DA 98-1060

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

In the Matter of	)	
	)	
MCI Communications Corporation	)	ISP-98-M-135
	)	
Petition for Waiver of the International Settlements Policy to Change the Accounting Rate for Switched Voice Service with India	)	

MEMORANDUM, OPINION AND ORDER

Adopted: June 4, 1998 **Released: June 4, 1998**

By the Chief. International Bureau:

I. Introduction

1. We have before us a petition filed by MCI Communications Corporation ("MCI") to waive the Commission's International Settlements Policy (ISP)[1] to change the accounting rate for switched voice service with India. For the reasons stated below, MCI's modification request is denied.

II. Background

2. MCI filed a request for modification of the Commission's ISP for switched voice

[1] The ISP requires uniform accounting rates, uniform terms for the sharing of tolls, and uniform settlement 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 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*).

service[2] that would change its accounting rate with Videsh Sanchar Nigam Limited ("VSNL"), the monopoly supplier of international telephone service in India. The current accounting rate is $1.58 per minute. MCI seeks approval to introduce rates of $1.45 effective on April 1, 1997, $1.425 on December 1, 1997, and $1.30 on April 1, 1998. The $1.30 rate is scheduled to expire on March 31, 1999.

III. Discussion

3. The purpose of the ISP is "to insure that operating agreements achieve their purpose of allowing both service providers fair compensation for the costs of service."[3] In a foreign market served by a monopoly carrier, that carrier has an incentive and ability to manipulate multiple U.S. carriers in negotiations in an attempt to extract favorable terms and to gain financial concessions in settlement arrangements. This manipulation is referred to as "whipsawing." Frequently, whipsawing takes the form of the foreign carrier isolating a U.S. carrier in an effort to negotiate a favorable accounting rate agreement. Once such agreement is reached, other U.S. carriers are under substantial pressure to accept the same agreement or risk sanctions such as having a larger share of return traffic diverted to other U.S. carriers. Traffic diversion could raise a U.S. carrier's settlement costs and this may adversely affect its ability to compete against other U.S. carriers for business in the U.S. marketplace. If whipsawing is allowed to succeed, prices charged to U.S. consumers may rise or service quality may suffer. To prevent action that is contrary to the U.S. public interest, we have taken steps to insure that foreign carriers' attempts to engage in whipsawing are unsuccessful.[4]

4. When the Commission extended the ISP from international record services to switched voice service, the overwhelming majority of foreign markets were characterized by monopoly service suppliers. Since then, many countries have taken steps to privatize service providers and establish conditions that are conducive to entry. We have encouraged U.S. carriers to seek alternative settlement arrangements in recognition of changing market conditions. [5] The international service market in India, however, has been slow to change. VSNL continues to be the sole international service supplier in India. The accounting rate for service between the United States and India has been persistently high for several years and remains high in comparison to most other countries.[6] The

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2 *See* MCI's International Settlements Policy Request to Change the Accounting Rate for International Switched Voice Service with India, ISP-98-M-135 (filed March 23, 1998, amended April 9, 1998).

3 *See ISP Order* at para. 4.

4 *See AT&T Corp., Order*, DA 96-378 (rel. March 18, 1996).

5 *See* Regulation of International Accounting Rates, Phase II, *Fourth Report and Order*, 11 FCC Rcd 20063 (1996), and Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, *Report and Order and Order on Reconsideration*, FCC 97-398, (rel. November 26, 1997).

6 The average, minute-weighted, U.S. accounting rate on all routes is currently 57¢. *See* "Accounting Rates for International Message Telephone Service of the United States," Federal Communications Commission, International Bureau, Telecommunications Division, June 1, 1998. The high accounting rates, combined with a growing imbalance of minutes, between the United States and India have resulted in large and rapidly growing net settlement payments from U.S. carriers to VSNL. In 1996, VSNL received $305 million, an increase of 45 percent

settlement rate in effect between MCI and VSNL is more than double the tariffed component price for India.[7] As we noted in the *Benchmark Order*, "the TCP methodology results in benchmark rates that are still above-cost."[8] The settlement rate is also significantly above the benchmark rate we adopted for countries like India.[9] The proposal before us fails to make significant progress in moving the rate toward the benchmark rate. We have noted repeatedly that high accounting rates artificially inflate U.S. carriers' settlement costs, which in turn puts upward pressure on U.S. calling prices to the detriment of U.S. consumers.

