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

In the Matter of

AMERICAN TELEPHONE AND TELEGRAPH COMPANY — File No. USP-88-(W)-025

Petition for Waiver of the International Settlements Policy to Reduce the Accounting Rate for International Direct Packet Switched Service Between the United States and the Federal Republic of Germany

MEMORANDUM OPINION AND ORDER

Adopted: January 17, 1989; Released: January 30, 1989

By the Chief, Common Carrier Bureau:

I. SUMMARY OF PLEADINGS

A. AT&T PETITION

1. On April 21, 1988, American Telephone and Telegraph Company (AT&T) filed a petition for waiver of the International Settlements Policy (ISP) to permit a reduction in the accounting rate for international direct packet switched service between the United States and the Deutsche Bundespost (DBP) in the Federal Republic of Germany (FRG), with a proposed effective date of June 1, 1988 (USP-88-(W)-025). AT&T seeks an accounting rate of SDR 2.85 per kilosegment and SDR 2.85 per hour of connect time, divided on a 50/50 basis. AT&T states that this would be a reduction of 14 percent from the current accounting rate of SDR 3.32 per kilo segment and SDR 3.32 per hour of connect time.

2. AT&T notes that the DBP has indicated that packet switched communications service between the United States and the FRG is growing and is expected to increase. AT&T states that the proposed change in the accounting rate should have no appreciable impact on AT&T's revenues or on the U.S. telecommunications industry overall. AT&T emphasizes that the DBP has not indicated that there will be any change in the method of allocating return traffic. AT&T further states that routing calls to the AT&T packet network in the United States is at the direction of the originators of the calls in the FRG. Specifically, for inbound calls routed to the AT&T packet network in the United States from the FRG, AT&T maintains that users can select AT&T as the U.S. carrier by inclusion of the Data Network Identification Code (DNIC) 3134 in the call request packet. All calls with the 3134 DNIC are sent to AT&T and all calls with other than a 3134 DNIC are sent to other carriers for completion. Finally, AT&T states that its petition for waiver is not being filed in response to any attempt by the DBP to secure concessions in the accounting rate.

B. OPPOSITIONS AND COMMENTS

3. FTC Communications, Inc. (FTCC) and TRT Telecommunications Corporation (TRT) filed oppositions to AT&T's waiver request. Telenet Communications Corporation (Telenet) filed comments in response to AT&T's petition for waiver of the ISP. TRT opposes the AT&T petition for waiver claiming that the flow of international packet switched data traffic is primarily toward the U.S. TRT states that, as a result, any reduction in the accounting rate for packet switched services would result in an almost corresponding reduction in revenues retained by the United States industry for this service and an increase in the share of revenues to foreign correspondents. TRT adds that U.S. carriers have historically established the same accounting rate for packet switched service with all European Conference of Postal and Telecommunications Administrations (CEPT). TRT argues that the result of a reduction in the U.S./FRG accounting rate would lead to irresistible demands by other CEPT administrations for the same reduction. TRT asserts that the adverse financial impact on the U.S. industry would therefore be quite substantial. TRT states that while it does not contend that the financial impact on the U.S. carriers should be the only consideration in determining revised accounting rates, TRT believes that where a revision will have a significant adverse impact on the U.S. industry, the proposed revision should not be revised in the absence of a compelling showing that the revision is required in fairness to the foreign correspondent or that it will benefit U.S. consumers.

4. TRT asserts that close scrutiny of AT&T's petition is particularly necessary in this case because AT&T has "circumvented" regular FCC-Industry meetings. TRT states that AT&T's petition sets forth no grounds that could justify grant of waiver, such as that it will result in lower collection rates, improved services, increased competition, or in any other public benefit. TRT states that it is well known that the DBP, and other CEPT administrations, have been seeking a general reduction in accounting rates for packet switched data services. TRT asserts that the DBP's present agreement to initiate packet switched service with AT&T, with a significantly lower accounting rate, should be realistically viewed as part of a DBP strategy to pressure other U.S. carriers to agree to this rate reduction.

5. TRT contests AT&T's assertion that packet switched services are provided in the FRG on a customer select basis. TRT states that packet calls from the FRG to the U.S. are generally routed among U.S. carriers at the DBP's discretion. TRT adds that calls to AT&T's network must be treated differently because AT&T's relatively new packet network has so far not been interconnected with the networks of other U.S. carriers. TRT states that it would expect this situation to change and, with interconnection, there would be nothing to prevent the DBP from transmitting the majority of U.S. destined traffic via a lower cost AT&T route. TRT believes that AT&T's petition should be denied so that the U.S. carriers and the Commission may consider the need for the revision of the U.S./CEPT packet switched service accounting rate in an orderly fashion without the potential threat of whipsawing.

