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

In the Matter of	)	
	)	
Petition of AT&T Inc. for Settlements Stop Payment Order on the U.S.-Tonga Route	)	IB Docket No. 09-10
	)	

MEMORANDUM OPINION AND ORDER

Adopted: April 4, 2014 **Released: April 7, 2014**

By the Commission:

I. INTRODUCTION

1. In this Memorandum Opinion and Order (Order), we deny Tonga Communications Corporation's (TCC)[1] Application for Review of the International Bureau's (Bureau) 2009 *Tonga Stop Payment Order*, which directed all U.S. carriers authorized to provide facilities-based international switched voice services on the U.S.-Tonga route to suspend all U.S. carrier payments for termination services to TCC.[2] As we discuss below, we concur with the Bureau's findings that TCC disrupted the U.S.-international networks of AT&T Inc. (AT&T) and Verizon Communications Inc. (Verizon) for the purpose of forcing those carriers to agree to higher termination rates, and we find the Bureau's decision to issue the *Tonga Stop Payment Order* consistent with Commission precedent and adequately supported by the record.

II. BACKGROUND

2. TCC is a telecommunications carrier that provides voice, data, Internet, and cellular services in the Kingdom of Tonga.[3] As noted in the *Tonga Stop Payment Order*, TCC provides service pursuant to a telecommunications license issued by the Tonga Communications Minister.[4]

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[1] Tonga Communications Corporation (TCC), Application for Review, IB Docket No. 09-10 (filed July 15, 2009) (Application for Review).

[2] *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*). Specifically, the Bureau ordered that "all facilities-based carriers subject to Commission jurisdiction having a correspondent agreement with TCC for direct termination of U.S. traffic on the U.S.-Tonga route shall suspend all termination payments to TCC for switched voice service effective upon release of [the *Tonga Stop Payment Order*] until such time as the Commission issues a Public Notice that AT&T's and Verizon's circuits on the U.S.-Tonga route are fully restored." *Id.* at 8024, ¶ 59 (emphasis in original). AT&T and Verizon continue to report that their circuits remain disrupted. *See, e.g.*, Letter from Jacquelynn Ruff, Vice President, International Public Policy & Regulatory Affairs, Verizon to Marlene H. Dortch, Secretary, FCC (filed Jan. 13, 2014) (Jan. 13 Verizon Letter); Letter from James J.R. Talbot, General Attorney, AT&T to Marlene H. Dortch, Secretary, FCC (filed Jan. 24, 2014) (Jan. 24 AT&T Letter).

[3] TCC Opposition, IB Docket 09-10 (filed Feb. 19, 2009). TCC is a public enterprise wholly owned and controlled by the Tongan Government. *See Tonga Stop Payment Order*, 24 FCC Rcd at 8007, ¶ 3; *see also* http://www.tcc.to/index.php/aboutus/ (last visited Jan. 30, 2014); http://www.mic.gov.to/government/176-public-enterprises/1131-aggregate-performance-of-public-enterprises (last visited Jan. 30, 2014).

[4] TCC Opposition at 2; *see Tonga Stop Payment Order*, 24 FCC Rcd at 8007, ¶ 3. Tonga's Ministry of Information and Communications is the "main regulating body for all communication services, and has the role of lead

(continued….)

3. On December 3, 2008, AT&T filed a petition asking the Commission to issue an order stopping U.S. settlements payments to TCC because TCC had blocked AT&T's circuits to Tonga since November 24, 2008, in support of its demand to increase termination rates on this route to over three times the previous level (from approximately $0.09 to $0.30).[5] Verizon filed comments in support of AT&T's petition.[6] TCC opposed the petition, arguing, *inter alia*, that it did not engage in any anticompetitive behavior because the rate increases were mandated by the Tonga Communications Minister; the Commission lacks authority to issue a stop payment order on the U.S.-Tonga route because the increased rates were mandated by the government; the Commission does not have authority to prescribe rates that would create a conflict with the laws of a foreign country; and the $0.30 rate increase was not unreasonably high.[7]

4. On June 15, 2009, the Bureau issued the *Tonga Stop Payment Order*, which found that TCC's disruption of the international networks of AT&T and Verizon was anticompetitive and required action to protect U.S. consumers in accordance with Commission policy and precedent.[8] In particular, the Bureau found that TCC engaged in anticompetitive actions by demanding a substantial rate increase amounting to a rate floor without engaging in meaningful negotiations and then threatening and carrying out threats to disrupt the AT&T and Verizon networks when the carriers did not accede to the increase.[9] In this regard, the Bureau found that TCC demanded an increase in termination rates for inbound international calls from $0.09 per minute to $0.30 per minute – a rate floor that is well over the Commission's existing benchmark rate of $0.19 per minute for U.S.-Tonga traffic – and began blocking Verizon's and AT&T's circuits in November 2008.[10] Further, the Bureau determined that TCC had not presented persuasive arguments to rebut the presumption that its actions harm the U.S. public interest.[11] Specifically, the Bureau stated that TCC's disruption of U.S. carrier circuits to enforce the rate increase, notwithstanding the Tonga Communications Minister's mandate to increase termination rates for inbound international telephone calls, had an anticompetitive effect on U.S. carriers and consumers.[12] The Bureau explained that the Commission has the authority to issue a stop payment order to U.S. carriers to protect U.S. consumers from such anticompetitive behavior regardless of whether the rate increases were

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communicator for government information in creating awareness of government policies, programs and activities." Tonga Government Portal: Ministry of Information and Communications, at http://www.mic.gov.to/ministrydepartment/14-govt-ministries/prime-ministers-office/information-a-communications (last visited Jan. 30, 2014).

[5] AT&T, Petition for Settlements Stop Payment Order on the U.S.-Tonga Route, IB Docket No. 09-10, at 1 (filed Dec. 3, 2008) (AT&T Petition); AT&T, Reply Comments (filed Feb. 26, 2009) (AT&T Reply Comments).

[6] Verizon, Comments, IB Docket No. 09-10 (filed Feb. 19, 2009) (Verizon Comments). Verizon states that TCC also has blocked Verizon's circuits to Tonga since November 17, 2008, in support of its demand to increase termination rates on this route to $0.30. *Id*. at 1.

[7] *See generally* TCC Opposition; TCC Reply (filed Feb. 26, 2009). For a full discussion of the pleadings filed in response to the AT&T Petition, *see Tonga Stop Payment Order*, 24 FCC Rcd at 8007-10, ¶¶ 2-10.

