

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

In Re Petition of	)		
	)		
AT&T CORP. AND	)	File Nos.:	ARC-PDR-19990216-00036
MCI WORLDCOM, INC.	)		ARC-PDR-19990224-00039
	)		
For Declaratory Ruling Regarding	)		
Alternative Accounting Rate	)		
Arrangements for Service between the	)		
United States and Mexico	)		

**Declaratory Ruling and Order**

Adopted: April 13, 1999

Released: April 13, 1999

By the Chief, Telecommunications Division:

**I. Introduction**

1. On February 16, 1999, AT&T Corp. ("AT&T"), and on February 24, 1999 MCI WorldCom, Inc. ("MCI WorldCom") filed Petitions for Declaratory Ruling pursuant to Section 64.1002 of the Commission's Rules seeking a ruling that the alternative settlement arrangement each had negotiated with its Mexican affiliate is consistent with the public interest and, therefore, should be approved.<sup>1</sup> Specifically, AT&T seeks approval of an alternative settlement arrangement for traffic exchanged between January 1, 1999 and December 31, 1999 with its Mexican affiliate, Alestra S. de R.L. ("Alestra"), and MCI WorldCom seeks approval of an alternative settlement arrangement to exchange traffic with its Mexican affiliate, Avantel S.A. ("Avantel"), for traffic exchanged between February 23, 1999 and June 30, 1999.<sup>2</sup> For the reasons stated below, we approve the petitions of

<sup>1</sup> AT&T Petition for Declaratory Ruling Regarding a Flexible Arrangement for the Origination and Termination of International Switched Traffic between the United States and Mexico (Alestra), File No. ARC-PDR-19990216-00036 (filed February 16, 1999); MCI WorldCom Petition for Declaratory Ruling Regarding a Flexible Arrangement for the Origination and Termination of International Switched Traffic between the United States and Mexico, File No. ARC-PDR-19990224-00039 (filed February 24, 1999).

<sup>2</sup> AT&T seeks approval of an agreement to exchange U.S.-Mexico traffic with Alestra from January 1, 1999 to December 31, 1999 at rates of \$0.25 for the first 24 million minutes per month sent by AT&T to Alestra, \$0.25 for the first 10 million minutes per month sent by Alestra to AT&T, \$0.14 for all minutes above 24 million minutes per month sent by AT&T to Alestra, and \$0.08 for all minutes above 10 million minutes per month sent by Alestra to AT&T. MCI WorldCom seeks approval of an arrangement to exchange U.S.-Mexico traffic with its affiliate Avantel from February 23, 1999 to June 30, 1999 at a rate of \$0.12 per minute, plus the cost of international private line circuits.

AT&T and MCI to enter into alternative settlement arrangements with Alestra and Avantel, respectively.

## II. Background

2. The AT&T and MCI WorldCom petitions were placed on public notice on February 26, 1999.<sup>3</sup> On March 19, 1999, Telefonos de Mexico, S.A. de C.V. ("Telmex") filed a petition in opposition to both petitions.<sup>4</sup> Telmex argues the Commission should deny the petitions on the basis of international comity because alternative settlement arrangements are unlawful in Mexico. Telmex cites the international comity standard that was articulated in the Commission's *Via USA Order* dealing with uncompleted call signalling (i.e. "callback services").<sup>5</sup> In addition, on March 24, 1999, Telmex filed with the Commission a copy of a letter from Jorge Lara Guerrero, a Commissioner of the Comision Federal de Telecomunicaciones ("Cofetel"),<sup>6</sup> to Telmex that lists and describes Mexican laws and regulations dealing with the settlement of international traffic in Mexico. Telmex argues the Cofetel letter demonstrates that alternative settlement arrangements such as those for which AT&T and MCI WorldCom seek approval are unlawful in Mexico and that the Commission should reject them on the basis of international comity.

3. On March 26, 1999, AT&T and MCI WorldCom filed separate replies to the Telmex opposition.<sup>7</sup> AT&T and MCI WorldCom argue that the Commission's *Flexibility Order*<sup>8</sup> does not provide for an international comity exception. AT&T, furthermore, argues that the Commission's holding concerning international comity in the *VIA USA Order* does not apply in this circumstance where the Mexican government can enforce its laws and regulations on alternative settlement arrangements in Mexico.

