

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

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

SECOND MEMORANDUM OPINION AND ORDER

Adopted: February 18, 2016

Released: February 18, 2016

By the Chief, International Bureau:

I. INTRODUCTION

1. In this Second Memorandum Opinion and Order, we find that competitive conditions on the U.S.-Pakistan route have improved sufficiently enough since release of the *2013 Pakistan Order* to allow us to modify and remove certain requirements of that *Order*.¹ U.S. carriers are now able to exchange traffic on the U.S.-Pakistan route at settlement rates that are lower than the negotiated rates in effect prior to October 1, 2012. As discussed below, to provide for an orderly transition in the settlement of traffic balances, we modify the *2013 Pakistan Order* to allow U.S. carriers to settle traffic balances at the higher termination rate floor set on or around October 1, 2012 for the one-week period following the effective date of the *2013 Pakistan Order*, that is, from March 5, 2013 to March 12, 2013. Further, we remove on a going-forward basis the prohibition on U.S. facilities-based carriers paying a higher rate than the negotiated rates in effect prior to October 1, 2012. We also remove the notification requirements of the *Order* that are no longer necessary. We find that our actions will encourage direct service on the U.S.-Pakistan route at commercially negotiated rates and protect U.S. consumers by promoting lower, more cost-based termination rates.

II. BACKGROUND

2. The Commission maintains safeguards designed to protect U.S. consumers from anticompetitive conduct by foreign carriers and other types of market failures.² Included among the safeguards is a process by which the Commission may consider petitions alleging anticompetitive harm.³ 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.”⁴ The Commission regards certain actions as indicia of potential anticompetitive conduct by foreign carriers, including establishing rate floors that are above previously negotiated rates, even if those

¹ *Petition for Protection From Anticompetitive Behavior and Stop Settlement Payment Order on the U.S.-Pakistan Route*, Memorandum Opinion and Order, 28 FCC Rcd 2127 (IB 2013) (*2013 Pakistan Order* or *Order*).

² *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*).

³ 47 CFR § 63.22(g); *2012 ISP Reform Order*, 27 FCC Rcd at 15532, para. 22.

⁴ *2004 ISP Reform Order*, 19 FCC Rcd at 5729, para. 40.

rate floors are below the Commission's accounting rate benchmarks.⁵

3. In the *2013 Pakistan Order*, the International Bureau (Bureau) found that on or around October 1, 2012 certain Pakistani long distance international carriers (LDI carriers) had set a rate floor above previously negotiated rates for termination of international telephone calls to Pakistan.⁶ Specifically, these Pakistani LDI carriers established a new International Clearing House (ICH) exchange for all incoming international calls to Pakistan and established a \$0.088 per minute rate, the minimum settlement rate for all inbound international telephone traffic to Pakistan, which was above the previous levels of approximately \$0.02 per minute.⁷ The Bureau found that, “[b]y 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.”⁸ The Bureau added that the joint action of the Pakistani LDI carriers met one of the “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.”⁹

4. The Bureau ordered all facilities-based U.S. carriers to not pay the increment above the negotiated settlement or termination rate in existence prior to the establishment of the rate floor on or about October 1, 2012.¹⁰ The Bureau required all U.S. carriers to notify it immediately of any termination rate increase effective on or around October 1, 2012 on the U.S.-Pakistan route.¹¹ The Bureau also required U.S. carriers to 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 a termination rate above those in effect on or around October 1, 2012.¹² The prohibition on paying the increased termination rate was to remain in place until such time as the Commission or the International Bureau, on delegated authority, issued a notice removing the prohibition.¹³

5. As required by the *2013 Pakistan Order*, two U.S. carriers, AT&T and Verizon, notified the Bureau that the Pakistani LDI carriers no longer require U.S. carriers to pay the increased October 1, 2012 rate, and instead offer a reduced rate on the condition AT&T and Verizon settle outstanding traffic balances.¹⁴ On November 12, 2015, AT&T informed the Commission that a Pakistani LDI carrier offered to terminate AT&T’s direct traffic to Pakistan below the rates AT&T paid prior to the rate increase, provided AT&T settled its outstanding traffic balances, for the period January 1, 2013 through March 9, 2013, at the increased settlement rate imposed effective in early October 2012.¹⁵ AT&T advises that it

⁵ *Id.* at 5731, para. 45.

⁶ *2013 Pakistan Order* at 2131-32, paras. 12-15; 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).

⁷ *2013 Pakistan Order*, 27 FCC Rcd at 2129, para. 7.

⁸ *Id.*

⁹ *Id.* at 2131, para. 12.

¹⁰ *Id.* at 2132, para. 15.

¹¹ *Id.* at 2132-33, para. 18.

¹² *Id.* at 2133, para. 20.

¹³ *Id.* at para. 19.

