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

In the Matter of	)	
	)	
International Settlements Policy Reform	)	IB Docket No. 11-80
	)	
Joint Petition for Rulemaking of AT&T Inc., Sprint Nextel Corporation and Verizon	)	RM-11322
	)	
Modifying the Commission's Process to Avert Harm to U.S. Competition and U.S. Customers Caused by Anticompetitive Conduct	)	IB Docket No. 05-254
	)	
Petition of AT&T for Settlements Stop Payment Order on the U.S.-Tonga Route	)	IB Docket No. 09-10

REPORT AND ORDER

Adopted: November 29, 2012 **Released: November 29, 2012**

By the Commission:

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I. INTRODUCTION

1. Today, we further modernize and streamline our international telephony rules in an effort to lower costs and increase competition among U.S. carriers. We find that regulatory requirements related to our International Settlements Policy (ISP) are no longer necessary. While the ISP originally served to promote and protect competition in the provision of international telephone services, we conclude that it has become unnecessarily burdensome on U.S. carriers attempting to negotiate agreements to achieve lower rates. Eliminating the ISP will enable more market-based arrangements between U.S. and foreign carriers on all U.S.-international routes, giving U.S. consumers competitive pricing when they make international calls. We therefore adopt the proposal in this proceeding's Notice of Proposed Rulemaking (*NPRM* or *Notice*)[1] to remove the ISP from the international routes to which it continues to apply, with one exception related to Cuba, described below.[2] We also adopt certain limited measures to improve the Commission's ability to protect U.S. consumers from the effects of anticompetitive conduct by foreign carriers. We will, in the future, consider other measures proposed in this proceeding that may be appropriate where commercial negotiations are unsuccessful.[3]

II. BACKGROUND

A. ISP and Benchmarks

2. The ISP governs how U.S. carriers negotiate with foreign carriers for the exchange of international traffic on certain international routes. The Commission established the ISP to apply initially to telegraph traffic and later to telephone traffic in response to concerns that foreign carriers with market power are able to take advantage of the presence of multiple U.S. carriers serving a particular market.[4] Its

[1] *International Settlements Policy Reform*, Notice of Proposed Rulemaking, IB Docket Nos. 11-80, 05-254, 09-10, RM 11322, 26 FCC Rcd 7233 (2011) (*NPRM*).

[2] *See* ¶ 13-19 below.

[3] In the *NPRM*, the Commission incorporated by reference the records of various related proceedings. *See NPRM*, 26 FCC Rcd at 7234, ¶ 2 and accompanying notes.

[4] *See International Settlements Policy Reform; International Settlement Rates,* IB Docket Nos. 02-324, 96-261, First Report and Order, FCC 04-53, 19 FCC Rcd 5709, 5713-15, ¶¶ 9-12 (2004) (*2004 ISP Reform Order*); *Market Entry and Regulation of Foreign-Affiliated Entities,* IB Docket No. 95-22, Report and Order, FCC 95-475, 11 FCC Rcd 3873 (1995) (*Foreign Carrier Entry Order*) at 3877, ¶ 6. *See also International Settlements Policy Reform; International Settlement Rates,* IB Docket Nos. 02-324, 96-261, Notice of Proposed Rulemaking, FCC 02-285,17 FCC Rcd 19954, 19955, ¶ 1 n.1 (*ISP NPRM*).

purpose has been to prevent foreign carriers with market power from discriminating against or using threats of discrimination or other anticompetitive actions against competing U.S. carriers as a strategy to obtain pricing concessions regarding the exchange of international traffic.[5] Specifically, the ISP requires that: (1) all U.S. carriers must be offered the same effective accounting rate and same effective date for the rate ("nondiscrimination"); (2) all U.S. carriers are entitled to a proportionate share of U.S.-inbound, or return traffic based upon their proportion of U.S.-outbound traffic ("proportionate return"); and (3) the accounting rate is divided evenly between U.S. and foreign carriers for U.S.-inbound and outbound traffic so that inbound and outbound settlement rates are identical ("symmetrical settlement rates").[6] As discussed below, the ISP now applies to only 38 international routes.

3. In addition to the ISP, the Commission also promotes lower international telephone rates through its benchmark policy. Because settlement rates remained substantially above cost despite efforts to promote competition through reform of the ISP, the Commission decided in 1997 in its *Benchmarks Order* to establish benchmarks that govern the international settlement rates that U.S. carriers may pay foreign carriers to terminate international traffic from the United States.[7] The policy requires U.S. carriers to negotiate settlement rates at or below benchmark levels established by the Commission.[8] The *Benchmarks Order* divided countries into five groups, based on economic development levels as determined by information from the International Telecommunication Union (ITU) and the World Bank.[9] The Commission established benchmark settlement rates – above which U.S. carriers must not pay

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[5] Certain forms of anticompetitive activity can be referred to as "whipsawing," generally defined as a broad range of anticompetitive behavior by foreign carriers that possess market power, in which the foreign carrier or a group of foreign carriers exploit that market power in negotiating settlement rates with competitive U.S. telecommunications carriers. For example, the Commission has found "whipsawing" to have occurred when a foreign carrier or foreign carriers acting in concert have demanded increases in settlement rates and blocked the circuits of any U.S. carrier that refuses to agree to the demanded rate increases. *See, e.g.*, *AT&T Corp. Emergency Petition for Settlements Stop Payment Order and Request for Immediate Interim Relief and Petition of WorldCom, Inc. for Prevention of "Whipsawing" On the U.S.-Philippines Route*, IB Docket No. 03-38, Order on Review, FCC 04-112, 19 FCC Rcd 9993 (2004) (*Philippines Order on Review*); *AT&T Corp. Emergency Petition for Settlements Stop Payment Order and Request for Immediate Interim Relief and Petition of WorldCom, Inc. for Prevention of "Whipsawing" On the U.S.-Philippines Route*, IB Docket No. 03-38, Order, 18 FCC Rcd 3519 (Int'l Bur. 2003) (*2003 Philippines Order*). *See also AT&T Corp. Proposed Extension of Accounting Rate Agreement for Switched Voice Service with Argentina,* ISP-96-W-062, Order, 11 FCC Rcd 18014, 18014, ¶ 1 (Int'l. Bur. 1996) ("The Commission will not allow foreign monopolists to undermine U.S. law, injure U.S. carriers or disadvantage U.S. consumers.") (*Argentina Order*); *Sprint Communications Company, L.P. Request for Modification of the International Settlements Policy to Change the Accounting Rate for Switched Voice Service with Mexico,* ISP-97-M-708, Memorandum Opinion and Order, 13 FCC Rcd 24998, 25000-02, ¶ 6-9 (Int'l. Bur. 1998) (*Mexico Order*); *Cable & Wireless P.L.C. v. FCC*, 166 F.3d 1224, 1226-1227 (D.C. Cir. 1999) ("The FCC has long sought to protect U.S. carriers and U.S. consumers from the monopoly power wielded by foreign telephone companies in the international telecommunications market.") (*Cable & Wireless*); *see, e.g., Atlantic Tele-Network, Inc. Application for Authority to Acquire and Operate Facilities for Direct Service Between the U.S. and Guyana*, Order on Review, FCC 93-342, 8 FCC Rcd 4776 (1993).

[6] 47 C.F.R. § 43.51.

[7] *See, e.g.*, *International Settlement Rates*, IB Docket No. 96-261, Report and Order, FCC 97-280, 12 FCC Rcd 19806, ¶ 1 (1997) (*Benchmarks Order*); Report and Order on Reconsideration and Order Lifting Stay, 14 FCC Rcd 9256 (1999) (*Benchmarks Reconsideration Order*); *aff'd sub nom. Cable & Wireless P.L.C. v. FCC*, 166 F.3d 1224 (D.C. Cir. 1999).

[8] *Benchmarks Order*, 12 FCC Rcd at 19860, ¶ 111.

[9] *Id.* at 19965-66, Appendix C.

foreign carriers – of $0.15 per minute for upper income countries; $0.19 for upper middle income and lower middle income countries; and $0.23 for low income countries.[10] The Commission established its benchmarks policy with the goal of reducing above-cost settlement rates paid by U.S. carriers to foreign carriers for the termination of international traffic, where market forces had not led to cost-based settlement rates.[11] The Commission has consistently stated that it expects U.S. consumers to receive the benefit of settlement rate savings by carriers.[12]

4. The *Benchmarks Order* became effective in 1998 with the first of the series of benchmark rates becoming effective for upper income countries on January 1, 1999. Since then, both U.S.-international average settlement rates and average IMTS[13] revenue per minute have dropped dramatically. Average settlement rates have decreased from $0.35 per minute (1997) to $0.05 per minute (2010), and average IMTS revenue per minute has decreased from $0.67 per minute (1997) to $0.06 per minute (2010). The international payments U.S. carriers have made to foreign carriers for termination of U.S.-international traffic have decreased dramatically. In 1997, one year before the first benchmark rate took effect, U.S. carriers paid foreign carriers $5.6 billion in net settlement payments for termination of U.S.-international calls. In 2010, U.S. carriers paid foreign carriers approximately $2.7 billion (a decrease of 51 percent). During that time, U.S.-billed international calling minutes increased from 22.8 billion minutes to 62.3 billion minutes (an increase of 173 percent). Net settlement payments per minute, therefore, decreased from $0.25 per minute to $0.04 per minute (a decrease of 82 percent).[14]

5. As the U.S.-international market and foreign markets have become more competitive and settlement rates have decreased to benchmark rates or below, the Commission exempted a substantial number of international routes from application of the ISP. In its *2004 ISP Reform Order*, the Commission decided to retain its benchmarks policy but recognized that the restrictions of the ISP that are intended to protect the public interest may, in reality, hinder the ability of U.S. carriers to negotiate lower

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[10] *Id.* at 19861, ¶ 111.

[11] *Id.* at 19862-63, ¶ 115. The Commission concluded that the benchmark rates are necessary because, under the current international accounting rate system, the settlement rates U.S. carriers pay foreign carriers to terminate U.S.-originated traffic are, in most cases, substantially above the costs foreign carriers incur to terminate that traffic. *Benchmarks Reconsideration Order*, 14 FCC Rcd at 9256, ¶ 3.

[12] *Benchmarks Order*, 12 FCC Rcd at 19930-32, ¶¶ 270-74 ("We expect to see U.S. carriers pass on to consumers the savings in net settlements payments on a route-by-route basis because settlement costs, and consequently, savings, are incurred on a route-by-route basis."); *Benchmarks Reconsideration Order*, 14 FCC Rcd at 9256, ¶ 4 ("As accounting rates are reduced, the cost to U.S. carriers of providing international service will decrease. U.S. consumers should see the benefits of such cost reductions in the form of lower prices for international service.").

[13] IMTS refers to International Message Telephone Service and is defined as the provision of message telephone service (MTS) between the United States and a foreign point. The term "message telephone service" refers to the transmission and reception of speech and low-speed dial-up data over the public switched telephone network (PSTN).

[14] Information based upon FCC, Section 43.61 International Telecommunications Data, 1997 and 2010 data. *See 1997 Section 43.61 International Telecommunications Data*, 1998 WL 911543 (1998) (*1997 Section 43.61 Report*), *available at* http://transition.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/Intl/4361-97.pdf; *2010 International Telecommunications Data,* 2012 WL 1066716 (2012) (*2010 Section 43.61 Report*), *available at* http://transition.fcc.gov/ib/sand/mniab/traffic/files10/CREPOR10.pdf. We note that although the Commission has stated that escalating net settlement payments are a problem, the Commission's concern is not with the absolute level of U.S. net settlement payments, but rather with the extent to which those payments reflect rates that exceed the underlying costs of providing international termination services. *See Benchmarks Order*, 12 FCC Rcd at 19822-23, ¶ 36.

settlement rates and more efficient terms in their agreements with foreign carriers under certain circumstances.[15] Indeed, because the ISP focuses on creating a unified bargaining position for U.S. carriers, it denies U.S. carriers the ability to respond quickly to changing conditions in the global telecommunications marketplace by preventing carriers from negotiating responsive and flexible agreements with individualized rates and terms.[16] Thus, in the *2004 ISP Reform Order*, the Commission reformed its U.S.-international regulatory policies to reflect increased competition on many U.S.-international routes accompanied by lower settlement rates and calling prices for U.S. consumers.[17] In particular, the Commission exempted benchmark-compliant international routes from the ISP to give U.S. carriers greater flexibility to negotiate market-based arrangements on these routes.[18] The Commission subsequently lifted the ISP from additional routes that were certified to be benchmark compliant.[19] There are currently 165 U.S.-international routes exempt from the ISP. The 38 U.S.-international routes that remain subject to the ISP constitute 1.7% of total minutes worldwide based on 2010 data.[20]

B. Competitive Safeguards

6. Although the Commission's *2004 ISP Reform Order* sought to permit greater flexibility in commercial negotiations on benchmark-compliant routes, it retained two additional safeguards to protect competition: (1) the "No Special Concessions" rule, which serves as a safeguard against non-price discrimination, and (2) its contract filing requirements to reinforce the ISP conditions on the remaining routes subject to the ISP.[21] The Commission also concluded that other safeguards are necessary to allow it to respond to anticompetitive conduct on individual U.S.-international routes as discussed below.[22] Accordingly, the Commission adopted procedures in the *2004 ISP Reform Order* that allow the Commission to address specific allegations of such conduct by foreign carriers.[23]

7. In addition to the *1997 Benchmarks Order* and the *2004 ISP Reform Order*, the Commission took action in specific cases to protect U.S. consumers from anticompetitive conduct on U.S.-international routes. In 2003, the Commission required U.S. carriers to suspend payments to certain foreign carriers that had disrupted circuits in the Philippines in an attempt to force higher settlement

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[15] *2004 ISP Reform Order,* 19 FCC Rcd at 5716, ¶ 13.