[8] *Tonga Stop Payment Order,* 24 FCC Rcd at 8006, ¶ 1.

[9] *Id*. at 8011-15, ¶¶ 15-25, 8021, ¶ 44.

[10] *Id*. at 8011-12, ¶¶ 16-18.

[11] *Id*. at 8012, ¶ 19, 8021, ¶ 44. *See International Settlements Policy Reform; International Settlement Rates*, IB Docket Nos. 02-324 and 96-21, First Report and Order, 19 FCC Rcd 5709, 5731, ¶ 45 (2004) (*2004 ISP Reform Order*) ("[T]here is 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.'").

[12] *Tonga Stop Payment Order*, 24 FCC Rcd at 8013-14, ¶¶ 22-23.

mandated by the Tonga Communications Minister.[13] For these reasons, the Bureau granted AT&T's petition to issue the stop payment order.[14]

5. On July 15, 2009, TCC filed its Application for Review requesting the Commission to review and overturn the Bureau's decision and lift the settlements stop payment order on the U.S.-Tonga route.[15] TCC contends, among other things, that the Bureau's determination that TCC's actions are anticompetitive and constitute "whipsawing"[16] is erroneous and conflicts with established law[17] because the Tongan Government required TCC to increase its termination rates.[18] TCC argues that, under these circumstances, the Commission does not have authority under the Communications Act of 1934, as amended (the Act),[19] to issue the stop payment order.[20] Additionally, TCC argues that the Commission cannot lawfully issue an order regarding the rates charged by a foreign telecommunications carrier for providing termination services in a foreign country when such order creates a direct conflict with the duly enacted laws and regulations of the foreign country.[21] TCC also maintains that the interests of U.S. consumers "would be better served" if the Bureau investigated AT&T's and Verizon's high rates for service on the U.S.-Tonga route.[22]

[13] *Id.* at 8013-16, ¶ 22-25.

[14] *Id.* at 8021, ¶ 44-45. The Bureau, on its own motion, also sought further comment in the *Tonga Stop Payment Order* on whether the Commission should extend the stop payment order to any U.S. carrier with direct arrangements with Digicel Tonga Limited (Digicel), another carrier licensed to provide telecommunications services in Tonga, for international termination services in Tonga. *Id.* at 8007, ¶ 3, 8021, ¶ 46. Based upon a review of the record developed on that issue, the Bureau released a second order in November 2009 requiring all facilities-based carriers subject to Commission jurisdiction having an operating agreement with Digicel for direct termination of U.S. traffic on the U.S.-Tonga route to suspend all termination payments to Digicel for switched voice service. *Petition of AT&T Inc. for Settlements Stop Payment Order on the U.S.-Tonga Route*, IB Docket No. 09-10, Second Order and Further Request for Comment, 24 FCC Rcd 13769 (Int'l Bur. 2009) (*Tonga Second Stop Payment Order*). Digicel did not file an application for review of the *Tonga Second Stop Payment Order*, and that order remains effective.

[15] Application for Review at 1-3, 10.

[16] *International Settlements Policy Reform et al.*, IB Docket Nos. 11-80, 05-254, 09-10 and RM-11322, Report and Order, 27 FCC Rcd 15521, 15523, n.5 (2012) (*2012 ISP Reform Order*) ("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.") (citations omitted).

[17] Application for Review at 1-5.

[18] *Id.* at 3-5. TCC states that it "increased its termination rate in response to an August 2008 ruling of the [Tonga Communications Minister] that raised the minimum termination rate for *all* inbound international telephone traffic – whether terminating to TCC or its competitor [Digicel Tonga Ltd], and without regard to country of origin – to US$0.30/minute effective no later than September 1, 2008." *Id.* at 3 (emphasis in original).

[19] 47 U.S.C. § 151 *et seq.*

[20] Application for Review at 6-8.

[21] *Id*.

[22] *Id*. at 8-9. TCC states that AT&T's and Verizon's published consumer landline rates to Tonga far exceed the termination rate to Tonga, and argues that the Commission should require AT&T and Verizon to lower their consumer landline rates for calls to Tonga and other thin routes. *Id*.

6. In July 2009, AT&T and Verizon filed oppositions to TCC's Application for Review, asking the Commission to affirm the Bureau's *Tonga Stop Payment Order*.[23] AT&T contends that the Bureau properly determined that TCC's disruption of U.S. carrier circuits violated Commission policies protecting U.S. consumers against the abuse of foreign market power. In particular, AT&T contends that the Bureau correctly applied Commission rules and policies to the facts in this matter; adopted the stop payment order to prevent "whipsaw" conduct on the U.S.-Tonga route; properly determined that the Tongan Government's order establishing a minimum termination rate does not justify TCC's actions; and did not create a conflict with foreign law by issuing the *Tonga Stop Payment Order*. Finally, AT&T argues that the Bureau properly determined that AT&T's inbound rates are not relevant to TCC's anticompetitive conduct.[24] Verizon argues that the Commission has authority under the Act to issue the *Tonga Stop Payment Order*; the *Tonga Stop Payment Order* creates no conflict of laws; and AT&T's and Verizon's allegedly high rates for service to Tonga are irrelevant.[25] TCC did not respond to AT&T's and Verizon's oppositions.

7. The Tongan Government officially rescinded its minimum termination rate effective April 1, 2010.[26] However, to date, Tongan carriers TCC and Digicel Tonga Ltd. (Digicel)[27] continue to require above-benchmark rates for inbound traffic that include a $0.051 cent per minute tax levied by Tonga,[28] and AT&T's and Verizon's direct circuits on the U.S.-Tonga route remain disrupted.[29] The Office of the United States Trade Representative (USTR) stated, in its 2012 Section 1377 Review on Compliance with Telecommunications Trade Agreements,[30] that TCC and Digicel continue to "insist on unreasonable above-cost rates and refuse to restore direct circuits between the United States and Tonga."[31] In this regard, USTR has urged the Tongan Government to restore direct circuits and offer

[23] AT&T, Opposition to Application for Review, IB Docket No. 09-10 (filed July 30, 2009) (AT&T Opposition); Verizon, Opposition to Application for Review, IB Docket No. 09-10 (filed July 30, 2009) (Verizon Opposition).

[24] AT&T Opposition at 1-13.

[25] Verizon Opposition at 1-6.