6. FTCC also opposes the AT&T petition for waiver. FTCC states that AT&T provides virtually no information on the direction of the net flow of packet switched data communications traffic between the U.S. and the FRG

either for its own traffic, or for the industry at large. FTCC states that without knowing the direction of net flow, it is impossible to know whether AT&T's proposal will benefit or harm the public interest.

7. FTCC adds that since AT&T has failed to provide any information with respect to the total amount of traffic flowing between these two countries, either for AT&T or for the industry, the extent of the gain or the loss to the balance of payments cannot be gauged. FTCC observes that the Commission has expressed its concern at the proportion of revenues obtained or retained by foreign correspondents and the relationship to the 232 million net revenue outflow in 1986 to the twelve member countries of the European community. FTCC asserts that without information on the financial impact of the waiver, the Commission should deny or dismiss AT&T's petition without prejudice to its being refiled at a later time with the appropriate supporting information.

8. Telenet does not oppose the AT&T petition. Telenet states that it agrees with AT&T that arrangements that permit users, rather than the Postal Telephone and Telegraph (PTT), to select the U.S. carrier for inbound traffic generally are insulated from operating agreement and return flow traffic manipulations. Telenet adds that this is true for packet switched services, however, only where the DNIC selection of the overseas user is honored and the overseas administration does not establish collection rates or other terms that arbitrarily encourage use of one U.S. carrier's DNIC over another. Indeed, Telenet suggests that the Commission may wish to consider incorporating these concerns as conditions into the grant of AT&T's petition for waiver.

C. REPLY COMMENTS

9. AT&T states that the TRT and FTCC assertions that the petition should be denied because AT&T failed to provide sufficient information are without merit. AT&T asserts that its petition provides the information that was specified by the Commission as subjects that must be addressed in any petition for waiver. AT&T observes that neither TRT nor FTCC identify any deficiency in meeting those requirements, relying instead on general allegations that are not based on the Commission's stated criteria. AT&T adds that thus far AT&T has not experienced an imbalance of traffic in its packet switched communications service. AT&T also disagrees with TRT's suggestion of "FCC-Industry" meetings as an avenue for addressing this question and states that AT&T believes these meetings among U.S. carriers to discuss accounting rate changes are unwise and inconsistent with the Commission's pro-competitive initiatives.

10. AT&T states that Telenet's objection to the possibility of a lower DBP collection rate that would encourage the selection of the U.S. carrier's DNIC with the lowest accounting rate runs directly counter to the primary goal of the ISP, which is to promote lower prices and better services for U.S. users. AT&T observes that the Commission has recently expressed its increasing concern with the relatively high level of uniform international accounting rates and the possible adverse affect in the achievement of the Commission's objectives. AT&T urges the Commission to follow its pro-competitive policies and to resist attempts to hamper and impede the development of the packet switched communications services market.

II. DISCUSSION

11. For some five decades, the Commission has engaged in regulatory oversight of settlement arrangements between U.S. carriers and their foreign correspondents. Commission policy, which has evolved through individual decisions, policy statements, and practice has traditionally focused on the need to ensure that foreign PTTs do not obtain unduly favorable terms and conditions in their relations with U.S. carriers, to the detriment of U.S. carriers and, more important, U.S. ratepayers. Specifically, the Commission has required that all carriers providing the same service to the same foreign point have the same accounting, settlement and division of tolls arrangement with a given PTT.[1] The Commission has also stated, however, that in an effort to encourage entry by new competitors, lower prices and greater innovation in international telecommunications services, the Commission would consider waiver requests concerning the uniformity requirement of its ISP. Specifically, the Commission stated that it would consider a variety of factors, including, but not limited to, the possibility of lower collection rates, improved services and increased competition,[2] in determining whether to grant a petition requesting a waiver of the Commission's uniformity requirement. Moreover, the Commission concluded that, in the grant of a waiver of the ISP, each of these factors alone could support a conclusion that a waiver would provide overall benefits to the public [3] and should be granted.