[16] *ISP NPRM*, 17 FCC Rcd at 19968, ¶ 21.

[17] *2004 ISP Reform Order*, 19 FCC Rcd 5709.

[18] *Id.* at 5711, ¶ 2; 47 C.F.R. § 64.1002.

[19] *U.S.-Cambodia Route Exempted from the International Settlements Policy,* IB Docket Nos. 02-324, 96-261, Public Notice, 20 FCC Rcd 14837 (2005); *U.S.-Angola Route Exempted from the International Settlements Policy,* IB Docket Nos. 02-324, 96-261, Public Notice, 19 FCC Rcd 24056 (2004); *Additional U.S. International Routes Exempted from the International Settlements Policy*, Public Notice, 19 FCC Rcd 22032 (2004); *Commission Lifts the International Settlements Policy on Certain Benchmark Compliant Routes, Seeks Further Comment on Other Routes,* IB Docket Nos. 02-324, 96-261, Public Notice, 19 FCC Rcd 20469 (2004).

[20] *See 2010 Section 43.61 Report*.

[21] *See supra* n.11. The pertinent contract filing requirements are codified in section 43.51 of the Commission's rules. 47 C.F.R. § 43.51.

[22] *2004 ISP Reform Order*, 19 FCC Rcd at 5729, ¶ 40; 47 C.F.R. § 64.1002(d).

[23] *Id*. at 5730-32, ¶¶ 43-52.

rates.[24] Since then, there have been instances in which U.S. carriers have reported that certain foreign carriers, in some instances with the implicit support of their governments, have demanded non-cost-based rate increases, set rate floors, or otherwise engaged in anticompetitive behavior on a number of U.S.-international routes where there is little or no competition on the foreign end.[25] Foreign carriers, on occasion, have also blocked international phone circuits, in some instances with the alleged support and endorsement of their respective governments and regulators, as a negotiating tactic to obtain higher settlement rates from U.S. carriers.[26]

C. FCC Action Since the *2004 ISP Reform Order*

8. In 2005, the Commission issued a Notice of Inquiry that sought comment on ways to improve the process available to the Commission to protect U.S. consumers from the effects of anticompetitive conduct by foreign carriers.[27] In 2006, AT&T, Sprint Nextel Corporation (Sprint) and Verizon filed a *Joint Petition for Rulemaking* requesting that the Commission remove the ISP requirements from the remaining international routes that are subject to the ISP.[28]

9. More recently in 2009, the International Bureau responded to the disruption of U.S.-international networks of AT&T and Verizon following a nearly three-fold, above-benchmark increase in termination rates on the U.S.-Tonga route. It granted a petition filed by AT&T Inc. (AT&T) and supported by Verizon Communications Inc. (Verizon) seeking protection from and remedies to the disruption of circuits on the U.S.-Tonga route. The International Bureau found that actions taken by the Tonga Communications Corporation (TCC) to disrupt the U.S.-international networks of AT&T and Verizon, for the purpose of trying to force those carriers to agree to higher termination rates, are anticompetitive and require action to protect U.S. consumers in accordance with Commission policy and precedent. The International Bureau ordered all U.S. carriers with Commission authorizations permitting the provision of facilities-based international switched voice services on the U.S.-Tonga route to suspend immediately all U.S. carrier payments for termination services to TCC.[29] On November 16, 2009, the

[24] In 2003, certain Philippines carriers disrupted the circuits on the U.S.-Philippines route of those U.S. carriers that did not agree to the demanded settlement rate increases. In response to petitions filed by U.S. carriers alleging anticompetitive conduct on the part of the Philippine carriers and in order to promote the public interest, the International Bureau, among other things, directed all U.S. carriers that provide facilities-based services to suspend payments to the Philippine carriers for terminating services until those carriers restored U.S. carriers' circuits. *Philippines Order on Review*, 19 FCC Rcd 9993; *2003 Philippines Order*, Order, 18 FCC Rcd 3519 (2003).

[25] *NPRM,* 26 FCC Rcd 7233, 7238, ¶ 8, n.27.

[26] *Id.* at 7238, ¶ 8, n.28.

[27] *Modifying the Commission's Process to Avert Harm to U.S. Competition and U.S. Customers Caused by Anticompetitive Conduct,* IB Docket No. 05-254, Notice of Inquiry, FCC 05-152, 20 FCC Rcd 14096 (2005).

[28] *Joint Petition for Rulemaking to Further Reform the International Settlements Policy*, RM-11322 (filed by AT&T Inc., Sprint and Verizon on March 13, 2006) (*Joint Petition*); *Joint Petition for Rulemaking to Further Reform the International Settlements Policy*, Public Notice, RM-11322, Report No. 2764 (rel. March 21, 2006) (*Joint Petition Public Notice*).

[29] *Petition of AT&T Inc. for Settlements Stop Payment Order on the U.S.-Tonga Route,* IB Docket No. 09-10, Order and Request for Further Comment, 24 FCC Rcd 8006 (Int'l Bur. 2009) (*Tonga Stop Payment Order*). On July 15, 2009, TCC filed an application for review of the Bureau's order. *See Petition of AT&T Inc. for Settlements Stop Payment Order on the U.S.-Tonga Route*, Application for Review, IB Docket No. 09-10 (filed July 15, 2009). AT&T and Verizon filed Oppositions to TCC's application for review. *Petition of AT&T Inc. for Settlements Stop Payment Order on the U.S.-Tonga Route,* AT&T Opposition to Application for Review, IB Docket No. 09-10 (filed July 30, 2009); *Petition of AT&T Inc. for Settlements Stop Payment Order on the U.S.-Tonga Route,* Verizon (continued….)

International Bureau released an order requiring all facilities-based carriers subject to Commission jurisdiction having an operating agreement with Digicel Tonga Limited for direct termination of U.S. traffic on the U.S.-Tonga route to suspend all termination payments to Digicel for switched voice service.[30] Tonga subsequently removed its minimum termination rate effective April 1, 2010. However, AT&T and Verizon circuits on the U.S.-Tonga route remain down as Tonga carriers continue to demand above-benchmark termination rates for inbound traffic that include a $0.051 cent per minute tax levied by Tonga.[31] TCC and Digicel continue to demand above-benchmark settlement rates.

III. DISCUSSION

10. In this Report and Order, we eliminate the ISP and apply a modified version to Cuba. Further, we amend our rules and procedures to enhance the Commission's ability to respond to foreign carriers' anticompetitive behavior in a timely and effective manner.

A. Removal of the ISP

11. We initiated this proceeding as a result of a public notice requesting comment on the *Joint Petition* filed by AT&T, Sprint and Verizon (jointly, the "Petitioners") proposing that the Commission lift the ISP from all remaining routes still subject to this regulation. No oppositions or comments were filed in response to the Commission's public notice of the Petition.[32] The Petitioners argued that removing the ISP would encourage lower rates and more flexible and innovative arrangements on all international routes.[33] They also contended that remaining competitive concerns can be addressed through the Commission's competitive safeguards.[34]

12. While the concern underlying the ISP is that foreign carriers not be permitted to discriminate against and "whipsaw" U.S. carriers or engage in other anticompetitive conduct that results in unnecessarily high rates to U.S. consumers, Petitioners argued that the ISP may increase the rates for some remaining routes by preventing U.S. and foreign carriers from negotiating lower rates. They pointed out that the Commission retains the ISP on a small number of routes and that maintaining the ISP on these routes impedes the carriers' ability to negotiate lower rates on those routes.[35] Petitioners contended that the requirements of the ISP obstruct U.S. carrier rate negotiations to a greater extent in the

(Continued from previous page)
Opposition to Application for Review, IB Docket No. 09-10 (filed July 31, 2009). *See also Petition for Protection for Anticompetitive Behavior and Stop Settlement Payment Order on the U.S.-Pakistan Route*, Public Notice, IB Docket No. 12-324, DA 12-1738 (rel. October 31, 2010).

[30] *Petition of AT&T Inc. for Settlements Stop Payment Order on the U.S.-Tonga Route*, IB Docket No. 09-10, Second Order and Request for Further Comment, DA 09-2422, 24 FCC Rcd 13769 (Int'l Bur. 2009) (*Tonga Second Order*).

[31] Letter from James J.R. Talbot, General Attorney, AT&T to Marlene H. Dortch, Secretary, Federal Communications Commission (filed October 22, 2012) (*AT&T Status Report*); Letter from Jacquelynn Ruff, Vice President, International Public Policy & Regulatory Affairs, Verizon to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission (dated October 12, 2012) (*Verizon Status Report*). *See also* Office of the United States Trade Representative, 2012 Section 1377 Review on Compliance with Telecommunications Trade Agreements, *available at* http://www.ustr.gov/webfm_send/3331.

[32] *Joint Petition for Rulemaking to Further Reform the International Settlements Policy*, Public Notice, RM-11322, Report No. 2764 (rel. March 21, 2006) (*Joint Petition Public Notice*).

[33] *Joint Petition* at 3.

[34] *Id.* at 8-10.

[35] *Joint Petition* at 2, 5, n.9.

current market because foreign carriers on ISP routes have little or no incentive to agree to symmetrical rates when they can send their U.S.-bound traffic at much lower market rates through lower refile or traffic reorigination arrangements.[36] The Petitioners further contended that, where U.S. carriers do negotiate symmetrical rate arrangements, U.S. carriers may be worse off under our current rules because they may pay higher rates to those ISP destinations than third-country carriers pay at the foreign end of ISP-exempt routes. They stated that since the implementation of the *2004 ISP Reform Order*, on the other hand, U.S. carriers have been able to negotiate commercial arrangements on routes no longer subject to the ISP, develop more efficient and innovative termination arrangements, and improve services to U.S. consumers.[37] The Petitioners further argued that U.S. carriers now compete in a largely deregulated world, and that removing the ISP from a route is more likely to lower rates than continuing the ISP on a limited number of routes.[38] They maintained that, while the Commission retained the ISP on non-benchmark compliant routes in 2004 because of higher rates and more limited development of market forces on those routes, the burdens associated with retaining the ISP on those routes now outweigh the benefits of this policy.[39]

13. In the *NPRM*, the Commission proposed to remove the ISP from all U.S.-international routes, with the exception of Cuba, which is the only international route currently listed in the Commission's "Exclusion List."[40] Policy guidelines from the U.S. Department of State (State Department) provide for the continued application of the ISP and the appropriate benchmark rate to Cuba, subject to waivers of limited duration.[41] The Commission sought comment on whether removal of the ISP from virtually all of the remaining ISP routes will, on balance, result in lower rates and otherwise benefit U.S. consumers.[42] The Commission also sought comment on whether there are any competitive concerns on a particular U.S.-international route that should be considered prior to removing the ISP from that route.

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[36] *Id.* at 2-8.

[37] *Id.* at 6.

[38] *Id.*

[39] *Id.* at 6-8.

