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

In the Matter of

Sprint Communications Company, L.P.  ISP-97-M-708

Request for Modification of
the International Settlements Policy
to Change the Accounting Rate
for Switched Voice Service with
Mexico

MEMORANDUM OPINION AND ORDER

Adopted: November 24, 1998  Released: November 24, 1998

By the Chief, International Bureau:

I. Introduction

1. We have before us a request filed by Sprint Communications Company L.P. (Sprint) for a modification of the Commission's International Settlements Policy (ISP) to change the settlement rate for switched voice service with Mexico. We approve the $0.19 rate which is to become effective on January 1, 2000. For the reasons discussed below, however, we deny Sprint's request for interim rates of $0.375 effective January 1, 1998 and $0.345 effective January 1, 1999.

II. Background

2. Sprint filed a request for modification of the Commission's International Settlements Policy (ISP) for switched voice service that would change its settlement rate with Teléfonos de Mexico, S.A. de C.V.

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3. Settlement arrangements between U.S. carriers and Telmex are based on settlement rates that vary by rate band in each country, time of day, and service classification. Individual settlement rates are established for each of these categories. The individual rates filed by Sprint are set to produce the average settlement rates of 37.5¢ in 1998, 34.5¢ in 1999, and 19¢ in 2000.

4. Sprint responds that the Sprint Modification Request is not a "garden variety" accounting rate modification because it is based on an alleged compromise reached by Telmex with the U.S. and Mexican governments. Thus, Sprint disputes AT&T's and MCI's claim that its proposed rates reflect a "sweetheart" deal. Sprint acknowledges that its proposed rates neither achieve nor approximate annual proportionate reductions, but states that this is "irrelevant" because the Commission previously found that the reductions were in the public interest.


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4 AT&T Opposition to Sprint Waiver, ISP-97-708 (filed December 3, 1997) (AT&T Opposition), at 2-11; MCI Opposition to Sprint Waiver, ISP-97-708 (filed December 3, 1997) (MCI Opposition) at 1-6. See also WorldCom Opposition to Sprint Waiver, ISP-97-708 (filed December 3, 1997) at 2-3 (the rates are not in the public interest because they do not achieve annual proportionate reductions). AT&T and MCI state that Sprint does not have a firm commitment to the $0.19 rate for 2000 because Telmex reserved the right to reconsider its commitment if the Commission requires it to comply with rates other than the rates in Sprint's modification request or if U.S. carriers make settlement payments at other rates. AT&T Opposition at 8; MCI Opposition at 5-6.

5 Sprint Opposition to Petitions of AT&T, MCI, and WorldCom, ISP-97-708 (filed December 16, 1997) (Sprint Opposition), at 1-5. Sprint describes a series of negotiations between U.S. and Mexican officials and carriers but does not describe the terms of the alleged compromise.

6 Sprint Opposition at 1-5.
III. Discussion

5. We consider here whether the Sprint Modification Request is in the public interest. For more than sixty years, the Commission has exercised regulatory oversight of international settlement arrangements.\(^7\) During this time, the Commission has developed policies to ensure that such arrangements are in the public interest. The cornerstone of these policies is the Commission's ISP. The traditional focus of the ISP was largely to prevent "whipsawing," which can occur when a dominant foreign carrier exercises its market power to play competing U.S. carriers off one another in order to force U.S. carriers to accept accounting rate agreements with unfavorable terms and conditions.\(^8\) The Commission has consistently found whipsawing to be contrary to the public interest because it prevents U.S. carriers from negotiating lower accounting rates, to the ultimate detriment of U.S. consumers. While the traditional focus of the Commission's regulation has been to prevent whipsawing, the Commission's policies have evolved over time to focus also on the "adverse effect of above-cost levels of international accounting rates on U.S. carriers and U.S. consumers."\(^9\) The Commission has found that above-cost accounting rates are contrary to the public interest because (a) they contribute to artificially high international calling prices and (b) they represent a subsidy from U.S. consumers to foreign carriers.\(^10\)

6. Over the past several years, the Commission has increased its efforts to ensure that accounting rate arrangements are in the public interest. The Bureau has strictly enforced the Commission's regulations against whipsawing\(^11\) and the Commission has modified its regulatory policies "in order to promote low, more


\(^8\) See, e.g., 1986 ISP Order, 51 Fed. Reg. at 4741 ("The most frequent concession sought is a modification of the accounting rate in such a manner as to decrease the revenues paid by the PTT to the U.S. carrier for effectuating delivery in the United States or to increase the revenues paid by U.S. carriers to the PTT to effectuate delivery in the foreign country.").

