we approve AT&T's petition to enter into an alternative settlement arrangement with CANTV.

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[1] AT&T Petition for Approval of a Waiver to the ISP for the Origination and Termination of International Switched Traffic between the United States and Venezuela (CANTV), File No. ISP-WAV-19991215-00012 (filed December 15, 1999).

[2] For service to Venezuela between June 1, 1999 and September 30, 1999, AT&T proposes to settle its initial 5.5 million minutes in a month at a rate equal to one-half of the accounting rate, to settle the minutes between 5.5 and 8.5 million at 15¢, and to settle the minutes in excess of 8.5 million at a rate equal one-half of the accounting rate. The accounting rate was 74¢ in June 1999, and declined to 64¢ in July 1999. For service to Venezuela between October 1, 1999 and December 31, 1999, AT&T seeks to settle its initial 5 million minutes in a month at 32¢, to settle the minutes between 5 and 8.5 million at 15¢, and to settle the minutes in excess of 8.5 million at 32¢. CANTV would settle the traffic it sends to AT&T in June at 37¢ and at 32¢ for July through December.

II. DISCUSSION

2. The global communications market is changing rapidly. National markets in many countries are beginning to open to new suppliers, new carriers are entering the global marketplace, consumers are being offered a growing variety of services and calling options, and advances in technology are pushing costs to lower levels. As these forces change market conditions, international settlement procedures that evolved during the 19th century when bilateral monopoly markets prevailed in international communications are a growing impediment to the rapid, efficient transactions of a more competitive market. Continued reliance on these settlement procedures will slow the development of competitive markets in international communications. To foster competitive global markets, the Commission has adopted policies that permit U.S. carriers to negotiate settlement arrangements with foreign carriers that depart from the traditional International Settlements Policy ("ISP")[3] in certain market situations. Specifically, the Commission abolished the ISP and related filing requirements for arrangements between U.S. carriers and foreign carriers that lack market power in foreign markets in the *ISP Reform Order*[4]. In addition, the *Order* exempts arrangements between U.S. carriers and all foreign carriers on routes where the settlement rate used for at least one-half of the traffic on the route is at least twenty-five percent less than the applicable benchmark settlement rate.[5] Allowing departures from the ISP was intended to give U.S. carries an incentive and opportunity to negotiate market-based solutions to terminate international traffic rather than continue to rely on administered settlement arrangements.

3. The arrangement between AT&T and CANTV does not qualify for an exemption from the ISP under the standards adopted in the *ISP Reform Order*. However, the Commission noted in that Order that there might be "unforeseen circumstances" in which an arrangement between a U.S. carrier and a foreign carrier with market power might promote the public interest, even though the criteria for removing the ISP had not been met.[6] To allow for such circumstances, the Commission noted that it would entertain waivers of the ISP for individual arrangements. Important public interest considerations used to evaluate an ISP waiver request are whether an arrangement moves the rate toward the cost to terminate international

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[3] The ISP requires uniform accounting rates, uniform terms for the sharing of tolls, and uniform settlements rates among U.S. carriers providing the same service to the same foreign point. The ISP also requires that U.S. carriers accept only their proportionate share of return traffic. *See Implementation of Uniform Settlement Policy for Parallel International Communications Routes*, 51 Fed. Reg. 4736 (1986) (*"ISP Order"*), *Reconsideration*, 2 FCC Rcd 1118 (1987), and *Further Reconsideration*, 3 FCC Rcd 1614 (1988). In 1991, the Commission reformed the ISP to encourage and facilitate accounting rate reductions by U.S. carriers. *See Regulation of International Accounting Rates*, 6 FCC Rcd 3553 (1991) (*"Phase I Report & Order*"), and *Reconsideration*, 7 FCC Rcd 8040 (*"Phase II Second Report & Order and Second Further Notice of Proposed Rulemaking"*). In 1996, the Commission codified the proportionate return policy. *See Flexibility Order*, 11 FCC Rcd 20063. The Commission's Rules also require a U.S. carrier to file with the Commission a modification request or waiver if it seeks to change the accounting rate with a foreign carrier. *See* 47 *C.F.R.* §43.51(d)(2).