¹⁴ *Id.* at para. 20; Letter from James J.R. Talbot, General Attorney, AT&T, to Marlene H. Dortch, Secretary, FCC, IB Docket No 12-324 (filed Nov. 12, 2015) (AT&T November 2015 Letter); Letter from Ian Dillner, Vice President, Federal Regulatory and Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, IB Docket No. 12-324 (filed Dec. 10, 2015) (Verizon December 2015 Letter).

¹⁵ AT&T November 2015 Letter. *See also* Letter from Amy L. Alvarez, Executive Director, International External Affairs, AT&T, to Marlene H. Dortch, Secretary, FCC, IB Docket Nos. 12-324, 04-112 (filed June 18, 2015)

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incurred these traffic charges “while it inquired whether the correspondent Pakistani LDI carrier would accept the lower rate required by the *Order*.”¹⁶ AT&T states that when the correspondent Pakistani LDI carrier declined to accept the lower rate, AT&T promptly moved traffic to third-country indirect routes.¹⁷ AT&T requests that the Bureau clarify whether AT&T may settle its outstanding traffic balances in the event that the Bureau removes the requirements in the *2013 Pakistan Order*.¹⁸

6. On December 10, 2015, Verizon filed a letter stating that it “has an informal offer from a correspondent Pakistani LDI carrier stating that it may terminate traffic at a rate less than the rates Verizon paid prior to the rate increase of October 1, 2012.”¹⁹ Verizon states that “[t]he offered rate is contingent upon the settlement of outstanding balances for traffic exchanged between March 5, 2013 and July 31, 2013 at rates higher than those in effect prior to October 1, 2012.”²⁰

III. DISCUSSION

7. The recent action by Pakistani LDI carriers to negotiate lower termination rates with U.S. carriers, below the negotiated rates in effect prior to October 1, 2012, is a positive step toward reducing rates closer to cost. As explained below, we find that the new termination rates AT&T and Verizon have been offered by their Pakistani correspondent carriers – specifically the removal of the October 1, 2012 rate floor and the offer of new rates that are lower than the pre-October 1, 2012 negotiated rates – will help protect U.S. consumers by promoting lower, more cost-based rates on the U.S.-Pakistan route. To facilitate the initial transition away from the higher termination rates in effect at the time of the *2013 Pakistan Order*, we modify the *Order* to allow U.S. carriers to settle outstanding traffic balances from March 5, 2013 through March 12, 2013 at the higher termination rate set on or around October 1, 2012. We find that a one-week extension of settlement payments at this higher rate gives U.S. carriers sufficient time to work with their Pakistani correspondents to comply with the terms of the *Order*.

8. The *2013 Pakistan Order* prohibits the payment of increased rates, as opposed to requiring a full stop payment in response to anticompetitive behavior on a U.S.-international route.²¹ Specifically, it prohibits, effective March 5, 2013, increased payments above the negotiated rates that existed before October 1, 2012. The prohibition against paying the October 1, 2012 increment above the prior negotiated termination rates was not retroactive in nature. Thus, for the period of October 1, 2012 to March 5, 2013, the *Order* did not affect payment of outstanding traffic balances by U.S. carriers at the higher termination rate. In response to the AT&T and Verizon filings, we now look at the period following March 5, 2013.

9. AT&T and Verizon advise that they no longer will be required to pay the increased rates that went into effect on or around October 1, 2012, but instead would pay rates that are lower than the negotiated rates that existed prior to the imposed rate increase, subject to the settlement of outstanding

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(AT&T expressed support for the removal of the Stop Settlement Payment Order on the U.S. Pakistan route following the dissolution of the ICH mechanism in Pakistan).

¹⁶ AT&T November 2015 Letter.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Verizon December 2015 Letter at 1.

²⁰ *Id.*

²¹ Other decisions require a full stop payment. See e.g., *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 (IB 2009); *Philippines Order on Review*, 19 FCC Rcd 9993; *2003 Philippines Order*, Order, 18 FCC Rcd 3519 (2003); *AT&T and MCI Circuits to the Philippines Reactivated by PLDT: Suspension Lifted on U.S. Carrier Payments to PLDT*, IB Docket No. 03-38, Public Notice, 19 FCC Rcd 427 (2004).

balances. AT&T requests that the Bureau clarify whether AT&T may settle its outstanding traffic balances for the period of March 5 through March 9, 2013 at the higher rates.²² To the extent clarification is needed, we confirm that the prohibition on paying the higher termination rates applies until the Commission removes the prohibition, and even then the removal of the restriction only applies to traffic that occurs for the period for which the prohibition has been removed. However, based on the facts and arguments presented by AT&T, we find good cause to treat AT&T's request as one seeking a modification of the terms of the *2013 Pakistan Order*.

