Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of The Effect of Foreign Mobile Termination Rates on U.S. Customers	IB Docket No. 04-398

COMMENTS OF BELLSOUTH CORPORATION

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<u>EXECUTIVE SUMMARY</u>

BellSouth Corporation ("BellSouth") is pleased to respond to the Commission's *Notice of Inquiry* on the effect of foreign mobile termination rates on U.S. customers. Based on its extensive experience as a mobile operator in Latin American and other calling party pays ("CPP") markets, BellSouth believes that the Commission should refrain from regulating foreign mobile termination rates, for numerous reasons.

First, mobile termination rates in CPP markets are not unreasonably high. Mobile termination rates in CPP regimes recover different costs from those under receiving party pays ("RPP") mobile regimes or in wireline networks. Furthermore, mobile termination rates in CPP countries may incorporate factors above network cost, such as universal service objectives.

Second, U.S. consumers generally do not face discriminatory charges – the threshold condition for U.S. intervention into a foreign market. Foreign mobile termination rates typically apply uniformly to all callers (not just U.S. consumers), and there is often little difference between termination rates applied to domestically-originated as opposed to foreign-originated calls.

Third, mobile operators compete vigorously on a bundle of retail services that includes not only termination, but also handsets, monthly access and outgoing calls. Mobile markets are generally acknowledged to be competitive worldwide, and this vigorous competition is applying downward pressure to mobile termination rates. Regulation of foreign mobile termination rates would conflict with the FCC's consistent policy of permitting deregulation and market forces to set prices in competitive markets.

Fourth, to the extent that there are concerns about high foreign mobile termination rates in a particular country, the national regulator in the country is best situated to address the problem. The national regulator can most effectively gather the relevant data and assess market conditions, and most appropriately consider the extent to which any social policy goals may be integrated into mobile termination rates. As explained further in two studies being submitted with these comments, mobile termination rates play an important role in serving universal service policy goals in numerous Latin American countries. Given the many country-specific factors that must be taken into account in assessing the reasonableness of mobile termination rates, it is simply not practical for the Commission to develop a cost or benchmark model that could be applied consistently across nearly 200 foreign mobile markets.

Rather, to the extent that foreign mobile termination rates in a particular market pose a concern, the better approach – as already articulated in the *ISP Reform Order* – is for the Commission to work with its foreign counterparts on a case-by-case basis.

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BellSouth Corporation ("BellSouth") hereby submits its comments to the Federal Communications Commission's ("FCC" or "Commission") October 26, 2004 *Notice of Inquiry* ("Notice") on the effect of foreign mobile termination rates on U.S. consumers.[1] BellSouth has substantial familiarity with mobile termination rates and the general issues raised by the Commission's *Notice.*[2] For the reasons set forth below, BellSouth believes that the Commission should refrain from regulating foreign mobile termination rates.

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[1] *The Effect of Foreign Mobile Termination Rates on U.S. Customers,* Notice of Inquiry, IB Dkt. 04-398, FCC 04-247 (Oct. 26, 2004) ("*Notice*").

[2] BellSouth International, Inc. operated mobile systems in Argentina, Brazil, Chile, Colombia, Ecuador, Guatemala, Nicaragua, Panama, Peru, Uruguay, and Venezuela until recently. *See* BellSouth Press Release, "BellSouth and Telefónica Móviles Complete Transfer of Operations in Argentina," Jan. 11, 2005, *available at* <http://bellsouthcorp.com/proactive/newsroom/release.vtml?id=48548>. BellSouth continues to hold an indirect interest in a mobile operator in Israel, and has acquired new, indirect interests in mobile operators in thirteen Caribbean countries through Cingular's acquisition of AT&T Wireless Services, Inc. and its Caribbean subsidiaries. *See Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation For Consent to Transfer Control of Licenses and Authorizations, File Nos. 0001656065, et al., and Applications of Subsidiaries of T-Mobile USA, Inc. and Subsidiaries of Cingular Wireless Corporation, For Consent to Assignment and Long-Term De Facto Lease of Licenses, File Nos. 0001771442, 0001757186, and 0001757204, and Applications of Triton PCS License Company, LLC, AT&T Wireless PCS, LLC, and Lafayette Communications Company, LLC, For Consent to Assignment of Licenses, File Nos. 0001808915, 0001810164, 0001810683, and 50013CWAA04*, Memorandum

Based upon BellSouth's experience as a mobile operator in Latin American calling party pays ("CPP") markets, mobile termination rates in those (and similar) markets are neither unreasonable nor discriminatory against U.S. consumers. Furthermore, foreign mobile markets in general are competitive, and competition places downward pressure on rates, including mobile termination rates. To the extent that any intervention may be warranted with respect to a particular foreign market, the national regulator in the country is the appropriate body to address mobile termination rates. By way of example, the Network Economic Consulting Group ("NECG"), which focused on particular considerations specific to Latin American countries, has concluded that mobile termination rates have played a key, and societally beneficial, role in extending universal service to low-income and rural consumers in those markets.[3] The national regulator is in the best position to take these unique social policy considerations into account, as well as cost and market structures specific to each country. The Commission should not lightly place itself in the position of second guessing the legitimate determinations of those foreign governments.

