

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

In the matter of
Petition for Protection from Anticompetitive
Behavior and Stop Settlement Payment Order on
the U.S.-Pakistan Route
IB Docket No. 12-324

MEMORANDUM OPINION AND ORDER

Adopted: March 5, 2013

Released: March 5, 2013

By the Chief, International Bureau:

I. INTRODUCTION

1. By this Memorandum Opinion and Order, we seek to protect U.S. consumers from the effects of anticompetitive behavior and to promote competitive, cost-based termination rates on the U.S.-Pakistan route. We find that recent and ongoing actions by certain Pakistani long distance international carriers (Pakistani LDI carriers) to set rate floors over previously negotiated rates with U.S. carriers for termination of international telephone calls to Pakistan are anticompetitive and require action to protect U.S. consumers in accordance with Federal Communications Commission policy and precedent. Their continuation would result in a substantial increase in the cost of and repress demand for calling Pakistan. We therefore grant the petition filed by Vonage Holdings Corp. (Vonage), modified as recommended by AT&T, Inc. (AT&T), and order all U.S. carriers with Commission authorizations permitting the provision of facilities-based international switched voice services on the U.S.-Pakistan route to suspend immediately all U.S. carrier payments to Pakistani LDI carriers for termination services that are in excess of the rates that were in effect immediately prior to the rate increase on or around October 1, 2012.

II. BACKGROUND

2. Vonage is a provider of international communications services from the United States using third party U.S. and international carriers to terminate its traffic overseas. U.S. carriers separately negotiate with Pakistani LDI carriers rates for the termination of telephone traffic. On October 3, 2012, Vonage filed a petition requesting that the Commission issue an order stopping U.S. settlement payments to certain Pakistani LDI carriers.1 In its petition, Vonage states that the Pakistani LDI carriers have

1 See Petition for Protection from Anticompetitive Behavior and Stop Settlement Payment Order on the U.S.-Pakistan Route, IB Docket No. 12-324 (filed Oct. 3, 2012) (Vonage Petition). Vonage alleges that the following Pakistani LDI carriers have colluded to engage in anticompetitive behavior: Pakistan Telecommunication Company Limited (PTCL), Multinet Pakistan (Private) Limited, 4B General International (Private) Limited, Wi-tribe Pakistan Limited, Dancom Pakistan (Private) Limited, Wise Communication System (Private) Limited, Worldcall Telecom

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established a new International Clearing House (ICH) exchange for all international incoming calls to Pakistan, creating a monopoly provider of international termination in Pakistan. Vonage states that as a result, there has been approximately a 400% increase in the termination rates to be paid by international telecommunications carriers for terminating calls into Pakistan to more than \$0.088 per minute. Vonage notes that it offers consumers a plan with unlimited domestic and international calling to more than 60 countries for a set price per month.² Vonage states that the increase in termination rates has forced it to charge its customers significantly more for calls to Pakistan thus resulting in harm to U.S. consumers.³

3. According to Vonage, the Pakistani LDI carriers submitted in 2011 to the Competition Commission of Pakistan (CCP) an application seeking an exemption from the Pakistan Competition Act of 2010 to allow them to create the ICH exchange. The Pakistani LDI carriers later withdrew the application and the CCP subsequently issued an order in February of 2012 disposing of the application and identifying concerns with the application. In that order, the CCP outlined the following details of the agreement to create the ICH exchange (ICH Plan): (1) it assigns the rights of 13 Pakistani LDI carriers to terminate incoming international traffic to the Pakistan Telecommunication Company Limited (PTCL), the incumbent telecommunications service provider in Pakistan; (2) each Pakistani LDI carrier is to suspend and keep suspended all interconnection capacities in relation to incoming international traffic to Pakistan; (3) PTCL is to act as the sole Pakistani LDI operator with the right to exclusively terminate all incoming traffic to Pakistan; (4) PTCL is to sell its call terminating services to foreign carriers at the approved settlement rates of the Pakistan Telecommunications Authority (PTA); and (5) each Pakistani LDI carrier will get a pre-determined fixed quota from PTCL to terminate calls on its network, and receive a fixed share of revenues generated from all incoming international traffic.⁴ On August 28, 2012, the CCP sent a Policy Note to the PTA and the Ministry of Information Technology of Pakistan (MOIT), warning that the ICH Plan was illegal under Pakistan's Competition Act.