5. The accounting rates proposed by MCI are higher than rates MCI was previously offered by VSNL. In June 1997, VSNL offered MCI a series of rate reductions below the rate that was then in effect. The rates were: 1) $1.40, to take effect on April 1, 1997; 2) $1.26, to take effect on April 1, 1998; 3) $1.16, to take effect on April 1, 1999; and 4) $1.00, to take effect on April 1, 2000.[10] As a comparison demonstrates, the rates for 1997 and 1998 in the June 1997 offer are significantly lower than the rates submitted by MCI in its modification. VSNL's earlier offer also includes two additional reductions that are not part of the modification before us.

6. We believe that VSNL's decision to raise its proposed rates so dramatically for 1997 and 1998 is an attempt to use its monopoly power to extract concessions from U.S. carriers. VSNL has negotiated higher accounting rates than it previously offered to MCI.[11] If the Commission approves MCI's modification, VSNL could be expected to exert pressure on other U.S. carriers to accept the same rates.

7. The Commission has vowed to safeguard U.S. carriers against whipsawing by foreign monopoly suppliers because such action has a significant adverse impact on U.S consumers. To prevent whipsawing, we reject MCI's request.

8. The Commission's Benchmark Order sets forth settlement rates that U.S. carriers must achieve according to a transition schedule. The benchmark rate and the transition period vary depending upon a country's level of economic development. For India, the rate is 23¢ per minute by January 1, 2002. The Commission stated in the Benchmark Order that it expects U.S. carriers to

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over the payment in 1995.

7 The tariffed component price for India is 31.2¢. *See International Settlement Rates, Report and Order,* 12 FCC Rcd 19806 (1997), Appendix D (*Benchmark Order).*

8 *See Benchmark Order* at 19840.

9 The Commission adopted a benchmark rate of 23¢ per minute for service with countries with a level of economic development like India and we expect that rate to be effective by January 1, 2002. *See Benchmark Order* at 19860.

10 The accounting rates offered to MCI are summarized in a letter dated February 24, 1998, from Brijendra K. Syngal, Chairman and Managing Director, VSNL, to C. Michael Armstrong, President, AT&T. VSNL also states in the letter that the same rates could have been discussed with AT&T if its officials had been prepared to negotiate these rates with VSNL.

11 *Id.* at 1.

negotiate proportionate annual reductions in settlement rates. However, within this general guideline, the transition path from a country's current rate with U.S. carriers to its benchmark level could proceed along different schedules. In some cases, carriers may negotiate rates that cover only a portion of the transition period, with the remaining rates being left to future rounds of negotiation. In other cases, carriers may decide to negotiate a single agreement for the entire transition period that culminates in the benchmark rate. The schedule of the reductions may also vary among countries. In some instances, carriers may negotiate rates with an equal annual percentage reduction while in other instances the carriers may agree to more frequent reductions, for example, quarterly changes. The effective date of the new lower rates may also vary. We have not attempted to prescribe precise schedules for U.S. carriers to follow in negotiating rates during the transition period, but we expect them to file proposals demonstrating reasonable progress to benchmark levels throughout the relevant transition period. We are prepared to approve proposals demonstrating such progress.

9. We believe it is inappropriate for the International Bureau to prescribe a formula that should be used to determine reductions of the current rate or identify a particular period of time that should be included in the next agreement between VSNL and MCI. Matters involving the particular transition path should be part of the negotiations between the carriers providing service, but the agreement should demonstrate reasonable progress toward the benchmark settlement rate throughout the transition period. VSNL's offer to MCI in June 1997 provides one option for a partial transition to the benchmark rate. To reach the benchmark rate in 2002, however, significant additional reductions would be needed in a short period. MCI and other U.S. carriers should explore other alternatives with VSNL that achieve reasonable progress in moving the settlement rate toward the benchmark level. An agreement that would raise the rate above a previous offer extended to MCI by VSNL, as the modification before us does, is not a step toward the benchmark rate. We, therefore, encourage MCI to explore other transition paths with VSNL in their negotiations.

IV. Ordering Clauses

10. Accordingly, IT IS ORDERED that MCI's request to establish accounting rates with VSNL of $1.45 per minute on April 1, 1997, $1.425 per minute on December 1, 1997, and $1.30 per minute for the period April 1, 1998 through March 31, 1999, is DENIED.

11. IT IS FURTHER ORDERED that MCI and other U.S. carriers shall continue their efforts to achieve significantly lower, nondiscriminatory accounting rates with VSNL that comply with the Commission's benchmark rate for service with India by 2002.

12. This order is effective upon adoption. Petitions for reconsideration under Section 1.106 of the Commission's rules may be filed within 30 days of the public notice of this order (*see* Section 1.4(b)(2) of the Commission's rules).

FEDERAL COMMUNICATIONS COMMISSION

Regina M. Keeney

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