I. MOBILE TERMINATION RATES IN CPP COUNTRIES ARE NEITHER EXCESSIVE NOR DISCRIMINATORY

In the *Notice*, the Commission requests comment on the impact on U.S. customers of termination rates for calls to mobile phones in countries that follow a calling party pays ("CPP") regime. Referring to studies that allegedly suggest that mobile termination rates are higher under

(Continued . . .)
Opinion and Order, WT Dkt. 04-70, FCC 04-255 (Oct. 26, 2004). Cingular is BellSouth's joint venture with SBC Communications Inc.

[3] Network Economics Consulting Group, *The Diffusion of Mobile Telephony in Latin America: Successes and Regulatory Challenges* (Sept. 2004) ("NECG Study"). The NECG Study is attached as Exhibit 1.

CPP regimes than under receiving party pays ("RPP") regimes, the Commission asks whether foreign mobile termination rates in CPP countries may be "unreasonably high," or whether U.S. customers may be paying rates that may be discriminatory.[4] In BellSouth's experience, neither is the case.

First, a simplistic comparison of mobile termination rates in CPP and RPP countries is insufficient to show that such rates in CPP countries are other than just, reasonable, competitive and appropriate. Recovery mechanisms and cost structures under CPP regimes usually differ dramatically from those under RPP regimes, and may vary significantly even among CPP countries.

Similarly, it is not possible to determine if mobile termination rates for calls to a particular foreign country are reasonable by simply comparing the mobile rates against fixed (i.e., wireline) termination rates in that country. CPP regime mobile termination rates may be designed to recover a completely different set of costs than fixed wireline termination charges. For example, Oftel has determined that mobile termination costs in the U.K. are usually 10 times greater than fixed termination costs.[5] Furthermore, governments and regulators in other countries may prefer a CPP regime because they believe that CPP is the optimal system for incorporating costs associated with social policy goals such as universal service.[6] Each country's legislative and regulatory bodies are in the best position to make that judgment, and the Commission should not interfere with that decision.

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[4] *Notice*, at ¶¶ 9, 12, 16.

[5] Oftel, "The Setting of Fixed and Mobile Termination Charges," available at http://www.ofcom.org.uk.

[6] *See infra* Section III.A.

Second, the Commission might inquire as to whether U.S. consumers face foreign mobile termination charges that are discriminatory. The Commission has long treated discrimination against U.S. consumers as a threshold condition for intervention into a foreign market.[7] In the absence of discrimination or other indications of competitive misconduct – as in this case – the Commission should not act to intervene. Indeed, unilateral action by the FCC could jeopardize investments by U.S. companies in foreign carriers, and the export of related U.S. technology and services abroad, because carriers in many foreign countries must comply with CPP regimes imposed by legislative or regulatory mandate.[8]

Based on its experience, BellSouth does not believe U.S. consumers are being discriminated against today. Foreign mobile termination rates typically apply uniformly to all callers to a particular foreign mobile operator's subscribers, not just to callers situated in the United States. Further, there is often little difference between the termination rates applied to domestically-originated calls as compared to foreign-originated calls. For example, European Union regulations mandate non-discrimination between interconnection rates for call termination that mobile carriers can charge, regardless of whether the call originates nationally or internationally.[9] In the Latin American markets with which BellSouth has the greatest familiarity, mobile operators charge similar rates for terminating both types of calls. Indeed, in some markets, operators charge less for terminating foreign calls than the domestic CPP rates.[10]

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[7] The FCC's settlement policies (and in particular the International Settlements Policy) were specifically established to prevent foreign carriers with market power from discriminating or using threats of discrimination or other anticompetitive actions. *International Settlement Policy Reform, International Settlement Rates*, 19 FCC Rcd 5709, 5715 (¶ 12) (2004) ("ISP Reform Order").

[8] For example, nearly all of the former BellSouth systems in Latin America were required to operate under CPP systems through regulations governing mobile carriers.

[9] *See ex parte* presentation of Telecom Italia, IB Dkt. 02-324, Position Paper at 1 (Mar. 3, 2004).

[10] *See ex parte* presentation of BellSouth, IB Dkt. 02-324 at 2 (Feb. 25, 2003).

Thus, there is no basis for a threshold finding of discrimination against U.S. consumers. Accordingly, the FCC should not intervene in foreign markets on foreign mobile termination rates.