\(^9\) 1991 ISP Order, 6 FCC Rcd at 3552.


cost-based, international accounting rates and calling prices.\textsuperscript{12} As part of this effort, the Commission reformed its ISP in order to promote more cost-based accounting rates and directed U.S. carriers to "negotiate with their foreign correspondents accounting rates that are consistent with relevant cost trends."\textsuperscript{13} The Commission also adopted its \textit{Benchmarks Order}, which establishes a set of benchmark rates and transition periods within which U.S. carriers are to negotiate settlement rates with their foreign correspondents that comply with these benchmarks.\textsuperscript{14} The Commission recognized in the \textit{Benchmarks Order} that the benchmark rates are still above-cost, and reiterated that its goal remains "settlement rates that reflect incremental costs."\textsuperscript{15}

7. Applying these Commission policies, we find that the interim rates for 1998 and 1999 contained in the \textit{Sprint Modification Request} are not in the public interest. First, we find that the interim rates are contrary to the public interest because they do not make adequate progress toward achieving cost-based settlement rates. Second, we find that denial of the interim rates is necessary to prevent whipsawing. We discuss these findings further below.

8. Although the \textit{Sprint Modification Request} proposes a $0.19 settlement rate with Mexican carriers by January 1, 2000, as required by the \textit{Benchmarks Order}, we find that the interim reductions remain so far above cost that they do not represent adequate progress in 1998 and 1999 toward cost-based rates.\textsuperscript{16} The Commission estimated that cost-based settlement rates are likely no higher than $0.06-$0.09.\textsuperscript{17} The interim settlement rates proposed by Sprint are well in excess of cost-based settlement rates. In the \textit{Benchmarks Order}, the Commission stated that it "expected[ed] carriers to negotiate proportionate annual reductions in settlement rates."\textsuperscript{18} We note that Sprint's proposed reductions fall far short of the reductions that would be achieved under annual proportionate reductions. Sprint's proposed reduction of $0.02 in 1998 from the 1997 settlement rate and an additional $0.03 in 1999 unduly delay settlement rate reductions on the U.S.-Mexico route. Under the rates proposed in the \textit{Sprint Modification Request}, 75 percent (15.5¢) of the aggregate reductions required in order to achieve the benchmark rate of $0.19 would be delayed until January 1, 2000. This means that the aggregate U.S. settlement outpayments that would be due if the rates in the \textit{Sprint Modification Request} were to be approved would be at least $200 million greater than the aggregate outpayments that would be due if annual proportionate reductions were proposed, according to AT&T's calculations.\textsuperscript{19} Accordingly, we find that the interim rates for 1998 and 1999 in the \textit{Sprint Modification Request}...
See AT&T Reply to Sprint Opposition, ISP-97-708 (filed January 13, 1988) (AT&T Reply), at 2. We note that Telmex currently has settlement rates with carriers in other countries that are substantially lower than the interim rates in the Sprint Modification Request. See Ex parte letter to Magalie Roman Salas, Secretary, Federal Communications Commission, from Judy Simonson, Government Affairs, Vice President, AT&T, October 30, 1998, at 1 (citing information provided by Telmex to the International Telecommunication Union showing that Telmex's lowest settlement rate is 25¢ per minute).

For example, a foreign carrier could retaliate simply by refusing to negotiate with other U.S. carriers. More aggressive forms of retaliation include diverting a disproportionate share of traffic to the U.S. carrier that agreed to the foreign carrier's demands or cutting off circuits of U.S. carriers that refuse to agree to the foreign carrier's terms.

See, e.g., AT&T Reply at 2-3.

AT&T Opposition at 6-8; MCI Opposition at 3-4.


AT&T Reply at 2-3 (citing Telmex letter stating that the settlement rates in the Sprint Modification Request "are not negotiable" because the Bureau "found Telmex's commitment to reduce its settlement rates to these
whipsawing.

11. In finding that the interim rates are not in the public interest, we note that the U.S.-Mexico route is of unusual importance because of the high level of traffic and the extent to which traffic is unbalanced. The traffic levels on the U.S.-Mexico route are so high that U.S. settlement payments to Mexican carriers greatly exceed settlement payments to carriers in any other country. Mexican carriers have received almost $6 billion in settlement payments from U.S. carriers since 1990. Under these circumstances, a relatively small difference in the settlement rate on the U.S.-Mexico route can have a substantial impact on settlement payments, and, ultimately, on U.S. calling prices. For example, based on the U.S. carriers' net traffic outflow to Mexico in 1997 of 1.8 billion minutes, a one cent decrease in the settlement rate would result in a reduction of almost $20 million in outpayments to Mexican carriers. As the Commission noted in its *Benchmarks Order*, a substantial portion of U.S. settlement payments exceed the cost to terminate calls in other countries. The high outpayments to Mexican carriers are fueled by above-cost accounting rates and rapid growth in U.S. carriers' net traffic outflow to Mexico. The portion of U.S. carrier settlement outpayments to Mexican carriers that are above-cost represents a subsidy from U.S. consumers to foreign carriers. The subsidy from U.S. consumers to Mexican carriers is particularly large because of the tremendous volume of traffic, the traffic imbalance, and the extent to which accounting rates on the route are above-cost. These particular circumstances provide additional support for our finding that the interim reductions for 1998 and 1999 contained in the *Sprint Modification Request* are not in the public interest.

