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

In the Matter of	)	
	)	
GTE Hawaiian Tel International Inc.	)	ARC-MOD-20000326-00063
	)	
Petition for Waiver of the	)	
International Settlements Policy	)	
to Change the Accounting Rate	)	
for Switched Voice Service with	)	
Vietnam	)	

ORDER

Adopted: March 20, 2001 **Released:** March 21, 2001

By the Chief, Telecommunications Division:

Introduction

1. In this Order we deny the petition of GTE Hawaiian Tel International ("GTE Hawaiian") to waive the Commission's International Settlements Policy (ISP)[1] to change the accounting rate for

[1] The ISP requires uniform accounting rates, settlement rates, and division of tolls for 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 Settlements Policy for Parallel International Communications Routes*, 51 Fed. Reg. 4736 (1986) (*ISP Order); Reconsideration,* 2 FCC Rcd 1118 (1987); *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 and Order); Reconsideration,* 7 FCC Rcd 8049 (1992). *See Regulation of International Accounting Rates*, 7 FCC Rcd 8040 (1992) (*Phase II Second Report & Order and Second Further Notice of Proposed Rulemaking*). In 1996, the Commission codified the proportionate return policy. *See Fourth Report and Order on Regulation of International Accounting Rates,* 11 FCC Rcd 20063 (1997) (*Flexibility Order).* The Commission's Rules require a U.S. carrier to file with the Commission a modification request if it seeks to change that accounting rate with a foreign carrier. (47 C.F.R. Ch. 1 §43.51(d)(2)). The Commission recently amended its ISP so that it does not apply on routes where settlement rates are twenty-five percent or more below the Commission's benchmark rates or to agreements with foreign carriers that lack market power. *See 1998 Biennial Regulatory Reform of the International Settlements Policy and Associated Filing Requirements, Report and Order and Order on Reconsideration,* 14 FCC Rcd 7963 (eff. July 29, 1999) (*ISP Reform Order*).

switched voice service with Vietnam. The International Bureau had previously suspended this modification request because the foreign carrier in Vietnam, Vietnam Telecom International ("VTI") offered a higher accounting rate at a later effective date to GTE Hawaiian than it negotiated with other U.S. carriers.

2. The Commission has a longstanding policy of protecting U.S. consumers from the effects of harmful discrimination by foreign carriers with market power by strictly enforcing its ISP.[2] We find that the agreement between VTI and GTE Hawaiian violates the ISP because it would result in a significant disparity in the accounting rates among U.S. carriers. Therefore, to enforce our ISP, to ensure equitable treatment of U.S. carriers, and to protect U.S. consumers, we deny GTE Hawaiian's modification request and direct it to negotiate a nondiscriminatory agreement with VTI. Until GTE Hawaiian negotiates a nondiscriminatory rate with VTI, we direct GTE Hawaiian to settle with VTI on an interim basis at the lowest rates VTI has negotiated with other U.S. carriers for service on the U.S.-Vietnam route.

Background

3. GTE Hawaiian filed a petition for modification of the Commission's ISP for service with VTI that would reduce its accounting rate from 2.2 Special Drawing Rights ("SDR") per minute to 1.2 SDR per minute on January 1, 2000.[3] The International Bureau suspended GTE Hawaiian's modification request[4] because VTI previously entered into agreements with AT&T, MCI WorldCom, and Sprint to implement an accounting rate of 1.15 SDR per minute with an effective date of January 1, 1999.[5] Subsequently, VTI agreed to an accounting rate of 1.0 SDR with Concert to take effect on January 1, 2000.[6]

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2 *See In the Matter of AT&T Corp., MCI Telecommunications Corp., Petition of the International Settlements Policy to Change the Accounting Rate for Switched Service with Bolivia*, 11 FCC Rcd 13799 (1996) and *In the Matter of AT&T Corp., MCI Telecommunications Corp., Sprint, LDDS WorldCom, Petition of the International Settlements Policy to Change the Accounting Rate for Switched Service with Peru*, 11 FCC Rcd 12107 (1996).

3 GTE Hawaiian Tel Accounting Rate Change for International Switched Voice Service with Vietnam, ARC-MOD-20000326-00063 (filed March 26, 2000).

4 See Letter from Kathryn O'Brien , FCC, to Carole Tsutsumi, GTE Hawaiian Tel International, April 13, 2000.

5 See AT&T's International Settlements Policy Modification for Change in Accounting Rate for International Message Telephone Service with Vietnam, ARC-MOD-19990518-00159 (filed May 18, 1999), MCI WorldCom's International Settlements Policy Modification for Change in Accounting Rate for International Message Telephone Service with Vietnam, ARC-MOD-19990701-00237 (filed July 1, 1999), and Sprint's International Settlements Policy Modification for Change in Accounting Rate for International Message Telephone Service with Vietnam, ARC-MOD-19990813-00272 (filed August 13, 1999).