[40] The Commission's "Exclusion List" identifies countries and facilities that are not covered by the grant of global section 214 authority under section 63.18(e)(1) of the Commission's rules. Carriers desiring to serve countries or use facilities included on the Exclusion List must file a separate application pursuant to section 63.18(e)(3). Cuba continues to be identified on the list as a country for which a separate application is required pursuant to section 63.18(e)(3). We will process applications for the provision of telecommunications services to Cuba on a non-streamlined basis and coordinate with the U.S. Department of State before acting on the application. The Commission's procedures are specified in a public notice issued on January 21, 2010 by the International Bureau, and implement revised policy guidance from the U.S. Department of State on licensing for the provision of telecommunications services between the United States and Cuba. *See Modification of Process to Accept Applications for Service to Cuba and Related Matters*, Public Notice, DA 10-112, 25 FCC Rcd 436 (Int'l Bur. 2010) (attaching letter from Ambassador Philip Verveer, U.S. Coordinator for International Communications and Information Policy, U.S. Department of State to Julius Genachowski, Chairman, Federal Communications Commission (dated Jan. 12, 2010)) (*Cuba Public Notice*).

[41] *Cuba Public Notice*.

[42] *NPRM*, 26 FCC Rcd at 7242, ¶15.

14. AT&T, Digicel, Sprint and Verizon support the removal of the ISP from all U.S.-international routes with the exception of Cuba.[43] No commenters opposed removing the ISP from these points. AT&T states that, "[a]s the result of increased global competition, the continued application of the ISP to the small number of routes still subject to this policy – accounting for less than 2 percent of U.S.-outbound international traffic – is no longer necessary to protect the U.S. market against competitive harm."[44] AT&T argues that the burdens imposed by the ISP are greater on U.S. carriers now that most U.S.-international routes are exempt.[45] Verizon states that "[s]ince the filing of the Joint Petition, the case for eliminating the ISP on the remaining routes has become even more compelling."[46] Verizon further states that, "[a]lternative technologies, in combination with the increased flexibility afforded to U.S. carriers by the Commission's prior reform efforts, have helped increase the prevalence of market driven rates overall."[47]

15. AT&T agrees that there is reasonable rationale to retain the ISP on the U.S.-Cuba route. However, AT&T proposes that the ISP should be applied in limited form on the U.S.-Cuba route.[48] AT&T supports the continued application of the non-discrimination requirement of the ISP on the route so that, "the Commission will ensure that when direct services resume, U.S. carriers have competitive access to the same termination rate arrangements."[49] AT&T expresses concern that the application of the proportionate return and symmetrical rate requirements of the ISP "would serve no purpose and would not promote the resumption of direct services with Cuba."[50] It notes that, "foreign carriers have little or no incentive to agree to symmetrical rates when they can send their U.S.-bound traffic at much lower market-based rates through refile arrangements with third party carriers."[51] The State Department "supports continued application of the nondiscrimination requirement so that all U.S. carriers are able to negotiate the same effective accounting rates with the same effective dates when direct traffic on the U.S.-Cuba route recommences."[52] The State Department further recommends that the Commission "consider whether retaining other aspects of the ISP would facilitate or hinder the resumption of such direct service."[53] Finally, it notes that if the Commission "seeks to remove the application of the current ISP on all other international routes, the State Department supports a different treatment for the Cuba route only

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[43] AT&T Comments at 3-5; Digicel Comments at 2; Sprint Comments at 2-3; Verizon Comments at 2-5; AT&T Reply at 3-4.

[44] AT&T Comments at 3-4.

[45] *Id*. at 4-5.

[46] Verizon Comments at 4.

[47] *Id*. at 4-5.

[48] AT&T Comments at 7; AT&T Reply at 3-4.

[49] AT&T Comments at 7.

[50] *Id*. at 7-8

[51] AT&T Comments at 8.

[52] Letter from Ambassador Philip Verveer, U.S. Coordinator for International Communications and Information Policy, U.S. Department of State to Julius Genachowski, Chairman, Federal Communications Commission (dated Oct. 16, 2012) ("Oct. 16, 2012 State Department Letter"). The U.S. Department of State further supports the current policy of continuing the application of the benchmark rate to the U.S. Cuba route as well as the waiver process available for the application of the benchmark rate to that route. *Id*.

[53] *Id*.

to the extent that it would not, in the FCC's view, impede the resumption of direct telecommunications services on that route."[54] No commenter identified competitive concerns on any of the other U.S.-international routes to which the ISP currently applies that we should consider prior to removing the ISP from that route.

16. We find that the record supports taking further action beyond the *2004 ISP Reform Order* and removing the ISP from virtually all remaining U.S.-international routes to which it continues to apply, except Cuba. The market has seen significant competitive growth since the Commission adopted the *1997 Benchmarks Order* and the *2004 ISP Reform Order*.[55] Further, in today's competitive market, maintaining the ISP has the opposite effect for which it was intended because it now hurts U.S. carriers' ability to negotiate competitive rates with their foreign correspondents. Foreign carriers on ISP routes no longer have the incentive to agree to pay symmetrical rates to U.S. carriers for their U.S.-bound traffic, as required by the ISP, because they can send that traffic to the United States at significantly lower market rates through traffic re-origination arrangements offered by third country foreign carriers on ISP-exempt routes between the United States and those third countries.[56] We believe that removing the ISP from the remaining U.S.-international routes will provide U.S. carriers greater flexibility to negotiate lower settlement rates on those routes. Thus, we adopt our proposal in the *NPRM* to remove the ISP from the remaining international routes with the exception of Cuba, to which we continue to apply a limited form of the ISP as well as the benchmarks policy subject to waivers.[57]

17. Telecommunications services between the United States and Cuba have been subject to historically unique circumstances. There currently is no direct telephone service between the United States and Cuba, and services are routed indirectly through other countries. We believe it is appropriate to continue to apply only part of the ISP to the U.S.-Cuba route. We agree with AT&T that continuing to apply the proportionate return and symmetric rate prongs of the ISP to the U.S.-Cuba route would likely complicate the resumption of direct telecommunications services on the route because Cuban carriers are able to continue indirect routing of U.S. traffic.[58] Accordingly, we will remove these requirements from this route. We believe, however, that the nondiscrimination prong of the ISP is essential to assuring that one U.S. carrier is not favored over another once direct service on the U.S.-Cuba route resumes. Therefore, consistent with the guidance from the State Department,[59] we will continue to apply the nondiscrimination prong of the ISP to the U.S.-Cuba route. We will continue to apply our benchmarks policy to direct U.S.-Cuba traffic subject to waiver.[60]

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[54] *Id*.

[55] *See, e.g.*, *Joint Petition* at 1. The Commission recognized many of the same market changes in the *2004 ISP Reform Order*. *See 2004 ISP Reform Order*, 19 FCC Rcd at 5717-5720, ¶¶ 18-23.

[56] *See, e.g.*, AT&T Comments at 5 (*citing* Joint Petition at 7).

[57] *IConnect Wholesale d/b/a TeleCuba Petition for Waiver of the International Settlements Policy and Benchmark Rate for Facilities-Based Telecommunications Services with Cuba*, IB Docket No. 10-95, FCC File No. ISP-WAV-20100412, Memorandum Opinion and Order, DA 11-654, 26 FCC Rcd 5217 (Int'l Bur. 2011) (*TeleCuba Waiver Decision*).

[58] AT&T Comments 7-8.

[59] Oct. 16, 2012 State Department Letter.

[60] *TeleCuba Waiver Decision*.

18. The actions that we take here are a logical outgrowth of our proposals contained in the *NPRM*.[61] While the *NPRM* proposed to retain the ISP for direct traffic to Cuba, it is reasonable to anticipate that the Commission may adopt a variation of that proposal based on comments received on the record that demonstrate that a varied approach is grounded in sound commercial considerations and would better serve to achieve overall policy goals with respect to Cuba. A goal with respect to Cuba is the re-establishment of direct telecommunication links by U.S. carriers.[62] Continued application of proportionate return and symmetric rates would make it more difficult to establish direct links with Cuba. This is because foreign carriers now have little incentive to agree to all three prongs of the ISP when they can get more favorable terms under indirect routing arrangements commonly used by both foreign and U.S. carriers. We are concerned that the goal of re-establishment of direct links may be frustrated by continued full application of the ISP to Cuba. As we stated in the *NPRM* in this proceeding, retaining the ISP may be unnecessarily burdensome on U.S. carriers in negotiating agreements to achieve lower calling rates.[63] The Bureau on delegated authority has recognized, however, the continued importance of avoiding discrimination against U.S. carriers in re-establishing links to Cuba.[64] Retention of only the nondiscrimination prong for traffic to Cuba would place all U.S carriers in a better position to negotiate direct links to Cuba. We have coordinated this approach with the State Department.

19. Because we continue to apply the nondiscrimination prong to U.S.-Cuba traffic, we will provide in our rules that the terms and conditions of any operating or other agreement relating to the exchange of services, interchange or routing of traffic and matters concerning rates, accounting rates, division of tolls, the allocation of return traffic, or the basis of settlement of traffic balances, entered into by U.S. common carriers authorized pursuant to Part 63 of the Commission's rules to provide facilities-based switched voice service on the U.S.-Cuba route in correspondence with a Cuban carrier that does not qualify for the presumption that it lacks market power in Cuba, shall be identical to the equivalent terms and conditions in the operating agreement of another carrier providing the same or similar service between the United States and Cuba. No operating or other agreement inconsistent with this requirement may become effective unless and until the U.S. carrier obtains a waiver from the Commission. This condition would also be imposed on all Section 214 authorizations for direct service to Cuba.

20. Carriers that seek waiver of this nondiscrimination requirement on the U.S.-Cuba route must submit a request to the Commission with a persuasive showing as to the public interest benefits of permitting it to enter into an agreement with a Cuban carrier with market power that contains accounting rates and related arrangements not offered by that Cuban carrier to all other U.S. carriers. Any such request for waiver shall include identification of the Cuban carrier party to the proposed agreement; a copy of the proposed agreement; the present accounting rate (if any); the new accounting rate (including any surcharges); the proposed effective date of the new agreement; a notarized statement by the carrier

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[61] *Public Service Commission of the District of Columbia v. FCC*, 906 F.2d 713, 717 (D.C. Cir. 1990) (stating that "it is well established that the exact result reached after a notice and comment rulemaking need not be set out in the initial notice for the notice to be sufficient. Rather, the final rule must be 'a logical outgrowth' of the proposed rule.").

[62] *Modification of Process to Accept Applications for Service to Cuba and Related Matters*, Public Notice, DA 10-112 (rel. Jan. 21, 2010) (Int. Bur. 2010) (attaching letter from Ambassador Philip Verveer, U.S. Coordinator for International Communications and Information Policy, U.S. Department of State to Julius Genachowski, Chairman, Federal Communications Commission (dated Jan. 12, 2010)). *See also TeleCuba Waiver Decision*, 27 FCC Rcd at 5220, ¶15.

[63] *NPRM*, 26 FCC Rcd at 7234, ¶ 1.

[64] *TeleCuba Waiver Decision*, 27 FCC Rcd at 5224 ¶ 15.

requesting the waiver that it has informed the Cuban administration that U.S. policy requires that competing U.S. carriers have access to accounting rates negotiated by the filing carrier with a Cuban carrier with market power on a nondiscriminating basis; and a statement as to the public interest reasons the Commission nevertheless should permit the proposed discriminatory accounting rate or related arrangement to go into effect. The filing carrier shall serve a copy of the waiver request on all other U.S. carriers providing switched voice services to Cuba. Any waiver request will be placed on public notice and coordinated with the U.S. Department of State.

21. Because we have removed the ISP from all U.S.-international routes except for the U.S.-Cuba route as described above, we eliminate Sections 64.1001 and 64.1002 (a)-(c) and (e) of our rules.[65] Maintaining these formal rules is unnecessary.[66] We add a provision in Section 63.22 to implement our continuing policy goal of preventing discriminatory treatment of U.S. carriers on the Cuba route. We also require any agreement reached on the U.S.-Cuba route to be consistent with this condition and filed with the Commission. We will consider such an agreement routinely available for public inspection.[67]

22. We amend and retain the requirements of Section 64.1002(d), relocating it to Part 63 of the Commission's rules.[68] This section sets forth procedures for Commission consideration of allegations of anticompetitive conduct on international routes.