10. We find it in the public interest to grant AT&T's request to modify the *2013 Pakistan Order*. After the *Order* became effective, U.S. carriers took steps to effectuate its requirements. As AT&T explained, upon issuance of the *Order* it notified its correspondent carriers of the terms of the *Order*, determined if the correspondent carriers would be willing to lower their termination rates to continue exchanging traffic, and sought to determine alternative arrangements for continuing service to its customers on the U.S.-Pakistan route.²³ We find that these were practical actions by the U.S. carrier to preserve service to U.S. customers on the U.S.-Pakistan route, and conclude that an additional one-week period is a reasonable amount of time to take these steps.

11. This one-week extension will not substantially harm consumers as it simply allows U.S. carriers an additional seven days to settle traffic balances at the higher rate while seeking a lower rate that complies with the terms of the *Order*. Although Verizon states that the offer it has received from a correspondent Pakistani LDI carrier is contingent on settling its outstanding balances from March 5, 2013 to July 31, 2013 at the higher rate, we find that this longer time period would be contrary to the safeguards imposed in the *2013 Pakistan Order*, which were based on Commission policy and rules designed to protect U.S. consumers from anticompetitive conduct by foreign carriers, and thus would not be a reasonable extension.

12. In conclusion, we modify the *2013 Pakistan Order* and permit U.S. carriers to settle outstanding balances for traffic terminated during the period between March 5, 2013 through March 12, 2013 at the higher rate effective on or around October 1, 2012.²⁴ Furthermore, in light of the cessation of the anticompetitive conduct by the Pakistani LDI carriers and the offering of lower termination rates to U.S. carriers, we remove on a going-forward basis the prohibition on U.S. facilities-based carriers paying a higher rate than the negotiated rates in effect prior to October 1, 2012. We also find unnecessary and therefore remove the requirement that facilities-based carriers subject to Commission jurisdiction and having a correspondent agreement with the relevant Pakistani LDI carriers immediately inform the International Bureau of any settlement or termination rate increases imposed effective on or around October 1, 2012.²⁵ Finally, for the same reasons we remove the requirement that U.S. carriers notify the Bureau immediately if they are informed by any or all of the Pakistani LDI carriers that they are no longer required to pay any settlement rate or termination rate above those in effect on or around October 1, 2012.²⁶ However, if any or all of the Pakistani LDI carriers resume anticompetitive behavior on the route, we expect U.S. carriers to notify us immediately so that we may take appropriate action.

IV. ORDERING CLAUSES

13. IT IS ORDERED that the requirement of the *2013 Pakistan Order* that facilities-based carriers subject to Commission jurisdiction and 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 named in the *Order*

²² AT&T November 2015 Letter at 1.

²³ *Id.*

²⁴ *2013 Pakistan Order*, 28 FCC Rcd at 2133, para. 19.

²⁵ *Id.* at 2132-33, para. 18.

²⁶ *Id.* at 2133, para. 20.

shall not pay the increment above the negotiated settlement or termination rate in effect prior to October 1, 2012 is hereby REMOVED for all traffic terminated in Pakistan after the effective date of this Second Memorandum Opinion and Order.

14. IT IS FURTHER ORDERED that the requirement of the *2013 Pakistan Order* that facilities-based carriers subject to Commission jurisdiction and having a correspondent agreement with the relevant Pakistani LDI carriers immediately inform the International Bureau of any settlement or termination rate increase imposed effective on or around October 1, 2012 is hereby REMOVED.

15. IT IS FURTHER ORDERED that the requirement of the *2013 Pakistan Order* that U.S. carriers notify the Bureau immediately if they are informed by any or all of the Pakistani LDI carriers that they are no longer required to pay any settlement rate or termination rate above those in effect on or around October 1, 2012 is hereby REMOVED.

16. IT IS FURTHER ORDERED that facilities-based carriers subject to Commission jurisdiction and 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 named in the *2013 Pakistan Order* shall be permitted to settle outstanding balances for traffic terminated during the period between March 5, 2013 through March 12, 2013 at the rate imposed effective on or around October 1, 2012.

17. This Second Memorandum Opinion and Order is issued pursuant to Sections 1, 2, 4(i)-(j), 5, 201-205, 211, 214, 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 43.51, 63.14, and 63.22(g) of the Commission's rules, 47 CFR §§ 43.51, 63.14, and 63.22(g).

18. This Second Memorandum Opinion and Order is issued on delegated authority under 47 CFR §§ 0.51, 0.261, and IS EFFECTIVE ON RELEASE. Petitions for reconsideration under Section 1.106 of the Commission's rules, 47 CFR § 1.106, or applications for review under Section 1.115 of the Commission's rules, 47 CFR § 1.115, may be filed within 30 days of the date of the release of this Second Memorandum Opinion and Order.

FEDERAL COMMUNICATIONS COMMISSION

Mindel De La Torre
Chief
International Bureau