

BEFORE THE
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
International Settlement Rates;
Atlantic Tele-Network, Inc.
Request for a Waiver of the Benchmark
Settlement Rate on the U.S.-Guyana Route
IB Docket No. 96-261

ORDER

Adopted: November 15, 2001

Released: November 16, 2001

By the Chief, Telecommunications Division:

I. INTRODUCTION AND BACKGROUND

1. On July 6, 2001, Atlantic Tele-Network, Inc. (ATN) filed a petition for waiver, pursuant to Section 1.3 of the Commission's rules, of the transition deadline for the benchmark settlement rate on the U.S.-Guyana route. ATN is a U.S. corporation that holds a majority interest in several telecommunications providers in the Caribbean, including the incumbent provider in Guyana, Guyana Telephone & Telegraph Ltd. (GT&T). In this Order, we deny ATN's waiver request.

2. In the Commission's 1997 Benchmarks Order, the Commission adopted benchmark settlement rates and a schedule of effective dates for these rates governing U.S. carriers in their settlement arrangements with foreign carriers. The Commission adopted the benchmark settlement rates because, in

1 Atlantic Tele-Network, Inc., Petition for Waiver of the Benchmark Settlement Rate for Guyana (filed July 6, 2001) (ATN Petition). 47 C.F.R. § 1.3.

2 See ATN Petition at 1.

3 International Settlement Rates, IB Docket No. 96-261, Report and Order, 12 FCC Rcd 19,806 (1997) (Benchmarks Order); Report and Order on Reconsideration and Order Lifting Stay, 14 FCC Rcd 9256 (1999) (Benchmarks Reconsideration Order); aff'd sub nom. Cable & Wireless P.L.C. v. FCC, 166 F.3d 1224 (D.C. Cir. 1999).

4 The current international accounting rate system was developed as part of a regulatory tradition in which international telecommunications services were supplied through a bilateral correspondent relationship between national monopoly carriers. An accounting rate is the price a U.S. facilities-based carrier negotiates with a foreign carrier for handling one minute of international telephone service. Each carrier's portion of the accounting rate is referred to as the settlement rate. In most cases, the settlement rate is equal to one-half of the negotiated accounting rate.

most cases, settlement rates that U.S. carriers pay foreign carriers are substantially above the costs foreign carriers incur to terminate U.S. international traffic.⁵ These high settlement rates discourage effective competition and cost-based pricing in foreign markets, create competitive distortions in the U.S. international market, and harm U.S. consumers who must indirectly pay these increased costs to U.S. carriers through artificially high international calling prices. In establishing the benchmark rates and effective dates, the Commission took into consideration the possible, unique difficulties of settlement rate reduction on low income countries. In particular, the Commission set forth transition periods for the settlement rates and their scheduled effective dates, based primarily on country income levels using World Bank and ITU GNP per capita classifications.⁶ For the low income category, which includes Guyana, the benchmark rate is 23 cents per minute.⁷ Thus, the Commission's *Benchmarks Order* requires U.S. facilities-based carriers to negotiate a settlement rate with GT&T that does not exceed 23 cents per minute. The rate applies to service provided from January 1, 2002. Currently, the settlement rate on the U.S.-Guyana route is 85 cents.

3. In its petition, ATN requests a five-year extension of the transition deadline of January 1, 2002 for the U.S.-Guyana route or until Guyana reaches a teledensity of 23,⁸ whichever occurs first.⁹ ATN contends that a waiver of the benchmark transition deadline is necessary because the loss of revenue resulting from negotiating a 23 cent settlement rate with U.S. carriers as of January 1, 2002 will harm the infrastructure development and provision of universal service in Guyana. ATN asserts that Guyana has "no other choice" than to rely upon settlement payments for funding investment in its telecommunications network and further claims that settlement revenues have been re-invested in infrastructure development of the telecommunications network of Guyana during the past decade.¹⁰ Moreover, ATN argues that a waiver would be in the public interest by creating job opportunities for U.S. industry through increased sales of information technology equipment and Internet-related services and creating opportunities for U.S. consumers who call Guyana to communicate with a higher percentage of people abroad as a result of increased expansion of the telecommunications networks in Guyana, as well as creating goodwill for U.S. foreign policy objectives in Guyana.¹¹

4. The International Bureau (Bureau) placed the *ATN Petition* on public notice July 17, 2001.¹² Considering the need for parties to build a detailed record in this proceeding, the Bureau subsequently extended deadlines in the comment cycle.¹³ The Bureau has received a number of comments,

⁵ *Benchmarks Order*, 12 FCC Rcd at 19,807-08, para. 2.