23. Finally, we address Sprint's requests that the Commission make clear that the removal of the ISP has no retroactive effect. Sprint specifically "requests that the Commission clarify that elimination of the ISP in no way validates any settlement agreement previously rejected by the Commission for non-compliance with these Commission policies."[69] We confirm that our decision to remove the ISP from U.S.-international routes, with the exception of Cuba, will not have a retroactive effect on any previous application of the ISP's requirements and will not have the effect of validating any agreement previously rejected by the Commission for non-compliance with the ISP. We also clarify that in removing the ISP from the remaining U.S.-international routes, we do not amend the "No Special Concessions" rule.[70]

B. Contract Filing Requirement and Notification of Above-Benchmark Rates

24. In the *NPRM,* we proposed requiring U.S. carriers to file agreements, amendments to agreements (whether written or oral), and rates for the provision of services (hereinafter referred to collectively as "agreements") when the agreed-upon rates are above benchmark.[71] We proposed to apply the requirement to all U.S.-international routes involving any foreign correspondent,[72] dominant or non-dominant, for which U.S. outbound rates are above benchmark regardless of whether the ISP previously

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[65] 47 C.F.R. §§ 64.1001 and 64.1002(a)-(c).

[66] Eliminating these rules is consistent with and in furtherance of the Commission's ongoing effort to identify and eliminate or modify outmoded or counterproductive rules. *See* Preliminary Plan for Retrospective Analysis of Existing Rules, Nov. 7, 2011 *at* http://www.fcc.gov/document/fccs-preliminary-plan-retrospective-analysis. *See also* Exec. Order No. 13563, Improving Regulation and Regulatory Review, 76 Fed. Reg. 3821 (Jan. 18, 2011) and Exec. Order No. 13579, Regulation and Independent Regulatory Agencies, 76 Fed. Reg. 41587 (Jul. 11, 2011).

[67] 47 C.F.R. § 0.457(d)(1)(v).

[68] *See* Appendix A.

[69] Sprint Comments at 3.

[70] 47 C.F.R. § 63.14.

[71] *NPRM*, 26 FCC Rcd at 7242-43, ¶17-19.

[72] A foreign correspondent is the foreign carrier with which the U.S. carrier exchanges traffic.

had been removed from that route or benchmarks had been temporarily achieved at some point in the past. We proposed that the filing requirement also apply when any provision in the contract has the effect of bringing the settlement rate above benchmark even though the stated contract rate is at or below benchmark. We noted that maintaining a contract filing requirement for U.S. carrier agreements that are not benchmark-compliant provides a measured approach to provide the Commission continued oversight of above-benchmark routes.

25. Alternatively, rather than requiring the filing of an agreement, we requested comment on requiring U.S. carriers to file a notice of any agreement or amendment (whether written or oral) that includes rates that are above benchmark. The requirement would apply to all U.S.-international routes regardless of whether the ISP previously had been removed from that route or benchmarks had been temporarily achieved at some point in the past. Under this approach, we might require a U.S. carrier to file the agreement, amendments and rates where there is a competitive concern on a particular route or where the Commission receives a complaint from a carrier or from a consumer with respect to that route. We would not however require the filing for all routes which may have above benchmark rates. We also proposed retaining the Commission's authority to require U.S. carriers to file agreements, amendments to agreements (whether written or oral) and rates for the provision of services on international routes involving any foreign correspondent at any time and upon reasonable request.[73]

26. AT&T, Verizon and Sprint oppose the proposal that carriers file agreements that have above-benchmark rates. They argue that such a requirement is unnecessary and would be unduly burdensome as well as inconsistent with Commission policy of not requiring the filing of such agreements. Both Sprint and Verizon believe that a notification requirement would be acceptable. Sprint agrees that the Commission should be notified where, "foreign carriers require payment of termination rates higher than the Commission's benchmark."[74] Sprint notes that such a requirement would "'put the spotlight' on a foreign carrier seeking" above benchmark rates "and would likely serve to create pressure to reduce the rate."[75] Verizon states that "[t]o the extent the Commission is concerned about being able to examine the competitive effects of an agreement or amendment that includes international settlement rates which are above benchmark, this concern could readily be addressed by requiring U.S. carriers to file notice of any such agreement or amendment. . . ."[76] Verizon further notes that the notification requirement approach would "allow the Commission to request a copy of that agreement or amendment if it determines that additional investigation is warranted . . . ."[77]

27. AT&T maintains that the Commission should not require the filing or notification of above-benchmark agreements.[78] AT&T argues that it is too difficult to determine whether U.S. outbound rates are above benchmark as "[m]any correspondent agreements now include different rates for traffic terminated in different geographical areas, on fixed and mobile networks, and with different carriers in the foreign country."[79] In addition, AT&T notes there may be volume discounts that would apply once

[73] *NPRM*, 26 FCC Rcd at 7243, ¶ 18.

[74] Sprint Comments at 3 and n.6.

[75] *Id*.

[76] Verizon Comments at 8-9.

[77] Verizon Comments at 9.

[78] AT&T Comments at 8-13, AT&T Reply at 4-6.

[79] AT&T Comments at 9. *See also* AT&T Reply at 6.

particular volumes are reached within the contract period.[80] A complicating factor is that agreements are frequently of short duration.[81]

28. As stated above, the Commission has an interest in knowing about – and being able to examine – the competitive effects of an agreement or amendment that includes international settlement rates that are above benchmark. There may be instances where above-benchmark settlement rates are related to competition problems that may arise on a route, or otherwise contribute to high rates charged to consumers on that route. We agree with Sprint and Verizon that we could satisfy this interest by requiring U.S. carriers to file *notice* of any such agreement or amendment, as opposed to initially requiring the filing of the agreement itself. We believe, however, that AT&T has raised practical concerns about problems that may arise for a U.S. carrier with regard to a notice requirement that applies to all routes on a continuous basis. AT&T suggests that a continuous notice requirement applicable to all routes may place unnecessary burdens on U.S. carriers when balanced against our need for information. Because the information we require will primarily be used for investigating competition problems or high rates to consumers, information involving all routes may not be necessary. As a result, we will not adopt either alternative proposed in our *NPRM*. Rather, we will require all U.S. carriers to provide information about any above-benchmark settlement rates on an as-needed basis in connection with an investigation of competition problems on selected routes or review of high consumer rates on either multiple or selected routes. We will require U.S. carriers to provide information on request and give confidential treatment to the information pursuant to our rules.[82] On an as-needed basis, we may require U.S. carriers to file all agreements, amendments and rates with the Commission. We might exercise that authority on our own motion or where the Commission receives a complaint from a carrier or from a consumer with respect to a specific international route.[83]

29. We find that this approach appropriately balances the Commission's need to have notice of above-benchmark rates to prevent and protect against potential anticompetitive behavior while minimizing the burden on U.S. carriers. Finally, we continue to reserve the right to require the filing of particular contracts when presented with evidence of a violation of the "No Special Concessions" rule or of other anticompetitive behavior related to these matters on a particular route.[84]

C. Enhanced Competitive Safeguards

30. Because removing the ISP eliminates a tool the Commission has used to protect U.S. carriers and consumers from anti-competitive conduct, we sought comment in the *NPRM* on ways to improve our competitive safeguards procedures and remedies to allow the Commission to respond to competitive concerns in a more timely, efficient and tailored manner. The *NPRM* sought comment on the issues, alternatives and proposals with respect to the application of our rules to safeguard competition and our benchmarks policy.[85]

[80] AT&T Comments at 10.

[81] *Id*.

[82] *See* 47 C.F.R. § 0.459.

[83] *2004 ISP Reform Order*, 19 FCC Rcd at 5723-28, ¶¶ 27-38.

[84] *Id.* at 5736, ¶ 58.

[85] *NPRM*, 26 FCC Rcd at 7243-49, ¶22-48.

1. Presumption of Anticompetitive Behavior

31. In the *NPRM,* we noted that the Commission sought to give U.S. carriers greater flexibility to negotiate commercial arrangements with foreign carriers by exempting benchmark-compliant U.S.-international routes from the ISP in the *2004 ISP Reform Order*.[86] By encouraging market-based arrangements, the Commission sought to promote greater competition in the U.S.-international market and ensure more favorable calling rates for U.S. consumers.[87] The Commission recognized, however, the need to protect competition and respond to anticompetitive conduct. Thus, the Commission identified three indicia of anticompetitive conduct: (1) increasing settlement rates above benchmarks, (2) establishing rate floors, even if below benchmarks, that are above previously negotiated rates, or (3) threatening or carrying out circuit disruptions to achieve rate increases or changes to the terms and conditions of termination agreements.[88] Additionally, the Commission established a rebuttable presumption of harm to the public interest if U.S. carriers demonstrate in their petitions that they have suffered network disruptions by foreign carriers with market power in conjunction with their allegations of anticompetitive behavior or "whipsawing."[89]

32. In the *NPRM*, we sought further comment on what additional acts, if any, the Commission should presume to constitute anticompetitive behavior.[90] Specifically, we sought comment on AT&T's and MCI's proposals that the Commission should utilize a broad definition of the types of circuit disruptions that the Commission should presumptively treat as anti-competitive conduct.[91]

33. We noted that, in the *2004 ISP Reform Order*, the Commission found that blockage or disruption of U.S. carrier networks by foreign carriers directly harms the public interest and leads to decreases in call quality or completion and to potential increases in calling prices.[92] The Commission further found that resorting to such retaliatory abuse of market power against U.S. carriers, as opposed to resolving disagreements through commercial negotiations, is unlikely to ever be appropriate or justified in the public interest and does not promote the provision of international services to consumers in the United States or abroad. As a result, the Commission established a rebuttable presumption of harm to the public interest if U.S. carriers demonstrate in their petitions that they have suffered network disruptions by foreign carriers with market power in conjunction with their allegations of anticompetitive behavior.

34. We sought comment on whether the presumption that circuit blockages constitute anticompetitive behavior should be extended to partial circuit blockages.[93] Likewise, we sought comment on whether there should be a presumption that threats of circuit blockage should be considered anticompetitive and whether the complaining carrier should be required to provide evidence of the threat and its anticompetitive nature.[94] We sought comment on the notion that not all attempts to refuse or limit

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[86] *Id.* at 7244, ¶ 24.

[87] *2004 ISP Reform Order,* 19 FCC Rcd at 5711, ¶ 2.

[88] *Id.* at 5730-31, ¶ 44.

[89] *Id*. at 5731, ¶ 45.

[90] *NPRM*, 26 FCC Rcd at 7244, ¶ 25.

[91] *Id*. (*citing* AT&T Comments at 5-10; MCI Comments at 5, 7).

[92] *NPRM*, 26 FCC Rcd at 7244, ¶ 26 *(citing 2004 ISP Reform Order*, 19 FCC Rcd at 5731, ¶ 45).

[93] *Id.* at 7245, ¶ 27.

[94] *Id.* at 7245, ¶ 28.

traffic termination constitute anticompetitive behavior.[95] We also sought comment on what evidence a complaining carrier should present in its complaint.[96]

35. Both AT&T and Sprint state that all types of partial circuit blockages, or threats to undertake such action, harm the public interest and constitute anticompetitive conduct if undertaken within the context of rate negotiations.[97] Verizon disagrees and states that the Commission should not extend the presumption of anticompetitive conduct to include circuit disruptions, partial circuit blockages, or threats of circuit blockages and should, instead address such issues on a case-by-case basis.[98] Based on our experience,[99] and the record in this proceeding, we find that similar to complete circuit blockages, partial circuit blockages and threats of circuit blockages are unlikely ever to be appropriate or justified in the public interest and do not benefit the provision of international services to consumers in the United States or abroad. Accordingly, we will adopt the presumption that partial circuit blockages and threats of circuit blockages, like circuit blockages, constitute anticompetitive behavior. We also adopt a case specific approach in response to Verizon's concern that such issues should be addressed on a case-by-case basis. If a U.S. carrier believes it has been subjected to such anticompetitive conduct, and desires Commission intervention, that carrier will need to demonstrate through correspondence, declarations, affidavits or other evidence that the circuit were blocked with the intent of forcing unwarranted rate increases or other onerous terms or conditions on U.S. carriers.[100]

36. AT&T also argues that unreasonable contract terminations have a similar adverse potential impact on U.S. competition as the blockage of traffic.[101] AT&T further states that foreign carriers can abuse their market power when they force U.S. carriers to accept unreasonable conditions in operating agreements, such as conditions allowing termination of those agreements on very short notice, or prohibiting the use of third country routing arrangements to avoid an unreasonably high inbound rate.[102] We agree that there are many potential forms of market power abuse that can occur during contract negotiations, and we will review such allegations on a case-by-case basis.

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[95] *Id.* at 7245, ¶ 29 (*citing* MCI Comments at 4-6, 6 at n.15, 8).

[96] *Id.* at 7245, ¶¶ 27-28.