[4] *1998 Biennial Regulatory Review Reform of the International Settlements Policy and Associated Filing Requirements*, Report and Order and Order on Reconsideration, 11 FCC Rcd 7963 (1999) (*"ISP Reform Order")*. The Commission adopted a presumption that a carrier does not posses market power if it possesses less than a fifty percent share of the relevant foreign market. Id. at ¶¶38-41. A list of foreign carriers that do not qualify for the presumption that they lack market power is available on the Commission's website (www.fcc.gov/IB).

[5] *See ISP Reform Order*. at ¶78.

[6] *Id*. at ¶80.

traffic and whether the arrangement raises concerns about discriminatory behavior by a dominant foreign carrier. Taking these considerations into account, we find that a waiver of the ISP is warranted.

4. CANTV has negotiated agreements with U.S. carriers that will gradually reduce the settlement rate for service between the United States and Venezuela to the benchmark level of 19¢ on January 1, 2001 so U.S. carriers have met the Commission's expectations concerning benchmark rates.[7] AT&T's new arrangement with CANTV would allow a substantial portion of its service to Venezuela to be settled at a rate that is significantly lower than the rate in its current agreement with CANTV, and also below the benchmark rate for Venezuela.[8] The lower rate will promote the Commission's objective of cost-based rates in two ways. First, the Commission believes its benchmark rates are higher than foreign carriers' costs to terminate international service so the rate moves closer to CANTV's costs. At the lower rate, AT&T will realize significant savings in its settlement costs for service to Venezuela and these savings should lead to lower prices for calls by U.S. consumers. Second, the reduction in the settlement rate for service to Venezuela will put additional pressure on carriers that provide international service in surrounding countries to negotiate lower settlement rates with U.S. carriers. Carriers in these countries that refuse to reduce their rates may discover that a portion of their traffic is re-routed through Venezuela.

5. CANTV, as a monopoly provider of international service in Venezuela, possesses market power. The typical concern with the exercise of monopoly power in international settlement negotiations is whipsawing to extract favorable concessions from U.S. carriers. In this case, CANTV is not seeking to raise the settlement rate. Instead, it has agreed to settle a large portion of its service from the United States at a rate that is sharply lower than the prevailing rate. In addition, AT&T states in its waiver request that CANTV has offered alternative settlement agreements containing comparable terms and conditions to all other U.S. carriers that provide service on the U.S.-Venezuela route. No U.S. carrier has opposed AT&T's petition for waiver with CANTV or disputed the assertion that the terms are available to other U.S. carriers. Thus, we find no basis for concluding that the arrangement between AT&T and CANTV is the result of an abuse of market power by CANTV.

6. We therefore grant AT&T's Petition for Approval of a Waiver to the ISP for service between the United States and Venezuela.

III. ORDERING CLAUSES

7. Accordingly, it is ORDERED that AT&T's petition for a waiver of the ISP for service to Venezuela with CANTV, File No. ISP-WAV-19991215-0012, being found consistent with the Commission's *ISP Reform Order* and in the public interest, is therefore GRANTED.

8. This Order is issued under Section 0.261 of the Commission's rules and is effective immediately. 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

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[7] AT&T's agreement with CANTV, for example, has the following settlement rates and effective dates: 49¢ on July 1, 1997, 43¢ on January 1, 1998, 40¢ on July 1, 1998, 37¢ on January 1, 1999, 32¢ on July 1, 1999, 27¢ on January 1, 2000, 23¢ on July 1, 2000, and 19¢ on January 1, 2001. See AT&T Request to Modify the International Settlements Policy ("ISP") Related to Accounting Rates for International Switched Voice Service with Venezuela, ISP-97-M-644 (October 6, 1997).

[8] Based on information filed by AT&T in its 43.61 report, we estimate that its average traffic to Venezuela was approximately 7.5 million minutes per month in 1998.

Section 1.4(b)(2) of the Commission's rules.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca Arbogast

Chief, Telecommunications Division