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

In the Matter of	)	
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Petition for Enforcement of International Settlements Benchmark Rates on the U.S.-Fiji Route	)	IB Docket No. 13-175
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MEMORANDUM OPINION AND ORDER

Adopted: March 7, 2014 **Released: March 7, 2014**

By the Chief, International Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order (Order), we grant AT&T's unopposed petition requesting enforcement of the benchmark rate of $0.19 per minute for international traffic on the U.S.-Fiji route terminated with Fiji International Telecommunications Limited (Fintel), the incumbent international carrier in Fiji. In the *Benchmarks Order*, the Commission adopted benchmark settlement rates governing U.S. carriers in their settlement arrangements with foreign carriers.[1] As we discuss below, we find that AT&T has been unable to negotiate benchmark-compliant rates with Fintel on the route since November 2011. To enforce the *Benchmarks Order* and ensure compliance by U.S. carriers, we grant AT&T's request as discussed below.

II. BACKGROUND

2. On June 13, 2013, AT&T filed a petition asking the Commission to enforce benchmarks on the U.S.-Fiji route.[2] AT&T notes that Fintel is the incumbent international carrier in Fiji, in which the Fiji government holds a 51 percent ownership interest and Amalgamated Telecom Holdings Limited holds a 49 percent ownership interest.[3] In its petition, AT&T states that, beginning in 2011, Fintel began

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[1] *International Settlement Rates*, IB Docket No. 96-261, Report and Order, FCC 97-280, 12 FCC Rcd 19806, 19807-08, ¶¶ 1-2 (1997) (*Benchmarks Order*), *aff'd sub nom. Cable & Wireless P.L.C. v. FCC*, 166 F.3d 1224 (D.C. Cir. 1999) (*Cable & Wireless*); Report and Order on Reconsideration and Order Lifting Stay, FCC 99-124, 14 FCC Rcd 9256 (1999) (*Benchmarks Reconsideration Order*). The applicable benchmark rate for Fiji is $0.19 per minute. *See Benchmarks Order*, 12 FCC Rcd at 19860-61, ¶ 111, & 19965-66, App. C (Classification of Economies listing Fiji as a Lower Middle Income economy subject to a benchmark rate of $0.19).

[2] AT&T Inc., Petition to Enforce Benchmark Rates on the U.S.-Fiji Route, IB Docket No. 13-175 (filed June 13, 2013) (AT&T Petition).

[3] AT&T Petition at 2 and n. 6 (*citing* http://www.fintel.com.fj/pages.cfm/company and http://fijitimes.com/story.aspx?id=192997 and stating that "Fintel is therefore the successor to Cable and Wireless Fiji, which is listed as the dominant carrier in Fiji.")

to charge U.S. carriers above-benchmark settlement rates. It notes that in the years prior to 2011, average U.S.-Fiji termination rates were in the range of $0.16-$0.18 per minute.[4] AT&T states that, in 2010, the Fiji Commerce Commission required all international traffic terminated in Fiji to pay a minimum rate of approximately $0.165 per minute.[5] AT&T explains further that, on November 7, 2011, the Fiji Commerce Commission directed Fintel to increase the minimum termination rate for inbound international traffic from $0.165 to $0.22 per minute. In addition, AT&T reports that Fintel notified it on November 8, 2011 that Fintel would raise termination rates for U.S.-Fiji traffic to $0.22 per minute on November 17, 2011.[6] AT&T has sent no traffic to Fintel for termination in Fiji since November 2011. Instead, AT&T has routed all U.S.-Fiji traffic via third countries.[7]

3. AT&T further states that it has been attempting, but has been unable, to negotiate settlement rates with Fintel that would continue to comply with the *Benchmarks Order*. Compliance with Fintel's rate demands would violate the Commission's benchmark policies. AT&T requests that the Commission enforce the *Benchmarks Order* on the U.S.-Fiji route by requiring all U.S. carriers to pay Fintel rates for U.S.-Fiji traffic that do not exceed the $0.19 per minute benchmark rate.

4. The Bureau issued a public notice on the petition setting dates for comments and replies.[8] There were no comments or replies filed in the proceeding.

III. DISCUSSION

5. The Commission's benchmark policy requires U.S. carriers to negotiate settlement rates with foreign carriers that do not exceed specific benchmark levels. The Commission adopted the benchmarks policy in 1997 because accounting rates on most international routes continued to exceed foreign carriers' costs to terminate international message telephone service from the United States. The Commission found that the lowering of termination rates would benefit consumers and carriers in all countries since it would reduce calling prices and increase demand for international calling services. It therefore adopted benchmark settlement rates to bring a cost component that affects end user international rates closer to the underlying cost of providing international termination services.[9] The U.S. Court of Appeals for the D.C. Circuit upheld the *Benchmarks Order* and affirmed the Commission's authority to prescribe the maximum settlement rates U.S. international carriers may pay to foreign carriers.[10] U.S. carriers, over time, were able to negotiate benchmark-compliant settlement rates on many international routes, including Fiji.[11] In this proceeding, AT&T is asking the Commission to address Fiji's reversion to above-benchmark rates.