[97] AT&T Comments at 14, Sprint Comments at 4.

[98] Verizon Comments at 11-12. Verizon asserts that there may be a variety of reasons for circuit blockage or threatened circuit blockages that are separate from the negotiation process. Thus, Verizon prefers a case-by-case approach. *Id*. AT&T disagrees stating that such actions "harm the public interest where they are threatened or undertaken in connection with rate negotiations, or in an effort to force acceptance of unreasonable terms and conditions that would support foreign carrier efforts to increase rates, such as a restriction on the use of third country routing arrangements. As a presumption based on those circumstances would not reach actions by the foreign carrier that were 'completely divorced from the negotiation process,' Verizon's objections to the use of expanded safeguards on those grounds (p. 12) are misplaced." AT&T Reply at 8.

[99] *See, e.g.*, *Tonga Stop Payment Order*, 24 FCC Rcd 8006; *Tonga Second Order*, 24 FCC Rcd 13769; *Philippines Order on Review*, 19 FCC Rcd 9993; *2003 Philippines Order*, 18 FCC Rcd 3519; *Argentina Order*, 11 FCC Rcd 18014.

[100] AT&T Comments at 15; Sprint Comments at 4.

[101] AT&T Comments at 15.

[102] *Id*. at 15.

2. Procedure

a. Complaint Process

37. Pursuant to the *2004 ISP Reform Order,* and under the Commission's current rules, the Commission may respond to anticompetitive behavior in response to complaints or petitions filed by U.S. carriers or other affected parties alleging anticompetitive behavior on a U.S.-international route that will harm U.S. consumers.[103] If the Commission responds to a complaint or petition, the Commission considers these complaints and petitions on a case-by-case basis following issuance of a public notice.[104] If U.S. carriers or other parties can demonstrate harm to U.S. competition or U.S. consumers, the Commission may find that the actions of the foreign carrier with market power (or a group of foreign carriers that collectively have market power) constitute anticompetitive behavior.[105] We sought comment on the effectiveness of this complaint process, including the appropriateness of the current pleading cycle in the *NPRM*.[106]

38. In addition, we considered the terms and procedures under which the Commission may act on its own motion to address anticompetitive behavior.[107] We proposed that the Commission should maintain its ability to act on its own motion because the Commission's objective to protect consumers could be hindered without this ability.[108] We sought further comment on certain procedures to expedite Commission action to respond more effectively and to prevent anticompetitive behavior.

39. AT&T supports the proposal that the Commission maintain the ability to act on its own motion in response to anticompetitive conduct by foreign carries.[109] However, AT&T maintains that the Commission should allow disputes to be resolved commercially wherever possible, be hesitant to intervene if a U.S. carrier does not request such action, and only intervene under compelling circumstances.[110] AT&T agrees with the Commission approach of intervening directly with foreign regulators, but contends that such government-to-government contacts should not preclude the use of other remedies.[111]

40. Verizon notes that in the cases where there is anticompetitive conduct, the trend in recent years has been conduct that has involved foreign governments' mandating higher termination rates or imposing taxes and fees on incoming international traffic.[112] Thus, Verizon argues that the Commission cannot readily resolve these types of issues by imposing remedies with the goal of ending the anticompetitive conduct. Instead, Verizon argues that the Commission should rely on government-to-

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[103] 47 C.F.R. § 64.1002(d); *2004 ISP Reform Order*, 19 FCC Rcd at 5732-5733, ¶¶ 39-52. Under our rules, a petitioning carrier must file its commercial agreements with its petition in order to give all interested parties, including foreign carriers or governments, an opportunity to comment. *Id.* at 5732-33, ¶ 50.

[104] *Id*.

[105] *Order on Review*, 19 FCC Rcd 9993; *2003 Bureau Order*, 18 FCC Rcd 3519.

[106] *NPRM*, 26 FCC Rcd at 7245, ¶ 30.

[107] *Id*. at 7246, ¶ 31.

[108] *NPRM*, 26 FCC Rcd at 7246, ¶ 31 (*citing 2004 ISP Reform Order,* 19 FCC Rcd at 5730, 5734, ¶¶ 44, 52).

[109] AT&T Comments at 17.

[110] *Id*.

[111] *Id*. at 17-18.

[112] Verizon Comments at 13.

government resolution of these issues. AT&T disagrees with Verizon that there is no need for additional remedies and procedures. AT&T argues that, when possible, the Commission should allow disputes to be resolved commercially and that the Commission should use government-to-government resolution as a first response.[113] However, AT&T further notes that there is "no basis for confidence that all disputes will be resolved through such action as Verizon contends."[114]

41. We adopt the proposal in the *NPRM* that the Commission maintain its ability to act on its own motion because the Commission's objective to protect consumers could be hindered without this ability.[115] We generally agree with AT&T's suggestion that the Commission not be quick to intervene in the negotiation process where a U.S. carrier does not request such action and we will carefully consider such action on a case-by-case basis. We reject Verizon's argument that the Commission should limit its actions to only government-to-government resolution. Commission action is one aspect of a coordinated U.S. government effort to end anticompetitive conduct on an international route. We share AT&T's concern that such resolution likely will not be sufficient in all circumstances to prevent and protect against anticompetitive behavior on a U.S.-international route. We find it would be detrimental to remove our ability to protect consumers and respond to competitive concerns without maintaining our ability to act on our own motion.

b. Comment Cycle

42. The current pleading cycle for U.S. carrier petitions requesting Commission intervention on a particular route is ten days for comments and seven days for replies.[116] We sought comment on whether a different timeline would be preferable. Several commenters to the *2005 NOI* proposed that the Commission adopt a shorter comment cycle of five days for comments and two for replies to allow the Commission to respond more quickly to carriers' complaints.[117] CANTO argued, however, that a shorter pleading cycle would make it more difficult for a foreign carrier to participate meaningfully in the proceeding, which would therefore make it more difficult for the Commission to evaluate allegations of anticompetitive conduct.[118] AT&T responded that expedited procedures would be consistent with due process requirements.[119] The *NPRM* sought comment on maintaining the existing pleading cycle, which the *NPRM* noted appears to appropriately balance the need for the Commission to act quickly when presented with evidence of anticompetitive behavior given current market realities and the interest in receiving full information and allowing the foreign carrier to participate meaningfully in the proceeding.

43. Sprint argued that the Commission should be prepared to grant relief on an immediate, *ex parte* basis to be effective.[120] Sprint maintained that a pleading cycle with time for comments, replies and an explanatory decision will not be effective because in that amount of time circuits can be blocked, coerced arrangements signed and U.S.-international traffic shifted from the blocked to the unblocked

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[113] AT&T Reply at 8.

[114] *Id*. at 8 (*noting* that in the Tonga dispute cited by Verizon, the Tonga government has removed its mandated rate increase but TCC continues to disrupt U.S. carrier circuits).

[115] *NPRM*, 26 FCC Rcd at 7246, ¶ 31 (*citing 2004 ISP Reform Order,* 19 FCC Rcd at 5730, 5734, ¶¶ 44, 52).

[116] *See* 47 C.F.R. § 64.1002(d); *2004 ISP Reform Order*, 19 FCC Rcd at 5733, ¶ 51.

[117] AT&T Comments at 11; JCTA Comments at 2-3; and MCI Comments at 8.

[118] CANTO Comments at 10-11; CANTO Reply at 4.

[119] AT&T Reply at 8.

[120] Sprint Comments at 4-5.

carriers.[121] We noted in the *NPRM* that section 64.1002(d) already provides for Commission grant of relief on an immediate basis (*i.e*., without comment and reply).[122] We sought comment on when, and under what circumstances, the Commission should exercise this authority.

44. AT&T maintains that the Commission should be prepared to "impose immediate relief on an *ex parte* basis under Rule 64.1002(d) where a U.S. carrier demonstrates there is a credible threat of imminent circuit disruption or other circumstances that require immediate action."[123] Verizon states that the Commission's current complaint process and pleading cycle are generally appropriate to address allegations of anticompetitive conduct by a foreign carrier.[124]

45. After considering the record of this proceeding, we believe that the existing pleading cycle appropriately balances the need for the Commission to act quickly when presented with evidence of anticompetitive behavior and the interest in receiving full information and allowing the foreign carrier to participate meaningfully in the proceeding. Accordingly, in most cases we will set ten days for comments and seven days for replies. We note, however, that we have the ability to impose immediate relief on an *ex parte* basis under Rule 64.1002(d) where a U.S. carrier demonstrates there is a credible threat of imminent circuit disruption or other circumstances that require immediate action.

c. Public Notice and Notice to Foreign Carriers

46. In the *NPRM,* we noted that, consistent with court and Commission precedent, formal notification to the foreign carriers is not required when a U.S. carrier notifies or petitions the Commission regarding alleged anticompetitive conduct of a foreign carrier.[125] We proposed to adopt a requirement that a U.S. carrier should make a reasonable attempt to serve the subject foreign carrier at the time the U.S. carrier files a request for action under section 64.1002(d), but we also stated such a requirement would not prevent us from acting to prevent harm from anticompetitive behavior on a route. The *NPRM* requested input regarding whether we should release a public notice upon a formal request for Commission intervention by a U.S. carrier. The public notice of the formal request could reference the U.S. carrier's prior notification. No comments were filed on this issue.

47. We hereby adopt our proposal requiring a U.S. carrier to make a reasonable attempt to serve the subject foreign carrier at the time the U.S. carrier files a request for action. We note, however, that if a U.S. carrier is unable to effect proper service on the foreign carrier, that will not prevent us from acting to prevent harm from anticompetitive behavior on a U.S.-international route. Upon receipt of a notification or petition, we will expeditiously place such request on public notice. We find that adopting such a proposal properly balances the interests of fairness with our interest in being able to act in a timely manner to prevent harm from anticompetitive behavior.

d. Notice to Commission

48. In the *NPRM,* we sought comment on how quickly U.S. carriers should be required to report circuit blockages. We also sought comment on what other reporting requirements might alert us to potential anticompetitive behavior on a U.S.-international route in a timely manner. Verizon argues that

[121] *Id*. at 3-6.

[122] 47 C.F.R. §64.1002(d).

[123] AT&T Comments at 16.

[124] Verizon Comments at 13.

[125] *See Cable & Wireless v. FCC*, 166 F.3d 1224 (D.C. Cir. 1999); *Philippines Order on Review* and *2004 ISP Reform Order.*

the Commission should be careful about establishing such a requirement. Verizon maintains that carriers should be given time to resolve disputes without needing to resort to the administrative process.[126]

49. As a general matter, we encourage U.S. carriers to attempt to resolve disputes before seeking regulatory administrative processes. However, as we concluded and discussed above, circuit blockages, full or partial, as well as threats of circuit blockages are presumptively anticompetitive. As such, notice should be given to the Commission so it has the opportunity to be aware of potential anticompetitive behavior on the part a foreign carrier on a U.S.-international route. Indeed, this presumption of anticompetitive behavior was supported by AT&T and Sprint. Therefore, we encourage U.S. carriers to notify us as soon as possible upon partial or full circuit blockage on a U.S.-international route or upon credible threat of such action. We would then have the opportunity to coordinate with other U.S. government agencies and address the situation on a case-by-case basis that could appropriately allow the parties additional opportunity to resolve the dispute or could require additional Commission action as needed.

3. Remedies

50. In the *NPRM,* the Commission noted that upon a finding of anticompetitive behavior, we may direct U.S. carriers to renegotiate with foreign carriers, direct U.S. carriers to withhold payment to foreign carriers, or restrict U.S. carriers from paying a specific rate.[127] The Commission may also reinstate the requirements of the ISP on a route from which it has been lifted.[128] In the event significant, immediate harm to the public interest is likely to occur that cannot be addressed through *ex post facto* remedies, our rules allow us to impose temporary requirements on U.S. carriers without prejudice to our findings on such petitions.[129] Commenters to the *2005 NOI* suggested a variety of additional potential remedies that the Commission may use upon a finding of anticompetitive behavior by a foreign carrier. The Commission sought comment on each potential remedy.

51. Verizon generally opposes any new proposed remedies and argues that they are ill-suited for resolving the problems likely to be encountered in the international market as the remedies as the proposed remedies are directed at U.S. carriers.[130] Verizon argues that the "trend in recent years has been conduct that has involved foreign government's mandating higher termination rates or imposing taxes and fees on incoming international traffic."[131] Verizon cites the case in Tonga as an example and argues that these cases are most efficiently dealt with via government-to-government resolution.[132] AT&T disagrees with Verizon and argues that the Tonga case demonstrates that we cannot solely rely on every dispute being resolved through government-to-government action. Even though the Tongan government removed its mandated rate increase following the issuance of two stop payment orders by the Commission and additional action by the Office of the United States Trade Representative (USTR), the Tongan carrier

[126] *Id*. at 14.

