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March 30, 2000

## Commission Repeals International Settlements Policy

In response to the increased competition in the international telecommunications marketplace, the Federal Communications Commission ("FCC" or "Commission") approved a series of reforms of its longstanding international settlements policy ("ISP"), which protects U.S. telecommunications carriers from foreign carriers with monopoly power. Most significantly, the FCC has eliminated the requirement that settlement arrangements between U.S. carriers and foreign carriers that provide service in competitive markets conform to the ISP. In light of the reform of the ISP, the Commission also eliminated or modified certain related filing requirements, simplified accounting rate filing requirements, and eliminated the superfluous "flexibility policy."

The rules implementing the reform of the ISP, which were effective July 29, 1999, provide for the following:

- Removal of the ISP and related filing requirements -- The Commission has removed the ISP and related contract filing requirements for settlement arrangements between U.S. carriers and foreign carriers that lack market power in both WTO Member and non-WTO member markets. The Commission concluded that the ISP is no longer necessary for settlement arrangements with foreign carriers that lack market as a means to prevent "whipsawing,"<sup>(1)</sup> and that removal of the ISP and related contract filing requirements in these circumstances will promote competition in the U.S. market.

The Commission will maintain a list of foreign carriers that are presumed to possess market power in foreign markets, and with whom U.S. carriers must continue to exchange traffic in accordance with the ISP (except on selected routes, as discussed below).<sup>(2)</sup> Interested parties may challenge the inclusion or exclusion of any carrier on the list by submitting a petition for declaratory ruling and the appropriate supporting documentation. The Commission may also amend the list on its own motion. The list of foreign carriers presumed to possess market power will be updated periodically and

posted on the FCC's web site.<sup>(3)</sup>

- Eliminating the ISP on Selected Routes -- The Commission has also removed the ISP completely on selected routes involving certain foreign carriers that possess market power in the foreign market. Specifically, the Commission will not apply the ISP to arrangements with carriers (in both WTO and non-WTO Member countries) on routes where rates to terminate U.S. calls are at least 25 percent lower than the relevant benchmark previously adopted by the FCC in the *Settlement Rate Benchmark Order*. Countries with competitive telecommunications markets that currently qualify under this standard include Canada, the United Kingdom, Ireland, Sweden, Germany, France, Italy, Hong Kong, the Netherlands, Denmark and Norway.

To enter into an arrangement with a foreign carrier that possesses market power on a route for which the ISP has not previously been lifted, a carrier must file a petition for declaratory ruling (together with supporting documentation) that at least 50 percent of U.S.-billed traffic on the route is terminated in the foreign market at rates that are at least 25 percent below the benchmark settlement rate. For upper income routes, 25 percent below the benchmark rate is 11.25 cents; for upper middle income routes, 25 percent below the benchmark rate is 14.25 cents; for lower income routes, 25 percent below the benchmark rate is 17.25 cents. The Commission will issue a Public Notice upon the filing of such a petition and may, in each case, determine an appropriate deadline for filing comments. Unopposed requests may be granted by Public Notice. The FCC will periodically update a list of international routes exempt from the ISP on its web site.

- Filing Requirements for Arrangements with Foreign Carriers with Market Power -- Under the newly adopted rules, the Commission will require carriers that exchange traffic with foreign carriers that possess market power on routes where the ISP has been lifted to file with the Commission information on rates paid for the origination and/or termination of international traffic and copies of their contracts. Such information may be filed with the Commission under confidential seal. This filing requirement covers all arrangements between U.S. and foreign carriers that possess market power, including arrangements currently classified as international simple resale ("ISR") arrangements and alternative settlement arrangements.
- Competitive Safeguard for Affiliated Carriers -- The new rules prohibit U.S. carriers that are affiliated or non-equity joint venture partners with foreign carriers that possess market power in the foreign market from entering into arrangements that may present a significant adverse impact on competition on the international route. Where such arrangements have been entered into, the FCC reserves the right to take appropriate action to remedy the situation, including reimposing the ISP on the route.
- Alternative Settlement Arrangements -- The Commission has abolished the "flexibility policy," which permitted flexibility in the accounting rate policies where appropriate market and regulatory conditions existed. The Commission found that maintaining the flexibility policy's "detailed and complex" procedures

for exempting settlement arrangements from the ISP was no longer necessary in light of the limited application it would have upon adoption of the new rules. The Commission, however, will still consider waivers of the ISP for individual settlement arrangements with a foreign carrier with market power to deviate from the ISP, even though the standard for removing the ISP has not been met. Among the factors it will consider when entertaining a waiver request include whether granting the waiver would promote the public interest in achieving cost-based rates for terminating international traffic, while precluding the abuse of foreign market power.