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<sup>3</sup> *Public Notice, DA 99-404.*

<sup>4</sup> Consolidated Opposition of Telefonos de Mexico, S.A. de C.V., File Nos. ARC-PDR-199902224-00039 and ARC-PDR-19990216-0036 (filed March 19, 1999) (Telmex Opposition).

<sup>5</sup> *VIA USA, Ltd.*, Order on Reconsideration, 10 FCC Rcd 9549, ¶ 50 (1995).

<sup>6</sup> Cofetel is the Mexican government agency responsible for regulating Mexican telecommunications.

<sup>7</sup> AT&T Corp. Re: AT&T Petition for Declaratory Ruling Regarding a Flexible Arrangement for the Origination and Termination of International Switched Traffic between the United States and Mexico (Alestra) File No. ARC-PDR-19990216-00036 (filed March 26, 1999); MCI WorldCom Re: MCI WorldCom Petition for Declaratory Ruling Regarding a Flexible Arrangement for the Origination and Termination of International Switched Traffic between the United States and Mexico, File No. ARC-PDR-19990224-00039 (filed March 26, 1999).

<sup>8</sup> *Fourth Report & Order on Regulation of International Accounting Rates*, 11 FCC Rcd 20063 (1997) (*Flexibility Order*).

### III. Discussion

4. 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 further development of competitive market conditions. To facilitate the development of competitive markets, the Commission adopted a policy in its *Flexibility Order* that allows U.S. carriers to negotiate settlement arrangements with foreign carriers that depart from the traditional International Settlements Policy ("ISP")<sup>9</sup> 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 satisfies the Commission's effective competitive opportunities (ECO) test adopted in the *Foreign Carrier Entry Order*.<sup>10</sup>

5. The Commission subsequently modified this threshold standard for permitting alternative settlement arrangements in the *Foreign Participation Order*.<sup>11</sup> Under the rules adopted in that order, there is a rebuttable presumption that alternative settlement agreements will be permitted on routes with countries that are members of the World Trade Organization ("WTO").<sup>12</sup> 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

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<sup>9</sup> 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 Rcd 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*, 11 FCC Rcd 20063. 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. See 47 C.F.R. §43.51(d)(2).

<sup>10</sup> *Market Entry and Regulation of Foreign Affiliated Entities*, Report and Order, FCC 95-475, 11 FCC Rcd 3873 (1995).

<sup>11</sup> *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 Participation Order*).

<sup>12</sup> See *id.* at ¶ 302.

traffic and serving existing customers in the foreign market.<sup>13</sup> 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 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*, specifically: (i) any arrangements between affiliated carriers or involving non-equity joint ventures must 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.<sup>14</sup> The Commission also stated that an alternative settlement arrangement could be approved, even where the presumption in favor of flexibility is 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.<sup>15</sup>

6. Because Mexico is a member of the WTO, we apply the presumption that the MCI WorldCom and AT&T petitions should be granted unless Telmex demonstrates that Alestra or Avantel are not subject to competition in Mexico from multiple facilities-based carriers. Telmex, however, does not attempt to rebut the presumption and, in fact, concedes that "Alestra and Avantel are subject to substantial competition in Mexico from multiple existing facilities-based carriers with the ability to terminate international traffic."<sup>16</sup> Telmex instead argues that because alternative settlement arrangements are not allowed in Mexico, the Commission should reject the petitions as a matter of international comity. In support of its claim, Telmex cites the international comity standard that was articulated in the Commission's *Via USA Order* dealing with the uncompleted call signalling form of callback.<sup>17</sup> We disagree with Telmex that we should deny, on the grounds of international comity, flexibility petitions that comply with Commission rules.

7. Contrary to what Telmex maintains, the international comity standard that was articulated in the Commission's *Via USA Order* is inapposite to the petitions before us. The Commission's findings with respect to international comity in the *Via USA Order* were made in response to exceptional circumstances where certain foreign governments that had prohibited callback faced unusual difficulties in enforcing their domestic laws or regulations.<sup>18</sup> No such exceptional circumstances or concerns about enforcement exist here. In fact, the petitions of AT&T and MCI WorldCom do not, in themselves, raise any enforcement issues. By approving the petitions of AT&T and MCI WorldCom we are finding solely that the petitions comply with Commission regulations.