[127] *See*, *e.g.*, *2004 ISP Reform Order*, 19 FCC Rcd at 5731-32, ¶ 47.

[128] *Id*.

[129] 47 C.F.R. § 64.1002(d).

[130] Verizon Comments at 12.

[131] *Id*. at 12-13.

[132] *Id*. at 13.

TCC continues to disrupt U.S. carrier circuits in a further effort to force agreement to unreasonably high rates.[133]

52. As noted above, the Tonga matter continues to be unresolved since AT&T and Verizon circuits remain down and the Tonga carrier demands above benchmark rates. We agree with AT&T and find that the Commission should not limit its actions to government-to-government communication when responding to anticompetitive behavior on the part of a foreign carrier since other actions may be necessary to resolve cases of anticompetitive conduct. The Commission should have available different remedies to respond to anticompetitive action following consultation with other U.S. government agencies as appropriate. Alternative remedies would be available as part of U.S. strategy in responding to an anticompetitive situation. We discuss each potential remedy below.

a. Prohibit Increased Payments

53. In the *NPRM*, the Commission noted that some *NOI* commenters suggested that the Commission should respond to threats of or actual anticompetitive behavior by prohibiting any increase of payments to a foreign carrier engaging in anticompetitive conduct until such conduct ceases, while others oppose this approach as inappropriate interference in commercial negotiations.[134] The Commission sought comment on whether this remedy is appropriately tailored in most circumstances to prevent a foreign carrier from receiving a benefit as a result of its anticompetitive behavior while allowing continued payments at the preexisting rate. One potential benefit of this remedy is that it could create an environment in which the parties might be more likely to keep circuits open during ongoing negotiations. The Commission proposed this to be the remedy of choice under most circumstances when there is anticompetitive behavior on a U.S.-international route. The Commission sought comment on this proposal and sought additional comment on when this remedy might be less appropriate and/or fail to provide the proper incentive for a foreign carrier to cease anticompetitive behavior.

54. AT&T supports prohibitions on increased payments where circuits are not disrupted but the foreign carrier threatens to take such action if a demanded rate increase is not agreed to because the parties may be more likely to keep circuits open under those circumstances.[135] However, in the event the foreign carrier proceeds to disrupt circuits notwithstanding the prohibition on increased payments, AT&T states the most appropriate remedy is the use of a full stop payment order to exert greater pressure on the foreign carrier to resume service.[136] AT&T suggests that the Commission treat the prohibition of increased payments as merely one of several potential enforcement tools that may be applied based on the facts of each situation.[137] Sprint argues that the remedy of choice in most circumstances of anticompetitive behavior should be an order prohibiting any increase in termination payments to the foreign carrier engaged in threats of circuit disruption.[138]

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[133] AT&T Reply at 8 (references omitted).

[134] AT&T Comments at 16-18; JCTA Comments at 4 (supporting Commission prohibition of payment increases to a foreign carrier); CANTO Comments at 5-6 (opposing Commission prohibition of payment increases to a foreign carrier).

[135] AT&T Comments at 18.

[136] *Id*. at 19.

[137] AT&T Reply at 9.

[138] Sprint Comments at 4.

55. In light of the arguments presented, we believe that we should not make the prohibition of increased payments our remedy of choice under most circumstances, but rather treat this remedy as one of several potential enforcement tools that may be applied based on the facts of each situation. We find that a case-by-case analysis will allow us to determine the appropriate remedy for the particular circumstance.

b. Increase U.S. Inbound Rates

56. In the *NPRM*, the Commission noted that several *NOI* commenters proposed that the Commission require U.S. carriers to increase inbound rates when a foreign carrier unreasonably increases termination rates.[139] The Commission did not propose this as a potential remedy based on the previous record established, but did seek comment on how this remedy may work and when it may be appropriately used. Sprint is the only commenter on this issue, arguing that U.S.-inbound rates are either inappropriate or inadequate by itself as an effective remedy.[140] We agree, and therefore will not implement increasing U.S.-inbound rates as a potential remedy at this time.

c. Reimpose ISP

57. In the *NPRM*, the Commission noted that several *NOI* commenters opposed the use of reimposition of the ISP as a remedy.[141] Because the *NPRM* proposed both to remove the ISP from all but one route and to strengthen our ability to effectively respond to instances of anticompetitive behavior, we concluded that the reimposition of the ISP as a potential remedy would not be appropriate and sought comment on this issue. AT&T argues that reimposition of the ISP would likely be burdensome for U.S. carriers and would obstruct the resumption of normal commercial relations.[142] Sprint also opposes reimposition of the ISP.[143] We agree with the proposal in the *NPRM* and with commenters that the reimposition of the ISP as a potential remedy would not be appropriate, and therefore will not consider this as an appropriate remedy.

d. Government-to-Government Communication

58. Some *NOI* commenters argued that government-to-government communication should be the Commission's preferred response when there are concerns regarding anticompetitive behavior.[144] The *NPRM* noted that the Commission should not be limited to such government-to-government communication when responding to anticompetitive behavior on the part of a foreign carrier, and it proposed to continue to coordinate our actions with overall U.S. government actions as in the past when a foreign carrier has disrupted the circuits of U.S. carriers.

59. Sprint argues that government-to-government communication is either inappropriate or inadequate by itself as a remedy.[145] As mentioned above, Verizon argues that the trend in recent years has been conduct that has involved foreign government's mandating higher termination rates or imposing

[139] AT&T *NOI* Comments at 19; MCI *NOI* Comments at 13-14; JCTA *NOI* Comments at 3; AT&T *NOI* Reply at 11.

[140] Sprint Comments at 5.

[141] AT&T Comments at 18-19; Sprint Comments at 6-7; AT&T Reply at 10-11; CANTO Reply at 8.

[142] AT&T Comments at 20.

[143] Sprint Comments at 5.

[144] CANTO *NOI* Comments at 5; Digicel *NOI* Comments at 4; CANTO *NOI* Reply at 2-3. *See also* AT&T *NOI* Comments at 12-14.

[145] Sprint Comments at 5.

taxes and fees on incoming international traffic.[146] Verizon argues that these cases are most efficiently dealt with via government-to-government resolution.[147] AT&T disagrees, maintaining that the Commission cannot solely rely on all disputes being resolved through government-to-government action.

60. The Commission has in the past and will continue in the future to use government-to-government communication in appropriate circumstances, and will do so in coordination with the U.S. Department of State and USTR. An important aspect of any coordinated effort will continue to be the option of regulatory action in response to anticompetitive conduct by a foreign carrier on an international route. As demonstrated in the Tonga case, we should not be limited to government-to-government communication when responding to anticompetitive behavior on the part of a foreign carrier since other actions may be necessary to resolve cases of anticompetitive conduct.

e. 214 Authorizations

61. In the *NPRM,* the Commission proposed to maintain our authority to revoke or place limitations on section 214 authorizations in instances where the carrier or its affiliate is engaging in anticompetitive behavior. The Commission sought comment on what circumstances should trigger such revocations or limitations.[148] AT&T notes that the Commission has the authority to revoke section 214 authorizations to address anticompetitive conduct. AT&T only supports this remedy where the sanctioned conduct involves the section 214 licensee and such a remedy is necessary to protect the interests of U.S. consumers.[149] Sprint argues that the remedy of revoking or placing limitations on the section 214 authorization of a foreign carrier or its U.S. affiliate is a severe remedy, and should be reserved for cases of sustained circuit disruption or other egregious behavior by the section 214 authorization holder's foreign affiliate.[150]

62. We find that the public interest will be served by continuing to maintain our authority to revoke or place limitations on section 214 authorizations in instances where the carrier or its foreign affiliate is engaging in anticompetitive behavior. However, we agree with Sprint that such a remedy should be reserved for cases of sustained circuit disruption or other egregious behavior.

f. Prohibit Termination of Traffic

63. In its *NOI* comments, MCI suggested that the Commission prohibit U.S. carriers from carrying or terminating traffic of foreign carriers found to be acting anticompetitively.[151] MCI argued that this prohibition would raise the foreign carrier's costs and counter the perceived benefits of anticompetitive behavior.[152] Although the Commission encourages parties to keep circuits open while negotiating the terms of an operating agreement, the *NPRM* proposed to include this prohibition as a potential remedy, and we sought comment on what circumstances or anticompetitive activity might warrant such a remedy. AT&T notes that while "this remedy might be potentially helpful, it is unclear

[146] Verizon Comments at 12-13.

[147] *Id*. at 13.

[148] *See, e.g.,* 47 C.F.R. 63.10(e) (requiring that a foreign carrier's settlement rates be at or below benchmark as a condition of allowing a U.S. affiliate to provide U.S.-international service between the United States and any foreign country where the foreign carrier possesses market power).

[149] AT&T Comments at 19.

[150] Sprint Comments at 5.

[151] MCI *NOI* Comments at 13-14.

[152] *Id*.

whether it could be fully enforced in today's international market in view of the widely available least cost routing opportunities allowing a foreign carrier to send U.S. traffic via third countries and thus making identification of such traffic more difficult."[153] Sprint expressed skepticism regarding the effectiveness of this proposed remedy as "foreign carriers have the ability to re-originate such traffic through intermediate carriers such that their traffic would thus be terminated in any case."[154]

64. We share commenters' concerns that such a remedy may not be effective due to the wide availability of least cost routing opportunities. Nonetheless, we will include the prohibition to carry or terminate traffic as a potential remedy to be used as appropriate in circumstances where it could prevent or minimize anticompetitive behavior on a U.S.-international route.

g. Full Stop Payment Orders

65. Some *NOI* commenters noted that a full stop payment order, a remedy that the Commission has used in the past when a carrier is found to be engaging in anticompetitive behavior,[155] can be counterproductive.[156] The Commission acknowledged in the *NPRM* that although a full stop payment order has limitations and, in some circumstances, could hinder negotiations to re-open circuits,[157] it can be an effective tool to address anticompetitive conduct. Accordingly, in the *NPRM,* the Commission proposed to maintain this as a potential remedy and sought comment on this proposal. The Commission also asked under what circumstances a full stop payment order would be an effective remedy and under what circumstances it would be counterproductive.

66. AT&T supports the use of a full stop payment order to exert greater pressure on the foreign carrier to resume service in the event a foreign carrier disrupts circuits notwithstanding the prohibition on increased payments.[158] It notes that "full stop payment orders are generally the most appropriate remedy where the Commission is responding to actual, rather than threatened, circuit disruption."[159] Sprint also supports a full stop payment order as a potentially effective remedy to sustained anticompetitive conduct that is directed at one or more, but not all, U.S. carriers.[160] Based upon our experience with full stop payment orders and the record, we continue to believe that full stop payment orders are an appropriate

[153] AT&T Comments at 20.

[154] Sprint Comments at 5.

[155] *See generally Philippines Order on Review*, 19 FCC Rcd at 9993, ¶¶ 1-2; *2003 Philippines Bureau Order*, 18 FCC Rcd at 3519, ¶ 1.

[156] AT&T *NOI* Reply at 10; CANTO *NOI* Reply at 8.

[157] In the *NPRM,* the Commission noted, however, that both AT&T and Verizon requested such action with respect to the Tonga route in 2008. *See Petition of AT&T Inc. for Settlements Stop Payment Order on the U.S.-Tonga Route,* IB Docket No. 09-10, Order and Request for Further Comment, 24 FCC Rcd 8006 (Int'l Bur. 2009) (*Tonga Stop Payment Order*). TCC filed an application for review of the *Tonga Stop Payment Order*. *Petition of AT&T Inc. for Settlements Stop Payment Order on the U.S.-Tonga Route,* TCC Application for Review, IB Docket No. 09-10 (filed July 15, 2009). AT&T and Verizon filed oppositions to TCC's Application for Review. *Petition of AT&T Inc. for Settlements Stop Payment Order on the U.S.-Tonga Route,* AT&T Opposition to Application for Review, IB Docket No. 09-10 (filed July 30, 2009); *Petition of AT&T Inc. for Settlements Stop Payment Order on the U.S.-Tonga Route,* Verizon Opposition to Application for Review, IB Docket No. 09-10 (filed July 31, 2009).

[158] AT&T Comments at 19.