[26] *See* Letter from Jacquelynn Ruff, Vice President, International Public Policy & Regulatory Affairs, Verizon to Marlene H. Dortch, Secretary, FCC (filed June 14, 2010) (attaching announcement from Tongan Government that it will no longer be setting a regulatory minimum access charge for all inbound international telephone calls effective April 1, 2010); *see 2012 ISP Reform Order*, 27 FCC Rcd at 15527, ¶ 9.

[27] Digicel is licensed to provide telecommunications service in Tonga. TCC Opposition at 2-3.

[28] *See 2012 ISP Reform Order*, 27 FCC Rcd at 15527, ¶ 9. Letter from James J.R. Talbot, General Attorney, AT&T to Marlene H. Dortch, Secretary, Federal Communications Commission (filed October 22, 2012); 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). *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 (last visited Feb. 12, 2014).

[29] *See*, *e.g.*, Jan. 13 Verizon Letter; Jan. 24 AT&T Letter.

[30] Section 1377 of the Omnibus Trade and Competitiveness Act of 1988 requires USTR to review, by March 31 of each year, the operation and effectiveness of U.S. telecommunications trade agreements. The purpose of the review is to determine whether any act, policy, or practice of a foreign country that has entered into a telecommunications-related agreement with the United States is not in compliance with the terms of the agreement or otherwise denies, within the context of the agreement, mutually advantageous market opportunities to telecommunications products and services of U.S. firms in that country. *See* Office of the United States Trade Representative, Section 1377 Review, *at* http://www.ustr.gov/trade-topics/services-investment/telecom-e-commerce/section-1377-review (last visited Jan. 30, 2014).

[31] *See* Office of the United States Trade Representative, 2012 Section 1377 Review on Compliance with Telecommunications Trade Agreements at 11, *available at* http://www.ustr.gov/webfm_send/3331 (last visited Jan. 30, 2014).

reasonable, cost-based rates to U.S. carriers. Nevertheless, USTR observed in its 2013 Section 1377 Review on Compliance with Telecommunications Trade Agreements that "TCC … refuses to negotiate a cost-oriented and reasonable rate for termination for international traffic to Tonga and the [Tongan Government] has failed to take appropriate steps to ensure that TCC offers such rates."[32]

III. DISCUSSION

8. In this section, we assess whether TCC has proffered a basis for overturning on review the Bureau's findings and decisions in the *Tonga Stop Payment Order*.[33] In particular, we consider whether TCC has provided an adequate basis to rebut the Bureau's finding that TCC's actions constituted anticompetitive conduct harming U.S. consumers and so were contrary to the public interest.[34] We also examine whether the Bureau's order created a conflict with Tongan law or otherwise amounted to an exercise in extraterritorial jurisdiction, as TCC claims.[35] Finally, we address TCC's contention that the Commission should investigate AT&T's and Verizon's allegedly high rates for service to Tonga to protect U.S. consumers.[36] As we discuss below, we find no basis in the record to grant TCC's Application for Review. We also find that the Bureau's *Tonga Stop Payment Order* comports with Commission authority to act in the public interest in responding to carrier-initiated petitions and notifications seeking Commission intervention on individual international routes where there is anticompetitive conduct.

A. The Bureau's Finding of Anticompetitive Conduct and Issuance of the Stop Payment Order

1. Indicia of Anticompetitive Conduct

9. *Background*. The Commission maintains several safeguards designed to protect U.S. consumers from anticompetitive conduct by foreign carriers and other types of market failures.[37] Included among the safeguards is a process by which the Commission may consider petitions such as that filed by AT&T alleging anticompetitive harm.[38] The Commission has recognized that, under certain circumstances, "carriers with market power might be free to act anticompetitively, ultimately harming U.S. customers through artificially inflated costs for call termination."[39] The Commission regards "certain actions as indicia of potential anticompetitive conduct by foreign carriers, including, but not limited to: (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 in order to achieve rate increases or changes to the terms and conditions of termination agreements."[40] The Commission has concluded that each of these types of actions is a means to disrupt

[32] *See* Office of the United States Trade Representative, 2013 Section 1377 Review on Compliance with Telecommunications Trade Agreements at 15, *available at* http://www.ustr.gov/sites/default/files/04032013%202013%20SECTION%201377%20Review.pdf (last visited Jan. 30, 2014).

[33] *See* 47 C.F.R. § 1.115.

[34] *See Tonga Stop Payment Order*, 24 FCC Rcd at 8012-13, ¶ 19. TCC asserts that the Bureau's finding is based on erroneous findings of fact and conflicts with prior precedents. Application for Review at 3-5.

[35] Applications for Review at 6-8.

[36] *Id.* at 8-9.

[37] *See 2012 ISP Reform Order*, 27 FCC Rcd 15521; *2004 ISP Reform Order*, 19 FCC Rcd 5709.

[38] *See* 47 C.F.R. § 64.1002(d) (2008). Subsequent to the time AT&T filed its petition, in 2008, the Commission moved the rule governing petitions alleging anticompetitive conduct to Section 63.22(g) of its rules. 47 C.F.R. § 63.22(g); *see 2012 ISP Reform Order*, 27 FCC Rcd at 15532, ¶ 22.

[39] *See 2004 ISP Reform Order,* 19 FCC Rcd at 5729, ¶ 40.

[40] *Id.* at 5730-31, ¶ 44.

normal commercial negotiations in order to force U.S. carriers to accept above-cost settlement rate increases that would be passed on to U.S. customers, and may require Commission action to protect U.S. customers.[41] The Commission has found, in particular, that blocking or disruption of U.S. carrier networks directly harms the public interest.[42] As a result, the Commission has adopted a rebuttable presumption of anticompetitive conduct causing 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.'"[43]

10. *Discussion*. After reviewing the record in this case, we conclude that the Bureau correctly determined that TCC's actions were anticompetitive because they satisfy each of the three indicia for anticompetitive conduct recognized by the Commission.[44] The record supports the Bureau's finding that: (1) there was a substantial increase in rates above benchmarks; (2) a rate floor was set; and (3) TCC disrupted AT&T's and Verizon's circuits when its rate demands were not met. First, TCC demanded a substantial increase in termination rates from $0.09 to $0.30,[45] which was more than triple the rate negotiated between AT&T and TCC in July 2008[46] and is well above the Commission's established benchmark rate for the U.S.-Tonga route of $0.19 per minute.[47] Second, the $0.30 termination rate is the minimum settlement rate for all inbound international telephone traffic to Tonga. The $0.30 rate floor did not permit additional commercial negotiation below that level.[48] Finally, TCC disrupted circuits when its rate demands were not met, directly harming the public interest.[49] Thus, the Bureau correctly determined that TCC's actions to disrupt the U.S.-international networks of AT&T and Verizon, for the purpose of trying to force U.S. carriers to agree to higher termination rates, constituted anticompetitive conduct causing harm to the public interest that required Commission action to protect U.S. consumers.[50]