II. THE COMPETITIVE MARKET FOR MOBILE SERVICES MAKES REGULATION OF FOREIGN MOBILE TERMINATION RATES UNNECESSARY

A. It is widely recognized that wireless markets are competitive, both domestically and internationally.

In most countries, mobile operators compete for subscribers by offering a bundle of retail services, including handsets, monthly access, outgoing calls, and incoming calls.[11] Competition among providers involves all elements of the bundle, not simply mobile termination in isolation. For this reason, fixed-to-mobile call termination is not a bottleneck.[12] Instead, the relevant market for analyzing mobile termination rates is the market for a basket of mobile services.

The market for mobile services is patently competitive around the globe. A recent ITU study found that approximately 74 percent of countries worldwide have two or more mobile operators.[13] In the U.S. CMRS marketplace, the Commission recently reiterated that "effective competition" exists.[14] BellSouth's own experience in Latin American wireless markets has been one of vigorous and growing competition. In the eleven Latin American countries in which

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[11] *See* Charles River Associates, *Economic Analysis of Fixed-To-Mobile Call Termination Charges* (March 28, 2003) at 28, attached as Ex. 2 ("CRA Study"). Crandall and Sidak define the bundle slightly differently, as (1) call origination, (2) call termination, and (3) value-added services such as short message services (SMS) or information services. Robert W. Crandall and Gregory J. Sidak, *Should Regulators Set Rates To Terminate Calls on Mobile Networks?*, 21 Yale J. on Reg. 261, 268 (2004) ("Crandall and Sidak").

[12] CRA Study at 15.

[13] *See* Comments of Verizon to Notice of Proposed Rulemaking, IB Dkt. 02-324 at 9 (Jan. 14, 2003) (citing International Telecommunications Union Country and Regulators Profile, *available at* <http://www.itu.int/ITU-D/treg/profiles/guide.asp>).

[14] *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, WT Dkt. 04-111, FCC 04-216, ¶ 2 (Sept. 28, 2004) ("2004 CMRS Report").

BellSouth had operations, all have at least two mobile competitors; eight have at least three; and Argentina has four. A recent study by Charles River Associates, a leading U.S. consulting firm, of several commonly-used indicia of competition confirms BellSouth's experience. The study, which examined market shares, the Herfindahl-Hirschman Index (HHI), rates of growth, and churn, ultimately concluded that the markets for retail mobile services in the Latin American markets examined "are increasingly characterized by vigorous competition."[15] Furthermore, mobile operators face competition not only from numerous facilities-based wireless competitors, but also increasingly from fixed operator(s) and VoIP providers.

B. Competition is the best means of setting foreign mobile termination rates.

The presence of this vigorous competition among wireless providers, as well as with their growing intermodal competitors, is placing and will continue to place downward pressure in CPP and RPP markets on mobile rates generally, including mobile termination rates. In competitive CPP markets, both customer behavior and carrier incentives will act to keep mobile termination rates at reasonable levels.

Economists Robert W. Crandall and J. Gregory Sidak explain that mobile subscribers will respond if mobile termination rates rise too high. Some mobile subscribers are likely to receive feedback from calling parties regarding high termination rates.[16] Such subscribers may consider termination rates for incoming calls in choosing a mobile network, and may switch carriers if incoming call charges are too high.[17] A mobile subscriber is especially likely to receive feedback on termination rates if he belongs to a small community of people who call each other

[15] CRA Study at 29-33.

[16] Crandall and Sidak at 290-91.

[17] *Id.* at 290.

frequently.[18] For example, the subscriber may be a part of a "friends and family" group, or in the business context, receive calls from co-workers, clients, or potential sources of business.[19] Within such groups, the caller from the fixed network will have several opportunities to observe the prices paid for his fixed-to-mobile calls and will have an incentive to provide feedback to the mobile subscriber. If the mobile subscriber knows he will not receive calls from a person from whom he wants to hear,[20] he will have an incentive to monitor termination rates and/or switch providers. Similar incentives will exist if the mobile subscriber contributes to or pays for termination rates on incoming fixed-to-mobile calls – for example, if the user is a parent receiving calls on his mobile phone from a child (in which case the parent will pay the charges originating from both the fixed line and the mobile), or a business mobile subscriber whose employees call the firm-sponsored mobiles of other employees.[21]

If the calling and/or called parties are sensitive to mobile termination rates, mobile operators will be incentivized to reduce termination rates in a competitive CPP market in order to increase their subscriber base and to maximize overall revenue. First, to the extent that high termination rates discourage calls to an operator's network generally, the operator will lose termination revenue, because a mobile operator loses the entire margin of terminating a call when a fixed-line caller decreases his demand to contact a mobile customer.[22] The operator will thus be encouraged to ensure its termination rates do not rise to a level that significantly reduces

18 Economists term these communities "closed user groups" or "related user pairs." *See id.* at 294; CRA Study at 25-26.

19 Crandall and Sidak at 294.

20 *Id.* at 293-95.

21 *Id.* at 294-96.