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[4] *See* AT&T Petition at 3 (*citing* Section 43.61 International Telecommunications Traffic Reports for 2008-2010, Table A1).

[5] *Id.* at 4, n.8.

[6] *Id.*

[7] *See* AT&T Petition, Declaration of Joe Ettore Jr. at 2-3.

[8] *See Petition to Enforce Benchmark Rates on the U.S.-Fiji Route*, IB Docket No. 13-175, Public Notice, DA 13-1460, 28 FCC Rcd 9131 (Int'l Bur. 2013).

[9] *See Benchmarks Order*, 12 FCC Rcd at 19818, ¶ 25.

[10] *See Cable & Wireless,* 166 F.3d 1224.

[11] *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 (2004); *U.S.-Cambodia Route Exempted from the International Settlements Policy,* IB Docket Nos. 02-324, 96-261, Public Notice, DA 05-2513, 20 FCC Rcd 14837 (Int'l Bur., Policy Div. 2005); *U.S.-Angola Route Exempted from the International Settlements Policy,* IB Docket (continued....)

6. In its *Benchmarks Order*, the Commission set forth its enforcement policy to ensure compliance with the benchmark settlement rates.[12] As part of that effort, the Commission stated that it would take appropriate steps to ensure compliance by U.S. carriers with the requirements of the *Benchmarks Order*. The Commission provided procedures that U.S. carriers may follow in cases where foreign carriers fail to respond to a U.S. carrier's efforts to negotiate settlement rates that comply with the requirements of the *Benchmarks Order*. As outlined in the *Benchmarks Order*, a U.S. international carrier seeking relief may file a petition with the Commission demonstrating that it has not been able to negotiate a settlement rate that complies with the rules and policies adopted in the *Benchmarks Order*. The U.S. carrier may request that the Commission take enforcement measures to ensure that no U.S. carrier pays the foreign carrier an amount exceeding the lawful benchmark settlement rate.[13] The Commission has granted such requests on several U.S.-international routes.[14]

7. AT&T claims it has made good faith efforts to negotiate an agreement with Fintel that complies with the *Benchmarks Order*, but that its attempts have failed to produce an agreement on a benchmark settlement rate. The carrier's petition includes an affidavit of an employee with responsibility for AT&T's settlement arrangements with Fintel.[15] The affidavit asserts, based in part on a press release from the Fiji Commerce Commission at the time that the settlement rate increase was announced, that the purpose of the rate increase was not to meet increased termination costs, but to ensure that consumers outside Fiji bear the costs of increasing telecommunications service penetration within Fiji: "Indeed, the press statement issued by the Fiji Commerce Commission to announce the decision [to increase settlement rates] states that one of the objectives of the rate increase is to '[s]upport Governments (*sic*) plan to accelerate ICT [information and communications technology] penetration i[n] Fiji by outsourcing that charge to callers from outside Fiji.'"[16] AT&T asserts that the Commission has rejected claims that benchmarks should be "'revised to take into account discriminatory local access charges or universal service subsidies aimed solely or disproportionately at international

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Nos. 02-324, 96-261, Public Notice, DA 04-3905, 19 FCC Rcd 24056 (Int'l Bur., Policy Div. 2004); *Additional U.S. International Routes Exempted from the International Settlements Policy*, Public Notice, DA 04-3518, 19 FCC Rcd 22032 (Int'l Bur., Policy Div. 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, DA 04-2832, 19 FCC Rcd 20469 (Int'l Bur., Policy Div. 2004).

[12] *See generally Benchmarks Order*, 12 FCC Rcd 19806. The Commission later affirmed the continued application of the benchmark policy. *See International Settlements Policy Reform; International Settlement Rates*, IB Docket Nos. 02-234 and 96-21, First Report and Order, FCC 04-53, 19 FCC Rcd 5709, 5743, ¶ 76 (2004). *See also International Settlements Policy Reform et al.*, IB Docket Nos. 11-80, 05-254, 09-10 and RM-11322, Report and Order, FCC 12-145, 27 FCC Rcd 15521, 15524, ¶ 5 (2012).

[13] *See Benchmarks Order*, 12 FCC Rcd at 19894, ¶ 186. *See also Cable & Wireless*, 166 F.3d at 269 (finding that "the Commission may modify such agreements as it deems necessary to serve the public interest," and has "ample authority . . . to limit settlement rates paid by U.S. carriers.").

[14] *See AT&T Corp, MCI WorldCom, Inc., Sprint Communications Co. LP Petition for Enforcement of International Settlements Benchmark Rates for Service with Kuwait*, IB Docket No. 96-261, Order, DA 99-1052, 14 FCC Rcd 8868 (Int'l Bur., Telecom. Div. 1999); *AT&T Corp, MCI WorldCom, Inc., Sprint Communications Co. LP Petition for Enforcement of International Settlements Benchmark Rates for Service with Cyprus*, IB Docket No. 96-261, Order, DA 99-1053, 14 FCC Rcd 8874 (Int'l Bur., Telecom. Div. 1999); *AT&T Corp, MCI WorldCom, Inc. Petition for Enforcement of International Settlements Benchmark Rates for Service with Qatar*, IB Docket No. 96-261, Order, DA 01-2066, 16 FCC Rcd 16203 (Int'l Bur. 2001).