11. TCC does not question the factual bases underlying the Bureau's determination that these three types of actions occurred here. Rather, TCC in effect argues that the occurrence of the three types of actions does not warrant a conclusion in this case that TCC's conduct was anticompetitive. For the reasons discussed below, we conclude that TCC's arguments are not persuasive, and, therefore, that the Bureau properly issued the stop payment order to U.S. carriers subject to Commission jurisdiction.

2. Tongan Law Requirements

12. *Background*. TCC argues that, because its actions were mandated by Tongan law, TCC cannot be found to have engaged in anticompetitive conduct, citing to *Interamerican Refining Co.* for

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[41] *Id*.

[42] *Id*. at 5731, ¶ 45.

[43] *Id.*

[44] *See supra* ¶ 9 and accompanying notes.

[45] *See Tonga Stop Payment Order*, 24 FCC Rcd at 8011-13, ¶¶ 15-19.

[46] *Id.*

[47] *See Tonga Stop Payment Order*, 24 FCC Rcd at 8013-14, ¶¶ 20-22*; see also International Settlement Rates*, IB Docket No. 96-261, Report and Order, 12 FCC Rcd 19806, 19807, ¶ 1, 19815-16, ¶ 19, 19865, ¶ 120, 19965, Appendix C (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, 14 FCC Rcd 9256 (1999); *see also* AT&T Reply Comments at 2-3; Verizon Comments at 2.

[48] *Tonga Stop Payment Order*, 24 FCC Rcd at 8012, ¶ 17.

[49] *See id.* at 8011-13, ¶¶ 15-20.

[50] *Id*. at 8022, ¶ 48.

support.[51] TCC further states that, by ordering U.S. carriers to stop settlement payments to TCC until TCC rescinds its demand that U.S. carriers pay the amount required by Tongan law and reopens AT&T's and Verizon's circuits, the Bureau, in effect, is penalizing a foreign carrier for refusing to disobey the dictates of its own domestic law.[52]

13. *Discussion.* We are not persuaded by these arguments. As a preliminary matter, the involvement of the Tongan Government in this case does not change the anticompetitive nature of TCC's actions. TCC's actions, regardless of whether they were taken pursuant to a mandate from the Tonga Communications Minister, were "no less coercive or anticompetitive than they would have been if TCC [had] acted on its own."[53] In this regard, we note that there is nothing in the record to suggest that the Tongan Government required TCC to block U.S. carrier circuits.[54] In any event, the Commission's policies to address anticompetitive conduct apply regardless of whether such conduct is undertaken solely by a foreign carrier or pursuant to the direction of a foreign government. Indeed, in the *2004 ISP Reform Order*, the Commission stated that its policies regarding foreign market power abuse apply in instances where foreign carriers "are under common control or act pursuant to anticompetitive government mandates."[55] Moreover, in its *Benchmarks Order*, the Commission, in recognizing the sovereign rights of countries to regulate their telecommunications, stated that it cannot accept the view that it must agree to allow U.S. carriers to settle their traffic at whatever rates are imposed by entities controlling the foreign end of an international route without regard to the impact on the U.S. public interest.[56] Finally, we do not find compelling TCC's reliance on *Interamerican Refining Co.* for the general proposition that "[a] party whose actions are mandated by law cannot be found to have engaged in anticompetitive conduct."[57] That case deals with the sovereign compulsion defense to antitrust liability, which is inapplicable here as this case neither involves antitrust liability nor an attempt to exercise Commission jurisdiction over TCC. Accordingly, we find that TCC's argument does not provide a basis for overturning the *Tonga Stop Payment Order*.

3. TCC Blockage of Circuits

14. *Background.* In the *Tonga Stop Payment Order*, the Bureau concluded that TCC's disruption of AT&T's and Verizon's networks for their failure to accede to its rate increases was anticompetitive.[58] In response, TCC claims that it did not block AT&T's and Verizon's circuits for anticompetitive reasons, but rather because its contractual agreements with AT&T and Verizon had expired.[59]

15. *Discussion*. We concur with the Bureau's conclusion that TCC blocked AT&T's and Verizon's circuits for an anticompetitive purpose; namely, to try to force them to accept above-benchmark termination rates.[60] This conclusion is supported by TCC itself, which acknowledged that "it

[51] Application for Review at 3 (citing *Interamerican Refining Co. v. Texaco Maracaibo, Inc.*, 307 F.Supp. 1291, 1296 (D. Del. 1970)).

[52] *Id.* at 2-5.

[53] *Tonga Stop Payment Order,* 24 FCC Rcd at 8014, ¶ 22.

[54] *Id.*

[55] *2004 ISP Reform Order*, 19 FCC Rcd at 5727, ¶ 35, n.92.

[56] *Benchmarks Order*, 12 FCC Rcd at 19950, ¶ 311; *see also Tonga Stop Payment Order,* 24 FCC Rcd at 8013, ¶ 22.

[57] Application for Review at 3.

[58] *Tonga Stop Payment Order,* 24 FCC Rcd at 8021, ¶ 44.

[59] Application for Review at 4.