22 *Id.* at 293.

calls to its network. Second, in order to save on termination payments to other mobile networks and to attract the largest possible revenue from termination fees, mobile operators will have to moderate termination rates.[23] As noted in the prior paragraph, maintaining a large customer base in the face of competitive alternatives will likely require the mobile operator to ensure its mobile termination rates are reasonable.[24] Third, if the share of outgoing to incoming calls varies significantly across subscribers, carriers will attempt to attract customers who receive a large number of calls – a group to whom high mobile termination rates are especially less attractive.[25] This again puts downward pressure on termination rates. For the above reasons, in a competitive market in which mobile subscribers are concerned about the welfare of their callers, competition among mobile operators will result in termination rates roughly equal to marginal cost.[26]

Negotiations among carriers in a competitive, free-functioning marketplace provide a further control upon mobile termination rates. Most of BellSouth's former Latin American properties set mobile termination rates through standard contract negotiations. These negotiations generally resulted in lower rates, because each party had an incentive to keep costs as low as possible, to enhance profitability in a competitive market. Furthermore, to the extent that multiple domestic fixed carriers serve a single market, the carriers may have an incentive to compete for foreign-originated traffic by offering competitive rates for mobile termination to foreign (including U.S.) long distance carriers.[27] Empirical evidence in the U.S. market implies

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[23] NECG Study at 26-28.

[24] Crandall and Sidak at 293-94.

[25] *Id.* at 310.

[26] *Id.* at 295 (citing Armstrong study).

[27] Furthermore, if termination rates for foreign-originated traffic drop below domestic rates, domestic carriers will tend to refile traffic through the foreign carrier.

that voluntarily negotiated termination rates among network operators leads to low termination rates,[28] and any tendency for wireless firms to set high termination charges may be alleviated in such negotiations as long as the firms' bargaining power is roughly balanced.[29]

Finally, there are several substitutes to fixed to mobile local or foreign-originated calls that will further restrain mobile termination rates. For example, VoIP will make it increasingly difficult for mobile operators to identify and distinguish calls based on their originating location. With VoIP, not only is the customer's phone number irrelevant to the country in which the customer may be located, but also a VoIP foreign-originated call may lack originating identification and thus be classified as a domestic call not subject to foreign mobile termination rates. Moreover, in many countries, customers, including international customers, substitute mobile-to-mobile traffic for fixed-to-mobile traffic whenever those rates differ significantly. This prevents fixed-to-mobile rates from being able to remain significantly higher than the mobile-to-mobile rates. For example, if fixed-to-mobile rates are significantly higher than mobile-to-mobile rates, corporate customers configure their PBXs to route calls over mobile-to-mobile services.

C. Given the competitive nature of the wireless market, it would be counter-effective and contrary to U.S. policy to impose rate regulation.

Over the years, Congress and the FCC have made abundantly clear their preference for competition over regulation as the best way to benefit consumers. In the Telecommunications Act of 1996, Congress sought to establish a "pro-competitive, deregulatory national policy framework" that would make "advanced telecommunications and information technologies and

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28 Crandall and Sidak at 311.

29 *Id.* at 309.

services" available to all Americans "by opening all telecommunications markets to competition."[30] As a matter of this deregulatory policy, Congress specifically determined that competitive markets should not be cost-regulated.[31] The FCC, in accordance with this policy, forbears from regulating rates in the competitive retail CMRS market, because "[c]ompetition, along with the impending advent of additional competitors, leads to reasonable rates."[32] As Chairman Powell has stated:

> Regulations generally tend more to distort the competitive process, for such regulation attempts to pronounce appropriate conditions and pick winning business models rather than letting the competitive process determine them. Thus, instead of waiting for a certain utopian state of competition to arrive ... we should be using our deregulatory tools… to *promote* competitive conditions.[33]

As anticipated, deregulation in the U.S. mobile market has resulted in "many significant benefits to consumers." Most recently, the Commission found that "competitive pressures continue to compel carriers to introduce innovative pricing plans and service offerings, and to match the pricing and service innovations introduced by rival carriers," and that "consumers continue to contribute to pressures for carriers to compete on price and other terms and conditions of service by freely switching providers in response to differences in the cost and quality of service."[34]

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[30] Joint Statement of Managers, S. Conf. Rep. No. 104-230, at 1 (1996).

[31] *See, e.g.*, 47 U.S.C. § 332(c)(1)(A).

[32] *Implementation of Section 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, 9 FCC Rcd 1411, 1478 (¶ 174) (1994) ("CMRS Second Report and Order").

[33] *In the Matter of Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, 14 FCC Rcd 16340, Separate Statement Of Commissioner Michael Powell, Concurring In Part And Dissenting In Part, at 1 (1999).

[34] *2004 CMRS Report* at ¶¶ 2, 4.