[159] *Id*. at 19.

[160] Sprint Comments at 5-6.

remedy, and we will maintain full stop payment orders as a potential remedy to be used on a case-by-case basis.

h. “No Payment Orders”

67. In its *NOI* comments, Sprint proposed that the Commission establish a remedy of no-payment by all U.S. carriers for a specified period for any international traffic terminated with a foreign carrier (including refiled traffic through third party carriers) upon a finding that any U.S. carrier had its circuits blocked as a result of the foreign carrier’s whipsawing behavior.[161] The *NPRM* requested further comment on Sprint’s proposed remedy of a “no payment” order. In the *NPRM,* the Commission sought comment on the circumstances under which the use of a “no payment” order might be appropriate.

68. Sprint argues that a Commission order directing U.S. carriers to stop payments, including payments for refiled traffic through third party carriers, to an offending carrier could be an effective remedy to sustained anticompetitive conduct that is directed at one or more, but not all, U.S. carriers.[162] We decline at this time to adopt Sprint’s no payment order as a potential remedy.

i. WTO

69. One commenting party to the *NOI* argued that if the Commission believes that a country has adopted a surcharge in violation of its WTO commitments, the only appropriate place to raise that concern would be through WTO enforcement mechanisms.[163] The *NPRM* noted, however, that the Commission is not limited to relying on WTO dispute resolution procedures to respond to whipsawing behavior.[164] Indeed, the D.C. Circuit has affirmed that the Commission has authority to address such behavior by applying necessary safeguards to a route.[165] In the *NPRM*, the Commission proposed to retain the ability to exercise this authority if there also appears to be a WTO violation in connection with the alleged anticompetitive behavior.

70. Sprint argues that a WTO complaint is either inappropriate or inadequate by itself as an effective remedy.[166] Based upon our experience and relevant case law, we confirm that we are not limited to relying on WTO dispute resolution procedures to respond to whipsawing behavior.[167] As previously affirmed by the D.C. Circuit, we have the authority to address such behavior by applying necessary

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[161] Sprint NOI Comments at 5-6. In its NOI Comments, Sprint stated that “[t]o be effective, this remedy would apply to direct, bilateral arrangements between U.S. carriers and the blocking foreign carrier, and also to “re-filing,” *i.e.*, U.S. carriers would be required to notify third-party non-U.S. international carriers that they would not be compensated for any traffic passed to them for termination in a country where a U.S. carrier’s circuits were blocked.” Sprint NOI Comments at 5, n.6.

[162] *Id*. at 5-6.

[163] Cable and Wireless Jamaica *NOI* Comments at 10.

[164] AT&T Reply at 12.

[165] *See, e.g., Cable & Wireless P.L.C.*, 166 F.3d 1224, 1226-1227 (D.C. Cir. 1999) (“The FCC has long sought to protect U.S. carriers and U.S. consumers from the monopoly power wielded by foreign telephone companies in the international telecommunications market.”). *See also* AT&T Reply at 12.

[166] *Id*. at 5.

[167] AT&T Reply at 12.

safeguards to a route,[168] and we retain our ability to exercise this authority if there also appears to be a WTO violation in connection with the alleged anticompetitive behavior.

D. Other Issues

71. Finally, commenters to the *NOI* and U.S.-Tonga proceeding have alleged that U.S. carriers have failed to decrease retail calling rates in proportion to the decrease in settlement rate reductions.[169] They contend that failure to decrease retail calling rates in proportion to any settlement rate reduction harms U.S. consumers and carriers in foreign countries because U.S. consumers pay higher rates than necessary. This, in turn, results in lower traffic volumes and reduced terminating revenues for foreign carriers on the relevant international route.[170] U.S. carriers disputed this argument as discussed in the *NPRM*. Specifically, U.S. carriers maintained that they have fully passed through reductions in settlement rates, and that carrier price reductions have exceeded their reductions in settlement costs by more that 160% in a six-year period.[171] Sprint stated that the pass-through argument fails to take into account the fact that international carriers incur costs other than transit and termination costs such as those for marketing, customer acquisition and retention, bad debt, and fraud.[172] Another carrier argued that the international telecommunications market is so competitive that carriers cannot price services significantly above their marginal costs without losing consumers to competing providers.[173] It stated that the appropriate response to concerns over U.S. carrier rates to U.S. consumers would be not to condone anticompetitive practices by foreign carriers.[174] Other carriers argued that the rates U.S. carriers charge to U.S. consumers have no relevance to the Commission's determination of whether a foreign carrier has acted anticompetitively.[175]

72. In the *NPRM,* the Commission observed that, based on section 43.61 traffic and revenue data filed by U.S. carriers, on average, U.S. carriers appear to have been flowing through settlement rate reductions in U.S.-international calling rates. Data showed that from 1996 to 2009 (comparing the year before the FCC adopted benchmarks to the most recent year for which data are available), the average IMTS settlement rate paid by U.S. carriers decreased by $0.37 per minute, while the average IMTS revenue per minute (an estimate of the average U.S.-international calling rate) decreased by $0.66 per

[168] *See, e.g., Cable & Wireless P.L.C.*, 166 F.3d 1224, 1226-1227 (D.C. Cir. 1999) ("The FCC has long sought to protect U.S. carriers and U.S. consumers from the monopoly power wielded by foreign telephone companies in the international telecommunications market."). *See also* AT&T Reply at 12.

[169] *NPRM*, 26 FCC Rcd at 7253, ¶ 59 (*citing* Cable and Wireless Jamaica *NOI* Comments at 15-16; CANTO *NOI* Comments at 11; Digicel *NOI* Comments at 4-5 and Digicel Comments in IB Docket No. 09-10 (Tonga proceeding)).

[170] Cable and Wireless Jamaica *NOI* Comments at 15-16; CANTO *NOI* Comments at 11; Digicel *NOI* Comments at 4-5; Digicel Comments in the Tonga proceeding.

[171] AT&T *NOI* Comments at 20-21.

[172] Sprint *NOI* Reply at 6-7.

[173] MCI *NOI* Comments at 14-15; MCI *NOI* Reply at 4-7.

[174] MCI *NOI* Reply at 4-7.

[175] *See* AT&T Comments in the Tonga proceeding, IB Docket No. 09-10 at 19-21 (filed July 8, 2009); Verizon Comments in the Tonga proceeding at 14-15 (filed July 24, 2009); AT&T Opposition to Application for Review in the Tonga proceeding at 11-13 (filed July 30, 2009); Verizon Opposition to Application for Review in the Tonga proceeding at 4-7 (filed July 30, 2009).

minute, more than flowing through settlement rate reductions.[176] The Commission recognized that this data has certain limitations and may underestimate the level of U.S.-international calling rates to some degree. For instance, the IMTS revenue per minute figure is based on revenue reported by facilities-based carriers and, therefore, reflects a mix of wholesale and retail rates. Also, some carriers may not have included non-route-specific calling plan revenue in their revenue figures. The Commission noted that the figures cited above are average numbers and that settlement rate reductions may not have been flowed through uniformly to all segments of the retail market. The Commission noted in the NPRM that some U.S. carriers, between 1985 and 2000, increased the retail "basic rates"[177] they charged consumers. Nevertheless, the section 43.61 data covers the entire U.S. facilities-based IMTS industry and all international routes, and shows average IMTS revenue per minute falling much *more* than the average settlement rate payout. We sought comment on the data limitations discussed above. In addition to the decrease in the average IMTS settlement rate paid by U.S. carriers as well as a decrease in the average IMTS revenue per minute received by U.S. carriers, the Commission asked what other data or factors we should consider in evaluating whether U.S. carriers are passing on reductions in settlement rates to the retail rates they charge consumers. Further, the Commission asked what action, if any, it should consider taking with respect to these issues.

73. We disagree with Digicel and TCC that U.S. carriers must make a specific showing that any benchmark cost savings have been passed through to U.S. consumers prior to the Commission having the ability to impose benchmarks on a particular international route.[178] We believe the appropriate response to any concerns over U.S. carrier rates to U.S. consumers would not be to condone anticompetitive practices by foreign carriers. Such an approach to anticompetitive practices would not be in the public interest. The Commission has the authority to take action in response to anticompetitive behavior on a U.S.-international route and that authority is in no way dependent upon a certain pricing arrangement for U.S. consumers. Furthermore, as noted above and taking into account more recent 2010 data, section

[176] The Commission noted in the *NPRM* that, based on calculations from compilation of international traffic and revenue data published by the Commission for 2009, the average U.S. carrier settlement payout per minute was $0.054 and the average IMTS revenue per minute was $0.080, based on all facilities-based IMTS carriers and all international points. *See* FCC's 2009 *International Telecommunications Data* (*Section 43.62 Report*), Table A1 (World Total) available at http://www.fcc.gov/ib/mniab/traffic/. For 1996, the average U.S. carrier settlement payout per minute was $0.428 per minute and the average IMTS revenue per minute was $0.739. *See* FCC's 1996 *Section 43.62 Report*, Table A1 (World Total). The reduction in the average settlement payout per minute over the time period was therefore $0.37, and the reduction in the average IMTS revenue per minute was $0.65.

[177] Retail "basic rates" are default rates consumers must pay if they do not enter into monthly contracts for international communications services.

[178] Digicel argues that "any U.S. carrier that approaches the Commission to apply the benchmark policy to reoriginated, indirectly terminated traffic should, as a condition of its petition, be required to submit clear and convincing evidence" that it has passed benchmark cost savings through to U.S. consumers. Digicel Comments at 12-13. Digicel further argues that "any attempted imposition by the Commission of benchmarks to such indirect routing of traffic should be conditioned on the complaining U.S. carrier demonstrating convincingly that it will reflect the benefits of any further resulting reduction in settlement rates in its domestic retail rates." Digicel Comments at 13. TCC argues that the Commission should "adopt a policy that further regulation of termination rates for a particular country include a condition that US carriers pass on any future reductions in settlement payments to the retail charges for calls to the particular country." TCC Reply at 6. Furthermore, TCC cites retail rates for AT&T and Verizon and argues that the figures indicate that U.S. carriers are not engaged in cost-based pricing on the U.S.-Tonga route, and would not pass on any future settlement rate reductions to U.S. consumers making U.S.-Tonga calls. TCC Reply at 8-9.

43.61 data covering the entire U.S. facilities-based IMTS industry and all international routes shows average IMTS revenue per minute falling much *more* than the average settlement rate payout.[179]

IV. CONCLUSION

74. In this Report and Order, we eliminate the ISP from the international routes to which it applies, but continue to apply it in modified form to the U.S.-Cuba route. We also adopt other proposals to enable the Commission to better protect U.S. consumers from the effects of anticompetitive conduct by foreign carriers in instances necessitating Commission intervention.

V. PROCEDURAL ISSUES

A. Regulatory Flexibility Analysis

75. As required by the Regulatory Flexibility Act, 5 U.S.C. § 604, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact on small entities by the proposals adopted in this Report and Order. The text of the FRFA is set forth in Appendix B.

B. Final Paperwork Reduction Act of 1995 Analysis

76. This Report and Order contains either new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the modified information collection contained in this proceeding. In addition, pursuant to the Small Business Paperwork Relieve Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

C. Congressional Review Act

77. The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

VI. ORDERING CLAUSES

78. IT IS ORDERED that, pursuant to the authority contained in 47 U.S.C. Sections 151, 152, 154(i), 154(j), 201-205, 208, 211, 214, 303(r), 309 and 403 this Report and Order is ADOPTED and the

[179] Calculations based on compilation of international traffic and revenue data published by the Commission for 2010 show an even greater flow-through of settlement rate reductions. The average U.S. carrier settlement payout per minute was $0.050 and the average IMTS revenue per minute was $0.065, based on all facilities-based IMTS carriers and all international points. *See 2010 Section 43.61 Report*, 2012 WL 1066716 (2012), Table A1 (World Total), For 1996, the average U.S. carrier settlement payout per minute was $0.428 per minute and the average IMTS revenue per minute was $0.739. *See 1996 Section 43.61 Report*, 1998 WL 27563 (1998), Table A1 (World Total). The reduction in the average settlement payout per minute over the time period was therefore $0.378, and the reduction in the average IMTS revenue per minute was $0.674. *See also* AT&T Comments at 22 (arguing that there is "no basis to foreign carrier claims that U.S. carriers have failed to reflect reductions in termination costs in their retail rates.") AT&T argues that the data cited in the *NPRM* demonstrates that U.S. carriers' reductions in retail rates exceeded their reductions in termination costs in the relevant period by almost 80 percent. AT&T also notes that "foreign termination costs are not the only cost component of international calls, which also require use of the U.S. network, as well as marketing, billing, and other costs. *Id*. AT&T argues that competitive market pressures ensure that U.S.-international carriers' prices closely follow costs. *Id*. Neither Sprint nor Verizon filed comments addressing this issue.

policies, rules, and requirements discussed herein ARE ADOPTED and Parts 0, 43 and 64 of the Commission's rules, 47 C.F.R. §§ 0, 43, 64, ARE AMENDED as set forth in Appendix A.