[60] *Tonga Stop Payment Order,* 24 FCC Rcd at 8022, ¶ 48.

stopped terminating AT&T and Verizon's calls" in part because "U.S. carriers refused to pay the termination rate that TCC was required by Tongan law to charge."[61]

16. We also find that there is no record basis for TCC's contention that its agreements with AT&T and Verizon for terminating traffic in Tonga had expired. As the Bureau found in the *Tonga Stop Payment Order*, AT&T's rate agreement with TCC was set forth in a schedule to the underlying operating agreement, which specifically provided that the parties should continue to provide service in the event the parties failed to agree on new rates before the expiration of the period in which agreed rates were in effect.[62] Similarly, Verizon's agreement with TCC provides that its term is extended "indefinitely" until terminated on prior written notice.[63] The Bureau properly observed these provisions to be consistent with industry practice, that is, to continue service pursuant to the underlying operating agreement, notwithstanding the expiration of rates contained in a separate schedule or annex.[64]

4. Preventing Whipsawing

17. *Background*. In the *Tonga Stop Payment Order*, the Bureau noted that one purpose of a stop payment order is to require U.S. carriers to take a unified bargaining position with respect to the foreign carrier, thereby removing any opportunity that the foreign carrier might have to whipsaw, *i.e.,* "play one [U.S. carrier] off against the other" in an effort to establish a higher settlement rate.[65] TCC denies any plans to play one U.S. carrier off against the other, and asserts on this basis that any finding of anticompetitive conduct in the *Tonga Stop Payment Order* was unwarranted.[66]

18. *Discussion*. TCC cannot rebut the Bureau's finding that TCC engaged in anticompetitive conduct[67] by saying that TCC lacked a plan for playing U.S. carriers against each other. Even if TCC had no plans for whipsawing U.S. carriers, without the *Tonga Stop Payment Order* TCC would still have had the opportunity to engage in such conduct. The Bureau properly concluded that requiring U.S. carriers to take a unified bargaining position against a non-cost-based, higher rate would remove the opportunity for TCC to play U.S. carriers against each other to the detriment of U.S. consumers.[68]

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[61] Application for Review at 4.

[62] *See* AT&T Opposition at 4-5; *Tonga Stop Payment Order*, 24 FCC Rcd at 8020, ¶¶ 41-43. AT&T claims that TCC's action of blocking circuits is specifically prohibited by the terms of AT&T's agreement with TCC for the nominal period of July 1 through August 31, 2008, which, according to AT&T, provided for continuation of service past this period unless specifically terminated under the terms of the agreement, and for deferral of the exchange of monthly rates and the processing of settlements pending execution of a new rate sheet. AT&T Opposition at 2-3.

[63] Verizon Comments at 1-2 (stating that under its most recent termination agreement with TCC effective from September 1, 2007 through December 31, 2007, its term would "extend indefinitely thereafter until terminated by either party with thirty (30) days prior written notice or until amended by the parties upon mutual agreement"). Verizon received an email from TCC providing three days' notice of termination of the circuits but not thirty day notice of termination of the agreement. *See* Verizon Comments at 2 ("On November 14, 2008, TCC sent an email informing Verizon of its decision to "turn down circuits with [Verizon]" effective November 17, 2008 to avoid being out of compliance. TCC began blocking Verizon circuits to Tonga after the close of business on November 17, 2008.").

[64] *See Tonga Stop Payment Order,* 24 FCC Rcd at 8020-21, ¶ 43, and sources cited therein.

[65] *Tonga Stop Payment Order,* 24 FCC Rcd at 8017, ¶ 30 (citing *Cable & Wireless*, 166 F.3d at 1229-30).

[66] Application for Review at 5.

[67] *See supra* ¶ 10.

[68] *Tonga Stop Payment Order,* 24 FCC Rcd at 8017, ¶ 30.

B. Conflict of Laws

19. *Background*. TCC contends that the Commission cannot lawfully issue an order regarding the rates charged by a foreign telecommunications carrier for providing termination services in a foreign country when such order creates a direct conflict with the duly enacted laws and regulations of the foreign country.[69] In addition, TCC maintains that courts have refused to construe U.S. laws in a way that would bring them in conflict with foreign laws.[70] Further, TCC observes that the U.S. Court of Appeals for the D.C. Circuit (D.C. Circuit), in its decision upholding the Commission's *Benchmarks Order*, withheld judgment on whether the Commission has authority to issue an order that "subjects foreign carriers to conflicting obligations," making this an issue of first impression.[71]

20. *Discussion*. As an initial matter, we disagree with TCC that there is any conflict, let alone a "direct conflict," between Tongan law and the *Tonga Stop Payment Order*. "[W]hat [i]s required to establish a true conflict [i]s an allegation that compliance with the regulatory laws of both countries would be impossible,"[72] which, as a corollary, requires that the entity whose compliance is at issue be subject to the regulatory requirements of both jurisdictions.[73] As TCC is not subject to the U.S. regulatory requirements at issue here, there is no such impossibility. Specifically, the Bureau's order does not impose any requirement on TCC with respect to settlement rates. Rather, the order's requirements apply only to U.S. carriers. Additionally, we note that the Tongan Government rescinded the mandated minimum termination rate in 2010. Thus, even if there had been some sort of conflict of laws in this case, the conflict would have ended with that rescission.[74]

21. Further, assuming for the sake of argument that there was an actual conflict in this case, we disagree with TCC that such conflict would limit the Commission's authority to carry out its statutory responsibilities in a manner that it finds will best serve the public interest, as the Bureau did in this case on behalf of the Commission under delegated authority.[75] Indeed, while the Commission has acknowledged that principles of international comity can play a role in accommodating the laws of foreign governments,[76] it has made clear that such principles do not relieve the Commission of its obligation to serve the U.S. public interest in assessing whether to allow U.S. carriers to settle their traffic at a given rate imposed by entities controlling the foreign end of an international route.[77]

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[69] *See* Application for Review at 6-8.

[70] *Id.* at 6 (citing TCC Opposition at 8, n.16).

[71] *See id.* (citing *Cable & Wireless*, 166 F.3d at 1230).

[72] *Filetech, S.A. v. France Telecom, S.A.*, 157 F.3d 922, 932 (2d Cir. 1998) (quoting *In re Maxwell Communications Corp*., 93 F.3d 1036, 1050 (2d Cir. 1996)).

[73] *See, e.g.*, *Hartford Fire Insurance Co. v. California*, 509 U.S. 764, 799 (1993) (quoting Restatement (Third) Foreign Relations Law § 403, Comment *e* (No conflict exists "where a person subject to regulation by two states can comply with the laws of both.")); *Chavez v. Carranza*, 559 F.3d 486, 495 (6th Cir. 2009) (same).

[74] *See supra* ¶ 7.

[75] *See* 47 U.S.C. § 201, 47 C.F.R. § 0.261.

[76] *See, e.g.*, *VIA USA, Ltd., Telegroup, Inc.*, Order on Reconsideration, 10 FCC Rcd 9540, 9555-56, ¶ 47 (1995) (*Call-back Reconsideration Order*) (concluding that the United States should, for reasons of international comity, assist in the enforcement of foreign laws that ban call-back). *But see infra* note 80.