The FCC has adopted these pro-competitive, deregulatory principles for U.S. international services, consistently recognizing that benefits to U.S. customers will be maximized when there is effective competition in the global market.[35] Furthermore, the Commission has urged foreign governments to adopt these same principles.[36] Because competition already imposes effective constraints on mobile termination rates, Commission regulation of those rates would be completely inconsistent with these firmly-held and oft-repeated deregulatory, pro-competitive policies.

Further, the Commission's ISP and benchmark policies do not provide a basis for extending regulation to foreign mobile termination rates. Those rate regulation policies were developed in an environment characterized by national fixed-line monopolies and an absence of independent national regulators.[37] In contrast, mobile markets are fiercely competitive. Moreover, as discussed in Section III.C. below, national regulators are generally capable of or already monitoring mobile termination rates in their countries. Significantly, too, the Commission has become "progressively more deregulatory" in its application of the ISP. As the U.S.-international market and foreign markets have become more competitive, the Commission has recognized that regulation may hinder the ability of U.S. carriers to negotiate responsive and

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35 For example, the FCC has stated "that the best way to achieve cost-based international settlement rates is through effective competition." *ISP Reform Order* at 5740 (¶ 70).

36 See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, 12 FCC Rcd 23891, 23893 (¶ 1) (1997) ("In the U.S. domestic market, we have found that private sector competition dramatically lowers the cost of providing service and stimulates creation of innovative service and investment in infrastructure deployment. These positive developments encouraged Congress to enact the Telecommunications Act of 1996 (the 1996 Act), with its emphasis on competition and deregulation. The United States, in an effort to achieve these same benefits internationally, urged foreign governments to open their markets to competition and to adopt procompetitive, transparent regulatory policies in order to foster the growth of a global information infrastructure.") (footnotes omitted).

37 *See 1988 Biennial Regulatory Review - Reform of the International Settlements Policy and Associated Filing Requirements*, 13 FCC Rcd 15320, 15334-35 (¶ 2) (1998) ("ISP Reform NPRM").

flexible agreements with individualized rates and terms in order to respond quickly to changing conditions in the global telecommunications marketplace.[38] Particularly in the competitive mobile environment, the ISP is not the model to follow.

III. TO THE EXTENT THERE ARE CONCERNS ABOUT HIGH FOREIGN MOBILE TERMINATION RATES, THE NATIONAL REGULATOR OF THE PARTICULAR COUNTRY IS BEST SITUATED TO ADDRESS THE PROBLEM

Because mobile markets are generally competitive, BellSouth believes that there is no need for any regulatory intervention with respect to mobile termination rates. However, if such intervention were appropriate in a specific case, it is beyond question that the particular foreign regulator is in the best position to collect and analyze data specific to its country and to weigh the competing public policy imperatives of that country. The Commission simply does not have the resources to conduct an analysis of mobile termination rates in almost two hundred foreign countries. The Commission's benchmark policy was based on publicly available tariffs; in contrast, mobile termination rate data is not generally publicly available.[39] This will make the gathering and verification of data far more difficult, time consuming, and prone to error.

As discussed below, even if the FCC could somehow collect sufficient data, it would be faced with at least two analytical dilemmas. First, mobile termination rates in many countries reflect not only network costs, but social policy objectives such as universal service. It is neither practical nor appropriate for the Commission to attempt to re-weigh these considerations in the place of a country's own legislative and regulatory bodies.[40] For example, the FCC's own rate

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38 *ISP Reform Order* at 5716 (¶ 13).

39 *Notice*, ¶ 19.

40 *See* Irene Wu et al, *The Impact of Competition and Technology on Telecommunications Regulation: Call for Further Research on Regulatory Procedures and the Convergence of Wireless, Wireline, and Cable,* 6 Info – The Journal of Policy, Regulation and Strategy for Telecommunications 225, 229 (2004), *available at*

regulations specifically address the needs of rural, high-cost, and insular areas within the United States.[41] Similarly, the Peruvian regulator has instituted a special program addressing the needs of remote areas in that country, including jungle areas and the Andes Mountain region. The principles underlying the policies may be similar, but the Commission would hardly expect the Peruvian regulator to possess the data and expertise necessary to evaluate the FCC's rural, high-cost, and insular policies – and the reverse is equally true. Second, cost structures, license requirements, and market conditions vary widely across countries, and developing an appropriate analytical model that could be applied consistently would be extremely resource-intensive, if not impossible. Given the competitive state of mobile markets and the pending actions of foreign regulators, it is simply unnecessary for the Commission to wade into this quagmire.

Finally, there is no reason to believe foreign regulators will fail to address excessive foreign mobile termination rates, if needed. Indeed, some regulators have already commenced their own review of mobile termination rates,[42] and unilateral action on the Commission's part could have the unintended consequence of interfering with those processes.

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<http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-253863A1.pdf> ("In many markets, a calling-party-pays regime that allows the wireless operator to generate most of its revenue from charging high rates to terminate calls on their mobile network has enabled the rapid popularization of wireless telephony services…. [I]n countries with limited wireline development … [i]f universal service is the primary policy objective, then regulatory regimes may appropriately have a higher tolerance for high termination rates").