4. Vonage states in its petition that the MOIT, despite the order of the CCP, nevertheless issued a directive calling for the implementation of the ICH Plan. Subsequently, the Pakistani LDI carriers, PTA and MOIT moved forward with the ICH Plan and have implemented the rate increase to more than \$0.088 per minute as of October 1, 2012.

5. In its petition, Vonage requested that the Commission require U.S. carriers to stop settlement payments to the Pakistani LDI carriers until the ICH Plan is abrogated and international termination rates are re-established at cost-based levels on the U.S.-Pakistan route.⁵ Vonage also requested that the Commission immediately impose temporary requirements on U.S. carriers prohibiting

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Limited, ADG (Private) Limited, Link Direct International (Private) Limited, Telecard Limited, Circle Net Communications Pakistan (Private) Limited, Wateen Telecom Limited, Redtone Telecommunications Pakistan (Private) Limited, and Telenor LDI Communications (Private) Limited.

² See *Vonage Petition* at 6.

³ See *id.* at ii.

⁴ See *id.* at Attachment B.

⁵ According to unpublished 2011 International Telecommunications Data, the following carriers serve the U.S.-Pakistan route: AT&T, MCI, Sprint, Bharti Airtel, France Telecom, iBasis/KPN, IDT Corp., New Century, Pacifica Telecom/ITE, Primus Telecomm, Reach Services, Reliance Communications, Telecom Colombia USA, Telecom Italia Sparkle, Telecom New Zealand, Telstra, and Telia Sonera. *2011 Section 43.61 International Telecommunications Data*, Table A1 (not yet publicly available) (*2011 Section 43.61 International Telecommunications Data*).

all U.S. carriers from paying the Pakistani LDI carriers anything more than the termination rate to Pakistan in effect prior to October 1, 2012, while it considers its request to stop all settlement payments.⁶

6. On October 31, 2012, the International Bureau issued a Public Notice requesting comment on Vonage's petition.⁷ KDDI Global, LLC (KDDI) filed comments and AT&T filed reply comments in support of Vonage's petition. Vonage also filed reply comments. We did not receive any comments opposing the allegations of anticompetitive conduct in the Vonage petition.

7. KDDI states that the Pakistani LDI carriers have colluded with one another, as well as with the PTA and MOIT to create the ICH exchange to funnel all incoming international traffic through a monopoly carrier, PTCL.⁸ KDDI states that rates prior to October 1, 2012 for call termination to Pakistan had been based on cost, averaging \$0.02 per minute, and the rate hike to \$0.088 per minute after the creation of the ICH presents a significant increase.⁹

8. AT&T contends in its reply that the Pakistani carriers' actions violate the Commission's policies protecting U.S. consumers against anticompetitive conduct by foreign carriers to force above-cost settlement rate increases.¹⁰ However, AT&T suggests that, instead of issuing a full stop payment order as requested by Vonage, the Commission issue an order prohibiting increased U.S. settlement payments above the rates that existed before October 1, 2012, prior to the anticompetitive conduct.¹¹ In response to AT&T's reply comments, Vonage stated it supports the issuance of an order prohibiting payment of any amounts over the settlement rates that prevailed prior to implementation of the ICH Plan.¹²

9. Following press reports that, pursuant to a court order, the PTA had withdrawn its mandate of the increased rate and implementation of ICH Plan,¹³ the International Bureau requested a status update from the parties. In response, AT&T filed an *ex parte* letter explaining that it had asked its correspondent long distance carrier in Pakistan to clarify the current status of the settlement rate on the U.S.-Pakistan route.¹⁴ AT&T notes that its correspondent carrier responded on December 17, 2012, that the increased rate of \$0.088 per minute remains in effect.¹⁵ On January 23, 2013, Vonage filed a second *ex parte* letter reiterating that the increased rate of \$0.088 per minute for termination into Pakistan is still in effect and "is not cost-based and appears to be the result of concerted action among Pakistan carriers, even if the new rate is no longer mandated by the PTA."¹⁶ On February 22, 2013, it was reported that a

⁶ *Vonage Petition* at 16.