[77] *See Benchmarks Order*, 12 FCC Rcd at 19950, ¶ 311 (finding that FCC benchmark settlement rate requirements for U.S. carriers are consistent with international law and International Telecommunication Union (ITU) regulations, as such requirements constitute an exercise of the sovereign right of the United States to regulate its telecommunications; that such right 'includes the right to attach reasonable conditions to [telecommunications] authorizations to ensure that the actions of such carriers are consistent with the public interest"; and that the United

(continued….)

22. More generally, we agree with the Bureau's conclusion that there is a longstanding exception to the doctrine of international comity as applied by the U.S. courts, "that no nation is required to enforce 'foreign interests that are fundamentally prejudicial to those of the domestic forum.'"[78] Moreover, comity is a discretionary means for U.S. courts and agencies to take account of foreign sovereign acts, and therefore is distinct from obligations imposed under international law.[79] As we have stated in previous orders, foreign governments may not, simply by enacting domestic legal, regulatory, or procedural measures, require the United States to implement such measures as a matter of international law.[80] In the present case, for the reasons set forth herein and in the underlying Bureau decisions, we agree that the Bureau correctly concluded that the public interest would be best served by issuing the *Tonga Stop Payment Order*, despite any Tongan governmental mandates for rate increases (which, notably, have now been removed).

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States is not constrained to "agree to allow U.S. carriers to settle their traffic at whatever rates the foreign carrier deems appropriate regardless of the impact on the U.S. public interest").

[78] *Tonga Stop Payment Order*, 24 FCC Rcd at 8017, ¶ 29. *See also Laker Airways, Ltd. v. Sabena, Belgian World Airlines*, 731 F.2d 909, 937 (D.C. Cir. 1984) ("[F]rom the earliest times, authorities have recognized that the obligation of comity expires when the strong public policies of the forum are vitiated by the foreign act."); *Treco v. Treco & Hamilton*, 240 F.3d 148, 157 (2d Cir. 2000) (*Treco*) ("It is implicit in the concept that deference should be withheld where appropriate to avoid the violation of the laws, public policies, or rights of the citizens of the United States."); *Republic of Philippines v. Westinghouse Elec. Corp*., 43 F.3d 65, 75 (3d Cir. 1994) (comity "must yield to domestic policy" and "cannot compel a domestic court to uphold foreign interests at the expense of public policies of the forum state") .

[79] *Royal and Sun Alliance Insurance Company of Canada v. Century International Arms, Inc.*, 466 F.3d 88, 92 (2d Cir. 2006) (Doctrine of comity "is not an imperative obligation of courts but rather is a discretionary rule of practice, convenience, and expediency.") (internal quotations omitted); *Pravin Banker Assocs., Ltd. v. Banco Popular Del Peru,* 109 F.3d 850, 854 (2d Cir. 1997) (same). *See also Hilton v. Guyot*, 159 U.S. 113, 163-64 (1895), *quoted in Treco*, 240 F.3d at 157-58 ("'Comity,' in the legal sense, is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other"). We note that TCC indirectly cites three cases in support of the proposition that "the law is clear that the Act will be construed narrowly to avoid a conflict with foreign laws." *See* Application for Review at 6 (providing cross-reference to TCC Opposition at 8, n.16). Footnote 16 in the cross-referenced TCC Opposition, in turn, cites the following cases: *Ali v. Ashcroft*, 346 F.3d 873, 885 (9th Cir. 2003); *Amerada Hess Shipping Corp. v. Argentine Republic*, 830 F.2d 421, 426 (2d Cir. 1987); and *CFTC v. Nahas*, 738 F.2d 487, 493 (D.C. Cir. 1984). As the Bureau correctly observed in the *Tonga Stop Payment Order*, however, these cases are inapposite because they hold that U.S. statutes must be construed consistently with international law, and are not relevant to construction of U.S. statutes with respect to the domestic law or policy of a foreign government. *See Tonga Stop Payment Order*, 24 FCC Rcd at 8016, n.89.

[80] Thus, in 2003, the Commission changed the approach it had taken in the *Call-Back Reconsideration Order* (*see supra* note 76), eliminating the existing comity-based prohibitions on call-back and the policy on call-back services that allowed a foreign government or entity to make use of the enforcement mechanisms of the Commission to enforce foreign government prohibitions against U.S. carriers from offering uncompleted call-signaling abroad. *Petition for Rulemaking of the Telecommunications Resellers Association To Eliminate Comity-Based Enforcement of Other Nations' Prohibitions Against the Uncompleted Call Signaling Configuration of International Call-back Service*, IB Docket No. 02-18, Order, 18 FCC Rcd 6077 (2003). The Commission eliminated the prohibitions on call-back and its policy on call-back services given the absence of record support for continuing the policy and because the Commission viewed it as "inconsistent with and undermining the Commission's goal of promoting global competition." *Id.* at 6081, ¶¶ 10-11. The Commission explained that "[b]y no longer enforcing prohibitions against call-back in foreign countries, [it is] not rejecting the sovereign rights of any foreign government or limiting the ability of a foreign government to adopt and enforce policies to prohibit call-back within its jurisdiction. Rather, [it is] re-emphasizing [its] standing policy to encourage competition in all markets, both developed and developing." *Id.* at 6081, ¶ 12 (internal citations omitted).

C. Extraterritorial Jurisdiction

23. *Background*. TCC argues that the *Tonga Stop Payment Order* exceeds the Commission's jurisdiction by interpreting the operating agreements between the U.S. carriers and TCC.[81] It contends that, "[w]hen the Bureau construes an agreement between a U.S. carrier and TCC, it is inherently regulating TCC in the process [because] [w]hatever contract interpretation applies to the U.S. carrier presumably applies equally to TCC."[82] In addition, TCC asserts that the Bureau exceeded its authority by attempting to "coerce" TCC to terminate AT&T's and Verizon's traffic at rates lower than those mandated by Tongan law.[83]

24. *Discussion*. We reject TCC's argument that extraterritorial consequences preclude the Bureau's review and findings in the *Tonga Stop Payment Order*. It is well settled that the exercise of our authority over U.S.-international settlement rates and practices is not an assertion of extraterritorial regulation of foreign carriers; rather, such exercise constitutes direct regulation of U.S. carriers, which the Commission employs in order to protect the public interest.[84] In a similar context, the D.C. Circuit has upheld the Commission's international settlement rates policy, including Commission review of contracts between U.S. carriers and foreign correspondents, despite the "extraterritorial consequences" of the Commission's application of this policy to U.S. carriers.[85] Indeed, Commission review and interpretation of contracts entered into by U.S. carriers for delivery of traffic to foreign destinations may, as here, be necessary and relevant to the Commission's policy goals of protecting U.S. ratepayers from the effects of anticompetitive actions[86] and ensuring that U.S. consumers receive telecommunications services at reasonable rates.[87] Thus, the existence of extraterritorial consequences stemming from the Bureau's review of this case does not render the Bureau's actions impermissible.