[41] *See, e.g,. Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the Contiguous States and Alaska, Hawaii Puerto Rico and the Virgin Islands,* 9 FCC Rcd 3023 (1994).

[42] *See, e.g., ex parte* presentation of BellSouth, IB Dkt. 02-324 (Mar. 4, 2004); CRA Study at 13, 47-52; Comments of Vodafone to Notice of Proposed Rulemaking, IB Dkt. 02-324 (Jan. 14, 2003), Appendix B (listing actions by foreign regulators). For example, regulators in several countries previously or currently served by BellSouth have reduced mobile termination rates significantly. In Chile and Peru, the regulator has already mandated reductions of 35 and 30 percent, respectively. In Ecuador and Israel, pending proceedings are anticipated to result in rate reductions of approximately 50 percent.

A. **Mobile termination rates may serve important social policy goals that are best weighed by national regulators.**

National regulators are charged with implementing social policy goals as well as fostering competition among carriers. Such social goals may include promoting universal service, encouraging foreign investment, fostering wireless-to-landline competition, and facilitating the deployment of a modern telecommunications infrastructure. Given the country-specific market information needed to determine both the goals and how to meet them, national regulators are best situated to make this complicated determination.

One example of this is the role of CPP and mobile termination rates in extending universal service in Latin America, especially to low-income and rural populations. Both the CRA and NECG studies conclude that lower mobile termination rates in Latin America may actually lead to reduced social welfare. Because the CRA and NECG analyses illustrate the complex factors that must be considered in determining the optimal mobile termination rate in a particular country, they are discussed in more detail below.[43]

In Latin America and many other developing countries, mobile service frequently extends the first opportunity to access telephone service to users who do not have a fixed telephone.[44] Mobile telephony is more accessible to rural and low-income groups for several reasons. First, mobile operators are more willing to sign up customers whom fixed line operators might not accept because mobile operators incur much lower average sunk costs in adding a subscriber to the network, especially under prepaid plans. Second, the availability of prepaid mobile plans makes mobile service more appealing to low-income and first-time telephone subscribers by

[43] The CRA Study primarily provides a more general economic analysis of fixed-to-mobile call termination charges, but discusses Latin American markets as a part of its analysis. The NECG Study, on the other hand, is more specifically focused on analyzing the contribution of mobile termination rates to social welfare in Latin America. Therefore, the NECG Study is discussed more extensively here.

[44] NECG Study at 16.

enabling them to limit their telephone expenses. Third, mobile telephony can serve groups without access to fixed telephony, such as workers who are itinerant, homeless, or living in homes (*e.g.* shantytowns) for which they do not have clear legal title. Finally, a mobile subscription is generally cheaper than a fixed line subscription if the user uses a phone primarily to receive calls and to make a limited number of important outgoing calls.[45]

Although this last factor – low usage – can create a challenge for profitability,[46] serving such subscribers can be economical in a CPP regime if the wireless operator can charge high enough mobile termination rates.[47] Operators will also have an incentive to maximize their customer base to increase their aggregate termination revenues.[48] However, in a competitive market, increasing the customer base will require mobile operators to compete for subscribers by lowering retail prices – *i.e.* by passing termination revenues on to their customers in other forms, including subsidized handsets, low monthly rental fees, lower call costs, and low minimal monthly plans. In this way, higher mobile termination rates should benefit all subscribers and certainly increase the number of low-income and rural consumers that can connect to the network.[49]

The NECG Study explains that when market penetration of mobile is low, higher fixed-to-mobile termination rates can result in an overall benefit to society as long as the mobile market is competitive.[50] Although the direct effect of higher mobile termination rates will be a

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45 NECG Study at 18-23.

46 NECG Study at 26-27.

47 *Id.*

48 NECG Study at 8; CRA Study at 15.

49 *See* NECG Study at 27-28.

50 *Id.*

lower number of fixed-to-mobile calls, the indirect effect will be to increase the termination profit obtained from every subscriber. If the market is competitive, operators will have to pass these profits through. This will create incentives for operators to compete aggressively to increase their customer base, which will increase network size.[51] Without such "subsidies," the network may not reach its socially optimal size. As the CRA Study explains:

> a new subscriber joining a network obtains benefits from calling and being called by other subscribers, and takes these benefits into account when deciding to subscribe to a service. However, the new subscriber is likely to ignore benefits obtained by other subscribers who can call or be called by the new subscriber. Some subscribers with private benefits below the cost of subscription will not join the network, even though the total benefits to all subscribers exceed those costs.[52]

Thus, because mobile subscription confers benefits onto all subscribers who are interconnected to the network, it is not unreasonable for both fixed & mobile subscribers to contribute toward the cost of establishing the network.[53] Furthermore, the benefits from such "network externalities" from adding a new user are heightened in countries with low penetration rates.[54]

The higher mobile termination rate "subsidy" also benefits fixed-line users and operators in other ways. Mobile networks that compete with fixed line monopolies provide incentives for fixed operators to improve performance.[55] And new mobile users create additional traffic to and

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[51] *Id.*

[52] CRA Study at 3.