⁷ *See Petition for Protection from Anticompetitive Behavior and Stop Settlement Payment Order on the U.S.-Pakistan Route*, Public Notice, DA No. 12-1738, IB Docket No. 12-324, 27 FCC Rcd 13429 (Int'l Bur. 2012).

⁸ *See* KDDI Comments at 1.

⁹ *Id.* at 2.

¹⁰ *See* AT&T Reply at 1.

¹¹ *Id.* at 1, 4-6.

¹² *See* Letter from Ulises R. Pin, Counsel for Vonage, to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 12-324 (filed Dec. 14, 2012) (*Vonage December 14 Letter*).

¹³ *See, e.g., PTA Withdraws Clearing House Directive*, THE EXPRESS TRIBUNE WITH THE INTERNATIONAL HERALD TRIBUNE, Dec. 5, 2012. The PTA actions were in response to a Stay Order issued by the Lahore High Court to suspend the PTA's and MOIT's previous actions establishing the ICH Plan.

¹⁴ *See* Letter from James Talbot, General Attorney, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 12-324 (filed Dec. 19, 2012).

¹⁵ *Id.*

¹⁶ *See* Letter from Ulises R. Pin, Counsel for Vonage, to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 12-324 (filed Dec. 23, 2012).

two-member bench of the Pakistan Supreme Court suspended the Lahore High Court's Stay Order on the ICH Plan and directed the Pakistani LDI carriers to approach the CCP to resolve the issue.¹⁷ The practical effect of the suspension of the Stay Order would appear to put back in place the ICH Plan unless and until the CCP rules against it. Vonage notes that so long as these artificially high rates remain in place, whether pursuant to the ICH Plan or concerted action among the Pakistani LDI carriers, they will continue to harm U.S. consumers, necessitating the need for Commission action.¹⁸

III. DISCUSSION

10. We review below the process established and indicia required by the Commission to consider claims of anticompetitive conduct, and apply the indicia to the information in this record. For the reasons set forth below, we grant Vonage's request that we impose requirements on U.S. carriers in response to the anticompetitive conduct by Pakistani LDI carriers. Specifically, we adopt the relief proposed by AT&T and supported by Vonage, and order U.S. carriers to suspend increased payments above the rates that existed before October 1, 2012, immediately prior to the anticompetitive conduct. We have coordinated our action with the United States Trade Representative (USTR) and the State Department.

A. Commission Policy and Process

11. The Commission maintains several safeguards designed to protect U.S. consumers from anticompetitive conduct by foreign carriers and other types of market failures.¹⁹ Included among the safeguards is a process by which the Commission may consider petitions such as that filed by Vonage alleging anticompetitive harm.²⁰ The Commission has recognized that, under certain circumstances, "carriers with market power might be free to act anticompetitively, ultimately harming U.S. customers through artificially inflated costs for call termination."²¹ The Commission regards "certain actions as indicia of potential anticompetitive conduct by foreign carriers including, but not limited to: (1) increasing settlement rates above benchmarks; (2) establishing rate floors, even if below benchmarks, that are above previously negotiated rates; or (3) threatening or carrying out circuit disruptions in order to achieve rate increases or changes to the terms and conditions of termination agreements."²² The Commission also regards partial circuit blockages as indicia of anticompetitive behavior.²³

B. Application of Indicia of Anticompetitive Behavior

12. Vonage argues that the rate increase meets the Commission's standard for finding anticompetitive conduct as it establishes a rate floor above previously negotiated rates. Vonage further argues that the Pakistani LDI carriers' actions have created a rebuttable presumption of harm to the public interest. AT&T and KDDI both point out that the unilateral rate increase represents a rate floor that was

¹⁷ See, e.g., *SC Suspends LHC's Stay on Tax on Incoming Calls*, THE EXPRESS TRIBUNE WITH THE INTERNATIONAL HERALD TRIBUNE, Feb. 22, 2013.

