

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

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| In Re Petition of |) | |
| |) | |
| STAR Telecommunications, Inc. |) | File No. ISP-98-PDR-366 |
| |) | |
| For Declaratory Ruling Regarding an |) | |
| Alternative Accounting Rate |) | |
| Arrangement for Service between the |) | |
| United States and Japan |) | |

DECLARATORY RULING AND ORDER

Adopted: February 24, 1999

Released: February 26, 1999

By the Chief, Telecommunications Division:

1. On August 6, 1998, STAR Telecommunications, Inc. ("STAR"), filed a Petition for Declaratory Ruling pursuant to §64.1002 of the Commission's Rules seeking a ruling that the alternative settlements arrangement it negotiated with International Digital Communications, Inc. ("IDC") for services between the United States and Japan is consistent with the public interest and, therefore, should be approved.¹ Specifically, STAR seeks approval of an agreement to pay IDC a basic settlement rate of less than 15 cents per minute, which is the benchmark rate for Japan under the *Benchmark Order*,² and a different rate for service from STAR that IDC transmits to mobile service carriers for termination in Japan. STAR is committed to transmitting a minimum volume of traffic to IDC in the course of each one year period. IDC will not transmit any traffic to STAR for termination in the United States. For the reasons stated below, STAR's alternative settlement arrangement with IDC is approved.

¹ STAR Telecommunications' Petition for Declaratory Ruling to Implement an Alternative Settlement Arrangement for International Switched Services with International Digital Communications, Inc., Japan, File No. ISP-98-PDR-366 (filed August 6, 1998).

² See *International Settlement Rates, Report and Order*, 12 FCC Rcd 19806 (1997) (*Benchmark Order*) *aff'd. subnom.*, *Cable and Wireless v. FCC*, No. 97-1612 (D.C. Cir., January 12, 1999).

2. STAR's Petition was placed on public notice on August 26, 1998.³ On September 16, 1998, LDDS WorldCom (later MCI WorldCom) filed a petition in opposition to STAR's Petition requesting that the Commission deny STAR's request on the grounds that no cost justification has been provided in support of the difference in the settlement rate for mobile service.⁴ On September 28, 1998, STAR responded to the opposition filed by MCI WorldCom.⁵

3. International communications service markets are changing rapidly as a growing number of national markets begin to open, new carriers enter the global arena, a wider range of services are offered to consumers, and technology advances. As competition emerges in national markets, adherence to historic settlements procedures for international service between the United States and such markets can impede the future development of competitive market conditions. To facilitate the development of competitive markets, the Commission adopted a policy in its *Flexibility Order*⁶ that allows U.S. carriers to negotiate settlement arrangements with foreign carriers that depart from the traditional International Settlements Policy (ISP)⁷ under certain conditions. Permitting departures from historic settlement procedures was intended to further open international markets by encouraging U.S. carriers to seek market solutions to terminating international traffic rather than continuing to rely on administrative, non-market determined settlement arrangements. The *Flexibility Order* provided that U.S. carriers could negotiate arrangements that depart from the ISP with all carriers in another country if that country passes the Commission's effective competitive opportunities (ECO) test adopted in the *Foreign Carrier Entry*

³ *Public Notice*, DA 98-1700.

⁴ LDDS WorldCom, Re: STAR Telecommunications Alternative Settlement Rate Proposal, File No. ISP-98-PDR-366, (filed September 16, 1998).

⁵ STAR Telecommunications, Inc., Re: STAR Telecommunications, Inc. Alternative Settlement Rate Proposal, File No. ISP-98-PDR-366 (filed September 28, 1998).

⁶ *Fourth Report & Order on Regulation of International Accounting Rates*, 11 FCC Rcd 20063 (1997) (*Flexibility Order*).

⁷ 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 Settlement 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 3553 (1991) (*Phase I Report & Order*); *Reconsideration*, 7 FCC Rcd 8049 (1992). See *Regulation of International Accounting Rates*, 7 FCC Rcd 8040 (*Phase II Second Report & Order and Second Further Notice of Proposed Rulemaking*). In 1996, the Commission codified the proportionate return policy. See *Flexibility Order*. The Commission's Rules also require a U.S. carrier to file with the Commission a notification letter, modification request, or petition for declaratory ruling, as appropriate, if it seeks to change the accounting rate with a foreign carrier. (47 C.F.R. §43.51(d)(2)).

Order.⁸

4. The Commission subsequently modified this threshold standard for permitting alternative settlement arrangements in the *Foreign Carrier Participation Order*.⁹ Where a foreign carrier provides service in a country that is a member of the World Trade Organization (WTO) Basic Telecommunications Agreement, the Commission adopted a rebuttable presumption that an alternative settlement agreement would be permitted.¹⁰ This presumption can be rebutted by a showing that the foreign carrier involved in the alternative settlement arrangement is not subject to competition from multiple facilities-based carriers capable of terminating international traffic and serving existing customers in the foreign market.¹¹ The Commission noted that multiple facilities-based carriers in a foreign market would be an indication that U.S. carriers could safely negotiate alternative settlement arrangements without a concern about the exercise of market power against U.S. carriers in settlement negotiations. The Commission retained the safeguards against the exercise of monopoly power that it adopted in the *Flexibility Order*, e.g. (i) any arrangements between affiliated carriers or involving non-equity joint ventures would have to be filed with the Commission and be publicly available, and (ii) arrangements affecting more than 25 percent of the U.S. outbound or U.S. inbound traffic on a particular route cannot contain unreasonably discriminatory terms or conditions.¹² The Commission also stated that an alternative settlement arrangement could be approved, even where the presumption in favor of flexibility can be rebutted, if a U.S. carrier seeking approval of such an arrangement demonstrates that a deviation from the ISP will promote market-oriented pricing and competition while precluding an abuse of market power by the foreign carrier.¹³