[53] NECG Study at 26-27.

[54] CRA Study at 35.

[55] NECG Study at 28-31.

from fixed networks, which increases profits for fixed operators without the need for new infrastructure.[56]

In Latin America, the CPP system has proven to be quite successful in encouraging the deployment of mobile service. Indeed, mobile phones are now the principal means of voice communication in Latin America,[57] with the number of cellular subscribers increasing from 4 million in 1995, to 100 million in 2002.[58] Mobile subscribership is continuing to grow steeply, driven by the growth of prepaid subscribers.[59] The NECG Study demonstrates that after moving from a RPP to CPP regime, Latin American countries have experienced very rapid subscriber and network traffic growth. The introduction of CPP has resulted in increased penetration and traffic, even in the presence of increased mobile termination rates, a result that the authors of the study attribute to the incentive that CPP provides to mobile operators to increase their subscriber base.[60]

Thus, both NECG and CRA conclude that the imposition of regulation to artificially lower mobile termination rates is likely to decrease universal service and welfare.[61] Reducing the price of fixed-to-mobile calls is likely to make mobile service less affordable to low income subscribers, and in Latin America, public funding to offset the shortfall is unlikely to be available.[62] Furthermore, lower rates could inhibit the growth of mobile telephony, and its

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56 *Id.*

57 *Id.* at 7.

58 *Id.* at 14.

59 *Id.* at 15.

60 *Id.* at 24-26.

61 *Id.* at 44; CRA Study at 34-39.

62 CRA Study at 37-40.

corresponding potential to bridge the digital divide with respect to low-income users as broadband services are increasingly provided through wireless networks. In addition, reducing the number of users in the network will decrease the overall benefit to all users.[63] Indeed, NECG questions whether *any* of the cost savings from reduced mobile termination rates would be passed through to end users, because most fixed operators in Latin America face a low degree of competitive constraint, and are generally regulated based on a basket of fixed services rather than on any particular rate element.[64] In sum, the NECG Study cautions against "undue regulatory intervention in an area where market forces have created unambiguous gains for society."[65]

B. No single cost or benchmark model can be applied consistently to all foreign markets.

As the Commission is well aware, development of an analytical model for evaluating costs even for a single product market in a single country can be extremely resource-intensive and contentious. These problems are multiplied exponentially when the subject of analysis consists of almost 200 markets worldwide. Benchmarking and long-run incremental cost approaches will not work here.

Benchmarking. As the CRA Study explains, benchmarking "works best when the comparators are very similar to the regulated company, so that few adjustments are necessary." Because of the differences in fundamental aspects of demand and supply across countries, international benchmarks obtained from developed countries are all but impossible to use for evaluating and setting rates in developing countries and vice versa. Some of the significant differences among countries for which benchmark adjustments would be necessary include:

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[63] NECG Study at 28-31.

[64] *Id.*

[65] *Id.* at 8.

Differences in teledensity. Developing countries have serving areas with lower teledensity (subscribers per square mile) than developed countries. It is well known that even within a country, unit costs are higher in areas with low teledensity than in areas with high teledensity. Since unit costs are driven by the teledensity of individual serving areas (i.e., area served by a switch or cell site), adjustments for differences in teledensity should be made on the basis of teledensity in each serving area (or cell), not on the basis of national population divided by national land area.

Differences in peak/off-peak traffic ratios. Networks are typically designed to offer acceptable service during peak periods. When the offered load is more sharply peaked, the cost per unit of the traffic is higher.

Differences in call duration. Differences in call duration across countries (including differences resulting from the use of wireless data services and the technologies used to support data services, differences in the use of vertical services such as voice mail and conference calling, and other differences in the mix of services offered) can lead to differences in the per minute cost of switched services across countries.

Differences in usage volume. The cost-volume elasticity of providing many telecommunications services is quite low. That is, the percentage increase in costs corresponding to a 1 percent increase in usage tends to be quite close to zero. Therefore, the unit cost of a company serving customers with lower usage is likely to be higher than the unit cost of a company serving customers with higher usage.

Differences in input prices. For mobile networks, important inputs include interconnection to fixed networks, telecommunications equipment (handsets and network equipment), capital, labor, and the costs of collection and fraud. The prices corresponding to these inputs can vary significantly from one country to another and also from one period to another. In some cases, the required data (for example, prices for major items of telecommunications equipment purchased by telecommunications companies in developed countries) may not be publicly available. Taxes and regulations (including license fees and roll-out requirements) may also vary significantly from one country to another.