¹⁸ *Id.*

¹⁹ See *International Settlements Policy Reform*, IB Docket Numbers 11-80, 05-254, 09-10, RM-11322, Report and Order, FCC 12-145, 27 FCC Rcd 15521 (2012) (*2012 ISP Reform Order*); *International Settlements Policy Reform: International Settlement Rates*, IB Docket Nos. 02-234 and 96-21, First Report and Order, 19 FCC Rcd 5709 (2004) (*2004 ISP Reform Order*).

²⁰ See 47 C.F.R. § 64.1002(d); *2012 ISP Reform Order*, 27 FCC Rcd at 15532, ¶ 22.

²¹ See *2004 ISP Reform Order*, 19 FCC Rcd at 5729, ¶ 40.

²² *Id.* at 5731, ¶ 45.

²³ See *2012 ISP Reform Order*, 27 FCC Rcd at 15536, ¶ 35.

not commercially negotiated.²⁴ Under this arrangement, U.S. carriers must pay a predetermined rate for termination of traffic higher than the rates previously negotiated with Pakistani LDI carriers. We therefore agree and find that the joint action of the Pakistani LDI carriers meets one criteria of anticompetitive behavior listed in the Commission's 2004 *ISP Reform Order*, i.e., the establishment of a rate floor, even if below benchmarks, above previously negotiated rates.

13. The record reflects that the new \$0.088 per minute rate is the minimum settlement rate for all inbound international telephone traffic for Pakistan, and this rate floor is significantly above the previous levels of approximately \$0.02 per minute.²⁵ Moreover, the rate floor does not permit additional commercial negotiation below that level. There is nothing on the record demonstrating that the rate increases are cost-based or otherwise reasonable. We note that based upon the most recently available international traffic and revenue data from U.S. carriers prior to October 1, 2012, the average termination rate for Pakistan was \$0.031 per minute while the U.S. calling rate to call Pakistan in 2011 was \$0.044 per minute.²⁶ The average U.S. calling rate for all international points was \$0.041 per minute.²⁷ Calls from the United States to Pakistan over the public switched telephone network (PSTN) totaled more than 240 million minutes in 2011 resulting in \$10.5 million in U.S. calling charges.²⁸ The increase of settlement rates on the U.S.-Pakistan route from an average of \$0.02 per minute to \$0.088 per minute would more than double costs to U.S. callers, costing them millions of dollars in extra charges and substantially repressing demand for calling to Pakistan.

14. We find anticompetitive the Pakistani LDI carriers' actions demanding a substantial rate increase above previously negotiated rates in a way that amounts to a rate floor. By establishing the ICH Plan, the Pakistani LDI carriers acted in concert to impose unilaterally this rate floor without engaging in meaningful negotiations with U.S. carriers and foreclosing future separate negotiations between U.S. and individual LDI correspondent carriers.²⁹ The involvement of the PTA and MOIT in the concerted actions of the Pakistani LDI carriers to implement a rate floor does not change the anticompetitive nature of the actions or affect the Commission's ability to act on this matter.³⁰ And, in any event, the Commission has the authority to issue an order to U.S. carriers prohibiting the payment of increased rates to protect U.S. consumers from anticompetitive behavior.³¹

²⁴ See KDDI Comments at 2; AT&T Reply at 3-4; Letter from James Talbot, General Attorney, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 12-324 (filed Dec. 19, 2012).