[15] AT&T Petition, Declaration of Joe Ettore Jr.

[16] *See id.* at 2 (*quoting* Fiji Commerce Commission, Press Statement, Determination on Interconnection Service Charges, Nov. 7, 2011, at 2); *see also* AT&T Petition, Attachment B (attaching a copy of the press statement).

termination services.'"[17] AT&T further states that the Commission has "repeatedly emphasized that it will not allow foreign countries to require U.S. consumers to subsidize such discriminatory policies through above-cost termination rates."[18] Finally, AT&T argues that the mandated nature of the rate increase provides no basis to prevent Commission action on the route.[19]

8. The Commission remains committed to achieving more cost-based accounting rates because high accounting rates inflate U.S. carriers' costs and, as a result, put upward pressure on the prices charged to U.S. consumers. We find no evidence on the record that the rate increase was cost-based or otherwise justified. There is nothing on the record that suggests that the relevant benchmark rate for Fiji does not permit recovery of the incremental costs incurred to receive, transmit and terminate international service in Fiji.[20] Thus we grant AT&T's petition for enforcement of the $0.19 international settlements benchmark rate on the U.S.-Fiji route.

9. To enforce the Commission's *Benchmarks Order* and to ensure that U.S. international carriers provide service on the U.S.-Fiji route under settlement terms that comply with the Commission's policy, we direct each U.S. facilities-based carrier that has a settlement agreement or settlement arrangements with Fintel for international message telephone service to: (1) conduct settlements at a rate that does not exceed $0.19 per minute for services provided on or after **May 6, 2014**; *and* (2) notify the Commission when it negotiates a benchmark-compliant rate with Fintel on the U.S.-Fiji route.[21]

IV. ORDERING CLAUSES

10. IT IS ORDERED that AT&T Inc.'s Petition for Enforcement of International Settlements Benchmark Rates on the U.S.-Fiji Route IS GRANTED.

11. IT IS FURTHER ORDERED that all U.S. international facilities-based carriers providing international message telephone service with Fintel on the U.S.-Fiji route SHALL CONDUCT settlements for services provided on or after **May 6, 2014** at a rate that does not exceed the Commission's benchmark settlement rate of $0.19 per minute.

12. IT IS FURTHER ORDERED that, in any negotiations with Fintel regarding any settlement rates on the U.S.-Fiji route on or after the date of this Order, U.S. international facilities-based carriers SHALL conduct such negotiations to achieve rates in compliance with the rules and requirements of the Commission's *Benchmarks Order*.

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[17] *See* AT&T Petition at 5 (*quoting Benchmarks Order*, 12 FCC Rcd at 19849, ¶ 87).

[18] *See* AT&T Petition at 5 (*citing Benchmarks Order*, 12 FCC Rcd at 19877-78, ¶ 148; *Benchmarks Reconsideration Order*, 14 FCC Rcd at 9260, ¶ 14; *Atlantic Tele-Network, Inc. Request for a Waiver of the Benchmark Settlement Rate on the U.S.-Guyana Route*, IB Docket No. 96-261, Order, DA 01-2659, 16 FCC Rcd 20263 (Int'l Bur., Telecom. Div. 2001)).

[19] *See* AT&T Petition at 6 (*citing 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, DA 09-1325, 24 FCC Rcd 8006 (Int'l Bur. 2009); *Petition for Protection from Anticompetitive Behavior and Stop Settlement Payment Order on the U.S-Pakistan Route,* IB Docket No. 12-324, Memorandum Opinion and Order, DA 13-341, 28 FCC Rcd 2127 (Int'l Bur. 2013)).

[20] *See Benchmarks Order*, 12 FCC Rcd at 19849, ¶ 88.

[21] According to preliminary Commission traffic and revenue data collected for 2012, the following carriers provide facilities-based service on the U.S.-Fiji route: AT&T, Bharti Airtel, France Telecom, IDT Corp., IT&E Overseas/Pacifica, KPN INS/iBasis, MCI, New Century, Primus Telecomm., Reach Services (Telstra), Reliance Comm., Sprint, Telecom Italia, Telecom New Zealand, Telia Sonera. *See, generally,* 47 U.S.C. § 43.61. The data does not show which carriers conduct settlements directly with Fintel.

13. IT IS FURTHER ORDERED that any facilities-based carrier subject to Commission jurisdiction SHALL IMMEDIATELY INFORM the Commission when it negotiates a benchmark-compliant settlement rate with Fintel for direct termination of U.S. traffic on the U.S.-Fiji route.

14. This Memorandum Opinion and Order is issued pursuant to sections 1, 2, 4(i)-(j), 5, 201-205, 211, 214, 303(r), and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i)-(j), 155, 201-205, 211, 214, 303(r), 309, and sections 0.51, 0.261, 43.51, 63.14, and 63.22 of the Commission's rules, 47 C.F.R. §§ 0.51, 0.261, 43.51, 63.14, and 63.22, and is EFFECTIVE UPON RELEASE.

FEDERAL COMMUNICATIONS COMMISSION

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