⁶ *Id.* at 19,883-90, paras. 161-176.

⁷ *Id.* at 19,860-61, para. 111.

⁸ "Teledensity" is the number of lines per 100 inhabitants. *See Benchmarks Order*, 12 FCC Rcd at 19,884-85, para. 164. ATN states that the current teledensity of Guyana is slightly greater than ten.

⁹ *ATN Petition* at 1.

¹⁰ *Id.* at 2, 4-7.

¹¹ *Id.* at 7-23.

¹² Public Notice, DA 01-1714 (July 17, 2001).

¹³ Public Notice, DA 01-1933 (August 13, 2001); Public Notice, DA 01-2104 (September 6, 2001).

replies, and *ex parte* filings.¹⁴

II. DISCUSSION

5. The Commission may grant a waiver of its rules for good cause shown.¹⁵ Waiver of the Commission's rules is appropriate only if special circumstances warrant a deviation from the general rule. Such deviation must serve the public interest and be consistent with the policies underlying the rule.¹⁶

6. We find that ATN has not persuasively demonstrated that a waiver of the transition deadline would be in the public interest.¹⁷ As the Commission explained in the *Benchmarks Order*, any carrier may request that the Commission reconsider, in a specific case, the applicable benchmark settlement rate on the ground that it does not permit the carrier to recover the incremental costs of providing international termination service.¹⁸ Accordingly, in such a request, the petitioner must demonstrate that its relevant incremental costs are higher than the established benchmark. Additionally, the Commission specifically considered the impact of benchmark rates on developing countries and stated that it would consider granting additional transition time for negotiations with foreign carriers in countries for which annual percentage reductions in the settlement rate would result in a loss of greater than twenty-percent of the country's annual telecommunications revenue.¹⁹ ATN has not demonstrated in its petition that it cannot recover incremental costs at the benchmark rate of 23 cents or that it meets the criteria for grant of additional transition time.

7. ATN further argues that a waiver would not undermine the Commission's benchmark policies because such a waiver would not affect the current downward trend in settlement rates paid by U.S. carriers or the calling rates paid by U.S. consumers.²⁰ We disagree and reiterate that timely enforcement of the benchmark rates continues to be necessary to achieve the Commission's goal of ensuring lower international calling prices. The Commission adopted its benchmark policy because, despite

¹⁴ Because of the broad applicability of our ruling in this matter, the Bureau reclassified this proceeding for *ex parte* purposes as "permit-but-disclose." Public Notice, DA 01-2546 (October 31, 2001).

¹⁵ 47 C.F.R. § 1.3.

¹⁶ *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied* 409 U.S. 1027 (1972).

¹⁷ We note that a number of parties agree that ATN has either not produced the necessary evidence to meet the standard for waiver or that ATN's arguments otherwise lack merit. *See, e.g.*, Comments of Caribbean Wireless Telecom, LLC, Reply Comments of Caribbean Telecommunications Limited, *Ex Parte* filing of Joseph Tyndall, Comments of WorldCom, Inc., Comments of Sprint Communications Company L.P., Comments of AT&T Corp. and its affiliates Concert Global Networks USA L.L.C. and Concert Global Network Services Ltd. *But see* Comments of Caribbean Association of National Telecommunication Organizations (supporting *ATN Petition*).

¹⁸ *Benchmarks Order*, 12 FCC Rcd at 19,842-43, para. 74 & at 19,849, para. 88.

¹⁹ *Id.* at 19,888, para. 173.

²⁰ *ATN Petition* at 23-29.

repeated efforts,²¹ as well as efforts by multilateral organizations such as the International Telecommunication Union, accounting rates on most routes exceeded foreign carriers' costs to terminate international message telephone service from the United States. This continues to be the case today on many routes, including the U.S.-Guyana route. The Commission remains committed to achieving more cost-based accounting rates because high accounting rates inflate U.S. carriers' costs and, as a result, put upward pressure on the prices charged to U.S. consumers. As the Commission stated in the *Benchmarks Order*, the goal of the benchmark policy is to reduce settlement rates in situations where lack of exposure to market forces and competition has produced settlement rates that are not more cost-based.²² Since the implementation of the Commission's *Benchmarks Order*, the average U.S.-international accounting rate has fallen from 81 cents in 1995 to 38 cents in 2000.²³ In addition, U.S. consumer calling prices for international services, particularly discount calling program rates, have fallen dramatically. Based upon Commission information, the average price of residential direct-dial calling for all U.S.-international routes combined has fallen from 74 cents per minute in 1997 to 52 cents per minute in 2000. This drop in U.S. consumer calling prices on U.S.-international routes can stimulate demand for calling to foreign countries and possibly lead to increased revenues for foreign carriers on those routes that may potentially offset the revenue loss associated with lowering settlement rates.