79. IT IS ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of Small Business Administration, in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. § 601 *et seq*.

80. IT IS FURTHER ORDERED that the policies, rules, and requirements established in this decision shall take effect thirty days after publication in the Federal Register except for Section 43.51(d) which contains new information collection requirements that require approval by the Office of Management and Budget (OMB) under the PRA. The Federal Communications Commission will publish a document in the Federal Register announcing such approval and the relevant effective date.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Final Rules

Parts 0, 1, 43, 63 and 64 of the Commission rules are amended as follows:

PART 0 – COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

AUTHORITY: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Amend section 0.457 by revising paragraph (d)(1)(v) to read as follows:

§ 0.457 Records not routinely available for public inspection.

* * * * *

(d) * * *

(1) * * *

* * *

(v) The rates, terms and conditions in any agreement between a U.S. carrier and a foreign carrier that govern the settlement of U.S.-international traffic, including the method for allocating return traffic, except as otherwise specified by the Commission by order or by the International Bureau under delegated authority. *See, e.g.*, *International Settlements Policy Reform*, IB Docket Nos. 11-80, 05-254, 09-10, RM-11322 , Report and Order, FCC 12-145 (rel. Nov. 29, 2012).

* * * * *

PART 1 – PRACTICE AND PROCEDURE

3. The authority citation for part 1 continues to read as follows:
AUTHORITY: 15 U.S.C. 79 et seq.; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r), and 309.

4. Amend section 1.1206 by removing and reserving paragraph (a)(12).

§ 1.1206 Permit-but-disclose proceedings.

(a) * * *

* * * * *

(12) [Removed]

Part 43 – REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES

5. The authority citation for part 43 continues to read as follows:

AUTHORITY: 47 U.S.C. 154; Telecommunications Act of 1996, Pub. L. 104-104, secs. 402(b)(2)(B), (c), 110 Stat. 56 (1996) as amended unless otherwise noted, 47 U.S.C. 211, 219, 220 as amended.

6. Amend section 43.51 by revising the introductory language in paragraph (a)(1) and (d), removing paragraphs (b)(3), (e), (f), note 3 and removing note 4 to section 43.51 to read as follows:

§ 43.51 Contracts and concessions.

(a)(1) Any communication common carrier described in paragraph (b) of this section must file with the Commission, within thirty (30) days of execution, a copy of each contract, agreement, concession, license, authorization, operating agreement or other arrangement to which it is a party and amendments thereto (collectively hereinafter referred to as "agreement" for purposes of this rule) with respect to the following:

* * *

(2) * * *

(b) * * *

(3) [Removed]

(c) * * *

(d) Any U.S. carrier, other than a provider of commercial mobile radio services, that is engaged in foreign communications, and enters into an agreement with a foreign carrier, is subject to the Commission's authority to require the U.S. carrier providing service on any U.S.-international routes to file, on an as-needed basis, a copy of each agreement to which it is a party.

(e) [Removed]

(1) [Removed]

(2) [Removed]

(f) [Removed]

(2) [Removed]

Note 3 to § 43.51: [Removed]

Note 4 to § 43.51: [Removed]

PART 63 – EXTENSION OF LINES, NEW LINES, AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PROVATE OPERATING AGENCY STATUS

7. **The authority citation for part 63 continues to read as follows:**

AUTHORITY: Sections 1, 4(i), 4(j), 10, 11, 201-205, 214, 218, 403 and 651 of the Commissions Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 160, 201-205, 214, 218, 403, and 571, unless otherwise noted.

8. **Amend section 63.14 by revising paragraph (c) and removing note to paragraph (c) as follows:**

63.14 Prohibition on agreeing to accept special concessions.

*** * * * ***

(c) This section shall not apply to the rates, terms and conditions in an agreement between a U.S. carrier and a foreign carrier that govern the settlement of U.S. international traffic, including the method for allocating return traffic.

NOTE TO PARAGRAPH (C) [REMOVED]

9. **Amend section 63.17 by revising paragraph (b) as follows:**

63.17 Special provisions for U.S. international common carriers.

*** * * * ***

(b) Except as provided in paragraph (b)(4) of this section, a U.S. common carrier, whether a reseller or facilities-based carrier, may engage in "switched hubbing" to countries provided the carrier complies with the following conditions:

*** * * * ***

10. **Amend section 63.22 by redesignating paragraph (f) as paragraph (h) and adding new paragraphs (f) and (g) and notes 1 and 2 as follows:**

63.22 Facilities-based international common carriers.

* * * * *

(f) The terms and conditions of any operating or other agreement relating to the exchange of services, interchange or routing of traffic and matters concerning rates, accounting rates, division of tolls, the allocation of return traffic, or the basis of settlement of traffic balances, entered into by U.S. common carriers authorized pursuant to Part 63 of the Commission's rules to provide facilities-based switched voice service on the U.S.-Cuba route in correspondence with a Cuban carrier that does not qualify for the presumption that it lacks market power in Cuba, shall be identical to the equivalent terms and conditions

in the operating agreement of another carrier providing the same or similar service between the United States and Cuba. Carriers may seek waiver of this requirement. *See International Settlements Policy Reform*, Report and Order, IB Docket Nos. 11-80, 05-254, 09-10, RM 11322, FCC 12-145 (rel. November 29, 2012).

(g) A carrier or other party may request Commission intervention on any U.S. international route for which competitive problems are alleged by filing with the International Bureau a petition, pursuant to this section, demonstrating anticompetitive behavior by foreign carriers that is harmful to U.S. customers. The Commission may also act on its own motion. Carriers and other parties filing complaints must support their petitions with evidence, including an affidavit and relevant commercial agreements. The International Bureau will review complaints on a case-by-case basis and take appropriate action on delegated authority pursuant to §0.261 of this chapter. Interested parties will have 10 days from the date of issuance of a public notice of the petition to file comments or oppositions to such petitions and subsequently 7 days for replies. In the event significant, immediate harm to the public interest is likely to occur that cannot be addressed through *post facto* remedies, the International Bureau may impose temporary requirements on carriers authorized pursuant to § 63.18 of this chapter without prejudice to its findings on such petitions.

(h) The authority granted under this part is subject to all Commission rules and regulations and any conditions or limitations stated in the Commission's public notice or order that serves as the carrier's section 214 certificate. See §§ 63.12, 63.21 of this part.

Note 1 to § 63.22: For purposes of this section, *foreign carrier* is defined in § 63.09 of this chapter.

Note 2 to § 63.22: For purposes of this section, a *foreign carrier* shall be considered to possess market power if it appears on the Commission's list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points. This list is available on the International Bureau's World Wide Web site at http://www.fcc.gov/ib. The Commission will include on the list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points any foreign carrier that has 50 percent or more market share in the international transport or local access markets of a foreign point. A party that seeks to remove such a carrier from the Commission's list bears the burden of submitting information to the Commission sufficient to demonstrate that the foreign carrier lacks 50 percent market share in the international transport and local access markets on the foreign end of the route or that it nevertheless lacks sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market. A party that seeks to add a carrier to the Commission's list bears the burden of submitting information to the Commission sufficient to demonstrate that the foreign carrier has 50 percent or more market share in the international transport or local access markets on the foreign end of the route or that it nevertheless has sufficient market power to affect competition adversely in the U.S. market.

PART 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

11. The authority citation for part 64 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), (c), Public Law 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 225, 226, 228, and 254(k) unless otherwise noted.

12. Remove and reserve subpart J, consisting of sections 64.1001 and 64.1002.

Subpart J – Removed and Reserved.

§ 64.1001 [Removed]
§ 64.1002 [Removed]

APPENDIX B

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA),[180] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking* (*NPRM*).[181] The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA.[182] This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Report and Order

2. In recent years there has been increased participation and competition in the U.S. international marketplace, decreased settlement and end-user rates, and growing liberalization and privatization in foreign markets. Because of this increase, the Commission believes that it is an appropriate time to adopt changes to its International Settlements Policy (ISP) and accounting rate policies.

B. Description and Estimate of the Number of Small Entities To Which Rules Will Apply

3. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of entities that will be affected by the rules.[183] The RFA defines "small entity" as having the same meaning as the term "small business," "small organization," and "small governmental jurisdiction."[184] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities.[185] Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).[186]

4. This *Order* may directly affect up to approximately 31 facilities-based U.S. international carriers providing IMTS traffic. In the 2010 annual traffic and revenue report, 31 facilities-based and facilities-resale carriers reported approximately $4.0 billion in revenues from international message

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[180] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq*., has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[181] *International Settlements Policy Reform*, Notice of Proposed Rulemaking, IB Docket Nos. 11-80, 05-254, 09-10, RM 11322, 26 FCC Rcd 7233 (2011) (*NPRM*).

[182] *Id*.

[183] 5 U.S.C. §§ 603(b)(3), 604(a)(3).

[184] 5 U.S.C. § 601(6).

[185] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to 5 U.S.C § 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, established one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition in the Federal Register."

[186] 15 U.S.C. § 632.

telephone service (IMTS). Of these, three reported IMTS revenues of more than $1 billion, six reported IMTS revenues of more than $100 million, nine reported IMTS revenues of more than $50 million, 19 reported IMTS revenues of more than $10 million, 23 reported IMTS revenues of more than $5 million, and 26 reported IMTS revenues of more than $1 million. Based solely on their IMTS revenues the majority of these carriers would be considered non-small entities under the SBA definition.[187] Neither the Commission nor the SBA has developed a definition of "small entity" specifically applicable to these international carriers. The closest applicable definition provides that a small entity is one with 1,500 or fewer employees.[188] We do not have data specifying the number of these carriers that are not independently owned and operated and have fewer than 1,500 employees. Furthermore, because not all agreements between the U.S. and foreign carriers are required to be filed at the Commission, it is difficult to determine how many of these 31 carriers might have agreements with foreign carriers. The *Order* adopts a wide variety of proposals intended to promote market-based policies and reduce unnecessary regulatory burdens on all facilities-based U.S. international carriers regardless of size.

C. Description of Projected Reporting, Record Keeping, and Other Compliance Requirements

5. The *Order* largely reduces projected reporting, record keeping, and other compliance requirements. These changes affect small and large companies equally. In developing the Commission's ISP, benchmarks and international settlement rates policies, the Commission implemented various reporting requirements to monitor possible anticompetitive behavior and protect the public interest. The *Order* reserves the right to require the filing of particular contracts when presented with evidence of a violation of the "No Special Concessions" rule or of other anticompetitive behavior related to these matters on a particular route.

D. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

6. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[189]

7. The changes adopted in this *Order* are designed to provide the Commission with information to determine whether its existing regulatory regime may inhibit the benefits of lower calling process and greater service innovations to consumers. Because the *Order* is broad and changes would likely affect only 31 facilities-based carriers, it would be difficult to adopt specific alternatives for the small facilities-based entities. The changes adopted in the *Order* would benefit all entities, including small entities.

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[187] *See* 13 C.F.R. § 121.201, NAICS Code at Subsector 517 – Telecommunications.

[188] 13 C.F.R. § 121.201, NAICS codes 513310 and 513322.

[189] 5 U.S.C. § 603(c).

8. The *Order* does take action that would minimize the economic impact on all entities, including small entities. For example, the *Order* removes the ISP from certain remaining routes. This proposal would eliminate the burden of seeking prior Commission approval before a carrier could enter into arrangements with foreign carriers. Any changes to our existing policies and rules will expand the ability of all entities, including small entities, to reap the economic benefits of competition. Thus, the *Order* does not propose any exemption for small entities.

E. Report to Congress

9. The Commission will send a copy of the *Order*, including this FRFA, in a report to be sent to Congress pursuant to the SBREFA.[190] In addition, the Commission will send a copy of the *Order*, including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Order* and the FRFA (or summaries thereof) will also be published in the Federal Register.[191]

[190] *See* 5 U.S.C. § 801(a)(1)(A).

[191] *See* 5 U.S.C. § 604(b).