



PUBLIC NOTICE

Federal Communications Commission
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DA 09-149
January 29, 2009

PETITION FOR PROTECTION FROM WHIPSAWING AND STOP SETTLEMENT PAYMENT ORDER ON THE U.S.-TONGA ROUTE

IB Docket No. 09-10

PLEADING CYCLE ESTABLISHED

Comments or Oppositions Due: February 9, 2009
Replies Due: February 17, 2009

AT&T Inc., on behalf of its affiliates (“AT&T”), filed a petition on December 3, 2008 requesting that the Commission issue an order stopping U.S. settlement payments to the Tonga Communications Corporation (“TCC”). TCC has blocked AT&T’s circuits to Tonga since November 24, 2008. AT&T states that TCC has demanded to increase termination rates on the U.S.-Tonga route to more than three times the previous negotiated rate of approximately nine (\$0.09) cents to thirty (\$0.30) cents per minute. AT&T states that TCC’s action of blocking AT&T’s circuits for its refusal to accede to TCC’s rate increase is a clear violation of the Commission’s longstanding prohibition against engaging in whipsawing and other coercive conduct to increase rates.

TCC is the 90 percent government–owned incumbent international carrier in Tonga. AT&T has had an international settlement arrangement with TCC since 2000. Through this arrangement, TCC terminated all U.S-Tonga calls sent by AT&T over circuits directly linking these two countries, including calls to both fixed and mobile numbers in Tonga.

AT&T’s petition points out that the Commission, under past precedent, protects U.S.-international carriers and U.S. consumers from alleged “whipsawing” behavior. “Whipsawing” is a form of anticompetitive behavior that involves the ability of foreign carriers to obtain unduly favorable terms and conditions from U.S.-international service providers by setting competing U.S. carriers against one another.

AT&T requests that the Commission require U.S. carriers to stop settlement payments until all circuits have been restored on the U.S.-Tonga route.¹ AT&T also requests for the Commission to take action to protect U.S. carriers in their negotiations on the U.S.-Tonga route from whipsawing and prevent further network disruptions that are harmful to U.S. carriers and consumers.

¹ According to the most recent information filed with the Commission, the following carriers serve the U.S.-Tonga route: AT&T Corp., MCI International, Sprint Nextel Corporation, Bharti Airtel Limited, France Telecom Long Distance USA, LLC, IDT Corporation, IT&E Overseas, Inc., KDDI America, Inc., KPN International Network Services, Inc., New Century InfoComm Tech Co. Ltd., Primus Telecommunications, Inc., REACH Services (USA) Inc., Telecom New Zealand USA, Inc., and TeliaSonera AB.

This Public Notice is issued pursuant to Section 64.1002(d) of the Commission's rules. 47 C.F.R. 63.1002(d).

EX PARTE STATUS OF THIS PROCEEDING

Pursuant to section 1.1200(a) of the Commission's rules,² the Commission may adopt modified or more stringent *ex parte* procedures in particular proceedings if it finds that the public interest so requires. We announce that this proceeding will be governed by permit-but-disclose *ex parte* procedures that are applicable to non-restricted proceedings under section 1.1206 of the Commission's rules.³

We direct parties making oral *ex parte* presentations to the Commission's statement re-emphasizing the public's responsibility in permit-but-disclose proceedings and are reminded that memoranda summarizing the presentation must contain the presentation's substance and not merely list the subjects discussed.⁴ More than a one- or two-sentence description of the views and arguments presented is generally required.⁵ Other rules pertaining to oral and written presentations are set forth in section 1.1206(b) as well.⁶ We urge parties to use the Electronic Comment Filing System (ECFS) to file *ex parte* submissions.⁷

GENERAL INFORMATION

Interested parties must file comments or oppositions to the petition no later than **February 9, 2009**. Replies to such comments or oppositions must be filed no later than **February 17, 2009**. All filings concerning matters referenced in this Public Notice should refer to **DA 09-149, IB Docket No. 09-10**, as well as the specific file numbers of the individual applications or other matters to which the filings pertain.

Under the Commission's procedures for the submission of filings and other documents,⁸ submissions in this matter may be filed electronically (*i.e.*, through ECFS) or by hand delivery to the Commission's Massachusetts Avenue location.

- Electronic Filers:⁹ Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/>. In completing the transmittal screen, filers should include

² 47 C.F.R. § 1.1200(a) (2007).

³ *Id.* § 1.1206.

⁴ *See* Commission Emphasizes the Public's Responsibilities in Permit-But-Disclose Proceedings, Public Notice, 15 FCC Rcd 19945 (2000).

⁵ *See* 47 C.F.R. § 1.1206(b)(2) (2007).

⁶ *Id.* § 1.1206(b).

⁷ *See* discussion *infra* Part VI.

⁸ *See Implementation of Interim Electronic Filing Procedures for Certain Commission Filings*, Order, 16 FCC Rcd 21483 (2001); *see also FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence*, Public Notice, 16 FCC Rcd 22165 (2001); *Reminder: Filing Locations for Paper Documents and Instructions for Mailing Electronic Media*, Public Notice, 18 FCC Rcd 16705 (2003).

⁹ *See Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998).

their full name, U.S. Postal Service mailing address, and the applicable docket number. Parties also may submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554.

One copy of each pleading must be delivered electronically, by e-mail or facsimile, or if delivered as paper copy, by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (according to the procedures set forth above for paper filings), to the Commission's duplicating contractor, Best Copy and Printing, Inc., at fcc@bcpiweb.com or (202) 488-5563 (facsimile).

Additionally, filers may deliver courtesy copies by email or facsimile to the following Commission staff:

- (1) James Ball, Chief, Policy Division, International Bureau, at James.Ball@fcc.gov or (202) 418-2824 (facsimile);
- (2) David Krech, Associate Chief, Policy Division, International Bureau, at David.Krech@fcc.gov or (202) 418-2824 (facsimile);
- (3) Kimberly Cook, Policy Division, International Bureau, at Kimberly.Cook@fcc.gov or (202) 418-2824 (facsimile);
- (4) Cara Grayer, Policy Division, International Bureau, at Cara.Grayer@fcc.gov or (202) 418-2824 (facsimile);
- (5) Emily Talaga, Strategic Analysis & Negotiations Division, International Bureau, at Emily.Talaga@fcc.gov or (202) 418-0398 (facsimile);

Copies of this Petition and any subsequently-filed documents in this matter may be obtained from Best Copy and Printing, Inc., in person at 445 12th Street, S.W., Room CY-B402, Washington, D.C.

20554, via telephone at (202) 488-5300, via facsimile at (202) 488-5563, or via e-mail at fcc@bcpiweb.com. The Petition and any associated documents are also available for public inspection and copying during normal reference room hours at the following Commission office: FCC Reference Information Center, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. The Petition also is available electronically through the Commission's ECFS, which may be accessed on the Commission's Internet website at <http://www.fcc.gov>.

People with Disabilities: To request this Public Notice in accessible formats (computer diskette, large print, audio recording, and Braille) send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

For further information, contact James Ball, Policy Division, International Bureau, at 202-418-1460 or David Krech, Policy Division, International Bureau, at 202-418-1460.

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