8. Moreover, the Commission thoroughly addressed and dismissed in the *Benchmarks Order* the universal service policy arguments ATN sets forth in its petition, and it subsequently affirmed these positions in the *Benchmarks Reconsideration Order*.²⁴ As the Commission stated in the *Benchmarks Order*, to the extent countries have used settlement payments from U.S. carriers for telecommunications infrastructure development, alternative capital funding mechanisms, from both public and private sources, must be identified.²⁵ The Commission previously rejected the argument ATN raises that hidden subsidies in settlement rates are comparable to domestic universal service policies in the United States.²⁶ Universal service in the United States is dependent upon end user telecommunications revenues in the United States, not on international settlement revenues paid by foreign carriers, and such universal service contributions rely upon explicit and transparent funding mechanisms.²⁷

²¹ See, e.g., *Regulation of International Accounting Rates*, CC Docket No. 90-337 (Phase II), Second Further Notice of Proposed Rulemaking, 7 FCC Rcd 8040 (1992); Public Notice, DA 96-105, 11 FCC Rcd 3152 (1996); *Policy Statement on International Accounting Rate Reform*, 11 FCC Rcd 3146 (1996); *Regulation of International Accounting Rates*, CC Docket No. 90-337 (Phase III), Fourth Report and Order, 11 FCC Rcd 20,063 (1996); and *International Settlement Rates*, IB Docket No. 96-261, Notice of Proposed Rulemaking, 12 FCC Rcd 6184 (1996) (*Benchmarks Notice*).

²² *Benchmarks Order*, 12 FCC Rcd at 19,863, para. 116 & at 19,868, para. 128.

²³ See *In the Matter of 2000 Biennial Regulatory Review; Policy and Rules Concerning the International, Interexchange Marketplace*, IB Docket No. 00-202, Report and Order, 16 FCC Rcd 10,647 (2001) at 10,657, para. 15.

²⁴ In addition, the U.S. Court of Appeals for the D.C. Circuit upheld the *Benchmarks Order*. *Cable & Wireless P.L.C. v. FCC*, 166 F.3d 1224 (D.C. Cir. 1999).

²⁵ *Benchmarks Order*, 12 FCC Rcd at 19,875, para. 143.

²⁶ *ATN Petition* at Part I.C.

²⁷ *Id.* at 19,877-78, para. 148.

9. In addition, GT&T has had ample time to make reasonable adjustments in the settlement rate it negotiates with U.S. international carriers. The Commission specifically stated in the *Benchmarks Order* that meaningful progress in negotiating settlement rates toward the benchmark rate is necessary, and it suggested annual percentage reductions during the transition period.²⁸ The Commission adopted the *Benchmarks Order* on August 7, 1997. Because the benchmark rate for low income countries such as GT&T does not take effect until January 1, 2002, GT&T has had more than four years to make the transition from its consistently high settlement rate with U.S. carriers to the benchmark rate of 23 cents. The last reduction GT&T made in the settlement rate with U.S. carriers for the U.S.-Guyana route was in 1987. We note that many foreign carriers in the low income category have already made the transition to the benchmark rate. Currently, U.S. carriers have negotiated a 23 cent benchmark rate as of January 1, 2002 with approximately forty-percent of carriers in low income countries.²⁹

10. For the foregoing reasons, we do not find ATN's contentions persuasive that there is good cause to waive the transition deadline for the U.S.-Guyana route. Grant of ATN's request would not be in the public interest or consistent with Commission policies. Therefore, we reject ATN's arguments and deny the petition for waiver.

III. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED, pursuant to Sections 1, 2, 4(i), 4(j), 5(c), 201, 214, and 303(r) of the Communication Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 155(c), 201, 214, and 303(r), and Sections 0.51, 0.261, 1.3 of the Commission's Rules, 47 C.F.R. §§ 0.51, 0.261, 1.3, that ATN's petition for waiver of the benchmark settlement rate transition deadline for the U.S.-Guyana route IS DENIED.

²⁸ *Id.* at 19,888, para. 172.

²⁹ Moreover, we note that as of January 1, 2002, U.S. carriers have negotiated a 23 cent benchmark rate as of January 1, 2002 with twenty-five percent of the low income countries that fall within the last transition category, or countries with teledensity less than one – a year earlier than the required deadline of January 1, 2003.

12. IT IS FURTHER ORDERED that this order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn O'Brien
Acting Chief
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International Bureau