²⁵ See KDDI Comments at 2; Letter from Ulises R. Pin, Counsel for Vonage, to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 12-324 (filed Jan. 23, 2013).

²⁶ 2011 Section 43.61 International Telecommunications Data.

²⁷ *Id.*

²⁸ *Id.* We note that this number does not include voice over Internet protocol (VOIP) minutes that would make the minute total on the route even higher.

²⁹ See, e.g., *AT&T Corp. Emergency Petition for Settlements Stop Payment Order and Request for Immediate Interim Relief and Petition of WorldCom, Inc. for Prevention of "Whipsawing" On the U.S.-Philippines Route*, IB Docket No. 03-38, Order, 18 FCC Rcd 3519 at 3528, ¶ 12 (Int'l Bur. 2003) (*Philippines Order*) (finding that the Philippine carriers engaged in concerted action to extract the same rate increase).

³⁰ See *Petition of AT&T Inc. for Settlements Stop Payment Order on the U.S.-Tonga Route*, IB Docket No. 09-10, Order and Request for Further Comment, 24 FCC Rcd 8006 at 8013-18, ¶¶ 20-33 (Int'l Bur. 2009) (*Tonga Stop Payment Order*) (discussing the Commission's authority to address anticompetitive conduct in order to protect the public interest).

³¹ See *Tonga Stop Payment Order*, 24 FCC Rcd at 8016-18, ¶¶ 28-33.

C. Suspension of Payment of Increased Rates

15. For these reasons, we grant Vonage's petition as modified to provide the relief proposed by AT&T³² and supported by Vonage.³³ Thus, in lieu of issuing a full stop payment order, we hereby prohibit U.S. carriers from paying any Pakistani LDI carrier settlement or termination rates in excess of the previously negotiated rates in effect prior to the rate increase that occurred on or around October 1, 2012. Our order prohibiting the payment of the increased rate will be effective immediately and remain in place until such a time as the Commission or International Bureau, on delegated authority, issues a public notice lifting the order. We seek cessation of the current unilateral rate and renewal of an opportunity for U.S. carriers to negotiate termination rates separately with Pakistani LDI carriers. Our action here is consistent with Commission policy and precedent.³⁴

16. We note that Vonage had also requested that during the pendency of its petition, we issue temporary measures "prohibiting all U.S. carriers from paying the Pakistani LDI carriers anything more than the current termination rate to Pakistan, without prejudice to the Commission's findings on the instant petition."³⁵ As noted in this Memorandum Opinion and Order, we instead adopt the remedy proposed by AT&T and supported by Vonage prohibiting U.S. carriers from paying any Pakistani LDI carrier settlement or termination rates in excess of the previously negotiated rates in effect prior to the rate increase that occurred on or around October 1, 2012. Because our actions today effectively address Vonage's petition, and, given Vonage's support of AT&T's proposed remedy that we adopt today, we find it unnecessary to impose any interim remedies.

IV. ORDERING CLAUSES

17. IT IS ORDERED that the Vonage Petition is hereby GRANTED as modified to provide the relief proposed by AT&T and supported by Vonage.

18. IT IS FURTHER ORDERED that all facilities-based carriers subject to Commission jurisdiction having a correspondent agreement for direct termination of U.S. traffic on the U.S.- Pakistan route with any or all of the following Pakistani LDI carriers -- Pakistan Telecommunication Company Limited (PTCL), Multinet Pakistan (Private) Limited, 4B General International (Private) Limited, Wi-tribe Pakistan Limited, Dancom Pakistan (Private) Limited, Wise Communication System (Private) Limited, Worldcall Telecom Limited, ADG (Private) Limited, Link Direct International (Private)

³² See AT&T Reply at 2, 4-6.

³³ See *Vonage December 14 Letter*.