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<sup>13</sup> *Id.* at ¶ 307.

<sup>14</sup> *Id.* at ¶ 308.

<sup>15</sup> *Id.* at ¶ 309.

<sup>16</sup> Telmex Opposition at 1-2.

<sup>17</sup> *VIA USA Order*, 10 FCC Rcd 9549, ¶ 50 (1995).

<sup>18</sup> *See id.* at ¶ 47 and ¶ 50.

We make no determination as to whether the parties may actually implement the terms of the agreements. As MCI WorldCom notes, the Mexican parties to the agreements "will take the steps required, if any, to obtain, whatever clearance may be necessary in Mexico in order to proceed."<sup>19</sup> Therefore, we find that approval of the AT&T and MCI WorldCom alternative settlement arrangements is consistent with past Commission decisions and that Commission approval of these alternative settlement arrangements would not be condoning what Telmex alleges are "AT&T's and MCI WorldCom's efforts to circumvent Mexican law."<sup>20</sup> We therefore reject Telmex's request to deny, on the basis of international comity, AT&T's and MCI WorldCom's Petitions for Declaratory Ruling.

8. Our expectation is that alternative settlement arrangements such as those for which AT&T and MCI WorldCom seek approval, if permitted by the relevant Mexican authorities, would benefit consumers in the United States and Mexico by fostering innovation, increasing competition and lowering prices on the United States-Mexico route.<sup>21</sup> More broadly, we continue to support efforts of U.S. carriers to negotiate lower settlement rates on the U.S.-Mexico route.<sup>22</sup> We are encouraged by the fact that the Mexican government recently announced that it will review this year its current regulations dealing with international traffic and consider proposals from Mexican carriers to allow alternative methods to exchange international traffic.<sup>23</sup>

9. We therefore grant AT&T's and MCI WorldCom's Petitions for Declaratory Ruling. We find Telmex has failed to rebut the presumption in favor of the alternative settlement arrangements between AT&T and Alestra and between MCI WorldCom and Avantel and has raised no other issues that would warrant denial of the petitions.

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<sup>19</sup> MCI Reply at 3.

<sup>20</sup> *Id.* at 4.

<sup>21</sup> The United States-Mexico route is one of most important international routes for U.S. carriers and consumers in terms of volume of traffic and settlement payments. In 1997 consumers in the United States placed more than 2.8 billion minutes in calls to Mexico (second highest volume of foreign-terminated calls) and U.S. carriers paid Mexican carriers more than \$710 million dollars in settlement payments (largest U.S. settlement payment).

<sup>22</sup> See *Sprint Communications Company L.P.*, ISP-97-M-708, Memorandum Opinion and Order, DA 98-2401 (Int'l Bur., released Nov. 24, 1998). See also *Statement of FCC Chairman William E. Kennard on Telmex* (released August 7, 1998); *Statement of Chairman William E. Kennard on the current dispute between Telmex and U.S. carriers* (released February 25, 1998).

<sup>23</sup> See *Mexican Secretariat of Communications and Transport Work Plan 1999* at 3.1. Basic Telephony, section 4 (released February 16, 1999). The Secretariat of Communications and Transport (SCT) oversees Cofetel. Copies of the SCT Workplan can be obtained from the Cofetel website <[http://www.cft.gob.mx/html/9\\_publica/program99/programa05.html](http://www.cft.gob.mx/html/9_publica/program99/programa05.html)>.

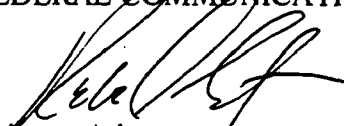
**IV. Ordering Clauses**

10. Accordingly, it is ORDERED that AT&T's alternative settlement arrangement with Alestra for service to Mexico, File No. ARC-PDR-19990216-00036 and MCI WorldCom's alternative settlement arrangement with Avantel for service to Mexico, File No. ARC-PDR-19990224-00039 being found consistent with the Commission's *Flexibility Order* and *Foreign Carrier Participation Order* and in the public interest, are therefore GRANTED.

11. It is further ORDERED that Telmex's Petition to Deny AT&T's and MCI WorldCom's Petition for Declaratory Ruling is DENIED.

12. 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  
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