25. As explained previously, the Commission, or the Bureau under delegated authority,[88] has the authority to issue an order to U.S. carriers prohibiting the payment of increased rates to protect U.S. consumers from anticompetitive behavior, and the Bureau's action in this instance is consistent with similar actions taken by the Commission and the Bureau to address the consequences of a foreign carrier's anticompetitive conduct on an international route.[89] In this case, we find that the Bureau, in

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[81] Application for Review at 7 (stating TCC's view that the government of Tonga "effectively modified" the operating agreements when it set a rate floor on termination of international traffic).

[82] *Id*.

[83] *Id*. at 5.

[84] *Cable & Wireless*, 166 F.3d 1224. *See also 2004 ISP Reform Order* 19 FCC Rcd at 5742, ¶ 74; *Tonga Stop Payment Order*, 24 FCC Rcd at 8014, ¶ 23.

[85] *Cable & Wireless*, 166 F.3d at 1230-31.

[86] *Id*.; *Benchmarks Order*, 12 FCC Rcd at 19948-49, ¶¶ 306-08.

[87] *See Benchmarks Order*, 12 FCC Rcd at 19817, ¶ 24.

[88] *See* 47 U.S.C. § 201; 47 C.F.R. §§ 0.261, 64.1002(d) (2008) (subsequently redesignated as 47 C.F.R. § 63.22(g)).

[89] *See e.g.*, *AT&T Corp. Proposed Extension of Accounting Rate Agreement for Switched Voice Service with Argentina*, Order, 11 FCC Rcd 18014 (Int'l Bur. 1996) (*Argentina Order*); *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, 28 FCC Rcd 2127 (Int'l Bur. 2013) (*Pakistan 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*, Memorandum Opinion and Order, 13 FCC Rcd 24998, 25000-01, ¶ 6 (1998) (*Mexico Order*) ("The Bureau has strictly enforced the Commission's regulations against whipsawing."); *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) (*Philippines Order*), Order on Review, 19 FCC Rcd 9993 (2004)

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issuing the *Tonga Stop Payment Order*, properly applied Commission policies for protecting U.S. consumers from unreasonably high termination rates demanded by TCC.[90] We enforce those policies through the issuance of stop payment orders – that are addressed *only* to U.S. carriers (not foreign carriers) – where, as here, the Commission finds anticompetitive conduct and coordinates with the Executive Branch agencies responsible for trade and foreign relations,.

26. Finally, TCC asserts that the Bureau's *Tonga Stop Payment Order* is an attempt to coerce TCC into terminating AT&T's and Verizon's traffic at benchmark rates, and that, therefore, the Bureau's action is inconsistent with Commission practices.[91] We disagree. Stop payment orders like the one at issue here are designed to prevent a foreign carrier from unfairly using its market power to play U.S. carriers off against each other in order to obtain a demanded higher rate. The effect of the stop payment order – to unify the position of the U.S. carriers so that the bargaining power of individual U.S. carriers is not diluted vis-à-vis the foreign carrier – helps level the playing field by strengthening the bargaining position of the U.S. carriers as a whole.[92] Accordingly, rather than creating coercive power to enable U.S. carriers to extract price concessions from the foreign carrier, as suggested by TCC, a stop payment order ameliorates an inherently coercive environment stemming from foreign carrier market power. Furthermore, the *Tonga Stop Payment Order* is substantially similar to previous stop payment orders adopted in response to anticompetitive practices employed by carriers in other countries.[93] Thus, we find that the Bureau's order is fully consistent with Commission practice.

D. AT&T and Verizon Rates

27. *Background.* TCC argues that the interests of U.S. consumers "would be better served if the Bureau were to investigate AT&T's and Verizon's usurious collection rates on the U.S.-Tonga route and require AT&T to lower its above-benchmark settlement rate on the U.S.-Tonga route and other thin routes."[94] TCC states that, before TCC blocked AT&T circuits, AT&T was paying $0.09 per minute to terminate traffic in Tonga and yet its published consumer rates for service to Tonga ranged from $1.57 per minute (under AT&T's Worldwide Value Calling Plan) to $3.22/minute (under AT&T's Worldwide Occasional Calling Plan).[95] TCC also states that Verizon's published consumer landline rates for service to Tonga range from $1.56 per minute (under Verizon's International Single Rate Plan) to $7.09 per minute (under Verizon's Basic International Rates).[96] TCC contends the Bureau "brush[ed] aside" concerns regarding AT&T's above-benchmark termination rates in certain high-cost Numbering Plan Areas (NPAs) in the United States.[97]

28. *Discussion*. We reach no conclusion on TCC's argument regarding AT&T's rates for terminating traffic into high-cost NPAs, because it is not relevant to our assessment of TCC's anticompetitive conduct on the U.S.-Tonga route, and thus provides no basis for granting its Application for Review of the Bureau's *Tonga Stop Payment Order*. In the context of the ISP reform proceedings, the

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(affirming Bureau finding of whipsawing and upholding stop payment order), *aff'd* by Order on Reconsideration, 20 FCC Rcd 14106 (2005).

[90] *See Tonga Stop Payment Order*, 24 FCC Rcd at 8016-18, ¶¶ 28-33.

[91] Application for Review at 4-5.

[92] *Tonga Stop Payment Order*, 24 FCC Rcd at 8017, ¶ 30 (citing *Cable & Wireless*, 166 F.3d at 1229-30).

[93] *See, e.g.*, *Pakistan Order*, 28 FCC Rcd 2127; *Philippines Order*, 18 FCC Rcd 3519; *Mexico Order*, 13 FCC Rcd 24998; *Argentina Order* 11 FCC Rcd 18014.

[94] Application for Review at 8-9.