5. MCI WorldCom argues that the Commission should deny STAR's Petition because STAR fails to provide a cost justification for the difference between the settlement rates for wireline service and mobile service. MCI WorldCom, however, fails to present evidence to rebut the presumption in favor of flexibility. As STAR notes in its Petition, Japan is a WTO member country. Multiple facilities-based carriers provide international communications service in Japan, including KDD and Japan Telecom in addition to IDC. STAR stipulates that it is not affiliated with IDC nor are the two carriers involved in a non-equity joint venture affecting the provision of basic communications service on this route. STAR also states that IDC is a non-dominant carrier in Japan and estimates that less than two

⁸ *Market Entry and Regulation of Foreign Affiliated Entities, Report and Order*, FCC 95-475, 11 FCC Rcd 3873 (1995) (*Foreign Carrier Entry Order*).

⁹ *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Report and Order and Order on Reconsideration*, FCC 97-398, 12 FCC Rcd 23891 (1997) (*Foreign Carrier Participation Order*).

¹⁰ See *Foreign Carrier Participation Order* at ¶302.

¹¹ *Id.* at ¶307.

¹² *Id.* at ¶308.

¹³ *Id.* at ¶309.

percent of the service from Japan to the United States will be covered by the alternative settlement arrangement it has negotiated with IDC.

6. In the *Flexibility Order*, the Commission noted that where an alternative settlement arrangement does not trigger the safeguards in that order, the Commission's review generally will focus on whether the criteria for allowing flexibility have been satisfied.¹⁴ The Commission, however, reserved the right to review, and, if necessary, reject the terms and conditions of all alternative settlement arrangements to ensure that they meet the Commission's policy objectives of achieving market-determined terms and conditions of payment that approximate competitive levels and will not have a significant adverse impact on U.S. net settlement payments and resulting traffic volumes. Taking these criteria into account, we find no reason to deny STAR's Petition.

7. Although MCI WorldCom correctly notes that STAR has not provided information about the costs to terminate wireline service and mobile service that would justify the difference between the two settlement rates, our *Flexibility Order* does not necessarily require the same rate for these services. Our previous orders under the ISP have discouraged different rates for different IMTS service categories unless these differences can be justified on the basis of different costs,¹⁵ but the purpose of the *Flexibility Order* is to encourage departures from traditional settlement arrangements, particularly in competitive market situations. If we continue to apply the same standards to flexible settlement arrangements as we have applied to traditional arrangements, U.S. carriers might be less inclined to negotiate different types of termination arrangements. Such a result could thwart our policy to encourage U.S. carriers to enter into interconnection arrangements with foreign carriers that reflect market forces rather than regulatory rules. In STAR's case, it has negotiated an arrangement with IDC in which both carriers agree that different rates will be used to terminate wireline and mobile service, and at a lower level than IDC has with other U.S. carriers.

8. We, therefore, deny MCI WorldCom's request to deny STAR's Petition for Declaratory Ruling. MCI WorldCom has failed to rebut the presumption in favor of the alternative settlement arrangement between STAR and IDC. We further find that STAR's proposal will promote market-oriented pricing and competition, while not posing the threat of an abuse of market power by IDC. Moreover, we note that the proposed settlement rate of less than 15 cents complies with the benchmark rate established in our *Benchmark Order* for U.S. carriers on the U.S.-Japan route. We therefore find that STAR's alternative settlement arrangement with IDC serves the public interest.

9. Accordingly, it is ORDERED that STAR's alternative settlement arrangement with IDC for services to Japan, File No. ISP-97-PDR-366, being found consistent with the Commission's *Flexibility Order* and *Foreign Carrier Participation Order* and in the public interest, is therefore GRANTED.

10. It is further ORDERED that MCI WorldCom's Petition to Deny STAR's Petition for Declaratory Ruling is DENIED.

¹⁴ *Flexibility Order* at ¶59.

¹⁵ See, e.g., AT&T and MCI, *Memorandum Opinion and Order*, 5 FCC Rcd 4618 (1990); AT&T, *Memorandum Opinion and Order*, 7 FCC Rcd 2186 (1992); AT&T and MCI, *Memorandum Opinion, Order and Authorization*, 8 FCC Rcd 3901 (1993); and AT&T, MCI, and Sprint, *Memorandum Opinion, Order and Authorization*, 9 FCC Rcd 6942 (1994).

11. This Order is issued under Section 0.261 of the Commission's rules and is effective immediately. 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 Section 1.4(b)(2) of the Commission's rules).

FEDERAL COMMUNICATIONS COMMISSION

Rebecca Arbogast
Chief, Telecommunications Division