³⁴ See *2012 ISP Reform Order*, 27 FCC Rcd 15521; *2004 ISP Reform Order*, 19 FCC Rcd 5709. See also *AT&T Corp. Emergency Petition for Settlements Stop Payment Order and Request for Immediate Interim Relief and Petition of WorldCom, Inc. for Prevention of "Whipsawing" On the U.S.-Philippines Route*, IB Docket No. 03-38, Order on Review, 19 FCC Rcd 9993 (2004) (*Philippines Order on Review*); *Philippines Order*, 18 FCC Rcd 3519; *AT&T Corp. Proposed Extension of Accounting Rate Agreement for Switched Voice Service with Argentina*, Order, 11 FCC Rcd 18014, 18017, ¶11 (1996) (*Argentina Order*) ("The Commission will not allow foreign monopolists to undermine U.S. law, injure U.S. carriers or disadvantage U.S. consumers."); *Sprint Communications Company, L.P., Request for Modification of the International Settlements Policy to Change the Accounting Rate for Switched Voice Service with Mexico*, Memorandum, Opinion and Order, 13 FCC Rcd 24998, 25000-01, ¶ 6 (1998) (*Mexico Order*) ("The Bureau has strictly enforced the Commission's regulations against whipsawing."). See also *Cable & Wireless v. FCC*, 166 F.3d 1224, 1226 (D.C. Cir. 1999) ("The FCC has long sought to protect U.S. carriers and U.S. consumers from the monopoly power wielded by foreign telephone companies in the international telecommunications market."). See also *Tonga Stop Payment Order*, 24 FCC Rcd 8006; *Petition of AT&T Inc. for Settlements Stop Payment Order on the U.S.-Tonga Route*, IB Docket No. 09-10, Second Order and Request for Further Comment, 24 FCC Rcd 13769 (Int'l Bur. 2009) (*Tonga Second Order*).

³⁵ See *Vonage Petition* at 16.

Limited, Telecard Limited, Circle Net Communications Pakistan (Private) Limited, Wateen Telecom Limited, Redtone Telecommunications Pakistan (Private) Limited, and Telenor LDI Communications (Private) Limited -- shall immediately inform the International Bureau of any settlement or termination rate increase imposed effective on or around October 1, 2012, by any or all of these Pakistani LDI carriers for direct termination of U.S. switched voice traffic on the U.S.-Pakistan route.

19. IT IS FURTHER ORDERED that all facilities-based carriers subject to Commission jurisdiction having a correspondent agreement for direct termination of U.S. traffic on the U.S.-Pakistan route with any or all of the Pakistani LDI carriers listed above shall not pay the increment above the negotiated settlement or termination rate by which such prior rate was increased effective on or around October 1, 2012, by any or all such Pakistani LDI carriers for direct termination of U.S. switched voice traffic on the U.S.-Pakistan route (“October 1, 2012 Termination Rate Increment”) until such time as the Commission or the International Bureau, under delegated authority, issues a Public Notice removing this prohibition. All facilities-based carriers subject to Commission jurisdiction may continue to pay any settlement or termination rate in effect prior to the October 1, 2012 Termination Rate Increment.

20. IT IS FURTHER ORDERED that all facilities-based carriers subject to Commission jurisdiction having a correspondent agreement for direct termination with any of the above-listed Pakistani LDI carriers on the U.S.-Pakistan route shall notify the Commission immediately if they are informed by any or all of the Pakistani LDI carriers that they are no longer required to pay any settlement or termination rate increase imposed effective on or around October 1, 2012 for direct termination of U.S. switched voice traffic on the U.S.-Pakistan route.

21. This Memorandum Opinion and Order is issued pursuant to sections 1, 2, 4(i)-(j), 5, 201-205, 211, 214, and 303(r), and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i)-(j), 155, 201-205, 211, 214, 303(r), 309 and sections 0.51, 0.261, 43.51, 63.14, and 64.1001 of the Commission's rules, 47 C.F.R. §§ 0.51, 0.261, 43.51, 63.14, and 64.1001, and is EFFECTIVE UPON RELEASE.

FEDERAL COMMUNICATIONS COMMISSION

Mindel De La Torre
Chief
International Bureau