[95] *Id*. at 8.

[96] *Id*.

[97] *Id.* at 9.

Commission made it clear that the rates charged by U.S. carriers do not provide any basis for excusing anticompetitive conduct by foreign carriers.[98] In response to allegations that U.S. carriers had failed to lower retail calling rates in proportion to decreases in international settlement rates – allegations raised both generally and specifically in connection with the U.S.-Tonga route and interactions between TCC and U.S. carriers – the Commission sought comment in the *2011 ISP Reform NPRM* on what action, if any, it should take.[99] TCC and Digicel submitted comments arguing that U.S. carriers must make a specific showing that any benchmark savings have been passed through to U.S. consumers prior to the Commission having the ability to impose benchmarks on a particular U.S.-international route.[100] In the *2012 ISP Reform Order*, the Commission, *inter alia*, rejected an approach that would link action on these two types of rates in the manner that TCC proposes again here – *i.e.*, addressing the allegations against the U.S. carriers before or instead of acting on claims of anticompetitive settlement rates charged by foreign carriers.[101] The Commission determined that condoning anticompetitive practices by foreign carriers would not be an appropriate response to concerns about U.S. carrier rates, and that such a response would, in fact, not be in the public interest.[102] Further, the Commission disagreed with the notion – asserted by TCC and Digicel – that U.S. carriers must make a specific showing that any benchmark savings have been passed through to U.S. consumers prior to the Commission being able to impose benchmarks on a particular U.S.-international route.[103] Instead, the Commission found that it has the authority to take action in response to anticompetitive behavior on a U.S.-international route, and that authority (and the exercise thereof) is in no way dependent upon a certain pricing arrangement for U.S. consumers.[104] TCC has provided no basis for changing our approach on this issue. Accordingly, we reject TCC's suggestion that the Bureau should have investigated rates charged by domestic carriers to U.S. consumers in lieu of issuing the *Tonga Stop Payment Order*.[105]

E. Elimination of Reporting Requirement

29. *Background.* In the *Tonga Stop Payment Order*, the Bureau ordered AT&T and Verizon to "immediately inform the Commission when their circuits have been fully restored, and, otherwise . . . file a report every 30 days after release of this Order explaining the status of their attempts to have their circuits on the U.S.-Tonga route fully restored."[106] Since that order was issued, AT&T and Verizon have regularly submitted reports stating that their direct circuits on the U.S.-Tonga route remain disrupted.[107] AT&T states that it continues to seek the resumption of directly routed services to Tonga. Verizon states that it unsuccessfully engaged in communications with TCC regarding re-opening Verizon's circuits in

[98] *See*, *e.g.*, *2012 ISP Reform Order,* 27 FCC Rcd at 15546-47, ¶¶ 71-73.

[99] *See International Settlements Policy Reform: International Settlement Rates*, IB Docket Nos. 11-80, 05-254 & 09-10, and RM-11322, Notice of Proposed Rulemaking, 26 FCC Rcd 7233, 7253-55, ¶¶ 59-60 (2011) (*2011 ISP Reform NPRM*).

[100] *2012 ISP Reform Order,* 27 FCC Rcd at 15547, ¶ 73, n.178.

[101] *See id.* at 15547, ¶ 73.

[102] *Id*.

[103] *Id*.

[104] *Id*.

[105] While not relevant to the issues in this proceeding, we note that the appropriate forum for reviewing concerns regarding whether U.S. carriers are passing through savings to customers is a separate request for Commission consideration of such concerns independent of this proceeding.

[106] *Tonga Stop Payment Order*, 24 FCC Rcd at 8025, ¶ 50. The order also requires AT&T and Verizon to notify the Commission immediately when service is restored and inform the Commission at what rate service was restored. *Id.* at 8021, ¶ 45.

[107] *See supra* note 29.

light of the June 8, 2010, announcement that the Tongan Government will no longer be setting a regulatory minimum settlement rate or access charge for all inbound international telephone calls.[108] Verizon also states that, for the time being, it is not pursuing further negotiations with TCC.[109]

30. *Discussion*. We observe that the status of carriers' circuits on the U.S.-Tonga route has not changed significantly since AT&T and Verizon began filing status reports with the Commission shortly after release of the *Tonga Stop Payment Order*. For this reason and because the requirement that AT&T and Verizon submit periodic updates on the status of their circuit restoration attempts imposes a burden on the carriers, we eliminate this reporting requirement. We will, however, continue to require AT&T and Verizon to immediately inform the Commission when their respective circuits on the U.S.-Tonga route have been fully restored and at what rate service was restored and/or about other significant developments regarding their efforts to have their circuits on the U.S.-Tonga route fully restored.

IV. CONCLUSION

31. For the reasons set forth above, we find no basis in the record to grant TCC's Application for Review. Accordingly, we affirm the Bureau's decision to suspend U.S. carrier payments to TCC for termination services pending restoration of AT&T's and Verizon's circuits.

V. ORDERING CLAUSES

32. IT IS ORDERED that Tonga Communications Corporation's Application for Review IS DENIED.

33. IT IS FURTHER ORDERED that all facilities-based carriers subject to Commission jurisdiction having a correspondent agreement with Tonga Communication Corporation for direct termination of U.S. traffic on the U.S.-Tonga route SHALL CONTINUE TO SUSPEND all termination payments to Tonga Communications Corporation for switched voice service until such time as the Commission issues a Public Notice announcing that AT&T's and Verizon's direct circuits on the U.S.-Tonga route are fully restored.

34. IT IS FURTHER ORDERED that AT&T and Verizon shall immediately inform the Commission when their circuits on the U.S.-Tonga route have been fully restored and at what rate service was restored and/or about other significant developments regarding their efforts to have their circuits on the U.S.-Tonga route fully restored.

35. IT IS FURTHER ORDERED that upon release of this Memorandum Opinion and Order, AT&T and Verizon are no longer required to file a report every 30 days explaining the status of their efforts to have their circuits on the U.S.-Tonga route fully restored.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[108] *See* Letter from Jacquelynn Ruff, Vice President, International Public Policy & Regulatory Affairs, Verizon to Marlene H. Dortch, Secretary, FCC (filed June 14, 2010) (attaching announcement from Tongan Government that it will no longer be setting a regulatory minimum access charge for all inbound international telephone calls effective April 1, 2010).

[109] *See, e.g.,* Jan. 13 Verizon Letter.