12. Sprint argues that the Commission should approve the *Sprint Modification Request* under the standard adopted in the *Benchmarks Order* for "grandfathered" settlement rate agreements, even though the interim reductions are nominal. We disagree for the following reasons. Sprint's argument refers to the Commission's statement in the *Benchmarks Order* that a settlement rate agreement reached prior to January 1, 1998 could be found to be in the public interest -- and thereby "grandfathered" -- even if it does not comply strictly with the requirements of the *Benchmarks Order*. The Commission stated that such "grandfathered" agreements could be found to be in the public interest, provided they achieved the goals the Commission set forth in the *Benchmarks Order* and achieved settlement rates at or below the relevant benchmarks within a

levels to be a significant public interest factor weighing in favor of grant of TSC's [Section 214] application”). In fact, the Bureau made no finding regarding interim rates in the *TSC Order* or elsewhere. See infra, para. 13.


27 Although settlement payments to Mexican carriers declined in 1997, they still exceeded $700 million in that year, almost 13 percent of total U.S. payments worldwide. The next highest outpayment country after Mexico in 1997 was China, which received $267.7 million in settlement payments from U.S. carriers.

28 The traffic imbalance on the U.S.-Mexico route grew at a compound annual rate of approximately 26% in the years 1993 through 1997.

29 Sprint Opposition at 6-7.

30 January 1, 1998 was the effective date of the *Benchmarks Order*. 

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reasonable time. We find that the interim rates in the *Sprint Modification Request* are not consistent with the goals of the *Benchmarks Order* because, as discussed above, they delay unduly settlement rate reductions on the U.S.-Mexico route and do not represent adequate progress in 1998 and 1999 toward cost-based rates. We thus disagree with Sprint’s argument that the rates are in the public interest and should be approved under the standard for grandfathered agreements contained in the *Benchmarks Order*.

13. Sprint further argues that the Bureau already found in its October 1997 *TSC Order* the interim rates for 1998 and 1999 to be in the public interest. Sprint’s assertion is incorrect. In fact, the Bureau made no finding whatsoever in the *TSC Order* regarding the interim rates. The Bureau found only that Telmex’s agreement to reduce its rates to the $0.19 benchmark by January 1, 2000 was in the public interest, and we reiterate that finding here in approving that part of the *Sprint Modification Request* proposing a $0.19 rate from January 1, 2000. We note that even this $0.19 rate remains far above cost and encourage carriers to negotiate lower rates.

IV. Conclusion

14. For the above-stated reasons, we grant Sprint’s request for the $0.19 rate effective January 1, 2000 and deny Sprint’s request for the interim rates of $0.375 effective January 1, 1998 and $0.345 effective January 1, 1999. We direct U.S. carriers to negotiate lower interim rates that demonstrate reasonable progress toward achieving cost-based settlement rates.

V. Ordering Clauses

15. Accordingly, IT IS ORDERED that Sprint’s request to establish a settlement rate with Telmex of $0.375 per minute effective January 1, 1998, and $0.345 per minute effective January 1, 1999 is DENIED.

16. IT IS FURTHER ORDERED that Sprint’s request to establish an accounting rate with Telmex of $0.19 per minute effective January 1, 2000 is GRANTED.

17. IT IS FURTHER ORDERED that Sprint and other U.S. carriers shall continue their best efforts to achieve interim settlement rate reductions for 1998 and 1999 that comply with the Commission’s ISP.

18. This order is effective upon adoption. Petitions for reconsideration under Section 1.106 of

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31 *Benchmarks Order* at ¶ 190.
32 Application for Authority under Section 214 of the Communications Act for Global Authority to Operate as an International Switched Resale Carrier Between the United States and International Points, Including Mexico, ITC-97-127, Order, Authorization and Certificate, DA 97-2289 (October 30, 1997) (*TSC Order*), application for review pending.
33 Sprint Opposition at 6-7.
34 Specifically, the Commission found in the *TSC Order* that “Telmex’s commitment to reduce its settlement rate to the applicable benchmark in a timely manner” was in the public interest. *TSC Order* at ¶ 59 (emphasis added). See Letter from Regina M. Keeney, Chief, International Bureau, FCC, to Luis López Rojo, Chief Executive Officer, Telmex/Sprint Corporation, dated June 2, 1998 (noting that the Bureau did not, contrary to the claim in a TSC press release, find that Telmex’s commitments on interim rates for 1998 and 1999 were a public interest factor in favor of granting TSC a Section 214 authorization).
the Commission's rules may be filed within 30 days of the public notice of this order (see Section 1.4(b)(2) of the Commission's rules).

FEDERAL COMMUNICATIONS COMMISSION

Regina M. Keeney
Chief, International Bureau