- The "No Special Concessions" Rule -- The "No Special Concessions" rule prohibits a U.S. international carrier from agreeing to accept special concessions from a foreign carrier that has sufficient market power in the destination market such that it can affect competition adversely in the United States. Under the new rules, the "No Special Concessions" rule will no longer apply to the terms and conditions under which traffic is settled, including the allocation of return traffic, on routes where the ISP has been removed. The "No Special Concessions" rule, however, will continue to apply to interconnection of international facilities, private line provisioning and maintenance, and quality of service on routes where the ISP has been removed.
- "Grooming" of International Traffic -- The Commission has removed the condition that the FCC's International Bureau has imposed on Bell Operating Company international Section 214 certificates that requires these carriers to obtain prior Commission approval of "grooming" arrangements (*i.e.*, arrangements involving traffic that terminates in particular geographic regions). The Commission concluded that grooming arrangements are no longer a cause for concern on routes where the ISP has been removed.
- Accounting Rate Filings -- The Commission has eliminated the option of notifying the Commission of simple reductions in the applicable accounting rate in favor of a single procedure for accounting rate changes. Under the new rules, all accounting rate change filings are to be filed pursuant to the existing procedures for accounting rate modifications. Under these procedures, filings are automatically granted 21 days after filing if the filing is unopposed and the FCC's International Bureau has not notified the applicant that approval of the modification may not serve the public interest. When a filing is not automatically granted, approval is only granted by formal action of the International Bureau. The Commission has also eliminated the former requirement that carriers making accounting rate filings serve every carrier that provides service on the international route with a copy of the filing.
- One-End Interconnections by U.S. Facilities-Based Carriers -- The Commission has eliminated as superfluous the provision adopted in the *Foreign Carrier Entry Order* permitting one-end interconnections by U.S. facilities-based carriers. At one time, the Commission required that a U.S. facilities-based carrier obtain separate authority under Section 214 of the Communications Act of 1934, as amended (the "Act"), and demonstrate that equivalency existed when such a carrier sought to provide ISR over its



facilities-based U.S. international private lines. An exception to this general rule permitted a carrier to use its private lines to carry switched traffic without demonstrating equivalency where two conditions were met: (1) the private line is interconnected to the public switched network on one end only; and (2) the foreign correspondent with which the U.S. facilities-based carrier is interchanging switched traffic is not the owner of the underlying foreign private line half-circuit. In light of the fact that removal of the ISP for arrangements with carriers that lack market power allows U.S. facilities-based carriers to carry switched traffic over international circuits interconnected on one or both ends in correspondence with foreign carriers that lack market power, the Commission determined that the rule permitting one-end interconnection by U.S. facilities-based carriers is no longer necessary.

- Resale of One-End Interconnection Services -- The new rules will permit U.S.-authorized private line resellers to interconnect their private lines to the public switched network, at one or both ends, for the provision of switched basic services, and thus, to engage in ISR in either of the following circumstances: (1) on any route where the resale carrier exchanges switched traffic with a foreign carrier that lacks market power; or (2) on any route for which the Commission has authorized the provision of ISR. This rule supersedes the condition that appears in the authorizations of private line resellers granted pursuant to Section 214 of the Act that limits the ability to resell interconnected private lines on routes for which the Commission has authorized ISR.

- Tariffs -- All U.S. private line carriers are required to have international private line tariffs that track these rules. In particular, each such tariff must explicitly state that the private line user may engage in resale of the international private line for the provision of a switched, basic telecommunications service upon authorization from the Commission under Section 214 of the Act, and provided that the private line is used only (1) on a route where the resale carrier exchanges switched traffic with a foreign carrier that the Commission has determined lacks market power, or (2) on any route for which the Commission has lifted the ISP.

### Endnotes

1. The ISP was originally designed to prevent foreign monopoly carriers from pitting one U.S. carrier against another when negotiating settlement rates -- a practice known as whipsawing. The ISP prevents whipsawing by prohibiting U.S. carriers from accepting discriminatory terms and conditions for the termination of traffic in overseas markets.

2. The Commission's rules include a presumption that a foreign carrier does not possess market power on the foreign end of a U.S. international route if it possesses less than 50 percent market share in each of three relevant foreign product markets: international transport facilities, including cable landing station access and backhaul facilities; intercity facilities and services; and local access facilities and services on



the foreign end.

3. The address is <http://www.fcc.gov/ib>