Thus, CRA concludes that while call termination rates in other countries might be easy to obtain, the adjustments required to obtain comparable rates as benchmarks are likely to be extremely complicated, limited by the availability of necessary data, and very costly to undertake.[66]

LRIC models. Long-run incremental cost approaches also have a series of drawbacks, including (1) prices set at LRIC do not cover total costs and are unsustainable; (2) they are extremely expensive to develop, maintain, and update; and (3) they give rise to protracted adversarial arguments in regulatory proceedings. Furthermore, while significant effort has been devoted to developing cost models of fixed networks, modeling of mobile networks is far less advanced. Modeling of mobile networks raises new issues not previously addressed in models developed for fixed networks.[67] Crandall and Sidak explain the complex factors and estimates that would be required to determine a socially optimal mobile termination rate, and conclude that the costs of conducting such a search would be futile and socially unjustified if mobile subscribers can be assumed to care about the welfare of their callers.[68]

This problem is compounded exponentially when applied to numerous, diverse foreign countries. A cost model developed for a single country (such as the U.K. LRIC model) cannot be blindly applied to other markets. In addition to the differences in national telecommunications markets,[69] broader macroeconomic conditions or business practices can

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66 CRA Study at 42-43. The factors listed by CRA are not exhaustive. For example, it is unclear how U.S.-foreign mobile calls transmitted over IP networks (in part, or possibly in the future, in whole) would be treated. The compensation structure applicable to VoIP is unsettled not only in the U.S. but in many foreign countries.

67 *Id.* at 43-44.

68 Crandall and Sidak at 306.

69 *See supra* p. 18-20.

significantly affect costs.[70] The U.K. regulator Oftel, with relatively deep resources, took several years to develop a cost model specific to that country.[71] One analyst suggests that conducting cost-based analyses of the mobile termination market similar to that of U.K. "is likely to put a serious strain" on many national regulators.[72] If market forces are performing adequately, it is difficult to see how the expense and effort of producing (likely-dueling) LRIC studies could be justified. Finally, efficient prices in the mobile market should not necessarily just reflect costs. As discussed further in the NECG Study, it may be efficient to set mobile termination charges above cost in order to internalize the benefit fixed network users obtain from high mobile penetration. In other words, because fixed-line and existing mobile subscribers both benefit from the addition of new users to the network, both should contribute to the costs of establishing the mobile network.[73]

C. Where a foreign mobile termination rate is particularly problematic, the Commission should work with the particular foreign regulator to address the issue.

As noted above, the regulator in a particular country is in the best position to weigh the appropriateness of its mobile operators' termination rates. Foreign regulators are aware of the issue and capable of taking any steps needed. Indeed, many foreign regulators are actively

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[70] *See, e.g.* BellSouth Feb. 25, 2003 Section 1377 Comments at 3-5 (explaining that LRIC study from UK cannot be blindly applied to Argentina, in part because of cost differences caused by Argentina's macroeconomic crisis, and by differences in billing cycles between domestic and international calls).

[71] CRA Study at 44.

[72] J. Scott Marcus, "Europe's New Regulatory Framework for Electronic Communications in Action" at 14, presented at the 4th ZEW Conference on the Economics of Information and Communication Technologies, Mannheim, Germany (July 2004), *available at* <ftp://ftp.zew.de/pub/zew-docs/div/IKT04/Paper_Marcus_Invited.pdf>.

[73] *NECG Study* at 26-27.

monitoring mobile termination rates in their countries, and may choose (and in some cases, have already chosen) to take further regulatory action.[74]

However, in the event that foreign mobile termination rates in a particular country are egregiously discriminatory or insufficiently contained by competitive pressures, BellSouth urges the Commission to take the approach articulated in the *ISP Reform Order* – to work with its foreign counterparts on a case-by-case basis to address the situation.[75] This cooperative approach fully utilizes the national regulator's expertise and understanding of the market, and avoids needlessly wasting FCC resources on a duplicative analytical effort. Furthermore, this approach would enable the Commission to advocate the interests of U.S. consumers in accordance with principles of international comity, without unduly interfering with the legislative and regulatory processes of the foreign country. Given the generally competitive state of foreign mobile markets, BellSouth believes that this approach would be the most effective and prudent use of Commission resources.

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[74] *See supra* n. 46.

[75] *ISP Reform Order* at 5731 (¶ 46).

IV. CONCLUSION

Consistent with longstanding Congressional and Commission policy, the FCC should refrain from regulating rates in mobile markets, which are competitive worldwide. Mobile termination rates in CPP countries are not presently unreasonable or discriminatory against U.S. consumers, and competition already places downward pressure on such rates. To the extent that any intervention may be warranted with respect to a particular foreign market, the national regulator in the country is the appropriate body to address mobile termination rates, taking into account specific cost structures and social policy goals. The Commission should work with its foreign counterpart to address any issues that may rise on a case-by-case basis, rather than attempting to impose a costly, worldwide regulatory framework.

Respectfully submitted,

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