12. More recently, the Bureau issued a report that concluded that price of telecommunications services is an important determinant of demand and that accounting rates for international telecommunications services have not kept pace with reductions in international telecommunications facilities costs.[4] Based on this report, we believe that packet switched communications service between the U.S. and the FRG should grow, particularly if reductions in the accounting rate lead to reductions in collection rates on both sides of the Atlantic.[5] Moreover, should the reduction in the accounting rate lead to reductions in collection rates for packet switched service, we believe that there should be no appreciable negative impact on AT&T's revenues or on the U.S. telecommunications industry overall. To the contrary, we believe it could lead to revenue growth for this service. Therefore, in this Order, we conclude that the AT&T petition for an accounting rate of SDR 2.85 per kilosegment and SDR 2.85 per hour of connect time, divided on a 50/50 basis, for international direct packet switched service to and from the FRG, should be granted.

13. We also recognize, however, that some carriers may continue to have legitimate concerns that their share of inbound traffic volume from a PTT may not be proportionate to their share of outbound traffic to the FRG. Therefore, in order to address the question of possible whipsawing of other U.S. carriers, we will condition this waiver grant on AT&T filing a revenue and traffic report showing originating and terminating minutes of use, messages and revenues for packet switched service to and from the FRG for calendar year 1989 on or before August 1, 1990,[6] and may consider additional action at a later date if necessary. We believe that the reduction, with these conditions, will promote the Commission's goals of encouraging new entry, competition, and innovation in the provision of international services[7] and that these

benefits, on balance, outweigh any remaining procedural or substantive concerns expressed by the commenting parties.

III. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED, that the petition for waiver of the International Settlements Policy filed by American Telephone and Telegraph Company to permit a reduction in the accounting rate for international direct packet switched service between the United States and the FRG IS GRANTED to the extent discussed herein and the reduction may go into effect on the release date of this Order.

15. IT IS FURTHER ORDERED, that other U.S. international record carriers are given leave to establish an accounting rate of SDR 2.85 per kilosegment and SDR 2.85 per hour of connect time, divided on a 50/50 basis, by filing a letter with the Chief of the Common Carrier Bureau that notifies this Commission of the effective date of the new rate, which must be after the release date of this Order.

16. IT IS FURTHER ORDERED, that AT&T and any other carrier that establishes an accounting rate of SDR 2.85 per kilosegment and SDR 2.85 per hour of connect time, divided on a 50/50 basis, must file a revenue and traffic report for calendar year 1989 on or before August 1, 1990, showing originating and terminating minutes of use, messages, and revenues for their packet switched service to and from the FRG.

17. This order is issued under Section 0.291 of the Commission's rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] *See, e.g.*, Implementation and Scope of Uniform Settlements Policy for Parallel Communications Routes, CC Docket No. 85-204, 51 Fed. Reg. 4736, 4737 (February 7, 1986) (hereinafter Report and Order).

[2] *See* Uniform Settlement Rates, Memorandum, Opinion and Order, 84 FCC 2d 121 (1980); *see also* Implementation and Scope of the Uniform Settlements Policy for Parallel International Communications Routes, Notice of Proposed Rule Making, CC Docket No. 85-204, 50 Fed. Reg. 28418 (July 3, 1985); *see also* Report and Order, *supra* n. 1.

[3] *See* Uniform Settlement Rates, *supra* n. 2.

[4] *See* International Accounting Rates and the Balance of Payments Deficit in Telecommunications Services, Report of the Common Carrier Bureau to the Federal Communications Commission, December 12, 1988.

[5] The international communications industry grew substantially in the period 1975-1987. Revenues from international service increased from 861.7 million in 1975 to 2.9 billion in 1987. In 1987 the telephone volume increased by 24.9 percent and revenues for telephone grew by 18.9 percent. *See* Trends in the International Communications Industry 1975-1987, Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission October, 1988 (hereinafter Trends in International Communications).

[6] We will not require that other U.S. carriers that also wish to reduce their accounting rate to SDR 2.85 per kilosegment and SDR 2.85 per hour of connect time file additional petitions for waiver. Rather, we will permit other U.S. carriers to establish this accounting rate for packet switched service to and from the FRG by filing a letter with the Chief of the Common Carrier Bureau, that notifies this Commission of the effective date of the rate (which must be after the effective date of this Order). A copy of the notification will be appended to the file containing the original waiver petition. Carriers availing themselves of this opportunity, however, will be subject to the same condition that they submit a revenue and traffic report on their packet switched traffic to and from the FRG for the calendar year 1989 on or before August 1, 1990.

[7] *See* Report and Order, *supra* n. 1.