6 See Concert's Accounting Rate Change for International Switched Voice Service with Vietnam,

Discussion

4. The purpose of the ISP is to prevent foreign carriers with market power, like VTI, from taking advantage of their market positions vis-a-vis U.S. carriers in accounting rate negotiations by engaging in discriminatory behavior that favors some carriers at the expense of others. The Commission has stated that the ISP requires accounting rate changes to be made available to all U.S. carriers with the same effective date.[7] We have before us clear evidence of unfair discrimination by VTI against a U.S. carrier. VTI has refused to offer the same accounting rate to GTE Hawaiian that it negotiated with other U.S. carriers and the higher rate VTI offered to GTE Hawaiian would take effect later than the rate negotiated with the other U.S. carriers. Different effective dates for accounting rate reductions among U.S. carriers, unrelated to underlying costs, raise the costs of one or several U.S. carriers above the costs of others. These disparities impair the ability of those U.S. carriers that are the target of discrimination to compete on an equal footing in the U.S. market for international services. Approval of the modification request at issue would perpetuate this discrimination and distortion of competition in our market, and give the mistaken impression that the Commission condones such behavior by foreign carriers.

5. The Commission's policy is to enforce the ISP in order to protect the U.S. market from competitive distortions. We find that the refusal of VTI to negotiate comparable terms and conditions with all U.S. carriers for service on the U.S.-Vietnam route violates the ISP.[8] We therefore deny GTE Hawaiian's modification request and direct it to negotiate a nondiscriminatory agreement with VTI. Pending the conclusion of negotiations with VTI to establish a nondiscriminatory rate for all carriers, we direct GTE Hawaiian to settle on an interim basis at the lowest rates VTI has negotiated with a U.S. carrier on the U.S.-Vietnam route since January 1, 1999.

6. We also note that although recent changes in the accounting rate for service on the U.S.-Vietnam route have moved the rate toward costs, it significantly exceeds the benchmark settlement rate we expect U.S. carriers to negotiate with carriers in low-income countries, like Vietnam, by January 1, 2002.[9]

ARC-MOD-20000505-00078 (filed May 5, 2000).

7 The Commission stated that "[w]e wish to emphasize again to both U.S. carriers and their foreign correspondents that it is our expectation that an accounting rate modification agreed to by a given foreign correspondent will be available to all competing carriers in a nondiscriminatory fashion." *Regulation of International Accounting Rates, Report and Order, CC Docket No. 90-337,* 6 FCC Rcd 3553, 3555 (1991). The Commission added "[t]his would include, of course, the expectation that the effective date of the accounting rate change, whether prospective or retroactive, will be available to competing U.S. carriers." Id. at n. 36.

8 We note that the Commission recently revised the ISP so that it does not apply to agreements between U.S. carriers and foreign carriers that lack market power. Because VTI has market power in Vietnam, the ISP, in its prior form and as revised, applies to agreements between VTI and U.S. carriers.

9 *See International Settlement Rates, IB Docket No. 96-261, Report and Order,* 12 FCC Rcd 19,806 (1997), *Report and Order on Reconsideration and Order Lifting Stay*, 14 FCC Rcd 9256

High accounting rates artificially inflate U.S. carriers' costs, which places upward pressure on U.S. calling prices and thereby harms U.S. consumers. To avoid harm to U.S. consumers and to comply with the Commission's *Benchmarks Order,* we expect U.S. carriers to continue to negotiate actively with VTI in order to reduce the accounting rate on the U.S.-Vietnam route.

Ordering Clauses

7. Accordingly, IT IS ORDERED that GTE Hawaiian's modification request IS DENIED.

8. IT IS FURTHER ORDERED that GTE Hawaiian negotiate a nondiscriminatory accounting rate arrangement with VTI for service on the U.S.-Vietnam route.

9. IT IS FURTHER ORDERED that GTE Hawaiian shall, pending the conclusion of negotiations with VTI to establish a nondiscriminatory rate for all U.S. carriers, settle on an interim basis at the lowest rates VTI has negotiated with any U.S. carrier for service on the U.S.-Vietnam route since January 1, 1999.

10. This order 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 C.F.R. Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Rebecca Arbogast
Chief, Telecommunications Division
International Bureau

(1999), *aff'd. sub nom., Cable and Wireless P.L.C. v. FCC*, 166 F.3d 1224 (D.C. Cir. 1999).